



Police Review Commission

POLICE REVIEW COMMISSION MINUTES

Wednesday, June 10, 2009
6:00 P.M.

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. CALL TO ORDER BY CHAIRPERSON SHERRY SMITH AT 6:00 p.m.

ROLL CALL AND ATTENDANCE

Present: Chairperson Sherry Smith
Vice Chair George Perezvelez
Commissioner Russell Bloom
Commissioner Kamau Edwards
Commissioner Vonnie Gurgin
Commissioner Jonathan Huang
Commissioner Sharon Kidd
Commissioner Michael Sherman
Commissioner William White

Absent: None.

PRC Staff: Victoria Urbi, PRC Officer

BPD Staff: Chief Hambleton
Sergeant Wilson
Captain Harris
Officer Wellington, BPA President

2. **ORDER OF AGENDA:** No changes.

3. **PUBLIC COMMENT:** None.

4. **PUBLIC HEARING: OFFICER-INVOLVED SHOOTING POLICY RECOMMENDATIONS**

a. Subcommittee's report on overview of policy recommendations:

Chairperson Smith stated:

The purpose of the hearing tonight is to hear and consider public comment on officer-involved shooting policy recommendations related to the shooting of Anita Gay during an altercation in February 2008. The BPD has conducted its own internal investigation, and the PRC and staff have conducted a separate independent investigation. The board



of inquiry was held on April 13, 2009, and findings were forwarded to the BPD and the City Manager. A subcommittee was formed to look into the policy issues that arose during our investigation, and this public hearing is to assist the Commission before its approval of the proposed policies that resulted from the PRC's investigation. You can also submit comments in writing regarding the policy recommendations to PRC@ci.berkeley.ca.us.

- b. Staff's report on purpose of recommendations, goals of public hearing and process of policy recommendations:

Staff stated that the purpose of the policy hearing was to highlight the importance of maintaining the public's trust in the Berkeley Police Department.

- c. Investigation of officer-involved shootings and discussion of General Order P-12.
Chief Hambleton stated that many people that hear about officer-involved shootings do not jump into the conclusion that the officer acted inappropriately. He stated that this meeting was scheduled when he was on vacation and was not aware of it until last week when he came back. Therefore, he did not have an opportunity to discuss the recommendations with staff. His plan was to listen and consider the public comments, and will provide responses at a later time.
- d. Question and Answer
Ms. Urbi stated that even though the meeting was scheduled while the Chief was on vacation, he had a chance to see these policy recommendations when the report was first forwarded to BPD in February during the Anita Gay board of inquiry. The recommendations are not new and contained only minor revisions.

Chief Hambleton stated that typically when subcommittees are formed by PRC, he assigns someone to work with the subcommittee. He assigned Captain Harris to work with this subcommittee. This often involves a lot of give and take at the subcommittee level before recommendations are forwarded to the Commission.

Ms. Urbi stated that Captain Harris and Chief Hambleton are here tonight and this would be an opportunity to provide their input. If the Commission wishes to hold off on adopting the recommendations, they can do that. These are just the subcommittee's recommendations, which have not been adopted and can be discussed tonight.

Chairperson Smith confirmed that BPD was notified of the subcommittee meetings.

- e. Public Comment
Ms. Grinage, a former Berkeley resident and current Oakland resident, stated that she is involved in a campaign to improve police accountability in Oakland, primarily through the upgrading of the Citizen's Police Review Board. They are trying to move the filing from Internal Affairs to the Citizen's Police Review Board. The Internal Affairs Department receives between 800-1000 complaints a year. The CPRB receives about 80. It would be far more valuable to the City in terms of oversight, data collection, of identifying what's going on for them to be aware of the totality of the City's concerns and complaints. The budget crisis in Oakland has made them look at funding issues.

She strongly endorses all the subcommittee's policy recommendations. She would add the inclusion of not only domestic disturbance situations, but also 5150 incidents.

Chief Hambleton stated that in Berkeley the Mobile Crisis Unit and BPD officers handle 5150 cases.

Chairperson Smith stated what she thought the subcommittee was thinking on this. They wanted to make it more forceful and clearer, that before an officer proceeds, the cover officer should arrive. If we were to insert 5150, it might weaken the intent of the specific proposal.

- f. Recommendation from the subcommittee regarding Officer-Involved shooting policy. There are seven recommendations.

Motion to adopt the policy recommendations on officer-involved shootings as proposed to the Commission. M/S/C (Perezvelez/Kidd) Motion failed.

Commissioner Huang suggested all the recommendations should be adopted. If adopted, can additional recommendations be added in the future?

Chairperson Smith responded "You can adopt these in total, amend them, or consider other policy recommendations."

Amended motion to delete from consideration #3, and to postpone the consideration of that to a future meeting, which would include consultation with members of Berkeley Mobile Crisis Unit. M/S/C (Sherman/Bloom)

Motion to withdraw previous amended motion. M/S/C (Sherman/Bloom)

Motion to send the policy recommendations back to the subcommittee to discuss with Captain Harris. (Sherman/Kidd) Motion carried.

Ayes: Bloom, Edwards, Gurgin, Huang, Kidd, Perezvelez, Sherman, Smith, and White.

Noes: None. **Abstain:** None. **Absent:** None.

5. OLD BUSINESS

- a. Discuss Berkeley Police Department's Mutual Aid Agreements with other law enforcement agencies and the requirements of Ordinance Number 4640.

Jim Chanin stated that he helped write the Police Review Commission Ordinance and the Mutual Aid Pact Ordinance. He was on the first Commission and Chair for the first four years. The Ordinance provided that the Berkeley Police Department had to disclose in writing its relationship with all other law enforcement agencies, all mutual aid pacts and understanding of agreements on an annual basis. The material would be available in the City Clerk's office ten days before the City Council convened a public hearing.

The City Council would vote on all these pacts. The process would be repeated each year for review. The City is obligated to enforce this Ordinance as part of the Berkeley Municipal Code.

Motion to form a subcommittee to review Mutual Aid Pacts and return to the full Commission with recommendation of whether to forward to City Council. (Sherman/Kidd) Motion carried.

Ayes: Bloom, Edwards, Gurgin, Huang, Kidd, Perezvelez, Sherman, Smith, and White.

Noes: None. **Abstain:** None. **Absent:** None.

Subcommittee members include: Commissioners Perezvelez, Kidd, and Huang.

- b. Discuss Berkeley Police Department's vehicle pursuit of suspects on May 16 (See San Francisco Chronicle story dated May 18, 2009 and BPD General Order V-6 in agenda packet).

Motion to request that the Berkeley Police Department provide a presentation regarding an incident that took place on May 16 during a vehicle pursuit. (White/Perezvelez) Motion carried.

Ayes: Bloom, Edwards, Gurgin, Huang, Kidd, Perezvelez, Sherman, Smith, and White.

Noes: None. **Abstain:** None. **Absent:** None.

Motion to start an administrative investigation of the vehicle pursuit that occurred on May 16. (Huang/Bloom). Motion failed.

Ayes: Bloom, Edwards, Huang, and White.

Noes: Gurgin, Sherman, Perezvelez, and Smith. **Abstain:** Kidd. **Absent:** None.

- c. Discuss BART Police Citizen Oversight Meeting on June 8th and a proposed model. Commissioner White's report. On June 8, Commissioner White attended a BART subcommittee meeting that is charged with developing an oversight committee. He handed out a draft matrix of different oversight models.

The first model consists of an independent auditor with no input from the civilian oversight. The second one consists of an independent auditor, which shares the report with the civilian oversight, but the civilian oversight will have no input. The third one consists of an independent auditor, who does the report and presents it to the civilian oversight, who will make recommendations and disciplinary actions. The report then goes to the Chief for approval. The committee voted unanimously on the third recommendation, but is waiting until a hybrid is developed. The hybrid will be presented for a vote by the subcommittee. Next, it will be voted on by the BART directors.

6. APPROVAL OF MINUTES

Motion to approve May 27, 2009 minutes. M/S/C (Perezvelez/Gurgin) Motion carried.

Ayes: Edwards, Gurgin, Huang, Kidd, Perezvelez, Sherman, Smith, and White.

Noes: None. **Abstain:** Bloom. **Absent:** None.

7. PRC OFFICER'S REPORT (For Discussion or Action)

- a. Hearing update. Hearings were held on June 1st and 8th. The next hearings are scheduled on June 15th and 22nd.
- b. Status of complaints: 21 open cases.
- c. Comments: The Commission has requested that the PRC Annual Report be presented to the City Council. The City Manager approved a presentation scheduled on October 13 at the City Council Meeting.

8. BERKELEY POLICE DEPARTMENT CHIEF'S REPORT

Chief Hambleton reported to City Council on June 9 the quarterly crime report, which is accessible online through the City Website. Historically, 2008 was the lowest crime in Berkeley in over forty

years. On the staffing, currently there are five sworn positions vacant and there may be more hiring in the next months. BPD expects a huge wave of retirements in June or July.

9. COMMITTEE REPORTS (For Discussion or Action)

- a. Regulations Review Subcommittee. The subcommittee met on June 3. Commissioner Perezvelez stated that a couple of issues were brought up, such as questions about the current regulations compared to the 2007 changes after the court order. He also stated there was extensive information and research done by a prior subcommittee (2005), but the regulations were never adopted, because the City Manager or the City Attorney did not review the 2005 changes.

Commissioner Perezvelez stated that Mr. Wellington raised an issue at the subcommittee meeting regarding whether the City Manager directed PRC staff to revise the Regulations, because the hearings were operating illegally. Ms. Urbi replied that she never received an order from the City Manager to revise the regulations. The suggestion to revise them was made, because after the court of appeal decision, it was a good opportunity to review the procedures for any improvements. Also, the City Attorney's office reviewed the 2007 regulations. The subcommittee will meet on June 24 and possibly on June 25.

- b. Search of Homes Subcommittee meeting is scheduled on June 16.
- c. Crowd Control Subcommittee. Commissioner Huang stated the subcommittee reviewed a final draft of the Crowd Control General Order, and will provide copies at the next meeting (July 8) for approval. An issue that came up is, the BPD would like to implement these general orders for the Juneteenth festival in South Berkeley. Commissioner Huang asked the Commission if BPD could follow these general orders at the festival. The Commission gave the "go ahead" for BPD to use those general orders, and on July 8 the Commission will proceed with the formal approval.

10. COMMUNICATIONS: Attached.

11. PUBLIC COMMENT: Limited to item 13 only.

12. NEXT MEETING

NOTE: The Regular Commission Meeting on June 24 has been cancelled.
The next Regular Commission Meeting is scheduled on July 8.

Closed Session

The Police Review Commission recessed into closed session to discuss and take action on the following items:

13. LATE FILE PETITION

Case No. 2231 – Complainant James Bronson.

Motion to approve Late File as timely. (White/Gurgin) Motion carried.

Ayes: Bloom, Edwards, Gurgin, Huang, Kidd, Perezvelez, Sherman, Smith, and White.

Noes: None. **Abstain:** None. **Absent:** None.

14. ADJOURNMENT

Meeting was adjourned at 10:00 p.m.