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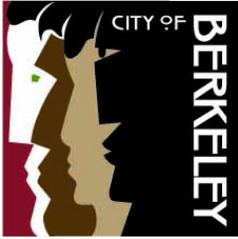
## CITY MANAGER

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Police Review Commission

September, 2002

Mr. Weldon Rucker  
City Manager  
2180 Milvia Street, Fifth Floor  
Berkeley, CA 94704

Dear Mr. Rucker:

Enclosed is the 2001 Statistical Report of the Police Review Commission (PRC) for the calendar year, January 1 to December 31, 2001. In addition to statistics regarding PRC investigations and findings, the report is an overview of policy work completed by the Commission and the Commission's involvement in the larger civilian oversight community.

In reviewing the work of the PRC in 2001, I want to recognize the accomplishments of the Commission and PRC staff. The PRC staff handled 57 cases in 2001 and held 30 Boards of Inquiry, thus averaging two to three hearings per month in addition to its regular meetings. In addition, the PRC reviewed and presented important policy items to the City Council. This level of intensity in workload requires all parties to work at full capacity on a sustained basis. I very much appreciate the level of commitment to the City of Berkeley and the civilian oversight process that has been displayed by the PRC staff and commissioners. I want to recognize the assistance provided by the Berkeley Police Department, as well. Without the cooperation of the Department, the PRC would not be able to complete its mission.

I welcome any questions, comments or suggestions regarding this report.

Respectfully submitted,

Barbara J. Attard  
PRC Officer

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# **EXECUTIVE SUMMARY**

## ***INTRODUCTION***

The introduction provides a brief history of the PRC and describes the PRC mandate as approved by the voters in the PRC enabling legislation, Ordinance No. 4644. (The full text is provided in Technical Appendix A)

## ***SECTION 1: THE YEAR IN BRIEF***

This section contains a generalized overview reporting a 15% increase in the number of cases filed at the PRC in 2001. The PRC website is discussed, as well as PRC involvement in networking efforts through the national and international associations of civilian oversight and individually with jurisdictions requesting professional assistance. This section also contains a text box that provides a description of the PRC process.

## ***SECTION 2: OVERVIEW OF INVESTIGATIONS AND FINDINGS***

A more detailed analysis of cases received and completed is found in this section. There were no significant trends in types of cases sustained. The PRC received 57 complaints in 2001 and conducted Board of Inquiry evidentiary hearings on 30 of 52 cases closed. Nineteen of the cases heard by the PRC resulted in findings with one or more sustained allegations. There continues to be a high level of concurrence on findings between the City Manager and the PRC.

## ***SECTION 3: COMPLAINANT DEMOGRAPHICS***

Using graphs and narrative, this section discusses complainant demographics over the last three years. Complainant demographics in 2001 were proportionally similar to those in 1999. There was a drop in the number of complaints filed by African Americans in 2001, but not a significant number when the statistics are reviewed over several years.

## ***SECTION 4: POLICY DEVELOPMENT***

Highlights of policy work undertaken by the PRC in 2001 include:  
A recommendation approved by the City Council that the Berkeley Police Department (BPD) develop written directives for conducting consensual stops;  
Recommendations approved by the City Council for police handling of bicycle issues;  
Attended the lesbian/gay/bisexual/ transgender (LGBT) training that was conducted in 2001 as the result of a PRC policy issue.

## ***SECTION 5: LEVEL OF COMPLAINTS RECEIVED***

Although the PRC received a higher number of complaints (57) in 2001 than the average complaint receipt rate over the last 8 years, Berkeley Police Department's Internal Affairs Bureau (IAB) received 112 external complaints. This difference in the level of complaints received between the two units is discussed in this section in the context of the number of police misconduct cases benefiting from the civilian oversight process.

# 2001 PRC STATISTICAL REPORT

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**CITY OF BERKELEY**

**POLICE REVIEW COMMISSION**

**2001 STATISTICAL REPORT**

**INTRODUCTION**

The Berkeley Police Review Commission (PRC), established by voter initiative in 1973, completed its 28<sup>th</sup> year of operation in 2001. The PRC has independent authority to investigate complaints filed against employees of the Berkeley Police Department (BPD) and to provide for citizen involvement in setting and reviewing BPD policies, practices, and procedures.

The following report provides data and information about the PRC for the year 2001 and comparative information for previous years. Included in this report are:

- An overview of PRC activities and developments in 2001
- A description and analysis of the investigative and policy work completed in the past year
- Charts and graphs demonstrating the accomplishments and changes over the last years
- The PRC Ordinance, Regulations, and Categories of Allegations

**The Police Review Commission Mandate**

In 1973, the citizens of Berkeley approved Ordinance No. 4644 creating the Police Review Commission (PRC), a body composed of nine volunteer commissioners appointed by the Mayor and members of the Berkeley City Council. The PRC was given authority to investigate civilian complaints of misconduct lodged against the Berkeley Police Department, and to provide for citizen participation in the formulation and review of police practices, policies, and procedures. Professional staff to the commission is provided by the Office of the City Manager and consists of one PRC officer, one investigator, and two clerical staff. The PRC is one of the oldest civilian oversight agencies in the nation and has been an important model and source of information for emerging oversight bodies.

## **SECTION 1: THE YEAR IN BRIEF**

The PRC experienced a slight rise in complaints in 2001, 57 cases received, up from 50 in 2000, but a comparable number to the 59 complaints received in 1999. As compared with 1999, a high number of cases (30) resulted in Boards of Inquiry in 2001, with 19 cases administratively closed and 3 policy cases going to the full commission.

The PRC website continues to be upgraded and now offers access to the PRC complaint form, annual statistical reports since 1999, PRC Ordinances and Regulations and information about other civilian oversight bodies and organizations. The PRC website is: <http://www.ci.berkeley.ca.us/prc/>. PRC meeting agendas and minutes are currently posted on the City website at: <http://www.ci.berkeley.ca.us/clerk/> .

PRC staff and commissioners continue to be active in international, national and regional associations of civilian oversight. One PRC commissioner and two staff members attended the National Association of Civilian Oversight of Law Enforcement (NACOLE) confer-

ence in Denver in October 2001. The City Manager also approved funds to allow the President of the Berkeley Police Association (BPA) and a sergeant from Internal Affairs to attend. The conference was an important networking and training experience for those who attended and provided an opportunity for the police department representatives to become familiar with the police oversight community. One staff member attended the International Association of Civilian Oversight Law Enforcement (IACOLE) in Quebec City, Canada.

The PRC process is a model for emerging oversight agencies and PRC staff and commissioners serve as a resource for communities exploring civilian oversight options. Last year, the PRC responded to dozens of inquiries from jurisdictions throughout the United States, from communities as near as Emeryville, and across the country to Florida and Maine. Staff also made presentations to and met with community leaders from England and Brazil.

## **The PRC Complaint Process**

There are several options for handling PRC complaints. Upon receipt, cases are screened for timeliness of complaint submission,<sup>1</sup> allegations of misconduct, and policy issues. Cases that fall within PRC guidelines are investigated and prepared for Boards of Inquiry. Cases that do not warrant investigation are reviewed and submitted to the commission for administrative closure or summary dismissal. Policy issues are researched and brought to the full commission for recommendations for change in BPD policy. In addition, a mediation pilot project has been underway for several years—providing an alternate dispute resolution option for complainants and officers to resolve the issues of the complaint.

Upon completion of an investigation, the PRC investigator compiles all relevant documents into a report and a Board of Inquiry (Board) is scheduled. The Board is made up of three commissioners who assemble with involved parties and hold a public evidentiary hearing of the complaint.<sup>2</sup> Complainants and officers testify and have the opportunity to question all parties regarding the incident.

At the conclusion of the hearing, the Board deliberates and determines findings based upon a “clear and convincing” standard of evidence. The findings of the Board are forwarded to the complainant and the subject officer, the City Manager, the Chief of Police and the City Council in an advisory capacity.

City Manager staff reviews the PRC reports and findings and the Internal Affairs reports and findings to determine whether the PRC findings should be upheld by the City Manager. The City Manager’s response to PRC findings is disseminated to the complainant, the officer, the Chief of Police and the PRC.

The City of Berkeley is in the process of implementing a new appeal process for officers who have had allegations sustained by the PRC. The appeal procedures have been developed to comply with the Court of Appeals decision in *Caloca v. County of San Diego*. A report on the impact of this process will be provided in the 2002 Statistical Report.

<sup>1</sup> Complaints must be filed with the PRC within 90 days of the alleged misconduct; however, in circumstances specified in the PRC Regulations, a 90-day extension can be granted by a vote of at least 6 commissioners. (See Attachment B, Page 3) Officers are not required to attend hearings on late-filed cases and the findings from such hearings cannot be considered for disciplinary action against the officer.

<sup>2</sup> Boards of Inquiry can be closed by unanimous vote of the Board in order to protect the rights and privacy of individuals.

## SECTION 2: OVERVIEW OF INVESTIGATIONS AND FINDINGS

### Complaints Received

There was an increase in the number of complaints received in 2001, 57 cases, up from 50 in 2000, but comparable to the 59 complaints received in 1999. Review of complaints received shows no significant pattern in the types of complaints received, although a pattern in the location of incidents that result in complaints is apparent. Approximately 46% of cases filed (26 cases) were filed regarding incidents that occurred west of San Pablo and south of Dwight Way.

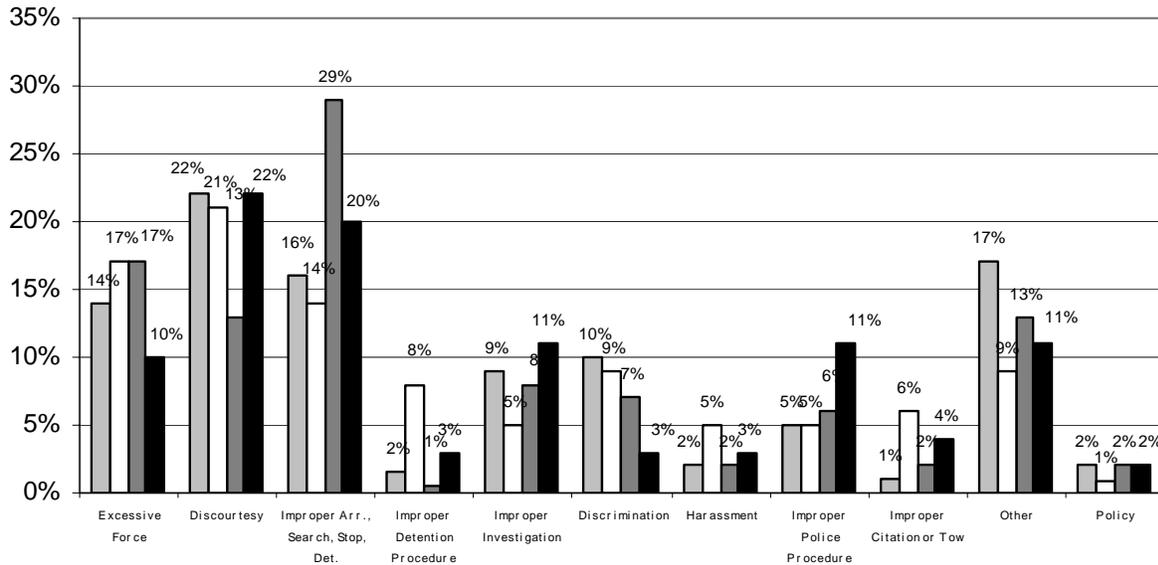
Six complaints received in 2001 involved Critical Mass incidents. This number is comparable to the 5 Critical

Mass complaints received in 2000, and down from the 15 received in 1999.<sup>3</sup>

The PRC was petitioned to have a special meeting regarding enforcement action at a housing development on University Avenue where several search warrants were served. A misconduct complaint and a policy complaint resulted from the meeting.

<sup>3</sup> Critical Mass is a monthly group ride of bicyclists who ride for fun and, at times, to bring attention to bicycle issues. Because Critical Mass rides and the police response to them have generated some ongoing friction, the PRC made some policy recommendations that are discussed below.

### Allegations Received by Percentage



Year and Total Number of Allegations



## **Overview of Allegations Received**

PRC cases are comprised of specific allegations of misconduct. For the past four years complaints have averaged 4 allegations per complaint.

There are significant changes in types of allegations received in 2001, however, when considering these apparent trends, the 14% rise in the number of complaints received must be taken into account.<sup>4</sup> The chart above shows that major categories of allegations received in 2002 were discourtesy allegations (22% of all allegations) and “improper arrest, search, seizure, stop or detention” allegations (20% of all allegations).

- “Discourtesy” allegations rose from 28 to 55 in 2001, nearly a 100% increase, although a more average number of allegations in this category than received in 2000;
- “Improper arrest, search, seizure, stop or detention” allegations remained high after a sharp rise in 2000;
- “Improper police procedure” allegations (which includes a variety of property and arrest issues) rose from 13 to 27, also a 100% increase;
- Other significant increases were in the “improper or inadequate investigation” category from 16 to 27, “improper detention procedures” from 1 to 9 allegations, and “improper citation or tow” from 4 to 10 allegations;
- Excessive force and discrimination allegations declined--excessive force declined 28%, from 36 to 26; and

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<sup>4</sup> Complaints rose from 50 to 57 complaints. At an average number of allegations per complaint in 2001 of 4.4 allegations per complaint, an increase of 31 allegations must be factored in.

discrimination allegations dropped from 14 to 8.

### Discourtesy

Although the level of discourtesy allegations (55) reflects a sharp rise this year, review of the statistics for the last four years shows that the level of discourtesy allegations in 2000 (28) was unusually low. The average number of discourtesy allegations from 1998 through 2001 is 42.5. It was noted in the 2000 Statistical Report that the drop in discourtesy allegations corresponded to BPD training in “customer service” in the preceding period.

Allegations are broken down into several sub-categories within each type of complaint.<sup>5</sup> Significant breakdowns within the discourtesy category in 2001 were: 24 basic discourtesy allegations (up from 9 in 2000); 14 threat allegations (up from 4 in 2000); and 10 failure to give proper explanation to a citizen allegations (with 9 received in 2000). Discourtesy allegations should be monitored to determine whether this is an area that merits attention.

### Improper Arrest, Search, Seizure, Stop Or Detention

In 2000, there was a significant change in the number of “improper arrest, search, seizure, stop or detention” category with allegations doubling from 30 to 60. The number of allegations received in this category remained high in 2001, with 52 allegations received. Within this category, there were 15 allegations of false arrest, 11 of improper detention, and 21 allegations of improper search.

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<sup>5</sup> Technical Appendix C contains a complete listing of the types of allegations within each category.

There is no particular pattern in complainant or location demographics regarding the false arrest allegations; however, review of specific complaint data indicates that 62% (13 of 21) of the improper search allegations were filed by African American complainants.

The decrease in improper detention from 17 to 11 in this allegation category corresponds to an increase from 1 to 9 of improper detention procedures allegations. A possible explanation for this could be a change in emphasis in charging detention issues.

**Closed Cases/Boards of Inquiry**

The PRC closed 52 cases in 2001—30 of which culminated in Boards of Inquiry (Boards) hearings that are public meetings. (See graph below and charts on Pages 13 and 15.) Of cases that were completed in Boards of Inquiry in 2001, 19 cases resulted in findings with at least one sustained allegation (sustained). This represents a sustained rate of over 63% in cases that were heard by Boards, and a sustained rate of over 36% of the total number of cases closed. Of the total 225 allegations in the 52 cases closed in 2001, 176 allegations in 30 cases went to Boards, 49 of which were

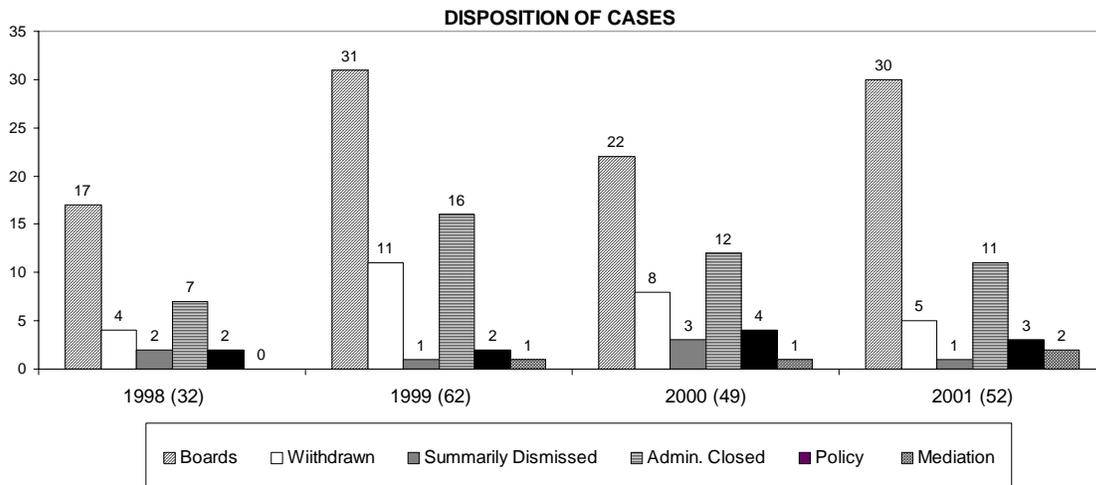
sustained, a sustained rate of 28% of allegations heard at Boards, and 21% sustained of total 225 allegations closed.

**Sustained Misconduct**

In 2001, there were no significant trends in sustained allegations of misconduct. (Charts detailing this information are on pages 13 and 15.) The majority of allegations sustained in a particular category is 12 sustained “discourtesy” allegations.

There was an increase in “discourtesy” allegations sustained, from 6 in 2000 to 12 in 2001. This increase corresponds to the increase in discourtesy allegations received. It should be noted, however, that a total of 26 discourtesy allegations were heard at boards of inquiry, and 46% of those allegations were sustained.

There was also an increase in sustained “inadequate or improper investigation” allegations, from one sustained in 2000 to 7 sustained in 2001. There was a rise in the number of allegations received in this category as well, and 21 of these allegations were heard at boards of inquiry.



### **City Manager Review**

City Manager staff reviews PRC findings and investigations along with Internal Affairs investigations and findings to make an assessment as to whether the Manager agreed with the findings of the PRC. This process was suspended during part of the year due to negotiations with the Berkeley Police Association (BPA) to institute a post-PRC appeal hearing process initiated by a Court of Appeals ruling that officers have the right to an appeal of sustained findings rendered by civilian oversight boards in specified situations.<sup>6</sup> The appeal process is scheduled to take effect in June 2002. City Manager review of PRC cases have resumed in cases in which no appeal has been filed.

City Manager staff reviewed 22 of 30 PRC cases heard by Boards of Inquiry in 2001. Of the 125 allegations that were closed in the 22 cases reviewed, the Manager concurred with the findings of the PRC in 120 of 125 allegations. Of the five allegations in which there was disagreement, three sustained allegations were determined to be not sustained, one not sustained allegation was evaluated as exonerated at the Manager level and the Manager sustained one allegation that was not sustained by the PRC. Due to confidentiality limitations, a full breakdown of PRC and/or Manager agreement with IAB findings cannot be provided.

This level of review at both the PRC and the City Manager's office, and the high level of concurrence on findings, is an indication of the quality of the work and dedication of the Commission and the City to the fair assessment of each case.

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<sup>6</sup> Caloca v. County of San Diego (1999) 72 Cal. App.4<sup>th</sup> 1209

### **Mediation**

A mediation pilot program was continued in 2001. Mediation provides an opportunity for complainants and officers to resolve their differences in a non-adversarial dispute resolution setting. Although only two cases were mediated in 2001, and only one per year over the previous two years, all parties involved in the mediated cases reported that the process was worthwhile and an important alternative to the adversarial Board of Inquiry conclusion to the complaint process. Both complainants and officers felt that they had an opportunity to express their issues and come away with an understanding of the perspective of the other party.

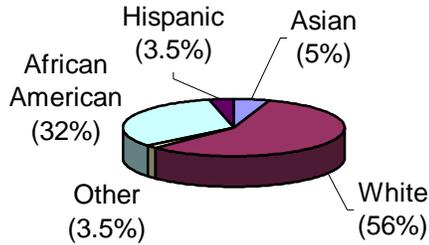
Staff has attempted to refer a larger number of cases to mediation; however, it is difficult to convince parties in police misconduct cases that mediation may be a more rewarding way to resolve their complaint than the adversarial process. Mediation may appear less attractive in the complaint context than in personal disputes because the officer and the complainant usually do not have an ongoing relationship with each other—and therefore do not have a vested interest in coming to a mutual understanding about the incident.

Other civilian oversight jurisdictions that have successful mediation projects have reported that in cases in which both parties commit and mediation does occur, the results are remarkable. It is a staff priority to increase the number of cases that are resolved through mediation in future years.<sup>7</sup>

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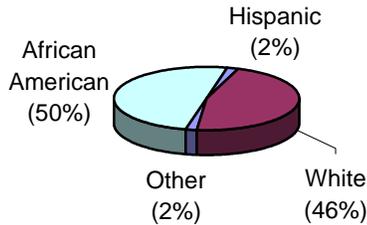
<sup>7</sup> An article, "In Praise of Mediation," by PRC Officer Barbara Attard, discusses the importance of mediation in the civilian oversight/citizen complaint setting. Copies are available upon request.

## COMPLAINANT DEMOGRAPHICS



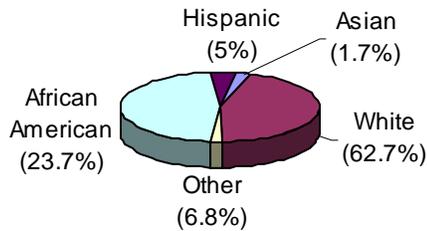
### 2001

Asian	3
White	32
Other	2
African American	18
Hispanic	2



### 2000

Asian	0
White	23
Other	1
African American	25
Hispanic	1



### 1999

Asian	1
White	37
Other	4
African American	14
Hispanic	3

2000 City of Berkeley Population *		
Race	Totals	Percentage
Asian	16,740	16.3
White	56,691	55.2
Other	5,604	5.5
African American	13,707	13.3
Hispanic	10,001	9.7
<b>TOTAL</b>	<b>102,743</b>	<b>100</b>
*2000 Census		

## **SECTION 3: COMPLAINANT DEMOGRAPHICS**

The graphs on the preceding page compare complainant demographics for the years 1999 through 2001 and details the City of Berkeley population based on the 2000 Census. As you can see from the chart, numbers of complainants in all racial categories are of similar proportions for the years 2001 and 1999. The complaint rate is higher for African Americans than the corresponding percentage of African Americans who live in Berkeley, but there have been a fairly consistent number of African American complainants in 1997 (21), 1998 (21), 2000 (25), and 2001 (18).

1999 was an unusual year in this respect with a lower number of complaints filed by African Americans (14).

There was a rise in the number of white complainants in 1999, 37 complaints, as compared with 20 in 1998 and 17 in 2000. In 2001, 32 complaints were filed by white complainants. The large increase in this category in 1999 corresponded with the large number of Critical Mass complainants, 14 of whom were white. There were six Critical Mass complaints filed in 2001 by white complainants.

## **SECTION 4: POLICY DEVELOPMENT**

The PRC was involved in some significant policy work in 2001. While many cases involve specific policy issues, the following represents highlights of the more significant policy reviews conducted by the PRC in 2001. During this period the Commission:

- Submitted an item to the City Council requesting that BPD develop written directives on handling consensual stops;
- Attended the lesbian/gay/bisexual/transgender (LGBT) training conducted by BPD as the result of a PRC policy recommendation;
- Brought police/bicycle issues to the City Council;
- Made several recommendations to the City Council that the City of Berkeley take positions on pending state legislation;
- Assisted BPD with recruitment efforts;

- Reviewed BPD pepper spray reports disseminated to the PRC as the result of the PRC pepper spray study completed in 1997.

### **Consensual Stops by BPD**

The PRC heard two complaints in which officers demanded that individuals identify themselves in consensual stops. In one case the man was arrested and was forced to spend the weekend in jail, although no law was broken. Misconduct allegations were sustained in both complaints and the Commission was concerned that officers were overstepping their authority. This policy issue was brought to the City Council in 2001 and BPD was required to develop a training and information bulletin defining the parameters of consensual encounters. The training and information bulletin is very specific in informing officers that they cannot force

individuals to identify themselves if they lack the authority to make a detention.

### **Transgender Task Force**

The PRC Transgender Task Force (TTF) was formed in 1998 to address issues stemming from a PRC case that involved a transgendered female to male person who was found to have been treated insensitively by a Berkeley police officer. In addition to sustaining misconduct allegations, the Board of Inquiry called for policy intervention regarding transgender issues.

After hearing from the TTF, in 2000 the PRC brought its recommendations to the City Council for training and policy revisions for BPD. A Training and Information Bulletin on “Transgender Awareness” drafted by the Task Force was submitted to BPD and adopted. Training in LGBT cultural awareness was mandated by the council and BPD was asked to appoint a liaison to the LGBT community.

In 2001, the LGBT training was instituted. All employees of the BPD, from the Chief through the clerical and dispatch staff (and PRC staff and several Commissioners) attended a full 8-hour training course that was organized by the BPD LGBT liaison. The training was interesting, informative, and well received by all. BPD received national media recognition for conducting this progressive training.

### **Bicycle Issues**

PRC staff initiated meetings with bicycle activists and BPD in attempt to resolve ongoing hostilities between BPD and Critical Mass participants that have

resulted in large numbers of PRC complaints filed over many years regarding Critical Mass issues (15 cases in 1999, 5 cases in 2000, and 6 in 2001). Bicyclists who were not a part of Critical Mass had indicated that they felt that issues regarding Critical Mass had developed into hostile relations between BPD and bicyclists in general. After several months of meetings, impasse was reached and a formal policy recommendation was articulated.

In 2001 the PRC brought this issue to the City Council and Council requested that BPD meet with Critical Mass in order to improve communications and ensure that the rides to go smoother. These meetings are now in place and both officers and riders have reported improved relations between the two groups.

### **Recruitment**

As are many police agencies throughout the country, BPD is undergoing a large turnover in staffing. It is anticipated that by the end of 2003 BPD will have had a turnover of 55 officers, over a 25% turnover in staff in just a few years. In response to a BPD request, a PRC commissioner worked with BPD staff in planning for recruitment efforts and attending a job fair.

### **Pepper Spray Study**

In 1997 the PRC conducted a study of the effectiveness of the use of *oleoresin capsicum* (OC or “pepper spray”) by BPD officers. The study involved a review of reports of all of the uses of pepper spray (36) at the time by BPD and revealed that OC spray was known to be effective in less than one third (11)

of the incidents in which it was used. Upon completion of the study, the PRC recommended that the BPD discontinue the use of OC spray. Although the Council declined to ban the use of pepper spray by BPD, the Council did

require BPD to report each use of pepper spray to the PRC and the Council.

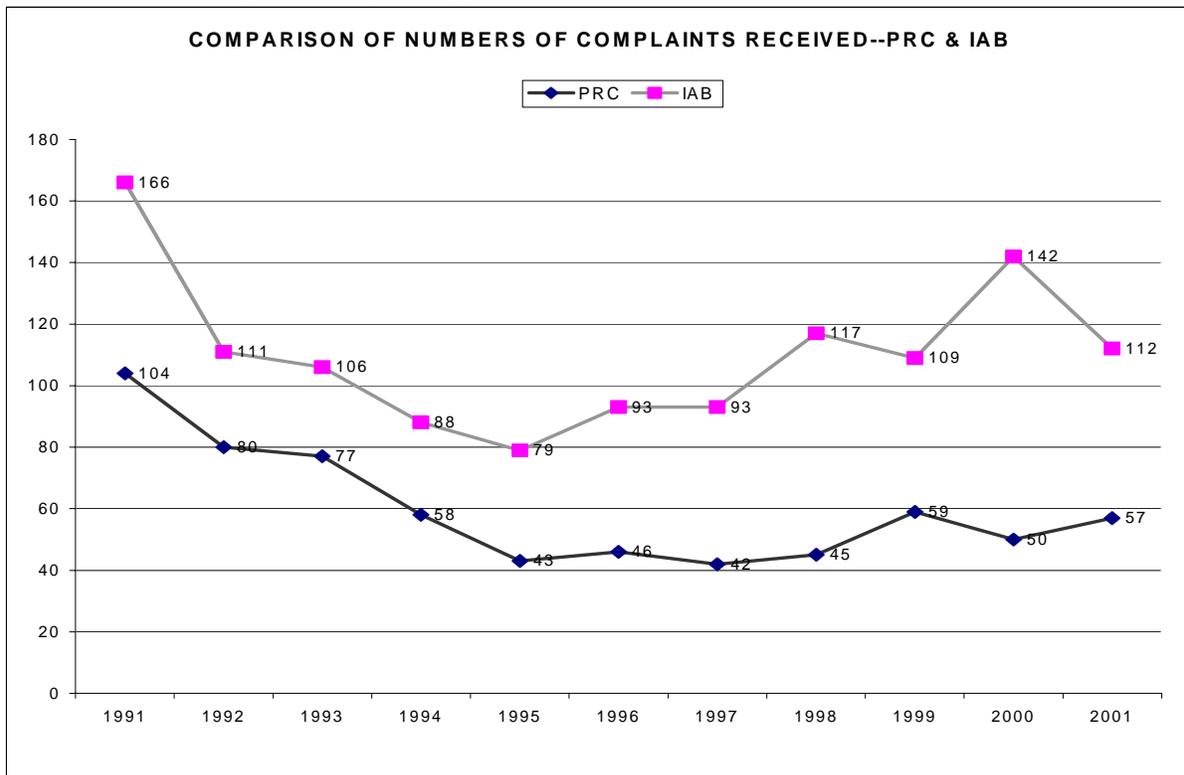
The pepper spray study has received international attention. Copies of the report are available through the PRC office.

## SECTION 5: LEVEL OF COMPLAINTS RECEIVED

The PRC received 57 complaints in 2001, 14% higher than the average of 50 complaints received over the last 8 years. The number of complaints filed with the PRC has leveled off in the last 8 years at a much lower number of cases filed than were filed in the early 1990's—in 1991, 104 cases were filed at the PRC. Speculation as to the reasons for the decline in complaint levels includes recognition that there have been fewer political demonstrations in recent years than 10 years ago, and theories that BPD “community based policing” and

“customer service” initiatives are having a positive impact on officers’ interactions with the community. It is likely that a variety of factors have contributed to the overall drop in the number of complaints filed.

An important measure in analyzing the level of complaints received by the PRC is in comparing the number of complaints filed at the PRC to the number of complaints filed with BPD Internal Affairs (IAB).



The graph above indicates that IAB complaint levels have generally been lower over the past 10 years. (A detailed chart of IAB statistics is attached on Page 16). It is important to note in reviewing the IAB complaint rate that numbers of “informal inquiries”<sup>8</sup> can fluctuate and may account for the sharp rise in the level of complaints received by IAB in 2000.<sup>9</sup> The decision to handle a case as an informal inquiry or a formal complaint can influence the complaint level and may be the result of changes in personnel in IAB and different priorities in handling of complaints. In 2001 the IAB level of complaints is more in line with the numbers of complaints received over the last 5 years. It should be noted that informal inquiries increased in 2001 from 78 to 87.

The IAB complaint figures reflect cases referred by the PRC as well as other citizen complaints filed (IAB opens investigations on all PRC complaints referred).<sup>10</sup> It is significant that in the last six years the PRC has received 45% or fewer cases than has IAB—PRC received an average of 50 cases per year

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<sup>8</sup> BPD General Order P-26 defines informal inquiries as: “Inquiries regarding employee conduct wherein the concerned party specifically requests only advice or that the matter be resolved without a personnel complaint investigation. . .” Sections 12 and 32.

<sup>9</sup> Numbers of informal inquiries have consistently dropped from a high of 329 in 1995, but dropped dramatically in the year 2000—from 141 to 78. This drop in informal inquiries during the same period that formal complaints rose from 109 to 142 may account for the rise in the IAB external complaint level in 2000.

<sup>10</sup> The PRC Ordinance requires IAB to refer all complaints filed to the PRC; however, this referral has historically not taken place. State law declares citizen complaints filed with IAB to be confidential. Thus, a referral process that would comply with current statutes and the PRC Ordinance is being sought.

as compared with 111 received by IAB. In earlier years this percentage was much higher, with highs in 1992 and 1993 when PRC received 72% of the number of complaints received by IAB—PRC averaged 78 cases per year, as compared with IAB’s average of 109.

The comparison of numbers of complaints received by the PRC and IAB is significant because it represents a measure of the extent that civilian oversight of police misconduct is actually being conducted in Berkeley. In 2000, only 35% of the complaints lodged against BPD had the benefit of the PRC civilian oversight process.<sup>11</sup> This percentage rose to 50% in 2001.

In order to increase the level of awareness of the PRC in the community a regular program of outreach is needed. At the current level of staffing in the PRC office, staff has been unable to conduct active outreach. The City of Berkeley has recently instituted a “Neighborhood Services” initiative to increase community access to City services. It is hoped that by linking with Neighborhood Services, word can be spread about the benefits of participating in the PRC process.

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<sup>11</sup> Through misconduct investigations, both PRC and IAB function as quality control mechanisms for BPD and the City of Berkeley. In this context, it is important to note that BPD officers handled an estimated 85,000 citizen contacts in 2001.

**PRC STAFF**

Barbara Attard, PRC Officer  
Najuma Henderson, PRC Investigator  
Maritza Martinez, Office Specialist III  
Beverly Powell, Office Specialist II

**Former PRC Staff Employed in 2001**

Dan Silva, PRC Investigator

**CITY MANAGER REVIEW**

Ann Miley

## STATISTICAL OVERVIEW

### 1998, 1999, 2000 and 2001

Complaint Data	1998 Totals	1999 Totals	2000 Totals	2001 Totals
<b>Cases Filed</b>	<b>45</b>	<b>59</b>	<b>50</b>	<b>57</b>
<b>Cases Closed *</b>	<b>32</b>	<b>62</b>	<b>49</b>	<b>52</b>
<b>Cases To Board of Inquiry *</b>	<b>17</b>	<b>31</b>	<b>22</b>	<b>30</b>
<b>Cases with Sustained Allegations*</b>	<b>8</b>	<b>19</b>	<b>13</b>	<b>19</b>
• Allegations Sustained	26	40	32	49
• Allegations Not Sustained	51	90	57	99
• Allegations Unfounded	10	9	9	10
• Allegations Exonerated	2	8	9	17
• Other (Includes Mediation)	0	1	6	4
<b>Cases Closed--No Board *</b>	<b>13</b>	<b>31</b>	<b>23</b>	<b>19</b>
• Summary Dismissal	2	1	3	1
• Administrative Closure	7	16	12	11
• Withdrawn	4	11	8	5
• Mediation	0	1	1	2
<b>Policy Cases—Full Commission*</b>	<b>2</b>	<b>2</b>	<b>4</b>	<b>3</b>
<b>Total Allegations Received</b>	<b>189</b>	<b>217</b>	<b>207</b>	<b>254</b>
• Excessive Force	26	38	36	26
• Discourtesy	42	45	28	55
• Improper Arr., Search, Stop, Det.	30	30	60	52
• Improper Detention Procedure	3	17	1	9
• Discrimination	19	19	14	8
• Harassment	4	11	4	7
• Improper Police Procedure	10	11	13	27
• Improper Citation or Tow	2	13	4	10
• Other	32	19	26	28
• Improper Investigation	17	12	16	27
• Policy	4	2	5	5
*May include cases filed in previous years. Detailed report of allegations closed provided in chart on Pg. 15				

**ANALYSIS OF COMPLAINANT AND OFFICER DATA**  
**REPORT ON CITY MANAGER REVIEW OF PRC FINDINGS**

<b>Complainant Information</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>
Filed by Berkeley Residents	30	32	41	41
Complainants with Multiple Complaints Filed in Calendar Year	4	4 <sup>a</sup>	5	6
<b>Accused Officer Information</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>
Total No. of Officers in BPD	195 <sup>b</sup>	199 <sup>c</sup>	192 <sup>d</sup>	195 <sup>d</sup>
No. of Officers Named in Calendar Year	40	56	50	54
No. of Non-Sworn Personnel Named	2	2	1	1
No. of Cases With Unknown Officers	3	14	8	9
No. of Officers Named in Multiple Cases	8	19	14	16
No. of Officers Named in 2 Cases	4	15	11	9
No. of Officers Named in 3 Cases	3	3	2	6
No. of Officers Named in More Cases	1 (4)	1 (4)	1 (6)	1 (4)
No. of Officers With Sustained Findings	11	14	17	20
No. of Officers With Multiple Sustained Cases	0	4	5	3
No. of Officers With Sustained Findings in 3 or More Cases	0	1	0	0
<sup>a</sup> One Complainant filed 6 Complaints in 1999 and 2000 <sup>b</sup> Average, 1998 <sup>c</sup> Total Officers Hired, Full Allotted Strength=201 <sup>d</sup> Total Officers Hired, Full Allotted Strength=204				
<b>Report On City Manager (CM) Review Of PRC Findings</b>				
	Cases To Board	Cases With CM Review	CM Agreement	
1999	31	16	68 of 70 Allegations <sup>e</sup>	
2000	22	14	55 of 57 Allegations <sup>f</sup>	
2001	30	22	120 of 125 Allegations <sup>g</sup>	
<sup>e</sup> In one case the CM sustained an allegation that was not sustained by the PRC and in one case the CM not sustained an allegation sustained by the PRC. <sup>f</sup> Of two sustained allegations in which there was disagreement with the PRC findings at the CM review level, one was found by the CM to be not sustained and one was found to be exonerated. <sup>g</sup> In one case the CM sustained an allegation that was not sustained by the PRC, in three cases the CM not sustained allegations that had been sustained by the PRC, and in another case, one allegation that had been not sustained was exonerated by the CM.				

**DISPOSITION OF CLOSED ALLEGATIONS 1999, 2000, 2001**

2001	EXF	DIS	ASD	DET	PRJ	HAR	PRO	CIT	OTH	INV	TOTALS
Board of Inquiry	20	26	47	8	9	3	18	5	19	21	<b>176</b>
Sustained	5	12	11	3	1	0	2	3	5	7	49
Not Sustained	8	13	29	4	8	2	13	2	8	12	99
Exonerated	3	1	4	1	0	0	2	0	4	2	17
Unfounded	4	0	3	0	0	1	0	0	2	0	10
Other/Policy*	0	2	0	0	0	0	1	0	0	1	4
No Board	6	14	12	1	1	1	1	1	6	6	<b>49</b>
<b>Totals</b>	<b>26</b>	<b>40</b>	<b>59</b>	<b>9</b>	<b>10</b>	<b>4</b>	<b>19</b>	<b>6</b>	<b>25</b>	<b>27</b>	<b>225</b>

2000	EXF	DIS	ASD	DET	PRJ	HAR	PRO	CIT	OTH	INV	TOTALS
Board of Inquiry	16	21	31	4	11	5	3	7	8	7	<b>113</b>
Sustained	7	6	10	0	2	1	1	3	1	1	32
Not Sustained	5	12	13	2	9	2	2	3	4	5	57
Exonerated	3	1	5	0	0	0	0	0	0	0	9
Unfounded	0	1	0	2	0	2	0	1	3	0	9
Other/Policy*	1	1	3	0	0	0	0	0	0	1	6
No Board	16	13	15	1	2	0	2	3	9	5	<b>66</b>
<b>Totals</b>	<b>32</b>	<b>34</b>	<b>46</b>	<b>5</b>	<b>13</b>	<b>5</b>	<b>5</b>	<b>10</b>	<b>17</b>	<b>12</b>	<b>179</b>

1999	EXF	DIS	ASD	DET	PRJ	HAR	PRO	CIT	OTH	INV	TOTALS
Board of Inquiry	25	29	21	4	6	2	14	0	24	7	<b>132</b>
Sustained	12	8	6	2	1	0	3	0	4	2	38
Not Sustained	11	21	10	2	2	2	8	0	17	3	76
Exonerated	0	0	2	0	0	0	2	0	2	2	8
Unfounded	2	0	3	0	2	0	1	0	1	0	9
Other/Policy*	0	0	0	0	1	0	0	0	0	0	1
No Board	12	20	8	12	8	7	4	6	9	5	<b>91</b>
<b>Totals</b>	<b>37</b>	<b>49</b>	<b>29</b>	<b>16</b>	<b>14</b>	<b>9</b>	<b>18</b>	<b>6</b>	<b>33</b>	<b>12</b>	<b>223</b>

**Allegation Legend**

EXF=Excessive Force    DET=Improper Detention Procedure    HAR=Harassment  
DIS=Discourtesy    PRO=Improper Police Procedures    PRJ=Discrimination  
OTH= Other    INV= Inadequate or Improper Investigation    CIT=Improper Citation or Tow  
ASD=Improper Arrest, Search Seizure, Stop or Detention

\* **Other/Policy** may include allegations resolved through mediation.

**BERKELEY POLICE DEPARTMENT**  
2001 INTERNAL AFFAIRS COMPLAINTS

	COMP. RECV'D.	COMP. CLOSED	COMP. PEND.	SUST.	NOT SUST.	UNF.	TOTAL
EXTERNAL PRC	47	41	10	4	16	21	41
EXTERNAL IAB	65	63	15	7	36	20	63
INTERNAL	48	40	8	38	1	1	40
<b>TOTAL CASES</b>	<b>160</b>	<b>144</b>	<b>33</b>	<b>49</b>	<b>53</b>	<b>42</b>	<b>144</b>
EXCESSIVE FORCE	39	37	12	0	29	8	37
DISCOURTESY	60	63	19	9	39	15	63
IMPROPER STOP / SEARCH/ SEIZURE / ARREST	41	67	6	0	22	45	67
IMPROPER DETENTION	1	6	0	0	3	3	6
INADEQUATE INV / REPORT	30	37	7	0	19	18	37
DISCRIMINATION	9	13	2	0	2	11	13
HARASSMENT	11	8	1	0	3	5	8
IMPROPER PROCEDURE	75	74	15	41	18	15	74
IMPROPER CITE /TOW	12	16	1	0	3	13	16
OTHERS	25	31	7	2	16	13	31
<b>TOTAL ALLEGATIONS</b>	<b>303</b>	<b>352</b>	<b>70</b>	<b>52</b>	<b>154</b>	<b>146</b>	<b>352</b>
INFORMAL INQUIRIES	87						
<b>Comp. Recv'd.=Complaints Received; Comp. Pend.=Complaints Pending; Sust.= Sustained; Unf.=Unfounded</b>							

Note: Discrepancies in totals between "complaints closed" and "totals" on the right side are due to some complaints having more than one complainant, accused employee or allegation. The lower, right quadrant refers to the disposition of each final allegation.

**Comparison Chart 1994 - 2001**

	1994	1995	1996	1997	1998	1999**	2000**	2001**
Complaints received by PRC	48	23	31	25	28	23**	31**	47**
Complaints received by IAB	40	56	62	68	89	86**	111**	65**
Internal complaints received	53	41	60	46	49	41**	47**	48**
<b>Total complaints received</b>	<b>141</b>	<b>120</b>	<b>153</b>	<b>139</b>	<b>166</b>	<b>150**</b>	<b>189**</b>	<b>160**</b>
Informal inquiries	311	329	246	214	158	141**	78**	87**

# TECHNICAL APPENDIX

Appendix A

**PRC ORDINANCE**

Ordinance No. 4644-N.S.

Establishing a  
Police Review Commission

# ***CITY OF BERKELEY***

## **ORDINANCE NO. 4644-N.S.**

**Establishing a Police Review Commission  
Adopted by People of Berkeley  
April 17, 1973**

**(Referenced by Court Decision April 12, 1976)**

**Amended To: April 15, 1975  
Annotated: June 9, 1976  
Amended To: December 3, 1982**

## ***POLICE REVIEW COMMISSION***

*POLICE REVIEW COMMISSION OFFICES: 1947 Center Street, Third Floor, Berkeley, CA 94704  
510.981-4950 TDD: 510.981.6903 FAX: 510.981-4955  
e-mail: [prc@ci.berkeley.ca.us](mailto:prc@ci.berkeley.ca.us) <http://www.ci.berkeley.ca.us/prc/>*

## ORDINANCE NO. 4644-N.S.

ESTABLISHING A POLICE REVIEW COMMISSION, PROVIDING FOR THE APPOINTMENT AND REMOVAL OF MEMBERS THEREOF, AND DEFINING THE OBJECTIVES, FUNCTIONS, DUTIES AND ACTIVITIES OF SAID COMMISSION.

The people of the City of Berkeley do ordain as follows:

Section 1. The general purpose of this Ordinance is to provide for community participation in setting and reviewing police department policies, practices, and procedures and to provide a means for prompt, impartial, and fair investigation of complaints brought by individuals against the Berkeley Police Department.

Section 2. There is hereby established a Police Review Commission for the City of Berkeley. Said Commission shall consist of nine (9) members. Each Council member shall appoint (1) member to the Commission. All members shall be residents of the City of Berkeley. No officer or employee of the City shall be appointed to the Commission.

~~Section 3. The term of each member shall be two (2) years commencing on October 4 of each odd numbered year and ending on October 3 of each succeeding odd numbered year. Any vacancy occurring during the term of any member shall be filled by the Councilmember whose appointee has ceased to serve, or, if such Councilmember is no longer a member of the Council, by the Councilmember who has no appointee then serving on the Commission, or, (i) if there be more than one, by such of said Councilmembers as shall be determined by lot, or, (ii) if there be none, by the Council. No member shall serve more than two (2) consecutive terms or portions thereof.\*~~

Section 4. Vacancies on said Commission, from whatever cause, except temporary vacancies as hereinafter provided, shall be filled for the unexpired term by the City Councilmember whose appointee has ceased to serve. The appointment of any member of the Commission who has been absent and not excused from three (3) consecutive regular or special meetings shall automatically expire effective on the date the fact of such absence is reported by the Commission to the City Clerk. The City Clerk shall notify any member whose appointment has automatically terminated and report to the City Council that a vacancy exists on said Commission and that an appointment should be made for the length of the unexpired term. A member of the Commission may be granted a leave of absence not to exceed three (3) months by the City Council, and a temporary vacancy shall thereupon exist for the period of such leave of absence. During the period of such temporary vacancy, the Council may fill such vacancy by a temporary appointment to said Commission; provided, however, that the period of such temporary appointment shall not exceed the period of the temporary vacancy. At the expiration of a leave of absence so granted, the member shall automatically resume full and permanent membership on said Commission.

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\* Section 3 amended December 3, 1982; see attachment.  
*PRC Ordinance - 1*

Section 5. The Commission shall elect one of its members as Chairperson and one as Vice-Chairperson, who shall each hold office for one (1) year and until their successors are elected. No officer shall be eligible to succeed himself or herself in the same office. Officers shall be elected no later than the second meeting of the Commission following its appointment.

Section 6. The Police Review Commission shall be a working Commission. In order to compensate Commissioners for their time and work in investigating complaints, reviewing policies and practices, and attending meetings, Commissioners shall receive \$3.00 (three dollars) per hour, but in no case shall compensation for any one Commissioner exceed \$200 (two hundred dollars) per month. Procedures and regulations for accounting for hours worked and compensation shall be developed and adopted by the Commission and filed with the office of City Clerk.

~~Such clerical and secretarial assistance as are needed by the Commission shall be provided by the office of the City Clerk. The Commission is further authorized to secure and define the duties of same, in the manner consistent with existing law, as it may deem necessary or appropriate.\*~~

Section 7. The Commission shall establish a regular time and place of meeting and shall meet regularly at least once every two weeks or more frequently as workload requires. The regular place of meeting shall be in an appropriate central location in the City capable of accommodating at least 75 people, but shall not be held in the building in which the Police Department is located. At least once every three (3) months, or more frequently if the Commission desires, the Commission may meet in other places and locations throughout the City for the purpose of encouraging interest and facilitating attendance by people in the various neighborhoods in the City at the meetings.

Special meetings may be called by the Chairperson or by three (3) members of the Commission, upon personal notice being given to all members or written notice being mailed to each member and received at least thirty-six (36) hours prior to such meeting, unless such notice is waived in writing.

All Commission meetings, and agendas for such meetings shall be publicized in advance by written notice given to newspapers, radio and television stations serving the City at least three (3) days prior to regular meetings, and at the same time as members are notified of special meetings. In addition, notice of meetings shall be posted regularly on such bulletin boards and at such locations throughout the City as are designated by the Commission.

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\*Language shown in ~~strike-out type~~ was declared invalid by the California Court of Appeal on April 12, 1976.  
*PRC Ordinance - 2*

All meetings shall be open to the public, unless the Commission, in order to protect the rights and privacy of individuals, decides otherwise and if such closed meeting is not waived by the individual concerned. The Commission shall cause to be kept a proper record of its proceedings. The records and files of the Commission and its officers shall include, but not be limited to, all official correspondence, or copies thereof, to and from the Commission and its members, gathered in their official capacities, and shall be kept and open for inspection by the public at reasonable times in the office of the Secretary of the Commission.

A majority of the appointed Commissioners shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present is required to take any action.

The Commission may appoint such subcommittees as are deemed necessary or desirable for the purposes of this ordinance, provided that, membership on such subcommittees shall not be limited to the Commission members but may include members of the public who express an interest in the business of the subcommittees. The members of such subcommittees shall serve without compensation.

Section 8. On the petition of fifty (50) or more citizens in the City of Berkeley filed in the office of the Secretary of the Commission, the Commission shall hold a special meeting in an appropriate and convenient location for the individuals so petitioning for the purpose of responding to the petition and hearing and inquiring into matters identified therein as the concern of the petitioners. Copies of the petition shall be filed by the Commission with the City Clerk and the City Council. Notice of such meeting shall be given in the same manner as notice is given for other meetings of the Commission. In no case shall the Commission meet later than five (5) working days following the date the petition is filed.

Section 9. ~~In carrying out its objectives, the Commission shall receive prompt and full cooperation and assistance from all departments, officers, and officials of the City of Berkeley. The Chief of Police, or his deputy if the Chief is ill or absent from the City, shall as part of his duties attend meetings of the Commission when so requested by the Commission, and shall provide such information, documents, or materials as the Commission may request. The Commission may also require the attendance at its meeting of any other Police Department personnel or City officials it deems appropriate in the carrying out of its responsibilities under this Ordinance.\*~~

Section 10. The Commission established by this Ordinance shall have the following powers and duties:

a) to advise and make recommendations to the public, the City Council, and the City Manager;

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\*The language shown in ~~strike out type~~ was declared invalid by the California Court of Appeals on April 12, 1976.  
*PRC Ordinance - 3*

b) to review and make recommendations concerning all written and unwritten policies, practices, and procedures of whatever kind and without limitations, in relation to the Berkeley Police Department, other law enforcement agencies and intelligence and military agencies operating within the City of Berkeley, and law enforcement generally, such review and recommendation to extend to, but not be limited to, the following:

- i) treatment of rape victims;
- ii) police relationship with minority communities;
- iii) use of weapons and equipment;
- iv) hiring and training;
- v) priorities for policing and patrolling;
- vi) budget development;
- viii) other concerns as specified from time to time by the City Council;

~~e) to request and receive promptly such written and unwritten information, documents, and materials and assistance as it may deem necessary in carrying out any of its responsibilities under this Ordinance from any office or officer or department of the city government, including but not limited to the Police Department, the City Manager, the Finance Department, the Public Works Department, and the City Attorney, each of all of which are hereby directed out of its responsibilities; provided that information the disclosure of which would impair the right of privacy of specific individuals or prejudice pending litigation concerning them shall not be required to be made available to the Commission except in general form to the extent police activities in specific cases reflect Police Department policies and; provided that the individual involved in the specific situation may consent in writing to the disclosure of information concerning him or her, in which case it shall be made available to the Commission;\*~~

d) to receive complaints directed against the Police Department and any of its officers and employees, and fully and completely investigate said complaints and make such recommendations and give such advice ~~without limitation including disciplinary and action~~ relating to departmental policies and procedures to the City Council and the City Manager in connection therewith as the Commission in its discretion deems advisable; provided as follows:

- i) that investigation of all complaints filed with the Commission shall begin immediately after complaints are filed and proceed as expeditiously as possible;
- ii) that all such complaints filed with other offices, boards, bureaus, and departments of the City, including the Police Department, shall be referred

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\*The language shown in ~~strike out type~~ was declared invalid by the California Court of Appeal on April 12, 1976.  
*PRC Ordinance - 4*

- to the Commission for investigation ~~and that the Police Department shall conduct its own investigation only at the request of said Commission, and;~~
- iii) that regular quarterly reports relating to the number, kind, and status of all such complaints shall be made by the Commission to the City Council and the City Manager;<sup>\*\*</sup>

e) consistent with provisions of the Berkeley City Charter and to the extent permissible by law, to exercise the power of subpoena;

f) to adopt rules and regulations and develop such procedures for its own activities and investigations as may be necessary and to publish and file same with the office of the City Clerk, and to do such other things not forbidden by law which are consistent with a broad interpretation of this Ordinance and its general purposes.

Section 11. That Ordinance No. 4061-N.S. and Ordinance No. 4149-N.S. and No. 4887-N.S. in amendment thereof are each and all repealed by this Bill. To assist in an orderly transition between the Citizens Committee on Public Safety, herein abolished, and the Police Review Commission established by this Bill, all files, records, books, and publications, and documents of whatever kind of the former Committee shall be promptly deposited in the Office of the City Manager for the use and benefit of the newly created Police Review Commission.

Section 12. If any provision of this Ordinance or its application is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions, sections, or applications of the Ordinance which can be given effect without the invalid provisions or applications, and to this end any phrase, section, sentence, or word is declared to be severable.

In effect: April 17, 1973

## ORDINANCE NO. 5503-N.S.

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<sup>\*\*</sup>The language shown in ~~strike out type~~ was declared invalid by the California Court of Appeals on April 12, 1976.  
*PRC Ordinance - 5*

AMENDING SECTION 3 OF INITIATIVE ORDINANCE NO. 4644-N.S. ENTITLED  
"ESTABLISHING A POLICE REVIEW COMMISSION, PROVIDING FOR THE APPOINT-  
MENT AND REMOVAL OF MEMBERS THEREOF, AND DEFINING THE OBJECTIVES,  
FUNCTIONS, DUTIES, AND ACTIVITIES OF SAID COMMISSION."

BE IT ORDAINED by the People of the City of Berkeley as follows:

That Section 3 of Initiative Ordinance No. 4644-N.S., as above entitled, is hereby amended to read as follows:

Section 3. The term of each member shall be two (2) years commencing on December 1 of each even numbered year and ending on November 30 of each succeeding even numbered year. Any vacancy occurring during the term of any member shall be filled by the Councilmember whose appointee has ceased to serve, or, if such Councilmember is no longer a member of the Council, by the Councilmember who has no appointee then serving on the Commission, or (i) if there be more than one, by such of said Councilmembers as shall be determined by lot, or, (ii) if there be none, by the Council.

This Ordinance was approved by the electors of the City of Berkeley at the General Municipal Election held in the City of Berkeley on November 2, 1982.

In effect: December 3, 1982

## INDEX TO TEXT CHANGES

	<u>Section</u>	<u>Action</u>	<u>Ordinance No.</u>	<u>Eff. Date</u>
	2	Amended	4779-N.S. (Vote of the People)	4-15-75
	3	Amended	4779-N.S. (Vote of the People)	4-15-75
Attached	3	Amended	5503-N.S. (Vote of the People)	12-3-82

**Appendix B**

**PRC REGULATIONS**

# ***CITY OF BERKELEY***

# **REGULATIONS**

**For Handling Complaints Against  
Members of the Police Department**

## ***POLICE REVIEW COMMISSION***

*POLICE REVIEW COMMISSION OFFICES: 1947 Center Street, Third Floor, Berkeley, CA 94704  
510.981-4950 TDD: 510.981.6903 FAX: 510.981-4955  
e-mail: [prc@ci.berkeley.ca.us](mailto:prc@ci.berkeley.ca.us) <http://www.ci.berkeley.ca.us/prc/>*

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EXHIBIT B - Memo From City Manager Re: Accused Officer Testimony

# **BERKELEY POLICE REVIEW COMMISSION**

## **REGULATIONS FOR HANDLING COMPLAINTS AGAINST MEMBERS OF THE POLICE DEPARTMENT**

(Adopted May 13, 1975)  
(Amended August 8, 1984)  
(Amended April 30, 1990)  
(Amended May 26, 1993)

### **PREAMBLE**

The following procedures for handling complaints against members of the Berkeley Police Department have been drawn up in accordance with the enabling Ordinance establishing the Police Review Commission for the City of Berkeley. That Ordinance, No. 4644-N.S., passed by the voters April 17, 1973, provides a means for prompt, impartial, and fair investigation of complaints brought by individuals against the Berkeley Police Department and these regulations are adopted by the Commission to carry out that purpose.

The Ordinance gives the Commission the power to adopt rules and regulations and develop such procedures for its own activities and investigations. The intent of the Ordinance reflected in these procedures is to give citizens the means to have complaints against the Berkeley Police Department and its employees investigated, heard, and resolved. The Ordinance, by setting up this Commission made up of residents of this community, intended to establish a process available to any citizen, free of charge and without the need for attorneys or other professional advisors.

The Commission is not a court of law and does not conduct its business according to the strict rules of evidence. Consistent with the powers granted to it by the enabling Ordinance, the Commission reserves the right to establish and interpret its procedures in the spirit of the Ordinance and in the best interest of the City of Berkeley.

## **I. GENERAL**

1. Application of Regulations. The following regulations shall be employed by the Berkeley Police Review Commission to govern the receipt and processing of complaints. The Commission shall receive and process complaints in accordance with these regulations, and shall advise and make recommendations concerning its findings directly to the Chief of Police, the City Manager and the City Council, and the public.
  
2. Definitions. The following definitions shall apply in these regulations:
  - a. Complaint: An allegation of misconduct against a member of the Berkeley Police Department (including employees of the Public Safety Communications Center) while engaged in police functions, or of an improper policy or practice of the Berkeley Police Department.
  - b. Aggrieved Person: Any person directly affected by the alleged police misconduct, policy, or practice as defined above.
  - c. Complainant: The Aggrieved Person filing the complaint.
  - d. BPD Member: A sworn officer or other employee of the Berkeley Police Department (see Complaint definition).
  - e. Subject Officer: A BPD member against whom a complaint is filed.
  - f. Commission or PRC: The Berkeley Police Review Commission.
  - g. Departmental Representative: That BPD member designated by the Chief to appear at a Board of Inquiry or before the Commission to speak on behalf of the Berkeley Police Department.
  - h. BPD Member Witness: A BPD member, not a subject officer, who has personal knowledge of events concerning a complaint, and whose presence is reasonably required by a Board of Inquiry.
  - i. Investigator: A staff investigator employed by the Officer of the City Manager and assigned to the PRC.
  - j. Board of Inquiry: A Board impaneled by the PRC to hear complaints.

## **II. PROCESSING COMPLAINTS**

## 1. Initiation of Complaints

- a. Complaints may be made by an aggrieved person. No complaint will be deemed filed with the Commission until it has been reduced to writing and signed by the Complainant. Complaint forms will conclude with the following words: "I hereby certify that, to the best of my knowledge, the statements made herein are true. I also understand that my verbal testimony before the Board of Inquiry shall be given under oath."
- b. All complaints shall be filed within ninety (90) calendar days of the alleged misconduct, and any complaint not filed within ninety (90) calendar days shall be dismissed; provided, however, that a complaint may be filed within an additional ninety (90) calendar days if at least six (6) Commissioners vote that the Complainant has demonstrated by clear and convincing evidence that failure to file the complaint within the initial ninety (90) calendar day statutory period was the result of inadvertence, mistake, surprise, or excusable neglect; provided, however, that the running of such ninety (90) calendar day period shall be tolled when a Complainant is incapacitated or otherwise prevented from filing such complaint. Lack of knowledge of the existence of the Commission or its complaint procedures shall not constitute mistake, inadvertence, surprise, or excusable neglect in any case.

The findings of the Commission in cases which have been filed during the extension period will not be considered by the City Manager or Police Chief in any disciplinary actions.

Subject Officer testimony is not mandatory in hearings of cases which are filed during the ninety (90) day extension period.

- c. Complaints must allege facts which, if true, would establish that misconduct occurred. Complaints which do not allege such misconduct shall be referred by the Investigator to the Commission for summary dismissal.
- d. If there is no aggrieved person able to initiate a complaint, or in any case involving the death of a person, the Commission may, at any time, with five (5) affirmative votes, authorize an investigation or such other action as it deems appropriate. If such an investigation results in a Board of Inquiry, the Commission may designate any person to act in the role of the complainant.

## 2. Recording of Complaints and Informing Interested Parties

- a. The Commission shall maintain a central register of all complaints filed. Within twenty (20) working days after the filing of a complaint, the Investigator shall notify the Complainant, the Chief of Police, and each identified Subject Officer that a complaint has been filed, the allegations of the complaint, and that the matter is under investigation. Delivery to the Police Department shall constitute notice for BPD members. In the event that notice is not given within the time limit set forth above, the complaint shall be dismissed unless good cause is shown as determined by the Commission.
  - b. In addition to the notice, the signed complaint form shall be available for review and copying at the PRC office by each Subject Officer prior to being interviewed by the Investigator. If no interview with the Subject Officer is conducted prior to the issuance of the investigative report, a copy of the signed complaint form shall be furnished to him/her with the investigative report. There shall be no charge to the parties for a copy of the report and other documents that constitute the investigative packet.
3. Mediation (*Note: A pilot program for a new mediation program is underway. The procedures described in this section are not being followed. B. Attard 9/2000*)

- a. Definition - Mediation is an informal process, held before one (1) Commissioner and attended by the Complainant and the subject BPD member for the purpose of fully, thoroughly, and frankly discussing the alleged misconduct and attempting to arrive at a mutually agreeable resolution of the complaint. Mediation may be considered in all cases except those involving the death of an individual.

Mediation will be attempted when all of the following parties agree: 1) Complainant, 2) Commission, 3) Police Department, and 4) Subject Officer.

Successful mediation shall be defined as a process in which the parties have heard, clarified, and understood the issues and each other's point of view. This may result in agreement or an agreement to disagree.

- b. Election - The Investigator shall, prior to the filing of a complaint, inform the Complainant of the PRC process, including the possibility of mediation.

If the Complainant elects mediation, the Investigator shall review the allegations, determine if the complaint is appropriate for mediation, and if so, notify the Police Department. Such review and notification shall occur within ten (10) calendar days.

If referred to the Department, the Department shall have ten (10) calendar days to review the allegations, determine if the complaint is appropriate for mediation, and if so, notify the Subject Officer.

If referred to the Subject Officer, the Subject Officer shall have ten (10) calendar days from the date of notification to elect mediation. If Subject Officer elects mediation, he/she must agree, as a condition of mediation, to toll the City's 120-day disciplinary deadline for the length of the mediation process, which shall include the appeal process.

- c. Mediator Selection - If all parties agree to mediation, the Investigator will provide the Complainant and the Subject Officer with a list of three possible PRC Commission Mediators. The list will be accompanied by appropriate biographical information on each Commissioner. Both the Complainant and the Subject Officer may then, within ten (10) calendar days, select two (2) Commissioners who are acceptable to them. The Investigator shall then appoint a Mediator from those selected and within ten (10) calendar days schedule a mediation hearing at a time convenient for all parties.
- d. Mediation Sessions - The mediation sessions should be completed within thirty (30) calendar days of appointment of mediator. However, the mediation may continue as long as the Mediator feels that progress is being made towards resolution of differences between the parties.
- e. Successful Mediation - If mediation is successful (as defined in 3.a. above), the Mediator will provide written notice (see Exhibit A) to the PRC and the Department within five (5) calendar days of the last mediation session.
- f. Breakdown of Mediation - If both parties attempt mediation in good faith yet are unable to make substantial progress towards resolution, the Mediator may terminate the sessions.

Once the Mediator makes this decision, both parties will be notified and the Complainant will be advised of his/her right to proceed with the official PRC investigation and hearing of the complaint.

If the Mediator determines that the Subject Officer is acting in bad faith, the mediation may be terminated and the Complainant advised of his/her right to proceed with the official PRC investigation and hearing of the complaint.

If the Mediator determines that the Complainant is acting in bad faith, the Mediator may terminate mediation and no further action will be taken on this matter by the Commission, subject to the appeal rights described in Section II.3.g.

- g. Appeal of Mediator's Decision - Either party, within ten (10) calendar days of the termination of the mediation, may petition the full Commission for review of the Mediator's decision.

Within thirty (30) calendar days of filing of an appeal, the Commission may, if good cause is determined by a vote of five Commissioners (exclusive of the Commis-

sioner/Mediator), grant the petition for review and either reinstitute mediation, dismiss the complaint, or order a formal PRC investigation.

If mediation is reinstated, a new Mediator will be selected under the procedures described in Section II.3.c.

- h. Records of mediation will be destroyed one year from the date mediation is elected by the Complainant.
4. Investigations/Conduct/Timetables. The Investigator shall interview the Complainant(s) and Subject Officer(s). The Investigator should interview witnesses and other persons likely to have information concerning the complaint, and shall assemble all other relevant information. The Investigative Report shall be circulated and submitted within seventy-five (75) calendar days after the filing of the complaint. In the absence of good cause, failure of the Investigator to complete and submit the report within said period may result in a summary dismissal of the case. Interviews are to be taped when practicable, and such tapes shall be preserved for 100 days or until the City Manager makes his final disposition of the complaint, whichever is later. Signed summaries of statements prepared by the Investigator shall be mailed to the parties and witnesses, who will have five (5) days to notify the PRC office if they wish to add to or modify their testimony.

The initial PRC report of the investigation should include, at a minimum, an interview of the Complainant, Subject Officer, and all principal percipient witnesses, together with the Berkeley Police Department and/or City Rule and Regulation which was allegedly violated by the Subject Officer.

- a. Manner of Conducting Investigations. The investigation shall be conducted in a manner designed to produce a minimum of inconvenience and embarrassment to all parties. When possible, BPD members shall not be contacted at home, and others should not be contacted at their place of employment.
- b. Notice of Rights to Persons Involved in Litigation. In the event that litigation relating to the matter of the complaint is known to be commenced or to be contemplated by or against any party to a complaint, the Investigator shall suggest that such party consult with an attorney about the advisability or effect of filing a complaint with the PRC.
- c. Notice of Constitutional Rights. Subject Officer testimony shall be required, in accordance with the City Manager's policy (see Exhibit B). While all BPD members have a right to invoke the Fifth Amendment, BPD employees also have a duty to answer questions before the PRC regarding conduct and observations which arise in the course of their employment and may be subject to discipline for failure to respond. The exercise of any or all constitutional rights shall not in any manner be considered by the Commission in its disposition of a complaint.

- d. Statements of Witnesses. Whenever the Investigator takes a statement from any Complainant, BPD Member, Subject Officer, BPD Member Witness, Witness, or any other person, said statement shall be tape-recorded, whenever practicable, a summary drafted by the Investigator, and said summary shall, whenever practicable, be signed by the person who gave said statement. The Investigator shall make every reasonable effort to obtain the signature of each person on their statement. Tape recordings of each statement shall be kept and preserved for 100 days or until the case is finally disposed of by the PRC and its decision has been reviewed by the City Manager.
  
- e. Criminal Proceedings. In the event that criminal proceedings relating to the matter of the complaint are known to be commenced against the Subject Officer, no investigation shall be undertaken beyond the filing, lodging, and docketing of the complaint. The PRC shall undertake no investigation until the criminal matter has been adjudicated or the authorities have rendered a final decision not to commence any such proceedings. During the pendency of any such contemplated or commenced criminal proceedings, all time limits applicable to the processing of PRC complaints (with the exception of the initial filing requirements set forth in paragraph 1.b., supra) shall be tolled.

Whenever a PRC investigation is tolled as provided in Paragraph e., the Chief of Police shall take appropriate steps to assure preservation of the following items of evidence:

- (1) The original Communications Center tapes relevant to the complaint.
- (2) All police reports, records, and documentation of the evidence.
- (3) Names, addresses, telephone numbers, and statements of all witnesses.

5. Notification to Parties. Immediately after completion of the Investigative Report, the Investigator shall provide to the Complainant, each Subject Officer, and the Chief of Police the following:
  - a. Written notice that the complaint will be considered by a Board of Inquiry.
  - b. Any Investigators' recommendations dealing solely with summary disposition or procedural matters.
  - c. A copy of the Investigative Report and Summary, including all attachments, transcribed statements, and exhibits supplied to the Board of Inquiry.
  - d. Written notice that the parties may consult an attorney if desired, and that an attorney may represent him/her at the hearing, but that an attorney will not be required.
  - e. In the event the PRC is notified that a Subject Officer is represented by legal counsel, the PRC shall thereafter send, by mail, copies of any requested documents, together with investigation reports, supplemental reports, etc., to the office of the Subject Officer's attorney.
  
6. Administrative Closure. Pursuant to the grounds set forth below, a complaint of individual officer misconduct may, upon recommendation of a member of the Police Review Commission or Staff, be closed by a majority vote of Commissioners present at a regular business meeting. Cases closed pursuant to this section shall be deemed "administratively closed" and the results of investigation shall be made available to the office of the City Manager and the Police Department.

Administrative Closure does not constitute a judgement on the merits of the complaint. The grounds upon which a complaint may be administratively closed include but are not limited to the following:

- 1) Unavailability of complainant where staff have attempted at least three telephone and/or mail contacts to complainant's last available address.
- 2) Mootness of the complaint including but not limited to situations where the employment of the subject officer has been terminated or where the complaint has been resolved by other means (e.g. mediation).
- 3) Failure of the complainant to cooperate including but not limited to repeated refusal of a complainant to submit to an interview or to make available essential evidence, and other similar action or inaction by a complainant that compromises the integrity of the investigation or produces a significant prejudicial effect.

All recommendations for administrative closure shall, without exception, be included in the posted agenda of the meeting. The complaining party shall be notified of the opportunity to address the commission at this meeting and such notice shall be sent no later than five days prior to said meeting.

### **III. BOARDS OF INQUIRY AND HEARINGS**

1. **No Contest Response.** Subject Officer may enter a written response of "no contest" at any time before a hearing.
  - a. A response of "no contest" indicates that the Subject Officer accepts the allegations of the complaint as substantially true in fact and interpretation. The Subject Officer shall be bound by the terms of the "no contest" response in any consideration of the complaint by the City Manager.
  - b. Upon receipt of a "no contest" response, the Investigator shall refer the file and the findings of "no contest" to the City Manager for appropriate action.
2. **Waiver of Hearing.** The Commission shall have the discretion, with the concurrence of the Accused Officer and the Complainant, to consider any case upon interview statements, obtained from the Complainant and Subject Officer and any other witnesses, without the necessity of a hearing. The initial request to proceed on this basis may be made either by the Complainant or the Subject Officer. The Accused Officer(s) and the Complainant(s) will sign a written waiver form giving up their right to a hearing.
3. **Composition.** A Board of Inquiry shall consist of three members of the Commission, one of whom shall be selected by the Board as Chairperson. In cases involving the death of a person, and in such other cases as the Commission shall determine by a vote of six (6) Commissioners, the Commission shall sit as a Board of the whole, with a minimum of six (6) Commissioners.
4. **Designation of Boards of Inquiry**
  - a. Commissioners will volunteer for dates upon which hearings have been scheduled, without knowledge of the cases to be heard. The Commission will keep a record of the number of cases heard by each Commissioner, who will be expected to hear an approximately equal number of cases over each three-month period.
  - b. If any member of a Board of Inquiry becomes unavailable for any reason, he or she shall be replaced by another Commissioner. Notice of this substitution shall be made as soon as possible to all parties to the complaint. If a Commissioner is substituted within seven (7) calendar days of a Board of Inquiry, both parties will retain the right to challenge said Commissioner for cause under Paragraph 5 below. The notice of intent to challenge a substituted Commissioner must be made as soon as possible prior to the convening of a Board of Inquiry and shall be deemed as just cause for a continuance of the Board. If a Board of Inquiry agrees to reschedule a hearing due to the unavailability for any reason of the Complainant(s) or Subject Officer(s) or legal

counsel for either, the case or cases assigned to each Board shall be reassigned to another Board of Inquiry. Once a hearing of a case has been convened by a Board of Inquiry, the same Board shall consider the case to final disposition.

5. Challenges of Commissioners

- a. Challenge for Conflict of Interest or Bias. A Commissioner who has personal bias or prejudice, or the appearance thereof, in the outcome of a complaint shall not sit on such Board. Personal interest in the outcome of a Board of Inquiry does not include holding or manifesting any political or social attitude or belief which does not preclude objective consideration of a case on its merits. Examples of personal bias include, but are not limited to:
  - (1) familial relationship or close friendship with parties material to the inquiry;
  - (2) witnessing events material to the inquiry from a non-neutral perspective;
  - (3) having a financial interest in the outcome of the inquiry;
  - (4) holding a bias against a particular party that is sufficient to impair the Commissioner's impartiality.
- b. Procedure. Within seven (7) calendar days after the date on which the Commissioners furnished notice of a Board of Inquiry, including the names of the Commissioners constituting that Board, either party to the complaint may file a written challenge for cause to any Commissioner hearing the complaint. Challenges for conflict of interest or bias must substantiate the challenge in terms of the standard set forth in Paragraph 5.a. above. When a challenge for cause is filed, the Chairperson shall contact the challenged Commissioner as soon as possible, and if the Commissioner agrees that the challenge is for good cause, or otherwise agrees, the Chairperson shall ask another Commissioner to serve. If the challenged Commissioner does not agree that the challenge is for good cause, the Chairperson shall poll the other members of the Board, and if both agree that the challenge is for good cause the Chairperson shall so notify the challenged Commissioner and ask another to serve. If a challenge to a Commissioner is rejected, and the Commissioner serves, the written challenge and the Commissioner's written response shall be incorporated in the investigative packet as part of the record of the complaint.
- c. Replacement of Challenged Commissioners. Any Commissioner removed, or unable to serve for any reason shall be replaced by another Commissioner.

6. Commissioner Comment. Commission members shall avoid public comment on pending complaints.

- a. No member of the PRC shall discuss or listen to discussion of the facts or analysis of any matter which is the subject of a complaint prior to its hearing.
  - b. No member of the Commission shall pledge or promise to vote in any particular manner in any pending complaint.
  - c. Failure to comply with this Regulation shall be grounds for removing a Commissioner from the Board that hears the complaint.
7. Function. The Board of Inquiry shall review the Investigative Report and the evidence gathered in connection therewith, hear testimony, prepare findings, and shall advise the Chief of Police and the City Manager of its conclusions and recommendations. The Board shall accept court disposition of traffic or parking citations. It shall assume that uncontested citations are justified, and shall make no assumptions regarding the dismissed citations.
8. Continuances
- a. The PRC recognizes the need of all parties to have complaints heard as expeditiously as possible after full investigation has taken place. Therefore, requests for continuances will not be granted in the absence of good cause.
  - b. A majority of the Board of Inquiry has the discretion to grant a continuance. Such requests shall be presented to the PRC as soon as the cause for continuance arises. In considering whether to grant such a continuance the Board of Inquiry members shall consider the reason offered for the continuance; the timeliness of the request; the prejudice to the other party; the date of the filing of the complaint; whether previous requests for continuance have been made; and other relevant information.
  - d. A request for continuance made within three (3) days of the hearing date will not be granted unless the moving party can demonstrate grave emergency which will unduly prejudice him or her if the hearing is not continued.
  - e. Any continuance requested by the Subject Officer shall toll any BPD disciplinary time period.
9. Presence at Hearing

- a. Each Subject Officer, each BPD Member Witness, the Departmental Representative, the Complainant, and the Commissioner's Investigator shall be present and shall testify as required by the City Manager's policy (see Exhibit B) unless otherwise directed by City Manager as requested by the Board of Inquiry. The Departmental Representative and the Commission's Investigator shall be present and shall answer appropriate questions addressed to them.

No person who is present at a Board of Inquiry or Mediation session shall become the subject of undue harassment, personal attack, or invective. If the Chairperson fails to maintain reasonable order, BPD members shall be excused without prejudice. The burden shall be upon the BPD member to establish to the satisfaction of the City Manager that his or her reasons for leaving were sufficient.

- b. In the absence of good cause, failure of the Complainant to appear within thirty (30) minutes after the scheduled time for the hearing shall result in the complaint being dismissed against the Subject Officer.
  - c. The unavailability of the BPD member witness, a Complainant's witness, or other witnesses or the representative of a party, may, if good cause is shown to the Board of Inquiry, be grounds to continue the hearing.
10. Counsel at Hearing. An attorney or other person acting on behalf of the Complainant or any Subject Officer may participate in the hearing, but such representative shall not be required. Witnesses may be represented by counsel. However, each party is responsible for insuring the presence of their counsel at the hearing and the failure of counsel to appear at the hearing without good cause will not delay the hearing or result in continuance.
  11. Scheduling. The Chief of Police, or his designee, shall provide the PRC with a Subject Officer's schedule prior to the scheduling of a hearing, which shall not be held on regular days off, scheduled vacation, or authorized leave of absence.
  12. Subpoena Power. The Commission's subpoena power shall be used to the extent necessary to insure fairness to all parties.

13. Summary Dismissal. The Police Review Commission, or its designee, after reviewing the investigative packet, may summarily dismiss any or all of the allegations in a complaint which it finds clearly without merit, by unanimous vote, on the recommendation of the Investigator, its own motion, or that of the Subject Officer. Parties to the complaint shall be notified of the summary hearing, and may appear to argue for or against summary disposition.
14. Summary Affirmance. After reviewing the investigative packet the Board may summarily sustain any or all of the allegations in a complaint which it finds clearly meritorious, by unanimous vote, on the recommendation of the Investigator, its own motion, or that of the Complainant. Summary affirmance will not occur over the objection of the Subject Officer, who shall be notified of the summary hearing, and may appear to make a timely objection in writing.
15. Open Public Hearing. All Board of Inquiry hearings will be open to the public, unless the Board, in order to protect the rights and privacy of individuals, unanimously decides otherwise.
16. Deliberation. After obtaining evidence, the Board will deliberate in closed session, unless a majority of Commissioners vote to deliberate in public. The Board shall not consider any information not received as part of the hearing. The Board may reconvene in the presence of all parties to ask further questions, and each party shall have the opportunity to respond to any such questions.

After reaching its decision, the Board will reconvene and announce its decision, and state its reasons.

17. Hearing Procedure. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection on civil actions. "Hearsay evidence" is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated.

Evidence shall be taken in accordance with the following provisions:

- a. Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him or her to testify; and to rebut the evidence against him or her. If the Subject Officer does not testify in his or her own behalf, he or she may be called and examined as if under cross-examination.

- b. Oral evidence shall be taken only under oath.
  - c. Upon the request of either party, witnesses shall be excluded from the hearing until they are called to testify.
  - d. Irrelevant and unduly repetitious evidence shall be excluded.
  - e. Audience participation or comment is not permitted. The Chairperson shall exclude unruly or disruptive persons from the hearing.
  - f. The Chairperson will conduct the hearing subject to being overruled by a majority of the Board members. Members of the Board shall be primarily responsible for obtaining testimony. The Investigator will answer Commissioner's questions on the evidence, points of law, and procedure.
  - g. The City Attorney's opinion will be sought whenever the interpretation of City of Berkeley Ordinance is contested and pivotal in the case, or when a case raises substantial legal issues of first impression.
  - h. The hearing will proceed as follows: The Complainant will present the complaint, and introduce witnesses, if any. The Subject officer shall then respond to the complaint, and introduce witnesses, if any. Each person testifying and each party to the complaint may be questioned by the Board and by the parties or their attorneys. After the Board has taken all relevant evidence, each party will be given an opportunity to make a closing statement.
  - i. If the Board considers that additional evidence is necessary to reach its findings, it will continue the hearing to a future date unless the parties agree to allow the Board to receive such material in writing without reconvening.
  - j. If, upon the petition of either party, the hearing is continued for consideration of motions or points of law, any applicable BPD disciplinary time limit shall be tolled for the period of such continuance.
18. Majority Vote. All action by the Board shall be by majority vote, except as specified in these procedures. A dissenting member shall set forth the reasons for dissenting in writing, and such dissent shall be circulated in the same manner as the decision of the majority.
19. Standard of Proof. No complaint shall be sustained unless it is proven by clear and convincing evidence presented at the hearing or otherwise contained in the record. "Clear and convincing" is more than a preponderance of the evidence, but less than beyond a reasonable doubt.

20. Categories of Findings

- a. If the investigation shows the alleged act did not occur, the finding shall be "Unfounded."
- b. If the investigation fails to support the allegations, but the allegations cannot be shown as false, the finding shall be "Not Sustained."
- c. If the investigation shows the alleged act did occur, but was lawful, justified, and proper, the finding shall be "Exonerated."
- d. If the investigation shows the allegation did occur and the action is not justified, the finding shall be "Sustained."

21. Report of Board Findings and Notification

- a. Within thirty (30) calendar days of the hearing of the complaint, the Board shall submit written findings to the Commission Secretary. Circulation of the findings to each party to the complaint shall include notice of the right to petition for rehearing.
- b. Policy recommendations by Boards shall be presented to the full Commission for confirmation before being sent to the Chief of Police and City Manager.

22. Petition for Rehearing. Within fifteen (15) calendar days of the mailing of the findings of the Board, any party to the complaint may petition in writing, with grounds set forth, for a rehearing. Such rehearing may be granted by the PRC, if it is shown that there is newly discovered evidence, material for the party making the application, which could not have been with reasonable diligence, discovered and produced at the hearing; or if it is shown that there was substantial procedural error likely to have affected the outcome. In a petition for rehearing of a case summarily dismissed by the designee of the Commission an additional ground for rehearing shall be a clear error in the application of the standard set forth in sub-section 13.

Upon receipt of a petition for rehearing by either party, a decision shall be made within twenty-one (21) calendar days as to whether to grant or deny it. When a rehearing is granted, it shall be held within thirty-five (35) calendar days of the receipt of the petition. The 120-day discipline period shall be tolled until the petition is either denied or rehearing concluded.

23. Circulation of Findings. The Commission shall routinely send copies of its findings together with the investigative packet to the City Manager and Chief of Police. The Commission shall make its findings and recommendations available.

24. Amendment of Complaint Procedure

- a. Amendments shall be numbered sequentially and dated, and shall indicate where they are to be placed in the procedure (i.e., "supersedes Section 29," or "read between Section 29 and Section 30").

The PRC office shall maintain a complete current set of Complaint Procedures.

- b. Amendments shall be distributed to Commissioners, the Berkeley Police Association, City Manager, City Attorney, and Chief of Police.

Appendix C

**PRC ALLEGATIONS**

## ALLEGATION CATEGORIES, CODES AND ABBREVIATIONS

### Categories

### Abbreviations

#### **IMPROPER USE OF FORCE**

#### **EXF**

All allegations concerning the unnecessary use of force that goes beyond reasonable or lawful limits of physical power that may be used upon a person including:

Improper Use of Firearm	iuf
Unnecessary Display of Weapon (As defined in Police Regulation 200)	udw
Improper Physical Contact (As defined in Police Regulation 318 or 321)	ipc
Improper Use of Handcuffs	iuh
Improper Use of Baton	iub
Improper Use of Mace or Pepper Spray	ium
Improper Use of Flashlight	ifl

#### **DISCOURTESY**

#### **DIS**

All allegations concerning a failure to be courteous and civil to the public. All employees are expected to be quiet, orderly, attentive, and respectful and to exercise patience and discretion in the performance of their duties. (PR. 239) Complaints may include improper hand gestures or signs and/or the failure of an employee to give a proper response or explanation to a citizen.

Discourtesy	dis
Abusive or Obscene Language	aol
Failure to Give Proper Explanation to Citizen	fge
Failure to Provide Information	fpi
Failure to Respond	fr
Misrepresentation of Vehicle Code	mvc
Threat	tht

**IMPROPER ARREST, SEARCH, SEIZURE, STOP OR DETENTION ASD**

All allegations concerning police actions conducted without sufficient lawful reason, particularly as they relate to improper stops, street detentions, searches, seizure and arrests. This category does not include complaints about improperly issued traffic citations or improper police tows. (May be based upon proper police conduct defined in Police Regulation 401).

Improper Arrest	far
Improper Search	isr
Improper Seizure	isz
Improper Stop	ist
Improper Detention	idt

**IMPROPER DETENTION PROCEDURES DET**

All allegations concerning a failure to follow proper procedures for arrest, booking, incarceration and release of prisoners. May include allegations concerning a failure to advise of the reasons for an arrest; failure to "Mirandize" a suspect; failure to utilize the proper citation release procedure; a failure to follow proper bail procedures; failure to allow phone calls and/or access to attorneys, and unnecessary delays in releasing prisoners.

(May be defined in reference to Police Regulations 400, 401, 211, 212, 213, 201, 202, 203, 204, 205, 206, 207 and General Orders.

Failure to Inform of Grounds of Arrest	fga
Failure to Provide Notice of Intent to Cite or Arrest	fpn
Failure to Provide Medical Assistance	fpm
Failure to Read Miranda Rights	frr
Improper Bail Procedure	ibp

**INADEQUATE OR IMPROPER INVESTIGATION**

**INV**

All allegations concerning a failure to adequately and impartially investigate and to accurately provide a written account of an incident. May include the failure of an employee to take a report or to make a lawful arrest. (May be defined in Police Regulation 276 and 401, General Order R-24.4 and appropriate Penal Code Sections).

Failure to Investigate	fti
Failure to Make Police Report	fmr
False Police Report	fpr
Improper Police Report	ipr

**DISCRIMINATION**

**PRJ**

All allegations concerning a favorable or unfavorable treatment of action by a police employee which exhibits partiality or prejudice based upon a person's race, sex, religion, political persuasion or appearance. (May be defined in Police Regulation 237, 239, 240 and 401)

Racial Discrimination	rac
Sexual Discrimination	sex
Religious Discrimination	rel
Political Discrimination	pld
Discrimination by Appearance	app
Discrimination by Sexual Orientation	sxd
Selective Enforcement	sef

**HARASSMENT**

**HAR**

Any allegation asserting a consistent, deliberate annoyance by police employees where the complainant can attest to repetitious contact over a period of time. (May be defined in Police Regulation 257)

Harassment	har
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**IMPROPER POLICE PROCEDURES****PRO**

Any allegation concerning a failure to follow approved Departmental policies, procedures, orders or guidelines. (May be defined in official Police Training Bulletins, Captain's instructions, Police Regulations or General Orders).

Damage to Property	dam
Failure to Arrest	fta
Failure to Honor Citizen's Arrest	fca
Improper Confiscation of Property	icp
Failure to Return Property	frp
Improper Police Dispatch	ipd
Interference with Taking of Evidence	ite
No Badge Visible	nbv
Making False Statements	mfs

**IMPROPER CITATION OR TOW****CIT**

All allegations of improperly issued traffic citations or improper towing by a police employee. (May be defined by the California Vehicle Code or local ordinance).

Improper Citation	ict
Improper Tow Tag	irt
Improper Tow	itw

**OTHER****OTH**

All other allegations concerning police employee misconduct that do not fit into any of the other listed categories. These allegations may include, but are not limited to complaints concerning criminal misconduct, abuse of discretion, or failure of a police employee to properly identify self.

Abuse of Discretion	ads
Breach of Confidentiality	boc
Failure to Identify Oneself	fti
Lack of Discretion	lod