



Police Review Commission

POLICE REVIEW COMMISSION REGULAR MEETING MINUTES

Wednesday, October 28, 2009
7:00 P.M.

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. CALL TO ORDER BY CHAIRPERSON SHERRY SMITH AT 7:00 P.M. ROLL CALL AND ATTENDANCE:

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

Absent: Commissioner Jonathan Huang

PRC Staff: Victoria Urbi, PRC Officer
Byron Norris, PRC Investigator

BPD Staff: Interim Chief Gustafson, Lt. Rolleri, Sgt. J. Wilson, Officer Wellington

2. ORDER OF AGENDA

No changes were made.

3. PUBLIC COMMENT

None.

4. APPROVAL OF MINUTES

A. Regular Meeting: October 14, 2009

Motion to approve minutes. M/S/C (Gurgin/Kidd) Motion carried.

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

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



5. NEW BUSINESS

- A. Findings reports: discuss the current process, how to achieve consensus among board of inquiry and past practice.
- a. Commissioner Bloom's report: Comm. Bloom discussed that it is difficult or impossible to achieve a findings report that reflects all perspectives of the Board members.

b. Discussion

Comm. Sherman stated that if there is no consensus, the Board member could write a minority opinion or something that shows the Board member's opinion. He also stated that during deliberations, Ms. Urbi is constantly asking the Board members for more specific opinions, so that the report is accurate. The current process has been a marked improvement and this is a way of shortening the process than having Board members write the findings report.

Comm. White stated that each Board member is given the findings report for comment and review. If a Board member believes it is not accurate, s/he is free to fine tune the report and make changes. The changes must go back to the Board members through a process where each member must approve the changes.

Also, in the past when Board members wrote the reports, it was more difficult for the members, because each member has a different writing style and the version that the PRC Officer produces has been a relief. Comm. White pointed out that the PRC has been winning the Caloca appeal since the PRC Officer has been writing the findings reports.

Chair Smith stated that the Board member is compelled to write a minority opinion if s/he has a different vote from the majority. But, if the Board members wish to write a concurring opinion, s/he should run it by the others, because others may agree with the concurring opinion, so that there is a full flavor of what the Board members were thinking.

She also pointed out that after one Board of Inquiry, there was a danger when a couple of Board members discussed the case and one member changed the mind of another member. She stated that everyone has a different writing style and she is satisfied personally with the current process.

Vice Chair Perezvelez stated that if the Board members reached a consensus on the conclusion, but not on the direction of the allegations, he would be concerned about Caloca appeal issues, because of a difference of opinion among the Board members. This reasoning could be challenged in a Caloca appeal. Also, the Board members could choose to have the Board members or the PRC Officer write the findings report, but this has to do with being expeditious. Board members should discuss during the deliberations their reasons for their finding, so that it could be accurately reflected.

Comm. Edwards stated that in the past, the Board members would write the findings report, so that might be something to consider.

Comm. Bloom would like PRC staff to include in the findings report that the Board members made a finding for the following reasons, but there was variance on the issues.

Motion to amend the PRC Regulations, section III, #20A to “The Board shall agree to written findings within thirty (30) calendar days of the hearing.”

M/S/C (White/Sherman) Motion carried.

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

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

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

A. Hearing update: The next hearing is scheduled on November 10. Ms. Urbi provided the Commission with a sign-up sheet for upcoming hearings.

B. Status of complaints: Since the last Commission meeting, the staff received two new complaints. There are 29 total complaints.

C. Comments:

- Byron Norris, the PRC Investigator, was introduced. He worked with the San Francisco District Attorney’s Office in the Child Support Division, where he was a supervisor and investigator for 11 years. He received a Master’s Degree in Public Administration from Golden Gate University. He is from Louisiana, grew up in Oakland and currently lives in San Francisco.
- Ms. Urbi noted that the PRC is now fully staffed with an Investigator, two Office Specialists, and two student interns from U.C. Berkeley.
- The Commission and staff presented the Statistical Report to the City Council on October 27.
- The Statistical Report is available on the PRC website at <http://www.ci.berkeley.ca.us/prc/>
- The presentation to City Council is available online at <http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=9868>
- Ms. Urbi stated that she will not be attending the NACOLE conference this weekend in Texas. She had to cancel her trip.
- She informed the Commission that the Berkeley Police Department will be featured on America’s Most Wanted on November 7, regarding the murder of Charles Davis, a former PRC complainant.

7. BERKELEY POLICE DEPARTMENT INTERIM CHIEF'S REPORT

Interim Chief Gustafson reported that the department is completing the racial profiling training. The department has seen the Commission’s memorandum concerning General Order A-1. He has talked to the City Manager about GO A-1 and the Commission will be receiving a response from the City Manager. As discussed at the last Commission meeting, he believes it is most appropriate to avoid any lasting policy decisions while the department awaits a new Police Chief, because the new Police Chief may have a different approach to a policy decision and he would not want to revisit an issue again.

The police staffing is facing a budget crunch. Several senior officers will be retiring next year and more officers will need to be hired to fill those positions.

8. COMMITTEE REPORTS (For Discussion or Action)

A. Officer-Involved Shooting Subcommittee

- a. Chair Smith's report to request that the Commission approve the subcommittee's policy recommendations: She stated that the subcommittee met with Captain Harris to hear BPD's comments on the recommendations.

- b. Action

Motion to accept the Officer-Involved Shooting Subcommittee's policy recommendations with the following amendments (see below) to Policy Recommendation #5:

Final Amendments:

“Officers shall undergo mandatory drug and alcohol testing after all officer-involved shootings resulting in bodily injury or death and the results shall be used in the evaluation of the incident.”

The Subcommittee recommends that General Order D-19, page 2, #5, shall be amended to add a section (d) to include, “Officers shall undergo mandatory drug and alcohol testing after an officer-involved shooting in keeping with the established scientific practice.”

M/S/C (Gurgin/Perezvelez) Motion carried.

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

Noes: None. **Abstain:** Edwards. **Absent:** Huang.

Amendments:

Motion to amend the original motion by adding to Policy Recommendation #5 the following: “The Subcommittee recommends that General Order D-19, page 2, #5, shall be amended to add a section (d) that includes officers shall undergo mandatory drug and alcohol testing after an officer-involved shooting and the results shall be used in the evaluation of the incident.” (Italics and underline indicate amendment)

M/S/C (White/Sherman) Motion carried.

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

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

Motion to amend the original motion by adding to Policy Recommendation #5, “Officers shall undergo mandatory drug and alcohol testing after all officer-involved shootings resulting in serious bodily injury or death within 24 hours of the incident.” (Italics and underline indicate amendment)

M/S/C (Perezvelez/Kidd) Motion failed. There was no vote.

Motion to amend the original motion by adding to Policy Recommendation #5 the following: “The Subcommittee recommends that General Order D-19, page 2, #5, shall be amended to add a section (d) that includes officers shall undergo mandatory drug and alcohol testing after an officer-involved shooting in keeping with the established scientific practice and the results shall be used in the evaluation of the incident.” (Italics and underline indicate amendment)

M/S/C (Bloom/Perezvelez) Motion carried.

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

Noes: None. Abstain: None. Absent: Huang.

Motion to amend the original motion by deleting “serious” after “...officer-involved shootings resulting in....”.

M/S/C (Bloom/Perezvelez) Motion carried.

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

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

B. Regulations Review Subcommittee

Next meeting is scheduled on December 1, 6:00 p.m.

The subcommittee is close to completing its recommendations and will review the final changes at the next meeting.

C. Search of Homes Subcommittee

Based on the Interim Chief’s decision to hold off on any policy decisions, the subcommittee is going to wait until the new Chief has been appointed to get BPD’s input on the policy recommendations.

D. Mutual Aid Subcommittee

The subcommittee has not met. Commissioner Huang was not present, so there were no updates.

9. COMMUNICATIONS

A. Attached.

10. PUBLIC COMMENT: Limited to items 11 and 12 only.

A. None.

Closed Session

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

11. RECOMMENDATION FOR ADMINISTRATIVE CLOSURE

A. Case No. 2229 – Complainant Pablo Maldonado

Motion to close Case No. 2229.

M/S/C (Gurgin/Kidd) Motion carried.

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

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

12. RECOMMENDATION FOR SUMMARY DISMISSAL

A. Case No. 2222 – Complainant Ollie Beasley

Motion to close Case No. 2222.

M/S/C (Gurgin/Perezvelez) Motion carried.

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

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

B. Case No. 2227 – Complainant Ollie Beasley

Motion to close Case No. 2227.

M/S/C (Sherman/Gurgin) Motion carried.

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

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

13. ADJOURNMENT

Meeting was adjourned at 9:00 p.m.