

# CITY OF BERKELEY

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## POLICE REVIEW COMMISSION STATISTICAL REPORT 2005-2007

# CITY OF BERKELEY POLICE REVIEW COMMISSION 2005-2007

## 2007

William White, Chair  
Sharon Anne Kidd, Vice-Chair (2007-08), Chair (2006-07)

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Jonathan Huang  
George Perezvelez  
Michael Sherman  
Sherry Smith

Former Commissioners 2005-06  
Annie Chung, Chair (2005-06)  
Taymyr Bryant, Danny Herrera, Jack Radisch,  
David Ritchie, Michael Sheen, Jonathan Wafer

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Tom Bates

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Dona Spring (District 4)  
Laurie Capitelli (District 5)  
Betty Olds (District 6)  
Kriss Worthington (District 7)  
Gordon Wozniak (District 8)

## CITY MANAGER

Phil Kamlarz

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## **FORWARD**

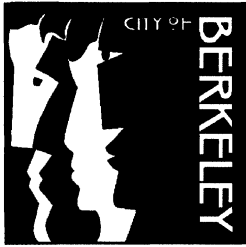
As a custom, we are pleased to present another annual report to the community of Berkeley. As always, our staff has worked hard to compile statistical data that reflects the activities of complaints received by the PRC.

Unfortunately, this past year has been a year of transition and setback in reference to the civilian oversight process. The State of California's judicial system has made sweeping decisions that have changed the process of civilian oversight. No longer can an individual bring a complaint against a police officer and follow that complaint through an open hearing. An Alameda County Superior Court Judge interpreted a recent California Supreme Court decision as prohibiting open hearings and ruled that these complaints are personnel records and the law prohibits police officers' records from being disclosed to the public. Therefore, the judge ordered that the open hearing process be abolished.

The City of Berkeley has taken on this court decision head on through litigation but it is estimated that it will take at least two years to work its way through the appeal process. Berkeley, well known nationally as the innovator of civilian oversight, has an innate responsibility to defend its citizen mandate for a transparent process of police misconduct. California is the only state in the union that seems to have taken a step backwards to prevent citizen participation in a democratic process. The State Legislature made a trivial effort to preserve the oversight process, but police union pressures canceled this effort.

We as citizens of Berkeley know that we have an outstanding police department, but we also know that the civilian oversight process is an important factor that created this performance. Civilian oversight came into existence through a Berkeley voter initiative. This means that you, the citizenry of this City, want and supports civilian oversight! I therefore, challenge each of you to make an individual effort to save the process and get involved once again and tell the "powers that be" to bring back transparency of civilian oversight to the State of California.

William C. White  
Chair, Police Review Commission



**Police Review Commission**

April 10, 2008

Mr. Phil Kamlarz  
City Manager  
2180 Milvia Street  
Berkeley, CA 94704

Dear Mr. Kamlarz:

Enclosed is the 2005-2007 Statistical Report of the Police Review Commission (PRC). The PRC has cultivated a collaborative relationship with the Berkeley Police Department (BPD) and community stakeholders by providing a fair, neutral and objective process to hear complaints against police officers. The PRC strives to increase public confidence in the police and complaint process, while supporting public safety and ensuring police accountability.

The PRC has undergone the most significant transition in its 34-year history: in the case of Berkeley Police Association v. City of Berkeley and City of Berkeley Police Review Commission, an Alameda County Superior Court judge ordered the PRC to close boards of inquiry hearings from the public and ordered all PRC records regarding police misconduct be kept confidential.

The City of Berkeley became the only oversight agency in California to challenge closed hearings when it appealed the Alameda County Superior Court decision requiring the PRC to close its hearings to the public. Thus, closed hearings have been implemented while PRC awaits the outcome of the City's appeal.

I would like to thank the Commissioners for their commitment, endurance and enthusiasm in taking on this challenging work. I am grateful to the PRC staff for their hard work and assistance in putting together this report. I would like to thank the Berkeley Police Department for their continued cooperation. I would like to extend my appreciation to members of the Berkeley community, who have challenged, questioned, informed and raised the awareness of civilian oversight of police. Finally, I thank you for your continued support of the PRC as we continue to serve the Berkeley community.

Respectfully submitted,

A handwritten signature in black ink that reads "Victoria A. Urbi".

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Victoria A. Urbi  
PRC Officer

# 2005-2007 PRC STATISTICAL REPORT

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**APPENDIX**

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# POLICE REVIEW COMMISSION 2005-2007 STATISTICAL REPORT

## I. INTRODUCTION

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 complaints of misconduct filed against the Berkeley Police Department. The PRC also provides citizen participation in the formulation and review of police practices, policies, and procedures.

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.

PRC Commissioners and Staff, December 2006



From left to right: TOP ROW - Victoria Urbi, PRC Officer, Jack Radisch (Former Comm.), Chair William White, Comm. Michael Sherman.  
BOTTOM ROW: Comm. Sherry Smith, Comm. Sharon Kidd



## II. SUMMARY

|                                 |   |
|---------------------------------|---|
| <b>Police Review Commission</b> | An independent civilian oversight agency that investigates and hears complaints concerning Berkeley Police.   |
| <b>Mission</b>                  | <ul style="list-style-type: none"> <li>• Increase public confidence in the police</li> <li>• Improve police training and policies</li> <li>• Increase professionalism among police officers</li> <li>• Increase public confidence in complaint investigations</li> <li>• Conduct fair, objective and neutral investigations.</li> </ul>               |
| <b>Types of Complaints</b>      | Complaints vary from: discourtesy, excessive force, improper search, improper police procedures, abuse of discretion, and more. (See complete categories of allegations, Appendix, Section C)   |
| <b>Commissioners</b>            | Members of the community appointed by City Council and the Mayor.   |
| <b>Department</b>               | <ul style="list-style-type: none"> <li>• Staff reports to the City Manager.</li> <li>• External to the police department.</li> </ul>  |
| <b>Members</b>                  | <ul style="list-style-type: none"> <li>• 9 Commissioners</li> <li>• 4 full-time employees, 2 student interns.</li> </ul>  |
| <b>Function</b>                 | <ul style="list-style-type: none"> <li>• Conducts independent investigations of complaints/allegations of police misconduct.</li> <li>• Conducts closed administrative hearings.</li> <li>• Forwards recommended findings to City Manager and Chief of Police.</li> <li>• Makes policy recommendations on police practices and procedures.</li> </ul> |
| <b>Authority for oversight</b>  | <ul style="list-style-type: none"> <li>• Berkeley Police Department members</li> <li>• Approximately 200 officers</li> </ul>  |
| <b>Commission Meetings</b>      | Commissioners meet on the 2 <sup>nd</sup> and 4 <sup>th</sup> Wednesday of each month at 7:00pm. (See Meeting Schedule, Appendix D)   |
| <b>Complaint outcome</b>        | Cases are either recommended for a hearing or closure through summary dismissal or administrative closure.  |





## III. PRC STAFF



Left to right: Rebecca Webb, Maritza Martinez, Barbara Mann. Top: Victoria Urbi.

Victoria Urbi, PRC Officer  
Barbara Mann, Investigator  
Maritza Martinez, Office Specialist III  
Rebecca Webb, Office Specialist II  
Interns 2007: Gilberto Vera, Drei Munar

### **Former Staff 2005-2006**

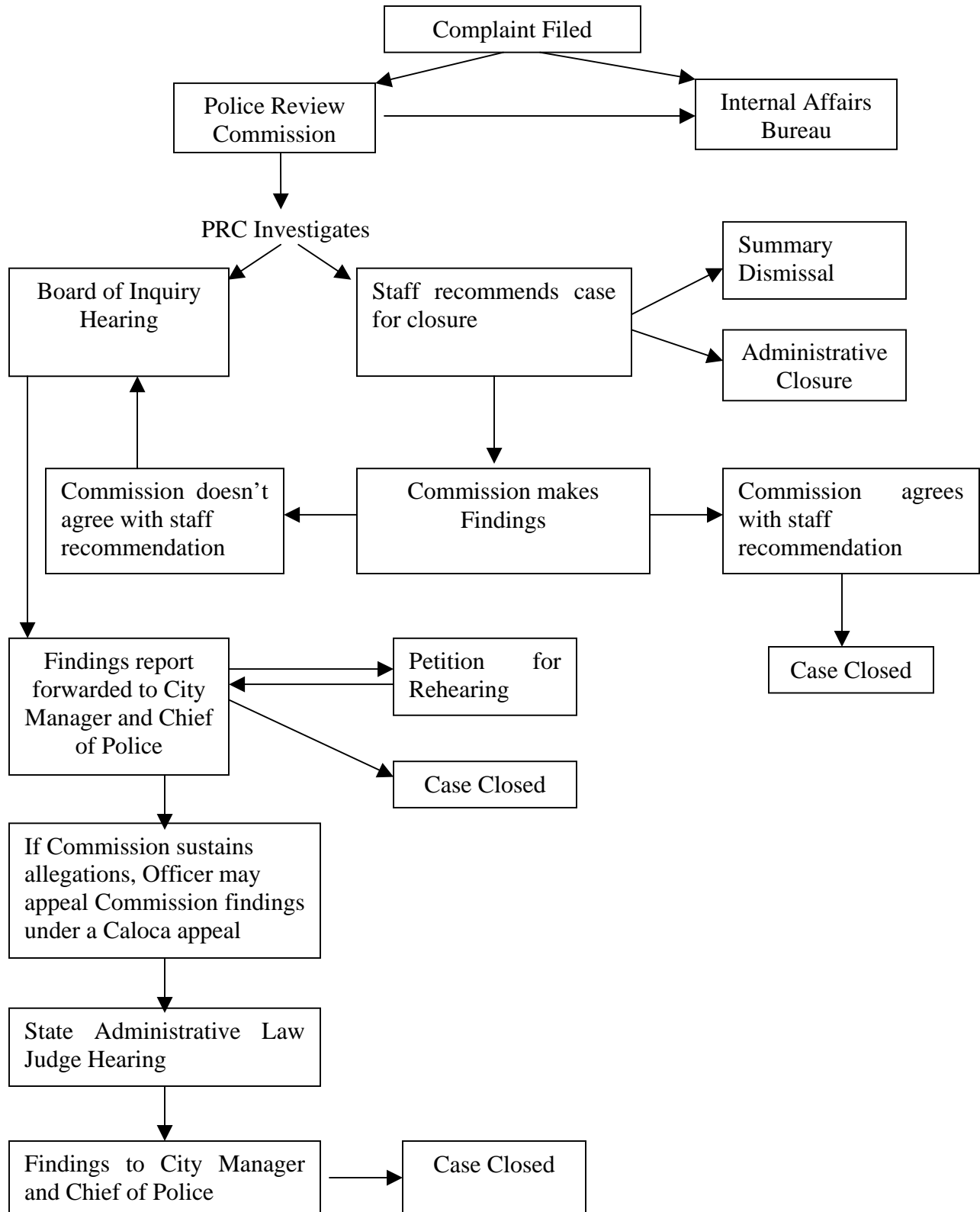
Dan Silva, Acting Officer, Investigator  
Fred Vides, Investigator  
Beverly Powell, Office Specialist II

### **Former PRC Interns**

Stephanie Ahn  
Fiona Cua  
Michael McNeil  
Maya Rossin  
Andrew Smith  
Melodie Yashar



# IV. COMPLAINT PROCESS





# V. INVESTIGATION PROCESS

## FILING COMPLAINTS

To file a complaint against a Berkeley police officer, a complainant must complete and sign a complaint form. PRC staff will screen the complaint for timeliness of complaint submission.<sup>1</sup> Staff will determine whether to investigate the allegations of misconduct or any BPD policy issues. PRC staff will forward a list of allegations from the complaint to BPD to provide notice that a complaint has been filed against the subject officer/s.

## INVESTIGATION OF COMPLAINTS

PRC investigators interview the complainant, witnesses, police officers and they gather relevant evidence. The PRC investigator analyzes police reports, communication dispatch reports, photographs and any other physical or documentary evidence relevant to the complaint. Upon collection of all evidence, the Investigator will prepare a report and recommend whether the case should be closed or forwarded to a Board of Inquiry.

## BOARD OF INQUIRY

A Board of Inquiry is an evidentiary hearing of the complaint, consisting of three Commissioners, who review an investigation report and make a determination on the findings of a case. The hearing provides an opportunity for the Board to question the complainant and police officers about their version of the events forming the complaint

After reviewing the evidence and receiving witness testimony, the Board deliberates and determines findings based upon a “clear and convincing” standard of proof. The Commission could find that the allegations of misconduct against an officer were either sustained, not sustained, unfounded or exonerated. The Commission’s findings are forwarded to the complainant, subject officer, City Manager and Chief of Police.

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<sup>1</sup>Complaints must be filed with the PRC within 90 days of the alleged misconduct; except, in circumstances specified in the PRC regulations, a 90-day extension can be granted by a vote of at least 6 Commissioners. (See Technical Appendix 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.



## VI. CLOSED HEARINGS

|                             |   |
|-----------------------------|---|
| <b>Closed to public</b>     | In February 2007, an Alameda County Superior Court judge ruled that the PRC complaint investigation and hearing process was subject to the confidential provisions of Penal Code Section 832.7 and ordered the PRC to close its hearings to the public and maintain the complaint investigation records confidential. (See Berkeley Police Association v. City of Berkeley and City of Berkeley Police Review Commission, Alameda County Superior Court Case No. 2002-057569.) The City has complied with the trial court order, but it has appealed the trial court decision to the California Court of Appeal.  |
| <b>Board of Inquiry</b>     | <ul style="list-style-type: none"> <li>• A closed administrative hearing</li> <li>• Not a court of law.</li> <li>• Three Commissioners hear testimony, review a case and make findings.</li> <li>• Findings include whether the complainant’s allegations should be sustained, not sustained, unfounded or exonerated.</li> </ul>   |
| <b>Procedures</b>           | <ol style="list-style-type: none"> <li>1. Complainant testifies and answers questions from the three Commissioners, subject officer or subject officer’s representative. The Complainant is excluded from the hearing after his/her testimony.</li> <li>2. Civilian witness testifies and answers questions from the three Commissioners, subject officer or subject officer’s representative. The witness is excluded from the hearing after his/her testimony.</li> <li>3. Subject officers testify and answer questions from two Commissioners, unless waived by officer.</li> <li>4. Three commissioners can question a witness officer.</li> <li>5. Subject officer may provide a 2-minute closing argument.</li> <li>6. Commissioners deliberate outside the presence of the officers</li> <li>7. Commissioners will announce findings to the officers.</li> <li>8. Findings will be sent to the Complainant, Subject Officer, City Manager and Chief of Police.</li> </ol> |
| <b>Investigation Report</b> | <ul style="list-style-type: none"> <li>• Commissioners, subject officers and the officer’s representative assigned to a hearing will receive the full confidential report one week before the hearing.</li> <li>• Complainant will receive his/her interview transcript, relevant BPD policies and law and a redacted police report.</li> <li>• Civilian witnesses may receive their interview transcript to refresh their recollection prior to a hearing.</li> </ul>  |
| <b>Legal representation</b> | An attorney or other representative may represent subject officers, but officers may elect to speak for themselves.   |



## CLOSED HEARINGS

In 2002, the Berkeley Police Association (BPA), the employee organization representing sworn officers, filed a lawsuit against the City and PRC contending that the PRC's public hearings violated the confidentiality provisions afforded police officers in Penal Code Section 832.5 and that the officers were entitled to the procedural protections of Government Code 3300 et seq. (See *City of Berkeley and City of Berkeley Police Review Commission vs. Berkeley Police Association*, Alameda Superior Court Case No. 2002 057569). The BPA sought as relief that the PRC hearings be closed to the public and the PRC's complaint investigation records made confidential. On August 31, 2006, the California Supreme issued its decision in *Copley Press v. County of San Diego Civil Service Commission*, and held that the records of a civilian county civil service commission that considers appeals of police officer discipline are strictly confidential under Penal Code section 832.5 and may not be released to the public.

After the California Supreme Court issued its decision in *Copley Press*, the BPA immediately demanded that the PRC close its hearings. Similar demands were made by the police associations in other jurisdictions. In September 2006, the BPA and City entered into a stipulation to temporarily suspend hearings until the trial court issued a decision on the BPA's motion for summary judgment. In February 2007, the trial court issued a decision finding that the PRC's complaint investigation and hearing process was subject to the confidentiality provisions of the Penal Code. At a subsequent hearing, the trial court ordered the City to close PRC hearings to the public. In November 2007, the City appealed the trial court's decision and the case is currently pending on appeal.

For more information on the lawsuit, go to: <http://www.ci.berkeley.ca.us/prc>.



## VII. OVERVIEW OF 2007

### REVISED REGULATIONS TO CLOSE PRC HEARINGS

On February 9, 2007, the Alameda County Superior Court held that the PRC's complaint investigation and hearing process was subject to the confidentiality provisions of Penal Code Sections 832.5 and 832.7 and that the PRC was required to comply with the Peace Officers' Procedural Bill of Rights during its investigation and hearings. During 2007, the Commission held several meetings with the City Council and City Attorney to receive regular updates on the BPA's lawsuit. The Commission voted to recommend to the City Council and the City Council voted to appeal the Alameda County Superior Court's decision to close the PRC's hearings to the public. The case is currently on appeal in the California Court of Appeal.

Following the Superior Court's order to close the PRC hearings, the PRC revised its Regulations to close the hearings and also determined which documents were required by the court's order to be kept confidential. The Commission spent much of its time in 2007 determining how to implement the trial court's order. The PRC could not hear any complaints until it revised its Regulations to comply with the court order. On November 7, the Commission approved the revised Regulations. In December, the Commission considered four late file petitions. The Commission approved one late file petition and denied three petitions.

### POLICY SUBCOMMITTEES

Since the Commission could not consider any cases until the Regulations were finalized, Commissioners spent most of 2007 working on policy Subcommittees. See Policy Subcommittees, page 11.

### TRAINING

PRC Officer Victoria Urbi oversaw two training workshop panels at the National Association of Civilian Oversight of Law Enforcement Conference, which the full Commission attended in San Jose, CA. Commissioners attended a broad range of workshops on civilian oversight of police and met other practitioners in the field. Ms. Urbi facilitated a workshop on "Establishing Credibility of Witnesses," which included speakers: Mary Greenwood, Santa Clara County Public Defender, Jayson Wechter, Investigator of San Francisco's Office of Citizen Complaints and Peter Holmes, former Seattle Office of Professional Accountability Review Board member.

Ms. Urbi also facilitated a workshop on "Law Enforcement Monitoring and Anti-Terrorism Efforts," which included speakers: Jonathan Schmidt, U.S. Attorney's Anti-Terrorism Task Force, Captain Edward Tracey of the Oakland Police Department, Mark Schlossberg of the American Civil Liberties Union and Bob Aaronson, Police Auditor for Palo Alto and Santa Cruz.



# VIII. YEARLY HIGHLIGHTS

## 2005

|                 |                           |
|-----------------|---------------------------|
| <b>November</b> | PRC became fully staffed. |
|-----------------|---------------------------|

## 2006

|                  |  |
|------------------|--|
| <b>March</b>     | Commissioners attended training on <ul style="list-style-type: none"> <li>• Conducting police misconduct hearings,</li> <li>• Regulation requirements and</li> <li>• Reviewing investigation reports.</li> </ul>   |
| <b>May</b>       | Commission voted to begin the Evidence Theft Policy Subcommittee.  |
| <b>August</b>    | <ul style="list-style-type: none"> <li>• PRC conducted last open public hearing.</li> <li>• PRC participated in BPD Citizens' Awareness Academy</li> <li>• PRC participated in National Night Out.</li> <li>• PRC observed BPD Barricaded Suspect Hostage Negotiation Team interviews.</li> </ul>  |
| <b>August 31</b> | <u>Copley Press v. County of San Diego Civil Service Commission</u> , The new California Supreme Court <u>Copley Press</u> decision held that the records of a county civil service commission that considers appeals of police officer discipline are strictly confidential under state law.  |
| <b>September</b> | <ul style="list-style-type: none"> <li>• PRC approved the BPD Mutual Aid Policies and Agreements and forwarded a report to City Council.</li> <li>• Staff attended NACOLE Conference</li> <li>• PRC temporarily suspended hearings due to current litigation.</li> <li>• PRC worked with Oakland's Citizens' Police Review Board in grading written examinations for investigator search.</li> </ul> |
| <b>October</b>   | Public Hearing on closed boards of inquiry   |



## 2007

|                  |   |
|------------------|---|
| <b>February</b>  | Alameda County Superior Court ruled PRC must comply with confidentiality provisions in Penal Code Sections 832.5 and 832.7.   |
| <b>May</b>       | Vehicle Pursuit Subcommittee forwarded policy recommendations to BPD.   |
| <b>June</b>      | PRC testified at State Legislature's Assembly and Senate Public Safety Committees on proposed legislation that supported open public hearings.  |
| <b>September</b> | Full Commission attended the National Association of Civilian Oversight of Law Enforcement Conference in San Jose, CA.  |
| <b>October</b>   | <p>Evidence Theft Policy Subcommittee released its report on BPD's evidence handling of narcotics and held a public hearing on the report.</p> <p>To download the report, go to <a href="http://www.ci.berkeley.ca.us/prc/">www.ci.berkeley.ca.us/prc/</a>.</p> |
| <b>November</b>  | <p>Commission approved the revised Regulations on closed hearings and confidential records.</p> <p>Staff conducted two Commissioner trainings on conducting closed hearings.</p>  |
| <b>December</b>  | Commission closed three complaints and approved one late file petition.   |





## **A. TRAINING**

### **1. NEW COMMISSIONER TRAINING**

In 2006, the Commission completed various trainings in order to understand the PRC Regulations, police practices and policies. In March, Commissioners attended a half-day training where they learned about:

- The history of the Commission;
- How cases are investigated;
- The Brown Act;
- How to weigh evidence in a case and
- The police perspective in complaint investigations.

### **2. CITIZENS' AWARENESS ACADEMY**

In August, former PRC Chairperson Sharon Kidd and PRC staff completed the BPD Citizens' Awareness Academy, a 14-week training program on the police department, administration, and procedures. This allowed staff and Commission to see how the police department operates from behind the scenes and taught the inner workings of police work with interactive exercises. Participants in the program learned basic patrol techniques, officer safety, use of force issues, crime scene management, evidence collection, criminal investigation – what detectives do, weaponless/defensive tactics, a basic firearms safety/live fire course, and scenarios involving police and community members.

### **3. RIDE-ALONGS**

Throughout the year, most Commissioners and PRC staff completed BPD's Ride-along program, where a civilian rides with a police officer and observes how officers respond to 911 calls or calls for service. This gave Commissioners an understanding of officer safety, timing issues during critical incidents, and how officers problem solve various issues throughout their shifts. By completing a ride-along, Commissioners have a better understanding of detentions, traffic stops, and other public contact issues that arise during boards of inquiry hearings.

## **B. POLICY SUBCOMMITTEES**

### **1. EVIDENCE THEFT SUBCOMMITTEE**

On April 18, 2006, a former Berkeley Police Sergeant pled guilty to grand theft by embezzlement, possession of methamphetamine and possession of heroin. On May 24, 2006, as a result of the irregularities in BPD's evidence and narcotics handling practices, PRC voted to form an Evidence Theft Subcommittee. Subcommittee members included Chairperson William White, Commissioner Sharon Kidd and Commissioner Sherry Smith. Two community volunteers, Jim Chanin and Andrea Pritchett, joined the subcommittee half way through the investigation process. Chief Hambleton answered the Subcommittee's questions on policy and police practices.



On October 24, 2007, PRC released the “Policy Report: Evidence Theft within the Berkeley Police Department.” The Commission held a public hearing to garner community input on the Commission’s findings and recommendations. In November, the Commission met with City Manager Phil Kamlarz and Chief Doug Hambleton to discuss BPD’s response to the Commission’s recommendations.

The City Manager agreed with 25 of the Commission’s 28 recommendations. Mr. Kamlarz stated that the intent of the Policy Report was to make certain that this issue does not happen again. He informed the Commission that several of the recommendations had already been implemented. The Commission presented their report to City Council in January of 2008.

## **2. CRIMINAL INTELLIGENCE SUBCOMMITTEE**

The Criminal Intelligence Subcommittee reviewed First Amendment activities and how police monitor political and religious groups. Commissioners Sherman and White worked with BPD in analyzing criminal intelligence policies of other jurisdictions and drafting a best practices approach to how police could investigate criminal activity without infringing on First Amendment rights.

## **3. MUTUAL AID PACTS SUBCOMMITTEE**

In September 2006, PRC approved the BPD Mutual Aid Pacts and Agreements and forwarded the report to City Council. The Mutual Aid Pacts are a set of agreements between BPD and other law enforcement agencies that set standards for conducting joint operations. The Subcommittee reviewed the entire pacts and reviewed potential constitutional issues.

The agreements form guidelines to how BPD will work with other law enforcement agencies in the event that coordination is necessary. For example, a suspect fleeing from Oakland Police who drives into Berkeley would result in two law enforcement agencies attempting to apprehend the suspect. The Agreements outline the policies that BPD must follow in these operations.

## **C. COLLABORATION WITH STAKEHOLDERS**

### **1. BERKELEY POLICE DEPARTMENT**

#### **a. NATIONAL NIGHT OUT**

In August, PRC staff participated in BPD’s National Night Out, a crime prevention event where neighborhoods host block parties to raise awareness about public safety and meet police, fire and other City officials. PRC worked with BPD to visit various neighborhoods, outreach to the community and raise awareness about the work of the PRC. This event heightened civic duty by showing how neighbors could work together to prevent crime and learn about City resources available to address problems in the community.



**b. BARRICADED SUSPECT HOSTAGE NEGOTIATION TEAM**

As stated above, the Commission participated in training with BPD, which were also collaborative efforts to cultivate a positive working relationship. Commissioner White worked with BPD in gathering information on how officers are selected for the Barricaded Suspect Hostage Negotiation Team (BSHNT). The BSHNT is a specialized unit that receives training in handling critical incidents, such as hostage situations. Commissioner White and PRC Officer Urbi were invited by BPD to observe the selection process.

**2. UNIVERSITY OF CALIFORNIA, BERKELEY**

PRC worked with U.C. Berkeley's Cal Corps Public Service Center Internship Program, where two students worked at the PRC office and learned about police oversight. The students attended Commission meetings, assisted in drafting investigation reports, completed BPD ride-alongs, and learned the inner operations of a City department.

**3. UCB BOALT SCHOOL OF LAW**

PRC collaborated with U.C. Berkeley, Boalt School of Law students to work with complainants in preparing and representing complainants at boards of inquiry. Since police union representatives assisted officers with advocating on their behalf at hearings, the complainants also needed an advocate to balance the parties' representation. Boalt law students worked closely with complainants to advise them of how the hearing was conducted and what their rights are at hearings.

**4. NATIONAL ASSOCIATION OF CIVILIAN OVERSIGHT OF LAW ENFORCEMENT (NACOLE)**

In September 2006, PRC staff attended the annual NACOLE conference in Boise, Idaho. PRC staff learned to sharpen their skills on interviewing witnesses and drafting investigation reports. Staff also received updates on developments in police civilian oversight and how the international agencies face similar issues in Berkeley. The conference gave staff an opportunity to share information and form networks with other agencies to problem solve similar issues in police oversight.



**D. COMMISSION MEETINGS IN 2007**

In 2007, the Commission held a total of 52 meetings for the year, which averaged 4.3 meetings per month. The Evidence Theft Policy Subcommittee held the same amount of meetings as the full Commission Regular meetings. Commissioners also attended several Closed Session meetings with the City Council and City Attorney to discuss the status of the litigation and to facilitate the change in hearing procedures from open to closed meetings.

| <b>Type of Meeting</b>                             | <b>Number of Meetings</b> |
|--|---------------------------|
| Regular PRC Meetings                               | 17                        |
| Evidence Theft Policy Subcommittee                 | 17                        |
| Criminal Intelligence Policy Subcommittee          | 4                         |
| Vehicle Pursuit Policy Subcommittee                | 2                         |
| Special Meeting:<br>Commission with City Officials | 2                         |
| Closed Session                                     | 7                         |
| Training   | 3                         |
| <b>Average number of meetings per month</b>        | <b>4.3</b>                |
| <b>TOTAL MEETINGS</b>                              | <b>52</b>                 |



## **E. WEBSITE**

The PRC website is an important way that the PRC serves the community and the nation at large. The website contains extensive information and resources and is frequently updated. The web site is designed to be user-friendly for consumers and offers access to:

- PRC Complaint form.
- How to File A Complaint With the Berkeley PRC.
- Explanation of PRC Investigation Procedures after a Complaint is filed.
- PRC Ordinances and Regulations.
- Links to other resources regarding police misconduct.
- Information about other civilian oversight bodies.
- Annual statistical reports since 2001.
- Link to PRC meeting agendas and minutes.

The URL is <http://www.ci.berkeley.ca.us/prc>.

## **F. A LEADER IN POLICE OVERSIGHT**

PRC Commissioners and PRC staff serve as a resource for jurisdictions interested in developing a police oversight body to serve their community. Berkeley's PRC was the first citizen oversight body in California. PRC created the model for many such bodies that followed by developing a protocol of independent investigation of police actions and by appointing a civilian review panel to adjudicate the complaints following staff investigation.

PRC remains a leader among national oversight bodies by continuing to recommend changes to police practice in light of our changing times and our evolving community. PRC is singular among police oversight bodies in its commitment to professionalism and to impartial investigation and decision-making. PRC makes itself available as a mentor to communities that seek to improve the level of skill and quality of service they provide.



# IX. COMPLAINTS

## A. 2005-2007 IN BRIEF

The following is a general overview of the changes PRC experienced in the years 2005 to 2006. There was no significant change in the number of complaints received by the PRC in 2005; complaints numbered 49 compared to 45 complaints filed in 2004. In 2006, the total number of complaints declined to 34. On average, the PRC received 43.2 complaints each year during 2003-2007.

### 1. COMPLAINTS FILED

| YEAR | NUMBER OF COMPLAINTS FILED |
|------|----------------------------|
| 2007 | 41                         |
| 2006 | 34                         |
| 2005 | 48                         |
| 2004 | 45                         |
| 2003 | 47                         |

In 2005, 22% of filed complaints proceeded to Board of Inquiry. In 2006, 17% of filed complaints proceeded to a Board of Inquiry. Separately, in the reduced percentage of cases that did proceed to a Board of Inquiry, the Board sustained fewer allegations. The percentage of cases that closed with sustained allegations declined from 16% of cases closed with sustained allegations in 2005, and to 5% of cases closed with sustained allegations in 2006.

### 2. CASE DISPOSITION

| CASE DISPOSITION         | 2007 | 2006 | 2005 |
|--------------------------|------|------|------|
| Board of Inquiry         | 0    | 6    | 11   |
| Summary Dismissal        | 0    | 9    | 5    |
| Administrative Closure   | 3    | 18   | 5    |
| Withdrawn by Complainant | 0    | 1    | 3    |
| Mediation Resolution     | 0    | 0    | 1    |
| Policy Cases Closed      | 0    | 0    | 2    |
| Total Cases Closed       | 3    | 35   | 27   |

The number of cases closed through summary dismissal in 2005 and 2006 increased resulting in no net decline of productivity. Summary dismissals increased from 10% of cases closed in 2005 and to 26% of cases closed in 2006. Administrative Closure increased from 10% in 2005 to 52% in 2006.



In sum, over the past two years, a higher percentage of cases were resolved by PRC staff than by Board of Inquiry, but the overall productivity of the Commission has not declined.

There was no significant change in the number of complaints received by the PRC. In 2005, the total number of complaints were 49. In 2006, the total number of complaints declined to 34, but increased to 41 in 2007.

**3. ALLEGATIONS STATISTICS**

|  | <b>2007</b>                                | <b>2006</b> | <b>2005</b>                                |
|--|--|-------------|--|
| Complaints filed:  | 41   | 34          | 48   |
| Allegations received:                                    | 354  | 98          | 154  |
| Largest percentage of allegations:                       | Improper Arrest, Search, Stop or Detention | Discourtesy | Improper Arrest, Search, Stop or Detention |
| Total Percentage with the Highest number of allegations: | 26%  | 28%         | 34%  |

**4. STATISTICAL OVERVIEW**

Since the Commission could not hear or resolve any cases until the Regulations were revised to comply with the court order, the Commission was only able to close three (3) cases in 2007.

In 2007, the total number of allegations received increased to 354. This is because the PRC received several complaints alleging “improper search” of homes, where officers may have conducted a valid probationary search or a search warrant, but there were other issues involved. Complaints alleging “improper search” typically involve approximately ten (10) officers, so each officer would have one allegation against him/her. During the course of the investigation, the officer in charge of the search would remain as the subject officer, while the remainder of the officers would become witness officers.

Moreover, in 2007, the PRC received a number of complaints where several officers were involved, such as cases involving “Critical Mass,” where bicyclists ride their bicycles through Berkeley, or cases involving protest demonstrations. Complaints involving several officers will result in the number of allegations increasing significantly.



| <b>STATISTICAL OVERVIEW</b>                    |             |             |             |             |
|--|-------------|-------------|-------------|-------------|
| <b>Complaint Information</b>                   | <b>2007</b> | <b>2006</b> | <b>2005</b> | <b>2004</b> |
| <b>Cases Received / Filed</b>                  | 41          | 34          | 48          | 45          |
| <b>Cases Closed with Sustained Allegations</b> | 0           | 2           | 8           | 9           |
| <b>Cases Closed - Board</b>                    | <b>0</b>    | <b>6</b>    | <b>11</b>   | <b>17</b>   |
| * Allegations Sustained                        |             | 5           | 16          | 23          |
| * Allegations Not Sustained                    |             | 14          | 36          | 77          |
| * Allegations Exonerated                       |             | 5           | 14          | 8           |
| * Allegations Unfounded                        |             | 5           | 6           | 6           |
| <b>Cases Closed - No Board</b>                 | <b>0</b>    | <b>27</b>   | <b>14</b>   | <b>21</b>   |
| * Summary Dismissal                            |             | 9           | 5           | 7           |
| * Administrative Closure                       | 3           | 18          | 5           | 8           |
| * Withdrawn                                    |             | 1           | 3           | 3           |
| * Mediation                                    |             | 0           | 1           | 3           |
| <b>Policy Cases Closed (Full Commission)</b>   | <b>0</b>    | <b>0</b>    | <b>2</b>    | <b>1</b>    |
| <b>TOTAL CASES CLOSED</b>                      | <b>3</b>    | <b>34</b>   | <b>27</b>   | <b>39</b>   |
| <b>Allegations Received</b>                    |             |             |             |             |
| * Excessive Force                              | 67          | 8           | 13          | 32          |
| * Discourtesy                                  | 69          | 27          | 27          | 30          |
| * Improper Arrest, Search, Stop, Detention     | 92          | 18          | 52          | 59          |
| * Improper Detention Procedures                | 5           | 1           | 1           | 7           |
| * Discrimination                               | 6           | 5           | 9           | 11          |
| * Harassment                                   | 18          | 2           | 6           | 1           |
| * Improper Police Procedures                   | 46          | 5           | 9           | 17          |
| * Improper Citation or Tow                     | 3           | 3           | 7           | 13          |
| * Other  | 26          | 11          | 19          | 28          |
| * Improper Investigation                       | 22          | 18          | 11          | 13          |
| <b>TOTAL ALLEGATIONS RECEIVED</b>              | <b>354</b>  | <b>98</b>   | <b>154</b>  | <b>211</b>  |
| <b>Policy Cases Received</b>                   | 1           | 0           | 4           | 2           |





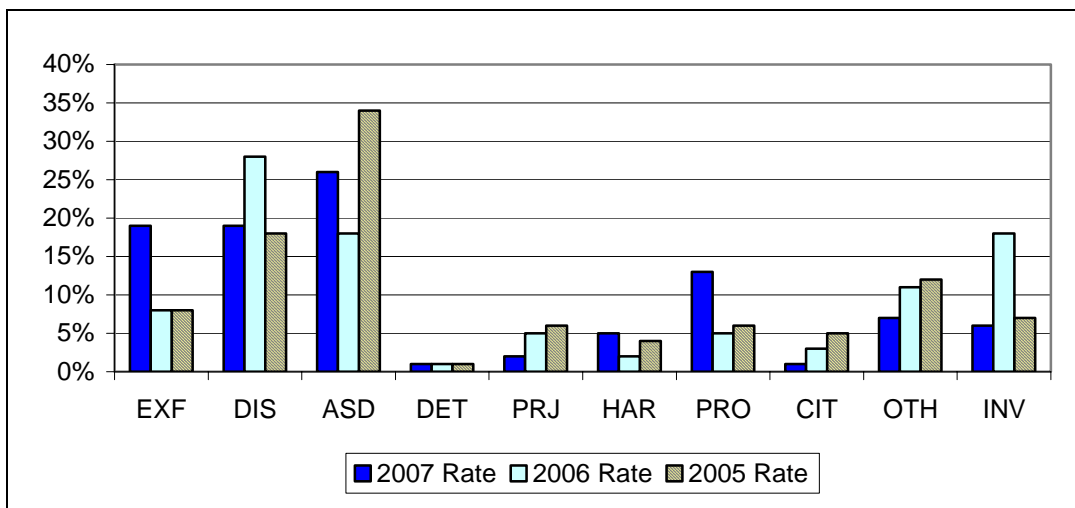
**C. ANALYSIS OF ALLEGATIONS**

After reviewing the evidence, certain trends are noteworthy. Excessive force allegations increased from 8% in 2005 and 2006 to 19% in 2007. Discourtesy allegations increased from 18% in 2005 to 28% in 2006. However, discourtesy allegations dropped to 19% in 2007. Also, improper investigation allegations rose from 7% in 2005 to 18% in 2006.

**ALLEGATIONS CHART**

| Allegations   | Code | 2007 Rate   | 2006 Rate   | 2005 Rate   |
|---|------|-------------|-------------|-------------|
| Excessive Force                                     | EXF  | 19%         | 8%          | 8%          |
| Discourtesy   | DIS  | 19%         | 28%         | 18%         |
| Improper Arrest, Search, Seizure, Stop or Detention | ASD  | 26%         | 18%         | 34%         |
| Improper Detention Procedure                        | DET  | 1%          | 1%          | 1%          |
| Discrimination                                      | PRJ  | 2%          | 5%          | 6%          |
| Harassment  | HAR  | 5%          | 2%          | 4%          |
| Improper Police Procedure                           | PRO  | 13%         | 5%          | 6%          |
| Improper Citation                                   | CIT  | 1%          | 3%          | 5%          |
| Other   | OTH  | 7%          | 11%         | 12%         |
| Improper Investigation                              | INV  | 6%          | 18%         | 7%          |
| <b>Total Allegations</b>                            |      | <b>100%</b> | <b>100%</b> | <b>100%</b> |

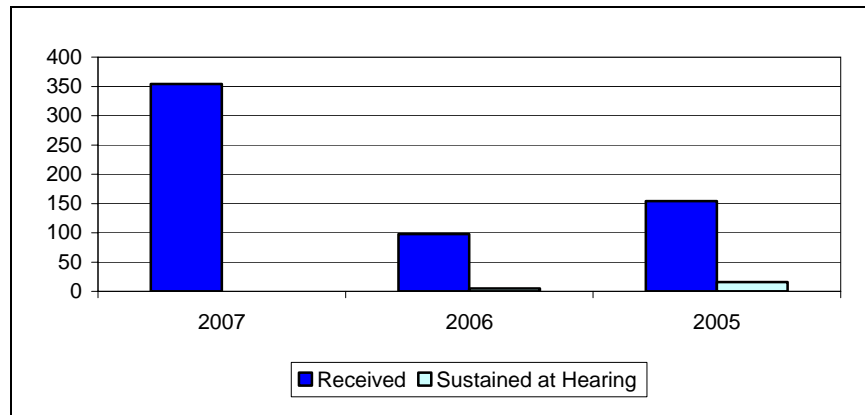
Rate calculation was based on *Each Allegation* divided into *Total Allegations*.





In the reduced percentage of cases that proceeded to a Board of Inquiry in 2005 and 2006, the Board sustained fewer allegations overall than they had in prior years. The percentage of cases that closed with sustained allegations declined from 16% of cases closed with sustained allegations in 2005, to 5% of cases closed with sustained allegations in 2006.

### ALLEGATIONS RECEIVED AND ALLEGATIONS CLOSED AND SUSTAINED AT HEARING 2005-2007



| Allegations   | ALLEGATIONS |                               |           |                               |            |                               |
|---|-------------|-------------------------------|-----------|-------------------------------|------------|-------------------------------|
|   | 2005        |                               | 2006      |                               | 2007       |                               |
|   | Received    | Closed & Sustained at Hearing | Received  | Closed & Sustained at Hearing | Received   | Closed & Sustained at Hearing |
| Improper Arrest, Search, Seizure, Stop or Detention                                 | 52          | 5                             | 18        | 1                             | 92         |                               |
| Improper Citation or Tow  | 7           | 0                             | 3         | 0                             | 3          |                               |
| Improper Detention Procedures   | 1           | 2                             | 1         | 0                             | 5          |                               |
| Discourtesy   | 27          | 4                             | 27        | 2                             | 69         |                               |
| Excessive Force   | 13          | 1                             | 8         | 1                             | 67         |                               |
| Harassment  | 6           | 0                             | 2         | 0                             | 18         |                               |
| Improper Investigation  | 11          | 1                             | 18        | 0                             | 22         |                               |
| Other (Abuse of discretion, breach of confidentiality, failure to identify oneself) | 19          | 3                             | 11        | 1                             | 26         |                               |
| Discrimination  | 9           | 0                             | 5         | 0                             | 6          |                               |
| Improper Police Procedure   | 9           | 0                             | 5         | 0                             | 46         |                               |
| <b>TOTAL</b>  | <b>154</b>  | <b>16</b>                     | <b>98</b> | <b>5</b>                      | <b>354</b> | <b>0</b>                      |



**D. COMPLAINANT ETHNICITY AND GENDER**

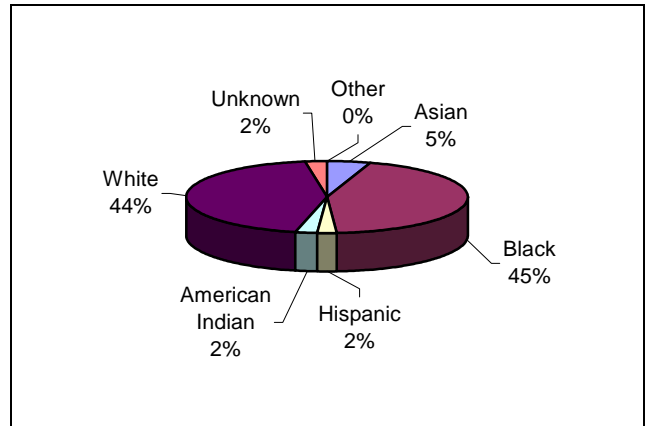
There has been no significant change in complainant demographics between 2005-2007. African-American complainants remain a higher percentage than their percentage in the general population of the City of Berkeley. According to the 2000 census, African Americans constitute 13.3% of the City of Berkeley population, yet in 2007, they represented 46% of PRC complainants.

Asians, Whites, and Hispanics are underrepresented among PRC complainants relative to their percentage in the general population. However, in terms of national metropolitan crime statistics, 67% of adults arrested for crime were white, 30% were African American and 3% were of other races. Thus, based on national crime statistics, conclusions may vary.

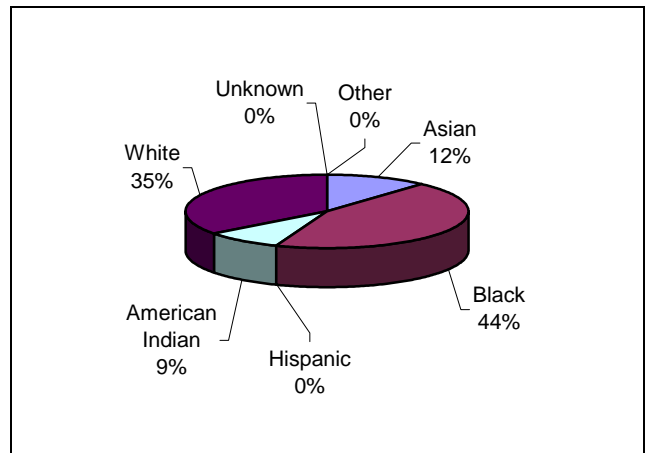
| <b>2000 CITY OF BERKELEY POPULATION *</b> |                |                   |
|---|----------------|-------------------|
| <b>Race</b>                               | <b>Totals</b>  | <b>Percentage</b> |
| Asian                                     | 16,740         | 16.3%             |
| White                                     | 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>       |
| *Information from the 2000 Census         |                |                   |



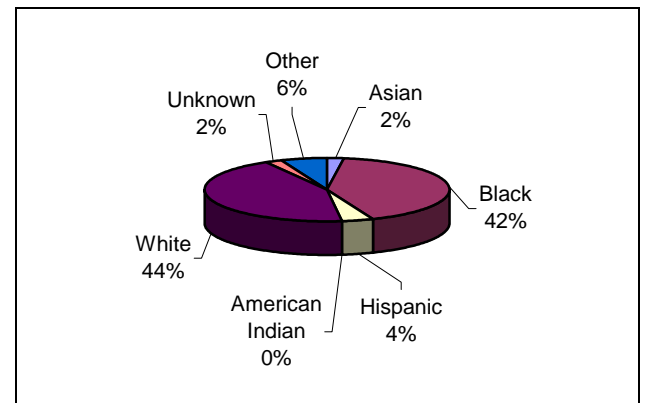
| 2007 COMPLAINANT ETHNICITY |            |                      |
|----------------------------|------------|----------------------|
| Race                       | Percentage | Number of Complaints |
| Asian                      | 5%         | 2                    |
| Black                      | 45%        | 18                   |
| Hispanic                   | 2%         | 1                    |
| American Indian            | 2%         | 1                    |
| White                      | 44%        | 18                   |
| Unknown                    | 2%         | 1                    |
| Other                      | 0%         | 0                    |
| Total                      | 100%       | 41                   |



| 2006 COMPLAINANT ETHNICITY |            |                      |
|----------------------------|------------|----------------------|
| Race                       | Percentage | Number of Complaints |
| Asian                      | 12%        | 4                    |
| Black                      | 44%        | 15                   |
| Hispanic                   | 0%         | 0                    |
| American Indian            | 9%         | 3                    |
| White                      | 35%        | 12                   |
| Unknown                    | 0%         | 0                    |
| Other                      | 0%         | 0                    |
| Total                      | 100%       | 34                   |

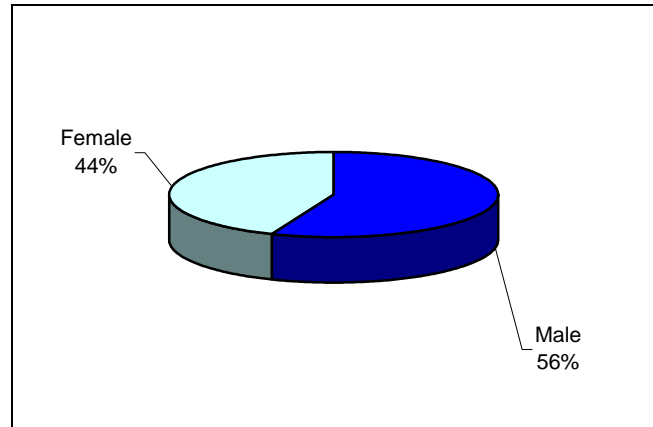


| 2005 COMPLAINANT ETHNICITY |            |                      |
|----------------------------|------------|----------------------|
| Race                       | Percentage | Number of Complaints |
| Asian                      | 2%         | 1                    |
| Black                      | 42%        | 20                   |
| Hispanic                   | 4%         | 2                    |
| American Indian            | 0%         | 0                    |
| White                      | 44%        | 21                   |
| Unknown                    | 2%         | 1                    |
| Other                      | 6%         | 3                    |
| Total                      | 100%       | 48                   |

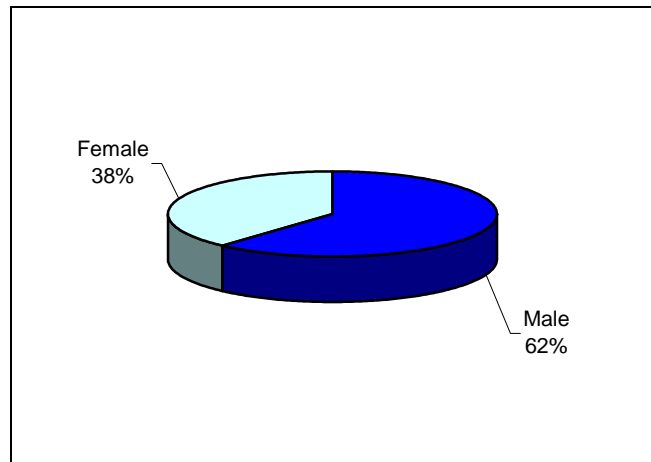




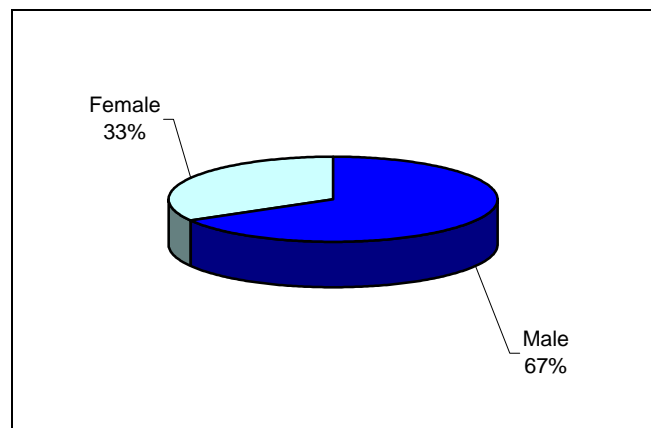
| 2007 COMPLAINANT GENDER |            |                      |
|-------------------------|------------|----------------------|
| Gender                  | Percentage | Number of Complaints |
| Male                    | 56%        | 23                   |
| Female                  | 44%        | 18                   |
| Total                   | 100%       | 41                   |



| 2006 COMPLAINANT GENDER |            |                      |
|-------------------------|------------|----------------------|
| Gender                  | Percentage | Number of Complaints |
| Male                    | 62%        | 21                   |
| Female                  | 38%        | 13                   |
| Total                   | 100%       | 34                   |



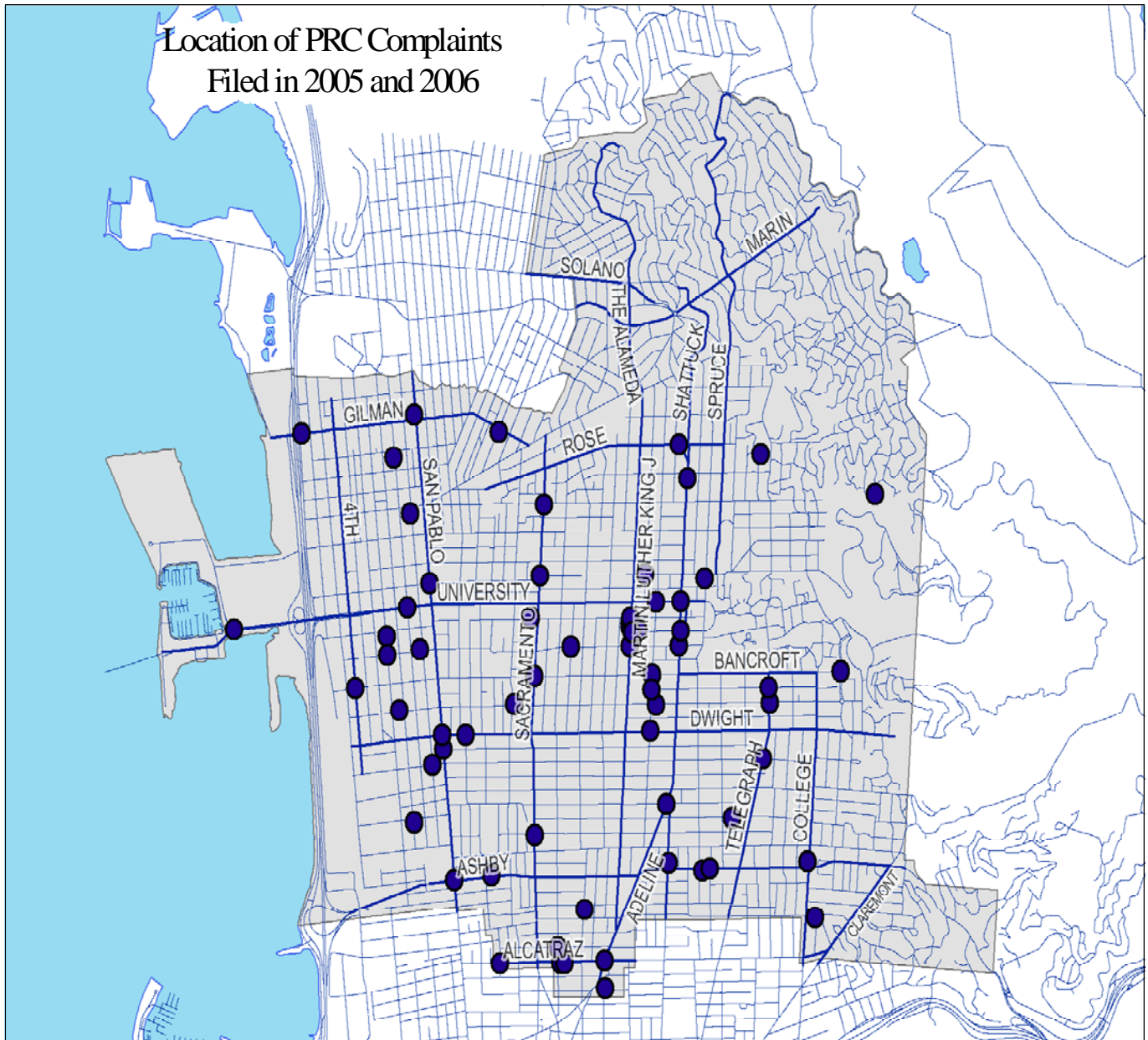
| 2005 COMPLAINANT GENDER |            |                      |
|-------------------------|------------|----------------------|
| Gender                  | Percentage | Number of Complaints |
| Male                    | 67%        | 32                   |
| Female                  | 33%        | 16                   |
| Total                   | 100%       | 48                   |





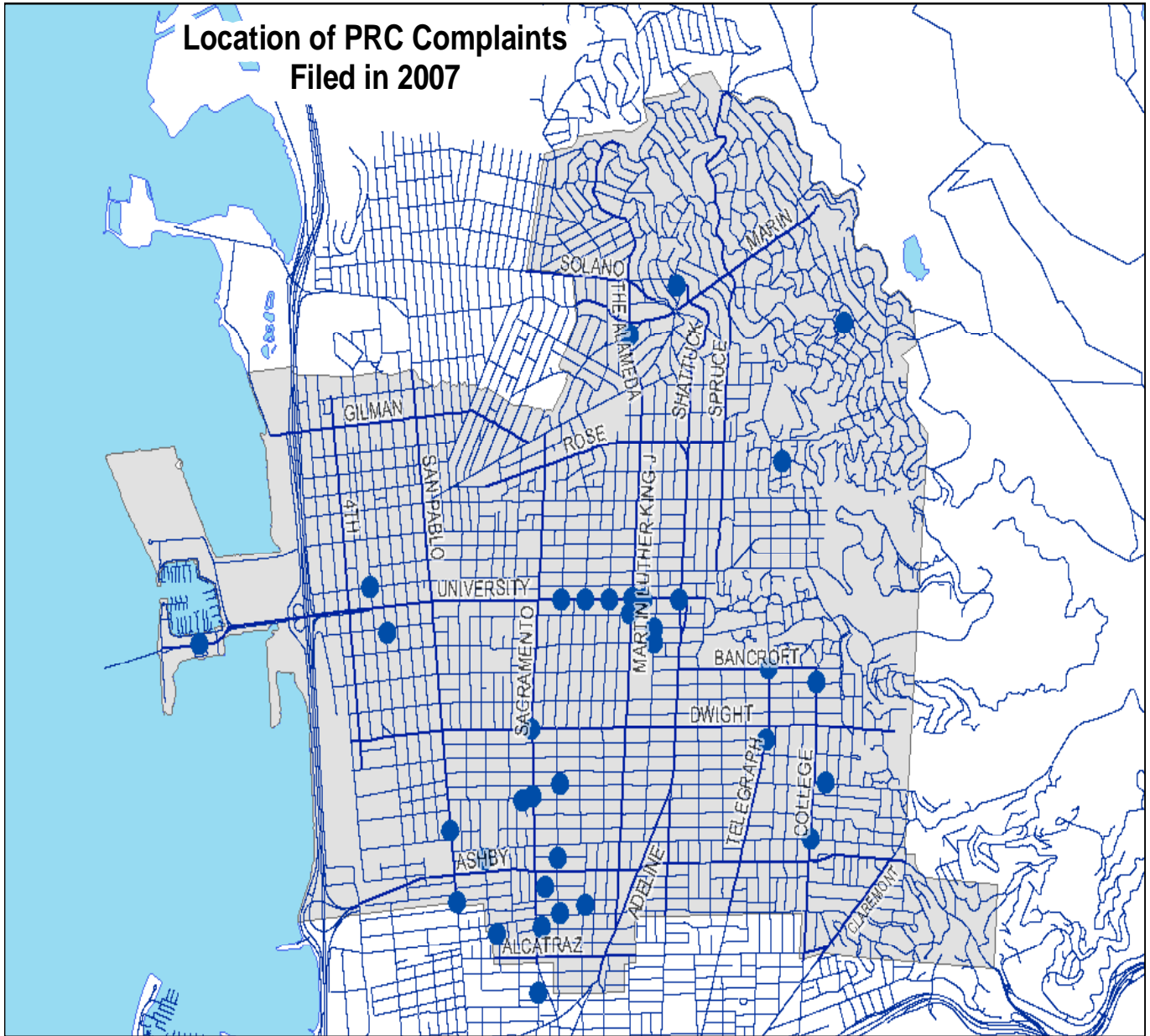
### E. INCIDENT LOCATIONS

The incident location from a complaint can provide valuable information in analyzing trends and patterns when monitoring law enforcement complaints.





### Location of PRC Complaints Filed in 2007





**F. CALOCA OFFICER APPEAL: POST PRC REVIEW**

Since June 2002, the City of Berkeley has implemented an appeal process for police officers, who have had misconduct allegations sustained by the PRC. The City Manager, in consultation with staff, developed the appeal procedures after a demand by the BPA that the City comply with the Court of Appeals decision in Caloca v. County of San Diego (2002) 102 Cal. App. 4th 433 (“*Caloca*”).

Beginning in 2005, the City of Berkeley contracted with the Office of Administrative Hearings (OAH) in Oakland to adjudicate the *Caloca* appeal hearings. Since April 24, 2006, PRC has not received appeal findings and thus no *Caloca* hearings have been requested.

| <b>Year</b> | <b>Cases with <i>Caloca</i> Review</b> | <b><i>Caloca</i> Findings</b>                        |
|-------------|--|--|
| 2007        | 0 Cases                                | As of 4/24/06, PRC has not received appeal findings. |
| 2006        | 0 Cases                                | As of 4/24/06, PRC has not received appeal findings. |
| 2005        | 8 Cases, 13 Allegations                | 3 Sustained Allegations Upheld, 10 Not Sustained     |
| 2004        | 6 Cases, 10 Allegations                | 3 Sustained Allegations Upheld, 7 Not Sustained      |
| 2003        | 14 Cases, 28 Allegations               | 4 Sustained Allegations Upheld, 24 Not Sustained     |



# **TECHNICAL APPENDIX**

**APPENDIX A**

**PRC ORDINANCE**

**Ordinance No. 4644-N.S.**

**Establishing a  
Police Review Commission**

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***CITY OF BERKELEY***

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**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**

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***POLICE REVIEW COMMISSION***

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***1947 Center Street, 3<sup>d</sup> Floor - Berkeley, CA 94704 - (510) 981-4950  
TDD (510) 981-6903 FAX (510) 981-4955***

## 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:

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

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

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;

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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*

- ii) that all such complaints filed with other offices, boards, bureaus, and departments of the City, including the Police Department, shall be referred 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 Officer 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.

AMENDING SECTION 3 OF INITIATIVE ORDINANCE NO. 4644-N.S. ENTITLED "ESTABLISHING A POLICE REVIEW COMMISSION, PROVIDING FOR THE APPOINT-

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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*



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.<br>(Vote of the People) | 4-15-75          |
|          | 3              | Amended       | 4779-N.S.<br>(Vote of the People) | 4-15-75          |
| Attached | 3              | Amended       | 5503-N.S.<br>(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 A Report of Successful Mediation (Not used and not included)

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# **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)  
(Amended November 7, 2007)

### **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. These regulations have been further revised to reflect the Alameda County Superior Court's judgment in June 2007 and its subsequent compliance order in September 2007 that the Commission's Boards of Inquiry and related Commission records must be kept confidential. Confidentiality provisions have been added to these regulations to comply with the Court's order pending the outcome of the City's appeal to the California Court of Appeal of Berkeley Police Association v. City of Berkeley and City of Berkeley Police Review Commission, Alameda County Superior Court Case No. 2002-057569.

## I. GENERAL

1. Application of Regulations-Confidentiality of Complaint proceedings. 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. The records of these investigations shall be treated as confidential and will not be disclosed to members of the public, except that information and documents which are public (such as police reports released to the public pursuant to the Berkeley Police's department's policies and procedures on public records), shall not be withheld from the parties or the public. All Board of Inquiry and Commission proceedings relating to an investigation of an individual complaint against an officer shall be closed to the public, including to any witnesses, except for the subject officer and his or her representative. An accused officer shall have a right to inspect documents for the purpose of facilitating the investigation and disposition of the complaint.

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 Office 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." Nothing in these regulations or the Commission's hearing procedures shall be read to preclude the complainant from disclosing any information about the incident which is the subject of the complaint where such information is based either on his or her own recollection, observation or independent investigation of the incident or on public information.
- 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 that 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.

## 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. If any of the documents included in, or attached to, the Investigative Report are public records, such as police reports, police department regulations or training bulletins, etc., these shall remain public records, and copies of such documents shall be made available to the complainant and subject officer at no charge.

## 3. Mediation

- a. Definition - Mediation is an informal, confidential 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 Commissioner/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 confidential Investigative Report shall be made available for inspection by the Subject Officer or his/her Representative within seventy-five (75) calendar days after the filing of the complaint. The Commissioners assigned to a Board of Inquiry shall receive the full Investigative Report seven (7) days before a scheduled Board of Inquiry, but shall return the confidential portions thereof to the PRC staff after the matter to which they relate has been concluded.

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.

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 compliance with the Peace Officers Procedural Bill of Rights, Government Code Section 3304. 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 the Subject Officer. Immediately after completion of the Investigative Report, the Investigator shall provide to each Subject Officer or his/her representative, if any, and the Chief of Police the following:
  - a. Written notice that the complaint will be considered by a Board of Inquiry in a closed hearing and that the subject officer and his/her representative, if any, will have a right to inspect the entire report.
  - b. Any Investigators' recommendations dealing solely with summary disposition or procedural matters.
  - c. All public records, such as police reports, departmental regulations, included in the Investigative Report and/or attachments thereto.
  - d. Written notice that the subject officer 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, to legal counsel's office copies of any materials and notifications provided to the Subject Officer(s).
  
6. Notification to Complainant. Immediately after completion of the Investigative report the Investigator shall provide to the Complainant the following:
  - a. Written notice that the complaint will be considered by a Board of Inquiry in a closed hearing.
  - b. All public records, such as police reports, departmental regulations, included in the Investigative Report and/or attachments thereto.
  
7. 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. All considerations by the Commission for administrative closure shall occur during closed session 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 judgment 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.

The complaining party shall be notified of the opportunity to address the commission during closed session 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) will sign a written waiver form giving up his/her 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 the subject officer . If a Commissioner is substituted within seven (7) calendar days of a Board of Inquiry, the subject officer 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 the subject officer's legal counsel, 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, the subject officer(s) 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 not make any public comment on any 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 confidential Investigative Report and the evidence gathered in connection therewith, hear testimony in closed session, 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 interested 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 and will consider any such requests during closed session. 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 complainant and subject officer; 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 Closed Hearing

- a. All Board of Inquiry hearings shall be closed to the public. The Subject Officer(s), the officer's representative, PRC staff, Commissioners and a BPD Departmental Representative shall be present during the closed hearing.
- b. Each Subject Officer, the Departmental Representative, , the officer's representative and the PRC staff shall be present and shall testify in a closed hearing as required by the City Manager's policy (see Exhibit B) unless otherwise directed by the City Manager. The Complainant and witnesses shall be excluded, except when testifying. 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.

- c. 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.
  - d. 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 any Subject Officer may participate in the hearing, but such representative shall not be required. However, the subject officer(s) is responsible for insuring the presence of his/her 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, or its own motion. 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. Deliberation. After obtaining evidence, the Board will deliberate outside the presence of the subject officer (s) involved in the complaint, . The Board shall not consider any information not received as part of the hearing. The Board may reconvene in the presence of the subject officer(s) to ask further questions, and the subject officer(s) shall have the opportunity to respond to any such questions.
16. 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. The subject officer(s) 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 who 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. All witnesses shall be excluded from the closed hearing until they are called to testify.
- d. Irrelevant and unduly repetitious evidence shall be excluded.
- e. 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 PRC Staff will present the complaint, and introduce witnesses, if any. The complainant and the complainant's witness may be questioned by the Board and by the Subject officer or his/her representative. The Subject officer shall then respond to the complaint, and introduce witnesses, if any. . The questioning of the subject officer shall be limited to no more than two Commissioners.
  - 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.
17. 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.
18. 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.
19. 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."
20. 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 PRC Officer. The Board's findings are confidential, except that the Complainant and subject officer shall receive written notice whether the allegation was sustained, not sustained, unfounded or exonerated and 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.
21. 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.

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

**CATEGORIES OF 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<br>(As defined in Police Regulation 200)    | udw |
| Improper Physical Contact<br>(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 |
|------------|-----|

**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 |

**APPENDIX D**

**COMMISSION MEETING SCHEDULE**



## POLICE REVIEW COMMISSION 2008 MEETING SCHEDULE

|             |              |
|-------------|--------------|
| January 9   | June 11      |
| January 23  | June 25      |
| February 13 | July 9       |
| February 27 | July 23      |
| March 12    | September 10 |
| March 26    | September 24 |
| April 9     | October 15   |
| April 23    | October 29   |
| May 14      | November 12  |
| May 28      | December 10  |

### **MEETING TIME – 7:00 P.M.**

South Berkeley Senior Center  
2939 Ellis St. (off Ashby), 981-5170

*Commission\Meetings\PRC Meetings Schedule*



1947 Center Street, Third Floor, Berkeley, CA 94704  
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