

CITY OF BERKELEY



POLICE REVIEW COMMISSION STATISTICAL REPORT 2002

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Police Review Commission

August 1, 2003

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

Dear Mr. Rucker:

Enclosed is the 2002 Statistical Report of the Police Review Commission (PRC) for the calendar year, January 1 to December 31, 2002. In addition to statistics regarding PRC investigations and findings, the report is an overview of policy work completed by the Commission and the Commission's involvement in the larger civilian oversight community. A survey of parties involved in the PRC's mediation pilot project is featured as well.

In 2002, the PRC staff handled 46 cases and conducted 26 Boards of Inquiry, thus hearing over two cases per month in addition to its regular meetings. The PRC held two community meetings and a public forum on Community Policing and brought policy items to the City Council. In addition, this year the City implemented a new program that impacted the PRC, the *Caloca* appeal process, a brief overview of which is contained in the report. This level of intensity in workload requires all parties to work at full capacity on a sustained basis.

I want to thank and acknowledge the PRC staff and commissioners for their continued commitment to the City of Berkeley and the civilian oversight process. I want to recognize the assistance provided by the Berkeley Police Department, as well. Without the cooperation of the Department, the PRC would be unable to complete its mission. I also want to thank staff from the City Manager's Office and Information Technology who reviewed this report and have offered technical assistance, and editorial and substantive recommendations.

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

Respectfully submitted,

Barbara J. Attard
PRC Officer

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EXECUTIVE SUMMARY

INTRODUCTION

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

SECTION 1: THE YEAR IN BRIEF

Section 1 contains a generalized overview reporting nearly a 20% decrease in the number of cases filed at the PRC in 2002. The PRC website is discussed, as well as special meetings held by the PRC in 2002, and PRC involvement in networking efforts through the national association of civilian oversight and with jurisdictions requesting professional assistance. This section also contains a text box that provides a description of the PRC process.

SECTION 2: OVERVIEW OF INVESTIGATIONS AND FINDINGS

A more detailed analysis of cases received and completed is found in this section. The PRC received 46 complaints in 2002, and conducted Board of Inquiry evidentiary hearings on 26 of 50 cases closed, 21 of which resulted in findings with one or more sustained allegations. The highest number and percentage of allegations received in 2002 were in the discourtesy category; 2002 saw an increase in discrimination allegations (17), 70% of which were filed by African-American complainants. The number of excessive force allegations has steadily fallen over the last four years. A text box in this section discusses a survey conducted of participants in the PRC mediation pilot project.

SECTION 3: POST-PRC REVIEW

The City Manager's review of PRC findings continued in 2002 and resulted in a high level of agreement with the PRC in cases reviewed in this context. The CM review and the impacts of a new appeal process for officers who had complaints sustained against them are discussed in this section.

SECTION 4: INCIDENT LOCATIONS

Section 4 looks at complaints received from a geographic perspective. A cluster of complaints filed by homeless people involved incidents in the downtown area, particularly near the University of California campus.

SECTION 5: COMPLAINANT DEMOGRAPHICS

Using graphs and narrative, this section discusses complainant demographics over the last three years. Complainant demographics in 2002 were proportionally similar to those in 2000 and a more normal dispersal than complaints received in 2001. Complaints filed by African American and white complainants were of similar proportions in 2002.

SECTION 6: POLICY DEVELOPMENT

Highlights of policy work undertaken by the PRC in 2002 include:

- Community meetings and a public forum on Community Policing;
- Recommendations to the City Council regarding non-cooperation with the federal government;
- Meeting with the Berkeley Police Department (BPD) and the Berkeley Unified School District (BUSD) to discuss the parameters of the duties of police in Berkeley schools.

SECTION 7: COMPARATIVE OVERVIEW OF COMPLAINTS RECEIVED—PRC/IAB

Although the PRC experienced a decline in the number of complaints received in 2002, the number of complaints received by BPD's Internal Affairs Bureau (IAB) increased. This difference in the level of complaints received by the two units is discussed in this section in the context of the number of police misconduct cases benefiting from the civilian oversight process.

2002 PRC STATISTICAL REPORT

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CITY OF BERKELEY

POLICE REVIEW COMMISSION

2002 STATISTICAL REPORT

INTRODUCTION

The Berkeley Police Review Commission (PRC), established by voter initiative in 1973, completed its 29th year of operation in 2002. The PRC has independent authority to investigate complaints filed against employees of the Berkeley Police Department (BPD) and to provide for citizen involvement in setting and reviewing BPD policies, practices, and procedures.

The following report provides data and information about the PRC for the year 2002 and comparative information for previous years. Included in this report are:

- An overview of PRC activities and developments in 2002
- A description and analysis of the investigative and policy work completed in the past year
- Charts and graphs demonstrating the accomplishments and changes over the last years
- The PRC Ordinance, Regulations, and Categories of Allegations

THE POLICE REVIEW COMMISSION MANDATE

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



SECTION 1: THE YEAR IN BRIEF

The PRC experienced a decline in complaints in 2002, 46 cases received, down from 57 in 2001, but a comparable number to the 50 complaints received in 2000. In 26 cases, over 50% of the 50 cases closed, full evidentiary hearings were held; 22 cases were closed through administrative action; two cases were mediated, and one policy case was reviewed by the full commission.

This year, in response to a demand by the Berkeley Police Association (BPA) that the City comply with a recent court case, the City has implemented a new appeal process for officers who have had allegations sustained by the PRC. Although only one appeal hearing was held in 2002, most sustained cases are being appealed, and the additional workload of this new program has impacted the PRC.

In 2002, the PRC held a series of neighborhood meetings to gain perspective from members of the community regarding policing tactics and service. The meetings culminated with a well-attended forum on Community Policing in December, featuring nationally known experts as panelists. The Commission plans to issue a report with information gleaned from its 2002 meetings and forum in 2003.

The PRC Web site continues to be upgraded and now offers access to the PRC complaint form, annual statistical reports since 1999, PRC Ordinances and Regulations and information about other civilian oversight bodies and organizations. To access the PRC Web site, go to: <http://www.ci.berkeley.ca.us/prc/> PRC meeting agendas and minutes are currently posted on the City's Web site at: <http://www.ci.berkeley.ca.us/clerk/> The PRC Web site registered 88,360 hits in 2002, with 3795 unique visitors during the year.

PRC staff and commissioners continue to be active in international, national and regional associations of civilian oversight. Three PRC commissioners and two staff members attended the National Association of Civilian Oversight of Law Enforcement (NACOLE) conference in Cambridge, Massachusetts in October 2002. The conference was an important networking and training experience for those who attended. The PRC was featured as one of several types of civilian oversight agencies examined in a workshop at the conference.

As one of the first oversight models developed incorporating independent investigations and community review, the PRC process continues to be a model for emerging oversight agencies. PRC staff and commissioners serve as a resource for communities exploring civilian oversight options. Last year, the PRC responded to dozens of inquiries from jurisdictions throughout the United States, from communities as near as Oakland and San Francisco, and across the country to Ohio, Montana, Florida and Maine. Staff and commissioners also made presentations to and met with community leaders from Japan as well as local organizations.

PRC STAFF

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

PRC INTERNS

Annie Chung Winnie Phua



THE PRC COMPLAINT PROCESS

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

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

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

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

The City of Berkeley has recently implemented a new appeal process for officers who have had allegations sustained by the PRC.³ The appeal procedures have been developed to comply with the Court of Appeals decision in *Caloca v. County of San Diego*. A report on the impact of this process will be provided in the 2003 Statistical Report.

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

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

³ For more information on "Caloca" appeals, see Section 3 of this report.



SECTION 2: OVERVIEW OF INVESTIGATIONS AND FINDINGS

Complaints Received

The PRC experienced a decline in the number of complaints received in 2002. A total of 46 cases were filed, lower than in the recent four years. One factor that appears to have contributed to the decline in overall complaints received is that improved relations between BPD and "Critical Mass"⁴ have resulted in no Critical Mass complaints filed in 2002. In the past several years numbers of Critical Mass complaints have ranged from 6 to 15 complaints per year.

The total number of allegations declined corresponding to the decline in the

number of cases received, 197 total allegations, an average of just over 4 allegations per complaint. The largest percentage of allegations received in a specific category was discourtesy allegations, 24%, followed by improper arrest, search, stop and detention allegations 17%. (Text, charts and graphs detailing this information are on pages 5-7, and 14-16.)

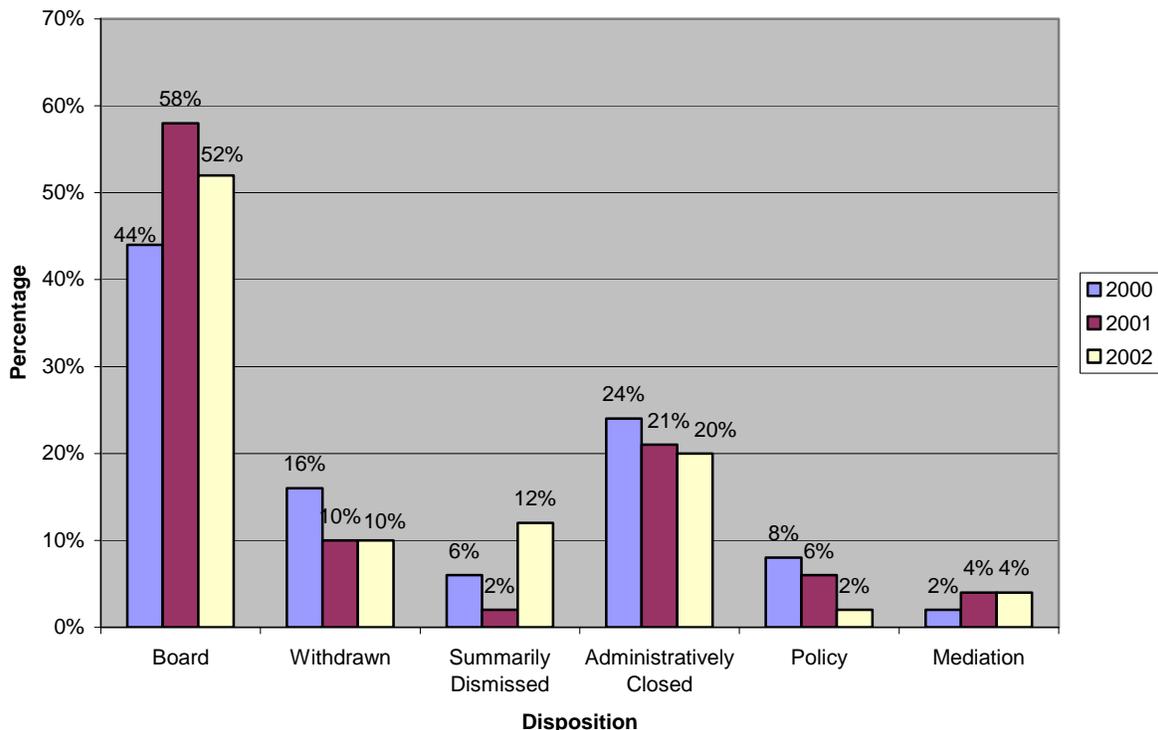
Disposition of Cases

The PRC closed 50 cases in 2002. The majority of cases (26) went to Board of Inquiry evidentiary hearings, in which the officers and complainants present their case before a subcommittee of three commissioners who comprise the "board".

Six cases were summarily dismissed in 2002, up from only one in 2001, 3 in 2000, and 1 in 1999. Complainants and officers elected to resolve their complaints through mediation in 2 cases in 2002.

⁴ Critical Mass is a monthly group ride of bicyclists who ride for fun and, at times, to bring attention to bicycle issues. Because Critical Mass rides and the police response to them have generated some ongoing friction, the PRC made successful policy recommendations resulting in BPD and Critical Mass riders opening communications and meeting before the rides. No Critical Mass complaints have been filed since August 2001.

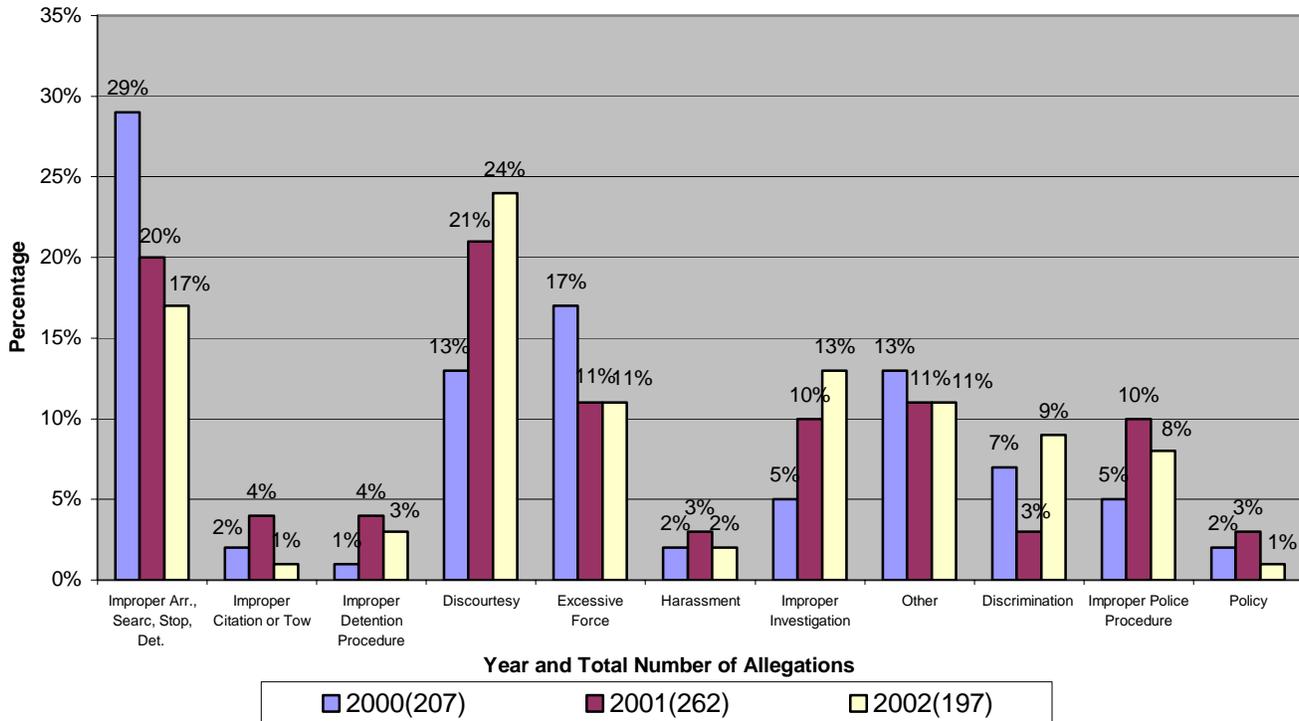
Disposition of Cases





ALLEGATIONS RECEIVED AND CLOSED

Allegations Received By Percentage



IMPROPER ARREST, SEARCH, SEIZURE, STOP OR DETENTION

Allegations Received

In 2002, there were 34 improper arrest, search, seizure, stop or detention allegations received, 17% of the total number of allegations filed. This represents a significant drop in allegations received in this category when compared to the 60 allegations received in 2000, (29% of the total allegations), and the 52 allegations received (20%) in 2001.

Allegations Closed

The commission sustained 9 of the 21 improper arrest, search, seizure, stop or detention allegations heard at boards in 2002. In 2001, 11 of the 47 allegations that went to boards were sustained.

Notable Trends

Reviewing statistics in this category from a wider perspective dating back to 1996, the number of Improper Arrest, Search, Stop

and Detention allegations have generally registered between 18-30 per year. The rise in complaints filed in this category over the past 2 years may have been an unusual spike.

IMPROPER CITATION OR TOW

Allegations Received

In 2002, there were only 2 improper citation or tow allegations received, a large decrease from the 10 allegations received in 2001, and the 13 received in 1999.

Allegations Closed

Four improper citation or tow allegations went to board in 2002, with one allegation sustained.

Notable Trends

In reviewing statistics in this category over a longer period, 2001 and 1999 stand out as anomalous, as allegations received in this category have historically been very low.



IMPROPER DETENTION PROCEDURES

Allegations Received

Seven improper detention procedures allegations were received in 2002, a slight drop from the 9 allegations received in 2001. Since 1999, there have been large fluctuations in this category, from a high of 17 allegations received in 1999, to only 1 allegation received in 2000.

Allegations Closed

In the year 2002, only 2 improper detention allegations went to board, and 1 of the 2 was sustained.

DISCOURTESY

Allegations Received

The number of discourtesy allegations received fell from a high over the last 5 years of 55 allegations received in 2001, to 47 allegations in 2002. While the number of allegations received for this category decreased, the percentage of discourtesy allegations increased from 21% in 2001 to 24% in 2002.

Allegations Closed

Although the number of discourtesy allegations received was high, of the 25 that went to board only five were sustained, a decrease as compared to previous years.

Notable Trends

Discourtesy accounted for the highest percentage (24%) of all allegations received in 2002. The discourtesy category encompasses a variety of issues including misrepresenting or failure to provide information and threats, as well as offensive language or manner. Almost two thirds, 29 of 46 complainants alleged that they were treated discourteously when communicating with police officers. Ten of the 29 complainants alleged that they felt threatened during their interaction with officers. Although few of these allegations were sustained by the PRC, a significant number of complainants are bringing forth complaints with similar issues.

EXCESSIVE FORCE

Allegations Received

There were 23 excessive force allegations, 11% of all allegations received, in 2002. As in the past few years, there were no complaints filed alleging serious excessive force in 2002.

Allegations Closed

Although the number of excessive force allegations received declined in 2002, there was an increase in the number of allegations that went to board as well as the number of allegations that were sustained. Twenty-four allegations went to board in 2002 with 10 allegations sustained, as compared to 20 in 2001 with 5 sustained, and 16 in 2000 with 7 sustained.

Notable Trends

The number of excessive force allegations has fallen steadily over the last four years. Although the percentage of excessive force allegations received (11%) is consistent with 2001 and down from 17% in 1999 and 2000, the actual number of allegations in this category has fallen from 38 in 1999 to 23 in 2002.

HARASSMENT

Allegations Received

The number of harassment allegations was the lowest in the past 4 years in 2002, 3 allegations were received, with 7 received in 2001 and 4 in 2000, down from 11 in 1999.

Allegations Closed

One of the 3 harassment allegations that went to board was sustained.

INADEQUATE OR IMPROPER INVESTIGATION

Allegations Received

The number of allegations received in the inadequate or improper investigation category was 26 in 2002, although consistent with the 26 received in 2001, this represents a higher percentage of this year's total allegations received.



Allegations Closed

In 2002, 18 inadequate or improper investigation allegations went to board, and 7 were sustained. In 2001, 7 of 21 allegations that went to board in this category were sustained as well.

Notable Trends

There has been a significant increase in the number of complaints received in the inadequate or improper investigation category in 2001 and 2002—26 in both years. In earlier years the total number of allegations in this category ranged from 7 to 16. In 2002, inadequate or improper investigation allegations constituted 13% of the total allegations received. Sub-allegations in this category include alleged reporting and investigation violations. In 2002, 18 of the complainants in this category alleged that there was a failure on the part of the police officer to investigate the incident properly.

OTHER

Allegations Received

Twenty-one allegations were received in the “other” category in 2002, a decline over previous years. This category encompasses discretion issues, breach of confidentiality, and failure to identify oneself. The average number of allegations received in this category over the past 5 years was 25 per year, while only 21 (11%) allegations were received in 2002.

Allegations Closed

The number of allegations in the other category heard at boards and sustained increased in 2002. The 7 sustained allegations were complaints of abuse of discretion.

Notable Trends

There has been a trend of increased numbers of other allegations heard at boards over the last several years; 8 allegations went to board in 2000, 19 in 2001, and 20 in 2002.

DISCRIMINATION

Allegations Received

Discrimination allegations rose in 2002 after having declined in 2000 and 2001. In 2002, 17 allegations were received, while in 2001 only 8 allegations were received, and 14 in 2000, down from 19 in 1999.

Allegations Closed

A large number of discrimination allegations went to board in 2002; however, it is significant that only 2 of the 15 allegations were sustained.

Notable Trends

The number of discrimination allegations received was the highest in 2002 for the past three years.⁵ Allegations in this category include racial, sexual, religious, and political discrimination, as well as discrimination by appearance, sexual orientation and selective enforcement. Approximately 70% of the complainants who filed discrimination allegations in 2002 were African American. It is significant to note that there was an increase in the number of African American complainants who filed at the PRC, from 18 (32% of all complaints) in 2001 to 23 (51%) in 2002.⁵

IMPROPER POLICE PROCEDURES

Allegations Received

In 2002, the number of improper police procedures allegations fell to 16, from an unusual increase in this category of 28 allegations received in 2001.

Allegations Closed

A total of 22 improper police procedures allegations went to board, the highest number in three years.⁶ Nine (41%) of the 22 allegations were sustained in 2002, as compared to 2 (11%) of the 18 allegations sustained in 2001.

Notable Trends

This category includes a wide variety of procedural issues, which include: property issues, failure to arrest or honor a citizens arrest, improper dispatch, making false statements, improper use of handcuffs, and no badge visible. Of the 9 allegations that were sustained, the majority involved property and arrest issues.

⁵ For a demographic breakdown and analysis see Section 5 of this report.

⁶ Some of the allegations that were heard at boards had been filed in the previous year.



MEDIATION OF COMPLAINTS— AN OPPORTUNITY FOR CHANGE

For the past several years, the PRC has conducted a pilot mediation project in an effort to provide complainants and police officers an alternative method to resolve police misconduct complaints. Utilizing the services of the Berkeley Dispute Resolution Service (BDRS), the PRC mediation project enables the parties to engage in thoughtful dialogue moderated by impartial BDRS mediators.⁷ The pilot project has had limited success in that only one or two cases have gone to mediation each year, although mediation is routinely offered in many cases.

Because of the low level of acceptance of mediation, PRC conducted a survey of parties who participated in mediation of PRC cases over in the last five years to determine the satisfaction level of participants. Overall, the response was overwhelmingly positive. Because of the positive feedback from participants, PRC staff is in the process of meeting with the Berkeley Police Association (BPA) to establish formal guidelines and make mediation an integral part of the PRC process.

A sampling of responses of participants surveyed demonstrates the positive impact of mediation. One complainant stated that the process “facilitated understanding, peace and goodwill between the two parties.” Another complainant stated that the program enabled him to “understand some of the things police officers go through more openly.” Praise for the program was also given by police officers responding to the survey, agreeing that mediation allowed them to address civilian concerns. One officer put it well, describing the process as “a sensible way to deal with such concerns” because it allowed for “discussion, mediation and resolution.” Another officer cited mediation as “a neutral way of resolving problems without involving non-value added people.” All survey respondents enthusiastically responded that they would recommend mediation as an alternative for other complainants or police officers to consider.

Often it can be difficult to convince parties in police misconduct cases that mediation is a good choice because they do not have an ongoing relationship and consequently they have little interest in sitting down with the other person and baring their souls. However, when the parties are willing, mediation can be a more satisfying and beneficial way of resolving a complaint. The ultimate goal in police misconduct investigations is determining and correcting errant behavior. While traditional discipline is an important and necessary part of in the process, mediation is a much more powerful tool to bring about real change. And, as an added bonus, successful mediation brings the benefit that there is no losing side. Both parties feel good about the process and come away with a gift, genuine understanding, as the results of the survey of participants in the PRC pilot project on mediation clearly testify.

⁷ BDRS handles the case completely upon referral and has a cadre of experienced mediators, three of whom are assigned to each case. In a survey of PRC mediation participants, all complainants and police officers praised the BDRS mediators in encouraging, facilitating, and focusing discussion, and gave BDRS top marks when asked to rate the quality of the services they provided.



SECTION 3: POST PRC REVIEW

CITY MANAGER REVIEW

The City Manager reviews the PRC's and the Internal Affairs Bureau's findings and investigations to make an assessment as to whether or not the City Manager agrees with the findings of the PRC. This process was suspended during part of the year due to the establishment of a post-PRC appeal hearing process initiated by a Court of Appeals ruling which established that officers have the right to appeal sustained findings of misconduct rendered by civilian oversight boards in specified situations. (See below.)

City Manager review of PRC cases have resumed in cases in which no appeal has been filed; however, only 11 cases were reviewed in this context in 2002, 2 cases from boards held in 2002 and 9 cases from boards held in 2001. In the 11 cases reviewed, the City Manager concurred with the findings of the PRC in 54 of 56 allegations. Of the 2 allegations in which there was disagreement, 1 PRC sustained allegation of improper citation was determined to be not sustained, and the City Manager sustained 1 detention/failure to read Miranda allegation that was not sustained by the PRC. Because the IAB process is confidential, a full breakdown of PRC and/or City Manager agreement with IAB findings cannot be provided.

This level of review by both the PRC and the City Manager's office is an indication of the dedication of the Commission and the City to the fair assessment of each case.

CALOCA APPEALS

In the last year the City has implemented a new appeal process for 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 (Caloca)*.⁸

A panel of three city staff appointed by the City Manager presides over the *Caloca* appeal hearing and makes findings. In the *Caloca* appeal hearings, the PRC has the burden to prove to the hearing panel that the PRC's sustained findings were based upon clear and convincing evidence, the standard of evidence delineated in the PRC Regulations. The *Caloca* panel reviews the full PRC investigative packet, transcripts of the PRC Board of inquiry, and briefs submitted by the officer and the PRC.

The *Caloca* appeal process began in June 2002 and has had a significant impact on the PRC. PRC employees prepare the record of the PRC proceedings, disseminate the record to the parties, and, in most cases, have the responsibility of preparing a brief defending the Commission's findings and arguing the Commission's case before the *Caloca* panel.

This new process places considerable scrutiny on the PRC. With the burden of proof on the PRC, it is necessary to research and cite the record to document the evidence the board relied on in making credibility determinations and factual findings. Commissioners who presided over the PRC Board of Inquiry may attend the *Caloca* appeal hearing and have the option of briefing and arguing the case; however, due to time constraints, most commissioners are unable to be involved on this level.

Only 1 *Caloca* hearing was held in 2002, although appeals were requested in several cases. To date, involved officers or the BPA have requested appeals in all but 1 case sustained by the PRC. The *Caloca* hearing panel overturned the PRC's sustained finding in the case that was heard in 2002.

⁸ *Caloca v. County of San Diego* (1999) 72 Cal. App. 4th 1209, *Caloca v. County of San Diego* (2002) 102 Ca. App. 4th 433

SECTION 4: INCIDENT LOCATIONS

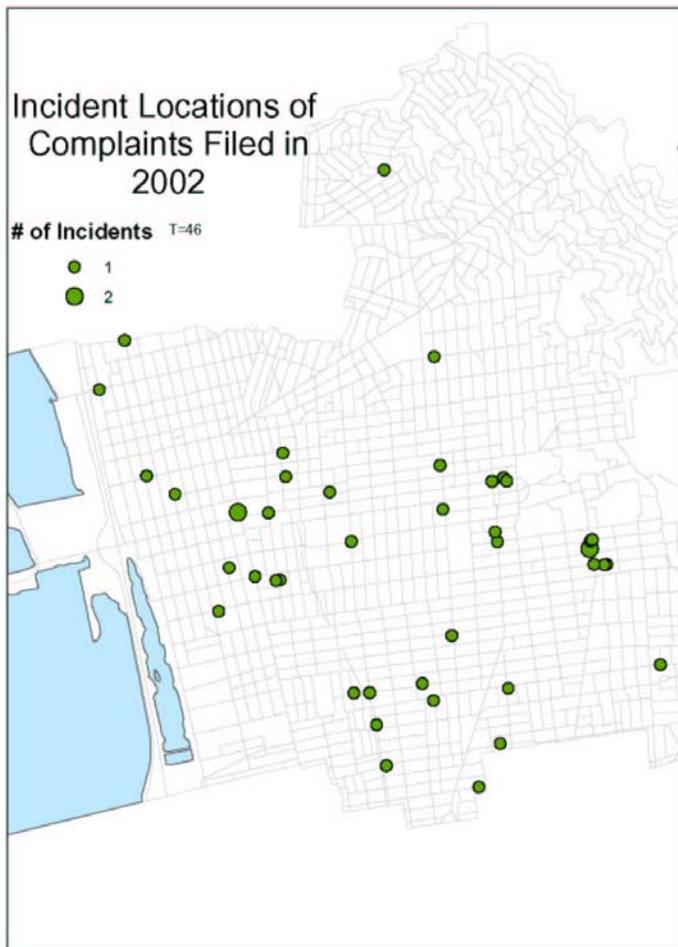
To assess whether there were significant trends in incident locations, cases received in 2002 were plotted throughout the City. While in 2001 most incidents occurred in West Berkeley, in 2002 there was a significant cluster, 14 complaints filed, regarding incidents that occurred in the downtown area, particularly near the University of California campus.

Ten⁹ of the 14 complaints from this area were filed by homeless people. The large

number of complaints received from this demographic group could be the result of increased police enforcement in this area due to merchant complaints, increased awareness of the PRC, and/or more willingness on the part of homeless people to report their issues. The PRC held a community meeting in October 2002 in this area, which could have resulted in more knowledge of the PRC and its services within the homeless community.¹⁰

While there is not much similarity in the types of complaints reported, 13 of the complaints had discourtesy allegations. Five of the 14 cases reported both allegations of discourtesy and discrimination. There was no significant trend in the complainants that made discrimination allegations. There was an even dispersal of complainants of different races in this group of complainants.

⁹ The 10 homeless related complaints resulted from 8 separate incidents.



¹⁰ Within this cluster, there were 3 complaints made by the same complainant at a similar location, and 2 complaints were made at the same location by different complainants that were involved in the same interaction with police officers.

Map created by:
Pat Detemple, Information
Systems, City of Berkeley



SECTION 5: COMPLAINANT DEMOGRAPHICS

The dispersal of complainants in the various demographic categories resumed to more “normal” proportions in 2002. White and African American complainants have historically made up similar proportions of over 90% of the total number of PRC complainants, while Asian, Hispanic and complainants that fall into the “others” categories usually make up fewer than ten percent of the total number of complainants. There was a documented increase in the number of white complainants in 2001 and 1999 due to large numbers of complaints filed regarding “Critical Mass” incidents by white complainants in those years.¹¹

It is important to note that the percentage of African American complainants is significantly larger than the general population of African American residents in the City of Berkeley. African American complainants filed 51% of the complaints received by PRC in 2002 and, according to the 2000 census, comprise less than 14% of the City of Berkeley population.

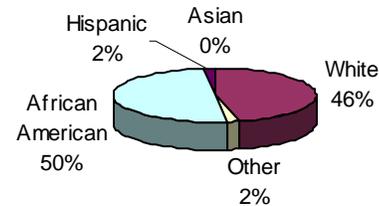
2000 City of Berkeley Population *		
Race	Totals	Percentage
Asian	16,740	16.3
White	56,691	55.2
Other	5,604	5.5
African American	13,707	13.3
Hispanic	10,001	9.7
TOTAL	102,743	100

*Information from the 2000 Census

¹¹ For more information about Critical Mass, please see footnote #4, page 4.

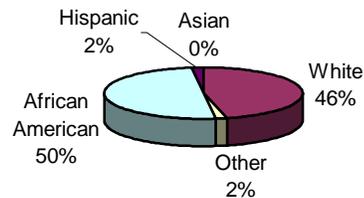
2000

Asian	0
White	23
Other	1
African American	25
Hispanic	1



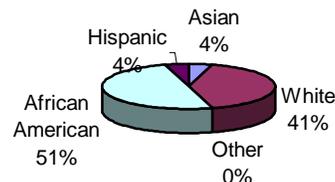
2001

Asian	3
White	32
Other	2
African American	18
Hispanic	2



2002

Asian	2
White	19
Other	0
African American	23
Hispanic	2





SECTION 6: POLICY DEVELOPMENT

Overview

In 2002 much of the policy work of the PRC was focused on outreach to the community and responding to of national enforcement efforts that could impact the Berkeley community. The following represents highlights of the more significant policy reviews conducted by the PRC in 2002. In 2002 the PRC:

- Held two community meetings to get feedback regarding BPD tactics and enforcement procedures;

- Held a forum on Community Policing;

- Began a review of police in schools looking into the parameters of police assignments in Berkeley's schools;

- Made a recommendation that the BPD General Order regarding juveniles be revised;

- Made recommendations to the City Council that the City take positions of non-cooperation with the federal government on questioning individuals and medical marijuana enforcement.

Community Meetings and Public Forum on Community Policing

The PRC held two community meetings in 2002 to obtain community feedback about police services in Berkeley. Approximately 150 members of the public attended the meetings and provided valuable and wide-ranging testimony to the PRC regarding community issues and police services. A public forum followed in December, with invited speakers presenting their views on various aspects of community policing, particularly in regard to the Berkeley community. The panelists involved were: Maya Harris West of Policy Link of Oakland; Professor Merylee Shelton from San Jose City College; Ann-Marie Hogan, Berkeley City Auditor; and BPD Captain Doug Hambleton.

The PRC is in the process of reviewing BPD's "Community Involved Policing" policies and procedures. BPD implemented Community Involved Policing (CIP) in 1994 to focus on problem-solving as a dominant policing strategy, to increase involvement in the community, and to include citizen participation in setting priorities for police activities.¹²

Because of the many changes in BPD resulting from the recent change in leadership and the retirement of many career officers, the PRC feels that it is a good time to assess the status of CIP within BPD.

The Commission will review the information and material collected during this process, as well as through its ongoing interactions with members of the BPD and the public, and plans to issue a report in 2003 to be presented to the City Manager, the police department, and the City Council.

Police in Schools and Juvenile Miranda

In response to issues raised in complaints and from community concerns, the PRC began looking into the parameters and rules governing police in Berkeley middle schools and Berkeley High. The PRC met with BPD and Berkeley Unified School District (BUSD) officials and intends to follow up on reviewing written guidelines for officers assigned as school resource officers (SROs). It was clear from the meeting that BUSD feels that SROs play an important role in the schools.

As the result of a policy issue raised in a complaint investigation, the PRC made policy recommendation that BPD revise the general order regarding officers' responsibilities for giving *Miranda* advisements to juveniles.

Recommendations to the City Council

The PRC made recommendations to the City Council that the City adopt a position of non-compliance with U.S. Department of Justice (DOJ) requests to question individuals of Middle Eastern decent. The PRC views the DOJ targeting of select groups for questioning as discriminatory and a form of racial profiling.

In response to U.S. Drug Enforcement Administration (DEA) raids of Bay Area medical marijuana facilities, the PRC asked the Council to direct BPD not to cooperate with DEA investigations of medical marijuana clubs operating in the City, and to support national legislation supporting states rights to regulate medical marijuana enforcement. The Council supported the Commission's recommendations regarding medical marijuana.

¹² Hogan, Ann-Marie; Teresa Berkeley-Simmons; Frank Marietti; *Police Staffing Audit*, City of Berkeley, April 30, 2002.



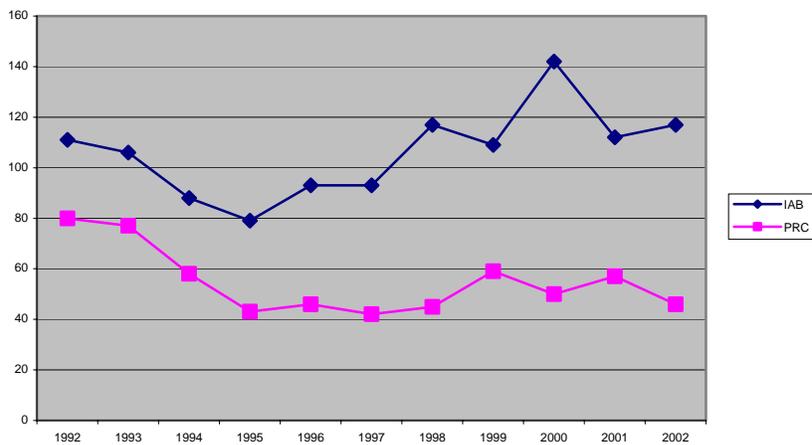
SECTION 7: COMPARATIVE OVERVIEW OF COMPLAINTS RECEIVED—PRC/IAB

In 2002, the PRC received 46 complaints, 11 fewer than in 2001. This 20% decline in the number of complaints received may be the combined result of the PRC offices relocating during the year and the fact that the number of Critical Mass complaints dropped to zero in 2002, as discussed in Section 2, page 4.

Over the last nine years, the PRC has had an average of 50 complaints filed per year.

In the early 1990's complaint levels were higher, ranging from 77 to 104 complaints filed from 1990 through 1994. A significant percentage of the complaints filed during the early 1990's involved complaints about policing of political demonstrations, of which there have been fewer in recent years.

Comparison of Numbers of Complaints Received --PRC & IAB



An important measure in analyzing the level of complaints received by the PRC is in comparing the number of complaints filed at the PRC to the number of complaints filed with the IAB. The comparison of numbers of complaints received by the PRC and IAB is significant because it represents a measure of the extent that civilian oversight of police misconduct is being conducted in Berkeley.

The number of complaints filed with the BPD Internal Affairs Bureau (IAB) has historically been higher than those filed with the PRC. In 2000, only 35% of the complaints lodged against the BPD had the benefit of the PRC civilian oversight process. In 2001, that number rose to 50%, but fell to 40% in 2002. It is particularly significant that in 2000 and 2002 the PRC experienced a decline in the number of complaints while the IAB registered an increase in the number of complaints received.¹³

In order to increase the percentage of complaints filed with the PRC relative to cases filed with IAB it may be necessary to conduct an outreach program to inform the public of the benefits that the PRC civilian oversight process brings. Complaints filed with the PRC are resolved through a hearing involving testimony and questioning of both the complainants and the involved officers. At the hearing, both parties gain an understanding as to how the incident happened and both sides of the issue are heard. The PRC process is also public, as the PRC does not have the same confidentiality constraints that IAB has. It is hoped that the PRC will be able to get the word out about its services in the future.

Ordinance requires IAB to refer all complaints filed to the PRC; however, this referral does not take place as state law declares citizen complaints filed with IAB to be confidential. The PRC would like to develop a referral process that would comply with current statutes and the PRC Ordinance.

¹³ IAB complaint figures reflect cases referred by the PRC as well as citizen complaints filed (IAB opens investigations on all PRC complaints). The PRC



STATISTICAL OVERVIEW 1999, 2000, 2001 and 2002

Complaint Data	1999 Totals	2000 Totals	2001 Totals	2002 Totals
Cases Filed	59	50	57	46
Cases Closed	62	49	52	50
Cases To Board of Inquiry	31	22	30	26
Cases with Sustained Allegations	19	13	19	21
* Allegations Sustained	40	32	65	52
* Allegations Not Sustained	90	57	119	71
* Allegations Unfounded	9	9	10	13
* Allegations Exonerated	8	9	17	10
* Other	1	6	4	3
Cases Closed -- No Board	31	23	19	24
* Summary Dismissal	1	3	1	6
* Administrative Closure	16	12	11	10
* Withdrawn	11	8	5	5
* Mediation	1	1	2	2
Policy Cases -- Full Commission	2	4	3	1
Total Allegations Received	217	207	262	197
* Excessive Force	38	36	30	23
* Discourtesy	45	28	55	47
* Improper Arrest, Search, Stop, Detention	30	60	52	34
* Improper Detention Procedures	17	1	9	7
* Discrimination	19	14	8	17
* Harassment	11	4	7	3
* Improper Police Procedures	11	13	28	16
* Improper Citation or Tow	13	4	10	2
* Other	19	26	30	21
* Inadequate or Improper Investigation	12	16	26	26
* Policy	2	5	7	1

Notes: 1. Harassment Allegations: Annual allegations may be different from quarter reports as there have been changes to the total number of cases.

2. Cases Closed, Cases with Sustained Allegations, Cases Closed - No Board, Policy Cases - Full Commission may include cases filed in previous years.



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

<i>Complainant Information</i>	1999	2000	2001	2002
Filed by Berkeley Residents	32	41	41	23
Complainants with Multiple Complaints*	4 ^a	5	6	4
<i>Accused Officer Information</i>	1999	2000	2001	2002
Total Number of Officers in BPD	199 ^b	192 ^c	195 ^c	204
Number of Officers Named*	56	50	54	46
Number of Non-Sworn Personnel Named	2	1	1	0
Number of Cases With Unknown Officers	14	8	9	9
Number of Officers Named in Multiple Cases	19	14	16	12
Number of Officers Named in 2 Cases	15	11	9	11
Number of Officers Named in 3 Cases	3	2	6	0
Number of Officers Named in More Cases	1(4)	1(6)	1(4)	1(6)
Number of Officers With Sustained Findings	14	17	20	28
Number of Officers With Multiple Sustained Cases	4	5	3	2
Number of Officers With Sustained Findings in 3 or more cases	1	0	0	0
^a One Complainant filed 6 complaints in 1999 and 2000 ^b Total Officers Hired, Full Allotted Strength = 201 ^c Total Officers Hired, Full Allotted Strength = 204				

Report on City Manager (CM) Review of PRC Findings			
	Cases To Board	Cases With CM Review	CM Agreement
2000	22	14	55 of 57 Allegations ^d
2001	30	22	120 of 125 Allegations ^e
2002	26	2/2002 cases 9/2001 cases	5 of 5 Allegations 49 of 51 Allegations ^f
^d Of two sustained allegations in which there was disagreement with the PRC findings at the CM review level, one was found by the CM to be not sustained and one was found to be exonerated. ^e In one case the CM sustained an allegation that was not sustained by the PRC, in three cases the CM not sustained allegations that had been sustained by the PRC, and in another case, one allegation that had not been sustained was exonerated by the CM. ^f In one case the CM Sustained an allegation that was not sustained by the PRC, and in the other case, the CM not sustained an allegation that was sustained by the PRC.			



DISPOSITION OF ALLEGATIONS 2000, 2001, 2002

2002	EXF	DIS	ASD	DET	PRJ	HAR	PRO	CIT	OTH	INV	TOTALS
Board of Inquiry	24	25	21	2	15	3	22	4	20	18	154
Sustained	10	5	9	1	2	1	9	1	7	7	52
Not Sustained	11	16	7	1	10	2	8	3	6	7	71
Exonerated	0	1	2	0	0	0	2	0	3	2	10
Unfounded	1	2	2	0	2	0	1	0	3	2	13
Other/Policy*	1	0	0	0	0	0	1	0	1	0	3
No Board	14	21	17	0	4	3	7	1	10	9	83
Totals	38	46	38	2	19	6	29	5	30	27	240

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

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

Allegation Legend

EXF=Excessive Force

DET=Improper Detention Procedures

HAR=Harassment

DIS=Discourtesy

PRO=Improper Police Procedures

PRJ=Discrimination

OTH=Other

CIT=Improper Citation or Tow

INV=Improper Investigation

ASD=Improper Arrest, Search, Seizure, Stop or Detention

*Other/Policy may include allegations resolved through mediation

TECHNICAL APPENDIX

Appendix A

PRC ORDINANCE

Ordinance No. 4644-N.S.

Establishing a
Police Review Commission

CITY OF BERKELEY

ORDINANCE NO. 4644-N.S.

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

(Referenced by Court Decision April 12, 1976)

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

POLICE REVIEW COMMISSION

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

ORDINANCE NO. 4644-N.S.

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

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

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

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

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

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

* 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In effect: April 17, 1973

ORDINANCE NO. 5503-N.S.

^{**}The language shown in ~~strike out type~~ was declared invalid by the California Court of Appeals on April 12, 1976.
PRC Ordinance - 5

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

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

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

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

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

In effect: December 3, 1982

INDEX TO TEXT CHANGES

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

Appendix B

PRC REGULATIONS

CITY OF BERKELEY

REGULATIONS

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

POLICE REVIEW COMMISSION

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

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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)

PREAMBLE

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

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

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

I. GENERAL

1. Application of Regulations. The following regulations shall be employed by the Berkeley Police Review Commission to govern the receipt and processing of complaints. The Commission shall receive and process complaints in accordance with these regulations, and shall advise and make recommendations concerning its findings directly to the Chief of Police, the City Manager and the City Council, and the public.

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

II. PROCESSING COMPLAINTS

1. Initiation of Complaints

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

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

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

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

2. Recording of Complaints and Informing Interested Parties

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- d. Statements of Witnesses. Whenever the Investigator takes a statement from any Complainant, BPD Member, Subject Officer, BPD Member Witness, Witness, or any other person, said statement shall be tape-recorded, whenever practicable, a summary drafted by the Investigator, and said summary shall, whenever practicable, be signed by the person who gave said statement. The Investigator shall make every reasonable effort to obtain the signature of each person on their statement. Tape recordings of each statement shall be kept and preserved for 100 days or until the case is finally disposed of by the PRC and its decision has been reviewed by the City Manager.

- e. Criminal Proceedings. In the event that criminal proceedings relating to the matter of the complaint are known to be commenced against the Subject Officer, no investigation shall be undertaken beyond the filing, lodging, and docketing of the complaint. The PRC shall undertake no investigation until the criminal matter has been adjudicated or the authorities have rendered a final decision not to commence any such proceedings. During the pendency of any such contemplated or commenced criminal proceedings, all time limits applicable to the processing of PRC complaints (with the exception of the initial filing requirements set forth in paragraph 1.b., supra) shall be tolled.

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

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

5. Notification to Parties. Immediately after completion of the Investigative Report, the Investigator shall provide to the Complainant, each Subject Officer, and the Chief of Police the following:
 - a. Written notice that the complaint will be considered by a Board of Inquiry.
 - b. Any Investigators' recommendations dealing solely with summary disposition or procedural matters.
 - c. A copy of the Investigative Report and Summary, including all attachments, transcribed statements, and exhibits supplied to the Board of Inquiry.
 - d. Written notice that the parties may consult an attorney if desired, and that an attorney may represent him/her at the hearing, but that an attorney will not be required.
 - e. In the event the PRC is notified that a Subject Officer is represented by legal counsel, the PRC shall thereafter send, by mail, copies of any requested documents, together with investigation reports, supplemental reports, etc., to the office of the Subject Officer's attorney.

6. Administrative Closure. Pursuant to the grounds set forth below, a complaint of individual officer misconduct may, upon recommendation of a member of the Police Review Commission or Staff, be closed by a majority vote of Commissioners present at a regular business meeting. Cases closed pursuant to this section shall be deemed "administratively closed" and the results of investigation shall be made available to the office of the City Manager and the Police Department.

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

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

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

III. BOARDS OF INQUIRY AND HEARINGS

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

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

5. Challenges of Commissioners

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

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

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

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

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

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

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

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

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

Evidence shall be taken in accordance with the following provisions:

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

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

20. Categories of Findings

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

21. Report of Board Findings and Notification

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

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

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

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

24. Amendment of Complaint Procedure

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

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

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

Appendix C

PRC ALLEGATIONS

ALLEGATION CATEGORIES, CODES AND ABBREVIATIONS

Categories

Abbreviations

IMPROPER USE OF FORCE

EXF

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

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

DISCOURTESY

DIS

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

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

IMPROPER ARREST, SEARCH, SEIZURE, STOP OR DETENTION ASD

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

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

IMPROPER DETENTION PROCEDURES DET

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

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

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

INADEQUATE OR IMPROPER INVESTIGATION

INV

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

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

DISCRIMINATION

PRJ

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

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

HARASSMENT

HAR

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

Harassment	har
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IMPROPER POLICE PROCEDURES**PRO**

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

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

IMPROPER CITATION OR TOW**CIT**

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

Improper Citation	ict
Improper Tow Tag	irt
Improper Tow	itw

OTHER**OTH**

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

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

ROMARE BEARDEN



Romare Bearden, 1974, "The City and Its People", is currently National Tour by the National Gallery of Art

ABOUT THE ARTIST

Romare Bearden, an internationally renowned African American artist, was born on September 2, 1911 and died on March 12, 1988, at the age of 76. Recognized as one of the most creative visual artists of the twentieth century, Romare Bearden was born in Charlotte, North Carolina, and was educated at Boston University and New York University.

Although he graduated with a degree in Mathematics, Bearden joined the Harlem Artists Guild, where he studied art. There, he combined influences such as cubism, the Italian Renaissance, social realism and classical Chinese landscape painting and created many unique works of his own, typically in collages. His success was first recognized when he held a solo exhibition in 1940.

THE CITY AND ITS PEOPLE

"The City and Its People" was one of the first public art commissions of renowned African-American artist, the late Romare Bearden. The Civic Arts Commission of the City of Berkeley commissioned this mural to be placed in the City Council Chambers as an active and accessible part of the city and its civic life. In accordance with the placement of the and well-used civic area, the logo of the City of Berkeley contains a multi-cultural design derived from a segment of this mural's retrospective of Romare Bearden's life work and has request to borrow this piece for their national exhibition of his work. The exhibition will tour around the country after it opens in September of 2003 in Washington D.C.

"The City and Its People" would be of great importance to this exhibition due to its size, the fact the artist worked on this artwork directly and the fact that the City of Berkeley had incorporated this mural into the fabric of its civic life. This piece identifies with the "free speech movement" and because it is hung in public view in a very busy city council area, it has been incorporated into the life of the city, even down to the city of Berkeley logo.

References:

<http://www.beardenfoundation.org>

<http://www.ci.berkeley.ca.us>