

# CITY OF BERKELEY

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## POLICE REVIEW COMMISSION STATISTICAL REPORT 2003

# CITY OF BERKELEY POLICE REVIEW COMMISSION

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## CITY MANAGER

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Police Review Commission

September, 2004

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

Dear Mr. Kamlarz:

Enclosed is the 2003 Statistical Report of the Police Review Commission (PRC) for the calendar year, January 1 to December 31, 2003. In addition to statistics regarding PRC investigations and findings, the report is an overview of policy work completed by the Commission and the Commission's involvement in the larger civilian oversight community.

In 2003, the PRC staff handled 47 cases and conducted 24 Boards of Inquiry, thus hearing an average of two cases per month in addition to its regular meetings. The PRC also brought several policy items to the City Council. This level of intensity in workload requires all parties involved in the PRC process 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 (BPD), 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, BPD, Information Technology, and our Cal-in-Berkeley intern 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

# 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. (Full text in Technical Appendix A)

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

Section 1 contains a generalized overview reporting no significant change in the number of cases filed at the PRC in 2003. The PRC website is discussed, as well as special meetings held by the PRC in 2003, and PRC involvement in networking efforts. This section also contains text boxes highlighting the 30<sup>th</sup> Anniversary Celebration of the PRC and 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 47 complaints in 2003, and conducted Board of Inquiry evidentiary hearings in 24 of 51 cases closed, sustaining 24% of the allegations that were heard at Boards of Inquiry. The highest number and percentage of allegations received in 2003 were in the Improper Arrest, Search, Seizure, Stop or Detention category; particularly of note is a significant increase in improper stops and improper detentions complaints. There was a decrease in Inadequate or Improper Investigation and Discourtesy allegations this year.

## **SECTION 3: POST-PRC REVIEW**

The City Manager's review of PRC findings and the impact on the PRC of the new *Caloca* 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 significant number of complaints were filed regarding incidents located in areas that have historically had higher incidents of criminal activity.

## **SECTION 5: COMPLAINANT ETHNICITY**

Using graphs and narrative, this section discusses complainant ethnicities over the last three years. There was an increase in African American complainants and a decrease in white complainants, while other racial groups were of similar proportions in 2003.

## **SECTION 6: POLICY DEVELOPMENT**

Highlights of policy work undertaken by the PRC in 2003 include:

- A recommendation that the courts regularly update records regarding probation status and stipulations and stay away orders;
- Recognition of outstanding work by BPD and the Mental Health Division stemming from a dangerous barricaded suspect incident;
- A recommendation for roll call training for officers regarding marijuana enforcement;
- Support for creation of a County drug and alcohol detoxification facility.

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

PRC received 47 complaints in 2003 while the BPD Internal Affairs Bureau (IAB) received 91 formal complaints and 96 informal inquiries. The difference in the levels of complaints received by the PRC and IAB is discussed in this section in the context of the number of police misconduct cases benefiting from the civilian oversight process.

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# CITY OF BERKELEY

## POLICE REVIEW COMMISSION

### 2003 STATISTICAL REPORT

#### *INTRODUCTION*

The Berkeley Police Review Commission (PRC), established by voter initiative in 1973, completed its 30<sup>th</sup> year of operation in 2003. 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 2003 and comparative information for previous years. Included in this report are:

- An overview of PRC activities and developments in 2003;
- A description and analysis of the investigative and policy work completed in the past year;
- Charts and graphs demonstrating 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

There was no significant change in the number of complaints received by the PRC in 2003, 47 cases received, up from 46 in 2002, but considerably lower than the 57 complaints received in 2001. In 24 cases, just under 50% of the 51 cases closed, full evidentiary hearings were held; 21 cases were closed through administrative action; four cases were mediated, and two policy cases were reviewed by the full commission.

In 2002, in response to a demand by the Berkeley Police Association (BPA) that the City comply with a recent court case, the City implemented a new appeal process for officers who had allegations sustained against them by the PRC. One appeal hearing was held in 2002; 14 cases were appealed in 2003. Most sustained cases are being appealed, and the additional workload of this new program has impacted the PRC.

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. The PRC Web site is: <http://www.ci.berkeley.ca.us/prc/>

PRC meeting agendas and minutes are posted on the City of Berkeley Web site at: <http://www.ci.berkeley.ca.us/clerk/> The PRC Web site registered 68,666 hits in 2003, with 3799 unique visitors during the year.

PRC staff and commissioners continue to be active in international, national and regional associations of civilian oversight. Two PRC commissioners and two staff members attended the National Association of Civilian Oversight of Law Enforcement (NACOLE) conference in Los Angeles in September 2003. The conference provided training and workshops in examining force allegations, First Amendment issues, and mediation of complaints.

The PRC staff and commissioners continue to serve as a resource for jurisdictions interested in developing oversight in their community. The PRC represents one of the earliest models developed incorporating independent investigations and community review. Last year the PRC responded to dozens of inquiries from jurisdictions throughout the United States, from communities as near as Oakland and San Francisco, to cities across the country from Oregon to New York and Michigan.

## 30<sup>TH</sup> ANNIVERSARY CELEBRATION

The PRC celebrated its 30<sup>th</sup> anniversary in December, with a reception attended by supporters, community members, city and elected officials, and commissioners hailing back to the inception of the PRC. Dolores Huerta, co-founder of the United Farmworkers Union, gave the keynote address and Osha Neumann, a former commissioner and Berkeley activist, provided an historical perspective. The PRC was honored with a proclamation from Mayor Bates. The event was held at the Bancroft Hotel and the award-winning Berkeley High School Jazz Band provided entertainment. A videotape of the evening's festivities was filmed by L.A. Wood and aired locally.



## THE PRC COMPLAINT PROCESS

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

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

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

City Manager staff reviews 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.<sup>3</sup> The appeal procedures have been developed to comply with the Court of Appeals decision in *Caloca v. County of San Diego*.

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

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

<sup>3</sup> For more information on “*Caloca*” appeals, see Section 3 of this report.



# SECTION 2: OVERVIEW OF INVESTIGATIONS AND FINDINGS

## Complaints Received

A total of 47 cases were filed in 2003, just one more than in 2002. The number of complaints received by the PRC is consistent with last year, but represents a decline in complaints received from the previous three years (averaging 55 cases per year).

One factor that appears to have contributed to the decline in overall complaints received is that improved relations between BPD and "Critical Mass"<sup>4</sup> have resulted in no Critical Mass complaints filed in 2002 and 2003. In years past numbers of Critical Mass complaints ranged from 6 to 15 complaints per year.

Allegations received totaled 211 in 2003, an average of 4.5 allegations per complaint. The largest percentage of allegations received in a specific category was improper

arrest, search, stop and detention allegations, 24% of all allegations, followed by discourtesy allegations, 18% of the total allegations. (Text, charts, graphs and details of this information follow on pages 5-7, and 14-16.)

## Disposition of Cases

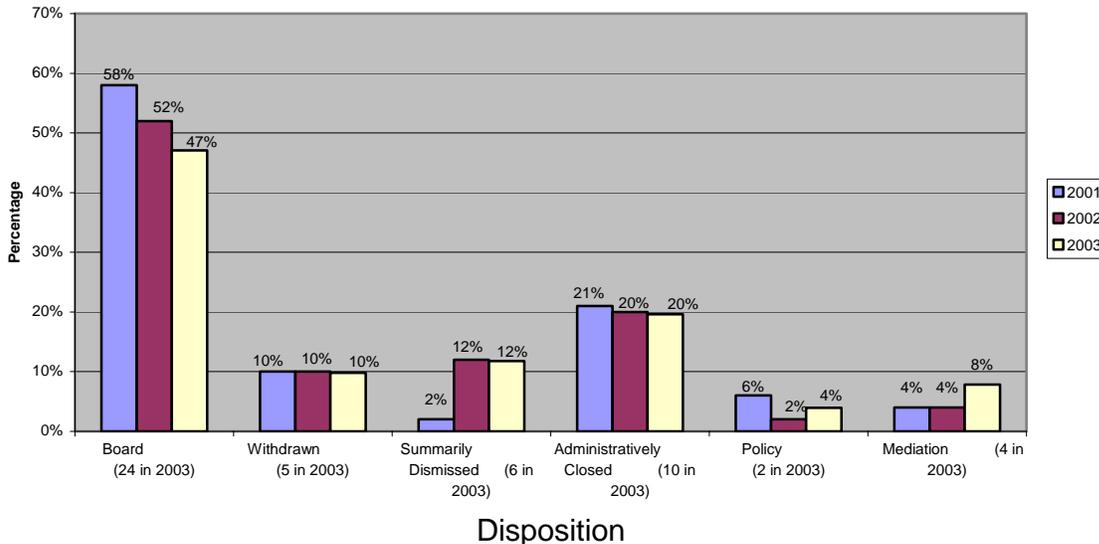
The PRC closed 51 cases in 2003. Of those cases, 47% (24 cases) went to Board of Inquiry evidentiary hearings, in which the officers and complainants present their case before a subcommittee of three commissioners who comprise the "board". Twenty-nine (29) of the 118 allegations that went to boards in 2003 were sustained (24%), a significant reduction from the 52 of 139 allegations (37%) sustained in 2002 and 49 of 176 allegations (28%) sustained in 2001.

## Mediation of Complaints

In 2003, complainants and officers elected to resolve their complaints through mediation in 4 cases, twice as many cases as in the last two years.

<sup>4</sup> Critical Mass is a monthly group ride of bicyclists trying to bring attention to bicycle issues. Because Critical Mass rides and the police response to them had generated some friction in the past, the PRC made successful policy recommendations resulting in BPD and Critical Mass riders opening communications and meeting before the rides.

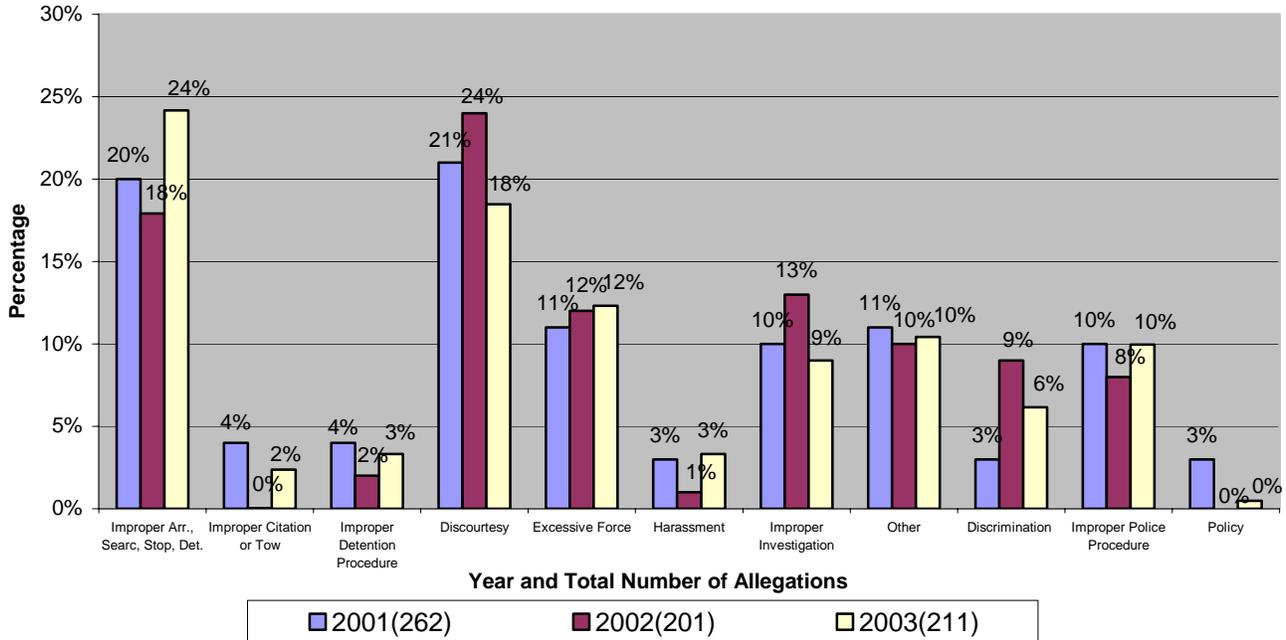
## Disposition of Cases





# ALLEGATIONS RECEIVED AND CLOSED

## Allegations Received By Percentage



### IMPROPER ARREST, SEARCH, SEIZURE, STOP OR DETENTION

#### Allegations Received

In 2003, there were 51 improper arrest, search, seizure, stop or detention allegations received, 24% of the total number of allegations filed. This represents a significant increase in allegations received in this category as compared to the 36 allegations received in 2002 (18% of the total allegations).

#### Allegations Closed

The commission sustained 7 (32%) of the 22 improper arrest, search, seizure, stop or detention allegations that went to boards in 2003. In 2002, 9 (47%) of the 19 allegations heard at boards in this category were sustained.

#### Notable Trends

Twenty-two (47%) of the 47 complainants registering complaints with the PRC in 2003 alleged improper arrest, search, seizure, stop or detention issues in their cases.

Review of the subcategories within the improper arrest, search, seizure, stop or detention allegation indicates that the complaints for improper stops increased substantially to 11 this year, from none last year and 2 in both 2001 and 2000. Complaints filed specifically for improper detentions also went up significantly, from 9 in 2002 to 22 in 2003.

### IMPROPER CITATION OR TOW

#### Allegations Received

In 2003, 5 improper citation or tow allegations were received, higher than the 2 received in 2002, but significantly fewer than the 10 allegations received in 2001.



*Allegations Closed*

In 2003, two of the four improper citation or tow allegations were resolved through mediation and two were withdrawn.

**IMPROPER DETENTION PROCEDURES**

*Allegations Received*

This year 7 improper detention procedures allegations were filed, on par with the 6 allegations received last year. There have been large fluctuations in this category in previous years, from a high of 17 allegations received in 1999, to only 1 allegation received in 2000. Five of the 7 improper detention procedure allegations filed in 2003 specifically alleged failure to provide medical assistance.

*Allegations Closed*

In 2003, 2 of the 6 detention allegations heard at boards were sustained.

**DISCOURTESY**

*Allegations Received*

The 39 allegations of discourtesy filed in 2003 fell from 48 in 2002. This resulted in a decrease in the percentage of discourtesy allegations from 24% in 2002 to 18% this year.

*Allegations Closed*

Fifty-five percent of the discourtesy allegations (24) were heard at boards of inquiry, and 4 were sustained. Five discourtesy allegations were resolved through mediation.

*Notable Trends*

Discourtesy accounted for the second highest percentage (18%) of all allegations received in 2003, an improvement over the 24% last year. Almost half (47%) of all complainants (22 of 47) included an allegation of discourtesy in their complaint.

**IMPROPER USE OF FORCE**

*Allegations Received*

In 2003, 26 allegations of improper use of force were filed, 12% of all allegations received. The subcategory of improper physical contact was cited in 17 of the 26 allegations of improper use of force. As in the past few years, there were no complaints filed alleging serious excessive force in 2003.

*Allegations Closed*

Although the percentage of improper use of force allegations received increased slightly in 2003, there was a decrease in the number of allegations that went to board as well as the number of allegations that were sustained. Fourteen allegations went to board with 4 allegations sustained, as compared with 21 to board and 10 sustained in 2002. One excessive force allegation was resolved through mediation in 2003.

*Notable Trends*

While the number of improper use of force allegations received increased slightly from 25 to 26 in 2003, there has been a significant decline in allegations in this category from 36 in 2000 and 30 in 2001.

**HARASSMENT**

*Allegations Received*

The number of harassment allegations received in 2003 was 7, an increase from the low of 3 in 2002, consistent with the 7 received in 2001, and up from the 4 received in 2000.

*Allegations Closed*

One harassment allegation was resolved through mediation. Neither of the 2 harassment allegations that went to board were sustained.



## **INADEQUATE OR IMPROPER INVESTIGATION**

### *Allegations Received*

The number of allegations received in the inadequate or improper investigation category was 19 in 2003, a notable decrease from 26 in 2002, and a drop in percentage of total allegations from 13% to 9%.

### *Allegations Closed*

In 2003, 4 of the 15 inadequate or improper investigation allegations that went to board were sustained. This represents a significant decline from 2002, in which 7 of 18 allegations that went to board in this category were sustained.

### *Notable Trends*

The allegations received in the inadequate or improper investigation category decreased to 19 in 2003 after a significant increase in 2001 and 2002 (26 in both years). In earlier years the total number of allegations in this category was lower, ranging from 7 to 16.

## **OTHER**

### *Allegations Received*

In 2003, 22 allegations were received in the "other" category, no significant change from the 21 received in 2002. This category encompasses discretion issues, breach of confidentiality, and failure to identify oneself. Twenty of the 22 allegations were filed about abuse of discretion issues.

### *Allegations Closed*

Fewer allegations in the "other" category were heard and sustained by board in 2003, 16 allegations were heard and 4 sustained, down from 18 allegations heard and 7 sustained in 2002. The 4 allegations sustained in 2003 were complaints of abuse of discretion.

## **DISCRIMINATION**

### *Allegations Received*

Discrimination allegations declined in 2003 after a significant rise the year before.

Thirteen allegations were received this year, down from 18 allegations in 2002, while only 8 allegations were received in 2001 and 14 in 2000.

### *Allegations Closed*

Nine discrimination allegations went to board in 2003, and one was sustained.

### *Notable Trends*

The percentage of discrimination allegations received in 2003 (6% of total allegations, 13 received) was lower than the 9% received in 2003. Allegations in this category include racial, sexual, religious, and political discrimination, as well as discrimination by appearance, sexual orientation and selective enforcement. All of the complainants who filed discrimination allegations in 2003 were African American, though only approximately 42% of the discrimination complaints alleged racial bias.

## **IMPROPER POLICE PROCEDURES**

### *Allegations Received*

In 2003, the number of improper police procedures allegations rose to 21, down from 16 the year before, but below the unusual high of 28 allegations received in 2001.

### *Allegations Closed*

Of 10 improper police procedures allegations that went to board, 3 were sustained (30%). This is down from 2002, in which 17 improper police procedures allegations went to board and 7 were sustained.



## 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 "*Caloca* Appeals" below.)

City Manager review of PRC cases have resumed; however, only nine cases were reviewed in this context in 2003. In the cases reviewed, the City Manager concurred with PRC findings in 46 allegations (those allegations that were not sustained and not part of the *Caloca* review process, detailed below). 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*

Since June 2002, 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)*.<sup>5</sup>

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 and this workload falls on the PRC staff.

One *Caloca* hearing was held in 2002; in 2003, the first full year of *Caloca* hearings, 14 cases were appealed. In 2003, the *Caloca* panel concurred with only 4 PRC findings in the 28 sustained allegations reviewed, disagreeing with more than 85% of the appealed sustained findings. In 2003, involved officers or the BPA have requested appeals in all but one case sustained by the PRC.

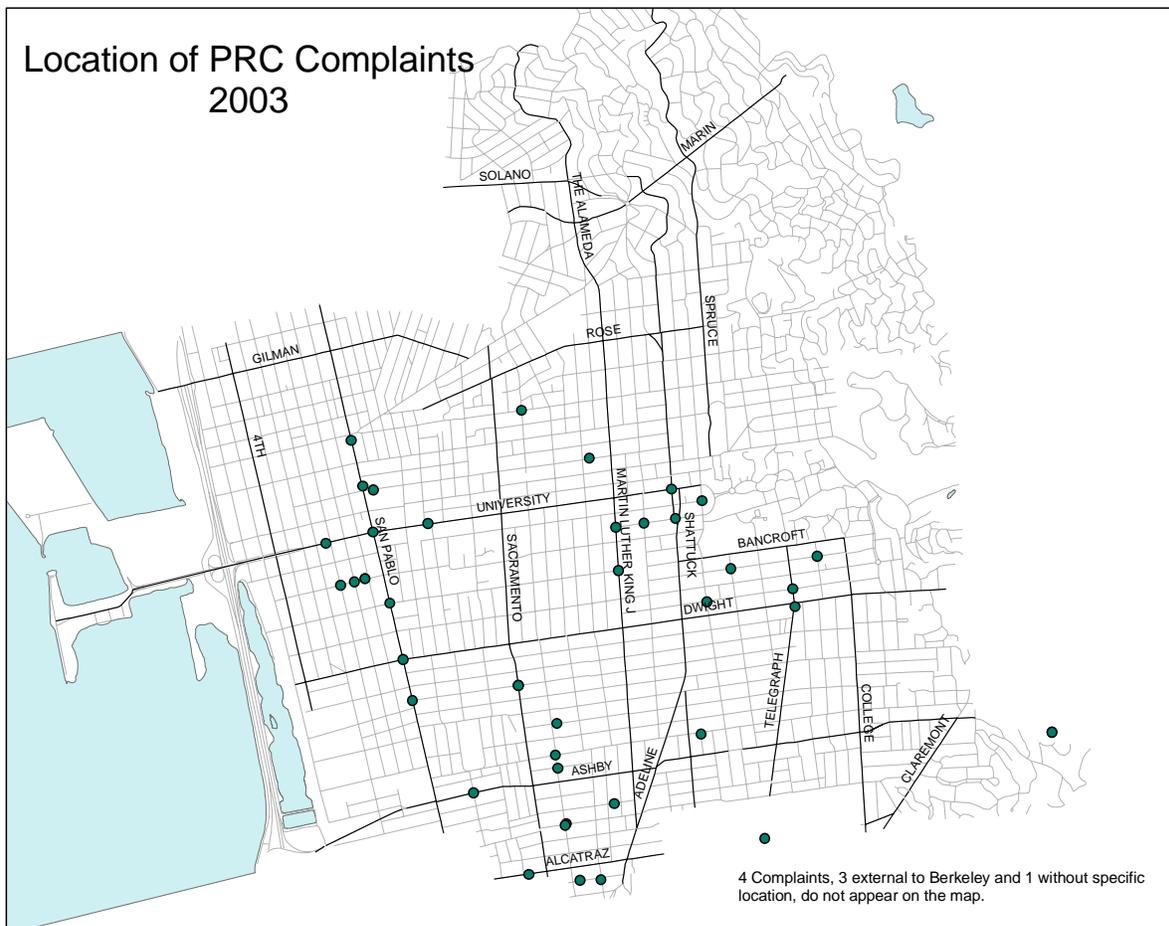
<sup>5</sup> *Caloca v. County of San Diego* (1999) 72 Cal. App. 4<sup>th</sup> 1209, *Caloca v. County of San Diego* (2002) 102 Ca. App. 4<sup>th</sup> 433



# SECTION 4: INCIDENT LOCATIONS

Review of complaints by incident location can be helpful in analyzing trends and patterns in complaints. In 2002, review of complaint locations indicated that there was a cluster of complaints in the downtown area, and further research found that the majority of those complaints had been filed by homeless complainants. There were no such patterns in 2003.

A majority of incident locations in 2003 were dispersed in areas that have historically had a higher crime rate, which would indicate higher calls for service. There are no other patterns discernable in the map of incident locations.



Map created by:  
 Pat DeTemple  
 Department of Information Systems  
 City of Berkeley



# SECTION 5: COMPLAINANT ETHNICITY

The number of complaints filed by African Americans increased to 30 in 2003 from 23 in 2002. Complaints decreased among whites to 12 in 2003 from 19 in 2002, and remained relatively steady among other demographic groups. The percentage of African American complainants increased from 51% in 2002 to 64% in 2003. The percentage of white complainants dropped from 41% to 26% during this period.

White and African American complainants have historically made up similar proportions of 90% or more of the total number of PRC complainants, while Asian, Hispanic and those that are categorized under the "Other" group usually make up less 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.<sup>6</sup>

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 64% of the complaints received by PRC in 2003 and, according to the 2000 census, comprise less than 14% of the City of Berkeley population.

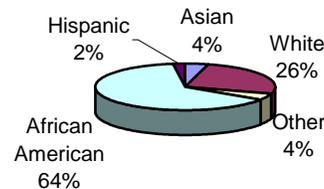
2000 City of Berkeley Population *		
Race	Totals	Percentage
Asian	16,740	16.3%
White	56,691	55.2%
Other	5,604	5.5%
African American	13,707	13.3%
Hispanic	10,001	9.7%
TOTAL	102,743	100%

\*Information from the 2000 Census

<sup>6</sup> For more information about Critical Mass, please see footnote #4, page 4.

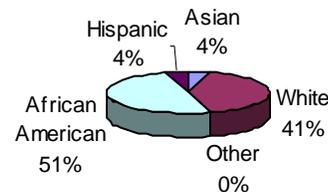
## 2003

Asian	2
White	12
Other	2
African American	30
Hispanic	1



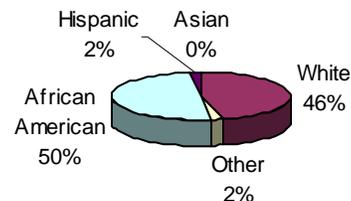
## 2002

Asian	2
White	19
Other	0
African American	23
Hispanic	2



## 2001

Asian	3
White	32
Other	2
African American	18
Hispanic	2





## SECTION 6: POLICY DEVELOPMENT

### *Overview*

In 2003, the PRC made recommendations on policy matters and requested Council action regarding a wide range of issues. Highlights of these actions include the following:

- A recommendation that the City Council request that Alameda County Superior and Municipal Courts regularly update records regarding probation status and stipulations and stay away orders;
- Recognition of outstanding work by BPD and the Mental Health Division for the humane handling of a dangerous barricaded suspect incident;
- A recommendation that BPD conduct roll call training for officers regarding the City of Berkeley policy that enforcement of marijuana laws be given the lowest priority; and,
- A recommendation that the City Council urge the Alameda County Board of Supervisors to create a County drug and alcohol detoxification facility.

### *Updating Court Records*

As requested by the PRC, the City Council sent a letter to the Alameda County Board of Supervisors asking that computer records for the Alameda County Superior and/or Municipal Courts related to probation conditions be updated regularly and in a timely way, to ensure that accurate data regarding probation status and stipulations and stay away orders is available to police and other jurisdictions.

After receiving several complaints, the PRC became concerned about the ability of the BPD to enforce conditions of probation imposed by Alameda County Superior and/or Municipal Courts, particularly stay away orders for persons on probation, because it was determined that information in the computerized record system was incorrect or out of date. The PRC investigated several incidents, in which individuals had been arrested and jailed because officers relied on faulty information in the court's computer system.

### *Roll Call Training Regarding Marijuana Enforcement*

Review of marijuana enforcement activity by BPD over the last several years indicated that there has been increased activity in this area. At the request of the PRC, BPD agreed to conduct roll call training for officers regarding the City of Berkeley policy that enforcement of marijuana laws be given the lowest priority by BPD. Due to the high turnover of BPD officers in the last several years, and recent cases involving marijuana enforcement, there was concern that some officers were unaware of the City policy on marijuana enforcement.

### *Recognition of Outstanding Work by BPD and the Division of Mental Health*

The PRC took action to formally commend the women and men of BPD and the Division of Mental Health of the Department of Health and Human Services (HHS) for their sensitive and humane handling of a standoff incident with a barricaded suspect.

In its role of oversight of the BPD, the PRC recognized the careful work of officers and mental health workers involved in the handling of this serious incident. Faced with a suspect who fired gunshots at police officers, superficially wounding one officer, BPD and mental health workers negotiated for 24 hours and were able to end the standoff peacefully with the surrender of the suspect. Their patience and skill in handling this difficult, dangerous incident serves as a positive example to officers and mental health workers in other jurisdictions.

### *Support Establishment of a Detox Facility*

Members of the Neighborhood Partnership on Homelessness presented to the PRC their study, "Detox—the Missing Step in Berkeley's Continuum of Care—One Neighborhood's Approach," documenting the need for a local detoxification facility.

The PRC asked the City Council to communicate the need for funding for such a facility to state and federal legislators, and urged the City to seek funding for a detox facility from other available sources.



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

In 2003, the PRC received 47 complaints, an insignificant change from the 46 received last year. Over the last ten years, the PRC has had an average of 49 complaints filed per year. In the early nineties, the complaint levels were higher, ranging from 77 to 104 complaints filed between 1990 and 1993. A significant percentage of the complaints filed during the early 1990's stemmed from policing political demonstrations, of which there have been fewer in recent years.

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.

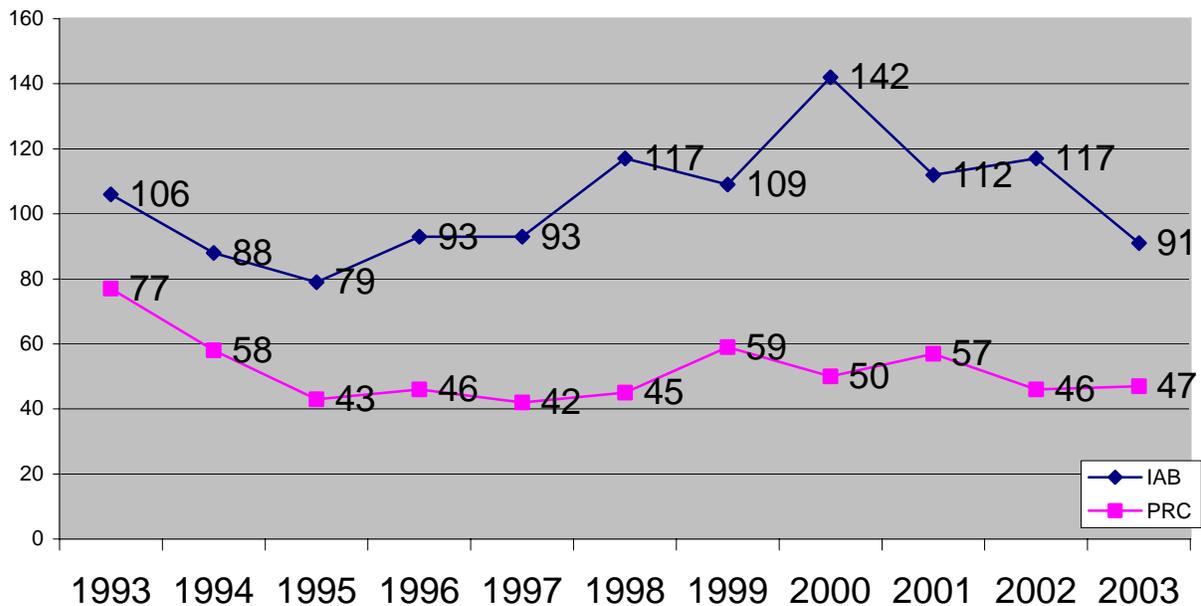
The number of complaints filed with the BPD Internal Affairs Bureau (IAB) has

historically been higher than those filed with the PRC. (Detailed charts of IAB statistics can be found on pages 13 and 17). In 2003, the IAB received 91 formal complaints. Over the last 10 years, the IAB has had an average of 104 complaints filed per year.

In 2003, 47 of 91 cases filed with BPD (52%) had the benefit of the PRC civilian oversight process. However, in the years preceding that percentage has fallen as low as 40%, due to fluctuations in the numbers of cases received in either department.<sup>7</sup>

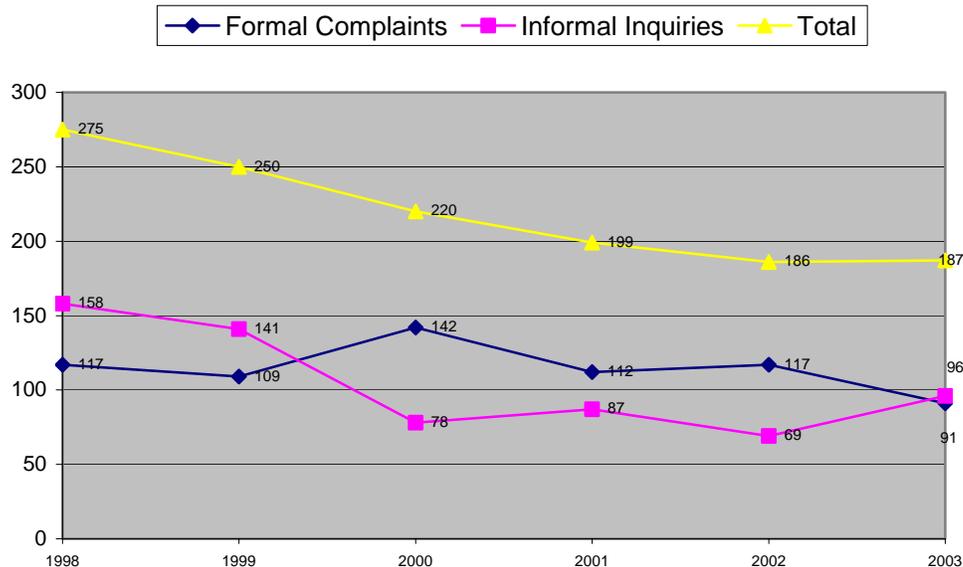
<sup>7</sup> IAB complaint figures reflect cases referred by the PRC as well as citizen complaints filed directly with IAB (IAB opens investigations on all PRC complaints). The PRC Ordinance requires IAB to refer all complaints filed to the PRC; however, this referral does not take place as state law 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.

### Comparison of Numbers of Complaints Received -- PRC & IAB





## IAB Complaints and Informal Inquiries



### Informal Inquiries

It is important to note in reviewing the IAB complaint rate that numbers of “informal inquiries”<sup>8</sup> can fluctuate and may account for some variation in the number of formal complaints received by IAB. The decision to handle a case as an informal inquiry or a formal complaint can influence the complaint level and may be the result of changes in IAB and different priorities in handling of complaints.

The number of formal complaints filed in IAB dropped from 117 in 2002 to 96 in 2003 (26 cases); during that same period, there was an increase of 27 informal inquiries from 69 in 2002 to 96 in 2003. In the last ten years, there has been a general decreasing trend in the accumulated yearly total of formal complaints and informal inquiries.

### Need for Increased Community Awareness of the PRC

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 public, as the PRC does not have the same confidentiality constraints that IAB has. To get the word out about the PRC process, PRC commissioners and staff are continuously seeking ideas and avenues for informing the Berkeley community of these services.

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

**PRC STAFF**  
 Barbara Attard, PRC Officer  
 Dan Silva, Investigator  
 Maritza Martinez, Office Specialist III  
 Beverly Powell, Office Specialist II

**FORMER PRC STAFF**  
 Najuma Henderson, Investigator

**PRC INTERNS**  
 Steven McCarty      Alex Young



# STATISTICAL OVERVIEW

## 2000, 2001, 2002, 2003

Complaint Data	2000 Totals	2001 Totals	2002 Totals	2003 Totals
<b>Cases Filed</b>	<b>50</b>	<b>57</b>	<b>46</b>	<b>47</b>
<b>Cases Closed</b>	<b>49</b>	<b>52</b>	<b>50</b>	<b>51</b>
<b>Cases To Board of Inquiry</b>	<b>22</b>	<b>30</b>	<b>26</b>	<b>24</b>
<b>Cases with Sustained Allegations</b>	<b>13</b>	<b>19</b>	<b>21</b>	<b>15</b>
* Allegations Sustained	32	49	52	29
* Allegations Not Sustained	57	99	67	72
* Allegations Unfounded	9	10	13	13
* Allegations Exonerated	9	17	10	4
* Other	6	4	3	3
<b>Cases Closed -- No Board</b>	<b>23</b>	<b>19</b>	<b>24</b>	<b>27</b>
* Summary Dismissal	3	1	6	6
* Administrative Closure	12	11	10	10
* Withdrawn	8	5	5	5
* Mediation	1	2	2	4
<b>Policy Cases -- Full Commission</b>	<b>4</b>	<b>3</b>	<b>1</b>	<b>2</b>
<b>Total Allegations Received</b>	<b>207</b>	<b>262</b>	<b>201</b>	<b>211</b>
* Improper Use of Force	36	30	25	26
* Discourtesy	28	55	48	39
* Improper Arrest, Search, Stop, Detention	60	52	36	51
* Improper Detention Procedures	1	9	6	7
* Discrimination	14	8	18	13
* Harassment	4	7	3	7
* Improper Police Procedures	13	28	16	21
* Improper Citation or Tow	4	10	2	5
* Other	26	30	21	22
* Inadequate or Improper Investigation	16	26	26	19
* Policy	5	7	1	1

**Notes:**

Some entries may have changed due to database updates.

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



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

Complainant Information		2000	2001	2002	2003
Filed by Berkeley Residents		41	41	33	26
Complainants with Multiple Complaints		5	6	4	5
Accused Officer Information		2000	2001	2002	2003
Total Number of Officers in BPD		192	195	204	194
Number of Officers Named		50	54	46	56
Number of Non-Sworn Personnel Named		1	1	0	0
Number of Cases With Unknown Officers		8	9	9	18
Number of Officers Named in Multiple Cases		14	16	12	7
Number of Officers Named in 2 Cases		11	9	11	7
Number of Officers Named in 3 Cases		2	6	0	0
Number of Officers Named in More Cases		1(6)	1(4)	1(6)	0
Number of Officers With Sustained Findings		17	20	28	11*
Number of Officers With Multiple Sustained Cases		5	3	2	1*
Number of Officers With Sustained Findings in 3 or more cases		0	0	0	1*
* May Include Cases Received in 2002					

Report on City Manager Review of PRC Findings			
Year	Cases To Board	Cases With City Manager Review	City Manager Agreement
2002	26	11	54 of 56 Allegations**
2003	24	9	46 of 46 Allegations***
** In one case the City Manager Sustained an allegation that was not sustained by the PRC; in the other case, the City Manager not sustained an allegation that was sustained by the PRC. ***Not Sustained findings that were not part of the <i>Caloca</i> appeal process.			

Report on Findings of <i>Caloca</i> Appeal Hearings		
Year	Cases With <i>Caloca</i> Review	<i>Caloca</i> Findings
2002	1 case, 1 allegation	1 Sustained Allegation Evaluated as Not Sustained
2003	14 cases, 28 allegations	4 Sustained Allegations Upheld, 24 Evaluated as Not Sustained



## DISPOSITION OF PRC ALLEGATIONS 2001 - 2003

2003	EXF	DIS	ASD	DET	PRJ	HAR	PRO	CIT	OTH	INV	TOTALS
Board of Inquiry	14	24	22	6	9	2	10	0	16	15	118
Sustained	4	4	7	2	1	0	3	0	4	4	29
Not Sustained	8	15	11	4	6	2	7	0	9	10	72
Exonerated	1	1	2	0	0	0	0	0	0	0	4
Unfounded	1	4	2	0	2	0	0	0	3	1	13
Other/Policy*	1	6	1	0	0	1	1	2	2	1	15
No Board	6	20	16	0	3	5	10	4	5	5	74
<b>Totals</b>	<b>20</b>	<b>44</b>	<b>38</b>	<b>6</b>	<b>12</b>	<b>7</b>	<b>20</b>	<b>4</b>	<b>21</b>	<b>20</b>	<b>192</b>

2002	EXF	DIS	ASD	DET	PRJ	HAR	PRO	CIT	OTH	INV	TOTALS
Board of Inquiry	21	23	19	2	14	3	17	4	18	18	139
Sustained	10	5	9	1	2	1	9	1	7	7	52
Not Sustained	10	16	6	1	10	2	7	3	5	7	67
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*	0	0	0	0	0	0	1	0	1	0	2
No Board	16	22	19	0	5	3	9	1	11	9	95
<b>Totals</b>	<b>37</b>	<b>45</b>	<b>38</b>	<b>2</b>	<b>19</b>	<b>6</b>	<b>26</b>	<b>5</b>	<b>29</b>	<b>27</b>	<b>234</b>

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
<b>Totals</b>	<b>26</b>	<b>40</b>	<b>59</b>	<b>9</b>	<b>10</b>	<b>4</b>	<b>19</b>	<b>6</b>	<b>25</b>	<b>27</b>	<b>225</b>

### Allegation Legend

EXF=Improper Use of 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 and are included in the "No Board" totals.



# INTERNAL AFFAIRS STATISTICS (IAB)

2003 Internal Affairs Complaints					
	COMPLAINTS RECIEVED	SUSTAINED	NOT SUSTAINED	UNF. OR ADMIN. CLOSED	TOTAL
External PRC*	43	2	8	33	43
External IAB*	48	10	10	28	48
Internal*	57	40	7	10	57
<i>Total Cases</i>	148	52	25	71	148
Improper Use Of Force	41	0	15	26	41
Discourtesy	42	5	12	25	42
Improper Stop / Search / Seizure / Arrest	40	5	8	27	40
Improper Detention	1	0	1	0	1
Inadequate Inv / Report	15	3	5	7	15
Discrimination	10	0	0	10	10
Harassment	13	0	4	9	13
Improper Procedure	78	54	11	13	78
Improper Cite /Tow	12	0	2	10	12
Others	20	0	5	15	20
<i>Total Allegations</i>	272	67	63	142	272
Informal Inquiries	96				

**\*Definitions:**

External PRC: Misconduct cases received from members of the public through the PRC.

External IAB: Misconduct cases filed by members of the public directly with IAB.

Internal: Misconduct cases filed internally within BPD, i.e. through supervisory officers or other police personnel.

NOTE: IAB reports fewer than 47 complaints received through the PRC in 2003 because cases that are first filed with the IAB are considered by BPD to be "External IAB" complaints.

# TECHNICAL APPENDIX

Appendix A

**PRC ORDINANCE**

Ordinance No. 4644-N.S.

Establishing a  
Police Review Commission

# ***CITY OF BERKELEY***

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

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

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

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

## ***POLICE REVIEW COMMISSION***

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

## ORDINANCE NO. 4644-N.S.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In effect: April 17, 1973

## ORDINANCE NO. 5503-N.S.

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

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

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

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

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

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

In effect: December 3, 1982

## INDEX TO TEXT CHANGES

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

**Appendix B**

**PRC REGULATIONS**

# ***CITY OF BERKELEY***

# **REGULATIONS**

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

## ***POLICE REVIEW COMMISSION***

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

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EXHIBIT A - Report of Successful Mediation (Not used and not included)

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

# **BERKELEY POLICE REVIEW COMMISSION**

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

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

### **PREAMBLE**

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

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

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

## **I. GENERAL**

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

## **II. PROCESSING COMPLAINTS**

## 1. Initiation of Complaints

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

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

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

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

## 2. Recording of Complaints and Informing Interested Parties

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- h. Records of mediation will be destroyed one year from the date mediation is elected by the Complainant.

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Challenges of Commissioners

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

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

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

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

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

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

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

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

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

Evidence shall be taken in accordance with the following provisions:

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

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

20. Categories of Findings

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

21. Report of Board Findings and Notification

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

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

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

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

24. Amendment of Complaint Procedure

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

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

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

**Appendix C**

**PRC ALLEGATIONS**

## ALLEGATION CATEGORIES, CODES AND ABBREVIATIONS

### Categories

### Abbreviations

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

#### **EXF**

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

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

#### **DISCOURTESY**

#### **DIS**

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

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

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

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

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

**IMPROPER DETENTION PROCEDURES DET**

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

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

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

**INADEQUATE OR IMPROPER INVESTIGATION**

**INV**

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

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

**DISCRIMINATION**

**PRJ**

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

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

**HARASSMENT**

**HAR**

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

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

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

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

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

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

Improper Citation	ict
Improper Tow Tag	irt
Improper Tow	itw

**OTHER****OTH**

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

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

# 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>