

COMMUNITY POLICE REVIEW COMMISSION
of the City of Richmond, California
(CPRC)
Wednesday, August 7, 2024
7:00 P.M.

MINUTES

I. CALL TO ORDER, ROLL CALL, PLEDGE

The meeting was called to order at 7:00 P.M. by Chair Carol Hegstrom in the Richmond Room at 450 Civic Center Plaza, 1st Floor, at Richmond, California.

Present: Carol Hegstrom (Chair), Marisol Cantú, Oscar Garcia, Andre Jackson*, Steven Lacy*, Daniel Lawson, Rachel Lorber (Vice Chair) and Carmen Martinez
*Arrived after Roll Call

Absent: None

Staff: Shané Johnson – Present

Council Liaison: Claudia Jimenez – Not Present

**City Attorney's
Office Representative** Kimberly Chin, Senior Assistant City Attorney - Present

II. STATEMENT OF CONFLICT OF INTEREST

Kimberly Chin, Senior Assistant City Attorney, asked Commissioners to review the agenda to advise whether there were any conflicts with respect to any item on the agenda. There were none.

III. AGENDA REVIEW

There were no changes to the agenda.

IV. APPROVAL OF MINUTES (June 5, 2024)

ACTION: It was M/S/C (Lawson/Garcia) to approve the minutes of the June 5, 2024 meeting, as submitted; approved by a voice vote: 5-0 (Ayes: Garcia, Jackson, Lawson, Martinez and Chair Hegstrom; Noes: None; Abstain: Cantú and Lorber; Absent: Lacy).
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V. PUBLIC FORUM

CORDELL HINDLER welcomed Commissioner Cantú to the CPRC. He announced the upcoming Contra Costa Mayors Conference scheduled for October 3, 2024 at 6:30 P.M. hosted by the City of Richmond, location yet to be determined.

VI. REPORT OF CITY COUNCIL LIAISON (Claudia Jimenez)

The City Council Liaison was not available.

VII. REPORT BY CHIEF OF POLICE (Chief French or Designee)

There was no report from the Chief of Police.

VIII. REPORT BY RICHMOND POLICE OFFICERS' ASSOCIATION (Ben Therriault or Designee)

There was no report from the Richmond Police Officers' Association (RPOA).

IX. REPORT BY RICHMOND POLICE MANAGEMENT ASSOCIATION (Eric Smith or Designee)

There was no report from the Richmond Police Management Association (RPMA).

For public comment on the reports, CORDELL HINDLER reiterated some comments he had previously provided with respect to individuals hanging out in front of the 7Eleven. He noted his concern that those individuals continually asked for money and that situation was becoming worse. He had also spoken to some of the adjacent businesses to the 7Eleven because cars had been parking in the area for more than two hours and there had been excessive speeding in the area. He urged more traffic enforcement.

CPRC Staff Liaison Shané Johnson advised that Sergeant Ben Therriault had just submitted a written report from the RPOA. She read the report into the record.

Sergeant Therriault's report had spoken to National Night Out and the homicide that had occurred, which had impacted regular operations and the reporting schedule from the RPOA. His report highlighted the fact that the RPOA had made a donation of \$300 to National Night Out activities at Parchester Village, which had been well received. The report also indicated that despite best efforts, there remained challenges in recruiting new members for the Richmond Police Department (RPD) and the RPOA was actively seeking new approaches to improve recruiting efforts.

X. REPORT BY CONFIDENTIAL INVESTIGATIVE AND APPEALS OFFICER (Jerry Threet)

a. Status Update

Jerry Threet, Confidential Investigative and Appeals Officer, reported on eight investigations pending that remained to be completed. His work had been delayed by COVID and he hoped to have the McDonald officer-involved shooting case ready for the next meeting in closed session. The other remaining cases involved the case that had been delayed pending the completion of an active murder investigation, and the six remaining complaints related to racial discrimination and excessive force.

Chair Hegstrom referred to the most recent complaint she understood had not been filed by the victim and she asked how that would work, and Mr. Threet stated he would reach out to the person who filed the complaint to get the victim's contact information.

XI. OLD BUSINESS, DISCUSSION ITEMS

a. Community Events – Juneteenth Recap

Chair Hegstrom took this opportunity to thank Commissioner Garcia for all his help setting up during the Juneteenth event when all Commissioners had participated.

Commissioner Garcia thanked Staff Liaison Johnson for having the equipment and supplies ready for his pickup and for being available to accept those items on his return after the event.

CORDELL HINDLER stated he had attended Juneteenth, which he indicated had been well done but he suggested that information about the CPRC and blank applications should have been available to help recruit young people.

An unidentified speaker asked for more information on the homicide that had been reported on August 6, although Chair Hegstrom advised that the homicide had been identified in the RPOA report and there was no additional information available to the CPRC at this time.

b. Update on the Status of the Commission's Proposed Revisions to Chapter 3.54

Chair Hegstrom reported that nearly a year ago the CPRC had voted to make amendments to its charter to allow the CPRC more power. She noted one of the main issues was the definition of serious bodily injury, which had been under review by the City Attorney's Office and would now go on to the meet and confer process with the RPOA. She added that she would be attending the meet and confer.

No written comments were submitted, or oral comments made, by any member of the public.

c. Update on the National Association for Civilian Oversight of Law Enforcement (NACOLE) Conference in Tucson, AZ from October 13-17, 2024

Chair Hegstrom stated that the City of Richmond's travel ban to Arizona would not allow the CPRC's participation at the NACOLE Conference this year.

Staff Liaison Johnson clarified that City Resolution 55-10 did not allow Commissioners to travel to Arizona and the complications involved with attempts to get an exemption in this case had not been successful and the City did not support anyone attending that conference as part of official City business. She noted that the City Manager had urged the CPRC to consider other training possibilities that comported with City policy and to check the NACOLE website for other training venues outside of Arizona.

Kimberly Chin, Senior Assistant City Attorney noted that Commissioners could attend the NACOLE Conference in their personal capacity but not as members of the Commission. She clarified the ban was for all City staff and related to the immigration laws passed by the state of Arizona in years past.

CORDELL HINDER agreed that the CPRC could consider other training opportunities beyond those outside the CPRC's ability to attend.

In response to an unidentified speaker, both Ms. Chin and Ms. Johnson clarified the City's ban.

Commissioner Lawson requested an agenda item for the next meeting to allow a discussion of alternative training opportunities Commissioners could research and request.

XII. NEW BUSINESS

a. CPRC Flyer Update

Chair Hegstrom referred to the CPRC handout/flyer and recommended the creation of a new CPRC flyer. She asked for volunteers to work on that effort and Commissioner Garcia, and potentially others, volunteered to help.

CORDELL HINDLER recommended that the CPRC flyer be prepared to enhance interest in the CPRC and recommended a more interesting logo design that might help interest young people into applying to the CPRC.

XIII. PRESENTATION

a. CPRC Commissioner Training

Chair Hegstrom commented that usually in August the CPRC did not have a meeting but had a retreat where the CPRC worked on training and the history of the CPRC. She had put together some training information and suggested this would be a good opportunity to offer that information.

Chair Hegstrom provided a PowerPoint presentation and explained that the charter and purpose of the CPRC was to promote positive relations between the community and the RPD, and to advise the City Council, City Manager, and Chief of Police on all matters pertaining to the administration of the RPD. The duties of the CPRC were to review and evaluate the policies, practices and procedures contained in the RPD Manual and develop programs and strategies to promote positive community relations and make appropriate recommendations to the Chief of Police.

Chair Hegstrom stated the CPRC could look at the Police Manual and recommend changes it would like to be made, and if making a recommendation to the Chief of Police and the Chief responded in the negative the CPRC could submit recommendations to the City Manager, and all the way to the City Council for appropriate action. Both the Chief and the City Manager had 30 days to respond and each could request an additional 30 days extension.

Chair Hegstrom stated the CPRC also received, investigated and heard complaints against Richmond police officers alleging the use of unreasonable force, discrimination, sexual harassment and/or sexual assault as well as receive, investigate and hear reports from the RPD about all incidents of death and/or serious bodily injury, and/or all incidents of discharge of a firearm at a person by a Richmond police officer.

Chair Hegstrom clarified the CPRC received automatic notifications from the RPD or from someone who filed a complaint against the RPD with the CPRC.

Complaints must be filed with the CPRC within 120 days of alleged misconduct unless the complainant established that there was a reason that the filing could not have been filed sooner (excusable neglect or mistake).

Chair Hegstrom identified the instances of automatic notification to the CPRC: instances when death or serious bodily injury and/or instances of a discharge of a firearm at a person by an RPD officer, at which time notice is sent to the Office of Professional Accountability (OPA) to CPRC staff who would then forward the notice to the CPRC and the Investigative Officer.

Joseph Englund, the new head of the OPA replacing Eddie Aubrey, confirmed that was the case. He stated he had worked with Mr. Aubrey and verified that notification would be provided to the CPRC almost immediately.

Chair Hegstrom stated once there was a complaint or automatic notification, the Investigative Officer would write a report and both complaints and automatic notifications would go through the same process. With respect to serious bodily injury, she explained that the ordinance establishing the CPRC cited death or hospitalization for more than 72 hours, and the CPRC had pursued a negotiation to get that down to 12 hours of continuous hospitalization and certain types of bodily injury.

Once the Investigative Officer investigated a complaint, a report would be written and there may be more than one charge against more than one officer. The Investigative Officer's recommendation would be provided in a confidential investigative report distributed to the CPRC, after which a closed session would be scheduled when the report would be discussed by the CPRC with a vote on the recommendations. In the closed session, the CPRC would be asked to vote whether or not to accept the report as submitted, with the potential to return the investigation to the Investigative Officer for a further evaluation, if determined. The CPRC could also vote for a complaint hearing.

Commissioner Garcia commented that he had never seen a hearing on a complaint, which could be affected by the Brown Act.

Ms. Chin verified that the ordinance required that the hearing be in closed session. She cited Richmond Municipal Code (RMC) Section 3.54.080 B7 where all hearings concerning police officer misconduct shall be held in closed session.

Mr. Threet recalled that former legal counsel Bruce Soublet had indicated that hearings had been held before state law changed requiring that the hearings be confidential and in closed session. Since that time there had been no hearings.

Chair Hegstrom suggested that was an avenue the CPRC could pursue. If the CPRC was not satisfied with the report from the Investigative Officer, it could require more interviews or the CPRC could interview the officer(s).

Ms. Chin referred to the RMC and clarified the options open to the Commission.

Chair Hegstrom stated that once receiving the complaint and the investigator's report, the CPRC must find that in order to sustain a complaint, the complainant would have to establish the allegations of the complaint with clear and convincing evidence, which was more a preponderance of the evidence and less beyond a reasonable doubt.

If not sustaining a complaint, it could be found to be unfounded or the officer could be exonerated.

Ms. Chin clarified pursuant to the RMC that the decision could be sustained, not-sustained, exonerated or unfounded. With respect to *sustained*, there had to be clear and convincing evidence that the facts perceived substantiated the allegations of the complaint; *not-sustained* meant there was not clear and convincing evidence that the allegations of the complaint were not founded, and *exonerated* and *unfounded* meant that clear and convincing evidence was not found to sustain the complaint. The basic burden was for clear and convincing evidence to support the complaint.

Mr. Threet understood the difference between exonerated and unfounded was that unfounded meant there was not sufficient evidence to establish that the allegations occurred while exonerated meant that the evidence showed that the alleged acts did occur but were consistent with policy and procedures.

Commissioner Martinez asked if legal counsel could write a memo to define those four terms and present that information at the next CPRC meeting since those terms had not been defined in the ordinance establishing the CPRC.

Ms. Chin stated that she could do that but those terms were not defined in the ordinance and it would be based on legal standards that might not apply to the CPRC. She would work with Mr. Threet to be consistent with what the Commission had done in the past and she suggested the CPRC might want to define those terms in the ordinance in the future.

Commissioner Garcia agreed that the legal terms were confusing and when discussing cases in the past, the CPRC always received guidance from the Investigative Officer as to which term would apply in each case.

Commissioner Lawson asked if non-sustained was equivalent to “not guilty” and exonerated was equivalent to “innocent.”

Ms. Chin explained that guilt or innocence was usually used in criminal context, which had a different burden of proof than the CPRC operated under, which was clear and convincing evidence. Usually guilt and innocence in a criminal context was beyond reasonable doubt although the CPRC did not use that term. She would provide something in writing but that document would be a confidential legal memo to the CPRC only and would not be public.

Mr. Threet offered examples of when the four terms would apply.

Vice Chair Lorber proposed a discussion of those terms for a future agenda and noted that the Office of Justice program had a handbook that defined terms and she would be happy to write up something for the next meeting.

It was clarified by legal counsel that any proposed amendment to the ordinance would have to be approved by the City Council.

Chair Hegstrom stated based on the complaint, the CPRC could also vote to make recommendations to the Chief of Police.

After concluding the closed session, within 30 days a letter would be sent to the Chief stating the findings and recommendations by the CPRC and the investigative report would be included with that letter. If a finding was not sustained and no recommendation was made, the Chief did not need to respond. If the CPRC sustained a finding the Chief had 30 days to send a written response. If the Chief agreed with the findings, appropriate action would be taken, but if the Chief disagreed the complaint and investigative report would be forwarded to the City Manager, and the Chief would respond to the CPRC and the complainant advising of the disposition of the case.

Chair Hegstrom added that if the CPRC made a recommendation based on the case, the Chief of Police had 30 days to respond and if the Chief agreed with the recommendation the appropriate action would be taken but if the Chief disagreed, the CPRC could decide to forward the case to the City Manager. The Chief had an additional 30 days to respond so the decision would go to the City Manager who would review the CPRC's findings and recommendations along with other information submitted by the Chief. After review, the City Manager would prepare a written conclusion concerning the documentation presented and the City Manager's written conclusion regarding the complaint would be transferred to the CPRC, the Chief and the involved officer(s) within 30 days of receiving the information. The City Manager would also notify the complainant. The City Manager would then notify everyone within 30 days and may request an additional 30 days to review the case.

Chair Hegstrom stated that another provision was to receive and review appeals from the disposition by the RPD of complaints against Richmond police officers not involving allegations of the use of unreasonable force or racially abusive behavior, and submit recommendations to the City Manager and the Chief of Police. She referred to a change that had been proposed by the CPRC related to cases *not previously heard by the Commission*.

Chair Hegstrom stated that a complaint would be referred to the Office of Professional Accountability (OPA), which would review it and make a decision. If someone was not happy with that decision it could be appealed to the CPRC. All appeals filed with the CPRC shall be in writing, signed by the appellant, and shall state the specific grounds of the appeal and must be filed within 10 days of the date of the letter from the Chief of Police notifying them of the disposition of the complaint. Once the CPRC received the appeal, the procedure to investigate and the hearing would be similar to the process for complaints. The CPRC would consider appeals in closed session.

Chair Hegstrom added that the CPRC charter also charged the CPRC to perform such other duties as requested by the City Council. She did not know what those other duties might be but the City Council had the authority to ask.

Commissioner Lorber asked about CPRC terms, and Chair Hegstrom stated the CPRC had three 3-year terms and members could serve a maximum of ten years, although some Commissioners were serving out the terms of others.

Ms. Chin confirmed pursuant to Section 3.54.040 that no member shall serve more than three consecutive full terms.

Chair Hegstrom referred to confidentiality and explained that CPRC complaints, appeals, investigative reports, and any responses from the Chief of Police and the City Manager were confidential and could not be discussed with the public or with other Commissioners, except during closed sessions.

Commissioner Lawson asked how a Commissioner could dispose of confidential reports, electronic or otherwise, and Ms. Chin advised that staff retained copies of reports and responses, and CPRC confidential documents in the CPRC's possession should be shredded and electronic copies deleted.

Commissioner Garcia asked in terms of confidentiality what the repercussions would be if the confidential reports were not disposed as identified.

Mr. Threet stated that would actually be a misdemeanor. There were Brown Act closed session statutes and also a statute that made disclosure of confidential police personnel records a misdemeanor.

Ms. Chin added that a violation of the Brown Act could invalidate any action taken. There could also be no serial communications amongst the members of the CPRC.

Chair Hegstrom referred to accountability and transparency and noted the CPRC could not talk about anything so the rules had been changed to be able to create a Public Summary that could be released to the public, be placed on the CPRC website, and still maintain privacy since the names of the officer(s) were not included.

Chair Hegstrom clarified that the CPRC was controlled through the City charter, the contracts with the RPD, and California law. She referred to the information in the ordinance under California law that complaints and appeals filed with the Commission and the investigations and investigative reports of the Investigative Officer and the Police Commission shall comply with California Penal Code Sections 832.5 and 832.7 and California Evidence Code Sections 1043 and 1046, as amended from time to time. She asked for a clarification from legal counsel.

Ms. Chin stated that generally the Penal Code section related to investigations, which were confidential. The Evidence Code governed the disclosure of police officer personnel records. She added that if the City received a Public Records Act (PRA) request for anything related to the work of the CPRC it would go to the City Attorney's Office for a determination of whether or not to release the records if consistent with the PRA. She added that there were exemptions to the PRA so that a request would not be guaranteed.

Chair Hegstrom stated that was why Commissioners were asked to get a separate email account to avoid the need of exposing personal emails if there was a valid PRA request.

PUBLIC COMMENTS OPENED

CORDELL HINDLER thanked the CPRC for the information and agreed with the 30-day period to allow responses from the Chief of Police.

An unidentified speaker referred to a specific incident where the newspaper had identified the criminal records of an individual, and Chair Hegstrom stated that was the kind of thing that the laws were intended to protect.

The unidentified speaker also asked about the Brown Act and whether it applied only to public officials, and the Chair clarified that the CPRC was a public body.

Commissioner Lawson commented that he had gone through Brown Act training as part of his employment and he knew that committees that advised legislative bodies were sometimes governed by and subject to the Brown Act.

Another unidentified speaker verified with Ms. Chin that when talking to individual members of the City Council, as an example, and passing along voting preferences from his discussions from one Councilmember to another could actually be a violation of the Brown Act under certain circumstances.

XIV. REPORTS FROM COMMISSIONERS, STAFF, AND RIDEALONGS

Chair Hegstrom introduced and welcomed new Commissioner Marisol Cantú.

Commissioner Garcia spoke to the National Night Out event at Parchester Village and encouraged Commissioners to hand out CPRC flyers at such events since there had been over 200 people at that one event only. He noted that the Iron Triangle Neighborhood Council had received a report on the triple homicide that had occurred in the Iron Triangle after the June CPRC meeting when there had been a lot of concern about safety and being out in the public since the shooting had been reminiscent of random shootings in the 1990s. The RPD had confirmed that the shooting was potentially random where there could be rivalry issues with random people being shot. He also noted that RPD had expressed that it did not have enough officers to properly investigate the triple homicide and provide the necessary patrols.

With the understanding that recruiting remained a serious concern, Commissioner Garcia reiterated that people from the Iron Triangle were very concerned for their safety. Given that there had recently been another homicide near the area of the triple homicide, people were even more concerned. He had hoped to speak to the Police Chief and the Council Liaison about this issue at this meeting.

Staff Liaison Johnson stated that Chief French had indicated at the last meeting that she had a work conflict with the current meeting. On another matter, she reported the CPRC had money in the budget to provide some swag for Commissioners to promote the CPRC in the community or to provide other kinds of handouts.

An unidentified speaker spoke to police funding and questioned why patrols could not be provided where needed.

XV. ADJOURNMENT

The meeting was adjourned at 8:30 P.M.

Carol Hegstrom, Chair