

**COMMUNITY POLICE REVIEW COMMISSION**  
**of the City of Richmond, California**  
**(CPRC)**  
**Wednesday, October 4, 2023**  
**7:00 P.M.**

**MINUTES**

**I. CALL TO ORDER, ROLL CALL, PLEDGE**

The meeting was called to order at 7:03 P.M. by Chair Carol Hegstrom in the Richmond Room at 450 Civic Center Plaza, 1<sup>st</sup> Floor, at Richmond, California.

**Present:** Carol Hegstrom (Chair), Dow Tunis (Vice Chair), Oscar Garcia, Andre Jackson, Carole Johnson, Steven Lacy\*, Daniel Lawson and Rachel Lorber\*  
\*Arrived after Roll Call

**Absent:** None

**Staff:** Lilia Corral - Present

**Council Liaison:** Claudia Jimenez – Not Present

**City Attorney's  
Office Representative:** Pam Lee - Present

[NOTE: Throughout this meeting the microphones in the Richmond Room cut in and out making many comments impossible to include in the minutes.]

**II. STATEMENT OF CONFLICT OF INTEREST**

Pam Lee, Legal Counsel representing the City Attorney's Office, explained that this was the time of the meeting for any member of the CPRC who had a conflict of interest with respect to any item on the agenda to identify that conflict of interest.

**III. AGENDA REVIEW**

Commissioner Lawson noted that he had previously requested a standing agenda item for a report on the status of the tracking database. There was a brief discussion with no specific determination as to where on the agenda the standing item should be placed.

**IV. PUBLIC FORUM**

Staff Liaison Lilia Corral advised of a written comment from CORDELL HINDLER, as follows: *Hello Chair Hegstrom, Commissioners and staff, I am submitting the following comments into the record: 1. The update is that my project is coming along and I will keep the Commission informed at a later time. 2. For a future item the Commission should look into planning for a city event in 2024.*

**V. REPORT OF CITY COUNCIL LIAISON (Claudia Jimenez)**

Council Liaison Claudia Jimenez was not present at this time.

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

Police Chief Bisa French presented an overview of RPD activities and explained that while there had been an improvement in recruiting, there remained 23 vacancies in the RPD, and while 19 police officers had been hired this year, the benefit of those hires had not yet been realized because many were still in training. As a result, mandatory overtime remained. In addition to the 19 police officers, another 12 professional staff had been hired. Parking remained a huge issue in the community and parking enforcement had been focused on stolen and abandoned vehicles. There were three new parking enforcement officers with two vacancies. She also reported that working with the Richmond Police Officers' Association (RPOA), every January shifts at the RPD changed and people went into different specialties or different teams with six-month deployments on a trial basis.

Chief French reported there had been 12 use of force reports in August. In terms of events, she reported there had been a retreat for all managers and supervisors off-site to discuss the issues and work towards fixing those issues and to learn how to be more consistent and efficient at the RPD. The focused retreat had been facilitated by an outside facilitator and RPD had applied for it through POST, a police officer organization that had paid for a portion of the retreat.

Chief French also reported that on Friday, October 7, 2023 the RPD would participate in Faith & Blue, a four-day event across the nation with numerous activities in an effort to bring community and police together. At the end of the month, Cops & Goblins would be brought back since COVID where the community was allowed to come into the RPD. There would be a haunted house event with kids and visits to the RPD where officers would decorate their own stations for the event. She also advised that the Community Safety Academy had been delayed until spring given there had been little interest shown for that activity. Also, since COVID, the Explorers program would be brought back with the Police Activities League (PAL).

In response to Commissioner Lorber as to the time involved in getting new police officers to the point of being on their own, Chief French described the levels of training and orientation required which could take six months.

Commissioner Garcia asked if there was an update to the homicide in the Iron Triangle at the end of August and Chief French stated there was a suspect in that case but no arrest had been made at this point. She commented that there had been only four homicides so far this year and suggested that could be attributed to the efforts of the community and the RPD to reduce violent crime even though the RPD continued to be understaffed.

Commissioner Lawson asked about the crime statistics posted on the RPD website, stated he had asked Captain Stonebraker about this issue last month, and referred to crime statistics using a comparison of UCR (Uniform Crime Reporting) data and the National Incident-Based Reporting System (NIBRS). Given that the numbers were different, he suggested the percent change was misleading, and recommended reporting the data as month-to-month or year-to-year to avoid confusion and error.

Chief French stated she would take a look at it and report back next month. In further response to the CPRC, she explained that in the case of the four homicides, there had been a named suspect in each case. She noted there had been some type of self-defense aspect to each of the four homicides.

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

Sergeant Ben Therriault, President of the Richmond Police Officers' Association (RPOA), stated there was still a need for additional staff at the RPD. He reported that he had participated in a community event to honor Pedie Perez with members of the Perez Family. He looked forward to increased staffing at the RPD as a long-term goal.

Commissioner Lorber referred to the annual shift of positions and asked if the RPOA had advocated for that policy, and Mr. Therriault stated that change was advantageous at times and positions had been based on seniority. He commented that it shook things up and could be considered a positive thing because organizations needed that at times.

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

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

**IX. REPORT BY INVESTIGATIVE AND APPEALS OFFICER (Jerry Threet)**

**A. Status Update**

Jerry Threet, Investigative and Appeals Officer, reported there were seven investigations pending, although there was one item that could be resolved in Executive Session at this meeting. Three investigations had been completed last month, although three new complaints had been filed. Those investigations remaining included the oldest, the Gutzalenko investigation from 2021 that he had been unable to complete because he had been down with COVID for two weeks. He expected to have that case available at the next CPRC meeting. He would then return to the Macdonald officer-involved shooting from July 2023, and the other investigations including an unnecessary use of force complaint from 2022, and the three most recent investigations of discrimination.

Commissioner Lawson asked for a clarification of the seven outstanding investigations given that he could find only six remaining on the tracking document. Mr. Threet advised that he could get that information in a spreadsheet in the future.

**B. Approve and Vote Public Case Summaries: 2021-8 (Leothurs), 2022-10 (Egbukichi) and 2022-11 (Foster)**

<b>ACTION: M/S/C (Lawson/Lacy) to approve Public Case Summaries 2021-8 (Leothurs), 2022-10 (Egbukichi) and 2022-11 (Foster); as submitted; approved by a voice vote: 8-0 (Ayes: Garcia, Jackson, Johnson, Lacy, Lawson, Lorber, Tunis and Chair Hegstrom; Noes: None; Abstain: None; Absent: None.</b>
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**X. OLD BUSINESS, DISCUSSION ITEMS: None**

## XI. NEW BUSINESS

### A. Discuss and Vote on Resolution on Standards of Evidence (D. Lawson)

Commissioner Lawson explained that the item had come up in an August discussion when it had been noted that the standards of evidence did not seem to be normal and he had volunteered to look into it. He presented the results of his investigation and reported he could find no other public police oversight board in the state that had any standard other than the “preponderance of evidence,” which was the standard that all police departments in the state used and which was a nationwide standard as well. Based on that, he proposed a resolution to change the standard of evidence to the preponderance of evidence. He suggested that the actual language should be included in the ordinance and noted two places where it should be placed.

Commissioner Lawson recommended changes under Section 3.54.080 Section B.12, which should be changed to read: *The commission shall not sustain any complaint unless the complaint established by a preponderance of the evidence the allegations of the complaint.* He explained that was a change from ‘clear and convincing evidence.’ He had stricken the second sentence after that in the ordinance that defined clear and convincing evidence in relation to a preponderance of evidence, which he explained was basically the same thing for the section on appeals by RPD complaints.

Commissioner Garcia noticed that clear and convincing evidence was more than a preponderance of evidence but less than the reasonable doubt standard, and he asked what that meant.

Commissioner Lorber stated that the preponderance of evidence was more than 50 percent and the standard in the ordinance of clear and convincing evidence was not as strong. The standard used by other police oversight boards was the preponderance of evidence.

Commissioner Garcia asked if there were examples where a preponderance of evidence would have made a difference in cases and while there were no specific examples, Mr. Threet mentioned that there had been one case where it would have changed his recommendation if the standard of evidence had been the preponderance.

Mr. Threet clarified that had been a case from the Public Defender’s office. He explained the way the ordinance phrased it made clear and convincing evidence the standard of proof for reaching a sustained finding but not for the other findings, and meant that sometimes there might not be enough evidence to meet that standard but the balance of evidence might have gotten it for a not exonerated but not sustained instead. Where there was a preponderance of evidence for all the findings and in most cases if there was not sustained, it was exonerated and he stated it was a bit of an anomaly the way it had been phrased in the ordinance.

Commissioner Lorber suggested adding a definition and borrowed the language from the California Civil Jury Instructions No. 200 where a preponderance of evidence meant evidence that was more likely to be true than not.

Chair Hegstrom clarified for the benefit of the discussion that the proposed language met the standard used by nationwide police oversight bodies and the City of Richmond’s language was a higher standard than what had been proposed, which she stated would make it easier to sustain.

Mr. Threet advised this was the type of thing that was likely to trigger a meet and confer process.

Vice Chair Tunis confirmed that any recommended changes to the ordinance would have to be submitted to the City Council for action.

#### PUBLIC COMMENT

Ben Therriault stated the RPD always appreciated the higher than industry standard, which balanced out what Richmond did on a training experience level as opposed to what other police departments did. He stated the RPOA thought that having that balancing out was a good thing. It had been the original standard in place for a long time and had been very effective.

Commissioner Garcia noted that over the years in reviewing more sensitive complaints that language had been reviewed multiple times. At the end of the day, he suggested it was cut and dry and he had a hard time understanding the effort required with the City Council and the police unions, and questioned whether it would really make a difference in the community.

Pam Lee stated with respect to the process of getting a change in the Richmond Municipal Code (RMC) that in addition to what had already been discussed this would be just a recommendation to the City Council for review and approval. Because it involved an ordinance, it would require two meetings, adequate notice and would become effective 30 days after adoption. She stated the City had the authority and it was within the management purview to change the RMC but the effect of that would be a change to the terms and conditions of employment of police officers. The effect of that change would trigger the requirement to meet and confer and agree on the change in the language prior to implementation even if the City Council agreed to the change.

Chair Hegstrom added that there were now three proposed ordinance changes and the intent was to pursue them all at once so that when they went to the City Council and the meet and confer, they would all be done at the same time.

Ms. Lee added that as part of the deliberation process, generally speaking with legal counsel and with the Investigative Officer also being an attorney, there was a recommendation and guidance with respect to which standard of review was required and what the evidentiary record had to be before a finding could be made.

Commissioner Jackson clarified that over time the CPRC, which had been very limited at first, was expanding things and this proposal would offer a slightly greater ability to find a case as sustained.

Commissioner Garcia did not think that CPRC members' votes had been impacted by the current standard in the ordinance.

<b>ACTION: M/S/F (Lawson/Lorber) to adopt a Resolution on Standards of Evidence, as presented; FAILED by a Roll Call vote given a tie: 4-4 (Ayes: Johnson, Lawson, Lorber, and Chair Hegstrom; Noes: Garcia, Jackson, Lacy and Tunis; Abstain: None; Absent: None.</b>
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- B. Discuss and Vote on Proposed Change to Current Ordinance 3.54.080(c) (C. Hegstrom)

Chair Hegstrom noted that some cases had been discussed that had been filed as appeals and at least one of the cases the CPRC had not been allowed to hear because of the way it had been written. She had looked at the ordinance and found it to be outdated because it did not list the scope of the CRPC and there were restrictions that did not make sense to her. She wanted to be able to review any appeals by the RPD and recommended that complainants be allowed to file an appeal with the CPRC.

Commissioner Garcia asked about the complaint involved and Mr. Threet referred to Case 2021-8 (Leothurs), one of the public summaries the CPRC had just approved, which was an appeal on a finding of excessive force complaint.

Pam Lee added that the only recommendation she would include would be in those instances where the complainant may have a second opportunity with a second allegation, which should be prevented so that the case would be heard in the first instance whether an appeal or an original jurisdiction.

Chair Hegstrom confirmed with Ms. Lee that would be except for a situation where a case had already been heard by the CPRC.

#### PUBLIC COMMENT

Ben Therriault noted that there was no opposition to the proposed change, although his comments were not fully audible.

**ACTION: M/S/C (Lawson/Lorber) to approve a change to the current Ordinance 3.54.080(c), subject to the comments by City Attorney Lee that the case would be heard in the first instance whether an appeal or an original jurisdiction except where a case had already been heard by the CPRC; approved by a Roll Call vote: 8-0 (Ayes: Garcia, Jackson, Johnson, Lacy, Lawson, Lorber, Tunis and Chair Hegstrom; Noes: None; Abstain: None; Absent: None.**

- C. Discuss and Vote on Recommendation to the City Council/City Council Liaison to Update Definition of “Serious Bodily Injury” in ORDINANCE NO. 2-20 N.S. (R. Lorber)

Ben Therriault stated from the RPOA’s perspective, serious bodily injury was generally a higher level than great bodily injury. He noted that some of the subjectivity would have to be flushed out as would the timeframe involved. He commented that one of the things that was difficult on the job was that police needed to clearly know what they could and could not do.

Commissioner Lorber stated that currently one of the default ways that complaints were brought to the CPRC was when there had been a serious bodily injury, which was currently defined as requiring the immediate hospitalization for a period of 72 consecutive hours. She proposed that the 72 hours be replaced with 12 hours, and adding at the end the statutory definition of serious bodily injury in Penal Code Section 243(f) 4, which had the same language. She suggested 72 hours was a long time and 12 hours was very serious and it made sense to mirror the actual legal definition of serious bodily injury.

Commissioner Garcia commented that section was one of the newer sections of the ordinance and had been debated for weeks. He asked Commissioner Lorber if she had researched the reason for the 72 hours and noted that the more conditions the more ambiguity created.

Commissioner Garcia stated the 72 hours had been proposed to keep it simple and clear, an indicator of no doubt. He was open to debating the 72 hours but thinking back on the discussions five years ago, he agreed that it added uncertainty as to the rest of the language. He reiterated that section had been evaluated by many people and the language had been proposed because it could be more clearly executed.

Commissioner Lawson suggested that the definition of serious bodily injury that was not a definition of serious bodily injury in the City ordinance was problematic, had already been defined under state law, and suggested that the immediate hospitalization for a period of 72 consecutive hours was a clear standard that was almost impossible to meet. He stated it would be good to have a standard that actually matched state law.

Chair Hegstrom explained that the existing definition had been in the ordinance for seven years and that standard had been met only once by an individual who had underlying health problems.

Commissioner Jackson commented that 72 hours was a long time and would offer a clear indicator that someone indeed had serious bodily injury.

Pam Lee explained that Section 243(f) 4 from which the definition of serious bodily injury had been taken involved the misdemeanor of battery. She stated that whenever someone perpetrated a crime in the sense it would become battery, which was inflicting serious injury for bodily injury punishable by a misdemeanor. In the instance here, it was not a complaint of someone alleging serious bodily injury as a result of police action and was not an actionable complaint to which the CPRC was authorized to review. The complaints in which the CPRC was authorized to review included discrimination, excessive force, sexual harassment or assault. But the Investigative Officer was also required to conduct investigations anytime a firearm was discharged, there was an officer-involved shooting or a death, or a serious bodily injury. Up to this time it required 72 consecutive hours of hospitalization. If that time was reduced to what had been defined under the Penal Code for which battery may be considered a crime, it would open the door to requiring the Investigative Officer or any other officer doing his job to investigate a lot more cases because of the lower threshold. She understood the need for consistency as well as defined parameters, the result of that being a lower threshold which would open up a requirement to investigate a lot more cases.

Mr. Threet explained that it would be useful to have some additional clarity regardless of the time period for hospitalization and he suggested the term hospitalization was not entirely clear, and should be defined as to admitted to the hospital or being treated at the hospital because someone at a hospital for a long time could mean they were waiting because the hospital was understaffed.

Commissioner Lawson did not see that any reasonable person would assume that waiting for treatment would be part of the 12 hours of hospitalization.

Chair Hegstrom asked how many more cases might be involved with a change in hours of hospitalization and there was no definitive suggestion audible on tape.

**ACTION: M/S/C (Lawson/Hegstrom) to approve the recommendation to the City Council/City Council Liaison to update the definition of “Serious Bodily Injury” in ORDINANCE NO. 2-20 N.S. approved by a Roll Call vote: 7-1 (Ayes: Jackson, Johnson, Lacy, Lawson, Lorber, Tunis and Chair Hegstrom; Noes: Garcia; Abstain: None; Absent: None.**

## **XII. REPORTS FROM COMMISSIONERS, STAFF, AND RIDEALONGS**

Commissioner Lawson asked about the status of the tracking report, and CPRC Staff Lilia Corral referred to the tracking document submitted to the CPRC. The report was clarified and a missing number was identified by Investigative Officer Threet as complaint 2023-6 (Bones), which had involved a CHP officer and not an RPD officer.

Commissioner Lawson suggested there was a discrepancy in the tracking document that would have to be worked out with Mr. Threet.

Commissioner Johnson reported on a recent ridealong and commented she had learned that Richmond was not as bad as people thought it was and there were some issues that the police didn't need to be called to address.

Commissioner Garcia reported that the 23<sup>rd</sup> Street Trick or Treat event would be held on October 31 (Halloween) and he invited everyone to the event, especially if there were youngsters in the family.

Vice Chair Tunis reported he had attended the event honoring Pedie Perez and noted that the Perez Family had been thankful for the recognition. More than 50 people had attended that event.

Commissioner Lacy reported that there would be a Haunted House on October 28 through October 31 starting at 4:00 P.M. at 11261 San Pablo Avenue in El Cerrito, and there would be a Trick or Treat on Halloween in the parking lot with food, candy and activities for the kids.

## **XIII. EXECUTIVE SESSION – CLOSED TO THE PUBLIC – Government Code §54957 (b)**

- A.** Receive Complaint Reports from CIAO on Complaint 2022-12 (Foster). Discuss and Vote on Findings and Recommendations.

Return to Open Session

Pam Lee reported that the CPRC had met in Executive Session to discuss complaint 2022-12 (Foster) and had taken the following action.

**ACTION: The CPRC had met in Executive Session on Complaint 2022-12 (Foster), had voted unanimously to accept the investigative report and had also voted unanimously to make a finding that there was an excusable neglect in failing to file the complaint within 120 days of the incident; however, the CPRC lacked jurisdiction to make a determination on the complaint.**

## **XIV. ADJOURNMENT**

The meeting was adjourned at 8:37 P.M.

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Carol Hegstrom, Chair