



THE CITY OF SAN DIEGO  
**M E M O R A N D U M**

DATE: September 22, 2020  
TO: Parks and Recreation Department Communications Group  
FROM: Andrew Field, Director, Parks and Recreation Department  
SUBJECT: Fact-Finding Panel Selection and Investigation Procedures

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The purpose of this memorandum is to provide Parks and Recreation Department supervisory staff with pertinent information and procedures regarding conducting fact-finding investigations. This memo is meant to provide additional guidance only and should be read in conjunction with the Personnel Regulations, Administrative Regulations, Dimensions in Discipline Manual, and applicable Memoranda of Understanding.

Important procedures highlighted in this memo include the following:

- Duty to report
- Duty to respond
- Makeup of fact-finding panels
- Expectations for fact-finding investigations

**1. Duty to Report Allegations**

Any City employee, elected official, contract worker, intern, or volunteer who believes that a violation of City or Department policy has occurred or is occurring should immediately bring the matter to the attention of a supervisor, Appointing Authority, or any of the individuals or offices listed in the City's Equal Employment Opportunity (EEO) Policy - Annual Statement.

Note: Supervisors who observe or become aware of harassment of an employee, elected official, contract worker, intern, or volunteer, including by a third-party (e.g., a member of the public), must take prompt action and report the conduct, even if the harassment did not take place in their work unit.

**2. Duty to Respond to Allegations**

In accordance with the City's EEO Policy and Administrative Regulations, supervisors have a duty to respond to all allegations, reports, or claims from employees, park patrons, or other members of the public concerning possible violations of City or Departmental policy or law.

Upon learning of an allegation, supervisors must contact their Appointing Authority, usually the Deputy Director, to review the allegation and determine appropriate next steps. If it is determined that the allegation is credible and a fact-finding investigation is needed, the Appointing Authority will convene a fact-finding panel to investigate.

The designated fact-finding chairperson should notify their Human Resources (HR) liaison to inform them of the fact-finding investigation. The HR liaison is a useful resource for guidance during the fact-finding process.

If a supervisor witnesses employee misconduct directly, the supervisor and Appointing Authority should evaluate whether there are sufficient facts to determine if a violation of City policy or procedure occurred, and then take appropriate corrective action. For example, if a supervisor directly observes a subordinate employee misusing City equipment for personal use, they can take the actions necessary to correct the behavior, consistent with the progressive discipline process. However, if there is insufficient evidence, the Appointing Authority may initiate a fact-finding investigation to determine the facts and whether there was misconduct. Fact-findings are not used to determine performance-related issues, except in situations where a performance issue resulted in a violation of City policy, which would then be considered misconduct.

Appropriate Use of Investigatory Interview Process: When the allegation to be investigated is extremely narrow or limited, such as when there is just one person being investigated (i.e., one "Subject"), one or no witnesses, and the allegation of wrongdoing is confined to one specific event, it may be permissible to conduct only an Investigatory Interview rather than a fact-finding investigation. This must be cleared with the Department Director via the Appointing Authority. An Investigatory Interview consists of a supervisor interviewing a subordinate employee. If the employee could receive discipline as a result of the Investigatory Interview, the employee must be provided with notice of their right to representation.

### **3. The Fact-Finding Panel**

Upon determination of a credible allegation and need for a fact-finding investigation, the Appointing Authority should designate a Fact-Finding Chairperson and assign panel members to investigate the allegations at issue (together, the Chair and members comprise the "Panel"). The Appointing Authority should empanel members after consultation with the Administrative Services Program Manager or Coordinator and the Department Director or Assistant Director as needed. Care should be taken to ensure the Panel is comprised of individuals who can be impartial and are able to conduct a fair and unbiased investigation. The Panel should consist of two or three employees who are of a higher classification (at least one level above) than the Subject(s) and are able to give the fact-finding investigation top priority. If matters develop that interfere with the expeditious course of the fact-finding, the Fact-Finding Chair must notify the Appointing Authority immediately. In cases where the allegations suggest a need for expertise outside of the Department, or to eliminate any actual or perceived conflict of interest within the Department and ensure utmost impartiality of the investigation, the Appointing Authority may contact staff from other City departments to serve on the Panel.

Role of the Chair: The Fact-Finding Chair is responsible for issuing fact-finding notices, coordinating and conducting the fact-finding interviews, composing the interview questions with the assistance of the other panel members, and writing the fact-finding

report, also with the assistance of the other panel members. This employee should have good interviewing skills and the ability to take thorough, accurate notes and write a clear and concise report.

Panel Requirements: The Chair should have completed the Human Resources Department's Fact-Finding Training (refer to the Dimensions in Discipline workbook training, which is available in SuccessFactors) within the last five years and have served on at least one fact-finding panel during the last two years with the City. The Panel should refer to the Dimensions in Discipline Manual for specific information related to fact-findings and disciplinary processes. All members of the fact-finding panel need to be of a higher (at least one level above) classification than the Subject(s) of the fact-finding investigation.

In situations where the allegation under investigation is narrow, the Panel may consist of two persons, but this must be cleared with the Department Director via the Appointing Authority.

In no case shall a supervisor in the chain of command of a/the Subject of the investigation serve as the Chair, and neither shall a Subject's direct supervisor serve on the Panel. It is preferred that no one on the Panel be within a/the Subject's chain of command. Also, no member of the Panel should be designated as the Appointing Authority who will evaluate the result of the fact-finding investigation or act as the Appeal or Skelly Hearing Officer who will hear the Subject's appeal or Skelly hearing.

#### **4. Expectations for Fact-Finding Investigation**

Right to Representation: A Subject must be provided with notice of their right to representation in accordance with their applicable Memorandum of Understanding for represented employees, or the Personnel Manual, Index Code L-2, for unrepresented employees. Employees who are not a Subject are considered witnesses. A witness does not have a right to representation and does not need five days advance notice for the interview. The notice for a fact-finding interview of a witness just needs to set the interview for a reasonable time during the working hours of the employee.

Should information revealed during an interview of a witness indicate possible misconduct by the witness and the possibility of discipline, the Fact-Finding Chair should stop the interview and inform the witness that information reveals a potential for discipline and the employee is therefore entitled to representation. If the employee waives their right to representation in writing, the fact-finding interview may proceed at that time. Otherwise, the interview will need to be rescheduled to continue once the employee has had an opportunity to have representation present.

Admonishment: The Fact-Finding Chair must read the Admonishment to the interviewee at the beginning of the interview. The Admonishment with Lybarger/Garrity Rights Warning should be used when the fact-finding concerns allegations that may constitute a violation of law and result in criminal investigation or prosecution.

Development of Probing Questions: The Fact-Finding Chair should consult with the Appointing Authority during the course of the investigation, including requesting a review of draft interview questions, and keep the Appointing Authority apprised of the progress of the fact-finding process, including any significant findings as soon as they come to light. The Chair may also consult with the Administrative Services Office (Program Coordinator or Program Manager).

Investigations should cover the five “Ws”: Who, What, When, Where, and Why. For example:

- Who allegedly made the Threat or committed the Bullying and who else was present?
- What was the alleged Threat or Bullying and what exactly happened?
- When did the incident(s) happen?
- Where did the incident(s) occur?
- Why did the incident(s) occur?

The documentation during an investigation should be kept factual, without editorial comments. Interview questions should be written so as to elicit as much detailed information as possible. Open-ended questions should be used as much as possible, as they help to encourage the interviewee to elaborate. Generally, questions should be asked starting with general, open-ended questions and narrowing down to more direct, focused questions. An example of an open-ended question is, “Tell me what happened on June 4<sup>th</sup>, 2020.” Direct questions, such as those eliciting a “yes or no” answer, should be used to confirm or clarify information. These are often follow-up questions such as, “Were you the only person present during the events you described on June 4<sup>th</sup> besides the Subject?” A more effective follow-up question, however, might be “Who else was present on June 4<sup>th</sup> besides you and the Subject?” as it would elicit more than just a “yes” or “no” answer.

Follow-up questions are generally not included in the written list of questions prepared for the interview, as they will change according to the Subject’s or witness’s answers. If an interviewee refuses to respond to a question, the Fact-Finding Chair should pause the questioning and remind the interviewee of the Admonishment, which the Chair read aloud at the beginning of the interview, and reread the portion that states, “You are directed to answer all questions completely, truthfully, and to the best of your knowledge.” Interviewees should be informed that refusal to answer a direct question could be deemed insubordination and could result in disciplinary action. Unwillingness to cooperate with the interview can be noted as a matter of fact in the investigation.

To ensure that the interviewees feel comfortable sharing their testimonies, the Panel should create a non-restrictive environment for the interview. The Panel should not use threats, coercion, or intimidation in questioning a Subject or witnesses. The Panel should avoid making any promises of benefit or threat of adverse action.

If requested, a copy of the fact-finding questions may be provided to the Subject and the employee’s representative at the beginning of the Subject’s interview. The employee’s representative may retain the copy of the questions provided.

No fact-finding interview shall be recorded without the express consent of all parties present. If a recording is made pursuant to such consent, the party who makes the recording will provide a copy, within one working day, to any participant who requests it.

Whenever evidence of egregious misconduct or performance issues emerge during an investigation, it should immediately be brought to the attention of the Appointing Authority and the Human Resources Department.

Concluding the Interview: At the end of the interview, interviewees should be reminded of the portion of the Admonishment that states:

The City of San Diego has a strong interest in protecting the integrity of its fact-finding investigations, preserving evidence, preventing fabrication, and protecting witnesses from harassment, intimidation, and retaliation. You are directed not to engage in any harassing, intimidating, or retaliatory conduct toward anyone. You also must not try to interfere with the investigation in any way. Any violation of these directives may result in discipline.

The Chair should explain that this means the interviewee is prohibited from trying to influence other witnesses. Attempting to influence the testimony of any potential witness will result in discipline. By the same token, the interviewee should be reminded that they are protected from retaliation for having participated in the investigation, and if anyone tries to harass or intimidate them, or if they feel they are being retaliated against because they participated in the investigation, they should report this to a member of the Panel, their chain of command, the Administrative Services Program Manager or Coordinator, Department management, or the Human Resources Department immediately.

Paid Administrative Leave Pending Investigation: In some cases, there is a need for the temporary removal of an employee from the workplace, pending the outcome of the investigation, to maintain the wellbeing, safety, security, or protection of City employees, members of the public, City property, or City resources. The determination whether temporary removal is necessary will be made by the Appointing Authority, Assistant Director, or Director, in consultation with the Administrative Services Program Manager or Coordinator and the Human Resources Department. Human Resources Department approval is required to place an employee on Paid Administrative Leave. Paid Administrative Leave places an employee on a fully paid leave of absence for up to 30 days. In light of the 30-day limit, the Panel must make every effort to complete the fact-finding investigation within that time. Extensions of Paid Administrative Leave will require the approval of the Human Resources Department and the Chief Financial Officer.

Note: The Appointing Authority may consider other options prior to requesting Paid Administrative Leave for a Subject, such as reassigning the employee to another work location, as appropriate.

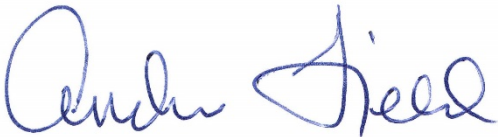
Tracking Progress of Investigation: The Administrative Services Program Coordinator will track the progress of all fact-finding investigations and check in periodically with the Fact-Finding Chair to ensure that timelines are met. All fact-findings should be completed as expeditiously as possible, but in no case shall a fact-finding take longer than 120 days to

complete, from the first interview to completion of the fact-finding report. **In all but rare cases, fact-findings should be concluded within a far shorter timeframe than this.**

Final Report: The fact-finding report template is found on the Human Resources CityNet page. Fact-finding investigations must be completed within 30 days of the last interview/Subject interview<sup>1</sup>, with the Notice of Completion issued to the Subject and the fact-finding report completed. In *rare instances* when a fact-finding cannot be completed within this 30-day timeframe, the Chair shall work with the Appointing Authority and Administrative Services Program Manager or Coordinator to request an extension from the Human Resources Department. If an extension is granted, the HR Liaison will notify the Subject and/or the Subject's representative (if the Subject is represented) as well as the Fact-Finding Chair.

In connection with any discipline or proposed discipline, the Subject will be entitled to receive all documentation related to the disciplinary action and the reason for the action. This includes the notes made in connection with the fact-finding, if requested. As with all personnel matters, any discipline that is imposed shall be discussed only with the disciplined employee and their designated representative.

In conclusion, the goal of the fact-finding investigatory process is to ensure fairness, impartiality, transparency, thoroughness, competency, and a detailed report that reveals all the facts determined. The Department takes employee rights and responsibilities very seriously. It is my expectation that our Department will report all employee misconduct, respond to all complaints, and investigate promptly and thoroughly all credible allegations. As previously stated, individuals assigned to serve on fact-finding panels should be prepared to make these investigations their top priority.



Andrew Field  
Director  
Parks and Recreation Department

AF:arc

Attachment: Checklist for the Fact-Finding Chair

cc: Kristina Peralta, Interim Deputy Chief Operating Officer  
Parks and Recreation Department Unclassified Leadership Team

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<sup>1</sup> Please refer to applicable Memorandum of Understanding regarding completion timelines

References:

- Administrative Regulation 96.50, Equal Employment Opportunity Policy and Complaint Resolution Procedure:  
<https://www.sandiego.gov/sites/default/files/legacy/humanresources/pdf/ar/ar9650.pdf>
- Administrative Regulation 97.10, Threat Management Policy  
<https://www.sandiego.gov/sites/default/files/legacy/humanresources/pdf/ar/ar9710threat.pdf>
- Dimensions in Discipline Manual  
<https://citynet.sandiego.gov/sites/default/files/dimensionsindiscipline.pdf>
- Dimensions in Discipline Workbook  
<https://citynet.sandiego.gov/sites/default/files/dimensions-in-discipline-training.pdf>
  
- Employee Code of Conduct Handbook  
<https://citynet.sandiego.gov/sites/default/files/ecch07.pdf>
- EEO Policy - Annual Statement, dated July 1, 2020:  
<https://citynet.sandiego.gov/sites/default/files/eeopolicyfy21.pdf>
- HR Quick Reference  
<https://citynet.sandiego.gov/sites/default/files/quickreference.pdf>
- Memorandum of Understanding, AFSCME Local 127:  
<https://www.sandiego.gov/sites/default/files/local-127-fy21-mou.pdf>
- Memorandum of Understanding, Municipal Employees Association:  
<https://www.sandiego.gov/sites/default/files/fy21-mea-mou.pdf>
- Personnel Manual Index K-2:  
<https://www.sandiego.gov/sites/default/files/regs.pdf#PAGE=393>
- Quick Guide: Paid Administrative Leave Pending Investigation  
<https://citynet.sandiego.gov/sites/default/files/qg-paid-admin-leave-pending-investigation.pdf>

## Checklist for the Fact-Finding Chair

This checklist should be used as a guideline for all Fact-Finding activities. The Fact-Finding Chair should complete this checklist and submit it to the department Fact-Finding Coordinator at [EFerreira@sandiego.gov](mailto:EFerreira@sandiego.gov) upon completion of the Fact-Finding<sup>1</sup>. Please use the Fact-Finding Templates with the appropriate COVID-19 language found on the Human Resources website at <https://citynet.sandiego.gov/hr/documents#discipline>.

<b>Description of Complaint/Allegation:</b>
<b>Date of Complaint/Allegation:</b>
<b>Date Panel Assigned:</b>

### Preparation for Fact-Finding

	Chair	Panel Member	Panel Member
<b>Assigned Panel Members*:</b>			
* Panels are assigned by the Appointing Authority.			
<b>Date of Preliminary Panel Meeting*:</b>			
*Used to review all relevant information/documents, determine scope of investigation, list of witnesses, and to begin question development.			
<b>Date of Issued Notice of Fact-Finding Investigation Memo to Subject*:</b>			
*This memo notifies the Subject/s that they are the/a Subject of a Fact-Finding. If multiple subjects, document the dates each memo was sent.			

### Question Development

	Panel Review Dates	DD Review Dates	Dept HR Review Dates <sup>2</sup>
<b>Complainant Questions</b>			
<b>Witness Questions: If multiple dates, please note.</b>			
<b>Subject Questions: If multiple dates, please note.</b>			

<sup>1</sup> Provide the complete Fact-Finding packet (hardcopies of all notes, evidence, reports, etc.) to the Administrative Services Program Coordinator at completion of Fact-Finding.

<sup>2</sup> Questions to be reviewed by Administrative Services Program Coordinator and/or Administrative Services Program Manager.



**Issue Fact-Finding Interview Notices**

	Date		Date
<b>Complainant Notice of FF</b>			
Admonishment*		Waiver of Right to Representation, if applicable**	
<b>Witness Notice of FF</b>			
Admonishment*		Waiver of Right to Representation, if applicable**	
<b>Subject Notice of FF</b>			
Admonishment or Admonishment with Lybarger/Garrity Warning, if applicable*		Waiver of Right to Representation, if applicable**	
Plan to provide the Subject and any representative with a copy of the questions at the start of the interview, if requested. If the Subject or their representative requests, you may allow them to step out for a reasonable amount of time to review.			
*Make two copies of the appropriate Admonishment for each interview. The interviewee will sign one and the Fact-Finding Chair will sign one. Each keep a copy. If the interviewee declines to sign, the Chair should note "Chose not to sign" in the signature blank.			
**Bring extra blank copies of the Waiver of Representation, in case the Subject elects not to bring a representative, or in case a Complainant or Witness states something that could lead to their own discipline. If this occurs, stop the interview, and inform them they have the right to representation and the interview can be rescheduled. If they opt to continue without representation, have them sign.			

**Completion of Fact-Finding**

<b>Draft FF Report Date:</b>		<b>Panel Review Date:</b>	
<b>DD Review</b>		<b>Dept HR Review</b>	
<b>Appointing Authority to determine discipline, if misconduct is found (check which apply):</b>			
<b>Allegations Substantiated:</b> _____		<b>Unsubstantiated:</b> _____	
<b>Date of Final FF Report*</b>			
*Report should be completed within 30 days of the last interview/Subject interview <sup>3</sup> . Report is submitted to the AA for review. Report is only provided to a Subject and their representative as part of a discipline packet. If no discipline ensues, Report is not provided to any Subject, representative, or witness.			
<b>Date Issued Notice of Fact-Finding Completion to the Subject and Representative*:</b>			
*Notice is issued when Fact-Finding Report is finalized. Do not provide Report or fact-finding notes to the Subject or their representative unless directed by your Appointing Authority. Notes will be provided only if discipline is issued and the notes are requested. If discipline was determined as a result of the fact-finding investigation, the Fact-Finding Report must be attached to the discipline document.			
<b>(to be completed by Administrative Services Program Coordinator):</b>			<b>Date</b>
<b>Discipline Issued</b> _____			

<sup>3</sup> Please refer to applicable Memorandum of Understanding regarding completion timelines.