

COMMISSION ON POLICE PRACTICES

Wednesday, June 5, 2024

4:30pm-7:30pm

**REGULAR BUSINESS MEETING
AND AD HOC PERSONNEL COMMITTEE
JOINT MEETING AGENDA**

**Balboa Park Santa Fe Room
2144 Pan American W. Road
San Diego, CA 92101**

Commissioners: Octavio Aguilar, John Armantrout, Bonnie Benitez, Alec Beyer, Dennis Brown, Cheryl Canson, Doug Case, Stephen Chatzky, Armando Flores, Christina Griffin-Jones, Dwayne Harvey, Brandon Hilpert, Daniel Mendoza, Darlanne Mulmat, Clovis Honoré, James Justus, Lupe Lozano-Diaz, Ada Rodriguez, Yvania Rubio, and Gloria Tran

Ad Hoc Personnel Committee: Dennis Brown, Clovis Honoré, James Justus, Darlanne Mulmat

Please be advised that the City of San Diego is presently engaged in a recruitment process to fill the position of Executive Director to the Commission on Police Practices (Commission), which is currently held by an interim director. The Commission does not have appointing authority or subject matter jurisdiction over the recruitment or appointment of the Executive Director. Under San Diego City Charter section 4.1.2, the City Council must appoint and establish the initial annual compensation for the Commission's' Executive Director, who will then serve at the direction and will of the Commission following appointment. To recruit and make advisory recommendations related to the selection of an Executive Director, the City Council has established an Ad Hoc Committee that includes two Councilmembers and four members of the Commission. See San Diego Resolution R-315326 (Jan. 29, 2024). The public may find information and meeting notices related to the work of the Ad Hoc Committee at the following links:

https://docs.sandiego.gov/council_reso_ordinance/rao2024/R-315326.pdf

<https://www.sandiego.gov/council-committees/ah-cpp-recruitment-committee-public-comment-form>

The Ad Hoc Personnel Committee Meeting shall only jointly convene where all four commissioners of the committee are in attendance. If the Ad Hoc Personnel meeting is not convened, there will be no discussion or update at the meeting regarding the Executive Director selection or recruitment. No formal action may be taken by the Commission or the Personnel Committee regarding the Executive Director selection pursuant to the City Charter.

Staff: Outside Counsel Duane Bennett, Interim Executive Director Danell Scarborough, Executive Assistant Alina Conde, Administrative Assistant Jon'Nae McFarland, Community Engagement Coordinator Yasmeen Obeid

The Commission on Police Practices (Commission) meetings will be conducted pursuant to the provisions of California Government Code Section 54953 (a), as amended by Assembly Bill 2249.

The Commission business meetings will be in person and the meeting will be open for in-person testimony. Additionally, we are continuing to provide alternatives to in-person attendance for participating in our meetings. In lieu of in-person attendance, members of the public may also participate via telephone/Zoom.

The link to join the meeting by computer, tablet, or smartphone at 4:30pm is:

<https://sandiego.zoomgov.com/j/1610950576>

Meeting ID: 161 095 0576

In-Person Public Comment on an Agenda Item: If you wish to address the Commission on an item on today's agenda, please complete and submit a speaker slip before the Commission hears the agenda item. You will be called at the time the item is heard. Each speaker must file a speaker slip with the Executive Director at the meeting at which the speaker wishes to speak indicating which item they wish to speak on. Speaker slips may not be turned in prior to the day of the meeting or after completion of in-person testimony. In-person public comment will conclude before virtual testimony begins. Each speaker who wishes to address the Commission must state who they are representing if they represent an organization or another person.

For discussion and information items each speaker may speak up to three (3) minutes, subject to the Chair's determination of the time available for meeting management purposes, in addition to any time ceded by other members of the public who are present at the meeting and have submitted a speaker slip ceding their time. These speaker slips should be submitted together at one time to the Executive Director. The Chair may also limit organized group presentations of five or more people to 15 minutes or less.

In-Person Public Comment on Matters Not on the Agenda: You may address the Commission on any matter not listed on today's agenda. Please complete and submit a speaker slip. However, California's open meeting laws do not permit the Commission to discuss or take any action on the matter at today's meeting. At its discretion, the Commission may add the item to a future meeting agenda or refer

the matter to staff or committee. Public comments are limited to three minutes per speaker. At the discretion of the Chair, if a large number of people wish to speak on the same item, comments may be limited to a set period of time per item to appropriately manage the meeting and ensure the Commission has time to consider all the agenda items. A member of the public may only provide one comment per agenda item. In-person public comment on items not on the agenda will conclude before virtual testimony begins.

Virtual Platform Public Comment to a Particular Item or Matters Not on the Agenda: When the Chair introduces the item you would like to comment on (or indicates it is time for Non-Agenda Public Comment), raise your hand by either tapping the “Raise Your Hand” button on your computer, tablet, or Smartphone, or by dialing *9 on your phone. You will be taken in the order in which you raised your hand. You may only speak once on a particular item. When the Chair indicates it is your turn to speak, click the unmute prompt that will appear on your computer, tablet or Smartphone, or dial *6 on your phone. The virtual queue will close when the last virtual speaker finishes speaking or 5 minutes after in-person testimony ends, whichever happens first.

Written Comment through Webform: Comment on agenda items and non-agenda public comment may also be submitted using the [webform](#). If using the webform, indicate the agenda item number you wish to submit a comment for. All webform comments are limited to 200 words. On the [webform](#), members of the public should select Commission on Police Practices (even if the public comment is for a Commission on Police Practices Committee meeting).

The public may attend a meeting when scheduled by following the attendee meeting link provided above. To view a meeting archive video, click [here](#). Video footage of each Commission meeting is posted online [here](#) within 24-48 hours of the conclusion of the meeting.

Comments received no later than 11am the day of the meeting will be distributed to the Commission on Police Practices. Comments received after the deadline described above but before the item is called will be submitted into the written record for the relevant item.

Written Materials: You may alternatively submit via U.S. Mail to Attn: Office of the Commission on Police Practices, 525 B Street, Suite 1725, San Diego, CA 92101. Materials submitted via U.S. Mail must be received the business day prior to the meeting to be distributed to the Commission on Police Practices.

If you attach any documents to your comment, they will be distributed to the Commission or Committee in accordance with the deadlines described above.

- I. CALL TO ORDER/WELCOME (Chair Tran)
- II. CPP COMMISSION ROLL CALL (Executive Assistant Conde)
 - A. AD HOC Personnel Committee Roll Call

- III. PURPOSE OF THE COMMISSION ON POLICE PRACTICES
The purpose of the Commission on Police Practices (CPP or Commission) is to provide independent community oversight of SDPD, directed at increasing community trust in SDPD & increasing safety for community and officers. The purpose of the Commission is also to perform independent investigations of officer-involved shootings, in-custody deaths and other significant incidents, and an unbiased evaluation of all complaints against members of SDPD and its personnel in a process that will be transparent and accountable to the community. Lastly, the Commission also evaluates the review of all SDPD policies, practices, trainings, and protocols and represents the community in making recommendations for changes.
- IV. APPROVAL OF MEETING MINUTES (Chair Tran)
 - A. CPP Regular Meeting Minutes of May 15, 2024
- V. CHAIR/CABINET REPORT (Chair Tran)
- VI. NON-AGENDA PUBLIC COMMENT (Community Engagement Coordinator Yasmeen Obeid)
- VII. POLICE PURSUIT AD HOC COMMITTEE (Chair Tran and Ad Hoc Committee Chair Case)
 - A. Ad Hoc Committee Update
 - B. Public Comment
 - C. Discussion
- VIII. SAN DIEGO POLICE PROTEST POLICY
 - A. Policy Recommendations (Commissioner Hilpert)
 - B. Public Comment
 - C. Discussion
- IX. POLICY COMMITTEE (Chair Tran)
 - A. Presentation
 - B. Public Comment
 - C. Discussion
 - D. Action—Vote on forming Policy Committee
- X. AD HOC OPERATING PROCEDURES (Ad Hoc Committee Chair Case)
 - A. Presentation:
 - 1. Case Review Procedure
 - 2. Subpoena Procedure
 - B. Public Comment
 - C. Discussion
 - D. Action—Vote to approve each procedure separately
- XI. CLOSED SESSION
 - A. Public comment
 - B. Outside Counsel Duane Bennett – Lead CPP into Closed Session
(Not Open to the Public)

C. PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

Discussion & Consideration of Complaints & Reports: Pursuant to Government Code Section 54957 to discuss complaints, charges, investigations, and discipline (unless the employee requests an open public session) involving San Diego Police Department employees, and information deemed confidential under Penal Code Sections 832.5–832.8 and Evidence Code Section 1040. Reportable actions for the Closed Session items on the agenda will be announced and posted on the Commission’s website at www.sandiego.gov/cpp.

- | | |
|-------|---|
| I. | San Diego Police Department Feedback on Case Specific Matters (0) |
| II. | Shooting Review Board Reports (0) |
| III. | Officer-Involved Shooting (1) |
| IV. | Category II Case Audit Reports (0) |
| V. | Discipline Reports (4) |
| VI. | Case Review Team Reports (2) |
| VII. | Case-Specific Recommendations to the Mayor/Chief (0) |
| VIII. | Referrals to other governmental agencies authorized to investigate activities of a law enforcement agency (0) |
| IX. | Legal Opinion(s) Request & Response (0) |
| X. | Findings Letter Example (1) |

XII. REPORT FROM CLOSED SESSION (Outside Counsel Duane Bennett)

XIII. COMMISSIONER COMMENTS (Time Permitting)
A. Commissioner Ride Along

XIV. ADJOURNMENT

Materials Provided:

- DRAFT Minutes from Regular Meeting on May 15, 2024
- DRAFT Case Review Procedure
- DRAFT Subpoena Procedure

Access for People with Disabilities: As required by the Americans with Disabilities Act (ADA), requests for agenda information to be made available in alternative formats, and any requests for disability-related modifications or accommodations required to facilitate meeting participation, including requests for alternatives to observing meetings and offering public comment as noted above, may be made by contacting the Commission at (619) 236-6296 or commissionpolicepractices@sandiego.gov.

Requests for disability-related modifications or accommodations required to facilitate meeting participation, including requests for auxiliary aids, services, or interpreters, require different lead times, ranging from five business days to two weeks. Please keep this in mind and provide as much advance notice as possible to ensure availability. The city is committed to resolving accessibility requests swiftly to maximize accessibility.

Commission on Police Practices

**COMMISSION ON POLICE PRACTICES
REGULAR MEETING REGULAR BUSINESS MEETING
AND AD HOC PERSONNEL COMMITTEE
JOINT MEETING MINUTES**

Wednesday, May 15, 2024

4:30pm-7:30pm

**Balboa Park Santa Fe Room
2144 Pan American W. Road
San Diego, CA 92101**

Click <https://youtu.be/JnkpBknqejg> to view this meeting on YouTube.

CPP Commissioners Present:

Chair Gloria Tran

1st Vice Chair Dennis Brown

2nd Vice Chair Doug Case

Bonnie Benitez (arrived at 4:35 pm)

Alec Beyer

Cheryl Canson (arrived at 4:34 pm)

Stephen Chatzky

Lupe Diaz

Armando Flores

Christina Griffin-Jones

Dwayne Harvey (arrived at 4:35 pm)

Brandon Hilpert

Clovis Honoré

James Justus

Daniel Mendoza

Darlanne Mulmat

Ada Rodriguez

Excused:

Octavio Aguilar

John Armantrout

Yvania Rubio

Absent:

None

Ad Hoc Personnel Committee Present:

Committee Chair, 1st Vice Chair Dennis Brown

Clovis Honoré

James Justus

Darlanne Mulmat

CPP Staff Present:

Danell Scarborough, Interim Executive Director

Duane Bennett, CPP Outside Counsel

Olga Golub, Chief Investigator

Yasmeen Obeid, Community Engagement Coordinator

Alina Conde, Executive Assistant

Jon'Nae McFarland, Administrative Aide

- I. CALL TO ORDER/WELCOME: Chair Gloria Tran called the meeting to order at 4:30 pm, once a quorum was formed.
 - Welcome to CPP newest Commissioner, Daniel Mendoza.
 - Commissioners Laila Aziz and Dennis Larkin have resigned. Just a reminder that nominations are open to join the Commission. If any community member is interested, please go to the Commission on Police Practices website to enter your candidacy. The deadline for nominations for these seats is Monday, June 3, 2024, at 11:59 p.m.
 - The City H.R. Department has agreed to extend coverage of the City's Employee Assistance Program to CPP Commissioners. Handout provided to each Commissioner.
 - The CPP will have a Spanish version of the complaint form up on the CPP website soon.
 - Congratulations to new police Chief Scott Wahl to his official appointment to that role.
- II. ROLL CALL: Executive Assistant Alina Conde conducted the roll call for the Commission; established quorum.
 - A. Executive Assistant Alina Conde conducted roll call for the Ad Hoc Personnel Committee.
- III. PURPOSE OF THE COMMISSION ON POLICE PRACTICES: The purpose of the Commission on Police Practices (CPP or Commission) is to provide independent community oversight of SDPD, directed at increasing community trust in SDPD & increasing safety for community and officers. The purpose of the Commission is also to perform independent investigations of officer-involved shootings, in-custody deaths and other significant incidents, and an unbiased evaluation of all complaints against members of SDPD and its personnel in a process that will be transparent and accountable to the community. Lastly, the Commission also evaluates the review of all SDPD policies, practices, trainings, and protocols and represents the community in making recommendations for changes.
- IV. APPROVAL OF MEETING MINUTES
 - A. CPP Regular Meeting Minutes of May 15, 2024
 1. **Motion:** Commissioner Brandon Hilpert moved for approval of the CPP Regular Meeting Minutes of April 17, 2024. Commissioner James Justus seconded the motion. The motion passed with a vote of 14-0-0.
Yays: Chair Tran, 1st Vice Chair Brown, 2nd Vice Chair Case, Beyer, Canson, Chatzky, Diaz, Flores, Griffin-Jones, Hilpert, Honoré, Mendoza, Mulmat, and Rodriguez
Nays: 0
Abstained: 0
Absent/Excused/Arrived Late: Aguilar, Armantrout, Benitez, Harvey, Rubio
- V. NON-AGENDA PUBLIC COMMENT: None
- VI. SAN DIEGO POLICE PROTEST POLICY
 - A. SDPD's First Amendment Activity Facilitation and Management (Chief David Nisleit and Executive Assistant Chief Paul Connelly) (*Timestamp 6:52*)
 - B. Interim CPP Recommendations (Commissioner Hilpert) (*Timestamp 29:58*)
 - C. Public Comment

In person Public Comment: Kate Yavenditti (*Timestamp 17:07*) – Spoke regarding public protests and SDPD policy.

Virtual Public Comment: Yusef Miller (*Timestamp 18:51*) – Spoke regarding public protests.

D. Discussion

E. **Motion:** Chair Tran moved to table the vote to potentially send recommendations to Police Department. Commissioner Hilpert seconded the motion. The motion passed with a vote of 15-0-1.

Yays: Chair Tran, 1st Vice Chair Brown, 2nd Vice Chair Case, Benitez, Beyer, Canson, Chatzky, Diaz, Flores, Griffin-Jones, Hilpert, Justus, Mendoza, Mulmat, and Rodriguez

Nays: 0

Abstained: Honoré

Absent/Excused: Aguilar, Armantrout, Harvey, Rubio

VII. Executive Director Hiring Update (1st Vice Chair Brown)

A. Presentation (*Timestamp 57:35*)

B. Public Comment

In person Public Comment: Kate Yavenditti (*Timestamp 1:08:43*) – Spoke Executive Director hiring update

C. Discussion

VIII. PARALEGAL INTRODUCTION (Outside Counsel Duane Bennett)

A. Joseph Comstock (appeared in person) and Judith Ezeh (Judith appeared virtually) (*Timestamp 1:11:38*)

B. Public Comment – None

C. Discussion – Both paralegals introduced themselves to the Commission

IX. POLICE PURSUIT AD HOC COMMITTEE

A. Ad Hoc Committee Update –

1. Presentation – (*Timestamp 1:17:20*) Ad Hoc Committee Chair Doug Case gave an update on the progress of the committee's action plan.

2. Public Comment – None

3. Discussion

X. AD HOC NOMINATING COMMITTEE (Chair Tran)

A. Per bylaws, 3 Commissioners form Nominating Committee

B. Public Comment – None

C. Discussion

D. **Motion:** Chair Tran moved to accept the nominating committee members of Commissioners Benitez, Rodriguez, and Harvey. 1st Vice Chair Dennis Brown seconded the motion. The motion passed with a vote of 17-0-0.

Yays: Chair Tran, 1st Vice Chair Brown, 2nd Vice Chair Case, Benitez, Beyer, Canson, Chatzky, Diaz, Flores, Griffin-Jones, Harvey, Hilpert, Honoré, Justus, Mendoza, Mulmat, and Rodriguez

Nays: 0

Abstained: 0

Absent/Excused: Aguilar, Armantrout, Rubio

XI. AD HOC OPERATING PROCEDURES (Ad Hoc Committee Chair Case)

A. Presentation:

1. Complaint procedure
 - a. Public Comment - None
 - b. Discussion - (*Timestamp 1:26:01*)
 - c. **Motion:** 2nd Vice Chair Case moved to accept the complaint procedure. Commissioner Mulmat seconded the motion. The motion passed with a vote of 16-0-1.
Yays: Chair Tran, 1st Vice Chair Brown, 2nd Vice Chair Case, Benitez, Beyer, Canson, , Diaz, Flores, Griffin-Jones, Harvey, Hilpert, Honoré, Justus, Mendoza, Mulmat, and Rodriguez
Nays: 0
Abstained: Chatzky
Absent/Excused: Aguilar, Armantrout, Rubio
2. Subpoenas
 - a. **Motion:** 2nd Vice Chair Case moved to table the Subpoenas presentation. Commissioner Ada Rodriguez seconded the motion. The motion passed with a vote of 17-0-0.
Yays: Chair Tran, 1st Vice Chair Brown, 2nd Vice Chair Case, Benitez, Beyer, Canson, Chatzky, Diaz, Flores, Griffin-Jones, Harvey, Hilpert, Honoré, Justus, Mendoza, Mulmat, and Rodriguez
Nays: 0
Abstained: 0
Absent/Excused: Aguilar, Armantrout, Rubio
3. Pitchess Motions/Police Discovery
 - a. Public Comment - None
 - b. Discussion - (*Timestamp 1:26:01*)
 - c. **Motion:** Commissioner Darlann Mulmat moved to accept the Pitchess Motions/Police Discovery procedures. Commissioner Ada Rodriguez seconded the motion. The motion passed with a vote of 16-0-1.
Yays: Chair Tran, 1st Vice Chair Brown, 2nd Vice Chair Case, Benitez, Beyer, Canson, Chatzky, Flores, Griffin-Jones, Harvey, Hilpert, Honoré, Justus, Mendoza, Mulmat, and Rodriguez
Nays: 0
Abstained: Diaz
Absent/Excused: Aguilar, Armantrout, Rubio

XII. CLOSED SESSION (NOT OPEN TO THE PUBLIC)

- A. Public Comment - None
- B. Outside Counsel Mr. Duane Bennett - Led CPP into Closed Session
- C. PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE
Discussion & Consideration of Complaints & Reports: Pursuant to Government Code Section 54957 to discuss complaints, charges, investigations, and discipline (unless the employee requests an open public session) involving San Diego Police Department employees, and information deemed confidential under Penal Code Sections 832.5-832.8 and Evidence Code Section 1040. Reportable actions for the Closed Session items on the agenda will be posted on the Commission's website at www.sandiego.gov/cpp or stated at the beginning of the Open Session meeting if the meeting is held on the same day.

- | | |
|-------|---|
| I. | San Diego Police Department Feedback on Case Specific Matters |
| II. | Officer Involved Shooting (0) |
| III. | Category II Case Audit Reports (2) |
| IV. | Discipline Reports (0) |
| V. | Category I Case Review Reports (1) |
| VI. | Case-Specific Recommendations to the Mayor/Chief (0) |
| VII. | Referrals to other governmental agencies authorized to investigate activities of a law enforcement agency (0) |
| VIII. | Legal Opinion(s) Request & Response (0) |

- XIII. REPORT OUT FROM CLOSED SESSION (7:11pm): Outside Counsel Duane Bennett reported that there was no reportable action.
- XIV. THANK YOU, AMAZING INTERNS! (Community Engagement Coordinator Yasmeen Obeid and Executive Assistant Alina Conde) (*Timestamp 1:12:20*)
- A. Ayan Mohamed
 - B. Tomas Moshi
 - C. Maria Jaramillo Pacheco
 - D. Ezra Skerlecz
- XV. COMMISSIONER COMMENTS:
- 1st Vice Chair Dennis Brown (*Timestamp 1:39:30*) regarding a scam that is happening in San Diego posing as SDPD.
 - Commissioner Daniel Mendoza (*Timestamp 1:42:12*) introduction comments by Commissioner Mendoza.
 - Commissioner Clovis Honoré (*Timestamp 1:43:17*) regarding access to the CPP suite.
 - Commissioner James Justus (*Timestamp 1:43:43*) regarding CPP budget cuts.
 - Commissioner Christina Griffin-Jones (*Timestamp 1:45:22*) showing gratitude to the Interim Executive Director and Cabinet for getting information to the Commission regarding protest policy.
- XVI. ADJOURNMENT: The meeting adjourned at 7:25 pm.

City of San Diego Commission on Police Practices

**STANDARD OPERATING PROCEDURE ON REQUIRED
REVIEW OF INTERNAL AFFAIRS INVESTIGATIONS
OF POLICE OFFICER MISCONDUCT**

San Diego Municipal Section 26.1107 spells out the duties and powers of the Commission on Police Practices (Commission). Subsection (a) (6) states, in part, “The Commission must review and evaluate all factual findings and evidentiary conclusions of the Police Department arising from Police Department investigations of alleged misconduct by police officers, including internal investigations not resulting from a complaint ...” Subsection (3) also gives the Commission the discretion to independently investigate complaints that meet specified criteria.

San Diego Police Department Investigations

All allegations of police misconduct, including complaints generated through the Commission or an alternate process, are investigated by the San Diego Police Department (Police Department). Allegations of unlawful arrest or detention, excessive force, discrimination, slur, search and seizure violations, or criminal conduct are investigated by Internal Affairs (IA). Less serious complaints that involve only allegations of courtesy, procedure, conduct, and service are investigated by the subject officer’s Division. Allegations of criminal misconduct are investigated by the Police Department Professional Standards Unit. The investigating officer is responsible for completing a thorough investigation and writing an investigative report that is fair to both the complainant(s) and subject officer(s). Results of investigations are documented in the Investigator's Report. A complaint may contain more than one allegation. At the conclusion of the investigation, IA makes one of the following findings for each allegation:

1. Sustained – the Department member committed all or part of the alleged acts of misconduct;
2. Not Sustained – the investigation produced insufficient information to clearly prove or disprove the allegations;
3. Exonerated – the alleged act occurred was justified, legal and proper, or was within policy; or
4. Unfounded – the alleged act did not occur.

The Investigator’s Report, including the finding(s), and all related material in the Police Department investigation file are forwarded to the Commission, via the Executive Director, for their review. The Executive Director shall implement procedures to ensure compliance with all legal confidentiality requirements.

Commission Case Review

The Commission’s Executive Director and Chief Investigator will review the IA case file and advise members of the Cabinet whether a matter merits an independent investigation instead of a review. The Cabinet will have the authority to initiate an investigation after consultation with the Executive Director and Chief Investigator. The Commission will be provided a list of received complaints and complaints selected for investigation by the Cabinet and may provide

feedback to the Cabinet.

The Executive Director, in consultation with the Cabinet, will assign each case to be reviewed to (1) a group of Commissioners, (2) Commission staff, or (3) a combination of Commission staff and one or more Commissioners, hereinafter referred to as “Reviewers.” The Reviewers will review and analyze the IA case file and prepare a report with recommendations for consideration by the Commission. All final determinations will be made by a vote of the entire Commission. The Reviewers are responsible for reviewing the Investigator’s Report and all related materials (reports, body worn camera and other videos, audio recordings of interviews, etc.). The Reviewers shall have access to all materials used by IA in the course of their investigation. If during the course of their review, the Reviewers determine that an independent Commission investigation of one or more of the allegations that the Commission has discretion to investigate (in accordance with the City of San Diego Municipal Code §26.1107) may be warranted, a recommendation for an independent investigation shall be sent to the Executive Director and Chief Investigator. If the Cabinet, in consultation with the Executive Director and Chief Investigator, determines that an independent investigation is not warranted or that there is insufficient time to complete an investigation within the time restrictions specified in the California Peace Officers’ Bill of Rights, the case will be returned to the Reviewers for findings.

The Reviewers may contact the IA investigator if they need clarification or additional information regarding a case and the findings, if they believe the allegations listed in the Investigator’s Report do not accurately capture all those asserted by the complainant if they believe that an additional finding is warranted, or other issues regarding a case. Questions should be sent via a form developed by the Office of the Commission. If the Reviewers desire additional communication after receiving the response from the IA investigator, they may request a meeting with the IA Lieutenant supervising the investigator. If issues remain after meeting with the Lieutenant, the Reviewers can ask the Executive Director to set up a meeting with the IA Captain, which may be attended by Reviewers, appropriate Commission and IA staff, and the Commission Chair. The goal of these communications is to resolve questions, issues, and disagreements before the Reviewers finalize their report.

The Reviewers will indicate whether they determine that the Internal Affairs investigation was thorough and complete and reflects the issues raised by the complainant. For each allegation, the Reviewers will indicate their findings:

1. Agree – The finding(s) by IA is correct;
2. Agree with Comment – The finding(s) by IA is correct and additional information from the case review should be noted (comments may include, but are not limited to, the appropriateness of the tactics employed by the subject officer and the potential impact of the subject officer’s actions);
3. Disagree with Comment – The finding(s) by IA is incorrect (comments should explain the disagreement and note the appropriate finding for IA).

Upon conclusion of the case review, the Reviewers will present a summary of the case, including

the conclusions and list of evidence and documentation reviewed, to the full Commission in closed session. If the Reviewers do not have consensus on all issues, a minority report can also be submitted. The Commission will hear the case and take action regarding the final disposition of the case.

In the event that the Commission considers every possible finding and is unsuccessful in reaching the required majority vote to indicate a position on one or more findings, the Commission may close the case by vote of the Commission as a failure to achieve consensus.

The results of the Commission action are provided to IA with a detailed written explanation of any Commission concerns or disagreements. IA retains the option to amend its report based upon Commission action, in which case the amended report will be returned to the Commission for a final vote. IA does not close its case until after the Commission takes final action, unless it is necessary to do so in order to comply with time restrictions specified by the California Peace Officers' Bill of Rights. The Commission shall send a letter to the complainant and/or impacted party briefly summarizing the Commission's findings.

In all cases where there is disagreement with an IA finding, disagreements are recorded and highlighted as part of the semiannual reports to the Mayor and City Council.

A summary of each case, with personally identifiable information redacted as required by law, shall be included in the Commission's semiannual report to the Mayor and City Council. Within one month after a summary is completed and approved by Commission's legal counsel, the redacted summary will be posted on the Commission website. A draft of the summary shall be sent to IA prior to publication so that any concerns can be reviewed by the Commission's legal counsel.

City Charter section 41.2 states that the Commission "is authorized to refer any matter before the Commission to the grand jury, district attorney, or any other governmental agency that is authorized by law to investigate the activities of a law enforcement agency."

City of San Diego Commission on Police Practices

SUBPOENA AND NOTICE PROCEDURES

DRAFT

Power to Subpoena

The Commission on Police Practices (Commission) may issue subpoenas. Subpoenas may be issued to secure the personal appearance of a witness to testify or provide testimony in connection with a Commission investigation or hearing.

Under San Diego Municipal Code section 26.1110:

(a) The *Commission* has the power to subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of books, papers, records or other items whenever material to the performance of the *Commission's* duties or exercise of its powers.

(b) A subpoena issued under this section must be issued and signed by the *Executive Director* or their designee.

(c) If a witness fails to appear before the *Commission* at the time and date set by subpoena, or in the case of a subpoena duces tecum, if a record is not produced as required, the *Commission* may, by majority vote, authorize its chairperson or the *Executive Director* to certify the facts to the Superior Court for an order to show cause why the subpoena recipient should not be ordered to comply with the subpoena.

Types of Subpoenas

A *personal subpoena* may be issued and signed by the Executive Director. In order to be effective, the subpoena must be signed and dated by the Executive Director and personally served on the witness by a legal process server, certified mail service, or electronically, as afforded by law. A sample subpoena for personal appearance is appended as Appendix A. The proof of service must be attached when the subpoena is served by mail or electronically.

A *subpoena duces tecum* seeks the production of documents as described in the subpoena. It must be signed and dated by the Executive Director and personally served on the person in possession of the documents by certified mail service or electronically, as afforded by law. This type of subpoena seeks production of records or documents as opposed to live testimony. A sample subpoena duces tecum is appended as Appendix B. The proof of service must be attached when the subpoena is served by mail or electronically.

Receipt of Subpoenas

As a custodian of various police information or records, the Commission may also be subpoenaed for records in conjunction with various court proceedings. Because many records maintained by the Commission will be confidential and privileged, the General Counsel or legal counsel should be immediately contacted for assistance where a subpoena is served.

A designated Commission staff member should be selected to receive and handle subpoenas to avoid confusion. Once a subpoena is received, it should be promptly reviewed with the General Counsel in the event that the subpoena is overbroad or a motion to quash the subpoena is necessary (refer to the *Pitchess* motion procedures regarding discovery and motions to quash).

Strict attendance should be paid to the timeframe for complying with the subpoena. If the subpoena does not afford the statutory time for compliance, or seeks confidential information not subject to subpoena, an objection may be made or motion to quash filed.

A subpoena is not required to be filed for information maintained by the Commission that is publicly accessible or easily accessible through other means.

Noticing of City Employees to Testify in Proceedings

There will be occasions where police officers or City employees will be necessary for testimony in conjunction with investigations or Commission proceedings.

Under San Diego Municipal Code section 26.1108, City employees are required to cooperate in Commission activities. Section 26.1108 states:

(a) It is the policy of the City that all officers and employees of the City cooperate promptly and fully with the *Commission* to ensure the *Commission* can timely and properly perform its duties as required by the Charter, the Council by ordinance, and state and federal laws. A City employee who fails or refuses to comply with this section is subject to discipline, up to and including termination. This requirement to cooperate includes participation in any *investigatory proceeding* set forth in the *Commission's* operating procedures approved by the Council. If the *Commission* seeks to interview any City employee, including an employee who is the subject of a *complaint*, as part of an *investigatory proceeding*, the *Commission* must provide timely advance written notice to the employee. The *Commission* must also provide timely advance written notice to the City employee's appointing authority. The written notice must specify the date and time of the interview and provide the employee with reasonably sufficient time to secure union or legal representation by the employee's personal attorney, as applicable, and to make any legal objections to the interview, either before or at the time of the interview.

Notice to interview City employees must be issued in writing and in a timely manner such that the employee may confer with a representative of legal counsel. The notice must specify the date and time of the interview. The employee may object to the interview at or before the time of the interview by code.

A sample notice to interview a City employee is appended as Appendix C. Personal service on employees should be requested through the Department head or respective supervisor. It should be noted that by ordinance, all City employees are required to cooperate in Commission activities, which would include the interview process.

Appendix A

BEFORE THE COMMISSION ON POLICE PRACTICES FOR THE CITY OF SAN DIEGO

SUBPOENA FOR PERSONAL APPEARANCE

To: _____

Pursuant to California Code of Civil Procedure §§1985-1985.4, San Diego Municipal Code §26.1110, and in furtherance of an investigation, the Commission on Police Practices hereby commands you to appear at the following location:

Commission on Police Practices
[Address]
[Date and Time]

You are being subpoenaed in regards to an investigation of various conduct, related to California Penal Code §§ 832.5 – 832.8. You have been identified as a person with information, documents, or who might be able to offer information or evidence in this matter deemed to be relevant to the investigation in this matter.

If you have any questions regarding compliance with this Subpoena, contact: [Commission Staff Name, Title, Contact Information].

Please be advised that willful disobedience, destruction, or concealment of any items requested could result in a referral to law enforcement for criminal prosecution pursuant to California Penal Code §135.

Failure to comply with the commands of this Subpoena may subject you to an action for contempt or other penalties before the Superior Court of the State of California.

Dated:

Commission on Police Practices
Executive Director

Proof of Service

I am employed in the County of San Diego, State of California. I am a citizen of the United States, residing in the county of San Diego, State of California. I am over the age of 18 and am not a party to nor interested in the within action. My business address is _____.

On _____, I served the attached subpoena described as follows:

By placing the true copy enclosed in a sealed certified mail envelope addressed as follows:

___ (By overnight delivery) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses specified above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

___ (By Mail) I enclosed the documents in a sealed and certified envelope or package addressed to the persons at the addresses specified above and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid. I placed the envelope for collection and mailing, following ordinary business practices. I am readily familiar with business practices for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I placed the envelope or package in the mail at San Diego, California.

(Electronically) I sent the document to (NAME) at the (ELECTRONIC ADDRESS or other means) as mutually agreed upon, on (DATE AND TIME).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____ at San Diego, California.

[Commission Staff Name and Signature]

Appendix B

BEFORE THE COMMISSION ON POLICE PRACTICES FOR THE CITY OF SAN DIEGO

SUBPOENA DUCES TECUM

To: _____

Pursuant to California Code of Civil Procedure §§1985-1985.4, San Diego Municipal Code §26.1110, and in furtherance of an investigation, the Commission on Police Practices hereby commands you, within fifteen (15) days after service, to produce and permit inspection and copying of all documents, records, and other materials described in Exhibit A, by mailing or providing such materials via other mutually agreed upon means, together with a certification from you, dated and signed under penalty of perjury under the laws of the State of California that the documents provided are true, correct and complete copies of all documents responsive to this Administrative Subpoena, to the following location or :

Commission on Police Practices
[Address]

The subpoenaed items are relevant to an investigation of various conduct, related to California Penal Code §§ 832.5 – 832.8. You have been identified as a person with information, documents, or who might be able to offer evidence in this matter and the documents requested are believed to contain evidence relevant to the investigation in this matter.

If you have any questions regarding compliance with this Subpoena, contact: [Commission Staff Name, Title, Contact Information].

Please be advised that willful disobedience, destruction or concealment of any items requested could result in a referral to law enforcement for criminal prosecution pursuant to California Penal Code §135.

Failure to comply with the commands of this Subpoena may subject you to an action for contempt or other penalties before the Superior Court of the State of California.

Dated:

Commission on Police Practices
Executive Director

Proof of Service

I am employed in the County of San Diego, State of California. I am a citizen of the United States, residing in the county of San Diego, State of California. I am over the age of 18 and am not a party to nor interested in the within action. My business address is _____.

On _____, I served the attached subpoena described as follows:

By placing the true copy enclosed in a sealed certified mail envelope addressed as follows:

____ (By overnight delivery) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses specified above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

(By Mail) I enclosed the documents in a sealed and certified envelope or package addressed to the persons at the addresses specified above and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid. I placed the envelope for collection and mailing, following ordinary business practices. I am readily familiar with business practices for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I placed the envelope or package in the mail at San Diego, California.

(Electronically) I sent the document to (NAME) at the (ELECTRONIC ADDRESS or other means) as mutually agreed upon, on (DATE AND TIME).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____ at San Diego, California.

[Commission Staff Name and Signature]

Appendix C

COMMISSION ON POLICE PRACTICES NOTICE OF INTERVIEW

CONFIDENTIAL

RE: Notice of Interview on _____, 202_

TO: [Name of Employee]:

This is to advise you that you are being scheduled to participate in an interview in connection with an investigation conducted by the San Diego Commission on Police Practices. Under San Diego Municipal Code section 26.1108, City employees are required to cooperate in Commission activities. Section 26.1108 states:

- (a) It is the policy of the City that all officers and employees of the City cooperate promptly and fully with the *Commission* to ensure the *Commission* can timely and properly perform its duties as required by the Charter, the Council by ordinance, and state and federal laws. A City employee who fails or refuses to comply with this section is subject to discipline, up to and including termination. This requirement to cooperate includes participation in any *investigatory proceeding* set forth in the *Commission's* operating procedures approved by the Council.

The interview is to be conducted as follows:

Date:

Time:

Location:

[For police interviews] The interview is being conducted at a reasonable time and place. By law, you may be accompanied to the interview by a representative or attorney of your choice. The interview will be conducted in full compliance with the Public Safety Officers' Procedural Bill of Rights (Government Code sections 3300 et seq.).

Please feel free to contact [Commission Staff Name, Title, Contact Information].
Your supervisor or department head is also copied on the notice.

Date:

Commission on Police Practices
Executive Director

Cc: Supervisor/Department Head