

## **Commission on Police Practices**

### **Ad Hoc Transition Planning Committee Meeting**

**Friday, July 15, 2022**

**12:30 pm-1:30 pm**

**Remote Zoom Webinar Platform**

<https://sandiego.zoomgov.com/j/1607263495?pwd=RXFBZnBaM2doVW5YVTBtK1Q2dC9lQT09>

**Passcode: 8T3Zs7**

**Phone: 1 669 254 5252 or 833 568 8864 (Toll Free)**

**Webinar ID: 160 726 3495**

#### **COVID- 19 PUBLIC SERVICE ANNOUNCEMENT REGARDING MEETING ACCESS**

Until further notice, Commission on Police Practices' meetings will be conducted pursuant to the provisions of California Government Code Section 54953 (e), added by Assembly Bill 361, which suspends certain requirements of the Ralph M. Brown Act. During the current State of Emergency and in the interest of public health and safety, all Commission on Police Practices meetings will take place via teleconferencing. All Commissioners and members of Commission staff will participate in Commission on Police Practices meetings via teleconferencing.

This meeting will be available on the City's YouTube page after the meeting. Click **here** to view this meeting after its scheduled time. Rules for public participation in this meeting can be found on pages 2&3 of this agenda.

#### **AGENDA**

- I. CALL TO ORDER/WELCOME (Committee Chair Doug Case)
- II. ROLL CALL
- III. PUBLIC COMMENT: (Fill out and submit comment using [webform](#). Please see instructions at the end of this agenda)
- IV. UPDATES
  - A. Budget Process
  - B. Staffing (executive searches for Deputy Executive Director, Supervising Investigator, Policy Analyst and Performance Auditor)
    - i. Job Description for Community Engagement Coordinator
  - C. Implementation Ordinance & Standard Operating Procedures
  - D. Office Space
  - E. Standing Rules
  - F. Community Outreach

G. Meetings with Mayor and City Councilmembers

V. UNFINISHED BUSINESS

- A. Standard Operating Procedures for Investigations
- B. Further discussion of models of case review by the permanent Commission (on hold)
- C. Procedure to implement the requirement for the Commission's duty to review and evaluate the Police Department's compliance with federal, state, and local reporting requirements (need list of reporting requirements, then put on hold until performance auditor is hired)
- D. Follow-up on amending the Office of the CPP ordinance to include establishment of an operating procedure for the selection of the Executive Director (next steps)

VI. NEW BUSINESS

- A. Role of the Commission's Executive Director in Initial Application Screening Process & Hiring Process for Staff Positions
- B. Role and Expectations of Community Panelists when invited to participate in the Recruitment Process for Selected Positions
- C. Role and Expectations of CPP Committee Chairs & Members in the Recruitment Process for Selected Positions

VII. AGENDA ITEMS AND SCHEDULING FOR NEXT MEETING

VIII. ADDITIONS TO THE LIST OF ITEMS FOR FUTURE AGENDAS (See below)

IX. OTHER ITEMS AND/OR CONCERNS

X. ADJOURN

**Materials Provided:**


- Meeting Notes from June 24, 2022 Meeting
- Draft Job Description for the Asst/Deputy Executive Director Position
- Preliminary Draft Standard Operating Procedures for Investigations
- Appendix A – Investigation Report Format
- Draft Job Description for the Supervising Investigator
- Draft Outline for Standard Operating Procedures for Investigations
- Tentative Implementation Timeline, Version 10.3 (November 19, 2021)
- Draft Implementation Ordinance – February 14, 2022
- Amendments to the February draft adopted by City Council on February 28, 2022
- Timeline for Deputy Executive Director search
- Timeline for Supervising Investigator search
- CLERB Rules and Regulations
- MOU on Countywide Protocol for the Investigation and Review of Officer-Involved Shootings and Other Deadly Force Events on CPP Reviews and Investigations

**Items for Future Agendas:**

- A. Training program for new Commissioners
- B. Ways to address barriers to service (transportation, childcare, etc.)
- C. Transparency and Accountability Issues
- D. Quality Assurance Program
- E. Clarity of CPP Access to Training Bulletins and Special Unit Policies

**In lieu of in-person attendance, members of the public may participate and provide comment via virtual attendance or using the webform, as follows:**

**Virtual Testimony:**

Members of the public may provide comment on the comment period for Non-agenda Public Comment or Agenda Public Comment during the meeting, following the  [Public Comment Instructions](#).

**Written Comment through Webform:**

In lieu of in-person attendance, members of the public may submit their comments using the [webform](#). If using the webform, indicate the agenda item number you wish to submit a comment for. Instructions for word limitations and deadlines are noted on the [webform](#). 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 below. To view a meeting archive video, click [here](#).

Only comments submitted no later than 4pm the day prior to the meeting using the public comment webform will be eligible to be read into the record. If you submit more than one comment on webform per item, only one comment will be read into the record for that item. **Comments received after 4pm the day prior and before 8am the day of the meeting** will be provided to the Commission or Committee and posted online with the meeting materials. All comments are limited to 200 words. Comments received after 8am the day of the meeting, but before the item is called, will be submitted into the written record for the relevant item.

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

**Please click the link below to join the webinar:**

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## Commission on Police Practices

### Ad Hoc Transition Planning Committee Meeting

**Friday, June 24<sup>th</sup>, 2022**  
**12:30 pm-1:30 pm**  
**Zoom Webinar Platform**

#### NOTES

Meeting YouTube Link: <https://youtu.be/MZgUBw51Bg8>

- I. CALL TO ORDER/WELCOME –Committee Chair Doug Case called to order at 12:35pm.
- II. ROLL CALL  
**Commission**  
Commissioner Patrick Anderson  
Committee Chair Doug Case  
Chair Brandon Hilpert  
Commissioner Diana Dent  
**Absent/Excused**  
Commissioner Nancy Vaughn  
Alina Conde, Executive Assistant  
**Staff Present**  
Sharmaine Moseley, Interim Executive Director  
Robin Recendez, Administrative Aide  
**Present**  
Kate Yavenditti, Member of Women Occupy representing San Diegans for Justice  
David Niemeyer, Executive Recruiter with CPS HR Consulting  
Duane E. Bennett, CPP Outside Legal Counsel
- III. PUBLIC COMMENT: No Public Comment received.
- IV. UPDATES
  - A. Budget Process – Budget process is in the detail phase until June 28<sup>th</sup>, 2022 and City Council will finalize and adopt the budget.
  - B. Staffing – Finalizing the Deputy Executive Director search candidates.  
Commissioner Patrick Anderson will be working with Executive Recruiter with CPS HR Consulting David Niemeyer on scheduling community panel meetings and providing feedback for the interviewing committee. Executive Recruiter with CPS HR Consulting David Niemeyer developed and drafted language for the Supervisor Investigator position for the brochure. He will send the draft to the commission. The schedule for the position is being posted on July 5<sup>th</sup> with a 30-day period deadline for recruitment of August 4<sup>th</sup>. Followed by screening interviews and

present results to committee near end of August. There will be no community panel for the Supervising Investigator position. Commissioner Patrick Anderson gave an update on the Executive Deputy Director position and will be meeting community panelist on Friday, July 1<sup>st</sup>. He will go over confidentiality agreements, questions, and structure. He will also be including City of San Diego HR Consultant Liz Barat for assistance. Last, Commissioner Patrick Anderson reported that the community panelist will be available for interviews between July 15<sup>th</sup> – 20<sup>th</sup>. The Interview Committee are 1<sup>st</sup> Vice Chair Doug Case, Commissioner Patrick Anderson, Commissioner Diana Dent, Commissioner Patrick Anderson, and Member of Women Occupy representing San Diegans for Justice, Kate Yavenditti for the Executive Deputy Director position.

- C. Implementation Ordinance & Permanent Standard Operating Procedures – No current updates.
- D. Office Space – No current updates.
- E. Standing Rules – No current updates.
- F. Community Outreach – No current updates.
- G. Meetings with Mayor and City Councilmembers – No recent meetings with Mayor or Council members.

#### V. UNFINISHED BUSINESS

- A. Standard Operating Procedures for Investigations- reviewing the draft of “Standard Operating Procedures for Investigations” in sections. CPP Outside Legal Counsel, Duane E. Bennett recommended not to be too specific and list items in a generic form.
  - The verbiage on list of “General causes for disciplinary action” on Page 3 of the draft, is broadly categorized, 1<sup>st</sup> Vice Chair Doug Case requested to add a “catch all” language of violation of policy and procedures, department orders and training bulletins.
  - Also adding to the paragraph that the list is not an all-inclusive list on the bottom of Page 2.
  - Chair Brandon Hilpert requested on the list of “General causes for disciplinary action”, to number 7 “Drunkenness on Duty” to be changed to “under the influence on Duty”.
  - Page 3 under “What Police Officer Conduct Must be Investigated?” to change “citizens” to “members of the public”.
  - Page 4, top paragraph “...suspected misconduct should not be ignored” the “should” be changed to “must”.
  - Page 4, under “Complaint Process” it was requested to delete “...a complaint must be signed under penalty of perjury.”
  - Page 4, second to last paragraph “Complainants may complete a complaint...” to add “email”, add CPP phone number, “in-person at Office of the Commission on Police Practices office, and Police facility.” In addition to add language like “future electronic communication”.
  - Page 5, under “SDPD” should indicate the Implantation Ordinance, however for now it will be a place holder until the Ordinance is finalized.
  - Also, CPP Outside Legal Counsel, Duane E. Bennett will re-word “coordination”. Commissioner Patrick Anderson proposed to share draft to a larger community and receive community feedback.
- B. Further discussion of models of case review by the permanent Commission that entail utilization of Commission staff (currently on hold).

- C. Procedure to implement the requirement for the Commission's duty to review and evaluate the Police Department's compliance with federal, state, and local reporting requirements. (on hold)
  - D. Follow-up on amending the Office of the CPP ordinance to include establishment of an operating procedure for the selection of the Executive Director (on hold)
- VI. NEW BUSINESS
- VII. AGENDA ITEMS FOR NEXT MEETING -Unfinished Business: Standard Operating Procedures for Investigations: reviewing the draft of "Standard Operating Procedures for Investigations" will resume on Section IV. "Conducting Investigations".
- VIII. ADDITIONS TO THE LIST OF ITEMS FOR FUTURE AGENDAS
- IX. OTHER ITEMS AND/OR CONCERNS- July 1<sup>st</sup> meeting is cancelled, next meeting will be on Friday July 8<sup>th</sup>, 2022.
- X. ADJOURN at 1:32pm

**Office of the Commission on Police Practices**  
**Assistant Executive Director**  
**Job Description**

**The City:**

With more than 1.4 million people, the City of San Diego is the eighth largest city in the United States and the second largest in California. The City of San Diego's strong economy, diverse population, great educational institutions, unsurpassed quality of life, and world-renowned location makes it the ideal place to work, live, and play. With its great weather, miles of sandy beaches, and major attractions, San Diego has something to offer for everyone.

The City's Mission, as found in our Strategic Plan, is "To Effectively Serve and Support Our Communities." Our core values are Integrity, Service, People, and Excellence. The City's Vision is "A World-Class City for All."

As one of the region's largest employers, the City of San Diego has a combined Fiscal Year 2021 operating and capital budget of approximately \$4.0 billion and employs approximately 11,800 highly dedicated employees. Additional information about the City of San Diego can be obtained on the City's website: [www.sandiego.gov](http://www.sandiego.gov).

**The Department:**

The Office of the Commission on Police Practices is a City department that provides staff to support the work of the Commission on Police Practices. City voters established the Commission by their approval of Measure B, on November 3, 2020, which added City Charter section 41.2 and took effect on December 18, 2020. The Commission is an investigatory body of the City, independent of the Mayor and the Police Department, and the Commission must act in conformance with applicable federal, state, and local laws. The Commission has the duties and powers set forth in City Charter section 41.2.

The purpose of the Commission is to provide an independent investigation of officer-involved shootings, in-custody deaths and other significant incidents, and to provide an unbiased evaluation of all complaints against the San Diego Police Department (SDPD) and its personnel, in a process that will be transparent and accountable to the community. The Commission will also evaluate and review SDPD policies, practices, training, and protocols and represent the community in making recommendations for changes. The mission of the Commission is to hold law enforcement accountable to the community and to increase community trust in law enforcement, resulting in increased safety for both the community and law enforcement.

**The Position:**

Under the supervision and guidance of the Executive Director, the Assistant Executive Director coordinates direction and policy decisions in close collaboration with the Commission on Police Practices. The Assistant Executive Director is expected to be a seasoned executive who is comfortable making decisions and stepping in for the Executive Director when necessary and

work with diverse communities in San Diego. The diverse communities may include but not limited to LGBTQ+, mental illness, drug usage, immigrant communities, unhoused, faith, youth, and communities of color.

The Assistant Executive Director will also be responsible for:

- Leading efforts to expand awareness and increase community input that informs and shapes the Commission on Police Practices' (CPP) work and mission
- Establish, build, develop and maintain effective relationships with a wide variety of communities in San Diego, including but not limited to community-based organizations, law enforcement agencies, city officials, staff, and other stakeholders
- Providing inclusive and meaningful ways for all people in the City of San Diego to engage and influence decisions that impact them through the San Diego Police Department
- Working with Commissioners to plan, organize, and facilitate a wide range of community engagement events, activities and forums intended to increase the transparency and accountability of the Commission's work and focused on community building and on improving interactions between community members and law enforcement
- Managing and supervising the Commission's Mediation Coordinator
- Managing and updating the Commission's website to increase transparency
- Representing the Department before a variety of governing bodies with the City, including oversight entities, City Council, and working closely with elected officials, community leaders and representatives to achieve resolution and make decisions
- Representing the Department at various community forums and meetings
- Coordinating meetings, special projects, and events
- Preparing reports & presentations to educate stakeholders about the work of the Commission
- Soliciting input to learn about community experiences with members of the San Diego Police Department to better understand and address concerns
- Performing related duties as assigned

Finally, the Assistant Executive Director will be expected to fulfill the duties of the Executive Director when the Executive Director is absent for any reason, and whenever there is a vacancy in the Executive Director position.

The ideal candidate will have a minimum of three years of experience cultivating and building relationships across diverse community groups, thrive in a team-based work environment, work efficiently under pressure, be able to meet deadlines, outcome-oriented, pro-active and solutions-focused, demonstrate effective decision-making, adaptability, creativity, and have good written and oral communication skills. Additionally, the ideal candidate will have strong experience working with diverse communities and will have identified ways and best practices to engage community members successfully.

### **Qualifications:**

The ideal candidate will possess the following qualifications:



- A demonstrated ability and success in working in a cooperative, collaborative, non-adversarial environment
- 5 years of full-time professional level administrative, managerial, and supervisory experience
- Strong experience and background actively seeking participation from a diverse range of community advocacy groups
- Excellent problem-solving skills, with the ability to proactively identify and support creative and viable solutions
- Strong interpersonal leadership skills with the ability to successfully interact and work with a wide variety of stakeholders that includes community organizations, law enforcement, city officials, and/or boards and commissions
- Experience preparing written reports & making presentations to diverse communities, city officials, boards and commissions, and law enforcement
- High level of political acumen and ability to operate in an unbiased manner
- A Bachelor's degree in the social sciences, including psychology, sociology, political science or a related field (required); a Master's or terminal degree in social sciences (preferred); additionally; conversational fluency in Spanish (preferred); and 5 years of progressively responsible experience in a community engagement setting (preferred)

**Preliminary Draft**

*This information cannot be finalized until the final adoption of the City implementation ordinance, meet-and-confer and input from the Commission's investigators. These guidelines are prepared for discussion and to provide a legal context for the Commission's investigative protocols.*

**City of San Diego Commission on  
Police Practices**

**STANDARD OPERATING PROCEDURES FOR  
INVESTIGATIONS**

## I. Rules of Conduct

Every public safety agency must establish rules of conduct governing behavior and conduct of members. These rules of conduct, sometimes referred to as general or Departmental orders, establish the standards for acceptable conduct, performance and behavior, in any given law enforcement agency. Internal investigations of the Commission on Police Practices (Commission) should always be predicated upon established rules of conduct. Such rules proscribe how the investigation must be evaluated, and establish the basis for any resultant disciplinary actions.

The San Diego Police Department (SDPD) has missions, goals and standards that circumscribe the rules of conduct. In order to establish acceptable levels of conduct and performance, rules must be adhered to and followed by personnel. Where deviation or violation of rules or orders is suspected, internal investigations are required to ascertain the extent of any violations, or to establish that no such violation occurred.

The City's implementation ordinance directs the Commission to perform independent *investigations of police officer*-involved shootings, in-custody deaths, and other significant incidents involving the *Police Department*, and independent *evaluations of complaints* against the *Police Department* and its personnel, in a process that is transparent and accountable to the community.

In order to serve as a basis for investigation, rules must be clearly established, noticed to personnel and consistently applied. Problems occur in investigations where orders are arbitrarily or inconsistently applied. Moreover, where orders are not clearly disseminated or noticed to personnel, investigations may be flawed and result in violations of *due process* under law. The concept of due process relates to proper notice, an opportunity to be heard, and fair disciplinary actions in this regard.

It is also important that all required statutory guidelines be adhered to when conducting investigations. Many state laws, such as the Public Safety Officers Procedural Bill of Rights (POBOR) provide protections for police officers involved in administrative investigations. This statute proscribes the rights of officers under investigation, and generally affords officers the right to representatives of their choice, notice of charges, advisement of *Miranda* rights, and the rights to timely investigations. ( Government Code §§3300 et seq.)

### *A. General Causes for Disciplinary Action*

The following standards are generally included in rules or Departmental orders and serve as a basis for investigation or discipline:

- (1) Incompetence
- (2) Inattention to duty
- (3) Insubordination
- (4) Untruthfulness
- (5) Dishonestly
- (6) Discourteous treatment to a member of the public
- (7) Drunkenness on duty
- (8) Violations of state or federal law (deprivation of civil rights, excessive force, etc.)
- (9) Discriminatory conduct in violation of state or federal law
- (10) Willful disobedience
- (11) Negligence or general recklessness
- (12) Abuse of authority
- (13) Neglect of duty

Also, *conduct unbecoming of an officer* is generally proscribed. Orders prohibiting this sort of conduct are based upon general notions of sometimes undefined, yet inappropriate conduct. Conduct unbecoming of an officer generally involves on or off-duty conduct that serves to bring discredit, stigma or disrespect to a Department. As such, such conduct could constitute a plethora of disfavored actions or conduct.

Given the sometimes undefined nature of conduct under this section, great care must be used when investigating conduct unbecoming of an officer. The prohibition should not be used for investigating arbitrary conduct, or used in a vindictive or retaliatory manner. Instead, in order to withstand judicial scrutiny, if necessary, conduct determined to be unbecoming should be of such a nature that a clear and unambiguous nexus is established between the conduct and discredit to the Department.

#### *B. What Police Officer Conduct Must be Investigated?*

Internal investigations of the Commission will generally involve matters that fall into the following categories:

- Conduct that violates Departmental rules, guidelines, procedures or ordinances;
- Conduct that violates federal or state law;
- Conduct complained of by citizens;
- Conduct complained of by regulatory agencies or licensing bodies.

#### *C. Must a Formal Complaint be Filed?*

A complaint may be investigated even though a formal or written

complaint has not been filed. Under certain circumstances, an inquiry may be performed even where a formal complaint has not been lodged.

Police officer representatives may refute the Department's ability to conduct an investigation absent a written complaint. Although this may present an issue for investigators at times, suspected misconduct should not be ignored.

## **II. Complaints by the Public**

The Commission has several functions, including conducting independent investigations, beyond those of its predecessor, the Community Review Board on Police Practices (CRB).

The responsibility of responding to complaints against the SDPD is shared between the Department, primarily the Internal Affairs Department (IA), and the Commission. The collaborative relationship between the two is important for a fair and objective process that gives serious consideration to community members and SDPD officers equally. The process is improved by both organizations working together. While cooperation is key, independence of each organization is crucial.

### **1. Complaint Process**

Complaints are submitted either through the Commission or at multiple locations with SDPD. The Commission must receive, register, review and evaluate all complaints. Complaints submitted via the SDPD must be transmitted to the Commission in a timely manner pursuant to the City's implementation ordinance. [\* This presumes the finalizing of an implementation ordinance containing verbiage similar to the draft ordinance currently subject to meet and confer.]

In order for the Commission to open an investigation, a complaint must be signed under penalty of perjury. A complaint online form should be completed, sign and returned. Complainants should be directed to fill in the complaint information and incident information sections of the form. If the complaint involves allegations of injury, a separate medical release form may also be required as afforded by law.

Complainants may complete a complaint online, mail or fax the completed form to the Commission's address or facsimile number.

A copy of any complaint received by the Commission that identifies an employee of the Police Department should be forwarded to the Police Department within five calendar

days of the Commission's receipt of the complaint. The Commission is not authorized to investigate a complaint against an employee of the Police Department who is not a police officer unless the complaint also alleges police officer misconduct.

## 2. SDPD Role

Coordination between SDPD and the Commission is required throughout the process, starting with complaint intake, through preparation of the case file, discussion during Commission review (including any Team requests for additional allegations or additional investigation as well as any disagreement), and, finally, preparation for presentation at a closed session meeting of the full Commission.

## 3. SDPD Complaint Investigations

Each complaint regarding an officer, whether generated through the Commission or an alternate process, is investigated by SDPD. Complaints involving any 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 SDPD Division. 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:

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

## 4. County-wide MOU for Officer Involved Shootings

The SDPD has entered a County-wide MOU for the investigation of various officer involved shootings requiring that criminal investigations into such incidents be normally conducted by the San Diego Sheriff's Department. Where an incident involves both the

SDPD and the Sheriff's Department, the criminal investigation shall be conducted by the Chula Vista Police Department.

In such investigations, it is important for the Commission to have access to the same information provided to the SDPD consistent with the criminal investigative protocol and briefings. The City implementation ordinance requires that the SDPD provide periodic information to the Commission within established guidelines. These requirements are not vitiated by the County-wide officer involved shooting MOU, and remain the responsibilities of the SDPD. [\* This presumes the finalizing of an implementation ordinance containing verbiage similar to the draft ordinance currently subject to meet and confer.]

### **III. Admonitions Compelling Officer Testimony**

Where police officer misconduct could involve an allegation of criminal conduct, the officer must be provided with a *Miranda* admonition. If the officer invokes *Miranda*, the officer may be ordered to provide a statement by giving the officer a *Garrity/Lybarger* admonition.<sup>1</sup> This admonition compels the officer to provide a statement to the investigator under the threat of insubordination, discipline and possible discharge. A *Garrity/Lybarger* admonition is deemed by officers and representatives as a prohibition against the statement being used against the officer in a subsequent criminal matter.

The admonition acts to compel a statement from police officers, deemed to have engaged in misconduct, which could also criminal ramifications. Courts have held that public safety officers are not relegated to “watered down constitutional rights.” As such, prior to interrogation in an internal investigation involving criminal implications, a *Miranda* warning must be offered as would be true in any other scenario where law enforcement agents desired to interrogate a suspect not free to leave.

If a police officer invokes *Miranda* during the interrogation, the invocation is deemed to have the same affect as to any criminal action that could be later filed against the officer.

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<sup>1</sup> *Garrity v. New Jersey* (1967) 385 U.S. 493, involved police officers who were questioned about illegal activities and answered questions after a warning that they were entitled to silence, but could be terminated if they refused to answer questions. The Supreme Court held that the protection of the Fourteenth Amendment prohibits use in subsequent criminal proceedings of statements obtained under threat of termination. The Court stated that such statements are involuntary and coerced.

In *Lybarger v. City of Los Angeles* (1985) 40 Cal. 3d 822, the California Supreme Court held that an officer who refuses to cooperate in an investigation involving his or her potential criminal conduct may be administratively disciplined; however, such discipline imposed pursuant to a threat of insubordination for refusal to answer questions involving potential criminal conduct is invalid unless a *Miranda* warning is first provided.

Namely, that any statements offered to the internal investigator may not be used against the police officer in a later criminal action.

Recognizing that the invocation of Miranda in internal investigations could impede or prohibit investigations, the courts have sanctioned the usage of a *Garrity/Lybarger* admonition so that investigators may compel, or force, public safety officers to provide statements in internal investigations. In theory, the admonition forces an officer to cooperate in an investigation under the threat of insubordination. If, after having invoked *Miranda* and been provided with a *Garrity/Lybarger* admonition, officers do not provide statements to internal investigators, they may face disciplinary action for insubordination.

The admonition is being increasingly requested by counsel representing public safety officers in internal investigations even where remote chances of criminal filings are possible. In such cases, the necessity of providing the admonition rests with the investigator or the Department. Out of abundance of caution and in an effort to complete the investigation in an expeditious fashion, some investigators compel an officer statement even where criminal filings are extremely remote.

#### *I. Garrity/Lybarger Protocol and Admonition*

The following is an example of the protocol to use in a Commission investigation where criminal conduct may also be found to exist. [Whether the Commission will be afforded the right to compel officer statements, or require cooperation of subject officers, will be subject to the City's implementation ordinance.]

#### **Miranda Warning**

*Due to the nature of this administrative or internal investigation, I am required to advise you of your constitutional rights. Therefore, it is important that you are aware of the following:*

- *You have the right to remain silent;*
- *Anything that you say may be used against you in court;*
- *You have the right to an attorney before and during questioning;*
- *If you cannot afford an attorney, one may be appointed by law.*



### **Miranda Waiver**

*Do you understand each of these rights as I have explained them to you?*

*Yes/No*

*With these rights in mind, do you wish to speak to me about this matter?*

*Yes/No*

*(Where rights to silence are invoked, provide the Garrity/Lybarger Admonition below.)*

### **Garrity/Lybarger Admonition**

*This is an administrative investigation conducted by the Commission on Police Practices. While you have the right to remain silent with regard to any criminal investigation, you do not have a right to refuse to provide a statement or answer my questions in this administrative investigation.*

*I am therefore now ordering you to provide a statement in this matter and to answer all of my questions truthfully and honestly.*

*Your refusal to cooperate in this matter or your silence will be deemed insubordination and could result in disciplinary action, up to and including termination.*

*Any statement that you make under compulsion of the threat of discipline is for purposes of this internal or administrative investigation only and cannot be used against you in a criminal prosecution.*

*Do you understand this admonition and order to talk? Will you now provide a statement in this matter?*

*\*(If the officer still refuses to provide a statement, a separate ground for insubordination or discipline may exist.)*

## IV. CONDUCTING INVESTIGATIONS

### 1. Category One Investigations

- (A) Officer-involved shootings;\*
- (B) All incidents of in-custody deaths;
- (C) Alleged violations of the Fourth Amendment related to excessive force or violations of civil rights;
- (D) An incident in which the use of force by a police officer against a person resulted in great bodily injury.

**\*Since the Department has entered a County Memorandum of Understanding that provides for the County Sheriff to investigate Departmental shootings, Commission investigators may have to coordinate such investigations, and/or requests for reports/documents/evidence through the Department in order to gain access to incident scenes and various information.**

### 2. Category Two Investigations

As often as necessary, a committee of the Commission shall meet with the Executive Director, General Counsel and Senior Investigator to decide whether to investigate and evaluate a complaint against a police officer that does not involve an in-custody death, a death resulting from an interaction with a police officer, or a police officer-related shooting.

Regarding discretionary investigations, the Commission will not investigate a complaint where the complainant has requested that the complaint be handled without an investigation by the Commission, or where no specific allegation or police officer can be identified or discerned.

The Commission may investigate any allegations of misconduct that become known to the Commission during an investigation of a separate complaint. In exercising its discretionary power to investigate a complaint, the Commission must determine that a complaint involves any of the following:

- (A) dishonesty by a police officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting or investigation of misconduct by another police officer, peace officer, or custodial officer, including an allegation of perjury, making a false statement, filing a false report, or destroying, falsifying, or concealing evidence;

(B) an incident that has generated substantial public interest or concern, or that alleges excessive force or violation of civil rights under the Fourth Amendment to the U.S. Constitution;

(C) an incident where data shows a pattern of misconduct by a police officer; or

(D) an incident where data shows a pattern of inappropriate policies, procedures, or practices of the Police Department or its members.

In deciding whether to investigate or consider such discretionary cases, the Commission shall also consider, 1) the nature of the case and public interest, 2) resource allocation, 3) the number of pending cases/investigations, 4) any delays in processing ongoing cases and investigations, and 5) the time commitments required of commissioners. The Commission shall limit the number of cases, where possible, such that multiple closed sessions during the month are not required in consideration of time commitments required in such matters.

### **3. Category Three Investigations**

The Commission may, but is not required to, review, investigate, and evaluate allegations of:

(A) Inappropriate sexual or discriminatory conduct, alleged violations under Title VII or Government Code sections 12940 et seq. (FEHA);

(B) Physical assault, or domestic violence by a police officer, whether or not a complaint has been submitted to the Police Department or the Commission.

The Commission may use the same criteria outlined for Category Two Investigations in deciding to review Category three matters.

Upon completion of any review, investigation, or evaluation, the Commission must make findings. The Chief of Police must consider any findings or recommendation by the Commission of proposed police officer discipline, prior to Police Department imposition of the discipline. The Commission's findings, evaluation or recommendation must be completed before the statutory timelines set forth in POBOR or other applicable law. The Chief of Police retains authority and discretion to discipline subordinate employees in the Police Department.

The exercise of the Commission's duties and powers, as set forth in the City Charter and ordinance, including its investigatory duties and powers, is not meant to obstruct, supersede or abrogate the duties of the Police Chief.

## V. Investigation Guidelines

1. Pursuant to the City's implementation ordinance, the Department must make available to the Commission its records, within ten calendar days after a written request from the Commission, relating to any matter under investigation, review, or evaluation by the Commission. The Department must provide to the Commission all complaints received by the Department within five calendar days of receipt regardless of whether there is a written request from the Commission for the complaints. [\* This presumes the finalizing of an implementation ordinance containing verbiage similar to the draft ordinance currently subject to meet and confer.]
2. The Commission's investigators should seek cooperative access to Category One incident scenes through the Department and/or outside agency investigating the incident(s), and scenes of other public/critical incidents of concern. Investigators should not obstruct or interfere with criminal investigations, but should seek early access to investigation files.
3. Where notified of a critical incident by the Department, the Senior Investigator should notify the Executive Director and/or General Counsel as soon as practical to discuss the incident, and the appropriate approach to the Commission's investigation.
4. Investigators should seek to access to any public records/reports, and seek to coordinate investigations with those of Internal Affairs and/or the outside agency investigating the incident.
5. Investigators should review and understand the Department's general orders and standard operating guidelines and constantly review the orders prior to, and during, an investigation. This aspect cannot be overemphasized. The Department's general orders are its standards of conduct proscribing proper behavior. An alleged violation of the standards is what predicates an investigation. Therefore, the investigator must properly discern and apply the general orders to the facts to conduct a proper investigation.
6. Investigators must carefully analyze all *relevant facts* surrounding the allegations involved in the investigation.
7. Investigators must be familiar with the procedural rights of police officers and strictly adhere to POBOR. Remember that police officers are not subject to "watered down" constitutional rights and are not presumed to be guilty of misconduct.
8. Interviews of police officers must strictly comply with the requirements of POBOR:

*Brief Summary of Public Safety Officers' Procedural Bill of Rights*

- The investigator must conduct the interrogation at a reasonable hour, preferably when the employee is on duty or during the employee's normal waking hours, unless the seriousness of the investigation requires otherwise.
- The employee must be compensated for time spent in the interrogation if the interrogation is not conducted during the employee's normal working hours.
- The investigator must inform the employee of the position, name and command of the officer in charge of the interrogation, the interrogating officers and other persons to be present during the interrogation.
- All questions directed to the employee shall be asked by and through no more than two interrogators at one time.
- The investigator must inform the employee of the general nature of the investigation prior to any interrogation.
- The investigator must allow the employee to attend to his/her own personal physical needs.
- The investigator must provide an accused employee access to any recording made of an interrogation prior to any subsequent interrogation.
- The investigator must advise the employee of his or her Constitutional rights (*Miranda Rights*) as soon as it appears that he or she may be charged with a criminal offense.
- The investigator may inform the employee that failure to answer questions directly related to the investigation may result in punitive action.
- The investigator may record the entire interrogation.
- The accused employee may record the entire interrogation.
- The accused employee may be represented by a person of his or her choice who may be present during the entire interrogation. However, the representative may not be a person who is subject to the same investigation. The representative cannot be required to disclose any information obtained from the employee in non-criminal matters.
- The investigator cannot use offensive language.
- The investigator cannot use threats of punitive action, other than informing the employee that failure to answer questions related to the investigation may result in disciplinary action up to and including termination.
- The investigator cannot promise any rewards.

- The investigator cannot subject the employee to news media visits without the employee's consent.
- The investigator cannot penalize the employee for asserting his or her rights. The investigator cannot compel or order an officer to submit to a polygraph examination, and no reference regarding an officer's refusal may be made in any reports.

9. Investigators should coordinate with Internal Affairs, or the outside investigating agency, interviews of officers and all *relevant witnesses* maintaining strict *confidentiality*. Do not to interfere in the criminal investigation. Advise complainants and witnesses as to the necessity of absolute truthfulness and confidentiality. However, recognize that the ability to restrict a civilian witness from discussing an investigation, etc. is limited. Nonetheless, all witnesses should be directed, or strongly encouraged, not to discuss the investigation or testimony presented. Interviewing witnesses is critical in an investigation and ensures the adequacy of review. Investigators should be careful not to selectively interview only witnesses that support a predetermined conclusion. Moreover, witness statements should be recorded and summarized in a manner that provides the investigator an ability to refer to the statement and analyze testimony to derive a proper conclusion. Also, separately identify complainant or witness addresses and telephone numbers for purposes of possible civil discovery in any later court action.

10. Investigators must maintain an *open mind* and not rush to a conclusion or judgment as to a particular allegation. Be fair and objective. Where bias occurs in an investigation, the integrity of the investigation may be compromised and may be legally harmful to a police officer and agency alike.

11. Investigators must thoroughly *analyze the facts and data* discovered in an investigation. Prepare a report that discusses the facts of the investigation, and compares the facts to involved Departmental orders or standard operating guidelines. In this regard, investigative conclusions should be supported by facts as opposed to mere simple conclusory statements. Every investigation should contain an analysis of facts and an explanation, or articulated rationale, as to why an investigator reached a particular conclusion. An internal investigation must justify findings, particularly in light of disciplinary actions.

12. POBOR clearly states that police investigations must generally be completed within one (1) year from the date someone authorized to initiate an investigation discovers the incident giving rise to the investigation.

In general, complaints directly received by the Commission must be completed within one-year of receipt. There are several exceptions to this statute of limitation, the most prevalent of which is that the statute is tolled during a criminal investigation.

The time period may be tolled if criminal prosecution or investigation is involved, or civil litigation in which the officer is a party exists. The officer may also waive the time period in writing. Other waivers exist where: 1) a multijurisdictional investigation is involved; 2) numerous employees are involved requiring an extension; 3) an officer is unavailable or incapacitated; 4) the investigation involves workers compensation fraud by the officer.

An investigation may be reopened after the one year limitation period if: 1) significant new evidence has been discovered affecting the outcome of the investigation; and 2) the evidence could not have been discovered in the normal course of investigation or the evidence resulted from the officer's pre-disciplinary response or procedure.

## **VI. Checklist for Investigating Conduct**

### **A. Notice**

- ☐ 1. Did police officer have notice of any applicable Department order, policy, order, etc.?
- ☐ 2. Was there a breach of such order, policy, and procedure?
- ☐ 3. Did the police officer have notice of the disciplinary consequences of his or her actions?
- ☐ 4. Did the police officer have notice of any changes in Departmental orders, policies, procedures or other requirements affecting misconduct?

### **B. Thoroughness**

- ☐ 1. Did you investigate all of the facts concerning the matter prior to reaching a conclusion?
- ☐ 2. Did you comply with all procedural requirements of the Public Safety Officers Procedural Bill of Rights in conducting the investigation?
- ☐ 3. Did you interview witnesses, accurately record statements and resolve any conflicting facts?
- ☐ 4. Have all documents been reviewed for discrepancies or missing facts?
- ☐ 5. Have you reviewed relevant portions of the police officer's personnel file?
- ☐ 6. Have past records of discipline related to current allegations been reviewed or analyzed?



- \_\_\_7. Has the police officer been interviewed and credibility assessed?
- \_\_\_8. Have any factors in mitigation been considered?
- \_\_\_9. If any discrepancies exist between the police officer's account of the facts and the account of witnesses, can the discrepancies be resolved based upon solid rationale to support the finding?

**C. Consistency of Practices**

- \_\_\_1. Have the Department's policies, practices, orders been consistently applied and enforced?
- \_\_\_2. Has the Department overlooked or condoned past violations of the same sort in the past?
- \_\_\_3. If consistent enforcement is lacking, are there aggravating factors supporting a disciplinary finding?
- \_\_\_4. Is the investigative finding consistent with the Department's past history or past practices?

**D. Nature of Alleged Misconduct**

- \_\_\_1. What is the nature of the violation?
- \_\_\_2. Does the offense involve alleged breach of law, integrity or honesty?
- \_\_\_3. How does the alleged misconduct relate to the police officer's past performance?
- \_\_\_4. Has the officer received previous discipline, training, assistance or guidance from the Department relative to the alleged misconduct?

- \_\_\_5. Are the expectations of the Department the same for the affected police officer relative to other members in the Department?

**E. Alleged Criminal Misconduct**

- \_\_\_1. Is the alleged misconduct of a criminal nature? Does the conduct involve integrity or moral turpitude? Is the alleged conduct a misdemeanor or felony?
- \_\_\_2. Has a *Miranda* warning been provided? Has a Garrity/Lybarger admonition been given?
- \_\_\_3. Has the police officer been formally charged with a crime?
- \_\_\_4. Does it appear that all of the necessary elements of the crime exist?
- \_\_\_5. Has the police officer been convicted of a crime? Was the conviction a felony?
- \_\_\_6. Is any criminal action of such a nature such that it will be impossible for the police officer to continue employment?

***Where possible criminal allegations exist, it is recommended that the Commission's investigation trail the criminal investigation, and await a determination from the District Attorney or Grand Jury. In general, an investigation may be tolled under POBOR where a criminal investigation is also involved.***

## VII. Investigation Findings

- A. Investigations must evaluate all of the facts and circumstances surrounding allegations. The investigator should proceed with the investigation in an open and unbiased manner in an effort to preserve the integrity of the investigation. Fairness is critical in conducting investigations. The investigator is very important relative to this critical requirement.
- B. Upon a careful analysis of the totality of facts in an investigation, a finding based on the preponderance of evidence, or totality of facts, must be made by the investigator or a supervisor reviewing the investigation. Findings must be supported by the clear facts and circumstances present in the investigation.
- C. Although the investigative analyses and conclusions may not necessarily be discussed or disclosed in public given confidentiality protections, the analyses and conclusion will affect any disciplinary finding stemming from the investigation. In this regard, investigators must take great care to be accurate and thorough in rendering conclusions based upon all of the facts in an investigation. At the conclusion of the investigation, findings should be rendered based on what the totality of evidence determines. Findings will generally fall into one of four categories:
  - 1) **Sustained**: meaning that the suspected conduct investigated occurred in violation of Departmental orders, rules, policies and/or procedures.
  - 2) **Not sustained**: meaning that the investigation revealed that there was insufficient evidence to prove a violation of Departmental orders, rules, policies and/or procedures. A not sustained finding does not mean that the conduct did not occur, but that there is a lack of evidence to prove any violation.
  - 3) **Exonerated**: meaning that the alleged conduct occurred, but that there was justification for the action militating against a disciplinary finding.
  - 4) **Unfounded**: meaning that the alleged conduct did not occur, or that evidence determined that a violation of rules, policies, etc. did not occur.
- D. The Commission may adopt one of the above findings or take further action as follows:
  - (1) Summarily dismiss the Complaint, in whole or in part;
  - (2) Refer the Complaint back to staff for further investigation;
  - (3) Defer further action on the Complaint;

- (4) Conduct an Investigative Hearing;
  - (5) Take any other appropriate action, disposition, make recommendations, or the Commission may refer any matter before the Commission to the grand jury, district attorney, or other governmental agency authorized by law to investigate the activities of a law enforcement agency.
- E. After reviewing the investigation or case report, the Commission may summarily dismiss a case, upon recommendation of the Executive Officer, on its own motion, or that of the Subject Officer or the Complainant. Parties to the Complaint shall be notified of a proposed Summary Dismissal, and may appear to argue for or against Summary Dismissal. Summary Dismissal may be appropriate in the following circumstances:
- (1) The Commission does not have jurisdiction over the subject matter of the Complaint.
  - (2) The complaint was not filed in a timely manner.
  - (3) Lack of cooperation by the Complainant such that the Commission is unable to continue its investigation, failure by the Complainant to respond to repeated inquiries when such response is necessary to the ongoing investigation.
  - (4) The Subject Officer is no longer employed by the Department, or in the interest of justice.
  - (5) The Complaint is frivolous, or clearly devoid of merit such that no reasonable person could sustain a finding based on the facts.
  - (6) The case investigation is not completed within one year, not including any applicable tolling exemptions.

## **VIII. COMMISSION INVESTIGATIVE HEARINGS**

The Complainant, Subject Officer, Executive Officer, or a member of the Commission may request an Investigative Hearing for some or all of the allegations of a Case.

An Investigative Hearing will be conducted, in accordance with the procedures for such hearings when the Commission determines that such a hearing may facilitate the fact-finding process.

An Investigative Hearing may be deemed to facilitate the fact-finding process when:

- (a) There has been an undue lapse of time since the occurrence of the incident that is the subject of the Complaint; or
- (b) There are additional witnesses, evidence, or information that contradicts or supplements, or is not disclosed by the Investigative Report; or
- (c) There is reason to question the conclusion of the Investigative Report; or
- (d) the case of heightened public attention and an Investigative Hearing would advance public confidence in the complaint and investigation process of the Commission; or
- (e) An appearance in person by the parties would facilitate the fact process.

**A. Scope of the Investigative Hearing.** The scope of an Investigative Hearing may vary. It may consist of a single, narrowly drawn issue; of multiple issues; or of the entire complaint. The scope should be determined by the Commission when authorizing an Investigative Hearing, and all interested parties to the complaint shall be informed of any limitation in scope when notified of the Investigative Hearing.

**B. Admission or No Contest Response by Officer.** A Subject Officer may admit or enter a written response of “no contest” at any time prior to an Investigative Hearing. A response of “no contest” indicates that the Subject Officer accepts the allegations of the Complaint as substantially true in fact and interpretation. The Subject Officer shall be bound by the terms of the “no contest” response in any further consideration of the complaint.

### C. Hearings In General:

1. The Investigative Hearing Process must be conducted consistent with the Brown Act, Penal Code sections 832.5-832.7, Evidence Code sections 1040-1047 and Government code sections 6250 et seq.
2. The Investigative Hearing Panel of the Commission shall consist of *five\*<sup>[or whatever uneven number desired]</sup>* members of the Commission, as selected by the Chair, with one member designated as the Presiding Member. In cases involving an in-custody death, and in such other cases as the Commission shall decide, the Commission will sit as a whole with a minimum of thirteen members present.

3. Challenges of Commission members:

A) *Challenge for Conflicts of Interest or Bias:* A Commission member sitting on an Investigative Hearing Panel must consider all complaints in a fair and impartial manner. A member who has a personal bias or prejudice, or the appearance thereof, in the outcome of a complaint shall not sit on the Investigative Hearing Panel deciding that Complaint. Personal interest in the outcome of a complaint does not include holding or manifesting any political or social attitude or belief, where such belief or attitude does not preclude objective consideration of a case on its merits. Examples of personal bias include, but are not limited to:

- 1) Familial relationship, or close friendship, with parties material to the inquiry;
- 2) Witnessing events material to the inquiry from a non-neutral perspective;
- 3) Being a party to the inquiry;
- 4) Having a financial interest in the outcome of the inquiry; and/or
- 5) Holding a bias against a particular party that is sufficient to impair the Commission member's impartiality.

B) *Procedure for Challenges.* Within five calendar days after the date on which Commission furnishes notice of an Investigative Hearing, including the names of the Commission members constituting the Investigative Hearing Panel, any party to the complaint may file a challenge for cause. Challenges for conflict of interest or bias must substantiate the challenge.

When a challenge for cause is filed, the Chair shall notify the challenged member as soon as possible, and if the member agrees that the challenge is for good cause, or otherwise agrees, the Chair shall ask another member to serve. If the challenged member does not agree that the challenge is for good cause, the Chair may poll the other members of the Investigative Hearing Panel, and if they agree that the challenge is for good cause, the

Chair shall so notify the challenged Commission member and ask another to serve.

4. *Public Comments.* Commission members shall avoid public comment on the substance of particular pending complaints and investigations and shall preserve the confidentiality of closed session meetings in accordance with the Brown Act and applicable law.

## 1) **INVESTIGATIVE HEARING PROCEDURES**

Investigative Hearings may be scheduled by the Chair for any regular or special meeting of the Commission consistent with notice requirements under the Brown Act.

**Fourteen day Notice Requirements.** Fourteen days' calendar notice of an Investigative Hearing shall be given to the complainant, each Subject Officer, and any other person whose attendance the Commission deems appropriate. The notice shall state the date, time, and place of the Investigative Hearing, and the names of the Investigative Hearing Panel members.

**Hearings are Generally Closed to the Public.** The nature of Investigative Hearings, open or closed, will be in closed session consistent with the Brown Act and peace officer confidentiality protections existing at the time of the Investigative Hearing, unless the Subject Officer requests an open Investigative Hearing.

Where an incident has been or is highly known to the public, there is nothing that prevents the Commission from holding open public hearings to receive community input or comments concerning the incident. The Commission may consider community input or information in conjunction with any investigation underway, but shall not form any conclusions or hold deliberations regarding the outcome of the investigation solely based on public opinion or community input.

**Authority to Compel Appearance.** The authority of the Executive Director to subpoena witnesses may be used to compel the appearance of witnesses, including Subject Officers, and/or the production of documents.

**Conduct of the Investigative Hearing.** Investigative Hearings should be informal, and should be conducted in the following manner unless the Chair orders otherwise:

- (a) The Presiding Member or Chair, as applicable, will conduct the Investigative Hearing subject to being overruled by a majority of the Investigative Hearing Panel or the Commission, as applicable. Members of the Investigative Hearing Panel shall be primarily responsible for obtaining testimony. One Investigative Hearing Panel member

may be assigned by the Presiding Member or the Chair to perform the initial questioning of witnesses during an Investigative Hearing convened for a Case. Additional questions may be asked by any Investigative Hearing Panel member, or by a Subject Officer or his or her representative.

(b) At the discretion of the Commission or the Investigative Hearing Panel, opening statement(s) may be made on behalf of the Complainant and the Subject Officer(s) involved.

(c) In the event that the Subject Officer is compelled to cooperate in an Investigative Hearing, Departmental personnel shall provide the Subject Officer with the “*Garrity/Lybarger* warning” when required under the appropriate circumstances. After the Investigative Hearing Panel has taken all relevant evidence, each party may, at the discretion of the Presiding Member or the Chair, be given an opportunity to make a closing statement.

(d) At the conclusion of any witness testimony, either the Complainant or the Subject Officer may request that Commission or the Investigative Hearing Panel consider any additional areas of inquiry they feel need to be covered. The Chair or Presiding Member shall determine whether any further questions will be asked.

(e) To the extent possible, the entire Investigative Hearing on a given complaint should be conducted in one meeting. However, if the Commission or the Investigative Hearing Panel determines that additional evidence is necessary to reach its findings, it will continue the Investigative Hearing to a future date unless the parties agree to allow the Investigative Hearing Panel to receive such material in writing without reconvening.

(f) *Deliberation.* After obtaining evidence, the Investigative Hearing Panel will deliberate in closed session. The Investigative Hearing Panel shall not consider any information not received as part of the Investigative Hearing. The Investigative Hearing Panel may reconvene in the presence of all parties to ask further questions, and each party shall have the opportunity to respond to any such questions.

(g) *Finding and Report by Five-Member Investigative Hearing Panel* *\*[for whatever uneven number desired]*. At the conclusion of an Investigative Hearing before an Investigative Hearing Panel, the Panel members shall, by majority vote, adopt a recommended Finding with respect to the complaint. The Investigative Hearing Panel shall not consider evidence or information obtained outside of the Investigative Hearing. The Investigative Hearing Panel shall then prepare a written report summarizing the evidence, the recommended Finding, the reasons for the recommended Finding, any dissenting opinion, and any other information that may be useful to the full Commission in its consideration of the case.

(h) *Submission to Commission.* A written Confidential Investigative Hearing Panel Report shall be forwarded to all members of the Commission, and the matter calendared as soon as possible at a scheduled regular or special meeting.

A copy of the Confidential Investigative Hearing Panel Report shall be forwarded, to the extent afforded by law to each Complainant and Subject Officer, together with a notice of



the time and place of the Commission meeting at which the complaint will be considered. All Complainants and Subject Officers shall be notified that Commission may accept written objections to the report within 10 days of the date of the submission of the report.

Upon consideration by the Commission, it may:

1. Vote to conclude the matter without further investigation, review, or hearings;
2. Request further information or review by staff, by the Investigative Hearing Panel, or through other appropriate means;
3. Vote to conduct further proceedings on the matter before the entire Commission;
4. Take such other or additional action as it deems necessary and appropriate, such as the making of recommendations regarding policy or rule changes, referral to appropriate agencies, or other appropriate action;
5. Accept the Confidential Investigative Hearing Panel Report as the Final Report of the Commission.

(i) *Record of Investigative Hearing.* All Investigative Hearings shall be transcribed or recorded by a court or stenographic reporter.

## **2) EVIDENCE AT INVESTIGATIVE HEARINGS**

Investigative Hearings do not need to be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil actions.

Hearsay evidence may be used for the purpose of supplementing or explaining other evidence. However, hearsay shall not be sufficient in and of itself to establish facts unless of the nature generally relied upon in civil actions.

Evidence shall be taken in accordance with the following provisions:

1. Each party and the Investigative Hearing Panel shall have the following rights:
  - a. To call and examine witnesses;
  - b. To introduce exhibits;
  - c. To examine and cross-examine witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination;

d. To impeach any witness regardless of which party first called the witness to testify;

If the Subject Officer does not testify in his/her own behalf, he/she may be called and examined as if under cross-examination.

2. Oral evidence shall be taken only under oath or affirmation.
3. Upon the request of either party, a witness may be excluded from the Investigative Hearing until they are called to testify.
4. Irrelevant and unduly repetitious evidence shall be excluded.
5. The rules governing privileged communications shall be effective to the extent that they are otherwise required by constitution or statute.
6. Each party, and any witness, shall have the right to have an attorney or representative of his or her choice present at all times during his or her own fact-finding interview or at the Investigative Hearing. The representative may not be a witness or a person involved in the same investigation.
7. Interpreters. The Chair shall have discretionary authority to provisionally qualify and utilize interpreters. Each party in need of an interpreter shall give notice to the Chair within seven days of receipt of the notice of hearing so that appropriate arrangements can be made.
8. Authority to Compel Appearance. The authority of a Commission subpoena issued by the Executive Director may be used to compel the production of documents and/or the appearance of witnesses, including the Subject Officer.
9. Failure to Appear. When either the Complainant or the Subject Officer fails to appear, the Investigative Hearing Panel may receive statements from those persons present and relying on the evidence received, continue with the Investigative Hearing.
10. Confidentiality of Commission Records. The Commission shall not disclose to the general public any reports, statements, files, records, documents, tapes, or other items whose confidentiality is protected by law. This confidentiality may only be waived in accordance with applicable law, statute, ordinance, or legal proceedings. Evidence contained in Commission's file may only be disclosed to the Complainant and the Subject Officer to the extent afforded by law.
11. Burden of Proof. No finding with respect to an allegation of a Complaint shall be sustained unless it is proven by a Preponderance of the Evidence or totality of facts presented at the Investigative Hearing(s) or otherwise contained in the investigative record.

# **APPENDIX**

## **Public Safety Officers Procedural Bill of Rights**

### **CALIFORNIA CODES GOVERNMENT CODE SECTIONS 3300-3311**

3300. This chapter is known and may be cited as the Public Safety Officers Procedural Bill of Rights Act.

3301. For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code. The Legislature hereby finds and declares that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, wherever situated within the State of California.

3302. (a) Except as otherwise provided by law, or whenever on duty or in uniform, no public safety officer shall be prohibited from engaging, or be coerced or required to engage, in political activity.

(b) No public safety officer shall be prohibited from seeking election to, or serving as a member of, the governing board of a school district.

3303. When any public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety Department, that could lead to punitive action, the interrogation shall be conducted under the following conditions. For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.

(a) The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for any off-duty time in accordance with regular Department procedures, and the public safety officer shall not be released from employment for any work missed.

(b) The public safety officer under investigation shall be informed prior to the interrogation of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. All questions directed to the public safety officer under interrogation shall be asked by and through no more than two interrogators at one time.

- (c) The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation.
- (d) The interrogating session shall be for a reasonable period taking into consideration gravity and complexity of the issue being investigated. The person under interrogation shall be allowed to attend to his or her own personal physical necessities.
- (e) The public safety officer under interrogation shall not be subjected to offensive language or threatened with punitive action, except that an officer refusing to respond to questions or submit to interrogations shall be informed that failure to answer questions directly related to the investigation or interrogation may result in punitive action. No promise of reward shall be made as an inducement to answering any question. The employer shall not cause the public safety officer under interrogation to be subjected to visits by the press or news media without his or her express consent nor shall his or her home address or photograph be given to the press or news media without his or her express consent.
- (f) No statement made during interrogation by a public safety officer under duress, coercion, or threat of punitive action shall be admissible in any subsequent civil proceeding. This subdivision is subject to the following qualifications:
- (1) This subdivision shall not limit the use of statements made by a public safety officer when the employing public safety Department is seeking civil sanctions against any public safety officer, including disciplinary action brought under Section 19572.
  - (2) This subdivision shall not prevent the admissibility of statements made by the public safety officer under interrogation in any civil action, including administrative actions, brought by that public safety officer, or that officer's exclusive representative, arising out of a disciplinary action.
  - (3) This subdivision shall not prevent statements made by a public safety officer under interrogation from being used to impeach the testimony of that officer after an in camera review to determine whether the statements serve to impeach the testimony of the officer.
  - (4) This subdivision shall not otherwise prevent the admissibility of statements made by a public safety officer under interrogation if that officer subsequently is deceased.
- (g) The complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. No notes or reports that are deemed to be confidential may be entered in the officer's personnel file. The public safety officer being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation.
- (h) If prior to or during the interrogation of a public safety officer it is deemed that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights.
- (i) Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that are likely to result in punitive action against any public safety officer, that officer, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation. The representative shall not be a person

subject to the same investigation. The representative shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer under investigation for non-criminal matters. This section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer, nor shall this section apply to an investigation concerned solely and directly with alleged criminal activities.

(j) No public safety officer shall be loaned or temporarily reassigned to a location or duty assignment if a sworn member of his or her Department would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances.

3304. (a) No public safety officer shall be subjected to punitive action, or denied promotion, or be threatened with any such treatment, because of the lawful exercise of the rights granted under this chapter, or the exercise of any rights under any existing administrative grievance procedure. Nothing in this section shall preclude a head of an agency from ordering a public safety officer to cooperate with other agencies involved in criminal investigations. If an officer fails to comply with such an order, the agency may officially charge him with insubordination.

(b) No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal.

3305. No public safety officer shall have any comment adverse to his interest entered in his personnel file, or any other file used for any personnel purposes by his employer, without the public safety officer having first read and signed the instrument containing the adverse comment indicating he is aware of such comment, except that such entry may be made if after reading such instrument the public safety officer refuses to sign it. Should a public safety officer refuse to sign, that fact shall be noted on that document, and signed or initialed by such officer.

3306. A public safety officer shall have 30 days within which to file a written response to any adverse comment entered in his personnel file. Such written response shall be attached to, and shall accompany, the adverse comment.

3307. No public safety officer shall be compelled to submit to a polygraph examination against his will. No disciplinary action or other recrimination shall be taken against a public safety officer refusing to submit to a polygraph examination, nor shall any comment be entered anywhere in the investigator's notes or anywhere else that the public safety officer refused to take a polygraph examination, nor shall any testimony or evidence be admissible at a subsequent hearing, trial, or proceeding, judicial or administrative, to the effect that the public safety officer refused to take a polygraph examination.

3308. No public safety officer shall be required or requested for purposes of job assignment or other personnel action to disclose any item of his property, income, assets, source of income, debts or personal or domestic expenditures (including those of any member of his family or household) unless such information is obtained or required under state law or proper legal procedure, tends to indicate a conflict of interest with respect to the performance of his official duties, or is necessary for the employing agency to ascertain the desirability of assigning the public safety officer to a specialized unit in which there is a strong possibility that bribes or other improper inducements may be offered.

3309. No public safety officer shall have his locker, or other space for storage that may be assigned to him searched except in his presence, or with his consent, or unless a valid search warrant has been obtained or where he has been notified that a search will be conducted. This section shall apply only to lockers or other space for storage that are owned or leased by the employing agency.

3309.5. (a) It shall be unlawful for any public safety Department to deny or refuse to any public safety officer the rights and protections guaranteed to them by this chapter.

(b) The superior court shall have initial jurisdiction over any proceeding brought by any public safety officer against any public safety Department for alleged violations of this section.

(c) In any case where the superior court finds that a public safety Department has violated any of the provisions of this chapter, the court shall render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including, but not limited to, the granting of a temporary restraining order, preliminary, or permanent injunction prohibiting the public safety Department from taking any punitive action against the public safety officer.

3310. Any public agency which has adopted, through action of its governing body or its official designee, any procedure which at a minimum provides to peace officers the same rights or protections as provided pursuant to this chapter shall not be subject to this chapter with regard to such a procedure.

3311. Nothing in this chapter shall in any way be construed to limit the use of any public safety agency or any public safety officer in the fulfilling of mutual aid agreements with other jurisdictions or agencies, nor shall this chapter be construed in any way to limit any jurisdictional or interagency cooperation under any circumstances where such activity is deemed necessary or desirable by the jurisdictions or the agencies involved.

**APPENDIX A**

**COMMISSION ON POLICE PRACTICES**

**CONFIDENTIAL INTERNAL INVESTIGATION**

**Conducted by:** *Name of Investigator*

**Complainant(s):** *Name of complainant(s), address and phone number, where applicable. This section may be omitted where a particular complainant has not been identified.*

**Departmental Orders / Policies Involved**

*Include any alleged violations of general orders or policies involved in the investigation. The general orders, laws or policies involved should be cited and described for reference.*

**Documents and Evidence Appended:**

*Any relevant documents, evidence and/or exhibits should be described and included in this section. Any writings, recordings, photographs, videos, documents, etc. used in the investigation must be included in this section.*

**Summary of Incident**

*A brief summary of the facts concerning the incident should be included in this section. Relevant details including the what, where and how of the incident should be described. The subject officer, involved officers and any civilian witnesses should be identified and referenced. A brief summary of the investigative findings and conclusions should also be included.*

**Witnesses and Interviews Conducted**

*All officers and civilian witnesses interviewed, along with addresses and phone numbers should be included. In particular, investigators must obtain the names, addresses and phone numbers of any civilian witnesses for purposes of Pitchess or discovery motions under Evidence Code sections 1043-1047.*

## **Summary of Interviews**

*Investigators should summarize the interviews of all officers and civilian witnesses. The dates of the interviews should be included. Representatives or attorneys for officers or civilian witnesses should be identified, as well as any conditions placed on interviews by representatives.*

*In particular, investigators should be mindful of accommodating civilian witnesses and the scheduling of interviews. Witnesses must be interviewed respectfully, and in a manner that facilitates cooperation. Some civilian witnesses may request various accommodations regarding locations, time and manner of interviews. Investigators should endeavor to accommodate such requests as long as fairness and due process are not compromised during the investigation.*

*All interviews should be recorded and described in the Documents and Evidence Appended section above.*

## **Investigative Findings**

*The investigator should analyze and discuss the investigation and the evidence relied upon in forming conclusions as discussed in Section VII. The investigative analysis should be thorough, reasoned, complete and based on the totality of evidence.*

*It is important that the investigative discussion and findings be clearly written in a manner that commissioners, officers and Departmental officials may all understand. Since the investigation could form the basis of an appeal or court action, it must be clearly communicated and based on the facts analyzed in reference to Departmental standards, general orders and/or policies.*

## **Conclusion**

*This section should separately list the alleged violations of general orders and dispositive findings:*

- 1) Sustained
- 2) Not Sustained
- 3) Exonerated
- 4) Unfounded



**Office of the Commission on Police Practices**  
**Supervising Investigator**  
**Job Description**

**The Department:**

The Office of the Commission on Police Practices is a City department that provides staff to support the work of the Commission on Police Practices. City voters established the Commission by their approval of Measure B, on November 3, 2020, which added City Charter section 41.2 and took effect on December 18, 2020. The Commission is an investigatory body of the City, independent of the Mayor and the Police Department, and the Commission must act in conformance with applicable federal, state, and local laws. The Commission has the duties and powers set forth in City Charter section 41.2.

The purpose of the Commission is to provide an independent investigation of officer-involved shootings, in-custody deaths and other significant incidents, and to provide an unbiased evaluation of all complaints against the San Diego Police Department (SDPD) and its personnel, in a process that will be transparent and accountable to the community. The Commission will also evaluate and review SDPD policies, practices, training, and protocols and represent the community in making recommendations for changes. The mission of the Commission is to hold law enforcement accountable to the community and to increase community trust in law enforcement, resulting in increased safety for both the community and law enforcement.

**The Position:**

The Supervising Investigator of the Commission on Police Practices will supervise the day-to-day operations of the investigators in the Office of the Commission on Police Practices and oversee the investigators' work product, review evidence collection and procedures, administer investigative techniques, and manage the most complex, sensitive, and difficult investigations. The Supervising Investigator will coordinate the work of the investigators, prepare work performance evaluations, train new investigators, provide on-going training of staff, and participate in the hiring and discipline of investigators with the Executive Director. The Supervising Investigator will also prioritize and assign investigation and related tasks; monitor cases assigned to the investigators to ensure that investigations are timely and in compliance with established procedures; and review assignments and completed cases for accuracy, thoroughness, and appropriateness of conclusions.

The Supervising Investigator will also be responsible for:

- Conducting sensitive independent investigations of officer-involved shootings, in-custody deaths, and other significant incidents
- Decision-making on the investigative approach or methodology used for cases that will range in difficulty from moderate to complex

- Analyzing and adapting applicable policies, procedures, and case laws in determining the proper resolution or recommended course of action
- Interviewing complainants, witnesses, individual members of the SDPD, and others in connection with a variety of sensitive cases
- Conducting canvasses at the location of the incident
- Obtaining and analyzing reports related to the incident, listen to audio, review video footage, and assure the safe custody of evidence, file materials, data, records, and reports as well as maintain a high level of confidentiality
- Compiling information and preparing detailed analytical reports that includes an analysis of discovery, findings, police procedures and legal analysis of conduct under applicable statutes
- Developing, implementing, and refining investigation policies and protocols as well as propose recommendations for improving internal (Commission) and external (Police Department) policies and procedures
- Presenting reports to the Commission, Executive Director, SDPD, city officials, City departments, City Council, Mayor, public, and community groups
- Maintaining case management records of all the investigators and organized case files
- Managing documents pursuant to all legal rules
- Performing related duties as assigned

The Supervising Investigator will perform challenging work and may consult with the Commission's attorney and/or subject matter experts to review the case and findings prior to its release. The Supervising Investigator will also work with staff when identifying and reporting on trends, issues of concern, and improvement to SDPD's tactics and training based on information obtained through investigations and serve as the expert for the Commission on difficult complex investigations.

Due to the nationwide push for change to improve law enforcement agencies by increasing accountability and transparency combined with the broad array of responsibilities outlined in Section 41.2 of the City Charter that established the Commission, the Supervising Investigator will have the authority to exercise decision-making and oversee the investigators' work and reporting of findings to ensure that the investigative process is independent.

#### **Minimum Qualifications:**

The ideal candidate will possess the following qualifications:

- Possession of a Peace Officer Standards and Training (POST) Certificate of Completion from Basic Academy or Specialized Basic Investigators' Certificate of Completion
- A Bachelor's degree with a major in criminal justice, law enforcement, administration of justice, political science, criminology, or a comparable field of study
- Four (4) years' experience in performing investigative work at a professional level in the field of law, law enforcement, police oversight or a closely related field
- NACOLE practitioner of law enforcement is preferred

**License or Certificate/Other Requirements:**

- Must possess and maintain a valid California Driver's License throughout the tenure of employment, have a satisfactory driving record, and demonstrate the ability to travel to various locations in a timely manner as required in the performance of duties
- Must be able to work various shifts, weekends, holidays, and overtime
- Must be able to respond to special investigative occurrences that arise during non-business hours
- Oral and written bi-lingual skills in Spanish, Mandarin, or Cantonese are highly desirable.
- Expected to work nights and weekends as necessary

**Substitution:**

Additional professional experience as outlines above may be substituted for the education on a year-for-year basis

**Knowledge Skills, and Abilities****Knowledge of:**

- Principles, practices, and techniques of conducting an investigation including conduct of interviews and interrogation, research and data investigation, analysis of information, and preparing thorough and objective recommendations
- Procedures for gathering, documenting, preserving, and presenting data and evidence; interview methods and techniques
- Laws of arrest, search and seizure, use of force
- Legal rights of citizens
- Principles of constitutional law and Public Safety Officer's Bill of Rights
- Public relations principles including public speaking and conflict mediation techniques.
- Police department administration and organization
- Administrative hearing practices
- English punctuation, syntax, language mechanics and spelling
- Principles and techniques necessary for the objective presentation of recommendations both in oral and written formats
- Basic personal computer applications including word processing, databases and spreadsheets

**Abilities and Skills:**

- Plan, organize and conduct thorough investigations of complex and sensitive matters in a timely manner
- Maintain accurate records and files of investigative data and evidence
- Create comprehensive investigative operational plans
- Interview effectively and analytically; speak clearly, concisely, and effectively; listen and elicit information
- Remain fair, objective, and open-minded while investigating complaints
- Follow-up on discrepancies

- Corroborate evidence and leads to other evidence suggested by complaint and defense
- Use tact, discretion, courtesy, and diplomacy in interviewing individuals from diverse backgrounds while remaining calm and impartial during sensitive, confrontational, and stressful situations
- Compile and critically analyze information, facts, evidence, and other data to evaluate testimony and analyze the credibility of the witness and the probative value of information obtained
- Reason logically
- Identify and apply correct standards and rules to the facts found in investigations
- Draw sound conclusions and make supported logical recommendations
- Operate a camera to photograph complainants' injuries and the scene of the incident if necessary
- Read, comprehend, and analyze complex policies, rules, laws, reports, medical records, and other pertinent documents
- Interpret information regarding the case and process in lay person's terms
- Maintain a high level of professionalism and ethical standards in approaching each case without preconceived biases
- Communicate effectively orally and in writing
- Make verbal presentations to both large and small groups
- Establish and maintain professional working relationships with employees, elected officials, boards and commissions, community groups and the general public
- Handle stressful and sensitive situations with tact and diplomacy
- Meet critical deadlines, manage time effectively to manage caseload and adapt quickly to changing priorities
- Work with minimal supervision and direction
- Write reports and correspondence in a clear, concise, well-organized and effective manner
- Maintain perspective and take initiative in implementing a variety of methods in order to gather information.

**FIRST DRAFT - TOPICAL OUTLINE – FEBRUARY 4, 2022**  
**STANDARD OPERATING PROCEDURES FOR INVESTIGATIONS**  
**CITY OF SAN DIEGO COMMISSION ON POLICE PRACTICES**

- Access to incident scenes of officer-involved shootings and in-custody deaths
- Process for determining which discretionary cases to investigate
- Priority of investigations
- Deadlines/timelines for completing investigation and deferments
- Role of staff (investigators) and volunteers (Commissioners)
- Joint interviews by IA and CPP investigators with subject officers
- Process for complaints involving potential criminal misconduct
- Procedure for issuing subpoenas
- Fundamental due process rights for subject officers and complainants in investigatory hearings (notice, representation, etc.)
- Standard of proof
- List and definitions of possible commission findings
- Coordination with State Department of Justice investigations of officer-involved shootings
- Scope of investigations (elements required for a thorough and complete investigation)
- Interview procedures (oath/admonishments, recording, participants, interpreters, etc.)
- Rules of evidence (written statements, verbal statements, relevant evidence, etc.)
- Access and review of police department documents
- Documentation of investigations and findings (format, content, etc.)
- Initial review of investigation report (supervising investigator, General Counsel, Commission leadership)
- Options of the Commission upon receipt of an investigation report
- Scope, agendas and procedures for investigatory hearings, if necessary
- Determination of hearing panels
- Scope, agendas and procedures for investigatory hearings
- Failure to appear
- Procedures for CPP determinations of findings, recommendations, etc.
- Distribution and publication of findings
- Appeals process for sustained findings
- Confidentiality procedures

**DRAFT City of San Diego Commission on Police Practices Timeline (Tentative)**  
**November 19, 2021 – Version 10.3**

*Disclaimer: This timeline is for Commission planning purposes only. The timing of certain items (e.g., docketing of City Council actions, meet and confer process, etc.) are beyond the control of the Commission. Additionally, the length of time required for some processes (e.g., hiring and contracting) may take longer than originally anticipated.*

November 3, 2020	General Election
November 2020 – June 2021	Community Input on the Implementation Commission Ordinance via Community Roundtables
November 2020 & December 2020	Meetings with All Continuing and Newly Elected Mayor and City Councilmembers
December 3, 2020	Election Results Certified
December 10, 2020	Mayor and City Councilmembers Installed
December 18, 2020	Secretary of State Chapters Measure B, Activating the New Commission
February 10, 2021	Presentation to City Council Public Safety and Livable Neighborhoods Committee (PS&LN)
March 10, 2021	PS&LN Considers Creation of Office of the Commission on Police Practices, Appointment of Interim Executive Director and Adoption of Interim Standard Operating Procedures
March and April 2021	Discussions with Department of Finance on CPP Budget Needs
April 20, 2021	Mayor Releases Budget for Fiscal Year 22 (July 1, 2021 – June 30, 2022)
April 26, 2021	City Council Approves Creation of Office of the Commission on Police Practices, Appointment of Interim Executive Director and Adoption of Interim Standard Operating Procedures
May 11, 2021	Budget Review Hearing on FY22 Budget
June 2021	Hiring of Executive Assistant
June 6, 2021	Civil Service Commission Approves Exempt Managerial Positions
June 14, 2021	City Council Adopts Budget for FY22
June 24, 2021	PS&LN Reviews First Draft Implementation Ordinance
July – October 2021	Obtain and Equip Commission Office Space
September – December 2021	Interim Outside Counsel Contract Bidding and Selection (Original RFP rebid)
December 2021	Hiring of Administrative Aide/Complaints and Finance Coordinator (Offer Extended)
March 2022 – April 2022	Selection and Hiring of Deputy Executive Director/Director of Community Engagement
December 2021 – July 2022	Develop proposed Standard Operating Procedures for Investigations (SOPs)

January 27, 2022	Anticipated date that PS&LN Reviews Second Draft of the Implementation Ordinance
February 2022	(Depends on whether PS&LN refers the second draft of the ordinance for further revision) PS&LN approves the implementation Ordinance and sends to the full Council.
March 2022	City Council Considers the Implementation Ordinance. They May Refer Back to Counsel or Refer for Meet and Confer.
March 2022	Development of FY23 Budget Proposal
May 2022	Budget Review Hearing for FY23 Budget
March 2022 – April 2022	Selection and Hiring of Deputy Executive Director/Director of Community Engagement
May – August 2022	Meet and Confer on the Implementation Ordinance.
May – December 2022	Recruitment and Selection of Permanent Commissioners (Including Independently Conducted Background Checks)
June 2022	Hire Supervising Investigator, Policy Analyst and Performance Auditor
June 2022	City Council Approves FY23 Budget
August – December 2022	Investigation SOPs Reviewed by PS&LN, City Council and Undergo Meet and Confer
September 2022	Hiring of 3 Staff Investigators and Selection of Pool of Contract Investigators (Contingency Basis)
September 2022	Adopt Memorandum of Understanding with SDPD (Including Complaint Processing and Sharing, Sharing of Records, etc.)
September 2022	City Council Adopts Implementation Ordinance (2 Readings Required)
October 2022	Implementation Ordinance Takes Effect; Independent Investigations Initiated
January 2023	City Council Appoints Permanent Commissioners
January – June 2023	National Search and Selection of New Executive Director
August 2023	City Council Appoints Permanent Executive Director
September – November 2023	Mediation Program Procedures Established
December 2023	Hiring of Commission General Counsel
January 2024	Hiring of Mediation Coordinator, Mediation Program Commences

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 6, DIVISION 11 OF THE SAN DIEGO MUNICIPAL CODE BY RETITLING DIVISION 11; BY RETITLING AND AMENDING SECTIONS 26.1101, 26.1102, 26.1103, 26.1104, 26.1105, AND 26.1106; AND BY ADDING NEW SECTIONS 26.1107, 26.1108, 26.1109, 26.1110, 26.1111, 26.1112, 26.1113, 26.1114, AND 26.1115, RELATING TO THE IMPLEMENTATION OF THE COMMISSION ON POLICE PRACTICES.

WHEREAS, at the municipal election held on November 3, 2020, City of San Diego (City) voters approved Measure B to establish the Commission on Police Practices (Commission), which supersedes the City's Community Review Board on Police Practices (CRB); and

WHEREAS, Measure B amended the San Diego Charter (Charter) to, among other things, add section 41.2; and

WHEREAS, the Charter amendments set forth in Measure B took effect on December 18, 2020, when the California Secretary of State chaptered them; and

WHEREAS, under Charter section 41.2, the Commission is established as an investigatory body of the City, independent of the Mayor and the Police Department; and

WHEREAS, the Commission has certain mandatory duties and discretionary powers, as described in Charter section 41.2, and the City Council (Council) may, by ordinance, mandate additional duties and authorize additional powers for the Commission, consistent with the Charter and applicable federal and state law; and



WHEREAS, the Council wishes to adopt the ordinance to implement the Commission, as required by Charter section 41.2; NOW, THEREFORE, BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 2, Article 6, Division 11 of the San Diego Municipal Code is amended by retitling Division 11, to read as follows:

**Article 6: Board and Commissions**

**Division 11: Commission on Police Practices**

Section 2. That Chapter 2, Article 6, Division 11 of the San Diego Municipal Code is amended by retitling and amending sections 26.1101, 26.1102, 26.1103, 26.1104, 26.1105, and 26.1106, to read as follows:

**§26.1101 Establishment and Purpose of the Commission on Police Practices**

Effective December 18, 2020, City Charter section 41.2 established the Commission on Police Practices, which supersedes and replaces the Community Review Board on Police Practices. The *Commission* is an investigatory body of the City, independent of the Mayor, Police Chief, and *Police Department*.

The *Commission's* purpose is: (1) to provide independent community oversight of the *Police Department*, directed at increasing community trust in the *Police Department* and increasing safety for both members of the community and *police officers*; (2) to perform independent *investigations* of *police officer*-involved shootings, in-custody deaths, and other significant incidents involving the *Police Department*, and independent *evaluations* of *complaints* against the *Police Department* and its personnel, in a process that is transparent and accountable to

the community; and (3) to *evaluate* and *review* *Police Department* policies, practices, training, and protocols, and represent the community in making recommendations for changes. The *Commission* has *investigatory*, *review*, and *auditing* powers, including the power to make factual determinations about matters that are *investigated* and to make advisory recommendations regarding the actions of *police officers* and the procedures, policies, and practices of the *Police Department*.

#### **§26.1102 Definitions**

In the interpretation and implementation of City Charter section 41.2 and this Code, the following definitions apply to the terms set forth in italics:

*Audit* means to examine a matter in compliance with an established set of standards.

*Commission* means the Commission on Police Practices.

*Complaint* means any communication to the *Commission*, *Police Department*, or City that alleges *misconduct* by a *police officer*, including, but not limited to, complaints submitted under California Penal Code section 832.5.

*Complainant* means a person who files a *complaint*.

*Evaluate* means to determine the significance or condition of a matter.

*Executive Director* means the City employee appointed to serve as the director of the Office of the Commission on Police Practices, and having the duties set forth in City Charter section 41.2.

Finding means the determination of the Commission after it has reviewed, investigated, or audited a matter within its authority. Findings must be based on provable facts applying California evidentiary rules applicable to administrative proceedings, based on the preponderance of the evidence standard, which is defined as more likely than not. Findings must be in accordance with State law, including California Penal Code sections 832.5 through 832.8, or any successor California law, binding on the City as a public agency employer of peace officers.

The possible findings are as follows:

- (a) Sustained means the police officer committed all or part of the alleged acts of misconduct;
- (b) Not Sustained means the investigation produced insufficient information to clearly prove or disprove the allegations;
- (c) Exonerated means the alleged act occurred was justified, legal and proper, or as within policy;
- (d) Unfounded means the alleged act did not occur.

Finding means the determination of the Commission after it has reviewed, investigated, or audited a matter within its authority. All findings must be based on provable facts applying California evidentiary rules applicable to administrative proceedings. The possible findings and their definitions are as follows:

- (a) Sustained means all or part of the alleged misconduct, as set forth in a

~~*complaint or brought to the attention of the Commission through other means, occurred based on a preponderance of the evidence presented, which is defined as more likely than not;*~~

~~(b) *Not Sustained means there is not enough evidence to clearly prove or disprove the alleged misconduct, as set forth in a complaint or brought to the attention of the Commission through other means, including evaluation, review, or investigation, even if not alleged in the complaint;*~~

~~(c) *Unfounded means the alleged misconduct, as set forth in a complaint or brought to the attention of the Commission through other means, did not occur or the allegation is not true based on the preponderance of the evidence presented, which is defined as more likely than not; and*~~

~~(d) *Exonerated means the alleged conduct occurred, based on a preponderance of the evidence presented, which is defined as more likely than not, but the conduct was legal and not in violation of Police Department policy.*~~

*Investigation* means a gathering of actionable information, including from original sources, regarding a *complaint* against a *police officer* or an incident involving a *police officer*, which is conducted in compliance with applicable laws. Any *investigation* of a *police officer* must comply with the California Public Safety Officers Procedural Bill of Rights Act, as set forth in the California Government Code, and other applicable laws. When conducting an *investigation*, the *Commission* must gather and consider factual information from a number of

sources, including documents or copies originating from material gathered and generated by the *Police Department*, witness interviews obtained by the *Commission* or its staff, and documents or copies gathered or prepared by the *Commission* or its staff.

*Investigatory proceeding* means any process, formally set forth in the *Commission's* operating procedures and approved by the Council, to *investigate*, *review*, or *audit* a matter, including interviewing witnesses, *receiving* and *reviewing* documents, engaging a fact-finding panel, and conducting hearings.

*Member* means a person appointed to serve on the *Commission*.

*Misconduct* means conduct that causes risk or harm to the health and safety of the public, impairs the operation and efficiency of the *Police Department*, or brings the *Police Department* into disrepute. *Misconduct* may involve a violation of any law, including a federal or state statute or local ordinance, a regulation, including a City Administrative Regulation, or a *Police Department* policy or procedure.

*Misconduct* may also involve a willful act of moral turpitude or an ethical violation. On-duty or off-duty conduct may constitute *misconduct*.

*Original Sources* means firsthand testimony or direct evidence concerning a matter under *investigation*.

*Personnel records* mean records maintained by the City, including records within the City's Personnel Department, Risk Management Department, and *Police Department*, specific to each *police officer's* employment, including, but not

limited to, performance evaluations, assignments, status changes, imposed discipline, and personal information.

*Police Department* means the City's *Police Department*, including *police officers* and other City employees.

*Police officer* means a peace officer, as defined by and with the authority set forth in the California Penal Code, who is employed by the *Police Department*.

*Police misconduct* means *misconduct* alleged in a *complaint* against a *police officer*. *Police officer misconduct*, as used in City Charter section 41.2, has the same meaning as *police misconduct*.

*Receive* means to gain knowledge of information from a written or verbal communication or to take physical possession of a document.

*Register* means to record in writing and maintain the record.

*Review* means to inspect, consider, and reexamine a matter and reach a conclusion regarding the matter. When *reviewing* a *complaint*, the *Commission* must consider information and documents or copies, originating from material gathered and generated by the *Police Department*, witness interviews by the *Commission* or its staff, and information and documents or copies, gathered or prepared by the *Commission* or its staff.

#### **§26.1103 Commission Composition and Member Qualifications**

- (a) The *Commission* will be composed of members of the Community Review Board on Police Practices serving on December 18, 2020, until the

Council has formally appointed *members* to the *Commission*, in accordance with the provisions and process set forth in this Code.

- (b) The Council will not consider citizenship status in appointing *members* to the *Commission*.
- (c) All *members* must reside in the City at the time of their appointment or reappointment and throughout their service on the *Commission*. The Council cannot waive this requirement.
- (d) The Council must appoint *members* to the *Commission*, who reflect the diversity of the City, by including *members* who represent the City's diverse geographic areas and socio-economic, cultural, racial, ethnic, gender, gender identity, sexual orientation, and age differences, and who have differing personal backgrounds, education, occupations, and life experiences. The Council must make appointments to specific designated seats, as follows:
  - (1) There must be at least one *member* who resides in each of the nine Council districts appointed to serve in a designated seat for each Council district. Any vacancy in these designated seats, created by a *member* moving out of the Council district or a change in Council district boundaries, must be addressed by the Council at the end of the *member's* term.
  - (2) There must be two *members* in the age range of 18 to 24 at the time of appointment, who are appointed to serve in two designated

youth seats. Once these *members* reach the age of 25, they are no longer eligible for reappointment to these designated seats. Any vacancy in these designated seats must be addressed by the Council at the end of the *member's* term.

- (3) The Council must appoint five *members* who reside in and represent those City residents living in low- and moderate-income United States Census tracts. Any vacancy in these designated seats, created by a *member* moving out of a low- or moderate-income United States Census tract, must be addressed by the Council at the end of the *member's* term.

- (4) The Council must appoint nine at large *members*, prioritizing the appointment of individuals who have had prior contact or interactions with law enforcement; individuals with experience or expertise in substance abuse addiction treatment; individuals involved in services for or directed towards the unhoused; individuals involved or with expertise in immigration or migrant services; individuals who were or are criminal justice system impacted; individuals involved or with expertise in mental health, restorative justice, social work, or law enforcement practices and oversight; and individuals with experience or expertise in civil rights advocacy.



- (e) To ensure the *Commission's* independence from the *Police Department* and other law enforcement agencies in San Diego County, no current or former employee of the *Police Department* or other law enforcement agency working within the geographic boundaries of the County of San Diego may serve on the *Commission*. In addition, no immediate family or household member, defined as the parent, spouse, domestic partner, sibling, child, or cohabitant, of a law enforcement officer, who works or worked for a law enforcement agency within the geographic boundaries of the County of San Diego, may serve on the *Commission*. For purposes of this prohibition, law enforcement agencies include police departments in all cities in the County of San Diego, as well as local agency, county, state, and federal law enforcement officers and City, county, state, and federal prosecutors. This prohibition does not apply to former employees of law enforcement agencies outside of the County of San Diego, who have been separated from their law enforcement employment for at least five years.
- (f) No City employee, who is on active payroll, may serve on the *Commission*.
- (g) All prospective or nominated *members* of the *Commission* are subject to a criminal history background review prior to appointment, to be conducted in cooperation with the City's Personnel Department. The consideration of an applicant's or nominee's criminal history may only take place during

the final stage of the appointment process. An applicant or nominee shall not be excluded from participation on the *Commission* based on their criminal history background, at time of appointment, except for any of the following reasons:

- (1) they have been convicted of malfeasance in office, and their civil rights have not been restored;
- (2) they have been convicted of a felony, and are on parole, post-release community supervision, felony probation, or mandated supervision for the conviction of a felony;
- (3) they are required to register as a sex offender pursuant to California Penal Code section 290 based on a felony conviction;
- (4) they are incarcerated in any prison or jail; or
- (5) they have been found in violation, by a state or local judicial or administrative body, of any of the following: (i) misuse of a public position for personal interests; (ii) misuse of City records; or (iii) violation of federal or state law relating to confidentiality or City employee privacy.

If an applicant or nominee is disqualified as a result of their criminal history background review, the City must provide them with a written explanation of the reasons. Criminal convictions and other involvement with law enforcement, such as arrests or detentions, do not bar appointment as a *member*, except as described in this Subsection.

- ~~(1) — An applicant or nominee will be disqualified, without consideration, if their criminal history includes any conviction, regardless of the date of the conviction, for any felony crime; felony or misdemeanor hate crime or enhancement; felony or misdemeanor crime that requires registration under federal or state sex offender registration laws; or misdemeanor crime involving child abuse, domestic violence, elder abuse, embezzlement, sexual battery, or criminal violation of state or local conflict of interest laws.~~
- ~~(2) — Notwithstanding Subsection (1) above, an applicant or nominee is not disqualified, without consideration, if they can satisfy any of the following conditions: (a) they can demonstrate that they are no longer on probation or parole and have satisfied a minimum period of rehabilitation in the community continuously for a period of five years or longer; (b) they present a certificate of rehabilitation issued in accordance with the California Penal Code; or (c) they present a court order demonstrating that the conviction has been overturned, expunged, or dismissed, or a court has issued any other post conviction relief that modifies the conviction so that it no longer fits within the category of convictions set forth in Subsection (1) above.~~
- ~~(3) — An applicant or nominee will be disqualified, after review of their~~

application or nomination, if it is found that a state or local judicial or administrative body has sustained findings of any of the following: (a) misuse of a public position for personal interests; (b) misuse of City records; or (c) violation of federal or state law relating to confidentiality or City employee privacy.

- (4) — An applicant or nominee will not be disqualified from consideration for any misdemeanor convictions not described in Subsection (1) above. Convictions solely involving controlled substances or theft do not bar participation as a Commission member.
- (h) No person shall be excluded from eligibility or disqualified to serve on the *Commission* for any reason other than those reasons provided by Section 26.1103. If an applicant or nominee is disqualified from appointment for any reason under Section 26.1103, the City must provide a written explanation of the reason or reasons to the disqualified applicant or nominee.

#### **§26.1104 Terms of Commission Members**

- (a) *Members* serve two-year terms and until a successor is appointed, except that 12 of the 25 *members* first appointed will initially serve a one-year term, so that the terms of no more than 13 *members* expire in any year. Following the first Council appointments to the *Commission*, the City Clerk will administer a random drawing to determine which of the 25 *members* will initially serve a one-year term.

- (b) All terms begin upon appointment and end on June 30 of the applicable year.
- (c) The City Clerk must maintain a record of the *members* and their terms, and regularly make this information available to the Council and the public.
- (d) The Council President, with the assistance of the *Executive Director*, will timely schedule Council consideration of new appointments to ensure that the *Commission* positions remain filled.
- (e) *Members* can serve no more than four two-year terms consecutively. However, *members* whose terms of service have expired must continue to serve until their successor is appointed, even if the total time served extends beyond the maximum permissible length of service. If for any reason a *member* serves a partial term in excess of one-half of a full term, that partial term will be considered a full term for the purpose of the *member's* term limitation of four consecutive terms.

**§26.1105 Appointment of Commission Members**

- (a) *Members* are appointed by the Council in accordance with the approved Council rules and policies. In making appointments, the Council may consider written nominations made by the public and community-based organizations, as long as nominees accept their nomination in writing prior to Council consideration. The Council may also consider nominations

from the *Commission*. The *Commission* may prepare an operating procedure for its nomination process.

- (b) As part of their appointment process, prospective *members* are subject to a *review* of their qualifications to serve, which will be conducted by the Council President or designee, in accordance with applicable laws. This *review* includes an *investigation* into any record of criminal convictions, as set forth in section 26.1103(g).
- (c) The *Commission* will work with the Chair of the Council Public Safety & Livable Neighborhoods Committee to have an annual special meeting where community stakeholders have the ability to advocate and promote community members as potential nominees to the Commission.

#### **§26.1106 Removal of Commission Members**

- (a) A *member* may resign prior to the expiration of their term with written notice to the Council President. Upon this notification, the Council President must consider the position vacant and eligible for the Council to appoint a new *member* to serve for the remainder of the vacating *member's* term. If a *member* resigns from a designated seat, the Council must appoint a new *member* who meets the qualifications to serve in that designated seat.
- (b) If a *member* is convicted during the *member's* term ~~of~~ for (1) malfeasance in office and their civil rights have not been restored; (2) of a felony; (3) of a felony or misdemeanor where they are required to register as a sex

offender pursuant to Section 290 of the California Penal Code; (4) are incarcerated in any prison or jail; any felony crime; felony misdemeanor hate crime or enhancement; felony or misdemeanor crime that requires registration under federal or state sex offender registration laws; or misdemeanor crime involving child abuse, domestic violence, elder abuse, embezzlement, sexual battery, or (5) criminal violation of state or local conflict of interest laws, the *member* must immediately notify the Council President and cease any further participation on the *Commission*, pending a vote by the Council to formally remove and replace the *member*. The Council's consideration of the removal and replacement of the *member* must occur within 60 days following the Council President's notice of the *member's* conviction. The *member* may waive a Council hearing on removal, but the Council must consider replacement of the *member* within the 60 days following the Council President's notice of the conviction.

- (c) The *Commission*, by a two-thirds vote of its *members*, may recommend to the Council, by written notice to the Council President, that a *member* be removed for good cause, other than a criminal conviction, for the following reasons:

- (1) misuse of their position for personal interests;
- (2) misuse of records, including *Police Department* or *Commission* records;

- (3) violation of federal or state law relating to confidentiality or City employee privacy;
  - (4) conduct that impedes a *member's* ability to serve impartially and independently;
  - (5) unexcused absences from at least three consecutive meetings of the full *Commission*. Prior notification to the *Commission's* chairperson of a *member's* absence from a meeting of the full *Commission* will count as an excused absence;
  - (6) failure to complete case *review* as assigned by the *Executive Director*;
  - (7) violation of the Code of Ethics of the National Association for Civilian Oversight of Law Enforcement (NACOLE) or the *Commission's* adopted code of ethics;
  - (8) any other cause that impacts the *Commission's* effective operations, standing, or independence.
- (d) Upon receipt of a written recommendation by the *Commission* to remove a *member*, as described in section 26.1106(c), the Council President must schedule a hearing of the Council to occur within 60 days following receipt of the recommendation. The Council must act, by a majority vote, to remove a *member*.
- (e) If a *member* voluntarily resigns before a required Council hearing on removal, the *member* waives their right to the hearing on removal. The



Council President may suspend a *member's* participation on the *Commission* by written notice to the *member*, pending a Council hearing on removal.

- (f) The Council may remove *members* of the *Commission* for cause, other than criminal conviction, by a majority of the *members* of Council for the reasons set forth in Subsection (c) above, regardless of whether a recommendation is received from the *Commission*.

Section 3. That Chapter 2, Article 6, Division 11 of the San Diego Municipal Code is amended by adding new sections 26.1107, 26.1108, 26.1109, 26.1110, 26.1110, 26.1111, 26.1112, 26.1113, 26.1114, and 26.1115 to read as follows:

**§26.1107 Duties and Powers of the Commission**

- (a) The *Commission* has the following duties and powers, as mandated by the Charter and by the authority of the Council:
  - (1) Once *members* are formally appointed by the Council, the *Commission* must establish operating procedures for its governance, and the *Commission's investigatory proceedings*. All operating procedures prepared by the *Commission* must be consistent with all applicable laws, including the Charter, the Ralph M. Brown Act, the California Public Records Act, and all laws, rules, regulations, and collective bargaining agreements between the City and its recognized employee organizations that provide rights to City employees. The *Commission's* initial

operating procedures and any amendments must be approved by the Council, by resolution, before the operating procedures take effect.

- (2) The *Commission* is an investigatory body of the City of San Diego, independent of the Mayor and the *Police Department*. The *Commission* must independently *investigate* and *evaluate* all deaths occurring while a person is in the custody of the *Police Department*, all deaths resulting from interaction with a *police officer*, and all *police officer*-involved shootings, regardless of whether a *complaint* has been made against a *police officer* or the *Police Department*. These *investigations* must be conducted by *Commission* staff or contractors who are independent of the *Police Department*. In accordance with the *Commission's* duties and powers, tThe *Commission* must prepare operating procedures for *Commission* investigators to have immediate access to the scene or area of a *police officer* involved shooting, the scene or area where a death or deaths occurred resulting from interaction with a *police officer*, the scene or area where a death or deaths occurred while a person was in the custody of the *Police Department*, and *Police Department* investigations of *police officer*-involved shootings, deaths resulting from interaction with *police officers*, and deaths occurring while a person is in the custody of the *Police*

*Department*. Upon completion of any *investigation*, the *Commission* must make *findings*. The Chief of Police must provide a written substantive response to the *Commission's findings* within 30 days of receipt of the *findings*.

- (3) The *Commission* may, but is not required to, *investigate* and *evaluate* a *complaint* against a *police officer* that does not involve an in-custody death, a death resulting from an interaction with a *police officer*, or a *police officer*-related shooting. Upon completion of any *investigation*, the *Commission* must make *findings*. The *Commission* is prohibited from *investigating* and *evaluating* a *complaint* where the *complainant* has requested that the *complaint* be handled without an *investigation* by the *Commission* or where no specific allegation or *police officer* can be identified. The *Commission* may *investigate* any allegations of *misconduct* that become known to the *Commission* during an *investigation* of a *complaint*. In exercising its discretionary power to *investigate* and *evaluate* a *complaint*, the *Commission* must determine that the *complaint* involves any of the following:
- (A) an incident in which the use of force by a *police officer* against a person resulted in great bodily injury;
  - (B) dishonesty by a *police officer* directly relating to the reporting, *investigation*, or prosecution of a crime, or

directly relating to the reporting or *investigation* of *misconduct* by another *police officer*, peace officer, or custodial officer, including an allegation of perjury, making a false statement, filing a false report, or destroying, falsifying, or concealing evidence;

(C) an incident that has generated substantial public interest or concern;

(D) an incident where data shows a pattern of *misconduct* by a *police officer*; or

(E) an incident where data shows a pattern of inappropriate policies, procedures, or practices of the *Police Department* or its members.

(4) The *Commission* must *receive, register, review, and evaluate* all *complaints* against *police officers*, except the *Commission* must not *review or evaluate* a *complaint* where the *complainant* has requested that the *complaint* be handled without *investigation* by the *Commission* or where no specific allegation or police officer can be identified. Upon completion of any *complaint review or evaluation*, the *Commission* must make *findings*. The Chief of Police must provide a written substantive response to the *Commission's findings* within 30 days of receipt of the *findings*.

- (5) The *Commission* may, but is not required to, *review, investigate,* and *evaluate* allegations of inappropriate sexual conduct, physical assault, or domestic violence by a *police officer*, whether or not a *complaint* has been submitted to the *Commission* or the *Police Department*. Upon completion of any *review, investigation,* or *evaluation*, the *Commission* must make *findings*. The Chief of Police must provide a written substantive response to the *Commission's findings* within 30 days of receipt of the *findings*.
- (6) 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*, and all disciplinary decisions proposed by the Chief of Police or designee following *sustained findings* of *police officer misconduct*. The *Commission* may provide advisory recommendations to the Chief of Police, but must act promptly, timely, and in accordance with applicable law, including the California Public Safety Officers Procedural Bill of Rights Act. In providing advisory recommendations on the discipline of officers to the Chief of Police, the *Commission* may consider all information, agreements, and documents of prior discipline imposed, including agreements for reduced discipline or last

chance agreements, and prior *sustained findings* of *misconduct* against the *police officer*, including prior *sustained findings* of *misconduct* made by the *Commission* or the *Police Department*, in a manner consistent with state law and the City's established disciplinary process. In order to execute its powers and duties under this section, every 30 days after the *Police Department* has commenced an *investigation* of alleged *misconduct* by *police officers*, the *Police Department* must provide to the *Commission* a written status report on the progress of the *investigation*, until the *investigation* concludes. Upon the *Commission's* written request, the *Police Department* must provide all *records* pertaining to the *investigation*, subject to Section 26.1109. The *Police Department* must either provide to the *Commission* its factual *findings* and evidentiary conclusions within six months after commencement of its *investigation*, or a written explanation as to why it cannot provide such information. If after six months the factual *findings* and evidentiary conclusions are not available, the *Police Department* must provide a written report to the *Commission* on the status of the *investigation* every two weeks thereafter until the *investigation* is concluded. Unless expressly permitted under the California Public Safety Officers Procedural Bill of Rights Act,

there are no circumstances express or implied for the *Police Department* to delay or toll completion of its *investigation*.

- (7) The *Commission* may, but is not required to, *review* and *evaluate* the *Police Department's* administration of discipline of *police officers* arising from other matters not involving alleged *misconduct*. The *Commission* may provide advisory recommendations to the Chief of Police, but must act promptly, timely, and in accordance with applicable law, including the California Public Safety Officers Procedural Bill of Rights Act. In providing advisory recommendations on the discipline of officers to the Chief of Police, the *Commission* may consider all prior discipline imposed, including agreements for reduced discipline or last chance agreements, and *sustained findings of misconduct* against the *police officer*, including prior sustained *findings of misconduct* made by the *Commission* or the *Police Department*, in a manner consistent with state law and the City's established disciplinary process. The Chief of Police must provide a written substantive response to the *Commission's* advisory recommendations within 30 days of receipt of the recommendations.

- (8) The *Commission* must *review* and *evaluate* the *Police Department's* compliance with federal, state, and local reporting laws and requirements.
- (9) The *Commission* may, but is not required to, *review* and *evaluate* the policies, procedures, practices, and actions of the *Police Department*. The *Commission* may make advisory recommendations to the Chief of Police, the Mayor, and the Council on any policies, procedures, practices, and actions of the *Police Department*. The Chief of Police must provide a written substantive response to the *Commission's* recommendations within 60 days of receipt of the recommendation.
- (10) The *Commission* may request that the Mayor review any *Commission findings* or advisory recommendations that the Chief of Police does not accept, implement, execute, or apply.
- (11) The *Commission* may develop and implement a mediation program that enables *complainants* to resolve their issues with a *police officer* who is a subject of a *complaint*, through face-to-face alternative dispute resolution involving a trained mediator. Participation in a mediation program must be voluntary and mutually agreed upon by both the *complainant* and the *police officer*. Mediation must be limited to eligible cases as determined by the *Commission*. A case successfully resolved through



mediation, as determined by the *Commission*, is not considered a disciplinary proceeding or punitive action under the California Public Safety Officers Procedural Bill of Rights Act. However, the *complaint* may be subject to discovery in a criminal or civil action in accordance with applicable state law.

(12) The *Commission* must interact with all City employees, including *police officers* and other employees of the *Police Department*, in accordance with all applicable federal, state, and local laws and regulations, including the City's Civil Service Rules, Personnel Regulations, Administrative Regulations, and collective bargaining agreements between the City and its recognized employee organizations.

(13) The *Commission* may establish an operating procedure to directly *receive and investigate complaints* by members of the public against *Police Department* employees who are not *police officers*, in accordance with the City Charter and this Code. Any procedure to *investigate the complaints* must be made available in writing and accessible to the public. A copy of any *complaint received* by the *Commission* that identifies an employee of the *Police Department* must be forwarded to the *Police Department* within five calendar days of the *Commission's* receipt of the *complaint*. The *Commission* is not authorized to *investigate a complaint* against an

employee of the *Police Department* who is not a *police officer* unless the *complaint* also alleges *police officer misconduct*.

- (14) The *Commission* must maintain a training program for individuals interested in appointment to the *Commission*. *Members* must also complete training upon their appointment to ensure their working knowledge of applicable laws and rules. The training program must include instruction in civil or human rights and criminal justice as well as of the impacts of racial and identity profiling.
- (15) Subject to any limitations set forth in governing federal or state law, the *Commission* may refer any matter before the *Commission* to the grand jury, district attorney, or other governmental agency authorized by law to *investigate* the activities of a law enforcement agency.
- (b) The Chief of Police must consider any *evaluation* or recommendation by the *Commission* of proposed *police officer* discipline, prior to *Police Department* imposition of the discipline, but only if the *evaluation* or recommendation is completed before the statutory timelines set forth in the California Public Safety Officers Procedural Bill of Rights Act or other applicable law. The Chief of Police retains authority and discretion to discipline subordinate employees in the *Police Department*. The exercise of the *Commission's* duties and powers, as set forth in the City Charter and this Code, including its *investigatory* duties and powers, is not

intended to obstruct, abrogate, or supersede the duties of the Chief of Police, as set forth in the City Charter.

**§26.1108 Cooperation of City Employees in Commission Activities**

- (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.
- (b) 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.

**§26.1109 Records**

- (a) The *Police Department* must make available to the *Commission* its records, within ten calendar days after a written request from the *Commission*, relating to any matter under *investigation*, *review*, or *evaluation* by the *Commission*. The *Police Department* must provide to the *Commission* all *complaints received* by the *Police Department* within five calendar days of receipt regardless of whether there is a written request from the *Commission* for the *complaints*. The *Commission* and the *Police Department* may develop an operating procedure for the disclosure of *Police Department* records to the *Commission*. However, any disclosure of *personnel records* to the *Commission* by any City department must be in accordance with all applicable federal and state laws and regulations, including all laws and regulations pertaining to confidential medical information and *personnel records*. The *Commission* is required to maintain the confidentiality of all *Police Department* records and City *personnel records*, in accordance with applicable laws, and to respond to requests by members of the public for records in the possession of the *Commission* in a manner consistent with the California Public Records Act and applicable California constitutional, statutory, and case law that protects *personnel records*.
- (b) In accordance with City Charter section 57, the Chief of Police retains authority over the records of the *Police Department*. The Chief of Police must provide records to the *Commission* in whole and with all information

unredacted unless in the opinion of the Chief of Police to do so will hinder a criminal investigation or will infringe upon the exercise of the Chief of Police's right to deliberative process and confidential communications with other law enforcement agencies, the Mayor, or with the subordinate employees of the *Police Department* regarding matters within the authority of the Chief of Police. Within ten calendar days after a written request from the *Commission*, the Chief of Police must provide the *Commission* with *Police Department* records as specified in Subsection (a) above or a written explanation, setting forth the specific records or reasonably segregable portions of the records being withheld, the reason for the withholding or redactions, and the legal justification supporting the withholding or redactions. If the *Commission* disagrees with the Chief of Police's decision to withhold records or redact information, the *Commission* may seek disclosure through its subpoena power, as defined by the Charter and Chapter 2, Article 6, Division 11.

- (c) *The Commission* must retain *complaints* and any reports or *findings* relating to *complaints* for at least five years or any longer period required by state law. These *Commission* records are considered *personnel records* and must be managed in accordance with the California Public Records Act, the California Penal Code, the California Public Safety Officers Procedural Bill of Rights Act, California Evidence Code section 1043, and other applicable laws and collective bargaining agreements. The

*Commission* is responsible for compliance with discovery requests for  
*Commission* records in a manner consistent with controlling law.

#### **§26.1110 Subpoenas**

- (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 chair 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.

#### **§26.1111 Conflict of Interest Code**

The Council must adopt a conflict of interest code for the *members, Executive Director, and City* employees in the Office of the *Commission*. All *members* must be required to complete and file statements of economic interests in accordance with the conflict of interest code.

#### **§26.1112 Reimbursement for Expenses**

The *Executive Director* is authorized to reimburse *members* for reasonable expenses incurred in the performance of their official duties in accordance with the City's approved Administrative Regulations regarding reimbursable expenses and the approved budget and appropriations for the Office of the *Commission*, and with the concurrence of the City's Chief Financial Officer, as required by the Charter.

**§26.1113 Whistleblower Protection**

The City is prohibited from taking an adverse employment action against a City employee that is directly related to the filing of a *complaint* with the *Commission* or to the lawful participation in an *investigatory proceeding* conducted by the *Commission*. A City officer or employee who takes an adverse employment action against a City employee that is directly related to the filing of a *complaint* with the *Commission* or to the lawful participation in an *investigatory proceeding* conducted by the *Commission* is subject to discipline up to and including termination. This protection is in addition to all whistleblower and other protections afforded to City employees under state law.

**§ 26.1114 Outreach and Communications**

- (a) The *Commission* must engage in outreach to address community groups, and inform the public, on the duties and responsibilities, policies and ongoing operations of the *Commission*. This outreach must include a process for obtaining input from the community as to the functioning of the *Commission*. All public input regarding the *Commission's* functions,

including *complaints* about the *Commission* must be made publicly available on the *Commission's* website.

- (b) At least twice each year, the *Commission* must have an offsite community roundtable to solicit community testimony and other input in discussions regarding community policing, building trust between the community and the *Police Department*, and other similar and relevant subjects as determined by the *Commission* in accordance with the Charter.
- (c) The *Commission* must establish an operating procedure for the preparation and submission of a semi-annual report to the Mayor and Council regarding the exercise of the *Commission's* powers and duties. The operating procedure must, at a minimum, establish:
  - (1) the number and types of *complaints received*, categorized by description as well as by City district, police division, and police beat;
  - (2) the number of *complaint reviews* and *investigations* initiated during the prior six months;
  - (3) the number of *complaint reviews* and *investigations* concluded during the prior six months, and of the *investigations*, the number that took more than six months to conclude and an explanation as to why those *investigations* took more than six months to conclude;
  - (4) the number of *complaint reviews* and *investigations* pending as of the last day of the prior six months;



- (5) a tabulation of the results of *complaint reviews* and *investigations* by category of *findings* and recommendations as well as by City district, police division, and police beat;
- (6) a description of any *complaints* that resulted in a referral to other agencies and the names of those agencies;
- (7) a description and summary of all *evaluations*, *complaint reviews*, and *investigations* undertaken by the *Commission* regarding the practices, policies, procedures and actions of the *Police Department* as well as any recommendations made by the *Commission* and the responses to the recommendations;
- (8) the results of the *Commission's evaluations* and *audits* of the *Police Department's* compliance with reporting laws;
- (9) a description of each instance where the *Police Department*, any other City department or City employee refused to provide the *Commission* with records or information requested as well as all instances where the *Police Department* took longer than mandated when complying with records requests;
- (10) a description of the *Commission's* community outreach efforts;  
and,
- (11) a description of any other significant activity undertaken by the *Commission*. The public disclosure of the report, and all

information within the report, must be in accordance with  
controlling federal or state law.

- (d) The semi-annual report must be published no later than 60 days after the end of the preceding reporting period.
- (e) The *Commission* must establish an operating procedure for allowing the community to *evaluate* the *Commission's* processes and performance.
- (f) The *Commission* must prepare an operating procedure for the preparation, data collection, tracking, and report of community policing standards. The following non-exhaustive list of topics for the *Commission* to consider for community policing standards are: (1) de-escalation techniques, strategies, and practices; (2) use of distraction blows; (3) acts of intimidation; and (4) detention. The operating procedure must, at a minimum, include processes for community input and *Police Department* dialogue facilitated by the *Commission* regarding the community policing standards.
- (g) The *Commission* must prepare an operating procedure that describes the *Commission's* communications with *complainants* regarding the status of their *complaints*. At a minimum, the operating procedure must describe the process for receiving and acknowledging how *complaints*, and for providing *complainants* with the status and outcomes of the *Commission's* reviews and investigations. The *Commission* must provide a notice to complainants on the status of their *complaints* no less than every 45 days.

- (h) The *Commission* must prepare an operating procedure covering public communications on the *Commission's* Internet website, as soon as practicable, as much information as permitted by law, on the status of the *Commission's investigation* of each *complaint*, the list of all *complaints received*, the *Commission's findings* of the *complaints* it *investigated*, and all of the *Commission's* recommendations.

**§26.1115 Ballot Measures and Federal, State, and Local Legislation**

The Council recognizes the expertise of the *Commission* in matters related to law enforcement and public safety. The Council authorizes the *Commission* to make recommendations to the Mayor and Council on (1) proposed City ballot measures, in accordance with the Council's policies, and (2) proposed federal, state, and local legislation, in accordance with the Council's process to establish the City's legislative platform. The Council also authorizes the *Commission* to provide information to the public about the possible effects of any proposed ballot measure or legislation related to the activities, operations, or policies of the *Commission* or the City involving law enforcement or public safety. In exercising this authority, the *Commission* must ensure that (1) the use of City resources for this purpose, including budgeted funds and staff time, is otherwise legally authorized, and (2) the information provided to the public constitutes a fair and impartial presentation of relevant facts to aid the public in reaching an informed judgment regarding the proposed ballot measure or legislation. The *Commission*

must ensure compliance with all laws related to the required separation between the use of City resources and campaign activities. The *Commission* may consult with its counsel or appropriate local or state regulatory agencies for guidance in complying with this section.

Section 4. That a full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 5. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED AS TO FORM: MARA W. ELLIOTT, City Attorney

By \_\_\_\_\_  
Joan F. Dawson  
Senior Deputy City Attorney

JFD:cm  
Or.Dept: Council District 4  
Doc. No.: 2864606

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of \_\_\_\_\_.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_

(date)

TODD GLORIA, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
TODD GLORIA, Mayor

5064459.1

DRAFT

## CITY COUNCIL MEETING RESULTS SUMMARY

**DATE: MONDAY, FEBRUARY 28, 2022, COUNCIL MEETING RECORDER: PATTERSON**

This is a summary of the actions taken by the City Council. It is NOT equivalent to the Minutes which, when approved by the City Council, constitute the official record of the meeting.

ITEM NO.	ACTIONS	R	313925	Motion / Second	VOTE
		O	00000		
200	<p><b>Adopted with Direction (R-2022-315)</b></p> <p>Setting forth the Council's policy direction related to implementation of the Commission on Police Practices and directing the City's management team for labor relations to meet and confer</p>	R	313925	<p><b>4/5</b></p> <p>5/7</p> <p>9/7</p>	<p><b>Unanimous; all present</b></p> <p><b><u>Amendment Incorporated</u></b></p> <p>Motion with direction to amend the working draft ordinance by: 1) Adding a subsection (6) to Section 26.1103(g) "Commission Composition and Member Qualifications" that reads: "or have been convicted of a violent crime against a government employee or official. For purposes of this section, government employee means a person who is employed by the Federal government, the State of California, or any city, county, city and county, special district, or political subdivision of the State of California."; and 2) Adding a subsection (6) to Section 26.1106(b) "Removal of Commission Members" that reads: "or have been convicted of a violent crime against a government employee or official. For purposes of this section, government employee means a person who is employed by the Federal government, the State of California, or any city, county, city and county, special district, or political subdivision of the State of California." 235678-yeas; 149-nay</p> <p><b><u>Amendment Incorporated</u></b></p> <p>Motion with direction to amend the working draft ordinance to replace the language in Section 26.1112 "Reimbursement for Expenses" with the following: "The Executive Director is authorized to purchase goods and arrange services needed by <i>members</i> in the performance of their official duties and to reimburse <i>members</i> for reasonable expenses incurred in the</p>

					<p>performance of their official duties, in accordance with the City's approved procurement procedures, the approved budget and appropriations for the Office of the Commission, and the concurrence of the City's Chief Financial Officer. <i>Members</i> must use and return goods, in accordance with the City's approved policies and administrative regulations."</p> <p>Unanimous; all present</p>
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**DEPUTY EXECUTIVE DIRECTOR  
CITY OF SAN DIEGO COMMISSION ON POLICE PRACTICES  
WORK PLAN/SCHEDULE**

Timeframe	Activity
<b>KICK-OFF MEETING/STAKEHOLDER MEETINGS</b>	
3/25/22	CPS HR will meet with San Diego Police Transition Commission to discuss timeline, ideal candidate attributes and recruitment process, stakeholder involvement, desired reporting frequency.
3/28/22 to 4/6/22	CPS HR conducts interviews with key stakeholders including the Interim Executive Director, the Ad Hoc Transition Planning Committee, and community leaders to gather data on qualities of the ideal candidate.
<b>RECRUITMENT MATERIALS</b>	
Week of 4/4/22	<ul style="list-style-type: none"><li>• Stakeholder feedback summarized and submitted to Commission.</li><li>• CPS HR to draft brochure text for review.</li><li>• Commission to submit photos for brochure.</li></ul>
Week of 4/11/22	<ul style="list-style-type: none"><li>• Commission submits final revisions to recruitment brochure text.</li><li>• CPS HR prepares draft flipbook brochure.</li><li>• Commission provides final approval of brochure.</li><li>• CPS HR prepares recruitment and advertising materials.</li><li>• CPS HR to share outreach strategy, receive prompt feedback, and incorporate additional suggestions.</li></ul>

**ACTIVE RECRUITMENT**

Week of 4/18/22	<b>Advertising</b> <ul style="list-style-type: none"><li>• CPS HR posts the job to various websites and publications, City of San Diego website, CPS HR website, and various professional associations. CPS HR will also send an initial email blast to its relevant database of professionals.</li></ul>
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4/20/22 thru 5/19/22	<p style="text-align: center;"><b>Aggressive Outreach/Application Process</b></p> <ul style="list-style-type: none"> <li>• CPS HR follows up with targeted/qualified candidates (those who are a match to the candidate profile) to ascertain interest and encourage application.</li> <li>• Candidates apply through the CPS HR website, with receipt of applicant materials acknowledged. The Consultant vets candidate resumes against minimum qualifications.</li> <li>• CPS HR provides weekly updates to Commission regarding recruitment activities.</li> </ul>
5/20/22	<b>Final Filing Date</b>
<b>SELECTION ACTIVITIES</b>	
Week of 5/23/22 and 5/30/22	<p style="text-align: center;"><b>Screening Interviews</b></p> <ul style="list-style-type: none"> <li>• CPS HR conducts comprehensive screening of all candidates who meet the minimum qualifications as described in the job announcement. Consultant will also conduct media checks on all screened candidates. CPS HR provides reference list to Commission on top 5-7 candidates so the Commission can conduct preliminary and final reference checks.</li> </ul>
Week of 6/6/22	<p style="text-align: center;"><b>Client Report Meeting</b></p> <ul style="list-style-type: none"> <li>• CPS HR and Commission meet to select candidates to be invited for interviews.</li> <li>• Client Report will be delivered electronically ahead of time for review prior to scheduled meeting.</li> </ul>
Week of 6/13/22	<p style="text-align: center;"><b>Interviews Scheduled</b></p> <ul style="list-style-type: none"> <li>• CPS HR schedules interviews</li> </ul>
Week of 6/20/22 and 6/27/22	<p style="text-align: center;"><b>Semi-finalist Interviews</b></p> <ul style="list-style-type: none"> <li>• CPS HR prepares all materials, coordinates candidate logistics and assists with facilitation of the short-listed candidate interviews.</li> <li>• First round of interviews will consist of candidates making a presentation and engaging in dialog with a designated group of 7-10 community leaders who will submit feedback forms to the Selection Committee. (Community leaders required to complete a confidentiality agreement).</li> <li>• Second round of interviews will be the Selection Committee (comprised of the Commission Chair, First Vice Chair, Community Outreach Chair and a designated community representative) interviewing the candidates and selecting the top candidates (rank ordered) to be interviewed by the Interim Executive Director.</li> </ul>

Week of 7/4/22	<p style="text-align: center;"><b>Final Interviews</b></p> <ul style="list-style-type: none"> <li>• CPS HR prepares all materials, coordinates candidate logistics and assists with facilitation of the finalist candidate interviews.</li> <li>• Interim Executive Director interviews the final candidates. Conditional offer to selected candidate.</li> </ul>
Week of 7/11/22 and 7/18/22	<p style="text-align: center;"><b>Background Check</b></p> <ul style="list-style-type: none"> <li>• CPS HR conducts thorough background check on finalist candidate.</li> </ul>
Week of 7/25/22 through 8/13/22	<p style="text-align: center;"><b>Onboarding</b></p> <ul style="list-style-type: none"> <li>• Start date contingent on candidate's availability</li> </ul>



# SAN DIEGO COMMISSION ON POLICE PRACTICES SUPERVISING INVESTIGATOR WORK PLAN/SCHEDULE

Timeframe	Activity
<b>KICK-OFF MEETING</b>	
6/13/22	CPS HR meets with Interim Executive Director to discuss timeline, ideal candidate attributes and recruitment process.
<b>RECRUITMENT MATERIALS</b>	
Week of 6/20/22	<ul style="list-style-type: none"> <li>CPS HR to draft recruitment brochure.</li> <li>Commission to supply any new photos.</li> </ul>
End of Week of 6/20/22	<ul style="list-style-type: none"> <li>Commission to review and provide any revisions to text for the recruitment brochure.</li> <li>Review and approve advertising sources.</li> </ul>
Week of 6/27/22	<ul style="list-style-type: none"> <li>Once approved, the text/pictures will be forwarded to graphics for final brochure (flipbook) creation.</li> <li>CPS HR prepares recruitment and advertising materials.</li> <li>CPS HR to share outreach strategy, prompt feedback, and incorporate additional suggestions.</li> </ul>
<b>ACTIVE RECRUITMENT</b>	
7/5/22	Supervising Investigator position posted
Week of 7/5/22	<p><u>Marketing and Candidate Research</u>: CPS HR posts the job opening to various websites and publications. List to be provided prior to posting.</p> <p>CPS HR sends initial e-mail blast around the country to potential candidates and referral sources based on qualified candidate research.</p>
7/5/22 thru 8/4/22	<u>Aggressive Outreach/Application Process</u> : CPS HR follows up with targeted/qualified candidates (those who are a match to the candidate profile) to ascertain interest and encourage application.

Timeframe	Activity
	<p>Candidates apply through the CPS HR website, receipt of applicant materials acknowledged. CPS HR screens/vets candidate resumes against minimum qualifications.</p> <p>CPS HR provides weekly updates to Commission and Interim Executive Director and any other stakeholders regarding recruitment activities.</p>
8/4/22	Final Filing Date
<b>SELECTION ACTIVITIES</b>	
Week of 8/8/22 and 8/15/22	<p><u>Screening Interviews:</u> CPS HR conducts comprehensive screening of all candidates who meet the minimum qualifications as described in the job announcement. CPS HR will also conduct preliminary media checks on all screened candidates.</p>
Week of 8/22/22	<p><u>Client Report Meeting:</u> CPS HR to present short list of candidates to Interim Executive Director and the Commission to determine who will be interviewed at this stage.</p> <p>Client Report will be delivered electronically ahead of time for review prior to scheduled meeting.</p>
Week of 9/5/22	<p><u>Semi-finalist Interviews:</u> Interview short-listed candidates and determine finalists for further consideration. Selection process to be determined.</p> <p>CPS HR prepares all materials, coordinates candidate logistics and assists with facilitation of the short-listed candidate interviews.</p>
Completed 5-7 days post semi-finalist interviews	<p><u>Reference/Assessment Activities:</u> CPS HR conducts reference checks on the finalist candidates. Finalist candidates will participate in any pre-determined assessment exercises, i.e., leadership assessment, creation of staff report and presentation, etc.</p> <p>CPS HR prepares all materials and coordinates any assessment activities.</p>
Week of 9/26/22	<p><u>Final Interviews:</u> Conduct interviews with finalist candidates and approve selection. Other assessment and candidate activities TBD.</p> <p>CPS HR prepares all materials, coordinates candidate logistics and assists with facilitation of the finalist candidate interviews.</p>
Week of 10/10/22 (depending on background checks, schedules)	<p><u>Appointment:</u> Interim Executive Director makes a final selection.</p>

**CITIZENS' LAW ENFORCEMENT REVIEW BOARD**

**RULES AND REGULATIONS**

**Adopted by CLERB on March 9, 1992**

**Last Revision May 18, 2021**

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**CITIZENS' LAW ENFORCEMENT REVIEW BOARD**  
**RULES AND REGULATIONS**  
**Adopted by the CLERB on March 9, 1992**  
**Last Revision December 17, 2020**

**SECTION 1: MISSION AND PURPOSE**

1.1 **Mission.** CLERB's mission is to increase public confidence in and accountability of peace officers employed by the Sheriff's Department or the Probation Department by conducting independent, thorough, timely, and impartial reviews of Complaints of misconduct and deaths and other specified incidents arising out of or in connection with actions of peace officers.

1.2 **Purpose.** The purpose of these Rules and Regulations is to facilitate the operation of the Citizens' Law Enforcement Review Board (hereinafter referred to as CLERB), including the review of Complaints filed against peace officers or custodial officers employed by the County of San Diego in the Sheriff's Department or the Probation Department, as authorized by San Diego County Ordinance #7880, as amended (Article XVIII, Section 340-340.15 of the San Diego County Code of Administrative Ordinances). Complaints subject to review are those that allege improper or illegal conduct of peace officers or custodial officers arising out of the performance of their duties or the exercise of peace officer authority, within the jurisdiction of CLERB, as more fully described in Section 4 below.

CLERB shall receive, review, investigate and report on Complaints in accordance with these Rules and Regulations. These rules are to provide for the independent, thorough, timely, and impartial investigation of Complaints, deaths of individuals arising out of or in connection with actions of peace officers and custodial officers employed by the Sheriff's Department or the Probation Department, and other specified incidents in a manner that a) protects both the public and the Departments, Sheriff and Probation, that are involved in such Complaints, and b) enhances the relationship and mutual respect between the Departments and the public they serve.

CLERB shall publicize the review process to the extent permitted by law in a manner that encourages and gives the public confidence that they can come forward when they have a legitimate Complaint regarding the conduct of peace officers or custodial officers designated above. CLERB shall also make every effort to ensure public awareness of the seriousness of the process, and that fabricated Complaints will neither be tolerated nor reviewed. The statutory and constitutional rights of all parties shall be safeguarded during the review process.

**SECTION 2: DEFINITIONS**

Wherever used in these Rules and Regulations, unless plainly evident from the context that a different meaning is intended, the following terms mean:

- |     |                    |  |
|-----|--------------------|--|
| 2.1 | “Aggrieved Person” | Any person who appears from a Complaint to have suffered injury, harm, humiliation, indignity, or any other damage as a result of actions by a peace officer or custodial officer in the performance of official duties or the exercise of peace officer authority.  |
| 2.2 | “Case”             | A Complaint or investigation of an incident not requiring a Complaint.   |
| 2.3 | “Chair”            | The Chairperson of CLERB or the Vice Chairperson if the Chairperson is not able to preside.  |
| 2.4 | “CLERB”            | The 11 member Citizens' Law Enforcement Review Board nominated and appointed in accordance with the provisions of the Ordinance.   |
| 2.5 | “Complainant”      | Any person who files a Complaint regarding the conduct of a peace officer or custodial officer in the employ of the Sheriff's Department or the Probation Department arising in the performance of official duties or the exercise of peace officer or custodial officer authority and who files a Complaint with CLERB. |

2.6	“Complaint”	A complaint received from any person without regard to age, citizenship, residence, criminal record, incarceration, or any other characteristic of the Complainant alleging an improper act or misconduct, as further defined in Section 4.1 of a peace officer or custodial officer in the performance of official duties or the exercise of peace officer authority.
2.7	“County”	County of San Diego, California
2.8	“Criminal Conduct”	Conduct punishable under any applicable criminal law.
2.9	“Filed”	The status of a Complaint signed under penalty of perjury.
2.10	“Investigative Hearing Panel”	A three (3) member subcommittee of CLERB selected to conduct an Investigative Hearing of a Complaint, and make appropriate findings and recommendations to CLERB based on the hearing.
2.11	“Lodged”	The status of a Complaint not signed under penalty of perjury.
2.12	“Ordinance”	County Ordinance #7880, as amended, Article XVIII (commencing with Section 340) of the San Diego County Code of Administrative Ordinances adopted by the Board of Supervisors of the County of San Diego, California, which became effective on May 2, 1991.
2.13	“Preponderance of the Evidence”	Evidence that has more convincing force than that opposed to it.
2.14	“Presiding Member”	The member of a three person Investigative Hearing Panel appointed by the Chair to preside at an Investigative Hearing.
2.15	“Subject Officer”	The peace officer or custodial officer employed by the County of San Diego in the Sheriff’s Department or the Probation Department against whom a Complaint has been filed alleging improper or illegal conduct as set forth in Section 4.1 or about whom an investigation is undertaken without the filing of a Complaint as set forth in Section 4.3.

### **SECTION 3: ORGANIZATION AND MEETINGS**

3.1 Composition of CLERB. CLERB shall consist of 11 members nominated by the Chief Administrative Officer and appointed by the Board of Supervisors. Each CLERB member shall be a qualified elector of San Diego County and shall possess a reputation for integrity and responsibility and have demonstrated an active interest in public affairs and service.

3.2 Term of Membership. Each member shall serve a term of three years. A member shall serve on CLERB until a successor has been appointed. A member shall be appointed for no more than two consecutive full terms. Appointment to fill a vacancy shall constitute appointment for one term. The term for all members shall begin on July 1 and end on June 30. The terms for all persons who are the initial appointees to CLERB shall be deemed to commence on July 1, 1991.

Members of CLERB serve at the pleasure of the Board of Supervisors and may be removed from CLERB at any time by a majority vote of the Board of Supervisors.

3.3 Vacancies on CLERB. A vacancy on CLERB shall occur as a result of any of the following events before the expiration of the member’s term:

- (a) Death of the incumbent,
- (b) Resignation of the incumbent,

- (c) Ceasing of the incumbent to be a resident of the County of San Diego,
- (d) Absence of the member from three consecutive regular meetings of CLERB, or,
- (e) Failure to attend and satisfactorily complete the required training course as defined in Section 3.6 within three months of the beginning of a member's term or of the member's appointment to fill a vacancy.

When a vacancy occurs, the Board of Supervisors and, where appropriate, the CLERB member shall be notified of the vacancy by the Chair. Vacancies shall be filled within 45 days for the balance of the unexpired term, and in the same manner as the position was originally filled.

3.4 Compensation. Members of CLERB shall serve without compensation, except that they shall be reimbursed for expenses incurred in performing their duties in accordance with provisions of the County Code of Administrative Ordinances regulating reimbursement to County officers and employees.

3.5 Officers of CLERB. The members of CLERB shall elect annually from its membership the following officers: a Chair, a Vice Chair, and a Secretary. The term of office shall be for one year or until the successor has been elected. No member shall hold more than one office at a time, and no member shall be eligible to serve more than two consecutive terms in the same office. The duties of the Officers shall be as follows:

- (a) Chair: The Chair shall preside over all meetings of CLERB and shall have the right to vote on all questions. The Chair shall ensure that the laws of the County pertaining to the activities of CLERB and the rulings of CLERB are faithfully executed. The Chair or his or her designee shall act as the spokesperson in all matters pertaining to CLERB including dealings with the media.

The Chair shall sign all documents on behalf of CLERB, with the exception of Meeting Minutes, after the same have been approved by CLERB and shall perform such other duties and delegated responsibilities as may be imposed upon him or her by CLERB. The Chair shall designate all members of subcommittees and be an ex-officio voting member of all subcommittees.

- (b) Vice-Chair: In the absence of the Chair, the Vice-Chair shall perform all the duties of the Chair with the same force and effect as if performed by the Chair.
- (c) Chair Pro Tem: If both Chairs are absent at any meeting of CLERB and have not selected a Chair Pro Tem, CLERB shall select a Chair Pro Tem who shall perform all the duties of the Chair.
- (d) Secretary: The Secretary or designee shall keep a true and correct record of all proceedings of CLERB. The Secretary or designee shall have custody of all reports, books, papers, and records of CLERB. The Secretary or designee keeps the roll, certifies the presence of a quorum, and maintains a list of all active members.
- (e) Secretary Pro Tem: In the absence of the Secretary, CLERB may appoint a Secretary Pro Tem.

3.6 Orientation and Training. The Chief Administrative Officer is responsible for the establishment of an orientation and training program for the members of CLERB. Each member of CLERB shall attend and satisfactorily complete a training course within three months of the beginning of the member's term, or of the member's appointment to fill a vacancy. Failure to attend and satisfactorily complete the course within the prescribed time shall result in the member's removal from CLERB and automatically create a vacancy.

The orientation and training program includes familiarization with the following:

- (a) County Government structure and CLERB operations;
- (b) County Charter, County Code of Administrative Ordinances, Brown Act, and State Law pertaining to procedural conduct of CLERB;



- (c) State Law relating to Peace Officers' rights and privacy;
- (d) Operations of the Sheriff's Department and the Probation Department;
- (e) Disciplinary process for Deputy Sheriffs and Probation Officers;
- (f) Sheriff and Probation Departments' training programs;
- (g) Community perspective on Law Enforcement;
- (h) Constitutional and civil rights law relating to police misconduct and community rights;
- (i) Memoranda of Agreement between the County of San Diego and the Deputy Sheriff's Association or San Diego Probation Officers' Association;
- (j) Diversity and inclusion; and implicit, or unconscious, bias

3.7 Transaction of Business. CLERB shall establish a regular meeting schedule and shall give public notice of the time and place of the meetings. The address of CLERB shall be posted on CLERB's official website:

<https://www.sandiegocounty.gov/clerb.html>

All regular and special meetings of CLERB shall be held at the County Administration Center, Room 302/303, 1600 Pacific Highway, San Diego, or at any other public place as designated by the Chair.

The meetings and business of CLERB will be conducted in accordance with the following:

- (a) The agenda for each meeting will normally be provided to all members in time to be received at least one week prior to the regularly scheduled meeting. Items for the agenda for any regular meeting of CLERB may be included on the agenda only with the approval of the Chair; provided, however, CLERB members may file an item for the agenda for a regular meeting directly with the Executive Officer.
- (b) The agenda for each meeting will be posted, distributed, and otherwise made public in accordance with the requirements of the Ralph M. Brown Act, Section 54950 et seq., of the California Government Code.
- (c) All meetings shall be held in accordance with the requirements of the Ralph M. Brown Act, Section 54950 et seq., of the California Government Code.
- (d) A majority of members currently appointed to CLERB shall constitute a quorum.
- (e) The affirmative vote of the majority of the members currently appointed to CLERB shall be required to carry a motion or proposal.
- (f) CLERB's legal counsel will normally be present for all meetings of CLERB.
- (g) In all procedures not provided for by these Rules and Regulations, or the Ordinance, CLERB shall be governed by Robert's Rules of Order, Newly Revised.
- (h) CLERB shall keep written minutes of all meetings and a copy shall be filed with the Clerk of the Board of Supervisors.
- (i) Subcommittees may be established by CLERB as appropriate; however, no subcommittee shall consist of a quorum of CLERB.
- (j) Members and the chairperson of each subcommittee shall be designated by the Chair of CLERB.
- (k) As noted in Section 3.3 above, a member's absence from three consecutive regular meetings of CLERB shall result in the member's automatic removal from CLERB.

(l) Normally, the order of business for CLERB meetings shall be as follows:

1. Roll Call.
2. Approval of Minutes.
3. Public Comments.
4. Presentation/Training.
5. Executive Officer's Report.
6. Chair's Report.
7. New Business.
8. Unfinished Business.
9. Board Member Comments
10. Sheriff/Probation Liaison Query.
11. Recess to closed session, if appropriate.
12. Adjourn.

3.8 Special Meetings of CLERB. Special meetings may be held at the call of the Chair, or the Vice-Chair in the absence of the Chair. In addition, upon petition of a quorum of CLERB, the Chair shall call a special meeting of CLERB. CLERB members will be given at least a twenty-four hour notice prior to any special meeting. The notice and agenda for any special meeting will be distributed in accordance with Section 54956 of the Government Code. No business other than that specified in the special meeting agenda shall be considered.

3.9 CLERB Staff. CLERB shall appoint personnel in support of CLERB as may be authorized by the Board of Supervisors. The Board of Supervisors has also authorized the hiring of outside, independent legal counsel for CLERB.

CLERB delegates its authority to the Executive Officer to fill, manage, and discipline all staff positions. Once appointed, all unclassified personnel will serve at the pleasure of the Executive Officer. Once appointed, all classified personnel may be disciplined by the Executive Officer, subject to the County of San Diego's Civil Service Rules. The Executive Officer shall promulgate internal office procedures and prepare necessary standardized forms for the conduct of the investigations and the receipt of Complaints. The daily operations of CLERB, including the conduct of investigations, shall be managed by the Executive Officer who shall oversee the regular functioning of the staff assigned to help carry out the duties of CLERB.

CLERB shall conduct an annual performance evaluation of the Executive Officer.

#### **SECTION 4: AUTHORITY, JURISDICTION, DUTIES AND RESPONSIBILITIES OF CLERB**

4.1 Complaints: Authority. Pursuant to the Ordinance, CLERB shall have authority to receive, review, investigate, and report on Complaints filed against peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department that allege:

- (a) Use of excessive force;
- (b) Discrimination or sexual harassment in respect to members of the public;
- (c) The improper discharge of firearms;
- (d) Illegal search or seizure;
- (e) False arrest;
- (f) False reporting;

(g) Criminal conduct; and/or

(h) Misconduct.

4.1.1 Complaints: Prerequisite. Except as provided in Section 4.3 below, CLERB shall have no authority with respect to improper activities as set forth in Section 4.1 above to take action in regard to incidents for which no Complaint has been filed with CLERB.

4.1.2 Complaints: Jurisdiction. CLERB shall have jurisdiction in respect to all Complaints arising out of incidents occurring on or after November 7, 1990. Notwithstanding the foregoing, CLERB shall not have jurisdiction to take any action in respect to Complaints received more than one year after the date of the incident giving rise to the Complaint, except that if the person filing the Complaint was incarcerated or physically or mentally incapacitated from filing a Complaint following the incident giving rise to the Complaint, the time duration of such incarceration or incapacity shall not be counted in determining whether the one year period for filing the Complaint has expired.

The Complainant shall bear the burden of demonstrating that he/she was prevented from timely filing a Complaint by reason of incarceration or physical or mental incapacity. Mental incapacity shall be proven by qualified medical opinion, and not based on the Complainant's unskilled observations or general averments. Physician's declarations should contain a comprehensive diagnosis of the Complainant's condition during the filing period and, additionally, should focus on whether the incapacity prevented the Complainant from filing a Complaint.

The statement submitted to CLERB pursuant to this section shall be in writing and attested to under penalty of perjury as provided by Section 5.5 of these rules.

4.1.3 Complaints: Notification of Disposition. CLERB shall notify in writing any person having filed a Complaint with CLERB of the disposition of the Complaint. The Chief Administrative Officer shall also receive appropriate notification of the disposition of Complaints. Such notifications shall be in writing and shall contain the following statement: "In accordance with Penal Code section 832.7, this notification shall not be conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court or judge of California or the United States."

4.2 "Misconduct" Defined. "Misconduct," as referred to in section 4.1 (h) above, is defined to mean and include any alleged improper or illegal acts, omissions, or decisions directly affecting the person or property of a specific person arising out of the performance of the peace officer's or custodial officer's official duties by reason of:

- (a) An alleged violation of any general, standing, or special orders or guidelines of the Sheriff's Department or the Probation Department; or,
- (b) An alleged violation of any state or federal law; or,
- (c) Any act otherwise evidencing improper or unbecoming conduct by a peace officer or custodial officer employed by the Sheriff's Department or the Probation Department.

4.3 Complaint Not Required: Jurisdiction with Respect to Specified Incidents. CLERB shall have authority to review, investigate, and report on the following categories of incidents, regardless of whether a Complaint has been filed:

- (a) The death of any individual arising out of or in connection with actions of peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department, arising out of the performance of official duties. CLERB shall have jurisdiction in respect to all deaths of individuals coming within the provisions of this subsection occurring on or after November 7, 1990. Notwithstanding the foregoing, CLERB may not commence review or investigation of any death of an individual coming within the provisions of this Section 4.3 (a) more than one year after the date of the death, unless the review and investigation is commenced in response to a Complaint filed within the time limits set forth herein.
- (b) Incidents involving the discharge of a firearm by peace officers or custodial officers employed by the County Sheriff's Department or the Probation Department.

- (c) The use of force by peace officers or custodial officers employed by the County Sheriff's Department or custodial officers employed by the County Sheriff's Department or the Probation Department resulting in great bodily injury.
- (d) The use of force by peace officers or custodial officers employed by the County Sheriff's Department or the Probation Department at protests or other events protected by the First Amendment.

4.4 Other Duties and Responsibilities. CLERB shall have authority to:

- (a) Prepare reports, including at least the Sheriff or the Chief Probation Officer as recipients, on the results of any investigations conducted by CLERB in respect to the activities of peace officers or custodial officers, including recommendations relating to any trends in regard to employees involved in Complaints. CLERB is not established to determine criminal guilt or innocence.
- (b) Prepare an annual report to the Board of Supervisors, the Chief Administrative Officer, the Sheriff and the Chief Probation Officer summarizing the activities and recommendations of CLERB including the tracking and identification of trends in respect to all Complaints received and investigated during the reporting period and present the annual report to the Board of Supervisors within 60 days of its adoption by CLERB.
- (c) Review and make recommendations on policies and procedures of the Sheriff and the Chief Probation Officer to the Board of Supervisors, the Sheriff, and the Chief Probation Officer.
- (d) Annually inspect County adult detention facilities and annually file a report of such visitations together with pertinent recommendations with the Board of Supervisors.
- (e) Establish necessary rules and regulations for the conduct of its business, subject to approval of the Board of Supervisors.

## **SECTION 5: PROCEDURES REGARDING COMPLAINTS**

5.1 Policy. The following shall provide a framework for the receipt, screening, review, investigation, reporting on, and disposition of Complaints regarding alleged activity set forth in Section 4.1 by peace officers or custodial officers of the County of San Diego in the Sheriff's Department and the Probation Department:

- (a) It is the policy of CLERB to encourage persons who have complaints concerning the conduct of peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department to bring the same to the attention of CLERB. CLERB will attempt to assist and accommodate Complainants regarding the Complaint filing process.
- (b) The investigation of Complaints shall be conducted in an ethical, independent, thorough, timely, fair, and impartial manner.
- (c) Complaints will be screened, reviewed, and investigated (where appropriate), and disposed of in accordance with the procedures set forth in these Rules and Regulations.
- (d) As promptly as possible, Complaints received by CLERB shall be transmitted by the Executive Officer to the Sheriff or the Chief Probation Officer.
- (e) CLERB will make every effort to consider and to respond to Complaints against peace officers or custodial officers and investigate when necessary.
- (f) The right of any Complainant to bring a Complaint shall be absolute and unconditional. The reluctance or refusal of the Complainant to prepare a Complaint form shall not impair the right to lodge a Complaint. Notwithstanding the foregoing, no Complaint shall be investigated, however, until a written Complaint has been received by CLERB or a member of its staff, which Complaint has been signed and

the truth of the Complaint attested to, under penalty of perjury, by the Complainant.

- (g) The investigation of a Complaint will be conducted in a manner designed to avoid unnecessary inconvenience or embarrassment to the Complainant, the Aggrieved Person, the witnesses, the Subject Officer, and any agency or instrumentality of the County.
- (h) To the extent possible consistent with its duties and responsibilities, CLERB shall coordinate its activities with other public officers, such as the Sheriff, the District Attorney, the Grand Jury, the U. S. Attorney, and the Public Defender, so that the other public officers and CLERB can fully and properly perform their respective duties.

5.2 Lodging and Filing of Complaints. Complaints may be lodged in writing, in person, by telephone, or by any other means of communication. A Complaint may be lodged with CLERB by a person on behalf of himself or herself or on behalf of an Aggrieved Person by any interested person or group. A Complaint shall be considered received by CLERB at the time it is lodged. However, no Complaint will be deemed to have been filed with CLERB unless and until (i) the Complaint has been reduced to writing on CLERB's complaint form with the truth of the Complaint attested to under penalty of perjury and (ii) all other forms required by this Section have been completed and signed by the Complainant in accordance with the following procedures:

- (a) Required forms consist of the following, which may be modified from time to time by the Executive Officer:
  - 1. CLERB's Complaint form
  - 2. Request for Investigation of Complaint & Agreement Not to Subpoena Citizens' Law Enforcement Review Board Personnel or Records, and
  - 3. Authorization to Use or Disclose Protected Health Information, if applicable.
- (b) If the Complaint is lodged in person, CLERB employee shall furnish the Complainant with a blank Complaint form. The Complainant shall be asked to fill out the form and to sign the form in the space provided. A copy of the completed form shall be given to the Complainant to serve as a record of the filing of the Complaint.
- (c) If the Complaint is lodged by mail, the Complaint form shall be completed by CLERB staff on the basis of the information contained within the correspondence. CLERB staff shall mail a copy of the completed Complaint to the Complainant as a record of the lodging of the Complaint, together with a request that the Complainant review the Complaint form for accuracy, and if accurate, sign the same and return it to the CLERB office.
- (d) If the Complaint is lodged by telephone, CLERB staff shall fill out an original Complaint form and prepare one duplicate copy of the Complaint form as a record of the lodging of the Complaint. The CLERB employee taking the Complaint shall give his or her name to the Complainant. The CLERB staff shall furnish the Complainant with a copy of the completed form, together with a request for verification of the accuracy and a signature.
- (e) In those cases where the Complainant is incarcerated in a detention facility in the County of San Diego, the Complaint will be handled as outlined in (c) or (d) above.

5.3 Who May File Complaint. Complaints shall include Complaints received from any person without regard to age, citizenship, residence, criminal record, incarceration, or any other characteristic of the Complainant.

5.4 Time Limitations for Filing Complaints. All Complaints shall be received within one year after the date of the incident giving rise to the Complaint, except that if the person filing the Complaint was incarcerated or physically or mentally incapacitated from filing a Complaint following the incident giving rise to the Complaint, the time duration of such incarceration or physical or mental incapacity shall not be counted in determining whether the one year period for filing the Complaint has expired, subject to the provisions of Section 4.1.2 of these Rules and Regulations.

5.5 Complaint Form. CLERB shall cause all Complaints received by it to be reduced to writing. Unless CLERB has

received another writing setting forth the substance of the Complaint signed by the Complainant, CLERB shall furnish the Complaint form to the Complainant advising that the Complaint will not be deemed to have been filed with CLERB until and unless it is reduced to writing. In order for a Complaint to be deemed filed, the Complainant shall attest to the truthfulness of a written Complaint under penalty of perjury in the following manner, or by words of similar effect: "I hereby certify under penalty of perjury under the laws of the State of California that to the best of my knowledge, the statements made herein are true."

5.6 Recording of Complaints. CLERB shall cause a central register of all Complaints filed with it to be maintained in its office. The central register shall record actions taken on each Complaint. Disclosure of information from the central register shall be in compliance with applicable law. The central register shall contain the following:

- (a) Name of the Complainant, the Aggrieved Person, and the Subject Officer,
- (b) CLERB-assigned Complaint Number,
- (c) Date Complaint was filed,
- (d) A brief description of the subject matter of the Complaint,
- (e) Date the Complaint was transmitted to the Sheriff's Department or the Probation Department,
- (f) Date the Investigative Report was completed, if applicable,
- (g) Results of CLERB's consideration and/or investigation, if any,
- (h) Date and content of the final disposition of the Complaint.

5.7 Withdrawal of Complaints. A Complaint may be withdrawn from further consideration at any time by a written notice of withdrawal signed and dated by the Complainant. The effect of such withdrawal will normally be to terminate any further investigation of the Complaint of conduct, unless the Executive Officer or a CLERB member recommends that the investigation continue and CLERB, in its discretion, concurs.

5.8 Termination, Resignation, or Retirement of Subject Officer. CLERB shall have the discretion to continue or terminate an investigation, if, after a Complaint is filed and before CLERB completes its investigation, the Subject Officer terminates employment with the Sheriff's Department or the Probation Department. The Sheriff or the Chief Probation Officer or the Subject Officer shall notify CLERB when the Subject Officer's employment is terminated.

## **SECTION 6: COOPERATION AND COORDINATION**

In the discharge of its duties, CLERB shall receive complete and prompt cooperation from all officers and employees of the County. CLERB and other public officers, including the Sheriff, the District Attorney, and the Grand Jury, shall coordinate their activities so that the other public officers and CLERB can fully and properly perform their respective duties.

Such cooperation shall include responding to written questions during the investigation, appearing at and answering questions during interviews, appearing at and answering questions during hearings, assisting with access to physical evidence, and cooperation with any other relevant investigation procedures.

CLERB shall attempt to avoid contacting any Subject Officer at home. CLERB shall attempt to get the Subject Officer's work schedule prior to scheduling an interview or investigative hearing. CLERB shall attempt to avoid scheduling interviews or investigative hearings on a Subject Officer's regular days off, scheduled vacation or authorized leave of absence. Representatives assigned by the Sheriff's and Probation Department as liaisons to CLERB will coordinate the requested interviews.

## **SECTION 7: SUBPOENAS AND OATHS**

CLERB shall, pursuant to the Charter of the County of San Diego, Section 606, subd. (d), have the power to subpoena

and require the attendance of witnesses and the production of documents and papers pertinent to its investigations; and shall have the power to administer oaths. A subpoena issued under this Section 7 shall be issued and signed by the Executive Officer or his or her designee.

## **SECTION 8: CONFIDENTIALITY OF RECORDS**

Any personnel records, Complaints against peace officers or custodial officers in the Sheriff's Department or the Probation Department, and information obtained from these records, that are in the possession of CLERB or its staff, shall be confidential and shall not be disclosed to any member of the public, including the Complainant, except in accordance with applicable law.

Copies of records and Complaints of CLERB shall be made available to the Sheriff or the Probation Officer upon completion of the investigation of CLERB unless prohibited by applicable law.

The disclosure of information, including, but not limited to, the identification of the Subject Officer, in CLERB's meeting agenda, public documents, and other public reports shall be in compliance with applicable law.

## **SECTION 9: INVESTIGATION OF CASES**

### **9.1     Screening of Complaints.**

- (a)     Filed Complaints shall be referred to the Executive Officer for investigation. Each Complaint will be initially screened by staff for jurisdiction and priority.
- (b)     The Executive Officer may periodically advise CLERB as to the progress and status of each Complaint.
- (c)     CLERB staff may periodically advise the Complainant and the Subject Officer(s) as to the status of a Complaint.

### **9.2     Scope of Investigation.** The investigation of a Complaint may include, but need not be limited to, the following:

- (a)     Interviews with the Complainant, the Aggrieved Person, each Subject Officer, and witnesses or other persons likely to have information concerning the Complaint;
- (b)     Sheriff's Department and Probation Department employee response forms;
- (c)     Examination of the scene of the incident;
- (d)     Viewing and analyzing physical evidence associated with the alleged incident;
- (e)     Review, analysis, and preservation of other physical evidence including videos and photographs.

Such investigations must be conducted in a manner that will not obstruct the criminal investigations conducted by the Sheriff, District Attorney, or other law enforcement agencies. In the event that the Subject Officer is compelled to cooperate in an investigation, departmental personnel shall provide the Subject Officer with the "Lybarger warning" when required under the appropriate circumstances.

### **9.3     Documenting Investigative Activities.** It shall be the responsibility of the investigator to document each step in the investigation and the result thereof in an investigation report.

**9.4     Written Statements.** CLERB investigators shall attempt to secure written statements signed under penalty of perjury from all participants in and witnesses to the alleged incident. Where any witness or participant is unwilling to make a signed written statement, the assigned investigator shall prepare a written summary of the oral statement, if any, provided by such participant or witness. Where a written statement is given and signed by a participant or witness, the assigned investigator shall provide the person making such statement with a copy of the statement.

**9.5     Recording of Interviews.** Interviews and statements may be tape-recorded by the CLERB investigator. Such recordings shall be kept and preserved until the case is completed by CLERB and its findings distributed to any appropriate agency or official as may be required by law.

### **9.6     Deferment of Investigation.** CLERB may toll its investigation of a Complaint pursuant to applicable tolling

exemptions under the Peace Officers' Procedural Bill of Rights (POBR). CLERB reserves the right to commence immediate investigations, or to defer investigations, in all other cases depending upon CLERB priorities and available resources.

9.7 Investigative Report. At the conclusion of the investigation and prior to placement on a CLERB agenda, the CLERB investigator shall complete an Investigative Report that sets forth the names of the Complainant, the Aggrieved Person, the Subject Officer, in compliance with applicable law, and a summary of the investigation.

9.8 CLERB Options After Receipt of Investigative Report. After receipt of the Investigative Report, CLERB shall take action it deems appropriate for disposition of the allegations of the Complaint, including the following options:

- (a) Review and determine the Complaint based on the Investigative Report and the evidence in the investigative file, but without an Investigative Hearing, pursuant to Section 9.9; or
- (b) Summarily dismiss the Complaint, in whole or in part, pursuant to Section 15; or
- (c) Refer the Complaint back to staff for further investigations; or
- (d) Defer further action on the Complaint; or
- (e) Any other appropriate action or disposition, consistent with the Ordinance, or
- (f) Conduct an Investigative Hearing or Hearings, pursuant to Sections 10-14.

9.9 Disposition by CLERB without an Investigative Hearing. If CLERB decides to review and determine a Complaint based on the Investigative Report and investigative file evidence, but without an Investigative Hearing, CLERB shall apply the standard of proof set forth in Section 14.8 and shall follow the Final Report process set forth in Sections 16.1-16.4. If the Executive Officer recommends that CLERB make a determination on a Complaint without an Investigative Hearing, the Subject Officer and representative and Complainants shall have an opportunity to: (a) review the Investigative Report in compliance with applicable law and; (b) submit additional evidence prior to the determination of the Complaint by CLERB.

9.10 File Accessibility. Every member of CLERB shall have full access to all Complaints and files maintained by CLERB or its staff.

9.11 Notification to Parties. Upon completion of the Investigative Report, CLERB staff shall provide the Complainant, Aggrieved Person, and each Subject Officer the following:

- (a) Written notice that the Complaint will be considered by CLERB including an explanation of the process.
- (b) The content of the Investigative Report to the extent permitted by applicable law. A notification that all additional statements, records, reports, exhibits, and other items contained in the file will be available on request, except for any evidence that cannot be so made available because its disclosure is prohibited by law.
- (c) Written notice that the parties may consult an attorney if desired, and that an attorney or other representative may represent him/her at any hearing, but that an attorney or other representative is not mandatory.
- (d) A copy of or a link to these Rules and Regulations.

## **SECTION 10: DETERMINING WHEN AN INVESTIGATIVE HEARING IS NECESSARY**

10.1 Requests for Investigative Hearing. The Complainant, Subject Officer, Executive Officer, or a member of CLERB may request an Investigative Hearing (as set forth in Sections 12-14) for some or all of the allegations of a Case.

10.2 When an Investigative Hearing is Necessary. An Investigative Hearing will be conducted, in accordance with



the procedures for such hearings set forth in Sections 11-15, when CLERB determines that such a hearing may facilitate the fact-finding process.

An Investigative Hearing may be deemed to facilitate the fact-finding process when:

- (a) There has been an undue lapse of time since the occurrence of the incident that is the subject of the Complaint; or
- (b) There are additional witnesses, evidence, or information that contradicts or supplements, or is not disclosed by the Investigative Report; or
- (c) There is reason to question the conclusion of the Investigative Report; or
- (d) An Investigative Hearing would advance public confidence in the Complaint process; or
- (e) An appearance in person by the parties would facilitate the fact-finding process.

10.3 Scope of the Investigative Hearing. The scope of an Investigative Hearing may vary. It may consist of a single, narrowly drawn issue; of multiple issues; or of the entire Complaint. The scope should be determined by CLERB when authorizing an Investigative Hearing, and all interested parties to the Complaint shall be informed of any limitation in scope when notified of the Investigative Hearing.

## **SECTION 11: NO CONTEST RESPONSE**

A Subject Officer may enter a written response of “no contest” at any time prior to an Investigative Hearing. A response of “no contest” indicates that the Subject Officer accepts the allegations of the Complaint as substantially true in fact and interpretation. The Subject Officer shall be bound by the terms of the “no contest” response in any further consideration of the Complaint by CLERB.

## **SECTION 12: INVESTIGATIVE HEARING**

12.1 Composition of Investigative Hearing. Except as otherwise provided in this Section 12.1, an Investigative Hearing will be performed by an Investigative Hearing Panel of CLERB, which shall consist of three members of CLERB, selected pursuant to Section 12.2 below, with one member designated as the Presiding Member. In cases involving the death of a person, and in such other cases as CLERB shall decide, CLERB will sit as a Board of the Whole with a minimum of six Board members present.

12.2 Selection of Three-Person Investigative Hearing Panels.

- (a) Selection of three-person Investigative Hearing Panels under this section shall be made by rotation among CLERB members, as appointed by the Chair, using any basis (including lottery) that balances the workload among CLERB members. A CLERB member may request that he or she be temporarily excused to equalize caseload, avoid conflicts of interest, or for other good cause. In the event a CLERB member is so excused, another CLERB member shall be reassigned by the Chair.
- (b) If an Investigative Hearing Panel is unable to meet to convene an Investigative Hearing on a scheduled date due to the unavailability for any reason of one or more of its members, or if an Investigative Hearing Panel agrees to reschedule an Investigative Hearing due to the unavailability for any reason of the Complainant(s) or Subject Officer(s) or legal counsel for either, the case or cases assigned to such Investigative Hearing Panel may be re-assigned to another Investigative Hearing Panel. However once an Investigative Hearing of a case has been convened by an Investigative Hearing Panel, the same Investigative Hearing Panel shall consider the case to final disposition.

### 12.3 Challenges of CLERB Members.

- (a) Challenge for Conflict of Interest or Bias. A CLERB member sitting on an Investigative Hearing Panel shall consider all Complaints in a fair and impartial manner. A CLERB member who has a personal bias or prejudice, or the appearance thereof, in the outcome of a Complaint shall not sit on the Investigative Hearing Panel hearing that Complaint. Personal interest in the outcome of a Complaint does not include holding or manifesting any political or social attitude or belief, where such belief or attitude does not preclude objective consideration of a case on its merits. Examples of personal bias include, but are not limited to:
1. Familial relationship or close friendship with parties material to the inquiry;
  2. Witnessing events material to the inquiry from a non-neutral perspective;
  3. Being a party to the inquiry;
  4. Having a financial interest in the outcome of the inquiry; and/or
  5. Holding a bias against a particular party that is sufficient to impair the CLERB member's impartiality.
- (b) Procedure for Challenges. Within five calendar days after the date on which CLERB furnishes notice of an Investigative Hearing, including the names of the CLERB members constituting that Investigative Hearing Panel, any party to the Complaint may file a written challenge for cause to any CLERB member hearing the Complaint. Challenges for conflict of interest or bias must substantiate the challenge in terms of the standard set forth in Section 12.3 (a) above.
- When a challenge for cause is filed, the Chair shall contact the challenged CLERB member as soon as possible, and if the CLERB member agrees that the challenge is for good cause, or otherwise agrees, the Chair shall ask another CLERB member to serve. If the challenged CLERB member does not agree that the challenge is for good cause, the Chair may poll the other two members of the Investigative Hearing Panel, and if both agree that the challenge is for good cause, the Chair shall so notify the challenged CLERB member and ask another to serve. If a challenge to a CLERB member is rejected and the member serves, the written challenge and the CLERB member written response shall be incorporated in the investigative case file as part of the record of the Complaint.
- (c) Replacement of Challenged CLERB Member. Any CLERB member removed, or who removes him/her self, from the Investigative Hearing Panel due to a challenge for cause shall be replaced by the Chair with another CLERB member.

12.4 Public Comments. CLERB members shall avoid public comment on the substance of particular pending complaints and investigations and shall preserve the confidentiality of closed session meetings in accordance with applicable law.

## **SECTION 13: INVESTIGATIVE HEARING PROCEDURES**

13.1 Schedule of Investigative Hearings. Investigative Hearings may be scheduled by the Chair for any regular or special meeting of CLERB; or, as to Investigative Hearings before an Investigative Hearing Panel, by the Presiding Member for any other appropriate time.

13.2 Notice Requirements. Ten days' notice of an Investigative Hearing shall be given to the Complainant, each Subject Officer, and any other person whose attendance CLERB deems appropriate. The notice shall state the date, time, and place of the Investigative Hearing, and the names of the Investigative Hearing Panel members.

13.3 Hearings, Open or Closed to the Public. The nature of Investigative Hearings, open or closed, will be in compliance with legal standards existing at the time of the Investigative Hearing, unless the Subject Officer requests an open Investigative Hearing.

13.4 Authority to Compel Appearance. The authority of CLERB's subpoena may be used to compel the appearance of witnesses, including Subject Officers, and/or the production of documents. Subpoenas may be requested through the Chair of CLERB.

13.5 Conduct of the Investigative Hearing. Investigative Hearings should be informal, and should be conducted in the following manner unless the Chair or Presiding Member orders otherwise:

- (a) The Presiding Member or Chair, as applicable, will conduct the Investigative Hearing subject to being overruled by a majority of the Investigative Hearing Panel or CLERB, as applicable. Members of the Investigative Hearing Panel or CLERB, as applicable, shall be primarily responsible for obtaining testimony. One Investigative Hearing Panel member or CLERB member may be assigned by the Presiding Member or the Chair to perform the initial questioning of witnesses during an Investigative Hearing convened for a Case. Additional questions may be asked by any Investigative Hearing Panel member or CLERB member, or by a Subject Officer or his or her representative, or by an assigned CLERB staff member.
- (b) At the discretion of CLERB or the Investigative Hearing Panel, opening statement(s) may be made on behalf of the Complainant and the Subject Officer(s) involved.
- (c) The Investigative Hearing will generally then proceed pursuant to the provisions detailed in Section 14.1. In the event that the Subject Officer is compelled to cooperate in an Investigative Hearing, departmental personnel shall provide the Subject Officer with the "Lybarger warning" when required under the appropriate circumstances. After the Investigative Hearing Panel has taken all relevant evidence, each party may, at the discretion of the Presiding Member or the Chair, be given an opportunity to make a closing statement.
- (d) At the conclusion of any witness testimony, either the Complainant or the Subject Officer may request that CLERB or the Investigative Hearing Panel cover any additional areas of inquiry they feel need to be covered. The Chair or Presiding Member shall determine whether any further questions will be asked.
- (e) Unless otherwise ordered by the Chair or Presiding Member, the entire Investigative Hearing on a given Complaint should be conducted on one occasion. However, if CLERB or the Investigative Hearing Panel determines that additional evidence is necessary to reach its findings, it will continue the Investigative Hearing to a future date unless the parties agree to allow CLERB or the Investigative Hearing Panel to receive such material in writing without reconvening.

13.6 Deliberation. After obtaining evidence, CLERB or the Investigative Hearing Panel will deliberate in closed session. CLERB or the Investigative Hearing Panel shall not consider any information not received as part of the Investigative Hearing. CLERB or the Investigative Hearing Panel may reconvene in the presence of all parties to ask further questions, and each party shall have the opportunity to respond to any such questions.

13.7 Finding and Report by Three-Member Investigative Hearing Panel. At the conclusion of an Investigative Hearing before an Investigative Hearing Panel, the Panel members shall, by majority vote, adopt a recommended Finding with respect to the Complaint. The Investigative Hearing Panel shall not consider evidence or information obtained outside of the Investigative Hearing. The Investigative Hearing Panel shall then prepare a written report summarizing the evidence, the recommended Finding, the reasons for the recommended Finding, any dissenting opinion, and any other information that may be useful to the full CLERB in its consideration of the case. The Investigative Hearing Panel shall take into account any rule, regulation, or policy of the Subject Officer's employing department brought to its attention by the Subject Officer or representative that the Investigative Hearing Panel determines to be pertinent to the Complaint being investigated.

13.8 Submission to Full CLERB. The written Investigative Hearing Panel report referred to in Section 13.7 shall be forwarded to all members of CLERB, and the matter calendared as soon as possible at a scheduled regular or special CLERB meeting.

A copy of the written Investigative Hearing Panel report referred to in Section 13.7, above, shall be forwarded to the extent permitted by applicable law to each Complainant and Subject Officer, together with a notice of the time and place of the CLERB meeting at which the Complaint will be considered. All Complainants and Subject Officers shall be notified that CLERB may accept written objections to the Investigative Hearing Panel report within 10 days of the date of the report.

13.9 Consideration by CLERB. CLERB shall consider the report of the Investigative Hearing Panel and any other information that may be brought to its attention at the meeting. Thereafter, CLERB may:

- (a) Vote to conclude the matter without further investigation, review, or hearings;
- (b) Request further information or review by staff, by the Investigative Hearing Panel, or through other appropriate means;
- (c) Vote to conduct further proceedings on the matter before the entire CLERB;
- (d) Take such other or additional action as it deems necessary and appropriate, such as the making of recommendations regarding policy or rule changes, referral to appropriate agencies, or other appropriate action;
- (e) Accept the Investigative Hearing Panel report as the Final Report of CLERB.

13.10 Investigative Hearings before entire CLERB. In cases that are initially heard before the entire CLERB, the interim steps required when a case is heard before a three-member Investigative Hearing Panel are not applicable.

13.11 Record of Investigative Hearing. All Investigative Hearings shall be recorded by CLERB. At the option of the Investigative Hearing Panel Presiding Member, a stenographic record may be kept, and, if kept, shall be available upon payment of the cost of duplicating or transcribing the same, to a Complainant or Subject Officer requesting a transcript, to the extent permitted by applicable law. Any record of the Investigative Hearing shall become part of the CLERB file.

## **SECTION 14: EVIDENCE FOR INVESTIGATIVE HEARINGS**

14.1 What Evidence May be Considered. The Investigative Hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil actions.

Hearsay evidence may be used for the purpose of supplementing or explaining other evidence.

Evidence shall be taken in accordance with the following provisions:

- (a) Each party and the Investigative Hearing Panel shall have the following rights:
  - 1. to call and examine witnesses;
  - 2. to introduce exhibits;
  - 3. to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination;
  - 4. to impeach any witness regardless of which party first called the witness to testify; and
  - 5. to rebut the evidence against the party.

If the Subject Officer does not testify in his/her own behalf he/she may be called and examined as if under cross-examination.

- (b) Oral evidence shall be taken only under oath or affirmation.
- (c) Upon the request of either party, a CLERB member, or the Investigative Hearing Panel, witnesses may be excluded from the Investigative Hearing until they are called to testify.

- (d) Irrelevant and unduly repetitious evidence shall be excluded.
- (e) The rules governing privileged communications shall be effective to the extent that they are otherwise required by constitution or statute to be recognized at hearings before CLERB or the Investigative Hearing Panel.

14.2 Representatives. Each party and any witness shall have the right to have a representative of his or her choice present at all times during his or her own fact-finding interviews or Investigative Hearings conducted by or on behalf of CLERB. The representative shall not be a witness or a person subject to the same investigation.

14.3 Interpreters. The Chair shall have discretionary authority to provisionally qualify and utilize interpreters. Each party in need of an interpreter shall give notice to the Chair within seven days of receipt of the notice of hearing so that appropriate arrangements can be made.

14.4 Authority to Compel Appearance. The authority of a CLERB subpoena may be used to compel the production of documents and/or the appearance of witnesses, including the Subject Officer.

14.5 Failure to Appear. When either the Complainant or the Subject Officer fails to appear, the Investigative Hearing Panel may receive statements from those persons present and relying on the evidence received, continue with the Investigative Hearing.

14.6 Confidentiality of CLERB Records. CLERB shall not disclose to the general public any reports, statements, files, records, documents, tapes, or other items whose confidentiality is protected by law. This confidentiality may be waived in accordance with applicable law, statute, ordinance, or legal proceedings. Moreover, evidence contained in CLERB's investigative file may be disclosed to the Complainant and the Subject Officer, but only to the extent and in the manner authorized by these Rules and Regulations and by then existing law.

14.7 Discovery.

- (a) By CLERB. CLERB, through its staff and agents, may utilize whatever formal or informal methods for the discovery of evidence as are authorized and available under federal, state, or local law.
- (b) By the Parties. Prior to an Investigative Hearing, each Subject Officer may have access to or receive copies of evidence contained in CLERB's investigative file for the Complaint, except for any evidence that cannot be made available because its disclosure is prohibited by law. Parties seeking such discovery must give at least 48 hours advance notice to CLERB, either in writing or by telephone.

14.8 Standard of Proof. No finding with respect to an allegation of a Complaint shall be sustained unless it is proven by a Preponderance of the Evidence presented at the Investigative Hearing(s) or otherwise contained in the investigative record.

## **SECTION 15: SUMMARY DISMISSAL**

After reviewing the Investigative Report and records, CLERB may summarily dismiss a Case, ("Summary Dismissal") upon recommendation of the Executive Officer, its own motion, or that of the Subject Officer. Parties to the Complaint shall be notified of a proposed Summary Dismissal, and may appear to argue for or against Summary Dismissal. Summary Dismissal may be appropriate in the following circumstances:

- (a) CLERB does not have jurisdiction over the subject matter of the Complaint.
- (b) CLERB does not have jurisdiction because the Complaint was not timely filed.
- (c) Lack of cooperation by the Complainant such that CLERB is unable to continue its investigation, such as a failure by the Complainant to respond to repeated inquiries when such response is necessary to the ongoing investigation.

- (d) The Subject Officer is no longer employed by the Sheriff or Probation Departments.
- (e) The Complaint is so clearly without merit that no reasonable person could sustain a finding based on the facts.
- (f) Case investigation is not completed within one year, not including applicable tolling exemptions; Staff shall submit the Case to CLERB for Summary Dismissal.

## **SECTION 16: CLERB FINDINGS AND RECOMMENDATIONS**

16.1 Final Report by CLERB. At the conclusion of a matter before the entire CLERB, CLERB shall deliberate and adopt a final report ("Final Report") with respect to the Case or matter under consideration. This report shall include Findings as to the facts relating to any Case, as well as an overall conclusion as to any Case as specified in Section 16.2 below.

Dissenting CLERB members may set forth reasons for their dissent in writing and provide the written dissent to the Executive Officer within five days of adoption of the Final Report, and any such dissent(s) shall be included in the Final Report.

16.2 Conclusions in Final Report. The Final Report of CLERB shall contain an overall finding ("Finding") as to each allegation of the Case in the following manner:

- (a) If the investigation clearly established that the allegation is not true, the Finding shall be "Unfounded."
- (b) If the investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation, the Finding shall be "Not Sustained."
- (c) If the investigation shows the alleged act did occur but was lawful, justified, and proper, the Finding shall be "Action Justified."
- (d) If the investigation disclosed evidence sufficient to prove the allegation by a Preponderance of the Evidence, the Finding shall be "Sustained."
- (e) If CLERB lacks jurisdiction or the allegation clearly lacks merit, the Finding shall be "Summary Dismissal."

A Finding of "Sustained" should include an explanation of the finding of improper conduct and may include recommendations relating to:

- (a) the imposition of discipline, including the facts relied on in making such recommendations;
- (b) any trends in regard to employees involved in Complaints.

16.3 Consideration of Subject Officer's Disciplinary History. Only after a finding of "Sustained" with respect to an allegation of improper or illegal conduct by a Subject Officer, should CLERB consider the Subject Officer's disciplinary history in determining the appropriate recommendation for discipline. The details of the Subject Officer's disciplinary history will be held confidential by CLERB and will not be made a part of the Final Report.

16.4 Transmittal of Final Report. The Final Report adopted by CLERB shall be forwarded to the Board of Supervisors, the Sheriff or Chief Probation Officer, the Complainant, and each Subject Officer, to the extent permitted by applicable law.

16.5 Reconsideration of Final Report. Upon request by the Complainant, Subject Officer, or his or her representatives, the Final Report may be re-opened for reconsideration by CLERB provided that:

- (a) previously unknown relevant evidence is discovered that was not available to CLERB before it issued its Final Report, and

- (b) there is a reasonable likelihood the new evidence will alter the Findings and recommendations contained in the Final Report.

A Final Report may also be re-opened for reconsideration by CLERB at the request of the Board of Supervisors or upon initiative of CLERB when such reconsideration is in the public interest.

Every party to the proceeding or their representative(s) shall be notified of any request or proposal for reconsideration and shall be given the opportunity to respond to the CLERB before the request or proposal is acted upon.

#### **SECTION 17: PROCEDURES WHEN NO COMPLAINT IS REQUIRED**

In cases not requiring a Complaint as set forth in Section 4.3 above, the review, investigation, including the Investigative Hearing procedures for such cases, and adoption of a Final Report shall otherwise proceed in the same manner, pursuant to these Rules and Regulations, as in cases initiated by a Complaint.

#### **SECTION 18: DELEGATION OF FUNCTIONS TO EXECUTIVE OFFICER**

CLERB may, in its discretion, delegate to the Executive Officer certain of the procedural and administrative functions or duties assigned to CLERB by these Rules and Regulations. CLERB shall not, however, delegate to the Executive Officer any functions, duties or responsibilities that are required by the Ordinance to be performed by CLERB.

#### **SECTION 19: AMENDMENTS TO RULES AND REGULATIONS**

These Rules and Regulations are subject to approval by the Board of Supervisors of the County of San Diego, as required by the Ordinance. Once approved, these Rules and Regulations may only be amended by a majority vote of CLERB, and any such amendments are subject to approval by the Board of Supervisors. These Rules and Regulations will be subject to review by CLERB at least every four years from the last revision date.

# **MEMORANDUM OF UNDERSTANDING**

**March 7, 2022**

## **Countywide Protocol for the Investigation and Review of Officer-Involved Shootings and Other Deadly Force Incidents**

WHEREAS the law enforcement agencies of San Diego County recognize the need for transparent and independent criminal investigations and reviews of all peace officer-involved shootings, use of force incidents resulting in death, and "in custody" related deaths occurring outside of the jail setting, these agencies have a desire to cooperate to achieve this goal with this Memorandum of Understanding (MOU).

NOW, therefore the signatories to this MOU agree and consent to the investigative and review responsibilities described herein.

### **PURPOSE AND SCOPE**

The purpose of this agreement is to conduct independent investigations, provide consistency in inter-agency investigations within San Diego County and outline the circumstances for conducting criminal investigations and independent review of all law enforcement related:

- a. Discharges of a firearm (excluding discharges that are deemed unintentional, training related, or conducted during the euthanization of an animal)
- b. Deadly force incidents that result in serious bodily injury or death

This agreement applies solely to criminal investigations and does not address or impact an agency's ability to conduct their own concurrent or subsequent investigation for administrative or civil litigation purposes.

This agreement is not intended to transfer investigative responsibility for all deaths occurring in a custodial setting. Deaths in a County Custodial setting will only be investigated in accordance with this agreement when they are the apparent result of a use of force by an officer, deputy, or custodial staff.

### **DEFINITIONS**

- a. "AB1506 Qualifying Event" means an officer-involved shooting incident where the subject shot by officers is killed and deemed "unarmed" based on the guidelines established by the California Department of Justice and California Attorney General's Office.
- b. "Deadly Force" means any use of force that creates a substantial risk of causing death



or serious bodily injury, including, but not limited to, the discharge of a firearm.

- c. "Incident" is defined as 1) any discharge of a firearm by a peace officer, excluding discharges that are deemed unintentional, training related, or conducted during the euthanization of an animal, 2) any use of deadly force by a peace officer resulting in death, or 3) any death of a person while "in custody" of a peace officer. For purposes of this MOU, an "incident" does not include the death of a person incarcerated in a County or City detention facility/jail (except when it stems from a use of force).
- d. "In-Custody" is defined as a detention or arrest coupled with a use of physical force and/or some sort of physical restraint (e.g., handcuffing, placed in a police vehicle). "In-Custody" means more than being chased or contained by officers.
- e. "Involved Agency" means the agency employing the peace officers involved.
- f. "Investigating Agency Liaison" means the employee, supervisor, or manager of the investigating agency tasked with being a liaison between the investigating agency and the involved agency and/or jurisdictional agency to facilitate the comprehensive and independent investigation of the incident.
- g. "Involved Agency Liaison" means the employee, supervisor, or manager of the involved agency tasked with being a liaison between the involved agency, the jurisdictional agency (if different than the involved agency), and the primary investigating agency to facilitate the comprehensive and independent investigation of the incident.
- h. "Jurisdictional Agency" means the agency with primary law enforcement jurisdiction over the area where the incident occurred.
- i. "Jurisdictional Agency Liaison" means the officer, supervisor, or manager tasked with being the resource conduit between the jurisdictional agency, the involved agency (if different than the jurisdictional agency), and the investigating agency to ensure facility, information, evidentiary, and other logistical access for investigators handling the incident.
- j. "Officers Involved" means peace officers who have fired their weapons, used force, or were participants in an incident as defined.
- k. "Primary Investigating Agency" means the agency with investigative responsibility for a qualifying incident.

### **PRIMARY INVESTIGATING AGENCY**

The Primary Investigating Agency is decided using the following criteria:

- a. Incidents where officers involved are employed by the San Diego Police Department will be investigated by the San Diego Sheriff's Department.
- b. Incidents where deputies/officers involved are employed by the San Diego Sheriff's Department or any of the other agencies participating in this agreement by signature below (except the San Diego Police Department), will be investigated by the San Diego Police Department.
- c. Incidents where both the San Diego Sheriff's Department and the San Diego Police Department have deputies/officers involved, will be investigated by the Chula Vista Police Department.
- d. Incidents meeting the definition of an " AB1506 Qualifying Event" will be investigated as detailed under the header below.
- e. Uses of deadly force, aside from the discharge of a firearm by a peace officer, that do not result in death will be investigated by the involved agency unless there is an independent MOU with another agency to handle those investigations.

For incidents involving a predicate criminal investigation and an associated officer-involved shooting investigation, the jurisdictional agency of the original incident will handle the criminal investigation and apprehension of any related suspects, while the primary investigating agency will specifically investigate the officer-involved shooting. The lead case agents from each investigative team will confer to ensure investigatory needs, such as evidence collection and processing, scene processing and documentation, and interviews are met, and take into consideration the needs of both investigations. Appropriate laboratory personnel will be utilized for each investigation.

In situations where an officer is seriously injured or killed, other than traffic collisions, and an officer-involved shooting occurs, the incident will be investigated by the primary investigating agency utilizing their laboratory personnel. In some instances, the primary investigating agency and jurisdictional agency may consider separating the investigations. This decision will be made by the primary investigating agency, who will consider factors which may include the jurisdictional agency's interests, case integrity and other applicable considerations when making a decision to separate the cases.

Incidents meeting the definition of an AB1506 Qualifying Event will initially be handled as outlined above; however, once California DOJ is notified, responds, and determines the incident is a qualifying event, they will assume the role of primary investigating agency and the former primary investigating agency will take a secondary, collaborative role. The process for handling these events is outlined in the California Department of Justice – Division of Law Enforcement California Police Shooting Investigations Teams (CaPSIT) Investigation Protocol Procedures.

Incidents involving federal law enforcement or any state or local agency electing not to participate in this MOU will be handled by the jurisdictional agency or in accordance with other existing

agreements. This is further outlined below.

## **POLICY**

When a peace officer, whether on or off duty, is involved in an incident, the jurisdictional agency shall contact the appropriate primary investigating agency, via their Communications Centers, as outlined above. The agency that employs the officer(s) involved, or other designated investigating agency, may conduct a concurrent or subsequent administrative investigation of the incident; however, the intent of the parties to this agreement is that these types of investigations be conducted by the primary investigating agency, independently and without interference or undue influence from the agency that employs the involved officer(s) or deputy(s).

All information or reports developed by the primary investigators shall be made available to all involved agencies, as needed, and as permitted by law. Except as outlined in AB1506, or for incidents involving Federal Law Enforcement, the primary investigating agency shall submit investigative documentation of qualifying incidents, as defined herein, to the District Attorney's Office for review.

All AB1506 cases will be submitted by the California Department of Justice investigators to the charged Deputy Attorney General for review in accordance with their review process and the law.

## **RESOURCES**

The primary investigating agency will utilize their own laboratory personnel, unless impractical to do so. If the primary investigating agency laboratory personnel are not to be used, the primary investigating agency will make arrangements to provide laboratory personnel.

## **JURISDICTIONAL AGENCY'S INITIAL RESPONSE**

Officers who used force in incidents, as defined above, and officers identified as key witnesses shall be removed from the scene as soon as possible. Officers who used force shall be transported, as determined by the primary investigating agency, to a law enforcement facility within a reasonable distance from the scene, with resources deemed adequate for the separation of witnesses, accommodates investigative procedures, and affords a reasonable degree of personal comfort, convenience, and privacy for the parties involved.

Officers involved in incidents, as defined above, should brief the first responding supervisor, or other officer responsible for securing the incident scene, of the general facts of the incident and other matters as they relate to public safety. Within the guidelines of law and department policy, officers involved should cooperate fully with supervisors and advise them of the following via a public safety statement that captures the following:

- Are there any outstanding suspects; if so, please describe them and any vehicles and their last known direction of travel?
- Are there any injured persons; if so, please advise of their whereabouts and the nature

of their injuries?

- Where were you when you fired and in what approximate direction were you pointing your weapon when you fired? If you were fired at, from what direction was the suspect firing?
- How many rounds do you think you fired and how many rounds were fired at you?
- Are there any outstanding weapons, and if so, do you know what type?

This information will enable the responding staff to take appropriate emergency action, to secure evidence and to isolate the scene.

Following the initial briefing with the first responding supervisor, and except as permitted below, officers involved should not discuss the incident with other persons, or among themselves, before being interviewed by the investigators from the primary investigating agency.

Investigators shall seek voluntary statements from officers involved in the incident. Officers involved in the incident shall be permitted to speak with a legal representative, peer support representatives, chaplain and/or mental health professionals before submitting to an interview by incident investigators. Under no circumstances will the primary investigating agency compel a statement from an involved officer. Should an involved officer decline to provide a voluntary statement, an involved agency may elect to follow their Department's Policy and Procedure to obtain a statement for their internal use.

### **INCIDENT SCENE**

Officers at the scene, regardless of agency affiliation, shall secure the scene pending arrival of representatives of the jurisdictional agency and the primary investigating agency.

The security of the incident scene shall be handled by the jurisdictional agency, as directed by the primary investigating agency, for the duration of the time they are on scene.

### **AGENCY LIASIONS**

When the primary investigating agency is dispatched to handle an incident, they shall, immediately upon arriving on scene, identify who the involved agency liaison will be and, if applicable, a jurisdictional agency liaison to coordinate the sharing of necessary information.

The primary investigating agency liaison, or their designee, shall brief the involved agency and jurisdictional agency as requested. This will facilitate on scene logistical operations and allow the involved agency to complete necessary administrative and operational reviews.

The involved agency liaison shall also be responsible for providing any necessary agency-specific information to the primary investigating agency, such as mobile data/CAD information, BWC

footage, and employee record information to include date of hire, assignment, etcetera.

### **EVIDENCE**

Evidence, including personal belongings of the officers involved, shall not be unnecessarily moved or altered. Evidence in the personal possession of the officers involved, such as firearms or other equipment, shall be surrendered upon request of investigators representing the primary investigating agency. Replacement of equipment taken for evidence will be handled as outlined in the involved officer's Department policy and the law.

### **ON SCENE BRIEF**

Prior to beginning the investigation of the incident, members of the primary investigating agency, the involved agency, the assigned District Attorney Investigator, and where applicable, the jurisdictional agency liaison, shall receive a joint briefing on the facts known to that point. The primary investigating agency is not required to delay the briefing or subsequent investigation to accommodate unavailable involved or jurisdictional agency members, so as not to delay the onset of the investigation. Additional briefings may take place as time allows or as necessitated as the investigation unfolds.

### **MEDIA RELEASES**

The release of information concerning any incident as defined herein will be handled by the primary investigating agency, in coordination and collaboration with the involved agency, and when appropriate, the jurisdictional agency. The release of video or information related to these investigations shall be in compliance Government Code section 6254(f) and SB 1421. Any other agency receiving media inquiries about the incident shall refer them to the primary investigating agency for coordination and distribution with the involved agency, and if appropriate, the jurisdictional agency. Once the primary investigating agency submits the case to the District Attorney's Office for review, media requests should generally be referred to the District Attorney's Office. This MOU is not meant to restrict the head of an agency from making public statements or releasing video that he or she deems necessary to the interests of justice or to protect public safety.

### **NOTIFICATIONS**

The primary investigating agency shall be responsible for notifying the Medical Examiner and coordinating all necessary evidentiary information and collection with the Medical Examiner's Office.

The primary investigating agency shall be responsible for coordinating family notifications with the Medical Examiner's Office, as necessary.

The primary investigating agency shall notify the designated representative of the District Attorney, and/or representatives from the California Department of Justice as outlined below, immediately upon learning of the occurrence of any incident as defined herein.

### **DISTRICT ATTORNEY'S OFFICE INITIAL RESPONSE**

A District Attorney Investigator (DAI) may respond to the scene of incidents, as defined herein, which occur within the County of San Diego.

The DAI will contact the supervisor in charge of the investigative agency at an incident scene. A briefing of the incident and a familiarization of the incident scene will be given as soon as practical. The DAI will be permitted access to the incident scene to the extent possible, without contaminating evidence or otherwise disturbing the scene.

The DAI may participate in the interview of witnesses, if invited by the primary investigating agency. They will identify any potential witnesses they discover and point out any item of evidence they observe to the officer in charge of the investigation. The DAI will not interview witnesses and will not gather evidence at the initial scene but may provide any advice or other assistance sought by the primary investigating agency.

The assigned DAI may attend the autopsy of any decedent involved in a fatal incident.

### **"THREE DAY" INITIAL BRIEF**

In any incident, as defined herein, the primary investigating agency, or former primary investigating agency if the incident is an AB1506 Qualifying Event, shall provide a briefing to representatives of the involved agency and the District Attorney's Office, or the Attorney General's Office, generally no later than the third working day following the incident. The briefing shall include a verbal review of the evidence, witness statements, and the status of the investigation. Included in this review should be selected representatives of the involved agency, representatives from the Federal Bureau of Investigation, the United States Attorney's Office, and legal representatives for the involved agency.

### **REPORTING**

Upon completion of the investigation of an incident, as defined above, or no later than 90 days, the investigating agency shall provide copies of all investigative reports, witness statements, recordings, video evidence, photographs, diagrams, autopsy reports, and all other relevant documents in their possession to the California DOJ or the District Attorney for review as appropriate. The primary investigative agency shall also make available for inspection any item of evidence. In return, the District Attorney will complete their review and report their findings to the involved and investigating agencies within 90 days of receiving all relevant reports, such as the Medical Examiner's reports and laboratory findings.

In cases where there is a use of deadly force that is not a qualifying discharge of a firearm or does not result in death, the investigation will be conducted by the involved agency unless there is an independent MOU with another agency to handle those investigations. Submission of these cases for review by the District Attorney's Office for potential criminal liability will be determined by the investigating agency.

### **DISTRICT ATTORNEY RESPONSIBILITY**

The District Attorney may request supplemental investigation of an incident by the primary investigating agency or conduct additional investigation through District Attorney personnel. Copies of any investigative reports prepared by the District Attorney will be provided to the primary investigating agency as soon as possible.

The District Attorney shall conduct an independent assessment of the circumstances surrounding an incident, as defined herein. The District Attorney will issue written findings to the head of the primary investigating agency and the head of the agency employing the officer(s) involved within 90-days of receiving all relevant reports, such as the Medical Examiner's reports and laboratory findings.

The District Attorney's Office will be responsible for releasing their findings to the media/public after first issuing the findings to the head of the primary investigating agency and the head of the agency employing the involved officer/agent. The time and manner of release shall be determined by the District Attorney's Office with notification being made to the affected agencies beforehand, to ensure involved parties are prepared for that release of information.

In the event of an officer-involved shooting where an officer is wounded and a person is charged with a crime, the District Attorney reserves the option to waive the review set forth herein. In such a case, the District Attorney will send the requesting agency a letter memorializing the absence of state criminal liability on the part of the officer(s) involved.

### **VIDEO AND AUDIO EVIDENCE RELEASES**

Law enforcement agencies will endeavor to release video and audio evidence from an incident within 45 days of an incident or sooner, pursuant to Government Code section 6254(f)(4) and in accordance with Penal Code section 832.7. However, video and audio evidence will not be released if:

- 1) Release will substantially interfere with an active criminal investigation.
- 2) The safety of a witness or confidential source will be endangered, and redaction of the video or audio will not protect the safety of the individual.
- 3) Release will violate the reasonable expectation of privacy of a subject depicted in the recording which outweighs the public interest in the video, and redaction of the video or audio will not protect the privacy of the individual.

Release will violate the reasonable expectation of privacy of a subject depicted in the recording which outweighs the public interest in the video, and redaction of the video or audio will not protect the privacy of the individual.

### **INCIDENTS INVOLVING NON-PARTICIPATING LAW ENFORCEMENT AGENCIES**

When an employee of a state, local, or out-of-county law enforcement agency not participating in this agreement is involved in an incident as described above, the jurisdictional agency shall conduct the primary investigation of the incident unless there is an independent MOU between that non-participatory law enforcement agency and another agency to conduct those investigations. The agency that employs the involved officer may conduct a concurrent or subsequent investigation of the incident.

### **INCIDENTS INVOLVING FEDERAL LAW ENFORCEMENT PERSONNEL**

This MOU does not generally apply to incidents involving federal law enforcement personnel; therefore, incidents involving federal agencies will be handled by the appropriate federal investigatory agency or as outlined in an independent MOU/agreement.

### **INCIDENTS INVOLVING PEACE OFFICERS ASSIGNED TO A FEDERAL TASK FORCE**

If the involved officer is a peace officer under California law and assigned to a federal task force (i.e., a Task Force Officer, aka TFO), then the primary investigating agency shall be determined based on the agency the Task Force Officer works for, and pursuant to this MOU.

### **AB1506 QUALIFYING EVENTS**

The California Department of Justice is mandated under AB1506 to investigate officer-involved shootings of "unarmed" civilians resulting in death. The intent of this MOU is to have Department of Justice investigators working collaboratively with the staff from the local primary investigating agency to conduct the investigation. These investigations will be conducted in accordance with the guidelines in the California Department of Justice – Division of Law Enforcement California Police Shooting Investigations Teams (CaPSIT) Investigation Protocol Procedures manual and local OIS practices, like this MOU. Upon completion of the investigation, the investigative package will be submitted by the CaPSIT Case Agent to the California Attorney General's Division of Criminal Law for review.

### **LIABILITY AND INDEMNITY**

No party assumes liability for any act or omission committed by another party. The parties acknowledge that this agreement is by and between independent entities and is not intended, nor shall be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association. For civil liability purposes, no party shall be considered the agent of any other party. Each party shall, to the extent possible under applicable law, assume financial responsibility, and defend itself, for any liabilities arising from the acts or omissions of its own employees' actions pursuant to this agreement.



### **AMENDMENTS**

All amendments to this MOU need to be in writing and signed by each party to this MOU.

### **WITHDRAWAL**

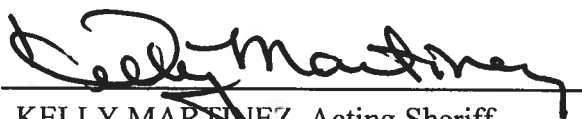
A party to this MOU may withdraw its agreement and participation. A notice of intention to withdraw from this memorandum of understanding (MOU) shall be given to each other signatory, in writing, 30 days prior to the effective date of such revocation. All cases that are currently being investigated under this MOU shall continue to be investigated until the investigation is finished, notwithstanding the withdrawal of the investigating agency. All parties agree to a continued duty to cooperate with the investigating agency until all pending investigations are finished.

### **TERM OF AGREEMENT**

The parties, by signing this MOU, acknowledge and agree that this protocol shall be effective upon approval and shall remain in full force and effect unless and until a party withdraws or a revised memorandum of understanding is established.

**ENDORSEMENTS**

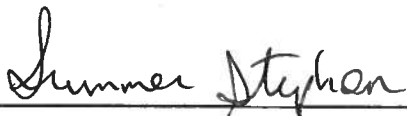
Agreed hereto by all parties whose signatures appear below:



KELLY MARTINEZ, Acting Sheriff  
County of San Diego



DAVID NISLEIT, Chief  
San Diego Police Department



SUMMER STEPHAN, District Attorney  
County of San Diego



TAMIKA NELSON, Chief  
San Diego County Probation



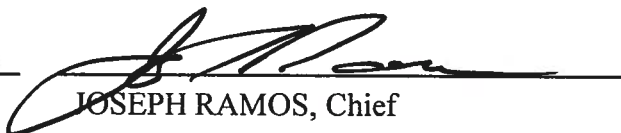
JORGE DURAN, Chief  
District Attorney - Bureau of Investigations



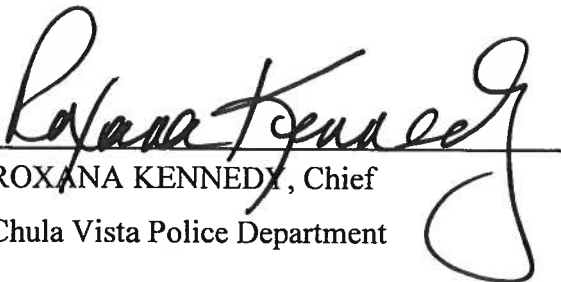
MICKEY WILLIAMS, Chief  
Carlsbad Police Department



KIRK NICHOLS, Interim Chief  
San Diego Harbor Police



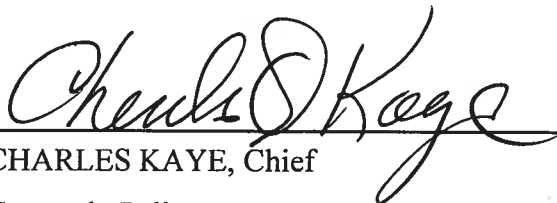
JOSEPH RAMOS, Chief  
San Diego Community College Police



ROXANA KENNEDY, Chief  
Chula Vista Police Department



JOEY FLORENTINO, Interim Chief  
San Diego Unified School District Police



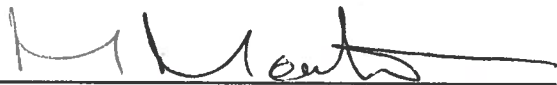
CHARLES KAYE, Chief

Coronado Police Department



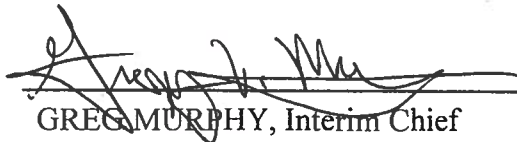
MICHAEL HAYES, Chief

~~MICHAEL HAYES~~  
San Diego State University Police



MICHAEL MOULTON, Chief

El Cajon Police Department



GREG MURPHY, Interim Chief

University California San Diego Police



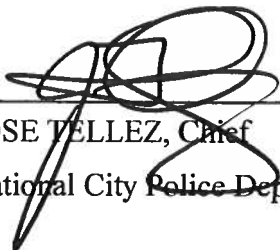
ED VARSO, Chief

Escondido Police Department



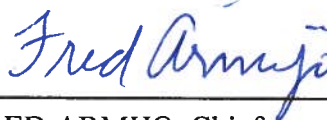
RAY SWEENEY, Chief

La Mesa Police Department



JOSE TELLEZ, Chief

National City Police Department



FRED ARMIJO, Chief

Oceanside Police Department