

Commission on Police Practices

Ad Hoc Transition Planning Committee Meeting

Friday, June 25, 2021
12pm-1:30pm
Zoom Platform

AGENDA

This is an Ad Hoc Committee meeting so it **will not** be available live on YouTube. However, the meeting will be available on the City's YouTube page after the meeting. Click [here](#) to view this meeting after its scheduled time.

- I. CALL TO ORDER/WELCOME (Committee Chair Doug Case)
- II. ROLL CALL
- III. APPOINTMENT OF NOTETAKER
- IV. PUBLIC COMMENT: (Fill out and submit comment using [webform](#). Please see instructions at the end of this agenda)
- V. UPDATES
 - A. Budget Process
 - B. Staffing
 - C. Assistant Executive Director/Community Engagement Coordinator Position
 1. Status of Development of Job Description for Assistant Executive Director (Program Manager)
 2. Status of the Proposal for a Selection Process
 - D. Implementation Ordinance & Permanent Standard Operating Procedures
 - E. Office Space
 - F. Standing Rules
 - G. Community Outreach –SDJ Roundtable Discussion
 - H. Legal Counsel Contract
- VI. UNFINISHED BUSINESS –None
- VII. NEW BUSINESS (Discussion/Action)
 - A. Review of Draft Implementation Ordinance
 - B. Next steps and agenda prioritization for future meetings
- VIII. DATE OF NEXT MEETING
- IX. OTHER ITEMS AND/OR CONCERNS
- X. ADDITIONS TO THE LIST OF ITEMS FOR FUTURE AGENDAS (see below)
- IX. ADJOURN

Materials Provided:

- Draft Implementation Ordinance

Items for Future Agendas:

- A. Whistle-blower Protections
- B. Quality Assurance Program
- C. Procedures for Review of IA/PSU Investigations not Emanating from a Complaint
- D. Clarity of CPP Access to Training Bulletins and Special Unit Policies
- E. How to Handle Internal Complaints
- F. Procedures for making recommendations to SDPD and requirements for SDPD response
- G. Investigation Procedures

Comment on Agenda Items must be submitted using [webform](#), checking the appropriate comment type box, and indicating the agenda item number they wish to submit their 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). Only comments submitted no later than 4:00 p.m. the day prior to the meeting using the public comment form will be eligible to be read into the record. If you submit more than one form per item, only one will be read into the record for that item.

Comments received after 4:00 p.m. the day prior and before 8:00 a.m. the day of the meeting will be provided to the Committee and posted online with the meeting materials. All comments are limited to 200 words. Comments received after 8:00 a.m. the day of the meeting but before the item is called will be submitted into the written record for the relevant item.

Non-Agenda Public Comment must be submitted using [webform](#) and checking the appropriate comment type box in order to be eligible to be read into the record. Staff will read the first 30 comments received by 4:00 p.m. the day before the meeting. However, if there are less than 30 comments submitted by 4:00 p.m. the day before the hearing, the staff will read comments submitted by 8:00 a.m. on the day of the meeting up to a total of 30 comments. The maximum number of comments to be read into the record on a single issue will be 16. Comments submitted by 8:00 a.m. the day of the meeting will be provided to the Committee, made a part of the record, and posted with the meeting materials. All comments are limited to 200 words. Comments received after 8:00 a.m. the day of the meeting but before Non-agenda comment is called will be submitted into the written record for the meeting.

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

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, AND 26.1112, 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, and 26.1105, 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.

As set forth in the City Charter and Chapter 2, Article 6, Division 11, 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 Article 6, Division 11, 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 a formally communicated allegation of *misconduct* against an employee or employees of the *Police Department*.

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. 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;
- (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.

Investigate means to inquire into a matter by gathering and analyzing facts and information.

Investigatory proceeding means any process, formally set forth in the *Commission's* operating procedures and approved by the *Council*, to *investigate* a matter, including interviewing witnesses, *receiving* and reviewing documents, engaging a factfinding 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*.

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 *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, which is also known as the San Diego 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 California Penal Code, who is employed by the *Police Department*.

Police misconduct means *misconduct* alleged in a *complaint* against any *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.

§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 Chapter 2, Article 6, Division 11.
- (b) The *Council* must formally appoint 25 *members* to the *Commission*, who will serve without compensation.
- (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:
 - (i) 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 this designated seat, created by a

member moving out of the *Council* district or a change in *Council* district boundaries, should be addressed by the *Council* at the end of the *member*'s term.

(ii) There must be at least one *member* who resides in each of the nine neighborhood divisions of the *Police Department* appointed to serve in a designated seat for each *Police Department* neighborhood division. Any vacancy in this designated seat, created by a *member* moving out of the *Police Department* neighborhood division or a change in the *Police Department* neighborhood division boundaries, should be addressed by the *Council* at the end of the *member*'s term.

(iii) 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.

(iv) To ensure socio-economic diversity, the *Council* must appoint five *members* who reside in and represent those City residents living in low and moderate-income United States Census tracts.

- (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) All prospective *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. However, a prior criminal conviction is not necessarily a disqualifying factor for any prospective *member*, but falls within the discretion of the Council to determine.

§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 will 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 the nominated prospective *members* accept their nomination in writing prior to *Council* consideration.
- (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 designee, in accordance with applicable law. This *review* includes an *investigation* into any record of criminal convictions, as set forth in section 26.1103(f).

§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 any felony crime or any misdemeanor crime involving child abuse, domestic violence, elder abuse, embezzlement, grand theft, sexual battery, or 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 reasons including:
- (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 two consecutive meetings;
 - (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 similar code of ethics or conduct by a successor organization;
 - (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.
 - (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.

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, 26.1111, and 26.1112, 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) 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*-related shootings, regardless of whether a *complaint* has been made against a *police officer* or the *Police Department*. Upon completion of any *investigation*, the *Commission* must make *findings*.

(2) 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. In exercising its discretionary power to *investigate* and *evaluate* a *complaint*, the *Commission* must determine that the *complaint*, on its face, 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.

(3) 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 *review or evaluation*, the *Commission* must make *findings*.

(4) 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*.

(5) 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 prior *sustained findings* of *misconduct* against the *officer*, including prior *sustained findings* of *misconduct* by the *Commission* or the *Police Department*, in a manner consistent with state law and the City's established disciplinary process.

(6) 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 prior *sustained findings of misconduct* against the *officer*, including prior *sustained findings of misconduct* by the *Commission* or the *Police Department*, in a manner consistent with state law and the City's established disciplinary process.

- (7) The *Commission* must *review and evaluate* the *Police Department's* compliance with federal, state, and local reporting laws and requirements.
- (8) The *Commission* must prepare and submit semi-annual reports to the Mayor and *Council* regarding the exercise of the *Commission's* duties and powers. These reports must be public, but the *Commission* must not disclose any information required to be kept confidential by controlling federal or state law.
- (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 *Police Department*, the Mayor, and the *Council* on any policies, procedures, practices, and actions of the *Police Department*.
- (10) 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.

(11) 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.

(12) The *Commission* may establish a procedure to directly *receive* and *investigate complaints* by members of the public against *Police Department* employees, within the limitations set forth in the Charter and Chapter 2, Article 6, Division 11. 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*.

(13) Once *members* are formally appointed by the *Council*, the *Commission* may establish operating procedures to govern its internal operations, including specific details about *investigatory proceedings*. However, these operating procedures must be consistent with all applicable laws, including the Charter, the Ralph M. Brown Act, and 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. In addition, these operating procedures must be approved by the *Council*, by resolution, before the procedures take effect.

(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.

(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 *Commission* is not authorized to consider or make recommendations on proposed discipline of *Police Department* employees who are not *police officers*. 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 Charter and Chapter 2, Article 6, Division 11, 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 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 and the *Council* by ordinance. This requirement to cooperate includes participation in any *investigatory proceeding* set forth in the standard operating procedures approved by the *Council*. The *Commission*

must comply with the Charter and applicable federal and state laws in the performance of its duties and exercise of its powers.

- (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 officer'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 *Commission* and the *Police Department* may develop administrative procedures 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 Charter section 57, the Chief of Police retains authority over the records of the *Police Department* and may withhold any record from the *Commission* when, in the opinion of the Chief of Police, the disclosure 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. The Chief of Police must provide the *Commission* with a written explanation, setting forth the specific records being withheld and the reason for withholding them. If the *Commission* disagrees with the decision to withhold records, 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) In an *investigatory proceeding*, the *Commission* has authority, acting by majority vote, to issue a subpoena or subpoena duces tecum in accordance with California Code of Civil Procedure sections 1985 through 1985.4, whenever the *Commission* deems it necessary or important to examine the following:
- (1) Any person as a witness upon any matter within the authority of the *Commission*.
 - (2) Any *police officer* in relation to the discharge of their official duties on behalf of the *Police Department*.
 - (3) Any books, papers, or documents in the possession of or under the control of any person or officer relating to the affairs of the *Police Department*.
- (b) All subpoenas for personal appearance and subpoenas duces tecum for records must be relevant to an *investigatory proceeding* which the *Commission* is authorized to make, must seek information reasonably relevant to that *investigatory proceeding*, and must describe the records sought with reasonable specificity and not be too indefinite.

- (c) A subpoena must be served in accordance with California Code of Civil Procedure sections 1987 and 1988.
- (d)
 - (1) 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 timely produced, the *Commission*, by majority vote, with proof of service of the subpoena, may petition the San Diego Superior Court for an order compelling the person responsible for compliance with the subpoena to appear before the *Commission* and testify or to produce and permit the inspection and copying of the records or other items required by the subpoena.
 - (2) If it appears to the Superior Court that the subpoena was regularly issued, the Superior Court may enter an order directing the subpoenaed person to appear before the Superior Court and show cause why they should not be ordered to comply with the *Commission's* subpoena. The Superior Court's order must be served on the subpoenaed person and the Superior Court has jurisdiction of the matter.
 - (3) The *Commission* may request that the Superior Court follow the same proceedings and impose the same penalties as in a case of a person who has been found in contempt in the trial of a civil action before the Superior Court.

§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.

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: MARA W. ELLIOTT, City Attorney

By _____
Joan F. Dawson
Senior Deputy City Attorney

JFD:cm
May 21, 2021
Or.Dept: Council District 4
Doc. No.: 2678816

DRAFT

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

