

Commission on Police Practices

Ad Hoc Transition Planning Committee Meeting

Friday, August 6, 2021
12pm-1pm
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. PUBLIC COMMENT: (Fill out and submit comment using [webform](#). Please see instructions at the end of this agenda)
- IV. DISCUSSION WITH OUTSIDE COUNSEL
 - A. CPP Options for Handling Cases Beyond the One-Year POBAR Limit
 - B. Establishing a Quorum Based on Number of Seats Filled
- V. UPDATES
 - A. Budget Process
 - B. Staffing
 - C. Assistant Executive Director/Community Engagement Coordinator Position
 1. Funding Options for Executive Search Services
 - D. Implementation Ordinance & Permanent Standard Operating Procedures
 1. Potential outside counsel to draft the ordinance
 - E. Office Space
 - F. Standing Rules
 - G. Community Outreach
 - H. Legal Counsel Contract
 - I. Meetings with PS&LN Members
- VI. UNFINISHED BUSINESS
 - A. Implementation Ordinance -Composition of the Commission -Proposal from Patrick regarding representation based on areas with highest numbers of police interactions, complaints, etc.
- VII. NEW BUSINESS (Discussion/Action)
 - A. Discussion of Investigation and Investigative Hearing Procedure Items Determine which items should be included in the implementation ordinance, the Standard Operating Procedures, and internal Commission policies and procedures
 - B. Investigation SOPs Subcommittee
 - C. 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)
- XI. ADJOURN

Materials Provided:

- Draft Implementation Ordinance
- Voters Ordinance DRAFT
- Meeting Notes from July 30
- Outside Counsel Memo – Investigative Findings After One Year POBAR Limit

Items for Future Agendas:

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

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.

Commission on Police Practices

Ad Hoc Transition Planning Committee Meeting

Friday, July 30th 2021
12pm-1pm
Zoom Platform

Meeting Notes

Meeting YouTube Link: <https://www.youtube.com/watch?v=ikBLIaEfkfc>

- I. CALL TO ORDER/WELCOME: Committee Chair Doug Case called to order at 12:01pm.
- II. ROLL CALL: (called by 1st Vice Chair Doug Case)
Commission
Chair Brandon Hilpert
1st Vice Chair Doug Case
Commissioner Patrick Anderson
Commissioner Joe Craver
Commissioner Diana Dent
Commissioner Nancy Vaughn
Staff Present
Sharmaine Moseley, Interim Executive Director
Alina Conde, Executive Assistant
Present
Henry Foster, Chief of Staff (District 4)
- III. PUBLIC COMMENT: No public comment received.
- IV. UPDATES
 - A. Budget Process – No updates at this time.
 - B. Staffing
Administrative Aide II interviews are completed and are now moving on to the process of background checks. Plan to have selected a candidate and hoping to fill this position before the end of the month.
 - C. Assistant Executive Director/Community Engagement Coordinator Position
 1. Funding Options for Executive Search Services
Need to amend the job description to reflect job name change to Deputy Executive Director. Interim Executive Director Sharmaine Moseley is doing investigation on possible use of another line item to cover expenses for executive search process. Better to identify non personnel line items and whether we have to request authorization to do this.
 - D. Implementation Ordinance & Permanent Standard Operating Procedures – No

updates at this time.

1. Potential outside counsel to draft the ordinance

E. Office Space- No updates at this time.

F. Standing Rules

The Commission approved the elimination of the “minimum vote requirement” of 10 votes to pass a motion or 12 votes to pass a motion that requires a 2/3 vote. Asking legal counsel to research whether or not we can change the quorum.

G. Community Outreach

Event coming up and Patrick will send out the information as soon as received. No further updates at this time.

H. Legal Counsel Contract

Finished drafting the scope of work with legal contract. The next step is to wait on purchasing and contracts.

I. Meetings with PS&LN Members

Scheduled a follow up meeting with Council Member Marni von Wilpert but this was rescheduled again for 8/8. Discussion list for meeting; 1. Memo 2. Concerns of dwindling numbers of members in the Commission 3. Proposal for outside council drafting the Implementation Ordinance instead of the city attorney.

V. UNFINISHED BUSINESS

A. Implementation Ordinance -Implementation Ordinance -Composition of the Commission

Commissioner Patrick Anderson explained that in order to get this information accurately, we would need a full-time data analyst as data changes year to year. Patrick proposed that we write into the recommendation that the data the Commission is mandated to collect must include the police department data shared directly with the Commission. The Commission should also collect, store, and disseminate data on complaints that it receives, complaints received by the Police Department including the internal investigations of officers. (Possible verbiage: The data collected by the new Commission must be used in the nominations for filling vacancies). Recommending two bits of language; one related to the collection of data and the other on how that data can be used in the nomination of new commissioners.

Requested and approved extension on this assignment.

VI. NEW BUSINESS (Discussion/Action) -

A. Implementation Ordinance Discussion

1. Subpoenas & Investigations

Discussed what should be included in an Ordinance for Investigations definition (voters ordinance language may be adopted). Full consensus on recommending a definition more similar to specific definition that is included in the voter’s ordinance. Also, make the definition of investigative proceedings refer specifically to the hearing process.

- ✓ Note to further discuss whether an officer should take an oath for honesty in the investigating process. As well as consequences for not being fully responsive or truthful during an investigation by the Commission. Will the consequences be the same as if they were untruthful during a department investigation?

Voters Ordinance has a section 26.110 & 26.111 for investigatory proceedings. To what degree should the contents of the process of an investigation and the process of a hearing be in an Ordinance as apposed to an operating procedure? Henry Foster elaborated on expectation that the intent of the operating procedures is encompassing any rules being established and would need to go through the City Council for approval. 1st Vice Chair Doug Case proposes the idea to have a broader framework document; operating procedures that are approved by the Council and the details of how to go about the work can be decided by the Commission without requiring City approval.

- ✓ Note that operating procedures would require a meet and confer. Keep in mind as decisions are being made that we do not want internal procedures to require meet and confer. Will discuss further next week.
- 2. Interactions with PD (Collective Bargaining Agreements, Sharing of Information, etc.) - This item has been tabled.
- B. Investigation SOPs Subcommittee – This item has been tabled.
- C. Next steps and agenda prioritization for future meetings.

- VII. DATE OF NEXT MEETING will be scheduled for Friday, 8/6 at 12:00 pm.
- VIII. OTHER ITEMS AND/OR CONCERNS – None
- IX. ADJOURNED at 1:01 pm.

MEMORANDUM

To: Sharmaine Moseley, Executive Director, Commission on Police Practices
From: Christina Cameron, General Counsel
Date: August 4, 2021
Re: *Investigation Findings After One-Year POBR Limit – LSR No. 14*

Question Presented

For discipline not administered within the one-year limitations period established by the Public Safety Officers Procedural Bill of Rights Act (“POBR”), may a sustained finding of misconduct go into an officer’s personnel file even if they did not receive disciplinary action?

Short Response

Likely not. Under the broad case law interpreting POBR – specifically as to what constitutes punitive actions that trigger POBR protections – including a sustained finding of misconduct in an officer’s file would likely be in violation of POBR because of the potential impact on the officer’s career in the future.

Analysis

Section 3304 of POBR prohibits the imposition of discipline after one-year, except under limited circumstances:

Except as provided in this subdivision and subdivision (g), no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct *if the investigation of the allegation is not completed within one year* of the public agency’s discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct.

(Gov. § 3304(d)(1) (emphasis added).) “Punitive actions” are defined in the preceding section of POBR as “any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.” (Gov. § 3303.) Case law under POBR has broadly interpreted the types of actions that trigger the protections of POBR, including what may be included in an officer’s file under POBR.

A recent court of appeal decision, from 2019, highlights the breadth of how courts have applied POBR’s limitations. In *Conger v. County of Los Angeles*, the court considered whether POBR protections (specifically, appeal rights) applied where an officer’s promotion was rescinded during the probationary period for the promotion and the probationary evaluation was included in the officer’s personnel file. (See *Conger v. County of Los Angeles* (2019) 36 Cal.App.5th 262.) Though the appellate court ultimately held against the officer, finding that POBR’s appeal rights did not apply, the limited scope of that holding and the broader reach of key cases discussed in *Conger* demonstrate the risks of including negative materials in an officer’s file after the one-year mark. The officer in *Conger* claimed that he was entitled to an administrative

appeal under POBR (section 3304(b)) not only because he lost his promotion but “because his negative probation evaluation is now in his personnel file ‘and may be relied upon in future personnel decisions,’ including denying him future promotions.” (*Id.* at 275.) To reach its conclusion, the appellate court analyzed three key cases relied on by Conger – *Hopson v. City of Los Angeles*, *Caloca v. County of San Diego*, and *Otto v. Los Angeles Unified School District*. According to the appellate court, those cases held that “an officer’s administrative appeal right under section 3304, subdivision (b) may be triggered by findings of misconduct that could affect an officer’s career negatively in the future, even if they do not result in immediate discipline.” (*Id.*)

In rejecting the officer’s claims, the court took a narrow reading of the three cases cited and disagreed with them to the extent those cases suggested “that personnel actions that could lead to future denials of promotion on merit grounds are punitive actions” under POBR. (*Id.* at 277.) The court reasoned that “denial of promotion” is not a punitive action listed under section 3303 of POBR. (*Id.*) The court’s focus was thus narrow, relying on denial of promotion not constituting punitive action. The risk in relying on Conger’s rationale is evident in the following portion of the court’s discussion:

Hopson, Caloca, and Otto also are unavailing because Conger, unlike the peace officers in those cases, has not put forth any evidence that his negative evaluation will lead to punitive action or impact his career in the future. The negative evaluation itself does not recommend or refer to any consequences apart from the release of Conger from his probationary promotion on merit grounds, an action that expressly does not trigger the administrative appeal right under section 3304, subdivision (b). Conger submitted no declarations other than from himself and his attorney, both of which are silent on the issue of future career impact. Conger cites a Department policy concerning probationary evaluations, but it merely states that evaluations are placed in an employee’s “Unit file” with copies sent to “Personnel Administration,” with no suggestion as to how the evaluation may be used in future personnel decisions. In the absence of evidence that the evaluation will affect Conger’s career beyond losing his probationary position, Hopson, Caloca, and Otto are of no aid to Conger.

(*Id.* (emphasis added).) Crucially, the Conger decision appears to be based on factual issues with the record, i.e. no evidence or facts that the negative report in the officer’s file could lead to punitive actions or other negative career effects in the future. That sets a low bar for other officers to rely on POBRs protections so long as they can provide some evidence of future negative impacts from the material in their personnel file.

Such a low bar would be consistent with prior interpretations of POBR, including *Otto*, which was discussed in *Conger*. *Otto* held that whether or not a record in an officer’s file constituted punitive action depended entirely upon its content:

For purposes of determining a public safety officer’s right to an administrative appeal, the term “punitive action” is given a very broad interpretation. If the contents of the memorandum to be inserted in an officer’s personnel file fall within the scope of punitive action, then that officer’s administrative appeal rights under the statute are triggered whatever may be the title of the memorandum or the disciplinary intent of the superior officer preparing the memorandum.

(*Otto v. Los Angeles Unified School Dist.* (2001) 89 Cal.App.4th 985, 998 (emphasis added).) It does not matter that the intent of the record is not disciplinary or does not lead to discipline at that time; instead, it was enough for the court in *Otto* to find that POBR's protection applied where the record "will be considered in future personnel decisions affecting [Otto] and may lead to punitive action." (*Id.* (citing *Caloca v. County of San Diego* (1999) 72 Cal.App.4th 1209, 1222).)

Given the limitations of the holding in *Conger* and the breadth of prior case law such as *Otto*, including a finding of misconduct in an officer's personnel file after the one-year POBR limit could be seen as a violation of POBR. All an officer would have to do to establish POBR's application and protections would be to provide evidence that placing a finding of misconduct in his or her file could or would be considered in future personnel decisions, such as harsher future discipline.

Conclusion

Case law interpreting POBR has generally been broad in its interpretation of what constitutes punitive action which triggers POBR's rights and protections. If a finding of misconduct is placed in an officer's personnel file in a manner that is not in compliance with POBR – such as an investigation and finding that conclude after one-year – the likelihood of an officer establishing a POBR violation seems high. An officer could reasonably assert that a finding of misconduct in his or her file will negatively affect his or her career in the future, such as by resulting in harsher discipline if another instance of misconduct arises.

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

DRAFT

**PROPOSED ORDINANCE SUBMITTED BY
SAN DIEGANS FOR JUSTICE**

Andrea St. Julian and Maresa Martin Talbert, Co-Chairs
team@sandiegansforjustice.com

June 24, 2021

AN ORDINANCE AMENDING CHAPTER 2,
ARTICLE 6, DIVISION 11 OF THE SAN DIEGO
MUNICIPAL CODE IS AMENDED BY RETITLING
AND AMENDING SECTIONS 26.1101 THROUGH
26.1106 AND ADDING SECTIONS 26.1107,
26.1108, 26.1109, 26.1110, 26.1112, 26.1113, 26.1114,
26.1115, 26.1116, 26.1117, 26.1118, 26.1119, 26.1120,
26.1121, 26.1122, 26.1123, 26.1124, 26.1125, 26.1126,
26.1127, 26.1128, 26.1129, 26.1130, 26.1131 AND
26.1132.

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 City 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 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, 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 amending sections 26.1101 through 26.1106 and adding sections 26.1107, 26.1108, 26.1109, 26.1110, 26.1112, 26.1113, 26.1114, 26.1115, 26.1116, 26.1117, 26.1118, 26.1119, 26.1120, 26.1121, 26.1122, 26.1123, 26.1124, 26.1125, 26.1126, 26.1127, 26.1128, 26.1129, 26.1130, 26.1131 and 26.1132.

Article 6: Boards 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 through 26.1106 and adding sections 26.1107, 26.1108, 26.1109, 26.1110, 26.1112, 26.1113, 26.1114, 26.1115, 26.1116, 26.1117, 26.1118, 26.1119, 26.1120, 26.1121, 26.1122, 26.1123, 26.1124, 26.1125, 26.1126, 26.1127, 26.1128, 26.1129, 26.1130 and 26.1131.

§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-focused oversight of the Police department, directed at increasing safety for both members of the community and police officers; (2) to receive, register, review, and evaluate all complaints and suggestions regarding the Police department and its officers; (3) to provide 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; (4) to review and evaluate all factual findings and evidentiary conclusions of the Police department arising from investigations of police misconduct and all disciplinary decisions proposed by the Chief of Police or designee following sustained findings of police misconduct; (4) To review and evaluate the Police department's compliance with federal, state, and local reporting laws and requirements (5) to review and evaluate the policies, practices, training and protocols of the Police department, and represent the community in making recommendations for improvement.

The Commission is exempt from all City collective bargaining agreements. City collective bargaining agreements must be in accord with the public policy and provisions of the Charter as well as this Division.

As set forth in the Charter and this Division, the Commission has

investigatory, review, evaluation, and auditing powers, including the power to make factual determinations about matters that are evaluated, reviewed, audited or investigated and advisory recommendations regarding the actions of police officers and procedures, policies, and practices of the Police department.

The physical office of the Commission must be located in a facility separate from the Police department.

The City Council shall appropriate a reasonable budget for the Commission, allowing it to fully and appropriately fulfill its powers and duties.

DEFINITIONS

§26.1102 Definitions

The following definitions apply to the terms as used in this Division:

Audit means to examine a matter in compliance with an established set of standards for the purpose of making an evaluation.

Charter means the Charter of the City of San Diego.

City means the City of San Diego, as defined by its territorial city limits, and all of its organizational units including departments, offices, boards, and commissions.

Commission means the Commission on Police Practices.

Commissioner means a person appointed to serve on the Commission.

Complaint means any formal communication to the Commission, police department, or City that :

(1) expresses criticism, discontent or suggestions for changes to the policies, practices, procedures or actions of the police department; and/or,

(2) alleges misconduct by any of the police department's police officers or any staff. "Complaint" includes allegations made by victims, witnesses to alleged wrongdoing, as well as allegations and requests for evaluation, review and or investigation made by third parties.

Complainant means a person or entity that submits a complaint.

Council means the City Council of the City of San Diego.

Custody means a situation where a reasonable person believes that his or her freedom of action is impaired by an officer or the police. The term "custody" is not limited to legal or physical restraint.

Evaluate means to draw conclusions from examining.

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

Finding means the determination of the Commission after it has reviewed, investigated, or evaluated a matter within its authority. The possible findings and their definitions are as follows:

(a) *Sustained* means that all or part of the alleged misconduct, as set forth in a complaint or brought to the attention of the Commission through

other means, including the evaluation, review or investigation of the complaint, 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, or any possible misconduct brought to the attention of the Commission through other means including, evaluation, review, and/or investigation, even if not alleged in the complaint;

(c) *Unfounded* means the alleged misconduct 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) *Community Value Violation* means conduct, a policy, practice or action that does not meet community expectations regarding health, safety, transparency, accountability, or police effectiveness, even if such conduct does not violate the law or a particular policy of the Police department. Community Value Violations include, but are not limited to:

- (1) inappropriate escalation/failure to de-escalate;
- (2) abuse of distraction blows;
- (3) disrespect;
- (4) inappropriate intimidation; and
- (5) inappropriate stops or detainment.

The Commission must compile a list of Community Value Violations based on community input. The is of community values must be published

on the Commission's website.

(f) *Pattern of Misconduct* means two or more separate instances of misconduct or Community Values Violations against an employee of the Police department.

(g) *Repeated Allegations* means two or more complaints of the same or similar allegations filed against a police officer, whether or not the findings were previously sustained by the Police department, the Commission, or any other body.

Investigation is a formal, systematic, and detailed inquiry into allegations regarding the actions of a police officer or the actions, procedures, policies, or practices of the Police department through the comprehensive gathering of information from original sources, coupled with the analysis of that information for the purpose of establishing relevant facts, making findings, and formulating recommendations.

Investigative proceeding is a meeting conducted by a panel of Commissioners to facilitate the fact-finding process.

Misconduct means conduct that causes risk to the health and safety of members of the public, impairs the operation and efficiency of the Police department, or brings into disrepute the reputation of the Police department, as determined by the Commission. Misconduct may involve a violation of any law, including federal or state statutes or local ordinances, or regulations, including City Administrative Regulations or Police department policies or procedures. Misconduct may also involve 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, evaluations, allegations of misconduct or other inappropriate behavior, assignments, status changes, imposed discipline, and personal information.

Police means Police department.

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 of the Police department.

Police officer means a peace officer, as defined by and with the authority set forth in California Penal Code sections 830 through 832.17, who is employed by the Police department.

Police misconduct means misconduct by any police officer employed by the Police department or by the Police department itself.

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 making allegations against a police officer, the term "review" includes consideration of the material gathered and generated by San Diego Police department's Internal Affairs, as well as any materials gathered or generated by the Commission, including original source materials.

System means the police department's Quality Assurance and Performance Improvement System

§26.1103 Nomination, Appointment and Abilities of Executive Director

(a) The Commission must select and nominate for appointment its Executive Director.

(b) The Council must consider the Commission's nominee for appointment.

(c) In the event that the Council votes not to appoint a nominee, the Commission must nominate a new candidate for Executive Director. The Council may not appoint an Executive Director who has not been nominated by the Commission.

(d) The appointed Executive Director serves at the direction and will of the Commission, and thus the Commission, based on a simple majority vote, may request that the Council terminate the Executive Director's employment. The Council must then act in accordance with the Commission's request.

(e) The Executive Director has the authority to hire staff at the direction of the Commission. The Commission has the authority to set minimum qualifications and appropriate screening procedures for all persons to be considered for employment by the Commission, and to set appropriate staffing levels to carry out the powers and duties of the Commission, provided, however, that no investigator employed by the Commission can be a current or former sworn member of the Police department. It is the Commission that determines the number and type of employees and who the Executive Director will hire.

(f) The Commission must retain its own legal counsel, independent of the City Attorney. The Executive director must hire a full-time staff attorney as general counsel who shall provide legal services to the

Commission. The employment of general counsel by the Executive Director must be at the direction, evaluation, and will of the Commission. In the event that the general counsel has a financial interest or other conflict of interest in a particular matter, the Commission may retain outside counsel to advise the Commission. The Commission may also retain outside counsel to advise the Commission in any specific instance it deems necessary.

(g) The Executive Director is authorized to reimburse Commissioners for reasonable expenses incurred in the performance of their official duties, in accordance with the City Charter and applicable federal and state laws.

§26.1104 Nomination and Appointment of Commissioners

(a) The Commission shall maintain an online method for suggesting individuals for nomination to the Commission.

(b) Any person or entity may suggest an individual for nomination. In order to maintain the Commission's independence from the City, however, neither the City nor any other governmental entity/agency may make a suggestion.

(c) The Commission shall create a committee to nominate individuals for appointment to the Commission by the Council. The Committee must consist of at least nine members, three of whom are current or former Commissioners. The remaining members of the committee must consist of the following: Two university professors who specialize in policing and racial/identity equity; Two representatives of human or civil rights tax-exempt organizations who specialize in civil or human rights, and two representatives of community organizations who specialize in civil or human rights and criminal justice, and whose work includes victims of racial and identity profiling. None of the organizations

providing representatives to the nominating committee may be affiliated with law enforcement.

(d) The Commission nominating committee must consider all suggestions received by the Commission. The nomination of a Commissioner must be by a simple majority vote of the committee.

(e) Prospective Commissioners who accept their nominations in writing are to be appointed by the Council in accordance with the approved Rules of Council.

(f) The Council may not appoint a Commissioner who has not been nominated by the Commission's nominating committee.

(g) If the Commission's nominating committee nominates an individual for appointment, and the City Council fails to act on that nomination within 120 days, that individual is automatically deemed to have been appointed by the Council.

§26.1105 Commission Composition, Commissioner Qualifications, Training

(a) The Council must appoint twenty-five Commissioners to the Commission.

(b) The Commission must reflect the diversity of the City by including Commissioners who represent the City's diverse geographic areas and socio-economic, cultural, racial, ethnic, gender and gender identity, sexual orientation, housing status, and age differences, and who have differing personal backgrounds, education, occupations, and life experiences. In ensuring socio-economic diversity, the Council must include representation on the Commission by Commissioners who reside

in and represent those City residents living in low-and moderate-income United States Census tracts.

(c) All Commissioners must be at least eighteen years of age and reside in the City at the time of their appointment or reappointment and throughout their service on the Commission.

(d) The Commission must include Commissioners residing in each of the nine Council districts. Commissioners may complete their term of appointment even if they move from the geographic area in which they resided at the time of the appointment.

(e) The Commission must at all times include two individuals, who were aged eighteen to twenty-four at the time of their appointment or reappointment.

(g) Ten of the Commissioners must reside in those the police beats with the highest rates of warrantless stops, searches, and complaints submitted regarding the police department, its police officers and staff. Three commissioners must come from each of the three beats with the highest rates. One Commissioner must come from the police beat with the fourth highest rate of warrantless stops, searches, and complaints submitted regarding the police department, its police officers and staff.

(h) With respect to the designated youth, geographic and diversity requirements for Commissioners, Commissioners may fill more than one requirement, thereby satisfying the composition requirements. If the Commission, after a diligent search, cannot locate an individual who fulfills one of the geographic requirements for composition of the board, it may nominate an individual who most closely meets the requirement needed to be filled. The Commission must, however, explain, in writing, to the Council the extent of its efforts to locate an individual who fulfills the

original requirement sought and the basis for believing that the individual nominated most closely meets the requirement needed to be filled.

(I) To ensure the Commission's independence from law enforcement, the enumerated law enforcement officers and their immediate family members are prohibited from appointment to the Commission. For purposes of this prohibition, law enforcement agencies include police departments as well as county and federal law enforcement officers and prosecutors. Immediate family members is defined as a parent, spouse or domestic partner, sibling, or child.

(1) No current, former, or retired police officer or 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.

(2) No one who is a current law enforcement officer or currently employed by a law enforcement agency may serve on the Commission.

(3) The immediate family members of law enforcement officers or an employee who works or worked for a law enforcement agency within the geographic boundaries of the County of San Diego may not serve on the Commission.

(4) The immediate family members of law enforcement officers, defined as the parent, spouse or domestic partner, sibling, or child of an employee who works for a law enforcement agency may not serve on the Commission.

(5) The prohibition against law enforcement does not apply to sworn officers or 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, or their immediate family members.

(j) Paid staff members of the Council and mayor's office may not be Commissioners.

(k) As part of their appointment process, prospective Commissioners are subject to a review of their qualifications to serve, which will be conducted by the Executive Director or a designee, in accordance with applicable law. This review includes an investigation into any record of criminal convictions. Information regarding an applicant's criminal background may not be obtained by the Commission until the applicant has reached the final stage of nomination process.

(l) Criminal convictions and other involvement with law enforcement, such as arrests or detentions, cannot be a per se bar to appointment as a Commissioner. A criminal conviction may only factor into the nomination process if the facts underlying the conviction show that the applicant's current attributes would specifically and negatively impact the fulfillment of his or her duties as a commissioner. The consideration of an applicant's criminal status may only take place during the final stage of the nomination process. Under no circumstances may a misdemeanor, drug or theft conviction, or a convictions more than five years old bar a nominee from appointment.

(m) Commissioners need not be citizens nor must they be documented residents of the United States.

(n) The Commission must maintain a training program for individuals interested in appointment to the Commission. Commissioners must also complete training upon their appointment to ensure their

working knowledge of applicable laws and rules. The training program must include instruction by community organizations specializing in civil or human rights and criminal justice work as well as work that includes victims of racial and identity profiling.

§26.1106 Terms of Commissioners

(a) Commissioners serve two-year terms and until a successor is appointed, except that of the twenty-five Commissioners first appointed after the effective date of this Division, twelve Commissioners will serve a one-year term, initially, so that the terms of no more than thirteen Commissioners 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 twenty-five Commissioners 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 Commissioners and their terms, and regularly make this information available to the Council and the public.

(d) The Council President, with the assistance of the Commission, will timely schedule Council consideration of new appointments to ensure that the Commission remains fully constituted.

(e) Commissioners are limited to serving a total of four, two-year terms. However, appointees whose terms of service have expired may continue to serve until their successor is appointed. If for any reason, a Commissioner 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 four

consecutive term limitation.

Section 3. That Chapter 2, Article 6, Division 11 of the San Diego Municipal Code is amended by adding sections 26.1107, 26.1108, 26.1109, 26.1110, 26.1112, 26.1113, 26.1114, 26.1115, 26.1116, 26.1117, 26.1118, 26.1119, 26.1120, 26.1121, 26.1122, 26.1123, 26.1124, 26.1125, 26.1126, 26.1127, 26.1128, and 26.1129.

§26.1107 Resignation and Removal of Commissioners

(a) A Commissioner may resign prior to the expiration of his or her term with written notice to the Council President and Executive Director. Upon this notification, the Commission and the Council President must consider the position vacant and eligible for the Council to appoint a new Commissioner to fill the remainder of the vacating Commissioner's term. If a Commissioner resigns from a designated seat, the Commission's nominating committee must nominate a new Commissioner and the Council must appoint a new Commissioner who meets the qualifications to serve in that designated seat.

(b) Commissioners must notify the Executive Director of any felony convictions occurring during his or her tenure. If a Commissioner is convicted of any of the following felonies during his or her term, the Commission must consider whether the circumstances underlying the conviction conflict with the Commissioner's duties as a Commissioner: domestic violence, elder abuse, child abuse, or sexual battery. In the event that the Commission makes such a determination by a simple majority vote, the Commission must immediately suspend the Commissioner from participating in any capacity on the Commission until such time as the Council determines that the Commissioner shall not be removed.

(c) The Commission, by a two-thirds vote of its Commissioners, may

recommend to the Council, by written notice to the Council President, that a Commissioner be removed for good cause other than a criminal conviction, for reasons including:

- (1) misuse of position as a Commissioner;
- (2) misuse of records, including Police department or Commission records;
- (3) violation of federal or state laws relating to confidentiality or City employee privacy;
- (4) conduct that impedes a Commissioner's ability to serve impartially and independently;
- (5) unexcused absences from at least three consecutive meetings. Prior notification to the Chairperson of absence from Commission meetings constitutes an excused absence;
- (6) repeated failures to complete case assignments;
- (7) an unlawful or inappropriate conflict of interest; or
- (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 Commissioner, as described in subsections (b) and (c), the Council President must schedule a hearing of the Council to occur within sixty days following receipt of the recommendation. The Council President may suspend participation of a Commissioner, by written notice, pending a Council hearing on removal.

(e) If a Commissioner voluntarily resigns before a required Council hearing on removal, the Commissioner waives his or her right to the hearing on removal.

§ 26.1108 Duties and Powers of the Commission; generally

(a) The Commission has the duties and powers, as mandated by the City Charter and by the authority of the Council as listed in this Division.

(b) The Commission must evaluate and review all complaints it receives. The Commission is also empowered to investigate complaints as mandated by the City Charter and by the authority of the Council as described in this Division.

(c) The Commission may consider the allegations of a closed complaint in conjunction with a subsequent complaint received by the Commission, even where the time has passed to implement police officer discipline.

(d) The Commission is not precluded from conducting an evaluation, review, investigation or audit concurrently with a related, active criminal investigation.

(e) Upon completion of any evaluation, review, investigation or audit, the Commission must make findings and recommendations in accordance with the Charter and this Division.

§ 26.1109 Receipt of Complaints

(a) The Commission must develop and implement a process for allowing individuals and organizations to file complaints with it by various means, including submission of complaints using the Internet, by

telephone, and in person at locations in the community.

(b) The Commission must receive and register all complaints regarding the police department, its police officers, and staff.

(1) Complaints may be submitted by the individual who suffered the alleged wrongdoing, witnesses to the alleged wrongdoing, and third parties to the alleged wrongdoing.

(2) Complaints may be submitted directly to the Commission or the Police department.

(c) Any complaints filed with the Police department must be transmitted to the Commission within twenty-four hours of receipt, including informal complaints, those where the complainant may have requested that no investigation take place as well as those which may be considered to have made "no specific allegation" or where no "police officer can be identified."

(d) 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.

(e) The Commission must publish all complaints received within 15 days of receipt. Publication must include placement on the Commission's website.

(1) The Commission must ask the complainant if s/he objects to the publication of the complaint. If the complainant does object, the complaint must not be published.

(2) All complaints must be redacted to remove information identifying the complainant, witnesses, and police officers involved prior to publication. All confidential information must also be redacted

§ 26.1110 Evaluation, Review and Investigation of Complaints

(a) The Commission must evaluate all complaints including those where the complainant has requested that the complaint be handled without investigation or where no specific allegation or police officer can be identified.

(1) The determination of whether a complainant has requested that the complaint be handled without investigation shall be independently evaluated and determined by the Commission. This determination must include contact with the complainant, explaining the complaint process and ensuring that the complainant maintains the desire that the matter not be investigated.

(2) The determination of whether a complaint does not make a specific allegation shall be independently evaluated and determined by the Commission. The Commission must make reasonable efforts to discern and clarify the allegations of a complaint before making a determination that the complaint does not state a specific allegation. These efforts must include contact with the complainant, requesting further explanation of the complaint being made. Such information must be used to supplement the complaint.

(3) The determination of whether a complaint does not identify a specific police officer shall be independently evaluated and determined by the Commission. The Commission must make reasonable efforts to determine the identity of the police officer(s) involved in a complaint before making a determination that the complaint does not identify a

police officer. The police department must assist the Commission in these efforts.

(b) If after an evaluation of a complaint, the Commission determines that the complainant wants the complaint to be handled without investigation or determines no specific allegation or police officer can be identified, then the Commission may not investigate the matter. This prohibition, however, does not prevent the Commission from reviewing the complaint for purposes of making recommendations on the police department's policies, procedures and/or practices.

(c) The Commission must independently investigate all deaths occurring while a person is in the custody of the Police department and/or its police officers, all deaths resulting from any 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. The police department must notify the commission of an event as described in this subsection at the time the police department learns of it and without delay. The police department must, at that time, provide the Commission's investigators the opportunity to be present at the scene of the incident as part of the Commission's investigation. Commission investigators shall have access, alongside police department investigators, to incident scenes of officer-involved shootings and in-custody deaths.

(d) The Commission may, but is not required to, investigate complaints against police officers which do not involve in-custody deaths, deaths resulting from an interaction with a police officer, or police officer-related shootings. Such complaints, must however, be reviewed. In determining whether to exercise its discretionary power to investigate a complaint, the Commission must consider whether the complaint arises from any of the following:

(1) an incident in which the use of force by a police officer against a person resulted in great bodily injury;

(2) dishonesty by a police officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by another police officer, peace officer, or custodial officer, including an allegation of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence;

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

(4) an incident in which data shows a pattern of misconduct by or repeated allegations concerning a police officer; or,

(5) an incident in which data shows a pattern of inappropriate policies, procedures, or practices of the Police department or its employees.

(e) An investigation must include the timely gathering and receipt of any and all information about the allegations available to the Police department and/or the City. A comprehensive investigation must include all relevant interviews (including but not limited to the complainant, affected persons, subject police officers, and police as well as civilian witnesses), experts (including but not limited to medical experts, use of force experts, subject matter experts); review of relevant visual materials (including but not limited to photographs, body worn camera videos, surveillance videos, bystander videos and other relevant materials); review of relevant physical evidence; review of medical reports associated with an incident; review of all police documents related or relevant to an incident (including but not limited to arrest reports, field interviews, dispatcher reports, patrol vehicle tracking, and Shooting Review Board Reports);

review of all relevant correspondence, statements and other material communications; and review and analysis of applicable police policies/procedures, statutes and case law. No investigation shall be considered incomplete merely because, after the application of concerted due diligence, the Commission is unable to obtain one or more of the enumerated items as required to be included in a comprehensive investigation. Nothing in this subsection relieves the Police department and/or the City of its responsibility to provide the Commission with a relevant materials.

(f) In performing a review or investigation of a complaint against a police officer, the Commission must review the history of complaints involving the subject officer.

(g) The Commission, in its discretion, may evaluate, review and/or investigate allegations of inappropriate sexual conduct, physical assault, and/or domestic violence, where a complaint has been submitted to the Commission or the Police department.

(h) The Commission, in its discretion, may review and/or investigate the facts of individual civil lawsuits and criminal proceedings involving alleged police officer misconduct in order to identify and investigate incidents of police misconduct or to make recommendations to improve Police department policies and practices within the Commission's jurisdiction, even where no complaint is filed.

(i) If the Commission does not conclude a review or investigation of alleged misconduct or a complaint within six months after its initiation, the Commission shall notify, within three days after the end of the six-month period, the Mayor or his designee, the police chief, the chair of the City Council's Public Safety and Liveable Neighborhoods committee, the complainant, and the police officer named in the complaint, explaining the

reasons for the Commission's failure to complete the investigation within six months. Thereafter, the Commission must provide an update to such notice, including the same information and notification to the same individuals, every four weeks until the investigation is completed. All of this information must be made public within one working day of the enumerated date.

(j) The police department may not close a case involving police officer misconduct until the Commission has indicated that it has completed its evaluation, review or investigation, unless the Commission has failed to timely address the matter thereby putting in jeopardy the police department's ability to discipline the police officers involved.

(k) The Commission must retain complaints and any reports or findings relating to complaints for a period of at least ten years.

§ 26.1111 Investigatory Proceedings

(a) The Commission may compel the attendance of witnesses and the production of documents at an investigatory proceeding. Testimony provided at this proceeding may be taken under oath. At the conclusion of an investigative proceeding, the proceeding panel shall submit a report that include recommended findings for consideration by the full Commission. The scope of an investigative proceeding may vary to include a single issue, multiple issues and/or the entire complaint.

(b) The complainant, the public, and the police officer who is the subject of the complaint must be given adequate notice of an investigative proceeding and the opportunity to attend. The complainant and the subject police officer must be given the opportunity to speak and respond to any information elicited at the proceeding.

§ 26.1112 Evaluation and Review of Police Department Investigations and Discipline

(a) 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 and all disciplinary decisions proposed by the Chief of Police or his/her designee following the police department's sustained findings of misconduct by police officers.

(1) The police department must provide the materials generated by any investigation of a complaint against a police officer as directed by this Division.

(2) In the event that the Commission provides the police department with findings and recommendations on a matter, the police chief must respond to the Commission within 5 days, in writing, informing it whether the police chief will comply with the findings and recommendations.

(3) If after receiving the police chief's response, the Commission is not satisfied with the police chief's decision, the Commission may request that the mayor review the Commission's recommendation and direct the police chief accordingly.

(4) The Commission is authorized to refer any matter before the Commission to the grand jury, district attorney, or other governmental agency that is authorized by law to investigate the activities of a law enforcement agency, its police officers or staff.

(b) The Commission may, but is not required to, review and evaluate the Police department's administration of discipline. The

Commission may provide advisory recommendations to the Chief of Police.

(1) In the event that the Commission provides the police department with recommendations on the administration of discipline, the police chief must respond to the Commission within 5 days, in writing, informing it whether the police chief will comply with the recommendations.

(2) If after receiving the police chief's response, the Commission is not satisfied with the police chief's decision, the Commission may request that the mayor review the Commission's recommendation and direct the police chief accordingly.

§ 26.1113 Commission Findings and Recommendations

(a) Upon completion of any evaluation, review, investigation, or audit, the Commission must make findings, conclusions, and recommendations in accordance with this Division.

(b) With respect to complaints regarding police officer misconduct, the Commission may make the following findings as defined in this Division.

(1) Sustained;

(2) Not Sustained;

(3) Unfounded;

(4) Pattern of Misconduct;

(5) Repeated Allegations; and,

(6) Community Value Violation.

(c) Findings of a pattern of misconduct, repeated allegations, or of a Community Value Violation may be made in tandem with other findings.

(d) Where a pattern of misconduct or Community Value Violations is found, the Commission may recommend revisions to the police department's policies, practices, programs, and training in order to address and eliminate such patterns or practices.

(e) With respect to all findings, with the exception of a finding of "exonerated," a passing vote by the Commission is by a simple majority. A finding of exoneration must be made by a two-thirds vote.

(f) The Commission must make its findings and recommendations on complaints regarding police officer misconduct and provide those findings and recommendations to the police department in a timely manner so as to allow the police department to consider those findings and recommendations prior to the police department's implementation of discipline and closing of the police department's case.

(g) The Commission is required to conduct an evaluation, review, and/or investigation of the complaint as required by this Division and produce findings and recommendations, even if the time for meting out police officer discipline has passed.

(h) At any point in its review or investigation of a matter, the Commission may recommend to the police department that it make additional or different findings and conclusions.

(i) In the event the findings and recommendations of the Commission differ from those of the police department, the Commission may request

that the Mayor review the matter for discussion with the police, requesting that the police department change its findings and/or conclusions. Under no circumstances may the Commission change its findings and recommendations merely because they are dissimilar from those of the police department.

§ 26.1114 Considerations of Commission Findings and Recommendations

In making a final determination as to whether a police officer was engaged in misconduct or violated any policy, the Chief of Police and the Police department must consider any findings and/or recommendations by the Commission, to the extent that findings are available prior to any federal or state-imposed deadline for the imposition of discipline. 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 the authority and discretion to discipline police officers and other employees in the Police department.

§ 26.1115 Appeals Process for Sustained Findings and Discipline

Nothing in this Division prevents any police officers against whom findings have been sustained from pursuing his or her rights to appeal to the Civil Service Commission as provided by state law.

§ 26.1116 Commission Mediation

(a) The Commission may develop and implement a mediation program as an alternative means to resolve complaints. The mediation program must enable complainants to resolve their issues with a police officer, who is the subject of the complaint, in a form of face-to-face dispute resolution involving a trained mediator.

(b) Mediation must be limited to eligible matters as determined by the Commission. The following matters are not eligible for mediation.

(1) Matters in which either the complainant or the police officer who is the subject of the complaint do not agree to mediation.

(2) Matters where the police officer involved has previously committed sustained misconduct.

(3) Matters where a previous complaint has been filed against the police officer alleging what the Commission determines is similar conduct.

(4) Matters where the complainant alleges domestic violence, sexual assault, or the use of excessive force that results in death or serious bodily injury.

(c) The Commission may, in its discretion, refuse to allow mediation in any eligible matters where it deems it appropriate.

(d) Cases that are successfully resolved through mediation are not considered disciplinary proceedings or punitive actions. Complainants shall be informed prior to their decision to engage in mediation that such engagement will negate any investigation and disciplinary action regarding the alleged misconduct. In determining whether a mediation is successful, the Commission must consider whether the police officer involved made an objectively reasonable effort to participate in mediation and to adequately address the allegations and concerns of the complainant.

§ 26.1117 Evaluation, Review, and Auditing of Police Department's Compliance With Reporting Laws

The Commission must evaluate, review and audit the Police Department's compliance with federal, state, and local reporting laws and requirements. The purpose of this process is to ensure that the police department is appropriately complying with each stage of the required reporting process as well as the purpose and goals of the reporting laws.

(a) The Police Department must provide the Commission with the information gathered and the statistics compiled on the last day of the month following the reporting period.

(b) The Commission must retain professionals with relevant expertise to conduct the evaluation and audit. A complete audit must be conducted on a semi-annual basis. The results of such an evaluation and audit must be reduced to writing and published online within three days of its completion.

§ 26.1118 Independent Review of Policies, Procedures, Practices, and Actions of the Police Department

The Commission may, but is not required to, report issues and/or recommend and promote to City policymakers, including the Mayor, the City Council, and the police chief, changes to policies and practices, collective bargaining agreements, City ordinances, and state laws in order to support systemic improvements and other enhancements to police performance and in furtherance of community trust. If, however, a complaint is filed with the Commission regarding a particular policy, procedure, practice or action of the Police Department, the Commission must evaluate, review and/or investigate the complaint in accord with this Division.

(a) The Commission's reporting of issues and the provision of recommendations regarding the policies, procedures, practices, and actions of the Police Department need not be based on a complaint filed. Rather, they may be based on the Commission's independent review and evaluation.

(b) The entity to which the Commission's report or policy recommendation is directed must respond to the Commission in writing within sixty days. Such response must include a description of the actions the entity has taken or is planning to take, if any, with respect to the issues raised in the report or recommendation. If the entity declines to implement one or more of the Commission's recommendations, such response must explain the reasons for not doing so. The entity's responses must be placed on the Commission's website within thirty days of receipt.

(c) The Commission may request that the entity appear at an opening hearing before it to explain and respond to questions concerning any response provided by a City entity or official.

§ 26.1119 Records and Investigative materials

(a) Every office, employee, department, and agency of the City must cooperate with the Commission in its exercise of its duties and powers. The City, including the police department, must provide any and all information and materials as requested by the Commission in an unredacted state. The City must provide the Commission with police officer discipline and personnel records. The police department and City must make all files and records available to the Commission in an electronic format. The Commission may request that the police department and/or City make the original documents available for inspection.

(b) The police department must create an online repository of the

following documents that are at all times available to the Commission and its Commissioners:

- (1) all police academy training materials;
- (2) all police officer training bulletins;
- (3) all police officer training material prepared as part of pre-event planning;
- (4) all police officer continuing education training materials;
- (5) all police department orders; and
- (6) all special unit policy and procedure manuals to the extent not required to be confidential by state or federal law.

(c) The police department, including its internal affairs department, must promptly provide the Commission with all materials received, gathered or produced by a police department or police officer complaint as a result of an investigation by Internal Affairs or any other investigating arm of the police department.

(1) Within 3 days of receiving a complaint, the police department must notify the commission of the status of its investigation.

(2) Every 30 days after the police department's receipt of a complaint, the police department must update the Commission on the status of the police department's investigation, until such investigation is concluded. At such time, the police department must also provide the Commission with all investigative materials gathered to date. The Commission may request and the police department must provide any

materials available in between the thirty-day intervals upon the request of the Commission.

(3) The police department must make every effort to provide the Commission with its concluding report on a complaint regarding police officer misconduct at least six months before any statutory deadline for the imposition of police officer discipline. In the event that the police department does not provide the Commission with its final report by the six-month date, the police department must send a written explanation as to when it expects to provide the report and why it has not provided the report. The police department must update the Commission on the status of its investigation every two weeks thereafter until the investigation report is provided to the Commission. The following circumstances may not be grounds for the police department's delay in investigating a matter, in providing the Commission with investigative materials, or in providing the Commission with a final investigative report:

(A) the complainant has or has threatened to file a lawsuit;

(B) the police officer who is the subject of the complaint is on leave; or,

(C) the police investigator assigned to the matter is on leave.

(d) With the exception of the materials described in the immediately preceding subsection, the City, its employees, departments and agencies, including the Police department, must make available its records to the Commission within 5 calendar days, of a request by the Commission. Any disclosure of personnel records to the Commission by any City department must be in accordance with all applicable federal and state laws. Further,

the Commission is required to maintain the confidentiality of all Police department records and City personnel records, in accordance with applicable federal and laws.

(e) If the Chief of Police believes there are records and other materials that the police department is legally entitled to withhold, the Chief of Police must provide the Commission with a written explanation, within five calendar days of receiving the request, setting forth the specific records being withheld and the reason for withholding them. Additionally, the Police department must file a request with the Superior Court to issue an order to permit the withholding of the records or materials, within ten calendar days of receiving the Commission's request. If the police department's request for an order is not filed within the specified time period, the police department must turn over the records to the Commission. Nothing in this ordinance may impinge on the Commission's rights to subpoena individuals or records, as allowed by state law, the Charter and this Division.

(f) All employees of the City, including the police department's police officers and staff, must attend and be fully responsive to requests from the Commission for participation in interviews, attendance at an investigatory proceeding or any other similar request.

(g) All employees of the City, including the police department's police officers and staff, must provide the Commission with all information, documents, and other materials requested by the Commission.

(h) The Commission may enter into an agreement with the police department as to the processes by which the Commission will receive documents and be allowed access to police officers and other city staff for questioning. The Commission may not, however, waive any rights

provided to it by the City Charter or the ordinance, including but not limited to the right to compel the production of documents and to issue subpoenas.

(i) Any employee or police officer who fails to cooperate with a valid request for information is subject to discipline, including but not limited to discharge.

(j) Any employee or police officer who fails to cooperate with a valid request for questioning is subject to discipline, including but not limited to discharge.

§ 26.1120 Subpoenas

(a) In accordance with the Charter, the Commission has authority to issue subpoenas to the full extent allowed by law whenever the Commission deems it necessary to carry out its duties and/or powers.

(b) All subpoenas must be served as required by state law.

(c) If the subpoena was regularly issued, and the person responsible for compliance failed to comply with the subpoena, the Superior Court has jurisdiction of the matter, and may impose any penalty allowed by law.

§ 26.1121 Closed Session Meetings

(a) Police officers and other members of the public may only attend a closed session of the Commission upon the request of the Commission and only for the purpose of providing information that is required by law to be kept confidential.

(b) Only Commissioners and Commission staff may be present during the case deliberation portion of a closed session of the Commission. Police officers and other staff of the police department may not be present.

§ 26.1122 Commission Referrals

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 that is authorized by law to investigate the activities of a law enforcement officer, a law enforcement agency, or its staff.

§ 26.1123 Retaliation, Obstruction, or Interference

(a) No person may retaliate against, punish, intimidate, discourage, threaten or penalize any other person for reporting misconduct, making a misconduct complaint, conducting an investigation, complaining to officials, providing information, testimony or documents in an investigation, or cooperating with or assisting the Commission in the performance of its powers and duties.

(b) Any employee or police officer who violates any provision of this ordinance is subject to discipline, including but not limited to discharge, in addition to any other penalty provided by law.

§26.1124 Communication with and Rights of Complainants

(a) The Commission must send the complainant written notice of each of the milestone determination within two working days of the milestone or the Commission's determination. These milestones include

but are not limited to the following:

(1) That the Commission has received the complaint;

(2) That the Commission has assessed the complaint to determine whether it will be reviewed or investigated and, the results of that assessment, along with an overview of the complaint process and the estimated time line for disposing of the complaint;

(3) that the Commission has begun either the review or investigation process;

(4) that the Commission has completed its review or investigation, and the specifics of the findings, recommendations, or other decisions made.

(b) The complainant must receive notice of the status of his or her complaint, no less than every forty-five days.

(c) If the Commission intends to receive oral input, at any meeting, session, or hearing, from any police officer or from any witness, the Commission must notify the complainant and of his/her ability to attend and speak on his/her behalf.

(d) If the Commission determines that it is necessary to receive further input from the Police department, its Internal Affairs, or any police officer against whom a complaint has been made, the complainant will be promptly notified and given the opportunity to respond.

(e) Any rights or privileges afforded to a police officer by the Commission as a part of the review or investigation process must also be afforded the complainant.

§26.1125 Public Nature of Commission's Work

(a) All information required to be made public under this section must be made public on the Commission's website as soon as practicable. All published materials must be redacted as required by state and federal law.

(b) All complaints must be made public within two working days of being submitted to the Commission unless the victim/complainant specifically requests of the Commission that it be kept confidential.

(c) When the complaints are made public, all information identifying specific individuals, as well as other confidential information, must be redacted. The Commission is that entity that will make the redactions.

(d) The Commission must identify all of the key steps of its process for evaluating, reviewing and investigating individual cases, and the decisions made at each of the following stages must be made public within two working days after the decision is made:

(1) That the Commission has received the complaint;

(2) That the Commission has assessed the complaint to determine whether it will be reviewed or investigated and, the results of that assessment, along with an overview of the complaint process and the estimated time line for disposing of the complaint;

(3) that the Commission has begun either the review or investigation process;

(4) that the Commission has completed its review or investigation, and the specifics of the findings, recommendations, or other

decisions made.

(e) The Commission must receive public comment on each of its findings, recommendations and decisions through its website as well as through other methods such as mail and telephone. The public comments received must be made public as soon as practicable, but no later than within two working days of receipt.

(f) The full text of all findings, decisions, and recommendations must be made public as soon as practicable, but no later than two working days of their finalization.

(g) All written responses to the Commission's requests and decisions made by the City, including the Police department, must be made public on the Commission's website within two working days of receipt.

§ 26.1126 Community Outreach

(a) The Commission must engage in outreach to address community groups, and inform the public, on the mission, 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 input regarding the Commission's function, 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.

§ 26.1127 Semi-Annual Reports

(a) 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 made public within 24 hours of completion, or upon submission to the Mayor and Council, whichever comes first, but the Commission must not disclose any information required to be kept confidential by controlling federal or state law. These reports must be published to the Commission's website, and must be electronically mailed to all members of the public who have requested an e-mail of such reports upon its publication.

(b) The semi-annual report must include the following information regarding the prior six-month reporting period:

(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 reviews and investigations initiated during the prior six months;

(3) the number of reviews and investigations concluded during the prior six-months, and of those investigations, the number that took more than six months to conclude and an explanation as to why those matters took more than six months to conclude;

(4) the number of reviews and investigations pending as of the last day of the prior six-months;

(5) a tabulation of the results of 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 identity of such other agencies;

(7) a description and summary of all evaluations, 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 any responses given by the entity to which the recommendations were directed;

(8) the results of the Commission's evaluations and audits of the police department's compliance with reporting laws and the police department's quality assurance program as described in this Division.

(9) a description of each instance where the police department, its Internal Affairs, any other City entity or its employees refused to provide the Commission with materials or information requested as well as all instances where the police department was late in complying with those requests;

(10) a description of the Commission's community outreach efforts; and,

(11) a description of any other significant activity undertaken by the Commission.

(B) The semi-annual reports must be published no later than 60 days following the end of the preceding reporting period.

§ 26.1128 Commission Operating Procedures

The Commission may establish governing rules and standard operating procedures to govern its internal operations.

(a) Any rules or procedures the Commission seeks to establish must be consistent with the Charter, this Division, and all applicable federal and state laws.

(b) The Commission must create and implement a process for receiving public comment on any rules or procedures it seeks to establish. Notice of the proposed rule or procedures must be made available for public comment at least 90 days before the Commission seeks to establish them. Within 24 hours of adoption, the Commission must publicly post its rules and procedures on the Commission website.

§ 26.1129 Conflict of Interest Code

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

§ 26.1130 Whistleblower Protections

(a) The Commission must develop a special process for police officers and police department staff to submit complaints regarding other officers and the practices, policies, procedures, or actions of the police department itself. The process must include methods to protect the identity of the complaining police officers and staff and also to protect the officers and staff from retaliation.

(b) Police officers may submit complaints to the Commission as an alternative to informing the police department of the wrongdoing. The police department may not reprimand an officer for informing the Commission rather than reporting the wrongdoing to the police

department. The Commission must keep the complaining police officer's or staff's identity confidential.

§ 26.1131 Police Department Quality Assurance and Performance Improvement System and Commission Oversight of That System

(a) The Police department must create a Quality Assurance and Performance Improvement System.

(b) The purpose of the System is to improve the following:

(1) any performance deficiencies in the police department's functioning;

(2) the effectiveness of the police department's policies, practices and procedures.

(c) The System must include the following:

(1) An identification of the police department's process for training police officers in best practices and tracking the identity and number of police officers trained. The definition of training must include the repetitive practice of a desired behavior;

(2) A process for reviewing police encounters with members of the public and determining whether best practices were used. All encounters that result in injury and deaths must be audited; and,

(3) A management process that creates leadership responsibility and accountability for the System. This process must assure that training and audits are carried out appropriately and that the results

of the audits are analyzed in a systematic way to identify the root causes of any deficiencies.

(d) The results of the audits must be made available to the police officers who were audited, and the results of these audits must be reported to the police department leadership, the Mayor, the City Council, and the Commission on Police Practices on a monthly basis. The data must be aggregated to the division and substation levels.

(e) The Commission has the duty to audit the processes of the police department's Quality Assurance and Performance Improvement System.

(1) The purpose of the Commission's auditing process is to ensure that the police department is carrying out its duties with respect to the System.

(2) The Commission must create and implement a survey process to seek out information from all individuals following their encounters with police. This data must be used to identify needs for improvement in training and/or improvement in police policies, practices, and procedures. The police department must provide the Commission with any and all information necessary for the Commission to carry out this duty.

(3) The police department must provide the Commission with any and all data, information, and results gathered and produced by the police department and the Quality Assurance and Process Improvement System that the Commission requests.

(f) After one year of data has been compiled and analyzed, and at all times thereafter, System data must be aggregated at the substation and division levels and made available on the Commission's website and also in the Commission's semi-annual reports.

§ 26.1132 Commission Accountability

The Commission must create a formal process for allowing complainants and other members of the community to evaluate the Commission's processes and performance. The Commission must analyze the community and complainant evaluations and publish the results on a semi-annual basis.

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.