

Commission on Police Practices

Ad Hoc Transition Planning Special Committee Meeting

Thursday, January 20, 2022
9:30 am-11:30 am
Zoom Webinar Platform

AGENDA

As an Ad Hoc Committee meeting, this meeting is not subject to the Ralph M. Brown Act; however, to promote transparency, the meeting will be available to the public via this Zoom webinar link:

<https://sandiego.zoomgov.com/j/1604304431?pwd=aDVHZEIkNTBNa25UN0hNTGV0MVJ6QT09>

Click [here](#) to view this meeting after its scheduled time. Please see the rules/procedures for submitting public comment at the bottom of the agenda.

- I. CALL TO ORDER/WELCOME/ROLL CALL (Committee Chair Doug Case)
- II. PUBLIC COMMENT: (Fill out and submit comment using [webform](#). Please see instructions at the end of this agenda)
- III. NEW BUSINESS (DISCUSSION/ACTION)

Development of a list of recommendations for the full Commission on Police Practices to consider regarding the City Attorney's January 11th draft of the implementation ordinance for the Commission on Police Practices
- IV. NEXT STEPS
- V. ADJOURN

Materials Provided:

- 1/11/2022 City Attorney's Draft of the Implementation Ordinance

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

Virtual Testimony:

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

Written Comment through Webform:

In lieu of in-person attendance, members of the public may submit their comments using the [webform](#). If using the webform, indicate the agenda item number you wish to submit a comment for. Instructions for word limitations and deadlines are noted on the [webform](#). On the [webform](#), members of the public should select Commission on Police Practices (even if the public comment is for a Commission on Police Practices Committee meeting).

The public may attend a meeting when scheduled by following the attendee meeting link provided below. To view a meeting archive video, click [here](#).

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

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

Please click the link below to join the webinar:

Join from a PC, Mac, iPad, iPhone or Android device:

Please click this URL to join.

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ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

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

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

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

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

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

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

WHEREAS, the Council wishes to adopt the ordinance to implement the Commission, as required by Charter section 41.2; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

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

Article 6: Board and Commissions

Division 11: Commission on Police Practices

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

§26.1101 Establishment and Purpose of the Commission on Police Practices

Effective December 18, 2020, City Charter section 41.2 established the Commission on Police Practices, which supersedes and replaces the Community Review Board on Police Practices. The *Commission* is an investigatory body of the City, independent of the Mayor, Police Chief, and *Police Department*. The *Commission's* purpose is: (1) to provide independent community oversight of the *Police Department*, directed at increasing community trust in the *Police Department* and increasing safety for both members of the community and *police officers*; (2) to perform independent *investigations* of *police officer*-involved shootings, in-custody deaths, and other significant incidents involving the *Police Department*, and independent *evaluations* of *complaints* against the *Police Department* and its personnel, in a process that is transparent and accountable to

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

§26.1102 Definitions

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

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

Commission means the Commission on Police Practices.

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

Complainant means a person who files a *complaint*.

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

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

Finding means the determination of the *Commission* after it has *reviewed*, *investigated*, or *audited* a matter within its authority. 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;
- (a) *Not Sustained* means there is not enough evidence to clearly prove or disprove the alleged *misconduct*, as set forth in a *complaint* or brought to the attention of the *Commission* through other means, including evaluation, review, or *investigation*, even if not alleged in the complaint;
- (c) *Unfounded* means the alleged *misconduct*, as set forth in a *complaint* or brought to the *attention* of the *Commission* through other means, did not occur or the allegation is not true based on the preponderance of the evidence presented, which is defined as more likely than not; and
- (d) *Exonerated* means *the* alleged conduct occurred, based on a preponderance of the evidence presented, which is defined as more likely than not, but the conduct was legal and not in violation of *Police Department* policy.

Investigation means a formal gathering of actionable information regarding a *complaint* against a *police officer* or an incident involving a *police officer*, which is conducted in compliance with applicable laws. Any *investigation* of a *police officer* must comply with the California Public Safety Officers Procedural Bill of Rights Act, as set forth in the California Government Code, and other applicable laws.

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

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

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

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

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*, including *police officers* and other City employees.

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

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

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

Register means to record in writing and maintain the record.

Review means to inspect, consider, and reexamine a matter and reach a conclusion regarding the matter. When *reviewing* a *complaint* alleging *misconduct* against a *police officer*, the *review* process includes consideration of information and documents or copies, originating from material gathered and generated by the *Police Department*, as well as information and documents or copies, gathered or prepared by the *Commission*.

§26.1103 Commission Composition and Member Qualifications

- (a) The *Commission* will be composed of members of the Community Review Board on Police Practices serving on December 18, 2020, until the Council has formally appointed *members* to the *Commission*, in accordance with the provisions and process set forth in this Code.
- (b) The Council will not consider citizenship status in appointing *members* to the *Commission*.

- (c) All *members* must reside in the City at the time of their appointment or reappointment and throughout their service on the *Commission*. The Council cannot waive this requirement.
- (d) The Council must appoint *members* to the *Commission*, who reflect the diversity of the City, by including *members* who represent the City's diverse geographic areas and socio-economic, cultural, racial, ethnic, gender, gender identity, sexual orientation, and age differences, and who have differing personal backgrounds, education, occupations, and life experiences. The Council must make appointments to specific designated seats, as follows:
 - (1) There must be at least two *members* who reside in each of the nine Council districts appointed to serve in a designated seat for each Council district. Any vacancy in these designated seats, created by a *member* moving out of the Council district or a change in Council district boundaries, must be addressed by the Council at the end of the *member's* term.
 - (2) There must be two *members* in the age range of 18 to 24 at the time of appointment, who are appointed to serve in two designated youth seats. Once these *members* reach the age of 25, they are no longer eligible for reappointment to these designated seats.
 - (3) The Council must appoint five *members* who reside in and represent those City residents living in low- and moderate-income United States Census tracts.

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

involvement with law enforcement, such as arrests or detentions, do not bar appointment as a *member*, except as described in this subsection. An applicant or nominee will be disqualified, without consideration, if their criminal history includes any conviction, regardless of the date of the conviction, for any felony crime, felony or misdemeanor hate crime or enhancement, or any misdemeanor crime involving child abuse, domestic violence, elder abuse, embezzlement, sexual battery, or criminal violation of state or local conflict of interest laws. An applicant or nominee may be disqualified, upon review of their application or nomination, for sustained findings by a state or local judicial or administrative body of the following: (1) misuse of a public position for personal interests; (2) misuse of City records; (3) violation of federal or state law relating to confidentiality or City employee privacy. An applicant or nominee will not be disqualified from consideration for any other misdemeanor conviction, including convictions involving controlled substances or theft.

§26.1104 Terms of Commission Members

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

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

§26.1105 Appointment of Commission Members

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

- (b) As part of their appointment process, prospective *members* are subject to a *review* of their qualifications to serve, which will be conducted by the Council President or designee, in accordance with applicable laws. This *review* includes an *investigation* into any record of criminal convictions, as set forth in section 26.1103(g).

§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, felony or misdemeanor hate crime or enhancement, 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 the following reasons:

- (1) misuse of their position for personal interests;
- (2) misuse of records, including *Police Department* or *Commission* records;
- (3) violation of federal or state law relating to confidentiality or City employee privacy;
- (4) conduct that impedes a *member's* ability to serve impartially and independently;
- (5) unexcused absences from at least three consecutive meetings of the full *Commission*. Prior notification to the *Commission's* chairperson of a *member's* absence from a meeting of the full *Commission* will count as an excused absence;
- (6) failure to complete case review as assigned by the *Executive Director*;
- (7) violation of the Code of Ethics of the National Association for Civilian Oversight of Law Enforcement (NACOLE) or 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. The Council must act, by a majority vote, to remove a *member*.
- (e) If a *member* voluntarily resigns before a required Council hearing on removal, the *member* waives their right to the hearing on removal. The Council President may suspend a *member's* participation on the *Commission* by written notice to the *member*, pending a Council hearing on removal.
- (f) The Council may remove *members* of the *Commission* for cause, other than criminal conviction, by a majority of the *members* of Council for the reasons set forth in subsection (c) above, regardless of whether a recommendation is received from the *Commission*.

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

§26.1107 Duties and Powers of the Commission

- (a) The *Commission* has the following duties and powers, as mandated by the Charter and by the authority of the Council:

(1) Once *members* are formally appointed by the Council, the *Commission* must establish operating procedures for its governance, and the *Commission's investigatory proceedings*. All operating procedures prepared by the *Commission* must be consistent with all applicable laws, including the Charter, the Ralph M. Brown Act, the California Public Records Act, and all laws, rules, regulations, and collective bargaining agreements between the City and its recognized employee organizations that provide rights to City employees. The *Commission's* initial operating procedures and any amendments must be approved by the Council, by resolution, before the operating procedures take effect.

(2) The *Commission* must independently *investigate* and *evaluate* all deaths occurring while a person is in the custody of the *Police Department*, all deaths resulting from interaction with a *police officer*, and all *police officer*-involved shootings, regardless of whether a *complaint* has been made against a *police officer* or the *Police Department*. The *Commission* must prepare operating procedures for *Commission* investigators to access *Police Department* investigations of *officer*-involved shootings, deaths resulting from interaction with *police officers*, and deaths occurring while a person is in the custody of the *Police Department*. Upon completion of any *investigation*, the

Commission must make *findings*. The Chief of Police must provide a written substantive response to the *Commission's findings* within 30 days of receipt of the *findings*.

- (3) The *Commission* may, but is not required to, investigate and evaluate a complaint against a *police officer* that does not involve an in-custody death, a death resulting from an interaction with a *police officer*, or a *police officer*-related shooting. Upon completion of any *investigation*, the *Commission* must make *findings*. The *Commission* is prohibited from investigating and evaluating a complaint where the complainant has requested that the complaint be handled without an *investigation* by the *Commission* or where no specific allegation or *police officer* can be identified. The *Commission* may investigate any allegations of *misconduct* that become known to the *Commission* during an *investigation* of a complaint. In exercising its discretionary power to investigate and *evaluate* a complaint, the *Commission* must determine that the complaint, 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.

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

(5) The *Commission* may, but is not required to, *review*, investigate, and *evaluate* allegations of inappropriate sexual conduct, physical assault, or domestic violence by a *police officer*, whether or not a

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

- (6) The *Commission* must *review and evaluate* all factual *findings* and evidentiary conclusions of the *Police Department* arising from *Police Department investigations* of alleged *misconduct* by *police officers*, including internal *investigations* not resulting from a complaint, and all disciplinary decisions proposed by the Chief of Police or designee following sustained *findings* of *police officer misconduct*. The *Commission* may provide advisory recommendations to the Chief of Police, but must act promptly, timely, and in accordance with applicable law, including the California Public Safety Officers Procedural Bill of Rights Act. In providing advisory recommendations on the discipline of officers to the Chief of Police, the *Commission* may consider all information, agreements, and documents of prior discipline imposed, including agreements for reduced discipline or last chance agreements, and prior sustained *findings* of *misconduct* against the officer, including prior sustained *findings* of *misconduct* made by the *Commission* or the *Police Department*, in a manner consistent with state law and the City's established

disciplinary process. In order to execute its powers and duties under this section, every thirty days after the *Police Department* has commenced an *investigation* of alleged *misconduct* by *police officers*, the *Police Department* must provide to the *Commission* a written status report on the progress of the *investigation*, until the *investigation* concludes. Upon the *Commission's* written request, the *Police Department* provide all *records* pertaining to the *investigation*, subject to Section 26.1109. The *Police Department* must either provide to the *Commission* its factual *findings* and evidentiary conclusions within six months after commencement of its *investigation*, or a written explanation as to why it cannot provide such information. If after six months the factual *findings* and evidentiary conclusions are not available, the *Police Department* must provide a written report to the *Commission* on the status of the *investigation* every two weeks thereafter until the *investigation* is concluded. Unless expressly permitted under the California Public Safety Officers Procedural Bill of Rights Act, there are no circumstances express or implied for the *Police Department* to delay or toll completion of its investigation.

(7) The *Commission* may, but is not required to, *review* and *evaluate* the *Police Department's* administration of discipline of *police officers* arising from other matters not involving alleged *misconduct*. The *Commission* may provide advisory

recommendations to the Chief of Police, but must act promptly, timely, and in accordance with applicable law, including the California Public Safety Officers Procedural Bill of Rights Act. In providing advisory recommendations on the discipline of officers to the Chief of Police, the *Commission* may consider all prior discipline imposed, including agreements for reduced discipline or last chance agreements, and sustained *findings of misconduct* against the officer, including prior sustained *findings of misconduct* made by the *Commission* or the *Police Department*, in a manner consistent with state law and the City's established disciplinary process. The Chief of Police must provide a written substantive response to the *Commission's* advisory recommendations within 30 days of receipt of the recommendations.

(8) The *Commission* must review and evaluate the *Police Department's* compliance with federal, state, and local reporting laws and requirements.

(9) The *Commission* may, but is not required to, review and evaluate the policies, procedures, practices, and actions of the *Police Department*. The *Commission* may make advisory recommendations to the *Chief of Police*, the Mayor, and the Council on any policies, procedures, practices, and actions of the *Police Department*. The *Chief of Police* must provide a written

substantive response to the *Commission's* recommendations within 60 days of receipt of the recommendation.

- (10) The *Commission* may request that the Mayor review any *Commission* findings or advisory recommendations that the Chief of Police does not accept, implement, execute, or apply.
- (11) The *Commission* may develop and implement a mediation program that enables *complainants* to resolve their issues with a *police officer* who is a subject of a *complaint*, through face-to-face alternative dispute resolution involving a trained mediator. Participation in a mediation program must be voluntary and mutually agreed upon by both the *complainant* and the *police officer*. Mediation must be limited to eligible cases as determined by the *Commission*. A case successfully resolved through mediation, as determined by the *Commission*, is not considered a disciplinary proceeding or punitive action under the California Public Safety Officers Procedural Bill of Rights Act. However, the *complaint* may be subject to discovery in a criminal or civil action in accordance with applicable state law.
- (12) The *Commission* must interact with all City employees, including *police officers* and other employees of the *Police Department*, in accordance with all applicable federal, state, and local laws and regulations, including the City's Civil Service Rules, Personnel Regulations, Administrative Regulations, and collective bargaining

agreements between the City and its recognized employee organizations.

- (13) The *Commission* may establish an operating procedure to directly receive and investigate *complaints* by members of the public against *Police Department* employees who are not *police officers*, within the limitations set forth in the City Charter and this Code. Any procedure to investigate the *complaints* must be made available in writing and accessible to the public. A copy of any *complaint received* by the *Commission* that identifies an employee of the *Police Department* must be forwarded to the *Police Department* within five calendar days of the *Commission's* receipt of the *complaint*. The *Commission* is not authorized to investigate a *complaint* against an employee of the *Police Department* who is not a *police officer* unless the *complaint* also alleges *police officer misconduct*.
- (14) The *Commission* must maintain a training program for individuals interested in appointment to the *Commission*. *Members* must also complete training upon their appointment to ensure their working knowledge of applicable laws and rules. The training program must include instruction in civil or human rights and criminal justice as well as of the impacts of racial and identity profiling.
- (15) Subject to any limitations set forth in governing federal or state law, the *Commission* may refer any matter before the *Commission*

to the grand jury, district attorney, or other governmental agency authorized by law to *investigate* the activities of a law enforcement agency.

- (b) The Chief of Police must consider any *evaluation* or recommendation by the *Commission* of proposed *police officer* discipline, prior to *Police Department* imposition of the discipline, but only if the *evaluation* or recommendation is completed before the statutory timelines set forth in the California Public Safety Officers Procedural Bill of Rights Act or other applicable law. The *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 City Charter and this Code, including its *investigatory* duties and powers, is not intended to obstruct, abrogate, or supersede the duties of the Chief of Police, as set forth in the City Charter.

§26.1108 Cooperation of City Employees in Commission Activities

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

includes participation in any *investigatory proceeding* set forth in the *Commission's* operating procedures approved by the Council.

- (b) If the *Commission* seeks to interview any City employee, including an employee who is the subject of a *complaint*, as part of an *investigatory proceeding*, the *Commission* must provide timely advance written notice to the employee. The *Commission* must also provide timely advance written notice to the City employee's appointing authority. The written notice must specify the date and time of the interview and provide the employee with reasonably sufficient time to secure union or legal representation by the employee's personal attorney, as applicable, and to make any legal objections to the interview, either before or at the time of the interview.

§26.1109 **Records**

- (a) The *Police Department* must make available to the *Commission* its records, within ten calendar days after a written request from the *Commission*, relating to any matter under *investigation*, *review*, or *evaluation* by the *Commission*. The *Police Department* must provide to the *Commission* all *complaints received* by the *Police Department* within five calendar days of receipt regardless of whether there is a written request from the *Commission* for the *complaints*. The *Commission* and the *Police Department* may develop an operating procedure for the disclosure of *Police Department* records to the *Commission*. However, any disclosure of *personnel records* to the *Commission* by any City department must be

in accordance with all applicable federal and state laws and regulations, including all laws and regulations pertaining to confidential medical information and *personnel records*. The *Commission* is required to maintain the confidentiality of all *Police Department* records and City *personnel records*, in accordance with applicable laws, and to respond to requests by members of the public for records in the possession of the *Commission* in a manner consistent with the California Public Records Act and applicable California constitutional, statutory, and case law that protects *personnel records*.

- (b) In *accordance* with City Charter section 57, the Chief of Police retains authority over the records of the *Police Department*. The Chief of Police must provide records to the *Commission* in whole and with all information unredacted unless in the opinion of the Chief of Police to do so will hinder a criminal investigation or will infringe upon the exercise of the Chief of Police's right to deliberative process and confidential communications with other law enforcement agencies, the Mayor, or with the subordinate employees of the *Police Department* regarding matters within the authority of the Chief of Police. Within ten calendar days after a written request from the *Commission*, the Chief of Police must provide the *Commission* with *Police Department* records as specified in subsection (a) above or a written explanation, setting forth the specific records or reasonably segregable portions of the records being withheld, the reason for the withholding or redactions, and the legal justification supporting the

withholding or redactions. If the *Commission* disagrees with the Chief of Police's decision to withhold records or redact information, the *Commission* may seek disclosure through its subpoena power, as defined by the Charter and Chapter 2, Article 6, Division 11.

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

§26.1110 Subpoenas

- (a) The *Commission* has the power to subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of books, papers, records or other items whenever material to the performance of the *Commission's* duties or exercise of its powers.
- (b) A subpoena issued under this section must be issued and signed by the *Executive Director* or their designee.
- (c) If a witness fails to appear before the *Commission* at the time and date set by subpoena, or in the case of a subpoena duces tecum, if a record is not

produced as required,, the *Commission* may, by majority vote, authorize its chair or the Executive Director to certify the facts to the Superior Court for an order to show cause why the subpoena recipient should not be ordered to comply with the subpoena.

§26.1111 Conflict of Interest Code

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

§26.1112 Reimbursement for Expenses

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

§26.1113 Whistleblower Protection

The City is prohibited from taking any adverse employment action against any City employee who, in accordance with state or local law, files a *complaint* with the *Commission* or participates in any *investigatory proceeding*. Any City officer or employee who takes any adverse action against any City employee for participating lawfully in any *Commission proceeding* is subject to discipline up to

and including termination. This protection is in addition to all whistleblower and other protections afforded to City employees under state law.

§ 26.11144 Outreach and Communications

- (a) The *Commission* must engage in outreach to address community groups, and inform the public, on the duties and responsibilities, policies and ongoing operations of the *Commission*. This outreach must include a process for obtaining input from the community as to the functioning of the *Commission*. All public input regarding the *Commission's* functions, including *complaints* about the *Commission* must be made publicly available on the *Commission's* website.
- (b) At least twice each year, the *Commission* must have an offsite community roundtable to solicit community testimony and other input in discussions regarding community policing, building trust between the community and the *Police Department*, and other similar and relevant subjects as determined by the *Commission* in accordance with the Charter.
- (c) The *Commission* must establish an operating procedure for the preparation and submission of a semi-annual report to the Mayor and City Council regarding the exercise of the *Commission's* powers and duties. The operating procedure must, at a minimum, establish:
- (1) the number and types of *complaints received*, categorized by description as well as by City district, police division, and police beat;
 - (2) the number of *complaint reviews* and *investigations* initiated during the prior six months;

- (3) the number of *complaint reviews* and *investigations* concluded during the prior six-months, and of the *investigations*, the number that took more than six months to conclude and an explanation as to why those *investigations* took more than six months to conclude;
- (4) the number of *complaint reviews* and *investigations* pending as of the last day of the prior six-months;
- (5) a tabulation of the results of *complaint reviews* and *investigations* by category of *findings* and recommendations as well as by City district, police division, and police beat;
- (6) a description of any *complaints* that resulted in a referral to other agencies and the names of those agencies;
- (7) a description and summary of all evaluations, *complaint reviews*, and *investigations* undertaken by the *Commission* regarding the practices, policies, procedures and actions of the *Police Department* as well as any recommendations made by the *Commission* and the responses to the recommendations;
- (8) the results of the *Commission's* evaluations and *audits* of the *Police Department's* compliance with reporting laws;
- (9) a description of each instance where the *Police Department*, any other City department or City employee refused to provide the *Commission* with records or information requested as well as all instances where the *Police Department* took longer than mandated when complying with records requests;

- (10) a description of the *Commission's* community outreach efforts;
and,
- (11) a description of any other significant activity undertaken by the
Commission. The public disclosure of the report, and all
information within the report, must be in accordance with
controlling federal or state law.
- (d) The semi-annual report must be published no later than 60 days after the
end of the preceding reporting period.
- (e) The *Commission* must establish an operating procedure for allowing the
community to *evaluate* the *Commission's* processes and performance.
- (f) The *Commission* must prepare an operating procedure for the preparation,
data collection, tracking, and report of community policing standards. The
following non-exhaustive list of topics for the *Commission* to consider for
community policing standards are: (1) de-escalation techniques, strategies,
and practices; (2) use of distraction blows; (3) acts of intimidation; and (4)
detention. The operating procedure must, at a minimum, include processes
for community input and *Police Department* dialogue facilitated by the
Commission regarding the community policing standards.
- (g) The *Commission* must prepare an operating procedure that describes the
Commission's communications with *complainants* regarding the status of
their *complaints*. At a minimum, the operating procedure shall provide for
how *complaints* are acknowledged as *received*, that the *Commission* has
begun either a *review* or *investigation*, and that the *Commission* has

completed its *review or investigation* and the results therefrom.

Complainants shall *receive* from the *Commission* a notice on the status of their *complaint* no less than every forty-five days.

- (h) The Commission must prepare an operating procedure that, in accordance with all applicable laws, rules, and regulations, posts on the Commission's Internet website a list of all complaints received, the status of the Commission's investigation of each complaint, and the Commission's findings of the complaints it investigated.

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

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

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

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

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

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

By _____
Joan F. Dawson
Senior Deputy City Attorney

JFD:cm
Or.Dept: Council District 4
Doc. No.: 2855283

**WORKING DRAFT ONLY FOR POLICY REVIEW PURPOSES ONLY (O-20[INSERT
REMAINDER OF TITLE])**

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