

Commission on Police Practices

Ad Hoc Transition Planning Committee Meeting

Friday, February 11, 2022
10:30 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>

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. UPDATES
 - A. Budget Process (report on Executive Budget Review meeting)
 - B. Staffing (executive searches for Deputy Executive Director, Supervising Investigator, Policy Analyst and Performance Auditor)
 - C. Implementation Ordinance & Permanent Standard Operating Procedures (Status of Amendment to Interim Operating Procedures regarding review of OIS cases)
 - D. Office Space
 - E. Standing Rules
 - F. Community Outreach (report on District 4's community forum)
 - G. Legal Counsel Contract – Announcement of Outside Counsel
 - H. Meetings with City Councilmembers
- V. UNFINISHED BUSINESS
 - A. Procedure to implement the requirement for the Commission's to review and evaluate the Police Department's compliance with federal, state, and local reporting requirement
 - B. Selection Process for the Executive Director – Operating Procedure
- VI. NEW BUSINESS
 - A. Outline for Standard Operating Procedures for Investigations
 - B. Options for filling vacancies for interim Commissioners
 - C. Case Review Process – recommendations for the new CPP on methods to reduce volunteer workload

- VII. AGENDA ITEMS FOR NEXT MEETING – February 18, 2022
- VIII. ADDITIONS TO THE LIST OF ITEMS FOR FUTURE AGENDAS (See below)
- IX. OTHER ITEMS AND/OR CONCERNS
- X. ADJOURN

Materials Provided:


- Meeting Notes from February 4, 2022 Meeting
- Draft Outline for Standard Operating Procedures for Investigations
- Tentative Implementation Timeline, Version 10.3 (November 19, 2021)
- Handout on the City’s FY23 Budget Process/Timeline
- City Attorney’s January 20, 2022 Draft of the Implementation Ordinance
- Amendments to the January 20 draft adopted by PS&LN on January 21
- Municipal Code Section 22.5601 – Office of the Commission on Police Practices
- Outside Counsel Opinion on Selection Process for Council Appointments

Items for Future Agendas:

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

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

Virtual Testimony:

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

Written Comment through Webform:

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

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

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

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

Please click the link below to join the webinar:

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

Please click this URL to join.

<https://sandiego.zoomgov.com/j/1604304431?pwd=aDVHZELkNTBNa25UNohNTGV0MVJ6QT09>

Passcode: kku5UK

Or One tap mobile:

+16692545252,,1604304431#,,,,*850167# US (San Jose)

+16692161590,,1604304431#,,,,*850167# US (San Jose)

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US: +1 669 254 5252 or +1 669 216 1590 or +1 646 828 7666 or +1 551 285 1373 or 833 568 8864 (Toll Free)

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International numbers available: <https://sandiego.zoomgov.com/join/1604304431>

Or an H.323/SIP room system:

H.323: 161.199.138.10 (US West) or 161.199.136.10 (US East)

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Commission on Police Practices

Ad Hoc Transition Planning Committee Meeting

Friday, February 4, 2022
10:30 am-11:30 am
Zoom Webinar Platform

NOTES

Meeting YouTube Link: <https://www.youtube.com/watch?v=wreN1j4r7JI>

- I. CALL TO ORDER/WELCOME – Committee Chair Doug Case called to order at 10:32am.
- II. ROLL CALL
Commission
Commissioner Patrick Anderson (left at 11:00am)
Committee Chair Doug Case
Commissioner Diana Dent
Chair Brandon Hilpert
Absent/Excused
None
Staff Present
Alina Conde, Executive Assistant
Sharmaine Moseley, Interim Executive Director
Robin Recendez, Administrative Aide
Present
Kate Yavenditti, Member of Women Occupy representing San Diegans for Justice
Henry Foster, Chief of Staff for City Council District 4
- III. PUBLIC COMMENT: No public comment received.
- IV. UPDATES
 - A. Budget Process – The CPP will be meeting with the Executive Budget Team sometime between the dates of the February 9th-16th.
 - B. Staffing – We have not yet heard back from HR regarding being able to use the City’s Executive Search firm to hire the Deputy Executive Director.
 - C. Implementation Ordinance & Permanent Standard Operating Procedures –The CABINET is going to set up meetings with Council members to brief them on things regarding the CPP.
 - D. Office Space – No current updates.
 - E. Standing Rules – No current updates.
 - F. Community Outreach – No current updates.

G. Legal Counsel Contract – The letter of intent to award a contract went out but we are not able to give an update on the outcome until we get the green light from Purchasing & Contracts. We hope to have P&C at our next meeting.

V. UNFINISHED BUSINESS

A. Procedure to implement the requirement for the Commission to review and evaluate the Police Department’s compliance with federal, state and local reporting requirement

We want to proceed with our requirement to review and evaluate the police departments reporting requirements. Captain Jordan agreed to put together a list for us so we can compare with other oversight groups to make sure it is complete. Once we have personnel on board to do that, we will be able to proceed. Tabled.

VI. NEW BUSINESS

A. Selection Process for the Executive Director

Proposing an amendment to the municipal code section to include the ability of the commission to nominate individuals for the Council to appoint. This would be incorporated into an operating procedure. Possible layered approach with community input. The process would be to employ an executive search firm to conduct a search and then select the top applicants. Have the search committee narrow that down to 3-5 applicants. Invite the applicants to a meeting and ask them to make a presentation. Give the attendees the opportunity to provide feedback. Additionally, add a step to offer the Commission the opportunity to ask questions and provide feedback. Then have selection committee interview these candidates then make a recommendation to the City Council. Commissioner Patrick Anderson requested to revisit putting together both a Community Advisory Committee and Youth Advisory Committee (under the age of 18). Possibly have these committees to listen in on the presentations from the applicants and have them provide feedback. Tabled.

B. Investigations Operating Procedure Framework

We established a subcommittee of who will work on the investigation procedures. We looked previously at the CLERB rules and regulations and we overall liked their procedures. Doug will put together an outline of what the topics would be and next week we could have our outside counsel present to get their opinion on completing that. We need someone with legal background to help with the framework. Tabled.

VII. AGENDA ITEMS FOR NEXT MEETING – February 11, 2022

VIII. ADDITIONS TO THE LIST OF ITEMS FOR FUTURE AGENDAS A. Case Review Process – recommendation for the new CPP on methods to reduce volunteer workload.

IX. ADJOURN at 11:22am.

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

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

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

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

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

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

Department of Finance
Fiscal Year 2023 Budget Development Calendar
Fiscal Activities & Deliverables (updated 11/16/2021)

Task	Start	End
August 2021		
Fiscal Year 2022 Adopted Budget Released	8/31/2021	8/31/2021
September 2021		
Release Fiscal Year 2023 OM Position Maintenance Memorandum	9/13/2021	9/13/2021
Departments Request OM Position Modifications	9/13/2021	10/8/2021
Restructure Process Training for Departments	9/14/2021	9/14/2021
Release Budget Process Calendars	9/20/2021	9/20/2021
Restructure Review Panel Meetings	9/22/2021	9/23/2021
Release Fiscal Year 2023 Non Discretionary (ND) Budget Process Memorandum	9/23/2021	9/23/2021
Provider Departments Prepare ND Allotments	9/24/2021	10/29/2021
Notify Departments of Approved Restructures	9/30/2021	9/30/2021
October 2021		
ND Budget Process Training for ND Provider Departments	10/5/2021	10/5/2021
Deadline to Submit Restructures Forms	10/8/2021	10/8/2021
Deadline for Departments to Request OM Position Modifications	10/8/2021	10/8/2021
Release One-Time Memos	10/14/2021	10/14/2021
November 2021		
Extract Human Capital Management (HCM) Data to Public Budget Formulation System (PBF)	11/1/2021	11/1/2021
Release Fiscal Year 2023 Budget Development Process Memorandum	11/8/2021	11/8/2021
Release Fiscal Year 2023 HCM Extract PEP Projection	11/8/2021	11/8/2021
Post Preliminary ND Allotments	11/17/2021	11/19/2021
Base Budget Process Training	11/18/2021	11/18/2021
Provider Departments Enter Preliminary ND Allotments into PBF	11/19/2021	11/24/2021
Departments Review Baseline PEP Projection	11/22/2021	11/26/2021
Fiscal Year 2023 Budget Development Process Training	11/22/2021	11/22/2021
Departments Review and Redistribute Base Budget	11/22/2021	11/26/2021
Departments Review and Request Adjustments to Preliminary ND Allotments via ND Provider Departments	11/22/2021	12/5/2021

Department of Finance
Fiscal Year 2023 Budget Development Calendar
Fiscal Activities & Deliverables (updated 11/16/2021)

Task	Start	End
December 2021		
Budget Adjustment Process Training	12/6/2021	12/6/2021
Provider Departments Submit Updated ND Allotments to DoF	12/6/2021	12/7/2021
ND Budget Process Training	12/8/2021	12/8/2021
Post Updated ND Allotments	12/9/2021	12/9/2021
Departments Distribute ND Allotments in PBF	12/13/2021	12/20/2021
Departments Enter Budget Adjustments in PBF	12/13/2021	1/7/2022
January 2022		
Deadline to submit information for the KPI section.	1/20/2021	1/20/2021
February 2022		
Deadline to Submit Budget Narratives & KPI's	2/2/2022	2/2/2022
Departments Participate in Executive Budget Review Meetings (5 Days)	2/9/2022	2/16/2022
March 2022		
April 2022		
Release Budget Review Committee (BRC) Presentation Process Memorandum	4/8/2022	4/8/2022
Departments Submit BRC Presentation Introductory Slides	4/12/2022	4/13/2022
Release the Proposed Budget	4/15/2022	4/15/2022
Release the Mayor's May Revision Budget Process Memo	4/15/2022	4/15/2022
Departments Enter May Revision Budget Adjustments in PBF	4/15/2022	4/20/2022
Mayor Presents the Fiscal Year 2023 Proposed Budget at City Council	4/18/2022	4/18/2022
May 2022		
DoF, Departments, and Agencies Participate in the BRC Meetings on the Proposed Budget	5/4/2022	5/10/2022
Release the Mayor's May Revision to the Proposed Budget	5/17/2022	5/17/2022
Present the Mayor's May Revision at BRC	5/19/2022	5/19/2022
Release Appropriation Ordinance (AO) Memorandum	5/19/2022	5/19/2022

Department of Finance
Fiscal Year 2023 Budget Development Calendar
Fiscal Activities & Deliverables (updated 11/16/2021)

Task	Start	End
June 2022		
City Council Approves Final Modifications to the Budget	6/13/2022	6/14/2022
Release the Appropriation Ordinance - (Text Only)	6/15/2022	6/15/2022
Mayor's Veto Period	6/15/2022	6/21/2022
City Council Veto Period	6/21/2022	6/27/2022
Present the Appropriation Ordinance (Text Only) at Budget and Government Efficiency Committee	6/22/2022	6/22/2022
Present the Fiscal Year 2023 Appropriation Ordinance Introduction & Adoption at City Council	6/28/2022	6/28/2022
Load the Fiscal Year 2023 Adopted Budget to SAP	6/29/2022	6/29/2022
July 2022		
August 2022		
Release the Fiscal Year 2023 Adopted Budget	8/26/2022	8/26/2022

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

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

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

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

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

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

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

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

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

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

Article 6: Board and Commissions

Division 11: Commission on Police Practices

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

§26.1101 Establishment and Purpose of the Commission on Police Practices

Effective December 18, 2020, City Charter section 41.2 established the Commission on Police Practices, which supersedes and replaces the Community Review Board on Police Practices. The *Commission* is an investigatory body of the City, independent of the Mayor, Police Chief, and *Police Department*. The *Commission's* purpose is: (1) to provide independent community oversight of the *Police Department*, directed at increasing community trust in the *Police Department* and increasing safety for both members of the community and *police officers*; (2) to perform independent *investigations* of *police officer*-involved shootings, in-custody deaths, and other significant incidents involving the *Police Department*, and independent *evaluations* of *complaints* against the *Police Department* and its personnel, in a process that is transparent and accountable to the community; and (3) to *evaluate* and *review Police Department* policies, practices, training, and protocols, and represent the community in making recommendations for changes. The *Commission* has *investigatory*, *review*, and

auditing powers, including the power to make factual determinations about matters that are *investigated* and to make advisory recommendations regarding the actions of *police officers* and the procedures, policies, and practices of the *Police Department*.

§26.1102 Definitions

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

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

Commission means the Commission on Police Practices.

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

Complainant means a person who files a *complaint*.

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

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

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

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

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

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

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

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

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

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

Personnel records mean records maintained by the City, including records within the City's Personnel Department, Risk Management Department, and *Police Department*, specific to each *police officer's* employment, including, but not limited to, performance evaluations, assignments, status changes, imposed discipline, and personal information.

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

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

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

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

Register means to record in writing and maintain the record.

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

§26.1103 **Commission Composition and Member Qualifications**

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

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

- (4) The Council must appoint nine at large *members*, prioritizing the appointment of individuals who have had prior contact or interactions with law enforcement; individuals with experience or expertise in substance abuse addiction treatment; individuals involved in services for or directed towards the unhoused; individuals involved or with expertise in immigration or migrant services; individuals who were or are criminal justice system impacted; individuals involved or with expertise in mental health, restorative justice, or social work; and individuals with experience or expertise in civil rights advocacy.
- (e) To ensure the *Commission's* independence from the *Police Department* and other law enforcement agencies in San Diego County, no current or former employee of the *Police Department* or other law enforcement agency working within the geographic boundaries of the County of San Diego may serve on the *Commission*. In addition, no immediate family or household member, defined as the parent, spouse, domestic partner, sibling, child, or cohabitant, of a law enforcement officer, who works or worked for a law enforcement agency within the geographic boundaries of the County of San Diego, may serve on the *Commission*. For purposes of this prohibition, law enforcement agencies include police departments in all cities in the County of San Diego, as well as local agency, county, state, and federal law enforcement officers and City, county, state, and federal prosecutors. This prohibition does not apply to

former employees of law enforcement agencies outside of the County of San Diego, who have been separated from their law enforcement employment for at least five years.

- (f) No City employee, who is on active payroll, may serve on the *Commission*.
- (g) All prospective or nominated *members* of the *Commission* are subject to a criminal history background review prior to appointment, to be conducted in cooperation with the City's Personnel Department. The consideration of an applicant's or nominee's criminal history may only take place during the final stage of the appointment process. If an applicant or nominee is disqualified as a result of their criminal history background review, the City must provide them with a written explanation of the reasons. Criminal convictions and other involvement with law enforcement, such as arrests or detentions, do not bar appointment as a *member*, except as described in this Subsection.
- (1) An applicant or nominee will be disqualified, without consideration, if their criminal history includes any conviction, regardless of the date of the conviction, for any felony crime; felony or misdemeanor hate crime or enhancement; felony or misdemeanor crime that requires registration under federal or state sex offender registration laws; or misdemeanor crime involving child abuse, domestic violence, elder abuse, embezzlement, sexual

battery, or criminal violation of state or local conflict of interest laws.

(2) Notwithstanding Subsection (1) above, an applicant or nominee is not disqualified, without consideration, if they can satisfy any of the following conditions: (a) they can demonstrate that they are no longer on probation or parole and have satisfied a minimum period of rehabilitation in the community continuously for a period of five years or longer; (b) they present a certificate of rehabilitation issued in accordance with the California Penal Code; or (c) they present a court order demonstrating that the conviction has been overturned, expunged, or dismissed, or a court has issued any other post-conviction relief that modifies the conviction so that it no longer fits within the category of convictions set forth in Subsection (1) above.

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

(4) An applicant or nominee will not be disqualified from consideration for any misdemeanor convictions not described in Subsection (1) above. Convictions solely involving controlled

substances or theft do not bar participation as a *Commission member*.

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

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

- (1) misuse of their position for personal interests;
- (2) misuse of records, including *Police Department* or *Commission* records;
- (3) violation of federal or state law relating to confidentiality or City employee privacy;

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

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

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

§26.1107 Duties and Powers of the Commission

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

(2) The *Commission* 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 *police officer*-involved shootings, deaths resulting from interaction with *police officers*, and deaths occurring while a person is in the custody of the *Police Department*. Upon completion of any *investigation*, the *Commission* must make *findings*. The Chief of Police must provide a written substantive response to the *Commission's findings* within 30 days of receipt of the *findings*.

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

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

- (A) an incident in which the use of force by a *police officer* against a person resulted in great bodily injury;
- (B) dishonesty by a *police officer* directly relating to the reporting, *investigation*, or prosecution of a crime, or directly relating to the reporting or *investigation* of *misconduct* by another *police officer*, peace officer, or custodial officer, including an allegation of perjury, making a false statement, filing a false report, or destroying, falsifying, or concealing evidence;
- (C) an incident that has generated substantial public interest or concern;
- (D) an incident where data shows a pattern of *misconduct* by a *police officer*; or
- (E) an incident where data shows a pattern of inappropriate policies, procedures, or practices of the *Police Department* or its members.

- (4) The *Commission* must *receive, register, review, and evaluate* all *complaints* against *police officers*, except the *Commission* must not *review or evaluate* a *complaint* where the *complainant* has requested that the *complaint* be handled without *investigation* by the *Commission* or where no specific allegation or police officer can be identified. Upon completion of any *complaint review or evaluation*, the *Commission* must make *findings*. The Chief of Police must provide a written substantive response to the *Commission's findings* within 30 days of receipt of the *findings*.
- (5) The *Commission* may, but is not required to, *review, investigate, and evaluate* allegations of inappropriate sexual conduct, physical assault, or domestic violence by a *police officer*, whether or not a *complaint* has been submitted to the *Commission* or the *Police Department*. Upon completion of any *review, investigation, or evaluation*, the *Commission* must make *findings*. The Chief of Police must provide a written substantive response to the *Commission's findings* within 30 days of receipt of the *findings*.
- (6) The *Commission* must *review and evaluate* all factual *findings* and evidentiary conclusions of the *Police Department* arising from *Police Department investigations* of alleged *misconduct* by *police officers*, including internal *investigations* not resulting from a *complaint*, and all disciplinary decisions proposed by the Chief of Police or designee following *sustained findings* of *police officer*

misconduct. The *Commission* may provide advisory recommendations to the Chief of Police, but must act promptly, timely, and in accordance with applicable law, including the California Public Safety Officers Procedural Bill of Rights Act. In providing advisory recommendations on the discipline of officers to the Chief of Police, the *Commission* may consider all information, agreements, and documents of prior discipline imposed, including agreements for reduced discipline or last chance agreements, and prior *sustained findings of misconduct* against the *police officer*, including prior *sustained findings of misconduct* made by the *Commission* or the *Police Department*, in a manner consistent with state law and the City's established disciplinary process. In order to execute its powers and duties under this section, every 30 days after the *Police Department* has commenced an *investigation* of alleged *misconduct* by *police officers*, the *Police Department* must provide to the *Commission* a written status report on the progress of the *investigation*, until the *investigation* concludes. Upon the *Commission's* written request, the *Police Department* must provide all *records* pertaining to the *investigation*, subject to Section 26.1109. The *Police Department* must either provide to the *Commission* its factual *findings* and evidentiary conclusions within six months after commencement of its *investigation*, or a written explanation as to why it cannot

provide such information. If after six months the factual *findings* and evidentiary conclusions are not available, the *Police Department* must provide a written report to the *Commission* on the status of the *investigation* every two weeks thereafter until the *investigation* is concluded. Unless expressly permitted under the California Public Safety Officers Procedural Bill of Rights Act, there are no circumstances express or implied for the *Police Department* to delay or toll completion of its *investigation*.

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

substantive response to the *Commission's* advisory recommendations within 30 days of receipt of the recommendations.

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

officer. Mediation must be limited to eligible cases as determined by the *Commission*. A case successfully resolved through mediation, as determined by the *Commission*, is not considered a disciplinary proceeding or punitive action under the California Public Safety Officers Procedural Bill of Rights Act. However, the *complaint* may be subject to discovery in a criminal or civil action in accordance with applicable state law.

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

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

Commission is not authorized to *investigate a complaint* against an employee of the *Police Department* who is not a *police officer* unless the *complaint* also alleges *police officer misconduct*.

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

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

§26.1108 Cooperation of City Employees in Commission Activities

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

§26.1109 Records

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

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

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

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

§26.1110 Subpoenas

- (a) The *Commission* has the power to subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of books, papers, records or other items whenever material to the performance of the *Commission's* duties or exercise of its powers.
- (b) A subpoena issued under this section must be issued and signed by the *Executive Director* or their designee.
- (c) If a witness fails to appear before the *Commission* at the time and date set by subpoena, or in the case of a subpoena duces tecum, if a record is not produced as required, the *Commission* may, by majority vote, authorize its chair or the *Executive Director* to certify the facts to the Superior Court for an order to show cause why the subpoena recipient should not be ordered to comply with the subpoena.

§26.1111 Conflict of Interest Code

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

§26.1112 Reimbursement for Expenses

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

§26.1113 Whistleblower Protection

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

§ 26.1114 Outreach and Communications

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

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

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

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

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

received, the Commission's findings of the complaints it investigated, and all of the Commission's recommendations.

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

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

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

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

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

By _____
Joan F. Dawson
Senior Deputy City Attorney

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

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

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

Amendments to the January 20, 2022 draft of the Implementation Ordinance approved by PS&LN on January 21, 2022

- Section 26.1102 (New Definition)
 - Investigation means a gathering of actionable information, including from original sources, regarding a complaint against a police officer or an incident involving a police officer, which is conducted in compliance with applicable laws. Any investigation of a police officer must comply with the California Public Safety Officers Procedural Bill of Rights Act, as set forth in the California Government Code, and other applicable laws. When conducting an investigation, the Commission must gather and consider factual information from a number of sources documents or copies originating from material gathered and generated by the Police Department, witness interviews obtained by the Commission or its staff, and documents or copies gathered or prepared by the Commission or its staff

- Section 26.1103 (d) (4)
 - The Council must appoint nine at large members, prioritizing the appointment of individuals who have had prior contact or interactions with law enforcement; individuals with experience or expertise in substance abuse addiction treatment; individuals involved in services for or directed towards the unhoused; individuals involved or with expertise in immigration or migrant services; individuals who were or are criminal justice system impacted; individuals involved or with expertise in mental health, restorative justice, social work, or law enforcement practices and oversight; and individuals with experience or expertise in civil rights advocacy.

- Section 26.1105 (New sub section)
 - (c) The commission will work with the Chair of the Public Safety & Livable Neighborhoods to have an annual special meeting where community stakeholders have the ability to advocate and promote community members as potential nominees to the Commission.

Article 2: Administrative Code

Division 56: Office of the Commission on Police Practices

*(“Office of the Commission on Police Practices”
added 5-19-2021 by O-21318 N.S.; effective 6-18-2021.)*

§22.5601 Office of the Commission on Police Practices

- (a) The Office of the Commission on Police Practices is a City department that acts independently of the Mayor and the Police Department. The department provides administrative staff and support for the Commission on Police Practices, which is an investigatory body of the City established by City Charter section 41.2 with the duties and powers set forth therein and by ordinance of the Council.
- (b) The Executive Director of the Commission on Police Practices serves as the administrative director of the department. The Executive Director is appointed by the Council, which also establishes the initial annual compensation for the Executive Director. Following appointment, the Executive Director serves at the direction and will of the Commission on Police Practices. The Commission on Police Practices must conduct an annual performance review of the Executive Director, and determine any increases or decreases to the Executive Director’s annual compensation after it is initially established by the Council. The Executive Director’s compensation must be consistent with the compensation schedules established by the Council in adopting the annual salary ordinance.
- (c) The Executive Director serves as the appointing authority for all personnel in the department.
- (d) The Executive Director is authorized to employ experts and consultants to assist with the work of the Commission on Police Practices.
- (e) The Commission on Police Practices must retain its own legal counsel, who is independent of the City Attorney, for legal support and advice in carrying out its duties and actions. The Commission's independent legal counsel is responsible for providing legal services related to those matters solely within the authority of the Commission. The City Attorney provides all other legal services for the City, in accordance with Charter section 40.
- (f) The department’s budget is established by the Council, must be reflected in the City’s annual budget, and must be authorized by the annual appropriations ordinance.

(“Office of the Commission on Police Practices” added 5-19-2021 by O-21318 N.S.; effective 6-18-2021.)

MEMORANDUM

To: Sharmaine Moseley, Executive Director, Commission on Police Practices
From: Christina Cameron, General Counsel, and Richard E. Romero, Assistant General Counsel
Date: January 18, 2022
Re: ***Analysis of City Attorney Findings on City Council Appointment Authority – LSR No. 18***

Question Presented

Provide an analysis of the City Attorney’s finding that the power of appointment of Commission members and the Commission’s Executive Director under section 41.2 of the San Diego City Charter (as established by Measure B) includes the power of selection, which cannot be delegated.

Short Response

The findings in the City Attorney’s analysis are generally accurate, though there are nuances about what tasks or process short of appointment may be delegated. Specifically, the power of appointment does include the power of *final* selection, but that does not preclude delegation of certain authority short of final selection provided that any delegation does not provide unfettered discretion and that the Council retains ultimate discretion and authority.

Analysis

In its memorandum, the City Attorney answered the question whether the City Council can delegate its authority to appoint members of the Commission and the Executive Director to others in the negative, opining that section 41.2 of the Charter requires the Council to make such appointments. That conclusion was based on the finding that, “[g]enerally, the power of appointment includes the power of selection and the power of removal, unless expressly stated otherwise” and, thus, the appointment process rests with the Council. The City Attorney did, however, qualify that general opinion by noting that certain administrative and screening tasks may be delegated so long as the Council maintains its discretion and control of the process.

Upon review of the conclusions by the City Attorney and the authority underlying those conclusions, we do not disagree with the general premise that the power of appointment includes the power of selection and that such authority rests with the City Council. The more nuanced question, however, is the extent to which tasks and processes short of appointment may be delegated. The City Attorney refers to section 11.1 of the Charter for delegation limits, which in turn refers to the California Constitution for the prohibition against delegation of legislative power. The relevant Constitutional language provides as follows:

The Legislature may not delegate to a private person or body power to make, control, appropriate, supervise, or interfere with county or municipal corporation improvements, money, or property, or to levy taxes or assessments, or perform municipal functions.

(Cal. Const. art. XI, § 11(a).)

The key question is not whether the Council can delegate its appointment authority but what actions short of final appointment can be delegated. Though it is settled agencies may not delegate their legislative power, it is equally established that cities may delegate certain administrative tasks. For instance, the California Supreme Court has recognized limitations on the general prohibition against delegating legislative powers, stating that “legislative power may properly be delegated if channeled by a sufficient standard.” (*Kugler v. Yocum* (1968) 69 Cal.2d 371, 375–376.) Relying on authority such as *Kugler*, the League of California Cities’ Municipal Law Handbook similarly notes that “[a] city may delegate specific administrative acts to specific administrative officers or boards” subject to there being standards guiding that official that are “sufficiently definite and certain to ensure the action taken will not be left to the uncontrolled discretion of that official or board.” (League of California Cities’ Municipal Law Handbook, § 1.256 (see also § 1.6, noting that “[g]enerally, a city may delegate specific administrative power to subordinate boards or persons subject to imposition of standards that constrain the discretion of the board or person.”).)

In that context, the Commission’s recommendations in items 1 and 3 of the November 23, 2021 List of Recommendations to the City Council PS&LN Committee Regarding the Implementation Ordinance and Standard Operating Procedures are consistent with both the City Attorney’s findings and general standards on appropriate delegations of authority. As noted in one of the cases relied on by the City Attorney, *Gillespie v. San Francisco Public Library Commission*, to “appoint” means to “name officially.” (See *Gillespie v. San Francisco Public Library Com.* (1998) 67 Cal.App.4th 1165, 1174.) The Court of Appeals in *Gillespie* analyzed what constitutes an “appointment” in the context of Brown Act disclosure requirements and found that actions by a Library Commission nominating candidates for City Librarian for the final decision by the Mayor did not constitute an “appointment,” since to “appoint” means “the *final* selection of a candidate for a public office.” (*Id.* (italics in original).) The court reasoned that “[t]o ‘appoint’ a candidate is, by definition, to make the final staffing decision after all *considerations* have been concluded” and that the Library Commission -- whose actions included interviewing and nominating candidates -- “though endowed with some degree of influence over the appointment process, did not have the authority to make the final decision.” (*Id.* At 1177 (italics in original).)

Just as the Library Commission’s preliminary actions in interviewing and nominating candidates did not constitute an “appointment” (which authority rested with the Mayor), neither would the recommendations proposed by the Commission appear to be an improper delegation of the Council’s authority to appoint – e.g., make the *final* decision on and selection of – Commission members and the Executive Director. The Commission’s recommendations included the ability to make nominations to the City Council and involvement in the selection process. Such actions are the exact same types of actions taken by the Library Commission in *Gillespie* that fell short of an “appointment.” Even with such involvement by the Commission, the ultimate authority on who to appoint would remain with the Council and would not be an improper delegation of the Council’s authority.

Conclusion

The City Attorney is correct that appointment authority for Commission members and the Executive Director rests with the City Council. Notwithstanding, the power to appoint refers to the authority to make the *final* decision and selection, which would allow the Council to delegate certain tasks short of final selection, as also noted by the City Attorney. Provided such final authority remains with the Council, a delegation of tasks as recommended by the Commission would appear to be appropriate.