

Commission on Police Practices

Ad Hoc Transition Planning Committee Meeting

Friday, May 20, 2022

12:30 pm-1:30 pm

Remote Zoom Webinar Platform

<https://sandiego.zoomgov.com/j/1607263495>

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

Webinar ID: 160 726 3495

COVID- 19 PUBLIC SERVICE ANNOUNCEMENT REGARDING MEETING ACCESS

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

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

AGENDA

- I. CALL TO ORDER/WELCOME (Committee Chair Doug Case)
- II. ROLL CALL
- III. PUBLIC COMMENT: (Fill out and submit comment using [webform](#). Please see instructions at the end of this agenda)
- IV. UPDATES
 - A. Budget Process
 - B. Staffing (executive searches for Deputy Executive Director, Supervising Investigator, Policy Analyst and Performance Auditor)
 - C. Implementation Ordinance & Standard Operating Procedures
 1. Status of Amendment to Interim Operating Procedures regarding review of OIS cases
 - D. Office Space
 - E. Standing Rules
 - F. Community Outreach
 - G. Meetings with Mayor and City Councilmembers

- V. UNFINISHED BUSINESS (Discussion/Action Items)
 - A. Standard Operating Procedures for Investigations
 - B. Further discussion of models of case review by the permanent Commission that entail utilization of Commission staff
 - C. Procedure to implement the requirement for the Commission's duty to review and evaluate the Police Department's compliance with federal, state, and local reporting requirements (need list of reporting requirements, then put on hold until performance auditor is hired)
 - D. Follow-up on amending the Office of the CPP ordinance to include establishment of an operating procedure for the selection of the Executive Director
 - E. Selection of the community feedback panel for the Deputy Executive Director search
- VI. NEW BUSINESS
 - A. Review draft job description for Supervising Investigator position (see below)
- VII. AGENDA ITEMS AND SCHEDULING FOR NEXT MEETINGS
- 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 May 5, 2022 Meeting
- Draft Job Description for the Supervising Investigator
- 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
- Draft Implementation Ordinance – February 14, 2022
- Amendments to the February draft adopted by City Council on February 28, 2022
- Timeline for Deputy Executive Director search
- CLERB Rules and Regulations
- MOU on Countywide Protocol for the Investigation and Review of Officer-Involved Shootings and Other Deadly Force Events on CPP Reviews and Investigations

Items for Future Agendas:

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

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

Virtual Testimony:

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

Written Comment through Webform:

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

members of the public should select Commission on Police Practices (even if the public comment is for a Commission on Police Practices Committee meeting).

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

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

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

Please click the link below to join the webinar:

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

Please click this URL to join.

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Passcode: 8T3Zs7

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+16692545252,,1607263495#,,, *916564# US (San Jose)

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Passcode: 916564

Commission on Police Practices

Ad Hoc Transition Planning Committee Meeting

Thursday, May 5, 2022
3:30 pm-4:30 pm
Zoom Webinar Platform

NOTES

Meeting YouTube Link: <https://www.youtube.com/watch?v=2sx9b1Gdcjg&t=9s>

- I. CALL TO ORDER/WELCOME –Committee Chair Doug Case called to order at 3:33pm.
- II. ROLL CALL
Commission
Commissioner Patrick Anderson
Commissioner Diana Dent
Committee Chair Doug Case
Commissioner Nancy Vaughn
Chair Brandon Hilpert
Absent/Excused
Robin Recendez, Administrative Aide
Staff Present
Alina Conde, Executive Assistant
Sharmaine Moseley, Interim Executive Director (4:16pm)
Present
Liz Barat, City of San Diego HR Consultant
Duane E. Bennett, CPP Outside Legal Counsel
David Niemeyer, Executive Recruiter with CPS HR Consulting
Kate Yavenditti, Member of Women Occupy representing San Diegans for Justice (3:40pm)
- III. PUBLIC COMMENT: No Public Comment received.
- IV. UPDATES
 - A. Budget Process – The City Council hearing for budget review on May 10th and a dry run is scheduled on May 9th.
 - B. Staffing – In order to do the Executive Searches, can do all four positions (including Supervising Investigator, Policy Analyst & Performance Auditor) the way currently planned as a packet RFP. Or possibly, handle each position independently as each one comes up. The costs need to be kept less than \$25,000. It seems to make more sense to do it one at a time. Regarding Deputy Executive Director executive search, CPS HR Consulting David Niemeyer has updated that the ads are all live (except for El Latino classified which got approved for middle of next week). As of this morning, there are 28 applicants and there is still 3 weeks to go. The online survey has only had 13 responses but CPP staff is currently working on getting the survey link on the

website. The survey deadline has been extended two weeks from Friday (5/6). City HR Liz Barat updated that the position has now been posted on SanDiego.gov website.

- C. Implementation Ordinance & Permanent Standard Operating Procedures –The Amendment that Committee Chair Doug Case proposed is to allow the committee to continue to review Officer Involved Shootings and In-Custody deaths until investigating procedures are approved and investigators are hired. This amendment was presented at the PS&LN Committee and has been unanimously approved on Tuesday, April 26th. The meet and confer has begun.
- D. Office Space – A response has been received to a proposal that was sent to the Department of Real Estate. More updates to come.
- E. Standing Rules – No current updates.
- F. Community Outreach – No current updates.
- G. Legal Counsel Contract –Outside Legal Counsel Duane Bennett is officially on board as of Friday, April 29th.
- H. Meetings with Mayor and City Councilmembers – No recent meetings with Mayor or Council members.

V. UNFINISHED BUSINESS

- A. Standard Operating Procedures for Investigations – Outside Legal Counsel Duane E. Bennett will be leading in drafting this. CLERB's guidelines provided a good starting template. Mr. Bennett will have (in a couple of weeks) some suggested SOP's. However, until the Implementation Ordinance is finalized this can not be concrete. In addition, there is no Investigating Supervisor in position yet as their input will need to be provided. This will eventually need to go through meet and confer. Item Tabled.
- B. MOUs with primary investigating agencies for officer-involved shootings – Contingent due to Legal Contract being finalized. Outside Legal Counsel Duane E. Bennett believes that the CPP does not need and MOU for this. The City Council can direct the SDPD to give the CPP access to certain information. Mr. Bennett explains that the rule regarding 2nd interviews requires certain disclosures is under POBAR, and POBAR is limited to the administrative interviews and accounts for the criminal interviews. It does effects both if an officer could be criminally charged then they would have to be mirandized under POBAR. Item Tabled.
- C. Further discussion of models of case review by the permanent Commission that entail utilization of Commission staff. –Tabled
- D. Procedure to implement the requirement for the Commission's duty to review and evaluate the Police Department's Compliance with federal, state, and local reporting requirements (need list of reporting requirements, then put a hold until performance auditor is hired) –relying on Performance Auditor to do reviews, but Auditor won't be on board until later. Chair Brandon Hilpert is waiting for a list from Captain Jordan and other Statewide agencies. Commissioner Patrick Anderson will also compile a list with scholars who work with police data for input. On Hold.
- E. Follow-up on amending the Office of the CPP ordinance to include establishment of an operating procedure for the selection of the Executive Director (hold) – Open discussion on Council process, the advantages, and disadvantages on amending the ordinance. On Hold.

VI. NEW BUSINESS

- A. Selection of 7 to 10 community organizations to have a representative participate in the community feedback for the Deputy Executive Director search
The first step of the interview process is the community panel with representative of 7 to 10 community organizations who will provide feedback and submit to the interviewing committee. CPS HR Consulting David Niemeyer says they can put together and give a candidate packet with the necessary information, documents, summaries, resume possibly along with the questions that will be asked by the

interview panel. There was a consensus to invite all 12 groups to have one representative for each group. Commissioner Patrick Anderson will begin to write them all up and confirm interest and have them nominate someone. Then he will speak to each of them regarding time commitment.

- VII. AGENDA ITEMS FOR NEXT MEETING: Committee Chair Doug Case will be unavailable on Friday, May 13; next meeting will take place Friday, May 20 at 12:30pm.
- VIII. ADDITIONS TO THE LIST OF ITEMS FOR FUTURE AGENDAS
- IX. OTHER ITEMS AND/OR CONCERNS – To put on the agenda, the draft of the feedback instruments to make sure it covers what is needed. To discuss investigations procedures.
- X. ADJOURN at 4:24pm

Office of the Commission on Police Practices
Supervising Investigator
Job Description

The Department:

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

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

The Position:

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

The Supervising Investigator will also be responsible for:

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

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

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

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

Minimum Qualifications:

The ideal candidate will possess the following qualifications:

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

License or Certificate/Other Requirements:

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

Substitution:

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

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

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

Abilities and Skills:

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

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

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

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

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

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

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

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

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. Findings must be based on provable facts applying California evidentiary rules applicable to administrative proceedings, based on the preponderance of the evidence standard, which is defined as more likely than not. Findings must be in accordance with State law, including California Penal Code sections 832.5 through 832.8, or any successor California law, binding on the City as a public agency employer of peace officers.

The possible findings are as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Register means to record in writing and maintain the record.

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

§26.1103 Commission Composition and Member Qualifications

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

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

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

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

- (3) The Council must appoint five *members* who reside in and represent those City residents living in low- and moderate-income United States Census tracts. Any vacancy in these designated seats, created by a *member* moving out of a low- or moderate-income United States Census tract, must be addressed by the Council at the end of the *member's* term.
- (4) The Council must appoint nine at large *members*, prioritizing the appointment of individuals who have had prior contact or interactions with law enforcement; individuals with experience or expertise in substance abuse addiction treatment; individuals involved in services for or directed towards the unhoused; individuals involved or with expertise in immigration or migrant services; individuals who were or are criminal justice system impacted; individuals involved or with expertise in mental health, restorative justice, social work, or law enforcement practices and oversight; and individuals with experience or expertise in civil rights advocacy.

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

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

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

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

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

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

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

§26.1104 Terms of Commission Members

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

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

§26.1105 Appointment of Commission Members

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

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

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

§26.1106 Removal of Commission Members

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

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

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

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

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

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

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

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

§26.1107 Duties and Powers of the Commission

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§26.1108 Cooperation of City Employees in Commission Activities

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

§26.1109 Records

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

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

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

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

§26.1110 Subpoenas

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

§26.1111 Conflict of Interest Code

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

§26.1112 Reimbursement for Expenses

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

§26.1113 Whistleblower Protection

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

§ 26.1114 Outreach and Communications

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

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

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

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

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

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

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

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

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

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

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

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

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

By _____
Joan F. Dawson
Senior Deputy City Attorney

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

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

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____

(date)

TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

5064459.1

DRAFT

CITY COUNCIL MEETING RESULTS SUMMARY

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

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

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

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|--|--|--|--|--|--|
| | | | | | <p>performance of their official duties, in accordance with the City's approved procurement procedures, the approved budget and appropriations for the Office of the Commission, and the concurrence of the City's Chief Financial Officer. <i>Members</i> must use and return goods, in accordance with the City's approved policies and administrative regulations."</p> <p>Unanimous; all present</p> |
|--|--|--|--|--|--|



**DEPUTY EXECUTIVE DIRECTOR
CITY OF SAN DIEGO COMMISSION ON POLICE PRACTICES
WORK PLAN/SCHEDULE**

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

ACTIVE RECRUITMENT

| | |
|-----------------|---|
| Week of 4/18/22 | Advertising <ul style="list-style-type: none">CPS HR posts the job to various websites and publications, City of San Diego website, CPS HR website, and various professional associations. CPS HR will also send an initial email blast to its relevant database of professionals. |
|-----------------|---|

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

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

CITIZENS' LAW ENFORCEMENT REVIEW BOARD

RULES AND REGULATIONS

Adopted by CLERB on March 9, 1992

Last Revision May 18, 2021

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

SECTION 1: MISSION AND PURPOSE

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

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

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

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

SECTION 2: DEFINITIONS

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

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

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

SECTION 3: ORGANIZATION AND MEETINGS

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

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

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

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

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

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

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

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

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

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

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

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

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

The orientation and training program includes familiarization with the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) Criminal conduct; and/or

(h) Misconduct.

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 5: PROCEDURES REGARDING COMPLAINTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 6: COOPERATION AND COORDINATION

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

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

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

SECTION 7: SUBPOENAS AND OATHS

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

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

SECTION 8: CONFIDENTIALITY OF RECORDS

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

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

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

SECTION 9: INVESTIGATION OF CASES

9.1 Screening of Complaints.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 10: DETERMINING WHEN AN INVESTIGATIVE HEARING IS NECESSARY

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

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

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

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

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

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

SECTION 11: NO CONTEST RESPONSE

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

SECTION 12: INVESTIGATIVE HEARING

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

12.2 Selection of Three-Person Investigative Hearing Panels.

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

12.3 Challenges of CLERB Members.

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

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

SECTION 13: INVESTIGATIVE HEARING PROCEDURES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 14: EVIDENCE FOR INVESTIGATIVE HEARINGS

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

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

Evidence shall be taken in accordance with the following provisions:

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

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

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

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

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

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

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

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

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

14.7 Discovery.

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

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

SECTION 15: SUMMARY DISMISSAL

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

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

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

SECTION 16: CLERB FINDINGS AND RECOMMENDATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 17: PROCEDURES WHEN NO COMPLAINT IS REQUIRED

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

SECTION 18: DELEGATION OF FUNCTIONS TO EXECUTIVE OFFICER

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

SECTION 19: AMENDMENTS TO RULES AND REGULATIONS

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

MEMORANDUM OF UNDERSTANDING

March 7, 2022

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

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

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

PURPOSE AND SCOPE

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

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

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

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

DEFINITIONS

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

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

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

PRIMARY INVESTIGATING AGENCY

The Primary Investigating Agency is decided using the following criteria:

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

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

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

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

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

agreements. This is further outlined below.

POLICY

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

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

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

RESOURCES

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

JURISDICTIONAL AGENCY'S INITIAL RESPONSE

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

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

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

of their injuries?

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

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

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

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

INCIDENT SCENE

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

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

AGENCY LIAISONS

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

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

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

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

EVIDENCE

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

ON SCENE BRIEF

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

MEDIA RELEASES

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

NOTIFICATIONS

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

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

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

DISTRICT ATTORNEY'S OFFICE INITIAL RESPONSE

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

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

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

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

"THREE DAY" INITIAL BRIEF

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

REPORTING

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

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

DISTRICT ATTORNEY RESPONSIBILITY

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

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

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

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

VIDEO AND AUDIO EVIDENCE RELEASES

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

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

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

INCIDENTS INVOLVING NON-PARTICIPATING LAW ENFORCEMENT AGENCIES

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

INCIDENTS INVOLVING FEDERAL LAW ENFORCEMENT PERSONNEL

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

INCIDENTS INVOLVING PEACE OFFICERS ASSIGNED TO A FEDERAL TASK FORCE

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

AB1506 QUALIFYING EVENTS

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

LIABILITY AND INDEMNITY

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

AMENDMENTS

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

WITHDRAWAL

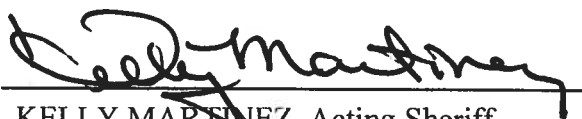
A party to this MOU may withdraw its agreement and participation. A notice of intention to withdraw from this memorandum of understanding (MOU) shall be given to each other signatory, in writing, 30 days prior to the effective date of such revocation. All cases that are currently being investigated under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

TERM OF AGREEMENT

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

ENDORSEMENTS

Agreed hereto by all parties whose signatures appear below:



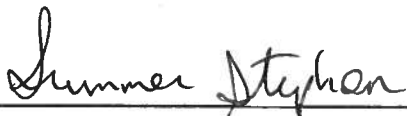
KELLY MARTINEZ, Acting Sheriff

County of San Diego



DAVID NISLEIT, Chief

San Diego Police Department



SUMMER STEPHAN, District Attorney

County of San Diego



TAMIKA NELSON, Chief

San Diego County Probation



JORGE DURAN, Chief

District Attorney - Bureau of Investigations



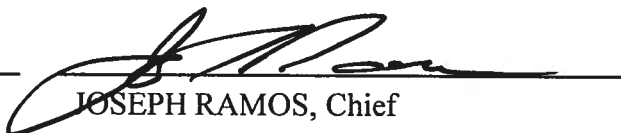
MICKEY WILLIAMS, Chief

Carlsbad Police Department



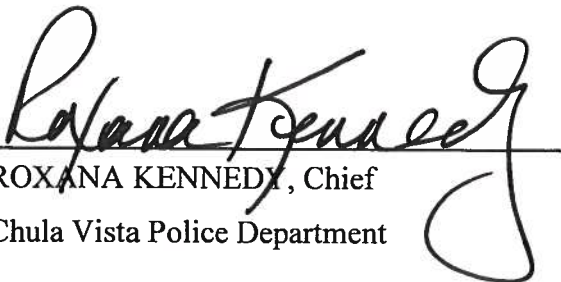
KIRK NICHOLS, Interim Chief

San Diego Harbor Police



JOSEPH RAMOS, Chief

San Diego Community College Police



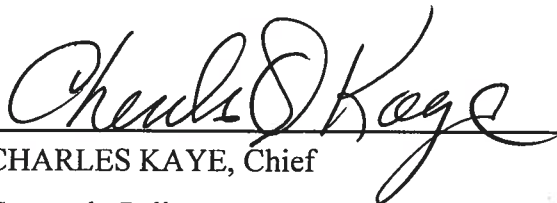
ROXANA KENNEDY, Chief

Chula Vista Police Department



JOEY FLORENTINO, Interim Chief

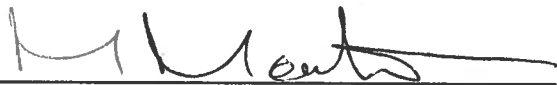
San Diego Unified School District Police



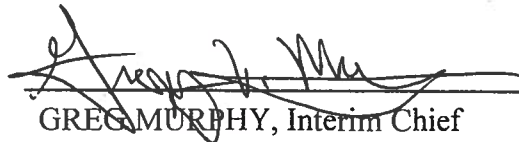
CHARLES KAYE, Chief
Coronado Police Department



MICHAEL HAYES, Chief
MICHAEL HAYES
San Diego State University Police



MICHAEL MOULTON, Chief
El Cajon Police Department



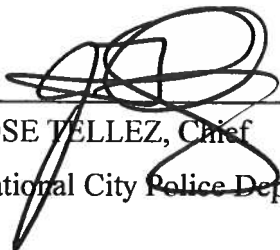
GREG MURPHY, Interim Chief
University California San Diego Police



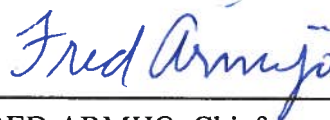
ED VARSO, Chief
Escondido Police Department



RAY SWEENEY, Chief
La Mesa Police Department



JOSE TELLEZ, Chief
National City Police Department



FRED ARMIJO, Chief
Oceanside Police Department