

## COMMISSION ON POLICE PRACTICES

### REGULAR MEETING AGENDA

**Tuesday, May 24, 2022**

**Open Session for Public Comment for Closed Meeting (4 p.m.-4:30 p.m.)**

Remote Meeting Zoom Platform

<https://sandiego.zoomgov.com/j/1612663030>

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

Webinar ID: 161 266 3030

**Closed Session (4:30 p.m.-5:30 p.m.)**

(Not Open to the Public)

**Open Session (6 p.m.-8 p.m.)**

Remote Meeting Zoom Platform

<https://sandiego.zoomgov.com/j/1613968599>

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

Webinar ID: 161 396 8599

#### COVID- 19 PUBLIC SERVICE ANNOUNCEMENT REGARDING MEETING ACCESS AND PUBLIC COMMENT:

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.

- I. CALL TO ORDER/WELCOME (Chair Brandon Hilpert)
- II. ROLL CALL (Interim Executive Director Sharmaine Moseley)
- III. DISCUSSION/ACTION (Chair Brandon Hilpert)
  - A. Adoption of Resolution Authorizing and Ratifying the Continuance of Teleconference Public Meeting Pursuant to Government Code 54953

Motion: The Commission on Police Practices will adopt this Resolution authorizing and ratifying the use of teleconferencing for all meetings including meeting of it ad hoc or standing committees, in accordance with Government Code Section 54953(e) and all other applicable provisions of the Brown Act, for a period of thirty (30) days from the adoption of this Resolution, or such a time that the Commission adopts a subsequent Resolution in accordance with Government Code Section 54953 (e). The Interim Executive Director is directed to return no later than thirty (30) days

after the adoption of this Resolution with an item for this legislative body's reconsideration of these findings.

IV. PUBLIC COMMENT: Fill out and submit comment using [webform](#). Please see instructions at the end of this agenda.

V. CLOSED SESSION

A. PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

Discussion & Consideration of Complaints & Reports: Pursuant to Government Code Section 54957 to discuss complaints, charges, investigations, and discipline (listed in the Closed Session portion of the agenda) involving San Diego Police Department employees, and information deemed confidential under Penal Code Sections 832.5-832.8 and Evidence Code Section 1040. Reportable actions for the Closed Session items on the agenda will be posted on the Commission's website at [www.sandiego.gov/cpp](http://www.sandiego.gov/cpp) or stated at the beginning of the Open Session meeting if the meeting is held on the same day.

- I. San Diego Police Department Feedback on Case Specific Matters
- II. Shooting Review Board Reports (0)
- III. Category II Case Audit Reports (0)
- IV. Discipline Reports (5)
- V. Case Review Team Reports (1)
- VI. Case-Specific Recommendations to the Mayor/Chief (0)
- VII. Referrals to other governmental agencies authorized to investigate activities of a law enforcement agency (0)
- VIII. Legal Opinion(s) Request & Response (0)

VI. OPEN SESSION

VII. REPORT OUT FROM CLOSED SESSION

VIII. PURPOSE OF THE COMMISSION ON POLICE PRACTICES (CPP)

IX. APPROVAL OF MEETING MINUTES

- A. CPP Open Session Meeting Minutes OF April 26, 2022
- B. Special Joint Meeting of Commission on Police Practices & Citizens Advisory Board on Police/Community Relations on 4/21/2022

X. NON-AGENDA PUBLIC COMMENT: Fill out and submit comment using [webform](#). Please see instructions at the end of this agenda

XI. EDUCATIONAL/TRAINING TOPIC

**"Open & Transparent Meetings Under the Brown Act"- Part 1 of 2**

Presenter: Duane E. Bennett, Esq. (CPP Outside Counsel)

XII. UNFINISHED BUSINESS (DISCUSSION/ACTION) (Chair Brandon Hilpert)

A. Commission Meetings in June (Dates and Times)

B. Case Review

1. Status of CPP Case Review & Evaluation of Disciplines
2. Feedback on Remote Case Access (Google Drive)
3. IA Office Hours/Schedule
4. Scheduling Chair/Interim Executive Director Meeting with Teams

XIII. COMMITTEE CHAIR REPORTS (DISCUSSION/ACTION)

- A. Continuing Education Committee (Nancy Vaughn)
  1. List of Upcoming Educational Topics/Presentations
    - Restraining Orders
    - Interactions Between Kumeyaay People & Law Enforcement
    - Show of Force/Use of Force & Reporting Requirements
- B. Outreach Committee (Patrick Anderson)
  1. Past Events/Virtual Meetings/Roundtable Discussions
  2. Upcoming Events/Outreach Opportunities
- C. Rules Committee (1<sup>st</sup> Vice Chair Doug Case)
- D. CPP Handbook Committee (1<sup>st</sup> Vice Chair Doug Case)
  1. Update – On Hold
- E. Policy Committee (Discussion/Action) (Chair Brandon Hilpert)
  1. Update/Next Policy Committee Meeting
- F. Recruitment & Training Committee (Kevin Herington)
  1. Update – On Hold
- G. Citizens Advisory Board on Police Community Relations (Chair Hilpert)
  1. Update Past & Upcoming Meetings
- H. Ad Hoc Transition Planning Committee (1<sup>st</sup> Vice Chair Doug Case)
  1. Budget Update
  2. Staffing & Legal Counsel Update
  3. Draft Implementation Ordinance & Standard Operating Procedures Update
  4. Office Space Update

XIV. CHAIR'S REPORT (Chair Brandon Hilpert)

- A. Reminders for Commissioners
  - 4<sup>th</sup> Quarter (April 1<sup>st</sup> – June 30<sup>th</sup>) Volunteer Hours Report –All Commissioners log hours in for reporting purposes
- B. Update on Collaboration/Information Sharing with Statewide Oversight Groups
- C. Update & Next Steps on CPP Special Joint Meeting with Citizens Advisory Board on Police/ Community Relations (CAB) 4/21/22– Countywide MOU Between County Chiefs & Sheriff Association
- D. Creation CPP Social Media Pages & Training of Administrators
- E. CPP Presentation to Newest Officer Academy (June 16<sup>th</sup>)
- F. Other Items/Reminders


- XV. EXECUTIVE DIRECTOR'S REPORT (Interim ED Sharmaine Moseley)
- A. Caseload Update & Status of Case Reports
  - B. Planning for CPP Former Member Appreciation/Acknowledgements
  - C. Status of Inclusion of CPP Interim ED in City's Department Director's Meetings
  - D. NACOLE Annual Conference in Fort Worth, Texas (September 2022)
  - E. Other Items/Reminders
- XVI. SAN DIEGO POLICE DEPARTMENT REPORT (EA Chief Chris McGrath)
- A. Status of SDPD Written Responses to CPP Recommendations Submitted on March 30, 2021
    1. Protest Policy
    2. BWC Usage in Secure Facilities
    3. Warnings Prior to OC Usage
    4. Time Limits in Maximum Restraints
    5. Seatbelt Usage during Transportation
    6. Observation of Detainees in Sally Port
  - B. Status of SDPD Written Responses to CPP Recommendations Submitted on May 10, 2022
    1. BWC Buffering Enhancements
    2. Investigation of Complaints Involving SDPD Leadership
    3. Discipline Manual and Matrix Changes
    4. Formation of SDPD's Disciplinary Tracking System
    5. Be on Lookout (BOLO) Flyers
    6. Transmittal of Commission's OIS Reports to Shooting Review Board
  - C. Status of CPP Cabinet Meeting with SDPD Training Captain Regarding Use of Force & Show of Force Reporting
  - D. Updates (Staffing in IA, Training, etc.)
- XVII. COMMISSIONER RIDE-ALONG REPORTS
- XVIII. COMMISSIONER ANNOUNCEMENTS/COMMENTS
- XIX. ADJOURNMENT

**Materials Provided:**

- Minutes from Open Session Meeting on April 26, 2022 (DRAFT)
- Minutes from Special Joint Meeting of CPP & CAB on April 21, 2022 (DRAFT)
- CPP Resolution Authorizing & Ratifying the Continuance of Teleconferenced Public Meetings Pursuant to Government Code 54953
- CPP Outside Counsel Letter to Interim ED Regarding Brown Act

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.

**Joining the webinar as an attendee at 4pm:**

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

Please click this URL to join. <https://sandiego.zoomgov.com/j/1612663030>

Description: This meeting is for the public to provide comment on the Commission's Closed Session Meeting Agenda. This meeting will conclude at 4:10pm.

Or One tap mobile:

+16692545252,,1612663030# US (San Jose)

+16692161590,,1612663030# US (San Jose)

Or join by phone:

Dial(for higher quality, dial a number based on your current location):

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

Webinar ID: 161 266 3030

International numbers available: <https://sandiego.zoomgov.com/u/ab5VcvSoOu>

Or an H.323/SIP room system:

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

Webinar ID: 161 266 3030

SIP: [1612663030@sip.zoomgov.com](mailto:1612663030@sip.zoomgov.com)

**Joining the webinar as an attendee at 6pm:**

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

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Webinar ID: 161 396 8599

SIP: [1613968599@sip.zoomgov.com](mailto:1613968599@sip.zoomgov.com)

**OPEN SESSION MEETING MINUTES**

**Tuesday, April 26, 2022  
6 p.m. – 8 p.m.  
Via Zoom Webinar**

Click <https://www.youtube.com/watch?v=XZF19xMy5Bs> to view this meeting on YouTube.

**Commissioners Present:**

Brandon Hilpert, Chair  
Doug Case, 1<sup>st</sup> Vice Chair  
Patrick Anderson  
Maxine Clark  
Andrea Dauber-Griffin  
Diana Dent

Kevin Herington  
Steve Hsieh  
Ernestine Smith  
Nancy Vaughn  
Marty Workman

**Commissioners Absent or Excused:**

Poppy Fitch, 2<sup>nd</sup> Vice Chair  
Chris Pink  
Robin Spruce

**Staff Present:**

Sharmaine Moseley, Interim Executive Director  
Robin Recendez, Administrative Aide  
Alina Conde, Executive Assistant

**San Diego Police Department (SDPD) Staff Present:**

EA Chief Chris McGrath  
IA Captain Anthony Dupree  
Lieutenant Tristan Schmottlach  
Lieutenant Stephen Shebloski

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- I. **CALL TO ORDER/WELCOME:** Chair Brandon Hilpert called the meeting to order at 6:05pm.
  - II. **PURPOSE OF THE COMMISSION ON POLICE PRACTICES (CPP):** Chair Brandon Hilpert explained that the purpose of the Commission on Police Practices (CPP) is to provide an independent investigation of officer-involved shootings, in-custody deaths, and an unbiased evaluation of all complaints against the police department and its personnel in a process that will be transparent and accountable to the community. The Commission will also evaluate the review of all SDPD policies, practices, trainings, 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.

III. ROLL CALL: Interim Executive Director Sharmaine Moseley conducted the roll call.

IV. APPROVAL OF CPP OPEN SESSION MEETING MINUTES OF MARCH 22, 2022  
**The Commissioners reviewed the minutes. Commissioner Nancy Vaughn moved for the Commission to approve its March 22, 2022 Open Meeting minutes with the correction to change “motioned” to “move”. Commissioner Marty Workman seconded the motion. The motion passed with a vote of 8-0-2. (Time 3:49)**

**Yays: 1<sup>st</sup> Vice Chair Case, Commissioner Anderson, Commissioner Clark, Commissioner Herington, Commissioner Hsieh, Commissioner Smith, Commissioner Vaughn, and Commissioner Workman**

**Nays: None**

**Abstained: Chair Hilpert and Commissioner Dauber-Griffin**

**Absent/Excused: 2<sup>nd</sup> Vice Chair Fitch, Commissioner Dent, Commissioner Pink, and Commissioner Spruce**

V. NON-AGENDA PUBLIC COMMENT: No public comment received.

VI. NEW CITY STAFF & CPP CONTRACTOR ANNOUNCEMENTS/INTRODUCTIONS

A. Chida Warren-Darby (Director, Office of Boards & Commissions)  
**(Time 14:07)**

B. Duane E. Bennett, Esq. (CPP Outside Counsel)  
**(Time 8:01)**

VII. UNFINISHED BUSINESS (DISCUSSION/ACTION (Chair Brandon Hilpert)

A. Commission Closed Meetings in May (Dates and Times) – Chair Brandon Hilpert will be working with Executive Assistant Alina Conde on sending out a doodle poll for each Tuesday of the month. The Commission has about a hundred cases waiting for review. The Commission has been meeting almost every week (if not bi-weekly). Will check in with the teams to see how many cases will be ready for the Commission to review.

B. Case Review

1. Status of CPP Case Review & Evaluation of Disciplines

Reminder to Teams that if they disagree with the discipline of an officer, they can meet with the Captain who issued that discipline to discuss the discipline.

2. Feedback on Remote Case Access (Google Drive)

Reminder that Commissioners can go down to Internal Affairs to review audio files or IA has agreed to burn them on a CD or flash drive. The Commissioners can sign out the flash drives, listen to

them, and then return them to IA.

3. IA Office Hours/Schedule (Continuation of Saturday Hours) – Reminder that Internal Affairs has offered weekend hours for Commissioners who may need it. Commissioners should send an email and request the time if they need to go into Internal Affairs on the weekends.

VIII. NEW BUSINESS (DISCUSSION/ACTION) (Chair Brandon Hilpert)

- A. Participation of CPP Leadership & Legal Counsel in the Implementation Ordinance Meet & Confer Process

**1<sup>st</sup> Vice Chair Doug Case moved for the Commission to send a letter to the Mayor expressing the rationale for the CPP Leadership and Outside Counsel to participate in the meet and confer process of implementation ordinance. Additionally, request for the Mayor to take action to ensure the Commission on Police Practices' participation. Commissioner Nancy Vaughn seconded the motion. The motion passed with a vote of 11-0-0. (Time 27:21)**

**Yays: Chair Hilpert, 1<sup>st</sup> Vice Chair Case, Commissioner Anderson, Commissioner Clark, Commissioner Dauber-Griffin, Commissioner Dent, Commissioner Herington, Commissioner Hsieh, Commissioner Smith, Commissioner Vaughn, and Commissioner Workman**

**Nays: None**

**Abstained: None**

**Absent/Excused: 2<sup>nd</sup> Vice Chair Fitch, Commissioner Pink, and Commissioner Spruce**

*(Time 21:02) Public Comment from Evie Kosower: Ms. Kosower commented that she expressed concern that the MOU between the various parts of the County, including the Sheriff and the Police Department may have something to do with the meet and confer and that pieces of the MOU might impact the Commission. Chair Hilpert explained the Commission's next steps regarding the MOU.*

*(Time 24:14) Public Comment from Kate Yavenditti: Ms. Yavenditti commented on the meet and confer process and her belief that the Commission should have a representative participate in the process.*

- B. On February 28, 2022, the City Council amended the working ordinance by "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.  
**1<sup>st</sup> Vice Chair Doug Case moved for the Commission to go on record opposing the addition of this exclusion and the process in which it was done without public comment. Commissioner Patrick Anderson seconded the motion. The motion passed with a vote of 10-1-0. (Time 44:16)**

**Yays: Chair Hilpert, 1<sup>st</sup> Vice Chair Case, Commissioner Anderson, Commissioner Clark, Commissioner Dauber-Griffin, Commissioner**



**Dent, Commissioner Hsieh, Commissioner Smith, Commissioner Vaughn, and Commissioner Workman**

**Nays: Commissioner Herington**

**Abstained: None**

**Absent/Excused: 2<sup>nd</sup> Vice Chair Fitch, Commissioner Pink, and Commissioner Spruce**

*(Time 35:02) Public Comment from Kate Yavenditti: Ms. Yavenditti expressed her opposition for the process and amendment approved by City Council.*

*(Time 37:26) Public Comment from Evie Kosower: Ms. Kosower commented and questioned the process and if the ordinance had to be voted on again. Interim Executive Director Sharmaine Moseley responded that once it come back form meet and confer; it will go back to Council for consideration.*

**IX. COMMITTEE CHAIR REPORTS (DISCUSSION/ACTION)**

**A. Continuing Education Committee (Nancy Vaughn)**

**1. List of Upcoming Educational Topics/Presentations**

- Restraining Orders
- Interactions Between Kumeyaay People & Law Enforcement
- Show of Force/Use of Force & Reporting Requirements

**B. Outreach Committee (Patrick Anderson)**

**1. Past Events/Virtual Meetings/Roundtable Discussions -No update**

**2. Upcoming Events/Outreach Opportunities**

Commissioner Patrick Anderson stated that he will be participating in the hiring process of the Deputy Executive Director. He identified many community members who have participated in the previous roundtable discussions. This search will be announced soon.

**C. Rules Committee (1<sup>st</sup> Vice Chair Doug Case)**

No current updates.

**D. CPP Handbook Committee (1<sup>st</sup> Vice Chair Doug Case)**

**1. Update – This item is on hold.**

**E. Policy Committee (Chair Brandon Hilpert)**

**1. Items being Considered by Committee on 4/20/2022**

**A. Proposed BWC Buffering Enhancements**

**B. Investigation of Complaints Involving SDPD Leadership**

**C. Revisions to Discipline Manual & Matrix**

**D. Formal Review of SDPD's Disciplinary Tracking**

**E. Be On Look Out (BOLO) Flyers**

**F. OIS Reports**

**G. Development of Third-Party Mediation**

**H. Review Homeless Encampment**

- I. Discrimination/Non-Biased Policing
- J. 4.17 Protest Policy
- K. SDPD Procedure 1.43: Wellness/Psychological Review of Officers Involved in OIS Incidents Prior to Returning to Field Duty
- L. SDPD Procedure 5.10: Officers Uniform Policy -Use of Political or Membership Affiliation under Uniform Policy
- M. Firearm Show of Force as Reportable Use of Force
- N. Use of Profane Language as De-escalation Tactic

2. Consideration of Items for Discussion/Action

A. Proposed BWC Buffering Enhancements

**Chair Brandon Hilpert moved to recommend to SDPD that existing 2-minute BWC buffers be modified to include audio.**

**Commissioner Patrick Anderson seconded the motion. The motion passed with a vote of 11-0-0. (Time 58:56)**

**Yays: Chair Hilpert, 1<sup>st</sup> Vice Chair Case, Commissioner Anderson, Commissioner Clark, Commissioner Dauber-Griffin, Commissioner Dent, Commissioner Herington, Commissioner Hsieh, Commissioner Smith, Commissioner Vaughn, and Commissioner Workman**

**Nays: None**

**Abstained: None**

**Absent/Excused: 2<sup>nd</sup> Vice Chair Fitch, Commissioner Pink, and Commissioner Spruce**

B. Investigation of Complaints Involving SDPD Leadership

**Chair Brandon Hilpert moved to recommend to SDPD that SDPD create a procedure that specifically addresses how complaints**

**against SDPD leadership are investigated with the amendment of defining leadership as Captain and above. Commissioner Patrick Anderson seconded the motion. The motion passed with a vote of 11-0-0. (Time 1:01:27)**

**Yays: Chair Hilpert, 1<sup>st</sup> Vice Chair Case, Commissioner Anderson, Commissioner Clark, Commissioner Dauber-Griffin, Commissioner Dent, Commissioner Herington, Commissioner Hsieh, Commissioner Smith, Commissioner Vaughn, and Commissioner Workman**

**Nays: None**

**Abstained: None**

**Absent/Excused: 2<sup>nd</sup> Vice Chair Fitch, Commissioner Pink, and Commissioner Spruce**

C. Discipline Manual and Matrix Changes

**Chair Brandon Hilpert moved to recommend to SDPD that SDPD update the Discipline Manual and Matrix to 1. Command shall complete discipline memo within 14 days after discipline has been issued 2. Update Discipline Manual to indicate when officers must be notified and when discipline must be issued 3. Add a description/definition of “Minor Policy Violation” 4. Add a new category of “Sustained Excessive Force (causing injury)” with a recommended first offense being suspension. Commissioner Nancy Vaughn seconded the motion. The motion passed with a vote of 11-0-0. (Time 1:14:10)**

**Yays: Chair Hilpert, 1<sup>st</sup> Vice Chair Case, Commissioner Anderson, Commissioner Clark, Commissioner Dauber-Griffin, Commissioner Dent, Commissioner Herington, Commissioner Hsieh, Commissioner Smith, Commissioner Vaughn, and Commissioner Workman**

**Nays: None**

**Abstained: None**

**Absent/Excused: 2<sup>nd</sup> Vice Chair Fitch, Commissioner Pink, and Commissioner Spruce**

D. Formal Review of SDPD’s Disciplinary Tracking

**Chair Brandon Hilpert moved to recommend to SDPD that SDPD create and share with CPP for review, a tracking system of pending discipline for department follow up to ensure “Sustained” findings result in appropriate and timely disciplinary action. Commissioner Patrick Anderson seconded the motion. The motion passed with a vote of 11-0-0. (Time 1:17:00)**

**Yays: Chair Hilpert, 1<sup>st</sup> Vice Chair Case, Commissioner Clark, Commissioner Anderson, Commissioner Dauber-Griffin, Commissioner Dent, Commissioner Herington, Commissioner Hsieh, Commissioner Smith, Commissioner Vaughn, and Commissioner Workman**

**Nays: None**

**Abstained: None**

**Absent/Excused: 2<sup>nd</sup> Vice Chair Fitch, Commissioner Pink, and Commissioner Spruce**

- E. Be On Look Out (BOLO) Flyers  
**Commissioner Ernestine Smith moved to recommend to SDPD that BOLOs be required to have an issue date. Commissioner Diana Dent seconded the motion. The motion passed with a vote of 11-0-0. (Time 1:19:46)**

**Yays: Chair Hilpert, 1<sup>st</sup> Vice Chair Case, Commissioner Anderson, Commissioner Clark, Commissioner Dauber-Griffin, Commissioner Dent, Commissioner Herington, Commissioner Hsieh, Commissioner Smith, Commissioner Vaughn, and Commissioner Workman**

**Nays: None**

**Abstained: None**

**Absent/Excused: 2<sup>nd</sup> Vice Chair Fitch, Commissioner Pink, and Commissioner Spruce**

- F. OIS Reports  
**Chair Brandon Hilpert moved for the Commission to forward OIS reviews/reports to SDPD and SDPD to include said reviews/reports in package of information provided to the Shooting Review Board for consideration. Commissioner Patrick Anderson seconded the motion. The motion passed with a vote of 11-0-0. (Time 1:25:07)**

**Yays: Chair Hilpert, 1<sup>st</sup> Vice Chair Case, Commissioner Anderson, Commissioner Clark, Commissioner Dauber-Griffin, Commissioner Dent, Commissioner Herington, Commissioner Hsieh, Commissioner Smith, Commissioner Vaughn, and Commissioner Workman**

**Nays: None**

**Abstained: None**

**Absent/Excused: 2<sup>nd</sup> Vice Chair Fitch, Commissioner Pink, and Commissioner Spruce**

- F. Recruitment & Training Committee (Kevin Herington)  
1. Update – On Hold
- G. Citizens Advisory Board on Police Community Relations (Chair Hilpert)  
1. Update Past & Upcoming Meetings  
The CPP and CAB recently held a joint meeting regarding the county wide MOU for Officer Involved Shootings. CAB met on the 14th to go over PD updates. There weren't too many changes.
- H. Ad Hoc Transition Planning Committee (1<sup>st</sup> Vice Chair Doug Case)  
1. Budget Update – The CPP Leadership will be going in front of the

City Council's Budget Review Committee on May 10 for FY23. Interim Executive Director Sharmaine Moseley and Chair Brandon Hilpert will be presenting. The highlights will be: 1. requesting \$200,000 as a contingency for contract investigator 2. \$100,000 for Executive Searches for the positions that are top level positions that will be recruited in FY23, 3. Reduction of non-personnel expenditure 4. Reclassification of positions. The goal is to have a full-time complaints coordinator and full-time budget analyst person. Lastly, wanted to ensure money is included for the outside counsel contract for next year.

2. Staffing and Legal Counsel Update – The CPP is hoping that the City will get all paperwork signed off so we can utilize our legal counsel services. The City has given approval to use the City's Executive Search Firm named CPS HR Consulting in Chicago where they specialize in doing searches for government agencies. They will be helping the Commission in filling the position for Deputy Executive Director who would be second in charge and would be primarily responsible for community engagement.
3. Draft Implementation Ordinance & Standard Operating Procedures Update – More updates to come.
4. Office Space Update – Interim Executive Director Sharmaine Moseley, Chair Brandon Hilpert, 1<sup>st</sup> Vice Chair Doug Case, Executive Assistant Alina Conde, and Administrative Aide Robin Recendez met with DREAM's Karen Johnson to go over new space options. There were two potential spots that looked promising. Parking may be included (still checking on this) and there will be an option for a large conference room (up to 60 individuals).

X. CHAIR'S REPORT

(Chair Brandon Hilpert)

- A. Reminders for Commissioners
  1. 4<sup>th</sup> Quarter (April 1<sup>st</sup> – June 30<sup>th</sup>) Volunteer Hours Report – All Commissioners need to log in their hours for reporting purposes. If there are any issues or if anyone needs help with trouble shooting, please reach out to Executive Assistant Alina Conde for assistance.
- B. Update on Collaboration/Information Sharing with Statewide Oversight Groups -Sharing best practices and identifying areas for change.
- C. Update & Next Steps on CPP Special Joint Meeting with Citizens Advisory Board on Police/Community Relations (CAB) 4/21/22 (Countywide MOU Between County Chiefs & Sheriff Association) CPP held a joint meeting with the Citizens Advisory Board as well as some members of SDPD's leadership to answer some questions. The Sherriff's department was unable to attend due to scheduling conflicts.
- D. Update on Upcoming CPP Joint Meeting with Citizens Advisory Board on Police Community Relations (CAB) Regarding CPE Data Study CPP Leadership had conversations with the Police Department and the Chief on plans to host a joint meeting to present their data and come up with some solutions.
- E. Other Items/Reminders – N/A

XI. EXECUTIVE DIRECTOR'S REPORT (Interim ED Sharmaine Moseley)

- A. Caseload Update and Status of Case Reports- It was reported that as of today, the Commission started out with 94 active cases assigned to its Teams and closed out 2 cases in tonight's Closed Session meeting. Twenty-eight of the 94 cases are Category II cases. At last month's meeting, the Commission agreed to hold off on auditing Category II cases due to the backlog of cases.

In this fiscal year, that began on July 1, 2021, the Commission reviewed, deliberated on and closed out 92 Category I cases, 7 OIS cases, and 1 ICD case. The Commission audited 17 Cat II cases and evaluated 103 disciplines. The Commission also evaluated 2 Shooting Review Board Reports.

The statistics for the Team assignments are as follows:

The Teams have no in-custody cases assigned for review. Teams were reminded to check their folders for any disciplines and/or Shooting Review Board Reports.

- Team 1 has 17 cases in their queue (10 are Category I cases- one of which have one or more sustained findings, and 1 OIS case). The Team also has 6 Category II cases which are on hold.
  - Team 2 is inactive.
  - Team 3 has 6 cases in their queue. Of the 6 assigned cases, 5 are Category I cases and 1 is a Category II case. One of the Category I cases have one or more sustained findings. The Team has no OIS or ICD cases.
  - Team 4 has 28 cases in their queue. Of the 28 cases, 19 are Category I cases, 10 are Category II cases and 2 of the Category I cases have sustained findings. Team 4 has 1 SRB report to evaluate and no OIS or ICD cases to review.
  - Team 5 has 16 cases in their queue. Of the 16 cases, one was closed out at the Commission's closed meeting earlier tonight. One case is ready for the next agenda. The Team 5 has 14 active cases. Nine are Category I cases, 5 are Category II that are on hold. The Team has no ICD cases to review. Team 5 has 1 SRB report and disciplines to evaluate. One of the Category I cases has one or more sustained findings.
  - Team 6 has 26 cases in their queue. Of the 26 cases, 21 cases are Category I cases, 4 of which have sustained findings. Five of the 26 cases are Category II cases. The Team has no ICD or OIS cases.
  - Team 7 is inactive.
- B. Commission Vacancies/Resignations -With the resignation of Commissioner Sheila Holtrop last month and Commissioner Marty Workman at the end of this week, the Commission will be down to 13 Commissioners with one Commissioner who has been on leave for several months. The Commission has 12 active Commissioners. This will make it difficult to have quorum for meetings as well as leading the Teams in case review. Commissioners Holtrop and Workman were both Team leads for the CRB and then for the Interim Commission. Both grew as Commissioners as they led their Teams in making sure that reviews were being done fairly

and thoroughly. The CPP is planning on holding an appreciation/acknowledgement ceremony for members who resigned just prior to the passage of Measure B and Commissioners who resigned over the last two years. Administrative Aide Robin Recendez is currently working on the planning of this event. The Commission would like to thank Commissioner Workman for his time and dedication to oversight and for being there when needed and for taking on those cases with a fast turnaround time.

- C. Planning for CPP Former Member Appreciation/Acknowledgements- This item was already reported on.
- D. Other Items/Reminders – N/A

**XII. SAN DIEGO POLICE DEPARTMENT REPORT (EA Chief Chris McGrath)**

**A. Status on CPP Recommendations to SDPD**

1. Protest Policy
2. BWC Usage in Secure Facilities
3. Warnings Prior to OC Usage
4. Time Limits in Maximum Restraints
5. Seatbelt Usage during Transportation
6. Observation of Detainees in Sally Port

The recommendations have been written up and will be finalized. There was a request when sending these recommendations, to put as much information as possible to avoid tracking down information.

- B. Updates (Staffing in IA, Training, etc.) - Lieutenant Stephen Shebloski will be moving over to the Homicide Unit. Taking over will be Lieutenant Tristan Schmottlach.

**XIII. COMMISSIONER RIDE-ALONG REPORTS:** It was reported that Commissioners can start doing ride-a-long's again.

**XIV. COMMISSIONER ANNOUNCEMENTS/COMMENTS:** No announcements or comments.

**XV. ADJOURNMENT:** The meeting adjourned at 8:08pm.

**SPECIAL JOINT MEETING MINUTES**  
of  
**Commission on Police Practices**  
&  
**Citizens Advisory Board on Police/Community Relations**

**Thursday, April 21, 2022**  
**6 p.m. – 8 p.m.**  
**Via Zoom Webinar**

Click <https://www.youtube.com/watch?v=ASYeVOy5exE> to view this meeting on YouTube.

**Commissioners Present:**

Brandon Hilpert, Chair  
Doug Case, 1<sup>st</sup> Vice Chair  
Maxine Clark (arrival 6:15)  
Diana Dent  
Sheila Holtrop  
Steve Hsieh

Robin Spruce  
Nancy Vaughn  
Marty Workman  
Andrea Dauber-Griffin  
Ernestine Smith

**Commissioners Absent or Excused:**

Poppy Fitch, 2<sup>nd</sup> Vice Chair  
Patrick Anderson  
Kevin Herington  
Chris Pink

**Staff Present:**

Sharmaine Moseley, Interim Executive Director  
Alina Conde, Executive Assistant  
Robin Recendez, Administrative Aide

**Citizens Advisory Board on  
Police/Community Relations:**

Gerald Brown, Executive Director  
Samantha Jenkins, Chair  
Robert Ilko, Vice Chair  
Norma Sandoval, Youth Advocate  
David Burton, Board Member

Polly Dong, Board Member  
Cathy Fisher, Board Member  
Adrianna Flores, Board Member  
Dennis Hodges, Board Member

**CLERB:**

Executive Director, Paul Parker



**San Diego Police Department (SDPD) Staff Present:**

Chris McGrath, Executive Assistant Chief

Paul Connelly, Assistant Chief

Terence Charlot, Assistant Chief

Jeff Jordon, Captain

Richard Freedman, Captain

Anthony Dupree, IA Captain

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I. CALL TO ORDER/WELCOME: Chair Brandon Hilpert called the meeting to order at 6:06pm.

II. OPENING REMARKS/GUIDELINES (CPP CHAIR HILPERT/CAB CHAIR SAMANTHA JENKINS)

Commission on Police Practices (CPP or Commission) Chair Brandon Hilpert explained that the objective of the meeting is to learn more about the countywide memorandum of understanding regarding entry agency review of officer-involved shootings (OIS) and other deadly force incidents. SDPD OIS incidents will now be investigated by San Diego Sheriff's Office and vice versa. In cases where Officer/Deputy involved shootings occur, then both SDPD and Sheriff's Department incidents will be investigated by the Chula Vista Police Department.

III. PURPOSE OF THE COMMISSION ON POLICE PRACTICES (CPP): Chair Brandon Hilpert explained that the purpose of the Commission on Police Practices is to provide an un-biased review and evaluation of all complaints, brought by members of the public, against officers of the San Diego Police Department and to review and evaluate the administration of discipline arising from sustained complaints. Currently the Commissioners reviews and evaluates officer involved shootings, all in-custody deaths and all police interactions that result in a death of a person. Upon the passage of the Implementation Ordinance by City Council, the Commission will be providing independent investigations of officer involved shootings and in-custody deaths. The Commission will also evaluate and review SDPD policies, practices, trainings, protocols and represent the community 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.

IV. PURPOSE OF THE CITIZEN ADVISORY BOARD ON POLICE AND COMMUNITY RELATIONS (CAB): Chair Samantha Jenkins explained that the purpose of the Citizen Advisory Board on Police and Community Relations is to: study, consult and advise the Mayor, City Council and Community on matters of Police and Community relations; support crime prevention efforts and foster community

participation in that effort; recommend, review policies, practices, and programs; increase law enforcement sensitivity, effectiveness, and responsiveness to needs and concerns of the community; promote and encourage open communication between the community and the San Diego Police Department; promote and support the shared responsibility for improvements in the relationship between the San Diego Police Department and the community; and to inform community members of their rights and responsibilities during engagements and encounters with the Police department.

- V. ROLL CALL: CPP Interim Executive Director Sharmaine Moseley conducted the roll call.
- VI. ROLL CALL: CAB Vice Chair Robert (Bob) Ilko conducted the roll call.
- VII. **Presentation:** “Memorandum of Understanding Regarding Protocols for the Investigation & Review of Officer & Deputy–Involved Shootings & Other Deadly Force Incidents” (7:15)

**Speakers:** SDPD Executive Assistant Chief Chris McGrath, SDPD Assistant Chief Terence Charlot & SDPD Captain Jeff Jordon, Assistant Chief Paul Connelly, Captain Richard Freedman, IA Captain Anthony Dupree

SDPD Executive Assistant Chief Chris McGrath described that the MOU document has 18 signatures, 16 of them are from Police Chiefs and Sheriff and then the District Attorney’s office. Those who signed the document felt that this is what the citizens asked for, which are best practices for accountability and transparency in investigations when officers are involved in shootings. No process or any reviews will be eliminated for the purposes of oversight. Nothing changes for CPP.

Assistant Chief Paul Connelly from Investigations described how investigations included the Homicide Unit in addition to the responsibility of investigating officer–involved shootings. The history of the process started two years ago with an Assembly Bill AB 594 was on the table to be voted upon. It would eliminate an agency’s ability to investigate their own officer–involved shooting. Chiefs and Sheriffs in the County wanted to get ahead of the Assembly Bill by developing their own MOU. The bill has not passed yet. SDPD predicted officer –involved shootings in the County and came up with an approximate number of 20–25 occur a year throughout San Diego County with 16 agencies that are involved. SDPD had about half of those OIS cases, because San Diego has one of the largest geographical areas of 372 square miles and one of the largest populations, therefore more likely to have more OIS. SDPD will investigate the San Diego County Sheriff's Department's deputy–involved shootings, as well as all other local law enforcement agencies involved in a shooting. Shootings

involving the San Diego County Sheriff's Department and SDPD will be investigated by the Chula Vista Police Department. It is set up where each agency will be having liaisons be present during investigations. Liaisons would be responsible for coordinating with other agencies, provide resources, process suspects and be put in place to help the investigation move smoothly. Since investigating areas that might be out of jurisdiction, each liaison will be making sure all policies and procedures are being followed by each agency. In addition, for CLERB and CPP having their own investigator respond to homicide or OIS situations. There are provisions to allow this and to liaison with Homicide investigators to be able to report back to the Board. An appropriate way to do this is to set up a separate MOU between SDPD and CPP to have that in writing and see how it would work and the parameters of that will be.

VIII. QUESTION FROM CPP COMMISSIONERS AND CAB MEMBERS (CPP CHAIR HILPERT) (17:55)

CPP 1<sup>st</sup> Vice Chair Doug Case stated that it would likely need an MOU between SDPD and CPP, but it seems there is a need of an MOU between SDPD, CPP and Sheriff's office. CPP relies heavily upon the Sheriff's office for cooperation and CPP will be conducting its own independent investigations. What is SDPD's feedback on this? Will SDPD still be conducting Shooting Review Boards for those cases? SDPD Executive Assistant Chief Chris McGrath responded that the internal process of Shooting Review Board should continue.

SDPD Executive Assistant Chief Chris McGrath responded that in the MOU, it's a legal agreement between three entities so what is CPP proposing and what is CPP Counsel recommending would need to be looked at. Then it will go to SDPD to review documents for questions or adjustments on the MOU. Assistant Chief Paul Connelly responded with every agency that is involved in the MOU and they agreed to everything in the MOU.

CPP Chair Brandon Hilpert asked what if, for example, SDPD feels there is some sort of deficiency in the way the Sheriff's office is doing their report, is SDPD able to ask the Sheriff's office to modify the report to meet SDPD standards? Will SDPD be able to tell the Sheriff's office these are SDPD standards expected in OIS investigations and therefore ask them to fulfill that? Assistant Chief Paul Connelly responded it would defeat the purpose of being an independent investigation. There are many checks and balances outside of the involved agency such as the DA, the DA's office, FBI, and City Attorney's office.

CLERB Executive Director Paul Parker expressed (23:54) CLERB's experience when it comes to the MOU that has been discussed and the MOU between CLERB and Sheriff's department. In this specific MOU, in reference to the agencies investigating other OIS incidents, CLERB is here to listen to those communities that are being impacted. Since February 14<sup>th</sup>, when CLERB Executive Director Paul Parker signed the MOU between CLERB and the Sheriff's Department, he has been to six in-custody deaths, two deputy-involved shootings that involved a fatality, and both are being investigated by the SDPD. On those shootings, CLERB gets nothing from SDPD. CLERB doesn't

have an agreement with SDPD but has an agreement with the Sheriff's Department who has been good with giving a general brief. However, SDPD is the lead investigating agency, so to CPP Commissioner Doug Case's point, absolutely, there should be an MOU with CPP and SDPD.

CPP Commissioner Andrea Dauber-Griffin stated that her question pertains to timelines. CPP is usually on a timeline when it comes to the investigation of cases. It appears there may be some back and forth between agencies, exchanging of information, reaching out to receive additional information as the investigation goes on. How does this impact CPP's timeline in which the investigation would be finished and the timeline CPP will be given to complete the evaluation of an investigation?

Assistant Chief Paul Connelly responded there will not be any change to the timeline. SDPD will not change the process, just changing who's doing the investigation. The Homicide Unit is still responsible to get the investigation completed and over to the DA's office within 90 days. Then the DA's office does their own investigation and follow up and get their findings back to SDPD within 90 days after that. A typical investigation between the DA's office and SDPD will at least take 180 days. It's a long and complex investigation, which takes time to make sure SDPD is as thorough as possible.

CAB Chair Samantha Jenkins asked when an incident occurs with a particular agency (SDPD), who is going to be responsible for securing the scene when this occurs? Is someone going to automatically call the Sheriff's department and request an investigator? Whose laboratory team will be responsible for collecting and securing evidence at the scene?

Assistant Chief Paul Connelly responded that to ensure the integrity of the investigation is that scene needs to be secured as quickly as possible. SDPD will secure that scene, have supervisor's arrive on scene immediately, coordinate freezing the scene, identify witnesses, separate witnesses, identify any evidence, make sure that evidence is visibly identified and protected, then get a safety statement from the subject officer. A notification process is in place where SDPD Watch Commander will notify the Sheriff's Department and the Sheriff's Department will respond to all SDPD homicide teams. SDPD, Sheriff's Department and Chula Vista have on call homicide teams that are required to respond within one hour. Homicide teams will arrive in one hour and they will receive a briefing from the SDPD Sergeant that was on scene. The Sheriff's Department will then take over that investigation. San Diego Sheriff's Crime Laboratory/ Crime Scene/Specialist/Criminalist will respond to San Diego's Sheriff Homicide team. The Homicide team would collect the evidence and process evidence in own crime laboratory. Only evidence handled by SDPD is immediately after the scene where SDPD officers would preserve the evidence.

CPP Commissioner Robin Spruce stated that in this meeting, Commissioners, CLERB and public comments from attendees pointed out that there is quite a bit of frustration around what was discussed because the public was not consulted or informed as this process was ongoing. Does the Department have any

willingness now to potentially have a couple of Open Forums for community members to comment and is the Department open to potential changes to what SDPD puts forward?

Assistant Chief Paul Connelly responded that SDPD is always willing to meet with the community to present how SDPD does things and answer any questions or concerns. Police Chief David Nisleit has been approached by some concerned citizens and has taken the time to explain the MOU, the process and the “why” SDPD did this.

CAB Executive Director Gerald Brown asked who is also on the scene doing investigations? Is it just the Sheriff’s Department or does SDPD do the investigation? Does the DA or Department of Justice (DOJ) also come along? Does DOJ investigate during the OIS?

Assistant Chief Paul Connelly responded there are a lot of different entities that respond to an OIS. In the scenario that has been discussed, the Sheriff, the DA, and the City Attorney would arrive on the scene. SDPD would have an Internal Affairs Sergeant arrive to liaison with the Sheriff’s Homicide team to look at any policy or procedure type violations. The training department also responds to Internal Affairs to make sure there weren’t any issues with training practices.

CAB Executive Director Gerald Brown asked if the SDPD Homicide team will mirror its investigation with the Sheriff’s Department?

Assistant Chief Paul Connelly responded in the negative. The SDPD Homicide team will not do a parallel investigation. They are simply there to make sure things go smoothly with the transition since this is a new MOU. However, it is not uncommon for SDPD to do investigations for other agencies.

CPP Chair Brandon Hilpert added that at some point in the future, once the Commission has its implementation ordinance approved by the City Council and CPP has hired its investigators, there will be a parallel investigation by the Commission, by CPP investigators and this will most likely be parallel investigations, but as discussed, an additional MOU with the Sheriff and possibly SDPD would be needed. The goal is to have the Commission perform its own independent investigations.

CPP Commissioner Nancy Vaughn referred to the California Department of Justice on page 3 of MOU. She stated that there is a reference in the paragraph that starts “incidents meeting the criteria, once DOJ is notified, responds and determines the incident has met the qualifications” and that DOJ will take over the investigations. How and when does that happen?

Assistant Chief Paul Connelly responded that there are a lot of layers to these investigations. A year ago, Assembly Bill 1506 was passed, which is what SDPD is referring to that went into effect last July 1st. It was put in place by DOJ and the Attorney General’s office. When SDPD had incidents where

officers shoot and kill an unarmed suspect, that is a qualifying AB 1506 OIS incident. At that point, when SDPD identifies that has occurred and shows up to the scene, SDPD calls DOJ and preserve the scene. DOJ sends its independent investigators for that type of shooting incident. In this case, neither San Diego PD, Sheriff's Office or Chula Vista Police Department would be the lead investigating agency in this type of incident.

CAB Chair Samantha Jenkins stated that the MOU that was released states that the lead case agents from each investigative team will confer to ensure investigatory needs. Earlier it was mentioned that all local or regional agencies employ generally the same investigative practices. What is it that they would need to confer on if that is the case?

Assistant Chief Paul Connelly responded that it is hard to predict what an investigative team might need. But SDPD is anticipating, if for instance, SDPD went up to Oceanside to handle an OIS- SDPD would need a liaison or investigative aide from that agency to help provide SDPD with resources and facilities to process: the officers who are involved with the shooting, the suspects, conduct interviews, and bring wellness team in to make sure officers are being taken care of from a mental stand point. This would entail any resources SDPD may not have because of the distance from police headquarters.

CAB Chair Samantha Jenkins asked what this new process would look like as it relates to a release of information to the public regarding OIS's within the last year or two. SDPD appears to be making a better effort in releasing information to the public in a timely fashion or releasing body cam footage in a responsive fashion. Looking at the MOU, it states that agencies would endeavor to release audio and video evidence from an incident within 45 days of the incident. Endeavor doesn't speak to "may, will or shall". What will the transparency and the readiness to share that kind of information with the public would look like?

CAB Chair Samantha Jenkins further stated that given this course of action as CAB was told, was prompted by pending legislation that did not pass in the form of AB 594. What were the policing agencies trying to either preempt or respond to subsequent to this action?

Assistant Chief Paul Connelly responded that by law SDPD has 45 days to release the videos, but the Chiefs in this county are committed to releasing those videos as soon as possible to help satisfy community concerns and to know exactly what happened. However, these investigations are complex and takes time to get all facts and video footage. SDPD tries to get video's out within 7-10 days. This can vary from time to time due to the complexity of the situation. The reason the word "endeavor" was used is because there are some exclusions listed under video and audio evidence where there are situations by law where SDPD wouldn't have to release video. Those situations are if it will substantially interfere with an active criminal investigation, safety of witnesses, or violate reasonable expectations of

privacy.

Executive Assistant Chief Chris McGrath added there was discussion on the Carotid Restraint where people in California were talking about how agencies need to get rid of that technique when it comes to getting people in custody. It created a discussion with law enforcement agencies and Chief David Nisleit wanted this conversation. He was the first one in the County to remove that technique. The same thing with this MOU. These discussions were taken place in Sacramento. When SDPD heard about the discussions, SDPD started to have these conversations and consider is this something we should be doing and SDPD is doing it.

Chair Commissioner Brandon Hilpert stated that the Commission and CAB make recommendations to SDPD based upon the community. He clarified that the Carotid Restraint was one of the recommendations. The CRB/CPP made recommendations 3 years ago to have the Carotid Restraint discontinued and SDPD chose not to implement CPP's recommendations. SDPD accepts about 85% of CPP's recommendations and implements them, and if SDPD does not implement those recommendations they provide explanations as to why. CPP has been transparent and will put all recommendations online and SDPD's responses to CPP's recommendations online.

CPP Commissioner Robin Spruce stated that SDPD mentioned best practices. She is curious to what other avenues explored for this oversight. Did SDPD look at any other models other than sharing duties amongst people within the same County?

Executive Assistant Chief Chris McGrath responded that San Diego and the County of San Diego is one of the first counties that has done this. There is no other option when investigating an OIS, which is a criminal investigation. Somebody must investigate it. It would either be Sheriff's, Oceanside, or SDPD.

CPP Commissioner Steve Hsieh asked when is this new practice going to take effect? On March 8<sup>th</sup>, 2022 a lady was fatally shot dead by three Sheriff deputies and one SDPD officer. Is this case going to be investigated under this new practice?

Assistant Chief Paul Connelly responded in the negative. The MOU doesn't go into effect until May 1<sup>st</sup>, 2022. It will be incidents after that date.

#### IX. PUBLIC COMMENT:

*Attendee Laila Aziz asked (56:39), now that Chula Vista and the Sheriff will be investigating the OIS's how is that going to interact with all of the work we did for the Police Commission in San Diego, when we have no authority over them, legally? Second question is, who is paying for this? Where is this pot of money coming from, that now the San Diego Sheriff is going to investigate the SDPD OIS? Is this a grant? Has money been moved? Has money been allocated? Is there extra money and who*

*authorized that? Third question is did SDPD do a meet and confer? What other entities are going to be affected by this change that SDPD has done? What other agencies, county and city departments are going to be affected? Was there a meet and confer before this was done?*

Assistant Chief Paul Connelly responded that the CRB and CPP will have the same review authority for the investigation and any administrative violations that may have occurred during that, so nothing will change in that regard. SDPD doesn't anticipate spending any additional money because of this MOU. Lastly, the SDPD Police Officer Association was consulted early on, both with Board members and the Attorneys and they did not have any issue with it.

CPP Chair Brandon Hilpert added that there is one concern with the investigations. CPP can work with Internal Affairs before that case is closed to add other findings, CPP can do that. The process that it is now, since CPP doesn't have that relationship with the Sheriff's office, they will close out the report after its completed and not be open to any feedback or questions from the Commission. CPP's concern is to have the process stay as much the same as possible. CPP would have to come up with an MOU with the Sheriff's Department and see if they are willing to keep that investigation open until CPP is able to review it or until CPP conducts its own independent investigation. If CPP disagrees, they cannot do an independent discipline on an officer if they were not within policy. Which is kind of taking away power from the Commission on the review process.

Assistant Chief Paul Connelly used as an example a case where an officer from SDPD got involved in a shooting. The Sheriff's office will conduct the criminal investigation. They will not conduct the administrative investigation. SDPD Internal Affairs will still conduct the administrative investigation. The Shooting Review Board investigation will be conducted by SDPD and would be readily available to the CPP.

CAB Chair Samantha Jenkins added how that supports transparency, CAB already knows that the community was not brought to the table to be a part of the conversation and it seems like POA leadership wasn't fully involved in the conversation either. It brings the conversation back around to transparency and collaborative process. Are we being authentic when we claim we want to pursue that on behalf of the Police department and community?

Executive Assistant Chief Chris McGrath responded the POA President was not aware or given details, but that does not mean the rest of POA President's Board wasn't kept up to speed on what SDPD was doing or intending on doing. At the time, POA President was a board member not the President of the board, so it's unlikely he received all the information. Now as the new POA President, he was provided with some information. Executive Assistant Chief Chris McGrath reiterated there was a discussion and POA was aware of this.



*Attendee Laila Aziz commented (1:05:19) that the Police Department knew everything we were doing with the Commission's Ordinance and there still had to be a meet and confer. Hopefully there is something or someone they can legally do, to ensure they have to start this process over, include the correct people and then have transparency. The biggest fear, as a community member, is that there isn't anything legally documented that says the Sheriff must follow the process that SDPD has to follow with the new independent Police Commission. Seeing that down the line as a barrier of other things and it doesn't matter if the exact issue that the officers spoke about is covered, everything must be covered. If the Sheriff can say "no" they've never signed off to that and not legally obligated to do that, but the Police Department is, then there is an issue. Hoping that someone will make this stop, using the same loopholes SDPD used on us like meet and confer, and start again to try to get this right and not let the communities' power be taken away.*

*Attendee Kate Yavenditti (1:08:46), with Women Occupy San Diego and the National Lawyers Guild, commented on all the talk of transparency and accountability is total nonsense. The community needed to be involved in this. It's a reminder of the same thing that SDPD has done with the protest policy when it was slammed it out and without any conversation with people who are actually involved in demonstrations in protest, and this is the same thing. There is no excuse for SDPD for not involving the experts in investigations of CPP and CLERB. Agreeing to Mr. Parker, this should have involved the oversight agencies and other community people who are involved and working on this issue. This shows nothing but content for the oversight agencies and for the community and it's a done deal and there is a signed MOU at this point. SDPD can listen to the community and the expressed outrage, but this is the history of SDPD and will do what they're going to do. Having confidence in CPP will do the best they can to get the right kind of MOU, and once they get their independent investigators to do the right kind of thing. Again, this should not how SDPD should be responding to the community and be dealing with these issues.*

*Unknown Attendee (1:10:42) question from the chat is inquiring how CPP will bring Chula Vista into conversations and be able to ask questions of them or will those engagements be limited to just reading reports?*

**CPP Chair Brandon Hilpert clarified that figuring out what the next steps are is something the CPP will discuss in its CPP Open Session meeting on April 26<sup>th</sup>. Once CPP's Legal Counsel is fully on board and able to participate in the meetings. CPP will possibly need to do an MOU with every agency that would be touching any OIS investigation.**

**X. DISCUSSION OF THE MEMORANDUM OF UNDERSTANDING (CPP CHAIR HILPERT)**

**CPP will need to consult with the CPP's Outside Counsel and get feedback on what CPP can do. Additionally, the OIS reports would still contain the same amount of information CPP has been getting from SDPD. Due to recent laws, a lot of these OIS reports (redacted) can be released to the public to provide transparency.**

## XI. CLOSING REMARKS/NEXT STEPS

CPP 1<sup>st</sup> Vice Chair Doug Case agreed in concept in what the Departments and other agencies around the County did, but he does not think its best practice to have a law enforcement agency investigating themselves. It is necessary to have a law enforcement agency investigate an OIS to bring criminal charges. CLERB Paul Parker commented that the agencies not involving the public and oversight agencies if they are trying to build public's trust and build transparency. It's critically important that SDPD involve CPP in the process. CPP will be doing independent investigations and its role is going to change substantially. CPP will need an MOU with all agencies that are doing the investigations. The recent MOU, for CLERB and Sheriff's department, allows access to incident scenes with specific conditions. CPP's MOU needs to be much broader than that in terms of cooperation between the investigative agency and CPP's own investigators. The next step is to develop its own MOU's with investigative agencies.

CAB Chair Samantha Jenkins commented on issues regarding the community engagement piece of this whole process. She noted the importance of building relationships between the SDPD and the community. All parties have agreed to come to the table of some form or other to support initiatives as it relates to community-based policing, accountability, policy development, transparency. This will significantly impact the community. She reiterated that this was not what CAB agreed to and how it was supposed to look. She hopes that a level of personal accountability as well as public accountability governs future decision making, future policy implementation and roll out strategy. If SDPD would like CAB's support in helping them build a relationship with the community then SDPD would have to support CAB by providing information and the opportunity to provide authentic consultation when decisions are being made.

*Public Comment from attendee DeAndre Brooks (1:21:40) commented and reiterated that when it comes to the community engagement portion, it seems there was no community engagement. Every time we come back around to that and address that this evening San Diego PD has no response, they don't even look engaged when individuals are speaking and telling exactly what's going on and how the community feels. Been watching how SDPD has been talking to each other and looking down at paperwork and not taking into consideration what's really being said here. Kind of letting things pass and not speaking to it. But the different things SDPD are responding to is that it's a long process or it's this or that, but when it comes down to community engagement portion, SDPD has nothing to say. Basically, being said that this is already done, or this is already going to be implemented and we don't care. That is the energy SDPD is giving off when not paying attention and not listening when people are speaking like this. So, shame on you. I'm done.*

## XII. ADJOURNMENT: The meeting adjourned at 7:30pm.

SAN DIEGO COMMISSION ON POLICE PRACTICES RESOLUTION AUTHORIZING AND RATIFYING THE CONTINUANCE OF TELECONFERENCED PUBLIC MEETINGS PURSUANT TO GOVERNMENT CODE 54953

WHEREAS, international, national, state, and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2," and the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19, ("COVID-19"); and

WHEREAS, on January 30, 2020, the World Health Organization ("WHO") declared a Public Health Emergency of International Concern as a result of the COVID-19 virus. On January 31, 2020, the United States Secretary of Health and Human Services also declared a Public Health Emergency of the COVID-19 virus; and

WHEREAS, on February 14, 2020, the San Diego County Health Officer declared a Local Health Emergency as a result of the COVID-19 virus, which was subsequently ratified by the Board of Supervisors on February 19, 2020, and recognized by the City of San Diego; and

WHEREAS, on March 4, 2020, Governor Newsom issued a Proclamation of State of Emergency ("State of Emergency") pursuant to section 8625 of the California Emergency Services Act, in response to the COVID-19 pandemic; and,

WHEREAS, on March 17, 2020, Governor Newsom issued Executive Order N-29-20 that suspended the teleconferencing rules set forth in the California Open Meeting law, Government Code section 54950 et seq. (the "Brown Act"), provided certain requirements were met and followed; and,

WHEREAS, on June 11, 2021, Governor Newsom issued Executive Order N-08-21 that clarified the suspension of the teleconferencing rules set forth in the Brown Act, and further provided that those provisions would remain suspended through September 30, 2021; and,

WHEREAS, on September 16, 2021, Governor Newsom signed AB 361 which provides that a legislative body subject to the Brown Act may use revised teleconference rules provided under section 53593(e) if the legislative body makes certain findings and those findings are reconsidered every thirty (30) days, as applicable; and,

WHEREAS, on September 20, 2021, Governor Newsom issued Executive Order N-15-21 that suspended AB 361 through September 30, 2021; and,

WHEREAS, the proclaimed State of Emergency remains in effect; and,

WHEREAS, the California Occupational Safety and Health Standards Board adopted California Code of Regulations, Title 8, Section 3205 which states, "particles containing the virus can travel more than six feet, especially indoors, so physical distancing, face coverings, increased

ventilation indoors, and respiratory protection decrease the spread of COVID-19, but are most effective when used in combination;” and

WHEREAS, on or about September 23, 2021, Dr. Wilma Wooten, the County of San Diego’s Public Health Officer issued a letter recommending the utilization of teleconferencing options for public meetings as an effective and recommended social distancing measure to facilitate participation in public affairs and encourage participants to protect themselves and others from the COVID-19 virus (the “Teleconferencing Recommendation”); and

WHEREAS, in the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, this legislative body deems it necessary to take action for purposes of utilizing the provisions of AB 361 related to teleconferencing;

WHEREAS, social distancing measures have been imposed and implemented by the State of California to mitigate the spread of COVID-19; and

WHEREAS, the San Diego Commission on Police Practices believes the spread of COVID-19 poses an imminent risk to the health and safety of in person meeting attendees; and

WHEREAS, the San Diego Commission on Police Practices is committed to open and transparent governance in compliance with the Brown Act; and

WHEREAS, the San Diego Commission on Police Practices is conducting virtual meetings by way of telephonic and/or internet-based services as to allow members of the public to fully participate in meetings and offer public comment.

NOW THEREFORE, BE IT RESOLVED, that the recitals set forth above are true and correct and fully incorporated into this Resolution by reference.

BE IT FURTHER RESOLVED, that the San Diego Commission on Police Practices recognizes that a State of Emergency in the State of California continues to exist due to the COVID-19 pandemic.

BE IT FURTHER RESOLVED, that the San Diego Commission on Police Practices recognizes that social distancing measures remain recommended by state and local officials.

BE IT FURTHER RESOLVED, that the San Diego Commission on Police Practices finds that holding in-person meetings would present imminent risks to the health or safety of attendees due to the cause of the State of Emergency and that the cause of the State of Emergency directly impacts the ability of the governing board members to meet safely in person.

BE IT FURTHER RESOLVED, the San Diego Commission on Police Practices authorizes and ratifies the use of teleconferencing for all meetings, including meetings of its ad hoc or standing committees, in accordance with Government Code section 54953(e) and all other applicable provisions of the Brown Act, for a period of thirty (30) days from the adoption of this resolution, or such a time that the Commission adopts a subsequent resolution in accordance with

Government Code section 54953(e)(3). The Interim Executive Director is directed to return no later than thirty (30) days after the adoption of this Resolution with an item for this legislative body's reconsideration of these findings.

BE IT FURTHER RESOLVED, the Interim Executive Director is directed to take any other necessary or appropriate actions to implement the intent and purposes of this Resolution.

BE IT FURTHER RESOLVED, this Resolution shall take effect immediately upon its adoption.

Adopted this \_\_\_\_\_ day of the month of \_\_\_\_\_ in 2022.

Motion made by: \_\_\_\_\_

Second made by: \_\_\_\_\_

Commissioners voting "yes" \_\_\_\_\_

Commissioners voting "no" \_\_\_\_\_

Commissioners abstaining \_\_\_\_\_

Commissioners not present \_\_\_\_\_

*Duane E. Bennett*

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May 9, 2022

Sharmaine Moseley  
Interim Executive Director  
Commission on Police Practices  
1200 Third Avenue – 9<sup>th</sup> Floor, Suite 924  
San Diego, California 92101  
RE: Closed Session Meetings and Brown Act Requirements

Dear Ms. Moseley:

This is in regards to conducting closed session meetings under the Brown Act. Although I am unfamiliar with exactly how the Commission has managed meetings and closed sessions in the past, I offer the following guidance to ensure proper compliance with the requirements of the Brown Act.

In light of the Commission's new independent and investigatory authority, it should be expected that there will be increased scrutiny regarding compliance with the Brown Act and how Commission meetings are conducted. Moreover, non-compliance with the Brown Act may result in invalid actions or decisions, legal actions to cure, equitable relief and, in some situations, the filing of misdemeanor charges.

### **1. The Brown Act In General**

The Ralph M. Brown Act is California's "sunshine" law for local government. It is found in the California Government Code commencing at Section 54950. In general, it requires local government business to be conducted at open, transparent and public meetings, except in certain limited situations. The Brown Act is based upon state policy that the people must be informed so they can maintain control over their government.

The requirements of the Brown Act apply to "legislative bodies" of local governmental agencies, such as the Commission or CPP. The term "legislative body" is defined to include the governing body of a local agency (e.g., the city council) and *any commission, committee, board or other body of the local agency, whether permanent or temporary,*

decision-making or advisory, that is created by formal action of the city council or legislative body.<sup>1</sup>

Standing committees of a legislative body, or the CPP, which consist solely of less than a quorum of the body, are subject to the requirements of the Act. Some common examples include policy subcommittees of the city council, or commissions, that have either some “continuing subject matter jurisdiction” or a meeting schedule fixed by formal action of the legislative body. It should be noted that standing committees exist to make routine and regular recommendations on a specific subject matter. Unlike ad hoc committees, standing committees survive the resolution of any one issue or matter, and continue to have a role in the structure of government.

On the other hand, the Brown Act does not necessarily apply to *ad hoc* committees consisting *solely* of less than a quorum of the legislative body, provided that:

- a) The ad hoc committee is composed solely of members of the legislative body;
- b) The ad hoc committee does not have some “continuing subject matter jurisdiction”;
- c) The ad hoc committee does not have a meeting schedule fixed by formal action of a legislative body.

The Brown Act does apply to an ad hoc committee if the committee invites others outside of the legislative body, or members of the public, to the meetings. This appears to be the case with the CPP ad hoc transition committee meetings. In such cases, the meetings are subject to the Brown Act noticing and public participation provisions. Generally, ad hoc committees only serve a limited or single purpose, and are dissolved when their specific task is completed.

The central provision of the Brown Act requires that all “meetings” of a legislative body be open and public, consistent with transparency and accountability to the public. The Brown Act definition of “meeting” is a very broad definition that encompasses virtually every gathering of a majority of Commission members and would include:

“Any congregation of a majority of members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.”

There are some noted exceptions to the meeting definition where the business of the body is not being conducted, such as where a majority of members attend a seminar and conference and do not discuss business.<sup>2</sup> In this regard, closed sessions meetings are subject to the agenda and noticing provisions of the Brown Act.

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<sup>1</sup> Cal. Gov’t Code § 54952.

<sup>2</sup> Cal. Gov’t Code § 54952.2.

## **2. Notice and Agendas Regarding Closed Sessions**

There are several provisions of the Brown Act that ensure that the public's business is conducted openly. As many are aware, there are the requirements that legislative bodies post agendas prior to their meetings and that no action or discussion may occur on items or subjects not listed on the posted agenda.<sup>3</sup> It is axiomatic that the Commission has been posting agendas prior to its public meetings.

The Brown Act allows a legislative body, such as the Commission, to convene a closed session in order to meet privately with its legal counsel, police department or advisors on specifically enumerated topics. Examples of business which may be conducted in closed session include personnel evaluations, personnel discipline, labor negotiations, pending litigation, etc.<sup>4</sup> On the other hand, politically sensitive issues are not lawful reasons for a closed session discussion.

It is important that the Commission follow the same practice when noticing and agendizing closed sessions. It appears that the Commission's closed session agenda notices are properly publicly posted no less than 72 hours prior to the closed session meeting. Best practices dictate that meetings involving closed sessions should first be opened, or convened, in public as would any regularly scheduled meeting. The meeting should also allow a time for public comment prior to the Commission excluding the public or retreating to closed session. In certain instances, members of the public might have a comment reflecting on a closed session item.

The Brown Act requires that closed session business be particularly described on the public agenda. There is "safe harbor" language that encourages legislative bodies to use similar closed session agenda descriptions. In this regard, the Commission should describe the nature of the closed session in a particular manner so that the public knows why the meeting is being conducted in private.

The Commission's current agendas properly refer to the basis of the closed session, and make reference to Government Code 54957. It might be helpful to include language closer to the safe harbor language in the Government Code when describing the purpose of the closed session. In most instances, the language on the Commission's closed session public agenda could state something similar to the following, and *should be announced by the agency or general counsel* prior to entering the closed session:

### ***Closed Session***

***PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE PURSUANT TO GOVERNMENT CODE SECTION 54957:***

*The Commission will meet in closed session pursuant to Government Code Section 54957 to discuss complaints, charges, investigations and discipline involving San Diego Police*

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<sup>3</sup> Cal. Gov't Code §§ 54954.2, 54955 and 54956.

<sup>4</sup> See Cal. Gov't Code §§ 54956.7 – 54957; §§ 54957.6 and 54957.8.



*Department employees, and information deemed confidential under Penal Code sections 832.5-832.8 and Evidence Code section 1040.*

After the closed session is concluded, the Commission must reconvene the public meeting and publicly report any specified closed session reportable actions and the vote taken on those actions.<sup>5</sup> In the alternative, the Commission could immediately post a public notice describing any reportable action from the closed session, or state that there is no reportable action. There are limited exceptions for reportable actions involving certain kinds of litigation, and to protect privacy or confidentiality. In regards to the Commission's review of personnel actions, complaints and/or discipline under Penal Code sections 832.5 – 832.8, the reports from closed session may state that:

*“The Commission met in closed session pursuant to Government Code section 54957 to discuss personnel complaints, charges, investigations and discipline. There is no reportable action.”*

On the other hand, where the Commission determines that policy recommendations should be made based upon closed session reviews, etc., there may be a need to report the findings or recommendations out of closed session, while preserving peace officer confidentiality under Penal Code sections 832.5-832.8.

It is usually left to the agency or general counsel to report final, or formal, actions from closed session consistent with the requirements of the Government Code.

### **3. Teleconferencing and Virtual Meetings**

The Commission continues to hold meetings virtually and through teleconferencing means in light of the Covid pandemic. In March 2020, and in response to the public health threat caused by Covid-19, Governor Newsom issued Executive Orders N-25-20 and N-29-20 (Executive Orders) suspending provisions of the Brown Act. The Executive Orders allowed local jurisdictions to hold teleconferenced public meetings, and for members of the public to observe and address the legislative bodies during teleconferenced meetings.

On September 16, 2021, the Governor signed Assembly Bill 361 (A.B. 361) into law. A.B. 361 amended the Brown Act to codify the temporary rules established by the Executive Orders and provided a mechanism for the San Diego City Council, and City boards and commissions to continue teleconferencing during a proclaimed state of emergency related to the pandemic.

The teleconferencing option in A.B. 361 applies to all legislative bodies in the City, defined in the Brown Act, including the City Council and commissions, committees,

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<sup>5</sup> Cal. Gov't Code § 54957.1.

boards and other bodies, “whether permanent or temporary, decision making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body.”<sup>6</sup>

As is the case with Commission meetings, during any teleconferenced meeting authorized by A.B. 361, the legislative body must allow members of the public to access the meeting and provide them an opportunity to address the legislative body directly.<sup>7</sup> As occurs in teleconferenced meetings of the Commission, members of the public must be given a real-time opportunity for public attendance by a call-in or internet-based service option.<sup>8</sup>

While teleconferencing pursuant to A.B. 361, the Commission may not take action during a technology disruption that prevents broadcasting to the public through the provided call-in option or internet-based service option or during a disruption within the local agency’s control that prevents members of the public from offering public comments.<sup>9</sup> When an internet-based service option, such as Zoom or the call-in connection is disrupted, the Commission must stop the meeting until connectivity and real-time public participation is restored.

It is my understanding that the City Council has resumed in person meetings. Therefore, and out of an abundance of caution since the Commission chooses to continue teleconferencing pursuant to A.B. 361, the Commission should adopt the attached resolution and must reconsider the circumstances of the emergency and need for continued teleconferencing every 30 days after thereafter.<sup>10</sup>

The attached resolution should be included on the Commission and ad hoc committee agendas entitled:

*“San Diego Commission on Police Practices Resolution Authorizing and Ratifying the Continuance of Teleconferenced Public Meetings Pursuant to Government Code 54953”*

During such reconsideration, the Commission must make findings that either: (i) the state of emergency continues to “directly impact the ability of members to meet safely in person”; or (ii) state or local officials continue to impose or recommend measures to promote social distancing. Social distancing measures could include guidance from state or county officials that require or recommend that the City promote social distancing. This may be done by placing on the matter on the agenda, and re-adopting a resolution declaring a state of emergency every 30 days.

The Commission may also include similar information and statements on its regular agenda as does the Ethics Commission regarding teleconferencing.

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<sup>6</sup> Cal. Gov’t Code § 54952.

<sup>7</sup> Cal. Gov’t Code § 54953(e)(2)(B).

<sup>8</sup> Cal. Gov’t Code § 54953(e)(2)(B).

<sup>9</sup> Cal. Gov’t Code § 54953(e)(2)(D).

<sup>10</sup> Cal. Gov’t Code § 54953(e)(3).

#### **4. Training of New Commissioners on Brown Act Requirements**

It goes without saying that all new commissioners should be immediately trained in, among other things, aspects of the Brown Act and open meeting laws. In particular, it is important for commissioners to avoid seriatim, or inadvertent serial, meetings and to preserve the confidentiality of information discussed in all closed sessions. This will become even more important as the CPP takes on investigatory responsibilities and provided access to various peace officer complaint and personnel file information.

As noted above, violations of the Brown Act could result in litigation and invalidate various Commission actions and decisions. I would be happy to assist in providing training in this regard, and in developing training materials for commissioners and/or staff.

Please feel free to contact me if you have further questions or require more information in this matter.

Very truly yours,  
/s/ Duane E. Bennett