

**DRAFT**

**RECOMMENDED BY THE AD HOC TRANSITION COMMITTEE, 2/1/21**

**MEMORANDUM**

TO: Public Safety and Livable Neighborhoods Committee  
San Diego City Council

FROM: Brandon Hilpert, Chair  
Commission on Police Practices

DATE: February 3, 2021

SUBJECT: PS&LN COMMITTEE AGENDA ITEMS ON FEBRUARY 10, 2021 RELATED TO  
THE COMMISSION ON POLICE PRACTICES

The Secretary of State chaptered Measure B with an effective date of December 18, 2020, establishing the Commission on Police Practices, superseding the Community Review Board on Police Practices (CRB). According to Charter Section 41.2, enacted by the ballot measure, the Commission is composed of the members of the former CRB serving at the time Measure B took effect, and they will continue serving until the City Council formally appoints members to the Commission in accordance with an implementation ordinance described in Section 41.2.

The new Commission adopted interim bylaws at its meeting on January 26, 2021, with permanent bylaws to be adopted by the new Commission Members once appointed.

The CRB/Commission Outreach Committee conducted four well-attended community forums/roundtables between November 2020 and January 2021. A synthesis of the input received resulted in the 10 Guiding Principles and corresponding recommendations listed in the attached report. The Commission has endorsed the 10 Guiding Principles and took the community input into consideration in developing our own recommendations.

At a special meeting of the Commission held February 2, 2021, the recommendations included in this memorandum were approved.

**Appointment of the Executive Director**

Section 41.2 states that the City Council must appoint and establish the initial compensation for the Commission’s Executive Director, who serves at the direction and will of the Commission. We recommend the appointment of the current Executive Director, Sharmaine Moseley, to serve in an interim capacity until new Commissioners are formally appointed. The Commission would then be able to conduct a national search for a permanent Executive Director.

**Implementation Ordinance and Standard Operating Procedures**

Charter Section 41.2 specifies the City Council must, by ordinance, establish the number, term length, qualifications, and method of appointing members of the Commission, and

define the circumstances and process under which the City Council determines there is cause for removal of a member of the Commission.

The Commission must review and evaluate all factual findings and evidentiary conclusions of the Police Department arising from investigations of police misconduct. Measure B requires that the terms “police misconduct” and “police officer misconduct” be defined in the implementation ordinance.

In addition to the mandatory duties and discretionary powers defined by Charter Section 41.2, the City Council may authorize additional powers for the Commission, consistent with state and federal law.

Section 41.2 also states that the City Council may establish rules and procedures for the Commission. The implementation ordinance for the former CRB (Municipal Code Sections 26.1101 – 26.1106) referred to such rules and procedures as Standard Operating Procedures.

### **Interim Standard Operating Procedures**

We recommend approval of the attached Interim Standing Operating Procedures (SOP). The SOP is based on the CRB’s SOP, as adopted by the City Council in July 2018, with revisions necessitated by the passage of Measure B. The purpose of the Interim Operating Procedures is to allow the case review and policy recommendation functions of the Commission to continue uninterrupted while new Standard Operating Procedures are being developed and adopted.

### **Composition, Qualification and Appointment of Commission Members**

We make the following recommendations or options for inclusion in the implementation ordinance:

1. There should be 25 Commission Members, including two designated as Youth Members.
2. The Youth Members must be [18 – 24 or 17 – 24] years old at the time of their appointment. We also strongly encourage the new Commission to establish a Youth Advisory Committee for youth 13-18 years old. This committee would not engage in case review, but would advise the Commission and conduct youth outreach and education activities.
3. All Commissioners, including the Youth Members, should serve two-year terms. Terms should be staggered so that 12 are appointed in even-numbered years and 13 are appointed in off-numbered years. Commissioners should be limited to a total of eight years of service.
4. Commissioners should serve until their successors are appointed.
5. Commissioners should be a resident of the City of San Diego at the time of their appointment or reappointment.

6. Current or former law enforcement members [from an agency in San Diego County] and their spouses, parents, sons, daughters, brothers, sisters, domestic partners, or persons involved in a dating relationship with law enforcement members should be ineligible to serve on the Commission. Law enforcement includes police officers, deputy sheriffs, and prosecutors. [Question: Should this include civilian members of police or sheriff departments?]
7. A community-based selection committee should nominate Commissioners who would be confirmed/appointed by the City Council. The selection committee should have nine members, two would be current or former Commission members and the other seven would be determined by community organizations not affiliated with law enforcement, to be designated by the Commission. A new selection committee should be constituted each year to allow for greater participation by multiple community organizations.
8. To ensure diverse representation, the selection committee should consider some combination of the following: (1) City Council District maps, (2) SDPD Division/Beat maps, (3) historical data on allegations made against SDPD officers, and (4) historical data on enforcement stops. In addition, the selection committee should attempt to include a variety of diversities including, but not limited to, gender, age, race and ethnicity, religion/faith, the unsheltered, occupation (e.g., mental health professionals, attorneys), socio-economic status, veterans, the disabled, LGBTQ, immigration status, and life experiences (including interactions with law enforcement).
9. A Commission Member may also be removed for cause including but not limited to the following reasons: (1) misuse of position as a Commission Member, (2) misuse of police-issued documents; (2) violation of state laws of confidentiality; (4) misconduct or conviction of a crime that impedes the member's ability to serve as an effective and impartial Commission member; (5) unexcused absences from at least two consecutive meetings or by failure to complete case review as assigned by the Executive Director; (6) violation of the NACOLE Code of Ethics; or (7) a conflict of interest. By a two-thirds vote, the Commission may recommend to the City Council that a member be removed. A hearing by the City Council shall occur within sixty (60) days of the receipt of the recommendation.
10. Nominations for vacancies caused by resignation or removal should be made by the community-based selection committee, to be confirmed/appointed by the City Council.

### **Definition of Police Misconduct**

In developing the required definition of police misconduct, we suggest the City Council consider this definition from Section 9.33 of the SDPD Policy Manual: "Misconduct means conduct that causes risk to the health and safety of the public or impairs the operation and efficiency of the Department or member or brings into disrepute the reputation of the member or the Department. The conduct could involve a violation of any law, statute,

ordinance, City Administrative Regulation, Department policy or procedure, act of moral turpitude or ethical violation. In this context misconduct involves a willful act done with a wrong intention and is more than mere negligence, error of judgment or innocent mistake.” It should also be clear that the definition includes both on-duty and off-duty conduct.

### **Other Authority to Be Assigned to the Commission**

As indicated, the City Council may by ordinance establish additional functions for the Commission. Several law enforcement civilian oversight bodies across the nation have established successful mediation programs. Mediation allows a person who filed a complaint about an officer to sit down with that officer and a third-party mediator to discuss their complaint and the interaction that led to it. Participation is voluntary for both the police officer and the complainant. It can be a particularly valuable process for all parties with regard to complaints regarding courtesy and service, and it is more cost effective than a formal investigation. While the development of such a program may not be an immediate priority for the new Commission, we ask that the implementation ordinance include it as an option. The mediation procedures developed would be subject to City Council approval and to a meet and confer process with the Police Officers Association.

### **Other Elements of the Implementation Ordinance**

The implementation ordinance should list the mandatory duties and discretionary powers of the Commission.

Per Charter Section 41.2, the Commission shall have the following mandatory duties:

1. Independently investigate all deaths occurring while a person is in custody of the SDPD, all deaths resulting from the interaction with an officer of the SDPD, and all SDPD officer-related shootings.
2. Receive, register, review and evaluate all complaints against SDPD officers, except that the Commission will not review and evaluate complaints where the complainant has requested that the matter be handled without investigation.
3. Review and evaluate all factual findings and evidentiary conclusions of the SDPD arising from investigations of police misconduct and all disciplinary decisions resulting from sustained findings.
4. Review and evaluate SDPD’s compliance with federal, state and local reporting laws and requirements.
5. Prepare and submit semi-annual reports to the Mayor and City Council regarding the exercise of the Commission’s duties and powers.

The Commission shall have the discretion to:

1. Conduct investigatory proceedings and subpoena witnesses.
2. Investigate complaints against SDPD officers (in addition to the required investigations stated above), unless the complainant has requested that the matter be handled without an investigation, provided that the Commission determines that the complaint arises from any one of the following:
  - a. an incident involving the use of force by a SDPD officer that resulted in great

- bodily injury
  - b. dishonesty by a SDPD officer including an allegation of perjury, filing false reports, and destruction, falsifying or concealing evidence
  - c. an incident that has generated substantial public interest or concern
  - d. an incident where the data shows a pattern of misconduct by a SDPD officer
  - e. an incident where the data shows a pattern of inappropriate policies, procedures or practices of the SDPD or its members
3. Review, evaluate and investigate allegations of inappropriate sexual conduct, physical assault or domestic violence by SPDP officers.
  4. Make recommendations to the SDPD on the discipline of individual officers about whom complaints have been made or about whom the Commission has conducted an investigation.
  5. Review and evaluate the policies, procedures, practices and actions of the SDPD.
  6. Make specific recommendations to the SDPD, the Mayor and the City Council on any policies, procedures, practices and actions of the SDPD.

Additionally, the implementation ordinance should include the following:

1. The process for issuing subpoenas and remedies for failure to comply or for providing false testimony.
2. The appeals process for sustained findings and discipline.
3. The role, selection and appointment of independent counsel.
4. Access to SDPD records necessary to conduct performance audits.
5. Authority for the Commission to establish its own bylaws and rules, consistent with the City Charter, the implementation ordinance, the Standard Operating Procedures and applicable state and federal laws.
6. Authority to refer any matter before the Commission to the grand jury, district attorney or other governmental agency that is authorized by law to investigate the activities of a law enforcement agency.

### **Permanent Standard Operating Procedures**

The City Council should adopt Standard Operating Procedures covering the following topics:

1. Processing of complaints and complaint categorization.
2. Evaluation and review of Internal Affairs investigations, including recommendations for changes to findings and additional findings where appropriate.
3. Determination of which cases to independently investigate
4. Investigation procedures for complaints.
5. Investigation procedures for officer-involved shootings and in-custody deaths.
6. Procedures to review, evaluate and investigate allegations of inappropriate sexual conduct, physical assault or domestic violence by SDPD officers.
7. Process for handling disagreements with SDPD findings.
8. Review and evaluation of Shooting Review Board reports.
9. Review and evaluation of disciplinary decisions and recommendations regarding discipline for sustained findings.
10. Preparation and publication of redacted case summaries.

11. Procedures for making policy recommendations to the SDPD and SDPD response.
12. Procedure for performance audits and SDPD response.

Attachments:

1. Proposed Interim Standard Operating Procedures
2. Report from the Community Roundtable Series

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