

Policy Committee Online Meeting

Thursday, July 1, 2021

5 p.m. – 6:30 p.m.

Zoom Webinar

Agenda

This meeting is open to the public. Please see the rules/procedures for submitting public comment and/or joining the webinar as an attendee at the bottom of the agenda. This meeting will be posted on YouTube the day after the meeting adjourns and can be accessed by clicking [here](#).

- I. Welcome/Call to Order
- II. Roll Call
- III. Approval of the Minutes from the February 25, 2021 Policy Committee Meeting
- IV. Non-Agenda Public Comment
- V. Unfinished Business (All tabled to address new business)
 1. Development of Third-Party Mediation (Nancy Vaughn)
This item is tabled until after the Commission on Police Practices is formally established/fully-funded.
- VI. New Business (Discussion/Action) Committee Chair Brandon Hilpert
 1. BWC Changes
Include additional officers required to have and use BWCs. (Add Watch Commander's office staff, eliminate exemption for plainclothes officers.) BWCs must be used (including for plainclothes officers) during searches.
 2. Use of Force Opinions (Action Item)
Requirements for UOF opinions to reviewed by supervisors
Review and approve proposed memo

3. Discrimination Policy
Discussion about proposing a stand-alone discrimination policy to replace “non-biased policing” policy
4. Review Homeless Encampment Sweep Procedures
Discussion regarding existing SDPD policies, review SD Sheriff information


VII. Adjourn

Materials Provided:

- CPP Policy Committee Minutes – February 25, 2021 DRAFT
- CPP Memo Re: SDPD Approval of Use of Force Opinions DRAFT

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:

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THE CITY OF SAN DIEGO
M E M O R A N D U M

Date: July ?, 2021
To: David Nisleit, Chief, San Diego Police Department
From: Brandon Hilpert, Chair, Commission on Police Practices
via Sharmaine Moseley, Interim Executive Director
Subject: **Approval of Use of Force Opinions**

During the review of a community generated Use of Force complaint, the Commission on Police Practices (CPP) read a Use of Force Opinion which essentially indicated that it is permissible for an officer to violate San Diego Police Department policy and procedures.

In this Use of Force opinion, the Use of Force Expert has independently changed SDPD Procedure 1.07 to now include “pre-assaultive cues” as a valid reason to utilize a taser contrary to the procedure. The term “pre-assaultive cues” is not listed as a valid reason to utilize a taser nor is this term used or defined in policy or procedure.

[SDPD Procedure 1.07 – Use of Taser](#), Section VI. A. 1. states (emphasis added, definitions of terms footnoted):

The Taser may be used on subjects exhibiting assaultive behavior¹ or life-threatening behavior², as defined in Department Procedure 1.04, Use of Force. The Taser may also be used to control actively resisting³ subjects reasonably believed to possess or have immediate access to a deadly weapon. Commands and warnings should normally be given, if feasible, prior to using the Taser.

¹ **Assaultive Behavior** – behavior that consists of aggressive physical opposition to being physically controlled and conveys a threat of injury to the officer; or, behavior that consists of a threat of attack conveyed through aggressive physical actions or aggressive physical actions coupled with verbal threats. Verbal threats alone do not constitute assaultive behavior. Assaultive behavior can be directed at the officer or others

² **Life-threatening Behavior** – behavior likely to cause serious bodily injury or death.

³ **Active Resistance** – physically evasive movements to defeat an officer’s attempt at control, including bracing, tensing, running away or verbally signaling an intention to avoid or prevent being taken into or retained in custody.

Not only does the Use of Force Opinion indicate an officer was within procedure (when per the letter of procedure, they were not), but it also changed the intent of the procedure. Although “assaultive behavior” clearly indicates that “verbal threats alone do not constitute assaultive behavior,” the Use of Force Opinion states that simply remaining silent (among other things) can be considered pre-assaultive.

Further, it is our understanding that there is no independent review or approval by supervisory staff of Use of Force Opinions before they are sent out on behalf of the Department. We see this as giving an in-service training officer far too much power and authority to dictate what is within or outside of policy and procedure.

The Commission, therefore, recommends that:

- Training Command Staff (lieutenant or captain) shall review, approve and sign all Use of Force opinions
- The police department’s City Attorney shall review all Use of Force opinions to ensure the opinion is legally valid, within existing procedure and appropriate given the circumstances
- Use of Force opinions shall include only facts available, not include potential scenarios that do not/did not exist nor narratives of what “could” happen

We find it concerning that SDPD is training officers to assume that an individual with their hands up could be pre-assaultive and attempting to “walk down” an officer. We frequently see “in the totality of circumstances” in reports, however this is always assuming the absolute worst-case scenario which is rarely reality. It is vital that officers fully assess a situation and not just assume that every situation will automatically devolve.

If you have any questions, please do not hesitate to contact me at BHilpert@sandiego.gov.

Brandon Hilpert, Chair
Commission on Police Practices

Digital Enclosure: [SDPD Procedure 1.07 Use of Taser](#)

cc: Honorable Mayor Todd Gloria
Jay Goldstone, Chief Operating Officer
Paola Avila, Chief of Staff
Chris McGrath, Executive Assistant Chief
Anthony Dupree, Captain, Internal Affairs
Wes Morris, Captain, Training
Matt Yagyagan, Deputy Director of Policy, Mayor’s Office

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David Nisleit, Chief, San Diego Police Department
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Chris Cameron, Outside Counsel, Commission on Police Practices
Members of the Commission on Police Practices

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