

COMMISSION ON POLICE PRACTICES

ONLINE MEETING AGENDA

Tuesday, February 22, 2022
Zoom Webinar

A majority of filled seats (10) on the Commission, with a minimum number of (7) Commissioners is needed to conduct business. If you cannot attend, please email the Interim Executive Director so we can plan accordingly.

CLOSED SESSION MEETING

4:00 p.m. – 5:30 p.m.

Commissioners and Staff Only

- I. Call to Order
- II. Legal Opinion(s) Request & Attorney/Client Privileged Response(s) (0)
- III. San Diego Police Department Feedback on Case Specific Matters Only
- IV. Shooting Review Board Reports (0)
- V. Category II Case Audit Reports (0)
- VI. Discipline Reports (8)
- VII. Case Review Team Reports (2)
- VIII. Case-Specific Recommendations to the Mayor (0)
- IX. Referrals to other governmental agencies authorized to investigate activities of a law enforcement agency (0)

Pursuant to California Government Code Section 54957 — To discuss community complaints brought against San Diego Police Department Officers under California Penal Code Section 832.7.

OPEN/PUBLIC SESSION MEETING

6p.m. – 8p.m.

Open to the Public

This meeting is open to the public. Click [HERE](#) to join/participate in this meeting at its scheduled time. Please see the rules/procedures for submitting public comment 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. CALL TO ORDER/WELCOME (Chair Brandon Hilpert)
- II. PURPOSE OF THE COMMISSION ON POLICE PRACTICES (CPP)
- III. ROLL CALL (Interim Executive Director Sharmaine Moseley)

- IV. APPROVAL OF MEETING MINUTES
 - A. MINUTES FROM CPP SPECIAL MEETING ON JANUARY 20, 2022
 - B. MINUTES FROM CPP OPEN SESSION MEETING ON JANUARY 25, 2022

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

- VI. **EDUCATIONAL TOPIC:** “AB 481 Acquisition and Use of Military Equipment – Draft SDPD Procedure”

Presenter: SDPD Captain Daniel Grubbs (20 mins)
Commander Officer of Operational Support

- VII. UNFINISHED BUSINESS (DISCUSSION/ACTION) (Chair Brandon Hilpert)
 - A. Commission Meetings in March (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

- VIII. NEW BUSINESS (DISCUSSION/ACTION) (Chair Brandon Hilpert)
 - A. **DISCUSSION:** Commission Preparation for City Council February 28th Meeting Re: Draft Implementation Ordinance

ACTION: Approval for Commission Cabinet to Draft a Group Presentation for Public Comment at City Council Meeting on February 28

 - B. **DISCUSSION:** Potential Process for the Selection of Interim Commissioners to the Commission on Police Practices

ACTION: Approval of Potential Process for the Selection of Interim Commissioners to the Commission on Police Practices

- 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

 - B. Outreach Committee (Patrick Anderson)
 - 1. Past Events/Virtual Meetings/Roundtable Discussions
 - 2. Upcoming Events/Outreach Opportunities

 - C. Rules Committee (1st Vice Chair Doug Case)

 - D. CPP Handbook Committee (1st Vice Chair Doug Case)
 - 1. Update – On Hold

- E. Policy Committee (Chair Brandon Hilpert)
 - 1. Items being Considered by Committee
 - a. Wellness/Psychological review for officers involved in OIS
 - b. Use of profane language as de-escalation tactic
 - c. Use of political or membership affiliation under uniform policy
 - d. Proposed BWC Buffering Enhancements

- 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 (1st Vice Chair Doug Case)
 - 1. Budget Update
 - 2. Staffing & Legal Counsel Update
 - 3. Draft Implementation Ordinance & Standard Operating Procedures Update
 - 4. Office Space Update

- X. CHAIR’S REPORT (Chair Brandon Hilpert)
 - A. Reminders for Commissioners
 - 1. 3rd Quarter (January 1st – March 31st) Volunteer Hours Report -All Commissioners log hours in for reporting purposes
 - 2. Requirement for Commissioner Committee Assignments
 - B. Scheduling CPP Former Member Appreciation/Acknowledgements
 - C. Update on Meetings with City Councilmembers
 - D. Update on Collaboration/Information Sharing with Statewide Oversight Groups
 - E. Update on CPP Joint Meeting with Citizens Advisory Board on Police Community Relations (CAB) Regarding CPE Data Study
 - F. Other Items/Reminders

- XI. EXECUTIVE DIRECTOR’S REPORT (Sharmaine Moseley)
 - A. Scheduling of Team Leaders Meeting with Cabinet
 - B. Caseload Update & Status of Case Reports
 - C. Update on Release of CPP FY2021 Statistics to Open Data Portal
 - D. Updates to CPP Website
 - E. Other Items/Reminders

- 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
 - B. Updates (Staffing in IA, Training, etc.)

XIII. COMMISSIONER RIDE-ALONG REPORTS

XIV. COMMISSIONER ANNOUNCEMENTS/COMMENTS


XV. ADJOURNMENT

Materials Provided:

- Minutes from Special Meeting on January 20, 2022 (DRAFT)
- Minutes from Open Session Meeting on January 25, 2022 (DRAFT)
- CPP FY23 Executive Budget Review Presentation on February 10, 2022
- Draft of Implementation Ordinance (Released 1.20.2022)
- Proposed Changes to Sections 26.1108 and 26.1109 (DRAFT)
- Potential Process for Selection of Commissioners

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:

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

Please click this URL to join. <https://sandiego.zoomgov.com/j/1613968599>

Or One tap mobile:

+16692545252,,1613968599# US (San Jose)

+16692161590,,1613968599# 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 +1 646 828 7666 or +1 551 285 1373 or 833 568 8864 (Toll Free)

Webinar ID: 161 396 8599

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

Or an H.323/SIP room system:

H.323: 161.199.138.10 (US West) or 161.199.136.10 (US East)
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SIP: 1613968599@sip.zoomgov.com

OPEN SESSION MEETING MINUTES

Thursday, January 20, 2022
4p.m. – 6p.m.
Zoom Webinar Platform

Click <https://www.youtube.com/watch?v=77Lnaf383kc> view this meeting on YouTube.

Commissioners Present:

Patrick Anderson
Doug Case, 1st Vice Chair
Maxine Clark
Andrea Dauber-Griffin
Diana Dent
Poppy Fitch
Kevin Herington

Brandon Hilpert, Chair
Sheila Holtrop
Ernestine Smith
Robin Spruce
Nancy Vaughn

Commissioners Absent or Excused:

Steve Hsieh
Chris Pink
Marty Workman

Staff Present:

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

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- I. CALL TO ORDER/WELCOME: Chair Brandon Hilpert called the meeting to order at 4:02pm.
 - 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. NON-AGENDA PUBLIC COMMENT: No public comment received.
- V. DISCUSSION & APPROVAL OF THE AD HOC TRANSITION PLANNING COMMITTEE'S LIST OF RECOMMENDATIONS REGARDING THE CITY ATTORNEY'S JANUARY 11TH DRAFT OF THE IMPLEMENTATION ORDINANCE FOR THE COMMISSION ON POLICE PRACTICES

Recommendation to take out the verbiage of priority order since all items will be of collective importance.

ACTION: Commissioner Patrick Anderson moved for the Commission to approve and endorse the Ad Hoc Transition Planning Committee List of Recommendations regarding the draft implementation ordinance. Commissioner Poppy Fitch seconded the motion. The motion passed unanimously with a vote of 12-0-0.

Yays: Chair Hilpert, 1st Vice Chair Case, 2nd Vice Chair Fitch

Commissioners Anderson, Clark, Dauber-Griffin, Dent, Herington, Holtrop, Smith, Spruce, Vaughn.

Nays: None

Abstained: None

Absent/Excused: Hsieh, Pink, and Workman.

- VI. ADJOURNMENT: The meeting adjourned at 5:06pm.

OPEN SESSION MEETING MINUTES

**Tuesday, January 25, 2022
6 p.m. – 8 p.m.
Via Zoom Webinar**

Click <https://www.youtube.com/watch?v=gBgc9N6Cotg> to view this meeting on YouTube.

Commissioners Present:

Patrick Anderson (left at 7pm)
Brandon Hilpert, Chair
Doug Case, 1st Vice Chair
Maxine Clark
Andrea Dauber-Griffin
Diana Dent
Poppy Fitch
Sheila Holtrop
Steve Hsieh

Ernestine Smith (left at 7pm)
Robin Spruce
Nancy Vaughn

Commissioners Absent or Excused:

Kevin Herington
Chris Pink
Marty Workman

Staff Present:

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

San Diego Police Department (SDPD) Staff Present:

IA Captain Dupree
SDPD Captain Jeff Jordon

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- I. CALL TO ORDER/WELCOME: Chair Brandon Hilpert called the meeting to order at 6:01pm.
 - 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 MEETING MINUTES

A. MINUTES FROM CPP OPEN MEETING ON NOVEMBER 23, 2021

The Commissioners reviewed the minutes. Commissioner Nancy Vaughn moved for the Commission to approve its November 23, 2021 Open meeting minutes. Commissioner Patrick Anderson seconded the motion. The motion passed with a vote of 10-0-2.

Yays, 1st Vice Chair Case, Clark, Dauber-Griffin, Dent, Fitch, Holtrop, Hsieh, Smith, Spruce, and Vaughn

Nays: None

Abstained: Chair Hilpert and Anderson

Absent/Excused: Herington, Pink, and Workman

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

VI. EDUCATIONAL TOPIC: “Legislative Update: Impact of New Laws on SDPD’s Policies & Procedures” Presenter SDPD Captain Jeff Jordon (20 mins)

SB 16 – Police Records: Mandatory reporting or public disclosure of sustained complaints of excessive force, failure to intervene, unlawful searches and seizures, and discrimination. There is a backlog of complaints waiting to be reviewed. Commissioner Patrick Anderson requested clarification on record retention allegations that are not sustained, and which categories fall under the 5- or 15-year timeline. Captain Jordan explained that it is currently being interpreted as all-inclusive. Only sustained records would fall under the 15-year timeline and all other categories (not sustained, exonerated, and unfounded) would fall under the 5-year timeline.

SB 2 – Police Decertification: It expands the list of circumstances that would disqualify a person from employment. Requires officers to investigate all complaints of serious misconduct regardless of employment status which means the investigations will go all the way to the end regardless of status.

AB 26 – Use of Force: Requires officers to immediately report potential excessive force and prohibits retaliation against officers that report violations of law or regulation of another officer to a supervisor. De-escalation and proportional use of force. Chair Brandon Hilpert expanded on possibly recommending the department take a liberal look at the section regarding officers receiving training from other officers.

AB 48 – Use of Force: Restricts use of kinetic energy projectiles and chemical agents. Prohibits their use solely due to a violation of an imposed curfew, verbal threat, or noncompliance with a law enforcement directive. Shall only be used to disperse an assembly, protest, or demonstration by a properly trained officer to defend against threat to life or serious bodily injury to any individual.

AB 958 – Law Enforcement Gangs: Addressed issues of “gangs” among peace officers that might undermine the professional standards of policing among California’s law enforcement agencies.

SB 98 – Media Access: Establishes new laws relating to interactions between law enforcement and duly authorized representatives of news services at events where individuals are engaged in activities that are protected pursuant to the First Amendment to the US Constitution and the California Constitution. Commissioner Nancy Vaughn requested clarification on the definition of duly authorized. Captain Jordan explained that totality of the circumstances broadly construed that they are employed by the categories listed in news services, newspaper, radio, television, networks etc.

AB 490 – Positional Asphyxia: Additionally, prohibit a law enforcement agency from authorizing techniques or transport method that involve a substantial risk of positional asphyxia.

AB 481 – Military Equipment: Requires agencies to obtain approval of a military equipment use policy, by ordinance at City Council prior to taking certain actions relating to the funding, acquisition, or use of military equipment. Commissioner Patrick Anderson asked if the ordinance lists the specific equipment that will be used? Captain Jordan explained that the ordinance lists every piece of equipment and includes the description provided by the manufacturer to define it. This includes: all weapons and where they are located, military definition, number of rounds currently possessed within the department, how they are used, training standards, who is being trained, projected expenses with anticipated needs going forward.

- VII. UNFINISHED BUSINESS (DISCUSSION/ACTION) (Chair Brandon Hilpert)
- A. Commission Closed Meetings in February (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.
 - B. Case Review
 - 1. Status of Discipline Cases
We will be working with Internal Affairs to go over any discipline cases for the teams to review.
 - 2. Feedback on Remote Case Access (Google Drive)
We are looking to try and get a CPP version of IaPro. IaPro is the software used by Internal Affairs. The goal is to allow these programs to talk to each other between IA and CPP. There is also a tool on there for complainants to know what the status of their

complaint is.

3. IA Office Hours/Schedule (Continuation of Saturday Hours) – Reminder that Internal Affairs has offered weekend hours for those 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. **DISCUSSION:** Draft memo to the City Council Regarding the Urgent Need to Appoint Commissioners to the Commission on Police Practices

ACTION: Commissioner Nancy Vaughn moved for the Commission to approve the proposed draft memo with amendments to the City Council regarding the urgent need to appoint Commissioners to the Commission on Police Practices. Commissioner Poppy Fitch seconded the motion. The motion passed with a vote of 9-0-1.

Yays: 1st Vice Chair Case, Clark, Dauber-Griffin, Dent, Fitch, Holtrop, Hsieh, Spruce, and Vaughn

Nays: None

Abstained: Chair Hilpert

Absent/Excused: Anderson, Herington, Pink, Smith, and Workman

IX. COMMITTEE CHAIR REPORTS (DISCUSSION/ACTION)

- A. Continuing Education Committee (Nancy Vaughn)
 1. List of Upcoming Educational Topics/Presentations
 - Restraining Orders
Commissioner Nancy Vaughn would like to have somebody from the Kumeyaay Nation speak to the Commission about their experiences with the police when they are off the reservation. If the Commission has any topics, they want to learn more about please reach out to Commissioner Vaughn. Interim Executive Director Sharmaine Moseley requested more information regarding restraining order presentation.
- B. Outreach Committee (Patrick Anderson)
 1. Past Events/Virtual Meetings/Roundtable Discussions
 2. Upcoming Events/Outreach Opportunities
Commissioner Patrick Anderson commented on the hard work between partnerships from San Diegans for Justice, Women Occupy, Mid-City CAN and it's youth counsel, the various Communities, the Commission and all who participated in helping the progress of the draft ordinance and memo.
- C. Rules Committee (1st Vice Chair Doug Case)
 1. Update on Streamlined Team Reports
No current updates.
- D. CPP Handbook Committee (1st Vice Chair Doug Case)
 1. Update – On Hold

- E. Policy Committee (Chair Brandon Hilpert)
 - 1. Items being Considered by Committee
 - a. Wellness/Psychological review for officers involved in OIS- We have a meeting with the Chief of Police and Executive team tomorrow (1/26) at 2:00pm. Chair Hilpert had a list of several questions that he forwarded to the police department and they will have answers during the meeting tomorrow.
 - b. Use of profane language as de-escalation tactic
Discuss the appropriateness on using profane language. The Committee tabled this item.
 - c. Use of political or membership affiliation under uniform policy
Waiting for this item to complete going through the process prior to discussing. The Committee tabled this item.

- 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
Chair Brandon Hilpert has no major updates. Trying to work with CAB to come up with solutions. However, they have been dealing with quorum issues. More updates to come.

- H. Ad Hoc Transition Planning Committee (1st Vice Chair Doug Case)
 - 1. Budget Update – We submitted four budget items to be changed for the next fiscal year which begins July 1st. 1. To include \$200,000 for as needed contract investigators. 2. Re-organization of the staffing to have a full-time financial person (current model has half time for complaints and the other half with finance issues). 3. We asked for money so our outside counsel would extend for another year. 4. We requested \$100,000 for executive search expenditures (for recruitment, transportation expenses for out of town applicants etc.) We will be making the presentation to the Executive Budget Committee in February 10th.
 - 2. Staffing & Legal Counsel Update – Working on the contract for Outside Counsel. The individuals on the search committee is Chair Brandon Hilpert, 1st Vice Chair Doug Case, and an attorney from the Human Relations Commission, Kristin Rizzo. The process is nearing completion.
 - 3. Draft Implementation Ordinance & Standard Operating Procedures Update
Last Thursday evening we had a special meeting to discuss the recommendation to PS&LN regarding the Implementation Ordinance in the corrected second draft. This addressed some of the issues we discussed during our meeting. There was a lot of community input and the desire of District 4 to try to resolve those issues prior to the PS&LN meeting.
 - 4. Office Space Update
The CPP will be located on the 9th floor at the Civic Plaza Blvd

building. We are currently in the plans of scheduling remodeling of the office. More updates to come.

- X. CHAIR'S REPORT (Chair Brandon Hilpert)
- A. Reminders for Commissioners
1. 3rd Quarter (January 1st – March 31st) 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.
 2. Requirement for Commissioner Committee Assignments
All Commissioners need to be on at least one Committee. They need to select what Committee they want to be on.
- B. Resignation of Commissioner Joe Craver, Commissioner Ernestine Neely, and upcoming resignation of Commissioner Sheila Holtrop. The Commission has several vacancies.
- C. Update on Collaboration/Information Sharing with Statewide Oversight Groups
There is another meeting coming up on February 10th around noon. We are trying to share best practices and identify areas we can make some changes. If any Commissioner would like to attend, please reach out to Chair Brandon Hilpert. Still working on doing a joint meeting with CAB regarding CPE data.
- 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 (Sharmaine Moseley)
- A. Caseload Update & Status of Case Reports – It was reported that 86 active cases were assigned to the Commission's Teams.

In this fiscal year, that began on July 1st, the Commission reviewed, deliberated on and closed out 62 Category I cases, 4 OIS cases, 1 ICD case, audited 10 Cat II cases, and evaluated 13 disciplines and 1 shooting review board report.

The statistics for the Team assignments are as follows:

Team 1- has 16 cases in their queue (13 are Category I cases- two of which have sustained findings, and 3 Category II cases). The Team has no OIS or ICD cases.

Team 2 – has 6 cases in their queue – Of the 6 cases, 5 are Category 1 cases, 1 is a Category II case and 3 of the cases have sustained findings. The Team has no OIS or ICD cases.

Team 3 – has 8 cases in their queue- Of the 8 assigned cases, 7 are Category I cases and 1 is a Category 1 case. One of the 6 cases have sustained findings. The Team has no OIS or ICD cases.

Team 4 –has 25 cases in their queue - Of the 25 cases, 16 are Category I cases, 7 are Category II cases and 4 cases have sustained findings. Team 4 has 1 SRB report to evaluate, 2 OIS cases- 1 of which has a sustained finding and no ICD cases to review.

Team 5 –Team 5 has 9 cases in their queue. Of the 9 cases, 5 are Category I cases, 2 are Category II and 2 are OIS cases. The Team has no ICD cases to review. Team 5 has 1 SRB report and 1 discipline to evaluate. Team 5 has 1 case that does not have a sustained finding that is approaching the 1-year deadline.

Team 6 – has 22 cases in their queue. Of the 21 cases, 17 cases are Category Is, 6 cases have sustained findings, 5 of the 21 cases are Category II cases. The Team has no ICD or OIS cases. Team 6 has 2 disciplines to evaluate.

Team 7 – Team 7 is inactive.

- B. NACOLE In-Person Conference Recap – Last month, Chair Hilpert, 1st Vice Chair Case and Interim Executive Director Sharmaine Moseley attended the NACOLE conference in Tucson, Arizona. There were COVID protocols in place to protect attendees. They attended sessions on Understanding the Impact of Trauma, Creating & Sustaining Effective Civilian Oversight of LE, Partnering LE with Mental Health Social Workers, Case Studies, and more. The takeaway from this year’s conference was the importance of community involvement in effective oversight. Most of the discussions involved community engagement in some aspect.
- C. Update on Release of CPP FY2021 Statistics to Open Data Portal – Interim Executive Director Sharmaine Moseley is still working with the Performance and Analytics Department to make sure that the correct data is released for FY2021. We are hoping to post the data in the city’s Open Data Portal soon.
- D. Release of CPP Standardized Annual Report – The OBC requires all the Boards and Commissions fill out and file with the City Clerk’s Office, the Standardized Annual Report. Earlier this month, Interim Executive Director Sharmaine Moseley completed the report and forwarded it to the City Clerk’s office.
- E. Other Items/Reminders –The Commission held interviews for Outside Counsel, ad hoc meetings, special meetings, budget meetings and more and continue to be extremely active.

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

- A. Status on CPP Recommendations to SDPD – No current updates
 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. Updates (Staffing in IA, Training, etc.) - No current updates

XIII. COMMISSIONER RIDE-ALONG REPORTS: No reports given.

XIV. COMMISSIONER ANNOUNCEMENTS/COMMENTS: No announcements/comments

XV. ADJOURNMENT: The meeting adjourned at 7:58pm.

Office of the Commission on Police Practices

FY 2023 Executive Budget Review

February 10, 2022



Mission:

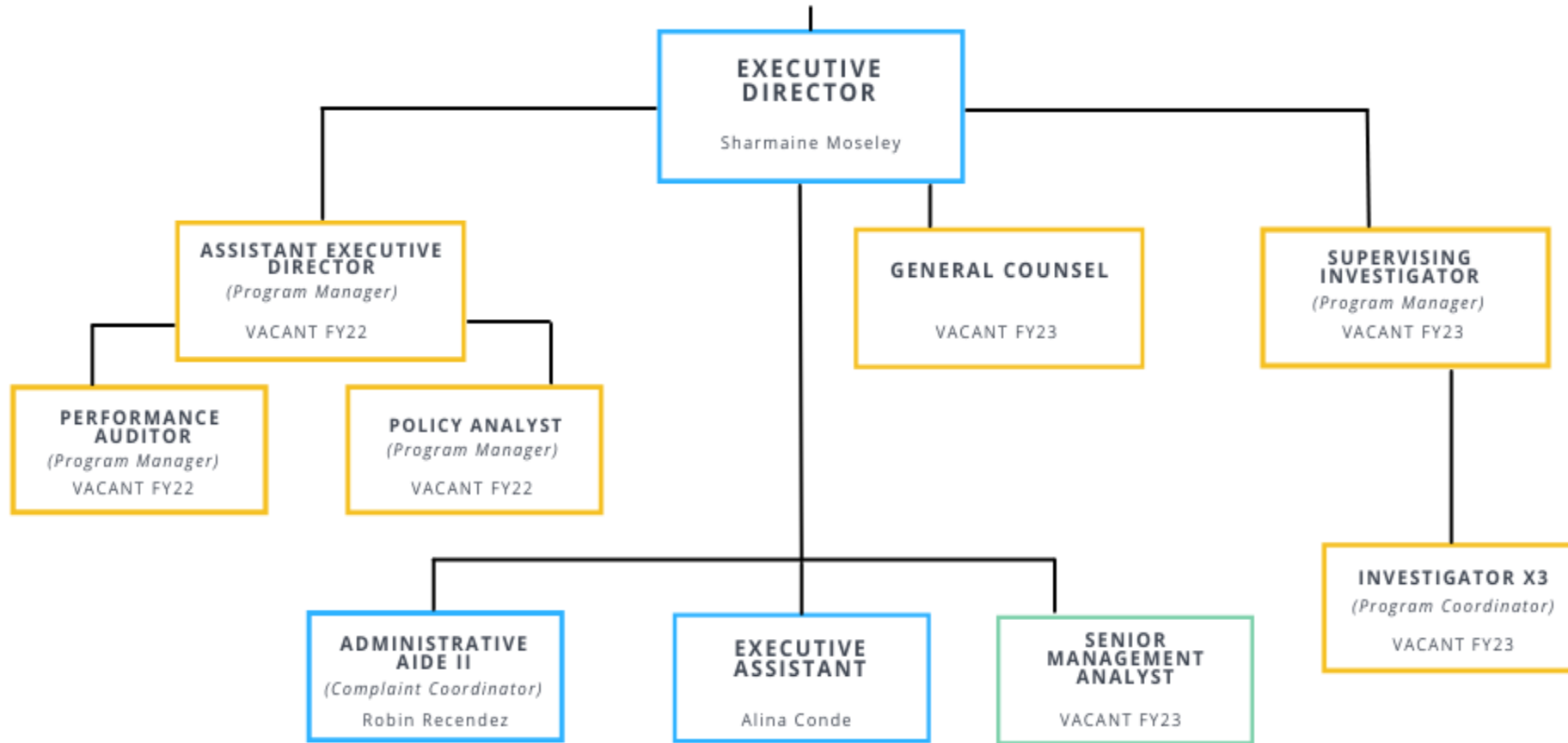
- To hold law enforcement accountable to the community and to increase community trust in law enforcement, resulting in increased safety for both the community and law enforcement.

Purpose:

- To provide an independent investigation of officer-involved shootings and in-custody deaths, and other significant incidents, and an unbiased evaluation of all complaints against the San Diego Police Departments and its personnel, in a process that will be transparent and accountable to the community.
- To evaluate and review SDPD policies, practices, training and protocols and represent the community in making recommendations for changes.



Office of the Commission on Police Practices



*Blue coded- Positions are currently filled
*Yellow coded- Positions approved in FY22, will be filled in FY22 & FY23
*Green coded- Needs approval for FY23
*Commission will request funding for Mediation Coordinator (Program Coordinator) in FY24



Budget Additions

Adjustment Categories	Public Justification	Expenditure
City Mandate	Addition of one-time non-personnel expenditures in the amount of \$180,000 for a legal services contract to retain independent legal counsel	\$180,000
City Mandate	Addition of on-going non-personnel expenditure in the amount of \$200,000 to contract investigators with specific expertise to meet its investigatory requirement	\$200,000
Critical Operational Needs	Addition of one-time non-personnel expenditures in the amount of \$100,000 to contract with an executive search firm to hire (4) highly specialized supervisory positions	\$100,000
Budget Additions Total		\$480,000



Other Adjustments

	Expenditures
Adjustments to expenditures associated with projected compensation to employees in-lieu of the use of annual leave	\$11,813
Reclassification of 3.00 FTE positions	(\$23,679)
Budget Additions Total	(\$11,866)

Executive Budget Review Report

Fiscal Year: 2023

Business Area: 1216 - Commission on Police Practices

Fund: 100000 - General Fund

	FTE	Revenue	Expenditures
FY 2022 Adopted Budget	7.00	-	\$1,327,134

Total Budget Adjustment Requests	(0.50)	-	\$384,518
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Budget Additions					
Priority	Adjustment Categories	Public Justification	FTE	Revenue	Expenditures

01	Expenditure (City Mandates)	Addition of one-time non-personnel expenditures in the amount of \$180,000 for a legal services contract to support the Commission in meeting the city mandate to retain independent legal counsel. This will be offset with the reduction of the general counsel position for six months of FY23.	(0.50)	-	\$96,384
02	Expenditure (City Mandates)	Addition of on-going non-personnel expenditure in the amount of \$200,000 to contract investigators with specific expertise to meet its investigatory obligations requirements per Section 41.2 of the City Charter.	-	-	\$200,000
03	Expenditure (Critical Operational Needs)	Addition of one-time non-personnel expenditures in the amount of \$100,000 to support the Commission on Police Practices in finalizing a contract with an executive search firm to hire four (4) highly specialized supervisory positions.	-	-	\$100,000
Not Applicable	Expenditure (City Mandates)	Adjustments to expenditures associated with projected compensation to employees in-lieu of the use of annual leave.	-	-	\$11,813
Not Applicable	Expenditure (Critical Operational Needs)	Reclassification of 3.00 FTE positions. The Office of the Commission on Police Practices reviewed currently budgeted positions and is looking to reclassify to other positions that more appropriately fit the department's needs.	0.00	-	(\$23,679)

Subtotal Budget Additions	(0.50)	-	\$384,518
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ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

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

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

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

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

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

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

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

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

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

Article 6: Board and Commissions

Division 11: Commission on Police Practices

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

§26.1101 Establishment and Purpose of the Commission on Police Practices

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

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

§26.1102 Definitions

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

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

Commission means the Commission on Police Practices.

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

Complainant means a person who files a *complaint*.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Register means to record in writing and maintain the record.

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

§26.1103 **Commission Composition and Member Qualifications**

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

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

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

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

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

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

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

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

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

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

§26.1104 Terms of Commission Members

- (a) *Members* serve two-year terms and until a successor is appointed, except that 12 of the 25 *members* first appointed will initially serve a one-year term, so that the terms of no more than 13 *members* expire in any year. Following the first Council appointments to the *Commission*, the City Clerk will administer a random drawing to determine which of the 25 *members* will initially serve a one-year term.
- (b) All terms begin upon appointment and end on June 30 of the applicable year.
- (c) The City Clerk must maintain a record of the *members* and their terms, and regularly make this information available to the Council and the public.
- (d) The Council President, with the assistance of the *Executive Director*, will timely schedule Council consideration of new appointments to ensure that the *Commission* positions remain filled.
- (e) *Members* can serve no more than four two-year terms consecutively. However, *members* whose terms of service have expired must continue to serve until their successor is appointed, even if the total time served extends beyond the maximum permissible length of service. If for any reason a *member* serves a partial term in excess of one-half of a full term,

that partial term will be considered a full term for the purpose of the *member's* term limitation of four consecutive terms.

§26.1105 Appointment of Commission Members

- (a) *Members* are appointed by the Council in accordance with the approved Council rules and policies. In making appointments, the Council may consider written nominations made by the public and community-based organizations, as long as nominees accept their nomination in writing prior to Council consideration. The Council may also consider nominations from the *Commission*. The *Commission* may prepare an operating procedure for its nomination process.
- (b) As part of their appointment process, prospective *members* are subject to a *review* of their qualifications to serve, which will be conducted by the Council President or designee, in accordance with applicable laws. This *review* includes an *investigation* into any record of criminal convictions, as set forth in section 26.1103(g).

§26.1106 Removal of Commission Members

- (a) A *member* may resign prior to the expiration of their term with written notice to the Council President. Upon this notification, the Council President must consider the position vacant and eligible for the Council to appoint a new *member* to serve for the remainder of the vacating *member's* term. If a *member* resigns from a designated seat, the Council must appoint a new *member* who meets the qualifications to serve in that designated seat.

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

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

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

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

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

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

§26.1107 Duties and Powers of the Commission

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

(2) The *Commission* must independently *investigate* and *evaluate* all deaths occurring while a person is in the custody of the *Police Department*, all deaths resulting from interaction with a *police officer*, and all *police officer*-involved shootings, regardless of whether a *complaint* has been made against a *police officer* or the *Police Department*. The *Commission* must prepare operating procedures for *Commission* investigators to access *Police Department* investigations of *police officer*-involved shootings, deaths resulting from interaction with *police officers*, and deaths occurring while a person is in the custody of the *Police Department*. Upon completion of any *investigation*, the *Commission* must make *findings*. The Chief of Police must provide a written substantive response to the *Commission's findings* within 30 days of receipt of the *findings*.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§26.1108 Cooperation of City Employees in Commission Activities

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

§26.1109 Records

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

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

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

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

§26.1110 Subpoenas

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

§26.1111 Conflict of Interest Code

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

§26.1112 Reimbursement for Expenses

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

§26.1113 Whistleblower Protection

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

§ 26.1114 Outreach and Communications

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

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

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

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

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

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

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

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

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

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

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

By _____
Joan F. Dawson
Senior Deputy City Attorney

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

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

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

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

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

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

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

For reference, here is an excerpt from City Charter 39.2 – Office of the City Auditor

The City Auditor must have access to, and authority to examine any and all records, documents, systems and files of the City and other property of any City department, office, or agency, whether created by the Charter or otherwise. It is the duty of any officer, employee, or agent of the City having control of such records to permit access to, and examination thereof, upon the request of the City Auditor or his or her authorized representative. It is also the duty of any such officer, employee or agent to fully cooperate with the City Auditor, and to make full disclosure of all pertinent information. The City Auditor may investigate any material claim of financial fraud, waste, or impropriety within any City department and for that purpose may summon any officer, agent, or employee of the City, any claimant or other person, and examine him or her upon oath or affirmation relative thereto.

Proposed language for the Commission on Police Practices (to be incorporated into Section 26.1108 – Cooperation of City Employees in Commission Activities and Section 26.1109 – Records of the CPP implementation ordinance)

The Commission on Police Practices must have access to, and authority to examine any and all records, documents, systems and files of any City department, office, or agency directly related to a matter within the Commission’s jurisdiction. It is the duty of any officer, employee, or agent of the City having control of such records to permit access to, and examination thereof, upon the request of the Commission. It is also the duty of any such officer, employee or agent to fully cooperate with the Commission, and to make full disclosure of all pertinent information. In fulfilling the duties and powers of the Commission, as enumerated in Section 26.1107, the Commission may summon any officer, agent, or employee of the City and examine him or her upon oath or affirmation relative thereto.

Add to Section 26.1109 Records, subsection (a):

For the purposes of this section, “records” includes all data and information collected by the City, regardless of whether it has been compiled into a report or document.

The below recommendation regarding a potential process for the selection of new Commissioners was approved by the Commission on the CPP approved Nov. 23, 2022

While the City Council appoints Commissioners the selection process for the independent commission be non-political and community driven. The implementation ordinance should specifically recognize the ability of the Commission to make nominations to the City Council. We recommend that Commission's bylaws (adopted once new Commissioners are appointed) include a Nominations Committee to make such recommendations. The Nominations Committee should be composed of 9 persons with 3 current or former Commission members and 6 community members to be chosen by the Commission (2 academic professionals who specialize in policing, criminal justice, and/or civil rights law and 4 from community nonprofit organizations or those in various fields including specific seats for experts in racial and identity profiling). None of the Nominations Committee members should be associated with law enforcement.