

COMMISSION ON POLICE PRACTICES

SPECIAL MEETING AGENDA

Tuesday, November 29, 2022

6 p.m. – 7 p.m.

Remote Meeting Zoom Webinar Platform

<https://sandiego.zoomgov.com/j/1615006941>

or

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

Webinar ID: 161 500 6941

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

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

Please see the rules/procedures for submitting public comment and/or for joining the webinar as an attendee at the bottom of the agenda. Public comment **will be limited** to the topic of this special meeting which is the discussion and consideration of select procedures by the Commission.

This meeting will be available on the City's YouTube page the day after the meeting and can be accessed by clicking [here](#).

- I. CALL TO ORDER/WELCOME (1st Vice Chair Doug Case)
- II. PURPOSE OF THE COMMISSION ON POLICE PRACTICES (1ST Vice Chair Doug Case)
- III. ROLL CALL (Interim Executive Director Sharmaine Moseley)
- IV. DISCUSSION/ACTION (1ST Vice Chair Doug Case)
 - a. Adoption of Resolution Authorizing and Ratifying the Continuance of Teleconference Public Meeting Pursuant to Government Code 54953 (ACTION ITEM)

Motion: The Commission on Police Practices will adopt this Resolution authorizing and ratifying the use of teleconferencing for all meetings including meeting of ad hoc or standing committees, in accordance with Government Code Section 54953(e) and all other applicable provisions of the Brown Act, for a period of thirty (30) days from the adoption of this Resolution, or such a time that the Commission

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

- b. Proposed Operational Procedure for Nominations & Selection Process for Commissioners (DRAFT November 4, 2022 – V4.) (ACTION ITEM)

Motion: Approval of the revised proposed operational procedure for the nominations & selection process for CPP Commissioners

- c. Proposed Operational Procedure for the Selection Process for the Executive Director of the OCPP (DRAFT October 25, 2022 –V3.) (ACTION ITEM)

Motion: Approval of the proposed operational procedure for the selection process for the Executive Director of the OCPP

- d. CPP Complaint Form Addition – Admonition Statement Required by Penal Code Section 148.6 (a) (2), that filing a knowingly false complaint of peace officer misconduct may result in criminal prosecution (ACTION ITEM)

Motion: Approval of the addition of the admonition statement required by Penal Code Section 148.6 (a)(2) to the Commission's Complaint Form

V. PUBLIC COMMENTS

Important note: Public comments are limited to the items discussed in this meeting and will be limited to 2 minutes depending on the number of comments submitted. If there are many people in the queue, comments may be limited to 1 minute. Please avoid unnecessary repetition. Once your time has ended, you will be moved out of the queue and your phone will be muted.

VI. ADJOURNMENT

Materials Provided:

- CPP Resolution Authorizing & Ratifying the Continuance of Teleconferenced Public Meetings Pursuant to Government Code 54953
- Proposed Operational Procedure for Nominations & Selection Process for Commissioners (DRAFT November 4, 2022 – V4)
- Proposed Operational Procedure for the Selection Process for the Executive Director of the OCPP (DRAFT Approved on October 25, 2022 –V3.)
- Report on Law Enforcement Complaint Forms (CPP Outside Counsel)

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 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.

Access for People with Disabilities: As required by the Americans with Disabilities Act (ADA), requests for agenda information to be made available in alternative formats, and any requests for disability-related modifications or accommodations required to facilitate meeting participation, including requests for alternatives to observing meetings and offering public comment as noted above, may be made by contacting the Commission at (619) 236-6296 or commissionpolicepractices@sandiego.gov.

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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Adopted this _____ day of the month of _____ in 2022.

Motion made by: _____

Second made by: _____

Commissioners voting "yes" _____

Commissioners voting "no" _____

Commissioners abstaining _____

Commissioners not present _____

~~**APPROVED BY THE CPP 10/25/2022**~~
~~**PENDING APPROVAL BY THE CITY COUNCIL**~~

PROPOSED OPERATIONAL PROCEDURE
NOMINATIONS AND SELECTION PROCESS
CITY OF SAN DIEGO COMMISSION ON POLICE PRACTICES

1. The Commission shall appoint a Nominations Committee to 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 with relevant expertise in various fields including but not limited to racial and identity profiling (at least one of whom is in the 18-24 age group). None of the Nominations Committee members shall be associated with law enforcement. Applicants for the Commission shall not be eligible to serve on the Nominating Committee.
2. All applicants must submit an application via the Boards and Commissions website (onboard.sandiego.gov). Applicants may submit up to two letters of recommendation from individuals or community-based organizations. A supplemental application will be sent to verify that applicants meet all of the criteria specified in the implementation ordinance and to ask for their age if they are interested in one of the youth-designated seats.
3. All applicants must attend an orientation session to explain how the Commission operates and time expectations.
4. The Nominations Committee shall interview all eligible applicants. All applicants shall be asked the same questions, to be approved by the City's Human Resources Department. Each Nominations Committee member shall submit a rating sheet.
5. The City will provide a list of which candidates that reside in low- and moderate-income U.S. Census tracts.
6. The Nominations Committee shall recommend one person for each of the open seats (2 youth designated, 9 City Council district designated, 5 from low- and moderate-income U.S. Census tracts, and 9 at-large). The Nominations Committee shall take the priority qualifications as indicated in the implementation ordinance for the at-large seats into consideration in making those appointments.
- ~~7. For the initial 2023 appointments, the Nominations Committee shall determine which are recommended for an initial one-year seat and which are for two-year seats.~~
- ~~8-7.~~ The Nominations Committee shall prepare a brief statement of qualifications for each recommended candidate.

9.8. The Nominations Committee shall send the recommendations to the City Council president, along with application materials for all candidates.

9. The final selection shall be at the sole discretion of the City Council, which is not required to accept Nomination Committee recommendations.

4-10. 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.

2- 11. Background checks will be conducted by the City's Personnel Department prior to appointment.

DRAFT

COMMISSION ON POLICE PRACTICES

~~**APPROVED BY THE CPP 10/25/2022**~~
~~**PENDING APPROVAL BY THE CITY COUNCIL**~~

PROPOSED OPERATING PROCEDURE
SELECTION PROCESS FOR THE EXECUTIVE DIRECTOR
CITY OF SAN DIEGO COMMISSION ON POLICE PRACTICES

1. The Commission shall contract with an executive search firm to conduct a national search. The search firm will prepare a brochure about the position, in consultation with the Commission and the City's Human Resources Department. The search firm will post the position on the City's website, NACOLE, and other relevant sites for at least 30 days.
2. The search firm will conduct an initial evaluation of the applications and select 10-15 that appear to be the most qualified.
3. A Selection Committee, consisting of the Commission officers or their designees and a community representative chosen by the Commission, will determine 5-7 semi-finalists.
4. A community panel comprised of representatives from 7-10 community organizations will interview the candidates and submit rating sheets. All candidates will be asked the same questions, approved by the City's Human Resources Department. All community panel members will be required to sign a confidentiality agreement.
5. The Commission will conduct confidential meetings to interview the candidates. Every Commissioner will submit a rating sheet. All candidates will be asked the same questions, approved by the City's Human Resources Department.
6. The Selection Committee will review all the rating sheets and select at least three candidates to interview.
7. The Selection Committee will recommend three candidates to the City Council. Candidates will not be ranked ordered. Instead, the Selection Committee will submit a list of strengths and weaknesses of each candidate.
8. The City Council will interview the three finalists and make the appointment.

AGENDA REPORT

To: Commission on Police Practices

RE: AGENDA ITEM: _____

On May 19, 2022, the California Court of Appeal issued a published decision affirming the issuance of an injunction against the city of Los Angeles that prohibits the City from accepting a citizen's complaint against a peace officer unless the complainant reads and signs the admonition required by Penal Code section 148.6 (a)(2), that filing a knowingly false complaint of peace officer misconduct may result in criminal prosecution.

Penal Code section 148.6 requires complainants to read and sign an advisory informing them of the right to file a complaint against a police officer, as well as mandatory investigation and records retention requirements. The code section also states that it is a misdemeanor for any person to file a knowingly false allegation of police misconduct.

In particular, Penal Code section 148.6 requires agencies accepting civilian complaints against police officers to include the following specific language in the complaint form:

YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER FOR ANY IMPROPER POLICE CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CIVILIANS' COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY FIND AFTER INVESTIGATION THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY. CIVILIAN COMPLAINTS AND ANY REPORTS OR FINDINGS RELATING TO COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS.

IT IS AGAINST THE LAW TO MAKE A COMPLAINT THAT YOU KNOW TO BE FALSE. IF YOU MAKE A COMPLAINT AGAINST AN OFFICER KNOWING THAT IT IS FALSE, YOU CAN BE PROSECUTED ON A MISDEMEANOR CHARGE.

I have read and understood the above statement.

Complainant

In 2002, the California Supreme Court upheld section 148.6 against a challenge the statute was an impermissible content - based speech restriction under the First Amendment to the

United States Constitution. (*People v. Stanistreet* (2002) 29 Cal.4th 497, cert. den. 538 U.S. 120.) Three years later, a panel of the United States Court of Appeals for the Ninth Circuit reached a different conclusion. The Ninth Circuit ruled section that Penal Code section 148.6 was an impermissible viewpoint-based speech restriction under the First Amendment because the statute criminalized false statements that accused a peace officer of misconduct, but not false statements made by the officer, or a witness, during the investigation that supported the officer.

The California Supreme Court in *Stanistreet* explained the circumstances that prompted the Legislature to enact section 148.6, stating that after the Rodney King incident in March 1991, law enforcement agencies throughout the state revised their citizen complaint procedures to promote greater accountability on the part of their line officers. However, according to the Legislature, “a glaringly negative side-effect [was] the willingness on the part of many of [California’s] less ethical citizens to maliciously file false allegations of misconduct against officers in an effort to punish them for simply doing their jobs.” Against this backdrop, the Legislature enacted section 148.6 in an effort to curb a perceived rising tide of knowingly false citizens’ complaints of misconduct by officers performing duties.

The city of Los Angeles was temporarily relieved from complying with the Penal Code advisory warning pending a federal consent decree. However, the Los Angeles Police Protective League filed a lawsuit and obtained injunctive and declaratory relief against the city. The Superior Court held that Penal Code section 148.6 (a)(2) is valid and enforceable, and that the City and Chief of Police are required to comply with that statutory provision.

The City appealed and argued that enforcement of the citizen advisory warning would impose “an impermissible viewpoint-based speech restriction” in violation of the First Amendment. In its May 2022 opinion, the Court of Appeal concluded the admonition in Penal Code section 148.6 does not chill speech or discourage complaints, as urged by the city. The court stated, “[B]ecause the United States Supreme Court has not ruled section 148.6 or an analogous statute is unconstitutional, we must follow *Stanistreet*. Therefore, we do, and we affirm.”

Based on Penal Code section 148.6 and this court decision, it has been recommended that the Commission on Police Practices include the statutory language of Penal Code section 148.6 in its complaint forms. As an oversight agency that accepts complaints against San Diego Police officers, the CPP is required to comply with the requisite language of the Penal Code.

It should be noted that the statutory language for police complaints has been in effect for many years, despite the fact that some departments have not included it in complaint forms. Even though agencies such as the LAPD had contended that the language in the Penal Code had a dissuading and chilling effect, the California Supreme Court and other courts disagreed.

It is important for the public to recognize that the purpose of the statutory language is not to discourage the filing of police complaints, but to ensure that complaints are filed truthfully

and in good faith. On the other hand, the public should be aware that it is not perjury if a complaint is simply not upheld. In other words, filing a complaint that is not sustained, exonerated or unfounded does not, ipso facto, subject the complainant to a charge of perjury or misdemeanor prosecution, etc. Under Penal Code section 148.6, it is against the law to file a complaint against a police officer that a person knows to be false. In this sense, Penal Code section 148.6 is not dissimilar to other admonitions at law, requiring that information provided to governmental agencies, such as the DMV, be truthful and signed under penalty of perjury.

By: Duane E. Bennett, Outside Legal Counsel