



THE CITY OF SAN DIEGO

MEMORANDUM

DATE: May 25, 2022

TO: Honorable Mayor Todd Gloria
Mara Elliott, City Attorney
Julie Rasco, Director, Human Resources Department

FROM: Brandon Hilpert, Chair, Commission on Police Practices *BH*
Douglas Case, Chair, Ad Hoc Transition Planning Committee
via Sharmaine Moseley, Interim Executive Director *SM*

SUBJECT: Draft Implementation Ordinance and Meet and Confer

As you may be aware, the Commission on Police Practices (Commission) has expressed a strong desire to participate in the meet and confer process regarding the Draft Ordinance entitled:

“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.”

After discussing the matter with our outside legal counsel, and for reasons affecting the Commission as discussed below, the Commission has an interest in participating in the meet and confer process as any changes hold bearing on its responsibilities and duties.

Although the Commission respects the City’s sovereignty in drafting the enabling ordinance, and has not been allowed to participate in the meet and confer process, we would ask that the City carefully consider the following issues impacting the ordinance and the critical operations of the Commission:

1. The draft ordinance is vague and ambiguous as to criteria for serving on the Commission. We have now received several community objections to the language in subsection (6) to Section 26.1103(g), “Commission Composition and Member Qualifications,” that reads: “*or have been convicted of a violent crime against a government employee or official...*” This proposed language would disqualify potential commissioners on the basis of convictions for “violence” against governmental officials.

In objecting to the criteria, there is no intent to endorse or condone an act of violence

against a governmental official, or anyone else for that matter. The objection is to the broad and vague nature of such “violence.” Does the City intend to disqualify an individual for a misdemeanor conviction of Penal Code sections 69, 148, 243(b)(c)...? Also, how long would such a conviction disqualify an individual? For instance, would a protestor convicted for obstruction or resisting arrest for the Vietnam war in the 1960’s still be disqualified from serving on the Commission?

In some instances, obstruction charges are brought against individuals participating in the public process; or against individuals who have been wrongfully charged and/or convicted for exercising civil rights that might have been unpopular at the time. Moreover, such individuals may be even more keenly aware of problematic issues involving law enforcement than others with limited interactions.

In these respects, the broad disqualifying language proposed to be including onto the ordinance is vague and overbroad. The Commission feels that the voices of the community should be heard and represented in the drafting of the ordinance in this regard.

2. The draft ordinance requires that the Police Department coordinate information and documents with the Commission regarding incidents to be investigated and reviewed by the Commission. How will this responsibility be affected, or impacted, by the new County-wide MOU regarding various San Diego officer involved shootings? There are no provisions in the draft ordinance that address the potential involvement of the San Diego County Sheriff’s Department/Chula Vista Police Department in OIS incidents, nor how any potential involvement by either department would affect the required access of information to be received by the CPP.

We recognized the dichotomy between the criminal investigation, to be conducted by the Sheriff’s Department or Chula Vista, as opposed to the administrative investigation conducted by the Police Department. Nevertheless, access to various information, reports, and briefings by the “Primary Investigating Agency” (under the MOU) will still be necessary for the Commission to fulfill its mission.

3. The draft ordinance makes reference to respecting the rights of police officers subject to investigation, and an ability to object to the interview process. Under section 26.1108, “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.” (Emphasis added.)

However, the draft ordinance is silent as to what happens if an officer objects to an interview request by the Commission. What would be the remedy for the Commission in such an instance? Would the Commission then rely on a *Garrity/Lybarger* admonition to compel the police officer’s participation under threat of “discipline, up to and including termination”? (See Section 261008(a).) This aspect alone could trigger Police Officer Association interest and is the type of issue ripe for the

Page 3
Honorable Mayor Todd Gloria,
City Attorney Mara Elliott
Director Julie Rasco
May 25, 2022

Commission's participation in the meet and confer process (if participation were permitted).

4. Finally, the draft ordinance does not appear to address the right to appeal a disciplinary recommendation by the Commission pursuant to Government Code section 3304. The Commission is drafting an appeal process in the event its recommendations differ from those of Internal Affairs, etc. Our legal counsel, Duane Bennett, has indicated that there is no way for the appeal process to be developed in a vacuum and outside of a meet and confer process. Nevertheless, the Commission is required to develop, and recommend, an appeal process consistent with POBOR. Perhaps the best and most efficient time to address this crucial aspect with the City, Police Department and POA is at the current ordinance drafting stage.

There is little doubt that the guidelines being developed by the Commission will require meet and confer at some point. Nevertheless, the draft ordinance contains information and parameters that establish the very existence and operation of the Commission. Many issues, including those discussed above, could be addressed at an early stage with a more inclusive meet and confer process. Such a process would serve to validate community input, and further transparency and effectiveness in Commission operations.

The Commission respects the City's negotiating posture in this matter. Speaking on behalf of the Commission and various members of the public, we desire to make the City aware of our concerns in the interests of transparency, equal justice and an effective Commission oversight process. We ask that the City carefully review these comments to the extent that the Commission and/or its legal counsel continue to be excluded from the ordinance meet and confer process.

Thank you for your time and attention in this matter.



Brandon Hilpert, Chair
Commission on Police Practices



Douglas Case, Chair
Ad Hoc Transition Planning Committee

cc: Jay Goldstone, Chief Operating Officer
Paola Avila, Chief of Staff
City Councilmembers
Joan Dawson, Deputy City Attorney
Matt Yagyagan, Deputy Director of Policy, Mayor's Office
Duane E. Bennett, Outside Counsel, Commission on Police Practices
Members of the Commission on Police Practices