

OPEN SESSION MEETING MINUTES

**Tuesday, March 23, 2021
6 p.m. – 8 p.m.
Via Zoom Webinar**

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

Commissioners Present:

Brandon Hilpert, Chair
Doug Case, 1st Vice Chair
Poppy Fitch, 2nd Vice Chair
Michael Chan
Maxine Clark (arrival 6:13pm)
Joe Craver (arrived at 6:33pm)
Andrea Dauber-Griffin (left 8:05pm)
Diana Dent
Sheila Holtrop

Kevin Herington (left 7:23pm)
Steve Hsieh
Ernestine Neely
Chris Pink (left 7:05pm)
Ernestine Smith (arrival 6:13pm)
Robin Spruce
Duke Taylor
Nancy Vaughn
Marty Workman

Commissioners Absent:

Patrick Anderson

Staff Present:

Sharmaine Moseley, Acting Interim Executive Director

San Diego Police Department (SDPD) Staff Present:

Mike Holden, Captain, Internal Affairs
Steve Shebloski, Lieutenant, Internal Affairs
Corissa Pich, Lieutenant, Internal Affairs

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- I. CALL TO ORDER/WELCOME: Chair Brandon Hilpert called the meeting to order at 6:02 p.m.
 - II. ANNOUNCEMENT ON PURPOSE OF THE COMMISSION
Chair Brandon Hilpert announced that the purpose of the Community Review Board on Police Practices (CRB) 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 this personnel in a process that will be transparent and accountable to the community. The commission will also evaluate the review of all SDPC 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: Executive Director Sharmaine Moseley conducted the roll call.
- IV. APPROVAL OF CPP OPEN MEETING MINUTES OF FEBRUARY 23, 2021

The Commissioners reviewed the minutes. Commissioner Duke Taylor moved for the Commission to approve its February 23, 2021 Open meeting minutes. Commissioner Nancy Vaughn seconded the motion.

The motion passed with a vote of 14-0-1.

Yays: 1st Vice Chair Case, 2nd Vice Chair Fitch, Commissioners- Chan, Dauber-Griffin, Dent, Herington, Holtrop, Hsieh, Neely, Pink, Spruce, Taylor, Vaughn, Workman

Nays: None

Abstained: Chair Hilpert

Absent: Anderson, Craver, Clark, and Smith

- V. NON-AGENDA PUBLIC COMMENT:

Public Comment:

Tasha Williamson encouraged the Commission to recommend policy changes in wake of the police incidents that have been happening. This includes: 1. Stops that have been happening with black men in southeastern and other areas 2. Push for police criminal activity to stop in the manner of how police are stopping and detaining the public and covering up their wrongdoings.

In light of this the southeastern division will be having a protest on Thursday March 25, 2021 in the wake of the stop that happened on 47th and Imperial, where an officer illegally detained and illegally searched Perry Owens Jr. They are asking for the video of the stop to be released and for the officers involved to be taken off patrol during the investigation.

- VI. Educational Topic: “SDPD Procedure 4.17: First Amendment Activity Facilitation & Management (Protest Policy)”
 - A. Guest Speaker: SDPD Captain Darryl Hoover
 - i. In September 2020, the Chief wanted Captain Hoover to create an overarching procedure dealing with first amendment speech demonstrations and protests that the police department could put out unredacted to the public as well as providing it to any other agency or department within the county, state, or country. Captain Hoover reached out to other law enforcement agencies but did not have much response. We received protest policies from Oakland PD, Fresno PD, Madison PD in Wisconsin, and

reviewed policy and protest recommendations on a memo from California Governor Gavin Newsom dated September 28, 2020. We scheduled a meeting with members of internal affairs, training division, SWAT mobile fuel forces to create a group of subject matter experts to review the materials received to help create the overarching procedure. A draft was created that went through several revisions. The draft was sent to the police legal department for review and input, the bargaining unit for review and input from their attorneys, and back to the Chief's office. It was then presented to the Chief's Advisory Board and before being forwarded to the Chief. The policy was released on February 17, 2021. It contains definitions of terms to stress the mission and direction of the police department which includes: 1. supporting the right to peaceably assemble 2. pre-planning steps officers need to go through when noticed of a future peaceful assembly and 3. guidelines used to coordinate any unlawful assembly strategies

Chair Hilpert added that the CPP Policy Committee conducted research and looked at policies around the country that were applicable to San Diego once it realized that SDPD did not have a standalone protest policy. The Commission found 4 policies from Wisconsin, Seattle, Washington D.C, and California and forwarded those policies to SDPD for consideration. The Commission held 2 policy committee meetings and 1 community roundtable and listened to the community feedback.

National Lawyers Guild member Kate Yavenditti stated that the community is dismayed that the community was not involved in this process. The CPP took steps to put this into motion but feel that the public should be involved since it is a topic important to the public. A CPP policy analyst should work with the public, CPP, law enforcement, and union to put together something the community can trust in.

Commissioner Holtrop asked when conducting the research for this policy were there any methods suggested in California or other states that were positive? Captain Hoover and Chair Brandon Hilpert replied that the Commission and SDPD looked at policies from Madison Wisconsin, Seattle, and Washington DC, put predominately California due to California Law.

Community member Debbie asked that with Homeland Security having the priority of protecting our borders, in the area of protest, who or what would be considered the main priority of protection? She commented that she feels that different people should be taken into consideration to give advice on how best to protect the public, rather than Homeland Security.

Tasha Williamson commented that when a chief says he is going to be transparent and build trust with the community, he should

not be creating any procedures that are going to be harmful to any community members without making sure the public is sitting at the table with him including the CPP and any community members for or against the policy. Officers practice with their batons how they will brutalize them. There is no trust between police and protesters because of how they prepare and plan to treat protesters.

Commissioner Poppy Fitch commented that the Commission sees officers whose role is to ensure our First Amendment Rights as citizens and coming prepared to demonstrations with military weaponry style munitions. This is a concern. She hopes the CPP looks at this policy through that lens and communicates our concerns to the SDPD.

Tasha Williamson commented that military weapons were given to the police for free to use against terrorism, not protestors of their injustices that they refuse to fix.

Commissioner Andrea Dauber-Griffin commented that even though the policy has been released can it still be changed? Chair Hilpert replied that yes it can still be changed, the police department takes into consideration the CPP recommendations and typically adjusts accordingly with multiple rounds of recommendations.

VII. UNFINISHED BUSINESS (DISCUSSION) (Chair Brandon Hilpert)

A. Commission Closed Meetings (April Dates and Times)

- i. There is a huge backlog since there are more complaints these past years. In response, IA has increased their investigating sergeants, which increases the number of cases the CPP needs to review. The CPP will propose to have an additional session next Tuesday. The CPP will also look at how to do the Closed Session Meetings. We will try to have all Commissioners review cases prior to the meeting and during the closed session meetings we will have the presenting group answer questions to make meetings more efficient rather than reading all the cases out loud in the meetings.

B. Case Review

- i. Feedback on Prioritization of Case Reviews, Workflow, Staffing – Prioritize the cases that have sustained findings and are coming up on the one year mark. Internal Affairs sent Chair Brandon Hilpert and Executive Director Sharmaine Moseley cases that are either over the one-year mark because of various issues, or that are 90, 60, and 30 days out so they can be prioritized or reassigned.
- ii. Status of Discipline Cases – The cases will be put in the team’s folders and the teams can talk to the commanding officer or the captains at each division to discuss that discipline if there are any comments or concerns.

- iii. Remote Case Access (Google Drive) – Commissioners are encouraged to reach out to the Help Desk, Brandon Hilpert or Sharmaine Moseley for any questions/concerns.
- iv. IA Office Hours/Schedule – If Commissioners would like to go in during the week or on the weekend they can, just make sure to let Detective Amado know so she can book it and coordinate staff to be there.

VIII. NEW BUSINESS (DISCUSSION/ACTION):

A. Commission Work Retreat (Date and Time)

This is typically held on a Saturday morning. There was a suggestion of doing it after hours on the weekday which Commissioners did not want to do. It is more of a workshop rather than a retreat. The retreats main priority is to keep everything in perspective about the CPP's priorities, draft the work plan and look at the tactical plan that the board and Commission adopts. In the past, the retreats were about four hours depending on the topics needed to be discussed. It was pointed out that Commissioners are trying to keep up with the backlog that occurred from COVID in both professional, personal, and volunteer work so there may be a delay with the cases.

It is a city requirement for the tactical plan to be filed with the City Clerks office.

B. Virtual Training on Pretext Stops, Detentions, Arrest (Date and Time)
i. The Commission will make more definite plans later.

C. Revisit Approach for Case Deliberation – Reports available prior to Closed Meeting
i. Plan to have Commissioners read the cases prior to the meetings and bring in their questions to hopefully make meetings more efficient.

D. Policy Committee Recommendations, on SDPD's Procedure 4.17: First Amendment Activity Facilitation & Management (Protest Policy)
i. Wants policy to restate that several existing policies remain in full force and effect during protest related activities specifically body-worn cameras policy, deescalation, duty for officers to intervene, and identification of name and/or ID policies (Policy 5.10 & 9.19).
ii. Sections specifically detailing how juveniles are treated or processed during protest activities.
iii. Clarifying what falls under "boisterous" under the definition of an unlawful assembly.
iv. See proof or evidence that an event become an unlawful assembly with a clear and present danger of violence to property damage or to individuals.
v. See some statement that preservation of life would take precedence over protecting property.

- vi. Dispersal order – Section 2 stated that an officer does not need to use specific words when they declare an unlawful assembly while Section 7 provides specific language. CPP would like to see that specific language being used to create a standard.
- vii. Feels dispersal order needs to be given a minimum of three times with a minute in between each order.
- viii. Having the verbiage of “must” or “shall” rather than “should” – Officers must or shall have their BWC’s activated in event mode (on and recording) to record a dispersal order. An officer should be stationed behind the crowd with BWC’s on to have audible confirmation that people in the crowd were able to hear the dispersal order.
- ix. Clarification on apple means of aggress.
- x. Concern for those with mobility issues – those in wheelchairs, crutches, ect. – unable to comply in the time given.
- xi. Currently order for dispersal is given in English and Spanish, but want a clarification about other languages such as for the hearing impaired. For planned protests potentially have the mobile traffic signage.
- xii. Felt it was important to have Emergency Medical Staging so EMS providers have the proper materials on hand
- xiii. Want to specify the definition of “reasonable” for the statement “a reasonable time will be allowed for the crowd to comply with police commands before taking action”, but not less than three minutes. Does this mean for the crowd to have left the scene or leaving the scene.
- xiv. Despite the current use of force policy, passive resistance which is behavior that consists of a refusal to comply with verbal commands and does not convey a threat to officer or another person shall not be subject to the use of impact weapons, impact weapon control holds, pain compliance, or pressure points. Under passive resistance in protests, officers will not be using chemical agents, OC spray, on protestors.
- xv. For active resistance which is behavior that consists of a refusal to comply with verbal commands and conveys a threat to the officer or another person or consists of physical opposition of attempts of control by the officer the response should be discussed.
- xvi. The section about special munitions needs to have specific descriptions as to when and how they are utilized, how they are handled when spent, and when not to be used.
- xvii. Special munitions should be listed in order of increasing use of escalation.
- xviii. Feels that the 40 millimeter foam baton rounds should be used as a last resort.
- xix. State that officers will replace flex cuffs should they tighten utilizing the existing fingertip rule policy – having a fingertip space between the handcuffs and the prisoner’s wrist.
- xx. Feel that officers should mark the initial placement of the flex cuffs so it is easy to tell if it got too tight, and write their ID on the flex cuffs.

- xxi. Pros and cons about having a body worn camera on during protests.
- xxii. Changes or additions to the BWC video retention period – have protest activity be added to the civil unrest category.
- xxiii. Add a section detailing that officers will not request or require media or other members of the public to stop or discontinue recording.
- xxiv. Add a section stating on how media and legal observers are identified and should not be told to leave the area and not required to disperse.
- xxv. Add that officers are required to name their commanding officer or incident commander. Have clear prohibition that officers would not be allowed to obstruct their name, badge, ID number, or use someone else’s name or ID number.
- xxvi. Consider having a specially trained unit to handle or address protest activity
- xxvii. Address issues of follow cars – a vehicle that has known supplies, equipment, water that would supply protestors of whatever they need.
- xxviii. Address undercover officer infiltration during protests.
- xxix. Address concern about how bicycles are used as weapons by officers at events or sometimes even shields.
- xxx. Clarify how officers address peaceful civil disobedience.
- xxxi. Address what policies stand if outside law enforcement agencies are brought in during large protests. Would like those agencies to follow the City of San Diego’s policies.
- xxxii. Public Comment: Kate – Concerned that the policy allows police to bring any heavy-duty munitions to peaceful demonstrations. Many demonstrations are peaceful until law enforcement arrive in full riot gear and agitate the crowd. Would like to see heavy-duty weapons completely eliminated. Typically the police initiate activity and claim that it is active resistance so they start using weapons. Want to prevent police making videos and taking pictures to use this information later on kept in a “red book”. Retention policy for BWC if there is no arrest or complaints needs to clarify the deletion policy. Police department cannot have undercover officers and infiltration officers in protests. Typically seen that these officers are the provocateurs in the protests.
- xxxiii. Public Comment: Kylie – Least dangerous to most dangerous munitions: grabbling, hand to hand combat, batons, bicycles, OC spray/pepper spray, pepper ball, ban bag shot gun (super shock), foam baton, tear gas, flash bang, stinger. Pepper spray / tear gas settles and does not dissipate so there have been secondary exposure to it. Flash bangs often cause permanent damage.
- xxxiv. Commissioner Duke Taylor: Media should not be asked to pause, stop, or leave and have the ability to continue doing their work in a specific area without officers stopping them. Although the higher officers typically follow this it does not apply for lower level police officers. Feel there should be an infraction to the

police officer who does stop them. Very hard to determine who is official media or bloggers and media.

- xxxv. Commissioner Robin Spruce: Need to find the balance of how long to keep BWC videos so people can still submit a complaint with evidence. Concern about following current policies during protest situations especially de-escalation and BWC's. Propose that plainclothes officers not be exempt from the BWC policy. Propose to make the BWC policy more robust.
- xxxvi. Commissioner Andrea Dauber-Griffen: This policy reads more as a crowd control policy rather than a protest policy. Does not explain how police ensure citizen safety, organize protest, accompany the protest, and ensure that everything is being done in an orderly fashion. Consider adding the pre-protest organization steps and procedures. Define unlawful assembly especially if a small group is declared unlawful is the entire protest declared unlawful?
- xxxvii. Public Comment: Kylie – intentional to be more of a crowd control policy due to the events that have occurred. In response to vehicles being driven into protest since many protests routes are not shared with the police so they do not know what streets to block off, making their job more difficult.
- xxxviii. Public Comment: Kate – For the BWC retention policy, if we cannot put a time then put a regulation for when it can be used. Proposes to only be accessed or used if there is a complaint made to the commission, to IA, or if there is some kind of legal action being taken whether it be civil or criminal and not used to gather information on demonstrators. Specifically say that the police cannot maintain files on peaceful political activists.
- xxxix. Commissioner Doug Case: Proposes to add a separate section on protecting the safety of peaceful protestors with traffic control, keeping counter protesters separate, etc. And having strategies and techniques to protect the safety of peaceful protestors.

The Commissioners reviewed the recommendations/talking points for the memo. Commissioner Joe Craver moved for the Commission to approve the talking points for the Chair to draft a memo to the Chief of Police. Commissioner Nancy Vaughn seconded the motion.

The motion passed with a vote of 15-0-1.

Yays: 1st Vice Chair Case, 2nd Vice Chair Fitch, Commissioners- Chan, Clark, Craver, Dauber-Griffin, Dent, Holtrop, Hsieh, Neely, Smith, Spruce, Taylor, Vaughn, Workman

Nays: None

Abstained: Chair Hilpert

Absent: Anderson, Herington, and Pink

IX. COMMITTEE CHAIR REPORTS (DISCUSSION/ACTION) **ALL REPORTS
TABLED EXCEPT FOR ITEM E (POLICY COMMITTEE)**

- A. Continuing Education Committee (Nancy Vaughn)
- List of Upcoming Educational Topics
- B. Outreach Committee (Patrick Anderson)
- i. Past Events/Virtual Meetings/Roundtable Discussions
 - ii. Upcoming Events/Outreach Opportunities
- C. Rules Committee (Doug Case)
- Update
- D. CRB Handbook Committee (Doug Case)
- Update – On Hold
- E. Policy Committee (Chair Brandon Hilpert)
- i. Status on Items being Considered Committee
 1. Protest Policy
 2. BWC Usage in Secure Facilities – Currently, if an officer goes into a secure facility such as a detention cell, sally port, or jail processing, officers can turn their BWC off. The Committee believe that officers should keep their BWC's on.
 3. Warnings Prior to OC Usage – Policy committee should be in line with the firearm policy, so the Committee believes there should be a warning in the policy.
 4. Time Limits in Maximum Restraints – The Committee wants to have a maximum of two hours. The 2 hours seemed reasonable to the Committee but should indicate a maximum time.
 5. Seatbelt Usage during Transportation – The Committee believes it is important that when transporting prisoners, a seat belt use is being applied, with certain exceptions.
 6. Observation of Detainees in Sally Port – The Committee believes that prisoners or detainees should be checked on every 15 minutes to make sure they are okay.

The Commissioners reviewed and discussed the recommendations for items 2-6. Commissioner Doug Case moved for the Commission to approve the addition of items 2-6 to the memo to the Chief of Police. Commissioner Joe Craver seconded the motion.

The motion passed with a vote of 13-0-1.

Yays: 1st Vice Chair Case, 2nd Vice Chair Fitch, Commissioners- Chan, Clark, Craver, Dent, Holtrop, Neely, Smith, Spruce, Taylor, Vaughn, Workman

Nays: None

Abstained: Chair Hilpert

Absent: Anderson, Dauber-Griffen, Herington, Hsieh, and Pink

- ii. Schedule Next Policy Committee Meeting – **Item tabled**
- F. Recruitment & Training Committee (Kevin Herington)
- G. Citizens Advisory Board on Police Community Relations (Chair Brandon Hilpert)
 - Update – March 22, 2021
- H. Ad Hoc Transition Contingency Planning Committee (Doug Case)
 - Update
- X. CHAIR’S REPORT **Items Tabled** (Chair Brandon Hilpert)
 - A. Reminder – 3rd Quarter (January 1st – March 31st) Volunteer Hours Report – All Commissioners log hours in for reporting purposes
 - B. Update on 3/10 PS&LN Committee Meeting Re: CPP
 - C. Update on Meetings with City Staff Re: Commission Budget
 - D. Commission Committee Assignments
 - E. Other Items/Reminders
- XI. EXECUTIVE DIRECTOR’S REPORT **Items Tabled** (Sharmaine Moseley)
 - A. Caseload Update & Status of Case Reports
 - B. Status of Work Accounts
 - C. Administrative Support
 - D. 2021 NACOLE Conference Update
 - E. Other Items/Reminders
- XII. SAN DIEGO POLICE DEPARTMENT REPORT **Items Tabled** (EA Chief Al Guaderrama)
 - Updates
- XIII. COMMISSIONER RIDE-ALONG REPORTS: On hold due to COVID
- XIV. COMMISSIONER ANNOUNCEMENTS/COMMENTS: **Items Tabled** (Chair Brandon Hilpert)
- XV. ADJOURNMENT: The meeting adjourned at 8:13 p.m.