



Andrea St Julian, Co-Chair
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5694 Mission Center Road, Ste 602-356
San Diego, CA 92108

VIA EMAIL

February 26, 2022

San Diego City Council
202 C Street
San Diego, CA 92101

RE: Implementation Ordinance for the Commission on Police Practices

Dear Council President Sean Elo-Rivera, Council President Pro Tem Montgomery-Steppe, and Councilmembers von Wilpert, Campillo, LaCava, Whitburn, Moreno, Campbell and Cate:

On Monday, February 28, 2020, the proposed ordinance for the Commission on Police Practices (CPP) will come before this Council. A review of the proposed ordinance shows that portions of it undermine Measure B and therefore require revision/amendment. Below is a brief explanation of the most important changes necessary.

(1) Police Chief's ability to withhold documents based merely on his "opinion"

Sec. 26.1109, subsection (b) of the proposed ordinance gives the Chief of Police the ability to withhold any records of the police department based merely on his "opinion." This provision will severely and unnecessarily compromise the Commission's ability to thoroughly investigate and review matters as well as undermine the confidence the community has in the process; therefore, this section must be revised without improperly impinging on the Police Chief's authority under San Diego City Charter 57. In this regard, parameters must be placed on the Police Chief's authority so that the decision to withhold documents is based on a subjective standard (not merely his "opinion") and is subject to appropriate review.

SDJ suggests that sec. 26.1109, subsection (b) of the proposed ordinance be revised as follows:

The Chief of Police must provide records, whether requested by the Commission or required by this ordinance to be provided to the Commission, in whole and with all information unredacted.



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The Chief of Police may, however, seek a court order to prevent the release of police department records, based on a reasonably objective standard, to prevent the release of documents whose confidentiality must be maintained because release of those documents to the Commission would unduly hinder a criminal investigation. Nothing in this ordinance may unduly infringe on the authority given the Chief of Police under San Diego City Charter section 57.

(2) Collective Bargaining Provisions

The proposed ordinance could be interpreted to give the Police Officers' Association the ability to shape and rewrite the CPP standard operating procedures through collective bargaining. In other words, the collective bargaining provisions in the proposed ordinance could allow the SDPD to control how the Commission functions. These provisions are completely contrary to the independence of the Commission as required by Measure B, and thus they simply cannot remain.

It must be noted, however, that SDJ is fully supportive of all rights to collective bargaining held by the Police Officer's Association and other City employees. SDJ does not suggest that any collective bargaining rights be taken away from City Employees. To the contrary, all collective bargaining rights that City Employees have should be honored. The collective bargaining rights should not, however, be expanded in such a way as to allow the Police Officer's Association to control the functioning of the Commission.

To ensure that City employees' rights are preserved, and the Commission maintains its independence, all provisions regarding collective bargaining must be removed from the proposed ordinance and the suggested language be added:

Nothing in this ordinance shall impair the state and federal collective bargaining rights of any City employee.

(3) Commission Access to Incident Scene

When community-led police oversight organizations are tasked with investigating incidents, the law enforcement agencies under their jurisdiction are routinely required to immediately inform the oversight body of the incident and allow immediate access to the incident scene. This is a standard across the country.



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The latest version of the proposed ordinance directs the Commission to include in its operating procedures a requirement regarding access to certain incident scenes. This provision of the proposed ordinance totally misses the point because it only directs the Commission, not the police department. In this regard, it should be remembered that the Commission's operating procedures do not control the police department, and thus the Commission's standard operating procedure regarding access will have no authority over the police department.

The ordinance must require that the Police Department provide the Commission with immediate notice of an incident where the Commission is required to investigate, as well as any other type of incident requested by the Commission.

(4) Nomination Process

Through joint forums, SDJ and the CPP gathered extensive information about the expectations of the community with respect to the CPP. One of the community's most ardent demands was for community members to nominate the proposed commissioners for appointment by the City Council. In support of this request, the CPP's legal counsel researched the viability of this process and concluded that it was legally possible for a panel of community members to nominate commissioners for appointment by the City Council.

The Voters' Ordinance prepared by SDJ details what that nomination process could look like. Similarly, the CPP has recommended that a community-based panel be created to nominate the commissioners. The method for selecting community members for the panel suggested by SDJ is based on the method used by the state of California for the Racial and Identity Profiling Act (RIPA) Board.

Although SDJ and the community would prefer that the Commission's nominating committee be the only method for nomination, a provision in the ordinance requiring a Commission nominating panel with a majority of community members would still be beneficial even if other methods for nomination were allowed.



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The provision in the proposed ordinance that allows nothing more than an annual meeting where the public can give names for nomination is simply not sufficient. The community needs to have a more formal role in nominating Commission members.

The proposed ordinance must be revised to require the Commission to create a nominations panel comprised of a 2/3 majority of community members who are neither current nor former commissioners.

ADDITIONAL CONCERNS AND ISSUES

SDJ has listed above its primary concerns about the proposed ordinance and these concerns must be addressed to ensure that the proposed ordinance provides a minimally appropriate structure for the new Commission. There are a number of additional concerns, however, that this Commission should address when revising the proposed ordinance. These additional concerns are addressed below.

(5) Determination of the complaint

Sec. 26.1107, subsection (a)(3) of the proposed ordinance specifies that the Commission may not investigate complaints where the complainant has requested that no investigation be conducted or where no specific allegation or police officer can be identified. At earlier hearings before the City Council and at forums, community members have discussed that upon making a complaint to the police department, the complainant is pressured into saying that s/he does not want the complaint investigated. Therefore, the relevant section of the proposed ordinance should make it clear that the Commission must evaluate all complaints received by itself or the police department to determine whether they fit into one of these categories listed. The fail to require this will allow the continued harassment of complainants and the miscategorization of complaints, whether intentional or inadvertent.

Sec. 26.1107, subsection (a)(3) should be revised to specifically state that it is the Commission that must evaluate all complaints received by either it or the police department to determine whether the complainant has requested that no investigation be conducted or that no specific allegation or police officer can be identified.



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(6) Definition of “Not Sustained”

From a legal perspective, there are a number of things problematic about the definitions of the possible findings, most of which are too intricate to be rewritten at a City Council meeting. We would, however request that subsection (b) of the definition of finding in Sec. 26.1102 be changed to include the words “or review” as follows: **“Not Sustained means the investigation or review produced insufficient information to prove or disprove the allegations.”**

(7) Public Nature of the Commission

The key goals of Measure B were to create accountability and transparency with respect to the San Diego Police Department. The proposed ordinance subverts these goals by directing that all information gathered by and produced by the Commission are to be considered personnel records. By defining these records as “personnel” records, they will be considered confidential/not publicly available.

Any unnecessary lack of transparency is contrary to the spirit of Measure B and will crush any efforts toward creating trust between the community and SDPD. Statutes already define “personnel records” and require that they be confidential. SDPD is sufficiently protected by these statutes and should remain so. The proposed ordinance should thus not enlarge the confidentiality of the Commissions’ records.

Sec. 26.1109, subdivision (c) of the proposed ordinance classifies ALL commission records as “personnel” records, and thus hidden from public scrutiny. This section must be rewritten to allow only those records designated by federal or state law as personnel records to be treated as personnel records and therefore confidential.

(8) Felony Bar

The felony bar for appointment to the Commission found in Sec. 26.1103, subdivision (g) should be removed.



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(9) Investigation/Review of sexual misconduct, physical assault, or domestic violence

Sec. 26.1107, subsection (5) of the proposed ordinance must be clarified. If read incorrectly, this provision may be interpreted to mean that the Commission doesn't need to even do a review of a complaint filed that alleges sexual misconduct, physical assault, or domestic violence. That is not the spirit of Measure B. The discretion not to review, investigate or evaluate the listed allegations is limited to instances where those allegations do not come to the attention of the Commission through a filed complaint.

(10) Miscellany

- The proposed ordinance states that “all findings must be based on provable facts applying California evidentiary rules applicable to administrative proceedings.”Section 26.1107 The ordinance should specify which particular type of administrative proceedings it is referring to.
- The proposed ordinance states that a review of a nominated commissioner’s qualifications will be conducted by the council president or a designee. It should be clarified that the council president may not designate SDPD to conduct that review.
- All references to POBOR should be removed, as they are unnecessary to effectuate the ordinance. POBOR does not need to be mentioned within the ordinance for it to be controlling because it is a state law. The mention of POBOR in the ordinance, however, is potentially confusing in the event of a later amendment of that statute or other related statutes.



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San Diego residents deserve a fully functioning Commission on Police Practices as soon as possible, without compromising the will of the 75% of voters who supported Measure B. Thus, we ask that the councilmembers move to make each of the requested revisions and that each member vote in support of the revisions as outlined in this letter.

Respectfully,

A handwritten signature in blue ink that reads "Andrea St. Julian". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Andrea Renee St. Julian, Co-Chair
San Diegans for Justice

cc: Mayor Todd Gloria
M. Yagyagan
M. Gordon
M. Griffith
V. Joes
K. Ferrier
V. Molina
M. Rowan
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