

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF SAN DIEGO, FOR THEIR APPROVAL OR REJECTION AT THE MUNICIPAL SPECIAL ELECTION, CONSOLIDATED WITH THE CALIFORNIA STATE GENERAL ELECTION TO BE HELD ON NOVEMBER 3, 2020, ONE MEASURE AMENDING THE CITY CHARTER BY AMENDING ARTICLE V, BY REPEALING SECTION 43(d), BY AMENDING SECTIONS 40 AND 41, AND BY ADDING A NEW SECTION 41.2, AND BY AMENDING ARTICLE VIII, BY AMENDING SECTION 115, RELATING TO THE DISSOLUTION OF THE COMMUNITY REVIEW BOARD ON POLICE PRACTICES AND THE ESTABLISHMENT OF A COMMISSION ON POLICE PRACTICES.

WHEREAS, pursuant to California Constitution, article XI, section 3(b), California Elections Code (Elections Code) section 9255(a)(2), and San Diego City Charter (Charter) section 223, the Council of the City of San Diego (Council) has authority to place Charter amendments on the ballot to be considered at a Municipal Election; and

WHEREAS, by San Diego Ordinance O-\_\_\_\_\_, introduced and adopted on \_\_\_\_\_, 2020, the Council has called a Municipal Special Election to be consolidated with the California State General Election to be held November 3, 2020, for the purpose of submitting to the qualified voters of the City one or more ballot measures; and

WHEREAS, on June 21, 2019, Andrea St. Julian, on behalf of Women Occupy San Diego, filed with the Office of the City Clerk of the City of San Diego (City), a proposed amendment to the Charter (Proposal or proposed Charter amendment), related to the dissolution of the existing Community Review Board on Police Practices and the establishment of a Commission on Police Practices; and

WHEREAS, the Proposal was submitted to the City in accordance with Council Policy 000-21 (Oct. 31, 2017), titled “Submission of Ballot Proposals,” for consideration for the November 2020 election; and

WHEREAS, on July 31, 2019, in accordance with Council Policy 000-21, the Council’s Rules Committee considered the Proposal and voted to forward it to the Public Safety and Livable Neighborhoods (PS & LN) Committee for the second committee review and further policy direction; and

WHEREAS, on September 18, 2019, the PS & LN Committee voted to modify some of the language in the Proposal and to forward it to the City Attorney for legal review and analysis and to draft legally appropriate language, and to return the Proposal to the PS & LN Committee for further consideration; and

WHEREAS, on October 23, 2019, the PS & LN Committee voted to forward the revised Proposal to the Council to determine if the Council wished to authorize the meet-and-confer process related to the proposed Charter amendment, so that it could be considered for the November 2020 ballot after the meet-and-confer process concluded; and

WHEREAS, on November 5, 2019, by San Diego Resolution R-312737, the Council voted to direct the City’s Management Team for labor negotiations to provide written notice to the City’s recognized employee organizations of the Council’s desire to place the Proposal on a future ballot for consideration by City voters; and

WHEREAS, on November 7, 2019, in accordance with the Meyers-Miliias-Brown Act (MMBA) and Council Policy 300-06, the City provided notice of the Proposal to the City’s six recognized employee organizations: the Deputy City Attorneys Association (DCAA), IAFF

Local 145, Local 127 AFCME, the San Diego Municipal Employees Association (MEA), the San Diego Police Officers Association (POA), and Teamsters Local 911. Only DCAA, MEA, and POA requested to meet; and

WHEREAS, on November 26, 2019, the City met with DCAA, MEA, and POA for discussion of the Proposal. DCAA and MEA identified no impacts related to the proposed Charter amendment that they wished to discuss with the City; and

WHEREAS, the City continued discussions with POA on the substance of the proposed Charter amendment, on February 4, 2020, March 3, 2020, and April 29, 2020; and

WHEREAS, on May 21, 2020, the City and reached agreement, which was approved by the Council on June 23, 2020, by San Diego Resolution R-313121; and

WHEREAS, the Council now wishes to submit to the voters at the November 3, 2020, Municipal Special Election one measure amending the Charter, by amending Article V, by repealing Section 43(d) (“Community Review Board on Police Practices”), by amending Sections 40 (“City Attorney”) and 41 (“Commissions”), and by adding a new Section 41.2 (“Commission on Police Practices”), and by amending Article VIII, by amending Section 115 (“Civil Service Commission”); and

WHEREAS, the proposed Charter amendment dissolves the Community Review Board on Police Practices and establishes a Commission on Police Practices (Commission), which is an investigatory body of the City, to be composed of community members appointed by the City Council, with subpoena powers, independent legal counsel, and City staff outside of the Police Department and Mayoral supervision; and

WHEREAS, the proposed Commission must independently investigate all deaths occurring while a person is in the custody of the Police Department; all deaths resulting from interaction with an officer of the Police Department; and all City police officer-related shootings. The Commission has this duty whether or not a complaint has been made against a police officer or the Police Department. These investigations must be conducted by Commission staff or contractors who are independent of the Police Department, and in accordance with the officer's federal and state law rights; and

WHEREAS, the proposed Commission may, but is not required to, investigate complaints against officers of the Police Department, which do not involve in-custody deaths, deaths resulting from an interaction with a police officer, or police officer-related shootings. However, the Commission must not investigate a complaint where the complainant has requested that the complaint be handled without investigation or where no specific allegation or police officer can be identified; and

WHEREAS, the proposed Commission must receive, register, review, and evaluate all complaints against officers of the Police Department, except complaints where the complainant has requested that the complaint be handled without investigation or where no specific allegation or police officer can be identified; and

WHEREAS, the proposed Commission may, but is not required to, review, evaluate, and investigate allegations of inappropriate sexual conduct, physical assault, or domestic violence by officers of the Police Department, whether or not a written complaint has been submitted to the Commission or the Police Department; and

WHEREAS, the proposed Commission must review and evaluate all factual findings and evidentiary conclusions of the Police Department arising from investigations of police

misconduct, and all disciplinary decisions proposed by the Chief of Police or designee following sustained findings of police misconduct, with the terms “police misconduct” and “police officer misconduct,” to be defined by the Council by ordinance; and

WHEREAS, the proposed Commission must review and evaluate the Police Department’s compliance with federal, state, and local reporting laws and requirements, and must prepare and submit semi-annual reports to the Mayor and Council regarding the exercise of the Commission’s duties and powers. These reports must be public, but must not disclose any information required to be kept confidential by controlling federal or state law; and

WHEREAS, the proposed Commission has other duties and powers, as specified in the proposed Charter amendment or to be specified by Council, by ordinance, if the proposed Charter amendment is approved by the City’s qualified voters; and

WHEREAS, the Council’s proposal of a Charter amendment is governed by California Constitution, article XI, section 3(b), Elections Code section 9255(a)(2), and California Government Code section 34458, and is not subject to veto by the Mayor; NOW, THEREFORE,

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

Section 1. One measure amending the Charter by amending Article V, by repealing Section 43(d), by amending Sections 40 and 41, and by adding a new Section 41.2, and by amending Article VIII, by amending Section 115, all related to the dissolution of the Community Review Board on Police Practices and the establishment of a Commission on Police Practices, is hereby submitted to the qualified voters at the Municipal Special Election to be held on November 3, 2020, and consolidated with the California State General Election to be held on the same date, with the measure to read as follows:

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**MEASURE**

**ARTICLE V**

**EXECUTIVE AND ADMINISTRATIVE SERVICE**

**SECTION 40: CITY ATTORNEY**

A City Attorney shall be elected for a term of four years in the manner prescribed by Section 10 of this Charter. The City Attorney shall hold office for the term prescribed from and after 10 a.m. on the tenth day of December next succeeding the election and until a successor is elected and qualified. If the tenth day of December falls on a weekend or holiday, the term shall begin at 10 a.m. on the next calendar day that is not a weekend or a holiday.

No person shall serve more than two consecutive four-year terms as City Attorney. If for any reason a person serves a partial term as City Attorney in excess of two years, that partial term shall be considered a full term for purposes of this term limit provision.

The City Attorney shall be the chief legal adviser of, and attorney for the City and all Departments and offices thereof in matters relating to their official powers and duties, except in the case of the Ethics Commission and the Commission on Police Practices, which each shall have its own legal counsel independent of the City Attorney. The attorney and his or her deputies shall devote their full time to the duties of the office and shall not engage in private legal practice during the term for which they are employed by the City, except to carry to a conclusion any

matters for which they have been retained prior to taking office. The City Attorney must be licensed to practice law in the State of California and must have been so licensed for at least ten years at the time he or she submits nominating petitions.

The City Attorney shall appoint such deputies, assistants, and employees to serve him or her, as may be provided by ordinance of the Council, but all appointments of subordinates other than deputies and assistants shall be subject to the Civil Service provisions of this Charter. The City Attorney may appoint no more than six Assistant City Attorneys and four other assistants, who shall serve at the pleasure of the City Attorney and may be removed by the City Attorney at any time.

No Deputy City Attorney, who has served continuously as a Deputy City Attorney in the Office of the City Attorney for one year or more shall be terminated or suspended without good cause, except that any Deputy City Attorney may be subject to layoff due to lack of work or insufficient appropriation to meet the salary requirements necessary to maintain existing personnel in the Office of the City Attorney.

To ensure that Deputy City Attorneys conduct their legal work with the highest level of integrity, honesty, and professionalism, good cause for purposes of termination or suspension includes, but is not limited to, failure to comply with the California Rules of Professional Conduct.

It shall be the City Attorney's duty, either personally or by such assistants as he or she may designate, to perform all services incident to the legal department; to give

advice in writing when so requested, to the Council, its Committees, the Manager, the Commissions, or Directors of any department, but all such advice shall be in writing with the citation of authorities in support of the conclusions expressed in said written opinions; to prosecute or defend, as the case may be, all suits or cases to which the City may be a party; to prosecute for all offenses against the ordinances of the City and for such offenses against the laws of the State as may be required of the City Attorney by law; to prepare in writing all ordinances, resolutions, contracts, bonds, or other instruments in which the City is concerned, and to endorse on each approval of the form or correctness thereof; to preserve in the City Attorney's office a docket of all cases in which the City is interested in any of the courts and keep a record of all proceedings of said cases; to preserve in the City Attorney's office copies of all written opinions he or she has furnished to the Council, Manager, Commission, or any officer. Such docket, copies and papers shall be the property of the City, and the City Attorney shall, on retiring from office, deliver the same, together with all books, accounts, vouchers, and necessary information, to his or her successor in office.

The City Attorney shall have charge and custody of all legal papers, books, and dockets belonging to the City pertaining to his office, and, upon a receipt therefor, may demand and receive from any officer of the City any book, paper, documents, or evidence necessary to be used in any suit, or required for the purpose of the office.

The City Attorney shall apply, upon order of the Council, in the name of the City, to a court of competent jurisdiction for an order or injunction to restrain the

misapplication of funds of the City or the abuse of corporate powers, or the execution or performance of any contract made in behalf of the City which may be in contravention of the law or ordinances governing it, or which was procured by fraud or corruption.

The City Attorney shall apply, upon order of the Council, to a court of competent jurisdiction for a writ of mandamus to compel the performance of duties of any officer or commission which fails to perform any duty expressly enjoined by law or ordinance.

The City Attorney shall perform such other duties of a legal nature as the Council may by ordinance require or as are provided by the Constitution and general laws of the State.

The Council shall have authority to employ additional competent technical legal attorneys to investigate or prosecute matters connected with the departments of the City when such assistance or advice is necessary in connection therewith. The Council shall provide sufficient funds in the annual appropriation ordinance for such purposes and shall charge such additional legal service against the appropriation of the respective Departments.

Effective December 10, 2020, the salary paid to the City Attorney will be equal to the salary prescribed by law and as adjusted by law for judges of the Superior Court for the State of California, provided that the salary of the City Attorney may not be decreased during a term of office.

Whenever a vacancy exists in the office of the City Attorney, an Assistant City Attorney, previously designated by the City Attorney to fulfill duties in the event of a vacancy and whose name has been recorded with the City Clerk as the Interim City Attorney in the event of a vacancy, shall fulfill the duties of the City Attorney as the Interim City Attorney until a replacement can be appointed or elected as provided by this Charter. The Interim City Attorney shall have the full authority of the Office.

**SECTION 41: COMMISSIONS**

The Mayor shall appoint, subject to the confirmation of the Council, members of all City commissions, ~~established pursuant to this section,~~ except the members of the Commission on Police Practices, whose appointment and service are governed by Section 41.2 of this Charter. Whenever the Mayor does not appoint a member within forty-five (45) days after a vacancy occurs, the Council shall make such appointment. The commissioners shall be limited to two (2) full consecutive terms, with one (1) term intervening before they become eligible for reappointment; and this provision shall apply to anyone who has served two (2) full consecutive terms by January 1972. The terms of commissioners may extend beyond the elective term of the appointing Mayor. The Mayor shall fill, subject to the confirmation of the Council, any vacancy and such appointment shall be for the unexpired term of the office being filled. The City Council may remove a member of the Civil Service Commission for cause by vote of two-thirds (2/3) of the members of the Council. However, before the Council may remove a member of the Civil Service Commission, written charges shall be made against the

commission member and an opportunity afforded for public hearing before the Council upon such charges. The City Council may remove members of all other commissions established pursuant to this section for cause by vote of a majority of the members of the Council.

(a) Funds Commission. [No change in text.]

(b) Civil Service Commission. [No change in text.]

(c) City Planning Commission. [No change in text.]

(d) Ethics Commission. [No change in text.]

**SECTION 41.2:      COMMISSION ON POLICE PRACTICES**

A Commission on Police Practices is established, which supersedes the Community Review Board on Police Practices. The Commission on Police Practices is referred to in this section as the “Commission,” the Police Department of the City of San Diego is referred to as the “Police Department,” and an officer of the Police Department is referred to as an “officer” or “police officer.”

The Commission is an investigatory body of the City of San Diego, independent of the Mayor and the Police Department.

The Commission has certain mandatory duties and discretionary powers, as described in this section. The City Council may, by ordinance, mandate additional duties and authorize additional powers for the Commission, consistent with this section and applicable federal and state law. The City Council may also establish rules and procedures to implement this section. Subject to any limitations set forth in governing federal or state law, the Commission is authorized to refer any

matter before the Commission to the grand jury, district attorney, or other governmental agency that is authorized by law to investigate the activities of a law enforcement agency.

The City Council must appoint the members of the Commission. The City Council may remove members of the Commission for cause by a vote of a majority of the members of the City Council. The City Council must, by ordinance, establish the number, term length, qualifications, and method for appointing members of the Commission, and define the circumstances and process under which the City Council determines there is cause for removal of a member of the Commission.

The Commission will be composed of members of the Community Review Board on Police Practices serving at the time this section takes effect, until the City Council has formally appointed members to the Commission, in accordance with the ordinance described in this section.

The City Council must appoint and establish the initial annual compensation for the Commission's Executive Director, who serves at the direction and will of the Commission. The Commission must conduct the annual performance review of the Executive Director, and may modify the Executive Director's annual compensation, consistent with the compensation schedules established by the City Council in adopting the annual salary ordinance. The Executive Director serves as the appointing authority for additional employees assisting the Commission, who must be appointed and serve in accordance with this Charter. The Executive Director is authorized to employ outside experts or consultants to assist with the

Commission's work on a contractual basis, consistent with the City's contracting rules. The Commission must retain its own legal counsel, who is independent of the City Attorney, for legal support and advice in carrying out the Commission's duties and actions.

The Executive Director serves as custodian of the Commission's records and must comply with all applicable laws related to records retention, protection, confidentiality, and disclosure. The Police Department must make available its records, relating to any matter under investigation, review, or evaluation by the Commission, subject to the restrictions of applicable federal and state law.

The Commission has the power to conduct investigatory proceedings, subpoena witnesses and compel their attendance and testimony, administer oaths and affirmations, and require by subpoena the production of any books, papers, records, or other items material to the performance of the Commission's duties or exercise of its powers, subject to the restrictions of and in accordance with this section and applicable federal and state law. The Commission may enforce its administrative subpoenas by initiating contempt procedures, upon a majority vote of the Commission and in the manner provided by applicable state law.

The Commission must independently investigate all deaths occurring while a person is in the custody of the Police Department; all deaths resulting from interaction with an officer of the Police Department; and all City police officer-related shootings. The Commission has this duty whether or not a complaint has been made against a police officer or the Police Department. These investigations must be conducted by Commission staff or contractors who are independent of the

Police Department, and in accordance with the officer's federal and state law rights.

The Commission may, but is not required to, investigate complaints against officers of the Police Department, which do not involve in-custody deaths, deaths resulting from an interaction with a police officer, or police officer-related shootings. However, the Commission must not investigate a complaint where the complainant has requested that the complaint be handled without investigation or where no specific allegation or police officer can be identified.

In determining whether to investigate a complaint that the Commission has the discretionary power, but not the mandatory duty, to investigate, the Commission must consider whether the complaint arises from any of the following: (1) an incident in which the use of force by a City police officer against a person resulted in great bodily injury; (2) dishonesty by a City police officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by another peace officer or custodial officer, including an allegation of perjury, false statements, filing false reports, or destruction, falsifying, or concealing of evidence; (3) an incident that has generated substantial public interest or concern; (4) an incident in which data shows a pattern of misconduct by any Police Department officer; or (5) an incident in which data shows a pattern of inappropriate policies, procedures, or practices of the Police Department or its members.

The Commission must receive, register, review, and evaluate all complaints against officers of the Police Department, except the Commission must not review

or evaluate a complaint where the complainant has requested that the complaint be handled without investigation or where no specific allegation or police officer can be identified.

The Commission may, but is not required to, review, evaluate, and investigate allegations of inappropriate sexual conduct, physical assault, or domestic violence by officers of the Police Department, whether or not a written complaint has been submitted to the Commission or the Police Department.

The Commission must review and evaluate all factual findings and evidentiary conclusions of the Police Department arising from investigations of police misconduct and all disciplinary decisions proposed by the Chief of Police or designee following sustained findings of police misconduct, with the terms “police misconduct” and “police officer misconduct,” to be defined by the City Council by ordinance. The Commission may, but is not required to, review and evaluate the Police Department’s administration of discipline arising from sustained complaints, which do not involve allegations of police misconduct, and from matters investigated by the Commission. The Commission may, but is not required to, make recommendations to the Police Department on the discipline of individual officers against whom complaints have been made or about whom the Commission has conducted an investigation.

The Commission must review and evaluate the Police Department’s compliance with federal, state, and local reporting laws and requirements. The Commission must also prepare and submit semi-annual reports to the Mayor and City Council regarding the exercise of the Commission’s duties and powers. These reports must

be public, but must not disclose any information required to be kept confidential by controlling federal or state law.

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 specific recommendations to the Police Department, the Mayor, and the City Council on any policies, procedures, practices, and actions of the Police Department.

The Chief of Police must consider the Commission’s evaluation of proposed police officer discipline, prior to imposition of the discipline, to the extent permitted within applicable federal and state law, and only if the evaluation is completed before the statutory timelines, set forth in the California Public Safety Officers Procedural Bill of Rights or subsequent, applicable state laws, for the Police Department to act on the evaluation. The Chief of Police retains authority and discretion to discipline subordinate employees in the Police Department, in accordance with Section 57 of this Charter.

Any sustained findings of police officer misconduct by the Commission are subject to appeal, as required by California law. These sustained findings may be appealed to the City’s Civil Service Commission.

**SECTION 43:           ADVISORY BOARDS AND COMMITTEES**

(a) through (c) [No change in text.]

~~(d) Community Review Board on Police Practices. Notwithstanding any other provision of this Charter, the Mayor and City Council shall have the exclusive~~

~~authority to create and establish a community review board on police practices to review and evaluate citizens' complaints against members of the San Diego Police Department and the San Diego Police Department's administration of discipline arising from such complaints. The Mayor and City Council shall establish such rules and regulations as may be necessary for this board to carry out its functions; provided, however, that such rules and regulations shall be consistent with the laws of the State of California concerning citizens' complaints against peace officers. Nothing in such rules and regulations shall interfere with the board's authority to independently refer a completed citizen complaint investigation to the grand jury, district attorney, or any other governmental agency authorized by law to investigate the activities of a law enforcement agency. The board shall review all deaths occurring while a person is in the custody of the San Diego Police Department and all police officer related shootings. The board shall submit semiannual reports to the Mayor and City Council concerning its evaluation of the San Diego Police Department's investigation of citizens' complaints; provided, however, that such reports shall not disclose any information required to be kept confidential by law.~~

## **ARTICLE VIII**

### **CIVIL SERVICE**

#### **SECTION 115: CIVIL SERVICE COMMISSION**

This Commission shall have supervision over the selection, promotion, and removal of all employees of the City, subject to the Civil Service provisions of this Charter. This Commission shall also conduct and determine appeals of

sustained findings of police officer misconduct by the Commission on Police Practices, established by this Charter, as required by California law.

**END OF MEASURE**

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Section 2. The measure shall be presented and printed upon the ballot and submitted to the voters in the manner and form set out in Section 3 of this ordinance.

Section 3. On the ballot to be used at this Municipal Special Election, in addition to any other matters required by law, there shall be printed substantially the following:

<b>MEASURE __. CHARTER AMENDMENTS          ESTABLISHING COMMISSION ON POLICE          PRACTICES.</b> Shall the City Charter be amended to dissolve the Community Review Board on Police Practices and replace it with a Commission on Police Practices, with members appointed by the City Council, its own staff, subpoena power, independent legal counsel, and authority to investigate police officer misconduct, review complaints against officers, and make recommendations on police officer discipline, police policies, and Police Department legal compliance?	YES	
	NO	

Section 4. An appropriate mark placed in the voting square after the word “Yes” shall be counted in favor of the adoption of this measure. An appropriate mark placed in the voting square after the word “No” shall be counted against the adoption of the measure.

Section 5. Passage of this measure requires the affirmative vote of a majority of those qualified electors voting on the matter at the Municipal Special Election.

Section 6. The City Clerk shall cause this ordinance or a digest of this ordinance to be published once in the official newspaper following this ordinance's adoption by the City Council.

Section 7. In compliance with San Diego Municipal Code section 27.0402, this measure will be available for public examination for no fewer than ten calendar days prior to being submitted for printing in the sample ballot. During the examination period, any voter registered in the City may seek a writ of mandate or an injunction requiring any or all of the measure to be amended or deleted. The examination period will end on the day that is 75 days prior to the date set for the election. The Clerk shall post notice of the specific dates that the examination period will run.

Section 8. A full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public prior to the day of its passage.

Section 9. Pursuant to sections 295(b) and 295(d) of the Charter of the City of San Diego, this ordinance shall take effect on the date of passage by the City Council, which is deemed the date of its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By \_\_\_\_\_  
Joan F. Dawson  
Senior Deputy City Attorney

JFD:jvg:jdf  
06/19/20  
Or. Dept.:  
Doc. No.: 2407838