

COMMISSION ON POLICE PRACTICES
Saturday, September 14, 2024
11:00am – 4:00pm

**SPECIAL MEETING and
COMMUNITY HEARING
AGENDA**

**Logan Heights Library
567 S 28th Street
San Diego 92113**

The Commission on Police Practices (Commission) meetings will be conducted pursuant to the provisions of California Government Code Section 54953 (a), as amended by Assembly Bill 2249.

The Commission's Community Hearing will be in person and the meeting will be open for in-person testimony. Additionally, we are continuing to provide alternatives to in-person attendance for participating in our meetings. In lieu of in-person attendance, members of the public may also participate via telephone/Zoom.

The link to join the meeting by computer, tablet, or smartphone at 11:00am is:

<https://sandiego.zoomgov.com/j/1610950576>

Meeting ID: 161 095 0576

In-Person Public Comment on Hearing Item: If you wish to address the Commission on the item on today's agenda, please complete and submit a speaker slip before the Commission hears the agenda item. You will be called at the time the item is heard. Each speaker must file a speaker slip with the Executive Director at the meeting at which the speaker wishes to speak indicating which item they wish to speak on. Speaker slips may not be turned in prior to the day of the meeting or after completion of in-person testimony. In-person public comment will conclude before virtual testimony begins. Each speaker who wishes to address the Commission must state who they are representing if they represent an organization or another person.

For discussion and information items each speaker may speak up to three (3) minutes, subject to the Chair's determination of the time available for meeting management purposes, in addition to any time ceded by other members of the public who are present at the meeting and have submitted a speaker slip ceding their time. These speaker slips should be submitted together at one time to the Executive Director. The Chair may also limit organized group presentations of five

or more people to 15 minutes or less.

Written Comment through Webform: Comment on the agenda item may also be submitted using the [webform](#). If using the webform, indicate the agenda item number you wish to submit a comment for. All webform comments are limited to 200 words. 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 above. To view a meeting archive video, click [here](#). Video footage of each Commission meeting is posted online [here](#) within 1 week of the conclusion of the meeting.

Comments received no later than 11 am the day of the meeting will be distributed to the Commission on Police Practices. Comments received after the deadline described above but before the item is called will be submitted into the written record for the relevant item.

Written Materials: You may alternatively submit via U.S. Mail to Attn: Office of the Commission on Police Practices, 525 B Street, Suite 1725, San Diego, CA 92101. Materials submitted via U.S. Mail must be received the business day prior to the meeting to be distributed to the Commission on Police Practices.

If you attach any documents to your comment, they will be distributed to the Commission or Committee in accordance with the deadlines described above.

- I. CALL TO ORDER/WELCOME (Chair Gloria Tran)
- II. ROLL CALL (Executive Director Paul Parker)
- III. PURPOSE OF THE COMMISSION ON POLICE PRACTICES
The purpose of the Commission on Police Practices (CPP or Commission) is to provide independent community oversight of SDPD, directed at increasing community trust in SDPD & increasing safety for community and officers. The purpose of the Commission is also to perform independent investigations of officer-involved shootings, in-custody deaths and other significant incidents, and an unbiased evaluation of all complaints against members of SDPD and its personnel in a process that will be transparent and accountable to the community. Lastly, the Commission also evaluates the review of all SDPD policies, practices, trainings, and protocols and represents the community in making recommendations for changes.
- IV. CLOSED SESSION
 - A. Public comment
 - B. Outside Counsel Duane Bennett – Lead CPP into Closed Session
(Not Open to the Public)
 - C. PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE
Discussion & Consideration of Complaints & Reports: Pursuant to Government Code Section 54957 to discuss complaints, charges,

investigations, and discipline (unless the employee requests an open public session) involving San Diego Police Department employees, and information deemed confidential under Penal Code Sections 832.5–832.8 and Evidence Code Section 1040. Reportable actions for the Closed Session items on the agenda will be announced and posted on the Commission’s website at www.sandiego.gov/cpp.

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| I. | San Diego Police Department Feedback on Case Specific Matters (0) |
| II. | Shooting Review Board Reports (0) |
| III. | Officer–Involved Shooting (1) |
| IV. | Discipline Reports (1) |
| V. | In–Custody Death (0) |
| VI. | Case Review Group Reports (4) |
| VII. | Case–Specific Recommendations to the Mayor/Chief (0) |
| VIII. | Referrals to other governmental agencies authorized to investigate activities of a law enforcement agency (0) |
| IX. | Legal Opinion(s) Request & Response (0) |

V. REPORT FROM CLOSED SESSION (Outside Counsel Duane Bennett)

12:30 P.M.

VI. **TIME CERTAIN COMMUNITY HEARING –SDPD PROTEST POLICY**

Community hearing items are “time certain” and shall be heard beginning at 12:30 p.m. Due to the time certain requirement, other items may be taken out of order to accommodate the 12:30 p.m. community hearing item.

- A. Introduction (Chair Tran)
- B. Overview of Protest Policy (Commissioner Brandon Hilpert)
- C. Public Comment on Protest Policy
- D. Commissioner Discussion

VII. CLOSING COMMENTS (Chair Tran)

- A. Next steps for the Commission

VIII. STANDING COMMITTEES (Chair Tran)

- A. Presentation
 - Training and Continuing Education Committee—change from Ad–Hoc
 - Community Outreach Committee
 - Rules Committee
 - Executive Committee
- B. Public Comment
- C. Discussion
- D. Vote on formation of standing committees

IX. ADJOURNMENT

Materials Provided:

- Protest Policy Recommendations—DRAFT
- Protest Policy Presentation
- [First Amendment Activity Facilitation and Management](#)
- [CPP Initial Recommendations](#)
- [SDPD Response](#)
- [Proposed New Recommendations/Re-recommendations](#)
- [SDPD Response to CPP Questions for Clarification](#)

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.

Requests for disability-related modifications or accommodations required to facilitate meeting participation, including requests for auxiliary aids, services, or interpreters, require different lead times, ranging from five business days to two weeks. Please keep this in mind and provide as much advance notice as possible to ensure availability. The city is committed to resolving accessibility requests swiftly.

SDPD Department Procedure 4.17 - FIRST AMENDMENT ACTIVITY FACILITATION AND MANAGEMENT follows POST Guidelines and meets or exceeds relevant state law.

Further, SDPD is obligated to respond to possible unlawful assembly or riot situations.

California Penal Code Section 410 states:

If a magistrate or officer, having notice of an unlawful or riotous assembly, mentioned in this Chapter, neglects to proceed to the place of assembly, or as near thereto as he can with safety, and to exercise the authority with which he is invested for suppressing the same and arresting the offenders, he is guilty of a misdemeanor.

California Penal Code Section 726 states:

Where any number of persons, whether armed or not, are unlawfully or riotously assembled, the sheriff of the county and his or her deputies, the officials governing the town or city, or any of them, must go among the persons assembled, or as near to them as possible, and command them, in the name of the people of the state, immediately to disperse.

1. Question 1: How is the threat of using violence by protesters assessed?

This is conduct-based and supported by specific articulable facts. Officers are trained to look at the totality of the circumstances. Factors include, but are not limited to, verbal threats to people or property; opposing parties engaged in threatening verbal or physical exchanges; criminal acts; fights; assaults; robberies; and the presence of traditional or improvised weapons (guns, knives, tasers, zip-ties, batons/sticks, rocks, chains, etc.).

2. What is the minimum number of individuals that makes a riot according to SDPD Officers?

Two. California Penal Code section 404(a) states:

A riot is any use of force or violence, disturbing the public peace, or any threat to use force or violence, if accompanied by immediate power of execution, **by two or more persons acting together**, and without authority of law.

3. What metrics does SDPD use to define between a riot and an unlawful assembly?

The California Penal Code defines both of these:

Penal Code section 404 defines a riot as:

Any use of force or violence, disturbing the public peace, or any threat to use force or violence, if accompanied by immediate power of execution, by two or more persons acting together, and without authority of law.

Penal Code section 407 defines an unlawful assembly as:

Whenever two or more persons assemble together to do an unlawful act or do a lawful act in a violent, boisterous or tumultuous manner, such assembly is an unlawful assembly.

The terms “boisterous” and “tumultuous” have been interpreted as conduct that poses a clear and present danger of imminent violence. *In re Brown* (1973) 9 Cal. 3d 612, 623.

4. Related to protest activities, what does SDPD consider criminal conduct?

Criminal conduct is an act that violates federal, state, or local law.

In regards to unlawful assembly, an “unlawful act” could be an intersection takeover. Obstructing traffic is an unlawful act, but SDPD rarely declares an unlawful assembly for obstructing traffic unless it is prolonged or accompanied by other factors, such as violence or vandalism.

Other examples of more serious criminal conduct could include vandalism, arson, assault, battery, theft, trespassing, and carrying or brandishing illegal weapons.

5. Unlawful Assemblies, the procedure refers to the "number and nature." How does the department consider these out of the larger crowd?

Section VII, B, 2 and 3 uses the term “number and nature.”

Immediately preceding is section VI C, which says:

During peaceful First Amendment Activity, officers may find the occasional individual who engages in criminal conduct that is not reflective of the larger group. In these cases, when feasible, officers should address the individual offender in compliance with other Department procedures while minimally disrupting the larger assembly.

Immediately following are sections VII, B, 4-7, which further state:

Whether the unlawful or violent acts result from one or two individuals or the larger crowd in general; whether separate crowds have merged and now the group has internal conflict between participants; whether contact with the police liaisons/event leaders to negotiate a resolution of the situation is appropriate and

effective; and evaluation of whether arresting individuals will be more appropriate than dispersing the entire crowd.

“Number and nature” is a way of articulating the facts that comprise the totality of the circumstances. It helps determine if a few individuals are exploiting a lawful assembly or if the assembly itself is the issue.

For instance, if officers are monitoring a protest and see that **one person** has vandalized a bus bench with a permanent marker, that would be a small number of vandalisms of a less severe nature (misdemeanor vandalism).

If **several people** were to use spray paint to vandalize a dozen storefront windows during the same event, that would be a larger number of acts and of a more severe nature (felony vandalism).

A further escalation would be if **several people** were to set fire to parked vehicles. That would be a larger number of acts of a much more severe nature (felony arson).

Each protest/demonstration must be evaluated independently. Officers may consider the “number and nature,” which means what type of criminal acts are occurring, whether criminal acts are widespread, whether there is a threat to safety or individuals being injured, whether there is a need to render aid to individuals in the crowd, and whether officers can safely arrest specific individuals in the crowd committing criminal acts, or if the larger crowd/event needs to be dispersed.

6. What does the department mean by "sufficient police resources"?

The goal of the SDPD is to provide public safety and protect the First Amendment rights of people engaged in expressive activity. Sufficiency will vary from incident to incident. Strategies, objectives, techniques and resources are articulated in section IX. CROWD DISPERSAL STRATEGIES, OBJECTIVES AND TECHNIQUES and XI. RESOURCES.

7. Regarding dispersal orders, what does the department consider a "reasonable way"?

Section VII, C provides detail about how a dispersal order is given.

Declaration of Unlawful Assembly

1. If the Incident Commander deems it is appropriate to declare an unlawful assembly, dispersal orders must be given.

2. For a dispersal order to be valid, a public officer must direct the persons assembled to immediately disperse in the name of the People of the State. Penal Code §726. The officer is not required to use any particular words. However, the terms used must be sufficient to inform a reasonable person that the officer is

acting in an official capacity and ordering people to leave the area. Additionally, the officer must communicate the order in a reasonable way that ensures that the order is heard. (Judicial Council of California Criminal Jury Instruction Number 2686).

Commented [EL1]: This is the current language in the Jury Instructions.

3. Dispersal orders should not be given until officers are in a position to support/direct crowd movement. Members of the crowd should be given ample means of egress. The Incident Commander should consider persons with mobility issues when evaluating ample means of egress. The dispersal order shall be given at least three (3) times, and when safe, with audible confirmation from officers behind the crowd.

4. The dispersal order shall be given in English and Spanish.

5. The Incident Commander should ensure video recording occurs during unlawful assemblies, consistent with Department Procedures 1.49 and 3.26.

6. Officers shall activate their Body Worn Cameras before dispersal orders begin, consistent with Department Procedure 1.49.

7. Officers shall use the following dispersal order:

I am (your name and rank), a Police Officer of the City of San Diego. I hereby declare this to be an unlawful assembly, and in the name of the People of the State of California, I command all those assembled at (give specific location) to immediately disperse. You may move to (give a suitable location for crowd destination). If you do not do so, you will be arrested. If you refuse to move, (describe force, e.g. chemical agents and other weapons will be used. Provide the chemical agent/projectile warning only if their use is anticipated.)

Yo soy (name and rank) un oficial del departamento de policia de San Diego. Por Medio de la presente declaro que esta es una asamblea ilegal y en el nombre del gobierno del estado de California, les ordeno a todos aquellos reunidos (give specific location) que se retiren inmediatamente. Usted puede moverse (give specific locations and best route). Sino hacen eso, ustedes seran arrestados. Si usted rehusa moverse se usara gas lacrimojeno y otras armas. (Provide the chemical agent/projectile warning only if their use is anticipated.)

8. Incident commanders shall consider the following methods that may be used to deliver and document dispersal orders (not in priority order):

a. Loud speech

b. Amplified sound

c. Ensuring that the order is heard in remote areas

- d. Using unmanned aircraft equipped with amplified sound flown to inaccessible areas
- e. Pre-recorded unlawful assembly messages in multiple languages as appropriate
- f. Display of signage, including electronic signage and billboards, indicating unlawful assembly, dispersal and clearly identified routes of egress
- g. Gaining the attention of the crowd and documenting affirmative responses of crowd members prior to the declaration of unlawful assembly
- h. Positioning law enforcement personnel to the rear of a crowd to confirm and document hearing the transmission of the dispersal order
- i. Acquiring multiple-language capability
- j. Community alert system(s)
- k. Provide easy to understand directions that help the crowd disperse so that they clearly understand the desired response
- l. Using video/audio recording equipment for documentation of the dispersal order, the crowd response and their ability to hear
- m. Use of social media platforms to send out alerts to specific areas

8. What does SDPD consider "violent criminal acts" or "acts of violence"?

Violence is defined as “behavior involving physical force intended to hurt, damage, or kill someone or something.”

Violent criminal acts/acts of violence may include the following violations of the law: fighting in public, assault, battery, robbery, sexual assault, assault with a deadly weapon, brandishing a weapon, criminal threats, arson, and false imprisonment. Serious acts of property damage may also be considered violent acts. Generally, any act causing or likely to cause bodily or death, or acts resulting in damage to property.



CPP “Protest Policy” Recommendations

Introduction

CPP Research & Community Meetings

- Began June 2020
- Reviewed Seattle, Fresno, Oakland and Washington DC demonstration policies
- Shared with SDPD to create San Diego's procedure

Development of a Procedure

- February 2021: SDPD released "First Amendment Activity Facilitation and Management" Procedure
- March 2021: CPP requested 19 revisions or clarifications
- May 2021: SDPD responded to recommendations
- August 2022: SDPD revised procedure
- May & June 2024: CPP meetings reviewing procedure

Reason & Purpose

- San Diego Police Department had no specific, stand-alone policy or procedure on how to address mass protest activities
- SDPD relied on components of other existing procedure to guide officers
 - Use of force, use of chemical agents, arrests, handcuffing, body worn cameras etc.
- CPP's Policy Committee initiated research to determine best practices nationwide
- Many other large cities also did not have a specific stand-alone policy or procedure
- Reviewed cities with publicly available policies or procedures with similar needs or circumstances
 - Seattle – 1999 WTO protests, and SPD's response led to resignation of Police Chief
 - Oakland – OPD experienced multiple violations including use of force, arrests and care for arrestees
 - Washington DC – Significant experience with protest activities

How SDPD Categorized Recommendations



Accepted or
will implement




Recommendation
already exists.



"Operational or legal challenges"
Will not implement



Accepted Recommendations

4. Clarify that a protest will not be declared unlawful simply for being “boisterous.”
 - SDPD agreed that simply because an assembly is boisterous or tumultuous does not establish a violation of PC §407. Procedure will be amended.
 - 6e. “Ample means of egress” considering those with mobility issues
 - SDPD agreed to add inclusive language.
 - 6f. Add options for non-English/Spanish speakers, signage for hearing impaired etc.
 - SDPD agreed to add “Display of signage, including electronic signage and billboards, indicating unlawful assembly, dispersal and clearly identified routes of egress.”
 7. EMS providers should have proper materials on hand (ex. decontamination).
 - SDPD does not have authority over SDFD or EMS, however agreed to add “cooperative pre-planning” to ensure adequate resources
- 

Recommendation Already Exists

SDPD stated "care is taken not to duplicate pre-existing procedures."

All officers are responsible for abiding by all SDPD policies and procedures - 1.01 Abiding by Legal Updates, Orders, Policies, Procedures and Training Bulletins and 9.03 Obedience to Rules.


1. Include SDPD existing guidelines regarding pre-protest planning with event organizers.
2. Restate that existing P&P remain in full force and effect during protests.
3. Specifically address how juveniles are treated in line with existing procedures.
5. Include in procedure a statement that preservation of life takes precedence over property.
 - SDPD referred to it's Vision Values and Mission Statement as well as other P&Ps.

Recommendation Already Exists

6. Dispersal orders

- 6a. Require BWCs activated to record circumstances that lead to an unlawful assembly order
SDPD referred to 1.49 and 3.26, generally stating officers should refrain from video recording or photographing lawful 1st Amendment activities.
- 6b. BWCs shall be activated to record dispersal order
SDPD felt that this was already addressed by VII. C. 3. 5 and 6.
- 6c. Procedure stated two different things. Script was provided, but not required to be used.
SDPD clarified VII. C. 2. referred to state law, VII. C. 7. referred to SDPD procedures.
SDPD felt their procedure was more restrictive; however also stated that any verbiage can be used and still within legal guidelines even if out of compliance with department procedures.
- 6d. Dispersal order to be given 3 times, with 1 minute between orders.
SDPD indicated they couldn't find established best practices with our recommendation and believes the procedure is more restrictive than law and POST guidelines.

Recommendation Already Exists

9. Reiterate use of OC Spray is prohibited during “passive resistance” at protests. (First sentence only)
 - SDPD simply restated the existing 1.06 Use of Liquid Chemical Agent procedure.
 10. Specialty munitions usage.
 - SDPD restated 4.17 as revised per Assembly Bill 48 and 1.36 (Use of Specialty Munitions).
 - Proposed new recommendation requests when/how these maybe used.
 11. Replace flexcuffs should they tighten (First sentence only)
 - SDPD restated 4.17 and 6.01 (Handcuffing, Restraining, Searching & Transporting)
 12. Body Worn Camera usage.
 - Add new category for retention
SDPD stated existing procedures already have a “demonstration/protest” category.
(As of March 2021, this category did not exist. There was only a “Civil Unrest” category.)
 - Add statement that BWC footage will not be used to create a database of participants
Procedure doesn’t explicitly state our recommendation, rather says officers should refrain from filming lawful activities.
- 

Recommendation Already Exists

13. Officers shall not prohibit audio or video recordings

- SDPD updated 4.17 to include media references. Referenced 3.26 (Media Evidence Recovery and Impounding/Preserving), in general stating the public has a 1st Amendment right to recordings in public places, officers shall not discourage from recording police enforcement activities or intentionally block or obstruct cameras or recording devices. (However, the public cannot cross police lines or enter places closed to the public.)

16. Prohibit obstructing badge, name or IDs and prohibit giving false ID details

- SDPD referred to 9.19 which states officers shall furnish their names and ID numbers to any person requesting it, except when withholding is necessary for the performance of duties or authorized by the proper authority.

17. Reconsider allowing ID number only notification during events.

- SDPD would not reconsider position. SDPD expressed concern that providing more than ID numbers exposes officers to “growing threats against them, which includes doxing.”

Recommendation Already Exists

18. Addressing civil disobedience response (using bikes as weapons or using follow cars)

- SDPD made a few comments in response to this recommendation. (Page 16 of response)
- The majority of this recommendation was paired with 1.04 (Use of Force), that officers may respond with the appropriate level of force.
- “The use of police bicycles to form a fence is not a reportable use of force.”
- “The use of a bicycle to push back a crowd is no different than the use of a baton to push back a crowd.”
- Follow cars were described as a new necessity after the Charlottesville car attack at a protest and stated “the purpose of follow-cars is to control vehicular traffic and prevent accidental and intentional physical harm to those exercising their First Amendment rights.”

Rejected Recommendations

8. Define “a reasonable time” for crowds to disperse

- SDPD stated that courts have never imposed a time limit to the reasonableness standard. SDPD also stated they must “be mindful not to establish “three minutes” as an absolute standard. (Page 18 of SDPD response.)

9. Reiterate use of OC Spray/impact weapons are prohibited during “passive resistance” at protests. (Remaining rec)

- SDPD responded that “these techniques are minimally-invasive, lesser controlling force options that result in temporary discomfort.” (Page 18 of SDPD response.)
- Addressed in proposed new recommendation.

11. Write ID number and mark flexcuff placement (Remaining rec)

- SDPD stated it would be impractical for officers to write IDs on flexcuffs during protest and said due to the material, writing would smear and become illegible. (Page 19 of SDPD response.) At the May meeting the former Chief indicated he could reconsider.

Rejected Recommendations

14. Legal observers shall not be specifically targeted

- SDPD responded that POST does not provide any guidance, and this is a developing area of law.
- They indicated that anyone present at an unlawful assembly/rout/riot, becomes participant in that event. There is no special consideration for “non-participants” or “legal observers.”
- Included in our proposed recommendations

15. Require officers to provide name/ID of commanding officer/incident commander

- SDPD stated that COs may change during events. If someone files a complaint, IA will determine who the commander of record was at the time of the complaint.

19. Require outside law enforcement agencies to adhere to SDPD procedures

- SDPD stated that under Mutual Aid agreements, each agency is responsible for their own employees and P&Ps. Further SDPD has no authority to discipline another agency’s officers.



Feedback Questions & Answers