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Paul Parker
CLERB Members
555 W Beech St., Ste. 220
San Diego, CA 92101

RE: Proposed amendments to CLERB ordinance and rules

Dear CLERB Members and Mr. Parker:

San Diegans for Justice (SDJ) would like to thank the Board and Mr. Parker for the proposed amendments to the County's CLERB ordinance and the related changes to the Board's Rules and Regulations. The addition of auditing and monitoring functions to CLERB's authority will be an important step forward, as will the expansion of CLERB's jurisdiction over various County staff. Of equal importance is CLERB's authority to conduct pattern and practice investigations under the proposed ordinance. This letter serves to request that the proposed ordinance be expanded to include the additional amendments as discussed below.

As this Board will recall, in January of 2022, San Diegans for Justice submitted a report to the County that listed 70 recommended changes to how CLERB functions. This Board supported 68 of those 70 recommendations. The below seeks to ensure that the proposed amended ordinance fully incorporates each of the recommendations in a manner most supported by the San Diego community.

We thank the Board for allowing SDJ to give a 15-minute presentation to the Board at the currently scheduled March 28th meeting, where SDJ will explain more fully why the below requests are in keeping with the needs and interests of the community.

CLERB Name

- The proposed amended ordinance appropriately removes the word “citizen” from the legislation. The word “citizen” should also be removed from the name of CLERB. It could be replaced with the word “Community.”

Independent Counsel

- The amended ordinance must prohibit CLERB from seeking legal advice from any governmental entity/attorney. Correspondingly, CLERB must be required to retain and seek legal advice from independent counsel.

Definitions

- The terms of “investigation” and “review” should be clearly and separately defined.

- A possible definition of "investigation" could be: a formal, systematic, and detailed inquiry into allegations regarding the complained actions or the actions, procedures, policies, or practices of a Department over which CLERB has jurisdiction through the comprehensive gathering of information from original sources, coupled with the analysis of that information for the purpose of establishing relevant facts, making findings, and formulating recommendations.

Jurisdictional Scope & Powers

- The amended ordinance merely lists CLERB’s authorities. It fails to detail CLERB’s duties. The ordinance must specify what CLERB is mandated to do, not just what CLERB has the authority to do. In determining CLERB’s mandatory actions, emphasis must be placed on conducting full robust investigations of the most serious complaints.

- CLERB must be required to investigate any potential wrongdoings discovered during an investigation, even if no complaint has been filed by the public. Correspondingly, CLERB and its staff must also be allowed to file complaints.

- The amended ordinance must require annual, unannounced visits to each detention facility under its jurisdiction.

- CLERB should be required to aggregate and publish data from the Departments on case outcomes and other matters that are the subject of audits.

- CLERB's authority must include the ability to receive, review, and investigate any complaints arising from the violation of local ordinances.

- The amended ordinance must list the audits CLERB is required to do. These should include periodic practice and pattern audits and audits of the Departments practices and procedures.

- CLERB should be required to make specific recommendations based on the results of its audits.

- CLERB's jurisdiction must also be expanded to complaints about investigators employed by the district attorney's office.

- CLERB must have direct access to Department reports and information systems.

- This must include direct access to all complaints filed with the Departments.

- This must include access to all legally obtainable personnel records, disciplinary records, and records of all complaint investigations. Without this access and information, it would be difficult for CLERB to conduct pattern and practice investigations.

- This must also include access to and participation in the Departments' Critical Incident Review Board proceedings/reports.

- The amended ordinance as proposed expands the definition of confidentiality so as to deprive CLERB of the ability to publish and provide information to the public. (See Sec. 340.14.) This provision MUST be removed from the proposed amendment.

- The Departments must annually provide CLERB with data on the various complaints arising within the Departments, the forms of misconduct or rule violations, as well as the discipline meted out. The ordinance must require that this data be reported publicly.

- CLERB must have the authority to conduct a pattern and practice investigation even without the filing of a complaint. Similarly, it must have the authority to conduct investigations of lawsuits or claims made against the Departments or their staff even where no complaint has been filed with CLERB.

- CLERB must have the ability to enforce the County's duty to cooperate to the extent permissible by law. For example, the ordinance must give specific timelines on the Departments and government staff to respond to requests for information and documents.

- The amended ordinance must require that the Departments respond to CLERB policy recommendations within a given period of time.

- CLERB must have the authority to undertake investigations of allegations of domestic violence.

- Definitions of "unbecoming" and "improper" should be included.

Policies & Procedures

- There must be no requirement that complaints are signed, nor must the complainant be required to sign under penalty of perjury.

- Complainants must not be asked to complete an attestation that they will not subpoena CLERB for records related to the complaint.

- The amended ordinance must require immediate notification to CLERB of critical incidents by Departments, even before the processing of the scene by Department investigators. The amended ordinance must require CLERB investigators to immediately respond to the notification to collect relevant evidence and independently interview witnesses.

- The amended ordinance must require both CLERB and the Departments to document and publish any delays in the investigation process, including delays in the Departments' provision of information to CLERB.

- CLERB investigators must conduct and record all witness interviews.

– The amended ordinance must prohibit CLERB and its investigators from allowing Departments and County staff from providing written or oral statements in lieu of a recorded, in person interview.

– The amended ordinance must prohibit CLERB from entering into any agreement, with the Departments or others, that reduces, impinges on, or limits the exercise of the full scope of authorities provided to it.

■ The ordinance must require full file review by at least two members before closing a case.

■ Serious cases must have legal input throughout the investigative process and a legal review prior to closing.

■ Reports prepared by investigators may only present the results of the investigation. They may not give an opinion as to the disposition of the complaint.

Nomination and Appointment of Executive Officer

■ If legally possible, CLERB must directly select and retain its Executive Officer.

■ If the Executive Officer must be hired by the County directly, then CLERB must select the Executive Officer.

■ In the event that the County chooses not to retain the Executive Officer selected by CLERB, CLERB must select a new candidate for Executive Officer. The County may not retain an Executive Officer who has not been selected by the CLERB.

■ The Executive Officer must serve at the direction and will of CLERB and thus CLERB, based on a simple majority, may request/decide that the County terminate the Executive officer's employment. The County must then act in accordance with the CLERB's request.

Nomination and Appointment of Board Members

■ The CLERB must create a committee to nominate individuals for appointment to the CLERB by the Board of Supervisors. The Committee must consist of

at least nine members, three of whom are current or former board members. The remaining members of the committee must consist of the following: Two university professors who specialize in policing, and racial and identity equity; Two representatives of human or civil rights tax-exempt organizations who specialize in civil or human rights, and two representatives of community organizations who specialize in civil or human rights and criminal justice, and whose work includes victims of racial and identity profiling. None of the organizations providing representatives to the nominating committee may be affiliated with law enforcement.

- The CLERB nominating committee must consider all suggestions received by the CLERB. The nomination of a board member must be by a simple majority vote of the committee.

- Prospective board members who accept their nominations in writing are to be appointed by the Board of Supervisors in accordance with the approved Rules of Board of Supervisors.

- The Board of Supervisors may not appoint a board member who has not been nominated by the CLERB's nominating committee.

- If the CLERB's nominating committee nominates an individual for appointment, and the County Board of Supervisors fails to act on that nomination within 60 days, that individual is automatically deemed to have been appointed by the Board of Supervisors.

CLERB Board Members

- As a result of the increased duties the amended ordinance will require, CLERB must increase its number to fifteen Board members.

- The CLERB must reflect the diversity of the County, by including Board members who represent the County's diverse geographic areas and socio-economic, cultural, racial, ethnic, gender and gender identity, sexual orientation, housing status, and age differences, and who have differing personal backgrounds, education, occupations, and life experiences. In ensuring socio-economic diversity, the Board of Supervisors must include representation on the CLERB by Board members who reside in and represent those County residents living in low-and moderate-income United States Census tracts.

- Five seats must be allotted for Board members residing in each of the five districts.
- Two youth seats must be allotted for individuals ranging in the age from eighteen to twenty-four at the time of appointment or reappointment.
- The remaining seats must be allotted based on the sheriff's stations and probation offices with the highest rates of warrantless stops, searches, and complaints residents have submitted regarding law enforcement and its officers. These seats must also be filled to ensure that the CLERB reflects the diversity of San Diego.
- Criminal convictions and other involvement with law enforcement, such as arrests or detentions, cannot be a per se bar to appointment as a Board member. Under no circumstances may misdemeanor, drug or theft convictions, or convictions more than five years old bar a nominee from appointment.
- Board members need not be citizens, nor must they be documented residents of the United States. They must be residents of San Diego County.

Communication with and Rights of Complainants

- The CLERB must send the complainant written notice of each milestone determination within two working days of the event or the CLERB's determination. These milestones include but are not limited to the following:
 - that the CLERB has received the complaint;
 - an overview of the complaint process and the estimated timeline for disposing of the complaint;
 - that the CLERB has begun the investigation process;
 - that the CLERB has completed its review or investigation, and the specifics of the findings, recommendations, or other decisions made.
- The complainant must receive notice of the status of his or her complaint, no less than every 45 days.

- If the CLERB intends to receive oral input, at any meeting, session, or hearing, from any law enforcement officer or from any witness, the CLERB must notify the complainant and of his/her ability to attend and speak on his/her behalf.

- Any rights or privileges afforded to an officer or individual by the CLERB as a part of the review or investigation process must also be afforded the complainant.

Public Nature of CLERB's Work

- All information required by the ordinance to be made public must be made public on the CLERB's website as soon as practicable. All published materials must be redacted as required by state and federal law.

- All agreements between CLERB and any union or Department within its jurisdiction must be made public.

- All complaints must be made public within two working days of being submitted to the CLERB unless the victim/complainant specifically requests of the CLERB that it be kept confidential.

- When the complaints are made public, all information identifying specific individuals, as well as other confidential information, must be redacted. The CLERB is the entity that will make the redactions.

- The CLERB must identify all of the key steps of its process for investigating individual cases, and the decisions made at each of those stages must be made public within two working days after the decision is made. These steps must include but not be limited to the following:

- that the CLERB has received the complaint;
- an overview of the complaint process and the estimated timeline for disposing of the complaint;
- that the CLERB has begun either the review or investigation process;
- that the CLERB has completed its review or investigation, and the specifics of the findings, recommendations, or other decisions made.

- The full text of all findings, decisions, and recommendations must be made public as soon as practicable, but no later than two working days of their finalization.

- All written responses to CLERB's requests and decisions made by the County, including the Departments, must be made public on the CLERB's website within two working days of receipt.

Increase in Staff and Funding

- The ordinance should set out a method that will prevent CLERB from being so underfunded. For example, and if legally feasible, the CLERB should have a budget equivalent to X% of the budgets of the departments overseen.


- The amended ordinance must state that CLERB may retain additional experts such as policy experts, data analysts, and legislative experts, whether as staff or on a contract basis, to provide the necessary policy and data analysis

SDJ would request that each of the changes it has proposed in the amended ordinance be reflected in CLERB's rules and regulations. SDJ further requests that it and the public be allowed sufficient time to review any changes to the proposed amended ordinance and give further comment.

We again thank the Board for the work it has done on the proposed amendment, and we look forward to discussing the contents of this letter at the Board's next meeting.

In solidarity,


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cc: San Diego County Board of Supervisors