



THE CITY OF SAN DIEGO
COUNCIL PRESIDENT MYRTLE COLE

FOURTH DISTRICT

November 14, 2018

Judge Peter C. Deddeh
Presiding Judge
San Diego Superior Court
1100 Union Street, 10th Floor
San Diego, CA 92101

Re: Grand Jury Report: "San Diego Community Review Board on Police Practices"

Dear Judge Deddeh:

Pursuant to California Penal Code Section 933.05(a),(b) and (c), the City of San Diego provides the attached response from the Mayor and City Council to the applicable findings and recommendations included in the above referenced Grand Jury Report.

If you require additional information or have any questions, please do not hesitate to contact Erin Demorest, Director of Legislative Affairs, at 619-533-3920.

Sincerely,

Myrtle Cole

Encl: 1. City response to Grand Jury Report: "San Diego Community Review Board on Police Practices"
2. City Council Resolution R-312054

**City Response to
San Diego County Grand Jury Report Entitled
“San Diego Community Review Board on Police Practices”**

Pursuant to California Penal Code Section 933(c), the City of San Diego provides the following responses to the findings and recommendations included in the above referenced Grand Jury Report:

FINDINGS 01 THROUGH 08

Finding 01: *The CRB requires frequent replacement of members who leave in order to maintain a membership level necessary to accomplish its assigned tasks.*

Response: The Mayor and City Council agree with the Grand Jury’s finding.

Finding 02: *The operation of the CRB has been negatively impacted by the failure of the San Diego City Government to implement Measure G.*

Response: The Mayor and City Council partially disagree with the Grand Jury’s finding.

Measure G went into effect on December 12, 2016, and the City immediately implemented the portions of the measure that did not require City Council action. This included the change in name, the review of officer involved shooting cases and in-custody death cases.

A significant change made by Measure G was shifting the exclusive authority to create and establish a community review board on police practices from the City Manager (Mayor) to the Mayor and City Council. Establishing the rules and regulations for a board that reviews confidential SDPD Internal Affairs (IA) cases and makes policy recommendations to the Mayor and City Council required extensive research and public participation. A total of eight public hearings were held including at CRB Rules Committee, CRB Board, City Council Rules Committee and City Council. The result was an implementing ordinance and a first of its kind City Council approved Standard Operating Procedures governing the way the Board conducts its business. During this process, which led to unanimous approval by the City Council, only one Closed Session meeting of the Board was cancelled due to lack of quorum. There was no appreciable change in the time it took to review cases and the Board issued two policy recommendation letters to the Mayor and/or Chief of Police. The process to fully implement Measure G lead to a positive result with minimal negative impact to the work of the Board. For this reason, the Mayor and City Council partially disagree with Finding 02.

Finding 03: *The Mayor’s Office and the City Council can resume filling CRB member and prospective member vacancies immediately.*

Response: The Mayor and City Council partially disagree with the Grand Jury’s finding.

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On May 10, 2018, the Mayor issued a memo soliciting input from the City Council on appointees to the CRB. The Measure G implementing ordinance and CRB Standard Operating Procedures went into effect in August 2018 which allowed the Mayor to appoint, and the Council to confirm, appointees to the Board. In August 2018 the City Council approved 21 board members. The implementing ordinance eliminated the category of “prospective member” to streamline the appointment process and has replaced the practice with a CRB Academy. The City partially disagrees because the implementing ordinance eliminated prospective members so no prospective member vacancies remain.

Finding 04: *The CRB is hindered in carrying out its mission because it does not receive, categorize, and track all complaints that are submitted to the Police Department and to the CRB.*

Response: The Mayor and City Council partially disagree with the Grand Jury’s finding.

The public has multiple avenues to file a complaint against a SDPD officer. This includes by telephone, in person at any police facility, via email, or in writing to the Chief of Police, IA or the Community Review Board on Police Practices. Prior to the implementation of Measure G, the CRB only reviewed Category One complaints, which involve allegations of arrest, criminal conduct, discrimination, force, detention, search and seizure, and/or slur. Category Two complaints, which involve allegations of procedure, courtesy, conduct, and/or service, were reviewed by CRB when associated with a Category One complaint. Following the implementation of Measure G, the CRB added an audit procedure for all Category Two complaints.

The City has been working to improve the tracking system between SDPD and the CRB. The CRB has been able to accomplish its mission to review complaints against members of the SDPD and the SDPD’s administration of discipline. However, the implementation of an improved joint-tracking system will enhance the CRB’s ability to assess work flow and provide important continued civilian oversight of the process. For this reason, the City partially disagrees with Finding 04.

Finding 05: *The CRB does not adequately fulfill its responsibility to advise the Mayor and the City Council under the current reporting practices.*

Response: The Mayor and City Council disagree with the Grand Jury’s finding.

The CRB regularly advises the Mayor and City Council through individual City Councilmember briefings, policy recommendation letters, semi-annual reports, and through the Executive Director and newly formed Office of Boards and Commissions. The CRB is also one of the few boards that keeps track of community outreach time with volunteers logging over 3000 hours in FY 2018. The volunteers on this board should be commended for their service and the thoughtful approach to representing the community

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in the disposition of their oversight duties.

The CRB’s provision of community oversight of law enforcement is always a work in progress and the CRB strives to develop and follow best practices. When appropriate, the CRB makes policy and procedural recommendations to the SDPD resulting from case review. In fiscal year 2018, several process improvements have been implemented and/or will be implemented that are inclusive of some of the initiatives identified by the CRB. They are as follows:

- Place SDPD Policy and Procedures online to create more transparency for the community (completed earlier this year)
- Continue to work with IA on flexibility with regard to case review and the development of a more defined complaint intake process
- Continue recruitment & retention efforts in Council Districts
- Explore providing additional case information, other than statistics, to the public
- Continue to retain and utilize outside legal counsel
- Formalize Category II Complaint Audit Process
- Finalize policy and procedures regarding case review
- Update bylaws to be consistent with Measure G
- Develop and implement the New Citizen Training Academy for newly appointed members and existing members
- Review unlawful detention and search & seizure cases

For these reasons we disagree with Finding 05.

Finding 06: *SDPD presence in closed meetings may inhibit free and open discussion by CRB members.*

Response: The Mayor and City Council disagree with the Grand Jury’s finding.

The presence of SDPD in closed session meetings of the CRB is intended to provide a resource to the Board as they deliberate on cases. The review model that the CRB uses affords the Board all information regarding an IA case and ensures civilian oversight through the entire IA process. This constant interaction between the CRB and IA allows for the Board to advise, question, consult, criticize, or commend IA during an investigation, with the aim of producing a better investigatory process from beginning to end. Additionally, the Board has a procedure in their bylaws that allows for an “Executive Session” that the Board can call during a Closed Session meeting which does not include members of the SDPD. For these reasons the City disagrees that the presence of the SDPD may inhibit free and open discussion by CRB members.

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Finding 07: *The CRB should have the authority to control attendance at closed sessions.*

Response: The Mayor and City Council agree with the Grand Jury’s finding.

The CRB has the authority to control attendance at its closed session meetings. Per the CRB bylaws, the CRB has the authority to convene an Executive Session which is solely attended by the members of the CRB.

Finding 08: *Many members of the community do not consider the CRB to be independent from the SDPD.*

Response: The Mayor and City Council disagree with the Grand Jury’s finding.

Although there have been members of the community who have expressed that they do not consider the CRB to be independent from the SDPD, the Grand Jury report does not provide sufficient evidence as to the pervasiveness of this viewpoint.

The function of the CRB is to provide civilian oversight over IA investigations. This civilian oversight occurs at every step of the process, from intake of complaints to investigation oversight, to findings and communication of those findings. The SDPD does not have the authority or power to intervene in the activities of the CRB as the CRB is a Charter-mandated board created by the authority of the voters. The rules and regulations necessary to the operation of the Board are enacted by the Mayor and City Council. There is therefore no authority that the SDPD wields over the CRB. It is, by its nature as a Charter created Board, independent from the SDPD and responsible only to the Mayor and City Council who appoint its members and govern its work.

The CRB-IA relationship is indeed collaborative, but it is also one of real accountability. The CRB exists to ensure that the IA investigation is thorough and fair. During a team’s review of a case, the team may notice that a case needs further investigation, and/or the team may suggest a change to IA regarding a case. Changes that can be made to a case may include:

- Allegations – allegations added, deleted, or wording changed
- Findings – findings changed from one finding to another
- Interviews – additional questions are asked of previously interviewed officers, complainants, witnesses, and experts or new interviews are conducted
- Evidence – additional evidence requested and sought in a case

Transparency, collaboration, and accountability are critical in citizen oversight of law enforcement. The CRB strives to be transparent while complying with federal, state, and local law. Due to its collaborative working relationship with SDPD, the CRB has been able to reach milestones that have improved the relationship between the community and law

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enforcement, such as the agreement to transparently post policies and procedures online. The City of San Diego has an effective oversight entity which continues to be a model for citizens’ review of law enforcement. The CRB will continue to improve the process to ensure transparency, accountability and fairness.

RECOMMENDATIONS 18-13 THROUGH 18-15

RECOMMENDATION 18-13: *Take steps to bring forward the rules and regulations necessary to implement Measure G for approval within three months. The rules and regulations should provide solutions to the following deficiencies:*

- a. The need for the CRB to have the ability and authority to track all complaints.*
- b. The inability of the CRB and the SDPD IA to jointly categorize all complaints.*
- c. The inability of the CRB to review all SDPD IA investigations of complaints whether the complaints were submitted to the SDPD or to the CRB.*
- d. The need to clarify if the CRB has the authority to determine who may attend closed sessions other than the members of the board.*
- e. The lack of required CRB periodic reports on all cases, or at least a summary of all cases, for review to the Mayor and City Council.*

Response: The recommendation has been implemented.

The ordinance to implement Measure G went into effect on August 10, 2018.

In April 2018, the CRB presented its semi-annual report on case statistics and update on the CRB to the City Council’s Public Safety and Livable Neighborhoods Committee and Mayor’s Office. The next semi-annual update is tentatively scheduled for November 28, 2018. The Annual Report for Fiscal Year 2018 will be released in October of 2018 and will be posted on the CRB website.

CRB bylaws give the CRB authority to determine who may attend the executive session component of closed sessions. Also, the City is working to improve the complaint tracking system between the SDPD and the CRB. However, CRB and SDPD will not jointly categorize all complaints.

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RECOMMENDATION 18-14: *Consider proposing an amendment to the City Charter to give the CRB subpoena power, the authority to perform independent investigations of citizen complaints, independent investigators, and the authority to report directly to the Mayor and City Council.*

Response: The recommendation has been implemented.

A similar proposed ballot measure related to the CRB was considered by the City Council’s Rules Committee during its 2018 ballot measure review process. This measure was forwarded to the full City Council, but due to its potential impact on represented employees, under California law, completion of a meet and confer process was required prior to consideration by the City Council for placement on the ballot. In August of 2018, the City Council considered whether to authorize the initiation of a meet and confer process with the Police Officers’ Association and the Municipal Employees Association, the potentially affected recognized labor organizations, regarding this proposed ballot measure. The City Council did not authorize the initiation of this required meet and confer process. As a result, the proposed ballot measure could not be considered by the Council for placement on the November 2018 ballot.

RECOMMENDATION 18-15: *Take action to begin filling CRB Appointed Member and Prospective Member vacancies immediately.*

Response: The recommendation has been implemented.

The Grand Jury’s recommendation that the City take action to begin filling CRB appointed member vacancies was implemented as of August 7, 2018. With the implementation of Measure G, there is no longer a prospective member category. This category was removed to align the CRB with the appointment process for the City’s Boards and Commissions.

RESOLUTION NUMBER R- 312054
DATE OF FINAL PASSAGE NOV 14 2018

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO APPROVING THE CITY COUNCIL'S RESPONSE
TO THE 2017-2018 SAN DIEGO COUNTY GRAND JURY
REPORT TITLED "SAN DIEGO COMMUNITY REVIEW
BOARD ON POLICE PRACTICES."

WHEREAS, on May 21, 2018, the 2017-2018 San Diego County Grand Jury (Grand Jury) filed a final report titled "San Diego Community Review Board on Police Practices" (Report) that requested a response from the Mayor and City Council (Council); and

WHEREAS, the Report discusses issues related to the operation of the Community Review Board; and

WHEREAS, the Report includes eight findings and three recommendations directed to the Mayor and Council; and

WHEREAS, under California Penal Code section 933(c), within 90 days after the filing of the report, each public agency which the Grand Jury reviewed, and about which it issued the Report, must comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency; and

WHEREAS, the comments required from the Mayor and Council are due to be submitted to the Presiding Judge of the Superior Court on November 16, 2018, as the City requested and received an extension of time to respond; and

WHEREAS, the response to the Report required that the Mayor and Council respond to Findings 01 through 08 and to Recommendations 18-13 through 18-15; and

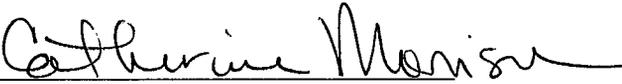
WHEREAS, the Office of the Independent Budget Analyst (IBA) has proposed a Council response to the Report, which is joined by the Mayor, as set forth in IBA Report No. 18-28, dated September 10, 2018, for the Council's consideration; and

WHEREAS, on September 19, 2018, the proposed joint Mayor and Council response to the Report was submitted to the Public Safety & Livable Neighborhoods Committee; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that the Council approves and adopts as its own the response to the 2017-2018 San Diego County Grand Jury Report titled "San Diego Community Review Board on Police Practices," as set forth in IBA Report No. 18-28, dated September 10, 2018.

BE IT FURTHER RESOLVED, that the Council President is authorized and directed, on behalf of the San Diego City Council, to execute and deliver the above-described response to the Presiding Judge of the San Diego County Superior Court no later than November 16, 2018.

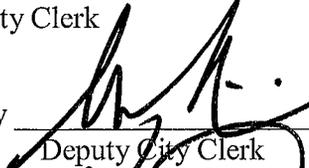
APPROVED: MARA W. ELLIOTT, City Attorney

By 
Catherine C. Morrison
Deputy City Attorney

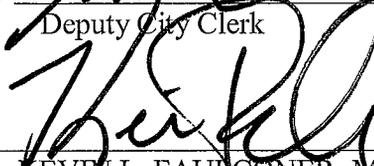
CCM:jvg
October 29, 2018
Or.Dept:IBA
Doc. No.: 1868121_2

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of NOV 13 2018.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 11/14/18
(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on NOV 13 2018, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Georgette Gomez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage NOV 14 2018

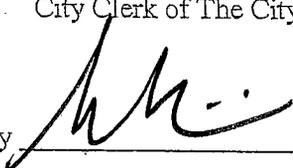
(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

(Seal)

By , Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 312054