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## **National City Community and Police Relations Commission Operating Procedures**

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### **Article I. Purpose and Legal Considerations**

**Section 1.01** In October 2003, the City COUNCIL established the Community and Police Relations Commission (hereafter referred to as “COMMISSION”). The COMMISSION is to serve as an independent, unbiased and impartial office that is to be readily available to the public. The COMMISSION shall be a medium for the improvement of police-community relations, and to facilitate mediation of disputes whenever possible. The COMMISSION will provide a forum for CITIZENs to voice their concerns or comments about police conduct, practices and policies, and ameliorate adversity between CITIZENs and the National City Police DEPARTMENT.

To carry out these functions, the COMMISSION will function through the Office of the CITY MANAGER, to whom the Chief of Police reports.

The Commission is authorized to receive, investigate and review citizen complaints regarding National City Police department personnel for alleged misconduct, and to recommend appropriate changes of Police department policies and procedures toward the goals of safeguarding the rights of all persons and promoting higher standards of competency, efficiency and justice in the provision of community policing services. The Procedures established herein are not intended to replace or diminish the procedures already in place in the police department for the investigation of citizen complaints, but are intended as a method of supplementing those procedures in order to establish an element of transparency to the citizenry for the handling of those complaints.

The Commission shall not be required to conduct independent investigations when it is satisfied that its oversight responsibility can be satisfied by the monitoring and review of a Departmental investigation into a complaint. In this respect, the Commission shall be considered an integral part of the City’s management structure as an adjunct to the internal department processing of citizen complaints, with an independent overview status to ensure transparency and correctness of process for the public.

The COMMISSION therefore adopts these procedures in furtherance of those objectives. These procedures shall define the authority and protocols of the COMMISSION and are hereby recommended for adoption by the COUNCIL in furtherance of the COUNCIL’s objectives.

**Section 1.02** In the conduct of its affairs, the COMMISSION will observe all applicable requirements of state and local law, including the following which have been summarized as follows:

- (a) The Police Officers Bill of Rights (Government Code sections 3300, et seq.) which generally provides police officers certain protections and rights of representation and participation in INVESTIGATIONS pertaining to their conduct, and the right of access to and comment upon any findings of that INVESTIGATION—whether positive or negative.
- (b) Penal Code sections 832.5 and 832.7 which pertain to the procedures for INVESTIGATION of COMPLAINTs involving police officers and safeguards against disclosure of the FINDINGs of those INVESTIGATIONs and other information relating to police personnel files, except such specified disclosure as may be allowed only to the person who actually files the COMPLAINT.
- (c) The Ralph M. Brown Act (Gov. Code, § 549501 et seq., hereinafter “the Brown Act,” or “the Act”) which shall govern open meetings for local government bodies.
- (d) National City Police Department rules and procedures, which govern the rights and duties of DEPARTMENT personnel.

**Section 1.03** Neither the Commission, Commission staff, nor any retained consultant shall comment upon or recommend the level of discipline for any officer pursuant to any review conducted under the authority of these Operating Procedures.

- (a) Departmental discipline of any officer shall be independent of and not dependant upon any finding by the Commission or its review of any investigation. The Department will conduct discipline in a timely manner in accordance with law and its internal procedures.
- (b) The Commission shall not interfere with the administration of the department, but shall make its recommendations for change or improvement to the Council, the city manager or the chief, as appropriate, consistent with the procedures outlined in this chapter.

**Section 1.04** These procedures shall not be construed as restricting any individual from contacting the Mayor, the City Council, any individual Councilmember, the CITY MANAGER or the CHIEF of Police on any matter concerning the National City Police DEPARTMENT, whether favorable or adverse.

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## **Article II. Definitions**

**Section 2.01** In this Procedure:

"**APPELLANT**" means a person who has filed a COMPLAINT with the COMMISSION and subsequently requested review of the INVESTIGATION conducted by the National City Police DEPARTMENT.

"**CHIEF**" means the Chief of the Police DEPARTMENT.

"**CITIZEN**" means any person who is not an employee of the DEPARTMENT.

"**CITY**" means the administrative offices, administrative staff, officers and officials, the physical location, all jurisdictional areas, and the elected representatives of the City of National City.

**“CITY ATTORNEY”** means the City Attorney of the City of National City or his/her designee.

**“CITY MANAGER”** means the City Manager of the City of National City.

**“COMMISSION”** and **“CPRC”** refer to the Community and Police Relations Commission, whose members are appointed by City COUNCIL.

**“COMMISSIONER”** means an appointed member of the Community and Police Relations Commission.

**“COMPLAINT”** means a COMPLAINT by a CITIZEN of alleged OFFICER misconduct, or a DEPARTMENT employee or OFFICER who feels aggrieved by an INVESTIGATION or REVIEW.

**“COMPLAINANT”** means any person who files a COMPLAINT against an employee of the National City Police DEPARTMENT, or a DEPARTMENT employee or OFFICER who feels aggrieved by an INVESTIGATION or REVIEW.

**“CONDUCT”** means any act or omission by an OFFICER, whether commendable or constituting misconduct.

**“CONSULTANT”** means the professional staffing retained by the City MANAGER to work with the COMMISSION.

**“COUNCIL”** means the City Council and Mayor of National City.

**“DEPARTMENT”** means the Police DEPARTMENT of the City of National City.

**“FINDING”** means a conclusion reached as a result of an INVESTIGATION, regarding whether a COMPLAINT is sustained, not sustained, unfounded, exonerated or frivolous.

**“IAD”** means the Internal Affairs Division of the DEPARTMENT, whose responsibilities and procedures are described in the DEPARTMENTs Manual of Rules and Regulations, specifically Operating Procedure No. 060, as amended from time to time.

**“INCIDENT”** means the alleged occurrence of misconduct by an OFFICER of the DEPARTMENT.

**“INVESTIGATE”** or **“INVESTIGATION”** shall refer to a REVIEW of the formal Internal Affairs INVESTIGATION conducted by DEPARTMENT, as well as an informal INVESTIGATION conducted by a police supervisor into allegations of MISCONDUCT.

**“MISCONDUCT”** means an act or omission by an OFFICER during an encounter with a CITIZEN that allegedly violates DEPARTMENT regulations or orders, or other standards of conduct required of CITY employees.

**“POLICY-RELATED ISSUE”** means a topic pertaining to the DEPARTMENT’s hiring and training practices, the Manual of Policies and Procedures, equipment, and general supervision and management practices, but not pertaining specifically to the propriety or impropriety of a particular OFFICER’s conduct.

**“OFFICER”** means a sworn police OFFICER employed by the DEPARTMENT about whom a COMPLAINT has been submitted to the COMMISSION.

**“OFFICER INVOLVED”** means an incident involving a sworn police

OFFICER employed by the DEPARTMENT about whom a COMPLAINT has been submitted to the COMMISSION

**“REQUEST FOR FURTHER REVIEW” or “REVIEW”** means a request by an APPELLANT and the COMMISSION’s examination of an INVESTIGATION of, alleged OFFICER MISCONDUCT, respectively.

**“SERVICE COMPLAINT”** means a COMPLAINT that is not related to specific OFFICER misconduct but rather is related to services received from an OFFICER or the DEPARTMENT.

**“SUPPORTED BY THE EVIDENCE”** means the evidence supports a FINDING regarding a COMPLAINT, which a reasonable person could make in light of the evidence, regardless of whether or not the COMMISSION agrees with the FINDING.

**“SUBPOENA”** means a writ to be issued commanding the person or party designated in it to appear before the COMMISSION as a witness, or to produce documents constituting evidence contained in the INVESTIGATION.

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### **Article III. Community and Police Relations Commission**

**Section 3.01** The COMMISSION is established by the COUNCIL with staff support from the CITY MANAGER’s Office.

**Section 3.02** The Commission shall be comprised of nine (9) individuals appointed by the Mayor with the approval of the City Council. Of the nine members, seven (7) shall be voting members, and two (2) shall be non-voting members. Of the seven voting members, five (5) shall be residents of the City of National City. One of the two non-voting members shall be a member of the National City Police Officers’ Association (POA), and one of the non-voting members shall be a member of a human rights organization. The City Council is authorized to appoint up to two alternate representatives to the primary POA representative, one of whom would attend Commission meetings when the primary representative is unable to attend, and who shall have the same rights and responsibilities as the primary representative.

Vacancies in COMMISSIONER positions shall be nominated and appointed as follows:

- (a) The COMMISSION shall solicit applications through the City Clerk, the CITY Office of Community Services, the established Neighborhood Councils, the COUNCIL, and the general public.
- (b) The CITY MANAGER shall appoint a committee to review applications and recommend an appropriate number of nominees to fill impending vacancies. The committee shall consist of two COMMISSION members, either a past COMMISSIONER or one not applying for reappointment, two members of the community at-large, and the CONSULTANT when designated. Three of the committee members, including one COMMISSION member and any CONSULTANT, shall serve as the interview panel.

- (c) Selection criteria shall include a record of community involvement and the absence of any real or perceived bias or conflict of interest.
- (d) The CITY MANAGER shall recommend nominees to the COUNCIL for appointment, together with such nominees as the COUNCIL may wish to submit and consider.
- (e) When selecting COMMISSIONERs, consideration should be given to appointments that will cause the group to reflect the demographic make-up of the CITY as best practicable. The final nominees selected by COUNCIL for appointment will be required to pass a criminal background check performed by an agency other than the DEPARTMENT prior to their actual appointment.
- (f) In the event the COUNCIL fails to appoint a nominee, the CITY MANAGER shall initiate the process again within 30-days after the COUNCIL action.

**Section 3.03** The COMMISSION shall adhere to adopted Bylaws which shall be filed with the City Clerk of National City.

**Section 3.04** The COMMISSIONERs shall be responsible for:

- (a) Participating in orientation and training activities at least two times per year, that may include reviewing of DEPARTMENT and IAD procedures, attending the DEPARTMENT Citizens' Academy, "ride-along" with OFFICERs, and training on investigative practices.
- (b) Service for a term of two years, subject to reappointment by COUNCIL. Upon expiration of term, a COMMISSIONER shall serve until re-appointed or replaced.
- (c) Attending COMMISSION meetings, except when excused for good cause.
- (d) Serving staggered terms to better ensure continuity. A lottery shall be held during the next regularly scheduled meeting following the adoption of these procedures to establish the term of each COMMISSIONER currently appointed. No more than four voting COMMISSIONERs shall be appointed to two-year terms as a result of the lottery, all others shall be appointed to a term of one-year. All COMMISSIONERs will remain eligible for reappointment upon expiration of their term.
- (e) Annually, electing a chair and vice-chair from among the COMMISSIONERs.
- (f) Adopting operating policies and procedures as necessary and appropriate to carry out their duties in a fair and unbiased manner.

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**Article IV. Role of the City Council**

**Section 4.01** The COUNCIL shall review applications of nominees to the COMMISSION, approve appointments and receive periodic reports on COMMISSION activities.

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**Article V. Consultant Selection**

**Section 5.01** In consultation with the CITY MANAGER, the COMMISSION may retain a CONSULTANT to guide the independence of the COMMISSION. The

CONSULTANT should be a person of recognized judgment, objectivity and integrity who is capable of analyzing problems of public administration and public policy, and who shall have a working knowledge commensurate with the duties of the COMMISSION.

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**Article VI. Staffing and Delegation**

**Section 6.01** The CITY MANAGER may appoint staff to assist the COMMISSION if requested and may appoint other personnel necessary to carry out the provisions of these Procedures in keeping within the adopted budget for the COMMISSION.

**Section 6.02** The CITY ATTORNEY shall advise and represent the COMMISSION.

**Section 6.03** Nothing within Article VI shall influence the autonomy of the COMMISSION and its independence to carry out its mission.

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**Article VII. Office Facilities and Administration**

**Section 7.01** The CITY shall provide suitable office facilities for the COMMISSION and/or staff in a location convenient for the public but separate from the DEPARTMENT.

**Section 7.02** The COMMISSION staff shall function within the organization and administration of the CITY MANAGER to whom the Chief of Police Reports.

**Section 7.03** The CONSULTANT shall comply with CITY purchasing procedures and shall select, with the approval of the COMMISSION and the CITY MANAGER, any sub-consultants to assist with the work undertaken on behalf of the COMMISSION.

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**Article VIII. The Authority of the COMMISSION**

**Section 8.01** The COMMISSION shall have the authority to do the following:

- (a) Receive COMPLAINTs and select the appropriate manner to address the COMPLAINT.
- (b) Report on COMPLAINT resolution activities. To track and issue statistical and other appropriate reports on the disposition of COMPLAINTs to the public, the CITY MANAGER and the COUNCIL, and to monitor and report measures of activity and performance of the DEPARTMENT, subject to confidentiality requirements of law.
- (c) Monitor INVESTIGATIONs. To identify COMPLAINTs which merit the additional involvement of the COMMISSION, and to REVIEW evidence and INVESTIGATION efforts.
- (d) Communicate with COMPLAINANTs. To serve as a source of contact with COMPLAINANTs regarding the intake processing, status and results of the COMPLAINT, and to assist the DEPARTMENT in communicating with the COMPLAINANT.

- (e) Arrange hearings of appeals. To provide for an appeal for COMPLAINANTS and schedule COMMISSION hearings.
- (f) Recommend policy changes. To evaluate COMPLAINTs and other information and INVESTIGATION practices and to make recommendations to the CHIEF to prevent future problems.
- (g) Outreach. To widely distribute COMPLAINT forms in languages and formats accessible to CITIZENS, to inform and educate them on the importance of reporting COMPLAINTs, to hold public meetings to hear general concerns about police services, and to serve as a forum for CITIZEN issues subject to confidentially requirements of law.
- (h) Records and INVESTIGATION access. Notwithstanding any other provision of law, to have access to and to examine any DEPARTMENT records, including records which are not confidential by law, including personnel records that are relevant to an INVESTIGATION under its purview, subject to any applicable state or federal laws and subject to the CHIEF's authorization. The COMMISSION shall not have access to legally privileged documents held by the CITY ATTORNEY or Attorney-Client communications held by the CITY ATTORNEY's clients. Neither the COMMISSION nor any individual COMMISSIONER or the CONSULTANT shall disclose to any person or source confidential information or personnel records, and they shall be subject to the same penalties and restrictions as the legal custodian of the records for any unlawful or unauthorized public disclosure.
- (i) Adopt, promulgate, amend and rescind rules and procedures required for the discharge of the COMMISSION's duties, including policies and procedures for receiving and processing COMPLAINTs, conducting reviews of INVESTIGATIONS, and the issuance of reports regarding its FINDINGS, conclusions and recommendations.
- (j) Issue reports on an annual basis identifying any policy-related issues or quality of INVESTIGATION issues that warrant improvement. The COMMISSION shall address any policy-related or quality of INVESTIGATION issues that would warrant further review.
- (k) Oversight. The COMMISSION shall report the material obstruction of or interference with an INVESTIGATION under its' cognizance, or observed malfeasance or misfeasance in office (other than that which is the subject of inquiry of a COMPLAINT) to the CHIEF, or to the CITY MANAGER, when appropriate.

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## **Article IX. Powers and Duties of the COMMISSION**

**Section 9.01** In carrying out its functions in a fair and unbiased manner, the COMMISSION's duties and powers shall include the following:

- (a) Conduct meetings. To schedule and conduct at least four meetings per year for the purpose of exercising the authority and responsibility delegated to it in these Procedures. Meetings and hearings conducted pursuant to these Procedures shall be subject to the BROWN ACT. The number of COMMISSIONERS required for

- a quorum shall be a majority of the voting members as defined in Section 3.02 of these Procedures. The Chair of the COMMISSION, or the Vice-Chair in the absence of the Chair, in consultation with the CITY ATTORNEY, shall be authorized to call special meetings when the COMMISSION is not in session.
- (b)** Gather community concerns. To participate in various community meetings to hear concerns about police services as well as to gather both commendatory and negative comment, not to include concerns about individual OFFICERS.
  - (c)** Recommend policy changes. To assist the CHIEF in identifying specific patterns or problems and to participate in the development of policy recommendations.
  - (d)** Advise on operations. To review methods for handling COMPLAINTs and advise on criteria for dismissal, mediation, and INVESTIGATION.
  - (e)** Receive COMPLAINTs. The COMMISSION may receive COMPLAINTs from any source concerning alleged OFFICER MISCONDUCT. In the interest of the greater public good:
    - i)** The COMMISSION shall make reasonable accommodation when COMPLAINANTs cannot file their COMPLAINT at the COMMISSION office or with the DEPARTMENT.
    - ii)** Accept COMPLAINTs for INVESTIGATION and REVIEW that are based upon first-hand knowledge, or make reasonable inquiry during initial intake processing regarding whether such knowledge or the identity of one or more percipient witnesses is ascertainable.
    - iii)** The COMMISSION shall not accept COMPLAINTs or INVESTIGATE matters in civil or criminal litigation, or those matters for which a notice of tort claim, or a grievance, discrimination COMPLAINT or other appeal under collective bargaining agreement or CITY personnel rules has been filed with appropriate authorities. The COMMISSION shall not accept COMPLAINTs that are conjectural or vague. Any previously commenced INVESTIGATION shall be discontinued when one of these events or factors is determined to exist.
    - iv)** The COMMISSION shall protect the confidentiality of COMPLAINANTs, OFFICER's or witnesses, except insofar as disclosures may be necessary to enable the COMMISSION to carry out its duties or comply with applicable collective bargaining agreements, or where the disclosure of records is directed by the CITY ATTORNEY or District Attorney. Maintenance of confidentiality and any exceptions to confidentiality shall be consistent with the requirements of law.
    - v)** The records of the COMMISSION shall be considered records of the CITY, and shall be filed in the office of the CITY MANAGER, or the CHIEF when the documents constitute a personnel record or matter. The records of the COMMISSION are subject to the requirements of law regarding retention, disclosure, and those circumstances when disclosure is not permitted.
  - (f)** Hear or REVIEW appeals. To hold hearings or REVIEW INVESTIGATIONs pertaining to COMPLAINANT appeals; to report FINDINGs conclusions and recommendations consistent with public disclosure requirements of law.

- (g) Outreach to the public. To disseminate information about the COMMISSION's activities to organizations in the community and to present statistical reports to COUNCIL that in such a way that does not involve disclosure of confidential personnel information.
- (h) Delegation. The COMMISSION may REVIEW by means of delegation to not more than two Commissioners who shall report back to the full COMMISSION their findings and conclusions with regard to an INVESTIGATION under COMMISSION cognizance. Reference elsewhere in these Procedures to the COMMISSION respecting REVIEW and INVESTIGATION shall include activity by such delegates, which activity shall not be construed as constituting a meeting that is subject to the Ralph M. Brown Act regarding notices, agenda and public meeting criteria, unless such delegation constitutes a "Standing Committee" under "the Act". The proceedings, to review COMPLAINTs and to reach the ultimate position of the COMMISSION's REVIEW of an INVESTIGATION, shall be in CLOSED-SESSION pursuant to Government Code Section 54957.

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## **Article X. Handling COMPLAINTs**

**Section 10.01** To ensure appropriateness and consistency in handling the COMPLAINTs received, the COMMISSION shall rely on the DEPARTMENT to determine whether a COMPLAINT is to be treated as a SERVICE COMPLAINT, commendatory comment, or as a COMPLAINT requiring further review. The COMMISSION may recommend to the DEPARTMENT that an INVESTIGATION be handled by IAD instead of a supervisor's or commander's INVESTIGATION.

### **General Protocols**

- (a) The COMMISSION shall INVESTIGATE and REVIEW citizen-initiated and DEPARTMENT-initiated COMPLAINTs. It is understood that DEPARTMENT-Initiated COMPLAINTs may require confidentiality in order for internal affairs or other authorities to complete their INVESTIGATION, and therefore, the COMMISSION may not be notified of an INVESTIGATION until it is concluded.
- (b) The COMMISSION may gather information from a COMPLAINANT and forward it to the DEPARTMENT. The COMMISSION shall monitor timeliness and disposition of the INVESTIGATION. Once the COMMISSION receives a COMPLAINT, it shall forward it to the DEPARTMENT for INVESTIGATION in accordance with Police Department Operating Procedures.
- (c) At the conclusion of an INVESTIGATION, the COMMISSION shall have an opportunity to review and comment separately to the CHIEF on the INVESTIGATION and any remedial actions taken by the DEPARTMENT resulting from the INVESTIGATION, other than regarding disciplinary actions.
- (d) The COMMISSION may dismiss a COMPLAINT or make a REQUEST FOR FURTHER REVIEW for the following reasons:

- i) The COMPLAINANT could reasonably be expected to use, or is using, another remedy, channel or tort claim for the grievance stated in the COMPLAINT;
  - ii) The COMPLAINANT delayed too long in filing the COMPLAINT to justify present examination – a limit of one-year from the original date of the INCIDENT is established for these purposes;
  - iii) Even if all aspects of the COMPLAINT were true, no act of MISCONDUCT would have occurred;
  - iv) The COMPLAINT is trivial, frivolous or not made in good faith;
  - v) Other COMPLAINTs must take precedence due to limited public resources;
  - vi) The COMPLAINANT withdraws the COMPLAINT or fails to complete or cooperate with necessary COMPLAINT steps or procedures.
- (e) Nothing contained herein shall preclude or supersede the processing and INVESTIGATION of COMPLAINTs that are initiated by the DEPARTMENT. The COMMISSION’s procedures shall supplement or complement those activities, and shall furnish community members and COMPLAINANTs an alternative forum for redress and COMPLAINT resolution. Moreover, nothing shall preclude or restrict the authority of the CITY MANAGER to supervise the CHIEF of the DEPARTMENT, consistent with the duties and responsibilities conferred upon that office by law.

**Section 10.02 Protocols for Reviewing COMPLAINTs**

- (a) In accordance with Police Department Operating Procedures, resolution by the DEPARTMENT shall include “declining” the COMPLAINT, conducting an “investigation”, conducting an "inquiry," or handling the COMPLAINT as a "service complaint."
- i) The DEPARTMENT will send an introductory letter to each COMPLAINANT identifying the assigned case investigator, the anticipated time in which the INVESTIGATION should be completed, and information regarding the right of the COMPLAINANT to seek a REQUEST FOR FURTHER REVIEW of the COMMISSION once the INVESTIGATION is completed should the COMPLAINANT believe evidence or allegations were omitted.
  - ii) In the case of an “inquiry”, the DEPARTMENT will send an introductory letter to the COMPLAINANT explaining that they will receive contact from the DEPARTMENT once the INVESTIGATION regarding the concern has been completed.
  - iii) In all cases, DEPARTMENT will send a copy of such letter to the COMMISSION for their tracking purposes.
  - iv) The DEPARTMENT will keep the COMMISSION apprised of the status of each INVESTIGATION, and no less than quarterly, send status letters to each COMPLAINANT. The OFFICER(s) INVOLVED shall be informed pursuant to DEPARTMENT policy and procedures.
  - v) “Inquiry” INVESTIGATIONs will result in a letter, including any appeal information, sent to the COMPLAINANT from the DEPARTMENT

outlining the results of the INVESTIGATION. The DEPARTMENT will forward a copy of the summary INVESTIGATION, and the letter to the COMMISSION for tracking purposes. The OFFICER(s) INVOLVED shall be informed pursuant to DEPARTMENT policy and procedures.

- (b) COMMISSION members shall avoid public comment on pending COMPLAINTs.**
  - i) No member of the COMMISSION shall discuss or listen to discussion of the facts or analysis of any matter which is the subject of a COMPLAINT prior to its REVIEW or CLOSED-SESSION MEETING.**
  - ii) No member of the COMMISSION shall pledge or promise to vote in any particular manner in any pending COMPLAINT.**
  - iii) Failure to comply with this regulation shall be grounds for removing a Commissioner from the REVIEW of the COMPLAINT by action of the remaining members of the COMMISSION.**
- (c) After the DEPARTMENT renders its FINDINGs on the COMPLAINT, the matter is referred to the COMMISSION to REVIEW the case. The file of the INVESTIGATION related to the COMPLAINT shall be made available to the COMMISSION consistent with Article VIII, Section 8.01(h). This includes an original of the COMPLAINT, video or audio tape recordings of interviews of witnesses and parties to the INCIDENT, and physical evidence that was considered. The COMMISSION members are required to conduct their REVIEW in the DEPARTMENT to preserve the required confidentiality. REVIEW proceedings shall be in CLOSED-SESSION pursuant to Government Code Section 54957 to hear COMPLAINTs or charges brought against National City Police Department employees by a citizen (unless the employee requests a public session). Notes made by the COMMISSION shall be left with the file in the DEPARTMENT.**
  - i) The DEPARTMENT will provide notice to the COMMISSION whether the disposition was “sustained,” “not sustained,” “exonerated,” “unfounded, “other findings”, or the “complainant non-cooperative”.**
  - ii) The COMMISSION’s REVIEW of documents shall rely upon the evidence submitted in the INVESTIGATIVE report**
  - iii) The COMMISSION may request within its scope of the REVIEW the DEPARTMENT to appear and answer questions regarding the INVESTIGATION, and may also request the responsible DEPARTMENT Commander or Supervisor to answer questions regarding the basis and the rationale for a particular FINDING or decision.**
  - iv) Requests to the DEPARTMENT to appear and answer questions at the REVIEW shall be made to the CHIEF.**
  - v) The COMMISSION may request an OFFICER to appear at a COMMISSION REVIEW, but no OFFICER who is subject to an INVESTIGATION shall be compelled to testify as a witness against themselves. OFFICERs appearing before the COMMISSION may appear with counsel.**

- vi) The COMMISSION may SUBPOENA the appearance of witnesses who are outside CITY employ to clarify evidence, and to the extent necessary to insure fairness to all parties. SUBPOENAs shall be issued in accordance with National City Municipal Code Chapter 2.74 to evaluate evidence pertinent to the REVIEW of the INVESTIGATION.
- vii) The COMPLAINANT is not entitled to be present, except when called as a witness by the COMMISSION. The COMMISSION shall REVIEW the INVESTIGATION file:
  - a. If the COMMISSION concludes the FINDING is supported by the evidence, it shall inform the CHIEF; or
  - b. If the COMMISSION determines the FINDING is inconclusive, it shall inform the CHIEF that further INVESTIGATION is required; or
  - c. If the COMMISSION concludes the FINDING is not supported by the evidence, it shall inform the CHIEF.
- viii) The COMMISSION will make no comments or recommendations regarding OFFICER discipline.
- ix) If the DEPARTMENT declines to accept the COMMISSION's recommendation resulting from the REVIEW, a CLOSED-SESSION MEETING of the COMMISSION pursuant to Government Code Section 54957 to hear complaints or charges brought against National City Police Department employees by a citizen (unless the employee requests a public session) shall be scheduled, at which the DEPARTMENT may appear to represent their position. The purpose of the meeting is for the COMMISSION to reach a final decision on its position regarding the COMPLAINT and to afford the DEPARTMENT an opportunity to explain why the INVESTIGATION FINDING is appropriate.
  - a. If, after the CLOSED-SESSION MEETING of the COMMISSION with the DEPARTMENT the COMMISSION is persuaded to agree with the DEPARTMENT's FINDINGS, the COMMISSION will send notification of same to the DEPARTMENT. The OFFICER(s) INVOLVED shall be informed pursuant to DEPARTMENT policy and procedures.
  - b. In those cases where the COMMISSION by a majority vote disagrees with DEPARTMENT's FINDINGS on a COMPLAINT, and cannot resolve its differences with the DEPARTMENT, the COMMISSION will send notification of same to the DEPARTMENT. The OFFICER(s) INVOLVED shall be informed pursuant to DEPARTMENT policy and procedures.
    - i. Additionally, the COMMISSION shall advise the CITY MANAGER of the COMMISSION's position. The COMMISSION shall also advise the CITY MANAGER of any substantive comments that the COMMISSION has made on individual cases, and may suggest policy changes based on trends that have come to the COMMISSION's attention.
    - ii. The COMMISSION will make no comments or recommendations regarding OFFICER discipline.

- iii. The City Manager may take whatever action is considered appropriate, consistent with the duties and authority conferred upon that office by law.
- iv. If any changes in the DEPARTMENT's FINDINGS occur, the DEPARTMENT will notify the COMMISSION.
- c. These Operating Procedures acknowledge the OFFICER's right to appeal the position of the COMMISSION consistent with *Caloca v. County of San Diego (1999)*, 72 Cal.App.4<sup>th</sup> 1209 and *Caloca v. County of San Diego (2002)*, 102 Cal.App.4<sup>th</sup> 433, which held that under the Public Safety Officers Procedural Bill of Rights Act (Government Code Section 3300 et seq.), police officers must be afforded an administrative appeal of sustained findings of misconduct even though no disciplinary matters are considered. Such administrative appeal proceeding will be conducted by a neutral, unbiased adjudicator(s) who will examine the finding de novo. All further terms of the re-examine will be consistent with the guidelines set forth in the *Caloca v. County of San Diego (2002)*, 102 Cal.App.4<sup>th</sup> 433.
- x) The COMMISSION will not provide any confidential information made known to it or its members by its INVESTIGATION to anyone other than the CITY MANAGER, CITY ATTORNEY or the DEPARTMENT. Under no circumstances will the CITY MANAGER or CITY ATTORNEY provide any confidential information made known to the CITY MANAGER by COMMISSION to anyone other than the DEPARTMENT.
- xi) The decision of the CHIEF regarding the DEPARTMENT's final disposition of the matter shall be communicated to the COMPLAINANT in the format prescribed by Penal Code sections 832.5 and 832.7.
  - a. The COMMISSION shall notify the COMPLAINANT of its' position in regard to the INVESTIGATION. Should public comment by the COMMISSION be appropriate, the COMMISSION shall comply with the requirements imposed by law regarding non-disclosure of personnel information regarding OFFICER(s) INVOLVED and the Police Officers Bill of Rights.
  - b. The CHIEF OF POLICE shall notify the COMPLAINANT's of the protocols for REQUEST FOR FURTHER REVIEW by the COMMISSION.
  - c. The OFFICER(s) INVOLVED shall be informed pursuant to DEPARTMENT policy and procedures.
- xii) If the DEPARTMENT finds that any portion of the COMPLAINT is "sustained," then procedures outlined in the National City Police Department Operating Procedures will be followed.

**Section 10.03 Mediation Procedures (Alternative Complaint Resolution Process)**

A COMPLAINANT may request mediation of the COMPLAINT. The DEPARTMENT will undertake mediation upon the mutual consent of the OFFICER INVOLVED. The DEPARTMENT shall utilize the services of a recognized mediation service or

professional to serve as mediator. The parties to the mediation shall consist only of the mediator, the COMPLAINANT and the OFFICER (s) INVOLVED. The mediation shall be informal, and oriented towards resolving the problem or mitigating any misunderstandings. The parties will agree in writing as a condition of mediation that neither the fact of mediation, nor any statements or admissions made during the mediation sessions shall be admissible in any later administrative or judicial proceedings involving the COMPLAINT, including any later initiated INVESTIGATION or DEPARTMENT proceedings. Upon satisfactory conclusion of the mediation, the COMPLAINT shall be dismissed and withdrawn, and shall not be filed in any personnel record pertaining to the OFFICER INVOLVED. The DEPARTMENT shall inform the COMMISSION of the outcome of the mediation (alternative complaint resolution process). The DEPARTMENT or the COMMISSION regarding the COMPLAINT shall thereafter entertain no further proceedings regarding the COMPLAINT.

#### **Section 10.04 Protocols for Reviewing SERVICE COMPLAINTS**

A SERVICE COMPLAINT is a COMPLAINT received from a CITIZEN regarding quality of service or minor acts or omissions that would not normally rise to the level of misconduct.

- (a) The DEPARTMENT shall resolve all SERVICE COMPLAINTs and report them to the COMMISSION on a SERVICE COMPLAINT Log form. The documentation will include the action taken to resolve the COMPLAINT.
- (b) No appeal of a SERVICE COMPLAINT shall be permitted before the COMMISSION. The COMMISSION, however, may audit COMPLAINTs categorized as SERVICE COMPLAINTs on a quarterly, semi-annual or annual basis, and provide appropriate comment to the CITY MANAGER and CHIEF on the handling of SERVICE COMPLAINTs on a continuing basis.
- (c) No public comment by the COMMISSION regarding SERVICE COMPLAINTs shall be permitted without the approval of a majority of the COMMISSIONERS. Public comment shall not include any discussion of personnel or confidential information.
- (d) The DEPARTMENT shall respond by letter to COMPLAINANTS the FINDINGS of their INVESTIGATION of the SERVICE COMPLAINT.

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#### **Article XI. Protocols for Filing of REQUEST FOR FURTHER REVIEW**

Any COMPLAINANT who is dissatisfied with the DEPARTMENT's FINDINGS reported following an INVESTIGATION of alleged OFFICER may file a REQUEST FOR FURTHER REVIEW by the COMMISSION which shall be based on either evidence or allegations the COMPLAINANT believes was omitted in the INVESTIGATION. The DEPARTMENT shall inform the COMPLAINANT at the time of notification of the opportunity to file a REQUEST FOR FURTHER REVIEW.

- (a) The REQUEST FOR FURTHER REVIEW must be filed within thirty (30) days of the COMPLAINANT receiving DEPARTMENT notification regarding disposition of the case. The COMMISSION may adopt rules for permitting late filings.

- i) A REQUEST FOR FURTHER REVIEW may be filed only by the COMPLAINANT in writing, either personally, by mail, fax or email with the COMMISSION Office, or through other arrangements approved by the COMMISSION. No COMPLAINT or REQUEST FOR FURTHER REVIEW will be deemed filed with the COMMISSION until it has been reduced to writing and signed by the COMPLAINANT.
  - ii) The REQUEST FOR FURTHER REVIEW shall include:
    - a. The name, address, and telephone number of the COMPLAINANT;
    - b. The approximate date the COMPLAINT was filed (if known);
    - c. The substance of the initial COMPLAINT;
    - d. The evidence, or allegation the COMPLAINANT believes was omitted in the INVESTIGATION.
  - iii) The COMPLAINANT may withdraw the REQUEST FOR FURTHER REVIEW at any time.
- (b) The COMMISSION may decline the REQUEST FOR FURTHER REVIEW if it appears that the DEPARTMENT's INVESTIGATION and FINDINGS were satisfactory and/or no information is provided to justify additional or further REVIEW by the COMMISSION.
- (c) Should the COMMISSION accept the REQUEST FOR FURTHER REVIEW, the matter shall be forwarded for resolution in accordance with Police DEPARTMENT Operating Procedure 015 et seq. The COMMISSION shall conduct its REVIEW as defined in Section 10.02 Protocols for Reviewing Complaints of these Procedures.
- i) The OFFICER(s) INVOLVED shall be informed pursuant to DEPARTMENT policy and procedures.
- (d) The COMMISSION's determination resulting from the REQUEST FOR FURTHER REVIEW shall be final. The COMMISSION shall thereafter entertain no further proceedings regarding the COMPLAINT.

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## **Article XII. Communications**

In the case of COMMISSION communications:

- (a) The COMMISSION shall not identify individuals involved in cases that come before the COMMISSION to any person other than among themselves, the COMMISSION, the and DEPARTMENT;
- (b) No COMMISSION member shall release any hearing documents to any person outside of the committee;
- (c) No COMMISSION member may publicly represent the COMMISSION without prior authorization from the COMMISSION or the Chairperson;
- (d) Any COMMISSIONER regarding any particular INCIDENT or OFFICER under COMMISSION review shall not send email, nor shall e-mail identify any DEPARTMENT personnel by name. Any e-mail communication sent by a COMMISSION member to any other member or members of the COMMISSION that relates to COMMISSION business shall be furnished to and retained by COMMISSION staff pursuant to the CITY records retention schedule. Copies of

communications shall be sent to the COMMISSION staff at the time the communication is made. The sender or recipient shall not retain individual copies, other than by COMMISSION staff in accordance with the CITY records retention schedule.

- (e) The COMMISSION should address the questions arising out of public comment during COMMISSION public meetings.
  - i) The questions should be addressed to the COMMISSION and not to COMMISSION staff.
  - ii) The Chair is the spokesperson for the COMMISSION and may restrict discussion of any question to allow for necessary research.
  - iii) The COMMISSION acknowledges that not all questions rise to the level of concern requiring a response.
  - iv) The Chair will advise the questioner when the COMMISSION will respond to a question.

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### **Article XIII. Monitoring and Reporting**

**Section 13.01** The COMMISSION shall develop a data system to track all COMPLAINTs received, develop quarterly reports to inform the CITY MANAGER regarding COMMISSION workload and performance, and review the status of COMPLAINTs and appeals with the CHIEF.

**Section 13.02** The COMMISSION may utilize the CONSULTANT to develop recommendations for modification of DEPARTMENT policies and procedures in order to prevent problems, and improve the quality of INVESTIGATIONs and police-community relations.

**Section 13.03** The COMMISSION shall develop annual summary reports for the CITY MANAGER, COUNCIL and public on COMMISSION activities, policy recommendations, and DEPARTMENT follow-through on recommendations. The report may include analysis of closed files that were not appealed, but not for the purpose that the files are to be reopened or that any confidential information or personnel records disclosed.

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### **Article XIV. Increasing Public Access**

**Section 14.01** The CITY MANAGER shall work with the COMMISSION to make COMPLAINT forms available in formats and locations to reach as many community members as possible.

**Section 14.02** The CONSULTANT shall work with the COMMISSION to develop programs to educate the public about the COMMISSION and the importance of reporting problems.

**Section 14.03** The COMMISSION shall develop programs to educate DEPARTMENT personnel on COMMISSION activities. DEPARTMENT personnel shall be informed that the COMMISSION is another means for CITIZENs to file COMPLAINTs.

The COMMISSION shall work with the DEPARTMENT to develop guidelines for situations when a COMPLAINANT with a COMPLAINT directly contacts a commander or supervisor within the DEPARTMENT.

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**Article XV. Limitation on Power**

Neither the COMMISSION nor any retained CONSULTANT may comment upon or recommend the level of discipline for any OFFICER pursuant to any REVIEW made under this procedure.

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