

THOMAS B. MODICA
City Manager

December 30, 2021

CPCC Case #20-139

Mr. Carlos Ovalle
csovalle@gmail.com

RE: Citizen Police Complaint Commission Case #20-139

Dear Mr. Ovalle:

This letter is in response to your request for information on the status of the above referenced complaint (Case #20-139) you filed on December 14, 2020, that includes two allegations of misconduct by Long Beach Police Chief Robert Luna. As this is an allegation regarding a high-level official, more detail than normal on a CPCC investigation is being provided to explain the findings of the investigation and the action taken.

As you are aware, once the CPCC completes its investigation and makes a recommended finding on a case, the matter is referred to the City Manager for a final determination. Both allegations in your complaint were investigated by the City-chartered Citizen Police Complaint Commission (CPCC). Also, included below are the actions that I took to address the violation of the City's Health Order at this event, immediately after the matter was brought to my attention.

Summary of Allegations

The first allegation of unbecoming conduct in your complaint is that on November 5, 2020, Chief Luna and members of his senior staff initiated a COVID-19 super spreader event at the Long Beach Convention Center without requiring compliance with Health Department mandates to prevent the spread of COVID-19, thereby knowingly allowing a super spreader event to occur. The second allegation of unbecoming conduct in your complaint is that on November 5, 2020, Chief Luna ordered the assembly of officers for the event at the Convention Center to put on their masks for a photograph. The assertion in your complaint is that Chief Luna was aware that officers at the event were unmasked and that he ordered them to put on masks specifically for the group photo.

After receiving the complaint, Case #20-139 was thoroughly investigated by CPCC staff through a review of the available records and interviewing the complainants and other witnesses regarding the allegations of misconduct.



Results of the Investigation

The investigation found that Chief Luna attended a portion of the training at the Convention Center in order to address the assembled officers. The investigation found that Chief Luna did direct officers at the event to put on their masks to take a group photo. This determination was based on evidence in the record, including specific information provided by Chief Luna as to his actions during the event. I agree with the facts of the case in this case and the investigation's conclusion that he did direct the officers to put on their masks for the photo. Based on the corrective actions taken by Chief Luna after the photo of the unmasked officers surfaced in public media, as further described below, appropriate action was taken immediately upon City management notification of this incident.

As to the second allegation regarding the organization of the event, after a complete and thorough investigation of the facts surround this event and the witness testimony present in the record, the investigation found that Deputy Chief Herzog was the lead LBPDP staff who organized and conducted the training event and was responsible for requiring that the event follow all COVID Health Orders at the time. The investigation found that Chief Luna's participation was to attend to address the officers. The investigation reviewed evidence presented in the record including witness testimony by LBPDP staff, including Deputy Chief Herzog. Deputy Chief Herzog provided a written statement (attached) that he initiated the training event and was responsible for the conduct of the officers in attendance in compliance with the City's Health Order and requiring masks to be worn at such an indoor event. I concur with the investigation findings that Deputy Chief Herzog was ultimately responsible and did not require all COVID Health Order rules to be followed for the event.

Additional Information on the City Manager's Response to the Incident

There was a lot of misinformation when the photos of the unmasked (and masked) LBPDP Officers surfaced in violation of the City's Health order at the indoor event on November 5, 2020. I would like to make the record clear on my actions when I became aware of these photos on December 8, 2020. I took immediate steps to address the matter directly with Chief Luna, who subsequently initiated direct communication with LBPDP staff. My discussion with Chief Luna occurred on or about December 8, 2020, six days prior to the complaint being filed on December 14, 2020 with the CPCC. I immediately expressed through a verbal reprimand my severe disappointment that the Health Order was not followed and my expectations that this be immediately corrected going forward. In our discussion, Chief Luna was completely forthcoming in acknowledging that he requested the officers to put on their masks for this event. More importantly, he accepted full responsibility for the conduct of the officers and the actions of his command staff. Chief Luna took immediate action to reiterate among LBPDP staff his expectation that full compliance with the City's Health order be required at all levels of the organization, including all masking protocols, and that non-compliance would be subject to disciplinary action.

After our discussion, Chief Luna issued a public statement (attached) admitting regret in how the event was handled and acknowledging it should have been handled differently. Additionally, the investigation found no indication from the contact tracing that the event resulted in any "super spreader" event. Since the event, Chief Luna and LBPDP management have been diligent in



requiring mask wearing, issuing directives to staff, leading by personal example, and correcting any individual instances of non-compliance.

The investigation, over the course of a year, found no new information that would lead to any further corrective action or discipline from what was initially imposed. As such, this case has been resolved and is now considered closed.

Delay in Response

The Police Officer Bill of Rights provides a one-year period for discipline to be taken. While the initiation date was originally thought to be December 8, 2020 when this issue was reported in the Long Beach Post and City Management became aware, upon further legal review it has been determined that the one-year period for this incident started on November 5, 2020 the date of the incident. Therefore, the one-year window for the City to render a disposition in the CPCC case ran through November 5, 2021, a fact that just recently came to light.

The CPCC Commission heard this case and provided their input to the City Manager in August 2021. There is typically time needed after the Commission's review to assemble the final work product and for the Deputy City Manager overseeing the CPCC to craft a recommendation for the City Manager's review and approval and to close out the case. Unbeknownst to me, this case was not presented for closure prior to the deadline. No additional disciplinary action is allowed once a case passes the 12-month window, absent extraordinary circumstances that justify the delay.

Deputy Chief Herzog retired on April 2, 2021 and is no longer with the City. Corrective action regarding Chief Luna was taken on December 8, 2020, six days prior to the complaint being filed. Based on those circumstances, this case is now considered closed and addressed. It is regrettable that we did not respond back to your complaint prior to the one-year period - that should not have occurred, and I accept responsibility that we did not respond to you within the one-year period. Corrective action will be taken to ensure that does not occur again in the future.

Sincerely,



THOMAS B. MODICA
City Manager

TM:PEW:PEW
Ovalle 20-139

Attachments:

LBPD Statement on the Event

Email from Deputy Chief Herzog

City Manager Alert to the Mayor and Council on Action Taken



December 17, 2020

STATEMENT FROM THE LONG BEACH POLICE DEPARTMENT REGARDING GROUP PHOTO AT TRAINING EXERCISE

Last week, a local publication released a photograph taken on November 5, 2020, showing a large gathering of Long Beach Police Department officers. The photo was taken during a mobile field force training exercise and depicted many officers not wearing a facial covering.

The day the photo was taken, a large group of officers were gathered at an off-site facility for the purpose of participating in a training exercise. This was necessary to effectively train our officers on large-scale mobilization tactics due to anticipated conflicts related to the national election week activities. These trainings occurred over several weeks and gradually grew in size and scope, culminating in the training event on November 5, which was the largest training day.

The Department's executive staff attended the training to address our officers and recognize them for their dedication, and sacrifice during this election period, which required extended shifts and limited days off during the Stage II tactical alert. At the conclusion, a photograph was taken with officers wearing facial coverings. However, other photographs were taken earlier at the event where officers are not wearing facial coverings. While we recognize the potential health and safety concerns that the photo raises regarding COVID-19, we must also reiterate that tactical training, especially during this highly contentious period, was necessary to ensure our officers were prepared.

"When I reflect back on that day, I recognize the potential health and safety concerns and should have been more diligent in ensuring that our employees were wearing face coverings at all times and physically distancing," stated Police Chief Robert Luna. "I regret the way that we handled this and if I had it to do over again I would do it differently."

As of today, our contact tracing investigations have not linked any positive COVID-19 cases to this gathering that occurred during the post-election public safety operation. However, in response to increased COVID positivity rate in our department and our community, we have implemented strict requirements for face



coverings in accordance with the most recent Health Order. Effective November 19, all Long Beach Police Department employees must wear a facial covering over the nose and mouth at all times, except when alone in a vehicle or alone in an office space. Employees who fail to wear the face covering as directed will be subject to progressive discipline to gain compliance.

Lastly, we also want to clarify that our City was still sufficiently staffed with other units to ensure that this training exercise did not impact our Department's ability to respond to calls for service.

On Monday, December 14, 2020, the Police Department was made aware of a community complaint regarding this matter that was filed with the Citizen Police Complaint Commission. As we would with any independent investigation, we are always open to an impartial and objective review of the facts and evidence in cases involving our Department and personnel.

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Re: FYI

Wally Hebeish <Wally.Hebeish@longbeach.gov>

Thu 12/17/2020 11:53 AM

To: Erik Herzog <Erik.Herzog@longbeach.gov>

Thank you for sending this Erik.

You did not have to do that, and I think it really speaks to your character.

Wally Hebeish

Assistant Chief of Police

Long Beach Police Department

400 W. Broadway | Long Beach, CA 90802

Office: 562.570.7529



From: Erik Herzog <Erik.Herzog@longbeach.gov>

Sent: Thursday, December 17, 2020 11:34 AM

To: Wally Hebeish <Wally.Hebeish@longbeach.gov>

Subject: FYI

In case you hear fallout I sent this out to my bureau yesterday.

From: Erik Herzog

Sent: Wednesday, December 16, 2020 1:01 PM

To: PD - Investigations Bureau <PD_Investigations_Bureau@longbeach.gov>

Cc: Eduardo De La Torre <Eduardo.DeLaTorre@longbeach.gov>

Subject: Updates

Over the last few months the Chief has heard from employees that they would like to hear directly from him on some topics. He has made an effort to make himself available to groups whenever possible and he has hosted several WebEx calls. The calls are getting increasingly difficult with the hold music and the background from open lines and I am not sure they will continue to be a viable option for him to communicate with the department. Remember, these calls are optional, so if you are not interested in hearing what he has to say, please do not interfere with other employees' ability to listen and ask questions. I also ask that you read the daily COVID emails and other information being distributed to have a better understanding of what is happening in the City and the department. If you have suggestions or questions regarding what the department is doing or what the Invest Bureau is working on please don't wait for a WebEx call and ask your supervisor. Sergeant Ed De La Torre is also available for questions and to act as a sounding board. I will make an effort to communicate more with supervisors and I ask that they stay engaged with their employees.

Last week there were several articles written about the group photo at the convention center. I have heard the Chief take responsibility for not enforcing mask wearing, but I want to give some background on how it came about. As you know, after May 31st the department committed resources to improving our ability to respond to civil unrest. This included conducting training for all ranks of the department. The training was not just for line level officers to work on movements, but it was also for supervisors and command staff to understand the challenges with assembling and moving large groups of officers. The week of the election prep I was the Incident Commander and was responsible for the deployment of all

of our field resources. I worked closely with the officers tasked with providing training to ensure we could meet our field objectives and also take advantage of the opportunity to train large groups of officers.

Early in the week the trainers made a request to assemble all available field personnel on an overlap day in an effort to demonstrate what a staging area for a mass mobilization would look like. This involved putting personnel out to check officers in as they arrived, coordinating how vehicles should be parked and working with lieutenants on being accountable for their platoons. This was the reason for the gathering, and just because every officer was not tasked with going through movements does not mean this was not a training exercise. The supervisors responsible for the staging area have made several recommendations on how to streamline the mobilization process as a result of lessons learned from this gathering and the training that was conducted throughout the lead up to the election cycle.

Based on feedback from the week after May 31st I asked the Chief to come down and personally address everyone we had brought together for the training. I also asked the PIO to arrange for a photo. I asked for the photo because in my time here I have never seen that many uniformed officers assembled in one spot and wanted a picture. Never was the intent of the gathering to take a picture, that was 100 percent my doing and I apologize for the negative fallout that resulted from the situation.

I brought the Chief into an unwinnable scenario and it is unfair for him to take responsibility for it. I should have made sure everyone knew the rules and reinforced with supervisors the importance of making sure employees were complying. However, I ask each one of you to also own the fact you know you are supposed to wear a mask and I should not be in a position to have to remind you.

If you have questions about anything please do not hesitate to come see me or Ed. These are interesting times and I don't want a lack of information to add to the stress.

Thank you,
Erik Herzog

From: [Tom Modica](#)
Cc: [Robert Luna](#); [Charles Parkin](#); [Douglas Haubert](#); [Laura Doud](#); [Linda Tatum](#); [Rebecca Garner](#)
Subject: CITY MANAGER ALERT: Statement Regarding PD Photo
Date: Thursday, December 17, 2020 11:39:13 AM
Attachments: [LBPD Statement Regarding Photo 12.17.2020.pdf](#)

Mayor and Council:

As mentioned last week in the briefings, photos of police officers not wearing masks from a training event on November 5 came to our attention. I've addressed this directly with the Chief who has owned the fact that this was wrong, that it will not happen again, and took additional steps back in November to ensure face coverings are being worn. Just so you are aware, none of the contact tracing performed has shown any link between this event and infections of officers. Nonetheless, it was not appropriate and does not set the example we want for our City employees and our entire community.

The Chief has held several in person interviews with the press to let them know all the facts and take responsibility. I encourage you to read the LB Post article, as from all the articles out there, it is the most balanced and does good reporting on the facts of the event and the Chief's direct response. <https://lbpost.com/news/long-beach-police-mask-photo-convention-center-not-wearing-face-coverings>

Over the past 24 hours, this has gained more national attention, some of which are reporting on the full facts and others are not. Attached is a statement that provides the facts. Feel free to use this with anyone who has concerns about this so they can see how we have responded.

Additionally, I have reminded all employees again, including our public safety employees, that face coverings are required in the workplace and let them know of my expectation that we as employees use any exemptions allowed in the State Order rarely, as we must set the best example for our community. That message went out today, and if we see further examples of employees not complying they will be subject to progressive discipline.

Please let me know if you have any questions.

Tom Modica
City Manager