

File No. 100636

Committee Item No. 2
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Rules

Date July 1, 2010

Board of Supervisors Meeting

Date _____

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Completed by: Linda Wong

Date June 25, 2010

Completed by: _____

Date _____

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[Establishment of Rent Board in Charter; Appointment and Removal of Members and Alternate Members.]

CHARTER AMENDMENT

PROPOSITION _____

Describing and setting forth a proposal to the qualified voters of the City and County of San Francisco to amend the Charter of the City and County of San Francisco by adding Section 4.136, and amending Section 15.105. Section 4.136 would be added to: establish the Residential Rent Stabilization and Arbitration Board ("Rent Board") in the Charter; authorize the Board of Supervisors to appoint three members and three alternate members, authorize the Mayor to appoint three members and three alternate members, and authorize the Board of Supervisors President and the Mayor to jointly appoint one member and one alternate member; and provide that the Rent Board will consist of three tenants, two landlords, and two neutral members, with an alternate for each member. Charter Section 15.105, which enumerates commissions whose members are subject to removal only for official misconduct, would be amended to include Rent Board members and alternate members.

The Board of Supervisors hereby submits to the qualified voters of the City and County, at an election to be held on November 2, 2010, a proposal to amend the Charter of the City and County by adding Section 4.136 and amending Section 15.105 to read as follows:

NOTE: Additions are *single-underline italics Times New Roman*;
deletions are ~~*strike-through italics Times New Roman*~~.

Section 1. The Charter of the City and County of San Francisco is amended to add Section 4.136 and amend Section 15.105, to read as follows:

SEC. 4.136. RESIDENTIAL RENT STABILIZATION AND ARBITRATION BOARD.

(a) The Residential Rent Stabilization and Arbitration Board (the "Rent Board") shall consist of seven members, appointed pursuant to this section. Three members of the Rent Board shall be tenants, two members shall be landlords, and two shall be neutral members.

(b) A tenant member may not be a landlord and may not own any residential rental property. A landlord member shall be a residential rental property owner and landlord in San Francisco, and may not be a tenant. A neutral member may not be a tenant or a landlord, and may not own any residential rental property.

(c) The Board of Supervisors shall appoint three members: one tenant member, one landlord member, and one neutral member. The Mayor shall appoint three members under this Section: one tenant member, one landlord member, and one neutral member. The Board of Supervisors President and the Mayor shall jointly appoint one tenant member under this Section.

(d) For each one of the members specified in subsection (c), there shall be an alternate member. The Board of Supervisors shall appoint three alternate members: one tenant alternate member, one landlord alternate member, and one neutral alternate member. The Mayor shall appoint three alternate members under this Section: one tenant alternate member, one landlord alternate member, and one neutral alternate member. The Board of Supervisors President and the Mayor shall jointly appoint one alternate tenant member under this Section. Alternate members shall serve as members of the Rent Board when the member for whom they are an alternate is not in attendance at a hearing, is recused from participating in a hearing, is suspended from serving as a member of the Rent Board, or no longer serves as a member. The requirements of subsection (b) shall apply to alternate members.

(e) Members and alternate members appointed by the Board of Supervisors, and the tenant member and tenant alternate member jointly appointed by the Board of Supervisors President and the Mayor, may be suspended by a motion of the Board of Supervisors and removed by the Board of Supervisors only pursuant to Section 15.105. Members and alternate

members appointed by the Mayor may be suspended and removed only pursuant to section 15.105.

(f) Each member's and each alternate member's term is four years, except, to stagger the terms, one tenant member and one tenant alternate member, one landlord member and one landlord alternate member, and one neutral member and one alternate neutral member, shall each initially serve a two-year term, with the remaining four members and four alternate members each initially serving a four-year term. The initial two and four-year terms of office shall be instituted as follows:

1. The respective terms of office of members and alternate members of the Residential Rent Stabilization and Arbitration Board created in Administrative Code Chapter 37 who hold office on the 15th day of April 2011 shall expire at 12 o'clock noon on that date; and the three members and three alternate members of the Rent Board appointed by the Board of Supervisors, the three members and alternate members of the Rent Board appointed by the Mayor, and the one member and one alternate member of the Rent Board jointly appointed by the Board President and the Mayor, shall succeed to their offices at that time.

2. The Clerk of the Board of Supervisors shall determine by lot which one of the three tenant members shall serve an initial two-year term, which one of the two landlord members shall serve an initial two-year term, and which one of the two neutral members shall serve an initial two-year term. The initial length of the term of each alternate member shall be identical to that of the member for whom they are an alternate.

SEC. 15.105. - SUSPENSION AND REMOVAL.

(a) ELECTIVE AND CERTAIN APPOINTED OFFICERS. Any elective officer, and any member of the Airport Commission, Asian Art Commission, Civil Service Commission, Commission on the Status of Women, Golden Gate Concourse Authority Board of Directors, Health Commission, Human Services Commission, Juvenile

Probation Commission, Municipal Transportation Agency Board of Directors, Port Commission, Public Utilities Commission, Recreation and Park Commission, Fine Arts Museums Board of Trustees, Taxi Commission, War Memorial and Performing Art Center Board of Trustees, Board of Education or Community College Board is subject to suspension and removal for official misconduct as provided in this section. Such officer may be suspended by the Mayor and the Mayor shall appoint a qualified person to discharge the duties of the office during the period of suspension. Upon such suspension, the Mayor shall immediately notify the Ethics Commission and Board of Supervisors thereof in writing and the cause thereof, and shall present written charges against such suspended officer to the Ethics Commission and Board of Supervisors at or prior to their next regular meetings following such suspension, and shall immediately furnish a copy of the same to such officer, who shall have the right to appear with counsel before the Ethics Commission in his or her defense. The Ethics Commission shall hold a hearing not less than five days after the filing of written charges. After the hearing, the Ethics Commission shall transmit the full record of the hearing to the Board of Supervisors with a recommendation as to whether the charges should be sustained. If, after reviewing the complete record, the charges are sustained by not less than a three-fourths vote of all members of the Board of Supervisors, the suspended officer shall be removed from office; if not so sustained, or if not acted on by the Board of Supervisors within 30 days after the receipt of the record from the Ethics Commission, the suspended officer shall thereby be reinstated.

(b) BUILDING INSPECTION COMMISSION, PLANNING COMMISSION, BOARD OF APPEALS, ELECTIONS COMMISSION, ETHICS COMMISSION, ~~AND ENTERTAINMENT COMMISSION~~, AND RESIDENTIAL RENT STABILIZATION AND ARBITRATION BOARD. Members of the Building Inspection Commission, the Planning Commission, the Board of Appeals, the Elections Commission, the Ethics Commission,

and the Entertainment Commission, and the Residential Rent Stabilization and Arbitration Board (including alternate members) may be suspended and removed pursuant to the provisions of subsection (a) of this section, except that (1) the Mayor may initiate suspension and removal only of the Mayor's appointees, (2) the Board of Supervisors shall act in place of the Mayor for suspension and removal of appointees jointly appointed by the Board of Supervisors President and the Mayor, and (3) the appointing authority shall act in place of the Mayor for suspension and removal of all other appointees.

(c) REMOVAL FOR CONVICTION OF A FELONY CRIME INVOLVING MORAL TURPITUDE.

(1) Officers Enumerated in Subsections (a) and (b).

(A) An appointing authority must immediately remove from office any official enumerated in subsections (a) or (b) upon:

(i) a court's final conviction of that official of a felony crime involving moral turpitude; and

(ii) a determination made by the Ethics Commission, after a hearing, that the crime for which the official was convicted warrants removal.

(B) For the purposes of this subsection, the Mayor shall act as the appointing authority for any elective official.

(C) Removal under this subsection is not subject to the procedures in subsections (a) and (b) of this section.

(2) Other Officers and Employees.

(A) At will appointees. Officers and employees who hold their positions at the pleasure of their appointing authority must be removed upon:

(i) a final conviction of a felony crime involving moral turpitude; and

(ii) a determination made by the Ethics Commission, after a hearing, that the crime for which the appointee was convicted warrants removal.

(B) For cause appointees. Officers and employees who by law may be removed only for cause must be removed upon:

(i) a final conviction of a felony crime involving moral turpitude; and

(ii) a determination made by the Ethics Commission, after a hearing, that the crime for which the appointee was convicted warrants removal.

(3) Penalty for Failure to Remove. Failure to remove an appointee as required under this subsection shall be official misconduct.

(d) DISQUALIFICATION.

(1) (A) Any person who has been removed from any federal, state, County or City office or employment upon a final conviction of a felony crime involving moral turpitude shall be ineligible for election or appointment to City office or employment for a period of ten years after removal.

(B) Any person removed from any federal, state, County or City office or employment for official misconduct shall be ineligible for election or appointment to City office or employment for a period of five years after removal.

(2) (A) Any City department head, board, commission or other appointing authority that removes a City officer or employee from office or employment on the grounds of official misconduct must invoke the disqualification provision in subsection (d)(1)(B) and provide notice of such disqualification in writing to the City officer or employee.

(B) Upon the request of any former City officer or employee, the Ethics Commission may, after a public hearing, overturn the application of the disqualification provision of subsection (d)(1)(B) if: (i) the decision that the former officer or employee engaged in official misconduct was not made after a hearing by a court, the Board of Supervisors, the Ethics Commission, an administrative body, an administrative hearing officer, or a labor arbitrator; and (ii) if the officer or employee does not have the right to

appeal his or her restriction on holding future office or employment to the San Francisco Civil Service Commission.

(e) OFFICIAL MISCONDUCT. Official misconduct means any wrongful behavior by a public officer in relation to the duties of his or her office, willful in its character, including any failure, refusal or neglect of an officer to perform any duty enjoined on him or her by law, or conduct that falls below the standard of decency, good faith and right action impliedly required of all public officers and including any violation of a specific conflict of interest or governmental ethics law. When any City law provides that a violation of the law constitutes or is deemed official misconduct, the conduct is covered by this definition and may subject the person to discipline and/or removal from office.

Section 2. This amendment to the Charter does not affect the functions, powers, and duties of the Residential Rent Stabilization and Arbitration Board as prescribed in Administrative Code Chapter 37 and other ordinances or affect existing authority to change those functions, powers, and duties.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: 

PAUL ZAREFSKY
Deputy City Attorney

LEGISLATIVE DIGEST (REVISED)

[Establishment of Rent Board in Charter; Appointment and Removal of Members and Alternate Members.]

**CHARTER AMENDMENT
PROPOSITION _____**

Describing and setting forth a proposal to the qualified voters of the City and County of San Francisco to amend the Charter of the City and County of San Francisco by adding Section 4.136 and amending Section 15.105 to: establish the Residential Rent Stabilization and Arbitration Board ("Rent Board") in the Charter; authorize the Board of Supervisors to appoint three members and three alternates, the Mayor to appoint three members and three alternates, and the Board of Supervisors President and the Mayor to jointly appoint one member and one alternate; provide that the Rent Board will consist of three tenants, two landlords, and two neutral members, with an alternate for each member; and add the Rent Board to the list of commissions whose members (and alternates) are subject to removal only for official misconduct.

Existing Law

The Board of Supervisors passed an ordinance in 1979 creating the City's Residential Rent Stabilization and Arbitration Board ("Rent Board"). (Administrative Code Chapter 37.) The Rent Board consists of five regular members: two landlords, two tenants, and one person (the "neutral") who is neither a landlord nor a tenant and who owns no residential rental property. Each regular member has an alternate, with the same qualifications as that regular member. The Mayor appoints all members and alternates to serve four-year terms. Members serve at the pleasure of the Mayor.

Under Charter Section 15.105, members of designated boards and commissions are subject to removal only for official misconduct, through a process that includes the appointing authority, the Ethics Commission, and the Board of Supervisors. The Rent Board is not one of the designated commissions.

Amendments to Current Law

Proposed Charter Section 4.136 would:

- Establish the Rent Board in the Charter.
- Increase the number of Rent Board members from five to seven (three tenant members, two landlord members, and two neutrals).

- Provide for a mixed system of appointments – The Board of Supervisors and the Mayor would each appoint three members (one tenant, one landlord, and one neutral), and the President of the Board of Supervisors and the Mayor would jointly appoint one tenant member. The Mayor's three appointments and the joint appointment would not be subject to review or approval by the Board of Supervisors.
- Provide that on April 15, 2011, there would be a transition of Rent Board membership – the terms of members appointed under Administrative Code Chapter 37 would expire, and the terms of members appointed under Charter Section 4.136 would commence. The terms of members appointed under Charter Section 4.136 would be four years, except to stagger the terms, one tenant member, one landlord member, and one neutral member, each chosen by lot by the Clerk of the Board of Supervisors, would initially each serve only a two-year term.
- Provide for an alternate member for each member, appointed by the same authority as the member for whom they are an alternate, and subject to the same qualification requirements and terms of office as members.

The proposed amendment to Section 15.105 would add the Rent Board to the list of boards and commissions whose members are subject to removal only for official misconduct, through the specified process that involves the appointing authority, the Ethics Commission, and the Board of Supervisors.

Changes from First Draft

The Second Draft of this proposed Charter amendment provides that the transition of Rent Board membership would occur on April 15, 2011 (rather than January 1, 2011, the date in the First Draft.) It also provides for appointment of alternate members to the Rent Board. Other changes from the First Draft to the Second Draft are nonsubstantive in nature and are intended to provide greater clarity to the proposed Charter amendment. While the Second Draft also amends the text of Charter Section 15.105, the change is not substantive because the First Draft effectively incorporated Section 15.105 by cross-referencing it, and the amendments to Section 15.105 are clarifying amendments.

Background Information

The Charter prescribes that the Mayor appoints members of executive branch boards and commissions, including those created by ordinance, such as the Rent Board. Unless the Charter prescribes otherwise, mayoral appointees serve at the pleasure of the Mayor (that is, no cause is required for their removal from office). To share Rent Board appointing authority between the Mayor and the Board of Supervisors and make Rent Board members (and alternates) subject to removal only for official misconduct, the voters must amend the Charter.

