

File No. 150902 Committee Item No. 3
 Board Item No. 7

COMMITTEE/BOARD OF SUPERVISORS
 AGENDA PACKET CONTENTS LIST

Committee: Public Safety and Neighborhood Services Date February 25, 2016

Board of Supervisors Meeting Date March 15 2016
 Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Ordinance |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Introduction Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
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| <input type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
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OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Referral FYI - 09/14/2015</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Response Women - 09/22/2015</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Referral YC - 09/30/2015</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Presidential Action Memo - 02/09/2016</u> |
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Completed by: Erica Major Date February 19, 2016
 Completed by: V Young Date 3/2/16

[Administrative Code - Considering Criminal History in Appointments to Boards and Commissions]

Ordinance amending the Administrative Code to delete the requirement that applicants for membership on boards and commissions disclose all felony convictions; to limit the City from using criminal history information in making decisions about appointment and removal of members of certain boards, commissions, and other bodies; and to require the City to follow certain restrictions when inquiring about or using conviction history information to make decisions about appointment or removal.

NOTE: Unchanged Code text and uncodified text are in plain Arial font. Additions to Codes are in *single-underline italics Times New Roman font*. Deletions to Codes are in *strikethrough italics Times New Roman font*. Board amendment additions are in double-underlined Arial font. Board amendment deletions are in ~~strikethrough Arial font~~. Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The Administrative Code is hereby amended by deleting Section 2.6-4 and adding Article XII, Sections 16.500, 16.501, and 16.502, to Chapter 16, to read as follows:

~~SEC. 2.6-4. DISCLOSURE OF FELONY CONVICTIONS.~~

~~Any person applying to the Board of Supervisors for appointment to a board, commission, committee, task force, or other body, shall submit, in addition to any other information required as part of the application process, a written statement under penalty of perjury disclosing any felony convictions.~~

~~These requirements shall not apply to mayoral nominations to boards and commissions submitted to the Board of Supervisors pursuant to Charter Section 3.100(15).~~

1 CHAPTER 16: OFFICERS AND EMPLOYEES GENERALLY

2 * * * *

3 ARTICLE XII:

4 CONSIDERATION OF CRIMINAL HISTORY OF PEOPLE APPLYING FOR OR SERVING ON
5 CERTAIN CITY BOARDS, COMMISSIONS, AND OTHER BODIES

6 Sec. 16.500. Findings.

7 Sec. 16.501. Definitions.

8 Sec. 16.502. Use Of Criminal History Information Regarding Appointments To Or Removal
9 From Policy Bodies.

10
11 SEC. 16.500. FINDINGS.

12 The health, safety, and well-being of San Francisco's communities depend on ensuring that
13 people with arrest or conviction records have opportunities to effectively reintegrate into the
14 community. The findings in Police Code Section 4902 provide many of the reasons why it is critical for
15 the City to take steps to facilitate that reintegration. One dimension of this reintegration process is to
16 remove arbitrary roadblocks to participation in City government.

17 To that end, this Article XII provides that the City and County of San Francisco cannot, except
18 in appropriate circumstances, remove people from certain City boards, commissions, and other bodies
19 or reject applicants seeking appointment to such boards, commissions, and other bodies, based on the
20 members' or applicants' criminal history. In this way, the policies that the City applies to its
21 appointment process for these boards, commissions, and other bodies will substantially mirror the
22 policies that apply to private employers and housing providers under Police Code Article 49.

23
24 SEC. 16.501. DEFINITIONS.
25

1 (a) As used in this Article XII, the terms "Arrest," "Background Check Report," "City,"
2 "Conviction History," "Evidence of Rehabilitation or Other Mitigating Factors," "Inquire," and
3 "Unresolved Arrest" shall have the meanings set forth in Police Code Section 4903.

4 (b) As used in this Article XII, the following terms have the following meanings:

5 "Adverse Action" shall mean a decision to not nominate or appoint a person as a member of a
6 Board Policy Body or to remove a person as a member of such a body.

7 "Applicant" shall mean a person seeking nomination or appointment to a Board Policy Body.

8 "Conviction" shall mean a record from any jurisdiction that includes information indicating
9 that a person has been convicted of a felony or misdemeanor; provided that the conviction is one for
10 which the person has been placed on probation, fined, imprisoned, or paroled.

11 "Directly-Related Conviction" shall mean that the conduct for which an Applicant or Member
12 was convicted or that is the subject of an Unresolved Arrest has a direct and specific negative bearing
13 on that Applicant or Member's ability to perform the duties or responsibilities of the Board Policy
14 Body or is directly related to matters that the Board Policy Body may consider.

15 "Member" shall mean a person serving as a member of a Board Policy Body.

16 "Board Policy Body" shall mean a board, commission, committee, task force, or other body,
17 created by a resolution or ordinance adopted by the Board of Supervisors, that is responsible for
18 exercising the sovereign powers of the City or for advising City employees, officers, departments,
19 boards, or commissions. "Board Policy Body" shall include a committee, task force, or other body of a
20 Board Policy Body. "Board Policy Body" shall not include boards, commissions, committees, task
21 forces, or other bodies created by the Charter or created by an initiative ordinance that specifies the
22 qualifications for appointments to the body.

23
24 **SEC. 16.502. REQUESTS FOR AND USE OF CRIMINAL HISTORY INFORMATION.**
25

1 (a) Regarding appointment to or removal from positions on Board Policy Bodies, City
2 employees and officers shall not, at any time or by any means, inquire about, require disclosure of, or if
3 such information is received base an Adverse Action in whole or in part on:

4 (1) An Arrest not leading to a Conviction, excepting an Unresolved Arrest under
5 circumstances identified in this Section 16.502;

6 (2) Participation in or completion of a diversion or a deferral of judgment program;

7 (3) A Conviction that has been judicially dismissed, expunged, voided, invalidated,
8 or otherwise rendered inoperative, by way of example but not limitation, under California Penal Code
9 sections 1203.4, 1203.4a, or 1203.41;

10 (4) A Conviction or any other determination or adjudication in the juvenile justice
11 system, or information regarding a matter considered in or processed through the juvenile justice
12 system;

13 (5) A Conviction that is more than seven years old, the date of Conviction being the
14 date of sentencing; or

15 (6) Information pertaining to an offense other than a felony or misdemeanor, such as
16 an infraction.

17 Accordingly, the matters identified in this subsection (a) may not be considered in any manner
18 by a City employee or officer in making a decision regarding appointment to or removal from positions
19 on Board Policy Bodies.

20 (b) No City employee or officer shall require Applicants to disclose on any application for
21 membership on a Board Policy Body the facts or details of any Conviction History, any Unresolved
22 Arrest, or any matter identified in subsections (a)(1)-(6). Nor shall any City employee or officer
23 inquire on any application for membership on a Board Policy Body about the facts or details of any
24 Conviction History, any Unresolved Arrest, or any matter identified in subsections (a)(1)-(6). A City
25 employee or officer may ask on an application for membership on a Board Policy Body for an

1 Applicant or Member's written consent for a Background Check so long as the application includes a
2 clear and conspicuous statement that the City will not itself conduct or obtain from a third party the
3 Background Check until either after the first live interview with the person, after the first public
4 hearing regarding the person's potential appointment, or after a conditional offer of appointment in
5 accordance with subsection (c) of this Section 16.502.

6 (c) No City employee or officer shall require Applicants for membership on a Policy Body to
7 disclose, and shall not inquire into or discuss, their Conviction History or an Unresolved Arrest until
8 either after the first live interview with the person (via telephone, videoconferencing, use of other
9 technology, or in person), after the first public hearing regarding the person's potential appointment,
10 or, at the City's discretion, after a conditional offer of appointment. The City may not itself conduct or
11 obtain from a third party a Background Check until either after the first live interview with the person,
12 after the first public hearing regarding the person's potential appointment, or after a conditional offer
13 of appointment.

14 (d) Prior to any Conviction History inquiry, the City shall provide notice to the Applicant or
15 Member that substantially conforms to the notice requirement described in Police Code Section
16 4905(b).

17 (e) Prior to obtaining a copy of a Background Check Report, the City shall comply with all
18 state and federal requirements including but not limited to those in the California Investigative
19 Consumer Reporting Agencies Act (ICRAA), California Civil Code sections 1786 et seq., and the
20 Federal Consumer Reporting Act (FCRA), 15 United States Code sections 1681 et seq., to provide
21 notice to the Applicant or Member that such a report is being sought.

22 (f) In making a decision based on an Applicant or Member's Conviction History, a City
23 employee or officer shall conduct an individualized assessment, considering only Directly-Related
24 Convictions, the time that has elapsed since the Conviction or Unresolved Arrest, and any evidence of
25 inaccuracy or Evidence of Rehabilitation or Other Mitigating Factors.

1 (g) If a City employee or officer intends to base an Adverse Action on an item or items in the
2 Applicant or Member's Conviction History, the City employee or officer shall provide the Applicant or
3 Member with a copy of the Background Check Report, if any, and shall notify the Applicant or Member
4 of the prospective Adverse Action and the items forming the basis for the prospective Adverse Action.

5 (h) City employees and officers shall not engage in any communication that is intended and
6 reasonably likely to reach persons who are reasonably likely to seek appointment to a Board Policy
7 Body, and that expresses, directly or indirectly, that any person with an Arrest or Conviction will not
8 be considered or may not apply for membership on a Board Policy Body.

9 (i) References in this Section 16.502 to "City officers and employees" shall be understood to
10 include members of Board Policy Bodies when considering appointment of persons to, and removal of
11 members from, a committee, task force, or other body of a Board Policy Body.

12
13 Section 2. Effective Date. This ordinance shall become effective 30 days after
14 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
15 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
16 of Supervisors overrides the Mayor's veto of the ordinance.

17
18
19 APPROVED AS TO FORM:
20 DENNIS J. HERRERA, City Attorney

21 By: 

22 _____
23 JON GIVNER
24 Deputy City Attorney

25 n:\legana\as2015\1500784\01012671.doc

LEGISLATIVE DIGEST

[Administrative Code - Considering Criminal History in Appointments to Boards and Commissions]

Ordinance amending the Administrative Code to delete the requirement that applicants for membership on boards and commissions disclose all felony convictions; to limit the City from using criminal history information in making decisions about appointment and removal of members of certain boards, commissions, and other bodies; and to require the City to follow certain restrictions when inquiring about or using conviction history information to make decisions about appointment or removal.

Existing Law

Any person applying to the Board of Supervisors for appointment to a board, commission, or other body must submit a written statement under penalty of perjury disclosing any felony convictions. The Board may decide to appoint or remove any person from such a body because of the person's criminal history.

Amendments to Current Law

The proposed ordinance would delete the requirement that applicants for boards, commissions, and other bodies disclose their criminal history. It would restrict the use of criminal history information in decisions by City officers or employees regarding appointment to or removal from boards, commissions, and other City bodies. Specifically, the ordinance would prohibit the Board of Supervisors or any other City employee or officer from requesting information about a person's criminal history until after an interview or hearing. Even after that point, the City could not consider certain criminal history information, including an arrest not leading to a conviction (other than an arrest that is still the subject of a criminal investigation or trial); participation in or completion of a diversion or deferral of judgment program; a conviction that has been expunged or otherwise made inoperative; a conviction or other determination in the juvenile justice system; a conviction that is more than 7 years old (measured from date of sentencing); and criminal offenses other than felonies or misdemeanors, such as infractions. For other convictions and unresolved arrests—those that the City can consider in deciding whether to appoint or remove a person—the City could only base a decision on convictions and unresolved arrests that have a direct and specific negative bearing on the person's ability to perform his or her duties or responsibilities or that are directly related to matters that the person may consider as a member of the board, commission, or other body.

The restrictions in this ordinance would apply to all boards, commissions, and other bodies created by the Board of Supervisors, but would not apply to bodies created by the Charter or created by an initiative ordinance that specifies the qualifications for appointments.

FILE NO. 150902

Background Information

In 2014, the Board of Supervisors adopted Ordinance No. 017-14, which restricted the use of criminal history information in decisions regarding employment and housing. This proposed ordinance will bring the City's policies regarding appointment and removal of board and commission members substantially in line with the policies reflected in Ordinance No. 017-14.

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President, District 5
BOARD of SUPERVISORS



London Breed

City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-7630
Fax No. 554-7634
TDD/TTY No. 544-5227

File 150902
BOS-11, COB,
Rules, PSNS, Rep City
Mayor's City

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
FEB 10 PM 1:35
AK

PRESIDENTIAL ACTION

Date: 2.9.2016

To: Angela Calvillo, Clerk of the Board of Supervisors

Madam Clerk,
Pursuant to Board Rules, I am hereby:

Waiving 30-Day Rule (Board Rule No. 3.23)

File No. _____
(Primary Sponsor)

Title. _____

Transferring (Board Rule No 3.3)

File No. 150902 Kim
(Primary Sponsor)

Title. Amendment to conform BOS appointment process to Fair Chance ordinance

From: Rules _____ Committee

To: Public Safety & Neighborhood Services _____ Committee

Assigning Temporary Committee Appointment (Board Rule No. 3.1)

Supervisor _____

Replacing Supervisor _____

For: _____ Meeting
(Date) (Committee)

London Breed, President
Board of Supervisors

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Youth Commission
FROM: Angela Calvillo, Clerk of the Board
DATE: September 30, 2015
SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS

The Board of Supervisors has received the following, which at the request of the Youth Commission is being referred as per Charter Section 4.124 for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File. 150902

Ordinance amending the Administrative Code to delete the requirement that applicants for membership on boards and commissions disclose all felony convictions; to limit the City from using criminal history information in making decisions about appointment and removal of members of certain boards, commissions, and other bodies; and to require the City to follow certain restrictions when inquiring about or using conviction history information to make decisions about appointment or removal.

Please return this cover sheet with the Commission's response to **Alisa Somera, Clerk, Rules Committee.**

RESPONSE FROM YOUTH COMMISSION Date: _____

- No Comment
- Recommendation Attached

Chairperson, Youth Commission

Major, Erica (BOS)

From: Major, Erica (BOS)
Sent: Wednesday, September 30, 2015 1:40 PM
To: Carpenter, Adele
Cc: Guzman, Monica (BOS); Lu, Allen; Somera, Alisa (BOS)
Subject: REFERRAL YC (150902) Administrative Code - Considering Criminal History in Appointments to Boards and Commissions
Attachments: 150902 YC.pdf

Greetings:

This matter is being referred to the Youth Commission for comment and recommendation. Please forward the Commission's response as soon as it is available.

Sent on behalf of Alisa.Somera@sfgov.org, Assistant Clerk, Rules Committee

Best,

Erica Major
Assistant Committee Clerk
Board of Supervisors
1 Dr. Carlton B. Goodlett Place, City Hall, Room 244
San Francisco, CA 94102
Phone: (415) 554-4441 | Fax: (415) 554-5163
Erica.Major@sfgov.org | www.sfbos.org



Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form.

The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation, and archived matters since August 1998.

Disclosures: Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors website or in other public documents that members of the public may inspect or copy.



Emily M. Murase, PhD
Executive Director

City and County of San Francisco
DEPARTMENT ON THE STATUS OF WOMEN



Edwin M. Lee
Mayor

Date: September 22, 2015
To: Alisa Somera, Assistant Clerk, Rules Committee, Board of Supervisors
From: Dr. Emily Murase, Executive Director
Re: BOS File No. 150902: Administrative Code - Considering Criminal History in Appointments to Boards and Commissions

The Department on the Status of Women has examined the proposed amendment to the Administrative Code regarding considering criminal history in appointments to boards and commissions. We support the intent of the ordinance to remove arbitrary roadblocks to participation in City government for persons with arrest or conviction records. However, we have some concerns regarding the impact of the following sections, which taken together would prohibit the City from considering criminal history information if a conviction is more than seven years old, even if it is a Directly-Related Conviction.

- i. Sec. 16.501(b): "Directly-Related Conviction" shall mean that the conduct for which an Applicant or Member was convicted or that is the subject of an Unresolved Arrest has a direct and specific negative bearing on that Applicant or Member's ability to perform the duties or responsibilities of the Board Policy Body or is directly related to matters that the Board Policy Body may consider.
- ii. Sec. 16.502(a): Regarding appointment to or removal from positions on Board Policy Bodies, City employees and officers shall not, at any time or by any means, inquire about, require disclosure of, or if such information is received base an Adverse Action in whole or in part on: (5) A Conviction that is more than seven years old, the date of the Conviction being the date of sentencing;
- iii. Sec. 16.502(f): In making a decision based on an Applicant or Member's Conviction History, a City employee or officer shall conduct an individualized assessment, considering only Directly-Related Convictions, the time that has elapsed since the Conviction or Unresolved Arrest, and any evidence of inaccuracy or Evidence of Rehabilitation or Other Mitigating Factors.

Considering that convictions for domestic abuse, and other forms of gender-based violence, are difficult to obtain and typically follow prior perpetrations of abuse that often go unreported to police or are not prosecuted, a seven year time limit of criminal history is insufficient for Directly-Related Convictions from the perspective of the Commission on the Status of Women. We recommend that Directly-Related Convictions be permitted for consideration by the City **regardless of time passed.**

Please direct any questions to Legislative Analyst Elizabeth Newman at (415) 252-3206 or elizabeth.newman@sfgov.org.

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Chief Karen Fletcher, Adult Probation Department
Erica Maybaum, Child Care Planning and Advisory Council
Naomi Kelly, City Administrator
Ben Rosenfield, City Controller
Anne Hinton, Executive Director, Department of Aging and Adult Services
Tom Hui, Director, Department of Building Inspection
Maria Su, Director, Department of Children, Youth and Their Families
John Arntz, Director, Department of Elections
Trent Rhorer, Director, Department of Human Services
Barbara Garcia, Director, Department of Public Health
Deborah Raphael, Director, Department of the Environment
Emily Murase, Director, Department on the Status of Women
George Gascon, District Attorney
Jesse Mainardi, Acting Director, Ethics Commission
Laurel Klooomok, Executive Director, First 5 San Francisco
Valerie Huggins, Health Authority
Theresa Sparks, Director, Human Rights Commission
Olson Lee, Director, Mayor's Office of Housing
Helynna Brooke, Director, Mental Health Board
Ed Reiskin, Director, Municipal Transportation Agency
Adrienne Pon, Director, Office of Civil Engagement and Immigrant Affairs
Barbara Carlson, Director, Office of Early Care and Education
Todd Rufo, Director, Office of Economic and Workforce Development
Ellen Love, Office of Labor Standards Enforcement
Regina Dick-Endrizzi, Director, Office of Small Business
John Rahaim, Director, Planning Department
Chief Greg Suhr, Police Department
Monique Moyer, Director, Port
Harlan Kelly, Jr., General Manager, Public Utilities Commission
Mohammed Nuru, Director, Public Works
Phil Ginsburg, General Manager, Recreation and Park Department
Kate Austin, Treasure Island Development Authority

FROM: Alisa Somera, Assistant Clerk, Rules Committee
Board of Supervisors

DATE: September 14, 2015

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee has received the following proposed legislation, introduced by Supervisor Kim on September 8, 2015. This matter is being referred to you for informational purposes since it may affect your department.

File No. 150902

Ordinance amending the Administrative Code to delete the requirement that applicants for membership on boards and commissions disclose all felony convictions; to limit the City from using criminal history information in making decisions about appointment and removal of members of certain boards, commissions, and other bodies; and to require the City to follow certain restrictions when inquiring about or using conviction history information to make decisions about appointment or removal.

If you wish to submit any reports or documentation to be considered with the legislation, please send those to me at the Board of Supervisors, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102 or by email at alisa.somera@sfgov.org.

- c: Danielle Harris, Municipal Transportation Agency
- Louis Liss, Municipal Transportation Agency
- Roberta Boomer, Municipal Transportation Agency
- Emily Lesk, Office of Economic and Workforce Development
- Greg Asay, Office of Economic and Workforce Development
- Barbara Carr, Department of Elections
- John Gavin, Office of the City Administrator
- Sonya Harris, Department of Building Inspection
- Bernadette Perez, Department of Building Inspection
- Mavis Asiedu-Frimpong, Department of Public Health
- Jeff Simbe, Department of Public Health
- Paul Jones, Department of Public Health
- Kahala Drain, First 5 San Francisco
- Emily Davis, Department of Children, Youth and Their Families
- Brian Cheu, Mayor's Office of Housing
- Maura Lane, Office of the City Controller
- Bridget Badasow, Department of Aging and Adult Services
- Mathew Snyder, Planning Department
- Alexis Smith, Planning Department
- Tachina Alexander, Department of Elections
- Rodney Nash, Public Utilities Commission
- Patrick Caceres, Public Utilities Commission
- Charles Perl, Public Utilities Commission
- Jocelyn Kane, Administrative Services
- Crystal Stewart, Administrative Services
- Mullane Ahern, Human Rights Commission
- Minouche Kandel, Department on the Status of Women
- Jimmer Cassiol, Public Works
- Megan Owens, Department of Human Services
- Olive Gong, Recreation and Park Department
- Inspector John Monroe, Police Department
- Karen Shain, Adult Probation Department
- Tara Anderson, Office of the District Attorney
- Mei Ling Hui, Department of the Environment

Print Form

Introduction Form

By a Member of the Board of Supervisors or the Mayor

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2018 SEP -9 PM 5:50
Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [] inquires"
- 5. City Attorney request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.

Sponsor(s):


Supervisor Kim

Subject:

Fair Chance amendments

The text is listed below or attached:

Please see attached.

Signature of Sponsoring Supervisor: 

For Clerk's Use Only:



DENNIS J. HERRERA
City Attorney

BURK E. DELVENTHAL
Deputy City Attorney

DIRECT DIAL: (415) 554-4650
E-MAIL: buck.delventhal@sfgov.org

OPINION NO. 2010-01

TO: HONORABLE GAVIN NEWSOM, Mayor
ANGELA CALVILLO, Clerk of the Board of Supervisors

FROM: BURK E. DELVENTHAL, Chief, Government Division *ES*
MARIE C. BLITS, Deputy City Attorney *MB*

DATE: February 12, 2010

RE: Summary of Legal Requirements for Appointment of Members to Boards and Commissions and Certain Other Entities, Removal and Other Related Matters, Appointment and Removal of Department Heads Under those Boards and Commissions, and Mayoral Voting Seats on Certain Boards and Commissions and Other Entities

In this memorandum we provide a summary of the legal requirements regarding the various boards, commissions and other entities where the Mayor, or the Mayor and the Board of Supervisors (sometimes referred to below as the "Board"), have appointing authority. This memorandum updates and supersedes our earlier memorandum Opinion No. 2004-01, dated March 31, 2004.

There are four general types of boards and commissions and other entities where the Mayor, or the Mayor and the Board of Supervisors, make appointments to some or all of the seats, or where the Mayor holds a voting seat:

1. Boards and commissions and certain other entities created by the San Francisco Charter to run City offices, agencies, and departments, or to serve in a substantive role for those City bodies (Section II.A., Memorandum pages 11 - 53);
2. Boards and commissions and certain other entities created by ordinance or resolution to run City offices, agencies, and departments, or to serve in a substantive role for those City bodies (Section II.B.1 voter-approved ordinances, Memorandum pages 54 - 58; Section II.B.2 Board of Supervisors-approved ordinances and resolutions, Memorandum pages 59 - 79);
3. Boards and commissions and certain other entities created under state or federal statutes, which are not part of the municipal corporation City and County of San Francisco and are separate legal entities that have jurisdiction within the territorial limits of the County, some of which carry out state and federal functions (Section II.C., Memorandum pages 80 - 90); and

OPINION NO. 2010-01

TO: Mayor Newsom, and Clerk of the Board Calvillo
 DATE: February 12, 2010
 RE: Memorandum on Appointments to Boards, Commissions, and Certain Other Entities
 PAGE: 2

4. Boards and commissions on which City and County of San Francisco representatives sit together with representatives from other California counties to carry out joint functions (Section II D, Memorandum pages 91 - 97).

We do not generally address here the Mayor's authority to appoint members to purely advisory entities created by ordinance or state or federal law or the Mayor's authority to sit on such bodies. We have included a few bodies that are primarily advisory in light of appointment questions that have arisen. Nor do we address other advisory bodies to which only the Board of Supervisors or City officials other than the Mayor make appointments. For information on other types of appointments, see the Board of Supervisors "Annual Listing of Active Boards, Commissions, Committees, and Task Forces and Requirement of Membership" as posted on the Board of Supervisors website in compliance with The Maddy Act, California Government Code §54972 (<http://www.sfbos.org/index.aspx?page=3045>).

This memorandum has two main sections followed by an index. The first section contains a general discussion of matters relating to: the appointment and removal of commissioners, including residency, compensation and tenure; the appointment and removal of department heads; and the appointment and removal of members to boards of multi-county agencies.

The second section contains an enumeration of the boards and commissions. Included in the listing for each board is a description of six key features: the board's purpose; the number and appointment of its members; the term members serve; the process for removal of members; whether members receive compensation or health benefits; and whether the board appoints a department head.

I. CREATION OF BOARDS AND COMMISSIONS, APPOINTMENT AND REMOVAL OF MEMBERS AND RELATED MATTERS, APPOINTMENT AND REMOVAL OF DEPARTMENT HEADS SERVING UNDER THOSE BOARDS AND COMMISSIONS, AND BOARDS OF MULTI-COUNTY AGENCIES

A. BOARDS AND COMMISSIONS

(1) CREATION OF BOARDS AND COMMISSIONS

California general law regulates cities unless voters in the city adopt a charter to govern their own municipal affairs. In a chartered city, the charter is the constitution of the city and regulates and governs all aspects of city governance and administration. San Francisco voters have adopted several charters for the City, most recently in 1932 and then in 1995 (effective 1996). The San Francisco Charter (the "Charter") has created most of the boards and commissions in San Francisco government.

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Many current boards and commissions derive their genesis from the 1932 Charter and amendments to that Charter. Amendments to the 1996 Charter created other boards and commissions. Also, Charter amendments have revised provisions for existing Charter-created boards and commissions.

The Board of Supervisors has also created a few boards and commissions by ordinance, as authorized by the 1932 Charter. These ordinance-created boards and commissions have the same power as those created directly by the 1932 Charter. The 1996 Charter also authorizes the Board of Supervisors to create new boards or commissions by ordinance. Also, San Francisco voters have also created some boards and commissions by ordinance, by voting to approve an ordinance on the ballot at a Citywide election.

The City has created some legally separate board or commission-type entities under state or federal law. These entities are not part of the municipal corporation City and County of San Francisco, but have jurisdiction within San Francisco. These entities carry out various state and federal functions at the local City and County level (*e.g.*, the Health Authority, Housing Authority, Parking Authority, Redevelopment Agency, Treasure Island Development Authority, and the Workforce Investment Board).

Finally, State law and agreements among public entities including San Francisco have created certain multi-county agencies in which San Francisco participates. (See Section I.C. of this Memorandum.)

(2) MAYORAL RESPONSIBILITIES FOR APPOINTING BOARD AND COMMISSION MEMBERS

Under Charter section 3.100, the Mayor is responsible for the general administration and oversight of all departments and governmental units in the executive branch of the City and County. Except where noted below in the description of each board and commission, the Mayor makes appointments to boards and commissions under Charter section 3.100(17).

Section 3.100 appointments are effective upon transmittal of a Notice of Appointment to the Clerk of the Board of Supervisors, and remain in effect, unless rejected by a two-thirds vote of the Board of Supervisors within 30 days following transmittal of the Notice of Appointment to the Clerk. The Notice of Appointment must include the appointee's qualifications to serve, and a statement as to how the appointee represents the communities of interest, neighborhoods and diverse populations of the City and County. The Mayor should transmit the Notice of Appointment to the Clerk promptly upon making the appointment. For the appointee to exercise the powers of the office, that person must take the oath of office prescribed by state law. (For more information on the appointment process see City Attorney Opinion No. 2003-05, available on the City Attorney's website, <http://www.sfcityattorney.org/Modules/ShowDocument.aspx?documentid=82>.)

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This memorandum identifies certain appointments that are subject to approval, rather than rejection of the Board of Supervisors. In those instances, the appointee may not exercise the powers of the office until the Board has approved the appointment and the appointee has taken the oath of office.

The Mayor must provide written notice to the Ethics Commission of the name of any appointee who has assumed or left office if City law requires the appointee to file a Statement of Economic Interests with the Ethics Commission. The Mayor must provide the notice within 15 days of the appointee assuming or leaving office. (San Francisco Campaign and Government Conduct Code §3.1-102.5.)

Also, the Mayor has a seat but no vote on all Charter or ordinance-created boards and commissions to which the Mayor makes appointments. (Charter §3.100(9).)

Mayoral appointments to (and Mayoral seats on) legally separate board and commission-type entities created under state or federal law, including multi-county agencies, are governed by the laws and agreements and by-laws applicable to each of those entities. They vary from entity to entity. This memorandum includes a summary of the appointment requirements for each such entity in its individual section (see Memorandum sections II.C. and D).

(3) RESIDENCY AND OTHER REQUIREMENTS FOR COMMISSIONERS

In general, Charter section 4.101 governs residency and other requirements for appointees to City boards and commissions. Except where the Charter specifies otherwise, members of Charter-created boards and commissions must be, and remain during their tenure, "electors." The Charter defines an elector as a person registered to vote in the City and County. This voter registration requirement encompasses other requirements: that a member be of legal voting age, a resident of the City and County, and a United States citizen. We have noted specific exceptions to these requirements, where applicable, in the description of the Charter-created boards and commissions.

For City boards and commissions created by ordinance, the appointing officer or entity may waive the residency requirement if that officer or entity cannot locate a qualified local elector. Also, the ordinance may specify that members need not be of legal voting age or residents, but may not dispense with the citizenship requirement. (Charter §4.101(2).) We have noted specific exceptions to the age and residency requirements, where applicable, in the description of the boards and commissions created by ordinance.

Some City boards and commissions must include members who come from a particular profession, trade, union or business. These requirements are noted for applicable boards and commissions. Where an appointee is selected from a particular interest, the Ethics Commission may grant that appointee a waiver from certain conflict of interest laws.

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Membership criteria for appointment to legally separate board and commission-type entities created under state or federal law, including multi-county agencies, are governed by the laws and agreements and by-laws applicable to each of those entities. These criteria vary from entity to entity. A summary of the membership criteria for each such entity is included in its individual section of this memorandum. (See Memorandum sections I.C. and D.)

(4) COMPENSATING COMMISSIONERS

Under Charter section A8.400, the Board of Supervisors sets compensation, if any, for all City boards and commissions, except where the Charter or other controlling law specifies otherwise. We have noted specific exceptions to section A8.400, where applicable, in the description of the City boards and commissions.

Compensation for members of legally separate board and commission-type entities created under state or federal law, including multi-county agencies, is governed by the laws and agreements and by-laws applicable to each of those entities. They vary from entity to entity. A summary of the compensation provisions for each such entity is included in its individual section of this memorandum. (See Memorandum sections I.C. and D.)

(5) HEALTH SERVICES BENEFITS FOR COMMISSIONERS

Charter sections 12.202 and A8.420 establish a Health Service System and provide that officers of the City and County, and other officers as provided by ordinance, are entitled to membership in the system. Administrative Code section 16.700 lists boards and commissions whose members are eligible to participate in the Health Service System.

Members of legally separate board and commission-type entities created under state or federal law, including multi-county agencies (see Memorandum sections I.C. and D.), generally are not eligible for participation in the City and County of San Francisco health services plan solely by virtue of their appointment to such entities. (A member may be separately eligible to participate in the City and County health services plan by virtue of that member's public office.)

(6) TENURE OF COMMISSIONERS

Under the Charter and applicable ordinances, the term for appointees to most City boards and commissions is four years. The same criteria and procedures that apply to initial appointments also apply to appointments of persons to complete unexpired terms. (Charter §4.101(2).) Exceptions to this rule are noted below, where applicable, in the description of each board or commission.

The term for each seat on a board or commission is fixed at the time the commission is constituted. A commission is "constituted" when a majority of its members are sworn in. The

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term for each seat runs whether the seat is occupied or vacant. Charter section 18.114 provides that when a new board or commission is created or when new members are added to an existing board or commission, initial appointments must give the members staggered terms.

In general, once a term expires the incumbent, if not replaced, may retain the office as a holdover commissioner for a maximum of 60 days. Members of citizen advisory committees, Charter Article V and Charter Article XII boards and commissions are not subject to the 60-day limitation. The 60-day provision does not apply where the Charter expressly prohibits hold-overs, for example, the Police Commission. The hold-over incumbent is replaced by operation of law once the Mayor appoints another candidate to the office and that candidate has taken the oath of office. Upon appointment the replacement candidate will serve the unexpired balance of the term. Exceptions to this rule are noted below, where applicable, in the description of each board or commission.

An important distinction exists between the term of an office and an individual commissioner's tenure in that office. The term of an office is generally a fixed period of time measured from a fixed anniversary date. For City boards and commissions, the term is generally four years from the date a quorum of the entity was first sworn into office (unless the enabling legislation mandates a specific operative date). The term runs with the office, not with the individual occupant. As mentioned above, the term continues to run whether the seat is occupied or vacant. If, for example, a seat is left open for six months after the date the term expires, the term of the office remains four years, but the next commissioner -- if appointed six months after the prior term expired -- will hold office only for the remaining three and one-half years of that next term. The commissioner does not have a right to a full four years in office from the date of his or her appointment.

The terms of office for members of legally separate board and commission-type entities created under state or federal law, including multi-county agencies, are governed by the laws and agreements and by-laws applicable to each of those entities. They vary from entity to entity. A summary of the term of office provisions for each such entity is included in its individual section of this memorandum. (See Memorandum sections II.C. and D.)

(7) REMOVING COMMISSIONERS

Many members of boards and commissions serve at the pleasure of the Mayor or other appointing authorities; that is, they serve an at-will tenure. Other commissioners may be removed only for cause. All for-cause commissioners must receive notice and an opportunity to be heard before they can be removed. In this memorandum we indicate at-will tenure generally as, "may be removed by the appointing authority," or "serves at the pleasure of the appointing authority," and for-cause tenure generally as, "removal under §15.105 of the Charter" or "may be removed only for cause."

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Under the Charter, the Mayor may suspend most for-cause commissioners and all elected office holders for official misconduct. For some boards and commissions, the Mayor may suspend only his or her appointee(s). (Charter §15.105(b).) "Official misconduct" is defined in Charter section 15.105(e):

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.

Removal is mandatory upon conviction of a felony crime involving moral turpitude. (Charter §15.105(c).)

Upon suspending a public officer under the Charter, the Mayor must immediately notify the Ethics Commission and Board of Supervisors of the suspension in writing. The Mayor must present written charges against the officer to the Ethics Commission and Board of Supervisors at or before their next regularly scheduled meetings following such suspension. The Mayor must also immediately furnish a copy of the charges to the officer, who has the right to appear with counsel before the Ethics Commission in his or her defense. After the hearing, the Ethics Commission must recommend to the Board of Supervisors whether the charges should be sustained. If, after reviewing the complete record, the Board of Supervisors sustains the charges by no less than a three-fourths vote of all eleven members (*i.e.*, nine votes), the suspended officer is removed from office. If the charges are not sustained, or not acted on by the Board of Supervisors within 30 days of receipt of the record from the Ethics Commission, the suspended officer is reinstated.

The law creating several City boards and commissions allows for "automatic" removal of members if they do not meet certain attendance requirements. These procedures are noted below, where applicable, in the description of each board or commission. City boards and commissions may not impose such automatic removal requirements through their own by-laws.

Removal requirements for members of legally separate board and commission-type entities created under state or federal law, including multi-county agencies, are governed by the laws and agreements and by-laws applicable to each of those entities. They vary from entity to entity. A summary of the removal provisions for each such entity is included in its individual section of this memorandum. (See Memorandum sections II.C. and D.)

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(8) RECALL OF COMMISSIONERS

Any member of the Airport Commission, Ethics Commission or the Public Utilities Commission may be recalled by the voters as provided in Charter §14.103 and by the laws of the State of California. Any member of the Port Commission may also be recalled by the voters. (Charter §§4.114, 14.103.) But no recall petition may be initiated for any officer whose term of office ends in six months or less. (California Elections Code §11007.)

(9) RESIGNATION BY COMMISSIONERS

Under San Francisco Administrative Code section 16.89-15, any member of a City board or commission may resign by presenting a written resignation to the body or officer that appointed the member. An oral statement of resignation alone is not sufficient. Such resignation becomes effective at the time the office of the appointing authority receives the written resignation, unless otherwise stated in the resignation. (Administrative Code §16.89-16.) For instance, a notice of resignation could state that the resignation will become effective once the appointing officer designates a new appointee. An offer of resignation, while indicating the office holder's willingness to vacate the office, does not, by itself, constitute a resignation. For further information see City Attorney Opinion No. 2007-01 "Laws Governing Resignations of Appointed City Officers," which is available on the City Attorney's website (<http://www.sfcityattorney.org/Modules/ShowDocument.aspx?documentid=111>).

(10) CONFLICTS OF INTEREST

Members of boards and commissions are subject to a number of state and local laws governing conflicts of interest. These laws include restrictions on the ability of officials to participate in decisions in which they have a financial interest, as well as limitations on the receipt of gifts, lobbying, and the holding of incompatible offices. Please refer to the most recent City Attorney's "Good Government Legal Guide – An Overview of the Laws Governing the Conduct of Public Officials," for an overview of these laws. This Guide is available on the City Attorney's website (<http://www.sfcityattorney.org/index.aspx?page=7>).

(11) THE ROLE OF COMMISSIONS AND COMMISSIONERS

A City commission is authorized to establish plans, policies and goals for the department, while the department head is responsible for the day-to-day management and administration of the department. Individual commissioners have no power over the department or the department head. As a body, the commission may set administrative policy for the department, provided that it gives its direction solely through the department head. If the department head does not follow the commission's instructions on a particular administrative matter, the commission may either accept the department head's decision or remove him or her. The board or commission may choose to express its displeasure without removing the department head. Certain department

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heads may only be removed for cause; others may have employment contracts. Except for purposes of inquiry, individual commissioners may not initiate or take actions in their official capacity without commission authorization. Further, individual commissioners may not interfere with the administration of the department. (For a more in-depth discussion of the role of commissions, commissioners, and department heads, please see City Attorney Opinion No. 2003-01, which is available on the City Attorney's website at <http://www.sfcityattorney.org/Modules/ShowDocument.aspx?documentid=77>.)

Some boards or commissions exercise both the above-described oversight functions and specific quasi-judicial functions in areas such as permitting, licensing, or discipline (e.g., the Planning Commission, the Municipal Transportation Agency, the Entertainment Commission, and the Police and Fire Commissions). Others, such as the Board of Appeals, exist exclusively as quasi-judicial bodies to hear and decide matters within the jurisdiction conferred by state statute, City ordinance or the Charter.

B. APPOINTMENT AND REMOVAL OF DEPARTMENT HEADS SERVING UNDER BOARDS OR COMMISSIONS

The Charter empowers the Mayor to appoint and to seek removal of most department heads serving under boards and commissions. The Mayor has the power to appoint department heads from among three or more nominees submitted by a board or commission. But, the Mayor may appoint a department head even though the Commission submitted fewer than three nominations. The City Attorney's Office has given long-standing public advice that the three-nominee process is intended to give the Mayor a range of selection. If the Mayor does not object, the board or commission may submit fewer than three nominees. While the Mayor may indicate a preferred nominee before the board or commission submits its nominee(s), the board or commission is not legally obligated to honor the Mayor's preference.

Generally, the Mayor may seek removal of most department heads by recommending removal of a department head to the appropriate board or commission, which must act on the recommendation by removing or retaining the department head within 30 days. Failure to timely act on the Mayor's recommendation constitutes official misconduct. (Charter §§3.100(18), 4.102(6).) Exceptions to these procedures for appointing and removing department heads are noted below, where applicable, in the description of each board or commission.

C. BOARDS OF MULTI-COUNTY AGENCIES

The City is a member of several multi-county agencies that neither the Charter nor the Municipal Code creates. These agencies are separate legal entities with their own power to sue and be sued, to create bonded indebtedness, enter contracts, and in some cases, to exert regulatory authority. Generally, each member city, county, or other public agency is authorized to appoint one or more directors to a multi-county board of directors. For the City, appointments are usually divided between the Mayor and the Board of Supervisors, but other City agencies such as the Municipal Transportation Agency have been granted appointment authority for some

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bodies. In this section we provide background on the two types of multi-county agencies discussed in this memorandum.

The first type of agency is created by state statute and derives its authority from the state legislature. The Metropolitan Transportation Commission, the Bay Area Air Quality Management District, and the Golden Gate Bridge Highway Transit District fall into this category. State statutes empower eligible counties to appoint representatives to the board of directors and enumerate the specific powers of each agency. A mayor, board of supervisors, or other appointing authority may limit the appointment by term, removal conditions, or any other provision that is not specifically covered by state law. To determine the term and conditions of an appointee's tenure one must consider the statute that created the agency and any declaration or resolution making the appointment.

The second type of multi-county agency, a "joint powers authority," is created by agreement between public agencies and derives its authority from a contract known as a "joint powers agreement." State law authorizes two or more public agencies to create a joint powers authority and to endow the new entity with some or all the powers of the parties to the contract. A joint powers agreement enumerates the powers and limitations that the member agencies have granted to or withheld from a joint powers authority. Each member generally appoints one or more representatives to a board of directors as set forth in the agreement. Unless specified in the joint powers agreement, each member retains authority over limitations such as term and removal of its own appointees. The Transbay Joint Powers Authority, the Peninsula Corridor Joint Powers Board, and the Association of Bay Area Governments fall into the category of multi-county joint powers authorities. To determine the terms and conditions of an appointee's tenure one must consider any resolutions that authorized entry into the joint powers agreement, the joint powers agreement itself, and specific resolutions or declarations of appointment.



**Board of Supervisors
City and County of San Francisco
1 Dr. Carlton B. Goodlett Place, Room 244
(415) 554-5184 FAX (415) 554-5163**

Application for Boards, Commissions, Committees, & Task Forces

Name of Board, Commission, Committee, or Task Force: _____

Seat # or Category (If applicable): _____ District: _____

Name: _____

Home Address: _____ Zip: 94102

Home Phone: _____ Occupation: _____

Work Phone: _____ Employer: _____

Business Address: _____ Zip: _____

Business E-Mail: _____ Home E-Mail: _____

Pursuant to Charter, Section 4.101(a)(2), Boards and Commissions established by the Charter must consist of electors (registered voters) of the City and County of San Francisco. For certain other bodies, the Board of Supervisors can waive the residency requirement.

Check All That Apply:

Resident of San Francisco: Yes No If No, place of residence: _____

Registered Voter in San Francisco: Yes No If No, where registered: _____

Pursuant to Charter, Section 4.101(a)(1), please state how your qualifications represent the communities of interest, neighborhoods, and the diversity in ethnicity, race, age, sex, sexual orientation, gender identity, types of disabilities, and any other relevant demographic qualities of the City and County of San Francisco:

IS AN
CHARTER MANDATES (SECTION 4.101) THAT APPLICANTS ARE TO AN ELECTOR; AN ELECTOR IS SOMEONE WHO
 - HAS NO FELONY
 - VOTING AGE
 - RESIDENT
 - US CITIZEN

Business and/or professional experience:

Civic Activities:

Have you attended any meetings of the Board/Commission to which you wish appointment? Yes No

Appointments confirmed by the Board of Supervisors require an appearance before the Rules Committee. Once your application is received, the Rules Committee Clerk will contact you when a hearing is scheduled. *(Please submit your application 10 days before the scheduled hearing.)*

Date: _____ **Applicant's Signature: (required)** _____

(Manually sign or type your complete name.
NOTE: By typing your complete name, you are hereby consenting to use of electronic signature.)

Please Note: Your application will be retained for one year. Once completed, this form, including all attachments, become public record.

FOR OFFICE USE ONLY:

Appointed to Seat #: _____ Term Expires: _____ Date Seat was Vacated: _____