

BOARD of SUPERVISORS



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MEMORANDUM

TO: Sheryl Evans Davis, Director, Human Rights Commission
William Scott, Police Chief, Police Department
Vicki Hennessy, Sheriff, Sheriff's Department
George Gascón, District Attorney, Office of the District Attorney
Jeff Adachi, Public Defender, Office of the Public Defender
Barbara A. Garcia, Director, Department of Public Health
Micki Callahan, Director, Department of Human Resources
Ben Rosenfield, City Controller, Office of the Controller

FROM: *ll*
ST Alisa Somera, Legislative Deputy Director
Rules Committee

DATE: May 18, 2018

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee has received the following proposed legislation, introduced by Supervisor Ronen on May 8, 2018:

File No. 180480

Ordinance amending the Administrative Code to establish, and to set rules governing the appointment of the Director and the qualifications and duties of employees of the Office of Sexual Harassment and Assault Response and Prevention (Office) as a City department under the direction and oversight of the Human Rights Commission, which Office shall be responsible for: 1) receiving complaints concerning the manner in which any City department has responded or failed to respond to allegations of sexual assault or sexual harassment, and assisting complainants in navigating within City government to resolve those complaints; 2) compelling the attendance of City officers or employees at meetings with complainants; 3) notifying relevant City departments of any failure, in connection with a complaint of sexual assault or sexual harassment, to perform a duty imposed by law, or to perform a promised act, or to respond reasonably to the complainant's or Office's requests, or to otherwise fully and conscientiously respond to the complainant's or the Office's concerns,

and reporting to the Mayor and the Board of Supervisors if any City department so notified fails to take timely and adequate corrective action; 4) in certain cases, referring City officers and employees to appropriate disciplinary authorities for possible professional or administrative discipline; 5) requiring City departments to report aggregated or otherwise de-identified information concerning the department's handling of allegations of sexual assault and harassment; 6) engaging with community members to develop recommendations for improving the City's efforts to combat sexual assault and harassment, and making related recommendations to City policymakers; 7) making regular reports to the Human Rights Commission; and 8) maintaining the confidentiality of information required by law to be kept confidential, and respecting complainants' wishes for confidentiality to the maximum extent permitted by law.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: alisa.somera@sfgov.org.

c: Rowena Carr, Police Department
Asja Steeves, Police Department
Theodore Toet, Sheriff's Department
Katherine Gorwood, Sheriff's Department
Nancy Crowley, Sheriff's Department
Cristine Soto DeBerry, Office of the District Attorney
Maxwell Szabo, Office of the District Attorney
Greg Wagner, Department of Public Health
Naveena Bobba, Department of Public Health
Sneha Patil, Department of Public Health
Susan Gard, Department of Human Resources
Carol Isen, Department of Human Resources
Todd Rydstrom, Office of the Controller

1 [Administrative Code - Office of Sexual Harassment and Assault Response and Prevention]

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3 **Ordinance amending the Administrative Code to establish, and to set rules governing**
4 **the appointment of the Director and the qualifications and duties of employees of the**
5 **Office of Sexual Harassment and Assault Response and Prevention (Office) as a City**
6 **department under the direction and oversight of the Human Rights Commission, which**
7 **Office shall be responsible for: 1) receiving complaints concerning the manner in**
8 **which any City department has responded or failed to respond to allegations of sexual**
9 **assault or sexual harassment, and assisting complainants in navigating within City**
10 **government to resolve those complaints; 2) compelling the attendance of City officers**
11 **or employees at meetings with complainants; 3) notifying relevant City departments of**
12 **any failure, in connection with a complaint of sexual assault or sexual harassment, to**
13 **perform a duty imposed by law, or to perform a promised act, or to respond reasonably**
14 **to the complainant's or Office's requests, or to otherwise fully and conscientiously**
15 **respond to the complainant's or the Office's concerns, and reporting to the Mayor and**
16 **the Board of Supervisors if any City department so notified fails to take timely and**
17 **adequate corrective action; 4) in certain cases, referring City officers and employees to**
18 **appropriate disciplinary authorities for possible professional or administrative**
19 **discipline; 5) requiring City departments to report aggregated or otherwise de-**
20 **identified information concerning the department's handling of allegations of sexual**
21 **assault and harassment; 6) engaging with community members to develop**
22 **recommendations for improving the City's efforts to combat sexual assault and**
23 **harassment, and making related recommendations to City policymakers; 7) making**
24 **regular reports to the Human Rights Commission; and 8) maintaining the**
25

1 confidentiality of information required by law to be kept confidential, and respecting
2 complainants' wishes for confidentiality to the maximum extent permitted by law.

3
4 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
5 **Additions to Codes** are in *single-underline italics Times New Roman font*.
6 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
7 **Board amendment additions** are in double-underlined Arial font.
8 **Board amendment deletions** are in ~~strikethrough Arial font~~.
9 **Asterisks (* * * *)** indicate the omission of unchanged Code
10 subsections or parts of tables.

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

12 Section 1. The Administrative Code is hereby amended by adding Section 12A.18, to
13 read as follows:

14 **SEC. 12A.18. OFFICE OF SEXUAL HARASSMENT AND ASSAULT RESPONSE AND**
15 **PREVENTION.**

16 **(a) Creation of Office.** *There is hereby created the Office of Sexual Harassment and*
17 *Assault Response and Prevention, which shall be a City department under the authority and direction*
18 *of the Human Rights Commission.*

19 **(b) Powers and Duties of Office.** *The Office of Sexual Harassment and Assault Response*
20 *and Prevention shall have the powers, and shall perform the duties, set forth in this subsection (b).*

21 **(1)** *The Office shall have the authority to receive complaints from any member of the*
22 *public concerning the manner in which any City department has responded, or has failed to respond, to*
23 *allegations that the complainant—or a person under the care or custody of the complainant—has been*
24 *a victim of sexual assault or sexual harassment. The Office shall promptly confirm receipt of all such*
25 *complaints, and shall work diligently to assist each complainant in navigating their way through City*
government. In particular, the Office shall work diligently to assist each complainant in contacting

1 relevant City departments, and shall take all appropriate steps to encourage those City departments to
2 respond fully and conscientiously to the complainant's concerns. The Office shall treat each
3 complainant with dignity, professionalism, and compassion. For purposes of this Section 12A.18,
4 "City department" means any department, agency, office, or commission, or any other part of the
5 government of the City and County of San Francisco. It includes, but is not limited to, the Police
6 Department, the Office of the District Attorney, and the Department of Public Health.

7 (2) The Office shall have the power to compel the attendance of officers or
8 employees from any City department at meetings with the complainant, and may require that the
9 officers or employees who attend any such meetings have detailed knowledge of the complainant's
10 case. Attendance at such meetings shall be considered part of the officers' and employees' employment
11 with the City, for which they shall be compensated. Such meetings shall be scheduled at reasonable
12 times and locations that do not compromise the powers of the Office under this subsection (b)(2). Such
13 meetings shall be held within two weeks of the Office's request for a meeting, unless the Office, for
14 good cause shown, waives this requirement.

15 (3) In any instance in which the Office determines that any City department, or any
16 City officer or employee, has failed to perform a duty imposed by law in connection with a complaint of
17 sexual assault or sexual harassment, or has promised to perform an act and has failed to perform the
18 promised act, or has unreasonably failed to respond to the complainant's or Office's requests, or has
19 otherwise not fully and conscientiously responded to the complainant's or the Office's concerns, the
20 Office shall notify the relevant City department of such failure, in writing. If, after a reasonable period
21 of time as determined by the Office, not to exceed six weeks, the relevant City department has not
22 corrected such failure to the Office's satisfaction, the Office shall report this failure, in writing, to the
23 Mayor and the Board of Supervisors.

24 (4) In any instance in which the Office determines that there is a reasonable basis to
25 believe that any City officer or employee should be subject to any form of professional or

1 administrative discipline, the Office shall have the power to refer that officer or employee to any
2 appropriate disciplinary authority, which may include, but is not limited to:

3 (A) The officer or employee's appointing authority;

4 (B) The Department of Human Resources;

5 (C) For uniformed members of the Police Department, the Department of
6 Police Accountability; and,

7 (D) For holders of any professional license, the appropriate State licensing
8 authority.

9 Any City department that receives a referral from the Office shall promptly open an
10 investigation into the conduct for which the Office has referred the City officer or employee.

11 (5) The Office shall have the power to require any City department to report, at
12 times and in the manner of the Office's reasonable choosing, aggregated or otherwise de-identified
13 information concerning that department's handling of allegations of sexual assault and sexual
14 harassment. Such information may include, but is not limited to, the number of open cases involving
15 allegations of sexual assault and sexual harassment; the number of such cases resolved in particular
16 time frames; the ways in which such cases were resolved, and related information (including, but not
17 limited to, information about the age and number of cases reaching each particular kind of resolution);
18 the average time it takes the department to resolve each such case; information about the number and
19 age of unresolved cases; and the number and substance of complaints the department has received
20 (from members of the public, the Office, or any other source) regarding the department's handling of
21 allegations of sexual assault and sexual harassment. The Office may request assistance from the
22 Controller in obtaining the information described in this subsection (b)(5), and the Controller shall
23 cooperate with any such requests.

24 (6) The Office shall, at such times and in such ways as the Office deems most
25 effective, engage with members of the community (including, but not limited to, community

1 organizations dedicated to preventing or redressing sexual assault or sexual harassment) to explore
2 ways in which the City can improve its efforts to combat sexual assault and sexual harassment. The
3 Office shall develop recommendations for improving the City's efforts to combat sexual assault and
4 sexual harassment (including, but not limited to, recommendations regarding education and training
5 for City officers and employees who handle allegations of sexual assault and sexual harassment), and
6 shall make reports about such recommendations to relevant City departments, the Mayor, and the
7 Board of Supervisors. Such reports shall include, but are not necessarily limited to, an annual report
8 to the Mayor, the Board of Supervisors, and all relevant City departments.

9 (7) In addition to the other reports described in this subsection (b), the Office shall
10 make regular reports to the Human Rights Commission. Subjects addressed by these reports may
11 include, but are not limited to, the Office's activities, the City's efforts to combat sexual assault and
12 sexual harassment, and proposed recommendations for improving the City's efforts to combat sexual
13 assault and sexual harassment (including, but not limited to, proposed recommendations regarding
14 education and training for City officers and employees who handle allegations of sexual assault and
15 sexual harassment).

16 (8) In fulfilling the powers and duties described in this subsection (b), the Office
17 shall maintain the confidentiality of information required by law to be kept confidential, and shall
18 respect the complainant's wishes for confidentiality to the maximum extent permitted by law. Nothing
19 in this subsection (b)(8) shall otherwise restrict the City's ability to maintain the confidentiality of
20 information where such confidentiality is permitted (but not required) by law.

21 (c) **Appointment of Director.** Before the Human Rights Commission submits nominations
22 for the position of Director of the Office pursuant to Section 4.102(5) of the City Charter, the
23 Commission shall first solicit recommendations regarding such nominations from a three-member
24 advisory committee, to be appointed by the Commission. One member of this advisory committee shall
25 be a sexual-assault survivor, another member of the committee shall be a person who has engaged in

1 community-based advocacy on behalf of survivors of sexual assault or sexual harassment, and the
2 remaining member shall be an academic whose scholarship has focused on issues relating to sexual
3 assault or sexual harassment. The advisory committee shall be empowered to review applications,
4 interview applicants, and recommend that the Commission nominate particular candidates for the
5 Director position. Any candidates so recommended by the advisory committee shall possess the
6 qualifications of a “sexual assault counselor” within the meaning of Section 1035.2 of the California
7 Evidence Code. The Commission shall consider any recommendations made by the advisory
8 committee, but nothing in this subsection (c) shall be construed to interfere with the Commission’s
9 authority to make nominations of its choosing under Charter Section 4.102(5). If the Director does not
10 already possess the qualifications of a “sexual assault counselor” within the meaning of Section 1035.2
11 of the California Evidence Code at the time of appointment, the Director shall undergo at least 40
12 hours of training as a sexual assault counselor, in a manner consistent with Section 1035.2(a)(2) of the
13 California Evidence Code, within one year of appointment.

14 (d) **Composition of Office.** Subject to the budgetary and fiscal provisions of the Charter,
15 the Office shall be staffed by no fewer than the equivalent of three full-time employees; for purposes of
16 this requirement, the Director of the Office may be counted as the equivalent of a full-time employee.
17 At least one full-time employee, other than the Director, shall be responsible for interacting directly
18 with individual survivors of sexual assault and sexual harassment, and their advocates, to receive and
19 resolve individual complaints, consistent with subsections (b)(1)–(4). At least one other full-time
20 employee, other than the Director, shall be responsible for engaging with community-based
21 organizations and City departments to gather information, produce reports, and promote systemic
22 change in the City’s policies and practices towards sexual assault and sexual harassment, consistent
23 with subsections (b)(5)–(7). All employees of the Office shall possess the qualifications of a “sexual
24 assault counselor” within the meaning of Section 1035.2 of the California Evidence Code.

1 **(e) Powers and Duties of Human Rights Commission.** In overseeing the Office, the
2 Human Rights Commission shall hold all the powers and duties set forth in Section 12A.5 of this
3 Administrative Code and Section 4.102 of the City Charter. This includes, but is not limited to, the
4 power to hold public hearings on any subject relevant to the Office. In holding any such public
5 hearing, the Commission shall maintain the confidentiality of information required by law to be kept
6 confidential, and shall respect a complainant's wishes for confidentiality to the maximum extent
7 permitted by law, in a manner consistent with subsection (b)(8).

8 **(f) Services Available to City Employees.** City employees shall be able to submit
9 complaints to, and use the services of, the Office on the same terms as other members of the public, but
10 nothing in this Section 12A.18 shall alter the City's existing procedures (including, but not limited to,
11 procedures established or administered by the Department of Human Resources) for handling
12 complaints of sexual assault or sexual harassment in the City's capacity as an employer.

13 **(g) Language Access.** The Office shall comply with Chapter 91 of the Administrative Code,
14 the Language Access Ordinance.

15 **(h) Construction with Other Laws.** Nothing in this Section 12A.18 shall be construed to
16 conflict with any State or Federal law, or with any provision of the City Charter. In particular, nothing
17 in this Section shall be construed to interfere with the investigative and prosecutorial functions under
18 State law of the District Attorney and the Sheriff, or to compromise the rights of peace officers under
19 California Penal Code Section 832.7 or the Public Safety Officers Procedural Bill of Rights Act,
20 California Government Code Sections 3300 et seq.

21 **(i) Undertaking for the General Welfare.** In enacting and implementing this Section
22 12A.18, the City is assuming an undertaking only to promote the general welfare. It is not assuming,
23 nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money
24 damages to any person who claims that such breach proximately caused injury.

1 (j) Severability. If any section, subsection, sentence, clause, phrase, or word of this Section
2 12A.18, or any application thereof to any person or circumstance, is held to be invalid or
3 unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the
4 validity of the remaining portions or applications of the Section. The Board of Supervisors hereby
5 declares that it would have enacted this Section, including each and every subsection, sentence, clause,
6 phrase, and word not declared invalid or unconstitutional, without regard to whether any other portion
7 of this Section or application thereof would be subsequently declared invalid or unconstitutional.
8

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

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

16 By: Matthew Lee
17 MATTHEW LEE
18 Deputy City Attorney

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LEGISLATIVE DIGEST

[Administrative Code - Office of Sexual Harassment and Assault Response and Prevention]

Ordinance amending the Administrative Code to establish, and to set rules governing the appointment of the Director and the qualifications and duties of employees of, the Office of Sexual Harassment and Assault Response and Prevention as a City department under the direction and oversight of the Human Rights Commission, which Office shall be responsible for: 1) receiving complaints concerning the manner in which any City department has responded or failed to respond to allegations of sexual assault or sexual harassment, and assisting complainants in navigating within City government to resolve those complaints; 2) compelling the attendance of City officers or employees at meetings with complainants; 3) notifying relevant City departments of any failure, in connection with a complaint of sexual assault or sexual harassment, to perform a duty imposed by law, or to perform a promised act, or to respond reasonably to the complainant's or Office's requests, or to otherwise fully and conscientiously respond to the complainant's or the Office's concerns, and reporting to the Mayor and the Board of Supervisors if any City department so notified fails to take timely and adequate corrective action; 4) in certain cases, referring City officers and employees to appropriate disciplinary authorities for possible professional or administrative discipline; 5) requiring City departments to report aggregated or otherwise de-identified information concerning the department's handling of allegations of sexual assault and harassment; 6) engaging with community members to develop recommendations for improving the City's efforts to combat sexual assault and harassment, and making related recommendations to City policymakers; 7) making regular reports to the Human Rights Commission; and 8) maintaining the confidentiality of information required by law to be kept confidential, and respecting complainants' wishes for confidentiality to the maximum extent permitted by law.

Existing Law

Under existing law, survivors of sexual assault and sexual harassment are responsible for interacting, directly and individually, with City departments that they believe to be relevant to their cases of sexual assault and sexual harassment. There is no centralized point of contact in City government to assist survivors of sexual assault and sexual harassment in navigating City government, or to advocate on their behalf.

Amendments to Current Law

This ordinance would create the Office of Sexual Harassment and Assault Response and Prevention, a City department under the direction and oversight of the Human Rights Commission. The Office would be responsible for receiving complaints from members of the public concerning the manner in which City departments have handled allegations of sexual assault or sexual harassment, and would assist complainants in navigating within City government to resolve those complaints. In particular, the Office would have the authority to require relevant City employees to meet with complainants, notify City departments (and, if necessary, the Mayor and the Board of Supervisors) when departments have failed to properly handle complaints, and refer City employees for administrative or professional discipline.

The Office would also be responsible for studying, and developing recommendations about, the City's overall systems for handling complaints of sexual assault and sexual harassment. To this end, the Office would have the power to require City departments to report aggregated or otherwise de-identified information concerning each department's handling of allegations of sexual assault and sexual harassment. The Office would also engage with the community. The Office would report regularly to the Human Rights Commission, and would also report recommendations to relevant City departments, the Mayor, and the Board of Supervisors.

The Director of the Office would be appointed by the Human Rights Commission, with input from a three-member advisory committee composed of a sexual-assault survivor, a community-based advocate, and an academic with expertise on sexual assault or sexual harassment. Employees of the Office would be required to qualify as "sexual assault counselors," as defined under California law.