File No. 181217 Committee Item No. 1
Board Item No. 35

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Rules Committee Date Feb. 11, 2019

Board of Supervisors Meeting Date February 26, 2019

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Completed by: Victor Young Date Feb. 7, 2019
Completed by: VY Date 2/15/19

AMENDED IN COMMITTEE
02/11/19

FILE NO. 181217 ORDINANCE NO.

[Administrative Code - Police Officers Questioning Youth]

Ordinance amending the Administrative Code to prohibit police officers from questioning persons 17 years of age or younger, in custody, unless certain conditions are met, providing for legal representation of the youth in connection with the interrogation, and mandating ~~parental~~ that responsible adults be given access to youth while police officers question youth.

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. Background and Findings

(a) Beginning January 1, 2018, state law has mandated that youths 15 years of age or younger consult with legal counsel prior to a custodial interrogation or a waiver of Miranda rights. Cal. Welf. & Inst. Code Section 625.6. The state law mandate does not cover youths aged 16 and 17. But there are compelling reasons to extend the same type of mandate within the City to youths who are 16 or 17.

(b) Developmental and neurological sciences suggest that the brain's cognitive function continues to develop through young adulthood.

(c) Youths aged 16 and 17 generally have not yet formed the mental capacity, on their own, to understand Miranda rights. Youths aged 16 and 17 also often lack the experience and maturity to understand Miranda rights. The Flesch-Kincaid readability test, which is one

of the most widely used tools for assessing readability of written materials, indicates that to understand Miranda rights, a person must have at least a twelfth-grade reading comprehension level. Most 16- and 17-year-olds are in the tenth and eleventh grade, and many lack a twelfth-grade reading comprehension level.

(d) An extensive body of literature demonstrates that juveniles are more suggestible than adults, may easily be influenced by questioning from authority figures, and may provide inaccurate reports when questioned in a leading, repeated, and suggestive fashion. (In J.D.B. v. North Carolina, 131 U.S. 2394,(2012)). Recent research has shown that more than one-third (35%) of proven false confessions were obtained from suspects under the age of 18. (Drizen & Leo, The Problem of False Confession in the Post – DNA World (2004) 82 N.C.L. Rev. 891, 902, 944-945. fn 5. The leading study of 125 proven false confession cases, cited by the Supreme Court in Corley v. U.S., 129 U.S. 1558 (2009) and J.D.B. v. North Carolina 131 U.S. 2394 (2012), found that 63% of false confessors were under the age of 25 and 32% were under 18. In another respected study of 340 exonerations that have taken place since 1989 (Samuel R. Gross et al., Exoneration in the United States 1989 Through 2003, 95. J.Crim. L. &Criminology 523-53 (2005)), researchers found that juveniles under the age of 18 were three times as likely to falsely confess as adults; a full 42% of juvenile exonerees had falsely confessed, compared to only 13% of wrongfully convicted adults In another study, an examination of 103 wrongful convictions of factually innocent teenagers and children found that a false confession contributed to 31.1% of the juvenile cases studied, as compared against only 17.8% of adult wrongful convictions. (Joshua A. Tepfer, Laura H. Nirider, & Lynda Tricarico, Arresting Development: Convictions of Innocent Youth, 64 Rutgers L. Rev. 887, 904 (2010).

(e) State law requires police officers to notify a minor's parent, guardian, or a responsible relative when the minor is taken into custody, and also gives the minor the right to

make two phone calls. Cal. Welf. & Inst. Code Section 625.6 9(a)(b). State law does not require that parents be permitted to be with their minor child, while the child is in police custody.

Section 2. The Administrative Code is hereby amended by adding Chapter 96C, consisting of Sections 96C.1, 96C.2, 96C.3, and 96C.4, to read as follows:

CHAPTER 96C: POLICE INTERROGATION OF YOUTH

SEC. 96C.1. RESTRICTIONS ON INTERROGATION.

(a) The Police Department ("SFPD") may not subject a person 17 years of age or younger ("Youth") to a custodial interrogation or question or engage in unnecessary conversation with Youth who are not free to leave, unless and until the following two conditions have been met:

(1) The Youth consults with legal counsel in person, by telephone, or by video conference, which consultation must occur before the waiver of any Miranda rights. This consultation with legal counsel may not be waived.

(2) Following the ~~legal~~ *consultation* with legal counsel, *SFPD shall allow* the parent, relative who is related to the youth by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of these persons even if the marriage was terminated by death or dissolution or an adult caregiver who has an established familial relationship with a relative of the youth or a familial or mentoring relationship with the youth, the youth's teacher, medical professional, clergy, neighbor, social worker, mental health clinician, or child advocate from a non-profit or community organization whose primary focus is assisting youth (collectively, "Responsible Adult") who is not a person of interest or a

suspect in the incident or subject matter giving rise to the custodial interrogation or questioning of the Youth. If the Youth does not object to the identified Responsible Adult's presence, the Responsible Adult may be present either in person, by telephone or video conference during the custodial interrogation and when SFPD questions or engages in unnecessary conversation with the Youth who is not free to leave. ~~immediate access to the Youth by the parent, guardian, or a responsible relative (collectively, "parent") to be present either in person, by telephone, or by video conference during the custodial interrogation and when SFPD questions or engages in unnecessary conversation with the Youth who is not free to leave.~~ *But while this subsection (a)(2) allows* ~~parental~~ *attendance* by the Responsible Adult *while SFPD subjects the Youth to a custodial interrogation or when SFPD questions or engages in* ~~unnecessary~~ unnecessary *conversation with the Youth who is not free to leave, this subsection (a)(2) also recognizes that the* ~~parent~~ Responsible Adult *may not violate California Penal Code Section 148, which forbids willfully delaying or obstructing a police investigation.*

(3) For purposes of this subsection (a), "unnecessary conversation" means communications with the Youth that are not designed to address the Youth's physical needs or to give the Youth directions relating to operation of the facility where the Youth is detained.

(b) The restrictions imposed by subsection (a) do not apply to a custodial interrogation or when SFPD questions a Youth who is not free to leave, when:

(1) An SFPD officer questions a Youth after reasonably concluding that the information the officer is seeking is necessary to protect life or property from an imminent threat; and

(2) The SFPD officer limits the questions to those reasonably necessary to obtain that information. Other questions to the Youth, if any, are subject to the restrictions imposed by subsection (a).

SEC. 96C.2. PROVISION OF COUNSEL.

The Public Defender's Office shall provide ~~counsel~~ legal advice limited in scope *for the Youth during the consultation and custodial interrogation referenced in subsection (a) of Section 96C.1. The Youth may instead retain private counsel, but not at the expense of the City,* absent appointment by the court.

SEC. 96C.3. UNDERTAKING FOR THE GENERAL WELFARE.

In enacting and implementing this Chapter 96C, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

SEC. 96C.4. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or word of this Chapter 96C, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the Chapter. The Board of Supervisors hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

Section 3. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the

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ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

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

By: _____
BURK E. DELVENTHAL
Deputy City Attorney

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FILE NO. 181217

REVISED LEGISLATIVE DIGEST
(Amended in Committee 02/11/19)

[Administrative Code - Police Officers Questioning Youth]

Ordinance amending the Administrative Code to prohibit police officers from questioning persons 17 years of age or younger, in custody, unless certain conditions are met, providing for legal representation of the youth in connection with the interrogation, and mandating that responsible adults be given access to youth while police officers question youth.

Existing Law

There is no City law requiring persons 17 years of age or younger to consult with a lawyer prior to a custodial interrogation or waiver of Miranda rights. State law requires persons 15 years of age or younger to consult with a lawyer prior to a custodial interrogation or a waiver of Miranda rights.

There is no City or state law that provides the parent, guardian, or a responsible relative (collectively "parent") the right to immediately access the Youth while in police custody or to be present during a custodial interrogation.

Amendments to Current Law

This ordinance expands on state law by increasing the age of persons, to 17 and younger, with a nonwaivable right to consult with a lawyer prior to a custodial interrogation or waiver of Miranda rights. This ordinance also gives the youth's parent, or another responsible adult with a familial or other relationship with the youth, the right to be present during the custodial interrogation or when police officers engage in unnecessary conversation with or question a youth who is not free to leave. These restrictions would not apply when the information the SFPD officer seeks is reasonably necessary to protect life or property from an imminent threat and questions asked of the youth are reasonably necessary to obtain that information.

Background Information

This ordinance arose from an incident where SFPD officers questioned students during the investigation of a firearm discharge at Balboa High School. During the Board of Supervisors hearing on SFPD's response to that incident, parents stated that SFPD detained students at gunpoint, and that parents were not allowed to see their children for over an hour, or to be present during SFPD's questioning of the students.

This legislative digest reflects amendments adopted by the Rules Committee on February 11, 2019.

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: Kiely Hosmon, Director
Youth Commission

FROM: Angela Calvillo, Clerk of the Board

DATE: December 21, 2018

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS

The Board of Supervisors has received the following proposed legislation which is being referred to the Youth Commission 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 No. 181217

Ordinance amending the Administrative Code to prohibit police officers from questioning persons 17 years of age or younger, in custody, unless certain conditions are met, providing for legal representation of the youth in connection with the interrogation, and mandating parental access to youth while police officers question youth.

Please return this cover sheet with the Commission's response to **Victor Young, Assistant Clerk, Rules Committee.**

****

RESPONSE FROM YOUTH COMMISSION Date: January 7, 2019

____ No Comment

__X__ Recommendation Attached

Chairperson, Youth Commission

1819-RBM-09

Youth Commission
City Hall ~ Room 345
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4532

(415) 554-6446
(415) 554-6140 FAX
www.sfgov.org/youth_commission

YOUTH COMMISSION

MEMORANDUM

TO: Victor Young, Assistant Clerk, Rules Committee
FROM: Youth Commission
DATE: Wednesday, January 9, 2019
RE: Referral response to BOS File No. 181217 – [Administrative Code - Police Officers Questioning Youth]

At our **Monday, January 7, 2019, meeting**, the Youth Commission voted unanimously to support the following motion:

To support BOS File No. 181217 — [Administrative Code - Police Officers Questioning Youth]

***

Youth Commissioners thank the Board of Supervisors for their attention to this issue. If you have any questions, please contact our office at (415) 554-6446, or your Youth Commissioner.

Bahlam Vigil, Chair
Adopted on January 7, 2019
2018-2019 San Francisco Youth Commission

Youth Commission
City Hall ~ Room 345
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4532

(415) 554-6446
(415) 554-6140 FAX
www.sfgov.org/youth_commission

YOUTH COMMISSION MEMORANDUM

TO: Victor Young, Clerk of the Rules Committee
Supervisor Hillary Ronen
Supervisor Shamann Walton
Supervisor Gordon Mar

CC: Angela Calvillo, Clerk of the Board of Supervisors
Carolyn Goossen, Chief of Staff, Supervisor Hillary Ronen
Percy Burch, Legislative Aide, Supervisor Shamann Walton
Alan Wong, Legislative Aide, Supervisor Gordon Mar

FROM: 2018-2019 Youth Commission, Transformative Justice Committee

DATE: Thursday, January 31, 2019

RE: Strong Support for City Ordinance File No. 181217 - Protecting the Constitutional Rights of Children

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The SF Youth Commission's Transformative Justice Committee has written a letter advocating strong support for City Ordinance File No. 181217 - Protecting the Constitutional Rights of Children. Please see the attached letter for more information.

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Please do not hesitate to contact Youth Commissioners or Youth Commission staff (415) 554-6446 with any questions. Thank you.

Youth Commission
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1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4532

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www.sfgov.org/youth_commission

January 31, 2019

Supervisor Hillary Ronen
City and County of San Francisco
1 Dr. Carlton B. Goodlett Place, Room 244 San Francisco, CA 94102-4689

RE: Strong Support for City Ordinance *File No. 181217 - Protecting the constitutional rights of children*

Dear Board of Supervisors,

The San Francisco Youth Commission acknowledges the effort that Supervisor Ronen and community members have made to introduce legislation San Francisco City Ordinance File No. 181217 of extending Miranda Rights protection to youth 17 and under. Youth Commissioners have been following with the issue since the beginning from participating at community stakeholder meetings to speaking at public comment advocating to protect youth rights. At the full Youth Commission meeting on Monday, September 17th, 2018, Youth Commissioners voted to unanimously support Motion No. 1819-AL-02 [Motion supporting the students being falsely detained as suspects without due process and urging the Board of Supervisors to conduct a hearing of the San Francisco Police Department's actions in the August 30,2018 Balboa High School gun incident] (attached) (PDF). At the Monday, January 7, 2019, meeting, the Youth Commission also voted unanimously to support BOS File No. 181217 [Administrative Code - Police Officers Questioning Youth] (attached) (PDF).

This is an important step toward creating safety and legal protections, in addition to fostering fairer interactions with police officers in San Francisco and mandating due process for all youth. Even though this legislation came forward in the wake of the Balboa High School incident, the gap in legal protection for youth 16 and older will continue to negatively impact all future youth experiences with police regardless of media coverage.

Currently, youth 16 and older in California can waive their Miranda rights on their own, as long as the waiver was made in a voluntary, knowing, and intelligent manner. However, research demonstrates that young people often fail to comprehend the meaning of their Miranda rights, because of a lack of civic education. They are also more likely than adults to waive their rights and confess to crimes they did not commit, especially in the face of authority. Due to adultism, the disempowerment of young people by adults in positions of authority, and a lack of legal rights education, San Francisco youth are put at a disadvantage with any interactions with the legal systems, leading to a higher risk of self-incrimination.

Since our establishment, the Youth Commission has demonstrated a long-standing commitment to improving youth and police relations and building room for youths to feel heard, seen, and empowered in spaces. For example, the Youth Commission was part of the Juvenile Justice Coalition which was comprised of over 25 city agencies and community groups including the Department of Police Accountability, Asian Law Caucus, and Huckleberry CARC. The coalition helped revise SFPD's procedures governing police interactions with youth and aided in the development and release of the "Know Your Rights for Youth in San Francisco" brochure, to help educate youth and parents about their rights under DGO 7.01. This commitment is rooted in our belief that youth need to have a voice in matters that impact their sense of safety, power, and belonging.

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On behalf of the youth of San Francisco, the San Francisco Youth Commission strongly supports San Francisco City Ordinance File No. 181217 and respectfully requests that you vote yes on this important effort to bridge the gaps in protection for youth, and further work towards introducing basic legal rights training for young people prior to when incidents occur.

Best regards,

Transformative Justice Committee
The San Francisco Youth Commission

[Motion supporting the students being falsely detained as suspects without due process and urging the Board of Supervisors to conduct a hearing of the San Francisco Police Department's actions in the August 30, 2018 Balboa High School gun incident]

Supplemental Information

On August 30, 2018, Balboa High school and all surrounding schools went into lockdown after a gun was fired at Balboa high school. The following statements are taken from the official press release:

"The community is left with many questions as to the way SFUSD leadership handled the incident involving a gun at Balboa High School and the subsequent media coverage on Thursday, August 30, 2018."

"Media outlets have portrayed the incident as though it involved an active shooter, scaring hundreds of families in the process. While all efforts to keep our school community safe are applauded, it is necessary to call out the wrongful criminalization of the young people taken into police custody as witnesses for questioning."

"A gun was brought to school and accidentally discharged. The student who brought the gun to campus later turned himself in with family."

"Balboa High School's principal failed to protect the students taken into police custody for questioning."

"One such student was incorrectly portrayed across news media outlets as the student who brought the gun to campus. That student was quickly criminalized and - in one day - went from having the reputation of a proud football player to "the kid with a gun." This student has participated in various community programs such as Boys and Girls club, the O'Connell YMCA summer program, Precita Center, and the Horizons MYEEP summer youth employment program. He is a member of the Balboa Varsity Football Team and has played soccer for various teams over the last five years."

"The family respectfully requests that the circulation of images showing the face of the minor be stopped IMMEDIATELY. An update should be issued stating that the students taken into SFPD custody for questioning were all released on Thursday, August 30th with NO charges."

"On Friday, August 31st, a community response meeting was held to support the families of those involved. Supervisor Ahsha Safai, Supervisor Hillary Ronen's staff, Board of Education Commissioner Shamann Walton and Youth Commissioner Balham Javier Vigil were all in attendance."

Youth Commission Media and Outreach Officer Grace Hoogerhyde attended a further community meeting at Balboa High School on Thursday, September 13th. Tensions in the community remain high, as the school and the police department remain closed to discussing and putting their protocols in question.

A California law recently passed by the State Legislature and signed by the Governor in 2017 (AB 395, Lara, Custodial interrogation: juveniles) required minors 15 years of age or younger to have a consultation with legal counsel before they are interrogated by police. While those youth detained for questioning in relation to the gun incident at Balboa High School were over that age, the Youth Commission believes that the lack of provision of legal consultation was an instance of undue overreach on the part of the police department, and of irresponsible inaction on the part of the school.

The Youth Commission, in the wake of this unfortunate event, extends its support to the families of students affected by the shooting and will also do everything in its power to ensure that all student voices will be listened to concerning gun violence and this tragic shooting. The Youth Commission also commits itself to holding a hearing whether joint with the Board of Supervisors or by ourselves, on gun violence and the school shooting at Balboa High School.

The Youth Commission urges the Board of Supervisors to hold a joint hearing with the Youth Commission on gun violence and more specifically on the Balboa shooting, and to conduct a thorough investigation of SFPD's questioning of minors without a parent present.

Lastly, let it be known that the Youth Commission stands with the students who were falsely detained as suspects without due process. The Youth Commission furthermore urges all parties involved to respect the families' demand of respecting the students' privacy by removing all the images of them.

Bahlam Vigil, Chair, 2018-19 Youth Commission
Adopted on September 17, 2018

BOARD of SUPERVISORS

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

MEMORANDUM

TO: Kiely Hosmon, Director
Youth Commission

FROM: Angela Calvillo, Clerk of the Board

DATE: December 21, 2018

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS

The Board of Supervisors has received the following proposed legislation which is being referred to the Youth Commission 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 No. 181217

Ordinance amending the Administrative Code to prohibit police officers from questioning persons 17 years of age or younger, in custody, unless certain conditions are met, providing for legal representation of the youth in connection with the interrogation, and mandating parental access to youth while police officers question youth.

Please return this cover sheet with the Commission's response to **Victor Young, Assistant Clerk, Rules Committee.**

****

RESPONSE FROM YOUTH COMMISSION **Date:** _____

____ **No Comment**

____ **Recommendation Attached**

_____
Chairperson, Youth Commission

BOARD of SUPERVISORS

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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: William Scott, Police Chief, Police Department
George Gascon, District Attorney
Jeff Adachi, Public Defender
Allen Nance, Chief Probation Officer
Vicky Hennessy, Sheriff, Sheriff's Department

FROM: Victor Young, Assistant Clerk
Rules Committee

DATE: December 27, 2018

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee has amended the following proposed legislation:

File No. 181217

Ordinance amending the Administrative Code to prohibit police officers from questioning persons 17 years of age or younger, in custody, unless certain conditions are met, providing for legal representation of the youth in connection with the interrogation, and mandating parental access to youth while police officers question youth.

If you have any additional 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: victor.young@sfgov.org.

c: Rowena Carr, Police Department
Asja Steeves, Police Department
Cristine Soto DeBerry, Office of the District Attorney
Maxwell Szabo, Office of the District Attorney
Sheryl Cowan, Juvenile Probation Department
Theodore Toet, Sheriff's Department
Katherine Gorwood, Sheriff's Department
Nancy Crowley, Sheriff's Department

Print Form

Introduction Form

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2018 DEC 11 PM 4:28
BY

Time stamp
or meeting date

By a Member of the Board of Supervisors or the Mayor

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. Request for Closed Session (attach written motion).

☐ 10. Board to Sit as A Committee of the Whole.

☐ 11. 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

Sponsor(s):

Ronen

Subject:

Ordinance amending the Administrative Code to prohibit police officers from questioning persons 17 years of age or younger,in custody, unless certain conditions are met, providing for legal representation of the youth in connection with the interrogation, and mandating parental access to youth while police officers' question youth.

The text is listed below or attached:

Please see the attached ordinance.

Signature of Sponsoring Supervisor: 

ɔr Clerk's Use Only: