

[Composition, appointment, tenure and removal of members of the San Francisco Police Commission; powers and duties of the Office of Citizen Complaints; discipline for police misconduct and neglect of duty; and, temporary suspensions pending disciplinary hearing.]

CHARTER AMENDMENT

PROPOSITION _____

Describing and setting forth a proposal to the qualified voters of the City and County of San Francisco to amend the Charter of the City and County of San Francisco by: (1) amending Section 4.109 to (i) increase the membership of the Police Commission from five members to seven members, (ii) change the process for appointing members to the Police Commission so that the Mayor nominates four members, subject to confirmation by the Board of Supervisors, and the Board of Supervisors appoints three members, (iii) require the approval of the Board of Supervisors for the Mayor to remove members of the Police Commission who were nominated by the Mayor and confirmed by the Board of Supervisors, (iv) authorize the Board of Supervisors to remove members of the Police Commission who were appointed by the Board of Supervisors, and (v) prohibit “holdover” commissioners by terminating the tenure of each member of the Police Commission by operation of law effective upon the expiration of the member’s term; (2) amending Section 4.127 to (i) authorize the director of the Office of Citizen Complaints (“OCC”) to verify and file charges with the Police Commission against members of the Police Department arising out of citizen complaints that are sustained by the OCC after meeting and conferring with the Chief of Police, and (ii) clarify that the duty of the Police Department and other City and County officials and employees to cooperate with and assist the OCC includes the obligation to promptly produce all records requested by the OCC except for records the disclosure of which to the OCC is expressly prohibited by law; (3) amending Section A8.343 to (i) require the Chief of Police, prior to suspending a member of the Police Department, to meet and confer with the director of the OCC and afford the director an

opportunity to verify and file charges with the Police Commission against the member in cases where the OCC has recommended discipline in excess of a 10-day suspension, and (ii) prohibit the Chief of Police from suspending a member of the Police Department pending the outcome of Police Commission proceedings on charges verified and filed by the OCC director; and (4) amending Section A8.344 to clarify the authority of the chiefs of the Police Department and Fire Department to temporarily suspend a member of the respective departments pending a hearing before the Police Commission or Fire Commission on disciplinary charges against the member.

The Board of Supervisors hereby submits to the qualified voters of the City and County, at an election to be held on November 4, 2003, a proposal to amend the Charter of the City and County by amending Sections 4.109, 4.127, A8.343 and A8.344 to read as follows:

Note: Additions are *single-underline italics Times New Roman*.
Deletions are ~~*strikethrough italics Times New Roman*~~.

SEC. 4.109. POLICE COMMISSION.

The Police Commission shall consist of ~~five~~ seven members nominated and appointed pursuant to this section. ~~appointed by the Mayor, pursuant to Section 3.100, The Mayor shall nominate four members to the commission, and the Board of Supervisors shall appoint, by motion, three other members to the commission. Each nomination of the Mayor shall be subject to confirmation by the Board of Supervisors, and shall be the subject of a public hearing and vote within 60 days. If the Board of Supervisors fails to act on a mayoral nomination within 60 days of the date the nomination is transmitted to the Clerk of the Board of Supervisors, the nominee shall be deemed confirmed. Appointments and mayoral nominations to fill a vacancy on the commission shall become operative on the date the Board of Supervisors adopts a motion appointing the member or confirming the nomination, or on the 61st day~~

following the date the Mayor transmitted the nomination to the Clerk of the Board of Supervisors if the Board of Supervisors fails to vote on the nomination prior to such date. Appointments and confirmation of nominations to fill a vacancy that will be created upon the expiration of a sitting member's term shall become operative upon the expiration of the sitting member's term, or, if the Board of Supervisors fails to act on the Mayor's nomination to fill such anticipated vacancy, on the 61st day following the date the Mayor transmitted the nomination to the Clerk of the Board of Supervisors or on the expiration of the sitting member's term, whichever occurs later. All appointments to the commission shall be for four-year terms.

The tenure of each member shall terminate upon the expiration of the member's term. The Mayor shall transmit a nomination or renomination to the Clerk of the Board of Supervisors no later than 60 days prior to the expiration of the term of a member nominated by the Mayor. The Board of Supervisors shall appoint or reappoint a member prior to the expiration of the term of a member appointed by the Board of Supervisors. For vacancies occurring for reasons other than the expiration of a member's term, within 60 days following the creation of such vacancy, the Mayor shall nominate or the Board of Supervisors shall appoint a member to fill such vacancy, depending upon whether the vacancy is for a seat filled by nomination of the Mayor or appointment of the Board of Supervisors.

The Mayor, with the consent of the Board of Supervisors, may remove a member the Mayor has nominated. The Board of Supervisors may remove a member the Board of Supervisors has appointed. Members may be removed by the Mayor.

Notwithstanding any other provision of the Charter, the Chief of Police may be removed by the Commission or the Mayor, acting jointly or separately of each other.

SEC. 4.127. POLICE DEPARTMENT.

The Police Department shall preserve the public peace, prevent and detect crime, and protect the rights of persons and property by enforcing the laws of the United States, the State of California and the City and County.

The Chief of Police may appoint and remove at pleasure special police officers.

The Chief of Police shall have all powers which are now or that may be conferred upon a sheriff by state law with respect to the suppression of any riot, public tumult, disturbance of the public peace or organized resistance against the laws or public authority.

DISTRICT POLICE STATIONS. The Police Department shall maintain and operate district police stations. The Police Commission, subject to the approval by the Board of Supervisors, may establish additional district stations, abandon or relocate any district station, or consolidate any two or more district stations.

OFFICE OF CITIZEN COMPLAINTS. The Mayor shall appoint a nominee of the Police Commission as the director of the Office of Citizen Complaints, subject to confirmation by the Board of Supervisors. The director shall serve at the pleasure of the Police Commission. If the Board fails to act on the appointment within 30 days, the appointment shall be deemed approved. In the event the office is vacant, until the Mayor makes an appointment and that appointment is confirmed by the Board, the Police Commission shall appoint an interim director who shall serve at the pleasure of the Police Commission. The appointment shall be exempt from the civil service requirements of this Charter. The director shall never have been a uniformed member or employee of the department. The director of the Office of Citizen Complaints shall be the appointing officer under the civil service provisions of this Charter for the appointment, removal or discipline of employees of the Office of Citizen Complaints.

The Police Commission shall have the power and duty to organize, reorganize and manage the Office of Citizen Complaints. Subject to the civil service provisions of this Charter, the Office of Citizen Complaints shall include investigators and hearing officers. As of July 1, 1996, the staff of the Office of Citizen Complaints shall consist of no fewer than one line investigator for every 150 sworn members. Whenever the ratio of investigators to police officers specified by this section is not met for more than 30 consecutive days, the director shall have the power to hire, and the city Controller must pay, temporary investigators to meet such staffing requirements. No full-time or part-time employee of the Office of Citizen Complaints shall have previously served as a uniformed member of the department. Subject to rule of the Police Commission, the director of the Office of Citizen Complaints may appoint part-time hearing officers who shall be exempt from the civil service requirements of this Charter. Compensation of the hearing officers shall be at rates recommended by the Commission and established by the Board of Supervisors or by contract approved by the Board of Supervisors.

Complaints of police misconduct or allegations that a member of the Police Department has not properly performed a duty shall be promptly, fairly and impartially investigated by staff of the Office of Citizen Complaints. The Office of Citizen Complaints shall investigate all complaints of police misconduct, or that a member of the Police Department has not properly performed a duty, except those complaints which on their face clearly indicate that the acts complained of were proper and those complaints lodged by other members of the Police Department. The Office of Citizen Complaints shall recommend disciplinary action to the Chief of Police on those complaints that are sustained. The director of the Office of Citizen Complaints, after meeting and conferring with the Chief of Police or his or her designee, may verify and file charges with the Police Commission against members of the Police Department arising out of sustained complaints. The director of the Office of Citizen Complaints shall schedule hearings

before hearing officers when such is requested by the complainant or a member of the department and, in accordance with rules of the Commission, such a hearing will facilitate the fact-finding process. The Board of Supervisors may provide by ordinance that the Office of Citizen Complaints shall in the same manner investigate and make recommendations to the Chief of Police regarding complaints of misconduct by patrol special police officers and their uniformed employees.

Nothing herein shall prohibit the Chief of Police or a commanding officer from investigating the conduct of a member of the department under his or her command, or taking disciplinary or corrective action, otherwise permitted by this Charter, when such is warranted; and nothing herein shall limit or otherwise restrict the disciplinary powers vested in the Chief of Police and the Police Commission by other provisions of this Charter.

The Office of Citizen Complaints shall prepare in accordance with rules of the Commission monthly summaries of the complaints received and shall prepare recommendations quarterly concerning policies or practices of the department which could be changed or amended to avoid unnecessary tension with the public or a definable segment of the public while insuring effective police services. The Office of Citizen Complaints shall prepare a report for the President of the Board of Supervisors each quarter. This report shall include, but not be limited to, the number and type of complaints filed, the outcome of the complaints, and a review of the disciplinary action taken. The President of the Board of Supervisors shall refer this report to the appropriate committee of the Board of Supervisors charged with public safety responsibilities. Said committee may issue recommendations as needed.

In carrying out its objectives the Office of Citizen Complaints shall receive prompt and full cooperation and assistance from all departments, officers and employees of the City and County, which shall promptly produce all records requested by the Office of Citizen

Complaints except for records the disclosure of which to the Office of Citizen Complaints is expressly prohibited by law. The director may also request and the Chief of Police shall require the testimony or attendance of any member of the Police Department to carry out the responsibilities of the Office of Citizen Complaints.

BUDGET. Monetary awards and settlements disbursed by the City and County as a result of police action or inaction shall be taken exclusively from a specific appropriation listed as a separate line item in the Police Department budget for that purpose.

POLICE STAFFING. The police force of the City and County shall at all times consist of not fewer than 1,971 full duty sworn officers. The staffing level of the Police Department shall be maintained with a minimum of 1,971 full duty sworn officers thereafter.

All officers and employees of the City and County are directed to take all acts necessary to implement the provisions of this section. The Board of Supervisors is empowered to adopt ordinances necessary to effectuate the purpose of this section including but not limited to ordinances regulating the scheduling of police training cases.

Further, the Commission shall initiate an annual review to civilianize as many positions as possible to maximize police presence in the communities and submit that report to the Board of Supervisors annually for review and approval.

The number of full duty sworn officers in the Police Department dedicated to neighborhood policing and patrol for fiscal year 1993-1994 shall not be reduced in future years, and all new full duty sworn officers authorized for the Police Department shall also be dedicated to neighborhood community policing, patrol and investigations.

PATROL SPECIAL POLICE OFFICERS. The Commission may appoint patrol special police officers and for cause may suspend or dismiss patrol special police officers after a hearing on charges duly filed with the Commission and after a fair and

impartial trial. Patrol special police officers shall be regulated by the Police Commission, which may establish requirements for and procedures to govern the position, including the power of the Chief of Police to suspend a patrol special police officer pending a hearing on charges. Each patrol special police officer shall be at the time of appointment not less than 21 years of age and must possess such physical qualifications as may be required by the Commission.

Patrol special police officers may be designated by the Commission as the owners of a certain beat or territory which may be established or rescinded by the Commission. Patrol special police officers designated as the owners of a certain beat or territory or the legal heirs or representatives of the owners may dispose of their interest in the beat or territory to a person of good moral character, approved by the Police Commission and eligible for appointment as a patrol special police officer.

Commission designation of beats or territories shall not affect the ability of private security companies to provide on-site security services on the inside or at the entrance of any property located in the City and County.

A8.343 FINE, SUSPENSION AND DISMISSAL IN POLICE AND FIRE DEPARTMENTS

Members of the uniformed ranks of the fire or the police department guilty of any offense or violation of the rules and regulations of their respective departments, shall be liable to be punished by reprimand, or by fine not exceeding one month's salary for any offense, or by suspension for not to exceed three months, or by dismissal, after trial and hearing by the commissioners of their respective departments; provided, however, that the chief of each respective department for disciplinary purposes may suspend such

member for a period not to exceed 10 days for violation of the rules and regulations of his department. Any such member so suspended shall have the right to appeal such suspension to the fire commission or to the police commission, as the case may be, and have a trial and hearing on such suspension. Written notice of appeal must be filed within 10 days after such suspension and the hearing of said appeal must be held within 30 days after the filing of said notice of appeal. If the commission shall reverse or alter the finding of the chief, it shall in the case of a reversal and in other cases it may in its discretion, order that the member affected be paid salary for the time of his suspension. In the event the chief should exercise such power of suspension, the member involved shall not be subject to any further disciplinary action for the same offense; provided, that where the Office of Citizen Complaints has sustained a complaint and recommended discipline in excess of a 10-day suspension, the Chief of Police may not exercise his or her power of suspension under this section without first meeting and conferring with the director of the Office of Citizen Complaints and affording the director an opportunity to verify and file charges with the Police Commission pursuant to Section 4.127. If the director of the Office of Citizen Complaints verifies and files charges, the Police Commission shall conduct a trial and hearing thereon, and the Chief of Police may not suspend the member pending the outcome of the Police Commission proceedings on the charges except as provided in Section A8.344.

Subject to the foregoing, members of the uniformed ranks of either department shall not be subject to dismissal, nor to punishment for any breach of duty or misconduct, except for cause, nor until after a fair and impartial trial before the commissioners of their respective departments, upon a verified complaint filed with such commission setting forth specifically the acts complained of, and after such reasonable

notice to them as to time and place of hearings as such commission may, by rule, prescribe. The accused shall be entitled, upon hearing, to appear personally and by counsel; to have a public trial; and to secure and enforce, free of expense, the attendance of all witnesses necessary for his defense.

A8.344 TEMPORARY SUSPENSION PENDING COMMISSION HEARING;
EXONERATION OF CHARGES

In exigent circumstances the chief of the police department and the chief of the fire department may temporarily suspend a member of the respective department pending a hearing before the police or fire commission on disciplinary charges against the member, and the member shall be entitled to a prompt administrative hearing to determine if he or she should remain suspended pending the outcome of the commission proceedings. If, as provided for in
~~Section 8.343~~ a member of the uniformed ranks of the police and fire departments is suspended by the chief of the respective department pending hearing before the police or fire commission for charges filed against him and subsequently takes a leave of absence without pay pending his trial before the commission, and, if after such trial he is exonerated of the charges filed against him, the commission may, at its discretion, remit the suspension and leave of absence without pay and may order payment of salary to such member for the time under suspension and on leave of absence without pay, and

the report of such suspension and leave of absence without pay shall thereupon be expunged from the record of service of such member.

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

By: _____
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