

BOARD of SUPERVISORS



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MEMORANDUM

TO: Ben Rosenfield, City Controller

FROM: Derek Evans, Clerk, Rules Committee
Board of Supervisors

DATE: July 11, 2016

SUBJECT: LEGISLATION INTRODUCED - CHARTER AMENDMENT

At the Board of Supervisors Rules Committee special meeting on July 6, 2016, Supervisor Mar duplicated File No. 160583, creating File No. 160781. This matter is being referred to you in accordance with Rules of Order 2.22.3.

File No. 160781 Charter Amendment - Public Advocate

Charter Amendment (Second Draft) to amend the Charter of the City and County of San Francisco to: 1) create the Office of the Public Advocate; 2) set the Public Advocate's powers and duties; 3) authorize the Public Advocate to review the administration of City programs, including programs for transmitting information to the public, and to receive, investigate, and attempt to resolve complaints regarding City services and programs; 4) authorize the Public Advocate to receive and investigate specified whistleblower complaints; 5) provide for the Public Advocate's election, removal, and salary; and, 6) set City policy regarding sufficient funding and minimum staffing for the Office of the Public Advocate; and setting an operative date, at an election to be held on November 8, 2016.

Please review and submit your written statement pursuant to the Charter to be included with the legislative file.

If you have any questions or concerns please call me at (415) 554-7702 or email derek.evans@sfgov.org. To submit documentation, please forward to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Todd Rydstrom, Office of the City Controller
Maura Lane, Office of the City Controller

1 [Charter Amendment - Public Advocate]

2
3 **Describing and setting forth a proposal to the voters, at an election to be held on**
4 **November 8, 2016, to amend the Charter of the City and County of San Francisco to:**
5 **1) create the Office of the Public Advocate; 2) set the Public Advocate’s powers and duties;**
6 **3) authorize the Public Advocate to review the administration of City programs, including**
7 **programs for transmitting information to the public, and to receive, investigate, and**
8 **attempt to resolve complaints regarding City services and programs; 4) authorize the**
9 **Public Advocate to receive and investigate specified whistleblower complaints; 5) provide**
10 **for the Public Advocate’s election, removal, and salary; and, 6) set City policy regarding**
11 **sufficient funding and minimum staffing for the Office of the Public Advocate; and setting**
12 **an operative date.**

13
14 Section 1. The Board of Supervisors hereby submits to the qualified voters of the City
15 and County, at an election to be held on November 8, 2016, a proposal to amend the Charter of
16 the City and County by revising Sections 6.100, 10.104, 13.101, 13.101.5, 13.102, 15.105,
17 A8.409-1, F1.102, F1.107, and F1.114, adding Sections 6.107 and 8C.101 through 8C.106, and
18 deleting Section F1.108, to read as follows:

19 NOTE: **Unchanged Charter text and uncodified text** are in plain font.
20 **Additions** are *single-underline italics Times New Roman font*.
21 **Deletions** are *strike-through italics Times New Roman font*.
22 **Asterisks (* * * *)** indicate the omission of unchanged Charter
23 subsections.

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1 **SEC. 6.100. DESIGNATION OF OTHER ELECTIVE OFFICERS.**

2 In addition to the officers required to be elected under other Articles of this Charter, the
3 following shall constitute the elective officers of the City and County: the Assessor-Recorder,
4 City Attorney, District Attorney, Public Defender, Sheriff, ~~and~~ Treasurer, and Public Advocate.
5 Each such officer shall be elected for a four-year term and shall serve full time.

6 The City Attorney shall be licensed to practice law in all courts of the State of California
7 and shall have been so licensed for at least ten years next preceding his or her election. The
8 District Attorney and Public Defender shall each be licensed to practice law in all courts of the
9 State of California and shall have been so licensed for at least five years next preceding his or her
10 election. Such officers shall not engage in the private practice of law during the period they
11 serve as elective officers of the City and County.

12 Subject to the powers and duties set forth in this Charter, the officers named in this
13 section shall have such additional powers and duties prescribed by state laws for their respective
14 office. The terms of office in effect for these officers on the date this Charter is adopted shall
15 continue.

16
17 **SEC. 6.107. PUBLIC ADVOCATE.**

18 (a) There shall be a Public Advocate for the City and County of San Francisco. The
19 functions, powers, and duties of the Public Advocate are set forth in Article VIII C.

20 (b) The Public Advocate shall appoint a Chief Deputy Public Advocate and at least two
21 Assistant Public Advocates, who shall serve at the pleasure of the Public Advocate, and may
22 have such other staff as provided according to the budgetary and fiscal provisions of the
23 Charter. The position of Chief Deputy Public Advocate shall be exempt from competitive civil
24 service selection, appointment, and removal procedures under Section 10.104(2), and the
25 position of Assistant Public Advocate shall be exempt under Section 10.104(14).

1 (c) The City Attorney shall be the attorney for the Public Advocate.

2 (d) The Public Advocate shall have an office in City Hall.

3 (e) During his or her tenure, the Public Advocate shall not contribute to, solicit
4 contributions to, publicly endorse or oppose or urge the endorsement of or opposition to or
5 otherwise participate in a campaign for a candidate for City elective office, other than himself or
6 herself, or be an officer, director, or employee of or hold a policy-making position in an
7 organization that makes political endorsements regarding candidates for City elective office.

8 (f) No person shall serve as Public Advocate for more than two successive terms. There
9 shall be no limit on the number of non-successive terms that a person may serve as Public
10 Advocate. A part of a term that exceeds two years shall count as full term for these purposes, but
11 the term of the first Public Advocate elected to a shortened term to expire at noon on January 8,
12 2021 under Section 13.101(b)(6) shall not be deemed to be a full term.

13 (g) No person shall be eligible to serve as Public Advocate who in the last four years
14 held the office of Mayor, member of the Board of Supervisors, City Attorney, District Attorney,
15 Treasurer, Sheriff, Assessor-Recorder, or Public Defender.

16
17 **ARTICLE VIII C: OFFICE OF THE PUBLIC ADVOCATE**

18 **SEC. 8C.101. PUBLIC ADVOCATE—GENERAL POWERS AND DUTIES.**

19 (a) Access to City Records. Except as provided below, the Public Advocate shall have
20 timely access to all records in the possession of City officers and agencies that the Public
21 Advocate deems necessary to complete the investigations, inquiries, and reviews required of him
22 or her by the Charter or other City law, and if necessary may issue subpoenas to enforce his or
23 her right of access to such records. The Public Advocate shall not have a right of access to
24 records the disclosure of which is forbidden by state or federal law, or records protected from
25 disclosure by privileges under federal, state, or local law, or other confidentiality provisions the

1 existence of which is derived from some source of state law other than the Public Records Act,
2 including, but not limited to, criminal investigation and prosecution files. The Public Advocate
3 may not disclose records that the City officer or agency possessing the records may decline to
4 disclose under the Public Records Act and the Sunshine Ordinance, as amended, or any
5 successor legislation, if the officer or agency declines to disclose such records.

6 (b) **Access to Third-Party Witnesses and Records.** In performing his or her duties, the
7 Public Advocate may administer oaths, take testimony, and, if necessary to complete the
8 investigations, inquiries, and reviews required of him or her by the Charter, issue subpoenas to
9 require witnesses to appear and produce evidence. The Public Advocate may seek enforcement
10 of such subpoenas in the manner prescribed by law.

11 (c) **Introduce Legislation.** The Public Advocate may introduce legislation at the Board
12 of Supervisors to address any matter within the Public Advocate's jurisdiction. The Public
13 Advocate may not introduce legislation addressing specific contract or personnel decisions
14 unless those contracts or personnel decisions involve the Office of the Public Advocate.

15 (d) **Non-Interference.** The Public Advocate shall not have any power or authority over,
16 nor shall the Public Advocate dictate, suggest or interfere with any appointment, promotion,
17 compensation, disciplinary action, contract or requisition for purchase or other administrative
18 actions or recommendations of an elected official, the Controller, or the City Administrator, or
19 of department heads under the Mayor, the City Administrator or under a board or
20 commission. The Public Advocate shall not have any power or authority over, nor shall the
21 Public Advocate dictate, suggest, or interfere with, any criminal investigation or prosecution.

22 (e) **Hearings.** The Public Advocate may hold public hearings in the course of fulfilling
23 the requirements of this Article VIIIC.

24 (f) **Confidentiality of Records.** The Public Advocate may, to the extent permitted by
25 state law, designate the records of any investigation, including but not limited to information that

1 would reveal the identity of complainants and witnesses, as confidential information. It shall be
2 official misconduct for any person to disclose information about any such investigation, except
3 as necessary to conduct the investigation, or with proper authorization, or as required by law or
4 lawful process. The Public Advocate may disclose confidential information to the District
5 Attorney to initiate or assist in a criminal investigation or prosecution. The unauthorized
6 release of confidential information shall be sufficient grounds for the termination of any
7 employee.

8 (g) **Reports.** The Public Advocate may issue reports relating to the operations or
9 activities of any City officer or agency, including recommendations for administrative or
10 legislative changes. The Public Advocate may, to the extent permitted by state law, designate
11 any portion of any draft, preliminary, or final report as confidential information. Before making
12 public any portion of any draft, preliminary, or final report, the Public Advocate shall send a
13 copy of the report to any officer, and to the head of any agency, discussed in such report and
14 provide the officer and agency, in writing, with a reasonable deadline for their review and
15 response. The Public Advocate shall include in any report, or portion thereof, that is made
16 public a copy of all such officer and agency responses, after redacting any information
17 contained in such responses that is confidential under state law.

18 (h) **Annual Report.** Not later than December 1 of each year, the Public Advocate shall
19 present to the Board of Supervisors, the Mayor, the City Administrator, and the Controller a
20 report on the activities of the office during the preceding fiscal year. The report may include:

21 (1) A statistical summary of the complaints received during such fiscal year,
22 categorized by agency, type of complaint, agency response, mode of resolution, and such other
23 factors as the Public Advocate deems appropriate;
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1 (2) An analysis of recurring complaints and complaints raising systemic or
2 citywide issues and the Public Advocate's recommendations for administrative, legislative, or
3 budgetary actions to resolve the underlying problems causing the complaints;

4 (3) A summary of the findings and recommendations of the agency program
5 reviews conducted during the fiscal year and a summary of each agency's responses to such
6 findings and recommendations; and

7 (4) Legislative proposals to improve the provision of City services and programs.

8 The Public Advocate may include in this report an assessment of the fiscal implications of
9 any recommendations presented in the report.

10 (i) **Outside Experts.** Notwithstanding any other provision of this Charter or any
11 ordinance or regulation of the City, the Public Advocate may contract with outside, independent
12 experts to assist in performing the requirements of this Article VIIC. In doing so, the Public
13 Advocate shall make good faith efforts to comply with the provisions of Chapters 12 et seq. of the
14 Administrative Code, as amended, or any successor legislation, but shall not be subject to the
15 approval processes of other City agencies. The Public Advocate shall submit an annual report
16 to the Board of Supervisors summarizing any contracts issued pursuant to this Section and
17 discussing the Public Advocate's compliance with Chapters 12 et seq. Contracts issued by the
18 Public Advocate pursuant to this Section shall be subject to the requirements of Sections 6.102
19 and 9.118.

20 No outside expert or firm shall be eligible to participate or assist in an audit or
21 investigation of any issue, matter, or question as to which that expert or firm has previously
22 rendered compensated advice or services to any individual, corporation, or other entity, or City
23 official or department. The Public Advocate shall adopt appropriate written regulations
24 implementing this prohibition, and shall incorporate this requirement in all written contracts
25 with outside experts and firms utilized pursuant to this subsection (i).

1
2 **SEC. 8C.102. PUBLIC ADVOCATE—REVIEW OF CITY PROGRAMS.**

3 (a) The Public Advocate may review the administration of City programs by City
4 agencies. Such reviews may include, but not be limited to, evaluations of: (1) the distribution of
5 City programs and services throughout the City; (2) the effectiveness of the public information
6 and service complaint programs of City agencies; and (3) the responsiveness of City agencies to
7 individual and group requests for data or information regarding the agencies' structure,
8 activities, and operations. The Public Advocate shall submit any reports documenting or
9 summarizing such reviews to the Board of Supervisors, the Mayor, and the appropriate agency,
10 and shall include in such reports his or her recommendations for addressing the problems
11 identified and, if appropriate, the fiscal implications of such recommendations.

12 (b) The Public Advocate may review the management and employment practices of City
13 officers and departments, including City policies and MOU provisions, that promote or impede
14 the effective and efficient operation of City government, including management of workers'
15 compensation claims and overtime expenditures.

16 (c) The Public Advocate may review the City's contracting procedures and compliance
17 with contracting rules and standards.

18 (d) The Public Advocate may conduct performance audits of City departments, services,
19 programs, and other activities. Nothing in this Section 8C.102 shall affect the powers or duties
20 of the Controller acting as City Services Auditor under Charter Section F1.104, and the Public
21 Advocate may coordinate with the City Services Auditor when both officers decide to conduct a
22 performance audit of the same City department, service, program, or activity.

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1 **SEC. 8C.103. PUBLIC ADVOCATE—INDIVIDUAL COMPLAINTS.**

2 (a) The Public Advocate may receive, investigate, and attempt to resolve complaints
3 from members of the public concerning City services, programs, or activities, except for those
4 that:

5 (1) another City agency is required by law to adjudicate;

6 (2) may be resolved through a grievance mechanism established by collective
7 bargaining agreement or contract; or,

8 (3) involve allegations of conduct that may constitute a violation of criminal law.

9 If the Public Advocate receives a complaint that involves conduct of a City employee that
10 could lead to discipline, the Public Advocate shall consult with and, where appropriate, refer the
11 matter to, the Department of Human Resources. If the Public Advocate receives a complaint that
12 is subject to a procedure described in items (1) or (2) of this subsection (a), the Public Advocate
13 shall advise the complainant of the appropriate procedure for the resolution of such complaint.
14 If the Public Advocate receives a complaint of the type described in item (3) of this subsection,
15 the Public Advocate shall promptly refer the matter in accordance with subsection (c).

16 (b) The Public Advocate shall establish procedures for receiving and processing
17 complaints, responding to complainants, conducting investigations, and reporting findings, and
18 shall inform the public about such procedures. Upon an initial determination that a complaint
19 may be valid or that the Public Advocate is not in a position to judge whether it may be valid, the
20 Public Advocate shall refer the complaint to the appropriate agency for resolution. If such
21 agency does not resolve the complaint in a manner that is satisfactory to the Public Advocate
22 within a reasonable time, the Public Advocate may conduct an investigation and make specific
23 recommendations to the agency for resolution of the complaint. If, within a reasonable time
24 after the Public Advocate has completed an investigation and submitted recommendations to the
25 agency, such agency has failed to respond to the recommendations in a manner that is

1 satisfactory to the Public Advocate, the Public Advocate may issue a report to the Board of
2 Supervisors, the Mayor, and the agency. Such report shall describe the conclusions of the
3 investigation and make such recommendations for administrative, legislative, or budgetary
4 action, together with their fiscal implications, as the Public Advocate deems necessary to resolve
5 the complaint or to address the underlying problems discovered in the investigation. In
6 exercising its functions under this subsection (b), the Public Advocate may treat related
7 complaints together.

8 (c) If the Public Advocate receives a complaint alleging conduct that may constitute a
9 violation of conflict of interest or governmental ethics laws, he or she shall promptly refer the
10 complaint to the Ethics Commission and the City Attorney. If the Public Advocate receives a
11 complaint alleging conduct that may constitute a violation of criminal law, he or she shall
12 promptly refer the complaint and information in his or her possession regarding the alleged
13 violation to the District Attorney.

14 If during the conduct of any investigation, inquiry, or review authorized by this section,
15 the Public Advocate discovers that the matter involves conduct that may constitute a violation of
16 conflict of interest or governmental ethics laws, he or she shall take no further action but shall
17 promptly refer the matter to the Ethics Commission and the City Attorney. If during the conduct
18 of any investigation, inquiry, or review authorized by this section, the Public Advocate discovers
19 that the matter involves conduct that may constitute a violation of criminal law, he or she shall
20 take no further action but shall promptly refer the matter and information in his or her
21 possession to the District Attorney.

22 Before making a determination whether alleged conduct may constitute a violation of
23 conflict of interest or governmental ethics laws, the Public Advocate shall consult with the City
24 Attorney. Before making a determination whether alleged conduct may constitute a violation of
25 criminal law, the Public Advocate shall consult with the District Attorney.

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2 **SEC. 8C.104. PUBLIC ADVOCATE—WHISTLEBLOWERS.**

3 (a) The Public Advocate shall have the authority to receive complaints by members of
4 the public concerning: incorrect, unreasonable, or unfair decisions or rulings of City officers or
5 agencies; inconsistent enforcement, or failure to enforce, laws, rules or regulations; poor or
6 inadequate service delivery or treatment; poor communication, including unreasonably long
7 response or wait times and unreasonable response delays; or inequitable or inefficient provision
8 of City services. The Public Advocate shall investigate and otherwise attempt to resolve such
9 individual complaints except for those that:

10 (1) another City agency is required by federal, state, or local law to adjudicate,

11 (2) may be resolved through a grievance mechanism established by collective
12 bargaining agreement or contract,

13 (3) involve allegations of conduct that may constitute a violation of criminal law,

14 (4) are assigned to the Controller under Section FI.107; or

15 (5) are subject to an investigation by the District Attorney, the City Attorney, or
16 the Ethics Commission, where either official or the Commission states in writing that
17 investigation by the Public Advocate would substantially impede or delay his, her, or its own
18 investigation of the matter.

19 If the Public Advocate receives a complaint described in items (1), (2), (3), or (4) of this
20 subsection (a), the Public Advocate shall advise the complainant of the appropriate procedure
21 for the resolution of such complaint.

22 (b) If the Public Advocate receives a complaint alleging conduct that may constitute a
23 conflict of interest or governmental ethics law, he or she shall promptly refer the complaint to
24 the Ethics Commission and the City Attorney. If the Public Advocate receives a complaint
25 alleging conduct that may constitute a violation of criminal law, he or she shall promptly refer

1 the complaint and information regarding the alleged violation to the District Attorney. Nothing
2 in this Section 8C.104 shall preclude the Public Advocate from investigating whether any alleged
3 criminal conduct also violates any civil or administrative law, statute, ordinance, resolution, or
4 regulation.

5 Within 10 working days after receipt of the complaint and information, the City Attorney
6 or the District Attorney shall inform the Public Advocate in writing regarding whether either
7 office has initiated or intends to pursue an investigation of the matter. If either office informs the
8 Public Advocate in writing that the office will pursue the case, the Public Advocate shall
9 suspend its own investigation.

10 Before making a determination whether alleged conduct may constitute a violation of
11 conflict of interest or governmental ethics laws, the Public Advocate shall consult with the City
12 Attorney. Before making a determination whether alleged conduct may constitute a violation of
13 criminal law, the Public Advocate shall consult with the District Attorney.

14
15 **SEC. 8C. 105. PUBLIC ADVOCATE—CUSTOMER SERVICE PLANS.**

16 The Public Advocate shall assess the progress of City departments' compliance with
17 Charter Section 16.120 and any implementing ordinances requiring City departments to prepare
18 effective customer service plans. The Public Advocate shall make recommendations to
19 departments to improve the effectiveness of such plans, or to the Mayor and the Board of
20 Supervisors regarding improvements in such plans generally. The Public Advocate shall report
21 to the Board of Supervisors and Mayor the failure of any department to comply substantially
22 with the Public Advocate's recommendations regarding customer service plans.

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1 **SEC. 8C.106. PUBLIC ADVOCATE—POLICY REGARDING FUNDING AND STAFFING.**

2 The voters declare that it shall be the policy of the City and County of San Francisco to
3 provide sufficient funding and administrative support for the Office of the Public Advocate to
4 perform its functions, and recommend that the Office have at least one staff member per
5 Supervisorial district to perform constituent services and at least one staff member per
6 Supervisorial district to perform investigations. The Public Advocate may request a
7 determination from the Ethics Commission whether the Office’s funding is sufficient for these
8 purposes.

9
10 **SEC. 10.104. EXCLUSIONS FROM CIVIL SERVICE APPOINTMENT.**

11 All employees of the City and County shall be appointed through competitive
12 examination unless exempted by this Charter. The following positions shall be exempt from
13 competitive civil service selection, appointment and removal procedures, and the person serving
14 in the position shall serve at the pleasure of the appointing authority:

15 * * * *

16 2. All elected officers of the City and County and their chief deputies or chief assistants;

17 * * * *

18 14. The law librarian, assistant law librarians, bookbinder of the Law Library,
19 purchaser, curators, Assistant Sheriff, Deputy Port Director, Chief of the Bureau of Maritime
20 Affairs, Director of Administration and Finance of the Port, Port Sales Manager, Port Traffic
21 Manager, Chief Wharfinger, Port Commercial Property Manager, Actuary of the Employees’
22 Employee’s Retirement System, Director of the Zoo, Chief Veterinarian of the Zoo, Director of
23 the Arboretum and Botanical Garden, Director of Employee Relations, Health Service
24 Administrator, Executive Assistant to the Human Services Director, Assistant Public Advocate,
25 and any other positions designated as exempt under the 1932 Charter, as amended;

1 * * * *

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3 **SEC. 13.101. TERMS OF ELECTIVE OFFICE.**

4 (a) Except in the case of an appointment or election to fill a vacancy, the term of office
5 of each elected officer shall commence at ~~12:00~~ noon on the eighth day of January following the
6 date of the election.

7 (b) Subject to the applicable provisions of Section 13.102, the elected officers of the City
8 and County shall be elected as follows:

9 (1) At the general municipal election in 1995 and every fourth year thereafter, a
10 Mayor, a Sheriff and a District Attorney shall be elected.

11 (2) At the general municipal election in 1996 and every fourth year thereafter,
12 four members of the Board of Education and four members of the Governing Board of the
13 Community College District shall be elected.

14 (3) At the general municipal election in 2013, and at the general municipal
15 election in 2015 and every fourth year thereafter, a City Attorney and a Treasurer shall be
16 elected. Notwithstanding any other provision of this Charter including Section 6.100, the term of
17 office for the person elected City Attorney or Treasurer at the general municipal election in 2013
18 shall be two years.

19 (4) At the general municipal election in 2006 and every fourth year thereafter, an
20 Assessor-Recorder and Public Defender shall be elected.

21 (5) At the general municipal election in 1998 and every fourth year thereafter,
22 three members of the Board of Education and three members of the Governing Board of the
23 Community College District shall be elected.

24 (6) At the first Citywide general or special municipal election occurring after
25 January 1, 2017, a Public Advocate shall be elected. Thereafter, at the general municipal

1 election in 2020 and every fourth year thereafter, the Public Advocate shall be elected.
2 Notwithstanding any other provision of this Charter including Section 6.100, the term of office
3 for the person elected Public Advocate at the first Citywide general or special municipal election
4 after January 1, 2017, shall expire at noon on January 8, 2021.

5 (7) ~~(6)~~ The election and terms of office of members of the Board of Supervisors
6 shall be governed by Section 13.110.

7
8 **SEC. 13.101.5. VACANCIES.**

9 (a) If the office of Assessor-Recorder, City Attorney, District Attorney, Public Defender,
10 Sheriff, Treasurer, or Member of the Board of Supervisors, Board of Education, or Governing
11 Board of the Community College District becomes vacant because of death, resignation, recall,
12 permanent disability, or the inability of the respective officer to otherwise carry out the
13 responsibilities of the office, the Mayor shall appoint an individual qualified to fill the vacancy
14 under this Charter and state laws. If the office of Public Advocate becomes vacant because of
15 death, resignation, recall, permanent disability, or the inability of the incumbent to otherwise
16 carry out the responsibilities of the office, the Chief Deputy Public Advocate shall serve as
17 Public Advocate until a successor is selected pursuant to subsection (c).

18 (b) If the Office of Mayor becomes vacant because of death, resignation, recall,
19 permanent disability, or the inability to carry out the responsibilities of the office, the President
20 of the Board of Supervisors shall become Acting Mayor and shall serve until a successor is
21 appointed by the Board of Supervisors by motion.

22 (c) Any person filling a vacancy pursuant to subsection (a) or (b) of this Section shall
23 serve until a successor is selected at the next election occurring not less than 120 days after the
24 vacancy, at which time an election shall be held to fill the unexpired term, provided that (1) if an
25 election for the vacated office is scheduled to occur less than one year after the vacancy, the

1 appointee shall serve until a successor is selected at that election or (2) if an election for any seat
2 on the same board as the vacated seat is scheduled to occur less than one year but at least 120
3 days after the vacancy, the appointee shall serve until a successor is selected at that election to
4 fill the unexpired term.

5 ~~(d) If no candidate receives a majority of the votes cast at an election to fill a vacated~~
6 ~~office, the two candidates receiving the most votes shall qualify to have their names placed on~~
7 ~~the ballot for a municipal runoff election at the next regular or otherwise scheduled election~~
8 ~~occurring not less than five weeks later. If an instant runoff election process is enacted for the~~
9 ~~offices enumerated in this Section, that process shall apply to any election required by this~~
10 ~~Section.~~

11
12 **SEC. 13.102. INSTANT RUNOFF ELECTIONS; RANKED-CHOICE VOTING**
13 **ELECTIONS.**

14 (a) For the purposes of this ~~Section~~ *section*: (1) a candidate shall be deemed "continuing"
15 if the candidate has not been eliminated ~~from further rounds of tabulation~~; (2) a ballot shall be
16 deemed "continuing" if it is not exhausted; and (3) a ballot shall be deemed "exhausted," and not
17 ~~included counted~~ in further stages of the tabulation, if all of the choices have been eliminated or
18 there are no more choices indicated on the ballot. If a ranked-choice ballot gives equal rank to
19 two or more candidates, the ballot shall be declared exhausted when such multiple rankings are
20 reached. If a voter casts a ranked-choice ballot but skips a rank, the voter's vote shall be
21 transferred to that voter's next ranked choice.

22 (b) The Mayor, Sheriff, District Attorney, City Attorney, Treasurer, Assessor-Recorder,
23 Public Defender, *Public Advocate*, and members of the Board of Supervisors shall be elected
24 using a ranked-choice, ~~or "instant runoff,"~~ ballot. The ballot shall allow voters to rank a number
25 of choices in order of preference equal to the total number of candidates for each office;

1 provided, however, that if the voting system, vote tabulation system, or similar or related
2 equipment used by the City and County cannot feasibly accommodate choices equal to the total
3 number of candidates running for each office, then the Director of Elections may limit the
4 number of choices a voter may rank to no fewer than three. The ballot shall in no way interfere
5 with a voter's ability to cast a vote for a write-in candidate.

6 (c) If a candidate receives a majority of the first choices, that candidate shall be declared
7 elected. If no candidate receives a majority, the candidate who received the fewest first choices
8 shall be eliminated from further rounds of tabulation and each vote cast for that candidate shall
9 be transferred to the next ranked candidate on that voter's ballot. If, after this transfer of votes,
10 any candidate has a majority of the votes from the continuing ballots, that candidate shall be
11 declared elected.

12 (d) If no candidate receives a majority of votes from the continuing ballots after a
13 candidate has been eliminated from further rounds of tabulation and his or her votes have been
14 transferred to the next-ranked candidate, the continuing candidate with the fewest votes from the
15 continuing ballots shall be eliminated from further rounds of tabulation. All votes cast for that
16 candidate shall be transferred to the next-ranked continuing candidate on each voter's ballot.
17 This process of eliminating candidates from further rounds of tabulation and transferring their
18 votes to the next-ranked continuing candidates shall be repeated until a candidate receives a
19 majority of the votes from the continuing ballots.

20 (e) If the total number of votes of the two or more candidates credited with the lowest
21 number of votes is less than the number of votes credited to the candidate with the next highest
22 number of votes, those candidates with the lowest number of votes shall be eliminated from
23 further rounds of tabulation simultaneously and their votes transferred to the next-ranked
24 continuing candidate on each ballot in a single counting operation.

25 (f) A tie between two or more candidates shall be resolved in accordance with State law.

1 (g) The Department of Elections shall conduct a voter education campaign to familiarize
2 voters with the ranked-choice ~~or, "instant runoff,"~~ method of voting.

3 (h) Any voting system, vote tabulation system, or similar or related equipment acquired
4 by the City and County shall have the capability to accommodate this system of ranked-choice,
5 ~~or "instant runoff,"~~ balloting.

6 ~~(i) Ranked choice, or "instant runoff," balloting shall be used for the general municipal
7 election in November 2002 and all subsequent elections. If the Director of Elections certifies to
8 the Board of Supervisors and the Mayor no later than July 1, 2002 that the Department will not
9 be ready to implement ranked-choice balloting in November 2002, then the City shall begin
10 using ranked-choice, or "instant runoff," balloting at the November 2003 general municipal
11 election.~~

12 ~~If ranked-choice, or "instant runoff," balloting is not used in November of 2002, and no
13 candidate for any elective office of the City and County, except the Board of Education and the
14 Governing Board of the Community College District, receives a majority of the votes cast at an
15 election for such office, the two candidates receiving the most votes shall qualify to have their
16 names placed on the ballot for a runoff election held on the second Tuesday in December of
17 2002.~~

18
19 **SEC. 15.105. SUSPENSION AND REMOVAL.**

20 (a) ELECTIVE AND CERTAIN APPOINTED OFFICERS. Any elective officer other
21 than the Mayor, and any member of the Airport Commission, Asian Art Commission, Civil
22 Service Commission, Commission on the Status of Women, Golden Gate Concourse Authority
23 Board of Directors, Health Commission, Human Services Commission, Juvenile Probation
24 Commission, Municipal Transportation Agency Board of Directors, Port Commission, Public
25 Utilities Commission, Recreation and Park Commission, Fine Arts Museums Board of Trustees,

1 ~~Taxi Commission~~, War Memorial and Performing Art Center Board of Trustees, Board of
2 Education or Community College Board is subject to suspension and removal for official
3 misconduct as provided in this section. Such officer may be suspended by the Mayor and the
4 Mayor shall appoint a qualified person to discharge the duties of the office during the period of
5 suspension. Upon such suspension, the Mayor shall immediately notify the Ethics Commission
6 and Board of Supervisors thereof in writing and the cause thereof, and shall present written
7 charges against such suspended officer to the Ethics Commission and Board of Supervisors at or
8 prior to their next regular meetings following such suspension, and shall immediately furnish a
9 copy of the same to such officer, who shall have the right to appear with counsel before the
10 Ethics Commission in his or her defense.

11 The Ethics Commission shall hold a hearing not less than five days after the filing of
12 written charges. After the hearing, the Ethics Commission shall transmit the full record of the
13 hearing to the Board of Supervisors with a recommendation as to whether the charges should be
14 sustained. If, after reviewing the complete record, the charges are sustained by not less than a
15 three-fourths vote of all members of the Board of Supervisors, the suspended officer shall be
16 removed from office; if not so sustained, or if not acted on by the Board of Supervisors within 30
17 days after the receipt of the record from the Ethics Commission, the suspended officer shall
18 thereby be reinstated.

19 Notwithstanding any other provision of this Section 15.105, the Mayor may file written
20 charges of official misconduct against the Public Advocate and those charges shall be heard and
21 acted on by the Ethics Commission and the Board of Supervisors in the same manner as other
22 charges of official misconduct, but the Mayor shall have no power to suspend the Public
23 Advocate prior to the determination of those charges by the Board of Supervisors.

24 * * * *

1 **SEC. A8.409-1. EMPLOYEES COVERED.**

2 * * * *

3 Except as otherwise provided by this Charter, the Civil Service Commission shall set the
4 wages and benefits of all elected officials of the City and County of San Francisco as follows:
5 The Commission shall conduct a salary survey of the offices of chief executive officer, county
6 counsel, district attorney, public defender, assessor-recorder, treasurer, and sheriff, in the
7 counties of Alameda, Contra Costa, Marin, San Mateo, and Santa Clara. The Commission shall
8 then average the salaries for each of those offices to determine respectively the base five-year
9 salaries for the Mayor, City Attorney, District Attorney, Public Defender, Assessor-Recorder,
10 Treasurer, and Sheriff.

11 If any of the aforementioned counties do not have an office of public defender, that
12 county shall be omitted from the salary survey for purposes of determining the base five-year
13 salary of the Public Defender. Among the aforementioned counties, any freestanding county
14 assessor's office or any county office in which the assessor's function is combined with other
15 county functions, shall be deemed comparable to the office of Assessor-Recorder for purposes of
16 determining the base five-year salary of the Assessor-Recorder. If any of the aforementioned
17 counties do not have a comparable county office of treasurer, the county office whose functions
18 most closely resemble the Treasurer's functions in San Francisco shall be deemed comparable to
19 the office of Treasurer for purposes of determining the base five-year salary of the Treasurer.

20 The initial base five-year salary determination for the respective salaries of the Mayor,
21 City Attorney, District Attorney, Public Defender, Assessor-Recorder, Treasurer, and Sheriff
22 shall apply to the period from July 1, 2007 through June 30, 2012. Subsequent base five-year
23 salary determinations for those offices shall apply to subsequent five-year periods, for example,
24 July 1, 2012 through June 30, 2017.

1 For the second, third, fourth, and fifth years of the period for which any base five-year
2 salary has been set, the Commission shall annually adjust the respective salaries of the Mayor,
3 City Attorney, District Attorney, Public Defender, Assessor-Recorder, Treasurer, and Sheriff, to
4 account for upward annual movement in the Consumer Price Index during the prior calendar
5 year; provided, that whenever the upward movement in the Consumer Price Index during the
6 prior calendar year exceeds 5%, the cost-of-living adjustment shall not be the actual increase in
7 the Consumer Price Index for the prior calendar year but instead shall be 5%. The annual cost-
8 of-living adjustment shall take effect July 1 of the second, third, fourth, and fifth years of the
9 period for which the base five-year salary has been set.

10 The Civil Service Commission shall set the salary of the Public Advocate every five years
11 based on a salary survey of comparable offices, or using such other methodology as the
12 Commission deems appropriate.

13 Except as noted below, in setting the initial and subsequent base five-year salary
14 determinations for the offices of Mayor, City Attorney, District Attorney, Public Defender,
15 Assessor-Recorder, Treasurer, and Sheriff, the Commission may not reduce the respective
16 salaries of any of those offices. If implementation of the process for setting the base five-year
17 salary would otherwise result in a salary reduction for any of those offices, the base five-year
18 salary for the affected office or offices shall be the existing salary for the office.

19 If the City and County of San Francisco and employee organizations agree to amend the
20 compensation provisions of existing memoranda of understanding to reduce costs, the
21 Commission shall review and amend the respective salaries of the Mayor, City Attorney, District
22 Attorney, Public Defender, Assessor-Recorder, Treasurer, ~~and~~ Sheriff, and Public Advocate as
23 necessary to achieve comparable cost savings in the affected fiscal year or years.

24 The Commission shall annually set the benefits of elected officials, to take effect July 1
25 of each year. Benefits of elected officials may equal but may not exceed those benefits provided

1 to any classification of miscellaneous officers and employees as of July 1 of each year, except,
2 after January 7, 2012, the City and County shall not pay the required employee contributions of
3 said officials into the San Francisco Employees' Retirement System trust fund or into the Retiree
4 Health Care Trust Fund.

5 In addition, subject to the approval or disapproval of the Board of Supervisors, the Mayor
6 may create, for employees designated as management, a management compensation package that
7 recognizes and provides incentives for outstanding managerial performance contributing to
8 increased productivity and efficiency in the work force. In formulating such a package, the
9 Mayor shall take into account data developed in conjunction with the civil service commission
10 regarding the terms of executive compensation in other public and private jurisdictions.

11
12 **F1.102. STREET, SIDEWALK, AND PARK CLEANING AND MAINTENANCE.**

13 (a) The Services Audit Unit shall conduct annually a performance audit of the City's
14 street, sidewalk, and public park maintenance and cleaning operations. The annual audit shall:

15 (1) Include quantifiable, measurable, objective standards for street, sidewalk, and
16 park maintenance, to be developed in cooperation and consultation with the Department of
17 Public Works and the Recreation and Park Department;

18 (2) Based upon such measures, report on the condition of each geographic
19 portion of the City;

20 (3) To the extent that standards are not met, assess the causes of such failure and
21 make recommendations of actions that will enhance the achievement of those standards in the
22 future;

23 (4) Ensure that all bond funds related to streets, parks and open space are spent in
24 strict accordance with the stated purposes and permissible uses of such bonds, as approved by the
25 voters.

1 Outside of the audit process, the City departments charged with cleaning and maintaining
2 streets, sidewalks, and parks shall remain responsible for addressing individual complaints
3 regarding specific sites, ~~although the Controller may receive and investigate such complaints~~
4 ~~under Section FI.107.~~

5 (b) In addition, all City agencies engaged in street, sidewalk, or park maintenance shall
6 establish regular maintenance schedules for streets, sidewalks, parks and park facilities, which
7 shall be available to the public and on the department's website. Each such department shall
8 monitor compliance with these schedules, and shall publish regularly data showing the extent to
9 which the department has met its published schedules. The City Services Audit Unit shall audit
10 each department's compliance with these requirements annually, and shall furnish
11 recommendations for meaningful ways in which information regarding the timing, amount and
12 kind of services provided may be gathered and furnished to the public.

13
14 **FI.107. CITIZENS' COMPLAINTS; WHISTLEBLOWERS.**

15 (a) The Controller shall have the authority to receive and investigate individual
16 complaints concerning: the misuse of City funds by officers or employees; the use of City
17 equipment or time for personal purposes; the purchase of unneeded supplies or equipment;
18 nonperformance, or inadequate performance of, contractually-required services; or, improper or
19 wasteful activities by City officers or employees. ~~the quality and delivery of government~~
20 ~~services, wasteful and inefficient City government practices, misuse of City government funds,~~
21 ~~and improper activities by City government officers and employees.~~ When appropriate, the
22 Controller shall investigate and otherwise attempt to resolve such individual complaints except
23 for those which:

24 (1) another City agency is required by federal, state, or local law to adjudicate,
25

1 (2) may be resolved through a grievance mechanism established by collective
2 bargaining agreement or contract,

3 (3) involve allegations of conduct which may constitute a violation of criminal
4 law,

5 (4) are assigned to the Public Advocate under Section 8C.104; or

6 ~~(5) (4)~~ are subject to an existing, ongoing investigation by the District Attorney,
7 the City Attorney, or the Ethics Commission, where either official or the Commission states in
8 writing that investigation by the Controller would substantially impede or delay his, her, or its
9 own investigation of the matter.

10 If the Controller receives a complaint described in items (1), (2), (3), or (4) of this
11 paragraph, the Controller shall advise the complainant of the appropriate procedure for the
12 resolution of such complaint.

13 (b) If the Controller receives a complaint alleging conduct that may constitute a violation
14 of criminal law or a governmental ethics law, he or she shall promptly refer the complaint
15 regarding criminal conduct to the District Attorney or other appropriate law enforcement agency
16 and shall refer complaints regarding violations of governmental ethics laws to the Ethics
17 Commission and the City Attorney. Nothing in this Section shall preclude the Controller from
18 investigating whether any alleged criminal conduct also violates any civil or administrative law,
19 statute, ordinance, or regulation.

20 (c) Notwithstanding any provision of this Charter, including, but not limited to
21 Section C3.699-11, or any ordinance or regulation of the City and County of San Francisco, the
22 Controller shall administer a whistleblower and citizen complaint hotline telephone number and
23 website and, together with the Public Advocate, publicize the hotline and website through press
24 releases, public advertising, and communications to City employees. The Controller shall
25 receive and track calls and emails related to complaints about the quality and delivery of

1 government services, wasteful and inefficient City government practices, misuse of government
2 funds and improper activities by City government officials, employees and contractors and shall
3 route these complaints to the appropriate agency subject to subsection (a) of this Section. The
4 Board of Supervisors shall enact and maintain an ordinance protecting the confidentiality of
5 whistleblowers, and protecting City officers and employees from retaliation for filing a
6 complaint with, or providing information to, the Controller, Ethics Commission, District
7 Attorney, City Attorney or a City department or commission about improper government activity
8 by City officers and employees. The City may incorporate all whistleblower functions set forth
9 in this Charter or by ordinances into a unified City call center, switchboard, or information
10 number at a later time, provided the supervision of the whistleblower function remains with the
11 Controller and its responsibilities and function continue unabridged.

12 (d) The Controller shall on a quarterly basis prepare summaries of all complaints
13 received by the Controller's whistleblower program and transmit those summaries to the Public
14 Advocate. The Public Advocate shall review the summaries by complaint type, department
15 involved, and other factors to identify trends in complaints and prepare recommendations for the
16 improvement of City controls and services. To the extent permitted by state law, the City shall
17 keep these summaries confidential.

18 (e) The Public Advocate and the Controller may from time to time and by written
19 agreement shift between themselves jurisdictional responsibilities for investigation and reporting
20 types of whistleblower complaints established in the Charter. The Public Advocate and the
21 Controller shall submit a copy of any such agreement to the Mayor and the Board of
22 Supervisors, and make the agreement available to the public.

23
24 / / /

25 / / /

1 **~~F1.108. CUSTOMER SERVICE PLANS.~~**

2 ~~The Controller shall assess the progress of City departments' compliance with Charter~~
3 ~~Section 16.120 and any implementing ordinances requiring City departments to prepare effective~~
4 ~~customer service plans. The Controller shall make recommendations to departments to improve~~
5 ~~the effectiveness of such plans. The Controller shall report to the Board of Supervisors and~~
6 ~~Mayor the failure of any department to comply substantially with the Controller's~~
7 ~~recommendations regarding customer service plans.~~

8
9 **SEC. F1.114. OPERATIVE DATE; SEVERABILITY.**

10 ~~(a) This charter amendment shall be operative on July 1, 2004. This amendment shall~~
11 ~~not affect the term or tenure of the incumbent Controller.~~

12 ~~(b) If any section, subsection, provision or part of this Appendix F charter amendment or~~
13 ~~its application to any person or circumstances is held to be unconstitutional or invalid, the~~
14 ~~remainder of Appendix F the amendment, and the application of such provision to other persons~~
15 ~~or circumstances, shall not be affected.~~

16
17 Section 2. Except for the provisions relating to the election of the Public Advocate which
18 shall become operative on the effective date of the charter amendment, the provisions of this
19 charter amendment shall become operative at the date and time that the first Public Advocate
20 takes office.

21
22 APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

23
24 By: _____
THOMAS J. OWEN
Deputy City Attorney

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LEGISLATIVE DIGEST

(Second Draft, dated 7/6/2016)

[Charter Amendment - Public Advocate]

Describing and setting forth a proposal to the voters, at an election to be held on November 8, 2016, to amend the Charter of the City and County of San Francisco to: 1) create the Office of the Public Advocate; 2) set the Public Advocate's powers and duties; 3) authorize the Public Advocate to review the administration of City programs, including programs for transmitting information to the public, and to receive, investigate, and attempt to resolve complaints regarding City services and programs; 4) authorize the Public Advocate to receive and investigate specified whistleblower complaints; 5) provide for the Public Advocate's election, removal, and salary; and, 6) set City policy regarding sufficient funding and minimum staffing for the Office of the Public Advocate; and setting an operative date.

Existing Law

The City currently does not have a particular official or central office responsible for overseeing how City departments interact with the public. The City has a whistleblower program under the Controller.

Amendments to Current Law

The proposal is a charter amendment that would create the Office of the Public Advocate.

The Public Advocate would review the administration of City programs, including the distribution of programs and services throughout the City, the effectiveness of the public information and service complaint programs of City agencies, and the responsiveness of City agencies to individual and group requests for data or information regarding the agencies' structure, activities, and operations. The Public Advocate would also review the management and employment practices of City officers and departments, including City policies and MOU provisions, that promote or impede the effective and efficient operation of City government, and would review the City's contracting procedures and practices. And the Public Advocate would investigate and attempt to resolve complaints from members of the public concerning City services and programs.

The Public Advocate could introduce legislation at the Board of Supervisors to address any matter within the Public Advocate's jurisdiction.

The proposal would authorize the Public Advocate to receive and investigate confidential whistleblower complaints concerning: incorrect, unreasonable, or unfair decisions or rulings of City officers or agencies; inconsistent enforcement, or failure to enforce, laws, rules or regulations; poor or inadequate service delivery or treatment; poor communication, including unreasonably long response or wait times and unreasonable response delays; or inequitable or inefficient provision of City services. The Controller would continue to receive and investigate confidential whistleblower complaints concerning: the misuse of City funds by officers or employees; the use of City equipment or time for personal purposes; the purchase of unneeded supplies or equipment; nonperformance, or inadequate performance of, contractually-required services; or, improper or wasteful activities by City officers or employees.

The Public Advocate could not interfere with specific contract or personnel decisions or other administrative actions, or with criminal investigations or prosecutions. And during his or her tenure, the Public Advocate could not contribute to, or publicly endorse or oppose, a candidate for City elective office, or be an officer, director, or employee of an organization that makes political endorsements regarding candidates for City elective office.

The Public Advocate would be elected at a Citywide election, using ranked-choice voting, and serve a four-year term. The first Public Advocate would be elected at the first general or special municipal election occurring after January 1, 2017, and would serve a shortened term. Then, beginning with the general municipal election in 2020, the Public Advocate would be elected every four years. No person could serve as Public Advocate for more than two successive terms. And no person could serve as Public Advocate who in the last four years held the office of Mayor, member of the Board of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor-Recorder, or Public Defender.

The Mayor could file written charges of official misconduct against the Public Advocate and those charges would be heard and acted on by the Ethics Commission and the Board of Supervisors in the same manner as other charges of official misconduct, but the Mayor would have no power to suspend the Public Advocate prior to the determination of those charges by the Board of Supervisors.

The Civil Service Commission would set the salary of the Public Advocate every five years based on a salary survey of comparable offices, or using such other methodology as the Commission deemed appropriate.

The proposal would make it City policy to provide sufficient funding and administrative support for the Office of the Public Advocate to perform its functions, and to authorize the Office to have at least one staff member per Supervisorial district to perform constituent services and at least one staff member per Supervisorial district to perform investigations. The Public Advocate could request an advisory opinion from the Ethics Commission whether the City was providing the Office with sufficient funding to perform its duties.