

**LEGISLATIVE DIGEST**

(Third Draft, 7/19/2016)

[Charter Amendment - Public Advocate; Department of Police Accountability]

**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; 6) set City policy regarding sufficient funding and minimum staffing for the Office of the Public Advocate; 7) re-name the Office of Citizen Complaints (OCC) as the Department of Police Accountability (DPA); 8) authorize the Public Advocate to appoint the director of DPA; 9) give DPA direct authority over its proposed budget; and 10) require DPA to conduct a performance audit every two years of how the Police Department has handled claims of officer misconduct and use of force; and setting an operative date.**

Existing Law

**Public Advocate.** The City currently does not have a particular official or central office responsible for overseeing how City departments interact with the public. The Controller reviews some City programs and services and runs the City's whistleblower program.

**Office of Citizen Complaints.** The City has an Office of Citizen Complaints ("OCC"), which is a separate department under the Police Commission. The OCC investigates complaints of misconduct and neglect of duty by police officers, and may, in certain circumstances, file disciplinary charges against the officers. The Mayor appoints a Director of the OCC from nominees selected by the Police Commission, and the Board of Supervisors confirms the Mayor's appointment.

Under the City Charter, individual departments propose budgets, which are then submitted to the Mayor, who prepares a City-wide budget for consideration and approval by the Board of Supervisors. If a department is overseen by a commission, the commission must review and approve the department's proposed budget. The OCC's budget is part of the budget for the Police Department as a whole and is reviewed and approved by the Police Commission.

### Amendments to Current Law

The proposal is a charter amendment that would (1) create the Office of the Public Advocate, (2) re-name the “Office of Citizen Complaints” as the “Department of Police Accountability,” and (3) make other changes.

**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 proposal would eliminate some corresponding functions of the Controller.

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.

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.

**Department of Police Accountability.** The proposal would change the name of the “Office of Citizen Complaints” to the “Department of Police Accountability” or “DPA”. The proposal would also move the provisions governing the DPA from within current Charter Section 4.127 (“Police Department”) to a new, free-standing Charter Section 4.136 (“Department of Police Accountability”). The DPA would still be overseen by the Police Commission. The Public Advocate would appoint a Director of DPA from nominees selected by the Police Commission, and the Board of Supervisors would have to confirm the appointment made by the Public Advocate.

The proposal would clarify the DPA’s access to relevant City records, and require the DPA to conduct a performance audit every two years analyzing police use of force and how the Police Department has handled claims of officer misconduct. To the extent permitted by law, the DPA would allow public access to information on the progress and disposition of claims of misconduct or use of force, and the results of the performance audits and reviews conducted by DPA.

The proposal would provide that the DPA budget would be prepared and submitted separately from the Police Department budget, and that the DPA budget would not need Police Commission review or approval. Instead, the DPA Director would submit the proposed budget directly to the Mayor for inclusion in the Mayor’s proposed budget for the City.

**Additional Provisions.** The proposal would also make conforming changes in other Charter sections and correct and up-date additional provisions. The provisions relating to the election of the Public Advocate and to the DPA would become operative on the effective date of the charter amendment. All other provisions would become operative at the date and time that the first Public Advocate takes office.