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October 30, 2023

Matt Dorsey, Chair  
Rules Committee  
San Francisco Board of Supervisors  
City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, California 94102

*Sent via email to [bos@sfgov.org](mailto:bos@sfgov.org)*

**RE: VOTE NO ON FILE NO. 231076, “ADMINISTRATIVE CODE—COMPOSITION OF BEHAVIORAL HEALTH COMMISSION”!**

Honorable Committee Chair Dorsey:

File No. 231076 will harm the Behavioral Health Commission by making it too small, badly hampering its ability to carry out its work.

This proposed legislation would reduce the Commission’s size by six seats or roughly 1/3 its current size, from 17 to 11 members, the absolute minimum prescribed by state law for San Francisco and one more than the minimum for any county in the State. But San Francisco is the thirteenth largest of 58 counties and devotes tremendous General Fund and special tax resources to its Behavioral Health Services, the division over which the Commission is charged with oversight. This division has an annual budget of \$600M, far more than the amount per-capita of other counties. It has appx. 150 subcontractors and a patient population of 30,000, over 3% of the population of the City and County. There are appx. an additional 10,000 people in its target mental health population who are not patients. The division is subject to a combined total of 334 pages of mental health performance contracts with the state, directly or indirectly, all of which contracts the Commission is responsible for reviewing. The Commission is additionally charged with review and evaluation of the City and County’s behavioral health needs, services, facilities, and special problems, review and approval of the procedures used to ensure citizen and professional involvement at all stages of the planning process for behavioral health services provided as part of the San Francisco Mental Health Plan, a \$100M contract with the State accounting for 198 of the aforementioned 334 pages of performance contracts, and monitoring of the division’s compliance and oversight over the division’s compliance program therewith. The

Commission has fulfilled none of these obligations in the last 30 years. If the proposed legislation passes, it will make it still more difficult for the Commission to perform these duties and could make it impossible. San Francisco needs and deserves a local mental health board substantially larger than those of small counties like Sierra and Alpine to deal with its far larger and more diverse target population and far larger and more complex division!

**A Poorly-Researched News Article Has Distorted the Issues in This Proposed Legislation.**

The proposed legislation is related to a newspaper article that came out a week before the proposed legislation was introduced. The *San Francisco Standard* published “San Francisco Drug Crisis Commission Doing Nothing for Lack of Members” by David Sjostedt on October 10, mentioning the proposed legislation. Not only did this article badly mischaracterize the Commission’s purpose in the headline, the title is otherwise misleading and the article rife with inaccuracies. The misnaming of the Commission is especially egregious because the Commission is San Francisco’s local mental health board, mandated by state law 65 years ago. State law allows the Board of Supervisors to graft extra duties onto the Commission, but it has not always done so in an intelligent way. In 2019, the Board changed the Commission’s name from “Mental Health Board” to “Behavioral Health Commission” and wherever the word “mental” appeared in its powers and duties, put the word “behavioral” its place, thus seeming to add oversight of overdose prevention, etc., to its mental health treatment oversight responsibilities. This ignored that the Commission’s core, nitty-gritty functions that no one currently on it wants to do, such as reviewing 334 pages of performance contracts and oversight responsibilities related to the Plan no one wants to read, pertain only to the mental-health side of behavioral health, not the substance-abuse side. As such, the Commission’s added powers and duties are like inviting your already-very-bad plumbing contractor to also dabble in electrical work.

Furthermore, it is not the case that the Commission is “Doing Nothing *for Lack of Members*,” and this error is repeated in the body of the article:

*“There are currently six active members on the 17-member Behavioral Health Commission . . .*

*“Because there are fewer than nine active members, the commission lacks a quorum and hasn’t been able to wield much of its power or hold meetings since February.”*

There are currently *ten* active members on the Commission, i.e., more than a quorum. Thus, the Commission’s inability to meet is due at least in part to Commissioners not showing up to meetings, not a lack of members alone. The attribution of inability to meet solely to lack of members is disingenuous because, while there are only six members with current appointments, the article elsewhere admits that members continue to serve, i.e., be “active” and contribute to quorum, after their appointments have expired. They often do so for periods longer than their

original appointments, which are for three years! Currently, four members are serving beyond their original appointments, bringing the total number of active members to ten. It is strictly illegal for members to serve beyond their appointments, but this illegality is supported by long-standing citywide custom, and the Behavioral Health Commission is not careful about legality.

While it was true that the Commission had not met with quorum since February when this article was written, the Commission did not meet during nearly half of the intervening months due to factors other than quorum. In March, unconstitutional interference by Behavioral Health Services caused a cancellation. In August, the Commission observed its customary recess. In July, the regular meeting was canceled due to “ongoing security concerns and inability to make quorum.” It is not clear whether the “inability to make quorum” was due to more than one Commissioner expressing that they would not be able to attend the meeting that month or general discouragement due to inability of the Commission to attain quorum at its previous three regular meetings.

As for this lack of quorum preventing the Commission from doing their work, this too is misleading. If this had been the case, there would have been a backlog of resolutions on the agenda to be proposed at the Commission’s regular monthly meeting on October 19. There was none, and the two members of the Commission who were interviewed for this article both asked to leave the meeting (which did draw a quorum – see below) early because they had other and presumably more important engagements to which to attend. (Mr. Grier was never a member of the Commission.) “People’s lives are at risk” indeed!

Furthermore, if lack of quorum at meetings could be attributed to lack of appointments to the Commission rather than Commissioners just not showing up to meetings, then the committees of the Commission, *which have been fully appointed all year long*, would have been able to meet and prepare resolutions for the Commission to pass. They have not done so. In the six months immediately before Mr. Sjodedt’s article came out, these committees noticed twelve regular meetings. Of these twelve, quora *of the committees* attended but five or less than half of them, causing the majority of meetings of committees in this period to be adjourned immediately. Resizing the Commission would have done nothing to avert this!

In fact, the Commission has made only a single advisory resolution in the past two-and-a-half years, during much of which it has been better appointed. This resolution was so appallingly bad that the Commission omitted it from their Annual Report and the Clerk of the Board of Supervisors refused to even put it on the public record, such that I had to append it to my lengthy letter lampooning it. Jan. 25, 2022, “THE SAN FRANCISCO BEHAVIORAL HEALTH COMMISSION HAS PASSED A RESOLUTION”, pp. 175-87 in file no. 220118, communications packet for the Feb. 8, 2022, meeting of the Board of Supervisors, available here: <https://sfgov.legistar.com/View.ashx?M=F&ID=10504772&GUID=4AB1E2DE-B3DE-4465-B0C4-C472F0EDAEB9>. The Commission has also conducted a pittance of site visits during the same period, the reports of which it is illegally withholding from the public even while it complains to the press about being denied information by the Department!

Shortly after this article was published and the proposed legislation introduced, the Commission met on October 19 with ten members present and conducted business normally, raising the question of whether the earlier failures had been planned all along to develop false momentum for this proposed legislation.

### **The Commission's Membership Requirements Are Not the Problem.**

The article then correctly mentioned the eight pending applications to the Commission but reported that "Victor Young [staff with the Clerk of the Board of Supervisors charged with oversight of the Commission – WH] . . . said it's difficult to find qualified members of the Commission due to the types of expertise needed for each seat." I have spoken with Mr. Young about this quotation and he said that he had been misquoted. He affirmed that membership requirements are not currently associated with specific seats. No legislative action regarding this is needed or appropriate!

In addition, the complex requirements in current legislation cannot be the cause of the current lack of appointments because the small number of current appointments relaxes the constraints posed by these requirements. Furthermore, both of the mental health professional seats and one of the two child/adult advocate requirements are currently filled, eliminating these particular requirements from the consideration of future applications. The remaining three members with current appointments are evenly distributed between a consumer, a family member of a consumer, and an interested member of the public. This means that, of the ten seats on the Commission currently available to non-Supervisors, three or four are available to consumers (because one seat may go to either a consumer or a family member of a consumer), two to four are available to family members of consumers (because of the previous ambiguity as well as uncertainty as to whether the current child/older adult advocate is a family member of a consumer or an interested member of the public), and four or three are available to interested members of the public, with the additional constraint that one of the available family-member-of-a-consumer or interested-member-of-the-public seats must go to a child/older adult advocate. While this highly complex arrangement is of doubtful utility and may make appointing members to the Commission administratively more difficult, it provides no legal constraint that would bar all eight currently-pending applicants from service, thus to continue current pressure on the quorum requirement (as if this was even the real problem)!

In further addition, and again as the article mentions, a member of the Board of Supervisors has not been appointed to the Commission, as required by law, in over a year and a half! The article failed to mention that neither of the two most recent Supervisor members attended even a single meeting of the Commission in person, a requirement under parliamentary rules. The problem in both seated Supervisor and non-Supervisor cases is that the Board and individual Supervisors are not making the needed and required appointments. Even when they do, the appointed members do not attend! Legislation shrinking the size of the Commission is not the correct response.

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The proposed legislation would make it administratively more difficult to appoint new Commissioners in a different way. *S.F. Charter* § 4.101(a) requires that the composition of the Commission be “broadly representative of the . . . neighborhoods . . . of the City and County . . .” This is currently guaranteed by the requirement that each Supervisor appoint a member of the Commission, provided that they make their appointment from among their constituents. If all of the Commissioners are appointed by the Board, per the proposed legislation, then this committee will have to look at street addresses of the homes of individual Commissioners as well as applicants, determine what districts each live in, and make sure that there are not any other current appointments from a district before making an appointment from it.

### **Conclusion**

In sum, the only result that the new legislation is sure to have besides allocating the necessary veteran seat is that it will freeze the current membership of the Commission and present a clear and insurmountable bar to any new appointments being made. Given the current lackadaisical attitude of current Commissioners, the intent seems to be to hobble the Commission by making sure that 30,000-patient, 150-contractor, and \$600M/year Behavioral Health Services has an oversight board the same size as those in California’s smallest counties, where patient populations are well under 100, contractors are nonexistent, and budgets far below \$10M!

Very Truly Yours,

/s/

Wynship Hillier

cc: Editor, San Francisco Standard  
Victor Young