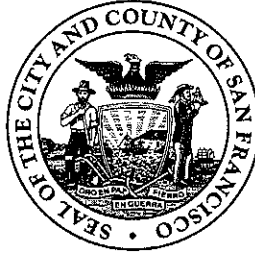


BOARD of SUPERVISORS



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MEMORANDUM

TO: Nicole Elliott, Mayor's Office
Jon Givner, Office of the City Attorney
John Arntz, Director, Department of Elections
Toney Chaplin, Police Department
Vicki Hennessy, Sheriff's Department
Joyce Hicks, Office of Citizen Complaints
George Gascon, District Attorney

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

DATE: June 3, 2016

SUBJECT: CHARTER AMENDMENT INTRODUCED
November 8, 2016, Election

The Board of Supervisors' Rules Committee has received the following Charter Amendment for the November 8, 2016, Election, introduced by Supervisor Avalos on May 24, 2016. This matter is being referred to you in accordance with Rules of Order 2.22.4.

**File No. 160584 Charter Amendment - Independent Investigations
Bureau in the Office of the District Attorney**

Charter Amendment (First Draft) to amend the Charter of the City and County of San Francisco to designate an Independent Investigations Bureau in the Office of the District Attorney as the primary agency to investigate criminal conduct arising out of critical incidents in the City involving officer-involved use of force, upon the District Attorney's establishment of the Bureau; to provide for development of a protocol between the District Attorney and Chief of Police to staff and coordinate the Bureau; and to establish the Independent Investigations Bureau Fund for the operation of the Bureau and require that an amount equal to 0.34% of the annual budgets of the Police Department and Sheriff's Department and funds for additional costs of the Bureau be allocated annually to the Fund, for so long as the District Attorney maintains the Bureau, at an election to be held on November 8, 2016.

Please review and submit any reports or comments 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@sfbgov.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: Christine Fountain, Police Department
Rachael Kilshaw, Police Department
Katherine Gorwood, Sheriff's Department
Eileen Hirst, Sheriff's Department

1 [Charter Amendment – Independent Investigations Bureau in the Office of the District Attorney]

2 **Describing and setting forth a proposal to the voters, at an election to be held on November**
3 **8, 2016, to amend the Charter of the City and County of San Francisco to designate an**
4 **Independent Investigations Bureau in the Office of the District Attorney as the primary**
5 **agency to investigate criminal conduct arising out of critical incidents in the City involving**
6 **officer-involved use of force, upon the District Attorney’s establishment of the Bureau; to**
7 **provide for development of a protocol between the District Attorney and Chief of Police to**
8 **staff and coordinate the Bureau; and to establish the Independent Investigations Bureau**
9 **Fund for the operation of the Bureau and require that an amount equal to 0.34% of the**
10 **annual budgets of the Police Department and Sheriff’s Department and funds for**
11 **additional costs of the Bureau be allocated annually to the Fund, for so long as the District**
12 **Attorney maintains the Bureau.**

13
14 Section 1. Findings.

15 Misconduct by one sworn officer may jeopardize the integrity and reputation of a law
16 enforcement agency. Trust between a police department and the communities they serve is
17 paramount to ensuring public safety.

18 Of the 60 largest U.S. cities, San Francisco ranked 8th in the rate of police homicides in
19 2015. San Francisco has an average of six officer-involved shootings every year. San Francisco
20 has had 110 officer-involved shootings since 2000. San Francisco saw a 100% increase in fatal
21 officer-involved shootings in 2015, as compared to 2014.

22 In 2014, the Office of Citizen Complaints (“OCC”) received complaints about 507 San
23 Francisco Police Department (“SFPD”) officers, representing approximately 25% of the SFPD.
24 Approximately 7% of those complaints were sustained. The OCC has authority to investigate
25 personnel violations, not criminal violations.

1 SFPD currently acts as the lead investigator on officer-involved shootings. State and
2 Federal authorities respond to officer-involved shootings only in rare and exceptional
3 circumstances. The United States Department of Justice initiates only a few pattern-and-practice
4 investigations a year.

5 The District Attorney is the only local agency with the authority to bring criminal
6 charges. With current staffing, it takes the District Attorney an average of 445 days to complete
7 an investigation into an officer-involved shooting. The District Attorney's establishment of an
8 Independent Investigations Bureau, dedicated to the investigation and prosecution of officer-
9 involved shootings and excessive use of force, may improve the timeliness, independence, and
10 transparency of those investigations and prosecutions.

11 Section 2. The Board of Supervisors hereby submits to the qualified voters of the City
12 and County, at an election to be held on November 8, 2016, a proposal to amend the Charter of
13 the City and County by revising Section 6.103 and adding Section 16.132, to read as follows:

14 NOTE: **Unchanged Charter text and uncodified text** are in plain font.
15 **Additions** are *single-underline italics Times New Roman font*.
16 **Deletions** are *strike-through italics Times New Roman font*.
17 **Asterisks (* * * *)** indicate the omission of unchanged Charter
18 subsections.

18 **SEC. 6.103. DISTRICT ATTORNEY.**

19 *(a)* The District Attorney shall:

20 ~~(1-)~~ Investigate all allegations of violations of laws which the District Attorney
21 has the power to prosecute in court or before any other trier of fact;

22 ~~(2-)~~ Prosecute all criminal cases in the appropriate courts and issue warrants
23 for the arrest of persons charged with crimes to be prosecuted in such courts; and

24 ~~(3-)~~ Proceed in such civil cases as authorized by state law.

25 *(b) District Attorney Investigation of Critical Incidents Involving Covered Officers.*

1 (1) Definitions. For purposes of this Section 6.103(b), the following
2 definitions shall apply:

3 “City” shall mean the City and County of San Francisco.

4 “Covered officers” shall mean law enforcement officers operating in the City if the
5 Police Department has jurisdiction to investigate possible criminal conduct involving those
6 officers.

7 “Critical incident” shall mean an incident in the City involving the use of force by a
8 covered officer while on or off duty, and only in which one or more of the following occurs: (A)
9 a covered officer intentionally discharges a firearm at a person, (B) a covered officer
10 unintentionally discharges a firearm at a person resulting in the death or great bodily injury of a
11 person, (C) a person in the custody or control of a covered officer dies, including deaths
12 following an arrest, detention, or foot or vehicle pursuit, or (D) a covered officer uses force on a
13 person resulting in that person’s death or great bodily injury.

14 “Firearm” shall mean a device designed to be used as a weapon from which is expelled
15 through a barrel, a projectile by the force of an explosion or other form of combustion as defined
16 in Penal Code section 16520(a), as amended, or any successor legislation..

17 “Great bodily injury” shall mean a significant or substantial physical injury as defined
18 in Penal Code section 12022.7(f), as amended, or any successor legislation.

19 “Law Enforcement Officer” shall mean any officer, agent, or employee of a State, federal
20 agency, unit of local government, or an Indian tribe who is authorized by law or by a
21 government agency to engage in or supervise the prevention, detection, or investigation of any
22 violation of criminal law, or authorized by law to supervise sentenced criminal offenders, and
23 shall include full, part-time, and auxiliary personnel, whether paid or volunteer.

24 (2) Independent Investigations Bureau.

1 The District Attorney may establish the Independent Investigations Bureau (the
2 “Bureau”) to assume primary responsibility to investigate possible criminal conduct arising
3 from critical incidents. Upon the District Attorney’s establishment of the Bureau, the District
4 Attorney shall give written notice to the Chief of Police, Police Commission, Board of
5 Supervisors, and Mayor. After the District Attorney does so, and when the Protocol provided for
6 in Section 6.103(b)(3) is in place and the funding requirement in Section 16.132 becomes
7 operative, then, for as long as the Bureau is in place consistent with Section 6.103(b)(3), and
8 notwithstanding the Police Department’s authority under Charter Section 4.127 to preserve the
9 public peace, prevent and detect crime, and protect the rights of persons and property by
10 enforcing the laws of the United States, the State of California, and the City, the Police
11 Department may not conduct a criminal investigation of critical incidents except (A) with the
12 District Attorney’s express written authorization, or (B) under the direction of the Bureau and
13 consistent with the Protocol required under Section 6.103(b)(3). The Chief of Police shall
14 provide staff and resources to the Bureau consistent with the Protocol required under Section
15 6.103(b)(3). The Bureau shall be housed in a building separate from the District Attorney’s
16 principal office to promote independence.

17 (3) Independent Investigations Bureau Protocol.

18 Following the District Attorney’s notification of the establishment of the Bureau under
19 Section 6.103(b)(2), the Chief of Police and the District Attorney shall develop a written protocol
20 (the “Protocol”) governing how their respective departments will work together to staff,
21 facilitate, and coordinate the Bureau’s criminal investigation of critical incidents. If the Chief of
22 Police and the District Attorney are unable to agree to a Protocol within 120 days of the District
23 Attorney’s notification of the establishment of the Bureau, or by such later date as the District
24 Attorney and Chief of Police may both agree, then the Board of Supervisors shall adopt promptly
25 an ordinance specifying the Protocol to be used for the Bureau’s criminal investigation of

1 critical incidents under this Section 6.103(b). If the District Attorney later decides in his or her
2 sole discretion to terminate the Bureau by giving the Mayor and the Chief of Police at least 90
3 days advance written notice of the decision, funds previously appropriated to the District
4 Attorney from the Fund created in Charter Section 16.132 that are unencumbered and
5 unexpended shall transfer to the General Fund, and no further funds shall be allocated to the
6 Fund.

7 (4) Nothing in this Section 6.103(b) shall be construed to control, direct,
8 restrict, or remove the duties under state law of the District Attorney, the Sheriff, the Chief Adult
9 Probation Officer, or the Chief Juvenile Probation Officer.

10 (5) Nothing in this Section 6.103 shall affect the authority of the Chief of
11 Police, the Office of Citizen Complaints, or any other applicable City official or agency to
12 investigate the conduct of a member of the Police Department or any other City law enforcement
13 officer for disciplinary or corrective action under Charter Sections 4.127 and A8.343; and
14 nothing in this Section shall limit or otherwise restrict the disciplinary powers vested in the Chief
15 of Police and the Police Commission by those or other provisions of this Charter.

16 (6) The funding requirements in Section 16.132 shall become operative at the
17 commencement of any fiscal year that occurs not fewer than 90 days after both of the following
18 have occurred: (A) the District Attorney has provided written notice of the establishment of the
19 Bureau as provided in Section 6.103(b)(2); and (B) the District Attorney and Chief of Police
20 submit the mutually agreed upon Protocol, or the thr City has enacted an ordinance specifying
21 the Protocol, under Section 6.103(b)(3).

22 (7) The City may adopt legislation consistent with this Section 6.103(b) to
23 implement any of its provisions.

24 (8) If the District Attorney does not establish the Bureau in accordance with
25 Section 6.103(b) by January 1, 2023, this Section 6.103(b) shall expire by operation of law and

1 have no force and effect, and the City Attorney shall cause it to be removed from the Charter, in
2 which case Section 6.103 shall revert to the status quo ante.

3 **SEC. 16.132. INDEPENDENT INVESTIGATIONS BUREAU FUND.**


4 (a) Establishment of Fund. There is hereby established the Independent Investigations
5 Bureau Fund (the "Fund") to be administered by the District Attorney. Monies in the Fund shall
6 be used solely to fund the salaries of staff necessary to establish, support, maintain, and operate
7 the Independent Investigations Bureau (the "Bureau") as provided under Charter Section
8 6.103(b), subject to the budgetary and fiscal provisions of the Charter. Any additional costs to
9 establish, support, maintain, and operate the Bureau, including the costs of acquiring necessary
10 office space, vehicles, and equipment, subject to the prior approval of the Controller as to the
11 objective reasonableness of both the necessity and the cost, shall be appropriated by the Mayor
12 and Board of Supervisors.

13 (b) The funding requirements in this Section 16.132 shall become operative at the
14 commencement of the fiscal year that begins not fewer than 90 days after both of the following
15 have occurred: (1) the District Attorney has provided written notice of the establishment of the
16 Bureau as provided in Section 6.103(b)(2); and (2) the District Attorney and Chief of Police
17 submit the mutually agreed upon Protocol, or the Mayor and Board have adopted an ordinance
18 specifying the Protocol, under Section 6.103(b)(3). Beginning with such fiscal year, and until
19 such time as the District Attorney may in his or her discretion terminate the Bureau, there shall
20 be allocated annually to the Fund an amount equal to 0.34% of the combined annual budgets of
21 the Police Department and Sheriff's Department. The District Attorney shall maintain records
22 documenting the use of monies appropriated under the Fund. Any unused portion of funds
23 appropriated to the District Attorney's Office for Bureau purposes at the end of a fiscal year
24 shall not be carried forward. Rather, each year's allocation to the Fund shall be equal to 0.34%
25

1 of the combined annual budgets of the Police Department and Sheriff's Department for that
2 fiscal year.

3 (c) If the District Attorney does not establish the Bureau consistent with Section 6.103(b)
4 by January 1, 2023, this Section 16.132 shall expire by operation of law and have no force and
5 effect, and the City Attorney shall cause it to be removed from the Charter.

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

8 By: 
9 JANA CLARK
10 Deputy City Attorney

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LEGISLATIVE DIGEST
(First Draft - 5/24/2016)

[Charter Amendment - Independent Investigations Bureau in the Office of the District Attorney]

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 designate an Independent Investigations Bureau in the Office of the District Attorney as the primary agency to investigate criminal conduct arising out of critical incidents in the City involving officer-involved use of force, upon the District Attorney's establishment of the Bureau; to provide for development of a protocol between the District Attorney and Chief of Police to staff and coordinate the Bureau; and to establish the Independent Investigations Bureau Fund for the operation of the Bureau and require that an amount equal to 0.34% of the annual budgets of the Police Department and Sheriff's Department and funds for additional costs of the Bureau be allocated annually to the Fund, for so long as the District Attorney maintains the Bureau.

Existing Law

Charter section 6.103 defines the District Attorney's duties and includes the duty to investigate all allegations of violations of law that the District Attorney has the power to prosecute. Charter section 4.127 defines the Police Department's duties and includes the duty to 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. Both the District Attorney and the Police Department share the duty to investigate possible criminal conduct arising out of law enforcement officers' use of force, including officer-involved shootings.

Amendments to Current Law

This Charter Amendment would amend Charter section 6.103 to designate an Independent Investigations Bureau ("Bureau") in the District Attorney's Office as the primary agency to investigate criminal conduct arising out critical incidents if the District Attorney elects to establish a Bureau provided that (1) the District Attorney notifies the Chief of Police, Police Commission, Board of Supervisors and the Mayor of the establishment of the Bureau and (2) either the District Attorney and the Chief of Police agree to a protocol governing the Bureau's investigations or, if there is no agreement, the City enacts an ordinance specifying the protocol. If the District Attorney establishes and provides notice of the Bureau and its protocol is developed either by agreement or through an ordinance enacted by the City, this Charter Amendment would prohibit the Police Department from investigating possible criminal conduct arising out critical incidents. The Charter Amendment would define critical incidents to include a law enforcement officer's use of force while on or off duty, and only in which one or more of

the following occurs: (A) a covered officer intentionally discharges a firearm at a person, (B) a covered officer unintentionally discharges a firearm at a person resulting in the death or great bodily injury of a person, (C) a person in the custody or control of a covered officer dies, including deaths following an arrest, detention, or foot or vehicle pursuit, or (D) a covered officer uses force on a person resulting in that person's death or great bodily injury. "Great bodily injury" and "firearm" are defined by reference to the Penal Code. This Charter amendment also would add Charter section 16.132 establishing the Independent Investigations Bureau Fund for the operation of the Bureau and require that an amount equal to 0.34% of the annual budgets of the Police Department and Sheriff's Department be allocated annually to this fund, for so long as the District Attorney maintains the Bureau and that additional costs to establish and operate the Bureau, subject to the Controller's approval, be appropriated by the Mayor and the Board of Supervisors.

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