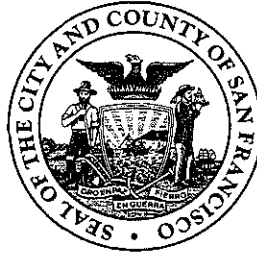



BOARD of SUPERVISORS



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MEMORANDUM

TO: Ben Rosenfield, City Controller

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

DATE: June 3, 2016

SUBJECT: LEGISLATION INTRODUCED - CHARTER AMENDMENT

The Board of Supervisors Rules Committee has received the following legislation, introduced by Supervisor Cohen on May 24, 2016. This matter is being referred to you in accordance with Rules of Order 2.22.3.

File No. 160586 Charter Amendment - Independent Police Oversight Department and Budget Set-Aside

Charter Amendment (First Draft) to amend the Charter of the City and County of San Francisco to: re-name the Office of Citizen Complaints (OCC) as the Independent Police Oversight Department (IPOD); eliminate the requirement that the Police Commission approve IPOD's proposed budget and instead give IPOD direct authority over its proposed budget; authorize IPOD to conduct periodic reviews of how the Police Commission, Police Department, and IPOD have handled claims of officer misconduct; and require an annual appropriation to IPOD at least equal to the OCC budget for FY2015-2016, adjusted for changes in total City discretionary revenues, 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
Natasha Mihal, Office of the City Controller

1 [Charter Amendment - Independent Police Oversight Department and Budget Set-Aside]

2
 3 **Describing and setting forth a proposal to the voters to amend the Charter of the City and**
 4 **County of San Francisco, at an election to be held on November 8, 2016, to: re-name the**
 5 **Office of Citizen Complaints (OCC) as the Independent Police Oversight Department**
 6 **(IPOD); eliminate the requirement that the Police Commission approve IPOD’s proposed**
 7 **budget and instead give IPOD direct authority over its proposed budget; authorize IPOD**
 8 **to conduct periodic reviews of how the Police Commission, Police Department, and IPOD**
 9 **have handled claims of officer misconduct; and require an annual appropriation to IPOD**
 10 **at least equal to the OCC budget for fiscal year 2015-2016, adjusted for changes in total**
 11 **City discretionary revenues.**

12
 13 Section 1. The Board of Supervisors hereby submits to the qualified voters of the City
 14 and County, at an election to be held on November 8, 2016, a proposal to amend the Charter of
 15 the City and County by revising Section 4.127 and adding Section 16.133, to read as follows:

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

21 **SEC. 4.127. POLICE DEPARTMENT.**

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

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

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

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

8 INDEPENDENT POLICE OVERSIGHT DEPARTMENT. OFFICE OF CITIZEN
9 COMPLAINTS. The Mayor shall appoint a nominee of the Police Commission as the Director
10 director of the Independent Police Oversight Department (IPOD) Office of Citizen Complaints,
11 subject to confirmation by the Board of Supervisors. The Director director shall serve at the
12 pleasure of the Police Commission. If the Board fails to act on the appointment within 30 days,
13 the appointment shall be deemed approved. In the event the office is vacant, until the Mayor
14 mayor makes an appointment and that appointment is confirmed by the Board, the Police
15 Commission shall appoint an interim Director director who shall serve at the pleasure of the
16 Police Commission. The appointment of the Director shall be exempt from the civil service
17 requirements of this Charter. The Director director shall never have been a uniformed member
18 or employee of the Police Department department. The Director director of the Office of Citizen
19 Complaints shall be the appointing officer under the civil service provisions of this Charter for
20 the appointment, removal, or discipline of employees of IPOD the Office of Citizen Complaints.

21 The Police Commission shall have the power and duty to organize, reorganize, and
22 manage IPOD the Office of Citizen Complaints. Subject to the civil service provisions of this
23 Charter, IPOD the Office of Citizen Complaints shall include investigators and hearing officers.
24 As of July 1, 1996, the The staff of IPOD the Office of Citizen Complaints shall consist of no
25 fewer than one line investigator for every 150 sworn members. Whenever the ratio of

1 investigators to police officers specified by this section is not met for more than 30 consecutive
2 days, the Director ~~director~~ shall have the power to hire, and the City Controller must pay,
3 temporary investigators to meet such staffing requirements. No full-time or part-time employee
4 of IPOD ~~the Office of Citizen Complaints~~ shall have previously served as a uniformed member
5 of the Police Department ~~department~~. Subject to rules ~~rule~~ of the Police Commission, the
6 Director ~~director~~ of IPOD ~~the Office of Citizen Complaints~~ may appoint part-time hearing
7 officers who shall be exempt from the civil service requirements of this Charter. Compensation
8 of the hearing officers shall be at rates recommended by the Commission and established by the
9 Board of Supervisors or by contract approved by the Board of Supervisors.

10 Complaints of police misconduct or allegations that a member of the Police Department
11 has not properly performed a duty shall be promptly, fairly, and impartially investigated by
12 IPOD ~~staff of the Office of Citizen Complaints~~. IPOD ~~The Office of Citizen Complaints~~ shall
13 investigate all complaints of police misconduct, or that a member of the Police Department has
14 not properly performed a duty, except those complaints which on their face clearly indicate that
15 the acts complained of were proper and those complaints lodged by other members of the Police
16 Department. IPOD ~~The Office of Citizen Complaints~~ shall use its best efforts to conclude
17 investigations of such complaints and, if sustained, transmit the sustained complaint to the Police
18 Department within nine (9) months of receipt thereof by IPOD ~~the Office of Citizen Complaints~~.
19 If IPOD ~~the Office of Citizen Complaints~~ is unable to conclude its investigation within such nine-
20 month period, the Director ~~director of the Office of Citizen Complaints~~, within such nine-month
21 period, shall inform the Chief of Police of the reasons therefor and transmit information and
22 evidence from the investigation as shall facilitate the Chief's timely consideration of the matter.
23 IPOD ~~The Office of Citizen Complaints~~ shall recommend disciplinary action to the Chief of
24 Police on those complaints that are sustained. The Director ~~director of the Office of Citizen~~
25 Complaints, after meeting and conferring with the Chief of Police or his or her designee, may

1 verify and file charges with the Police Commission against members of the Police Department
2 arising out of sustained complaints; provided, that the Director ~~director~~ may not verify and file
3 such charges for a period of 60 days following the transmittal of the sustained complaint to the
4 Police Department unless the Director ~~director~~ issues a written determination that the limitations
5 period within which the member or members may be disciplined under Government Code
6 Section 3304, as amended from time to time or any successor provisions thereto, may expire
7 within such 60-day period and either (a) ~~(i)~~ the Chief of Police fails or refuses to file charges
8 with the Police Commission arising out of the sustained complaint, (b) ~~(ii)~~ the Chief of Police or
9 his or her designee fails or refuses to meet and confer with the Director ~~director~~ on the matter, or
10 (c) ~~(iii)~~ other exigent circumstances necessitate that the Director ~~director~~ verify and file charges
11 to preserve the ability of the Police Commission to impose punishment pursuant to
12 Section A8.343. The Director ~~director of the Office of Citizen Complaints~~ shall schedule
13 hearings before hearing officers when such is requested by the complainant or a member of the
14 Police Department ~~department~~ and, in accordance with rules of the Commission, such a hearing
15 will facilitate the fact-finding process. The Board of Supervisors may provide by ordinance that
16 IPOD ~~the Office of Citizen Complaints~~ shall in the same manner investigate and make
17 recommendations to the Chief of Police regarding complaints of misconduct by patrol special
18 police officers and their uniformed employees.

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

24 IPOD ~~The Office of Citizen Complaints~~ shall prepare in accordance with rules of the
25 Commission monthly summaries of the complaints received and shall prepare recommendations

1 quarterly concerning policies or practices of the *Police Department department* which could be
2 changed or amended to avoid unnecessary tension with the public or a definable segment of the
3 public while insuring effective police services. *IPOD The Office of Citizen Complaints* shall
4 prepare a report for the President of the Board of Supervisors each quarter. This report shall
5 include, but not be limited to, the number and type of complaints filed, the outcome of the
6 complaints, and a review of the disciplinary action taken. The President of the Board of
7 Supervisors shall refer this report to the appropriate committee of the Board of Supervisors
8 charged with public safety responsibilities. Said committee may issue recommendations as
9 needed.

10 *In addition to its monthly and quarterly reports under this Section 4.127, IPOD may, at*
11 *such times as it deems appropriate, conduct general reviews of how the Police Commission, the*
12 *Police Department, and IPOD have handled claims of officer misconduct and report on the*
13 *results of those reviews.*

14 In carrying out its objectives, *including the preparation of recommendations concerning*
15 *departmental policies or practices referenced above, IPOD the Office of Citizen Complaints*
16 shall receive prompt and full cooperation and assistance from all departments, officers, and
17 employees of the City and County which shall promptly produce all records requested by *IPOD,*
18 *including records relevant to departmental policies or practices regardless of whether those*
19 *records pertain to a particular complaint, the Office of Citizen Complaints* except for records the
20 disclosure of which to *IPOD the Office of Citizen Complaints* is prohibited by law. The *Director*
21 *director* may also request and the Chief of Police shall require the testimony or attendance of any
22 member of the Police Department to carry out the responsibilities of *IPOD the Office of Citizen*
23 *Complaints.*

24 *The IPOD budget shall be separate from the budget of the Police Department.*
25 *Notwithstanding the provisions of Section 4.102, the IPOD budget shall not require Police*

1 Commission review or approval and the Director of IPOD shall submit its proposed annual or
2 two-year budget directly to the Mayor.

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

6 POLICE STAFFING. The police force of the City and County shall at all times consist
7 of not fewer than 1,971 full duty sworn officers. The staffing level of the Police Department
8 shall be maintained with a minimum of 1,971 full duty sworn officers thereafter. That figure
9 may be adjusted pursuant to Section 16.123.

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

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

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

21 PATROL SPECIAL POLICE OFFICERS. The Commission may appoint patrol special
22 police officers and for cause may suspend or dismiss patrol special police officers after a hearing
23 on charges duly filed with the Commission and after a fair and impartial trial. Patrol special
24 police officers shall be regulated by the Police Commission, which may establish requirements
25 for and procedures to govern the position, including the power of the Chief of Police to suspend

1 a patrol special police officer pending a hearing on charges. Each patrol special police officer
2 shall be at the time of appointment not less than 21 years of age and must possess such physical
3 qualifications as may be required by the Commission.

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

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


13
14 **SEC. 16.133. INDEPENDENT POLICE OVERSIGHT FUND.**

15 (a) Beginning with fiscal year 2017-2018, the City each year shall appropriate to the
16 Independent Police Oversight Department (IPOD) established in Section 4.127 an amount at
17 least equal to the amount appropriated to the former Office of Citizen Complaints for fiscal
18 year 2015-2016 (the baseline amount), to be adjusted as provided in subsection (b). These
19 monies shall be used exclusively to fund the operations of IPOD.

20 (b) Beginning with fiscal year 2018-2019, the City shall each year adjust the baseline
21 amount by the percentage increase or decrease in aggregate City discretionary revenues, as
22 determined by the Controller, based on calculations consistent from year to year. In determining
23 aggregate City discretionary revenues, the Controller shall only include revenues received by
24 the City that are unrestricted and may be used at the option of the Mayor and the Board of
25 Supervisors for any lawful City purpose.

1 (c) The City may suspend growth in the baseline amount pursuant to subsection (b) when
2 the City's projected budget deficit for the upcoming fiscal year at the time of the Joint Report or
3 Update to the Five Year Financial Plan as prepared jointly by the Controller, the Mayor's
4 Budget Director, and the Board of Supervisors' Budget Analyst exceeds \$200 million, adjusted
5 annually by changes in aggregate City discretionary revenues, as determined by the Controller.
6

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

9
10 By: 
11 THOMAS J. OWEN
 Deputy City Attorney

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

[Charter Amendment - Independent Police Oversight Department and Set-Aside]

Describing and setting forth a proposal to the voters to amend the Charter of the City and County of San Francisco, at an election to be held on November 8, 2016, to: re-name the Office of Citizen Complaints (OCC) as the Independent Police Oversight Department (IPOD); eliminate the requirement that the Police Commission approve IPOD's proposed budget and instead give IPOD direct authority over its proposed budget; authorize IPOD to conduct periodic reviews of how the Police Commission, Police Department, and IPOD have handled claims of officer misconduct; and require an annual appropriation to IPOD at least equal to the OCC budget for fiscal year 2015-2016, adjusted for changes in total City discretionary revenues.

Existing Law

The City has an Office of Citizen Complaints ("OCC") within the Police Department. The OCC investigates complaints of misconduct and neglect of duty by police officers, and may, in certain circumstances, file disciplinary charges against the officers.

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.

The City is not required to provide the OCC with a particular amount of money or other level of financial support in the budget. The City appropriated about \$5.57 million to the OCC in fiscal year 2015-2016.

Amendments to Current Law

The proposal is a Charter amendment that would change the name of the Office of Citizen Complaints to "the Independent Police Oversight Department" or "IPOD".

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

The proposal would authorize IPOD, at such times as it deemed appropriate, to conduct general reviews of how the Police Commission, the Police Department, and IPOD have handled claims of officer misconduct and report on the results of those reviews.

And the proposal would create a budget set-aside to fund IPOD. The proposal would require the City to appropriate to IPOD each year an amount at least equal to the amount appropriated to the former Office of Citizen Complaints for fiscal year 2015-2016, adjusted annually thereafter for changes in aggregate City discretionary revenues.

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