

1 [Charter Amendment - Department of Police Accountability]

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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 **re-name the Office of Citizen Complaints (OCC) as the Department of Police**
6 **Accountability (DPA); give DPA direct authority over its proposed budget; and require**
7 **DPA to conduct a performance audit every two years of how the Police Department has**
8 **handled claims of officer misconduct and use of force.**

9
10 Section 1. The Board of Supervisors hereby submits to the qualified voters of the City
11 and County, at an election to be held on November 8, 2016, a proposal to amend the Charter of
12 the City and County by revising Sections 4.127 and A8.343, and adding Section 4.136, to read as
13 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.

19 **SEC. 4.127. POLICE DEPARTMENT.**

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

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

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

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

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

16 ~~The Police Commission shall have the power and duty to organize, reorganize and~~
17 ~~manage the Office of Citizen Complaints. Subject to the civil service provisions of this Charter,~~
18 ~~the Office of Citizen Complaints shall include investigators and hearing officers. As of July 1,~~
19 ~~1996, the staff of the Office of Citizen Complaints shall consist of no fewer than one line~~
20 ~~investigator for every 150 sworn members. Whenever the ratio of investigators to police officers~~
21 ~~specified by this section is not met for more than 30 consecutive days, the director shall have the~~
22 ~~power to hire, and the City Controller must pay, temporary investigators to meet such staffing~~
23 ~~requirements. No full-time or part-time employee of the Office of Citizen Complaints shall have~~
24 ~~previously served as a uniformed member of the department. Subject to rule of the Police~~
25 ~~Commission, the director of the Office of Citizen Complaints may appoint part-time hearing~~

1 ~~officers who shall be exempt from the civil service requirements of this Charter. Compensation~~
2 ~~of the hearing officers shall be at rates recommended by the Commission and established by the~~
3 ~~Board of Supervisors or by contract approved by the Board of Supervisors.~~

4 ~~Complaints of police misconduct or allegations that a member of the Police Department~~
5 ~~has not properly performed a duty shall be promptly, fairly and impartially investigated by staff~~
6 ~~of the Office of Citizen Complaints. The Office of Citizen Complaints shall investigate all~~
7 ~~complaints of police misconduct, or that a member of the Police Department has not properly~~
8 ~~performed a duty, except those complaints which on their face clearly indicate that the acts~~
9 ~~complained of were proper and those complaints lodged by other members of the Police~~
10 ~~Department. The Office of Citizen Complaints shall use its best efforts to conclude~~
11 ~~investigations of such complaints and, if sustained, transmit the sustained complaint to the~~
12 ~~Police Department within nine (9) months of receipt thereof by the Office of Citizen Complaints.~~
13 ~~If the Office of Citizen Complaints is unable to conclude its investigation within such nine-month~~
14 ~~period, the director of the Office of Citizen Complaints, within such nine-month period, shall~~
15 ~~inform the Chief of Police of the reasons therefor and transmit information and evidence from~~
16 ~~the investigation as shall facilitate the Chief's timely consideration of the matter. The Office of~~
17 ~~Citizen Complaints shall recommend disciplinary action to the Chief of Police on those~~
18 ~~complaints that are sustained. The director of the Office of Citizen Complaints, after meeting~~
19 ~~and conferring with the Chief of Police or his or her designee, may verify and file charges with~~
20 ~~the Police Commission against members of the Police Department arising out of sustained~~
21 ~~complaints; provided, that the director may not verify and file such charges for a period of 60~~
22 ~~days following the transmittal of the sustained complaint to the Police Department unless the~~
23 ~~director issues a written determination that the limitations period within which the member or~~
24 ~~members may be disciplined under Government Code Section 3304, as amended from time to~~
25 ~~time or any successor provisions thereto, may expire within such 60-day period and either (i) the~~

1 ~~Chief of Police fails or refuses to file charges with the Police Commission arising out of the~~
2 ~~sustained complaint, (ii) the Chief of Police or his or her designee fails or refuses to meet and~~
3 ~~confer with the director on the matter, or (iii) other exigent circumstances necessitate that the~~
4 ~~director verify and file charges to preserve the ability of the Police Commission to impose~~
5 ~~punishment pursuant to Section A8.343. The director of the Office of Citizen Complaints shall~~
6 ~~schedule hearings before hearing officers when such is requested by the complainant or a~~
7 ~~member of the department and, in accordance with rules of the Commission, such a hearing will~~
8 ~~facilitate the fact finding process. The Board of Supervisors may provide by ordinance that the~~
9 ~~Office of Citizen Complaints shall in the same manner investigate and make recommendations to~~
10 ~~the Chief of Police regarding complaints of misconduct by patrol special police officers and their~~
11 ~~uniformed employees.~~

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

17 ~~The Office of Citizen Complaints shall prepare in accordance with rules of the~~
18 ~~Commission monthly summaries of the complaints received and shall prepare recommendations~~
19 ~~quarterly concerning policies or practices of the department which could be changed or~~
20 ~~amended to avoid unnecessary tension with the public or a definable segment of the public while~~
21 ~~insuring effective police services. The Office of Citizen Complaints shall prepare a report for the~~
22 ~~President of the Board of Supervisors each quarter. This report shall include, but not be limited~~
23 ~~to, the number and type of complaints filed, the outcome of the complaints, and a review of the~~
24 ~~disciplinary action taken. The President of the Board of Supervisors shall refer this report to the~~
25

1 ~~appropriate committee of the Board of Supervisors charged with public safety responsibilities.~~
2 ~~Said committee may issue recommendations as needed.~~

3 ~~In carrying out its objectives the Office of Citizen Complaints shall receive prompt and~~
4 ~~full cooperation and assistance from all departments, officers and employees of the City and~~
5 ~~County which shall promptly produce all records requested by the Office of Citizen Complaints~~
6 ~~except for records the disclosure of which to the Office of Citizen Complaints is prohibited by~~
7 ~~law. The director may also request and the Chief of Police shall require the testimony or~~
8 ~~attendance of any member of the Police Department to carry out the responsibilities of the Office~~
9 ~~of Citizen Complaints.~~

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

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

17 All officers and employees of the City and County are directed to take all acts necessary
18 to implement the provisions of this section. The Board of Supervisors is empowered to adopt
19 ordinances necessary to effectuate the purpose of this section including but not limited to
20 ordinances regulating the scheduling of police training classes ~~eases~~.

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

24 The number of full duty sworn officers in the Police Department dedicated to
25 neighborhood policing and patrol for fiscal year 1993-1994 shall not be reduced in future years,

1 and all new full duty sworn officers authorized for the Police Department shall also be dedicated
2 to neighborhood community policing, patrol and investigations.

3 PATROL SPECIAL POLICE OFFICERS. The Commission may appoint patrol special
4 police officers and for cause may suspend or dismiss patrol special police officers after a hearing
5 on charges duly filed with the Commission and after a fair and impartial trial. Patrol special
6 police officers shall be regulated by the Police Commission, which may establish requirements
7 for and procedures to govern the position, including the power of the Chief of Police to suspend
8 a patrol special police officer pending a hearing on charges. Each patrol special police officer
9 shall be at the time of appointment not less than 21 years of age and must possess such physical
10 qualifications as may be required by the Commission.

11 Patrol special police officers may be designated by the Commission as the owners of a
12 certain beat or territory which may be established or rescinded by the Commission. Patrol special
13 police officers designated as the owners of a certain beat or territory or the legal heirs or
14 representatives of the owners may dispose of their interest in the beat or territory to a person of
15 good moral character, approved by the Police Commission and eligible for appointment as a
16 patrol special police officer.

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

20
21 **SEC. 4.136. DEPARTMENT OF POLICE ACCOUNTABILITY.**

22 (a) There shall be under the Police Commission a Department of Police Accountability
23 (“DPA”).

24 (b) The Mayor shall appoint a nominee of the Police Commission as the Director of
25 DPA, subject to confirmation by the Board of Supervisors. The Director shall serve at the

1 pleasure of the Police Commission. If the Board of Supervisors fails to act on the appointment
2 within 30 days, the appointment shall be deemed approved. In the event the office is vacant,
3 until the Mayor makes an appointment and that appointment is confirmed by the Board, the
4 Police Commission shall appoint an interim Director who shall serve at the pleasure of the
5 Police Commission. The appointment of the Director shall be exempt from the civil service
6 requirements of this Charter. The Director shall never have been a uniformed member or
7 employee of the Police Department. The Director shall be the appointing officer under the civil
8 service provisions of this Charter for the appointment, removal, or discipline of employees of
9 DPA.

10 (c) The Police Commission shall have the power and duty to organize, reorganize, and
11 manage DPA. Subject to the civil service provisions of this Charter, DPA shall include
12 investigators and hearing officers. The staff of DPA shall consist of no fewer than one line
13 investigator for every 150 sworn members. Whenever the ratio of investigators to police officers
14 specified by this section is not met for more than 30 consecutive days, the Director shall have the
15 power to hire, and the City Controller must pay, temporary investigators to meet such staffing
16 requirements. No full-time or part-time employee of DPA shall have previously served as a
17 uniformed member of the Police Department. Subject to rules of the Police Commission, the
18 Director may appoint part-time hearing officers who shall be exempt from the civil service
19 requirements of this Charter. Compensation of the hearing officers shall be at rates
20 recommended by the Commission and established by the Board of Supervisors or by contract
21 approved by the Board of Supervisors.

22 (d) DPA shall promptly, fairly, and impartially investigate all complaints regarding
23 police use of force, misconduct or allegations that a member of the Police Department has not
24 properly performed a duty, except those complaints which on their face clearly indicate that the
25 acts complained of were proper and those complaints lodged by other members of the Police

1 Department. DPA shall use its best efforts to conclude investigations of such complaints and, if
2 sustained, transmit the sustained complaint to the Police Department within nine months of
3 receipt thereof by DPA. If DPA is unable to conclude its investigation within such nine-month
4 period, the Director, within such nine-month period, shall inform the Chief of Police of the
5 reasons therefor and transmit information and evidence from the investigation as shall facilitate
6 the Chief's timely consideration of the matter.

7 (e) DPA shall recommend disciplinary action to the Chief of Police on those complaints
8 that are sustained. The Director, after meeting and conferring with the Chief of Police or his or
9 her designee, may verify and file charges with the Police Commission against members of the
10 Police Department arising out of sustained complaints; provided, that the Director may not
11 verify and file such charges for a period of 60 days following the transmittal of the sustained
12 complaint to the Police Department unless the Director issues a written determination that the
13 limitations period within which the member or members may be disciplined under Government
14 Code Section 3304, as amended from time to time or any successor provisions thereto, may
15 expire within such 60-day period and (1) the Chief of Police fails or refuses to file charges with
16 the Police Commission arising out of the sustained complaint, (2) the Chief of Police or his or
17 her designee fails or refuses to meet and confer with the Director on the matter, or (3) other
18 exigent circumstances necessitate that the Director verify and file charges to preserve the ability
19 of the Police Commission to impose punishment pursuant to Section A8.343.

20 (f) The Director shall schedule hearings before hearing officers when such is requested
21 by the complainant or a member of the Police Department and, in accordance with rules of the
22 Commission, such a hearing will facilitate the fact-finding process. The Board of Supervisors
23 may provide by ordinance that DPA shall in the same manner investigate and make
24 recommendations to the Chief of Police regarding complaints of misconduct by patrol special
25 police officers and their uniformed employees.

1 (g) Nothing herein shall prohibit the Chief of Police or a commanding officer from
2 investigating the conduct of a member of the Police Department under his or her command, or
3 taking disciplinary or corrective action, otherwise permitted by this Charter, when such is
4 warranted; and nothing herein shall limit or otherwise restrict the disciplinary powers vested in
5 the Chief of Police and the Police Commission by other provisions of this Charter.

6 (h) DPA shall prepare in accordance with rules of the Commission monthly summaries
7 of the complaints received and shall prepare recommendations quarterly concerning policies or
8 practices of the Police Department which could be changed or amended to avoid unnecessary
9 tension with the public or a definable segment of the public while insuring effective police
10 services.

11 (i) DPA shall prepare a report for the President of the Board of Supervisors each
12 quarter. This report shall include, but not be limited to, the number and type of complaints filed,
13 the outcome of the complaints, and a review of the disciplinary action taken. The President of
14 the Board of Supervisors shall refer this report to the appropriate committee of the Board of
15 Supervisors charged with public safety responsibilities. Said committee may issue
16 recommendations as needed.

17 (j) In carrying out its objectives, including the preparation of recommendations
18 concerning departmental policies or practices referenced above, the investigations referenced
19 above, and the audits noted below, DPA shall receive prompt and full cooperation and
20 assistance from all departments, officers, and employees of the City and County, which shall,
21 unless prohibited by state or federal law, promptly produce all records and information
22 requested by DPA, including but not limited to (1) records relevant to Police Department
23 policies or practices, (2) personnel and disciplinary records of Police Department employees,
24 (3) criminal investigative and prosecution files, and (4) all records to which the Police
25 Commission has access, regardless of whether those records pertain to a particular complaint.

1 The DPA shall maintain the confidentiality of any records and information it receives to the
2 extent required by state or federal law governing such records or information. The Director may
3 also request and the Chief of Police shall require the testimony or attendance of any member of
4 the Police Department to carry out the responsibilities of DPA. Nothing in this Section 4.136 is
5 intended or shall be construed to interfere with the duties of the Sheriff or the District Attorney
6 under state law, including their constitutional and statutory powers and duties under
7 Government Code Section 25303, as amended from time to time or any successor provisions
8 thereto, or other applicable state law or judicial decision.

9 (k) Every two years, DPA shall conduct a performance audit or review of police officer
10 use of force and how the Police Department has handled claims of officer misconduct. DPA
11 shall also have the authority to conduct performance audits or reviews of whether Police
12 Department personnel and management have complied with federal and state law, City
13 ordinances and policies, and Police Department policies. The Director shall have the discretion
14 to determine the frequency, topics, and scope of such performance audits or reviews. To the
15 extent permitted by law, DPA shall also allow public access to information on the progress and
16 disposition of claims of misconduct or use of force, and the results of the performance audits and
17 reviews conducted by DPA.

18 (l) The DPA budget shall be separate from the budget of the Police Department.
19 Notwithstanding Section 4.102(3), the Director shall submit DPA's proposed annual or two-year
20 budget directly to the Mayor.

21
22 **SEC. A8.343. FINE, SUSPENSION AND DISMISSAL IN POLICE AND FIRE**
23 **DEPARTMENTS.**

24 Members of the uniformed ranks of the fire or the police department guilty of any
25 offense or violation of the rules and regulations of their respective departments, shall be liable to

1 be punished by reprimand, or by fine not exceeding one month's salary for any offense, or by
2 suspension for not to exceed three months, or by dismissal, after trial and hearing by the
3 commissioners of their respective departments; provided, however, that the chief of each
4 respective department for disciplinary purposes may suspend such member for a period not to
5 exceed 10 days for violation of the rules and regulations of his department. Any such member so
6 suspended shall have the right to appeal such suspension to the fire commission or to the police
7 commission, as the case may be, and have a trial and hearing on such suspension. Written notice
8 of appeal must be filed within 10 days after such suspension and the hearing of said appeal must
9 be held within 30 days after the filing of said notice of appeal. If the commission shall reverse or
10 alter the finding of the chief, it shall order that the member affected be paid salary for the time of
11 the suspension received or altered. In the event the chief should exercise such power of
12 suspension, the member involved shall not be subject to any further disciplinary action for the
13 same offense; provided, that where the Department of Police Accountability ~~Office of Citizen~~
14 ~~Complaints~~ has sustained a complaint and recommended discipline in excess of a 10-day
15 suspension, the Chief of Police may not exercise his or her power of suspension under this
16 section without first meeting and conferring with the Director ~~director~~ of the Department of
17 Police Accountability ~~Office of Citizen Complaints~~ and affording the Director ~~director~~ an
18 opportunity to verify and file charges with the Police Commission pursuant to Section 4.136
19 4.127. If the Director ~~director~~ of the Department of Police Accountability ~~Office of Citizen~~
20 ~~Complaints~~ verifies and files charges, the Police Commission shall conduct a trial and hearing
21 thereon, and the Chief of Police may not suspend the member pending the outcome of the Police
22 Commission proceedings on the charges except as provided in Section A8.344.

23 Subject to the foregoing, members of the uniformed ranks of either department shall not
24 be subject to dismissal, nor to punishment for any breach of duty or misconduct, except for
25 cause, nor until after a fair and impartial trial before the commissioners of their respective

1 departments, upon a verified complaint filed with such commission setting forth specifically the
2 acts complained of, and after such reasonable notice to them as to time and place of hearings as
3 such commission may, by rule, prescribe. The accused shall be entitled, upon hearing, to appear
4 personally and by counsel; to have a public trial; and to secure and enforce, free of expense, the
5 attendance of all witnesses necessary for his defense.

6
7 Section 2. Notwithstanding Section 1 of this measure, if the Charter amendment creating
8 the Office of the Public Advocate is adopted by the voters at the November 8, 2016 election,
9 then subsection (b) of Charter Section 4.136, as added by this measure, shall instead read as
10 follows:

11 (b) Until the first Public Advocate assumes office following the first election described in
12 Section 13.101(b)(6), the Mayor shall appoint a nominee of the Police Commission as the
13 Director of DPA, subject to confirmation by the Board of Supervisors, to fill any vacancy in the
14 office of Director. After the first Public Advocate assumes office, whenever the office of Director
15 of DPA becomes vacant, the Public Advocate shall appoint a nominee of the Police Commission
16 as Director, subject to confirmation by the Board of Supervisors. The Director shall serve at the
17 pleasure of the Police Commission. If the Board of Supervisors fails to act on the appointment
18 within 30 days, the appointment shall be deemed approved. In the event the office is vacant,
19 until the appointing authority described in this subsection (b) makes an appointment and that
20 appointment is confirmed by the Board, the Police Commission shall appoint an interim Director
21 who shall serve at the pleasure of the Police Commission. The appointment of the Director shall
22 be exempt from the civil service requirements of this Charter. The Director shall never have
23 been a uniformed member or employee of the Police Department. The Director shall be the
24 appointing officer under the civil service provisions of this Charter for the appointment,
25 removal, or discipline of employees of DPA.

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Section 3. Nothing in this measure is intended or shall be construed to affect the tenure of the person holding the office of Director of the Office of Citizen Complaints on November 8, 2016. That person shall continue in office as Director of the Department of Police Accountability unless and until he or she resigns or is removed by the Police Commission as provided in Section 4.136.

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

By: _____
THOMAS J. OWEN
Deputy City Attorney

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