

File No. 200132

Committee Item No. 4

Board Item No. 18

### COMMITTEE/BOARD OF SUPERVISORS AGENDA PACKET CONTENTS LIST

Committee: Rules Committee

Date March 2, 2020

Board of Supervisors Meeting

Date MARCH 10, 2020

#### Cmte Board

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- Budget and Legislative Analyst Report
- Youth Commission Report
- Introduction Form
- Department/Agency Cover Letter and/or Report
- Memorandum of Understanding (MOU)
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract/Agreement
- Form 126 - Ethics Commission
- Award Letter
- Application
- Form 700
- Vacancy Notice
- Information Sheet
- Public Correspondence

OTHER (Use back side if additional space is needed)

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Completed by: Victor Young Date February 27, 2020

Completed by: \_\_\_\_\_ Date \_\_\_\_\_

1 [Amending Board Rules - Administration of Oaths and Issuance of Subpoena Duces Tecum]

2  
3 **Motion amending the Board of Supervisors Rules of Order to set forth the process for**  
4 **administration of oaths to individuals testifying before the Board pursuant to a**  
5 **subpoena, and to authorize the Government Audit & Oversight Committee to**  
6 **administer oaths and issue subpoenas duces tecum.**

7  
8 **MOVED,** That the Board of Supervisors hereby amends Rule 3.3 of the Board of  
9 Supervisors Rules of Order by adding Rule 3.3.1 and Rule 3.3.2 to read as follows:

10 **3.3. Committee Authority.** Committees shall consider only items which have been  
11 referred to them by the President, or by the Board, and which have been posted, published,  
12 and noticed. The basic function of each committee is to inquire and to recommend actions to  
13 the full Board. Additional committee authority exists only when specifically authorized by  
14 ordinance or by the Board. Committees shall provide an opportunity for public comment only  
15 with regard to items posted, published, and noticed on their meeting agendas. No Supervisor  
16 or combination of Supervisors shall employ or engage the services of any person, or authorize  
17 or incur any charge, debt or liability against the City unless authority first shall have been  
18 given by the Board or is provided by law..

19 **3.3.1. Issuance of Subpoena Duces Tecum by the Government Audit & Oversight**  
20 **Committee.** By oral motion adopted by a majority of the members of the Government Audit &  
21 Oversight Committee during a subject public hearing, the Committee may instruct the Clerk of  
22 the Board to issue a subpoena duces tecum to individuals whose testimony is sought in that  
23 subject public hearing on file with the Clerk of the Board, with the request to appear at the  
24 Government Audit & Oversight Committee and respond to questions and produce any related  
25 materials in their possession on the hearing subject matter.

1           **3.3.2. Administration of Oaths at Government Audit and Oversight Committee**

2 **Meetings.** The Committee Clerk shall administer an oath to any person testifying before the  
3 Government Audit & Oversight Committee pursuant to a subpoena duces tecum issued by the  
4 Committee under Rule 3.3.1, excluding City employees testifying in their official capacity and  
5 persons testifying during public comment. Notwithstanding the forgoing, the Committee Clerk  
6 shall administer an oath to a Department Head when that Department Head is testifying  
7 pursuant to a subpoena duces tecum issued under Rule 3.3.1. Any testimony following such  
8 an oath shall be given under penalty of perjury. In addition to the authority granted by this  
9 Rule, the Board by written motion may authorize any standing committee to administer oaths,  
10 consistent with Charter Section 16.114.

11  
12           FURTHER MOVED, That the Board of Supervisors hereby amends Rule 6.7 of the  
13 Board of Supervisors Rules of Order by adding Rule 6.7.1 to read as follows:

14           **6.7. Subpoenas.** Whenever the subpoena power of the Board is to be exercised in an  
15 inquiry conducted pursuant to the provisions of the Charter, the subpoena shall be issued  
16 upon a motion duly seconded, with an affirmative vote of a majority of the Supervisors  
17 present, which subpoena shall be issued and authenticated in the name of the Board by the  
18 Clerk of the Board. Any person refusing to obey such subpoena or to produce such books,  
19 papers, testimony or other evidence shall be deemed in contempt and shall be subject to  
20 proceedings and penalties as provided by general law in such instances.

21           **6.7.1 Administration of Oaths.** The Clerk shall administer an oath to any person  
22 testifying before the Board pursuant to a subpoena issued under Rule 6.7, excluding City  
23 employees testifying in their official capacity and persons testifying during public comment.  
24 Notwithstanding the forgoing, the Clerk shall administer an oath to a Department Head when  
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1 the Department Head is testifying pursuant to a subpoena issued under Rule 6.7. Any  
2 testimony following such an oath shall be given under penalty of perjury.

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## Young, Victor (BOS)

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**From:** Board of Supervisors, (BOS)  
**Sent:** Tuesday, February 25, 2020 9:46 AM  
**To:** BOS-Supervisors; Young, Victor (BOS)  
**Subject:** FW: Public Comment

**From:** Thomas Busse <tjbussesf@gmail.com>  
**Sent:** Monday, February 24, 2020 1:36 PM  
**To:** Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>  
**Cc:** Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; PrestonStaff (BOS) <prestonstaff@sfgov.org>  
**Subject:** Public Comment

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Dear Members of the Board of Supervisors

I am a resident of District 5, and writing in support of Supervisor Peskin's proposal to change the rules regarding the issuance of subpoenas *deuces tecum* at the Audit and Oversight committee. I could not find a specific resolution at Legislative Research Center, so I am addressing this comment to the Board *at large*.

Local Agency subpoena power is sadly underutilized in California. The farcical public hearing process running rampant in our pay-to-play political culture too often gives way to astroturfing and misrepresentation. There is no consequence for lying to the board. It is the job of the Board of Supervisors to make investigation so as to ascertain facts for proposals of local legislation.

Moreover, Supervisor Peskin's proposal should be extended to the Police Commission, (which should also be given power of oversight in regard to the Sheriff's Dept.) Our law enforcement officials testify under penalty of perjury in courtrooms all the time, so demanding they do so before the Police Commission is not too much to ask.

Regarding the Nuru arrest, my understanding is in the "Shrimp Boy" operation, Deputy City Attorney David Pfeiffer and Dennis Herrera's political advisor Matthew Rothschild tipped off a number of investigation targets - essentially throwing Zula Jones (whom everyone already knew was crooked) under the bus and letting Leland Yee walk into a trap. The current operation seems to have "learned" from the endemic corruption in the City Attorney's office. It is very likely you are being given self-serving legal advice.

Yours truly,  
Thomas Bussè

## Patrick Monette-Shaw

975 Sutter Street, Apt. 6  
San Francisco, CA 94109  
Phone: (415) 292-6969 • e-mail: [pmonette-shaw@earthlink.net](mailto:pmonette-shaw@earthlink.net)

February 28, 2020

Rules Committee, Board of Supervisors  
The Honorable Hillary Ronen, Chair  
The Honorable Catherine Stefani, Member  
The Honorable Gordon Mar, Member  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

Re: Testimony, Agenda Item 4: Administration of Oaths and Subpoenas

Dear Chair Ronen Members of the Rules Committee,

This is testimony for the Rules Committee meeting on March 2, 2020.

I strongly support the Motion to amend the Board of Supervisors Rules of Order regarding administration of oaths to individuals testifying before the Board of Supervisors pursuant to a subpoena, and presumably under the penalty of perjury.

But the legislation doesn't go far enough and **must be strengthened**. First, it should **apply to every City Employee**, not just Department Heads, and second it must be expanded to **cover all subcommittees** of the Board of Supervisors, not just to the Government Audit and Oversight Committee. Here's why.

### Two Department Heads Provided False Testimony During Board Hearing

1. On March 20, 2014 the Board of Supervisors Neighborhood Services and Safety Committee held a hearing to consider a \$3 million increase in FY 14-15 to funding for the so-called Community Living Fund.

During that hearing, then-Supervisor David Campos peppered Director of Public Health Barbara Garcia and DAAS' Executive Director, Anne Hinton about discharge location data from SFGH and LHH in an effort to learn whether patients are being "integrated" into San Francisco communities, or whether they are being "integrated" in out-of-county communities. Both Hinton and Garcia did their level best to claim they had no way of tracking discharge data by location and type of facility, and that the aggregate data (scrubbed of any patient identifiers) might be protected somehow under the HIPPA law protecting patient's medical records, a claim that is complete nonsense.

Hinton asserted during Campos' March 20 hearing that she would have no way of knowing any discharge or diversion data, until I testified during public comment that under the *Chambers* settlement agreement, a Diversion and Community Integration Program (DCIP) was required by the U.S. Department of Justice. I also testified that DPH and DAAS had spent \$5.6 million between 2003 and 2014 developing the custom-made *SFGetCare* database that I knew contained patient discharge location data (by type of facility, and discharge location in-county or out-of-county).

Following my public testimony, Hinton quickly changed her tune with Campos during the remainder of the hearing, back pedaling and creatively claiming she hadn't understood the question Campos had asked her. She remained disingenuous about availability of the discharge data.

In FY 2013-2014, Hinton was paid \$184,498 as a Department Head, and Garcia was paid \$266,460 as a Department Head. Both women should have known they were providing false testimony to the Board of supervisors.

### Two Senior DPH Employees Provided False E-mail Testimony

2. Following the March 20 Neighborhood Services and Safety Committee hearing, Campos' legislative aide Carolyn Goossen, followed up by asking Ms. Hiramoto questions in an e-mail. Hiramoto then used the working job title of Acting Director of Transitions, San Francisco Health Network in DPH. Goossen had pointedly asked for "*the number of patients discharged from either LHH or SFGH to various "providers" (skilled nursing facilities, board and care homes, private homes, etc.), enumerating the number of aggregated patients discharged to each type of facility in-county.*"

In an e-mail response at 10:21 p.m. on May 29, 2014 Hiramoto replied to Goossen enclosing a handful of data from other reporting sources, rather than culling data from the *SFGetCare* database which contained the information requested. Hiramoto added that "*We did not collect the data in a reportable manner for the years not included.*" That

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Testimony, Agenda Item 4: Administration of Oaths and Subpoenas

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was nonsense because the data collected in *SFGetCare* is stored in a completely reportable manner.

Goossen had also requested: “Aggregate data for each fiscal year listing the types of facilities — board and care, SNF’s, other facilities, etc. — that patients diverted from LHH admission were sent to, stratified by year and types of facilities and the aggregate number of patients involved.”

In the same May 29 e-mail response, Hiramoto wildly claimed: “The data that was collected is incomplete. The software program designed to capture the data did not work as designed” — a lie I knew to be untrue.

On June 1, 2014 I placed a records request to Nancy Sarieh, DPH’s then Public Information Officer asking which software program did not work as designed. On June 9, 2014 at 8:14 a.m. Sarieh responded saying: “The software program involved that did not work as designed is *SF GetCare*.”

Concerned about the potential for reputational harm to the company that created *SF GetCare*, RTZ; on June 15, 2014 I contacted RTZ’s founder, Dr. Rick Zawadski — who is a nationally-recognized authority on long-term care policy — for comment. On June 23, Zawadski responded, saying “RTZ Associates stands behind the functionality and integrity of the software we have developed for the City of San Francisco. Any data fields related to LHH Diversions requested by the City of San Francisco are fully functional and work as designed.”

I shared Zawadski’s response standing by the functionality of his database with DPH staff, and I believe to Ms. Goossen. As a result, at 5:25 p.m. on Tuesday, June 24, 2014, Hiramoto e-mailed Ms. Goossen an update, saying: “The RTZ software, did in fact, work as designed. We were able to run the report for the time period requested.” Hiramoto provided amended responses to Goossen.

Had I not investigated with Zawadski, Hiramoto’s false information would not have been corrected.

The point of this story is that *had I not challenged Garcia’s and Hinton’s veracity* during Campos’ March 20 hearing, and *had I not pushed Hiramoto, Sarieh, and Dr. Zawadski* for information following the March 20 hearing, these four City employees would have essentially gotten away with providing inaccurate and untruthful data to the Board of Supervisors in the performance of your legislative duties.

All four of them should have been held to the requirement to provide truthful information under the penalty of perjury.

In FY 2013–2014, Hiramoto was paid \$133,438 and Sarieh was paid \$59,148.

**All City Employees Already Prohibited From Providing False Testimony**

3. In August 2008, San Francisco’s Campaign and Government Conduct Code was amended, adding §4.125 to *prohibit the furnishing of false information in, and require cooperation with, whistleblower investigations conducted by the Controller or any other officer or department.* §4.125(b) specifically requires that all City employees cooperate.

**SEC.4.125. FURNISHING FALSE OR MISLEADING INFORMATION; DUTY TO COOPERATE.**

(a) FURNISHING FALSE OR MISLEADING INFORMATION PROHIBITED. When making or filing a complaint pursuant to this Chapter or participating in an investigation conducted by the Controller, Ethics Commission, District Attorney, City Attorney or any other department or, commission, or any of their agents, as authorized under this Chapter, City officers and employees may not knowingly and intentionally furnish false or fraudulent evidence, documents or information, act, or conceal any evidence, documents, or information for the purpose of misleading any officer or employee or any of their agents.

To the extent all City employees are already prohibited from providing false information during whistleblower investigations, all City employees should be held to the same standard in providing truthful testimony to the Board of Supervisors during all subcommittee hearings under the penalty of perjury.

February 28, 2020

**Testimony, Agenda Item 4: Administration of Oaths and Subpoenas**

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**All City Employees Take an Oath of Office Upon Hiring**

4. Since all City employees have to take an Oath upon being hired to defend the U.S., State, and City constitutions, they should all be required to provide truthful testimony to the Board of Supervisors under penalty of perjury. This should not be restricted to only Department Heads, as it certainly does **not** change terms and conditions of employment, no matter what City labor unions may have tried to assert.

I urge the Board to strengthen this proposed legislation by expanding it to cover all City employees, and each subcommittee of the Board of Supervisors.

Respectfully submitted,

**Patrick Monette-Shaw**

*Columnist*

*Westside Observer* Newspaper

cc: The Honorable Sandra Lee Fewer, Supervisor, District 1  
The Honorable Aaron Peskin, Supervisor, District 3  
The Honorable Dean Preston, Supervisor, District 5  
The Honorable Matt Haney, Supervisor, District 6  
The Honorable Norman Yee, Supervisor, District 7  
The Honorable Rafael Mandelman, Supervisor, District 8  
The Honorable Shamann Walton, Supervisor, District 10  
The Honorable Ahsha Safai, Supervisor, District 11  
Victor Young, Clerk of the Rules Committee  
Carolyn Goossen, Legislative Aide to Supervisor Hillary Ronen  
Lee Hepner, Legislative Aide to Supervisor Aaron Peskin

# Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp  
or meeting date

2020 FEB -4 P 4: 12

BOARD OF SUPERVISORS  
rec'd by ll

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor [redacted] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [redacted] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. [redacted]
- 9. Reactivate File No. [redacted]
- 10. Topic submitted for Mayoral Appearance before the BOS on [redacted]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.**

Sponsor(s):

Supervisor Peskin, *RONEN*

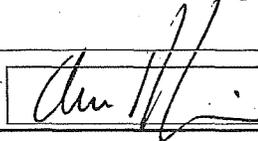
Subject:

[Amending Board Rules – Administration of Oaths and Issuance of Subpoena Duces Tecum]

The text is listed:

Motion amending the Board of Supervisors Rules of Order to set forth the process for administration of oaths to individuals testifying before the Board, and to authorize the Government Audit & Oversight Committee to administer oaths and issue subpoenas duces tecum.

Signature of Sponsoring Supervisor:



For Clerk's Use Only



## Young, Victor (BOS)

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**From:** Board of Supervisors, (BOS)  
**Sent:** Wednesday, March 4, 2020 5:30 PM  
**To:** BOS-Supervisors  
**Cc:** Young, Victor (BOS)  
**Subject:** FW: Support for File 200132, Rules Committee Meeting March 2

**From:** Nancy Wuerfel <nancenumber1@aol.com>  
**Sent:** Thursday, February 27, 2020 3:23 PM  
**To:** Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>  
**Cc:** Ronen, Hillary <hillary.ronen@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>; Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>  
**Subject:** Support for File 200132, Rules Committee Meeting March 2

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisors:

I enthusiastically support File 200132 "Amending Board Rules of Order" to increase subpoena powers for the Government Audit and Oversight Committee and to require administration of an oath to a Department Head when that Department Head is testifying pursuant to a subpoena duces tecum! Also, the rule change allows any of the BOS standing committees to be authorized to administer oaths by written motion of the Board.

These rule changes will expedite the ability of the BOS at a committee hearing to see documents and to hear truthful testimony from Department Heads when the seriousness of the hearing warrants exercising this power. When time is of the essence for the Board to uncover the facts before taking action on an issue, this Rule change will facilitate the Board's deliberations.

I believe that the BOS just having the capacity to issue subpoenas to Department Heads and to require an oath will go a long way to getting straightforward information up front and in a timely manner because they will be anxious to not provoke the BOS into using this power.

If the serious charges of fraud by the FBI on Director Nuru are not enough reasons for the BOS to question the adequacy of our current checks and balances in city governance, then I am at a loss to think what event WILL entice the BOS to exercise effective investigative powers that elicit the truth.

I hope that every member of the Board of Supervisors has the courage of their convictions to get all the facts, all the truth required, to perform their duty of government audits and oversight. If so, there will be eleven co-sponsors for File 200132.

Thank you for considering my comments.

Sincerely,

Nancy Wuerfel