

BOARD of SUPERVISORS



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MEMORANDUM

TO: Sophia Kittler, Liaison to the Board of Supervisors, Mayor's Office
Anne Pearson, Deputy City Attorney, Office of the City Attorney
John Arntz, Director, Department of Elections
LeeAnn Pelham, Executive Director, Ethics Commission
Paul Miyamoto, Sheriff, Sheriff's Department

FROM: Victor Young, Assistant Clerk, Rules Committee *Victor Young*
Board of Supervisors

DATE: May 26, 2020

SUBJECT: CHARTER AMENDMENT INTRODUCED
November 3, 2020 Election

The Board of Supervisors' Rules Committee has received the following Charter Amendment for the November 3, 2020, Election. This matter is being referred to you in accordance with Rules of Order 2.22.4.

File No. 200514

Charter Amendment (First Draft) to amend the Charter of the City and County of San Francisco to create the Sheriff's Department Oversight Board to advise and report findings and recommendations to the Sheriff and the Board of Supervisors regarding Sheriff's Department operations; to create the Sheriff's Department Office of Inspector General, under the direction of an Inspector General appointed by the Oversight Board, to investigate complaints of non-criminal misconduct by employees and contractors of the Sheriff's Department and in-custody deaths, develop policy recommendations for the Sheriff's Department, and report quarterly its findings, results, and recommendations to the Sheriff and the Oversight Board; at an election to be held on November 3, 2020.

Please review and submit any reports or comments you wish to be included with the legislative file.

If you have any questions or concerns, please call me at (415) 554-7723 or email: victor.young@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: Andres Power, Mayor's Office
Rebecca Peacock, Mayor's Office
Kanishka Cheng, Mayor's Office
Patrick Ford, Ethics Commission
Johanna Saenz, Sheriff's Department
Katherine Johnson, Sheriff's Department
Nancy Crowley, Sheriff's Department

1 [Charter Amendment - Sheriff Department Oversight Board and Inspector General]

2

3 **Describing and setting forth a proposal to the voters at an election to be held on November**

4 **3, 2020, to amend the Charter of the City and County of San Francisco to create the**

5 **Sheriff’s Department Oversight Board to advise and report findings and recommendations**

6 **to the Sheriff and the Board of Supervisors regarding Sheriff’s Department operations; to**

7 **create the Sheriff’s Department Office of Inspector General, under the direction of an**

8 **Inspector General appointed by the Oversight Board, to investigate complaints of non-**

9 **criminal misconduct by employees and contractors of the Sheriff’s Department and in-**

10 **custody deaths, develop policy recommendations for the Sheriff’s Department, and report**

11 **quarterly its findings, results, and recommendations to the Sheriff and the Oversight**

12 **Board.**

13

14 Section 1. The Board of Supervisors hereby submits to the qualified voters of the City

15 and County, at an election to be held on November 3, 2020, a proposal to amend the Charter of

16 the City and County by adding Section 4.137 and revising Section 15.505, to read as follows:

17 NOTE: **Unchanged Charter text and uncodified text** are in plain font.

18 **Additions** are *single-underline italics Times New Roman font*.

19 **Deletions** are ~~*strike-through italics Times New Roman font*~~.

20 **Asterisks** (* * * *) indicate the omission of unchanged Charter subsections.

21 **SEC. 4.137. SHERIFF’S DEPARTMENT OVERSIGHT.**

22 *(a) Establishment of Oversight Board.*

23 *(1) The Sheriff’s Department Oversight Board (“SDOB”) is hereby established.*

24 *The SDOB shall consist of seven members. The Board of Supervisors shall appoint four*

25

1 members (to Seats 1, 2, 3, and 4), and the Mayor shall appoint three members (to Seats 5, 6, and
2 7).

3 (2) Members shall serve four-year terms, beginning at noon on March 1, 2021;
4 provided, however, the term of the initial appointees to Seats 1, 3, and 5 shall expire at noon on
5 March 1, 2023, whereas the term of the initial appointees to Seats 2, 4, 6, and 7 shall expire at
6 noon on March 1, 2025.

7 (3) No person may serve more than three successive terms as a member. No
8 person having served three successive terms may serve as a member until at least four years
9 after the expiration of the third successive term. Service for a part of a term that is more than
10 half the period of the term shall count as a full term; further, this subsection (a)(3) makes no
11 distinction between the two-year terms referenced in subsection (a)(2) and four-year terms.

12 (4) Members may be removed from office only for official misconduct under
13 Article XV.

14 (5) All members shall complete a training and orientation on custodial law
15 enforcement, constitutional policing, and Sheriff's Department policies and procedures, within
16 90 days of assuming office for their first term. The Sheriff or the Sheriff's designee shall
17 prescribe the content of and provide the training and orientation.

18 (b) SDOB Powers and Duties. The SDOB shall:

19 (1) Appoint, and may remove, the Inspector General in the Sheriff's Department
20 Office of Inspector General ("OIG"), established in subsection (d).

21 (2) Evaluate the work of the OIG, and may review the Inspector General's
22 individual work performance.

23 (3) Compile, evaluate, and recommend law enforcement custodial and patrol best
24 practices.

1 (4) Conduct community outreach and receive community input regarding the
2 Sheriff's Department operations and jail conditions.

3 (5) Prepare and submit a quarterly report to the Sheriff and Board of Supervisors
4 regarding the SDOB evaluations and outreach, and OIG reports submitted to SDOB.

5 (6) By March 1 of each year, prepare and present to the Board of Supervisors
6 Public Safety and Neighborhood Services Committee, or successor committee, a summary of
7 SDOB evaluations and outreach, and OIG reports submitted to SDOB, for the prior calendar
8 year.

9 (c) In performing its duties, the SDOB may, among other things, hold hearings, issue
10 subpoenas to witnesses to appear and for the production of evidence, administer oaths, and take
11 testimony.

12 (d) Establishment of Office of Inspector General. There is hereby established the
13 Sheriff's Department Office of Inspector General ("OIG"), which shall be a department
14 separate from the Sheriff's Department. The OIG shall be headed by the Inspector General,
15 appointed by the SDOB as set forth in subsection (b)(1). The Inspector General shall be exempt
16 from civil service selection, appointment, and removal procedures.

17 (e) OIG Powers and Duties. The OIG shall:

18 (1) Receive, review, and investigate complaints against Sheriff's Department
19 ("SFSD") employees and SFSD contractors, and employees and contractors of other City
20 departments delivering services to or otherwise interacting with persons in SFSD custody;
21 provided, however, that the OIG shall refer complaints alleging criminal misconduct to the
22 District Attorney, and refer complaints alleging violations of ethics laws to the Ethics
23 Commission.

24 (2) Investigate the death of any individual in the custody of the SFSD.
25

1 (3) Recommend disciplinary action to the Sheriff where, following an
2 investigation pursuant to subsection (e)(1) or (e)(2), the OIG determines that an employee's
3 actions or omissions violated law or SFSD policy.

4 (4) Develop and recommend to the Sheriff an SFSD use of force policy and a
5 comprehensive internal review process for all use of force and critical incidents.

6 (5) Prepare and submit a quarterly report to the Sheriff and the SDOB regarding
7 OIG investigations that includes the number and type of complaints under subsection (e)(1)
8 filed; trend analysis; the outcome of the complaints; any determination that the acts or omissions
9 of an employee or contractor, in connection with the subject matter of a complaint under
10 subsection (e)(1) or a death in custody under subsection (e)(2), violated law or SFSD policy; the
11 OIG's recommendations, if any, for discipline; the outcome of any discipline recommendations;
12 and the OIG's policy recommendations under subsection (e)(4).

13 (f) In performing its duties, the OIG may hold hearings, issue subpoenas to witnesses to
14 appear and for the production of evidence, administer oaths, and take testimony.

15 (g) Cooperation and Assistance from City Departments. In carrying out their duties, the
16 SDOB and OIG shall receive prompt and full cooperation and assistance from all City
17 departments, officers, and employees, including the Sheriff and Sheriff's Department and its
18 employees, which shall promptly produce all records and information requested by the SDOB or
19 OIG. The SDOB and OIG shall maintain the confidentiality of any records and information it
20 receives to the extent required by local, state, or federal law governing such records or
21 information.

22 (h) Budget and Staffing. Subject to the fiscal, budgetary, and civil service provisions of
23 the Charter, the OIG staff shall include no fewer than one investigator for every 100 sworn
24 SFSD employees, and one attorney. No SDOB or OIG staff, including the Inspector General,

1 shall have been employed previously by a law enforcement agency or a labor organization
2 representing law enforcement employees.

3 (i) Nothing in this Section 4.137 shall prohibit, limit, or otherwise restrict the Sheriff or
4 the Sheriff's designee from investigating the conduct of an employee or contractor of the SFSD,
5 or taking disciplinary or corrective action permitted by City or State law.

6 (j) Nothing in this Section 4.137, including but not limited to subsection (g), is intended
7 to or shall be interpreted to abrogate, interfere with, or obstruct the independent and
8 constitutionally and statutorily designated duties of the Sheriff, the California Attorney General's
9 constitutional and statutory responsibility to oversee the Sheriff, or other applicable State law.
10 In carrying out their duties, the SDOB and OIG shall cooperate and coordinate with the Sheriff
11 so that the Sheriff, the SDOB, and the OIG may properly discharge their respective
12 responsibilities.

13
14 **SEC. 15.105. SUSPENSION AND REMOVAL.**

15 (a) ELECTIVE AND CERTAIN APPOINTED OFFICERS. Any elective officer, and
16 any member of the Airport Commission, Asian Art Commission, Civil Service Commission,
17 Commission on the Status of Women, Golden Gate Concourse Authority Board of Directors,
18 Health Commission, Human Services Commission, Juvenile Probation Commission, Municipal
19 Transportation Agency Board of Directors, Port Commission, Public Utilities Commission,
20 Recreation and Park Commission, Fine Arts Museums Board of Trustees, ~~Taxi Commission~~, War
21 Memorial and Performing Art Center Board of Trustees, Board of Education or Community
22 College Board is subject to suspension and removal for official misconduct as provided in this
23 section. Such officer may be suspended by the Mayor and the Mayor shall appoint a qualified
24 person to discharge the duties of the office during the period of suspension. Upon such
25 suspension, the Mayor shall immediately notify the Ethics Commission and Board of

1 Supervisors thereof in writing and the cause thereof, and shall present written charges against
2 such suspended officer to the Ethics Commission and Board of Supervisors at or prior to their
3 next regular meetings following such suspension, and shall immediately furnish a copy of the
4 same to such officer, who shall have the right to appear with counsel before the Ethics
5 Commission in his or her defense. The Ethics Commission shall hold a hearing not less than five
6 days after the filing of written charges. After the hearing, the Ethics Commission shall transmit
7 the full record of the hearing to the Board of Supervisors with a recommendation as to whether
8 the charges should be sustained. If, after reviewing the complete record, the charges are
9 sustained by not less than a three-fourths vote of all members of the Board of Supervisors, the
10 suspended officer shall be removed from office; if not so sustained, or if not acted on by the
11 Board of Supervisors within 30 days after the receipt of the record from the Ethics Commission,
12 the suspended officer shall thereby be reinstated.

13 (b) BUILDING INSPECTION COMMISSION, PLANNING COMMISSION, BOARD
14 OF APPEALS, ELECTIONS COMMISSION, ETHICS COMMISSION, SHERIFF'S
15 DEPARTMENT OVERSIGHT BOARD, AND ENTERTAINMENT COMMISSION. Members of
16 the Building Inspection Commission, the Planning Commission, the Board of Appeals, the
17 Elections Commission, the Ethics Commission, the Sheriff's Department Oversight Board, and
18 the Entertainment Commission may be suspended and removed pursuant to the provisions of
19 subsection (a) of this section except that the Mayor may initiate removal only of the Mayor's
20 appointees and the appointing authority shall act in place of the Mayor for all other appointees.

21 * * * *

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

24 By: /S/ Jon Givner
25 JON GIVNER, Deputy City Attorney

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LEGISLATIVE DIGEST

[Charter Amendment - Sheriff Department Oversight Board and Inspector General]

Describing and setting forth a proposal to the voters at an election to be held on November 3, 2020, to amend the Charter of the City and County of San Francisco to create the Sheriff's Department Oversight Board to advise and report findings and recommendations to the Sheriff and the Board of Supervisors regarding Sheriff's Department operations; to create the Sheriff's Department Office of Inspector General, under the direction of an Inspector General appointed by the Oversight Board, to investigate complaints of non-criminal misconduct by employees and contractors of the Sheriff's Department and in-custody deaths, develop policy recommendations for the Sheriff's Department, and report quarterly its findings, results, and recommendations to the Sheriff and the Oversight Board.

Existing Law

The Sheriff is a state constitutional officer with duties and powers under state law. State law defines the Sheriff's powers in broad terms. Under state law, the Sheriff shall preserve the peace, and arrest and take before a local magistrate all persons who commit crime. The Sheriff is a peace officer and has all powers and responsibilities of a peace officer, including the power to arrest. In addition, state law requires that the Sheriff take charge of and be the sole and exclusive authority to keep the county jail and the prisoners in it.

State law grants to the Board of Supervisors the power and duty to supervise the official conduct of all county officers, including the Sheriff. However, state law places limits on the Board's power and duty to supervise the Sheriff. State law expressly prohibits the Board's obstruction or interference with the Sheriff's independent constitutional and statutorily designated investigative and prosecutorial functions. And the Board of Supervisors has no power to control the Sheriff in the performance of their duties under state law.

Amendments to Current Law

This proposal is a Charter amendment that would create the Sheriff's Department Oversight Board ("SDOB") and the Sheriff's Department Office of Inspector General ("OIG"). The OIG would be a department separate from the Sheriff's Department ("SFSD"). The Board of Supervisors would appoint four members, and the Mayor would appoint three members.

The SDOB would advise and make recommendations to the Sheriff and Board of Supervisors concerning SFSD operations and report its findings and recommendations, based in part on OIG investigations, quarterly to the Sheriff and the Board of Supervisors. Annually, the SDOB would prepare and present to the Board of Supervisors Public Safety and Neighborhood

Services Committee a summary of SDOB evaluations and outreach, and OIG reports submitted to SDOB, for the prior calendar year.

The OIG would receive, review and investigate complaints against SFSD, its employees and contractors, and other City employees serving persons in SFSD custody, investigate in-custody deaths, and recommend a SFSD use of force policy and a SFSD internal review process for use of force and critical incidents.

In carrying out their duties, both the SDOB and OIG could hold hearings, and subpoena witnesses and documents.

All City Departments, including SFSD, would be required to cooperate with the SDOB and OIG. But the proposal would not require the Sheriff to cooperate with any SDOB or OIG request or investigation if that request or investigation obstructed or interfered with the Sheriff's constitutional or statutorily designated duties.

The proposal would specify that OIG staff include no fewer than one investigator for every 100 sworn SFSD employees, and one attorney, and that no SDOB or OIG staff, including the Inspector General, have been employed previously by a law enforcement agency or a labor organization representing law enforcement employees.

Nothing in the proposal would prohibit, limit, or otherwise restrict the Sheriff from investigating the conduct of an employee or contractor of the SFSD, or taking disciplinary or corrective action permitted by City or State law.

The proposal also would not grant the SDOB or the OIG the authority to hire, fire, or discipline personnel in the SFSD, manage or operate the SFSD, issue directives to the Sheriff or any SFSD employee or contractor, or set policy for the SFSD. The proposal would authorize the SDOB and OIG only to advise and make recommendations to the Sheriff and Board of Supervisors concerning SFSD operations, complaints against employees and contractors of the Sheriff, and in-custody deaths.