

**CITY AND COUNTY OF SAN FRANCISCO
BOARD OF SUPERVISORS
BUDGET AND LEGISLATIVE ANALYST**

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Policy Analysis Report

To: Supervisor Walton
From: Budget and Legislative Analyst's Office 
Re: Estimated Cost of Proposed Charter Amendment to Create the Sheriff
Department Oversight Board and Office of Inspector General
Date: June 29, 2020

SUMMARY OF REQUESTED ACTION

Your office requested that the Budget and Legislative Analyst estimate the cost of a proposed charter amendment to create a new Sheriff Department Oversight Board and Office of the Inspector General.

For further information about this report, contact Severin Campbell at the Budget and Legislative Analyst's Office.

Executive Summary

- The proposed legislation would place an initiative on the November 3, 2020 ballot to amend the City's Charter to create a civilian Sheriff's Department Oversight Board (SDOB) and an Office of the Inspector General (OIG) to support the SDOB.
- The SDOB and OIG would be responsible for investigating complaints against the Sheriff's Department and other City employees or contractors who interact with individuals in the Sheriff's custody, as well as making recommendations for disciplinary action and policy changes related to use of force. The SDOB and OIG would have the power to issue subpoenas for documents and testimony but the Sheriff (an elected official) would retain sole discretion to impose discipline on any Sheriff's Department employees and implement policy recommendations.
- The total estimated annual cost for the proposed Sheriff's Department Oversight Board and Office of Inspector General is approximately \$3 million. This is primarily due to the cost of staffing the proposed OIG, estimated at \$2.8 million per year for 14 full-time staff and associated overhead. The SDOB is estimated to cost approximately \$240,000 per year for commission secretary staffing, commissioner compensation and other meeting costs. Based on our understanding of proposed changes to the Charter Amendment that would delete the mandated Attorney position, the estimated OIG and SDOB costs would be reduced from \$3.0 million to approximately \$2.7 million.
- These are initial estimates based on the best available information and do not include one-time costs for setting up these new bodies (i.e. new case management

system, training, etc.) or other unknown costs related to workload. These costs are based on average FY 2019-20 salary and benefit levels. Actual staffing levels and costs may be higher or lower depending on the appropriation authorized by the Board of Supervisors and other relevant Charter provisions.

- Establishing civilian oversight over elected sheriffs is uncommon in California due to the constitutional independence granted to sheriffs to carry out investigations. However, pending state legislation would codify counties' power to establish civilian oversight with subpoena powers based on existing case law.
- The Department of Police Accountability has previously investigated allegations against Sheriff's Department staff under a Memorandum of Understanding between the two departments. In considering the proposed Charter Amendment, the Board of Supervisors could consider how to incorporate the goals to the proposed Office of Inspector General with the existing work of the Department of Police Accountability.

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Overview of Proposed Legislation

The proposed legislation would put forth an initiative on the November 3, 2020 ballot to amend the City's Charter to create a civilian Sheriff's Department Oversight Board (SDOB) and an Office of the Inspector General (OIG) to support the new Board. The SDOB and OIG would be responsible for investigating complaints against the Sheriff's Department and other City employees or contractors who interact with individuals in the Sheriff's custody, as well as making recommendations for disciplinary action and policy changes related to use of force. However, the Sheriff (an elected official) would remain responsible for deciding whether to accept these recommendations and for implementing them. Discussion of the authority of the Sheriff and local governing boards to oversee Sheriff operations is included in the section below.

Sheriff Department's Oversight Board

The proposed Oversight Board would include 7 members, 4 appointed by the Board of Supervisors and 3 appointed by the Mayor, serving four-year terms starting March 1, 2021. Members must complete a training on custodial law enforcement, constitutional policing and Sheriff's Department policies and procedures. No other experience requirements are specified for SDOB members.

The SDOB would primarily be responsible for overseeing the Office of the Inspector General and making recommendations to the Sheriff regarding policy. The SDOB would have the following duties:

- 1) Appoint and remove the Sheriff's Department Inspector General;
- 2) Evaluate the work of the Office of the Inspector General;
- 3) Compile, evaluate and recommend law enforcement custodial and patrol best practices to the Sheriff;
- 4) Conduct community outreach and receive community input;

- 5) Prepare and submit a quarterly report to the Sheriff and Board of Supervisors regarding its recommendations, outreach work and reports from the OIG;
- 6) Prepare and present an annual report to the Board of Supervisors Public Safety and Neighborhood Services Committee similar to the report in 5).

The SDOB would have the power to hold hearings, issue subpoenas and take testimony in order to carry out its duties.

Sheriff's Department Office of Inspector General

A new department, the Sheriff's Department of Office of Inspector General, would be created to support the SDOB by investigating complaints against the Sheriff's Department's, making policy recommendations on use of force and other custodial policies and procedures, and reporting to the SDOB.

Specifically, the OIG would have the following duties¹:

- 1) Receive, review & investigate complaints against SFSD employees and contractors, as well as employees and contractors of other City Departments delivering services or interacting with persons in the Sheriff's custody;²
- 2) Investigate the death of any individual in the Sheriff's custody;
- 3) Recommend disciplinary action to the Sheriff if it finds a violation of law or Sheriff's Department policy;
- 4) Develop and recommend a use of force policy and internal review process for use of force and critical incidents;
- 5) Submit a quarterly report to Sheriff and SDOB regarding OIG investigations (i.e. number, type, outcome, determination of violation, recommended discipline & outcome of discipline, and policy recommendations).

The OIG would have the power to hold hearings, issue subpoenas and take testimony in order to carry out its duties. All City Departments, including the Sheriff's Department, are required to cooperate with requests from the OIG.

¹ This does not include additional duties for the OIG that were included in a subsequent draft of the legislation provided by the Supervisor's office. These additional duties include monitoring Sheriff's Department operations through audits and other investigations as well as providing a mediation function to resolve complaints.

² Complaints alleging criminal misconduct shall be referred to the District Attorney and complaints alleging violations of ethics laws shall be referred to the Ethics Commission.

The proposed legislation specifies that the OIG would be staffed by investigators based on a ratio of one investigator per 100 sworn Sheriff's Department employees and one attorney, in addition to the Inspector General. Estimated staffing and associated costs are discussed in the next section.

Estimated Cost of Sheriff Department Oversight Board & Officer of Inspector General

In order to produce an initial estimate of the costs of creating the new Sheriff Department's Oversight Board (SDOB) and Office of Inspector General (OIG), we used information from the legislation, data from City departments on commission costs, and Department of Police Accountability information to estimate potential staffing needs. Based on this information and associated assumptions, we estimate the total ongoing annual cost for the proposed Sheriff's Department Oversight Board and Office of Inspector General to be approximately \$3 million, based on FY 2019-20 salary and benefit costs. This is primarily driven by the cost of staffing the proposed OIG, estimated at approximately \$2.8 million per year for 14 staff and overhead. The SDOB is estimated to cost approximately \$240,000 per year for commission secretary staffing, commissioner compensation and other meeting costs. Exhibit 1 details the estimated costs and key assumptions.

Exhibit 1: Sheriff's Department Oversight Board & Office of Inspector General Cost Estimates

Office of Inspector General Staffing & Costs

Position (Class)	FTE	Cost per FTE ^a	Total Cost
Inspector General (Dept. Head III/963)	1.00	\$ 306,603	\$ 306,603
Sr Investigator (8126)	2.00	171,158	342,315
Investigator (8124) ^b	8.00	156,031	1,248,249
Attorney (8177)	1.00	289,718	289,718
Executive Secretary (1450)	1.00	126,692	126,692
Legal Assistant (8173)	1.00	141,641	141,641
Total Staffing	14.00	-	\$ 2,455,220
Overhead Costs (HR, IT, Office Space)^c		\$24,129	\$ 337,813
<i>% Overhead Costs (of total)</i>			<i>14%</i>
Total OIG Cost	14.00		\$ 2,793,032

Sheriff's Department Oversight Board Staffing & Costs

Item/ Position (Class)	FTE/ #	Cost per FTE	Total Cost
Commission Secretary (1454)	1.00	\$ 148,283	\$ 148,283
Commissioner Compensation (114)	7.00	1,200	8,400
Other Commissioner Costs ^d	-	-	33,680
Meeting Costs	-	-	50,235
Other Costs	-	-	-
Total SDOB Cost	8.00	-	\$ 240,598
	FTE		Cost
Total SDOB & OIG Cost	22.00		\$ 3,033,631

Source: BLA estimate based on Department and budget data.

Notes: See full description of assumptions in the Appendix.

^a Salary and fringe benefit costs per FTE are from the City's financial system labor cost reports for FY 2019-20. Salaries are budgeted at the top step; the actual salaries may be less if new staff are hired at less than top step.

^b Investigator staffing based on ratio specified in proposed legislation of one investigator per 100 sworn Sheriff's Department staff. 8 investigators were estimated based on 834.21 sworn staff (FTE) from the FY 2019-20 funded positions budget (there were 942.95 authorized positions for FY 2019-20).

^c Overhead costs per FTE calculated based on DPA overhead costs (excludes one-off costs associated with the development a new IT case management system).

^d Other Commissioner Costs include commissioner health benefits (assumes 50% uptake).

Cost Assumptions

The OIG staffing cost estimates are based on ratios set out in the proposed legislation or Department of Police Accountability ratios and are not based on expected workload. Actual staffing is subject to appropriation by the Board of Supervisors and other relevant Charter provisions.

Based on our understanding of proposed changes to the Charter Amendment that would delete the mandated Attorney position, the estimated OIG staff costs would be reduced from approximately \$2.8 million to approximately \$2.5 million, and total combined OIG and SDOB costs would be reduced from \$3.0 million to approximately \$2.7 million.

The estimates above do not include additional one-time costs that may be required to set up these bodies. For example, the Department of Police Accountability estimated that they spent around \$260,000 to develop and implement a Salesforce-based case management and reporting system to track Police Department investigations and produce required reports. The costs also do not include additional dedicated staff to produce required

quarterly and annual reports or review and develop policy recommendations. It is assumed these functions could be performed by existing staff.

Further discussion of our assumptions of staffing and operating costs for the proposed SDOB and OIG are included in the Appendix.

Existing Sheriff Department Oversight

Establishing civilian oversight over elected Sheriff's Departments has generally been rare in California due to the constitutional independence granted to Sheriffs to carry out investigations. However, Los Angeles county established a Sheriff civilian oversight commission in 2016 and other counties have created Inspector General offices to oversee or investigate specific incidents involving Sheriff's Department misconduct. Pending State legislation would also codify counties' ability to establish civilian Sheriff oversight with subpoena powers. In San Francisco, the Sheriff's Department has been solely responsible for investigating complaints of misconduct by its officers. In 2019, the Sheriff's Department entered into an agreement with the Department of Police Accountability to investigate several existing high-profile allegations of misconduct as well as new cases referred at the Sheriff's discretion. The DPA reviewed and closed 33 of 36 cases under this MOU before its suspension due to a grievance by the Deputy Sheriff's Association. Around a third of the closed cases had findings for misconduct that were sustained, including one for inappropriate use of force.

Legal Authority for Civilian Oversight of Sheriff's Departments

Unlike the Police Chief, who is appointed by the Mayor, local sheriffs are an independent elected position established in the California Constitution.³ Direct supervision of local sheriffs is assigned to the State Attorney General⁴ and local governing bodies, such as the board of supervisors, are generally restricted from interfering with the investigative functions of the sheriff. However, state statute specifies that the board of supervisors has the authority to supervise the conduct of all county officers and retains budgetary authority over the sheriff.⁵ This has meant local sheriff's departments have generally not been subject to civilian oversight and have

³ See California Constitution, Article XI, Sec. 1(b) & Sec. 4(c)

⁴ See California Constitution, Article V, Sec. 13

⁵ California Government Code Sec. 25303

been responsible for investigating citizen complaints according to internal policies and procedures, and applicable state laws.

Legal precedent indicates that an oversight body, such as the proposed SDOB and OIG, may be permissible, and several counties, including Los Angeles County, have set up civilian oversight over their sheriff's departments. Additionally, Assembly Bill (AB) 1185 was introduced in 2019 which would have codified in statute the ability for counties to set up civilian oversight bodies over the counties' sheriff's departments, including with the ability to subpoena the Sheriff and deputies.⁶ AB 1185 was pulled from inactive and ordered to a second reading on June 11, 2020.

Sheriff Department Oversight and Complaint Investigation in San Francisco

In San Francisco, until 2019, the Sheriff's Department was responsible for investigating complaints against its employees and sworn officers and determining any disciplinary action. According to the Sheriff's internal policies and procedures, investigations can only be authorized by the Sheriff, Undersheriff or Assistant Sheriff and are carried out by investigators in the Department's Internal Affairs Bureau.⁷ The policy specifies that findings and recommendations from any investigations be submitted to the Sheriff who is also responsible for determining any disciplinary action.

In May 2019, the Sheriff's Department signed a Memorandum of Understanding (MOU) with the Department of Police Accountability for the investigation of around 19 existing cases of alleged sheriff deputy misconduct as well as new cases referred by the Sheriff. Under the MOU, the DPA would investigate the cases and complaints referred to it, make a determination of whether the allegations were sustained, and provide a non-binding disciplinary recommendation to the Sheriff.⁸ The DPA assigned around five staff to investigate Sheriff cases, two to three investigators, one senior investigator, and one attorney.

However, no further cases have been referred to DPA pending a meet and confer between the City and the Deputy Sheriff's Association on the MOU.

⁶ Assembly Bill 1185 (2019)

⁷ Sheriff's Policy & Procedure Manual – Part 2, SFSD 04-06: Internal Affairs Policy and Procedure, revised 10/10/1997 (<https://www.sfsheriff.com/forms-policies-reports/policies-and-rules>)

⁸ The DPA indicated that it was not providing a finding (sustained or not) or disciplinary recommendations following a request from the previous Sheriff to retain this authority.

Policy Alternative

Setting up a new department takes time to set up systems and hire staff, and results in new General Fund overhead costs. In considering the proposed Charter Amendment, the Board of Supervisors could consider how to incorporate the goals to the proposed Sheriff's Department Office of Inspector General with the existing work of the Department of Police Accountability. This consideration would need to include the role of the Sheriff's Department Oversight Board and appointment of the Inspector General.

APPENDIX

Detailed Cost Assumptions

The costs estimated above are an initial estimate based on the initial legislation submitted and the best available information at the time of writing.⁹ Several important assumptions, caveats and uncertainties underlie these estimates which could impact the actual cost of setting up the SDOB and OIG. In particular, we used staffing information and costs from the DPA given the similarities in functions. The key assumptions include:

- **Management & supervision oversight:** we used the same ratio used in DPA for investigators to senior investigators (3:1). However, given uncertainties about workload we did not include additional supervisory or management staff which are included in the DPA (i.e. Chief of Staff, Deputy Chief Attorney, Deputy Directors, etc.). Increasing managerial and supervisory oversight would increase the staffing cost of the OIG.
- **Support staff:** we used similar classifications as used by DPA for support staff. Discussion with the DPA indicated complaint investigations require both paralegal and administrative support. Given uncertainties about workload, we only included one paralegal (legal assistant) and assumed the Inspector General's support staff could be used to support investigators.
- **Legal and analytical staff:** given uncertainties around workload, we did not include any additional legal staff besides the one attorney position specified in the proposed legislation. However, DPA currently employs

⁹ The costs do not include additional functions identified in a subsequent draft of the legislation provided to the BLA. These additional functions include overall monitoring of Sheriff's Department operations, including audits and other investigations, as well as a mediation function for resolving complaints. Estimates for these functions could be estimated based on the DPA costs for providing these functions.

around 1 attorney for every 2.35 investigators. It may be difficult for one attorney to review OIG cases and help develop policy recommendations. We also assumed existing management staff would be responsible for producing the required quarterly and annual reports.

- **Overhead costs:** given uncertainties about workload and staffing, we used the average overhead cost per employee (FTE) for the DPA to estimate OIG overhead costs. These costs are based on work orders with various City departments to provide basic IT, Human Resources, and office space services. The actual costs for these services will depend on the needs of the OIG.
- **SDOB costs:** SDOB costs were estimated based on information from four other commissions with similar scope and level of responsibility: Police, Fire, Public Utilities and Airport
- **SB1421/ Public Records Requests:** SB1421 increased access to law enforcement investigation records under the California Public Records Act. The OIG would likely be covered under this statute and may require additional support staff to review, redact and release records requested.
- **FY 2019-20 Costs used:** given the economic uncertainty and interaction with labor union contracts, proposed Cost of Living Adjustments may be delayed. We used the average budgeted cost for salary and benefits at the top step for positions for FY 2019-20.

Comparison of Department of Police Accountability to Proposed Sheriff’s Department Office of Inspector General

The table below provides a comparison of the mandate, staffing and duties of the Department of Police Accountability to the proposed Office of Inspector General. The comparison is based on the description of the Department of Police Accountability in the City’s Charter.

Exhibit A1: Comparison Table

Provision	DPA (SF Charter Sec. 4.136)	SFSD OIG (Proposed Charter Amendment)
Department Head	Member of Police Commission, appointed by Mayor, subject to BOS confirmation. Exempt from Civil Service requirements	Appointed by SDOB, Exempt from Civil Service selection, appointment & removal procedures
Staffing	1 investigator : 150 sworn staff	1 investigator: 100 sworn staff; 1 attorney

Provision	DPA (SF Charter Sec. 4.136)	SFSD OIG (Proposed Charter Amendment)
Duties – Disciplinary action recommendations	Recommend disciplinary action to Chief of Police, meet & confer with Chief to discuss and file charges with Police Commission after review. The Police Commission can impose disciplinary action in cases filed by the DPA or where the discipline recommended exceed a 10-day suspension.	Recommend disciplinary action to the Sheriff and report quarterly to SDOB on outcome of disciplinary recommendation (no provision for filing charges with SDOB). The SDOB does not have the power to impose disciplinary action on Sheriff’s Department employees.
Duties	<ol style="list-style-type: none"> 1) Investigate all complaints regarding police use of force, misconduct or neglect of duty (except Police lodged complaints or prima facie valid complaints). Conclude investigations within 9 months (with exception) 2) Recommend disciplinary action to Chief of Police and file charges with Police Commission (certain exceptions) 3) Hold hearings if requested by complainant or Police Department 4) Monthly summaries of complaints received 5) Quarterly recommendations regarding Department policy changes to avoid unnecessary tension with the public 6) Quarterly report to BOS regarding complaints & outcomes 7) Conduct performance audit of police officer use of force and claims of misconduct every two years 	<ol style="list-style-type: none"> 1) Receive, review & investigate complaints against SFSD employees & contractors, employees and contractors of other City Departments delivering services or interacting with persons in SFSD custody 2) Investigate the death of any individual in SFSD custody 3) Recommend disciplinary action to the Sheriff (if violation of law or SFSD policy) 4) Develop & recommend SFSD use of force policy and internal review process for use of force and critical incidents 5) Submit quarterly report to Sheriff and SDOB regarding OIG investigations (number, type, outcome, determination of violation, recommended discipline & outcome, policy recommendations)
Powers	Hold hearings, request testimony or documents from any City and County employees, departments or officers (including Police officers).	Hold hearings, issue subpoenas & take testimony

Source: BLA analysis of Charter Amendment legislation and City and County Charter.