

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: June 30, 2020

SUBJECT: CHARTER AMENDMENT INTRODUCED
November 3, 2020 Election

On June 29, 2020, the Board of Supervisors' Rules Committee amended 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 (Second 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’s 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,
2 and 7). Seat 4 shall be held by a person with experience in labor representation.

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 ("SFSD") policies and
16 procedures, within 90 days of assuming office for their first term. The Sheriff or the Sheriff's
17 designee shall prescribe the content of and shall administer the training and orientation
18 regarding SFSD patrol and custodial law enforcement, policies and procedures. SFSD shall
19 develop the training content based on guidelines recommended by the National Association of
20 Civilian Oversight for Law Enforcement ("NACOLE") or successor association, the Bar
21 Association of San Francisco or successor association, and/or the American Civil Liberties
22 Union, and SFSD shall consult with the Department of Police Accountability, Public Defender,
23 and the District Attorney in developing the training content.

24 (b) SDOB Powers and Duties. The SDOB shall:
25

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

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

5 (3) Compile, evaluate, and recommend law enforcement custodial and patrol best
6 practices.

7 (4) Conduct community outreach and receive community input regarding SFSD
8 operations and jail conditions, by holding public meetings and soliciting input from persons
9 incarcerated in the City and County.

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

12 (6) By March 1 of each year, prepare and present to the Board of Supervisors or
13 a committee designated by the President of the Board, an annual report that includes a summary
14 of SDOB evaluations and outreach, and OIG reports submitted to SDOB, for the prior calendar
15 year.

16 (c) In performing its duties, the SDOB may hold hearings, issue subpoenas to witnesses
17 to appear and for the production of evidence, administer oaths, and take testimony.

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

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

24 (1) Receive, review, and investigate complaints against SFSD employees and
25 SFSD contractors; provided, however, that the OIG shall refer complaints alleging criminal

1 misconduct to the District Attorney, and refer complaints alleging violations of ethics laws to the
2 Ethics Commission.

3 (2) Investigate the death of any individual in the custody of the SFSD. The OIG
4 shall refer evidence of criminal misconduct regarding any death in custody to the District
5 Attorney. Notwithstanding such a referral, the OIG may continue to investigate a death in
6 custody unless OIG's investigation will interfere with a criminal investigation conducted by the
7 District Attorney, or any law enforcement agency to which the District Attorney may refer the
8 evidence of criminal misconduct.

9 (3) Recommend disciplinary action to the Sheriff where, following an
10 investigation pursuant to subsection (e)(1) or (e)(2), the OIG determines that an employee's
11 actions or omissions violated law or SFSD policy; provide notice of and a copy of the
12 recommendation, the reasons for the recommendation, and supporting records, to the extent
13 permitted by State or federal law, to the employee; and make available to the public any records
14 and information regarding OIG's disciplinary recommendations to the extent permitted by State
15 or federal law.

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

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

1 (6) Monitor SFSD operations, including the provision of services to incarcerated
2 individuals, through audits and investigations, to ensure compliance with applicable laws and
3 policies.

4 (f) In performing its duties, the OIG may hold hearings, issue subpoenas to witnesses to
5 appear and for the production of evidence, administer oaths, and take testimony. The OIG also
6 may request and the Sheriff shall require the testimony or attendance of any employee of the
7 SFSD.

8 (g) Cooperation and Assistance from City Departments. In carrying out their duties, the
9 SDOB and OIG shall receive prompt and full cooperation and assistance from all City
10 departments, officers, and employees, including the Sheriff and SFSD and its employees, which
11 shall, unless prohibited by State or federal law, promptly produce all records and information
12 requested by the SDOB or OIG, including but not limited to (1) personnel and disciplinary
13 records of SFSD employees, (2) SFSD criminal investigative files, (3) health information
14 pertaining to incarcerated individuals; and (4) all records and databases to which the SFSD has
15 access, regardless of whether those records pertain to a particular complaint or incident. The
16 Sheriff also shall, unless prohibited by State or federal law, allow the OIG unrestricted and
17 unescorted access to all facilities, including the jails. The SDOB and OIG shall maintain the
18 confidentiality of any records and information it receives or accesses to the extent required by
19 local, State, or federal law governing such records or information.

20 In carrying out their duties, the SDOB and OIG shall cooperate and collaborate with
21 organizations that contract with SFSD to provide legal services to incarcerated individuals.

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. No SDOB or OIG staff, including the Inspector General, shall have been
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1 employed previously by a law enforcement agency or a labor organization representing law
2 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 subsections (f) and (g), is
7 intended to or shall be interpreted to abrogate, interfere with, or obstruct the independent and
8 constitutionally and statutorily designated duties of the Sheriff, including the Sheriff's duty to
9 investigate citizens' complaints against SFSD personnel and the duty to operate and manage the
10 jails, the California Attorney General's constitutional and statutory responsibility to oversee the
11 Sheriff, or other applicable State law. In carrying out their duties, the SDOB and OIG shall
12 cooperate and coordinate with the Sheriff so that the Sheriff, the SDOB, and the OIG may
13 properly discharge their respective responsibilities.

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15 **SEC. 15.105. SUSPENSION AND REMOVAL.**

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

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

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

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

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

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LEGISLATIVE DIGEST

Revised 06/29/20

[Charter Amendment - Sheriff's 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 under the SDOB and separate from the Sheriff's Department ("SFSD"). The Board of Supervisors would appoint four members (seats 1-4), and the Mayor would appoint three members (seats 5-7). Seat 4 would be held by a person with experience in labor representation.

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 a committee designated by the President of the Board of Supervisors 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, 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. The OIG would refer evidence of criminal misconduct regarding any death in custody to the District Attorney, but, notwithstanding that referral, could continue to investigate a death in custody unless OIG's investigation would interfere with an investigation conducted by the District Attorney or a law enforcement agency to which the District Attorney referred the matter. The OIG also would monitor SFSD operations, including the provision of services to incarcerated individuals, through audits and investigations, to ensure compliance with applicable laws and policies.

In carrying out their duties, both the SDOB and OIG could hold hearings, and subpoena witnesses and documents. The OIG also could request that the Sheriff require the testimony or attendance of any employee of the SFSD.

All City Departments, including SFSD, would be required to cooperate with the SDOB and OIG and, unless prohibited by State or federal law, would be required to promptly produce all records and information requested by the SDOB or OIG, including but not limited to (1) personnel and disciplinary records of SFSD employees, (2) SFSD criminal investigative files, (3) health information pertaining to incarcerated individuals; and (4) all records and databases to which the SFSD has access, regardless of whether those records pertain to a particular complaint or incident. Also, unless prohibited by State or federal law, the Sheriff would be required to allow the OIG unrestricted and unescorted access to all facilities, including the jails. 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 also would require the SDOB and OIG to cooperate and collaborate with organizations that contract with SFSD to provide legal services to incarcerated individuals.

The proposal would specify that OIG staff include no fewer than one investigator for every 100 sworn SFSD employees, 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.

Background

This proposal reflects amendments made in the Rules Committee on June 29, 2020.

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