

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

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
Michael Brown, Executive Officer, Civil Service Commission

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

DATE: July 10, 2020

SUBJECT: CHARTER AMENDMENT
November 3, 2020 Election

On July 9, 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. 200509

Charter Amendment (Fourth Draft) to amend the Charter of the City and County of San Francisco to: 1) create the Office of the Public Advocate; 2) set the Public Advocate's powers and duties; 3) authorize the Public Advocate to review the administration of City programs and services, including programs for transmitting information to the public and departments' customer service plans, and to receive, investigate, and attempt to resolve complaints regarding City services and programs; 4) authorize the Public Advocate to receive and investigate specified whistleblower complaints; and 5) provide for the Public Advocate's election, removal, and salary; 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

1 [Charter Amendment - Public Advocate]

2

3 **Describing and setting forth a proposal to the voters, at an election to be held on**
 4 **November 3, 2020, to amend the Charter of the City and County of San Francisco to:**
 5 **1) create the Office of the Public Advocate; 2) set the Public Advocate’s powers and duties;**
 6 **3) authorize the Public Advocate to review the administration of City programs and**
 7 **services, including programs for transmitting information to the public and departments’**
 8 **customer service plans, and to receive, investigate, and attempt to resolve complaints**
 9 **regarding City services and programs; 4) authorize the Public Advocate to receive and**
 10 **investigate specified whistleblower complaints; and 5) provide for the Public Advocate’s**
 11 **election, removal, and salary.**

12

13 Section 1. The Board of Supervisors hereby submits to the qualified voters of the City
 14 and County, at an election to be held on November 3, 2020, a proposal to amend the Charter of
 15 the City and County by revising Sections 6.100, 10.104, 13.101, 13.101.5, 13.102, 15.105,
 16 A8.409-1, F1.102, F1.107, and F1.114, adding Section 6.107 and Article VIIC, consisting of
 17 Sections 8C.100 through 8C.104, and deleting Section F1.108, to read as follows:

18

19 NOTE: **Unchanged Charter text and uncodified text** are in plain font.
 20 **Additions** are *single-underline italics Times New Roman font*.
 21 **Deletions** are ~~*strike-through italics Times New Roman font*~~.
 22 **Asterisks (* * * *)** indicate the omission of unchanged Charter
 subsections.

22

23 **SEC. 6.100. DESIGNATION OF OTHER ELECTIVE OFFICERS.**

24 (a) In addition to the officers required to be elected under other Articles of this Charter,
 25 the following shall constitute the elective officers of the City and County: the Assessor-

1 Recorder, City Attorney, District Attorney, Public Defender, Sheriff, ~~and~~ Treasurer, and Public
2 Advocate. Each such officer shall be elected for a four-year term and shall serve full time.

3 (b) The City Attorney shall be licensed to practice law in all courts of the State of
4 California and shall have been so licensed for at least ten years next preceding the date the City
5 Attorney assumes office ~~his or her election~~. The District Attorney and Public Defender shall each
6 be licensed to practice law in all courts of the State of California and shall have been so licensed
7 for at least five years next preceding the date each assumes office ~~his or her election~~. ~~Such~~ The
8 officers named in this subsection (b) shall not engage in the private practice of law during the
9 period they serve as elective officers of the City and County.

10 (c) Subject to the powers and duties set forth in this Charter, the officers named in this
11 ~~§~~Section 6.100 shall have such additional powers and duties prescribed by state laws for their
12 respective offices, and as prescribed by ordinance. The terms of office in effect for these
13 officers on the date this Charter is adopted shall continue.

14
15 **SEC. 6.107. PUBLIC ADVOCATE.**

16 (a) There shall be a Public Advocate for the City and County of San Francisco. The
17 functions, powers, and duties of the Public Advocate are set forth in Article VIIC.

18 (b) The Public Advocate shall appoint a Chief Deputy Public Advocate and two Assistant
19 Public Advocates, who shall serve at the pleasure of the Public Advocate, and may have such
20 other staff as provided according to the budgetary and fiscal provisions of the Charter. The
21 position of Chief Deputy Public Advocate shall be exempt from competitive civil service
22 selection, appointment, and removal procedures under Section 10.104(2), and the position of
23 Assistant Public Advocate shall be exempt under Section 10.104(14).

24 (c) The City Attorney shall be the attorney for the Public Advocate.
25

1 (d) During his or her tenure, the Public Advocate shall not contribute to, solicit
2 contributions to, publicly endorse or oppose or urge the endorsement of or opposition to or
3 otherwise participate in a campaign for a candidate for City elective office, other than himself or
4 herself, or be an officer, director, or employee of or hold a policy-making position in an
5 organization that makes political endorsements regarding candidates for City elective office.

6 (e) No person shall serve as Public Advocate for more than two successive terms. There
7 shall be no limit on the number of non-successive terms that a person may serve as Public
8 Advocate. A part of a term that exceeds two years shall count as a full term for these purposes.
9 The two-year term beginning January 8, 2023 under Section 13.101(b)(6) shall not be deemed to
10 be a full term for purposes of the two-successive term limit.

11
12 **ARTICLE VIIC: OFFICE OF THE PUBLIC ADVOCATE**

13 **SECT. 8C.100. PUBLIC ADVOCATE—PURPOSE.**

14 The People of San Francisco establish the Office of the Public Advocate to ensure the
15 existence of an office in City government dedicated to investigating, uncovering, and eliminating
16 public corruption, the fraudulent use of taxpayer money, and the abuse of the public trust.

17
18 **SEC. 8C.101. PUBLIC ADVOCATE—GENERAL POWERS AND DUTIES.**

19 (a) Access to City Records. Except as provided in this subsection (a), the Public
20 Advocate shall have timely access to all records in the possession of City officers and agencies
21 that the Public Advocate deems necessary to complete the investigations, inquiries, and reviews
22 required of the Public Advocate by the Charter or other City law, and if necessary may issue
23 subpoenas to enforce this right of access to such records. The Public Advocate shall not have a
24 right of access to records the public disclosure of which is forbidden by state or federal law, or
25 records protected from public disclosure by privileges under federal, state, or City law, or by

1 other confidentiality provisions the existence of which is derived from some source of state law
2 other than the Public Records Act, including, but not limited to, rules governing criminal
3 investigations and prosecution files. The Public Advocate may not disclose records that the City
4 officer or agency possessing the records may decline to disclose under the Public Records Act
5 and the Sunshine Ordinance, as either may be amended from time to time, if the officer or
6 agency declines to disclose such records.

7 (b) **Access to Third-Party Witnesses and Records.** In performing the duties of the office,
8 the Public Advocate may administer oaths, take testimony, and, if necessary to complete the
9 investigations, inquiries, and reviews required by the Charter or other City law, issue subpoenas
10 to require witnesses to appear and produce evidence. The Public Advocate may seek
11 enforcement of such subpoenas in the manner prescribed by law.

12 (c) **Introduce Legislation.** The Public Advocate may introduce legislation at the Board
13 of Supervisors. The Public Advocate may not introduce legislation addressing specific matters
14 addressed in a negotiated labor agreement or memorandum of understanding with a labor
15 organization representing City employees, or addressing any contract or personnel matters
16 unless those specific contracts or personnel matters exclusively involve the Office of the Public
17 Advocate.

18 (d) **Hearings.** The Public Advocate may hold public hearings in the course of fulfilling
19 the duties of the office.

20 (e) **Confidentiality of Records.** The Public Advocate may, to the extent permitted by
21 state law, determine that the records of any investigation, including but not limited to
22 information that would reveal the identity of complainants and witnesses or confidential
23 personnel information, are confidential information. It shall be official misconduct for any
24 person to disclose information about any such investigation, except as necessary to conduct the
25 investigation, or with proper authorization, or as required by law or lawful process. The Public

1 Advocate may disclose confidential information to the City Attorney, the Ethics Commission, the
2 Controller, or District Attorney for the purpose of investigations or prosecutions by those offices.
3 The unauthorized release of confidential information shall be sufficient grounds for the
4 termination of any employee.

5 (f) Reports. The Public Advocate may issue reports relating to the operations or
6 activities of any City officer or agency, including recommendations for administrative or
7 legislative changes. The Public Advocate may, to the extent permitted by state law, designate
8 any portion of any draft, preliminary, or final report as confidential information.

9 (g) Annual Report. Not later than December 1 of each year, the Public Advocate shall
10 publicly release a report on the activities of the office during the preceding fiscal year. The
11 report may include:

12 (1) A statistical summary of the complaints received during such fiscal year,
13 categorized by agency, type of complaint, agency response, mode of resolution, and such other
14 factors as the Public Advocate deems appropriate;

15 (2) An analysis of recurring complaints and complaints raising systemic or
16 citywide issues and the Public Advocate's recommendations for administrative, legislative, or
17 budgetary actions to resolve the underlying problems causing the complaints;

18 (3) A summary of the findings and recommendations of the agency program
19 reviews conducted during the fiscal year and a summary of each agency's responses to such
20 findings and recommendations; and

21 (4) Legislative proposals to improve the provision of City services and programs.

22
23 **SEC. 8C.102. PUBLIC ADVOCATE—REVIEW OF CITY PROGRAMS AND SERVICES.**

24 (a) The Public Advocate may review the administration of City programs and services.
25 Such systematic reviews may include, but shall not be limited to, evaluations of any or all of the

1 following: (1) the distribution of City programs and services throughout the City; (2) the
2 effectiveness of the public information programs and service complaint features of City agencies;
3 and (3) the responsiveness of City agencies to requests for data or information regarding the
4 agencies' structure, activities, and operations. The Public Advocate shall submit any final
5 reports documenting or summarizing such reviews to the Board of Supervisors, the Mayor, and
6 the appropriate agency, and shall include in such reports the Public Advocate's
7 recommendations for addressing the problems identified and, if appropriate, the fiscal
8 implications of such recommendations.

9 (b) The Public Advocate may review the management and employment practices and
10 policies of City officers and agencies to determine whether they promote or impede the effective
11 and efficient operation of City government.

12 (c) The Public Advocate may review the City's contracting procedures and compliance
13 with contracting rules and standards.

14 (d) The Public Advocate may conduct performance audits of City departments, services,
15 programs, and other activities. Nothing in this Section 8C.102 shall affect the powers or duties
16 of the Controller acting as City Services Auditor under Charter Section F1.104, and the Public
17 Advocate may coordinate with the City Services Auditor when both officers decide to conduct a
18 performance audit of the same City department, service, program, or activity.

19 (e) The Public Advocate may assess the progress of City departments' compliance
20 with Charter Section 16.120 and any implementing ordinances requiring City departments to
21 prepare effective customer service plans. The Public Advocate may make recommendations to
22 departments to improve the effectiveness of such plans, or to the Mayor and the Board of
23 Supervisors regarding improvements in such plans generally. The Public Advocate shall report
24 to the Board of Supervisors and Mayor the failure of any department to comply substantially
25 with the Public Advocate's recommendations regarding customer service plans.

1
2 **SEC. 8C.103. PUBLIC ADVOCATE—INDIVIDUAL COMPLAINTS.**

3 (a) The Public Advocate may receive, investigate, and attempt to resolve complaints
4 from members of the public concerning public corruption, fraudulent use of taxpayer money, or
5 abuse of power in City services, programs, or activities, except for those that:

6 (1) another City agency is required by law to adjudicate or otherwise resolve;

7 (2) may be resolved through a grievance mechanism established by collective
8 bargaining agreement or contract; or

9 (3) involve allegations of conduct that may constitute a violation of criminal law.

10 (b) If the Public Advocate receives a complaint that is subject to a procedure described
11 in items (1) or (2) of subsection (a), the Public Advocate shall advise the complainant of the
12 appropriate procedure for the resolution of such complaint. If the Public Advocate receives a
13 complaint of the type described in item (3) of subsection (a), the Public Advocate shall promptly
14 refer the matter in accordance with subsection (e).

15 (c) If the Public Advocate receives a complaint that involves conduct of a City employee
16 that could lead to discipline, the Public Advocate shall refer the matter to, the Department of
17 Human Resources or the agency for which the employee works. If the Public Advocate receives
18 a complaint that involves conduct of a sworn Police Department employee, the Public Advocate
19 shall also notify, consult with and refer the matter to, the Department of Police Accountability
20 and the appropriate division of the Police Department charged with investigating employee
21 misconduct. If the Public Advocate refers a matter to another department as provided in this
22 subsection (c), the Public Advocate may continue to investigate and shall refer investigative
23 findings to the appropriate department under this subsection (c). The Public Advocate shall
24 have no authority to impose discipline on any City employee or officer.
25

1 (d) If the Public Advocate receives a complaint alleging conduct that may constitute a
2 violation of conflict of interest or governmental ethics laws, or if during the conduct of any
3 investigation, inquiry, or review authorized by this Section 8C.103 the Public Advocate discovers
4 that the matter involves conduct that may constitute a violation of conflict of interest or
5 governmental ethics laws, the Public Advocate shall promptly refer the complaint and
6 information regarding the alleged violation to the Ethics Commission, City Attorney, District
7 Attorney, and either the Department of Human Resources or the heads of department or
8 departments for whom the involved employee or employees work. Before making a
9 determination whether alleged conduct may constitute a violation of conflict of interest or
10 governmental ethics laws for purposes of this referral, the Public Advocate shall consult with the
11 City Attorney. Within 10 working days after receipt of a complaint referred from the Public
12 Advocate, each office or department to which the Public Advocate has referred the complaint
13 under this subsection (d) shall inform the Public Advocate in writing regarding whether the
14 office or department has initiated or intends to pursue an investigation of the matter. If the City
15 Attorney or District Attorney informs the Public Advocate in writing by that deadline that it has
16 initiated or intends to pursue an investigation, then the Public Advocate shall suspend its own
17 investigation.

18 (e) If the Public Advocate receives a complaint alleging conduct that may constitute a
19 violation of criminal law, or if during the conduct of any investigation, inquiry, or review
20 authorized by this Section 8C.103 the Public Advocate discovers that the matter involves conduct
21 that may constitute a violation of criminal law, the Public Advocate shall promptly refer the
22 complaint and information regarding the alleged violation to the District Attorney. Before
23 making a determination whether alleged conduct may constitute a violation of criminal law for
24 purposes of this referral, the Public Advocate shall consult with the District Attorney. Within 10
25 working days after receipt of a complaint referred from the Public Advocate, the District

1 Attorney shall inform the Public Advocate in writing regarding whether the office has initiated
2 or intends to pursue an investigation of the matter. If the District Attorney informs the Public
3 Advocate in writing by that deadline that it has initiated or intends to pursue an investigation,
4 then the Public Advocate shall suspend its own investigation.

5 (f) Upon an initial determination that a complaint may have merit or that the Public
6 Advocate cannot determine whether it may have merit, the Public Advocate shall refer the
7 complaint to the appropriate agency for resolution. If such agency does not resolve the
8 complaint in a manner that is satisfactory to the Public Advocate within a reasonable time as
9 determined by the Public Advocate, the Public Advocate may conduct an investigation and make
10 specific recommendations to the agency for resolution of the complaint. If, within a reasonable
11 time thereafter as determined by the Public Advocate, such agency has failed to respond to the
12 recommendations in a manner that is satisfactory to the Public Advocate, the Public Advocate
13 may issue a report to the Board of Supervisors, the Mayor, and the agency, describing the
14 conclusions of the investigation and making such recommendations for administrative,
15 legislative, or budgetary action, together with their fiscal implications, as the Public Advocate
16 deems necessary to resolve the complaint or to address the underlying problems discovered in
17 the investigation. In exercising its functions under this subsection (f), the Public Advocate may
18 treat related complaints together.

19 (g) The Public Advocate shall establish procedures for implementing this Section
20 8C.103, including, without limitation, receiving and processing complaints, responding to
21 complainants, conducting investigations, and reporting findings, and shall inform the public
22 about such procedures.

23
24 **SEC. 8C.104. PUBLIC ADVOCATE—WHISTLEBLOWERS.**

1 (a) The Public Advocate shall have the authority to receive complaints by members of
2 the public concerning allegedly: incorrect, unreasonable, or unfair decisions by City officers or
3 agencies; inconsistent enforcement, or failure to enforce, laws, rules, or regulations; poor or
4 inadequate service delivery or treatment; poor communication, including unreasonably long
5 response or wait times and unreasonable response delays; or inequitable or inefficient provision
6 of City programs or services. The Public Advocate may investigate and otherwise attempt to
7 resolve such individual complaints except for those that:

8 (1) another City agency is required by federal, state, or City law to adjudicate;

9 (2) may be resolved through a grievance mechanism established by collective
10 bargaining agreement or contract; or

11 (3) involve allegations of conduct that may constitute a violation of criminal law.

12 (b) If the Public Advocate receives a complaint described in items (1), (2), or (3) of
13 subsection (a), the Public Advocate shall advise the complainant of the appropriate procedure
14 for the resolution of such complaint.

15 (c) If the Public Advocate receives a complaint under this Section 8C.104 alleging
16 conduct that may constitute a conflict of interest or governmental ethics law, or that may
17 constitute a violation of criminal law, the process set forth in subsections (d) and (e) of Section
18 8C.103 shall apply.

19
20 **SEC. 10.104. EXCLUSIONS FROM CIVIL SERVICE APPOINTMENT.**

21 All employees of the City and County shall be appointed through competitive
22 examination unless exempted by this Charter. The following positions shall be exempt from
23 competitive civil service selection, appointment, and removal procedures, and the person serving
24 in the position shall serve at the pleasure of the appointing authority:

25 * * * *

1 2. All elected officers of the City and County and their chief deputies or chief assistants;

2 * * * *

3 14. The law librarian, assistant law librarians, bookbinder of the Law Library,
4 purchaser, curators, Assistant Sheriff, Deputy Port Director, Chief of the Bureau of Maritime
5 Affairs, Director of Administration and Finance of the Port, Port Sales Manager, Port Traffic
6 Manager, Chief Wharfinger, Port Commercial Property Manager, Actuary of the Employees'
7 Employee's Retirement System, Director of the Zoo, Chief Veterinarian of the Zoo, Director of
8 the Arboretum and Botanical Garden, Director of Employee Relations, Health Service
9 Administrator, Executive Assistant to the Human Services Director, Assistant Public Advocate,
10 and any other positions designated as exempt under the 1932 Charter, as amended;

11 * * * *

12
13 **SEC. 13.101. TERMS OF ELECTIVE OFFICE.**

14 (a) Except in the case of an appointment or election to fill a vacancy, or as otherwise
15 specified in this Section 13.101, the term of office of each elected officer shall commence at
16 ~~12:00~~ noon on the eighth day of January following the date of the election.

17 (b) Subject to the applicable provisions of Section 13.102, the elected officers of the City
18 and County shall be elected as follows:

19 (1) At the general municipal election in 1995 and every fourth year thereafter, a
20 Mayor, a Sheriff, and a District Attorney shall be elected.

21 (2) At the general municipal election in 1996 and every fourth year thereafter,
22 four members of the Board of Education and four members of the Governing Board of the
23 Community College District shall be elected.

24 (3) At the general municipal election in 2013, and at the general municipal
25 election in 2015 and every fourth year thereafter, a City Attorney and a Treasurer shall be

1 elected. Notwithstanding any other provision of this Charter including Section 6.100, the term of
2 office for the person elected City Attorney or Treasurer at the general municipal election in 2013
3 shall be two years.

4 (4) At the general municipal election in 2006 and every fourth year thereafter, an
5 Assessor-Recorder and Public Defender shall be elected.

6 (5) At the general municipal election in 1998 and every fourth year thereafter,
7 three members of the Board of Education and three members of the Governing Board of the
8 Community College District shall be elected.

9 (6) A Public Advocate shall be elected at the general municipal election on
10 November 8, 2022, for a two-year term beginning at noon on January 8, 2023. Thereafter, at the
11 general municipal election in 2024 and every fourth year thereafter, the Public Advocate shall
12 be elected. Notwithstanding any other provision of this Charter including Section 6.100, the
13 term of office for the person elected Public Advocate on November 8, 2022 shall expire at noon
14 on January 8, 2025.

15 (7) (6) The election and terms of office of members of the Board of Supervisors
16 shall be governed by Section 13.110.

17
18 **SEC. 13.101.5. VACANCIES.**

19 (a) If the office of Assessor-Recorder, City Attorney, District Attorney, Public Defender,
20 Sheriff, Treasurer, or Member of the Board of Supervisors, Board of Education, or Governing
21 Board of the Community College District becomes vacant because of death, resignation, recall,
22 permanent disability, or the inability of the respective officer to otherwise carry out the
23 responsibilities of the office, the Mayor shall appoint an individual qualified to fill the vacancy
24 under this Charter and state laws. If the office of Public Advocate becomes vacant because of
25 death, resignation, recall, permanent disability, or the inability of the incumbent to otherwise

1 carry out the responsibilities of the office, the Chief Deputy Public Advocate shall fill the
2 vacancy.

3 (b) If the Office of Mayor becomes vacant because of death, resignation, recall,
4 permanent disability, or the inability to carry out the responsibilities of the office, the President
5 of the Board of Supervisors shall become Acting Mayor and shall serve until a successor is
6 appointed by the Board of Supervisors by motion.

7 (c) Any person filling a vacancy pursuant to subsection (a) or (b) ~~of this Section~~ shall
8 serve until a successor is selected at the next election occurring not less than 120 days after the
9 vacancy, at which time an election shall be held to fill the unexpired term, provided that (1) if an
10 election for the vacated office is scheduled to occur less than one year after the vacancy, the
11 appointee person filling the vacancy shall serve until a successor is selected at that election
12 ~~or~~ and (2) if an election for the vacated office is not scheduled to occur less than one year after
13 the vacancy but an election for any seat on the same board as the vacated seat is scheduled to
14 occur less than one year but at least 120 days after the vacancy, the appointee person filling the
15 vacancy shall serve until a successor is selected at that election to fill the unexpired term.

16 ~~(d) If no candidate receives a majority of the votes cast at an election to fill a vacated~~
17 ~~office, the two candidates receiving the most votes shall qualify to have their names placed on~~
18 ~~the ballot for a municipal runoff election at the next regular or otherwise scheduled election~~
19 ~~occurring not less than five weeks later. If an instant runoff election process is enacted for the~~
20 ~~offices enumerated in this Section, that process shall apply to any election required by this~~
21 ~~Section.~~

22
23 **SEC. 13.102. ~~INSTANT RUNOFF ELECTIONS~~ RANKED-CHOICE VOTING**
24 **ELECTIONS.**

1 (a) For the purposes of this Section 13.102 section: (1) a candidate shall be deemed
2 “continuing” if the candidate has not been eliminated from further rounds of tabulation; (2) a
3 ballot shall be deemed “continuing” if it is not exhausted; and (3) a ballot shall be deemed
4 “exhausted,” and not included counted in further stages of the tabulation, if all of the choices
5 have been eliminated or there are no more choices indicated on the ballot. If a ranked-choice
6 ballot gives equal rank to two or more candidates, the ballot shall be declared exhausted when
7 such multiple rankings are reached. If a voter casts a ranked-choice ballot but skips a rank, the
8 voter's vote shall be transferred to that voter's next ranked choice.

9 (b) The Mayor, Sheriff, District Attorney, City Attorney, Treasurer, Assessor-Recorder,
10 Public Defender, Public Advocate, and members of the Board of Supervisors shall be elected
11 using a ranked-choice, ~~or “instant runoff,”~~ ballot. The ballot shall allow voters to rank a number
12 of choices in order of preference equal to the total number of candidates for each office;
13 provided, however, that if the voting system, vote tabulation system, or similar or related
14 equipment used by the City and County cannot feasibly accommodate choices equal to the total
15 number of candidates running for each office, then the Director of Elections may limit the
16 number of choices a voter may rank to no fewer than three. The ballot shall in no way interfere
17 with a voter’s ability to cast a vote for a write-in candidate.

18 (c) If a candidate receives a majority of the first choices, that candidate shall be declared
19 elected. If no candidate receives a majority, the candidate who received the fewest first choices
20 shall be eliminated from further rounds of tabulation and each vote cast for that candidate shall
21 be transferred to the next ranked candidate on that voter's ballot. If, after this transfer of votes,
22 any candidate has a majority of the votes from the continuing ballots, that candidate shall be
23 declared elected.

24 (d) If no candidate receives a majority of votes from the continuing ballots after a
25 candidate has been eliminated from further rounds of tabulation and his or her votes have been

1 transferred to the next-ranked candidate, the continuing candidate with the fewest votes from the
2 continuing ballots shall be eliminated from further rounds of tabulation. All votes cast for that
3 candidate shall be transferred to the next-ranked continuing candidate on each voter's ballot.
4 This process of eliminating candidates from further rounds of tabulation and transferring their
5 votes to the next-ranked continuing candidates shall be repeated until a candidate receives a
6 majority of the votes from the continuing ballots.

7 (e) If the total number of votes of the two or more candidates credited with the lowest
8 number of votes is less than the number of votes credited to the candidate with the next highest
9 number of votes, those candidates with the lowest number of votes shall be eliminated from
10 further rounds of tabulation simultaneously and their votes transferred to the next-ranked
11 continuing candidate on each ballot in a single counting operation.

12 (f) A tie between two or more candidates shall be resolved in accordance with State law.

13 (g) The Department of Elections shall conduct a voter education campaign to familiarize
14 voters with the ranked-choice ~~or, "instant runoff,"~~ method of voting.

15 (h) Any voting system, vote tabulation system, or similar or related equipment acquired
16 by the City and County shall have the capability to accommodate this system of ranked-choice,
17 ~~or "instant runoff,"~~ balloting.

18 ~~(i) Ranked choice, or "instant runoff," balloting shall be used for the general municipal~~
19 ~~election in November 2002 and all subsequent elections. If the Director of Elections certifies to~~
20 ~~the Board of Supervisors and the Mayor no later than July 1, 2002 that the Department will not~~
21 ~~be ready to implement ranked-choice balloting in November 2002, then the City shall begin~~
22 ~~using ranked-choice, or "instant runoff," balloting at the November 2003 general municipal~~
23 ~~election.~~

24 ~~If ranked-choice, or "instant runoff," balloting is not used in November of 2002, and no~~
25 ~~candidate for any elective office of the City and County, except the Board of Education and the~~

1 ~~Governing Board of the Community College District, receives a majority of the votes cast at an~~
2 ~~election for such office, the two candidates receiving the most votes shall qualify to have their~~
3 ~~names placed on the ballot for a runoff election held on the second Tuesday in December of~~
4 ~~2002.~~

5
6 **SEC. 15.105. SUSPENSION AND REMOVAL.**

7 (a) ELECTIVE AND CERTAIN APPOINTED OFFICERS. Any elective officer, and
8 any member of the Airport Commission, Asian Art Commission, Civil Service Commission,
9 Commission on the Status of Women, Golden Gate Concourse Authority Board of Directors,
10 Health Commission, Human Services Commission, Juvenile Probation Commission, Municipal
11 Transportation Agency Board of Directors, Port Commission, Public Utilities Commission,
12 Recreation and Park Commission, Fine Arts Museums Board of Trustees, ~~Taxi Commission~~, War
13 Memorial and Performing Art Center Board of Trustees, Board of Education, or Community
14 College Board is subject to suspension and removal for official misconduct as provided in this
15 ~~§~~Section 15.105. Such officer may be suspended by the Mayor and the Mayor shall appoint a
16 qualified person to discharge the duties of the office during the period of suspension. Upon such
17 suspension, the Mayor shall immediately notify the Ethics Commission and Board of
18 Supervisors thereof in writing and the cause thereof, and shall present written charges against
19 such suspended officer to the Ethics Commission and Board of Supervisors at or prior to their
20 next regular meetings following such suspension, and shall immediately furnish a copy of the
21 same to such officer, who shall have the right to appear with counsel before the Ethics
22 Commission in his or her defense.

23 The Ethics Commission shall hold a hearing not less than five days after the filing of
24 written charges. After the hearing, the Ethics Commission shall transmit the full record of the
25 hearing to the Board of Supervisors with a recommendation as to whether the charges should be

1 sustained. If, after reviewing the complete record, the charges are sustained by not less than a
2 three-fourths vote of all members of the Board of Supervisors, the suspended officer shall be
3 removed from office; if not so sustained, or if not acted on by the Board of Supervisors within 30
4 days after the receipt of the record from the Ethics Commission, the suspended officer shall
5 thereby be reinstated.

6 The Mayor may file written charges of official misconduct against the Public Advocate
7 and those charges shall be heard and acted on by the Ethics Commission and the Board of
8 Supervisors in the same manner as other charges of official misconduct, but notwithstanding any
9 other provision of this subsection (a) or this Section 15.105, the Mayor shall have no power to
10 suspend the Public Advocate.

11 * * * *

12
13 **SEC. A8.409-1. EMPLOYEES COVERED.**

14 * * * *

15 Except as otherwise provided by this Charter, the Civil Service Commission shall set the
16 wages and benefits of all elected officials of the City and County of San Francisco as follows:
17 The Commission shall conduct a salary survey of the offices of chief executive officer, county
18 counsel, district attorney, public defender, assessor-recorder, treasurer, and sheriff, in the
19 counties of Alameda, Contra Costa, Marin, San Mateo, and Santa Clara. The Commission shall
20 then average the salaries for each of those offices to determine respectively the base five-year
21 salaries for the Mayor, City Attorney, District Attorney, Public Defender, Assessor-Recorder,
22 Treasurer, and Sheriff.

23 If any of the aforementioned counties do not have an office of public defender, that
24 county shall be omitted from the salary survey for purposes of determining the base five-year
25 salary of the Public Defender. Among the aforementioned counties, any freestanding county

1 assessor's office or any county office in which the assessor's function is combined with other
2 county functions, shall be deemed comparable to the office of Assessor-Recorder for purposes of
3 determining the base five-year salary of the Assessor-Recorder. If any of the aforementioned
4 counties do not have a comparable county office of treasurer, the county office whose functions
5 most closely resemble the Treasurer's functions in San Francisco shall be deemed comparable to
6 the office of Treasurer for purposes of determining the base five-year salary of the Treasurer.

7 The Commission shall set the base salary of the Public Advocate based on a salary
8 survey of comparable offices, or using such other methodology as the Commission deems
9 appropriate. For the purpose of the survey, the Executive Director of the Ethics Commission
10 shall be a comparable office to the Public Advocate.

11 The initial base five-year salary determination for the respective salaries of the Mayor,
12 City Attorney, District Attorney, Public Defender, Assessor-Recorder, Treasurer, and Sheriff
13 shall apply to the period from July 1, 2007 through June 30, 2012. Subsequent base five-year
14 salary determinations for those offices shall apply to subsequent five-year periods, for example,
15 July 1, 2012 through June 30, 2017.

16 The initial base salary determination for the salary of the Public Advocate shall apply to
17 the period from the Public Advocate's initial assumption of office under Section 13.101(b)(6)
18 through June 20, 2027, even if that period may be longer or shorter than five years. Subsequent
19 base salary determinations for the Public Advocate shall apply to subsequent five-year periods.

20 For the second, third, fourth, and fifth years of the period for which any base five-year
21 salary has been set, the Commission shall annually adjust the respective salaries of the Mayor,
22 City Attorney, District Attorney, Public Defender, Assessor-Recorder, Treasurer, ~~and~~ Sheriff,
23 and Public Advocate to account for upward annual movement in the Consumer Price Index
24 during the prior calendar year; provided, that whenever the upward movement in the Consumer
25 Price Index during the prior calendar year exceeds 5%, the cost-of-living adjustment shall not be

1 the actual increase in the Consumer Price Index for the prior calendar year but instead shall be
2 5%. The annual cost-of-living adjustment shall take effect July 1 of the second, third, fourth, and
3 fifth years of the period for which the base five-year salary has been set.

4 Except as noted below, in setting the initial and subsequent base ~~five-year~~ salary
5 determinations for the offices of Mayor, City Attorney, District Attorney, Public Defender,
6 Assessor-Recorder, Treasurer, ~~and~~ Sheriff, and Public Advocate, the Commission may not
7 reduce the respective salaries of any of those offices. If implementation of the process for setting
8 the base five-year salary would otherwise result in a salary reduction for any of those offices, the
9 base five-year salary for the affected office or offices shall be the existing salary for the office.

10 If the City and County of San Francisco and employee organizations agree to amend the
11 compensation provisions of existing memoranda of understanding to reduce costs, the
12 Commission shall review and amend the respective salaries of the Mayor, City Attorney, District
13 Attorney, Public Defender, Assessor-Recorder, Treasurer, ~~and~~ Sheriff, and Public Advocate as
14 necessary to achieve comparable cost savings in the affected fiscal year or years.

15 The Commission shall annually set the benefits of elected officials, to take effect July 1
16 of each year. Benefits of elected officials may equal but may not exceed those benefits provided
17 to any classification of miscellaneous officers and employees as of July 1 of each year, except,
18 after January 7, 2012, the City and County shall not pay the required employee contributions of
19 said officials into the San Francisco Employees' Retirement System trust fund or into the Retiree
20 Health Care Trust Fund.

21 In addition, subject to the approval or disapproval of the Board of Supervisors, the Mayor
22 may create, for employees designated as management, a management compensation package that
23 recognizes and provides incentives for outstanding managerial performance contributing to
24 increased productivity and efficiency in the work force. In formulating such a package, the
25

1 Mayor shall take into account data developed in conjunction with the civil service commission
2 regarding the terms of executive compensation in other public and private jurisdictions.

3
4 **SEC. F1.102. STREET, SIDEWALK, AND PARK CLEANING AND MAINTENANCE.**

5 (a) The Services Audit Unit shall conduct annually a performance audit of the City's
6 street, sidewalk, and public park maintenance and cleaning operations. The annual audit shall:

7 (1) Include quantifiable, measurable, objective standards for street, sidewalk, and
8 park maintenance, to be developed in cooperation and consultation with the Department of
9 Public Works and the Recreation and Park Department;

10 (2) Based upon such measures, report on the condition of each geographic
11 portion of the City;

12 (3) To the extent that standards are not met, assess the causes of such failure and
13 make recommendations of actions that will enhance the achievement of those standards in the
14 future;

15 (4) Ensure that all bond funds related to streets, parks and open space are spent in
16 strict accordance with the stated purposes and permissible uses of such bonds, as approved by the
17 voters.

18 Outside of the audit process, the City departments charged with cleaning and maintaining
19 streets, sidewalks, and parks shall remain responsible for addressing individual complaints
20 regarding specific sites, although the Controller *and the Public Advocate* may receive and
21 investigate such complaints under Sections F1.107, *and 8C.103 and 8C.104, respectively.*

22 (b) In addition, all City agencies engaged in street, sidewalk, or park maintenance shall
23 establish regular maintenance schedules for streets, sidewalks, parks, and park facilities, which
24 shall be available to the public and on the department's website. Each such department shall
25 monitor compliance with these schedules, and shall publish regularly data showing the extent to

1 which the department has met its published schedules. The City Services Audit Unit shall audit
2 each department's compliance with these requirements annually, and shall furnish
3 recommendations for meaningful ways in which information regarding the timing, amount, and
4 kind of services provided may be gathered and furnished to the public.

5
6 **SEC. F1.107. CITIZENS' COMPLAINTS; WHISTLEBLOWERS.**

7 (a) The Controller shall have the authority to receive and investigate individual
8 complaints concerning: the misuse of City funds by officers or employees; the use of City
9 equipment or time for personal purposes; the purchase of unneeded supplies or equipment;
10 nonperformance, or inadequate performance of, contractually-required services; or, improper or
11 wasteful activities by City officers or employees. ~~the quality and delivery of government~~
12 ~~services, wasteful and inefficient City government practices, misuse of City government funds,~~
13 ~~and improper activities by City government officers and employees.~~ When appropriate, the
14 Controller shall investigate and otherwise attempt to resolve such individual complaints except
15 for those which:

16 (1) another City agency is required by federal, state, or local law to adjudicate or
17 otherwise resolve,

18 (2) may be resolved through a grievance mechanism established by collective
19 bargaining agreement or contract,

20 (3) involve allegations of conduct which may constitute a violation of criminal
21 law, or

22 (4) are subject to an existing, ongoing investigation by the District Attorney, the
23 City Attorney, or the Ethics Commission, where either official or the Commission states in
24 writing that investigation by the Controller would substantially impede or delay his, her, or its
25 own investigation of the matter.

1 If the Controller receives a complaint described in items (1), (2), (3), or (4) of this
2 paragraph, the Controller shall advise the complainant of the appropriate procedure for the
3 resolution of such complaint.

4 (b) If the Controller receives a complaint alleging conduct that may constitute a violation
5 of criminal law or a governmental ethics law, he or she shall promptly refer the complaint
6 regarding criminal conduct to the District Attorney or other appropriate law enforcement agency
7 and shall refer complaints regarding violations of governmental ethics laws to the Ethics
8 Commission and the City Attorney. Nothing in this Section shall preclude the Controller from
9 investigating whether any alleged criminal conduct also violates any civil or administrative law,
10 statute, ordinance, or regulation.

11 (c) Notwithstanding any provision of this Charter, including, but not limited to
12 Section C3.699-11, or any ordinance or regulation of the City and County of San Francisco, the
13 Controller shall administer a whistleblower and citizen complaint hotline telephone number and
14 website and, together with the Public Advocate, publicize the hotline and website through press
15 releases, public advertising, and communications to City employees. The Controller shall
16 receive and track calls and emails related to complaints about the quality and delivery of
17 government services, wasteful and inefficient City government practices, misuse of government
18 funds and improper activities by City government officials, employees and contractors and shall
19 route these complaints to the appropriate agency subject to subsection (a) of this Section. The
20 Board of Supervisors shall enact and maintain an ordinance protecting the confidentiality of
21 whistleblowers, and protecting City officers and employees from retaliation for filing a
22 complaint with, or providing information to, the Controller, Ethics Commission, District
23 Attorney, City Attorney or a City department or commission about improper government activity
24 by City officers and employees. The City may incorporate all whistleblower functions set forth
25 in this Charter or by ordinances into a unified City call center, switchboard, or information

1 number at a later time, provided the supervision of the whistleblower function remains with the
2 Controller and its responsibilities and function continue unabridged.

3 (d) The Controller shall on a quarterly basis prepare summaries of all complaints
4 received by the Controller's whistleblower program and transmit those summaries to the Public
5 Advocate. The Public Advocate shall review the summaries by complaint type, department
6 involved, and other factors to identify trends in complaints and prepare recommendations for the
7 improvement of City controls and services. To the extent permitted by state law, the City shall
8 keep these summaries confidential.

9 (e) The Public Advocate and the Controller may from time to time and by written
10 agreement shift between themselves jurisdictional responsibilities for investigation and reporting
11 types of whistleblower complaints established in the Charter. The Public Advocate and the
12 Controller shall submit a copy of any such agreement to the Mayor and the Board of
13 Supervisors, and make the agreement available to the public.

14
15 ~~**F1.108. CUSTOMER SERVICE PLANS.**~~

16 ~~The Controller shall assess the progress of City departments' compliance with Charter~~
17 ~~Section 16.120 and any implementing ordinances requiring City departments to prepare effective~~
18 ~~customer service plans. The Controller shall make recommendations to departments to improve~~
19 ~~the effectiveness of such plans. The Controller shall report to the Board of Supervisors and~~
20 ~~Mayor the failure of any department to comply substantially with the Controller's~~
21 ~~recommendations regarding customer service plans.~~

22
23 ~~**SEC. F1.114. OPERATIVE DATE; SEVERABILITY.**~~

24 ~~(a) This charter amendment shall be operative on July 1, 2004. This amendment shall~~
25 ~~not affect the term or tenure of the incumbent Controller.~~

1 (b) If any section, subsection, provision or part of this Appendix F charter amendment or
2 its application to any person or circumstances is held to be unconstitutional or invalid, the
3 remainder of Appendix F the amendment, and the application of such provision to other persons
4 or circumstances, shall not be affected.

5
6 Section 2. The amendments to Charter Sections 6.100, 13.101, and 13.102 shall become
7 operative on the effective date of this charter amendment. All other provisions of this charter
8 amendment shall become operative at the date and time that the first Public Advocate takes
9 office.

10
11 APPROVED AS TO FORM:
12 DENNIS J. HERRERA, City Attorney

13
14 By: /s/ _____
15 JON GIVNER
16 Deputy City Attorney

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