

LEGISLATIVE DIGEST

Revised 07/09/20

[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 three members (seats 1-3), and the Mayor would appoint four members (seats 4-7). Seat 3 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 July 9, 2020.

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