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Report regarding an ordinance adding Chapter 2.85 to Title 2 of the South San Francisco Municipal Code to create a Community Equity and Safety Advisory Board (*Sky Woodruff, City Attorney, and Amy Ferguson, Management Fellow*)

RECOMMENDATION

City staff recommend the City Council introduce an ordinance to create a Community Equity and Safety Advisory Board, with proposed names of “Commission on Equity and Public Safety” or “SSF Vision of Inclusive Community Equity and Safety (SSF VOICES).” Staff has incorporated feedback from a City Council Study Session on the role and composition of a proposed Board. As presented below, the proposed Board would serve as an advisory board to the City Manager and City Council, make recommendations related to equity and safety, receive and refer complaints against the conduct of City personnel, and to review some investigations related to personnel misconduct, specifically in the cases where records are public under state law.

BACKGROUND/DISCUSSION

The South San Francisco Commission on Racial and Social Equity recently concluded a yearlong, transformational process to learn about and recommend how to further equity in City programs and practices. A Community Equity and Safety Advisory Board, focused on public safety departments but also City government more broadly, is central to these efforts. Such a Board can: (1) extend community engagement with City programs, (2) allow community members to make recommendations across City departments that can further community equity and safety, and (3) increase transparency and accountability in City processes, thereby fostering a relationship and trust between the community and City departments. It is also recommended that the Board (4) have a role in receiving and referring complaints related to City personnel and reviewing investigations into complaints in the specific cases where investigation records must be public under state law. The goal with creating this Board is to address issues of diversity, equity, inclusion, and belonging that can work to dismantle systemic racism within any institutional policies and processes.

The model of a “hybrid” advisory community safety board was selected over other oversight models in light of

state law and bargaining agreements that keep personnel records private. A “hybrid” model in this context would function as an advisory board that would focus on high-level policy recommendations, but that can also field complaints filed by the public about city personnel. See Appendix A for a brief explanation of a hybrid model.

Proposed Model for South San Francisco

1) Community and City Engagement

- A Community Equity and Safety Advisory Board can serve as a liaison between the community and City staff.
- The Board can provide a safe space for addressing difficult issues of racial and social equity.
- It will provide intentional and effective community outreach to stay apprised of community concerns.
- It can increase community engagement and civic participation in government processes.
- The Board should receive updates from the Community Wellness and Crisis Response Team, including a mental health clinician, to stay abreast of these efforts.
- The Board will strive to promote positive police-community relations in an effort to provide better services and expectations from the community and police.

2) Making recommendations

- The primary purpose of the Board is to recommend changes to the City Manager and City Council regarding policies and procedures that impact safety, security, and equity across City departments. Any policy or procedure that is not simply administrative and is under City Council’s purview will be brought to City Council for discussion and approval.
- These recommendations will be publicly available.
- In this way, the Board can engage community vision and use an equity lens to reduce disparities and advance equitable practices in South San Francisco.
- Many advisory boards focused on public safety and policing exist in other cities, with some giving feedback to the Chief of Police.
- A Board in South San Francisco can advise on police matters; however, the Commission on Racial and Social Equity also found it important that a Board not be limited to making recommendations on policing only.
- The Commission wanted a board with a holistic approach to community equity and safety that could advise on any matter relating to racial and social equity, including in the areas of social services, education, health care, transportation, emergency management, fire departments, first responders, code enforcement, and so on. The Board could work to enhance safety nets that support communities previously harmed by isolation and systemic injustice, strengthen partnerships that aid in crime reduction, and invest in arenas that promote and create safe, healthy, and thriving communities.
- The Commission especially wanted the Board to look at early intervention strategies that minimize involvement of youth in the criminal justice system.
- Any issue or program can be evaluated for its racial and social equity impact, and so the scope of possibility of what programs the Board could examine is intentionally broad.
- However, it is recommended that the Board create a yearlong work plan to provide to the City Manager and Council and update annually, to ensure a manageable scope of work. They will also write an annual report including progress on the work plan.
- Final decision-making authority on recommendations remains with the City Manager and/or City Council, as appropriate.
- The Board will keep the City Manager apprised of the community’s need for any issue or service, including police services, disaster preparedness, and others.

3) Providing transparency and accountability

- The Board can prompt opportunities to listen to community voices and initiate constructive dialogue on policy, procedure, and protocols. It can initiate and lead courageous and honest conversations.
- By engaging the community and providing recommendations, the Board will serve the additional functions of increasing transparency and accountability.
- The Board will promote and adhere to transparency models and share its efforts to encourage equity and inclusion among the community and officials.
 - The Board will periodically share its efforts externally through updates on the City website and social media, through community meetings or other outreach efforts as necessary, and through an annual written report to the City Manager and City Council concerning its priorities and progress. The report will include the annual work plan with progress on initiatives.
- The Board will review data and track progress using measures that are meaningful to the community. The Board may publish data as well, for example on types of complaints against misconduct. Data will be aggregated as needed to protect confidentiality.
- Enhancing transparency and accountability will improve public confidence and trust in City departments, especially as relating to public safety, and is intended to reduce fear associated with law enforcement.

4) Refer and review complaints

- The Commission envisioned the Board having an additional power, which is to receive and refer complaints of misconduct related to City personnel.
- It was hoped for Board meetings to provide a safe space for a community member to raise a complaint. This would thereby remove an obstacle to citizen complaints as, for example, a complaint about a police officer could be relayed to the Board, and the resident would not have to submit their complaint at the Police Department.
- This process would typically involve hearing the complaint at a meeting and referring it to HR, where HR and the City Attorney would meet regarding the complaint and determine the appropriate form of investigation.
- The complaint and investigation process would be designed to respect the rights of both complainants and the personnel who is the subject of the complaint. It would also maintain consistency with applicable State and Federal law, the General Law City framework, and Bargaining Agreements between the unions representing police officers and the City.
- Due to protections on personnel records and the limitations on oversight by California law, the Board would not generally be able to review personnel records, be privy to investigations, or recommend discipline. Doing so could, among other risks, raise significant risk regarding complaints of violations of personnel privacy rights.
- However, in cases where the complaint was made directly to the Board, the Board could be updated on assignment of a complaint to an investigator and the identity of the investigator, the projected completion date of the investigation, whether the complaint was substantiated at the conclusion of the investigation, and any remedial actions taken. “Remedial actions” do not include discipline or other personnel info, but may include some sort of remedy to the complainant, for example, whether a citation is dismissed.
- Furthermore, due to state laws regarding public records, notably SB 1421, SB 2, and SB 16, police personnel records in certain cases are not considered confidential but are public records. In those cases, the investigation records could be disclosed to the Board. Example cases include where there has been an officer-involved shooting, a sustained finding of a complaint that alleges

unreasonable force, or a sustained finding of a situation where an officer has acted with prejudice or discrimination. A more in-depth review of the cases that are accessible to the public follows below.

- In these cases, the Board may review the investigation done in a public meeting and ask questions. The Board could make recommendations to the City Manager, including issuing recommendations for future similar cases. The Board would not provide comments regarding discipline or make independent decisions, as these could risk violations of police officer privacy rights and exposure to other labor-employment disputes for the City.
- Review of investigations in these cases would enhance the Board's ability to make recommendations and provide a community forum to discuss relevant complaints.

5) Initial and ongoing activities

- The Board will establish rules of conduct, bylaws, etc. with a racial and social equity lens.
- The Board will create a yearly work plan, which shall be provided to the City Manager and the City Council. The Board will also create an annual written report including the work plan and progress made on initiatives.

State Bills on Police Personnel Records

Police personnel records are generally protected as confidential. However, three recent state bills mandate that *some* records be disclosable to the public. The Equity Board may review investigations in relevant cases as outlined below, to inform the recommendation process and provide a community forum to discuss relevant issues.

Under the Police Officers' Bill of Rights ("POBR") at the state level, police personnel records are confidential, and were generally only disclosed to a Grand Jury, District Attorney, or Attorney General in an investigation or through a *Pitchess* motion, a court order where a judge determines the records to be relevant to a case. However, the three state bills that impact which records are open to the public are SB 1421, effective January 1, 2019, and SB 2 and SB 16, both effective January 1, 2022.

These bills mandate that investigation records be disclosable to the public for particular types of complaints. Some must be disclosed even if an investigation does not sustain the complaint. Others can only be disclosed after a sustained finding, which includes exhaustion of administrative remedies and the conclusion of any appeals, both administrative and judicial. These two categories are shared here:

- 1) Incidents where no sustained finding is required:
 - a. Officer-involved shooting (discharge of firearm) (SB 1421)
 - b. Use of force resulting in great bodily injury (SB 1421)
 - c. Records regarding the foregoing types of incidents in which an officer resigned before the city concludes the incident investigation.
 - d. Information (i.e., serious misconducts) reported to POST to determine whether the officer's certification should be revoked (SB 2). Under SB 2, all records related to the revocation of a peace officer's certification would become public, and records of an investigation by POST must be retained for 30 years.

Under state law, disclosure for these incidents can be made as early as when a complaint is submitted to the city, and subsequent investigation documents can be made available as the investigation process is ongoing. State law in these cases does not distinguish between whether the allegations were substantiated or if the police officer appeals the findings/discipline. However, staff recommends that disclosure be made only after the investigation has concluded and that the Board not provide any comments prior to the investigation's completion. This is to ensure the investigation is conducted in an

impartial manner with as little outside influence as possible. However, once the investigation has been initiated, the Board could be made aware of updates such as assignment of a complaint to an investigator and the identity of the investigator, the completion date for the investigation, that the nature of the complaint falls within the disclosable categories, and other similar information, unless this information could jeopardize the investigation, such as an investigation that involves surveillance.

- 2) Incidents where a “sustained finding” is required before related documents become public records:
 - a. Complaint that alleges unreasonable force (SB 16)
 - b. Officer failed to intervene against another officer using force that is clearly unreasonable or excessive (SB 16)
 - c. Officer engagement in conduct involving prejudice or discrimination including, but not limited to, verbal statements, writings, online posts, recordings, and gestures, against a person based on certain protected characteristics including race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status (SB 16)
 - d. Unlawful arrest or conducted unlawful search (SB 16)
 - e. Sexual assault involving a member of the public (SB 1421)
 - f. Dishonesty directly relating to the reporting, investigation, or prosecution of a crime, or the misconduct investigation of another officer (perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence, etc.) (SB 1421)

For these incidents, records can be disclosed only when the allegations were substantiated and the time for appeal has passed, or appeal has been exhausted. (PC 832.8(b)). The Board would only receive information once the investigation is complete and, if discipline is imposed, either the officer does not appeal, or all appeals have been exhausted. However, once the investigation has been initiated, the Board could be made aware of updates such as assignment of a complaint to an investigator and the identity of the investigator, the completion date for the investigation, that the nature of the complaint falls within the disclosable categories, and other similar information, unless this information could jeopardize the investigation, such as an investigation that involves surveillance.

Timing of disclosure

Under state law, in response to a request, the timing for release of information that is required to be disclosed is the earliest time possible, no later than 45 days from the date of a request. However, as described above, City staff recommend disclosing records once an investigation has been concluded and any time for appeal has been exhausted, so as to not interfere with the impartiality of the investigation.

Moreover, timeframes may be extended up to 60 days during an active criminal investigation, and then past 60 days if the agency provides a basis where disclosure would reasonably be expected to interfere with a criminal enforcement proceeding against the officer. (Note: the new SB 16 categories are not subject to this time limitation until 2023.) The City would anticipate not releasing documents to the Board, even for allegations that do not require a sustained allegation, as long as there is a parallel criminal investigation.

Records may be redacted to protect witnesses, victims, and whistleblowers. SB 16 also has new requirements around the length of time to keep records and keeping the cost of accessing records strictly to the “direct costs of duplication.”

The bill also requires that all peace officers immediately report any situations where there has been a use of

force to their employing agency and that law enforcement agencies review prior personnel records before hiring a candidate.

Board review process related to records under SBs 16, 2, and 1421

- 1) The Board may receive records (as described in PC 832.7, which consists of a broad range of records including discipline decisions) for complaints made regarding incidents covered by SBs 16, 2, and 1421 only. Redactions could be made to protect witnesses, etc.
- 2) For a complaint made directly to Board, referred to HR and City Attorney, in one of the disclosable categories under SBs 16, 2, and 1421:
 - a. The Board may be notified of assignment of a complaint to an investigator and the identity of the investigator, projected completion date, that the nature of the complaint falls within the disclosable categories, etc. unless this information could jeopardize the investigation, such as an investigation that involves surveillance.
 - b. If sustained finding not required, report back about completed investigation with documents (redacted if necessary).
 - c. If sustained finding required, report back about completed investigation after time for appeal or completion of appeal.
- 3) For a complaint not filed directly to the Board but in one of the disclosable categories under SBs 16, 2, and 1421:
 - a. Inform the Board of the complaint. The Board may be notified of assignment of a complaint to an investigator and the identity of the investigator, projected completion date, that the nature of the complaint falls within the disclosable categories, etc., unless this information could jeopardize the investigation, such as an investigation that involves surveillance.
 - b. The Board gets the documents in the manner described under Paragraph (2) above. They may receive a regular update that informs them when investigations are completed.
- 4) Once the documents are provided, the Board may do the following:
 - a. Review the documents at a publicly available meeting, with an opportunity for the public to comment.
 - b. Ask questions and provide feedback.
 - c. Make recommendations to the City Manager and/or City Council.
 - d. Make recommendations for future investigations.
 - e. The Board would not participate in or provide comments with regards to discipline, as this could invite a legal risk of violation of officer privacy rights or exposure to other labor-employment related claims.

Board process for complaints not related to SBs 16, 2, and 1421

- 1) For complaints made directly to the Board but where records are not available to the public, the Board will not review the investigations, as personnel records will be confidential. The Board will refer the complaint to HR and may only receive updates on assignment of a complaint to an investigator and the identity of the investigator, investigation completion date, whether the complaint was substantiated, and any remedial actions taken. “Remedial actions” do not include discipline or other personnel info but may include some sort of remedy to the complainant, for example, whether a citation is dismissed.

If additional state bills requiring disclosure or potential oversight roles are passed, those could be incorporated into Board processes, in discussion with the Board.

Training

Training will be an essential component when the Equity Board is appointed. Trainings may include but not be limited to:

- The Brown Act
- Myers-Milias-Brown Act, specifically with respect to scope of bargaining/mandatory subjects of bargaining
- Police Officers Bill of Rights
- Firefighter Bill of Rights
- Other pertinent employee relations laws
- Ethics
- Due process and conducting meetings that conform to principles of fairness
- How to have a public meeting on contested issues
- Police and fire ride-alongs
- Jail visits
- Systemic racism, history of racism, racial and social equity terms
- Trauma-informed police oversight
- Police-related terms and issues including:
 - Investigative practices
 - Abusive language
 - False imprisonment
 - Harassment
 - Use of force
 - Serious bodily issues
 - Death
 - Constitutional policing, including:
 - use of force
 - firearms
 - custody
 - mental health issues
 - juvenile justice
 - racial profiling
 - patrol

Composition of the South San Francisco Community Equity Safety Advisory Board:

- Volunteer advisory board with seven members plus one alternate, with staggered four-year terms and two-year terms, appointed by the City Council where each councilmember appoints one advisory board member, with the remaining two members and the alternate appointed by the City Council following the standard model used for other South San Francisco Boards and Commissions;
- City Councilmembers may make an appointment from any district and are not limited to selecting an appointee from their district;
- Board members are limited to three consecutive terms; upon serving the maximum number of consecutive terms, a Board member shall not be eligible for re-appointment to the Board for a period of two years;
- Board members must be residents of South San Francisco;
- Members may be removed by the Council as applies to other Boards and Commissions;
- Applications, interviews, and appointments are conducted when vacancies occur;
- City Council is encouraged to consider appointment of members that represent or demonstrate

knowledge of the experiences of limited-English speakers, people who are unhoused, and/or people living with mental illness and/or substance use disorders. Council is also encouraged to consider a diverse membership along race, gender, sexuality, age, national origin, and other characteristics, and to include diverse communities such as those that have been impacted by the justice system (e.g., people who have been arrested, youth whose parents were incarcerated), faith communities, and small business owners. If possible, it would be ideal to include at least one member with some level of expertise in law and/or public administration. City Council is also encouraged to appoint members from different areas of the city.

FISCAL IMPACT

Board members will be paid the standard city stipend of \$100 per meeting. If there is perfect attendance and monthly meetings, the annual cost would be \$8,400. This amount will be funded through the General Fund. This does not include the ancillary cost of time and supplies required to support the Board by existing staff.

CONCLUSION

The formation of a Community Equity and Safety Advisory Board can further the goals of the South San Francisco Commission on Racial and Social Equity. It can provide a community forum to address issues of equity and public safety and a permanent body to make recommendations and continue the work of the Commission in the arena of racial and social equity. Proposed names for the board are “Commission on Equity and Public Safety” or “SSF Vision of Inclusive Community Equity and Safety (SSF VOICES).”

Attachments:

- 1- Appendix A
- 2- Presentation