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Sent: Wednesday, July 13, 2022 6:08 PM
To: 'district5@sonoma-county.org' <district5@sonoma-county.org>
Cc: Leo Chyi <Leo.Chyi@sonoma-county.org>; 'Evan Zelig' <evan@eezlaw.com>
Subject: MOUs with Deputies' Associations regarding Measure P

Dear Supervisor Hopkins,

I want to alert you to what I think are serious problems with the MOUs the County has signed with the deputies' associations. Following are those problems I consider the most important although I have not addressed all my concerns here.

First, the MOUs state that the MOUs will take precedence over the ordinance where there is conflict to the extent allowable by applicable law (Sec. III (A)). This is an extremely unusual clause that is likely to lead to litigation down the road. The California Constitution (Article II, Section 11) and the Election Code (Section 9125) provide that where an ordinance has been passed by the voters, it can only be amended by approval of the voters. The Community Advisory Council was told by Interim Director Garrick Byers that this clause was "benign" because the ordinance would take precedent if the MOUs "substantially" amended the ordinance. Yet, unless the deputies' associations and the County can agree whether an amendment is substantial or not (an unlikely result), it appears that only litigation will resolve that issue.

Second, two other provisions do, in my opinion and the opinion of many attending the CAC meeting Monday evening, substantially and detrimentally amend Measure P. The first are the whistleblower provisions. The Ordinance gives IOLERO authority to receive **and investigate** whistleblower complaints (Section 2-394 (b)(3)). The MOU seemingly strips IOLERO of the power to actually investigate whistleblower complaints. Rather, the MOUS state that IOLERO must, after an initial intake interview and request of the complainant for documents and witness names, refer whistleblower complaints to "the appropriate enforcement agency" (Section V). That is in direct contrast to Measure P's provision that "... any whistleblower complaints received or investigated by IOLERO shall not need to be reported by IOLERO to the sheriff-coroner, including the Internal Affairs Division." (Section 2-394 (b)(3).) While Interim Director Byers suggested that this provision made sense because IOLERO does not have enforcement power, this provision will make it extremely – if not completely – unlikely that IOLERO will receive whistleblower complaints. Why would someone complain to IOLERO if they knew their complaint would be immediately forwarded to the Sheriff's Department? This is nonsensical and substantially amends Measure P.

The second provision that substantially amends Measure P is the provision that IOLERO cannot investigate incidents resulting in death until the Sheriff's Department has completed its investigation and sent the incident to IOLERO (Section IV(D)(ii)). Measure P did not limit the timing of IOLERO's independent investigation nor did it require a referral from the Sheriff. If IOLERO must wait until after the Sheriff's investigation is complete, that means that witnesses memories will have faded and

documents and other physical evidence is likely to be lost, essentially rendering any investigation by IOLERO virtually meaningless.

Third, the MOUs “allow” the Director to “request” access to the Sheriff’s investigative files during its investigation but do not require the Sheriff to comply. That contrasts with Measure P’s directive that the Sheriff must cooperate with IOLERO. (Cf. Section IV. (A) (ii) of MOUs; Section 2-394 (e) of Ordinance.) Moreover, it is unclear to me why the MOUs with the deputies’ associations would even include provisions about what the Sheriff provides IOLERO unless the information directly affects the conditions of employment. This seems to go well beyond that.

Finally, the MOUs have no sunset provision. I have never read a contract that did not have a time limit to it. This means that, unless a new ordinance is passed by the voters, the deputies associations will have no incentive to re-negotiate these terms if IOLERO or the County find that the MOUs render provisions of Measure P ineffective.

The County has done a disservice to the voters and to IOLERO. There was no need to concede any of these points given the Court of Appeal’s decision in the PERB complaint. I urge you and your colleagues to seek changes to the MOUs in order to minimize the chances of further litigation.

Sincerely,

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