



Legislation Text

File #: 2020-0758, **Version:** 1

To: Board of Supervisors

Department or Agency Name(s): County Administrator's Office and County Counsel

Staff Name and Phone Number: Michelle Arellano (565-2241) and Bruce Goldstein (565-2421)

Vote Requirement: Majority

Supervisory District(s): All

Title:

Review Proposed Evelyn Cheatham IOLERO Initiative; Provide Direction To Staff Regarding Placing The Initiative On The November Ballot Or Introduce The Initiative; and Consideration Of The IOLERO Ad Hoc Committee Charter

Recommended Action:

Review the proposed Evelyn Cheatham IOLERO Initiative measure and take one of the following actions regarding the proposed initiative:

- A) The Board may direct staff to place the Evelyn Cheatham IOLERO Initiative measure on the ballot for voters to consider at the November 3, 2020 election; **or**
- B) Instead of placing the ordinance on the ballot, the Board may accept the proposed language from the Evelyn Cheatham IOLERO Initiative ordinance and introduce the proposed initiative ordinance as an amendment to the County's ordinance; **or**
- C) The Board may make amendments to the proposed Evelyn Cheatham IOLERO Initiative and either (i) submit the revised initiative as a ballot measure to the voters at the November 3, 2020 election, or (ii) introduce the revised initiative ordinance to incorporate amendments into the County's current ordinance.

Or

Alternatively, the Board may take the following actions with regard to adopt the IOLERO Ad Hoc Charter and start a formal process to review the existing IOLERO ordinance:

- D) Review and Approve the IOLERO Ad Hoc Committee Charter; **and**
- E) Approve use of \$40,000 in FY 2020-21 General Fund Contingencies to fund staffing and County Counsel support and community outreach and engagement to lead County coordination of amendments to the IOLERO authorizing ordinance and related policy reforms. (4/5th Vote Required); **and**
- F) Provide direction to staff to solicit participation from the County Justice system and related Departments to provide support to the IOLERO Ad Hoc Committee.

Executive Summary:

On June 23, 2020, the Board of Supervisors (Board) expressed interest in revisiting the ordinance establishing the Independent Office of Law Enforcement Review and Outreach (IOLERO), which was created in 2015.

IOLERO has now been in operation for more than four years, and both the Board and the community have identified the need for amendments to its authorizing County legislation. (Chapter 2, Article XXVII of the Sonoma County Code (IOLERO Ordinance).) In November 2019, County Counsel provided a title and summary for a comprehensive overhaul to the IOLERO Ordinance put forward by community members (Evelyn Cheatham IOLERO Initiative). Proponents began gathering signatures in November 2019 to place the Evelyn Cheatham IOLERO Initiative on ballot, but their efforts were impeded by the COVID-19 pandemic and sufficient signatures were not collected. Initiative proponents now urge the Board to place the proposed initiative on the November 3, 2020 ballot.

Independently, the Board had begun to explore the need to strengthen the existing IOLERO ordinance and pursue other possible policy reforms to increase transparency and accountability of law enforcement and build the public's trust in County government and the Sheriff's Office. As part of that process, the Board created an ad hoc committee (the IOLERO Ad Hoc) and directed staff to draft a charter for the Ad Hoc. The Board reviewed the proposed Charter at its July 14, 2020 Regular Meeting, but continued consideration of the proposed charter to August 4, 2020, to allow additional time to review the Evelyn Cheatham IOLERO Initiative. The proposed Charter and related Agenda Summary are included as Attachments A and B.

At this time, the Board may consider various options including directing staff to place the proposed Evelyn Cheatham IOLERO Initiative on the November ballot as submitted, or with any changes made by the Board. Alternatively, the Board may consider adopting the Evelyn Cheatham IOLERO Initiative as submitted (or modified) by its own action, or direct staff to make modifications and place the proposed initiative on the November ballot or return with a revised ordinance at a subsequent meeting. Based on its decision regarding the Evelyn Cheatham IOLERO Initiative, the Board may then consider the proposed charter for the IOLERO Ad Hoc Committee from the July 14, 2020 Board meeting in addition to the other recommended actions accompanying that item

Discussion:

Background

George Floyd's death sparked global protests and acutely exposed systemic racism in our nation. While the initial focus fell on law enforcement, the Sonoma County Board of Supervisors acknowledged that institutionalized racial and social injustice pervades all aspects of our community. In addition to creating the Office of Equity to examine internal and external policies through a social and racial justice lens, the Board redoubled its commitment to working together with the community to explore ways to work with the Sheriff's Office and other law enforcement agencies in Sonoma County to increase transparency and accountability for law enforcement. On June 23, 2020, the Board:

- Formally supported Assembly Bill 1185 (AB-1185), a state bill that would authorize counties to establish sheriff oversight boards and vest those boards with certain powers to ensure they could perform their duties;
- Amended the County's Legislative Platform to add a Law Enforcement Accountability and Transparency Issue to allow the County to take a position on legislation related to police accountability, training, and transparency that arises during the term; and
- Directed the Chair to appoint an ad hoc committee to explore possible amendments to the IOLERO ordinance and other related policy reforms.

In addition, the Board directed staff to coordinate with County departments and agencies, as well as our city partners, to forge a unified approach to law enforcement oversight. At its July 14, 2020 Regular Meeting, the Board considered the draft charter for the IOLERO Ad Hoc Committee, but continued the item at the urging of the community to give further consideration to placing the Evelyn Cheatham IOLERO Initiative on the November ballot.

Evelyn Cheatham IOLERO Initiative

Since last fall, proponents of the Evelyn Cheatham IOLERO Initiative have been gathering signatures to place the initiative on the November 2020 ballot. County Counsel provided a title and summary of the proposed initiative to facilitate the signature gathering, but their efforts were impeded by the COVID-19 pandemic. While those signature efforts have fallen short to date, in the wake of George Floyd's death, proponents have urged the Board to place the initiative on the ballot. If adopted, the Evelyn Cheatham IOLERO Initiative would repeal and replace the IOLERO Ordinance and expand the independence and oversight authority of both IOLERO and the IOLERO Community Advisory Council. A copy of the full text of the Evelyn Cheatham IOLERO Initiative is attached to this summary as Attachment C.

The proposed initiative would repeal and replace Article XXVII of Title 2 of the Sonoma County Code establishing the Independent Office of Law Enforcement Review and Outreach (IOLERO). The Evelyn Cheatham IOLERO Initiative seeks to expand the oversight authority and independence of IOLERO to review and analyze complaints against the Sonoma County Sheriff's Office (Sheriff-Coroner) and would also expand the independence and role of the Community Advisory Council (CAC) currently appointed by the IOLERO Director.

This initiative prescribes new qualifications and protections for the IOLERO Director. If adopted, the ordinance would require the Director be qualified as a Certified Practitioner of Oversight by the National Association for Civilian Oversight of Law Enforcement. Additionally, the revised regulations would prohibit the removal of the Director during his/her appointed term except for cause upon a 4/5 vote by the Board.

The Evelyn Cheatham IOLERO Initiative would add more specificity to the complaints that IOLERO review to include review of all complaints: (1) filed with IOLERO regardless of the allegations; (2) involving issues of excessive force; (3) alleging violation of individual constitutional rights; (4) alleging bias in policing or corrections; (5) alleging sexual harassment or sexual assault by law enforcement personnel; (6) involving issues of dishonesty; and (7) that become a matter of media interest. Further, it would vest IOLERO with, among other things, the authority to: (1) directly access and independently review any and all sources of investigative evidence; (2) directly contact complainants and witnesses; (3) contact custodians of evidence; and (4) independently subpoena records.

The initiative additionally would impose a variety of duties on the Sheriff-Coroner and mandates that the Sheriff-Coroner cooperate fully with all IOLERO investigations.

To ensure IOLERO performs its function efficiently and effectively, the Evelyn Cheatham IOLERO Initiative would require that IOLERO be subject to a performance audit at least triennially. Additionally, the initiative would set the annual budget for IOLERO at 1% of the total annual budget for the Sheriff-Coroner.

This initiative would transfer the appointing authority for a CAC from the IOLERO Director to the Board and

would expand the requirements for membership on the CAC. The proposed regulations require that the CAC continue to include 11 members. Members of the CAC would serve two-year terms and be required to adhere to the National Association of Civilian Oversight of Law Enforcement (NACOLE) Code of Ethics. The ordinance also mandates that the 11 members represent the diversity and demographics of the County and community stakeholders, including, but not limited to, racial, ethnic, cultural, gender, socio-economic, and geographic diversity. Mandatory qualifications would, among other requirements, require that CAC members have not been employed by a law enforcement agency for three years prior to appointment. The CAC would continue to participate in the review and establishment of Sheriff-Coroner policies, procedures, practices, trainings, and initiatives.

A red-line showing the proposed changes against the existing IOLERO Ordinance is included as Attachment D.

Legal Analysis:

At the direction of the Board, County Counsel completed a review of the proposed initiative. The analysis is summarized in the Matrix included as Attachment E. The analysis shows that, if challenged, some legal risks exist. The biggest legal hurdle is proposed Section 2-395 which attempts to prescribe a minimum annual budget for IOLERO thus largely removing the discretion of the Board. The legal risk is based on the County Budget Act requirement that the adoption of the budget is a legislative function exclusively committed to the Board. (*County of Butte v. Superior Ct.* (1985) 176 Cal.App.3d 693, 698; Gov. C. §§ 29000-29065.) The electorate cannot, by initiative, in a general law county, enact an ordinance prescribing minimum future annual budgets; such an ordinance exceeds the electorate's initiative power and is constitutionally invalid. (*Totten v. Bd. of Supervisors* (2006) 139 Cal.App.4th 826, 830; *see also Gates v. Blakemore* (2019) 39 Cal.App.5th 32, 39-40.)

The other suspect provision is the attempt to grant independent subpoena power to IOLERO. General law counties lack the authority to delegate subpoena power to independent oversight bodies. However, this infirmity will likely be cured by the adoption of Assembly Bill 1185. (*Dibb v. County of San Diego* (1994) 8 Cal.4th 1200, 1210; *see also* Senate Rules Committee Floor Analysis of AB 1185 (June 2020) at pp. 5-6.)

Neither of the legal infirmities outlined above render the entire ordinance invalid, but they would render the specific provisions unenforceable if challenged and a court agreed with the analysis above. However, the initiative ordinance contains a standard severability clause that allows sections or portions of the ordinance found to be unconstitutional or invalid to be stricken from the ordinance without affecting the validity of the remaining provisions of the ordinance. Thus, if voters (or the Board) were to approve the measure with the two legal issues discussed above, and someone mounted a successful legal challenge to the enforceability of the provisions in question, the offending provisions could simply be stricken from the ordinance, leaving the remainder in effect as drafted.

Additional considerations:

In considering an update of the IOLERO Ordinance to increase its effectiveness, changes also have been recommended by the current Director of IOLERO, Karlene Navarro. Ms. Navarro recommended several additional changes for the IOLERO Ad Hoc's consideration. Those recommendations are summarized in IOLERO's July Newsletter, which is included in your board packet as Attachment F. For example, Ms. Navarro

recommends that:

- IOLERO audit every incident of force used by a sheriff's deputy regardless of whether a complaint is filed with IOLERO or the Sheriff's Office (Newsletter, recommendation 1);
- IOLERO receive all prior complaints for the involved deputy, prior investigations (including *Brady* investigations), and the record of discipline with each complaint file for audit (Newsletter, recommendation 4); and
- IOLERO be authorized to make discipline recommendations (Newsletter, recommendation 5).

Further, the Board should be aware of the limitations on its ability to amend an ordinance adopted by the electorate. If the Board deems amendments necessary in the future, an ordinance adopted by the voters may only be amended by placing another measure on the ballot and obtaining a subsequent majority vote, except under certain limited circumstances. If the Board were to adopt the Evelyn Cheatham IOLERO Initiative on its own action, it would not be subject to these limitations.

Finally, the Board requested an estimate of the cost to place the Evelyn Cheatham IOLERO Initiative on the November ballot. Deva Marie Proto, the Clerk-Recorder-Assessor-Registrar of Voters, estimates that the cost to place a countywide measure on the November 2020 ballot will run between approximately \$260,000 and \$400,000. For comparison, the cost to place Measure M (Parks Sales Tax Measure) on the November 2018 ballot was \$292,061.24, and the cost to place Measure G (the Wildfire Prevention Measure) on the March 2020 ballot was \$298,548.

Options:

The Board has the following options with respect to the Evelyn Cheatham IOLERO Initiative:

- The Board may direct staff to place the proposed measure on the ballot for voters to consider at the November 3, 2020 election; *or*
- Instead of placing the ordinance on the ballot, the Board may accept the proposed language from the Evelyn Cheatham IOLERO Initiative ordinance and change the County's ordinance; *or*
- The Board may make amendments to the proposed Evelyn Cheatham IOLERO Initiative and either (i) submit the revised initiative as a ballot measure to the voters at the November 3, 2020 election, or (ii) incorporate amendments into the County's current ordinance.

IOLERO Ad Hoc Committee Charter

Depending on its decision regarding the Evelyn Cheatham IOLERO Initiative the Board may want to revisit the proposed charter for the IOLERO Ad Hoc Committee presented at its July 14, 2020 Regular Meeting. The Charter proposes an ambitious timeline for the IOLERO Ad Hoc to: facilitate a robust community outreach process to solicit input on possible amendments to the IOLERO Ordinance and develop a list of priority amendments to the IOLERO Ordinance and return to the full Board with recommendations for consideration and direction. The goal of the IOLERO Ad Hoc Committee is to adopt amendments to the IOLERO Ordinance by mid to late October. If the charter is approved, staff request the Board approve the use of up to \$40,000 in FY 2020-21 General Fund Contingencies to support the community outreach and engagement process and cover staff support to the IOLERO Ad Hoc Committee. Staff also requests direction from the Board on whether to

engage participation from the District Attorney, Chief Probation Officer and Public Defender to provide additional support to the IOLERO Ad Hoc Committee.

Prior Board Actions:

July 14, 2020 - Board directed to continue the IOLERO Ad Hoc Committee Charter item to 8/4/20.

June 23, 2020 - Board approved formation of the IOLERO Ad hoc Committee

FISCAL SUMMARY

Expenditures	FY 19-20 Adopted	FY20-21 Projected	FY 21-22 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures			
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources			

Narrative Explanation of Fiscal Impacts:

If the Board decides to place an ordinance on the ballot, the estimated cost is \$260,000 to \$400,000. If the charter is approved, staff is recommending the Board allocate \$40,000 for community outreach and staff support. These costs would be paid out of FY 2020-21 General Fund Contingencies.

Staffing Impacts:			
Position Title (Payroll Classification)	Monthly Salary Range (A-I Step)	Additions (Number)	Deletions (Number)

Narrative Explanation of Staffing Impacts (If Required):

Attachments:

Attachment A: July 14, 2020 IOLERO Ad Hoc Committee Charter agenda item

Attachment B: IOLERO Ad Hoc Committee Charter

Attachment C: Evelyn Cheatham IOLERO Initiative Full Ordinance

Attachment D: Red-line showing proposed changes to Title 2, Article XXVII (existing IOLERO Ordinance)

Attachment E: Matrix Summarizing Legal Analysis of Evelyn Cheatham IOLERO Initiative

Attachment F: IOLERO July 2020 Newsletter

Attachment G: Resolution introducing the Evelyn Cheatham IOLERO initiative as an amendment to the current IOLERO Ordinance and waiving further reading

Related Items “On File” with the Clerk of the Board: