



Legislation Text

File #: 2020-0806, **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

Supervisorial District(s): All

Title:

Review Amendments to the Evelyn Cheatham Effective IOLERO Ordinance and place the Evelyn Cheatham Effective IOLERO Ordinance on the November Ballot

Recommended Action:

- A) Review amendments to the Proposed Evelyn Cheatham Effective IOLERO Ordinance;
- B) Adopt a resolution calling a special election to submit the Evelyn Cheatham Effective IOLERO Ordinance, as revised, to the voters of Sonoma County, and ordering the special election be consolidated with the statewide general election to be conducted on November 3, 2020.

Executive Summary:

In November 2019, proponents of the Evelyn Cheatham Effective IOLERO Ordinance began gathering signatures to place the proposed initiative on the November 3, 2020 ballot, but their efforts were impeded by the COVID-19 pandemic and sufficient signatures were not collected. 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, on June 23, 2020 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 meeting, however in response to the outpouring of support by community members to have the Evelyn Cheatham Effective IOLERO Ordinance placed on the November 2020 ballot, the Board continued consideration of the proposed Charter to August 4, 2020, to allow additional time to review the Evelyn Cheatham Effective IOLERO Ordinance.

On August 4, 2020 the Board reviewed County Counsel's legal analysis of the Evelyn Cheatham Effective IOLERO Ordinance and several options to consider. After extensive deliberation, the Board directed staff to incorporate changes recommended by the IOLERO Director Karlene Navarro, as supported by the IOLERO Community Advisory Council, and submit the Evelyn Cheatham Effective IOLERO Ordinance, as revised, as a ballot measure to the voters at the November election.

The Board is requested to review amendments to the Proposed Evelyn Cheatham Effective IOLERO Ordinance, and call a special election to submit the revised Evelyn Cheatham Effective IOLERO Ordinance to the voters of Sonoma County on November 3, 2020.

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, and approved the formation of an ad hoc committee to explore possible amendments to the IOLERO ordinance and other related policy reforms.

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 Effective IOLERO Ordinance on the November ballot.

Staff returned on August 4, 2020 to present the Board a legal analysis of the Evelyn Cheatham Effective IOLERO Ordinance and different options to consider. Among these considerations were changes to the proposed Ordinance recommended by the Director of IOLERO, Karlene Navarro. After lengthy discussion and resolute support by members of the community to have the proposed Ordinance placed on the ballot with inclusion of Ms. Navarro's amendments, the Board directed staff to amend the Evelyn Cheatham Effective IOLERO Ordinance by incorporating changes recommended by Ms. Navarro, as approved by the Community Advisory Council, and submit it, as revised, to the voters of Sonoma County on November 3, 2020.

Evelyn Cheatham Effective IOLERO Ordinance

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. While these efforts were impeded by the COVID-19 pandemic, proponents have urged the Board to place the initiative on the ballot.

The Evelyn Cheatham Effective IOLERO Ordinance 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.

The following is a summary of what the proposed Ordinance requires:

- The Director will be qualified as a Certified Practitioner of Oversight by the National Association for Civilian Oversight of Law Enforcement.
- Prohibits the removal of the Director during his/her appointed term except for cause upon a 4/5 vote by the Board.
- Adds more specificity to the complaints that IOLERO review to include review of all complaints, and

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.*

- Imposes a variety of duties on the Sheriff-Coroner and mandates that the Sheriff-Coroner cooperate fully with all IOLERO investigations.
- Requires that IOLERO be subject to a performance audit at least triennially.
- Sets the annual budget for IOLERO at 1% of the total annual budget for the Sheriff-Coroner.
- Transfers the appointing authority for a Community Advisory Council (CAC) from the IOLERO Director to the Board, and would expand the requirements for membership on the CAC.

*While general law counties lack the authority to delegate subpoena power to independent oversight bodies, this will likely be cured by the adoption of Assembly Bill 1185: County board of supervisors: sheriff oversight. If passed, AB 1185 will authorize a sheriff oversight board to issue a subpoena when deemed necessary to investigate a matter within the jurisdiction of the board and authorizes a county to establish an office of the inspector general to assist the board with its supervisory duties.

Proposed Amendments

The Director of IOLERO, Karlene Navarro, recommended additional changes to the Evelyn Cheatham IOLERO Initiative for the purpose of strengthening IOLERO. These recommendations were unanimously approved by the CAC at its August 3, 2020 meeting, and would authorize IOLERO to:

1. 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.
2. Have direct access to all body worn camera videos (BWC's) and be authorized to post every BWC where force was used on IOLERO's website in the interest of transparency.
3. Receive every case for audit where a civil lawsuit is filed against the Sheriffs' Office related to the use of force regardless of whether a complaint is filed with IOLERO or the Sheriffs' Office.
4. Receive all prior complaints for the involved deputy, prior investigations (including Brady investigations), and the record of discipline with each complaint file for audit.
5. Be authorized to make discipline recommendations.
6. Be authorized to audit racial profiling data consistent with AB 953 (The Racial and Identity Profiling Act of 2015)
7. Be authorized to accept Whistleblower complaints

In addition, the Board directed County Counsel to draft language for a possible provision that would allow the Board to make future amendments to the ordinance under certain limited circumstances.

The Evelyn Cheatham Effective IOLERO Full Ordinance is included as Attachment A.

The attached red-line shows the integration of the amendments recommended by the CAC into the Evelyn Cheatham Initiative. In addition, the proposed amendment clause is set forth as optional Section 2-398. Section 2-398 was carefully crafted to limit future amendments as follows:

- Must be adopted by a 4/5ths vote of the full membership of the Board
- Any proposed amendment must be consistent with the spirit and intent of the Evelyn Cheatham Initiative

- A proposed amendment must first be reviewed and recommended by the CAC before the Board may consider
- Any proposed amendment must:
 - strengthen the article,
 - replace a section invalidated by a court, or
 - clarify any ambiguities that have arisen

Clarifications are permissible only to the extent such clarifications meet the intent of the ordinance to create a thorough, effective and fair law enforcement review process.

A resolution calling a special election to submit the Evelyn Cheatham Initiative to voters is included as Attachment B. And the proposed ballot title and question are included as Attachment C.

If approved by the voters, the Evelyn Cheatham IOLERO Initiative, as amended, will repeal and replace Article XXVII of Title 2 of the Sonoma County Code establishing the Independent Office of Law Enforcement Review and Outreach (IOLERO), effective upon certification of the official canvass of the November 3, 2020 election.

Prior Board Actions:

August 4, 2020 - Board directed staff to make amendments to the proposed Evelyn Cheatham IOLERO Initiative and submit the revised initiative as a ballot measure to the voters at the November 3, 2020 election.

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 | | \$400,000 | |
| Total Expenditures | | \$400,000 | |
| Funding Sources | | | |
| General Fund/WA GF | | | |
| State/Federal | | | |
| Fees/Other | | | |
| Use of Fund Balance | | | |
| Contingencies | | \$400,000 | |
| Total Sources | | \$400,000 | |

Narrative Explanation of Fiscal Impacts:

The estimated cost to place the measure on the November 2020 ballot is between \$260,000 to \$400,000. 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) |
|--|--|-------------------------------|-------------------------------|
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Narrative Explanation of Staffing Impacts (If Required):

Attachments:

Red-Line of Amended Evelyn Cheatham Effective IOLERO Initiative Full Ordinance
Resolution calling a special election to submit the Evelyn Cheatham Effective IOLERO Ordinance
Ballot title and question

Related Items "On File" with the Clerk of the Board: