

April 29, 2025

VIA EMAIL

San Mateo Board of Supervisors
C/O County Attorney John Nibbelin

**Re: Sheriff Christina Corpus's Comments on the Draft Removal
Procedures Discussed at the April 8 Board Meeting**

Dear Board of Supervisors:

The draft "Removal Procedures" discussed at the April 8 meeting do not provide Sheriff Corpus with due process and they will not survive a legal challenge. First, the Removal Procedures permit Supervisors Corzo and Mueller to participate in the proceedings, but they are impermissibly biased, and they are disqualified from acting in a quasi-judicial capacity. Second, the Removal Procedures create little more than an impermissible echo-chamber, where the Board acts as accuser, prosecutor, judge, jury, and appellate body. No reasonable person can conclude that this is a fair division of power and responsibility.

These fatal flaws cannot be rectified, and Section 412.5 cannot be used to remove Sheriff Corpus.

If the Board elects to charge ahead despite our warnings, it should restructure both the first (pre-removal) and second (removal) phases dramatically. These changes will not fix the otherwise unlawful process, but at least they will give Sheriff Corpus a fairer opportunity to develop a factual record for later use on appeal, if necessary.

1. Facts: Section 412.5 and the Proposed Rules

Section 412.5 provides that the Board of Supervisors may remove Sheriff Corpus after it provides her with a written statement of alleged grounds for removal and gives her a reasonable opportunity to be heard regarding any explanation or defense. It also empowers the Board with the authority to craft rules and procedures. To that end, the Board hired an attorney, Alfonso Estrada, of Hansen Brigggett. Mr. Estrada was given an impossible task, as the San Mateo County government structure and section 412.5 limited the possible process and make fair rules impossible.

In the text of the draft Removal Procedures, and while presenting at the April 8, 2025, Board meeting, Mr. Estrada described two distinct phases, and he diagrammed those phases as linear. In reality, the procedures contemplated is circular, and an impermissible echo-chamber, wherein the Board (or its agent) would make the initial allegations and then prosecute the case while it simultaneously acts as judge, jury, and final appellate body. According to the draft Removal Procedures, the process commences if four-fifths of the Board conclude that there is “cause” to remove Sheriff Corpus. After the initial vote, the sheriff is given five calendar days to respond at a “Pre-Removal Conference,” which the proposed rules state that Assistant County Executive or their designee would preside over. Besides the sheriff being “given an opportunity to respond,” the proposed rules do not detail what would occur at the Pre-Removal Conference, whether the Board would be obligated to present a case, and who would present the Board’s case.

After the Pre-Removal Conference, the pre-removal officer is only empowered to give a non-binding recommendation to the Board as to whether the Board should uphold its allegations for removal. The Board then votes and can uphold its allegations against Sheriff Corpus by a four-fifths vote.

According to the proposed rules, at no point in this first phase is Sheriff Corpus entitled to discovery.

If the Board upholds its own allegations by a second four-fifths vote, Sheriff Corpus’ only remedy is to appeal the Board’s decision *to the Board itself*. According to the proposed rules, the Board will provide a list of three hearing officers, from which the parties select one. The rules refer to the prosecutor on appeal as the “County,” but they do not further explain who would occupy this role. In reality, it is the Board, through its attorneys, who will be prosecuting the case while it simultaneously decides the appeal.

Only after the hearing officer is selected can Sheriff Corpus request specific discovery and issue subpoenas for document. No depositions are permitted. This timeline leaves exceptionally little room for discovery, as a hearing is required to be completed within 60 days after the hearing officer is selected, and each side is allotted five days of presentation.

The proposed Removal Procedures contemplate that on appeal, the Board will shoulder the burden of proof by the preponderance of the evidence. After the evidentiary hearing, the hearing officer is empowered to provide an advisory opinion, which the Board shall consider, but which is non-binding. Regardless of what the hearing officer advises, the Board can then remove the sheriff by another four-fifths vote. That is, notwithstanding what the neutral hearing officers finds about the Board’s presentation of evidence at the appeal, the Board can still remove Sheriff Corpus.

2. Procedural Issues That Cannot Be Rectified: The Proposed Rules Violate Due Process and the Public Safety Officers Procedural Bill of Rights Act (PSOBR, Gov. Code § 3300 Et Seq.)

a. Due Process

i. The Board is impermissibly biased

Local legislatures wear many hats, sometimes acting in a quasi-legislative capacity, and sometimes acting in a quasi-judicial capacity. (*Petrovich Development Company, LLC v. City of Sacramento* (2020) 48 Cal.App.5th 963; *Beverly Hills Unified Sch. Dist. v Los Angeles County Metro. Transp. Auth.* (2015) 241 Cal.App.4th 627, 670–671.) In *Petrovich*, the Court of Appeal explained, “[m]ost of us think of city councils as legislative bodies. But city councils sometimes act in an *adjudicatory* capacity, that is, they sit in a role similar to judges.” (*Petrovich, supra*, 48 Cal.App.5th 963, citing to *Woody’s Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012, 1021.)

A legislative body acts in its quasi-judicial capacity when it oversees “a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer.” (Code Civ. Pro. § 1094.5.)

“Quasi-legislative acts involve the adoption of rules of general application on the basis of broad public policy, while quasi-judicial acts involve the determination and application of facts peculiar to an individual case. Quasi-legislative acts are not subject to procedural due process requirements while those requirements apply to quasi-judicial acts regardless of the guise they may take.” (*Save Civita Because Sudberry Won’t v. City of San Diego* (2021) 72 Cal.App.5th 957, 983) (internal citation omitted).)

As presently made up, the Board cannot adjudicate this matter because they will be acting as quasi-judges, and at least Supervisors Corzo and Mueller are impermissibly bias. (Code of Civ. Pro., § 170 et seq.) These supervisors’ bias is clear, obvious, and well-documented in public statements, and they are disqualified from participating. (*Id.*) By acting so, and disqualifying themselves, Supervisors Corzo and Mueller put the Board in a Catch-22—if those two participate, the process will be unlawful, but without their votes, the Board cannot attain the four-fifths majority of its members required to remove Sheriff Corpus.

ii. The rules impermissibly place the Board as accuser, prosecutor, judge, jury, and appellate body

Due process forbids an accuser from acting as the adjudicator. (*Applebaum v. Board of Directors* (1980) 104 Cal.App.3d 648; *Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155.) As example of an impermissible mingling of roles, in *Applebaum*, the Court of Appeal affirmed a judgment restoring a physician's hospital privileges, finding the hospital violated fair procedure rights when a complaining doctor served on the investigating committee and five committee members also sat on the reviewing executive committee, creating a "practical probability of unfairness" in the proceedings. In *Brown*, the Court of Appeal reversed a judgment denying a police officer's petition challenging paygrade reduction, holding the officer had a protected property interest and the department's appeal procedure was deficient for failing to place the burden of proof on the department, not requiring application of department manual criteria, and not providing a neutral decision-maker.

Perhaps worse than Supervisor Corzo and Mueller's bias, the draft Removal Procedures violate due process because it outlines an echo chamber, where the Board gets to affirm its already held conclusions three times (initiation of proceedings, after pre-removal process, and on appeal). Mr. Estrada described and diagramed this process as linear, but it is not, and it is in fact circular. The process can only begin with a four-fifths vote of the Board, which would be followed by a hearing that would produce a non-binding advisory opinion. The decision then goes back to the Board for it to vote to sustain its initial allegations. This would be followed by an appeal, where the Board would prosecute the case, which would be subject to another non-binding advisory opinion, and then the Board would again get to decide whether to affirm its initial allegations, which by then they have already voted affirmatively on twice.

Compare these draft procedures to San Francisco's, which is the only other California county who attempted to oust their sheriff through a non-recall process. In 2012, the Mayor of San Francisco initiated the process to oust then-Sheriff, Ross Mirkarimi. That process played out according to San Francisco's charter, which is more robust than San Mateo's. Per the San Francisco charter, the Mayor initiated the process by making a formal accusation against the Sheriff. On the Mayor's behalf, the City Attorney prosecuted the case, and consistent with San Francisco Charter, the San Francisco Ethics Commission decided the rules, heard the evidence, and made recommendations to the Board of Supervisors. Thereafter, the Board of Supervisors considered the evidence and findings, and voted on the question of removal.

Because the San Francisco Board voted against removal, their process was never challenged in court, and it is unclear whether the attempt to remove Sheriff Mirkarimi

was legally sufficient. It does not appear as though the process allowed for an administrative appeal, which Sheriff Mirkarimi was entitled to as an elected Sheriff. (More below.) Regardless, San Mateo's process falls well short of San Francisco's, and it is clearly insufficient.

b. Public Safety Officers Procedural Bill of Rights Act ("PSOBR")

Public employees have a right to due process, including a "*Skelly*" hearing, before discipline is imposed on them. (*Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194.) At a minimum, public employees are entitled to: (1) notice of the intended disciplinary action; (2) a copy of all materials upon which the action is based (including material which was available for review by the individual responsible for imposing discipline, regardless of whether such information was, in fact, reviewed); and, (3) an opportunity to respond orally or in writing to an impartial reviewer prior to the effective date of the disciplinary action.

In addition to standard public employee rights, law enforcement, including elected sheriffs, is entitled to protection under the Public Safety Officers Procedural Bill of Rights Act (PSOBR, Gov. Code, § 3300 et seq.) Under PSOBR, a public safety officer subject to punitive action is entitled to "an opportunity for administrative appeal." (Gov. Code, §§ 3304(b), 3254(b).) "[P]unitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment." (Gov. Code, §§ 3303, 3251(c).) The administrative appeal gives the public safety officer an opportunity to establish a formal record of the events leading to the discipline, as well as attempting to convince the department to reverse its decision. This may be done either by demonstrating that the charges leading to punitive action are false or that mitigating circumstances make the discipline improper. (*Binkley v. City of Long Beach* (1993) 16 Cal.App.4th 1795, 1806-1807.)

For all the reasons that the draft Removal Procedures violate due process, they violate PSOBR, and the Board should reject them. Additionally, the draft rules violate public employee rights and PSOBR because they deprive Sheriff Corpus of a true *Skelly* hearing and an administrative appeal. A *Skelly* hearing would require the Board to share a copy of all materials upon which the action is based (including material which was available for review by the individual responsible for imposing discipline, regardless of whether such information was, in fact, reviewed), but the Board has refused, and it will continue to refuse to provide such material. Further, what is deemed an administrative appeal, is really just another opportunity for the Board to rubberstamp the decision it has already made..

San Mateo cannot rectify this either. As written, Section 412.5 puts the first and last authority to remove with the Board, but among other things, PSOBR requires that the final authority be neutral, and not a participant in the proceedings until then.

3. Substantive Issues That the Board Should Change If It Presses On with This Unlawful Process

Even if the Board ignores the above, it should make substantive changes to the rules. These changes will not make the process fair, but the changes at least give Sheriff Corpus a chance to create a meaningful evidentiary record, even if the Board ultimately ignores the facts.

a. California Administrative Procedure Act should govern discovery

Section VI of the draft rules, “Discovery,” improperly limits discovery. As discussed above, in advance of the Pre-Removal Conference, PSOBR requires the government to provide Sheriff Corpus with all materials it reviewed or had access to. Additionally, the California Administrative Procedure Act (“APA”), Government Code, Title 2, Division 3, Part 1, Chapter 5, section 11500 et seq should apply. Per the APA, a party, on written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing. (Gov. Code, § 11507.6(1).) Additionally, the APA allows for subpoenas, which the draft rules include, but also allows for deposition (Gov. Code, § 11511), which the draft rules prohibit.

For more specific written discovery requests, the APA provides that the requesting party is also entitled to inspect and make a copy of any of the following materials in the possession or custody or under the control of the other party:

(1) a statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;

(2) a statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(3) statements of other witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions, or events that are the basis for the proceeding;

(4) all writings, including, but not limited to, reports of mental, physical, and blood examinations and things that the party then proposes to offer in evidence;

(5) any other writing or thing that is relevant and that would be admissible in evidence; and

(6) investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports: contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions, or events that are the basis for the proceeding or reflect matters perceived by the investigator in the course of their investigation, or contain or include by attachment any statement or writing described in items (1) to (5), inclusive, or a summary of it.

(Gov. Code, § 11507.6(2).)

The draft rules need to incorporate the APA, and if they do, Sheriff Corpus will engage in written extensive discovery, and she intends to take depositions. Preliminarily, Sheriff Corpus will seek discovery on the following:

- ❖ A copy of all materials upon which the action is based (including material which was available for review by the individual responsible for imposing discipline, regardless of whether such information was, in fact, reviewed). (See PSOBR.)
- ❖ Cordell's Complete Witness Interview Notes, including those whose statements were not included in the report.
- ❖ Cordell's Interview Schedule
- ❖ Judge Cordell's Engagement Letter and Scope
- ❖ Historical Staffing Turnover Data - comparison data for departures under previous administrations.
- ❖ Prior Administration Contracts - documentation of any county transition team practices, executive hiring, and consultant contracts from across government since 2015.
- ❖ Communications Between Judge Cordell and Complainants - all communications between Judge Cordell and county employees and any other witnesses.

- ❖ Complete Personnel Files - complete personnel files for all former and current county employees who provided statements to Judge Cordell and/or will provide testimony at the hearing.
- ❖ Reserve Deputy Program Records - documentation of the Reserve Deputy program practices, including how other Reserve Deputies record their hours.
- ❖ Email Communications - email communications between Judge Cordell and County Counsel during the investigation to examine potential direction or influence.
- ❖ Comparative Lease Agreement Analysis - all other county leases for property purchased since 2015.
- ❖ Complete Badge Issuance Records - historical records of badge issuances to civilian staff and reserves since 2000.

Additionally, and among others, Sheriff Corpus will likely depose County Executive, Mike Callagy, certain Supervisors, and other witnesses.

b. The Pre-Removal Conference and Removal Hearing officers should be neutral, trained in the law, who are not part of San Mateo government.

Based on the Board's discussions at the April 8, 2025, meeting, we believe the Board is seeking to find a Pre-Removal Conference officer outside of the County Executive's office. We agree with Board of Supervisor President David Canepa and his concern that the County Executive and that office is conflicted, but additionally, we do not believe any San Mateo County employee can fairly and impartially evaluate the evidence and decide the facts. We further believe the neutral should be trained in law and have experience interpreting conflicts in evidence.

c. The Removal Hearing date should be set at the discretion of the hearing officer, not on a specific timeline

Presently, the hearing officer is required to complete the Removal Hearing "within 30 to 60 calendar days" of the date the officer was notified of their selection. This timeline is artificially short, and it does not give Sheriff Corpus sufficient time to conduct the discovery she is entitled to. The Board should reject time timeline, and order that the hearing be completed as soon as practicable, with no further deadlines which might interfere with discovery.

d. The burden of proof should be clear and convincing

This would be the first time a California Board of Supervisors ousted an elected sheriff by vote, and clear and convincing is the appropriate standard. That is the standard the California Commission on Judicial Performance uses when seeking to remove judges, who are also elected officials, and it is the appropriate standard given the gravity of the consequences.

The unbiased Supervisors should reject the proposed rules and conclude that Section 412.5 cannot and will not be used to remove Sheriff Corpus. Supervisors Corzo and Mueller are impermissibly biased, but even more, the process unfairly makes the Board the accuser, prosecutor, judge, jury, and appellate body. Neither due process nor the more specific PSOBR allows one body to occupy so many roles, and the proceedings will necessarily be invalid.

If the Board pushes ahead regardless of the fatal procedural flaws, it should at least change some of the rules so that Sheriff Corpus has a chance of developing a factual record.

Sincerely,

A handwritten signature in blue ink, appearing to be 'C. Ulrich'.

Christopher R. Ulrich
Thomas P. Mazzucco
James A. Lassart
Philip J. Kearney
Matthew J. Frauenfeld