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## MEMORANDUM

TO: Hon. Mayor London N. Breed  
Hon. Members, Board of Supervisors  
Acting City Administrator Ken Bukowski  
Acting Director of Public Works Alaric Degrafinried

CC: Hon. Assessor Carmen Chu

FROM: Jon Givner  
Deputy City Attorney

DATE: January 20, 2021

RE: Establishment of the Public Works Commission, Sanitation and Streets Commission, and Department of Sanitation and Streets under Proposition B

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At the November 3, 2020 election, the voters approved Proposition B to establish two new commissions and a new department. First, the measure established a five-member Public Works Commission to oversee the Department of Public Works. Second, the measure established a five-member Sanitation and Streets Commission to oversee a new Department of Sanitation and Streets. Third, the measure established the Department of Sanitation and Streets to assume some of the duties currently performed by the Department of Public Works. The measure will precipitate two separate but overlapping transitions: transferring oversight of the Department of Public Works from the City Administrator to the new Public Works Commission, and transferring a number of the Department of Public Works' responsibilities to the new Department of Sanitation and Streets under the oversight of the Sanitation and Streets Commission.

Proposition B includes several provisions setting rules for these transitions. This memorandum describes those transition rules. Additional questions will probably arise as the City and its employees prepare for these transitions, including questions about administrative responsibilities, budgetary issues, and the division of roles between the two departments. Although this memorandum focuses only on the transition rules, the City Attorney's Office is available to provide additional advice about those related questions on request.

### **A. Public Works Commission**

Under Proposition B, the Public Works Commission will have five members. The Board of Supervisors (the "Board") will appoint two members, the Mayor will appoint two members subject to Board confirmation, and the Controller will appoint one member subject to Board confirmation. Proposition B sets a default timeline for the establishment of the Public Works Commission but allows the Board to adopt a written motion by majority vote (six Supervisors) changing that timeline.

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1. Default Timing for Establishment of the Commission

Unless the Board provides otherwise in a written motion, the following deadlines will apply.

- *Initial Appointments:* The Mayor, Board and Controller must make initial appointments to the Commission by no later than June 1, 2022. (Charter § 4.141(d)(1).)
- *Formation of Commission:* The Commission will come into existence and may begin to meet on July 2, 2022 if three Commissioners have assumed office by that time. If three Commissioners have not assumed office by July 2, 2022, then the Commission will come into existence and may begin to meet when three Commissioners have assumed office. (Charter § 4.141(d)(1).) A Commissioner assumes office when the Commissioner takes the oath of office after being finally appointed.
- *Inaugural Meeting:* Regardless of the timing of Commissioner appointments, the Commission must hold its first meeting no later than October 2, 2022. (Charter § 4.141(d)(2).)
- *Terms of Office:* To provide staggered terms, the initial terms of members will begin on July 2, 2022. (Charter § 4.141(d)(1).) The members in seats 1, 3 and 5 will serve initial terms of two years, and the members in seats 2 and 4 will serve initial terms of four years. Thereafter, all members will serve four-year terms. (Charter § 4.141(b)(2).)
- *Oversight of Department:* The Commission will assume oversight of the Department of Public Works on September 1, 2022. (Charter § 4.141(c).)

2. Earlier Establishment Set by Board Motion

Section 4.141 authorizes the Board to adopt a written motion any time before January 1, 2022 to speed up the formation of the Commission. The motion can set a date earlier than June 1, 2022 for the Board, Mayor, and Controller to make initial appointments to the Commission. (Charter § 4.141(d)(1).)

If the Board adopts such a motion, then the following deadlines would also change:

- *Initial Appointments:* The Mayor, Board and Controller would make appointments by the date set by the Board's motion (the "Appointment Deadline"). (Charter § 4.141(d)(1).)
- *Formation of Commission:* The Commission would come into existence either on the 31st day after the Appointment Deadline or on the date when three members have assumed office, whichever is later. (Charter § 4.141(d)(1).)

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- *Inaugural meeting:* The Commission would be required to hold its inaugural meeting at least three months after the Appointment Deadline. (Charter § 4.141(d)(2).)
- *Terms of Office:* The terms of Commission members would begin on the 31st day after the Appointment Deadline. (Charter § 4.141(d)(1).)
- *Oversight of Department:* In its motion establishing an earlier Appointment Date, the Board may specify what powers and duties the Commission may exercise during the transition period. The Commission must assume all oversight of the Department of Public Works no later than September 1, 2022, but during the period between the Commission’s formation and September 1, 2022, the Board need not authorize the Commission to exercise all those powers. (Charter § 4.141(c), (d).) The Board’s motion could, for example, designate a “study and plan” period for the Commission to establish its rules and procedures, hold hearings to learn about the Department’s operations, and receive training on Sunshine and ethics laws. Whether or not the Board decides to establish a “study and plan” period, the Board’s motion may authorize the Commission to assume some or all oversight authority on a date before September 1, 2022.

### 3. Oversight of the Department of Public Works Before and After the Transition

- *Appointment and Removal of Director:* Before the passage of Proposition B, the Charter provided that the City Administrator had authority to appoint and remove the Director of Public Works. (Charter § 3.104(6).) Proposition B immediately removes that authority from the City Administrator. Until the Public Works Commission assumes responsibility over the Department, the Mayor will have the power to appoint and remove the Director of Public Works. (Charter § 3.100(19).) When the Commission assumes responsibility for appointment and removal of the department head as described above, the Commission will have authority to remove the Director, and will have authority to submit to the Mayor nominees for the position of Director, subject to appointment by the Mayor. (Charter § 4.102(5), (6).)
- *Status of Director of Public Works when Commission Assumes Oversight.* The person holding the position of Director of Public Works when the Commission assumes oversight responsibility will remain in that office unless removed by the Commission. (Charter § 4.141(d)(3).) If the person holding the position is serving in an “acting” capacity at the time, the person will remain in the acting position until the Mayor appoints a new Director. (*Id.*)
- *Oversight of Department of Public Works during the Transition Period:* As described above, the Commission will assume oversight of the Department of Public Works on September 1, 2022 or an earlier date established by the Board. But the measure does not provide specific guidance about the administrative status of the Department of Public Works before that date. The Department

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currently is situated under the authority and oversight of the General Services Agency (“GSA”). While Proposition B removes the City Administrator’s appointment and removal authority over the Director of Public Works, it does not remove the Department from GSA’s general oversight. Accordingly, during the transition period before the Commission assumes oversight responsibility, the Department will remain part of GSA, and GSA will continue to provide the Department administrative support, including human resources, performance management, finance, budgeting, technology, emergency planning, training, and employee safety services, unless the Board enacts an ordinance requiring a different oversight structure.

- *Oversight of Department after the Transition Period:* Beginning on September 1, 2022 or an earlier date established by the Board as described above, the Commission will have authority to exercise all the powers and duties of boards and commissions under Charter Sections 4.102, 4.103 and 4.104. (Charter § 4.141(c)(1).)

In addition to those general powers, Proposition B also states that the Commission will have four specific responsibilities: (1) overseeing the Department’s performance; (2) approving all Department contracts, unless the Commission delegates that responsibility to the Director or the Director’s designee; (3) requiring the Director or designee to provide the Commission with proof of performance on certain public works contracts entered by the Department; and (4) performing an annual review on the designation and filling of Department positions. (Charter § 4.141(c)(2)-(5).)

The Board may also enact ordinances providing additional authority to the Commission. (Charter § 4.141(c).)

## **B. Sanitation and Streets Commission**

Like the Public Works Commission, the Sanitation and Streets Commission will have five members. The Board will appoint two members, the Mayor will appoint two members subject to Board confirmation, and the Controller will appoint one member subject to Board confirmation. But the rules for establishment of the two commissions differ significantly.

### **1. Timing for Establishment of the Commission**

In contrast to Proposition B’s transition rules for the Public Works Commission, the measure provides that the Sanitation and Streets Commission will not form until the Board enacts a written motion setting a “Transition Date” on which the Commission will come into existence. (Charter § 4.139(d)(1).) By January 1, 2022, the Board must vote on a motion by majority vote (six Supervisors) setting the Transition Date. (Charter § 4.139(d)(1).) If the Board fails to adopt a motion by January 1, 2022, then the Clerk of the Board must place a motion on the agenda of a Board meeting at least once every three months thereafter until the Board adopts a motion setting a Transition Date. (Charter § 4.139(d)(1).) The Board has discretion to set the

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Transition Date any time on or after July 1, 2022, but the Transition Date cannot be earlier than July 1, 2022. (Charter § 4.139(d)(1).) Depending on the Board's chosen Transition Date, Proposition B establishes the following deadlines:

- *Initial Appointments:* The Mayor, Board, and Controller must make appointments to the Commission no later than three months before the Transition Date. (Charter § 4.139(d)(1).) So if the Board sets July 1, 2022 as the Transition Date, the appointing authorities must make appointments by April 1, 2022.
- *Commission Formation:* The Commission will come into existence on the Transition Date set by the Board's motion. (Charter § 4.139(d)(1).)
- *Inaugural Meeting:* The Commission must hold its first meeting within 30 days after three members of the Commission have assumed office. (Charter § 4.139(d)(2).)
- *Terms of Office:* The initial terms of all Commission members will begin on the Transition Date. (Charter § 4.139(d)(1).) To provide staggered terms, the initial terms of the members in seats 1 and 4 will be two years, and the initial terms of the members in seats 2, 3, and 5 will be four years. Thereafter, all members will serve four-year terms. (Charter § 4.139(b)(2).)
- *Oversight of Department of Sanitation and Streets:* The Commission will assume oversight of the Department of Sanitation and Streets when the new Department forms three months after the Transition Date. (Charter §§ 4.138(a), 4.139(c).) So if the Board sets July 1, 2022 as the Transition Date, the Commission will assume oversight of the Department on October 1, 2022.

## 2. Oversight of the Department of Sanitation and Streets

The Department of Sanitation and Streets will come into existence three months after the Transition Date when the Sanitation and Streets Commission forms. (Charter § 4.138(a).) If the Commission forms on July 1, 2022, then the Department will form on October 1, 2022.

- *Appointment and Removal of Director:* The Commission will have authority to remove the Director of Sanitation and Streets, and will have authority to submit to the Mayor nominees for the position of Director, subject to appointment by the Mayor. (Charter §§ 4.102(5)-(6), 4.139(c).)
- *Initial Director Responsibilities when Commission Assumes Oversight.* The Director of Public Works or the person serving in an acting capacity as the Director of Public Works when the Commission assumes oversight of the Department of Sanitation and Streets will initially perform the duties of the Director of Sanitation and Streets in an acting capacity. That official will continue to perform those duties until the Mayor appoints a new Director of Sanitation and Streets following the Charter's prescribed appointment process. (Charter § 4.139(d)(3).) After the initial appointment of a Director of Sanitation

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and Streets, the two positions may no longer be held simultaneously by the same person. (Cal. Gov't Code § 1099.)

- *Oversight of Department:* The Commission will have authority to exercise the powers and duties of boards and commissions under Charter Sections 4.102, 4.103 and 4.104. (Charter § 4.139(c).)

In addition to those general powers, Proposition B also states that the Commission will have six specific responsibilities: (1) reviewing and evaluating data regarding street and sidewalk conditions; (2) establishing minimum standards of cleanliness in the public right of way; (3) setting baselines for services administered by the Department; (4) approving all Department contracts, unless the Commission delegates that responsibility to the Director or the Director's designee; (5) performing an annual cost analysis to evaluate inefficiencies and waste; and (6) performing an annual review on the designation and filling of Department positions. (Charter § 4.139(c)(1)-(5).)

The Board may enact ordinances providing additional authority to the Commission. (Charter § 4.139(c).)

### **C. Department of Sanitation and Streets**

The Department of Sanitation and Streets will form three months after the Board-approved Transition Date for the Sanitation and Streets Commission. The Department will be headed by a Director of Sanitation and Streets, appointed as discussed above.

#### **1. Duties of the Department of Sanitation and Streets**

Proposition B lists eight duties for the Department of Sanitation and Streets, and the Department will assume all responsibilities previously under the Department of Public Works that pertain to those duties. (Charter § 4.138(a).) The eight listed duties are:

- efficient and systematic street sweeping, sidewalk cleaning, and litter abatement;
- maintenance and cleaning of public restrooms in the public right of way;
- provision and maintenance of City trash receptacles;
- removal of illegal dumping and graffiti in the public right of way;
- maintenance of public medians, and of street trees in the public right of way;
- maintenance of City streets and sidewalks;
- construction, repair, remodeling, and management services for City-owned buildings and facilities; and
- control of pests on City streets and sidewalks.

(Charter § 4.138(b).) The Board may limit, modify, or eliminate any of these duties, or may transfer them to another City department, by ordinance approved by a two-thirds vote (eight

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Supervisors). (Charter § 4.138(b).) In addition to those eight duties, the Director of Sanitation and Streets will perform the responsibilities assigned to the Director of Public Works in the Refuse Collection and Disposal Ordinance. (Charter § 4.138(c).)

2. Administrative Support for the Department

By no later than the Transition Date when the Sanitation and Streets Commission forms, the Board must enact an ordinance to require the City Administrator, the Department of Public Works, or another City department to provide administrative support to the new Department of Sanitation and Streets for at least the first two years of the new Department's existence. (Charter § 4.138(d).) The ordinance must require a City department to provide human resources, performance management, finance, budgeting, technology, emergency planning, training, and employee safety services to the new Department. (Charter § 4.138(d).) If the Commission forms on July 1, 2022, then the Board must enact the ordinance by that date.

The Board cannot transfer these administrative responsibilities to the Department of Sanitation and Streets during the first two years of the Department's existence. (Charter § 4.138(d).) But after the Department has been in existence for two years, the Board may adopt ordinances requiring the Department to assume responsibility for some or all of that administrative support. (Charter § 4.138(d).)

**D. Conforming Ordinances During the Transition Period**

By no later than the Transition Date when the Sanitation and Streets Commission forms, the City Administrator must submit to the Board a proposed ordinance amending the Municipal Codes to conform to the changes in Proposition B. (Charter § 4.138(e).) The Charter does not impose a deadline by which the Board must adopt that ordinance.