



County of Sonoma
Independent Office of Law Enforcement Review and Outreach (IOLERO)
Community Advisory Council (CAC)
3333 Mendocino Avenue, Suite 240, Santa Rosa, CA 95403
CAC@sonoma-county.org

August 2, 2022

By Electronic Mail
Copy by First Class Mail

Dear Chairperson Gore and Supervisors:

We, the members of the IOLERO Community Advisory Council (CAC), are writing to convey our deep concerns about the Letters of Agreement (hereinafter “Letters”) between the various Sheriff’s deputies’ associations and the County. Our concerns are shared by community members attending our meetings on July 7th and August 1st. We think the County has undermined the intent of Measure P and the will of the voters by the concessions it made in the Letters.

Indeed, it appears that the County has done exactly what community members most feared would happen. When the CAC and IOLERO held a community meeting prior to the Board placing Measure P on the ballot, “[b]y far, the factor that seemed to concern the community the most was this: if amendments are made to IOLERO’s ordinance through the Board of Supervisors, those amendments could be watered down or reversed in the future by the Board of Supervisors.” (IOLERO Annual Report 2019-2020 at 7 (discussing the community meeting hosted by IOLERO and CAC on August 3, 2020).)

Following are our major concerns:

First, the Letters state that the provisions in the Letters will take precedence over the ordinance where there is conflict to the extent allowable by applicable law (Letters, Sec. III (A)). This is an extremely unusual clause that is likely to lead to litigation down the road. (Generally, it is the law that prevails over an agreement; not the reverse.) Article II, Section 11 of the California Constitution and California 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 precedence if the MOUs “substantially” amended the ordinance. Yet, in the likely event that the deputies’ associations and the County disagree whether particular provisions constitute a “substantial” amendment or not, only litigation will resolve the issue.

Second, the Letters do, in our opinion and the opinion of many attending the July 7, 2022 CAC meeting, substantially and detrimentally amend Measure P in three major areas.

- A. The first area is the issue of how whistleblower complaints will be investigated. Ordinance No. 6333 gives IOLERO authority to receive **and investigate** whistleblower complaints (Ord. 6333, Sec. 2-394 (b)(3)). The Letters seemingly strip IOLERO of the power to actually investigate whistleblower complaints. Rather, the Letters 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” (Letters, Sec. 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.” (Ord. 6333, Sec. 2-394 (b)(3).) The provision in the Letters 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? The Whistleblower provisions in the Letters completely undermine the purpose of the Whistleblower provisions in Measure P and are substantial amendments that cannot be allowed to stand.
- B. 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 (Letters, Sec. 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. Again, this limitation on IOLERO’s power substantially amends Measure P and must be changed.
- C. Third, the Letters “allow” the Director to “request” access to the Sheriff’s investigative files during its investigation but do not require the Sheriff to comply (which is current practice). That contrasts with Measure P’s directive that the Sheriff must cooperate with IOLERO. (Cf. Letters, Sec. IV. (A) (ii); Ord. 6333, Sec. 2-394 (e).) The Letters undermine Measure P in this respect, as well, and its provisions are substantial amendments.

Moreover, this provision regarding communications between the Sheriff and IOLERO seems to be well outside the scope of the deputies’ associations’ interests so the matter should not have been addressed in the Letters.

Finally, the Letters have no sunset provision. This unusual lack of an effective time frame 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 Letters render provisions of Measure P ineffective or impair IOLERO’s functioning.

The County has done a grave disservice to the voters, to the communities most impacted by the Sheriff's Department, and to IOLERO. There was no need to concede any of these points given the Court of Appeal's decision in the PERB complaint. We urge you to seek changes to the Letters of Agreement in order to minimize the risk of further litigation and voter disapproval.

Sincerely,


Evan E. Zelig (Aug 4, 2022 06:07 PDT)

Evan Zelig, Chairperson


Lorena Barrera (Aug 4, 2022 08:24 PDT)

Lorena Barrera, Vice-Chair

On behalf of IOLERO Community Advisory Council