

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

JESSE CAPIN SMITH
Chief Assistant City Attorney

Direct Dial: (415) 554-4709
Email: jesse.smith@sfgov.org

March 21, 2012

David P. Waggoner, Attorney at Law
1777 Haight Street
San Francisco, CA 94117-2807

Re: Sheriff Mirkarimi—Official Misconduct Charges and Notice of Suspension

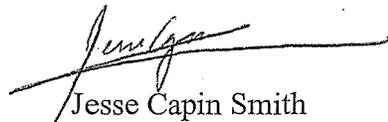
Dear Mr. Waggoner:

As we discussed on our telephone call this morning, we are hand delivering to you a copy of the Mayor's charges of official misconduct against Sheriff Mirkarimi together with a notice of suspension from the Office of Sheriff pending resolution of those charges. In your voicemail message to me and that call, you informed me that you are serving as legal counsel to Sheriff Mirkarimi in this matter, that you wish to accept service on his behalf of the charges and the suspension letter, and that Sheriff Mirkarimi has authorized you to do so.

We will be assigning one or more Deputies in this Office to serve as lead counsel on behalf of the Mayor before the Ethics Commission. I will advise you of the contact information for those Deputies. Until then, you may contact me with any questions you may have.

Very truly yours,

DENNIS J. HERRERA
City Attorney



Jesse Capin Smith
Chief Assistant City Attorney

OFFICE OF THE MAYOR
SAN FRANCISCO



EDWIN M. LEE
MAYOR

March 21, 2012

Ross Mirkarimi
c/o David P. Waggoner
Attorney at Law
1777 Haight Street
San Francisco, CA 94117-2807
By hand delivery

Dear Sheriff Mirkarimi:

Under the authority of Section 15.105 of the Charter of the City and County of San Francisco, I am immediately suspending you without pay from the Office of Sheriff on grounds of official misconduct. During your suspension, I will appoint Vicki Hennessey to discharge the duties of the Office of Sheriff.

I will notify the Ethics Commission and the Board of Supervisors that I have suspended you on grounds of official misconduct. I will present those bodies with written charges and ask that you be removed from office, as required under San Francisco Charter Section 15.105(a).

Sincerely,

A handwritten signature in cursive script, appearing to read "Edwin M. Lee".

Edwin M. Lee
Mayor

1 DENNIS J. HERRERA, State Bar #139669
City Attorney
2 JESSE CAPIN SMITH, State Bar #122517
Chief Assistant City Attorney
3 City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
4 Telephone: (415) 554-4700
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6 BOARD OF SUPERVISORS

7 ETHICS COMMISSION

8 CITY AND COUNTY OF SAN FRANCISCO

9
10 In the Matter of Charges Against
11 ROSS MIRKARIMI,
12 Sheriff, City and County of San Francisco.

**WRITTEN CHARGES OF OFFICIAL
MISCONDUCT.**
[San Francisco Charter Section 15.105]

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16 I, EDWIN M. LEE, Mayor of the City and County of San Francisco (the "City"), acting
17 under the authority vested in me by Charter Section 15.105, charge San Francisco
18 Sheriff Ross Mirkarimi ("SHERIFF MIRKARIMI") with engaging in official misconduct as defined
19 in San Francisco Charter Section 15.105(e). All the factual allegations contained in these charges
20 are based upon my information and belief.

21 **BACKGROUND**

22 **A. Charter Section 15.105**

23
24 1. San Francisco Charter Section 15.105 authorizes me to file these charges and initiate
25 proceedings to remove SHERIFF MIRKARIMI from his elective office. Section 15.105 states that
26 "[a]ny elective officer" is "subject to suspension and removal for official misconduct" as provided
27 for in that section. Section 15.105(a) provides: "Such officer may be suspended by the Mayor and
28 the Mayor shall appoint a qualified person to discharge the duties of the office during the period of

1 suspension. Upon such suspension, the Mayor shall immediately notify the Ethics Commission and
2 Board of Supervisors thereof in writing and the cause thereof, and shall present written charges
3 against such suspended officer to the Ethics Commission and Board of Supervisors at or prior to
4 their next regular meetings following such suspension, and shall immediately furnish a copy of the
5 same to such officer, who shall have the right to appear with counsel before the Ethics Commission
6 in his or her defense."

7 2. Charter Section 15.105(a) further provides: "The Ethics Commission shall hold a
8 hearing not less than five days after the filing of written charges. After the hearing, the Ethics
9 Commission shall transmit the full record of the hearing to the Board of Supervisors with a
10 recommendation as to whether the charges should be sustained. If, after reviewing the complete
11 record, the charges are sustained by not less than a three-fourths vote of all members of the
12 Board of Supervisors, the suspended officer shall be removed from office; if not so sustained, or if
13 not acted on by the Board of Supervisors within 30 days after the receipt of the record from the
14 Ethics Commission, the suspended officer shall thereby be reinstated."

15 3. Charter Section 15.105(e) defines the term "official misconduct":
16 "Official misconduct means any wrongful behavior by a public officer in relation to the duties of his
17 or her office, willful in its character, including any failure, refusal or neglect of an officer to
18 perform any duty enjoined on him or her by law, or conduct that falls below the standard of
19 decency, good faith and right action impliedly required of all public officers and including any
20 violation of a specific conflict of interest or governmental ethics law. When any City law provides
21 that a violation of the law constitutes or is deemed official misconduct, the conduct is covered by
22 this definition and may subject the person to discipline and/or removal from office."

23 4. Charter Section 15.105(e) does not require that the wrongful conduct at issue occur
24 while the officer held the office from which the Mayor seeks to remove him.

25 5. Under Charter Section 15.105(e), a public officer may engage in official misconduct
26 even if the officer's wrongful conduct is not related to the specific duties of his or her office.
27 Section 15.105(e) defines official misconduct to include "conduct that falls below the standard of
28 decency, good faith and right action impliedly required of all public officers." This phrase is

1 susceptible of two reasonable interpretations, neither of which requires a nexus between the
2 wrongful conduct and the duties of a specific public office. This phrase could be either (a) an
3 example of misconduct that, by definition, relates to the duties of all public officers, or (b) an
4 independent, alternative category of official misconduct that does not require a connection to an
5 officer's official duties. Under either interpretation, "conduct that falls below the standard of
6 decency, good faith and right action impliedly required of all public officers" is official misconduct,
7 regardless of whether there is a direct nexus between the conduct and the specific duties of the
8 officer.

9 6. While I believe the construction described above is correct and consistent with the
10 intent of the voters, there may be an argument that Section 15.105(e) should be interpreted to
11 require a direct connection between the officer's wrongful conduct and the specific duties of the
12 office. Under this alternative interpretation, official misconduct charges could be sustained only
13 upon a finding that the conduct in question is related to the duties of the office.

14 7. As discussed below, SHERIFF MIRKARIMI's conduct constitutes
15 official misconduct under either interpretation of Charter Section 15.105(e).

16 **B. The Office Of Sheriff**

17 8. On November 8, 2011, SHERIFF MIRKARIMI, then an elected Board of
18 Supervisors member of the City, was elected to the Office of Sheriff for the City and County of
19 San Francisco for a four-year term beginning January 8, 2012. The Director of Elections certified
20 the results of this election on November 22, 2011, and the Board of Supervisors declared the results
21 on December 6, 2011.

22 9. On January 8, 2012, SHERIFF MIRKARIMI ceased to be a member of the
23 Board of Supervisors and assumed office as Sheriff.

24 10. As set forth in Charter Sections 6.100 and 6.105, the Sheriff is an elective officer of
25 the City. Under San Francisco Charter Section 6.105, the duties of the Sheriff include keeping the
26 County jails; receiving all prisoners committed to jail by competent authorities; executing the orders
27 and legal processes issued by the courts of the State of California; upon court order detailing
28 necessary bailiffs; and executing the orders and legal processes issued by the Board of Supervisors

1 or by any legally authorized department or commission. Under Government Code Section 26600,
2 the Sheriff is also responsible for preserving the peace, "and to accomplish this object may sponsor,
3 supervise, or participate in any project of crime prevention, rehabilitation of persons previously
4 convicted of crime, or the suppression of delinquency."

5 11. As a peace officer, the Sheriff has the authority to make arrests and to carry a
6 firearm, among other powers. Cal. Penal Code § 830.1 et seq.

7 12. Under California Family Code Sections 6250 et seq., peace officers, including the
8 Sheriff, can request and must enforce emergency protective orders in domestic violence cases.

9 13. The Office of the Sheriff regularly interacts with local programs for perpetrators and
10 victims of domestic violence. This interaction includes providing grant funding to one or more
11 rehabilitation programs for perpetrators of domestic violence, and the Sheriff's Office may refer
12 offenders to such programs. The Sheriff's Office also provides recovery programs for persons in jail
13 who are victims of domestic violence.

14 14. The Office of the Sheriff also interacts with and cooperates with the City and County
15 of San Francisco's Adult Probation Department, which supervises all individuals sentenced to
16 probation. The Sheriff is a member of the Community Corrections Partnership, which is chaired by
17 the county's Chief Probation Officer. Cal. Penal Code § 1230. The Sheriff is also responsible for
18 appointing a co-chair of the City's Re-Entry Council, which supports programs serving individuals
19 exiting the criminal justice system who reside in or will be released to San Francisco.
20 San Francisco Administrative Code 5.1-1 et seq.

21 15. The Sheriff's Office also participates in and funds activities related to pre-trial
22 diversion, sentencing, re-entry and rehabilitation.

23 **C. Wrongful Conduct By Sheriff Mirkarimi**

24 16. On or about December 31, 2011, SHERIFF MIRKARIMI committed acts of verbal
25 and physical abuse against his wife, Eliana Lopez. During an argument with Ms. Lopez on that
26 date, SHERIFF MIRKARIMI grabbed Ms. Lopez with such force that he bruised her upper right
27 arm.

1 17. During that incident, SHERIFF MIRKARIMI restrained Ms. Lopez and violated her
2 personal liberty.

3 18. At or around the time of the incident, SHERIFF MIRKARIMI indicated to
4 Ms. Lopez that he was very powerful and could therefore take custody of their two-year-old child if
5 Ms. Lopez attempted to end their relationship.

6 19. On January 1, 2012, Ms. Lopez described the incident to one of her neighbors.
7 On January 4, 2012, Ms. Lopez described the incident to a second neighbor. One of these neighbors
8 contacted the San Francisco Police Department, which initiated a criminal investigation into the
9 report of domestic violence by SHERIFF MIRKARIMI.

10 20. On January 13, 2012, the District Attorney initiated a criminal complaint against
11 SHERIFF MIRKARIMI, charging that SHERIFF MIRKARIMI violated three provisions of the
12 California Penal Code in connection with the December 31, 2011 incident. Specifically, the
13 District Attorney charged that SHERIFF MIRKARIMI violated:

- 14 • Penal Code Section 273.5(a), by unlawfully inflicting a corporal injury resulting in
15 traumatic condition upon Ms. Lopez;
- 16 • Penal Code Section 273a(b), by willfully and unlawfully causing and permitting the
17 person and health of his two-year-old child to be endangered; and
- 18 • Penal Code Section 136.1(b)(1), by willfully and unlawfully attempting to prevent
19 and dissuade Ms. Lopez from making a report of the incident to law enforcement.

20 21. On March 12, 2012, the District Attorney amended the criminal complaint to add a
21 fourth charge: that SHERIFF MIRKARIMI violated California Penal Code Section 236 by willfully
22 and unlawfully violating the personal liberty of Ms. Lopez during the December 31, 2011 incident.

23 22. Following the incident, individuals who may have been speaking on behalf of
24 SHERIFF MIRKARIMI, acting as SHERIFF MIRKARIMI's agents, or acting in coordination with
25 SHERIFF MIRKARIMI, dissuaded and intimidated one or more witnesses, discouraged them from
26 speaking with law enforcement authorities, and encouraged them to destroy evidence.

27 23. On March 12, 2012, SHERIFF MIRKARIMI pled guilty to committing the crime of
28 false imprisonment in violation of California Penal Code Section 236 during the December 31, 2011

1 incident. Under Section 236, false imprisonment is the unlawful violation of the personal liberty of
2 another. "Force is an element of both felony and misdemeanor false imprisonment." *People v.*
3 *Dominguez* (2010) 180 Cal. App. 4th 1351, 1356-1357. By pleading guilty to that charge,
4 SHERIFF MIRKARIMI admitted that he unlawfully violated Ms. Lopez's personal liberty by use of
5 force.

6 24. On March 19, 2012, the Honorable James Collins of the San Francisco County
7 Superior Court sentenced SHERIFF MIRKARIMI for misdemeanor false imprisonment to one day
8 in jail, three years probation, 52 weeks of domestic violence counseling, community service and a
9 fine.

10 25. SHERIFF MIRKARIMI's actions have negatively impacted the functioning of the
11 Office of Sheriff. For example, Don Wilson, president of the San Francisco Deputy Sheriff's
12 Association, publicly stated after sentencing that Mirkarimi's guilty plea negatively affected
13 deputies' morale and that morale is very low.

14 26. Concurrently with the filing of these charges and service upon
15 SHERIFF MIRKARIMI, under Charter Section 15.105, I suspended SHERIFF MIRKARIMI from
16 office and appointed a qualified person to serve as Sheriff during the period of suspension.

17 **OFFICIAL MISCONDUCT BY SHERIFF MIRKARIMI**

18 27. Paragraphs 1-24 are incorporated by reference and realleged as if set forth in full.

19 28. SHERIFF MIRKARIMI committed official misconduct under Charter
20 Section 15.105(e) by willfully engaging in the acts described above, including but not limited to the
21 act of falsely imprisoning Ms. Lopez.

22 29. SHERIFF MIRKARIMI's actions constitute official misconduct under Charter
23 Section 15.105(e) because he engaged in willful actions that constitute "conduct that falls below the
24 standard of decency, good faith and right action impliedly required of all public officers." Jointly
25 and severally, the conduct described in Paragraphs 14-23 falls below the standard of decency
26 required of all public officers. SHERIFF MIRKARIMI's conduct described in those Paragraphs
27 includes but is not limited to: falsely imprisoning Ms. Lopez; committing acts of domestic violence
28

1 against Ms. Lopez that resulted in physical injuries to her; threatening to use his power and status as
2 a City official against her in child custody proceedings; and endangering the health of a child.

3 30. Even if Charter Section 15.105(e) required a direct nexus between
4 SHERIFF MIRKARIMI's wrongful conduct and the duties of his office to support a finding of
5 official misconduct, that additional element is satisfied here. SHERIFF MIRKARIMI'S conduct, as
6 described above, related to the duties of his office in at least the following ways:

- 7 • SHERIFF MIRKARIMI misused his office, and the status and authority it carries,
8 for personal advantage when he stated to Ms. Lopez that he could win custody of
9 their child because he was very powerful.
- 10 • The Sheriff is the City official charged by law with receiving prisoners and
11 overseeing the jails. SHERIFF MIRKARIMI engaged in conduct related to the duties
12 of Sheriff by committing criminal acts that could and did result in his personal
13 imprisonment in jail. SHERIFF MIRKARIMI's one-day sentence to county jail
14 undermines his ability to receive inmates and to supervise the County jails.
- 15 • The Sheriff is the head of a City department responsible for interacting and
16 cooperating with the City and County of San Francisco's Adult Probation
17 Department for all individuals sentenced to probation. SHERIFF MIRKARIMI
18 committed criminal acts that could and did result in SHERIFF MIRKARIMI serving
19 three years of probation.
- 20 • The Sheriff is a peace officer responsible for enforcing emergency protective orders
21 in domestic violence cases, and is the head of a City department that regularly works
22 with and funds local programs for perpetrators and victims of domestic violence.
23 SHERIFF MIRKARIMI engaged in acts of domestic violence.
- 24 • The Sheriff is the City official responsible for keeping the County jails and for
25 ensuring the legal and judicious imprisonment of inmates. SHERIFF MIRKARIMI
26 falsely imprisoned Ms. Lopez, using force to restrain her against her will.

- The Sheriff is a peace officer who has the power to carry a firearm and who is charged with the power to use force for law enforcement purposes.

SHERIFF MIRKARIMI used illicit force against Ms. Lopez.

- The Sheriff is the chief elected law enforcement officer of the City and County of San Francisco. SHERIFF MIRKARIMI may have acted or directed others acting with him or on his behalf to discourage and dissuade witnesses from lawfully providing information regarding criminal activity to law enforcement authorities, and encourage the destruction of evidence regarding criminal activity.

31. SHERIFF MIRKARIMI's actions undermine the integrity of the Office of Sheriff.

He misused the power and status accompanying his public office. He committed unlawful acts of violence and falsely imprisoned his wife—ultimately resulting in his own imprisonment.

This misconduct is fundamentally incompatible with holding the Office of Sheriff, the chief elected law enforcement officer in the City and County of San Francisco and constitutes official misconduct under Section 15.105 of the Charter.

PRAYER

Therefore, in my capacity as Mayor of the City and County of San Francisco, I am seeking the following under Charter Section 15.105:

1. That the Ethics Commission hold a public hearing not less than five days after the filing of these written charges, and after the hearing, transmit the full record of the hearing to the Board of Supervisors with a recommendation that the charges of official misconduct against SHERIFF MIRKARIMI should be sustained.

2. That the Board of Supervisors review the complete record and sustain the charges of official misconduct against SHERIFF MIRKARIMI by not less than a three-fourths vote of all members of the Board of Supervisors (i.e., nine votes).

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1 3. That upon the vote of the Board of Supervisors sustaining the charges,
2 SHERIFF MIRKARIMI be removed from the Office of Sheriff of the City and County of
3 San Francisco.

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5 DATED: March 21, 2012

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9 EDWIN M. LEE
10 Mayor
11 City and County of San Francisco

PROOF OF SERVICE

I, GEORGE COTHRAN, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, 1390 Market St., 7th Floor, San Francisco, CA 94102.

On March 21, 2012, I served the following document(s):

**CHARGES OF OFFICIAL MISCONDUCT
NOTICE OF SUSPENSION**

on the following persons at the locations specified:

SERVICE LIST

Sheriff Ross Mirkarimi
c/o David P. Waggoner, Attorney at Law
1777 Haight Street
San Francisco, CA 94117-2807

in the manner indicated below:

- BY UNITED STATES MAIL:** Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.
- BY PERSONAL SERVICE:** I sealed true and correct copies of the above documents in addressed envelope(s) and delivered such envelopes by hand at the above locations.
- BY OVERNIGHT DELIVERY:** I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and delivery by overnight courier service. I am readily familiar with the practices of the San Francisco City Attorney's Office for sending overnight deliveries. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be collected by a courier the same day.
- BY ELECTRONIC MAIL:** I caused a copy of such document to be transmitted via electronic mail in Portable Document Format ("PDF") Adobe Acrobat from the electronic address: *holly.chin@sfgov.org*

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed March 21, 2012, at San Francisco, California.



GEORGE COTHRAN

OFFICE OF THE MAYOR
SAN FRANCISCO



EDWIN M. LEE
MAYOR

March 21, 2012

Members, Board of Supervisors
c/o Angela Calvillo, Clerk of the Board
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689
By hand delivery

Members, San Francisco Ethics Commission
c/o John St. Croix, Executive Director
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102
By hand delivery

Dear Supervisors and Commissioners:

Under the authority of Section 15.105 of the Charter of the City and County of San Francisco, I have suspended Sheriff Ross Mirkarimi from the Office of Sheriff, and I am filing written charges of official misconduct seeking his removal from office.

I am transmitting to the Board of Supervisors and to the Ethics Commission the written charges specifying the acts of Sheriff Mirkarimi that constitute the official misconduct. I also am serving the charges and a suspension letter upon Sheriff Mirkarimi.

Today, I appointed Vicki Hennessey to discharge the duties of Sheriff during the period of Sheriff Mirkarimi's suspension under Charter Section 15.105.

Sincerely,

A handwritten signature in cursive script that reads "Edwin M. Lee".

Edwin M. Lee
Mayor

CITY HALL, ROOM 200
1 DR. CARLTON B. GOODLETT PLACE
SAN FRANCISCO, CALIFORNIA 94102-4681
(415) 554-6141
(415) 554-6160 FAX

RECYCLED PAPER

OFFICE OF THE MAYOR
SAN FRANCISCO



EDWIN M. LEE
MAYOR

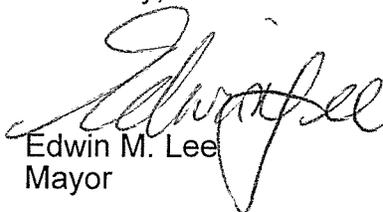
March 21, 2012

Ms. Vicki Hennessey
3060 23rd Avenue,
San Francisco, CA 94132

Dear Ms. Hennessey:

Having suspended Sheriff Mirkirami under the authority of Charter section 15.105, I am hereby appointing you to discharge the duties of the office of Sheriff during the period of Sheriff Mirkirami's suspension.

Sincerely,


Edwin M. Lee
Mayor

CITY HALL, ROOM 200
1 DR. CARLTON B. GOODLETT PLACE
SAN FRANCISCO, CALIFORNIA 94102-4681
(415) 554-6141
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