

RESOLUTION NO. _____

**RESOLUTION OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CLARA
DECLARING NO CONFIDENCE IN SHERIFF LAURIE SMITH**

WHEREAS, the Board of Supervisors has repeatedly affirmed its commitment to ensuring the safety and well-being of all individuals in the County's custody and has devoted hundreds of millions of taxpayer dollars to improving transparency, oversight, and treatment of individuals detained in the County jails;

WHEREAS, the Board of Supervisors is committed to holding County officers to the highest ethical standards and does not countenance any corrupt or unethical behavior in office;

WHEREAS, the Board of Supervisors has the obligation and authority, under Government Code section 25303, to supervise all County officers, including the elected Sheriff, to ensure that they faithfully perform their duties;

WHEREAS, the Board of Supervisors' confidence in Santa Clara County Sheriff Laurie Smith, and in her ability to faithfully, effectively, and ethically perform her duties, has been eroded by a series of revelations and incidents, including alleged ethical violations within the Sheriff's Office, repeated incidents of apparent malfeasance and/or negligence in the County jails, obstruction of efforts to improve transparency and independent oversight of jail and law enforcement operations, and unanswered questions regarding fiscal management and employee relations;

WHEREAS, for more than two years, the Santa Clara County District Attorney has pursued investigations and prosecutions of alleged corruption in the Sheriff's Office relating to the issuance of carry concealed weapons (CCW) licenses;¹

WHEREAS, in June 2020, an NBC Bay Area analysis found that donors to Sheriff Smith's election campaigns were 14 times more likely to be granted a CCW license than non-donor applicants;²

WHEREAS, in August 2020, then-Captain James Jensen, formerly a high-ranking member of the Sheriff's Office, was indicted by a criminal grand jury on felony bribery and

¹ See, e.g., Robert Salonga, The Mercury News, Santa Clara County Sheriff's Office hit with corruption probe over concealed weapons permits (Aug. 7, 2019), <https://www.mercurynews.com/2019/08/07/sheriffs-office-hit-with-corruption-probe-over-concealed-weapons-permits/>.

² NBC Bay Area, Donors to Sheriff's Political Campaigns Far More Likely to Get Concealed Gun Permits (June 15, 2021, updated Aug. 7, 2020), <https://www.nbcbayarea.com/news/local/donors-to-sheriffs-political-campaigns-far-more-likely-to-get-concealed-gun-permits/2309812/>.

conspiracy charges related to an alleged conspiracy to offer a \$90,000 donation supporting Sheriff Smith's reelection in exchange for CCW licenses;³

WHEREAS, the former CEO and two former managers of an international security firm have pleaded guilty to charges related to this alleged bribery conspiracy to obtain CCW licenses in exchange for a \$90,000 donation supporting Sheriff Smith's reelection;⁴

WHEREAS, in November 2020, then-Undersheriff Rick Sung, formerly Sheriff Smith's second-in-command, was indicted by a criminal grand jury on felony bribery charges related to allegations that he withheld CCW licenses in order to exact luxury suite tickets to a February 14, 2019 San Jose Sharks hockey game and a promise of 200 iPads worth nearly \$70,000;⁵

WHEREAS, during an August 3, 2020 appearance before the criminal grand jury in relation to the CCW investigation, Sheriff Smith invoked her Fifth Amendment right against self-incrimination and declined to answer questions;⁶

WHEREAS, on November 16, 2020, a Sheriff's Office employee testified before the criminal grand jury that Sheriff Smith asked her to purchase inexpensive tickets to the February 14, 2019 San Jose Sharks hockey game in order to avoid reporting the luxury suite tickets as a gift under California Fair Political Practices Commission rules. According to news reports, the inexpensive tickets were not used, and Sheriff Smith's reelection was celebrated in the luxury suite;⁷

WHEREAS, on January 19, 2021, the Fair Political Practices Commission notified Sheriff Smith and her attorney that its Enforcement Division had commenced an investigation

³ County of Santa Clara, Office of the District Attorney, County Sheriff's Captain, Prominent Lawyer Charged with Gun Permit Bribery Scheme (Aug. 7, 2020), <https://www.sccgov.org/sites/da/newsroom/newsreleases/Pages/NRA2020/CCW-.aspx>.

⁴ County of Santa Clara, Office of the District Attorney, Former CEO of International Security Firm Pleads Guilty to Concealed Weapon License Bribery Scheme (Aug. 31, 2020), <https://www.sccgov.org/sites/da/newsroom/newsreleases/Pages/NRA2020/C-West-Guilty---Chase-.aspx>; County of Santa Clara, Office of the District Attorney, Two More Employees of International Security Firm Plead Guilty to Involvement in Concealed Firearms License Bribery Scheme (Oct. 19, 2020), <https://www.sccgov.org/sites/da/newsroom/newsreleases/Pages/NRA2020/Nielsen-Stromgren-CCW-.aspx>.

⁵ County of Santa Clara, Office of the District Attorney, County Undersheriff, Sheriff's Captain, Local Businessman, and Apple's Chief Security Officer Charged with Bribery for CCW Licenses (Nov. 23, 2020) <https://www.sccgov.org/sites/da/newsroom/newsreleases/Pages/NRA2020/CCW-Undersheriff-Sung-.aspx>.

⁶ *See, e.g.*, Jennifer Wadsworth, San Jose Inside, Sheriff Smith, Second-in-Command Take the Fifth, <https://www.sanjoseinside.com/news/exclusive-sheriff-laurie-smith-second-in-command-take-fifth/>.

⁷ *See, e.g.*, Robert Salonga, The Mercury News, Gun bribery probe: Santa Clara County Sheriff acted to obscure use of donor's Sharks suite, according to testimony (Jan. 12, 2021), <https://www.mercurynews.com/2021/01/12/gun-bribery-probe-testimony-asserts-sheriff-sought-to-obscure-use-of-donors-sharks-suite/>.

regarding Sheriff Smith's potential violations of conflict-of-interest and gift disclosure/limits provisions of the Political Reform Act;⁸

WHEREAS, since July 2010, Sheriff Smith has been responsible for the vast majority of jail functions and staff, and is the appointing and supervising authority for more than 700 sworn correctional deputies and correctional officers employed in the County jails;

WHEREAS, under Sheriff Smith's supervision, there have been significant incidents of malfeasance and/or negligence in the Santa Clara County jails that have destroyed lives and cost taxpayers millions of dollars;

WHEREAS, on August 26, 2015, three correctional officers over whom the Sheriff had ultimate oversight brutally beat and murdered mentally ill inmate Michael Tyree;⁹

WHEREAS, the County paid \$3,625,000 to Michael Tyree's family to settle their claims of wrongful death and civil rights violations;

WHEREAS, on August 25, 2018, mentally ill inmate Andrew Hogan sustained debilitating injuries when Sheriff's correctional staff transported him between jail facilities by van, without safety restraints or protective gear, while Mr. Hogan repeatedly slammed his head against the van wall and bled profusely, and Sheriff's Office staff failed to provide for immediate medical attention;

WHEREAS, although the County paid \$10,000,000 to settle claims arising out of Andrew Hogan's injuries and his treatment by Sheriff's Office employees, there is no indication that the Sheriff took meaningful disciplinary action against any involved correctional staff;

WHEREAS, a pending lawsuit alleges that in August 2019, mentally ill inmate Martin Nunez suffered debilitating injuries after engaging in acts of self-harm, receiving inappropriate treatment by correctional staff, and being left unattended and without medical care for more than 24 hours;

WHEREAS, the pending lawsuit and claim allege that Mr. Nunez sustained injuries that left him a quadriplegic and seek extensive damages, including for ongoing medical and personal care;

⁸ San Jose Inside, FPPC Investigates Alleged Unreported Gifts to SCC Sheriff (Feb. 24, 2021), <https://www.sanjoseinside.com/the-fly/fppc-investigates-alleged-unreported-gifts-to-scc-sheriff/> and <https://www.sanjoseinside.com/wp-content/uploads/2021/02/2021-00041-and-2021-00043.pdf>.

⁹ See, e.g., County of Santa Clara, Office of the District Attorney, Three Santa Clara County Correctional Officers Convicted of Mentally-Ill Inmate's Murder (June 1, 2017), <https://www.sccgov.org/sites/da/newsroom/newsreleases/Pages/NRA2017/M-Tyree-Conviction.aspx>; Tracey Kaplan and Robert Salonga, The Mercury News, Michael Tyree jury: San Jose jail guards guilty of murdering mentally ill inmate (June 1, 2017), <https://www.mercurynews.com/2017/06/01/breaking-jury-reaches-verdict-in-san-jose-jail-guard-murder-case/>.

WHEREAS, on November 30, 2020, thirty-one Santa Clara County jail inmates allegedly beat another inmate for nearly six minutes, leaving the inmate naked and bloodied, with broken ribs and other injuries. According to news reports, some of the beating occurred in sight of a guard station, but Sheriff's correctional staff did not intervene;¹⁰

WHEREAS, the Sheriff's Office failed to report the November 30, 2020 beating through internal procedures, and the Board of Supervisors did not learn of it until the local media reported on it, nearly six months after the incident occurred;

WHEREAS, in 2017, KQED reported that Sheriff's Office staff were aware of, failed to stop, and may have facilitated illegal "bail capping" schemes in which at least 30 longtime inmates controlled access to phones, used threats, and/or promised cheap bail to pressure new inmates to sign contracts with certain bail agents;¹¹

WHEREAS, following the murder of Michael Tyree, the County established a Blue Ribbon Commission on Improving Custody Operations that, together with other agencies and organizations, developed 623 recommendations to improve the County's custody operations and facilities;

WHEREAS, although the County has devoted \$78 million annually and \$370 million in one-time expenditures to implement the Blue Ribbon Commission recommendations and adhere to two federal consent decrees, there remain serious concerns with the Sheriff's jail operations, as reflected in part in the incidents described above;¹²

WHEREAS, the Sheriff failed to cooperate with efforts by the County Management Auditor to evaluate the implementation of the Blue Ribbon Commission recommendations and also refused to provide information needed for an audit of custody operations;¹³

¹⁰ See, e.g., Robert Salonga, The Mercury News, New charges reveal Santa Clara County jail guards didn't intervene in mass gang beating of informant (May 11, 2021), <https://www.mercurynews.com/2021/05/11/new-charges-reveal-santa-clara-county-jail-guards-didnt-intervene-in-mass-gang-beating-of-informant/>.

¹¹ Sukey Lewis, KQED, Inside Santa Clara Jails, Predatory Bail Schemes Flourished for Years (Apr. 10, 2017), <https://www.kqed.org/news/11393155/inside-santa-clara-jails-predatory-bail-schemes-flourished-for-years>.

¹² Memorandum from Martha Wapenski, Deputy County Executive, to the Honorable Board of Supervisors and Jeffrey V. Smith, County Executive regarding Update on Resources Allocated Towards Jail Reforms (Mar. 24, 2021), <https://eservices.sccgov.org/OffAgenda/Home/ViewFile/540>.

¹³ See Board of Supervisors Management Audit Division, Combined Fiscal Year 2017-18 & 2018-19 Jail Improvement Recommendation Audit (Oct. 11, 2019), <https://board.sccgov.org/sites/g/files/exjcpb936/files/com-fy-17-19-jail-imp-rec-audit.pdf>; Board of Supervisors Management Audit Division, Management Audit of the County of Santa Clara Sheriff's Custody Operations at 32-33, (Feb. 22, 2021), <https://board.sccgov.org/sites/g/files/exjcpb936/files/Document/mngmnt-aud-shrffs-cust-oper-bureau-2-22-21.pdf>.

WHEREAS, the Blue Ribbon Commission identified two recommendations it believed would have the greatest immediate impact: (1) creation of an independent civilian oversight body, and (2) a change in leadership over custody operations;¹⁴

WHEREAS, the Board of Supervisors established the Office of Correction and Law Enforcement Monitoring, partly in response to the Blue Ribbon Commission's recommendations, to provide for independent civilian monitoring and reporting regarding custody and law enforcement operations;¹⁵

WHEREAS, the Ordinance Code requires the Sheriff's Office to cooperate with the Office of Correction and Law Enforcement Monitoring, agree to written information-sharing protocols, and promptly supply information and records requested;¹⁶

WHEREAS, after more than a year of information-sharing negotiations, the Sheriff has not agreed to a meaningful information-sharing protocol, has refused to provide information and access necessary to allow the Office of Correction and Law Enforcement Monitoring to perform its duties, and has effectively obstructed the independent oversight called for by the Blue Ribbon Commission;

WHEREAS, in addition to the serious concerns detailed above, other circumstances raise unanswered questions about fiscal responsibility, potential conflicts of interest, and employee relations under the leadership of Sheriff Smith;

WHEREAS, between fiscal years 2013 and 2018, Sheriff's Office expenditures on overtime pay more than doubled, increasing from \$16,554,662 to \$36,035,185, and have consistently caused the Sheriff's Office to exceed its budgetary appropriations, requiring the Board of Supervisors to adopt midyear budget modifications to increase the Sheriff's Office's budget;¹⁷

WHEREAS, in 2017, Amy Le, then a correctional lieutenant and president of the Santa Clara County Correctional Peace Officers Association (SCCCPOA), received the highest amount of overtime pay of any Sheriff's Office employee, earning \$175,767.44 in overtime on top of her base salary of \$142,530.12 (amounting, when combined with other payments, to a total compensation of \$363,551.48, excluding benefits). These payments amounted to more than 2.5

¹⁴ Memorandum from Judge LaDoris H. Cordell (Ret.), Chairperson of the Blue Ribbon Commission on Improving Custody Operations, to Board of Supervisors, Santa Clara County re: Final Recommendations of the Blue Ribbon Commission (Apr. 12, 2016), <http://sccgov.iqm2.com/Citizens/FileOpen.aspx?Type=4&ID=148198>.

¹⁵ Santa Clara County Ordinance Code § A20-61.

¹⁶ Santa Clara County Ordinance Code § A20-64(a)-(c).

¹⁷ Memorandum from Cheryl Solov, Management Audit Manager, to Supervisor S. Joseph Simitian, President of the Board of Supervisors, regarding Sheriff's Office Budgets, Actuals and Overtime Use (Sept. 19, 2018), <http://sccgov.iqm2.com/Citizens/FileOpen.aspx?Type=4&ID=178552>.

times the overtime pay she received just four years earlier in 2013 and nearly twice her total 2013 compensation;¹⁸

WHEREAS, in 2018, while Ms. Le remained SCCCPOA President, SCCCPOA endorsed Sheriff Smith for reelection, and the SCCCPOA PAC Supporting Laurie Smith for Sheriff 2018 raised over \$300,000—approximately the same amount raised by Sheriff Smith’s own committee—and spent over \$280,000 in support of the Sheriff’s reelection campaign;¹⁹

WHEREAS, on December 3, 2018, shortly after Sheriff Smith won reelection, Ms. Le was promoted to correctional captain;

WHEREAS, less than six months after her promotion, Ms. Le was placed on administrative leave and escorted from the workplace, apparently for reasons related to her construction of a gazebo and garden in the Elmwood Correctional Facility, and subsequently filed a lawsuit against the County alleging discrimination and retaliation claims and seeking over \$5 million in damages;²⁰ and,

WHEREAS, the incidents, allegations, and circumstances described above have raised serious questions about Sheriff Smith’s ongoing ability to faithfully perform her duties, resulted in lives damaged and destroyed, consumed inordinate amounts of County and taxpayer resources, and eroded the Board of Supervisors’ confidence in Sheriff Smith.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Santa Clara, State of California, that the Board of Supervisors hereby finds and declares that it has no confidence in Santa Clara County Sheriff Laurie Smith in light of, *inter alia*, repeated and serious incidents of malfeasance and negligence by correctional staff under Sheriff Smith’s supervision, alleged ethical breaches by Sheriff Smith and high-ranking members of her command staff, and continued resistance to and obstruction of transparency and oversight in jail and law enforcement operations.

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¹⁸ See Transparent California, <https://transparentcalifornia.com/salaries/search/?a=santa-clara-county&q=amy+le&y=>; Memorandum from Cheryl Solov, Management Audit Manager, to Supervisor S. Joseph Simitian, President of the Board of Supervisors, regarding Sheriff’s Office Budgets, Actuals and Overtime Use, Attach. C (Sept. 19, 2018), <http://sccgov.iqm2.com/Citizens/FileOpen.aspx?Type=4&ID=178552>.

¹⁹ See SCCCPOA for Laurie Smith, <https://www.scccpoasupportslauriesmithforsheriff.com/>; Recipient Committee Campaign Statements for Santa Clara County Correctional Peace Officers’ Association PAC Supporting Laurie Smith for Sheriff 2018 (filed Oct. 25, 2018 and Jan. 8, 2019), *available at* <https://public.netfile.com/pub2/?aid=SCC>; Recipient Committee Campaign Statement for Laurie Smith for Sheriff 2018 (filed Jan. 31, 2019), *available at* <https://public.netfile.com/pub2/?aid=SCC>.

²⁰ Robert Salonga, The Mercury News, Former Santa Clara County jail union president placed on leave amid vague circumstances (June 3, 2019), <https://www.mercurynews.com/2019/06/03/former-santa-clara-county-jail-union-president-placed-on-leave-amid-vague-circumstances/>.

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BE IT FURTHER RESOLVED that the Board of Supervisors hereby directs Administration to forward this Resolution to the Santa Clara County Civil Grand Jury for consideration pursuant to Government Code section 3060, to the California Fair Political Practices Commission for potential investigation, to the Office of the Attorney General of the State of California for potential investigation or other appropriate action, and to the United States Department of Justice for potential investigation or other appropriate action.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, on _____ by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

MIKE WASSERMAN, President
Board of Supervisors

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.
ATTEST:

TIFFANY LENNEAR
Acting Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

JAMES R. WILLIAMS
County Counsel