

August 1, 2022
Tyra Fennell
Office of Mayor London N. Breed
1 Dr. Carlton B. Goodlett Place, Room 200
San Francisco, CA 94102

Delivered via electronic mail

Dear Ms. Fennell,

On April 26, 2022, I submitted a conditional offer of resignation that could be accepted only if I engage in gross malfeasance.¹ I am now rescinding that offer. *See generally Ulrich v. City & Cnty. of S.F.*, 308 F.3d 968, 975 (9th Cir. 2002) (“[u]nder California law, an employee has a right to rescind a resignation unilaterally”). I currently have no outstanding offers of resignation with the Mayor’s Office.

I have always harbored serious misgivings about the ethics and legality of requiring a Commissioner to submit an open offer of resignation as a condition of being renominated. It is an unmistakable attempt to circumvent the Board of Supervisors’s role under the Charter. The Board, of course, is vested with the power to confirm or reject a Mayor’s decision to remove a Police Commissioner. S.F. Charter § 4.109 (“The Mayor, *with the consent of the Board of Supervisors*, may remove a member the Mayor has nominated.”) (emphasis added). And aside from arrogating to the executive branch a power reserved for the legislature, contracting around this Charter provision also has the effect of diminishing the independence of mayoral appointees, reducing public transparency into the removal process, and diminishing the Mayor’s accountability for any decision to remove a Commissioner. None of these effects can be squared with the plain meaning or intent of the Charter.

But my decision to revoke my offer is not based solely on my interpretation of the Charter. I have had many conversations with high-ranking City officials, who have suggested—at times in stark terms—that I should not exercise my independent judgment in carrying out my official duties on the Police Commission. And it has been further impressed upon me, by these same people, that my failure to follow their suggestions may have unspecified “consequences.”

¹ I was originally asked to make an unconditional offer of resignation, but the offer that I ultimately submitted could be accepted only if I engaged in gross malfeasance.

I of course cannot know for certain what precisely they mean to communicate. But I do know that I took an oath of office when I assumed this role. Implicit in that oath is that my first and only responsibility is to the people of San Francisco, not to any person, or organization, or cause. Today I reaffirm my commitment to that oath.

Sincerely,

A handwritten signature in blue ink, appearing to read "Max Carter-Oberstone". The signature is fluid and cursive, with the first name "Max" being the most prominent.

Max Carter-Oberstone

Police Commissioner for the City & County of San Francisco