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## **Study on How Jurisdictions Fill Vacancies to Elected Offices Between Election Cycles**

### **Draft Report**

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*March 29, 2013*



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## ***Definition of Terms***

Pertaining to the study at hand, and the varying ‘methods’ encountered in researching how municipalities fill vacancies to publicly elected positions, it is pertinent to define what we have conceived of as ‘categories’ relevant to this study, and the ‘methods’ utilized to fill vacancies within publicly elected positions. In providing these definitions, any mention of the following terms, unless otherwise noted, will always refer to the intent and meaning as defined below:

**Categories:** To provide an encompassing report of practices by varying municipalities, a need to look more extensively beyond the function of governance by the City and County of San Francisco is required. For this, the following report identifies and defines for the purpose of this study, *categories*; they are as follows: 1. Consolidated City-Counties (nationally), 2. Charter Counties, 3. California Wide Offices, and 4. California Most Populous Cities.

**Consolidated City-County (nationally):** is a city and county which have been merged into one unified jurisdiction. As such it is simultaneously a city, which is a municipal corporation, and a county, which is an administrative division of a state. It has the powers and responsibilities of both types of entities. The terminology used by varying governing agencies and boards for Consolidate City-Counties have also been recognized by other titles, as is the case with the Municipality of Anchorage, for example.

**California Charter County:** The main difference between general law and charter counties lies in the way they can organize and select their county governing bodies and officers. Every county is required to elect a governing body -- a board of supervisors. General law counties elect supervisors by district, while **charter counties** have the option of electing them at large or by district except for the constitutional requirement that every county elect a sheriff, district attorney and an assessor, charter counties have considerable freedom when drafting their charters to determine what other officers they will have, their powers and duties, and whether they will be elected or appointed.

**California Wide Offices:** Refers to publicly elected offices at the statewide level; includes U.S. Senators, U.S. House Representatives, State Senate, State Assembly, the Governor, Lt. Governor, Superintendent of Public Instruction, Secretary of State, Controller, Treasurer, Attorney General, the State Board of Equalization, Special Districts, and a General Provision for any unnamed statewide elected offices.

**California Most Populous Cities:** refers specifically to California’s top ten most populous cities, based on the 2010 U.S. Census findings; these cities include Los Angeles (3,792,621), San Diego (1,307,402), San Jose (945,942), San Francisco (812,826), Fresno (945,942), Sacramento



(466,488), Long Beach (462,257), Oakland (390,724), Bakersfield (347,483), and Anaheim (336,265).

**Methods:** relates specifically to who maintains the discretionary power to fill a vacancy of a publicly elected position, detailing the procedural actions and guidelines taken. Because four categories are surveyed in this study, the *methods* have been broadly defined as, 1. Appointments by individuals, 2. Appointments by groups, 3. Special elections, and 4. ‘Other’ or situational proceedings where anomalies exist or where a combination of the first three categories can be used.

**Appointment by Individual:** refers specifically to cases where a vacancy in a publicly elected office is filled by appointment by decision of one individual. Individuals may include, and will be specified, as being either a Mayor, Governor, Superintendent of Public Instruction, or President to a Board of Supervisors.

**Appointment by Group/Governing Body:** refers specifically to cases where a vacancy in a publicly elected office is filled by an appointment made by a group or governing body of individuals. A group of individuals may include, and will be specified, as being either a Board of Supervisors, a Board of Trustees (Community Colleges), a Board of Education, City Council, Board of County Commissioners, Transportation Selection Committee, City Council, or State Supreme Court.

**Special Election:** refers specifically to instances where a vacancy in a publicly elected office is filled only through calling and holding a special election.

**Other/Situational Proceedings:** refers specifically to instances where a vacancy in a publicly elected office is filled through ‘other’ means, or situation proceedings, not aforementioned, functioning in an anomalistic or situational manner.



## **Introduction:**

The objective of this report is to analyze the policies, and in extension, the procedures employed by the City and County of San Francisco (CCSF) in filling vacancies within publicly elected offices against other municipalities and governing districts. This study provides a summary of findings within four major categories: 1. consolidated city-counties (nationally), 2. all California charter counties, 3. California wide offices, and 4. California's most populous cities, and the methods within each category used to fill said vacancies.

The impetus for this report stems from the emerging discussion in San Francisco related to the process used to fill vacancies in publicly elected representative. In light of this debate, San Francisco's Local Agency Formation Commission (SF LAFCo) has undertaken a Special Study of the current practices provided by the City and County of San Francisco Charter in filling vacancies within publicly elected positions against those of other municipalities. This study, undertaken pursuant to Government Code §56378 and SF LAFCo Policies on Special Studies §2.6, §2.62, §2.63, and §2.64, was conducted with the intent of providing an objective analysis of these policies and procedures and as such relies primarily upon data provided by the varying municipalities governing Code of Ordinances and adopted Charters, as well as governing Board Policies, State Education Code, and in some cases, State Constitutional mandates.

To best provide empirical evidence for the purpose of this study, LAFCo examined a large body of data spanning multiple municipalities and governing boards, both in California and nationally. However, in regard to the breadth and scope of the conducted analysis, it is important to note that data collection capabilities and the information provided herein is limited to the accessibility of the sought after information online. In the vast majority of cases, all sought after information was obtainable. Where there exist exceptions, it is appropriately noted.



### *Executive Summary*

San Francisco being in the unique position as the only combined City and Country in California means there are no other direct comparisons to how vacancies get filled in elected office can be made. Therefore this study looks at varying points of similarities and deviations from the functions that govern that of the City and County of San Francisco were noticed within the identified categories: consolidated city-counties (nationally), California charter counties, California wide offices, and California's most populous cities. Moreover, trends among methods (appointment by an individual, appointment by a group/governing body, special elections, or other/situation proceeding) used by varying governing bodies within each of these four categories followed, in large part, general trends as well. Where moves away from patterns or trends occurred, extensive explanations were considered for understanding.

As we know from our full survey, by far the most prevalent method used in filling a vacancy within a publicly elected position was our fourth method of categorization, the 'other/situational proceeding' category. Within this method, the overwhelming majority of policies were written to specify different actions based on the precise amount of time left within the vacant office. The common theme viewed throughout this study was that either, 1. A group or governing body had the discretion to either (a) call for a special election, or (b) make an appointment to the vacancy in which case, the selected individual would serve until the next regularly held election at which point a successor to the office would be elected to fill the remainder of the unexpired term, or 2. in general, the more time left within a vacant office's term, the more likely that it was mandated that a special election take place. To specify a bit further on point number two, it was most common that in terms with more than one year left prior to expiration, that such a special election be called. Beyond this, appointments, as mentioned, were in the majority to fill a vacancy until the next regular election, or in some cases, to fill the vacancy for the remainder of the term.

One of the most notable reoccurrences throughout our study, across each method (appointment made by an individual, appointment made by a group/governing body, special election, or other/situational proceeding) was that, written into policy, inaction by a group or governing body, as well in the rare instances where one individual had sole discretion of appointment, time limits for action were given. Most often, such time limits for a call of action ranged between thirty and sixty days.

Looking directly at a comparison of the City and County of San Francisco to all other charter counties across the state, as noted, eight of the twelve counties herein grant discretion of appointment specifically to groups or governing bodies (Alameda, Butte, Los Angeles, Placer, Sacramento, San Bernardino, San Diego, and Santa Clara). It should be noted that in the case of two charter counties, El Dorado and Tehama, we could not find their charters online. The positions seen as exceptions here near exclusively pertain to vacant seats to both the many Boards of Education and the Community College District Board of Trustees; in filling such seats, most entities adopted the California Education Code. In addition, six of the eight counties listed



just prior (Alameda, Los Angeles, Placer, San Bernardino, San Diego, and Santa Clara) vest the discretion of appointment by a group or governing body in their Board of Supervisors for most every publicly elected position, with exception again being the two educationally based boards aforementioned, as well as seats to their respective Board of Supervisors. To extend this a bit, the six of eight Boards of Supervisors had discretion in appointing positions including Auditor-Assessor, District Attorney, Sheriff, Treasurer, County Clerk, Recorder, Tax Collector, Superintendent of Schools, Sheriff-Coroner, Treasurer-Tax Collector.

As noted in the report, a dominant trend in the discretion of appointment by groups/governing bodies was that the chosen individual would serve the functions of the office until the next publicly held election, at which point a successor would fill the remainder of the unexpired term. Again, it is important to note here that in the case of charter counties, there were no regulations that restricted those appointees prior to the first publicly held election from making running for that seat.

Reiterating a point made in our survey of California's charter counties, it is far more frequently the case that counties vest the discretion for filling a vacancy in a publicly elected position either through an appointment by a group/governing body. Or otherwise near equally, they will have laid out through policy a highly specified situational proceeding that dictates scenarios contingent upon the precise time the vacancy occurs, lending options to special elections, making limited appointments, or moving authority in the case of inaction by a group/governing body handling the vacancy.

With regard to the California wide offices, the primary observation and comparison that can be made, after reviewing that seven of the eleven positions (having removed the federal positions and Governor) are appointed directly in the discretion of the state Governor with the approval of both the State Senate and State Assembly. San Francisco, similar to the state, has both an executive arm (Mayor Office) and legislative arm (Board of Supervisors), but the mayor, in all but one case, appointment of a new Mayor, has the full discretion of appointment to vacancies in publicly elected offices. It is also relevant to note that, inaction to the Governor's appointments by the State Senate and Assembly within the time prescribed result in the appointment standing.

When we look at California's most populous cities, we again see a departure from what is more normative of practices used for filling vacancies in public offices. Of the ten cities surveyed here, no other city among the most populous grants total discretion for appointments, let alone, without strict time parameters for action necessary, to one individual.



### ***San Francisco's Methods For Filling Vacancies In Publicly Elected Positions***

As this report seeks to assess the City and County of San Francisco's utilized methods for filling vacancies within publicly elected positions against other municipalities and governing bodies, it proves relevant to cite, preceding the more broad findings, precisely what the CCSF Charter dictates in such circumstances.

As found in the CCSF Charter, Art. III, Sec. 13.101.5 (a)(c), if the office of a Member of the Board of Supervisors, Assessor-Recorder, City Attorney, District Attorney, Public Defender, Sheriff, Treasurer, or Board of Education, or member to the governing Board of the Community College District becomes vacant, the Mayor shall appoint a qualified individual at his/her discretion to fill the position. Any person filling a vacancy pursuant to subsection (a) or (b) of this Section shall serve until a successor is selected at the next election occurring not less than 120 days after the vacancy, at which time an election shall be held to fill the unexpired term, provided that (1) if an election for the vacated office is scheduled to occur less than one year after the vacancy, the appointee shall serve until a successor is selected at that election or (2) if an election for any seat on the same board as the vacated seat is scheduled to occur less than one year but at least 120 days after the vacancy, the appointee shall serve until a successor is selected at that election to fill the unexpired term.

If the Office of Mayor becomes vacant, the President of the Board of Supervisors shall become Acting Mayor and shall serve until the Board of Supervisors appoints a successor.

There is no time frame designated in which the Mayor, or in the case of the Mayor itself the Board of Supervisors, must appoint an individual to fill such a vacancy.



## ***Findings***

### ***A. Consolidated City-Counties (National)***

#### **(i.) Introduction: Consolidated City-Counties (National)**

As mentioned earlier, Consolidated City-Counties are a city and county which have been merged into one unified jurisdiction. As such it is simultaneously a city, which is a municipal corporation, and a county, which is an administrative division of a state. It has the powers and responsibilities of both types of entities. San Francisco functions as a consolidated city-county, as mentioned. For the purpose of this study, LAFCo sought to compile an accurate assessment from the available data on other consolidated city-counties, having collected one-fifth of the total number of consolidated city-counties (8 of 40), where, for comparative purposes, population was heavily considered.

It is relevant to note that in our research of consolidated city-counties, of which there are only forty nation-wide, most consolidations were the result of geographically wide spread, equally small in size, constituencies that were deemed by said constituents to be better served economically and efficiently through a consolidations of representative bodies. With our study, the most populous of the consolidated city-counties were selected for review to provide a potential for a greater and more founded comparison.

The surveyed consolidated city-counties were the City and County of San Francisco (812,826), the City and County of Honolulu (374,658), the City and County of Denver (619,968), the Municipality of Anchorage (295,570), the City and County of Philadelphia (1,536,471), New Orleans and the Orleans Parish (360,740), the City of Columbus and County of Muscogee (194,107), and the City and County of Broomfield (57,352).

The offices represented across the consolidated city-counties included the position of Mayor, Member to the Board of Supervisors, Assessor-Recorder, City Attorney, District Attorney, Public Defender, Sheriff, Treasurer, Member to the Board of Education, Auditor, Clerk-Recorder, Member to the Regional Transportation District Board of Supervisors, City Commissioner, and ‘Mayor’ to the University of Colorado Board of Regents.

#### **(ii.) Appointment by an Individual**

There are only three instances, San Francisco aside, when considering consolidated city-counties in which a sole individual has the discretion of appointment. Those exceptions are the Denver District Attorney<sup>1</sup> who is appointed by the state of Colorado’s Governor, the Representative-member to the University of Colorado Board of Regents to Broomfield, Colorado who is also

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<sup>1</sup> Colorado State Constitution: Art VI, Sec. 20, No. 4



appointed by the state of Colorado's Governor, and the City of Philadelphia's City Commissioner, who is appointed by the Mayor of Philadelphia<sup>2</sup>

### **(iii.) Appointment by a Group/Governing Body**

A more common trend among the consolidated city-counties was the 'appointment by a group/governing body.' While this method is used in six specific instances, without the aforementioned appointment of San Francisco's Mayor in the event of a vacancy by his/her Board of Supervisors, four of the six instances addressed the filling of a vacancy in the publicly elected position of a member to their respective Boards of Education.<sup>3</sup> The exceptions of use here, where the methods of appointment by a group/governing body use an appointment was Broomfield, Colorado. Broomfield, for the purpose of filling a vacancy to their Regional Transportation District Board and to fill a vacancy in the position of Councilmember, fill the vacancy by appointment through the board of county commissioners for the first, and the latter through a vote by the Council. Of each mentioned within this category, only vacancies in the Boards of Education to Denver, Anchorage, and Broomfield, as well as the Broomfield Councilmembers are given timeframes in which to complete their appointments. For Boards of Education, Broomfield is held accountable for appointing the successor to fill the vacancy at their next publicly held meeting, Anchorage is given thirty days, and Denver is given sixty. Only Denver stipulates that in the failure of the Board to appoint, the responsibility may then be shifted to the Board President. In the case of Broomfield filling a vacancy within the seat of a Councilmember, the Council is provided 30 days to make an appointment.

### **(iv.) Special Elections**

Five of our consolidated city-counties are found to utilize the method of calling a special election. Four of the five consolidated city-counties utilize special elections only in the case of one position. Both Broomfield and Anchorage call a special election to fill a vacancy in the office of Mayor, with slight variation of procedure. As detailed in their Charter, officials are given sixty days to call an election; the exception being cases in which an election is scheduled within 180 days the filing of the vacancy.<sup>4</sup> In such a case, the position can be consolidated with the scheduled election. For Anchorage, provided in their Charter, upon the filing of a vacancy in the office of Mayor, an election must be called, and such election shall occur at no less a point than ninety days after said filing.<sup>5</sup> For New Orleans and the Orleans Parish, a special election is called whenever a vacancy in the position of District Attorney occurs.<sup>6</sup> Until the District Attorney position is filled by election, temporary court appointees may fill the vacancy, but are not eligible for the subsequent election. The City and County of Philadelphia calls a special

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<sup>2</sup> Charter, City and County of Philadelphia: Title 2, Ch. 2-100, Sec. 2-112(1)

<sup>3</sup> Denver, Board Policy BBBE, Anchorage, Art. VII, Sec. 7.02, Broomfield, District Policies, Sec. B, No. BDC, and the City of Columbus, County of Muscogee Board of Education

<sup>4</sup> City and County of Broomfield Charter, Ch. 4, Sec. 4.7(c)

<sup>5</sup> Charter, Municipality of Anchorage: Art. VIII, Sec. 7.02

<sup>6</sup> [http://louisiana.gov/Government/Judicial\\_Branch/](http://louisiana.gov/Government/Judicial_Branch/)



election whenever a vacancy in the position of City Councilmember occurs (Philadelphia does not have a Board of Supervisors). As prescribed in the official Charter of Philadelphia, when calling an election, a minimum of 30 days notice must be provided.<sup>7</sup> The exception within this category, the City and County of Denver, utilizes special elections to fill the vacancies of four different publicly elected offices: Mayor, Councilmember, Clerk-Recorder, and Auditor. The procedures for calling the special election and setting a date are the same in all four cases; upon the filing of a vacancy, the special election to fill said vacancy is to be scheduled between 120 days and 130 days, unless there already exist a regularly scheduled election (primary, general, run-off) within 160 days.<sup>8</sup>

#### **(v.) Other/Situational Proceedings**

The final and most prevalent category in viewing consolidated city-counties is our ‘other’ category. Again, as earlier defined, this method refers specifically to instances where a vacancy in a publicly elected office is filled through ‘other’ or situational proceedings not aforementioned, functioning in an anomalistic or exceptional manner. Here, five of the eight municipalities surveyed utilized ‘other’ or situational proceedings for filling vacancies within publicly elected offices; four of the five utilized this method with multiple positions.

Four utilized varying measures within this method to fill vacancies in the office of mayor; each prescribed differing methods based on the amount of time left in an unexpired term. For Honolulu, pursuant to their City-County Charter, if less than one year remains in the unexpired term, the council appoints an individual to fill the position; in the case that more than one year remains, a special election is then called to fill the vacancy. The special election is to be called within ten days of the vacancy and the election shall be held within sixty days; the exception being, if a city election is scheduled to occur within 160 days of the vacancy, the position shall remain vacant.<sup>9</sup> For the City of New Orleans and the Orleans Parish, if the unexpired term is for less than one year, the district councilmembers shall, by majority vote, elect one of the two councilmembers-at-large to be Mayor for the unexpired term, and a vacancy shall thereupon exist in the office of council member at large; (b) If the unexpired term is for one year or more, the vacancy shall be filled by special election, to be called by the Council within ten days after the vacancy occurs and to be held at the earliest available date permitted under the election laws of the state.<sup>10</sup> For Philadelphia, an election to fill a vacancy for an unexpired term in the office of Mayor shall be held at the next municipal or general election occurring more than 30 days after the vacancy occurs, unless the vacancy occurs in the last year of the term, in which event a Mayor shall be chose by the Council by a majority vote of all its members.<sup>11</sup> Lastly, for the

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<sup>7</sup> Charter, City and County of Philadelphia: Title II, Ch. 2-100, §2-101

<sup>8</sup> Charter, City and County of Denver: Mayor, Title 1, Subtitle B, Art. II, Pt. 1, Sec. 2.1.4; Councilmember, Title I, Subtitle B, Art. III, Pt. 1, Sec. 3.1.8; Clerk-Recorder, Title 1, Subtitle B, Art VIII, Sec. 8.1.3; Auditor, Title I, Subtitle B, Art. V, Pt. 1, Sec. 5.1.1

<sup>9</sup> Charter, City and County of Honolulu: Art. V, Ch. 1, Sec. 5-106 (a)(b)

<sup>10</sup> Charter, City of New Orleans and the Orleans Parish: Pt. 1, Ch. 2, Art. IV, Sec. 4-204

<sup>11</sup> Charter, City and County of Philadelphia:



consolidated City of Columbus and County of Muscogee, a vacancy shall be filled through one of two means. If the vacancy occurs within one and one-half years after the date of a regular election for the office of mayor or councilor, then the board of elections shall, within 10 days after the occurrence of such vacancy, call a special election to fill the balance of the unexpired term of such office. If the vacancy occurs more than one and one-half years after the date of a regular election for office of mayor, then a person shall be appointed by a majority vote of the total membership of the council to serve until a successor is elected and qualified at a special election held concurrently with the next regular election for the office of Mayor. The special election is required therein to be held on the date specified in the advertisement, but not less than 30 days nor more than 45 days after the publication of the call of election.<sup>12</sup>

Moreover, of the five different consolidated city-counties classified within this method, three fill vacancies within the office of Councilmember through situational procedures; each are constructed on the remaining balance of time in the unexpired term. For the City of Columbus and County of Muscogee, the same measures for filling the office of Mayor aforementioned are used in filling a vacancy in the office of Councilmember. For Honolulu, if less than one year remains within the term of a Councilmember, the council has thirty days to fill the vacancy at their discretion; failure to fill the vacancy within this thirty days provides the discretion of appointment to be shifted to the Mayor. In the case that more than a year exists in the unexpired term, a special election shall be called within ten days the occurrence of the vacancy, with the election taking place within sixty days of the vacancies occurrence.<sup>13</sup> For the New Orleans and Orleans Parish, a vacancy in the office of any councilmember shall be filled as follows: if remainder of the term is less than one year, the Council selects by a majority vote a replacement; if there is an inability by the council then the Mayor shall appoint an individual to fill the vacancy. If the unexpired term is for one year or more, the vacancy shall be filled by special election, to be called by the Council within ten days after its occurrence and to be held in accordance with the laws of the state.<sup>14</sup>

The remaining three positions and consolidated city-counties falling within the ‘other’ or situational proceedings method of classification are each different. For Honolulu, in filling the position of Prosecuting Attorney, if less than one year remains in the unexpired term it shall be filled by the first deputy; if he doesn't meet the requirements or the position is vacant, then the mayor, with the consent of the council may appoint a replacement. If more than one year remains then a special election is to be called within 10 days of the vacancy being declared; the election must then be held within 60 days.<sup>15</sup> For Philadelphia, in the case of a vacancy occurring in a seat of a Member to the Board of Education, the individual to fill said vacancy shall do so through the manner in which the predecessor was selected. If the member was removed from office,

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[http://www.amlegal.com/nxt/gateway.dll/Pennsylvania/philadelphia\\_pa/thephiladelphiacode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:philadelphia\\_pa](http://www.amlegal.com/nxt/gateway.dll/Pennsylvania/philadelphia_pa/thephiladelphiacode?f=templates$fn=default.htm$3.0$vid=amlegal:philadelphia_pa)

<sup>12</sup> Municipal Code, City of Columbus and County of Muscogee: Pt. 1, Art. VI, Ch. 2, Sec. 6-201

<sup>13</sup> Charter, City and County of Honolulu: Art. III, Ch. 1, Sec. 3-105 (a)(b)

<sup>14</sup> Charter, City of New Orleans and the Orleans Parish: Pt. 1, Ch. 2, Art IV, Sec. 3-105 (b)(i)

<sup>15</sup> Charter, City and County of Honolulu: Art. VIII, Sec. 8-106 (a)(b)



however, then the Mayor shall appoint a replacement.<sup>16</sup> And lastly, for Denver, in the rare case that a vacancy occurs in a cross jurisdictional seat to the Regional Transportation District Board, such vacancies are filled either by a selection committee or metro-mayor committee; appointed individuals will serve until December 31st following a general election.<sup>17</sup>

## **B. California Charter Counties**

### **(i.) Introduction: California Charter Counties**

The main difference between general law and charter counties lies in the way they can organize and select their county governing bodies and officers. Every county is required to elect a governing body -- a board of supervisors or council. Let us not forget however, the constitutional requirement that every county elect a sheriff, district attorney and an assessor. Charter counties have considerable freedom when drafting their charters to determine what other officers they will have, their powers and duties, and whether they will be elected or appointed.

Because there exist such a considerable freedom, it was found necessary to review all of California's thirteen Charter counties They are listed herein, including population as a means for placing perspective: Alameda (1,529,874), Butte (220,266), Fresno (942,904), Los Angeles (9,889,056), Placer (357,158), Sacramento (1,436,105), San Bernardino (2,065,377), San Diego (3,140,069), San Francisco (812,826), San Mateo (727,209), Santa Clara (1,809,378), Tehama (63,463), and El Dorado (180,938).

The office represented across the twelve California Charter Counties (San Francisco aside) include: Member to a Community College Board of Trustees, Member to a Board of Education, Member to a Board of Supervisors, Coroner, Recorder, County Clerk, Sheriff, Treasurer, License Collector, Tax Collector, Auditor, District Attorney, Superintendent of Schools, Assessor, and Public Administrator. In some cases, provided as an option by California's governing code, some California Charter Counties have opted to consolidate positions: Treasurer-Tax Collector, Assessor-County Clerk, Sheriff-Coroner, Auditor-Controller, Assessor-Recorder, and Auditor-Assessor.

### **(ii.) Exceptions Seen Within California Charter Counties**

As noted earlier, the efforts to provide fully inclusive data on varying Municipal and County codes and policies is largely dependent on the extent of available information provided online. In the review of California's Charter Counties, two counties, Tehama and El Dorado, did not provide for methods used to fill vacancies within certain publicly elected positions online. The available policies and codes pertaining to each position detailed duties and powers granted to each position, but did not provide for handling a vacancy within each position. For Tehama, the

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<sup>16</sup> Charter, City and County of Philadelphia: Art. XII, Ch. 2, Sec. 12-205

<sup>17</sup> Barabara McManus, Board Office Administrator; (303) 299-2303; policy not viewable online, phoned for detail



positions identified as publicly elected not providing a method include members to the Board of Supervisors, Treasurer, Sheriff, County Clerk, District Attorney, Auditor, Tax Collector, License Collector, Coroner and Superintendent of Schools. For El Dorado, the positions not accounted for regarding vacancies include members to the Board of Supervisors, Sheriff, Coroner, Recorder, and County Clerk. Similarly, the available policies and codes pertaining to each position detailed duties and powers granted to each position, but did not provide for handling a vacancy within each position.

For our analysis of California's Charter Counties, it is relevant to note that only Fresno relies on directly turning to a public elections for the purpose of filling a vacancy within a publicly elected position. Specifically, Fresno fills vacancies through this method for all positions but a member to the Board of Supervisors, including: Assessor, District Attorney, Sheriff, Superintendent of Schools, Auditor, County Clerk, Coroner, Recorder, Public Administrator, Tax Collector, Treasurer, member to the Board of Education, and member to the Community College District Board of Trustees. The Board of Supervisors shall without delay call a special election to fill such vacancy to be held not less than 75 nor more than 90 days after the call. Provided however, if an election date as provided in Section 2504 of the Elections Code or similar State law falls not less than 75 days after the call, such special election shall be consolidated with such election.<sup>18</sup>

### **(iii.) Appointment by an Individual**

When surveying California's twelve (San Francisco aside) charter counties, only two counties, Los Angeles and Butte, grant sole discretion of appointment to and individual. Moreover, both counties only grant sole discretion of appointment in one publicly elected office, a member to the Board of Supervisors. For Los Angeles, whenever a vacancy occurs in the Board of Supervisors, the Governor shall fill such vacancy, and the appointee shall hold office until the election and qualification of his successor.<sup>19</sup> For Butte, whenever a vacancy occurs to the Board of Supervisors, the Governor shall fill such vacancy by appointment, and the appointee shall hold office until the election and qualification of his successor. Such election shall take place at the next general election at which county officers are elected. The person elected shall hold office for the remainder of the unexpired term.

### **(iv.) Appointment by a Group/Governing Body**

Not including Tehama and El Dorado County due to a lack of available information online, eight of the ten remaining counties fill vacancies in the office of Sheriff through the an appointment by a group/governing body (Fresno and San Mateo being the exceptions). The same eight counties (Alameda, Butte, Los Angeles, Placer, Sacramento, San Bernardino, San Diego, and Santa Clara) fill most all publicly elected positions through an appointment by a group/governing board; the positions seen as exceptions near exclusively are seen in positions such as members to Boards of

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<sup>18</sup> Charter, County of Fresno: Section 8

<sup>19</sup> Charter, County of Los Angeles: Art II, Sec. 8



Education and members to Community College Board of Trustees. Seen in tandem with Fresno and San Mateo, Sacramento, San Bernardino, San Diego, and Santa Clara also define in greater detail, to be given later, follow a different situational practice for filling vacancies in seats on Boards of Supervisors.

In Alameda County, the positions of Auditor/Assessor, District Attorney, Sheriff, Treasurer, County Clerk Recorder, and Tax Collector are filled whenever a vacancy occurs by the Board of Supervisors, and the appointee shall hold office until the election and qualification of his successor during the next general election. The successor elected at the next general election serve for the unexpired term.<sup>20</sup> In the instance of a vacancy in the office of member to the Board of Supervisors, the Board of Supervisors shall fill the vacancy. Only if it shall fail to fill the vacancy within 60 days following its occurrence, the Governor shall fill the vacancy. The appointee shall hold office until the election and qualification of his/her successor. In such cases there shall be elected at the next general election a supervisor to fill such vacancy for the unexpired term.<sup>21</sup>

Butte County, when filling a vacancy in the office of member to the Board of Education does so through appointing an individual to hold office only until the next regularly scheduled election for governing board members, whereupon an election shall be held to fill the vacancy for the remainder of the unexpired term. A person elected at an election to fill the vacancy shall hold office for the remainder of the term in which the vacancy occurs or will occur.<sup>22</sup>

In Los Angeles County, the positions of Assessor, Sheriff, District Attorney, member to the Board of Education, and member to the Community College District Board of Trustees, when a vacancy occurs, get filled by the Board of Supervisors, and the appointee shall hold office until the election and qualification of his/her successor. In such case, there shall be elected at the next general election an officer to fill such vacancy for the unexpired term.<sup>23</sup> Similarly, Sacramento County fills vacancies in the publicly elected offices of Assessor, District Attorney and Sheriff by an appointment from the Board of Supervisors.<sup>24</sup>

In Placer County, the offices of Sheriff-Coroner, District Attorney, Assessor, Superintendent of Schools, Auditor-Controller, County Clerk-Recorder, and Treasurer-Tax Collector, the Board of Supervisors shall fill such vacancy and the appointee shall hold office until the next general election and until his successor is elected and qualified.<sup>25</sup> Separately, Placer County fills a vacancy in a seat to the Board of Supervisors by the unanimous vote of the remaining members.

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<sup>20</sup> Charter, County of Alameda: Section 20

<sup>21</sup> Charter, County of Alameda: Section 8

<sup>22</sup> Board of Education Board Policies: BP 8000(15)

<sup>23</sup> Charter, County of Los Angeles: Art IV, Sec. 206

<sup>24</sup> Charter, County of Sacramento: Art VIII, Sec. 31

<sup>25</sup> Charter, County of Placer: Art IV, Sec. 404



Should they fail to make such appointment within 30 days of the occurrence of any such vacancy, then such a vacancy shall be filled by the Governor.<sup>26</sup>

In San Bernardino County, the offices of Sheriff, District Attorney, and seats on the Board of Supervisors, are filled by the Board of Supervisors for the remaining unexpired term.<sup>27</sup> For the office of Superintendent of Schools, vacancies are filled by the Board of Education via appointment. The appointee shall hold office until the office is filled by election at the next gubernatorial election.<sup>28</sup> In filling a vacancy to a member of the Community College District Board of Trustees, a special election or provisional appointment in accordance with the provisions of the Education Code is utilized.

For San Diego, when filling vacancies in the offices of Assessor-Recorder-Clerk, District Attorney, Sheriff, and Treasurer-Tax Collector, the Board of Supervisors has the power to fill, by appointment, any vacancy that occurs in an elective office. The appointee holds office until the election and qualification of a successor. The successor is elected at the next primary election, or at the next primary and general elections, to complete the term.<sup>29</sup> When filling a vacancy in the office of member to the Board of Education or member to the Community College Board of Trustees, the respective Boards fill the vacancy from the district in which it occurs within 45 days by appointment of a majority of the remaining members of their respective Boards. The successor is elected at the next general election, either to complete the term.

Lastly, within the method of appointment by a group/governing body, Santa Clara County, when filling vacancies in the offices of Assessor, District Attorney, or Sheriff, the Board of Supervisors shall make an appointment. The appointee shall hold office until the election and qualification of the successor at the next general election, who shall serve for the remainder of the unexpired term.<sup>30</sup> In the event that a vacancy should occur in a seat to the Board of Education, it is stipulated that the County Board of Education may fill by appointment any vacancy.<sup>31</sup>

The obvious dominant trend appearing within our identified method of an appointment by a group/governing body is that the respective bodies have the unchecked discretionary power to appoint an individual to fill a vacancy, who shall serve until the next public election. The victor of such an election then serves in the formerly vacant position for the remainder of the unexpired term.

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<sup>26</sup> Charter, County of Placer: Art II, Sec. 206

<sup>27</sup> Charter, County of San Bernardino: Art. II, Sec. 7, (BOS) Art. I, Sec. 7

<sup>28</sup> San Bernardino County Education Policy: Sec. 500, No. 532

<sup>29</sup> Charter, County of San Diego: Art. V, Sec. 500.2

<sup>30</sup> Charter, County of Santa Clara: Art. V, Sec. 501

<sup>31</sup> Board of Education Policy and Regulation, Board Bylaws: BB 9000A(5)



### **(v.) Other/Situational Proceedings**

In our final method for filling a vacancy within a publicly elected position, situational processing, eleven of the twelve counties surveyed within this portion of our study are herein categorized. Los Angeles is the only county that does not offer situational responses to vacancies within their publicly elected offices; meaning specifically, there is one clear route in which they, as a charter county, address vacancies. Nine of the eleven counties identified here are so categorized primarily for handling vacancies in the positions of members to a Board of Education and members to a Community College Board of Trustees. Furthermore, Alameda County, Butte County, Sacramento County, and El Dorado County each ascribe to filling vacancies through measures laid out by the California Education Code.<sup>32</sup> The same codes are used for filling the vacancies in seats to Community College District Board of Trustees; counties that utilize the California Education Code here are the County of El Dorado and Sacramento.

The California Education Codes 5090-95 stipulate that whenever a vacancy occurs, or whenever a resignation has been filed with the county superintendent of schools containing a deferred effective date, (a) the school district or community college district governing board shall, within 60 days of the vacancy or the filing of the deferred resignation, either order an election or make a provisional appointment to fill the vacancy. In the event that a governing board fails to make a provisional appointment or order an election within the prescribed 60-day period as required by this California's education code, the county superintendent of schools shall order an election to fill the vacancy....(c) (1) If a provisional appointment is made within the 60-day period, the registered voters of the district may, within 30 days from the date of the appointment, petition for the conduct of a special election to fill the vacancy....(e) A person appointed to fill a vacancy shall hold office only until the next regularly scheduled election for district governing board members, whereupon an election shall be held to fill the vacancy for the remainder of the unexpired term. A person elected at an election to fill the vacancy shall hold office for the remainder of the term in which the vacancy occurs or will occur. Furthermore, Section 5093(a) posits that there shall be no special election or appointment to fill a vacancy on a governing board if the vacancy occurs within four months of the end of the term of that position...(c) If a special election pursuant to Section 5091 could be consolidated with the next regular election for governing board members, and the vacant position is scheduled to be filled at such regular election, there shall be no special election. Finally, Section 5095 states that whenever any of the offices on any school district governing board or community college district governing board is vacant, the remaining governing board member or members, if any, and any governing board member or members elected or appointed to fill the vacancies, who have qualified, shall have all the powers and perform all the duties of the governing board.<sup>33</sup>

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<sup>32</sup> California Education Codes 5090-95: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=edc&group=05001-06000&file=5090-5095>

<sup>33</sup> *ibid.*



San Mateo County utilizes situational processing for filling vacancies in the vast majority of their publicly elected offices. Specifically, the positions vacant filled by situational processes are members to the Board of Supervisors, Assessor-County Clerk, Recorder, Controller, District Attorney, Sheriff, Treasurer-Tax-Collector, member to the Board of Education, and member to the Community College District Board of Trustees. Excluding the cases where vacancies are being filled with seats to the Board of Supervisors, Board of Education, or Community College District Board of Trustees, all other aforementioned positions publicly elected within San Mateo County are filled by either appointments.... the Board shall within 30 days of the effective date of the vacancy, either make an appointment, or order the calling of a special election to fill the vacancy. If the Board does not make an appointment or call a special election within 30 days, the county officer responsible for conducting county elections shall immediately order a special election to be called to fill this vacancy.<sup>34</sup> For vacancies in seats to the Board of Supervisors, at any time on or before October 15th of the third calendar year of a term, the Board shall, within 30 days of the effective date of the vacancy, order the calling of a special election to fill the vacancy. If the Board does not call a special election within 30 days, the county officer responsible for conducting elections shall immediately order a special election to be called to fill the vacancy....The special election shall be held not less than 102 days and not more than 131 days from the order calling the election, except that it may be held on an election date regularly established by general law if the date falls within 180 days from the order calling the special election....If the vacancy occurs after October 15th of the third calendar year of a term, the Board shall within 45 days of the effective date of the vacancy, either call a special election, make an appointment, or determine to leave the office vacant until the end of the term. If a special election is called, it shall be held on the earliest date that is administratively possible as determined in consultation with the county officer responsible for conducting elections.<sup>35</sup>

Again, for many, the situational proceedings covered varying education boards (Board of Education and Community College District Board of Trustees). Placer County responds in this manner for their Community College District Board of Trustees, where, when a vacancy occurs, a rigid timeline and steps are provided to accommodate many scenarios: 1. When a vacancy occurs four or more months before the end of a County member's term, the County Board shall take no action. 2. When a vacancy occurs four or more months before the end of a County Board member's term, the County Board shall, within 60 days of the date of the vacancy or the filing of the member's deferred resignation, either order an election or make a provisional appointment, unless a special election is mandated. 3. When a vacancy occurs from 6 months to 130 days before a regularly scheduled County election at which the position is not scheduled to be filled, a special election to fill the position shall be consolidated with the regular election. The person so elected shall take office at the first regularly scheduled County Board meeting following the certification of the election and shall serve only until the end of the term of the position that he/she was elected to fill. This policy, again, is modeled after California's Education Code. For provisional appointments, the Board may utilize the process to fill a vacancy of the Board

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<sup>34</sup> Charter, County of San Mateo: Art. IV, Sec. 415

<sup>35</sup> Charter, County of San Mateo: Art. II, Sec. 203



whereby interested individuals may apply for the appointment.<sup>36</sup> In just the same manner, San Mateo County, Tehama County, and Santa Clara County, when filling a vacancy within their Community College District Board of Trustees, fill by appointment or by special election as determined by the Board and in accordance with provisions of the California Education code.<sup>37</sup>

For both San Mateo County and Tehama County, when a vacancy occurs in a seat to the Board of Education, the Board of Education shall take the following action, as appropriate: 1. When a vacancy occurs less than four months before the end of a Board members term, the Board shall take no action, 2. When a vacancy occurs four or more months before the end of a Board member's term, the Board shall, within 60 days of the date of the vacancy or the filing of the member's deferred resignation, either order an election or make a provisional appointment, 3. When a vacancy occurs from six months to 130 days before a regularly scheduled Board election at which the position is not scheduled to be filled, a special election to fill the position shall be consolidated with the regular election.<sup>38</sup>

Sacramento has perhaps the most detailed situational processing for vacancies within their Board of Supervisors. Sacramento's charter provides different scenarios for filling a vacancy in the seat of a member to the Board, each dependent on how many days have passed in the unexpired term. Options for filling the vacancy include the calling of a special election, the appointment by the remaining members of the Board of Supervisors, and waiting to fill the vacancy all together until the next available public election.<sup>39</sup>

In the event a vacancy occurs in the office of Supervisor in the County of San Diego, the remaining members of the Board shall, within 30 days of the vacancy, shall fill either by appointment for the unexpired term, by appointment until the qualification of a successor elected at a special election, or by just calling a special election. If only one candidate qualifies for the special primary election, that candidate shall be appointed to the vacancy by the remaining members of the Board for the unexpired term, and shall serve exactly as if elected to such vacancy.<sup>40</sup>

For Santa Clara County, more simply, whenever a vacancy occurs in the office of Supervisor, the vacancy shall be filled by appointment by the Board of Supervisors, or, alternatively, by an

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<sup>36</sup> Placer County Community College District Board of Trustees, Board Policy and Regulation, Board Bylaws: BB 9223

<sup>37</sup> San Mateo County Community College District Board of Trustees, Board Policy:  
BP Ch. 1, BP No 1.02(4)(a)(i-iv)  
Santa Clara County, WVMCCD BP 2110

Tehama County, Shasta-Tehama-Trinity Community College District Board Policy 2110

<sup>38</sup> San Mateo County, Board of Education Policy and Regulations: BP 9217

Tehama County, Board of Education Board Policy and Regulations, Board Bylaws: BB 9223(a)

<sup>39</sup> Charter, County of Sacramento: Art. IV, Sec. 7 (a-d)

<sup>40</sup> Charter, County of San Diego: Art IV, Sec. 401.4



election called by the Board. If the appointment or call for an election is not made within 45 days from the occurrence of the vacancy, the Governor shall make the appointment.

If the Board makes an appointment, the appointee shall hold office until the election and qualification of the successor, much like San Francisco.<sup>41</sup>

So as we know in the case of California charter counties, it is far more frequently the case that counties vest the discretion for filling a vacancy in a publicly elected position either through an appointment by a group/governing body. Otherwise, counties near equally, will have laid out highly specified situational proceedings that dictate scenarios contingent upon the precise time the vacancy occurs, lending options to call special elections, make limited appointments, or otherwise dictate what is to happen in the case of inaction by group/governing body.

### **C. California Wide Offices**

As defined earlier, California wide offices refers to publicly elected offices at the statewide level; including U.S. Senators, U.S. House Representatives, State Senate, State Assembly, the Governor, Lt. Governor, Superintendent of Public Instruction, Secretary of State, Controller, Treasurer, Attorney General, the State Board of Equalization, Special Districts, and a General Provision for any unnamed statewide elected offices. Here, filling a vacancy in the above mentioned California wide publicly elected positions is procedurally provided by the California Governing Code.<sup>42</sup>

In the event of a vacancy in the offices of U.S. Senator, U.S. Representative to the House, State Senate, or State Assembly, the Governor shall within 14 calendar days after the occurrence of the vacancy, call for an election to fill the vacancy. Provided, that when such a vacancy occurs in a congressional office after the close of the nomination period in the final year of the term of office, a special election may be held at the Governor's discretion; and provided, further, that when a vacancy occurs in a legislative office after the close of the nomination period in the final year of the term of office, no special election shall be held.<sup>43</sup> This, then, would be classified within our 'other' or situational circumstances.

In the case of a vacancy in the office Governor, the Lt. Governor shall succeed to the office of Governor. Should the Lt. Governor be unable to fill such a responsibility, the State has provided a full line of succession.<sup>44</sup> For the office of Governor then, this would also be classified as an 'other' or situational proceeding; the state has greatly delineated a line of succession into the office of Governor.

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<sup>41</sup> Charter, County of Santa Clara: Art. V, Sec. 501

<sup>42</sup> <http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=gov&codebody=&hits=20>

<sup>43</sup> California Governing Code: Title I, Divisions 4, Ch. 4, Art. II, Sec. 1773

<sup>44</sup> California Governing Code: Title II, Division 3, Part II, Ch. 1 Art. 5.5, Sec 12058-12059



For all other offices previously mentioned for California wide offices, the governor shall nominate a person to fill the vacancy who shall take office upon confirmation by a majority of the membership of the Senate and a majority of the membership of the Assembly and who shall hold office for the balance of the unexpired term. In the event the nominee is neither confirmed nor refused confirmation by both the Senate and the Assembly within 90 days of the submission of the nomination, the nominee shall take office as if he or she had been confirmed by a majority of the Senate and Assembly; provided, that if such 90-day period ends during a recess of the Legislature, the period shall be extended until the sixth day following the day on which the Legislature reconvenes.<sup>45</sup> Because this process allows for approval of the Governors appointment by both parts of the State Legislature, this classifies, as the “other”/ situational process.

It is relevant to note the potential for a deviation from the above-mentioned California wide offices: when any office becomes vacant and no mode is provided by law for filling the vacancy, the Governor shall fill the vacancy by granting a commission, to expire at the end of the next session of the Legislature or at the next election by the people.<sup>46</sup>

### **C. California Most Populous Cities**

#### **(i.) Introduction: California Most Populous Cities**

As defined earlier, this section refers specifically to California’s top ten most populous cities, based on the 2010 U.S. Census findings; these cities include Los Angeles (3,792,621), San Diego (1,307,402), San Jose (945,942), San Francisco (812,826), Fresno (945,942), Sacramento (466,488), Long Beach (462,257), Oakland (390,724), Bakersfield (347,483), and Anaheim (336,265). In that San Francisco falls within this list of cities, it is relevant to note that we will omit discussing San Francisco here, as the City and County of San Francisco have been delegated its own section, Section III, within this study and all else is used in a manner of informative exploratory research for comparative purposes. Moreover, beyond the top ten most populous cities within California, population totals by city begin to drop significantly (by totals of 100,000 and more from that of Anaheim).

The city offices publicly elected, identified through surveying city charters, municipal codes, and records of election, include Mayor, Councilmember, City Attorney, Member to a Board of Education, and Member to a Community College District Board of Trustees.

Of the four identified categories in which a vacancy in a publicly elected position may be filled, it is tantamount to note that in comparing San Francisco to the nine other most populous cities in California, no other city gives total discretion for appointments to one individual.

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<sup>45</sup> California Governing Code: Title I, Division 4, Ch. 4, Art. II, Sec. 1775

<sup>46</sup> California Governing Code: Title I, Division 4, Ch. 4, Art. II, Sec. 1772:



## **(ii.) Appointment by a Group/Governing Body**

Of those cities that, for varying positions, utilize the category of appointment by a group/governing body, six of the nine cities reported herein, find use of this practice. Specifically, the positions filled within this category include Mayor, Councilmember, City Attorney, and Member to the Board of Education. That means, of the five surveyed positions herein, four of the five are represented here.

Of the six cities represented within this category, three use the practice of appointment by a group/governing board (Anaheim, Bakersfield, San Diego). For Anaheim, a vacancy in the office of Mayor, from whatever cause arising, shall be filled by appointment by the City Council, such appointee to hold office until the first Tuesday following the next general municipal election and until his or her successor qualifies. At the next general municipal election following any vacancy, a successor shall be elected to serve for the remainder of any unexpired term.<sup>47</sup> This also happens to be the same case in which Anaheim fills a vacancy within their city council. For Bakersfield, if a vacancy shall occur in the office of Mayor, the Council shall appoint a person, who may or may not be a member of the Council to fill such vacancy for the unexpired term, within fifteen days of the time that the Council shall be notified of such vacancy.<sup>48</sup> And in the case of San Diego, should a vacancy occur in the office of Mayor, The Charter of the City of San Diego gives the City Council the authority to fill a vacancy in the office of the Mayor within thirty business days by appointment; and failing to do so within that time, the City Council is required to immediately cause an election to be held to fill such vacancy.<sup>49</sup>

For the office of Councilmember to any given city, Anaheim is the only categorized herein as filling a vacancy within a publicly elected office by means of an appointment by a group/governing body. Anaheim, specifically, fills a vacancy in a seat of the City Council, from whatever cause arising, by appointment by the City Council, such appointee to hold office until the first Tuesday following the next general municipal election and until his or her successor qualifies. At the next general municipal election following any vacancy, a successor shall be elected to serve for the remainder of any unexpired term. Again, as earlier noted in our discussion of Anaheim's Mayor, this process is used for both the position of Mayor, and that of Councilmember.

Two cities, Oakland and San Diego, also fill the office of City Attorney through the categorical means of an appointment made by a group/governing body. Outlined in Oakland's city charter, a vacancy therein is filled by appointment by the majority vote of the members of the City Council; provided, that if the Council shall fail to fill a vacancy by appointment within sixty days after such office shall become vacant, the City Council shall cause an election to be held to fill

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<sup>47</sup> Charter, City of Anaheim: Art. V, Sec. 503

<sup>48</sup> Charter, City of Bakersfield: Art III, Sec. 20(1)

<sup>49</sup> City of San Diego Municipal Code: Charter, Ch. 2, Art, VII, Div. VII, Sec. 27.0701



such vacancy.<sup>50</sup> In San Diego's case, a vacancy within the office of City Attorney is filled through the same means as it replaces its Mayor; that is, the Charter of the City of San Diego gives the City Council the authority to fill a vacancy in the offices of the City Attorney within thirty business days by appointment; and failing to do so within that time, the City Council is required to immediately cause an election to be held to fill such vacancy.<sup>51</sup>

For the office of Members to a Board of Education, three cities (Long Beach, Fresno, San Diego) again fill office through our categorical means identified as an appointment by a group/governing board. For Long Beach, filling a vacant seat to their Board of Education is done so by appointment made by the Los Angeles County Board of Supervisors.<sup>52</sup> For Fresno, their Board of Education has adopted the California Education Code procedure, detailed in great length earlier, that allows for either a provisional appointment to be made to the position until the next general election, in which a successor shall be elected to fill the remainder of the unexpired term, or a call for a special election may be ordered.<sup>53</sup> Finally, in San Diego's case, the position is filled from the election district in which the vacancy occurs by appointment by the remaining Board members; but in the event that said remaining members fail to fill such vacancy by appointment within thirty days after the vacancy occurs, they must immediately cause to be held a primary election in the district in which the vacancy occurs and a general election within the entire school district to fill such vacancy.<sup>54</sup>

### **(iii.) Special Elections**

Moving forward within our survey of California's most populous cities, only three (Fresno, Long Beach, and Oakland) defer to calling special elections in every case a vacancy may occur. At that, Fresno only does so for their Mayor, Long Beach, their Mayor and Councilmembers, and Oakland, their Councilmembers. For Fresno, in the event of a vacancy in the office of Mayor, the Council shall appoint the Mayor Pro Tempore as Mayor for the period of time from the date of appointment to the date newly elected mayor assumes office. Meaning, the Council shall call a special election for filling the vacancy, which shall be called within thirty days after such vacancy occurs, provided that if such vacancy occurs within one hundred twenty days, but not less than eighty-eight days from the date of a municipal primary nominating election at which the office of mayor would regularly be filled, the City Council shall not cause a special election to be held to fill the vacancy but said vacancy shall be filled as part of the regular election process.<sup>55</sup> In Long Beach's case, when a vacancy should arise in the office of their Mayor, the position is filled by the council immediately calling an election to be held to fill such vacancy.

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<sup>50</sup> Charter, City of Oakland: Art. IV, Sec. 401(4)

<sup>51</sup> City of San Diego Municipal Code, Charter: Ch. 2. Art. VII, Div. VII, Sec. 27.0701

<sup>52</sup> Charter, City of Long Beach: <http://library.municode.com/index.aspx?clientId=16854>

<sup>53</sup> California Education Code 5092: : <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=edc&group=05001-06000&file=5090-5095>

<sup>54</sup> City of San Diego Municipal Code, Charter: Art. VI, Sec. 66

<sup>55</sup> Charter, City of Fresno: Art III, Sec. 305



The election shall be called within 60 days after such vacancy occurs and shall be held within 120 days after such vacancy occurs, provided that if such vacancy occurs within 120 days, but not less than 88 days, from the date of a municipal primary nominating election at which the office of mayor would regularly be filled.<sup>56</sup>

Of the office of Councilmember, both Long Beach and Oakland fill vacant seats through means of a special election. For Long Beach, such a vacancy shall be filled at a special election to be called for that purpose. The election to fill a vacancy shall be held in the district from which the City Council member is to be elected, and shall be called within 60 days after the declaration of such vacancy by the City Council.<sup>57</sup> For Oakland, all vacancies occurring in the office of Councilmember shall be filled by special election within 120 days of a vacancy. An extension of up to 60 days may be allowed for the express purpose of consolidating the special election with the next Municipal Election or Statewide Election.<sup>58</sup>

#### **(iv.) Other/Situational Proceedings**

Six of the nine cities herein reviewed use our method classified as situational proceedings when filling vacancies to publicly elected positions. Positions represented by the use of this method include Councilmember, Members to a Board of Education, Members to a Community College District Board of Trustees, and Mayor; this represents all publicly elected positions within the category of California's most populous cities.

Beginning with the position of Councilmember, four of our nine cities use situational proceedings in filling vacancies to this position. They are Fresno, Bakersfield, San Jose, and San Diego. For Fresno, filling a vacancy of a Councilmember's seat is done so through an appointment by the council if: (i) The Council declares the existence of the vacancy or the incumbent dies or resigns in the final year of the term, and (ii) The appointment is made within thirty days after the Council declares the existence of the vacancy or the incumbent dies or resigns, or 2, any vacancy in the office of a councilmember chose to not filled pursuant to paragraph 1, shall be filled by a special election to be held not sooner than ninety days after the Council calls such election nor later than the next regular election date after the expiration of such ninety days.<sup>59</sup> Bakersfield fills vacancies in the Council, except when caused by recall election, at a time less than six months prior to the date of the next general election for the vacant council seat, the Council shall fill the vacancy by appointment for the remainder of the unexpired term. If a vacancy occurs in the Council at a time more than six months prior to the date of the next general election for the vacant Council seat, a petition requesting a special election may be filed with the Council. If no petition requesting a special election is filed within four weeks after the vacancy occurs, the Council shall fill the vacancy by appointment or by special election for

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<sup>56</sup> Charter, City of Long Beach: Art. II, Sec. 202(e)

<sup>57</sup> Charter, City of Long Beach: Art. II, Sec. 204

<sup>58</sup> Charter, City of Oakland: Art. II, Sec. 205

<sup>59</sup> Charter, City of Fresno: Art III, Sec. 305



the remainder of the unexpired term.<sup>60</sup> In San Jose, vacancies in the Council are filled by Regular Municipal Elections or appointments. If the vacancy is to be filled by election, the election will be for the entire unexpired term of the office. The election will either be conducted at a regular municipal election, a General Election or at a special municipal election, as determined by the Council. There is also the option of an interim appointment, if a vacant office is to be filled by election, the Council may make an interim appointment to fill the office until a candidate has been duly elected and the results of the election have been officially certified.<sup>61</sup> And for San Diego, as soon as it is known that there will be a vacancy in the office of a Councilmember of the City of San Diego, for any reason other than a successful recall election, the decision to fill the vacancy by appointment or special election shall be determined by the length of time remaining in the term of office.<sup>62</sup>

Three cities, Oakland, Sacramento, and San Jose, also use situational proceedings in filling vacancies to the office of Mayor. In Oakland, Upon the declaration of vacancy in the office of the Mayor, the office shall be filled by the Vice-Mayor of the Council ....when the Vice Mayor of the Council assumes the office of Mayor upon the declaration of a vacancy, she/he shall serve for the unexpired term if such term is less than one year; otherwise she/he shall serve until the vacancy is filled as provided herein. Whenever the period of vacancy in a Mayor's term of office is less than one year and the Vice Mayor notifies the Council in writing that she/he does not wish to serve as Mayor for the unexpired term, the vacancy shall be filled by appointment through a majority vote of the remaining Councilmembers. If at the time of a vacancy declaration the unexpired term is one year or more, the vacancy occurring in the office of Mayor shall be filled by special election within 120 days of such vacancy. An extension of up to 60 days may be allowed for the express purpose of consolidating the special election with the next municipal election or statewide election.<sup>63</sup> In Sacramento, should a vacancy in the position of Mayor occur, it shall be filled by special election to be called by the city council as provided in Section 154 of their charter, unless such vacancy occurs within one year of the next general election at which the office of Mayor would normally be filled. In such a case, the vacancy shall be filled by appointment by a majority of the members or the city council then in office. A person elected or appointed to fill a vacancy in the office of mayor shall hold office for the unexpired term of the former incumbent.<sup>64</sup> In San Jose, vacancies in the office of Mayor are filled just the same as their Council, through Regular Municipal Elections or appointments. If the vacancy is to be filled by election, the election will be for the entire unexpired term of the office. The election will either be conducted at a regular municipal election, a General Election or at a special municipal election, as determined by the Council. There is also the option of an interim appointment, if a vacant office is to be filled by election, the Council may make an interim appointment to fill the

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<sup>60</sup> Charter, City of Bakersfield: Art III, Sec. 16

<sup>61</sup> Charter, City of San Jose, Art. IV: [www3.sanjoseca.gov/clerk/charter/.htm#Art4](http://www3.sanjoseca.gov/clerk/charter/.htm#Art4)

<sup>62</sup> City of San Diego Municipal Codes, Charter: Ch. 2, Art. VII, Div. VII, Sec 27.0701

<sup>63</sup> Charter, City of Oakland: Art. III, Sec. 303

<sup>64</sup> Charter, City of Sacramento: Art. IV, Sec. 46



office until a candidate has been duly elected and the results of the election have been officially certified.<sup>65</sup>

Vacancies in the Board of Education, for Oakland, Sacramento, San Jose, and Los Angeles, also utilize situational proceedings. San Jose, Sacramento, Los Angeles and Oakland all have adopted into their city charter and School District policies, the California Education Code regarding processes for filling vacancies. The California Education Code, simply put, stipulates that the office is filled by appointment or by special election as determined by the Board and in accordance with provisions of the California Education code.<sup>66</sup> The means may vary within each City in terms of who the Board of Education will engage with to achieve the application of the California Education Code. Oakland, San Jose, and San Diego have also adopted the California Education Code into their respective Community College District Board of Trustees governing Board Policies and Regulations, again, allowing for a provisional appointment or the call of a special election.<sup>67</sup> Again, this is situationally based.

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<sup>65</sup> Charter, City of San Jose, Art IV: [www3.sanjoseca.gov/clerk/charter/htm#Art4](http://www3.sanjoseca.gov/clerk/charter/htm#Art4)

<sup>66</sup> Charter, City of Oakland: Art. IV, Sec. 404(a)  
Sacramento Unified School District, Board of Education Policy and Regulation: Board Bylaws: BB 9223  
San Jose Unified School District, Board of Education Policy and Regulation: BP Ch. 2, BP 2110

<sup>67</sup> Oakland: Peralta Community College District Board of Trustees, Board Policy and Regulation: BP 2110  
San Jose: San Jose-Evergreen Community College District Board of Trustees, Board Policy and Regulation  
BP, Ch. 2, BP 2110

San Diego: Community College District Board of Trustees, Board Policy and Regulation, BP, Ch. 2, BP 2110



## CONCLUDING REMARKS:

The objective of this study was to provide an empirical analysis of how varying governing agencies fill vacancies in publicly elected positions between election cycles. The aim was to identify and assess the City and County of San Francisco's practices as either distinguishably different, relatively similar, or non-comparable to other governing agencies. The methodology of this process involved a qualitative analysis of data as provided online through the varying agencies publicly disclosed governing policies and regulations. To ensure a depth of consideration in our comparison, as the City and County of San Francisco functions as California's only consolidated city-county, four categories were analyzed, including:

- Consolidated City-Counties (nationally)
- California Charter Counties
- California's Most Populous Cities
- California Wide Offices

Within these categories, four distinct methods for filling vacancies within publicly elected positions were identified during our research. Those methods include:

- Appointments by an Individual
- Appointments by a Group/Governing Body
- Special Elections
- 'Other' or Situational Proceeding

As we know, the City and County of San Francisco fill vacancies, excluding the office of Mayor, in publicly elected positions through Mayoral appointments, of which, the chosen individual holds office until the next general election in which a successor is elected for the remainder of the unexpired term.

When considering the compiled data of our most prevalent method utilized, 'other' or situational proceedings, the City and County of San Francisco acts in a manner not consistent with the great majority of governing bodies. Specifically, whereas the City and County of San Francisco vest discretion of filling vacancies through Mayoral appointments, the overwhelming majority of vacancies across the state and nationally (within the limits of this research) utilize a situational proceeding in filling vacancies. More specifically, a governing body such as a Board of Supervisors, City Council, or Board of Education, holds the discretion to either call for a special election or make an appointment to the vacancy, in which case, the selected individual would serve until the next regularly held election at which point a successor to the office would be elected to fill the remainder of the term.

Again, a point of deviation from the norm by the City and County of San Francisco was that across each method, a notable reoccurrence written into policy found that inaction by a group or governing body, also including the rare instances where one individual had sole discretion of an appointment, time limits for action were given. Most often, such time limits for a call of action (either deciding between appointments or special elections) ranged between thirty and sixty days.



Looking directly at a comparison of the City and County of San Francisco to all other charter counties across the state, as noted, eight of the twelve counties herein grant discretion of appointment specifically to groups or governing bodies (Alameda, Butte, Los Angeles, Placer, Sacramento, San Bernardino, San Diego, and Santa Clara). The positions seen as exceptions here near exclusively pertain to vacant seats to both the many Boards of Education and the Community College District Board of Trustees; in filling such seats, most entities adopted the California Education Code. In addition, six of the eight counties listed just prior (Alameda, Los Angeles, Placer, San Bernardino, San Diego, and Santa Clara) vest the discretion of appointment by a group or governing body in their Board of Supervisors for most every publicly elected position, with exception again being the two educationally based boards aforementioned, as well as seats to their respective Board of Supervisors. To extend this a bit, the six of eight Boards of Supervisors had discretion in appointing positions including Auditor-Assessor, District Attorney, Sheriff, Treasurer, County Clerk, Recorder, Tax Collector, Superintendent of Schools, Sheriff-Coroner, Treasurer-Tax Collector.

Again, looking at our survey of California's charter counties, it is far more frequently the case that counties vest the discretion for filling a vacancy in a publicly elected position either through an appointment by a group/governing body, or otherwise near equally, they will have laid out through policy a highly specified situational proceeding that dictates scenarios contingent upon the precise time the vacancy occurs.

With regard to the California wide offices, the primary observation and comparison that can be made, after reviewing that seven of the eleven positions (having removed the federal positions and Governor) are appointed directly in the discretion of the state Governor with the approval of both the State Senate and State Assembly. The state legislature is given time limits on its ability to approve or disapprove the Governor's appointment. San Francisco, similar to the state, has both an executive arm (Mayor Office) and legislative arm (Board of Supervisors), but unlike the state the City and County of San Francisco's Mayoral appointments are not contingent on the approval of the Board of Supervisors or any other entity.

When we look at California's most populous cities, we again see a departure from what is more normative of practices used for filling vacancies in public offices. Of the ten cities surveyed here, no other city among the most populous grants total discretion for appointments, let alone, without strict time parameters for action necessary, to one individual.

It is perhaps best summed that the City and County of San Francisco, when filling vacancies to publicly elected positions, takes action through Mayoral appointments that are unchecked in a manner that supersedes most all other governing body's functions surveyed herein, including offices of considered 'higher status' at the statewide level.