

ELECTIONS COMMISSION
City and County of San Francisco



Joseph B. Phair, President
Winnie Yu, Vice President
Gerard Gleason
Richard P. Matthews
Rosabella Safont
Arnold Townsend

John Arntz
Director of Elections

Gail Hilliard
Commission Secretary

City and County of San Francisco
Election Commission
Agenda Room 408
December 15, 2010

1. **Call to order**
2. **Roll Call**
3. **Announcements**
4. **Approval of Minutes**

Discussion and possible action to approve the Minutes for the November 17, 2010 Elections Commission Meeting:

5. Director's Report:

• Ballot Processing	• Canvass
• Budget/Personnel	• Poll Worker Division
• Campaign Services	• Technology Division
• Outreach	• Voter Services
• Publications	•

6. Commissioners Report:

- Meetings with Public Officials
- Oversight and Observation activities
- Long-range planning for Commission activities and areas of study
- Proposed legislation which impacts elections

7. Old Business:

- (a) Discussion and possible action to hire a Commission Secretary.
- (b) Discussion and possible action to adopt performance criteria and procedures for the use by the commission in performing the annual review of the Department of Elections Director.

8. New Business:

(a) Discussion and possible action regarding evaluation of the effectiveness of the Elections Plan for the November 2, 2010 General Election.

(b) Report of the Budget and oversight of Public Elections Committee

1. Discussion and possible action regarding San Francisco Proposition I (Saturday voting) from the November 2, 2010 General Election, including its implementation and its impact on the Department of Elections;

2. Discuss and possible action related to the period immediately following elections after a vacancy per San Francisco Charter section 13.101.5 (c) (2); and

3. Discussion and possible action related to Elections Commission duties related to potential drawing of district boundaries following the decennial census per San Francisco Charter section 13.11001w1nc

(c) Discussion and possible action to retain counsel to advise the Commission and the Department of Elections on matters that directly involve the election or campaign in the November 2011 municipal election for Mayor of the City and County of San Francisco, as described in the San Francisco City Attorney's August 27, 2010 memorandum titled *Legal Advice on Matters concerning the Mayor's Race*.

9. Discussion regarding items for future agendas

Meeting Adjourned:

Disability Access

The Elections Commission meeting will be held in Room 408, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA. The Commission meeting room is wheelchair accessible. The closest accessible BART station is the Civic Center Station at United Nations Plaza and Market Street. Accessible MUNI lines serving this location are: #42 Downtown Loop, and #71 Haight/Noriega and the F Line to Market and Van Ness and the Metro Stations at Van Ness and Market and at Civic Center. For information about MUNI accessible services call **(415) 923-6142** (415) 923-6142. There is accessible curbside parking adjacent to City Hall on Grove Street and Van Ness Avenue and in the vicinity of the Veterans Building at 401 Van Ness Avenue adjacent to Davies Hall and the War Memorial Complex.

The following services are available on request 48 hours prior to the meeting; except for Monday meetings, for which the deadline shall be 4:00 p.m. of the last business day of the preceding week: For American sign language interpreters or the use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes, please contact The Elections Office at (415) 554- 4375 or our TDD at **(415) 554-4386** (415) 554-4386 to make arrangements for the accommodation. Late requests will be honored, if possible. In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals. Individuals with chemical sensitivity or related disabilities should call our accessibility hotline at **(415) 554-6060** (415) 554-6060.

Know your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact the Sunshine Ordinance Task Force, Donna Hall, Clerk, City Hall, Room 409, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4683 at Phone No.: **(415) 554-7724** (415) 554-7724; Fax No.: (415) 554-7854; E-mail: Donna_Hall@ci.sf.ca.us. Copies of the Sunshine Ordinance can be obtained from the Clerk of the Sunshine Task Force, the San Francisco Public Library and on the City's website at www.ci.sf.ca.us.

Materials contained in the Commission packets for meetings are available for inspection at the Elections Department, City Hall Room 48, in the Commission's Public Binder, no later than 72 hours prior to meetings.

If any materials related to an item on this agenda have been distributed to the Elections Commission after distribution of the agenda packet, those materials are available for public inspection at the Elections Department, City Hall Room 48, in the Commission's Public Binder, during normal office hours. The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices.

Lobbyist Registration and Reporting Requirements

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct Code §2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone **(415) 252-3100** (415) 252-3100, fax (415) 252-3112; web site at www.sfgov.org/ethics.

City and County of San Francisco

Elections Commission

Minutes of the Meeting at City Hall Room 408

November 17, 2010

1. Call to Order:

6:06

2. Roll Call: Present:

President Joseph Phair, Commissioner Rich Matthews, Commissioner Arnold Townsend, Gerard Gleason, Vice President Winnie Yu, (arrived at 6:09) Commissioner Rosabella Safont, (arrived at 6:15)

Present Also:

Director John Arntz, Deputy City Attorney Mollie Lee,

3. Announcements:

President Joseph Phair, put forth a MOTION. Deputy City Attorney Mollie Lee, request there be a deadline of 1 week prior to the meeting. President Joseph Phair, request that Deputy City Attorney, assist the Commissions Secretary on preparing this Motion and to give advice on preparations for Close Sessions. Commissioner Rich Matthews, Ask for more time regarding the Directors Review criteria by next year. President Joseph Phair, Agreed, the review will be done in closed session and Commissioners must have their information submitted by January 12th before the next scheduled meeting scheduled for January 19th.

The roll call vote was unanimous to approve the Motion.

Public speaker: Otto Duffy observed several polling places as he has for several Elections and compares the pollworkers he now sees as a trend of slight improvement.

Public Speaker: Debra Benedict worked at a polling place near Stonestown Shopping Mall and wishes to report that a person who was assigned as the Field Elections Deputy promised to return back to the polling place around 9:00pm however did not return until nearly 11:00pm. Information was reported and all was well. *President Joseph Phair, apologized.*

4. Discussion and possible action to approve the Minutes of the October 20, 2010 Elections Commission Meeting:

The roll call vote was unanimous to approve the Minutes.

5. Directors Report:

Ballot Processing: There are approximately 6,200 ballots remaining and some 32,000 ballot cards remain and we have started the Provisional Ballots, but we have not begun to process for district 3, 4 and 11.

Budget/Personnel: All workers have been disbursed to various operations. Employees verse temporaries all have return to our office and working on requisitions for materials and supplies.

Campaign Services: We have been very busy with Observers, there have been quite a number that have come thru we have sometimes been working until 12:00am thru the Thursday following the Elections Day.

Out Reach: Disbursed and in the canvass.

Publications: All are currently in the canvass

Canvess: Nearly complete estimates should be complete by next week before Thanksgiving, we have cut back on overtime.

Ballot Processing: Will be complete by next week.

Pollworker Division: Working on the Pollworkers payroll.

Technology: Working on information from the different departments and campaigns request.

Voter Services: Since the day after elections we have been working with approximately 209,000 Vote by Mail (VBM), 141,000 precinct, this is 67% return rate. We have not finished with the tally sheets we will be able to provide information by next week.

President Joseph Phair: Inquires if there are any close races? *Director John Arntz,* We have been focusing on district 2 and 10 and state wide race for Attorney General Harris vs Cooley, both campaigns have been talking about recounts. Propositions, we don't foresee any problems at this time. *President Joseph Phair,* Inquires how did you perform as far the budget? *Director John Arntz,* Good, by doing things more efficiently, having more people working on VBM, it appears VBM is approximately 60% this may be a tipping point we are seeing more VBM and roughly 16,000 provisional. *President Joseph Phair:* Do we have many voters VBM, who turn ballots in at the precincts? *Director John Arntz,* currently are no stats on this information.

Commissioner Gerard Gleason: Do we scan the roster before processing *Director John Arntz*, Yes.

Commissioner Rich Matthews: Do we have an update on the person who made away with the ballots? *Director John Arntz*, Yes, ballots have been located at the Palace of Fine Arts, in the pond and that person has been charged with three felonies. The Memory Pack has not been located at this point we estimate that approx. less than 75 ballots were involved. This occurred in district 11 however voters were able to continue voting. The wet ballots are being kept in the office and this point, I feel certain that the information can be retrieved, it will take time for them to dry and the paper is of a good quality which helps in this process. *Commissioner Rich Matthews*, It was reported that two polling places did not open on time? *Director Commissioner John Arntz*, Yes this was handled and all went well.

Public Speaker: Debra Benedict states she was an observer and is inquiring about the machine used for counting that resembles a conveyor belt located outside Room 48 at City Hall. *Director John Arntz* Yes this machine worked well, information was recounted to assure that it was correct and performing as it should.

Public Speaker: Otto Duffy, Comments on precincts located in the Tenderloin with comparisons to previous years, no real complaints.

6. Commissioners Report:

Commissioner Gerard Gleason, Commends the vendor for a job well done on the Ballots, everything from the perforation worked wonderfully. While in the polling place he surveyed there were more Vote by Mail (VBM) than pass elections with 16 provisional in which voters complained that had not received ballots. The pollworkers training did a great job with good quality workers and he hopes we are able to retain them for future use. Two voters claim to have registered with Department of Motor Vehicles and as the story goes, they did not receive their ballots. It was stated by the trainers at the pollworkers training class that this election is in your hands, he feels this is important because at this point pollworkers are important to the elections being that they work directly with the voter. Questions from a voter was presented to him in regards to whether or not a daughter could vote for a hospitalized mother, *Commissioner Gerard Gleason*, answer was no and a call was made into the help line, where the person receiving the call was not sure of the answer and caller was directed to Jerry Ashley and Nathtila who arranged for a ballot to be taken to the hospital. *Commissioner Gerard Gleason*, request that Hospital Ballots be a topic for discussion at a future meeting.

Commissioner Arnold Townsend, states that during the campaign he had several people to inquire information regarding Rank Choice Voting (RCV). In the past extensive training had been done to educate voters regarding Rank Choice Voting however new voters, who have w reached the age of being a first time voter have not given information to educate them on

this method every few years. *Commissioner Arnold Townsend*, states that several community organizations commented how pleased they are with how knowledgeable and helpful that the Elections Department has been and wants Director John Arntz to be aware of this.

7. (a) Deleted, was final at last meeting

(b) **Discussion to hire Commission's Secretary** *President Joseph Phair*, has obtained approval to hire however the rank has been adjusted. *Vice President Winnie Yu*, says that she has received several applications from HRs link and once she has a sufficient number she and Commissioner Safont, will begin working together to make a determination. *Commissioner Rich Matthews*, ask how long this position would remain on the job posting? *Commissioner Rosabella Safont*, it will remain until the position has been filled.

8. New Business: *Commissioner Gerard Gleason*, Contingent with the election being certified Measure I (Saturday Voting) he is asking that it be added to the agenda. *President Joseph Phair*, ask the Director to notify once this has been certified we will hold over tentatively for December's or January's meeting.

Commissioner Rich Matthews, states that he has been contacted by Voting Systems Task Force, they would like give a presentation of things they would like to see implemented. *President Joseph Phair*, Agreed.

Deputy City Attorney Mollie Lee, recommends at the December's meeting there be a discussion to consider outside counsel, should there be any conflicting issues. Attorney lee states her recommendation is for the City of San Mateo's counsel to be used.

President Joseph Phair, request the Annual Report be discussed.

President Joseph Phair, in December we will be holding elections for all commissioners that desire a position of President or Vice President he encourages them to submit the necessary documents.

9. Meeting adjourned: 6:55



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1444 Secretary I
(Elections Commission Secretary)
Recruitment #PEX-1444-056969

Department: Department of Elections
Analyst: Lillian Chow
Date Opened: 11/8/2010 2:00:00 PM
Filing Deadline: Continuous
Salary: \$19.42 - \$23.58/hour
Job Type: Permanent Exempt
Employment Type: Part-Time

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INTRODUCTION

The City Charter authorizes the Elections Commission to supervise the City's Department of Elections. The Commission sets general policies for the Department; it also selects and supervises the Director of the Department of Elections.

The Elections Commission has regularly scheduled meetings on the third Wednesdays of each month at 6:00 pm, City Hall, and has one standing committee with regularly scheduled meetings the first Wednesday of every month at 6:00 p.m. at City Hall. Special Meetings may be called as needed.

Appointment Type: Permanent Exempt, part time appointment, not to exceed 20 hours per week or 1040 hours in 12 months. Exempt employees are considered "at will" and serve at the discretion of the appointing officer.

Number of positions: The San Francisco Elections Commission is accepting resumes for one (1) position.

Nature of work: Evening hours **will be required** once per month (usually the third Wednesday of the month), and occasionally, a second evening per month (usually the first Wednesday of the month, if necessary). Outside of these meetings, the remainder of the 20 hours per week can be a regular schedule agreed upon by the successful applicant and the Commission president.

Essential Duties:

Under direction, acts as the Secretary to the Elections Commissioners; prepares the Elections Commission calendar and records official acts of the Commission, provides secretarial services of a varied nature for the Elections Commission. Essential functions include the following:

- Prepares and distributes agenda, notices, minutes and resolutions of the commission; maintains records of meetings and official actions of the commission; certifies all Commission documents and resolutions; types correspondence for members of the Commission.
- Types minutes of meetings from audio recordings of the meetings, and manages the edits suggested by Commissioners.
- Ensures documents are distributed to the Commissioners, the Director of Elections, and/or legal counsel, as needed; and maintains a public file for certain communications as required by relevant public meetings/open government laws and ordinances.
- Organizes Commission and Committee meetings, including: preparing the agendas with direction from the Commission president or committee chair; publishing the agendas in accordance with applicable laws; preparing and distributing meeting packets to Commissioners and principals, as well as having extra copies for the public; bringing materials to the meetings; ensuring the audio recording of the meetings, and, if necessary, posting notices of cancellations in accordance with applicable laws.
- Types a wide variety of letters, memoranda, reports and other materials from copy or verbal instructions: may compose routine correspondence in accordance with standard practice and policies.
- Screens office and telephone callers; personally assists those whose business does not warrant seeing the superior; screens incoming correspondence and routes accordingly; answers a wide variety of inquires and explains office operations, policies and procedures.
- Maintains office files for correspondence and records; maintains manuals and updates resource

San Francisco

San Francisco Elections Commission (the Commission)
Department of Elections Director
2010 Performance Evaluation Criteria

Elections:

1. Ensures free, fair and functional elections with no or only non-material errors, and deals effectively with anomalies;
2. Demonstrates an understanding of and effectively implements election laws, codes and deadlines;
3. Shows innovation and effectiveness in the elections process; and
4. Implements programs to effectively communicate with voters and educate them on election requirements, deadlines and procedures.

Communication:

1. Effectively communicates the Department of Elections' (DOE) mission, strategy, goals and other essential information to the Commission including, but not limited to duties specified in City Charter Section 13.104; and
2. Effectively interacts and cooperates with the Commission through timely and thorough providing of information; and
3. Implements the Commission's policies.

DOE Administration:

1. Builds and maintains an environment that fosters and contributes to the effective operation of the DOE including teamwork among DOE staff;
2. Effectively uses and manages DOE personnel; and
3. Demonstrates the ability to manage changing work conditions and problem situations quickly and effectively; and

Resources:

1. Effectively uses and manages DOE budget and resources.

SAN FRANCISCO
FILED

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

The People of the City and County of San Francisco do hereby ordain as follows:

SECTION 1.

This Act shall be known and may be cited as the "Saturday Voting Act" (the "Act").

SECTION 2.

The San Francisco Municipal Elections Code is hereby amended to add a new Article VII which will read as follows:

Article VII: SATURDAY VOTING ACT

SECTION 700. PURPOSE AND INTENT.

- (a) San Francisco residents deserve a voting system which corresponds to the schedules and lifestyles of working families. Allowing voting on Saturday would encourage parents to involve their children in the democratic process and help teach children the importance of civic engagement at an early age.
- (b) San Francisco residents deserve an election schedule based on current housing and workplace patterns, transportation networks, and technological developments. When American civic leaders first decided over 150 years ago that elections should be held on a Tuesday, Americans lived in an agrarian society and most voters had to travel a great distance to the polls.
- (c) The United States is ranked 132nd out of 179 developed nations in voter turnout. In the 2008 Presidential election, the United States had its largest turnout in over 50 years, yet only 60 percent of eligible voters participated. Despite San Francisco's politically-involved and educated population, voter turnout averages approximately 46 percent, and some recent elections have seen turnout as low as 23 percent. Citizens have indicated that scheduling of the election is a major barrier to voting.
- (d) A national grassroots movement called "Why Tuesday?" has proposed moving election day from Tuesday to the weekend, and has introduced legislation to implement this change to Congress several times over the past decade, though this legislation has not yet been put up for a legislative vote.
- (e) This initiative would create a pilot program in connection with the November 2011 General Municipal Election in the City and County of San Francisco which would require the Department of Elections to open satellite locations for early voting at each of the approximately 400 polling places throughout the City and County on the Saturday prior to the Tuesday election.
- (f) This pilot program would use the same safeguards and voting system applied to Tuesday voting in order to have the Saturday voting experience replicate the voting experience currently in place.

- (g) The pilot program would be at no cost to the taxpayers. The initiative creates a "Saturday Voting Fund" to accept donations to cover the cost of operating the satellite voting locations, all of which would be publicly disclosed on the Department of Elections' website. The pilot program would not be required if the Saturday Voting Fund does not raise the sufficient funds to cover the costs of operating the satellite voting locations.
- (h) The purposes and intent of this initiative are: to increase voter turnout at elections held in the City and County; to make voting more accessible for today's working families; to provide a voting system that encourages parents to involve their children in the democratic process; to teach the importance of civic engagement at an early age; to increase access to the polls on a day when the majority of residents are not working; to serve as an example to the rest of the country that offering Saturday voting increases voter turnout; and to study the efficacy of continued Saturday voting.

SECTION 701. OPERATION OF SATELLITE VOTING LOCATIONS.

- (a) On the Saturday before the November 8, 2011 General Municipal Election, the Department of Elections shall operate a satellite location for early voting, as authorized by California Elections Code section 3018, at each polling place which will be utilized for election day voting on November 8, 2011.
- (b) The Department of Elections will not be required to operate satellite locations for early voting at each polling place which will be utilized for election day voting on November 8, 2011, if the Saturday Voting Fund does not contain sufficient funds to cover the costs of operating the satellite locations. The determination regarding whether the Saturday Voting Fund contains sufficient funds to cover the costs of operating the satellite locations will be made by the Controller.

SECTION 702. SATURDAY VOTING AT FUTURE ELECTIONS.

- (a) The Department of Elections shall prepare a study of the efficacy of Saturday voting, including the effect on voter turnout, impact on working families, and educational benefits, to be completed no later than February 1, 2012.
- (b) If this study shows that Saturday voting could further the intent and purposes of the Act, then the voters urge the Department of Elections, Elections Commission, Mayor, and Board of Supervisors to take all necessary steps to develop and fund Saturday voting for future elections in the City and County of San Francisco.

SECTION 3.

The San Francisco Administrative Code is hereby amended to add a new Section 10-100.371 which will read as follows:

SECTION 10.100-371. ESTABLISHMENT OF SATURDAY VOTING FUND.

8B(2)

- (a) **Establishment of Fund.** The Saturday Voting Fund is established as a category eight fund into which shall be deposited all donations, grants, gifts, and bequests for the purpose of operating satellite locations for early voting at polling places in the November 8, 2011 election. The acceptance of any gift of cash or goods into this fund shall not be subject to the approval process required by section 10.100-305.
- (b) **Use of Fund.** The monies received into the Saturday Voting Fund are hereby appropriated exclusively to pay the necessary expenses that the Department of Elections incurs in connection with the operation of the satellite locations for early voting at each polling place for the November 8, 2011 election as required by Municipal Elections Code section 701. Any monies remaining in the Fund after paying these necessary expenses shall be used exclusively to develop and fund Saturday voting for future elections.
- (c) **Administration of Fund.** The Director of the Department of Elections shall submit a written report of all receipts and expenditures of the Saturday Voting Fund to the Department of Elections, Elections Commission, the Mayor, the Controller, and the Board of Supervisors by February 1, 2012.
- (d) **Transparency.** The Department of Elections shall post the names of all donors and donation amounts to the Saturday Voting Fund on its website within 15 days of receipt.

SECTION 4.

This Act shall be interpreted so as to be consistent with all federal and state laws, rules, and regulations. If any section, sub-section, sentence, or clause ("portion") of this Act is held to be invalid or unconstitutional by a final judgment of a court, such decision shall not affect the validity of the remaining portions of this Act. The voters hereby declare that this Act, and each portion, would have been adopted irrespective of the fact that any one or more portions of the Act are found invalid. If any portion of this Act is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Act which can be given effect.

This Act shall be broadly construed to achieve the purposes stated in this Act. It is the intent of the voters that the provisions of this Act be interpreted or implemented by the City and County, courts, and others in a manner that facilitates the purposes set forth herein.

SECTION 5.

This Act shall become effective upon approval by the voters of the City and County of San Francisco.

SAN FRANCISCO
FILED
2010 MAR -1 PM 5:00
DEPARTMENT OF ELECTIONS

88 (3)

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

JON GIVNER
Deputy City Attorney

DIRECT DIAL: (415) 554-4694
E-MAIL: jon.givner@sfgov.org

March 9, 2010

TO ALL INTERESTED PARTIES:

Attached is the City Attorney's summary and title for a proposed local initiative measure. In preparing this title, the City Attorney makes no representation regarding the merits or legality of the proposed legislation. Nor does the City Attorney verify or confirm any factual or legal assertion made in the proposal. The title is presented as a "true and impartial statement of the purpose of the proposed measure." Elections Code § 9203.

Very truly yours,

DENNIS J. HERRERA
City Attorney

Jon Givner
Deputy City Attorney

SAN FRANCISCO
FILED
2010 MAR -9 PM 3:13
DEPARTMENT OF ELECTIONS

ADDITIONAL VOTING AT POLLING PLACES ON SATURDAY

The City and County of San Francisco (the "City") holds municipal elections every year on the first Tuesday after the first Monday in November. The City will hold a municipal election on Tuesday, November 8, 2011, at which the voters will elect a Mayor, District Attorney and Sheriff. Local initiative, referendum or recall measures also could appear on the ballot at that election.

On Election Day, the City operates between approximately 400 and 561 polling places where registered voters can vote in person or return completed absentee (or vote-by-mail) ballots. The City also operates a polling place at San Francisco City Hall during the 29 days before Election Day. During those 29 days, registered voters can also submit absentee ballots by mail without going to any polling place.

The proposed measure would create the Saturday Voting Fund (the "Fund") to pay for the cost of operating polling places on the Saturday before the November 8, 2011 election. If the City's Controller determines there is enough money in the Fund to cover the cost of operating the polling places on Saturday, then the measure would require the City to open all polling places twice during that election – on Saturday, November 5, and on Tuesday, November 8.

The Fund could accept donations from individuals and organizations but would not be funded by the City. Money in the Fund could be used only for costs related to operating polling places on Saturday, November 5, 2011. Any money remaining in the fund after the November 2011 election could be used only for developing and funding the operation of polling places on Saturdays in future elections.

After the November 2011 election, the measure would require the City's Department of Elections to prepare a study of the effects of opening polling places on Saturday.

SAN FRANCISCO
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2010 MAR -9 PM 3:13
DEPARTMENT OF ELECTIONS



DENNIS J. HERRERA
City Attorney

DIRECT DIAL: (415) 554-4748
E-MAIL: tara.collins@sfgov.org

MEMORANDUM

TO: MAYOR GAVIN NEWSOM
MEMBERS, San Francisco Board of Supervisors
MEMBERS, San Francisco Elections Commission
MEMBERS, San Francisco Ethics Commission
ANGELA CALVILLO, Clerk of the Board of Supervisors
JOHN ARNTZ, Director of Elections
JOHN ST. CROIX, Executive Director, Ethics Commission

FROM: DENNIS J. HERRERA *DJH*
City Attorney

DATE: August 27, 2010

RE: Legal Advice on Matters Concerning the Mayor's Race

Yesterday I took the first steps to raise funds as a possible candidate for the Mayor of San Francisco. During the campaign, I will continue to serve as the City Attorney for the City and County of San Francisco. This memorandum explains the City Attorney's Office's policies regarding representation of the City during the Mayor's race. Following a short period of administrative transition, the policies described in this memorandum will apply during the period (the "Campaign Period") beginning September 10, 2010 and ending at the conclusion of the campaign, which I anticipate will be the day the Board of Supervisors (the "Board") declares the results of the November 8, 2011 election.

Summary

Under the San Francisco Charter, the City Attorney's Office provides a range of legal advice and representation to the City's officers, departments, boards and commissions, including advice regarding elections and campaign finance. Due to my decision to be a candidate in the Mayor's race, I intend to limit involvement of the City Attorney's Office and not personally participate in legal advice about matters related to elections and campaign requirements during the Campaign Period. To avoid even the appearance of any conflicts of interest, the City Attorney's Office has implemented the following protocols.

First, when a legal question directly involves the election or campaign for Mayor, the City Attorney's Office will not handle the matter. Instead, the City will retain outside counsel for advice and assistance, preferably from other public law offices. The City Attorney's Office has already made preliminary arrangements with three local public law offices to advise City departments about the limited range of issues directly involving the election and campaign for Mayor. This arrangement is consistent with past practices; my Office has a standing reciprocal agreement with other local law offices to provide legal support at no cost in situations like this.

Second, when a legal question involves elections or campaigns but does not directly involve the election or campaign for Mayor, the City Attorney's Office will handle the matter, but I will not participate in the matter during the Campaign Period. Within the next week, the Office will establish a screen so that I will not be involved in any legal advice regarding the

Memorandum

DATE: August 27, 2010
PAGE: 2
RE: Legal Advice on Matters Concerning the Mayor's Race

November 2011 election or campaigns, nor for that matter will I be involved in any legal advice about the upcoming November 2010 election or campaigns.

Third, for all other matters, the City Attorney's Office will continue to represent the City with my full involvement. Except in the two circumstances described above, I will remain actively involved in decisions regarding litigation, legislation, contracts, legal advice, investigations and claims.

Discussion

I. The Role of the City Attorney

As described in Charter section 6.102, the City Attorney is the legal counsel for the City. In that capacity, the City Attorney oversees an Office that represents the City, including its officers and employees, in litigation; drafts and approves legislation and contracts; and provides legal advice to the City and its commissions, officers and employees. See S.F. Charter § 6.102. The Office regularly advises the Department of Elections, the Elections Commission, the Ethics Commission, the Board and the Mayor's Office, each of which plays a role in funding, oversight and administration of local elections. The City Attorney's Office regularly advises those agencies on a range of matters, some that are specific to elections or campaigns and others that relate to general administrative matters that all City departments face. The general administrative advice includes legal advice about notice and agenda requirements for public meetings, responses to public records requests, the City's contracting process, contract administration, personnel issues, and other similar sorts of matters.

The Office's advice and representation on election- and campaign-related matters varies depending on the circumstances, and typically include the following:

- *Department of Elections and Elections Commission:* The Office provides advice regarding federal, state and local elections laws; represents the City in election-related litigation; and assists in drafting materials for publication in the Voter Information Pamphlet.
- *Ethics Commission:* The Office advises on the application and interpretation of local and state laws regarding campaign finance regulation, and drafts ordinances and regulations governing campaign finance and campaign conduct. In administrative enforcement proceedings alleging violations of campaign laws, the Office provides advice to the Commission and its staff. The Office also represents the City in litigation regarding campaign finance matters.
- *Board of Supervisors and Mayor:* The Office drafts legislation and advises on legal issues raised by proposed legislation regarding campaigns and elections, including amendments to the City Charter, the City's Campaign Finance Reform Ordinance ("CFRO") and the City's Municipal Elections Code ("MEC"). The Board has the authority to place measures on the ballot, and this Office usually drafts or approves those measures as to form and advises the Board and the Mayor regarding that process. Also, the Mayor or four or more individual members of the Board may submit a policy measure or ordinance to the voters, and this Office sometimes drafts those measures and advises the Mayor and Board about them, though we do not approve them as to form. This Office also provides advice on budgetary matters relation to the adoption of the budget and the City's funding of the Department of Elections and Elections Commission and the Ethics Commission.

Memorandum

DATE: August 27, 2010
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 RE: Legal Advice on Matters Concerning the Mayor's Race

- *City Attorney's Office:* In addition to its role advising and representing City departments, the City Attorney's Office also has independent obligations regarding certain matters impacting elections and campaigns. For instance, the City Attorney drafts a title and summary for each proposed local measure circulated in an initiative petition (Cal. Elec. Code § 9203); prepares the ballot question for most local measures that appear on the City ballot (MEC § 510); reviews proposed formal opinions from the Ethics Commission and determines whether to concur in their conclusions (S.F. Charter § C3.699-12); and determines whether to investigate and prosecute complaints of campaign finance violations (S.F. Charter § C3.699-13(a); CFRO § 1.170(b)).

II. The City Attorney's Office and the 2011 Election

As City Attorney, I am responsible for ensuring that every City officer, department, board and commission receives the highest quality legal representation, and my mayoral candidacy will not interfere with that goal. During the Campaign Period, I will take the following steps to ensure that the City continues to receive that highest quality legal representation and to avoid even the possible appearance of conflicts of interest.

A. Matters That Directly Involve the Mayoral Election or Campaign.

During the Campaign Period, the City Attorney's Office will not handle legal questions that directly involve the mayoral election or campaign. As section IV of this memorandum explains further, the affected departments should select outside counsel in advance to advise or represent them in those matters, consistent with past practices.

The following examples illustrate when an affected department should rely on outside counsel. These examples, and each of the examples listed in the remaining sections of this memorandum, are for illustration purposes only, and are not intended as an exhaustive list of possible issues.

Example 1 – Election questions regarding Mayoral candidates. The Department of Elections has a legal question concerning the ballot designation, candidate qualification statement, nomination documents or electioneering activities of a candidate for Mayor. Because this question pertains specifically to the election or campaign for Mayor, the City Attorney's Office will not handle the matter.

Example 2 – Campaign finance questions regarding Mayoral candidates. The Ethics Commission has a legal question regarding the application of campaign finance laws to a particular candidate for Mayor, such as: (a) whether the candidate qualifies for the City's partial public financing program; (b) whether a particular mailer supports or opposes the candidate, potentially increasing the candidate's spending limit; (c) whether a political expenditure was independent or was coordinated with the candidate's campaign; or (d) whether the candidate used public funds for a lawful purpose. Because these questions pertain specifically to the election or campaign for Mayor, the City Attorney's Office will not handle the matters.

Example 3 – Complaints filed with Ethics Commission alleging violations in the mayoral campaign. The Ethics Commission receives a complaint alleging a violation of the local campaign finance laws by a candidate for Mayor or by a committee supporting or opposing a candidate for Mayor. The Commission's staff seeks legal advice regarding how to prosecute the complaint. Because these questions pertain specifically to the election or campaign for Mayor, the City Attorney's Office will not handle the matter.

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For these matters where the City Attorney's Office will not be providing legal advice, outside counsel will handle the matter during the Campaign Period. In each such instance, the outside counsel may contact the City Attorney's Office to inquire whether this Office has any existing materials, such as previously-issued memoranda or research files, that could be relevant to the issue at hand. Neither outside counsel nor my staff will involve me in any of these informational inquiries and exchanges.

Also, if any such matter is still pending after the Campaign Period ends, this Office will re-evaluate whether use of outside counsel is still needed. That determination will depend on whether the acts alleged in the complaint involved or affected my campaign.

B. Matters Involving Elections or Campaign Conduct That Do Not Directly Involve the Mayoral Election or Campaign.

When a legal question does not *directly* involve the election or campaign for Mayor, use of outside counsel is not necessary. In those circumstances, the affected City department will consult as usual with the City Attorney's Office. But to avoid even an appearance of a conflict of interest, I will not participate in matters involving elections or campaigns during the Campaign Period. The City Attorney's Office will adopt a screen, memorialized in writing, so that the deputies handling general election and campaign matters regarding the November 2010 and 2011 elections do not communicate with me about these matters. The screen will also apply to the Office's Managing Attorney, Marisa Moret. Chief Assistant Jesse Smith will supervise the deputies handling the matters and will have final authority for the Office's decisions.

The following examples illustrate when the Office will screen me from participating in advice about elections or campaign conduct during the Campaign Period:

Example 1 – Election law questions. The Department of Elections has legal questions concerning (a) the qualifications, nomination documents or electioneering activities of a candidate for another City office, (b) the process for qualifying, withdrawing or resubmitting ballot measures, or (c) operational issues such as certification of the City's voting system, operation of satellite voting locations for early voting, or implementation of laws regarding voter registration. These questions do not pertain specifically to the election or campaign for Mayor, so the City Attorney's Office will handle the matters without my participation during the Campaign Period.

Example 2 – Campaign finance questions. The Ethics Commission has a legal question about interpretation of campaign finance laws like the City's contribution limits or disclosure rules, or about the effect of a pending appeals court case on the City's public financing system. The question is not related to any particular candidate or race. This question does not pertain specifically to the election or campaign for Mayor, so the City Attorney's Office will handle it without my participation during the Campaign Period.

Example 3 – Tasks related to ballot measures. The City Attorney's Office is responsible for preparing the title and summary for proposed ballot measures and for preparing ballot questions for measures that have qualified for the ballot. A designee of the City Attorney's Office also sits as an *ex officio* member of the Ballot Simplification Committee and prepares an initial draft digest for each measure that the Committee considers. These tasks do not pertain specifically to the election or campaign for Mayor, so the City Attorney's Office will handle them without my participation during the Campaign Period.

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Example 4 – Litigation regarding elections or campaign finance. A lawsuit is filed against the City challenging the City's voting system, ballot materials, or the application of the City's campaign finance laws. The litigation does not specifically pertain to the election or campaign for Mayor, so the City Attorney's Office will handle it without my participation during the Campaign Period.

Example 5 – Elections or campaign finance legislation. The Board or the Mayor seeks assistance drafting legislation to amend the Charter, the CFRO, or the MEC in a way that would affect local campaigns or elections, or seeks legal advice about such legislation while it is pending. Or, similarly, the Ethics Commission seeks assistance drafting regulations to interpret the CFRO. These questions do not pertain specifically to the election or campaign for Mayor, so the City Attorney's Office will handle them without my participation during the Campaign Period.

Example 6 – General advice to Department of Elections, Elections Commission and Ethics Commission. The Department of Elections, Elections Commission or Ethics Commission has a legal question concerning one of the general laws that govern all City agencies, such as a law governing public meetings, public records, contracting, or personnel. In most circumstances, because this advice could impact the City departments responsible for oversight of local elections and campaigns, the City Attorney's Office will handle it without my participation during the Campaign Period.

C. Matters That Do Not Involve Elections or Campaign Finance

Most of this Office's legal work is unrelated to our advice regarding elections and campaigns. When a legal question does not involve the November 2010 or November 2011 election or campaign and election issues in those years, the affected City departments will consult as usual with the City Attorney's Office. I will continue my involvement and remain the final decision-maker for the Office. For example, for all such matters, the Office will continue to draft legislation and approve it as to form, provide legal opinions upon request, represent boards and commissions in public meetings, represent the City in litigation, and provide advice to officers, departments, boards and commissions on a wide variety of matters. The following examples illustrate the type of matter that the Office will handle without any screen.

Example 1 – Legislation. A member of the Board requests that the City Attorney's Office draft legislation on a matter unrelated to elections or campaign finance. The legislation will address a controversial topic that could be a matter of policy debate in the campaign for Mayor. Because the legislation does not involve elections or campaign conduct, the City Attorney's Office will handle the matter with my involvement. This approach is consistent with past practice in campaigns where my predecessors or I ran for re-election as City Attorney. Though a sitting City Attorney may state personal policy positions during a campaign, those positions do not interfere with the City Attorney's Charter role in approving legislation or my professional responsibilities as City Attorney.

Example 2 – Litigation. A lawsuit is filed against the City, or my Office files a lawsuit, on a matter unrelated to elections or campaign finance. The litigation will address a controversial topic and I may refer to it in the course of my campaign. Because the litigation does not involve elections or campaign conduct, the City Attorney's Office will handle the matter with my involvement.

Example 3 – Redistricting. Following the publication of the 2010 Census, the Department of Elections or the Elections Task Force seeks legal advice regarding the apportionment of Supervisorial districts. Because this advice will not affect elections or

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campaigns in November 2010 or November 2011, I will continue to be in charge of the City Attorney's Office's handling of the matter.

Example 4 – Post-election determinations regarding conflicting measures. The voters adopt two measures in a single election addressing the same subject matter. The City Attorney's Office must review the two measures to determine which provisions of the two measures conflict, if any, and how they should be codified. Because this task involves statutory interpretation rather than elections or campaign conduct, the City Attorney's Office will handle the matter with my involvement.

Example 5 – General advice to City departments. A City department that does not regulate campaigns or elections has a legal question a law governing public meetings, public records, contracting, or personnel. Because this advice does not involve elections or campaign conduct, the City Attorney's Office will handle the matter with my involvement.

III. Determination to Use Outside Counsel or to Screen the City Attorney from Participation

It may not always be clear which of the categories described above applies to a particular legal question. During the Campaign Period, the determination about whether a particular matter should be referred to outside counsel, handled by the City Attorney's Office without my participation, or handled by the City Attorney's Office under my supervision will depend on the facts and circumstances of the situation. Chief Assistant Jesse Smith, or any deputy city attorney designated by him for particular matters, will be responsible for making these determinations, in consultation with the department seeking the advice or representation and the City Attorney's Office's Ethics and Elections Team.

IV. Hiring Outside Counsel

As I mentioned above in this memorandum, it is likely that the Ethics Commission, and possibly the Department of Elections or Elections Commission, will require outside counsel. From time to time, our Office calls on other public law offices to serve as outside counsel in particular matters. In return, my Office has occasionally acted as outside counsel for other localities when their in-house attorneys were unavailable. This arrangement has proven effective in ensuring that the City receives high quality legal advice with a minimal expenditure of City resources. We have utilized this arrangement in past elections with success. For example, in 2009, the Department of Elections and the Elections Commission retained the Santa Clara County Counsel's Office to advise them about legal matters directly affecting the City Attorney's election when I was the incumbent candidate. I recommend taking the same approach during the Campaign Period.

My Office already has contacted the Oakland City Attorney, Santa Clara County Counsel, and San Mateo County Counsel, and all three offices have offered to serve as the City's outside counsel on the issues discussed in section II(A) of this memorandum. These agencies will not charge the City for their time. Because of their expertise and the cost savings, I encourage each of the affected departments to retain one of these agencies as their outside counsel. My Office will work closely with you to facilitate those arrangements. The Ethics Commission and the Department of Elections and Elections Commission finalize these arrangements as soon as possible to ensure that the City receives timely advice from qualified counsel when the need arises.

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If any department chooses to seek outside counsel other than from the public law offices listed above, the department should be guided by the Charter sections that set criteria for outside counsel when the City Attorney has a conflict of interest. Those sections require the City to "give preference to engaging the services of a City attorney's office, a County counsel's office or other public entity law office with an expertise" regarding the subject matter of the representation. S.F. Charter §§ 6.102(1), 13.104.5. When private counsel is necessary, the attorney retained by the City "must be a member in good standing with the Bar of California" and must have "at least five years experience" in the subject matter of the representation. *Id.* The cost of outside counsel must be covered by the budget of the department requesting the legal advice or representation. *Id.* Charter section 13.104.5, which addresses the use of outside counsel by the Elections Commission and the Department of Elections when the City Attorney is standing for election, also provides that the outside counsel must comply with specific conflict of interest rules designed to minimize the risk of political influence. I recommend that any outside counsel retained to advise the City on matters directly involving the election or campaign for Mayor should comply with the same rules.

I am making every effort to ensure that the City receives the best possible legal representation during this period. If you have any questions about the policies set forth in this memorandum, feel free to contact me, or Jesse Smith or the general counsel assigned to work with your department.