

San Francisco Elections Commission

DRAFT

COMMISSION ANNUAL REPORT

January 01, 2010 – December 31, 2010

Pursuant to the Bylaws of the San Francisco Elections Commission,
Article V, Section 2.E., I herewith submit the Commission's Annual Report for the
Commission's Eighth year, 2009.

Joseph B. Phair
President

Approved by the San Francisco Elections Commission on January 19, 2011

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1 Purpose

The purpose of this report is to describe significant elections events during calendar year 2010 and Elections Commission (the "Commission") activities in the context of these events. Following is a brief history of the Commission's events during this year.

2 Commission Organizational Description

2.1 Commission Members

During 2010, the Commission held ten meetings and operated with a membership of six of the authorized seven Commissioner positions for roughly half of the year (five of those ten meetings). Due to the unavailability of certain Commissioners, the Commission's May meeting was cancelled. The July meeting was cancelled for the Commission's regular summer recess. In spite of being short one position since August, the Commission maintained a quorum at all of its other meetings.

Commissioner Derek Turner, appointed to the Commission by the San Francisco Board of Education the previous year, resigned from the Commission on August 14, 2010 when he relocated his residence to Washington, D.C., thereby becoming unable to continue his membership on the Commission. As of the date of this report the Board of Education has not appointed an individual to replace Mr. Turner on the Commission. The Commission President has contacted the Board of Education twice in this regard.

The Commission had one standing committee in 2010, the Budget and Oversight of Public Elections Committee ("BOPEC"). BOPEC consists of three Commission members. Commissioner Matthews served as the BOPEC Chairman this year. The other members were Commissioner Gleason, Commissioner Turner, until his resignation, and President Phair in place of Commissioner Turner. BOPEC held four meetings in 2010. The following table details each Commissioner, their dates of service, and their roles on the Commission:

Appointing Authority	Commissioner	Months of Service (2010)	Roles
Board of Supervisors	Gerard Gleason	January – December	Commission Member BOPEC Member
Board of Education	Derek Turner	January -- August	Commission Member and BOPEC Member
Public Defender	Joseph Phair	January – December	Commission President and BOPEC Member
Mayor	Arnold Townsend	January – December	Commission Member
Treasurer	Rosabella Safont	January – December	Commission Member
City Attorney	Richard Matthews	January – December	Commission Member and BOPEC Chairperson
District Attorney	Winnie Yu	January – December	Commission Vice President

2.2 Commission Secretary

During 2010, the Commission Secretary's authorized hours remained at half time. In 2005 and prior, the Commission's Secretary had been a full-time position. In 2006, the Commission's Secretary position was reduced to three-quarters time and in 2007 was reduced to half-time. Shirley Rodrigues, who has served as the Commission Secretary since her appointment in 2003, took retirement from The City effective January 11, 2009, continued as the Commission Secretary in a part time position until August 2010, at which time she finalized her retirement from the Commission. On Ms. Rodrigues' recommendation, Ms Gail Hilliard was retained on a temporary basis to served as interim Secretary of the Commission from August 2010 to present while a search for a permanent Secretary was conducted. That search is expected to be concluded in February 2011.

2.3 Deputy City Attorney

During the course of 2010, Ms. Mollie Lee served as Deputy City Attorney to the Commission with support from her colleague³, Jon Givner and Andrew Shen. Ms. Lee, Mr. Givner and Mr. Shen provided excellent and dedicated service to the Commission. Ms. Lee's assistance was particularly useful as legal counsel to the Commission and here professional assistance a great asset to the Commission's function.

At its December 15, 2010 meeting, the Commission authorized the appointment of the San Mateo County Counsel Office, including attorney Brenda Carlson of that office, to serve as special outside counsel to the Commission and the San Francisco Department of Elections (the "DOE") regarding legal issues directly involving the San Francisco November 2011 Municipal General Election or campaign for Mayor of San Francisco. This appointment was necessary to provide counsel to the Commission and the DOE in the event that issues were to arise regarding or relating to the City Attorney's candidacy in that election which presented a conflict of interests for the San Francisco City Attorney's office acting as counsel to the Commission or the DOE. Ms Carlson, or others in her office, have graciously agreed to serve in this special capacity without compensation or expense to The City under a mutual reciprocal arrangement of the legal departments of several governments throughout the SF Bay Area. As of the date of this report no issues have yet arisen regarding the subject campaign and election requiring use of special outside counsel. This appointment was confirmed by San Francisco Deputy City Attorney Mollie Lee on or about November 23, 2010.

2.4 Director of Elections

John Arntz continued to serve as the Director of Elections in 2010 (the "Director").

3 Department Accomplishments

3.1 Elections in 2009

Following the two election cycles in 2009, the Department of Elections successfully conducted two public elections in 2010:

- 1) June 18, 2010 Consolidated Statewide Direct Primary Election
- 2) November 2, 2010 General Election

In addition, the Department of Elections, which is called upon annually to conduct non-public elections, conducted the San Francisco City

Employee's DOE Health Services Election in January 2010 and two school district elections in November 2010.

3.2 Voting System for the 2009 Election Year

The public elections in 2010 continued use of the election voting system supplied under contract by Sequoia Voting Systems and first used the previous year, as well as the two components that comprise the voting equipment at polling places which are:

1. An optical scanner (brand: Insight); and
2. A direct recording electronic (DRE) touchscreen device with audio, sip-and-puff, and other features to assist voters who might have any of a wide variety of disabilities (brand: EDGE).

No significant voter use problems were encountered in with this system and equipment in 2010.

The Sequoia systems Edge touchscreen voting equipment, introduced in 2008, continued to be used in San Francisco in 2010. This is pursuant to the Help America Vote Act (HAVA) which requires the availability of voting machines that allow voting by disabled persons which is both accessible and private. Because the marking of optical scan ballots is physically difficult or impossible for some voters, the Sequoia touch screen Edge system is used to accommodate these voters (although any voter may elect to use the Edge touchscreen device).

The Commission continues to work with the Department in pursuing its stated goal of using only paper ballots in order to insure accountability and transparency in elections, which may not be entirely possible when electronic voting recording devices are used.

As in the past, the DOE continued to conduct extensive pollworker training prior to all of the elections in 2010, which training was variously observed by members of the Commission and continued to improve.

4 Commission Accomplishments

4.1 Elections

Pursuant to San Francisco Charter section 13.103.4, the Commission reviewed, assessed and approved the DOE's written election plans prior to each election, and following each election evaluated the elections, finding that each of them to be in substantial compliance with

the previously approved election plans. The Commission's findings were:

- 1) June 8, 2010 Election: The Commission found the election to be effective and in compliance with the written Election Plan.
[Minutes: June 16, 2010]
- 2) November 2, 2010 Election: The Commission found the election to be effective and in compliance with written Election Plan.
[Minutes: December 15, 1010]

4.2 Voting System

During 2010 the DOE continued its use of the voting equipment first introduced in 2008 under its contract with Sequoia Voting Systems. As reported last year, while the optical scan equipment provided under this contract is similar in scope and operation to the optical scan system under the previous contact with Election Systems & Software, the separate Sequoia component provided to meet accessible voting equipment requirements is a DRE unit. The SOS allows use of this DRE voting equipment in California subject to certain restrictions and mandates. These restrictions and mandates were developed and altered by the SOS during 2007 and 2008. In 2010 the DOE continued its efforts to comply with the SOS requirements, aimed at standardizing operating procedures such as instructions to pollworkers and the vote tabulation process for votes cast on DRE equipment.

To facilitate the size of San Francisco's June 8, 2010 ballot (in three languages), the DOE obtained temporary use of memory packs for its voting equipment from Riverside County, thus avoiding the necessity and expense of purchasing additional memory packs

The Commission continued to review and discuss these actions on a regular basis, both by its BOPEC standing committee and at the Commission's meetings with the DOE in 2010. [Commission Meeting: June 16, 2010 and BOPEC Meeting: June 3, 2010]

4.3 Outsourcing Functions

Pursuant to the voter approved requirements under Proposition J, the DOE outsources the assembly and mailing of vote-by-mail (VBM) ballots. The outsourcing of this work results in substantial cost savings for The City measured in the hundreds of thousands. The vendor retained to provide this service, K & H Printers of Everett, WA, a 100 year ole company that performs this kind of service for many jurisdictions. In June of this year, a mechanical error in the K & H processing center resulted in 350 VBM ballots were sent to the wrong

address and some voters received duplicate VBM ballots. The size of the San Francisco ballot and certain local postal regulations (not seen in other postal districts) contributed to the occurrence of the problem. However, the group of voters affected was quickly identified by the DOE and K & H and were contacted to correct the problems. Additionally, K & H has revised its processing to avoid a repeat of the problem and the local US postal authority has agreed to changes in mailing requirements which will further obviate a repeat of the error in the future. The Commission received presentations at its BOPEC meeting of June 3, 2010 and the full Commission meeting of June 16, 2010 from K & H and the Director on this issue, the response for the June 8, 2010 election and future corrective actions.

4.4 Director Performance Review

The Commission's responsibilities include overseeing the DOE, including annually reviewing the performance of the DOE's Director. As noted in last year's Annual Report, the most recent five-year appointment for the Director of Elections position began in May 2008 (term: May 2008 – May 2013). At its meeting on December 15, 2010 the Commission, with the Director in attendance, adopted criteria for performing its annual performance evaluation of the Director and scheduled the review discussion for the Commission's January 19, 2010 meeting, which follows conclusion of the calendar year 2010 review period.

4.5 Commission Observation and Oversight of Elections

It has been the practice of the Commission to authorize individual Commissioners to act on behalf of the Commission in observing specific functions, activities or conditions affecting or involving each election. In 2009, in order to facilitate a broader process of engaging in such election observation activities, the Commission adopted a policy to formally authorize all Commissioners to observe all election activities rather than limiting the Commissioner's observations to specific subjects during each election. This authorization has enabled Commissioners to select election activities to observe on behalf of the full Commission without having to obtain specific authorization for such activities, thus broadening the Commission's involvement in, and gathering information about, the conduct of San Francisco's elections.

4.6 Commission Subject Discussions in 2010

Various issues were brought before the Commission for discussion in 2010 from the DOE, observations of elections operations by members of the Commission and public input. Full descriptions and dialog can be

found in the minutes of the meetings as noted. The following is a brief synopsis of some of the more substantial issues discussed in 2010:

- 1) DOE post-election and pre-election reviews and improvement including: ballot distribution; budgeting and DOE personnel; campaign services; voter outreach (DOE newsletter, brochures and announcements for the June and November elections); DOE publications improvements and cost savings; voter poll locations and ADA services/access; Secretary of State pollworker training guidelines; voter database; voter registration information; and related matters. [Minutes; January 20, 2010 through December 15, 2010]
- 2) DOE update regarding campaign finance ordinance affecting how notices related to campaign expenditure ceilings are provided to the public. [Minutes: January 20, 2010]
- 3) Revisions and update of the Commission's bylaws as regards the Commission's annual report. changing to calendar year reporting and year-end adoption [Minutes: January 20, 2010]
- 4) Discussion of DOE Voter Outreach Report presented at the December 16, 2009 meeting [Minutes: January 20, 2010]
- 5) Approval of the Commission's 2009 Annual Report per new Commission bylaws [Minutes: January 20, 2010]
- 6) Review of the howsfvotes.com website's precinct mapping and discussion of suggestions regarding openness and community innovation dealing with election data [Minutes: January 20; 2010]
- 7) BOPEC reports:
 - a. regarding DOE's draft FY 2010-2011 budget of \$9.8 million, expectations for further reductions to \$9.2 million by February 22, 2011 to reach the Departments' fiscal goal and effect of reductions on elections and DOE functions; and vote-by-mail costs to reach additional savings; and approval of the DOE proposed budget [Meetings: January 20, 2010 and March 17, 2010]
 - b. regarding updates to preliminary budget materials presented by DOE to the Commission [Meeting: February 17, 2010]
 - c. regarding review of Proposition I (possible Saturday voting in upcoming elections) implementation with the DOE and City

- Attorney and elections during the vacancy of a City office, such as the District Attorney [Meeting December 15, 2010]
- 8) Discussion of the failed supervisor recall effort related to voter signatures [Minutes: February 17, 2010]
 - 9) President's report and review of Mayor's budget plans, fiscal challenges and deficits anticipated in FY 2010-2011 [Minutes: February 17, 2010]
 - 10) Report and review of performance of the DOE's DRE equipment used in the November 3, 2009 General Municipal Election with attention to pollworker implementation of the Commission's policy of preferring written ballots (for accountability, vote verification and transparency) [Minutes: February 17, 2010 and March 17, 2010]
 - 11) Receipt of DOE services outsourcing report over past three years and review with Director [Minutes: February 17, 2010 and March 17, 2010]
 - 12) Conducted closed session reviews of pending litigation involving the DOE and Commission, specifically Dudum et al. v Arntz et al., Northern District of California, Case No.: C 10-00504 SI (filed February 4, 2010); Protect Marriage et. Al v. Bowen et al. (Eastern District of California), Case No.: 2:09-CV-0058-MCE-DAD, filed January 7, 2009; Field et al. v. Bowen et al. (San Francisco Superior Court) Case No.: CGC-10-502018, filed July 28, 2010; and Alba-Swanson et al. v. Arntz et al. (San Francisco Superior Court) Case No.: CGC-10-502446, filed August 10, 2010 [Minutes: February 17, 2010, April 21, 2010 and August 18, 2010]
 - 13) Report regarding pending Senate Bill 1342 to allow election department to subtract permanent vote-by-mail voters from the one thousand maximum voters per voting precinct and discussion regarding receiving future updates of legislation affecting elections [Minutes: March 17, 2010, June 16, 2010 and August 18, 2010]
 - 14) Report of Commissioners Gleason and Matthews meeting with the chair San Francisco Legislative Committee, the Mayor's policy director and the City's lobbyist regarding the Commission's resolution requesting a change to the California Election Code to allow for limited use of voter's phone numbers and e-mail addresses (Voter Profile Information). [Minutes: March 17, 2010, August 18, 2010, September 15, 2010 and October 20, 2010]

- 15) Receipt of report from the San Francisco Board of Supervisors Voting Systems Task Force, focusing on the "prime three system" being reviewed by the Task Force [Minutes: April 21, 2010]
- 16) Discussion of DOE response to a voter challenge to the DOE's statement of vote and request that the Director review the challenge and report back to the Commission [Minutes: April 21, 2010]
- 17) Discussion of pollworker needs for the June 2010 election [Minutes: April 21, 2010]
- 18) Update on the "Audio Voter" equipment regarding use in ranked choice voting and related voting equipment remedies since the November 2009 election [Minutes: April 21, 2010 and August 18, 2010]
- 19) Discussion and action to inform the City Attorney of the Commission's concerns regarding postal delivery of ballots and voter materials in conjunction with the City Attorney's actions regarding postal delivery of U.S. Census forms and other mail to single room occupancy hotels in San Francisco [Minutes: April 21, 2010]
- 20) Discussion and approval of Election Plans for the June and November elections [Minutes: April 21, 2010 and September 15, 2010]
- 21) Discussion of and action to approve waivers allowing City employees to assist the DOE with the June and November elections [Minutes: April 21, 2010 and September 15, 2010]
- 22) Report of meeting at Swiss Consulate General regarding "direct democracy" movement [Minutes: June 16, 2010]
- 23) Review and discuss press reports and DOE actions regarding claims of a registered sex offender residing at a polling place location during the June 2010 election; received testimony from the polling place residence owner [Minutes: June 16, 2010]
- 24) Discussion of desirability to advise voters using DRE voting machines of the ballot remake process [Minutes: June 16, 2010]
- 25) Approved effectiveness of DOE's Election Plans for the June and November 2010 elections [Minutes: June 16, 2011 and December 15, 2010]

- 26) Receipt of report on post-election pilot audit project by the County of Humboldt [Minutes September 15, 2010]
- 27) Receipt of voter input regarding elections observations [Minutes: June 16, 2010 and November 17, 2010]
- 28) Report on status of pollworker who left the District 11 polling place with voting materials (ballots, memory pack and precinct ledger) [Minutes: November 17, 2010]
- 29) Discussions and approval for using special outside counsel from the County Counsel's Office of San Mateo County to advise the Commission and DOE on matters pertaining solely to the San Francisco Mayor's election due to the San Francisco City Attorney's Office conflict of interest arising out of the City Attorney's candidacy for Mayor [Minutes: November 17, 2010 and December 15, 2010]
- 30) Received a report from the City Attorney regarding application of City Charter section 13.101.5 to the District Attorney vacancy as requested by BOPEC at its December 1, 2010 meeting [Minutes December 15, 2010]
- 31) December 15, 2010]

4.7 Department Budget

The Commission reviewed and approved the DOE budget for 2010, with particular attention to budgetary limitations due to ongoing City and State projected deficits, noting the challenges to operations that anticipated or mandated cutbacks would require. The DOE's initial budget for 2010-2011 of \$9.2 million included a basic initial 10% reduction in costs. The DOE's February revised budget further reduced outstanding work orders by an additional \$1.2 million and reduced its work order deficit to \$110,000 from \$700,000. The DOE did an excellent job of reducing costs, managing expenses and meeting budgetary mandates while continuing its mission of conducting free, fair and efficient elections throughout this difficult year.
[Minutes: January 20, 2010; February 17, 2010; and March 17, 2010]