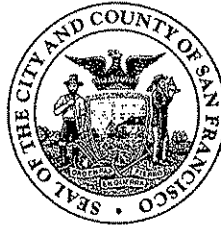**ELECTIONS COMMISSION**
City and County of San Francisco

Jennifer Meek, President
Arnold Townsend, Vice President
Gerard Gleason
Victor Hwang
Richard P. Matthews
Tajel Shah
Winnie Yu

John Arntz
Director of Elections

Shirley Rodriques
Commission Secretary

Elections Commission Meeting
Wednesday, April 18, 2007 at 7:00 pm
City Hall Room 408

ORDER OF BUSINESS

1. **CALL TO ORDER**

2. **ROLL CALL**

3. **FLAG SALUTE**

4. **Announcements**

5. **Public Comment** on any issue within the Elections Commission's general jurisdiction.

6. **Director's Report**

   - Ballot Distribution
   - Budget/Personnel
   - Campaign Services
   - Outreach
   - Poll Locating/ADA
   - Poll Worker Division
   - Technology Division
   - Voter Services
   - Update on securing a voting system for 2007-2008
   - Update on Supplemental Budget 2006-2007 approval
   - Update on 2007-2008 Budget approval

7. **Deputy City Attorney's Report**

8. **Commissioners' Reports**

   - Meetings with public officials
   - Meetings with nongovernmental organizations
   - Oversight and Observation activities
   - Long-range planning for Commission activities and areas of study

9. **OLD BUSINESS**

   (a) **Discussion and possible action regarding an amendment to the Elections Commission Bylaws to include a regular meeting date and a new meeting time for the Budget and Oversight of Public Elections Committee.**

   (b) **Discussion and possible action to recommend approval of a Commission general policy statement regarding transparency in all San Francisco Elections Department activities involving voting systems technologies as well as providing voting systems security.** (Commissioners Victor Hwang and Arnold Townsend)

   (c) **Discussion regarding holding an Elections Commission Retreat in May.** (President Jennifer Meek)

10. **NEW BUSINESS**

   (a) **Discussion and possible action to approve the Elections Commission minutes of the March 21, 2007 meeting.**

   (b) **Update from the Budget and Oversight of Public Elections Committee.** (Chairperson Gerard Gleason)

   (c) **Discussion and possible action regarding the items presented in the Director of Elections memo dated April 10, 2007 regarding the letter from the Secretary of State on Certification of San Francisco's Current Voting System.**

   (d) **Discussion and possible action to propose a resolution of appreciation for Commissioner Michael Mendelson for his service on the Elections Commission.** (President Jennifer Meek)

11. **Discussion regarding items for future agendas**

12. **Public comment** on any issue within the Elections Commission's general jurisdiction.

ADJOURNMENT

Disability Access

The Elections Commission meeting will be held in Room 421, 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. 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 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.

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; 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 is 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.

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 30 Van Ness Avenue, Suite 3900, San Francisco, CA 94102; telephone (415) 581-2300, fax (415) 581-2317; web site at www.sfgov.org/ethics.

DRAFT AMENDMENTS TO THE BYLAWS OF THE
SAN FRANCISCO ELECTIONS COMMISSION

March 22, 2007

Note: *Article XIII of the Elections Commission Bylaws allow the Elections Commission to amend the Bylaws by a majority vote of the full Commission after circulating the proposed amendments at least 10 days prior to the meeting where a motion to amend is to be made.*

The Elections Commission may discuss these draft amendments at its April 18, 2007 meeting and, if any Commissioner wishes to put forth a motion to so amend the bylaws, a motion may be made and a vote may be taken at that meeting.

1. Amend Section 1 of ARTICLE VII, COMMITTEES, as follows:

Section 1. Standing Committee. The Commission shall establish one standing committee, the Budget and Oversight of Public Elections Committee. *The regular meeting of the Committee shall be held on the first Wednesday of each month at 6:00 p.m., except in the case of a City-recognized holiday, when the meeting shall be held on the first Thursday following the first Wednesday of the month. Meetings shall be held at City Hall, One Dr. Carlton B. Goodlett Place, Room 421, in the City of San Francisco. The Commission or the Committee may change the date, time or place of its regular meeting by motion. At any time, the President of the Commission or the Chair of the Committee may cancel a regular meeting, subject to provision of appropriate notice.*

2. Amend Section 4 of Article VIII, MEETINGS, as follows:

Section 4. Regular Meetings.

A. ~~The Commission shall establish a regular meeting time.~~ *Regular meetings shall be held on the third Wednesday of each month at 7:00 p.m., except in the case of a City-recognized holiday, when the meeting shall be held on the first Thursday following the third Wednesday of the month. Meetings shall be held at City Hall, One Dr. Carlton B. Goodlett Place, Room 408, in the City of San Francisco.*

B. ~~A change in the date, time and/or place of Commission meetings shall not require amendment of these Bylaws. Regular meetings and/or special meetings may be held at other places, dates or times, subject to provisions of appropriate notice.~~*The Commission may change the date, time or place of its regular meeting by motion. At any time, the President may cancel a regular meeting, subject to provision of appropriate notice.*

9 (a)

Elections Commission >> Meeting Information >> Elections Commission Meeting Information

The Elections Commission

March 29, 2006 - Voting Systems Forum

Questions from attendees to the March 29, 2006 Forum on Voting Systems

1. *"Has anyone/group developed a good set of electionwatch material (for entire voting system of the election, not just the machine) especially for day of the election."* - Kaye Griffin (kage@yak.net)

Responses:

Warren Slocum, Chief Elections Officer, San Mateo County:
I don't know of any.

Alan Dechart, President, Open Voting Consortium:
I assume you mean something for voters to use in contrast to procedures that elections officials use. I believe that Black Box Voting has put together some materials along these lines.

Courtenay Strickland Bhatia of Verified Voting Foundation:
Various groups have developed materials for observing elections. The Election Protection Coalition, which is composed of many groups and led by People for the American Way and the Lawyers' Committee for Civil Rights Under Law, has Election Day polling place observation programs in various areas of the country and has created materials for the volunteer observers.

For the November 2004 elections, VVF sponsored a program called TechWatch, which focused on observing logic and accuracy testing of voting equipment by elections officials prior to Election Day, and on providing technical expertise to polling place observation during Election Day.

The Verified Voting Foundation web site provides significant guidance for observation, including information for observation at the central tabulating facility and questions for observers to consider when observing any logic & accuracy testing that is scheduled by the county.

Please see
http://www.verifiedvotingfoundation.org/downloads/20041024.pollmonitorsguide.pdf
for poll monitor observation information and
http://www.verifiedvotingfoundation.org/article.php?id=6153 for
questions that observers can take with them when going to observe

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pre-election testing.

Individuals wishing to engage in observation at the county's central office may need to make advance arrangements due to space limitations. For observation of logic & accuracy testing, one would need to contact the Elections Department in advance to find out the schedule.

VVF has also worked with the Miami-Dade Election Reform Coalition in the past to sponsor "poll closing" observation in Miami, Florida. That particular observation program focused on ballot accounting at the time of poll closing – reconciling the number of votes cast on the machines with the number of voters signing in at the polling place. In November, 2004, such a program revealed election irregularities that offered lessons for election administration across the country.

For November 2006, VVF anticipates implementing a targeted observation program similar to the 2004 poll closing project in additional counties. We will be preparing materials for groups that wish to implement such a program.

2. *"What is your opinion of increasing audits (to approx. 10%)?"* – Jennifer Hammond.

Responses:

Warren Slocum, Chief Elections Officer, San Mateo County:
I am OK with this proposal – and we should include absentees in the audit.

Alan Dechart, President, Open Voting Consortium:
Audits need to be improved. It's not just a matter of increasing the percentage, however. Ensuring a statistically valid audit is a complicated matter. How sure do we need to be that the results were correct? 99 percent? How about 99.9999 percent? Or what? And, what do you mean by correct? For example, consider these two questions:

1. Were there anomalies in the count?
2. Was the winner of the contest correctly declared?

Which question do we care about the most? In a landslide, there could be quite a few anomalies while we could still have a high confidence level that the winner was correctly determined.

Then, what actions are to be taken depending on the audit results?

Here's the problem: the best answer (which would include a lot of statistical formulas and such) is way too complicated and scientific to include in election law. The formulas would also depend somewhat on the voting technology employed. An answer with language simple enough to be included in a bill (like "10% audit") is not sufficiently detailed.

The best way to handle this would be to create a published standard

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and reference that standard in the law. This way, the standard could be refined and improved without needing to change the law. The law could say something like "audits will be done in accordance with the XYZ election audit protocol maintained by the National Institute of Standards and Technology (NIST)" (I'm not suggesting that NIST is the right body to maintain this standard – just using this as an example).

Courtenay Strickland Bhatia of Verified Voting Foundation:
The effectiveness of auditing a small number of precincts is greater in a statewide election than in a citywide election. This means that auditing 10% would be more useful for races representing fewer voters. There is an obvious cost tradeoff, though.

3. *"I tend to trust our optical scanning voting machines, but I wonder about the equipment downstream or i.e., the tabulating machines. How reliable are they?" – Allyson Washburn (V.P., League of Women Voters of SF)*

<u>Responses:</u>

Warren Slocum, Chief Elections Officer, San Mateo County:
There is no perfect system. I like them because in a recount situation you always have a real ballot voted by the voter.

Alan Dechart, President, Open Voting Consortium:
We can assume they are reliable because they have been tested. But should be assume that? Tabulating machines are black boxes whose inner workings cannot be checked by the public. We just have to take it on faith that the authorities are making sure. Shouldn't the details about how these systems work and how they are tested be made public? I think so.

Courtenay Strickland Bhatia of Verified Voting Foundation:
It is easier for someone with a password to change lots of votes in the Election Management System, which handles tabulation, than in lots of machines. However, it is also easier to audit the EMS, if the election office helps.

1. Precinct-by-precinct data should be posted on the internet as soon after the election as possible.

2. Precinct results should be posted at the polling place as soon as they are printed at the close of the election. California law can be read to require this, and Secretary Shelley issued a rule that it had to be done. That rule may still be in effect. Anyone can then compare the posted results with the results on the internet, and add up the numbers themselves.

3. Another step could be to ask poll workers to print extra copies of the results, and compare the numbers the next day to make sure the internet results match their numbers. While I don't know whether anyone does this, it would probably be doable.

This goes back to the primary point that it's important for the voting system in its entirety to provide transparency, reliability, and security, and for the system to be administered in a transparent, reliable, and secure manner. Tabulating machines can have vulnerabilities, both in terms of reliability and security, that must be managed. Ion Sancho, Supervisor of Elections in Leon County, Florida, showed how his own

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tabulating machine could be quickly manipulated by someone on the inside in order to change election results. It's important to choose the best possible equipment, but also to establish practices that will guard against exploitation of any vulnerabilities that the system may have. The three steps above are some good practices to follow.

4. *"Is 'interpreted' code really prohibited by the FEC 2002 Regulation or is it merely 'voluntary' and if only voluntary – what are the teeth to the regulation?"* – Pete Newcome

Responses:

Warren Slocum, Chief Elections Officer, San Mateo County:
Cannot comment.

Alan Dechart, President, Open Voting Consortium:
This is a pretty complicated question, legally and technically. I'll try to be brief. Computers (binary computers, actually) only understand zeros and ones ("machine code"). Programmers don't write the machine code that computers understand directly. Programmers write code using words and symbols relevant to their programming language of choice. Before a program can run, these words and symbols have to be translated into code the computer can understand – the translation will be done by another program, either an interpreter or a compiler, that works with the specific language and computer in use.

There are a couple of ways programmers' code can be translated into machine code: all-at-once, or on-the-fly. Interpreted code is programmers' code that gets translated into machine code on-the-fly. The interpreter (the program that interprets or translates the programmers' code into machine code) works line-by-line as the program executes (actually, some modern interpreters are smart enough to do more than a line at a time). Have you ever seen someone giving a speech in one language, stopping periodically while an interpreter repeats what is said but in another language? It's like that, but with computers the first speaker is talking the programmer's language and the interpreter repeats it in machine language. In a way, this is inefficient because the code may be executed over and over as the program repeats all or part of what it is designed to do. So, the same line of code may be translated into the same machine code over and over. Why not translate all the programmers' code into machine code and be done with it?

A compiler does just that. It takes the programmers' code and translates the whole thing into machine code. No interpretation (or translation) is needed while the program is executing because it's all written out in machine code (analgous to the speaker-translater example, it's like the original speaker doesn't say anything ... only the translation is read). In this way, a compiled program is more efficient and will execute faster than interpreted code. So why use interpreters at all?

With an interpreter, you can change the code and then run it. With a compiler, you have an extra step. You change the code, compile it, and then run it. Compilation can be automated to a certain degree, but when programs get large and complicated, this extra step can take some time.

So, it's easier to change a program that uses an interpreter compared

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to a program that uses a compiler. Does this mean that interpreted code is more hackable (because it's easier to change)? Yes, in some ways, but not necessarily. A lot of this depends on the physical security of the equipment. A computerized system used in the voting process that has no interpreted code could still be hackable. If someone with sufficient knowledge and tools has access to the machine, s/he could introduce malicious software.

Do the 2002 standards prohibit interpreted code? I have read the standards and nowhere does it say anything like, "interpreted code (or interpreter) is not allowed." There are some requirements that would seem to exclude interpreters, but there is also some language that would seem to allow them (that's not the only instance where there is some vague and contradictory language in the standards). It has been asserted that interpreters are prohibited, and enough authorities seem to have bought into this viewpoint to make it fact (or near fact).

So, let's assume that the 2002 standards say that interpreted code should not be used. Does that really mean NO? Is it illegal to have interpreted code in a voting machine? Not exactly.

The guidelines are voluntary. No one is required to follow the standards. Furthermore, there has been little oversight when it comes to ensuring the standards are followed in the certification process. Certification is a transaction between two private companies: the vendor and the test lab. For the most part, no one else is involved and they keep everything a secret. The Help America Vote Act of 2002 (HAVA) created the Election Assistance Commission (EAC) and gave them some oversight responsibilities. However, this new system has not really kicked into gear yet (and it's not clear how new the system is or will be... the EAC hired Tom Wilkey, the guy that used to run the old system).

Notwithstanding the voluntary nature of the guidelines, the provisions may be considered mandatory for California. This is because California has chosen to opt into this system. Still, it can be a challenge to know what those provisions are. Test authorities seem to say interpreted code should not be used but they did allow it. Will they continue to allow it?

I have recommended (and will continue to recommend over and over) that CA opt out of this system. It will not be trivial to get out, and will take some time (if we opt out right now, we may have to repay some HAVA funds). We need to put an alternate system in place. We should probably be working with the EAC and the CA alternate system in parallel for a while before we cancel out of the old system.

So, to make a long story short, as long as California has opted into this system, we need to go along with the requirements. It's not perfectly clear that interpreted code is not allowed. The Secretary of State needs to find out.

Courtenay Strickland Bhatia of Verified Voting Foundation:
The interpreted code requirement is subject to interpretation (no pun intended). The recent report by the Secretary of State's Voting Systems Technical Assessment Advisory Board (VSTAAB) said that interpreters were contrary to the FEC 2002 requirement.

This rule has not been enforced well by the Federal certification process.

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Some technical experts say that interpreters are not inherently bad, although Diebold's way of using them is problem. The FEC 2002 regulations are neither clear, nor particularly well-informed technically on this question.

5. *"California law requires an accessible voter-verified paper trail. When is a paper trail considered accessible, and do the voting systems certified for use in California meet or violate this state law?"* – anonymous

Responses:

Warren Slocum, Chief Elections Officer, San Mateo County:
The paper trail component is deemed "accessible" when a voter can validate his/her vote independently and in private. In a DRE environment, the choices of a voter should be "read" back to the voter through headphones from the paper trail (EC 19251a). Currently, the Diebold, Sequoia, and the Hart InterCivic voting machines certified by the state "read" back votes from the tally component of the system, but not directly from the paper trail.

Alan Dechart, President, Open Voting Consortium:
See section 19251(a) of the election code:

19251. For purposes of this article, the following terms shall have the following meanings:
   (a) "Accessible" means that the information provided on the paper record copy from the voter verified paper audit trail mechanism is provided or conveyed to voters via both a visual and a nonvisual method, such as through an audio component.

This section says the audio readback is supposed to come from the paper. I don't think any of the current systems do that. The audio is not obtained from the paper but from the stored data reflecting voter choices.
So, it seems that current DRE systems with the voter verified paper audit trail are in violation of state law.

Courtenay Strickland Bhatia of Verified Voting Foundation:
I don't think this question has been clarified. Verified Voting's position for a long time has been that people with disabilities have to be able to verify the contents of the VVPR, by electronic means if need be. In other words, the results have to be read off the paper, either by eye or electronically.

This requirement was in one of the original drafts of California's paper trail requirements, but it was then watered down. So far as we know, the AutoMark is the only accessible machine that reads back the marked ballots electronically.

6. *"Does HAVA require counties to purchase new electronic voting systems? If not, has SF considered using the HAVA funds for good quality, transparent scanning equipment not the error-prone Sequoia machines?"* – Lee Munson

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Responses:

> **Warren Slocum, Chief Elections Officer, San Mateo County:**
> A: HAVA requires that all voters be able to vote independently and in private. Current scanning (paper base) voting system cannot meet this requirement by itself. Therefore, new electronic voting systems made to serve this segment of the voting population must be acquired.

> **Courtenay Strickland Bhatia of Verified Voting Foundation:**
> This is an excellent question, and one that Verified Voting has heard from several counties. In answer to it, we prepared a commentary entitled, "Voting Systems Purchases and the Help America Vote Act," which can be downloaded at http://www.verifiedvotingfoundation.org/article.php?id=6346. In short, before January 1, 2007, HAVA does permit the acquisition of ACCESSIBLE optical scan voting systems. On or after January 1, 2007, HAVA still permits the acquisition of accessible optical scan systems so long as HAVA Title II funds are used only for purchase of the accessible components.
>
> At present, Verified Voting encourages the use of precinct-count optical scan voting systems and accessible ballot-marking devices as the most practical, cost-effective and accessible means of providing a voter-verified paper record, which is the essential ingredient for meaningful recounts and routine audits.

7. *"It seems to me that a 1% audit of precincts is inadequate. What can be done to improve the rigors of audits? We need to be reasonably sure that no cheating is going on."* – Jim Soper

Responses:

> **Warren Slocum, Chief Elections Officer, San Mateo County:**
> A: As a general policy we should strengthen the Canvass of the Vote process which includes the 1% manual recount. Specifically we should increase the requirement from the current level; we should run software checks to ensure the version of software used on Election Day was the same as the version certified; and we should include absentees in the Canvass process. In addition, there should be a mandatory recount statue which would require the government to automatically recount a contest if it is within a certain percentage.

> **Alan Dechart, President, Open Voting Consortium:**
> Same answer as I gave in #2 above.

> **Courtenay Strickland Bhatia of Verified Voting Foundation:**
> For a statewide race, 1% may be enough. For a local race, it doesn't prove much. One solution is to count more precincts.
>
> Randomly auditing small races is a big problem. Audits that take advantage of randomly selected BALLOTS instead of PRECINCTS could theoretically be much more effective, but they would require some way of individually matching paper and electronic ballots. We don't know if this method could be applied to existing equipment.
>
> One step that can be taken to improve the rigors of audits is to make sure that random audits are truly random. In order to do this, selection of the precincts must be public, transparent, and random in a way that

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is easily observed by the general public. For example, a researcher with the ACCURATE (A Center for Correct, Usable, Reliable, Auditable, and Transparent Elections) project has suggested that rolling 10-sided dice under public observation might be one way to achieve true randomness and transparency at the same time.

8. *"San Francisco's current voting equipment is pretty good (i.e., paper trail op-scan). Can we meet HAVA standards without throwing all that out? Something new might be worse."* – Brian

> **Courtenay Strickland Bhatia of Verified Voting Foundation:**
> You have a point. Access for persons with disabilities needs to be addressed.

9. *"Are efforts being made towards implementing background checks and enforcement for vendors?"* – anonymous

Responses:

> **Warren Slocum, Chief Elections Officer, San Mateo County:**
> Not that I know about.

> **Courtenay Strickland Bhatia of Verified Voting Foundation:**
> Probably not. One issue that we might want to consider is whether procurement standards should be linked to the certification process – for example, requiring vendors to demonstrate their capacity to fill orders.

- 10. *"Were the vendors the same in each of the voting poll places where there were discrepancies between reported counts and exit polls?"*

  - anonymous

  Response:

> **Courtenay Strickland Bhatia of Verified Voting Foundation:**
> No.

- **For Alan Dechert:**

  Why advocate for complete open source systems, software; hardware & firmware, considering that 99% of people/voters are not technically skilled enough to even look at source code? And considering that some number of people who could, in fact, look at source code may be the type of person who would consider doing something malicious, why invite that? Would it not be better to allow "disclosed source" systems, and have a wide body of responsible individuals and organizations (including the Open Voting Consortium) invited to review software that is in a more accessible escrow environment? What is wrong with the "disclosed source" system?- Commissioner Gerard Gleason

  Response:

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I covered part of this in my presentation. It doesn't matter if "99% of people/voters are not technically skilled enough to even look at source code." A similar percentage of people cannot evaluate legal code either. But we still want that freely available online for anyone that wants to study it.

The limited disclosure model you describe has its own problems. Who gets to review the code? Under what conditions? It may be a liability to look at it depending on what the disclosure agreement says. Will vendors have a say in approving/disapproving reviewers?

You specifically mention Open Voting Consortium but that may present serious conflicts of interest for us. I probably would advise our engineers to not look at it just as I did when VoteHere disclosed their source code. If few organizations/individuals get to see it, there may be too much work and responsibility placed on them. Real testing is a lot of work. Will the reviewers get paid? How much? By whom?

Review by prominent academics is not likely to be conclusive. They're going to find plenty of issues. I don't see disclosure as a way to give a thumbs up or thumbs down. Vendors need to come clean and say, "see, we have nothing to hide." This will improve public confidence. With full public disclosure, over time, the large body of reviewers will contribute improvements.

Generally, I favor full public disclosure because there are more pros than cons

● **For Slocum, Dechert & Bhatia:**

Why is there a need to allow individual California counties to select voting systems from a multitude of vendors? Many county registrars talk about the "uniqueness" regarding the voting systems needs of their jurisdictions, however it seems all elections require one simple product, a device to count votes. Some states have single system or selected choice voting systems. Given that in the private sector, 19 vendors would unlikely be able to compete delivering most products to such a restricted market need, why should California counties continue to engage in such a disjointed purchasing model? Why not restrict the selection to one or two reliable systems?
- Commissioner Gerard Gleason

Responses:
Warren Slocum, Chief Elections Officer, San Mateo County:
California counties have always enjoyed freedom from state control in this area despite the fact that under law counties are considered an arm of the state. Perhaps the government should sponsor efforts to create a open voting system that could then have incentives for counties to use? Local Registrars have always had the power to select the machines of their choice – I could envision the state changing this but it would be difficult. And once again, there is no perfect voting system and this approach would have pros and cons – plus the always present "unintended consequences."

Alan Dechart, President, Open Voting Consortium:

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I favor moving to one system in California – public software and commodity hardware. In this business model, election vendors would make their money on the services they provide to counties – not on the hardware and software. Hardware would be purchased from companies like Dell, IBM, HP, etc. Software would be free.

Courtenay Strickland Bhatia of Verified Voting Foundation:
It's possible to make statewide mistakes. Los Angeles does have different needs from rural counties, because of the sheer number of ballots. LA needs to allow voting in SEVEN languages, by law.

Also, if systems are chosen on a statewide level, we should be mindful of the impact that the voting machine selections of big states like California and Texas would likely have on the market as a whole. Voting machines could become like text books, with big states essentially determining through their choices what small states must use, since the vendors would likely cater to markets in the largest states.

With respect to the number of voting machine vendors, currently, the market is an oligopoly that is dominated by just a handful of companies. In Florida, all the vendors certified in that state refused for a time to do business with a Florida county whose election official exposed security vulnerabilities in his voting system. The small number of certified vendors (not to mention the behavior of the ones that were) was a big problem.

While this is not to say that we shouldn't adopt statewide systems, it is to say that there are a variety of factors that must be taken into account in determining whether that is a good idea.

● 14. *"I hear SF is considering Sequoia and Auto-Mark. Will SF consider one of the vote assistive devices, for example, Vote Pad or Equalivote to comply with HAVA's disability access requirements." – Sherry Healy*

Response:
None of the panelists responded to this question.

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City and County of San Francisco
Elections Commission
Approved:_____
Minutes of the Meeting at City Hall Room 408
March 21, 2007

1. **CALL TO ORDER.** President Jennifer Meek call the meeting to order at 7:02 pm.

2. **ROLL CALL.** PRESENT. Commissioners Gerard Gleason, Richard P. Matthews, Tajel Shah, Victor Hwang, Winnie Yu, Arnold Townsend (arrived at 7:06 pm), Deputy City Attorney Jon Givner, and Director of Elections John Arntz.

3. **Announcements.** President Meek introduced the District Attorney's new appointee to the Commission, Ms. Winnie Yu who replaces Commissioner Michael Mendelson. Ms. Yu greeted the Commission and said she was excited to be a part of the Elections Commission and was looking forward to learning the process and getting to know everyone. President Meek thanked Commissioner Michael Mendelson for his five years of service to the Commission and reminded everyone that Commissioner Mendelson is the last of the original Elections Commission members.

President Meek announced that the membership of the Budget and Oversight of Public Elections Committee (BOPEC) has changed. Commissioner Gerard Gleason is still Chair, Commissioner Richard P. Matthews remains on the Committee, but the third member is now Commissioner Tajel Shah who replaces Commissioner Meek. A Vice-chair will be announced later. The Committee will meet first Wednesdays of each month at 6:00 pm.

President Meek announced that the Commission Secretary's hours have been reduced until July 1, 2007. Ms. Rodriques will be working ten hours a week and will be in the office on Wednesdays only. At that time she will return phone calls and emails.

President Meek announced that Commissioners need to return their completed Form 700s (financial disclosures) and complete their Sunshine Ordinance Training Cerifications by April 2, 2007.

Deputy City Attorney Jon Givner reported that the Elections Commission's Deputy City Attorney, Ann O'Leary gave birth last Friday and both mother and daughter, named Violet, are doing well.

Deputy City Attorney Givner gave a handout to the Commissioners regarding their Sunshine Ordinance Training responsibilities. The Ordinance requires that Commissioners file a form declaring their completion of training every year. The training can be accomplished by watching the first hour of the two hour video provided by the City Attorney's website and taking the first half of the self-study test (the first 19 questions on the website). A separate state law, AB 1234, requires Commissioners to

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take two hours of ethics and open meeting related training every two years. If a Commissioner took office within the last year, that Commissioner must take the two-hour training within a year of taking office. The two-hour training and the completion of the full self-study test will satisfy both AB1234 and Sunshine training requirements for the new commissioners. Commissioners who were in office on January 2006, and attended or watched the full training that year, will not be required to do so again until 2008.

3. **Public Comment.** *David Pilpel* suggested a resolution of appreciation for the long tenure of Commissioner Mendelson. Mr. Pilpel said he would like to know why the advocates for open source software are not concerned about the use of ES&S's (Elections Systems and Software) equipment for San Francisco elections. *Brent Turner* responded that he wants the language regarding open source software to be included in the extension of the ES&S contract.

4. **Director's Report.**
Staff is updating the Department's Operations Manual, updating procedures and preparing the elections calendar for the four upcoming elections in the next 1 ½ years.

Ballot Distribution – staff is meeting with the post office and vendors regarding the ballots, voter guides and other mass mailings. Postal rates are increasing soon and regulations will be changing.

Budget and Personnel – staff is working to resolve classification issues for permanent staff and finding ways to move temporary staff into potentially permanent classifications. The two new Outreach positions were resolved this week and are now advertised. The Director said he wants to praise Roger Sandoval's efforts to make this happen. Interviews for these positions are expected to begin in three to four weeks.

Campaign Services – staff is completing the Candidate Guide for November. Meetings with the candidates will begin in May to help them through the paperwork of the election process.

Outreach – staff is assisting other divisions with graphics for brochures and posters. On Saturday, staff will be attending the Mayor's "March Gladness Fair" at the Ella Hill Hutch Community Center, and will be conducting a mock election at the event in effort to get youth interested in the elections.

Poll Locating/ADFA – staff is working on their mitigation plan to resolve issues where the path of voters to a polling site is more than 3% grade, and where there is insufficient space for the two voting devices now used by the City. New locations need to be secured in many cases for November.

Poll Worker Division – staff recently sent out the Department's newsletter and is readying training materials, and reviewing the pollworker manual. The staff sent out a test for pollworkers and received over a thousand responses. The staff will review the

answers and get back in touch with the pollworkers to let them know their test results. The Director commended the division for this innovative approach to enhanced training.

Technology – staff is still working to make the department's website accessible, getting reports prepared and formatted and data bases for the November election.

Voter Services – staff is conducting a 100 percent review of a petition because it failed to meet the threshold of verification in the sample review. There are 25,000 signatures to be checked. The process began March 15, and is not expected to be completed until April 18th.

Update on securing a voting system for 2007-2008 – The Director said that he was in the Board of Supervisors Budget and Finance Committee earlier today and that the Department has reached agreement on a completed contract extension with ES&S. The Board must now approve a resolution because the potential cost of the contract with the extension is over $10M. The Director added a performance bond requirement to the contract amendment, which caused a substantive change to the extension, this means that the item was continued for one week at the Board. However, the three members of the Committee present appeared to agree with the resolution and it looks like it will be approved at the first hearing in two weeks. The Director said that Supervisor Daly indicated today that negotiations with Sequoia have not ended, but are continuing.

ES&S must submit an application for certification for ranked choice voting by May 1, 2007. Secretary of State Bowen will submit new guidelines on certification shortly.

Update on Supplemental Budget 2006-2007 approval – The Mayor's Office has not moved the budget to the Controller's Office at this time. The DoE (Department of Elections) yesterday received a reimbursement check (for work done on previous elections) from the Secretary of State for over $1M. There is a chance that the DoE will not have to go forward with its supplemental budget request. What remains after the Department covers its previously non-reimbursed expenses will go into the General Fund.

Update on 2007-2008 Budget approval – There have been no changes in the budget reviewed by the Commission within the last month.

Commissioner Matthews asked if the contract with ES&S is carried through past the November election what would be the implications for February and June of 2008. The Director said that the agreement has a sliding scale of costs to the City depending on the number of elections for which ES&S's equipment is used. Mr. Arntz said that in his mind, "ES&S would run the January and February elections".

Commissioner Townsend said that he wanted to be on record as being disappointed that the City will be using ES&S again. He said that the company has been cavalierly disrespectful to the Elections Commission, by refusing requests to appear at meetings.

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Commissioner Townsend said that if the upcoming relationship with ES&S does not go well, the City gets what it deserves in working with that company.

Commissioner Hwang asked if there were any provisions in the contract regarding the widespread failure of the AutoMark machines, and are there any liquidated damages provisions. Director Arntz said there were not, this is an extension of an existing contract. Commissioner Hwang asked about the problems with ES&S equipment in the past. Director Arntz responded that in June election, last year, the breakdown rate was around 25% and in November it was up to 35%, that is 35% of the machines required technical assistance on election day.

Commissioner Shah asked if the Commission Secretary's salary shortfall could be covered by the reimbursement funds the Department received this week. Director Arntz said that only the items in the supplemental request could be covered, and he reminded the Commission that the Secretary's salary provision was removed by the Mayor's office, not by the Department.

Commissioner Gleason asked the Director if he had any numbers regarding the breakdowns of the AutoMark which is brand new equipment. Director Arntz said that AutoMarks were under used, and it is difficult to know how well they operate. Commissioner Gleason said that at his poll site, there was an "extreme amount of difficulty with them". Commissioner Gleason said that the Pollworker Newsletter was a great idea to keep communications with workers between elections, as well as the test, and the Commissioner recommended that the other Commissioners take the test.

Commissioner Hwang asked how the extension of the contract with ES&S affects the HAVA (Help America Vote Act) funds. Director Arntz said that there is potentially very little use of the HAVA funds with the extension because they are earmarked for new systems. There is a June 31, 2007 deadline to use the funds, but the SoS (Secretary of State's Office) is looking into extending the deadline.

Public Comment. *David Pilpel* asked if the reimbursement funds were included in the City's Annual Appropriations Ordinance, and if they weren't, they may need to be appropriated as revenue. He asked will there be a supplemental using that $1M as the fund source. Director Arntz said that he was not sure how it will done. Mr. Pilpel said that he agreed strongly with Commissioner Townsend regarding disappointment in having to work with ES&S again, after spending so much time on the RFP with Sequoia Systems. *Brent Turner* said that by going with a system with which pollworkers are already familiar, the City is saving $1M. He said that all systems are the same. *Steven Hill* said that there is no danger of losing the HAVA funds, that the new funds appropriated after January 1, 2007 would be affected. He said that Los Angeles County has placed its HAVA funds in escrow. *Roger Donaldson* repeated that some jurisdictions had escrowed their HAVA funding, and suggested that the DoE make an inquiry of the SoS regarding doing this also. *Tim Mayer* said that he wants to make sure that when a voter chooses "Susan", that their vote does not read "Bob". He wants the equipment to have open source so that voters can have elections they can depend

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upon. *Commissioner Townsend* responded that to his knowledge, the City has not had an election in which "Susan" came up as "Bob" in the results. The Commissioner said that he trusts the Director and the DoE staff to do the good job they have been doing, and that he doesn't want to see the Commission micro-manage the Department. *Commissioner Matthews* said he agreed and would go a step further. He said that the reason that we don't have the "intended to vote for Susan and actually voted for John problem" is 99.9% and greater of votes that are cast in San Francisco are on paper. This is important because the same machine that marks your ballot is not the one that counts your ballot.

5. **Commissioners Reports.** Commissioner Matthews reported that he and the Commission Secretary attended the swearing in ceremony of Elections Commissioner Winnie Yu at the Chinese Historical Society of America on Clay Street. The facility and its exhibits are fascinating and he invited the members to visit as well.

6. **OLD BUSINESS**

(a) **Discussion and possible action to recommend approval of a Commission general policy statement regarding transparency in all San Francisco Elections Department activities involving voting systems technologies as well as providing voting systems security.** Commissioner Gleason reminded the members that this item had been forwarded to the BOPEC for wording of the policy and for a recommendation to the full Commission. Below is the policy draft from the Committee:

> The Elections Department shall endeavor to ensure maximum transparency in all Department activities providing the citizenry maximum disclosure of all Department activities involving the election process, and the administration of elections.

> The elections Department shall endeavor to enable the citizenry to understand the methodology involved in the election process consistent with ensuring secret ballot protection and voting system security.

Commissioner Gleason MOVED and *Commissioner Victor Hwang* SECONDED that the Commission adopt the policy. Commissioner Gleason explained that the original wording that was proposed included the terminology of "open source", but the Committee intentionally removed that wording to exclude it from being the sole focus of the policy. Commissioner Matthews added that the removal of that reference was to "disentangle" the two different ideas of transparency from "open source", and that transparency has become a synonym for "open source" when "transparency" has its own separate meaning.

Commissioner Townsend said that he did not understand what "transparency in all Department activities means". He said he didn't know how it affects the DoE and its

staff in doing their work. The Commissioner said he doesn't want to hide the process from the public, but it has to work so that the elections and the Department can be efficiently run.

Commissioner Matthews reminded Commissioner Townsend that the statement was a direct quote from the policy Commissioners Townsend and Mendelson presented to the Commission originally at the last full meeting.

Commissioner Shah said that she had problems with the policy because its scope is very broad. She asked what does the Commission want to achieve by the policy, is it to drive the software applications or is it a broader piece about Department activities?

Commissioner Hwang said that he would vote for this policy because the Department already complies with the transparency requirements that the policy would formalize and it is a good policy. He said that he recalls that the original language had "transparency" in the policy.

Commissioner Matthews confirmed that the original policy did include the word "transparency" and that the BOPEC purposely removed it for the reasons mentioned earlier, to disentangle the two concepts that people are using interchangeably. The Commissioner said that he remains unconvinced that open source is absolutely necessary, and unconvinced about much of the claims made by it proponents. He said that in San Francisco the problems that the proponents have cited, do not exist and can't happen in a paper-based system.

Commissioner Gleason said that he was supportive of the idea of open source, but that Commissioner Matthews is correct that the problem would be to have mark and tabulate in the same device. This is not what happens in San Francisco. He said that what we need is a more blanket policy.

Commissioner Townsend asked the Deputy City Attorney what were the transparency requirements currently and is there anything that is not allowed in this policy we are considering. Deputy City Attorney Givner responded that transparency is a broad idea. The Department and Commission practice transparency in many ways such as websites, compliance with open meetings laws, public records laws and the Sunshine Ordinance. The discussion about this proposed policy focuses on voting equipment. Mr. Givner said that he does not see anything in the policy that the DoE doesn't already provide, however, the Director would have the discretion in terms of carrying out this policy, as he crafts contracts, RFPs and speaks to voting system vendors.

Commissioner Hwang said that he would like to re-introduce another version of the proposed policy similar to the one initially drafted by Commissioners Townsend and Mendelson after conferring with Commissioner Townsend. He said he would like to change the wording from creating open source to "the Department will endeavor to SELECT open source" technology. He said that he will consider such a proposal for the Commission's next meeting.

Public Comment. *Steven Hill* suggested separate resolutions that would separate open source and transparency. He said the current item for consideration was appropriate for transparency and that another policy should be proposed for open source. *Brent Turner* said every word matters and that the Commission and Department should defer to the experts in computers and science. *Tim Mayer* said the concern is not what the Director or the Department is doing currently, it is the history of subsequent elections systems that are problematic. *Roger Donaldson* said that the policy is meaningless without the reference to open source. He said it's a feel-good statement that doesn't accomplish much. He asked about the status of the DoE's Task Force that was mentioned in the original policy. *David Pilpel* said that he trusts the Commission and Director to make good decisions, unlike previous speakers who said they do not like the work "trust", and he suggested tabling this item until there is something specific that comes to the front about open source.

The ROLL CALL VOTE to hold this item over to the next meeting and to include the results of the open source forum that the Commission held last year was: Gleason – yes, Matthews – yes, Shah – no, Townsend – no, Hwang – yes, Yu – yes, Meek - Yes. The MOTION PASSED 5 to 2.

(b) **Discussion and possible action regarding the disposition of over-voted ballots.** Commissioner Gleason gave a brief history of this item having been tabled at a previous meeting at which a citizen, Chris Jerdonek, of FairVote, voiced concern regarding his encounter of over-voted ballots during the 1% post election canvass. At that time, Deputy Director Tulett pointed out that the over-voted ballots are not dealt with at the canvass. Commissioner Gleason said that this is on the agenda to answer the general question of what happens to these ballots. The DoE clearly informs the voter regarding what to do if he or she makes an error on their ballot and gives the voter options whether the vote is by mail or at the polling place. He said that there is no issue with how the Department informs voters about what can be done with their ballot in these instances.

However, these ballots do end up in the system and the issue of voter intent remains. He asked the Director and the Deputy City Attorney about the DoE's obligation regarding these over-voted ballots in the California Elections Code.

Director Arntz explained that the Eagles at the polling place will reject a ballot that contains an over-vote. The pollworker then gives the voter the opportunity to complete a new ballot if the voter did not intend to over-vote. If the voter indicates that s/he wants to submit the ballot as marked, then the ballot is submitted, but the over-voted portion of the ballot will not be counted. When the Department receives an over-voted ballot from an absentee voter, the Department reviews the ballot to assess voter intent. If the Department can determine voter intent, then it remakes the ballot to eliminate the over-vote in accordance with the intent. If not, then the Department does not count the over-voted portion of the ballot.

7. NEW BUSINESS

(a) **Discussion and possible action to approve the Elections Commission minutes of the February 20, 2007, Special Meeting.** Commissioner Matthews MOVED and Commissioner Shah SECONDED this item. The Roll Call Vote was UNANIMOUS to Approve the minutes.

(b) **Discussion regarding an amendment to the Elections Commission Bylaws to include a regular meeting date and a new meeting time for the Budget and Oversight of Public Elections Committee.** Due to the need to post the final amendment for public viewing, this item was CARRIED OVER to the next Commission meeting.

(c) **Discussion and possible action to formulate a method and criteria for evaluating the Department of Elections' compliance with each Election Plan in the future.** President Meek said that having a chart with dates and events would be easier to refer to in the Election Plan and that the chart should be in addition to the current Election Plan narrative.

Commissioner Gleason said that there was already an item similar to item 7c before the BOPEC committee, but that it had been tabled until a future BOPEC meeting. However, he reported that item 7c was on the Commission agenda that night because Commission President Meek wanted to give all Commissioners a chance to voice any issue about adding to or changing the Election Plan before BOPEC went about working on it. He said that President Meek was concerned that the Election Plan have some criteria to evaluate the election.

This item was MOVED to BOPEC to be combined with the BOPEC item already tabled.

(d) **Discussion and possible action to send a letter to the Board of Supervisors urging the approval of an election system for 2007-2008.** Commissioner Matthew MOVED and Commissioner Gleason SECOND this item. President Meek presented the letter she wants to send to the Board of Supervisors.

Public Comment. *Brent Turner* said that the certification process is "broken" and that San Francisco is the "open source capital of the world". *Tim Mayer* said that a hand count should be prepared for now because the fight for open source will not end. Roger Donaldson said the letter is missing several comments such as a date by which a hand-count procedure must be begun, and an inquiry to the SoS regarding the extension of the certification of ES&S. *David Pilpel* said that a letter to the SoS is not on the agenda and would need to be taken up at another time, and that the malfunction of ES&S's equipment should be mentioned in the letter.

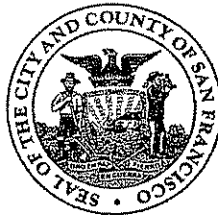The Roll Call Vote was UNANIMOUS to send the letter with minor edits.

7. **Discussion regarding items for future agendas.** Commissioner Hwang said that he wants to work with Commissioner Townsend on the language for the transparency policy and that he intends to re-introduce the policy at the next Commission meeting. Commissioner Matthews said that to do what Commissioner Hwang suggests, may not be possible under Robert's Rules Newly Revised Edition, but suggested that Deputy City Attorney Givner should look into the answer.

   Public Comment. *Steven Hill* said that there could be new language from the people in the audience, who are very informed, could be added to the transparency policy. He said the previously discussed policy "didn't make any sense….wasn't using the term open source in the way that anyone who is interested in this subject understands". *Brent Turner* said that the original language offered by the Voting Consortium legal counsel used the international definition for open source. *David Pilpel* suggested that the Commission place on its website all of its policy statements.

8. **Public Comment on any issue within the Elections Commission's general jurisdiction.** *Roger Donaldson* suggested that a citizen's group regarding open source should be formed. *Brent Turner* agreed with Mr. Donaldson that a task force should be formed. Additionally, Mr. Turner suggested that the Commission invite the open voting solutions group to make a demonstration of their systems to a meeting or event.

Announcement by the President. President Meek announced that the Commission still plans to have a Retreat. It is tentatively planned for May.

ADJOURNMENT at 9:22 pm.

DEPARTMENT OF ELECTIONS
City and County of San Francisco
www.sfgov.org/election

John Arntz
Director

MEMORANDUM

To: Honorable Gavin Newsom, Mayor
Honorable Members, Board of Supervisors

From: John Arntz, Director of Elections

Date: April 10, 2007

Re: Letter from Secretary of State on Certification of San Francisco's Current Voting System

RANKED-CHOICE VOTING CERTIFICATION

Secretary of State Debra Bowen issued a letter expressing concern for San Francisco not having a voting system in place to fully conduct the November 6, 2007 election. Secretary Bowen notes the system from Election Systems & Software (ES&S) that the City plans to use is not certified for ranked-choice elections. In November, three citywide contests will require ranked-choice voting: Mayor, District Attorney, and Sheriff.

The Secretary of State's office previously certified the ES&S system to conduct ranked-choice voting elections (RCV) on a conditional, election-by-election basis. As I noted in a memorandum on October 31, 2006, the previous Secretary of State did not intend to certify the ES&S system that the City uses for any elections beyond November 2006. Secretary McPherson was willing to grant conditional certification since San Francisco was seeking to complete the request for proposal process and contract for a new voting system.

Currently, Secretary Bowen is unsure if she will require ES&S to submit its system for federal review and approval and the Secretary will not make that decision until ES&S files an application for certification with her office. ES&S believes the Secretary of State will again certify the voting system and that its system will not require federal review. ES&S did have its RCV system federally reviewed and approved in 2004 but the standards applied to the review process were established in 1990. Now, if the ES&S system does require federal review, standards established in 2002 will apply, and San Francisco's current system will never pass these stricter standards.

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Should the ES&S system not be certified for RCV, one scenario is the City will need to hand-count all ballot cards containing RCV contests, but will be able to machine-count all other contests and votes cast for ballot measures. A second scenario is the Secretary of State will consider it acceptable for RCV ballots to be machine-read to only count the first-place votes cast for the candidates. Under the second scenario, for those contests in which no candidate receives a 50% +1 majority from results accumulated from a machine-count, the City will then need to conduct a hand-count that will include the second and third choices to determine a winner.

A third scenario is the Secretary decertifying the ES&S system for use in California. In her letter, the Secretary stated,

> Given the obsolete technical platform upon which the ES&S Eagle is based, and the high rate of failure experienced with this older, well-used equipment in your last election, it is far from certain that this equipment will be recertified for use in any future election, should ES&S choose to seek recertification.

Regarding the issue of the failure rate during the November 2006 election, the number of machines requiring on-site technical maintenance represented approximately 35% of the total number of machines in use on election day. In past years, preventative maintenance occurred on a yearly basis. The contract extension, however, requires ES&S to provide preventative maintenance before each election, starting with the November 2007 election and occurring before each of the three elections in 2008.

TOP-TO-BOTTOM REVIEW OF VOTING SYSTEMS

Unrelated to RCV certification, Secretary Bowen is in the process of establishing guidelines for evaluating all voting systems currently in use in California. This review is meant to ensure all voting systems operate securely, accurately, reliably, and are accessible for people with disabilities and for those requiring language assistance. Quite possibly, the Secretary will combine her review of ES&S' system for certification with the top-to-bottom review. Thus, while the City's present focus is on having a system that can conduct RCV elections this November, the Secretary's review of ES&S' system may expand our focus to whether San Francisco will also have a system for the February, June, and November 2008 elections.

BACKUP PLAN REQUIREMENT

During the more than two years the Department has tried to complete the request for proposal process to acquire new voting equipment, the City adopted an ordinance requiring the Department to prepare backup plans when contracting for a system not yet certified for use by the Secretary of State.

> The Department of Elections shall prepare a backup plan for any election for which the voting system that the Department of Elections intends to use in compliance with the San Francisco Charter and state law at that election is pending certification from the California Secretary of State. This backup plan shall be included as part of the written plan submitted to the Elections Commission pursuant to Section 13.103.5 of the Charter. The backup plan shall

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comply with the San Francisco Charter and state law and provide for alternate vote-counting methods and procedures, including but not limited to the possibility of entering into a contract with an alternate vendor. In addition, when considering the approval of a contract for voting equipment, the Board of Supervisors shall give great consideration to whether that equipment complies at the time of signing the contract with the San Francisco Charter and has gained all necessary certifications from the California Secretary of State. SF MEC § 980

Under the current situation, the Department will enter a contract with ES&S to use a system not certified to conduct RCV elections. The Department developed hand-count procedures in 2004 when it was uncertain if the ES&S system would receive certification from the Secretary of State, and before the enactment of the ordinance required such planning. The Department will rely on its hand-count procedures should the ES&S system not gain certification in 2007. At the time the ordinance was drafted, however, the preference was for the Department to contract with a vendor able to provide machine-counts of ballot cards due to the laboriousness and delay in finalizing results when conducting a hand-count. At that time, the Department was preparing to present a resolution to the Board of Supervisors to approve a contract with Sequoia Voting Systems (Sequoia) but concerns that Sequoia would not receive State certification in time for the June 2006 election prompted the City to extend ES&S' contract through July 31, 2007. At the present time, a possible backup plan for the uncertified ES&S system that includes a machine-count is for the City to contract with Sequoia Voting Systems (Sequoia) as an alternative option to a hand-count.

Secretary of State Bowen's letter regarding the proposed certification of the ES&S system for RCV and her intention to conduct a top-to-bottom review of all systems in California highlights the uncertainty the Department faces in planning how it will conduct elections this November and the three elections in 2008. As I have done for the past three November elections, I will provide regular updates on the status of the certification of the ES&S system as well as provide information on matters that might impact upcoming elections in San Francisco. I will be glad to answer any questions you might have on these matters.

Encl; March 27, 2007 Letter from Secretary of State regarding Proposed Certification of Voting System
        March 22, 2007 Draft Guidelines for Top-to-Bottom Review of Voting Systems Used in California

cc: Dennis Herrera, City Attorney
       Ed Harrington, Controller
       Ed Lee, City Administrator
       Susan Mizner, Director, Mayor's Office on Disability
       Phil Ginsburg, Chief of Staff, Mayor's Office
       Nani Coloretti, Mayor's Budget Director
       Greg Wagner, Budget Analyst, Mayor's Office
       Jon Givner, Deputy City Attorney
       Elections Commission

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TOP-TO-BOTTOM REVIEW OF ELECTRONIC VOTING SYSTEMS CERTIFIED FOR USE IN CALIFORNIA ELECTIONS

The Secretary of State intends within the next several weeks to begin a top-to-bottom review of voting systems currently certified for use in California elections. The goal of the review is to determine whether currently certified voting systems provide acceptable levels of security, accessibility, ballot secrecy, accuracy and usability under federal and state standards. For those that do not meet acceptable levels, the review will help determine whether certification should be withdrawn unconditionally, or withdrawn subject to re-certification with additional conditions on use for elections in 2007 and 2008.

Pursuant to Elections Code Section 19222, any decertification decision would only be effective for elections held more than six months later. Accordingly, a decertification decision made on or before August 3, 2007, would be effective for the February 5, 2008, presidential primary election. Every effort will be made to complete the top-to-bottom review of all voting systems before August. This will ensure that no voting system known to fall short of California's high standards will be used in any of the three major statewide elections scheduled for 2008. It will also assure local elections officials, poll workers and voters that they will not be required to change voting systems during the short intervals between the February and June 2008 elections and between the June and November 2008 elections, unless a serious new flaw is discovered that makes a later decertification unavoidable.

What follows is a set of draft criteria to guide the review of currently certified voting systems. The Secretary of State welcomes questions, comments and recommendations for changes from local elections officials, voting system vendors and any member of the public. This is only a draft; the final criteria may reflect substantial revisions based on the responses received and/or further review.

Please submit your questions, comments and recommendations regarding the draft criteria in writing no later than March 30, 2007 to:

By mail:

> Secretary Debra Bowen
> 1500 11th Street
> Sacramento, CA 95814
> ATTN: Voting Systems Review, 6th Floor

By e-mail:

votingsystems@sos.ca.gov

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After considering all questions, comments and recommendations submitted in response to the draft criteria, the Secretary of State will adopt final criteria no later than April 6, 2007.

DRAFT CRITERIA

Section 19205 of the Elections Code authorizes the Secretary of State to establish specifications for voting machines, voting devices, vote tabulating devices, and any software used for each, including the programs and procedures for vote tabulating and testing. These criteria must include suitability for the purpose for which a machine or device is intended, preservation of the secrecy of the ballot and safety of the voting system from fraud or manipulation. Pursuant to the authority established in Elections Code Section 19205, as well as the authority established by Section 12172.5 of the Government Code and Sections 10, 19222, 19227 and 19250 of the Elections Code, the Secretary of State hereby establishes criteria for the review of all voting systems currently certified for use in the State of California.

In each of the examination and testing processes set forth below, qualified reviewers selected by the Secretary will evaluate compliance with the mandatory provisions of the Elections Code, voluntary federal voting system standards as incorporated into California law by the Elections Code, and other applicable requirements imposed by state and federal law, including, but not limited to, Article II, Sections 2.5 and 7 of the California Constitution.

I. SECURITY.

1. **Security Standards.**

For purposes of these standards, "untraceable vote tampering" means preventing the accurate electronic recording of votes, or altering the record of votes, to change the result of an election in a manner that leaves no electronic record of tampering. "Denial of service attack" means disabling a voting system other than through sheer physical destruction in a manner that renders the voting system inoperable for voting.

a. DREs. Each direct recording electronic voting system ("DRE"), as defined in Elections Code Section 19251(b), must incorporate, as part of its design, hardware, firmware and/or software program features that effectively secure the DRE and all electronic media used with the DRE against untraceable vote tampering or denial of service attacks by any person with access to the DRE, its firmware, software and/or electronic media during their manufacture, transport, storage, temporary storage, programming, testing and use, including the electronic ballot definition or layout process.

b. Vote Tabulating Devices. Each "vote tabulating device," as that term is defined in Elections Code Section 358, must incorporate, as part of its design, hardware, firmware and/or software program features that effectively secure the vote tabulating

device and all electronic media used with the vote tabulating device against untraceable vote tampering or "denial of service" attacks by any person with access to the vote tabulating device, its firmware, software and/or electronic media during their manufacture, transport, storage, temporary storage, programming, testing and use.

c. Ballot Tally Computers and Ballot Tally Software. Each computer used to tally ballots and each "ballot tally software program," as that term is used in Elections Code Section 19103, must incorporate, as part of its design, hardware, firmware and/or software program features that effectively secure the computer, the ballot tally software program and all electronic media used with the computer and program against untraceable vote tampering or "denial of service" attacks by any person with access to ballot tally software program, the ballot tally computer, its firmware, software and/or electronic media during their manufacture, transport, storage, temporary storage, programming, testing and use.

2. Security Testing.

The security of each DRE, vote tabulating device and ballot tally computer will be tested using two complementary methods, "red teaming" and source code review. The Secretary will select qualified industry and academic experts in computer and software security, including experts in electronic voting systems, to perform both types of tests.

a. Red Teaming. The "red teaming" process is analogous to military training exercises in which the members of the "red team" are adversaries trying to defeat friendly, "blue team" forces. The red team exercise will be designed to simulate conditions in which a voting system might be vulnerable to attack in the actual cycle of manufacturing, programming, delivery, testing, storage, temporary storage and use in California elections. Initially, the team will approach the system knowing nothing of its source code. Knowledge of source code may be used in subsequent attack attempts. The objective will be to determine whether and to what degree it is possible to compromise the security of the voting system to interfere with the accurate recording of votes or alter the record of votes to change the result of an election.

b. Source Code Review. The second component of security testing will be source code review. The objective of the source code review will be to identify anything in the code that could be used maliciously to interfere with the accurate recording of votes or alter the record of votes to change the result of an election. The source code review may be performed prior to, during or after completion of the risk assessment.

3. Security Findings.

Upon completion of either component of the security testing, the Secretary of State may make written findings that a DRE, vote tabulation device or ballot tally computer is not reasonably secured against untraceable vote tampering and "denial of service" attacks by features included in the design of its hardware, firmware and/or

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software. On the basis of such written findings, the Secretary may immediately initiate the process to withdraw certification.

II. ACCESS FOR VOTERS WITH DISABILITIES.

1. Disability Access Standards.

The federal Help America Vote Act (HAVA) requires that all polling places in elections for federal office have at least one voting system that is "accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters."

Under Elections Code Section 19250(a), the Secretary of State may not certify a DRE unless the system "includes an accessible voter verified paper audit trail." Elections Code Section 19250(d) requires that all DRE voting systems "shall include a method by which a voter may electronically verify, through a nonvisual method, the information that is contained on the paper record copy of that voter's ballot." Under Elections Code Section 19251(a), "'[a]ccessible' means that the information provided on the paper record copy from the voter verified paper audit trail mechanism is provided or conveyed to voters via both a visual and a nonvisual method, such as through an audio component."

2. Disability Access Testing.

Each voting system will be examined to determine whether it complies with the accessibility requirements of HAVA and the Elections Code. The examination will be conducted with the assistance of persons from the disabled community. For purposes of this review, a voting system complies only if it provides all of the following features and capabilities in at least one voting system available for use in every polling place:

(a) A dual-switch input control interface that permits use of "sip and puff" or other adaptive devices by voters with paralysis or severe manual dexterity disabilities who are unable to use touch screens or tactile key inputs.

(b) The capability for the voter to select simultaneous and synchronized audio and visual outputs, audio outputs only or visual outputs only.

(c) Voter-adjustable magnification, contrast and display color settings to improve the readability of text on the video displays.

(d) Variable audio output levels and playback speed for voters with hearing impairments.

(e) Privacy curtains or shields that effectively prevent others from observing or hearing the selections of a voter using such features as audio output, simultaneous,

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synchronized audio and visual output, display magnification or modified display font, contrast or color settings.

(f) In the case of a DRE, the capability to permit a voter to verify electronically, through a nonvisual method, the information that is contained on the voter verifiable paper record copy of that voter's ballot. This requirement is satisfied by a method of nonvisual confirmation that draws the information provided to the voter from either (1) the paper record copy itself or (2) the same electronic data stream used to print the voter verifiable paper record copy.

3. Disability Access Findings.

The Secretary of State may make written findings, based on the results of the disability access testing described above, that a voting system fails to include any of the foregoing disability access features and capabilities, in which case the Secretary of State may immediately initiate the process to withdraw certification from the voting system for disability access use.

III. ACCESS FOR MINORITY LANGUAGE VOTERS.

HAVA requires that every voting system used in an election for federal office "shall provide alternative language accessibility pursuant to the requirements of Section 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa-1a)." Every certified voting system will be tested to determine whether it provides alternative language accessibility in the federally mandated language or languages for each county that uses or intends to use the system. If the Secretary of State makes written findings, based on the results of the minority language access testing, that a voting system does not provide alternative language access as required by federal law, the Secretary of State may immediately initiate the process to withdraw certification from the voting system with respect to the affected county or counties.

IV. USABILITY FOR ELECTIONS OFFICIALS AND POLL WORKERS.

Each certified voting system must be designed, configured and accompanied by sufficient documentation and training materials so that, in the absence of extraordinary circumstances, elections officials and poll workers can independently and without assistance or intervention by employees or contractors of an election system vendor, carry out all operations necessary to open the polls, set up and calibrate voting system equipment, instruct and assist voters in registering votes and casting ballots, respond to voting system error messages or temporary power failures, close the polls, print end-of-day vote totals, take down voting system equipment, transfer polling place results to central tally computers and tally final results.

The Secretary of State will conduct a review of each voting system's documentation and records regarding the use of the voting system by elections officials and poll workers in California elections. The Secretary of State may make written findings, based on the results of the review, that a voting system does not reasonably permit such independent operation. Based on such findings, the Secretary of State may immediately initiate the process to withdraw certification from the voting system.

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DEPARTMENT OF ELECTIONS

March 27, 2007

Mr. John Arntz
Director of Elections
City and County of San Francisco
1 Dr. Carlton B Goodlett Place, Room 48
San Francisco, CA 94102-4635

Dear Mr. Arntz:

I've been following with great interest the process the City and County of San Francisco has been engaged with respect to contracting for a new voting system that will accommodate San Francisco's needs.

Since your November 2007 election will be conducted as a ranked-choice voting (RCV) election, and there are no systems currently certified by either California or the Election Assistance Commission to conduct such an election, you face a unique dilemma. The now-expired certification of your current Election Systems and Software (ES&S) voting system was granted in October 2006 on a one-time only basis for purposes of the November 7, 2006, General Election. The extension of the 2004 single-purpose certification was granted solely to give San Francisco time to contract for a new system for use in 2007 and beyond.

As I've said many times in the past several months, I am firmly committed to ensuring that the voters of California are asked to cast their ballots on equipment that is secure, accurate, reliable, accessible, and auditable. To this end, I will be conducting a top-to-bottom review of all currently certified voting systems very shortly. Given the obsolete technical platform upon which the ES&S Eagle is based, and the high rate of failure experienced with this older, well-used equipment in your last election, it is far from certain that this equipment will be recertified for use in any future election, should ES&S choose to seek recertification.

California Elections Code section 19201 stipulates that no voting system can be used for an election in California unless the Secretary of State has approved that system for such use. To be safely deployed for an election, the system should be approved at least 45 days before any scheduled election to allow sufficient time for user acceptance testing, voter education and outreach, election-specific set-up, logic and accuracy testing, and the related tasks associated with conducting a flawless election. My examination process will take a minimum of six weeks in order to meet all statutory requirements, and certainly any issues that arise during that testing can lengthen the process. Therefore, it's safe to say that any system in search of state certification needs to be federally certified and
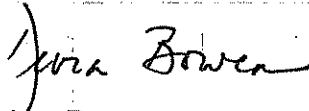
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submitted to my office by August 1 to have a chance of being certified for use in the November 6, 2007, election.

Given the uncertainty of the newly emerging federal qualification process, which can take months and is a pre-requisite to California testing and certification, it is imperative that the federal testing of whatever RCV voting system San Francisco may wish to use begin as soon as possible.

I know there are many unique issues involved with contracting for a new voting system and it's certainly not my intent to short-circuit that process in any manner. However, I do think it's imperative that you realize both the time it will take to certify a new system for use by November 6, 2007, and the hurdles the City and County of San Francisco's old system would face if ES&S – which was told six months ago that the system wouldn't be recertified – attempts to have that system recertified for use this year.

Please feel free to call on me or my staff at (916) 653-7244 if we can be of assistance or answer any questions.

Sincerely,

Debra Bowen
Secretary of State

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