

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 Rodrigues
Commission Secretary

Elections Commission Retreat and Special Meeting
Wednesday, June 20, 2007, at 1:00 pm
City Hall, Ground Floor, Room 034

ORDER OF BUSINESS

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **FLAG SALUTE**
4. **ANNOUNCEMENTS**
5. Overview of Retreat and Meeting Procedures
6. Overview of the Department of Elections
 - Election Day Procedures Overview (Commissioner Meek)
 - Walk-through of the Department (Director Arntz and Staff)
7. History of Commission (Commissioner Matthews)
8. Overview and Discussion of Commissioner roles, Duties and Responsibilities (Deputy City Attorneys Jon Givner and Ann O'Leary)
 - a. Overview of public meeting laws
 - b. Roles of Commission and the Department
 - c. Roles and Duties of Individual Commissioners
9. Discussion of Ideas for Improving Commission and Future Plans/Projects (Commissioner Meek)
10. **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

11. Discussion and possible action regarding securing a voting system for 2007-2008 and report from Commission Arnold Townsend regarding his assignment from the June 6, 2007 meeting to call ES&S.
12. Discussion and possible action to approve the meeting minutes of June 6, 2007.
13. Overview of Appointment Procedures for the Director of Elections (Deputy City Attorney Givner)
14. Discussion and possible action whether to hold Closed Session pursuant to Ralph Brown Act, section 54956.9 and Sunshine Ordinance section 67.10(d).

CLOSED SESSION

15. Closed Session discussion on Personnel Performance and possible reappointment of current Director of Elections.
16. Discussion and possible action regarding disclosure of closed session pursuant to Ralph Brown Act section 54957.1 and Sunshine Ordinance section 67.12.
17. **PUBLIC COMMENT** on any issue within the Elections Commission's general jurisdiction.

ADJOURNMENT

Disability Access

The Elections Commission meeting will be held in Room 034, 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.

The following five pages are the minutes from
the last Elections Commission Retreat

ELECTIONS COMMISSION RETREAT

Friday, July 22, 2005

1:00 pm to 5:00 pm

Fort Mason Officer's Club Lounge

- I. **WELCOMING REMARKS.** President Richard Matthews called the meeting to order at 1:10 pm and welcomed the Commissioners, Director of Elections, Deputy City Attorney and members of the public.

INTRODUCTION OF COMMISSIONERS & STAFF: Commissioners Sheila Chung, Eric Safire, Richard Matthews, Michael Mendelson, Deputy City Attorney Julia Moll, and Director of Elections John Arntz. Members of the Public in attendance were Dennis McKenzie and David Pilpel. Commissioner Gerard Gleason arrived at 1:16 pm and Commissioner Arnold Townsend arrived at 1:43 pm.

II. **THE ELECTIONS COMMISSION**

- a. ***A Brief Legal History*** - Deputy City Attorney Julia Moll gave an informative presentation on the history of elections administration in San Francisco. A copy of a related memo is attached to these minutes as Appendix #1.
- b. ***Powers Conferred and Duties Imposed By The Charter*** - Deputy City Attorney Julia Moll explained that the Charter imposes specific duties on the Elections Commission and general duties on all of the City's commissions. A copy of Ms. Moll's memorandum regarding these powers and duties is attached to these minutes as Appendix #2.

Commissioner Chung asked if the Department has an internal policy for dealing with complaints. Director Arntz answered that once the Department is made aware of a complaint, the Department tries to resolve the complaint. He meets with the person about the concerns, provides documentation of the incident, and goes over the situation in the meeting. This, he said, is normally enough. Mr. Arntz said that the Department does not have a "set program" of handling complaints, but complaints are handled individually and the Department is very responsive.

President Matthews asked the members to give comments regarding their interpretations of the sentence "The Commission shall set general policies for the Department of Elections and shall be responsible for the proper administration of the general practices of the Department, subject to the budgetary and fiscal provisions of this Charter" section of Sec.13.105.5 of the City Charter. Commissioner Safire replied that "if something goes wrong, it is our duty to fix it". Commissioner Chung added that the Commission's role, in addition to oversight of the Department, is to be supportive of the Department.

Commissioner Townsend said that if there is a complaint, it is automatically a "Department" issue. If there is a "chain of complaints", perhaps there would be the need to hold a hearing. If there were enough people coming to complain to the Commission, and after consultation with the Director, it could be decided that a problem needed to be addressed in a hearing. He said that most complaints have been handled on the Department level.

President Matthews stated that the Elections Commission's powers and duties are outlined in Charter Sec. 4.102, and read through the ten paragraphs in the section to reach consensus. He stated that all paragraphs, except numbers 5, and 6, apply to the Elections Commission. A copy of this section is attached to these minutes as Appendix #3.

BREAK (10 minutes) at 2:30 pm.

- c. ***Respective Roles of The Commission and Director of Elections*** - Deputy City Attorney Julia Moll, gave a brief introduction to the topic. She said that the Charter establishes a chain of command that applies to the governance of City departments. The Commission sets policy for the Department and communicates that policy to the Director. The Director is responsible for administration and management of the Department and for executing the policies established by the Commission.

Comments of Director of Elections John Arntz – Mr. Arntz stated that he prefers that Commissioners seeking information from members of the Department go through his office to obtain that information. Commissioner Matthews added that the law in fact requires this.

Commissioner Chung said that it would be helpful if staff were able to continue to let the Commission know of areas in which it can offer support to the Department, as was done when members of the Commission spoke before the Board of Supervisors Finance Committee in support of the Department's budget needs.

III.

CONDUCT OF COMMISSIONERS

- a. ***Duty of Loyalty to The City/Relationship Between Commissioners and Appointing Authorities*** – President Matthews stated that the reason he wanted this item on the Retreat's agenda was to revisit the Board of Education's meeting in which that Board, which has an appointment on the Elections Commission, expressed its desire that their appointee would keep in mind the needs of the Board of Education when considering matters before the Commission. President Matthews said that this was "classically wrong... and the Charter says the appointee, is broadly representative of the general public," not broadly representative of parents who have children in our schools or any of the other constituencies that the Board of Education wants represented.

In Deputy City Attorney Julia Moll's presentation, she stated that members of the Elections Commission, like all City boards and commissions are City officers, and as City officers, they owe a duty of loyalty to the City and must act in the City's best interests. She explained that although members are all appointed by different appointing authorities, those members do not owe a duty of loyalty to that appointing authority.

There was consensus by the Commissioners.

b. **Restrictions on Political and Other Outside Activity** – Commissioners recalled that there had been discussion of this topic during the annual conflict of interest seminar for Commissioners and agreed that there was consensus of the current Commissioners on this topic.

c. **Interaction with Department Staff**

The Commission agreed to consensus on requesting information from the Director rather than from other DoE staff.

IV. OPERATION AND GOVERNANCE OF THE COMMISSION

a. **Should the Commission amend its bylaws now that the Commission is no longer in its infancy?**

Commissioner Safire said that he felt that the subjects of: Formation of Committees, Procedure for Electing Officers, Decorum of Commissioners during meetings, and Preparation of Meeting Agendas, had been addressed by earlier Elections Commissions and that he saw no need to make changes.

President Matthews asked for a consensus regarding Commissioners refraining from conversation among themselves during meetings when public comments and presentations are being made. Commissioner Gleason said that he agreed. Commissioner Townsend said that he felt that the Commissioners should maintain, even in the "mist of great difficulty", when speakers are, themselves, being rude, decorum.

Procedure for Electing Officers - President Matthews expressed his concern that at the last election, members were called upon to verbally vote "yes" or "no", by name, for candidates. In the future, the Commission will use Robert's Rules for its election procedures.

b. **Expectations of individual Commissioners, between meetings and on Election Day** – President Matthews opened this discussion with the example of the three Commissioners who addressed the Board of Supervisors' Finance Committee recently

and said that he felt it was a good example of how Commissioners can assist the Department.

Commissioner Mendelson said that members should read the operations manual and learn all they can so that the Commission can assist by: giving direction to the Director, doing strategic planning, writing good motions, and talking to the Director to determine what the needs are.

Commissioner Chung said that the Commission can provide support to the Department by deciding that an individual Commissioner can conduct an investigation and bring ideas to the Commission or to the Budget and Policy Committee. Another suggestion is to bring forth agenda items that can help further the work of the Commission.

Commissioner Gleason said that the investigations are good ideas but that nothing can happen unless it is the policy of the body. He said that he had recently attended the accessibility meeting but that he feels that there is no obligation that a particular Commissioner attend outside meetings.

Commissioner Townsend said that, as individuals, Commissioners can attend meetings but not formally represent the Commission, or formally state the Commission's position if the position has not been formally taken.

c. ***What, if any, committee structure should the Commission have?***

Commissioner Mendelson said that the current structure of one committee, the Budget and Policy Committee, is sufficient.

Commissioner Chung said that an individual Commissioner can be charged to do an investigation and bring his or her information to the policy committee to be vetted before going forward to the full Commission. She said that this would eliminate having a backlog of work sent directly to the committee.

Commissioner Gleason suggested that there be a Budget Committee separate from the General Policy Committee. This would divide the work so that everyone has some involvement. For example, Commissioners could study the budget and therefore be more prepared to assist in that effort. The Budget Committee could meet only during the budget season.

Commissioner Townsend said that the committee structure should be used to look at an issue in depth.

d. **Discussion of use of Robert's Rules of Order at meetings -**

President Matthews said that it is his hope that Robert's Rules of Order will be used as an "enabling" tool rather than an "intimidating" one at Commission meetings.

Commissioner Mendelson said that Robert's Rules of Order is not meant to be a restraining device. He said that the purpose is "to make happen those things through a common understanding of individuals of the applicable law."

President Matthews requested that Commissioners have their main motions in writing before they make that motion.

V. Public Comment:

David Pilpel said that he has observed there is often a legal and technical approach taken by the Commission on the matters before it, and that this approach obscures the fundamental policy being considered. Regarding the budget, Mr. Pilpel said that the Commission should be better informed of the line items so that it can defend them before the Board of Supervisors if it should be necessary to do so. The Commission should do this rather than turning to the Director to answer all the questions.

Mr. Pilpel said that once an item is on the agenda, the Commission should be able to discuss it without making a motion to do so. Because it is already on the agenda, it is already before the body. This is the manner in which all the other Commissions and Committees he attends proceed with their meetings.

Mr. Pilpel said that he would like the Director to give status reports regarding candidates and potential ballot measures at Commission meetings.

Dennis McKensie said that he has attended City meetings for twenty years and that the important thing for commissions to remember is that their loyalty is to the City. Young people, students should be more involved in the process of elections and outreach.

Mr. McKensie said that kids have a real separation between why they are in school and what they do once they are out of school. There should be field studies where youth can observe and learn about their government, how it runs and what educational degrees are necessary to run the City's departments. He said that City Hall should have a classroom to provide presentations to students about government.

ADJOURNMENT

APPENDICES:

SAN FRANCISCO DEPARTMENT OF ELECTIONS AND ELECTIONS COMMISSION
STATEMENT OF INCOMPATIBLE ACTIVITIES

I. INTRODUCTION

This Statement of Incompatible Activities is intended to guide officers and employees of the San Francisco Department of Elections (“Department”) and Elections Commission (“Commission”) about the kinds of activities that are incompatible with their public duties and therefore prohibited. For the purposes of this Statement, and except where otherwise provided, “officer” shall mean the executive director (“director”) and a member of the Commission, and “employee” shall mean all employees of the Department.

This Statement is adopted under the provisions of San Francisco Campaign & Governmental Conduct Code (“C&GC Code”) section 3.218. Engaging in the activities that are prohibited by this Statement may subject an employee or officer to discipline, including possible termination of employment or removal from office, as well as to monetary fines and penalties. (C&GC Code § 3.242; Charter § 15.105.) Before an employee or officer is subjected to discipline or penalties for violation of this Statement, the employee or officer will have an opportunity to explain why the activity should not be deemed to be incompatible with his or her City duties. (C&GC Code § 3.218.) Nothing in this document shall modify or reduce any due process rights provided pursuant to the employee’s collective bargaining agreement.

In addition to this Statement, employees and officers are subject to Department policies and State and local laws and rules governing the conduct of public employees and officers, including but not limited to:

- The Political Reform Act, California Government Code § 87100 *et seq.*;
- California Government Code § 1090;
- The San Francisco Charter;
- San Francisco Campaign and Governmental Conduct Code;
- San Francisco Sunshine Ordinance;
- Applicable Civil Service Rules; and
- *The California Elections Code.*

Nothing in this Statement shall exempt any employee or officer from applicable provisions of law, or limit his or her liability for violations of law. Examples provided in this Statement are for illustration purposes only, and are not intended to limit application of this Statement. Nothing in this Statement shall interfere with the rights of employees under a collective bargaining agreement or Memorandum of Understanding applicable to that employee.

Nothing in this Statement shall be construed to prohibit or discourage any City officer or employee from bringing to the City’s and/or public’s attention matters of actual or perceived malfeasance or misappropriation in the conduct of City business, or from filing a complaint alleging that a City officer or employee has engaged in improper governmental activity by violating local campaign finance, lobbying, conflicts of interest or governmental ethics laws, regulations or rules; violating the California Penal Code by misusing City resources; creating a specified and substantial danger to public health or safety by failing to perform duties required by the officer or employee’s City position; or abusing his or her City position to advance a private interest.

No amendment to any statement of incompatible activities shall become operative until the City and County has satisfied the meet and confer requirements of State law and the collective bargaining agreement.

If an employee has questions about this Statement, the questions should be directed to the employee's supervisor or to the director. Similarly, questions about other applicable laws governing the conduct of public employees should be directed to the employee's supervisor or the director, although the supervisor or director may determine that the question must be addressed to the Ethics Commission or City Attorney. Employees may also contact their unions for advice or information about their rights and responsibilities under these and other laws.

If a City officer has questions about this Statement, the questions should be directed to the officer's appointing authority, the Ethics Commission or the City Attorney.

II. MISSION OF THE SAN FRANCISCO DEPARTMENT OF ELECTIONS AND ELECTIONS COMMISSION

The mission of the Department of Elections is to conduct all public federal, state, district and municipal elections in the City and County. (Charter § 13.104.) The mission of the Elections Commission is to set general policy for the Department. (Charter § 13.103.5.)

III. RESTRICTIONS ON INCOMPATIBLE ACTIVITIES

This section prohibits outside activities, including self-employment, that are incompatible with the mission of the Department. Under subsection C, an employee or officer may seek an advance written determination whether a proposed outside activity that is not expressly prohibited by subsections A or B of this section is incompatible and therefore prohibited by this Statement. Outside activities other than those expressly identified here may be determined to be incompatible and therefore prohibited. For an advance written determination request from an employee, if the director delegates the decision-making to a designee and if the designee determines that the proposed activity is incompatible under this Statement, the employee may appeal that determination to the director.

A. RESTRICTIONS THAT APPLY TO ALL EMPLOYEES AND OFFICERS

1. ACTIVITIES THAT CONFLICT WITH OFFICIAL DUTIES.

No employee or officer may engage in an outside activity (regardless of whether the activity is compensated) that conflicts with his or her City duties. An outside activity conflicts with City duties when the ability of the employee or officer to perform the duties of his or her City position is materially impaired. Outside activities that materially impair the ability of an employee or officer to perform his or her City duties include, but are not limited to, activities that disqualify the employee or officer from City assignments or responsibilities on a regular basis. Unless otherwise noted or permitted under subsection C, the following activities are expressly prohibited by this subsection.

a. No employee or officer may be a candidate for an elective office that will appear on the ballot in the City and County of San Francisco, or be employed by or receive gifts or other compensation from such a candidate. For purposes of this Statement, a person is a candidate if that person has filed or is required to file a Candidate Intention Statement (FPPC Form 501) or a Statement of Intention to

Solicit and Accept Contributions under California Government Code section 85200 or San Francisco Campaign & Governmental Conduct Code section 1.122.

- b. No employee or officer may act as a proponent of an initiative, referendum or recall petition if the measure would appear on the ballot in the City and County of San Francisco, or be employed by or receive gifts or other compensation from such a proponent.***
- c. No employee or officer may circulate an initiative, referendum, recall, nomination or other petition if the petition would be submitted to the Department of Elections, or be employed by or receive gifts or other compensation from such a petition circulator.***
- d. No employee or officer may use or permit the use of voter information or other elections data except as authorized by law.***
- e. No employee or officer may release or distribute voter information or other elections data to individuals or entities other than the Department of Elections except as authorized by law, or without following procedures specified by law or implemented by the Department. For example, no officer or employee may release voter information unless the individual or entity requesting the information has completed the required application.***
- f. No employee or officer may be employed by or receive compensation from individuals or entities that collect, analyze or report voter information or other elections data. These individuals or entities may include, but are not limited to, consultants and consulting firms, pollsters, research and policy institutes, and voting systems vendors. This rule is not intended to prohibit teaching or other activities associated with an academic institution. This prohibition does not apply to employment of or compensation received by an employee or officer's spouse or registered domestic partner.***
- g. No employee may report or comment on voter information or other elections data except as authorized by the Department of Elections. For example, an employee may not explain or predict voter turnout or offer opinions regarding elections processes except as authorized by the Department of Elections.***

2. ACTIVITIES WITH EXCESSIVE TIME DEMANDS.

Neither the director nor any employee may engage in outside activity (regardless of whether the activity is compensated) that would cause the director or employee to be absent from his or her assignments on a regular basis, or otherwise require a time commitment that is demonstrated to interfere with the director or employee's performance of his or her City duties.

Example. An employee who works at the Department's front desk answering questions from the public wants to take time off every Tuesday and Thursday from 2:00 to 5:00 to coach soccer. Because the employee's duties require the employee to be at the Department's front desk during regular business hours, and because this outside activity would require the employee to be absent from the office during regular business hours on a regular basis, the director or his/her designee may, pursuant to subsection C, determine that the employee may not engage in this activity.

3. ACTIVITIES THAT ARE SUBJECT TO REVIEW BY THE DEPARTMENT

No employee or officer may engage in an outside activity (regardless of whether the activity is compensated) that is subject to the control, inspection, review, audit or enforcement of the Department. In addition to any activity permitted pursuant to subsection C, nothing in this subsection prohibits the following activities: appearing before one's own department or Elections Commission on behalf of oneself; filing or otherwise pursuing claims against the City on one's own behalf; or making a public records disclosure request pursuant to the Sunshine Ordinance or Public Records Act. The following activities are expressly prohibited by this section:

- a. Assistance with City Bids, RFQs and RFPs. No employee or officer may knowingly provide selective assistance (i.e., assistance that is not generally available to all competitors) to individuals or entities in a manner that confers a competitive advantage on a bidder or proposer who is competing for a City contract. Nothing in this Statement prohibits an employee or officer from providing general information about a bid for a City contract, a Department Request for Qualifications or Request for Proposals or corresponding application process that is available to any member of the public. Nothing in this Statement prohibits an employee or officer from speaking to or meeting with individual applicants regarding the individual's application, provided that such assistance is provided on an impartial basis to all applicants who request it.
- b. *No employee or officer may act as a proponent of an initiative, referendum or recall petition if the measure would appear on the ballot in the City and County of San Francisco. (This is also prohibited by section III (A)(1), above.)*
- c. *No employee or officer may circulate an initiative, referendum, recall, nomination or other petition if the petition would be submitted to the Department of Elections. (This is also prohibited by section III (A)(1), above.)*
- d. *No employee or officer may conduct or participate in voter registration drives or absentee voter drives not conducted by the Department of Elections.*
- e. *No employee may prepare or review petitions or other election documents that will be submitted to the Department of Elections, or verify signatures on petitions or other election documents that will be submitted to the Department of Elections for verification.*

B. RESTRICTIONS THAT APPLY TO EMPLOYEES IN SPECIFIED POSITIONS

In addition to the restrictions that apply to all employees and officers of the Department, and except as provided in subsection C of this section, the following activities are incompatible for individual employees holding specific positions.

[RESERVED.]

C. ADVANCE WRITTEN DETERMINATION

As set forth below, an employee of the Department or the director or member of the Elections Commission may seek an advance written determination whether a proposed outside activity that is not expressly prohibited by subsections A or B of this section, if any, conflicts with the mission of the Department, imposes excessive time demands, is subject to review by the Department, or is otherwise incompatible and therefore prohibited by section III of this

Statement. For the purposes of this section, an employee or other person seeking an advance written determination shall be called "the requestor"; the individual or entity that provides an advance written determination shall be called "the decision-maker."

1. PURPOSE

This subsection permits an officer or employee to seek an advance written determination regarding his or her obligations under subsections A or B of this section. A written determination by the decision-maker that an activity is not incompatible under subsection A or B provides the requestor immunity from any subsequent enforcement action for a violation of this Statement if the material facts are as presented in the requestor's written submission. A written determination cannot exempt the requestor from any applicable law or authorize the requestor to engage in an activity expressly prohibited by this Statement. If an individual has not requested or received an advance written determination as to whether an activity is incompatible with this Statement and engages in that activity, the individual will not be immune from any subsequent enforcement action brought pursuant to this Statement.

In addition to the advance written determination process set forth below, the San Francisco Charter also permits any person to seek a written opinion from the Ethics Commission with respect to that person's duties under provisions of the Charter or any City ordinance relating to conflicts of interest and governmental ethics. Any person who acts in good faith on an opinion issued by the Commission and concurred in by the City Attorney and District Attorney is immune from criminal or civil penalties for so acting, provided that the material facts are as stated in the opinion request. Nothing in this subsection precludes a person from requesting a written opinion from the Ethics Commission regarding that person's duties under this Statement.

2. THE DECISION-MAKER

Decision-maker for request by an employee: An employee of the Department may seek an advance written determination from the director or his or her designee. The director or his or her designee will be deemed the decision-maker for the employee's request.

Decision-maker for request by the director: The director may seek an advance written determination from his or her appointing authority. The appointing authority will be deemed the decision-maker for the director's request.

Decision-maker for request by a member of the Commission: A member of the Commission may seek an advance written determination from his or her appointing authority or from his or her commission, or the Ethics Commission. The appointing authority, Commission or Ethics Commission will be deemed the decision-maker for the member's request.

3. THE PROCESS

The requestor must provide, in writing, a description of the proposed activity and an explanation of why the activity is not incompatible under this Statement. The written material must describe the proposed activity in sufficient detail for the decision-maker to make a fully informed determination whether it is incompatible under this Statement.

When making a determination under this subsection, the decision-maker may consider any relevant factors including, but not limited to, the impact on the requestor's ability to perform his or her job, the impact upon the Department as a whole, compliance with applicable laws and rules and the spirit and intent of this Statement. The decision-maker shall consider all

relevant written materials submitted by the requestor. The decision-maker shall also consider whether the written material provided by the requestor is sufficiently specific and detailed to enable the decision-maker to make a fully informed determination. The decision-maker may request additional information from the requestor if the decision-maker deems such information necessary. For an advance written determination request from an employee, if the director delegates the decision-making to a designee and if the designee determines that the proposed activity is incompatible under this Statement, the employee may appeal that determination to the director.

The decision-maker shall respond to the request by providing a written determination to the requestor by mail, email, personal delivery, or other reliable means. For a request by an employee, the decision-maker shall provide the determination within a reasonable period of time depending on the circumstances and the complexity of the request, but not later than 20 working days from the date of the request. If the decision-maker does not provide a written determination to the employee within 20 working days from the date of the employee's request, the decision-maker shall be deemed to have determined that the proposed activity does not violate this Statement.

The decision-maker may revoke the written determination at any time by written notice, based on changed facts or circumstances or other good cause.

4. DETERMINATIONS ARE PUBLIC RECORDS

To assure that these rules are enforced equally, requests for advance written determinations and written determinations, including approvals and denials, are public records to the extent permitted by law.

IV. RESTRICTIONS ON USE OF CITY RESOURCES, CITY WORK-PRODUCT AND PRESTIGE

A. USE OF CITY RESOURCES

No employee or officer may use City resources, including, without limitation, facilities, telephone, computer, copier, fax machine, e-mail, internet access, stationery and supplies, for any non-City purpose, including any political activity or personal purpose. No employee or officer may allow any other person to use City resources, including, without limitation, facilities, telephone, computer, copier, fax machine, e-mail, internet access, stationery and supplies, for any non-City purpose, including any political activity or personal purpose. Notwithstanding these general prohibitions, any incidental and minimal use of City resources does not constitute a violation of this section. Nothing in this subsection shall be interpreted or applied to interfere with, restrict or supersede any rights or entitlements of employees, recognized employee organizations, or their members under state law or regulation or pursuant to provisions of a collective bargaining agreement to use City facilities, equipment or resources, as defined herein.

Example. An employee or officer may use the telephone to make occasional calls to arrange medical appointments or speak with a child care provider, because this is an incidental and minimal use of City resources for a personal purpose.

Nothing in this Statement shall exempt any employee or officer from complying with more restrictive policies of the Department regarding use of City resources, including, without limitation, the Department's e-mail policy.

B. USE OF CITY WORK-PRODUCT

No employee or officer may, in exchange for anything of value and without appropriate authorization, sell, publish or otherwise use any materials that were prepared on City time or while using City facilities, property (including without limitation, intellectual property), equipment and/or materials. For the purpose of this prohibition, appropriate authorization includes authorization granted by law, including the Sunshine Ordinance, California Public Records Act, the Ralph M. Brown Act as well as whistleblower and improper government activities provisions, or by a supervisor of the officer or employee, including but not limited to the officer or employee's appointing authority. Nothing in this subsection shall be interpreted or applied to interfere with, restrict or supersede any rights or entitlements of employees, recognized employee organizations, or their members under state law or regulation or pursuant to provisions of a collective bargaining agreement to use public materials for collective bargaining agreement negotiations.

C. USE OF PRESTIGE OF THE OFFICE

No employee or officer may use his or her City title or designation in any communication for any private gain or advantage. The following activities are expressly prohibited by this section.

1. USING CITY BUSINESS CARDS

No employee or officer may use his or her City business cards for any purpose that may lead the recipient of the card to think that the employee or officer is acting in an official capacity when the employee or officer is not.

Example. An employee's friend is having a dispute with his new neighbor who is constructing a fence that the friend believes encroaches on his property. The friend invites the employee over to view the disputed fence. When the neighbor introduces herself, the employee should not hand the neighbor her business card while suggesting that she could help resolve the dispute. Use of a City business card under these circumstances might lead a member of the public to believe that the employee was acting in an official capacity.

Example. An employee is at a party and runs into an old friend who has just moved to town. The friend suggests meeting for dinner and asks how to get in touch with the employee to set up a meeting time. The employee hands the friend the employee's business card and says that he can be reached at the number on the card. Use of a City business card under these circumstances would not lead a member of the public to believe that the employee was acting in an official capacity. Nor would use of the telephone to set up a meeting time constitute a misuse of resources under subsection A, above.

2. USING CITY LETTERHEAD, CITY TITLE, OR E-MAIL

No employee or officer may use City letterhead, City title, City e-mail, or any other City resource, for any communication that may lead the recipient of the communication to think that the employee or officer is acting in an official capacity when the employee or officer is not. (Use of e-mail or letterhead in violation of this section could also violate subsection A of this section, which prohibits use of these resources for any non-City purpose.)

Example. An employee or officer is contesting a parking ticket. The employee or officer should not send a letter on City letterhead to the office that issued the ticket contesting the legal basis for the ticket.

3. HOLDING ONESELF OUT, WITHOUT AUTHORIZATION, AS A REPRESENTATIVE OF THE DEPARTMENT

No employee or officer may hold himself or herself out as a representative of the Department, or as an agent acting on behalf of the Department, unless authorized to do so.

Example. An employee who lives in San Francisco wants to attend a public meeting of a Commission that is considering a land use matter that will affect the employee's neighborhood. The employee may attend the meeting and speak during public comment, but should make clear that he is speaking in his private capacity and not as a representative of the Department.

V. PROHIBITION ON GIFTS FOR ASSISTANCE WITH CITY SERVICES

State and local law place monetary limits on the value of gifts an officer or employee may accept in a calendar year. (Political Reform Act, Gov't Code § 89503, C&GC Code §§ 3.1-101 and 3.216). This section imposes additional limits by prohibiting an officer or employee from accepting any gift that is given in exchange for doing the officer or employee's City job.

No employee or officer may receive or accept gifts from anyone other than the City for the performance of a specific service or act the employee or officer would be expected to render or perform in the regular course of his or her City duties; or for advice about the processes of the City directly related to the employee's or officer's duties and responsibilities, or the processes of the entity they serve.

Example. A member of the public who regularly works with and receives assistance from the Department owns season tickets to the Giants and sends a pair of tickets to an employee of the Department in appreciation for the employee's work. Because the gift is given for the performance of a service the employee is expected to perform in the regular course of City duties, the employee is not permitted to accept the tickets.

Example. A member of the public requests assistance in resolving an issue or complaint that is related to the City and County of San Francisco, but that does not directly involve the Department. The employee directs the member of the public to the appropriate department and officer to resolve the matter. The member of the public offers the employee a gift in appreciation for this assistance. The employee may not accept the gift, or anything of value from anyone other than the City, for providing this kind of assistance with City services.

As used in this statement, the term gift has the same meaning as under the Political Reform Act, including the Act's exceptions to the gift limit. (See Gov't Code §§ 82028, 89503; 2 Cal. Code Regs. §§ 18940-18950.4.) For example, under the Act, a gift that, within 30 days of receipt, is returned, or donated by the employee or officer to a 501(c)(3) organization or federal, state or local government without the employee or officer taking a tax deduction for the donation, will not be deemed to have been accepted. In addition to the exceptions contained in the Act, nothing in this Statement shall preclude an employee's receipt of a bona fide award, or free admission to a testimonial dinner or similar event, to recognize exceptional

service by that employee, and which is not provided in return for the rendering of service in a particular matter. Such awards are subject to the limitation on gifts imposed by the Political Reform Act and local law.

In addition, the following gifts are de minimis and therefore exempt from the restrictions on gifts imposed by section V of this Statement:

- i. Gifts, other than cash, with an aggregate value of \$25 or less per occasion; and
- ii. gifts such as food and drink, without regard to value, to be shared in the office among employees or officers.

Example. A member of the public who regularly works with and receives assistance from the Department sends a \$15 basket of fruit to an employee as a holiday gift. Although the fruit may in fact be offered in exchange for performing services that the employee is expected to perform in the regular course of City duties, the employee may accept the fruit because the value is de minimis. (Because the reporting requirement is cumulative, an employee may be required to report even de minimis gifts on his or her Statement of Economic Interests if, over the course of a year, the gifts equal or exceed \$50.)

Example. A member of the public who regularly works with and receives assistance from the Department sends a \$150 basket of fruit to the Department as a holiday gift. Although the fruit may in fact be offered in exchange for performing services that the Department is expected to perform in the regular course of City duties, the Department may accept the fruit basket because it is a gift to the office to be shared among employees and officers.

VI. AMENDMENT OF STATEMENT

Once a Statement of Incompatible Activities is approved by the Ethics Commission, the Department may, subject to the approval of the Ethics Commission, amend the Statement. C&GC Code § 3.218(b). In addition, the Ethics Commission may at any time amend the Statement on its own initiative. No statement of incompatible activities or any amendment thereto shall become operative until the City and County of San Francisco has satisfied the meet and confer requirements of State law and the collective bargaining agreement.

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City and County of San Francisco
Elections Commission

Approved: _____

Minutes of the Special Meeting at City Hall Room 421
June 6, 2007

1. **CALL TO ORDER.** Commissioner Gerard Gleason called the meeting to order at 6:06 pm.
2. **ROLL CALL. PRESENT:** Commissioners Gerard Gleason, Richard P. Matthews, Victor Hwang, Winnie Yu, Deputy City Attorney Jon Givner, and Director of Elections John Arntz. Commissioners Tajel Shah and Arnold Townsend arrived after the Roll Call. **EXCUSED:** President Jennifer Meek.
3. **Announcements.**
The Commission Secretary announced that the next meeting of the Elections Commission would be a Retreat on Wednesday, June 20, 2007 in City Hall Room 034, at Noon.

Deputy City Attorney Jon Givner announced that Deputy City Attorney Ann O'Leary will be returning this week and will be working part-time until August. Both will be sharing Elections Department and Commission assignments. Mr. Givner asked the Commissioners to consider him their primary contact, and if he is unavailable, to contact Ms. O'Leary. Both attorneys will be present at the retreat.

4. **Director's Report: Update on securing a voting system for 2007-2008.**
Director Arntz reported that the Department is awaiting Elections Systems & Software (ES&S) getting their application in to the Secretary of State's Office (SoS) to begin the certification process. He said it appears, in the information he has received from ES&S, that the company is combining the certification with the "top to bottom review". These are separate processes. The "top to bottom review" is for existing certified systems, not for a system that has been updated or that is seeking certification. The Eagle system is not going through the "top to bottom review"; it will require an application for certification to be turned in to the SoS.

Public Comment. *Brent Turner* said that he spoke to Mr. Lou Dedier of ES&S today and he was easy to reach by phone.

Commissioner Shah asked members of the public to contact ES&S and encourage them to submit their application by Friday.

9. **NEW BUSINESS**

(a) **Presentation of information regarding certification of ES&S voting system for 2007-2008** (ES&S) Commissioner Gleason referred to the statement received from ES&S earlier today, and attached to these minutes. He said that he questioned the wording in the last sentence regarding the 4C's being able to read "basically" any marking device, when he spoke to ES&S earlier today and was given a vague response that referred him to the Operations Manual.

Director Arntz said that he was informed by ES&S that they intend to have their application in to the SoS by Friday of this week and he doesn't want to consider preparations for back up plans until the SoS has made a decision.

Public Comment. *Brent Turner* said that the main point with the tabulator is the source code and that the DoE should continue on the path of "transparent systems", and that he is in favor of a hand count instead of a machine count without transparency.

(b) **Discussion and possible action regarding steps the Commission can take to ensure that San Francisco has a certified voting system in 2007-2008.** The Commission may consider sending a formal request to the Secretary of State or the Board of Supervisors, passing a resolution for distribution to the Board of Supervisors urging action, authorizing one or more Commissioners to speak in person with members of the Board of Supervisors or representatives of the Secretary of State, or other actions to achieve these goals. Commissioner Hwang asked if the Commission had previously sent a letter to the Board. Commissioner Shah answered that the Commission decided not to send the letter at the previous meeting because of timeliness and the Commission authorized the President to speak to the Secretary of State's Office. Deputy City Attorney Givner explained that there was an interim period of confusion regarding whether ES&S had submitted its application for certification, after the company had pulled out of the "top to bottom review", and now we know that ES&S hasn't submitted its application.

Director Arntz said that he hoped that the Commission would contact ES&S and push for them to get their application into the SoS.

Commissioner Hwang MOVED and Commissioner Shah SECONDED that Vice President Townsend telephone ES&S to request that they get their application in to the SoS by Friday of this week and to follow up with a letter regarding this request.

Public Comment. *Brent Turner* said he had never had a problem reaching ES&S by phone and that they have been responsive to him in the past. *Carol Bella* said that neither ES&S or Sequoia were any good, and that in a couple of years companies will have a better system. *Jennifer Kidder* said paper ballots would be better and provided copies of hand counting instructions that were used successfully in New Hampshire.

The Roll Call Vote was UNANIMOUS to contact ES&S.

(c) **Discussion and possible action to approve the Elections Commission minutes of the May 16, 2007 meeting.** Commissioner Matthews MOVED and Commissioner Hwang SECONDED the approval of these minutes.

Public Comment. *Carol Bella* said that she felt that an important part of her comments at the May 16th meeting was not recorded in the minutes. She asked that the Commission allow her to append written comments to the minutes after the meeting. *Roger Donaldson* complimented the Secretary on the Commission's accurate minutes and said that he understood that sometimes what a speaker thinks is an important point in that speaker's statement could be overlooked. *Brent Turner* asked that the Commission allow him to submit written comments.

Deputy City Attorney Givner suggested, and Commission Secretary Rodriques agreed, that attendees may provide a statement of not more than 150 words which can be attached to the minutes. Commissioner Matthews asked whether merely listing the speakers would satisfy the Sunshine Ordinance. Deputy City Attorney Givner responded that the ordinance requires that the speakers be listed, that the minutes note whether they supported or opposed the motion (if any), and that the minutes include a brief summary of their comments, which may be as short as "Mr. X supported the motion," depending on the comments. The Commission has the authority to amend the minutes before adoption to ensure their accuracy.

Commissioner Shah MOVED and Commissioner Matthews SECONDED an amendment to the MOTION to allow for attachments to the minutes of statements of no more than 150 words from speakers. The Roll Call Vote was UNANIMOUS for this amendment.

The Roll Call Vote to approve the minutes with the amendment was also UNANIMOUS.

ADJOURNMENT was at 7:09 pm.

ATTACHMENTS:

From: Election Systems & Software:
Statement for the City of San Francisco
4C and Eagle Tabulation Systems
6/6/07

ES&S received from the State of California last Thursday the information needed to move forward with the California Top to Bottom System Review. ES&S is currently reviewing the new agreement provided by the State, and is preparing to release a new application that includes RCV for the City of San Francisco. Working closely with the Secretary State Office, ES&S will try to establish the earliest testing date possible. We will keep the City of San Francisco informed of our effort, and planning surrounding this new certification event.

One item that has come up prior to the State certification event concerning the City of San Francisco is the difference in the scanning capabilities between the 4C central tabulators and Eagle tabulation machines. The 4C central tabulators rely on visible light technology, and have been run successfully in thousands of election in the City of San Francisco as well as across the country. Absentee ballots can be successfully ran through the 4C central tabulators since many different marking devices may be used. The Eagle tabulation machines which rely on infrared scanning technology have also been

used in thousands of elections. The Eagle tabulators are used in the precincts and have approved marking devices supplied with them to make sure the scanners properly see the ballot marks. The major difference from the scanning point of view is making sure that accepted marking devices are used during in-precinct voting with the Eagle tabulation machines as opposed to the 4C's which can have basically any marking device.

Rule 114

Appointments

Article IX: Director of Elections

Applicability: Article IX, Rule 114, shall apply to the Director of Elections as provided for in Charter Section 13.104.

Sec. 114.46 Purpose

The purpose of Article IX, Rule 114, shall be to reflect the authority of the Civil Service Commission and the Elections Commission as well as the employment rights of the Director of Elections as set forth in Section 13.104 and Article X of the Charter of the City and County of San Francisco. A Rule on the position of Director of Elections is in order because of the unique nature of the position under the Charter.

Sec. 114.47 Requirement for a Personnel Requisition and Job Announcement

114.47.1 Whenever the position of Director of Elections is to be filled, the Elections Commission shall issue a personnel requisition in the prescribed format noting that appointment to the position shall be in accordance with Charter Section 13.104 and Civil Service Commission Rule 114, Article IX.

114.47.2 The Department of Human Resources shall issue a job announcement which shall be posted for a minimum of ten (10) days and shall include a position description, qualifications, dates applications will be accepted, relevant provisions in Charter Section 13.104 and other relevant job-related information.

Sec. 114.48 List of Qualified Applicants

114.48.1 The names of the candidates who meet the requirements of the job announcement shall be placed on the list of qualified applicants in the order of their scores. There must be a minimum of three (3) qualified applicants available for selection. Approval of the Civil Service Commission shall be required to proceed should there be fewer than three (3) qualified applicants.

114.48.2 Should the Director of Elections position become vacant within twenty-four (24) months of appointment, the Elections Commission may elect to appoint a successor from the current list of qualified applicants provided a minimum of three (3) persons remain available on the list, except that approval to appoint from this list may be obtained from the Civil Service Commission should there be fewer than three (3) persons available.

Sec. 114.49 Selection of the Director of Elections

114.49.1 In accordance with Charter Section 13.104, no less than thirty (30) days before the expiration of the Director's term, the Elections Commission shall select a Director for the next term. The appointment shall be effective in accordance with Rule 114.51- Appointment Date.

114.49.2 Selection of the Director of Elections from the list of qualified applicants shall be based on merit and fitness without regard to relationship, race, religion, sex, national origin, ethnicity, age, disability, gender identity, political affiliation, sexual

orientation, ancestry, marital status, color, medical condition or other non-merit factors or otherwise prohibited nepotism or favoritism.

114.49.3 The Elections Commission shall establish a non-discriminatory selection process which may include scheduling each interested person from the list of qualified applicants for interview, conducting interviews by a diverse panel, asking job-related questions, and maintaining documentation of selection criteria.

114.49.4 The Elections Commission shall utilize appropriate job-related, non-discriminatory screening devices which may include but not be limited to resumes, updated applications, skills checklists, writing exercises, work samples, and performance reviews.

114.49.5 The Elections Commission shall notify the persons on the list of qualified applicants of the available position and selection process. The Notice shall include a minimum response period of five (5) business days and ten (10) business days in the event supplemental information is required.

Sec. 114.50 Appointment of the Director of Elections

114.50.1 Appointment to the position of Director of Elections shall be made pursuant exclusively to the provisions of Charter Section 13.104 and Civil Service Commission Rule 114, Article IX. Civil Service Commission Rules covering a civil service employee in another position in the same or different class, including but not limited to those Rules on Status and Layoff, shall not apply to appointment to the position of Director of Elections. Thus, by way of example but not limitation, a permanent civil service employee with greater seniority shall not have the right or preference for appointment to a vacant Director of Elections position nor the right to displace the incumbent Director of Elections with less seniority.

114.50.2 The Director of Elections shall be appointed permanent civil service by the Elections Commission from a list of qualified applicants for a term of five (5) years. The term shall commence upon the appointment date of the person selected.

114.50.3 The record of appointment shall be on the prescribed form noting that the appointment has been made in accordance with Charter Section 13.104 and Civil Service Commission Rule 114, Article IX.

114.50.4 Pending the appointment of the Director of Elections, the Elections Commission may make a temporary out-of-class assignment or a provisional appointment. Temporary out-of-class assignment or provisional appointment shall not be made to bypass the established selection procedures provided in this Rule. Temporary out-of-class assignment or provisional appointment may be approved while an appointment through the regularly established procedures is pending and shall be limited to ninety (90) days. Any extension beyond the ninety (90) days must be approved by the Civil Service Commission in increments of no more than sixty (60) days apiece. The selection procedures provided in this Rule shall be effectuated expeditiously.

Sec. 114.51 Appointment Date

114.51.1 In accordance with Charter Section 13.104, no less than thirty (30) days before the expiration of the Director of Election's five (5)-year term, the Elections Commission shall appoint a Director of Elections for the next term. In this circumstance, the appointment date shall be the date on which the person starts work in a permanent

civil service capacity as Director of Elections, which date may be no sooner than the first day following the last day of the term that is coming to an end.

114.51.2 Except as stated in Rule 114.51.4, if an appointment of the Director of Elections is made in some circumstance other than the impending completion of a Director of Election's five (5)-year term, the appointment date shall be the date on which the person starts work in a permanent civil service capacity as Director of Elections.

114.51.3 The Elections Commission and the Department of Human Resources shall expedite the appointment processing necessary to effectuate the appointment of the Director of Elections.

114.51.4 For the Director of Elections who is in office as of November 3, 2003, the appointment date shall be the date on which the Elections Commission acted to select the person to be Director of Elections in a permanent civil service capacity.

Sec. 114.52 Probationary Period

114.52.1 The final phase of the selection process shall include a probationary period that conforms to the requirements of Rule 117 – Probationary Period, except that Rules on the Voluntary Resumption of the Probationary Period (Rule 117.8) shall not apply. The Elections Commission may release the Director of Elections at anytime during the probationary period. The decision of the Elections Commission to release the Director of Elections during the probationary period shall be final.

114.52.2 In accordance with Rule 114.53.4, appointment of the incumbent to a new term shall not require a new probationary period.

Sec. 114.53 Renewal of Term

114.53.1 In accordance with Charter Section 13.104, no less than thirty (30) days before the expiration of the Director's term, the Elections Commission shall select a Director for the next term. The Elections Commission may appoint the incumbent Director of Elections for an additional five (5)-year term.

114.53.2 The Elections Commission may in its discretion renew the incumbent's term, without engaging in the competitive selection process specified in this Rule.

114.53.3 In the alternative, the Elections Commission may in its discretion again engage in the competitive selection process specified in this Rule, and renew the incumbent's term in the event the incumbent successfully competes in the process.

114.53.4 In accordance with Rule 114.52.2, renewal of the incumbent's term shall not require a new probationary period.

Sec. 114.54 Employment Rights

114.54.1 Notwithstanding the designation of the Director of Elections as a permanent civil service appointment, and notwithstanding the rights that normally accompany such a designation, upon the end of the Director's term as defined in Rule 114.58.1, there shall be no accrued right to return to the position or receive special consideration for or claim to the position. Thus, a former Director has no special claim to return to the position or right to receive special consideration for the position. This provision shall not preclude a

former Director from applying for the position or preclude consideration of experience as Director in evaluating candidates for the position.

114.54.2 Except as stated herein, this Rule 114, Article IX is not intended to interfere with the ongoing relationship between the Elections Commission and the Director of Elections or undermine the independence of the Elections Commission as established by the City Charter. Except as stated herein, if the application of a Civil Service Commission Rule to the Director would seriously undermine the authority of the Elections Commission over the Director, that Rule shall not apply. By way of example but not limitation, notwithstanding the designation of the Director of Elections as a permanent civil service appointment, for purposes of Rule 120 (Leaves of Absence), the Director shall have only those leave rights customarily afforded department heads.

114.54.3 The Director of Elections is both an officer and employee and shall be subject to those provisions in Rule 118 (Conflict of Interest) governing officers or employees. Further, the Director shall be subject to the provisions of Rule 118.2 governing part-time employment. However, in the case of the Director, the powers vested in the Human Resources Director under Rule 118.2 shall be vested exclusively in the Elections Commission, with no power of appeal to the Human Resources Director or the Civil Service Commission.

114.54.4 This Rule 114, Article IX shall not abrogate those employment rights customarily afforded by federal, state, and local law to department heads.

Sec. 114.55 Release from Term Appointment

Should the Elections Commission decide not to renew the incumbent's term, the Director of Elections shall be released. The decision of the Elections Commission to renew or not renew the term appointment shall be final.

Sec. 114.56 Removal for Cause

114.56.1 In accordance with Charter Section 13.104, following the successful completion of the probationary period and during the term appointment, the Elections Commission may remove the Director of Elections for cause upon written charges and following a hearing. The Elections Commission shall present the written charges to the Director of Elections no less than thirty (30) days before the scheduled hearing. The hearing shall be held not less than thirty (30) days after notice of charges, unless the Director of Elections requests an earlier hearing date and the Elections Commission agrees to the request.

114.56.2 The hearing shall be held no later than forty-five (45) days after notice of charges unless the Director of Elections and the Elections Commission agree to an extension, or in the absence of mutual agreement, either party seeks and obtains the approval of the Civil Service Commission for an extension. The Elections Commission shall render its decision no later than ten (10) days following the conclusion of the hearing.

114.56.3 Pending a hearing and decision of the Elections Commission to remove the Director of Elections for conduct involving misappropriation of public funds or property, misuse or destruction of public property, drug addiction or habitual intemperance, mistreatment of persons, immorality, acts which would constitute a felony or misdemeanor involving moral turpitude, or acts which present an immediate danger to

the public health and safety, the Elections Commission may place the Director of Elections on unpaid administrative leave. Pending the hearing and decision of the Elections Commission on the removal of the Director of Elections, the Elections Commission may make a temporary out-of-class assignment or provisional appointment.

114.56.4 For removal on charges other than those listed in Section 114.56.3, the incumbent shall continue to occupy the position of Director of Elections until the completion of the hearing and decision by the Elections Commission.

Sec. 114.57 Appeal to the Civil Service Commission following Removal for Cause

114.57.1 In the event of removal for cause as set forth in this Rule and Charter Section 13.104, the Director of Elections shall have the right of appeal to the Civil Service Commission.

114.57.2 A notice of termination from the Elections Commission to the Director of Elections detailing the specific reason(s) for the termination, shall serve as official notice of such termination.

114.57.3 The notice of termination must include the following information:

- 1) The Director of Elections has the right to a hearing before the Civil Service Commission provided that a request for hearing is made in writing and is received by the Executive Officer within twenty (20) calendar days from the date of removal from the term appointment or from the date of mailing of the Notice of Termination whichever is later. In the event the 20th day falls on a non-business day, the deadline shall be extended to the close of business on the first (1st) business day following the 20th day.
- 2) The stated reason(s) for the termination must be enumerated. Records of warnings, reprimands and previous suspensions, if applicable, must be attached.
- 3) Recommendation by the Elections Commission on future employment restrictions.

114.57.4 Upon receipt of an appeal in the Civil Service Commission office, the Executive Officer shall place the matter on the next Regular or Special meeting agenda consistent with applicable public meeting laws to determine time frames for hearing the appeal.

114.57.5 The hearing of the appeal must be scheduled no later than sixty (60) days from the date of receipt of the appeal. Extension beyond sixty (60) days shall be at the discretion of the Civil Service Commission, based on such factors as whether the appellant and the Elections Commission have agreed to the extension; whether an extension is consistent with the purposes underlying Charter Section 13.104 and related Charter provisions; and whether an extension would serve the interests of justice.

114.57.6 Unless the appeal clearly and expressly states otherwise, it shall be treated by the Civil Service Commission as an appeal of both the decision of the Elections Commission to remove the Director of Elections and the recommendation of the Elections Commission on future employment restrictions.

If the appeal is clearly and expressly limited to only the recommendation of the Elections Commission as to future employment restrictions, the Civil Service Commission shall take one or more of the following actions:

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- 1) Cancel any current examination and eligibility status;
- 2) Restrict future employment as it deems appropriate;
- 3) Return the person to the permanent civil service classification immediately held prior to acceptance of the position of Director of Elections. If necessary, layoff in the affected classes shall follow.

114.57.7 In accordance with Charter Section 13.104, on appeal of the decision of the Elections Commission to remove the Director of Elections, the Civil Service Commission shall be limited to consideration of the record before the Elections Commission; however, the Civil Service Commission may independently evaluate and weigh evidence and may in its discretion consider evidence proffered to the Elections Commission that the Elections Commission excluded and may in its discretion exclude evidence that the Elections Commission considered. In its discretion, and depending on the facts of a particular case, the Civil Service Commission may consider the presence or absence of contemporaneous documentation by the Elections Commission of facts supporting the removal for cause, and/or the presence or absence of documentation of such facts in a regular performance appraisal of the Director, as probative of the validity of the removal for cause.

114.57.8 With respect to the decision of the Elections Commission to remove the Director of Elections, the Civil Service Commission shall either:

- 1) Grant the appeal, vacate the decision of the Elections Commission, and order immediate reinstatement of the person to the position of Director of Elections. In reinstating the person, the Civil Service Commission may order payment of salary to the person for the period of the removal; or.
- 2) Deny the appeal, uphold the decision of the Elections Commission, and declare the person dismissed from the position of Director of Elections. In denying the appeal, the Civil Service Commission may return the person to the permanent civil service classification immediately held prior to acceptance of the position of Director of Elections. If necessary, layoff in the affected classes shall follow.

a) If the Civil Service Commission upholds the decision of the Elections Commission to remove the Director of Elections, the appellant may elect to withdraw the appeal on future employment restrictions.

b) Should the appellant not withdraw the appeal on future employment restrictions the Civil Service Commission may adopt the recommendations of the Elections Commission on future employment restrictions, cancel any current examination and eligibility status, or restrict future employment as it deems appropriate.

114.57.9 The decision of the Civil Service Commission on the appeal shall be final

Sec. 114.58 End of Term

114.58.1 The term of the Director of Elections shall end upon release during the probationary period, removal for cause, death, appointment to another position in the City service, including a position in the classified service at the San Francisco Community College District or the San Francisco Unified School District, resignation or completion of the five (5)-year term without renewal of the appointment for another term. In the case of removal for cause, the term shall end:

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1) If no appeal on the decision of the Elections Commission to remove the Director of Elections is filed, upon completion of the time period for filing an appeal with the Civil Service Commission as specified in this Rule; or,

2) If an appeal on the decision of the Elections Commission to remove the Director of Elections is filed within the time period for filing an appeal, upon the hearing and decision of the appeal by the Civil Service Commission, if the Civil Service Commission upholds the removal for cause.

114.58.2 In the interim, between removal for cause by the Elections Commission and the conclusion of the appeal process on the decision to remove the Director of Elections, the Elections Commission may make a temporary out-of-class assignment or provisional appointment while the appeal process is underway.

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