

# Rule 114

## Appointments

### Article VII: Director of Elections

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

#### **Sec. 114.27 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. 114.28 Requirement for a Personnel Requisition and Job Announcement**

**114.28.1** 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.

**114.28.2** 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. 114.29 List of Qualified Applicants**

**114.29.1** 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.

**114.29.2** 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. 114.30 Selection of the Director of Elections**

- 114.30.1** 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.
- 114.30.2** 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.
- 114.30.3** 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.
- 114.30.4** 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.
- 114.30.5** 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. 114.31 Appointment of the Director of Elections**

- 114.31.1** 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.

**Sec. 114.31 Appointment of the Director of Elections (cont.)**

- 114.31.2** 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.
- 114.31.3** 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.
- 114.31.4** 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. 114.32 Appointment Date**

- 114.32.1** 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.
- 114.32.2** 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.
- 114.32.3** The Elections Commission and the Department of Human Resources shall expedite the appointment processing necessary to effectuate the appointment of the Director of Elections.
- 114.32.4** 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.

**Sec. 114.32 Appointment Date (cont.)****114.32.4 (cont.)**

acted to select the person to be Director of Elections in a permanent civil service capacity.

**Sec. 114.33 Probationary Period**

**114.33.1** 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 any time during the probationary period. The decision of the Elections Commission to release the Director of Elections during the probationary period shall be final.

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

**Sec. 114.34 Renewal of Term**

**114.34.1** 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.

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

**114.34.3** 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.

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

**Sec. 114.35 Employment Rights**

**114.35.1** 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.

**Sec. 114.35**    **Employment Rights (cont.)****114.35.1**    **(cont.)**

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.

**114.35.2** 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.

**114.35.3** 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.

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

**Sec. 114.36**    **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. 114.37 Removal for Cause**

- 114.37.1** 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.
- 114.37.2** 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.
- 114.37.3** 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.
- 114.37.4** 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. 114.38 Appeal to the Civil Service Commission following Removal for Cause**

- 114.38.1** 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.
- 114.38.2** 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.

**Sec. 114.38 Appeal to the Civil Service Commission following Removal for Cause (cont.)**

- 114.38.3** 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 20<sup>th</sup> day falls on a non-business day, the deadline shall be extended to the close of business on the first (1<sup>st</sup>) business day following the 20<sup>th</sup> 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.
- 114.38.4** 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.
- 114.38.5** 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.
- 114.38.6** 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:
- 1) Cancel any current examination and eligibility status;

**Sec. 114.39 Appeal to the Civil Service Commission following Removal for Cause (cont.)**

**114.38.6 (cont.)**

- 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.

**114.38.7** 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.

**114.38.8** 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.



**Sec. 114.38 Appeal to the Civil Service Commission following Removal for Cause (cont.)**

**114.38.8 (cont.)**

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.

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

**Sec. 114.39 End of Term**

**114.39.1** 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:

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.

**114.39.2** 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.