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MEMORANDUM

TO: MEMBERS,
San Francisco Elections Commission

FROM: Julia A. Moll *JM*
Deputy City Attorney

DATE: July 1, 2005

RE: Operation and Governance of City and County Commissions

In anticipation of the upcoming Elections Commission retreat, scheduled for July 22, 2005, Commissioner Matthews requested that we provide general information about the operation and governance of City and County boards and commissions. This information is provided below. Please let me know if you have questions about this memorandum or would like additional information.

Exercising the Powers of the Commission

The Charter reposes the power and duties of a commission in the commission as a whole, and not in individual members. Charter § 4.102. The Charter and State law require commissions to act at public meetings at which there is an opportunity for public comment before action is taken. Charter § 4.104; California Government Code § 54953. (State and local open meeting laws are discussed in detail in the City Attorney's *Good Government Guide: An Overview of the Laws Governing the Conduct of Public Officials*.) In addition, as discussed below, a quorum of the commission must be present for the commission to act. Charter § 4.104; *see also* Govt. Code § 54952.6. Accordingly, a commission exercises its power as a body, and individual members have no authority to exercise powers of the commission as individuals. Commissions may designate individual commissioners to perform assigned duties. For example, a commission may designate an individual commissioner to monitor the progress of a departmental program and report information on the program to the commission.

Rules of Order and Bylaws

In addition to the State and local laws that govern the operation and governance of commissions, a commission may adopt rules or bylaws to address matters that are *not* addressed by State or local laws. Charter § 4.104(1). Generally, such rules and bylaws address issues such as the election, terms and duties of commission officers; the establishment of the regular meeting time and place of the commission; the procedure for setting agendas; and procedures relating to the establishment, duties of and assignments to committees of the commission. (A copy of the *Elections Commission Bylaws*, approved in 2002, is included in the materials for the July 22, 2005 retreat.)

City and County commission bylaws typically do not include detailed rules of order. Some commission bylaws provide that, where the bylaws are silent and there is no applicable

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law or rule, *Roberts Rules of Order* govern the conduct of commission meetings. Please note that, just as a commission may *not* adopt any rule that is inconsistent with State or local law, a commission may not rely on a provision of *Roberts Rules of Order* that is inconsistent with those laws. Some commission bylaws provide that, where the bylaws are silent and there is no applicable law or rule, the commission President has discretion to determine the conduct of commission meetings, subject to being overruled by a majority of the commission.

The adoption or amendment of commission rules or bylaws requires a public hearing, for which the commission must give at least ten days notice. Charter § 4.104. The commission must file copies of the rules or bylaws with the Clerk of the Board of Supervisors and the Library.

Quorum

Generally, a majority of the members of a commission constitutes a quorum for the transaction of business. Charter § 4.104; *see also* Govt. Code § 54952.6 (defining "action taken" as a collective decision or commitment made by a majority of members of a commission). For these purposes, "majority" means a majority of the number of members designated by law, rather than the number of seats actually filled. Charter § 4.104. For example, in order for a seven-member commission to take action on an item, at least four affirmative votes are required in support of the action. This is true even if, for example, two of the seven seats are vacant. In this example, a majority of the five commissioners actually available to vote on the matter is three, rather than four. Nonetheless, for purposes of establishing a quorum and voting, "majority" means a majority of the seven seats designated by law. Accordingly, four affirmative votes are required regardless of the number of seats actually filled or the attendance at any given meeting.

When a quorum of a commission fails to attend a scheduled meeting or the commission loses a quorum because of the departure of some of its members, the only official actions that the commission may take are to: (1) fix the time to which to adjourn; (2) adjourn the meeting; (3) recess the meeting; or (4) take measures to secure a quorum. *See generally* Govt. Code §§ 54955 and 54955.1. Any other action taken by the body is null and void.

Once a meeting is adjourned, members of the commission may remain to discuss any matter they choose with members of the public. In the event that documents are collected, notes taken or a recording made, they may be presented at the next meeting of the commission so that they become part of the public record of commission proceedings.

Voting

All votes, other than those permitted in a closed session, must be taken publicly. An absent member may not vote by proxy or by telephone. Charter §§ 2.108, 4.104(3); Govt. Code § 54953(c); Admin. Code § 67.26.

With two exceptions, the Charter requires members of commissions to vote on every matter before them. First, commissioners may not vote on any matter if the member's vote would violate a conflict of interest law. Second, a commissioner may be excused for any reason

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from voting on a matter by a motion adopted by a majority of members present. Charter § 4.104; Admin. Code § 1.29.

As mentioned above, the required number of votes needed for a commission to take action is based on the total number of seats, rather than the number of seats currently filled, the number of members present or the number of members qualified to vote on the item. Charter § 4.104.

Commission Officers and Committees of the Commission

As mentioned above, commissions generally adopt rules or bylaws establishing officers, responsibilities and terms for such officers, and committees of the commission. In general, the commission president presides over meetings, and has discretion to establish ad hoc committees of the commission, appoint members of committees, call special meetings and, in consultation with the department head, set agendas for meetings. Unless the rules or bylaws provide otherwise, neither the president nor vice-president of a commission has any greater authority than any other commissioners.

Where a commission has not adopted a specific process for electing officers, it may look to *Roberts Rules of Order* for guidance. *Roberts Rules of Order* provide several methods for electing officers. City and County commissions frequently use the following process:

- The presiding officer takes public comment on the agenda item.
- The presiding officer requests nominations for the office from the members of the commission. No second is required under *Roberts Rules of Order*.
- When no additional nominations are offered, the presiding officer closes the nominations.
- The commission votes on the nominations in the order in which they were made.
- The first candidate to receive a majority of the votes is elected to the office.

Term and Tenure of Members of the Elections Commission

The term of appointment to the Elections Commission is five years. Charter § 13.103.5. No person appointed to the Elections Commission may serve more than two successive five-year terms. Any person appointed to complete more than two and one half years of a five-year term is deemed to have served one full term. Any person who has served two successive five-year terms may not serve as a Commission member until at least five years after the expiration of the second successive term. Any Commission member who resigns with less than two and one half years remaining until the expiration of the term is deemed to have served a full five-year term.

In general, upon expiration of his or her term, a commissioner may continue to serve as a holdover until reappointed or replaced. The holdover commissioner is replaced by operation of law once the appointing officer appoints another candidate to the commission. The replacement candidate serves the unexpired portion of the five-year term.

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In the event a vacancy occurs, the appointing officer appoints a qualified person to complete the remainder of the term. Charter § 13.103.5.

The Commission Secretary

Provided that money is appropriated by the Mayor and Board of Supervisors for this purpose, the commission may appoint a secretary to manage the affairs and operations of the commission. Charter § 4.102. Generally, a commission secretary is responsible for arranging commission meetings; preparing and distributing notices, agendas, minutes and resolutions of the commission; providing information to the public regarding the commission's affairs; maintaining the commission's files and records; and carrying out additional duties as directed by the commission.

The commission secretary is appointed by and serves at the pleasure of the commission. The secretary's duty is to the commission, as whole, and not to individual commissioners. Accordingly, a commissioner should not ask the commission's secretary for individual reports, favors or special considerations. If a commissioner wants information that will require a significant amount of the staff time, the commissioner should bring the request to the commission to determine whether the secretary (or other staff) should pursue the task.

The City Attorney

The Charter provides that the City Attorney shall serve as legal counsel to the Elections Commission and the Department of Elections. Charter § 13.104.5. Accordingly, the City Attorney's Office regularly advises the Elections Commission and Department of Elections on a range of matters, some of which are specific to elections and others which relate to general administrative matters that all City departments face. For example, this Office advises on compliance with and enforcement of applicable federal, State and local elections laws; represents the City in election-related litigation; and assists in preparation of materials for publication in the Voter Information Pamphlet. In addition, this Office advises on the general laws that govern all City agencies. This general government advice includes advice on: compliance with notice and agenda requirements for public meetings; responses to public records requests; the City's contracting process; contract administration; and personnel.

The Charter authorizes the Elections Commission to use outside counsel under certain circumstances when the City Attorney is standing for election. The outside counsel must meet certain qualifications and comply with specific conflict of interest rules, and the Commission must pay for the outside counsel from the Elections Department budget. Charter § 13.104.5.

J.A.M.

cc: John Arntz
Shirley Rodriques