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## OFFICE OF THE CITY CLERK

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# REPORT

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### REPORT TO THE RULES AND ECONOMIC DEVELOPMENT COMMITTEE

DATE: June 26, 2013

REPORT NO.: 13-03

SUBJECT: Elections-Related Charter Clean-up

#### ISSUES

##### **1. Term of Office/Inauguration Date**

The Charter's required election date potentially conflicts with State law providing the Registrar of Voters more time to certify election results. City Charter §10 requires the City's general municipal elections to be held on the same date as the California State general election for the pertinent year. Those general elections are scheduled for the first Tuesday following the first Monday in November of even numbered years (California Elections Code (CEC) §1200).

The term of office for Mayor and Councilmembers runs "from and after 10 a.m. the first Monday after the first day of December next succeeding their election and until their successors are elected and qualified." (Charter §12 (e)) Thus, depending upon the specific election year, the term of office may begin from 27 to 34 days following the election date.

This may not allow the Registrar of Voters (ROV) sufficient time to complete the final canvass, as CEC §15372 currently provides up to 28 days to certify election results. In addition, Senate Bill 29 has currently been referred to Committee. This bill relates to the acceptance of vote-by-mail ballots, and extends the Registrar of Voters certification time from 28 days to 30 days, which would further impact the City's ability to comply with its Charter.

##### **2. Special Election to Fill a Vacancy**

The City's timing for special elections potentially conflicts with related state laws. In the event of a vacancy being filled by special election, where no candidate receives a majority of votes cast in the special election, City Charter 12(h)(ii) requires that a special run-off election be held within 49 days of the first

(primary) special election. The Charter allows for an exception in the event there is a regular municipal or statewide election scheduled to be held within 90 days of the proposed special run-off election date; should that be the case, then the special run-off election may be consolidated with the regular election.

[Charter §12(h)(1)(B)(ii)]

As noted above, CEC §15372 provides up to 28 days to certify election results. Further, Californians may start voting by mail and in person 29 days before an election, potentially requiring at least 57 days between the first and run-off special elections. Additionally, the state's most current procedures for military and overseas voters (AB 1805) became effective in 2013 (CEC §3101 et seq.), adding an additional requirement that ballots be mailed to qualified military and overseas voters not later than 45 days before an election. Together, these timeframes create a potential conflict between the requirements of state law and the requirements of the City Charter. That potential grows when factoring in the time needed to docket the legislative body's approval the first special election results.

## DISCUSSION

### **Term of Office/Inauguration Date**

Given the fact there was no single elegant solution to the issue related to Term of Office/Inauguration Date, several alternatives are presented here with factors to consider:

1. Move the Inauguration date to a "date certain" in mid-December (e.g., the 2<sup>nd</sup> Monday in December).

Factors to Consider:

- A date in mid-December should provide ample time for the Registrar of Voters to certify the results – even in the event of a close race and/or a request for a recount.
- Selecting a specific date allows the Council to plan around it in terms of quorum considerations; the Clerk would be able to reserve space and prepare for the Inauguration event.
- There are several holidays in December which may create quorum issues and/or impact participation by the public.
- Selection of Council President/Committee Assignment/Outside Appointments would have to occur after this date, so would likely be in late December, requiring a Special Meeting, leaving little time for logistics to start in the new year.

2. Hold the Inauguration within 10 Days of receiving Registrar of Voter Certification.

Factors to Consider:

- This would resolve any issue regarding obtaining the certification.
- Organization of the inauguration event, quorum, and participation would all be difficult to coordinate – depending on when the certification occurred.
- The open-ended nature of this scenario creates logistical challenges not just for the event itself, but for all subsequent meetings for selection of Council President/Committee Assignment/Outside Appointments.

3. Hold the Inauguration at the first Regular City Council Meeting in Chambers where the election certification could be approved (likely early to mid-December).

Factors to Consider:

- Removes some of the ceremonial nature of the current inauguration event.
- The election certification and swearing-in could be first items on the agenda, selection of Council President the next item.
- This could push Committee Assignment/Outside Appointments into January (may conflict with outside appointment calendars [SANDAG, etc.]).
- This would provide minimal time for a newly elected Mayor to transition administrations and/or plan for the State of the City Address (which, per the Charter, must occur on or before January 15<sup>th</sup> of each year).
- Could create similar quorum/participation issues as noted in items 1 and 2 above because of the late date.

4. Create a two-step process; informal swearing-in in Clerk's Office or at City Council Meeting where results are certified, more formal Inauguration ceremony in January.

The current date reference to Charter (1<sup>st</sup> Monday after the 1<sup>st</sup> of December) would be removed and all Charter references to term of office would be modified with more flexible language. (An example is: "The phrase 'four years' as used in this section shall mean the period between the date of the declaration of the results of any general municipal election held in November of any even numbered year and the date of the declaration of the results of any general municipal election held in November of any immediately preceding or immediately succeeding even-numbered year even though such period may be more or less than an actual period of four years.").

Factors to Consider:

- This would allow for election of Council President/Committee Assignments/Outside Appointments to occur much in the same way as present.
  - A ceremonial Inauguration date in January provides time to plan and prepare; avoids the holiday issues or quorum and participation.
  - Depending on timing, may conflict with or impact the State of the City Address, which must occur on or before January 15<sup>th</sup> of each year: preparation for lists of invitations, venue selection, and other logistics – especially in an election year where a new Mayor is selected.
5. Have an informal swearing-in for elected officials at the first Regular Council Meeting where certification of results can occur; combine the ceremonial Inauguration event with the Mayor’s State of the City.

Factor to Consider:

- This would resolve any issue regarding obtaining the certification.
- This would eliminate quorum issues and/or logistical issues regarding selection of Council President/Committee Assignment/Outside Appointments.
- Both the Inauguration and the State of the City are Council Meetings that involve the organization of a suitably large venue with a VIP invitation list, coordination of a more ceremonial National Anthem singer, invocator, etc. Combining the evens could create efficiencies and heighten the ceremonial nature of both events.
- This would require input and weigh-in by the Mayor.

For benchmarking information from other California jurisdictions related to Term of Office/Inauguration dates, see Attachment 1.

### **Special Election to Fill a Vacancy**

Given the fact there was no single elegant solution to the issue related to Special Election to Fill a Vacancy, several alternatives are presented here with factors to consider:

1. Temporarily fill any vacancy by appointment of the Council (with language to prevent the appointee from running for that office) and fill at the next Regular City Election.

Factors to Consider:

- The District in question would have immediate appointed representation.

- With the current City election cycle, the maximum amount of time filled by appointment would be two years.
- Filling the vacancy as a part of the regular election cycle would produce significant savings (v. Special Election).

2. Revise the City's Charter to be consistent with the California Elections Code on the issue of Special Election timing. Pursuant to current state law, a special election to fill a vacancy in the office of Representative in Congress, State Senator, or Member of the Assembly must be called for a Tuesday 126-140 days following the Governor's election proclamation, unless it may be consolidated with the next regularly scheduled statewide election within 180 days of the Governor's proclamation. (CEC §10703; the special election may also be consolidated with certain regularly scheduled local elections as described in this section).

The date of the special primary election is established by counting backward from the date of the special election to fill the vacancy, to either the ninth preceding Tuesday; or to the tenth preceding Tuesday if the ninth Tuesday is the day of or the day following a state holiday. (CEC §10704) This timeframe allows for 63-70 days between the two special elections.

Neither the special primary nor the special general may be conducted on the day after a state holiday. (CEC §§10703, 10704)

Factors to Consider:

- Referencing the California Elections Code might eliminate the need to update the Charter when updates/changes are made to State law.
- The City's Municipal Code would need to be updated.
- This may lengthen the time it takes to fill a vacancy (as opposed to current Charter requirements).

3. Increase the 49-day requirement to 90 days (or 120 days or no more than 180 days).

Factors to Consider:

- This might only create a temporary fix if additional legislative requirements impact the Registrar of Voters in such a way that additional time is required to properly mail, notice or allow for early voting.
- The timeframe for filling a vacancy would lengthen.

## Other Factors to Consider:

- Additional clean-up in this section: remove “regular” as a qualifier for consolidation with a statewide election to allow flexibility so that the City could consolidate with either a regular or special statewide election.

For benchmarking information from other California jurisdictions related to filling a vacancy, see Attachment 2.

## SUMMARY AND NEXT STEPS


### Term of Office/Inauguration Date

- There is no elegant solution to the issue of the timing of the certification and the ceremony as it has been historically conducted in the City of San Diego.
- This report provides several possible solutions; as well as benchmarking information from a variety of other California jurisdictions.
- Upon receiving direction from this body, a follow-up report could be prepared with a recommendation to return for additional discussion in September or October.
- The ultimate goal is to get a proposed ballot measure to this body in January 2014 as part of the Council Policy 000-21 process for reviewing proposed measures for the June 2014 ballot.

### Special Election for Filling a Vacancy

- A temporary appointment, with the seat to be filled at the next regular City of San Diego election provides immediate representation to a vacant Council seat and saves the City money by allowing the permanent fill to occur as part of the regular election cycle; however, there are a variety of iterations on this theme with regard to both the appointment and the type and length of the election cycle that may be considered prior to bringing forward a draft ballot measure.
- The ultimate goal is to get a proposed ballot measure to this body in January 2014 as part of the Council Policy 000-21 process for reviewing proposed measures for the June 2014 ballot.

The City Attorney's Office will make the determination as to whether election laws would allow one "Elections Clean-up" ballot measure that would capture both elements above, or would require the two topics to be presented as separate ballot measures.



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City Clerk

cc: Jan Goldsmith, City Attorney  
Andrea Tevlin, Independent Budget Analyst  
Scott Chadwick, Chief Operating Officer

Attachment 1

INAUGURATION BENCHMARKING FOR CALIFORNIA JURISDICTIONS WHICH CONSOLIDATE RUN-OFF ELECTIONS WITH NOVEMBER STATE GENERAL ELECTIONS		
JURISDICTION	TERM BEGINS	INAUGURAL EVENT?
Alameda Pop: 73,812	8:00 p.m. on the third Tuesday of the month following the general municipal election (Charter)	Small reception between swearing in and re-start of Council meeting.
Anaheim Pop: 336,265	elected officials sworn in at first Council meeting following receipt of ROV's election certification	Small reception between swearing in and re-start of Council meeting.
Bakersfield Pop: 347,483	2 <sup>nd</sup> meeting in December after election results are certified. (Charter)	Mid-December installation and valediction ceremony during Council meeting (election results certified; oaths administered; meeting recessed for reception, then reconvened)
Berkeley Pop: 112,580	first day of December after their election is certified by the City Clerk (Charter)	Council determines whether to break and/or hold reception following swearing-in; varies from year to year
Chula Vista Pop: 243,916	first Tuesday in December; if not, upon taking the oath of office, which shall be given at the first City Council meeting following certification of the election results (Charter)	Swearing-in ceremony as part of Council meeting; small reception following the meeting
Huntington Beach Pop: 189,992	first meeting in December (Charter)	Planned by Mayoral staff. Small reception held after leaving office members make statements, meeting reconvened and new office members take oath.
Oakland Pop: 390,724	11:00 a.m., on the Monday following January 1 (Charter)	2013 inauguration ceremony in Chambers concluded with cake and refreshments outside Chambers



INAUGURATION BENCHMARKING FOR CALIFORNIA  
 JURISDICTIONS WHICH CONSOLIDATE RUN-OFF ELECTIONS  
 WITH NOVEMBER STATE GENERAL ELECTIONS

JURISDICTION	TERM BEGINS	INAUGURAL EVENT?
Poway Pop: 47,811	following certification of election results (General Law)	Small reception between swearing in and re-start of Council meeting.
Sacramento Pop: 466,488	fourth Tuesday following the first Monday in the month of November (Charter)	Swearing-in ceremony followed by meet-and-greet prior to Council meeting.
<b>San Diego, City Pop: 1,307,402</b>	<b>10:00 a.m. first Monday after the first day of December</b>	<b>Swearing-in ceremony followed by refreshments, then proceed to afternoon council meeting.</b>
San Diego County Pop: 3,095,313	Noon on the first Monday after January 1 (Charter)	Swearing-in ceremony with small reception following.
San Jose Pop: 945,942	January 1 (Charter)	If there is an event, it is private.
Santa Ana Pop: 324,428	6:00 p.m. 2nd Tuesday of December (Charter)	Reception is planned and executed by City Manager staff.

Attachment 2

BENCHMARKING OF CALIFORNIA JURISDICTIONS REGARDING FILLING OF A VACANCY			
JURISDICTION	APPOINT OR SPECIAL	IF SPECIAL, AMOUNT OF TIME TO HOLD	AMOUNT OF TIME TO HOLD RUN-OFF
Alameda Pop: 73,812	Appointment and then fill by regular election. (Charter)	N/A	N/A
Anaheim Pop: 336,265	Appointment and then fill by regular election. (Charter)	No, when filled by appointment, there may be a special election called and consolidated with a regularly scheduled election if one occurs before the end of the term	Consolidated with regularly scheduled election.
Bakersfield Pop: 347,483	If unexpired term is less than 6 months, filled by appointment. If more than 6 months, constituents have 4 weeks to file petition for a Special Election. If a valid petition is not filed Council can choose Special Election or fill by appointment. (Charter)	If Special, must be called not less than 90 no more than 180 days of petition being certified.	No language regarding Run-off
Berkeley Pop: 112,580	Appointment if term is less than 1 year, Special if term is more than 1 year. (Charter)	No less than 60 days no more than 90 days	Uses Instant run-off, no Special run-off
Chula Vista Pop: 243,916	Appointment if term is less than 1 year, Special if term is more than 1 year. (Charter)	Within 120 days of vacancy, or if there is a scheduled election within 180 days, the election can be consolidated	either on the next regularly scheduled election date set by state or within 120 days of certification of the Special Election
Huntington Beach Pop: 189,992	Appointment (Charter)	N/A	N/A

**BENCHMARKING OF CALIFORNIA JURISDICTIONS  
REGARDING FILLING OF A VACANCY**

JURISDICTION	APPOINT OR SPECIAL	IF SPECIAL, AMOUNT OF TIME TO HOLD	AMOUNT OF TIME TO HOLD RUN-OFF
Los Angeles Pop: 3,792,621	Appointment or Special Election (Charter)	No, but if filled by appointment, the special election may still be called during a normally scheduled election if there is still remaining term.	Scheduled with regularly scheduled election.
Oakland Pop: 390,724	Special (Charter)	Within 120 days of vacancy, or if there is a scheduled election within 180 days, the election can be consolidated	if rank choice voting is not used, run-off election must be held within 60 days after the date of the Special Election
Poway Pop: 47,811	Appointment or special election (GC section 36512;MC is silent)	Without additional Council action, an appointment must be made within 60 days of vacancy , or a special election must be called within 60 days of vacancy. Election must be held on next established election date not less than 114 days from date of calling.	No run-off; top vote-getter is elected to office.
Sacramento Pop: 466,488	Appointment if term is less than 1 year, Special if term is more than 1 year. (Charter)	Must be called within 14 days of vacancy, not set time when election should be held	Candidate receiving most votes wins, no run-off
<b>San Diego, City Pop: 1,307,402</b>	<b>Appointment if term is less than 1 year, Special if term is more than 1 year. (Charter)</b>	<b>Special Election must be held within 90 days of the vacancy, if there is a scheduled election within 180 days, the election can be consolidated.</b>	<b>49 days after Special or if there is a Statewide election within 90 days it can be consolidated.</b>

**BENCHMARKING OF CALIFORNIA JURISDICTIONS  
REGARDING FILLING OF A VACANCY**

JURISDICTION	APPOINT OR SPECIAL	IF SPECIAL, AMOUNT OF TIME TO HOLD	AMOUNT OF TIME TO HOLD RUN-OFF
San Diego County Pop: 3,095,313	Appointment or Special (Charter)	If Special, between 56 to 64 days following the adoption to call the special election. If there is a general election within 180 days, the election can be held then.	Special General shall be held on the 4th Tuesday after the Special Primary
San Francisco Pop: 805,235	Appointment and then Special Election (Charter)	No, but if filled by appointment, there may be a special election called if a regularly scheduled election occurs before the end of the term.	Typically uses Rank Choice Voting, but Charter indicates if Rank Choice is not used, run-off must be held within 5 weeks.
San Jose Pop: 945,942	Appointment and then Special Election (Charter)	No, but if filled by appointment, there may be a special election called if a regularly scheduled election occurs before the end of the term.	N/A
Santa Ana Pop: 324,724	Appointment (Charter)	N/A	N/A