OFFICE OF THE CITY CLERK

REPORT

REPORT TO THE RULES AND ECONOMIC DEVELOPMENT COMMITTEE

DATE: September 16, 2013 REPORT NO.: 13-04

SUBJECT: Elections-Related Charter Clean-up: Inauguration Date and Special Elections

ISSUES

1. Term of Office/Inauguration Date

The Charter's required inauguration date potentially conflicts with State law, which provides 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, California 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. 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 46 days before an election. Prior to the Registrar of Voters mailing out these ballots, the certified election results must be docketed and placed before the legislative body for approval, the run-off election called, the top two vote getters must review their Statement of Qualifications and the ballot must be translated and printed, requiring an estimated 10 additional days.

PROPOSED SOLUTIONS

Term of Office/Inauguration Date

Recommendation: Move the Inauguration date to December 10th date certain, unless the 10th falls on a weekend. If it falls on a weekend, the Inauguration date would be moved to the Monday following the weekend date on which the 10th fell.

Elements to Consider:

- Per Attachment A, the proposed date allows for 32 – 38 days after the November election before the inauguration, which should be ample time given current and proposed state-driven election certification timeframes.
- The date certain provides consistency with regard to term of office.
- A specific Inauguration date allows for planning and preparation.
- Legislative calendar issues could be appropriately addressed by the legislative body in advance.

Special Election to Fill a Vacancy

Recommendation: Allow a special run-off election to be held as soon as possible within 90 days of the first (primary) special election, instead of the current 49 days referenced in City Charter section 12(h)(ii).

Elements to Consider:

- Requirements driving the 90 days cited in the recommendation:
  - The Registrar of Voters has up to 28 days to certify the results of an election.
  - An estimated 10 additional days are required to allow for legislative body action, translation and printing of material.
  - Per California Assembly Bill 1805, ballots for military & overseas voters must be mailed 46 days prior to an election.
- Although the requirements listed above add up to 84 days (28+10+46), the recommendation of 90 days allows flexibility for any additional state requirements that increase the timeframe and/or any timing issues related to docketing, printing or translation related to the 10 day estimate above.
- The simple expansion of the timeframe allows for minimal change to the Charter while addressing current state law constraints.
- The recommendation allows for a maximum timeframe of 90 days; adding "as soon as possible" within that timeframe would communicate the goal of moving with optimal efficiency.

OTHER DISCUSSION POINTS

At the July 10, 2013, Rules and Economic Development Committee Meeting, additional direction was given to research the following elements:

State Elections Code

Additional research was conducted with regard to the possibility of modifying the City's Charter to either reflect the State Elections Code with regard to a special election/special run-off election scenario, or simply to reference the Elections Code itself.

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)

As it turns out, this option is not a possibility; a citywide special election in the City of San Diego would not allow for a timeframe sufficient to meet all state-driven requirements.

Interim Appointment Prior to Election

A request was made with regard to a possible hybrid option that would include an interim appointment prior to an election to fill the vacant seat.

The Municipal Code currently requires that an appointment to fill a vacancy in any elective office shall be made within thirty business days of the date of the vacancy. (SDMC §27.0801) In addition, the filing requirements for applicants include, notably, a petition with signatures from at least 50 registered voters and a 500 word statement of qualifications. (SDMC §27.0804)

Depending on the timing of the election to fill the vacancy, there is the possibility that the application period would overlap with a candidate nominating period. Nominating Papers include, notably, a petition with at least 100 registered voters for a vacancy in a particular Council District and 200 registered voters for a vacancy in a city wide office. (SDMC §27.0210) A 200 word statement of qualifications is permitted. (SDMC §27.0620)

This hybrid option, tantalizing though it is with the idea of almost immediate representation in a vacated elected office, must be set aside given the potential for confusion among applicants and candidates, and the fact that this concept requires further research by the City Attorney to determine whether of not it is legally sound.

RECOMMENDATION

Recommendation:

- Request that the City Attorney prepare specific ballot language incorporating the two recommendations above for consideration at the Rules and Economic Development Committee as part of the Council Policy 000-21 process in January 2014.

- The goal is to get this clean-up item on the June 2014 Primary 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.

Elizabeth Maland
City Clerk

cc: Jan Goldsmith, City Attorney
Andrea Tevlin, Independent Budget Analyst
Walt Ekard, Interim Chief Operating Officer

Attachment A

E-Year	1st TU after 1st MO in Nov (statewide general e-date)	28 Days to Certify (current)	30 Days to Certify (proposed: SB 29)	1st MO after 12/1 (current inaug date)	Days After Election (27 or 34)	December 10 (proposed) Day of Week	Days After Election (34-38)
2014	11/4	12/2	12/4	12/8	34	We	36
2016	11/8	12/6	12/8	12/5	27	Sa→Mo 12/12	32→34
2018	11/6	12/4	12/6	12/3	27	Mo	34
2020	11/3	12/1	12/3	12/7	34	Th	37
2022	11/8	12/6	12/8	12/5	27	Sa→Mo 12/12	32→34
2024	11/5	12/3	12/5	12/2	27	Tu	35
2026	11/3	12/1	12/3	12/7	34	Th	37
2028	11/7	12/5	12/7	12/4	27	Su→Mo 12/11	33→34
2030	11/5	12/3	12/5	12/2	27	Tu	35
2032	11/2	11/30	12/2	12/6	34	Fr	38
2034	11/7	12/5	12/7	12/4	27	Su→Mo 12/11	33→34
2036	11/4	12/2	12/4	12/8	34	We	36
2038	11/2	11/30	12/2	12/6	34	Fr	38
2040	11/6	12/4	12/6	12/3	27	Mo	34
2042	11/4	12/2	12/4	12/8	34	We	36
2044	11/8	12/6	12/8	12/5	27	Sa→Mo 12/12	32→34
2046	11/6	12/4	12/5	12/3	27	Mo	35
2048	11/3	12/1	12/3	12/7	34	Th	37
2050	11/8	12/6	12/8	12/5	27	Sa→Mo 12/12	32→34
2052	11/5	12/3	12/5	12/2	27	Tu	35
2054	11/3	12/1	12/3	12/7	34	Th	37
2056	11/7	12/5	12/7	12/4	27	Su→Mo 12/11	33→34
2058	11/5	12/3	12/5	12/2	27	Tu	35
2060	11/2	11/30	12/2	12/6	34	Fr	38
2062	11/7	12/5	12/7	12/4	27	Su→Mo 12/11	33→34
2064	11/4	12/2	12/4	12/8	34	We	36

NOTE: Does not take the potential for recounts into consideration.

☐ *canvass may not be final* ▩ *inaug date coincides w/Council meeting day* ☐ *proposed inaug date is 1-4 days later than under current Charter*