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City Attorney

**MEMORANDUM**

TO: THE HONORABLE MATT GONZALEZ  
President, San Francisco Board of Supervisors

THE HONORABLE JAKE McGOLDRICK  
Member, San Francisco Board of Supervisors

ALIX ROSENTHAL  
President, San Francisco Elections Commission

JOHN ARNTZ  
Director of Elections

FROM: DENNIS J. HERRERA  
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THERESE STEWART  
Chief Deputy City Attorney  
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Deputy City Attorney

DATE: July 15, 2003

RE: Implementation of Instant Runoff Voting (Proposition A, March 5, 2002)

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Each of you has sought advice concerning the implementation of instant runoff voting in San Francisco. Because of the similarity of the questions, we address them together in this memorandum. Please let us know if we can provide further information or assistance.

**Questions Presented**

1. May the City use a ranked-choice voting system if that system has not been certified for use by the California Secretary of State?
2. If the City does not have a certified and tested ranked-choice voting system in time for use in the November 2003 election, may the City use a ranked-choice ballot and hand-count those ballots?
3. If the City does not have a certified and tested ranked-choice voting system in time for use in the November 2003 election, may the City conduct the election without using ranked-choice voting?
4. May the City undertake contingency plans now for the November 2003 election that do not involve ranked-choice voting?

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5. If the City is unable to use ranked-choice voting in November 2003, and if no candidate receives a majority of the votes cast, would the candidate who receives the highest number of votes be elected, or would the two candidates receiving the most votes qualify for a separate runoff election to be held at a later date?

### **Summary of Advice**

1. Except where "otherwise provided," the Charter incorporates provisions of the California Elections Code, including those governing evaluation, testing and approval of voting systems by the Secretary of State. San Francisco did not otherwise provide for the use of a system not certified by the Secretary of State and therefore must comply with this requirement.

2. Based on the language of the Charter, which incorporates terms of art from the California Elections Code, a court is likely to conclude that the voters expected the City to use a ranked-choice ballot with a computerized vote counting and tabulating system. However, a court could interpret the Charter to permit a hand-count if the procedure could produce reliable, accurate election results that could be certified in time to meet state law deadlines and that are subject to provisions of state law designed to protect the integrity of election results. Even if a court might conclude that the Charter authorizes the use of a ranked-choice ballot and a hand-count of those ballots, the approval of the Secretary of State's Office would likely still be required.

3. If, despite its best efforts, the City does not have a certified and tested instant runoff voting procedure in time for use in the November 2003 election, the City would have to delay implementing instant runoff voting until the next election. Under those circumstances, the most reasonable interpretation of the Charter is that the City must use the voting system in effect before adoption of instant runoff voting, namely a general election with a conventional ballot.

4. Unless and until it becomes clear that the City cannot implement instant runoff voting in time for the November 2003 election, the City must continue to take all steps necessary to implement the new system. Notwithstanding this obligation, because time is running short and it is possible the City will not be able to implement the new voting system for this election, the City may develop contingency plans to deal with this possibility.

5. The Charter does not specifically address the situation in which (a) the City is unable to implement instant runoff voting for the November 2003 election, (b) the City uses its conventional voting system at that election, and (c) no candidate at that election receives a majority of the votes cast for the office sought by the candidate. Because the voters clearly intended to preserve the majority vote requirement with the adoption of instant runoff voting, and because the Charter did provide that if instant runoff voting could not be implemented in November 2002 the City would hold a separate runoff election if necessary to ensure that the winning candidate received at least a majority of the votes cast, a court would likely require that the City conduct a separate runoff election if no candidate at the November 2003 election receives a majority of the votes cast for the office sought by the candidate.

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### **Background**

San Francisco has long required that most City officers be elected by majority vote. Before March 2002, the Charter provided that if no candidate received a majority of the votes cast for the office at the general municipal election, there would be a separate runoff election between the two candidates receiving the highest number of votes.<sup>1</sup> In March 2002, the San Francisco voters amended the Charter to require the use of "instant runoff" or "ranked-choice" voting to elect most City officers by majority vote.<sup>2</sup> The purpose of the Charter amendment, which was entitled "Instant Runoff," was "to eliminate *separate* runoff elections," saving the City "approximately \$1.6 million annually" and avoiding low voter turnout. March 5, 2002 City and County of San Francisco Voter Information Pamphlet, Digest and Controller's Statement (emphasis added); *see also id.*, Proponent's Argument In Favor Of Proposition A (instant runoff would "SAVE \$2 MILLION TAX DOLLARS PER YEAR," "RAISE VOTER TURNOUT," "REDUCE NEGATIVE CAMPAIGNING," and "make our elections more EFFICIENT and LESS EXPENSIVE").

The instant runoff Charter amendment (now Charter § 13.102) contemplated that the City might not be ready to implement the new voting system for the election in November 2002, only eight months after the voters approved the amendment. Section 13.102 explicitly provides that if the Director of Elections certified to the Board of Supervisors and the Mayor no later than July 1, 2002 that the Department was not ready to implement instant runoff voting in November 2002, then the City was required to begin using instant runoff voting in November 2003. In that circumstance, Section 13.102 expressly preserved the majority vote requirement and separate runoff procedure for candidates at the November 2002 election. As Acting Director of Elections, John Arntz certified to the Board and Mayor before July 1, 2002 that the Department was not ready to implement instant runoff voting in November 2002. As a result, the Department conducted a separate runoff election for certain offices in December 2002.

When enacting the instant runoff Charter amendment, the voters did not contemplate that circumstances beyond the City's control might prevent the City from implementing instant runoff voting for the *November 2003* election. Specifically, the voters did not contemplate that a certified and tested instant runoff voting system might not be available to the City in time for effective implementation in November 2003.

The City's efforts to obtain a fully tested and certified instant runoff voting system began almost immediately after adoption of the Charter amendment, when the City began searching for an elections vendor to modify its optical scan voting equipment and software to implement the new voting system. Once the City determined that there was no other qualified, interested elections vendor, the City negotiated with its current vendor, ES&S, to provide this modification.<sup>3</sup>

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<sup>1</sup> School Board and Community College Board officials do not have to be elected by a majority, so no runoff election was required for those elections.

<sup>2</sup> As with the predecessor provision regarding runoffs (*see note 1, supra*), instant runoff voting applies to all elected officials except members of the Board of Education and the Community College Board.

<sup>3</sup> Starting in March 2002, the City requested that ES&S provide a detailed proposal, timeline and cost estimate for implementation of instant runoff voting. Following the City's initial request, ES&S proposed that the City acquire from ES&S a new touch-screen voting system rather than modify the City's existing voting equipment. In May 2002, the Elections Commission formally requested that ES&S provide its detailed proposal, timeline and cost estimate for modification of *the City's existing voting equipment*, and apply to the Secretary of State for all required

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In its contract negotiations with ES&S, the City originally asked that ES&S deliver a fully tested and certified system no later than July 1, 2003. The Department of Elections set this deadline so it could complete sufficient testing, training and public education to use the new system in November 2003. The Department of Elections must thoroughly test any new voting system, train more than 1,000 staff members and poll workers to operate the new system, and educate San Francisco voters about how to cast ranked-choice ballots. As indicated above, the Charter amendment recognized that these steps take time, and specified *July 1, 2002* as the last date for the Director of Elections to certify whether the City would be ready to implement instant runoff voting for the *November 2002* election.

As the July 1, 2003 deadline approached and ES&S had not submitted its system to the Secretary of State for testing and certification, the Director of Elections extended the July 1, 2003 deadline to August 1, 2003. He did so in the hope that providing ES&S more time would enable it to deliver the voting system and obtain certification soon enough to avoid jeopardizing the City's ability to complete the necessary testing, training and public education and outreach. The Director concluded that as long as ES&S met certain critical deadlines and performance milestones *before July 1, 2003*, and if there was no reason to doubt that ES&S would deliver a fully tested and certified system by August 1, 2003, the City could wait until August 1, 2003 for delivery of the new voting system. The City's contract with ES&S specifies a number of critical performance milestones, and requires that ES&S pay liquidated damages to the City for failure to meet these milestones.

Notwithstanding ES&S's awareness of the legal mandate to implement instant runoff voting no later than November 2003 and of the need for ES&S to obtain certification of its system from the Secretary of State before its use by the City, the ES&S application to the California Secretary of State for testing and certification remains incomplete.

While the Department of Elections extended the ES&S deadline to August 1, 2003 and has continued to work with ES&S to implement instant runoff voting for the November 2003 election, the Department developed an alternative to the ES&S system known as "Ranked-Choice Voting Manual Data Capture and Tabulation Procedures" (the "partial hand-count plan"). This plan combines hand-counting of ranked-choice ballots with computerized tabulation of votes. The Department developed the partial hand-count plan for use if and only if ES&S fails to deliver a fully tested and certified instant runoff voting system by August 1, 2003, as required by the City's contract. The City's application for certification of the partial hand-count plan will be considered by the Secretary of State on July 28, 2003. As of today, the ES&S application is still incomplete, testing of the ES&S system has not yet begun and no date has been set for a public hearing on the system.

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approvals. ES&S did not submit a proposal to the City until September 4, 2002, and the proposal was not responsive to the Elections Commission's request. The proposal did not include the requested detail about modification of the existing voting equipment, and again recommended acquisition of new touch screen voting equipment. In October 2002, the Acting Director of Elections again formally requested that ES&S provide, this time no later than December 1, 2002, a detailed proposal, timeline and cost estimate for modification of the City's existing voting equipment. The Acting Director proposed to negotiate, no later than January 1, 2003, a modification of the City's contract with ES&S that would guarantee the City's ability to meet the November 2003 implementation deadline. ES&S did not submit its proposal until January 10, 2003, and contract negotiations did not begin until February 2003.

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Because there is still time for the Secretary of State to certify either the ES&S system, the partial hand-count plan, or both, the City may not need to resolve the questions you asked us to address. And it is incumbent on the City to do everything possible within the law to have a reliable instant runoff voting system in place for the November 2003 election. Notwithstanding that, if the City is unable for reasons beyond its control to accomplish that objective, it will have little time to make and implement a decision about how the November 2003 election should be conducted. For this reason, we now respond to the questions you have posed.

### Analysis

#### **1. May the City use a ranked-choice voting system if that system has not been certified for use by the California Secretary of State?**

Charter Section 13.100, enacted as part of the 1996 Charter, states that, unless “otherwise provided,” all City and County elections “shall be governed by the provisions of applicable state laws.” No Charter provision expressly provides that San Francisco will not follow state law requirements concerning state testing and certification of voting systems. Under state law, local jurisdictions may not use a “voting system” unless the system is certified by the Secretary of State. *See* Cal. Elect. Code § 19201 (no voting system may be used unless approved by the Secretary of State prior to the election at which it is to be first used); *see also* Cal. Elect. Code § 19200 (the Secretary of State shall not approve any voting system or part of a voting system unless the system fulfills the requirements imposed by the California Elections Code and regulations adopted by the Secretary of State).<sup>4</sup>

As discussed above, both ES&S and the City have applications pending before the Secretary of State for approval of an instant runoff voting system.<sup>5</sup> The ES&S application is for a computerized system of counting and tabulating votes. The City application is for a combined system that involves hand-counting of ranked-choice ballots and computerized tabulation of votes. Under state law, a “voting system” is “any mechanical, electromechanical, or electronic system and its software, or any combination of these used to cast or tabulate votes, or both.” Cal. Elect. Code § 362. This definition encompasses any method of casting, counting or tabulating

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<sup>4</sup> State law does not mandate that the Secretary of State act on an application within a specified period of time. Instead, the law provides that the Secretary of State shall complete his or her examination of each proposed voting system “without undue delay.” Cal. Elect. Code § 19202. The Secretary of State can determine the time and place for examining a proposed voting system. Cal. Elect. Code § 19203. Upon completing the examination, the Secretary of State is required to deliver a report of his or her findings to the Governor and Attorney General. *Id.* Before deciding whether to approve a new voting system, the Secretary of State is required to hold a public hearing on the application. Cal. Elect. Code § 19204. The Secretary of State must provide at least 30 days notice of the hearing. *Id.* The Secretary of State’s decision concerning certification must be in writing. *Id.* Within 30 days after completing the examination of a proposed voting system, the Secretary of State must produce a public report stating whether the system may be used. Cal. Elect. Code § 19207.

<sup>5</sup> According to information gathered by the Department of Elections, no instant runoff voting system is used in any public election in the United States. Although Cambridge, Massachusetts uses a comparable “proportional voting” system, the Cambridge system differs from instant runoff voting in San Francisco in several important ways. The Cambridge system allows voters to allocate votes among the field of candidates. Under that system, there is no elimination of candidates or redistribution of votes. In addition, Cambridge uses this voting system for only one elective office, uses only one ballot card per voter, has approximately 40,000 registered voters, and has a typical voter turnout of under 20,000 voters.

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votes that involves the use of machinery, including but not limited to computers.<sup>6</sup> Because both the ES&S and the partial hand-count systems involve the use of computerized tabulation of votes, Section 13.100 requires Secretary of State certification of both.

Although no Charter provision expressly "otherwise provides" for the use of a voting system that the Secretary of State has not approved, an argument could be made that section 13.102 implicitly "otherwise provides" for use of such a voting system. The argument would be that by requiring the City to implement ranked-choice voting in the November 2003 election, section 13.102 provides that such a system must be implemented irrespective of Secretary of State approval.

A court is unlikely to reach that conclusion. The fundamental task of statutory interpretation, including charter interpretation, is to determine the intent of the legislative body in enacting the measure. *White v. Ultramar Inc.*, 21 Cal.4th 563, 572 (1999). Courts use a three-step process to determine legislative intent. *See Roosevelt Soil v. Superior Court*, 55 Cal.App.4th 872, 875 (1997). First, the court must examine the language of the measure, giving its words their ordinary, everyday meaning. *Halbert's Lumber, Inc. v. Lucky Stores, Inc.*, 6 Cal.App.4th 1233, 1238 (1992). If the language is ambiguous or uncertain, the court must consider the legislative history. *See id.* at 1239. Ballot arguments and other materials presented to the voters may be used as legislative history to help determine the intent of the electorate. *Hodges v. Superior Court*, 21 Cal.4th 109, 113-115 (1999). If the first two steps do not provide an answer, the court must apply common sense to the language and, if possible, interpret the words in a manner that makes them reasonable and in accord with common sense, and that avoids an absurd result. *Halbert's Lumber, Inc.*, 6 Cal.App.4th at 1239.

Section 13.102 is silent as to compliance with state law. And, as discussed above, the voters intended to reduce the cost and increase the efficiency of electing officials by a majority of the votes cast. The voters did not indicate any intent to undermine the aim of the state law: namely, ensuring that elections are conducted and votes are tabulated in a manner that is fair and accurate and that produces credible and certain results. *See* Cal. Elect. Code § 19202 (any person owning voting system may apply to Secretary of State "to examine it and report on its accuracy and efficiency to fulfill its purpose")(emphasis added); *id.* § 19213 (when voting system has been approved, proposed modification must be shown not to impair accuracy or efficiency sufficient to require reexamination and reapproval); *see also* Cal. Gov't Code § 12172.5 (Secretary of State shall see that elections are efficiently conducted and that state elections laws are enforced). Indeed, these purposes are shared by the City and County, *see, e.g.*, Charter § 13.104 (conduct of elections shall include prevention of fraud and recount of elections in case of challenge or fraud); *id.* § 13.104.5 (Sheriff responsible for transporting all voted ballots and other documents or devices used to record votes from polls to central counting location and approving security plan for ballots until certification of election results); *id.* § 13.107.5 (requiring precinct boards to post accounting of number of ballots delivered, voted, unused, spoiled, cancelled, etc.); *id.* § 13.108 (requiring canvass of votes cast and certification of elections to be "as prescribed by law"), and underlie the City's incorporation of state law in

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<sup>6</sup> The dictionary definition of the word "mechanical" is "[o]f or relating to machines or tools." *The American Heritage® Dictionary of the English Language* (Fourth Ed. © 2000, Houghton Mifflin Company). The parallel definition of "electronic" is "[o]f, implemented on, or controlled by a computer or computer network." *Id.* The term "electromechanical" means "[r]elating to a mechanical device or system that is actuated or controlled by electricity." *Id.*

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Charter Section 13.100 and its predecessors.<sup>7</sup> Because the overriding interest of both San Francisco and the State is in ensuring a fair, accurate, and credible election, a court would not imply that section 13.102 "otherwise provided" that Secretary of State approval is not required. Accordingly, a court would likely conclude that Charter Section 13.102 does not compel or authorize the City to implement a new instant runoff voting system that has not been approved by the Secretary of State as required by state law and Section 13.100.<sup>8</sup>

**2. If the City does not have a certified and tested ranked-choice voting system in time for use in the November 2003 election, may the City use a ranked-choice ballot and hand-count those ballots?**

The question presents two issues. First, would a pure hand-count be permissible under San Francisco's Charter? Second, would a pure hand-count require Secretary of State approval?

Although Charter Section 13.102 does not expressly state that instant runoff voting must be implemented using mechanical or electronic recording and tabulation equipment, voter intent that such equipment would be used can be gleaned from the Charter's reference to such devices. See S.F. Charter § 13.102 (b) (number of choices a voter may have will depend on "the voting system, vote tabulation system or similar or related equipment used by the City and County"); *id.* § 13.102(h) ("[a]ny voting system, vote tabulation system, or similar or related equipment acquired by the City and County shall have the capability to accommodate this system of ranked-choice, or 'instant runoff,' balloting"). The terms "voting system" and "vote tabulating device" are terms of art that are defined in the California Elections Code and incorporated in local law by Charter Section 13.100. A "voting system" means "any mechanical, electromechanical, or electronic system and its software, or any combination of these used to cast or tabulate votes, or both." Cal. Elect. Code § 362. A "vote tabulating device" means "equipment . . . that compiles a total of votes cast by means of ballot card sorting, ballot card reading, paper ballot scanning, electronic data processing or a combination of that type of equipment." Cal. Elect. Code § 358. Although an argument could be made that the voters were aware that hand-counts are sometimes used during elections, those uses are limited to verifying the accuracy of vote count equipment or ensuring the accuracy of the vote count following an equipment failure.<sup>9</sup> Accordingly, the language of the instant runoff Charter amendment supports the conclusion that voters intended to implement instant runoff voting through a mechanized or computerized system, rather than through pure hand-counting.

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<sup>7</sup> Charter Section 13.100 dates back to the 1900 Charter, Section 5 of which provided that "the general laws of this State respecting elections shall be applicable to all elections held in the City and County of San Francisco." The 1919 Charter provision contained a similar section that included an exception for state laws that were inconsistent with the provisions of the Charter relating to municipal elections. 1919 Charter § 5. See also 1925 Charter § 4; 1932 Charter § 174.

<sup>8</sup> Because the Charter does not expressly provide that the state law requirement of approval by the Secretary of State does *not apply* to San Francisco's voting systems or that the evaluation, testing and approval of San Francisco's voting systems will be done by someone other than the Secretary of State, we do not address whether San Francisco, as a Charter City, could bypass Secretary of State review.

<sup>9</sup> The Elections Code also provides for handcounting write-in votes as part of an election in which a voting system, approved by the Secretary of State, is used. Cal. Elect. Code § 15342. In the 1999 Mayoral race, San Francisco hand counted write-in votes following a procedure that was part of the voting system approved by the Secretary of State.

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The legislative history, the City's voter information pamphlet describing the law, supports this conclusion. That history shows voters expected instant runoff voting to be an *efficient, cost-saving* process to be achieved using voting "technology." Specifically, the Controller's financial analysis of Proposition A, which was published in the City's voter information pamphlet, stated that instant runoff voting "may require modifications to the City's voting *technology*," but that the costs associated with *technology upgrades* would be more than offset by the cost savings of avoiding a separate run-off election. See March 5, 2002 San Francisco Voter Information Pamphlet at 37 (emphasis added). In addition, ballot arguments supporting Proposition A emphasized that instant runoff voting would make local elections "more EFFICIENT and LESS EXPENSIVE." See Proponent's Argument in Favor of Proposition A, March 5, 2003 San Francisco Voter Information Pamphlet at 38.

For these reasons, the better reading of section 13.102 is that the voters did not contemplate a pure hand-count. But even if a court concluded otherwise, implicit in both the instant runoff Charter amendment and all of the other Charter provisions relating to elections is that any system or method that is employed to count and tabulate votes will produce results that are reliable and credible. To be consistent with Section 13.100, which as discussed above incorporates state law, any pure hand-count would need to produce reliable, accurate election results that could be certified in time to meet state law deadlines and comply with safeguards such as recounts set forth in the state Elections Code. A court could interpret the Charter to permit a hand-count that was consistent with all of these purposes.

If a court were to come to the conclusion that a pure hand-count is permissible under the Charter, the court likely would require Secretary of State approval for the hand-count procedure. While on its face the state's statutory definition of voting systems does not appear to cover a non-mechanized, non computerized method for casting and counting ballots, *see p. 7, supra*, Government Code section 12172.5 confers broad authority on the Secretary of State as the "chief elections officer of the state," including the power to "see that elections are efficiently conducted and that state elections laws are enforced." *Accord* Cal. Elec. Code § 10. Under that authority, the Secretary of State could require approval of a pure hand-count to ensure that an election will be efficiently conducted in a manner consistent with state election laws. For example, although the Elections Code sets forth procedures for a hand-count,<sup>10</sup> it is unclear how those procedures would apply to instant runoff voting. In addition, the Secretary of State could conclude that a pure hand-count was potentially so inefficient and time-consuming as to make it impossible to meet state law deadlines for canvassing and certifying the vote and comply with state law safeguards such as recounts.

The Secretary of State's Office has indicated in informal discussions dating back to March 2002 that it would take the position that a pure hand-count may not be used absent Secretary of State approval. If, as seems probable, the Secretary of State or another party were to sue the City to enjoin the use of an uncertified hand-count procedure, a court would likely defer to the Secretary of State's position, given that courts generally accord great weight to an administrative agency's interpretation of state laws the agency is charged with enforcing. *Andal v. Miller*, 28 Cal.App.4th 358, 364 n.3 (1994).

As a practical matter, even if the Charter authorized a pure hand-count, the Director of Elections chose not to submit a pure hand-count procedure to the Secretary of State. The Director of Elections determined that a pure hand-count presented reliability and accuracy

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<sup>10</sup> See Cal. Elect. Code §§ 15270-15281 (requiring count of vote by precinct).

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concerns. He developed an alternative plan that employs some of the features of a hand-count, but that also ensures accountability and reliability and requires less handling of the ballots. Although there have been suggestions that an alternative hand-count procedure exists that would be less costly and time consuming, no such procedure has yet been presented to the Department, and it is unclear whether any such procedure could ensure the accuracy and reliability of the vote count in accordance with state law. Whether such a procedure would be consistent with these requirements would depend upon the characteristics of the particular procedure.

**3. If the City does not have a certified and tested ranked-choice voting system in time for use in the November 2003 election, may the City conduct the election without using ranked-choice voting?**

Common sense as well as law suggest that if the City does not have a certified and tested instant runoff voting system in time for use in the November 2003 election, it will have to delay implementing instant runoff voting and conduct the election using the City's conventional voting methods. *County of Orange v. Ranger Insurance Co.*, 61 Cal.App.4th 795, 803 (1998) (the law does not require the performance of a futile act).

Charter Section 13.101 requires the City to conduct the election. The City must therefore hold an election even in the event instant runoff voting becomes impossible to implement. Under those circumstances, the most reasonable interpretation of the Charter is that the City must use the voting system in effect before adoption of instant runoff voting, namely a general election with a conventional ballot.

**4. May the City undertake contingency plans now for the November 2003 election that do not involve ranked-choice voting?**

Although it appears we have not yet reached the point of impossibility for instant runoff voting in the November 2003 election, the City may develop contingency plans now for that election so long as doing so does not interfere with its continued effort to implement instant runoff voting. Nothing in the instant runoff Charter amendment or any other provision of local or state law prevents the City from making a contingency plan, and indeed, to the extent that failing to do so would prevent the City from conducting the election, that would violate the Charter.

**5. If the City is unable to use ranked-choice voting in November 2003, and if no candidate receives a majority of the votes cast, would the candidate who receives the highest number of votes be elected, or would the two candidates receiving the most votes qualify for a separate run-off election held at a later date?**

The Charter does not address the situation in which the City must use its conventional voting system for the November 2003 election, and no candidate at that election receives a majority of the votes cast for the office sought by the candidate. The Charter does not explicitly preserve or eliminate the majority vote requirement or separate run-off procedure for such candidates; it simply does not indicate how an election should proceed in that circumstance. Because the legislative history of section 13.102 plainly indicates that the voters intended to *retain* the requirement that a candidate receive the majority of votes cast to be elected to City office, a court would likely require that the City conduct a separate runoff if a general election without instant runoff voting were held and no candidate for a particular office obtained a majority of the votes cast for that office.

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As discussed above, San Francisco has had a long-standing requirement that most City officers be elected by majority vote. The California Supreme Court recently affirmed San Francisco's strong interest in assuring officials would be elected by a majority of the voters. *Edelstein v. City and County of San Francisco*, 29 Cal. 4th 164, 173-74 (2002). For the past 30 years San Francisco has used separate runoff elections to elect candidates with majority support. The voters amended the Charter in 1973 to provide for a runoff, if necessary, in mayoral elections. In subsequent years, the voters adopted parallel measures providing for runoffs to achieve a majority vote for supervisors and other elected officials.

In March 2002, when the San Francisco voters adopted the instant runoff Charter amendment, the voters embraced a new voting method intended to accomplish the same result as traditional runoff elections – *ensuring majority support of elected officials* – in less time, with greater voter participation, and reduced cost. See City and County of San Francisco Voter Information Pamphlet and Sample Ballot, Consolidated Primary Election March 5, 2002, pp. 37-46. There is no evidence that the voters intended to eliminate the majority vote requirement. On the contrary, there is ample evidence that the adoption of instant runoff voting reaffirmed the fundamental principle that City officials must be elected with majority support. *Id.* at 37 (Digest) ("A winner would still have to receive more than 50% of the vote"; process of counting rounds to see if any candidate received a majority "would be repeated until one candidate received more than 50% of the votes"); *id.* at 38 (Proponent's Argument in Favor of Proposition A) (instant runoff voting "will allow San Francisco to elect candidates *supported by a popular majority* without needing expensive, low-turnout December runoff elections") (emphasis added); *id.* (Proposition A will "*fulfill the goal of electing majority winners* without the inconvenience of a second election"). Moreover, when the voters did contemplate that the City might not be ready to implement instant runoff voting in November 2002, they expressly preserved the majority vote requirement and separate runoff procedure. Charter § 13.102.

Accordingly, we conclude that a court will require that the City conduct a runoff if instant runoff voting is impossible to implement and no candidate for a City office obtains a majority vote in November 2003.