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MEMORANDUM

TO: MEMBERS,
San Francisco Elections Commission

FROM: Julia A. Moll
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DATE: July 6, 2005

RE: A Brief History of Elections Administration in San Francisco

Several members of the Elections Commission requested historical information about the Commission. The Commission, as currently configured, has existed for only a few years. In November 2001, the voters amended the Charter relating to government ethics and elections and created the seven-member Commission (Proposition E, approved November 6, 2001; Charter § 13.103.5), and in January 2002 the original Commission members assumed office. Before the voters created this Commission, San Francisco experimented with different approaches to elections administration, and what follows is a brief history of elections administration in San Francisco. Please let me know if you have questions or would like additional information.

I. Early History: 1900 - 1932

At least as early as 1900, the San Francisco Charter provided for an elections commission, as follows:

The conduct, management and control of the registration of voters, and of the holding of elections, and of all matters pertaining to elections in the City and County, shall be vested exclusively in and exercised by a Board of Election Commissioners, consisting of five members, who shall be appointed by the Mayor and shall hold office for four years. Each of the Commissioners shall receive an annual salary of one thousand dollars. Each member of the Board must be an elector of the City and County at the time of his appointment and must have been such for five years next preceding such time. . . .

1900 Charter, Article XI, § 1 (ratified by election May 26, 1898, effective January 8, 1900).¹

Limitations on the Mayor's appointing authority were designed to prevent domination of the Board of Election Commissioners by any one political party. Specifically, the Charter provided:

Two of the five members first appointed shall be chosen from each of the two political parties casting in the City and County the highest vote for Governor or Electors of President and Vice-President, as the case may be, at the last preceding general election. The fifth member shall be chosen from the political party

¹ San Francisco's first council was elected on September 13, 1847, and the first City Charter became law on April 15, 1850. Keesling, *The San Francisco Charter of 1931* (1933), at pp.6-7. Little historical information is available about the early Charter. Mayor James Phelan led the effort to draft the Charter that the voters approved on May 26, 1898 and went into effect January 8, 1900, and that is discussed above. *Id.*, at p.10.

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casting the third highest such vote at such election, if there be such third party, and if not, then at the discretion of the Mayor.

*Id.*²

The Board of Election Commissioners was responsible for appointing a Registrar of Voters, whose duties and term of office were as follows:

The Registrar shall be the Secretary of the Board, and shall keep a record of its proceedings, and shall execute all orders and enforce all rules and regulations adopted by the Board. The term of office of Registrar shall be four years.

1900 Charter, Article XI, § 3. The Board also had the power to appoint clerical assistants, subject to the City's civil service rules and procedures. 1900 Charter, Article XI, § 4. Although these clerical employees were subject to civil service rules and procedures, the position of Registrar of Voters was exempt. 1900 Charter, Article XIII, § 11.

Soon after, the Charter was amended to provide for "preferential voting" of municipal officers, which was similar to San Francisco's current method of ranked-choice voting. 1900 Charter, Article XI, §§ 10(a)(providing for instructions to voters concerning first, second and third choice votes), 19 (procedures for canvass of ballots with first, second and third choices indicated), 20 (procedure for resolving tie votes based on the number of "first-choice" votes cast), 21 (defining "majority" based on the total number of "first-choice" votes cast for the office) (as amended November 5, 1918).

In the next few years, the Board of Election Commissioners was involved in several lawsuits concerning the scope of its authority. In 1923, the Board adopted a resolution providing for the purchase and use of 52 voting machines. It was clear that use of the voting machines would preclude use of preferential voting in municipal elections, and a taxpayer sued to compel the City to continue to use preferential voting. Based on both the Charter and State law, the California Supreme Court upheld the authority of the Board of Election Commissioners. *Ashe v. Zemansky* (1923) 192 Cal. 83, 84-85, 86-87.

In 1927, a second lawsuit arose from a dispute between the Board of Election Commissioners and the Board of Supervisors over budget appropriations for elections. *Griffin v. Boyle* (1927) 202 Cal. 95, 97-98. In that case, the California Supreme Court considered the authority of the Board of Election Commissioners to fix the salaries of its employees and concluded that, despite the broad powers conferred on the Board, it remained subject to the general budgetary and fiscal provisions of the Charter. Thereafter, the private attorneys who had represented the Board in *Griffin* sought attorneys' fees. *Glensor, Clewe & Van Dine v. Andriano* (1929) 99 Cal.App. 607, 608-09. The Court of Appeal denied the request for fees, reasoning that

² The Charter restricted members of the Board of Election Commissioners from participating in political activity as follows:

No member of the Board, nor Registrar, nor Deputy Registrar shall during his term of office, be a member of any convention the purpose of which is to nominate candidates for office; nor be eligible to any other municipal office during the term for which he shall have been appointed, or for one year thereafter; nor act as officer of any election or primary election; nor take part in any election except to vote and when acting as Election Commissioner.

1900 Charter, Article XI, § 2.

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the earlier litigation resulted from an inter departmental controversy rather than a controversy between the City and a separate entity. The Court reiterated what had been decided in *Griffin*:

The controversy appears to have been only a difference of opinion or judgment as to how much money would be necessary for election purposes for the fiscal year. The amount necessary to be allowed in the budget has been held to be a matter which is by law confided to the board of supervisors rather than to the other departments of the municipality.

Id. Two years later, the voters abolished the Board of Election Commissioners.

II. The 1932 Charter

On March 26, 1931, the San Francisco voters ratified a new Charter that brought about substantial government reforms and that remains the foundation for the City and County's current Charter. The new Charter abolished the Board of Election Commissioners and instead vested responsibility for the administration of elections in the Registrar of Voters, a department under the City's newly-created Chief Administrative Officer ("CAO"):

The conduct, management and control of the registration of voters, and of the holding of elections, and of all matters pertaining to elections in the city and county shall be vested exclusively in the registrar of voters. . . . He shall establish precincts in the city and county as provided by law. The regular and temporary forces under the registrar, and the temporary forces, shall be appointed by him subject to the civil service provisions of this charter.

1932 Charter, § 173 (ratified by election March 26, 1931, effective January 8, 1932). Under these reforms, the CAO could hire and remove the Registrar of Voters subject to the City's civil service rules and procedures. 1932 Charter, § 142.

Francis V. Keesling, a member of the Board of Freeholders that drafted the 1932 Charter, wrote:

In order to fix responsibility as well as to centralize executive authority, intermediate boards were eliminated. . . . [T]he Board of Elections Commissioners [is] abolished. The executive administration of those departments is centered in an individual executive responsible in turn to the Chief Administrative Officer.

Keesling, *The San Francisco Charter of 1931* (1933), at p.42, 63.

The CAO was appointed by the Mayor, and could be removed by a vote of at least 2/3 of the Board of Supervisors. 1932 Charter, § 59. The Charter described the powers and duties of the CAO as follows:

The chief administrative officer shall be responsible to the mayor and to the board of supervisors for the administration of all affairs of the city and county that are placed in his charge by the provisions of this charter and by ordinance, and to that end he shall have power and it shall be his duty to exercise supervision and control over all administrative departments which are under his jurisdiction; to appoint the heads of departments under his control

1932 Charter, § 60.

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As discussed below, disputes concerning the respective powers and duties of the CAO and Registrar of Voters were addressed and ultimately resolved by the voters and the judiciary.

III. The 1976 Charter Amendment

On June 8, 1976, the voters amended the Charter to clarify the responsibilities of the Registrar of Voters and CAO by making it explicit that all matters pertaining to voter registration and elections are vested exclusively in the Registrar. (Proposition A, adopted June 8, 1976.) Charter section 3.201, as amended, provided:

The chief administrative officer shall be responsible to the mayor and to the board of supervisors for the administration of all affairs of the city and county that are placed in his charge by the provisions of this charter and by ordinance, and to that end, **except as otherwise provided in section 9.102 of this charter, and the general laws of this state respecting the registration of voters, the holding of elections and all matters pertaining to elections in a city and county**, he shall have power and it shall be his duty to exercise supervision and control over all administrative departments which are under his jurisdiction; . . .

San Francisco Voter Information Handbook for the June 8, 1976 Primary Election, p. 11 (emphasis in the original to indicate additional or substituted language).

The *Voter Information Handbook* included the Ballot Simplification Committee's digest of the proposed Charter Amendment:

THE WAY IT IS NOW: The Charter does not state clearly who is in charge of election matters. One part of the Charter says that the Registrar of Voters is in charge of all election matters. But another part of the Charter says the Chief Administrative Officer is responsible for all activities of the Registrar of Voters.

THE PROPOSAL: Proposition A states that the Registrar of Voters shall be the only person in charge of election matters. The Chief Administrative Officer will continue to be responsible for any other activities of the Registrar of Voters.

A YES VOTE MEANS: If you vote yes, you want the Charter to say clearly that the Registrar of Voters shall be the only person in charge of election matters.

A NO VOTE MEANS: If you vote no, you want the Charter left the way it is even though it does not state clearly who is in charge of election matters.

San Francisco Voter Information Handbook for the June 8, 1976 Primary Election, p. 10.

In addition to the summary prepared by the Ballot Simplification Committee, the Voter Information Pamphlet included the following argument, submitted by Supervisor John L. Molinari, in support of the Charter amendment:

Vote Yes on Proposition "A" -- a measure to provide for the full independence and authority of the Registrar of Voters regarding the registration of voters, holding of elections, and all matters pertaining to elections in San Francisco.

Over the past months considerable attention has been focused on the conduct of voter registration and of election procedures generally. It has become very clear that the Registrar of Voters must be able to perform the duties of the office free of even the slightest possibility of interference, pressure or undue influence from any

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source except as specifically provided for by laws governing those functions and duties.

Proposition "A" clarifies and delineates carefully the relationship between the Registrar of Voters and the Chief Administrative Officer, so that the appropriate general management and administrative direction of the Chief Administrative Officer over the office of Registrar of Voters as a government activity is preserved, while making it clear that the functions of the Registrar of Voters concerning voter registration and the conducting of elections are the sole responsibility of the Registrar of Voters.

Vote Yes on Proposition "A" -- make it absolutely clear that responsibility for the vitally important functions of the Registrar of Voters is entrusted to the person duly appointed to that position, and that the Registrar is assured of independence of authority for the proper performance of duties.

San Francisco Voter Information Handbook for the June 8, 1976 Primary Election, p. 12. No arguments were submitted in opposition to Proposition A.

Soon after the adoption of this Charter amendment, which was intended to clarify the respective powers and duties of the Registrar and the CAO, litigation arose concerning the powers and duties of the Registrar and the CAO with respect to the selection of a new voting system. *See Diamond Int'l Corp. v. Boas*, 92 Cal.App.3d 1015, 1037 (1979). In *Boas*, the court concluded that the CAO was responsible for overseeing the Registrar but did not have the authority to either choose a voting system or prohibit the Registrar from recommending and issuing a requisition for a particular kind of voting equipment. Instead, the court determined that the CAO had the authority to investigate and recommend the type of equipment that would best serve the City. *Id.*³

The Registrar of Voters remained responsible for the conduct, management and control of all matters pertaining to elections in the City and County, and remained under the supervision of the CAO, until 1996.

IV. The 1996 Charter

On November 7, 1995, the voters adopted a new charter that replaced the Registrar of Voters with a Department of Elections administered by a Director of Elections "vested exclusively with the conduct and management of voter registration and matters pertaining to elections in the City and County." 1996 Charter § 13.104 (adopted November 7, 1995, effective July 1, 1996). Although the 1996 Charter replaced the position of Registrar of Voters with the position of Director of Elections, the job responsibilities of the two positions were substantially the same. The Charter, as amended, provided:

[T]he conduct of elections shall include, but not be limited to: voter registration; the nomination and filing process for candidates to City and County offices; the preparation and distribution of voter information materials; ballots, precinct

³ Based on powers expressly granted to the CAO in the former Charter that were not provided to the Commission, the *Boas* court concluded that the CAO could decide not to approve the contract that would be entered into under the requisition issued by the Director. *Id.* (relying on former Charter section 7.103, which required the CAO to approve all contracts under his jurisdiction with a value in excess of \$50,000).

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operations and vote count; the prevention of fraud in such elections; and the recount of ballots in cases of challenge or fraud.

1996 Charter, § 13.104.

The 1996 Charter also eliminated the position of CAO and created instead the position of City Administrator, who was responsible for, among other duties, appointment of the Director of Elections. 1996 Charter, § 3.104. The City Administrator could hire and remove the Director of Elections subject to the City's civil service rules and procedures. 1996 Charter, § 10.104. The City Administrator was appointed by the Mayor subject to confirmation by the Board of Supervisors. 1996 Charter, § 3.104.

V. The 2001 Charter Amendment

Five years later, on November 6, 2001, the voters amended the Charter concerning elections and ethics, and created the seven-member Elections Commission. (Proposition E, approved November 6, 2001.) The Mayor, the Board of Supervisors, the City Attorney, the Public Defender, the District Attorney, the Treasurer, and the Board of Education of the San Francisco Unified School District each appoint one member of the Commission. Charter § 13.103.5. As with the Board of Election Commissioners one hundred years before, the structure of the Elections Commission was designed to prevent domination of the Commission, this time by any one elected official or body.

As amended, the Charter charges the Elections Commission with the responsibility for setting general policies for the Department of Elections and for the proper administration of the general practices of the Department, subject to the budgetary and fiscal provisions of this Charter. *Id.* As discussed above, these responsibilities were previously exercised by the Director of Elections and, before there was a Director, by the Registrar of Voters. Creation of the new Elections Commission, which must conduct its meetings in public, was designed to require public deliberation of elections policy and increase the opportunity for public comment on elections administration.

As amended, the Charter authorizes the Elections Commission to hire the Director of Elections subject to civil service rules and procedures. Charter, § 13.104. The Director serves a five-year term during which he or she may be removed by the Commission only for cause, upon written charges and following a hearing. *Id.* Accordingly, decisions concerning appointment, removal, reappointment or replacement of the Director are now made collectively by seven individuals appointed by seven different appointing authorities, rather than by a single appointed official. (The rules and procedures for selection and removal of the Director of Elections in particular are now codified in Civil Service Rule 114.) This change was designed to insulate the Director from the political process.

Interestingly, some of the questions raised by the Elections Commission echo the questions and issues that emerged concerning the Board of Election Commissioners and later the Registrar of Voters and CAO. For example, in a memorandum dated November 19, 2003 (a copy of which is included with the materials for the July 22, 2005 retreat), the City Attorney addressed questions about the respective powers and duties of the Elections Commission and Director of Elections concerning selection of a new voting system. As discussed above, questions about the authority to select a new voting system were addressed by the California Supreme Court and Court of Appeal, respectively, in *Ashe v. Zemansky* and *Diamond Int'l Corp. v. Boas*.

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In addition, courts have addressed questions about the authority of the Elections Commission to appoint and remove the Director of Elections. On January 17, 2003, the Court of Appeal upheld the Commission's authority to (1) terminate without cause the incumbent Director of Elections, who was serving a probationary period following her initial appointment at the time the Elections Commission was created, and (2) hire a new Director to a five-year term. *City and County of San Francisco v. Superior Court*, 2003 WL 133459 (Cal.App. 1 Dist.) (not officially published). Following this Court of Appeal decision, the Civil Service Commission adopted Civil Service Rule 114 concerning the Director of Elections position (a City Attorney memorandum concerning Rule 114, dated December 29, 2003, is included in the materials for the July 22, 2005 retreat).

J.A.M.

cc: John Arntz
Shirley Rodriques