



DENNIS J. HERRERA
City Attorney

JON GIVNER
Deputy City Attorney

DIRECT DIAL: (415) 554-4694
E-MAIL: jon.givner@sfgov.org

MEMORANDUM

TO: Hon. Michela Alioto-Pier

FROM: Jon Givner
Ann O'Leary
Andrew Shen
Deputy City Attorneys

DATE: February 6, 2008

RE: Application of Term Limits

Question Presented

You have asked for a written opinion about whether you may seek reelection in November 2010 as Supervisor for District Two under the term limits imposed by the San Francisco Charter.

Short Answer

The Charter bars you from seeking reelection in November 2010 as Supervisor for District Two.

Section 2.101 of the Charter prohibits Board members from serving more than two successive full terms in office. The Charter further provides that a person "appointed . . . to complete" more than two years of a four-year term must be deemed to have served a full term. Charter section 13.101.5 requires that any individual appointed to the Board must stand for election to complete the remainder of her term if more than one year remains in the term at the time of the vacancy. In January 2004, the Mayor appointed you to fill the vacant seat representing District Two on the Board of Supervisors that was due to expire in January 2007. In November 2004, ten months after you were appointed, you won election to complete the remainder of the term. In November 2006, you won reelection to a new four-year term, which will expire in January 2011.

The question here is whether your appointment and subsequent election to finish the term that expired in January 2007 counts as a full term for purposes of the Charter's term limits provisions. You served nearly three years of a four-year term. The Charter provides that persons "appointed . . . to complete in excess of two years of a four-year term" will be deemed to have served a full term. This rounding up provision refers to appointees who serve more than two years of the term to which they were initially appointed, whether they stand for election during that period. Any other interpretation of section 2.101 would render the rounding up provision meaningless because, under a separate provision of the Charter, no appointee can serve for two years without standing for an intervening election. While California courts narrowly interpret term limits and other restrictions on the right to hold office, courts also interpret provisions of a charter in a manner that harmonizes them and does not render any of them superfluous. Accordingly, for the reasons discussed more fully below, we conclude that because you have

Memorandum

TO: Hon. Michela Alioto-Pier
DATE: February 6, 2008
PAGE: 2
RE: Application of Term Limits

completed one full term and are serving in your second full term, you may not run for reelection in 2010.

Background

In November 2002, then Supervisor Gavin Newsom won election to serve on the Board of Supervisors representing District Two. The term for which he was elected began on January 8, 2003, and was scheduled to end on January 8, 2007. In December 2003, Supervisor Newsom won the City's run-off election for Mayor. On January 8, 2004, Supervisor Newsom was sworn into office as Mayor, leaving his seat on the Board of Supervisors temporarily vacant. On January 26, 2004, Mayor Newsom appointed you to fill the vacant seat representing District Two. Under the Charter, the term for Board office runs with the seat and not with the person filling it. At the time of your appointment, just under three years remained in the term for that Board seat.

Because of the length of the remaining term, the City Charter required you to stand for election to the seat at the next general election, in November 2004. You won that election and completed the remaining two years and one month of the term to which Mayor Newsom originally had been elected. The term ended on January 8, 2007. In November 2006, you won reelection to a new four-year term, which commenced on January 8, 2007, and will expire on January 8, 2011.

Analysis

The fundamental task of statutory and charter interpretation is to determine the intent of the legislative body in enacting the measure. *See White v. Ultramar Inc.*, 21 Cal.4th 563, 572 (1999). To determine legislative intent, a court must first 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, 1238-39 (1992). Under established rules of statutory construction, courts must harmonize the provisions of a statute or measure if possible, giving full effect to each. *See Cacho v. Boudreau*, 40 Cal.4th 341, 352 (2007). Accordingly, "significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose." *DuBois v. Workers' Comp. Appeals Bd.*, 5 Cal.4th 382, 388 (1993) (quoting *Moyer v. Workmen's Comp. Appeals Bd.*, 10 Cal.3d 222, 230-231 (1973)). Only if the language is ambiguous or uncertain may a court consider legislative history. *Lucky Stores*, 6 Cal. App. 4th at 1238-39. If the language of a ballot measure is ambiguous or uncertain, the court may consider ballot arguments and certain other materials presented to the voters. *See Hodges v. Superior Court*, 21 Cal.4th 109, 113-115 (1999).

First we turn to the pertinent language of the Charter. Charter section 2.101 limits the terms of members of the Board of Supervisors as follows:

No person elected or appointed as a Supervisor may serve as such for more than two successive four-year terms. *Any person appointed to the office of Supervisor to complete in excess of two years of a four-year term shall be deemed, for the purpose of this section, to have served one full term.* No person having served two successive four-year terms may serve as a Supervisor, either by election or appointment, until at least four years after the expiration of the second successive term in office. Any Supervisor who resigns with less than two full years remaining until the expiration of the term shall be deemed, for the purposes of this section, to have served a full four-year term.

Memorandum

TO: Hon. Michela Alioto-Pier
DATE: February 6, 2008
PAGE: 3
RE: Application of Term Limits

S.F. Charter § 2.101 (emphasis added). As a general rule, section 2.101 prohibits a Supervisor from serving more than two successive four-year terms. Section 2.101 also provides, under specified circumstances, for rounding up a term that is less than four years to a full, four-year term for purposes of the “two successive four-year terms” limitation. Specifically, if a Supervisor is “appointed . . . to complete” more than two years of a four-year term, the appointed term counts as a full four-year term for the purposes of applying the Charter’s term limits.

Your question requires interpretation of when an individual has been “appointed to the office of Supervisor to complete in excess of two years of a four-year term.” You were appointed in January 2004 to complete a term with nearly three years remaining, and you subsequently stood for election for the remaining two years of the term in November 2004. You have asked whether the Mayor appointed you to hold the seat for ten months, after which your term of appointment ended when you were elected to complete the remaining two years of the term. In other words, were you “appointed” to serve the full three remaining years of the term, which would require rounding up under Charter section 2.101, or were you “appointed” to serve only the ten months before your election, which would require no rounding up and would mean that your first full term began in January 2007?

Courts narrowly interpret term limits and other restrictions on the right to seek and hold elective office. The California Supreme Court has long recognized that “the right to hold public office, whether by election or appointment, is one of the valuable rights of citizenship.” *Carter v. Commission on Qualifications of Judicial Appointments*, 14 Cal.2d 179, 182 (1939). Because “[t]he exercise of this right should not be declared prohibited or curtailed except by plain provisions of law,” courts resolve ambiguities “in favor of eligibility to office.” *Id.* The longstanding principle articulated by the courts of this State is that any burden on the right to run for and hold office should be explicit rather than implicit. Accordingly, in previous memoranda interpreting term limits under the Charter, this Office has explained that term limits apply to members of the Board of Supervisors only if the Charter explicitly requires that conclusion. *See* Memorandum to Hon. Tom Ammiano, Jan. 7, 2004.

As discussed below, Articles II and XIII of the Charter, when read in concert, compel the conclusion that an individual will be deemed to have served one full term if that person is appointed to the office of Supervisor to complete in excess of two years of a four-year term, regardless of whether the appointment is followed by an election. Charter section 13.101.5 provides that the Mayor shall appoint a new Supervisor when a seat on the Board becomes vacant. *See* S.F. Charter § 13.101.5(a). But to remain in office the appointee must run for election by a deadline set in the Charter. Section 13.101.5 sets forth three possible deadlines depending on the upcoming election schedule. First, if an election for the appointee’s seat on the Board is scheduled to occur less than one year after the vacancy, then the appointee may serve until that election, at which point he or she can run for the seat. *See* S.F. Charter § 13.101.5(c). Second, if an election for any other seat on the Board is scheduled to occur between 120 days and one year after the vacancy, then the appointee may serve until a successor is selected at that election. *See id.* Third, in any other case – for example, if the nearest Board elections are less than 120 days away or more than one year away – the appointee may serve until a successor is selected at the next election, as long as that election is scheduled to occur at least 120 days after the vacancy. *See id.*

Because the City holds general elections at least once each year (*see* Charter § 13.101), the longest period that any appointee on the Board of Supervisors can serve before running for

Memorandum

TO: Hon. Michela Alioto-Pier
DATE: February 6, 2008
PAGE: 4
RE: Application of Term Limits

election is one year plus 119 days. Consider, for example, a candidate appointed on July 11, 2006 to fill a vacancy for a seat on the Board of Supervisors representing an odd-numbered district. Because the appointee's seat was not scheduled for election in the November 2006 election, and because the closest election for Board seats was scheduled for November 7, 2006, less than 120 days away, the Charter would not have required the appointee to stand for election in November 2006. Rather, the election for the remainder of the term would have been scheduled for the next election, November 6, 2007, one year and 118 days after the vacancy.

There is a single hypothetical circumstance in which an individual may be appointed to discharge the duties of a Board member for more than two years without standing for election, but in that situation, the appointee would not hold the *office of Supervisor*. Under Charter section 15.105, the Mayor may suspend an elected officer, including a member of the Board of Supervisors, by filing written charges of official misconduct against the officer. The Charter provides that the officer must remain suspended while the Ethics Commission holds a hearing and the Board of Supervisors subsequently decides whether to sustain the charges. *See* Charter § 15.105(a). During this period, the Mayor must "appoint a qualified person to discharge the duties of the office." *Id.* Once the suspension ends – either with the officer's reinstatement, resignation or removal from office – the interim appointment ends. Because the Charter places no time limit on the removal proceedings, one might posit a hypothetical situation in which a member of the Board is suspended, and an interim appointee is appointed to discharge the Board member's duties, for more than two years while the Ethics Commission holds a hearing and the Board renders a decision. In this scenario, one might argue that the hypothetical interim appointee would be appointed to serve more than two years without standing for election.

But even if the suspension lasts more than two years, an interim appointee under section 15.105(a) is never "*appointed to the office of Supervisor to complete in excess of two years of a four-year term.*" Charter § 2.101 (emphasis added). Rather, the interim appointee merely is responsible for "discharg[ing] the duties of the office" during the Supervisor's suspension. Charter § 15.105(a). The suspended Supervisor continues formally to hold the office even though he or she cannot discharge the duties of the office during the suspension period. Indeed, the Charter refers to the suspended Supervisor as an "officer" and "suspended officer" even during the period of suspension. *Id.* Because no single district may have two Supervisors (*see* Charter §§ 2.100, 13.110), the interim appointee does not hold the office of Supervisor during the suspension. The interim appointee's temporary service during the suspension does not count as a period of office-holding for the purpose of the Charter's term limits.

Thus, under no circumstances can a member of the Board appointed to his or her seat by the Mayor serve for more than two years without running for the office at an intervening election. For this reason, section 2.101's mention of individuals "appointed . . . to complete in excess of two years of a four-year term" *must* refer to individuals who have been appointed to serve more than two years of a term and who retain the seat in an intervening election. Any other interpretation would render the rounding up provision of section 2.101 superfluous, in violation of basic rules of statutory construction. *See Wells v. One2One Learning Foundation*, 39 Cal.4th 1164, 1207 (2006) (noting "principle of statutory construction that interpretations which render any part of a statute superfluous are to be avoided"). Indeed, if section 2.101 required rounding up only when an appointee serves more than two years *without* standing for election, the provision would be meaningless because it would apply only to situations that cannot exist under the Article XIII of the Charter. Thus, despite the general rule that ambiguities

Memorandum

TO: Hon. Michela Alioto-Pier
DATE: February 6, 2008
PAGE: 5
RE: Application of Term Limits

should be resolved in favor of eligibility to hold office, to harmonize the disparate provisions of the Charter and give each meaning, we must conclude that appointees are “appointed . . . to complete” a term even if they stand for election before the end of the term. *See generally DuBois*, 5 Cal.4th at 388 (“[T]he various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole.”) (internal quotations omitted).

The relevant legislative history is consistent with this conclusion. The voters adopted section 2.101 as part of Proposition N on June 5, 1990. At that time, the Charter contained a different rule regarding Board vacancies. In 1990, if the appointee’s term had fewer than 29 months remaining at the time of the appointment, the appointee could serve the remainder of the term without standing for election. If more than 29 months remained in the term of the vacated office, the appointee could serve only until the next scheduled election. *See S.F. Charter § 2.102 (1990)*. On November 6, 2001, the voters changed the rules concerning vacancy appointments, adopting Proposition C, which included current Charter section 13.101.5. When the voters adopted section 2.101 in 1990, their intent was to limit each Supervisor’s term of service to roughly eight years, and, in the case of midterm appointees, no more than ten total years. *See Voter Information Pamphlet, Digest*, p. 113 (explaining that under Proposition N, “[a]ny person appointed to the Board of Supervisors to complete more than half a four-year term would be considered to have served one full term”); *Official Argument in Favor of Proposition N*, p. 114. Nothing in the history of 2001’s Proposition C suggests a reversal of that intent or a desire by the voters to allow appointees to serve more than ten years. *See Voter Information Pamphlet, Digest*, p. 33, *Official Argument in Favor of Proposition C*, p. 34. Thus, our conclusion based on the plain language of the Charter comports with voter intent.

Because neither the text nor the legislative history of section 13.101.5 indicates that the voters intended Proposition C to repeal the existing rounding up provision in section 2.101, we cannot interpret the Charter in a manner that effects such a repeal. Generally, California courts will not interpret a new law as an implied repeal of an existing provision. *See Pacific Lumber Co. v. State Water Resources Control Bd.*, 37 Cal.4th 921, 946 (2006). Indeed, “all presumptions are against a repeal by implication.” *Collins v. Overnite Transportation Co.*, 105 Cal. App. 4th 171 (2003) (quoting *Garcia v. McCutchen*, 16 Cal.4th 469, 476-477 (1997)). In the absence of an express declaration of legislative or voter intent, courts “will find an implied repeal only when there is no rational basis for harmonizing the two potentially conflicting statutes, and the statutes are irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation.” *Id.* (internal quotations and citations omitted). Courts “are bound, if possible, to maintain the integrity of both [provisions] if the two may stand together.” *Pacific Lumber*, 37 Cal.4th at 946 (quoting *Stop Youth Addiction, Inc. v. Lucky Stores, Inc.*, 17 Cal.4th 553, 569 (1998)). Because sections 2.101 and 13.101.5 can be harmonized, we must conclude that the voters did not intend to repeal section 2.101 by implication.

This conclusion is also consistent with this Office’s January 2004 advice to Supervisor Tom Ammiano regarding the application of section 2.101. *See Memorandum to Hon. Tom Ammiano*, Jan. 7, 2004. In that instance, Supervisor Ammiano had been elected to a four-year term in 1994 and reelected to a second term in 1998. Because of the transition from City-wide to district elections in 2000, Supervisor Ammiano’s second term was shortened to two years, and he won election to a new four-year term in 2000. In January 2004, we advised Supervisor Ammiano that section 2.101 did not prohibit him from running for the same seat in 2004. We

Memorandum

TO: Hon. Michela Alioto-Pier
DATE: February 6, 2008
PAGE: 6
RE: Application of Term Limits

explained that the Charter restricted Supervisors from serving “two *successive* four-year terms,” and that, although he already had served ten years, he had not served two four-year terms in succession. *See id.* at 5-6 (quoting S.F. Charter § 2.101) (emphasis added).

In reaching the conclusion that Supervisor Ammiano had not served two successive full terms, we applied the same legal principles that we apply here in responding to your request. In both cases, our advice is based on the plain language of the Charter. In light of the importance of the right to hold public office, we have based our analysis in both cases on the narrowest interpretation – in this case, the *only* interpretation permitted under the Charter – of the term limit requirement of section 2.101. But your request differs from Supervisor Ammiano’s in two important ways. First, Supervisor Ammiano’s request required us to consider different parts of the Charter provision, namely, the first and third sentences of section 2.101, while your request requires us to interpret the second sentence. Our January 2004 memorandum did not need to address the meaning of the term “appointed . . . to complete,” which we must consider in responding to your request. Second, the plain meaning of the term “successive four-year terms” compelled our conclusion in that opinion that Supervisors are limited to two four-year terms that follow each other without interruption. No suggested interpretation of that term raised a conflict with any other provisions in the Charter, so our analysis did not require us to harmonize disparate provisions as it does here. In short, the plain language of the Charter required our conclusion in the January 2004 memorandum; similarly, the plain language of the Charter compels our conclusion here.

One court has held that for the purposes of interpreting a term limit ordinance “elected does not mean appointed.” *Pope v. Superior Court*, 136 Cal. App. 4th 871 (2006). In *Pope*, a city clerk had alleged that a city council candidate was ineligible for reelection under the city’s term limit ordinance. The city clerk deemed the candidate to have been elected to a four-year term where the candidate had been appointed for five months and elected in a special election to serve the remaining 17-months of the term. But the term limit ordinance at issue in *Pope* was a prohibition against being “elected a member of the City Council for more than two (2) four-year terms.” The municipal code in *Pope* included no rounding up requirement for individuals that served less than a four-year term and did not require the harmonizing of the term limit provision with other sections of the municipal code.

For these reasons, we conclude that you were “appointed . . . to complete in excess of two years of a four-year term.” The four-year term began in January 2003 and ended in January 2007, and you served approximately three years of that term, from January 2004 through January 2007. *See Chenoweth v. Chambers*, 33 Cal. App. 104, 107 (1917) (a term is a period of time fixed by law that runs with the office rather than with the individual holding the office). Accordingly, for the purposes of the Charter’s term limits provisions, you already have served one full term, and you currently are serving your second successive full term. You may not seek reelection in November 2010 as a Supervisor for District Two.

cc: Angela Calvillo, Clerk, Board of Supervisors
John Arntz, Director of Elections