



DENNIS J. HERRERA
City Attorney

JON GIVNER
Deputy City Attorney

Direct Dial: (415) 554-4694
Email: jon.givner@sfcityattorney.org

MEMORANDUM

TO: Hon. Mayor London N. Breed
Hon. Members, Board of Supervisors

CC: Hon. Assessor-Recorder Joaquín Torres
Hon. Members, Elections Commission
John Arntz, Director of Elections
Ben Rosenfield, Controller
Angela Calvillo, Clerk of the Board
Jeffrey Tumlin, Director of Transportation

FROM: Jon Givner
Andrew Shen
Deputy City Attorneys

DATE: March 24, 2021

RE: Consolidation of a Special Municipal Election with a Gubernatorial Recall Election

On March 17, 2021, members of the public seeking to recall Governor Gavin Newsom submitted their final sets of signed petitions to county registrars. If the Secretary of State determines that the recall proponents have collected the required number of valid signatures, the State will hold a statewide recall election later this year. As described below, the Secretary of State has indicated that the election will most likely occur between late November and early December.

The City is not legally required to hold a municipal election at the same time as the statewide recall election, but we understand the Board of Supervisors (“Board”), the Mayor, or other City officials may wish to place measures on the ballot. To that end, the Board may call a special municipal election on the same date as the recall. In this memorandum, we summarize the process for calling a special municipal election and what types of measures and contests could appear on the ballot at that election.

SUMMARY

Calling a Special Election. The Board may call a special election by adopting a resolution setting a date for the election. The resolution would require six votes to pass and would be subject to approval or veto by the Mayor. The Board must call the election between 105 and 120 days before election day. But the Lieutenant Governor will not call the statewide recall election until 60 to 80 days before election day, so the Board will have to schedule the municipal election before the State schedules the statewide election. To ensure that the municipal election aligns with the statewide recall, the Board can adopt a conditional resolution,

MEMORANDUM

DATE: March 24, 2021

PAGE: 2

RE: Consolidation of a Special Municipal Election with a Gubernatorial Recall Election

scheduling a municipal election for a fixed range of dates that would coincide with the likely recall election dates. For example, if the State has not announced an anticipated election date by early August, the Board could adopt a resolution on August 10 calling a special election to occur on November 23, November 30, or December 7, conditioned on the timing of the state election. Also, even though the Board cannot formally call a special municipal election more than 120 days before election day, we recommend that the Board—to begin the process of preparing for the election—adopt an earlier resolution announcing its intention to hold a special election to coincide with the gubernatorial recall election. If the Board schedules a special election, it must also appropriate funds sufficient for that election, in consultation with the Director of Elections, the Controller, and the Mayor's Office.

Ballot Measures on the Special Election. The Board, the Mayor, or four Supervisors, can place initiative ordinances, including special tax measures, and declarations of policy on the special election ballot. The Municipal Transportation Agency ("MTA") Board of Directors can also place a special tax measure on the ballot. But the City cannot place Charter amendments or general tax measures on the ballot.

For the Board or the Mayor to place a measure on the ballot, the sponsor will need to introduce the measure *before* the Board adopts a resolution fixing the date of the special election. The deadline for the Board to vote to place initiative ordinances or declarations of policy on the ballot is 95 days before election day—roughly late August for a late November election, or early September for an early December election. To provide time for the required legislative process, the sponsor should introduce the measure at least six to eight weeks before that deadline. And the deadline for the Mayor or four Supervisors to submit an initiative ordinance or declaration of policy to the ballot is 140 days before election day—roughly early July for a late November election or late July for an early December election. Due to the unusual deadlines associated with a potential special election, you should contact the City Attorney's Office as soon as possible if you are interested in proposing a measure for the special election ballot.

Election of Assessor-Recorder. If the Board calls a special election in 2021, that election also must include a contest to elect the Assessor-Recorder. In February 2021, Assessor-Recorder Carmen Chu resigned with approximately 23 months remaining in the current term of office to become the City Administrator, and Mayor Breed appointed Joaquín Torres to fill the vacancy. Under the Charter, the voters must select a candidate at the "next election" held at least 120 days after Assessor-Recorder Chu's resignation to complete the Assessor-Recorder's current term. So if the Board calls a special election, the Charter will require the Assessor-Recorder contest to appear on that ballot.

MEMORANDUM

DATE: March 24, 2021

PAGE: 3

RE: Consolidation of a Special Municipal Election with a Gubernatorial Recall Election

DISCUSSION

A. State and Local Processes for Calling an Election.**1. The State's Process for Calling a Gubernatorial Recall.**

Under State law, the proponents of the recall must submit at least 1,495,709 valid signatures to precipitate a recall election. Cal. Const., Art. II § 14(b). The process for determining the number of valid signatures and calling a recall election for Governor involves a number of steps that will likely take about six months:

- The county registrars must complete their verification of signatures by late April. Cal. Elections Code § 9031(b).
- Within ten days after receiving certifications indicating that the petitions contain a sufficient number of valid signatures, the Secretary of State will initiate a 30-day period during which members of the public may withdraw their names from the recall petition. Cal. Elections Code § 11108(a)-(b).
- Within ten days after the end of that period, county registrars must report to the Secretary of State the number of signatures that have been withdrawn. Cal. Elections Code § 11108(c). If there are still a sufficient number of signatures after the withdrawals, the State Department of Finance will have 30 days to calculate the estimated costs of the election, and the Joint Legislative Budget Committee then will have another 30 days to review and comment on that budget estimate. Cal. Elections Code § 11108(d)-(e).
- After that review period, the Secretary of State may certify that the proponents have gathered a sufficient number of signatures to qualify for the ballot. Cal. Elections Code §§ 11108(e), 11109.
- Upon the Secretary of State's certification, the Lieutenant Governor must call a recall election to be held within 60 to 80 days. Cal. Const., Art. II § 15. Election day must be scheduled to occur on a Tuesday. Cal. Elections Code § 1100.

Depending on whether the various agencies take the maximum amount of time allowed under the law, and assuming there are sufficient signatures, the election will likely be held between late November and early December. But the date of a possible statewide recall election is still far from certain. The Director of Elections can share information with you as it becomes available. For the purpose of calculating possible dates in this memorandum, we assume, based on current information from the Secretary of State, that the recall election could occur on a Tuesday between November 23 and December 7. When the State sets a date for the recall election, we will work with the Clerk of the Board and the Department of Elections to advise you on the final schedule.

MEMORANDUM

DATE: March 24, 2021

PAGE: 4

RE: Consolidation of a Special Municipal Election with a Gubernatorial Recall Election

2. The Local Process for Calling a Special Municipal Election.

If the Lieutenant Governor calls a statewide recall election, that does not automatically trigger a municipal election in San Francisco. If City officials want to hold a special municipal election on the same day as the recall election, the Board must call the election.

The Board may call a special election by resolution. Charter § 13.103; Cal. Elections Code § 10201. A resolution calling a special election would be subject to approval or veto by the Mayor. Charter § 3.103. The Board's resolution must fix a date for the election, and the election must occur between 105 and 120 days after the enactment of the resolution. Charter § 13.103.

Because the Board must call a special election between 105 and 120 days before election day, the Board will need to adopt the resolution calling the special election several weeks before the Lieutenant Governor formally sets the date for the statewide recall election. To address this complication, the Board could adopt a conditional resolution, calling for the City to hold a municipal election on one of several dates within the 105-to-120-day range, only if the Lieutenant Governor schedules a statewide recall election on one of those dates. So if the Board intends to consolidate the municipal election with a gubernatorial recall election to be held between November 23 and December 7, 2021, the Board must adopt the resolution calling the election on August 10, 2021. We recommend that the sponsor of the resolution introduce it at least two to three weeks before the deadline.

Although the Lieutenant Governor cannot officially call the statewide recall election until 80 days before election day, it is possible the Secretary of State or Lieutenant Governor will announce the likely date of the election many months in advance. In that event, even though the Board cannot formally call a special municipal election until 120 days before election day, the Board can adopt an earlier non-binding resolution announcing its intention to hold a special election.

The Charter also allows the voters to call a special election by signature petition. *See* Charter § 14.101 (calling special election via initiative petition); Charter § 14.103 (calling special election via local recall petition). Because the voters have not triggered a special election in these ways in the past several decades, we do not address that process in this memorandum.

3. Budget for a Special Municipal Election.

If the Board calls a special election, the Board must maintain a fund sufficient to pay all costs and expenses of the election. Charter § 13.103. The Board should also consult with the Director of Elections, the Controller, and the Mayor's Office regarding those costs.

B. Ballot Measures at a Special Municipal Election.**1. Types of Measures the City May Place on the Ballot.**

If the Board calls a special election, the Board, the Mayor, four Supervisors, or the MTA Board could propose local ballot measures for the voters to consider at that election. But State

MEMORANDUM

DATE: March 24, 2021

PAGE: 5

RE: Consolidation of a Special Municipal Election with a Gubernatorial Recall Election

and local law restrict the types of measures that the City can place on the ballot at a special election. Members of the public also may propose measures by signature petition, but we do not summarize those processes here.

- **No Charter Amendments.** The Board may not place a Charter amendment on the ballot at this special municipal election. Cal. Elections Code §§ 1415, 9255.
- **No General Taxes.** The City may not place a general tax (that is, a tax to generate non-dedicated revenue) on the ballot at this special election. Cal. Const., Art. XIII § 2(b).
- **Initiative Ordinances, including Special Taxes.** The Board may place an initiative ordinance, including a special tax (other than a special sales tax), on the ballot by motion with six votes. Charter § 2.113. The Mayor or four or more Supervisors may also place an initiative ordinance, including a special tax, on the ballot. *Id.* And the MTA Board may also place a special tax measure on the ballot. Charter § 8A.109. The Ethics Commission, which has authority to place measures on the ballot at general elections, may not place a measure on the ballot at this special election. Charter § 15.102.
- **Special Sales Taxes.** The Board, or the Board sitting as the Transportation Authority Board, may place a special sales tax on the ballot with eight votes. *See, e.g.*, Cal. Rev. & Tax Code § 7285.5; Public Utilities Code § 180201. Neither the Mayor nor four Supervisors may place a special sales tax on the ballot.
- **General Obligation Bonds.** The Board may place a general obligation (“GO”) bond measure on the ballot by ordinance with eight votes, preceded by the adoption of a “public interest and necessity” resolution, also with eight votes. Charter § 9.106; Cal. Gov. Code §§ 43607-08. Under State law, neither the Mayor nor four Supervisors may place a GO bond on the ballot.
- **Declarations of Policy.** The Board may place a non-binding declaration of policy on the ballot by motion. Charter § 2.113. And the Mayor or four or more Supervisors may also place a declaration of policy on the ballot. *Id.*

2. Schedule for Placing Measures on the Ballot.

As explained above the date of the possible recall election is currently uncertain, so the deadlines for placing local measures on the ballot are also unsettled. But because of the narrow window for the Board to call a special election, sponsors will need to prepare and introduce potential ballot measures at least several weeks before the Board formally calls the election. As discussed below, the deadline for introducing and submitting a measure depends on the date of the election, the type of measure, and the method of submission. Due to the unusual deadlines associated with a potential special election, you should consult with the City Attorney’s Office as soon as possible if you are considering proposing a measure for the special election.

Ordinances and Declarations of Policy Placed on the Ballot by the Board. The Board must submit proposed ordinances and declarations of policy to the Department of Elections no

MEMORANDUM

DATE: March 24, 2021

PAGE: 6

RE: Consolidation of a Special Municipal Election with a Gubernatorial Recall Election

later than 95 days before election day. Mun. Elections Code § 300(b). If the date of the election is November 23, then the final date for the Board to submit proposed ordinances or declarations of policy to the Department of Elections would be August 20. And if the election will occur on December 7, then the deadline will be September 3.

Because of procedural restrictions in the Municipal Elections Code and the Board's Rules of Order, the City Attorney and the Clerk of the Board generally recommend that sponsors introduce proposed initiative ordinances roughly two months before the final deadline for the Board to vote. But in some circumstances, with coordinated committee scheduling and minimal amendments during the legislative process, the Board could vote on a proposed measure as little as five to six weeks after introduction. If the special election is scheduled for November 23, we recommend that sponsors introduce proposed measures for Board consideration no later than late June; and if the election is scheduled for December 7, we recommend introduction no later than early July.

Ordinances and Declarations of Policy Placed on the Ballot by the Mayor or Four Supervisors. In contrast to the more flexible introduction deadline for ballot measures approved by the Board, there is a specific deadline for the submission of initiative ordinances by the Mayor or four Supervisors. The sponsors of such a measure must submit it to the Clerk of the Board and the Department of Elections no later than 140 days before election day, and may withdraw it up to 95 days before election day. Charter §§ 2.113, 3.100(16); Mun. Elections Code § 300(b). If the special election is scheduled for November 23, the submission deadline would be July 6; and if the election is scheduled for December 7, the submission deadline would be July 20.

General Obligation Bonds. The process for the Board to place a GO bond measure on the ballot is longer and more complicated than the process for other measures. Departments must submit GO bond proposals to the Capital Planning Committee at least 188 days before election day—that is, mid-May for a November 23 election, or early June for a December 7 election. Admin. Code § 2.30-1. The Committee must submit a recommendation to the Board, and the sponsors must introduce the measure and an accompanying resolution at the Board at least 169 days before election day. Admin. Code §§ 2.30-1, 2.31. The deadline for the Board to submit a GO bond measure to the ballot depends on how many GO bond measures the Board is considering for this election. Mun. Elections Code § 300(a). If the Board places only one GO bond on the special election ballot, it must submit the measure to the Department of Elections at least 95 days before election day. *Id.*

3. Other Deadlines Related to Ballot Measures.

The Municipal Elections Code provides a number of other deadlines and public review periods in the month after the Board, Mayor, or other City officials place measures on the ballot. For example, the Ballot Simplification Committee must prepare ballot digests, the City Attorney must prepare ballot questions, and the Controller must prepare financial analyses, all at least 85 days before election day. Mun. Elections Code §§ 510, 520, 610. Proponents, opponents, and

MEMORANDUM

DATE: March 24, 2021

PAGE: 7

RE: Consolidation of a Special Municipal Election with a Gubernatorial Recall Election

members of the public may submit ballot arguments, and the Department of Elections must make ballot materials available in advance for public review. All of these deadlines will apply to a special election.

C. Election to Complete the Term of the Assessor-Recorder.

If the Board calls a special election in 2021, then the City must hold an election to select an Assessor-Recorder as well. Earlier this year, Mayor Breed appointed Joaquín Torres to fill the vacancy in the Office of Assessor-Recorder. Assessor-Recorder Torres assumed office on February 8, 2021. The current term of office for Assessor-Recorder ends on January 8, 2023, and the voters will vote on candidates for the next full term on November 8, 2022. But under the Charter, the voters must first have an opportunity to vote on who will serve the remainder of the current term.

Whenever a vacancy occurs in an elective office other than the Office of Mayor, the Charter empowers the Mayor to fill the vacancy until the voters elect a person to hold the seat. Charter § 13.101.5(a). Here, because of the timing of the vacancy, the Charter requires the City to hold an election to complete the term “at the next election occurring not less than 120 days after the vacancy.” Charter § 13.101.5(c). If the City does not hold a special election in 2021, then the “next election” in San Francisco will be the statewide primary election currently scheduled for June 2022, and the Office of Assessor-Recorder will appear on that ballot. But if the Board calls a special election in 2021, then the Assessor-Recorder contest will appear on the special election ballot instead. Whether the election is in 2021 or June 2022, the winner of the contest will serve the remainder of the term ending January 8, 2023, and the subsequent term will be on the ballot at the November 8, 2022 election.

If the Board calls a special election, the regular nomination filing deadline for Assessor-Recorder will apply. The nomination period for candidates for the Office of Assessor-Recorder begins 113 days before election day and ends 88 days before election day. Cal. Elections Code § 10220; Mun. Elections Code § 205. That nomination period would run in August if the City holds a November 23 special election, or from mid-August to early September if the City holds a December 7 special election.

CONCLUSION

We are available to answer any legal questions about a possible special municipal election. If you have procedural or operational questions we suggest you contact the Director of Elections. If you are interested in calling such an election and placing measures on the ballot, please contact our office as soon as possible so we can research and draft the potential measures.