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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
Ana Flores
Deputy City Attorneys

DATE: July 2, 2021

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

In light of yesterday's proclamation declaring that statewide gubernatorial recall election will be held on September 14, 2021, we are updating our March 24, 2021 advice regarding the possible consolidation of a special municipal election with the recall election. Our previous memorandum was based upon the California Secretary of State's earlier indication that the recall election would most likely be held between late November and early December.

In sum, the proclamation setting the date for the recall election on September 14: (1) eliminates the City's ability to call a special election to be held on the same date as the recall; and (2) precludes the possibility of including a vacancy election for Assessor-Recorder on the September 14 ballot.

Under Charter Section 13.101, the Board of Supervisors (the "Board") may call a special municipal election by resolution, but the Board must do so between 105 and 120 days before the proposed election date. Because there are now fewer than 75 days before September 14, the Board cannot enact a resolution calling for a special municipal election to be held on the same day.

Also, under Charter Section 13.101.5(c), the City must schedule a vacancy election for Assessor-Recorder "at the next election occurring not less than 120 days after the vacancy." While September 14, 2021 is more than 120 days since the Office of Assessor-Recorder became vacant in February 2021, there is no longer sufficient time for this election to be included on a September 14 ballot because other critical legal deadlines have already passed. For example, for

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a September 14, 2021 election, the nomination deadline for candidates seeking election to Assessor-Recorder would have been Friday, June 18, 2021. Cal. Elec. Code § 10220; S.F. Mun. Elec. Code § 205(b) (establishing nomination deadline of 88 days before election). Given these circumstances, the Charter requires the vacancy election for Assessor-Recorder to be held at the “next election” where candidates would have a sufficient opportunity to run for that office – rather than an election at which it would be impossible for any candidates to appear on the ballot. See Cal. Civ. Code § 3531 (“The law never requires impossibilities.”); *National Shooting Sports Foundation, Inc. v. State of California* (2018) 5 Cal.5th 428, 433-34.