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## MEMORANDUM

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

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

FROM: Jon Givner  
Deputy City Attorney

DATE: April 21, 2022

RE: Vacancy in the Office of District 6 Supervisor

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At the April 19, 2022 election, voters elected Supervisor Matt Haney as the Assemblymember for California's 17th Assembly District. Although Supervisor Haney has declared victory and his opponent has conceded, the election process could take another week to complete as the Department of Elections finishes the vote count and takes other legally required steps. The Director of Elections anticipates he will certify the results of the election by early May. According to news reports, Supervisor Haney may take office as an Assemblymember as soon as May 3. After Supervisor Haney leaves City office, Mayor Breed must appoint a qualified resident of District 6 to fill the vacancy. (*See* Charter § 13.101.5.) We write to answer likely questions about the legal process for that appointment.

### **When can the Mayor appoint a new District 6 Supervisor?**

The Mayor may appoint a qualified person as soon as Supervisor Haney vacates the office either by taking the oath for his Assembly seat or by resigning as Supervisor on an earlier date. In the past, Supervisors who have left office to assume a position in the Legislature have submitted letters to the Clerk of the Board resigning from the Board of Supervisors (the "Board") as of the date they assume State office, but a resignation letter is not legally required. Even if Supervisor Haney does not submit a letter, the District 6 Supervisor office will become vacant as soon as he assumes office as a member of the Assembly. (*See* Campaign & Gov'tal Conduct Code § 3.230; Cal. Gov't Code § 1099.)

The Mayor may announce her planned appointment before the District 6 Supervisor seat becomes vacant. But that appointment will not be effective until Supervisor Haney vacates the office.

### **What is the process for the Mayor to appoint a new District 6 Supervisor?**

The Mayor may appoint a new Supervisor by submitting a written notice to the Clerk of the Board. After the Mayor submits that notice, the appointee may assume the powers and duties of the office as soon as the appointee completes the oath of office.

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**What residency requirements or other qualifications apply to the Mayor's appointee?**

The appointee must be a registered San Francisco voter and must reside in District 6 at the time the appointee is sworn in. (Charter §§ 13.106, 13.110(e).) And the appointee must continue to be a registered voter and reside in the district for the duration of the term. (*Id.*) There are no additional qualifications for the office.

The Redistricting Task Force is currently in the process of establishing new district lines under Charter Section 13.110, and the new district map will modify the boundaries of District 6. A lawsuit has also been filed seeking to have the court adopt the new district map instead. The final map will become effective immediately once adopted. If the new map becomes effective before the Mayor's appointee assumes office, then the appointee must be a resident of District 6 under the new map.

If the new map is not final when Mayor's appointee assumes office, then the appointee must be a resident of District 6 under the existing map approved in 2012. In that circumstance, the appointee may remain in office until January 8, 2023 even if the appointee is not a resident of District 6 under the new map. As we explained in our public memorandum dated January 9, 2012, Supervisors who hold office under existing district boundaries may complete their terms of office even if they no longer reside in their original districts under the new map. (Charter § 13.110(b).) But if the appointee seeks to run for reelection in November 2022, the appointee must reside in the newly-drawn District 6 at least 30 days before filing a declaration of candidacy. (Charter § 13.110(e).)

**When will the City hold an election for District 6 Supervisor?**

November 8, 2022. Whenever a seat on the Board becomes vacant, the City must hold an election to fill the office within a time period imposed by the Charter. (Charter § 13.101.5(c).) If a regular election for the same seat on the Board is scheduled to occur less than one year after the vacancy, then the voters will choose a Supervisor at that election to complete the subsequent term. (*Id.*) Here, the regular election for District 6 Supervisor is scheduled to occur on November 8, 2022—within one year of the vacancy—so the voters will elect a Supervisor at that election. Regardless of which candidate wins that election, the Mayor's appointee may serve until the end of the current term at noon on January 8, 2023, as we explained in our public memorandum dated November 4, 2015.

**Can the appointed Supervisor run for a new term in the November 8, 2022 election?**

Yes, as long as the Supervisor is a resident of the newly drawn District 6 at least 30 days before filing a declaration of candidacy.

Proposition C on the June 7, 2022 ballot would amend the Charter to prohibit certain appointees to elective office from running in an election to keep their seats. But even if the voters adopt that measure, it would not apply here. Proposition C would apply only to vacancies created by a recall—not vacancies like this one created by the incumbent's resignation.

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**If the appointed Supervisor wins another term in the November 8, 2022 election, could the Supervisor run for reelection at the end of that term?**

Yes. The appointee's completion of Supervisor Haney's current term will not count as a full term for the purpose of calculating term limits. Charter Section 2.101 provides that no person may serve more than two successive terms as Supervisor. Under the Charter's "rounding up" rule, any person "appointed . . . to the office of Supervisor to complete in excess of two years of a four-year term shall be deemed for purpose of this section to have served one full term."

There are approximately eight months remaining in the current term of office for District 6 Supervisor. Because the unexpired portion of the term that the appointee may serve does not exceed two years, the appointee's service will not count as a full term under Section 2.101. If the appointee goes on to win the November 8, 2022 election, then the appointee will be eligible to serve up to two successive four-year terms starting on January 8, 2023.