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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: Bradley Russi   
Deputy City Attorney

DATE: June 9, 2022

RE: Vacancy in the Office of District Attorney

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At the June 7, 2022 election, voters approved Proposition H, recalling District Attorney Chesa Boudin. When the recall of District Attorney Boudin becomes effective, the Mayor must appoint a qualified resident of San Francisco to fill the vacancy. We write to describe the legal process for that appointment and address questions that have been raised.

### 1. When can the Mayor appoint a new District Attorney?

Under Charter Section 3.100.15, the Mayor has the power to make an appointment to fill any vacancy in an elective City office until the voters have elected a successor. The Mayor may appoint a qualified person to serve as District Attorney as soon as the recall of District Attorney Boudin becomes effective. When the recall becomes effective, the Office of District Attorney will automatically become vacant. (See question 2 below for when the recall will become effective, question 4 below for qualifications for the person to be appointed, and question 5 for the timing of the election for a successor.)

### 2. When will the recall of District Attorney become effective?

The California Elections Code requires the Director of Elections to prepare a certified statement of the election results. (Elec. Code § 15372.) After the Director of Elections issues the certified statement, the Board of Supervisors ("Board") must declare the results of the election, including the result of Proposition H. (*Id.* § 15400.) The Board declares the election results by adopting a resolution, which the Board must pass by majority vote. The City Attorney typically prepares the resolution at the request of the Director of Elections, and the Board President introduces the resolution and places it on the Board's Adoption Without Committee Reference agenda. Proposition H will become effective, and the Office of District Attorney will be vacant, 10 days after the Board approves the resolution declaring the result of the election. (Municipal Elections Code § 380.) The Board's approval of the resolution declaring the election results is a ministerial act.

The Department of Elections anticipates that it will issue the certified statement of the election results in time for the Board to approve the resolution declaring the election results at its June 28, 2022 meeting. Therefore, the vacancy will arise no later than July 8, 2022.

## MEMORANDUM

TO: Hon. Mayor London N. Breed  
Hon. Members of the Board of Supervisors  
DATE: June 9, 2022  
PAGE: 2  
RE: Vacancy in the Office of District Attorney

---

The Mayor may announce her planned appointment before the Office of District Attorney becomes vacant. But that appointment will not be effective until District Attorney Boudin vacates the office.

**3. What is the process for the Mayor to appoint a new District Attorney?**

The Mayor appoints a new District Attorney by submitting a written notice to the Clerk of the Board of Supervisors. 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.

**4. 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 San Francisco at the time the appointee is sworn in. (Charter § 13.106.) And the appointee must continue to be a San Francisco registered voter and resident for the duration of the appointee's tenure. (*Id.*)

State law requires that the District Attorney be licensed to practice law in California, and the Charter requires the District Attorney to have been so licensed for at least five years preceding election. (Gov't Code § 24002; Charter § 6.100.) Here, because the Mayor will appoint the new District Attorney, the appointee must have been licensed to practice law in California for five years before the appointment. The appointee may also not engage in the private practice of law while District Attorney. (*Id.*)

**5. When will the City hold an election for District Attorney?**

November 8, 2022. Whenever the Office of District Attorney becomes vacant, the City must hold an election to permanently fill the vacancy within a time period imposed by the Charter. (Charter § 13.101.5(c).) In light of the timing of this vacancy, the vacancy election must be held at the next election occurring at least 120 days after the date of the vacancy. As mentioned above, based on the Director of Elections anticipated timing for certifying the results of the recent election, the vacancy will likely arise no later than July 8, 2022, which is more than 120 days before the November 8, 2022 election.

The winning candidate at the November 8, 2022 election will serve the remainder of District Attorney Boudin's term of office and may run for additional terms in subsequent elections. The District Attorney's current term will end on January 8, 2024, and the City will hold an election for the next term on November 7, 2023. Supervisor Preston has introduced a proposed Charter amendment for the November 8, 2022 ballot that would change the regular election schedule for the Office of District Attorney and several other City offices. If the Board places the measure on the ballot in its current form and the voters approve it, then the next regular election for District Attorney would be moved to November 5, 2024.

**6. Can the appointed District Attorney run for a new term in the November 8, 2022 election?**

Yes. In addition to the recall measure, the voters also considered Proposition C on the June 7, 2022 ballot. Proposition C proposed to amend the Charter to provide that the Mayor's appointee to an elective office following a successful recall would be an interim officeholder prohibited from running in the vacancy election following the recall. Based on initial election results, it appears that the voters did not approve Proposition C. Proposition C would have

**MEMORANDUM**

TO: Hon. Mayor London N. Breed  
Hon. Members of the Board of Supervisors  
DATE: June 9, 2022  
PAGE: 3  
RE: Vacancy in the Office of District Attorney

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prohibited the appointed District Attorney from running in the vacancy election to be held on November 8, 2022. But because the voters did not approve Proposition C, the appointed District Attorney may be a candidate for District Attorney in the November 8, 2022 vacancy election.