

BOARD of SUPERVISORS



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MEMORANDUM

TO: Ben Rosenfield, City Controller

FROM: *DE* Derek Evans, Clerk, Rules Committee
Board of Supervisors

DATE: June 13, 2016

SUBJECT: CHARTER AMENDMENT INTRODUCED
November 8, 2016, Election

The Board of Supervisors Rules Committee has received the following Charter Amendment for the June 7, 2016, Election, introduced by Supervisor Avalos on December 15, 2015, and amended by Rules Committee on June 9, 2016. This matter is being referred to you in accordance with Elections Code, Section 305(B)(2), and Rules of Order 2.22.3.

**File No. 151273 Charter Amendment - Filling Vacancies in Local
Elective Office**

Charter Amendment (Fifth Draft) to amend the Charter of the City and County of San Francisco to require the Department of Elections to hold a special election when there is a vacancy in the Office of Member of the Board of Supervisors, unless a regularly scheduled election will be held within 180 days of the vacancy; provide that the Mayor shall appoint an interim Supervisor to fill a supervisorial vacancy until an election is held to fill that vacancy, with the interim Supervisor being ineligible to compete in that election; and require the Mayor to fill vacancies in all local elective offices within 28 days of the vacancy, at an election to be held on November 8, 2016.

Please review and prepare a financial analysis of the proposed measure prior to the Rules Committee hearing. Please note that it will be heard at the June 23, 2016, Rules Committee meeting.

If you have any questions or concerns please call me at (415) 554-7702 or email derek.evans@sfgov.org. To submit documentation, please forward to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Todd Rydstrom, Office of the City Controller
Maura Lane, Office of the City Controller

1 [Charter Amendment - Filling Vacancies in Local Elective Office]

2
3 **Describing and setting forth a proposal to the voters at an election to be held on November**
4 **8, 2016, to amend the Charter of the City and County of San Francisco to require the**
5 **Department of Elections to hold a special election when there is a vacancy in the Office of**
6 **Member of the Board of Supervisors, unless a regularly scheduled election will be held**
7 **within 180 days of the vacancy; provide that the Mayor shall appoint an interim**
8 **Supervisor to fill a supervisorial vacancy until an election is held to fill that vacancy, with**
9 **the interim Supervisor being ineligible to compete in that election; and require the Mayor**
10 **to fill vacancies in all local elective offices within 28 days of the vacancy.**

11
12 Section 1. The Board of Supervisors hereby submits to the qualified voters of the City
13 and County, at an election to be held on November 8, 2016, a proposal to amend the Charter of
14 the City and County by revising Section 13.101.5 and Article XVII, to read as follows:

15 NOTE: **Unchanged Charter text and uncodified text** are in plain font.
16 **Additions** are *single-underline italics Times New Roman font*.
17 **Deletions** are *strike-through italics Times New Roman font*.
18 **Asterisks (* * * *)** indicate the omission of unchanged Charter
19 subsections.

20 **SEC. 13.101.5. VACANCIES.**

21 (a) If the office of Assessor-Recorder, City Attorney, District Attorney, Public Defender,
22 Sheriff, Treasurer, or Member of the ~~*Board of Supervisors*~~, Board of Education or Governing
23 Board of the Community College District becomes vacant because of death, resignation, recall,
24 permanent disability, or the inability of the respective officer to otherwise carry out the
25 responsibilities of the office, the Mayor shall appoint an individual qualified to fill the vacancy
under this Charter and state laws within 28 days of the date of the vacancy.

1 (b) If the Office of Mayor becomes vacant because of death, resignation, recall,
2 permanent disability or the inability to carry out the responsibilities of the office, the President of
3 the Board of Supervisors shall become Acting Mayor and shall serve until a successor is
4 appointed by the Board of Supervisors.

5 (c) If the Office of Member of the Board of Supervisors becomes vacant because of
6 death, resignation, recall, permanent disability or the inability to carry out the responsibilities of
7 the office, the Mayor shall appoint an individual qualified to fill the vacancy under this Charter
8 and state law to serve as an interim Supervisor. The Mayor shall appoint an interim Supervisor
9 within 28 days of the date of the vacancy. The interim Supervisor shall serve until a successor is
10 elected at a special municipal election as provided in Section 13.101.5(e). That interim
11 Supervisor may not seek election for that seat at the special municipal election described in
12 Section 13.101.5(e).

13 (ed) Any person filling a vacancy pursuant to subsection (a) or (b) of this Section
14 13.101.5 shall serve until a successor is selected at the next election occurring not less than 120
15 days after the vacancy, at which time an election shall be held to fill the unexpired term,
16 provided that (1) if an election for the vacated office is scheduled to occur less than one year
17 after the vacancy, the appointee shall serve until a successor is selected at that election or (2) if
18 an election for any seat on the same board as the vacated seat is scheduled to occur less than one
19 year but at least 120 days after the vacancy, the appointee shall serve until a successor is selected
20 at that election to fill the unexpired term.

21 (e) If the Office of Member of the Board of Supervisors becomes vacant as provided in
22 subsection (c) of this Section 13.101.5, the Director of Elections, within 14 days of the vacancy,
23 shall call a special municipal election to fill the vacancy. The special municipal election shall be
24 held on a Tuesday at least 126 days, but not more than 140 days, following the date of its calling,
25 except that if the next scheduled election will occur within 180 days of the vacancy, the Director

1 of Elections shall consolidate the special municipal election with that election. Notwithstanding
2 this provision, the Director of Elections shall consolidate the special municipal election with
3 another scheduled election, if (1) the Director of Elections submits such a request to the Board
4 of Supervisors and (2) the Board of Supervisors and Mayor approve the request by resolution.
5 Any person elected at a special municipal election to fill a vacancy under this subsection shall
6 take office when the Director of Elections has issued the certified statement of election results for
7 that election.

8 (f) The Director of Elections shall not include any measures or other contests on the
9 ballot for a special municipal election held pursuant to Section 13.101.5(e), unless the special
10 municipal election is consolidated with another municipal election that includes measures or
11 other contests.

12 (g) If a vacancy in the Office of Member of the Board of Supervisors occurs after
13 November 8, 2016 but before the effective date of the Charter amendment amending this Section
14 13.101.5 at the November 8, 2016 election, and the vacancy is filled in accordance with the
15 Charter as operative at that time, the person appointed to fill the vacancy shall vacate the office
16 by operation of law on the effective date of the Charter amendment. The vacancy shall then be
17 filled as provided in this Section 13.101.5. The City Attorney shall remove this subsection (g)
18 from the Charter by June 30, 2017.

19 ~~(d) If no candidate receives a majority of the votes cast at an election to fill a vacated~~
20 ~~office, the two candidates receiving the most votes shall qualify to have their names placed on~~
21 ~~the ballot for a municipal runoff election at the next regular or otherwise scheduled election~~
22 ~~occurring not less than five weeks later. If an instant runoff election process is enacted for the~~
23 ~~offices enumerated in this Section, that process shall apply to any election required by this~~
24 ~~Section.~~

25 //

1 **ARTICLE XVII: DEFINITIONS**

2 For all purposes of this Charter, the following terms shall have the meanings specified
3 below:

4 "Business day" shall mean any day other than a Saturday, Sunday or holiday on which
5 governmental agencies are authorized by law to close.

6 "Confirm" or "confirmation" shall mean the approval by a majority of the members of the
7 Board of Supervisors.

8 "Discrimination" shall mean violations of civil rights on account of race, color, religion,
9 creed, sex, national origin, ethnicity, age, disability or medical condition, political affiliation,
10 sexual orientation, ancestry, marital or domestic partners status, gender identity, parental status,
11 other non-merit factors, or any category provided for by ordinance.

12 "Domestic partners" shall mean persons who register their partnerships pursuant to the
13 voter-approved Domestic Partnership Ordinance.

14 "Elector" shall mean a person registered to vote in the City and County.

15 "For cause" shall mean the issuance of a written public statement by the Mayor
16 describing those actions taken by an individual as a member of a board or commission which are
17 the reasons for removal, provided such reasons constitute official misconduct in office.

18 "General municipal election" shall mean *the election for local officials or measures to be*
19 *held in the City and County on the Tuesday immediately following the first Monday in November*
20 *in every year until and including 2015. Thereafter, "general municipal election" shall mean* the
21 election for local officials or measures to be held in the City and County on the Tuesday
22 immediately following the first Monday in November, both in all even-numbered years and in
23 every fourth year following 2015.

24 "Initiative" shall mean (1) a proposal by the voters with respect to any ordinance, act or
25 other measure which is within the powers conferred upon the Board of Supervisors to enact, any

1 legislative act which is within the power conferred upon any other official, board, commission or
2 other unit of government to adopt, or any declaration of policy; or (2) any measure submitted to
3 the voters by the Mayor or by the Board of Supervisors, or four or more members of the Board.

4 "Notice" shall mean publication (as defined by ordinance), and a contemporaneous filing
5 with the Clerk of the Board of Supervisors or other appropriate office.

6 "One-third," "a majority" or "two-thirds" of the Board of Supervisors or any other board
7 or commission of the City and County shall mean one-third, a majority or two-thirds of all
8 members of such board or commission.

9 "Published" shall have the meaning ascribed to the term by the Board of Supervisors by
10 ordinance. The Board of Supervisors shall seek a recommendation from the Clerk of the Board
11 of Supervisors before adopting such an ordinance.

12 "Referendum" shall mean the power of the voters to nullify ordinances involving
13 legislative matters except that the referendum power shall not extend to any portion of the annual
14 budget or appropriations, annual salary ordinances, ordinances authorizing the City Attorney to
15 compromise litigation, ordinances levying taxes, ordinances relative to purely administrative
16 matters, ordinances necessary to enable the Mayor to carry out the Mayor's emergency powers,
17 or ordinances adopted pursuant to Section 9.106 of this Charter.

18 "Special municipal election" shall mean, in addition to special elections otherwise
19 required by law, the election called by (1) the Director of Elections with respect to an initiative,
20 referendum or recall, *(2) the Director of Elections with respect to filling a vacancy in the Office*
21 *of Member of the Board of Supervisors,* and ~~(23)~~ the Board of Supervisors with respect to bond
22 issues, ~~election of an official not required to be elected at the general municipal election,~~ or an
23 initiative or referendum.

24 "Statewide election" shall mean an election held throughout the state.
25

1 "Voter" shall mean an elector who is registered in accordance with the provisions of state
2 law.

3
4 APPROVED AS TO FORM:
5 DENNIS J. HERRERA, City Attorney

6 By:



7 ANDREW SHEN
8 Deputy City Attorney

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LEGISLATIVE DIGEST
(Amended 6/9/16 – Fifth Draft)

[Charter Amendment - Filling Vacancies in Local Elective Office]

Describing and setting forth a proposal to the voters at an election to be held on November 8, 2016, to amend the Charter of the City and County of San Francisco to require the Department of Elections to hold a special election when there is a vacancy in the Office of Member of the Board of Supervisors, unless a regularly scheduled election will be held within 180 days of the vacancy; provide that the Mayor shall appoint an interim Supervisor to fill a supervisorial vacancy until an election is held to fill that vacancy, with the interim Supervisor being ineligible to compete in that election; and require the Mayor to fill vacancies in all local elective offices within 28 days of the vacancy.

Existing Law

When the office of Assessor-Recorder, City Attorney, District Attorney, Public Defender, Sheriff, Treasurer, or Member of the Board of Supervisors, Board of Education or Governing Board of the Community College District becomes vacant because of the death, resignation, recall, permanent disability, or the inability of the officer to otherwise carry out the responsibilities of the office, the Mayor has the authority to appoint a successor to fill the vacancy until an election is held. Current law does not establish a deadline by which the Mayor must make these appointments.

The Charter provides three possible dates for these vacancy elections depending on the upcoming election schedule. First, if an election for the vacant office is scheduled to occur less than one year after the vacancy, then the voters would choose the successor at that election. Second, if an election for any other seat on the Board of Supervisors is scheduled to occur between 120 days and one year after the vacancy, then the voters would choose the successor at that election. Third, in any other case—for example, if the nearest election for the office or the Board of Supervisors is less than 120 days away or more than one year away—then the voters would choose the successor at the next election, as long as that election is scheduled to occur at least 120 days after the vacancy.

Amendments to Current Law

The proposal would require the Mayor to make appointments to any vacancy in the office of Assessor-Recorder, City Attorney, District Attorney, Public Defender, Sheriff, Treasurer, or Member of the Board of Supervisors, Board of Education or Governing Board of the Community College District within 28 days of the date of the vacancy.

Under the proposed Charter amendment, when a seat on the Board of Supervisors becomes vacant, the Mayor would appoint an interim Supervisor to temporarily fill the vacant office, until

the City holds a special election to permanently fill the vacancy. The interim Supervisor would not be eligible to run for office in the special election held to permanently fill the vacancy, but would be able to run in any subsequent election for the office.

The Director of Elections would call the date of such a special election within 14 days of a supervisory vacancy. The City would hold the special election on a Tuesday falling between 126 and 140 days from the date of its calling. But if another scheduled election would occur within 180 days of the vacancy, the Director of Elections would consolidate the special election with the scheduled election. However, the City may consolidate a special election to fill a supervisory vacancy with any other scheduled election, if (1) the Director of Elections submits such a request to the Board of Supervisors and (2) the Board of Supervisors and Mayor approve the request by resolution.

The proposal also specifies that any person elected to fill a vacancy shall take office when the Director of Elections has issued the certified statement of election results for that election.

If the special election is not consolidated with another municipal election, the Director of Elections may not place any ballot measure or other contest on that ballot.

Lastly, if a supervisory vacancy occurs after the November 8, 2016 election but before the effective date of this Charter amendment, and the City filled the vacancy in accordance with the prior version of Charter, any such appointee would be required to leave office on the effective date of this Charter amendment. Such a vacancy would then be filled through the special election process set forth in this proposal.

Background Information

On January 14, 2016, the Rules Committee duplicated the original file and amended the original file to remove all changes to the regular Mayoral election process. The Committee further amended the proposed Charter amendment to give the Mayor authority to appoint the interim Supervisor in the event of a vacancy in a Supervisor's office.

On January 21, 2016, the Rules Committee further amended this proposal to remove any changes to the appointment process for mayoral vacancies.

On February 3, 2016, the Rules Committee amended this proposal so that it would appear on the November 8, 2016 ballot, if submitted by the Board of Supervisors.

On June 9, 2016, the Rules Committee adopted amendments that (1) would require the Mayor to make appointments to vacant local elective offices within 28 days of the vacancy, and (2) provide further flexibility to consolidate a special municipal election to fill a supervisory vacancy with another scheduled election.

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