

[Role of City Employees in Elections]

## CHARTER AMENDMENT

## PROPOSITION \_\_\_\_\_

Describing and setting forth a proposal to the qualified electors of the City and County of San Francisco to amend the San Francisco Charter by amending sections 13.103.5, 13.104.5, 15.100 and 6.102 to: clarify that said section does not prohibit City personnel from providing to the Department of Elections services that are indistinguishable from services provided to other City departments and unrelated to the conduct of elections; authorize the Board of Supervisors to grant a waiver, applicable before, during and after election day, to the prohibition on use of City employees; eliminate the requirement that, prior to seeking a waiver from the Board of Supervisors, the Elections Commission make a finding that the Department of Elections will not have adequate staffing to conduct an election without the waiver; specify that the Sheriff is responsible for transporting voted ballots and other documents and devices used to record votes from the polls to the central counting location and approving a security plan; and eliminate some of the restrictions that apply to members of the Ethics Commission, Elections Commission and the City Attorney.

The Board of Supervisors of the City and County of San Francisco hereby submits to the qualified electors of San Francisco, at an election to be held on November 5, 2002, a proposal to amend the Charter of the City and County by amending sections 13.103.5, 13.104.5, 15.100 and 6.102 to read as follows:

Note: Additions are *single-underline italics Times New Roman*.  
Deletions are ~~*strikethrough italics Times New Roman*~~.

## SEC. 13.103.5. ELECTIONS COMMISSION.

An Elections Commission shall be established to oversee all public federal, state, district and municipal elections in the City and County. The Commission shall set general policies for the Department of Elections and shall be responsible for the proper administration of the general practices

of the Department, subject to the budgetary and fiscal provisions of this Charter. These duties shall include but not be limited to approving written plans prior to each election, submitted by the Director of Elections, detailing the policies, procedures, and personnel that will be used to conduct the election as well as an assessment of how well the plan succeeded in carrying out a free, fair and functional election.

The Commission shall consist of seven members who shall serve five-year terms. No person appointed as a Commission member may serve as such for more than two successive five-year terms. Any person appointed as a Commission member to complete more than two and one half years of a five-year term shall be deemed, for the purpose of this section, to have served one full term. No person having served two successive five-year terms may serve as a Commission member until at least five years after the expiration of the second successive term in office. Any Commission member who resigns with less than two and one half years remaining until the expiration of the term shall be deemed, for the purposes of this section, to have served a full five-year term.

The Mayor, the Board of Supervisors, the City Attorney, the Public Defender, the District Attorney, the Treasurer, and the Board of Education of the San Francisco Unified School District each shall appoint one member of the Commission. The member appointed by the Mayor shall have a background in the electoral process. The member appointed by the City Attorney shall have a background in elections law. The member appointed by the Treasurer shall have a background in financial management. The members appointed by the District Attorney, Public Defender, the Board of Education of the San Francisco Unified School District, and the Board of Supervisors shall be broadly representative of the general public. In the event a vacancy occurs, the appointing authority who appointed the member vacating the office shall appoint a qualified person to complete the remainder of the term. All members initially appointed to the Election Commission shall take office on the first day of January, 2002.

The initial terms of Commission members shall expire according to the following guidelines:  
the term of the members appointed by the Mayor and the Board of Education of the San Francisco

Unified School District shall expire on January 1, 2003; the term of the members appointed by the Board of Supervisors and the Treasurer shall expire on January 1, 2004; the term of the member appointed by the City Attorney shall expire January 1, 2005; the term of the member appointed by the Public Defender shall expire January 1, 2006; and the term of the member appointed by the District Attorney shall expire January 1, 2007.

Members of the Commission shall serve without compensation. Members of the Commission shall be officers of the City and County, and may be removed by the appointing authority only pursuant to Section 15.105. During his or her tenure, members and employees of the Elections Commission are subject to the following restrictions:

(a) Restrictions on Holding Office. No member or employee of the Elections Commission may hold any other City or County office or be an officer of a political party.

(b) Restrictions on Employment. No member or employee of the Elections Commission may be a registered campaign consultant or registered lobbyist, or be employed by or receive gifts or other compensation from a registered campaign consultant or registered lobbyist. No member of the Elections Commission may hold any employment with the City and County and no employee of the Elections Commission may hold any other employment with the City and County.

(c) Restrictions on Political Activities. No member or employee of the Elections Commission may participate in any campaign supporting or opposing a candidate or ballot measure that will appear on the San Francisco ballot, other than candidates seeking election to federal or statewide office. For purposes of this section, participation in a campaign includes but is not limited to making contributions or soliciting contributions to any committee, including general purpose committees; publicly endorsing or urging endorsement of any candidate or ballot measure; or participating in decisions by organizations to participate in a campaign.

~~During his or her tenure, neither a member nor an employee of the Commission may: hold any other public office or employment with the City, state or federal government, with a district governmental body, with the governing body of any political party, with any City, district, state or~~

~~federal official, or with a member of the governing body of any political party; participate in contribute to, solicit contributions to publicly endorse or urge the endorsement of a campaign supporting or opposing a candidate for City, district, state or federal office appearing on the ballot in San Francisco, the governing body of any political party appearing on the ballot in San Francisco, or a City, regional or state ballot measure appearing on the ballot in San Francisco; be an officer, director or employee of or hold a policymaking position in an organization that makes political endorsements regarding candidates or ballot measures appearing on the ballot in San Francisco; be a registered lobbyist or campaign consultant as defined under the City's lobbyist or campaign consultant ordinances; or employ or be employed by, or receive any gifts or other compensation from, a person required to register as a lobbyist or campaign consultant under the City's lobbyist or campaign consultant ordinances, a person who employs someone required to register as a lobbyist or campaign consultant under the City's lobbyist or campaign consultant ordinances, or a person who is employed by or holds office in an organization that makes political endorsements regarding candidates or ballot measures appearing on the ballot in San Francisco.~~

If a person appointed to the Elections Commission is, at the time of appointment, an officer, ~~director~~ or employee ~~of or holds a policymaking position in an organization described herein~~ as prohibited by this section, that person shall be eligible to serve on the Elections Commission only if he or she resigns from his or her office or employment ~~with that organization~~ within thirty days of appointment.

~~For the purpose of this Section, "district" shall mean an existing or proposed public entity whose area includes any portion of the City and County of San Francisco or whose candidates or measures appear on the ballot in San Francisco. This Section is not intended to prohibit a member or employee of the Commission from serving with the federal or state military reserves.~~

#### SEC. 13.104.5. USE OF OTHER CITY EMPLOYEES AND OFFICERS.

Except as provided below, no City employee or officer, other than the Director of Elections, an appointee of the Director of Elections or a member of the Elections Commission, may in any capacity

perform any function relating to the conduct of an election that this Charter places under the Department of Elections. This section prohibits City personnel from providing to the Department of Elections services that are unique to that department. This section does not prohibit City personnel from providing to the Department of Elections ordinary services that are unrelated to the conduct of an election and that are indistinguishable from services performed for other City departments. These general support services include, but are not limited to, services relating to human resources, personnel processing, payroll, workers compensation, budgeting, accounting, procurement, contracting, and the maintenance of telephone and voice mail systems. The Elections Commission may, upon the recommendation of the Director of Elections ~~and a finding that the Department will not have adequate staffing to conduct an election~~, request from the Board of Supervisors a waiver of this prohibition so as to allow City employees and officers to assist the Department of Elections ~~on the day of an election~~. The Board of Supervisors shall approve or deny such requests from the Elections Commission by motion.

The City Attorney shall serve as legal counsel to the Elections Commission and the Department of Elections. The Commission may, by a majority vote of its members, hire outside legal counsel to advise the Commission and the Department on matters that directly involve the election or campaign of the City Attorney, if the City Attorney is standing for election. All outside legal counsel hired pursuant to this Section shall be a member in good standing of the California State Bar. In selecting outside legal counsel, the Commission shall give preference to engaging the services of a city attorney's office, a county counsel's office or other public entity law office with an expertise regarding the subject-matter jurisdiction of the Elections Commission. In the event that the Commission concludes that private counsel is necessary, it may, by a majority vote, engage the services of a private attorney who has at least five years' experience in the subject-matter jurisdiction of the Elections Commission. Any private counsel retained pursuant to this Section shall be subject to the conflict of interest provisions of Section 13.103.5. Any contract for outside legal counsel authorized by this section shall be paid for by the Commission and shall be subject to the budgetary and fiscal provisions of this charter.

The Sheriff shall be responsible for ~~preserving the security and integrity of elections in all matters including but not limited to~~ transporting all voted ballots and all other documents or devices used to record votes from the polls to the central counting location and approving a security plan providing security for the ballots until the certification of election results. This requirement shall not become operative following its adoption until the Sheriff has completed meeting and conferring required by state law. The Elections Commission shall send a copy of the approved transportation and security plan to the Board of Supervisors.

The Director of Elections shall develop and submit for the approval of the Elections Commission an alternative transportation and security plan if an incumbent sheriff is running for election or if there is a measure on the San Francisco ballot that would have a material, financial effect on the Sheriff or the uniformed personnel of the Sheriff's department as determined by the Ethics Commission. The Director of Elections shall invite the Secretary of State to comment on any alternative transportation and security plan. The Elections Commission shall send a copy of the approved alternative transportation and security plan to the Board of Supervisors. The Board of Supervisors shall have the authority to enter into any contracts or take whatever actions are necessary to meet the alternative security requirements of this section.

SEC. 15.100. ETHICS COMMISSION.

The Ethics Commission shall consist of five members who shall serve six-year terms; provided that the first five commissioners to be appointed to take office on the first day of February, 2002 shall by lot classify their terms so that the term of one commissioner shall expire at 12:00 o'clock noon on each of the second, third, fourth, fifth and sixth anniversaries of such date, respectively; and, on the expiration of these and successive terms of office, the appointments shall be made for six-year terms.

The Mayor, the Board of Supervisors, the City Attorney, the District Attorney and the Assessor each shall appoint one member of the Commission. The member appointed by the Mayor shall have a background in public information and public meetings. The member appointed by the City Attorney shall have a background in law as it relates to government ethics. The member appointed by the

Assessor shall have a background in campaign finance. The members appointed by the District Attorney and Board of Supervisors shall be broadly representative of the general public.

In the event a vacancy occurs, the officer who appointed the member vacating the office shall appoint a qualified person to complete the remainder of the term. Members of the Commission shall serve without compensation. Members of the Commission shall be officers of the City and County, and may be removed by the appointing authority only pursuant to Section 15.105.

No person may serve more than one six-year term as a member of the Commission, provided that persons appointed to fill a vacancy for an unexpired term with less than three years remaining or appointed to an initial term of three or fewer years shall be eligible to be appointed to one additional six-year term. Any term served before the effective date of this Section shall not count toward a member's term limit. Any person who completes a term as a Commissioner shall be eligible for reappointment six years after the expiration of his or her term. Notwithstanding any provisions of this Section or any other section of the Charter to the contrary, the respective terms of office of the members of the Commission who shall hold office on the first day of February, 2002, shall expire at 12 o'clock noon on said date, and the five persons appointed as members of the Commission as provided in this Section shall succeed to said offices on said first day of February, 2002, at 12 o'clock noon; provided that if any appointing authority has not made a new appointment by such date, the sitting member shall continue to serve until replaced the new appointee.

During his or her tenure, members and employees of the Ethics Commission are subject to the following restrictions:

(a) Restrictions on Holding Office. No member or employee of the Ethics Commission may hold any other City or County office or be an officer of a political party.

(b) Restrictions on Employment. No member or employee of the Ethics Commission may be a registered lobbyist or campaign consultant, or be employed by or receive gifts or other compensation from a registered lobbyist or campaign consultant. No member of the Ethics Commission may hold

employment with the City and County and no employee of the Commission may hold any other employment with the City and County.

(c) Restrictions on Political Activities. No member or employee of the Ethics Commission may participate in any campaign supporting or opposing a candidate for City elective office, a City ballot measure, or a City officer running for any elective office. For the purposes of this section, participation in a campaign includes but is not limited to making contributions or soliciting contributions to any committee within the Ethics Commission's jurisdiction, publicly endorsing or urging endorsement of a candidate or ballot measure, or participating in decisions by organizations to participate in a campaign.

~~During his or her tenure, a member of the Commission may not: hold any other public office or any employment with the City, state or federal government, with a district governmental body, with the governing body of any political party, with any City, district, state or federal official, or with a member of the governing body of any political party; participate in, contribute to, solicit contributions to, publicly endorse or urge the endorsement of a campaign supporting or opposing a candidate for City, district, state or federal office appearing on the ballot in San Francisco, the governing body of any political party appearing on the ballot in San Francisco, a City, regional or state ballot measure appearing on the ballot in San Francisco, or a City official seeking any elective office; be an officer, director, or employee of or hold a policymaking position in an organization that makes political endorsements regarding candidates or ballot measures appearing on the ballot in San Francisco; be a registered lobbyist or campaign consultant as defined under the City's lobbyist or campaign consultant ordinances; or employ or be employed by, or receive any gifts or other compensation from, a person required to register as a lobbyist or campaign consultant under the City's lobbyist or campaign consultant ordinances, a person who employs someone required to register as a lobbyist or campaign consultant under the City's lobbyist or campaign consultant ordinances, or a person who is employed by or holds office in an organization that makes political endorsements regarding candidates or ballot measures appearing on the ballot in San Francisco. If a person appointed to the Ethics Commission is,~~



~~at the time of appointment, an officer, director or employee of or holds a policymaking position in an organization described herein, that person shall be eligible to serve on the Ethics Commission only if he or she resigns from his or her office or employment with that organization within thirty days of appointment.~~

~~For the purposes of this Section, "district" shall mean an existing or proposed public entity whose area includes any portion of the City and County of San Francisco or whose candidates or measures appear on the ballot in San Francisco. This Section is not intended to prohibit a member of the Commission from serving with the federal or state military reserves.~~

For a period of one year upon completing his or her service with the Commission, no member of the Commission may: be a lobbyist or campaign consultant, ~~as defined under the City's lobbyist or campaign consultant ordinances; or employ or~~ be employed by, or receive any gifts or other compensation from a ~~person required to register as a~~ lobbyist or campaign consultant ~~under the City's lobbyist or campaign consultant ordinances, or~~ a person who employs someone required to register as a lobbyist or campaign consultant ~~under the City's lobbyist or campaign consultant ordinances, or a person who is employed by or holds office in a committee, as defined under San Francisco Campaign and Government Conduct Code Section 1.305.~~ For purposes of this section, the terms lobbyist and campaign consultant mean persons required to register under the City's lobbyist or campaign consultant ordinances.

The Commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records or other items material to the performance of the Commission's duties or exercise of its powers.

#### SEC. 6.102. CITY ATTORNEY.

The City Attorney shall:

1. Represent the City and County in legal proceedings with respect to which it has an interest; provided that any elected officer, department head, board or commission may engage counsel other than the City Attorney for legal advice regarding a particular matter where the elected officers

department head, board or commission has reason to believe that the City Attorney may have a prohibited financial conflict of interest under California law or a prohibited ethical conflict of interest under the California Rules of Professional Conduct with regard to the matter, subject to the following limitations and conditions.

The elected officer, department head, board or commission shall first present a written request to the City Attorney for outside counsel. The written request shall specify the particular matter for which the elected officer, department head, board or commission seeks the services of outside counsel, a description of the requested scope of services, and the potential conflict of interest that is the basis for the request. Within five working days after receiving the written request for outside counsel, the City Attorney shall respond in writing to the elected officer, department head, board or commission either consenting or not consenting to the provision of outside counsel. If the City Attorney does not consent to the provision of outside counsel, the City Attorney shall state in the written response why he or she believes that there is no conflict of interest regarding the particular matter.

If the elected officer, department head, board or commission continues to believe there are adequate grounds for outside counsel despite the City Attorney's response that there is no conflict of interest, the elected officer, department head, board or commission may, within thirty days after receiving the City Attorney's response, refer the issue of whether the City Attorney has a prohibited conflict of interest regarding a particular matter to a retired judge or justice of the state courts of California for resolution. If the elected officer, department head, board or commission and City Attorney cannot agree on a retired judge to hear the matter, the retired judge shall be selected at random by an alternative dispute resolution provider. If the matter is referred to a retired judge, the elected officer, department head, board or commission, subject to the budgetary and fiscal provisions of the Charter, shall be entitled to retain outside counsel to represent it solely on the issue of whether the City Attorney has a conflict of interest regarding the particular matter.

In deciding whether the City Attorney has a conflict of interest regarding a particular matter, the retired judge shall be bound by and apply the applicable substantive law and Rules of Professional

Conduct as if he or she were a court of law. To the extent practicable, the retired judge shall hear the matter within 15 days after its assignment to the retired judge, and within 15 days after the hearing, shall issue a written opinion stating the basis for the decision. The retired judge, but not the City Attorney or elected officer, department head, board or commission, shall have the power to subpoena witnesses and documents in this proceeding.

The retired judge may request that the City Attorney secure written advice from the California Fair Political Practices Commission, the State Bar of California, or the California Attorney General on the question of whether the City Attorney has a conflict of interest regarding the particular matter. Upon such a request by the retired judge, the City Attorney shall secure such written advice. The retired judge may consider, but is not bound by, written advice so secured. The decision of the retired judge shall be final for the limited purpose of determining whether or not the elected officer, department head, board or commission may retain outside counsel for the particular matter.

If the retired judge decides that the City Attorney does not have a conflict of interest regarding the particular matter, the City Attorney shall continue to be the legal adviser to the elected officer, department head, board or commission for such matter. If the retired judge decides that the City Attorney has a conflict of interest regarding a particular matter, the elected officer, department head, board or commission shall be entitled to retain outside counsel for legal advice regarding the particular matter, and the City Attorney shall thereupon cease to advise the elected officer, department head board or commission on such matter. Any such finding of a conflict of interest shall not affect the City Attorney's role as legal advisor to the elected officer, department head, board or commission on all other matters.

If at any time after the retention of outside counsel, the City Attorney believes that there is no longer a conflict of interest, the City Attorney shall state in writing to the elected officer, department head, board or commission why he or she believes that there is no longer a conflict of interest. Within five working days after receiving the written statement from the City Attorney, the elected officer, department head, board or commission shall respond in writing, either agreeing or disagreeing that

there is no longer a conflict of interest. If the elected officer, department head, board or commission agrees that there is no longer a conflict of interest regarding a particular matter, the elected officer, department head, board or commission shall cease employing outside counsel for legal advice regarding the matter, and the City Attorney shall serve as legal adviser to the elected officer, department head, board or commission regarding that matter. If the elected officer, department head, board or commission states in its written response that it believes the conflict of interest still exists, the City Attorney may, within ten working days after receiving the response of the elected officer, department head, board or commission, elect to refer the issue of whether the conflict of interest regarding the particular matter continues to exist to the same retired judge who originally heard the matter, if available. The same procedures as established herein shall apply thereafter.

In selecting outside counsel for any purpose described in this Section, the elected officer, department head, board or commission shall give preference to engaging the services of a city attorney's office, a county counsel's office or other public entity law office with an expertise regarding the subject-matter jurisdiction of the elected officer, department head, board or commission. If the elected officer, department head, board or commission concludes that private counsel is necessary, that attorney must be a member in good standing with the Bar of California who has at least five year's experience in the subject-matter jurisdiction of the elected officer, department head, board or commission. Any private counsel retained pursuant to this Section shall be subject to the conflict of interest provisions of Section 13.103.5. The cost of any of the services of outside counsel and of the alternative dispute resolution process authorized by this Section shall be paid for by the elected officer, department head, board or commission, subject to the budgetary and fiscal provisions of this Charter.

2. Represent an officer or official of the City and County when directed to do so by the Board of Supervisors, unless the cause of action exists in favor of the City and County against such officer or official;

3. Whenever a cause of action exists in favor of the City and County, commence legal proceedings when such action is within the knowledge of the City Attorney or when directed to do so

by the Board of Supervisors, except for the collection of taxes and delinquent revenues, which shall be performed by the attorney for the Tax Collector;

4. Upon request, provide advice or written opinion to any officer, department head or board, commission or other unit of government of the City and County;

5. Make recommendations for or against the settlement or dismissal of legal proceedings to the Board of Supervisors prior to any such settlement or dismissal. Such proceedings shall be settled or dismissed by ordinance and only upon the recommendation of the City Attorney;

6. Approve as to form all surety bonds, contracts and, prior to enactment, all ordinances; and examine and approve title to all real property to be acquired by the City and County;

7. Prepare, review annually and make available to the public a codification of ordinances of the City and County then in effect;

8. Prepare and make available to the public an annual edition of this Charter complete with all of its amendments and legal annotations; and

9. Establish in the Office of the City Attorney a Bureau of Claims Investigation and Administration which shall have the power to investigate, evaluate and settle for the several boards, commissions and departments all claims for money or damages. The Bureau shall also have the power to investigate incidents where the City faces potential civil liability, and to settle demands before they are presented as claims, within dollar limits provided for by ordinance, from a revolving fund to be established for that purpose. The City Attorney shall appoint a chief of the Bureau who shall serve at his or her pleasure. The chief of the Bureau may appoint, subject to confirmation by the City Attorney, investigators who shall serve at the pleasure of the chief.

10. During his or her tenure, ~~not participate in,~~ contribute to, solicit contributions to, publicly endorse or urge the endorsement of or otherwise participate in a campaign for a candidate for City elective public office, other than himself or herself ~~his or her own candidacy for public office, appearing on the ballot in San Francisco~~ or of a City ballot measure ~~appearing on the ballot in San Francisco~~; or be an officer, director or employee of or hold a policymaking position in an organization

that makes political endorsements regarding candidates for City elective office or City ballot measures ~~appearing on the ballot in San Francisco.~~

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

By: \_\_\_\_\_  
JULIE A. MOLL  
Deputy City Attorney