

1 [Municipal Elections Code - Open Source Voting]

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3 **Ordinance amending the Municipal Elections Code to require the Director of Elections**
4 **to submit information documenting the City’s intended open source voting pilot**
5 **program to the California Secretary of State, on behalf of the Board of Supervisors,**
6 **and, upon approval of the Secretary of State, to implement such a system for use at the**
7 **November 8, 2022, election.**

8 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
9 **Additions to Codes** are in *single-underline italics Times New Roman font*.
10 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
11 **Board amendment additions** are in double-underlined Arial font.
12 **Board amendment deletions** are in ~~strikethrough Arial font~~.
13 **Asterisks (* * * *)** indicate the omission of unchanged Code
14 subsections or parts of tables.

15 Be it ordained by the People of the City and County of San Francisco:

16 Section 1. The Municipal Elections Code is hereby amended by adding Article XII,
17 consisting of Sections 1200, 1201 and 1202, to read as follows:

18 **ARTICLE XII: OPEN SOURCE VOTING PILOT PROGRAM**

19 **SEC. 1200. FINDINGS.**

20 *(a) Since 2007, the Board of Supervisors (“Board”) has shown interest in developing and using*
21 *open source voting systems in the City and County of San Francisco (“the City”). In 2007, the City*
22 *adopted Resolution No. 330-07, supporting an investigation into the feasibility of an open source voting*
23 *system. In 2008, the City enacted Ordinance No. 268-08, creating a Voting Systems Task Force*
24 *(“VSTF”) that provided the City with recommendations on models for development of a voting system,*
25 *including proprietary, disclosed, and open source software and hardware. In June 2011, the VSTF*

1 issued “Recommendations on Voting Systems for the City and County of San Francisco,” a report
2 summarizing their recommendations. This report is available with the Clerk of the Board in File No.
3 110805. In 2014, the City adopted Resolution No. 460-14, committing the City to work with other
4 jurisdictions and organizations to create new voting systems using open source software. The
5 Elections Commission (“Commission”) has also passed resolutions in support of open source voting in
6 2007, 2015, and 2018. These Commission resolutions are with the Clerk of the Board in the file for the
7 ordinance establishing this Article XII, File No. 211303.

8 (b) Under California Elections Code Section 19209, to conduct an open source pilot program,
9 the Board, without formally adopting a voting system, may provide for the experimental use of the
10 voting system in a pilot program held in one or more precincts at a single election. Among other
11 criteria, the voting system must meet the requirements of regulations adopted by the California
12 Secretary of State (“SOS”). Under the California Elections Code, the Board must submit to the SOS a
13 plan for the pilot program no later than nine months before the election at which the pilot program is
14 proposed to be conducted; after submittal of such a plan, the SOS would have up to three months to
15 approve or reject it. But, as of December 14, 2021, the SOS had not yet issued the regulations required
16 for any pilot program, as required by the California Elections Code.

17 (c) On November 12, 2021, the SOS distributed a public letter confirming that it has begun the
18 process of drafting the necessary regulations for a pilot program. This letter from the SOS is on file
19 with the Clerk of the Board in File No. 211303. The letter also explained that while regulations have
20 not yet been adopted, there are two available paths to move forward with an open source pilot
21 program. First, the City or the open source voting system provider may submit a voting system for
22 testing and review for certification by the SOS. Second, the City or the open source voting system
23 provider may outline and document the intended voting system equipment, implementation, and use,
24 and provide that information to the SOS for feedback.

1 (d) As of December 14, 2021, the SOS had not approved a pilot program for an open source or
2 disclosed source voting system. The City is hoping to be the first to conduct a pilot program in
3 conjunction with a future election. Conducting this pilot program would advance the Board's and the
4 Commission's long-term goal of moving towards open source voting systems for City elections.

5 **SEC. 1201. DEFINITIONS.**

6 For purposes of this Article XII, the following terms have the following meanings:

7 "Ballot marking device" shall mean voting equipment used by voters to record votes on paper
8 ballots.

9 "Disclosed source voting system" shall mean a voting system subject to licenses that allow the
10 public to review all of its source code and the ability to share all source code with other parties.

11 Disclosed source voting systems may incorporate software that has a proprietary license that would
12 restrict the users' ability to copy or modify its source code.

13 "Open source" shall mean the software's source code is available for use, study, re-use,
14 modification, enhancement, and re-distribution and is subject to one or more licenses approved by the
15 Open Source Initiative.

16 "Open source voting system" shall mean a voting system (a) whose software is open source;
17 and (b) whose electronic hardware is off-the-shelf and publicly available.

18 "Secretary of State" shall mean the California Secretary of State.

19 "Source code" shall mean the version of a computer program in which the programmer's
20 original programming statements are expressed in a source language (e.g. C++, C#, Visual Basic or
21 Java) which must be compiled or assembled and linked into equivalent machine-executable object
22 code, thereby resulting in an executable software program.

23 "Voting system" means a mechanical, electromechanical, or electronic system and its software,
24 or any combination of these used for casting a ballot, tabulating votes, or both. "Voting system" does
25 not include a remote accessible vote by mail system.

1 **SEC. 1202. SUBMISSION OF PLAN FOR INTENDED OPEN SOURCE VOTING PILOT**
2 **PROGRAM.**

3 (a) For the purposes of this Article XII, the intended open source voting pilot program shall
4 consist of a minimum of one open source ballot marking device that the City wishes to use at the City
5 Hall Voting Center for the November 8, 2022 Consolidated General Election. The Director of
6 Elections shall have discretion to decide if more than one ballot marking device will be utilized during
7 the open source pilot program and where to place the ballot marking device(s), based upon
8 accessibility, security, and staffing requirements. But, to the extent feasible, an open source ballot
9 marking device shall be available to any voter that wants to use the device at the City Hall Voting
10 Center.

11 (b) By no later than February 8, 2022, the Director of Elections shall submit information to the
12 SOS that describes a plan for the City’s intended open source voting pilot program, as set forth in
13 subsection (a). The SOS must adopt regulations for open source voting pilots, and approve the City’s
14 plan for the intended open source voting pilot program, in order for the Department of Elections to
15 deploy the open source ballot marking device(s) at the November 8, 2022 Consolidated General
16 Election for the public’s use.

17 (c) The Director of Elections’ plan for the intended open source voting pilot program shall
18 include information that outlines and documents the City’s intended open source voting system
19 equipment, implementation, and use. The information shall include at a minimum: (a) a list of each
20 piece of hardware, software, and firmware that will be used and how each complies with the
21 requirements of California Elections Code Sections 19209 and 19212, and (b) draft use procedures on
22 how the system will be implemented and used by the Department of Elections and poll workers. The
23 use procedures shall conform to the SOS’s template available on the SOS website. This template is on
24 file with the Clerk of the Board in File No. 211303.

1 Section 2. Effective Date

2 This ordinance shall become effective 30 days after enactment. Enactment occurs
3 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
4 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
5 Mayor’s veto of the ordinance.

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7 APPROVED AS TO FORM:
8 DAVID CHIU, City Attorney

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9 By: /s/ _____
10 ANA FLORES
11 Deputy City Attorney

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