

File No. 211303

Committee Item No. 3

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Rules Committee

Date Jan 10, 2022

Board of Supervisors Meeting

Date _____

Cmte Board

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<input type="checkbox"/>	<input type="checkbox"/>	Resolution
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ordinance
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Legislative Digest
<input type="checkbox"/>	<input type="checkbox"/>	Budget and Legislative Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Youth Commission Report
<input type="checkbox"/>	<input type="checkbox"/>	Introduction Form
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Department/Agency Cover Letter and/or Report
<input type="checkbox"/>	<input type="checkbox"/>	Memorandum of Understanding (MOU)
<input type="checkbox"/>	<input type="checkbox"/>	Grant Information Form
<input type="checkbox"/>	<input type="checkbox"/>	Grant Budget
<input type="checkbox"/>	<input type="checkbox"/>	Subcontract Budget
<input type="checkbox"/>	<input type="checkbox"/>	Contract/Agreement
<input type="checkbox"/>	<input type="checkbox"/>	Form 126 - Ethics Commission
<input type="checkbox"/>	<input type="checkbox"/>	Award Letter
<input type="checkbox"/>	<input type="checkbox"/>	Application
<input type="checkbox"/>	<input type="checkbox"/>	Form 700
<input type="checkbox"/>	<input type="checkbox"/>	Vacancy Notice
<input type="checkbox"/>	<input type="checkbox"/>	Information Sheet
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OTHER

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Completed by: Victor Young Date Jan 6, 2022

Completed by: _____ Date _____

[Municipal Elections Code - Open Source Voting]

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

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

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

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

ARTICLE XII: OPEN SOURCE VOTING PILOT PROGRAM

SEC. 1200. FINDINGS.

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

6
7 APPROVED AS TO FORM:
8 DAVID CHIU, City Attorney

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

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LEGISLATIVE DIGEST

[Municipal Elections Code - Open Source Voting]

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

Existing Law

In general, the California Secretary of State ("SOS") must certify any voting systems before they are used in any elections held in California. Voting systems include hardware, software and combinations thereof used to either cast a ballot or tabulate votes.

But under Elections Code Section 19209 ("Section 19209"), the Board of Supervisors, without formally adopting a voting system, may provide for the experimental use of the voting system in a pilot program held in one or more precincts at a single election. The Board of Supervisors may proceed with such a pilot, even if the voting system has not been certified, if the pilot:

- uses only software and firmware with disclosed source code, except for unmodified commercial off-the-shelf software and firmware;
- meets the requirements set forth in the SOS's voting system standards, adopted pursuant to Elections Code Section 19101(b);
- meets the requirements of the SOS's regulations governing voting system pilot programs, adopted pursuant to Elections Code Section 19209(g); and
- implements risk-limiting audits.

As of December 14, 2021, the SOS had not adopted regulations governing disclosed source voting system pilot programs.

Section 19209 also requires the Board of Supervisors to submit any plan for a pilot program no later than nine months before the election at which the pilot program of a voting system is proposed to be conducted. The Secretary of State would then have up to three months to approve or reject the plan.

Amendments to Current Law

The proposed ordinance would require the Director of Elections, on behalf of the Board of Supervisors, to submit information documenting the City's intended open source voting pilot program to the California Secretary of State by February 8, 2022. For the purposes of this

proposed plan, the intended open source voting pilot program would consist of at least one open source ballot marking device that the City would use at the City Hall Voting Center for the November 8, 2022 Consolidated General Election. The deployment of the open source ballot marking device(s) at the November 8, 2022 Consolidated General Election would be subject to the SOS's adoption of regulations for disclosed source voting system pilots and the SOS's approval of the City's plan.

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Open Source Voting Systems Resolution

Adopted by the San Francisco Elections Commission (6-0) on November 18, 2015.

[Supporting Open Source Voting Systems — Encouraging the Mayor and Board of Supervisors to Initiate a Project to Develop and Certify an Open Source Voting System]

Resolution to support the development and certification of an open source voting system running on commercial off-the-shelf hardware; and to request that the Mayor and Board of Supervisors initiate and fund a project to develop and certify such a system for use in San Francisco.

WHEREAS, Free and fair elections, as a cornerstone of the democratic process, demand the highest levels of public openness, accessibility, accuracy, security, and trustworthiness;

WHEREAS, The public benefits from elections that, in their conduct and operation, also have increased efficiency, innovation, and affordability;

WHEREAS, The San Francisco Elections Commission (“Elections Commission”) on May 16, 2007 adopted a resolution that—

(a) Cited concerns raised by members of the Board of Supervisors about ratifying a contract for voting machines which did not allow for open source software; and that

(b) Established a policy that the San Francisco Department of Elections (“Department of Elections”) shall endeavor in contracting to prioritize and select if possible, voting systems and vendors which provide the maximum level of security and transparency possible consistent with the principles of public disclosure;

WHEREAS, The City and County of San Francisco (“San Francisco”) on December 11, 2007, and as amended on January 18, 2008, entered into a four-year voting system

1 agreement with Sequoia Voting Systems, Inc. at a cost of \$13.78 million — an agreement that
2 the Board of Supervisors extended and that will expire on January 1, 2017;

3 WHEREAS, The Board of Supervisors on November 18, 2008 created a Voting
4 Systems Task Force to make recommendations to the Board of Supervisors about voting
5 system standards, design and development, including models for development of a voting
6 system including proprietary, disclosed and open source software and hardware approaches
7 and which address aforementioned voting systems requirements and assure a cost effective,
8 highly reliable, maintainable system;

9 WHEREAS, The Voting Systems Task Force in June 2011 completed its report, which
10 recommended in part that—

11 (a) The Department of Elections should give strong preference to a voting system
12 licensing structure that gives San Francisco all of the rights provided by a license
13 approved by the Open Source Initiative (OSI), even if the system is maintained by an
14 external party; and that

15 (b) If an open source model is used, that San Francisco work with other jurisdictions
16 and organizations to develop and manage the code-base in order to leverage
17 additional resources and expertise; and

18 (c) San Francisco should be an active participant in the movement toward more open
19 and transparent voting systems;

20 WHEREAS, After the November 2016 election, San Francisco will have spent \$19.69
21 million over nine years on its current voting system agreement, including \$2.86 million on
22 software licensing fees, \$6.53 million on hardware, and \$1.63 million on hardware
23 maintenance;

24 WHEREAS, The California legislature, in enacting SB 360 in 2013, expressed its

1 intention that—

2 (a) The Secretary of State study and encourage the development of voting systems
3 that use nonproprietary source code and that are easy to audit;

4 (b) California receive the benefits of the publicly funded development of a
5 nonproprietary voting system in the state; and

6 (c) Provides for the experimental use of a voting system in a pilot program if the voting
7 system uses only software and firmware with disclosed source code, except for
8 unmodified commercial off-the-shelf software and firmware;

9 WHEREAS, The Board of Supervisors on December 9, 2014 unanimously passed
10 Resolution No. 460-14, which committed San Francisco to work with other jurisdictions and
11 organizations to create new voting systems using open source software, and which stated
12 further that—

13 (a) San Francisco supports the movement toward more open and transparent voting
14 systems and the creation of new voting systems using open source software and
15 inexpensive commodity components; and

16 (b) The Board of Supervisors requests that the Local Agency Formation Commission
17 conduct a study of the feasibility and cost-effectiveness of San Francisco leading an
18 effort to develop and use a new voting system, either whole or in part, through a
19 collaborative model;

20 WHEREAS, The Department of Elections on August 6, 2015 issued a Request for
21 Information (RFI) for a new voting system, expressing a preference for voting systems
22 designed using open source software;

23 WHEREAS, The Department received thirteen responses to the RFI by the August 28,
24 2015 deadline, all of which left significant gaps in meeting the RFI requirements with existing

1 voting systems; and

2 WHEREAS, Six RFI respondents proposed predominantly open source systems,
3 though in the absence of funding, none have yet been fully developed or certified; and

4 WHEREAS, The Local Agency Formation Commission on October 23, 2015 issued its
5 final report, “Study on Open Source Voting Systems,” which analyzed the possibility of San
6 Francisco leading an effort to develop and use an open source voting system, and concluded
7 in part that several ongoing voting system projects can be adopted and provide an opportunity
8 for San Francisco to expedite the development of an open source voting system, if San
9 Francisco chooses to develop its own voting system;

10 WHEREAS, The Elections Commission on October 21, 2015 held a public hearing on
11 open source voting systems during which five of the six open source RFI respondents gave
12 presentations on the benefits of open source voting systems and on possible ways forward for
13 San Francisco to develop and adopt a certified open source voting system;

14 WHEREAS, Any open source software license approved by the Open Source Initiative
15 (OSI) ensures that the software can be freely viewed, used, changed, and redistributed — in
16 modified or unmodified form — by anyone, including people, organizations, and governmental
17 entities;

18 WHEREAS, The transparency of open source software promotes greater trust and
19 public confidence in its use, and in particular permits greater security and correctness through
20 increased public scrutiny and feedback from experts;

21 WHEREAS, For the purposes of this resolution, “open voting system” means a voting
22 system whose software is open source under OSI-approved software licenses; whose
23 electronic hardware is commercial off-the-shelf (COTS); and whose auxiliary development
24 products, materials, and documents related to areas such as requirements, design, build,

1 installation, testing, and user documentation, and any additional materials submitted to gain
2 regulatory approval, are freely and openly licensed;

3 WHEREAS, The current voting system marketplace provides little or no incentive for
4 established vendors to offer an open voting system, and the initial development and
5 certification costs make it prohibitive for new industry entrants to do so;

6 WHEREAS, Since elections are a public process undergirding democracy across the
7 United States, access to improved voting systems should not be limited only to those
8 jurisdictions with greater financial means, and all jurisdictions should be free to make
9 improvements to those systems on their own as needed;

10 WHEREAS, The development and certification of an open voting system could not only
11 provide San Francisco with an affordable, accurate, flexible, and secure voting system, but
12 could benefit all election jurisdictions across the country by providing them such an option;

13 WHEREAS, Additionally, copyleft provisions in open source software licenses would
14 help ensure that everyone, including San Francisco, has free access to future changes and
15 improvements to that software, providing a way for San Francisco to derive additional benefit
16 from the creation of an open voting system; and

17 WHEREAS, As a leader in innovative public policy initiatives and as a hub for
18 innovation in software and open source — with the San Francisco Bay Area home to many
19 well-known organizations like Apple, Facebook, GitHub, Google, the Mozilla Foundation,
20 Twitter, Yahoo, and countless others contributing significantly to open source software — San
21 Francisco is a natural jurisdiction to take the lead in developing and certifying an open voting
22 system; now, therefore be it

23 RESOLVED, That it be the position of the Elections Commission that open voting
24 systems using paper ballots have the potential to provide the greatest degree of accessibility,

1 accuracy, transparency, security, auditability, affordability, and flexibility in elections, and so
2 would best serve the voters of San Francisco; and, be it

3 FURTHER RESOLVED, That the Elections Commission expresses its appreciation to
4 the Board of Supervisors for its past resolution in support of open source voting systems
5 running on inexpensive commodity components, and encourages the Mayor and Board of
6 Supervisors to initiate and fund a project, starting in the fiscal year beginning July 1, 2016,
7 with the goal of ensuring that an open voting system be available for use by the Department
8 of Elections for the June 2020 Presidential Primary Election, and for partial or pilot use by the
9 November 2019 Municipal Election or earlier; and, be it

10 FURTHER RESOLVED, That the Elections Commission encourages the Mayor and
11 Board of Supervisors to consider incorporating the following characteristics into such a
12 project:

13 (a) First, hire a project director with technical expertise to be responsible for planning
14 and leading the project, including working with stakeholders, collaborators, and
15 regulators; drafting system requirements; and selecting and managing technical
16 contractors, as necessary;

17 (b) Incorporate openness and transparency into the project, for example by forming a
18 public committee of experts and citizens to advise the project director, and by releasing
19 all development products, including software source code and documentation, as they
20 are developed;

21 (c) Design and implement the voting system in a modular fashion, by developing
22 components like the ballot layout software, scanner device drivers, a central scanner, a
23 precinct scanner, an accessible voting device, tabulation software, and the election
24 results reporter independently and in parallel, using open data formats to communicate

1 with one another;

2 (d) Express a preference for open source licenses with copyleft characteristics so that
3 San Francisco and other jurisdictions can benefit from future improvements that others
4 make to the voting system components;

5 (e) Build on prior open source work where possible to reduce project time and costs;

6 (f) Permit the selection of different organizations to develop different components of the
7 voting system to reduce project risk, for example by issuing separate, smaller
8 Requests for Proposal (RFPs) for each voting system component;

9 (g) Spread project costs over multiple years to reduce risk, spending funds in
10 subsequent years only after the results of prior expenditures are known;

11 (h) Produce production-ready deliverables early on and incrementally as in an agile
12 approach to further reduce risks and costs, rather than waiting until the conclusion of
13 the project to deliver finished versions of all components;

14 (i) Certify and use components of the voting system in real elections prior to the
15 completion of the full system, for example by facilitating pilot projects of the form
16 permitted by SB 360 and/or the use of a blended system during a transition period that
17 incorporates components from both a proprietary system and the open system being
18 developed;

19 (j) Work with the California Secretary of State's Office before the completion of each
20 component to maximize the likelihood of state certification;

21 (k) Recruit other organizations, including other jurisdictions, universities, open source
22 software organizations, and commercial entities with an interest in open source, to
23 cosponsor, fund, and help manage the development, certification, and maintenance of
24 the voting system;

1 (l) Explore the possibility of innovative partnerships with public and private entities that
2 could let San Francisco further reduce, and even recover, project costs;

3 (m) Seek grants from foundations, other government agencies, and nonprofit
4 organizations with a similar interest in election openness to help fund and support the
5 project; and, be it

6 FINALLY RESOLVED, That it be the policy of the Department of Elections to support

7 and work towards the adoption of a fully open voting system, including supporting the
8 development, testing, and certification of such a system.

1 SAN FRANCISCO ELECTIONS COMMISSION

2 **Open Source Voting Systems Resolution #2**

3 (Adopted by the San Francisco Elections Commission (6-0) on June 20, 2018.)

4
5 [The Commission is adopting this resolution to supplement (and not replace) its first
6 Open Source Voting Systems Resolution, adopted on November 18, 2015, since many
7 events have transpired since that time.]

8
9 WHEREAS, The San Francisco Elections Commission (“Elections Commission”)
10 on November 18, 2015 unanimously passed an Open Source Voting Systems
11 Resolution that, in part—

12 (a) Encouraged the Mayor and Board of Supervisors to initiate and fund a project
13 to develop and certify an open source voting system; and

14 (b) Outlined several key project characteristics, and encouraged the Mayor and
15 Board of Supervisors to consider incorporating them; and

16 (c) Established a policy for the San Francisco Department of Elections to support
17 and work towards the adoption of an open source voting system;

18 WHEREAS, Mayor Ed Lee in the 2016 budget process allocated \$300,000
19 towards a planning and assessment phase for the project, approximately half of which
20 was allocated for a “business case” to assess the feasibility of the project, including
21 informing the City and County of San Francisco (“San Francisco”) of the associated
22 costs, timelines, options, and possible next steps;

23 WHEREAS, The Elections Commission on April 19, 2017 established an Open
24 Source Voting System Technical Advisory Committee (“TAC”) to provide technical

1 guidance, ideas, and support to the Elections Commission on ways to improve and help
2 ensure the success of San Francisco's open source voting system project;

3 WHEREAS, The Department of Elections in May 2017 issued the RFP for the
4 business case, which required that, "Any Contractor who prepares or assists in
5 preparing the business case described in this RFP will not be eligible to perform
6 subsequent services for the City in relation to the possible development of an
7 accessible, open source voting system," which resulted in organizations with the most
8 interest and expertise not bidding;

9 WHEREAS, The winning bidder, Slalom, whose contract was signed September
10 29, 2017, had no prior experience in elections or voting systems and little or no
11 experience with open source development efforts;

12 WHEREAS, Travis County, Texas on September 28, 2017 cancelled its
13 STAR-Vote project, in large part because its monolithic, waterfall-like approach sought
14 to build all components at once as opposed to developing components delivering
15 usable functionality incrementally, and which differed from San Francisco's project
16 because it—

17 (a) Was larger in scope to the extent that its core purpose was to fundamentally
18 change how voting was performed, recorded, tabulated, and verified;

19 (b) Was based on a proprietary source rather than an open source development
20 plan and only anticipated becoming open source eventually; and

21 (c) Lacked a business / development plan to incrementally provide usable
22 functionality within the available funding capacity;

23 WHEREAS, Slalom delivered its final report to San Francisco for review by the
24 Mayor's Office and San Francisco's Committee on Information Technology ("COIT") on

1 March 14, 2018, more than six weeks after the January 26, 2018 due date and well into
2 San Francisco's annual budget process;

3 WHEREAS, Slalom's report recommended a waterfall-like approach and lacked
4 the information, specificity, and credibility needed for San Francisco leaders and
5 stakeholders to decide on next steps, including—

6 (a) Recommended a second, much more expensive planning phase of \$1.1 to
7 \$1.2 million that the report called a “Discovery Phase,” which would take place
8 before doing any actual development and whose purpose included doing many
9 of the things the business case was supposed to do;

10 (b) Failing to consult with vendors and organizations that the Commission invited
11 to present at its October 21, 2015 meeting—subsequent to the Department of
12 Elections’ August 6, 2015 RFI (REG 2015-01) in relation to obtaining a new
13 voting system—all of whom presented cost estimates much lower than those
14 provided in Slalom’s report;

15 (c) Provided excessively high cost estimates with extremely wide ranges,
16 including—

17 (1) \$850,000 to \$2 million to develop a “Vote Tabulator System,” a simple
18 component responsible for summing vote totals;

19 (2) \$860,000 to \$2 million to develop a “Vote Reporting System,” a simple
20 component responsible for generating static reports of vote totals; and

21 (3) \$500,000 to \$1 million per year for “cloud-based hosting,” even though
22 only a remote accessible vote by mail component is allowed to be
23 connected to the internet, such a component would require a much

1 smaller hosting requirement, and such a component is not a requirement
2 to implement any other part of the system;

3 WHEREAS, TAC on March 8, 2018 voted unanimously to recommend to the
4 Elections Commission that—

5 (a) “the Mayor budget for the Department of Elections a full-time staff person who
6 can serve as the project lead / product owner for the project and report directly to
7 the Director of Elections”; and that

8 (b) “an agile, incremental approach be taken towards the project, in which
9 components can be piloted and used in real elections [in conjunction with the
10 proprietary system in use] as the components are developed and certified,”
11 starting with the components needed to tabulate vote-by-mail ballots;

12 WHEREAS, The Elections Commission on March 21, 2018 voted unanimously to
13 approve TAC's March 8, 2018 recommendations;

14 WHEREAS, TAC on June 14, 2018 voted unanimously to adopt a statement on
15 Slalom’s “Open Source Voting System Feasibility Assessment,” beginning, “Certain
16 inaccuracies and basic omissions in Slalom’s Report lead us to seriously question the
17 report as a whole. We recommend not relying on it for determining the future direction
18 of the project”;

19 WHEREAS, TAC also on June 14, 2018 voted unanimously to adopt a project to
20 implement a full-featured election results reporter as a proof of concept, to show in part
21 that a reporting component can be developed for much less cost than the \$860,000 to
22 \$2 million estimated by Slalom;

23 WHEREAS, The Open Source Voting System Resolution unanimously passed
24 by the Elections Commission on November 18, 2015 encouraged that the project “First,

1 hire a project director with technical expertise to be responsible for planning and leading
2 the project, including working with stakeholders, collaborators, and regulators; drafting
3 system requirements; and selecting and managing technical contractors, as necessary”;

4 WHEREAS, The Department of Technology and Department of Elections jointly
5 submitted to COIT an application for funding the open source voting system project in
6 FY2018-19 with an additional \$960,000; and in response COIT recommended only an
7 additional \$300,000, for a total of \$425,000 available for FY2018-19;

8 WHEREAS, San Francisco’s Department of Human Resources (“DHR”) in 2017
9 started a technology project to modernize its hiring practices (the “Hiring Modernization
10 Project”) using an iterative, modular approach that internally it estimated could cost
11 between \$20-30 million over five years;

12 WHEREAS, COIT on May 4, 2018 recommended allocating \$1 million in seed
13 money for the first year (FY2018-19) of the Hiring Modernization Project, for the
14 purposes of hiring a Project Manager and starting incremental development—even
15 though DHR recognizes that their overall estimate will continue to evolve since the
16 project is being approached in a modular and iterative way;

17 WHEREAS, The Elections Commission is responsible for the proper
18 administration of the general practices of the Department of Elections, which in turn is
19 vested with the conduct and management of matters pertaining to elections in San
20 Francisco;

21 WHEREAS, Since voting systems pertain to and are used in elections in San
22 Francisco, their development by San Francisco should require the same level of
23 transparency and public oversight that elections themselves require;

1 WHEREAS, Progress towards planning and development of an open source
2 voting system has so far been hampered by the lack of both clear designations of
3 accountability and a person with appropriate skills and experience to lead the project;

4 WHEREAS, Significant efforts and progress have been made by the California
5 Clean Money Campaign in conjunction with some San Francisco elected officials to
6 provide for state matching funds for open source voting systems;

7 WHEREAS, Clearer and renewed commitments from the Mayor and the Board of
8 Supervisors for an open source voting system, including a commitment for greater
9 funding in FY2018-19, would strengthen the project's ability to attract effective
10 development collaborators and supplementary sources of funding;

11 WHEREAS, Board of Supervisors President and Mayor-elect London Breed,
12 Board of Supervisors Budget and Finance Committee Chair Malia Cohen, and Board of
13 Supervisors Member Jane Kim recently made public statements in support of effective
14 funding to start developing an open source voting system project, in response to the
15 Elections Commission's request of \$4 million for FY2018-19; now, therefore be it

16 RESOLVED, That the Elections Commission calls on the Mayor and Board of
17 Supervisors to state their commitment to effectively proceeding with San Francisco's
18 open source voting system project, so that the Elections Commission, Department of
19 Elections, and the rest of San Francisco can state publicly and unambiguously that San
20 Francisco has decided to move forward, which will allow San Francisco to more
21 effectively identify and attract potential collaborators and other funders, including the
22 State of California, nonprofits, and other counties; and, be it

1 FURTHER RESOLVED, That the Commission ask the Mayor and Board of
2 Supervisors that the project be funded and developed incrementally, so that San
3 Francisco can support a robust development schedule in FY2018-19 that—

4 (a) Develops and uses some open source voting system components sooner and
5 more cost-effectively, without necessarily having to first fund the entire project;

6 (b) Develop cost estimates and project management approaches for later stages
7 of the project by learning from real-world experience, as opposed to planning
8 abstractly on paper; and

9 (c) More effectively attract and recruit project collaborators, by being able to
10 show real progress using innovative approaches; and, be it

11 FURTHER RESOLVED, That the Elections Commission ask the Mayor and
12 Board of Supervisors to name the Department of Elections as the owner of the project
13 to develop and certify an open source voting system, so that the Elections Commission
14 and the public can, through the authority and meetings of the Elections Commission,
15 have oversight over and regular visibility into this fundamental matter pertaining to
16 elections; and, be it

17 FURTHER RESOLVED, That it is the policy of the Elections Commission that the
18 open source voting system project should be led by a dedicated project director /
19 project manager who reports to the Director of Elections; who has experience in agile
20 methods, open source development, elections and voting systems, and the
21 management of technical projects; and who will—

22 (a) Work with the Director and other stakeholders in San Francisco;

23 (b) Use TAC and other Departments among their resources, including learning
24 from the model of DHR's Hiring Modernization Project;

1 (c) Use the RFI process to learn possible approaches from vendors; and, be it

2 FURTHER RESOLVED, That the Elections Commission rejects the cost

3 estimates in the Slalom Report as poorly supported and not credible, and the waterfall

4 approach recommended in the report as outmoded, inconsistent with the agile

5 approach preferred by the Commission, and generally not in San Francisco's interest

6 due to the increased cost and risk; and, be it

7 FINALLY RESOLVED, That the Commission encourages the Department of

8 Elections to continue its best practices of working collaboratively with other

9 Departments, including the Department of Technology, San Francisco Digital Services,

10 the Office of Contract Administration, the Mayor's Office, and other members of COIT

11 on the project.

SAN FRANCISCO ELECTIONS COMMISSION

Commission Policy on Transparency and Security in Voting Systems

***Commission general policy statement
regarding transparency in voting systems technologies
as well as providing for voting systems security***

Whereas California Secretary of State Debra Bowen has expressed strong support for a move towards open source election software;

Whereas members of the San Francisco Board of Supervisors have recently raised concerns about ratifying a contract for voting machines which did not allow for open source software;

Pursuant to Section 13.105.5, San Francisco Charter which authorizes the Election Commission to establish general policies for the Elections Department, the Elections Commission establishes the following general policies;

First, the Elections Commission endorses the policy of using voting system technologies and software that maximize voting system security while at the same time providing the maximum level of transparency possible to assure voters that their votes will be counted as cast.

Specifically, to ensure the integrity of our elections and to increase public confidence in our government, the Commission endorses the policy that the Department of Elections should make reasonable efforts to select and use voting systems technology, including hardware and software, that at a minimum, is publicly disclosed.

In this context, public disclosure means that members of the public should have at least the right to inspect, test, and comment on such technology in a procurement process and as configured for a specific election independent of the San Francisco Department of Elections or other government agency of the City and County of San Francisco,

Second, the Commission adopts as policy that the Election Department shall endeavor in contracting to prioritize and select if possible, voting systems and vendors which provide the maximum level of security and transparency possible consistent with the principles of public disclosure. This policy will enable the citizenry to understand the methodology involved in the election process, in a manner consistent with ensuring secret ballot protection and voting system security.

1 SAN FRANCISCO ELECTIONS COMMISSION

2 **Resolution on Open Source Voting Pilot Legislation**

3 (Adopted by the San Francisco Elections Commission (5-0) on December 15, 2021.)

4

5 WHEREAS, During the Roll Call for Introductions of the November 16, 2021
6 Board of Supervisors meeting, Board of Supervisors President Shamann Walton
7 requested legislation from the City Attorney regarding the San Francisco Department of
8 Elections submitting a plan to the California Secretary of State no later than February 8,
9 2022, so as to allow an open source voting pilot to be conducted during the
10 November 8, 2022 Consolidated General Election;

11 WHEREAS, At its November 17, 2021 meeting, the Elections Commission
12 unanimously adopted a resolution in support of President Walton's request for
13 legislation to move the open source voting pilot process forward;

14 WHEREAS, At the December 14, 2021 Board of Supervisors meeting, President
15 Walton introduced the open source voting legislation he previously requested; now,
16 therefore be it

17 RESOLVED, That the Elections Commission supports President Walton's open
18 source voting pilot legislation and encourages the Board of Supervisors to adopt it and
19 the Mayor to sign it; and, be it

20 FINALLY RESOLVED, That the Commission requests that the Mayor encourage
21 the Secretary of State to adopt regulations governing voting system pilot programs in
22 time for San Francisco to conduct a pilot during the November 8, 2022 election.

Voting System Use Procedures for California Template

California Elections Code (EC) §19205 requires the Secretary of State to establish procedures for the use and testing of a voting system. Regulations require those procedures to be reviewed biennially. Approval or certification of a proposed system does not take effect until all applicable procedures for the system's use have been formulated and approved. The vendor must supply a copy of those procedures to any prospective purchaser.

Statewide procedures provide the following benefits:

- Guidance to election staff and vendor support staff for use of a voting system in an election to ensure compliance with election law;
- Verifiable established standards to protect the security, integrity and accuracy of the election and insure privacy of all voters;
- A baseline for testing and evaluating the suitability of a proposed voting system; and
- Protection of an election from legal challenge by establishing statewide uniformity on use of the system.

The Secretary of State recommends that initial voting system use procedures be developed by the vendor, working together with county election officials who are knowledgeable in the laws and practices for conducting elections in California.

Procedures should be drafted so that minimum standards are established to provide the secure and accurate use of a voting system in compliance with all Federal and State regulations and procedures. On the other hand, they should not be so detailed and rigid that they do not allow the election official reasonable flexibility to establish additional procedures for use of the system in their jurisdiction, as appropriate.

The outline presented below is meant as guidance for developing voting system use procedures for all systems. The drafting of use procedures should address each of these elements *as appropriate for use of that particular system* in an election. Where existing system documentation (e.g., equipment operating manuals) already addresses a topic in detail, it is acceptable to provide an overview of that element and reference to the appropriate document, provided overall readability of the document is preserved. Clearly identify all areas where it is appropriate or required for jurisdiction election officials to establish additional procedures.

Voting System Use Procedures Template

1. Introduction

1.1. System description and components

Specifically identify all equipment, including model numbers and version numbers. Specifically identify all software and versions, including operating system and commercial off-the-shelf (COTS) applications, that are required or recommended for use with the system

1.2. Terms and Definitions

2. Ballot Definition

2.1. Overview

2.2. Paper and printing specifications (as appropriate)

2.3. Layout requirements and specifications (as appropriate)

3. System Installation and Configuration

3.1. Hardware requirements and specifications

3.2. Hardware and network set-up and configuration

3.3. Software installation and configuration

Are there installation options that must be installed or should not be installed for use in California?

3.4. Acceptance Testing

Certification Procedures, Article 13 requires an election jurisdiction to perform acceptance testing whenever it acquires a new voting system or whenever the voting system is modified. The results of that acceptance testing are to be certified to the Secretary of State. Please establish procedures for that testing in accordance with the requirements detailed in this Article.

3.5. Software and firmware upgrades

Detail how software and firmware upgrades will be distributed and how they are to be applied.

4. Election Set-up and Definition

4.1. Programming and configuration of election management system/software, including audit records to be generated and retained

4.2. Programming and configuration of vote recording/tabulation devices, including audit records to be generated and retained

4.3. System diagnostic testing procedures, including audit records to be generated and retained

4.4. System proofing

4.5. Logic and accuracy testing of system and components

The test is to verify the readiness of the system for the specific election and not just an equipment test. The test should be performed using the actual election definition and ballot formats.

4.5.1. Pre-conditions for performance of tests, including test decks (as appropriate)

4.5.2. Accuracy Test procedures

4.5.3. Logic Test procedures

4.5.4. Retention of test materials

4.5.5. Logic and Accuracy Board and certification of testing

4.6. Ballot tally programs

4.7. Election Observer Panel

4.8. Hardware maintenance and preparation for use

5. Polling Place Procedures

5.1. Precinct supplies, delivery and inspection

5.2. Polling place set-up (*including equipment setup*)

5.3. Opening the polls

5.4. Polling place procedures

For DREs, include how to handle a "fleeing voter"

5.5. Special needs voters

What are the procedures for voters who are visually impaired or have other disabilities? What are the procedures for voters who have a language preference other than English?

5.6. Provisional voters

5.6.1. In precinct

5.6.2. Out of precinct

5.7. Closing the polls and vote reporting

5.8. Securing audit logs and back-up records

5.9. Troubleshooting and problem resolution

6. Absentee/Mail Ballot Procedures (Central Tabulation)

6.1. System start-up and pre-tabulation report procedures

6.2. Tabulation procedures

6.3. Post-tabulation report and shutdown procedures

7. Semi-Official Canvass Tabulation and Reporting

7.1. System start-up and pre-tabulation reports

7.2. Processing vote reports

7.2.1. Central tabulation

7.2.2. Precinct tabulation (as appropriate)

7.3. Integration with county systems and Calvoter

8. Official Canvass and Post-Election Procedures

8.1. Election Observer Panel

8.2. Canvassing precinct returns

8.3. Canvassing absentee ballots

8.4. Canvassing provisional ballots

8.5. Canvassing write-in votes

8.6. 1% Manual recount procedures

8.7. Handling ballot exceptions (definition of vote, determining voter intent)

How to handle various incorrect markings. Guidelines on determining voter intent.

8.8. Post-election logic and accuracy testing

8.9. Final reporting of official canvass

8.10. Back-up and Retention of election material

What to back up and how. What materials and reports to retain.

9. Manual Recount procedures

10. Security

10.1. Physical security of system and components

Describe all physical methods that should be employed for protecting the system, its components and data before, during and after an election

10.2. Logical security of system and components

10.2.1. Essential and non-essential services and ports

What features, services and ports in the operating system and supporting software should be disabled? What features, services and ports are essential and cannot be disabled?

10.2.2. User-level security

Security accounts/roles should be defined such that each level of user has only sufficient privileges to perform the tasks of that role and no more. Please provide sufficient definitions to create these accounts/roles.

10.2.3. Anti-virus protection

10.2.4. Procedures for verifying, checking, and installing essential updates and changes

These changes are primarily for installing critical updates to operating system, anti-virus protection or other third-party elements related to security and error correction.

10.2.4.1. Audit records for the changes showing what, when, who, and why

10.2.4.2. Installation procedures for those updates which would normally be installed using an internet connection

10.2.4.3. Acceptance testing after the installation.

10.3. Security procedures for central processing

10.4. Security procedures for polling places

10.5. Audit trails

11. Biennial Hardware Certification and Notification

EC § 19220 requires jurisdictions to examine voting systems every two years and certify the results to the Secretary of State.

Describe detailed procedures for performing the examination and certifying the results to the Secretary of State.



SHIRLEY N. WEBER, PH.D.
CALIFORNIA SECRETARY OF STATE

November 12, 2021

David J. Canepa
President, Board of Supervisors
County of San Mateo
Hall of Justice - 400 County Center
Redwood City, CA 94063

Shamann Walton
President, Board of Supervisors
City & County of San Francisco
City Hall - 1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, Ca. 94102-4689

Dear President Canepa and President Walton,

Thank you for your August 11, 2021 correspondence. In your correspondence, you request that the California Secretary of State adopt regulations pertaining to voting system pilot programs. It is our understanding that both of you want to utilize a voting system that is not certified or conditionally approved in California, but that is an open-source voting system, for your respective counties in a pilot program during the November 8, 2022, General Election. Thank you for your proposed text and other supporting information. You have also requested that the Secretary of State file the regulations on an emergency basis with the California Office of Administrative Law.

Secretary of State staff has met with members of your respective teams on July 15, 2021, and October 6, 2021 to discuss the current statutory requirements and possible pilot projects for an open-source voting system.

Request for Regulations

It is the expressed intent of the Secretary of State to move forward with promulgating regulations regarding the use of open-source voting systems in pilot programs. Preliminary activities relating to drafting proposed regulations are underway. The regulations to be developed may include, but not be limited to, requirements for plans, implementation and use requirements, and testing and review requirements.

The Rulemaking Process Under the Administrative Procedure Act

The state rulemaking process begins with the research and gathering of necessary materials and information to develop the following four documents required to initiate the formal Administrative Procedure Act (APA) (Chapter 3.5 of the California Government Code, section 11340 et seq.) rulemaking process with the Office of administrative Law, the agency responsible for reviewing and approving state regulations: (a) Express Terms (Proposed Regulations), (b) Notice of Proposed Action, (c) Initial Statement of Reasons, and (e) Economic and Fiscal Impact Statement. The Secretary of State has historically included parties from outside of the agency, typically those who would be subject to the proposed regulations, to participate in this process.

Upon initiation of the rulemaking process, the Secretary of State is required to also publish a notice of proposed action to the California Regulatory Notice Register and provide notice to all persons that have requested notice. Once the APA rulemaking process is officially started, the Secretary of State has one year to complete process and submit the completed rulemaking file to OAL.

The APA requires a minimum 45-day period for the public to comment to the agency in writing on the proposed regulation. The Secretary of State has historically held public hearings for proposed rulemaking actions. Hearings must be scheduled for a date at least 45 days after the notice of proposed action was published. At the public hearing, both written and oral comments are accepted.

After the initial public comment period, any changes made to the initial proposal require further notice to the public and must be made available for public comment for at least 15 days. If a change is substantial and not sufficiently related to the original proposal, the Secretary of State is required to publish another 45-day notice in the California Regulatory Notice Register. In both instances, a notice of opportunity to comment on proposed changes along with a copy of the text of the proposed changes must be sent to each person who has submitted written comments on the proposal, testified at the public hearing, or asked to receive any notices of proposed modification. However, no further public hearing is required. This typically transpires several times prior to the adoption of regulations.

The Secretary of State is required to summarize and respond to comments that are directed at the proposal or at the procedures of the rulemaking action. For each comment, the Secretary of State must include either an explanation of how the proposed action has been changed to accommodate the comment or state the reasons for rejecting the comment. In summarizing and responding to public comments, the agency must demonstrate that it understood and considered the comment. The summary and response to comments is included as part of the rulemaking file in a document called a Final Statement of Reasons. This is also an extensive process that can require a considerable amount of time and resources depending on the quantity of the received comments.

Once submitted, OAL has 30 working days to conduct a review of the rulemaking record to ensure that the agency satisfied the requirements of the APA and Office of Administrative Law's regulations. OAL will then either approve the rulemaking action and file the proposed regulation with the Secretary of State or disapprove the rulemaking action. Regulations typically become effective on quarterly dates based on when the final regulations are filed with the Secretary of State. The typical quarterly effective dates are January 1, April 1, July 1, and October 1.

Request to File Regulations as an Emergency

After analysis, the request to file voting system pilot program regulations on an emergency basis to allow utilization of a piloted uncertified voting system for the November 8, 2022, General Election does not meet the requirements outlined in the California Government Code. Government Code section 11342.545 provides that an emergency means a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare. For an emergency regulation to be approved, an emergency must be shown to exist. Unless a situation is expressly deemed in statute to meet the emergency standard, an agency must make a finding of emergency by describing specific facts supported by substantial evidence that demonstrate the existence of an emergency and the need for immediate adoption of the proposed regulation. Additionally, pursuant Government Code section 11346.1(b)(2), a finding of emergency based only upon expediency, convenience, best interest, public need, or speculation, is not adequate to demonstrate the existence of an emergency.

Next Steps

As indicated above, the Secretary of State has begun the preliminary activities for drafting and promulgating regulations. We look forward to your participation in the rulemaking process.

As you are aware, the California Elections Code allows that a governing board can provide for the experimental use of a voting system in a pilot program in an election if the voting system is either: (1) certified or conditionally approved prior to its experimental use; or (2) uses only software and firmware with disclosed source, implements risk-limiting auditing, is suitable for the purpose for which it is intended, preserves the secrecy of the ballot, is safe from fraud or manipulation, is accessible to voters with disabilities pursuant to Elections Code section 19242 and applicable federal laws, and is accessible to voters who require assistance in a language other than English if the language is one in which a ballot or ballot materials are required to be made available to voters pursuant to Elections Code section 14201 and applicable federal laws.

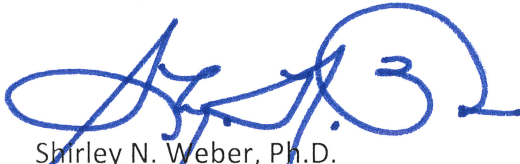
Accordingly, you have two paths forward: submit the voting system for testing and review for certification pursuant to California Elections Code and the California Code of Regulations or utilize a system that is solely disclosed source. If you chose to submit the voting system for testing and review for certification, the application and associated information can be found on our website: <https://votingsystems.cdn.sos.ca.gov/cert-and-approval/vsysapproval/vote-tech-applic-2021.pdf>. If you chose to pursue a system that is solely disclosed source, as the regulation

process moves forward, the Secretary of State would encourage you to clearly outline and document each of your jurisdiction's intended voting system equipment, implementation and use and provide it to our office for feedback. The outline and documentation should provide, at minimum, (a) a list of each piece of hardware, software and firmware that will be used and how each complies with the requirements in (2) above; and (b) draft Use Procedures on how the system will be implemented and used by county election officials and poll workers. The Use Procedures should be written to conform to the template that is available from the Secretary of State's website at:

<http://votingsystems.cdn.sos.ca.gov/cert-and-approval/vsysapproval/useprocedures-2006.pdf>.

Again, thank you for your correspondence and partnership on this issue. We look forward to working with you.

Sincerely,



Shirley N. Weber, Ph.D.
California Secretary of State



State of California

925 L Street, Suite 805
Sacramento, CA 95814

phone: (916) 445-2125

**Milton Marks Commission on California State
Government Organization and Economy**

website: www.lhc.ca.gov

January 5, 2022

San Francisco Board of Supervisors Rules Committee
1 Dr. Carlton B. Goodlett Place, City Hall, Room 244
San Francisco, CA 94102

RE: SUPPORT FOR OPEN SOURCE VOTING PILOT LEGISLATION (FILE NO. 211303)

Dear San Francisco Board of Supervisors Rules Committee,

The Little Hoover Commission supports legislation (File No. 211303) sponsored by Supervisor Shamann Walton that would authorize an open source voting pilot program to be conducted during the November 8, 2022 election in San Francisco.

The Commission underscored the importance of strengthening the security of the state's voting infrastructure in its March 2019 [letter](#) to the Governor and Legislature and its April 2021 report, [California Election Infrastructure: Making a Good System Better](#). In [Making a Good System Better](#), the Commission found that California relies on a for-profit model for election equipment security. Under this model, the process to test and re-certify election infrastructure is extensive and does not incentivize security upgrades for existing models.

To help California better address any security vulnerabilities, the Commission recommended that California invest in a publicly-owned, open source elections system. In this system, expert "white hat" hackers and interested members of the public could review the source code and report potential security flaws and other concerns before they could impact elections. Only authorized personnel would be allowed to physically modify the code. The Commission found several benefits to the state investing in and utilizing open source elections systems, including greater transparency, financial savings, and better alignment with a state goal to use open source software across government.

This legislation would partially implement the Commission's recommendation for California to adopt an open source elections system. For this reason, the Little Hoover Commission supports this legislation. If the Commission can provide any further information about our study, please do not hesitate to ask.

Sincerely,

Pedro Nava, Chair

C: Commissioners, Little Hoover Commission

Pedro Nava, Chairman

Sean Varner, Vice Chairman

Dion Aroner

David Beier

Tasha Boerner Horvath,
Assemblymember

Cynthia Buiza

Phillip Chen, Assemblymember

Bill Emmerson

Gil Garcetti

Dave Min, Senator

Jim Nielsen, Senator

Cathy Schwamberger

Janna Sidley

Ethan Rarick, Executive Director

From: [Brandon Phillips](#)
To: [Board of Supervisors, \(BOS\)](#); [Young, Victor \(BOS\)](#)
Subject: Comment in Support of the Open Source Voting Pilot Legislation, File No. 211303
Date: Friday, December 31, 2021 9:20:59 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear San Francisco Board of Supervisors-

I write to comment in support of the open-source voting pilot legislation, File No. 211303.

From September 2018 to July 2019 I served on the San Francisco Open Source Voting System Technical Advisory Committee (OSVTAC). I also served as a San Francisco Polling Place Inspector in November 2018 to gain firsthand experience on SF Elections training, processes, and hardware.

I have also spent my entire career working on open source software. Recently, I was Co-Founder and CTO of a company, CoreOS, which built open source and commercial infrastructure software that is used by companies like Nike, Starbucks, Verizon and many others. And we created many open source software products that power critical components of services run at Microsoft, Google, Amazon, and countless others.

My combined experiences with elections and open source development, I believe, give me a useful perspective to comment on the legislation under consideration. In short, I want to encourage you to pass the open-source voting pilot legislation (File No. 211303) and enable the City's open source voting pilot program with VotingWorks to proceed.

In January 2019 as part of my SF OSVTAC research I met Ben Adida, founder of VotingWorks. We discussed the challenges of creating organizations that can both build open source software and also deliver that software to enterprise users with complex requirements. Ben and I shared the same view that early on a successful open source product requires both an engaged set of early users and a core team of engineers who enjoy solving those users' problems.

Throughout the remainder of 2019 VotingWorks built an impressive initial product, piloted in a real election, and received significant donations to expand their work. It was clear that VotingWorks was rapidly becoming an organization up to the challenges we had discussed in January.

In September 2019 my family made our first donation to VotingWorks. The same motivation that motivated my volunteer efforts on the OSVTAC motivated our donation to VotingWorks: I want to see municipalities using the best possible technologies for voting systems, and my experience has shown the best possible technologies for critical systems are open source.

Further, VotingWorks does what no municipality pursuing an open source voting system on its own can accomplish: create a center for collaboration. Having a non-profit organization, like VotingWorks, focused on solving the common problems of many municipalities ensures the open source products are adaptable to municipal requirements, well documented, and encodes

the reliability that naturally emerges from lots of demanding users.

Finally, based on my personal experience as a SF Polling Place Inspector, I believe the proposed plan to pilot VotingWorks as an alternative to existing Dominion ballot marking devices will delight users, SF Elections Staff, and Poll Workers alike. I think all Poll Workers and Staff can agree the accessible ballot marking devices currently deployed in SF are unwieldy and failure-prone. So, a replacement using modern web technologies will be a welcome change.

Moving forward with this VotingWorks pilot will help San Francisco lead California in adopting open source voting technology. And I am confident that SF Staff, Poll Workers, and Voters will see excellent results with the product just as Mississippi has.

Thank You,

Brandon



SHIRLEY N. WEBER, PH.D.
CALIFORNIA SECRETARY OF STATE

November 12, 2021

David J. Canepa
President, Board of Supervisors
County of San Mateo
Hall of Justice - 400 County Center
Redwood City, CA 94063

Shamann Walton
President, Board of Supervisors
City & County of San Francisco
City Hall - 1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, Ca. 94102-4689

Dear President Canepa and President Walton,

Thank you for your August 11, 2021 correspondence. In your correspondence, you request that the California Secretary of State adopt regulations pertaining to voting system pilot programs. It is our understanding that both of you want to utilize a voting system that is not certified or conditionally approved in California, but that is an open-source voting system, for your respective counties in a pilot program during the November 8, 2022, General Election. Thank you for your proposed text and other supporting information. You have also requested that the Secretary of State file the regulations on an emergency basis with the California Office of Administrative Law.

Secretary of State staff has met with members of your respective teams on July 15, 2021, and October 6, 2021 to discuss the current statutory requirements and possible pilot projects for an open-source voting system.

Request for Regulations

It is the expressed intent of the Secretary of State to move forward with promulgating regulations regarding the use of open-source voting systems in pilot programs. Preliminary activities relating to drafting proposed regulations are underway. The regulations to be developed may include, but not be limited to, requirements for plans, implementation and use requirements, and testing and review requirements.

The Rulemaking Process Under the Administrative Procedure Act

The state rulemaking process begins with the research and gathering of necessary materials and information to develop the following four documents required to initiate the formal Administrative Procedure Act (APA) (Chapter 3.5 of the California Government Code, section 11340 et seq.) rulemaking process with the Office of administrative Law, the agency responsible for reviewing and approving state regulations: (a) Express Terms (Proposed Regulations), (b) Notice of Proposed Action, (c) Initial Statement of Reasons, and (e) Economic and Fiscal Impact Statement. The Secretary of State has historically included parties from outside of the agency, typically those who would be subject to the proposed regulations, to participate in this process.

Upon initiation of the rulemaking process, the Secretary of State is required to also publish a notice of proposed action to the California Regulatory Notice Register and provide notice to all persons that have requested notice. Once the APA rulemaking process is officially started, the Secretary of State has one year to complete process and submit the completed rulemaking file to OAL.

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Once submitted, OAL has 30 working days to conduct a review of the rulemaking record to ensure that the agency satisfied the requirements of the APA and Office of Administrative Law's regulations. OAL will then either approve the rulemaking action and file the proposed regulation with the Secretary of State or disapprove the rulemaking action. Regulations typically become effective on quarterly dates based on when the final regulations are filed with the Secretary of State. The typical quarterly effective dates are January 1, April 1, July 1, and October 1.

Request to File Regulations as an Emergency

After analysis, the request to file voting system pilot program regulations on an emergency basis to allow utilization of a piloted uncertified voting system for the November 8, 2022, General Election does not meet the requirements outlined in the California Government Code. Government Code section 11342.545 provides that an emergency means a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare. For an emergency regulation to be approved, an emergency must be shown to exist. Unless a situation is expressly deemed in statute to meet the emergency standard, an agency must make a finding of emergency by describing specific facts supported by substantial evidence that demonstrate the existence of an emergency and the need for immediate adoption of the proposed regulation. Additionally, pursuant Government Code section 11346.1(b)(2), a finding of emergency based only upon expediency, convenience, best interest, public need, or speculation, is not adequate to demonstrate the existence of an emergency.

Next Steps

As indicated above, the Secretary of State has begun the preliminary activities for drafting and promulgating regulations. We look forward to your participation in the rulemaking process.

As you are aware, the California Elections Code allows that a governing board can provide for the experimental use of a voting system in a pilot program in an election if the voting system is either: (1) certified or conditionally approved prior to its experimental use; or (2) uses only software and firmware with disclosed source, implements risk-limiting auditing, is suitable for the purpose for which it is intended, preserves the secrecy of the ballot, is safe from fraud or manipulation, is accessible to voters with disabilities pursuant to Elections Code section 19242 and applicable federal laws, and is accessible to voters who require assistance in a language other than English if the language is one in which a ballot or ballot materials are required to be made available to voters pursuant to Elections Code section 14201 and applicable federal laws.

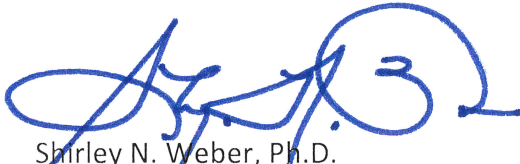
Accordingly, you have two paths forward: submit the voting system for testing and review for certification pursuant to California Elections Code and the California Code of Regulations or utilize a system that is solely disclosed source. If you chose to submit the voting system for testing and review for certification, the application and associated information can be found on our website: <https://votingsystems.cdn.sos.ca.gov/cert-and-approval/vsysapproval/vote-tech-applic-2021.pdf>. If you chose to pursue a system that is solely disclosed source, as the regulation

process moves forward, the Secretary of State would encourage you to clearly outline and document each of your jurisdiction's intended voting system equipment, implementation and use and provide it to our office for feedback. The outline and documentation should provide, at minimum, (a) a list of each piece of hardware, software and firmware that will be used and how each complies with the requirements in (2) above; and (b) draft Use Procedures on how the system will be implemented and used by county election officials and poll workers. The Use Procedures should be written to conform to the template that is available from the Secretary of State's website at:

<http://votingsystems.cdn.sos.ca.gov/cert-and-approval/vsysapproval/useprocedures-2006.pdf>.

Again, thank you for your correspondence and partnership on this issue. We look forward to working with you.

Sincerely,



Shirley N. Weber, Ph.D.
California Secretary of State

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
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TDD/TTY No. 554-5227

MEMORANDUM

TO: Director John Arntz, Department of Elections

FROM: Victor Young, Assistant Clerk *Victor Young*

DATE: December 17, 2021

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee received the following proposed legislation:

File No. 211303

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

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: victor.young@sfgov.org.



City and County of San Francisco

Master Report

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 211303	File Type: Ordinance	Status: Pending Committee Action
Enacted:	Effective:	
Version: 1	In Control: Rules Committee	
File Name: Municipal Elections Code - Open Source Voting	Date Introduced: 12/14/2021	
Requester:	Cost:	Final Action:
Comment:	Title: Ordinance amending the Municipal Elections Code to require the Director of Elections to submit information documenting the City’s intended open source voting pilot program to the California Secretary of State, on behalf of the Board of Supervisors, and, upon approval of the Secretary of State, to implement such a system for use at the November 8, 2022, election.	
Sponsor: Walton		

History of Legislative File 211303

Ver	Acting Body	Date	Action	Sent To	Due Date	Result
1	President	12/14/2021	ASSIGNED	Rules Committee		
12/16/21 - President Walton waived the 30-day rule pursuant to Board Rule No. 3.22.						

Member, Board of Supervisors
District 3



City and County of San Francisco

AARON PESKIN

DATE: January 6, 2022

TO: Angela Calvillo
Clerk of the Board of Supervisors

FROM: Supervisor Aaron Peskin, Chair, Rules Committee

RE: Rules Committee
COMMITTEE REPORT

Pursuant to Board Rule 4.20, as Chair of the Rules Committee, I have deemed the following matter is of an urgent nature and request it be considered by the full Board on Tuesday, January 11, 2022, as a Committee Report:

211100 [Administrative Code - Commissioners - Health Service System Eligibility]

Ordinance amending the Administrative Code to provide members of the Public Works Commission, Sanitation and Streets Commission, and Sheriff's Department Oversight Board with health insurance coverage through the San Francisco Health Service System.

211303 [Municipal Elections Code - Open Source Voting]

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

This matter will be heard in the Rules Committee at a Regular Meeting on Monday, January 10, 2022, at 10:00 a.m.

/s/ Aaron Peskin