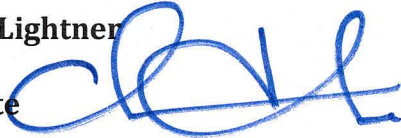




**COUNCILMEMBER CHRIS CATE
CITY OF SAN DIEGO
SIXTH DISTRICT**

MEMORANDUM

DATE: July 6, 2016
TO: Council President Sherri Lightner
FROM: Councilmember Chris Cate 
SUBJECT: Request for Further Review of Alternative Election Process

A vigorous debate regarding the City of San Diego's election process has been initiated due to a recent "Right to Vote in the General Election" proposal heard at the June 15, 2016 meeting of the Rules Committee. While this proposal was brought forward for consideration, alternative election models were not presented to the Committee.

This proposal is in stark contrast to the process that unfolded in 2006 and 2007. On February 9, 2006, the City Council established an Elections Task Force (Task Force) consisting of nine community members, plus the City Clerk, whom served as the chairperson. The Task Force had the following defined objectives:

- Report back to the Committee on Rules, Open Government, and Intergovernmental Relations (Committee) for feedback on and approval of recommendations, then present an approved report with recommendations to the City Council;
- For each recommendation or approach considered, examine the fiscal impacts of that recommendation or approach, identify and explore all feasible alternatives, and examine the fiscal impacts of each alternative;
- Hear presentations on the ideas, suggestions, and recommendations of a variety of experts in those areas under consideration by the Task Force, as well as representatives from elections-focused community or outreach groups;
- Examine whether the City should move to a mail-only ballot, including examination of possible impacts on voter participation and impacts to the election and canvass process;
- Examine whether or not the City should use instant run-off voting, including research into the type of instant run-off voting that would be best for the City, the potential impacts to consolidated elections, and the cost and funding issues that would be involved in implementing and certifying this voting system;
- Examine the City's relationship with the Registrar of Voters and the availability of private vendors offering similar services as alternatives, particularly in the context of if the City should decide to pursue mail-only ballots or instant run-off voting;
- Examine the issue of voter outreach to boost public participation in municipal elections; and
- Examine any other elections-related issues and make any other recommendations as appropriate.

Over a period of one year, the Task Force, along with assistance from the Office of the City Attorney, Office of the Independent Budget Analyst, Office of the City Clerk, and the Mayor's Office, developed well-researched policy documents that reviewed the impact of various voting methods. This review included the advantages and disadvantages of such methods, as well as the fiscal impact of such a change. After receiving all of the input and completing a study, no changes were recommended by the Committee.

The current proposals being presented have had one public hearing, with no input from the same offices that were involved in the Task Force. Neither a report or study has been presented that analyzes the advantages and disadvantages of such a proposal, nor has the impact on costs been analyzed.

I believe strongly that before the City Council decides whether to place a measure on the November ballot that will dramatically alter the voting structure from a system that has been in place in the City for a number of years, we must diligently review any and all options to ensure the best proposal is put forward. I respectfully request the option to re-establish this Task Force to review the current proposal, provide an update on the previously studied election methods, as well as review other methods as determined best by the Chair of the Task Force, and that their findings and recommendations be presented to the City Council.

Attachments

- (1)-City Council Resolution 301223
- (2)-Office of the City Clerk Report 06-02
- (3)- Office of the City Clerk Report 07-01
- (4)-Election Task Force Memorandum

cc: Honorable Mayor Kevin Faulconer
City Clerk, Elizabeth Maland
Andrea Tevlin, Independent Budget Analyst

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2/6/06

(R-2006-661 REV)
(COR COPY 2)

RESOLUTION NUMBER R- 301223
DATE OF FINAL PASSAGE FEB 09 2006

WHEREAS, in accordance with San Diego Charter section 43(b), the City Council may create and establish temporary citizen committees for the purpose of advising on questions with clearly defined objectives; and

WHEREAS, on October 17, 2005, the Office of the City Clerk presented information on instant run-off voting to the City Council Government Efficiency and Openness Committee [GE&O Committee], and

WHEREAS, during that presentation it became clear that there were a number of elections-related issues that would benefit from an organized process of researching, discussing, and presenting information to the City Council, and

WHEREAS, on November 21, 2005, the GE&O Committee voted to recommend to the City Council that an Elections Task Force be formed pursuant to City Charter section 43 (b) to study and make recommendations on election-related issues that have recently been raised; and

WHEREAS, pursuant to Council Policy 000-16, the Elections Task Force will adhere to the requirements of the California Brown Act, NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that there is hereby established pursuant to City Charter section 43(b) an Elections Task Force consisting of ten members including a chairperson, who shall all serve without compensation. The composition and appointment of the Elections Task Force shall be as follows.

- a Eight individuals, one each nominated by each City Councilmember, whose names shall be submitted to the City Clerk no later than 30 days after the final passage of this resolution, and
- b One individual nominated by the Mayor, whose name shall be submitted to the City Clerk no later than 30 days after the final passage of this resolution, and
- c The City Clerk, who shall be the chairperson.

BE IT FURTHER RESOLVED, by the Council of the City of San Diego, that there is hereby established pursuant to City Charter section 43(b) the Elections Task Force with the following defined objectives:

- a. Report back to the Committee on Rules, Open Government, and Intergovernmental Relations for feedback on and approval of recommendations, then present approved report with recommendations to City Council.
- b. For each recommendation or approach considered, examine the fiscal impacts of that recommendation or approach, identify and explore all feasible alternatives, and examine the fiscal impacts of each alternative
- c. Hear presentations on the ideas, suggestions, and recommendations of a variety of experts in those areas under consideration by the Elections Task Force, as well as representatives from elections-focused community or outreach groups
- d. Examine whether the City should move to a mail only ballot, including examination of possible impacts on voter participation and impacts to the election and canvass process
- e. Examine whether or not the City should use instant run-off voting, including research into the type of instant run-off voting that would be best for the City, the

potential impacts to consolidated elections, and the cost and funding issues that would be involved in implementing and certifying this voting system

- f. Examine the City's relationship with the Registrar of Voters and the availability of private vendors offering similar services as alternatives, particularly in the context of if the City should decide to pursue mail-only ballots or instant run-off voting.
- g. Examine the issue of voter outreach to boost public participation in municipal elections
- h. Examine any other elections-related issues and make any other recommendations as appropriate.

BE IT FURTHER RESOLVED, that the Elections Task Force shall be staffed by the Mayor's Office, the City Attorney's Office, and the Office of Independent Budget Analyst.

APPROVED. MICHAEL J. AGUIRRE, City Attorney

By Stephane Rahlfs
Stephane Rahlfs
Deputy City Attorney

SR,jb
01/26/2006
01/30/2006 COR COPY
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02/06/2006 REV
Or Dept Clerk
R-2006-661

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at its meeting of FEB 06 2005

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: Feb 09, 05
(date)


JERRY SANDERS, Mayor

Vetoed _____
(date)

JERRY SANDERS, Mayor



OFFICE OF THE CITY CLERK

REPORT

**REPORT TO THE COMMITTEE ON RULES, OPEN GOVERNMENT AND
INTERGOVERNMENTAL RELATIONS**

DATE: April 5, 2006

REPORT NO.: CC-06-02

SUBJECT: ELECTIONS TASK FORCE ASSIGNMENTS AND TIMELINE

ISSUE

To develop a list of study assignments for the Elections Task Force, and to develop a timeline for the purpose of completing those assignments.

BACKGROUND

On February 6, 2006, with R-301223, the City Council acted to establish an Elections Task Force with the understanding that the specific agenda and timeline for the Task Force would be approved by the Rules Committee.

The specific structure of the Task Force was approved by Council, and will consist of the following:

The City Clerk will chair the Task Force, which will be staffed by the Mayor's Office, the City Attorney's Office, and the Office of the Independent Budget Analyst. Each Councilmember and the Mayor have appointed an individual to sit on the task force, as follows:

Hon. Council President Scott Peters has appointed Faith Bautista;
Hon. Councilmember Kevin Faulconer has appointed Mel Shapiro ;
Hon. Councilmember Toni Atkins has appointed Kevin Davis;
Hon. Council President Pro Tem Tony Young has appointed Cassandra Clady;
Hon. Councilmember Brian Maienschein has appointed Charles G. Abdelnour;
Hon. Councilmember Donna Frye has appointed Charles R. Imes;
Hon. Councilmember Jim Madaffer has appointed John Kern;
Hon. Councilmember Ben Hueso has appointed Adrian Kwiatkowski; and
Hon. Mayor Jerry Sanders has appointed Craig Benedetto.

The Task Force will initially meet twice per month on a day and at a time set by the City Clerk once the agenda and timeline for the Task Force have been established by the Rules Committee. The first meeting is expected to be held in April 2006. All meetings will be publicly noticed.

DISCUSSION

The following topics have been identified as potential initial matters for the Task Force to study, subject to the approval of the Rules Committee:

1. Mail-Only Ballot

On May 5, 1981, the City of San Diego conducted by mail a special, referendary election on a proposed convention center. Voter turnout was 60.8%, with an estimated cost savings of 40% compared to the cost of a conventional election.

To date, that has been the City's only experience with a mail-ballot election, and much has changed in the intervening 25 years. For example, state law now enables any voter to request to be a Permanent Absentee Voter, and the San Diego County Registrar of Voters (ROV) reports that approximately 22% of the City's voters are currently registered as such. In the City of Oceanside's recent special election, more voters cast their ballots by mail than at a polling place. In the City of San Diego's recent run-off election in District 2, nearly half of the ballots cast were absentee ballots. The City's experience in 1981 indicated that a mail-only election could result in greater voter participation; however, its impact on more transient voters is unknown.

The Council could enact a mail-only ballot by ordinance. Input from the ROV would be vital.

Timeline:

Research – 4 weeks
Discussion and Report-Writing – 3 weeks
Docketing for Rules Committee – 1 week
TOTAL: 8 weeks

2. Instant Run-off Voting

There are various permutations of Instant Run-off Voting (IRV), which is a voting system that falls under the umbrella term "preferential voting." Other iterations include Proportional, Supplemental, and Ranked Choice Voting. In addition to discussing these variations with the Registrar of Voters, we would like to do some benchmarking with other jurisdictions that have implemented some form of IRV (Berkeley, San Francisco, San Leandro, Oakland, Santa Clara County) for their recommendations regarding the

timeframe for implementation, the process for educating the public, and other pertinent issues.

A Charter amendment would be needed prior to implementing any new IRV process, whether it was intended to replace regular elections or would be used solely in the case of special elections to fill a vacancy. The extent of the Charter amendment would depend on what Council ultimately elects to pursue, and the City Attorney's input would be critical. In addition to allowing for IRV, other potential Charter-change issues include but are not necessarily limited to the question of consolidation, and the timing of the IRV election (i.e., whether the election would be held in June, November, or some other month).

If IRV is approved, there would be a delay of several years before its implementation, because of hardware/software certification requirements.

The Ballot

If the City continues to consolidate its elections, IRV could probably not be accommodated on the regular ballot provided by the Registrar. The amount of space City races would require has the potential to triple. This could require a second ballot page, which would increase costs and difficulty for every jurisdiction on the ballot. We believe that the City of San Diego is currently the only local jurisdiction actively discussing IRV. Thus, we would pay all costs associated with changes to the ballot. Again, these ballot issues assume a consolidated election. Moving to a stand-alone election would resolve some of these ballot-related issues, but would create additional cost impacts.

Voter Education

With IRV, the City's race would look, and be, different from every other jurisdiction on the ballot. Even if we moved to stand-alone elections, intensive voter education would be required to insure that voters understand how to mark the multiple columns of bubbles. There would be significant cost and timing considerations regarding this necessary outreach.

Software & Hardware

The County's current software cannot support IRV. The County's RFP with Diebold calls ultimately for the capability, but even once the tabulation software is changed to accommodate IRV, the system must be tested by an independent testing authority, federally qualified, and recertified by the State of California.

The task force could research other vendors with whom the City could contract in place of the County, should we opt for stand-alone elections. San Francisco uses ES&S. Again, there would be issues of cost, feasibility and reliability.

Timeline:

Research – 8 weeks
Discussion and Report-Writing – 3 weeks
Docketing for Rules Committee – 1 week
TOTAL: 12 weeks

3. Alternative Election Services Providers

Currently, the City contracts for election services with the County of San Diego Registrar of Voters (ROV). The ROV's staffing, expertise and equipment have historically provided for an efficient, effective election process.

For the November 16, 2004, special election in District 4, the ROV was only able to provide limited services to the City because of the statewide general election held earlier in the month. Subsequently, the City contracted for certain services with a private vendor, and handled many election-related tasks in-house.

It would be practical to investigate the availability of other private vendors offering services similar to those of the ROV as alternatives, particularly should the City decide to pursue mail-only ballots or instant run-off voting.

Timeline:

Research – 6 weeks
Discussion and Report-Writing – 3 weeks
Docketing for Rules Committee – 1 week
TOTAL: 10 weeks

4. Voter Outreach

Recent attention has been given to voter turnout in a variety of jurisdictions. In the City, turnout varies fairly dramatically by type of election and by district. The task force could examine the issue of voter outreach to boost public participation in municipal elections.

Timeline:

Research – 4 weeks
Discussion and Report-Writing – 3 weeks
Docketing for Rules Committee – 1 week
TOTAL: 8 weeks

5. Ballot Tabulation

The task force's examination of and report out on the process used by the ROV to tabulate ballots in City elections would respond to concerns from various members of

the public as to the integrity of that process. It should be noted that the June 6, 2006, statewide primary election--with which the City is consolidating its primary election for Councilmembers in Districts 2, 4, 6, and 8--provides an excellent opportunity for task force members to view first-hand the ROV's tabulation process.

Timeline:

Research – 8 weeks
Discussion and Report-Writing – 3 weeks
Docketing for Rules Committee – 1 week
TOTAL: 12 weeks

6. Public Financing of Elections

Proponents of this concept claim that public financing of elections would improve the integrity of government officials by reducing the influence of special interests on elections, by enabling lawmakers to focus on their work rather than on fundraising, and by allowing all viable candidates the financial resources with which to communicate with voters. Opponents cite free-speech issues, and the cost to taxpayers at the expense of other programs.

At least six states currently have implemented some form of public financing in recent years. In 2005, voters in Portland, Oregon and Albuquerque, New Mexico approved full public financing for their city elections. In those cities, participating candidates now collect a certain number of small "qualifying contributions" to demonstrate community support, reject private donations, limit campaign spending, and agree to strict electioneering regulations. In return, the participants receive limited amounts of campaign dollars from a publicly financed fund. Candidates who do not wish to participate are able to raise and spend private money for their campaigns.

In mid-March, 2006, the Los Angeles Ethics Commission voted to recommend public financing to the City Council for possible inclusion on an upcoming ballot, despite a warning that the cost would be up to \$9 million annually.

Public financing of City of San Diego elections is currently being pursued by a ballot measure committee, Neighborhoods for Clean Elections, which appears to be an offshoot of the local Alliance for Clean Elections. The committee appears to be finalizing their Charter amendment language, and a representative of the committee has indicated that they hope to put the Charter amendment on the ballot in 2008.

Timeline:

Research – 8 weeks
Discussion and Report-Writing – 3 weeks
Docketing for Rules Committee – 1 week
TOTAL: 12 weeks

7. Write-In Ballot Space

The ballot style currently used by the ROV always provides a space for voters to write in the name of a candidate whose name does not already appear on the ballot, even in those races where no one has qualified as a write-in candidate. Some voters may find this confusing, while others may use it to indicate their dissatisfaction with those candidates whose names do appear on the ballot. Recently, the question has arisen as to whether that space must appear on the ballot.

An additional, related area of interest lies in using the space to denote "None of the Above" (NOTA). In fact, this idea was presented to the voters of the State of California as Proposition 23 on March 7, 2000. The proposition, which failed 36.3% to 63.7%, would have provided that NOTA votes be tallied and listed in the official election results, but not counted for purposes of determining who wins the election. (It should be noted that alternative opinions exist about what should occur in the event that NOTA receives more votes than any of the qualified candidates.)

Further, certain differences exist between state and local law regarding the tabulation of election results; one such apparent difference relates to the matter of filling in the bubble beside a write-in candidate's name in order to complete the act of voting. When City elections are consolidated with statewide elections, the ROV follows state law in its canvass of votes. The inconsistency between City and state law could be eliminated with a change to the Municipal Code.

Timeline:

Research – 8 weeks

Discussion and Report-Writing – 3 weeks

Docketing for Rules Committee – 1 week

TOTAL: 12 weeks

CONCLUSION

With the passage of R-301223, the concept of an Elections Task Force was approved by the City Council; specific topics for study would be assigned by the Rules Committee. Once the agenda and timeline for the Task Force has been determined, the Task Force will present these items to the Rules Committee for feedback on and approval of all recommendations before presentation to the full Council.

Submitted by:

Elizabeth Maland, City Clerk

cc: Michael Aguirre, City Attorney
Ronne Froman, Chief Operating Officer



OFFICE OF THE CITY CLERK

REPORT

REPORT TO THE COMMITTEE ON RULES, FINANCE AND INTERGOVERNMENTAL RELATIONS

DATE: June 27, 2007

REPORT NO.: CC-07-01

SUBJECT: FOLLOWUP REPORT: MAIL-ONLY BALLOT ELECTION ISSUES OF
VOTER TURNOUT AND FRAUD

INTRODUCTION

On July 26, 2006, the Elections Task Force presented its report on mail-only ballot elections to the Rules Committee, which then directed that the City Clerk provide additional information on voter turnout and fraud issues related to mail-only elections. This is the Clerk's response.

IMPACT OF MAIL-BALLOT ELECTIONS ON VOTER TURNOUT

In a mail-ballot election, every voter in the jurisdiction is provided with an absentee ballot. Local jurisdictions in Oregon have conducted all-mail elections since 1981; in 1998, 67% of Oregon voters approved voting by mail (VBM) for all elections, including those at the federal level. Much of the research on mail-ballot elections focuses on Oregon's experience.

Oregon's election officials and voters alike appear to view voting by mail as a success, and the Secretary of State's Office touts it as a way to increase voter participation.

Mail-ballot elections may be one factor making voter turnout in Oregon consistently higher than the average national voter turnout. For example, in the U. S. 2004 presidential general election, the nation experienced a turnout of 58.4% of the voting-age-eligible population, while Oregon had a record 70.6% turnout. The state's turnout of registered voters for that election was 86.48%, compared to California's 57.03% and to San Diego County's 58.23%. The City of San Diego's ballot featured run-off elections for the offices of Mayor, City Attorney, and District 1 Councilmember, in addition to seven propositions; citywide turnout was 73.93%.

Mixed Results

Evidence is mixed on how significant an impact voting by mail may have on voter turnout. It appears that mail-ballot elections do increase turnout, but that the increase is generally noticeable only in low-profile contests such as local elections and primaries. In fact, a recent study (Kousser and Mullin) finds indications that voting by mail actually may have a small *negative* impact on participation in general elections. However, that study also shows that voting by mail "brings a clear and consistent increase in turnout in municipal special elections," potentially as high as eight percentage points.

It is commonly accepted that voter turnout for any given election is the result of a number of factors, including which offices and issues are on the ballot, and how high-profile those offices and issues are.

The 2000 election was the first presidential election held entirely by mail in Oregon, and turnout increased in that election by 8.5% over the 1996 turnout. The 2001 study "Who Votes by Mail?" (Berinsky et al) posited that not all of the increase was a result of the switch in voting techniques, as the ballot had such a large number of referenda on it that the ballot ran to two punch-cards per voter for the first time.

Mail-Ballot Elections Do Not Appear to Increase Registration

Additionally, data indicates that voting by mail's increase in voter turnout results from retaining existing voters rather than recruiting new voters into the system. The purpose of mail-ballot elections is not to increase voter registration, but to make it easier for those who are registered to vote.

In fact, mail-ballot elections do *not* appear to draw non-voters into the electorate—if there is any impact on a voter's decision to register, that impact appears to occur at the first, and only the first, opportunity to vote by mail. However, mail-ballot elections *do* appear to retain voters by removing obstacles such as illness, traffic or busy-ness, which might reduce one's likelihood of voting on a given election day.

This conclusion is supported by a 2005 study from the University of Oregon (UO), which found that certain groups of individuals—women, young people (26-38 years of age), and the disabled and retirees—found mail-ballot elections to be more convenient than polling-place elections held on a single election day. In fact, using data from the 2003 Oregon Annual Social Indicators Survey, the UO study found overwhelming *support* for vote-by-mail (compared to polling-place elections); the data indicates that the preference is consistent across all demographic and attitudinal subcategories. (We note that in November, 2006, Arizonans voted down a proposition which would have established mail-ballot elections in that state, by a 71.06% [no] to 28.94% [yes] margin.)

Mail-Ballot Elections Have Questionable Impact on Minority Voter Turnout

To date, no studies we have found have definitively shown that mail-ballot elections have either a significant positive or a significant negative impact specific to minority voter

turnout. It is worth mentioning again that allowing mail-only elections is *not* a tool for increasing voter registration.

Voting behavior expert Paul Gronke (Reed College, Oregon) noted in 2006 that mail-only elections do not appear to make voting sufficiently convenient to overcome barriers to higher turnout in minority and disempowered communities.

Gronke has interpreted data as indicating that few, if any, racial differences appear in turnout for early or absentee voting. However, in 2007, the University of California, San Diego's Dr. Thad Kousser anecdotally interpreted Berinsky et al to mean that the problem of under-representation is increased, because turnout rates are increased for those who "always used to turn out" but not for those who had always been under-represented.

The report of the 2001 National Commission on Election Reform found that in 1996, "use of absentee ballots varies by race. Blacks are only half as likely as whites to vote absentee." Gronke attributes this to the fact that while some states had begun relaxing absentee ballot requirements by 1996, states with large African-American populations, particularly in the South and Northeast U.S., still had very restrictive rules.

The Brennan Center for Justice at NYU School of Law noted in 2005 that there may be disproportionate *information* regarding the process for absentee balloting among different racial communities. Individuals who voted absentee were disproportionately white nationwide in 1996, and the Brennan Center reports that no evidence exists to indicate that that disproportion has changed, additionally noting that legal opportunity to vote by absentee ballot does not necessarily translate into preference or habit. The Brennan Center admits, however, that it is unaware of any studies examining the racial impact of reforms such as relaxing absentee ballot requirements.

That has been the difficulty in determining the impact of mail-only elections on minority voter turnout: the lack of definitive data.

However, in the 2005 University of Oregon study, some 81.5% of white respondents reported *preference* for voting by mail, while 79.3% of non-white respondents reported the same preference. Nearly two-thirds of all respondents self-reported that the frequency of their voting was "about the same" (white=66.8%; non-white=66.1%), and approximately 28% of all respondents self-reported that they voted more often using the mail-ballot system (white=29.6%; non-white=27.1%). A small portion of respondents self-reported that they voted less often under the system (white=3.6%; non-white=6.8%).

We note that post-election surveys are often exit polls or random digit dialing (RDD) telephone polls where respondents are assumed to provide correct and complete information. It is commonly accepted that registered voters tend to over-report their voting activity; i.e., in post-election surveys, an individual may report that he or she participated in the election, when that is not, in fact, the case.

It is also important to mention that neither Oregon nor California collect race and ethnicity data on their voter registration forms, although "ethnic background" is included on California's form as an optional item.

In California, voting by mail is garnering increasing attention at the state level. Introduced earlier this year, Assembly Bill 1654 (Huffman) would have allowed any local, special, primary, or general election to be conducted as an all-mail ballot election subject to certain conditions. The bill was ultimately not heard in committee, as the hearing was cancelled at the author's request. However, at the time of its introduction, the bill was supported by such entities as the City Clerks Association of California and the California State Association of Counties, the latter of which noted its belief that all-mail balloting would increase voter participation.

Opponents of the bill included the Mexican American Legal Defense and Educational Fund (MALDEF) and the Asian Pacific American Legal Center (APALC). MALDEF found data that it believes supports the concept that minority and low-income voters prefer to cast their votes at a polling place, in lieu of absentee voting. APALC expressed concern that providing language assistance to limited English proficient voters would be compromised by the implementation of mail-only elections. APALC was also concerned that voters from populations with high rates of mobility would not receive their absentee ballots in the mail.

POTENTIAL FOR VOTER FRAUD IN MAIL-BALLOT ELECTIONS

Finding agreement on the prevalence of fraud in absentee balloting or mail-only elections is also difficult. As recently as this year, there have been conflicting arguments on the issue.

In early 1998, the Florida Department of Law Enforcement (FDLE) issued a report with observations on actual and potential voter fraud issues in that state. While not principally responsible for monitoring Florida's election issues, the FDLE had recently conducted "criminal investigations of specific allegations of election fraud or other misconduct" and had subsequently identified what the Department considered to be basic trends in election fraud in the state and nationwide.

Pertinent to absentee ballots, the FDLE found three areas that it considered "ripe" for potential abuse:

- a) Using absentee ballots improperly. The FDLE noted that relaxing voter registration requirements had the potential for increasing fraudulent registration. Once registered, a voter has the opportunity to vote absentee in each future election, with no "in-person, at-the-polls" accountability. The FDLE concluded that absentee ballots were the "tool of choice" for individuals seeking to commit voter fraud.

However, in California, voter fraud is punishable as a felony. Recent discussions with the San Diego County Registrar of Voters have made us aware that voter identification is more closely scrutinized in a mail-ballot election than in a standard election. Voters at local polling places are asked for identification only under specific, limited circumstances, whereas returned mail ballots are subject to both a signature identification check and a residential address check.

Berinsky et al noted that the 2000 presidential election in Oregon resulted in no significant charges of fraud or corruption, reflecting no change from other recent

Oregon elections. The 2005 Carter-Baker study ("Ballot Integrity and Voting by Mail: The Oregon Experience") concurs that Oregon has been "relatively free" from voter fraud controversies. It is possible, then, that Oregon's voting system has deterred voter fraud in the state, as it incorporates a variety of security measures, including a signature authentication system, in addition to substantial punishment for those convicted of engaging in voter fraud.

- b) Illegally or improperly "assisting" others to vote their absentee ballot. The FDLE also expressed its concern that absentee ballots could be fraudulently used without the actual voter even knowing it. Those with access to the "ill or infirm or those who do not have the ability to resist the influence of another" could have a tremendous opportunity to mark or force to mark the absentee ballot in a way that differs from how the actual voter wants or expects or believes it to be marked. The same opportunity exists with voters "whose interest in voting is marginal or non-existent."
- c) Vote-buying. The FDLE contended that offering payment or some sort of reward for marking any ballot a certain way is a problem in any election, and that absentee ballots make vote-buying easier, as the buyer can physically see the ballot being marked.

We note additionally that there is the perception that ballots mailed to voters by the election official may be intercepted and voted by someone other than the voters for whom they were intended. However, the Carter-Baker study found that, in Oregon, the cooperation of the U. S. Postal Service helped prevent ballots from being mis-delivered, and that this was a factor in reducing the risk of large-scale attempts to cast fraudulent ballots.

We understand also that some voters may not wish to return by mail a ballot on which their signatures are clearly evident. The Elections Task Force believed that this concern could be addressed by establishing one or more drop-off locations for ballots. However, the Carter-Baker study found a degree of risk for election fraud in such 'non-mail' return of ballots. Oregon voters use official drop-sites, including drop boxes; additionally, a voter's ballot may be picked up at the voter's home by volunteers, who are often sponsored by political groups or by elected officials as a form of constituent service. The Carter-Baker study found no documented cases in which such ballots were tampered with or destroyed, but notes that election officials cannot confirm receipt of every ballot given to anyone other than an authorized election official.

How Prevalent Is Voter Fraud?

In late 2006, the U. S. Election Assistance Commission (Commission) published its report "Election Crimes: An Initial Review and Recommendations for Future Study," phase one of what the Commission sees as a comprehensive study of voting fraud and voter intimidation, among other election-related issues. We must note that the Commission's report has generated a degree of controversy.

During its research, the Commission found no studies conducted in the past based on "a comprehensive, nationwide study, survey or review of all allegations, prosecutions or

convictions of state or federal crimes related to voting fraud or voter intimidation in the United States." Rather, reports tended to be limited to small numbers of case studies or instances of alleged voting fraud or voter intimidation. The Commission also noted that, in its research, it found "no consensus on the pervasiveness of voting fraud and voter intimidation," but noted "the pervasiveness of *complaints* (emphasis added) of fraud and intimidation throughout the country."

In early 2007, representatives of The Brennan Center expressed their belief that "evidence of actual fraud by individual voters is painfully skimpy," although they were not specifically addressing issues directly related to mail-ballot elections. Their conclusion was echoed in Project Vote's 2007 study, "The Politics of Voter Fraud," which reported, "At the federal level, records show that only 24 people were convicted of or pleaded guilty to illegal voting between 2002 and 2005, an average of eight people a year. The available state-level evidence of voter fraud, culled from interviews, reviews of newspaper coverage and court proceedings, while not definitive, is also negligible."

We take this opportunity to point out that the Commission's work addressed elections in general, not mail-ballot elections or absentee ballots specifically. However, the Commission noted that interviews and conclusions gathered from books, articles and other studies indicated that its sources "largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote-buying and voter registration fraud." Consequently, the Commission recommended a study specific to absentee ballot fraud; the study should consider how absentee ballot fraud schemes are conducted, and propose methods for preventing such fraud.

Further, we note that there have been a number of recent disputed elections and documented cases of absentee ballot fraud. Law professor Richard L. Hasen (Loyola Law School, Los Angeles) notes that "(m)ost of the documented cases of voting fraud in the United States in recent years involve absentee ballots." In 1998, the courts threw out all of the 4,740 absentee ballots cast in the 1998 Miami mayoral election, and overturned the original election results. Absentee ballots were cited as a source of some of the problems in the November 2004 Washington gubernatorial election. The Carter-Baker study notes other recent allegations of election fraud that involve absentee ballots in Colorado, Michigan, New York and Mississippi. Additionally, the Kousser-Mullin study reports such a case in a 1993 California mail-only special election, "when a voter who appeared in registration rolls under two names because of a change in marital status cast and returned both ballots."

Elizabeth Maland

Elizabeth Maland
City Clerk

cc: Elections Task Force Members

MEMORANDUM

Date: June 27, 2007
To: The City of San Diego Rules Committee
From: The Elections Task Force
Subject: Instant Runoff Voting (IRV)

Introduction

On February 6, 2006, the Elections Task Force was formed by the City Council with the objective of researching elections-related issues and reporting results and recommendations to the Rules Committee for possible consideration by the full City Council. Members of the Task Force included appointments from the Mayor and each Council Office as well as staff from the City Attorney's Office, Office of the Independent Budget Analyst, Office of the City Clerk and the Mayor's Office, with the Clerk serving as the Chair. On April 5, 2006, the Task Force agenda and a potential timeframe were approved by the Rules Committee. The first meeting of the Task Force occurred on April 21, 2006.

The Elections Task Force presented a report on the first topic, Mail-Only Balloting, to the Rules Committee on July 26, 2006. On September 29, 2006, the Task Force embarked upon the topic of Instant Runoff Voting (IRV). On February 7, 2007, the Task Force received permission from the Rules Committee to combine several topics, including IRV, Voter Outreach, Alternate Services Providers and Mail-Only Balloting as it relates to IRV.

What is Instant Runoff Voting (IRV)?

IRV is a ranked-ballot method of voting (sometimes referred to as Ranked Choice Voting) that always results in a winner chosen by a majority of voters. On the ballot, voters rank the candidates in order of preference. Each voter has one vote, and that vote counts toward the highest-preferred viable candidate. If no candidate receives a majority of votes in the first round of ballot tabulation, the candidate with the fewest votes is eliminated. Those whose first choice is eliminated have votes transferred to their second choice. This process is repeated until one candidate receives a majority. Thus, the process has been compared to a series of runoff elections that occur at the same election, on one ballot – hence the term, "Instant Runoff Voting."

An example of what a ballot might look like is as follows:

| Candidates | 1st Choice | 2nd Choice | 3rd Choice | 4th Choice |
|------------|------------|------------|------------|------------|
| Person A | | | | |
| Person B | | | | |
| Person C | | | | |
| Person D | | | | |

Research

The concept of IRV is not a new one. It was first used in Ohio in 1915, and was used in twenty-three cities in the 1930s and 1940s including New York City, Sacramento and Cincinnati. It has been used in Cambridge, Massachusetts since 1941.

San Francisco

San Francisco voters passed ranked choice voting in 2002. The system was used in November, 2004 to elect district Supervisors in seven of the eleven districts. In four of those districts (1,5,7 and 11), no candidate won a majority in the first round, but IRV eliminated the need for a December runoff. In 2005, IRV was used in three citywide races. San Francisco saved over \$2 million in 2005 by avoiding that second, potentially low-turnout election.

According to a 2004 exit poll by San Francisco State University/Public Research Institute, 86% of those who voted in the polling place and 89% of absentee voters felt they understood IRV fairly well or perfectly well after using it. In addition, 61% of polling place voters and 77% of absentee voters preferred IRV over the old system.

The Chinese American Voters Education Committee (CAVEC) also conducted a poll in 2004 and found that, of those who expressed an opinion, 83% of Latinos, 70% of Whites, 72% of Asians, and 62% of Blacks liked IRV.

Burlington, Vermont

Burlington used IRV for the first time to elect its Mayor in 2006. There were five candidates on the ballot plus a write-in slot. In testimony to the Pierce County Charter Review Commission by Caleb Kleppner, a former staffer with the Center for Voting and Democracy from 1999-2004, voters preferred IRV to the old "vote for one" method by more than 3 to 1. In

addition, 91% disagreed with the statement, "The ballot was confusing."
The valid ballot rate was 99.9%.

In the process of studying IRV, the Elections Task Force became aware of the following issues, which will be addressed in more detail below:

- I. According to the report presented by the City Attorney's Office, a Charter Amendment would be required for the City to implement IRV.
- II. The City of San Diego is the only local jurisdiction considering IRV at this time. Thus, should the City implement IRV, it would create a different look and feel to the City's ballot (as compared to other local municipalities participating in the election process). In addition, it's possible that City elections would require two ballot cards (one for City-specific races where IRV would be used, and one for other County issues before City voters).

The County Registrar of Voters (ROV) has indicated an uncertainty about whether the ROV could support the City's election process should the City choose to move forward with implementing IRV. The City Clerk is currently working with the new ROV to increase communication between the City and the County, with the hope that increased communication will enable the ROV to provide additional or more detailed election-related information to the City.

In the instance of IRV, the ROV would need to determine whether the County's equipment and software could support an IRV election, and the City would likely have to pay the cost of either upgrading equipment, software or both.

It should be noted, however, that the State Assembly is currently considering IRV for the State of California (AB 1294). Although the Assembly analysis specifically states that, 'Any costs to cities or counties would be non-reimbursable, as this bill is permissible,' the impact that this bill might have on the State's election process and the possible role of IRV is unknown at this time.

I. Charter Amendment

The City of San Diego is a Charter City and thus could implement IRV for municipal elections by a vote of the people to change the City Charter. The City Attorney's Office has suggested that implementation of IRV would require numerous Charter changes. Depending upon how the Council wishes to implement IRV, it may be possible to do so with a single

Charter Amendment regarding Special Elections, or with multiple Charter Amendments on the ballot at one time to allow for IRV in other election situations.

In addition, the City Council would need to revise related Municipal Code election procedures.

This report does not address procedural issues related to IRV in consolidated elections. The Task Force did not address this because California law presently does not permit the use of IRV to elect state or federal office holders. However, when the City consolidates its elections, in general, state law applies to that ballot. It should be noted that even if AB 1294 is approved, the City would still need to go through a Charter amendment process if it wishes to implement IRV for municipal elections.

II. Registrar of Voters

As noted above, after inquiries by the Elections Task Force, the ROV was not certain whether the County could implement an IRV election. In addition, the ROV noted that programming did not exist in the current ballot tabulation software to support IRV and that such software would have to be developed should the City choose to pursue IRV. The ETF did determine that in other jurisdictions where IRV has been implemented, there has been a cost associated with new equipment and upgraded software, as well as election official training in order to conduct this type of election.

The ROV did indicate that, should the City determine that it was important or valuable to pursue IRV, it might be beneficial to consider moving off the consolidated election cycle so that the City would have the ballot to itself.

The Elections Task Force determined that it would be important to research alternate services providers to ascertain what options are available to the City in contracting with outside vendors to support the election process. In addition, the Task Force decided that it would be wise to consider mail-only balloting in that this methodology might provide a medium for allowing IRV to occur through an alternate services provider or as a stand-alone election.

Alternate Services Providers/Logistics

In November 2004, the City of San Diego conducted a stand-alone special election to fill a vacancy in Council District 4. The deadline to consolidate with the November General Election had passed, and the ROV could not support a Special Election for District 4 in addition to conducting the

November General Election. Thus, the City Council voted to have the City Clerk conduct this Special Election with support from the ROV for both poll-worker set-up and training, as well as for signature verification for absentee ballots. A private company, Martin & Chapman, was hired to conduct the ballot tabulation. At the time this Special Election occurred, Martin & Chapman was one of the few election services providers that was equipped to handle an election the size and scope of the District 4 election. At the time, District 4 had 64,350 registered voters.

It should be noted that, although Martin & Chapman's initial estimate to provide election services came in well under the ROV's estimate at the time (\$158,000 v. \$280,000), the actual costs were almost equal. The services provided by Martin & Chapman only encompassed some training and ballot tabulation. The City had to contract with the County for polling places, signature verification and translation services. In addition, business in the Office of the City Clerk came to a virtual stand-still for a three-week period in order to accommodate absentee ballot processing and to conduct the canvass following the election.

In researching alternate election services providers, the City Clerk was not successful in finding a private company capable of supporting the City's almost 580,000 registered voters citywide. In addition, the Clerk was unable to identify any services providers with the ability to provide the full spectrum of elections services (poll-worker recruitment, training and location selection, state-mandated translation requirements, printing, mailing, signature verification, tabulation and canvass of results) in a cost-effective manner. In order to conduct its own elections, the City would have to set up a duplicate election system (that would mirror the County's), without the expertise, equipment or resources currently available to the County. In addition, the duplication of polling places would likely create confusion for citizens and would put a strain on the already-taxed volunteer poll-worker system.

Mail-Only Balloting

Given the lack of options relating to alternate election services providers, the Elections Task Force re-examined the possibility of suggesting the use of a mail-only election in conjunction with a Special Election as a way of enabling the City of San Diego to utilize IRV in specific, Special Election circumstances.

Voter Outreach

Voter outreach and education would potentially need to have a dual component:

I. Pre-Charter Change

As the City Attorney's Office has noted, a Charter change would be required if the City chose to implement IRV – regardless of whether it entailed global implementation or just discrete, Special Election circumstances. Thus, should the City choose to move forward with IRV, there would need to be an outreach program geared toward educating the public on the general concept of IRV and its anticipated benefits. The Elections Task Force was unable to estimate a cost for this kind of outreach, but using the City/County of San Francisco's example, described further below, it is clear that it would not be a modest cost, particularly given the number of the City of San Diego's registered voters and the fact that the City of San Diego would be considering this change apart from the rest of the county and the other jurisdictions that currently use the ROV to manage their election processes.

II. Implementation

If the IRV-related Charter changes are approved by the electorate, a secondary education and outreach program would be required. The City/County of San Francisco budgeted \$750,000 for the 2004 election relating to IRV, to educate approximately 440,000 registered voters. The education initiative had several components, including:

- * Funding targeting the education and outreach of minority communities and organizations, elderly communities, young people and those with disabilities.
- * A focus on ethnic media to buy advertisements.
- * On-line changes to the Department of Elections web-site specifically addressing IRV.
- * A citywide mailing, ads on the backs of city buses, radio ads, and other general outreach methodologies.

It should be noted that the cost of voter outreach could be supplemented or partially offset by using grant funding or collaborating with community organizations. In addition, although the outreach component during the pre-Charter change portion has a focus on IRV (what it is, how it works, etc.), in the implementation phase, the intent of voter outreach is far broader in scope. During implementation, there would need to be an equal focus on increasing voter participation in general.