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MEMORANDUM

TO: JASON ELLIOTT
Chief of Staff to Mayor Mark Farrell

FROM: BRADLEY A. RUSSI 
Deputy City Attorney

DATE: March 9, 2018

RE: Timing of Mayoral Transition Following June 5, 2018 Special Election

Introduction

In this memorandum we respond to your request for written advice concerning the timing of the mayoral transition that will occur following the June 5, 2018 election. As we described in our December 12, 2017 public memorandum regarding mayoral succession, after Mayor Edwin M. Lee tragically passed away, San Francisco Charter Section 13.101.5(c) required the City to schedule a special election on June 5th to fill the vacancy he left in the Office of Mayor. At that election, the voters will select a person to serve as Mayor through January 8, 2020, which is the end of Mayor Lee's remaining term. President of the Board of Supervisors London Breed served as Acting Mayor until January 23, 2018 when, under Charter Section 13.101.5(b), the Board of Supervisors (the "Board") appointed Mark Farrell to fill the vacancy in the Office of Mayor. Mayor Farrell will serve until the winner of the June 5, 2018 special election assumes office.

Summary

Two main steps must occur for the winner of the special election for Mayor to assume office: first the City must finalize the election results, through the process we describe below ending with the Board adopting a resolution approving the election results and the Director of Elections providing a certificate of election to the winner; and then the winner must take the oath of office. Unless the Board holds a special meeting to approve the election results, the earliest date the new Mayor could assume office after the election results become final is likely July 10, 2018. The latest date that the new Mayor would assume office is likely July 28, 2018.

Discussion

Process Required Before the Newly Elected Mayor May Assume Office

The California Elections Code requires the Director of Elections to prepare a certified statement of the election results within 30 days of the election. Elec. Code § 15372. After the Director of Elections issues the certified statement, the Board must declare the results of the election, including the name of the person elected to the Office of Mayor. *Id.* § 15400. The

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Board declares the election results by adopting a resolution, which a majority of the Board must pass. The resolution typically is prepared by the City Attorney at the request of the Director of Elections, introduced by the Board President, and voted on by the Board on the Adoption Without Committee Reference portion of the Board's agenda. The resolution becomes effective when the Mayor signs it, returns it unsigned, or does not sign the resolution within 10 days of receiving it. Charter § 3.103. The adoption and approval of this resolution are ministerial acts.

After the resolution becomes effective, the Director of Elections must prepare and deliver a certificate of election to the person elected to office. Elec. Code. § 15401. Once the winner of the election receives the certificate of election from the Director of Elections, the winner assumes the Office of Mayor upon taking the oath of office. This advice is consistent with our opinion concerning the swearing-in date for the winner of the November 2015 special election to fill the vacancy in the office of District Three Supervisor. *See Memorandum re. Swearing in Dates Following Vacancy Elections*, Nov. 4, 2015, available at <https://www.sfcityattorney.org/wp-content/uploads/2015/07/OP-2015-11-04-BOSD3.pdf>.

Timing of Mayoral Transition Following June 5, 2018 Special Election

The date by which the above process will conclude and the winner of the election may be sworn in depends on four factors: (1) when the Director of Elections completes the certified statement of election results, (2) when the Board meets to adopt the resolution declaring the election results, (3) when the Mayor acts on the resolution, and (4) when the Director of Elections delivers the certificate of election to the winner of the election.

The Director of Elections has informed our office that he does not anticipate he will be able to certify the election results by June 20, the date by which this would need to be completed for the Board of Supervisors to consider a resolution at its regularly scheduled meeting on June 26, 2018. The process of finalizing the election results after Election Day typically takes several weeks, although the exact timing depends on a number of factors including voter turnout. Beginning immediately after June 5, the Department of Elections must process and tabulate provisional ballots and vote-by-mail ballots received on or shortly before Election Day, and must complete a mandatory post-election canvass that includes a manual tally of ballots from randomly-selected precincts, inspection of materials and supplies returned by poll workers, reconciliation of records from each polling place, and reproduction of damaged ballots. To take the two most recent examples, the Board approved the resolution declaring the results of the June 7, 2016 election on July 12, 2016, and the Board approved the resolution declaring the results of the November 8, 2016 election on December 13, 2016.

If the Director of Elections certifies the results between June 21 and July 3, and if the Board does not schedule a special meeting to act on the resolution, then the resolution declaring the results will appear on the Board's agenda at its regularly scheduled meeting on July 10, 2018. The 10-day period for the Mayor to sign the resolution would conclude on July 20, 2018. We assume the Director of Elections would promptly deliver the certificate of election to the winner of the election as soon as the resolution is effective. The first day the new Mayor could be sworn in and assume office is July 10, if the Mayor takes action on the resolution and the Director of Elections delivers the certificate of election that day. The last day the process would complete in

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this scenario is likely July 21, if the Mayor waits the entire 10-day period to take action on the resolution and the Director of Elections delivers the certificate of election the following day.

If the Director of Elections certifies the election results after July 3 and there is no special Board meeting, then the resolution declaring the results will appear on the Board's agenda at its regularly scheduled meeting on July 17, 2018, and the winner of the election could assume office sometime between July 17 and July 28, depending again on when the Mayor takes action on the resolution and when the Director of Elections delivers the certificate of election.

Conclusion

Following the June 5, 2018 special election, the new Mayor is likely to assume office between July 10, 2018 and July 28, 2018. Please contact us if we can provide you with any additional information.

cc: John Arntz, Director of Elections
Angela Calvillo, Clerk of the Board of Supervisors