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REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

SCHEDULING A RUN-OFF ELECTION
TO FILL MAYORAL VACANCY

INTRODUCTION

On April 25, 2005, Mayor Dick Murphy announced that he will be resigning from office effective July 15, 2005. In accordance with San Diego City Charter [Charter] section 24, on May 2, 2005, the City Council called a special election for July 26, 2005 to fill the vacancy. The City Council did not set a date for a run-off election because the Governor had indicated he may call a special election in November and the City Council expressed interest in consolidating any run-off election with the statewide election. On June 13, 2005, the Governor called a special election for November 8, 2005. This report discusses the legal issues the City Council must consider with respect to scheduling a run-off election to fill the mayoral vacancy.

DISCUSSION

I. THE CHARTER REQUIRES THAT THE VACANCY BE FILLED AT THE EARLIEST POSSIBLE TIME.

Charter section 24 states in relevant part:

In the event of a vacancy occurring in the office of the Mayor, existing by reason of any cause, the Council shall have authority to fill such vacancy, provided, however, that if the Council shall fail to fill such vacancy by appointment within thirty (30) days after the vacancy, the Council must immediately cause an election to be held to fill such vacancy. (emphasis added).

“Immediately” means occurring, acting, or accomplished without a loss of time. Accordingly, the clear intent of the Charter is for the process of filling a Mayoral vacancy to proceed with all due diligence and speed. The City Council has called the primary election, but it is possible that no candidate will receive a majority of the vote and that a run-off election will be necessary. This run-off election also must proceed at the earliest possible time.

We are advised by the San Diego County Registrar of Voters that, because of the November 8, 2005, statewide special election, they are not able to conduct a run-off election in September unless the City agrees to an election by mail ballot. The Registrar has suggested September 27, 2005, as a possible date for a mail ballot election. The Registrar also is willing to consolidate the run-off election with the November 8, 2005, statewide election, which would be conducted in the usual manner.

II. THE SAN DIEGO MUNICIPAL CODE PROVISIONS MUST BE INTERPRETED CONSISTENT WITH THE CHARTER REQUIREMENTS.

San Diego Municipal Code [SDMC] section 27.0707(b) provides that “When a vacancy is to be filled by special election, the City Council shall fill such vacancy in accordance with the provisions set forth in Division 9 of this article.” Division 9 provides more detailed procedures to be followed with respect to a special election to fill a vacancy. If one candidate receives the majority of votes cast at the special election, the candidate shall be deemed to be and declared by the Council to be elected to the vacant office. SDMC § 27.0905. If no candidate receives a majority of the votes cast, a special run-off election shall be held within 49 calendar days of the first election between the two candidates receiving the highest number of votes, unless there is a regular municipal, statewide, or countywide election scheduled to be held within 90 days of the proposed special run-off election date, in which case the special election may be consolidated with that regular election. SDMC § 27.0906.

Although the SDMC permits consolidation of the run-off election with the regular statewide election, there are two factors that may prevent consolidation in the event there is a run-off mayoral election this Fall. First, extending the 49 day time period by an additional 90 days to consolidate the run-off election, is inconsistent with the Charter. Under the Charter, the City Council must call the run-off election for the earliest possible date. It is not clear at this time, whether November 8, 2005, represents the earliest possible date for a run-off election. Second, the November 8, 2005, statewide election is a “special” election. The plain language of SDMC section 27.0906 provides that consolidation may occur only with “regular” elections. In order to proceed otherwise, the City Council would have to waive the applicable language in that SDMC section.

CONCLUSION

As we have noted in a prior report,¹ the election process must not be manipulated for political gain or convenience. Now that the decision has been made to call a special election to fill the vacancy, the City Council must ensure that the process continues in such a manner so that the City will have a new Mayor at the earliest possible time. Because the City Council has already considered and rejected the possibility of a mail ballot election, we recommend that the

¹ See Addendum to Report to Honorable Mayor and City Council, Report No. RC-2005-9 (Apr. 29, 2005).

Honorable Mayor and
City Council

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City Clerk be instructed to work with the Registrar of Voters to eliminate the potential obstacles to a September 27, 2005, election, or request that the City Clerk report on whether the City can conduct the election without the assistance of the Registrar.

Respectfully submitted,

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