

PAUL E. COOPER
EXECUTIVE ASSISTANT CITY ATTORNEY

MARY T. NUESCA
ASSISTANT CITY ATTORNEY

JENNIFER L. BERRY
DEPUTY CITY ATTORNEY

OFFICE OF

THE CITY ATTORNEY

CITY OF SAN DIEGO

JAN I. GOLDSMITH

CITY ATTORNEY

1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

July 6, 2016

REPORT TO THE CITY COUNCIL

REPORT ON ISSUES ARISING FROM DRAFT CHARTER AMENDMENTS RELATED TO VACANCY AND REMOVAL OF ELECTIVE OFFICERS AND EXPLANATION OF RULES COMMITTEE CHANGES TO DRAFT

INTRODUCTION

On June 20, 2016, the Rules Committee (Committee) reviewed draft amendments to the City of San Diego Charter (Charter) related to the vacancy and removal of elective officers for possible inclusion on the November 2016 general election ballot. This Report addresses questions asked by the Committee regarding the draft and lists changes made to the draft at the direction of the Committee and with input from the staff working group, for review and further direction from the City Council (Council).

SUMMARY OF DRAFT MEASURE

City Attorney Report RC-2016-9, dated June 15, 2016, attached, summarizes the draft measure as presented to the Committee. Changes to the draft measure made at the direction of the Committee include:

- Deleted reference to Councilmember also serving as Mayor or City Attorney.
- Deleted specific duties from provision addressing scope of interim authority in the office of a Councilmember.
- Removed edits providing for civil liability for violations of Charter section 217 and 218 and removed power of Council to adjudicate guilt of officials and employees.
- Clarification of state law limitations on appointments by the Council and an Interim Mayor.
- Changed 90 day period for establishing dereliction of duty to a 45 day period. This change was made at the suggestion of the staff-working group to address the Council President's concerns regarding attempts by an elective official to evade dereliction of duty proceedings by performing duties at the last minute. Whether to define the number of days for establishing dereliction of duty is a policy call.
- Deleted reference to non-criminal malfeasance and violations of City law.
- Deleted option to remove by accusation.
- References to specific section numbers removed.

- Added 30 day time lime for making appointments to elective offices.

The Committee also asked that the reference to the City Manager in section 265 be changed to Mayor. Charter section 265 (b)(7) was added to the Charter as a part of the Strong Mayor Charter amendments and gives the Mayor the authority to appoint a City Manager. Replacing this reference to the City Manager with Mayor could lead to a gap in interim authority when a Mayor has exercised this authority, as the Mayor has sole authority to direct and exercise control over the City Manager. San Diego Charter § 265 (b)(8). Accordingly, this change was not incorporated into the draft.

QUESTIONS PRESENTED

1. How late in an elective officer's term can a removal election be initiated?
2. What does it mean to suspend an elective officer?

SHORT ANSWERS

1. This is a policy decision. If the Council would like the timing of a removal election to be similar to a recall election, removal elections should be initiated when more than six months remain in an elective officer's term. If the Council would like the timing of a removal election to be similar to when a vacancy is filled by an election rather than appointment, removal elections should only be initiated when more than a year remains in an elective officer's term.

2. A suspended elective officer would not have the powers and privileges of office. If suspension without pay is desired, it should be specified in the amendment.

ANALYSIS

I. THE TIME LEFT IN A TERM PRIOR TO THE INITIATION OF A REMOVAL ELECTION IS A POLICY DECISION

In the draft measure reviewed by the Committee, the Council could initiate an election to remove an elective officer by a three-quarters vote following certain events when six months or more remain in an elective officer's term. Council President Lightner stated that she would prefer that the six-month remaining on a term limitation change to one-year remaining on the term to be consistent with current practice. We believe the Council President was referencing the one-year remaining in term requirement for filling vacancies by a special election, when caused for reasons other than recall.

This six-month limitation on holding a removal election was drafted to mirror the same timing limitation provided by the San Diego Municipal Code (Municipal Code) for a recall election, which states:

A recall petition may not [be] filed if the elected official's term of office will end within six months or less of the date the petition is presented for filing.

SDMC § 27.2701(c). This limitation mirrors the provision applicable to general law cities in California Election Code (Election Code) section 11007(c).¹

The Charter provides that vacancies in the office of a Councilmember or of the Mayor resulting from recall be filled as provided by procedures adopted by the Council. San Diego Charter §§ 12(e)(2) and 265(f). This language provides flexibility so that a vacancy caused by a recall can be filled by a vote on a successor on the same special election ballot as the recall question. SDMC § 27.2720. For all other vacancies, when there is more than one year left in a term, the vacancy is filled by a special election. San Diego Charter §§ 12(e)(1)(B) and 265(e)(2). The draft amendment includes the procedure for filling a vacancy resulting from a removal election in the same provision as a recall election so that two special elections would not be necessary for a removal election: one with the question to remove and one to elect a successor.

The draft has been updated to reflect the Council President's request that a removal election only be initiated when more than one year remains on an elective officer's term.

II. SUSPENSION LANGUAGE CAN SPECIFY THE SCOPE OF THE SUSPENSION

The draft measure includes an option to suspend an elective officer upon the initiation of criminal charges. At the Committee meeting, Councilmember Cate asked for clarification on what it means to suspend an elected official. As applied to elected officers, suspension is generally defined as, "the temporary deprivation of a person's powers or privileges, esp. of office or profession." *Black's Law Dictionary* 1676 (10th ed. 2014). The suspension provision can be drafted to further specify the scope of the suspension, such as whether the suspension is with or without pay.² This is a policy decision for the Council.

The draft amendment is similar to suspension language found in the Los Angeles City Charter. Los Angeles City Charter § 211. Our Office was unable to find an instance where an elective officer of the City of Los Angeles was suspended as provided by this section, so there has been no legal analysis of the scope of suspension beyond the text of the section. The provision specifies that the office is temporarily vacant, so the suspended officer would have no rights or privileges of the office and duties would be performed by whomever filled the temporary vacancy.

The City and County of San Francisco also provides for suspension in its charter. The mayor initiates removal proceedings for official misconduct by suspending the elective officer.³ San Francisco Charter § 15.105. Unlike the Los Angeles provision, the suspension provision does not create a vacancy, but the duties of the office are performed by a mayoral appointee. At least one supervisor was suspended under that provision and he was stripped of all powers and responsibilities related to the office, someone was appointed to fulfill the duties of the office, and

¹ This provision does not apply to charter cities, as the division does "not supersede the provisions of a city charter or county charter, or of ordinances adopted pursuant to a city charter or county charter, relating to recall." Cal. Elec. Code § 11000.

² Suspended elective officials may still be subject to the Brown Act.

³ The removal section of the San Francisco Charter applies to all elective officers, but is silent regarding the procedure for removing the mayor.

his pay was directed to an escrow account, payable upon reinstatement. Cecilia M. Vega, *Mayor Suspends Ed Jew From Board, Opening Doors to Political Fight*, S.F. Gate, September 25, 2007. Our Office was unable to find any legal authority for putting the payment in escrow and the San Francisco Charter is silent regarding the right to compensation during suspension.

At the state level, voters approved an amendment specifying that suspended legislators were not entitled to compensation on the June 7, 2016 primary election ballot. This clarifies the California Constitutional provision providing for suspension of legislators preventing the “exercise any of the rights, privileges, duties, or powers of his or her office” and the use of state resources. Cal. Const. art. IV, § 5. As explained by the ballot arguments for the proposition, three state senators were suspended in 2014 and because it was not clear in the California Constitution, continued collecting salary during the period of suspension. Ballot Pamp. Primary Elec., (June 7, 2016) argument for Prop. 50 at 10. Prior to the suspension, Legislative Counsel opined that the California Constitution allowed for the suspension of the senators, but prohibited lowering salary during a legislator’s term of office. Senate Committee on Elections and Constitutional Amendments, Analysis of Sen. Const. Amend. 17 (2013-2014 Reg. Sess.) May 6, 2015. Among other changes to suspension procures, the Legislature advanced the proposition to the voters to clarify that pay and benefits could be suspended during suspension.

The Charter procedure for establishing the compensation of Council members and the Mayor is different than the state process, but is likely similarly unclear on the ability to suspend pay. Charter section 40 explicitly prohibits lowering pay during a term of office. This Office has issued preliminary advice regarding the ability of the Salary Setting Commission to lower pay for current Council members and the Mayor. City Att’y MS 2016-1 (Jan. 12, 2016). While lowering compensation is not explicitly prohibited for Council members and the Mayor, other issues, such as vested rights to compensation, impact the analysis. *Id.*

For the purposes of suspension, the section can add certainty by explicitly stating whether or not suspended elective officials receive compensation during suspension. Similar to the Proposition 50 language, the draft can be edited to provide the Council the power to suspend pay when voting to suspend elective officials, or to further clarify the scope of suspension. The draft also contemplates suspension when circumstances leading to possible removal occur late in a term, so clarifying edits may be necessary even if the Council opts not to provide for suspension during criminal proceedings. Our Office needs direction regarding whether to clarify the proposed suspension during criminal proceedings provision or to remove that option from the amendment.

CONCLUSION

The attached draft Charter amendment incorporates policy direction and edits based on the comments and questions arising from Committee. Unless otherwise specified, this report supplements previous legal advice provided by this Office on the issue of vacancy and removal in the Charter and is not intended to supersede this Office’s previous report on a proposed draft removal and vacancy Charter amendment.

In addition to input on issues addressed in City Attorney Report 2016-9, this Office needs direction from Council regarding the issues discussed in this report regarding election timing and suspension prior to the preparation of the ordinance to place the measure on the ballot.

JAN I GOLDSMITH, CITY ATTORNEY

By: /s/ Jennifer L. Berry
Jennifer L. Berry
Deputy City Attorney

JLB:sc:als

RC-2016-12

Doc. No. 1313616_2

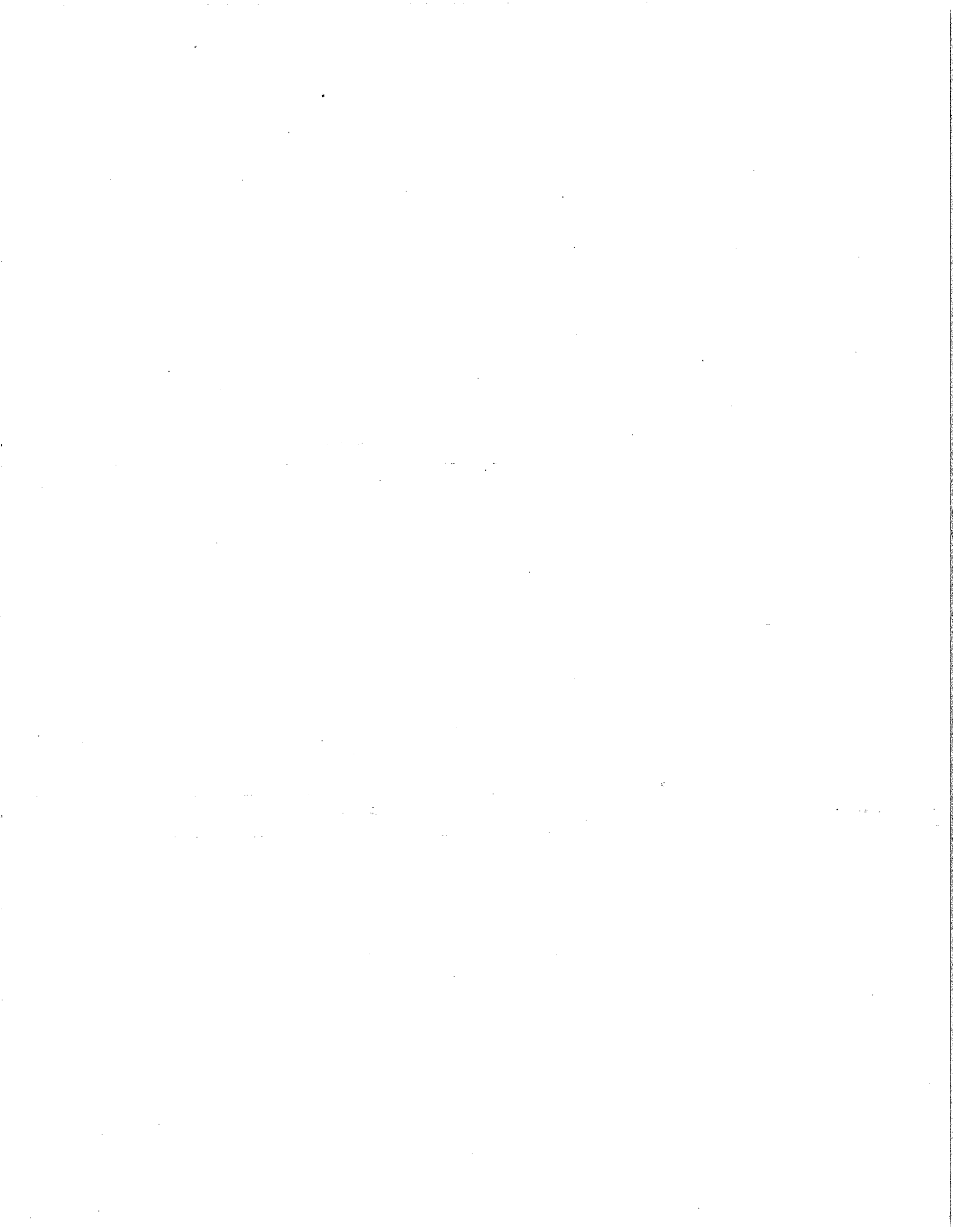
Attachments: City Att'y Report 2016-9 (June 15, 2016)

Revised Draft Charter Amendments Related to Vacancy and Removal of Elective Officers (Doc No. 1309527)

Revised Draft Charter Amendments Related to Vacancy and Removal of Elective Officers REDLINE (Doc No. 1309527)



ATTACHMENTS



PAUL E. COOPER
EXECUTIVE ASSISTANT CITY ATTORNEY

MARY T. NUESCA
ASSISTANT CITY ATTORNEY

JENNIFER L. BERRY
DEPUTY CITY ATTORNEY

OFFICE OF

THE CITY ATTORNEY

CITY OF SAN DIEGO

JAN I. GOLDSMITH

CITY ATTORNEY

1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

June 15, 2016

REPORT TO THE RULES COMMITTEE

DRAFT OF CHARTER AMENDMENTS RELATED TO VACANCY AND REMOVAL OF ELECTIVE OFFICERS

INTRODUCTION

On May 18, 2016, the Charter Review Committee asked the City Attorney's office to draft amendments to the City of San Diego Charter (Charter) related to the vacancy and removal of elective officers to consider for inclusion on the November 2016 general election ballot. This report summarizes the amendments drafted in response to that request, for review and direction by the Rules Committee prior to consideration by the full City Council (Council). These draft amendments are submitted at the direction of the Charter Review Committee and are not proposals made by this Office.

DISCUSSION

The draft amendments for consideration address vacancy in elected office, including removal, for all elective officers. Existing Charter sections addressing vacancy and forfeiture are amended and new sections provided. The new provisions apply to all elective officers, with the exception of a vote of no confidence, which would apply only to the Mayor or City Attorney.

The amendments also clarify procedures for succession and interim authority when there is a vacancy in elective office.

I. SECTION AMENDMENTS

The following Charter sections would be amended as discussed.

Section 7: Elective Officers Residency Requirement

Currently, Charter section 7 provides residency requirements for elective officers and provides that Council members forfeit their office when they move from their district. The draft amendment strikes the forfeiture provision, which is included in a new Charter section defining vacancy, discussed below. The new section defines vacancy to occur when any elective official violates residency requirements.

Section 12: The Council

Council vacancy definitions and succession procedures are deleted and included in a new Charter section providing uniform definitions of vacancy and succession procedures for all elective officers, discussed below.

A new subsection provides for interim authority in the office of a Council member during a vacancy, providing that the chief of staff for the departing Council member can continue to manage the Council office under the authority of the Council President, until a replacement Council member is appointed or elected. It specifies that the chief of staff cannot appoint new staff, approve new expenditures, such as funding for Community Projects, Programs and Services pursuant to Council Policy 100-06, or participate or vote in Committee or Council meetings or outside boards and commissions. The draft does not address the termination of staff. If the Council would like to limit authority to terminate staff, this can be added to the draft. This limited interim authority is given pending appointment or election of someone to fill the vacancy as provided in section XI discussed below.

Section 40: City Attorney

City Attorney vacancy and succession procedures are deleted and included in a new Charter section providing for uniform definitions of vacancy and succession procedures for all elective officers, discussed below.

A new subsection provides for interim authority in the office the City Attorney by requiring the City Attorney to designate an Assistant City Attorney to serve as Interim City Attorney in the case of a vacancy. The City Attorney records the name of the designated Assistant City Attorney with the City Clerk. The Interim City Attorney fulfills all of the duties of the City Attorney required by the section.

Section 94: Contracts; Section 100: No Favoritism in Public Contracts; Section 101: When Contracts and Agreements are Invalid

Charter sections 94, 100, and 101 provide for forfeiture of office for misconduct related to contracting. No amendments are necessary for these forfeiture provisions to operate under new vacancy procedures. Further, an expanded definition of vacancy, discussed below, clarifies that conviction of these offenses operates to vacate an office.

The Charter Review Committee approved proposed amendments to Charter section 94 as part of a proposal to update the Charter's contracting provisions. Our Office will review proposed contracting amendments for consistency with the draft vacancy provisions.

Section 108: Forfeiture of Office for Fraud

The draft amendment provides that fraud, as defined in the section, may be determined by civil liability or prosecuted as a misdemeanor, providing a specific trigger for forfeiture of office. This makes the provision consistent with other forfeiture provisions in the Charter and provides an explicit enforcement mechanism absent in the current section.

Section 217: No Payment for Office and Section 218: No Contributions for Employment

Currently, these sections allow the Council or a court to find an officer or employee guilty of the offense of giving or promising money (217) or soliciting or accepting money (218) in exchange for appointment or election. These sections are the only forfeiture provisions in the Charter allowing the Council to determine guilt.

Because these sections apply to employees and both elective and non-elective officers, the draft amendment preserves the Council's ability to determine guilt of employees and non-elective officers, but requires a finding of civil liability or criminal conviction for elective officers consistent with other Charter forfeiture provisions. The draft also specifies that applicable Civil Service rules apply to employees. There is no indication that the Council has exercised its authority under these sections in the past.

Section 265: The Mayor

The draft strikes Mayoral vacancy definitions and succession procedures, which are included in a new Charter section providing uniform definitions of vacancy and succession procedures for all elective officers, discussed in Section II.

Draft amendments also make the following changes to interim authority provisions in the office of the Mayor during a vacancy:

- Presiding officer of the Council is given the title Interim Mayor.
- The Interim Mayor does not chair Council committee meetings or Council meetings.
- The Rules of Council shall provide for the exercise of the presiding officer's duties during service as Interim Mayor.
- The periods provided by sections 280 and 290 for Mayoral approval of resolutions and ordinances do not apply during a mayoral vacancy. Resolutions and Ordinances passed by the Council will take effect as they would if the Mayor had no veto power.
- The Interim Mayor has no authority to appoint members to Charter section 41 Commissions and Charter section 43 Advisory Boards and Committees.
- A Mayoral vacancy suspends the waiting period to take action on appointments and the Council may make appointments, subject to applicable governing laws regarding appointment authority and the noticing and posting of vacancies.

II. NEW SECTIONS ON VACANCY AND REMOVAL

A. Vacancy in Elective Office

A new Charter section defines vacancy consistently for all elective officers. This section provides a more comprehensive definition of vacancy, including situations where the current

Charter is silent, such as incapacity, felony convictions, and removal. Those bases for vacancy that are new are underlined. The new section provides for vacancy as follows:

- The death of the elective officer.
- An elective officer ceases to be a resident and elector of the City or a Councilmember moves from the district of which the Council member was elected to represent.
- An adjudication by a court of competent jurisdiction declaring that the elective officer is physically or mentally incapacitated due to disease, illness, or accident, and that there is reasonable cause to believe that the elective officer will not be able to perform the duties of his or her office for the remainder of his or her term.
- The resignation of an elective officer, effective on the date specified in the written letter of resignation or, if there is no date certain specified in the letter, upon receipt of the letter by the City Clerk.
- In the office of a Council member only, unexcused absences from eight (8) consecutive meetings or fifty percent (50%) of any scheduled meetings as provided by section 12 of this Charter.
- An elective officer's conviction or civil liability of an offense requiring forfeiture of office under the Charter.
- An elective officer's conviction of a felony.
- His or her removal from office by recall or other Charter procedure.

Consistent with state law and courts' interpretation of similar charter provisions, other than removal, vacancies occur automatically upon the occurrence of the specified event. *See Klose v. Superior Court*, 96 Cal. App. 2d 913, 917 (1950). For example, following a felony conviction, an office is vacant and Council can appoint or voters can elect a successor as provided by the Charter. This section is also intended to make recall and Charter removal procedures exclusive, precluding removal of elective officials pursuant to California Government Code 3060.

B. Removal for Cause

A new draft Charter section provides a procedure to remove an elective officer for cause. As explained above, the draft defines removal as a type of vacancy and the removal for cause section outlines the procedure to remove an elective officer for dereliction of duty and malfeasance in office.

1. Causes for Removal

The draft defines dereliction of duty as ceasing to discharge official duties for 90 days without excuse. Currently, the Council can direct the City Attorney to apply for a writ of mandamus to compel an officer to perform any duty expressly enjoined by law or ordinance. San Diego Charter § 40. In conjunction with that authority, this section will provide for removal if the elective officer fails to fulfil official duties after compelled by a court order.

Malfeasance in office “has reference to evil conduct or an illegal deed, the doing of that which one ought not to do, the performance of an act by an officer in his official capacity that is wholly illegal and wrongful.” *Mazzola v. City & County of San Francisco*, 112 Cal. App. 3d 141, 150 (1980). The draft defines malfeasance in office to include:

- Conviction for crimes of moral turpitude.
- Conviction for crimes involving a violation of official duties.
- Conduct that falls below the standards of decency, good faith and right action impliedly required of all elective officers (referred to as “noncriminal misconduct”).

Since the drafted amendments provide for automatic vacancy upon felony conviction, crimes leading to removal under this section would all be misdemeanors.

Moral turpitude¹ is a legal term of art used to describe crimes that have an element of dishonesty and demonstrate:

... inherent baseness or vileness of principle in the human heart; it means, in general, shameful wickedness, so extreme a departure from ordinary standards of honesty, good morals, justice, or ethics as to be shocking to the moral sense of the community.

50 Am. Jur. 2d Libel and Slander § 161; *People v. Chavez*, 84 Cal. App. 4th 25, 28 (2000); *In re Craig*, 12 Cal. 2d 93, 97 (1938). Examples of both felony and misdemeanor crimes considered to involve moral turpitude in California include:

- Forgery. *In re Bogart*, 9 Cal. 3d 743, 748 (1973).
- Burglary. *People v. Collins*, 42 Cal. 3d 378, 395 (1986).
- Grand theft. *In re Basinger*, 45 Cal. 3d 1348, 1358 (1988).
- Embezzlement. *In re Ford*, 44 Cal. 3d 810, 813 (1988).
- Violation of securities laws prohibiting insider trading. *Chadwick v. State Bar*, 49 Cal. 3d 103 (1989).
- Arson. *People v. Miles*, 172 Cal. App. 3d 474, 481-82 (1985).
- Assault with intent to commit murder. *People v. Olmedo*, 167 Cal. App. 3d 1085, 1097-98 (1985).
- Murder. *People v. Johnson*, 233 Cal. App. 3d 425, 459 (1991).
- Voluntary manslaughter. *People v. Parrish*, 170 Cal. App. 3d 336, 349-50 (1985).
- Felon in possession of a firearm. *People v. Littrel*, 185 Cal. App. 3d 699, 703 (1986).
- Child abuse. *People v. Brooks*, 3 Cal. App. 4th 669, 671-72 (1992).
- Possession of heroin for sale. *People v. Castro*, 38 Cal. 3d, 301, 317 (1985).

Courts have ruled city charter definitions of official misconduct² including crimes of moral turpitude to be constitutionally sufficient to provide notice of prohibited conduct to officials. *Mazzola*, 112 Cal. App. 3d at 151.

¹ Crimes of moral turpitude are determined by the courts. *In re McAllister*, 14 Cal.2d 602 (1939).

The third basis for malfeasance allows for removal where there has been no criminal conviction. While no conviction is necessary, malfeasance implies unlawful conduct by definition and courts are reluctant to find cause for removal absent a “specified statutory violation.” *Mazzola*, 112 Cal. App. 3d at 151. Accordingly, this provision would allow for removal for unlawful, but non-criminal conduct, for example as discrimination based on race, gender, or other protected categories or as the court reviewed in *Mazzola*, non-criminal provisions relating to incompatible offices. *Id.*

2. Procedure for Removal for Cause

As drafted, the City Clerk would notify the Council of the circumstances leading to removal. The draft provides for the initiation of removal proceedings for dereliction of duty upon a court of competent jurisdiction’s order of enforcement for failure to obey a writ of mandamus. This allows the Council to follow current procedures provided by the Charter to compel the performance of duties prior to the initiation of removal proceedings. The Council would vote to send the question of removal to the voters after a court compels the elective officer’s performance and he or she still refuses to perform required duties.

In the case of criminal conduct, notification of a criminal conviction by the City Clerk would initiate a Council vote on whether to ask the voters to remove the elective officer. Since malfeasance is broader than criminal conduct, the draft provides for the initiation of removal proceedings for noncriminal misconduct upon the filing a written accusation of misconduct with the City Clerk, but the current draft does not specify who would file the accusation because more policy direction from the Council is needed. Once the City Clerk notifies the Council, the Council initiates proceedings to determine whether the noncriminal misconduct warrants removal. The Council would provide detailed procedures for removal proceedings in the San Diego Municipal Code or Council Policy.

The Charter Review Committee did not give policy direction for procedures to remove elective officers for noncriminal misconduct, so if the Rules Committee would like this option, our Office needs more direction.³ Options for initiating removal for noncriminal conduct include:

- An accusation by an official or body, such as the Mayor, the Council, or the Ethics Commission for adjudication by the Council. This would provide flexibility to remove for unforeseeable conduct, but since a court decision is not the prompt for removal, it is not as objective as other removal options.
- An accusation by an official or body forwarded to another body for adjudication. For instance, the City and County of San Francisco Charter gives the mayor the authority to file an accusation with the San Francisco Ethics Commission, which holds hearings on the misconduct and forwards its findings to the board of supervisors for a final decision on removal.

² Official misconduct is often the term used to describe conduct leading to the removal of a public office and is inclusive of malfeasance by definition. *Coffey v. Superior Court of Sacramento County*, 147 Cal. 525, 529 (1905).

³ California Government Code section 3060 allows a grand jury to file an accusation for willful misconduct, initiating a judicial removal process. The Charter Review Committee specifically rejected this option.

- A court of competent jurisdiction's decision adverse to the elective official in a civil action involving noncriminal misconduct. This option would provide for an objective prompt by a court determination. However, the nature of civil proceedings, such as length, may hamper removal pending the resolution of litigation.

As the method of initiating of removal is largely a policy decision, other options for the process include:

- Notification to the Council by a party other than the City Clerk.
- Initiation or removal by criminal charges rather than criminal conviction.
- Issuance of a writ of mandate to perform duties, rather than failure to comply with a writ.

After a finding of noncriminal misconduct warranting removal, or upon notification of a criminal conviction or court order, by a three-fourths vote, the Council can initiate a special election where the voters decide whether to remove the elective official. The voters would remove by a majority vote.

The draft provides for a removal election when six months or more remain in a term. A similar restriction exists for recall elections. San Diego Municipal Code § 27.2701. When less than six months remain, the Council would have the option to suspend the elective officer through the end of the term by a three-fourths vote.

The Committee asked for an option to suspend an elective official pending criminal conviction. The draft includes a provision allowing the Council to suspend by a three-fourths vote upon criminal charges where a conviction would lead to vacancy or removal.

Other than the six-month limitation on calling a removal election, the San Diego Municipal Code would define the conduct of the special election, consistent with other special elections in the City. Excluding these details from the Charter ensures that procedures and deadlines are sufficient to allow the City Clerk to perform the necessary actions for conducting a special election.

C. Removal for Lack of Confidence

The draft includes a new section allowing the Council to initiate a special election to remove the Mayor or City Attorney upon a unanimous vote. The unanimous vote of the Council signifies the lack of confidence, rather than defining lack of confidence as a specific cause for Council action.

As explained in the recent report issued by this Office outlining the removal of elective officers in California, removal elections for cause or by unanimous vote of a legislative body are untested in California and implicate voters' federal and state constitutional equal protection and due process rights. City Att'y Report 2016-7 (May 18, 2016). *In re Carter*, 141 Cal. 316, 320 (1903) supports the concept of charter-created offices being subject to removal without judicial

proceedings to determine cause, as a term and condition of taking office. Even though it has never been overruled, this case is over 100 years old and is not specific to elective offices. No other jurisdictions have a procedure allowing a council to call a special election upon a unanimous vote of no confidence. This Office will continue to analyze constitutional issues should the Rules Committee refer these options to the full Council for consideration.

III. SUCCESSION TO OFFICE

A new section provides a uniform procedure for succession to all elective offices following a vacancy. The new section combines the current procedure for succession applicable to the Mayor and the Council for consistency and extends the procedure to vacancies in the office of the City Attorney. The Council adopts succession procedures following removal by recall or by a special removal election, which allows a vote on the question of removal and succession on the same ballot. This is the current procedure provided for recall. The Council fills other vacancies by appointment or special election depending on when the vacancy occurs.

CONCLUSION

The draft Charter amendments provide uniformity for vacancy and succession in elective office and provide procedures for removing elective officers as requested by the Charter Review Committee. This Report notes policy alternatives for review and direction by the Rules Committee and this Office is prepared to make any changes prior to review by the full Council. If the Committee approves procedures providing for a removal election initiated by Council, analysis of additional constitutional issues not yet addressed by this Office will accompany drafts provided for Council approval. The City Clerk should review any proposal forwarded to the Council for conformance with the conduct of similar elections.

JAN I. GOLDSMITH, CITY ATTORNEY

By: /s/ Jennifer L. Berry

Jennifer L. Berry

Deputy City Attorney

JLB:sc:als

RC-2016-9

Doc. No. 1301712_3

Attachment: Draft Charter Amendments Related to Vacancy and Removal of Elective Officers
(Doc No. 1294899_5)

**REVISED DRAFT CHARTER AMENDMENTS RELATED TO
VACANCY AND REMOVAL OF ELECTIVE OFFICERS**

SECTION 7: ELECTIVE OFFICERS RESIDENCY REQUIREMENT

An elective officer of the City shall be a resident and elector of the City.

In addition, every Council member shall be an actual resident and elector of the district from which the Council member is nominated. ~~Any Council member who moves from the district of which the Council member was a resident at the time of taking office forfeits the office, but no Council member shall forfeit the office as a result of redistricting. The office of a Council member shall be vacated if he or she moves from the district of which he or she was a resident at the time of taking office. Redistricting that occurs during a member's term shall not operate to create a vacancy.~~

The Council shall establish by ordinance minimum length of residency requirements for candidacy to elective office, whether by appointment or election.

...

SECTION 12: THE COUNCIL

...

~~(e) If a vacancy occurs for any reason in the office of a Council District, the following procedures shall apply:~~

~~(1) If the vacancy occurs for any reason other than a successful recall election, and,~~

~~(A) If the vacancy occurs with one (1) year or less remaining in the term, the Council shall appoint a person to fill the vacant seat on the City Council. Any person appointed by the Council to fill a vacant Council District seat shall not be eligible to run for that office for the next succeeding term; or,~~

~~(B) — If the vacancy occurs with more than one (1) year remaining in the term, the Council shall call a special election to be held within ninety (90) days of the vacancy, unless there is a municipal or statewide election scheduled to be held within 180 days of the vacancy. If there is a municipal or statewide election scheduled to be held within 180 days of the vacancy, the Council may consolidate the special election with that election.~~

~~(i) — If one candidate receives the majority of votes cast for all candidates in the special election, the candidate receiving the majority of votes cast shall be deemed to be and declared by the Council to be elected to the vacant office.~~

~~(ii) — If no candidate receives a majority of votes cast in the special election, a special run-off election shall be held within ninety (90) days of the first special election, unless there is a municipal or statewide election scheduled to be held within 120 days of the proposed special run-off election date, at which time the City Council may consolidate the special run-off election with that election. The two (2) candidates receiving the highest number of votes cast for the vacant seat in the first special election shall be the only candidates for the vacant Council seat and the names of only those two (2) candidates shall be printed on the ballot for that seat.~~

~~(2) — If a vacancy occurs by reason of a successful recall election, the Council shall adopt procedures to fill the vacancy.~~

~~Whether a person is appointed or elected to fill a vacant Council District seat, whatever the reason for the vacancy, that person shall serve as that District's Councilmember for the remainder of the unexpired term.~~

~~For purposes of this Charter section 12, a vacancy may result from death, resignation, recall, or unexcused absences as described in Charter section 12(f). If a vacancy occurs by reason of a~~

resignation, the date of the vacancy will be the date specified in the written letter of resignation or, if there is no date certain specified in the letter, upon the date of receipt of the letter by the City Clerk.

~~(f)~~(e) It is the duty of the Council members to attend all Council meetings. The Council shall vacate the seat of any Councilmember who is absent from eight (8) consecutive meetings or fifty percent (50%) of any scheduled meetings within a month unless the absence thereof is excused by resolution of the Council.

~~(g)~~(f) Council members shall devote full time to the duties of their office and not engage in any outside employment, trade, business or profession which interferes or conflicts with those duties.

~~(h)~~(g) Council members shall not be eligible during the term for which they were appointed or elected to hold any other office or employment with the City, except as Mayor or City Attorney and as a member of any Board, Commission or Committee thereof, of which they are constituted such a member by general law or by this Charter.

~~(h)~~ Whenever a vacancy exists in the office of a Council member, the chief of staff for the departing Council member shall manage the office of the Council member under the authority of the Council President, until a replacement is appointed or elected pursuant to the procedures for filling vacancies provided by this Charter.

...

SECTION 40: CITY ATTORNEY

...

The Council shall have authority to employ additional competent technical legal attorneys to investigate or prosecute matters connected with the departments of the City when such assistance or advice is necessary in connection therewith. The Council shall provide sufficient funds in the annual appropriation ordinance for such purposes and shall charge such additional legal service against the appropriation of the respective Departments.

The salary of the City Attorney shall be fixed by the Council and set forth in the annual appropriation ordinance, provided that the salary of the City Attorney may not be decreased during a term of office, but in no event shall said salary be less than \$15,000.00 per year. ~~In the event of a vacancy occurring in the office of the City Attorney by reason of any cause, the Council shall have authority to fill such vacancy, which said authority shall be exercised within thirty (30) days after the vacancy occurs. Any person appointed to fill such vacancy shall hold office until the next regular municipal election, at which time a person shall be elected to serve the unexpired term. Said appointee shall remain in office until a successor is elected and qualified.~~

Whenever a vacancy exists in the office of the City Attorney, an Assistant City Attorney, previously designated by the City Attorney to fulfill duties in the event of a vacancy and whose name has been recorded with the City Clerk as the Interim City Attorney in the event of a vacancy, shall fulfill the duties of the City Attorney as the Interim City Attorney until a replacement can be appointed or elected as provided by this Charter. The Interim City Attorney shall have the full authority of the Office.

...

SECTION 108: FORFEITURE OF OFFICE FOR FRAUD

Every officer who shall willfully approve, allow, or pay any demand on the treasury not authorized by law and found civilly liable by a court of competent jurisdiction, shall be liable to the City individually

and on his official bond, for the amount of the demand so approved, allowed or paid, and shall forfeit such office and be forever debarred and disqualified from holding any position in the service of the City. Violations of this section may also be prosecuted as a misdemeanor.

...

SECTION 217: NO PAYMENT FOR OFFICE

No officer or employee of the City shall give or promise to give to any person any portion of his compensation, or any money or thing of value in consideration of having been, or of being nominated, appointed, voted for or elected to any office or employment. Any officer or employee found guilty by the Council or a court of competent jurisdiction for such actions shall thereby forfeit his or her office or position.

SECTION 218: NO CONTRIBUTIONS FOR EMPLOYMENT

No officer or employee shall solicit or accept any donation or gratuity in money, or other thing of value, either directly or indirectly, from any subordinate or employee, or from any one under his charge, or from any candidate or applicant for any position as employee or subordinate in any Department of the City. Any officer or employee found guilty by the Council or a court of competent jurisdiction for such actions shall thereby forfeit his or her office or position.

SECTION 265: THE MAYOR

...

(e) ~~If a vacancy occurs in the Office of Mayor for any reason other than a successful recall election, and,~~

~~(1) If the vacancy occurs with one year or less remaining in the term, the Council shall appoint a person to fill the vacancy.~~

~~(2) If the vacancy occurs with more than one year remaining in the term, the Council shall call a special election to be held within ninety (90) days of the vacancy, unless there is a municipal or~~

~~statewide election scheduled to be held within 180 days of the vacancy. If there is a municipal or statewide election scheduled to be held within 180 days of the vacancy, the Council may consolidate the special election with that election.~~

~~(A) If one candidate receives the majority of votes cast for all candidates in the special election, the candidate receiving the majority of votes cast shall be deemed to be and declared by the Council to be elected to the Office of Mayor.~~

~~(B) If no candidate receives a majority of votes cast in the special election, a special run-off election shall be held within ninety (90) days of the first special election, unless there is a municipal or statewide election scheduled to be held within 120 days of the proposed special run-off election date, at which time the City Council may consolidate the special run-off election with that election. The two candidates receiving the highest number of votes cast for the Office of Mayor in the first special election shall be the only candidates for the Office of the Mayor and the names of only those two candidates shall be printed on the ballot for that seat.~~

~~(f) If a vacancy occurs by reason of a successful recall election, the Council shall adopt procedures to fill the vacancy.~~

~~(g) Whether a person is appointed or elected to the Office of Mayor, whatever the reason for the vacancy, that person shall serve as Mayor for the remainder of the unexpired term.~~

~~(h) Upon the appointment or election of any person to the Office of Mayor, any other City office held by that person is automatically vacated.~~

~~(i)(e) During the period of time w~~When an appointment or election is pending to fill a vacancy in the
~~Office of Mayor, the presiding officer of the Council shall serve as Interim Mayor and shall be~~
~~vested with the authority to supervise the staff remaining employed in the Office of the~~
~~Mayor, to direct and exercise control over the City Manager in managing the affairs of the City~~
~~under the purview of the Mayor and to exercise other power and authority vested in the Office~~

of the Mayor when the exercise of such power and authority is required by law. This limited authority would include circumstances where the expeditious approval of a legislative action is necessary to meet a legal requirement imposed by a court or another governmental agency. Such limited authority would not include the exercise of the power of veto or any other discretionary privilege which is enjoyed by a person appointed or elected to the Office of Mayor. The presiding officer, while acting under this section pending the filling of a mayoral vacancy, shall not lose his or her rights as a Member of the Council. While serving as Interim Mayor, the presiding officer of the Council shall not chair Council committee meetings or Council meetings. Other duties of the presiding officer of the Council serving as Interim Mayor shall be performed as provided by the rules of Council established pursuant to this Charter; however, changes may not be made to Council committee structure or assignments while the presiding officer of the Council serves as Interim Mayor.

The time provided by the Charter for the Mayor to sign resolutions and ordinances shall not apply during a mayoral vacancy. Resolutions and Ordinances passed by the City Council shall take effect as they would if the Mayor had no veto power.

The Interim Mayor shall not have authority to appoint members to Commissions, Boards and Committees defined in the Charter. The Charter's 45-day waiting period to take action on such appointments will be suspended, however, and the Council will have the authority to appoint and confirm members to such City boards and commissions during the interim period, subject to other governing laws regarding noticing and posting of vacancies. The Interim Mayor and Council are not authorized to make appointments to any boards when prohibited by state law. While serving as Interim Mayor, the presiding officer of the Council may continue to represent the City as a representative, alternate or liaison to any outside boards, commissions,

committees, and governmental agencies to which he or she has been appointed and serve in a leadership capacity, if applicable.

- (j) For purposes of this section, a vacancy may result from death, resignation, or recall. If a vacancy occurs by reason of a resignation, the date of the vacancy will be the date specified in the written letter of resignation or, if there is no date certain specified in the letter, upon the date of receipt of the letter by the City Clerk.

...

CHARTER SECTION XX1: VACANCY IN ELECTIVE OFFICE

A vacancy in elective office occurs when any of the following events occur during the term:

- (a) The death of the elective officer.
- (b) An elective officer ceases to be a resident and elector of the City or a Council member moves from the district that the Council member was elected to represent. Redistricting shall not cause a vacancy in the office of a Council member.
- (c) An adjudication by a court of competent jurisdiction declaring that the elective officer is physically or mentally incapacitated due to disease, illness, or accident, and that there is reasonable cause to believe that the elective officer will not be able to perform the duties of his or her office for the remainder of his or her term.
- (d) The resignation of an elective officer, effective on the date specified in the written letter of resignation or, if there is no date specified in the letter, upon the date of receipt of the letter by the City Clerk.
- (e) For a Council member only, unexcused absences from eight consecutive meetings or fifty percent of any scheduled meetings as provided by section 12 of this Charter.

- (f) An elective officer's conduct requiring forfeiture of office, upon conviction or finding of civil liability by a court of competent jurisdiction, as provided by this Charter. An elective officer shall be deemed to have been convicted or found liable when trial court judgment is entered. For purposes of this section, "trial court judgment" means a judgment by the trial court either sentencing the officer or otherwise upholding and implementing the plea, verdict, or finding.
- (g) An elective officer's conviction of a felony. An elective officer shall be deemed to have been convicted when trial court judgment is entered. For purposes of this section, "trial court judgment" means a judgment by the trial court either sentencing the officer or otherwise upholding and implementing the plea, verdict, or finding.
- (h) The elective officer's removal from office. An elective officer may be removed only by recall or removal proceedings as provided by this Charter.

CHARTER SECTION XX2: REMOVAL FOR CAUSE

- (a) Any elective officer is subject to removal for cause for dereliction of duty or malfeasance in office as provided in this section.
- (b) Dereliction of duty means the elective officer has ceased to discharge the duties of the office for 45 consecutive days, except when prevented by illness, injury, or other reasonable cause.
- (c) Malfeasance in office means conviction for crimes of moral turpitude or crimes involving a violation of official duties.
- (d) Upon an elective officer's criminal conviction, a court's adjudication of failure, refusal or neglect of an elective officer to perform the duties of the office, the City Clerk shall provide notice of the conviction, adjudication, or accusation to the Council and the subject elective officer.
- (1) An elective officer shall be deemed to have been convicted when trial court judgment is entered. For purposes of this section, "trial court judgment" means a judgment by the

trial court either sentencing the officer or otherwise upholding and implementing the plea, verdict, or finding.

- (2) A court of competent jurisdiction's order of enforcement for failure to obey a writ of mandamus constitutes an adjudication of failure, refusal or neglect of an elective officer to perform the duties of office.
- (e) Upon notification from the City Clerk of a criminal conviction or adjudication of failure, refusal or neglect of an elective officer to perform any duty of office, the Council may proceed to vote on calling a special municipal election as provided by subsection (f) or suspend an elective official as provided by subsection (g).
- (f) If more than one year remains in the elective officer's term, upon a vote of no less than three-fourths of the Council that cause exists for removal, the Council shall call a special municipal election in compliance with the City's election laws for the purpose of submitting to the voters a proposition to remove the elective officer. By ordinance, the Council shall provide an expeditious and complete procedure for special municipal elections to remove elective officers by a majority of voters.
- (g) If less than one year remains in the elective officer's term, upon a vote of not less than three-fourths of the Council that cause exists for removal, the Council shall suspend the elective officer until the end of his or her term and appoint a qualified person to discharge the duties of the office during the period of suspension.
- (h) Upon no less than a three-fourths vote, the Council may suspend any elective officer upon the commencement of felony criminal proceedings or criminal misdemeanor proceedings involving crimes of moral turpitude or a violation of official duties that is pending trial and shall appoint a qualified person to discharge the duties of the office during the period of suspension.

- (i) Nothing in this section shall be construed to interfere with the right of the people to initiate a recall of an elective officer, as provided in this Charter and the California Constitution.
- Removal proceedings under this section shall be suspended any time a recall petition is found to be sufficient as defined by the City's election laws.

CHARTER SECTION XX3: REMOVAL FOR LACK OF CONFIDENCE.

If more than six months remain in the term of the Mayor or City Attorney, the Council may indicate a lack of confidence in the Mayor or City Attorney by unanimous vote of all Council members and call a special municipal election to submit to the voters a proposition to remove the Mayor or City Attorney.

An election under this section shall be conducted in the same manner as a special municipal election to remove an elective officer for cause.

Nothing in this section shall be construed to interfere with the right of the people to initiate a recall of an elective officer, as provided in this Charter and the California Constitution. Removal proceedings under this section shall be suspended any time a recall petition is found to be sufficient as defined by the City's election laws.

CHARTER SECTION XX4: SUCCESSION TO OFFICE

- (a) If a vacancy in the office of an elective officer occurs by reason of a successful recall or removal election, the Council shall adopt procedures to fill the vacancy.
- (b) If a vacancy occurs in the office of an elective officer for any reason other than a successful recall or removal election, the following procedures shall apply:
- (1) If the vacancy occurs with one year or less remaining in the term, the Council shall appoint a person to fill the vacant office within 30 days of the office being vacated. Any person appointed by the Council to fill a vacant office shall not be eligible to run for that office for the next succeeding term; or,

- (2) If the vacancy occurs with more than one year remaining in the term, the Council shall call a special election to be held within ninety days of the vacancy, unless there is a municipal or statewide election scheduled to be held within 180 days of the vacancy. If there is a municipal or statewide election scheduled to be held within 180 days of the vacancy, the Council may consolidate the special election with that election.
- (3) If one candidate receives the majority of votes cast for all candidates in the special election, the candidate receiving the majority of votes cast shall be deemed to be and declared by the Council to be elected to the vacant office.
- (4) If no candidate receives a majority of votes cast in the special election, a special run-off election shall be held within 90 days of the first special election, unless there is a municipal or statewide election scheduled to be held within 120 days of the proposed special run-off election date, at which time the Council may consolidate the special run-off election with that election. The two candidates receiving the highest number of votes cast for the vacant office in the first special election shall be the only candidates for the vacant office and the names of only those two candidates shall be printed on the ballot for that office.
- (5) The person appointed or elected to fill a vacancy in elective office shall serve in that elective office for the remainder of the unexpired term.

REVISED DRAFT CHARTER AMENDMENTS RELATED TO
VACANCY AND REMOVAL OF ELECTIVE OFFICERS

SECTION 7: ELECTIVE OFFICERS RESIDENCY REQUIREMENT

An elective officer of the City shall be a resident and elector of the City.

In addition, every Council member shall be an actual resident and elector of the district from which the Council member is nominated. ~~Any Council member who moves from the district of which the Council member was a resident at the time of taking office forfeits the office, but no Council member shall forfeit the office as a result of redistricting. The office of a Council member shall be vacated if he or she moves from the district of which he or she was a resident at the time of taking office. Redistricting that occurs during a member's term shall not operate to create a vacancy.~~

The Council shall establish by ordinance minimum length of residency requirements for candidacy to elective office, whether by appointment or election.

...

SECTION 12: THE COUNCIL

...

(e) ~~If a vacancy occurs for any reason in the office of a Council District, the following procedures shall apply:~~

(1) ~~If the vacancy occurs for any reason other than a successful recall election, and,~~

(A) ~~If the vacancy occurs with one (1) year or less remaining in the term, the Council shall appoint a person to fill the vacant seat on the City Council. Any person appointed by the Council to fill a vacant Council District seat shall not be eligible to run for that office for the next succeeding term; or,~~

(B) — If the vacancy occurs with more than one (1) year remaining in the term, the Council shall call a special election to be held within ninety (90) days of the vacancy, unless there is a municipal or statewide election scheduled to be held within 180 days of the vacancy. If there is a municipal or statewide election scheduled to be held within 180 days of the vacancy, the Council may consolidate the special election with that election.

(i) — If one candidate receives the majority of votes cast for all candidates in the special election, the candidate receiving the majority of votes cast shall be deemed to be and declared by the Council to be elected to the vacant office.

(ii) — If no candidate receives a majority of votes cast in the special election, a special run-off election shall be held within ninety (90) days of the first special election, unless there is a municipal or statewide election scheduled to be held within 120 days of the proposed special run-off election date, at which time the City Council may consolidate the special run-off election with that election. The two (2) candidates receiving the highest number of votes cast for the vacant seat in the first special election shall be the only candidates for the vacant Council seat and the names of only those two (2) candidates shall be printed on the ballot for that seat.

(2) — If a vacancy occurs by reason of a successful recall election, the Council shall adopt procedures to fill the vacancy.

Whether a person is appointed or elected to fill a vacant Council District seat, whatever the reason for the vacancy, that person shall serve as that District's Councilmember for the remainder of the unexpired term.

For purposes of this Charter section 12, a vacancy may result from death, resignation, recall, or unexcused absences as described in Charter section 12(f). If a vacancy occurs by reason of a

resignation, the date of the vacancy will be the date specified in the written letter of resignation or, if there is no date certain specified in the letter, upon the date of receipt of the letter by the City Clerk.

(f)(e) It is the duty of the Council members to attend all Council meetings. The Council shall vacate the seat of any Councilmember who is absent from eight (8) consecutive meetings or fifty percent (50%) of any scheduled meetings within a month unless the absence thereof is excused by resolution of the Council.

(g)(f) Council members shall devote full time to the duties of their office and not engage in any outside employment, trade, business or profession which interferes or conflicts with those duties.

(h)(g) Council members shall not be eligible during the term for which they were appointed or elected to hold any other office or employment with the City, except as Mayor or City Attorney and as a member of any Board, Commission or Committee thereof, of which they are constituted such a member by general law or by this Charter.

(h) Whenever a vacancy exists in the office of a Council member, the chief of staff for the departing Council member shall manage the office of the Council member under the authority of the Council President, until a replacement is appointed or elected pursuant to the procedures for filling vacancies provided by this Charter. The chief of staff is authorized to manage the office and staff of the Council member, but has no authority to appoint new employees, approve new expenditures, participate or vote in Council committees or Council meetings, or serve as representative, alternate, or liaison to any outside boards, commissions, committees, and governmental agencies to which the Council member has been appointed.

...

Formatted: Strikethrough

SECTION 40: CITY ATTORNEY

...

The Council shall have authority to employ additional competent technical legal attorneys to investigate or prosecute matters connected with the departments of the City when such assistance or advice is necessary in connection therewith. The Council shall provide sufficient funds in the annual appropriation ordinance for such purposes and shall charge such additional legal service against the appropriation of the respective Departments.

The salary of the City Attorney shall be fixed by the Council and set forth in the annual appropriation ordinance, provided that the salary of the City Attorney may not be decreased during a term of office, but in no event shall said salary be less than \$15,000.00 per year. ~~In the event of a vacancy occurring in the office of the City Attorney by reason of any cause, the Council shall have authority to fill such vacancy, which said authority shall be exercised within thirty (30) days after the vacancy occurs. Any person appointed to fill such vacancy shall hold office until the next regular municipal election, at which time a person shall be elected to serve the unexpired term. Said appointee shall remain in office until a successor is elected and qualified.~~

Whenever a vacancy exists in the office of the City Attorney, an Assistant City Attorney, previously designated by the City Attorney to fulfill duties in the event of a vacancy and whose name has been recorded with the City Clerk as the Interim City Attorney in the event of a vacancy, shall fulfill the duties of the City Attorney as the Interim City Attorney until a replacement can be appointed or elected as provided by this Charter. The Interim City Attorney shall have the full authority of the Office.

...

SECTION 108: FORFEITURE OF OFFICE FOR FRAUD

Every officer who shall willfully approve, allow, or pay any demand on the treasury not authorized by law and found civilly liable by a court of competent jurisdiction, shall be liable to the City individually

and on his official bond, for the amount of the demand so approved, allowed or paid, and shall forfeit such office and be forever debarred and disqualified from holding any position in the service of the City. Violations of this section may also be prosecuted as a misdemeanor.

...

SECTION 217: NO PAYMENT FOR OFFICE

No officer or employee of the City shall give or promise to give to any person any portion of his compensation, or any money or thing of value in consideration of having been, or of being nominated, appointed, voted for or elected to any office or employment. Any non-elective officer or employee found guilty civilly liable by the Council or a court of competent jurisdiction for such actions shall thereby forfeit his or her office or position, consistent with any applicable Civil Service rules. Any elective officer found civilly liable for a violation of this section by a court of competent jurisdiction shall immediately forfeit his or her office. Violations of this section by an elective official may also be prosecuted as a misdemeanor.

SECTION 218: NO CONTRIBUTIONS FOR EMPLOYMENT

No officer or employee shall solicit or accept any donation or gratuity in money, or other thing of value, either directly or indirectly, from any subordinate or employee, or from any one under his charge, or from any candidate or applicant for any position as employee or subordinate in any Department of the City. Any non-elective officer or employee found guilty civilly liable by the Council or a court of competent jurisdiction for such actions shall thereby forfeit his or her office or position, consistent with any applicable Civil Service rules. Any elective officer found civilly liable for a violation of this section by a court of competent jurisdiction shall immediately forfeit his or her office. Violations of this section by an elective official may also be prosecuted as a misdemeanor.

...

Formatted: Not Strikethrough

Formatted: Strikethrough

Formatted: Not Strikethrough

Formatted: Strikethrough

Formatted: Line spacing: Double

SECTION 265: THE MAYOR

...

- (e) If a vacancy occurs in the Office of Mayor for any reason other than a successful recall election, and,
 - (1) If the vacancy occurs with one year or less remaining in the term, the Council shall appoint a person to fill the vacancy.
 - (2) If the vacancy occurs with more than one year remaining in the term, the Council shall call a special election to be held within ninety (90) days of the vacancy, unless there is a municipal or statewide election scheduled to be held within 180 days of the vacancy. If there is a municipal or statewide election scheduled to be held within 180 days of the vacancy, the Council may consolidate the special election with that election.
 - (A) If one candidate receives the majority of votes cast for all candidates in the special election, the candidate receiving the majority of votes cast shall be deemed to be and declared by the Council to be elected to the Office of Mayor.
 - (B) If no candidate receives a majority of votes cast in the special election, a special run-off election shall be held within ninety (90) days of the first special election, unless there is a municipal or statewide election scheduled to be held within 120 days of the proposed special run-off election date, at which time the City Council may consolidate the special run-off election with that election. The two candidates receiving the highest number of votes cast for the Office of Mayor in the first special election shall be the only candidates for the Office of the Mayor and the names of only those two candidates shall be printed on the ballot for that seat.
- (f) If a vacancy occurs by reason of a successful recall election, the Council shall adopt procedures to fill the vacancy.

(g) ~~Whether a person is appointed or elected to the Office of Mayor, whatever the reason for the vacancy, that person shall serve as Mayor for the remainder of the unexpired term.~~

(h) ~~Upon the appointment or election of any person to the Office of Mayor, any other City office held by that person is automatically vacated.~~

(i)(e) ~~During the period of time w~~When an appointment or election is pending to fill a vacancy in the ~~O~~office of Mayor, the presiding officer of the Council shall serve as Interim Mayor and shall be vested with the authority to supervise the staff remaining employed in the Ooffice of the Mayor, to direct and exercise control over the City Manager in managing the affairs of the City under the purview of the Mayor and to exercise other power and authority vested in the Ooffice of the Mayor when the exercise of such power and authority is required by law. This limited authority would include circumstances where the expeditious approval of a legislative action is necessary to meet a legal requirement imposed by a court or another governmental agency. Such limited authority would not include the exercise of the power of veto or any other discretionary privilege which is enjoyed by a person appointed or elected to the Ooffice of Mayor. The presiding officer, while acting under this section pending the filling of a mayoral vacancy, shall not lose his or her rights as a Member of the Council. While serving as Interim Mayor, the presiding officer of the Council shall not chair Council committee meetings or Council meetings. Other duties of the presiding officer of the Council serving as Interim Mayor shall be performed as provided by the rules of Council established pursuant to this Charter; however, changes may not be made to Council committee structure or assignments while the presiding officer of the Council serves as Interim Mayor.

The time provided by sections 280 and 290 the Charter for the Mayor to sign resolutions and ordinances shall not apply during a mayoral vacancy. Resolutions and Ordinances passed by the City Council shall take effect as they would if the Mayor had no veto power.

The Interim Mayor shall not have authority to appoint members to Charter section 41 Commissions, and Charter section 43 Advisory Boards and Committees defined in the Charter. The Charter's 45-day waiting period to take action on such appointments will be suspended, however, and the Council will have the authority to appoint and confirm members to such City boards and commissions during the interim period, subject to other governing laws regarding noticing and posting of vacancies. The Interim Mayor and Council are not authorized to make appointments to any boards that are governed when prohibited by state law.

While serving as Interim Mayor, the presiding officer of the Council may continue to represent the City as a representative, alternate or liaison to any outside boards, commissions, committees, and governmental agencies to which he or she has been appointed and serve in a leadership capacity, if applicable.

- (j) For purposes of this section, a vacancy may result from death, resignation, or recall. If a vacancy occurs by reason of a resignation, the date of the vacancy will be the date specified in the written letter of resignation or, if there is no date certain specified in the letter, upon the date of receipt of the letter by the City Clerk.

...

CHARTER SECTION XXI: VACANCY IN ELECTIVE OFFICE

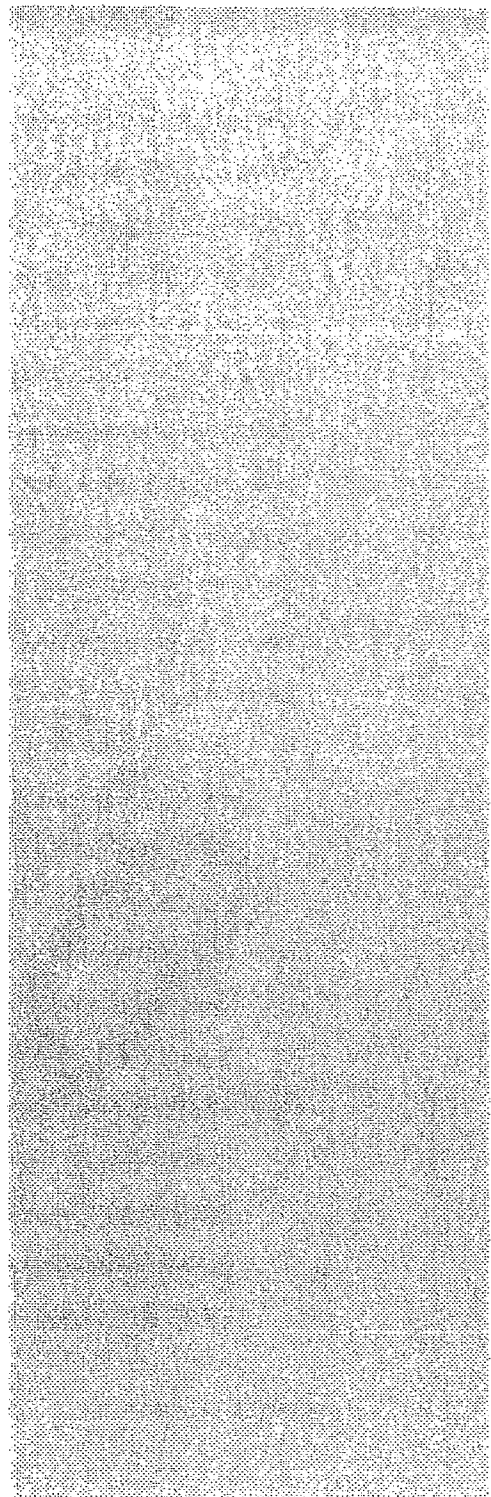
A vacancy in elective office occurs when any of the following events occur during the term:

- (a) The death of the elective officer.
- (b) An elective officer ceases to be a resident and elector of the City or a Council member moves from the district that the Council member was elected to represent. Redistricting shall not cause a vacancy in the office of a Council member.

- (c) An adjudication by a court of competent jurisdiction declaring that the elective officer is physically or mentally incapacitated due to disease, illness, or accident, and that there is reasonable cause to believe that the elective officer will not be able to perform the duties of his or her office for the remainder of his or her term.
- (d) The resignation of an elective officer, effective on the date specified in the written letter of resignation or, if there is no date specified in the letter, upon the date of receipt of the letter by the City Clerk.
- (e) For a Council member only, unexcused absences from eight consecutive meetings or fifty percent of any scheduled meetings as provided by section 12 of this Charter.
- (f) An elective officer's conduct requiring forfeiture of office, upon conviction or finding of civil liability by a court of competent jurisdiction, as provided by this Charter. An elective officer shall be deemed to have been convicted or found liable when trial court judgment is entered. For purposes of this section, "trial court judgment" means a judgment by the trial court either sentencing the officer or otherwise upholding and implementing the plea, verdict, or finding.
- (g) An elective officer's conviction of a felony. An elective officer shall be deemed to have been convicted when trial court judgment is entered. For purposes of this section, "trial court judgment" means a judgment by the trial court either sentencing the officer or otherwise upholding and implementing the plea, verdict, or finding.
- (h) The elective officer's removal from office. An elective officer may be removed only by recall or removal proceedings as provided by this Charter.

CHARTER SECTION XX2: REMOVAL FOR CAUSE

- (a) Any elective officer is subject to removal for cause for dereliction of duty or malfeasance in office as provided in this section.



- (b) Dereliction of duty means the elective officer has ceased to discharge the duties of the office for 90-45 consecutive days, except when prevented by illness, injury, or other reasonable cause.
- (c) Malfesance in office means conviction for crimes of moral turpitude or crimes involving a violation of official duties or conduct that falls below the standards of decency, good faith and right action impliedly required of all elective officers. When any City law provides that a violation of the law constitutes or is deemed malfesance in office, the conduct is covered by this definition and may subject the person to removal from office.
- (d) Upon an elective officer's criminal conviction, a court's adjudication of failure, refusal or neglect of an elective officer to perform the duties of the office, or an accusation of noncriminal misconduct that falls below the standards of decency, good faith and right action impliedly required of all elective officers, the City Clerk shall provide notice of the conviction, adjudication, or accusation to the Council and the subject elective officer.
- (1) An elective officer shall be deemed to have been convicted when trial court judgment is entered. For purposes of this section, "trial court judgment" means a judgment by the trial court either sentencing the officer or otherwise upholding and implementing the plea, verdict, or finding.
- (2) A court of competent jurisdiction's order of enforcement for failure to obey a writ of mandamus constitutes an adjudication of failure, refusal or neglect of an elective officer to perform the duties of office.
- (3) The [POLICY DIRECTION NEEDED] may file a written accusation with the City Clerk detailing charges of noncriminal misconduct that falls below the standard of decency, good faith and right action impliedly required of all elective officers. Upon notification from the City Clerk of an accusation of noncriminal misconduct, the Council shall initiate proceedings to determine whether the elective officer's conduct

warrants removal. The Council shall adopt procedures for removal proceedings that provide for the presentation of evidence and provide the elective officer the right to appear with counsel in his or her defense.

- (e) Upon notification from the City Clerk of a criminal conviction or adjudication of failure, refusal or neglect of an elective officer to perform any duty of office, the Council may proceed to vote on calling a special municipal election as provided by subsection (f) or suspend an elective official as provided by subsection (g).
- (f) If more than six months one year remains in the elective officer's term, upon a vote of no less than three-fourths of the Council that cause exists for removal, the Council shall call a special municipal election in compliance with the City's election laws for the purpose of submitting to the voters a proposition to remove the elective officer. By ordinance, the Council shall provide an expeditious and complete procedure for special municipal elections to remove elective officers by a majority of voters.
- (g) If less than six months one year remains in the elective officer's term, upon a vote of not less than three-fourths of the Council that cause exists for removal, the Council shall suspend the elective officer until the end of his or her term and appoint a qualified person to discharge the duties of the office during the period of suspension.
- (h) Upon no less than a three-fourths vote, the Council may suspend any elective officer upon the commencement of felony criminal proceedings or criminal misdemeanor proceedings involving crimes of moral turpitude or a violation of official duties that is pending trial and shall appoint a qualified person to discharge the duties of the office during the period of suspension.
- (i) Nothing in this section shall be construed to interfere with the right of the people to initiate a recall of an elective officer, as provided in Section 23 of this Charter and the California

Constitution. Removal proceedings under this section shall be suspended any time a recall petition is found to be sufficient as defined by the City's election laws.

CHARTER SECTION XX3: REMOVAL FOR LACK OF CONFIDENCE.

If more than six months remain in the term of the Mayor or City Attorney, the Council may indicate a lack of confidence in the Mayor or City Attorney by unanimous vote of all Council members and call a special municipal election to submit to the voters a proposition to remove the Mayor or City Attorney. An election under this section shall be conducted in the same manner as a special municipal election to remove an elective officer for cause.

Nothing in this section shall be construed to interfere with the right of the people to initiate a recall of an elective officer, as provided in Section 23 of this Charter and the California Constitution. Removal proceedings under this section shall be suspended any time a recall petition is found to be sufficient as defined by the City's election laws.

CHARTER SECTION XX4: SUCCESSION TO OFFICE

- (a) If a vacancy in the office of an elective officer occurs by reason of a successful recall or removal election, the Council shall adopt procedures to fill the vacancy.
- (b) If a vacancy occurs in the office of an elective officer for any reason other than a successful recall or removal election, the following procedures shall apply:
 - (1) If the vacancy occurs with one year or less remaining in the term, the Council shall appoint a person to fill the vacant office within 30 days of the office being vacated. Any person appointed by the Council to fill a vacant office shall not be eligible to run for that office for the next succeeding term; or,
 - (2) If the vacancy occurs with more than one year remaining in the term, the Council shall call a special election to be held within ninety days of the vacancy, unless there is a

municipal or statewide election scheduled to be held within 180 days of the vacancy. If there is a municipal or statewide election scheduled to be held within 180 days of the vacancy, the Council may consolidate the special election with that election.

- (3) If one candidate receives the majority of votes cast for all candidates in the special election, the candidate receiving the majority of votes cast shall be deemed to be and declared by the Council to be elected to the vacant office.
- (4) If no candidate receives a majority of votes cast in the special election, a special run-off election shall be held within 90 days of the first special election, unless there is a municipal or statewide election scheduled to be held within 120 days of the proposed special run-off election date, at which time the Council may consolidate the special run-off election with that election. The two candidates receiving the highest number of votes cast for the vacant office in the first special election shall be the only candidates for the vacant office and the names of only those two candidates shall be printed on the ballot for that office.
- (5) The person appointed or elected to fill a vacancy in elective office shall serve in that elective office for the remainder of the unexpired term.

