

CITY OF OAKLAND
CITY ATTORNEY'S OFFICE

LEGAL OPINION

TO: President Brunner and Members of the City Council

FROM: John Russo
City Attorney

CC: City Administrator
City Clerk

DATE: December 16, 2009

RE: **City's Legal Obligation to Implement Ranked Choice Voting**

INTRODUCTION

In November 2006, the voters of the City of Oakland approved Measure O, which amended the City Charter to provide that elections for all city offices will be conducted using ranked choice voting (RCV), known sometimes as "instant runoff voting." The Charter defines RCV as "an election system in which voters rank the candidates for office in order of preference, and the ballots are counted in rounds that, in the case of a single-winner election, simulate a series of runoffs until one candidate receives a majority of votes." The Charter requires that the City use RCV to conduct Oakland elections "once the Alameda County Registrar of Voters is able to conduct the [RCV] election."

The Alameda County Registrar of Voters (Dave Macdonald) has submitted RCV-enabled voting equipment to the Secretary of State for her approval; Mr. Macdonald has stated that once he receives her approval, he will be able to conduct an RCV election for Oakland in November 2010. The County requested that the Secretary of State provide a decision on certification before December 31, 2009.

Several Councilmembers have asked this Office to opine as to whether the City Charter mandates implementation of RCV once the Secretary of State approves the RCV-enabled voting equipment and the Alameda County Registrar of Voters is able to conduct an RCV election.

QUESTION

Does the City Charter mandate that the City implement ranked choice voting ("RCV")?

SUMMARY CONCLUSION

Yes, the City Charter mandates that the City implement RCV in Oakland once the Alameda County Registrar of Voters has the ability to conduct the election on behalf of the City. The Charter is clear: RCV implementation only depends upon the ability of the Registrar of Voters to conduct the election on behalf of the City.

BACKGROUND

Section 1105 of the City Charter provides that “(e)lections for all city offices, including but not limited to Mayor, Councilmember, City Attorney, City Auditor, and School Director, shall be conducted using ranked choice voting, known sometimes as ‘instant runoff voting.’” The Charter defines “ranked choice voting” as “an election system in which voters rank the candidates for office in order of preference, and the ballots are counted in rounds that, in the case of a single-winner election, simulate a series of runoffs until one candidate receives a majority of votes.”

Recognizing that the Alameda County Registrar of Voters would need to upgrade the County’s voting equipment before the City would be able to use Ranked Choice Voting (RCV) for its elections, the Charter amendment included the following language:

Notwithstanding any other provision of this Charter, the City shall use ranked choice voting **once the Alameda County Registrar of Voters is able to conduct the election on behalf of the City** in accordance with the requirements and procedures of this section... (*Emphasis added*).

The Secretary of State has granted her approval to the County to use Sequoia Voting Systems’ RCV-enabled voting equipment on a one-time basis subject to certain conditions regarding outreach. The Alameda County Registrar of Voters has previously said that he will be “able” to conduct an RCV election as soon as his office receives certification from the Secretary of State.

ANALYSIS

Section 1105 of the City Charter requires that the City hold RCV elections as soon as the County Registrar of Voters “is able to conduct the election on behalf of the City.” No further action by the City Council is required for the implementation of RCV, and the Charter provides no mechanism whereby the City Council or any City officer may advance or delay its implementation.

The City Charter is the City’s constitution; it is the supreme law of the City subject only to conflicting provisions in the federal and state Constitutions and preemptive state law. Ordinances must be consistent with the City Charter; otherwise they are void. *Domar Electric, Inc. v. City of Los Angeles* 9 Cal.4th 161, 170 (1994). A charter city may not act in conflict with its charter. (*Id.* at p. 171.) Any act that is violative of or not in compliance with the charter is void. (*Ibid.*) See also, *Skaggs v. City of Los Angeles*, 43 Cal.2d 497, 501 (1954); *De Aryan v.*

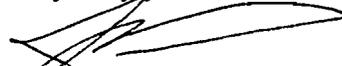
Butler, 119 Cal.App.2d 674, 683 (1953); *Howard Jarvis Taxpayer's Assn. v. City of Roseville*, 106 Cal.App.4th 1178, 1186 (2003).

The supremacy of the City Charter is established by the state constitution. California Constitution Article XI sections 3(a) and 5(a) provide: "The provisions of a charter are the law of the State and have the force and effect of legislative enactments." "City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith." City Charter provisions are controlling in the absence of preemptory state law. *United Public Employees v. City and County of San Francisco*, 190 Cal.App.3d 419, 422 (1987).

CONCLUSION

The Charter grants the Alameda County Registrar of Voters the exclusive power to determine when ranked choice voting will be implemented in Oakland by way of his determination that he is "able to conduct the election on behalf of the City." Because the City Charter is the supreme law of the City, it can be amended only by a vote of the electorate approving an amendment to the Charter. No enactment by the City Council, whether by resolution, motion or ordinance can override the Charter's dictates; nor does any elected official, City officer or employee have the authority to ignore the City Charter's requirements. A charter city may not act in conflict with its charter and any act that violates the Charter is invalid. Therefore once the Registrar of Voters is able to conduct the election in accordance with the Charter, the Charter requires that the City implement ranked choice voting.

Very truly yours,



JOHN A. RUSSO
City Attorney

Attorney Assigned:
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