

# CITY OF OAKLAND

## STATEMENT FROM CITY ATTORNEY BARBARA J. PARKER

**RE:** City Clerk's Ministerial Duty to Administer the Oath of Office to Candidates  
Certified by the Alameda County Registrar of Voters

**DATE:** January 8, 2023

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The California Elections Code governs the counting, certification and declaration of results of municipal elections.

The California Elections Code imposes a mandatory, ministerial duty upon the City Clerk, who is the City of Oakland's election official, to administer the oath of office to each candidate who the Alameda County Registrar of Voters certified as receiving the majority of the votes cast.

Elections Code section 10265 provides:

The elections official shall immediately sign and deliver to each person elected a certificate of election. He or she shall also administer to each person elected the oath of office prescribed in the California Constitution.

The Alameda County Registrar of Voters sent the City Clerk a December 8, 2022 letter enclosing the Certificate of the official, certified election results for the November 2022 City of Oakland General Election. To date, the Registrar of Voters has not changed the official results that appear on their website, nor has the Registrar sent the City different, certified results. The City Clerk thus has no legal authority to proceed other than by administering the oath of office to the candidates whom the County Registrar of Voters declared the winners in their December 8, 2022 letter.

An election contest has been filed in the Alameda County Superior Court by the candidate who the County Registrar recently stated should have been declared the winner. Accordingly, the City will await the results of the election contest and will comply with any order the Alameda County Superior Court issues in that action.

See Attached Memorandum.

**CITY OF OAKLAND**

**OFFICE OF THE CITY ATTORNEY**

**MEMORANDUM**

**TO:** Mayor Sheng Thao, Council President Fortunato Bas, Members of the City Council and Members of the Public

**FROM:** City Attorney Barbara J. Parker

**SUBJECT:** City Clerk’s Ministerial Duty to Administer the Oath of Office to Candidates Certified by the Alameda County Registrar of Voters

**DATE:** January 8, 2023

**CC:** City Administrator Edward D. Reiskin and City Clerk Asha Reed

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**INTRODUCTION**

On December 20, 2022 the City Council passed Resolution No. 89543 C.M.S. (“Resolution”) declaring the results of the November 8, 2022 General Municipal Election pursuant to the City Clerk’s certification of the results after the City Clerk received the Alameda County Registrar of Voters’ December 8, 2022 certified statement of the results of the General Municipal Election. (The Registrar of Voters’ December 8, 2022 certified statement of the election results is Exhibit A to the Resolution.) The Resolution declared the candidates who received the majority of the votes cast for the following offices and further declared such candidates elected to said offices:

- Mayor
- City Auditor
- Councilmember District 2
- Councilmember District 4
- Councilmember District 6
- School Director District 2
- School Director District 4
- School Director District 6.

The Alameda County Registrar of Voters’ December 8, 2022 certified official, final result for the Office of School Director District 4 declared Nick Resnick was elected. On December 28, 2022 the Alameda County Registrar of Voters issued a statement that provided in part:

“The ROV [Registrar of Voters] learned that its RCV [Ranked Choice Voting] tally system was not configured properly for the November 2022 General Election. . . . After reviewing the election data and applying the correct configuration, the ROV learned that only one outcome was affected: Oakland School Director, District 4, for the Oakland Unified School District. No other result for any RCV election in any jurisdiction was changed.”

To date the Alameda County Registrar of Voters has not changed the certified official election results on its website, nor has the City received official notice from the Registrar certifying a different election result for School Director, District 4 or any other City of Oakland Office.

On January 6, 2023 counsel for Mike Hutchinson, who ran for the District 4 school board seat, filed a Statement of Election Contest in the Alameda County Superior Court. The election contest names as defendant Nick Resnick, whom the County Registrar declared the winner of that seat. The County Registrar and the City Clerk are named in their official capacities as Real Parties in Interest.

The terms of office for Councilmembers and School Directors for Districts 2, 4 and 6 commence at 11:00 a.m. on January 9, 2023; and the Mayor’s and City Auditor’s terms commenced at 11:00 a.m. on January 2, 2023. (City Charter sections 204, 302, 403, and 404.)

## **QUESTION AND BRIEF ANSWER**

### **Question:**

Does the City Clerk have discretion to decline to administer the oath of office to the candidate who the Registrar of Voters has certified as receiving the majority of the votes for a City office?

### **Brief Answer**

No. The City Clerk has a ministerial duty to administer the oath of office to the candidate who the Registrar of Voters has certified as receiving the majority of the votes for a City office. (Elections Code section 10265.) The Registrar of Voters has not revised the December 8, 2022 certified election results declaring the candidates who received the majority of the votes cast for each office. An election contest has been filed by the candidate, who the Registrar now states, should have been declared the winner of the District 4 Oakland Unified School District board election. However, to date no court order has been issued regarding the election results.

## **ANALYSIS**

The Oakland City Charter provides that except to the extent the Charter or City ordinance provides otherwise, “all elections and all procedures relating thereto shall be in accordance with the applicable provisions of state law.” Charter section 1103 entitled Election Procedure, provides:

Except as may be otherwise provided by this charter, the mode, manner, form and procedure for nominations, qualifications, petitions, filing — including fees therefor and amounts thereof — and elections, for elective office, may be provided by ordinance. Except as may be otherwise provided by ordinance or by this charter, declarations of candidacy, nominations for election, all elections and all procedures relating thereto shall be in accordance with the applicable provisions of state law.

Because neither the Charter nor any City ordinance prescribes the procedures for counting votes and certifying election results, the California Elections Code’s regulations governing municipal elections apply to Oakland’s elections.

The Elections Code mandates that upon receipt of the election results from the Registrar of Voters, who conducted the consolidated election, the city elections official (the City Clerk) certify the results to the City Council and that the Council “declare elected the persons for whom the highest number of votes were cast for each office.” (Elections Code sections 10262(b) and 10263.) The Elections Code further provides that the governing body’s elections official (City Clerk) shall enter on its records a statement of the results. (Elections Code section 10264.) The Elections Code also provides that the elections official (City Clerk) shall “immediately sign and deliver to each person elected a certificate of election” and that “[h]e or she shall also administer to each person elected the oath of office prescribed in the California Constitution.” (Elections Code section 10265.)

Elections Code section 10265 provides:

The elections official *shall* immediately sign and deliver to each person elected a certificate of election. He or she *shall* also administer to each person elected the oath of office prescribed in the California Constitution.  
(Italics added)

The language of Elections Code section 10265 imposes a mandatory, ministerial duty upon the City Clerk to administer the oath of office to each person declared elected by the City Council.

## CONCLUSION

The Elections Code imposes a mandatory duty on the City Clerk, who is the City’s elections official, to certify to the Council the December 8, 2022 election results the Clerk received from the Alameda County Registrar of Voters. The City Clerk complied with this ministerial duty when the Clerk submitted Resolution No. 89543 to the Council at its December 20, 2022 meeting. The Council’s passage of Resolution No. 89543 complied with the Council’s duty to declare elected the persons for whom the highest number of votes were cast for each office. The Clerk now has the mandatory, ministerial duty to administer the oath of office to each person declared elected by the Council Resolution.

The City will await the results of the election contest and the Alameda County Superior Court orders in that action.

Respectfully,



BARBARA J. PARKER  
City Attorney