CITY OF OAKLAND
OFFICE OF THE CITY ATTORNEY
PUBLIC LEGAL OPINION

TO: Mayor Kevin Jenkins
(*serving as Mayor pursuant to the Charter*)
Members of the City Council
City Administrator Jestin D. Johnson
Oakland Residents and Businesses

FROM: City Attorney Ryan Richardson

DATE: February 3, 2025

RE: **Addendum to November 27, 2024 Public Legal Opinion *"Process to Address Vacancies in the Office of the Mayor and District 2 Council Office and the 2025 Special Election"***

I. INTRODUCTION

Dear Mayor Jenkins, Councilmembers, City Administrator Johnson, Oakland residents and businesses:

Following the November 5, 2024 election, we received many inquiries regarding the process to address vacancies in the Office of the Mayor and the District 2 Council Office as well as the special election to fill vacant seats. In response, on November 27, 2024, our office issued a public legal opinion: "*Process to Address Vacancies in the Office of the Mayor and District 2 Council Office and the 2025 Special Election*."

We have received additional inquiries regarding the precise timing of the vacancy in the office of the Mayor and the timing of the former Mayor's removal from office. Accordingly, we are issuing this addendum to the November 27, 2024 memo to provide additional clarity on the effective date by which the office of Mayor was vacant and the process leading to the vacancy.

This opinion is public because it addresses the rights and powers of the Mayor under the Charter and California election law. Like all public legal opinions, this opinion will be posted on the City Attorney's website at: https://www.oaklandcityattorney.org.

II. ADDENDUM ON VACANCY IN THE OFFICE OF THE MAYOR

A. When did the Mayor's seat become vacant?

The office of the Mayor became vacant on December 17, 2024, following the City Council's declaration of the election results pursuant to the California Elections Code and the Oakland City Charter.

Process:

Oakland City Charter section 1104 provides that the recall of elected officials is "to be exercised in the manner prescribed by general law of the State." Under California Elections Code section 11382, "[i]f a majority of the votes on a recall proposal for a local officer are 'Yes', the officer is removed and the office shall be vacant until it is filled according to law."

The results of a recall measure, however, are not self-effectuating. California Elections Code section 11328 clarifies that "[a] recall election shall be conducted, canvassed, and the results declared in substantially the manner provided by law for a regular election for the office." (Emphasis added.) For elections consolidated with a statewide general election, such as the November 5, 2024 recall election, the Alameda County Registrar of Voters must submit a certified statement of election results within thirty days to the Oakland City Council, which must then declare the results no later than at its next regularly scheduled meeting. (See, e.g., Cal. Elec. Code §§ 10262-10263, 15372, 15400 and Resolution No. 90587 C.M.S.)[1]

Therefore, although the majority of voters voted on or before November 5, 2024 to recall the prior Mayor, the office of the Mayor was not vacant until the process for certifying and declaring the election results was finalized on December 17, 2024. On December 5, 2024, the Alameda County Registrar of Voters provided the certified results of the recall election to the City. Pursuant to the California Elections Code, the City Clerk scheduled the resolution for the City Council to declare the election results to the City Council's next regularly scheduled meeting. At that meeting, on December 17, 2024, the City Council passed a resolution declaring the results of the recall election (see Resolution No. 90587 C.M.S.) and subsequently passed a resolution declaring the vacancy in the office of the Mayor and calling for a special election to fill that vacancy. (See Resolution No. 90588 C.M.S.) This process finalized the results of the recall election in compliance with the California Elections Code and the City Charter, and the prior Mayor was formally removed from office. (See Resolution No. 90587 C.M.S. ["That the City Council hereby determines and declares that a majority of the votes cast on the question of whether to Recall are 'Yes,' the question is declared PASSED and the Mayor is removed from office"].)

[1] In the context of a regular election for the office of Oakland Mayor, the City Council's declaration of the results is an inherent and necessary step in finalizing the results. For example, a successful Mayoral candidate cannot be installed, and the City Clerk cannot issue the candidate a certificate of election, until after the Council declares the results. (See Cal. Elec. Code §§ 10263 and 15401.)