



Office of the City Manager

CONSENT CALENDAR

November 29, 2005

To: Honorable Mayor and
Members of the City Council

From: *PK* Phil Kamlarz, City Manager

Submitted by: Sherry M. Kelly, Assistant City Manager

Subject: Contract for Alameda County Election Voting System

RECOMMENDATION

Urge the Alameda County Board of Supervisors to: 1) select a new election voting system that supports instant runoff voting (IRV), also known as ranked choice voting (RCV) and 2) require as part of contract negotiations that an instant runoff voting component be available in time for use in the November 2006 elections.

FISCAL IMPACTS OF RECOMMENDATION

The cost of including an instant runoff voting component as part of Alameda County's new election voting system is unknown at this time. Responses to the County's request for proposals for a new voting system, including the cost for the new system and any instant runoff voting component, have not been made public at this time. Negotiating the instant runoff voting component as part of the initial contract with the County will be more cost effective and timely than negotiating this as an add-on after the contract is awarded and signed.

Historically the City of Berkeley has consolidated its general municipal elections with statewide elections in November of even numbered years and has contracted with Alameda County for the conduct of the general municipal elections.

Direct costs specific to a jurisdiction, such as the cost of printing candidate statements and measures in the sample voter pamphlet are billed directly the applicable jurisdictions. The costs for services provided by the Alameda County Registrar of Voters, including, but not limited to: 1) ballot and voter pamphlet preparation and printing; 2) mailing of voter pamphlets and absentee ballots; 3) operating polling places and hiring and training polling place workers; 4) ballot tabulation, reporting and certifying election results; and 5) the cost of the County's election voting systems are shared by all entities listed on the ballot for that election. The cost for services associated with a general municipal election as part of a consolidated statewide election in November of even numbered years is approximately \$1 per registered voter.

Alameda County is eligible for approximately \$8,700,000 in federal funds from the Help America Vote Act (HAVA) to be used toward the purchase of an election voting system that

meets HAVA requirements. At this time it is unknown whether or not the cost of a new election voting system will be covered in its entirety through this funding.

CURRENT SITUATION AND ITS EFFECTS

Alameda County intends to award a five (5) year contract with an option to renew, for a new election voting system as an alternative to the current Diebold system. The County issued a request for proposals for a new voting system on September 30, 2005. A County Selection Committee (CSC) composed of County staff and other parties that may have expertise or experience in election voting systems, will be making their selection and is expected to issue a recommendation to the Board of Supervisors on November 23, 2005. The Council will be updated as to the recommendation on November 29th. The Board is expected to award the contract on December 13, 2005.

The addendum to the original request for proposals states: “57.1 Requirement – System shall support instant runoff voting, proportional voting or similar voting methods. System shall have the ability to adapt to any federal or state requirement for IRV. If the voting system currently cannot support these methods, and this becomes a need for the County or some city in the County, the system shall be adapted to do so.” However, in response to questions asked as part of the bidders’ conference and in the original request for proposals, the County indicated that they are only assessing a vendor’s readiness to conduct an IRV election and not requiring that IRV be part of the system delivered to the County in early 2006. (Addendum Q&A – 6 – Page 11). Vendors were referred to the San Francisco ranked choice voting model as an example.

As recently as September 13, 2005 the Council took action to encourage the Alameda County Board of Supervisors and the Acting Registrar of Voters to facilitate instant runoff voting with the current election equipment system vendor or with any new vendor in time for the November 2006 elections.

Because Alameda County will be selecting an election voting system that will be used in the County for a minimum of five years, failure to negotiate an instant runoff voting component based on a methodology agreed upon by those cities in Alameda County that desire to conduct elections using an instant runoff voting method at the time the contract is awarded will most likely result in higher costs and a delay in implementation.

BACKGROUND

The cities of Berkeley, Oakland and San Leandro have provisions to conduct instant runoff voting stated in their charters. Article III, Section 5 (12) of the Berkeley charter states that “...upon a determination by the City Council of all of the following, that: a) the voting equipment and procedures are technically ready to handle instant runoff voting in municipal elections; b) instant runoff voting will not preclude the City from consolidating its municipal elections with the County; and c) instant runoff elections will not result in additional City election costs, the Council may be ordinance establish a system of instant runoff voting for the offices of mayor, city council and auditor in any manner permitted by the State of California Elections Code.”

The Acting Registrar of Voters, has been working with a taskforce consisting of staff from the cities of Berkeley, Oakland and San Leandro, elected officials, the League of Women Voters and other organizations and interested citizens, to develop a methodology for use by any city in Alameda County that has the authority and desire to conduct an IRV election. A copy of the proposed methodology is enclosed as Attachment 1. At a future meeting, the Council will be presented with an ordinance based on the proposed methodology.

While the Acting Registrar of Voters has been very willing to work with the cities and interested parties to develop a common methodology and to integrate an instant runoff voting component into the County's election voting system, unresolved questions raised by the Registrar regarding whether or not the County can conduct an IRV election as part of a consolidated election without either amendments to the California Elections Code or regulations developed by the Secretary of State has had a direct impact on how much weight instant runoff voting capability will be given in evaluating and considering a new election voting system.

County Counsel has issued a draft legal opinion and has asked for comments from the city attorneys for Berkeley, Oakland and San Leandro. The Berkeley City Attorney recently provided her response to the County Counsel. Her analysis is that the California Election Code does not preclude use of an instant runoff voting system in a consolidated election. However, until the Acting Registrar of Voters receives an official legal opinion from County Counsel indicating that her office may use an instant runoff voting system for local jurisdictions in a consolidated election, she does not believe she has the authority and guidance to do so. As a result, the selection of a vendor for a new election voting system and the negotiation of a contract with the requirement for an instant runoff voting component may not be given significant consideration by the County.

RATIONALE FOR RECOMMENDATION

In March 2004, 72% of the voters approved Measure I, which amended the City's charter to provide for instant runoff voting, a method by which voters would rank candidates for a particular local office in order of preference and would eliminate the need for costly runoff elections with lower voter turnout. The Council has previously expressed their desire to encourage Alameda County to acquire an election voting system capable of conducting instant runoff voting for local races with the hopes of being able to utilize this method for the November 2006 elections.

ALTERNATIVE ACTIONS CONSIDERED

Some interested parties have suggested that if the County is not able or willing to provide an instant runoff voting system for use by the City of Berkeley as part of a consolidated election in November 2006, rather than waiting until the County has an integrated system, the City should conduct its own local election in 2006 using instant runoff voting either: 1) on a date different than November 7, 2006 or 2) on the same date via a concurrent election. These suggestions have been considered, reviewed and are not being recommended for the following reasons.

The City's charter requires that the City's general municipal election be conducted in November of even numbered years on the same day as the statewide election. Therefore, a charter amendment would be required to change the date of the city's general municipal election.

The City's charter allows for instant runoff voting only when: " a) the voting equipment and procedures are technically ready to handle instant runoff voting in municipal elections; b) instant runoff voting will not preclude the City from consolidating its municipal elections with the County; and c) instant runoff elections will not result in additional City election costs."

The City Attorney has determined that conducting an election in a concurrent or parallel path would violate the wording and intent of the charter as it relates to the term "consolidated".

The charter also requires that instant runoff voting result in no additional costs. The cost to conduct a separate citywide election for local candidates would be approximately \$300,000. Based on informal conversations that staff has had with election vendors, it is unlikely that a vendor would find it financially feasible to go through the arduous process of designing an instant runoff voting system based on a methodology for use only by the City of Berkeley and obtaining certification and approval from the Secretary of State. If a vendor were willing to do this, the vendor would pass this cost on to the City and the cost of this would need to be added to the general cost of conducting the local election.

CONTACT PERSON

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Attachments:

1: Proposed Methodology for Instant Runoff Voting

**DRAFT METHODOLOGY
INSTANT RUNOFF VOTING**

Summary:

This ordinance provides guidelines for implementing the Instant Runoff Voting method of determining single winners in municipal elections. It applies only to charter cities in which either the governing body conducts its own municipal election using the Instant Run-Off Voting method or where the County has agreed to conduct the city's municipal election using the Instant Runoff Voting method. This voting method produces a majority winner in a single election by simulating a series of runoff elections, thereby making a separate runoff election unnecessary. Voters rank their choices for candidates for a single office. All voters' first choices are counted, and if any candidate receives a majority of first choices, that candidate is elected. If no candidate receives a majority, the instant runoff tabulation is conducted in rounds. In each round, each voter's ballot is counted as a single vote for whichever continuing candidate he/she has ranked highest. The candidate with the fewest votes after each round is eliminated until one candidate has a majority of the continuing ballots. At that point, the candidate receiving the greatest number of votes is

Section 1: BALLOT SPECIFICATIONS AND INSTRUCTIONS TO VOTERS

Ballots approved under this section shall be simple and easy to understand, and shall allow each voter to rank at least three (3) candidates for a single winner race in order of choice. Each voter may rank one qualified write-in candidate, and, if feasible, one write-in candidate per ranking to the extent that voting technology and ballot layout allows. Sample ballots illustrating voting procedures shall be posted in or near the voting booth, and shall be included in the instruction packet of absentee ballots.

Instructions provided to voters shall conform substantially to the following specifications, but may be modified based on ballot design and voting equipment used:

“Vote by ranking candidates in your order of choice. You may rank as many or as few candidates as you choose. Select a different candidate for each ranking. Do not give more than one candidate the same ranking. Ranking more candidates will not hurt your higher

ranked candidates. Do not skip rankings.”

Section 2: BALLOT COUNTING

1. In the first round of ballot counting, election officials shall count the first choices marked on each ballot. If a candidate receives a majority of the first choices, that candidate shall be declared elected and the counting shall end.

2. If no candidate receives a majority of the first choices during the first round of counting, the second round of counting (the “instant runoff”) begins. The last place candidate, or candidate with the fewest number of first choices, shall be eliminated. On ballots that indicate a first choice for the eliminated candidate, the voter’s second choice is counted for the candidate so designated such that each ballot is counted as a single vote for its highest ranked continuing candidate. If, following the second round of counting, a candidate receives a majority of votes from the continuing ballots, that candidate shall be declared elected and the counting ends.

3. If, following the second round of counting, no candidate receives a majority of the votes cast on the continuing ballots for that office, the third round of counting shall begin. The last place candidate shall be eliminated. Voters for the eliminated candidate shall have their ballot counted for their next-choice candidate such that each ballot is counted as a single vote for the highest ranked continuing candidate. If, following this third round of counting, a candidate receives a majority of the votes from the continuing ballots, that candidate shall be declared elected and the counting shall end.

4. If, following the third round of counting, no candidate receives a majority of the votes cast on the continuing ballots for that office, the process of eliminating candidates and conducting new rounds of counting, as described in Subsection 3, shall be repeated until one candidate has a majority of votes from the continuing ballots. Ties shall be resolved in accordance with Section 4.

5. If the total number of votes of two or more candidates credited with the lowest number of votes is less than the number of votes credited to the candidate with the next highest number of votes, those candidates with the lowest number of votes shall be eliminated

simultaneously and those ballots shall each be counted for the next-ranked continuing candidate on that ballot in a single counting operation.

Section 3: VOTING CONDITIONS AND LIMITATIONS

1. The ballot shall allow voters to rank a number of choices equal to the total number of candidates appearing on the ballot for that office. However, if the voting system, vote tabulation system or similar or related equipment used by the City or County cannot feasibly accommodate the number of choices equal to the total number of candidates running for each office, then the governing body may limit the number of choices to no fewer than three.
2. If a voter skips a ranking, the voter's ballot shall be counted for that voter's next ranked choice.
3. If a ballot has more than one candidate indicated at a certain ranking, that ballot shall be declared an overvote when such multiple rankings are reached and cannot be counted towards any candidate in that round or any subsequent round of counting.
4. If a ballot has no more continuing candidates ranked on it and the ballot is not an overvote or undervote, that ballot shall be declared exhausted and not counted towards any candidate in that round or any subsequent round of counting.
5. Qualified write-in candidates shall be treated as any other candidate. The ballot must in no way interfere with a voter's ability to rank at least one write-in candidate.
6. Last place candidates are eliminated and continuing ballots counted for next ranked continuing candidates until one candidate has a majority of the continuing ballots. At that point, the candidate with the greatest number of votes is declared the winner.
7. No votes may be counted for a candidate who has been eliminated.

Section 4: DETERMINATIONS IN THE CASE OF A TIE

When two or more candidates tie for the lowest number of votes, the tie shall be resolved by lot with the candidate chosen by lot being eliminated.

Section 5: PROVISION TO MODIFY THE INSTANT RUNOFF VOTING BALLOT

The city or county governing body may provide for the use of mechanical, electronic or other devices for marking, sorting and counting the ballots and tabulating the results. The form of the ballots, the directions to voters, and the details with respect to the method of marking, sorting, counting, invalidating, and retaining of ballots, and the tabulating and recounting of votes will depend upon the voting system used. No change shall be made that will alter the intent or principles embodied in this law.

Section 6: REPORTING OF RESULTS

The Official Statement of Results shall include the following reports: the summary round-by-round report and the precinct-level round-by-round report. A ballot image report shall also be made available to the public.

1. The summary round-by-round report shall include (a) the total number of votes counted towards each candidate in each round of counting, (b) the total number of exhausted ballots in each round, (c) the total number of overvotes in each round, and (d) the total number of undervotes for the race. The number of overvotes and undervotes shall be reported separately from the number of exhausted ballots.
2. The precinct-level round-by-round report shall include the quantities in the summary round-by-round report, but organized by precinct. For example, for (a) the report shall include the number of votes cast at each precinct that counted towards each candidate, in each round of counting.
3. The ballot image report shall include a list of the choices indicated on each ballot, including skipped or duplicate rankings. The elections official shall prevent the identification of votes. At minimum, the report shall include the ordered list of candidates that each ballot counted towards during the election.
4. Preliminary versions of the summary round-by-round report and the ballot image report

shall be released as soon as possible, preferably on election night. At minimum, first choice totals of all candidates shall be released on election night, if technology permits. Preliminary results for the first IRV tally shall be released by the end of the business day following the election, if possible. More complete preliminary election results, summary round-by-round report, and ballot image report may be made available to the public at least twice a week, if possible as more ballots are counted. Each report shall be released in formats including plain-text digital format and, if possible, be posted on the Elections Official's website.

Section 7: MANUAL ONE-PERCENT TALLY

In each selected precinct, the manual one-percent tally shall be conducted as follows:

The ballot-counting procedures in Section 2 shall be followed, with the following differences. After each round of manual counting of the randomly selected 1% of precincts, the number of votes counted towards each candidate, the number of exhausted ballots, and the number of overvotes shall be checked against the numbers listed in the precinct-level round-by-round report. After each round, the candidates to be eliminated shall be determined not by the totals for the precinct, but by the candidate totals in the summary round-by-round report for the entire election.

The total number of undervotes for the selected precinct shall also be checked against the numbers in the precinct-level round-by-round report.

Definitions

1. "Instant Runoff Voting," also known as a form of Ranked Choice Voting, means a system of voting in which voters rank the candidates in order of preference by indicating a first choice, a second choice, a third choice, etc. up to as many choices as are permitted on the ballot so that a winner may be determined by majority support in each election
2. "Choice" means an indication on a ballot of a voter's assigned ranking of candidates

(i.e. first choice, second choice, third choice, etc.) for any single office according to the voter's preference.

3. "Vote" means a ballot choice that is counted toward the election of a candidate. During each round of counting, each continuing ballot contains one vote. All first choices are votes and lower ranked choices are potential runoff votes that may, in accordance with the requirements of this chapter, be credited to and become votes for a candidate.

4. "Majority of the votes" means more than half of the votes cast on continuing ballots.

5. "Single winner race" means an election contest in which there is one seat to be elected for a single office.

6. "Round of counting" or "round" means a step in the counting process during which votes for all continuing candidates are tabulated for the purpose of determining whether a candidate has achieved a majority of the votes cast for a particular office, and, absent a majority, which candidate or candidates must be eliminated.

7. "Continuing candidate" means a candidate who has not been eliminated in a previous round or in the current round of counting.

8. "Continuing ballot" means a ballot counting towards some continuing candidate.

9. "Next choice" means the highest ranked choice for a continuing candidate.

10. "Last place candidate" means a candidate who has received the fewest votes among the candidates who remain at any round of counting.

11. "Exhausted ballot" means a ballot on which all of the choices have been eliminated or there are no more valid choices indicated on the ballot. An exhausted ballot shall not be counted in further rounds of counting. Overvotes and undervotes are not counted as exhausted ballots for purposes of reporting.

12. "Overvote" means a ballot not counted towards any candidate in a round of counting because more than one candidate was indicated as the next choice in a previous round or the current round.

13. “Undervote” means a ballot not counted towards any candidate in the first and later rounds of counting because no valid choice is indicated on the ballot.