


Office of the City Manager

ACTION CALENDAR

October 14, 2003

To: Honorable Mayor and
Members of the City Council
From:  Weldon Rucker, City Manager
Subject: Options to Change the Date of Runoff Elections (CF 13-03)

RECOMMENDATION

1) Determine whether the Council desires to place a charter amendment on either the March or November 2004 ballot to change the date of runoff elections based on one of the scenarios listed below and if so direct the City Clerk to prepare the appropriate documents to call the election and consolidate with Alameda County and 2) If the Council desires to place a charter amendment on either the March or November ballot, provide direction to the City Clerk and City Attorney on the date of the runoff and the date that elected officials take office.

1. Election Dates

Changing the date of the runoff would require amending various sections of the Charter and can affect the terms of office of council members in order to avoid a long, lame duck period for the retiring incumbent. A charter amendment approved by the voters in March 2004 would allow for any new runoff date as proposed in Scenarios A and B to be effective with the November 2004 General Municipal Election. A charter amendment as proposed in either Scenarios A, B or C approved by the voters in November 2004 would provide that any new runoff date would be effective for elections held in 2006.

Scenarios A and B are based on the general municipal election being held on the first Tuesday after the first Monday in November of the even-numbered years. Scenario C changes both the date of general municipal election as well as the date of the runoff election to coincide with the statewide primary and statewide general elections.

Scenario A November 2004/February 2005 - Runoff Election held on the first Tuesday after the first Monday in February of odd-numbered years.

Scenario B November 2004/March 2005 - Runoff Election held on the first Tuesday after the first Monday in March of odd-numbered years.

Scenario C March 2006/November 2006 - This scenario replicates the City of Oakland model. In this scenario, the general municipal election would be held on the first Tuesday in March of even-numbered years (statewide direct primary) and if necessary a runoff election would be held on the first Tuesday after the first Monday in November of even-numbered years (statewide general).

2. Date of Taking Office and Terms of Office

If the Council chooses to place a charter amendment on the ballot changing the date of elections, it would also need to revisit and amend when the terms of office of council members begin or end and/or when newly elected officials take office.

Article V, Sections 14 through 16 currently state that the auditor, mayor, council members and school board members hold office for a period of four years from and after the first day of December after his or her election is certified by the City Clerk and until a successor is elected and qualified. Article XVII, Section 122(1) states that rent stabilization board commissioners serve terms beginning on the first day of the month following their election.

While runoff elections only apply to the offices of auditor, mayor and council members, the Council would also need to decide whether or not the terms of rent stabilization board commissioners and school board directors would stay the same or change to coincide with any new terms established for other offices.

Assuming there would be no change in the dates that rent board and school board members take office, staff has presented two options for terms of office for the auditor, mayor and council members that can be applied to any of the scenarios. These options are described below and illustrated in the attached chart.

Option 1 This option is similar to the current situation in that elected officials not subject to a runoff take office after certification of the general election and officials elected at a runoff take office after certification of the runoff. With this option, if there is a runoff, the person elected in a runoff election will serve a term shorter than four years. All persons elected at the general election will be seated within a month after the general election and will serve a full four-year term. See attached chart.

Option 2 With this option the terms of all elected officials start and end at the same time and terms of office are four-years. Term dates start approximately one month after the date of the established date for a runoff, whether or not a runoff election is required. See attached chart.

Depending on which scenario the Council selects for the date of the runoff election and the preference for taking office, the charter will need to be amended to reflect any changes to terms of office.

FISCAL IMPACTS OF RECOMMENDATION

Potential Cost Savings:

Under the current situation of requiring runoff elections four weeks after the general election, the City Clerk must expend monies well in advance of even knowing whether a runoff election is required. Staff must contract for printing and mailing services and order ballot materials several months in advance of any election. Staff must also make a call, without benefit of final vote tabulations, to place certain candidate's names on ballot material and mail ballot material to registered voters. In 1998 the semi-final election results for a hotly contested mayoral race indicated that a runoff election would be unnecessary. However the City had already spent over \$100,000 to prepare for a runoff election. If the results had been close on election night, the City Clerk could have spent another \$150,000 to mail out and process ballots prior to receiving final election results.

Cost to place Measure on March Ballot:

The City must pay actual costs of printing and translation of ballot materials including the measure text and arguments in three languages. This cost varies depending on the length of the measure, and is estimated at \$10,000 for each measure.

Alameda County also bills each city for its pro rata share of printing the ballots and administering the election. This cost varies depending on the number of jurisdictions participating in any given election. The more jurisdictions that consolidate for any given election, the more this cost can be shared among jurisdictions. The Alameda County Registrar of Voters has provided the City Clerk with an estimate of \$1 per registered voter for a March 2004 election and \$ 0.50 per registered voter for a November 2004 election. However these are merely estimates. Based these on these estimates the cost for placing measures on the March 2004 ballot would be approximately \$80,000 plus the cost of each measure.

CURRENT SITUATION AND ITS EFFECTS

The Berkeley Charter, Article V, Section 9, establishes that to be elected to an office, a candidate for auditor, mayor, and council member must receive at least 45% of the votes cast for each such office. In the event that no candidate for auditor, mayor and council member for one or more council offices receives at least 45% of the votes cast for that office, a runoff election shall be held four weeks after the initial election between the two candidates receiving the most votes and that no other issues shall appear on the ballot of any runoff election.

There are several problems in planning for and conducting a runoff election 28 days after the general municipal election including: 1) the City Clerk can not meet California Elections Code deadlines related to the timing of publishing a notice of election and mailing sample ballots to voters; 2) the runoff election must be called and balloting begin prior to knowing whether or not a runoff election is required; 3) the City must incur costs in advance of knowing whether or not an election is necessary; and 4) there is insufficient time for the City and candidates to notify voters of the runoff. More detail about each of these issues is provided for in the background section of this report.

BACKGROUND

At the Council meeting of May 13, 2003 the Council directed the City Clerk to explore possible changes to the charter and options for extending the time period between the general and runoff elections and scheduling special elections to coincide with the next regularly scheduled election.

This report presents information on the current situation; the problems associated with the current runoff schedule; and alternative runoff dates for Council consideration. This report also speaks briefly to other alternatives in combination or in place of changing the date of the runoff.

Under the current Charter requirements that a runoff election be conducted four weeks after the initial election, the voters, candidates and City staff are faced with an unrealistic situation fraught with problems and strategic obstacles and one that is likely to result in calling for an election that need not occur and/or placing the wrong candidates on the ballot.

Problems with 28-day runoff election

1. Deadlines for publishing notice of election and mailing sample ballots per the Election Code.

Article III, Section 5(1) of the Charter states unless otherwise provided in the charter all elections shall be held in accordance with provisions of Election Code. Conducting a runoff election within four weeks of the general municipal election is in conflict with several sections of the Election Code. Election Code Section 12101 requires that a notice of election be published not earlier than the 127th day nor later than the 113th day before any municipal election. Election Code Section 13303 requires that sample ballots be mailed not more than 40 nor less than 21 days before the election to each voter who is registered at least 29 days prior to the election and shall include notice of polling places with the sample ballot.

Under the current situation the City Clerk publishes a notice of election and mails sample ballots along with original ballot approximately two and a half weeks prior to the runoff election. In addition the Alameda County Registrar of Voters is unable to provide the City with the most updated voter registration list during the period they are canvassing the November election.

2. Runoff Election must proceed in advance of certification of November election results.

Per Election Code 15372 the Alameda Registrar of Voters has until 28 days after the election to prepare a certified statement of the results of the election. Per Election Code 10263, for consolidated elections, the City Council has until the third Friday following presentation of the 28-day canvass of the returns to declare the results and to install the newly elected officers. Article III, Section 5 (10) of the Charter requires the Council to meet on the first Tuesday after the election, including any runoff election, to receive the certification of results prepared by the City Clerk. The Clerk is to canvass results of the election in accordance with procedures established in the Election Code.

The City generally receives the 28-day canvass from the Registrar of Voters anywhere between 21 and 28 days after the election. The City Clerk cannot wait until the canvass is complete to be sure a runoff election is necessary and in some cases may not even be sure who the top two candidates in any given race may be. In the past two runoff elections (District 7 – 1996) and (District 8 – 2002) vote tallies changed daily and final results were not received until a few days before the end of the runoff. In either of these elections, the Clerk could have held an election that was not necessary.

In order to ensure voters have ample opportunity to vote, especially since the current election cycle includes only 17 business days and several holidays (*Veterans Day and Thanksgiving*), the City Clerk orders the final printing of ballot material within a week of the general election and mails the voter pamphlet and ballots by the end of the second week after the general election to give voters approximately two weeks after receipt of ballots to consider their choice and vote. As a result the Clerk is making a call that a runoff election is necessary and whom the top two candidates are based on election night results and a small sampling of absentee ballots, without having complete information on the numbers of absentee and provisional ballots yet to be processed.

3. City incurs cost for planning and contracting for runoff election services and supplies in advance of knowing whether or not a runoff is necessary.

Since the runoff election is held only four weeks after the general election, Alameda County will not conduct this election. As a result the City Clerk must conduct the runoff election as a stand alone election and is responsible for all planning, preparation, and operations including: 1) setting up and testing computer voting software programs; 2) reviewing election laws; 3) preparing schedules, procedures, and informational pieces; 4) designing and preparing voter pamphlets and other balloting materials; 5) obtaining up-to-date voter registration files from the County; 6) contracting for and obtaining printing services, ballot materials and other election supplies; 7) contracting for vote counting equipment and ballot mailing services; and 8) hiring and training temporary staff.

The City Clerk must start this planning process as early as January in an election year and must contract for election supplies and services several months in advance of the election. The decision on the quantity of supplies is based on how many candidates file nomination papers for any given office. Time and money is expended well in advance of knowing whether a runoff election is necessary. While no runoff election was held in 1998 the City spent approximately \$100,000 in preparation of a runoff for a hotly contested mayoral race.

4. Voter awareness and participation is limited.

Voter outreach and participation is severely impacted by the short turn around time between the general election and the runoff election. Many voters and the candidates have expressed concern that people aren't aware that there is another election despite publicity on the part of the City and

the candidates and others are frustrated that the runoff election falls during a holiday season when many people are out of town or heavily committed.

The City has expanded voting opportunities by conducting the past few runoff elections by mail, and by providing extended evening, weekend, and holiday hours in the City Clerk Department during the two-week voting period. However, the mail service has been an issue during the holiday season and many students and other residents are gone during a good portion of the voting period.

RATIONALE FOR RECOMMENDATION

Changing the date of the runoff election will provide for: 1) compliance with election laws; 2) better election administration; 3) cost savings in planning for runoff elections; and 4) better voter outreach and increased voter participation.

ALTERNATIVE ACTIONS TO BE CONSIDERED

The Council may wish to consider other alternatives as described below:

1. Amend the charter to reduce the threshold to trigger a runoff election from 45% to a number such as 40%.

This alternative could be considered with or without changing the date of the runoff election. However if Council desires to place a measure on the ballot reducing the threshold for a runoff, staff still recommends changing the date of the runoff election to address concerns raised in this report.

2. Amend the charter to eliminate runoff elections and require a simple plurality (highest vote getter wins) to be elected.

If Council desires to amend the charter to elect the auditor, mayor, and council members by plurality, as school board members and rent stabilization board commissioners are, there would be no need to amend the charter to change the date of the runoff election.

3. Amend the charter to provide for IRV (instant runoff voting).

On December 19, 2000, the City Council directed staff to study the feasibility of implementing and transitioning into an instant runoff voting system. On May 14, 2002 the City Clerk presented a report indicating that instant runoff voting was not yet feasible in Alameda County and also presented charter language that could be placed on the November 2002 ballot to allow for instant runoff voting when feasible. At the Council meeting of June 11, 2002 the Council failed, on a four-five vote, to place the measure on the ballot.

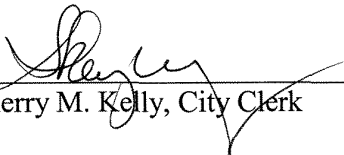
On May 13, 2003 the Council directed the City Clerk to once again explore the feasibility of instant runoff voting. In response to Council direction, the City Clerk has prepared a separate report for this meeting updating the Council on the feasibility of implementing instant runoff voting. This report advises the Council that instant runoff voting has not yet been implemented in any city or county in California and that there are still issues that need to be resolved in the city and county of San Francisco, with the Secretary of State, and with the Alameda County Registrar of Voters.

Since it is unlikely that the City of Berkeley will be able to implement instant runoff voting in the immediate future, staff recommends proceeding with a charter amendment to change the date of the runoff election to address the immediate concerns with the date of the runoff and consider placing a measure on the November 2004 ballot to allow for instant runoff voting, when feasible.

CONTACT PERSON

Sherry M. Kelly, City Clerk, 981-6900

Approved:



Sherry M. Kelly, City Clerk

Attachment – Options Matrix

Election Dates/Dates to Take Office/Terms of Office

Scenario	Description	Election Dates		Terms and Dates to Take Office	
		General	Run-Off	Option 1	Option 2
A	<p>General Election held the first Tuesday after the first Monday in even-numbered years.</p> <p>The Runoff Election is held on the first Tuesday after the first Monday in February in odd-numbered years.</p>	November 2004	February 2005	<p>Elected officials not subject to a run off take office December 1, 2004.</p> <p>Officials elected in a runoff election take office March 1, 2005.</p> <p>All terms expire November 30, 2008 or until a successor is elected.</p>	<p>All elected officials take office March 1, 2005.</p> <p>All officials serve 4-year terms.</p> <p>All terms expire last day of February 2009.</p>
B	<p>General Election held the first Tuesday after the first Monday in even-numbered years.</p> <p>The Runoff Election is held on the first Tuesday after the first Monday in March in odd-numbered years.</p>	November 2004	March 2005	<p>Elected officials not subject to a runoff take office December 1, 2004.</p> <p>Officials elected in a runoff election take office April 1, 2005</p> <p>All terms expire November 30, 2008 or until a successor is elected.</p>	<p>All elected officials take office April 1, 2005.</p> <p>All officials serve 4-year terms.</p> <p>All terms expire March 31, 2009.</p>

Election Dates/Dates to Take Office/Terms of Office

Scenario	Description	Election Dates		Terms and Dates to Take Office	
		General	Run-Off	Option 1	Option 2
C	<p>General Election is held the first Tuesday after the first Monday in March in even-numbered years. (statewide primary election)</p> <p>Runoff election is held the first Tuesday after the first Monday in November in even-numbered years. (statewide general election)</p>	March 2006	November 2006	<p>Elected officials not subject to a runoff take office April 1, 2006.</p> <p>Officials elected in a runoff election take office December 1, 2006.</p> <p>All terms expire March 31, 2010 or until a successor is elected.</p>	<p>All elected officials take office December 1, 2006.</p> <p>All officials serve 4-year terms.</p> <p>All terms expire November 30, 2010.</p>

* Other alternatives to consider:

1. Amend the charter to reduce the threshold to trigger a runoff election from 45% to a lower number such as 40%.
2. Amend the charter to eliminate runoffs and require a simple plurality (highest vote getter) to be elected.
3. Amend the charter to provide for IRV (instant runoff voting). This alternative may not be available for several years.