

SAN FRANCISCO ELECTIONS COMMISSION

2022 ANNUAL REPORT - DRAFT

January 1, 2022 – December 31, 2022

Prepared by:

Christopher J. Jerdonek
2022 President (starting July 20, 2022)

Approved by the Commission on:

XXX

San Francisco Elections Commission
1 Dr. Carlton B. Goodlett Place, Room 48
San Francisco, CA 94102
<https://sf.gov/departments/elections-commission>
elections.commission@sfgov.org

Table of Contents

1. Introduction
2. Commission Membership & Executive Officers
 - 2.1. Commission Membership
 - 2.2. Executive Officers
 - 2.3. Committees
3. Staffing & Administration
4. Commission Meetings

- 2022 Discussion Topics (Secs. 5 – 13)
5. Elections
 - 5.1. Elimination of Odd-Year Elections (November 2022’s Proposition H)
6. Election Results Reporting

- Voting Systems & Technology (Secs. 7 – 9)
7. Open Source Voting
8. Current Voting System (Dominion Voting Systems)
 - 8.1. Letter Regarding Statements in Media by Dominion Sales Representative
 - 8.2. Sealed Report Regarding Security Flaws in Dominion’s ImageCast X
 - 8.3. Extension of Contract with Dominion Voting Systems
9. Internet Voting

10. Department Oversight Processes
 - 10.1. Review of Department Budget
 - 10.2. Information Requested by Commission
 - 10.3. Director Appointment & Evaluation Process
11. Racial Equity & Diversity, Equity, Inclusion, Belonging, Justice (DEIBJ) Initiatives
12. Hearing with Redistricting Task Force Appointees
13. Redistricting Process Initiative

Appendices & Attachments

14. Appendices

- A. Commission Bylaws relating to the Annual Report
- B. Open Source Voting Background

15. Attachments

- 1. Open Source Voting History in San Francisco “At a Glance”
- 2. Commission President Letter to Dominion Sales Representative
- 3. Elections Commission’s “List of Regularly Requested Information”
- 4. Elections Commission’s “Resolution on Extending the City’s Contract with Dominion Voting Systems”
- 5. 2022 Review: Elections Commission Racial Equity Discussion Lookback
- 6. Elections Commission’s “Resolution on Ramaytush Ohlone Land Acknowledgment”

1. Introduction

This is the 2022 Annual Report of the San Francisco Elections Commission, prepared in accordance with the Elections Commission’s Bylaws.¹

Per the Bylaws, the annual report “shall cover the calendar year from January 1 through December 31” and shall be drafted by the President serving at the conclusion of the year. It shall contain “the President's report of the activities of the Commission during the previous year, as well as any other information the President deems significant and of likely assistance to subsequent Commissions.” See Appendix A of this report for a copy of all sections of the Bylaws relating to the annual report.

Though I was the Commission President serving at the end of the year, I served as President for only the last five months of the year. I was elected Vice President on June 15, became acting President on June 30 due to the resignation of the President at that time, and was elected President at the July 20 meeting.

1.1. History and Uniqueness of Elections Commission

The year of this report marks the Commission's twentieth anniversary. The voters of San Francisco established the Elections Commission when they passed a Charter amendment called Proposition E during the November 6, 2001 Consolidated Municipal Election (see Charter Sec. 13.103.5.). The Commission assumed authority on January 1, 2002. Thus, the Commission has been overseeing elections in the City and County of San Francisco for over twenty years now.

¹ Elections Commission Bylaws (as of April 19, 2023): <https://sf.gov/sites/default/files/2023-11/SF%20Elections%20Commission%20Bylaws%20-%20Updated%20April%202023.pdf>

San Francisco is the only county in California with a policy-making body dedicated to overseeing its elections. Moreover, crucially, the Commission is independent. Each of its seven members is appointed by a different government entity. In addition to providing oversight and setting policies for the Department of Elections, the Commission provides the public with transparency into its elections and the operations of the Department.

The improvement in San Francisco's elections over the past twenty years can in part be attributed to the Commission's unique structure and the forum it provides the public. The Commission provides the public a regular place to learn, ask questions, express concerns, and offer suggestions. Many suggestions for improvements have come not just from Commissioners but also members of the public at Commission meetings. Regular monthly meetings also allow for long-term follow through. Many "unexciting" details go into ensuring free, fair, and functional elections. A Commission provides the public regular access and opportunity to **provide input into** those details, without which there would be less transparency and accountability.

Only three other counties in California have a similar body, and unlike San Francisco, those bodies are advisory and report to their County Boards of Supervisors. Moreover, two of them formed only in the past couple years. In 2008, Santa Clara County's Board of Supervisors formed a five to seven member Citizens' Advisory Commission on Elections (CACE).² In March 2022, Riverside County's Board of Supervisors formed a seven-member Election Advisory Committee.³ Finally, following some election issues, in June 2023 Alameda County's Board of Supervisors established a thirteen-member Elections Oversight Commission⁴ modeled partly on San Francisco's Elections Commission.

1.2. Personal Note

On a personal note, 2023 will be my last year on the Commission since my second term ends on January 1, 2024. I was first appointed by the Board of Supervisors in April 2014 and reappointed in 2019. I was also President for a full term in 2015 and 2017. I am thankful for the opportunity to serve San Francisco, and I am thankful to my fellow Commissioners, to Director John Arntz, to all the Department of Elections staff, and to the Commission's current and former staff—all for their service in pursuit of improving elections in San Francisco.

² Santa Clara Citizens' Advisory Commission on Elections (CACE): <https://sccgov.iqm2.com/Citizens/Board/1060-Citizens-Advisory-Commission-on-Elections>

³ Riverside County Election Advisory Committee: <https://rivco.org/election-advisory>

⁴ Alameda County Elections Oversight Commission Press Release: <https://district5.acgov.org/alameda-county-establishes-elections-oversight-commission/>

2. Commission Membership & Executive Officers

The 2022 year was marked by much higher than average turnover and vacancies on the Commission, both in Commission membership and in its executive officer positions. (Normally executive officers don't change during the year.) This was due to one member's term ending and not seeking reappointment, the severe illness of another member, two resignations mid-year, and one appointing authority leaving their seat unfilled the whole year (for over two-and-a-half years by the end of 2022).

The year began with five members and two vacancies. By mid-summer, on July 1, the Commission was down to only four members, or quorum. During this time, then, all Commissioners had to be present at meetings to take action, and all votes had to be unanimous to pass. This lasted for over two months until Commissioner LiVolsi was sworn in.

July 1 was also the day where the cumulative experience of the Commission was at its lowest point. On July 1, only two Commissioners had been on the Commission for more than five months (Commissioner Bernholz for about four years and me for about eight years).

2.1. Commission Membership

2.1.1. Membership at Start of 2022

Two seats were vacant at the beginning of the year. The Board of Education's seat was last held by Charlotte Hill nearly two years before, when she left office on March 19, 2020. The City Attorney's seat was last held by Roger Donaldson when he left office on September 22, 2021.

Name	Position	Started	Term End	Appointed By
Becca Chappell	President	1/15/2021	1/1/2026	Public Defender
Charles Jung	Vice President	11/1/2013	1/1/2023	Mayor
Lucy Bernholz		9/14/2018	1/1/2024	Treasurer
Christopher Jerdonek		4/1/2014	1/1/2024	Board of Supervisors
Viva Mogi		4/13/2017	1/1/2022	District Attorney
<i>Vacant</i> (since March 20, 2020)		1/1/2018	1/1/2023	Board of Education
<i>Vacant</i> (since September 23, 2021)		1/1/2020	1/1/2025	City Attorney

2.1.2. Membership Changes

Date	Description of change
February 10, 2022	Cynthia Dai was sworn in for a term ending 1/1/2025. She was appointed by City Attorney David Chiu.
March 1, 2022	Commissioner Mogi's term ended on 1/1/2022, though she served an additional sixty days for the maximum hold-over period. At the January 19, 2022 meeting, she announced she would not be seeking an additional term. She had been appointed by the District Attorney.
March 7, 2022	Robin Stone was sworn in for a term ending 1/1/2027. She was appointed by District Attorney Chesa Boudin. <i>Note: Commissioner Stone was sworn in as Robin M. Shapiro. At the September 21, 2022 meeting, it was announced that Commissioner Shapiro's new last name is Stone. To avoid confusion, I will always use Commissioner Stone in this document.</i>
May 18, 2022	Commissioner Jung resigned. His term would have ended 1/1/2023. He had been appointed by the Mayor.
June 30, 2022	President Chappell resigned. Her term would have ended 1/1/2026. She had been appointed by the Public Defender.
September 12, 2022	Renita LiVolsi was sworn in for a term ending 1/1/2026. She was appointed by Public Defender Manohar Raju.
October 14, 2022	Nancy Hayden Crowley was sworn in for a term ending 1/1/2023. She was appointed by Mayor London Breed.

2.1.3. Membership at End of 2022

Name	Position	Started	Term End	Appointed By
Christopher Jerdonek	President	4/1/2014	1/1/2024	Board of Supervisors
Robin Stone	Vice President	3/7/2022	1/1/2027	District Attorney
Lucy Bernholz		9/14/2018	1/1/2024	Treasurer
Cynthia Dai		2/10/2022	1/1/2025	City Attorney
Nancy Hayden Crowley		10/14/2022	1/1/2023	Mayor
Renita LiVolsi		9/12/2022	1/1/2026	Public Defender
<i>Vacant</i> (since March 20, 2020)		1/1/2018	1/1/2023	Board of Education

2.2. Executive Officers

This section describes who the Commission's executive officers were in 2022.

Per the Commission's Bylaws, the election of Commission executive officers happens during a Commission meeting in January of each year. Terms are one year and begin at the conclusion of the meeting in which elections are held.

The table below lists the changes in the Commission's executive officer positions.

Date	Description of change
January 19, 2022	At the January 19 meeting, the Commission elected Commissioner Bernholz President and Commissioner Chappell Vice President.
May 18, 2022	At the May 18 meeting, President Bernholz reported during the Commissioners' Reports agenda item that she had to resign as President because of health issues related to long COVID. This is also why she has had to attend meetings remotely. She also explained that there is a rule that meetings cannot be chaired by a President that is attending remotely. Per the Commission's Bylaws, Vice President Chappell assumed the President's duties.
June 15, 2022	At the June 15 meeting, the Commission elected Commissioner Chappell President and Commissioner Jerdonek Vice President.
June 30, 2022	President Chappell resigned from the Commission. Per the Commission's Bylaws, Vice President Jerdonek assumed the President's duties.
July 20, 2022	At the July 20 meeting, the Commission elected Commissioner Jerdonek President and Commissioner Stone Vice President.

The table below shows graphically who the executive officers were at any point in time during the year.

Date	President	Vice President
January 19, 2022 meeting	Bernholz	Jung
		Chappell
May 18 meeting	Vacant	Jerdonek
June 15 meeting	Chappell	
June 30 (between meetings)	Vacant	Stone
July 20 meeting	Jerdonek	
January 18, 2023 meeting	Stone	Jerdonek

2.3. Committees

In 2022, the Commission had only one committee, its three-member Budget and Oversight of Public Elections Committee (BOPEC).

BOPEC met only twice in 2022, on January 28, 2022 and on August 10, 2022. The committee leadership and membership during those two meetings is shown in the table below.

Meeting Date	Name	Position
January 28, 2022	Lucy Bernholz	Chair
	Becca Chappell	
	Christopher Jerdonek	
August 10, 2022	Robin Stone	Chair
	Cynthia Dai	
	Christopher Jerdonek	

BOPEC met only twice in part because it no longer had regularly scheduled meetings. Rather, it met on an as-needed basis when convened by the President. This was due to a change the Commission made to its bylaws on April 21, 2021. From the Commission’s bylaws:

ARTICLE VII: COMMITTEES

Section 1. Budget and Oversight of Public Elections Committee

The Commission shall establish one standing committee, the Budget and Oversight of Public Elections Committee (BOPEC). Subject to applicable notice requirements, the Commission President may, at their discretion, convene a meeting of the BOPEC and appoint its members.

3. Staffing & Administration

- John Arntz continued to serve as the Director of Elections.
- Martha Delgadillo served as the Commission Secretary until November 4, at which point she went on leave. The position was part-time (20 hours per week). The Commission did not have a Secretary for the remainder of the year.
- Deputy City Attorney Ana Flores served as the Commission’s main attorney by attending most meetings throughout the year. Deputy City Attorney Andrew Shen assisted until he left the City Attorney’s Office on September 2. Deputy City Attorney Brad Russi took over Deputy City Attorney Shen’s role on September 6 and occasionally filled in. For example, he attended the November 16, 2022 meeting.

3.1. Social Media

The Commission continued to maintain both a YouTube account⁵ for hosting meeting videos and a Twitter account⁶ (since September 2014) for posting meeting-related announcements. The Twitter account, however, wasn't used consistently in 2022 due to the limited time of the Commission Secretary (due to it being a part-time position). Below is some additional information for historical tracking purposes. As of October 2023—

- The Commission's YouTube channel had 39 subscribers and 160 videos.
- The Commission's Twitter account had 373 followers.

4. Commission Meetings

In 2022, the full Commission had eleven meetings (not including three cancelled meetings) and two BOPEC meetings. The two bullets below contain information about the length of the meetings.

- The average length of the full Commission meetings (by video length, so not including closed sessions) was 3 hours and 39 minutes. The shortest meeting was 1 hour and 29 minutes on January 19, 2022. The longest was 6 hours and 58 minutes on April 8, 2022.
- The average length of the two BOPEC meetings was 2 hours and 1 minute (1 hour, 5 minutes and 2 hours, 57 minutes).

The table on the following page shows the full list of meetings, along with a link to the video for each meeting.

⁵ Commission YouTube channel: <https://www.youtube.com/channel/UCAXKDcd6YQ4FxHFUp8Hb5Jg>

⁶ Commission Twitter account: <https://twitter.com/SFElectionsComm>

2022 Commission and Committee Meetings

The table below shows all Commission meetings in 2022 in chronological order, including committee meetings and cancelled meetings. In the “Notes” column, an “R” indicates the meeting was held remotely rather than in-person, and a “C” indicates the meeting had a closed session agenda item. Meeting durations in the “Duration” column were obtained from the length of the public video, so they do not include the length of closed session portions.

Date	Type	Notes	Duration	Video
January 19, 2022	Commission	(R)	1:28:54	https://www.youtube.com/watch?v=nGlyai7kErM
January 28, 2022	BOPEC	Special (R)	1:04:59	https://www.youtube.com/watch?v=_P1wA8LxSsQ
February 14, 2022	Commission	Special (R)	1:40:31	https://www.youtube.com/watch?v=vAvc-GV1GDs
March 16, 2022	Commission	Cancelled		
April 6, 2022	Commission	Special	4:20:15	https://www.youtube.com/watch?v=LVf0UOrV_Dc
April 8, 2022	Commission	Special	6:58:12	https://www.youtube.com/watch?v=nzJVpaTMmvk (Part 1) https://www.youtube.com/watch?v=xjhct83FGpQ (Part 2)
April 20, 2022	Commission	Cancelled		
May 18, 2022	Commission		3:43:10	https://www.youtube.com/watch?v=fjewH9F3KcU
June 15, 2022	Commission		3:23:27	https://www.youtube.com/watch?v=6tUr-NEr1Jc
July 20, 2022	Commission		2:03:34	https://www.youtube.com/watch?v=e3knAGLQiVs
August 10, 2022	BOPEC	Special	2:56:40	https://www.youtube.com/watch?v=TMT-6_cnUaU
August 17, 2022	Commission	Cancelled		
September 21, 2022	Commission	(C)	3:16:13	https://www.youtube.com/watch?v=m50-UtLdzRw
October 19, 2022	Commission		4:13:58	https://www.youtube.com/watch?v=lqEzL8xTHxA
November 16, 2022	Commission	(C)	4:09:19	https://www.youtube.com/watch?v=Pa_5YLZ4gBE
December 12, 2022	Commission	Special	4:53:25	https://www.youtube.com/watch?v=1S5VDFLqQHI
December 21, 2022	Commission	Cancelled		

5. Elections

The Department held four elections in 2022. The elections are listed below, along with the dates of the Elections Commission meetings during which the Commission (1) reviewed the Department's Election Plan for the election and (2) reviewed the election itself. The two elections marked with an asterisk (February 15 and April 19) were special elections. The reason for those elections is described after the table.

Election	Review of Plan	Review of Election
February 15, 2022 Consolidated Special Municipal Election*	December 15, 2021	April 6, 2022
April 19, 2022 Special General Election*	April 6, 2022	May 18, 2022
June 7, 2022 Consolidated Statewide Direct Primary Election	May 18, 2022	July 20, 2022
November 8, 2022 Consolidated General Election	September 21, 2022	December 12, 2022

February 15, 2022 Consolidated Special Municipal Election.

The Department held a special election on February 15, 2022 because in October 2021 three recall petitions for members of the local Board of Education were certified as sufficient.

In addition to the three recall measures, the election also had contests for the offices of Assessor-Recorder and State Assembly, District 17. Assessor-Recorder was on the ballot because a vacancy was created when on February 2, 2021 Mayor London Breed appointed Assessor-Recorder Carmen Chu to serve as City Administrator. (On February 9, 2021, she appointed Joaquin Torres to serve as interim Assessor-Recorder.)

Similarly, the State Assembly seat was on the ballot because a vacancy was created when in September 2021 Mayor Breed appointed Assembly Member David Chiu to the position of San Francisco City Attorney.

April 19, 2022 Special General Election

The Department held a special election on April 19, 2022 because no candidate for District 17 State Assembly received a majority (50%+1) in the February 15, 2022 primary above.

5.1. Elimination of Odd-Year Elections (November 2022's Proposition H)

In the November 2022 election, voters passed a Charter amendment called Proposition H by 71% to 29%.⁷ The passage of Proposition H moved the elections for the local offices of Mayor, Sheriff, District Attorney, City Attorney and Treasurer from November of odd years (2023, 2027, etc.) to November of presidential election years (2024, 2028, etc.). This eliminated the need for the Department to run regular elections in odd years. Another consequence is that the November presidential elections would have a longer ballot.

6. Election Results Reporting

The Elections Commission discussed election results reporting at a few meetings in 2022. This started after the June 2022 election.

During the August 10, 2022 BOPEC meeting, BOPEC started discussing ways the Department could improve how it reports election results to the public. The starting point for the discussion was two documents included in the agenda packet of the meeting: a 1-page memo Commissioner Dai had first included as part of the agenda packet of the July 20, 2022 Commission meeting (when the June 2022 election was reviewed), and a longer, 16-page memo I wrote with pictures that also included a history of past Commission discussion of this topic.

Most of the issues raised during the BOPEC discussion related to the Department's election results summary page. The results summary page is the main way the Department communicates election results to the media and the public, both on Election Night and in the days after. Some of the issues also related to the reporting of ranked choice voting (RCV) results. San Francisco's first RCV election was nearly twenty years ago, in November 2004, and some of the RCV issues raised have been present since that first election.

Some of the observations made at the BOPEC meeting included—

1. The results summary page doesn't provide any indication that there are more ballots left to count. It doesn't say how many ballots are left to count, nor why there are more ballots to count (e.g. because of vote-by-mail ballots and provisional ballots).

Since so many ballots are cast by mail (it can be more than 90%), many ballots don't arrive at the Department until after Election Day. Consequently, up to around half of all ballots might not be counted until well after Election Day. This causes the voter turnout percent reported on Election Night to be much lower than its actual value. This has caused the media to underreport voter turnout by a large amount following the

⁷ November 8, 2022 Election Results: <https://sfelections.sfgov.org/november-8-2022-election-results-summary>

election.

The lack of visibility around the number of ballots left to count has also caused the media and voters to mistakenly blame RCV for the delay in knowing the final results of RCV contests. In truth, RCV contests don't take longer to tabulate than non-RCV contests. Rather, it is the processing of vote-by-mail and provisional ballots (signature verification, envelope extraction, ballot preparation, etc.) that requires additional time.

2. The summary page doesn't show which candidates would be elected for contests that have multiple winners (like Board of Education) or for RCV contests (like Mayor or District Attorney).
3. The summary page doesn't indicate which local measures are passing their required threshold, which can be different for different measures, e.g. 50% or 66 $\frac{2}{3}$ %.
4. The summary page shows only the first-choice vote totals for RCV contests. For the current winner and final-round vote totals, voters have to browse to a separate PDF using several clicks—and for each contest separately.

This has led to the media sometimes reporting only the first-choice totals of RCV contests, making it seem like the winner won with less than 50% of the vote.

5. Because of a limitation in the Dominion voting system that San Francisco started using in 2019, the Department no longer posts the round-by-round results of RCV contests in HTML format. The Department only posts them as PDF.

Some of the issues above had been raised or discussed in past years by the Commission. For example, issues (2) and (4) above were raised in a BOPEC meeting six years prior in 2016. The Commission's Open Source Voting System Technical Advisory Committee, or TAC for short, which met from 2017 to 2020, had also developed an open-source solution for some of these issues and presented the solution to the Commission at a past meeting (the memo in the agenda packet of the August 10, 2022 BOPEC meeting includes screenshots).

In response to the BOPEC meeting discussion, at the October 19, 2022 Commission meeting, the Director presented some short-term solutions his staff could implement for the November 2022 election. This would address some of the easier-to-address issues that were raised. The appendix to the October 2022 Director's Report (included in the agenda packet of that meeting) included screenshots of some of the planned solutions.

6.1. November 2022 Improvements to Results Reporting

Below are two screenshots from the results summary page of the November 8, 2022 election, showing a couple of these short-term solutions. The first screenshot shows how contests with multiple winners (like Board of Education) now show the winners. In the screenshot, they are shown in green.

MEMBER, BOARD OF EDUCATION

	Ballots Counted	Percentage
LISA WEISSMAN-WARD	149,996	21.94%
LAINIE MOTAMEDI	132,088	19.32%
ALIDA FISHER	121,292	17.74%
ANN HSU	117,152	17.14%
GABRIELA LÓPEZ	89,385	13.07%
KAREN FLESHMAN	73,744	10.79%
Write-in	0	0%
Total	683,657	100%

The second screenshot shows an example of an RCV contest. While the table still only shows the first-choice totals and doesn't show the winner or final-round totals, the text above the table now includes a link that goes directly to a PDF of the round-by-round totals. In contrast to previous elections, voters could now navigate to the results in a single click.

DISTRICT ATTORNEY (Ranked-Choice Voting Contest)

A candidate must receive 50%+1 votes to be elected. The table below shows only first-choice votes. The candidate shaded in green on the [RCV Results Report for District Attorney](#) has the most votes based on the total number of ballots counted. [Learn how RCV works.](#)

	Ballots Counted	Percentage
BROOKE JENKINS	125,576	46.01%
JOHN HAMASAKI	101,924	37.34%
JOE ALIOTO VERONESE	33,633	12.32%
MAURICE CHENIER	11,820	4.33%
Write-in	0	0%
Total	272,953	100%

7. Open Source Voting

Open source voting was a significant topic of discussion for the Commission in 2022, as it has been each year since 2015 (the year after Supervisor Scott Wiener’s open source voting resolution⁸ passed).

In 2022, the Commission’s discussions were focused mainly on the City’s attempt to conduct an SB 360⁹ pilot of an open source voting system during the November 8, 2022 election. While the pilot didn’t happen for reasons that will be discussed below, the City’s attempt did eventually lead to the elimination of the main obstacle that prevented the pilot from being approved in 2022.

The subsections below contain details about what happened in 2022, along with the most relevant background. Because open source voting has such a long history in San Francisco, this report also contains an Appendix B with more information about the history and past support. Attachment 1, Open Source Voting History in San Francisco “At a Glance,” also contains a summary of historical information in a more condensed, tabular form.

7.1. Recent Background and 2022 Timeline

On January 25, 2022, the Board of Supervisors unanimously passed the ordinance for a pilot that Board President Shamann Walton had introduced the previous month. Ordinance No. 012-22¹⁰ directed the Director of Elections to submit to the Secretary of State an application to conduct an open source voting pilot during the November 8, 2022 election, and to conduct the pilot if the Secretary of State approved the application. Mayor London Breed signed the ordinance on February 4, 2022.

President Walton had introduced the ordinance on December 14, 2021. The ordinance had six cosponsors: Supervisors Matt Haney, Rafael Mandelman, Gordon Mar, Dean Preston, Hillary Ronen, along with President Walton himself. The Commission also passed a resolution in support at its December 2021 meeting, as well as a resolution in November 2021 prior to its formal introduction.

The pilot was to be conducted with the help of the San Francisco-based nonprofit VotingWorks¹¹ using their open source voting system. VotingWorks had recently developed an open source voting system within the past few years. Their system is the only open source

⁸ File No. 141105 (Resolution #460-14):

<https://sfgov.legistar.com/LegislationDetail.aspx?ID=1946783&GUID=0725E575-B05E-4137-B771-E8BFD5B98237>

⁹ SB 360 (2013-2014) "Certification of voting systems":

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB360

¹⁰ San Francisco File No. 211303 (Ordinance #012-22):

<https://sfgov.legistar.com/LegislationDetail.aspx?ID=5363338&GUID=17F649C5-8994-4B55-BC46-BEF731449C51>

¹¹ VotingWorks: <https://www.voting.works/>

voting system currently used in US elections since multiple counties in Mississippi use it. (Later in the year, it was also piloted in three towns in New Hampshire during the November 2022 election.) VotingWorks also maintains an open source risk-limiting audit application called Arlo¹² that has been used by several counties in California, as well as about ten states outside of California.

The idea for the pilot came from a September 10, 2021 letter that VotingWorks sent to the Board of Supervisors, the Elections Commission, and the Director of Elections. In their letter, VotingWorks offered to help San Francisco pilot an open source voting system during the November 2022 election at no expense to San Francisco. As part of this, they offered to implement any needed additions to their system, service their system, provide on-site staff as needed, conduct a public demo in advance of the election, and help the Director draft the plan for the pilot to submit to the Secretary of State.

Director Arntz decided on a narrow scope for the proposed pilot. The pilot would be limited to a single VotingWorks ballot-marking device (BMD) in the City Hall Voting Center. Thus, no polling-place precincts or vote-by-mail ballots would be involved, and the creation and proofing of VotingWorks paper ballots wouldn't be necessary. The pilot would also be opt-in for voters. A voter could participate in the pilot by going to City Hall and choosing the VotingWorks BMD instead of the usual BMD made by Dominion, San Francisco's current vendor. After Election Day, the official vote totals for the ballots cast on the VotingWorks BMD would be tabulated by certified Dominion voting equipment. To do this, Department staff would manually remake the VotingWorks BMD ballots onto Dominion ballots using the same process the Department uses to remake damaged and faxed ballots, etc.

On February 7, 2022, the Department submitted its application to the California Secretary of State to conduct the pilot. This met the nine-month deadline specified in the California Elections Code.¹³ See the agenda packet of the Commission's February 14 meeting for a copy of the application. At that point, per the same state law, the California Secretary of State had three months to review the application.

In response to initial feedback from the Secretary of State's office, the scope of the pilot was reduced even further. For example, the step of tabulating the VotingWorks BMD ballots using VotingWorks' tabulator was removed. This further de-risked the pilot from a security perspective and further minimized the work required by the Department, in the hopes of increasing the chance of the application's acceptance further. This change also meant that ranked choice voting ballots would no longer need to be tabulated using VotingWorks equipment and then tested—only marking them.

¹² Risk-Limiting Audits with Arlo: <https://www.voting.works/risk-limiting-audits>

¹³ California Elections Code Section 19209: https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=ELEC§ionNum=19209.

One of the primary challenges San Francisco faced when applying to conduct a pilot is that the Secretary of State never developed the needed regulations that the system and pilot application would be judged against. SB 360 (2013-2014), the law the state legislature passed nine years prior that allowed voting system pilots, required the Secretary of State to adopt regulations for pilots. Moreover, for a pilot application to be approved, SB 360 said the voting system had to satisfy the regulations that were developed. Even after nine years, these regulations were never developed. Thus, it wasn't clear what requirements VotingWorks' system needed to satisfy before the pilot could be conducted.

Since state regulations normally take up to about a year to be developed and the Secretary of State hadn't yet started the process, the only hope was that the Secretary of State would adopt *emergency* regulations and approve the pilot application conditionally. Then, in the months leading up to the November election, VotingWorks could implement whatever changes were needed to meet those emergency regulations and that conditional approval. For example, before VotingWorks could use their BMD in a San Francisco pilot, VotingWorks knew they needed to add support for California and San Francisco-specific things like multi-language support and marking ranked choice voting ballots. In their September 2021 letter, VotingWorks had already offered to do additional work like this for free, at no cost to San Francisco. However, before investing this effort, VotingWorks wanted some assurance from the Secretary of State that their efforts wouldn't be wasted. This required knowing what not-yet-specified requirements they needed to meet.

On August 11, 2021, prior to VotingWorks' letter, Presidents David Canepa and Shamann Walton of the San Mateo and San Francisco County Boards of Supervisors, respectively, co-wrote a letter to Secretary of State Weber asking her to adopt the regulations required by SB 360 by November 8, 2021. This way, their counties could submit plans to conduct pilots during the November 8, 2022 election. (For a copy of this letter, see Attachment 2 of the "Memo re: Open Source Voting Pilots" included in the agenda packet of the Commission's September 22, 2021 meeting.)

In the months following San Francisco's February 2022 submission of an application, there was email correspondence between the California Secretary of State and the Department to clarify the plan and scope of the pilot, as well as conference calls with the California Secretary of State, Director Arntz, and VotingWorks in attendance. In the absence of regulations or emergency regulations, VotingWorks had offered to complete whatever extra voting system development was needed by August 31 if the application was conditionally approved by the Secretary of State. That would give time for VotingWorks to work with San Francisco on the changes that San Francisco needed, including incorporating any feedback from San Francisco and meeting whatever conditions the Secretary of State spelled out. The pilot could always be canceled later (and without affecting the rest of the election) if extra conditions weren't met.

On May 6, 2022, Secretary of State Weber wrote a letter denying San Francisco's application to conduct a pilot. The letter also said that the Secretary's Office had created an initial draft of regulations and that they would be starting the official process of developing regulations after

getting feedback on the initial draft. See the agenda packet of the Commission's May 18 meeting for a copy of this letter. Because the application was rejected before the Secretary of State communicated any regulations, no collaboration on voting system development ever happened between the Department of Elections and VotingWorks in the lead-up to the pilot.

During agenda item #8 ("Commissioners' Reports") of the Commission's November 16, 2022 meeting, in response to questions from Commissioners, VotingWorks went on record saying that they are still open to supporting a larger-scope pilot program. Namely, if they have support from the Secretary of State and the Director of Elections for a more complete pilot program that includes things like hand-marked paper ballots, ballot-marking devices, ranked choice voting, and ballot tabulation, and if the pilot plan is approved, they would commit to performing the work and agreeing to a contractual relationship to complete the work. During the previous pilot process, they had experienced resistance to a larger scoped pilot.

7.2. Postscript

State regulations for voting system pilots were eventually approved on March 29, 2023 and made effective on July 1, 2023, more than a year after the Secretary of State's May 2022 letter.¹⁴ This was ten years after the passage of SB 360, the bill that required the regulations to be developed. This was also nearly two years after the August 2021 letter that Board Presidents Canepa and Walton wrote to Secretary Weber, asking for the regulations to be developed.

Nine years ago, in a 2014 resolution¹⁵ introduced by Supervisor Scott Wiener, the Board of Supervisors adopted a policy for San Francisco to work with other organizations to create open source voting systems. A similar resolution was established even earlier by the Board in 2007 (Ammiano), with related follow-up hearings, policies, and actions by the Board in 2008 (Ammiano), 2018 (Cohen), 2019 (Mandelman), and 2022 (Walton). The Commission has also devoted considerable attention to and support for this policy year after year. Despite these policies and the 2022 application to conduct a pilot, San Francisco has yet to collaborate with an organization on the development of an open source voting system.

¹⁴ California Voting System Pilot Program Regulations: <https://www.sos.ca.gov/administration/regulations/current-regulations/elections/voting-system-pilot-program>

¹⁵ File No. 141105 (Resolution #460-14): <https://sfgov.legistar.com/LegislationDetail.aspx?ID=1946783&GUID=0725E575-B05E-4137-B771-E8BFD5B98237>

8. Current Voting System (Dominion Voting Systems)

8.1. Letter Regarding Statements in Media by Dominion Sales Representative

On January 12, 2022, President Bernholz wrote a letter to Dominion Voting's San Francisco sales representative (see Attachment 2). The letter asked the representative to respond regarding some disparaging remarks he was recently quoted in the media as making. The letter was included in the agenda packet of the Commission's January 19, 2022 meeting.

In November, the sales representative had been quoted in a November 14, 2021 article¹⁶ in the San Francisco Examiner as telling the Examiner, "The Elections Commission doesn't know anything about California elections" and "most people in San Francisco don't care about voting." In the month prior at its December 15, 2021 meeting, the Commission had discussed these remarks and how to proceed.

In her letter, President Bernholz wrote, "I invite you to submit a response regarding these remarks, including any explanation, clarification, or retraction." During the year and as of the writing of this report, the representative did not respond to the letter.

8.2. Sealed Report Regarding Security Flaws in Dominion's ImageCast X

On January 2, 2022, Dr. David Jefferson, a retired computer scientist and former UCLA professor, wrote a letter to the Commission about a recent report of security vulnerabilities in Dominion's ImageCast X (ICX) voting system. His letter encouraged the Commission to obtain a copy of the report. His letter is included in the agenda packet of the Commission's January 19, 2022 meeting.

As described in Dr. Jefferson's letter, Dr. J. Alex Halderman, a computer scientist at the University of Michigan, had examined and tested the ImageCast X in the context of a long-running federal court case in the Northern District of Georgia, *Curling v. Raffensperger*, and found dangerous security flaws and vulnerabilities. Dr. Halderman submitted his findings to the Court as a declaration. However, the Court required him to submit them as sealed, likely because of the severity of the findings and the Court's concerns about making them public. A previous declaration to the Court by Dr. Halderman that was not sealed (but was heavily redacted) also contained security concerns.

In November 2021, the Court indicated that it would consider allowing officials with a bona fide need for the sealed report to access the report. Because San Francisco also uses the ImageCast X, primarily for voters with disabilities, and so is potentially affected, Dr. Jefferson encouraged the Commission to request access to the report.

¹⁶ "How one company came to control San Francisco's elections," San Francisco Examiner, November 14, 2021 by Jeff Elder: https://www.sfexaminer.com/archives/how-one-company-came-to-control-san-francisco-s-elections/article_7ad03095-dc2e-55e3-911a-a04796e754c8.html

On January 28, 2022, President Bernholz wrote a letter to California Secretary of State Shirley Weber and forwarded the materials that Dr. Jefferson provided. The letter urged her to investigate and to share information with the public about the system's security. The Secretary of State's Office did not respond. The agenda packet of the Commission's February 14, 2022 meeting contains a copy of President Bernholz's letter under the "Commissioners' Reports" agenda item. The packet also contains additional materials related to *Curling v. Raffensperger* that became available since the Commission's previous meeting.

8.3. Extension of Contract with Dominion Voting Systems

In 2022, the Commission discussed San Francisco's contract with Dominion Voting Systems several times. Dominion is the voting equipment company that makes and sells the voting system that San Francisco uses. Specifically, the Commission discussed the extension of the contract.

In March 2019, the Board of Supervisors adopted Resolution #127-19,¹⁷ which approved a new contract between San Francisco and Dominion. The contract was to lease a new voting system from Dominion. The agreement was for four years for a contract term from January 1, 2019 through March 31, 2023. The amount was not to exceed \$8,460,000, and with two one-year options to extend at \$2,100,000 per year (for a total of \$12,660,000 if the City exercised both options). The agreement was deliberately short with two one-year options to extend. This gave the City the flexibility to switch to an open source voting system if one became available.

Historically, San Francisco first started using a voting system from Dominion in 2008. By 2022, San Francisco had paid a total of about \$30.4 million to Dominion, or an average of \$2.03 million per year.

At the January 28 BOPEC and February 14 Commission meetings during which the Commission reviewed the Department's proposed budget, Director Arntz's budget memo to the Commission said that the initial four-year term was expiring and that the Board had to decide whether to extend it:

With the City's current voting system contract with Dominion Voting Systems (DVS) expiring at the end of March 2023, the Board must decide whether to approve one or both of the one-year options to extend the term of the contract. Depending on the Board's decision, the Department may need to issue a Request for Proposals for a new voting system in mid-2022.

Given the upcoming decision before the Board, the Commission discussed extending the contract at its April 6, May 18, and June 15 meetings. At the June 15 meeting, the Commission

¹⁷ File No. 190192 (Approval of Contract with Dominion Voting Systems):
<https://sfgov.legistar.com/LegislationDetail.aspx?ID=3864492&GUID=330CD550-B782-4950-87BC-A8DD3C669051>

unanimously adopted a “Resolution on Extending the City's Contract with Dominion Voting Systems”¹⁸ (see Attachment 4). The resolution asked the Board of Supervisors to extend the City’s contract with Dominion for only one year this year and to wait until the following year to decide whether to extend the contract for a second year. Among other things, this would let San Francisco see whether an open source voting system became certified in the following year before extending again. Moreover, by keeping the contract open, it would give voting system organizations more incentive to certify an open source voting system.

Another factor in the Commission’s resolution was the lack of response from a Dominion sales representative to the letter that President Bernholz had written to him on January 12, 2022.

At the October 19 Commission meeting, when asked when the Board would be deciding on the contract extension, the Director replied that the contract extension doesn’t need to go to the Board, despite what the budget memo had said in January. Thus, the resolution that the Commission developed over several meetings in the Spring and passed in June wasn’t in fact applicable.

At the November 16 meeting, the Commission had an agenda item to discuss why there was a change in the legal interpretation and why the Commission wasn’t notified of this change. The agenda packet of the November 16 meeting contains several documents with more background and discussion of this issue.

9. Internet Voting

Relevant to the Commission in 2022 was a state bill related to internet voting called SB 1480 (2021-2022)¹⁹ (“Remote accessible vote by mail systems”). SB 1480 was brought to the Commission’s attention during the Commission’s April 6 meeting and revisited during the Commission’s July 20 meeting.

9.1. History

Since 2017, the Commission has had a policy²⁰ to oppose internet voting because of its risks to election security.

More recently, in the Fall of 2021 (culminating in the Commission’s December 15, 2021 meeting), the Commission was instrumental in stopping a \$1.5 million blockchain internet

¹⁸ Commission Resolution on Extending the City's Contract with Dominion Voting Systems: https://sf.gov/sites/default/files/2022-09/SF_Elections_Comm_Res_re_Dominion_Contract_June_2022.pdf

¹⁹ SB 1480 (2021-2022) (“Remote accessible vote by mail systems”): https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB1480

²⁰ Elections Commission Resolution on Internet Voting (April 19, 2017): https://sf.gov/sites/default/files/2023-01/Elections_Comm_Internet_Voting_Res.pdf

voting project that was being co-led by the San Francisco Department of Technology and a regional, 12-county organization called the Bay Area Urban Areas Security Initiative (UASI). Bay Area UASI is a federal grant program administered by the Department of Homeland Security (DHS) and FEMA, and in California by the California Governor's Office of Emergency Services (Cal OES). The voting project was to design, develop, and pilot a system for voters with disabilities to cast a ballot over the internet. San Francisco issued the RFP for the project, had selected a winning bidder, and was in contract negotiations with the winner. The system was planned to be piloted by at least 1,000 voters across the 12-county region. One puzzling aspect of the project at the time was that piloting an internet voting system in California would have been illegal without a change to state law.

9.2. SB 1480 (2021-2022)

A few months after the Bay Area UASI project to develop and pilot an internet voting system for voters with disabilities was cancelled, California State Senator Steve Glazer introduced a state bill SB 1480 that resembled the Bay Area UASI project. The bill would have changed state law to allow voters with disabilities to cast a ballot over the internet. It also required the Secretary of State to develop and certify an internet voting system by April 1, 2023.

The bill was later amended to remove the requirement that the Secretary of State develop a system—instead permitting the Secretary of State to certify such a system. The amended bill passed the State Senate in May 2022. On June 29, 2022, it was pulled by the author from the Assembly Committee on Elections. This was shortly after the Secretary of State wrote a letter to the author on June 27, 2022 opposing the bill (see the agenda packet of the Commission's July 20 meeting for a copy of this letter).

10. Department Oversight Processes

10.1. Review of Department Budget

As required by law, the Commission reviewed the Department's proposed two-year budget for FY 2022-23 and FY 2023-24 at two meetings: a BOPEC meeting on January 28 and a special Commission meeting on February 14.

Here are some notes on the proposed budget presented to the Commission:

- Because the City's Five-Year Financial Plan projected a surplus, proposed cuts were not requested or required.
- The Department's proposed expenditures were \$23.7M for FY 2022-23 and \$31.6M for FY 2023-24.

- The most significant statutory change affecting the Department’s budget was AB 37 (2021-2022)²¹ (“Elections: vote by mail ballots”), which made permanent the change that required a vote-by-mail ballot to be mailed to all voters—among other changes.
- The budget proposed an increase to the stipend given to Election Day poll-workers.
- The Department had 39.5 permanent full-time employees (FTE’s) approved from the previous year. The only change proposed to the make-up of FTE positions was to substitute an 1840 Junior Management Assistant for a 1222 Senior Payroll and Personnel Clerk, which would result in an increase of \$6,441 in permanent salaries in FY 2022-23 and \$6,598 in FY 2023-24.
- The budget also discussed the need to extend the City’s contract with Dominion Voting Systems, as it was set to expire at the end of March 2023. See Section 8.3 for more detail on this topic.

10.2. Information Requested by Commission

At the Commission’s September 21 meeting, the Commission adopted a document containing a “List of Regularly Requested Information”²² (see Attachment 3). This followed a discussion at the August 10 BOPEC meeting.

Prior to the Commission’s September 21 meeting, the Commission didn’t have explicit expectations for what information the Director should provide to the Commission. For the first time, then, this document listed what information the Commission would like to see going forward. It was adopted with the understanding that it could be modified over time (e.g. by removing, adding, or clarifying things).

The document was organized into four categories, by when and how often the information should be provided. The four categories and what they included, roughly, were—

- The monthly Director’s Reports should include information about—
 - any upcoming or current RFP’s,
 - any sole-source contracts being requested, and
 - any proposed projects, local legislation, or proposed positions on state legislation related to elections.
- On a quarterly basis, the Commission should receive information about the number of Equal Employment Opportunity (EEO) complaints within the Department.
- The reports provided to the Commission after each election should include, in addition to the standard post-election reports the Director normally provides—
 - graphs of some of the key numbers from the standard post-election reports over time, so these numbers can be viewed and compared over past elections,

²¹ AB 37 (2021-2022) (“Elections: vote by mail ballots”):

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB37

²² Elections Commission's "List of Regularly Requested Information": https://sf.gov/sites/default/files/2023-01/Regularly_Requested_Information_09-21-2022.pdf

- various numbers indicating when ballots were counted by the Department, how vote-by-mail ballots were sent or dropped off by voters, when ballots were received by the Department, how many ballot cards were remade because of damage, and various categories of how ballots were cast by voters (e.g. using a ballot-marking device, by printing and returning an accessibly vote-by-mail ballot, by fax, by people incarcerated in San Francisco jails, by people registered to an intersection as opposed to a street address, etc.).
- The annual proposed budget should include—
 - information about the Department’s contracts and where those amounts fit into the budget, and
 - a breakdown of the “Non-personnel Services” line item into smaller categories, as this is a very large amount relative to the Department’s overall budget.

10.3. Director Appointment & Evaluation Process

Per Section 13.104 of San Francisco's Charter, every five years the Commission needs to appoint a Director of Elections. The term is five years, and the Commission must make its appointment at least thirty days before the expiration of the term. From the Charter—

The term of the Director shall expire five years after his or her appointment. No less than thirty days before the expiration of the Director's term, the Elections Commission shall appoint a Director for the next term, who may but need not be the incumbent Director.

The same Section 13.104 also says—

The Director shall be appointed by the Elections Commission from a list of qualified applicants provided pursuant to the civil service provisions of this Charter.

Since in 2022 the Director’s five-year term was scheduled to expire on May 21, 2023, the Commission’s deadline for appointing a Director for a new term was April 21, 2023. To give itself enough time for the process, the Commission started discussing this topic in 2022. The subsections below provide background and details on the Commission’s process in 2022.

10.3.1. History before 2022

Director Arntz was first appointed to a five-year term in May 2003. In 2022, then, the Director had been serving in his position for about twenty years. The last time the Director’s term was going to expire was May 21, 2018. That year, the Commission wasn’t informed about the expiration of the five-year term until the posting of the agenda of its February 21, 2018 meeting. Since February 21 was only two months before the April 21 deadline for the new appointment, in 2018 the Commission didn’t have any option other than to reappoint the incumbent Director.

10.3.2. Timeline of Events in 2022

This section contains a detailed timeline of events related to the appointment process in 2022. This timeline is being provided for several reasons. First, some elected officials expressed that the Commission didn't start its appointment process soon enough. The timeline below provides transparency by showing when the Commission learned various pieces of information, like that funding would be needed, as well as when the public was informed of the issue. It also shows that an attempt was made to start the process even earlier.

Second, this timeline should assist future Commissions by showing things like the types of conversations the Commission may need to have at different points in the process, how much time may be needed, as well as the importance of messaging and a communications strategy. This information should help the Commission be better prepared next time and generally be better informed going into the process than the Commission was this year.

May 30, 2022. Following Commissioner Jung's resignation on May 18, 2022, I was the only member of the Commission who had gone through the previous appointment process in 2018. Having gone through the process once without the Commission having enough time to consider other options, I tried to make sure the Commission would have enough time this time.

Consequently, the week of May 30 I met with Vice President (and acting President) Chappell. During the meeting, I asked her if the Director appointment could be placed on the agenda of the June meeting to make sure the Commission would have enough time for the appointment process, in contrast with five years prior when the Commission didn't have enough time.

June 7, 2022. The week after meeting with me, Vice President Chappell emailed that she had discussed the agenda item with the Deputy City Attorneys. She wrote that there was disagreement among the attorneys as to whether the agenda item should be in open or closed session, so she decided to defer putting the item on the agenda.

August 17, 2022. The Commission's August meeting was cancelled since the Commission usually takes one month off during the summer, which is usually August.

August 26, 2022. I had a phone meeting with Deputy City Attorneys Flores and Shen to ask about the appointment process and how much time to allow for it. I learned that six months should be enough and that it would be unusual to start the discussion much before that. Working backwards from the April 21, 2023 deadline to make an appointment, six months before works out to October 21, 2022, which was around the time of the October meeting.

September 6, 2022. Vice President Stone and I met with the Department of Elections' representative of the Department of Human Resources (DHR) to learn more about two topics: first, the appointment process for the Director of Elections position and second, conducting an annual performance review of the Commission Secretary. The DHR representative shared some

high-level information about the hiring process for a Director. However, they didn't indicate that additional funding might be needed.

September 21, 2022. The Commission's September 21 regular meeting had a possible closed session agenda item regarding the Director appointment. Among other things, the agenda item description stated when the Director's term ended, by when the Commission needed to make an appointment, and that the Commission could decide to engage in a competitive selection process. The beginning of agenda item #11 ("Possible Closed Session Regarding Public Employee Appointment/Hiring: Director of Elections") read—

The Director of Elections' current five-year term expires at 12:00 a.m. on May 21, 2023. The Charter requires that the Commission appoint a Director for the next term at least 30 days before the expiration of the current term. S.F. Charter §13.104. At this meeting, the Commission may decide either to appoint the incumbent Director to an additional five-year term or to engage in a competitive selection process, in which the incumbent Director may participate.

Thus, the public was notified that the issue was up for discussion starting in September. This was seven months before the April 21, 2023 deadline. This was one month more than the six months the Deputy City Attorneys said is normal to allow. A copy of the relevant civil service rules (Civil Service Rule 114, Article VII) was also included in the agenda packet online and linked to online.

October 19, 2022. The Commission's October 19 regular meeting again included an agenda item related to the appointment process, namely agenda item #5 ("Selection and Hiring Process for Director of Elections Position"). This agenda item was in open session and featured an invited speaker, Shawn Sherburne, MS, PHR, who was Assistant Director, Employment Services for DHR. During the item, Mr. Sherburne gave a presentation to the Commission about the Executive Recruitment Process, including the steps, different options, and how the Commission would be involved. The agenda packet of the meeting includes a copy of the slides he used for the presentation.

During the presentation, Mr. Sherburne shared that the process could take sixteen weeks or more from beginning to end and that hiring an executive recruitment firm can cost up to \$50,000. This was the first point at which the Commission learned that an executive search process would require additional funding.

October 20, 2022. I spoke with President Walton's Chief of Staff to let them know that the Commission was discussing the Director appointment. I asked if the Board would be able to assist with providing the funds needed for an executive recruiter if the Commission were to vote to open a competitive selection process. They said they would get back to me.

November 4, 2022. On the advice of the Deputy City Attorneys and others, I emailed the Mayor's Office to request a meeting with someone in the Mayor's Budget Office before the

Commission's November 16 meeting. The meeting would be to discuss funding for an executive recruiter for the Director position, similar to my conversation with President Walton's Office. In my email to the Mayor's Office, I explained that the Director's five-year term would be ending the following year, and that the appointment would again be on the agenda of the Commission's November 16 meeting. Their office scheduled a meeting between me and Sean Elsbernd, the Mayor's Chief of Staff, for Monday, November 28, as that was the earliest Mr. Elsbernd was available. This would be after the Commission's November 16 meeting.

November 5, 2022. I spoke with President Walton's Chief of Staff a second time about the funding for an executive recruiter (the first time was on October 20). Again, they said they would get back to me. Later, they called me back and said they would help find a way to get us the funds that are needed if the Commission decided to move forward with a selection process. They also said I could share this information publicly.

November 16, 2022. The Commission's November 16 regular meeting had a possible closed session agenda item regarding the Director appointment, as well as an agenda item regarding the selection and hiring process for the Director of Elections position. During the closed session, the Commission voted 4-2 "to open up a competitive selection process and to invite Director Arntz to participate."

With twenty years having gone by without the Commission ever doing a selection process at the end of the five-year term, the Commission wanted to give other people a chance to compete for the position and see what other talent is out there. At the same time, the Commission made clear that the Director was also welcome to apply. In line with the City's racial equity goals, the Commission wanted to attract a diverse group of applicants—the Director included. See Section 10.3.3 for more background on how the decision to open a competitive selection process relates to the City's racial equity goals.

Later in the meeting, during the selection and hiring process agenda item, the Commission voted unanimously to form a hiring committee of three members. The Commission also voted unanimously during this item to authorize myself and Commissioner Dai to speak to the media on behalf of the Commission regarding the Commission's decision around the selection and appointment process for the Director position.

November 21, 2022. The following week, stories started appearing in the media reporting incorrectly that the Commission had decided to fire, replace, or not reappoint the Director. These stories weren't correct because the Commission didn't decide not to reappoint the Director. The Commission had until April 21, 2023 to decide whether to reappoint the current Director or to appoint a new one. This information was included in the agenda not just of the November meeting, but also of the September and October meetings, and the Commission didn't vote to reappoint at those meetings either.

The initial misreporting of the Commission's decision caused the story to be sensationalized further by other media outlets. Several elected officials made public statements critical of the

Elections Commission, either on social media, via press releases, or by being quoted in the news media. The story spread nationally in sensationalized form.

November 21, 2022. The scheduler for Sean Elsbernd, the Mayor's Chief of Staff, emailed me asking if I could meet with Mr. Elsbernd that day or the next instead of the previously scheduled November 28. I scheduled a meeting for November 22, the following day.

November 22, 2022. I met with Sean Elsbernd. I explained the reasons the Commission voted to open a selection process and asked if the Mayor's Office could provide the \$30K to \$50K needed to conduct the executive search. He said they wouldn't provide the funding.

November 29, 2022. At the Board of Supervisors' November 29, 2022 meeting, Supervisor Aaron Peskin introduced a Board resolution²³ stating the Board's intent not to appropriate funding in FY 2022-2023 for an executive search for the position of Director of Elections and urging the Commission to reappoint the current Director. You can find a transcript of Supervisor Peskin's comments introducing his resolution at the meeting in the agenda packet of the Commission's December 12, 2022 meeting.

By the time the resolution was introduced, the resolution was already cosponsored by ten of the eleven Supervisors. The previous week when the resolution was being prepared, I was unable to talk with President Walton's Chief of Staff, who had said they would help provide funding, because they were away during the week for Thanksgiving, which was November 24.

December 6, 2022. At the Board of Supervisors' December 6, 2022 meeting, Supervisor Peskin announced that, in response to a request from me, he would be postponing the vote on his resolution one week to December 13 to allow the Commission to have its special meeting on December 12 first. He also said that he was open to amending his resolution to say that it is the Board's policy to fund future searches.

December 12, 2022. The Commission's December meeting was a special meeting on December 12, which was rescheduled from December 21 because of the holidays. At the meeting, the Commission discussed Supervisor Peskin's resolution and his remarks the previous week. The Commission knew that the Board would be voting on the resolution the next day.

December 13, 2022. At the Board of Supervisors' December 13 meeting, the Board unanimously adopted the resolution that Supervisor Peskin introduced on November 29. Moreover, all eleven supervisors had signed on as cosponsors.

The resolution the Board adopted included the following new language that Supervisor Peskin added in response to a request from myself and perhaps others:

²³ File No. 221210 (Resolution #545-22) "Resolution of Intent to Not Appropriate Funding for Executive Recruitment Services": <https://sfgov.legistar.com/LegislationDetail.aspx?ID=5952880&GUID=B53E3EAA-6A62-4879-AB4A-4DCF9DDF3F6E>

FURTHER RESOLVED, That the Board of Supervisors of the City and County of San Francisco, hereby declares its intent to appropriate funding in Fiscal Year 2026-2027 for the services of an executive recruitment firm for the purpose of hiring a new Director of Elections prior to the May 21, 2027, expiration of the incumbent Director of Elections' next term;

I and I'm sure other Commissioners are grateful to Supervisor Peskin for incorporating this additional language.

Since neither the Board nor the Mayor's Office would provide the \$50,000 needed to hire an executive search firm, the Commission couldn't conduct its selection and hiring process. Thus, the hiring committee that the Commission voted in November to form never met.

10.3.3. Racial Equity Considerations

In the Commission's November 16 vote to open a competitive selection process for the position of Director, the Commission was in part attempting to follow the principles laid out by San Francisco's Office of Racial Equity (ORE)²⁴ in the City's Racial Equity Framework.²⁵ In several documents,²⁶ ORE laid out a bold vision of transformation and warned to expect resistance from others when enacting change. The Commission had discussed some of these documents during a discussion on racial equity during its August 10, 2022 BOPEC meeting.

San Francisco created the Office of Racial Equity (ORE) in 2019 "in response to the City's growing racial disparities, and as a means to address the history of structural and institutional racism in San Francisco's delivery of services to the public and its own internal practices and systems" (p. 2 of Framework). Inaugural ORE Director Shakirah Simley wrote that "plans and actions need to lead with race" because of the culture we live in. She warned of attitudes like defensiveness that protect the status quo and undermine advancing racial equity (p. 1 of Letter from Director).²⁷ See also the "Continuum on Becoming an Anti-Racist Multicultural Organization" on page 12.

On the topic of hiring and leadership appointments, the Framework called on the City to conduct its processes with a racial equity lens: "Commit to reviewing and conducting all internal policies and practices with a racial equity lens, specifically: hiring, recruitment, promotions, discipline, compensation, and leadership appointments" (p. 5).

²⁴ San Francisco Office of Racial Equity (ORE): <https://www.racialequitysf.org>

²⁵ Citywide Racial Equity Framework, Phase 1 (June 2020): <https://racialequity.squarespace.com/s/ORE-SF-Citywide-Racial-Equity-Framework-Phase-1.pdf>

²⁶ Office of Racial Equity Reports and Resources: <https://www.racialequitysf.org/resources>

²⁷ ORE Citywide Issues and Themes (July 2021): <https://racialequity.squarespace.com/s/Citywide-Executive-Summary-Racial-Equity-Action-Plans-2021.pdf>

The Commission’s decision in November merely took the step of giving others the *opportunity* to compete for the Director position, and after twenty years of not providing that opportunity. The Commission also wanted the process to include a robust search and recruitment to attract a diverse group of qualified candidates. Crucially, the Commission didn’t decide that the current Director wouldn’t prevail after that process. Indeed, we invited the Director to apply.

Many media outlets misreported what happened—twisting and exaggerating the events and so fueling a backlash. For example, Fox News' Tucker Carlson wrote falsely in a national news story, “The city of San Francisco just fired its elections director ... because he's White.”²⁸ This was false as the Director was never fired and indeed never left his position. In the end, the ORE’s guidance was accurate in its predictions of resistance.

10.3.4. Additional Context and Considerations

While the Commission’s vote to open a competitive selection process was in large part to follow the principles and vision laid out by the Office of Racial Equity, there are other considerations for observers to keep in mind.

First, Civil Service Rule 114, Article VII,²⁹ which was included in the agenda packets of the September, October, and November meetings, makes clear that there is no default expectation or presumption that an incumbent Director should be reappointed, with or without a selection process. In other words, the position is not a lifetime position:

Sec. 114.35. Employment Rights

114.35.1 Notwithstanding the designation of the Director of Elections as a permanent civil service appointment, and notwithstanding the rights that normally accompany such a designation, upon the end of the Director's term as defined in Rule 114.58.1, there shall be no accrued right to return to the position or receive special consideration for or claim to the position. Thus, a former Director has no special claim to return to the position or right to receive special consideration for the position. This provision shall not preclude a former Director from applying for the position or preclude consideration of experience as Director in evaluating candidates for the position.

Second, while the analogy may not be perfect, in other situations it is quite normal to have to reapply or compete for an additional term, regardless of an incumbent’s performance. For example, in many counties in California, the Registrar of Voters, or County Clerk, is an elected position. The Clerk competes for their position every four years as a matter of course. As another example, for Commissioners appointed by the Board of Supervisors, if a Commissioner’s term is ending and they want to serve another term, the Commissioner must

²⁸ “What can we learn from what's happening in California?” Tucker Carlson, Fox News, Dec. 14, 2022:

<https://www.foxnews.com/opinion/tucker-carlson-can-we-learn-happening-california>

²⁹ Civil Service Rule 114: <https://sf.gov/reports/december-2017/rule-114-appointments-civil-service-commission>

reapply for their seat, and there can be other applicants during that process. This is what happened to me when I applied for my second term on the Elections Commission, and I was reappointed.

Third, four of the Commission's six members were new in 2022. Given the number of months the Commission learned it takes to conduct a competitive selection process, there wasn't enough time before the April 21, 2023 appointment deadline for the Commission to complete a performance evaluation of the Director before starting the selection process. Thus, the two things had to be done in parallel to allow time for both. By starting the competitive selection process in December and conducting the performance evaluation of the Director in parallel, the Commission would be able to complete the performance evaluation before deciding whether to reappoint the Director. There would then be enough time at that point for the Commission to have more than one option to choose from, unlike in 2018.

Finally, the appointment and hiring process is a personnel matter, so it's a confidential process. This is why much of the discussion takes place in closed session. The Commission's motion and vote were also made in closed session. Thus, outside observers and commenters won't necessarily know all the information, and likewise, Commissioners aren't allowed to share all the information.

11. Racial Equity & Diversity, Equity, Inclusion, Belonging, Justice (DEIBJ) Initiatives

In 2022, the Commission spent significant time advancing and making progress on racial equity, and more generally on diversity, equity, inclusion, belonging, justice (DEIBJ).

For a comprehensive account of the Commission's 2022 progress and investments in this area, please see Attachment 5. This is 2023 Commission President Stone's "2022 Review: Elections Commission Racial Equity Discussion Lookback," which she prepared in February 2023.

In addition, below is a more concise summary of the Commission's progress in 2022. The summary is organized into two lists: "internal" items (focused on the Commission itself) and "external" (outside the Commission, including policy matters). A list of resources or reference materials follows. These lists were copied from the Elections Commission section of the Department of Elections' 2022 Racial Equity Progress Report,³⁰ dated May 8, 2023. The list of resources was edited to include added context like dates. The contents of the Elections Commission section were voted on and approved by the Commission at a meeting in 2023.

³⁰ Department of Elections 2022 Racial Equity Progress Report: <https://sf.gov/sites/default/files/2023-05/2022RacialEquityProgressReport.pdf>

Internal

- Conducted both an internal assessment of existing initiatives and also a strategic planning session focused heavily on diversity, equity, inclusion, justice, belonging (DEIBJ) initiatives the Commission could undertake, including exploration of:
 - Commissioner compensation to increase appointment access for lower-income communities
 - Commissioner demographic data transparency
 - Referencing the Office of Racial Equity's (ORE's) "Organizational Culture of Belonging and Inclusion" to uphold an inclusive Commission culture
- Established commitment to apply a racial justice lens for at least one agenda item every month

External (including Policies)

- Voted 4-2 to open a competitive selection process for Director of Elections in part to advance the City's racial equity goals and offer a diverse pool of candidates access and opportunity to compete for a leadership position (see Section 10.3, and 10.3.3 more specifically, for more detail)
- Passed resolution to permanently recite an Elections Commission-specific Land Acknowledgment at the opening of every Commission meeting, designed based on the Human Rights Commission (see Attachment 6 for the resolution)
- Established new relationship with the American Indian Cultural District to better incorporate community feedback into Commission policies
- Initiated redistricting process reform as a strategic Commission priority to ensure fairness in local electoral representation (see Section 13 for more detail)
- Drafted and submitted a letter to relevant appointing authorities seeking diverse and more-representative candidates to fill Commission vacancies
- Passed a motion to include Commissioner pronouns on the body's website page
- Advocated for increased support for historically under-resourced and under-represented voting communities, including formerly incarcerated and in-jail voters

Resources

- Elections Commission Land Acknowledgment Resolution³¹ (authored by Vice President Stone and adopted by the Elections Commission 6-0 on October 19, 2022, see Attachment 6) and associated October 2022 memo³² written by Vice President Stone

³¹ Elections Commission Land Acknowledgment Resolution: https://sf.gov/sites/default/files/2023-01/Elections_Comm_Land_Acknowledgment_Res_Oct_2022.pdf

³² Elections Commission Land Acknowledgment Memo: <https://sfgov.org/electionscommission/sites/default/files/Documents/meetings/2022/2022-10-19-commission/SFEC%20-%20Land%20Acknowledgment%20Memo%20-%20Final.pdf>

- 2022 Review: Elections Commission Racial Equity Discussion Lookback³³ (dated February 28, 2023 and written by 2023 President Stone, see Attachment 5)
- December 2022 Email Correspondence³⁴ on Elections Commission Racial Equity Progress between Reporter Jonah Lamb and President Jerdonek & Vice President Stone
- Racial Equity Action Item: Commissioner Compensation Research Memo³⁵ (dated October 17, 2022 and written by President Jerdonek)
- Commission Racial Equity Discussion during August 10, 2022 BOPEC Meeting
 - Video of Discussion³⁶ (begins at 14:39)
 - Meeting Agenda³⁷ (Item #5)

12. Hearing with Redistricting Task Force Appointees

On April 8, 2022, the Commission held a special meeting on short notice to discuss the City's redistricting process with the Elections Commission's three appointees to the San Francisco Redistricting Task Force (RDTF). This section discusses the lead-up to the hearing as well as the hearing itself.

12.1. Events Before the Hearing

The Commission made its three appointments to the RDTF the previous year at its June 22, 2021 meeting. At that meeting, the Commission voted unanimously to appoint Raynell Cooper, Ditka Reiner, and Chasel Lee to the upcoming RDTF. This was after an evaluation process in which the Commission (mostly through BOPEC) reviewed thirty-three applicants for the positions.

April 6, 2022 Meeting

At the Commission's April 6, 2022 meeting, which was a special meeting on a Wednesday, the Commission heard approximately two hours of comment during agenda item #3, General Public Comment. Nearly all the commenters expressed concerns to the Commission about the redistricting process and the actions of some RDTF members. Many asked the Commission to

³³ 2022 Review: Elections Commission Racial Equity Discussion Lookback: <https://sf.gov/sites/default/files/2023-04/Commission%20Racial%20Equity%20Initiatives%20Discussed%20-%20032223.pdf>

³⁴ Correspondence with Reporter Jonah Lamb on Elections Commission Racial Equity Progress: https://sf.gov/sites/default/files/2023-04/Email_Correspondence_Jonah_Lamb.pdf

³⁵ Racial Equity Action Item: Commissioner Compensation Research Memo: https://sfgov.org/electionscommission/sites/default/files/Documents/meetings/2022/2022-10-19-commission/Commissioner_Compensation_Research.pdf

³⁶ Video of August 10, 2022 BOPEC Meeting Racial Equity Discussion: https://youtu.be/TMT-6_cnUaU?si=hJol00029b4KOQha&t=879

³⁷ Agenda for August 10, 2022 BOPEC Meeting: https://wayback.archive-it.org/20565/20230120183810/https://sfgov.org/electionscommission/sites/default/files/Documents/meetings/2022/2022-08-10-bopec/2022_08_10_BOPEC_Agenda.pdf

investigate. About 44 people commented, with most of them commenting in person. This was an unprecedented number of public commenters for those on the Commission. At the time, the RDTF was in the process of finalizing its district map for forwarding to the Board of Supervisors by April 15.

Following the General Public Comment agenda item, Vice President Chappell, who was chairing the meeting, skipped ahead to agenda item #12 (“Discussion and possible action regarding items for future agendas”). She announced that she would be scheduling a special meeting to be held as soon as possible. After Commission discussion, the date was tentatively set for the following weekend on Sunday, with the agenda item description to be determined later by the Commission’s executive officers.

12.2. April 8 Hearing

The special meeting ended up being held on Friday, April 8. It was chaired by Vice President Chappell since President Bernholz was participating remotely.

In her introductory remarks, Vice President Chappell explained that the Commission had received hundreds of emails, letters, and public comments asking the Commission to remove or not remove the Commission’s appointees to the RDTF. (The Board of Supervisors’ June 2021 ordinance³⁸ to convene the RDTF included language which allowed removal: “Members of the Task Force shall serve at the pleasure of their appointing authority and may be removed by their appointing authority at any time.”) She continued that, from her perspective, the meeting was called to allow the appointees to respond publicly to concerns that were directed to the Commission regarding the RDTF’s decision-making process. Vice President Chappell invited the appointees to address the following four points:

1. Without getting into specifics of the maps themselves, what process occurred between Saturday and Monday (Before)?
2. Can you describe the process by which the Redistricting Task Force tracks and accounts for public input from communities?
3. Can you describe the process by which the Redistricting Task Force evaluates and establishes priorities for the purpose of drawing maps, and what factors do you consider?
4. Can you confirm the Redistricting Task Force commitment to, and describe some of the actions you have taken for the purpose of, reflecting communities of interest within the City and County of San Francisco?

In addition, Commissioners were allowed during the hearing to ask follow-up questions.

³⁸ File No. 210606 (Ordinance convening the Redistricting Task Force):
<https://sfgov.legistar.com/LegislationDetail.aspx?ID=4967612&GUID=AB46E5F0-E487-4D48-A64F-28D0A6FAA0B2>

At the end of the meeting, which lasted approximately seven hours and included several hours of public comment, the Commission voted unanimously to adopt the following resolution:

Resolved: After hearing from the Elections Commissions' appointees to the Redistricting Task Force, invited speakers, and public commenters, the Commission finds no reason for removal. We applaud our appointees for their hard work. We affirm the independence of the Redistricting Task Force.

13. Redistricting Process Initiative

In 2022, the Elections Commission started an initiative to research and explore ways of improving the redistricting process. This followed the work of San Francisco's 2021–2022 Redistricting Task Force³⁹ (RDTF) and their adoption of new supervisorial district boundaries on April 28, 2022.

13.1. Background

The redistricting process in 2021-2022 drew significant public attention across many facets of its operations and decision-making processes. Following the completion of its final map, the RDTF completed a final report of their process and recommendations for future commissions' consideration. Some RDTF members also released personal statements regarding their experiences with the process and serving on the task force.

Based on feedback from the public and independent advocacy groups, and in line with its mandate to ensure free, fair, and functional election administration, the Commission started an initiative to offer a public forum for education, dialogue, and soliciting strategic recommendations to strengthen San Francisco's redistricting process.

The Elections Commission is a natural entity to host such a forum because it is independent of any one part of San Francisco government, already meets regularly and in public, and was established by San Francisco's Charter to oversee all public federal, state, district, and municipal elections in San Francisco. The Charter also grants the Commission an explicit role in redistricting by having the Commission appoint three of the RDTF's nine members. The Commission also oversees the Director of Elections, who serves as an ex officio, non-voting member of the RDTF.

³⁹ 2021–2022 San Francisco Redistricting Task Force (RDTF): <https://sf.gov/departments/2020-census-redistricting-task-force>

13.2. Meetings and Invited Speakers

Below is a list of the people the Commission invited to speak on redistricting in 2022 and the topics they were invited to speak on, organized chronologically by Commission meeting. There were five meetings in 2022 in all, from June 15 to November 16.

June 15 Commission meeting

- Topic area: San Francisco Redistricting Task Force history & high-level overview of alternate redistricting structures
- Invited speakers:
 - Steven Hill, FairVote co-founder and advisor to original Elections Task Force of San Francisco in 1996
 - Julia Marks, Voting Rights Program Manager and Staff Attorney at Asian Americans Advancing Justice – Asian Law caucus

July 20 Commission meeting

- Topic area: San Francisco supervisorial representation history and insight into independent redistricting archetypes and case studies.
- Invited speakers:
 - Gwenn Craig, Former chair of the Elections Task Force and 2001 RDTF Chair
 - Alesandra Lozano, Voting Rights & Redistricting Program Manager, California Common Cause

September 21 Commission meeting

- Gwenn Craig, former Chair, 2001 Redistricting Task Force (RDTF)
- Myong Leigh, former member, 2011 RDTF
- Raynell Cooper, former member, 2021 RDTF
- Topic area: San Francisco's Redistricting in Practice
- Invited Speakers (all former San Francisco RDTF members):
 - Gwenn Craig, Chair, 2001 San Francisco RDTF
 - Myong Leigh, 2011 San Francisco RDTF
 - Raynell Cooper, 2021 San Francisco RDTF

October 19 Commission meeting

- Topic area: Staffing/Support and Community Input
- Invited Speakers:
 - Angela Calvillo, Clerk of the Board
 - Fernando Martí and Emily Lee, San Francisco Unity Map Coalition

November 16 Commission meeting

- Topic area: Best Practices Exemplars. Redistricting Comparison.
- Invited Speakers:
 - Alejandra Gutiérrez, Long Beach Independent Redistricting Commission
 - Rebecca Szetela, Chair & Vice Chair
 - Nancy Wang, Executive Director, Voters Not Politicians

13.3. Summary of Redistricting Recommendations Received

The agenda packet of the December 12, 2022 meeting included a document⁴⁰ that summarized the redistricting recommendations that the Commission had received in its hearings so far. It was prepared by Commissioners Dai and LiVolsi.

14. Appendices

- A. Commission Bylaws relating to the Annual Report
- B. Open Source Voting Background

⁴⁰ December 2022 Summary of Redistricting Reform Recommendations: <https://wayback.archive-it.org/20565/20230120201625/https://sfgov.org/electionscommission/sites/default/files/Documents/meetings/2022/2022-12-12-commission/Summary%20of%20Redistricting%20Reform%20Recommendations.pdf>

Appendix A

Commission Bylaws relating to the Annual Report

This appendix includes for convenience those sections of the Elections Commission Bylaws that mention the Commission Annual Report.

SAN FRANCISCO ELECTIONS COMMISSION BYLAWS

(as amended April 21, 2021)

ARTICLE IV – COMMISSION'S POWERS AND DUTIES

M. The Commission shall prepare an annual report describing its activities and shall file such report with the Mayor and the Clerk of the Board of Supervisors consistent with the Commission's duties under Section 4.103 of the San Francisco Charter and Sections 1.56 and 8.16 of the Administrative Code. This annual report shall cover the calendar year from January 1 through December 31.

ARTICLE V – OFFICERS

Section 2. The President

E. As soon as reasonably practicable following completion of each calendar year, the President who served at the conclusion of that calendar year shall present a draft annual report to the full Commission. An annual report shall be approved by the full Commission as soon as reasonably practicable following submission of the draft annual report.

ARTICLE XI – COMMISSION ANNUAL REPORT

Section 1. Each year, the Commission President shall cause to be bound the "Commission Annual Report."

Section 2. The Commission Annual Report shall contain the President's report of the activities of the Commission during the previous year, as well as any other information the President deems significant and of likely assistance to subsequent Commissions.

Section 3. It is the intent to preserve and pass on to successive Commissions relevant information so as to make more effective subsequent Commission tenures by providing institutional memory to assist in resolution of recurring Commission problems.

Appendix B: Open Source Voting Background

This appendix is included because open source voting is a more technical topic, and with a long history of support in San Francisco that many are probably not familiar with.

This history spans sixteen years and is currently scattered across many different reports and pieces of legislation, etc. It would otherwise be hard to piece together. In San Francisco, support for open source voting goes back at least to 2007, when the Elections Commission and the Board of Supervisors both first supported forms of the idea.

This appendix defines what open source voting is, summarizes its advantages, and then provides a brief history of some of the support for and attention to the issue in San Francisco and California. See also Attachment 1, “Open Source Voting History in San Francisco ‘At a Glance,’” for a condensed list of past legislation, documents, statistics, and events on the topic.

B.1. What is Open Source Voting?

Open source voting refers to a paper-ballot voting system whose software is open source and whose hardware is commercial-off-the-shelf (“COTS”). Voting system and open source are defined in the subsections below.

B.1.1. Voting System

A voting system is the equipment used to cast and count paper ballots. On the voter-facing side, this includes things like the precinct scanners into which voters insert their hand-marked ballots at polling places. It also includes accessible ballot-marking devices (BMD’s) that are especially useful to voters with disabilities. BMD’s typically have a touch-screen interface and generate a computer-printed ballot. On the elections staff-facing side, a voting system includes things like high-speed vote-by-mail ballot scanners, as well as software to aggregate the vote totals from all machines and generate official vote totals for reporting. A voting system can also include things like software to help configure an election definition and to perform ballot design and layout. To be used in California (other than for a pilot), a voting system must meet California’s Voting System Standards (CVSS)⁴¹ and be certified by the California Secretary of State.

B.1.2. Open and Closed Source

Open source software refers to software whose source code is licensed under an open source license. An open source license is a license that has been approved by the Open Source Initiative.⁴² Software with an open source license guarantees three things: anyone is allowed to

⁴¹ California Voting System Regulations: <https://www.sos.ca.gov/administration/regulations/current-regulations/elections/voting-system-certification-regulations>

⁴² Open Source Initiative: <https://opensource.org/>

view and inspect the software, anyone can use the software for free, and anyone can make a copy of and modify the software (e.g. to make improvements). Two well-known examples of open source software are the Linux operating system and the Firefox web browser. Much of the security-critical software undergirding the internet is also open source.

In contrast to open source, closed source refers to software whose source code is secret and not open to inspection. Closed source software is also known as proprietary software.

B.2. Advantages of Open Source Voting

The advantages of open source voting include that it's more transparent, more affordable, more flexible, and more secure. The Commission's November 18, 2015 Open Source Voting Resolution⁴³ also mentions these benefits.

B.2.1. Affordability

Open source software is more affordable because open source software has no licensing fees. Moreover, because an open source voting system doesn't have any intellectual property restrictions, there aren't restrictions on who can support and service the system. This creates more options and more competition for support contracts and thus can lower costs further. For example, to service a voting system, San Francisco could contract with a local vendor, or it could contract with the vendor that originally made the system. If it wanted, San Francisco could even service the system itself, in-house.

B.2.2. Flexibility

Open source is more flexible than proprietary systems because if San Francisco wants a particular improvement to be implemented, San Francisco wouldn't be constrained by the vendor. San Francisco could pay a third-party vendor to implement it, or it could even make the change on its own. In the case of a voting system, San Francisco would still need to make sure the change is approved by the Secretary of State, just as a traditional vendor would. Another way of stating this flexibility is that open source avoids vendor lock-in.

One example where the above could be useful is with the ranked choice voting (RCV) reporting abilities of San Francisco's voting system. The voting system that San Francisco used from 2007 to 2018 had the ability out-of-the-box to report the round-by-results results of RCV elections in an accessible, HTML format. The voting system that San Francisco acquired in 2019, however, no longer had this ability, even though it was sold by the same vendor (see Section 6 for more on this). The only human-readable format the system supports is PDF, which isn't accessible to people with vision impairments. As of 2023, the vendor still hasn't restored this capability.

⁴³ Elections Commission Nov. 18, 2015 "Open Source Voting Systems Resolution":
https://sf.gov/sites/default/files/2023-01/Elections_Comm_Open_Source_Voting_Res.pdf

Alameda County, who uses the same voting system as San Francisco, was even threatened with a lawsuit by the National Federation of the Blind (NFB) for only reporting its results using PDF's.

B.2.3. Security

Finally, open source software is more secure in general because if a company knows that their code will be viewable to the public, they will prioritize quality more (e.g. to avoid embarrassments in the code). In addition, open source allows many more people to check the code for security vulnerabilities and other issues.⁴⁴ With closed source software, customers can't check for themselves that the code is secure. They can only trust the vendor.

B.3. Brief History of Past Support

B.3.1. San Francisco Support

Support for open source voting in San Francisco started in 2007 when the Board of Supervisors was discussing signing a contract with Sequoia Voting Systems for a new voting system. Sequoia was later acquired by Dominion Voting Systems, who is now San Francisco's current vendor.

The Board held several hearings on the proposed contract with Sequoia in February, November, and December of 2007. At the time, some members of the Board wanted the code for Sequoia's voting system to be disclosed. While the vendor didn't agree to this requirement, San Francisco was able to secure a clause in the contract that required the vendor to publicly disclose their system's code (or federally certify another system whose code is disclosed) if another vendor got certified in California whose source code was disclosed. From the Board's resolution⁴⁵ authorizing the contract:

WHEREAS, To encourage a transparent, secure and fair election, ... if the California Secretary of State certifies any voting system for use in California that is licensed under a disclosed or open source code license, the Agreement further requires Sequoia to disclose its source code or submit an application for federal certification of a disclosed or open source code voting system within one year;

Since 2007, the Board of Supervisors has taken several more actions to advance open source voting. The following supervisors have authored legislation or taken action since then: Tom Ammiano (2007, 2008), Scott Wiener (2014), Malia Cohen (2018), Rafael Mandelman (2019),

⁴⁴ See, for example, DoD Open Source Software FAQ: "Continuous and broad peer-review, enabled by publicly available source code, improves software reliability and security through the identification and elimination of defects that might otherwise go unrecognized by the core development team."
<https://dodcio.defense.gov/open-source-software-faq/#q-doesnt-hiding-source-code-automatically-make-software-more-secure>

⁴⁵ Board of Supervisors File No. 070040 (Resolution #654-07):
<https://sfgov.legistar.com/LegislationDetail.aspx?ID=479750&GUID=25DA3EB0-CCDA-464F-87D7-23C6B7A6CB1A&Options&Search>

and Shamann Walton (2022). Some of these actions are described in more detail below. For more on President Walton’s 2022 ordinance, see Section 7.1.

In 2008, the San Francisco Board of Supervisors passed an ordinance⁴⁶ to create a nine-member Voting Systems Task Force (VSTF) to provide the City with recommendations on matters including “models for development of a voting system including proprietary, disclosed, and open source software and hardware approaches.” In 2011, the VSTF issued its final report.⁴⁷ Its recommendations included:

The DOE [Department of Elections] should give strong preference to a voting system licensing structure that gives San Francisco all of the rights provided by an OSI-approved license, even if the system is maintained by an external party.

...

San Francisco should be an active participant in the movement toward more open and transparent voting systems. ... We encourage the City to be a strong advocate in the private sector marketplace for more transparent systems and to be open as well to new collaborative development models.

In 2014, following the VSTF’s report and the passage of SB 360 (see Section B.3.1 below), Supervisor Scott Wiener introduced a Board resolution⁴⁸ “to put [the Board of Supervisors] on record in favor of moving firmly towards open source voting in San Francisco.”⁴⁹

In May 2018, the California Clean Money Campaign held an “Open Source Voting Campaign Kickoff” in the Women’s Building in the Mission District. Many current and former local elected officials attended in support, including State Assemblymember David Chiu, State Senator Scott Wiener, Assembly Speaker pro Tem Kevin Mullin, Board of Supervisors President London Breed, Board of Supervisors Budget Chair Malia Cohen, and Former State Senator Mark Leno, as well as Christine Pelosi, Chair of the California Democratic Party Women's Caucus.

⁴⁶ Board of Supervisors File No. 081227 (Resolution #268-08):

<https://sfgov.legistar.com/LegislationDetail.aspx?ID=482591&GUID=EB20560E-E9DD-43FD-B397-181204298CBD>

⁴⁷ Hearing on San Francisco's Voting Systems Task Force Report (File No. 110805):

<https://sfgov.legistar.com/LegislationDetail.aspx?ID=922532&GUID=960A8B65-68A3-48A6-B7B0-956BD3405D5F&Options&Search>

⁴⁸ Board of Supervisors File No. 141105 (Resolution #460-14):

<https://sfgov.legistar.com/LegislationDetail.aspx?ID=1946783&GUID=0725E575-B05E-4137-B771-E8BFD5B98237>

⁴⁹ Supervisor Scott Wiener's comments introducing Resolution 460-14:

https://www.youtube.com/watch?v=X4qGeJ5QF_c

See below for a picture from the event, in which all the people mentioned above are visible.



Here are a couple more photos from the event:



In the picture on the left are Christine Pelosi, David Chiu, London Breed, and Scott Wiener. On the right are Malia Cohen and Trent Lange. Mr. Lange is the President and Executive Director of the California Clean Money Campaign.

Later in 2018, as Budget Chair, Supervisor Malia Cohen secured \$1.3 million to start San Francisco's open source voting project in earnest (though most of the remaining money was taken away during the pandemic). This followed a unanimous vote in March 2018 by the Elections Commission to request from the Board \$4 million for the 2018-19 fiscal year to start the project.

Further showing the importance of the issue for the City, in June 2018, the 2017-18 San Francisco Civil Grand Jury issued a report⁵⁰ on open source voting to answer the question, “Why doesn’t San Francisco Have Open Source Voting after a decade of discussion?”

San Francisco’s representatives at the state level have also pushed for open source voting there. In 2019, Assemblymember David Chiu, along with Assemblymembers Miguel Santiago and Lorena Gonzalez, introduced AB 1784 (2019-2020),⁵¹ “the Secure the VOTE Act.” State Senator Scott Wiener was principal coauthor of the bill. The bill would have provided state matching funds for a jurisdiction like San Francisco to develop an open source voting system. The bill passed in the Assembly on a bipartisan vote (60-12) before being held up in the Senate during the pandemic.

B.3.2. State-Level Support

At the state level, in 2013 the state legislature adopted SB 360⁵² (“Certification of voting systems”). SB 360 was authored by State Senator Alex Padilla before he became California Secretary of State. SB 360 allowed jurisdictions in California to pilot a voting system that hasn’t been certified yet if the system uses only software with disclosed source code, along with some other conditions (see Section 7.1 for more on SB 360). Later, in October 2016 and after becoming Secretary of State, Padilla endorsed open source voting, saying, “open source [voting] is the ultimate in transparency and accountability for all.”⁵³

In April 2021, the bipartisan California Little Hoover Commission endorsed open source voting in a report titled, “California Election Infrastructure: Making a Good System Better.”⁵⁴ The Commission called on California “to adopt an open source election system,” among other things. From the report’s Executive Summary:

The state currently relies on for-profit producers of election equipment. An open source system would be more transparent, save money, increase versatility for counties, and align with a state goal to use open source software across government. ... The Commission recommends that the state invest in a publicly owned, open source elections system.

On October 1, 2021, former Governor Jerry Brown endorsed open source voting at a KQED event at KQED’s San Francisco headquarters. The event also featured California Secretary of State Shirley Weber. At the event, Governor Brown said, “So these voting machines have to be

⁵⁰ 2017-2018 Civil Grand Jury Reports: https://civilgrandjury.sfgov.org/2017_2018.html

⁵¹ AB 1784 (2019-2020): https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1784

⁵² SB 360 (2013-2014): https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB360

⁵³ California Secretary of State Alex Padilla endorsing open source voting: <https://www.youtube.com/watch?v=HbSguoRI-U4>

⁵⁴ California Little Hoover Commission, “California Election Infrastructure: Making a Good System Better,” Report #259, April 2021: <https://lhc.ca.gov/report/california-election-infrastructure-making-good-system-better>

squeaky clean, perfect, open to observation. We gotta know. There can be no obscurity here— nothing, nothing hidden. That's what open source means. I'm all for it.”⁵⁵

15. Attachments

1. Open Source Voting History in San Francisco “At a Glance,” September 20, 2022, prepared for the Commission’s September 21, 2022 meeting (3 pages).
2. January 12, 2022 Letter from President Bernholz to Dominion Sales Representative regarding disparaging comments made in media (1 page).
3. Elections Commission’s “List of Regularly Requested Information,” as adopted on September 21, 2022 (3 pages).
4. Elections Commission’s “Resolution on Extending the City’s Contract with Dominion Voting Systems,” adopted unanimously (5 - 0) on June 15, 2022 (2 pages).
5. 2022 Review: Elections Commission Racial Equity Discussion Lookback prepared by 2023 Commission President Stone on February 28, 2023 (3 pages).
6. Elections Commission’s “Resolution on Ramaytush Ohlone Land Acknowledgment,” adopted unanimously (6 - 0) on October 19, 2022 (2 pages).

⁵⁵ Former Governor Jerry Brown endorsing open source voting:
<https://www.youtube.com/watch?v=5u9nsJY73yk&t=4075s>