



Memorandum

To: Honorable Sean Elsbernd, Member, Rules Committee
From: John Arntz, Director *JA*
Date: August 3, 2006
Re: Mailing of Voter Information Pamphlet for June 6, 2006 Primary Election

This memorandum provides a review of the various steps involved in preparing voter information pamphlets (VIPs) and explains why the Department was unable to mail the pamphlets for this recent June 2006 primary as early in the election cycle as in previous years.

Preparing the VIP: The production of the VIP depends first on finalizing the actual ballot because the VIP must contain samples or images of the actual ballots that voters will use in the upcoming election. Delays in preparing the actual ballot are most often outside of the control of the Department of Elections. The Department must rely on the Secretary of State to provide Chinese and Spanish translations for ballot designations and must rely on its vendor to properly format the ballot.

For the past election, it is important to note that the Department of Elections mailed VIPs within the deadlines set for primary elections by the California Elections Code. Although the time of mailing the pamphlets was later than in other recent elections, the Department overcame tremendous challenges in completing the ballots for the existing voting equipment and for the new accessible voting equipment implemented in June. A nearly two-month delay in completing the ballots caused mostly from vendor problems resulted in the VIP being mailed later than it has in the recent past.

Complexity of Primary Elections: Furthermore, primary elections are always more complex than November general elections. The reason for the complexity is that primaries have a large number of contests and the intersection of the various district lines creates a greater number of ballot styles. In addition, there is a distinct list of candidates for each party which necessitates a different ballot card for each party's candidates for partisan contests, as well as ballot cards for non-partisan voters.

For the June 2006 primary, the Department produced 158 different ballot styles and needed to separately review each style during a series of revisions. Even the smallest changes required a wholesale review of these different ballot styles. In contrast, for the upcoming General election,

the Department will likely produce approximately 30 ballot styles, depending on final ballot layout.

The California Election Code Accounts for this Complexity: The deadline for mailing the VIP for primary elections is 10 days before the date of the election, but the mailing deadline is 21 days for all other elections. See Cal. Elections Code § 13300(c) and § 13303(a). This differential suggests that the State recognizes that the preparation of sample ballots takes more time when preparing multiple ballots in the context of a primary election. State elections law controls the mailing of the VIP for primary elections while San Francisco's Municipal Code sets the deadline for all other elections. See San Francisco MEC §500 (requiring mailing at least 21 days before a general or special municipal election) and San Francisco Charter §13.107 (requiring that the voter pamphlet be mailed in a general, runoff, or general special election, so that the voter receives it at least 10 days before the election).

Recommendations: This memorandum sets out recommendations for shifting the deadlines pertaining to the VIP to allow the department to mail the VIP earlier. Further, the Department recommends that any change to the requirement for mailing out the VIP reflects the complexity in the primary process, as recognized by state law. Currently, state law provides an 11 day difference for mailing VIPs for general (21 days prior) and primary (10 days prior) elections. If the law is changed to require that VIPs be mailed 29 days prior to a general election, we recommend that the primary election VIPs be afforded the 11 extra days to account for the complexity, which would require that the VIPs be mailed 18 days prior to a primary election.

PREPARING THE VIP: DELAYS BEYOND DEPARTMENT'S CONTROL**COLLECTING AND FINALIZING BALLOT INFORMATION**

Each election some candidates will be required to make changes to their ballot designations, which are the three-word descriptions of candidates' occupations found under candidates' names on ballots. These changes may be the result of a challenge to the ballot designation by the Department or from the public during the public review period; the candidate may disagree with the challenge or the Department's determination and request that the Department allow a different designation or seek relief in Superior Court.

For instance, as the ballots for the Eagle machines were nearly finalized and ready for printing, one candidate for a judicial office brought suit in Superior Court stating another candidate's ballot designation was improper and required changing. The Department and its printing vendor needed to wait for the court's decision before proceeding. Since it was a nonpartisan contest appearing on every voter's ballot, we could not release the materials to the printer. Only when the court decided no change to the ballot designation was necessary was the Department able to release the electronically formatted ballot to the printer to prepare for printing. This situation alone delayed the production process by two days.

In addition, California permits political parties to hold their central committee or county council elections during State primary elections. As usual, the committee and council elections this June included over one hundred candidates from whom the Department needed to collect nomination information. Compiling the nomination information itself for such a large number of candidates requires significant amounts of time, but the requirement to ensure the names are transliterated into Chinese characters and the ballot designations are translated to Chinese and Spanish substantially increases the workload. Any challenges to this information can delay the Department in being able to finalize the information for ballot production.

INFORMATION FROM THE SECRETARY OF STATE'S OFFICE

For the June election, the VIPs were also mailed later than normal because the Secretary of State's office (SOS) was late in providing Chinese and Spanish translations for ballot designations. The Department received the translations on April 10, which was one week after the Department planned to submit ballot and VIP artwork to the publishing vendor. Even when the SOS did submit the translations, it did not include the Chinese name transliterations. There were also questions about the accuracy of some ballot designation translations; to prevent further delays, we and other counties had our local translators provide the transliterations and translations. Thus, after the SOS issued the certified list of candidates for the June election, the Department did not receive all necessary translations for more than two weeks afterward. Ultimately, San Francisco and other counties relied on their translation vendors to provide the information that allowed for the completion of ballot preparation work.

It is important to note that AB 2430 (Umberg), if passed, will prohibit local elections officials from obtaining their own translations of state ballot titles and summaries for the

official ballot. AB 2430 will only allow the Secretary of State to provide the official translation of the ballot title and the condensed statement of ballot materials in a language other than English to the local elections official. The deadline set by AB 2430 for these translations is not later than 68 days prior to the election. This bill would also require that, after this translation is provided, the text of the translation shall be made available to the public during the State's 20-day public review period. If passed, this bill could put further delay to the formatting of the sample ballots contained in the voter information pamphlet and, therefore, create more difficulty for the Department to meet the 29-day mailing requirement under local law.

VENDOR

Once the Department was able to finalize the information to place on the ballot, the Department relied on its vendor, ES&S, to format the information. Although the ballots and VIP are separate productions, the VIP must contain samples or images of the actual ballots that voters will use in the upcoming election. Any delay in formatting the ballots will cause delays in producing the VIP, thus, delaying the publication and mailing of the VIP.

The inclusion of the AutoMARK in San Francisco's elections nearly tripled the tasks required to prepare ballots for production. The AutoMARK requires the preparation and production of separate ballot cards for use specifically with the AutoMARK that are different from those that are compatible with the Eagle system in use since November 2000. The reason for the separation between these two systems is that the vendor has not sought the approval and certification from the Secretary of State to use the AutoMARK with our existing system. Additionally, the AutoMARK requires preparation of audio ballots in English, Cantonese, Mandarin, and Spanish. The addition of the AutoMARK essentially required the production of three trilingual versions of each of the 158 ballot styles – a total of 474 styles.

Despite the increase in workload, ES&S assigned only one person to format paper ballots for both the Eagle and the AutoMARK, and that person had only limited experience with formatting ballots for the AutoMARK. Even when the ballot production continually stalled due to errors and formatting problems, ES&S still relied on this one person to complete San Francisco's ballots. When revisions were sent to the Department, staff needed to review all information on multiple ballot styles because they found that often times one update or correction in an electronic ballot file would change the formatting in another part of the file. Apparently, the vendor was unable to proof its work before sending it to the Department. Also, there was a five-day delay because the person formatting the ballots for San Francisco took a vacation break, and the vendor did not provide somebody else to continue the work on the ballots during this time.

Typical ballot errors that the Department continually found on files provided by ES&S for the 158 ballot styles are listed below:

- Candidates listed on ballot for wrong party
- Name misspellings
- Incorrect candidate name rotations
- Incorrect pairing of names and Chinese transliterations
- Cut-off characters or lines of type
- Inconsistent font sizes
- Missing words from contest titles
- Inconsistent line densities
- Chinese formatting issues (wrong characters, nonsense characters, etc.)
- Overlapping text
- Fold mark alignment issues
- Arrow alignment issues

The vendor did not set an initial timeline for preparing the AutoMARK ballots and would not adopt the timeline the Department set to complete the work necessary for finalizing the ballots for printing and for the VIP. The vendor indicated, however, that it would not commence its work on the AutoMARK ballots until ALL Eagle ballots were finalized; this did not occur until April 18th. Then, work on the AutoMARK ballot information continued until May 3rd for paper ballots. Normally, when all ballots are formatted and sent to press, the Department's publications staff shifts its focus to VIP production. With the addition of the AutoMARK, however, the review of the audio files required substantial time and effort before the Department could allow voters to use them. The Department eventually chose to abandon the idea of having audio files in Cantonese, but nonetheless the audio files in English, Mandarin, and Spanish for all 158 ballot styles were not finalized until May 27th, which was the Friday before Memorial Day weekend, and eleven days prior to the election.

STAFFING

To meet federal accessibility requirements, San Francisco offered voters their first opportunity to use a new ballot-marking device called the AutoMARK. As noted in the Department's memorandum issued on May 26, 2006, the same staff prepares ballots for the Eagle optical scan equipment San Francisco has used since November 2000, the AutoMARK paper ballots, and the AutoMARK audio ballots, in addition to the 144-page voter information pamphlet, which includes 101 arguments, 89 of which are paid arguments associated with the local ballot measures placed on the June 2006 ballot, and candidate statements submitted by state candidates. Additionally, the same staff reviews the translated Chinese and Spanish text for each of these products.

One issue the Department faces each election is the loss of experienced temporary staff and the need to hire and train new personnel, likely with no experience in producing a publication as complicated and time-sensitive as San Francisco's voter information pamphlet. Since the positions

are temporary, there is usually a complete turnover of temporary staff from election to election, requiring the manager to train and supervise new, inexperienced staff.

Despite the challenges of a much greater number of ballot styles and the implementation of a new voting system that required the development and review of both paper and audio ballots, the Department had to rely on inexperienced temporary staff to complete this work under the supervision of one manager, who oversaw both the VIP and ballots during a primary for the first time. Furthermore, this manager's staffing resources were insufficient since the new, federally-mandated voting equipment required a phenomenal amount of attention that the Department could not have anticipated. Although the staff worked overtime each week to complete their assignments, the issues associated with the AutoMARK ballots demanded so much of the staff's time that they were unable to focus on the preparations of the VIP as they planned.

Reviewing and correcting the ballots for the new AutoMARK device and reviewing the device's audio features overwhelmed staff during the busiest time in the production cycle. Staff was unable to devote 100% of its time to VIP production as they had scheduled because ballot production required their attention into late May. To ensure that the printing of ballots was completed in time for distribution to both absentee voters and to polling places, as well as for mandated testing, and given the unexpected amount of time that was devoted to development of the AutoMARK paper and audio ballots, the VIP work fell behind.

ADMINISTRATIVE CHANGES AND AREAS OF IMPROVEMENT

CHANGES TO THE MUNICIPAL ELECTIONS CODE

To seek solutions that will allow the Department to mail the VIP earlier, we have accepted your invitation to propose modifications to certain deadlines pertaining to the VIP. We suggest that some deadlines associated with the filing of proponent and opponent arguments, paid ballot arguments, and subsequent public review periods for each type of filing be shifted by no more than three days for any one document.

The chart below provides a brief overview of the modifications the Department proposes as a way of easing the schedule of filings and review periods to provide an additional three days production time for the Department and the vendors who translate, layout, print, bind, and mail the pamphlets to San Francisco voters.

Proposed Changes in Municipal Election Code based on November-7,-2006 Election

	Current Statute	Current Date	Proposed Statute	Proposed Date
ACTION	DAYS PRIOR TO ELECTION	DATE	DAYS PRIOR TO ELECTION	DATE
<u>Submission of City Primary/Rebuttals/Paid Arguments MEC §535</u>				
Submission of Proponent/Opponent Arguments, Noon	81	Fri-August-18-06	82	Thu-August-17-06
Selection of Proponent/Opponent Arguments, 2PM	81	Fri-August-18-06	82	Thu-August-17-06
Correct grammar/spelling in Proponent/Opponent Arguments, Noon	78	Mon-August-21-06	81	Fri-August-18-06
Submission of Rebuttal Arguments, Noon	77	Tue-August-22-06	78	Mon-August-21-06
Submission of Paid Arguments due, Noon	76	Thu-August-24-06	78	Mon-August-21-06
Correct grammar/spelling in Rebuttals, Noon	75	Thu-August-24-06	77	Tue-August-22-06
Correct grammar/spelling in Paid Arguments, Noon	75	Thu-August-24-06	77	Tue-August-22-06
<u>Public Review Periods MEC §590b(3)- (6)</u>				
Proponent/Opponent arguments, change from noon to 2PM (to compensate for selection of arguments)	77	Tue-August-22-06	81	Fri-August-18-06
	64	Mon-September-04-06	71	Mon-August-28-06
Rebuttal Arguments	75	Thu-August-24-06	77	Tue-August-22-06
	64	Mon-September-04-06	67	Fri-September-01-06
Paid Arguments	74	Fri-August-25-06	77	Tue-August-22-06
	64	Mon-September-04-06	67	Fri-September-01-06
Other Materials	No later than 64	Mon-September-04-06	77	Tue-August-22-06
	No later than 54	Thu-September-14-06	67	Fri-September-01-06

***Notes:**

All dates set above can/will be used for any school, college, or BART special measures; any date that falls on a Saturday, Sunday, or holiday will move to next business day

MAILING THE VIP

We also suggest that any proposed ordinance recognize that not all voters who receive a VIP for an election are actually registered 29 days before an election. The reason for this is the registration deadline is 15 days before an election. To clarify any changes in mailing deadlines, we suggest that people who are registered 40 days before an election will have the VIP mailed to them before the new mailing deadline. Due to set-up times, we send a file of voters registered as of 40 days before an election to the vendors responsible for addressing and shipping the VIP for distribution to the branch post offices located throughout San Francisco. Another reason for this suggestion is that the federal "Help America Vote Act" now requires all states to administrate a statewide database; the time it takes to process the registration information in our office and then have the state validate the information against its statewide database increases the time involved in finalizing voters' registration status.

The current VIP mailing deadline is 21 days before an election, except for primary elections, for which state election law stipulates a 10-day deadline. The Department suggests that the City continue to recognize the added complexities to preparing VIP information for primary elections, and the fact that the Department relies on the SOS to provide most of the information necessary of preparing ballots and the VIP. One approach would be to apply the 11-day difference in the current mailing deadlines to any new deadlines the City adopts. For instance, an ordinance requiring a 29-day deadline to mail the VIP would then allow an extra 11 days for the preparation and mailing of the VIP for primaries; therefore, the new mailing deadline for primaries would be 18 days before a primary election.

MAILING ABSENTEE BALLOTS

One issue that became apparent to the Department during the June election is that many voters are unaware that the VIP is posted on the Department's website before any mailings take place. The Department is able to post the VIP information sooner than the pamphlets are mailed due to the time involved in printing, production, and mailing processes. To increase voters' awareness of the VIP being available on the Department's website, we plan to provide an extra insert in the envelopes containing absentee ballots to inform voters that they can access the voter information pamphlet on our website. The benefit of this approach is that even when the Department has mailed the VIP to voters but the pamphlets have not arrived at voters' residences before the absentee ballot, voters will still be able to access the information specific to their ballot type. Our website will also include the location of all voters' polling sites.

CONCLUSION

The Department has met with the vendors involved in formatting and printing San Francisco's ballots and voter information pamphlets. The vendor responsible for formatting the information for publication, ES&S, assured us that it will assign more than one person to complete San Francisco's ballots for upcoming elections. Furthermore, the vendor responsible for printing the ballots and VIP, Sequoia, has provided several methods that the Department can incorporate to shorten the time the Department needs to submit final proofs for printing. A temporary as-needed

staff person has also been designated to ensure that VIP production moves forward even if ballots are delayed.

The later mailing of the VIPs during this past June election was unique for a variety of reasons, but mostly having to do with our vendor's problems with the new voting technology required by the Help America Vote Act of 2002. Finally, we look forward to working with your office to identify any necessary changes that will ensure the VIP is mailed to voters in a timely manner for each election.

cc: Honorable Gavin Newsom, Mayor
Honorable Members, Board of Supervisors
Dennis Herrera, City Attorney
Ed Harrington, Controller
Steve Kawa, Mayor's Chief of Staff
Noelle Simmons, Director, Mayor's Budget Office