

**THE 2007-2008 CIVIL GRAND JURY
FOR THE
CITY AND COUNTY OF SAN FRANCISCO**

**A YEAR OF FIVE ELECTIONS
FOR THE CITY/COUNTY OF SAN FRANCISCO**

**RELEASE DATE
JULY 3, 2008**

The Purpose of the Civil Grand Jury

The purpose of the Civil Grand Jury is to investigate the functions of city and county government, tax-supported agencies and districts, and any agencies or districts created by state law to develop constructive recommendations for improving their operations, as required by law.

Each Civil Grand Jury has the opportunity and responsibility to determine which departments, agencies and officers it will investigate during its one-year term of office. To accomplish this task, the Civil Grand Jury divides into committees. Each committee conducts its research by visiting government facilities, meeting with public officials, and reviewing appropriate documents.

The nineteen members of the Civil Grand Jury are selected at random from a pool of thirty prospective jurors. San Francisco residents are invited to apply. More information can be found at: <http://www.sfgov.org/site/courts>, or by contacting Civil Grand Jury, 400 McAllister Street, Room 008, San Francisco, CA 94102, (415) 551-3605.

State Law Requirement

Pursuant to state law, reports of the Civil Grand Jury do not identify the names or provide identifying information about individuals who spoke to the Civil Grand Jury.

Departments and agencies identified in the report must respond to the Presiding Judge of the Superior Court within the number of days specified, with a copy sent to the Board of Supervisors. For each finding of the Civil Grand Jury, the response must either (1) agree with the finding, or (2) disagree with it, wholly or partially, and explain why. Further, as to each recommendation made by the Civil Grand Jury, the responding party must report either (1) that the recommendation has been implemented, with a summary explanation of how it was implemented; (2) the recommendation has not been implemented, but will be implemented in the future, with a time frame for the implementation; (3) the recommendation requires further analysis, with an explanation of the scope of that analysis and a time frame for the officer or agency head to be prepared to discuss it (less than six months from the release of the report); or (4) that recommendation will not be implemented because it is not warranted or reasonable, with an explanation of why that is. (California Penal Code, sections 933, 933.05).

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I. EXECUTIVE SUMMARY

Between November 2007 and November 2008, the San Francisco Department of Elections will conduct five elections -- a special election, two primaries, and two general elections, including the 2008 presidential election. For three of the five elections, the key question of the validity of the results has been answered. The legally-required internal audit of the election (the "canvass" process) validated the results of the November 2007 and the February and April 2008 elections.¹ The Secretary of State has certified the results of all three elections.

The Department of Elections (the "DOE"), not the Mayor or the Board of Supervisors, deserves the credit for conducting well run elections. The DOE does so even with the significant challenges it faces. The DOE does not have permanent space that is secure for the storage of voting machines, offers adequate working conditions, and provides sufficient training space. These conditions persist in spite of the 2002-2003 Civil Grand Jury (the "2002-2003 Jury") recommendation: "*The City should identify and secure a single site for consolidation of DOE operations.*"² (emphasis added) While it took a year, the DOE, the City Administrator, and the Real Estate Division finally indicated their full agreement with the recommendation in 2004. Even so, the Mayor and the Board of Supervisors (the "Board") have yet to take action to implement the Jury's recommendation. Now in mid-2008, the need for permanent space remains unfulfilled. The current site at Pier 48 is a modest improvement over the prior space, but it is not permanent and must compete with potential demands for development of the site. In short order, the Office of the Mayor and the Board of Supervisors must provide a permanent, consolidated home for DOE functions.

In addition to the sheer number of elections, the DOE faced and still faces increased scrutiny from the Secretary of State. The November 2008 presidential election will involve Ranked-Choice Voting ("RCV") for local elections in much of the City, and yet the Sequoia voting machine has not been certified by the Secretary of State for counting RCV ballots. The lack of a back-up plan for counting RCV ballots in the event certification is not received must be remedied, especially in view of the high voter turnout anticipated for the November 2008 election.

The DOE must create better and more effective outreach efforts to the electorate, particularly on the intricacies of RCV and the technicalities of casting provisional and absentee (vote by mail) ballots.

¹ At the time of this report, certification of the June 2008 election is not yet complete.

² "Improving the Infrastructure of Democracy ..." Report of the 2002-2003 Civil Grand Jury. www.sf.courts.org

II. INTRODUCTION

The 2007-2008 San Francisco Civil Grand Jury (the "Jury") decided to conduct this inquiry because of the total number of elections occurring during its term. The Jury was also aware of concerns about the integrity of local elections generally and controversy surrounding voting machines specifically. In conducting this inquiry and through issuing this report the Jury seeks to inform the citizens of the City and County of San Francisco of the conduct of the four elections in November 2007 and February, April, and June 2008 and to determine whether the elections met the standard of competence, thoroughness and integrity demanded and expected by the citizens of San Francisco and by applicable laws.

The Jury notes that from the first, the DOE leadership granted the Jury's request to have virtually unlimited access to all aspects of the election process. DOE leadership, mindful of the concerns voters had about accurate election results, was committed to making all aspects of the election process transparent to the Jury.

In the conduct of this inquiry the Jury reviewed the report of the 2002-2003 Jury, the San Francisco Charter, and the official Department of Elections Election Plans. The Jury observed numerous aspects of the election process for the November 2007 and February 2008 elections. This included voting machine testing, pollworker training, precinct voting, ballot processing, ballot counts, and verification. In addition, there were several interviews with DOE staff, Election Day personnel, temporary workers, and pollworkers. Many aspects of the special election in April and the June primary were observed as well.³ (see Appendix)

The Civil Grand Jury thanks the Department of Elections staff for their cooperation and support during its investigations and observations. The Jury found that DOE personnel were informed, competent, flexible, and efficient. The staff took ownership of their specific area of responsibility. They were willing to work as long and hard as it would take to complete a process or resolve a problem. They were well trained with adequate back-up to meet unforeseen requirements. During the February election, they were able to deal with the larger than expected voter turnout and the more than expected Provisional Ballots that required additional processing time.

The Jury believes there are some areas where improvements would strengthen the efficiency of the DOE's operations and would clarify voter registration and voting procedures. The Jury has developed recommendations in those areas.

³ A list of the materials provided by the DOE and of the Civil Grand Jury's observations of the myriad activities that take place prior, during, and following an election are included in the Appendix.

III. DISCUSSION

The San Francisco Department of Elections is charged with the following responsibilities:

“...Conduct all public federal, state, district and municipal elections in the City and County ... [This includes] voter registration; the nomination and filing process for candidates to City and County offices; the preparation and distribution of voter information materials; ballots, precinct operations and vote count; the prevention of fraud in such elections; and the recount of ballots in cases of challenge or fraud.”

(San Francisco Charter, sec. 13.104)

The Department of Elections faced several challenges for the November 2007 and February 2008 elections. Some of these same challenges were factors in the April and June 2008 elections, as they will be in the November 2008 election. These include:

- Working locations dispersed across the City, creating loss of efficiency and productivity;
- Machine storage and testing facility with poor security, adverse working conditions and the potential to damage machines;
- Ranked-Choice Voting for several City offices;
- Use of voting machines from Election Systems & Software (“ES&S”) that were not certified by the Secretary of State to count RCV ballots;
- Introduction of the new Sequoia voting machines requiring testing and training;
- Unexpectedly high voter turnout for the February 2008 partisan presidential primary election.

A. The Centralization of the Department of Elections

1. Space Needs of the Department of Elections

The DOE lacks adequate, permanent space for its day-to-day operations. Furthermore, its space requirements, which increase significantly during an election, have been inadequate for some time. The 2002-2003 Jury reported that the Department of Elections was operating in and out of six different facilities during the election periods it observed, including City Hall, Pier 29, and Cor-o-Van Storage (“COV”) on lower Potrero Hill. The 2002-2003 Jury recommended a consolidation of all activities into a single site. The Director of the DOE, the Director of the Real Estate Division, and the City Administrator each issued official responses to the recommendation between June 8 and July 6, 2004. Each response indicated full agreement with the recommendation that a consolidated site should be provided. Four years later, the DOE is still spread across the City, with the 2002-2003 Jury recommendation unimplemented.

Currently, the primary offices used by DOE staff are in the basement of City Hall. City Hall also serves as a polling place for early voting and on election day. The polling place is set up in a lobby immediately outside the DOE offices. The regular DOE offices are a series of interconnected office spaces along one side of the basement corridor on the Van Ness side of City Hall. The path of travel from one end of DOE to another is so complicated that it is easier to go out into the hall and down a busy corridor to get to another part of DOE than it is to snake one's way through multiple doorways, past intervening desks and storage racks. This is not the full extent of all the space complications, though; during elections, the DOE expands into other areas of the basement, including the cafeteria, basement meeting rooms, and even hallways.

The DOE's other significant needs include space to store voting equipment, to conduct pollworker training, to manage post-election activities, and to process all the paperwork generated during each election – ballots, registers, etc. As City Hall does not have the space, the DOE must use additional locations in various parts of San Francisco.

Given the very important DOE mandate to conduct trustworthy elections with credible outcomes, it must have space that is secure, accessible to staff and public, and environmentally appropriate for equipment and personnel. Storage of voting machines is especially critical, as the space needs to be secure and to be adequate for maintenance and testing. DOE staff must often work with the machines, making employee safety and convenience vitally important. Furthermore, it is disruptive to the efficient running of the DOE for the storage areas to change frequently.

Once the polls close and in the days following an election, DOE needs space to receive, process and secure the ballots, as well as perform post-election activity. Here also, space in City Hall is not adequate for DOE's needs.

2. DOE Facilities

The Jury observed some of the facilities used by the DOE – City Hall, the Cor-O-Van public storage warehouse, Pier 29, and Pier 48. Cor-O-Van (COV) and Pier 29 were in use for the November 2007 election. Pier 48 came into use for the 2008 elections, replacing Pier 29 and COV.

a. Cor-O-Van

Cor-O-Van is where DOE stored and tested voting machines, along with other equipment needed to conduct elections. COV is a commercial storage facility. The concrete floors were uneven and cracked, potentially causing damage to the sensitive machines, as well as creating hazards for DOE personnel. The loading dock to the unheated, un-insulated building was open during business hours. Reflecting weather conditions, the building could be quite cold, drafty, and damp, thereby making it uncomfortable for DOE staff members attempting to carry out their duties. On one occasion, the Jury observed staff wrapped in blankets or wearing heavy jackets as they worked. The COV facility had no onsite parking or nearby eating facilities for use by DOE personnel.

DOE sites need to be accessible to members of the public, who are invited to observe the election process. COV had limited on-site visitor parking with one disability parking space and a few spaces for visitors. DOE did not have designated spaces. During one visit, the disabled-accessible parking space was blocked by a COV truck. The building could be accessed by a ramp, which was not a designated walkway, but designed for moving stored material. The same was true of the entrance, where people competed with equipment for space.

Security of the COV site was a concern, since COV is a commercial facility available to the public. Storage company employees and other customers had relatively easy access to the area where election machines were stored. The DOE space was not separately secured or guarded. DOE did not provide security for the facility. For reasons of insurance liability coverage, only COV personnel were permitted to access DOE equipment from facility shelves. This may seem a reasonable policy for COV, but not for DOE, as it increased the Department's costs.

b. Pier 48

For the elections in 2008, a different storage site was used -- Pier 48. This facility is an improvement; however, Pier 48 still presents drawbacks. Working conditions are less than ideal (for example, drinking water is unavailable and there is a lack of nearby eating facilities). This Pier is far from the other DOE operations and public transportation to and from this location is inefficient, with only one MUNI line stopping nearly two blocks away. Two blocks is a long walk for the disabled or for personnel transporting documents or equipment. Furthermore, the DOE's lease for Pier 48 expires in a few more years, presenting again the challenge to find adequate and permanent space. The site is also threatened by the Port's consideration of developing the space for other uses.

The Jury again toured Pier 48 shortly after the June 2008 election and found various hazards and problems. Most significant was the lack of drinkable water. The water fountains installed after the February 2008 election were wrapped in multiple layers of yellow caution tape. This was to prevent personnel from drinking brownish tap water.

Due to the Mayor's ban on buying bottled water, there was no water in the water cooler jug, nor were there any cases of bottled water—unlike in February, when both were readily available.

Additional safety hazards (electrical and tripping) that the Jury observed involved the use of an extension cord, running along a wet floor. The cord provided power to a microwave used by staff to prepare their food.

These problems at Pier 48 show DOE management's lack of proper attention to workplace safety and the need to meet both the legal requirement to provide drinking water and the City's policies regarding bottled water in the workplace.⁴

⁴ California Code of Civil Regulations Title 8, Div.1, Chap. 4, § 3363. Water Supply.

c. City Hall

City Hall is the site used to conduct such standard election activities: taking out candidacy papers, registering to vote, being a polling place for absentee/early voting, and conducting pollworker training.

City Hall is an attractive, ceremonial location for DOE. It is not essential for the DOE to be housed in City Hall. When City Hall was closed for the multi-year earthquake repair/retrofit, the DOE moved to leased space at 633 Folsom Street. Several elections were held during this time, with no reports of major problems.

There is insufficient space to consolidate all DOE activities within City Hall. Yet, elected and appointed officials appear reluctant to consolidate all DOE operations at one site outside City Hall. The Jury believes it is imperative that the DOE have a unified site with space for equipment storage, training, canvassing, and all of its day-to-day, year-round work.

3. Santa Clara County Election Facilities

The Jury had the opportunity to observe an example of such a unified setting. Santa Clara County has approximately 714,000 registered voters, San Francisco nearly 400,000. Santa Clara County's election offices are located in two side-by-side buildings, one for staff members requiring public contact and the other for equipment maintenance, testing, and storage. The locations are excellent, accessible, efficient, and highly secure. These two side-by-side office spaces have approximately 60,000 square feet of space - vastly greater than the constantly varying space allocated to San Francisco's DOE in all its various locations.

FINDINGS:

- 1. The Department of Elections' City Hall space is inadequate for the performance of all of its functions, so the Department utilizes various locations throughout the City.**
- 2. The use of multiple locations impacts the efficiency of DOE operations and potentially compromises the security and even the integrity of elections.**
- 3. Five years after the 2002-2003 Civil Grand Jury recommended that "the City should identify and secure a single site for consolidation of DOE operations," the DOE is still without consolidated, permanent space.**
- 4. The current off-site location at Pier 48 does not offer DOE personnel consistent access to a reliable supply of drinking water.**

B. Voting Machine Certification for Ranked-Choice Voting (RCV)

In 2002, San Francisco voters approved a Charter Amendment requiring the City to utilize a Ranked-Choice Voting, or “instant run-off voting” method for elections for certain City offices. By allowing voters to rank a first, second and third choice candidate for a single office, RCV eliminates separate runoff elections.

The official DOE explanation of RCV is found in How Ranked-Choice Voting Works:⁵

- To start, every first-choice selection is counted. Any candidate who receives a majority (more than 50%) of the first-choice selections is declared the winner.
- If no candidate receives more than 50% of the first-choice selections, the candidate who received the fewest number of first-choice selections is eliminated.
- Voters who selected the eliminated candidate as their first choice will have their vote transferred to their second choice.
- The votes are then recounted. If any remaining candidate receives more than 50% of the votes, he or she is declared the winner.
- If no remaining candidate receives more than 50% of the votes, the process of eliminating candidates and transferring votes to the next ranked candidate is repeated until one candidate has a winning majority.

RCV was used for the November 2007 election for the offices of Mayor, District Attorney, and Sheriff. The voting machine used for that election, Election Systems & Software (ES&S), had not been certified by the California Secretary of State for its use for counting RCV ballots. As a result, the count and tally of each precinct’s ballots had to be done at a location other than the local precincts. This delayed the issuing of the election results. The delay would have been considerably greater if the RCV second and third choice ballots had had to be counted. However, each race subject to RCV resulted in one candidate getting a majority of the first choice votes cast, so no RCV ballot counting procedure was needed. Counting of second and third choice ballots is required only if no candidate receives a majority of first choice votes.

RCV will be used for some local elective offices in the November 2008 election. The new Sequoia voting machine has not yet been certified by the California Secretary of State for counting RCV ballots. Voter turnout for the November 2008 presidential election is likely to be high. An alternative way of counting RCV ballots must be in place in the event the Secretary of State does not issue the required certification in sufficient time for the election.

FINDINGS:

- 5. Sequoia must obtain the Secretary of State’s certification that Sequoia voting machines have the capacity to count RCV ballots.**

⁵ Tuesday, November 6, 2007 Voter Information Pamphlet & Sample Ballot, page 14