Staff Report

City of Manhattan Beach

TO: Honorable Mayor Montgomery and Members of the City Council

THROUGH: Geoff Dolan, City Manager

FROM: Liza Tamura, City Clerk
               Terri Aliabadi, Senior Deputy City Clerk

DATE: October 21, 2008

SUBJECT: Consideration of a Resolution Providing for a Procedure to Resolve Tie Votes for
               Elected Offices at General Municipal Elections

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RECOMMENDATION:
It is recommended that the City Council adopt one of the two versions of Resolution No. 6159 providing for a procedure to resolve tie votes for elective offices for the Tuesday, March 3, 2009, General Municipal Election and all subsequent elections.

FISCAL IMPLICATION:
In the case of a tie vote, should Council choose to hold a Special Runoff Election rather than resolve the tie by "lot", staff will need to return to Council to request additional funds. A Special Runoff Election would cost approximately $67,000.

DISCUSSION:
At the City Council meeting of October 7, 2008, Councilmember Ward requested additional information regarding how cities resolve tie vote elections. The City Clerk's Office conducted a poll through the League of California Cities and received a number of responses, a majority of which referred staff to California Elections Code Section 15651 (see attached), which in essence, conveys that the City Council may either choose to hold a Special Runoff Election or decide a tie by "lot" (coin toss, high card, draw name, etc.). Among other responses, 8 cities adopt a Resolution calling for a Special Election; 11 cities resolve the tie by "lot" and 2 cities leave it up to the City Council to determine whether to decide by "lot" or to hold a Special Election.

**Resolution No. 6159A** - Authorizes the conduct of a Special Runoff Election for elective offices in the event of a tie vote. The City Clerk's Office did not budget for a Special Election but will return to Council for approval of additional funds if the Council chooses this option.

**Resolution No. 6159B** – Provides for a "by lot" procedure to resolve tie votes for elective offices.

Exhibits: Resolution No. 6159A & 6159B
               California Election Code Section 15651
               Procedure for Coin Toss for Determination of the Winner

RESOLUTION NO. 6159A

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, PROVIDING FOR THE CONDUCT OF A SPECIAL RUNOFF ELECTION FOR ELECTIVE OFFICES IN THE EVENT OF A TIE VOTE AT ANY MUNICIPAL ELECTION.

WHEREAS, § 15651(b) of the Elections Code of the State of California authorizes the City Council, by majority vote, to adopt provisions to require the conduct of a Special Runoff Election to resolve a tie vote involving those candidates who received an equal number of votes and the highest number of votes for an elective office.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1.   That pursuant to § 15651(b) of the Elections Code of the State of California, if any two or more persons receive an equal and the highest number of votes for an office to be voted for within the city, there shall be held within the city a Special Runoff Election to resolve the tie vote. A Special Runoff Election shall be called and held on a Tuesday not less than 40 nor more than 125 days after the administrative or judicial certification of the election which resulted in a tie vote.

SECTION 2. That this resolution shall apply only to the election to be held on March 3, 2009, and shall then be repealed.

SECTION 3. That this resolution shall take effect immediately. The City Clerk shall make this resolution readily available for public inspection within thirty (30) days of the date this resolution is adopted.

SECTION 4.   That the City Clerk shall certify to the passage and adoption of this resolution and thenceforth and thereafter the same shall be in full force and effect.

PASSED, APPROVED and ADOPTED this 21st day of October, 2008.

Ayes:
Noes:
Absent:
Abstain:

_____
Mayor, City of Manhattan Beach, California

ATTEST:

_____
City Clerk

RESOLUTION NO. 6159B

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MANHATTAN BEACH, CALIFORNIA, PROVIDING FOR A PROCEDURE
TO RESOLVE TIE VOTES FOR ELECTIVE OFFICES AT GENERAL
MUNICIPAL ELECTIONS

WHEREAS, § 15651(a) of the Elections Code of the State of California authorizes the City Council, by majority vote, to adopt provisions to provide for a procedure to resolve a tie vote involving those candidates who received an equal number of votes and the highest number of votes for an elective office.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1.   That in the event no candidate for a municipal office qualifies by receiving more than half of the votes cast for that position and an equal number of votes are cast for two or more candidates qualifying for second place, the tie to decide the second place candidate for a run off election shall be resolved as outlined in Exhibit "A" attached hereto.

SECTION 2.   That in the event two or more candidates for a Municipal Elective Office in a run off election receive an equal number of votes creating a tie, the tie shall be resolved as outlined in Exhibit "A" attached hereto.

SECTION 3.   That the provisions of Sections 1 and 2 shall apply at the next ensuing municipal election to be held in the City on March 3, 2009, and at each municipal election thereafter.

SECTION 4.   That this resolution shall take effect immediately. The City Clerk shall make this resolution readily available for public inspection within thirty (30) days of the date this resolution is adopted.

SECTION 5.   That the City Clerk shall certify to the passage and adoption of this resolution and thenceforth and thereafter the same shall be in full force and effect.

PASSED, APPROVED and ADOPTED this 21st day of October, 2008.

Ayes:
Noes:
Absent:
Abstain:

_____
Mayor, City of Manhattan Beach, California

ATTEST:

_____
City Clerk

EXHIBIT "A"

By Lot: The City Council shall forthwith summon the candidates who have received the tie votes, whether upon the canvass of the returns by the Council or upon a recount by a court, to appear before the Council at a time to be designated by the Council. The Council shall, at that time and place, determine the tie by lot (e.g., tossing a coin, etc.), or in order to maintain a sense of dignity in resolving a tie vote, Council may place each candidate's name in an unmarked, sealed envelope. The Mayor will then select a person to draw an envelope and read the name of the winning candidate.

true media used in the election and have not been altered.

(Amended by Stats. 1998, c. 1073, §42.)

Chapter 10. Tie Votes

Article 1. Elections Other than Primary Elections

15650. Application of article.

This article does not apply to any primary election.

(Added by Stats. 1994, c. 920, §2.)

15651. Procedure to resolve a tie vote; runoff election.

(a) If at any election, except as provided in subdivision (b) and an election for Governor or Lieutenant Governor, two or more persons receive an equal and the highest number of votes for an office to be voted for in more than one county, the Secretary of State shall forthwith summon the candidates who have received the tie votes, whether upon the canvass of the returns by the Secretary of State or upon recount by a court, to appear before him or her at the Secretary of State's office at the State Capitol at a time to be designated by him or her. The Secretary of State shall at that time and place determine the tie by lot. Except as provided in subdivision (b), in the same manner, at a time and place designated by it, the election board shall determine a tie vote, whether upon the canvass of the returns by the election board or upon a recount by a court, for candidates voted for wholly within one county or city.

(b) In lieu of resolving a tie vote by lot as provided in subdivision (a), the legislative body of any county, city, or special district not subject to the Uniform District Election Law (Part 4 (commencing with Section 10500) of Division 10) may resolve a tie vote by the conduct of a special runoff election involving those candidates who received an equal number of votes and the highest number of votes.

A special runoff election shall be held only if the legislative body adopts the provisions of this subdivision prior to the conduct of the election resulting in the tie vote. If a legislative body decides to call a special runoff election in the event of a tie vote, all future elections conducted by that body shall be resolved by the conduct of a special runoff election, unless the legislative body later repeals the authority for the conduct of a special runoff election.

If a special runoff election is held pursuant to this subdivision, the legislative body shall call for the runoff election to be held in the local entity on a Tuesday not less than 40 nor more than 125 days after the administrative or judicial certification of the election that resulted in a tie vote. If a regular election is to be held throughout the jurisdiction within that time period, the special runoff election shall be held on the same day as, and consolidated with, the regular election.

(Amended by Stats. 1998, c. 199, §49.)

15652. Certificate of election.

If the tie vote has been determined pursuant to Section 15651, the person declared elected by the Secretary of State or the election board is entitled to a certificate of election. The Secretary of State, the county elections official or the city elections official, whichever the case may be, shall immediately make out and deliver to that person a certificate of election.

(Added by Stats. 1994, c. 920, §2.)

PROCEDURE FOR COIN TOSS FOR DETERMINATION OF THE WINNER

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It is proposed that a toss of a coin be used to determine the winner of the tie election in the manner which follows:

Selection of Coin
1) A U.S. minted dollar coin shall be used in the toss.

2) The coin shall be obtained by the Elections Official from the City Finance Department or from a local Bank.

3) Both candidates shall be allowed to examine the selected coin.

Candidates' Witnesses
1) Each candidate shall select one person, of his/her choice, to act as a witness.

2) The witnesses shall verify the results of the drawing of cards and the coin toss, but shall not touch either the cards or the coin.

Selection of Person to Call Coin
1) Each candidate shall write his/her name on five separate 3" x 5" index cards.

2) The ten index-cards shall then be folded once and placed in a solid colored container.

3) One card shall be drawn from the container by the Elections Official and shown to the (Head of the Legislative Body*), the two candidates, and the two witnesses.

4) The Election Official (or Head of the Legislative Body*) shall announce who shall call the toss.

Method of Tossing Coin
1) The coin shall be tossed, by the Election Official (or Head of the Legislative Body*), to a height of at least six feet, flipping end over end. If the proper height or form is not attained, the Elections Official shall call a fault before the coin hits the ground, and the coin shall be tossed again.

2) The call must be made by the selected candidate after the coin leaves the hand, but before it begins its descent to the floor. If the call is not made before it begins its descent, the Elections Official shall call a fault before the coin hits the ground and the coin shall be tossed again.

3) The coin shall be allowed to fall directly to the floor and come to rest without interference of any kind, including but not limited to, contact with the following: any person, any person's apparel, chairs, tables, walls, wires or draperies. If the coin comes in contact with any object except the floor the Elections Official shall call a fault before the coin comes to a rest, and the coin shall be tossed again.

4) No person shall touch the coin until the Legislative Body declares the result.

Verification of Result
1) The Election Official (or Head of the Legislative Body*) and the two witnesses shall view the coin first and agree on the result, without touching the coin.

2) Once the results have been so verified, the two candidates may view the coin, without touching it.

3) Following this, the remaining members of the Legislative Body shall view the coin, without touching it.

4) Following this, all other interested parties may view the coin, without touching it.

Declaration of Result
1) Once all interested parties have viewed the coin, the Election Official (or Head of the Legislative Body*) will announce the winner of the toss and entertain a motion to declare the winner of the toss the winner of the election.

2) Once the Legislative Body has acted to declare the winner, the coin shall be picked up.

3) The declaration shall be put in the appropriate written form (Resolution declaring the Results of the Election, *Resolution R-9*), signed by the (Head of the Legislative Body*) and transmitted to Elections Official of the Legislative Body

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* Head of Legislative Body can be defined as:
> Mayor of a City or Town Council
> President of a Board of Directors or Board of Trustees

APPROVED BY:

_____
Candidate   Date

_____
Candidate   Date

(Contributed by Pamela O'Camb, City Clerk, City of Loma Linda, from their 2000 Election)

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(Contributed by Pamela O'Camb, City Clerk, City of Loma Linda, from their 2000 Election)

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