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TO: HONORABLE MARK RIDLEY-THOMAS
Supervisor, Second District

FROM: JOHN F. KRATTLI *PKW (for)*
County Counsel

RE: **Los Angeles Unified School District Board of Education
Vacancy**

This is to provide an analysis of the various options available to the Los Angeles Unified School District Board of Education in order to fill the vacancy left by the passing of Ms. Marguerite Poindexter LaMotte, District 1 Board member.

Summary

Ms. LaMotte passed away on December 5, 2013, leaving a vacancy on the Los Angeles Unified School District Board of Education ("LAUSD Board.") The Los Angeles City ("City") Charter primarily governs the process for filling the vacancy. The Charter allows for the vacancy to be filled by either appointment by the LAUSD Board or by special election of the voters, but not both. Thus, should the LAUSD Board decide to appoint, the option of an election is no longer available. Should the LAUSD Board decide to hold a special election it may not appoint a replacement Board member for the interim period. In the case of an election, the Charter provides that there will be a primary election and if no candidate receives more than 50 percent of the votes, then a subsequent runoff election will occur.

Although the City Charter does not reference a deadline for the LAUSD Board to make an appointment or to order an election to fill the vacancy, State law provides a window of 60 days for this decision to be made. In this instance the 60 day deadline is February 3, 2014. If by February 3, 2014, the

LAUSD Board has neither appointed a replacement, nor ordered an election, then the county superintendent of schools must order an election.

The City Charter provides that the primary qualifications for an appointee or a candidate are residency in the District and voter registration.

In the event the LAUSD Board decides to appoint a replacement member, that member would remain on the Board until Ms. LaMotte's present term would have otherwise ended, June 30, 2015.

In the event of an election, the timing of the special election and the corresponding deadlines are dependent on whether the special election is consolidated with the County Statewide Primary Election on June 3, 2014, or held on a different election date. With consolidation, the special election will be conducted in a manner consistent with the applicable laws, deadlines, and processes of the County. A request for consolidation of the election for Board member with the County's June 3, 2014, Statewide Primary Election must be received by the Board of Supervisors by March 7, 2014.

If the special election is held on a different date, such as the proposed August 12, 2014, it would be conducted by the City Clerk. All deadlines, other than those for candidate filing, would depend on the City Clerk's ability to perform necessary activities such as translating and printing ballots, mailing vote by mail ballots, securing polling places, and other necessary Elections preparation activities. In either case, the LAUSD Board must make the initial decision to order an election by the February 3, 2014, deadline earlier mentioned.

Analysis

Ms. LaMotte originally assumed office on the LAUSD Board on July 1, 2003, and was most recently re-elected in 2011. Her current term began July 1, 2011, and expires on June 30, 2015. She passed away on December 5, 2013, which caused a vacancy in the office for the unexpired term. (California Education Code ["Cal. Ed. Code"] § 5090.) On January 7, 2014, the LAUSD Board will hold a special meeting to determine whether her vacancy on the LAUSD Board will be filled by appointment or an election will be held.

Because Los Angeles is a charter City, the LAUSD Board and the election of its members is governed by the City Charter and the City Election Code. If the City Charter or City Election Code fail to address certain issues, then the general laws under the California Education Code and the California Elections Code will govern. (Cal. Ed. Code §§ 5200, 5222.)

Vacancy May Be Filled Either By Appointment or Election

The City Charter specifically provides that a vacancy on the LAUSD Board shall be filled by either appointment or election. Similarly, section 5091 of the Cal. Ed. Code provides for either an appointment or election upon a vacancy, but does not allow for both. Thus, the LAUSD Board does not have authority to order an election to fill the vacancy, and in the interim appoint a Board member until the election is held.

Timeframe to Appoint or Call Election

Both the City Charter and the City Election Code are silent as to when the appointment may be made or the special election ordered. However, Section 5091 of the Cal. Ed. Code provides that an appointment must be made or the election must be ordered within 60 days of the vacancy. Since the vacancy occurred December 5, 2013, the appointment must be made, or the election ordered by February 3, 2014, with the actual election date occurring later.

If the LAUSD Board fails to take action by this deadline, the City Charter and Election Code are silent as to this process. However, section 5091 of the Cal. Ed. Code provides that if no action is taken within the 60 days, the county superintendent of schools shall order an election to fill the vacancy.

Appointment

As stated above, the LAUSD Board may choose to fill a vacancy of one of its member's unexpired term by appointment. (L.A. City Charter, § 410.) To be eligible for appointment, a person must be a registered voter of the School District at the time of his/her appointment and have been a resident of the Board District at least 30 days prior to the date of his/her appointment. (L.A. City Charter, § 407(b).)

The City Charter and City Election Code do not refer to the internal process of making an appointment such as posting notice or other procedural steps, nor does any California statute appear to apply. Thus, it is reasonable to infer that the LAUSD Board would have to determine that process.

Special Election

Alternatively, should the LAUSD Board choose not to appoint, it may order a special election and enter into a contract with the City to conduct the special election. Within 30 days of the City Council's approval of the contract, the Council shall adopt a resolution calling a special election and special runoff election, if necessary, and provide in an ordinance: (1) the time for holding the election; (2) whether consolidation with any other scheduled election will be sought; (3) the procedures for nominating candidates, including the amount of the

filing fee, if any, to be paid by candidates; and (4) any other matters pertaining to the election." (L.A. City Charter, § 410(b).) The ordinance calling for an election will take effect immediately. (Gov. Code § 36937.)

To be eligible as an election candidate to fill a vacancy, a person must be a registered voter of the School District at the time of his/her nomination and election. Additionally, that person has to have been a resident of the Board district from which he/she is nominated or elected for at least 30 days immediately preceding the first day upon which the candidate could file a Declaration of Intention to run for that office. (L.A. City Charter, § 407.)

Election Date Options

1. Consolidating with the County June 3, 2014, Statewide Primary Election

The City Council may consolidate the primary special election with the County Statewide Primary Election on June 3, 2014, which is conducted by the County. If consolidation occurs, then the special election will be conducted in a manner consistent with the applicable laws, deadlines, and processes of the County. March 7, 2014, is the last day that the City Council may legally file a resolution with the Board of Supervisors requesting consolidation of the LAUSD Board special election with the County Statewide Primary Election on June 3, 2014. Although the City Clerk is responsible for processing all relevant candidate filings and documents (e.g., Declaration of Intention and nominating petitions), those documents have to be filed between February 10, 2014, and March 7, 2014. Moreover, the City Clerk must provide the names of all qualified candidates that will appear on the ballot to the Registrar-Recorder/County Clerk ("RRCC") no later than March 14, 2014. All other necessary election activities (e.g., translating and printing the ballots, mailing the vote by mail ballots and the sample ballots) are the responsibility of the RRCC who must perform them consistent with California Elections Code. Finally, the RRCC has provided an estimated cost for consolidation of the special election with the June 3 primary election for four candidates at \$623,000. This estimate could change if the number of candidates increases or other factors arise.

2. August 12, 2014, Special Primary Election Date

An election occurring on a different date would most likely be conducted by the City Clerk as the RRCC has no regularly scheduled elections until November 4, 2014, with which to consolidate the Board member special election. If the City chooses to hold the primary special election on another date, such as August 12, 2014, then the City Council must set forth, via ordinance, the election procedures. The City Election Code provides that "the Election Ordinance ordering the Special Election shall specify the filing period for the

Declaration of Intention provided that: (1) the filing period may not be for a period of less than 60 days, and (2) the filing period may start concurrently with the period for obtaining nominating petitions. (L.A. City Elec. Code § 301(b).) Additionally, that ordinance shall set forth the time period for circulating and filing nominating petitions and associated fees, which must be a minimum of 20 days. (L.A. City Elec. Code § 301(d).) Apart from these candidate deadlines specified in the City Election Code, the City Clerk appears to have sufficient time to conduct all necessary activities for an election to occur on this date.

Conclusion

The LAUSD Board has 60 days to either make an appointment or order an election to fill the vacancy. If an election is ordered, the election may be consolidated with the County Statewide Primary Election or may choose a different date. The deadlines will vary depending on whether the election will be conducted by the RRCC or the City Clerk.

If you have questions concerning this matter or need additional information, please contact me, Assistant County Counsel Judy W. Whitehurst at (213) 974-1921, or Principal Deputy County Counsel Vicki Kozikoujekian at (213) 974-1895.

JFK:VK:am

c: William T Fujioka
Chief Executive Officer

Sachi A. Hamai, Executive Officer
Board of Supervisors