

Agenda Report

August 28, 2017

TO: Honorable Mayor and City Council

FROM: City Clerk

SUBJECT: REQUEST FOR DIRECTION REGARDING POTENTIAL AMENDMENTS TO THE CITY CHARTER THAT MAY BE NECESSARY TO COMPLY WITH THE CALIFORNIA VOTER PARTICIPATION RIGHTS ACT (CVPRA) AND CALIFORNIA ATTORNEY GENERAL OPINION NO. 16-603

RECOMMENDATION:

It is recommended that the City Council:

- (1) Find that the proposed action is exempt from California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15061(b)(3), ("General Rule"); and
- (2) Provide direction to staff regarding potential amendments to the City Charter that may be necessary to comply with the CVPRA and Attorney General Opinion No. 16-603, as follows:
 - a. Consider the matter at the City Council level on whether and (if affirmed) how to comply with the CVPRA, including submitting amendments to the City Charter for voter consideration and approval at an upcoming election;
 - b. Refer the matter to the Legislative Policy Committee (or other City Council Committee) for study and recommendation, prior to taking further action;
 - c. Refer the matter to a Charter Study Task Force for study and recommendation, prior to taking further action; or
 - d. Provide alternative direction to staff on how to proceed.

BACKGROUND:

Over the past several years, the State's legislature has dedicated significant time and focus on issues related to the local election process, including the voting format of local races, timing of elections, and turnout rates of voters. This has resulted in a number of bills being introduced and considered at the state level, that, if enacted and signed by the Governor, will have significant direct and indirect impacts to local elections held in Pasadena and Pasadena Unified School District (PUSD). Staff has been monitoring these developments, providing periodic updates to the Legislative Policy Committee, the City Council, and PUSD Board of Education on the State's proposals.

California Voter Participation Rights Act

One bill in particular, SB 415 (Hueso), which was signed by Governor Brown on September 1, 2015, and codified as the California Voter Participation Rights Act (CVPRA), Elections Code Sections 14050-14057 (Attachment B), greatly concerned City staff based on the fundamental changes to the local election process that will likely occur as a result of this new law. Citing participation issues and low voter turnout rates on “off-year” local elections, the stated purpose of CVPRA is to eliminate the off-year election date option and require local elections to be held on established statewide dates (June Primary and November General elections held in even years). The author of the bill argued that consolidating election dates would increase voter turnout in local elections, more effectively utilize tax dollars for elections, and result in more representative local governments through increased participation of local voters.

Summary of the CVPRA:

“Commencing January 1, 2018, a political subdivision is prohibited from holding an election other than on a statewide election date if holding an election on a non-current date has previously resulted in voter turnout for a regularly-scheduled election in that political subdivision being at least 25 percent less than the average voter turnout within the political subdivision for the previous 4 statewide general elections, except as specified. Requires a court to implement appropriate remedies upon a violation of this prohibition. Permits a voter who resides in a political subdivision where a violation is alleged to file an action in Superior Court to enforce this prohibition, and allows a prevailing plaintiff other than the state or political subdivision to collect a reasonable attorney's fee and litigation expenses, as provided.”

At the time of the bill's signing, it was unclear whether the CVPRA applied to charter cities. The California Constitution states that properly adopted charter language would supersede state law (Cal Const. Article XI, Sec 5: “City charters adopted pursuant to this Constitution...with respect to municipal affairs shall supersede all laws inconsistent therewith”). Initially, staff believed this protection under the Constitution would shield Pasadena and PUSD from potential litigation but recent case law (*Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th,801) involving the California Voting Rights Act (CVRA) created additional uncertainty (a more complete discussion on the relevancy and relationship of the *Jauregui* decision to the CVPRA was discussed at the March 7, 2016 City Council meeting).

State Attorney General Opinion Sought to Clarify Applicability of CVPRA

At the March 7, 2016 City Council meeting, following a discussion on the CVPRA and *Jauregui* decision, staff was directed to seek a legal opinion from the California Attorney General regarding the applicability of the CVPRA on charter city elections. The City Attorney's Office contacted Assemblymember Chris Holden to submit a request for

clarification on behalf of the City of Pasadena, as well as the Pasadena Unified School District whose election timing is also governed by the City's Charter.

On June 6, 2016, Assemblymember Holden submitted a formal request for legal opinion (Attachment A) to then State Attorney General Kamala Harris, requesting a response to the following two questions:

- (1) Does the Voter Participation Rights Act directly apply to charter cities and local school districts, if both entities' district elections are governed by the charter of a city?
- (2) Could a municipal election held by a charter city on an otherwise valid but non-statewide election date, that produced low voter turnout, be considered a matter of "statewide concern" sufficient to negate local control and impose the Voter Participation Rights Act on a charter city?

Applicability to Charter Cities

On July 13, 2017, more than a year later, the City received Attorney General Opinion No. 16-603 (Attachment A), which opined that the CVPRA does apply to charter cities and to local school districts whose elections are governed by city charters. On Pages 4 and 5 of the Opinion, the Attorney General's Office cited the *Jauregui* decision as supporting justification for its determination that the CVPRA applies to charter cities.

Based on Voter Turnout in Pasadena and PUSD Elections, CVPRA Applies

As noted above, liability under the CVPRA applies to local elections when voter turnout is 25% less than the average of the last four statewide general elections held in November of even years. Pasadena and PUSD elections generally average about 20% voter turnout for elections held in odd years, which, based on reported turnout rates from the Los Angeles County Registrar of Voters is about 40% less than the statewide General Election. The following provides some recent turnout statistics:

- Average turnout for the last four Statewide General Elections is 63.21%
 - **62,468** ballots were cast in the November 2016 election
- Pasadena Mayoral Election in 2015, the turnout was 20.16%
 - **15,368** ballots were cast in 2015 Mayoral race
- Turnout for the March 2017 City elections was 21.67%
- Turnout for March 2017 PUSD election was 20.47%

Assuming the Attorney General Opinion correctly applies the CVPRA to charter cities and school districts whose elections are governed by city charter, the turnout rates for Mayor, City Council, and Board of Education elections fall well short of the 25% threshold that would allow exemption from the law. While not the same as a court ruling, Opinion 16-603 lends further support to the notion that the City and PUSD could face potential legal challenges if the past turnout rates for Pasadena elections remain at similar levels when conducting future off-year elections.

Impacts of CVPRA – City’s Election Vendor

Setting aside the legal questions, there are other administrative reasons to consider the move to statewide election dates. As mentioned, there are indirect impacts created by the CVPRA, the most significant related to the City’s current election vendor, Martin & Chapman Company, who has been the primary vendor for election services for Pasadena and other cities for more than 50 years. Martin & Chapman services include:

- Type-setting and printing of official ballots and sample ballot pamphlets
- Inserting and mailing of Vote by Mail ballots to voters
- Supplying ballot tracking software and processes for accurate accounting of ballots received for verification and counting
- Preparing precinct kits for polling places (e.g. printing and supplying voter rosters, ballot materials, required language translations, signage, etc.)
- Ensuring legal compliance with California election laws
- Furnishing and operating ballot tabulation equipment on election night
- Facilitating the tabulation and final canvass of all votes cast in an election

The City’s election vendor has been greatly affected by the passage of CVPRA, with many General Law client cities having already completed the process in transitioning to statewide election dates (applicability of CVPRA to General Law cities is clear). This has led to significant challenges for Martin & Chapman to continue operations under its current business model as a full-service election vendor. In addition, staff has met with a number of charter cities considering the CVPRA applicability issue, and it appears that most charter city staff see little alternative other than to comply and transition to statewide election dates in the near future, in light of the Attorney General’s Opinion (please note, no official or final determination has been made by any charter city with which Pasadena staff has met regarding changing election dates).

City staff is unaware of any other election vendor, besides Martin & Chapman Company, that offers the same comprehensive, start-to-finish assistance for cities administering elections. There are a few vendors that provide certain services covering aspects of the election process (e.g., supplying a voting system that is certified by the California Secretary of State, providing Vote by Mail services, printing election ballots and materials, etc.), but not the comprehensive assistance needed to continue the current model of elections for Pasadena and PUSD. Taking into account the uncertainty of Martin & Chapman, the City and School District may be left with limited options in terms of experienced election vendors for future off-year elections.

County of Los Angeles Registrar of Voters

One logical alternative to utilizing a private vendor (such as Martin & Chapman), which could allow for the continuation of the off-year election cycle model, is to request that the Los Angeles County Registrar of Voters conduct elections on behalf of the City and PUSD. As the Elections Official for LA County, the Registrar of Voters is required to conduct elections for local political subdivisions within the County's jurisdiction.

Staff has already started the dialogue with the County regarding the feasibility and cost to run City and PUSD elections in March and April of odd years (consistent with the current model). Based on those discussions, County staff has indicated that the current framework of City and School District Primary and General Elections could present challenges for the County. Specifically, the timing between the two elections is an issue for the County process, such that the six week period between the two dates would need to be extended to eight or ten weeks under the County's election administration model. Such an extension in the timing would require a change to the City's Charter.

Another potentially more significant issue for the City Council to consider under the County-run election model is the cost factor. Based on information provided by the County, the amount paid by the City and School District for odd-year elections would significantly increase (likely double) as compared to the current election costs for the City and PUSD when utilizing the services of a private vendor such as Martin & Chapman.

For example, expenditures for the 2015 City and PUSD election cycle were approximately \$740,000 to cover both the March Primary Election and April General (runoff) Election. The County's estimates suggest that City and School District costs could increase to approximately \$1.4 million to \$1.6 million for a similar election cycle. This estimate was provided on an informal basis and certainly warrants further review with County staff in order to validate the increases.

Comply or Not Comply – What Changes Are Necessary and How

With the City Council and Board of Education election timing governed by Pasadena City Charter, any changes to the Charter require a vote of the people. Neither the City Council, nor Board of Education, nor City staff can act unilaterally to amend the City Charter.

In light of the Attorney General opinion, the initial question to consider is whether the City Council and the Board of Education (collectively or separately) determine it is necessary to comply with the California Voter Participation Rights Act. Although the School District's election format is contained in the City Charter, the School Board is not bound by any determination made by the City Council (nor vice versa). Therefore, the City Council and Board of Education can submit separate and/or different charter

amendments for voters to consider. Some level of coordination is advisable, if only considering cost effectiveness and savings to be gained in submitting charter amendment measures at the same election.

Turning the focus to City-only considerations, if the City Council's determination is to maintain the current off-year election schedule (status quo), and in so doing concludes that the current City Charter provisions still govern the election schedule for the City as a traditional municipal affair (notwithstanding Attorney General Opinion No. 16-603), the City would still likely need to adjust the timing between the Primary and General elections. While City Clerk staff would continue to utilize the services of Martin and Chapman for as long as possible, and if necessary, pursue other vendor alternatives (e.g., perhaps utilizing multiple election vendors to replace the majority of services provided by Martin & Chapman), the most simple and clear cut resolution to the private vendor issues detailed above would be to turn to the LA County Registrar of Voters to conduct future elections for the City. In this scenario, and as advised by the County, staff would note that the time period between the Primary and General elections would need to be extended to either eight or ten weeks to accommodate the County's election administration model. Such a change would require amendments to City Charter Sections 1202 and 1204.

If the City Council's determination is to comply with the CVPRA and move forward with the transition to statewide election dates, the changes to the City Charter necessary to accomplish this course of action would be more significant and require careful consideration of the content, format, and timing of the necessary amendment(s) to facilitate compliance. Following is a list of issues compiled by City staff for the City Council to consider in providing direction to proceed in this manner:

- (1) Should the City and School District comply with the CVPRA in light of Attorney General Opinion No. 16-603?
- (2) If it is determined to comply, when should the City transition from the odd year election cycle to even year statewide election dates? During the 2020 election year, or the 2022 election year?
- (3) Should the terms of the City Council and Board of Education be extended or reduced on a one-time basis to facilitate the transition to statewide election dates?

SB 568 (Lara) – Statewide Primary Election Date

On July 24, 2017, staff presented the following information to the City Council, which could impact a significant portion of the CVPRA discussion: As a result of the recent national election, California lawmakers are also considering Senate Bill 568 (Lara) (Attachment B), which would move the state primary election date from June to three months earlier in March. The purpose of the bill is to increase California's influence in Presidential Primary Election races. To quote the author of SB 568, "California voters have not played a decisive role in the presidential nomination process since 1980. Over

the past 25 years, all of the presidential primaries for both the Republican and Democratic parties were effectively decided by June.”

If signed by Governor Brown (which appears likely), SB 568 (Lara) would establish new election dates in March for both the Gubernatorial and Presidential Primaries. Further, the bill has recently been revised to provide added authority and flexibility to the Governor to move the Presidential Primary election date **earlier** than the March date. Quoting the LEGISLATIVE COUNSEL'S DIGEST summary; “...in presidential election years, the bill would enable the Governor to select a date for the consolidated primary that is before the 3rd Tuesday in March, provided that (1) at least 3 states are scheduled to hold their primaries before the date that the Governor selects and (2) the Governor issues a proclamation calling the election at least 240 days before the date that he or she selects.”

As has been noted previously, any change by the City and PUSD to statewide election dates would significantly increase the length of time between the Primary and General elections for City Council and the Board of Education; from the current six weeks separating the two elections, to five months under the statewide model.

SB 568 (Lara) would further and significantly exacerbate that issue by not only extending the gap between Primary and General election dates (from five to eight months), but also adding the additional element of uncertainty for elections that occur in the Presidential Election cycle, where the Governor has the sole discretion to change the Statewide Primary Election date as he or she deems necessary.

The ripple effect of suddenly changing the Statewide Primary date would include a number of impacts: a) any change to the date of the election also changes the timing of the candidate nomination period and has the potential to confuse candidates as to when to pull papers to run for office; b) moving the date earlier would result in an even longer period of campaigning between the Primary and General elections; c) an earlier election date would also increase the amount of campaign spending needed to maintain voter support and momentum during the period leading up to the runoff; d) longer periods between elections could reduce the viability of grass-roots campaigns and increase challenges for candidates with fewer resources to effectively compete for a seat on the City Council or Board of Education; and e) such a change would extend the period of time that an unsuccessful incumbent candidate would remain in office if defeated in the Primary election.

Plurality Voting

One potential alternative for the City Council and School Board to consider (though certainly a solution with additional challenges to consider) would be to switch from the Primary and General Election format (requiring a 50%+1 majority mandate) to a single General Election utilizing plurality voting and occurring in November of even years. In the plurality voting model, the candidate receiving the highest number of votes is elected, regardless of whether the candidate receives a 50%+1 majority mandate.

In a recent study prepared by California Common Cause entitled, "California Municipal Democracy Index, 2016", it was reported that 462 California cities (96%) utilize plurality voting. As noted in the study, plurality voting "requires only one election to determine a winner...the election can be scheduled at the same time as the state general election when turnout is highest..." There are many pros and cons to plurality voting, that warrants a separate discussion, however staff believes it is necessary to raise this issue as part of the broader question(s) being considered, and in light of the newer challenges and unintended impacts that SB 568 (Lara) creates in considering a transition to statewide dates.

With this in mind, the following question is suggested to be added to the list of CVPRA issues to be considered:

- (4) Should the City Council and Board of Education consider plurality voting as an alternative to the current Primary and General election format requiring a 50%+1 majority mandate?

Next Steps

Staff is requesting direction on how to proceed on the four issues detailed above, with several options available to the City Council in moving forward with its determination:

- a. Consider the matter at the City Council level on whether and (if affirmed) how to comply with the CVPRA, including submitting amendments to the City Charter for voter consideration and approval at an upcoming election;
- b. Refer the matter to the Legislative Policy Committee (or other City Council Committee) for study and recommendation, prior to taking further action;
- c. Refer the matter to a Charter Study Task Force for study and recommendation, prior to taking further action; or
- d. Provide alternative direction to staff on how to proceed.

The City Council can, at its own discretion, consider the issues at the Council level and decide on a course of action regarding whether or not to comply with the CVPRA, and if so, submit the necessary amendments to the City Charter that facilitate compliance. The voters will ultimately decide whether or not to approve the suggested Charter changes. If the discussion remains at the City Council level, staff will continue to provide information and assist as necessary in moving the process forward.

In certain circumstances, when for instance the City Council's busy regular meeting schedule does not provide sufficient time for discussion, complicated matters have been referred to one of the five standing City Council Committees for a recommendation prior to the City Council's deliberation and action. In this case, the CVPRA has been discussed at the Legislative Policy Committee on at least two occasions and is a logical location for the City Council to consider when referring the matter for a more fuller vetting and recommendation on how best to proceed.

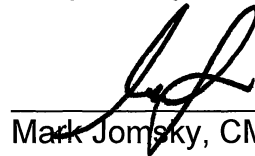
In the event that the City Council provides direction to proceed with a Charter Study Task Force, staff will need to seek consultant services to help facilitate the discussion of the Task Force. In addition, staff would also bring back a report to the City Council on September 18, 2017 regarding a proposed charge, scope of work, and timeline for the Task Force's work.

In whatever direction the City Council decides to proceed, it is suggested to engage the Pasadena Unified School District as part of the process, given the similar impacts of the CVPRA to Board of Education elections. At the request of the Board President, City staff will be presenting information to the Board of Education at their next regularly scheduled meeting in September, with staff planning to provide a similar review of the issues to the Board of Education.

FISCAL IMPACT

Of the available options for the City Council to consider, support of a Charter Study Task Force will require some financial commitment. The City Council reallocated \$150,000 in the City Clerk's FY 2018 Operating Budget towards the formation and support of a Task Force. The City Clerk's Office has maintained the full balance of Council's allocation. At this time, no additional funding is being requested.

Respectfully submitted,



Mark Jomsky, CMC
City Clerk

Attachments:

- A. Attorney General Opinion No. 16-603
- B. Senate Bill 568 (Lara)