

Agenda Report

DATE: July 24, 2017

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: CITY CLERK
SUBJECT: UPDATE REGARDING THE CALIFORNIA VOTER PARTICIPATION RIGHTS ACT (CVPRA) AND STATE ATTORNEY GENERAL'S ISSUED OPINION NO. 16-603

RECOMMENDATION:

The following report is for information only; no City Council action is required.

BACKGROUND:

On September 1, 2015, Governor Brown signed SB 415 (Hueso), which was chaptered as Election Code Sections 14050-14057. The primary focus of the law is to increase voter turnout for local elections by prohibiting "political subdivisions" from holding local elections on any other date than statewide election dates when local voter turnout rates average 25% less than statewide voter turnout rates within the same political subdivision.

Following is a summary of the California Voter Participation Rights Act (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."

The Act also contains a provision allowing political subdivisions to delay compliance until the 2022 election cycle, so long as the agency adopts a plan to consolidate with a future statewide election date prior to January 1, 2018.

On January 26, 2016, staff presented information regarding the CVPRA to the Legislative Policy Committee, and shortly thereafter to the City Council on March 7, 2016. Although it was believed at the time that charter cities were exempt from

complying with the CVPRRA, staff was concerned that new case law involving the City of Palmdale and the California Voting Rights Act (a different election law that contained similar provisions to the CVPRRA) could result in unanticipated applicability of the CVPRRA to charter cities and potential exposure to lawsuits. The following is an excerpt from the March 7th agenda report to the City Council (Attachment C):

Recent case law applied the California Voting Rights Act to charter cities despite the similar lack of “statewide significance” language, where the definition of “political subdivision” (in the California Voting Rights Act) was the same as in the new [California] Voter Participation Rights Act, which according to Senator Hueso, was by design. Subsequently as part of recently signed legislation contained in AB 277 (Hernandez), the definition of “political subdivision” in the California Voting Rights Act was amended to clearly apply the Act to charter cities. As a result of the arguable legislative intent present in the [California] Voter Participations Rights Act and recent case law applying the definition of “political subdivision” to charter cities, there appears to be some risk that litigation regarding the application of the Voter Participations Rights Act would require charter cities to comply with its requirements. This conflict of understanding and applicability may also be resolved through future amendments to the law.

In response to the information presented, the City Council directed staff to seek a legal opinion from the California Attorney General regarding the applicability of the California Voter Participation Rights Act 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?

Following a lengthy delay in receiving the opinion (which can be partially attributed to the change in leadership in the Attorney General’s Office following Kamala Harris’ successful candidacy to the United States Senate), the City received Opinion No. 16-603 (Attachment B), which stated that the CVPRRA **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 *Jauregui v. City of Palmdale* (the same case law that initially concerned City staff), as supporting justification for its determination that the CVPRRA applies to charter cities, and specifically pointed to the court’s use of the definition of “political subdivisions” as evidence of the legislature’s intent to include charter cities under the law.

Next Steps

With the Attorney General opinion issued, the City and School District will need to consider the next steps in determining the future of City Council and Board of Education elections. This consideration will include whether to comply with the California Voter Participation Rights Act, and if so, the content, format, and timing of the necessary charter amendment(s) to facilitate compliance. In addition, there will likely be other issues and changes that the City Council and Board of Education will want and need to consider for future local elections in Pasadena and PUSD. Following is an initial list of issues compiled by City staff:

- (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? Extension or reduction is dependent on selection of the transition year (2020 or 2022).

SB 568 (Lara) and Plurality Voting

As a result of the recent national election, California lawmakers are also considering two new bills, Assembly Bill 84 (Mullin) and Senate Bill 568 (Lara), which would move the state primary election date from June to three months earlier in March. The purpose of the two bills 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."

According to contacts within the California Association of Clerks and Elections Officials, SB 568 is the more likely of the two bills to eventually be signed by the Governor. If signed, the bill's provisions 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 noted in the March 7, 2016 staff report, a change 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. This would greatly extend the election cycle for Pasadena's local races, and result in longer periods of campaigning, increased campaign costs, etc.

SB 568 exacerbates this issue by not only extending the gap between Primary and General election dates (from five to eight months), but also adding in the element of uncertainty for elections that occur in the Presidential Election cycle. For example, should the Governor exercise his or her authority granted under SB 568, a candidate for City Council or Board of Education would be subject to a new Primary election date with as little notice as 240 days, and an even longer gap between the Primary and General elections (as much as 10 months). Other impacts include changes to the timing of the candidate nomination period and the potential for constituent confusion.

One way to offset this impact would be to consider a switch from the Primary and General Election format (requiring a 50%+1 majority in either the Primary or General election to be elected) to a single General Election occurring in November of even years, which utilizes plurality voting where the candidate receiving the highest number of votes is elected regardless of whether the candidate receives a majority mandate. With this in mind, the following question should be added to the list of CVPRRA 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?

Complying with CVPRRA Requires Amending the City Charter

As stated above, the CVPRRA becomes effective on January 1, 2018. The City Council can delay compliance until the 2022 election cycle, so long as the Council adopts a plan to consolidate with a future statewide election date prior to January 1, 2018. However, in order to make any changes to the City or School District election dates, the City Charter would need to be amended (those sections specifying the timing of City and School District elections) through a vote of the people.

In terms of meeting the timing requirements of the CVPRRA, potential upcoming election dates for the City Council to consider would be the June 5, 2018 Gubernatorial Primary election, November 6, 2018 General election, or the March 5, 2019 regular City election.

Charter Study Task Force

Although the City Council is not required to form a Charter Study Task Force, based on the complexity and intersection of issues, staff will be returning to the City Council in late August with a recommendation suggesting the need for the formation of a Charter Study Task Force. The suggested purpose of the Task Force will be to study and fully examine the issues related to complying with the CVPRRA (including the four issues identified above), and to provide recommendations for the necessary Charter changes, including proposed ballot and City Charter language.

As an example, and to give the City Council a possible timeline to preliminarily consider, one target date for a special election for the purpose of submitting Charter Amendments to Pasadena and PUSD voters would be the November 6, 2018 Statewide General election. This election would likely be the most cost effective option and would also provide the Task Force, City Council, and Board of Education, the necessary to work through the public process, finalize ballot and charter language, and submit the issue to the voters. The following dates provide an abbreviated draft timeline developed by staff for the purposes of discussion:

August 28, 2017	City Council Action on Recommended Course of Action
September 2017	Charter Study Committee Begins Work
December 2017	Action to Adopt a Plan to Comply with CVPRA
February 2018	Joint City Council/Board of Education Meeting (opportunity to provide a 6 month update)
June 2018	Draft Final Report to City Council and Board of Education
August 6, 2018	Deadline for Calling Election for Charter Amendments to Coincide with November 6, 2018 General Election
November 6, 2018	Statewide General Election

Consultant Services and Other Considerations

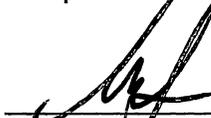
Staff is in the beginning stages of preparing a Request for Proposals (RFP) for consultant services to help facilitate the work of a Task Force, should one be formed by the City Council. Information regarding a Task Force facilitator will be included in the August 2017 report to the City Council, along with an outline for a proposed scope of work.

Other issues that will need to be addressed should the City Council decide to move forward with a Charter Study Task Force include: 1) consideration of an application and/or appointment process for those interested in serving on the Task Force, with appointments recommended to occur in September 2017; 2) composition of the Task Force, including the number of members to serve; 3) coordination with the Pasadena Unified School District, as changes in the election process would similarly impact Board of Education elections; and 4) development of a charge of the Task Force to ensure that all work occurs within the suggested timeframe and in consideration of future special and regular elections.

FISCAL IMPACT

The City Council allocated \$150,000 in the City Clerk's FY 2016 Operating Budget towards the formation and support of a citizen-based Charter Study Task Force. In FY 2017, and again in FY 2018, the City Clerk's Office carried forward the Council's funding allocation in anticipation of a future need for charter review. The full balance of the funding allocation has been maintained, and at this time, no additional funding needs are anticipated.

Respectfully submitted,



Mark Jomsky, CMC
City Clerk

ATTACHMENTS:

- Attachment A: Letter from Assemblymember Chris Holden to State Attorney General Kamala Harris
- Attachment B: State Attorney General Xavier Becerra's Opinion No. 16-603
- Attachment C: March 7, 2016 City Staff Report to City Council (attachments omitted)
- Attachment D: City of Los Angeles Charter Amendment Ballot Material – Changing City Council and LAUSD Election Dates to June and November of Even Years to Coincide with Statewide Election Dates – **City of Los Angeles information was not referenced in the agenda report but is provided for purposes of discussion**
- Attachment E: Illustration of Potential Options in Complying with CVPRA