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October 3, 2017

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Request the City Attorney to Prepare a Resolution Adopting a Plan to Implement SB 415, Changing the Date of Long Beach Municipal and School District Primary and General Elections. (Citywide.)

BACKGROUND

Recent legislation will require the City of Long Beach and Long Beach Unified School District to change the dates on which they hold their primary and general elections for Mayor, City Council, School Board and other local elected officers. This Memorandum is intended to provide you an overview of the new law, an analysis of how it applies to Long Beach, and various means by which to implement these mandated changes.

1. The City Charter:

The City Charter, in pertinent part, sets the following rules regarding timing of municipal and school district elections:

1901. The primary and general municipal elections for elective officers of the City shall be held in even numbered years, on the second Tuesday in April and the first Tuesday after the first Monday in June, respectively, and candidates elected to office shall assume such office on the third Tuesday in July and serve until election and qualification of their successors.

Only those elected offices shall be filled which become vacant on the third Tuesday in July of that year.

1902. All other municipal elections shall be known as special municipal elections.

1906. In the event that any candidate for nomination to an elective office shall receive a majority of the votes cast for all the candidates for nomination to such office at any primary nominating election, the candidate so receiving such majority of votes shall be deemed to be and declared by the City Council to be elected to such office.

1910. Unless otherwise provided by this Charter or ordinance adopted by the City Council, all municipal elections shall be held in accordance with the provisions of the Elections Code of the State of California governing municipal elections.

2206. The primary and general election for members of the Board of Education shall be held on the second Tuesday in April and the first Tuesday after the first Monday in June, respectively, which is concurrent with the election for the Officers and Council for the City of Long Beach.

(Long Beach City Charter, §§1901, 1902, 1906, 1910 & 2206, emphasis added)

Pursuant to its Charter, the City of Long Beach and Long Beach Unified School District have conducted their local primary and general elections in April and June for many years. However, recent legislation will require the City and District to change these dates.

2. The California Voter Participation Rights Act – SB 415:

Senate Bill SB 415 (Elections Code, §§14050–14057) was signed by Governor Brown on September 1, 2015. The intent of SB 415 is to improve voter turnout at local elections. According to legislative reports, local agencies which hold elections on “nonconcurrent” dates often see lower voter turnout than at elections held on the two Statewide election dates. A “nonconcurrent” date is any date other than the June Statewide Primary or November Statewide General Election. Long Beach’s April municipal primary election is held on a “nonconcurrent” date.

SB 415 requires a local public agency with a nonconcurrent election date to change it to either the Statewide Primary or General Election, if the agency’s voter turnout for a municipal election held on a nonconcurrent date was at least 25% lower than its average voter turnout for the last four Statewide General Elections (November 2016, 2014, 2012 and 2010). Later in this Memorandum, we will specifically address Long Beach’s voter turnout numbers.

Average voter turnout at a Statewide General Election (where we elect either a President or Governor) is often much higher than an election held on a nonconcurrent date. Therefore, there is often a 25% voter turnout difference between the two, triggering a local agency’s requirement to change its election date. As shown below, Long Beach faces the same situation. A public agency covered by SB 415 must start complying by January 1, 2018 or, at the very least, must adopt a plan by that time to change its election date so that it is ultimately consolidated with a Statewide election occurring no later than November 8, 2022.

If an agency fails to comply, SB 415 authorizes local citizens to file legal action to require the agency change its election date. If a violation is proven, the court has broad powers to ensure future elections occur on the Statewide Primary or General Election, and to award attorney's fees and costs to the successful plaintiff.

SB 415 only affects the timing of regularly scheduled local elections for elected officials (local primary and general). It does not affect the timing of special elections to fill mid-term vacancies or to consider local measures. These items may go on the ballot at any time allowed by law.

3. California Attorney General Holds SB 415 Applies to Charter Cities:

For nearly two years, it was unclear whether SB 415 applied to charter cities and agencies governed by city charter. As noted above, Long Beach's City Charter directly conflicts with SB 415, setting clearly different election dates. While the bill's author claimed that SB 415 was intended to apply to charter cities, the text of the statute is ambiguous at best. Further, local elections are typically considered a "municipal affair" where a city's charter supersedes state law.

In 2016, Assemblyman Chris Holden's Office submitted a request to the California Attorney General to opine specifically on whether SB 415 applies to charter cities and school districts governed by city charter. On July 11, 2017, the Attorney General issued an opinion holding that SB 415 applies to charter cities and school districts governed by city charter. In this opinion, the Attorney General resolved the question of whether a charter city's Constitutional "home rule" authority with respect to local elections prevails over SB 415, or vice versa.

The Attorney General first noted prior California Supreme Court decisions holding that a charter city's "home rule" is not absolute and may be superseded by state law if that law touches a matter of "statewide concern." The Supreme Court has established a four-part test to determine whether "home rule" or a state law will prevail when the two are in conflict:

1. whether the city law regulates a municipal affair;
2. whether there is an actual conflict between the city and state law;
3. whether the state law addresses a matter of statewide concern; and
4. whether the state law "is reasonably related to resolution of that concern and narrowly tailored to avoid unnecessary interference in local government."

The Attorney General focused on a 2014 Court of Appeal decision applying this same four-part test to the California Voting Rights Act (CVRA), which requires local agencies to change from "at-large" to "by district" electoral systems under certain circumstances. In *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, the court held that the CVRA addressed a matter of statewide concern (preventing minority voter dilution), and did so in a reasonable manner that was narrowly tailored to avoid unnecessary interference in local government.

The Attorney General concluded that SB 415 equally addresses a matter of statewide concern - low voter turnout in “nonconcurrent” elections, which adversely affects the fundamental right to vote. The Attorney General further concluded that the law was reasonably related and narrowly tailored to address just that concern. Therefore, a charter city’s “home rule” authority must defer to SB 415.

While Attorney General opinions are not legally binding like court decisions, they are viewed by the courts as highly persuasive and local agencies generally follow them as they would a court decision.

DISCUSSION

Does SB 415 Require the City of Long Beach and Long Beach Unified School District to Move Their Elections? Is There a 25% Decline in Voter Turnout?

The succinct answer is “yes”.

Before getting to the math, we note that SB 415 applies to any “regularly scheduled election in a political subdivision” (Elections Code §14051(b)). The Long Beach municipal and school district primary and general elections are both “regularly scheduled” elections (*see*, City Charter §§1901 & 2206). Neither are a “special election” (*see*, City Charter §1902), which would be exempt from SB 415. Therefore, both the primary and general elections are “an election” that must be accounted for under SB 415’s statutory scheme.

SB 415 requires a change of election date “if holding an election on a nonconcurrent date has previously resulted in a significant decrease in voter turnout.” As noted above, the City and District hold one of their elections on a nonconcurrent date - the April primary. Thus, this analysis will focus on the April election.

The remaining legal question under SB 415 is whether there has been a “significant decrease in voter turnout.” This requires an analysis of whether “the voter turnout for a regularly scheduled election in [Long Beach] is at least 25% less than the average voter turnout within [Long Beach] for the previous four statewide general elections,” (Elections Code §14051(b)).

In this regard, we read SB 415 to mean that if only one nonconcurrent election in the past four election cycles produced a 25% voter turnout decline then SB 415 would require the City and District to move their election date to be concurrent with a Statewide election date. Nonetheless, as demonstrated below, this is a distinction without a practical difference in Long Beach’s case, because all of the City’s past four local primaries showed at least a 25% voter turnout decline when contrasted against the four-statewide-general election average.

The Los Angeles County Registrar of Voters has provided the following turnout figures for Long Beach voters at the previous four statewide general elections:

2010 Statewide General Election	114,322 (52.49% of registered LB voters)
2012 Statewide General Election	156,812 (67.40%)
2014 Statewide General Election	73,139 (28.41%)
2016 Statewide General Election	169,191 (63.38%)
TOTAL	513,464
Four-Statewide-General Election Average	128,366 (52.9%)

To avoid a “significant decrease in voter turnout”, a City/District primary election would have had to achieve at least a turnout of 96,274 voters, or 39.7% of registered voters. This number is calculated by taking 75% of the four-statewide-general election average (75% x 52.9% = 39.7%). Any turnout below 75% of the statewide average will be “at least 25% less than the average voter turnout” and trigger SB 415’s requirement to move the primary election.

The figures for the City’s/District’s Primary Nominating Elections in the past four cycles is as follows:

2010 Local Primary	40,292 (16.91% of registered LB voters)
2012 Local Primary	18,779 (12.42%)
2014 Local Primary	49,870 (17.50%)
2016 Local Primary	22,733 (13.50%)

The percentage difference between the City’s/District’s primary election turnout and the four-statewide-general election average is as follows:

Election	Turnout %	Comp to Statewide Avg	% Decline
2010 Local Primary	16.91%	16.91% / 52.9% = .32	68%
2012 Local Primary	12.42%	12.42% / 52.9% = .24	76%
2014 Local Primary	17.50%	17.50% / 52.9% = .33	66%
2016 Local Primary	13.50%	13.50% / 52.9% = .25	75%

Ultimately, none of the City’s/District’s past four primaries drew a 39.9% voter turnout rate and all showed at least a 25% decline in voter turnout. Therefore, the City and District have held a “nonconcurrent” election, indeed, four such elections, with a “[s]ignificant decrease in voter turnout,” (Elections Code §14051(b)) and must not hereafter “hold an election other than on a statewide election date”. (Elections Code §14052(a).)

How to Implement SB 415?

SB 415 provides the following procedure to implement its requirements:

“A political subdivision may hold an election other than on a statewide election date if, by January 1, 2018, the political subdivision has adopted a plan to consolidate a future election with a statewide election not later than the November 8, 2022, statewide general election.” (Elections Code §14052 (b))

In other words, the City and District are not required to immediately change their election date in 2018, although that is an option. As long as the City/District has adopted a “plan” by January 1, 2018 to move future elections, they are not required to actually change its municipal election date until the 2022 cycle.

A. What is a “Plan”? Is a Charter Amendment Required?

SB 415 does not spell out the type of “plan” document that must be adopted – whether it be a Charter amendment, ordinance or resolution. SB 415 does suggest that Council action is required for “adoption” of a plan, therefore we believe that one of these actions is required.

The City’s and District’s current April local primary is written into Long Beach’s Charter. Normally, amendments to the City Charter must be approved by the voters. However, we do not believe that a Charter amendment is required to adopt a “plan” in this case. As noted above, the Attorney General’s Office has opined that SB 415 prevails over a contrary city charter provision. Because the City and District are now prohibited by State law from enforcing this provision of the Charter, it is, in effect, void. Therefore, the City Council may move the primary election without a Charter amendment in order to comply with SB 415 and, in effect, disregard the contrary provision in the City’s Charter¹. SB 415 requires the City/District to adopt a “plan” by January 1, 2018.

B. What Dates Are Available to Move the Local Primary Election? Does the Local General Election Have to Move as Well?

For local agencies that have only one election for local offices, there would be six available dates under SB 415:

- 1.) June Statewide Primary, starting with the June, 2018 Election;
- 2.) June Statewide Primary, starting with the June, 2020 Election;
- 3.) June Statewide Primary, starting with the June, 2022 Election;
- 4.) November Statewide General, starting with the November, 2018 Election;
- 5.) November Statewide General, starting with the November, 2020 Election;
- 6.) November Statewide General, starting with the November, 2022 Election.

¹ See, Calif. Const., Art XI, §5(a) (“It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws.”)

However, Long Beach has two elections that must be accounted for under SB 415 – the municipal primary and the municipal general election. This limits Long Beach's options. For the reasons discussed above, the April primary election must be moved to a Statewide election date, which is either June or November. It is illogical to move the primary to November because that would leave no date afterwards for the local general election. Aligning Long Beach's local primary election date with the June Statewide Primary (Options #1-3) is the only practical and legal option under SB 415.

Further, because the City/District cannot conduct its local primary and general elections on the same date, the local general election (which is currently held the same day as the June Statewide Primary) will have to be moved as well. And, SB 415 will require it to be moved to a Statewide election date. The only remaining Statewide date after June would be the November Statewide General Election.

Therefore, Long Beach will ultimately have to move its municipal and school district primary and general election dates to match the June Statewide Primary and November Statewide General Elections. There is no other scenario that complies with SB 415 when a local agency regularly holds two local elections every two-year cycle.

The remaining choice for the City/District is when this transition will take place under the new "plan." There are three options:

- 1.) Transition with the June and November, 2018 Elections;
- 2.) Transition with the June and November, 2020 Elections; or
- 3.) Transition with the June and November, 2022 Elections.

If the City Council chooses Option 1, the change will go into effect immediately with the next municipal elections in 2018. With Option 2, the City would conduct its April and June, 2018 municipal elections as before and would transition to the new dates in 2020. With Option 3, the City would conduct its April and June, 2018 and 2020 elections and would then transition to the new dates in 2022.

C. What Happens to the Terms of Incumbents if the Election Dates are Moved?

The City Charter is not entirely clear what happens to the terms of incumbents if elections dates are moved. The Charter currently provides that candidates are nominated in April, elected in June (if not earlier by carrying a majority in April) and assume office the third Tuesday in July. Further, only elected offices that become vacant on the third Tuesday in July are filled by election. There are similar rules for School Board members. (City Charter §§200, 202, 506, 1901 & 2205) However, once the City/District move their election dates, these timeframes will have to be adjusted, since a candidate will not be elected until November and, therefore, cannot assume office in July. On the other hand, the Charter also provides that an incumbent shall "serve until election and qualification of their successors," suggesting that an incumbent's term will automatically simply extend until the next election.

To clarify, we recommend that any ordinance or resolution adopting a “plan” expressly address what will happen to the terms of current elected officials. It should expressly indicate that, when the transition occurs, candidates will be nominated in June, elected in November, and assume office the third Tuesday in December. That will best adjust terms to the new SB 415 election dates while maintaining the same timeframes for the new incumbencies as before. For the reasons stated above, we believe the Council can make these changes without a Charter amendment in order to comply with SB 415.

State elections law allows a City to extend or decrease the terms of City elected officials by up to 12 months, in order to match their terms with a changed municipal election date. (Elections Code §10403.5(b)) For school boards moving their election date, the term of office of incumbent Board members “shall be extended accordingly.” (Elections Code §10404.5(g)) If the City Council moves the local general election to November, terms of elected officials would be extended by five months (July to December) to match them with the new election cycle.

D. What about SB 568?

As outlined above, SB 415 requires Long Beach and the School District to move their local elections to the Statewide Primary and the Statewide General Election dates. Currently, that is the first Tuesday after the first Monday in June and in November of even-numbered years.

However, SB 568 is pending in the Assembly. If enacted, beginning in 2019, it would change the date of the Statewide Primary from the first Tuesday in June to the first Tuesday after the first Monday in March. It is uncertain at this time if SB 568 will ultimately pass.

Therefore, it is possible that Long Beach will have to move its local primary to March as that would be the new Statewide Primary date. And, because June would no longer be a Statewide election date, the local general election would be on a “nonconcurrent” date and have to move as well to comply with SB 415. As noted above, the only remaining Statewide date available would be the November Statewide General Election. Therefore:

If SB 568 does not pass: Long Beach would be required by SB 415 to hold a *June* local primary and a November local general election.

If SB 568 does pass, Long Beach would be required by SB 415 to hold a *March* local primary and a November local general election.

Because of the uncertainty created by this bill, our recommendation is two-fold:

- Adopt a plan that anticipates and adapts to both situations; and

- Delay effectiveness of the transition until at least 2020. This will provide enough time to confirm which direction the law is taking on this issue.

E. Other Conforming Municipal Code Amendments Required by the Change in Election Dates.

There are two other sections of the Long Beach Municipal Code we would suggest amending to address this change in election date. Section 2.01.210(B) of the Long Beach Campaign Reform Act defines the "Election Cycle," which sets the time period that regulates local campaign contribution and expenditure limits. It is defined as:

"'Election Cycle' means that period commencing with January 1 of an odd-numbered year and ending twelve (12) months after the regular general election. If there is no general election in that election year, then the Election Cycle shall end twelve (12) months after the primary election. For a special election, the "Election Cycle" commences with the declaration of a vacancy in an elective office and ends twelve (12) months after the special election date."

However, with June and November elections, this timeframe could become problematic. For example, an "election cycle" wouldn't end until 12 months after the November election. However, that overlaps 11 months into the next "election cycle" which starts January 1 of the same year. This could make enforcement of the City's campaign finance regulations difficult. Therefore, to best harmonize the language with SB 415's requirements, we would suggest the following amendments:

"'Election Cycle' means that period commencing with January 1 of an odd-numbered year and ending **December 31 of the following year**. For a special election, the "Election Cycle" commences with the declaration of a vacancy in an elective office and ends **six (6)** months after the special election date."

With these amendments, each regular "election cycle" will be precisely two years long and naturally end about two months after the November local general election. We also shortened the "election cycle" for special elections in order to avoid any overlap with a potentially new "election cycle".

In most cases, the remainder of the campaign finance ordinance will adapt to the new "election cycle" without any issues. However, this amendment will also affect the timing of when campaign funds become "surplus." LBMC Section 2.01.1010 defines surplus funds as those remaining "at the end of the Election Cycle during which such funds have been raised." When the municipal general election is in June and the "election cycle" doesn't end until December 31 of the next year, there is plenty of time for a candidate to use or re-purpose campaign funds post-election before they become "surplus". However, amending the definition of "election cycle" along with a November municipal general election will leave far less time to a candidate – less than 2 months – to decide what to do with remaining campaign funds.

Therefore, we suggest amending this section to conform more closely with recent Political Reform Act rules for statewide elections (Government Code §89519). Under this rule, campaign funds do not become surplus until 90 days after closing date for the post-election reporting period (December 31 after the election) or within 90 days after leaving office, whichever occurs last. That will typically provide a candidate until March 31 of the following year – about 5 months – to decide what to do with remaining campaign funds before they become “surplus”. The proposed amendment to Section 2.01.1010 would be as follows:

“Any funds remaining to a candidate, or any controlled committee of such candidate, **ninety (90) days following** the end of the Election Cycle, during which such funds have been raised, shall be defined as "surplus funds" and shall be disposed of only as provided in this Division X. Funds retained by a candidate and specifically earmarked for payment of campaign expenses lawfully incurred during the Election Cycle need not be included in surplus funds provided that, such expense payment is made no later than **ninety (90) days** after the end of the Election Cycle.”

Because the Long Beach Campaign Reform Act was voter-approved (1994’s Proposition M), the City Council may normally not amend it without further voter approval. (Elections Code §9217) However, the Act expressly provides that the Council may amend it by a 2/3 vote upon finding that such amendment is consistent with and in furtherance of the purposes of the Act. For the reasons above, we believe that these amendments are consistent and further the purposes of the Act.

SUMMARY

It is recommended that the City Council direct the City Attorney’s office to prepare a resolution adopting a plan to implement SB 415, including the following items:

- Election dates (a March Statewide Primary if SB 568 passes, or a June Statewide Primary if SB 568 does not pass, and a November Statewide General Election)
- Year of Transition (either 2020 or 2022, again depending on the passage of SB 568)
- Amendment of applicable Long Beach Municipal Code sections by ordinance

We trust that this Memorandum has been helpful in understanding the impacts and means of implementing SB 415 within the City of Long Beach and the Long Beach Unified School District.

SUGGESTED ACTION:

Approve recommendation.

Very truly yours,

CHARLES PARKIN, City Attorney

By



AMY R. WEBBER
Deputy City Attorney

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Attachment: California Senate Bill 415

CALIFORNIA SENATE BILL 415 [ELECTIONS CODE SECTIONS 14050 – 14057]

CHAPTER 1.7. Voter Participation

14050. This chapter shall be known and may be cited as the California Voter Participation Rights Act.

14051. As used in this chapter:

(a) "Political subdivision" means a geographic area of representation created for the provision of government services, including, but not limited to, a city, a school district, a community college district, or other district organized pursuant to state law.

(b) "Significant decrease in voter turnout" means the voter turnout for a regularly scheduled election in a political subdivision is at least 25 percent less than the average voter turnout within that political subdivision for the previous four statewide general elections.

(c) "Voter turnout" means the percentage of voters who are eligible to cast ballots within a given political subdivision who voted.

14052. (a) Except as provided in subdivision (b), a political subdivision shall not hold an election other than on a statewide election date if holding an election on a nonconcurrent date has previously resulted in a significant decrease in voter turnout.

(b) A political subdivision may hold an election other than on a statewide election date if, by January 1, 2018, the political subdivision has adopted a plan to consolidate a future election with a statewide election not later than the November 8, 2022, statewide general election.

14053. Upon a finding of a violation of subdivision (a) of Section 14052, the court shall implement appropriate remedies, including the imposition of concurrent election dates for future elections and the upgrade of voting equipment or systems to do so. In imposing remedies pursuant to this section, a court may also require a county board of supervisors to approve consolidation pursuant to Section 10402.5.

14054. In an action to enforce subdivision (a) of Section 14052, the court shall allow the prevailing plaintiff other than the state or political subdivision of the state, a reasonable attorney's fee consistent with the standards established in *Serrano v. Priest* (1977) 20 Cal.3d 25, 48-49, and litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs. A prevailing defendant shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

14055. A voter who resides in a political subdivision where a violation of subdivision (a) of Section 14052 is alleged may file an action pursuant to that section in the superior court of the county in which the political subdivision is located.

14056. This chapter does not apply to special elections.

14057. This chapter shall become operative on January 1, 2018.