

# City of Brisbane

## Agenda Report

DATE: Meeting of October 20, 2016

TO: Mayor Lentz and Members of the City Council

FROM: Michael Roush, City Attorney

**SUBJECT: New Legislation—California Voter Participation Rights Act--That Mandates Changes to the Years in Which Municipal Elections Must Be Held**

### **RECOMMENDATION**

Receive report on the California Voter Participation Rights Act (SB 415) and provide direction on the next steps to be taken.

### **BACKGROUND**

Recent state legislation—the California Voter Participation Rights Act (SB 415)--requires by January 1, 2018 either City Council elections be held in conjunction with statewide elections, i.e., November or June of even numbered years or a plan be in place to provide for such elections by no later than November 8, 2022.

#### Current Municipal Election Dates

Section 2.38.010 of the Municipal Code, adopted in 1983, provides the general municipal election for City Council members shall be on the first Tuesday following the first Monday in November in odd numbered years. Holding municipal elections in November of odd numbered years was permissible under general state law at the time. The terms of office for Council members shall be four years, from the Tuesday succeeding their election until their successors are elected and qualified. Section 2.38.050, BMC.

#### New State Legislation

The State law concerning this issue has changed (SB 415). State law now provides that a city shall not hold an election for its members other than on a “statewide election date” if holding an election on a non-current date has previously resulted in a “significant decrease in voter turnout”. Elections Code, section 14051 (a). A “statewide election date” is either the first

Tuesday after the first Monday in November of even numbered years or the first Tuesday after the first Monday in June in even numbered years. A “significant decrease in voter turnout” means the “voter turnout” for a “regularly scheduled election” is at least 25% less than the average voter turnout for the previous four “statewide general elections”. Elec. Code, section 14051 (b). A “statewide general election” is the first Tuesday after the first Monday in November in even numbered years. Voter turnout” means the percentage of voters who are eligible to cast ballots with the city who voted. Elec. Code, section 14051 (c).

Where there has been a significant decrease in voter turnout, a city may nevertheless hold an election other than on a statewide election date if, by January 1, 2018, the city has adopted a plan to consolidate a future election with a statewide election by no later than November 8, 2022.

### Impact on Brisbane

The City Clerk, in consultation with the County Registrar of Voters, has determined that indeed there has been a significant decrease in voter turnout when the voter turnout in November 2015 (48%) is compared to the average voter turnout in the previous four statewide general elections, i.e., the elections in November of 2014, 2012, 2010 and 2008 (71%). (There was a 32% decrease in voter turnout:  $71 - 48 = 23/71 = 32\%$ .)

### **DISCUSSION**

City Council will need to amend the Municipal Code such that the election of Council members will occur at a statewide election (November or June of even numbered years) by no later than November 8, 2022. As a practical matter this means that some terms of some Council members will need to be either shortened or lengthened by one year, or lengthened by half a year. For example, one approach would be to extend the terms of current Council members such that their terms would end in December 2018 or December 2020 (or June 2018/2020). Another approach would be to shorten the terms of office for those elected in 2017 so those persons’ terms would end in December 2020 (rather than December 2021), or those persons’ terms (rather than the current members’ terms) would be extended by one year such that the terms would end in December 2022 (or extended one half year such that the terms would end in June 2022). Moreover, because the City is required only to have in place a “plan” to consolidate a future election with a statewide election by January 1, 2018, the terms of office of those elected in 2017 could remain four years, but the terms of those elected in 2019 (and 2021) would need to have their terms either shortened by one year or lengthened by one year/one half year.

Interestingly, there is some precedent for shortening the length of a council member’s term. Presumably because of a change in state law in the early 1980’s, the Council at that time changed the timing of the Council election to the first Tuesday following the first Monday in November of odd numbered years but to effectuate that change, the Council adopted an ordinance shortening the terms of office elected in April 1982 to just over three years

(November 1985). Section 2.38.030, BMC. That same ordinance directed that the voters in the community would be notified by mail of these changes. Section 2.38.070, BMC.

Within San Mateo County, ten other municipalities also conduct their Council elections in odd numbered years and therefore must bring their election cycle into compliance with this new state law. To date, only three of the cities have taken such steps. Millbrae and South San Francisco have extended their current members' terms by one year such that the next Council election in those jurisdictions will be in 2018 rather than 2017 and members whose terms would have ended in 2017 will now end in 2018 and those members whose terms would have ended in 2019 will now end in 2020. In San Mateo, Council directed that a charter amendment be placed on the November 2017 ballot that would move municipal elections to even numbered years beginning in 2020 and that any then sitting Council members would have their terms extended by one year. Attached to this report is a spread sheet showing the status of this issue in other cities in San Mateo County.

### Next Steps

The purpose of this workshop will be to discuss various options and receive direction from the City Council as to how it would like to proceed. Staff would then return an ordinance or some other "plan" to the Council in order for the City to comply with this new state law by the statutory deadline. That is, all of the various Options discussed below will provide that the City's municipal elections will be conducted in even numbered years, beginning no later than November 2022, as required by SB 415.

**Option 1:** Extend the terms of the current Council members whose terms are expiring in December 2017 (Conway, Liu and Lentz) one year to December 2018 and the terms of the current Council members whose terms are expiring in December 2019 (Davis, O'Connell) one year to December 2020. Person elected in 2018 and 2020 would then serve until 2022 and 2024, respectively. (This option is consistent with option chosen by Millbrae and South San Francisco.)

**Option 1A:** Extend the terms of the current Council members by six months, rather than one year, such that the elections would be held in June 2018 and June 2020 and the terms of office extended accordingly. (This option would likely be more costly to the City as typically fewer items are on a June ballot and the City's proportionate share of the election costs would be higher than a November election.)

**Option 2:** Conduct the election for City Council in November 2017 and November 2019 but shorten the term of office for those so elected by one year, i.e., to December 2020 and December 2022. Those individuals then elected in 2020 and 2022 would serve until 2024 and 2026, respectively.

**Option 2A:** Same as Option 2 but shorten the term of office so elected by six months, i.e., to June 2020 and June 2022. This option has the same cost issue as Option 1A.

**Option 3:** Conduct the election for City Council in November 2017 and November 2019 but extend the term of office for those so elected by one year, i.e., to December 2022 and December 2024. Those individuals then elected in 2022 and 2024 would serve until 2026 and 2028.

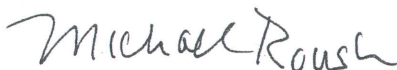
**Option 3A:** Same as Option 3 but extend the term for six months, i.e., to June 2022 and June 2024. This option as the same cost option as Option 1A.

**Option 4:** Conduct the election for City Council in November 2017 for a term of four years but the term of office for those elected in 2019 and 2021 would be shortened by one year, i.e., to 2022 and 2024, respectively. (Shortening the terms of office for the 2019 and 2021 elections is required because the state law requires the even year election dates to be in place by no later than November 2022.)

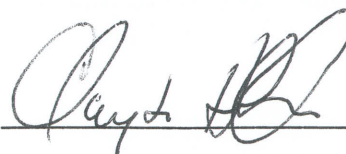
**Option 4A.** Same as Option 4 but reduce the terms of office for those elected in 2019 and 2021 by 18, rather than 12, months. (Same cost issue as Option 1A and questionable what good reason there would be for shortening a term from three years to two and half years.)

**Option 5:** Do nothing at this time and return this matter to the Council in December 2017 (following the November 2017 election) for Council to adopt one of the above options so that by January 1, 2018, there is a "plan" in place for municipal elections to be held no later than November 2022. (Might be seen a kicking the can down the road but would allow a "new" council to make the decision.)

If Council provides at this time direction to staff concerning any of the Options other than Option 5, staff will prepare an Ordinance for Council's consideration in order to implement the Option chosen. Consistent with Council action in the 1980's, the Ordinance would provide that voters be notified by mail of the change, as well as by the City's various newsletters and social media. If Council chooses Option 5, staff will return with a "plan" for Council to consider that will implement Option 5.



Michael Roush, City Attorney



Clay Holstine, City Manager

Attachments:

1. San Mateo County SB 415 Action Spreadsheet

City	Election Year	Date presented (or will present) to Council	Recommended Actions	Action Taken	Comments
Atherton	Even				
Belmont	Odd	End of November 2016			
Brisbane	Odd	Workshop October 2016			
Burlingame	Odd	After November 2016			Will present Council with Ordinance to have 2017 and 2019 election for 5 years terms.
Colma	Even				
Daly City	Even				
East Palo Alto	Even				
Foster City	Odd				
Half Moon Bay	Even			Move election to 2018	1st Reading Council to Adopt Ordinance on 10-17
Hillsborough	Even				
Menlo Park	Even				
Millbrae	Odd	6.14.16	1. Consolidate future non-special elections with statewide elections starting January 1, 2018 and extend all Councilmembers' terms by 12 months 2. Adopt plan before Jan 1, 2018 to consolidate future elections - continue 2017 and 2019 local elections off-cycle.	Extend all members' terms by 12 months	7.26.16 Introduced Ordinance
Pacifica	Even				
Portola Valley	Odd	No Plans			
Redwood City	Odd	Oct-16			ad hoc committee to discuss SB 415 to prepare recommendations
San Bruno	Odd	No Plans			Was originally going to present to Council on 9/12 with Ordinance to extend elected officials' terms, but directed to table the item for a few months.
San Carlos	Odd	On Hold			

San Mateo	Odd	September 19 2016 Study Session	<p>Council directed staff to place a charter amendment on the 11/7/2017 election that would move the elections to even years beginning with the November 2020 election. The 2017 election would be our last odd year election. The amendment would include a provision for any sitting office holders when the amendment becomes effective to automatically extend their term by one year to accommodate the change to even years.</p>	<p>11/7/2017 - regular candidate election for 3 seats  11/6/2018 - no election  11/5/2019 - no election  11/3/2020 - election for the 2 seats that would have been up in 2019.</p>	
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City	Election Year	Date presented (or will present) to Council	Recommended Actions	Action Taken	Comments
SSF	Odd	7.27.16 Study Session	<ol style="list-style-type: none"> <li>1. Consolidate elections with statewide elections starting 2018 - extend or reduce all Council seats by 1 year</li> <li>2. Consolidate elections with statewide elections starting 2018 - 2017 and 2019 elections would be for 3 or 5 year terms</li> <li>3. Continue 2017 and 2019 local elections off-cycle, but put a plan in place before 2018</li> <li>4. Submit the Question to the Voters</li> </ol> <p>3 Options were provided, but staff recommended Option 1 as the simplest and most economical choice: Consolidate Future Non-Special Local Elections with the Statewide Elections Starting in 2018</p> <p>To implement this option, the regularly-scheduled November 2017 and 2019 elections could be moved to November 2018 and 2020</p>	<p>Extend all members' terms by 1 year, next election in 2018</p> <p>Council direction to staff approving Option 1 and staff to bring back an introduction to the new ordinance in October</p>	<p>8/24 Introduce Ordinance 9/28 Adopt Ordinance</p> <p>This would extend the terms of current Councilmembers by 1 year; consolidate election with statewide elections in 2018. Consideration of term limits to be reviewed as a separate future Council discussion item.</p>
Woodside	Odd	09.27.2016			