

UPDATED

STAFF REPORT

J-8



THE CITY OF
NOVATO
CALIFORNIA

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MEETING
DATE: April 4, 2017

TO: City Council

PRESENTER: Claudia Laughter, City Clerk
Veronica Nebb, Assistant City Counsel

SUBJECT: **DISCUSSION AND DIRECTION TO STAFF ON A PLAN TO CHANGE CITY MUNICIPAL ELECTIONS TO EVEN YEARS BY 2022 AS REQUIRED BY SB 415 – THE CALIFORNIA VOTER PARTICIPATION RIGHTS ACT**

REQUEST

Discussion and direction to staff on a plan to change City elections to even years to comply with the requirements of Senate Bill No. 415 (SB 415), the California Voter Participation Rights Act, (Sections 14050-14057 of the California Elections Code) and to bring back an ordinance to effectuate such plan for approval by the Council.

BACKGROUND

On September 1, 2015, Governor Jerry Brown signed into law Senate Bill 415 (SB 415), the California Voter Participation Rights Act, addition Sections 14050-14057 to the California Elections Code. A copy of SB 415 is included as Attachment 1.

SB 415 prohibits a local governmental entity from holding a general election other than on a State-wide election date if holding an election on a non-concurrent date (i.e., election date other than November of even numbered years), has previously resulted in a “significant decrease in voter turnout”. A “significant decrease in voter turnout” is defined as voter turnout for a regularly scheduled election of the local governmental entity that is at least twenty-five percent (25%) less than the average voter turnout within that entity for the previous four (4) statewide general elections.

The City of Novato currently holds municipal elections in November of odd-numbered years. Section 2-3.2 of the Novato Municipal Code currently governs the date of the City’s General Municipal Election. Section 2-3.2.a. provides that all general municipal elections shall be consolidated with the general district school election as set forth in Section 2602 of the California Elections Code¹. A copy of Section 2-3.2 of the City’s Municipal Code is included as Attachment 2. It appears that the last time the City’s election date was changed was in 1983 by the adoption of Ordinance 1008. Ordinance 1008 adopted Section 2-3.2 in its entirety and appears to have

¹ Section 2-3.2 a references a section of the Elections Code for school district elections which was repealed in 1994, it was replaced with California Elections Code Section 1302.

operated to change the City’s general election from even to odd numbered years. Section 2-3.2.c also reduced the terms of those persons in office at that time from 4 to 3 years.

The voter turnout for the last 4 regularly scheduled municipal elections in Novato show voter turnout was at least 25% lower than the average voter turnout for the previous four statewide general elections. The voter turnout for elections 2008-2015 (the relevant period of analysis for SB 415) is as follows:

| | |
|-------------|--------|
| 2016 | 87.89% |
| 2015 | 39.86% |
| 2014 | 56.88% |
| 2013 | 32.28% |
| 2012 | 86.22% |
| 2011 | 36.95% |
| 2010 | 73.84% |
| 2009 | 36.64% |
| 2008 | 90.22% |

Thus, the City must, pursuant to SB 415, move its general municipal election to the statewide election dates.

Pursuant to sections 1000 and 1001 of the California Elections Code, statewide elections are held on the first Tuesday after the first Monday in June and the first Tuesday after the first Monday in November of even numbered years. Based upon the election turnout noted above, the City Council must, by January 1, 2018, adopt a plan to move the general municipal elections to either June or November of even numbered years.

DISCUSSION

The plan for changing the general municipal election dates to even numbered years need not take any specific form and can be general direction of the City Council reflected by minute action or resolution. However, in order to effectuate the actual change of election date, the City Council must adopt an ordinance amending section 2-3.2. In addition, pursuant to sections 10403.5 and 1301 of the California Elections Code, the City Council ordinance changing the election date, must be transmitted to and approved by the Marin County Board of Supervisors. A copy of sections 10403.5 and 1301 of the California Elections Code are included as Attachment 3.

The Novato City Council will need to determine direction to give to staff to bring the City into compliance with SB 415. In order to change the election date, one-time adjustments of terms will need to be made to all Council seats until the City’s elections are placed on even years, then terms will revert to 4 year terms.

OPTIONS:

1. Direct staff to draft an Ordinance amending Section 2-3.2 to change the date of municipal elections to November of even years commencing in November, 2020 and to phase in the shift to even year elections by electing office holders in 2017 and 2019 to serve 3-year terms, expiring in 2020 and 2022, respectively, returning to 4 year terms in the 2022 election.
2. Direct staff to draft an Ordinance amending Section 2-3.2 to change the date of municipal elections to November of even years commencing in November, 2022, and to phase in the shift to even year elections by electing office holders in 2017 and 2019 to serve 5-year terms, expiring in 2022 and 2024, respectively, returning to 4 year terms in the 2022 election.
3. Direct staff to draft an Ordinance to change the date of municipal elections to November of even years commencing in November 2018. This would require cancellation of the November 2017 municipal elections and would extend the terms of all current Councilmembers for an additional year.
4. Direct staff to draft an Ordinance to change the date of municipal elections to June of even years commencing in November, 2018. This would require cancellation of the November 2017 municipal elections and would extend the terms of all current Councilmembers for an additional six months.
5. Reject all options and provide further direction to staff on permutations of the above options.

DISCUSSION OF OPTIONS:

Option 1. Direct staff to draft an Ordinance amending Section 2-3.2 to change the date of municipal elections to November of even years commencing in November, 2020 and to phase in the shift to even year elections by electing office holders in 2017 and 2019 to serve 3-year terms, expiring in 2020 and 2022, respectively.

Option 1, is similar to how the City Council chose to phase in the move from November of even-numbered years to November of odd-numbered years in 1983. Under Option 1, officeholders elected in November, 2017 would serve three-year terms, expiring in November, 2020. Officeholders elected in November, 2019 would serve three-year terms, expiring in November, 2022. Following November, 2020, the City's municipal elections would take place in even-numbered years. The advantage of this option, is that the voters would actually be placing the councilmembers elected into the 3 year terms, rather a term modification by Council action alone (see, Option 3)

The drawback to this option is that back-to-back elections would need to be held in November, 2019 and 2020. Additionally, cost-savings and potential increase in voter turnout resulting

from a move to even-numbered years would not be realized for several years, given that the change is phased in over several election cycles. However, this option may be more acceptable to the public, since terms are truncated, rather than lengthened and since the voters are the ones able to decide who serves in the 3 year terms.

Option 2. Direct staff to draft an Ordinance amending Section 2-3.2 to change the date of municipal elections to November of even years commencing in November, 2022, and to phase in the shift to even year elections by electing office holders in 2017 and 2019 to serve 5-year terms, expiring in 2022 and 2024, respectively, returning to 4 year terms in the 2022 election.

Under Option 2, officeholders elected in November, 2017 would serve five-year terms, expiring in November, 2022. Officeholders elected in November, 2019 would serve five-year terms, expiring in November, 2024. Beginning in November of 2026, terms would revert to 4 year terms. This option would essentially “give back” the year removed from terms in 1983 when the election date was switched to odd numbered years.

Disadvantages of this option would be that cost-savings associated with an earlier move to even numbered years and potential increase in voter turnout resulting from a move to even-numbered years would not be realized for several years since the change is phased in over several election cycles.

The advantage of this option, is that the voters would actually be placing the councilmembers elected into the 5 year terms rather than the Council adding a year to the terms. In addition, this option avoids back to back elections as there would be an election in 2017, 2019, 2022 and 2024.

Option 3. Direct staff to draft an Ordinance amending Section 2-3.2 to change the date of municipal elections to November of even years commencing in November, 2018. This would require cancellation of the November 2017 council election and would extend the terms of all current Councilmembers for an additional year.

Selection of this option would result in the cancellation of the City Council election in November, 2017 and would lengthen the terms of office holders to a total of five years each. The terms of the two officeholders expiring in November, 2017 would be extended through November, 2018. The terms of the three officeholders expiring in November, 2019 would be extended through November, 2020. Following November 2018, the City’s municipal elections would take place in November of even-numbered years.

The drawback to this option is that back-to-back elections would need to be held in November, 2017(for the UGB), 2018 and then again in 2020. Cost-savings associated with an earlier move to even numbered years, may be offset by the costs of 3 elections in 4 years. In addition, the public may be concerned about action in which the City Council extends the terms of seated councilmembers without a vote of the people.

Option 4. Direct staff to draft an Ordinance to change the date of municipal elections to June of even years commencing in November, 2018. This would require cancellation of the November 2017 municipal elections and would extend the terms of all current Councilmembers for an additional six months.

Selection of this option would result in the cancellation of the election for City Council seat in November, 2017 and would lengthen the terms of office holders for six months.

The drawback to this option is that back-to-back elections would need to be held in November, 2017(for the UGB), June 2018 for the council election and then again in June 2020. Cost-savings associated with an earlier move to even numbered years, may be offset by the costs of 3 elections in 4 years (with two occurring in 6 months). In addition, the maximum benefit of the shift to a statewide election may not be realized since voter turnout in June tends to be less than November turnout.

PUBLIC OUTREACH

Public outreach, including registered voter notification, will occur after Council provides direction. In accordance with the Elections code, once the City Council takes action, notice of the change must be mailed to all registered voters of the City after approval by the Board of Supervisors.

FISCAL IMPACT

The City of Novato, like other Marin County municipalities, coordinates elections with the Marin County Department of Elections which charges jurisdictions based upon a methodology approved by the Marin County Board of Supervisors in 2003. The basic elements for billing are the number of jurisdictions and measures and/or contests on a ballot. If more are on the ballot, the costs are spread out among the jurisdictions. If a jurisdiction has many items on a ballot, their individual jurisdictional costs will increase. The standard costs for an election would be \$1.75-\$3.00 per registered voter with Novato having 31,289 registered voters in 2016. These estimated costs are between \$54,775 and \$93,867. These costs may apply to Option 3.

At the Council's March 7, 2017 Meeting, the Council approved placing the Urban Growth Boundary Measure on the November 2017 Election ballot. Based on that decision, and the reports from the Marin County Elections Office, the estimated election costs for 2017 will be \$4.00-6.00 per registered voter, or between \$125,156 and \$187,734. These costs would apply to Options 1, 2 and 4.

The City typically budgets \$60,000-65,000 for election costs. There will also be additional costs for mailing notifications to all registered Novato voters of these changes.

RECOMMENDATION

Staff is recommending either Option 1 or Option 2, that the Council continues with the 2017 Election for 2 Council seats and inclusion of the Urban Growth Boundary ballot measure with a change in terms to either 3 or 5 years in 2017 and 2019. This would set compliance with SB 415 to occur by the 2022 deadline when all Council seats would revert back to 4-year terms.

ATTACHMENTS

1. Senate Bill 415
2. Section 2-3.2 of the City of Novato Municipal Code
3. Sections 10403.5 and 1301 of the California Elections Code

Senate Bill No. 415

CHAPTER 235

An act to add Chapter 1.7 (commencing with Section 14050) to Division 14 of the Elections Code, relating to elections.

[Approved by Governor September 1, 2015. Filed with Secretary of State September 1, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 415, Hueso. Voter participation.

Existing law generally requires all state, county, municipal, district, and school district elections be held on an established election date. Existing law also establishes certain dates for statewide elections. Existing law requires any state, county, municipal, district, and school district election held on a statewide election date to be consolidated with a statewide election, except as provided.

This bill, commencing January 1, 2018, would prohibit a political subdivision, as defined, from holding an election other than on a statewide election date if holding an election on a nonconcurrent date has previously resulted in voter turnout for a regularly scheduled election in that political subdivision being at least 25% less than the average voter turnout within the political subdivision for the previous 4 statewide general elections, except as specified.

This bill would require a court to implement appropriate remedies upon a violation of this prohibition. The bill would authorize 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 it would allow a prevailing plaintiff other than the state or political subdivision to collect a reasonable attorney's fee and litigation expenses, as provided.

The people of the State of California do enact as follows:

SECTION 1. Chapter 1.7 (commencing with Section 14050) is added to Division 14 of the Elections Code, to read:

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.

2-3.2 Municipal Elections.

a.

Date of General Municipal Elections. All general municipal elections shall be consolidated with the general district school election as set forth in Section 2602 of the California Elections Code.

b.

Applicability of California Elections Code. When an election is held pursuant to this subsection and the election is consolidated with another election, the provisions contained in Part 2.5 (commencing with Section 23300) of Division 14 of the California Elections Code shall govern the consolidation, and, if the county clerk is requested to conduct the municipal election, Section 22003 of the California Elections Code shall be applicable to that election.

c.

Effect on Elected City Officers. The city officers whose terms of office would have otherwise expired on the Tuesday succeeding the second Tuesday in April of 1984, shall instead expire the fourth Tuesday after the General Municipal Election in November of 1983.

Those city officers whose terms of office would otherwise expire on the Tuesday succeeding the second Tuesday in April of 1986, shall instead expire the fourth Tuesday after the General Municipal Election in November of 1985.

d.

Notice to Voters of Change in Election Date. Within 30 days after this subsection becomes operative, the city clerk shall cause a notice to be mailed to all registered voters informing the voters of the change in the election date. The notice shall also inform the voters that as a result of the change in the election date, elected city officeholders' terms in office will be decreased. The city clerk shall send a similar notice within 30 days after any subsequent change in the election date made pursuant to subsection 2-3.2a of the Novato Municipal Code.

State of California

ELECTIONS CODE

Section 10403.5

10403.5. (a) (1) Any city ordinance requiring its general municipal election to be held on a day specified in subdivision (b) of Section 1301 shall be approved by the board of supervisors unless the ballot style, voting equipment, or computer capability is such that additional elections or materials cannot be handled. Prior to adoption of a resolution to either approve or deny a consolidation request, the board or boards of supervisors shall each obtain from the elections official a report on the cost-effectiveness of the proposed action.

(2) A city, by itself or in concert with other cities, may purchase or otherwise contribute to the purchase of elections equipment, including, but not limited to, a computer for the purposes of conducting a consolidated election when the equipment shall be owned by the county.

(b) As a result of the adoption of an ordinance pursuant to this section, no term of office shall be increased or decreased by more than 12 months. As used in this subdivision, "12 months" means the period between the day upon which the term of office would otherwise have commenced and the first Tuesday after the second Monday in the 12th month before or after that day, inclusive.

(c) If an election is held on a day specified in subdivision (b) of Section 1301, and the election is consolidated with another election this part, except Section 10403, shall govern the consolidation and, if the county elections official is requested to conduct the municipal election, Section 10002 shall be applicable to that election.

(d) If a general municipal election is held on the same day as a statewide election, those city officers whose terms of office would have, prior to the adoption of the ordinance, expired no later than the next regularly scheduled city council meeting after receipt of the certification of the results from the elections official shall, instead, continue in their offices until not later than that meeting.

(e) Within 30 days after the ordinance becomes operative, the city elections official shall cause a notice to be mailed to all registered voters informing the voters of the change in the election date. The notice shall also inform the voters that as a result in the change in the election date, the terms of office of the elected city officeholders will be changed.

(Amended by Stats. 2004, Ch. 785, Sec. 9. Effective January 1, 2005.)

State of California

ELECTIONS CODE

Section 1301

1301. (a) Except as required by Section 57379 of the Government Code, and except as provided in subdivision (b), a general municipal election shall be held on an established election date pursuant to Section 1000.

(b) (1) Notwithstanding subdivision (a), a city council may enact an ordinance, pursuant to Division 10 (commencing with Section 10000), requiring its general municipal election to be held on the day of the statewide direct primary election, the day of the statewide general election, the day of school district elections as set forth in Section 1302, the first Tuesday after the first Monday of March in each odd-numbered year, or the second Tuesday of April in each year. An ordinance adopted pursuant to this subdivision shall become operative upon approval by the county board of supervisors.

(2) In the event of consolidation, the general municipal election shall be conducted in accordance with all applicable procedural requirements of this code pertaining to that primary, general, or school district election, and shall thereafter occur in consolidation with that election.

(c) If a city adopts an ordinance described in subdivision (b), the municipal election following the adoption of the ordinance and each municipal election thereafter shall be conducted on the date specified by the city council, in accordance with subdivision (b), unless the ordinance in question is later repealed by the city council.

(d) If the date of a general municipal election is changed pursuant to subdivision (b), at least one election shall be held before the ordinance, as approved by the county board of supervisors, may be subsequently repealed or amended.

(Amended by Stats. 2016, Ch. 86, Sec. 83. (SB 1171) Effective January 1, 2017.)