



# City of Culver City

## Staff Report Details (With Text)

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**Title:** CC - (1) Discussion of Options Regarding Consolidation of Future Culver City Municipal Elections with California Statewide Elections, in Response to the California Voter Participation Rights Act and Related Opinion by the State Attorney General; and (2) Direction to the City Clerk as Deemed Appropriate.

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**Meeting Date:** October 9, 2017

**Contact Person/Dept:** Jeremy Green, City Clerk; Lisa Vidra, Sr. Deputy City Attorney

**Phone Number:** (310) 253-5859; (310) 253-5660

**Fiscal Impact:** Yes  No       **General Fund:** Yes  No

**Public Hearing:**       **Action Item:**       **Attachments:**

**Commission Action Required:** Yes  No       **Date:**

**Public Notification:** (E-Mail) Meetings and Agendas - City Council (10/04/17);

**Department Approval:** Serena Wright, Administrative Services Director (10/04/17);  
Carol Schwab, City Attorney (10/03/17)

## **RECOMMENDATION**

Staff recommends the City Council (1) discuss options regarding consolidation of future Culver City Municipal Elections with California Statewide Elections, in response to the California Voter Participation Rights Act and the related opinion by the State Attorney General; and (2) provide direction to the City Clerk as deemed appropriate.

## **BACKGROUND**

Under the provisions of the California Elections Code, California holds its statewide elections in even numbered years, with the primary held in June, although this was recently changed to March, beginning in 2020, and the general election in November. Under previous state law, cities were permitted to select whether to hold their elections (1) on the same dates as the state, referred to as consolidated, on-cycle or concurrent elections; or (2) on a different date, referred to as off-cycle or non-concurrent elections. The City of Culver City's election date is set forth in the City's Charter, section 1500, which provides for City elections to be held specifically in April of even numbered years.

### **SB 415-Municipal Election Consolidation Requirements**

In 2015, in an effort to increase local voter turnout, the California Legislature enacted Senate Bill (SB) 415, the California Voter Participation Rights Act (the CVPRA or the Act), which was signed into law by Governor Brown on September 1, 2015). The CVPRA is codified in the California Elections Code, sections 14050-14057. The Act requires cities, school districts, and other entities to consolidate their local elections with either the statewide Primary Election (beginning in March 2020 of even-numbered years), or the General Election (currently in November of even-numbered years). Specifically, the Act states that, effective January 1, 2018, "political subdivisions" are prohibited from holding local elections on any other date other than a statewide election date, *if* the average voter turnout for the off-cycle local elections (over 4 previous elections) is 25% less than the statewide voter turnout rates within the same political subdivision. A political subdivision is defined in the Act as "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."

The CVPRA becomes operative on January 1, 2018; if a political subdivision meets the 25% threshold of lower voter turnout, the change in election date must be implemented no later than November 8, 2022. The entity making the change must adopt a plan by January 1, 2018 to consolidate with a future statewide election date.

When SB 415 was passed, the California Primary was still scheduled for June. However, SB 568, which moved the Primary from June to March of even-numbered years recently passed and has been signed by the Governor and takes effect 2020.

Changing the date of a local election, in accordance with the CVPRA, will result in requiring a change in the length of the term that certain Council Members serve. For instance, if the City changes its

election date from April to November, to consolidate with the state General Election, the Council Members' terms, that would ordinarily be ending in April, would be extended for seven months. If the City makes a change to the Primary date in March, this would result in shortening a sitting council member's term by one month. These changes are discussed further below.

*Applicability to Charter Cities: Attorney General's Opinion*

A threshold question raised by numerous California cities was whether the mandate to change election dates would apply to California charter cities (such as Culver City) and the school districts whose elections are governed by those charters. In June 2016, the City of Pasadena, through its Assembly representative, requested that the California Attorney General issue an opinion regarding the applicability of the CVPRA to charter cities. On July 11, 2017, California Attorney General (AG) Xavier Becerra issued an official opinion stating that the CVPRA does apply to charter cities (and to the school districts whose elections are governed by city charters).

The AG's Opinion states in part: "While a charter city's constitutional sovereignty over its municipal affairs should not be minimized, it must at times yield to statewide concerns. When off-cycle elections result in significantly decreased voter participation, they compromise 'the essence of a democratic form of government,' raising an important matter of statewide concern." While an AG opinion is not binding, the formal legal opinions of the AG have been given "great respect" and "great weight" by the courts.

The City Clerk's Office reviewed the Culver City voter turnout for the last four Municipal Elections and found that the average turnout was 19.29%, while the average turnout in the City for the past four statewide General Elections was 67.5%. Thus, Culver City meets the 25% lower voter turnout threshold, and the Act applies to Culver City, under the AG's analysis.

In November 2016, the Culver City Unified School District considered the issue of consolidation and voted to change its off-cycle elections from November of odd-numbered years, to the first Tuesday after the first Monday in November of even-numbered years, to coincide with the statewide General Election.

**DISCUSSION**

With the Attorney General's opinion issued, the first step is for the City Council to make certain determinations regarding compliance with the legislation. The threshold consideration includes whether the City will comply with the CVPRA, under the AG's opinion. If so, decisions must be made as to *how* and *when* to implement such changes. This would include adopting a plan by January 1, 2018, describing how the City will comply, including the future date for consolidation, and the impact on then sitting City Council Members' terms.

**I. *Determine Whether to Comply with the CVPRA and the AG Opinion***

A threshold question for the Council is whether to comply with the CVPRA, based on the Attorney General's opinion. As stated above, although an Attorney General opinion is not technically binding, the courts do give deference to such opinions.

A. Non-compliance with CVPRA:

The options under non-compliance with the CVPRA are:

- 1) Not take any action and proceed as the City has in the past with its April elections.
- 2) File some form of legal challenge.

At this date, the City of Whittier has announced it will file a challenge to the Attorney General's opinion. Staff is not aware of any other cities that are either challenging the AG Opinion or opting not to comply.

B. Compliance with CVPRA:

If the City Council determines that it will move forward with the consolidation, there are a number of decisions that the Council will need to make, as described in Section II, below.

## II. ***Compliance Timelines and Options***

A. Adopt a Plan.

By the end of 2017, the City must adopt a plan, either by adopting a resolution or an ordinance, outlining how the City will carry out the consolidation.

B. Primary or General Election: The Council may choose to consolidate with:

- 1) The State Primary Election, to be held in March of even numbered years beginning in 2020; OR
- 2) The Statewide General Election, held in November of even-numbered years.

C. Year for Implementation: Whether to set the effective date for consolidation in 2020 or 2022. As mentioned above, the consequence of either year (2020 or 2022) will be that Council Members' terms would be shortened or extended depending on whether the Primary date (March) or Statewide General Election date (November) is chosen.

1) If the City's Election is consolidated with the state Primary in March, this will result in shortening the term by one month of all Council Members who are serving on Council at the time of the change:

- a. Those whose terms expire in the year the change is implemented and are eligible for re-election would run for re-election one month earlier, in March, instead of April;
- b. Those who are in their second full term would have their term expire one month earlier, in March, instead of April;
- c. Those not up for re-election for two more years would have their term shortened by one month to end in March, instead of April of their final year.

2) If the City's Election is consolidated with the Statewide General Election in November, it will result in an extension of the term of the then-sitting Council Members by seven months:

- a. Those whose term expires in the year the change is implemented and are eligible for re-election would run for re-election seven months later, in November, instead of April;
  - b. Those who are in their second full term would have their term expire seven months later, in November, instead of April;
  - c. Those not up for re-election for two more years would have their term extended by seven months, so the term would end in November of their final year.
- 3) The change in dates could potentially also impact when a Council Member, who has served two terms, could run again. Currently, Section 601 of the Charter states that a two-term Council Member shall be eligible to serve again after “at least two years have elapsed from the Council Member’s last full term.” There are a few scenarios which would require current Council Members to wait a longer period than the two year term.
- a. If the change is implemented in March 2020, a Council Member whose term expires in April 2018 could not run in 2020, because only 23 months will have elapsed.
  - b. If the change is implemented in March 2022, a Council Member whose term expires in April 2020 could not run in 2022, because only 23 months will have elapsed.
  - c. If the change is implemented in November 2020, a Council Member whose term expired in April 2018 would need to wait two years and seven months before they can run again.
  - d. If the change is implemented in November 2022, a Council Member whose term expired in April 2018 would need to wait two years and seven months before they can run again.

D. Determine Whether to Place a Charter Amendment on the Municipal Election Ballot.

As mentioned above, the City’s election date is set forth in the City’s Charter, Section 1500, which provides that “[g]eneral municipal elections for the filling of all elective offices, other than the Board of Education, shall be held in the City on the second Tuesday in April in each even numbered year.” Under state law, the City’s Charter may only be amended by the City’s voters.

Thus, to change the election date set out in the Charter, the change would be submitted to the voters. The charter amendment may be placed on the ballot of a regularly scheduled City election, or of any statewide Primary or General Election. The earliest placement date would be the April 2018 Municipal Election. However, the Charter Amendment could be placed on a later ballot, up to and including November 2020.

The Charter Amendment measure would need to be ratified by the voters, but would not be effective until after the amendment is accepted and filed by the Secretary of State. Therefore, the earliest date for a consolidated election would be 2020, if the measure would be placed on the April or November ballots in 2018.

In addition the Charter Amendment setting the election date, the Council may want to consider an amendment to Charter Section 601 regarding the eligibility of a Council Member to run after their term has expired. As stated above, there are certain scenarios which would cause an unintended consequence of requiring a Council Member to wait a significant amount of time before running again.

There has been discussion in some cities whether it would be permissible to simply suspend enforcement of the Charter provisions, rather than submitting an Amendment to the voters. Rather than amend the Charter, a City Council would adopt an ordinance changing the date of the election, taking a position that the Charter is preempted (void) due to the passage of the CVPR. However, it is staff's recommendation that a solid course of action would be to take the Charter amendment to the voters, so that the Charter does not conflict with the CVPR.

## **FISCAL ANALYSIS**

There is no cost to adopt a resolution to implement the Plan for consolidation. There is a cost to place the Charter Amendment on a Municipal Election ballot. This cost varies depending on the length of the text of the ordinance, the impartial analysis, and any argument(s) and rebuttal(s). Another cost consideration is whether the measure is incorporated with a stand-alone or a consolidated election.

## **ATTACHMENTS**

None.

## **MOTION**

That the City Council:

1. Determine whether to comply with the CVPR requirement that the City consolidate the Culver City General Municipal Election with one of the Statewide Election dates held in even-numbered years.
  - b. If No, direct staff, accordingly.
  - c. If Yes, adopt a plan by December 31, 2017, outlining the following:
    - i. Whether to consolidate with the Primary Election in March, or the General Election in November of even numbered years.
    - ii. Determine the year of the election consolidation (2020 or 2022).
    - iii. Determine:
      - Whether to direct Staff to prepare a draft Charter Amendment to be considered by the City Council on a future agenda;
      - The election date on which to place the Charter Amendment on the

ballot.

2. Provide other direction to Staff, as deemed appropriate.