

## AGENDA REPORT

DATE: City Council Meeting of December 8, 2016

TO: Mayor Lentz and Members of the City Council

FROM: Michael Roush, City Attorney

**SUBJECT: Ordinance Changing the Year at which City Council Elections Must be Held to Even Numbered Years (Statewide Elections) and Extending the Term of Office for Current City Council Members by One Year**

### RECOMMENDATION

Introduce an Ordinance (Ordinance No. 614, Attachment 1) changing the year at which City Council elections must be held to even numbered years, in order to comply with new State legislation that mandates such change and extending the term of office for current City Council members by one year, i.e., for three Council members whose terms now end in 2017, their terms would be extended to 2018, and for two Council members whose terms now end in 2019, their terms would be extended to 2020.

### BACKGROUND

Under certain circumstances applicable to Brisbane, 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 that 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 within 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**

Because there has been a “significant decrease in voter turnout” when the voter turnout for municipal elections is compared to the voter turnout for statewide elections, City Council must 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, the terms of current Council members could be extended 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 the terms of those elected in 2017 (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.

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 for members 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, five of the cities have taken such steps: Foster City, Millbrae, Portola Valley, San Mateo, and South San Francisco have extended their current members’ terms by one year. The next Council election in these jurisdictions will be in 2018 rather than in 2017, except in the case of San Mateo, which will hold a regular candidate election for three seats in 2017, not hold elections in 2018 or 2019, and in 2020, have an election for the two seats that would have been up in 2019 (San Mateo 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 and 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). Therefore, for all the jurisdictions listed, the members' terms that would have ended in 2019 will now end in 2020. Attached to this report as Attachment 2 is a table showing the status of this issue in other cities in San Mateo County.

On October 20, 2016, the City Council conducted a workshop to discuss various options and provided direction to staff as to how it would like to proceed. Pursuant to that direction, staff has prepared an Ordinance (Attachment 1) in order for the City to comply with this new state law by the statutory deadline. Council directed that Option 1—extending the terms of the current Council members by one year—be embodied in the Ordinance. Council's reasoning was largely driven by the Council's current consideration of the Baylands development issues, which consideration is likely to continue through most of 2017. Council indicated that for continuity it made sense for the current Council to complete that task, similar to the Council's extending the terms of office of certain Planning Commissioners during the time that the Planning Commission was formulating its recommendation on the Baylands to the City Council.

Notwithstanding the Council direction at the workshop, set forth below are all of the various options that 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 is the option that is reflected in the attached Ordinance. (This options is also consistent with what the City Councils in Foster City, Millbrae, Portola Valley, San Mateo, and South San Francisco have chosen.)

**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 a 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. (This might be seen as kicking the can down the road but would allow a “new” council to make the decision.)

Assuming Council chooses to introduce (and then adopt) an Ordinance at this time, consistent with Council action in the 1980’s, the Ordinance would provide that voters be notified of the change. This would be accomplished through the City’s various print & electronic communication channels.

**FISCAL IMPACT**

The only immediate fiscal impact by adopting this Ordinance will be the costs associated with informing Brisbane voters about the change. Presumably there will be some savings as to the City’s share of election costs by conducting its municipal elections at statewide election dates.

  
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Michael H. Roush, City Attorney

  
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Clay Holstine, City Manager

Attachments

- 1: Draft Ordinance
- 2: Status of Decisions of Other Cities in San Mateo County Concerning Terms of Office

## ORDINANCE NO. 614

**AN ORDINANCE OF THE CITY OF BRISBANE AMENDING SECTION 1 (PART) OF ORDINANCE NO. 286 AND CHAPTER 2.38 OF THE BRISBANE MUNICIPAL CODE CONCERNING GENERAL MUNICIPAL ELECTIONS****THE CITY COUNCIL OF THE CITY OF BRISBANE HEREBY ORDAINS AS FOLLOWS:**

**Section 1:** Section 1 (part) of Ordinance No. 286 and Chapter 2.38 of the Brisbane Municipal Code are amended to read as follows:

**“Chapter 2.38 General Municipal Elections**

2.38.010 Election date designated.

The general municipal election for the offices of city council members shall be held on the first Tuesday following the first Monday in November of even numbered year, commencing November 2018

2.38.020 Consolidation of elections.

The city clerk shall petition the County of San Mateo to consolidate the City of Brisbane general municipal election with the statewide election held on first Tuesday following the first Monday in November of each even numbered year, commencing November 2018.

2.38.030 Terms of Office—City Council members elected in November 2013.

The term of office for each City Council member elected in November 2013 is extended to the beginning of the term of office for each City Council member elected in November 2018.

2.38.040 Terms of Office—City Council members elected in November 2015.

The term of office for each City Council member elected in November 2015 is extended to the beginning of the term of office for each City Council member elected in November 2020.

2.38.050 Terms of Office—City Council members generally

The term of each City Council member elected in November 2018 and November 2020, and in each subsequent general municipal election shall be for a term of four years, from the time each member is elected and qualified until his/her successor is elected and qualified.

2.38.060 Notice to inform voters

Within 30 days after the Ordinance codified in this Chapter becomes operative, the City Clerk shall cause a notice to be mailed to all registered voters in the City informing them 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, the term of office for each current City Council member has been extended.”

**Section 2.** This Ordinance shall be in full force and effect 30 days after its passage and adoption.

The above and foregoing Ordinance was regularly introduced and, after the waiting time required by law, thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on \_\_\_\_\_, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

### List of San Mateo County Municipalities and Their Respective Actions on SB 415

City	Election Year	Date Presented or Will be Presented to Council	Action Taken
Atherton	Even		n/a
Belmont	Odd	Study Session tentatively scheduled for early 2017	
Brisbane	Odd	Informational Report submitted on October 20, 2016, 12/8 Ord. 614 introduced	
Burlingame	Odd	Informational Report submitted on December 5, 2016	
Colma	Even		n/a
Daly City	Even		n/a
East Palo Alto	Even		n/a
Foster City	Odd	October 17, 2016	Extended all members' terms by 12 months
Half Moon Bay	Even		n/a
Hillsborough	Even		n/a
Menlo Park	Even		n/a
Millbrae	Odd	July 26, 2016	Extended all members' terms by 12 months
Pacifica	Even		n/a
Portola Valley	Odd	October 26, 2016	Extended all members' terms by 12 months
Redwood City	Odd	October 2016	Ad hoc committee recommended Council extend terms by 12 months; Council will consider in early 2017
San Bruno	Odd	November 22, 2016 Study Session	
San Carlos	Odd	September 12, 2016	Recommendation was to extend terms by 12 months; Council will consider in early 2017
San Mateo	Odd	September 19, 2016 Study Session	Charter amendment for 11/7/2017 election to extend terms 12 mos.
South San Francisco	Odd	July 27, 2016 Study Session, 8/24 Ord. introduced, 9/28 adopted	Extended all members' terms by 12 months
Woodside	Odd	September 27, 2016	Ordinance to extend members' terms by 12 months on December 13, 2016 agenda