

BOARD of SUPERVISORS



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MEMORANDUM

TO: John Arntz, Director, Department of Elections

FROM: Victor Young, Assistant Clerk *Victor Young*
Rules Committee

DATE: April 29, 2020

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee received the following proposed legislation on April 21, 2020:

File No. 200400

Ordinance amending the Municipal Elections Code to require the Department of Elections to expand use of vote-by-mail ballots at the November 3, 2020, Consolidated General Election; to report to the Board of Supervisors regarding planning for that election; and to report to the Board regarding implementation of the Voter's Choice Act in future San Francisco elections.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: victor.young@sfgov.org.

1 [Municipal Elections Code - Expanded Vote-by-Mail for the November 3, 2020 Election -
2 Voter's Choice Act]

3 **Ordinance amending the Municipal Elections Code to require the Department of**
4 **Elections to expand use of vote-by-mail ballots at the November 3, 2020, Consolidated**
5 **General Election; to report to the Board of Supervisors regarding planning for that**
6 **election; and to report to the Board regarding implementation of the Voter's Choice Act**
7 **in future San Francisco elections.**

8 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
9 **Additions to Codes** are in *single-underline italics Times New Roman font*.
10 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
11 **Board amendment additions** are in double-underlined Arial font.
12 **Board amendment deletions** are in ~~strikethrough Arial font~~.
13 **Asterisks (* * * *)** indicate the omission of unchanged Code
14 subsections or parts of tables.

15 Be it ordained by the People of the City and County of San Francisco:

16 Section 1. Findings.

17 (a) In 2016, then-California Governor Jerry Brown signed Senate Bill 450, opening the
18 option for California counties to adopt a new voting model known as the Voter's Choice Act
19 ("VCA"). The VCA requires counties to mail every registered voter a vote-by-mail ballot and
20 gives voters the options of mailing in their ballot, delivering it to a county-placed ballot drop
21 box, or voting in person at a vote center that will be open for early voting and through Election
22 Day.

23 (b) According to a recent study on the initial impacts of the VCA published by the
24 Public Policy Institute of California and University of California at San Diego, turnout in the five
25 counties that had implemented the VCA (Madera, Napa, Nevada, Sacramento and San
Mateo) increased by about three percentage points in the 2018 general election and four

1 points in the primary, when compared to counties that had not implemented the VCA.
2 Moreover, turnout increases were greater for 18-to-24-year old, Latino, and Asian American
3 voters in the counties that implemented the VCA.

4 (c) Originally launched with the five counties participating during an initial pilot period,
5 VCA is now open to any county that takes steps to implement it, and as of April 2020, more
6 than ten counties have adopted the VCA. San Francisco has not yet taken steps to
7 implement the VCA.

8 (d) On April 6, 2020, during the global COVID-19 pandemic that has spurred shutdown
9 orders throughout the United States and the world, and despite clear evidence that keeping
10 people at home and away from crowds is necessary to save lives, the United States Supreme
11 Court issued a decision, *Republican National Committee et al. v. Democratic National*
12 *Committee et al.* (Docket No. 19A1016), that restricted the ability of many Wisconsin citizens
13 to have their absentee ballots counted, thus forcing voters in Wisconsin to leave the safety of
14 their homes in order to cast votes in-person at increased risk to their health. News reports
15 circulated worldwide showing long queues of voters, many of them seniors or potentially
16 people with serious health conditions, waiting to vote in-person.

17 (e) In San Francisco, vote-by-mail ballots are available in advance of Election Day, but
18 only on request. As of April 2020, approximately 70% of San Francisco voters were
19 registered as permanent vote by mail. By contrast, several states -- Colorado, Hawaii,
20 Oregon, Utah, and Washington -- conduct all elections by having ballots sent to every
21 registered voter without the voter having to request one. Other jurisdictions, including
22 California (see California Elections Code Sections 4000-04), conduct certain specified
23 elections as "all mail" elections.

24 (f) On February 25, 2020, Mayor London Breed proclaimed a state of emergency
25 based on the coronavirus pandemic (COVID-19), and on March 3, 2020, the Board of

1 Supervisors concurred in the February 25 Proclamation. On March 4, 2020, Governor Gavin
2 Newsom declared a state of emergency for California due to COVID-19. On March 16, 2020,
3 the County Health Officer issued Order No. C19-07 (later extended by Order No. C19-07b),
4 directing people to stay in their homes and requiring businesses to cease all non-essential
5 operations at physical locations in San Francisco. On March 19, 2020, Governor Newsom
6 issued Executive Order N-33-20, incorporating an order issued by the State Public Health
7 Officer, requiring California residents to shelter in place except as needed to maintain
8 continuity of operations of certain critical infrastructure sectors.

9 (g) On March 20, 2020, Governor Newsom issued Executive Order N-34-20, which
10 directed special elections scheduled for the City of Westminster, the California 25th
11 Congressional District, and the 28th State Senate District to be held as “all mail” elections with
12 in-person voting options in a manner consistent with public health and safety. On April 9,
13 2020, Governor Newsom issued Executive Order N-48-20 which similarly directed special
14 elections scheduled for the City of Santa Ana, the City of Commerce, and the El Rancho
15 Unified School District to be held as “all mail” elections with in-person voting options in a
16 manner consistent with public health and safety.

17 (h) The duration of the COVID-19 crisis, and when and how shelter-in-place orders will
18 be modified or lifted, are, as of April 2020, unknown, but it appears the COVID-19 pandemic
19 will persist for a considerable time. Data show that those most at risk are the elderly, people
20 of color, and people with certain chronic medical conditions. To avoid disenfranchising these
21 communities and all San Franciscans by requiring them to decide between their health and
22 their right to vote, the City should take action now to maximize fair and safe access for all
23 voters to exercise their right to vote in the November 3, 2020 election. This ordinance will
24 ensure an emergency plan for a fair, safe, and secure November 3, 2020 election, and a clear
25 path to prepare for future elections by instituting similar protections.

1
2 Section 2. The Municipal Elections Code is hereby amended by adding Article XI,
3 consisting of Sections 1101, 1102, and 1103, to read as follows:
4

5 **ARTICLE XI: VOTE-BY-MAIL FOR THE NOVEMBER 3, 2020 ELECTION; VOTER'S**
6 **CHOICE ACT**
7

8 **SEC. 1101. DEFINITIONS.**

9 *Whenever the following terms are used in this Article XI, the following definitions shall apply.*
10 *Other terms shall be defined as set forth in the California Elections Code.*

11 *"Department" means the San Francisco Department of Elections.*

12 *"Director" means the Department's Director of Elections, or the Director's designated agent*
13 *or representative.*

14 *"Election" means the November 3, 2020 Consolidated General Election.*
15

16 **SEC. 1102. EXPANSION OF VOTE-BY-MAIL FOR THE SAN FRANCISCO NOVEMBER**
17 **3, 2020 CONSOLIDATED GENERAL ELECTION.**

18 *(a) Purpose. Unless federal or State law preempt such action, the Department shall expand the*
19 *use of vote-by-mail by San Francisco voters for the Election to the extent permitted by law and as*
20 *specified in subsections (b) and (c). But if any State or federal law (including but not limited to*
21 *statutes, executive orders, and regulations) that requires the expansion of vote-by-mail for the Election*
22 *is approved, enacted, or issued prior to or after the effective date of this Article XI, this Section 1102,*
23 *except for subsection (d), shall be inoperative and shall impose no requirements on the Department.*

24 *(b) Implementation. To the extent not preempted by federal or State law and not otherwise*
25 *rendered inoperative by subsection (a), the Department shall take all available steps, to the extent*

1 reasonably feasible and financially practicable, to expand the use of vote-by-mail ballots including, but
2 not necessarily limited to:

3 (1) the Department shall attempt to inform every San Francisco household regarding
4 the opportunity to register as a vote-by-mail voter for the Election; and

5 (2) the Department shall distribute vote-by-mail ballots to all registered voters, even if
6 they have not applied to become vote-by-mail voters.

7 (c) **Conditions.** The following conditions shall apply to the Department's expansion of the use
8 of vote-by-mail ballots and its conduct of the Election:

9 (1) in consultation with the Department of Public Health, the Department shall evaluate
10 and implement measures regarding the distribution and collection of vote-by-mail ballots, and in-
11 person and ballot drop-off opportunities that the Department of Public Health has determined to be
12 safe, necessary to protect public health, especially the health of people who are particularly vulnerable
13 to COVID-19 infections, including, but not limited to, persons 65 years and older, persons who reside
14 in a long-term care facility or other congregate settings, persons in custody, and persons with
15 underlying medical conditions;

16 (2) in consultation with the Department of Public Health and the Department of Human
17 Resources, the Department shall evaluate and implement measures to protect the health of its
18 employees and contractors, and employees of other City departments who may assist the Department
19 with the Election, such as the Sheriff's Department;

20 (3) consistent with public health requirements and to the extent required by State and
21 federal laws, such as the Americans with Disabilities Act of 1990 (42 U.S.C. Sections 12101 et seq.)
22 and the Help America Vote Act of 2002 (52 U.S.C. Sections 20901 et seq.), the Department shall
23 provide voters with a disability with adequate facilities and opportunities to cast a ballot through vote-
24 by-mail or alternative means; and

1 (4) the Department shall consult with the Office of Racial Equity and community-based
2 organizations to conduct outreach to communities and neighborhoods with historically low voter
3 turnout regarding the expansion of vote-by-mail for the Election.

4 (d) Report to the Board of Supervisors. No later than June 30, 2020, the Department shall
5 submit a written report to the Board of Supervisors, with a copy to the Elections Commission,
6 regarding its implementation of this Section 1102. If any State or federal law (including but not limited
7 to statutes, executive orders, or regulations) expanding the use of vote-by-mail is approved, enacted, or
8 issued prior to or after the operative date of this Article XI, no later than June 30, 2020, the
9 Department shall submit a written report to the Board of Supervisors and the Elections Commission
10 regarding its plans for the Election under that law. The report required by this subsection (d) shall
11 address, but is not limited to, the following topics:

12 (1) voter outreach, education, and services;

13 (2) staffing and staff training;

14 (3) voting equipment and capacity;

15 (4) ballot collection and processing; and

16 (5) public health measures and procedures.

17
18 **SEC. 1103. VOTER'S CHOICE ACT.**

19 (a) Purpose. The Board of Supervisors seeks the Department's input, and the public's
20 feedback, on the potential implementation of the Voter's Choice Act (SB 450, adding California
21 Elections Code Sections 4005-08 and amending California Elections Code Sections 3017 and 15320) in
22 San Francisco.

23 (b) Report to the Board of Supervisors. No later than January 31, 2021, the Department shall
24 submit a written report to the Board of Supervisors, with a copy to the Elections Commission,
25

1 regarding the potential implementation of the Voter’s Choice Act in San Francisco for elections to be
2 held in 2021 and thereafter. The report shall address, but need not be limited to, the following topics:

3 (1) voter outreach, education, and services;

4 (2) staffing and staff training;

5 (3) voting equipment and capacity;

6 (4) ballot collection and processing; and

7 (5) location and operation of potential vote centers.

8 (c) **Removal of Article XI.** Following submission of the report referenced in subsection (b), the
9 City Attorney shall cause this Article XI to be removed from the Municipal Elections Code.

10
11 Section 3. Effective Date. This ordinance shall become effective 30 days after
12 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
13 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
14 of Supervisors overrides the Mayor’s veto of the ordinance.

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19 Section 4. Severability.

20 If any section, subsection, sentence, clause, phrase, or word of this ordinance, or any
21 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
22 decision of a court of competent jurisdiction, such decision shall not affect the validity of the
23 remaining portions or applications of the ordinance. The Board of Supervisors hereby
24 declares that it would have passed this ordinance and each and every section, subsection,
25 sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to

1 whether any other portion of this ordinance or application thereof would be subsequently
2 declared invalid or unconstitutional.

3

4 APPROVED AS TO FORM:
5 DENNIS J. HERRERA, City Attorney

6 By: /s/ Andrew Shen
7 ANDREW SHEN
8 Deputy City Attorney

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LEGISLATIVE DIGEST

[Municipal Elections Code - Expanded Vote-by-Mail for the November 3, 2020 Election - Voter's Choice Act]

Ordinance amending the Municipal Elections Code to require the Department of Elections to expand use of vote-by-mail ballots at the November 3, 2020, Consolidated General Election; to report to the Board of Supervisors regarding planning for that election; and to report to the Board regarding implementation of the Voter's Choice Act in future San Francisco elections.

Existing Law

Article XIII of the Charter and the Municipal Elections Code govern the conduct of San Francisco elections. San Francisco elections are also generally subject to the California Elections Code and federal laws, such as the Americans with Disabilities Act of 1990 (42 U.S.C. Sections 12101 et seq.) and the Help America Vote Act of 2002 (52 U.S.C. Sections 20901 et seq.).

California Elections Code Sections 3000-3026 and 3200-3206 address vote-by-mail voting. The Municipal Elections Code does not specifically address vote-by-mail procedures.

In 2016, the State enacted the Voter's Choice Act (SB 450), amending the Elections Code to authorize the use of an elections model that incorporates expanded use of vote-by-mail and greater opportunities for early voting through the use of ballot drop-off boxes and vote centers. As of January 1, 2020, any county in California can choose to adopt the Voter's Choice Act model for its elections. See Elec. Code § 4005(a). San Francisco has not adopted the Voter's Choice Act for its elections.

Amendments to Current Law

The proposed ordinance would require the Department of Elections ("Department") to expand the use of vote-by-mail voting for the November 3, 2020 Consolidated General Election ("Election"), to the extent not preempted or addressed by State or federal law. Subject to those limitations, this expansion would include informing all San Francisco households of the ability to register as vote-by-mail voters and sending all registered voters vote-by-mail ballots.

In expanding the use of vote-by-mail for the Election, to the extent not preempted or addressed by State or federal law, the proposed ordinance would require the Department to:

- to implement measures, in consultation with the Department of Public Health, to protect public health in the distribution and collection of vote-by-mail ballots, and in-person

voting and ballot drop-off opportunities determined to be safe, especially for vulnerable populations of voters;

- to implement measures, in consultation with the Department of Public Health and the Department of Human Resources, to protect the health of the Department's employees and contractors, and employees of other City departments who may assist the Department with the Election;
- to provide voters with disabilities with adequate facilities and opportunities to cast a ballot through vote-by-mail or alternative means, as required by the required by State and federal laws, including the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.) and the Help America Vote Act of 2002 (52 U.S.C. Section 20901 et seq.); and
- to conduct outreach to communities and neighborhoods with historically low voter turnout regarding the expansion of vote-by-mail for the Election, in consultation with the Office of Racial Equity and community-based organizations.

The proposed ordinance would also require the Department to submit a written report to the Board of Supervisors by June 30, 2020, regarding its plans for the Election. The Department would also submit a copy of the written report to the Elections Commission.

The proposed ordinance would also require the Department to submit a written report to the Board of Supervisors and Elections Commission by January 31, 2021, regarding the potential implementation of the Voter's Choice Act in San Francisco for future elections held in 2021 and later.

Background Information

On February 25, 2020, Mayor London Breed proclaimed a state of emergency based on coronavirus ("COVID-19"), and on March 4, 2020, Governor Gavin Newsom declared a state of emergency for California due to COVID-19.

In light of the COVID-19 crisis, on March 20, 2020, Governor Newsom issued Executive Order N-34-20 which directed special elections scheduled for the City of Westminster, the California 25th Congressional District, and the 28th State Senate District to be held as "all mail" elections with in-person voting options in a manner consistent with public health and safety. On April 9, 2020, Governor Newsom issued Executive Order N-48-20 which similarly directed special elections scheduled for the City of Santa Ana, the City of Commerce, and the El Rancho Unified School District to be held as "all mail" elections with in-person voting options in a manner consistent with public health and safety.

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Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor inquiries"
- 5. City Attorney Request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Subject:

The text is listed:

Signature of Sponsoring Supervisor:

For Clerk's Use Only