

5/7/2020

FILE NO. 200400

ORDINANCE NO.

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.

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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:

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

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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.

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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, and early voting options to offset the lack of in-person
 12 voting due to fewer polling places, in order that the Department of Public Health has
 13 determined to be safe, necessary to protect public health, especially the health of people who are
 14 particularly vulnerable to COVID-19 infections, including, but not limited to, persons 65 years and
 15 older, persons who reside in a long-term care facility or other congregate settings, persons in custody,
 16 and persons with underlying medical conditions;

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

21 (3) consistent with public health requirements and to the extent required by State and
 22 federal laws, such as the Americans with Disabilities Act of 1990 (42 U.S.C. Sections 12101 et seq.)
 23 and the Help America Vote Act of 2002 (52 U.S.C. Sections 20901 et seq.), the Department shall
 24 provide voters with a disability with adequate facilities and opportunities to cast a ballot through vote-
 25 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 and to implement diverse and targeted strategies to engage
 3 and inform communities and neighborhoods with historically low voter turnout regarding the
 4 expansion of vote-by-mail and other options to vote for the Election.

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

13 (1) voter outreach, education, and services, including to limited-English speaking
 14 communities and persons with disabilities;

15 (2) staffing needs, hiring strategies, and staff training;

16 (3) voting equipment and capacity;

17 (4) preliminary voting locations and hours, dropbox or curbside drop-off
 18 locations and hours;

19 (4) (5) ballot collection and processing; and

20 (5) (6) public health measures and procedures for both voters and poll workers.

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 22 **SEC. 1103. VOTER'S CHOICE ACT.**

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

3 (b) Report to the Board of Supervisors. No later than ~~January 31, 2021~~ February 28,
 4 2021, the Department shall submit a written report to the Board of Supervisors, with a copy to the
 5 Elections Commission, regarding the potential implementation of the Voter's Choice Act in San
 6 Francisco for elections to be held in 2021 and thereafter. The report shall address, but need not be
 7 limited to, the following topics:

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

9 (2) staffing and staff training;

10 (3) voting equipment and capacity;

11 (4) ballot collection and processing; and

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

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

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 16 Section 3. Effective Date. This ordinance shall become effective 30 days after
 17 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
 18 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
 19 of Supervisors overrides the Mayor's veto of the ordinance.

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 21 Section 4. Severability.

22 If any section, subsection, sentence, clause, phrase, or word of this ordinance, or any
 23 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
 24 decision of a court of competent jurisdiction, such decision shall not affect the validity of the
 25 remaining portions or applications of the ordinance. The Board of Supervisors hereby

1 declares that it would have passed this ordinance and each and every section, subsection,
2 sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to
3 whether any other portion of this ordinance or application thereof would be subsequently
4 declared invalid or unconstitutional.

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6 APPROVED AS TO FORM:
7 DENNIS J. HERRERA, City Attorney

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

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