

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

[619-236-6220]

DATE: September 17, 2015

TO: Councilmember Marti Emerald

FROM: City Attorney

SUBJECT: Councilmember's Proposal to Lower the Voting Age to 16 for Municipal Elections

INTRODUCTION

Local, state and federal laws require San Diego voters to be at least 18 years old. (U.S. Const. amend. XXVI, § 1; Cal. Const. art. II, § 2; San Diego Charter § 6.)

Your office has requested legal analysis regarding “the ability of a *California Charter City*” to lower the voting age from 18 to 16 for its municipal elections. This Office has interpreted the request as one for an opinion regarding the City of San Diego only, as we are not empowered to provide advice regarding other jurisdictions and other Charter cities are governed by different local laws. San Diego Charter § 40.

There is no precedent for a 16-year-old voting age in California or nationwide, with two small Maryland cities as the only reported exceptions: The first city reported to have passed such a law, allowing 16-year-olds to vote in its municipal elections, is Takoma Park, Maryland, a city of about 17,000 people. The Charter change to allow younger voters was enacted by a seven-person City Council vote in 2013, without a requirement to submit the question to voters.¹ By contrast, California law requires a vote of the people to amend San Diego's Charter.

¹ Takoma Park, Maryland is an outlier in other areas of election law as well: According to Wikipedia, Takoma Park also allows those who are not U.S. citizens to vote, uses Instant Run-off Voting, uses an open source electronic voting system, and allows convicted felons on parole and probation to vote in its municipal elections. (*Takoma Park, Maryland, Wikipedia (July 22, 2015, 14:55), https://en.wikipedia.org/wiki/Takoma_Park,_Maryland#Voting. The small city of Hyattsville, Maryland, also lowered its voting age. Although a San Francisco supervisor proposed a 16-year-old vote in a charter amendment proposal for that city earlier this year, he tabled the proposal and may reintroduce it.

QUESTION PRESENTED

Can the City of San Diego lower the legal voting age from 18 years old to 16 years old for its municipal elections and, if so, how?

SHORT ANSWER

Local, state and federal laws set the voting age at 18 for San Diego voters. The San Diego Charter requires voters to be qualified to vote under state law in order to participate in municipal elections. San Diego Charter § 6 (“No person shall be eligible to vote at such City election until he has conformed to the general State law governing the registration of voters.”). Voters thus must approve a Charter amendment if they wish to allow younger voters to vote in municipal elections. Even if such a Charter amendment were approved, however, the lower voting age would create a number of other legal issues, some of which are discussed in this memorandum.

ANALYSIS

I. THE SAN DIEGO CHARTER REQUIRES RESIDENTS TO BE AT LEAST 18 YEARS OLD TO BE ELIGIBLE TO VOTE IN MUNICIPAL ELECTIONS

The San Diego Charter requires City residents to qualify to vote under state law in order to vote in San Diego’s municipal elections. The Charter thus sets the minimum voting age at 18 for municipal elections:

The qualifications of an elector at any election held in the City under the provisions of this Charter shall be the same as those prescribed by the general law of the State for the qualification of electors at General State Elections. No person shall be eligible to vote at such City election until he has conformed to the general State law governing the registration of voters.

San Diego Charter § 6. The California Constitution, which governs here, states, “A United States citizen 18 years of age and resident in this state may vote.” Cal. Const. art. II, § 2. This requirement is also codified in the California Elections Code. Cal. Elec. Code § 321.

These laws stem from the 26th Amendment to the U.S. Constitution, which provides in section 1 that, “The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.” U.S. Const. amend. XXVI, § 1.

Federal and state laws preempt all California cities from changing the voting age for federal and state elections. For California’s general law cities, municipal elections are governed by the California Constitution and the California Elections Code. As a California Charter city, San Diego is empowered to enact laws governing its municipal elections only. San Diego’s Charter provides, however, that the City must adopt the same voting age requirement as that of the State

of California – i.e., a minimum age of 18. San Diego Charter § 6. Thus, the City would need a Charter amendment, approved by the voters, in order to lower the voting age for its municipal elections.

There are both policy and practical reasons that the minimum voting age of voters from the City and state have been aligned: An elections official following state law – in this case the San Diego County Registrar of Voters (the Registrar) – handles voter registration for the City and invokes state law requirements to register voters.² The Charter also requires the City to hold its regularly scheduled elections on the same day as state elections, which then provides that the elections may be consolidated on one ballot and that the City may retain the Registrar to conduct the canvass and certification of results. Once the elections are consolidated, state procedural laws apply. All required services, including translation of ballots into multiple languages, are coordinated as well. If San Diego decides to empower younger voters, it is likely that the City would then need to run a separate, parallel election, as the Registrar of Voters presumably would not be empowered to register those voters or to count and certify their ballots. The City then would need to segregate municipal ballots from those used for state and federal elections.

II. A CHARTER AMENDMENT TO LOWER THE VOTING AGE FOR MUNICIPAL ELECTIONS WOULD HAVE OTHER LEGAL CONSEQUENCES

As discussed above, the City of San Diego could lower the voting age for its municipal elections only through a Charter amendment approved by City voters. Even if voters were to agree to a lower voting age, however, the analysis would not end there: Lowering the voting age would have other ramifications and, perhaps, unintended consequences. Among the related issues that would require further analysis and that could raise legal challenges are:

- 16-year-olds could then run for City Office: San Diego’s Charter provides that those who are registered voters can seek City offices, including seats on the City Council or Mayor. There is no age limitation in the section, just a requirement that the candidate be a resident and elector. San Diego Charter § 7. If the voting age were lowered to 16, this Charter section would allow younger voters to seek office, creating other legal issues not addressed here. (Such issues may include Charter section 12(g), which provides that an elected official must “devote full time to the duties of their office,” and section 12(f), which provides the “duty of the Council members to attend all Council meetings.” These sections would be at odds with California’s compulsory education laws, which may require that a given voter be in school full-time, or state labor laws.)

² Although California law allows a 17-year-old resident to “pre-register” to vote, the resident remains ineligible to vote until his or her 18th birthday.

- Disparate voting rights: Even if 16-year-old voters could cast votes for City candidates and ballot measures, younger voters would be prohibited from voting at the state and federal levels, requiring a separate ballot to accommodate them.
- Election officials: As noted above, since this voting population is not recognized by state law, the City Clerk's office would likely be the election official who would have to oversee the registration of such voters and a separate ballot. It is unlikely that the San Diego County Registrar of Voters, following state law, would legally be authorized or allowed to assist with registering younger voters or counting their votes. The City Clerk would then need to keep the database of younger voter signatures to verify absentee ballots and to conduct a separate canvass of their votes. This, in turn, raises other legal questions regarding splitting an election between two elections officials, and what portion of the balloting would need to revert to the City Clerk's Office, with separate ballots used for all City voters.
- Basis for the 16-year-old vote: The City would need to make a strong record of the basis for extending the municipal vote to 16-year-old and 17-year-old residents to withstand legal challenge. When the federal voting age was lowered from 21 to 18 in 1971, the U.S. Supreme Court and Congress had considered a number of reasons that 18 year olds should be provided the right to vote. This included arguments related to the fact that 18-year-olds were serving in the armed forces, had the ability to enter into contracts, were treated as adults by the criminal justice system, and were not required by any state to attend school after that age. *See, Oregon v. Mitchell*, 400 U.S. 112, 243-45 (1970), Harlan Opinion (concurring and dissenting), superseded by the 26th Amendment to the U.S. Constitution; Eric S. Fish, *The Twenty-Sixth Amendment Enforcement Power*, 121 Yale LJ 1168, 1184-86 nn. 77-84 (March 2012).

This memorandum is intended only to highlight a few of the issues that would need significant and additional legal research if the idea were to be advanced. This is not intended to be a complete or comprehensive list.

CONCLUSION

Local, state, and federal laws set the voting age at 18 for San Diego voters. The San Diego Charter requires the voting age for municipal elections to be the same as that required to participate in state elections. San Diego Charter § 6. If the City seeks to lower the voting age for City elections, it would need to do so through a ballot measure to amend the Charter. Even if the measure were approved, however, the lower voting age would have other legal ramifications, some of which are discussed in this memorandum.

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This memorandum is preliminary and only a high-level survey of some of the issues related to the proposal. If the idea were to be advanced, our Office reserves the right to conduct more extensive and comprehensive legal analysis regarding the proposal.

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