

November 29, 2021

VIA HAND-DELIVERY

Ms. Holly M. Charléty
City Clerk, City of El Cerrito
10890 San Pablo Ave.
El Cerrito, CA 94530

RE: “The Balanced Ballot for El Cerrito Act”

Dear Ms. Charléty:

Enclosed please find a “Notice of Intent to Circulate Petition,” and the text for a proposed initiative ordinance in the City of El Cerrito, “The Balanced Ballot for El Cerrito Act.” We request that you immediately forward a copy of the proposed ordinance to the City Attorney for preparation of a Ballot Title and Summary.

Also, enclosed please find a copy of the proponent’s signed statement required by California Elections Code section 9608.

Thank you for your assistance in this matter. As soon as the Ballot Title and Summary are prepared, please e-mail a copy to legal counsel Jim Sutton and/or Nicholas Sanders (jsutton@campaignlawyers.com; nsanders@campaignlawyers.com; 415/732-7700).

This letter authorizes you and other City officials to correspond with Jim Sutton and Nicholas Sanders for all matters related to the The Balanced Ballot for El Cerrito Act. Please mail all correspondence to 150 Post Street, Suite 405, San Francisco, CA 94108, and direct all questions regarding this ordinance to Messrs. Sutton and Sanders.

Sincerely,

Jennifer Chang, Proponent
1006 Everett Street
El Cerrito, CA 94530

cc: James R. Sutton, Esq.
Nicholas L. Sanders, Esq.
Enclosures

Notice of Intent to Circulate Petition

Notice is hereby given by the person whose name appears hereon of her intention to circulate the petition within the City of El Cerrito for the purpose of amending Article VI, Sections 600 and 602 of the El Cerrito City Charter, as well as Chapter 2.02 of the El Cerrito Municipal Code, to implement and institute a balanced ballot voting system in the City.

A statement of the reasons of the proposed action as contemplated in the petition is as follows:

In enacting this Ordinance, the People of the City of El Cerrito seek to:

- (a) Expand their democratic rights of free speech in connection with elections for or against candidates for municipal office by voting either for or against such candidates; and
- (b) Provide voters with the ability to vote against a candidate, and not only for a candidate, improve the democratic process, and seek to improve voter turnout.

Jennifer Chang, Proponent
1006 Everett Street
El Cerrito, CA 94530

Date

BALANCED BALLOT FOR EL CERRITO ACT

The People of the City of El Cerrito ordain as follows:

SECTION 1. Title.

This Ordinance shall be known and may be cited as “The Balanced Ballot for El Cerrito Act.”

SECTION 2. Purposes and Intent.

In enacting this Ordinance, the People of the City of El Cerrito seek to:

A. Expand their democratic rights of free choice in connection with elections for or against candidates for municipal office by voting either for or against such candidates;

B. Improve the democratic process by increasing voter turnout in municipal elections. According to a RAND Corporation survey, in the 2016 Presidential election, balanced ballot voting, in which voters could have legally cast a positive vote in favor of a candidate or a negative against a candidate, would have increased voter participation by 7.2 percent, and Donald Trump would have received a net negative vote: -3.9 percent. Another RAND Corporation survey in the 2020 Presidential election showed similar effects for the 12 key swing states, and if voters could have the choice to vote NO, participation in those states would have increased by 3.4 percent and Trump would have received a net negative vote: -2.3 percent; and

C. Enhance the voting process so that it more closely resembles voting for the Secretary General of the United Nations and for Justices of the California Supreme Court and Courts of Appeal by legally permitting votes to be cast as a positive vote in favor of a candidate or a negative vote against a candidate.

It is the intent of the People of the City of El Cerrito to institute, and that the City undertake every effort in order to institute, balanced ballot voting at the earliest possible election.

SECTION 3. Charter amendments.

A new Section 602, entitled “Balanced Ballot Voting,” is hereby added to the El Cerrito Charter as follows:

**Article VI.
ELECTIONS**

600. - State elections law.

Except as provided in this Charter and in Municipal Code, the City shall comply with the laws of the State of California applicable to general law cities regarding elections. The City's laws, ordinances, codes, resolutions, and policies implementing State laws regarding elections shall continue to apply when this Charter takes effect and may be amended thereafter.

602. – Balanced Ballot Voting

For the purposes of this Charter, “balanced ballot voting” shall mean an election system in which voters are able to cast either one positive vote or one negative vote for each office for which one or more candidates for El Cerrito City office are seeking to be elected. Notwithstanding any other provision of this Charter, the elections for El Cerrito City office shall be conducted through balanced ballot voting at the earliest possible election.

SECTION 4. Additions to the El Cerrito Municipal Code.

A new Chapter 2.02, entitled “Elections – Balanced Ballot Voting,” is hereby added to the El Cerrito Municipal Code as follows:

Chapter 2.02 Elections – Balanced Ballot Voting

Section 2.02.010 Implementation

This Chapter shall not be implemented unless and until the El Cerrito City Council makes a determination that: (1) the voting equipment and procedures are technically prepared to implement balanced ballot voting in municipal elections; and (2) balanced ballot voting will not preclude the City from consolidating its municipal elections with the County. Until that time, municipal elections shall be conducted pursuant to state law.

Section 2.02.020 Definitions

A. “Balanced ballot voting” shall mean an election system in which voters are able to cast either one positive vote or one negative vote for each municipal office for which one or more candidates are seeking to be elected.

B. “Vote” shall mean a ballot choice, whether positive vote or negative vote, that is counted towards the election of a candidate.

C. “Positive vote” shall mean a ballot choice in support of a candidate’s election to office.

D. “Negative vote” shall mean a ballot choice in opposition to a candidate’s election to office.

E. “Net positive votes” shall mean the total resulting from the subtraction of the total number of negative votes, if any, cast towards a candidate from the total number of positive votes cast towards that same candidate.

Section 2.20.030 General Provisions.

A. The elections for candidates for municipal office shall be conducted through balanced ballot voting according to the procedures in this Chapter, upon the certification by the California Secretary of State of a voting and vote tabulation system able to tally positive votes and negative votes, and agreement from the Registrar of Voters to provide all election services and consolidate City elections using balanced ballot voting. Balanced ballot voting shall be implemented at the earliest election following Secretary of State certification and Registrar of Voters agreement, as long as such certification and agreement occurs no later than the start of the candidate filing period for that election.

B. Immediately after enactment of this Chapter, the City shall take all steps necessary to implement balanced ballot voting at the earliest possible election, including:

1. Obtaining Secretary of State certification of a balanced ballot voting system;

2. Obtaining Registrar of Voters agreement to provide all election services for balanced ballot voting; and

3. Conducting voter and community education to familiarize voters with balanced ballot voting through publications, trainings, and other projects deemed necessary by the City.

C. Immediately after the Secretary of State certifies the balanced ballot voting system and the Registrar of Voters agrees to provide all election services for balanced ballot voting, the City shall take all necessary steps to make the determination that: (1) the voting equipment and procedures are technically prepared to implement balanced

ballot voting in municipal elections; and (2) balanced ballot voting will not preclude the City from consolidating its municipal elections with the County, so that balanced ballot voting may be implemented at the next municipal election.

Section 2.02.040 Election Services.

The request for election services submitted to the Registrar of Voters shall include all requirements and procedures enumerated in this Chapter.

Section 2.02.050 Ballot.

A. The balanced ballot voting ballot shall allow voters to cast either one positive vote or one negative vote for each office for which one or more candidates are seeking to be elected.

B. The balanced ballot voting ballot shall not interfere with a voter's ability to write-in a candidate for the office being voted on and thereafter cast a positive vote or negative vote for such write-in candidate.

C. Instructions provided to voters shall contain the following specifications, as well as other specifications deemed necessary by the City, and may be modified based on ballot design and voting equipment used:

“Vote by casting a positive vote to support a candidate’s election to office or a negative vote to oppose a candidate’s election to office. You may cast either one positive vote or one negative vote for each office for which one or more candidates are seeking to be elected.”

Section 2.02.060 Tabulation.

The ballots shall be counted as follows:

A. For each office for which one or more candidates are seeking to be elected, every positive vote shall be tabulated for each candidate for whom such vote was cast.

B. For each office for which one or more candidates are seeking to be elected, every negative vote shall be tabulated for each candidate for whom such vote was cast.

C. For each office for which one or more candidates are seeking to be elected, the net positive votes for each candidate shall be tabulated by subtracting the total number of negative votes tabulated for each candidate for whom such vote was cast from

the total number of positive votes tabulated from each candidate for whom such votes were cast.

D. After all of the tabulations are complete, the candidate for a particular office who receives the greatest number of net positive votes shall be declared the winner.

Section 2.02.070 Ties.

In the event that two or more candidates tie by receiving the greatest number of net positive votes, then the winner shall be the candidate who received the greatest number of positive votes. In the event that two or more candidates who tied also received the same number of positive votes, the winner shall be selected by lot.

Section 2.02.080 Net Negative Votes.

No candidate may be elected to office in any election in which that candidate receives fewer than zero net positive votes.

Section 2.02.090 Amendment.

The City Council may amend this Chapter by ordinance passed with the approval of two-thirds of the membership concurring, provided that the ordinance is consistent with, and furthers the purpose of, this Chapter, including the implementation of balanced ballot voting for all City elections. Such amendments by the City Council shall be as minimal and specific as possible. Additionally, the City Council may amend the relevant Municipal Code sections by ordinance passed with the approval of a majority of the membership concurring, if an amendment is required to cure a legal or constitutional infirmity specifically identified in a final adjudication issued by court of competent jurisdiction.

Section 2.02.100 Severability.

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this measure is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this article. The voters of the City of El Cerrito, California declare that they would have independently adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase of this measure irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this measure is declared invalid or unenforceable.

SECTION 5. Earliest Possible Election.

The People of the City of El Cerrito hereby expressly request that, if not adopted by the City Council, this measure be submitted to the voters at a regular or special election at the earliest time allowable by law.

SECTION 6. Competing Measures.

This measure is intended to be comprehensive. It is the intent of the People of the City of El Cerrito that, in the event this measure and one or more measures relating to election systems for municipal elections shall appear on the same ballot, the provisions of the other measure or measures shall be deemed in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and all provisions of the other measure or measures shall be null and void. If this measure is approved by a majority of the voters but does not receive a greater number of affirmative votes than any other measure or measures appearing on the same ballot related to election systems for municipal elections, then this measure shall take effect to the extent not in conflict with said other measure or measures.

SECTION 7. Amendment and Repeal.

This measure shall not be amended or repealed except by a vote of the People of the City of El Cerrito, except the City Council may amend the relevant Municipal Code sections by ordinance passed with the approval of two-thirds of the membership concurring, provided that the ordinance is consistent with, and furthers the purpose of, the measure, including the implementation of balanced ballot voting for all City elections. Such amendments by the City Council shall be as minimal and specific as possible. Additionally, the City Council may amend the relevant Municipal Code sections by ordinance passed with the approval of a majority of the membership concurring, if an amendment is required to cure a legal or constitutional infirmity specifically identified in a final adjudication issued by court of competent jurisdiction.

SECTION 8. Effective Date.

This measure shall be effective upon its passage.

SECTION 9. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this measure is for any reason held to be invalid or unenforceable, such invalidity or

unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this article. The voters of the City of El Cerrito, California declare that they would have independently adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase of this measure irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this measure is declared invalid or unenforceable.

SECTION 10. Municipal Affairs.

The People of the City of El Cerrito hereby declare that providing balanced ballot voting to elect El Cerrito City officers constitutes a municipal affair. The People hereby further declare their desire for this measure to coexist with any similar voting systems adopted at the city, county or state levels.

SECTION 11. Home Rule.

The authority to pass this measure is derived from the City of El Cerrito's home rule powers outlined in the Charter and Article XI, section 5 of the California Constitution. The People of the City of El Cerrito declare their intent that this citizen initiative be enacted, and balanced ballot voting be used to elect City officers, if this measure is approved by a simple majority of voters.

SECTION 12. Liberal Construction.

This measure is an exercise of the initiative power of the People of El Cerrito to change the voting system for municipal elections and shall be liberally construed to effectuate that purpose.

SECTION 13. Legal Defense.

The purpose of this section is to ensure that the People's precious right of initiative cannot be improperly annulled by politicians who refuse to defend the will of the voters. Therefore, if this Act is approved by the voters of the City of El Cerrito and thereafter subjected to a legal challenge which attempts to limit the scope or application of this Act in any way, or alleges this Act violates any local, state, or federal law in whole or in part, and the City refuses to defend this Act, then the following actions shall be taken:

(a) Notwithstanding any laws to the contrary contained in state Government Code or within the City Charter or Municipal Code, the El Cerrito City Attorney shall appoint independent counsel to faithfully and vigorously defend this Act on behalf of the City of El Cerrito.

(b) Before appointing or thereafter substituting independent counsel, the City of El Cerrito City Attorney shall exercise due diligence in determining the qualifications of independent counsel and shall obtain written affirmation from independent counsel that independent counsel will faithfully and vigorously defend this Act. The written affirmation shall be made publicly available upon request.

(c) In order to support the defense of this Act in instances where the City of El Cerrito fails to do so despite the will of the voters, a continuous appropriation is hereby made from the General Fund of the City, without regard to fiscal years, in an amount necessary to cover the costs of retaining independent counsel to faithfully and vigorously defend this Act on behalf of the People of the City of El Cerrito.

Proponent’s Signed Statement Pursuant to Elections Code Section 9608

Pursuant to California Elections Code section 9608, I, as the proponent, hereby submit this signed statement with regard to the “Balanced Ballot for El Cerrito Act,” as follows:

I, Jennifer Chang, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.

Dated this ____ day of _____, 20____

Jennifer Chang, Proponent