



MEMORANDUM

TO: Fredericksburg City Council
FROM: Kathleen Dooley, City Attorney; Dori E. Martin, Assistant City Attorney
SUBJECT: Proposal to move local elections to November of odd-numbered years
DATE: March 18, 2021 (for the March 23, 2021 City Council Meeting)

ISSUE

Shall City Council move local elections from May of even-numbered years to November of odd-numbered years?

RECOMMENDATION – UPDATED:

Moving Council and School Board elections to November of odd-numbered years is within City Council's sound discretion at this time. The current choice is between moving these elections to November of odd-numbered years or November of even-numbered years. Due to the passage of SB1157 (Spruill) in the 2021 General Assembly, and its approval by the Governor, retaining local May elections is not an option.

The March 4, 2021 staff memo has been revised and updated in light of the Governor's approval of SB1157, without amendment, on March 12, 2021. The bill becomes law effective July 1, 2021.

The following chart summarizes the options before City Council:

	Va. Code s24-222.1		SB1157	
	Ward reps	At-large	Ward reps	At-large
Next Election	Nov 2021	Nov 2023	Nov 2022	Nov 2024
Next Term Start	Jan 2022	Jan 2024	Jan 2023	Jan 2025
Change to Next Election	6 mos earlier		6 mos later	
Effect on Incumbents	Term of office reduced by 6 mos		Term of office extended by 6 mos	
Follow-on Election	Nov 2025	Nov 2027	Nov 2026	Nov 2028
Principal Change	Future elections odd-numbered years		Future elections even-numbered years	
Ordinance Deadline	April 2021		2022	

DISCUSSION

- **Why is City Council considering this change?**

City Council is considering moving municipal May elections to November of odd-numbered years because of legislation adopted by the 2021 General Assembly that will have the effect of moving Fredericksburg’s municipal May elections to November of even-numbered years. Until this law goes into effect, the City has the choice between odd-numbered year and even-numbered year election cycles. Elections for Virginia state and other local offices are held in odd-numbered years. Elections for federal offices are held in even-numbered years. Council felt that the public should at least have the opportunity to consider which November election cycle better serves the City, and therefore initiated this process, while the legal authority to do so still exists. As will be explained in more detail below, keeping local City Council and School Board elections in May is no longer an option.

- **What law currently governs the timing of City Council elections?**

City Charter §§7 and 19 established the first Tuesday in May as the date for election of the Mayor and members of City Council, beginning with the first Tuesday in May, 1992. The Mayor and two members of Council are elected at large. The other four members of Council are elected from one of four wards. Elections for City Council seats are staggered – with ward seats elected in one cycle and the Mayor and at-large seats elected in the next cycle. Members of City Council serve four-year terms of office, and terms of office begin on the July 1 succeeding the May election.

Since 1992 was the first year for May elections, and since local elections occur every two years, City Council elections are held in even-numbered years.¹

- **What law governs the timing of School Board elections?**

City Charter §17 provides for the election of the six members of the School Board, of whom four shall be elected by districts (wards) and two at large. Section 17 then states that the terms of office and other provisions for school board elections shall be as prescribed by the general law of the Commonwealth. That general law, Virginia Code §24.2-223, provides that elections for members of the school board shall coincide with the election of members of the governing body, either in November or in May as the case may be.

So, under these laws, elections for City Council and the School Board are held in May of even-numbered years. The Mayor and the at-large Council and School Board representatives are elected on one cycle (May 2020/May 2024) and the ward representatives (four for City Council and four for the School Board) are elected in the next cycle (May 2018/2022).

- **What is the effect of Senate Bill 1157 on local elections for City Council and School Board?**

The Virginia Senate and House of Delegates have both passed SB1157 (Spruill), a bill that moves all local May elections to November, effective January 1, 2022. The bill requires localities with May elections to adopt an ordinance providing for the transition of those elections to the November general election date. Finally, it provides that no term of an incumbent shall be shortened in implementing this change. The Virginia Public Access Project estimates that the bill will affect about 900,000 voters in 16 cities and 107 towns.²

In Fredericksburg, the bill will require the adoption of an ordinance transitioning the May 2022 City Council and School Board elections to the November 2022 general election date, and all subsequent elections to November in even-numbered years. The terms of incumbent office-

¹ Meanwhile, under Virginia Constitution Article VII §4, local Constitutional officers (treasurer, sheriff, Commonwealth's attorney, clerk of court, and commissioner of revenue) are elected on the November general election date (Tuesday after the first Monday in November.) These elections occur in odd-numbered years pursuant to Va. Code § 24.2-217. The governing body of each county is elected on the general election date in November under Va. Const. Article VII §5. These elections occur in odd-numbered years pursuant to Va. Code §§ 24.2-218 and 24.2-219.

² <https://www.vpap.org/visuals/visual/end-of-may-elections/> Some Virginia cities and towns have already moved their May elections to November, under existing legal authority, discussed later in this memo. SB1157 does not apply to these localities.

holders would be extended by six months. New office-holders elected in November would take office on January 1 following their election.

The Governor has signed this bill without amendment. It goes into effect July 1, 2021.

- **What is the existing authority for transitioning May elections to November?**

Under Va. Code §24.2-222.1, local governments have the authority (option) to adopt an ordinance transitioning May elections to November, notwithstanding their Charter provisions. This law was adopted in 2000, and several localities have adopted ordinances under this authority. Notably, Va. Code §24.2-222.1 permits localities to *either reduce or extend* incumbents' terms of office. In Fredericksburg, this existing authority therefore authorizes a transition from May elections of even-numbered years to November elections of odd-numbered years. This authority will be extinguished when SB 1157 becomes effective. SB1157 will mandate a transition (not merely authorize it) and it will mandate the extension of incumbents' terms of office, effectively locking Fredericksburg into the even-numbered year election cycle.

- **What is the difference between the even-numbered year vs odd-numbered year election cycles?**

Federal vs. State.

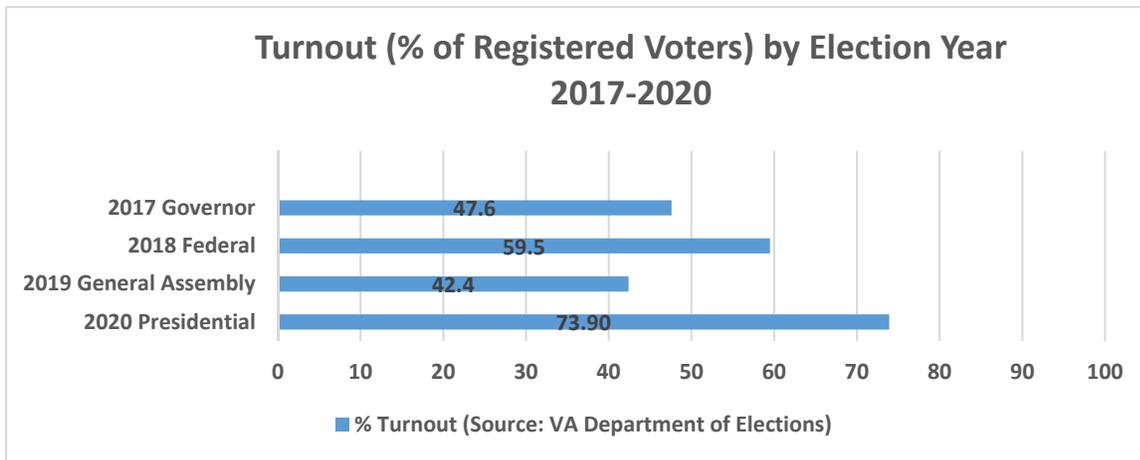
The main difference between the even-numbered year and odd-numbered year election cycles in Virginia is that federal offices are elected in the even-numbered year cycle and state and constitutional offices are elected in the odd-numbered year cycle. A transition under SB 1157 to even-year elections would mean that the Mayor and at-large councilmembers and school board members would share a ballot with President/Vice-President and Congressional elections, while the election of ward representatives would coincide with Congress. A transition to odd-year elections this year would place all ward representatives on the ballot with Governor, Lieutenant Governor, Attorney General, House of Delegates, and constitutional offices, while the Mayor and at-large representatives would share a ballot with the General Assembly.³

³ See Virginia Department of Elections' 5 year election day calendar, included in the meeting packet.

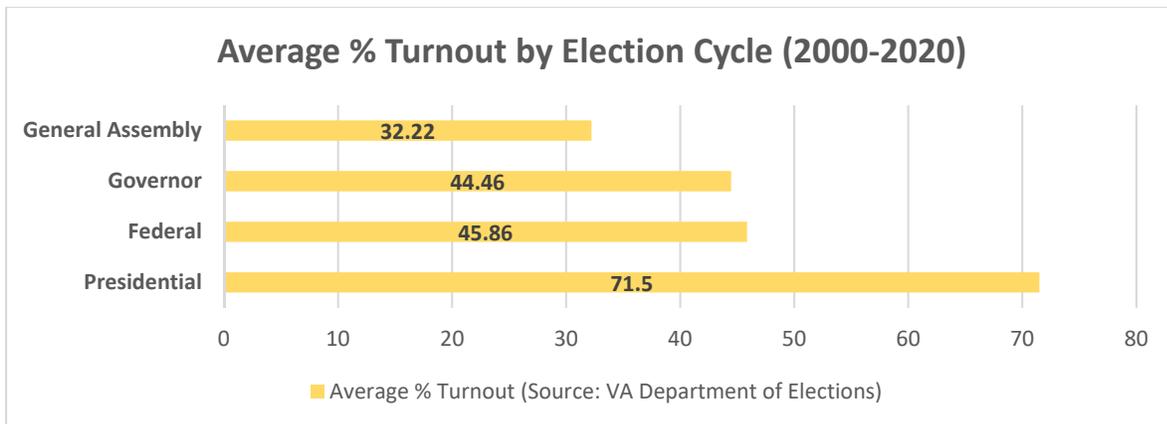
Voter Turnout.

While turnout in November elections is remarkably higher across the board than that of elections held in May, there are some significant differences in turnout among the various November election cycles. Presidential elections produce the highest voter turnout by far, followed by U.S. Congressional elections. Turnout for Gubernatorial elections tends to be marginally lower than off-year Congressional elections, and those numbers continue to decline for years that have General Assembly and constitutional officers only on the ballot. The fact that these state elections are scheduled on odd-year cycles, or “off-off-years,” is often cited as the reason for this depressed turnout.⁴ That said, turnout for Congressional elections can vary significantly, depending on the year and other factors, such as whether there is a competitive U.S. Senate race on the ballot. On average, voter turnout for gubernatorial elections is actually quite close to that of Congressional elections.

For Fredericksburg, this means that the Mayor and at-large councilmembers and school board members could expect to see the largest discrepancy in the projected turnout for their elections if they were held in odd (General Assembly) years versus even (Presidential) years. The differences for ward representative elections would be less significant.



⁴ Council on Virginia’s Future, *Virginia Performs*, archived at https://vaperforms.virginia.gov/GovCitizens_voterRegistration.cfm



- **How does redistricting affect the City’s decision?**

The Governor’s decision to sign SB1157 without a delayed effective date clarifies this issue.

If City Council moves May 2022 elections to November 2021, then those ward elections will take place using existing ward boundaries, because there will be no time to redistrict the City. The U.S. Census data will arrive in Virginia in the month of September. Virginia Code §24.2-306 prohibits changes to local election districts, precincts, and polling places within 60 days next preceding any general election. So there is no time for reapportionment of local districts for the November 2, 2021 General Election.⁵ Ward representatives elected in the November 2, 2021 General Election would continue to serve in office regardless of any redistricting effects, under Va. Code §24.2-304.6.⁶

If City Council moves May 2022 elections to November 2022, then it should be able to complete redistricting actions in time for the November 2022 ward elections.⁷ Local redistricting will begin when the Commonwealth has completed its work. Local redistricting would need to be complete by Friday, September 9, 2022 to meet the 60-day next-preceding rule.

Note – as long as Council elections are in even years and Census data is delivered in time to reapportion local wards in the “1” year, there is no overlap between ward elections and redistricting. However, a move to an odd-numbered year election cycle will schedule ward elections to occur in 2041, a redistricting year.⁸

⁵ The 60-day “next preceding” time period begins September 3, 2021.

⁶ “County, city, or town officers, including members of the school board or planning commission, in office on the effective date of a reapportionment or redistricting ordinance, shall complete their terms of office, regardless of loss of residency in a particular district due to reapportionment or redistricting.”

⁷ See Va. Code §24.2-307.

⁸ On the other hand, county board of supervisors members are elected in odd-numbered years, so some counties likely deal with redistricting in a district-election year periodically.

- **How would a change to odd-year elections affect the local campaign season?**

If Council passes this ordinance, 2021 will become a campaign year. Upon its enactment, all candidates for local office may immediately commence the activities required to qualify for the November ballot. The qualifying deadline for candidates is expected to be June 15 this year. (This deadline typically occurs on the 2nd Tuesday in June (June 8), but the General Assembly has passed legislation that, if signed, would delay this one week.) New campaign finance filing schedules would apply.

- **What process will City Council use to consider the move to the odd-numbered year election cycle?**

City Council will schedule a public hearing on this ordinance for March 23, 2021; it will accept public comment on the proposal through the first Council meeting in April, April 13th. The ordinance moving elections to November of odd-numbered years, if adopted, would become effective immediately.



March 9, 2021
Regular Meeting
Ordinance No. 21-__

MOTION:

SECOND:

RE: Providing for the Election of City Council Members and School Board Members at the November General Election Date of Odd-Numbered Years

ACTION: APPROVED: Ayes: 0; Nays: 0

FIRST READ: _____ SECOND READ: _____

Sec. I. Introduction.

Fredericksburg City Charter §§7 and 19 provide for the election of the Mayor and members of City Council on the first Tuesday in May, beginning with the first Tuesday in May, 1992, for terms of office of four years, from July 1 succeeding their election and until their successors have qualified.

Virginia Code §24.2-223 states that, in any city wherein members of the school board are elected, elections shall be held to coincide with the election of members of the governing body at the regular general election in November or the regular general election in May, as the case may be. Elected school board members shall serve terms which are the same as those of the governing body, to commence on January 1 following their election or July 1 following their election, as the case may be.

Under City Code §10-401, school board members are elected for terms of four years. Beginning on the first Tuesday in May, 1994, and every four years thereafter, the four ward members shall be elected at the same time as the ward city council members are elected. Beginning the first Tuesday in May, 1996, and every four years thereafter, the two at-large members shall be elected at the same time as the Mayor and the two at-large city council members are elected. The terms of all Board members so elected shall commence on July 1 following their election.

Virginia Code §24.2-222.1 provides that, notwithstanding any contrary provisions of a city charter, the council of a city may provide by ordinance that the mayor and council shall be elected at the November general election date of any cycle as designated in the ordinance, for terms to commence January 1. In any city that elects its council quadrennially and that changes

to the November general election date in odd-numbered years from the May general election date in even-numbered years, mayors and members of council who were elected at a May general election shall have their term of office shortened by six months but shall continue in office until their successors have been elected at the November general election and have been qualified to serve.

The 2021 General Assembly passed Senate Bill 1157 (Spruill), shifting all municipal elections for city and town council and school board from May to November, beginning with elections held after January 1, 2022. Once this new law goes into effect, it will apply notwithstanding any charter provision to the contrary; it will not permit the City of Fredericksburg to shift municipal elections into odd-numbered years.

City Council, after public hearing and considering the interests of the voters of the City of Fredericksburg, has concluded that it is in the public interest to shift municipal elections to odd-numbered years under Va. Code §24.2-222.1.

Sec. II. City Code amendment.

1. City Code §2-81, "Election, term and duties of Mayor," is amended as follows:

§ 2-81 Election, term and duties of Mayor.

- A. The term and manner of election of the Mayor shall be as prescribed in ~~the Charter~~ *Chapter 30 of this Code*.
- B. The Mayor's duties shall be those set forth in the Charter. In addition, the Mayor shall preside at all meetings of the City Council and ~~he~~ shall be the formal representative of the City. ~~He~~ *The Mayor* shall make appointments as specified by law or ordinance. It shall also be the duty of the Mayor to lay before the City Council, from time to time, in writing, such recommendations as he *or she* may deem necessary and proper. The Mayor also shall assume those duties which may be assigned to him *or her* by the City Council.
- ~~C. The Mayor shall serve as the Director of emergency management.~~

2. City Code §10-401, "Election of members [of the school board]" is amended as follows:

§ 10-401 Election of members.

- A. The School Board shall consist of six members, each of whom shall hold office until his successor has qualified, unless sooner removed by death, resignation, or other cause. One Board member shall be elected from each of the four wards established for City Council elections. The other two members shall be elected at-large.
 - B. All Board members shall be elected for terms of four years. ~~Beginning on the first Tuesday in May, 1994, and every four years thereafter, the four ward members shall be elected at the same time as the ward City Council members are elected. Beginning on the first Tuesday in May, 1996, and every four years thereafter, the two at-large members shall be elected at the same time as the Mayor and the two at-large City Council members are elected. The terms of all Board members so elected shall commence on July 1 following their election. The manner of election of Board members shall be as prescribed in Chapter 30 of this Code.~~
3. City Code Chapter 30 is amended to add a new section 30-10, "Election of city council and school board at November general election in odd-numbered years," as follows:

Sec. 30-10 Election of city council and school board at November general election in odd-numbered years.

- A. *Pursuant to Virginia Code §24.2-222.1 and notwithstanding the provisions of City Charter §§7 and 19 and Virginia Code §24.2-222, the election of members of city council and the school board shall be held on the general election date in November of odd-numbered years, beginning in November, 2021, and biennially thereafter, in accordance with the following cycles:*
 1. *The election for the four city council and school board ward representatives filled by the election of May, 2018, shall be held on the November, 2021 general election date and every four years thereafter.;*
 2. *The election for the two city council and school board at-large seats, and the office of mayor, filled by the election of May, 2020, shall be held on November 2023 general election date and every four years thereafter.*

3. *In accordance with the provisions of Virginia Code §24.2-222.1(D), the members of the city council and school board elected at a May general election shall have their term of office shortened by six months but shall continue in office until their successors have been elected at the November general election and have been qualified to serve.*

4. *The terms of office for those elected at the November general election shall commence on January 1 immediately following said election.*

Sec. III. Effective date.

This ordinance shall go into effect immediately.

Votes:

Ayes:

Nays:

Absent from Vote:

Absent from Meeting:

Approved as to form:

Kathleen Dooley, City Attorney

Clerk's Certificate

I, the undersigned, certify that I am Clerk of Council of the City of Fredericksburg, Virginia, and that the foregoing is a true copy of Ordinance No. 21- duly adopted at a meeting of the City Council meeting held Date, 2021 at which a quorum was present and voted.

***Tonya B. Lacey, MMC
Clerk of Council***



COMMONWEALTH OF VIRGINIA
City of Fredericksburg

OFFICE OF THE GENERAL REGISTRAR

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DIRECTOR OF ELECTIONS & GENERAL REGISTRAR

Marc Hoffman

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ELECTORAL BOARD

Rene Rodriguez, Chairperson

Floyd Roberson, Vice Chairperson

Cathie Fisher Braman, Secretary

Madam Mayor Greenlaw and Council Members,

As entrusted Administrators of Elections in the city of Fredericksburg, the Electoral Board wishes to advise the city leadership on your pending proposal to move the May 3, 2022 local election. Legislation passed in the General Assembly's 2021 session requires the move of all May elections to November beginning with the move of the May 2022 election to November 2022. The current legislation does not require, nor do we recommend moving the Election to November 2, 2021 for the following reasons:

- 1) Conflict with June 8, 2021 Dual Primary Elections.** The earliest a decision on this topic can be made is April 13, 2021, exactly 10 days before the start of early voting for the June primary. The Registrar's office will be involved with election preparations, including equipment testing, ballot design, and ballot printing. To begin fielding voter, officeholder and prospective candidate questions and developing new administrative processes for a November 2021 election while overseeing the June primary will be challenging.
- 2) Compressed candidate qualification timeframe & administrative burden:** With the move of the election to November 2021, all candidates will have between April 13, 2021 and June 8, 2021 at 7:00p.m., which is the close of polls for the June Primary Election to perfect their filings. This includes completed petitions, campaign finance and other related filings. For incumbents as well as new candidates the Registrar's office, is required to review all documents, set up individual candidate accounts in the voter database and check each petition signature to ensure that it can be counted towards the required total. This would result in a minimum of 12 candidate qualifications to process. (4 City Council, 4 School Board, 4 Constitutional Offices)
- 3) Staffing:** Moving the election to November 2021 will severely limit the ability of the Office to assist with local candidate inquiries and administrative qualifications. The Electoral Board has already asked for an additional resource in the office to comply with current requirements, but that position would not be effective until July.

- 4) **Virginia Department of Elections (ELECT) capacity to support this move:** Moving the election to fall of 2021 places the burden *exclusively* on the registrar's office to interpret and make policies that have not been vetted with ELECT. The law was designed to allow ELECT to develop processes, guidelines, and election materials to support the six cities and 107 towns impacted by the new legislation. Fredericksburg is the only locality considering moving municipal election forward to November 2021.
- 5) **Redistricting delays and conflicts:** As of this memo, redistricting will begin in September of 2021. During redistricting, only the House of Delegates, State Senate, and Congressional Districts are required to have special elections if the boundaries are changed. There is potential for voters to be represented on school board or council for four years by someone not in their local ward.
- 6) **Potential Ballot size: A move to November 2021 will increase the offices/items for voters to nine races plus Constitutional Amendments vs in November 2022 three races and Constitutional Amendments.** This will require large ballots and could require two-sided ballots for the first time in Fredericksburg. This will require an update to our training procedures for all administrators and volunteers.

For these multiple reasons, the Electoral Board strongly recommends not moving forward with Council's current proposal. The Electoral Board and General Registrar are prepared to answer any questions from Council.

Respectfully,

/s/ Rene Rodriguez

Rene A. Rodriguez, Chair, City of Fredericksburg Electoral Board

/s/Rob Roberson

Floyd I. "Rob" Roberson, Vice-Chair, City of Fredericksburg Electoral Board

/s/Cathie Fisher Braman

Cathie Fisher Braman, Secretary, City of Fredericksburg Electoral Board

CC: Kathleen Dooley, City Attorney
Dori Martin, City Assistant Attorney
Tim Baroody, City Manager