

## DISCUSSION ITEM: ELECTION DATES

### HISTORY OF ELECTION DATES IN FLAGSTAFF

The current City Charter reads that Primary Elections shall be held on the first Tuesday in February in even-numbered years and the General Election shall be held on the first Tuesday in March in each even-numbered year. In 1996, A.R.S. §16-204(B) was amended to require cities to hold elections on one of four consolidated election dates regardless of Charter provisions. Thereafter, the City Attorney's Office determined that the City Charter provisions were preempted by State Law; a notation was added to the City Charter that A.R.S. §16-204(B) preempts the charter.

On September 16, 1997, the City adopted Ordinance No. 1951 establishing that the Primary Election be held on the second Tuesday in March of even-numbered years, and the General Election be held on the third Tuesday in May of even-numbered years, consistent with A.R.S. §16-204(B) and closest to the dates included in the Charter.

In 2012, A.R.S. §16-204 was amended to require cities starting in 2014 to hold primary elections in August, and general elections on the first Tuesday in November of even-numbered years, regardless of Charter provisions.

On August 18, 2014, the Arizona Court of Appeals in *City of Tucson, City of Phoenix v. State* affirmed that election dates are a matter of local concern, and cities may hold their elections on the date specified in the City Charter. However, because this decision was not made until after the process was to start for a fall election, the City of Flagstaff took steps to prepare for such a fall election.

On September 16, 2014, the City adopted Ordinance No. 2014-26, repealing Ordinance No. 1951 as the primary and general election dates no longer conformed with A.R.S. §16-204 as amended in 2012. Ordinance No. 2014-26 did not establish new election dates.

On October 20, 2014, pursuant to an extension, the State filed a petition for review of the Arizona Court of Appeals decision, which was granted.

The Arizona Court of Appeals in *City of Tucson, City of Phoenix v. State* has ruled that state law does not preempt local election dates established by city charter, and we are waiting for a final decision from the Arizona Supreme Court later in 2015. This memorandum assumes that Tucson and Phoenix will prevail and sets forth some options for the Council to consider.

### COUNCIL DECISIONS REQUIRED

#### ***I. When do we want to hold candidate elections?***

Currently the City Charter requires February/March for primary and general elections. Pursuant to existing case law, that election schedule is not permissible. Please see the various options below (A through D).

A. March/May of even-numbered years (past practice) **(MAR/MAY 2016)**

1. Terms for Brewster, Evans, Oravits would be four years (Summer 2016).

2. Term for Barotz, Overton, Putzova would be five and one-half years (Summer 2020).
  3. Term for Mayor would be three and one-half years (Summer 2018); OR
  4. Mayor and/or Councilmembers resign before conclusion of term.
- B. March/May of odd-numbered years (**MAR/MAY 2017**)
1. Terms for Brewster, Evans, Oravits would be five years (Summer 2017).
  2. Terms for Barotz, Overton, Putzova would be four and one-half years (Summer 2019).
  3. Term for Mayor would be two and one-half years (Summer 2017); OR
  4. Council members and/or Mayor resign before conclusion of term.
- C. August/November of odd-numbered years (**AUG/NOV 2017**)
1. Terms for Brewster, Evans, Oravits would be five and one-half years (Winter 2017).
  2. Terms for Barotz, Overton, Putzova would be five years (Winter 2019).
  3. Term for Mayor would be three years (Winter 2017)
- D. August/November of even-numbered years (this year's elections, meets current statutory requirement) (**AUG/NOV 2016**)
1. Terms for Brewster, Evans, Oravits would be four and one-half years (Winter 2016).
  2. Terms for Barotz, Overton, Putzova would be four years (Winter 2018).
  3. Term for Mayor would be two years (Winter 2016).
- E. For elections held under **A**, **B** or **C** above:
- Would NOT be in conjunction with statewide elections:
- PROS:**
1. Allows for a mail-ballot election – convenience for voters
  2. More emphasis on local candidates/issues; only thing on ballot
  3. Potentially more campaign funding for local candidate/issues
  4. Potentially decreased partisan advertising and party influence on local politics
  5. No confusion with independent/no party voters on Permanent early voting list (PEVL) needing to request an early ballot
  6. Potentially less voter fatigue with local issues not at end of statewide ballot
  7. Cost is the same as polling place election in conjunction with statewide election

**CONS**

1. Election not in conjunction with statewide election; more education needed to notify electors of election; may result in lower voter turnout
2. If a polling place election was held, cost would double

F. For an election held under **D** above:

**PROS**

1. Voters more familiar with election date due to statewide candidates/issues
2. Allows for polling place election (for those preferring this method)

**CONS**

1. Potentially increased partisan advertising and party influence on local politics
2. Potentially decreased campaign funding for local candidates/issues
3. Confusion with Primary ballots being partisan and independents/no party designated needing to request an early ballot if on the PEVL, leading to less participation by independents in primary election

**II. *When should we bring a Charter amendment to the voters?***

A. Should the Council want to return to **March/May elections in even-numbered years** (past practice) an amendment would be needed as soon as possible (August 2015 Charter amendment election) because candidate packets would be required to be submitted to the Clerk's Office as follows:

1. If the May 2015 Charter amendment question passes (to change from 60-90 days to 90-120 days for submission of petitions), candidates petitions/documentation would need to be filed with the City Clerk's Office between November 9, 2015, and December 9, 2015.
2. If the May 2015 Charter amendment question fails (to change from 60-90 days to 90-120 days for submission of petitions), candidate petitions/documentation would need to be filed with the City Clerk's Office between December 9, 2015, and January 8, 2016.

Regardless of the outcome of the May 2015 Charter amendment election, a decision will need to be made as soon as possible IF the Council wishes to go back to a spring election because even with an August 2015 election, the results will not be official until the first part of September, thus giving candidates only a few months to circulate their petitions.

If the City Charter is amended in an August 2015 Charter amendment election to return to March/May 2016 spring elections, and later this year the Arizona

Supreme Court affirms local authority to set such election dates by Charter, then the City may so proceed. If the Arizona Supreme Court reverses the appellate decision, then the City's new Charter provision will be preempted and the City will follow current state law providing for August/November elections in even-numbered years.

**Note:** *Election called and ballot language must be ready by 04/21/15*

- B. Should the Council want to follow current state law of **August/November elections in even-numbered years**, a Charter amendment is recommended so that the City Charter can be cleaned up. Thus, we would recommend a November 2015 Charter amendment election to simply require election dates to be held in conformance with state law. If the voters approve this change, the City will follow state law regardless of how the Arizona Supreme court rules later this year.

**Note:** *Election called and ballot language must be ready by 07/06/2015*

- C. Should the City want to hold its elections in **March/Mayor of odd-numbered years, or August/November of odd-numbered years**, then we recommend the Council wait and see whether the Arizona Supreme Court upholds local authority to set election dates by City Charter. The City may hold a Charter election in 2016.

### **BACKGROUND INFORMATION**

<b>Mayor/ Councilmembers</b>	<b>Election</b>	<b>Term</b>
Karla Brewster	March 2012	June 2012 – June 2016
Coral Evans	March 2012	June 2012 – June 2016
Jeff Oravits	March 2012	June 2012 – June 2016
Celia Barotz	November 2014	December 2014 – December 2018
Scott Overton	November 2014	December 2014 – December 2018
Eva Putzova	November 2014	December 2014 – December 2018
Mayor Nabours	November 2014	December 2014 – December 2016

### **City Of Flagstaff Charter Provisions (Select. Emphasis Added):**

Article IX, Section 5 – PRIMARY ELECTIONS. (a) The Primary Election shall be held on the first Tuesday in February in even-numbered years. \* \* \* \*

Article IX, Section 6 - TIME OF HOLDING THE GENERAL ELECTION. The General Election shall be held on the first Tuesday in March in even-numbered years.

Article II, Section 3 – TERM OF THE MAYOR. The term of office of the Mayor shall commence on the first meeting in April following the election, and shall be for two (2) years, or until a successor is elected and inducted.

Article II, Section 4 – TERM OF COUNCILMEMBERS. The term of office of Councilmembers shall commence on the first meeting in April following the election, and shall be for two (2) years, or until a successor is elected and inducted.

Article II, Section 8 – INDUCTION. On the second meeting in April following the General Election, the Council shall hold a meeting to induct into office the newly-elected Mayor and Councilmembers and to organize the Council. \* \* \* \*

Article II, Section 9 – ABSENCE TO TERMINATE MEMBERSHIP. If any Council member shall be absent from more than two (2) consecutive regular meetings without the consent of the Council, the member shall thereupon cease to hold office. If the Mayor shall be absent for more than two (2) consecutive regular meetings without the consent of the Council, the Mayor shall thereupon cease to hold office.

Article II, Section 10 - VACANCIES IN THE COUNCIL AND THE OFFICE OF MAYOR. The Council, by a majority vote of its remaining members, shall, within thirty-one (31) days, fill the vacancies in its own membership, and in the office of Mayor, for the unexpired terms. In the event that such unexpired term exceeds two years, then the appointment to such vacancy shall be for the period from the appointment until the next succeeding election, at which time a Councilmember shall be elected to serve the remainder of the term and who shall be designated on the ballot as running for the “short term.”

### **State Law**

A.R.S. § 16-204.E: Beginning with elections held in 2014 and later and notwithstanding any other law or any charter or ordinance to the contrary, a candidate election held for or on behalf of any political subdivision of this state other than a special election to fill a vacancy or a recall election may only be held on the following dates and only in even-numbered years:

1. The tenth Tuesday before the first Tuesday after the first Monday in November. If the political subdivision holds a primary or first election and a general or runoff election is either required or optional for that political subdivision, the first election shall be held on this date, without regard to whether the political subdivision designates the election a primary election, a first election, a preliminary election or any other descriptive term.

2. The first Tuesday after the first Monday in November. If the political subdivision holds a general election or a runoff election, the second election held shall be held on this date. If the political subdivision holds only a single election and no preliminary or primary or other election is ever held for the purpose of reducing the number of candidates, or receiving a partisan nomination or designation or for any other purpose for that political subdivision, the single election shall be held on this date.

### **Litigation Status**

The Arizona Supreme Court will decide whether to uphold or overturn the *City of Tucson v. State* decision in summer or fall of 2015.