



State of California
Office of the Attorney General

ROB BONTA

ATTORNEY GENERAL

September 28, 2023

VIA EMAIL AND U.S. MAIL

The Honorable Tony Strickland
Mayor of Huntington Beach
Tony.Strickland@surfcity-hb.org

Dan Kalmick
Councilmember
Dan.Kalmick@surfcity-hb.org

The Honorable Gracey Van Der Mark
Mayor Pro Tem
Gracey.VanDerMark@surfcity-hb.org

Natalie Moser
Councilmember
Natalie.Moser@surfcity-hb.org

Pat Burns
Councilmember
Pat.Burns@surfcity-hb.org

Rhonda Bolton
Councilmember
Rhonda.Bolton@surfcity-hb.org

Casey McKeon
Councilmember
Casey.McKeon@surfcity-hb.org

City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

RE: Proposed Charter Amendments Requiring Voter Identification at the Polls and Monitoring of Ballot Drop Boxes in Municipal Elections

Dear Mayor Strickland and Councilmembers:

The Attorney General is California's chief law officer, with the authority and duty to ensure the uniform and adequate enforcement of state law, and to protect public rights and interests under the state and federal constitutions. (Cal. Const. art. V, § 13.) The Secretary of State is the chief elections officer (Elec. Code, § 10), and is broadly charged with protecting the integrity of the electoral process, preventing voter confusion, and promoting public confidence in elections. (E.g., *Timmons v. Twin Cities Area New Party* (1997) 520 U.S. 351.)

We write regarding the City’s proposal to amend its charter to add section 705, titled “Special Provisions Relating to Municipal Elections.” Specifically, the City’s proposal to require voter identification at the polls in municipal elections conflicts with state law and would only serve to suppress voter participation without providing any discernible local benefit. Accordingly, we respectfully urge you to reject this proposed charter amendment. If the City moves forward and places it on the ballot, we stand ready to take appropriate action to ensure that voters’ rights are protected, and state election laws are enforced.

The pending proposal to require the City to “monitor ballot drop boxes located within the City” also touches on an area governed by state law. The Elections Code and related regulations already direct county elections officials to monitor drop boxes by video surveillance or internal cameras. The Elections Code also prohibits anyone, with the intent of dissuading another person from voting, from video recording a voter within 100 feet of a polling place or other outdoor site at which a voter may cast a drop off ballot. At present, no details about how the City’s proposal would be implemented have been made available, and thus it is unclear whether or how the proposal might conflict with state law. This lack of detail also calls into question the City Attorney’s previous assurances to the City Council and the public that the proposal is legal. Although the potential waste of local resources on a redundant ballot box monitoring system is the City’s concern, please be advised that, in the event this proposal moves forward, our Offices will act to ensure it is not implemented in a way that interferes with the right to vote or otherwise conflicts with state law.

A. The Voter ID Proposal Conflicts with State Law on a Matter of Statewide Concern

The City’s proposal to require voter identification at the polls squarely conflicts with state law and is invalid, notwithstanding a charter city’s “home rule” authority to legislate on municipal affairs.¹ (See, e.g., *Cal. Federal Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1; *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781; *City of Huntington Beach v. Becerra* (2020) 44 Cal.App.5th 243.)

Under state law, identifying information, as well as other specified information, is required when registering to vote and must be validated by elections officials. (Elec. Code, §§ 2188, subd. (b), 2196, subd. (a)(7); Cal. Code Regs. tit. 2, §§ 19073, 20107.) An applicant must certify to the truth and correctness of the content of the application, under penalty of perjury. (Elec. Code, § 2188, subd. (e).) An individual who registers to vote knowing that they are ineligible to do so is subject to criminal penalties. (Elec. Code, § 18100.)

¹ While this proposal would expressly govern only “municipal” elections, it is not clear this would be the case in practice, given that most local elections are consolidated with the state and federal ballots. Consolidated elections are to be conducted in accordance with state law. (Elec. Code, §§ 10418, 10403.)

The Elections Code further provides that, at the time of voting, a registered voter wishing to vote in person need only provide their name and address; no further identification is required. (Elec. Code, § 14216, subd. (a).) The Elections Code also sets forth a detailed process for resolving questions of voter identity or eligibility at the polls. A voter's identity or eligibility to vote may only be questioned by election workers on narrow grounds, and only with evidence constituting probable cause to justify such a challenge. (*Id.* § 14240.) A challenged voter need only take a sworn oath of affirmation to remedy the challenge. (*Id.*, §§ 14243, 14244, 14245, 14246.) All doubts are to be resolved in favor of the challenged voter. (*Id.*, § 14251.) And any person who illegally casts a ballot is subject to criminal prosecution. (*Id.*, § 18500.)

This framework strikes a careful balance: it guards the ballot box against ineligible and/or fraudulent voters, while at the same time simplifying and facilitating the process of voting so as to avoid suppressing turnout and disenfranchising qualified voters. It also makes clear that the job of local elections officials is to supervise voting at the polls, not to take over voter-eligibility functions performed by the county registrar and the Secretary of State.

Huntington Beach's voter ID proposal would destroy this careful balance by placing the onus on the voter to establish their identity and right to vote with some form of identification at the time they cast their ballot. By requiring additional documentation to establish a voter's identity and eligibility to vote at the time of voting—a higher standard of proof than set out in the Elections Code—Huntington Beach's proposal conflicts with state law. Indeed, the City's proposal would arguably constitute “mass, indiscriminate, and groundless challenging of voters,” in violation of Elections Code section 18543.

The state laws outlined above address a matter of statewide concern: ensuring the fundamental right to vote without imposing unnecessary obstacles that may reduce voter participation or disproportionately burden low-income voters, racial and ethnic minorities, the elderly, or people with disabilities. Courts have long recognized that protecting the integrity of the electoral process, at both the state and local level, is a matter of statewide concern (*Jauregui v. City of Palmdale, supra*, 226 Cal.App.4th at p. 801), as is “the protection of the constitutional rights of California residents.” (*City of Huntington Beach v. Becerra, supra*, 44 Cal.App.5th at p. 275.)

While there are obvious and significant statewide concerns at issue here, the City has not identified *any* basis for its voter ID proposal, much less a basis supported by uniquely local concerns. As noted, state law already requires prospective voters to verify their identity—at the registration stage. It also sets forth a detailed process for resolving disputes over a voter's identity or eligibility at the polls, and contains ample provisions for dealing with rare cases of fraudulent or otherwise illegal voting. Abstract or hypothetical concerns about voter fraud, or concerns that state law does not strike an appropriate balance in this area, are insufficient to justify the City's proposal.

Accordingly, we respectfully urge you to reject the voter ID proposal currently under consideration. If necessary, our Offices stand ready to take appropriate action to ensure that state law is upheld and voters' rights are protected.

B. The Ballot Drop Box Monitoring Proposal May Impinge on the County's Authority, and May Conflict with State Law, Depending on How It Is Implemented

Huntington Beach's proposal to "monitor ballot drop boxes located within the City for compliance with all applicable laws," may also conflict with state law, depending on how it would be implemented. State law provides that county elections officials—not city officials—are responsible for establishing the number and location of ballot drop boxes, setting ballot collection and chain of custody procedures, and maintaining security at such locations. (See Elec. Code, § 3025.) Regulations specify, among other things, that "[i]f feasible, drop boxes shall be monitored by a video surveillance system, or an internal camera that can capture digital images and/or video." (Cal. Code Regs. tit. 2, § 20135, subd. (e).) State law also expressly prohibits—with the intent of dissuading another person from voting—photographing, video recording, or otherwise recording a voter within 100 feet of a polling place or outdoor site at which a voter may cast or drop off a ballot. (Elec. Code, § 18541.) Until the City provides further details about how this proposal would be implemented, it is not clear that the City even has the authority to enact such a measure,² or whether or how it might conflict with existing law and regulations. Accordingly, we respectfully urge you to reject this proposal. If the proposal moves forward and is ultimately passed, we will take action to ensure that any monitoring system implemented by the City does not interfere with the right to vote or otherwise violate state law.

Sincerely,



Shirley N. Weber, Ph.D.
California Secretary of State

Sincerely,



ROB BONTA
California Attorney General

cc: Michael Gates, Esq., City Attorney, Michael.Gates@surfcity-hb.org
Cathy Fikes, Senior Administrative Assistant, CFikes@surfcity-hb.org

² Only county elections officials may establish ballot drop boxes, designate their location and hours of operation, and provide for the security and chain of custody of the ballots deposited in them. (Elec. Code, § 3025; Cal. Code Regs. tit. 2, §§ 20133, 20137.) Among other unanswered questions, it is not clear whether the City contemplates establishing its own ballot drop boxes in addition to those already in existence and, if so, what security and chain-of-custody procedures the City intends to use, or what impact there may be on state or federal elections.