



# Board Agenda Item 7

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DATE: June 18, 2019

TO: Board of Supervisors

SUBMITTED BY: Donald Kendig, CPA, Retirement Administrator  
Fresno County Employees' Retirement Association

SUBJECT: Amended Election Procedures for the Board of Retirement of FCERA

RECOMMENDED ACTION(S):

- 1. Approve and authorize Chairman to execute resolution adopting the amended election procedures for the Board of Retirement of the Fresno County Employees' Retirement Association (FCERA).**
- 2. Direct the Clerk of the Board of Supervisors to transmit a certified copy of the adopted resolution, in action item 1, above, to the Board of Retirement, the Retirement Administrator of FCERA, and the Fresno County Clerk/Registrar of Voters.**

**(Continued from May 14, 2019)**

This item brings forward the relevant portion of the discussion of the proposed amended election procedures presented to your Board on May 14, 2019. In light of public comment that your Board received from a member of FCERA during the presentation of that item to your Board, this item is a continuation of that item along with further proposed revisions (See Discussion, Sections 5 and 6 below) for your Board's requested action. The recommended action 1, above, sets forth these cumulative proposed amended election procedures.

ALTERNATIVE ACTION(S):

There are no identified alternative actions.

In order for the proposed amended election procedures to be effective for the next regular Board of Retirement election (scheduled for November 19, 2019 for the Retiree and Alternate Retiree), your Board would need to adopt the recommended resolution (either in the recommended form or in such form with any additional election procedures that your Board may wish to include) not later than July 9, 2019 (the last regular meeting of your Board before the date that FCERA needs to call the next regular election).

If your Board does not take such action within such time, the existing election procedures would continue in effect for Board of Retirement elections until they are amended by the Board of Supervisors.

FISCAL IMPACT:

There is no anticipated additional net County cost associated with the recommended actions; however, the recommended amended election procedures, if adopted by your Board, would promote efficiency and effectiveness in the conduct of the Board of Retirement elections.

Under an existing agreement between the County and FCERA, FCERA will reimburse the Fresno County Clerk/Registrar of Voters (Registrar) for all Board of Retirement election-related costs within 45 calendar days of each Board of Retirement election.

DISCUSSION:

Generally, the County Employees Retirement Law of 1937 (CERL) governs the composition and length of membership on the Board of Retirement.

1. Board of Retirement composition; length of member terms.

Under Government Code § 31520.1, a statute within the CERL, the Board of Retirement consists of the following members according to the following designated seat numbers:

- The first member is the County Auditor-Controller/Treasurer-Tax Collector;
- The second and third members are general members of FCERA;
- The fourth, fifth, sixth, and ninth members are qualified electors of the County who are not connected with the County government in any capacity (except one may be a member of the Board of Supervisors) and are appointed by the Board of Supervisors;
  - The Board of Supervisors' appointment of one of its Supervisors is made pursuant to the Board of Supervisors' policies and procedures for the appointment of any of its members to serve on another public agency's governing board;
- The seventh member is a safety member of FCERA;
- The eighth member is a retired member of FCERA;
- The alternate seventh member would be a safety member where there are multiple safety member groups but that condition does not currently exist, so, that seat is vacant; even so, the recommended amended election procedures are drafted so that they shall apply to such an alternate seventh member if and when there should be such a member.

Government Code § 31520.1 further provides that the length of term of each Board of Retirement member shall be three years. Members' terms alternate as well.

In addition, Government Code § 31524, another statute within the CERL, provides that the Board of Retirement's second and third members, seventh member, and, if any, alternate seventh member, shall be employees of the County or a Special District (*i.e.*, a governmental employer that participates in FCERA) while they hold such respective offices.

2. Election Procedures.

The CERL does not prescribe elections procedures for Board of Retirement elections. However, Government Code § 31520.1 permits the Board of Supervisors to determine the manner in which elected members shall be elected to the Board of Retirement.

The Board of Retirement elections procedures were last amended by the Board of Supervisors on December 8, 2015. Because those existing procedures are in place, unless and until they are amended, this item discusses the key proposed amendments to those existing procedures.

The elections procedures, including the proposed amended election procedures in this item, govern the conduct of elections to the Board of Retirement in an objective and standardized manner. Such procedures

enable the elections official to conduct orderly proceedings for the Board of Retirement elections.

Under the current and recommended amended elections procedures, the Fresno County Clerk/Registrar of Voters serves as the elections official for the Board of Retirement elections.

3. Recommended Amended Election Procedures (See Sections 5 and 6 of this item for updated revisions).

The recommended amended elections procedures provide additional detail and clarity for the following key procedures:

- Election scheduling process, which relates to regular elections and any called special elections;
- Provides procedures how the Fresno County Clerk/Registrar of Voters (“Registrar”) may declare that he or she cannot conduct, or complete the conducting of, an election;
- Voter eligibility & membership classifications, discussed below;
- Nominating process;
- Balloting process & preparation for elections;
- Distribution & receipt of ballot packets;
- Pre-counting and counting of ballots, discussed below;
- Posting and delivering election results; and
- Protesting processes; and legal remedies for any legal challenge seeking review of, FCERA’s, the County’s, and/or Special Districts’ compliance with these elections procedures relating to any election of the Board of Retirement, discussed below.

Voter eligibility (same classifications as current classifications, but, further explanation provided in the recommended amended elections procedures):

- Active Member Elections
  - General Members (employees, and deferred & inactive members);
  - Safety Members (employees, and deferred & inactive members); and
- Retired Member Elections (retirees).
- “One vote per eligible FCERA member,” as discussed below.
  - A member of FCERA who is eligible to participate in a Board of Retirement election may vote only for one candidate who is designated within the same FCERA membership classification to which that eligible member of FCERA belongs as of the “Eligible Voter Certification Date” (e.g., for an Active Member Election, the eligible member of FCERA may only participate in the appropriate voter classification either as an Eligible General Member or as an Eligible Safety Member, but not both).
  - “Eligible Voter Certification Date” is the date that a “FCERA Authorized Officer” delivers electronic data file(s) of eligible voters and a written certification of such data file(s) to the Registrar of Voters.
    - “FCERA Authorized Officer” is any of the following: the Retirement Administrator; the Assistant Retirement Administrator; the FCERA Executive Assistant or the FCERA employee whom the Retirement Administrator certifies in writing to the County Registrar of Voters as the functional equivalent of the FCERA Executive Assistant for purposes of these election procedures; or the FCERA officer who is designated by the Retirement Administrator as the clerk to the Board of Retirement.

This “one vote per eligible FCERA member” rule means that a FCERA member’s accumulated

retirement service credit in the other FCERA member classification (e.g., Eligible Safety Member who has accumulated retirement service credit as a prior general member of FCERA), if any, shall not be considered in the determination of such FCERA members' eligibility to participate in a Board of Retirement election.

Pre-counting and counting of official ballots (the additional detail in recommended amended elections procedures):

- Ballots (Voters) remain confidential.
- Write-in ballots may not be made.
- Pre-count of returned ballots is conducted before ballots are separated from their envelopes (envelopes cross checked with certified roster of names); then, envelopes to be opened solely for the purpose of determining if the ballots are in the like-kind envelopes; and then, ballots to be separated from envelopes. Any ballot not in its like-kind official envelope will not be counted.
- Registrar shall count returned ballots and tally results for Active Member and Retired Member elections.

Recount and related procedures (new provisions in recommended amended elections procedures):

- Requests for recounts must be delivered to Registrar no later than 5:00 PM on the 5th calendar day following the date the Registrar posted the elections results.
- One request per candidate. Candidate must pay for recount.
- Tie Votes: Procedures for drawing of lots to break the tie (i.e., drawing slips of paper from a container).
- Protests/legal challenge: Must file timely protest (no later than 5:00 PM on the 5th calendar day following the date the Registrar posted the elections results). If there is a legal challenge relating to the County Parties (e.g., Board of Supervisors or any officer, employee, or agent) the FCERA Parties (e.g., Board of Retirement or any officer, employee, or agent) and/or Special District parties (e.g., governing board or any officer, employee, or agent), it shall be a writ of mandate.

Employee Release Time:

- The amended election procedures clarify that each candidate, or his or her designated single representative who is a County employee, but not both, shall be allowed a reasonable amount of County release time for observing the elections process relating to: Retirement Administrator's drawing of lots for the order of placement of eligible candidates' names on the ballot; the Registrar's undertaking of the pre-count procedures, and the opening and inspection of return envelopes and the counting of returned voted ballots.

In addition, the proposed elections scheduling process is summarized below (key events; "E - #" is the number of days prior, and "E + #" is the number of days after, the election):

- E -120: FCERA provides to the Registrar a written request to conduct Board of Retirement elections with date of election, the seat(s) up for election, confirmation that FCERA will reimburse County, and estimate of number of official ballots to be ordered for printing.
- E -70: FCERA provides Notice of Election to County departments, Special Districts, labor organizations having FCERA members, and retirees.
- E -50: Close of Nominations.
- E -47: Retirement Administrator determines order of placement of eligible candidates on ballot.
- E -35: Sample ballot and proof of statements finalized by Registrar and FCERA.
- E -43: FCERA delivers to the Registrar (a) the electronic data file(s) of those members who are eligible to vote in the election (based on voter classification as of the delivery date known as the "Eligible Voter Certification Date"), and (b) certification by a FCERA Authorized Officer (defined above) relating to such electronic data file(s).

- E -24: Registrar mails sealed ballot packet to eligible members at their mailing address.
- Day of Election (“E”): Ballots to be returned in like-kind envelopes via mail, commercial courier, or in-person (*i.e.*, by the voter) delivery to Registrar by 5:00 PM on election day.
- E +1: Pre-Count -- Verification of those voting and creation of roster of FCERA members that voted. Verification of envelopes. Opening of envelopes; counting of Ballots.
- E +14: Posting and certification of election, except that the time is extended for any requested recount, and by five County business days for breaking any tie.

The election schedule through 2032, Appendix A to the amended recommended amended election procedures, is attached to this item.

Your Board is being asked to approve the recommended resolution that would adopt the proposed amended election procedures (as presented to your Board on May 14, 2019, and as further revised and presented in this item), and to direct the Clerk of your Board to transmit certified copies of your Board's adopted resolution as provided in recommended action 2, above.

If adopted by your Board, the recommended amended elections procedures will supersede the current election procedures for Board of Retirement elections.

Attachment A summarizes the comparison of the current key election procedures to the proposed recommended elections procedures, including further revisions discussed in Sections 5 and 6, below, of this item; the further revisions are highlighted in the right column of Attachment A, entitled “Summary of Key Proposed Changes.” A computer-generated cumulative redline document, showing the changes between the current procedures and the proposed procedures (including further revisions discussed in Sections 5 and 6, below, of this item) is also included with that BAI.

#### 4. Board of Retirement support and participation in the process.

To demonstrate its support and participation in the development of the recommended amended elections procedures, the Board of Retirement held two readings (March 20, 2019 and April 3, 2019), and on the second reading, approved recommended amended election procedures that were presented to your Board on May 14, 2019.

If your Board approves the recommended amended election procedures, and once the Clerk of your Board to transmit certified copies of your Board's adopted resolution containing these amended election procedures, as provided in recommended action 2, above, FCERA staff will present your Board's adopted resolution as an informational receive and file item to the Board of Retirement.

The Board of Retirement provided the foregoing public meetings to FCERA members and members of the public concerning its approval of the recommended amended election procedures. The Board of Retirement's approval and support continues that spirit of collaboration with your Board, with the understanding that the procedures set by the Board of Supervisors are the Board of Supervisors' elections procedures. The Board of Retirement's consent on the proposed amended election procedures is not required in order for these amended election procedures to go into effect.

This has been a collaborative process between the County Administrative Officer's Office, County Counsel, the Registrar of Voters, Counsel to the Board of Retirement, and FCERA staff with the goal of providing a clear and comprehensive set of procedures for conducting Board of Retirement elections in an orderly manner.

#### 5. Board of Supervisors-directed revisions (*new*).

On May 14, 2019, your Board considered the proposed amended procedures forwarded by the Board of Retirement and, after hearing public comment from a member of FCERA, directed the drafting of further

proposed revisions, which include:

- Requiring nominees for the active employee election to sign a document, when they declare their candidacy, concerning the County's ordinance code section 3.08.110, relating to political activity concerning elections.
- In response to the request, the recommended amended election procedures provide for a single, convenient Nominee's submittal form, for Active Member Elections, in which the nominee provides his or her declaration of candidacy, contact information, and acknowledgement of receipt of a copy of the County's ordinance code section 3.08.110. (See Attachment B - Nominee's Submission.)
- Although County ordinance code section 3.08.110 is referenced in the proposed amended election procedures, the proposed amended election procedures specifically state that ordinance code section is not incorporated into these election procedures or to be used for any purposes under these election procedures except as expressly stated on the Nominee's Submittal. The proposed amended election procedures also provide that the reference to that ordinance code section is only a statement of existing rules of conduct for County employees and does not impose any new term or condition of employment upon nominees who are County employees.
- The County has informed FCERA that if County management determines an employee has not complied with County ordinance code section 3.08.110, the employee may be subject to disciplinary action in accordance with County policies.
- Revise the reference to "overnight commercial carrier service," for eligible voters to return their voted ballots, to state that it does not include County Stop Mail.
  - The term "overnight commercial carrier service," in the proposed amended election procedures, as presented to your Board on May 14, 2019, refers to a company that provides commercial carrier service (e.g., as stated therein, it may also be used by eligible voters outside of the continental U.S.); and those proposed amended election procedures eliminated "County messenger," which is the term used in the current election procedures to describe "Stop Mail."

But to be responsive to the request, further revisions are provided:

- The further proposed revisions refer to "overnight commercial carrier service" as "overnight delivery by a commercial carrier, such as FedEx or United Parcel Service, also known as UPS" ("Commercial Carrier").
- The further proposed revisions state the following:

Voted official ballots may be returned by the eligible voting member to the County Registrar of Voters only by United States Postal Service, Commercial Carrier, or the eligible voting member returning his or her voted official ballot by hand delivery to a County staff member who is attending the front counter within the County Registrar of Voter's office, in each case, not later than 5:00 PM on the date of the election.

The County Registrar of Voters shall not accept delivery of any returned voted official ballots through any means other than specified immediately above. Without limiting the generality of the foregoing sentence, the County Registrar of Voters shall not accept delivery of any returned voted official ballots through

any of the following means:

- (i) any County means of internal communication among County departments, including, but not limited to, County messenger, commonly known as “stop mail” or County inter-office mail or delivery (however, any County means of internal communication among County departments are not considered herein as, and shall not be treated herein as, the use of Commercial Carriers);
- (ii) any County Registrar of Voters drop box otherwise used by the County Registrar of Voters for any elections other than an election of the Board of Retirement; and/or
- (iii) the delivery to the County Registrar of Voters in any manner of multiple voted official ballots.

6. Additional revisions - key items (new).

In addition to preparing the revisions directed by your Board on May 14, 2019, the following further recommended revisions are proposed:

- Clarifying circumstances when the County Registrar of Voters may declare an inability to conduct or complete the conduct of an election, and limiting that authority:
  - in scope (i.e., except for any alleged or actual violation by a nominee, or any other County employee allegedly or actually acting at the behest of or in concert with the nominee, of County ordinance code section 3.08.110 relating to any Active Member Election); and
  - in time (i.e., up to the moment immediately following 5:00 PM on the day of the election, which is up to the time when returned ballots may be received by the County Registrar of Voters.
- Providing for the Retired Member Nominee’s Submittal form, which is distinct from the active employee election nominee’s submittal, discussed above.
- Providing that, for any Active Member Elections, the Retirement Administrator shall email a PDF copy of the nominee’s signed Nominee’s Submittal to his or her employer identified therein, and obtain email confirmation from such employer that such nominee is employed by such employer, and retain the original thereof solely for the purpose of keeping custody of such documents, and no additional obligations of the Retirement Administrator shall be inferred or implied from that.
- Providing that a nominee’s lack of sufficient contact information in his or her Nominee’s Submittal shall not be a basis for the Retirement Administrator to determine that a nominee is not duly nominated or eligible.
- Clarifying the scope of any legal challenge by writ of mandate.
- Making various clarifications, punctuation changes, and additional technical edits for consistency within the document.

ATTACHMENTS INCLUDED AND/OR ON FILE:

Proposed Amended Election Procedures Resolution including Appendix A

Amended Election Procedures Resolution - REDLINE for changes from current election procedures to Proposed

Attachment A - Summary Comparison of Key Current to Proposed Amended Election Procedures, as further revised.

Attachment B - Nominee's Submittal (Active Member Election)

On file with Clerk - Current Election Procedures

On file with Clerk - May 14, 2019 Board Agenda Item

REFERENCE MATERIALS:

BAI #24, May 14, 2019

BAI #25, December 8, 2015

BAI #31, August 11, 2009

BAI #24, September 11, 2007

BAI #32, March 1, 2005

BAI #19, October 30, 2001

No Board Agenda Item Number, November 25, 1969

CAO ANALYST:

Deborah Paolinelli