



303 North Beeline Highway
Payson, Arizona 85541
Phone 928-474-5242
Fax 928-474-8472

MEMORANDUM

Date: September 5, 2013
To: Mayor and Council Members
From: Tim Wright, Town Attorney 
Re: Ordinance 836 (Implementing Consolidated Elections)
CC: Debra Galbraith, Town Manager
Silvia Smith, Town Clerk

Ordinance 836 has been necessitated by the convergence of four factors (1) the Town's current election procedures (both Town Code provisions and written policies of the Council), (2) the statutory and constitutional requirements for Home Rule, (3) HB2826 (Consolidated Elections), and (4) Section 22 of SB1454. Below is a summary of each of these factors, followed by a summary of the provisions of Ordinance 836.

Town's Current Election Procedures:

Since the Town's incorporation, the Town has held Candidate Elections for Council Members and Mayor¹ in March and May of even numbered years. The March election was the primary election and a general election, if needed, was held in May. The specific calendar dates for each of these elections is determined by State Statute.

If a candidate for Council or Mayor received a majority of votes at the Primary Election, such person was deemed elected as of the date of the General Election. Over the years, including the last election cycle, this provision has saved the Town the expense of having a General Election when all candidate were elected at the Primary. A 'majority of votes cast' is currently defined as "a majority of all the votes cast" at the election. See Section 30.07(A) of the Town Code.

¹ In the 1980s, the Town switched to the direct election of the Mayor.

Pursuant to Ordinance 16 (passed in 1974) Council members serve four year terms and pursuant to State Law the Mayor serves a two year term. See Section 30.01 of the Town Code codifying the terms of office. Section 30.01 also clarifies that both the Mayor and Council Members “continue in office until assumption of duties of office by their duly elected successors.” In order to facilitate an efficient transition between Councils, the Council adopted Admin Policy A204. Pursuant to Admin Policy A204, the Mayor and Council Members are sworn in and seated on the second Tuesday following the general election date.

Council Members Ed Blair, Su Connell, and Fred Carpenter were elected or reelected during the 2010 March/May election cycle and are currently serving four year terms that expire in June of 2014. Council Members Rick Croy, Michael Hughes, and John Wilson were reelected during the 2012 March/May election cycle and are serving four year terms that expire in June of 2016. Mayor Kenny Evans was reelected during the 2012 March/May election cycle and is serving a term that expires in June of 2014.

But for Consolidated Elections (discussed below), in March/May of 2014, the Town would have held elections for the Mayor and the Council seats occupied by Blair, Connell, and Carpenter; and in March/May of 2016, the Town would have held elections for the Mayor and Council seats occupied by Croy, Hughes, and Wilson.

Home Rule and its Statutory and Constitutional Requirements.

Article IX, Section 20 of the Arizona Constitution limits the amount a municipality may authorize during the budget process and expend during a specific fiscal year. This is called the “expenditure limitation.” The expenditure limitation amount is based upon local revenues from the 1979-1980 fiscal year with some adjustments.² Even with the adjustments, the expenditure limitation does not permit most cities/towns to offer the level of services their citizens desire and to which they have become accustomed. For most cities/towns, the effect of having to follow the expenditure limitation (based on the 1979-1980 formula) could be characterized as extremely harsh.

The Constitution does provide several ways for a city/town to avoid such an arbitrary/historical number. The most common way is called an alternative expenditure limitation, commonly known as “Home Rule.” Subsection (9) of Article IX, Section 20 gives the electors of a municipality the right to select an ‘alternative expenditure limitation.’ So instead of the 1979-1980 formula dictating a city/town’s services, the voters actually get to decide. Such Home Rule decisions are required to be voted upon at the same time the Mayor and Council are voted upon. If the voters choose Home Rule, Home Rule is valid for four fiscal years.

² It is important to note that the expenditure limitation does not have any relation to a city/town’s revenues. It is an artificial number that relates back to the 1979-1980 FY. It does not limit revenue and therefore has no effect on taxes.

For the last 30 plus years, the voters of the Town of Payson have chosen Home Rule; deciding that the Payson Town Council should make spending decisions for Payson, not the 1979-1980 formula. Most recently, in March of 2010, Payson's voters approved Home Rule for FY2010-2011, FY2011-2012, FY2012-2013, and FY2013-2014.

But for Consolidated Elections (discussed below), in March of 2014, the Town would again submit Home Rule to the voters during the primary election.

Consolidated Elections, HB2826 (2012 Legislative Session).

In 2012 the Arizona Legislature passed and the Governor signed HB 2826 ("Consolidated Elections") which amended A.R.S. 16-204.³ Consolidated Elections requires that all regular municipal Candidate Elections be conducted in the fall (September primary election/November general election) of even numbered years.⁴ When Governor Brewer signed Consolidated Elections, it was well known that Consolidated Elections would create timing issues for both Mayor/Council terms and Home Rule ballot questions. In the Governor's letter accompanying HB2826 she said, "I encourage the sponsor to work closely with the stakeholders to thoroughly review [Consolidated Election's] full impact prior to the 2014 elections and make any changes to avoid unintended consequences."

For the Town, Consolidated Elections created two very specific "consequences" (whether intended or unintended) and one potential consequence:

- (1) Consolidated Elections prevents the Town from conducting its normal Candidate Elections during March/May of 2014 and 2016. This places in limbo the status of sitting Council Members between the end of their four year term (June of 2014 and 2016 respectively) and the next Candidate Elections in the fall of 2014 and 2016.
- (2) Consolidated Elections prevents the voters of the Town from voting on the Home Rule option prior to the Council's adoption of the FY 2014-2015 budget. The Budget (which contains the limits on the Town's expenditures) must be completed by July of 2014. Yet, the first election at which the voters could decide upon Home Rule would be in September of 2014.
- (3) Consolidated Elections requires that all national, state, county, school, special district, and local elections be placed on one ballot. There is a concern that this consolidated ballot will become lengthy and that voters may experience 'ballot fatigue,' i.e., they may

³ See attached copy of HB2826.

⁴ The only exceptions to the fall Candidate Election rule are special elections to fill a vacancy and recall elections.

skip candidates and questions toward the end of the lengthy ballot. Local candidates and questions will most likely be towards the end of the ballot. If voters skip the local questions, it may be possible for a Council or Mayoral candidate at the Primary Election to receive a majority of the votes actually cast for his/her office, but not receive a majority of all votes cast (i.e., for all of the questions). This could unnecessarily create the need for a General Election.

Section 22 of SB1454 (2013 Legislative Session).

One of the last bills approved by the 2013 Legislature was SB1454. On June 20, 2013 the Governor signed SB1454. Section 22 of SB1454 is an attempt to resolve and avoid several of the “unintended” consequences created by Consolidated Elections as Governor Brewer predicted. Section 22⁵ specifically addresses lengths of terms and Home Rule. Subsection (A) allows a municipality to “lengthen the terms of office for its elected officials” to comply with Consolidated Elections. Subsection (B)(1) waives any penalties for a municipality that exceeds the 1979-1980 expenditure limitation during Fiscal Year 2014-2015 if (a) Consolidated Elections makes it impossible to submit Home Rule to the electors of the municipality prior to the adoption of the 2014/2015 fiscal year budget; and (2) the Home Rule option is submitted to the voters during the fall 2014 election cycle.

Ordinance 836.

The approval of Ordinance 836 will formalize the steps the Town is taking to comply with Consolidated Elections and formally place the Town within the safe harbor provisions of Section 22 of SB1454. Specifically, Ordinance 836 does the following: (note that the numbers below correspond to the sections within Ordinance 836)

1. Town Candidate Elections in 2014 are moved from the spring to the fall as mandated by Consolidated Elections. Therefore the Town will not have Candidate Elections in March and May of 2014. The next Candidate Elections will be on August 26 (primary election) and November 4 (general election, if necessary) of 2014.
2. The terms of the current Mayor and Council Members will be extended approximately six months so that they serve until either they are reelected or their successors are elected at the August/November 2014 Council elections.
3. Administrative Policy A204 is repealed. A204 contains procedures for the seating of the Council following March/May elections.

⁵ See attached copy of Section 22 of SB1454.

4. Following the 2014 Candidate Elections and all other Candidate Elections, the new Mayor and Council Members shall be seated at the first regularly scheduled meeting in December following their election, regardless of whether a November general election was necessary.
5. The FY 2014-2015 budget amount shall be the expenditure limitation for such fiscal year.
6. Town Staff is directed to start a new cycle for submitting the Home Rule option to the voters by submitting such option at the September 2014 primary election. If approved, the Home Rule Option would be effective for Fiscal Years 2015-2016, 2016-2017, 2017-2018, and 2018-2019.
7. Clarify that a local candidate for Mayor and/or Council Member is deemed elected at the Primary Election if such candidate receives a majority of the votes cast for the office of Mayor and not a majority of the ballots cast as allowed by A.R.S. 9-821.01.

State of Arizona
House of Representatives
Fiftieth Legislature
Second Regular Session
2012

HOUSE BILL 2826

AN ACT

AMENDING SECTION 16-204, ARIZONA REVISED STATUTES; RELATING TO ELECTION DATES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 16-204, Arizona Revised Statutes, is amended to
3 read:

4 16-204. Declaration of statewide concern; consolidated election
5 dates; definition

6 A. While the legislature recognizes that the holding of multiple
7 elections by political subdivisions, including charter counties, may
8 have been a matter of local concern, the legislature finds and determines that
9 for the purposes of increasing voter participation and for decreasing the
10 costs to the taxpayers it is a matter of statewide concern that all elections
11 in this state be conducted on a limited number of days and, therefore, the
12 legislature finds and declares that the holding of all elections on certain
13 specific consolidated days is a matter of statewide concern. THIS SECTION
14 PREEMPTS ALL LOCAL LAWS, ORDINANCES AND CHARTER PROVISIONS TO THE CONTRARY.

15 B. FOR ELECTIONS HELD BEFORE 2014 AND notwithstanding any other law or
16 any charter or ordinance of any county, city or town to the contrary, an
17 election held for or on behalf of a county, city or town, a school district,
18 a community college district or special districts organized pursuant to title
19 48, chapters 5, 6, 8, 10, 13 through 16 and 33 may only be held on the
20 following dates:

21 1. Except for regular elections for candidates in a city or town with
22 a population of one hundred seventy-five thousand or more persons, all
23 elections, including recall elections and special elections to fill
24 vacancies, shall be held on:

25 (a) The second Tuesday in March.

26 (b) The third Tuesday in May.

27 (c) The tenth Tuesday before the first Tuesday after the first Monday
28 in November.

29 (d) The first Tuesday after the first Monday in November.
30 Notwithstanding any other law, an election must be held on this date for the
31 approval of an obligation or other authorization requiring or authorizing the
32 assessment of secondary property taxes by a county, city, town, school
33 district, community college district or special taxing district, except as
34 provided by title 48.

35 2. For regular elections that are only for candidates in a city or
36 town with a population of one hundred seventy-five thousand or more persons
37 and not including recall elections and special elections to fill vacancies in
38 those cities or towns, elections shall be held on:

39 (a) The tenth Tuesday before the first Tuesday after the first Monday
40 in November.

41 (b) The first Tuesday after the first Monday in November.

42 C. FOR ELECTIONS HELD BEFORE 2014, for any city or town, including a
43 charter city, that holds its regularly scheduled candidate elections in
44 even-numbered years pursuant to subsection B, paragraph 2, the term of office

1 for a member of the city council or for the office of mayor begins on or
2 after the second Tuesday in January in the year following the election.

3 D. ~~THE FOLLOWING~~ SUBSECTIONS B AND C OF THIS SECTION DO not apply
4 to an election regarding a county or city charter committee or county or city
5 charter proposal that is conducted pursuant to article XIII, section 2 or 3
6 or article XII, section 5, Constitution of Arizona.

7 E. BEGINNING WITH ELECTIONS HELD IN 2014 AND LATER AND NOTWITHSTANDING
8 ANY OTHER LAW OR ANY CHARTER OR ORDINANCE TO THE CONTRARY, A CANDIDATE
9 ELECTION HELD FOR OR ON BEHALF OF ANY POLITICAL SUBDIVISION OF THIS STATE
10 OTHER THAN A SPECIAL ELECTION TO FILL A VACANCY OR A RECALL ELECTION MAY ONLY
11 BE HELD ON THE FOLLOWING DATES AND ONLY IN EVEN-NUMBERED YEARS:

12 1. THE TENTH TUESDAY BEFORE THE FIRST TUESDAY AFTER THE FIRST MONDAY
13 IN NOVEMBER. IF THE POLITICAL SUBDIVISION HOLDS A PRIMARY OR FIRST ELECTION
14 AND A GENERAL OR RUNOFF ELECTION IS EITHER REQUIRED OR OPTIONAL FOR THAT
15 POLITICAL SUBDIVISION, THE FIRST ELECTION SHALL BE HELD ON THIS DATE, WITHOUT
16 REGARD TO WHETHER THE POLITICAL SUBDIVISION DESIGNATES THE ELECTION A PRIMARY
17 ELECTION, A FIRST ELECTION, A PRELIMINARY ELECTION OR ANY OTHER DESCRIPTIVE
18 TERM.

19 2. THE FIRST TUESDAY AFTER THE FIRST MONDAY IN NOVEMBER. IF THE
20 POLITICAL SUBDIVISION HOLDS A GENERAL ELECTION OR A RUNOFF ELECTION, THE
21 SECOND ELECTION HELD SHALL BE HELD ON THIS DATE. IF THE POLITICAL
22 SUBDIVISION HOLDS ONLY A SINGLE ELECTION AND NO PRELIMINARY OR PRIMARY OR
23 OTHER ELECTION IS EVER HELD FOR THE PURPOSE OF REDUCING THE NUMBER OF
24 CANDIDATES, OR RECEIVING A PARTISAN NOMINATION OR DESIGNATION OR FOR ANY
25 OTHER PURPOSE FOR THAT POLITICAL SUBDIVISION, THE SINGLE ELECTION SHALL BE
26 HELD ON THIS DATE.

27 F. BEGINNING WITH ELECTIONS HELD IN 2014 AND LATER THAT ARE NOT
28 CANDIDATE ELECTIONS, AN ELECTION HELD FOR OR ON BEHALF OF ANY POLITICAL
29 SUBDIVISION OF THIS STATE, AND INCLUDING A SPECIAL ELECTION TO FILL A VACANCY
30 OR A RECALL ELECTION, MAY ONLY BE HELD ON THE FOLLOWING DATES:

31 1. THE SECOND TUESDAY IN MARCH.

32 2. THE THIRD TUESDAY IN MAY.

33 3. THE TENTH TUESDAY BEFORE THE FIRST TUESDAY AFTER THE FIRST MONDAY
34 IN NOVEMBER.

35 4. THE FIRST TUESDAY AFTER THE FIRST MONDAY IN NOVEMBER.
36 NOTWITHSTANDING ANY OTHER LAW, AN ELECTION MUST BE HELD ON THIS DATE FOR THE
37 APPROVAL OF AN OBLIGATION OR OTHER AUTHORIZATION REQUIRING OR AUTHORIZING THE
38 ASSESSMENT OF SECONDARY PROPERTY TAXES BY A COUNTY, CITY, TOWN, SCHOOL
39 DISTRICT, COMMUNITY COLLEGE DISTRICT OR SPECIAL TAXING DISTRICT, EXCEPT AS
40 PROVIDED BY TITLE 48.

41 G. NOTWITHSTANDING ANY OTHER LAW, FOR AN ELECTION ADMINISTERED BY A
42 COUNTY RECORDER OR OTHER OFFICER IN CHARGE OF ELECTIONS ON BEHALF OF A CITY,
43 TOWN OR SCHOOL DISTRICT AND THAT IS AN ALL MAIL BALLOT ELECTION FOR THAT
44 CITY, TOWN OR SCHOOL DISTRICT, THE COUNTY RECORDER OR OTHER OFFICER IN CHARGE
45 OF ELECTIONS MAY USE A UNIFIED BALLOT FORMAT THAT COMBINES ALL OF THE ISSUES

1 APPLICABLE TO THE VOTERS IN THE CITY, TOWN OR SCHOOL DISTRICT REQUESTING THE
2 ALL MAIL BALLOT ELECTION.

3 H. FOR THE PURPOSES OF THIS SECTION, "POLITICAL SUBDIVISION" MEANS ANY
4 GOVERNMENTAL ENTITY OPERATING UNDER THE AUTHORITY OF THIS STATE AND GOVERNED
5 BY AN ELECTED BODY, INCLUDING A CITY, TOWN, COUNTY, SCHOOL DISTRICT,
6 COMMUNITY COLLEGE DISTRICT OR ANY OTHER DISTRICT ORGANIZED UNDER STATE LAW
7 BUT NOT INCLUDING A SPECIAL TAXING DISTRICT.

8 Sec. 2. Conforming legislation

9 The legislative council staff shall prepare proposed legislation
10 conforming the Arizona Revised Statutes to the provisions of this act for
11 consideration in the fifty-first legislature, first regular session.

12 Sec. 3. Severability

13 If a provision of this act or its application to any person or
14 circumstance is held invalid, the invalidity does not affect other provisions
15 or applications of the act that can be given effect without the invalid
16 provision or application, and to this end the provisions of this act are
17 severable.

SB 1454

1 respondent that a response is required within twenty days of mailing of the
2 petition showing cause, if any, why the petition should be dismissed.

3 E. After receiving the response, the director or the director's
4 designee shall promptly review the petition for hearing and, if justified,
5 refer the petition to the office of administrative hearings. The director
6 may dismiss a petition for hearing if it appears to the director's
7 satisfaction that the disputed issue or issues have been resolved by the
8 parties.

9 F. Failure of the respondent to answer is deemed an admission of the
10 allegations made in the petition, and the director shall issue a default
11 decision.

12 G. Informal disposition may be made of any contested case.

13 H. Either party or the party's authorized agent may inspect any file
14 of the department that pertains to the hearing, if ~~such~~ THE authorization is
15 filed in writing with the department.

16 I. At a hearing conducted pursuant to this section, a corporation may
17 be represented by a corporate officer, employee or contractor of the
18 corporation who is not a member of the state bar if:

19 1. The corporation has specifically authorized the officer, employee
20 or contractor of the corporation to represent it.

21 2. The representation is not the officer's, employee's or contractor
22 of the corporation's primary duty to the corporation but is secondary or
23 incidental to the officer's, ~~or~~ employee's OR CONTRACTOR OF THE
24 CORPORATION'S, LIMITED LIABILITY COMPANY'S, LIMITED LIABILITY PARTNERSHIP'S,
25 SOLE PROPRIETOR'S OR OTHER LAWFULLY FORMED AND OPERATING ENTITY'S duties
26 relating to the management or operation of the corporation.

27 Sec. 22. Implementation of consolidated elections; expenditure
28 limitations

29 A. Notwithstanding any other law, in order to comply with the
30 consolidation of election dates prescribed in Laws 2012, chapter 353, a city
31 or town may lengthen the terms of office for its elected officials.

32 B. Notwithstanding section 16-204, Arizona Revised Statutes, for any
33 city or town whose alternate expenditure limit is scheduled to expire in 2014
34 or 2015, the following apply:

35 1. For a limitation that is scheduled to expire in the spring of 2014,
36 the penalties prescribed in section 41-1279.07, Arizona Revised Statutes,
37 shall not apply to that city or town in fiscal year 2015 if the city or town
38 seeks voter approval of an alternative expenditure limit in the fall of 2014.

39 2. For a limitation that is scheduled to expire in 2015 or 2016, the
40 penalties prescribed in section 41-1279.07, Arizona Revised Statutes, shall
41 not apply to that city or town in fiscal year 2015, 2016 or 2017 and the
42 amount of the expenditure limitation remains at the level established before
43 the expiration of the alternate expenditure limitation if the city or town
44 seeks voter approval of an alternate expenditure limitation at the next
45 eligible regular election in 2014, 2015 or 2016.