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ELECTIONS DIVISION

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April 13, 2021

County Clerk/Registrar of Voters (CC/ROV) Memorandum # 21047

TO: All County Clerks/Registrars of Voters

FROM: /s/ Robbie Anderson
Elections Counsel

RE: Emergency Readopt Regulations: Vote-by-Mail Ballot Drop Boxes and
Vote-by-Mail Drop-Off Locations – Section 20136

The Secretary of State is proposing to readopt emergency regulations it adopted on June 21, 2020, that amended Section 20136 of Chapter 3 of Division 7 of Title 2 of the California Code of Regulations.

The purpose of the readoption is to keep the emergency regulations in effect during the time of the regular rulemaking process to make the emergency regulations permanent, for which the public comment period has started on March 12, 2021, and will end on April 26, 2021. For information on the regular rulemaking process submission, please refer to CC/ROV Memorandum #21034.

Notice period:

This notice period will run from April 14, 2021, through April 20, 2021. At the end of the notice period, the Secretary of State will submit the required documents to the Office of Administrative Law for the readoption of these emergency regulations.

A copy of the notice, the original text, and the amended text of the regulation is attached to this memorandum and is available on the Secretary of State's website at <https://www.sos.ca.gov/administration/regulations/proposed-regulations>

If you have any questions, please feel free to contact Robbie Anderson at aanderso@sos.ca.gov, or Raj Bathla at rbathla@sos.ca.gov, or by calling (916) 657-2166. Thank you.

California Secretary of State

Proposed Regulatory Action: Vote-by-Mail Ballot Drop Boxes and Vote-by-Mail Drop-Off Locations (Readoption of Emergency Regulations)

Finding of Emergency

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6. (1 California Code of Regulations, Section 48.)

INFORMATIVE DIGEST AND STATEMENT OF EMERGENCY

The Secretary of State published the 45-day notice for public comments on March 12, 2021, to adopt the changes proposed in these emergency regulations through the regular rulemaking process, as a Certificate of Compliance action. However, the regular rulemaking process will not be complete before the emergency regulations are expired. Therefore, additional time is needed to keep the emergency regulations in effect until the regular rulemaking process is completed.

These emergency regulations avoid serious harm to the public peace, health, safety, and general welfare by doing the following:

- Provide greater flexibility to county elections officials in retrieving ballots from unstaffed drop boxes every 48 hours instead of 24 hours.

On February 19, 2021, the California legislature passed, and the Governor signed, Senate Bill (SB) 29. This bill extended the existing law requirements that required the county elections officials to mail a ballot to every registered voter for the November 3, 2020, statewide general election to all elections conducted prior to January 1, 2022. Since this law is still in effect, the need regarding the deployment of additional vote-by-mail ballot drop boxes remains unchanged from the time the initial emergency regulations were adopted.

Additionally, COVID-19 restrictions regarding social distancing are still in place and most California counties are still working with reduced in-person staff. Therefore, the emergency related to the retrieval of ballots from unstaffed drop boxes remains unchanged.

Regulatory Compatibility

The Secretary of State has determined that these proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would

relate to or affect this area, the Secretary of State has concluded that these are the only regulations that concern Vote-by-Mail Ballot Drop Boxes and Vote-by-Mail Drop-Off Locations in California.

Local Mandate Determination

Mandate on local agencies or school districts: None

Estimate of Cost Savings

Cost savings to any state agency: None

Reimbursable cost to any local government agencies: None

Nondiscretionary cost or savings to local government agencies: None

Cost or savings in federal funding to the state: None

NECESSITY STATEMENT

These proposed regulations are necessary to ensure that all elections until January 1, 2022, are conducted in an orderly fashion and without putting at risk the health and safety of Californians during the COVID-19 crisis and consistent with the health and safety guidelines issued by the Centers for Disease Control and Prevention (CDC), and local public health officials.

AUTHORITY AND REFERENCE

Section 12172.5, Government Code; and Section 10 and 3025, Elections Code. Reference: Section 3025, Elections Code.

INCORPORATED BY REFERENCE

- OAL file no. 2020-0616-01E

DOCUMENTS RELIED UPON

- Senate Bill 29 of 2021

California Secretary of State

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Proposed Regulation Text Showing Changes to Permanent Regulation Text

Note: The Secretary of State is proposing no changes to the Emergency Regulation Text as part of the readoption regulatory action. The changes to the Permanent Regulation Text shown here are the same as reflected in the currently effective Emergency Regulation Text.

Title 2. Administration
Division 7. Secretary of State
Chapter 3. Voting Locations
Article 1. Vote-by-Mail Ballot Drop Boxes and Vote-by-Mail Drop-Off Locations

20136. Drop-off Location and Drop Box Hours. Public Notification. Collection Times.

(a) The county elections official shall publicly announce the locations of drop-off locations and drop boxes at least 30 days prior to the election. The announcement must include the days and estimated times a particular staffed drop box will be available. The announcement must also include information on accessibility, including wheelchair access, for each drop-off location and drop box. Information shall be included in the county's Voter Information Guide and Sample Ballot publications, included in vote-by-mail materials sent to voters, and conspicuously posted on the county elections official's website. In the event any changes are made to locations and/or schedules, the information posted on the elections official's website shall be updated within 24 hours.

(b) For the purpose of posting the locations on the Secretary of State's website and to include information in any relevant election materials, the county elections official shall notify the Secretary of State of the drop-off and drop box locations, and the dates and estimated hours of availability, at least 30 days prior to the election. In the event any changes are made to locations and/or schedules, the Secretary of State must be notified within 24 hours.

(c) Drop boxes shall be locked and covered, or otherwise made unavailable to the public until the 29th day prior to the election, to ensure that no ballots or any other materials may be deposited before the vote-by-mail period begins. The elections official shall determine the appropriate method or design to make the drop boxes unavailable for use. Prior to use on the 29th day before the election, all drop boxes shall be inspected for damage and to ensure they are empty.

(1) A county elections official who provides a drop box outside of their office throughout the year for the purpose of voters delivering completed voter registration affidavits shall not be required to lock and cover those drop boxes.

(2) In the event drop boxes are deployed on the 60th day prior to an election for use by military and overseas voters, the provisions of this Article must be followed.

(d) Ballots shall be retrieved from drop boxes at times determined by the elections official, but shall be subject to the following:

(1) Ballots shall be retrieved from both staffed and unstaffed drop boxes at least every 96 hours, excluding Saturdays and Sundays, between the 29th day before the election and the 10th day before an election.

(2) Ballots shall be retrieved from staffed drop boxes at least every 72 hours, excluding Saturdays and Sundays, after the 10th day before the election through the closing of the polls on Election Day. The elections official shall develop procedures for contacting locations of staffed drop boxes between ballot retrieval periods to determine if an additional retrieval is needed.

(3) Ballots shall be retrieved from unstaffed drop boxes every ~~24~~ 48 hours, excluding Saturdays and Sundays, hours after the 10th day prior to an election through the closing of the polls on Election Day.

(e) Upon the closing of the polls on Election Day, all drop boxes shall be locked and covered or otherwise made unavailable at 8:00 p.m. to ensure that no ballots are dropped off after the polls have closed. In the event there are voters in line at 8:00 p.m., or a court order has been issued extending the time for the closing of the polls, the drop boxes may remain open until those voters have cast their ballot or the court order extending time has lapsed.

Note: Authority cited: Section 12172.5, Government Code; and Sections 10 and 3025, Elections Code. Reference: Section 3025, Elections Code.

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