



Claremont City Council

Agenda Report

File #: 2657

Item No: 14.

TO: CLAREMONT CITY COUNCIL

FROM: JOSEPH LARSEN, ACTING CITY ATTORNEY

DATE: NOVEMBER 27, 2018

Reviewed by:
City Manager:
Finance Director:

SUBJECT:

CONSIDERATION OF RESOLUTION OF INTENTION TO COMMENCE A POTENTIAL TRANSITION FROM AT-LARGE TO DISTRICT-BASED ELECTIONS FOR THE CITY COUNCIL, PURSUANT TO ELECTIONS CODE SECTION 10010

SUMMARY

Over the past several years, voting rights advocates have threatened many cities across the State of California - and more recently in the San Gabriel Valley region specifically - alleging the cities violated the California Voting Rights Act ("CVRA") (Elec. Code §§ 14025-14032). In response, nearly all cities have voluntarily changed their method of electing City Councilmembers to district elections rather than face costly litigation.

The CVRA only applies to jurisdictions, like the City of Claremont, that utilize an "at-large" election method where voters of the entire jurisdiction elect each of the members of the City Council. The threshold to establish liability under the CVRA is extremely low, and the CVRA allows prevailing plaintiffs to recover their attorneys' fees and costs from a government defendant. As a result, every government defendant in the history of the CVRA that has fought the conversion to district elections has either lost in court or settled and agreed to implement district elections. Judgments or settlements have forced all of these defendants to pay at least some portion of the plaintiffs' attorneys' fees and costs (See Attachment A, Table of Results of CVRA Litigation). All of the cities that chose to fight CVRA challenges through litigation have lost and incurred multi-million dollar fee awards.

While this change may not be a popular one with the residents of Claremont, by acting before the threat of litigation the City avoids the cost of paying the challenging attorney for sending a letter informing the City of its need to comply with CVRA. These letters typically result in a cost of \$30,000 to the opposing attorney, plus the City's own attorney cost. By moving to districts without litigation the City Council retains the authority to, with community input, determine the boundaries of the districts. If the City waits for challenges and lawsuits to come it will be more expensive and the courts

or opposing counsel may end up drawing the districts and imposing their decision on Claremont.

This is an unfortunate situation where the City Council is being pressured by outside forces and changes in law at higher levels of government to change our local governance structure. And while there has been no locally driven public request for transition to district elections, it is the prudent course of action, based on the potential threats, to act without incurring additional costs or losing the local control over the districting process by adopting the resolution presented with this report. Staff does not bring this recommendation lightly or with out reservation but rather out of the responsibility to protect the City from what is believed to be an imminent and potentially costly threat.

RECOMMENDATION

It is recommended that the City Council

- 1) adopt A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLAREMONT, CALIFORNIA EXPRESSING THE CITY COUNCIL'S INTENTION, PURSUANT TO ELECTIONS CODE SECTION 10010(e)(3)(A), TO INITIATE PROCEDURES FOR ESTABLISHING AND IMPLEMENTING BY-DISTRICT ELECTIONS FOR CITY COUNCILMEMBERS, and activating the "safe harbor" period protecting the City from the filing of a lawsuit.
- 2) Appropriate \$60,000 from the Operating and Environmental Emergency Reserve to fund the cost of consultant and attorney time to take the City through the process of moving to district-based elections.

ALTERNATIVES TO RECOMMENDATION

In addition to the recommendation there are the following alternatives:

- A. Continue this item to a future City Council meeting, preferably to a date certain.
- B. Decline to adopt the resolution of intention and retain the City's current at-large method of election.

FINANCIAL REVIEW

The estimated cost of the transition to district elections, which consists of hiring a demographer and additional City Attorney time, will be approximately \$60,000. Should the City Council opt to move forward with the recommendation to transition to district-based elections, an appropriation for consultant and attorney costs would be necessary.

Staff proposes that the City Council appropriate \$60,000 from the Operating and Environmental Emergency Reserve to fund this cost. Such an appropriation, taking into account other appropriations recommended at the City Council meeting of November 27, 2018, would reduce the balance in the reserve to \$5,537,667, representing 21.1 percent of adopted 2018-19 General Fund expenditures and transfers out. This is less than the minimum threshold of 25 percent established by the City's Reserve Policy.

The ultimate cost of attempting to retain the City's current at-large method of election could potentially be millions of dollars and a greater impact on the reserve balance.

ANALYSIS

Background

The CVRA was enacted in 2002 with the specific intent of eliminating several key burden of proof requirements that exist under the Federal Voting Rights Act of 1965 (“FVRA”) (52 U.S.C. § 10301 *et seq.*). Before the enactment of the CVRA, several jurisdictions in California successfully defended themselves in litigation brought under the FVRA.

Under the FVRA, four factors must be met in order to establish a violation, including: (1) the “geographically compact” FVRA precondition (e.g., can a majority-minority district be drawn?), and; (2) the “totality of the circumstances” or “reasonableness” test. The CVRA removes both of those factors. Instead, under the CVRA, the only “element” a plaintiff must establish is that racially polarized voting occurs in a jurisdiction with at-large elections. As a result, the CVRA is tilted heavily in favor of plaintiffs’ attorneys and was enacted with that specific intent in mind. Despite its removal of key safeguards contained in the FVRA, the California courts have held that the CVRA is constitutional (See *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660).

Over the relatively short history of the CVRA, and only after an initial constitutional challenge was resolved in 2006, plaintiff public agencies have paid over \$16 million to CVRA plaintiff attorneys (Attachment A). The City of Modesto, which challenged the CVRA’s constitutionality, ultimately paid \$3 million to the plaintiffs’ attorneys. The City of Palmdale, which also aggressively litigated a CVRA claim, ultimately paid \$4.5 million in attorneys’ fees. More recently, earlier this year the City of Santa Clara lost a CVRA trial, and the plaintiffs are seeking over \$4 million in attorneys’ fees. Importantly, these figures do not include the tens of millions of dollars government agency defendants paid for their own attorneys and associated defense costs. Also important to note is that these cities - like all other CVRA defendants - ultimately ended up converting to district elections.

Due to the combination of the CVRA’s low burden to trigger mandatory districting and its mandatory attorneys’ fees provision, all CVRA cases that have been filed have ended with the defendant governmental agency implementing a district election system and paying some or all of the plaintiffs’ attorneys’ fees. Further, where a lawsuit is filed, the City often loses control of the district drawing process, and the plaintiff or judge ultimately draws the districts.

In response to the substantial costs imposed upon cities and other public agencies in defending CVRA suits, in 2016, the California Legislature amended the Elections Codes to simplify the process of converting to by-district elections and to provide a “safe harbor” process to protect agencies from litigation. If a city receives a demand letter alleging violations of the CVRA, then the city is given 45 days of protection from litigation to assess its situation. If the city then adopts a resolution declaring the Council’s intent to transition from at-large to district-based elections (Attachment B), outlining the steps to be taken to facilitate that transition, and estimating a time frame for action, then the CVRA prohibits a potential plaintiff from filing a CVRA action for an a 90-day period “safe harbor” (Elec. Code § 10010(e)(3)).

Here, the City has not received a demand letter from a prospective CVRA plaintiff, but neighboring jurisdictions have received such letters. If the City Council decides not to adopt the proposed resolution and, instead, waits until a demand letter is actually received, the author of the letter is entitled to demand reimbursement of up to \$30,000, even if the City adopts a resolution of intention and begins its transition to by-district elections immediately following receipt of the letter. If, instead, the City Council follows staff’s recommendation, by adopting the resolution *before* a letter is received, the City would not be liable for the reimbursement payment, thereby saving \$30,000 (Elec. Code §

10010(e)(3)(B)). Adopting the resolution would also activate safe harbor period.

The staff recommendation is not based on any admission or concession that the City would ultimately be found to have violated the CVRA; rather, the risks and costs associated with protracted CVRA litigation - particularly in light of results in all other cities that have fought to retain at-large voting - cannot be ignored, and further, the City has the opportunity to save an additional \$30,000 and control of its own process if it proactively moves forward with what may be considered an inevitable outcome. The public interest may be ultimately better served if the City converts to a by-district electoral system if converting to that system avoids a significant attorneys' fees and cost award. If the City Council decides to, at this time, transition to a pure by-district system - where all Councilmembers are elected by only the voters of the district in which they reside - the City will be insulated from liability from all future CVRA claims (Elec. Code §§ 14026, 14027(a)).

The attached resolution, if approved, would affirm the City Council's intent to adopt a by-district election system, but it does not commit the City Council to ultimately adopt such an election system. The draft resolution also includes, as an attachment, the proposed timeline for implementing transition to by-district elections, including the tentative schedule for the required public hearings.

Process for Establishing Districts

Upon adoption of the resolution, the City Council would be required to hold a total of five public hearings before a by-district electoral system can be adopted:

- two must be held before any proposed district boundaries have been drawn,
- two must be held after proposed district maps have been generated, and finally,
- the City Council must consider the actual ordinance that would establish district based elections at a fifth public hearing. (The fourth and fifth public hearings can occur at the same meeting.)

Staff is recommending the following schedule in order to provide for public input and complete the first reading of the ordinance before the end of the 90 day safe harbor period.

District Election Timeline

November 27, 2018	Public Meeting City Council adopts resolution setting forth intention and timeline for adopting by-district elections.
January 8, 2019	Public Hearing No. 1 Overview of the process and city demographics. Gather input from public to be used in establishing options for district boundaries. Adopt resolution setting forth mandatory and permissive districting criteria.
January 17, 2019	Public Hearing No. 2 Second hearing to gather input from public to be used in establishing options for district boundaries.
Minimum 7 days before third public hearing	Draft maps available for public review.
February 4, 2019	Public Hearing No. 3 Public hearing to discuss and take public comment on draft maps and proposed sequence of elections.
February 12, 2019	Public Hearing No. 4 Second public hearing to discuss and take public comment on draft maps and proposed sequence of elections. Public Hearing No. 5 Introduce ordinance for first reading establishing by-district elections, district boundaries and transition plan/sequence of elections.
February 26, 2019	Public Meeting Second reading and adoption of ordinance establishing by-district elections, district maps and transition plan/sequence of elections.

In addition to the statutorily required public hearing dates (as shown on Exhibit 1 of the attached Resolution), staff has identified Monday, January 28, 2019 as a date for an optional community meeting, where additional input from the community could be gathered for use in establishing options for district boundaries, feedback on the draft maps and feedback on the transition to districted elections.

Districting Consultant

The City has also retained an expert districting consultant and demographer to evaluate the City's position under the CVRA and to advise on risks and potential liabilities. Douglas Johnson, an expert with National Demographics Corporation ("NDC"), has extensive experience drawing districts in compliance with the requirements of both the FVRA and CVRA. If the City Council elects to transition to by-district elections, Dr. Johnson and his staff at NDC will draw proposed districts after the first two public hearings and present the maps to the City Council. NDC will draw these maps based on input from the City Council, the public, and compliance with all applicable law. The City Council will have the ability to request modifications to the options presented, or a different option entirely.

Transition to Districts

If the City Council ultimately adopts district elections, that change would be implemented in two phases. Specifically, two district seats would be placed on the ballot in November 2020, and the remaining three seats would be placed in the ballot in November 2022. The City Council would determine which district seats are placed on the ballot in each year. Regardless of which district seats are selected for each year, the Government Code prohibits cutting short any existing terms. In other words, all City Council members elected in 2018 are entitled to continue to serve "at large" until 2022.

RELATIONSHIP TO CITY PLANNING DOCUMENTS

Staff has evaluated the agenda item in relationship to the City's strategic and visioning documents and finds the following

Council Priorities - This item does not relate to the Council Priorities

Sustainability Plan - This item does not relate to the Sustainability Plan.

Economic Sustainability Plan - This item does relate to the Economic Sustainability Plan.

General Plan - This item does relate to the General Plan.

2018-19 Budget - This is an unbudgeted item, and therefore does not relate to the 2018-19 Budget.

Youth and Family Master Plan - This item does not relate to the Youth and Family Master Plan.

CEQA REVIEW

In accordance with the California Environmental Quality Act (CEQA), this matter is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment in accordance with Section 15061(b)(3) of the Guidelines. The proposed action, beginning the transition from at-large to by-district elections, does not result in a physical change to the environment that can be associated with the action. Therefore, CEQA does not apply, and no

environmental review is needed.

PUBLIC NOTICE PROCESS

This item has been noticed through the regular agenda notification process. Copies are available at the City Hall public counter, the Youth Activity Center, the Alexander Hughes Community Center, and the City website.

Submitted by:

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Rutan and Tucker
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Reviewed by:

Tara Schultz
City Manager

Attachments:

- A - Table of Results of CVRA Litigation
- B - Resolution of Intention