



City Council Meeting Transcript

July 14, 2020

City Attorney Curley: As the Council asked, I will give hopefully at least, a foundational snapshot of what the law is, what it applies, where you are. I'm going to go back in time to 1988 when the City incorporated, it adopted your Municipal Code and that continues to stand as viable law. There have been some changes but the Code is enforceable, legitimate, and proper as always. Ten years later in 1998, several communities in relation to a change in State Law started looking at term limits. The City of Mission Viejo City Council then formed a sub-committee and working with the community at large, and whoever was on the committee, they came up with an ordinance. A free-standing specific ordinance that addressed only term limits, meaning how long can you serve in office ([ballot measure analysis available here](#)). It said you could have three terms. It tried to define those terms by temporal measurements and it noted that on the rolling basis you always elected three and then two. That every two years somebody would be elected. It did not say all five and if you look at the record, you look at the ballot statements, you look at everything related to it, it is clear as a bell. We can put that up on the City website. No one should have any difficulty understanding what that initiative did. That initiative is what everybody has referenced, [Municipal Code Section] 2.04.010 that has only to do with the fact that this community said elected Council Members should not serve more than three terms consecutively, that you take a year off and if you get re-elected again you have another run at three terms. That's all section 2.04.010 applies to. When you look at State Law, which is also echoed in the Municipal Code as to actual length of term, that is four years. That is section 2.04.140, that is also referenced in the ballot measure for the 1998 Term Limit Election to make sure no one was confused. So, digging back just briefly into history really solves all this as to what 2.04.010 does and what it doesn't do. So, we move forward from there. In 2018 the City was sued by the Southwest Voters Registration entity, a primarily Hispanic Latinx group that said the City is racially polarized. We started the process to look at districting. At the time the Council said, "you understand we want to have a legitimate, a real-world solution not some knee jerk let's do 'just districting' to say we've done something, let's find the thing that works." Our opponents, the people who sued us, the Latinx group said "well you know we understand but it's easy to do districting." We had our demographers look and determine that doing districting was a sham. It gives our minority voters in this town no real opportunity to have their election voices heard. We mentioned that and brought that up with opposing Counsel who said "no you are wrong, let me have my demographic people look at it." They did and came back and said "you guys are absolutely right. This City is very unique, you have such a small minority population located in such a manner that under the Voting Rights Act you cannot form a minority-majority district." That's how the voice of the minority population is heard. We said "well what is the best solution?" We looked at cumulative voting, we looked at limited voting, we looked at every form of alternative voting out there. We've worked with the Fair Vote Group, we've looked at everything, we looked across the Nation at what other communities have done. What appeared most viable and what Plaintiffs thought most viable was cumulative voting. It's been done in other parts of the Nation, it's never been done in California. You are very cutting edge in pursuing it. The parties all agreed, you know what? We're willing to take a shot let's try to do it. And we have heard

about the Secretary of State's concerns and yes, he has valid concerns as the Chief Elections Officer. Now here is where the confusion or friction comes. The California Voting Rights Act in Section 14029 says that a judge can either look to districting or any remedy tailored to solve the problem. To cure that racial polarization. We all agreed, both sides that districting would not cure it. Since the statute says a judge can tailor and order the solution, that is what we gained. 2018, we have a stipulated judgement to pursue cumulative voting because it's the right thing. This Council understood and believes it will give the minority population, the people of color, an actual legitimate vote. Not just a "sham" as we've been calling it of districting. Again, as Plaintiff Counsel agrees, in discussing with the Secretary of State, they've kind of taken the position, "it doesn't expressly say that, so we the Secretary of State are not going to be the ones to say yes that's fine." They said, "Mission Viejo you do the work, you do the analysis, you do the programming to put it all together. We will review it." Now people, I got mentioned as mischaracterizing... I looked at it as they would be working with us at the Secretary of State's Office, I was mistaken. They will not work with us. They will review our work but they will leave it all to us. So, there was a question, do they collaborate with us or are they an oversight? We thought collaboration they thought oversight, there is the mischaracterization. So, we are now working, Plaintiff's Attorneys and me, to put together the proper package to be able to submit to the Secretary of State. We know the Registrar of Voter has told the City Clerk and us that their new machines can handle cumulative voting, no problem. All the Secretary of State has to do is tell our local ROV Neal Kelly, it's okay by him and they can do it in a heartbeat. So, we are now I will call it, working out the program, working out the process, and no we are not starting from scratch. The premiere city doing this is Port Chester in New York. Port Chester was ordered to do cumulative voting after a violation of the Federal Voting Rights Act upon which the California Voting Rights Act is modeled, so it dovetails very nicely. We have about six inches of paper from Port Chester. Their whole voting protocol, we are looking at it and trying to convert mutually into a California friendly process. When you are doing all of that, it does not move quickly. So, we come to the time when we have to call an election which was done on the public agenda two meetings ago. Nothing in Closed Session. In the Closed Session was litigation direction not the calling of the election and not extending the terms which didn't need to be extended because as we noted, 2.04.140 is a four-year term section. So, we are working... we will be talking with the Judge, both of us, mutual actions, the Attorneys for the Voters Rights Group and us are walking in collaboratively. This is a joint effort by this City, this City Council and the Counsel for the minorities to do the right thing for the minorities. Not to disenfranchise them, that's what a district would have done, but in fact to work hard to be the first City in the State to do what other cities in other states have done to best serve this community. Again, we are proud of it, we are working hard, opposing Counsel is with us. I mean if anybody was going to be upset with the delay or anything it would be the guys who sued us. They are 100% with us. So, I hope this information will have people perhaps rethink their thoughts that they have been disenfranchised or the City is doing the wrong thing. This City is the strongest in the State right now trying to give minority voters the best chance at a vote. We would love these folks, rather than to throw rocks at us, to come help us. Come support us, come work with us. They've obviously got lots of energy and enthusiasm and they're smart people. Help us advance this – don't make it an impediment. And to that I leave it that, again, nothing untoward has been done. All laws have been satisfied carefully. We respect voting as much or more than perhaps anybody and that is why we are

being so careful in trying to give our minority population the best opportunity to have their voices heard. I can't say it any more specifically. And you know, I feel some passion... the Mayor, the City Manager, the whole Council... we've been butting heads for two years trying to advance this. It's one of those "no good deed goes unpunished" moments. The harder we try, the more people seem to mistake that for delay, rather than hard effort. And okay, I'm done.

Council Member Bucknum: Mr. Mayor, I would ask Bill... one thing I'd like him to just talk through is the election of three people, the three folks that are in question – myself, Council Member Rath and Sachs. On the two-year term and why it has fallen back to four-year and could you please touch on that.

City Attorney Curley: Certainly. The two-year term in the 2018 election was driven not by [Municipal Code Section] 20.04.010, it was driven by the Stipulated Judgement that the Judge had approved. The Judge said "City of Mission Viejo, you need to have in place the cumulative voting by 2020." Now mathematically, this is where statistics and math come in. For cumulative voting to work, all five offices have to be elected at the same time. You can't stagger them 3-2. So, we did not change our Municipal Code from the four-year term, but we said in respect to this Stipulated Judgement, this court order, we have to go for two-year terms which we did because we were aiming and thought, with all best efforts, that we would have cumulative voting in place for 2020. Well, we hit the headwinds. It's not able to be done and again, not for lack of effort, but when you're breaking new ground on a statewide voting system, it's not the easiest thing. Plaintiff's Counsel and I said "Look, we're going to need another two years to pull this off. Current status is all of our Council Members have a four-year term. The only reason it would have been two-year is because of that Stipulated Judgement. Now people note: "well, a resolution says this" and yes, we very much respect and honor resolutions. But in the hierarchy of government actions there is an ordinance. An ordinance is a law of the city. A resolution is lesser; it is policy statement. It is recitation of facts and circumstances but not a law. Lower than that are minute motions which are basically expression of a thought or a position. So, we had a resolution that was echoing a court order and had we been able to accomplish as we hoped, everything would have been just ducky. All five would be up, we'd be sailing along into cumulative voting. Because cumulative isn't in effect, we can't just scrape off and have no voting system so we maintain every government of any type looks for consistency. We are maintaining this last hurrah, if you will, of the codified ordinance on our election process. That is with the agreement of the attorneys representing those who sued us. Everybody is in agreement, it just needs to happen this way to avoid chaos, to avoid confusion, to avoid a process that does not yet exist. Cumulative doesn't exist so having all five up would truly be unregulated, if you will. The Secretary of State would probably not like that as much as he may not like the concept of cumulative voting. So, we are maintaining. We've changed nothing. It's been noted through the last year, we've had speakers say: "you've not changed your city voting ordinance." Absolutely, because we're not going to change something until we have the new thing to replace it with. Because everybody who is aware of the litigation and the process knows it's working in good faith and this last effort, with consistency, is the way to go. So, we are spot on on statute. We are spot on on ordinance. We are consistent with what we are advancing to the court. We've asked the court to kick everything, I'll say two years to allow it to be completed. It's mutual actions between all the parties. So, those that are actually in the fight

are all comfortable and on board. Those that we perhaps need to draw in, educate more, and bring on to our side as allies, rather than folks thinking that we're up to no good... They're the ones that don't have all the facts so they've come to a different conclusion. We'd love to educate them, again, and get them to help us push this thing through. It would be stupendous for the state, stupendous for the minority voters, stupendous for people of color. This is an opportunity to create something that would be so good for California. Help us, don't attack us.

Council Member Kelley: I just want to make sure that our residents understand, as Mr. Curley has said, that we have been working on this. In fact, I think the latest communication, between you - your letter and your conversation with the Secretary of State - is that he cannot approve it at this time. It would have to be a legislative change and it would have to be a change in the law. And so, this is not something that we have just been dragging out. There has been conversation, there has been work that's gone on. And I think that our residents need to know is that a real easy fix to this, which is legal and would get us out of all this hot water with being in violation of the CVRA, is districting. District voting. That would be the easy fix. Like someone was saying, "well Lake Forest did it in no time at all." Yes, yes, we could do that but while that would fill the letter of the law, it would not fulfill the spirit of the law. The spirit of the law is to do what we can to give more voice to minority voters. And so, I think our residents need to know that we just have two choices: cumulative vote or districts. It's going to be one or the other. I think right now I need to say that, to avoid any confusion, with the two seats that are up in November, if we go the cumulative route, then that will be two-year terms. But if we go the district route, it will be four-year terms. So, I don't want to have people coming back to us in two years, if we do districts, saying "oh you extended your terms, or Council Members extended their terms." I think it's really important for our residents to know... and I have answered every email that's come in, every question that we've received on this. And I'm doing my best to help people to understand this. It is a confusing issue but again, the easy fix would be districts. The other choice is cumulative and we (inaudible) one or the other. I just encourage everyone, if you have any questions, to contact us, contact the Council Members for the City. We are (inaudible)... working on information for an article and I encourage you to read it and stay informed. Thank you.

Council Member Bucknum: I just want to say, one thing that was not said is that there were a lot of complaints about having the public involved. We had workshops when this came up. We had the public involved, and do you know what the public said? They said, "fight Mission Viejo. We don't want districts. That doesn't solve the problem." That was overwhelmingly what people came and said and sent in. We had meetings, we had workshops. So please know that. Maybe you weren't involved but know that that happened and we moved forward with great input from the City.