



CITY COUNCIL AGENDA REPORT

MEETING DATE: April 19, 2016 **ITEM NUMBER:** PH-2

SUBJECT: PLAN FOR COMMUNITY PARTICIPATION IN CREATION OF DISTRICT BOUNDARIES FOR DISTRICT ELECTIONS

DATE: April 19, 2016

FROM: CHIEF EXECUTIVE OFFICE/CITY CLERK DIVISION

PRESENTATION BY: BRENDA GREEN, CITY CLERK

FOR FURTHER INFORMATION CONTACT: BRENDA GREEN/714-754-5221

RECOMMENDATION:

Staff recommends that the City Council:

1. Hold a public hearing regarding City Council voting district formation and a community participation plan for gathering public input on district boundaries;
2. Approve a community participation plan; and
3. Direct staff to implement the plan.

BACKGROUND:

On December 21, 2015, the City received a letter from Attorney Kevin Shenkman alleging that the City's at-large election system is illegal due to the presence of racially polarized voting (RPV), which impairs the ability of minority citizens to elect the candidate of their choice to the City Council. The City reviewed and researched the allegations contained in the letter.

The California Voting Rights Act (CVRA) authorizes lawsuits challenging at-large elections that are applied in a manner that impairs a minority group's "ability to elect" its chosen candidates, or "ability to influence" the outcome of an election (Cal. Elec. Code § 14027). A violation of the CVRA does not require proof of discriminatory intent. Rather, a violation of the CVRA is established if it is shown that RPV occurs in elections for members of the governing body or in elections incorporating other electoral choices by the voters of the political subdivision (Cal. Elec. Code § 14028(a)). In determining whether there is a violation, one thing the court can consider is the extent to which "candidates who are a member of a protected class and who are preferred by voters of the protected class, as determined by an analysis of voting behavior, have [or have not] been elected to the governing body" subject to the CVRA challenge (Cal. Elec. Code § 14028(b)).

DISCUSSION

The presumption underlying the CVRA is that if a city had a by-district system, then minority candidates who are not elected under the at-large electoral system would, instead, be able to get elected to the City Council. As such, a violation of the CVRA allows a court to mandate that a city change to a district-based electoral system.

If a city is found liable for violating the CVRA, a court must implement “appropriate” remedies (including the imposition of district-based elections) that are tailored to remedy the violation (Cal. Elec. Code § 14029). “District-based elections” means a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.

Put another way, a court is not limited to the imposition of a by-district electoral system as the only remedy. The statute is open-ended in the available remedies for a court to consider, limited only by what is “appropriate . . . to remedy the violation.” *Id.* Some courts have ordered implementation of district-based elections, selected the district boundaries in lieu of the city council doing so, required special elections to replace all current council members, and imposed other remedies where violations have been found.

A successful CVRA plaintiff is entitled to reasonable attorneys’ fees and litigation expenses, including, but not limited to expert witness fees and expenses (Cal. Elec. Code § 14030). Prevailing defendants cannot recover any fees or costs, unless the court finds the action to be frivolous, unreasonable, or without foundation. *Id.*

Of the numerous CVRA cases which have been filed throughout the State, only one city has successfully had a case against it under the CVRA dismissed. Although that city voluntarily placed a measure on the ballot to allow for district-based elections which passed, the city was still ordered to pay attorneys’ fees and costs just under \$1 million. Other cities that have gone to trial and lost CVRA cases have paid attorneys’ fee orders upwards of \$3 million, not including their own fees for defense. In sum, becoming involved in CVRA litigation is expensive and fraught with peril.

In Costa Mesa’s case, with the direction of City Council, the City Attorney’s Office has negotiated a tentative agreement with the potential plaintiff that will avoid litigation and all of its attendant risks and expenses, while preserving the rights of Costa Mesa’s citizens to affirmatively vote on the issue of district elections and to maintain control of the process of selecting district boundaries.

For a general law city the size of Costa Mesa, there is only one option for establishing district-based elections without litigation: placing a measure on the ballot to allow registered voters to determine whether or not to establish district-based elections. Such a ballot measure would describe how the system would operate and provide geographical boundaries for the proposed districts. The geographic districts formed must be roughly equal in population according to the latest federal decennial census. Factors which may be considered in creating districts are: (1) topography; (2) geography; (3) cohesiveness, continuity, integrity, and compactness of territory; and (4) community of interest of the districts. One Council member will be chosen for each district only by the voters residing in that district.

In essence, the City had two choices in responding to Mr. Shenkman's CVRA claim. The first was to decline to take any action and then defend any litigation that was filed. The second was to allow the citizens to fully participate in the decision by engaging in a public process to identify proposed district boundaries and using a ballot measure to get voter approval of districts. Elections would continue to be staggered so that some Council members will be selected at one election and the remaining Council members will be selected at the next election.

Pursuant to the draft settlement agreement being considered by the Council, the City would agree to contract with Compass Demographics to design one or more electoral maps for public and Council consideration. The process for developing the electoral district map will include, at minimum, two public hearings on a proposal to establish the district boundaries prior to a public hearing at which the City Council will vote to approve the electoral district map. The draft settlement agreement requires that, on or before August 12, 2016, the City Council will place on its agenda for action a resolution to place a Ballot Measure on the Statewide General Election Ballot to occur on November 8, 2016, asking whether Costa Mesa should change from an at-large method of election to a by-district method of election with the proposed district lines to be included in the measure and requiring by-district elections for City Council seats for the November 2018 election and thereafter. The City Council must authorize itself to make an argument in favor of the ballot measure and is not permitted to make a ballot argument in opposition to the measure as an official Council action. Finally, the City will pay as a settlement all costs, expenses, and fees it incurred in preparation for bringing litigation in this matter.

In order to immediately commence the districting process to be able to timely place a districting measure on the ballot, the City has entered into an agreement with Compass Demographics to direct the process of creating districts. In consultation with David Ely, principal of Compass Demographics, staff has designed a community participation plan to gather input on voting district boundaries. As a result, the following community participation plan is recommended, as further set forth in Exhibit A.

Meet with the Expert

Public input will begin with a series of meetings for interested stakeholders with demographics mapping expert David Ely from Compass Demographics. Mr. Ely will hold "office hours" at City Hall. He typically uses sample maps as a starting point to give an idea of how equal population districts might be distributed. The sample maps are not proposals for district boundaries but are rather illustrative of several ways that legal districts could be drawn. Mr. Ely will project the sample maps on a screen so stakeholders can watch him redraw boundary lines as they request, while he works with them and advises them how to achieve legal results and equal population districts as close as possible to their interests. The City's population from the 2010 Census is 109,960. A Costa Mesa map with United States 2010 Census population figures by Census block groups will be available to facilitate stakeholder efforts to craft equal population districts.

Mr. Ely develops data tables to accompany each sample map to convey demographic information on any iteration of districts. The data tables contain raw population numbers along with other information expressed in percentages, including voting age population by ethnicity, Spanish and Asian surname registered voters, and Spanish and Asian surname voter turnout.

Times for meetings with the expert will be identified and anyone may participate, but the City will proactively invite key stakeholders who have previously shown an interest in the issue such as City Council members, and other local elected officials such as school board members. Stakeholders may meet with Mr. Ely individually or with a small group of their choosing; room capacity and effective map drawing interaction will likely limit the maximum group size to approximately six individuals. The City Clerk's office will make reservations for appointments. The initial Meet the Expert sessions are expected to be conducted in late April or early May 2016. The schedule for the Meet the Expert sessions will be posted on the project webpage.

Community Meetings

Following the small meetings with key stakeholders, public input will continue with a first round of open community meetings. The meetings will begin with an educational presentation to inform the public about voting districts and the process for initial formation of district boundaries, followed by small group interaction with sample maps led by outreach workers to elicit participants' ideas about communities of interest and where district boundaries should be drawn.

At least two meetings with identical agendas and presentations will be held within a short time frame in different parts of the community and at different times to accommodate community members who are interested in voting district formation.

A second round of community meetings will be held in early summer.

Public Hearings

State law requires at least three public hearings for any voting district formation process. The City must hold at least two public hearings on a proposal to establish voting district boundaries prior to a public hearing at which the City Council votes on the proposed boundaries that would be included in a ballot measure. The City, therefore, will hold at least two additional public hearings during the districting process:

- Consideration of the district formation process – April 19, 2016
- Report on community meetings round 1 – not yet scheduled.
- Presentation of proposed voting districts – not yet scheduled.
- Adoption of proposed voting districts – not yet scheduled.

It is anticipated that multiple proposed district maps will be developed through meetings with the expert and the first round of public meetings for presentation at the second public hearing. Additional City Council meetings and/or public hearings may be held prior to the City Council adoption of proposed voting districts to include in the proposed ballot measure.

Outreach Materials

The City will develop brief instructions for those interested in drawing their own districts to elicit input that will be most helpful in determining district boundaries. The five main points will be:

- Neighborhoods or Communities. Outline and identify areas that you believe function as neighborhoods or communities that should be kept together in a single district.
- Connections. Identify neighborhoods or communities that you believe share common interests and should be combined within a district.
- Barriers. Identify physical features such as streets, utilities or other elements that you believe would act as natural barriers between districts.
- Divisions. Identify communities that you believe are dissimilar and should be put into separate districts.
- Points of interest. Identify significant locations or points of interest that are of particular interest or concern to individual communities and explain their significance.

Staff will be developing outreach materials for use on the City website and other avenues of communication. A fact sheet, PowerPoint information presentation, frequently asked questions (FAQs) document, press releases, and other materials will be used to educate the community and request their input.

Communications about districting will be released in English, Spanish, and Vietnamese.

Once the City Council approves the community participation plan, the City will begin media releases, e-blasts and other contacts to disseminate the information and invite participation. Staff and consultants will develop a contact list to invite people to register for further information about the district formation process. Announcements about the plan will also be made to organizations such as:

- City eNewsletter registrations
- Community organizations and clubs directory
- Social service agencies
- Boards and commissions
- Neighborhood Watch
- Chamber of Commerce
- School districts and colleges
- Homeowners associations and historic neighborhoods
- Foundations

Information will be posted at major public buildings, on the website, and on the municipal access television channel. The new outreach materials will be placed on the City website.

ALTERNATIVES CONSIDERED

Council could determine not approve the community participation plan or not to go forward with a proposed ballot measure, and instead take the risk of litigation being filed against the City.

FISCAL REVIEW

Use of Compass Demographics for consulting services in connection with the development of district maps will cost the City approximately \$20,000. Specific costs for implementation of the community participation plan will be developed by the City Clerk and presented to City Council for approval following the City Council's consideration of the proposed plan. Costs will include advertising, translation services, staff costs for meetings, and other advertising costs.

LEGAL IMPACT

The City Attorney has reviewed this matter and concurs with the recommended actions.

CONCLUSION

Staff recommends that the City Council (1) hold a public hearing regarding City Council voting district formation and a community participation plan for gathering public input on district boundaries for a proposed ballot measure; (2) approve a community participation plan; and (3) direct staff to implement the plan.

BRENDA GREEN
City Clerk

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Attachment: A – Community Participation Plan.