



CITY COUNCIL AGENDA REPORT

MEETING DATE: July 12, 2016

ITEM NUMBER: PH-1

SUBJECT: VOTING DISTRICTS FORMATION

DATE: JULY 6, 2016

FROM: CHIEF EXECUTIVE OFFICE/CITY CLERK DIVISION

PRESENTATION BY: RICHARD L. FRANCIS, ASSISTANT CEO
BRENDA GREEN, CITY CLERK
KIMBERLY HALL BARLOW, CITY ATTORNEY'S OFFICE

FOR FURTHER INFORMATION CONTACT: BRENDA GREEN, CITY CLERK, 714-754-5225

SUMMARY

The City Council is holding its third public hearing on the formation of voting districts in the City of Costa Mesa ("City"). After closing the public hearing, the City Council must select a final voting district map and accompanying ordinance to be included on the November 2016 general election ballot and adopt resolutions in support thereof.

RECOMMENDATION

Staff recommends that the City Council:

1. Open the public hearing, receive public input, and close public hearing; and
2. Select a final City Council voting district map ("Voting District Formation Map");
3. Order placement of the measure on the November 8, 2016 consolidated municipal election by adopting the following resolutions:
 - a. Resolution 2016-59 (Alternative 1 or Alternative 2): Calling and giving notice for the holding of a General Municipal election to be held on November 8, 2016 for the submission to the voters of an ordinance electing city council members by district (Attachment 7); and
 - b. Adopt Resolution 2016-60 (Alternative 1 or Alternative 2): Requesting the Orange County Board of Supervisors to Consolidate a General Municipal Election to be held on November 8, 2016, for the purpose of submitting to the voters of the City of Costa Mesa a question relating to electing city council members by district (Attachment 7); and
 - c. Adopt Resolution 2016-61 (Alternative 1) or Adopt Resolutions 2016-61 and 2016-62 (Alternative 2): Authorizing written arguments for or against the proposed ordinance, setting priorities for filing written arguments, determining the authors

of the written arguments, and directing the City Attorney to prepare an impartial analysis (Attachment 7).

4. Provide direction on informational mailers.

BACKGROUND

In April 2016, the City of Costa Mesa (“City”) entered into a settlement agreement consenting to place a measure on the November 2016 general election ballot allowing citizens to vote for city council members by district in accordance with the California Voting Rights Act (“CVRA”).

Since then, city staff, David Ely of Compass Demographics and Arellano Associates conducted community outreach, received input from the public, and prepared maps in accordance with the CVRA and the public’s input. The City Council received public testimony, and presentations by Arellano Associates who summarized the community participation process, and David Ely who summarized the voting district map formation process at the second public hearing on July 5, 2016. The community outreach and public participation process is more thoroughly described in July 5, 2016 Staff Report and “Costa Mesa Voting District Formation Summary Report” (Attachments 1 & 2.) The City Council considered four (4) proposals prepared by Compass Demographics and requested further consideration of Proposal 3 (Attachment 3); which provides for six council voting districts and a directly elected mayor. Tonight is the third and final public hearing wherein the City Council must adopt a district map for voters to consider on the November 2016 ballot, the proposed ordinance and measure language, and resolutions in support thereof.

DISCUSSION

The City’s current system of electing council members is codified in Title 2 Chapter II entitled “City Council Generally” which provides for a five-member city council elected at large with the mayor and mayor pro tem appointed every two-years by fellow councilmembers. Title 2 Chapter II currently limits city council members to a maximum of two (2) consecutive four (4) year terms. In moving from an at-large system to districts, the city council may submit to voters a map consisting of five, seven or nine districts; or four, six, or eight districts, with an elective mayor...”¹

At the July 5, 2016 meeting, the City Council requested further consideration of a map consisting of 6 council member districts with a mayor elected at-large for a maximum of two (2) consecutive terms of two (2) years each. Under the CVRA, the criteria used in creating districts include equal population density within each district, topography, geography, *cohesiveness*, contiguity, compactness, integrity of territory and *communities of interest*. Ultimately, the CVRA’s intended goal when forming districts is to increase opportunities for racial minorities by increasing the likelihood that one will be elected to serve that district. According to the demographer at the July 5, 2016 meeting, Proposal 3 would still comply with the requirements under the CVRA, in part, by providing a predominantly Latino district within district 4.

¹ California Government Code Section 34871.

Ordinance Amendments

If the City Council opts for Proposal 3, Title 2 Chapter II entitled “City Council Generally” must be amended by voters’ approval to reflect the “6+1” along with other amendments required by the California Voting Rights Act, the Settlement Agreement, City Council direction and other provisions applicable to elections.

A question has been raised as to whether the proposed districting ordinance may address the issue of term limits for the new position of directly elected Mayor. The question relates to the “single subject rule.” Cal. Const. art II, §8(d). Under this provision, an initiative measure embracing more than one subject may not be submitted to the electors or have any effect.² However, an initiative measure will not violate the single-subject rule if, despite its varied collateral effects, all of its parts are “reasonably germane” to each other.³ The question then is whether the number of terms a directly elected mayor may serve under the new districting system is an appropriate question for voters to consider in the same ordinance as the one creating the districts and directly elected mayor position.

In analyzing this question, a number of questions arise. First, if the term limits for a directly elected mayor were not included in the ordinance/measure, would the new ordinance, if adopted, conflict with the existing code section 2-24 regarding term limits? It could certainly be argued that there is a conflict between the adopted ordinance and existing section 2-24 with respect to the language providing that city council members shall serve maximum of two consecutive terms “of four (4) years each.” The reason this presents a conflict is that the directly elected mayor is also a member of the city council, and the mayoral position will not be for four years, but for two. So in the absence of addressing term limits in the ordinance creating the districts and position, it will be at a minimum unclear what limits apply to the directly elected mayor, and arguably create a direct conflict between the terms identified in the new system with the existing code.

Even if the new ordinance does not create a conflict with existing law, would it leave the interaction of the new law with the old unclear? Again, this would arguably be the case. Would a Council Member who had served two consecutive four year terms be eligible to run for directly elected mayor under existing code section 2-24? Arguably the answer is “no.” Since section 2-24 as it currently reads is silent on the interaction between existing four year terms for council members and two year terms for a directly elected mayor, at a minimum, this would create an ambiguity as to who is eligible to run for mayor and how many terms they may serve. Would it be two terms of two years or four terms of two years?

Because addressing these issues in a single measure resolves all possible conflicts and ambiguities, we believe the issue of term limits for the directly elected mayor is reasonably germane to the other issues to be placed on the ballot.⁴ Therefore, we have prepared a proposed ordinance and measure reflecting adoption of six districts, with a

² Cal Const art II, §8(d).

³ *Senate of the State of Cal. v Jones* (1999) 21 Cal. 4th 1142; *Amador Valley Joint Union High Sch. Dist. v State Bd. of Equalization* (1978) 22 Cal. 3d 208; *San Mateo County Coastal Landowners' Ass'n v County of San Mateo* (1995) 38 Cal. App. 4th 523.

⁴ If the City did not have existing term limits for council members, the outcome might be different. In that scenario, there would be no conflict or ambiguity.

directly elected mayor, the mayor to serve two terms and be subject to term limits of two terms. This is our recommended course.

Should the Council disagree with our recommendation, it could put two separate measures on the ballot. One would establish the districting and directly elected mayor, and one would establish the mayoral term limits.

If the Council placed two separate measures on the ballot, one for the districts and directly elected mayor, and one to address term limits for the directly elected mayor, this could lead to voter confusion, voter fatigue, and extra expense. However, perhaps the biggest concern is if the district/directly elected mayor measure passes, but the term limit measure does not, the conflicts and ambiguities raised above would remain unresolved. Therefore, we do not recommend this alternative.

One Measure

A brief summary of the amendments to Title 2 Chapter II to be presented to voters include:

Sec. 2-20 which currently calls for a five member council elected at large would be repealed in its entirety and replaced with a provision requiring six (6) council members elected by-district with voters in each district voting for a resident of that district for four year terms, and a mayor elected by the voters city-wide. Section 2-20 further enumerates residency requires for council members elected by district along with requirements for filling vacancies, requirements for changing boundaries of council districts, makes clear that current office holders shall continue to hold office until their terms expire, and provides a sequence of electing councilmembers under the new district format.

Section 2-20.5 describes the specific boundaries in the event Proposal 3 is chosen.

Section 2-22 currently provides appointment of mayor and mayor pro tem. However, if the "6+1" map is adopted, Section 2-22 must be amended consistent with having a directly elected mayor.

Section 2-24 currently limits city council members to serving two consecutive four (4) year terms. Based on council's direction, new Section 2-25 would establish limits for the directly elected mayor position of two (2) consecutive terms of two (2) years each and would provide that this would be in addition to the council member terms established in Section 2-24.

As indicated above, the question was raised whether including a two (2) term limit for the directly elected mayor is authorized. Setting term limits for a directly elected mayor under the new system is appropriate under the Government Code and California Constitution. Specifically, the Government Code provides that when forming districts with a directly elected mayor, the voters must decide whether the mayor shall serve a two-year or four-year term.⁵ Voters may also limit the number of terms that may be served by members of the city council and/or an elected mayor.⁶ If approved, the new term limit only applies to future elected mayors. See Attachment 4.

⁵ Government Code Section 34900.

⁶ Government Code Section 36502(b).

Two Measures

If the Council opts to separate the term limits issue from the remainder of the districting measure, the two measures are summarized below.

1. **District and Directly Elected Mayor Measure.** Section 2-20 which currently calls for a five member council elected at large would be repealed in its entirety and replaced with a provision requiring six (6) council members elected by-district with voters in each district voting for a resident of that district for four year terms, and a mayor elected by the voters city-wide. Section 2-20 further enumerates residency requires for council members elected by district along with requirements for filling vacancies, requirements for changing boundaries of council districts, makes clear that current office holders shall continue to hold office until their terms expire, and provides a sequence of electing councilmembers under the new district format.

Section 2-20.5 describes the specific boundaries in the event Proposal 3 is chosen.

Section 2-22 currently provides appointment of mayor and mayor pro tem. However, if the "6+1" map is adopted, Section 2-22 must be amended consistent with having a directly elected mayor. In order to minimize potential conflict with existing section 2-24, this language also includes a provision that the limits in section 2-24 do not apply to the directly elected mayor position. See Attachment 5.

2. **Mayoral Term Limits**

This measure would add a new Section 2-25 which would establish limits for the directly elected mayor position of two (2) consecutive terms of two (2) years each and would provide that this would be in addition to the council member terms authorized by Section 2-24. This measure would also specify that it only takes effect if the districting/directly elected mayor measure is passed by the voters. See Attachment 6.

Public Hearings

Initially, the third public hearing for city council members to adopt a map and place the measure on the ballot was proposed for August 2, 2016. However, the third public hearing was rescheduled for July 12, 2016. Neither the Settlement Agreement nor the Elections Code prohibit rescheduling of the public hearings nor require a certain number of days between public hearings.⁷ However, public participation is integral to this process. In order to ensure full public participation, staff has conducted considerable voter outreach over the past two weeks to inform the public of the new public hearing date.

Resolutions to Place the Measure on the Ballot, Consolidate Election & Arguments

Upon selecting a map, the City Council must adopt resolutions calling the election for the ballot measure(s), request consolidation of the election with the County of Orange, setting priorities for written arguments regarding the measure(s) and directing the City Attorney to prepare an impartial analysis(es) and providing for the filing of rebuttal arguments for the measure(s). The consolidation resolution would authorize the Orange

⁷ Elections Code Section 10010.

County Registrar of Voters to conduct the election on behalf of the City and canvass the election results. Consolidation provides the most cost effective and practical solution for conducting Costa Mesa's municipal elections.

The resolution setting priorities for filing written arguments regarding a ballot measure and directing the City Attorney to prepare an impartial analysis must accompany the resolution calling for the placement of the question(s) on the ballot. In the case of the by-district elections, the resolution authorizes all Council Members to file written arguments in favor of the measure, not to exceed 300 words. Per the Settlement Agreement, Council Members may not submit arguments against the by-district elections measure. The last day to file arguments regarding the by-district elections measure is 10 days after City Council adopts the resolution calling the election (July 12, 2016), or Friday July 22, 2016. A ballot argument may have up to five authors. The resolution also directs the City Attorney to file the Impartial Analysis of the ballot measure, consisting of no more than 500 words, with the City Clerk's Office on the same date as the deadline for direct ballot arguments.

The resolution pertaining to rebuttal arguments allows authors of direct ballot arguments to submit, or authorize in writing another author to submit, rebuttal arguments not exceeding 250 words. No more than five authors may sign a rebuttal argument. The last day to submit a rebuttal argument is 10 days after the final date for filing direct arguments for or against the measure.

The Registrar of Voters must canvas the votes and certify the election no later than December 8, 2016. Historically, the Orange County Registrar of Voters certifies the election in time for City Council to declare the results of the election and install newly elected council members at the first City Council meeting in December. Staff has tentatively agendaized the election certification and installation of the directly elected mayor and other officers for December 6, 2016 at 7:00 p.m.

FISCAL REVIEW

The cost to place one measure on the November 2016 ballot is estimated at \$10,000 and is included in the Fiscal Year 2016-17 budget, Elections Consulting. If the Council elects to put two measures on the ballot, the additional cost would be approximately \$10,000.

LEGAL REVIEW

The City Attorney's office has reviewed this report for legal content and approved it as to form.

CONCLUSION

Staff recommends that the City Council (1) hold the final public hearing regarding City Council voting district formation, select a final map and ordinance as proposed in Alternative 1, and adopt resolutions in support thereof.

KIMBERLY HALL BARLOW
City Attorney's Office

BRENDA GREEN
City Clerk

- ATTACHMENTS:
1. July 5, 2016 Staff Report (excluding attachments)
 2. Costa Mesa Voting District Formation Summary Report
 3. Proposal 3 - 6-District Map
 4. Draft Ordinance including mayoral term limits (16-05)
 5. Draft Ordinance for districting without mayoral term limits (16-06)
 6. Draft Ordinance regarding mayoral term limits (16-07)
 7. Resolutions 16-59, 16-60, 16-61, 16-62