



# Placentia City Council

## **AGENDA REPORT**

TO: CITY COUNCIL

VIA: CITY ADMINISTRATOR

FROM: DIRECTOR OF ADMINISTRATIVE SERVICES

DATE: JULY 14, 2016

SUBJECT: **CONSIDERATION OF A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLACENTIA, CALIFORNIA, CALLING FOR THE HOLDING OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2016, FOR THE ELECTION OF CERTAIN OFFICERS AS REQUIRED BY THE PROVISIONS OF THE CHARTER AND FOR THE SUBMISSION TO THE VOTERS OF A QUESTION RELATING TO AMENDING THE CHARTER TO ESTABLISH BY-DISTRICT ELECTIONS FOR THE CITY COUNCIL AND ADDITIONAL ACTIONS IN SUPPORT THEREOF**

FISCAL

IMPACT: APPROXIMATELY \$44,000 FOR THE GENERAL ELECTION.  
\$20,000 IN MALDEF ATTORNEY'S FEES ASSOCIATED WITH SETTLEMENT AGREEMENT. THESE ITEMS HAVE BEEN BUDGETED IN THE FISCAL YEAR 2016-17 GENERAL FUND BUDGET.

### **SUMMARY:**

In accordance with the California Elections Code, resolutions are presented pertinent to the calling and notice of the General Municipal Election, establishing regulations for candidates' statements, and submitting a request to the Orange County Board of Supervisors for consolidation of the General Municipal Election with the Statewide Election. Additionally, the resolution proposes placing a measure on the November 8, 2016 ballot asking the voters whether the City of Placentia's Charter should be amended to establish elections of City Council members by-district. The placement of the by-district Council elections ballot measure on the November 2016 ballot is as a result of the City complying with the terms of a settlement agreement by and between the City and the Mexican American Legal Defense Fund ("MALDEF").

### **RECOMMENDATION:**

It is recommended the City Council adopt the following resolutions:

1. Adopt Resolution No. R-2016-40, a Resolution Of The City Council Of The City Of Placentia, California, Calling For The Holding Of A General Municipal Election To Be Held On Tuesday, November 8, 2016, For The Election Of Certain Officers As Required By The Provisions Of The Charter And For The Submission To The Voters

Of A Question Relating To Amending The Charter To Establish By-District Elections For The City Council; and

2. Adopt Resolution No. R-2016-41, a Resolution Of The City Council Of The City Of Placentia, California, Requesting The Board Of Supervisors Of The County Of Orange To Consolidate A General Municipal Election Held On Tuesday, November 8, 2016 With The Statewide General Election Held On The Same Date Pursuant To Elections Code Section 10403; and
3. Adopt Resolution No. R-2016-42, a Resolution Of The City Council Of The City Of Placentia, California Setting Priorities For Filing Written Arguments Regarding A City Measure And Directing The City Attorney To Prepare An Impartial Analysis; and
4. Adopt Resolution No. R-2016-43, a Resolution Of The City Council Of The City Of Placentia, California Providing For The Filing Of Rebuttal Arguments For City Measures Submitted At Municipal Elections; and
5. Adopt Resolution No. R-2016-44, a Resolution Of The City Council Of The City Of Placentia, California, Adopting Regulations For Candidates For Elective Office Pertaining To Candidates Statements Submitted To The Voters At An Election To Be Held On Tuesday, November 8, 2016.

## **BACKGROUND**

The City Charter calls for elections to be held in accordance with the California Elections Code. At the November 8, 2016 general election, the following seats are up for election: three (3) City Council seats and the City Treasurer. In order for the City of Placentia to conduct the General Municipal Election in conjunction with the statewide general election, the proposed resolutions need to be adopted.

In addition to calling the general municipal election, the proposed resolution will allow the question to voters whether to elect city council members by-district. On December 11, 2015, the City received a demand letter from the Mexican American Legal Defense Fund ("MALDEF") alleging the City's at-large system of electing city council members violates the California Voting Rights Act ("CVRA") and must be converted to afford Latino voters an equal opportunity to elect city council candidates. The letter threatened a lawsuit if the City did not comply with MALDEF's demands. After evaluating the merits of the letter with the City Attorney's Office and analyzing other cities' losses under similar threats, the City entered into a settlement agreement (Agreement) with MALDEF (collectively "the Parties") in February 2016. The Agreement required the City to put forth a ballot measure for voter consideration on or before July 2017.

The required ballot measure would seek to afford Latino voters an equal opportunity to elect City Council candidates by creating City Council election districts. If the ballot measure does not pass in November 2016, the City under the current Agreement may be exposed to additional liability for not complying with the CVRA. To afford additional protections to the City in event the ballot measure does not pass in November 2016, the parties have proposed to amend the Agreement (Amended Agreement). This will ensure that, in the event the measure does not

pass in November 2016, the City agrees to place the measure on the ballot in November 2018. Subsequent to any approved by-district ballot measure the City Council would be required to select a district map during a public hearing process. The map would be prepared in accordance with the terms of the CVRA and use the services of a demographer.

### **Legal Analysis**

Under the CVRA, a City is required to move from electing City Council members at-large to, instead, “by-district” if the at-large election prevents minority members from electing their chosen candidates and/or impairs the ability of minority voters to *influence* elections. Whereas, an “at-large method of election” system is one where voters may choose any candidate on the ballot; “by district” electoral system is one where there are elections of members of the City Council for separate districts “by voters of the district alone.” Cal. Elec. Code § 14026; Cal. Govt. Code § 34871.

A number of cities throughout the State of California have unsuccessfully challenged lawsuits alleging violation of the CVRA at great expense to cities due, in large part, to the fact that the CVRA does not require proof of discriminatory intent. Instead, a mere showing of impairing the ability of minority voters to influence elections is all that is necessary to show a violation of the CVRA. Several cities throughout the State have had to comply with the CVRA and similar demands, including the Orange County cities of Garden Grove, Fullerton, and Costa Mesa.

As proposed in the attached resolution, the question presented to voters is whether to move to create five equal districts. The City Attorney’s Office has provided a proposed ballot measure and draft resolutions calling for election of City Council members and City Treasurer as well as posing the question to voters whether to elect City Council members by-district. While there are other options available to the Council, the City Attorney’s Office recommends that, based on the Amended Agreement with MALDEF, the five equal district model be submitted to the voters for consideration.

### **Resolutions to Place the Measure on the Ballot, Consolidate Election, Arguments & Candidate Statements**

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), directing the City Attorney to prepare an impartial analysis and providing for the filing of rebuttal arguments for the measure(s). The consolidation resolution would authorize the Orange County Registrar of Voters to conduct the election on behalf of the City and canvass the election results.

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 up to five (5) Council Members to file written arguments in favor of the measure, not to exceed 300 words. Per the Amended 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. 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.

Finally, Section 13307 of the Elections Code of the State of California provides that the governing body of any local agency adopt regulations pertaining to materials prepared by any candidate for a municipal election, including costs of the candidates' statement. The final resolution is proposed in accordance with Elections Code Section 13307.

The Registrar of Voters must canvass 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 officials at the first City Council meeting in December.

**FISCAL IMPACT**

The City's cost of holding a consolidated election is estimated at \$44,000. If the City were to conduct a special election, as originally envisioned, it would cost the City an estimated \$142,000. In addition, the Amended Agreement calls for the City to pay MALDEF's attorney's fees in an amount not-to-exceed \$20,000. All of these funds are budgeted for in the FY 16-17 General Fund budget.

Prepared and submitted by:

Reviewed and approved:

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Director of Administrative Services

Reviewed and approved:

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**Attachments:**

1. Resolutions
2. Amended Settlement Agreement