



AGENDA REPORT

CITY ATTORNEY'S OFFICE

DATE: November 19, 2019

TO: Mayor Tom Butt and Members of the City Council

FROM: Bruce Reed Goodmiller, City Attorney
Pamela Christian, City Clerk

SUBJECT: Second Public Hearing Regarding Composition of City Council Districts

STATEMENT OF THE ISSUE:

On September 11, 2019, the City received a demand letter from attorney Scott J. Rafferty (Rafferty) which threatens legal action against the City under the California Voting Rights Act (CVRA) if the City does not transition from at-large to district-based elections of City Councilmembers.

Recent efforts to protect jurisdictions from costs related to CVRA litigation (which include plaintiffs' attorneys' fees and litigation expenses) led to an amendment of the Elections Code 10010 to include a "safe-harbor" provision that gives jurisdictions the opportunity to change their election system once they receive a demand letter and caps legal fees recoverable by a plaintiff at \$30,000 if a jurisdiction:

- Adopts a resolution of intention to transition to district-based elections that outlines specific steps and estimates a time frame, within forty-five (45) days of receiving the demand letter; and
- Holds at least four (4) public hearings and adopts an ordinance within ninety (90) days of adopting the resolution of intention.

On October 22, 2019 the City adopted a Resolution of Intention to transition from at-large to district-based elections of City Councilmembers. On November 5, 2019, the City held its first public hearing regarding the composition of City Council districts. Staff also held City Council Voting District Community Workshops on November 14 and November 18 at the Council chambers and will hold two additional Community Workshops tentatively scheduled for December 4 and 5 at locations to be determined.

RECOMMENDED ACTION:

HOLD a public hearing to receive public input regarding the composition of potential City Council districts.

FINANCIAL IMPACT OF RECOMMENDATION:

There is no specific impact from tonight's public hearing, although the consideration of transitioning to a district-based election system will involve the use of the demographer retained by the City.

DISCUSSION:

On September 11, 2019, the City received a demand letter from Attorney Scott Rafferty (Rafferty) asserting that the City's at-large council member electoral system violates the Federal Voting Rights Act (FVRA) and the CVRA by denying Latino voters of an opportunity to elect candidates of their choice that is equal to the opportunity enjoyed by non-Latino voters and by diluting the electoral influence of Richmond's Asian and African-American communities.

The letter threatened litigation if the City declined to voluntarily change to a district-based election system.

Federal and California Voting Rights Acts

The FVRA was enacted in 1965 to overcome legal barriers at the state and local levels that prevented minority groups from exercising their right to vote as granted by the U.S. Constitution. Cities with at-large electoral systems have been challenged under Section 2 of the FVRA on the premise that the at-large system dilutes minority voting rights.

The CVRA was enacted in 2001 to implement the California constitutional guarantees of equal protection and the right to vote. The CVRA is broader than the FVRA and provides a private right of action to members of a protected class where, because of "dilution or the abridgment of the rights of voters," an at-large election system "impairs the ability of a protected class to elect candidates of its choice or its ability to include the outcome of an election." A violation of CVRA is established if racially polarized voting occurs in elections.

- "Racially polarized voting" means voting where there is a difference between candidates or other electoral choices preferred by voters in a protected class and those preferred by voters in the rest of the electorate." Intent to discriminate is not necessary to find evidence of racially polarized voting.

The essential difference between the federal and state statutes is that federal law applies only if a majority-minority district (i.e., a district in which a majority of residents are of a minority group) can be drawn while the state law applies whether or not this is so.

Attorney Fees

In many cases, the apparent motivation for a claim under the CVRA (as opposed to the FVRA) is the attorney fees often awarded to successful plaintiffs.¹ For example, Modesto settled a CVRA claim against that city for \$3 million in attorney fees.² Notably, no attorney fees award is available to the defending jurisdiction, even if it wins — which none has yet done.³

Under the CVRA, a plaintiff need not obtain a court judgment to recoup attorney fees. Under the “catalyst theory,” a party may seek attorney fees if a matter is settled or the defendant agency accedes to the plaintiff’s demands before judgment. To obtain catalyst fees, a plaintiff must demonstrate his or her suit or demand was “a substantial factor contributing to” the agency’s decision to adopt districts.⁴

Safe-Harbor Under the CVRA

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- Adopts a resolution of intention to transition to district-based elections that outlines specific steps and estimates a time frame, within forty-five (45) days of receiving the demand letter; and
- Holds at least four (4) public hearings and adopts an ordinance within ninety (90) days of adopting the resolution of intention.

On October 22, 2019 the City adopted a Resolution of Intention to transition from at-large to district-based elections of City Councilmembers.

Public Hearings on District Formation

Following adoption of the Resolution of Intention, four public hearings must be held in 90 days. The first two public hearings are held prior to drawing maps to consider communities of interest and other interests which should influence map design. The third and fourth public hearings are held to receive public input on the draft maps provided by the City’s contract demographer, those submitted by Mr. Rafferty and any other map proposals that are received. The first reading to introduce the ordinance to transition to district elections may take place on the same meeting as the fourth hearing, provided the proposed draft district map does not change. Since the Resolution of Intention was adopted on October 22, 2019, the ordinance must be adopted no later than January 20, 2020.

¹ FVRA cases have been brought by non-profit impact litigation groups, while CVRA cases have been brought by private, for-profit attorneys sometimes suing for such groups.

² Ashton, “Settlement in Latino voting case will set Modesto back \$3 million,” *The Modesto Bee* (June 6, 2008).

³ Elec. Code, § 14030.

⁴ *Hogar Dulce Hogar v. Community Development Comm.* (2007) 157 Cal.App.4th 1358, 1365.

Analysis

Tonight's public hearing will be the second of two public hearings required to be held regarding composition of City Council districts. This hearing is to gather information on, among other things, how to define the "communities of interest" that will help inform the Council's decision of how the districts will be formed. Examples of communities of interest include:

- Shared demographic characteristics (e.g. levels of income, education, and/or linguistic isolation)
- School attendance areas
- Areas around parks and other neighborhood landmarks
- Natural neighborhood dividing lines, such as highway or major roads, rivers, canals, and/or hills
- Common issues, neighborhood activities, or legislative/election concerns

NEXT STEPS

The third public hearing regarding the composition of City Council districts will be held on December 3, 2019, at which time the draft maps will be presented to the Council. Following this meeting, there will be two additional Community Workshops tentatively scheduled for December 4 and 5 at locations to be determined. The fourth public hearing will take place on December 17, 2019. It is anticipated that the Council will adopt the district maps and election ordinance on January 14, 2020.

DOCUMENTS ATTACHED:

Tentative public hearing and community workshop schedule

EXHIBIT A
Tentative Public Hearing Timeline

DATE	EVENT	COMMENT
November 5, 2019	1st Public Hearing	Council to receive input from community to be used to draw preliminary district maps. No maps yet drawn.
November 14, 2019 November 18, 2019	Community Workshops	Staff provides a presentation regarding the move to district elections, demonstrates the mapping tools and receives input on map designs.
November 19, 2019	2nd Public Hearing	Council to receive additional input from community to be used to draw preliminary district maps. No maps yet drawn.
November 21, 2019	Initial Map Submission Deadline	Deadline to submit maps that will be posted November 26 and considered by Council at third public hearing.
November 26, 2019	Publish Draft Maps and Potential Sequence of elections.	Maps will be posted at least 7 days prior to the third public hearing.
December 3, 2019	3rd Public Hearing	Regarding draft maps and proposed sequence of elections. Opportunity for public to respond and make recommendations regarding the proposed district boundaries and sequence of elections.
December 4, 2019 December 5, 2019	Community Workshop	Staff to receive input from community regarding draft maps submitted for review.
December 6, 2019	Revised Maps Deadline	Deadline to submit revisions to posted maps that will be posted December 10 and considered by Council at fourth public hearing.
December 17, 2019	4th Public Hearing	Expected that Council will select map to establish district boundaries, introduce an ordinance establishing district elections, and determine election sequence. Note: If posted maps are further amended, ordinance cannot be introduced until 7 days after amended map is published.
January 14, 2020		Expected that Council will adopt maps and ordinance establishing district elections.