



CITY OF CALIFORNIA CITY AGENDA REPORT

TO: City of California City - City Council

FROM: Victor M. Ponto, City Attorney

SUBJECT: **RESOLUTION DECLARING THE CITY OF CALIFORNIA CITY'S INTENT TO INITIATE PROCEDURES TO TRANSITION FROM AT-LARGE ELECTIONS TO DISTRICT-BASED ELECTIONS PURSUANT TO ELECTIONS CODE SECTION 10010; APPROVING A TENTATIVE TIMELINE AND OTHER RELATED ACTIONS; AND AUTHORIZE CITY MANAGER TO EXECUTE A CONTRACT WITH REDISTRICTING PARTNERS IN AN AMOUNT NOT TO EXCEED \$80,000 FOR DISTRICT TRANSITION SERVICES, SUBJECT TO CITY ATTORNEY'S APPROVAL AS TO FORM**

DATE: February 11, 2025

BACKGROUND

The City received a letter from a potential plaintiffs' (Southwest Voter Registration Education Project) attorney, Shenkman & Hughes PC ("Shenkman"), alleging a violation of the California Voting Rights Act (the "CVRA") and threatening litigation if the City declines to voluntarily change to a district-based election system for electing Councilmembers. (See Attachment 2). The Council considered this threat of litigation at its January 28, 2025 closed session meeting and Council gave direction to staff to proceed with agendizing the resolution of intent in order to have the option of taking advantage of the safe harbor provisions of Elections Code Section 10010, cap the City's potential attorneys' fees to Shenkman, and avoid costly litigation.

The attached resolution of intent to transition to district-based elections has been prepared, which will allow the City to take advantage of the safe harbor provisions of Elections Code Section 10010 to prevent any litigation from proceeding while the City is transitioning to district-based elections.

DISCUSSION

I. California Voting Rights Act and Racially Polarized Voting

The City of California City currently elects four Councilmembers at-large, which means that each Councilmember is elected by the registered voters of the entire City. The Mayor

is directly elected, which means that the Mayor is directly elected at-large to the office of the Mayor.

The CVRA was enacted in 2001, in part, to provide minority groups in California with tools to prevent dilution of votes in “at-large” election systems and is more expansive than the federal Voting Rights Act of 1965 (“FVRA”). Under the CVRA an at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgement of the rights of voters who are members of a protected class.¹ A violation of the CVRA is established if it is shown that racially polarized voting occurs in elections for members of the governing body or in elections incorporating other electoral choices by the voters of the political subdivision.² Any voter who is a member of a protected class and who resides in a political subdivision where a violation of the CVRA is alleged may file an action in the superior court in which the political subdivision is located.³

The CVRA defines “protected class” as a class of voters who are members of a race, color, or language minority group, as referenced and defined in the FVRA⁴ and “racially polarized voting” as voting in which there is a difference, as defined in case law under the FVRA, in the choice of candidates or other electoral choices preferred by voters in a protected class, as compared to the rest of the electorate (*i.e.*, the protected class members vote as a politically cohesive unit, while the majority votes sufficiently as a bloc usually to defeat the protected class’s preferred candidate).⁵

The CVRA does not require a plaintiff to prove intent on the part of the voters or elected officials to discriminate against a protected class nor does the fact that members of a protected class are not geographically compact or concentrated preclude a finding of racially polarized voting.⁶ Instead, **a violation of the CVRA may be established by showing that both racially polarized voting and dilution occur in elections** for members of the governing body.⁷

II. Safe Harbor and Transitioning

California Government Code Section 34886, in certain circumstances, authorizes the legislative body of a city of any population to adopt an ordinance to change its method of election from an “at-large” system to a “district-based” system in which each councilmember is elected only by the voters in the district in which the candidate resides.

1 Cal. Elec. Code §§ 14026 and 14027.

2 Cal. Elec. Code §14028(a); see also § 14027.

3 Cal. Elec. Code §14032.

4 Cal. Elec. Code §14026(d) citing 52 U.S.C. Sec. 10301 *et seq.*

5 Cal. Elec. Code §14026(e) citing 52 U.S.C. Sec. 10301 *et seq.*; *Thornburg v. Gingles* (1986) 478 U.S. 30, 56.

6 Cal. Elec. Code §14028(c) and (d).

7 Cal. Elec. Code §§14026(e), 14028(a); *Pico Neighborhood Ass’n v City of Santa Monica* (2023) 15 C5th 292, 314.

Pursuant to Elections Code Section 10010, a city may rely on the “safe harbor” provisions that allows a city to adopt a resolution outlining its intention to transition from at-large to district-based elections within forty-five (45) days of receiving a demand letter from a potential plaintiffs’ attorney.⁸ These “safe harbor” provisions allow a city to transition in accordance with a statutory timeline and, if followed, insulate a city from litigation arising from alleged CVRA violations and caps attorneys’ fee liability to a maximum of \$30,000.⁹

Under those “safe harbor” provisions, a prospective plaintiff is required to send a written notice to the clerk of a city asserting that the city’s method of conducting elections may violate the CVRA.¹⁰ A forty-five (45) day pause is then imposed on a prospective plaintiff’s ability to bring an action.¹¹ That forty-five (45) day pause allows a city to adopt a resolution outlining its intention to transition from at-large to district-based elections.¹² If a resolution of intention is adopted by a city council to move to district-based elections, a prospective plaintiff may not commence an action within ninety (90) days of the resolution of intention’s passage.¹³ After the City has completed the transition to district-based elections following these procedures, a prospective plaintiff would be able to submit a letter demanding that the City pay up to \$30,000 in their attorneys’ fees as mentioned above.

If the Council adopts the resolution of intention on February 11, 2025 (tonight), then the 90-day period ends on May 21, 2025.

III. Tentative Timeline

If the Council adopts the proposed resolution, the City will need to comply with the timelines set forth in Elections Code 10010 to transition to district-based elections within the statutory “safe harbor” provisions.

If the Council decides to proceed with transitioning to district-based elections, the City needs to hold at least two public hearings over a period of no more than 30 days, at which the public is invited to provide input regarding the composition of the districts. No official maps can be drawn before completion of these two public meetings. Once the initial two meetings are complete, the demographer and public can begin to officially draw maps that will be considered in the districting process. The City would then hold at least two additional hearings over a period of no more than 45 days, at which the public is invited to provide input regarding the content of the draft maps and the proposed sequence of elections. Once a map is selected, it would need to be published at least seven days before consideration at a hearing for introduction of an ordinance to adopt the district map.

The City will also need to comply with the Fair and Inclusive Redistricting for Municipalities and Political Subdivisions (Fair Maps) Act, which provides criteria that the City must utilize

8 Cal. Elec. Code § 10010(e)(2).

9 Cal. Elec. Code § 10010(f)(1)-(3).

10 Cal. Elec. Code § 10010(e)(1).

11 Cal. Elec. Code § 10010(e)(2).

12 Cal. Elec. Code § 10010(e)(1)-(3).

13 Cal. Elec. Code § 10010(e)(1)-(3).

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when establishing election district boundaries or when undertaking the redistricting process (which must occur every ten years after each population census). This criteria includes, among other things, compliance with the United States Constitution, the California Constitution, and the FVRA. The Fair Maps Act also prohibits the adoption of district boundaries for the purpose of favoring or discriminating against an incumbent, political candidate or political party.

A tentative timeline has been prepared, which identifies the preliminary schedule for the required public hearings and public outreach, which complies with Elections Section Code 10010. (See Exhibit A to Attachment 1). This timeline may change depending on the level of community involvement and the complexity of the map drawing process. If the timeline needs to adjust beyond the 90 days, then the City under State law may seek entering into a written agreement with Shenkman to extend the 90-day period up to an additional 90 days in order to provide additional time to conduct public outreach, encourage public participation, and receive public input. However, Elections Code Section 10010 permits entering into this agreement, but not require it. This means that Shenkman is not required to enter into such an agreement.

IV Demographer

A demographer will be needed to analyze and assist the City in drafting district maps.

RECOMMENDATION

It is recommended that the City Council consider:

- 1) Consider approving the Resolution declaring the City of California City's intent to initiate procedures to transition from at-large elections to district-based elections pursuant to Elections Code Section 10010; approving a tentative timeline and other related actions.
- 2) Authorize the City Manager to execute a contract with Redistricting Partners in an amount not to exceed \$80,000 for District Transition Services, subject to City Attorney's approval as to form.
- 3) Alternatively, discuss and take other action related to this item.

TYPE OF ACTION (LEGISLATIVE; QUASI-JUDICIAL; OR ADVISORY)

Legislative Action: The recommended action includes adoption of a Resolution of intent to initiate procedures to transition from at-large elections to district-based elections and approval of a tentative timeline and other related actions. In considering such actions, the City Council acts in its discretionary legislative capacity (showing its intent to begin the process of transitioning to a district-based elections for the City Council that will be applicable to future elections).

CEQA STATUS

This item does not constitute a project as defined by the California Environmental Quality Act (Public Resources Code § 21000, et seq.) (CEQA) as the adoption of the resolution does not have the potential to result in either a direct physical change in the environment,

or a reasonably foreseeable indirect physical change in the environment (14 Cal. Code Regs. § 15378.).

FISCAL IMPACT

Adoption of the Recommendation will result in the City incurring additional costs relating to the transition to district-based elections. In total, the costs of a demographer will be approximately \$80,000. However, as stated above, the City is also required to pay attorneys' fees and costs incurred by the Southwest Voter Education Project, provided that those amounts would be capped at \$30,000 if the City transitions to district-based elections within the time periods stated above. The City would also incur its own costs as well, including staff time and attorneys' fees and costs.

ATTACHMENTS

1. Resolution No.25-3107
2. Shenkman Letter.
3. Tentative Timeline.
4. Redistricting Partners' Proposal