



DATE: August 19, 2024

TO: Mayor and Members of the City Council

VIA: Stefan Chatwin, City Manager

FROM: Stefan Chatwin, City Manager  
Benjamin L. Stock, City Attorney

DEPARTMENT: City Manager

SUBJECT: DISCUSSION OF CALIFORNIA VOTING RIGHTS ACT  
CHALLENGE AND DEMAND FOR CITY TO TRANSITION TO  
DISTRICT-BASED ELECTIONS; AND PROVIDE DIRECTION TO  
STAFF REGARDING NEXT STEPS, INCLUDING RETENTION OF  
DEMOGRAPHER

---

## RECOMMENDATION

It is recommended that the Council consider a letter received on July 22, 2024, challenging the City's at-large election system and demanding that the City transition to district-based elections; and by Minute Order, provide direction to staff regarding next steps, including the retention of a demographer.

## EXECUTIVE SUMMARY

The City received a certified letter from a potential plaintiffs' attorney, Shenkman & Hughes PC, on July 22, 2024, alleging a violation of the California Voting Rights Act (the "CVRA")<sup>1</sup> and threatening litigation if the City declines to voluntarily change to a district-based election system for electing Councilmembers. (See Attachment 1).

Pursuant to Elections Code section 10010, a city may take advantage of "safe harbor" provisions that allows a city to adopt a resolution outlining its intention to transition from

---

<sup>1</sup> Cal. Elec. Code §§ 14025-14032.

at-large to district-based elections within forty-five (45) days of receiving a demand letter from a potential plaintiffs' attorney.<sup>2</sup> Staff is seeking direction from the Council on next steps including the future date to consider a resolution of intent to transition to district-based elections and the retention of a demographer to assist in the potential transition.

## BACKGROUND

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"). 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

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 FVRA<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup>

---

<sup>2</sup> Cal. Elec. Code § 10010(e)(2).

<sup>3</sup> Cal. Elec. Code §§ 14026 and 14027.

<sup>4</sup> Cal. Elec. Code §14028(a); see also § 14027.

<sup>5</sup> Cal. Elec. Code §14032.

<sup>6</sup> Cal. Elec. Code §14026(d) citing 52 U.S.C. Sec. 10301 et seq.

<sup>7</sup> Cal. Elec. Code §14026(e) citing 52 U.S.C. Sec. 10301 et seq; *Thornburg v. Gingles* (1986) 478 U.S. 30, 56.

<sup>8</sup> Cal. Elec. Code §14028(c) and (d).

<sup>9</sup> Cal. Elec. Code §§14026(e), 14028(a); *Pico Neighborhood Ass'n v City of Santa Monica* (2023) 15 C5th 292, 314.

## ANALYSIS

Since enactment of the CVRA, the legislature has adopted laws to provide “safe harbor” provisions that allow a city to transition in accordance with a statutory timeline and, if followed, insulates a city from litigation arising from alleged CVRA violations and caps attorneys’ fee liability to a maximum of \$30,000.<sup>10</sup>

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.<sup>11</sup> A forty-five (45) day stay is then imposed on a prospective plaintiff’s ability to bring an action.<sup>12</sup> That forty-five (45) day stay allows a city to adopt a resolution outlining its intention to transition from at-large to district-based elections.<sup>13</sup> 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.<sup>14</sup>

Many cities, counties and special districts have received CVRA challenge letters. In San Mateo County, the cities of Pacifica, Belmont, Burlingame, Menlo Park, Millbrae, Half Moon Bay, Town of Woodside, Redwood City, San Bruno, San Mateo, and South San Francisco have all transitioned to district-based elections. While various cities have tried to defend against CVRA challenges and have spent millions of dollars in attorneys’ fees, there has not yet been one case that has been successfully defended in the courts. The City of Santa Monica, for example, has spent many millions of dollars defending against a CVRA challenge since 2016 and the parties are still litigating the case after it was heard by the California Supreme Court. The City of Palmdale was required to pay \$4.7 million in attorneys’ fees as a result of a CVRA lawsuit. The City of Modesto also challenged a CVRA claim but was unsuccessful and ultimately settled the case for about \$3 million and switched over to by-district elections.

Due to the uncertainty of litigation and the potentially extraordinary cost of such a lawsuit, most cities, counties and special districts decide to take advantage of the “safe harbor” provisions and transition to district-based elections to limit the attorneys’ fees to \$30,000.

### ***Next Steps***

Given that the City has received this CVRA challenge letter, staff is seeking direction from the Council on whether to proceed to agendaize for the Council’s consideration a resolution of intent to transition to district-based elections. Staff is recommending scheduling that item for the September 3, 2024, regular Council meeting. At that meeting, the Council would consider whether to adopt the resolution of intent to take

---

<sup>10</sup> Cal. Elec. Code § 10010(f)(1)-(3).

<sup>11</sup> Cal. Elec. Code § 10010(e)(1).

<sup>12</sup> Cal. Elec. Code § 10010(e)(2).

<sup>13</sup> Cal. Elec. Code § 10010(e)(1)-(3).

<sup>14</sup> Cal. Elec. Code § 10010(e)(1)-(3).

advantage of the “safe harbor” provisions. At that meeting, staff would provide a tentative timeline for the transition, which would need to be completed within ninety days of adoption of the resolution.<sup>15</sup>

Additionally, staff is recommending the retention of a demographer. There are a number of well-qualified demographers in the bay area that offer various levels of services depending on the needs of each city. Staff has obtained some preliminary information from a few demographers who have assisted other cities in San Mateo County to transition to district-based elections and has determined that the basic costs of the demographers are generally within the City Manager’s purchasing authority under the City’s Purchasing Policy (Less than \$50,000 for Level D professional services). However, given the importance of the demographer’s role in the transition to district-based elections, the City Manager is seeking direction from the Council to confirm that the City Manager should proceed with retaining a demographer, without Council input. If the Council gives direction to the City Manager to proceed with the retention of the demographer, the City Manager will follow the procedures in section 3.04.140(B)(1) to retain those professional services.

### California Environmental Quality Act

This item does not constitute a project as defined by the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) (CEQA) as the discussion and direction 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

If the City Council decides to transition to district based elections there will be a fiscal impact due to the costs associated with that transition including the demographer costs, which are estimated to be less than \$50,000 and payment of the plaintiffs’ attorney costs of \$30,000. Alternatively, if the City Council decides not to transition to district based elections, the City could incur significant costs relating to litigation.

### CITY COUNCIL VISION, MISSION, AND VALUE/PRIORITY AREA

City Council Operations and Improved Community Engagement

### ATTACHMENT:

Attachment 1 – July 22, 2024, Letter from Shenkman & Hughes LLC.

---

<sup>15</sup> 90 days from September 3, 2024 (if Council adopts the resolution of intent on that day would be December 2, 2024.