



**CITY COUNCIL
AGENDA REPORT**

**TYPE OF ITEM: Report
AGENDA ITEM NO.: 1**

DATE: November 27, 2017

TO: City Council

FROM: Stephen Fischer
City Attorney

SUBJECT: Resolution Declaring Intent to Transition to District-Based Elections (10/15/20)

CONTACT: Stephen Fischer, City Attorney
Stephen.Fischer@oxnard.org, 385-7483

RECOMMENDATION:

1. That City Council consider the adoption of a resolution declaring its intent to transition from at-large to district-based elections for members of the City Council pursuant to Elections Code Section 10010.
2. If the City Council adopts the resolution declaring its intent to transition to district-based elections, that the City Council authorize the Mayor to execute an agreement with National Demographics Corporation for demographic services relating to the drawing of districts in a not-to-exceed amount of \$70,000.
3. If the City Council chooses to adopt the resolution declaring its intent to transition to district-based elections, that the City Council provide direction to staff whether it wishes to consider increasing the number of City Council seats.

BACKGROUND

Historically, the City of Oxnard has elected its Councilmembers through an at-large election system. Under this system, candidates for the City Council can reside anywhere in the City and are elected by the registered voters of the entire City. (The Mayor is separately elected, but is also elected through an at-large election system.)

The City received a letter dated October 7, 2017, from attorney Jason Dominguez, claiming that the City's current method of electing the City Council through at-large elections violates the

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California Voting Rights Act ("CVRA"). The letter alleges that the City's elections "may be occurring by polarized voting," and threatens litigation if the City declines to adopt a district-based election system. A district-based election system is generally one in which a city is divided into separate districts, with each district electing a representative from that district.

The CVRA was adopted in 2002, and is based upon the Federal Voting Rights Act of 1965 ("FVRA") with some important differences that make at-large election systems much more susceptible to legal challenge. For a plaintiff to be successful in a claim of violation under the FVRA relating to at-large elections, the plaintiff must show that: 1) a minority group is sufficiently large and geographically compact to form a majority of the eligible voters in a single-member district; 2) there is racially-polarized voting; and 3) there is "white bloc voting" (the term used by the courts reviewing such cases) sufficient usually to prevent minority voters from electing candidates of their choice. If a plaintiff proves these three elements, then the federal court will consider whether, under the "totality of circumstances," the votes of minority voters are diluted by the at-large election system.

The CVRA removes two of these factors. It eliminates what is known as the "geographically compact" FVRA precondition (e.g., can a majority-minority district be drawn) as well as the "totality of the circumstances" or "reasonableness" test. Because the CVRA eliminates some of the elements that a plaintiff must prove, a lawsuit brought pursuant to the CVRA is substantially more difficult to defend against than a claim under the FVRA. As a result of the lower threshold for proving a claim under the CVRA, many jurisdictions have voluntarily switched to district-based election systems instead of facing litigation.

Because of the low standards necessary for a plaintiff to prevail in CVRA litigation, every public entity defendant since the CVRA was enacted in 2002 has either lost in court or settled. To date, every government defendant has ultimately been forced to pay at least some portion of the plaintiff's attorney fees and costs. Awards in contested CVRA cases have reportedly ranged from approximately \$400,000 to over \$4,500,000. For example, in February 2015, the City of Santa Barbara reportedly paid \$800,000 in attorney's fees and expert costs to settle its CVRA lawsuit. Another example is the City of Palmdale, which incurred an expense in excess of \$4.5 million.

Because of claims of abuses by some plaintiff's attorneys in CVRA cases, the Legislature adopted AB 350 in 2016 to place a "safe harbor" cap of a maximum of \$30,000 on attorney's fees that a plaintiff would be entitled to recover if the target city, within 45 days of receipt of the plaintiff's demand letter, voluntarily adopts a Resolution of Intent to consider an ordinance to establish a district-based election system, and then actually adopts such an ordinance within 90 days following the date it adopted the Resolution of Intent.

That 90-day period to adopt the ordinance would include the following steps:

- 1) Prior to drawing a draft map or maps of the proposed boundaries of the districts, the City Council would hold at least two public hearings over a period of no more than 30 days, at which

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time the public will be invited to provide input regarding the composition of the districts. (Elec. Code §10010(a)(1).)

2) After the draft maps are drawn, the City would publish and make available for release at least one draft map and, if members of the City Council will be elected in their districts at different times to provide for staggered terms of office, the potential sequence of the elections would also be published. (Elec. Code §10010(a)(2).)

3) The City Council would hold at least two additional public hearings over a period of no more than 45 days, at which the public shall be invited to provide input regarding the content of the draft map or maps and the proposed sequence of elections, if applicable. (*Id.*)

4) The first version of a draft map is required to be published at least seven days before consideration at a public hearing. If a draft map is revised at or following a public hearing, it is required to be published and made available to the public for at least seven days before being adopted. (*Id.*)

ANALYSIS

Based upon the vulnerability of at-large election systems to legal challenge under the CVRA, as well as concerns expressed by the public and members of the City Council that certain geographic areas of the City lacked representation on the City Council, the City Council should consider establishing district-based elections. While the City's record of recent elections does not reflect racially-polarized voting in Oxnard in violation of the CVRA or the FVRA, the October 7, 2017 letter threatens costly litigation if the City Council chooses not to adopt a Resolution of Intent to implement a district-based election system. If successful, such a lawsuit would force a district-based election system upon the City, with districts drawn and election dates for each district determined by the courts.

To utilize the state law "safe harbor" and cap potential attorney fees that the City could be required to pay, the City Council would need to adopt the Resolution of Intent to initiate the transition to a district-based election system. (Elections Code Section 10010.)

In addition, if the City Council chooses to adopt the Resolution of Intent at tonight's meeting to initiate the transition to a district-based election system, then the City will need to retain the services of a demographer. The demographer will assist the City in creating districts that meet legal requirements, and will also coordinate public outreach at some of the public hearings and through the online interactive system that would allow the public to draw and submit proposed districting plans for the Council's consideration. Staff recommends that the City Council authorize the Mayor to execute an agreement with National Demographics Corporation for demographic services relating to the drawing of districts in a not-to-exceed amount of \$70,000. National Demographics has provided CVRA analysis and districting efforts for more than 50 cities and 250 school districts in California.

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Finally, given the short time frame available to draw district boundaries (the process is to be completed by February 26, 2018), the number of districts proposed to be created will need to be factored into the analysis as soon as possible. If the City Council wishes to consider increasing the size of the City Council as part of the districting process, it should provide direction on this matter as soon as possible.

STRATEGIC PRIORITIES

Not applicable.

FINANCIAL IMPACT

There will be significant staff time needed to transition to a district-based election system because the City must conduct at least four public hearings. In addition, the costs for a demographics consultant are estimated to be up to \$70,000, depending on the number of hearings the demographer would be asked to attend and the online public outreach tools included in the scope of services. Should the City Council determine to adopt the Resolution of Intent tonight, Mr. Dominquez could seek up to \$30,000 in attorney fees and costs from the City, but the City would have a defense to litigation if it adopted a district-based election system within the statutory time frame.

ATTACHMENTS:

Attachment A: October 7, 2017 Letter from Jason Dominguez

Attachment B: Resolution Declaring Intent to Transition to District Based Elections

JASON DOMINGUEZ

Attorney at Law
PO Box 20040
Santa Barbara, CA 93120

October 7, 2017

Oxnard City Council
Michelle Ascencion, City Clerk
300 West Third Street
Fourth Floor
Oxnard, CA 93030

Via regular US Mail and email to: cityclerk@oxnard.org

RE: *Notice of Violation* – The City of Oxnard’s methods of conducting elections are violating the California Voting Rights Act of 2001.

Dear City Officials,

I am writing on behalf of my client and the voters of the City of Oxnard who are interested in improving the accountability and responsiveness of future elected officials as well as the election system of the City of Oxnard as a whole. As Oxnard and its government continues to grow, it must adopt positive statewide trends in voting and elections in order to prevent voters from losing the ability to meaningfully engage in elections and community policy making.

One of the growing trends in California is district elections. District elections have been shown to improve voter turnout and help governments respond to community concerns. Districts are the cornerstone of our state and federal legislative systems. Accordingly, they have been adopted by numerous cities, community college districts and school districts. Almost all cities of Oxnard’s size have adopted district elections. We look forward to you coming into compliance.

With regard to the City of Oxnard’s City Council elections, after studying demographics and election results, we have determined that a violation of the California Elections Code sections 14025 *et. seq.*, known as the California Voting Rights Act of 2001 (“CVRA”), may be occurring by polarized voting. A change is mandated in the election system to prevent occurrences of voting patterns that impair the ability of voters to elect candidates of their choice or impair their rights to influence the outcome of an election, particularly as the result of the dilution or abridgment of its rights and privileges under state and federal law.

We therefore respectfully demand that the City of Oxnard change its at-large voting system to a district-based voting system that affords all voters and protected groups the equal

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opportunity to choose elected officials to the Oxnard City Council and, thereby, bring the system into compliance with the CVRA.

Please respond to this correspondence and include the City of Oxnard's plans to calendar a resolution and outline the steps it will take to facilitate the transition along with an estimated timeline. If the City fails to take action within the statutory timeline to effect a change in its election process, we will seek judicial assistance to enforce our remedies at law. Per the CVRA, we will seek equitable relief and other forms of relief, including our costs of litigation (court fees, expert witness fees, etc.) and attorney's fees.

We are hopeful that you will be able to work with us to achieve a timely transition in order to bring the City of Oxnard into compliance with the CVRA. If you have any questions or would like to discuss this matter further, please do not hesitate to contact me.

Thank you.

A handwritten signature in black ink, appearing to read "Jason Dominguez". The signature is fluid and cursive, with a large initial "J" and "D".

Jason Dominguez
Attorney at law

cc: Greg Nyhoff, City Manager

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OXNARD DECLARING ITS INTENT TO TRANSITION FROM AT-LARGE ELECTIONS TO DISTRICT-BASED ELECTIONS FOR MEMBERS OF THE CITY COUNCIL PURSUANT TO ELECTIONS CODE SECTION 10010

WHEREAS, members of the City Council of the City of Oxnard (City) are currently elected in "at-large" elections, in which each Councilmember is elected by the registered voters of the entire City; and

WHEREAS, the Mayor of the City is separately elected in an "at-large" election by the registered voters of the entire City; and

WHEREAS, Government Code Section 34886 in certain circumstances, authorizes the legislative body of a city to adopt an ordinance to change its method of election for councilmembers from an "at-large" system to a "by-district" system in which each Councilmember is elected only by the voters in the district in which the Councilmember resides; and

WHEREAS, the City received a letter on October 9, 2017, from Jason Dominguez, Esq., containing unsubstantiated allegations that the City's at-large electoral system violates the California Voting Rights Act (CVRA) and threatening litigation if the City declines to adopt a district-based electoral system; and

WHEREAS, the City denies that its election system violates the CVRA or any other provision of law and asserts that Oxnard's overall electoral system is legal in all respects and further denies any wrongdoing whatsoever in connection with the manner in which it has conducted its City Council elections; and

WHEREAS, although the letter was not accompanied by any evidence to support the claim of a CVRA violation, the City Council has concluded that the public interest of having councilmembers from each geographic area of the City would be better served by transitioning to a district-based electoral system pursuant to Elections Code Section 10010; and

WHEREAS, prior to the City Council's consideration of an ordinance to establish boundaries for a district-based electoral system, Elections Code Section 10010 requires all of the following:

1) Prior to drawing a draft map or maps of the proposed boundaries of the districts, the City shall hold at least two public hearings over a period of no more than 30 days, at which the public will be invited to provide input regarding the composition of the districts.

2) After all draft maps are drawn, the City shall publish on the City's website and make available for release at least one draft map and, if members of the City Council will be elected in their districts at different times to provide for staggered terms of office, the potential sequence of the elections shall also be published.

3) The City Council shall also hold at least two additional public hearings over a period of no more than 45 days, at which the public shall be invited to provide input regarding the content of the draft map or maps and the proposed sequence of elections, if applicable.

4) The first version of a draft map shall be published on the City's website at least seven days before consideration at a public hearing. If a draft map is revised at or following a public hearing, it shall be published on the City's website and made available to the public for at least seven days before being adopted.

WHEREAS, the City will be utilizing the services of a professional demographer to assist the City to develop a proposal for a district-based electoral system; and

WHEREAS, the adoption of a district-based electoral system will not affect the terms of any sitting Councilmember, each of whom will serve out his or her current term.

NOW, THEREFORE, the City Council of the City of Oxnard resolves:

SECTION 1. The City Council hereby resolves to consider adoption of an ordinance to transition to a district-based electoral system as authorized by Government Code Section 34886 for use in the City's General Municipal Election for Members of the City Council.

SECTION 2. The City Council directs the City Clerk and City Attorney to work with a professional demographer, and other appropriate consultants as needed, to provide a detailed analysis of Oxnard's current demographics and any other information or data necessary to prepare a draft map that divides Oxnard into voting districts in a manner consistent with the intent and purpose of the CVRA and the Federal Voting Rights Act.

SECTION 3. The process outlined in the above recitals is anticipated to be completed by February 26, 2018.

SECTION 4. The City Council directs the City Clerk to post information regarding the proposed transition to a district-based electoral system on the City's website, including maps, notices, agendas and other information.

PASSED AND ADOPTED THIS _____ day of _____, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Tim Flynn, Mayor

ATTEST:

Michelle Ascencion, City Clerk

APPROVED AS TO FORM:

Stephen M. Fischer, City Attorney

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