



**CITY COUNCIL
AGENDA REPORT**

**TYPE OF ITEM: Public Hearing
AGENDA ITEM NO.: 2**

DATE: December 12, 2017

TO: City Council

FROM: Stephen Fischer
City Attorney

A handwritten signature in cursive script, appearing to read "S. Fischer".

SUBJECT: First Public Hearing Regarding Composition of Possible City Council Districts
(30/30/30)

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

RECOMMENDATION:

That City Council hold a public hearing to review the districting process for City Council elections and receive public input regarding the composition of potential City Council districts.

BACKGROUND

Historically, the City 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, claiming that the City's current method of electing the City Council through at-large elections violates the California Voting Rights Act ("CVRA") (see Attachment A). 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 one in which a city is divided into separate districts.

The CVRA (Elections Code Section 14025 et seq.) 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

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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, defending 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 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 must include the following steps:

- 1) Prior to drawing a draft map or maps of the proposed boundaries of the districts, the City Council hold at least two public hearings over a period of no more than 30 days, at which time the public is invited to provide input regarding the composition of the districts. (Election Code §10010(a)(1).)
- 2) After the draft maps are drawn, the City publishes and makes 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. (Election Code §10010(a)(2).)
- 3) The City Council holds at least two additional public 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 map or maps and the proposed sequence of elections, if applicable. (Id.)

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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

At its November 27, 2017 meeting, the City Council adopted Resolution No. 15,068, which indicated the City's intent to consider transitioning from at-large elections to district elections for members of the City Council pursuant to Elections Code Section 10010 (see Attachment B). The adoption of Resolution No. 15,068 was the first step the City needed to take in order to utilize the legislative "safe harbor" to avoid litigation and cap attorney's fees that a plaintiff challenging the City of Oxnard's election system could be entitled to recover from the City at \$30,000.

The next step in the "safe harbor" process is for the City Council to hold at least two public hearings over a period of no more than 30 days, at which time the public is invited to provide input regarding the composition of the proposed City Council districts. (Election Code §10010(a)(1).) Under state law, these public hearings are required to occur prior to the drawing of a draft map or maps of the proposed boundaries of the districts.

Tonight's public hearing will be the first of two public hearings required to be held regarding composition of City Council districts. The public hearing will include a presentation from a representative from National Demographics, the firm providing demographic services relating to the drawing of the districts. The representative will preview the online interactive system that will allow the public to draw and submit proposed districting plans for the City Council's consideration.

The second public hearing regarding the composition of City Council districts will be held on January 3, 2018 at 6:00 p.m., with a January 5, 2018 deadline for submittal of maps from the public. Draft maps are then scheduled to be released online at www.oxnard.org/districts by not later than January 10, 2018. After the release of the maps to the public, three public hearings will be held to discuss the draft maps and proposed sequencing of district elections. These public hearings are currently scheduled for January 17, 2018, January 29, 2018 and February 7, 2018.

The City Council will then hold a public hearing on February 20, 2018 to consider an ordinance designating districts and the timing of elections in each district (i.e., either November 2018 or November 2020). If a majority of the City Council votes for the ordinance on February 20, 2018, the City Council will consider the adoption of the ordinance the following week. If adopted, the new City Council districts would not become effective until the November 2018 election, with the specific date on which a councilmember would be elected from each new district provided for in the ordinance.

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STRATEGIC PRIORITIES

Not applicable.

FINANCIAL IMPACT

There is no specific financial impact from tonight's public hearing, although the consideration of transitioning to a district-based election system will take significant staff time and involves the use of a demographer to attend specific public hearings and provide online public outreach tools included in the scope of services.

ATTACHMENTS:

Attachment A: October 7, 2017 Letter from Jason Dominguez

Attachment B: Resolution 15,068 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.



Jason Dominguez
Attorney at law

cc: Greg Nyhoff, City Manager

RESOLUTION NO. 15,068

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 a 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.

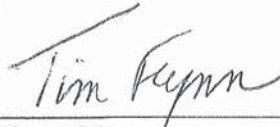
PASSED AND ADOPTED THIS 27th day of November, 2017, by the following vote:

AYES: Councilmembers Flynn, Ramirez, MacDonald, Perello and Madrigal.

NOES: None.

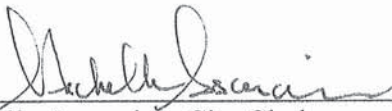
ABSENT: None.

ABSTAIN: None.



Tim Flynn, Mayor

ATTEST:



Michelle Ascencion, City Clerk

APPROVED AS TO FORM:



Stephen M. Fischer, City Attorney