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## Report to Mayor and City Council

Thursday, April 16, 2019

Discussion

### SUBJECT:

**DISCUSSION AND REQUEST FOR DIRECTION CONCERNING CHANGING FROM AT-LARGE TO BY-DISTRICT SYSTEM FOR ELECTION OF CITY COUNCIL MEMBERS (CITY COUNCIL)**

### I. SUMMARY

Legal action against the City under the California Voting Rights Act (CVRA) has been threatened, if the City does not begin the process of transitioning from at-large to district-based elections. Recently in February, 2019 the City of Santa Monica was the latest public entity to have a court find it in violation of the CVRA and judicially order a switch to district-based elections.

Government Code Section 34886 allows the City to, by ordinance, change from at-large elections for the City Council to district-based elections. The City could establish four districts for election of members of the City Council, with the Mayor continuing to be elected at-large by all the voters in the City.

The Elections Code lays out several requirements, including at least four public hearings, which the City must satisfy prior to adopting an ordinance formally transitioning to district-based elections.

A first step in moving the City to district-based elections is consultation with a demographer to assist the City with establishing both the data necessary to complete the process as well as a timetable for meeting state and federal requirements for the transition. Pursuant to Carson Municipal Code Section 2611(c), and previous Council direction, staff has obtained bids and has selected demographer Compass Demographics, Inc. to assist the City with this process for a contract sum of \$23,500, which is within the signing authority of the City Manager.

At the direction of City Council, staff will both proceed to work with the demographer to gather and review the data and establish a timeline for the City to switch to districts prior to the November 3, 2020 General Municipal election and report back to Council, as well as prepare a timeline for any necessary amendment to the Charter to switch from at-large

elections to district based elections.

## II. RECOMMENDATION

**CONSIDER TAKING ONE** of the following actions:

1. **DIRECT STAFF** to commence process to establish four districts for election of members of the City Council, with the Mayor continuing to be elected at-large by all the voters in the City, and to subsequently present to Council both a timetable and action plan (after consultation with a demographer) to make the changes for the November 3, 2020 General Municipal Election, as well as the steps required for the necessary Charter amendment to be sent to City voters at the scheduled March 3, 2020 primary election; or
2. **CONTINUE TO REVIEW ISSUE** and bring matter back to another Council meeting for further discussion; or
3. **AFFIRM** City will not presently switch to districts for Councilmember elections.
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## III. ALTERNATIVES

Take other action as considered appropriate and consistent with law.

## IV. BACKGROUND

### A. Threat of CVRA Litigation

The Law Offices of Shenkman & Hughes (“Shenkman”) is alleging within Carson there is racially polarized voting, resulting in minority vote dilution, and, therefore, the City’s at-large elections violate the California Voting Rights Act. Shenkman and his clients have demanded the City begin the process of transitioning from at-large to district-based elections, and they have threatened legal action if the City does not do so.

Government Code Section 34886 allows the City to, by ordinance, change from at-large elections for the City Council to district-based elections. The City could establish four, six, or eight districts for members of the City Council, with the Mayor continuing to be elected at-large by all the voters in the City. The Elections Code lays out several steps, including at least four public hearings, which the City must satisfy prior to adopting an ordinance formally transitioning to district-based elections. The Charter would also need to be amended to allow the City to switch to districts.

### B. At-Large Versus District-Based Elections and a Directly Elected Mayor

The members of the City Council are currently elected at-large. Under an at-large system

of elections, every voter in the City votes for each member of the City Council, regardless of where the voter or the candidate is registered to vote in the City. Under a by-district based system of elections, the City is divided into districts, and candidates may only run for the seat representing the district in which they are registered to vote, and voters may only vote for the candidates from their district.

Note there are also so called "from-district" electoral systems (which combine elements of an at-large system and a district based system). A "from-district" system is one "in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body." (Election Code section 14026(a)(2).) These types of districts are not discussed further because switching to a "from-district" system still exposes the City to CVRA liability.

The City currently has a directly elected Mayor, which is a separate office from the other members of the City Council. Cities have two choices for selecting their mayor - one is a directly elected mayor, such as in the City of Carson, and the second is to have the members of the City Council select the Mayor from amongst themselves. Both at-large and district-based elections systems allow for a directly elected mayor.

### **C. California Voting Rights Act**

In 2002, the CVRA was enacted through Election Code sections 14025-14032. In 2006, the California Court of Appeal upheld the CVRA as constitutional, and the United States Supreme Court subsequently declined to review the case. (*Sanchez v. City of Modesto*, (2006) 145 Cal.App.4th 660 (Review Denied March 21, 2007) (Certiorari Denied Oct. 15, 2007).)

The CVRA expands on the Federal Voting Rights Act by making it easier for protected classes to challenge at-large electoral systems in the courts. According to some critics, the Federal Voting Rights Act ("FVRA") has failed to meet its goals when applied to California. To overcome these alleged failures of the FVRA, in 2002 the California Legislature enacted the CVRA. "The legislative history of the CVRA indicates that the California Legislature wanted to provide a broader right to challenge circumstances of vote dilution than was provided for by federal law." (*Sanchez v. City of Modesto*, (2006) 145 Cal. App. 4th 660, 669.)

A violation of the CVRA does not require proof of discriminatory intent. Rather, a CVRA violation may be established by showing that racially polarized voting ("RPV") occurs in elections for the City Council. (Election Code section 14028.) Racially polarized voting may be determined by the extent to which "candidates who are members of a protected class and who are preferred by voters of the protected class, as determined by an analysis of voting behavior, have been elected to the governing body." (Election Code section 14028(a-b).)

In other words, if a protected class consistently votes differently - as a group - than the rest of the electorate, and their candidates fail to win election, a violation of the CVRA may be triggered. Any voter who is a member of a protected class and who resides in the City may bring a CVRA lawsuit. (Election Code section 14032.)

“Protected class” is defined in the CVRA to mean a class of voters who are members of a race, color or language minority group, as referenced and defined in the FVRA. (Election Code section 14026(d).) Expanding on this, a court has also ruled that “[a]ll persons have standing under the CVRA to sue for race-based vote dilution because all persons are members of a race.” (*Sanchez v. City of Modesto*, (2006) 145 Cal. App. 4th 660, 685.)

Additional factors probative, but not necessary, to establish a CVRA violation are: 1) history of discrimination; 2) use of electoral devices or other practices or procedures that may enhance the dilutive effects of at-large elections; 3) denial of access to those processes determining which groups of candidates will receive financial or other support in a given election; 4) extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment and health; and 5) use of overt or subtle racial appeals in political campaigns. (Election Code section 14028(e).)

A judge has broad authority to implement appropriate remedies that are tailored to address specific CVRA violations. (Election Code section 14029.) The most common remedy has been to order a municipality to switch from at-large elections to by-district elections. The presumption is that if a city has a by-district system, then minority candidates who are not elected under the at-large electoral system, would be able to get elected to the City Council.

Two municipal procedures are available (short of a court order) to switch to by-district elections. A city council may pass an ordinance to enact the change. A city council may also submit a measure to the voters which proposes to switch a city to by-district elections. (Government Code section 34871.) However, if the voters reject such an ordinance, the City is not immunized from civil liability under the CVRA.

#### **D. Experiences of Other Cities**

Most of California’s 482 cities elect their city councils by at-large elections. However, since the enactment of the CVRA in 2002, over 130 local governments have switched from at-large to by-district elections, according to legislative analysis from the California Senate on Senate Bill 493 (which in 2015 enacted Govt. Code section 34886 concerning the CVRA).

Many of these local governments were sued under the CVRA by groups arguing that at-large elections prevented minority groups from electing candidates representing their community or interests.

In all such cases, according to the SB 493 legislative analysis referenced above, citizens alleging at-large elections who brought a lawsuit that a city violated the CVRA prevailed.

Below is a summary of the experience of a few cities.

1. Modesto - sued in 2004 under the CVRA and litigated the matter. California Court of Appeal upheld the CVRA as constitutional, and the U.S. Supreme Court declined review. That city eventually settled the case, paid \$3 million in plaintiffs’ attorney’s fees and switched to districts pursuant to a voter passed ballot measure.

2. Anaheim - sued in 2012 under the CVRA and settled the lawsuit in January 2014. As part of the settlement, that city paid \$1.2 million in plaintiffs' attorney's fees and agreed to increase the city council from five seats to six members elected by-district, with a mayor elected at-large.
3. Highland - sued in 2014 under the CVRA, and a judge ordered the city to go to by-district elections in the upcoming November 2016 election. The judge also ordered that all seats on the city council be contested in November 2016.
4. Wildomar - threatened with litigation in 2015 under the CVRA, and had taken steps, by January 2016, to move the city to by-district elections.
5. Rialto - threatened with litigation in 2016 by MALDEF, and city responded that it was not presently going to switch to districts; to date no lawsuit filed against city.
6. Huntington Beach - threatened with litigation in 2017, city disagreed that there was liability under the CVRA, and to date no litigation.
7. Santa Monica - recently sued under the CVRA, and in February, 2019 a trial court ruled the city in violation of the law, ordered the city to hold a district-based election on July 2, 2019, and ordered that no City Council members elected at-large could continue to hold their seats past August 15, 2019. The city has appealed the trial court decision. If the city pursues, and loses, its appeal, then estimates are as high as over \$20 million in attorney's fees that the city will owe plaintiffs' attorneys (the same attorneys threatening to sue the City of Carson).
8. Torrance - recently received a CVRA demand letter, decided to switch to districts, and commenced the process of holding state required public hearings for the adoption of district maps.

#### **E. District Maps**

Both federal and California law require that voting districts must be as equal in population as possible. (U.S. Constitution, Amendment XIV; Election Code section 21601.)

California law generally provides that the following factors be considered when drawing a district map: (1) topography; (2) geography; (3) cohesiveness, contiguity, integrity, and compactness of territory; and (4) community of interests of the districts. (Election Code section 21601.)

#### **F. Process for Changing to District Elections**

##### **1. State Law**

Government Code section 34886 allows the City to, by ordinance, change from at-large elections for the City Council to district-based elections. The City could establish four, six, or eight districts for members of the City Council, with the Mayor continuing to be elected at-large by all the voters in the City.

Elections Code section 10010 lays out several requirements the City would need to satisfy before adopting an ordinance establishing district-based elections.

## **2. Charter**

Carson Charter Section 301 provides “the members of the city council and the mayor shall be elected by the voters from the City at large...” The Charter will need to be amended to provide for district elections. On March 3, 2020 the state will be holding a primary election at which time the Council can send to the City’s voters a Charter amendment for consideration to switch to districts for the November 3, 2020 General Municipal Election.

## **3. Demographer**

Staff has solicited proposals pursuant to Carson Municipal Code section 2611(c) for the professional services of a demographer to assist the City with meeting the requirements of switching to districts. Amongst the limited number of qualified demographers available to perform this professional service, staff received proposals from two regional companies, and also located an out-of-area demographer located in the San Francisco Bay area. Based on demonstrated competence, the professional qualifications necessary for satisfactory performance of the required services, a fair and reasonable price, and proximity to City of Carson reasonably necessary to provide in-person services, staff has selected Compass Demographics, Inc. for a not-to-exceed contract sum (\$23,500) within the City Manager’s signing authority.

## **4. Steps**

First, the City would be required to hold two public hearings prior to drawing any district maps, over a period of no longer than 30 days, in order to receive public input and discuss the composition of the voting districts. (Elections Code section 10010(a)(1).)

Second, after district maps are drawn, the City must hold at least two more public hearings, over a period of no more than 45 days, to receive public input on the draft map(s). (Elections Code subdivision 10010(a)(2).)

The draft district map(s) must also contain the proposed sequence of elections, if the district elections are to be implemented over the course of several elections, to account for staggered terms of office for sitting members of the City Council.

After at least four public hearings are held, the City may introduce and adopt the ordinance establishing district elections.

## **5. Other Scenarios**

There are also several other possible avenues for changing to district elections. Pursuant to Government Code section 34871, the City Council could submit the question of changing to district elections to the voters. Or, the City could potentially be ordered by a court to change to district-based elections after unsuccessfully defending against a CVRA

lawsuit.

**V. FISCAL IMPACT**

**A. Potential Awards of Attorney's Fees to Prospective Plaintiffs**

If the City were to defend against a CVRA lawsuit, then the potential attorney's fees and costs (both the City's own and any amount the City could potentially be ordered to pay the plaintiffs) could total in the several hundreds of thousands of dollars or even millions of dollars.

**B. Costs of Running District Elections**

Changing to district-based elections will likely not change the City's cost very much.

**VI. EXHIBITS**

None.

Prepared by: City Attorney's Office