

City of Los Alamitos

Agenda Report Consent Calendar

May 11, 2018
Item No.: 4A

To: Mayor Troy D. Edgar & Members of the City Council

Via: Bret M. Plumlee, City Manager

From: Windmera Quintanar, CMC, City Clerk
Michael S. Daudt, City Attorney

Subject: Resolution 2018-08 – Declaring Its Intention to Transition from At-Large to District-Based Elections

Summary: The City currently utilizes an at-large election system to elect its City Council Members. On March 29, 2018, the City received a certified letter from Kevin Shenkman, an attorney with the law firm of Shenkman & Hughes in Malibu, California. The letter asserts that the City's at-large election system violates the California Voting Rights Act and threatens litigation if the City declines to voluntarily convert to district-based elections. The first step in transitioning to district-based elections is adoption of a resolution of intention. Staff has prepared a resolution of intention to transition from at-large to district-based elections pursuant to Government Code Section 34886 and Elections Code Section 10010 for the 2020 General Municipal Election. The purpose of this report is to present the resolution for Council consideration.

Recommendation: Adopt Resolution No. 2018-08, entitled, "A RESOLUTION OF CITY COUNCIL OF THE CITY OF LOS ALAMITOS, CALIFORNIA, DECLARING ITS INTENTION TO TRANSITION FROM AT-LARGE TO DISTRICT-BASED ELECTIONS PURSUANT TO CALIFORNIA ELECTIONS CODE 10010(e)(3)(A)".

Background

The City currently utilizes an at-large election system where voters citywide select each of the five City Council Members. By contrast, a district-based election system is one in which a city is physically divided into separate districts, each with one council member who resides in the district and is chosen solely by the voters residing in that district.

The City received a certified letter on March 29, 2018, from Kevin Shenkman, an attorney with the law firm of Shenkman & Hughes in Malibu, California. The letter asserts that the City's at-large election system violates the California Voting Rights Act by diluting the ability of Latinos to elect candidates of their choice or otherwise influence the outcome of

Los Alamitos' City Council elections. Mr. Shenkman claims "polarized voting" may be occurring and threatens litigation if the City declines to voluntarily convert to district-based elections.

The California Voting Rights Act ("CVRA"), codified as Elections Code sections 14025 et seq. became law on January 1, 2003. The purpose of the CVRA is to prevent the disenfranchisement of protected classes; which are broadly defined to include members of a race, color, or language minority group. Any voter who resides in a city and is a member of a protected class may file a lawsuit against the city for a violation of the CVRA. To succeed, the plaintiff must only show that, as a result of an at-large election, "racially polarized voting" has occurred. "Racially polarized voting" means there is a difference between the choice of candidates preferred by voters in a protected class and candidates preferred by voters in the remainder of the voting population. If the plaintiff prevails in litigation, the CVRA allows for the recovery of significant attorneys' fees and expert witness fees. On the other hand, even if the city prevails, it cannot recover either attorneys' fees or costs.

Consequently, cities throughout the State have increasingly faced legal challenges to their at-large election systems. Nearly all have settled claims out of court by voluntarily transitioning to district-based elections. Those cities that have attempted to defend their existing at-large election systems have incurred significant legal costs. A few examples:

Palmdale: \$4.5 million
Whittier: \$1 million
Anaheim: \$1.1 million

Modesto: \$3 million
Santa Barbara: \$600,000

Staff is unaware of any city that has prevailed in defending its at-large election system under a claim filed pursuant to the CVRA.

On September 28, 2016, the Governor signed AB 350 into law, codified as Elections Code section 10010. The legislation provides a "safe harbor" from CVRA litigation for cities. Once a city receives a demand letter, it has 45 days of protection from litigation to assess its situation. If within that 45-day period, a city adopts a resolution of intention declaring its intent to transition from at-large to district-based elections, outlining specific steps to be undertaken to facilitate the transition, and estimating a timeframe for action, then a potential plaintiff is prohibited from filing a CVRA action for an additional 90-day period. Under AB 350, a city's liability is capped at \$30,000 if it utilizes the safe harbor provisions after receiving a demand letter.

Discussion

The Proposed Resolution of Intention

The attached resolution of intention to transition to district-based elections declares the City's intention to transition to district-based elections for the 2020 General Municipal election. Exhibit A of the resolution includes a tentative timeline: Consideration and Implementation of "District-Based" Election Method

Following the approval of a resolution of intent, there are two steps for transitioning from at-large to district-based elections: (1) engaging in the public hearing process to establish district boundaries, and (2) adopting an ordinance transitioning to district-based elections.

Setting District Boundaries

Prior to adopting an ordinance to transition to district-based elections, the City Council is required to establish district boundaries and the sequencing of district elections. Elections Code section 10010 sets forth the City Council public hearing process for establishing district boundaries and the sequencing of district elections. This process requires a series of noticed public hearings during which the public has a right to provide input on proposed district boundaries. Specifically, the City must hold at least two "clean slate" hearings at which the public can provide input on district boundaries before any maps are prepared. Thereafter, the City must hold at least two public hearings to consider draft maps. Finally, the City must hold a public hearing at which the map is adopted and sequencing of district elections is established. The map and sequencing must be approved by ordinance.

The creation and approval of voting district maps is intended to be a transparent public process. Voting district maps must be prepared in compliance with certain State and federal requirements, including consideration of communities of interest, natural geographic boundaries, and, perhaps most importantly, the "one-person, one vote" standard, which requires all voting districts be as nearly equal in population as possible.

Adopting an Ordinance Transitioning to District-Based Elections

Transitioning to district-based elections is effectuated by the City Council enacting an ordinance pursuant to Government Code section 34886, provided that the ordinance includes a declaration that it is being adopted to further the purposes of the CVRA. Under this method, the City Council will need to determine whether it wants to have a mayor elected at-large, with the remaining seats chosen through a district-based election process (with either four, six, or eight voting districts). If the City Council chooses not to have an elected mayor, it has the option of establishing five, seven, or nine voting districts.¹ These decisions will be made by the City Council based on information from the initial public hearings, and other appropriate considerations, should it adopt the proposed resolution of intent.

¹ Govt. Code §34871.

Fiscal Impact

Significant staff time will be required to transition to district-based elections and to administer the process including the need for five (5) public hearings. Transitioning to district based elections will also require the City to retain the services of a demographer. Additionally, the City will be required to reimburse Shenkman & Hughes for its documented costs up to \$30,000. Additional legal fees will be incurred by our City Attorney as well for this unbudgeted item. Once these additional charges have been realized, an appropriation request will come back to the Council.

Submitted By: Windmera Quintanar, CMC, City Clerk
Michael S. Daudt, City Attorney
Approved By: Bret M. Plumlee, City Manager

Attachments: 1. *Resolution No. 2018-08*
2. *Demand Letter from Shenkman & Hughes*

RESOLUTION NO. 2018-08

A RESOLUTION OF CITY COUNCIL OF THE CITY OF LOS ALAMITOS, CALIFORNIA, DECLARING ITS INTENTION TO TRANSITION FROM AT-LARGE TO DISTRICT-BASED ELECTIONS PURSUANT TO CALIFORNIA ELECTIONS CODE 10010(e)(3)(A)

WHEREAS, Members of the City Council of the City of Los Alamitos (“City”) are currently elected in at-large elections, in which each City Council Member is elected by all registered voters of the entire City; and

WHEREAS, Government Code Section 34886 authorizes the City Council to adopt an ordinance to change its method of election from an at-large system to a district-based system, in which each City Council Member is elected only by the voters in the district in which the candidate resides; and

WHEREAS, on March 29, 2018, the City received a certified letter from attorney Keven Shenkman of the law firm of Shenkman & Hughes asserting that the City’s at-large councilmember electoral system violates the California Voting Rights Act (“CVRA”) and threatening litigation if the City declines to voluntarily change to a district-based election system for electing council members; and

WHEREAS, the City denies its election system violates the CVRA or any other provision of law and asserts the City’s election system is legal in all respects and further denies any wrongdoing whatsoever regarding the way it has conducted its City Council elections; and

WHEREAS, despite the foregoing, the City Council has concluded it is in the public interest to begin the process of transition from at-large to district-based elections due to the uncertainty of litigation to defend against a CVRA lawsuit and the potentially extraordinary cost of such a lawsuit, even if the City were to prevail.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LOS ALAMITOS DOES RESOLVE AS FOLLOWS:

SECTION 1. The City Council of the City of Los Alamitos, California, finds that the above recitals are true and correct.

SECTION 2. The City Council hereby outlines its intention to transition from at-large to district-based elections, the specific steps it will undertake to facilitate this transition, and an estimated time frame for doing so.

SECTION 3. The City Council shall select and retain a demographer experienced and qualified to assist the City in drafting a district map consistent with the CVRA and the Federal Voting Rights Act.

SECTION 4. City staff shall work with the selected demographer to provide a detailed analysis of the City's current demographics and any other information or data necessary to prepare a draft map that divides the City into voting districts in a manner consistent with the intent and purpose of the CRVRA and the Federal Voting Rights Act.

SECTION 5. The City Council hereby approves the tentative timeline as set forth in Exhibit "A", attached to and made a part of this resolution, for conducting a public process to solicit public input and testimony on proposed district-based electoral maps before adopting any such map.

SECTION 6. The timeline contained in Exhibit "A" may be adjusted by the City Manager as deemed necessary, provided that such adjustments shall not prevent the City from complying with the time frames specified by Elections Code Section 10010.

SECTION 4. The City Clerk shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 11th day of May 2018.

Troy Edgar, Mayor

ATTEST:

Windmera Quintanar, CMC, City Clerk

APPROVED AS TO FORM:

Michael S. Daudt, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LOS ALAMITOS)

I, Windmera Quintanar, CMC, City Clerk, of the City of Los Alamitos, do hereby certify that the foregoing Resolution was adopted at a regular meeting of the City Council held on the 11th day of May, 2018, by the following vote, to wit:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:

Windmera Quintanar, CMC, City Clerk

Exhibit A

TENTATIVE TIMELINE: CONSIDERATION AND IMPLEMENTATION OF “DISTRICT-BASED” ELECTION METHOD

| DATE | EVENT | COMMENT |
|----------------------------|---|---|
| March 29, 2018 | City received demand letter | City has 45 days to adopt Resolution of Intention to change to district elections. |
| May 11, 2018 Friday | City Council adopts Resolution declaring its intention to transition from at-large to district-based elections | CVRA action cannot be commenced for 90 days (August 9, 2018) |
| May 11, 2018 Friday | City Council approves Consulting Services Agreement with qualified demographer | |
| | Public Outreach regarding process and to encourage public participation | |
| May 21, 2018 Monday | 1 st Public Hearing | City Council hearing regarding composition of district; no maps yet. |
| June 4, 2018 Monday | 2 nd Public Hearing <i>Must be conducted no more than 30 days from the 1st public hearing date</i> | City Council hearing regarding composition of district; no maps yet. |
| June 6, 2018 Wednesday | Post draft maps and potential sequence of elections | Draft maps and proposed sequence must be posted publicly at least 7 days before 3 rd Public Hearing. |
| June 18, 2018 Monday | 3 rd Public Hearing | City Council hearing regarding composition of district. |
| June 20, 2018 Wednesday | Post any new or amended maps and potential sequence of elections. | Draft maps and proposed sequence must be posted publicly at least 7 days before 3 rd Public Hearing. |

| | | |
|-------------------------|--|--|
| July 9, 2018 Monday | 4 th Public Hearing – Select map, City Council introduces ordinance establishing district elections, including district boundaries and election sequence | |
| July 16, 2018 Monday | 5 th Public Hearing – second reading of ordinance establishing district elections | Ordinance must be adopted at a Regular Council meeting |
| August 8, 2018 | Day 90 | |
| August 15, 2018 | Effective date of ordinance establishing district elections | |

SHENKMAN & HUGHES, PC

Attorneys

Malibu, California

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CITY OF LOS ALAMITOS

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(310) 457-0970

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VIA CERTIFIED MAIL

March 27, 2018

Windmera Quintanar - City Clerk
City of Los Alamitos
3191 Katella Avenue
Los Alamitos, CA 90720

Re: Violation of California Voting Rights Act

I write on behalf of our client, Southwest Voter Registration Education Project and its members. The City of Los Alamitos (“City”) relies upon an at-large election system for electing candidates to its City Council. Moreover, voting within the City is racially polarized, resulting in minority vote dilution, and, therefore, the City’s at-large elections violate the California Voting Rights Act of 2001 (“CVRA”).

The CVRA disfavors the use of so-called “at-large” voting – an election method that permits voters of an entire jurisdiction to elect candidates to each open seat. *See generally Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 667 (“*Sanchez*”). For example, if the U.S. Congress were elected through a nationwide at-large election, rather than through typical single-member districts, each voter could cast up to 435 votes and vote for any candidate in the country, not just the candidates in the voter's district, and the 435 candidates receiving the most nationwide votes would be elected. At-large elections thus allow a bare majority of voters to control *every* seat, not just the seats in a particular district or a proportional majority of seats.

Voting rights advocates have targeted “at-large” election schemes for decades, because they often result in “vote dilution,” or the impairment of minority groups’ ability to elect their preferred candidates or influence the outcome of elections, which occurs when the electorate votes in a racially polarized manner. *See Thornburg v. Gingles*, 478 U.S. 30, 46 (1986) (“*Gingles*”). The U.S. Supreme Court “has long recognized that multi-member districts and at-large voting schemes may operate to minimize or cancel out the voting strength” of minorities. *Id.* at 47; *see also id.* at 48, fn. 14 (at-large elections may also cause elected officials to “ignore [minority] interests without fear of political consequences”), citing *Rogers v. Lodge*, 458 U.S. 613, 623 (1982); *White v. Register*, 412 U.S. 755, 769 (1973). “[T]he majority, by virtue of its numerical superiority, will regularly defeat the choices of minority voters.” *Gingles*, at 47. When racially polarized

voting occurs, dividing the political unit into single-member districts, or some other appropriate remedy, may facilitate a minority group's ability to elect its preferred representatives. *Rogers*, at 616.

Section 2 of the federal Voting Rights Act (“FVRA”), 42 U.S.C. § 1973, which Congress enacted in 1965 and amended in 1982, targets, among other things, at-large election schemes. *Gingles* at 37; *see also* Boyd & Markman, *The 1982 Amendments to the Voting Rights Act: A Legislative History* (1983) 40 Wash. & Lee L. Rev. 1347, 1402. Although enforcement of the FVRA was successful in many states, California was an exception. By enacting the CVRA, “[t]he Legislature intended to expand protections against vote dilution over those provided by the federal Voting Rights Act of 1965.” *Jauregui v. City of Palmdale* (2014) 226 Cal. App. 4th 781, 808. Thus, while the CVRA is similar to the FVRA in several respects, it is also different in several key respects, as the Legislature sought to remedy what it considered “restrictive interpretations given to the federal act.” Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001-2002 Reg. Sess.) as amended Apr. 9, 2002, p. 2.

The California Legislature dispensed with the requirement in *Gingles* that a minority group demonstrate that it is sufficiently large and geographically compact to constitute a “majority-minority district.” *Sanchez*, at 669. Rather, the CVRA requires only that a plaintiff show the existence of racially polarized voting to establish that an at-large method of election violates the CVRA, not the desirability of any particular remedy. *See* Cal. Elec. Code § 14028 (“A violation of Section 14027 *is established* if it is shown that racially polarized voting occurs ...”) (emphasis added); *also see* Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, p. 3 (“Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown).”)

To establish a violation of the CVRA, a plaintiff must generally show that “racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision.” Elec. Code § 14028(a). The CVRA specifies the elections that are most probative: “elections in which at least one candidate is a member of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of a protected class.” Elec. Code § 14028(a). The CVRA also makes clear that “[e]lections conducted prior to the filing of an action ... are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action.” *Id.*

Factors other than “racially polarized voting” that are required to make out a claim under the FVRA – under the “totality of the circumstances” test – “are probative, but not

necessary factors to establish a violation of” the CVRA. Elec. Code § 14028(e). These “other factors” include “the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns.” *Id.*

The City’s at-large system dilutes the ability of Latinos (a “protected class”) – to elect candidates of their choice or otherwise influence the outcome of the City’s Council elections.

The City’s election history is illustrative: during the past 15 years, there has not been a single Latino candidate for the Los Alamitos City Council. Opponents of fair, district-based elections may attribute the lack of Latinos vying for elected positions to a lack of interest in local government from the Latino community. On the contrary, the alarming absence of Latino candidates seeking election to the Los Alamitos City Council reveals vote dilution. *See Westwego Citizens for Better Government v. City of Westwego*, 872 F. 2d 1201, 1208-1209, n. 9 (5th Cir. 1989).

The elections on ballot measures addressing the rights of ethnic minorities are similarly illustrative of the racially polarized voting in City of Los Alamitos. For example, in the 1994 election for State Proposition 187, which involved the denial of governmental benefits to persons who could not demonstrate legal residence, Latino voters voted against State Proposition 187, while the rest of the electorate in City of Los Alamitos, particularly the Non-Hispanic White voters, supported the passage of State Proposition 187. Similarly, the 1996 election for State Proposition 209, which involved eliminating “affirmative action,” was racially polarized in City of Los Alamitos. Latino voters voted against State Proposition 209, while the Non-Hispanic White portion of the electorate in City of Los Alamitos supported the passage of State Proposition 209. Similarly, the 1998 election for State Proposition 227, which involved eliminating bilingual education was racially polarized in City of Los Alamitos. Latino voters voted against State Proposition 227, while the rest of the electorate in City of Los Alamitos, particularly the Non-Hispanic White voters in Mission Viejo, supported the passage of State Proposition 227.

As of the 2010 Census, the City of Los Alamitos has a population of 11,449. According to this data, Latinos comprise over 21% of the City’s population. However, for at least the past 15 years, there has not been one Latino to serve on the Los Alamitos City Council. Therefore, not only is the contrast between the significant Latino proportion of the electorate and the total absence of Latinos to run for or be elected to the City’s

Council outwardly disturbing, it is also fundamentally hostile towards Latino participation.

This hostility – the same sort of hostility demonstrated by Los Alamitos’ support of the unconstitutional Proposition 187 – was evidenced most recently when, on March 19, 2018, the Los Alamitos City Council adopted Chapter 9.30, deceptively entitled “Constitution of the United States Compliance” to its Municipal Code to expressly exempt the City of Los Alamitos from the “California Values Act.” This politically charged move by the City Council, to incite a fight over California’s status as a “sanctuary state,” reflects a disturbing insensitivity to the Latino community it purports to represent. Under the guise of compliance with the US Constitution, the action of the Los Alamitos City Council only serves to perpetuate a climate of fear amongst Latinos who feel unwanted, unsafe and unrepresented in Los Alamitos. These exact sentiments were voiced by Luz Beltran-Acevedo, a Los Alamitos resident, who during public comment at the March 19th City Council meeting said, “I don’t want to be scared walking on Katella...be scared that my neighbors are going to be looking at me because I’m Mexican-American. My husband is Mexican-American too and he served in the Afghanistan war. I’m here speaking out because I don’t want my two daughters to be afraid of walking on our streets in Los Alamitos.” Disregarding her plea and the comments of dozens of other speakers who urged a “no” vote, the City Council adopted this Ordinance leaving many Los Alamitos families living in fear, rejected by their neighbors because of their national origin.

Sadly, racially charged rhetoric is not unfamiliar to the Los Alamitos City Council. In 2009, shortly after the inauguration of our first African American President, Mayor Dean Grose circulated an email of a picture entitled “No Easter egg hunt this year” depicting the White House lawn as a watermelon patch. While Mr. Grose proclaimed that he had no idea that the picture was objectively racist, any American with even a modicum of sensitivity to racial stereotypes and discourse would have recognized that the suggestion that President Obama had turned the White House lawn into a watermelon farm is overtly racist. Then, in 2012 the majority non-Hispanic white voting bloc in Los Alamitos expressed its tolerance for such racist behavior when it elected Mr. Grose to the Los Alamitos City Council again. This overtly racial incident, and the lack of any consequence to Mr. Grose from the Los Alamitos electorate is yet another direct reflection of the lack of diversity on the Los Alamitos City Council.

As you may be aware, in 2012, we sued the City of Palmdale for violating the CVRA. After an eight-day trial, we prevailed. After spending millions of dollars, a district-based remedy was ultimately imposed upon the Palmdale city council, with districts that combine all incumbents into one of the four districts.

Given the historical lack of Latino representation on the Los Alamitos City Council in the context of racially polarized elections, we urge the City to voluntarily change its at-large system of electing City Council members. Otherwise, on behalf of residents within the jurisdiction, we will be forced to seek judicial relief. Please advise us no later than May 15, 2018 as to whether you would like to discuss a voluntary change to your current at-large system.

We look forward to your response.

Very truly yours,

A handwritten signature in black ink, appearing to read 'KS', written over a horizontal line.

Kevin I. Shenkman