

CITY OF VENTURA

ADMINISTRATIVE REPORT

Date: 10/11/2017
Agenda Item No.: 5
Meeting Date: 10/23/2017

To: Honorable Mayor and Members of the City Council

**From: Gregory G. Diaz, City Attorney
Antoinette Mann, City Clerk**

**Subject: Public Hearing #1 Regarding the Composition of the City's
Voting Districts pursuant to Elections Code Section
10010(a)(1)**

RECOMMENDATIONS

That the City Council:

- a. Hold a public hearing, receive public comment regarding the composition and criteria to establish the boundaries of the City's as yet-to-be-formed voting districts and consider a draft resolution setting forth legal criteria for drawing of such districts.
- b. Close the public hearing and set the next public hearing November 6, 2017.

PREVIOUS CITY COUNCIL ACTION

- September 2014, the City Council appointed a citizens Charter Review Committee and the charge to the Committee included reviewing district-based elections.
- In November of 2015, the citizens Charter Review Committee submitted its Final Report which included a recommendation to transition to district-based elections.
- In June of 2016, the City Council determined to place a charter amendment on the ballot that included removing the at-large election process from the charter and having the method of election determined by ordinance of the City Council codified in the Municipal Code.
- In November of 2016, the voters approved Measure N which included having the method of election determined by ordinance of the City Council codified in the Municipal Code.
- On March 20, 2017, the City Council adopted Ordinance No. 2017-007 which requires at-large City Council elections.
- On September 6, 2017, the City received a letter alleging the City's at-large method of electing Members of the City Council violates the California Voting Rights Act.
- On October 9, 2017, the City Council considered a variety of options and directed that the staff return with a draft resolution declaring its intention to transition to district based elections pursuant to Elections Code Section 10010(e)(3)(A).
- **On October 16, 2017, the City Council adopted a Resolution declaring its intention to transition to district-based elections.**

DISCUSSION

On September 6, 2017, the City received a letter from Robert Rubin, an attorney in San Francisco, threatening to sue the City for alleged

violations of the California Voting Rights Act ("CVRA")¹ unless the City voluntarily converts to district-based elections.

The CVRA applies to jurisdictions, including charter cities, that utilize the "at-large" method of election, where voters of the entire jurisdiction elect the Members of the City Council. The threshold to establish liability under the CVRA is extremely low and prevailing plaintiffs are granted the ability to recover their attorneys' fees and costs. Virtually every city that has had a CVRA case filed against it has either lost in court or settled the case and been forced to pay the attorneys' fees and costs, within the hundreds of thousands to in excess of millions of dollars.

The City Council at its October 9, 2017 meeting discussed the ramifications of this threat of litigation and the issues associated with transitioning to district-based elections. The City Council elected to avail itself of the safe harbor provisions of the 2016 Amendments to the CVRA² and directed the City staff to bring back a draft Resolution for consideration at its October 16, 2017 meeting for adoption. The Resolution was adopted by the City Council. As stated in the Resolution, the City Council took this action in furtherance of the purposes of the CVRA and all information relating to this action is on the city's website at: www.cityofventura.ca.gov/districtelections.

Following the City Council's October 16, 2017 adoption of Resolution No. 2017-042, pursuant to Elections Code Section 10010(a)(1), the City is required to hold two public hearings within a 30-day period before commencing with the drawing of any of the draft maps for the proposed voting districts in order to receive public input regarding the composition of the districts.³ This public hearing is the first of the two public hearings that will be held for this purpose; the second public hearing will be held on November 6, 2017.

¹ California Elections Code Section 14025 *et seq.*

² California Elections Code Section 10010.

³ California Elections Code Section 10010(a)(1).

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The CVRA was specifically enacted in 2002 to eliminate several key burden-of-proof requirements existing under the Federal Voting Rights Act of 1965 ("FVRA")⁴ after several jurisdictions in California successfully defended themselves in litigation brought under the FVRA. As a result, the CVRA is tilted heavily in favor of challengers and their attorneys. Indeed, over the relatively short 15-year history of the CVRA and after only an initial challenge to it was resolved in 2006, public agencies have paid over \$15 million to CVRA attorneys. Due to the combination of the CVRA's low burden to trigger mandatory district-based elections and its almost mandatory attorneys' fee provision, almost all CVRA cases that have been filed have ended with the public agency implementing a district-based elections system and paying some or all of the challenger's attorneys' fees. After California cities and other public agencies expressed concern about the inability to fix what had otherwise not been brought as a problem before incurring substantial litigation costs and attorneys' fees, in 2016 the California State Legislature amended the Elections Code and the CVRA to make the transition to a district-based election system more simple and to provide a "safe harbor" process to protect public agencies from litigation that are undertaking this effort.⁵ Because the City Council adopted Resolution No. 2017-042 declaring its intention to convert to a district-based method of election, a CVRA lawsuit cannot be filed before 90 days after the City Council's adoption of this Resolution, effectively January 14, 2018.

To begin this process of converting the City's at-large election system to a district-based system the City Council must hold a public hearing and receive comments regarding the composition of the yet-to-be-formed voting districts. In effect, the City will be asking its residents what criteria should be used in developing and drafting where the lines should be dividing the districts. Before the City can commence the actual drawing of district maps, the City Council is required to have a second public hearing also on the criteria for consideration of how and where the district lines should be drawn. This is the first such hearing and the second will occur on

⁴ 52 U.S.C. 10301 *et seq.*

⁵ California Elections Code Section 10010.

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November 6, 2017. It is the intent of these first two public hearings to help identify the neighborhoods, or other "communities of interest" and other local factors that should be considered or used as the "building blocks" when drawing of draft district maps. The public is welcome to propose competing districting maps, but it is not required. The second public hearing will also be the public launch of the City's online redistricting tool, provided by our redistricting consultant, (National Demographics Corporation or NDC). This online tool will be available as a link from the City's website.

While public input concerning the composition of the City's yet-to-be-formed voting districts should be considered, there are several mandatory considerations and criteria that the City will have to comply with when the actual districts are created:

1. Population equality across districts⁶
2. Race cannot be the "predominant" factor or criteria when drawing districts⁷
3. Compliance with the FVRA, which among other things, prohibits districts that dilute minority voting rights, and encourages a majority minority district, if the minority group is sufficiently large, and such a district can be drawn without race being the predominant factor⁸

Also in accordance with Elections Code Section 21601⁹ and Government Code Section 34884¹⁰, the City Council *may* consider the following factors when establishing districts which are not exclusive and:

(a) Topography

⁶ Elections Code Section 21601; Government Code Section 34884 ("the districts shall be nearly as equal in population as may be.").

⁷ *Shaw v. Reno* (1993) 509 U.S. 630; *Miller v. Johnson* (1995) 515 U.S. 900.

⁸ *Bartlett v. Strickland* (2009) 556 U.S. 1.

⁹ Elections Code Section 21601 only applies as a guide to the City based on its status as a charter city.

¹⁰ Government Code Section 34884 only applies as a reference as this section pertains to cities in the incorporation process.

- (b) Geography
- (c) Cohesiveness, continuity, integrity, and compactness of territory;
- (d) Community of Interests

The City Council may also plan-ahead for future growth, consider the boundaries of other political subdivisions, and consider physical, visual, geographical, and topographical features (natural and man-made). The City Council may also choose to include some, all, or none of the criteria, or may choose to come up with unique criteria that the City Council believes is applicable to the City. As to issues under the FVRA, attention needs to be paid to not “overloading” a district with members of a protected class such that their chance of influencing the outcome of a second district is precluded. This is known as “packing” a district with minority voters and violates the FVRA because it dilutes the vote of such minority voters. Alternatively, attention needs to be made to the splitting members of a protected class such that their ability to elect a candidate of their choosing is defeated. This is known as “cracking” and violates the FVRA because it prevents members of protected classes from electing candidates of their choosing.

The term “community of interest” is not specifically defined in statute as it applies to municipal districting. It has been defined for purposes of statewide reapportionment as:

“a contiguous population which share common social and economic interests that should be included within a single district for purposes of its effective and fair representation.”¹¹

In educational material prepared for the City of Sacramento’s Redistricting Citizens Advisory Committee in 2011, communities of interest is defined as including:

¹¹ Proposition 20, November 2010.

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“common ‘needs and interests’ reflected in patterns of geography, social interaction, trade, political ties and common interests.”¹²

The Primer developed for the Sacramento Redistricting Advisory Committee also includes a number of factors used to help determine a community of interest:

“Political/Geographic

- Urban and rural interests
- Housing patterns and living conditions (urban, suburban, rural)
- Cultural, religious, and language characteristics
- Transportation hubs/centers
- Redevelopment areas
- School districts/attendance areas

Socio-Economic

- Income levels
- Educational backgrounds
- Age demographics, household size/family size
- Group quarters, housing owners vs. renters
- Policy issues (concerns about crime, education, etc.)
- Employment and economic patterns (How are community residents employed? What is the economic base of the community?)
- Health and environmental conditions
- Work opportunities

Cultural

- Social interests

¹² Sacramento Redistricting Citizens Advisory Committee, “Communities of Interest,” Session 3, May 9, 2011, Primer #4, Pg. 2.

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- Community centers
- Parks/dog parks
- Media markets
- Occupations and lifestyles”¹³

In addition, members of the community may suggest additional or alternative criteria that the City Council may wish to consider. A proposed draft resolution adopting line drawing criteria for City Council districts is attached as Attachment A. This draft Resolution is intended to be adopted following the second public hearing, November 6, 2017, and include the factors to be used by the demographer, public, and ultimately the City Council to prepare, consider, and adopt district lines. Three more public hearings will be required in order to complete this process. At the conclusion of the planned final public hearing, the City Council may introduce for first reading an ordinance establishing district boundaries and thereafter, the district-based elections will be implemented for the 2018 election cycle.

Public Engagement

To increase public awareness for the transition to District Elections, the City will be utilizing a variety of communications channels to engage members of our community. Residents will be advised of the Public Hearings as well as the Community Information Meeting via Spanish and English newspaper and radio advertisements. A Community Information Meeting will be held on October 26, 2017 at the Poinsettia Pavilion, 3451 Foothill Road, at 6 p.m., allowing those that cannot attend a City Council Public Hearing (October 23 and November 6) or would like additional education on at-large vs. district-based elections, an overview of the California Voting Rights Act, and to provide community input. The City's redistricting consultant, National Demographics Corporation (NDC), will attend the October 23, October 26 and November 6 meetings to assist with our public engagement process. All public meetings will be conducted in

¹³ Sacramento Redistricting Citizens Advisory Committee, "Communities of Interest," Session 3, May 9, 2011, Primer #4, Pg.3.

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both English and Spanish with simultaneous professional interpreting services.

A short video in Spanish and English was produced to engage and reach citizens on social media and is posted on www.cityofventura.ca.gov/districtelections. If requested, presentations will be available for local Community Councils and other organizations. To increase awareness and participation, the City will be contacting its community partners to distribute information and make use of existing sites and outlets that already have an audience.

The City's website has been enhanced with a complete list of key dates and a robust list of Frequently Asked Questions at www.cityofventura.ca.gov/districtelections.

ALTERNATIVES

1. Take action as recommended in the Administrative Report.
2. Modify the recommended action.
3. Decline to take action.

FISCAL IMPACTS

The fiscal impacts of the transition to districts has been discussed in the two previous Administrative Reports, October 9 and 16, 2017.

Prepared by: Gregory Diaz, City Attorney, Antoinette Mann, City Clerk, and Kelly Flanders, Communications Manager



Gregory G. Diaz
City Attorney

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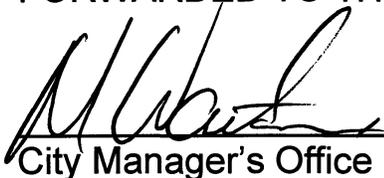
Antoinette Mann, MMC, CRM
City Clerk

Reviewed as to Fiscal Impacts



Gilbert A. Garcia
Finance and Technology Director

FORWARDED TO THE CITY COUNCIL


City Manager's Office

ATTACHMENTS

Draft Resolution on Criteria

RESOLUTION NO. 2017-____

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF SAN BUENAVENTURA, CALIFORNIA,
ADOPTING LINE DRAWING CRITERIA
INITIALLY AND FOR ADJUSTING CITY COUNCIL
DISTRICT BOUNDARIES AFTER INITIAL
ADOPTION

WHEREAS, The City Council of the City of San Buenaventura (“City”) was elected under an “at large” election system whereby Members of the City Council were elected by voters of the entire City; and,

WHEREAS, The City Council is considering a change to district-based elections whereby each Member of the City Council must reside within the designated district boundary and is elected only by voters of that district; and,

WHEREAS, The Federal Voting Rights Act (42 U.S.C. Section 1973) prohibits the use of any voting qualification, or prerequisite to voting, or standard practice or procedure in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color; and,

WHEREAS, Federal law and the equal protection clause require that each district be equal in population to ensure compliance with the “one person, one vote” rule; however, deviations approximating five to ten percent may pass muster under the equal protection clause where required to meet an official criteria; and,

WHEREAS, The City Council has instructed its demographer and city staff to develop draft maps that fully comply with legal requirements and intends to provide official criteria for any needed deviations.

NOW, THEREFORE, the City Council of the City of San Buenaventura does hereby find, determine, resolve, order and adopt the following criteria to guide the establishment of district for City Council elections:

Section 1: Each City Council District shall contain a nearly equal number of inhabitants; and,

Section 2: City Council District borders shall be drawn in a manner that complies with the Federal Voting Rights Act; and,

Section 3: City Council districts shall consist of contiguous territory in as compact form as possible; and,

Section 4: City Council districts shall respect communities of interest as much as possible; and,

Section 5: City Council district borders shall follow visible natural and man-made geographical and topographical features as much as possible.

PASSED AND ADOPTED this _____ day of _____, 2017.

Erik Nasarenko, Mayor

ATTEST:

Antoinette M. Mann, MMC, CRM
City Clerk

APPROVED AS TO FORM
GREGORY G. DIAZ, City Attorney

By: Gregory G. Diaz 10/17/2017
Gregory G. Diaz Date
City Attorney