



**City Council Consideration of the
Initiation of the Process to Transition
from an “At-large” to a “District-
based” Election System**

10.11.18

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Overview of Presentation

- **Current at-large election system in Moorpark**
- **Summary of assertions that current election system violates the California Voting Rights Act (“CVRA”)**
- **Public policy implications of changing system**
- **Background about the CVRA and racially polarized voting**
- **Why is the City having to address this now?**
- **Affect of Extension Agreement on Tentative Timetable**
- **Impacts on Incumbents of a district-based election system**
- **Cumulative voting alternative**
- **Resolution of Intention and next steps**



Current Moorpark “At-Large” Election System

- Since the City’s incorporation in 1983, Councilmembers have been elected through an "at-large" election system.
- Council candidates can reside anywhere in the City and are elected by the registered voters of the entire City.
- Office of Mayor is a separate, directly elected office.
- Office of Mayor became directly elected in Moorpark in 1988.



Assertions Against Current System

- On August 29, 2018, City received a letter dated August 27, 2018 from an attorney on behalf of the “Southwest Voter Registration Project.”
- Letter claims the City's “at-large” elections violates the CVRA.
- Letter alleges that voting within Moorpark is racially polarized, resulting in minority vote dilution.
- Letter highlights the electoral losses of City Council candidates Ernesto Acosta in 1998, Bernardo Perez in 2002, and Jose Magdalano in 2008 as evidence of the inability of Latino voters to elect their chosen candidates.
- Letter threatens a lawsuit if the City does not change from an “at-large” election system to a “district-based” election system.



Public Policy Implications of “District-Based” versus “At-Large” Elections

- **Advantages of a “district-based” election system:**
 - Each geographic area of the City is represented
 - Viewpoints that might not be citywide can be represented
 - Minority candidates (racial or political) may have a better opportunity to be elected
 - Running for City Council could be less expensive than a city-wide campaign
 - Each voter has a specific Councilmember to contact for assistance
 - Voter choice may be simplified with fewer offices and fewer candidates to choose from



Public Policy Implications (cont.)

- **Disadvantages of “district-based” election system:**
 - Councilmembers may represent only the interests of their district and not the whole City
 - Candidates may be elected with few votes
 - Councilmembers may have more divergent views, resulting in greater conflict with each other
 - District lines have to be reviewed and redrawn after each census potentially disrupting established Councilmember-constituent relationships
 - “Best qualified” or “interested” candidates may be concentrated in one district



Background about Law

- Despite these valid public policy implications, there are legal standards the City must consider that will affect whether to transition or not transition to a “district-based” election system.
- **Federal Voting Rights Act of 1965 ("FVRA")**
 - Designed to address a variety of state actions designed to deny or abridge the right of citizens to vote and to have an opportunity to elect representatives of their choice.
 - Originally designed to protect minority voters and candidates in states and localities with a history of racial discrimination and barriers to voting.



Background about Law (cont.)

- Successful FVRA plaintiff must prove THREE basic elements:
 1. Sufficiently large/geographically compact minority group to form a majority of the eligible voters in a single-member district;
 2. Minority group is politically cohesive; and
 3. “White bloc voting” is sufficient to prevent minority voters from usually electing candidates of their choice.
- If FVRA plaintiff proves these three basic elements:

Court then considers “totality of circumstances” to determine if minority voters have an equal opportunity to elect their chosen candidate in an at-large election system.



Background about Law (cont.)

■ The CVRA:

- Expressly intended to make it easier for California plaintiffs to prove their case (historically, California plaintiffs had a losing record under the FVRA).
- Eliminates "geographically compact" element.
- Purports to make proof under the "totality of the circumstances" test optional.
- Focus becomes on whether there has been "racially polarized voting."



What is “Racially Polarized” Voting?

- **“Racially polarized voting” is:**
 - Voting in which there is a difference in the choices of candidates preferred by voters in a protected minority class and the choices of candidates in the rest of the electorate.
 - Evidence as to whether the racially predominant voting group submerges the voting strength and preferences of a politically cohesive racial minority group.



What is “Racially Polarized” Voting? (cont.)

- **The occurrence of racially polarized voting is determined by several factors including:**
 - **The extent to which candidates who are members of a protected class and who are preferred by the voters of the protected class, as determined by an analysis of voting behavior, have been elected.**
 - **Results of city elections in which at least one candidate is a member of a protected class.**
 - **Elections involving ballot measures or other electoral choices that affect the rights of the members of the protected class.**
 - **Proof of intent on the part of the voters or elected officials to discriminate against a protected class is not required.**



Effect of the CVRA

- Accordingly, a CVRA lawsuit is substantially more difficult to defend.
- Lower standards for a plaintiff to prevail in CVRA litigation.
- Every public entity defendant since the CVRA was enacted has either lost in court or settled.
 - Exception: one case dismissed after voters enacted district-based elections during the pending litigation
- Every government defendant ultimately forced to pay at least some portion of the plaintiffs' attorney fees and costs.
- Range of awards: approximately \$400,000 to over \$4.5M.



Why is this Issue Coming Up Now?

- August 27, 2018 letter threatens costly litigation if City does not implement a district-based election system.
- It is too late to affect 2018 election for City Council because the process to draw and adopt district maps cannot be accomplished before 2018 election.
- If the City moves to district-based elections, it would only affect Council elections in 2020 and thereafter.
- Under California law, any adopted district based election system would not affect the terms of Councilmembers elected in 2018 – they will still be able to serve a full four-year term.



Law Provides Limited Time to Make Initial Decision

- The law provides a limited 45-day time period to make an initial decision whether the City is willing to consider a transition to “district-based” elections.
- If the City Council acts within this 45-day period to adopt a Resolution of Intent to transition to “district-based” election system, the CVRA provides a limited “safe harbor” against litigation and a cap on plaintiffs’ attorneys fees.
- This 45-day period will expire on October 13, 2018.
- This meeting was scheduled to allow the City to consider this matter before that deadline.



Limited Time Periods

- If the City chooses not to adopt the Resolution of Intent to transition to district based elections, the Southwest Voter Registration Education Project would be permitted to bring legal action against the City shortly thereafter.
- If the City does adopt the Resolution of Intention, then the law provides the City with an additional 90-day period to come up with plan, maps and adopt the ordinance establishing district-based elections.
- During this 90-day period, the City will also have another “safe harbor” period from litigation challenging the City’s current “at-large” election system.



Extension Agreement – 180 days

- The City has reached an agreement with the attorneys for the Southwest Voter Registration Education Project for an extension to the 90-day period.
- Extension Agreement will provide the City up to 180 days to accomplish the steps ordinarily required in the 90-day period.
- This will allow the City to complete the process outside of the holiday season and by April 9, 2019 rather than by January 9, 2019.
- That Extension Agreement is on today's agenda for City Council approval.



Steps to Accomplish in Next 180 –day Period

- During the 180-day period, there would be a multi-step process:
 - Two “public hearings” (community meetings) over a period of no more than 30 days with
 - the 1st public hearing would be in November, 2018 and
 - the 2nd public hearing in December, 2018.
 - At these public hearings, the public invited to provide input regarding district composition.
 - These would be organized and run as community meetings and not as City Council meeting.
 - One (or more) draft map(s) by City’s demographer.



Steps to Accomplish in Next 180-day Period (cont.)

- At these meetings, input would be sought on the potential sequence of elections so that City Councilmembers would be elected in their districts at different times to provide for staggered terms of office.
- Consideration of alternatives to “district-based” elections including cumulative voting.
- Then, City Council is required to hold at least two additional public hearings over a period of no more than 45 days
 - A 3rd public hearing in January
 - A 4th public hearing in February
- Public shall be invited to provide input regarding the content of the draft map or maps and the proposed sequence of elections.



Steps to accomplish in next 180-day period (cont.)

- Following the close of the public hearing in February, the City Council would consider an ordinance to adopt district maps and a district election sequencing plan.
- A final (5th) public hearing would then occur at final adoption of the map and sequencing plan at the end of February.
- Ordinance would then take effect 30-days thereafter and prior to the expiration of the 180-day Extension Agreement deadline of April 9, 2019.
- Well in advance of the next Moorpark election in November 2020.



Sequencing District Elections and Impacts on Incumbents

- Questions have arisen as to the impact on incumbent Councilmembers and Councilmembers elected in November 2018.
- All Councilmembers elected to a four-year term prior to the adoption of the district map and sequencing plan will still serve their original four-year term.
- None of the incumbents are automatically assigned as the representative of the district in which they live – they remain “at large” incumbents for the rest of their terms.
- If an incumbent wants to run for reelection, they would then have to run in their district for the district seat when that seat is sequenced for an election.



Cumulative Voting Alternative

- Questions have arisen as to whether the City can adopt a cumulative voting election system rather than a “district-based” election system.
- Cumulative voting is a system in which each voter would be allotted the same number of votes as there are seats up for election.
- Voters residing anywhere in the City would be able to vote for one or more candidates on the ballot who reside anywhere in the City.
- Voters could distribute their votes among candidates or “plump” all their votes on one candidate.



Cumulative Voting Alternative (cont.)

- Staff and the City's consultants are looking at this option and are gathering information.
- Factors that will be evaluated include:
 - How this alternative will or will not enhance the ability of minority groups to elect candidates of their choice; and
 - Whether voting machines to allow for cumulative voting are available from the County of Ventura, and if so, under what financial arrangements and in what time frame.



Resolution of Intent

- Declares City's intent to transition to district based elections for Councilmembers.
- Outlines specific steps to facilitate the transition.
- Provides an estimated time frame for action (see *Exhibit "A" to proposed Resolution for tentative timeline*).
- If adopted, allows for the 180-day period to hold public hearings and thereafter adopt an ordinance approving district-based election system and district maps for that purpose.
- Adoption of Resolution does not foreclose consideration of other options.



Demographer Assistance

If City Council adopts the Resolution, National Demographics Corporation will assist the City with the following:

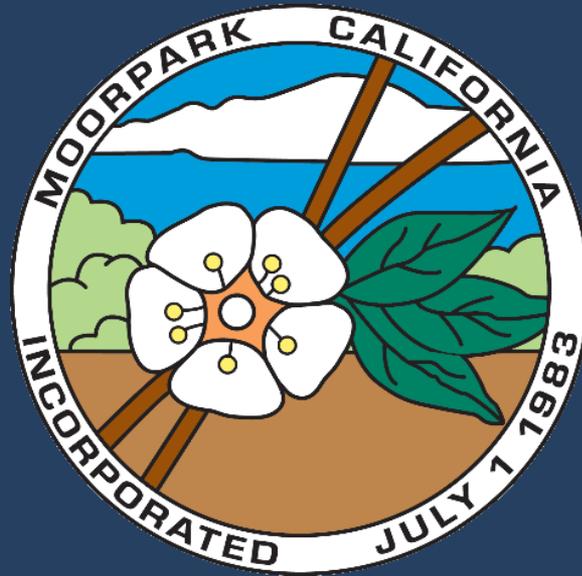
- Coordinating and leading the first two public hearings in November and December, 2018 to obtain community input.
- Coordinating and facilitating public outreach for those public hearings and providing other services.
- Educating the public about establishment of districts, including criteria and methodology.
- Drawing proposed district map(s) for consideration.



Staff Recommendations

- **Adopt Resolution of Intent to transition to district-based elections.**
- **Approve the Agreement for Extension of time period for specified steps provided by the CVRA.**





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Moorpark City Council Meeting