



ITEM # _____

CITY OF MONTEBELLO

CITY COUNCIL AGENDA STAFF REPORT

TO: Honorable Mayor and City Council Members

FROM: René Bobadilla, P.E., City Manager

BY: Arnold M. Alvarez-Glasman, City Attorney

SUBJECT: **Adopt Resolution No. 21-43 Declaring Intention to Transition from an “At-Large” to a “By-District” Election System**

DATE: May 26, 2021

RECOMMENDATION (S):

It is recommended that the City Council:

- 1) Adopt Resolution No. 21-43 declaring the City’s intention, pursuant to Elections Code Section 10010, to initiate procedures for establishing and implementing by-district elections for City Council members; and
- 2) Take such additional, related, action that may be desirable.

FISCAL IMPACT

Should the Council adopt a resolution declaring the City’s intention to initiate procedures for establishing and implementing by-district elections, staff recommends retaining the services of an appropriate demographic evaluation firm to assist with the analysis, redistricting and public hearing process. The cost of the demographer is not yet known at this time.

If the Council ultimately adopts an ordinance implementing by-district elections, the City may also be liable for costs to the prospective plaintiffs of up to an additional \$30,000. If it does not, a fee demand will likely exceed that amount by a significant margin.

BACKGROUND

On March 15, 2021, the City of Montebello (City) received a Notice of Possible Violation of California Voting Rights Act (CVRA) demand letter from attorney Scott J. Rafferty (Rafferty), on behalf of his client, which threatens legal action against the City under the

Adopt Resolution No. 21-43 Declaring Intention to Transition from an “At-Large” to a “By-District” Election System

Page 2 of 3

CVRA if the City does not transition from at-large to district-based elections of City Councilmembers.

Recent efforts to protect jurisdictions from costs related to CVRA litigation (which include plaintiffs’ attorneys’ fees and litigation expenses) led to an amendment of the Elections Code 10010 to include a “safe-harbor” provision that gives the jurisdictions the opportunity to change their election system once they receive a demand letter and caps legal fees recoverable by a plaintiff at \$30,000 if a jurisdiction:

- a. Adopts a resolution of intention to transition to district-based elections that outlines specific steps and estimates a time frame, within forty-five (45) days of receiving the demand letter; and
- b. Holds at least five (5) public hearings and adopts an ordinance within ninety (90) days of adopting the resolution of intention.

On April 22, 2021, Attorney Rafferty agreed to extend the forty-five (45) day deadline described in subsection (a) above to adopt a resolution of intention to transition to district-based elections until May 27, 2021.

DISCUSSION

The CVRA was enacted in 2001 to implement the California constitutional guarantees of equal protection and the right to vote. The CVRA is broader than the Federal Voting Rights Act and provides a private right of action to members of a protected class where, because of “dilution or the abridgment of the rights of voters,” an at-large election system “impairs the ability of a protected class to elect candidates of its choice or its ability to include the outcome of an election.” A violation of CVRA is established if racially polarized voting occurs in elections. “Racially polarized voting” means voting where there is a difference between candidates or other electoral choices preferred by voters in a protected class and those preferred by voters in the rest of the electorate.” Intent to discriminate is not necessary to find evidence of racially polarized voting.

In many cases, the apparent motivation for a claim under the CVRA is the attorney fees often awarded to successful plaintiffs. Under the CVRA, a plaintiff need not obtain a court judgment to recoup attorney fees. A plaintiff may seek attorney fees if the matter is settled or the defendant agency acceded to the plaintiff’s demands before judgment. Plaintiff must demonstrate, however, that his or her suit or demand was a “substantial factor contributing to” the agency’s decision to adopt districts.

If Council decides not to change to district-based elections, Rafferty on behalf of prospective plaintiffs can be expected to sue the City for violation of the CVRA. Costs to defend against a CVRA lawsuit often exceeds \$1 million and successful plaintiffs are entitled to attorney’s fees, costs and other litigation expenses. Public agencies are not

Adopt Resolution No. 21-43 Declaring Intention to Transition from an “At-Large” to a “By-District” Election System

Page 3 of 3

entitled to costs or litigation expenses unless the court finds the action to be frivolous, unreasonable, or without foundation.

If the City Council adopts a Resolution of Intention, then five (5) public hearings must be held within 90 days of adoption. The first two public hearings are held prior to drawing maps to consider communities of interest and other interest which should influence map design through public comment. The third and fourth public hearings are held to receive public input on the draft maps provided by the City’s contract demographers, those submitted by Mr. Rafferty and any other map proposals that are received. The fifth hearing to introduce the ordinance may be on the same day as the fourth hearing, provided the proposed draft district map does not change. If the Resolution of Intention is adopted on May 26, 2021 the fifth hearing must occur by August 24, 2021.

SUMMARY

On March 15, 2021, the City received a demand letter from Rafferty asserting that the City’s at-large council member electoral system violates the CVRA by denying minority voters of an opportunity to elect candidates of their choice that is equal to the opportunity enjoyed by non-minority voters. Staff recommends that City Council adopt a resolution declaring the City’s intention, pursuant to Elections Code Section 10010, to initiate procedures for establishing and implementing by-district elections for City Council members.

ATTACHMENT(S):

- A. Attachment A – Resolution No. 21-43 of Intention

ATTACHMENT A

RESOLUTION NO. 21-43

RESOLUTION OF THE CITY OF MONTEBELLO EXPRESSING ITS INTENTION TO TRANSITION FROM AT-LARGE TO BY-DISTRICT CITY COUNCIL ELECTIONS PURSUANT TO CALIFORNIA ELECTIONS CODE SECTION 10010 ET SEQ., AND TO INITIATE PROCEDURES FOR ESTABLISHING AND IMPLEMENTING BY-DISTRICT ELECTIONS FOR CITY COUNCIL MEMBERS

WHEREAS, the City of Montebello, California (“City”) is a general law city, duly organized under the Constitution and laws of the State of California; and

WHEREAS, members of the Montebello City Council are currently elected in “at-large” elections, in which each City Councilmember is elected by the registered voters of the entire City; and

WHEREAS, under Elections Code Section 14028(a), the California Voting Rights Act (“CVRA”) violation is established if it is shown that racially polarized voting occurs in elections. Under Elections Code Section 14026(e), “racially polarized voting” means voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choice that are preferred by voters in the rest of the electorate; and

WHEREAS, the City received a demand letter on March 15, 2021 from Scott J. Rafferty alleging that the City’s at-large election system violates the CVRA and threatening litigation against the City if it does not voluntarily change its at-large system of electing Councilmembers; and

WHEREAS, California Government Code Section 34886 authorized the legislative body of a city of any population to adopt an ordinance to change its method of election 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 candidate resides without the need to put such change to the voters; and

WHEREAS, California Elections Code Section 10010 establishes a process to expeditiously transition to a by-district election system, and which provides a “safe-harbor” to avoid potentially costly litigation under the CVRA, and provides that a city may pass a resolution outlining its intention to transition to by-district elections, the steps it will undertake to facilitate this task, and an estimated time frame for doing so under Elections Code Section 10010(e)(3)(A); and

WHEREAS, the public interest would be better served by Council consideration of a proposal to transition to a by-district electoral system because of: 1) the extraordinary cost to defend against a CVRA lawsuit; 2) the risk of losing such a lawsuit which would require the City to pay the prevailing plaintiffs’ attorneys’ fees; and 3) the reimbursable costs and attorneys’ fees would be capped at a maximum of \$30,000 by following the procedures set forth in Elections Code Section 10010 as amended by AB 350; and

RESOLUTION NO. 21-43

Page 2 of 4

WHEREAS, the adoption of a by-district election system will not affect the terms of any sitting Councilmember; and

WHEREAS, prior to the City Council's consideration and approval of an ordinance establishing boundaries for a by-district election system, California Elections Code Section 10010 outlines procedural rules and requires all of the following step:

- 1) Prior to drawing a draft map or maps of the proposed boundaries of the districts, the City shall hold at least two (2) public hearings over a period of no more than thirty (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 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 elections shall also be published;
- 3) The City Council shall also hold at least two (2) additional public hearings over a period of no more than forty-five (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 at least seven (7) days before consideration at a public hearing. If a draft map is revised at or following a public hearing, it shall be published and made available to the public for at least seven (7) days before being adopted.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MONTEBELLO HEREBY RESOLVES, FINDS, AND DECLARES AS FOLLOWS:

SECTION 1: The above recitals are true and correct and are incorporated herein by this reference.

SECTION 2: The City Council hereby resolves, pursuant to California Elections Code Section 10010, to adopt a by-district election system by ordinance as authorized by California Government Code Section 34886 for City Councilmembers, and said by-district election system is planned to be in place for the City Council elections scheduled for November 2022.

SECTION 3: The City Council directs staff to work with the appropriate consultants as needed, 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 state and federal Constitutions, the California Voting Rights Act, and the Federal Voting Rights Act.

SECTION 4: The City Council directs staff to post information regarding the proposed transition to a by-district election system, including maps, notices, agendas and

RESOLUTION NO. 21-43

Page 3 of 4

other information and to establish a means of outreach to receive public input and to answer questions from the public.

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 by-district maps before adopting 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 7: That the City Clerk shall certify to the passage and adoption of this Resolution and that the same shall be in full force and effect. Notwithstanding the foregoing, this Resolution shall be deemed adopted effective May 27, 2021.

APPROVED this 26th day of May 2021 and **ADOPTED** effective May 27, 2021.

Kimberly A. Cobos-Cawthorne, Mayor

ATTEST:

APPROVED AS TO FORM:

Christopher Jimenez, City Clerk

Arnold M. Alvarez-Glasman, City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS:
CITY OF MONTEBELLO)

I, Christopher Jimenez, City Clerk of the City of Montebello, County of Los Angeles, State of California, hereby certify that the foregoing Resolution No. 21-43 was passed and adopted by the City Council of the City of Montebello, signed by the Mayor and attested by the City Clerk at a regular meeting of said Council held on the 26th day of May 2021 and that said Resolution was adopted by the following vote, to-wit:

RESOLUTION NO. 21-43

Page 4 of 4

AYES:

NOES:

ABSTAIN:

ABSENT:

The undersigned, City Clerk of the City of Montebello, does hereby attest and certify that the foregoing Resolution is a true, full and correct copy of a resolution duly adopted at a meeting of said City which was duly convened and held on the date stated thereon, and that said document has not been amended, modified, repealed or rescinded since its date of adoption and is in full force and effect as of the date hereof.

DATE: _____

Christopher Jimenez, City Clerk

Exhibit “A”

Proposed Timeline

Implementing By-District Elections for the Election of City Councilmembers

<u>Date</u>	<u>Topic</u>
<i>May 26, 2021</i>	City Council Meeting <ul style="list-style-type: none">• Adopt Resolution of Intention.
<i>June 9, 2021</i>	City Council Meeting – Public Hearing #1 <ul style="list-style-type: none">• Discuss process.• Identify neighborhoods and communities of interest.• Consider criteria for the formation of districts.
<i>June 23, 2021</i>	City Council Meeting – Public Hearing #2 <ul style="list-style-type: none">• Discuss process.• Identify neighborhoods and communities of interest.• Consider criteria for the formation of districts.
<i>July 21, 2021</i>	Preliminary District Maps Released
<i>July 28, 2021</i>	City Council Meeting – Public Hearing #3 <ul style="list-style-type: none">• Receive input on proposed district maps.• Final opportunity to provide direction to modify map options.
<i>TBD</i>	Revised District Maps Released (if needed)
<i>August 11, 2021</i>	City Council Meeting – Public Hearing #4 <ul style="list-style-type: none">• Receive input on proposed district maps.• Selection of final district map.• Introduce ordinance to transition to districts.
<i>August 24, 2021</i>	City Council Meeting – Public Hearing #5 <ul style="list-style-type: none">• Second reading and adoption of ordinance to transition to districts.
<i>August 24, 2021</i>	Day 90