



# CITY OF SANTA BARBARA

## COUNCIL AGENDA REPORT

**AGENDA DATE:** May 29, 2014

**TO:** Mayor and Councilmembers

**FROM:** Ariel Pierre Calonne, City Attorney

**SUBJECT:** District Elections And Other Voting System Options

**RECOMMENDATION:**

That Council review the accompanying discussion, receive public comment, and consider providing direction to staff regarding possible Charter amendments.

**DISCUSSION:**

On April 29, 2014, Council considered a request from Mayor Schneider and Councilmember White to place an item on the Council agenda regarding a ballot measure for hybrid at-large/district elections. Council decided that it would conduct a community workshop to further examine the issues associated with district elections in general.

This report is intended to provide background information to facilitate Council's discussion at the workshop. This report is organized into four sections: 1) state and local legal framework; 2) types of voting systems; 3) examples of other cities with district elections; and, 4) a brief summary of the California Voting Rights Act.

**State and Local Legal Framework**

Santa Barbara has "plenary authority" to establish and control the "manner" of electing municipal officers.<sup>1</sup> This authority must be exercised through adoption or amendment of the city charter.<sup>2</sup> The Santa Barbara City Charter currently provides that: "The elective officers of the City shall consist of a City Council of seven (7) members, including the Mayor, all to be elected from the City at large . . . ."<sup>3</sup> Accordingly, the City has both the power and obligation to propose charter amendments if it wishes to provide for district or other forms of elections.

<sup>1</sup> Cal. Const., Art, XI, §5(b)(4); *Johnson v. Bradley* (1992) 4 Cal.4<sup>th</sup> 389, 403.

<sup>2</sup> Cal. Const., Art, XI, §5.

<sup>3</sup> Santa Barbara City Charter, §500

A charter amendment may be proposed by the Council or through an initiative.<sup>4</sup> Charter amendments to establish district or other forms of elections ordinarily must be submitted to the voters at a statewide general election.<sup>5</sup> However, a charter proposal that proposes to amend a charter in a manner that does not “alter any procedural or substantive protection, right, benefit, or employment status of any local government employee or retiree or of any local government employee organization” may be submitted to the voters at either a statewide general or primary election, or at a general municipal election.<sup>6</sup> A charter amendment to provide for district or other forms of elections appears to be appropriately submitted at any of these types of elections.

The manner in which the council districts will be drawn should also be set forth in the charter amendment. Districts may be drawn by the Council itself, an advisory body established by ordinance, or another form of decisionmaking body such as a districting commission established by ordinance or charter.<sup>7</sup> At least one public hearing must be held by the Council before districts are drawn.<sup>8</sup> Districts must be “as nearly equal in population as may be according to the latest federal decennial census,” and must be re-evaluated with each new decennial or mid-decennial census, depending what the charter provides.<sup>9</sup> Council districts are most often drawn by ordinance of the city council with the assistance of demographic experts.<sup>10</sup>

### **Types of Voting Systems**

There are at least five types of voting systems in use, or proposed for use, in California. These include:

- At Large
- From District
- By District, including Instant Runoff/Ranked Choice
- Cumulative
- Hybrids

Some basic characteristics of each system are discussed below.

#### **At Large**

Santa Barbara currently uses at large voting. Under this system, council candidates may reside anywhere in the City. Each voter, regardless of the location of their

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<sup>4</sup> Cal. Const., Art, XI, §3b.

<sup>5</sup> Elec. Code, §9255(b)(1)

<sup>6</sup> Elec. Code, §1415(a)(2)(A).

<sup>7</sup> Santa Barbara City Charter, §800.

<sup>8</sup> Elec. Code, §21620.1.

<sup>9</sup> Elec. Code, §21620.

<sup>10</sup> See, e.g., Attachment 10.

residence, may vote for any candidate. This system may provide assurance that each councilmember will consider all voters to be his or her constituents. On the other hand, at large elections may cause dilution of minority voting power, particularly when the minority group resides in a geographically compact area. At large elections remain the predominant system in small to medium-sized California cities.<sup>11</sup>

#### From District

Under this system, council candidates must reside in a specified geographical district of the City. Each voter, regardless of the location of their residence, may vote for any candidate. This hybrid system provides some assurance of geographical representation while possibly providing assurance that each councilmember will consider all voters to be his or her constituents. From district elections are used in Santa Ana and Newport Beach.

#### By District

The by district voting system requires each council candidate to reside in a specified geographical district of the City. Unlike at large and from district voting, only voters residing in the same district as the council candidate may vote for that candidate. In many by district jurisdictions, the mayor is elected at large. In other jurisdictions, all candidates are elected by district and the mayor is appointed by the council. The by district system may provide assurance that each councilmember will focus more attention on the geographical constituency that makes up his or her district. Where a racial, color, or language minority group resides in a geographically compact area, by district voting may provide a greater opportunity for the election of minority candidates.

By district elections are used in each of California's largest cities (Los Angeles, San Diego, San Jose, San Francisco, Fresno, Long Beach, Sacramento, Oakland, Bakersfield). By district elections are also used in numerous small to medium-sized cities including Berkeley, Pasadena, Redondo Beach, San Leandro, Chula Vista, Hanford, Colton, Watsonville, Hollister, Sanger, Seal Beach, Dinuba, Parlier, and Bradbury.

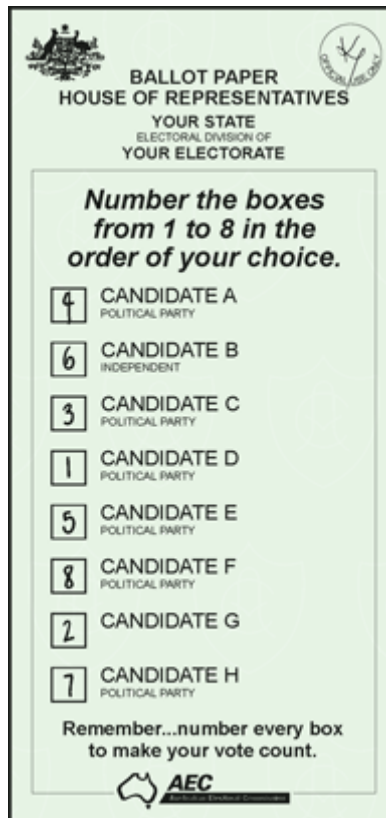
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<sup>11</sup> 441 out of California's 482 cities use at large elections. (National Demographics Corporation – See Attachment 10.)

Instant Runoff/Ranked Choice

Instant runoff/ranked choice voting can be combined with by district elections. It is used in lieu of a primary system in order to assure that each elected official has 50% or more support from the constituents of his or her district. This system is used in combination with by district elections in San Francisco, Oakland, Berkeley and San Leandro. A ranked choice ballot is shown below.



### Cumulative

Cumulative voting systems allow each voter several votes, typically the same number as there are open seats. Voters may vote for the candidates singly or cumulatively (thus assigning more than one vote for a given candidate). A cumulative voting ballot is shown below.

**Cumulative Ballot**

You may offer up to 3 votes.

1	2	3	
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Joe Smith
<input checked="" type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	Henry Ford
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Jane Doe
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Fred Rubble
<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	Mary Hill

**RESULT:**  
2 votes for Ford  
1 vote for Hill

This system is not in wide use in California, but has been included as a potential remedy in the settlement of the city of Santa Clarita's recent California Voting Rights Act litigation.<sup>12</sup> Unlike by district voting, this system may provide a greater opportunity for the election of racial, color, or language minority group candidates, regardless whether the minority group voters reside in a geographically compact area.

### Hybrids

A chartered city may design many creative hybrid forms of voting systems. As noted above, some cities combine by district elected councilmembers with an at large elected mayor; others elect all councilmembers by district and appoint the mayor. The hybrid at large/district proposal from Mayor Schneider and Councilmember White would have the mayor and two councilmembers elected at large and four councilmembers elected by district. This proposal may provide assurance that each voter would have a majority of the Council who considered them a voting constituent.

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<sup>12</sup> See Attachment 2.

**Examples of Cities with District Elections**

The following table describes numerous smaller to medium-sized cities with district elections, the makeup of the council, whether they are conducted in even years and how council districts are drawn.

City	Council Makeup	Election Year	Districts Drawn By
Berkeley	8 by district, mayor at large	Even year, November, Ranked Choice	Council
Santa Ana	6 from ward, mayor at large	Even year, November	Council
Newport Beach	7 from district, mayor appointed	Even year, November	Council with advisory committee
San Leandro	6 by district, mayor at large	Even year, November, Ranked Choice	Council
Chula Vista (2012)	4 by district , mayor at large	Even year, June primary, November general	Redistricting Commission
Hanford	5 by district, mayor appointed	Even year, November	Council
Colton	6 by district, mayor at large	Even Year, November	Council
Watsonville	7 by district, mayor appointed	Even year November	Council
Hollister	4 by district, mayor at large	Even year November	Council
Sanger	4 by district, mayor at large	Even year November	Council
Seal Beach	5 by district, mayor appointed	Even year, November	Council
Dinuba	5 by district, mayor appointed	Even year, November	Council
Parlier	4 by district, mayor at large	Even year, November	Council
Pasadena	7 by district with primary, mayor at large	Odd year, March primary, April general	Council with advisory commission
Redondo Beach	5 by district, mayor at large	Odd year, March primary, May general	Council
Bradbury	5 by district, mayor appointed	Even year, April	Council

### **Summary of the California Voting Rights Act**

The California Voting Rights Act of 2001 (“CVRA”) was enacted as the state analog to the federal Voting Rights Act of 1965.<sup>13</sup> The CVRA creates a legal cause of action for members of any racial, color or language minority group who can establish that their votes are weakened through the combination of racially polarized voting and an at-large election system.<sup>14</sup> By district elections appear to be the only form of voting system that is clearly protected against a CVRA challenge.<sup>15</sup> The CVRA does not require proof of intent on the part of the voters or elected officials to discriminate against a protected class.<sup>16</sup> And, unlike the federal law, the CVRA does not require a showing that members of a protected class live in a geographically compact area.<sup>17</sup> This means that a CVRA claim can be established in many cities with a large minority of protected class residents.<sup>18</sup>

Under the CVRA, “racially polarized” voting is determined:

“. . .from examining results of 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. One circumstance that may be considered in determining a violation of Section 14027 and this section is 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 of a political subdivision that is the subject of an action based on Section 14027 and this section. In multiseat at-large election districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative groupwide support received by candidates from members of a protected class shall be the basis for the racial polarization analysis.”<sup>19</sup>

The courts’ remedial powers under the CVRA are extremely broad, and specifically include the power to implement “appropriate remedies,” including the “imposition” of

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<sup>13</sup> Elec. Code, §§14025, *et seq.*; 42 U.S.C. §1973

<sup>14</sup> Elec. Code, §§14027, 14028(a).

<sup>15</sup> Elec. Code, §14027.

<sup>16</sup> Elec. Code, §14028(d).

<sup>17</sup> Elec. Code, § 14028(c); *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 667.

<sup>18</sup> According to the 2010 census, 38% of Santa Barbara’s residents are Hispanic or Latino.

<sup>19</sup> Elec. Code, § 14028(b).

district elections.<sup>20</sup> The CVRA also allows a prevailing plaintiff to recover attorney's fees and litigation expenses, including, but not limited to, expert witness fees and expenses.<sup>21</sup>

Numerous CVRA cases have been litigated and/or settled by cities.<sup>22</sup> Virtually every settlement involves the city changing from an at large voting system to by district elections and payment of substantial attorney's fees. Some settlements also involve a switch to even year elections, although the courts' power to impose that and other remedies upon a chartered city has not been tested. In the Palmdale decision, the trial court rejected the city's argument that its charter-based municipal affairs authority was paramount to the CVRA, finding instead that the statewide concern over the dilution of minority voting rights preempted local control. We have attached a variety of news articles, judgments and settlement agreements to illustrate the range of litigation outcomes.

- ATTACHMENTS:**
1. Palmdale Statement of Decision, July 23, 2013
  2. Santa Clarita Settlement Agreement, March 8, 2014
  3. Anaheim Settlement Agreement, January 7, 2014
  4. Escondido Consent Decree, April 19, 2013
  5. "Settlement in Latino voting case will set Modesto back \$3 million," Modesto Bee, June 6, 2008
  6. "Turlock weighs hiring consultant to propose district boundaries," Modesto Bee, April 21, 2014
  7. "Anaheim City Council settles nearly 2-year old Voting Rights Act lawsuit; Voters to have final say," 89.3 KPCC Blog, January 7, 2014
  8. "Legal bills piling up in Whittier's Latino voting rights lawsuit," Whittier Daily News, March 19, 2014
  9. "Compton plans ballot measure on switching to voting by district," Los Angeles Times, March 1, 2012
  10. "City Council Election Systems," National Demographics Corporation, March 17-20, 2014, Turlock

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**APPROVED BY:** City Administrator's Office

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<sup>20</sup> Elec. Code, § 14029.

<sup>21</sup> Elec. Code, § 14030.

<sup>22</sup> Our research shows that litigation and/or settlements have occurred in Anaheim, Compton, Palmdale, Santa Clarita, Modesto, Turlock, Visalia, Tulare, Madera, Escondido and Whittier. There are numerous school and community college district cases as well.