



Agenda Report

Date: August 27, 2013
To: The Honorable Mayor and City Council
From: Richard D. Jones, City Attorney
Subject: Election Alternatives

RECOMMENDATION

It is recommended the City Council discuss the City's method of electing Council Members and election timing and determine which election alternatives should be considered to address allegations that Latino voters are disenfranchised by the City's at-large voting system and election timing. The City Council may adopt resolutions to propose charter amendments to the voters to change how council members are elected to office, change the regular election date, and/or take other actions related to City elections. Such actions may include:

1. Adopting a Resolution calling a Special Election for Tuesday, June 3, 2014 or another date;
2. Adopting a Resolution requesting consolidation with elections conducted by Los Angeles County on June 3, 2014 or another date;
3. Adopting a Resolution Authorizing Council Members to submit arguments and the City Attorney to prepare an impartial analysis;
4. Adopting a Resolution authorizing the Filing of Rebuttal Arguments for City Measures Submitted at Municipal Elections;
5. Identifying preferred and alternate letter designations for the measures; and
6. Directing staff to return with a FY13-14 Budget Amendment to fund election costs.

BACKGROUND

The City Charter calls for elections to be held on the second Tuesday in April of each even numbered year. Five City Council members are elected at large to terms of four years each, staggered so that three are elected in one election year and two are elected in the next. The Mayor is selected from the five Council members following the election each year and during off-election years. The existing election system has been in place since the charter was adopted by Whittier's voters in 1957.

A majority of the City's residents are of Hispanic descent, as are its registered voters. Though constituting a majority of city voters, these residents are still considered a "minority" voting group under state and federal law. For many years, the City has taken special steps at each City election to ensure compliance with the federal Voting Rights Act, including establishing a Voting Rights Act Advisory Committee to review and implement a program of outreach to all eligible voters; preparing and distributing ballot

materials, registration and vote-by-mail materials, and election related information in several languages; publicizing the city elections; and promoting registration and voting by all those eligible. A variety of groups are invited to participate in the Voting Rights Act Advisory Committee, and have actively done so for many years. Among those invited are the Whittier Hispanic Outreach Task Force, Whittier Latino Coalition, Mexican American Legal Defense Fund, and Whittier Latino Business and Professional Association. After each municipal election, the City Clerk prepares a report to the City Council describing outreach, education and Voting Rights Act compliance measures taken for that election, detailing the more than forty program goals to increase registration, voting access, bilingual ballots and services, and to promote voting by each and every eligible resident of the City. A copy of the 2012 Election report (without attachments) is attached hereto as Attachment A.

The City Council has acted to enhance the City's voter outreach and Voting Rights Act compliance and has monitored both the City's program and election turnout and results to ensure that all Whittier citizens are equally able to participate in City elections and elect candidates of their choosing. A significant number of Hispanic candidates in jurisdictions including Whittier or with overlapping boundaries have been elected to federal, state and local offices, and candidates endorsed by local Hispanic and Latino groups have also successfully been elected to City Council seats.

Nonetheless, some Whittier citizens have recently raised concerns about whether the City's electoral system violates the California Voting Rights Act. The City Council committed to and did study the issue in detail. It retained experts on both the California Voting Rights Act and voting analysis as those claiming violations did not offer any analysis to support their claims. While no determination has been made that the City's current system is legally invalid, it does appear that California law favors creation of districts and citizens of Whittier have requested that the City's election system change. Thus, the Council has determined to consider the proposal of bringing a ballot measure before the City's voters to decide whether to amend the City's Charter to provide for by-district voting rather than at large voting.

DISCUSSION

Legal Background

Cities with at-large electoral systems have been challenged under Section 2 of the Federal Voting Rights Act ("FVRA") on the premise that the at-large system dilutes minority voting strength. A violation of Section 2 can occur with a facially neutral act or process, such as an at-large electoral system. An at-large electoral system can be

shown to violate Section 2 of the FVRA if a plaintiff first establishes all the following: 1) the minority group harmed is sufficiently large and geographically compact to constitute a majority in a single-member district; 2) the minority group is politically cohesive; and 3) the majority group votes as a bloc to enable it to usually defeat the minority group's preferred candidates. Thornburg v. Gingles, 478 U.S. 30, 49-51 1986).

Many challenges to at-large systems under the FVRA have been unsuccessful. To overcome this lack of success under the FVRA, in 2002 the California Legislature enacted the California Voting Rights Act ("CVRA") (Cal. Elec. Code §§ 14025-14032) to expand on the FVRA by making it easier for minority groups to challenge at-large electoral systems in the courts. "The legislative history of the CVRA indicates that the California Legislature wanted to provide a broader cause of action for vote dilution than was provided for by federal law." Sanchez v. City of Modesto, 145 Cal. App. 4th 660, 669 (Cal. App. 5th Dist. 2006).

Pursuant to the CVRA an at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgement of the rights of voters who are members of a protected class. Cal. Elec. Code § 14027. The CVRA only applies to electoral systems which are either at-large, or from-district; the CVRA does not apply to an electoral system which is by-district.

An "at-large method of election" system is one where voters may vote for any candidate on the ballot. Cal. Elec. Code § 14026(a). An at-large system includes both the traditional at-large system, wherein "the voters of the entire jurisdiction elect the members to the governing body" and the candidates simply need to reside anywhere in the jurisdiction, as well as the "from district" at-large system, where "the candidates are required to reside within given areas of the jurisdiction [yet] the voters of the entire jurisdiction [still] elect the members to the governing body." Cal. Elec. Code § 14026(a)(1-3). This is opposed to a "by district" electoral system which is one where there are elections of members of the City Council for separate districts "by voters of the district alone." Cal. Elec. Code § 14026(b); Cal. Govt. Code § 34871.

An elected mayor "is a member of the city council and has all the powers and duties of a member of the city council." Government Code § 34903. An elected mayor has the same powers as an appointed mayor. See Government Code §§ 40601-40604. A charter city may make different provisions for a directly elected mayor, including having a so-called "strong mayor," from those provided in the Government Code for general law cities.

Measure Options

We have analyzed the various options available to the Council for ballot measures to address creation of by-district elections, as well as possible changes to the timing of the municipal elections. While there are numerous alternatives that meet the provisions of the law, staff recommends that the Council focus their consideration on two possible options for creating districts in the City. One option would be to create four equal districts and have a city-wide directly elected mayor with district seats staggered two at each election and mayoral election held every four years. Another option would be to create five equal districts, and have district elections staggered as currently provided for at-large voting. Staff recommends the four district plus directly elected mayor approach so that all citizens will have a say in who serves as their mayor, which would not be the case if there were five separate districts. Staff has provided proposed ballot measures and draft resolutions for both of these options. While there are other options available to the Council, staff recommends that one of the two alternative systems be selected and submitted to the voters.

As far as the timing of the city's elections, the CVRA does not address timing of elections for charter cities. Staff explored the possibility of moving the city's elections through a ballot measure to another date, however is not recommending such a measure at this time. The County Registrar of voters has advised the City that the County will not consolidate a city's council election with the statewide election in June of even numbered years. The County has also indicated that it cannot consolidate a city's council election with the statewide election in November of even numbered years due to inadequacy of the voting system. Thus, if the election date were moved to either June or November of even numbered years, the City would have to hold a stand-alone election for any June election and for an undetermined number of November elections. This could cause significant voter confusion, since such stand-alone elections would require Whittier citizens to sign in and vote two different times at different areas to participate in both statewide and local elections.

The County has also indicated that it could consolidate a local council election with the elections held in November of odd years. While there may be some advantages to holding City elections at that time, there may be significant policy reasons to leave the city elections in April, including allowing voters to focus purely on local issues (rather than statewide issues), the more than fifty year history of the City in holding elections in April, and the likelihood that retaining the existing election timing can lead to reduced costs and expenditures associated with campaigning. Moving the election to the same time as a statewide election, even in odd-numbered years, can potentially inject

statewide issues into the City's election, causing a need to spend more on reaching voters regarding local issues. This could actually harm Hispanic candidates seeking office in the City.

Four Districts and a Directly Elected City-Wide Mayor

"District-based elections" means a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.

Under this proposal, the City would be divided into four geographic districts equal in population according to the latest federal decennial census. Factors which may be considered in creating the districts are: (1) topography, (2) geography, (3) cohesiveness, contiguity, integrity, and compactness of territory, and (4) community of interest of the districts. Cal. Elec. Code § 21620. One Council member would be chosen from each district only by the voters residing in that district. The remaining council member would be a directly elected Mayor serving a term of four years. It is not proposed that the Mayor have any greater power than other members of the City Council, other than as currently provided in the City's charter. Elections would continue to be staggered so that two council members and a mayor would be selected at one election and the remaining two council members would be selected at the next election. The charter need not specify the exact manner of drawing districts. If this ballot option is selected, the Council should adopt the Resolutions attached as Attachments B and C, and the Resolution regarding Arguments attached as Attachment H.

Five Districts

Under this proposal, the City would be divided into five geographic districts equal in population according to the latest federal decennial census. Factors which may be considered in creating the districts are: (1) topography, (2) geography, (3) cohesiveness, contiguity, integrity, and compactness of territory, and (4) community of interest of the districts. Cal. Elec. Code § 21620. One Council member would be chosen from each district only by the voters residing in that district. Elections would continue to be staggered so that three council members would be selected at one election and the remaining two council members would be selected at the next election. The charter need not specify the exact manner of drawing districts. If this ballot option is selected, the Council should adopt the Resolutions attached as Attachments D and E, and the Resolution regarding Arguments attached as Attachment I.

Drawing of Districts

California Elections Code section 21620 ["Boundaries of districts of chartered cities"] provides in full that: "If the members of the governing body of a chartered city are nominated or elected 'by districts' or 'from districts,' as defined in Section 34871 of the Government Code, upon the initial establishment thereof, the districts shall be as nearly equal in population as may be according to the latest federal decennial census or, if the city's charter so provides, according to the federal mid-decade census or the official census of the city, as provided for pursuant to Chapter 17 (commencing with Section 40200) of Part 2 of Division 3 of Title 4 of the Government Code, as the case may be. After the initial establishment of the districts, the districts shall continue to be as nearly equal in population as may be according to the latest federal decennial census or, if authorized by the charter of the city, according to the federal mid-decade census. The districts shall comply with the applicable provisions of the federal Voting Rights Act of 1965, Section 1973 of Title 42 of the United States Code, as amended. In establishing the boundaries of the districts, the council may give consideration to the following factors: (1) topography, (2) geography, (3) cohesiveness, contiguity, integrity, and compactness of territory, and (4) community of interest of the districts."

There are three broad options for a City Council controlled districting process with final adoption by City Council: (a) staff level public outreach with community workshops, developing mapping alternatives, etc. (based on community and consultant input) and presenting same to City Council over several hearings; (b) a Council subcommittee to perform the workshop level analysis and develop plans for City Council consideration and final adoption, or (c) an advisory committee to conduct the mapping process and make recommendations to the City Council. Alternatively, the City Council could establish an autonomous redistricting commission. No decision need be made at this time about how the districts will be decided upon. That process would occur after a ballot measure is passed.

Impacts on Current Officeholders

An ordinance (including a charter amendment ordinance) consolidating elections may not increase or decrease a term of office "by more than 12 months." (Elec. Code § 10403.5(b) [12 months means "the period between the day upon which the term of office would otherwise have commenced and the first Tuesday after the second Monday in the 12th month before or after that day, inclusive"].) Per Whittier Charter Section 400, council terms commence the first Tuesday following the "election." Thus, if the timing of the elections changes, this could potentially shorten the terms of incumbents or those elected in April 2014.

If districting is selected, the district boundaries would be established after June 2014, and should be able to be completed by the April 2016 election. At that time, the seats which would be up for election in April 2016 would switch to by-district voting. Which districts would vote at that time would be determined when the boundaries are selected. Those elected from the districts selected and a city-wide elected Mayor would then fill the seats of those whose terms expire in April 2016. The remaining districts would vote for candidates from those districts at the April 2018 elections, at which point, all future elections would occur by district. Should the selection be to create four districts and a directly elected mayor, the general law provides as follows: "At the next succeeding general municipal election held in the city, one of the offices of city councilperson, to be filled at the election, shall be designated as the office of mayor, to be filled at the election. The person elected at the election as mayor shall hold office from the Tuesday succeeding his or her election, and until his or her successor is elected and qualifies." This same manner of handling a directly elected Mayor position is proposed in the draft ordinance proposing that change. It is undetermined at this time how to resolve the possibility that districts could be drawn in such a way to include more than one incumbent within one district.

Arguments, Rebuttals, Impartial Analysis

Whittier Municipal Code (WMC) Chapter 2.56 (Attachment F) governs arguments and rebuttals submitted for City measures. It dictates that arguments will be accepted and further that, if authorized by the City Council, rebuttal arguments are permitted; contains word limits: 300 for arguments and 250 for rebuttals; and establishes the priority for the selection of arguments and rebuttals to be printed if more than one argument/rebuttal for or against a measure is received.

Resolution authorizing rebuttal arguments (Attachment G). If the City Council does not choose to permit rebuttal arguments, the draft resolution should be omitted from the actions calling the Special Election. Section 2 of the Resolution authorizes the authors of arguments in favor of or against the measure to authorize (in writing) a rebuttal argument to be submitted by another person or entity. The City Council may omit this option by deleting Section 2 of the Resolution. And, the City Council pursuant to WMC 2.56.020(A), may permit any other entity, bona fide association of citizens, individual voters eligible to vote on the measure, or any combination thereof (other than just authors of arguments in favor of or against the measure), to submit a rebuttal argument. This is permitted by Section 3 of the Resolution. If the City Council desires to restrict rebuttal argument submissions to only authors who submitted main arguments, then Section 3 should be deleted from the Resolution.

Resolution regarding Council Members authoring an argument in favor of the measure, requesting Impartial Analysis and addressing priorities for multiple arguments/rebuttals (Attachments H or I). This resolution authorizes but does not obligate the City Council or any individual Member to submit an argument. It directs the City Attorney to prepare an Impartial Analysis of the measure for printing in the sample ballot pamphlet. The Resolution can be amended to authorize less than the full City Council to author an argument by modifying Section 1 to identify which Council Members are authorized to submit an argument. If none of the Council Members wish to author an argument, the Resolution should be amended to omit Section 1 and be adopted to provide for preparation of the Impartial Analysis.

If more than one argument/rebuttal is submitted for or against the measure, the WMC outlines the priorities for selecting the direct and rebuttal arguments in favor and/or against the measure to be printed in the sample ballot pamphlet. This Resolution also includes a statement that the priorities for selecting arguments for the Election will be those in WMC 2.56. If the City Council wishes to change the priorities, Section 3 of the Resolution should be amended. Following are the current argument/rebuttal priorities.

2.56.040 – Priority for selection of arguments

- A. The legislative body, or member or members of the legislative body authorized by that body, either alone or jointly with any other entity, bona fide association of citizens, individual voters, or any combination thereof.
- B. The individual voter, or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors or proponents of the measure.
- C. Bona fide associations of citizens, either alone or in combination with individual voters who are eligible to vote on the measure.
- D. Individual voters who are eligible to vote on the measure.

2.56.050 Priority for selection of rebuttal arguments

- A. The legislative body, or member or members of the legislative body authorized by that body, either alone or jointly with any other entity, bona fide association of citizens, individual voters, or any combination thereof.
- B. The individual voter, or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors or proponents of the measure and who filed a primary argument regarding the measure, or the person(s) or entity(ies) authorized in writing by the author(s) of a primary argument if permitted by resolution applying to that election.

- C. Bona fide associations of citizens either alone or in combination with individual voters who are eligible to vote on the measure.
- D. Individual voters who are eligible to vote on the measure.

If the City Council wishes to change the argument and/or rebuttal priorities, it must be done at the time the election is called, pursuant to WMC 2.56.020.

The City's regulations relating to arguments do not address the names and signatures which must be submitted with an argument or rebuttal argument. Therefore, pursuant to Section 1002 of the Charter, California Elections Code Section 9283 is applicable, which provides that a ballot argument may not be accepted unless accompanied by the printed name and signature or printed names and signatures of the author or authors submitting it, or, if submitted on behalf of an organization, the name of the organization and the printed name and signature of at least one of its principal officers who is the author of the argument.

Measure Letter Designation

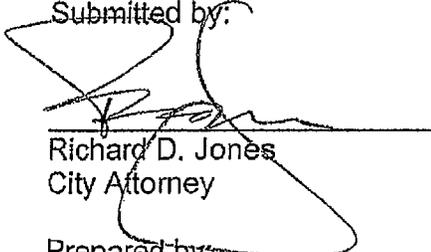
The County allows jurisdictions to request a specific letter designation for its measure(s) and assigns designations in the order they are received. The City Council may designate its preference, delegate the task to staff, or take no action which would result in the County assigning the next available letter when it orders its ballot. For example, the City may want to request the letter "W" for Whittier. If the City Council selects a preferred letter designation, it is recommended one or two alternatives be identified in the event the first choice is not available.

FISCAL IMPACT

The potential outcome of the discussion is too broad to predict the fiscal impact. However, the cost of holding a consolidated special election in June 2014 is anticipated to be approximately \$147,000¹. Staff will return with a funding resolution, reflecting the City Council's direction, at a future meeting.

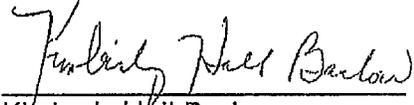
¹ The cost estimate includes the County's estimated charges to the City and the City's direct costs for legal notices, translation services, temporary part-time help, and standard office expenses. It does not include funds for an information campaign; election outreach such as posting banners along Whittier Boulevard or disseminating flyers and posters about the election; or creating "Vote Here" signs and posting them on barricades, along with American flags, at polling places.

Submitted by:



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Prepared by:



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Attachments:

- A -- 2012 VRA Program Report (without attachments)
- B -- Resolution calling an election for June 3, 2014 (four districts and directly elected Mayor)
- C -- Resolution requesting consolidation with Los Angeles County elections (four districts and directly elected Mayor)
- D -- Resolution calling an election for June 3, 2014 (five districts)
- E -- Resolution requesting consolidation with Los Angeles County elections (five districts)
- F -- WMC Chapter 2.56
- G -- Resolution authorizing the filing of rebuttal arguments for city measures submitted at municipal elections
- H -- Resolution setting priorities for filing written arguments regarding city measures and directing the city attorney to prepare an impartial analysis (four districts and directly elected Mayor)
- I -- Resolution setting priorities for filing written arguments regarding city measures and directing the city attorney to prepare an impartial analysis (five districts)