COUNCIL AGENDA REPORT

TO: City Council

FROM: City Manager and City Attorney

SUBJECT: RESOLUTION DECLARING THE CITY OF SANTA MARIA'S INTENTION TO TRANSITION FROM AN AT-LARGE CITY COUNCIL ELECTED PROCESS TO A DISTRICT-BASED ELECTION PROCESS PURSUANT TO ELECTIONS CODE SECTION 10010

RECOMMENDATION:
That the City Council adopt a resolution declaring its intention to transition from an at-large City Council election process to a district-based elections process, outlining specific steps it will take and providing an estimated timeline for doing so pursuant to Elections Code Section 10010.

BACKGROUND:
The City received a certified letter on December 16, 2016, from Jason Dominguez, Esq., on behalf of his client Hector Sanchez, an unsuccessful candidate for City Council in the November 2016 election, asserting that the City's at-large electoral system violates the California Voting Rights Act, codified at California Elections Code sections 14025–14032 ("CVRA"). Mr. Dominguez claims "polarized voting" may be occurring and threatens litigation if the City declines to adopt district-based elections.

The CVRA was signed into law in 2002. The law was motivated, in part, by the lack of success by plaintiffs in California in lawsuits challenging at-large electoral systems brought under the Federal Voting Rights Act ("FVRA"). In fact, the City of Santa Maria had successfully defended a FVRA lawsuit in the early 1990's brought by the Mexican American Legal Defense and Education Fund. This litigation cost over $1 million to defend and took ten years to resolve in the City's favor.

The passage of the CVRA made it much easier for plaintiffs to prevail in lawsuits against public entities that elected their members to its governing body through "at-large" elections with the ultimate goal to transition to "district-based" elections. By way of background, in a district-based election system, a candidate must live in the district he or she wishes to represent.

It is staff's understanding that no such FVRA lawsuits have been filed in California since 2000. Accordingly, all voting rights lawsuits in California have been filed under the CVRA since its passage. Under the CVRA, to prove a violation, plaintiffs must only demonstrate that there is "racially polarized voting." This occurs when there is a
difference between the choice of candidates preferred by voters in a protected class and the choice of candidates preferred by voters in the rest of the electorate. Plaintiffs in other litigation have taken the position that the CVRA does not require a showing of discriminatory intent or an actual electoral injury. They have further argued that the CVRA does not require proof that racially polarized voting actually resulted in the defeat of a group’s preferred candidate. No appellate court has yet ruled on these issues.

Cities throughout the State have increasingly been facing legal challenges to their “at-large” systems of electing City Council members. Almost all have settled claims out of court by essentially agreeing to voluntarily shift to district-based elections, while others have defended CVRA challenges through the courts. Ultimately, these cities have either voluntarily adopted, or have been forced to adopt, district-based elections. The exception is the City of Santa Clarita that resolved the CVRA action filed against it by agreeing to change the date of its general municipal election to November of even-numbered years.

Cities that have attempted to defend their existing “at-large” system of City Council elections in court have incurred significant legal costs, including attorneys’ fees incurred by plaintiffs. Awards in these cases have reportedly ranged from about $400,000 to over $3,500,000. When sued, the settlements entered into by cities typically have included paying the plaintiff’s attorney fees. For example, in February 2015, the City of Santa Barbara reportedly paid $800,000 in attorneys’ fees and expert costs to settle their CVRA lawsuit. Another example is the City of Palmdale that incurred expenses in excess of $4.5 million in its unsuccessful attempt to defend against a lawsuit brought under the CVRA. Moreover, what is most concerning is that staff is unaware of any city that has prevailed in defending its “at-large” system of election under a claim filed by any individual or group under the CVRA. Accordingly, staff has concluded that the public’s best interest is in preserving and protecting vital general fund revenues from being unnecessarily expended (given the low probability of defending against a CVRA lawsuit) and that this interest outweighs the public’s interest in maintaining the current at-large voting system.

**DISCUSSION:**

Accordingly, after much analysis and in-depth conservations with those most familiar with these types of litigation matters, staff is recommending that the City Council adopt a resolution declaring its intention to transition from at-large to district-based elections following the procedures required by Elections Code section 10010, as amended by AB 350, to establish voting districts. Staff makes this recommendation due to the extraordinary costs to successfully defend against a CVRA lawsuit and the fact that no apparent city has successfully prevailed against a CVRA lawsuit, and that the public interest would best be served by transitioning to a district-based electoral system.

While the City has a sustained history of electing Latinos/as to the City Council, the outcome of litigation is always uncertain. Unlike other cities where at-large elections have prevented Latinos from electing candidates of their choice, the election history for the Santa Maria City Council has demonstrated that Latino candidates have been
regularly elected. Since 1996, at least one Latino/a has been elected to the City Council in each election except the November 2012 election where a Latina candidate (Waterfield) lost by only two votes. In all, ten Latinos/as have been elected to the City Council in the last twenty years. In addition, partly because of appointments made by the City Council to fill unexpired terms, the City Council has been represented by a Latino majority from 2002 until 2010 and the current City Council is a Latino elected majority. Not withstanding the aforementioned history of being able to elect Latinos to the City Council, the CVRA essentially makes any at-large election vulnerable to challenge with a low probability of successfully defending against such a challenge.

Staff estimates that the cost to defend this lawsuit would exceed $1,000,000 even if it were successful, and would likely exceed $2,000,000 if the plaintiff prevailed and the City was ordered to pay plaintiff's attorneys' fees. These attorney fees and costs would be a General Fund liability which would be a significant unexpected expense that could not come at a worse time since the City already has a multi-million dollar structural budget deficit AND pension-related expenses continue to escalate.

It should be noted that Government Code section 34886 permits the legislative body of any city to adopt an ordinance establishing election of members of the legislative body by district. AB 350 was recently adopted by the State Legislature and became effective on January 1, 2017, and amended Elections Code section 10010 to place a cap of a maximum of $30,000 on attorneys' fees that a plaintiff would be entitled to recover if the target city voluntarily adopted an ordinance to establish voting districts either before or after receiving notice of a CVRA violation. In addition, AB350 prohibits a plaintiff from filing a CVRA lawsuit within 90 days of a city's adoption of a resolution declaring its intention to transition to district-based elections. Accordingly, should the City Council adopt the proposed resolution, the maximum the City will have to reimburse Mr. Dominguez in attorneys' fees and costs is $30,000, and plaintiff would be prohibited from filing a CVRA lawsuit until May 22, 2017.

Alternatives:
1. The City Council may elect to place this issue on the ballot and let the electorate decide if they prefer district-based elections. However, even if the voters rejected district-based elections, the City would be vulnerable to a CVRA lawsuit if racially polarized voting is occurring in the City.
2. The City Council may direct staff to defend against any CVRA lawsuits that may be filed. This option will be very expensive to defend, and even if successful, would expose the City to an award of costly attorneys' fees.

Fiscal Considerations:
There will be significant staff time needed to transition to district-based elections because of the staff time that will be incurred for the five (5) public hearings that will be required in addition to the cost for a demographics and elections consultant and special legal counsel. Should the City Council concur with staff's recommendation, the City will only be required to reimburse plaintiff for its attorney's fees and costs up to $30,000. In addition, staff expects roughly a $10,000 increase in election costs for district-based
elections during each of the upcoming election cycles. These fiscal impacts are necessary and unavoidable if the Council transitions to district-based elections.

Impact to the Community:
The decision to change from at-large to district-based voting may have a substantial impact on the community since the City Council has been elected at-large since the City’s incorporation in 1905. There may be a profound and noticeable impact to the community if the City adopts district-based elections and confusion until district-based elections are fully implemented in 2020. As proposed, two council seats will be elected by-district in the 2018 election and two or three council seats (pending the outcome of the five public hearings) in the 2020 election after the current incumbents have served their full terms. In some situations, the Mayor may be elected at-large, but all other members of the City Council must reside in the district they represent. The decision whether to establish four voting districts with the Mayor elected at-large, or five voting districts is one of the topics that will be decided upon by the City Council as a result of the minimum of five (5) public hearings that will be held as required by California Elections Code section 10010 should it adopt the proposed resolution.

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