



NOTICE OF MEETING

CITY OF PACIFIC GROVE

CITY COUNCIL

REGULAR MEETING AGENDA

Wednesday, March 6, 2024, 6:00 P.M.

Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

The Council will not begin consideration of any item on this agenda later than 10:00 p.m. unless such consideration is approved. Any items on this agenda not considered this evening will be continued to a future meeting.

Copies of the agenda packet are available for review at the Pacific Grove Library, in the Finance Department, and electronically at www.cityofpacificgrove.org/agendas. The most effective method of communication with the City Council is by sending an email to citycouncil@cityofpacificgrove.org. In order to allow the City Council adequate time to review communication related to an agenda item, it is recommended that the communication be sent no later than 9:00 AM on the day prior to the City Council meeting.

PACIFIC GROVE COUNCIL MEETINGS ARE CONDUCTED IN PERSON AT CITY HALL COUNCIL CHAMBER AND VIRTUALLY.

**PLEASE NOTE THE MEETING WILL PROCEED AS NORMAL EVEN IF THERE ARE TECHNICAL DIFFICULTIES ACCESSING ZOOM.
THE CITY WILL DO ITS BEST TO RESOLVE ANY TECHNICAL ISSUES AS QUICKLY AS POSSIBLE.**

THE PUBLIC MAY ALSO VIEW THE MEETING ON PENINSULA CHANNEL 25.

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AGENDA

CALL TO ORDER

PLEDGE OF ALLEGIANCE: Councilmember Amelio

1. **APPROVAL OF AGENDA**
2. **PRESENTATIONS**

- A. Rotary Club Donation

3. **COUNCIL AND STAFF ANNOUNCEMENTS (City-Related Items Only)**

- A. Other

4. **GENERAL PUBLIC COMMENT**

General Public Comment must deal with matters subject to the jurisdiction of the City and the Council that are not on the Regular Agenda. This is the appropriate place to comment as to items on the Consent Agenda, only if you do not wish to have the item pulled for individual consideration by the Council. Comments from the public will be limited to three minutes and will not receive Council action. Comments regarding items on the Regular Agenda shall be heard prior to Council's consideration of such items at the time such items are called. Whenever possible, written correspondence should be submitted to the Council in advance of the meeting, to provide adequate time for its consideration.

- A. Written General Public Comment

CONSENT AGENDA

The Consent Agenda deals with routine and non-controversial matters, and may include action on resolutions, ordinances, or other public hearings for which testimony is not anticipated. The vote on the Consent Agenda shall apply to each item that has not been removed. Any member of Council, staff, or the public may remove an item from the Consent Agenda for individual consideration. When items are pulled for discussion, they will be automatically placed at the end of their respective section within the Regular Agenda. One motion shall be made to adopt all non-removed items on the Consent Agenda.

5. **APPROVAL OF CITY COUNCIL MEETING MINUTES**

Items pulled from this section will be placed under 12. Unfinished and Ongoing Business

- A. Minutes of the February 14, 2024 City Council Adjourned Meetings **PG 7**
Reference: Sandra Kandell
Recommended Action: Approve minutes.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378
- B. Minutes of the February 21, 2024 Special and Regular Meetings **PG 16**
Reference: Sandra Kandell, City Clerk
Recommended Action: Approve minutes.
CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378
- C. Minutes of the February 28, 2024 Goals Update and Budget Workshop **PG 24**

Reference: Sandra Kandell, City Clerk

Recommended Action: Approve minutes.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

6. **RESOLUTIONS**

Items pulled from this section will be placed under 12. Unfinished and Ongoing Business or 13. New Business

- A. Resolution Amending Council Policy 000-017 to add Section G for Agenda Language regarding Public Comment at Meetings of Legislative Bodies **PG 27**

Reference: Brian Pierik, City Attorney

Recommended Action: Motion to adopt Resolution Amending Council Policy 000-017 to add Section G for Agenda Language Regarding Public Comment at Meetings of Legislative Bodies.

Alternatively, take other action related to this item.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

7. **ORDINANCES**

Items pulled from this section will be placed under 11. Public Hearings

- A. Second Reading of an Ordinance Repealing Section 2.06.020 of the Pacific Grove Municipal Code Relating to the Removal of the City Manager **PG 37**

Reference: Jenica Maldonado, Special Counsel, Brian Pierik, City Attorney

Recommended Action: Hold second reading and adopt an Ordinance Repealing Section 2.06.020 of the Pacific Grove Municipal Code Relating to the Removal of the City Manager.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

- B. Second Reading of an Ordinance to Amend the Fiscal Year 23/24 Operating and Capital Improvement Budget **PG 45**

Reference: Tori Hannah, Administrative Services Director / Assistant City Manager

Recommended Action: Hold second reading and adopt an ordinance to amend the Fiscal Year 2023-24 Operating and Capital Improvement Budget.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

- C. Second Reading of an Ordinance Amending Section 23.76.021 (a) of the Pacific Grove Municipal Code Relating the Membership of the Historic Resource Committee **PG 58**

Reference: Brian Pierik, City Attorney

Recommended Action: Hold second reading and adopt an Ordinance Amending Section 23.76.021 (a) of the Pacific Grove Municipal Code Relating the Membership of the Historic Resource Committee.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

8. **REPORTS – INFORMATION ONLY**

Items pulled from this section will be placed under 12. Unfinished and Ongoing Business or 13. New Business

A. Housing Element Monthly Status Update **PG 63**

Reference: Alyssa Kroeger, Housing Program Manager

Recommended Action:

1. Receive the report.
2. Alternatively, discuss and take other action related to this item.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

9. **REPORTS – REQUIRING ACTION**

Items pulled from this section will be placed under 12. Unfinished and Ongoing Business or 13. New Business

A. PGUSD & City of Pacific Grove MOU ELOP **PG 65**

Reference: Katie Clark, Recreation Manager

Recommended Action:

1. Approve the City of Pacific Grove to enter a Memorandum of Understanding with Pacific Grove Unified School District for the purpose of creating a partnership to offer a free summer recreation camp through the Expanded Learning Opportunities Program grant.
2. Alternatively, discuss and take other action related to this item.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

B. Contract Award -Phase 9 Waster Water Collection System Improvements **PG 73**

Reference: Joyce Halabi, Deputy Public Works Director

Recommended Action:

1. Authorize an agreement with Monterey Peninsula Engineering for the Phase 9 Waster Water Collection System Improvements Project in an amount not to exceed \$717,280 plus an 15% contingency.
2. Alternatively, take other action related to this item.

CEQA: Initial Study, Negative Declaration

- C. Contract Amendment #2 for Professional Contract Planner Services with Harris & Associates, Inc. **PG 76**

Reference: Karen Vaughn, Community Development Director

Recommended Action: Approve Amendment #2 to Professional Services Agreement with Harris & Associates, Inc. not to exceed \$381,560 to:

- A. Allow continuation of current contract planner staffing services through June 30, 2024 for Fiscal Year 23-24 (\$87,840); and
B. Provide contract planner staffing services for Fiscal Year 24-25 (\$293,720).

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

10. **MEETING MINUTES OF COMMISSIONS, BOARDS, AND COMMITTEES**

Items pulled from this section will be placed under 13. New Business

REGULAR AGENDA

11. **PUBLIC HEARINGS**

For public hearings involving a quasi-judicial determination by the Council, the proponent of an item may be given 10 minutes to speak and others in support of the proponent’s position may be given three minutes each. A designated spokesperson for opposition to the item may be given 10 minutes to speak and all others in opposition may be given three minutes each. Very brief rebuttal and surrebuttal may be allowed in the sole discretion of the Council. In public hearings not involving a quasi-judicial determination by the Council, all persons may be given three minutes to speak on the matter.

- A. Introduction of an Ordinance Amending Section 2.04.050 (a) of the Pacific Grove Municipal Code Regarding Order of Agenda **PG 91**

Reference: Brian Pierik, City Attorney

Recommended Action:

1. Request the City Attorney read the title of the ordinance;
2. Motion to waive further reading and introduce an Ordinance Amending Section 2.04.050 (a) of the Pacific Grove Municipal Code Regarding Order of Agenda;
3. Direct a summary of a proposed ordinance be published as approved by the City Attorney;
4. Other action related to this item.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

12. **UNFINISHED AND ONGOING BUSINESS**

- A. Request Direction by Council to City Manager to Issue a Request for Proposal for a Demographer in Connection with the California Voting Rights Act **PG 95**

Reference: Brian Pierik, City Attorney

Recommended Action: Motion to:

1. Direct City Manager to issue a Request for Proposal for a qualified demographer to study the demographics of the City including:
 - a. The population of the City and its various racial and ethnic groups under the 2020 Census.
 - b. The most recent estimates of the proportion of eligible voters in the various racial and ethnic groups in the City.
 - c. Estimate of the socio-economic characteristics of the various racial and ethnic groups in the City.
 - d. The criteria governing the design of electoral districts for the election of City Council members.
 - e. A proposed timeline for the transition to by-district elections should the City Council decide upon that course of action.
2. Direct City Manager to return to the City Council with the demographer's report for discussion and further direction.

Take other action as directed by City Council related to this agenda item.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

13. **NEW BUSINESS**

14. **FULL PRESENTATIONS**

15. **CLOSED SESSION**

- A. Public Employment, (Government Code § 54957)
Title: City Manager

ADJOURNMENT

NOTICE OF ADA COMPLIANCE: Pursuant to Title II of the Americans with Disabilities Act (Codified At 42 United States Code Section 12101 and 28 Code of Federal Regulations Part 35), and Section 504 of the Rehabilitation Act of 1973, the City of Pacific Grove does not discriminate on the basis of race, color, religion, national origin, ancestry, sex, disability, age or sexual orientation in the provision of any services, programs, or activities. The City of Pacific Grove does not discriminate against persons with disabilities. City Hall is an accessible facility. A limited number of assisted listening devices will be available at this meeting. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting or provide the requested agenda format.



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Sandra Kandell, City Clerk/DEI Coordinator
MEETING DATE: March 06, 2024
SUBJECT: Minutes of the February 14, 2024 City Council Adjourned Meetings
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Approve minutes.

Attachments

Draft Minutes 2-14-24



DRAFT MEETING MINUTES

CITY OF PACIFIC GROVE CITY COUNCIL

CLOSED SESSION MEETING

Wednesday, February 14, 2024, 5:00 P.M.

(Adjourned from February 7, 2024)

Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

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HALL COUNCIL CHAMBER AND VIRTUALLY.**

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CALL TO ORDER

Mayor Peake called the meeting to order at 5:00 p.m. Present in Chamber: Mayor Peake, Councilmembers Amelio, Beck, Coletti, McDonnell, and Poduri. Mayor Pro Tem Smith arrived at 5:15 p.m.

APPROVAL OF AGENDA

Action: Upon motion by Councilmember Amelio and seconded by Councilmember Beck, Council voted 6-0-1, Mayor Pro Tem Smith absent, to approve the agenda.

CLOSED SESSION

PUBLIC COMMENT ON CLOSED SESSION MATTERS

Public comment received from Colleen Ingram.

1. Written Public Comment
 - A. Conference with Labor Negotiators (Government Code Section 54957.6)
City Negotiators: Robert Perrault, Interim City Manager, Tori Hannah, Administrative Services Director/Assistant City Manager, and Katy Suttorp, Esq.
Employee Organization: Police Officers Association
 - B. Conference with Real Property Negotiators Pursuant to Government Code Section 54956.8 Property: 618 Ocean View Boulevard, the Grill at Lovers Point
City Negotiators: Robert Perrault, Interim City Manager; Tori Hannah, Administrative Services Director/Assistant City Manager, James Minshew, Management Analyst
Parties: Joseph F. Cavallaro
Under Negotiation: Price and terms of payment
 - C. CONFERENCE WITH LEGAL COUNSEL--ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to Government Code Section 54956.9
(d)(2) One potential case (Employee Complaint)



DRAFT MEETING MINUTES

CITY OF PACIFIC GROVE

CITY COUNCIL

AMENDED REGULAR MEETING

Wednesday, February 14, 2024, 6:00 P.M.

(Adjourned from February 7, 2024.)

Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

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CALL TO ORDER

Mayor Peake called the meeting to order at 6:00 p.m. Present in Chamber: Mayor Peake, Mayor Pro Tem Smith, Councilmembers Amelio, Beck, Coletti, McDonnell, and Poduri.

PLEDGE OF ALLEGIANCE

Councilmember Coletti led the pledge of allegiance.

1. APPROVAL OF AGENDA

Action: Upon motion by Councilmember Poduri and seconded by Mayor Pro Tem Smith, Council voted 5-2, Councilmembers Beck and Coletti dissenting, to approve the agenda continuing Regular Agenda item 12E Recommendations from Parklet Subcommittee to the Council's February 21, 2024 meeting.

2. PRESENTATIONS

3. COUNCIL AND STAFF ANNOUNCEMENTS (City-Related Items Only)

A. Report on Closed Session by City Attorney

Conference with Labor Negotiators (Government Code Section 54957.6)

City Negotiators: Robert Perrault, Interim City Manager, Tori Hannah, Administrative Services Director/Assistant City Manager, and Katy Suttorp, Esq.

Employee Organization: Police Officers Association

Conference with Real Property Negotiators Pursuant to Government Code Section 54956.8

Property: 618 Ocean View Boulevard, the Grill at Lovers Point

City Negotiators: Robert Perrault, Interim City Manager; Tori Hannah, Administrative Services Director/Assistant City Manager, James Minshew, Management Analyst

Parties: Joseph F. Cavallaro

Under Negotiation: Price and terms of payment

Conference with Legal Counsel – Anticipated Litigation

Significant exposure to litigation pursuant to Government Code Section 54956.9 (d)(2) One potential case (Employee Complaint)

City Attorney Brian Peirik reported no action was taken as to any of the three noticed Closed Session items.

B. Council and staff made general announcements.

4. **GENERAL PUBLIC COMMENT**

General public comments received from Adam de Boor, Mike Gibbs, Tina Rau, Sally Moore, Jane Haines, and Lisa Ciani.

A. Written General Public Comment

CONSENT AGENDA

Action: Consent Agenda item 9A was pulled and considered immediately following the Consent Agenda.

Action: Upon motion by Mayor Pro Tem Smith and seconded by Councilmember Beck, the Council voted 7-0 to approve the Consent Agenda as modified.

5. **APPROVAL OF CITY COUNCIL MEETING MINUTES**

A. Minutes of the January 17, 2024 Special and Regular Meetings

Action: Approved minutes.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

6. **RESOLUTIONS**

A. Adopt a Resolution Ratifying the Actions of the City Manager/Emergency Services Director Declaring a State of Emergency and Authorizing the Mayor to Send a Letter to the Office of Emergency Services Requesting Assistance

Action: Adopted Resolution No. 24-004 Ratifying the Actions of the City Manager/Emergency Services Director and authorized the Mayor to send a letter to the Office of Emergency Services Requesting Assistance.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

7. **ORDINANCES**

8. **REPORTS – INFORMATION ONLY**

A. Second Quarter Treasurer’s Quarterly Report

Action: Received the report.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

B. Second Quarter Budget Report.

Action: Received the report.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines

Section 15378

- C. Second Quarter FY 23/24 Purchase Order Report
Action: Received the FY 23/24 Second Quarter Purchase Order Report.
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378
- D. Second Quarter 23/24 Workers' Compensation Report
Action: Received the report.
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378
- E. Safety Lighting at Robert Down Elementary School Project
Action: Received Report
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378
- F. Housing Element Monthly Status Update
Action: Received the report.
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

9. **REPORTS – REQUIRING ACTION**

- A. Authorization to Participate in a Joint Subcommittee with the Pacific Grove Unified School District ***This item was pulled and considered immediately following the consent Agenda.***
Reference: Robert Perrault, Interim City Manager
Recommended Action: Authorization to Participate in Joint Subcommittee with the School Board and Appoint the Mayor and Mayor Pro Tempore to the Committee.
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

10. **MEETING MINUTES OF COMMISSIONS, BOARDS, AND COMMITTEES**

- A. Architectural Review Board Minutes: November 14, 2023
Action: Received the minutes.
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

- 9.A. Authorization to Participate in a Joint Subcommittee with the Pacific Grove Unified School District
No public comment received.

Action: Upon motion by Mayor Pro Tem Smith and seconded by Councilmember Amelio, the Council voted 7-0 and authorized participation in a Joint Subcommittee with the School Board and appointed the Mayor and Mayor Pro Tempore to the Committee, and Councilmember Poduri as alternate.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

REGULAR AGENDA

11. PUBLIC HEARINGS

12. UNFINISHED AND ONGOING BUSINESS

- A. Public Comment at Meetings of Legislative Bodies *This item was continued from the Council's January 17, 2024 meeting.*

Public comments received from Lisa Ciani, Inge Lorentzen Daumer, Beth Walker, and Carol Marquart.

Action: Upon motion by Councilmember Beck and seconded by Councilmember Amelio, the Council voted 7-0 to direct the City Attorney to return to the Council with a resolution amending Council Policy 000-017.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

- B. Direct to City Attorney to return to the City Council with an ordinance to amend Pacific Grove Municipal Code Section 2.04.050 or other actions related to this Agenda item.

This item was continued from the Council's January 17, 2024 meeting.

Public comments received from Adam de Boor, Inge Lorentzen Daumer, Rebecca Lee, Daniel Miller, Lisa Ciani, and Carmelita Garcia.

Action: Upon motion by Councilmember Coletti and seconded by Councilmember Beck, the Council voted 7-0 to direct the City Attorney to return to the Council with an ordinance to amend Pacific Grove Municipal Code Section 2.04.050 (a) clarifying provisions of noticing requirements for special meetings.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

- C. Boards, Committees and Commissions Handbook Revision *This item was continued from Council's January 17, 2024 meeting.*

Public comments received from Inge Lorentzen Daumer, Lisa Ciani, and Rebecca Lee.

Action: Upon motion by Mayor Pro Tem Smith and seconded by Councilmember Amelio, the Council voted 7-0 to direct the City Attorney to prepare a resolution adopting revised Boards, Committees and Commissions Handbook 1/17/24, and direct the City Manager and City Attorney to provide committee training.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

Action: Council took a break from 8:00 – 8:10 p.m. Upon return, Council moved 13A to be heard directly after 12D.

- D. Codifying Council Member Inquiry Authority

Public comments received from Bill Kampe, Joy Colangelo, Inge Lorentzen Daumer, Colleen Ingram, Daniel Miller, and Lisa Ciani.

Action: Upon motion by Mayor Pro Tem Smith and seconded by Council Coletti, the Council voted 5-2, Councilmember Amelio and Poduri dissenting, to

1. Direct the City Attorney to finalize draft Ordinance Codifying Provisions of Article

21 of the City Charter with direction to us language outlined in Version 2 (1) *The “administrative service” means officers and employees of the City that are under the City Manager’s direct supervision and control. Any inquiries regarding contract-related services shall be directed to the City Manager;*

2. Direct the City Attorney to finalize related draft Council Policy Establishing Procedures for Council Members to Make an Inquiry Pursuant to Pacific Grove Municipal Code Section 2.04.110 using language outlined in Version 2 (1) *The “administrative service” means officers and employees of the City that are under the City Manager’s direct supervision and control. Any inquiries regarding contract-related services shall be directed to the City Manager;* and

3. Direct the City Attorney to return to City Council for first reading of an Ordinance.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

- E. First Reading of an Ordinance Repealing Section 2.06.020 of the Pacific Grove Municipal Code Relating to the Removal of the City Manager ***This item was formerly 13A.***
No public comment received.

Action: Upon motion by Councilmember Coletti and seconded by Councilmember Beck, the Council voted 6-1, Councilmember Poduri dissenting, to

1. Request the City Attorney read the title of the ordinance;
2. Waive further reading of the ordinance and introduce an Ordinance Repealing Section 2.06.020 of the Pacific Grove Municipal Code Relating to the Removal of the City Manager; and
3. Direct a summary of a proposed ordinance be published as approved by the City Attorney;

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

- F. Recommendations from Parklet Subcommittee ***During the Approval of the Agenda, this item was continued to the Council’s February 21, 2024 meeting.***

Reference: Councilmembers Luke Coletti, Lori McDonnell, Daniel Gho, Public Works Director/Deputy City Manager

Recommended Action:

1. Receive Report describing the design of the proposed curb extension and expanded sidewalk dining project prepared by the Parklet Subcommittee and City staff;
2. Direct staff to complete the remaining items necessary to finalize the project and bring back a final package to the City Council for approval prior to release of a Request for Proposals; and
3. Direct staff to prepare a Parklet and Sidewalk Dining Program Manual, to be adopted by Council Resolution, that thoroughly describes the program, including but not limited to, permitting, types of use, design standards, safety standards, amenities, and compliance and enforcement measures.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

- G. David Avenue Sidewalk Project
Public comments received from Andy Kubica, Sally Moore, Rebecca Lee, and Antony

Tersol.

Action: Upon motion by Mayor Pro Tem Smith and seconded by Councilmember Poduri, the Council voted 7-0 to direct staff to proceed with phasing the installation of sidewalks on the school side of David Avenue.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

Action: Upon motion by Councilmember Amelio and seconded by Councilmember Beck, Council voted 7-0 to adjourn the meeting and continue the Skatepark Project.

- H. Skatepark Project – City Hall Parking Lot ***Due to time constraints, this item was continued to the Council’s February 21, 2024 meeting.***

Reference: Daniel Gho, Public Works Director/Deputy City Manager

Recommended Action:

1. Receive the report and provide direction.
2. Alternatively, take other action related to this project.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

13. **NEW BUSINESS**

- A. First Reading of an Ordinance Repealing Section 2.06.020 of the Pacific Grove Municipal Code Relating to the Removal of the City Manager ***This item was moved and heard directly after Regular Agenda item 12D.***

Reference: Jenica Maldonado, Special Counsel and Brian Pierik, City Attorney

Recommended Action:

1. Request the City Attorney read the title of the ordinance;
2. Waive further reading of the ordinance and introduce an Ordinance Repealing Section 2.06.020 of the Pacific Grove Municipal Code Relating to the Removal of the City Manager; and
3. Direct a summary of a proposed ordinance be published as approved by the City Attorney;

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

14. **FULL PRESENTATIONS**

15. **CLOSED SESSION**

ADJOURNMENT

Council adjourned the regular meeting at 10:14 p.m.

Respectfully Submitted,

Sandra Kandell
City Clerk

Approved by Mayor: _____ Date _____

Attest by Interim City Manager Pro Tempore: _____ Date _____

DRAFT



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Sandra Kandell, City Clerk/DEI Coordinator
MEETING DATE: March 06, 2024
SUBJECT: Minutes of the February 21, 2024 Special and Regular Meetings
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Approve minutes.

Attachments

Draft Minutes 2-21-24



DRAFT MEETING MINUTES
CITY OF PACIFIC GROVE
CITY COUNCIL

CLOSED SESSION MEETING

Wednesday, February 21, 2024, 5:00 P.M.

Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

Appearing Telephonically Pursuant to Government Code Section 54953:

Councilmember Poduri

999 N. 2nd Street

St. Louis, MO 63102

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COUNCIL CHAMBER AND VIRTUALLY.**

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CALL TO ORDER

Mayor Peake called the meeting to order at 5:00 p.m. City Clerk Kandell conducted roll call with the following Council present in Chamber: Mayor Peake, Councilmembers Amelio, Coletti, and McDonnell. Appearing by Zoom: Councilmember Poduri. Mayor Pro Tem arrived at 5:15 p.m. Absent: Councilmember Beck.

APPROVAL OF AGENDA

Action: Upon motion by Councilmember Amelio and seconded by Councilmember Coletti, Council voted to approve the agenda.

Motion carried 5-0-2, by the following roll call vote:

AYES: Mayor Peake, Councilmember Amelio, Coletti, McDonnell, and Poduri.

NOES: None.

ABSENT: Mayor Pro Tem Smith and Councilmember Beck.

CLOSED SESSION

PUBLIC COMMENT ON CLOSED SESSION MATTERS

No public comment received.

1. Written Public Comment

Conference with Legal Counsel – Initiation of Litigation Government Code §54956.9(d)(4)) Number of Cases: One (Arising out of letter received from Andrew Sandoval on August 25, 2022, copy included in Agenda Packet)

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378



DRAFT MEETING MINUTES
CITY OF PACIFIC GROVE
CITY COUNCIL
REGULAR MEETING

Wednesday, February 21, 2024, 6:00 P.M.
Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

Appearing Telephonically Pursuant to Government Code 54953:
Councilmember Poduri
999 N. 2nd Street St.
Louis, MO 63102

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COUNCIL CHAMBER AND VIRTUALLY.**

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CALL TO ORDER

Mayor Peake called the meeting to order at 6:00 p.m. City Clerk Kandell conducted roll call with the following Council present in Chamber: Mayor Peake, Mayor Pro Tem Smith, Councilmembers Amelio, Coletti, and McDonnell. Appearing by Zoom: Councilmember Poduri. Absent: Councilmember Beck.

PLEDGE OF ALLEGIANCE:

Councilmember McDonnell led the pledge of allegiance.

1. APPROVAL OF AGENDA

Action: Upon motion by Mayor Pro Tem Smith and seconded by Councilmember Amelio, Council voted to approve the agenda.

Motion carried 6-0-1, by the following roll call vote:

AYES: Mayor Peake, Mayor Pro Tem Smith, Councilmember Amelio, Coletti,
McDonnell, and Poduri.
NOES: None.
ABSENT: Councilmember Beck.

2. PRESENTATIONS

A. Mayor's Proclamation: Black History Month

Action: Council received the proclamation.

CEQA: Does not constitute a "Project" per California Environmental Quality Act Guidelines Section 15378

3. COUNCIL AND STAFF ANNOUNCEMENTS (City-Related Items Only)

A. Report on Closed Session by City Attorney

Conference with Legal Counsel – Initiation of Litigation Government Code §54956.9(d)(4)) Number of Cases: One (Arising out of letter received from Andrew Sandoval on August 25, 2022, copy included in Agenda Packet)
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

City Attorney Brian Pierik reported that no action was taken, and that Council would be returning to Closed Session once the Regular Meeting adjourns.

B. Council and staff made general announcements.

4. **GENERAL PUBLIC COMMENT**

Public comment received from Joy Colangelo, Andy Kubica, Vince Tuminello, Nadja Mark, Colleen Ingram, Daniel Miller, and Anthony Ciani.

A. Written General Public Comment

CONSENT AGENDA

Action: Consent Agenda item 8C was pulled and considered immediately following the Consent Agenda. Consent Agenda item 9A was pulled and considered immediately following the Consent Agenda.

Action: Upon motion by Mayor Pro Tem Smith and seconded by Councilmember Amelio, Council voted to approve the Consent Agenda as modified.

Motion carried 6-0-1, by the following roll call vote:

AYES: Mayor Peake, Mayor Pro Tem Smith, Councilmember Amelio, Coletti, McDonnell, and Poduri.
NOES: None.
ABSENT: Councilmember Beck.

5. **APPROVAL OF CITY COUNCIL MEETING MINUTES**

6. **RESOLUTIONS**

7. **ORDINANCES**

8. **REPORTS – INFORMATION ONLY**

A. Core Revenue Report for January

Action: Received the report.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

B. January 2024 Check Register

Action: Received the check register.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

- C. Second Quarter FY 23/24 Capital Project Report & Update ***This item was pulled and considered immediately following the Consent Agenda.***
Reference: James Minshew, Management Analyst
Recommended Action: Received the report.
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

- D. Monterey-Salinas Transit Minutes: December 11, 2023 and January 8, 2024
Action: Received minutes.
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

9. **REPORTS – REQUIRING ACTION**

- A. Contract Amendment with Alvarez Technology Group for Information Technology Services
This item was pulled and considered immediately following the Consent Agenda.
Reference: Mohammed Khasimi, Chief Information Officer
Recommended Action: Approved an amendment to the contract with Alvarez Technology Group in amount not to exceed \$139,900.
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

10. **MEETING MINUTES OF COMMISSIONS, BOARDS, AND COMMITTEES**

- A. Diversity, Equity and Inclusion Task Force Minutes of January 1, 2024
Action: Received minutes.
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

- 8.C. Second Quarter FY 23/24 Capital Project Report & Update ***This item was pulled and considered immediately following the Consent Agenda.***
Public comment received from Andy Kubica and Lisa Ciani.
Action: Council received the report.
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

- 9.A. Contract Amendment with Alvarez Technology Group for Information Technology Services
This item was pulled and considered immediately following the Consent Agenda.
Public comment received from Dan Miller, Nadja Mark, and Adam de Boor.
Action: Upon motion by Mayor Pro Tem Smith and seconded by Councilmember Coletti, Council voted to approve an amendment to the contract with Alvarez Technology Group in amount not to exceed \$139,900.

Motion carried 6-0-1, by the following roll call vote:

AYES: Mayor Peake, Mayor Pro Tem Smith, Councilmember Amelio, Coletti, McDonnell, and Poduri.

NOES: None.
ABSENT: Councilmember Beck.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

REGULAR AGENDA

11. PUBLIC HEARINGS

- A. Fiscal Year 2023-24 Mid-Year Budget Modifications and First Reading of an Ordinance Amending the Fiscal Year 2023-24 Budget
Public comment received from Daniel Miller and Mike Gibbs.

Action: Upon motion by Mayor Pro Tem Smith and seconded by Councilmember Amelio, Council voted to

1. Request the City Attorney read the title of the ordinance;
2. Motion to waive further reading of the ordinance and introduce an Ordinance to Amend the Fiscal Year 2023-24 Budget;
3. Direct a summary of a proposed ordinance be published as approved by the City Attorney.

Motion carried 6-0-1, by the following roll call vote:

AYES: Mayor Peake, Mayor Pro Tem Smith, Councilmember Amelio, Coletti, McDonnell, and Poduri.
NOES: None.
ABSENT: Councilmember Beck.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

- B. Consider an Appeal of Architectural Permit (AP), Use Permit (UP) and Variance (VAR) 22-0284, 773-775 Ocean View Blvd, Pacific Grove (APN 006-071-007); continued from the City Council Regular Meeting on November 1, 2023
No public comment received.

Action: Upon motion by Councilmember Amelio and seconded by Mayor Pro Tem Smith, Council voted to

Motion carried 6-0-1, by the following roll call vote:

AYES: Mayor Peake, Mayor Pro Tem Smith, Councilmember Amelio, Coletti, McDonnell, and Poduri.
NOES: None.
ABSENT: Councilmember Beck.

CEQA: Categorical Exemption, CEQA Guidelines Section 15301, Class I, Existing Facilities

- C. Introduction of an Ordinance Amending Section 23.76.021 (a) of the Pacific Grove

Municipal Code Relating the Membership of the Historic Resource Committee
Attorney
Public comment received from Lisa Ciani.

Action: Upon motion by Mayor Pro Tem Smith and seconded by Councilmember Amelio, Council voted to

1. Request the City Attorney read the title of the ordinance;
2. Motion to waive further reading of the ordinance and introduce an Ordinance Amending Section 23.76.021 (a) of the Pacific Grove Municipal Code Relating the Membership of the Historic Resource Committee;
3. Direct a summary of a proposed ordinance be published as approved by the City Attorney.

Motion carried 6-0-1, by the following roll call vote:

AYES: Mayor Peake, Mayor Pro Tem Smith, Councilmember Amelio, Coletti, McDonnell, and Poduri.
NOES: None.
ABSENT: Councilmember Beck.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

Action: Council took a break from 7:25-7:35 p.m.

12. **UNFINISHED AND ONGOING BUSINESS**

- A. Housing Element Sites-Voter Approval Requirements
Public comment received from Don Murphy, Nancy Parsons, Lori Wick, Steve Obere, Pam Weaver, unnamed speaker, Peggy Gibbs, Mike Gibbs, Daniel Miller, Colleen Ingram, Ray Parsons, Marsha, Inge Lorentzen Daumer, Adam de Boor, Nadja Mark, and Lisa Ciani.

Action: Council received the report and provided further direction.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

- B. Recommendations from Parklet Subcommittee ***This item was continued from 2/14/2024.***
Public comment received from Don Murphy, Dave de Simone, Tina Rau, Liz Jacobs, Colleen Ingram, Adam de Boor, Beth Walker, Daniel Miller, Mike Gibbs, Marsha, Wendi Giles, Inge Lorentzen Daumer, Mari Adams, Peggy Gibbs, Laura Abihider.

Action: Upon motion by Mayor Pro Tem Smith and seconded by Councilmember Coletti, Council voted to direct the City Manager to complete the remaining items necessary to finalize the project and bring back a final package to the City Council for approval prior to release of a Request for Proposals, and direct the City Manager to prepare a Parklet and Sidewalk Dining Program Manual to be adopted by Council Resolution, that thoroughly describes the program, including but not limited to, permitting, types of use, design standards, safety standards, amenities, and compliance. and enforcement measures.

Motion carried 4-2-1, by the following roll call vote:

AYES: Mayor Peake, Mayor Pro Tem Smith, Councilmember Coletti and McDonnell.
NOES: Councilmember Amelio and Poduri.
ABSENT: Councilmember Beck.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

Action: Upon motion by Mayor Pro Tem Smith seconded by Councilmember Coletti, Council voted to adjourn the meeting and continue 12C Skatepark Project – City Hall Parking Lot to a date uncertain.

- C. Skatepark Project – City Hall Parking Lot ***This item continued from 2/14/2024. Due to time constraints, this item was continued to a date uncertain.***

Reference: Daniel Gho, Public Works Director/Deputy City Manager

Recommended Action:

1. Receive report and provide direction.
2. Alternatively, take other action related to this item.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

13. **NEW BUSINESS**

14. **FULL PRESENTATIONS**

15. **CLOSED SESSION**

ADJOURNMENT

Council adjourned the regular meeting at approximately 10:44 p.m. Council returned to Closed Session for further discussion on the noticed agenda and adjourned the Closed Session meeting at 10:56 p.m.

Respectfully Submitted,

Sandra Kandell
City Clerk

Approved by Mayor: _____ Date _____

Attest by Interim City Manager Pro Tempore: _____ Date _____



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Sandra Kandell, City Clerk/DEI Coordinator
MEETING DATE: March 06, 2024
SUBJECT: Minutes of the February 28, 2024 Goals Update and Budget Workshop
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Approve minutes.

Attachments

Draft Minutes 2-28-24



DRAFT MEETING MINUTES

CITY OF PACIFIC GROVE

CITY COUNCIL

SPECIAL MEETING AGENDA GOALS UPDATE AND BUDGET WORKSHOP

Wednesday, February 28, 2024, 6:00 P.M.
Council Chamber – City Hall – 300 Forest Avenue, Pacific Grove, CA

**PACIFIC GROVE COUNCIL MEETINGS ARE CONDUCTED IN PERSON AT CITY
HALL COUNCIL CHAMBER AND VIRTUALLY**

YOU MAY VIEW THE MEETING LIVE VIA ZOOM AT:

https://www.cityofpacificgrove.org/Zoom_CC

CALL TO ORDER

Mayor Peake called the meeting to order at 6:00 p.m. Present in Chamber: Mayor Peake, Councilmembers Amelio, Coletti, McDonnell, and Poduri. Absent: Mayor Pro Tem Smith and Councilmember Beck.

PLEDGE OF ALLEGIANCE:

Mayor Peake led the pledge of allegiance.

1. APPROVAL OF AGENDA

Action: Upon motion by Councilmember Coletti and seconded by Councilmember Amelio, Council voted 5-0-2, Mayor Pro Tem Smith and Councilmember Beck absent, to approve the agenda.

2. PUBLIC COMMENT AS IT PERTAINS TO GOALS UPDATE AND BUDGET WORKSHOP (To be taken separately with each item.)

A. Written General Public Comment

REGULAR AGENDA

NEW BUSINESS

A. Community Goals and Work Plan Review for FY 24-25

Public comment received from Donald Murphy, Peggy Gibbs, Andy Kubica, Mike Gibbs, Rebecca Lee, and Kim Akeman.

Action: Council reviewed existing Work Plan and provided direction to staff.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

- B. Five-Year Fiscal Forecast and Budget Workshop
Public comment received from Mike Gibbs, Andy Kubica, and Peggy Gibbs.

Action: Council received report and provided direction to staff.

CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

ADJOURNMENT

Council adjourned the special meeting at 8:47 p.m.

Respectfully Submitted,

Sandra Kandell
City Clerk

Approved by Mayor: _____ Date _____

Attest by Interim City Manager Pro Tempore: _____ Date _____



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Brian Pierik, City Attorney
MEETING DATE: March 06, 2024
SUBJECT: Resolution Amending Council Policy 000-017 to add Section G for Agenda Language regarding Public Comment at Meetings of Legislative Bodies
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Motion to adopt Resolution Amending Council Policy 000-017 to add Section G for Agenda Language Regarding Public Comment at Meetings of Legislative Bodies

Alternatively, take other action related to this item.

DISCUSSION

Under the Ralph M. Brown Act (“Brown Act”) as set forth in California Government Code Section 54950 et. seq, public comment at meetings of a legislative body for matters on the agenda must relate to that agenda item and public comments for matters not on the agenda must relate to the subject matter jurisdiction of this legislative body.

On October 18, 2023, the City Council meeting was disrupted by remote speakers, via Zoom, who used the public comment period to voice hateful, racist speech that violated the permissible scope of public comment under the Brown Act.

On November 15, 2023, the City Council directed the City Attorney to return with possible amendments to City Policy 000-017 regarding public comment from remote participants at meetings of legislative bodies. The City Council also voted at that meeting to allow for public comment via zoom.

On February 14, 2024, the City Council was presented with an Agenda Report addressing the subject of what options are available to the City in regard to public comments and behavior during meetings of a legislative body that are disruptive or otherwise violate the permissible scope of public comment under the Brown Act.

Pursuant to the direction of the City Council on February 14, 2024, a Resolution Amending Council Policy 000-017 to add Section G for Agenda Language Regarding Public Comment at Meetings of Legislative Bodies is hereby presented for Council consideration. Section G as proposed reads as follows:

“Under the Brown Act, public comment for matters on the agenda must relate to that

agenda item and public comments for matters not on the agenda must relate to the subject matter jurisdiction of this legislative body. This is a warning that if a member of the public attending this meeting remotely or in-person violates the Brown Act by failing to comply with these requirements of the Brown Act, then the Mayor may request that speaker be muted. If a member of the public attending this meeting in-person engages in disruptive behavior that disturbs the orderly conduct of the meeting, they may be removed from the meeting after a warning, pursuant to Council Policy 000-17.”

The legislative body may not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Government Code § 54954.3(c); Pacific Grove Municipal Code section 2.04.050(d)(2) Therefore, speakers who present comments which constitute such criticism should not be muted.

OPTIONS

None.

FINANCIAL IMPACT:

There is no fiscal impact.

FOCUSED PRIORITY AREA: Not Applicable.

Attachments

Proposed Reso and Policy

RESOLUTION NO. 24-xxx

RESOLUTION AMENDING COUNCIL POLICY 000-017 TO ADD SECTION G FOR AGENDA LANGUAGE REGARDING PUBLIC COMMENT AT MEETINGS OF LEGISLATIVE BODIES

FINDINGS

1. Under the Ralph M. Brown Act (“Brown Act”) set forth in Government Code Section 54950 et. seq., public comment at meetings of a legislative body for matters on the agenda must relate to that agenda item and public comments for matters not on the agenda must relate to the subject matter jurisdiction of this legislative body.
2. On October 18, 2023, the City Council meeting was disrupted by remote speakers, via Zoom, who used the public comment period to voice hateful, racist speech that violated the permissible scope of public comment under the Brown Act.
3. On November 15, 2023, the City Council directed the City Attorney to return with possible amendments to City Policy 000-017 regarding public comment from remote participants at meetings of legislative bodies. The City Council also voted at that meeting to allow for public comment via zoom.
4. On February 14, 2024, the City Council was present with an Agenda Report addressing the subject of what options are available to the City in regard to public comments and behavior during meetings of a legislative body that are disruptive or otherwise violate the permissible scope of public comment under the Brown Act.
5. Pursuant to the direction of the City Council on February 14, 2024, a Resolution Amending Council Policy 000-017 to add Section G for Agenda Language Regarding Public Comment at Meetings of Legislative Bodies is hereby presented for Council consideration. Section G as proposed reads as follows:

“Under the Brown Act, public comment for matters on the agenda must relate to that agenda item and public comments for matters not on the agenda must relate to the subject matter jurisdiction of this legislative body. This is a warning that if a member of the public attending this meeting remotely or in-person violates the Brown Act by failing to comply with these requirements of the Brown Act, then the Mayor may request that speaker be muted. If a member of the public attending this meeting in-person engages in disruptive behavior that disturbs the orderly conduct of the meeting, they may be removed from the meeting after a warning, pursuant to Council Policy 000-17.”
6. The legislative body may not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Government Code § 54954.3(c); Pacific Grove Municipal Code section 2.04.050(d)(2) Therefore, speakers who present comments which constitute such criticism should not be muted.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY
OF PACIFIC GROVE:**

1. The Council determines that each of the Findings set forth above is true and correct, and by this reference incorporates those Findings as an integral part of this Resolution.
2. The Council hereby approves this Resolution Amending Council Policy 000-017 To Add Section G For Agenda Language Regarding Public Comment At Meetings Of Legislative Bodies and the amended Council Policy 000-017 is attached hereto as Exhibit “A” and hereby incorporated by this reference.
3. This Resolution shall become effective immediately following passage and adoption thereof.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE
this 6th day of March 2024 by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

BILL PEAKE, Mayor

ATTEST:

DATED: _____

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

BRIAN A. PIERIK, City Attorney

EXHIBIT “A”

City of Pacific Grove

Council Policy

Subject	Policy	Effective Date	Page
Order of Agenda for Council Meetings	000-17	December 20, 2017	Page 1 of 4

- A. Council meeting agendas are designed to facilitate the orderly conduct of City business, provide adequate time for the City Council to make informed, deliberative decisions, and provide members of the public an opportunity to present information to the City Council on any matter within the subject matter jurisdiction of the City.
- B. This policy establishes the general practice to be followed with respect to the management of agenda items before the City Council. This policy shall not be construed to limit or impair rights of the public as set forth in the Ralph M. Brown Act, the Public Records Act, or any other provision of law.
- C. In the development of a specific meeting’s agenda, the City Manager may adjust this order, when warranted. The Mayor and Council may also adjust the order in which matters are considered at the meeting. Deviation from the order of the agenda set in this policy, by itself, shall not provide a basis to reverse or invalidate any action of the City Council.
- D. The standard order of the City Council agenda shall be as follows:

Call to Order

Pledge of Allegiance

1. Approval of the Agenda

Councilmembers shall have an opportunity to request changes to the order of items, to postpone items to a future meeting, or to add new matters in accord with the emergency or urgency requirements set forth in the Government Code.

2. Presentations

Presentations shall be made on behalf of the City to persons or organizations, and/or brief presentations (not to exceed 5 minutes, each) made to the Council by others upon approval of the City Manager. Presentations shall neither receive Council action nor provide a reason for Council debate. Council may ask brief questions or refer matters to staff for consideration on a future agenda.

3. Council and Staff Announcements

Announcements shall be limited to City-related items and shall neither receive Council

Page 1 of 6

action nor provide a reason for Council debate. Council may ask brief questions or refer matters to staff for consideration on a future agenda.

Report out of any closed session held prior to the Regular meeting will be provided as the first announcement.

4. Public Comment

These are comments from the public on matters that are on the agenda (including the Consent Agenda) as well as for matters not on the agenda during General Public Comment which are within the subject matter jurisdiction of the City.

Persons who wish to address the Council shall use the microphone and are asked to state their name. It is helpful if speakers also indicate the subject matter of their comments. (Note: Even if a speaker refuses to state his or her name or the subject matter of the comment, the speaker shall not be denied the right to speak.) Accommodations will be made for persons with disabilities.

Public comment shall be limited to three minutes per speaker for each item on the Agenda. For General Public Comment, each speaker shall be limited to three minutes.

In the discretion of the Mayor, the length of the public comment on an item on the Agenda may be reduced to lower than three minutes when appropriate based on the number of speakers for an item and/or the Mayor may limit the total time for public comment on an item on the Agenda.

Communication to the Council under General Public Comment will be received without comment while the public comment period is open. When public comment during General Public Comment Communications is closed, questions from the public may be referred to staff for a brief response.

Pursuant to Government Code Section 54954.3 (c), the City Council shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body.

Pursuant to Government Code Section 54957.9, in the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible, and order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the Mayor may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. After the meeting room has been cleared, the Mayor may readmit an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting.

Pursuant to Government Code Section 54957.95, the Mayor may cause the removal of any individual for disrupting the meeting subject to the following rules:

(1) Prior to removing an individual, the Mayor shall warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal.

(2) The Mayor may then cause the removal of the individual if they do not promptly cease their disruptive behavior.

(3) “Disrupting” means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, one of the following: (A) A failure to comply with reasonable and lawful regulations adopted by a legislative body pursuant to Section 54954.3 or any other law. (B) Engaging in behavior that constitutes use of force or a true threat of force.

(4) “True threat of force” means a threat that has sufficient indicia of intent and seriousness, that a reasonable observer would perceive it to be an actual threat to use force by the person making the threat.

(5) If there has been a use of force or a true threat of force, there is no obligation for the Mayor to provide a warning to the individual before causing the individual to be removed from the meeting.

Consent Agenda

The Consent Agenda deals with routine and noncontroversial matters, and may include action on resolutions and second readings of ordinances, provided no public comment is anticipated on those items. The purpose of the Consent Agenda is to make efficient use of available time by considering all routine and non-controversial items under one motion. The Consent Agenda is structured so that any Councilmember, staff, or the public may pull an item for discussion or questions.

A single vote on the Consent Agenda shall apply to each item that has not been removed.

Councilmembers may notify the City Clerk if they want a specific vote or abstention recorded as to any individual item.

The standard elements of the Consent Agenda are:

- 5. Approval of City Council Meeting Minutes**
- 6. Resolutions**
- 7. Ordinances**
- 8. Reports – Information Only**

9. Reports – Requiring Action

10. Meeting Minutes of Commissions, Boards, and Committees

When a Councilmember wishes to remove an item the Councilmember will discuss his/her question(s) with staff prior to the meeting in order for staff to research the answer(s), which shall be provided ahead of time to all members (e.g., in the blue folders).

The Mayor will first ask the members of the Council, then members of the public if anyone wants to pull an item from consent. The person pulling the item will simply state the item number and subject.

Unless a specific item is pulled for discussion, the Council shall ordinarily approve all action items or recommendations on the entire Consent Agenda under a single motion. Council's vote to approve the Consent Agenda is a direction to staff to proceed with each action as recommended.

Items Removed from the Consent Agenda

The Council shall separately consider and act on each item removed from the Consent Agenda. Such items shall be heard in their normal place on the Regular Agenda. That placement will be noted on each consent item. The discussion format for those items will follow the protocol for the Regular Agenda.

Regular Agenda

The protocol for deliberation on regular agenda items is:

- 1) The agenda report is presented by staff or other person who prepared the report. The report can be concise yet sufficient to establish context and key facts for the item.
- 2) Public comment is received, then closed.
- 3) Council deliberates and takes action as appropriate for the item

This protocol explicitly omits the practice of clarifying questions from council prior to opening for public comment. Councilmembers can ask for clarification prior to the Council meeting and can also ask questions during the council deliberation phase.

11. Public Hearings

The Public Hearing agenda includes matters for which a public hearing notice was posted or published and for which public comment is anticipated.

12. Unfinished and Ongoing Business

The Unfinished Business agenda shall consist of matters that return to the Council for action, the same matter having been considered at or continued from a prior meeting or are updates or actions for long term and ongoing topics.

13. New Business

The New Business agenda shall consist of matters not previously considered by the Council.

14. Full Presentations

Presentations under this item are those that may exceed five minutes and are made to the Council upon invitation of the Mayor or City Manager. Presentations shall neither receive Council action nor provide a reason for Council debate. Council may ask brief questions or refer matters to staff for consideration on a future agenda.

15. Closed Sessions (if required)

Closed Sessions are held in compliance with the Brown Act. The specific time for any Closed Session may be set at other times at the convenience of Council. The Council may adjourn to Closed Session on any other agenda item if authorized by law, upon advice of the City Attorney.

16. Public Announcement of Action Taken in Closed Session

This announcement shall immediately follow any Closed Session.

Adjournment

- E. Whenever practical, closed session items are best addressed during a special meeting prior to a regular meeting, as a convenience to the public, beginning at 5:00 pm.
- F. All agenda reports recommending Council action shall include the following: title, recommendation, background, justification, and financial impact. Closed session agenda reports shall be confidential pursuant to California Government Code 54963 and PGMC §2.04.080.

G. The Agendas the meetings of all Legislative Bodies shall include the following Statement:

““Under the Brown Act, public comment for matters on the agenda must relate to that agenda item and public comments for matters not on the agenda must relate to the subject matter jurisdiction of this legislative body. This is a warning that if a member of the public attending this meeting remotely or in-person violates the Brown Act by failing to comply with these requirements of the Brown Act, then the Mayor or Chair may request that speaker be muted. If a member of the public attending this meeting in-person engages in disruptive behavior that disturbs the orderly conduct of the meeting, they may be removed from the meeting after a warning, pursuant to Council Policy 000-17.”

Adopted May 2, 2001 - Resolution No.1-025
Amended June 3, 2009 - Resolution No. 9-021
Amended February 3, 2010 - Resolution No.10-014
Amended September 1, 2010 - Resolution No.10-068
Amended November 17, 2010 - Resolution No.10-099

Amended February 2, 2011 - Resolution No. 11-008
Amended January 20, 2016 - by motion of Council
Amended December 20, 2017 - Resolution No. 17-032
Amended September 1, 2021 - Resolution 21-028
Amended February 1, 2023 – by Minute Order
Amended March 6, 2024 by Resolution No. _____



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Jenica Maldonado, Special Counsel, Brian Pierik, City Attorney
MEETING DATE: March 06, 2024
SUBJECT: Second Reading of an Ordinance Repealing Section 2.06.020 of the Pacific Grove Municipal Code Relating to the Removal of the City Manager
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Hold second reading and adopt an Ordinance Repealing Section 2.06.020 of the Pacific Grove Municipal Code Relating to the Removal of the City Manager.

DISCUSSION

The City Council approved the first reading of the aforementioned ordinance at its February 14, 2024, adjourned meeting. There were no substantive changes between the first and second readings. The City Clerk caused a summary of the ordinance to be published on February 29, 2024.

In 1967, the City Council of the City of Pacific Grove (Pacific Grove) adopted Ordinance No. 573, which enacted certain portions of the Pacific Grove Municipal Code (Municipal Code) relating to the appointment and removal of the City Manager.

Section 2.06.020 of the Municipal Code sets forth the terms upon which the City Manager may be removed from the position upon a five-sevenths’ (i.e., super majority) vote of the Council of Pacific Grove (City Council). Section 2.06.020 also requires that the City Manager be furnished with a written notice of the City Council’s intention to remove the City Manager and the reasons for such removal, at least 30 days before the effective date of removal. Upon receiving notice, the City Manager may elect to schedule a hearing before the City Council regarding the proposed removal. The purpose of the hearing is for the City Manager to present the City Council with his or her grounds of opposition to his or her removal; however, the City Council shall use its uncontrolled discretion and its action shall be final.

Section 2.06.020 of the Municipal Code also authorizes the City Council to suspend the City Manager from duty after providing notice of removal but the City Manager is entitled to his or her compensation until removal by resolution subsequent to the public hearing, if requested.

Section 2.06.020 also contains a limitation of removal of the City Manager. It states that a City Manager is prohibited from being removed within six months of any general municipal election held in Pacific Grove where a member of the City Council is elected.

After a review of surrounding cities and various municipal codes, it is clear that Section 2.06.020 of the Municipal Code is an outlier. It does not appear that it is customary for a public employee, such as a City Manager, to be given a hearing if the employee's dismissal is not for cause but convenience. The City of Santa Cruz's Municipal Code authorizes the removal of the City Manager by the affirmative votes of at least four (4) members of the City Council, subject to certain time limitations relating to a general municipal election. The Municipal Codes and City Charters for the cities of San Luis Obispo and Monterey are silent as to the removal of the City Manager.

Moreover, the Brown Act authorizes the City Council to consider, in closed session, the dismissal of a public employee, such as a City Manager, or to hear the complaints or charges brought against an employee by another person or employee. Under the Brown Act, the impacted employee is also authorized to request that such dismissal and/or discussion of complaints and charges be discussed in public session. The Brown Act mandates that the impacted employee be provided notice of any such closed session and his/her ability to request that such discussions be held in open session. Government Code Section 54957

Special Counsel has confirmed that Section 2.06.010, entitled, "Appointment – Conditions of employment" provides that "[o]ther conditions of employment may be spelled out in a hiring agreement between the city manager and the council." Thus, it is appropriate for any terms governing termination and/or removal to be set forth in the agreement between the City Council and City Manager.

OPTIONS

Provide alternative direction.

FINANCIAL IMPACT:

There is no fiscal impact related to enactment of the Ordinance.

FOCUSED PRIORITY AREA: Not Applicable.

Attachments

1. Proposed Ordinance
2. Amended Proposed Ordinance 2/9/2024

ORDINANCE NO. 24 -

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF PACIFIC GROVE REPEALING
SECTION 2.06.020 OF THE PACIFIC GROVE MUNICIPAL CODE
RELATING TO THE REMOVAL OF THE CITY MANAGER**

FACTS

1. The City of Pacific Grove (Pacific Grove) is a charter city organized under the constitution of the State of California.
2. Pacific Grove became a charter city on April 22, 1927. New Charters were adopted in 1955, 1969, and 1974.
3. Section 2.06.020 of the Municipal Code sets forth the terms upon which the City Manager may be removed from the position upon a five-sevenths' (i.e., super majority) vote of the council of Pacific Grove (City Council). Section 2.06.020 also requires that the City Manager be furnished with a written notice of the City Council's intention to remove the City Manager and the reasons for such removal, at least 30 days before the effective date of removal. Upon receiving notice, the City Manager may elect to schedule a hearing before the City Council regarding the proposed removal. The purpose of the hearing is for the City Manager to present the City Council with his or her grounds of opposition to his or her removal; however, the City Council shall use its uncontrolled discretion and its action shall be final.
4. Section 2.06.020 of the Municipal Code also authorizes the City Council to suspend the City Manager from duty after providing notice of removal, but the City Manager is entitled to his or her compensation until removal by resolution subsequent to the public hearing, if requested.
5. Section 2.06.020 also contains a limitation of removal of the City Manager. It states that a City Manager is prohibited from being removed within six months of any general municipal election held in Pacific Grove where a member of the City Council is elected.
6. This ordinance repeals Section 2.06.020, to be replaced with the text "Repealed."
7. Notice of a public hearing regarding Ordinance No. ____ was published in [insert newspaper] on [date].
8. This ordinance does not constitute a Project as that term is defined by Section 15378 of the California Environmental Quality Act (CEQA) as it is an organizational or administrative activity of government that will not result in direct or indirect physical changes in the environment.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF PACIFIC GROVE DOES ORDAIN AS FOLLOWS:

SECTION 1. The facts set forth above are true and correct and are adopted as findings of the City Council as though set forth fully within the body of this ordinance.

SECTION 2. Section 2.06.020 of the Municipal Code is hereby repealed in its entirety.

SECTION 3. The City Manager is directed to execute all documents and to perform all other necessary City acts to implement this Ordinance.

SECTION 4. This Ordinance shall be liberally construed to implement its purposes.

SECTION 5. If any provision, section, paragraph, sentence, clause or phrase of this ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

SECTION 6. In accordance with Article 15 of the City Charter, this ordinance shall take effect thirty (30) days following adoption on second reading by the City Council.

(Continued on following page)

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE THIS ____ day of _____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

BILL PEAKE, Mayor

ATTEST:

DATED:_____

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

BRIAN PIERIK, City Attorney

ORDINANCE NO. 2024 -

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE ~~REPEALING~~AMENDING SECTION 2.06.020 OF THE PACIFIC GROVE MUNICIPAL CODE RELATING TO THE REMOVAL OF THE CITY MANAGER

FACTS

1. The City of Pacific Grove (Pacific Grove) is a charter city organized under the constitution of the State of California.
2. Pacific Grove became a charter city on April 22, 1927. New Charters were adopted in 1955, 1969, and 1974.
3. Section 2.06.020 of the Municipal Code sets forth the terms upon which the City Manager may be removed from the position upon a five-sevenths' (i.e., super majority) vote of the council of Pacific Grove (City Council). Section 2.06.020 also requires that the City Manager be furnished with a written notice of the City Council's intention to remove the City Manager and the reasons for such removal, at least 30 days before the effective date of removal. Upon receiving notice, the City Manager may elect to schedule a hearing before the City Council regarding the proposed removal. The purpose of the hearing is to present the City Council with his or her grounds of opposition to his or her removal; however, the City Council shall use its uncontrolled discretion and its action shall be final.
4. Section 2.06.020 of the Municipal Code also authorizes the City Council to suspend the City Manager from duty after providing notice of removal but the City Manager is entitled to his or her compensation until removal by resolution subsequent to the public hearing, if requested.
5. Section 2.06.020 also contains a limitation of removal of the City Manager. It states that a City Manager is prohibited from being removed within six months of any general municipal election held in Pacific Grove where a member of the City Council is elected.
6. ~~This ordinance repeals Section 2.06.020, to be replaced with the text "Repealed." This ordinance amends Section 2.06.020 to strike the existing language in this section in its entirety and to replace such language as follows: "The procedure for removal of the City Manager shall be set forth in the hiring agreement between the City and the City Manager."~~
7. ~~Notice of a public hearing regarding Ordinance No. _____ was published in [insert newspaper] on [date]. Article 19 City Manager of the Charter of Pacific Grove provides that "[t]he procedure for removal of the City Manager shall be prescribed by ordinance."~~
8. This ordinance does not constitute a Project as that term is defined by Section 15378 of the California Environmental Quality Act (CEQA) as it is an organizational or administrative activity of government that will not result in direct or indirect physical changes in the

environment.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF PACIFIC GROVE DOES ORDAIN AS FOLLOWS:

SECTION 1. The facts set forth above are true and correct and are adopted as findings of the City Council as though set forth fully within the body of this ordinance.

SECTION 2. Section 2.06.020 of the Municipal Code is hereby repealed in its entirety and is replaced with the following: “The procedure for removal of the City Manager shall be set forth in the hiring agreement between the City and the City Manager.”

SECTION 3. The City Manager is directed to execute all documents and to perform all other necessary City acts to implement this Ordinance.

SECTION 4. This Ordinance shall be liberally construed to implement its purposes.

SECTION 5. If any provision, section, paragraph, sentence, clause or phrase of this ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

SECTION 6. In accordance with Article 15 of the City Charter, this ordinance shall take effect thirty (30) days following adoption on second reading by the City Council.

(Continued on following page)

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE THIS ____ day of _____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

BILL PEAKE, Mayor

ATTEST:

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

BRIAN PIERIK, City Attorney



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Tori Hannah, Administrative Services Director/Assistant City Manager
MEETING DATE: March 06, 2024
SUBJECT: Second Reading of an Ordinance to Amend the Fiscal Year 23/24 Operating and Capital Improvement Budget
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Hold second reading and adopt an ordinance to amend the Fiscal Year 2023-24 Operating and Capital Improvement Budget.

DISCUSSION

On February 21, 2024, the City Council received a Fiscal Year 2023-24 Mid-Year Budget Report, as well as considered an ordinance to amend the Fiscal Year 2023-24 Budget. The Council approved the first reading of the ordinance at that meeting; and a summary of the ordinance was published on February 29, 2024. An overview of the information that was presented is included within this report.

The City Council approved the Fiscal Year 2023-24 Budget on June 21, 2023. It is customary at this time of the fiscal year to amend the current budget to reflect any updates to revenues and expenditures.

The City Council’s approval is needed to amend the budget. An ordinance reflecting those changes, as well as an overview of significant changes are included with this agenda report. Supplementary information related to the General Fund, as well as to other funds are included in Attachments 1-3. Additional details will also be provided during the presentation.

GENERAL FUND

The Fiscal Year 2023-24 Budget was developed with conservative optimism. The revenue assumptions incorporated into the budget reflected continued strong growth in the property taxes, a full-year of Measure A sales tax revenues, a partial year of cannabis tax; and slower, but stable growth in most other categories. Expenditures were anticipated to align with the increase in revenues; and the use of the *unassigned* fund was appropriated only to support one-time expenditures. Fiscal Year 2023-24 also marks the first full year since the pandemic, that the City has not included supplementary revenues, such as ARPA funds, in the General Fund operating budget.

At the time the Fiscal Year 2023-24 Budget was adopted, there was a planned \$841,086 use of the *unassigned* fund balance for one-time expenditures and a projected \$11.3 million ending fund balance.

This included just over \$1 million for capital outlays and capital project transfers; and a \$500,000 placeholder for the General Plan. When this net difference is applied to the updated Fiscal Year 2023-24 beginning *unassigned* fund balance, the estimated year-end balance is approximately \$13.9 million. The budget was adjusted for key unexpended contracts and purchases that were carried forward into Fiscal Year 2023-24; and later updated to support the final contract costs for the Housing Element/General Plan, as well as miscellaneous adjustments. It is anticipated that the Fiscal Year 2023-24 General Fund *unassigned* ending fund balance will be approximately \$13.3 million. This is approximately \$2.6 million above the reserve level requirements. These unprogrammed funds are primarily the result of budgetary savings, increased revenues in the prior fiscal year that contributed to a greater than anticipated beginning fund balance; and increased revenue performance in the current year.

An overview of the previous and proposed budgetary projections is presented in the subsequent table, with detailed information on mid-year updates provided in Attachment 1.

General Fund Balance Projections			
	FY 23/24 Adopted	FY 23/24 Amended	FY 23/24 Mid-Year Est.
Preliminary Beginning Fund Balance	\$ 14,815,979	\$ 14,815,979	\$ 14,815,979
Estimated Revenues	31,263,187	31,263,187	32,092,000
Estimated Expenses	32,104,273	34,117,976	33,593,659
Net Operating Difference	(\$841,086)	(2,854,789)	(\$1,501,659)
Estimated Ending Fund Balance	\$ 13,974,893	\$ 11,961,190	\$ 13,314,320

Revenues

The mid-year projections include an estimated increase in revenues of approximately \$829,000 when compared to the Amended Budget. This includes approximately \$505,000 in greater than anticipated tax receipts, \$187,000 in grant reimbursements for the prior year storms and the Recreation Department's Expanded Learning Opportunity Program; and an estimated increase of \$441,000 in the Licenses, Permits, and Impact Fees (LPIF) category. The revised tax estimates build upon the final Fiscal Year 2022-23 revenues, while also incorporating current trends. The increase in LPIF primarily reflects the receipt of a single construction permit of \$277,882 related to a major hotel project. This growth is projected to be partially offset by a \$437,687 reduction in promissory note proceeds for water entitlements, net of other adjustments. The promissory note proceeds were initially estimated at \$625,187; however \$62,500 was received in the prior year and \$187,500 are projected to be received in this fiscal year.

Expenditures

Expenses are initially projected to be approximately \$524,000 less than anticipated. This includes an \$87,000 reduction in net operating costs and a \$437,687 decrease in interfund transfers. The net reduction in operating costs is largely due to a \$232,000 decrease in Police Department salaries and benefits, resulting from position vacancies; a \$159,000 reduction in the Community Development Department budget, which includes allocating \$97,000 in Housing Element/General Plan costs to the Operating Grant and General Plan Maintenance Fee Funds; and \$25,000 in various adjustments. These operational savings were offset by a proposed increase of \$194,000 in the Recreation Department, and a \$135,000 increase in internal service fund (ISF) charges to assist in meeting ISF fund balance requirements. The request for a budgetary increase in the Recreation Department primarily reflects

\$136,000 in additional seasonal salaries to assist with summer programs and the externally funded Expanded Learning Opportunity Program (ELOP), along with increased utility costs. Additional information regarding recreation programming will be presented as part of the mid-year budget, with updated goal information provided during the Budget Workshop.

As part of the mid-year budget, staff is also requesting to increase a 3/4 time Librarian position to full-time position. The estimated annual cost associated with this transition is approximately \$25,000. The funding to support this change would come from the on-call salary budget of approximately \$54,000. The remaining \$29,000 would be made available for on-call staff. It is anticipated that this cost-neutral change will assist with employee retention.

Fund Balance

The City's new audit firm is in the process of producing the financial sections of the Annual Comprehensive Financial Statements (ACFR). In Fiscal Year 2022-23, the City updated and implemented the following new Government Accounting Standards Board (GASB) pronouncements: *GASB 87 - Leases*; and *GASB 96 - Subscription Based Information Technology Arrangements*. The City confirmed with the Independent Auditors that the calculation of the preliminary beginning General Fund balance was consistent with the new pronouncements and the draft financial statements. It is anticipated that the ACFR, along with the Independent Auditor Report will be presented to the City Council in early March.

OTHER FUNDS

Listings of all projected changes to revenues and expenditures within Other Funds are included in Attachments 2 and 3. To facilitate stronger budgetary management, staff would like to amend the budget to reflect the identified changes. None of the changes resulted in a negative *available* fund balance, with the exception of a deficit of \$15,000 in the Local Water Project (LWP) Fund. Staff is recommending making an adjustment to the LWP fund as it gets closer to year-end. This will provide staff with a better opportunity to assess the impact of the rate change on Local Water Project revenues, as well as the rainy season.

OPTIONS

1. Make no adjustments
2. Provide alternate direction to staff

FINANCIAL IMPACT:

The modifications to the General Fund are anticipated to result in a drawdown of *unassigned* fund balance in the amount of \$1.5 million. This is primarily related to the use of fund balance to support the amended Housing Element contract and capital improvements. This is projected to result in an estimated ending *unassigned* General Fund balance of approximately \$13.3 million. This places the estimated ending fund balance \$2.6 million above the City's updated reserve threshold of \$10.7 million.

The combined net change to all other funds is approximately \$644,000. The updated estimated ending fund balances can be found within the Ordinance.

FOCUSED PRIORITY AREA: Not Applicable.

Attachment 1 _General Fund Overview
Attachment 2 _Other Funds Revenue Summary
Attachment 3 _Other Funds Expenditure Summary
Attachment 4 _Budget Ordinance

General Fund Overview

	FY 23/24 Adopted		FY 23/24 Amended		FY 23/24 Mid-Year Estimate	Amended Budget to Mid-Year Difference
Beginning Fund Balance ⁽¹⁾	\$	14,815,979	\$	14,815,979	\$	14,815,979
Revenues						
Property Taxes	\$	9,609,000	\$	9,609,000	\$	9,806,000 ⁽²⁾
TOT and Licenses		6,562,000		6,562,000		6,840,000 ⁽³⁾
Sales and Use Tax		5,957,000		5,957,000		6,039,000 ⁽⁴⁾
Franchise and Utility User Taxes		3,590,000		3,590,000		3,628,000
Business Licenses		370,000		370,000		385,000
Cannabis Tax		100,000		100,000		- ⁽⁵⁾
Other Taxes		176,000		176,000		171,000
License, permits, and impact fees		838,000		838,000		1,279,000 ⁽⁶⁾
Intergovernmental Revenues		58,000		58,000		245,000 ⁽⁷⁾
Charges for Services		2,072,000		2,072,000		2,141,000
Fines and Forfeitures		125,000		125,000		34,000 ⁽⁸⁾
Interest, rents, and concessions		435,000		435,000		501,000
Other revenues		1,371,187		1,371,187		1,023,000 ⁽⁹⁾
	\$	31,263,187	\$	31,263,187	\$	32,092,000
Expenditures						
Departments						
City Council	\$	310,998	\$	318,600	\$	262,449 ⁽¹⁰⁾
City Manager		1,225,545		1,455,696		1,443,706
Economic Development		369,025		369,815		383,826
City Attorney		996,100		1,144,480		1,144,480
Finance		1,374,546		1,450,956		1,475,034
Information Systems		935,429		1,034,941		1,019,239
Community Development		3,022,491		4,049,815		3,891,205 ⁽¹¹⁾
Police		8,336,438		8,347,338		8,115,564 ⁽¹²⁾
Fire		4,403,000		4,403,000		4,498,600 ⁽¹³⁾
Public Works		5,011,544		5,044,698		5,098,853
Library		1,159,335		1,167,695		1,172,182
Recreation		1,189,769		1,194,749		1,388,405 ⁽¹⁴⁾
Museum		337,400		337,400		338,400
Capital Outlay		215,000		365,140		365,800
Capital Project Transfers		850,000		850,000		850,000
Debt Service		1,428,466		1,428,466		1,428,416
Interfund Transfers		939,187		1,155,187		717,500 ⁽¹⁵⁾
Total	\$	32,104,273	\$	34,117,976	\$	33,593,659
Net Difference	\$	(841,086)	\$	(2,854,789)	\$	(1,501,659)
Estimated Ending Fund Balance	\$	13,974,893	\$	11,961,190	\$	13,314,320
Reserve Calculation						
Expenditures applicable to policy ⁽¹⁶⁾		\$	30,794,941	\$	30,707,651	
Policy percentage - 35%		\$	10,778,229	\$	10,747,678	
Difference from policy		\$	1,182,961	\$	2,566,643	

Notes:

(1) The beginning fund balance represents the preliminary audited financial statements of \$14.8 million.

(2) Adjusted based on prior and current year performance; and additional information from the County of Monterey.

- (3) Increased estimate to reflect 3.1% over the prior year based on year to date performance.*
- (4) Adjusted based on performance and alignment with City and HdL estimates.*
- (5) It is not anticipated that there will be sufficient time to prepare the regulatory framework; and permit a storefront with commenced operations.*
- (6) The increase is primarily related to a single receipt of \$277,882 for a major hotel project, as well as increased construction permitting.*
- (7) Primarily reflects \$153,000 in reimbursements for prior year storm costs and funding to support the Recreation Extended Learning Opportunity Programs of \$55,000, net of other grant adjustments.*
- (8) This revenue category can vary year over year. The current year estimate was adjusted based on potential code enforcement revenues.*
- (9) The net reduction is primarily related to estimated water entitlement revenues related to a Developer Promissory Note.*
- (10) Reduction based on updated contract estimates, and the use of a grant to support the annual Community Health and Human Service allocation.*
- (11) Primarily reflects approximately \$97,000 in Housing Element costs moved to the Operating Grant and General Plan Maintenance Fee Fund.*
- (12) The projected difference is primarily related to position vacancies and the corresponding salary savings within the department.*
- (13) Reflects cost associated with true-up of fire contract services and approximately \$33,000 for a wildfire protection study.*
- (14) Additional funds requested for temporary services and supplies to continue the ramp-up recreation programs, as well as rising utilities.*
- (15) Primarily reflects a reduction in the transfer to the Local Water Project to be consistent with estimated Promissory Note proceeds.*
- (16) Adjusted calculation to exclude costs associated with updated Housing Element contract.*

OTHER FUNDS - REVENUE ADJUSTMENT SUMMARY

FUND	CURRENT YEAR BUDGET	MID-YEAR ESTIMATE	DIFFERENCE	NOTES
04 - Hyperbaric Chamber	10,200	11,100	900	Update for estimated interest earnings
06 - State Franchise PEG	52,500	49,000	(3,500)	General revenue update
07 - Library Building and Equip. Fund	3,570	3,000	(570)	General revenue update
10 - Hospitality Improvement District	589,400	663,900	74,500	Increase in the MCTID pass-through tax rate
11 - Library Book Fund	40,500	54,492	13,992	Increase for anticipated donations and used book sales
12 - Fire Emergency Equipment Fund	21,900	23,403	1,503	General revenue update
15 - Housing Fund	5,000	93,995	88,995	Estimated loan repayment receipts
17 - Local Streets and Roads	760,678	835,500	74,822	Adjustment based on estimated Measure X tax performance
20 - RSTP-(TAMC)	1,124,738	1,082,602	(42,136)	Reflects updates in reimbursements to align with project estimates, and funding for a project completed in prior year
27 - Lighthouse Fund	97,000	87,000	(10,000)	Updated based on current estimate
28 - Senior Housing Fund	100	500	400	Update for estimated interest earnings
30 - Operating Grants	591,906	509,637	(82,269)	Reduced based on grant funding received and billed in the prior year
31 - Operating Donations	1,250	1,700	450	Update for estimated interest earnings
34 - CDBG Grant Fund	7,500	75,000	67,500	Estimated loan repayment receipts
36 - Calhome Reuse	2,000	28,000	26,000	Update based on anticipated program revenues
43 - SLESF Fund	247,750	248,318	568	Update for estimated interest earnings
55 - General Plan Maint. Fee Fund	10,000	10,600	600	Update for estimated interest earnings
70 - Employee Benefit Fund	359,950	350,000	(9,950)	Updated based on current program participation
71 - Workers Comp. Fund	730,000	543,000	(187,000)	Adjustment for reimbursement billings booked as a revenue and receivable in prior year
72 - Liability Insurance Fund	722,500	1,087,000	364,500	Increase related to a transfer for the second half of separation agreement, and additional internal service charges
74 - Local Water Project	1,576,187	1,141,500	(434,687)	Primarily related to reduction for transfers-in for promissory note proceeds
75 - Cemetery	656,500	654,265	(2,235)	Increased interest earnings, net of reduced sale estimates
76 - Sewer Fund	4,436,000	4,040,500	(395,500)	Primarily related to reduction of the transfers-in to repay the Sewer Fund/LWP Interfund Loan. This transfer aligns with the receipt of promissory note proceeds.
77 - Golf Fund	731,500	759,000	27,500	Projected lease revenue performance
78 - Sewer Lateral Loans	10,000	3,000	(7,000)	Based on anticipated loan repayments and interest earnings
84 - American Rescue Plan Act -ARPA	3,000	15,000	12,000	Update for estimated interest earnings
85 - Library Trust Fund	10,000	11,000	1,000	Update for estimated interest earnings
86 - Cemetery Endowment Fund	110,000	111,900	1,900	Update for estimated interest earnings
90 - Yount Nonexpendable Fund	15,000	3,000	(12,000)	Update for estimated interest earnings
93 - Koo Estate Donation	-	457	457	Update for estimated interest earnings
Grand Total	12,926,629	12,497,369	(429,260)	

OTHER FUNDS - EXPENDITURE ADJUSTMENT SUMMARY

FUND	AMENDED BUDGET	MID-YEAR EST.	DIFFERENCE	NOTES
04 - Hyperbaric Chamber	\$ 22,400	\$ 22,932	\$ 532	Update to align with proposed expenditures
07 - Library Building and Equip. Fund	81,208	101,208	20,000	To support additional book shelves and art displays
10 - Hospitality Improvement District	488,000	662,000	174,000	Increase in MCTID pass-through revenues, along with performance
11 - Library Book Fund	40,000	44,492	4,492	Update to align with proposed expenditures
15 - Housing Fund	204,776	208,054	3,278	Update to align with proposed expenditures
18 - Gas Tax Fund	439,543	441,032	1,489	Update to align with proposed expenditures
20 - RSTP-(TAMC)	1,124,738	1,042,480	(82,258)	Decrease to reflect project completed in prior year and carry-forward adjustments
27 - Lighthouse Fund	186,414	167,673	(18,741)	Salary adjustments for first half of year
30 - Operating Grants	591,896	509,638	(82,258)	Grant funds expended in prior year; and update for remaining grants
40 - Poetry Promotion Fund	14,700	19,700	5,000	Update to align with proposed expenditures
43 - SLESF Fund	278,720	273,756	(4,964)	Update to align with proposed expenditures
70 - Employee Benefit Fund	359,600	330,000	(29,600)	Adjustment based on current expenditures and plan participation
71 - Workers Compensation Fund	730,992	769,566	38,574	Projected claims, net of a \$100,000 Closed Session Compromise and Release Agreement
72 - Liability Insurance Fund	690,375	830,500	140,125	Reduction in routine claims, offset by transfer-in for the final payment associated with the Separation Agreement
74 - Local Water Project (LWP) Fund	1,636,449	1,159,949	(476,500)	Budget included \$625,187 in transfers for the Sewer/LWP Interfund Loan. Adjustment based on estimated promissory note receipts and reduced utility expenses
75 - Cemetery Fund	684,119	704,746	20,627	Adjustment primarily relates to estimated increase in utility costs
76 - Sewer Fund	5,771,105	6,262,165	491,060	Increase of \$456,000 related to the sewer-related portion of the David Ave. and FY 23/24 Street Rehab. Projects., along with misc. adjustments
77 - Golf Fund	695,598	705,098	9,500	Estimated increase in capital trust contributions, which are based on a percentage of lease revenues
Grand Total	\$ 14,040,633	\$ 14,254,989	\$ 214,356	

ORDINANCE NO. xx-xxx

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE
AMENDING THE OPERATING AND CAPITAL PROJECTS BUDGET FOR THE
FISCAL YEAR (FY) 2023-24**

FACTS

1. The City Council approved the Fiscal Year 2023-24 Budget on June 21, 2023.
2. It is customary to amend the budget to adjust revenues and expenditures to reflect updated information since the adoption of the Fiscal Year 2023-24 Budget.
3. The City Manager is recommending amendments to the Fiscal Year 2023-24 Budget to reflect the City Council goals for the fiscal year budget.
4. The Council has determined it is appropriate to amend the approved budget for FY 2023-24.
5. Pursuant to Charter Article 15, an amendment of the budget must be approved by ordinance.
6. A summary of the Ordinance, approved by the City Attorney, was published on February 29, 2024.
7. In the enactment of this ordinance, the City followed the guidelines adopted by the State of California and published in the California Code of Regulations, Title 14, Section 15000, et seq.
8. Enactment of this ordinance action does not constitute a “project” as defined by California Environmental Quality Act (CEQA) Guidelines Section 15378 because it is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF PACIFIC GROVE DOES
ORDAIN AS FOLLOWS:**

SECTION 1. The foregoing facts are adopted as findings of the City Council as set forth fully within the body of this ordinance.

SECTION 2. The revenue budget for the following funds is amended, as stated herein, which by this reference are incorporated as set forth in its entirety.

REVENUE ADJUSTMENTS

FUND	ADJUSTMENT
01 - General Fund	828,813
04 - Hyperbaric Chamber	900
06 - State Franchise PEG	(3,500)
07 - Library Building and Equip. Fund	(570)
10 - Hospitality Improvement District	74,500
11 - Library Book Fund	13,992
12 - Fire Emergency Equipment Fund	1,503
15 - Housing Fund	88,995
17 - Local Streets and Roads	74,822
20 - RSTP-(TAMC)	(42,136)
27 - Lighthouse Fund	(10,000)
28 - Senior Housing Fund	400
30 - Operating Grants	(82,269)
31 - Operating Donations	450
34 - CDBG Grant Fund	67,500
36 - Calhome Reuse	26,000
43 - SLESF Fund	568
55 - General Plan Maint. Fee Fund	600
70 - Employee Benefit Fund	(9,950)
71 - Workers Comp. Fund	(187,000)
72 - Liability Insurance Fund	364,500
74 - Local Water Project	(434,687)
75 - Cemetery	(2,235)
76 - Sewer Fund	(395,500)
77 - Golf Fund	27,500
78 - Sewer Lateral Loans	(7,000)
84 - American Rescue Plan Act -ARPA	12,000
85 - Library Trust Fund	1,000
86 - Cemetery Endowment Fund	1,900
90 - Yount Nonexpendable Fund	(12,000)
93 - Koo Estate Donation	457

SECTION 3. The expenditure budget for the following funds is amended, as stated herein. Which by reference are incorporated as set forth in its entirety.

EXPENDITURE ADJUSTMENTS

FUND	DIFFERENCE
01 - General Fund	(524,317)
04 - Hyperbaric Chamber	\$ 532
07 - Library Building and Equip. Fund	20,000
10 - Hospitality Improvement District	174,000
11 - Library Book Fund	4,492
15 - Housing Fund	3,278
18 - Gas Tax Fund	1,489
20 - RSTP-(TAMC)	(82,258)
27 - Lighthouse Fund	(18,741)
30 - Operating Grants	(82,258)
40 - Poetry Promotion Fund	5,000
43 - SLESF Fund	(4,964)
70 - Employee Benefit Fund	(29,600)
71 - Workers Compensation Fund	38,574
72 - Liability Insurance Fund	140,125
74 - Local Water Project (LWP) Fund	(476,500)
75 - Cemetery Fund	20,627
76 - Sewer Fund	491,060
77 - Golf Fund	9,500

SECTION 4. The Fiscal Year 2023/24 preliminary estimated fund balances based on this adjustment, are referenced herein ⁽¹⁾:

FUND	PRELIMINARY			EST. ENDING FUND
	BEGINNING FUND BALANCE	REVENUES	EXPENDITURES	BALANCE
01 - General Fund	14,815,979	\$ 32,092,000	\$ 33,593,659	\$ 13,314,320
04 - Hyperbaric Chamber	31,469	11,100	22,932	19,637
06 - State Franchise PEG	91,066	49,000	81,000	59,066
07 - Library Building and Equipment	136,233	3,000	101,208	38,025
10 - Hospitality Improvement District	8,927	663,900	662,000	10,827
11 - Library Book Fund	33,376	54,492	44,492	43,376
12 - Fire Emergency Equipment Fund	171,430	23,403	22,000	172,833
15 - Housing Fund	373,039	93,995	208,054	258,980
17 - Local Streets and Roads	1,154,757	835,500	1,895,361	94,896
18 - Gas Tax Fund	180,685	416,317	441,032	155,970
20 - RSTP-(TAMC)	(40,122)	1,082,602	1,042,480	0
27 - Lighthouse Fund	195,031	87,000	167,673	114,358
28 - Senior Housing Fund	10,339	500	-	10,839
30 - Operating Grants	683	509,637	509,638	682
31 - Operating Donations	64,475	1,700	-	66,175
34 - CDBG Grant Fund	490,203	75,000	520,000	45,203
36 - Calhome Reuse Fund	172,196	28,000	24,000	176,196
40 - Poetry Promotion	119,714	35,620	19,700	135,634
43 - SLESF Fund	98,236	248,318	273,756	72,798
55 - General Plan Maintenance Fee	32,550	10,600	-	43,150
70 - Employee Benefit Fund	93,657	350,000	330,000	113,657
71 - Workers Compensation Fund	286,266	543,000	769,566	59,700
72 - Liability Insurance Fund	(250,965)	1,087,000	830,500	5,535
74 - Local Water PProject	1,109,022	1,141,500	1,159,949	1,090,573
75 - Cemetery Fund	984,482	654,265	704,746	934,001
76 - Sewer Fund	22,925,363	4,040,500	6,262,165	20,703,698
77 - Golf Fund	3,684,291	759,000	705,098	3,738,193
78 - Sewer Lateral Loans	199,240	3,000	-	202,240
84 - American Rescue Plan Act-ARPA	1,074,164	15,000	1,063,136	26,028
85 - Library Trust Fund	522,441	11,000	-	533,441
86 - Cemetery Endowment Fund	1,967,327	111,900	-	2,079,227
90 - Yount Nonexpendable Fund	772,697	3,000	15,000	760,697
93 - Koo Estate Donation	15,642	457	16,099	(0)

(1) The estimated ending “available” fund balance for the enterprise funds, are as follows: Local Water Project at (\$14,513); Cemetery Fund at \$857,908; Sewer Fund at \$5,608,548; and the Golf Fund at \$610,735.

SECTION 5. In accord with Article 15 of the City Charter, this ordinance shall become effective upon adoption hereof.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this
6th day of March, 2024, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

BILL PEAKE, Mayor

ATTEST:

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

BRIAN A. PIERIK, City Attorney



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Brian Pierik, City Attorney
MEETING DATE: March 06, 2024
SUBJECT: Second Reading of an Ordinance Amending Section 23.76.021 (a) of the Pacific Grove Municipal Code Relating the Membership of the Historic Resource Committee
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Hold second reading and adopt an Ordinance Amending Section 23.76.021 (a) of the Pacific Grove Municipal Code Relating the Membership of the Historic Resource Committee.

DISCUSSION

The City Council approved the first reading of the aforementioned ordinance at its February 21, 2024, regular meeting. There were no substantive changes between the first and second readings. The City Clerk caused a summary of the ordinance to be published on February 29, 2024.

On December 20, 2023, the City Council directed the City Attorney to return to the City Council with an Ordinance for first reading to amend Municipal Code Section 23.76.021 including a reduction in the number of members of the Historic Resource Committee from seven members to five members because the specificity of Historic Resource Committee (HRC) member qualifications makes it difficult to recruit and appoint members to fill the committee. Reducing the number of members from seven to five will have no effect on the current HRC as there are two vacancies.

Current Version of Municipal Code Section 23.76.021 (a)

(a) The historic resources committee shall consist of seven members having a demonstrated interest in and knowledge of historic preservation and the cultural resources of Pacific Grove. One of the members shall be a licensed architect with preservation experience, landscape architect, engineer, or architectural historian, one shall be a licensed general contractor with preservation experience, and one shall be a representative of the heritage society.

Proposed Amendment to Municipal Code Section 23.76.021 (a)

Proposed amendments are shown below by deletion of all text shown in ~~strikeout text~~ and the addition of all text shown in underscored text:

Chapter 23.76.021 Historic resources committee.

(a) The historic resources committee shall consist of ~~seven~~ five members having a demonstrated interest in and knowledge of historic preservation and the cultural resources of Pacific Grove. At least four members shall be residents registered to vote in the City of Pacific Grove. One of the members shall be a licensed architect with preservation experience, landscape architect, engineer, or architectural historian, ~~one shall or~~ be a licensed general contractor with preservation experience, and one shall be a representative of the heritage society. A member not registered to vote in the City of Pacific Grove shall have demonstrated architectural or general contractor experience in the city of Pacific Grove.

Summary of Reasons for Proposed Ordinance Based on December 20, 2023 Agenda Report by Mayor Peake.

The Proposed Ordinance includes a reduction in the number of members of the Historic Resource Committee from seven members to five members because the specificity of Historic Resource Committee (HRC) member qualifications makes it difficult to recruit and appoint members to fill the committee. Reducing the number of members from seven to five will have no effect on the current HRC as there are two vacancies.

Amending member qualifications will provide the flexibility to consider a wider range of applicants and have minimal impact on quality of HRC decisions.

Allowing a non-Pacific Grove resident with demonstrated architectural or general contractor experience in our city will facilitate knowledgeable professionals to serve on the HRC. Several local architects routinely work in Pacific Grove but are not residents and could fill this role.

Proposed amendments will align HRC size and qualifications with that of the Architectural review board which has similar permitting responsibilities.

OPTIONS

Discuss and take other action related to this item.

FINANCIAL IMPACT:

There is no fiscal impact related to this item.

FOCUSED PRIORITY AREA: Not Applicable.

Attachments

Proposed Ord Amd PGMC Section 23.76.021(a) Relating to HRC Membership

Attachment 1
Historic Resources Committee Membership

ORDINANCE NO. 24-XXX

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE
AMENDING SECTION 23.76.021 OF THE PACIFIC GROVE MUNICIPAL CODE
REGARDING MEMBERSHIP ON THE HISTORIC RESOURCES COMMITTEE**

FACTS

1. Pacific Grove Municipal Code Section 23.76.021 currently provides for a Historic Resources Committee with seven members.
2. The Proposed Ordinance includes a reduction in the number of members of the Historic Resource Committee from seven members to five members because the specificity of Historic Resource Committee (HRC) member qualifications makes it difficult to recruit and appoint members to fill the committee.
3. Proposed amendments to Section 23.76.021 are shown below by deletion of all text shown in strikeout text (~~strikeout text~~) and the addition of all text shown in underscored text:

Chapter 23.76.021 Historic resources committee.

(a) The historic resources committee shall consist of ~~seven~~ five members having a demonstrated interest in and knowledge of historic preservation and the cultural resources of Pacific Grove. At least four members shall be residents registered to vote in the City of Pacific Grove. One of the members shall be a licensed architect with preservation experience, landscape architect, engineer, or architectural historian, ~~one shall or~~ be a licensed general contractor with preservation experience, and one shall be a representative of the heritage society. A member not registered to vote in the City of Pacific Grove shall have demonstrated architectural or general contractor experience in the city of Pacific Grove.
4. Reducing the number of members from seven to five will have no effect on the current HRC as there are two vacancies.
5. Amending member qualifications will provide the flexibility to consider a wider range of applicants and have minimal impact on quality of HRC decisions.
6. Allowing a non-City of Pacific Grove resident with demonstrated architectural or general contractor experience in the City will facilitate knowledgeable professionals to serve on the HRC. Several local architects routinely work in Pacific Grove but are not residents and could fill this role.
7. Proposed amendments will align HRC size and qualifications with that of the Architectural review board which has similar permitting responsibilities.
8. Enactment of this ordinance action does not constitute a “project” as defined by California Environmental Quality Act (CEQA) because it is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF PACIFIC GROVE DOES ORDAIN AS FOLLOWS:

SECTION 1. The foregoing Facts are adopted as findings of the City Council as though set forth in fully within the body of this ordinance.

SECTION 2. Section 23.76.021 is hereby amended to read as follows:

Chapter 23.76.021 Historic resources committee.

(a) The historic resources committee shall consist of five members having a demonstrated interest in and knowledge of historic preservation and the cultural resources of Pacific Grove. At least four members shall be residents registered to vote in the City of Pacific Grove. One of the members shall be a licensed architect with preservation experience, landscape architect, engineer, or architectural historian, or be a licensed general contractor with preservation experience, and one shall be a representative of the heritage society. A member not registered to vote in the City of Pacific Grove shall have demonstrated architectural or general contractor experience in the city of Pacific Grove.

SECTION 3. The City Manager is directed to execute all documents and to perform all other necessary City acts to implement this Ordinance.

SECTION 4. Severability. If any provision, section, paragraph, sentence, clause or phrase of this ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

SECTION 5. In accordance with Article 15 of the City Charter, this Ordinance shall become effective on the thirtieth (30th) day following its passage and adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE
this _____ day of _____, _____, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

BILL PEAKE, Mayor

ATTEST:

DATED: _____

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

BRIAN A. PIERIK, City Attorney



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Alyssa Kroeger, Housing Program Manager
MEETING DATE: March 06, 2024
SUBJECT: Housing Element Monthly Status Update
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

1. Receive the report.
2. Alternatively, discuss and take other action related to this item.

DISCUSSION

On December 20, 2023, City Council approved the first amendment to the contract with Rincon Consultants, initiating the preparation of the Housing Element Update (HEU), along with related General Plan Amendments, Zoning Amendments, and Environmental Impact Report (EIR). Subsequently, City Staff and Rincon Consultants continued/commenced work and provided the first monthly progress report update to Council on February 14, 2024. Since then, the following tasks have been undertaken:

- **January 26 – February 28, 2024:** Staff and consultants' ongoing review and coordination of public comment (throughout the 30-day NOP public comment period) on the scope of the EIR.
- **February 15, 2024:** Staff and consultants held the EIR Public Scoping Session with the Planning Commission to receive verbal comments on the scope of the EIR.
- **February 16, 2024:** Internal staff review of the Program EIR Draft Project Description was completed for Rincon.
- **February 21, 2024:** The City Manager provided a report to the City Council on the Unclassified sites in the HEU and related ballot initiative information. City Council received the report and provided direction to staff to remove the three Unclassified sites (totaling 497 units) from the HEU sites inventory and to identify alternative pathways to accommodate the City’s RHNA allocation (1,125 units) plus a 20% buffer (totaling 1,272 new units planned for in the HEU).
- **February 23, 2024:** An Internal Housing Element Team coordination meeting was held to discuss Council’s direction and next steps for finding alternative sites or rezoning/upzoning to accommodate the necessary housing unit capacity. Work on the EIR has been paused until a revised sites inventory to accommodate the loss of 497 units on the three Unclassified sites is identified and vetted through the Planning Commission and City Council.

Staff will provide a monthly status update to the Council throughout the process, leading to an adopted and certified Housing Element. For more information, please visit the Housing Element Webpage at the link below:

https://www.cityofpacificgrove.org/our_city/departments/community_development/housing/housing_element.php.

OPTIONS

N/A - This is information only.

FINANCIAL IMPACT:

There is no fiscal impact associated with receiving this report.

FOCUSED PRIORITY AREA: Affordable Housing



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Katie Clark, Recreation Manager
MEETING DATE: March 06, 2024
SUBJECT: PGUSD & City of Pacific Grove MOU ELOP
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

1. Approve the City of Pacific Grove to enter a Memorandum of Understanding with Pacific Grove Unified School District for the purpose of creating a partnership to offer a free summer recreation camp through the Expanded Learning Opportunities Program grant.
2. Alternatively, discuss and take other action related to this item.

DISCUSSION

Pacific Grove Unified School District (PGUSD) has approached the City of Pacific Grove with an opportunity to work together to provide a free recreation summer camp through the Expanded Learning Opportunities Program (ELOP) grant that has been awarded to the district. The Expanded Learning Opportunities Program grant from the state of California provides schools with funding to operate programs outside the instructional school day. PGUSD will partner with the City to provide a free camp program for the district's unduplicated pupil population. PGUSD will provide facilities and funding to support the expansion of the City's current Summer Adventure Camp Program. The City of Pacific Grove Recreation Department will provide the programming, staff training and oversight for this program. This camp will be located at Robert H. Down Elementary School and will run up to 8 weeks from June 10-August 2, 2024. PGUSD and the City of Pacific Grove Recreation Department are looking at either a 7 or 8 week program. The final decision will take into account the 2024-2025 PGUSD Academic Calendar, the needs of Robert H Down staff and campus, and the student participants. Camp program hours will be Monday-Friday from 8:00 am-5:00 pm. Each week the program will serve up to 60 students. The final number of students will be dependent on the total number of staff hired for this program. PGUSD is assisting the City of Pacific Grove with recruitment efforts. A Memorandum of Understanding between Pacific Grove Unified School District and the City of Pacific Grove has been drafted. See attachment 1.

OPTIONS

1. Take no action
2. Provide alternate direction

FINANCIAL IMPACT:

The proposed Memorandum of Understanding between PGUSD and the City of Pacific Grove presented in this report outlines the terms of the fiscal arrangement and other types of support to be provided by each entity. A short summary of the fees section has been included here for consideration.

The proposed MOU will be effective June 1-August 30, 2024. PGUSD will pay for all students recruited by the district for the Expanded Learning Opportunities (ELOP) Summer Camp Program at a rate \$240.30/child per week, for up to 60 students, for the duration of the 8-week program. The total payment for all 60 students for 8 weeks of this camp program will be \$115,344 and will be paid directly to the City of Pacific Grove. The \$240.30/child per week camp registration reflects the City of Pacific Grove fees to cover all staffing cost associated with the program. PGUSD will also be billed for any additional materials and supplies required for the ELOP Summer Camp Program which is currently estimated at \$3,500.00.

FOCUSED PRIORITY AREA: Recreation Services

Attachments

PGUSD & City of Pacific Grove ELOP MOU 2024

MEMORANDUM OF UNDERSTANDING
BETWEEN
PACIFIC GROVE UNIFIED SCHOOL DISTRICT AND THE CITY OF PACIFIC
GROVE

This Memorandum of Understanding ("Agreement") is entered into between the Pacific Grove Unified School District ("District") and The City of Pacific Grove ("City") for the establishment of an Expanded Learning Opportunities Summer Camp Program located at the Pacific Grove Youth Center, 302 16th Street Pacific Grove, CA 93950 (the "Youth Center"), Robert Down Elementary School, 485 Pine Ave., Pacific Grove, CA 93950 (the "RHD"), and the Pacific Grove Community Center, 515 Junipero Ave, Pacific Grove, CA 93950 (the "Community Center"). Together, the sites listed in will be known as (the "Facilities"). Together, the District and the City are referred to herein as the "Parties."

WHEREAS, the Community Recreation Act (California Education Code sections 10900 through 10914.5) authorizes school districts and cities to organize, promote, and conduct community recreation programs and activities to promote the health and general welfare of the community; and

WHEREAS, the California Civic Center Law (California Education Code sections 38130-38138) establishes a civic center at every school for use by citizens for a variety of purposes, including recreation; and

WHEREAS, the District is the owner of real property, including facilities and Active Use Areas that are capable of being used for community recreational purposes; and

WHEREAS, the City is the owner of real property, including facilities and Active Use Areas that are capable of being used for community recreational purposes; and

WHEREAS, under appropriate circumstances, these publicly held lands and facilities should be used most efficiently to maximize use and increase recreational opportunities for the community; and

WHEREAS, California Education Code section 10905 authorizes the governing bodies of any two or more public authorities may cooperate with each other to enter into agreements to promote the health and general welfare of the community and to enhance the recreational opportunities afforded to the community.

A. Term: The Term of this MOU shall be for the period **June 1, 2024 through August 30, 2024.**

B. Fees: The District shall pay for all District students recruited by the District for the Expanded Learning Opportunities (ELOP) Summer Camp Program. All fees associated with the District's ELOP City program will be paid at the rate of \$240.30/child per week for up to 60 students for the 8 week program.

Any additional materials and supplies required to support the District's Expanded Learning Opportunities Summer Camp Program will be billed to the District by its pro rata share of use.

Supplies for the 2024 Summer program are estimated to be \$3,500

The District payment per student per week shall constitute reimbursement to the City for the additional cost in overhead associated with the increased capacity of the City's Summer Camp Program to accommodate the District's Expanded Learning Opportunities Summer Camp Program. The District has agreed to recruit additional Pacific Grove High School Students as chaperones, lifeguards, counselors etc. for the City's Summer Camp Program, and the District will work directly with the students to fill out the online application required by the City.

The District will set up payment directly to the City, **totaling \$118,844 (\$115,344 for tuition and \$3,500 for supplies)** for the District's Expanded Learning Opportunities 2024 Summer Camp Program.

C. Use: The District shall have joint use of all Facilities associated with the City's Summer Camp Program for the District's expansion of the program known as Expanded Learning Opportunities Summer Camp Program.

The City shall have joint use of all Facilities associated with the District's Expanded Learning Opportunities Summer Camp Program.

The Facilities will be used to conduct both the City's Summer Camp Program and the District's expansion of the program known as Expanded Learning Opportunities Summer Camp Program.

The District will offer their program slots to the unduplicated pupil population in grades TK-6. The District will give the exact number of students enrolled in the program following the District's lottery to be held prior to May 1, 2023.

D. Termination: This Agreement will be in effect for the fiscal year 2022-2023 and 2023-24, expiring as specified above. Both Parties have a right to

terminate the Agreement within (30) days written notice to either party without cause or for any reason.

E. Utilities Services: Gas, electricity and water usage will not be assessed by either party associated with this Agreement.

F. Waste: All waste associated with the City's Summer Camp Program and the District's expansion of the program known as Expanded Learning Opportunities Summer Camp Program will be isolated to each of the defined Facilities. The District will provide custodial support staff to dispose of all waste at its real property location (RHD), and the City will provide custodial support staff to dispose of all waste at its real property location(s).

G. Nuisance: The District agrees that, in connection with its use of the Facilities, The District will not commit any public or private nuisance or any other act or thing which might or would reasonably be construed to disturb the quiet enjoyment of nearby property.

The City agrees that, in connection with its use of the Facilities, The City will not commit any public or private nuisance or any other act or thing which might or would reasonably be construed to disturb the quiet enjoyment of nearby property.

H. Fingerprinting/Background Checks: All District staff in direct contact with children will be required to be fingerprinted by the District via livescan at their sole expense. All City staff in direct contact with children will be required to be fingerprinted via livescan by the City at their sole expense.

I. Repairs: Outside of the normal Maintenance Obligations provided by the District, the District agrees to maintain all real property owned Facilities in good condition. All repairs and upgrades to the Facilities are at the expense of the District, unless otherwise agreed upon by both Parties.

Outside of the normal Maintenance Obligations provided by the City, the City agrees to maintain all real property owned Facilities in good condition. All repairs and upgrades to the Facilities are at the expense of the City, unless otherwise agreed upon by both Parties.

J. Insurance: The District and the City shall both carry and maintain, during the entire term hereof, at its own cost and expense, the following types of insurance:

1. Comprehensive General Liability Insurance covering bodily injury and property damage in an amount no less than \$2,000,000 per occurrence, \$2,000,000 aggregate.
2. Comprehensive general liability insurance policy shall be endorsed with the language that "District, its officers and employees", is named as additional insured for all liability arising out of the operations in the performance of this MOU agreement.
3. Comprehensive general liability insurance policy shall be endorsed with the language that "the City, its officers and employees", is named as additional insured for all liability arising out of the operations in the performance of this MOU agreement.
4. The additional insured endorsement must be noted on a separate form which accompanies the Certificate of Insurance (COI).

K. Hold Harmless: The City shall defend, indemnify, and hold harmless the District and its agents, representatives, officers, the District's, employees, Board of Trustees, members of the Board of Trustees (collectively, the "District Parties"), from and against any and all claims, demands, liabilities, damages, losses, suits and actions, and expenses (including, but not limited to attorney fees and costs including fees of the District) of any kind, nature and description (collectively, the "Claims") directly or indirectly arising out of, connected with, or resulting from any act, error, omission, negligence, or willful misconduct of the City, its agents, subcontractors, employees, material or equipment suppliers, invitees, or licensees (collectively, the "the City Parties") in the performance of or failure to perform the City's or the City Parties' obligations under this Agreement, including, but not limited to the City's or the City Parties' use of District sites, performance of the Services, breach of any of the representations or warranties contained in this Agreement, or for injury to or death of persons or damage to property or delay or damage to the District or the District Parties. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph. The indemnification provided for in this Section includes, without limitation to the foregoing, claims that may be made against District by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against District alleging civil rights violations by the City or the City Parties under the California Fair Employment and Housing Act ("FEHA").

The District shall defend, indemnify, and hold harmless the City and its agents, representatives, officers, the City's, employees, Mayor, City Council, members of the City Council (collectively, the "City Parties"), from and against any and all claims, demands, liabilities, damages, losses, suits and actions, and expenses (including, but not limited to attorney fees and costs including fees of the City) of any kind, nature and description (collectively, the "Claims") directly or indirectly arising out of, connected with, or resulting from any act, error, omission, negligence, or willful misconduct of the District, its agents, subcontractors, employees, material or equipment suppliers, invitees, or licensees (collectively, the "the District Parties") in the performance of or failure to perform the District's or the District Parties' obligations under this Agreement, including, but not limited to the District's or the District Parties' use of City sites, performance of the Services, breach of any of the representations or warranties contained in this Agreement, or for injury to or death of persons or damage to property or delay or damage to the City or the City Parties. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph. The indemnification provided for in this Section includes, without limitation to the foregoing, claims that may be made against City by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against City alleging civil rights violations by the District or the District Parties under the California Fair Employment and Housing Act ("FEHA").

L. Parking: the City shall have access to the parking lots located at the real property Facilities owned by the District during the time the City is using the Facilities.

PACIFIC GROVE UNIFIED SCHOOL DISTRICT

By:_____

Date:_____

Title:_____

CITY OF PACIFIC GROVE

By: _____

Date: _____

Title: _____



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Joyce Halabi, Deputy Public Works Director
MEETING DATE: March 06, 2024
SUBJECT: Contract Award -Phase 9 Waster Water Collection System Improvements
CEQA: Initial Study, Negative Declaration

RECOMMENDATION

1. Authorize an agreement with Monterey Peninsula Engineering for the Phase 9 Waster Water Collection System Improvements Project in an amount not to exceed \$717,280 plus an 15% contingency.
2. Alternatively, take other action related to this item.

DISCUSSION

As part of the FY21/22 Capital Improvement Plan (CIP), the multi-year Phase 9 Waster Water Collection System Improvement Project (CIP22-03) was approved utilizing Sewer Funds.

The purpose of the project is to address known sewer deficiencies that have been identified via videoing and maintenance, in order to ensure safe and reliable public wastewater collection service to the residents of Pacific Grove.

The project will address identified sewer deficiencies at the following 6 locations.

1. Bently St, from Short to Heacock Ave,
2. Cypress Ave, between Laurel Ave and Short St,
3. Railroad Way, from Jewell Ave to Pico Ave,
4. Asilomar Dunes Easement, between Sunset Dr and Asilomar Ave, and
5. Arena Ave, from Sunset Dr to Asilomar Ave, and
6. 17 Mile Dr at Weldon Grove Pl.

The project Coastal Development Permit and project IS/ND have been approved by the City Council (as noted below in the Project Background and Timeline section). The purpose of this item is to request the formal award of a contract following the bid process.

Project Background and Timeline

This multi-year project has undergone significant milestones to reach the contract award phase. Included below is a high-level overview of the project milestones to-date.

- **FY21/22 (July 1, 2021 –June 30, 2022)-** The project underwent the project development phase including investigation work (videoing) and engineering.

- **September 5, 2022**- Staff began the Initial Study/Negative Declaration process with Harris & Associates, Inc.
- **November 30, 2022**- A Coastal Development Permit (CDP) Application was filed for repairs that fall within the Coastal Zone; locations include Railroad Way, Asilomar Dunes, and Arena Ave (locations 3, 4, and 5 noted above).
- **May 1, 2023** - The IS/ND was finalized in May 2023.
- **July 13, 2023** - The item was subsequently brought forward to the Planning Commission (PC), at their July 13, 2023, meeting. The PC considered the project and voted 6 –1 (6 yes and 1 no) to adopt the IS/ND and approve the proposed project (CDP23-0318).
- **July 17, 2023** – An appeal of the PC decision to adopt the IS/ND and approve the project was submitted.
- **September 6, 2023** – The appeal was brought forward to the City Council. The City Council voted 7-0 to deny the appeal, adopt the IS/ND and approve CDP 22-0318.
- **September 18, 2023** – An appeal of the City Council’s decision was filed with the California Coastal Commission (CCC).
- **November 15, 2023** – The CCC heard the appeal and found no substantial issue; the CCC upheld the local approval.
- **December 13, 2023**- A notice inviting sealed bids for the wastewater collect system Phase 9 project was issued.
- **January 17, 2024** – The bid period closed; 6 bids were received. Monterey Peninsula Engineer was qualified as the lowest bidder.

Scope of Work

The purpose of the project is to address known sewer deficiencies that have been identified via videoing and maintenance, in order to ensure safe and reliable public wastewater collection service to the residents of Pacific Grove.

The scope of work for the project includes:

- Repair and replacement of 1,217 LF of sewer pipeline via trenching
- Replacement of 332 LF of sewer pipeline via pipe bursting
- Construction of 4 new manholes
- Reconstruction of 6 manholes
- 1 spot repair, and
- Segments of pavement restoration following sewer work

Bid Process

Following the receipt of a CDP and completion of environmental review process, the project was put out to bid on December 13, 2023. The bid period closed on January 17, 2024. 6 bids were received.

Company	Bid Amount
Monterey Peninsula Engineering	\$717,280
Pacific Underground Construction, Inc.	\$744,480
Coastal Paving & Excavating	\$776,925
Manzo Construction, Inc.	\$835,220
California Trenchless	\$973,536
Anderson Pacific	\$1,024,630

Coastal Permitting & Environmental

As noted above in the timeline CDP 22-0318 was issued.

The PC, City Council and CCC also approved the project Initial Study/Negative Declaration (IS/ND) which analyzed the potential effects of the project on the surrounding environment and found that the project, as proposed and conditioned, would have less than significant or no impacts in all resource areas.

All construction mitigation measures will be adhered to.

Archeological Resources

The proposed project involves ground disturbance in an archaeologically sensitive area; therefore, an archaeological report was prepared by a qualified archaeologist (Donna Beddow; Harris & Associates; October 2022) and included as an element of the CDP and IS/ND.

In compliance with the issued CDP, the City will have archaeological and tribal monitoring during all ground disturbing activities within the coastal zone.

Construction Contract & Timeline

If approved, City staff will harness the standard construction contract approved by the City's insurer, the California Joint Powers Insurance Authority (CJPIA).

Following contract execution, a pre-construction meeting will be held to determine a project schedule. Updates on construction timelines will be provided to the Council and posted to the Clear Gov project page: <https://pacificgrove-ca.cleargov.com/projects>.

OPTIONS

1. Approve the contract award
2. Do not approve the contract award
 - Failure to approve the contract will result in continued degradation of deficient sewer infrastructure
3. Provide alternative direction

FINANCIAL IMPACT:

The total approved project budget is \$1,295,106, derived from the Sewer Fund.

Approved Budget	\$1,295,106
Expended to-date	\$105,577.67
Remaining Budget	\$1,189,528.33

There is sufficient project funding to accommodate construction, including the construction contract and contingency, \$842,872, and archeological and tribal monitoring for ground disturbance within the coastal zone.

FOCUSED PRIORITY AREA: Infrastructure



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Karen Vaughn, Community Development Director
MEETING DATE: March 06, 2024
SUBJECT: Contract Amendment #2 for Professional Contract Planner Services with Harris & Associates, Inc.
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Approve Amendment #2 to Professional Services Agreement with Harris & Associates, Inc. not to exceed \$381,560 to:

- Allow continuation of current contract planner staffing services through June 30, 2024 for Fiscal Year 23-24 (\$87,840); and
- Provide contract planner staffing services for Fiscal Year 24-25 (\$293,720).

DISCUSSION

In 2021, the City executed an agreement with Harris & Associates, Inc. (Harris) for contract planning consulting services to backfill vacant planning positions within the Community Development Department (CDD). The contract was amended and extended most recently through June 30, 2024 (Amendment #1). Due to ongoing workload within the Department and limited staff resources, Staff is seeking additional budget to augment the remainder of FY 23-24 as well as budget to continue the contract planning consulting services throughout FY 24-25.

Harris has been providing exemplary in-person planning consulting service to the City by serving as a trusted urban planning subject matter expert. Harris provides project management for complex project entitlement applications, Coastal Development Permit (CDP) applications, and appeals. Harris is also managing the environmental impact report (EIR) for the City’s Housing Element Update.

The previous agreement allowed for up to four (4) days/32 hours per week, however only budgeted for 24 hours per week. Due to the lack of full funding for the year, the remaining budget will run out on approximately March 8, 2024. This is similar to previous years when the Harris contract budget was exhausted ahead of the end of the fiscal year.

Staff is seeking a budget amendment of \$87,840 to continue the current contract planning consulting services, at 32 hours per week, through June 30, 2024.

In order to provide business continuity and ensure adequate staff resources for project applications and

the Housing Element Update EIR, it is recommended that the City continue to contract with Harris for the provision of planning consulting services. Staff proposes to extend the contract through June 30, 2025 and fully fund the contract at 32 hours per week for the Contract Senior Planner in addition to the one (1) hour per month for the Project Manager. The budget to fund the full FY24-25 contract is \$293,720.

OPTIONS

1. Take no action. This would result in the conclusion of the Harris contract services to the City and would severely impact the ability of CDD to meet statutory project timelines and current service delivery levels. This would also impact the schedule for the Housing Element Update EIR
2. Provide alternative direction, such as authorizing the contract amendment for a different length of time or dollar amount.

FINANCIAL IMPACT:

For FY 2023-24, the \$87,840 will be covered by recently approved mid-year budget adjustments and other funds available within the current budget. No additional general fund appropriation is required.

For FY 2024-25, an appropriation of \$293,720 will be needed to fund the services provided under this agreement. If approved, these amounts will be incorporated into the proposed Fiscal Year 2024-25 Budget.

FOCUSED PRIORITY AREA: Not Applicable.

Attachments

Harris Planning Consulting Services Contract Amendment #2

AMENDMENT #2
AGREEMENT FOR PROFESSIONAL SERVICES WITH HARRIS & ASSOCIATES

WHEREAS, the City of Pacific Grove ("City") and **Harris & Associates, Inc.** ("Contractor") entered into a Professional Services Agreement ("Agreement") dated July 1, 2022; and

WHEREAS, the City and Contractor desire to amend certain terms of the Agreement;
NOW, THEREFORE, the parties agree as follows: A. The Agreement is amended as follows:

1. **SERVICES TO BE PROVIDED.** The City hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of this Agreement. The services are generally described as follows: Provide contract planning services.
2. **PAYMENTS BY CITY.** City shall pay the CONTRACTOR in accordance with the payment provisions set forth in Exhibit A, subject to the limitations set forth in this Agreement. The total amount payable by City to CONTRACTOR under this Agreement shall not exceed the sum of **\$724,705.00.**
3. **TERM OF AGREEMENT.** The term of this Agreement is from July 1, 2022, to June 30, 2025, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and City and with City signing last, and CONTRACTOR may not commence work before City signs this Agreement. B. All other terms of the Agreement remain the same.

Dated: _____

Kate Elliott, Director, Environmental Planning + Compliance

Dated: _____

Karen Vaughn, Community Development Director

Dated: _____

Tori Hannah, Administrative Services Director

Dated: _____

Brian Pierik, City Attorney

Dated: _____

Bill Peake, Mayor

EXHIBIT A

SCOPE OF SERVICES / PAYMENT PROVISIONS

CONTRACTOR shall assign an individual to provide contract planning consulting and project management services commensurate with the specialized skills and experience of a senior level planner, (“contract planning consultant”) as approved by the City Manager and/or Director of Community Development. The contract planning consultant will provide in-person (City Hall) and/or remote contract planning consulting services (as approved by the Director of Community Development) to supplement the City’s planning operations for complex projects requiring the contract planning consultant’s expertise. The contract planning consultant will provide high-level planning support services, on a project-by-project basis, up to four (4) days (32 hours) per week, as determined by the City Manager and/or Director of Community Development. Assigned work may include, but would not be limited to, the following:

- High-level project review
- Preparing agenda report/resolutions and ordinances related to assigned projects
- Planning project management for complex or controversial development applications
- Management of environmental determinations and reports
- Public hearing support related to assigned projects

City shall pay CONTRACTOR \$175 per hour for existing senior planner staffing support services at a discounted rate, and \$210 per hour for project manager contract management. Project management services are anticipated to require one (1) hour per month. Payment shall be made by City after submittal of an invoice from CONTRACTOR itemizing the costs incurred by City.

CITY OF PACIFIC GROVE AGREEMENT FOR PROFESSIONAL SERVICES
(OVER \$40,000)¹

This Professional Services Agreement (“Agreement”) is made by and between the City of Pacific Grove, a political subdivision of the State of California (hereinafter “City”) and Harris & Associates, Inc., (hereinafter “CONTRACTOR”).

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1. **SERVICES TO BE PROVIDED.** The City hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of this Agreement. The services are generally described as follows: Provide contract planning services.
2. **PAYMENTS BY CITY.** City shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by City to CONTRACTOR under this Agreement shall not exceed the sum of **\$ 135,000.00.**¹
3. **TERM OF AGREEMENT.** The term of this Agreement is from July 1, 2022, to June 30, 2023, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and City and with City signing last, and CONTRACTOR may not commence work before City signs this Agreement.
4. **ADDITIONAL PROVISIONS/EXHIBITS.** The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement: **Exhibit A: Scope of Services / Payment Provisions**
5. **PERFORMANCE STANDARDS.**
 - 5.01. CONTRACTOR warrants that CONTRACTOR and CONTRACTOR’s agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the City, or immediate family of an employee of the City.
 - 5.02. CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
 - 5.03. CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use City premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.
6. **PAYMENT CONDITIONS.**
 - 6.01. CONTRACTOR shall submit to the Contract Administrator an invoice on a form acceptable to City. If not otherwise specified, the CONTRACTOR may submit such invoice monthly or

¹ Approved by the Pacific Grove City Council on June 15, 2022.

at the completion of each phase of the project, as provided on page 6 of the proposal, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together

with an itemized basis for the amounts claimed, and such other information pertinent to the invoice as the City may require. The Contract Administrator or his or her designee shall certify the invoice, either in the requested amount or in such other amount as the City approves in conformity with this Agreement, and shall promptly submit such invoice to the City Auditor-Controller for payment. The City Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

6.02. CONTRACTOR shall not receive reimbursement for travel.

6.03. All payments by the City will be made by Electronic Funds Transfer (EFT). CONTRACTOR will provide the City with its bank ABA number, account number and designation of the account to which such EFT shall be made. CONTRACTOR will be responsible for notifying the City when CONTRACTOR's EFT information changes. Payments shall be for the invoiced amount, with no retention.

7. **TERMINATION.**

7.01. During the term of this Agreement, the City may terminate the Agreement, with or without cause, by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, CONTRACTOR shall cease immediately all work in progress.

7.02. CONTRACTOR may terminate this Agreement at any time upon thirty (30) days' written notice of termination to City.

7.03. If either CONTRACTOR or City fail to perform any material obligation under this Agreement, then, in addition to any other remedies, either CONTRACTOR or City may terminate this Agreement immediately upon written notice.

7.04. Upon termination of this Agreement by either CONTRACTOR or City, all property belonging exclusively to City which is in CONTRACTOR's possession shall be returned to City. CONTRACTOR shall furnish to City a final invoice for work performed and expenses incurred by CONTRACTOR, prepared as set forth in Section 6 of this Agreement. This final invoice shall be reviewed and paid in the same manner as set forth in Section 6 of this Agreement.

8. **INDEMNIFICATION.**

8.01. As respects all acts or omissions which do not arise directly out of the performance of professional services, including but not limited to those acts or omissions normally covered by general and automobile liability insurance, CONTRACTOR shall indemnify, defend, and hold harmless the City, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death to the extent caused by CONTRACTOR's negligence, negligent acts, errors or omissions.

☐ Exemption/Modification (Justification attached; subject to approval).

9. **INSURANCE.**

9.01. Insurance Coverage Requirements: Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial general liability insurance, no less broad than Insurance Services Office (ISO) CG 00 01, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products/Completed Operations, with minimum limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Umbrella Liability Insurance. If CONTRACTOR maintains higher limits than the specified minimum limits, City requires and shall be entitled to coverage for the higher limits maintained by CONTRACTOR.

☐ Exemption/Modification (Justification attached; subject to approval).

Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence. ☐ Exemption/Modification (Justification attached; subject to approval).

Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

☐ Exemption/Modification (Justification attached; subject to approval).

Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the retroactive date shall be no later than the commencement of the work. Coverage applicable to the work performed under this Agreement shall be continued for three (3) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.

☐ Exemption/Modification (Justification attached; subject to approval).

9.02. Other Insurance Requirements. All insurance required by this Agreement shall be with a company acceptable to the City and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

CONTRACTOR shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, CONTRACTOR shall forthwith obtain and submit proof of substitute insurance. Should CONTRACTOR fail to immediately procure other insurance, as specified, to substitute for any canceled policy, the City may procure such insurance at CONTRACTOR's sole cost and expense.

Commercial general liability and automobile liability policies shall provide an endorsement naming the City of Pacific Grove, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that

such insurance is primary insurance to any insurance or self-insurance maintained by the City and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is **ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000)**. The required endorsement form for Automobile Additional Insured endorsement is **ISO Form CA 20 48 02 99**.

The general liability policy shall cover inter-insured suits and include a "separation of Insureds" or "severability" clause which treats each insured separately.

CONTRACTOR shall provide to City an endorsement that the insurer waives the right of subrogation against the City, its officers, officials, employees, agents and volunteers.

Prior to the execution of this Agreement by the City, CONTRACTOR shall file certificates of insurance with the City's contract administrator and City's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by City, annual certificates to City's Contract Administrator and City's Contracts/Purchasing Division. If the certificate is not received by the expiration date, City shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement which entitles City, at its sole discretion, to terminate this Agreement immediately.

10. RECORDS AND CONFIDENTIALITY.

10.01. Confidentiality. CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the City or prepared in connection with the performance of this Agreement, unless City specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to City any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.

10.02. City Records. When this Agreement expires or terminates, CONTRACTOR shall return to City any City records which CONTRACTOR used or received from City to perform services under this Agreement.

10.03. Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and City rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three-year period, then CONTRACTOR shall retain said records until such action is resolved.

10.04. Access to and Audit of Records. The City shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors

related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the City or as part of any audit of the City, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

10.05. **Royalties and Inventions.** City shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of City.

11. **NON-DISCRIMINATION.** During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.
12. **COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANT.** If this Agreement has been or will be funded with monies received by the City pursuant to a contract with the state or federal government in which the City is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, City will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.
13. **INDEPENDENT CONTRACTOR.** In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the City. No offer or obligation of permanent employment with the City or particular City department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from City any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold City harmless from any and all liability which City may incur because of CONTRACTOR's failure to pay such taxes.
14. **NOTICES.** Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the City's and CONTRACTOR'S contract administrators at the addresses listed below:

FOR CITY:	FOR CONTRACTOR:
John Kuehl, Interim Director Community Development Department	Kate Elliott, Director Cc: David Mack, Joseph Sidor
Name and Title	Name and Title

City of Pacific Grove 300 Forest Avenue	Harris & Associates, Inc. 450 Lincoln Avenue, Suite 103
Pacific Grove, CA 93950 Address	Salinas, CA 93940 Address
(831) 648-3127 Phone	(831) 789-8670 Phone

15. MISCELLANEOUS PROVISIONS.

15.01. Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement which would directly or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.

15.02. Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the City and the CONTRACTOR.

15.03. Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the City and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.

15.04. Contractor. The term “CONTRACTOR” as used in this Agreement includes CONTRACTOR’s officers, agents, and employees acting on CONTRACTOR’s behalf in the performance of this Agreement.

15.05. Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute. Contractor and the CITY hereby agree to make good faith efforts to resolve disputes as quickly as possible. In the event any dispute arising from or related to this Agreement results in litigation or arbitration, the prevailing party shall be entitled to recover all reasonable costs incurred, including court costs, attorney fees, expenses for expert witnesses (whether or not called to testify), expenses for accountants or appraisers (whether or not called to testify), and other related expenses. Recovery of these expenses shall be as additional costs awarded to the prevailing party, and shall not require initiation of a separate legal proceeding.

15.06. Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the City. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the City. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.

15.07. Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the City and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.

15.08. Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.

15.09. Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.

15.10. Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.

15.11. Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.

15.12. Non-exclusive Agreement. This Agreement is non-exclusive and both City and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.

15.13. Construction of Agreement. The City and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.

15.14. Counterparts and Electronic Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. By executing this Agreement, the City and CONTRACTOR also consent and agree that any electronic signature, as defined by Civil Code § 1633.2(h), affixed thereon shall have the full force and effect as a wet or manual signature.

15.15. Authority. Any individual executing this Agreement on behalf of the City or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.

15.16. Integration. This Agreement, including the exhibits any documents incorporated by reference, represent the entire Agreement between the City and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the City and the CONTRACTOR as of the effective date of this Agreement, which is the date that the City signs the Agreement.

15.17. Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

15.18. Severability. If any of the provisions contained in the Contract are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. Limitations of liability and indemnities shall survive termination of the Contract for any cause. If a part of this Contract is valid, all valid parts that are severable from the invalid part remain in effect. If a part of this Contract is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

This space is left blank, intentionally.

IN WITNESS WHEREOF, City and CONTRACTOR have executed this Agreement as of the day and year written below.

CITY OF PACIFIC GROVE

City Mayor

Department Head

City Attorney

Approved as to Fiscal Provisions

Finance

Approved as to Liability Provisions³

Risk Management

Date: _____

By: _____

CONTRACTOR

By: Harris &
Associates, Inc.

Contractor's Business Name*

Date: _____

By: (Signature of Chair, President, or
Vice-President)*

By: Diane Sandman, Vice President, EPC

Name and Title

Date: _____

Date:

By: _____
(Signature of Secretary, Asst. Secretary, CFO, or
Approved as to Form Asst.
Treasurer)*

By: _____
Name and Title

Date: _____

²Date: _____

By: _____

Date: _____

City Agreement Number: _____.

² Approval by Finance necessary only if financial questions or issues raised in Council approval of agreement.

³ Approval by Risk Management is necessary only if changes are made in paragraph 8 or 9.

***INSTRUCTIONS:** If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

EXHIBIT A SCOPE OF SERVICES / PAYMENT PROVISIONS

CONTRACTOR shall provide contract planning services provided by a senior planner, as approved by the City Manager and/or Director of Community Development. The planner will provide in-person (City Hall) and/or remote contract planning services (as approved by the Director of Community Development) to support City planning staff. The planner will provide planning support up to three (3) days (24 hours) per week, as determined by the City Manager and/or Director of Community Development. Duties may include, but would not be limited to, the following:

- Customer service/counter support
- Phone calls and email correspondence
- Ministerial and discretionary project review
- Staff report/resolution and ordinance preparation
- Current planning support including large, controversial development applications
- Public hearing support

City shall pay CONTRACTOR \$165 per hour for Senior Planner staffing support services, and \$190 per hour for Project Manager contract management. Project management services are anticipated to require one (1) hour per month. Payment shall be made by City after submittal of an invoice from CONTRACTOR itemizing the costs incurred by City.



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Brian Pierik, City Attorney
MEETING DATE: March 06, 2024
SUBJECT: Introduction of an Ordinance Amending Section 2.04.050 (a) of the Pacific Grove Municipal Code Regarding Order of Agenda
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

1. Request the City Attorney read the title of the ordinance;
2. Motion to waive further reading and introduce an Ordinance Amending Section 2.04.050 (a) of the Pacific Grove Municipal Code Regarding Order of Agenda;
3. Direct a summary of a proposed ordinance be published as approved by the City Attorney;
4. Other action related to this item.

DISCUSSION

On February 14, 2024, the City Council gave direction to the City Attorney to return to the Council with an Ordinance Amending Section 2.04.050 of the Pacific Grove Municipal Code Relating to Order of Agenda to include language regarding posting an agenda for special meetings not less than 24 hours before the special meeting.

A. Current Version of Section 2.04.050 (a)

“2.04.050 Agenda and consideration of unlisted matters.

a) Order of Agenda. The city manager shall prepare, circulate and post in conformity with the provisions of the Ralph M. Brown Act and council policy, not less than 72 hours before any regular and special council meetings, an agenda, which shall list and describe the items to be considered at the meeting.

B. Proposed Amendments to Section 2.04.050 (a)

Revise Section 2.04.050 (a) to add the underlined text

“(a) Order of Agenda. The city manager shall prepare, circulate and post in conformity with the provisions of the Ralph M. Brown Act and council policy, not less than 72 hours before any regular council meeting and not less than 24 hours before any special council meetings, an agenda, which shall list and describe the items to be considered at the meeting.”

The Ordinance attached to this Agenda Report would amend Section 2.04.050 (a) to include language regarding posting an agenda for special meetings not less than 24 hours before the special meeting.

OPTIONS

Other actions as directed by the City Council related to this agenda item.

FINANCIAL IMPACT:

There is no fiscal impact.

FOCUSED PRIORITY AREA: Not Applicable.

Attachments

Proposed Ordinance Amending PGMC Section 2.04.050 (a)

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE
AMENDING SECTION 2.04.050 (a)
OF THE PACIFIC GROVE MUNICIPAL CODE
REGARDING ORDER OF AGENDA**

FACTS

1. On February 14, 2024, the City Council gave direction to the City Attorney to return to the Council with an Ordinance Amending Section 2.04.050 (a) of the Pacific Grove Municipal Code Relating to Order of Agenda to include language regarding posting an agenda for special meetings not less than 24 hours before the special meeting.
2. This Ordinance will amend Section 2.04.050 (a) by adding language regarding posting an agenda for special meetings not less than 24 hours before the special meeting.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF PACIFIC GROVE DOES ORDAIN AS FOLLOWS:

SECTION 1. The foregoing Facts are adopted as findings of the City Council as though set forth in fully within the body of this ordinance.

SECTION 2. Section 2.04.050 (a) of the Pacific Grove Municipal Code is hereby amended to add the underlined language:

“(a) Order of Agenda. The city manager shall prepare, circulate and post in conformity with the provisions of the Ralph M. Brown Act and council policy, not less than 72 hours before any regular council meeting and not less than 24 hours before any special council meetings, an agenda, which shall list and describe the items to be considered at the meeting.”

SECTION 3. City Manager is directed to execute all documents and to perform all other necessary City acts to implement this Ordinance.

SECTION 4. Severability. If any provision, section, paragraph, sentence, clause or phrase of this ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

Section 5. In accord with Article 15 of the City Charter, this ordinance shall become effective on the thirtieth (30th) day following its passage and adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE
this 6th day of March 2024 by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

BILL PEAKE, Mayor

ATTEST:

DATED: _____

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

BRIAN A. PIERIK, City Attorney

1.



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Brian Pierik, City Attorney
MEETING DATE: March 06, 2024
SUBJECT: Request Direction by Council to City Manager to Issue a Request for Proposal for a Demographer in Connection with the California Voting Rights Act
CEQA: Does not constitute a “Project” per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

Motion to:

1. Direct City Manager to issue a Request for Proposal for a qualified demographer to study the demographics of the City including:
 - a. The population of the City and its various racial and ethnic groups under the 2020 Census.
 - b. The most recent estimates of the proportion of eligible voters in the various racial and ethnic groups in the City.
 - c. Estimate of the socio-economic characteristics of the various racial and ethnic groups in the City.
 - d. The criteria governing the design of electoral districts for the election of City Council members.
 - e. A proposed timeline for the transition to by-district elections should the City Council decide upon that course of action.
2. Direct City Manager to return to the City Council with the demographer’s report for discussion and further direction.

DISCUSSION

A. Letter from League of United Latin American Citizens

On August 25, 2022, the City of Pacific Grove received a letter from Andrew Sandoval on behalf of the League of United Latin American Citizens (LULAC). The letter included a demand that the City change its at-large voting system to a by-district voting system for city council elections. (“LULAC Letter” Attachment 1) The LULAC Letter was posted on the City’s website following receipt.

The case of Pico Neighborhood Association v. City of Santa Monica was pending at the time of receipt of the LULAC letter. The California Supreme has since issued its decision and the status of the Santa Monica case is discussed below.

The LULAC Letter asserts that changing to by-district elections would avoid a potential violation of the California Voting Rights Act (CVRA), protect the City from litigation under the CVRA, be consistent with the trend in California and Monterey County for cities and other jurisdictions to transition to

by-district elections, and improve the accountability and responsiveness of the City's elected officials.

In a by-district electoral system, the City is divided into districts of approximately equal population and only the voters residing in each district may vote for candidates for City Council for that district. Those candidates themselves must also be residents and voters of that district. In the current at-large voting electoral system, all voters in the City are entitled to vote for all candidates running for the City Council.

B. California Voting Rights Act ("CVRA")

The CVRA was enacted in 2001, Elections Code §§ 14025 - 14032. (Attachment 2) The CVRA applies only to at-large electoral systems. The CVRA alters established different standards of proof and defenses than exist under the federal Voting Rights Act, making it easier for plaintiffs to challenge the electoral system of any city or other jurisdiction that does not elect its governing board by-district. For example, under the CVRA, a plaintiff is not required to prove that by changing the districts that there will be a least one district which has a majority of minority voters.

Importantly, the CVRA also expands the ability of plaintiffs to recover their attorneys' fees and expenses, making awards mandatory if plaintiffs prevail. In contrast, defendants, even if successful, cannot recover either attorneys' fees or costs.

Importantly, even if the City were to successfully defend itself against a CVRA lawsuit, nothing prevents a different set of plaintiffs from filing a new CVRA demand against the City potentially plunging the City into litigation again. The only absolute protection for the City against a lawsuit under the CVRA is the implementation of single-member by-district elections.

The CVRA prohibits at-large electoral systems that impair 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 abridgment of the rights of voters who are members of a protected class. Plaintiffs in a CVRA case must prove that racially polarized voting occurs in specified elections.

C. Pico Neighborhood Association v. City of Santa Monica

The California Supreme Court recently ruled in *Pico Neighborhood Association v. City of Santa Monica*, 15 Cal. 5th 292 (2023) (see Attachment 3), that plaintiffs must also prove that the combination of at-large voting and voting patterns reflecting racial polarization results in the dilution of the ability of protected class voters to elect chosen candidate. In other words, plaintiffs must prove that they would have the opportunity to elect chosen candidates in a legal alternative electoral system such as a by-district system or alternatives that may be available in charter cities (e.g., cumulative voting ranked choice voting; limited voting, etc.).

The Santa Monica case has been remanded to the trial court for consideration of the dilution issue under the standard set in the Supreme Court's opinion. Given the flexibility of this standard, there is no "bright-line" percentage beneath which an action under the CVRA cannot be sustained. Even a protected class that forms a relatively small percentage of a city's population may be able to state a cause of action for violation of the CVRA. Also, small cities are as vulnerable as larger jurisdictions.

The CVRA purports to protect electoral "influence" as well as the ability to elect chosen candidates. No court has ruled on the meaning of electoral "influence" in the 23 years since enactment of the CVRA. Electoral influence was not an issue in the Santa Monica case. In the Santa Monica case, the Latino plaintiffs alleged that in a by-district electoral system in which Latinos constituted about 30 percent of eligible voters in a district, Latinos would be successful in electing chosen candidates because of the

characteristics of the voters in the neighborhoods in that district.

The League of California Cities provided a summary of the Santa Monica case on August 30, 2023 (Attachment 4).

D. Remedies

In CVRA cases, the court has broad jurisdiction to order additional “appropriate” remedies. In all CVRA cases to date, the court has ordered the losing jurisdiction to implement by-district election.

City of Highland: In this case, the city argued that the admitted CVRA violation could be remedied through use of a cumulative voting system. Plaintiffs argued in favor of by-district elections and won.

City of Palmdale: In the Palmdale case, the remedies included shortening the terms of office of council members elected in the at-large system and ordering a special election in which all the new district seats were on the ballot at the same time. The City was permitted to re-stagger the terms of office after that first election in the new districts.

E. Attorneys Fees

As mentioned above, the CVRA contains an attorneys’ fee-shifting provision that operates in only one direction, in favor of plaintiffs. The CVRA mandates that the defendant shall pay the reasonable attorneys’ fees and litigation expenses of plaintiffs who prevail in a CVRA lawsuit. Plaintiffs can also prevail through a settlement which results in a change to by-district election without a court order.

Exposure to payment of plaintiffs’ attorneys’ fees and expenses has been a significant incentive motivating other jurisdictions to transition to by-district elections because of the extremely high expense of CVRA trials. Both parties must retain expert witnesses, often three or four on issues such as demographics, racially polarized voting, the efficacy of alternative voting systems, and the totality of the circumstances supporting a showing of the undiluted ability of protected class voters to elect chosen candidates. Examples of the recovery of attorneys fees by plaintiffs by court order include:

City of Santa Monica: The outstanding demand for plaintiffs’ attorneys’ fees in through trial is \$22 million;

City of Palmdale: the City paid approximately \$4.5 million to the prevailing plaintiffs;

City of Highland: this case which concerned only the remedy to be implemented because the city had conceded liability, the city paid plaintiffs \$1 million;

City of Santa Clara: the prevailing plaintiffs collected \$3.5 million in fees and expenses through trial;

City of Modesto: this was the very first CVRA case to go to trial and the City prevailed at trial, but then was reversed on appeal, the city paid plaintiffs approximately \$3.5 million for attorneys fees.

Settlements have also been expensive with payments in the range of \$300,000 to \$1 million for plaintiffs’ attorneys’ fees depending on the stage of the litigation in which the case was settled.

In addition to these mandatory payments to plaintiffs’ attorneys, defending jurisdictions must pay their own attorneys and expenses of litigation, which generally run in the millions of dollars as well.

No jurisdiction has yet successfully defended itself in a CVRA case that has gone to trial. However, were that to happen, the defendant is not entitled to recover its attorneys' fees or costs of litigation and would remain exposed to a CVRA demand and lawsuit in the future by a different set of plaintiffs.

F. City Charter

Pacific Grove's Charter provides that , "The Mayor and the members of the Council shall be elected from the City at large." (Charter of the City of Pacific Grove, Art. 6.) Ordinarily, this provision could be changed only with approval of the majority of the voters of the City. Some cities, including charter cities have used a state law, Government Code § 34886, to transition to by-district elections without placing the issue of the change on the ballot. Section 34886 provides:

Notwithstanding Section 34871 or any other law, the legislative body of a city may adopt an ordinance that requires the members of the legislative body to be elected by district or by district with an elective mayor, as described in subdivisions (a) and (c) of Section 34871, without being required to submit the ordinance to the voters for approval. An ordinance adopted pursuant to this section shall comply with the requirements and criteria of Section 21130 of the Elections Code and include a declaration that the change in the method of electing members of the legislative body is being made in furtherance of the purposes of the California Voting Rights Act of 2001 (Chapter 1.5 (commencing with Section 14025) of Division 14 of the Elections Code).

Some charter cities that have transitioned from at-large elections to by-district elections have interpreted their respective charters as permitting the change without a vote. For example, the Charter of the City of Monterey, in contrast to the Charter of the City of Pacific Grove, does not specify the City's method of electing its legislative body. Accordingly, the city did not place the change to by-district elections on the ballot.

The City of Sunnyvale's charter did specify at-large elections for the city council and when the city transitioned to by-district elections, the process included a charter amendment ballot measure authorizing the change.

The City of Santa Rosa's charter also specified at-large elections for the city council; however, that city interpreted its charter as enabling the city to use section 34886, above, to transition to by-district elections without first amending the city charter.

No court has ruled on the legality of charter cities with at-large elections specified in the charter using section 34886 to transition to by-district elections without a charter amendment vote.

In the case of *Jauregui v. City of Palmdale*, 226 Cal. App. 4th 781, 798 (2014), the court held that if a charter city's electoral system is adjudicated to cause dilution of the voting rights of a protected class, then state law prevails over the Charter.

G. Process for Transitioning to By-District Elections

The process of transitioning to by-district elections is controlled by California Elections Code § 10010 (Attachment 5), which specifically applies to charter cities.

Elections Code § 10010 requires a minimum of five public hearings as follows:

Activity

Timing (EC § 10010)

Retain Demographer. Pass Resolution of Intent to Change to Single-member Districts; Adopt Tentative Calendar.	Passage of resolution commences 90-day safe harbor period, which can be extended within parameters.
Hold two Public Hearings on the Composition of Possible Districts Before Draft Maps Are Drawn.	No more than 30 days apart
Publish Draft Maps and Election Sequence.	7 days prior to 1 st public hearing on maps
Hold First of Two Public Hearings on Draft Maps.	No more than 45 days apart
Publish any Additional Maps With Election Sequence.	7 days prior to 2nd public hearing
Hold 2 nd Public Hearing on Draft Maps; Select Preferred Map.	Within 45 days of 1 st public hearing
Hold Final Public Hearing to Adopt Districting Plan and Sequence of Election To Be Implemented Contingent on Voter Approval of a Charter Amendment Providing for By-district Elections of City Council Members.	At least 7 days after any changes to map proposed for adoption
Deadline for Delivering to Monterey County Board of Supervisors Charter Amendment Ballot Measure Materials and Resolution Requesting Consolidation With the Statewide General Election.	August 9, 2024
First City Council Elections Conducted By-district if Charter Amendment Approved by the Voters.	November 2026

H. Conclusion

In order to evaluate the City’s demographics and the potential issues regarding the California Voting Rights Act, the recommendation is for the City Council to direct the City Manager to issue an Request for Proposal for a qualified demographer to study the demographics of the City and return to the City Council with the report by the demographer for discussion and further direction.

ENVIRONMENTAL REVIEW

This activity has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and as such, is not a “project” subject to the requirements of the California Environmental Quality Act (CEQA) 14 Cal. Code Regs § 15378.

OPTIONS

None.

FINANCIAL IMPACT:

Staff time for the preparation of the Request for Proposal.

FOCUSED PRIORITY AREA: Not Applicable.

Attachments

- 1 - LULAC Letter
- 2 - CVRA Elections Code Sections 14025-14032
- 3 - PICO Neighborhood Association v. City of Santa Monica, 15 Cal. 5th 292 (2023)
- 4 - League of California Cities Paper Dates August 30, 2023
- 5 - California Elections Code Section 10010



LULAC District 12
Andrew Sandoval, District Director
joseandrewsandoval@gmail.com

Dear City of Pacific Grove

I am writing on behalf of LULAC District 12. We are interested in improving the accountability and responsiveness of future elected officials as well as the election system of the City of Pacific Grove as a whole. As the City of Pacific Grove continues to grow, it must adopt positive stateside trends in voting and elections in order to prevent voters from losing the ability to meaningfully engage in elections and community policy-making. At our LULAC District 12 meeting, our District Board voted unanimously to request the City of Pacific Grove move toward District elections.

One of the growing trends in California is district elections. District elections have been shown to improve voter turnout and help governments respond to community concerns. Districts are the cornerstone of our state and federal systems. Accordingly, they have been adopted by numerous cities, community college districts, and school districts. Recently the City of Soledad, Gonzales, Greenfield, and Monterey has passed resolutions of intent and some have adopted maps. Chualar, Santa Rita, Salinas City, Pacific Grove, Alisal, and other school districts have also moved towards district elections.

With regard to the City of Pacific Grove elections, we believe that the City of Pacific Grove would benefit from moving towards district elections. This would prevent the City of Pacific Grove from being in violation of the California Elections Code sections 14025 et. seq., known as the California Voting Rights Act of 2001 (CVRA). A change mandated in the election system to prevent occurrences of voting patterns that impair the ability of voters to elect candidates of their choice or impair their rights to influence the outcome of an election, particularly as a result of the dilution or abridgment of its rights and privileges under state and federal law.

We therefore respectfully demand that the City of Pacific Grove change its at-large voting system to a district-based voting system that affords all voters and protected groups the equal opportunity to choose elected officials to the City of Pacific Grove and, thereby, bring the system into compliance with the CVRA.

The reality is that all public agencies that have litigated this issue have lost. The costs to litigate a CVRA challenge can be tremendously high since an agency must pay the plaintiff's legal fees if the city is unsuccessful. In other cases, the plaintiff's legal fees have ranged from \$385,000 to \$4.5 million.

Additionally, if the court finds a CVRA violation, the court has the authority to impose district-based elections and to determine district boundaries with input solely from the plaintiff's attorney and consultants, effectively removing this authority from the School District and the community.

Finally, even if the public agency successfully defends a CVRA lawsuit, that success does not bar a subsequent challenge under the CVRA by a different plaintiff.

A few cities have decided to defend against these actions, but none have prevailed on the merits. In addition to the low threshold for establishing a valid claim under the CVRA, the law also requires the city to pay a plaintiff's attorney's fees and costs if the plaintiff prevails. Plaintiffs' attorneys' fees and costs in CVRA cases often amount to millions of dollars.

Please respond to this correspondence and include the City of Pacific Grove's plans to calendar a resolution and outline the steps it will take to facilitate the transition along with an estimated timeline. If the City of Pacific Grove fails to take action within the statutory timeline to effect change in its election process, we may seek judicial assistance to enforce our remedies at law. Per the CVRA, we will seek equitable relief and other forms of relief, including attorneys fees.

We understand there is a pandemic and are aware of the need to maintain safe distances and exercise precautions. We have seen an increase in participation in public meetings with the many options currently available. Zoom, Google Meets, and YouTube along with in-person are excellent ways to engage the community. Having interpretation available at all engagement meetings will allow all stakeholders to play a meaningful role in the process of moving towards district elections and drawing maps. We hope to see the City of Pacific Grove be inclusive of all stakeholders.

We are hopeful that you will be able to work with us to achieve a timely transition in order to bring the City of Pacific Grove into compliance with the CVRA. We have attached a comprehensive study done by the Pacific Grove School District that will help provide more information and evidence as you make this decision.

Thank you



Andrew Sandoval
LULAC District 12 Director

Robert Goodman

ATTORNEY AT LAW
1114 STATE STREET, SUITE 312
SANTA BARBARA, CALIFORNIA 93101
TELEPHONE (805) 965-9869
FACSIMILE (805) 965-8669

August 9, 2021

Dr. Ralph G. Porras, Superintendent
Pacific Grove Unified School District
435 Hillcrest Ave.
Pacific Grove, CA 93950

Re: Notice of Violation of California Voting Rights Act

Dear Dr. Porras:

First, we would like to acknowledge and thank you for your work, and the work of the Board of Education and staff, on behalf of the Pacific Grove Unified School District.

On behalf of Olivia Hernandez, a member of a protected class and a registered voter in the Pacific Grove Unified School District, this letter and the enclosed report assert that the Pacific Grove Unified School District's method of conducting elections is in violation of the California Voting Rights Act. Pursuant to state law, the Board of Education of the Pacific Grove Unified School District has 45 days from receipt of this letter to adopt a resolution outlining its intention to transition from at-large to district elections, detailing specific steps it will take to facilitate this transition, and estimating the time-frame for this transition. If the Board of Education does not adopt a resolution to this effect, then a legal action will be commenced in Monterey County Superior Court. The lawsuit would seek a court order requiring the Pacific Grove Unified School District to establish district elections pursuant to the California Voting Rights Act.

District elections are sweeping California. As far as this office is aware, no government agency in California has successfully defended a complaint alleging a violation of the California Voting Rights Act. For this reason, we recommend a collaborative settlement which would cap costs to the Pacific Grove Unified School District and enable more participation by the Board of Education in the transition to district elections than would be the case through a court action.

Advantages of a pre-litigation settlement include that implementation of district elections in the Pacific Grove Unified School District could be deferred until November 2022 or November 2024, also deferring the hearings to draw district lines. This approach has proved successful in a number of other government jurisdictions in California.

Letter to Dr. Porras

August 9, 2021

Page 2

We appreciate that for a government agency that has not planned to institute district elections, the November 2022 deadline could be difficult, particularly since all census data are not yet available. Government jurisdictions elsewhere have asked for a settlement process whereby more time would be available for implementation, and a settlement agreement can achieve this result. Under any circumstances, reimbursement costs are capped at \$30,000, provided the Board of Education adopts a resolution of intent to implement district elections. The terms of existing Board members would not be affected by the move to district elections.

District elections elsewhere have been tied to more than greater representation -- these elections lead to more candidates seeking election to boards and councils and to greater participation and interest by the community in local government agencies and elections. There are many benefits that public agencies derive from district elections, including higher voter turn-out and more community participation, as described in the enclosed report. A number of government agencies in Monterey county, as elsewhere, have enacted district elections successfully.

Thank you for your consideration and attention to this matter. We look forward to working with you to establish district elections in the Pacific Grove Unified School District. We believe the Pacific Grove Unified School District will be an even better school district with district elections -- more representative of the people and in compliance with state law.

Sincerely yours,



Robert Goodman

RG/ph

Encl

Cc: California Voting Rights Project

Establishing District
Elections in the
Pacific Grove Unified
School District

pursuant to the

California Voting
Rights Act

California Voting Rights Project
July 2021

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Establishing District Elections in the Pacific Grove Unified School District Pursuant to the California Voting Rights Act

Introduction

There is a strong case for establishing district elections in the Pacific Grove Unified School District. Hundreds of California school districts, cities, and special districts have instituted district elections in recent years pursuant to the California Voting Rights Act. District elections bring government closer to the people and increase representation, result in higher turn-out in local elections, and lead more candidates to run for local office.

Although about two-fifths of the enrollment in the Pacific Grove Unified School District is comprised of members of protected classes, no members of protected classes currently serve on the Board of Education of the Pacific Grove Unified School District or have been elected to the Board in many years.

There are many examples of polarized voting in the Pacific Grove Unified School District on state and local ballot measures. There are also significant differences between members of different groups in socioeconomic characteristics pertaining to education, employment, and health and in performance in the Pacific Grove Unified School District. At least 19 government agencies in Monterey County utilize district elections.

Abridgment of voting rights of members of protected classes is proscribed by the California Voting Rights Act. The United States Voting Rights Act and, especially, the California Voting Rights Act provide strong and explicit protections to challenge at-large forms of election to government bodies and to replace them with district elections.

To date, no government jurisdiction in California has prevailed in a challenge to its electoral system on the basis of the California Voting Rights Act.¹ The current, at-large method of election to the Pacific Grove Unified School

District Board of Education impairs the ability of members of protected classes to elect candidates of their choice and their ability to influence the outcomes of elections. Therefore, district elections must be established in the Pacific Grove Unified School District.

1. Benefits of District Elections

There are many benefits of district elections which have been experienced in jurisdictions throughout California. These include greater voter turn-out and participation, and more candidates running for office. In some places, turn-out in some voting precincts has increased by as much as one-quarter after district elections were implemented, and the number of candidates seeking election has more than doubled.

District elections bring government closer to the people. They result in representatives who are more knowledgeable of neighborhood problems and concerns. Candidates learn about their electoral district when running for office. Voters have a member of the Board of Education to whom they can turn on issues, and Board members become more knowledgeable about area-specific issues. There is a wider spectrum of views on the Board of Education and more representation from all neighborhoods and the entire community. District elections empower neighborhoods. District elections have been accompanied by greater diversity of all sorts on elective boards.

District elections result in less expensive political campaigns. It is easier for younger and lower socioeconomic candidates to run for office if they do not have to raise as much money. This results in less influence by special interests. By walking door to door and other inexpensive means, candidates can be elected who would not be elected in at-large elections.

The Pacific Grove Unified School District will be an even better school district with district elections--more representative of the people and in compliance with state law. District elections will make elections to the Board of Education fairer and more inclusive, and will increase representation and participation. The universal experience with district elections in California is that school districts and other government jurisdictions have found them to be a superior form of representation, irrespective of the legal requirement.

Benefits of district elections are described in "The Politics of Latino Education: The Biases of At-Large Elections," by David Leal, Valerie Martinez-Ebers, and Kenneth Meier, published in the *Journal of Politics*, a publication of

the Southern Political Science Association, included here as Exhibit E and incorporated herein. This article contains much important information:

Representation is an integral part of the political system.

Boards are involved in all aspects of school policy. They hire and fire superintendents, set the curricula, decide spending priorities, and adopt reform plans. Although many decisions are in practice left to superintendents and other administrators, school boards are tasked to oversee these experts. Boards, therefore, shoulder much responsibility for the quality of public education in America.

The question of Latino representation in school policymaking might be less urgent if Latino educational achievement were high, but this is far from the case. While education may be the best way to escape poverty and realize the American dream, many Latinos find their hopes prematurely dashed through low educational achievement.

Latino representation on school boards was associated with better educational conditions. In school districts with more Latino representation, Latino students experienced greater access to equal education ... There also appeared to be a ripple effect, whereby more Latino school board members led to more Latino school administrators, which in turn led to more Latino teachers.

Multiple studies suggest greater minority representation in the educational policy process translates into more positive outcomes for minority students.

Our study supports the findings of earlier research showing minority population translating into minority school board seats at a substantially higher rate with district elections than with at-large elections. Our findings show that at-large election systems usually

disadvantage Latinos; the obvious recommendation is that at-large systems should be replaced by single-member systems.²

As members of protected classes are elected to governing boards, there tends also to be more members of protected classes who become employed by government agencies. In addition, because candidates for higher elective office are overwhelmingly elected first to local office, district elections lead in time to greater representation at all levels of elective office.

2. United States Voting Rights Act

The United States Voting Rights Act is landmark federal legislation that prohibits racial discrimination in voting. Passed in 1965 in the wake of the suppression of civil and voting rights, the United States Voting Rights Act is intended to enforce the voting rights guaranteed by the 14th and 15th Amendments to the United States Constitution, in particular the provisions of the 15th Amendment: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race ... [or] color".

According to the federal Voting Rights Act: "No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color ... A violation ... is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens ... in that its members have less opportunity than other members of the electorate to participate in the political process and elect representatives of their choice. The extent to which members of a protected class have been elected to office in the ... political subdivision is one circumstance which may be considered" (52 U.S. Code Sec. 10301).

The United States Supreme Court has "long recognized that multi-member districts and at-large voting schemes may operate to minimize or cancel out the voting strength" of protected classes (*Thornburg v. Gingles*, 478 U.S. 30, 47 (1986)). Although legal actions against government jurisdictions in California to require district elections have been brought since 2002 pursuant to the California Voting Rights Act (rather than the U.S. Voting Rights Act), the federal Voting Rights Act also provides explicit and strong protection for the voting rights of members of protected classes.

3. California Voting Rights Act

Building upon the United States Voting Rights Act, the California Voting Rights Act was passed by the California legislature in 2001 and signed into law in 2002 to allow legal challenges to government jurisdictions in California with at-large methods of election to require them to institute district elections. According to the Rose Institute of State and Local Government at Claremont McKenna College (the state leader in gathering information on the transition from at-large to district elections): “The California Voting Rights Act was written to promote the use of by-district elections to encourage the election of candidates preferred by previously ‘underrepresented’ voters such as Latinos.”³ A copy of the California Voting Rights Act is included here as Exhibit B and incorporated herein.

The core provision of the California Voting Rights Act (CVRA) is:

14027. 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 abridgment of the rights of voters who are members of a protected class.

The CVRA is clear: at-large methods of election are against California law when they impair the ability of protected classes to elect candidates of their choice or to influence the outcomes of elections as a result of dilution of the vote or abridgment of the rights of voters who are members of a protected class. Upon showing vote dilution or abridgment of the rights of voters of protected classes, at-large methods of election must be discontinued in favor of district elections.

According to Section 14028 of the CVRA: “A violation of Section 14027 is established if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision.” In addition: “Other factors such as ... the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the

political process, ... are probative ... factors to establish a violation” of the CVRA (Sec. 14028(e)).

The CVRA is also clear with respect to what the remedy for illegal, at-large elections is: “Upon a finding of a violation ..., the court shall implement appropriate remedies, **including the imposition of district-based elections**, that are tailored to remedy the violation” (Sec. 14029, emphasis added). Though a remedy for a violation of the CVRA other than district elections might be here contemplated, in fact no remedy has been ordered by a California court for violation of the California Voting Rights Act other than district elections.

When, as in the Pacific Grove Unified School District, a political subdivision utilizes an illegal, at-large method of election, district elections must be implemented.

To date, dozens of legal actions have been brought against school districts, cities, special districts, and other government agencies in California for violation of the California Voting Rights Act. Every action has been successful. The replacement of at-large elections by district elections is sweeping the state as a result of the CVRA. The Rose Institute also states: “Another significant effect of the California Voting Rights Act is the financial cost it has imposed ...--many challenges so far have resulted in settlements or legal awards over one million dollars.”⁴

The California Voting Rights Act was ruled constitutional by a California Court of Appeal in 2007. The decision held: “The CVRA is race neutral. It does not favor any race over others or allocate burdens or benefits to any groups on the basis of race. It simply gives a cause of action to members of any racial or ethnic group that can establish that its members' votes are diluted.”⁵ The court further held: “Curing vote dilution is a legitimate government interest”; and: “To prove a violation, plaintiffs ... do not need to show that members of a protected class live in a geographically compact area.”⁶

The CVRA also states: “Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required” (Sec.

14028(d)) to sustain a legal action brought pursuant to the California Voting Rights Act.

**B. Board of Education Candidates and the Votes They Received in
Pacific Grove School District Elections, 2018 and 2020**

<u>Year</u>	<u>Candidate</u>	<u>Votes</u>
2018	Dawson	5,063
	Paff	4,127
	Walton	4,073
	Sahenkoske	3,267
2020	C. Swanson	6,783
	B. Swanson	4,262
	Miller	3,482

No candidates who are members of protected classes have sought election or been elected to the Pacific Grove Unified School District Board of Education in its most recently contested elections. The next table presents the total number of candidates and the number of candidates elected in these elections:

**C. Pacific Grove Unified School District Board of Education
Elections in 2018 and 2020, Total and Elected Candidates**

<u>Year</u>	<u>Total Cand.s</u>	<u>Elected Cand.s</u>
2018	4	3
2020	<u>3</u>	<u>2</u>
Total:	7	5

As can be seen, of 7 total candidates for the Pacific Grove Unified School District Board of Education and 5 elected candidates in 2018 and 2020, none has been a member of a protected class. The next table on the following page shows the number of total votes in each of these elections:

**D. Pacific Grove Unified School District Board of
Education Elections in 2018 and 2020, Total Votes**

<u>Year</u>	<u>Total Votes</u>
2018	16,530
2020	<u>14,527</u>
Total:	31,057

As can be seen, of more than 30,000 total votes cast for the Pacific Grove Unified School District Board of Education in 2018 and 2020, none was for a member of a protected class.

That the Pacific Grove Unified School District is more diverse than those who have sought election and been elected to the Board of Education is not intended to detract from the service that existing and past trustees provide and have provided to the community. The concern is with respect to the at-large method of election utilized by the Pacific Grove Unified School District.

As previously indicated, one of the strongest arguments for district elections in the Pacific Grove Unified School District is that it would lead to more contested elections for the Board of Education, as well as provide representation from all neighborhoods of the Pacific Grove Unified School District on the Board of Education. Although a number of elections to the Pacific Grove Unified School District Board of Education have not been contested, this does not relieve the requirements of the California Voting Rights Act to establish district elections.

Pursuant to the California Voting Rights Act, it is not necessary that abridgment of voting rights be demonstrated only in elections to the political subdivision's governing board. Rather, voting issues with respect to which the CVRA becomes applicable "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 choices that are preferred by voters in the rest of the electorate" (Sec. 14026(e))--irrespective of whether the difference in voting occurs for the governing board of the government jurisdiction in which district elections is sought or in other electoral choices.

This is made clear by legal specialists in districting, electoral issues, and voting rights Marguerite Leoni and Christopher Skinnell. They write in “The California Voting Rights Act,” published by the *Public Law Journal* (vol. 32, Spring 2009), an official publication of the State Bar of California Public Law Section:

No Minority Candidates.

The fact that no members of the minority group have ever run for membership on the legislative body will not insulate a jurisdiction from CVRA challenge. The CVRA expressly provides that a violation can be shown if racially-polarized voting occurs in elections incorporating *other* electoral choices that affect the rights and privileges of members of a protected class, such as ballot measures. (Elec. Code Sec.s 14028(a) & (b).) Some particularly obvious examples ... might include Proposition 187 (denying services to undocumented immigrants), [and] Proposition 209 (preventing state agencies from adopting affirmative action programs) ... But other local measures may also serve the same purpose.⁸

This article also states that the California Voting Rights Act “makes fundamental changes to minority voting rights law in California”; the CVRA “alters established paradigms of proof and defenses ..., thus making it easier for plaintiffs in California to challenge allegedly discriminatory voting practices”; the CVRA “prescribe[s] an extremely light burden ... to establish a violation”; the CVRA “eliminate[s] the first precondition that plaintiffs must prove at the liability stage in federal litigation, that is, that the minority group is sufficiently large and geographically compact to form a majority in a single member district”; the CVRA “eliminates the requirement that plaintiffs prove discrimination”; the CVRA “mandates the award of costs, attorneys fees, and expert expenses to prevailing plaintiffs”; the CVRA “denies not only attorneys fees but also the costs of litigation to prevailing defendants”; the “sole fact that the voters of a city or special district have enacted an at-large electoral system by ballot measure, or rejected a by-district electoral system by ballot measure, will not protect a jurisdiction”; and “Demands by minority group representatives for a change to by-district elections must be taken seriously, even if the minority group is not numerous enough to form a majority in a new single member district. Changing voluntarily permits the

elected representatives ... to control the districting process and the considerations that will guide the districting. Once the single member districts are in place, the [government jurisdiction] is in the CVRA safe harbor.”⁹ A copy of this article is included here as Exhibit D and incorporated by this reference.

There are many examples of racially polarized voting, vote dilution, or differential voting in the Pacific Grove Unified School District on state ballot measures in even the two most recent elections, where electoral precincts within the District with different proportions of members of protected classes have expressed different preferences on measures, including:

**E. Polarized Voting on State Ballot Measures in
Pacific Grove Unified School District, 2018 and 2020**

<u>Year</u>	<u>State Ballot Measure</u>
2018	Proposition 1, housing programs
2018	Proposition 3, water bonds
2018	Proposition 8, dialysis payment restructuring
2018	Proposition 10, local rent control
2020	Proposition 15, funding for public schools
2020	Proposition 16, repeal Proposition 209
2020	Proposition 18, allow 17-, 18-year olds to vote
2020	Proposition 19, change property tax rules
2020	Proposition 25, require money bail

Further, there are also many instances of racially polarized voting in the Pacific Grove Unified School District on local ballot measures, including:

**F. Polarized Voting on Local Ballot Measures in
Pacific Grove Unified School District, 2009 to 2020**

<u>Year</u>	<u>Local Ballot Measure</u>
2009	Measure J, City of Pacific Grove Library Parcel Tax
2010	Measure Q, City of Pacific Grove Library Parcel Tax
2011	Measure V, Pacific Grove Unified School District Parcel Tax
2012	Measure A, Pacific Grove Unified School District Parcel Tax
2014	Measure A, Pacific Grove Unified School District Facilities Bond
2020	Measure V, Monterey Peninsula Com. Cllg Dist. Facilities Bond

The analysis here presents examples of polarization only to the year 2009. If this presentation were continued to the year 2000, incorporating state and local ballot measures and state and local candidates for office, it would be possible to demonstrate as many as 40 or more instances of polarized voting, vote dilution, or differential voting in the Pacific Grove Unified School District since this time.

Pursuant to the CVRA, as previously cited: "A violation of Section 14027 is established if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision or in *elections incorporating other electoral choices by the voters of the political subdivision*" (Sec. 14028(a)). The emphasized passage was specifically incorporated into the CVRA to provide for challenges to government jurisdictions in which very few or no members of protected classes had run for their elected boards. Pursuant to the California Voting Rights Act, district elections must be established in the Pacific Grove Unified School District.

The California Voting Rights Act also states: “Other factors such as ... denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, ... are probative, but not necessary factors to establish a violation” (Sec. 14028(e)). As well as the examples of abridgment of voting rights and polarized voting previously outlined, there is significant evidence of the extent to which members of protected classes in the Pacific Grove Unified School District bear the effects of past conditions in areas such as education, employment, and health.

The next table presents comparisons between the white and Latino populations in Pacific Grove on various socioeconomic characteristics pertaining to education, employment, and health in the 2019 United States Census Bureau American Community Survey estimate:

**G. Comparison Between White and Latino Populations
In City of Pacific Grove on
Various Socioeconomic Characteristics, 2019**

	<u>White Population</u>	<u>Latino Population</u>
<i>Education</i>		
Adults with high school degree	99.0%	74.5%
Adults with bachelor's degree	56.9%	19.7%
<i>Employment</i>		
Average per capita income	\$55,162	\$35,334
Households receiving food stamps	2.0%	5.0%
<i>Health</i>		
Individuals without health insurance	2.9%	6.5%

Furthermore, the California Assessment of Student Performance and Progress (CAASPP) is the main state assessment system for students in California schools. The CAASPP provides educational performance measures in

a variety of areas. The following tables present achievement for students tested in the Pacific Grove Unified School District in 2018-19 in English Language Arts/Literacy and Mathematics, disaggregated by white and Latino students:

**H. Pacific Grove Unified School District 2018-19 CAASPP
English Language Arts/Literacy Achievement by Ethnicity**

<u>Achievement Level</u>	<u>White</u>	<u>Latino</u>
4 -- Exceeds Standard	50.16%	32.45%
3 -- Meets Standard	31.05%	34.57%
2 -- Nearly Meets Standard	12.90%	21.81%
1 -- Standard Not Met	5.89%	11.17%

**I. Pacific Grove Unified School District 2018-19 CAASPP
Mathematics Achievement by Ethnicity**

<u>Achievement Level</u>	<u>White</u>	<u>Latino</u>
4 -- Exceeds Standard	41.24%	20.86%
3 -- Meets Standard	28.50%	24.06%
2 -- Nearly Meets Standard	19.27%	38.36%
1 -- Standard Not Met	10.99%	18.72%

Approximately one in five students in the Pacific Grove Unified School District, disproportionately Latino, qualifies for free or reduced price meals.

In addition, the Pacific Grove Unified School District is a “basic aid” school district, whereby local property tax revenues exceed the amount of revenue received by “revenue limit” school districts, which typically receive thousands of dollars less per student than basic aid districts. Although no challenge to the funding of basic aid school districts is currently active, enactment of district elections could help to protect the funding of the Pacific Grove Unified School District from future challenges to funding formulas.

Clear and compelling evidence exists that the Pacific Grove Unified School District's current, at-large method of election to its Board of Education does not meet the requirements of the California Voting Rights Act. It is very likely that the Pacific Grove Unified School District would be ordered by a court to implement district elections. In the event that the Pacific Grove Unified School District is not willing to institute district elections voluntarily, attached hereto and incorporated herein as Exhibit A is a draft complaint against the Pacific Grove Unified School District to require its implementation of district elections pursuant to the California Voting Rights Act.

5. Methods of Instituting District Elections In the Pacific Grove Unified School District

There are two basic methods by which district elections may be instituted in the Pacific Grove Unified School District: a) a pre-litigation settlement agreement by the Pacific Grove Unified School District Board of Education outlining the District's intention to transition from at-large to district elections, specifying specific steps it will take to facilitate this transition, and estimating the time-frame for this transition; or b) litigation.

If the Pacific Grove Unified School District Board of Education chooses a pre-litigation settlement, then, pursuant to Section 10010 of the California Elections Code, the process the Pacific Grove Unified School District will follow when district elections are implemented, as determined by the settlement agreement, is:

1) Within 45 days of receipt of the certified letter notifying the Pacific Grove Unified School District that its method of conducting elections violates the CVRA, the Pacific Grove Unified School District Board of Education will adopt a resolution outlining the District's intention to transition from at-large to district elections, specifying specific steps it will take to facilitate this transition, and estimating the time-frame for this transition.

2) If the Pacific Grove Unified School District Board of Education passes a resolution to this effect, a legal action may not be commenced for another 90 days after the resolution's passage, or as modified by the settlement agreement.

3) Before district lines are drawn, the Pacific Grove Unified School District Board of Education holds two public hearings at which the public is invited to provide input concerning the composition of districts. In advance of these hearings, the Pacific Grove Unified School District should conduct outreach to the public, including to non-English speaking communities, explaining the districting process and encouraging participation. According to the United States Census Bureau, approximately 16 percent of residents in Pacific Grove speak a language other than English in the home.

4) Following these two hearings, the Pacific Grove Unified School District publishes and makes available for release at least one draft map and the proposed sequence of elections to new districts. The Pacific Grove Unified School District then holds two more public hearings at which the public is invited to provide input on the draft map or maps and proposed sequence of elections.

5) In determining the sequence of elections, the Pacific Grove Unified School District is required to give special consideration to the purposes of the California Voting Rights Act. For this reason, it is likely that among the first districts in which district elections will be held will be districts including significant proportions of individuals from protected classes.

6) After adopting the resolution of intention to transition from at-large to district elections and holding the hearings, the Pacific Grove Unified School District Board of Education adopts a map of districts and a sequence of elections.

If the Pacific Grove Unified School District establishes district elections according to the above process as modified by the settlement agreement, no litigation is required.

Upon adopting the resolution of intention to transition from at-large to district elections, the Pacific Grove Unified School District may seek a waiver from the California State Board of Education, as permitted by California Education Code Sections 33050-33053, of the requirement of voter approval for the transition to district elections, reducing the cost of the transition to district elections. Such waivers are routinely granted.

6. Advantages of a Settlement Agreement

A pre-litigation settlement agreement is the best way to ensure the most expeditious, least expensive, and most cooperative process to establish district elections in the Pacific Grove Unified School District. There are many advantages of a pre-litigation settlement agreement rather than litigation to institute district elections. Most importantly, the Pacific Grove Unified School District Board of Education retains a greater role in and more control over the transition process to district elections and legal costs are capped.

A greater role by the Board of Education and more control over the transition to district elections could manifest itself in a number of ways through a settlement agreement, including:

1) Participation in timing of the first district elections. If this matter were to become the subject of litigation, a court could require that a special election be held. As a result of a pre-litigation settlement agreement, the first district elections could be held in November 2022 or November 2024, also delaying the hearings to draw district lines. Elsewhere in California, agreements have been reached to hold first district elections in 2022 or 2024, following the availability of all 2020 census data, as a result of pre-litigation settlement agreements.

2) The Pacific Grove Unified School District would retain the ability to draw the lines of voting districts both now and in the future. As a result of litigation, the court could draw the lines for voting districts through a court-determined process.

3) Saving of plaintiffs' attorney fees and costs, and its own legal expenses, by the Pacific Grove Unified School District, potentially saving hundreds of thousands or even more dollars. Pursuant to the CVRA: "In any action to enforce [the California Voting Rights Act] the court shall allow the prevailing plaintiff party ... a reasonable attorney's fee ... and litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs" (Sec. 14030). In addition: "Prevailing defendant parties shall not recover any costs" (id.).

In recent years, many jurisdictions have had to pay hundreds of thousands and even millions of dollars in attorneys' fees to prevailing plaintiff parties. Moreover, jurisdictions are responsible for their own legal costs, which can also be hundreds of thousands of dollars. The following table presents some settlements in California Voting Rights Act cases:

J. Settlements in CVRA Litigation (partial list)

<u>Jurisdiction</u>	<u>Settlement</u>
City of Palmdale	\$4,500,000
City of Modesto	\$3,000,000
City of Anaheim	\$1,200,000
City of Whittier	\$1,000,000
Santa Clarita Community College Dist.	\$850,000
San Mateo County	\$650,000
Tulare Healthcare District	\$500,000
City of Escondido	\$385,000
City of Garden Grove	\$290,000
City of Bellflower	\$250,000

As a result of the potentially significant costs of litigation, the **California Voting Rights Project strongly recommends that government jurisdictions reach settlement in the 45-day statutory pre-litigation stage.** In this case, pursuant to Assembly Bill 350 signed into legislation in 2016, costs to government jurisdictions are capped at \$30,000 plus annual CPI adjustment (now, \$32,377) for demographic and legal services.¹⁰

It should be emphasized that Assembly Bill 350 applies only to the pre-litigation phase of cases brought pursuant to the CVRA. If a CVRA action becomes the subject of litigation through a complaint being filed, there is no limit on attorneys' fees and costs other than as stated in the CVRA.

In addition, because Assembly Bill 350 would “impose additional duties on local agencies, the bill would impose a state-mandated local program. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state ... This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for these costs shall be made pursuant to ... statutory provisions” (Legislative Counsel’s Digest of Assembly Bill 350). Accordingly, it may be possible for the Pacific Grove Unified School District to receive reimbursement from the state for a pre-litigation settlement. A copy of Assembly Bill 350 is included here as Exhibit C and incorporated by this reference.

The preceding are only some of the advantages of a pre-litigation settlement agreement. As an example of a settlement agreement in another school district, a copy of the resolution and settlement agreement establishing district elections in the Goleta Union School District is included here as Exhibit G and incorporated by this reference.

Conclusion

The Pacific Grove Unified School District will be an even better school district with district elections. District elections will increase participation and representation and bring the Pacific Grove Unified School District into compliance with the California Voting Rights Act. More candidates will seek election to office and the community will become even more involved in the District and its schools.

For further information on the likelihood of district elections being instituted by a court, see the February 21, 2017, Council Agenda Report in the City of Santa Maria, which is included here as Attachment F and incorporated by this reference. According to this report: "After much analysis and in-depth conversations 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 ... 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 election system."¹¹

At least 19 government jurisdictions in Monterey county already utilize district elections, including:

K. Monterey County Government Jurisdictions Utilizing District Elections

Board of Supervisors
County Board of Education
Hartnell Community College District
Monterey Peninsula Community College District
Alisal Union School District
Chular Union Elementary School District
Monterey Peninsula Unified School District
North Monterey County Unified School District

**Monterey County Government
Jurisdictions Utilizing District Elections (cont.d)**

Pajaro Valley Unified School District
Salinas City Elementary School District
Salinas Union High School District
San Antonio Union School District
Soledad Unified School District
City of King
City of Marina
City of Salinas
Monterey Peninsula Airport District
Monterey Peninsula Water Management District
Salinas Valley Memorial Healthcare System

Abridgment of voting rights has no place in the Pacific Grove Unified School District or anywhere else. The Mission Statement of the Pacific Grove Unified School District states that the District is in “partnership with the community,” has a “focus on equity,” and will “meet the diverse needs of all students.” District elections will--to the District’s benefit--assist the Pacific Grove Unified School District to meet the goals of its Mission Statement and of the California Voting Rights Act, result in more participation and involvement by the community, and bring the District into compliance with the law.

Clear and compelling evidence of abridgment of voting rights would sustain a legal action brought pursuant to the California Voting Rights Act to institute district elections in the Pacific Grove Unified School District. A pre-litigation settlement agreement by the Pacific Grove Unified School District Board of Education provides the best opportunity to implement district elections in a manner that retains participation by the Board of Education and Pacific Grove Unified School District in the transition process to district elections and is cost-effective.

Endnotes

¹ See “CVRA Settlement Agreement / Resolution of Intention,” Council Agenda Staff Report, City of Carpinteria (August 14, 2017): “The City Attorney’s Office has surveyed the reported case law concerning litigation based on a violation of the CVRA. There is no reported case in which the defendant public agency has prevailed on the merits by proving that a violation of the CVRA did not occur” (p. 3).

² David L. Leal, Valerie Martinez-Ebers, and Kenneth J. Meier, “The Politics of Latino Education: The Biases of At-Large Elections,” *Journal of Politics* (Vol. 66, No. 4, November 2004; included here as Exhibit E).

³ Justin Levitt et al., “Quiet Revolution in California Local Government Gains Momentum” (Claremont McKenna College: Rose Institute of State and Local Government, November 3, 2016), p. 1. The Rose Institute remarks on the switch from at-large to district elections in California: “This quiet tectonic shift in local government is accelerating” (id.).

⁴ Id., p. 2.

⁵ *Sanchez v. City of Modesto*, Court of Appeal, Fifth District, California, No. F048277 (December 6, 2006).

⁶ Id.

⁷ Asian enrollment includes Filipinos.

⁸ Marguerite Mary Leoni and Christopher E. Skinnell, “The California Voting Rights Act,” *Public Law Journal* (Vol. 32, No. 2, Spring 2009; Official Publication of the State Bar of California Public Law Section; included here as Exhibit D).

⁹ Id.

¹⁰ Pursuant to Assembly Bill 350: “The amount of reimbursement required by this section is capped at \$30,000, as adjusted annually to the Consumer Price Index for All Urban Consumers, U.S. city average, as published by the United States Department of Labor” (Section 1. 10010(f)(3); included here as Exhibit C). The increase in the Consumer Price Index for All Urban Consumers in 2017 was 2.1%, in 2018 the increase was 1.9%, in 2019 the increase was 2.3%, and in 2020 the increase was 1.4%, meaning the cap for reimbursement is now \$32,377.

¹¹ City of Santa Maria, "Council Agenda Report" (February 21, 2017; included here as Exhibit F).

Exhibits

- A. Draft Complaint Against the Pacific Grove Unified School District for Violation of the California Voting Rights Act**
- B. California Voting Rights Act**
- C. Assembly Bill 350**
- D. Marguerite Mary Leoni and Christopher E. Skinnell, “The California Voting Rights Act,” *Public Law Journal* (Spring 2009)**
- E. David L. Leal, Valerie Martinez-Ebers, and Kenneth J. Meier, “The Politics of Latino Education: The Biases of At-Large Elections,” *Journal of Politics* (Nov. 2004)**
- F. City of Santa Maria Council Agenda Report with Respect to Implementing District Elections**
- G. Resolution and Settlement Agreement Establishing District Elections in the Goleta Union School District**

EXHIBIT “A”

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DRAFT

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MONTEREY**

**Complaint for Violation of the
California Voting Rights Act of 2001
Against the Pacific Grove Unified School District**

1
2
3 Plaintiffs, by and through their counsel of record, hereby bring this action against
4 defendant Pacific Grove Unified School District, California, and Does 1 through 25 (collectively
5 "Defendants" or "the defendants"). In support of their complaint, Plaintiffs allege as follows:

6
7 **I. INTRODUCTION**

8 1. This action is brought by Plaintiffs for injunctive relief against Defendants for their
9 violation of the California Voting Rights Act of 2001, California Elections Code Sec.s 14025, *et*
10 *seq.* (the "CVRA"). The imposition of the Pacific Grove Unified School District's at-large
11 method of election has resulted in vote dilution for residents of protected classes and has denied
12 them effective political participation in elections to the Pacific Grove Unified School District
13 Board of Education. The Pacific Grove Unified School District's at-large method of election for
14 electing members to its Board of Education prevents residents of protected classes from electing
15 candidates of their choice in Pacific Grove Unified School District Board of Education elections.
16

17 2. The effects of the Pacific Grove Unified School District's at-large method of
18 election are apparent and compelling. Despite a significant proportion of members of protected
19 classes living in the Pacific Grove Unified School District and attending its schools, no members
20 of protected classes have sought election or been elected to the Pacific Grove Unified School
21 District Board of Education for many years. The deficiency of members from protected classes as
22 candidates for and elected to the Pacific Grove Unified School District Board of Education
23 reveals the lack of access to the political process.
24

25 3. The Pacific Grove Unified School District's at-large method of election violates the
26 CVRA. Plaintiffs bring this action to enjoin the Pacific Grove Unified School District's
27 continued abridgment of the voting rights of members of protected classes. Plaintiffs seek a
28

1 declaration from this Court that the at-large method of election currently employed by the Pacific
2 Grove Unified School District violates the CVRA. Plaintiffs seek injunctive relief enjoining the
3 Pacific Grove Unified School District from further imposing or applying its current at-large
4 method of election. Further, Plaintiffs seek injunctive relief requiring the Pacific Grove Unified
5 School District to design and implement district-based elections to remedy its violation of the
6 CVRA.
7

8 **II. THE PARTIES**

9
10 4. At all material times, Plaintiffs are and have been registered voters residing in the
11 Pacific Grove Unified School District and are eligible to vote in the Pacific Grove Unified School
12 District's elections.

13 5. At all material times, defendant Pacific Grove Unified School District, California,
14 is and has been a political subdivision of the State of California subject to the provisions of the
15 CVRA.
16

17 6. Plaintiffs are unaware of the true names and capacities of the defendants sued
18 herein as Does 1 through 25, inclusive, and therefore sue these defendants by such fictitious
19 names. Plaintiffs will amend this complaint to allege the true names and capacities of these
20 defendants when their true names are ascertained. Plaintiffs are informed and believe, and on
21 that basis allege, that the acts and conduct alleged herein of each defendant was known to,
22 authorized by, and/or ratified by the other defendants. Does 1 through 25, inclusive, are
23 individuals or entities that have caused the Pacific Grove Unified School District to violate the
24 CVRA, failed to prevent the Pacific Grove Unified School District's violation of the CVRA, and/
25 or are otherwise responsible for the acts and omissions alleged herein.
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7. Plaintiffs are informed and believe, and allege on that basis, that each defendant named herein, at all times mentioned in this complaint, was the agent, employee, partner, joint venturer, and/or employer of the other defendants and was at all times herein mentioned acting within the course and scope of that agency, employment, partnership, ownership, or joint venture.

III. JURISDICTION AND VENUE

8. All parties hereto are within the unlimited jurisdiction of this Court. The unlawful acts subject to this complaint occurred in the County of Monterey.

9. Venue is proper in this court because the Pacific Grove Unified School District is a public entity located within this county.

IV. GENERAL ALLEGATIONS

A. Political Background on the Pacific Grove Unified School District

10. The Pacific Grove Unified School District is governed by a Board of Education. The Pacific Grove Unified School District Board of Education serves as the governmental body responsible for the operation of the Pacific Grove Unified School District. The Board of Education is comprised of five members.

11. The Board of Education of the Pacific Grove Unified School District is elected at-large. All of the voters of the Pacific Grove Unified School District elect all of the members of the Board of Education.

12. Vacancies to the Board of Education are elected on a staggered basis. Every two years, the electorate elects two or three Board of Education members, each of whom serves a four-year term.

1 13. No member of a protected class has been elected to the Pacific Grove Unified
2 School District Board of Education since at least 2007. No member of a protected class currently
3 serves on the Board of Education.
4

5 **B. Racial Polarization's Impact on the Pacific Grove Unified School District**

6 14. Elections held within the Pacific Grove Unified School District are characterized
7 by racially polarized voting.
8

9 15. Racially polarized voting occurs when members of a protected class -- as defined
10 by California Elections Code Sec. 14025(d) -- vote for candidates or other electoral choices that
11 differ from the rest of the electorate.

12 16. Racially polarized voting exists within the Pacific Grove Unified School District.
13 There is a clear difference between the choice of candidates and other electoral choices that are
14 preferred by voters from protected classes and the choice of candidates and other electoral
15 choices that are preferred by voters in the rest of the electorate.
16

17 17. Racially polarized voting consists of both voter cohesion on the part of members of
18 protected classes and voter cohesion by the non-protected class electorate against the choices of
19 protected class voters.
20

21 18. Patterns of racially polarized voting and vote dilution have the effect of impeding
22 opportunities for protected class voters to elect candidates of their choice to the at-large Board of
23 Education positions in the Pacific Grove Unified School District. The non-protected class
24 electorate dominates elections.

25 19. Voters from protected classes are harmed by racially polarized voting.
26
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28

1 20. There are many examples of racially polarized voting in the Pacific Grove Unified
2 School District. Merely in the past two election cycles, there is evidence of racially polarized
3 voting on the following state ballot measures, in which precincts within the Pacific Grove
4 Unified School with larger numbers of members of protected classes and other precincts have
5 differed in their electoral choices:
6

- 7 2018 -- Proposition 1 (housing programs);
8 2018 -- Proposition 3 (water bonds);
9 2018 -- Proposition 8 (dialysis payment restructuring);
10 2018 -- Proposition 10 (local rent control);
11 2020 -- Proposition 15 (funding for public schools);
12 2020 -- Proposition 16 (repeal of Proposition 209);
13 2020 -- Proposition 17 (allow 17-18-year olds to vote);
14 2020 -- Proposition 19 (change property tax rules);
15 2020 -- Proposition 25 (require money bail).
16

17 21. There is also evidence of racially polarized voting and vote dilution on ballot
18 measures at the local level in recent years, including:
19

- 20 2009 -- Measure J, City of Pacific Grove (library parcel tax);
21 2010 -- Measure Q, City of Pacific Grove (library parcel tax);
22 2011 -- Measure V, Pacific Grove Unified School District (parcel tax);
23 2012 -- Measure A, Pacific Grove Unified School District (parcel tax);
24 2014 -- Measure A, Pacific Grove Unified School District (facilities bond);
25 2020 -- Measure V, Monterey Peninsula Community College District (facilities bond).
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1 22. In addition, there is evidence of racially polarized voting and vote dilution for
2 candidates for local and state office in the Pacific Grove Unified School District. It is estimated
3 that, since the year 2000, it would be possible to demonstrate as many as 40 or more instances of
4 racially polarized voting, vote dilution, or differential voting in the Pacific Grove Unified School
5 District on state ballot measures, local ballot measures, and candidates for state and local office.
6

7 **C. Impact of Polarization on Protected Classes**

8 23. Members of protected classes in the Pacific Grove Unified School District bear the
9 effects of past discrimination in areas such as education, employment, and health. Members of
10 protected classes have graduated at a lower rate from high school and college than whites, have
11 lower per capita and median household income, and have higher percentages of households and
12 individuals receiving food stamps and without health insurance. There are marked differences in
13 the educational performance of white and Latino students in the Pacific Grove Unified School
14 District in California Assessment of Student Performance and Progress (CAASPP) testing.
15

16 24. The at-large method of election voting has caused the dilution of protected class
17 votes in the Pacific Grove Unified School District. Protected class voters and the rest of the
18 electorate regularly express different preferences on candidates and other electoral choices,
19 which has been to the detriment of protected class voters.
20

21 25. The obstacles posed by the Pacific Grove Unified School District's at-large method
22 of election impairs the ability of protected class voters to elect candidates of their choice in
23 elections held in the Pacific Grove Unified School District.
24

25 26. An alternative method of election exists -- district-based elections -- that will
26 provide an opportunity for the members of protected classes as defined by the CVRA to elect
27 candidates of their choice in Pacific Grove Unified School District elections.
28

1 27. All allegations made in this complaint are based upon information and belief,
2
3 except those allegations which pertain to the named Plaintiffs, which are based on personal
4 knowledge. The allegations of this complaint are stated on information and belief and are likely
5 to have evidentiary support after a reasonable opportunity for further investigation or discovery.

6 **V. CAUSES OF ACTION**

7 **First Cause of Action**

8 **(Violation of California Voting Rights Act of 2001)**

9 **(Against All Defendants)**

10
11 28. Plaintiffs hereby reallege and incorporate by reference each and every allegation
12 stated in paragraphs 1 through 27 above as though set forth fully herein.

13 29. Plaintiffs are registered voters and reside within the Pacific Grove Unified School
14 District.

15 30. Plaintiffs are members of a protected class of voters under the CVRA.

16 31. Plaintiffs are over the age of 18 and are eligible to vote in the Pacific Grove Unified
17 School District's elections.

18 32. The Pacific Grove Unified School District is a political subdivision within the State
19 of California.

20 33. The Pacific Grove Unified School District employs an at-large method of election.

21 34. Racially polarized voting has occurred, and continues to occur, in elections in the
22 Pacific Grove Unified School District and in elections incorporating other electoral choices by
23 voters in the Pacific Grove Unified School District. As a result, the Pacific Grove Unified School
24 District's at-large method of election is imposed in a manner that impairs the ability of a
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1 protected class as defined by the CVRA to elect candidates of its choice in Pacific Grove Unified
2 School District elections.

3
4 35. An alternative method -- district-based elections -- exists that will provide an
5 opportunity for the members of a protected class as defined by the CVRA to elect candidates of
6 their choice in Pacific Grove Unified School District Board of Education elections.

7 36. An actual controversy has arisen and now exists between the parties relating to the
8 legal rights and duties of Plaintiffs and Defendants, for which Plaintiffs desire a declaration of
9 rights.
10

11 37. Defendants' wrongful conduct has caused and, unless enjoined by this Court, will
12 continue to cause, immediate and irreparable injury to Plaintiffs, and those similarly situated.

13 38. Plaintiffs, and those similarly situated, have no adequate remedy at law for the
14 injuries they currently suffer and will otherwise continue to suffer.
15

16 **VI. PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as
18 follows:

- 19 1. For a decree that the Pacific Grove Unified School District's current at-large
20 method of election for its Board of Education violates the California Voting Rights Act of 2001;
- 21 2. For preliminary and permanent injunctive relief enjoining the Pacific Grove
22 Unified School District from imposing or applying its current at-large method of election;
- 23 3. For injunctive relief mandating that the Pacific Grove Unified School District
24 design and implement single-member district-based elections, as defined by the California Voting
25 Rights Act of 2001, to remedy the Pacific Grove Unified School District's violation of the
26 California Voting Rights Act of 2001;
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4. For an award of Plaintiffs' attorney fees, costs, and prejudgment interest pursuant to the CVRA, California Elections Code Sec. 14030, and other applicable law; and

5. For such further relief as the Court deems just and proper.

Dated: September 30, 2021

EXHIBIT “B”

CALIFORNIA VOTING RIGHTS ACT

ELECTIONS CODE SECTIONS 14025-14032

14025. This act shall be known and may be cited as the California Voting Rights Act of 2001.

14026. As used in this chapter:

(a) "At-large method of election" means any of the following methods of electing members to the governing body of a political subdivision:

(1) One in which the voters of the entire jurisdiction elect the members to the governing body.

(2) One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.

(3) One that combines at-large elections with district-based elections.

(b) "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.

(c) "Political subdivision" means a geographic area of representation created for the provision of government services, including, but not limited to, a general law city, general law county, charter city, charter county, charter city and county, school district, community college district, or other district organized pursuant to state law.

(d) "Protected class" means a class of voters who are members of a race, color, or language minority group, as

this class is referenced and defined in the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.).

(e) "Racially polarized voting" means voting in which there is a difference, as defined in case law regarding enforcement of the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.), 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 choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

14027. 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 abridgment of the rights of voters who are members of a protected class, as defined pursuant to Section 14026.

14028. (a) A violation of Section 14027 is established if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision. Elections conducted prior to the filing of an action pursuant to Section 14027 and this section are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action.

(b) The occurrence of racially polarized voting shall be 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.

(c) The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy.

(d) Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

(e) Other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns are probative, but not necessary factors to establish a violation of Section 14027 and this section.

14029. Upon a finding of a violation of Section 14027 and Section 14028, the court shall implement appropriate remedies, including the imposition of district-based elections, that are tailored to remedy the violation.

14030. In any action to enforce Section 14027 and Section 14028, the court shall allow the prevailing plaintiff party, other than the state or political subdivision thereof, a reasonable attorney's fee consistent with the standards established in *Serrano v. Priest* (1977) 20 Cal.3d 25, 48-49, and litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

14031. This chapter is enacted to implement the guarantees of Section 7 of Article I and of Section 2 of Article II of the California Constitution.

14032. Any voter who is a member of a protected class and who resides in a political subdivision where a violation of Sections 14027 and 14028 is alleged may file an action pursuant to those sections in the superior court of the county in which the political subdivision is located.

EXHIBIT “C”



AB-350 District-based municipal elections: preapproval hearings. (2015-2016)

SHARE THIS:



Assembly Bill No. 350

CHAPTER 737

An act to amend Section 10010 of the Elections Code, relating to elections.

[Approved by Governor September 28, 2016. Filed with Secretary of State
September 28, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 350, Alejo. District-based municipal elections: preapproval hearings.

Existing law provides for political subdivisions that encompass areas of representation within the state. With respect to these areas, public officials are generally elected by all of the voters of the political subdivision (at-large) or by districts formed within the political subdivision (district-based). Existing law requires a political subdivision, as defined, that changes from an at-large method of election to a district-based election to hold at least 2 public hearings on a proposal to establish the district boundaries of the political subdivision before a public hearing at which the governing body of the political subdivision votes to approve or defeat the proposal.

This bill would instead require a political subdivision that changes to, or establishes, district-based elections to hold public hearings before and after drawing a preliminary map or maps of the proposed district boundaries, as specified.

Existing law, the California Voting Rights Act of 2001 (CVRA), prohibits the use of an at-large method of election in a political subdivision if it would impair the ability of a protected class, as defined, to elect candidates of its choice or otherwise influence the outcome of an election. The CVRA provides that a voter who is a member of a protected class may bring an action in superior court to enforce its provisions.

This bill would require a prospective plaintiff under the CVRA to first send a written notice to the political subdivision against which the action would be brought indicating that the method of election used by the political subdivision may violate the CVRA. The bill would permit the political subdivision to take ameliorative steps to correct the alleged violation before the prospective plaintiff commences litigation, and it would stay the prospective plaintiff's ability to file suit for a prescribed amount of time. This bill would also permit a prospective plaintiff who sent a written notice, as described, to recover from the political subdivision reasonable costs incurred in supporting the written notice.

Because the bill would impose additional duties on local agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 10010 of the Elections Code is amended to read:

10010. (a) A political subdivision that changes from an at-large method of election to a district-based election, or that establishes district-based elections, shall do all of the following before a public hearing at which the governing body of the political subdivision votes to approve or defeat an ordinance establishing district-based elections:

(1) Before drawing a draft map or maps of the proposed boundaries of the districts, the political subdivision shall hold at least two public hearings over a period of no more than thirty days, at which the public is invited to provide input regarding the composition of the districts. Before these hearings, the political subdivision may conduct outreach to the public, including to non-English-speaking communities, to explain the districting process and to encourage public participation.

(2) After all draft maps are drawn, the political subdivision shall publish and make available for release at least one draft map and, if members of the governing body of the political subdivision will be elected in their districts at different times to provide for staggered terms of office, the potential sequence of the elections. The political subdivision shall also hold at least two additional hearings over a period of no more than 45 days, at which the public is invited to provide input regarding the content of the draft map or maps and the proposed sequence of elections, if applicable. The first version of a draft map shall be published at least seven days before consideration at a hearing. If a draft map is revised at or following a hearing, it shall be published and made available to the public for at least seven days before being adopted.

(b) In determining the final sequence of the district elections conducted in a political subdivision in which members of the governing body will be elected at different times to provide for staggered terms of office, the governing body shall give special consideration to the purposes of the California Voting Rights Act of 2001 (Chapter 1.5 (commencing with Section 14025) of Division 14 of this code), and it shall take into account the preferences expressed by members of the districts.

(c) This section applies to, but is not limited to, a proposal that is required due to a court-imposed change from an at-large method of election to a district-based election.

(d) For purposes of this section, the following terms have the following meanings:

(1) "At-large method of election" has the same meaning as set forth in subdivision (a) of Section 14026.

(2) "District-based election" has the same meaning as set forth in subdivision (b) of Section 14026.

(3) "Political subdivision" has the same meaning as set forth in subdivision (c) of Section 14026.

(e) (1) Before commencing an action to enforce Sections 14027 and 14028, a prospective plaintiff shall send by certified mail a written notice to the clerk of the political subdivision against which the action would be brought asserting that the political subdivision's method of conducting elections may violate the California Voting Rights Act.

(2) A prospective plaintiff shall not commence an action to enforce Sections 14027 and 14028 within 45 days of the political subdivision's receipt of the written notice described in paragraph (1).

(3) (A) Before receiving a written notice described in paragraph (1), or within 45 days of receipt of a notice, a

political subdivision may pass a resolution outlining its intention to transition from at-large to district-based elections, specific steps it will undertake to facilitate this transition, and an estimated time frame for doing so.

(B) If a political subdivision passes a resolution pursuant to subparagraph (A), a prospective plaintiff shall not commence an action to enforce Sections 14027 and 14028 within 90 days of the resolution's passage.

(f) (1) If a political subdivision adopts an ordinance establishing district-based elections pursuant to subdivision (a), a prospective plaintiff who sent a written notice pursuant to subdivision (e) before the political subdivision passed its resolution of intention may, within 30 days of the ordinance's adoption, demand reimbursement for the cost of the work product generated to support the notice. A prospective plaintiff shall make the demand in writing and shall substantiate the demand with financial documentation, such as a detailed invoice for demography services. A political subdivision may request additional documentation if the provided documentation is insufficient to corroborate the claimed costs. A political subdivision shall reimburse a prospective plaintiff for reasonable costs claimed, or in an amount to which the parties mutually agree, within 45 days of receiving the written demand, except as provided in paragraph (2). In all cases, the amount of the reimbursement shall not exceed the cap described in paragraph (3).

(2) If more than one prospective plaintiff is entitled to reimbursement, the political subdivision shall reimburse the prospective plaintiffs in the order in which they sent a written notice pursuant to paragraph (1) of subdivision (e), and the 45-day time period described in paragraph (1) shall apply only to reimbursement of the first prospective plaintiff who sent a written notice. The cumulative amount of reimbursements to all prospective plaintiffs shall not exceed the cap described in paragraph (3).

(3) The amount of reimbursement required by this section is capped at \$30,000, as adjusted annually to the Consumer Price Index for All Urban Consumers, U.S. city average, as published by the United States Department of Labor.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

EXHIBIT “D”

THE CALIFORNIA VOTING RIGHTS ACT

Marguerite Mary Leoni*
Christopher E. Skinnell**

In 2002, the California Voting Rights Act, S.B. 976, was signed into law. (Elec. Code §§ 14027-14032.) The Act makes fundamental changes to minority voting rights law in California. As of January 1, 2003, the California Voting Rights Act ("CVRA") alters established paradigms of proof and defenses under the federal Voting Rights Act, thus making it easier for plaintiffs in California to challenge allegedly discriminatory voting practices.¹ The potential consequences of this legislation are significant: it could force a city or special district to abandon an electoral system that may be perfectly legal under

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Ms. Leoni has represented and currently represents numerous state agencies, municipalities, counties, school districts and other special districts on districting, redistricting and electoral matters. She has assisted in all phases of such cases including design of plans, the public hearing process, analysis of proposed alternatives, enactment procedures, referenda, districting and redistricting, preparing and advocating preclearance submissions to the U. S. Department of Justice, and defending federal court litigation concerning the legality of electoral systems under the federal constitution and Voting Rights Act. She represented the Administrative Office of the Courts on federal Voting Rights Act issues and electoral questions pertaining to trial court unification in California. She also represented the Florida Senate in designing that state's Senate and Congressional districts, Voting Rights Act preclearance, and in defending against ensuing state and federal court challenges. She also represented the consultant to Arizona's Independent Redistricting Commission in designing redistricting plans for Arizona's state legislative and congressional districts.

** Mr. Skinnell is an associate (bar results pending) at Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP (Mill Valley, California), Phone: (415) 389-6800, E-mail: cskinnell@nmgovlaw.com. He received his Bachelor's degree in 1999 from Claremont McKenna College, *magna cum laude*, and is a 2003 graduate of the University of Chicago Law School, where he served as Editor-in-Chief of *The University of Chicago Legal Forum*.

Prior to attending law school, he was a political consultant to several California legislative and initiative campaigns, a research associate at the Rose Institute of State and Local Government, and chairman of a successful initiative campaign in Southern California.

Mr. Skinnell has extensive experience with voting rights matters, both from the legal and technical perspectives. In addition to working on various voting rights lawsuits, he has published numerous articles and studies on voting rights and redistricting, has served as the technical/GIS consultant on several municipal redistrictings, and has prepared a successful preclearance submission to the U.S. Department of Justice under Section 5 of the Voting Rights Act.

¹ As noted in a celebratory press statement by the Mexican American Legal Defense and Education Fund (MALDEF) following the passage of S.B. 976, which along with the ACLU and voting rights attorney Joaquin Avila, was a primary supporter of the CVRA, the "[b]ill makes it easier for California minorities to challenge 'at-large' elections."

federal law, in the process exposing the jurisdiction to the possibility of paying very high awards of attorneys fees to plaintiffs.²

California's cities, counties, and special districts have had almost four decades of experience in complying with the federal Voting Rights Act ("federal VRA"), especially Section 2, the landmark legislation outlawing both intentional discrimination in voting practices and those practices that have unintentional but discriminatory effects when viewed in the totality of the circumstances. (Voting Rights Act of 1965, Pub. L. No. 89-110, Stat. 437 (1965), codified as amended at 42 U.S.C. §§ 1971, 1973-1973ff-6 (1994).) Indeed, California has adopted compliance with Section 2 as one of its statutory redistricting criteria for cities, counties, and special districts. (See, e.g., Elec. Code §§ 21601 [general law cities], 21620 [charter cities], & 22000 [special districts].) After decades of litigation under the federal VRA, the courts have provided a wealth of guidance for cities and special districts in identifying practices that may have discriminatory effects. Most notable in California is the prevalence of the "at-large" electoral system (see description below). Jurisdictions have learned to consider changing to a district-based electoral system when they have minority group residents who are sufficiently numerous and geographically concentrated to form a majority in a single-member district, especially when that minority group, despite running candidates for election, consistently fails to elect.

But now the voting rights legal environment with which cities and special districts have grown familiar has changed significantly. Here are some of the highlights.

CVRA Highlights.

- **Focus of the CVRA: "At-large" and "From-district" Elections.**

If your city or special district elects its governing board members "by-district," (i.e., only by the voters of the district, sometimes called "division" or "area," in which the candidate resides), you can stop reading now. The CVRA does not apply to a by-district electoral system. However, if you have an "at-large" or "from-district" system, read on!

The CVRA applies only to at-large and from-district electoral systems, or combination systems. (Elec. Code §§ 14026(a), 14027.) At-large systems are those in which each member of the governing board is elected by all the voters in the jurisdiction. Most

² In federal voting rights cases, the litigation bill can run to hundreds of thousands of dollars even for a small jurisdiction of a few thousand people. See Florence Adams, *Latinos and Local Representation: Changing Realities, Emerging Theories* 73 (Garland 2000) (noting that in the City of Dinuba, California, the costs of federal voting rights litigation added up to nearly \$60 per person, more than the annual cost of Dinuba's Fire Department). In a voting rights case filed against the City of Santa Paula in 2000 and recently settled, the City reportedly spent \$700,000 for attorneys fees. See T.J. Sullivan, "Santa Paula Quiet on Measure D," *Ventura County Star* B-01 (Oct. 20, 2002).

jurisdictions in California, especially smaller jurisdictions, have at-large electoral systems. "From-district" elections differ from at-large systems only in that they require each member of the governing board to live within a particular district. Election, however, is still by all the voters in the jurisdiction, rather than being limited to the voters within a district. There are also combination systems in which, for example, a primary election may be conducted "by-district", but the general election is conducted "from" those same districts, *e.g.*, the top two vote winners in the primary in each district run for election "at-large" in the general election.

Each of these variations is equally vulnerable to challenge if the minority plaintiffs can show that racially-polarized voting undercuts their ability to elect or influence the election of minority-preferred candidates. Features that might cause plaintiffs to scrutinize a city or special district as a potential target for a CVRA challenge include a history of electoral losses by minority candidates or a history of unresolved issues disproportionately affecting the minority community (*e.g.*, affordable housing, street and sidewalk maintenance, juvenile crime, etc.), coupled with a significant proportion of the population that are ethnic or racial minorities.

- **Protection For Minority Electoral "Influence."**

The federal VRA prohibits the use of electoral systems that abridge the ability of minority voters to *elect* candidates of their choice. Thus, if the minority plaintiffs would have still been unable to elect their chosen candidates in the absence of the challenged at-large system, the plaintiff would have very little chance of stating a federal claim (see below). Not so under the CVRA. The CVRA invalidates not only at-large elections that prevent minority voters from electing their chosen candidates, but also those that impair the ability of minority voters to *influence* elections.

To date, such influence claims have enjoyed very limited recognition or success in federal litigation, and California jurisdictions have no real experience with them. The U.S. Supreme Court has repeatedly declined to address influence claims in recent years. See *Johnson v. De Grandy*, 512 U.S. 997, 1008-09 (1994); *Holder v. Hall*, 512 U.S. 874, 900 n.8 (1994) (Thomas, J., concurring in judgment); *Voinovich v. Quilter*, 507 U.S. 146, 154 (1993); *Grove v. Emison*, 507 U.S. 25, 41 n.5 (1993). The federal courts in California have refused to sanction such influence suits as well. See *Aldasoro v. Kennerson*, 922 F.Supp. 339, 376 (S.D. Cal. 1995); *DeBaca v. County of San Diego*, 794 F.Supp. 990, 996-97 (S.D. Cal. 1992); *Skorepa v. City of Chula Vista*, 723 F. Supp. 1384, 1391-92 (S.D. Cal. 1989); *Romero v. City of Pomona*, 665 F. Supp. 853, 864 (C.D. Cal. 1987), *aff'd* 883 F.2d 1418, 1424 (9th Cir. 1989).

Indeed, only two federal courts have ever held³ that the federal VRA requires, rather than merely permits, the creation of influence districts in the absence of a showing of intentional discrimination, and both are of questionable precedential value. See *Armour v. Ohio*, 895 F.2d 1078 (6th Cir. 1990); *East Jefferson Coalition for Leadership & Dev. v. Parish of Jefferson*, 691 F.Supp. 991 (E.D. La. 1988). One of the opinions, *Armour v. Ohio*, was subsequently vacated when rehearing en banc was granted, 925 F.2d 987 (6th Cir. 1991). On remand the district court implicitly sanctioned such claims again, 775 F.Supp. 1044, 1059 n.19 (N.D. Ohio 1991),⁴ but later opinions from the Sixth Circuit have not treated *Armour* as binding on this issue, and have, in fact, expressly rejected influence suits. See *Cousin v. Sundquist*, 145 F.3d 818, 828 (6th Cir. 1998) ("We do not feel that an 'influence' claim is permitted under the Voting Rights Act."); *Parker v. Ohio*, 2003 U.S. Dist. LEXIS 8745, *11 (S.D. Ohio). The holding of the second case, *East Jefferson Coalition for Leadership*, was effectively undermined when the court subsequently amended the finding that necessitated the influence claim: that the minority community was too widely dispersed in the jurisdiction to constitute a majority in a single-member district. See *East Jefferson Coalition for Leadership & Dev. v. Parish of Jefferson*, 926 F.2d 487, 491 (5th Cir. 1991) (noting the amended finding that the minority group could indeed constitute a majority in a single-member district).

Given the reluctance of federal courts to enter the political thicket of influence suits, by opening the door to such claims the CVRA greatly expands protection for minority voting rights and, consequently, the potential for liability of cities and special districts.

The next question, of course, is obvious: what constitutes "influence"? The answer, unfortunately, is not so obvious. The CVRA does not define "influence" and there is very little federal precedent on which to rely for guidance. As the federal district court for Rhode Island put it in *Metts v. Almond*:

"Ability to influence" itself, is a nebulous term that defies precise definition. If it means only the potential to alter the outcome of an election, it provides no standard at all because a single voter can be said to have that ability. On the other hand, if it means something more, there does not appear to be any workable definition of how much more is required and/or any meaningful way to determine whether the requirement has been satisfied.

³ Several other courts have assumed as much, without so deciding, instead ruling on other grounds. See, e.g., *Voinovich*, 507 U.S. at 154; *West v. Clinton*, 786 F.Supp. 803, 806 (W.D. Ark. 1992).

⁴ The district court in *Armour* purported to avoid the question of influence claims. See 775 F.Supp. at 1059 n.19 ("We need not reach the question of whether [an influence claim] may be viable under the Voting Rights Act because we find that the plaintiffs have met their burden of demonstrating an ability to elect a candidate of their choice."). But as Judge Batchelder noted in dissent, the Court only avoided the issue by first holding that the plaintiffs need not constitute a majority in the reconfigured district. 775 F.Supp. at 1079 (Batchelder, J., dissenting). In so ruling, "the majority opinion effectively h[eld] that there is a cause of action under Section 2 when political boundaries are drawn so that they fail to maximize a minority group's ability to influence the outcome of elections." *Id.*

Nevertheless, defining “influence” is the task that a California court may soon face. The definition may well be case-specific to the demographic and political circumstances in each defendant jurisdiction, leaving local jurisdictions without clear guidelines.

- **Streamlined Proof for Plaintiffs.**

Federal voting rights cases under Section 2 require that a successful plaintiff show that (1) the minority group be sufficiently large and geographically compact to form a majority of the eligible voters in a single-member district, (2) there is racially-polarized voting, and (3) there is white bloc voting sufficient usually to prevent minority voters from electing candidates of their choice. *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986). If (and only if) all three of these “preconditions” are proven, the court then proceeds to consider whether, under the “totality of circumstances” the votes of minority voters are diluted. (42 U.S.C. § 1973(b) [prescribing the totality of the circumstances standard].)

The CVRA, by contrast, purports to prescribe an extremely light burden on the plaintiff to establish a violation. Under the CVRA, plaintiffs apparently can prove a violation based *solely* on evidence of racially-polarized voting. (Elec. Code §§ 14027 & 14028(e).) Racially-polarized voting is defined as “voting in which there is a difference, as defined in case law regarding enforcement of the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.), in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and the electoral choices that are preferred by voters in the rest of the electorate.” (Elec. Code § 14026(e).) See *Ruiz v. City of Santa Maria*, 160 F.3d 543, 552 (9th Cir. 1998) (adopting relatively lenient “separate electorates” test for determining whether a candidate was a minority-preferred candidate who was defeated by white bloc voting), *cert. denied*, 527 U.S. 1022 (1999).

The CVRA appears to eliminate the first precondition that plaintiffs must prove at the liability stage in federal litigation, that is, that the minority group is sufficiently large and geographically compact to form a majority in a single member district. (Elec. Code § 14028(c).) Assuming that racially-polarized voting can be proven, the CVRA defers inquiry into the size and geographical compactness of the minority group and the impact of those factors on the minority voters’ ability to elect or ability to influence elections, to the remedial phase of the litigation. (See discussion below.)

The CVRA also eliminates the requirement that plaintiffs prove discrimination under the totality of the circumstances test. (Elec. Code § 14028(e).) This departure from the federal standards may prove to be the most significant. Some federal courts have been very lenient in finding racially-polarized voting. They could afford to be so lenient,

because, under federal law, establishing racially-polarized voting is not sufficient to prove a violation. The other *Thornburg v. Gingles* preconditions must be established and a violation must be proven in the “totality of the circumstances” phase of the lawsuit. The totality analysis then permits a federal judge to take into account such matters as the *degree* of the racially-polarized voting and perhaps find that it was not severe enough to warrant judicial intervention into the electoral processes of a city.

The CVRA does not require any comparable “totality of the circumstances” analyses as part of the plaintiff’s proof. Under what would seem to be a draconian application of the CVRA, plaintiffs could argue that a jurisdiction is subject to liability if 51% of minority voters vote one way, 51% of non-minority voters vote the other way, and the minority-preferred candidate loses. Whether a court would sanction such an extreme application of the CVRA, without the subsequent safety valve of the totality analysis, cannot be known at this time. Another plausible reading of the CVRA is that the Legislature meant to ease the burden on plaintiffs but still permit the totality analysis to come in by way of defense. (Elec. Code § 14028(e) [stating that many of the traditional totality factors are “probative,” but not necessary to establish a violation].)

Despite the fact that Section 14028(a) provides that a violation is established if racially-polarized voting is shown, the legislation does identify at least one other factor that bears on the question of liability. Specifically the CVRA provides that the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class have been elected to the governing body of a jurisdiction is “one circumstance that may be considered *in determining a violation*.” (Elec. Code § 14028(b) [emphasis added].) Thus phrased, the relevance of such evidence would not appear to be limited to the remedial stage, but would affect the question of liability as well. Moreover, the phraseology suggests that other, unspecified circumstances may be considered on the question of liability as well. Under the federal scheme, minority plaintiffs whose preferred candidates have a winning record would find it difficult, if not impossible, to establish a violation of the federal VRA. Presumably this would be the result under the CVRA, but the new law is not explicit on that point. Also, the CVRA specifies that the successful candidate must also be a member of the minority group in order to be taken into consideration as “one circumstance” that may be considered at the liability phase of the litigation. The CVRA is silent on whether the election of non-minority persons who are proven to be the preferred candidates of minority voters can also be considered. Plaintiffs may well argue that such successful minority-preferred candidates do not count.

- **New Remedies.**

The most likely remedy in a successful CVRA action would be to order cities and special districts with at-large, from-district, or mixed electoral systems to change to by-district systems in which a minority group will be empowered either to elect its preferred candidates, or influence the election outcome. But judicial remedies under the Act may

not be limited to the imposition of a by-district system. In cases where the minority group may be too small to form a majority in a single member district (*i.e.*, a district from which one member of the governing board is elected), the CVRA mandates that a court impose remedies “appropriate” to the violation. Indeed, the advocates of limited or cumulative voting systems may see the CVRA as an opportunity to attempt to impose such experimental remedies in California.

In a limited voting system, voters either cast fewer votes than the number of seats, or political parties nominate fewer candidates than there are seats. Theoretically, the greater the difference between the number of seats and the number of votes, the greater the opportunities for minorities to elect their chosen candidates. Versions of limited voting are used in Washington, D.C., Philadelphia (PA), Hartford (CT) and many smaller jurisdictions.

In a cumulative voting system, voters cast as many votes as there are seats. But unlike winner-take-all systems, voters are not limited to giving only one vote to a candidate. Instead voters can cast some or all of their votes for one or more candidates. Chilton County (AL), Alamogordo (NM), and Peoria (IL) all use a version of cumulative voting, as do a number of smaller jurisdictions. The State of Illinois used cumulative voting for state legislative elections from 1870 to 1980.

- **No-Risk Litigation For Plaintiffs.**

The CVRA mandates the award of costs, attorneys fees, and expert expenses to prevailing plaintiffs. (Elec. Code § 14030.) Prevailing defendants, however, are not treated so kindly. The CVRA denies not only attorneys fees but also the costs of litigation to prevailing defendants, unless the court finds a suit to be “frivolous, unreasonable, or without foundation,” an extremely high standard. (*Id.*)

Furthermore, California law interprets “prevailing party” more broadly than does the analogous federal law governing attorneys fees awards for actions brought under Section 2 of the Voting Rights Act. The United States Supreme Court has, as a matter of statutory interpretation, recently rejected the “catalyst” theory of prevailing parties. *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dept. of Health & Human Servs.*, 532 U.S. 598, 603-05 (2001). The catalyst theory, which the California Supreme Court has previously approved, permits recovery of attorneys fees if there is any “causal connection” between the plaintiffs’ lawsuit and a change in behavior by the defendant. *Maria P. v. Riles*, 43 Cal.3d 1281, 1291 (1987). The *Maria P.* court continued:

“The appropriate benchmarks in determining which party prevailed are (a) the situation immediately prior to the commencement of suit, and (b) the situation today, and the role, if any, played by the litigation in effecting any changes between the two.” . . . An award of attorney fees under section 1021.5 is

appropriate when a plaintiff's lawsuit "was a *catalyst* motivating defendants to provide the primary relief sought," or when plaintiff vindicates an important right "by activating defendants to modify their behavior."

Id. at 1291-92 (quoting *Folsom v. Butte County Assn. of Governments*, 32 Cal.3d 668, 685 n.31 (1982); *Westside Community for Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 353 (1983)) (internal citations omitted).

Federal law, by contrast, requires some "change [in] the legal relationship between [the plaintiff] and the defendant." *Buckhannon*, 532 U.S. at 604 (quoting *Texas State Teachers Assn. v. Garland Independent School Dist.*, 489 U.S. 782, 792 (1987)). In other words, it is not enough under federal law that the defendant changed its conduct voluntarily—there must be some legally compelled impediment to the defendant falling back into the old ways, like a judgment or a settlement.

The California Supreme Court has traditionally treated federal precedent interpreting 42 U.S.C. § 1988 as persuasive authority, but it has also held that such federal precedent is not binding with regards to interpretation of state attorneys fee law. *See Serrano v. Unruh*, 32 Cal.3d 621, 639 n.29 (1982). Thus, the *Buckhannon* holding will not inevitably lead California to reject the catalyst theory in CVRA litigation as well.

Charter Cities.

Charter cities should not be complacent in a belief that they are immune from successful challenge under the new CVRA. The CVRA, after all, purports to apply to "cities" without making any explicit distinction between general law or charter cities. (Elec. Code § 14026(c).) It is true that a charter can provide for a form of government or electoral process for a city that is different from the general law. A charter city, however, remains subject to the California Constitution and would be prohibited from adopting or maintaining a discriminatory electoral system or electoral practices that violate the equal protection clause or the right to vote. *See Canaan v. Abdelnour*, 40 Cal.3d 703 (1985), *overruled on other grounds by Edelstein v. City & County of San Francisco*, 29 Cal.4th 164, 183 (2002); *Rees v. Layton*, 6 Cal.App.3d 815 (1970). Furthermore, California courts have recognized that state statutes can override city charters if they are narrowly-tailored to address an issue of statewide concern, even in the core areas of charter city control like election administration. *Edelstein*, 29 Cal.4th at 172-174; *Johnson v. Bradley*, 4 Cal.4th 389, 398-400 (1992). The CVRA expressly provides that it is intended to implement the guarantees of Section 7 of Article I (Equal Protection) and Section 2 of Article II (Right to Vote) of the California Constitution, which are themselves regarded as matters of statewide concern. *See Cawdrey v. City of Redondo Beach*, 15 Cal.App.4th 1212, 1226 (1993).

It is always possible that the California Supreme Court would decide that, even if preserving the right to vote is a matter of statewide concern, the CVRA sweeps too broadly and cuts too deeply into municipal affairs in violation of the principle of home rule. As the Supreme Court has noted, "[T]he sweep of the state's protective measures may be no broader than its interest." *Johnson*, 4 Cal.4th at 400. Cf. *Bd. of Trustees of the Univ. of Ala. v. Garrett*, 531 U.S. 356, 365 (2000) (when Congress seeks to enforce constitutional protections with legislation, the statutory scheme must be congruent and proportional to the injury to be prevented or remedied); *City of Boerne v. Flores*, 521 U.S. 507 (1997). For example, charter cities could argue that, assuming eradicating the adverse effects of racially-polarized voting in at-large electoral systems is a matter of statewide concern, the CVRA is not narrowly-tailored because the federal VRA presents a scheme more carefully-crafted to weed out those at-large systems in which, under the totality of circumstances, minority voting rights are abridged, and leave in place those at-large systems in which a minority candidate may have simply lost an election.

Vote of the People.

The sole fact that the voters of a city or special district have enacted an at-large electoral system by ballot measure, or rejected a by-district electoral system by ballot measure, will not protect a jurisdiction. Indeed, the latter may increase the risk to the jurisdiction by serving as persuasive proof of a violation of the CVRA if the by-district system was rejected in an election characterized by a racially-polarized vote.

No Minority Candidates.

The fact that no members of the minority group have ever run for membership on the legislative body will not insulate a jurisdiction from CVRA challenge. The CVRA expressly provides that a violation can be shown if racially-polarized voting occurs in elections incorporating *other* electoral choices that affect the rights and privileges of members of a protected class, such as ballot measures. (Elec. Code §§ 14028(a) & (b).) Some particularly obvious examples from the last decade might include Proposition 187 (denying state services to undocumented immigrants), Proposition 209 (preventing state agencies from adopting affirmative action programs), and Proposition 227 (barring the use of bilingual education in California public schools). See *Cano v. Davis*, 211 F.Supp.2d 1208, 1241 n.37 (C.D. Cal. 2002) (assuming these initiatives may be used to demonstrate racially-polarized voting). But other local measures may also serve the same purpose.

CONCLUSION

California's cities and special districts are entering a new and uncertain era in voting rights law. Much about the CVRA is unclear and federal precedent on key issues appears to have been legislatively overruled. It may require years of litigation to sort it all out. It

is impossible to know now whether California courts will uphold the constitutionality of the CVRA, how they will interpret the new law, or what defenses will be available. Perhaps the "totality of the circumstances" test will be reinvigorated by way of defense. In the meantime, there is a safe harbor under the CVRA (though still not necessarily under the federal Voting Rights Act): a by-district electoral system.

Jurisdictions with a history of electoral losses by candidates who are members of a minority group should consider analyzing those elections for racially-polarized voting. If polarized voting is detected, these jurisdictions may want to consider whether a change to a by-district electoral system is warranted. Demands by minority group representatives for a change to by-district elections must be taken seriously, even if the minority group is not numerous enough to form a majority in a new single member district. Changing voluntarily permits the elected representatives and the voters, rather than adverse plaintiffs or a court, to control the districting process and the considerations that will guide the districting. Once the single member districts are in place, the city or special district is in the CVRA safe harbor, even if the districts are not exactly those that plaintiffs would have preferred.

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EXHIBIT “E”

The Politics of Latino Education: The Biases of At-Large Elections

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This paper investigates the determinants and consequences of Latino political representation in the field of K-12 education. The first task is to examine the association between Latino population and the Latino presence on school boards. We then investigate if Latino representation is affected by the electoral structure of school boards, as scholars have reached differing conclusions on whether at-large and ward systems hinder or enhance minority descriptive representation. The next step examines the consequences of Latino representation, specifically whether board membership is associated with the share of Latino school administrators and teachers. The regression results show that Latino population positively affects Latino board representation, but that at-large systems hinder descriptive representation. The primary determinant of Latino administrators is Latino school board membership, and the primary determinant of Latino teachers is Latino administrators. In sum, at-large elections negatively influence Latino educational representation, which produces a ripple effect that ultimately reduces the share of Latino teachers.

Latinos are now the largest minority group in the United States, but numbers alone are no guarantee of political influence. The traditional view of how minorities gain access to the benefits of the U.S. political system is via education, but research has long established that access to education itself is inherently political. The Latino community has for many generations struggled for educational equity but has faced numerous structural and other impediments. We therefore investigate the political dynamics of Latino education in the field of K-12 education, a subject of major academic and policy consequence.

This paper specifically will examine the politics of Latino representation on school boards and whether such descriptive representation has substantive effects. The first question is whether Latino population size is associated with the Latino presence on school boards. We then investigate if such representation is affected by the electoral structure of school boards because scholars disagree whether at-

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large and ward systems influence minority representation. Third, we test whether such descriptive representation influences the proportion of Latino administrators and teachers. Because the most recent prior research on these questions used data from the late 1980s, this paper provides needed evidence on how current conditions have changed given the dramatic growth in the Latino population.

School board representation is an integral aspect of the political system. School boards in America are the most local electoral unit in the federal system. Almost 100,000 people serve on 15,000 boards, and they constitute the largest bloc of elected officials in America. Overseeing the education of forty-five million public school students, they are entrusted with annual school expenditures of approximately three hundred billion dollars (Toch and Glastris 1994).

Boards are involved in all aspects of school policy. They hire and fire superintendents, set the curricula, decide spending priorities, and adopt reform plans. Although many decisions are in practice left to superintendents and other administrators, school boards are tasked to oversee these experts (Wirt and Kirst 1989). Boards, therefore, shoulder much responsibility for the quality of public education in America.

The question of Latino representation in school policymaking might be less urgent if Latino educational achievement were high, but this is far from the case. While education may be the best way to escape poverty and realize the American dream, many Latinos find their hopes prematurely dashed through low educational achievement. A report by the White House Initiative on Educational Excellence for Hispanic Americans (1999) documents how Latino underachievement in education begins as early as kindergarten and continues through higher education. By the age of nine, Latino children perform below their non-Latino peers in the subjects of reading, mathematics, and science. Their overall scores on the National Assessment of Educational Progress (NAEP) are also consistently below average. One-third of Latino students between the ages of 15 and 17 are enrolled below grade level, and Latinos are less likely to take college preparatory courses in high school.

The high Latino dropout rate is well known: 1998 data show a dropout rate of 30%, in comparison to 14% for African Americans and 8% for Anglos. Overall, Latinos perform lower than most groups on standardized tests, and they have the lowest high school graduation rates and four-year college enrollments of all racial and ethnic groups in the country (Riley and Pompa 1998; Secada et al. 1998).

Latinos also attend schools that are increasingly segregated in terms of race, ethnicity, and class (Orfield and Yun 1999). They often face institutional racism and cultural biases at school in terms of programming, curriculum, and tracking and ability grouping practices (Carrasquillo 1994; Grossman 1995; Spring 2000). In sum, Latinos are arguably the most educationally disadvantaged of all groups in the United States today (Riley and Pompa 1998).

Whether the dismal state of Latino education is related to political dynamics is a key question for political scientists to investigate. Meier and Stewart was one of the first investigations of this possibility. Using regression analysis and con-

trolling for intermediary factors, they discovered that Latino students were subject to more suspensions and expulsions, were underrepresented in gifted and talented classes, and were overrepresented in special education classes. Not only were such practices associated with lower student achievement, but they also served as "a substitute for segregation" (1991, 197).

Meier and Stewart also discovered that such treatment was associated with community political power. Most importantly, Latino representation on school boards was associated with better educational conditions. In districts with more Latino representation, Latino students experienced greater access to equal education and less "second-generation" discrimination. There also appeared to be a ripple effect, whereby more Latino school board members led to more Latino school administrators, which in turn led to more Latino teachers.

Others have found evidence that Latino representation on school boards is associated with policy outcomes of interest to this community. Leal and Hess (2000), for instance, found that the percentage of school board members who are Latino is positively associated with funding for bilingual education programs, even after controlling for objective student need for bilingual education. Board representation is, therefore, not just symbolic or of interest to a small number of activists but is inseparable from the aspirations of the larger community.

The first empirical part of this paper investigates the relationship between Latino population and the Latino presence on school boards. The overall literature on representation discusses two general linkages between constituents and representatives. The first is indirect representation, whereby a legislature may collectively represent the people even if there is no clear link between specific legislators and specific constituents (Weisberg 1978). Policy outcomes are therefore congruent with public opinion, even if elected officials are not actively trying to represent their constituents.

The second form of representation is direct. This takes place when the votes of a legislator are linked to the interests of his or her constituents. Elected officials in this scenario take seriously the delegate view of representation, as opposed to the trustee view exemplified by Edmund Burke in his famous letter to Bristol. Pitkin (1967) named this substantive representation and contrasted it with descriptive representation. The latter takes place when a constituency elects a representative who shares key traits but not necessarily policy views.

This paper begins by examining the descriptive representation of Latinos on school boards. While descriptive representation does not always lead to substantive representation, voters generally see a connection. This is not to say that Anglo school board members cannot adequately represent Latino constituencies, as many have undoubtedly done so. In a similar way, a lawyer may be able to represent a district of farmers. Farmers, however, may want their elected representatives to share an agricultural background. Not only would the latter likely know more about farming, but they could be better trusted to fight for farm interests behind closed doors in Washington.

This issue of trust is particularly important in the study of representation. Hall noted that many key legislative activities take place out of public view, such as "Building a coalition for a legislative package, drafting particular amendments, planning and executing parliamentary strategy, [and] bargaining with or persuading colleagues to adopt one's point of view" (1996, 2). Constituents must trust that members are acting in a way that furthers their interests, as there are few ways for them to monitor such legislative behaviors.

Bianco further observed that "many kinds of behavior that are not usually thought of as rational choices, such as voters' desire to be represented by 'someone like them,' are the product of a systematic, predictable calculus—moreover, a calculus aimed at securing favorable policy outcomes" (1994, ix). Voters therefore "focus on attributes because they cannot be the product of calculation and provide a clearer signal of a candidate's policy concerns" (62). In this way, descriptive representation is a shortcut voters use to increase the likelihood of their interests being served.

Electing a member of one's group to office also has symbolic value. As Davidson and Oleszek wrote, "When a member of an ethnic or racial minority goes to Congress, it is a badge of legitimacy for the entire grouping. Such legislators speak for people like them throughout the nation" (2000, 133). What is true for Congress at the national level is also true for school boards at the local level.

Prior studies of Latino representation in local political entities have documented its low levels. Scholars usually derive a statistic of group representation through the Engstrom and McDonald (1981) method, which regresses minority population on minority descriptive representation. Taebel (1978) found a Latino representation index of .44 for 60 large urban city councils, meaning an underrepresentation of 56%. Karnig and Welch (1979) found a similar city council ratio of .45 for 124 southwestern cities. Fraga, Meier, and England (1986) noted a ratio of .77 for 35 school districts in very large cities, and Meier and Stewart (1991) found it was .86 for a larger population of districts.

The second part of this paper examines whether specific types of electoral mechanisms affect the level of Latino descriptive representation. Historically, such representation was impeded by a variety of legal and extralegal tactics. Literacy tests, poll taxes, and simple intimidation were effective tools against the electoral participation of Latinos as well as African Americans and poor Anglos. These have largely passed from the political scene, but election laws originally adopted with discriminatory intent may still affect political representation.

School board membership is chosen through three means: elections by ward, elections at-large, and by appointment. Progressive reformers at the turn of the twentieth century advocated at-large elections as one prong in a larger effort to isolate school boards and city councils from the influence of political parties, immigrants, those of lower socioeconomic status, and the vagaries of the democratic process generally (Tyack 1974). This reform proved a substantial obstacle to minority communities, as minority candidates often lack the resources to launch district-wide campaigns and find it difficult to attract Anglo votes.

In recent decades, underrepresented minority groups used the *Voting Rights Act of 1965* as “the legal foundation for creation of district-based elections to replace at-large elections to city councils and other multimember bodies” (Bezdek, Billeaux, and Huerta 2000, 209). The above authors described the example of Corpus Christi, where the efforts of the Mexican American Legal Defense and Education Fund (MALDEF) led to the replacement of eight at-large city council seats with five ward seats and three at-large seats.¹

Whether at-large elections have discriminatory effects on minority representation is the subject of debate in the political science literature, and one with important practical ramifications. Some scholars have found that ward systems are positively associated with Latino representation on school boards (Davidson and Korbel 1981; Meier and Stewart 1991; Polinard, Wrinkle, and Longoria 1990, 1991). Others, however, have discovered no statistically significant effects (Fraga, Meier, and England 1986; Welch and Karnig 1978).

These varying findings are also present in different decades. Using data largely from the 1980s, Fraga, Meier, and England (1986) arrived at different conclusions than did Polinard, Wrinkle, and Longoria (1991) and Meier and Stewart (1991). Studies using data from the 1970s (Davidson and Korbel 1981; Welch and Karnig 1978) similarly arrived at opposite conclusions. In light of these differences across time, it is desirable to investigate representational dynamics with a contemporary survey.

A new study is also needed because the Latino population is located in a very different social and political space than was the case in the 1970s and 1980s. The 2000 Census revealed how this group is expanding throughout the United States, and many educational jurisdictions that have historically educated few Latino children are now encountering significant and growing numbers of such students. The state with the fastest-growing Latino population, for instance, is not Texas or California but North Carolina. The Latino population of this state increased by just over 440% from 1990 to 2000, growing from 69,020 to 372,964 people. The next largest growth rates were found in Arkansas (337%), Georgia (324%), and Tennessee (284%). The issues of Latino representation on school boards and the quality of education received by Latino children are therefore relevant to a growing number of states and regions. Consequently, a study using current data is vital to understanding how Latino educational representation fares in this new and expanding context.

The above dynamics are a larger and more noticeable continuation of previous trends. As Meier and Stewart noted, the school districts in their sample “have not had a stable enrollment composition over time. The average district increased its Hispanic enrollment by about ten percentage points since 1968 (Table 1–3). Some districts, of course, have become substantially Hispanic during this time period”

¹Many school boards have incorporated both ward and at-large elections under the theory that minorities can benefit from coalition building and win some of the at-large seats. McDonald and Engstrom (1992), however, suggested that this did not transpire in practice.

(1991, 31). They surveyed districts with at least 5,000 students, of whom at least 5% were Latino. Their total number of usable observations was 145; in comparison, our survey includes 857 such districts. Given these Latino population trends, additional studies might also be useful after each future census.

There is also a contemporary interest in Latinos that was largely absent in previous decades. Latino influence is now more strongly felt and more frequently commented upon in both politics and popular culture. This suggests that the role of Latinos in the contemporary political system may be qualitatively as well as quantitatively different than in previous decades.

In addition, given the extensive litigation over city council districts in recent decades, school boards are also probably the last place where at-large districts are still permitted in the presence of racial polarization. For those interested in whether and how electoral structures affect the representation of minorities on political bodies, school boards are the only arena to study. This was much less the case in the 1970s and 1980s, so a new study of school boards is the best way to investigate whether and how electoral structure can influence representation.

A related literature explores the impact of electoral systems on minority representation on city councils. Davidson and Korbel (1981) and Bezdek, Billeaux, and Huerta (2000) argued that ward districts increase Latino representation. On the other hand, Zax (1990) argued that residential segregation was a more important determinant than electoral method in the election of Latino officials. MacManus (1978) found that at-large plans did not impair the city council representation of African Americans and the Spanish speaking, although the details of the system and the socioeconomic environment were important. Taebel (1978) argued that city council size was more relevant for Latino representation than the electoral system. Rabinovitz and Hamilton (1980) suggested that a mixed system was better than a ward system for the representation of blacks on city councils.

Some have argued that electoral systems affect the representation of African Americans but not Latinos. Karnig and Welch (1979) and Welch (1990) found this was the case for city councils. One explanation is that Latinos are not subjected to the same degree of residential segregation as African Americans (Lopez 1981).

The third part of this paper investigates the consequences of descriptive representation, specifically whether the share of Latino board members is associated with the share of Latino school district employees. Administrators and teachers influence the quality of education received by students, and teachers in particular wield much power in their classrooms as "street level bureaucrats" (Lipsky 1980; on the substantive issue see Hess and Leal 1997 and Meier and Stewart 1991).

There is widespread agreement in the professional education community that minority students gain academically when they are taught by minority teachers. Empirical evidence for these propositions is less common than their assertion, however, although a growing number of scholars are testing this hypothesis in a

variety of settings. Hess and Leal (1997) examined the relationship between teacher race/ethnicity and student achievement in large urban school districts. They found that the proportion of minority teachers was positively associated with the college matriculation of all students. While they noted that the hiring of minority teachers might serve as a proxy for unobserved school conditions relevant to student achievement, the article provides intriguing evidence that minority teachers may promote the learning of both minority and Anglo students.

Meier, Wrinkle, and Polinard (1999) and Meier et al. (2001) tested how the percentage of minority teachers was associated with the student pass rates of standardized exams required by the state of Texas. They found that pass rates were higher for both minority and Anglo students in districts with a larger share of minority teachers (although see Nielsen and Wolf 2001). Meier, Wrinkle, and Polinard (1999) suggested an explanation based on discriminatory hiring practices. Districts less focused on the quality of educators than on their race will on average hire less competent teachers, thereby negatively affecting the educational outcomes of all students.

Dee (2001) argued that this question needed a randomized experimental methodology to accurately understand whether racial dynamics were factors in student achievement. He examined test score data from the Tennessee Project STAR (Student Teacher Achievement Ratio) class-size experiment, finding significant math and reading improvements among students randomly provided same-race teachers. There are also a number of more qualitative studies of Latino student achievement that highlight the importance of Latino faculty and staff (Garcia 2001; Nieto 1999; Reyes, Scribner, and Scribner 1999; Valdes 1996).

Substantial evidence also suggests that the Latino community wants more Latinos teaching their children (Nieto 1999; Romo and Falbo 1996). While the above debate asks whether minority teachers improve the educational outcomes of minority and Anglo children, this dynamic is less important from the perspective of representation theory. Many scholars have investigated whether elected officials and political institutions are responsive to constituents, but there is less discussion of the more difficult question—whether constituent wishes are objectively in their best interests. The presence of minority teachers is, therefore, an important indicator of political responsiveness to minority communities regardless of its effect on minority students.

The only previous research on board representation and the minority presence in teaching faculties and educational administrations is Meier and Stewart (1991). They found the share of Latino school board members was positively associated with Latino administrators but not with Latino teachers. They did find, however, a positive correlation between Latino administrators and Latino teachers.

Data and Methods

Data for this paper derive from three sources. Information on school board selection structures, school board ethnicity, administrator ethnicity, teacher eth-

nicity, and student ethnicity were obtained from an original survey. All school districts with more than 5,000 students were sent mail surveys in June 2001.² Nonrespondents received two follow-ups by mail. Up to six phone calls were then placed to nonrespondents in an effort to contact as many of the districts as possible; the phone interviews collected information only on the school board variables. A final attempt was made via email.

Of the 1,831 surveyed districts, 1,751 provided data on school boards (95.6%) and 1,532 (83.7%) on teachers and administrators. The actual numbers in the regression analysis are somewhat lower due to missing data for other variables. Nonrespondents on the electoral information were no different from respondents in terms of size of district, ethnic distribution in the district, and similar census data on which comparisons could be made. For the teacher and administrator data, district sizes were the same but nonrespondents were from locations with slightly smaller Latino populations. Given that the distinction between respondents and nonrespondents could not explain as much as 1% of the variance in any variable where measures existed, we are confident that any selection biases in the survey are slight and do not affect the results presented.³

Population figures and other demographic variables for 2000 were available from the 2000 census. Additional information used to check the accuracy of student enrollment figures on the survey were from the U.S. Department of Education (2001).

Findings

School Board Representation

The first step in assessing the level of descriptive representation is to examine the simple relationship between Latino population and Latino school board representation (both variables are expressed as a percentage of the total) as suggested by Engstrom and McDonald (1981). This equation essentially predicts the expected value of representation for a given level of population. The first column of Table 1 presents this seats-population relationship for all districts. The level of explained variation is consistent with past models for school board representation reported by Meier and Stewart [.60 (1991, 92)] and Fraga, Meier, and England [.77 (1986)]. Both previous studies, however, excluded districts with

²Districts with more than 5,000 students were surveyed for two reasons. First, these districts educate the overwhelming majority of Latino students, as they are located in the areas with the largest Latino populations. Our school districts had a total Latino population in 2000 of 32.84 million, which is 93% of the 35.3 million Latinos in the overall population. Second, there are significant data collection problems in many of the smaller districts. They often do not keep the type of records that larger districts do, particularly in terms of BEO data, as it is the larger districts that are regularly surveyed by the EEOC.

³We also checked to see if the districts lost from the sample because of missing data were different from those included in the analysis. The only difference we can find is that the districts with missing data are slightly smaller than other districts, which is not a major concern.

TABLE 1

The Representation Relationship: Latino School Boards

Dependent variable = Percent Latinos on School Board

Variable	All Districts	Minority Districts	Majority Districts	Five Percent + Latino
Intercept	-3.66 (13.05)	-1.36 (6.12)	-68.54 (7.54)	-8.97 (13.57)
Population	.71 (57.48)	.43 (40.44)	.72 (13.50)	.84 (40.44)
R-squared	.66	.33	.64	.66
Standard error	9.54	6.89	19.20	12.72
F	3,304.37	793.62	182.14	1,635.55
N of cases	1,739	1,633	106	857

Numbers in parentheses are t-scores.

fewer than 5% Latino students; Fraga et al. also only included districts with more than 25,000 students.

Two coefficients from the first regression in Table 1 merit discussion. First, the slope coefficient reveals that for each one percentage point increase in Latino population, Latino representation on the school board increases by .71 percentage points.⁴ In short, the translation of population into representation is only 71% effective. This figure should not be interpreted by itself as the precise estimate of underrepresentation, however. The intercept (-3.66) is negative and significant, thereby indicating a threshold effect. At low levels of population, increases in Latino population have no influence on expected representation levels. Only after a threshold is breached does population predict a positive value for expected representation. That "threshold" can be estimated by using the regression equation to predict the level of population where estimated representation will be at least zero. In the present situation, the threshold is 5.2%.

The findings in the first column suggest that the relationship between representation and population is not linear. The next two columns therefore show the same regression for districts where Latinos are a minority of the population and districts where they are a majority of the population. Previous arguments about electoral structure and representation presuppose the group in question, in this

⁴We use population as the base for all our regressions rather than voting-age population, estimated population who are citizens, or school enrollment for both an empirical reason and a normative reason. Empirically, the measures are highly correlated. The R^2 between voting-age population and population is .9963, and between enrollment and population it is .9631. Using other measures of population changes the size of the coefficients but has no impact on the statistical significance of any findings. The population numbers also predict representation better than any of the other three measures. In normative terms, to paraphrase the Supreme Court, these electoral units were created to represent populations, not citizens or school age children or even voting-age populations.

case Latinos, constitutes a minority of the total population. After all, if Latinos have a voting majority, then they can use at-large elections in the same manner as Anglos do when there is an Anglo majority.

The .71 coefficient for all districts drops to .43 in minority districts but jumps to .72 in majority districts. Comparing these figures directly is somewhat misleading simply because the intercepts are so dramatically different. Majority districts, for example, have an expected representation value of 17.5% for districts that are 50% Latino but 100% for districts with 98% or more Latinos. Both sets of findings strongly suggest that nonlinear estimates of the expected value of representation should be examined.

Before moving to the nonlinear estimates, the last column provides a comparison to the Meier and Stewart results by limiting the analysis to districts with at least 5% Latino population. Two things are immediately apparent. The representation coefficient increases to .84, essentially the same as the .86 coefficient reported by Meier and Stewart (1991, 92). The difference in intercepts in the two analyses, however, suggests caution in comparing these two values.

Table 2 estimates nonlinear equations linking population to representation. The differences between minority and majority jurisdictions are once again dramatic. In minority Latino districts, the population-squared term is significant and adds additional explanation to the overall equation. In majority districts, the nonlinear terms induce massive collinearity so that neither coefficient is significant and the level of explained variation has not changed at all.

These findings suggest that when Latinos are a minority of the population, the population-representation relationship is nonlinear, with larger percentages

TABLE 2
The Nonlinear Population-Representation Relationship:
Latino School Boards

Dependent variable = Percent Latinos on School Board				
Variable	Minority	Districts	Majority	Districts
Intercept	-1.3619 (6.12)	.0135 (.05)	-68.54 (7.54)	-46.31 (.81)
Population	.4315 (28.17)	.0683 (1.45)	1.72 (13.50)	1.08 (.66)
Population Squared		.0096 (17.33)		.00 (.39)
Adjusted R-squared	.33	.35	.64	.63
Standard error	6.89	6.76	19.20	19.20
F	793.62	445.75	182.14	90.41
N of cases	1,633	1,633	106	106

Numbers in parentheses are t-scores.

Tolerances for nonlinear equations, minority districts .10, majority districts, .0061.

getting significantly more representation than smaller percentages. The insignificant intercept for minority districts also eliminates the problematic threshold effect of the linear estimation. The insignificant linear term in this model suggests that it can be dropped from the analysis with no loss of information. The best interpretation for majority districts, however, is that the relationship between Latino population and Latino representation remains linear.

The now traditional way to assess the bias of electoral systems is to run an interaction between the various selection plans and population within a single regression (Engstrom and McDonald 1981). As noted above, there are three major selection plans for school districts: at-large systems, ward systems, and appointed systems. For those districts with less than 50% Latinos, the current sample contains 985 pure at-large systems (where all board members are elected at-large), 443 pure ward systems, and 53 pure appointed systems. The remaining 163 systems contain mixed combinations of the three selection types.

We created three variables for each district: the proportion of members elected from wards, the proportion elected at large, and the proportion appointed. Scores of 1.0 on any of these variables indicate a pure system, and lower scores indicate fewer members selected in the manner indicated by the variable. This process permits us to retain the 163 districts that do not have pure selection systems; the precise characteristics of these mixed systems are the subject of future research. To continue our distinction between majority and minority districts, these equations are estimated for both sets of districts with the hypothesis that structure matters when Latinos are a minority but does not matter when they are a majority.

Table 3 investigates this relationship for districts where Latinos are a minority. Adjusting for the nonlinear population coefficient, the regression contains five variables: Latino population squared, the ward selection percentage, the appointed selection percentage, ward selection multiplied by Latino population squared, and appointed selection multiplied by Latino population squared. This regression equation can then be used to derive representation estimates for each of the three pure systems.

Because several of the variables reduce to zero when other systems are in place, three equations can be derived from the results in Table 3:

At-Large Elections	Representation = .5283 + .0094 × Population ²
Ward Elections	Representation = -.1743 + .0148 × Population ²
Appointed	Representation = .8701 + .023 × Population ²

Because the various intercepts are not different from the at-large intercept, they can basically be ignored in discussions. Suffice it to say that while the at-large intercept is significantly different from zero, its size is trivial (that is, at 0% Latino population, the expected value of representation is .5%). The larger size of the population-squared coefficient for ward elections shows that they generate higher

TABLE 3

The Detrimental Impact of At-Large Elections: Latino School Boards

Dependent variable = Percent Latinos on School Board

Variable	Slope	t	tol.	Slope	t	tol.
Intercept	.5283	2.25	—	.5282	2.25	—
Latino Population Squared	.0094	21.45	.70	.0094	21.53	.70
Ward System	-.7026	1.77	.83	-.7054	1.78	.83
Ward x Population Squared	.0054	6.17	.67	.0054	6.20	.67
Appointed System	.3418	.33	.79	-1.2978	1.11	.63
Appointed x Population Squared	.0136	5.91	.78	—	—	—
Appointed x Population	—	—	—	.5112	6.21	.62
R-squared	.38			.38		
Standard error	6.61			6.60		
F	201.41			202.60		
N of cases	1,628			1,628		

Analysis includes districts only with less than 50% Latino population.

levels of Latino representation than at-large systems. Appointed systems generate the largest levels of representation, as found previously by Meier and Stewart (1991). For instance, with a Latino district population of 5%, expected Latino representation is .8% in at-large systems, .2% in ward systems, and 1.4% in appointed systems. With a Latino population of 25%, the respective numbers increase to 6.4%, 9.1%, and 15.2%; at 45%, the figures are 19.6%, 29.9%, and 47.2%.

The clear conclusion from Table 3 is that both *electoral* systems systematically underrepresent Latinos when they are a minority of the population, but at-large elections are significantly more detrimental to Latino representation than ward elections. It is unclear why some prior research found a lack of bias in at-large systems, but one possibility is that analyses that do not distinguish between majority and minority Latino districts may sometimes produce incorrect results. It is also possible that past research indicating differential ward and at-large effects was substantively correct but derived using incorrect models. Only a reanalysis of the data from previous projects would determine if this is the case.

We might also investigate some additional dimensions of the school board representation process, as Table 3 incorporated only two types of independent variables: population and selection plan. Such a regression overlooks the fact that Latinos are generally poorer, less well educated, less likely to own homes, and less likely to be citizens—all factors that affect voter turnout (Leighley 2001). Several demographic variables were therefore added to the equation in Table 3: percent of Latinos with college degrees, percent noncitizens, percent living in poverty, and median Latino family income. This new regression, which is not presented because of space considerations, shows that only the percentage of Latinos

who were noncitizens added any statistically significant explanation to the equation, and in that case the substantive impact was very small. To reduce Latino representation by 1.3 percentage points, fully one-half of all Latinos would need to not be citizens.⁵

As noted above, the theoretical arguments about electoral structure and ethnic minorities assume that ethnic minorities are a numerical minority. When Latinos become a numerical majority, electoral structure should have little effect on representation because they can simply use majoritarian electoral systems, such as at-large elections, to their advantage. To determine whether or not majority status changes the relationship between structure and representation, we replicated our analysis with the 106 school districts with a Latino majority. The equations in Table 4 include both linear relationships for population (as found in Table 2) and nonlinear relationships for population for comparison purposes.

Despite the substantial size of the coefficients for ward-based systems in both equations, none of the relationships are statistically significant. In short, when Latinos are a majority, there is no difference in the representational consequences of at-large elections compared to ward-based elections.

This finding should be qualified somewhat based on two additional bits of evidence. First, the equations are marked by a high degree of collinearity, thus making statistical significance difficult to obtain; tolerance levels for the linear relationship are especially low. At the same time, a joint *f*-test comparing the equations in Table 4 with those in Table 2 shows that the four additional variables as a group do not add a statistically significant level of explanation (*F*-test for the nonlinear specification = 1.67 with 4, 100 df, *p* = .16; *F*-test for the linear specification = 2.01, *p* = .10). Second, the appointive system relationships do appear to be somewhat different, with coefficients that approach or modestly exceed traditional levels of statistical significance. Because the translation of descriptive representation into substantive representation has been called into question in the literature (Meier and Stewart 1991), we leave the precise meaning of the relationships in appointive systems for future research.

Administrative Representation

Political representation on urban legislatures, be they city councils or school boards, has been linked to greater access to jobs for the represented group (Eisinger 1982; Mladenka 1989). Although there is some question as to whether the causal relationship runs from elected officials to employment or from employment to elected officials (Meier and Smith 1994), we will assume, as does the overwhelming majority of the literature, that the process flows from the top down—that is, representation on school boards increases representation in admin-

⁵ One reason why citizenship does not matter more than it does is that school district elections have very low turnout (often as little as 5% of registered voters). We also tried an interaction of the Latino population and the citizenship variable, but it was statistically insignificant.

TABLE 4
Selection Process Does Not Affect Latino Representation When
Latinos Are a Majority

Dependent variable = Percent Latinos on School Board						
Variable	Linear Slope	Population		Squared Slope	Population	
		t	tol.		t	tol.
Intercept	-65.40	6.21	—	-7.0380	1.25	
Latino Population	1.68	11.33	.71	.0116	11.25	.71
Ward System	-23.48	1.11	.04	-10.0413	.88	.15
Ward $\times$ Population	.34	1.15	.04	.0020	.98	.14
Appointed System	106.94	1.84	.04	48.6729	1.45	.11
Appointed $\times$ Population	-1.71	2.12	.04	-.0119	1.96	.11
R-squared	.65			.64		
Standard error	18.82			18.96		
F	39.46			38.55		
N of cases	106			106		

Analysis includes districts only with more than 50% Latino population.

istrative positions, and both in turn increase representation at the street level (in this paper, the teachers).

The first equation in Table 5 shows the relationship of Latino school board representation and population with the percentage of Latino administrators for minority districts. Population can be interpreted as a labor pool characteristic. Administrators are hired from a pool of individuals, a percentage of which will be Latino. To control for variation in the composition of the labor pool, therefore, the Latino population percentage is needed. In addition, the quality of this labor pool is affected by factors such as education levels, income, and even citizenship. Table 5 therefore controls for the Latino population percentage with college degrees, living in poverty, and who are not citizens.

Even with these controls, Latino board members are positively associated with more Latino administrators; a one percentage point increase in Latino board members is associated with a .16 percentage point increase in Latino administrators, *ceteris paribus*.⁶ The level of explained variation in Table 5 reveals that the hiring of Latino administrators is a far more predictable process than the election of school board members.

⁶The relationships in this table may all be nonlinear. When squared terms are added for both variables, all four slopes are positive and statistically significant. The level of explained variation increases by only three percentage points, however, and the literature does not contain any arguments about a nonlinear relationship.

TABLE 5

Latino Board Representation and Latino Administrators

Dependent variable = Percent Latino Administrators

Variable	Minority Slope	Districts		Majority Slope	Districts	
		t	tol.		t	tol.
Intercept	-.774	2.22	—	-26.866	2.85	
Latino Population	.327	30.31	.59	.391	2.40	.31
School Board Representation	.156	11.89	.68	.319	4.40	.33
Latino Non-Citizens	-.026	3.97	.89	-.359	2.55	.74
Latino College Graduates	.031	3.18	.68	1.619	3.76	.82
Latino Poverty	.014	1.44	.82	1.040	5.69	.66
R-squared	.62			.76		
Standard error	3.50			13.33		
F	450.86			65.63		
N of cases	1,371			101		

Table 5 also demonstrates how much other factors affect administrative hiring. The major influence on the percentage of Latino administrators hired is the percentage of Latino population, a percentage that reflects both the potential political clout of the Latino community as well as the potential pool of candidates for administrative positions. As expected, administrative representation increases with the percentage of college-educated Latinos. Even though citizenship is not a requirement for holding an administrative position in a school system, noncitizenship likely correlates with other factors that disadvantage Latinos, so the negative relationship is expected. The positive relationship between Latino poverty and administrative representation is likely a function of job opportunities. In communities with low poverty levels, well-paying jobs in the private sector are likely to attract many Latinos who might opt to be school administrators. High levels of poverty make safe, although lower paying, jobs in school systems more attractive. Even though each of these three relationships is statistically significant, their substantive impacts are relatively minor.

The second equation shows the same set of relationships for districts with a Latino majority. All relationships remain statistically significant although the size of the relationships, except for population, changes dramatically. The school board representation coefficient is now better than twice the size it was for minority Latino districts. Such a relationship is consistent with the notion that Latino representatives will be less constrained in pursuing their own interests in Latino majority jurisdictions than in jurisdictions where they are a minority. The other labor pool factors also increase in importance, thus suggesting that majority districts might be pushing up against the constraints of the size of the qualified labor force. The important finding in this second equation, however, is that Latino rep-

TABLE 6
The Determinants of Latino Teachers

Dependent variable = Percent Latino Teachers						
Variable	Minority Slope	Districts		Majority Slope	Districts	
		t	tol.		t	tol.
Intercept	-.058	.28	—	-32.268	7.16	—
Latino Population	.200	21.62	.36	.539	4.20	.30
School Board Representation	.055	5.93	.62	-.012	.19	.28
Latino Administrators	.290	16.04	.38	.467	6.04	.24
Latino College Grads	.013	2.06	.70	.890	2.54	.75
Latino Poverty	-.005	.72	.83	.435	2.64	.50
R-squared	.74			.82		
Standard error	2.35			10.43		
F	773.52			94.15		
N of cases	1,365			102		

resentation in majority districts differs from Latino representation in minority districts in significant ways.

Teacher Representation

Our final empirical analysis examines the determinants of Latino teachers. Well-developed models of teacher ethnicity in the literature suggest that labor pool characteristics (the size of the Latino population and the education levels of that population), Latino administrators, and Latino board members will be significantly linked to teacher representation. The strongest determinant of Latino teachers, however, is likely to be the percentage of Latino administrators.⁷

Table 6 reveals such a pattern. In Latino minority districts, a one percentage point increase in Latino administrators is associated with a .29 percentage point increase in Latino teachers, all other things being equal. Latino population also plays a role, but its impact is substantially less. Both Latino board representation and Latino college percentage have marginally significant relationships, but their direct substantive impact is small.⁸

⁷One potential question is what percentage of Latino teachers in the sample are bilingual education teachers. There are no national statistics on this question, but a separate Texas school data set indicates that less than 5% of Latino teachers are bilingual education teachers.

⁸To more fully explain this result, one might ask whether (1) non-Latino administrators resist hiring Latino teachers, (2) Latino administrators make extra efforts to hire Latino teachers, or (3) Latino teachers prefer to work for schools with relatively large numbers of Latino administrators. We cannot be certain which of these dynamics is taking place, but for the purposes of our study, it does not make a large difference whether one, two, or even all three are at work. The regressions show that the presence of Latino administrators leads to more Latino teachers, and it is beyond the scope of our paper to determine the relative importance of these three potential explanations.

The relationships for Latino majority districts are even more clear cut. Latino population, Latino administrators, and labor force characteristics matter, but school board representation does not. A one percentage point increase in Latino administrators is associated with a .47 percentage point increase in Latino teachers, all other things being equal. The corresponding impact for Latino population is a .54 percentage point increase.

The relative magnitude of the school board and administrators findings makes sense because administrators hire teachers and much of this process takes place in the schools rather than in front of the board. A number of researchers have indeed noted the indirect impact of school boards on many district decisions, as much power has devolved to administrators over time.⁹ In Latino minority districts, the impact of school board members is very small; in Latino majority districts, the influence cannot be distinguished from zero. Board members may lack a direct way to influence the composition of these street level bureaucrats. If the causal sequencing is correct, however, Latino school board members have a substantial indirect effect on teacher composition by affecting the ethnicity of school administrators.¹⁰

Conclusions

This is the first paper in a national study designed to update and expand the findings of previous research regarding the political factors and policy practices that influence educational outcomes for Latino students. Multiple studies suggest greater minority representation in the educational policy process translates into more positive outcomes for minority students (Meier, Stewart, and England 1989; Reyes, Scribner, and Scribner 1999; Spring 2000). Meier and Stewart went further in their assessment of the importance of Latino representation when they identified it as the *one* contributing variable that can be manipulated or changed by "concerted political efforts and appropriate policy decisions" (1991, 210). In this report we focus on descriptive representation with the objective of improving our ability to explain and predict the population-representation relationship.

A contemporary study of this topic is useful for several reasons. First, research in the 1970s and the 1980s arrived at different conclusions about the influence of electoral structure on minority educational representation. Second, the Latino population is now located in a different social and political situation. The 2000 Census revealed how this group is expanding throughout the United States, and many educational jurisdictions that have historically educated few Latino chil-

⁹ See Tyack (1974) for a discussion of how the responsibility for teacher hiring changed over time. Other research further suggests that the impact of Latino board members on the hiring of Latino teachers is real although indirect (Wirt and Kirst 2001, 164).

¹⁰ One might ask whether any of the above relationships vary according to which Latino national-origin group comprises the majority of the district population. We were able to test this possibility by separately analyzing majority Mexican-American districts and majority Puerto Rican districts. The regression results derived from these subsamples were very similar to those derived from the overall sample. There were only two plurality Cuban-American districts, however, and there were no majority or plurality districts for other Latino national-origin groups.

dren are now encountering significant and growing numbers of such students. A new and comprehensive national study is therefore important to understanding how Latino educational representation fares in this new and expanding context.

Third, to advance the methodology of analysis, the paper tests for a nonlinear population effect, which was not conducted in the educational representation literature. We also separately examine majority Latino population districts and minority Latino population districts, which was not done by previous research. Lastly, given the extensive litigation over city council districts, current school boards may represent the last opportunity to investigate whether and how electoral structures affect minority representation on political bodies in contemporary America.

Overall, our findings highlight the complexity of the relationship between Latino populations and their representation on school boards. Looking strictly at levels of population and levels of representation on school boards, earlier studies found Latinos significantly underrepresented. Our analysis shows this trend continues and appears to be growing.

The presence of a threshold effect, however, suggests that a nonlinear specification may be appropriate. We also note that Latinos (like any group) may be able to profit from at-large districting when they are a majority of the population. We test a squared population term and divide the sample into majority and minority Latino districts. The nonlinear Latino population variable is significant in the minority Latino districts and adds additional explanation to the overall equation. Both population variables are insignificant in the majority Latino districts and the model contains significant collinearity, however, thus suggesting that in these districts the relationship between Latino population and Latino representation remains linear.

A key question in the literature is the ethnic bias of different selection plans. Our study supports the findings of earlier research showing minority population translating into minority school board seats at a substantially higher rate with ward elections than with at-large elections. Our findings show that at-large election systems usually disadvantage Latinos; the obvious policy recommendation is that at-large systems should be replaced by single-member systems.

Interestingly, appointment systems appear more efficient than ward elections. We contend that the circumstances in appointment systems, however, are fundamentally different from elections. These differences may produce higher representation but potentially change the impact of representation. Why? The attitudes and priorities of political appointees may more closely reflect those of community elites rather than the general population, or appointees simply may behave differently than elected officials. Further study is clearly needed on the political context of appointment systems and its effect on appointee attitudes and behaviors.

We also explored other population demographics that were hypothesized to influence the low level of Latino representation on school boards. Based on theories of participation and group power, we expected the political resources of the population—income, education, and citizenship—to play a role. We found that the low socioeconomic status of the Latino population has no effect on the rela-

tionship. The percentage of the population that is ineligible to vote (noncitizens) has a negative effect, not surprisingly, but the size of that impact is trivial.

Finally, although our models predicting Latinos in lower positions of school authority basically mirror those previously reported, our analysis serves to emphasize the linkage between descriptive and substantive representation. While characteristics of the available labor pool play a role in predicting the presence of Latino administrators and teachers, they are overshadowed by the importance of having Latinos at higher levels of authority. Latino representation on school boards is significantly associated with increases in the percentage of Latino administrators, and the percentage of Latinos in administration is the most important variable determining the presence of Latino teachers. As we know the Latino community wants more Latinos teaching their children, greater Latino school board representation is therefore more likely to lead to education policies congruent with community wishes.

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EXHIBIT “F”

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 conversations 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. Notwithstanding 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.



RICHARD J. HAYDON
City Manager



GILBERT A. TRUJILLO
City Attorney

EXHIBIT “G”

**RESOLUTION OF THE GOVERNING BOARD
OF THE GOLETA UNION SCHOOL DISTRICT
Resolution No. 2019-01**

**Resolution to Initiate a Transition to a By-Trustee Area Election System Commencing
with the 2022 Governing Board Election and Statement of Intent to Seek a Waiver of the
Election Requirement from the State Board of Education**

WHEREAS, the Goleta Union School District Board of Education ("Board") is keenly aware of the importance of maintaining a fair election system;

WHEREAS, the Board has always strived to listen to all voices in the community and represent all of our community;

WHEREAS, California Education Code sections 5019(a) & (c)(1) and 5030 authorizes the Santa Barbara County Committee on School District Organization ("County Committee"), upon application of a school district's governing board, to change the method of election of governing board members in a school district under its jurisdiction;

WHEREAS, the California Voting Rights Act (Elections Code §§ 14025 *et seq.*) ("CVRA") prohibits the use of an "at-large" election system for governing board members of a school district if the "at-large" elections may impair the ability of a protected class to elect candidates of its choice, or its ability to influence the outcome of an election;

WHEREAS, Governing Board ("Board") Members of the Goleta Union School District ("District") are currently elected using an "at-large" election system (i.e., election system in which registered voters of the entire jurisdiction elect candidates to the governing board);

WHEREAS, it is considered the view of the Board that starting with the 2022 Board elections, and with the benefit of then-updated federal decennial Census data released in 2021, the public interest may be better served by election of its Board members using a "by-trustee area" election system (i.e., elections in which one candidate residing in each trustee area is elected by only the registered voters in that particular trustee area);

WHEREAS, although Education Code section 5020 requires that a County Committee's resolution approving a change in the method of electing governing board members be submitted to the electorate for its approval at the school district's next regular election following the District's formal adoption of the new election system, the Board intends to seek a waiver of the voter approval requirement as permitted by law. Education Code sections 33050-33053 authorize the State Board of Education to waive this voter approval requirement, which could reduce the costs and risks associated with a school district's transition to a "by-trustee area" election system;

WHEREAS, the Board finds it is appropriate to seek a waiver of the election requirement in Education Code section 5020, and portions of sections 5019, 5021, and 5030, to ensure the timely implementation of the "by-trustee area" election system commencing with the 2022

Governing Board election, to reduce costs for the District associated with placing an item on the ballot and to reduce any potential legal liability or financial risk to the District under the CVRA;

WHEREAS, the adoption of "by-trustee area" elections will not affect the terms of any Board members serving or elected during this transition, each of whom will serve out his or her full term; and

WHEREAS, the Board, cognizant of its need for fiscal responsibility, desires to implement this change in the manner of electing Board members in a cost effective and efficient manner.

NOW, THEREFORE, the Governing Board of the Goleta Union School District does hereby resolve, order and determine as follows:

1. The above recitals are true and correct.
2. The Board hereby determines that the trustee area boundary lines shall be developed based on the most updated federal decennial Census data following its release in 2021 to provide for "by-trustee areas" elections commencing in 2022.
3. By this resolution, and pursuant to Education Code sections 5019(a) and 5030, the Board directs District staff, when timely, to transmit this resolution to the Santa Barbara County Committee on School District Organization to apply to have the County Committee adopt a change in the method of electing members of the board from "at-large" elections [Education Code section 5030(a)] to "by-trustee area" elections [Education Code section 5030(b)] commencing with the 2022 Board elections.
4. Before submitting a final proposal to the County Committee for a trustee area plan using the federal Census data, multiple public hearings in accordance with Elections Code section 10010 shall be scheduled to obtain public input on the draft proposals prepared.
5. The Board shall apply to the County Committee for establishment of trustee areas pursuant to Education Code section 5019(a) in a timely manner to have the 2022 elections for the Board conducted within the new trustee areas.
6. The Superintendent, or her designee, shall send a copy of this resolution to the County Committee for action in accordance with law.
7. The Superintendent, or her designee, is hereby directed to prepare an additional Board resolution, and implement the applicable legal requirements in a timely manner, to seek a waiver from the State Board of Education of the election requirement imposed by Education Code section 5020.
8. The Superintendent, or her designee, shall consult with legal counsel to resolve all legal issues necessary to give effect to this resolution.
9. The foregoing resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the Board on January 9, 2019, at a duly noticed meeting by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

I, Susan Epstein, Clerk of the Governing Board of the Goleta Union School District, HEREBY CERTIFY that the foregoing Resolution was duly introduced, passed and adopted by the Board at a meeting thereof held on January 9, 2019, by a vote of _____ to _____.

IN WITNESS THEREOF, I have hereto set my hand this ____ day of _____, 2019.

Clerk of the Governing Board

390-112/4392421.1

CONDITIONAL SETTLEMENT AGREEMENT AND RELEASE

This CONDITIONAL SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is entered into on this 9th day of January, 2019 ("Effective Date") by and between the GOLETA UNION SCHOOL DISTRICT, a public school district organized and existing under the laws of the State of California, operating within Santa Barbara County ("DISTRICT"), and LINDSAY ROJAS and HECTOR MENDEZ, residents of District ("Prospective Plaintiffs"). The above parties are referred to herein individually as "Party" and collectively as "Parties."

RECITALS

- A. The Goleta Union School District Board of Education ("Board") is keenly aware of the importance of maintaining a fair election system. The Board has always strived to listen to all voices in the community and represent the interests of the entire community. Currently, members of the Board are elected pursuant to an "at-large" election system in which registered voters of the entire jurisdiction elect candidates to the Board.
- B. On November 26, 2018, the District received a Notice of Violation ("Notice") of the California Voting Rights Act ("Act") from Prospective Plaintiffs, dated November 20, 2018, alleging that the District's at-large system of electing District Board members violates the Act and threatening suit unless the District transitions to a district-based electoral system, an election method in which a candidate must reside within an election district or "trustee area" that is a divisible part of the District and is elected only by voters residing within that election district.
- C. The District denies that the District's at-large electoral system violates the Act. Nevertheless, in recognition that litigation involves significant costs and uncertainty, the District desires to enter into this Agreement.
- D. The Parties mutually desire to delay the institution of district-based elections until 2022 so that the trustee-area boundaries may be drawn based on 2020 federal decennial Census data, which will not become available until 2021.
- E. The Parties now wish conditionally to resolve and settle the Notice and all attendant and potential litigation arising therefrom.

NOW, THEREFORE, in consideration of the mutual covenants and agreements described below, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Settling Parties hereby agree:

1. Obligations of Parties

- A. At or before its regular meeting on February 6, 2019, the District will consider approval of a resolution of intent to institute a district-based election system for District Board elections by the November 2022 regular election.¹ The District

¹ The November 2022 regular election will occur on November 8, 2022.

already planned to consider such a resolution at a January 2019 Board meeting prior to receiving the Notice.

- B. Provided that the District adopts the resolution described in subsection A, Prospective Plaintiffs shall not bring suit against the District prior to November 9, 2022 for any cause of action related to the District's electoral system, including, but not limited to, suit seeking the implementation of district-based elections or claims related to or arising from the Notice.
- C. Provided that the District adopts the resolution described in subsection A, within 30 days of such adoption, the District will remit a payment of \$30,000.00 (thirty thousand dollars) to Prospective Plaintiffs as reimbursement of its costs incurred for the work product to support the Notice in fulfillment of the requirement to reimburse prospective plaintiffs' reasonable costs pursuant to Elections Code section 10010(f). The check will be made payable to Prospective Plaintiffs' attorney-of-record Robert Goodman to his trust account Robert Goodman Trust Account. Pursuant to Elections Code section 10010(f)(1), Prospective Plaintiffs have made a demand for reimbursement and staff has substantiated that the documentation provided by Prospective Plaintiffs represents the demography and legal costs incurred by Prospective Plaintiffs supporting their Notice.

2. Condition Precedent

Prospective Plaintiffs acknowledge, understand and agree that the District's passing of the resolution described in Section 1 is an express condition precedent to the consummation of this Agreement and the covenants, conditions and agreements contained herein. In the event that the resolution is not approved as set forth in Section 1, then this Agreement shall be null and void and shall be of no further force and effect. In such event, neither this Agreement, nor any of its terms or provisions, shall be admissible in any action or proceeding initiated by Prospective Plaintiffs for any purpose.

Further, the Prospective Plaintiffs recognize and acknowledge that the District is under no obligation to pass the resolution and that the District reserves its discretion and the full measure of its powers to evaluate the resolution in accordance with applicable procedures, standards and requirements. It is understood and agreed that this Agreement shall not be construed in any fashion as an advance determination and does not provide the Prospective Plaintiffs with any expectation as to the outcome of the District's decision on the resolution. The District's lack of approval or inaction on the resolution will not constitute a default of this Agreement, but instead will constitute a terminating event of this Agreement.

3. Admissibility of Agreement

If the District does not institute district-based elections for District Board elections by the November 2022 regular election, this Agreement shall not be construed as an admission by the District that such failure to act is unreasonable or unlawful under the Elections Code. In addition, this Agreement may not be introduced into or be admissible in any

judicial proceeding other than a judicial proceeding to enforce the terms of this Agreement.

4. Release

- A. Subject to the performance of the Parties' obligations in this Agreement, the Parties hereby fully and finally waive, release, and permanently discharge each other (and their respective officers, employees, agents, representatives and attorneys) (the "Releasees"), from any and all past, present, or future matters, claims, demands, obligations, liens, actions or causes of action, suits in law or equity, or claims for damages or injuries, whether known or unknown, which they now own, hold or claim to have or at any time heretofore have owned, held or claimed to have held against each other by reason of any matter or thing alleged or referred to, or in any way connected with, arising out of or in any way relating to the Notice (collectively, the "Released Claims"). In connection with the release of the Released Claims, the Parties waive any and all rights that they may have under the provisions of section 1542 of the California Civil Code, which states as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

In the event that any waiver of the provisions of Section 1542 of the California Code provided for in this Agreement shall be judicially determined to be invalid, voidable or unenforceable, for any reason, such waiver to that extent shall be severable from the remaining provisions of this Agreement, and the invalidity, voidability or unenforceability of the waiver shall not affect the validity, effect, enforceability or interpretation of the remaining provisions of this Agreement.

- B. The Parties understand and acknowledge that the foregoing release extends to any claims or damages, without limitation, arising out of the Released Claims that may exist on the date of the execution of this Agreement, but which the Parties do not know to exist, which, if known, would have materially affected their decision to execute this Agreement, regardless of whether their lack of knowledge is a result of ignorance, oversight, error, negligence or any other cause.
- C. Each Party acknowledges and agrees that this Agreement is a compromise and settlement of their disputes and differences, and is not an admission of liability or wrongdoing by any Party.
- D. Except as provided in Section 1.C. of this Agreement, each of the Parties waives any and all claims for the recovery of any costs, expenses, or fees, including attorney fees, associated with the matters and claims released in this Agreement.

5. Representations and Warranties

- A. Prospective Plaintiffs hereby represent and warrant to the District, as of the Effective Date, as follows:
- i. They have not heretofore assigned or transferred, or purported to assign or transfer, to any party not named herein any Released Claim, or any part or portion thereof.
 - ii. To the best of their knowledge, there are no legal actions, suits or similar proceedings pending and served, or threatened in writing against the Prospective Plaintiffs that would adversely affect their ability to consummate the transactions contemplated in this Agreement. To the best of their knowledge, Prospective Plaintiffs are not aware of any existing claims nor of any facts that might give rise to any claims of any type or nature against the District, whether asserted or not, that have not been fully released and discharged by the release set forth in this Agreement.
 - iii. Prospective Plaintiffs have freely entered into this Agreement and are not entering into this Agreement because of any duress, fear, or undue influence; this Agreement is being entered into in good faith.
 - iv. Prospective Plaintiffs have made such investigation of the facts pertaining to this Agreement as they deem necessary.
 - v. Prospective Plaintiffs have, prior to the execution of this Agreement, obtained the advice of independent legal counsel of their own selection regarding the substance of this Agreement and the claims released herein.
- B. In executing this Agreement, Prospective Plaintiffs acknowledge, represent, and warrant to the District that they have not relied upon any statement or representation of any District officer, agent, employee, representative, or attorney regarding any facts not expressly set forth within this Agreement. In entering into this Agreement, Prospective Plaintiffs assume the risk of any misrepresentations, concealment or mistake, whether or not they should subsequently discover or assert for any reason that any fact relied upon by them in entering into this Agreement was untrue, or that any fact was concealed from them, or that their understanding of the facts or of the law was incorrect or incomplete.
- C. The representations and warranties of each of the Parties set forth in this Section and elsewhere in this Agreement will survive the execution and delivery of this Agreement and are a material part of the consideration to the District in entering into this Agreement.

6. Interpretation

- A. The Parties have cooperated in the drafting and preparation of this Agreement and, in any construction or interpretation to be made of this Agreement, the same

shall not be construed against any Party. This Agreement is the product of bargained for and arm's length negotiations between the Parties and their counsel. This Agreement is the joint product of the Parties.

- B. This Agreement is an integrated contract and sets forth the entire agreement between the Parties with respect to the subject matter contained herein. All agreements, covenants, representations and warranties, express or implied, oral or written, of the Parties with regard to such subject matter are contained in this Agreement. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made or relied on by either Party.
- C. This Agreement may not be changed, modified or amended except by written instrument specifying that it amends such agreement and signed by both Parties. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision whether or not similar, nor shall any waiver be deemed a continuing waiver; and no waiver shall be implied from delay or be binding unless executed in writing by the party making the waiver.
- D. All of the covenants, releases and other provisions herein contained in favor of the persons and entities released are made for the express benefit of each and all of the said persons and entities, each of which has the right to enforce such provisions.
- E. This Agreement shall be binding upon and inure to the benefit of each of the Parties, and their respective representatives, officers, employees, agents, heirs, devisees, successors and assigns.

7. Further Cooperation

Each Party shall perform any further acts and execute and deliver any further documents that may be reasonably necessary or appropriate to carry out the provisions and intent of this Agreement. Except as expressly stated otherwise in this Agreement, actions required of the Parties or any of them will not be unreasonably withheld or delayed, and approval or disapproval will be given within the time set forth in this Agreement, or, if no time is given, within a reasonable time. Time will be of the essence of actions required of any of the Parties.

8. No Third Party Beneficiaries

Nothing in this Agreement is intended to benefit any third party or create a third party beneficiary. This Agreement will not be enforceable by any person not a Party to this Agreement.

9. Enforced Delay (Force Majeure)

- A. Performance by either Party shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, acts of terrorism, epidemic, quarantine, casualties, acts of God, litigation,

governmental restrictions imposed or mandated by governmental entities, enactment of conflicting state or federal laws or regulations, or other similar circumstances beyond the reasonable control of the Parties and which substantially interferes with the ability of a Party to perform its obligations under this Agreement.

- B. An extension of time for any such cause (a "Force Majeure Delay") shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the Party claiming such delay and interference delivers to the other Party written notice describing the event, its cause, when and how such Party obtained knowledge, the date the event commenced, and the estimated delay resulting therefrom. Either Party claiming a Force Majeure Delay shall deliver such written notice within thirty (30) days after it obtains actual knowledge of the event. The time for performance will be extended for such period of time as the cause of such delay exists but in any event not longer than for such period of time.

10. Governing Law; Venue

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, without regard to any otherwise applicable principles of conflicts of laws. Any action arising out of this Agreement must be commenced in the state courts of the State of California, County of Santa Barbara, and each party hereby consents to the jurisdiction of the above courts in any such action and to venue in the State of California, County of Santa Barbara, and agrees that such courts have personal jurisdiction over each of them.

11. Counterparts

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

12. Effectiveness

This Agreement shall become effective immediately following execution by each of the Parties and ratification by the Goleta Union School District Board of Education as required by Education Code section 17604.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below ("Date of Execution").

CALIFORNIA ELECTIONS CODE

§ 14025. Short title

Effective: January 1, 2003

This act shall be known and may be cited as the California Voting Rights Act of 2001

§ 14026. Definitions

As used in this chapter:

(a) “At-large method of election” means any of the following methods of electing members to the governing body of a political subdivision:

(1) One in which the voters of the entire jurisdiction elect the members to the governing body.

(2) One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.

(3) One that combines at-large elections with district-based elections.

(b) “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.

(c) “Political subdivision” means a geographic area of representation created for the provision of government services, including, but not limited to, a general law city, general law county, charter city, charter county, charter city and county, school district, community college district, or other district organized pursuant to state law.

(d) “Protected class” means a class of voters who are members of a race, color, or language minority group, as this class is referenced and defined in the federal Voting Rights Act of 1965 ([52 U.S.C. Sec. 10301 et seq.](#)).

(e) “Racially polarized voting” means voting in which there is a difference, as defined in case law regarding enforcement of the federal Voting Rights Act of 1965 ([52 U.S.C. Sec. 10301 et seq.](#)), 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 choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act of 1965 ([52 U.S.C. Sec. 10301 et seq.](#)) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

§ 14027. At-large method of election affecting protected class voters

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 abridgment of the rights of voters who are members of a protected class, as defined pursuant to [Section 14026](#).

§ 14028. Violation of protected class voter rights; determination

(a) A violation of [Section 14027](#) is established if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision. Elections conducted prior to the filing of an action pursuant to [Section 14027](#) and this section are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action.

(b) The occurrence of racially polarized voting shall be 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.

(c) The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of [Section 14027](#) and this section, but may be a factor in determining an appropriate remedy.

(d) Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

(e) Other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns are probative, but not necessary factors to establish a violation of [Section 14027](#) and this section.

§ 14029. Remedies for violation of §§ 14027 and 14028

Upon a finding of a violation of [Section 14027](#) and [Section 14028](#), the court shall implement appropriate remedies, including the imposition of district-based elections, that are tailored to remedy the violation.

§ 14030. Attorney's fees and costs

In any action to enforce [Section 14027](#) and [Section 14028](#), the court shall allow the prevailing plaintiff party, other than the state or political subdivision thereof, a reasonable attorney's fee consistent with the standards established in [Serrano v. Priest \(1977\) 20 Cal.3d 25, 48-49](#), and litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

§ 14031. Implementation as constitutional protection

This chapter is enacted to implement the guarantees of Section 7 of Article I and of [Section 2 of Article II of the California Constitution](#).

§ 14032. Voter private right of action

Any voter who is a member of a protected class and who resides in a political subdivision where a violation of [Sections 14027](#) and [14028](#) is alleged may file an action pursuant to those sections in the superior court of the county in which the political subdivision is located.

15 Cal.5th 292
Supreme Court of California.

PICO NEIGHBORHOOD ASSOCIATION et al.,
Plaintiffs and Respondents,
v.
CITY OF SANTA MONICA, Defendant and
Appellant.

S263972
|
August 24, 2023
|
As Modified September 20, 2023

Synopsis

Background: Neighborhood organization and registered voter brought action alleging that city's at-large voting system for nonpartisan elections for city council discriminated against Latinos, in violation of California Voting Rights Act and California Constitution's Equal Protection Clause. Following bench trial, the Superior Court, Los Angeles County, No. BC616804, [Yvette M. Palazuelos, J.](#), [2019 WL 10854474](#), entered judgment in plaintiffs' favor on constitutional and statutory claims and ordered city to switch to district-based voting. City appealed. The Court of Appeal, [51 Cal.App.5th 1002](#), 265 Cal.Rptr.3d 530, reversed. Review was granted.

[Holding:] The Supreme Court, [Evans, J.](#), held that plaintiffs, after establishing existence of racially polarized voting, were not required to prove that minority group of Latino voters would constitute a majority, or near majority, of hypothetical single-member district.

Court of Appeal reversed; remanded.

Opinion, [51 Cal.App.5th 1002](#), 265 Cal.Rptr.3d 530, depublished.

Procedural Posture(s): Petition for Discretionary Review; On Appeal; Judgment.

West Headnotes (17)

^[1] **Election Law** **Vote Dilution**
Election Law **Compactness and cohesiveness of minority group**

In two significant respects, California Voting Rights Act (CVRA) makes it easier than § 2 of VRA to challenge State's or political subdivision's at-large method of election: first, CVRA, unlike VRA, does not require plaintiff to demonstrate that members of minority group would be geographically compact or concentrated enough to constitute a majority of hypothetical single-member district, and second, while plaintiff can succeed under either VRA or CVRA by showing that at-large method dilutes minority group's voting power by impairing its ability to elect candidates of its choice, only CVRA allows plaintiff to prevail by demonstrating, in the alternative, that at-large method impairs minority group's ability to influence election outcome. Voting Rights Act of 1965 § 2, [52 U.S.C.A. § 10301\(b\)](#); [Cal. Elec. Code §§ 14027, 14028\(c\)](#).

^[2] **Election Law** **Vote Dilution**

A court presented with a vote-dilution claim challenging an at-large voting system under § 2 of the VRA, or under the California Voting Rights Act (CVRA), which applies to nonpartisan elections, should undertake a searching evaluation of the totality of the facts and circumstances, including the characteristics of the specific locality, its electoral history, and an intensely local appraisal of the design and impact of the contested electoral mechanisms, as well as the design and impact of the potential alternative electoral system. Voting Rights Act of 1965 § 2, [52 U.S.C.A. § 10301\(b\)](#); [Cal. Elec. Code §§ 14026\(a, c\), 14027, 14028\(e\)](#).

^[3] **Election Law** **Compactness and cohesiveness**

of minority group

Election Law Racially polarized or bloc voting

An at-large electoral system or multimember district can qualify as a prohibited vote-dilution practice under § 2 of the VRA when the plaintiff can show that a bloc-voting majority is usually able to defeat candidates supported by a politically cohesive, geographically insular minority group, and the greater the degree to which the electoral minority is homogenous and insular and the greater the degree that bloc voting occurs along majority-minority lines, the greater will be the extent to which the minority's voting power is diluted. Voting Rights Act of 1965 § 2,  52 U.S.C.A. § 10301.

- [4] **Election Law**  Compactness and cohesiveness of minority group

Election Law Racially polarized or bloc voting

Plaintiff asserting vote-dilution challenge to at-large voting system, under § 2 of VRA, must satisfy three threshold conditions under  *Gingles*: first, minority group must be sufficiently large and geographically compact to constitute majority in single-member district, second, minority group must be politically cohesive, and third, white majority must vote sufficiently as bloc to enable it, in absence of special circumstances, such as minority candidate running unopposed, usually to defeat minority group's preferred candidate. Voting Rights Act of 1965 § 2,  52 U.S.C.A. § 10301.

- [5] **Election Law**  Vote Dilution

Once the plaintiff asserting vote-dilution challenge to at-large voting system, under § 2 of VRA, has satisfied the three threshold conditions under  *Gingles*, trial court is to consider totality of the circumstances and determine, based upon a searching practical evaluation of past and present reality, whether the political process is equally open to minority voters, and this determination is peculiarly dependent upon the facts of each case, and requires an intensely local appraisal of the design and impact of contested electoral mechanisms. Voting Rights

Act of 1965 § 2,  52 U.S.C.A. § 10301.

- [6] **Election Law**  Vote Dilution

Under totality of circumstances approach for considering vote-dilution challenge to at-large voting system, under § 2 of VRA, court considers a number of factors that typically may be relevant, including: history of voting-related discrimination in State or political subdivision; extent to which voting is racially polarized; extent to which State or political subdivision has used voting practices or procedures that tend to enhance opportunity for discrimination against minority group, such as unusually large election districts, majority vote requirements, and prohibitions against bullet voting; exclusion of members of minority group from candidate slating processes; extent to which minority group members bear effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in political process; use of overt or subtle racial appeals in political campaigns; and extent to which members of minority group have been elected to public office in the jurisdiction. Voting Rights Act of 1965 § 2,  52 U.S.C.A. § 10301.

- [7] **Election Law**  Compactness and cohesiveness of minority group

Election Law Racially polarized or bloc voting

For a vote-dilution challenge to an at-large method of election under Section 2 of the VRA, or under the California Voting Rights Act (CVRA), which applies to nonpartisan elections, a plaintiff must show polarized voting, i.e., members of minority group vote as a politically cohesive unit, while the majority votes sufficiently as a bloc usually to defeat minority group's preferred candidate. Voting Rights Act of 1965 § 2,  52 U.S.C.A. § 10301; Cal. Elec. Code §§ 14026(a, c, e), 14027, 14028(a).

- [8] **Statutes**  Context

A court construing a statute does not view a fragment in isolation, but considers the statute as

a whole, in context with related provisions and the overall statutory structure, so that it may best identify and effectuate the scheme's underlying purpose.

^[9] **Election Law**🔑Dilution of voting power in general

To establish vote dilution under § 2 of the VRA, a court must find a reasonable alternative practice as a benchmark against which to measure the existing voting practice. Voting Rights Act of 1965 § 2,  52 U.S.C.A. § 10301.

^[10] **Election Law**🔑Racially polarized or bloc voting

While the existence of racially polarized voting is relevant to a vote-dilution claim under § 2 of the VRA, and is indeed a key element for the claim, it is not in itself sufficient, and dilution requires a showing that the minority group has less ability to elect its preferred candidate. Voting Rights Act of 1965 § 2,  52 U.S.C.A. § 10301.

^[11] **Election Law**🔑Racially polarized or bloc voting

The existence of racially polarized voting is not, in itself, sufficient for a vote-dilution claim under the California Voting Rights Act (CVRA) challenging a nonpartisan at-large voting system, and dilution requires a showing that the minority group has less ability to elect its preferred candidate or influence the election's outcome than it would have if the at-large system had not been adopted. Cal. Elec. Code §§ 14026(a, c), 14027.

^[12] **Election Law**🔑Vote Dilution

To establish the dilution element for a vote-dilution claim under the California Voting Rights Act (CVRA) challenging a nonpartisan at-large voting system, the plaintiff must identify a reasonable alternative voting practice to the existing at-large electoral system that will serve as the benchmark undiluted voting practice. Cal. Elec. Code §§ 14026(a, c), 14027.

^[13] **Election Law**🔑Compactness and cohesiveness of minority group

The rationale for requiring, in a vote-dilution challenge under § 2 of the VRA to an at-large voting system, that the challenger demonstrate that the minority group is sufficiently large and geographically compact to constitute a majority in a single-member district is that if the minority group is spread evenly throughout a multimember district, or if, although geographically compact, the minority group is so small in relation to the surrounding white population that it could not constitute a majority in a single-member district, these minority voters cannot maintain that they would have been able to elect representatives of their choice in the absence of the multimember electoral structure. Voting Rights Act of 1965 § 2,  52 U.S.C.A. § 10301.

^[14] **Municipal Corporations**🔑Nature and constitution of body in general

To prevail on vote-dilution challenge under California Voting Rights Act (CVRA) to at-large method of nonpartisan elections for city council, challengers, after establishing existence of racially polarized voting, were not required to prove that minority group of Latino voters would constitute a majority, or near majority, of hypothetical single-member district, where winning candidates often earned only plurality of vote; accordingly, what was required to establish dilution of Latino voters' ability to elect candidates of their choice was proof that, under some lawful alternative electoral system, Latino voters would have potential, on their own or with help of crossover voters, to elect their preferred candidate, and lawful alternative electoral systems could include, but were not limited to, single-member district elections. Cal. Elec. Code §§ 14026(a, c, e), 14027, 14028(a).

^[15] **Election Law**🔑Compactness and cohesiveness of minority group

To establish, under the California Voting Rights Act (CVRA), that an at-large voting system for nonpartisan elections dilutes a minority group's ability to elect its preferred candidate, a plaintiff

must demonstrate the potential to elect representatives under some lawful alternative electoral method, and one way to do this would be to show that minority group would be sufficiently large and geographically compact to constitute a majority in a single-member district, but that is not the only way, and plaintiff could demonstrate minority group's ability to attract crossover votes for its preferred candidate, or plaintiff may identify nondistrict remedies that would enable minority group, on its own or with assistance of crossover votes, to elect its preferred candidate. Cal. Elec. Code §§ 14026(a, c, e), 14027.

^[16] **Election Law** **Vote Dilution**

Key inquiry in establishing dilution, in vote-dilution challenge to at-large voting system for nonpartisan elections under California Voting Rights Act (CVRA), of minority group's ability to elect its preferred candidate is what percentage of vote would be required to win, an inquiry that is not short-circuited merely because minority group may fall short of absolute majority or something close to it, and in predicting how many candidates are likely to run and what percentage may be necessary to win, courts may consider experiences of similar jurisdictions that use district elections or other alternatives to traditional at-large elections, and courts should keep in mind that the inquiry at liability stage is simply to prove that a solution is possible, and not necessarily to present final solution. Voting Rights Act of 1965 § 2,  52 U.S.C.A. § 10301(b); Cal. Elec. Code §§ 14026(a, c), 14027, 14028(e).

^[17] **Election Law** **Vote Dilution**

The dilution element for a vote-dilution challenge to an at-large voting system under § 2 of the VRA, or under the California Voting Rights Act (CVRA), which applies to nonpartisan elections, ensures that the minority group is not made worse off, and to replace at-large elections with district elections under a dilution theory, a successful plaintiff must show

not merely that the minority group would have a real electoral opportunity in one or more hypothetical districts, but also that the incremental gain in the group's ability to elect its candidate of choice in such districts would not be offset by a loss of the group's potential to elect its candidates of choice elsewhere in the locality. Voting Rights Act of 1965 § 2,  52 U.S.C.A. § 10301(b); Cal. Elec. Code §§ 14026(a, c), 14027.

****57 ***322** Second Appellate District, Division Eight, B295935, Los Angeles County Superior Court, BC 616804, Yvette M. Palazuelos, Judge

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Opinion

Opinion of the Court by [Evans](#), J.

***305 **58 ***323** Local governments make many of the most important decisions that affect Californians' everyday lives. They build and repair public streets, they define a neighborhood's character through planning and zoning, and they decide where to place public parks and where to allow restaurants, bars, and liquor stores to operate. They make decisions about public transit and decide where to site industries that cause pollution. They provide police services and determine the level and type of policing and other first responder services, they educate our children, they operate or regulate local utilities, and they have the power to levy taxes. The people exercise control over these choices by electing representatives to city councils, county boards, boards of education, community college boards, special district boards, and other bodies.

The genius of representative government, in all its guises, is that it is responsive to the people it serves. But its ability to be responsive is dependent in a fundamental way on the assumption that each *****324** person's vote is of equal weight. While we often take that assumption for granted, sometimes the actual value of one's vote can vary based on the way the voting is structured. For example, a minority of voters may find itself unable to elect even a single member of a multimember body when the members are elected ***306** at large, but would be able to elect one or more representatives if the members were elected by districts or by another lawful method.

In such circumstances, the voting rules may effectively decide whether a group of voters can have a voice in the myriad decisions made by local representatives. With a seat at the table, the voters' representative can have a say in the topics and terms of the debate on the many crucial decisions that local governments make. Without a seat, though, the

voters' voice may be effectively muted or silenced and their needs and preferences may be ignored or given less weight.

To address this problem, federal and state law restrict at-large voting systems from unfairly submerging or diluting the votes of a minority in the majority's greater numbers. Section 2 of the federal Voting Rights Act of 1965 (52 U.S.C. § 10301; VRA) prohibits states and their political subdivisions from using an at-large method of election when such a scheme would “result in unequal access to the electoral process” based on protected characteristics of race, color, or membership in a language minority group. (*Thornburg v. Gingles* (1986) 478 U.S. 30, 46, 106 S.Ct. 2752, 92 L.Ed.2d 25 (*Gingles*)). In an effort to provide greater protections to California voters than those provided by the VRA, the Legislature subsequently enacted the California Voting Rights Act of 2001 (Elec. Code, § 14025 et seq.; CVRA). The CVRA prohibits an at-large method of election “that impairs the ability of a protected class” (*id.*, § 14027) — as defined by race, color, or language minority group (*id.*, § 14026, subd. (d)) — “to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class” (*id.*, § 14027).

^[1] Both statutory schemes require a plaintiff to show racially polarized voting — i.e., that the protected class members vote as a politically cohesive unit, while the majority votes “sufficiently as a bloc usually to defeat” the protected class's preferred candidate. (*Gingles*, *supra*, 478 U.S. at p. 56, 106 S.Ct. 2752; accord, Elec. Code, §§ 14026, subd. (e) [providing that “racially polarized voting” may be established by “[t]he methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the [VRA]”, 14028, subd. (a).] The CVRA, however, “make[s] it easier to successfully challenge at-large districts” in two significant respects. (Assem. Com. on Elections, Reapportionment and Const. Amends., Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Mar. 18, 2002, p. 4.) First, the CVRA, unlike the VRA, does not require a plaintiff to demonstrate that the members of the protected class would be geographically compact or concentrated enough to constitute a majority of a hypothetical single-member district. (Compare Elec. Code, § 14028, subd. (c) with *Gingles*, at p. 50, 106 S.Ct. 2752.) ^{*307} Second, while a plaintiff can succeed under either the

VRA or the CVRA by showing that the at-large method dilutes a protected class's voting power by impairing its ability “to elect” candidates of its choice (52 U.S.C. § 10301(b); Elec. Code, § 14027), only the CVRA allows the plaintiff to prevail by demonstrating, in the alternative, that the at-large method impairs the class's ability “to influence the outcome of an election.” ^{***325} (Elec. Code, § 14027, italics added; cf. *League of United Latin American Citizens v. Perry* (2006) 548 U.S. 399, 446, 126 S.Ct. 2594, 165 L.Ed.2d 609 (*LULAC*) (plur. opn. of Kennedy, J.) [“The failure to create an influence district ... does not run afoul of § 2 of the [VRA]”].)

In this case, the trial court determined that because of racially polarized voting, the at-large method of electing city council members in the City of Santa Monica (the City) diluted Latino voters' ability to elect their preferred candidates and their ability to influence the outcome of council elections, as compared to several alternative electoral methods, including district elections. To remedy this violation, the trial court ordered the City to promptly conduct a special election using a seven-district map drafted by an expert who testified at trial.

The Court of Appeal granted a stay of the judgment and then reversed. It disagreed with the trial court's finding that the at-large method of election had “impaired Latinos' ability to elect candidates of their choice or to influence the outcome of an election.” In the Court of Appeal's view, there had been no dilution of Latino voters' ability to elect their preferred candidates because Latino voters were too few and too geographically dispersed “to muster a majority, no matter how the City might slice itself into districts.” The court likewise found no dilution of Latino voters' ability to influence the outcome of an election because a group's ability to influence an election, the Court of Appeal reasoned, has no meaning independent of the group's ability to elect its preferred candidate. In light of its findings, the Court of Appeal found it unnecessary to consider whether racially polarized voting had been established.

We conclude the Court of Appeal misconstrued the CVRA. To prevail on a CVRA ^{**60} claim, a plaintiff who has established the existence of racially polarized voting in an at-large system need not prove that the protected class would constitute a majority — or, as the City proposes, a near

majority — of a hypothetical single-member district. City council elections, after all, are nonpartisan (Cal. Const., art. II, § 6), and the record here shows that winning candidates often earn only a plurality of the vote. Accordingly, what is required to establish “dilution” of a protected class’s “ability ... to elect candidates of its choice” (Elec. Code, § 14027) is proof that, under some lawful alternative electoral system, the protected class would have the *308 potential, on its own or with the help of crossover voters, to elect its preferred candidate. The lawful alternative electoral system may include, but is not limited to, single-member district elections.

^[2] A court presented with a dilution claim should undertake a searching evaluation of the totality of the facts and circumstances (see, e.g., Elec. Code, § 14028, subd. (e)), including the characteristics of the specific locality, its electoral history, and “ ‘an intensely local appraisal of the design and impact’ of the contested electoral mechanisms” as well as the design and impact of the potential alternative electoral system. (Gingles, supra, 478 U.S. at p. 79, 106 S.Ct. 2752; see Allen v. Milligan (2023) 599 U.S. 1, —, 143 S.Ct. 1487 [216 L.Ed.2d 60, 75] (Milligan).) In predicting how many candidates are likely to run and what percentage may be necessary to win, courts may also consider the experiences of other similar jurisdictions that use alternative electoral systems. (Cf. Gingles, at p. 56, 106 S.Ct. 2752.)

Because the Court of Appeal did not evaluate the dilution element of the CVRA under this standard, we reverse the judgment and remand the matter to the Court ***326 of Appeal for it to reconsider in the first instance the CVRA claim presented here.

I. Background

Defendant, the City of Santa Monica, has a seven-member city council. Members are elected at large through staggered elections: four are elected during the year of a presidential election, while the other three are elected during the year of a gubernatorial election. Plaintiff Pico Neighborhood Association is a nonprofit organization dedicated to advancing the interests of the residents of the City’s Pico neighborhood, where its Latino residents are concentrated.

While Latinos constitute only 13.64 percent of the City’s citizen-voting-age population, they make up 30 percent of Pico’s citizen-voting-age population.

In April 2016, plaintiffs Pico Neighborhood Association and Maria Loya, a Latina registered voter, filed this action against the City, alleging that the City’s at-large method of electing its city council unlawfully impaired the ability of Latino voters to elect their preferred candidates or, alternatively, to influence the outcome of council elections. The at-large scheme, in plaintiffs’ view, violated the CVRA as well as the equal protection clause of the California Constitution (Cal. Const., art. I, § 7, subd. (a)).

Following a six-week trial, the Los Angeles County Superior Court ruled in plaintiffs’ favor on both claims, but this appeal concerns only the CVRA claim. After reviewing elections over the preceding 24 years, the court *309 declared that “a consistent pattern of racially-polarized voting emerges. In most elections where the choice is available, Latino voters strongly prefer a Latino candidate running for Defendant’s city council, but, despite that support, the preferred Latino candidate loses.” Indeed, at the time of the court’s ruling, “only one Latino ha[d] been elected to the Santa Monica City Council in the 72 years of the current election system.”¹ The court further observed that the statistical evidence of racially polarized voting was corroborated by multiple qualitative factors within the meaning of Elections Code section 14028, subdivision (e): a history of discrimination against Latinos in Los Angeles County generally and in the City specifically; the use **61 of staggered elections, which may have discriminatory effects in some circumstances; an income disparity between the City’s Latinos and its majority population that is “far greater than the national disparity”; the use of racist appeals in city council campaigns; and the lack of responsiveness to the interests and concerns of the City’s Latino community, including the substantial underrepresentation of Latinos on the City’s various commissions.

The trial court further found that the City’s at-large voting system unlawfully diluted the electoral strength of its Latino residents within the meaning of the CVRA, in that several alternative voting systems — e.g., district-based elections, cumulative voting, limited voting, and ranked choice voting — would better enable Latino voters “to elect candidates of

their choice or influence the outcomes of elections.” In light of “the national, state and local experiences with district elections, particularly those involving districts in which the minority group is not a majority of eligible voters,” the court adopted the election map drafted by plaintiffs’ expert, ***327 which created seven council districts. The court ordered a special, district-based election for all seven seats to be held on July 2, 2019.

The City successfully petitioned for a writ of supersedeas to stay the trial court’s order for new elections pending resolution of its appeal. In that appeal, the Second Appellate District, Division Eight, reversed the trial court judgment, finding that the City’s at-large voting system violated neither the CVRA nor the California Constitution. The Court of Appeal began by rejecting plaintiffs’ one-sentence argument that a CVRA violation could be established merely by evidence of racially polarized voting without any further showing that the City’s at-large voting system “diluted” Latino voting power as compared to “ ‘some alternative method of election.’ ” The court next concluded that changing from an at-large system (where Latinos constituted approximately 14 percent of the voting population) to a district system *310 (where Latinos would constitute 30 percent of a district centered around the Pico neighborhood) would not enhance Latino voters’ ability to elect their candidates of choice or influence the outcome of an election in a “legally significant” way and therefore failed to demonstrate that the City’s at-large system “dilut[ed]” their voting power within the meaning of the CVRA. Plaintiffs’ theory, the Court of Appeal reasoned, “would create absurd results,” in that “any unrealized increase in a group’s percentage would satisfy the dilution element,” even if the group had “a vanishingly small numerical presence.” The court likewise rejected plaintiffs’ contention that other voters might “ ‘cross over’ and vote for Latino candidates, buoying Latino power and clearing the 50 percent threshold to electoral success.” Such a suggestion, the Court of Appeal claimed, “arbitrarily embraces racially polarized voting when it helps and abandons it when it hurts.” In light of its conclusion that plaintiffs had failed to demonstrate dilution, the court did not consider whether plaintiffs had demonstrated the existence of racially polarized voting.

We granted plaintiffs’ petition for review to determine what constitutes dilution of a protected class’s ability to elect

candidates of its choice or to influence the outcome of an election within the meaning of the CVRA. We also ordered depublication of the Court of Appeal opinion. (*Pico Neighborhood Assn. v. City of Santa Monica* (2020) 270 Cal.Rptr.3d, 474 P.3d 635.)

II. Discussion

Different electoral systems can lead to different outcomes. (See Engstrom, *Modified Multi-Seat Election Systems As Remedies for Minority Vote Dilution* (1992) 21 Stetson L.Rev. 743, 743 (Engstrom).) For example, where a racial minority and a racial majority consistently prefer different candidates, “multimember districts and at-large voting schemes may ‘operate to minimize or cancel out the voting strength of racial [minorities in] the voting population.’ ” (*Gingles, supra*, 478 U.S. at p. 47, 106 S.Ct. 2752.) The use of at-large voting schemes in such circumstances allows the majority, by virtue of its numerical superiority, not only to regularly defeat the candidates preferred by the minority (*id.* at p. 48, 106 S.Ct. 2752), but also to “ ‘ignore [minority] interests without fear of political consequences,’ [citation] leaving ***62 the minority effectively unrepresented.” (*Id.* at p. 48, fn. 14, 106 S.Ct. 2752.) If, on the other hand, the political unit were “divided into single-member districts,” those same minority groups “may be able to elect several representatives.” (*Rogers v. Lodge* (1982) 458 U.S. 613, 616, 102 S.Ct. 3272, 73 L.Ed.2d 1012.) This potential disparity is why the high court has “stated on many occasions that multimember districting ***328 plans, as well as at-large plans, generally pose greater threats to minority-voter *311 participation in the political process than do single-member districts.” (*Grove v. Emison* (1993) 507 U.S. 25, 40, 113 S.Ct. 1075, 122 L.Ed.2d 388.)

The VRA and the CVRA each offer an opportunity for racial and language minority groups to challenge the dilution of their voting power caused by at-large voting systems. But they do so in somewhat different ways. Because the CVRA bears some similarities to the VRA, while also seeking to address perceived inadequacies in the VRA, we begin with a review of both statutory schemes.

A. The VRA and the CVRA, Compared

1. The VRA

^[3] The VRA, as amended in 1982, prohibits a state or its political subdivisions from using any “voting qualification or prerequisite to voting or standard, practice, or procedure” that “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or [membership in a language minority group]” where, “based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of [the protected] class of citizens ... in that its members have less opportunity than other members of the electorate ... to elect representatives of their choice.” (52 U.S.C. § 10301(a), (b).) An at-large electoral system or multimember district² can qualify as a prohibited practice under the VRA when the plaintiff can show that a bloc-voting majority is “usually ... able to defeat candidates supported by a politically cohesive, geographically insular minority group.” (*Gingles, supra*, 478 U.S. at p. 49, 106 S.Ct. 2752.) “‘[T]he greater the degree to which the electoral minority is homogenous and insular and the greater the degree that bloc voting occurs along majority-minority lines, the greater will be the extent to which the minority’s voting power is diluted by multimember districting.’” (*Id.* at p. 50, 106 S.Ct. 2752.)

^[4] ^[5] ^[6] A plaintiff asserting a “vote dilution” challenge to an at-large voting system under the VRA must satisfy “three threshold conditions.” (*Voinovich v. Quilter* (1993) 507 U.S. 146, 157, 113 S.Ct. 1149, 122 L.Ed.2d 500.) “First, the minority group must be able to demonstrate that it is sufficiently large and *312 geographically compact to constitute a majority in a single-member district. ... Second, the minority group must be able to show that it is politically cohesive. ... Third, the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it — in the absence of special circumstances, such as the minority candidate running unopposed, [citation] — usually to defeat the minority’s preferred candidate.” (*Gingles, supra*, 478 U.S. at pp. 50–51, 106 S.Ct. 2752, fn. omitted.) Once those predicate facts have been established, “the trial court is to consider the ‘totality of the circumstances’ and to

determine, based ‘upon a searching practical evaluation of the “past and present reality,” ’ [citation], whether the political process is equally open to minority voters. ‘ “This determination is peculiarly dependent ***329 upon the facts of each case,” ’ [citation], and requires ‘an intensely local appraisal of the design and impact’ of the contested electoral mechanisms.” (*Id.* at p. 79, 106 S.Ct. 2752.) In undertaking this analysis, the court considers a number of factors that “typically may be relevant” to a claim under the VRA (*Gingles*, at p. 44, 106 S.Ct. 2752) and that are sometimes called “ ‘the Senate factors’ **63 ”³ because they appeared in the 1982 Senate Judiciary Committee majority report that accompanied the bill amending the VRA (*Yumori-Kaku v. City of Santa Clara* (2020) 59 Cal.App.5th 385, 394, 273 Cal.Rptr.3d 437).

2. The CVRA

While the CVRA is “much like” the VRA in some ways, there are notable differences between the two statutory schemes. (Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, p. 2.) Four stand out in this proceeding. First, unlike the VRA, the CVRA applies only to “[a]n at-large method of election” (*Elec. Code*, § 14027) for nonpartisan offices (*id.*, § 14026, subds. (a), (c); see *Cal. Const.*, art. II, § 6). Second, the CVRA addresses not only impairments to a protected class’s “ability ... to elect candidates of its choice” (*Elec. Code*, § 14027; cf. 52 U.S.C. § 10301(b) [“opportunity ... to elect representatives of their choice”]), but also the class’s “ability to influence the outcome of an election” (*Elec. Code*, § 14027, italics added). Third, the CVRA made it easier to challenge at-large electoral systems by explicitly rejecting the first *Gingles* *313 precondition: “The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy.” (*Elec. Code*, § 14028, subd. (c).) Fourth, the CVRA includes its own list of potentially probative factors, many of which overlap with the Senate factors above, but cautions that they are “not necessary factors to establish a violation” of the CVRA. (*Elec. Code*, § 14028, subd. (e).)⁴

^[7] Despite these differences, the CVRA, like the VRA, requires a plaintiff claiming vote dilution arising from an at-large voting system to establish the existence of racially polarized voting — i.e., that the protected class members vote as a ***330 politically cohesive unit, while the majority votes “sufficiently as a bloc usually to defeat” the protected class’s preferred candidate. (Gingles, *supra*, 478 U.S. at p. 56, 106 S.Ct. 2752; accord, Elec. Code, §§ 14026, subd. (e) [providing that “racially polarized voting” may be established by “[t]he methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the [VRA]”], 14028, subd. (a).)⁵

B. Defining Terms in the CVRA

The CVRA prohibits the use of an at-large method of election when it “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 abridgment of the rights of voters who **64 are members of a protected class.” (Elec. Code, § 14027.) Plaintiffs contend that the City’s at-large city council elections prevent Latino voters from electing, either on their own or with the support of crossover voters, their preferred candidate. They argue this diluted their ability to elect their candidate of choice as well as their ability to influence the outcome of an election. The statute, however, does not define “dilution,” “ability ... to elect candidates of its choice,” or “ability ... to influence the outcome of an election.” (*Ibid.*) The meaning of these *314 undefined terms presents a pure question of law that we review de novo. (See *Lopez v. Ledesma* (2022) 12 Cal.5th 848, 857, 290 Cal.Rptr.3d 532, 505 P.3d 212.)

1. “Dilution”

In plaintiffs’ view, proof of racially polarized voting, in itself, establishes “dilution” within the meaning of the CVRA. They rely on the “plain language” of Elections Code section 14028, subdivision (a), which provides, “A violation of Section 14027 is established if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision” (Italics added.) According to plaintiffs, “Section 14028 expressly states how a violation of Section 14027 is shown” — i.e.,

simply by demonstrating the existence of racially polarized voting in an at-large jurisdiction.

^[8] ^[9] ^[10] When considered in isolation, this single sentence might arguably be susceptible to plaintiffs’ reading. However, a court construing a statute does not view a fragment in isolation, but considers the statute as a whole, in context with related provisions and the overall statutory structure, so that it may best identify and effectuate the scheme’s underlying purpose. (See *People v. Pennington* (2017) 3 Cal.5th 786, 795, 221 Cal.Rptr.3d 448, 400 P.3d 14.) As plaintiffs concede, and as the legislative history reveals, the CVRA is in many ways “very similar” to the VRA. (Governor’s Off. of Planning & Research, Enrolled Bill Rep. on Sen. Bill No. 976 (2001–2002 Reg. Sess.) July 1, 2002, p. 4.) When we construe “dilution” under the CVRA, we must therefore be mindful that it is a term of art with a settled meaning under section 2 of the VRA: “‘The phrase vote dilution itself suggests a norm with respect to which the fact of dilution may be ascertained.’ ” (Holder v. Hall (1994) 512 U.S. 874, 880, 114 S.Ct. 2581, 129 L.Ed.2d 687 (plur. opn. of Kennedy, J.)) To establish vote dilution under the VRA, “a court must find a reasonable alternative practice as a benchmark ***331 against which to measure the existing voting practice.” (Holder, at p. 880, 114 S.Ct. 2581 (plur. opn. of Kennedy, J.); *id.* at p. 887, 114 S.Ct. 2581 (conc. opn. of O’Connor, J.) [“On this, there is general agreement”]; *id.* at p. 951, 114 S.Ct. 2581 (dis. opn. of Blackmun, J.) [“There is widespread agreement”].) So while the existence of racially polarized voting “‘is relevant to a vote dilution claim’ ” under the VRA (Gingles, *supra*, 478 U.S. at p. 55, 106 S.Ct. 2752) — and is indeed “a key element” (*ibid.*) — it is not in itself sufficient.

^[11] We find, for several reasons, the same is true under the CVRA. The similarities between the two schemes strongly suggest that “dilution” requires not only a showing that racially polarized voting exists, but also that the protected class thereby has less ability to elect its preferred candidate or *315 influence the election’s outcome than it would have if the at-large system had not been adopted. (Cf. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 874, 280 Cal.Rptr.3d 783, 489 P.3d 1166 [concluding that the Legislature intended to adopt the “‘widely understood’ ”

meaning of a term in federal law];  *Davis v. City of Berkeley* (1988) 47 Cal.3d 512, 533, 253 Cal.Rptr. 839, 765 P.2d 46 [concluding that undefined “terms of art” in a statute refer to the definitions provided by federal law].) Although the legislative history materials can be read in different ways, one committee analysis recognized that the CVRA targets racially polarized voting in at-large elections only “if it Impairs the Right of Protected Groups” to elect their preferred candidates or influence the outcome of an election. (Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976, *supra*, as amended Apr. 9, 2002, p. 2.) After all, “the very concept of vote dilution implies — and, indeed, necessitates — the existence of an ‘undiluted’ practice against which the fact of dilution may be measured.” (****65** *Reno v. Bossier Parish School Bd.* (1997) 520 U.S. 471, 480, 117 S.Ct. 1491, 137 L.Ed.2d 730.)

^[12] Plaintiffs’ construction would allow a party to prevail based solely on proof of racially polarized voting that could not be remedied or ameliorated by any other electoral system. Moreover, such a construction would render the word “dilution” in Elections Code section 14027 surplusage. Accordingly, we agree with the Court of Appeal that dilution is a separate element under the CVRA. To establish the dilution element, a plaintiff in a CVRA action must identify “a reasonable alternative voting practice” to the existing at-large electoral system that will “serve as the benchmark ‘undiluted’ voting practice.” (*Reno v. Bossier Parish School Bd.*, *supra*, 520 U.S. at p. 480, 117 S.Ct. 1491.)

2. “The Ability ... to Elect Candidates of Its Choice”

The CVRA does not explicitly define what it means to “impair[] the ability of a protected class to elect candidates of its choice.” (Elec. Code, § 14027.) On this question, we find the VRA illuminating, but not dispositive.

^[13] An at-large electoral system impairs a protected class’s ability “to elect representatives of their choice” under the federal act ( 52 U.S.C. § 10301(b)) only when the class can “demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district.” ( *Gingles*, *supra*, 478 U.S. at p. 50, 106 S.Ct. 2752.) The rationale for the VRA approach is that “if the minority group is spread evenly throughout a

multimember district, or if, although geographically compact, the minority group is so small in relation to the surrounding white population that it could not constitute ***332 a majority in a single-member district, these minority voters *316 cannot maintain that they would have been able to elect representatives of their choice in the absence of the multimember electoral structure.” ( *Gingles*, at p. 50, fn. 17, 106 S.Ct. 2752.)

For some period after  *Gingles*, it was uncertain whether the first  *Gingles* requirement (i.e., whether the minority group is sufficiently large and compact) could be satisfied by proof that the minority population “is large enough to elect the candidate of its choice with help from voters who are members of the majority and who cross over to support the minority’s preferred candidate.” ( *Bartlett v. Strickland* (2009) 556 U.S. 1, 13, 129 S.Ct. 1231, 173 L.Ed.2d 173 (plur. opn. of Kennedy, J.) ( *Strickland*)).  *Strickland* settled the question. It held that the VRA does not impose “a duty to give minority voters the most potential, or the best potential, to elect a candidate by attracting crossover voters.” ( *Strickland*, at p. 15, 129 S.Ct. 1231 (plur. opn. of Kennedy, J.)). Dispensing with the requirement that the minority group, by itself, be sufficiently large and compact to constitute a majority in the hypothetical district, the court reasoned, “would call in question the  *Gingles* framework.” ( *Strickland*, at p. 16, 129 S.Ct. 1231 (plur. opn. of Kennedy, J.)).

The Court of Appeal effectively embraced the  *Strickland* approach in construing the CVRA. It required a showing that Latino voters could constitute a majority, all by themselves, in a hypothetical single-member district. Indeed, it noted that “30 percent is not enough to win a majority” and rejected plaintiffs’ contention that an ability to elect a preferred candidate could be shown in this case if non-Latino voters were to “ ‘cross over’ and vote for Latino candidates, buoying Latino power and clearing the 50 percent threshold to electoral success.”

The Court of Appeal erred in importing the VRA’s majority-minority requirement into the CVRA. In enacting the CVRA, the Legislature wanted to make it “easier” for protected classes to demonstrate an ability to elect their preferred candidates under an alternative voting system. (Assem. Com. on Elections, Reapportionment and Const. Amends.,

Analysis of Sen. Bill No. 976, *supra*, as amended Mar. 18, 2002, p. 4.) No longer would plaintiffs need to show the protected class was sufficiently large and geographically compact to muster a majority in a hypothetical district: “The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation ****66** of [Section 14027](#) and this section” ([Elec. Code, § 14028, subd. \(c\)](#); see Sen. Com. on Elections and Reapportionment, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended May 1, 2001, p. 3 [“Unlike the preconditions established by the Supreme Court in [Thornburg v. Gingles](#), this bill does not require that the minority community be geographically compact or concentrated”]; Assem. Com. on Elections, Reapportionment and Const. ***317** Amends., Analysis of Sen. Bill No. 976, *supra*, as amended Mar. 18, 2002, p. 4 [“This bill requires that only two of those [Gingles](#) conditions be met”].)

The Legislature’s rationale for rejecting the majority-minority requirement seems clear enough: It would make little sense to require CVRA plaintiffs to show that the protected class could constitute a majority of a hypothetical district, given that the CVRA is not limited to ability-to-elect claims nor are its remedies limited to district elections. (See, e.g., [Sanchez v. City of Modesto](#) (2006) 145 Cal.App.4th 660, 670, 51 Cal.Rptr.3d 821 [“In a cumulative voting system, a politically cohesive but geographically dispersed minority group can *****333** elect a single candidate ... although it would be unable to elect any candidates in a conventional winner-take-all at-large system and could not form a majority in any feasible district in a district system”].) Though the parties have focused in this court on district elections, the trial court found that, in addition to district elections, several alternative at-large election methods — cumulative voting,⁶ limited voting,⁷ and ranked choice voting⁸ — would each enhance Latino voting power and their ability to elect candidates of their choice. None of these methods would require a winning candidate to muster a majority in a hypothetical district. We can think of no reason why a CVRA claim based on any of these alternate at-large election methods should depend on such a showing. (Cf. [Elec. Code, § 14028, subd. \(c\)](#) [“that members of a protected class are not geographically compact or concentrated ... may be a factor in determining an appropriate remedy”].) Furthermore, the Legislature clearly intended to make the

CVRA more expansive than the VRA — by, for example, explicitly recognizing claims based on dilution of the “ability to influence the outcome of an election.” ([Elec. Code, § 14027](#).)

Even in the context of district elections, the Court of Appeal’s focus on a majority-minority district was misguided. The Court of Appeal feared that allowing a plaintiff to rely on crossover votes “arbitrarily embraces racially polarized voting when it helps and abandons it when it hurts,” which it viewed as creating “a manipulable standard boiling down to plaintiff always wins.” But far from embracing racially polarized voting “when it ***318** helps” and abandoning it “when it hurts,” plaintiffs are merely pointing out the differing effects of racially polarized voting in two different settings. To challenge an at-large electoral system, a plaintiff must first demonstrate the existence of racially polarized voting — i.e., cognizable differences “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 choices that are preferred by voters in the rest of the electorate.” ([Elec. Code, § 14026, subd. \(e\)](#).) The plaintiff must next show that the protected class would have the potential to elect its preferred candidate or candidates under a different electoral system (say, district elections). In calculating the protected class’s voting strength under the alternative system, the plaintiff does not “abandon[]” racially polarized voting. Rather, the plaintiff must ****67** prove that, assuming the *same* degree of racial polarization, the greater concentration of protected class voters in the hypothetical district would nonetheless be sufficient to enable them to elect their preferred candidate when combined with the available crossover votes. Alternatively, the plaintiff may be able to demonstrate sufficient voting strength where racially polarized voting by other *****334** voters *in the hypothetical district* is lower than in the community as a whole. In neither instance is the plaintiff seeking to “abandon” racially polarized voting “when it hurts.”⁹

^[14] The City’s position in this court is slightly more nuanced, but no more persuasive. The City allows that there may be “room to expand vote-dilution claims beyond section 2’s narrow ambit,” but only “where the relevant minority group would account for a near-majority of voters in a hypothetical district with a history of reliable crossover support from

other voters.” The City does not dispute, however, that defining a near majority presents a new set of line-drawing problems. And in any case the CVRA permits consideration of at-large remedies such as cumulative voting, limited voting, or ranked choice voting — none of which would depend on the existence of a near majority in some hypothetical district that would never be drawn or used.

***319** These omissions counsel against adoption of the City's position. Rather than quibble over whether a protected class falls on one side or the other of an undefined near-majority line, we think it more sensible to inquire directly whether the prospect of crossover support from other voters under a lawful alternative electoral scheme would offer the protected class, whatever its size, the potential to elect its preferred candidate. When the hypothetical alternative is district elections, a high degree of racially polarized voting may, in many cases, effectively require the protected class to constitute a substantial or very substantial minority of voters. The higher the degree of racial polarization, the greater the percentage required by the protected class to demonstrate it would be able, in combination with crossover voters, to elect its preferred candidate. But there is no reason to layer this inquiry with an additional predicate showing of some undefined near majority. All that is required is that the protected class be “sufficiently large ... to elect candidates of its choice,” even if it falls short of “an absolute majority of the relevant population.” (¶ *De Grandy, supra*, 512 U.S. at pp. 1008, 1009, 114 S.Ct. 2647.)¹⁰

We are also sensitive to the fact that ¶ *Gingles*'s majority-minority requirement is a poor fit for the CVRA, which applies *****335** exclusively to nonpartisan elections. (See ¶ *Cal. Const., art. II, § 6.*) In the City, for example, multiple candidates may vie for office, and a plurality can be sufficient to win. Requiring a protected class to demonstrate it could constitute a majority or near-majority of a hypothetical district would impose a threshold far higher than what the protected class's preferred candidate would actually need to be ****68** elected. (See ¶ *Romero v. City of Pomona* (9th Cir. 1989) 883 F.2d 1418, 1424, fn. 7 [“Less than a majority, of course, might suffice in a district where candidates are elected by plurality”], overruled on other grounds in ¶ *Townsend v. Holman Consulting Corp.* (9th Cir. 1990) 929 F.2d 1358, 1363.) We therefore decline to require a protected class demonstrate it would constitute a

majority or near majority of a hypothetical district in all circumstances.

3. “Dilution” of “the Ability ... to Elect Candidates of Its Choice”

^[15] Accordingly, to establish dilution of a protected class's ability to elect its preferred candidate under the CVRA, a plaintiff must demonstrate “the *potential* to elect representatives” under some lawful alternative electoral ***320** method. (¶ *Gingles, supra*, 478 U.S. at p. 50, fn. 17, 106 S.Ct. 2752.) One way to demonstrate the class's potential to elect its preferred candidates would be to show, as the VRA requires, that the class would be “sufficiently large and geographically compact to constitute a majority in a single-member district.” (¶ *Gingles, at p. 50*, 106 S.Ct. 2752.) But that is not the only way. (See *Elec. Code, § 14028, subd. (c).*) Because the CVRA applies exclusively to nonpartisan elections, where there may be more than two candidates, the winner may prevail with far less than a majority of the vote. Moreover, the protected class may be able to demonstrate its ability to attract crossover votes for its preferred candidate. Finally, a plaintiff may identify nondistrict remedies that would enable the class, on its own or with the assistance of crossover votes, to elect its preferred candidate. The minority population percentage necessary to win an election under some alternative at-large electoral systems — cumulative or ranked-choice voting, for example — may be less than 25 percent. (See ¶ *Dillard v. Chilton County Bd. of Education* (M.D.Ala. 1988) 699 F.Supp. 870, 874 (¶ *Dillard*) [“in a jurisdiction with seven seats, the threshold of exclusion^[11] would be 12.5% plus” in a cumulative voting system]; Mulroy, *The Way Out: A Legal Standard for Imposing Alternative Electoral Systems as Voting Rights Remedies* (1998) 33 Harv. C.R.-C.L. L.Rev. 333, 342 [threshold for ranked-choice voting “is identical to that of cumulative voting”].)

Determining whether the protected class has the potential to elect its preferred candidate under some alternative system requires a “ ‘functional’ analysis of the political process” in that locality and a “ ‘searching practical evaluation of the “past and present reality.” ’ ” (¶ *Gingles, supra*, 478 U.S. at pp. 62–63, 106 S.Ct. 2752.) Courts should consider the totality of the facts and circumstances of the particular case

(see, e.g., Elec. Code, § 14028, subd. (e)), including the characteristics of the specific locality, its electoral history, and “an intensely local appraisal of the design and impact of the contested electoral mechanisms” as well as the design and impact of the potential alternative system. (Gingles, at p. 79, 106 S.Ct. 2752; see ***336 Milligan, supra, 599 U.S. 1, 143 S.Ct. 1487 [216 L.Ed.2d at p. 75].) This fact-specific inquiry accords with the legislative understanding that California is a large and diverse state that needs a flexible approach to address our changing demographics. (See Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976, supra, as amended Apr. 9, 2002, p. 2 [“In California, we face a unique situation where we are all minorities”].)

^[16] The key inquiry in establishing dilution of a protected class's ability to elect its preferred candidate under the CVRA, therefore, is what percentage of the vote would be required to win — an inquiry that is not short-circuited *321 merely because the protected class may fall short of an absolute majority (or something close to that). In predicting how many candidates are likely to run and what percentage may be necessary to win, courts may also consider the experiences of other similar jurisdictions that use district elections or other alternatives to traditional at-large elections. Courts should likewise keep in mind that the inquiry at the liability **69 stage “is simply ‘to prove that a solution is possible, and not necessarily to present the final solution to the problem.’ ” (Pope v. County of Albany (2d Cir. 2012) 687 F.3d 565, 576; see Gingles, supra, 478 U.S. at p. 50, fn. 17, 106 S.Ct. 2752.)

At the remedial stage the focus will shift to which electoral system is “appropriate” and “tailored to remedy the violation.” (Elec. Code, § 14029.) If the court selects a district remedy, then there must also be at least two public hearings before the maps are drafted and at least two more hearings once the maps have been drawn and published. (*Id.*, § 10010, subds. (a)(1), (2), (c).) In other words, the remedy the court ends up selecting under section 14029 may, but need not, be the benchmark the plaintiff offered to show the element of dilution.

The Court of Appeal feared that failing to craft a majority-minority requirement “would give a winning cause of action to any group, no matter how small, that can draw a district map that would improve its voting power by any amount, no

matter how miniscule.” To prove its point, the court offered a hypothetical in which a protected class's share of the electorate could increase from 0.1 percent under an at-large system to 1.5 percent in a proposed district. Even though the group's voting power would increase 15-fold, it could have “no practical numerical influence in any voting system” because there would be “simply too few voters ... to be numerically effective in an environment of race-based voting.” This would, the Court of Appeal warned, “merely ensure plaintiffs always win.”

We agree with the Court of Appeal that a plaintiff cannot prove dilution of its ability to elect its preferred candidate under the CVRA by showing that its voting share would increase 15-fold, from 0.1 percent to 1.5 percent, in a hypothetical district. In that circumstance, as the Court of Appeal explained, “[t]here are simply too few voters ... to be numerically effective in an environment of race-based voting.” But it does not follow that a majority (or near-majority) requirement should be judicially engrafted onto the CVRA. After all, by eliminating Gingles's geographic compactness requirement, the Legislature rejected any requirement that the protected class constitute a majority of a hypothetical district. (See Elec. Code, § 14028, subd. (c).) What enables courts to sort successful claims from unsuccessful claims is the dilution element itself, which requires the plaintiff to show that the protected class would, under some lawful alternative, have a “real *322 electoral opportunity” to elect its candidate of choice, either on its own or with the aid of crossover voters. (***337 LULAC, supra, 548 U.S. at p. 428, 126 S.Ct. 2594; see Pope v. County of Albany, supra, 687 F.3d at p. 575, fn. 8.)¹²

^[17] The dilution element also ensures the protected class is not made worse off. To replace at-large with district elections under a dilution theory, a successful plaintiff must show not merely that the protected class would have a real electoral opportunity in one or more hypothetical districts, but also that the incremental gain in the class's ability to elect its candidate of choice in such districts would not be offset by a loss of the class's potential to elect its candidates of choice elsewhere in the locality. (Cf. Georgia v. Ashcroft (2003) 539 U.S. 461, 479, 123 S.Ct. 2498, 156 L.Ed.2d 428 [“in examining whether the new plan is retrogressive, the inquiry must encompass the entire statewide plan as a whole”].) While “[t]he fact that the proposed remedy does not benefit

all of the [protected class] in the City does not justify denying any remedy at all” (*Gomez v. Watsonville* (9th Cir. 1988) 863 F.2d 1407, 1414, italics added), it remains the plaintiff’s burden to demonstrate that some lawful alternative method of election would improve the protected class’s overall ability to elect its preferred candidates. As both sides in this proceeding agree, unless the plaintiff can demonstrate a net gain in the protected class’s potential to elect candidates under an alternative system, it has not shown the at-large method of election “impairs” the ability of the protected class to elect its preferred **70 candidates. (Elec. Code, § 14027; cf. *Beer v. United States* (1976) 425 U.S. 130, 141, 96 S.Ct. 1357, 47 L.Ed.2d 629 [“the purpose of § 5 [of the VRA] has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise”].)

We also reject the City’s contention that a majority-minority requirement — or something close to it in the form of a near-majority requirement — is necessary to avoid difficult constitutional questions under the equal protection clause. In the City’s view, it would be perilous for courts to draw race-based districts in the absence of a compelling justification. (See *Cooper v. Harris* (2017) 581 U.S. 285, 291–293, 137 S.Ct. 1455, 197 L.Ed.2d 837.) Merely increasing the percentage of minority voters in a hypothetical district where “the increase will have no real-world effect,” the City warns, is not a compelling justification. But the CVRA does not require a court to grant relief that has no real world effect. As stated above, the alternative voting system must offer the protected class at least a “potential” to elect its preferred candidates that did not exist under the at-large system. (*Gingles, supra*, 478 U.S. at p. 50, fn. 17, 106 S.Ct. 2752.) Moreover, nothing in the CVRA requires a municipality or a court to select a district-based remedy or, even if it chooses to do so, to draw district lines, as the City contends, based “principally on race.” To the contrary: California law directs that district boundaries comply with the state and federal Constitutions (as well as the VRA) (Elec. Code, § 21621, subd. (b)) and requires, to the extent practicable, that boundaries be “geographically contiguous” and maintain the integrity of “any local neighborhood or local community of interest.” (*Id.*, subd. (c)(1), (2).) State law also encourages district lines to be drawn along ***338 “natural and artificial barriers” and with “geographical

compactness.” (*Id.*, subd. (c)(3), (4).) The City does not explain how or why districts drawn in accordance with the above criteria would run afoul of the Constitution. (See *Miller v. Johnson* (1995) 515 U.S. 900, 916, 115 S.Ct. 2475, 132 L.Ed.2d 762 [“legislatures will ... almost always be aware of racial demographics”]; cf. *ibid.* [strict scrutiny applies only where “race was the predominant factor motivating the legislature’s decision” and “the legislature subordinated traditional race-neutral districting principles, including but not limited to compactness, contiguity, and respect for political subdivisions or communities defined by actual shared interests, to racial considerations”].) Indeed, assuming lines are drawn “based on proper factors,” whether to create a district where a protected class has the potential to elect its candidate of choice is “a matter of legislative choice or discretion.” (*Strickland, supra*, 556 U.S. at p. 23, 129 S.Ct. 1231 (plur. opn. of Kennedy, J.); see *Higginson v. Becerra* (9th Cir. 2019) 786 Fed.Appx. 705, 707–708.) That’s precisely the choice the Legislature made in enacting 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” (Elec. Code, § 14027.)

4. “Dilution” of “the Ability ... to Influence the Outcome of an Election”

Unlike its federal analogue, the CVRA prohibits the use of an at-large electoral system that dilutes not only the ability of a protected class “to elect candidates of its choice,” but also “its ability to influence the outcome of an election.” (Elec. Code, § 14027.) The inclusion of the latter phrase further supports our conclusion that the CVRA cannot be read in the limited manner the City would like; indeed, the influence prong suggests a focus broader than the class’s ability to elect its preferred candidates (with or without the help of crossover voters). (Cf. *Strickland, supra*, 556 U.S. at p. 13, 129 S.Ct. 1231 (plur. opn. of Kennedy, J.) [“a minority group can influence the outcome of an election even if its preferred candidate cannot be elected”]; *LULAC, supra*, 548 U.S. at pp. 445–446, 126 S.Ct. 2594 (plur. opn. of Kennedy, J.) [distinguishing between a group’s “ability to influence the outcome [of an election] between some candidates, none of whom is their candidate of choice,” and the ability to elect “their candidate of choice”]; ***71 10 Ill.

[Comp. Stat. 120/5-5\(b\)](#) [“The phrase ***324** ‘influence district’ means a district where a racial minority or language minority can influence the outcome of an election even if its preferred candidate cannot be elected”].) As the Attorney General (who is appearing in this action as amicus curiae) suggests, a protected class’s ability to influence the outcome of an election could include, for example, “forming a coalition with another group to elect a candidate acceptable to each” or “blocking an unacceptable candidate.”

We need not decide the scope of the CVRA’s ability-to-influence prong in this case, however. Plaintiffs did not argue in the trial court or in this court an influence theory distinct from their claim that the City’s at-large election system diluted their ability to elect their candidates of choice.

III. Conclusion

A group’s ability “to compete successfully at electoral politics, in short, is often dependent on how the competition is structured.” (Engstrom, [supra](#), 21 Stetson L.Rev. at p. 743.) The CVRA represents the Legislature’s effort to make that competition more fair. It bars the use of an at-large method of election if that method *****339** dilutes a protected class’s ability to elect candidates of its choice or its ability to influence the outcome of an election. Dilution occurs when an at-large system denies a protected class the potential to elect its preferred candidate or influence the election’s outcome. The plaintiff in a CVRA action must identify a lawful alternative to the existing at-large electoral system that will serve as the benchmark undiluted voting system.

A protected class has the ability to elect its preferred candidate if it would have the potential to elect that candidate, on its own or with the assistance of crossover support from other voters, under an alternative voting system; there is no additional requirement that the protected class constitute a majority or near-majority of a hypothetical district. A court presented with a dilution claim should undertake a searching evaluation of the totality of circumstances (see, e.g., [Elec. Code, § 14028, subd. \(e\)](#)), including the characteristics of the specific locality, its electoral history, and the design and impact of the at-large system as well as the potential impact of lawful alternative electoral systems. In predicting how many candidates are

likely to run and what percentage may be necessary to win, courts may also consider the experiences of other similar jurisdictions that use district elections or some method other than traditional at-large elections.

We express no view on the ultimate question of whether the City’s at-large voting system is consistent with the CVRA. The parties vigorously contested in the Court of Appeal whether plaintiffs had established two elements of a ***325** CVRA claim: whether voting in city council elections was racially polarized and whether the at-large method of election diluted the voting power of Latino residents in those elections. Because the Court of Appeal concluded that plaintiffs had failed to demonstrate dilution of the Latino vote, it did not consider whether voting in council elections was racially polarized. We have determined that the Court of Appeal relied on an incorrect legal standard to conclude that plaintiffs had failed to satisfy the dilution element of their CVRA claim. Under the circumstances, we find it appropriate to remand the matter to the Court of Appeal to decide in the first instance whether, under the correct legal standard, plaintiffs have established that at-large elections dilute their ability to elect their preferred candidate; whether plaintiffs have demonstrated the existence of racially polarized voting; and any of the other unresolved issues in the City’s appeal. (See [Central Coast Forest Assn. v. Fish & Game Com.](#) (2017) 2 Cal.5th 594, 606, 214 Cal.Rptr.3d 265, 389 P.3d 840.)

Disposition

We reverse the judgment of the Court of Appeal and remand for further proceedings consistent with our opinion.

We Concur:

[GUERRERO](#), C. J.

[CORRIGAN](#), J.

[LIU](#), J.

[KRUGER](#), J.

[GROBAN, J.](#)

[JENKINS, J.](#)

All Citations

15 Cal.5th 292, 534 P.3d 54, 312 Cal.Rptr.3d 319, 23 Cal.
Daily Op. Serv. 8126, 2023 Daily Journal D.A.R. 8739

Footnotes

- ¹ The City asserts that in the 2020 city council election, four and one-half years after plaintiffs filed this action, three of the five winning candidates were Latino. Plaintiffs dispute this characterization of the winning candidates' ethnicities. Given the limited issue before us, we express no view on the dispute.
- ² “In an at-large (or multi-member district) system, all voters elect all representatives, and each voter has as many ballots as there are positions available. This system contrasts with a single-member district plan, under which the entire political jurisdiction is divided into districts roughly equal in population, each of which selects one representative by vote within the district.” ( *Badillo v. Stockton* (9th Cir. 1992) 956 F.2d 884, 889.)
- ³ The Senate factors include “the history of voting-related discrimination in the State or political subdivision; the extent to which voting in the elections of the State or political subdivision is racially polarized; the extent to which the State or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority vote requirements, and prohibitions against bullet voting; the exclusion of members of the minority group from candidate slating processes; the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process; the use of overt or subtle racial appeals in political campaigns; and the extent to which members of the minority group have been elected to public office in the jurisdiction.” ( *Gingles, supra*, 478 U.S. at pp. 44–45, 106 S.Ct. 2752.)
- ⁴ The CVRA factors include “the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns.” (Elec. Code, § 14028, subd. (e).)
- ⁵ We do not consider here whether the City's elections are racially polarized — an issue the Court of Appeal has not yet addressed — but we do note that, under the CVRA, “[e]lections conducted prior to the filing of an action ... are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action.” (Elec. Code, § 14028, subd. (a).)
- ⁶ Under cumulative voting, “a voter receives as many votes as there are candidates to elect, but may cast multiple votes for a single candidate.” ( *Portugal v. Franklin County* (Wash. 2023) 530 P.3d 994, 1002 ( *Portugal*).)
- ⁷ Under limited voting, “a voter receives fewer votes than there are candidates to elect.” ( *Portugal, supra*, 530 P.3d at p. 1002.)
- ⁸ Under ranked choice voting, a voter ranks candidates in order of preference. In an election to fill more than one seat, such as for a city council, each ballot is counted at the start of tabulation as one vote for its first-choice ranked candidate. Any candidate with more votes than the election threshold (see fn. 11, *post*) is declared elected. If the first round of the vote counting does not fill all the seats, then the system consults the next-ranked choices from the ballots supporting the candidate with the least number of votes, the next-ranked choices from the surplus ballots (i.e., those in excess of what was needed for the elected candidate to win), or both. Jurisdictions use a variety of methods to determine when and how to transfer the next-ranked choices from surplus ballots. This form of tabulation continues

until all seats are filled. (See Tideman, *The Single Transferable Vote* (Winter 1995) 9 J. Econ. Persp. 27, 27–28, 32–35; see generally Note, *The Madisonian Case for Ranked Choice Voting: Federalist No. 10, Preferential Voting, and the American Democratic Tradition* (2021) 23 N.Y.U. J. Legis. & Pub. Pol’y 953, 963.)

⁹ We recognize that where there is *complete* racial polarization, the protected class may itself need to make up a majority of the district in order to have an ability to elect its preferred candidate. But “‘[i]n practice, such extreme conditions are never present.’” (Strickland, *supra*, 556 U.S. at p. 45, 129 S.Ct. 1231 (dis. opn. of Breyer, J.) [“No voting group is 100% cohesive”]; see *id.* at pp. 32–33, 129 S.Ct. 1231 (dis. opn. of Souter, J.) [“of course minority voters constituting less than 50% of the voting population can have an opportunity to elect the candidates of their choice, as amply shown by empirical studies confirming that such minority groups regularly elect their preferred candidates with the help of modest crossover by members of the majority”].) As the high court has acknowledged, “there are communities in which minority citizens are able to form coalitions with voters from other racial and ethnic groups, having no need to be a majority within a single district in order to elect candidates of their choice.” (Johnson v. De Grandy (1994) 512 U.S. 997, 1020, 114 S.Ct. 2647, 129 L.Ed.2d 775 (De Grandy).)

¹⁰ An amicus curiae letter submitted in support of Pico Neighborhood Association’s petition for review by the chairs of the Assembly’s Latino, Black, and Asian and Pacific Islander caucuses recites that while some members were elected in majority-minority districts, many others were elected in districts in which their membership group made up only 20 to 40 percent of the eligible voters. The trial court here similarly found that candidates from minority groups who had been “unsuccessful in at-large elections have won district elections” in districts “where the minority group is one-third or less of a district’s electorate.”

¹¹ “The threshold of exclusion ‘is the percentage of the vote that will guarantee the winning of a seat even under the most unfavorable circumstances.’” (Dillard, *supra*, 699 F.Supp. at p. 874.) It “is calculated according to the following formula: $1/(1 + \text{number of seats available})$.” (U.S. v. Vill. of Port Chester (S.D.N.Y. 2010) 704 F.Supp.2d 411, 450.)

¹² Plaintiffs suggest it would be rare for a group constituting less than 25 percent of the relevant voting population to make the required showing. We have no occasion here to explore that suggestion, since the Latino population in the proposed district exceeds that threshold.



California Supreme Court ruling leaves voting rights lawsuit unresolved

Aug 30, 2023

A recent ruling by the California Supreme Court provided little clarity on a long-running legal battle over Santa Monica's election system. The **case centers** (<https://www.calcities.org/news/post/2023/07/12/california-supreme-court-poised-to-resolve-key-voting-rights-case>) on whether the city's at-large election system dilutes the voting power of Latino voters. The plaintiffs argue that the city should adopt district-based voting.

The Supreme Court held that a lower court failed to properly evaluate the plaintiffs' claim that Santa Monica's election system violated the California Voting Rights Act (CVRA). The Supreme Court provided a more nuanced test and sent the case back to the lower court for further proceedings.

The League of California Cities had urged the Supreme Court to adopt clear guidelines so that cities could evaluate their election system without fear of unjustified litigation. Despite the overall disappointing and unclear result, there are a couple of helpful takeaways for cities.

Case background

In the initial 2016 lawsuit, a trial court agreed with the plaintiffs and ordered Santa Monica to switch to a district-based election system. The city appealed the decision, and the Court of Appeal reversed it. The Court of Appeal concluded that the plaintiffs failed to prove unlawful vote dilution.

The plaintiffs showed a potential increase in Latino voting power from 14% under the at-large system to 30% in one district under the district-based system. However, the Court of Appeal concluded this was not unlawful vote dilution. It reasoned that 30% is not enough to change the outcome of an election: The CVRA only prohibits at-large election systems if they “impair the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election.”

The California Supreme Court reviewed the case to resolve what a plaintiff must prove to establish unlawful vote dilution.

What did the Supreme Court say?

The Supreme Court rejected the Court of Appeal’s reasoning. The Supreme Court pointed out that local elections are nonpartisan and that candidates can win with only a plurality — not a majority — of votes. It also noted that the CVRA was passed to make it easier to challenge at-large election systems using state law as opposed to federal law. Thus, a plaintiff does not need to prove that the protected class would make up a majority or near-majority of a district to establish unlawful vote dilution.

Rather, to prove that an at-large elections system impairs the ability of a protected minority "to elect candidates of its choice," a plaintiff must show that "under some alternative electoral system, the protected class would have the potential, on its own or with the help of crossover voters, to elect its preferred candidate."

In assessing whether a plaintiff has met this standard, courts must review the facts and circumstances as a whole, “including the characteristics of the specific locality, its electoral history, and an intensely local appraisal of the design and impact” of the contested election system and potential alternative systems. The Supreme Court also encouraged courts to “consider the experiences of other similar jurisdictions that use alternative electoral systems.”

What does this ruling say or not say about CVRA violations?

The Supreme Court's opinion does lay out the standard for reviewing claims of unlawful dilution of a protected minority group's ability to "elect candidates of its choice." However, the standard is fact-based and complex. Since the lawsuit is ongoing, it remains uncertain what evidence might persuade a court that a city's at-large elections system has led to unlawful voter dilution.

Moreover, the ruling left a significant question unanswered. The Court stated that it was not deciding "the scope of the ability-to-influence prong" in this case. Therefore, it is unclear what might give rise to a successful claim that an at-large elections system unlawfully dilutes the ability of a protected minority group to "influence the outcome of an election" as opposed to "electing candidates of its choice."

Despite this lack of clarity, the opinion did provide a couple of tangible takeaways. The Court rejected the suggestion that a CVRA violation could be proven simply by showing that racially polarized voting was occurring. The Court held that a plaintiff must prove vote dilution *and* racially polarized voting to establish a violation of the CVRA.

"Racially polarized voting" means that there is a marked difference between the electoral choices of voters in a protected class versus the choices of the rest of the electorate.

The Supreme Court further noted that a plaintiff must show that the incremental gain in a protected class's ability to elect its candidate of choice in such districts would not be offset by a loss of the class's potential to elect its candidates of choice elsewhere in the locality. Santa Monica has suggested that moving to district elections might leave Latinos with less voting power. The Supreme Court's conclusion on this point suggests that the city could still prevail in the case if they can make that showing.

It is unknown how long it will take for the Court of Appeal to decide the case. Cal Cities will report on significant developments and may consider filing additional amicus briefs if appropriate. City leaders with questions about the ruling should consult their city attorney.

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CALIFORNIA ELECTIONS CODE

§ 10010. Political subdivision changing from at-large method of election to district-based election or establishing district-based elections; public hearings; application; notice of action

(a) A political subdivision that changes from an at-large method of election to a district-based election, or that establishes district-based elections, shall do all of the following before a public hearing at which the governing body of the political subdivision votes to approve or defeat an ordinance establishing district-based elections:

(1) Before drawing a draft map or maps of the proposed boundaries of the districts, the political subdivision shall hold at least two public hearings over a period of no more than 30 days, at which the public is invited to provide input regarding the composition of the districts. Before these hearings, the political subdivision may conduct outreach to the public, including to non-English-speaking communities, to explain the districting process and to encourage public participation.

(2) After all draft maps are drawn, the political subdivision shall publish and make available for release at least one draft map and, if members of the governing body of the political subdivision will be elected in their districts at different times to provide for staggered terms of office, the potential sequence of the elections. The political subdivision shall also hold at least two additional hearings over a period of no more than 45 days, at which the public is invited to provide input regarding the content of the draft map or maps and the proposed sequence of elections, if applicable. The first version of a draft map shall be published at least seven days before consideration at a hearing. If a draft map is revised at or following a hearing, it shall be published and made available to the public for at least seven days before being adopted.

(b) In determining the final sequence of the district elections conducted in a political subdivision in which members of the governing body will be elected at different times to provide for staggered terms of office, the governing body shall give special consideration to the purposes of the California Voting Rights Act of 2001, and it shall take into account the preferences expressed by members of the districts.

(c) This section applies to, but is not limited to, a proposal that is required due to a court-imposed change from an at-large method of election to a district-based election.

(d) For purposes of this section, the following terms have the following meanings:

(1) “At-large method of election” has the same meaning as set forth in [subdivision \(a\) of Section 14026](#).

(2) “District-based election” has the same meaning as set forth in [subdivision \(b\) of Section 14026](#).

(3) “Political subdivision” has the same meaning as set forth in [subdivision \(c\) of Section 14026](#).

(e)(1) Before commencing an action to enforce [Sections 14027](#) and [14028](#), a prospective plaintiff shall send by certified mail a written notice to the clerk of the political subdivision against which the action would be brought asserting that the political subdivision's method of conducting elections may violate the California Voting Rights Act of 2001.

(2) A prospective plaintiff shall not commence an action to enforce [Sections 14027](#) and [14028](#) within 45 days of the political subdivision's receipt of the written notice described in paragraph (1).

(3)(A) Before receiving a written notice described in paragraph (1), or within 45 days of receipt of a notice, a political subdivision may pass a resolution outlining its intention to transition from at-large to district-based elections, specific steps it will undertake to facilitate this transition, and an estimated timeframe for doing so.

(B) If a political subdivision passes a resolution pursuant to subparagraph (A), a prospective plaintiff shall not commence an action to enforce [Sections 14027](#) and [14028](#) within 90 days of the resolution's passage.

(C)(i) A political subdivision and the prospective plaintiff who first sends a notice pursuant to paragraph (1) may enter into a written agreement to extend the time period described in subparagraph (B) for up to an additional 90 days in order to provide additional time to conduct public outreach, encourage public participation, and receive public input. The written agreement shall include a requirement that the district boundaries be established no later than six months before the political subdivision's next regular election to select governing board members. However, in a political subdivision that holds a primary election as part of its process for selecting governing board members, the written agreement shall include a requirement that district boundaries be established no later than six months before the political subdivision's next regular primary election.

(ii) No later than 10 days after a political subdivision enters into a written agreement pursuant to clause (i), the political subdivision shall prepare and make available on its internet website a tentative schedule of the public outreach events and the public hearings held pursuant to this section. If a political subdivision does not maintain an internet website, the political subdivision shall make the tentative schedule available to the public upon request.

(f)(1) If a political subdivision adopts an ordinance establishing district-based elections pursuant to subdivision (a), a prospective plaintiff who sent a written notice pursuant to paragraph (1) of subdivision (e) before the political subdivision passed its resolution of intention may, within 30 days of the ordinance's adoption, demand reimbursement for the cost of the work product generated to support the notice. A prospective plaintiff shall make the demand in writing and shall substantiate the demand with financial documentation, such as a detailed invoice for demography services. A political subdivision may request additional documentation if the provided documentation is insufficient to corroborate the claimed costs. A political subdivision shall reimburse a prospective plaintiff for reasonable costs claimed, or in an amount to which the parties mutually agree, within 45 days of receiving the written

demand, except as provided in paragraph (2). In all cases, the amount of the reimbursement shall not exceed the cap described in paragraph (3).

(2) If more than one prospective plaintiff is entitled to reimbursement, the political subdivision shall reimburse the prospective plaintiffs in the order in which they sent a written notice pursuant to paragraph (1) of subdivision (e), and the 45-day time period described in paragraph (1) shall apply only to reimbursement of the first prospective plaintiff who sent a written notice. The cumulative amount of reimbursements to all prospective plaintiffs shall not exceed the cap described in paragraph (3).

(3) The amount of reimbursement required by this section is capped at thirty thousand dollars (\$30,000), as adjusted annually to the Consumer Price Index for All Urban Consumers, United States city average, as published by the United States Department of Labor.