



# AGENDA REPORT

Agenda Item

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Reviewed:

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MSW

City Manager

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Finance Director

JA

MEETING DATE: SEPTEMBER 17, 2021

TO: MATTHEW S. WEST, CITY MANAGER

FROM: DAVID E. KENDIG, CITY ATTORNEY

SUBJECT: SECOND PUBLIC HEARING TO RECEIVE INPUT FROM THE COMMUNITY REGARDING THE TRANSITION FROM AT-LARGE TO DISTRICT ELECTIONS

## SUMMARY

The City received a letter from the Mexican American Legal Defense and Education Fund (MALDEF) asserting that the at-large election system violates the California Voting Rights Act (CVRA) and threatens litigation if the City declines to voluntarily convert to district-based elections. On August 3, 2021 the City Council adopted Resolution 21-64 declaring its intention to transition from at-large to district-based elections, and to complete the transition in time for the 2022 General Municipal Election. By voluntarily proceeding to transition to district-based elections, the City benefits from a “safe harbor” provision in the CVRA that maximizes community control and self-determination over the process of establishing districts and district boundaries.

The first steps in the transition process include holding at least two public hearings to invite public input regarding the composition of the City's voting districts before any draft maps are drawn. The first public hearing occurred on August 31<sup>st</sup>, and this item will involve the second such public hearing. Next, one or more draft maps of proposed district boundaries will be prepared and made available to the public and the Council must hold at least two additional public hearings on the draft map(s) of the districts themselves.

## RECOMMENDATION

It is recommended that the City Council take the following action:

1. Receive a report on the districting process and permissible criteria to be considered to create district boundaries; and
2. Conduct a public hearing to receive public input regarding “communities of interest” and considerations for establishing district boundaries; and
3. Following input received during the public hearing, provide direction to the demographer regarding potential draft maps to be considered at the third public hearing scheduled for Saturday October 9, 2021 at 10:00 a.m.

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## **FISCAL IMPACT**

Significant staff time will be required to transition to district-based elections and to administer the process including the need for at least several public hearings. Transitioning to district-based elections also involves the services of a demographer. Additionally, the City will be required to reimburse MALDEF for its documented costs, up to \$30,000. However, such expenses would likely be significantly lower than the costs of litigating the threatened lawsuit if district-based elections are not approved.

## **BACKGROUND**

The City currently utilizes an at-large election system where voters citywide select each of the five City Council Members. By contrast, a district-based election system is one in which a city is physically divided into separate districts, each with one council member who resides in the district and is chosen solely by the voters residing in that district.

### MALDEF's Demand to Convert to District Elections.

On June 23, 2020, the City received a letter from Tanya G. Pellegrini, an attorney representing the Mexican American Legal Defense and Education Fund (MALDEF) in Sacramento, California. The letter asserts that the “lack of success of Latino candidates results from the inability of Latino voters to elect candidates of choice due to racially polarized voting among the electorate, and that continued use of at-large elections therefore violates” the CVRA. The letter demands that the City convert to district-based elections and threatens litigation if the City declines to voluntarily convert to district-based elections.

### The California Voting Rights Act Imposes Significant Costs of Litigating

The CVRA, codified as Elections Code sections 14025 et seq., became law on January 1, 2003. The declared purpose of the CVRA is to prevent the disenfranchisement of protected classes, which are broadly defined to include members of a race, color, or language minority group. Any voter who resides in a city and is a member of a protected class may file a lawsuit for a violation of the CVRA. To succeed, the plaintiff must only show that, as a result of an at-large election, “racially polarized voting” has occurred. “Racially polarized voting” means there is a difference between the choice of candidates preferred by voters in a protected class and candidates preferred by voters in the remainder of the voting population. If the plaintiff prevails in litigation, the CVRA allows for the recovery of significant attorneys’ fees and expert witness fees. On the other hand,

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even if the city that is sued prevails in the lawsuit, it cannot recover either attorneys' fees or costs.

In addition, the CVRA provides that if a court finds that a violation of the CVRA has occurred, the court shall implement appropriate remedies, including the imposition of district-based elections, that are tailored to remedy the violation. The remedy can include the imposition of district maps for the City.

The CVRA "Safe Harbor"

On September 28, 2016, the Governor signed into law AB 350, which enacted Elections Code section 10010. That legislation established a "safe harbor" from CVRA litigation for cities. Once a city receives a demand letter, it has a period of protection<sup>1</sup> from litigation to assess its situation, and then to proceed with the transition to district-based elections.

In Tustin's case, the initial CVRA safe harbor period of protection ran until August 14, 2021. But because the City Council adopted the resolution of intention to transition to district-based elections on August 3, 2021, a CVRA lawsuit may not be filed for an additional 90-day period, or until November 1, 2021. And under AB 350, the City's liability would be capped at approximately \$30,000 if it adopts an ordinance establishing district-based elections by November 1, 2021.

It is important to note, when the City Council adopted Resolution No. 21-64 on August 3, 2021, it did so in part based on indications from MALDEF that an agreement to extend the deadline by an additional 90 days would change the November 1, 2021 deadline to January 30, 2022 to provide additional time to conduct public outreach, encourage public participation, and receive public input.

Unexpectedly, on August 16, 2021, MALDEF conditioned its willingness to extend the deadline upon terms that raise significant issues of compliance with State and Federal law. Despite having had numerous communications with MALDEF over the past several months regarding the City's utilization of an extension agreement, MALDEF previously made no mention of the extension being subject to additional material demands.

The City is committed to engaging in the districting process in compliance with all applicable laws and encourages MALDEF to drop its demanded conditions on the

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<sup>1</sup> Ordinarily the period of protection is a 45-day period from receipt of the demand letter. However, due to the Governor's COVID-related emergency orders, that period of protection was effectively extended to August 14, 2021.

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extension agreement, and to simply agree to extend the 90-day term so that the City, the public and MALDEF will have additional time to thoughtfully engage in public outreach and education, public participation, and public input during the districting process.

Given the uncertainty of reaching an agreement with MALDEF to extend the safe harbor period for public outreach and input beyond the November 1, 2021 deadline, the City adopted a new Resolution of Intent on September 7, 2021 reaffirming the City's intent to implement all required steps so that the process can be successfully completed before the end of the safe harbor period.

Setting District Boundaries

Prior to adopting an ordinance establishing district-based elections, the City Council is required to establish district boundaries and to establish the sequence of future district elections. California Elections Code section 10010 sets forth the City Council public hearing process for establishing district boundaries and the sequencing of district elections. This process requires a series of noticed public hearings during which the public has a right to provide input on proposed district boundaries and election sequence. Specifically, the City must hold at least two "clean slate" hearings at which the public can provide input on district boundaries *before any maps are prepared*. Thereafter, the City must hold at least two more public hearings to consider draft maps. Finally, the City must hold a public hearing at which the map is adopted and the sequencing of district elections is established. The map and sequencing would be approved by City ordinance.

**The purpose of the first two public hearings (including this hearing on September 17<sup>th</sup>) is to inform the public about the districting process and to hear from the community about what factors should be taken into consideration while creating district boundaries. The public is requested to provide input regarding communities of interest and other local factors that should be considered while drafting district maps.**

According to the CVRA, a "community of interest" is a "contiguous population that shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation." These may include a neighborhood or group that would benefit from being in the same district because of shared interests, views, cultures, histories, languages, and values and whose boundaries can be identified on a map. Possible community features include, but are not limited to:

- Shared interests in schools, housing, community safety, transit, health conditions, land use, environmental conditions, and/or other issues.

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- Common social and civic networks, including churches, mosques, temples, homeowner associations, and community centers, and shared use of community spaces, like parks and shopping centers.
- Racial and ethnic compositions, cultural identities, and households that predominantly speak a language other than English.
- Similar socio-economic status, including but not limited to income, home ownership, and education levels.
- Shared political boundary lines from other jurisdictions, such as school districts, community college districts, and water districts.

In creating the district boundaries, the City must ensure compliance with the following federal and state mandated criteria:

### Federal Laws:

1. Each council district shall contain a nearly equal population (based on total population of residents as determined by the most recent Federal decennial Census and adjusted by the State to reassign incarcerated persons to the last known place of residence); and
2. Each council district shall be drawn in a manner that complies with the Federal Voting Rights Act. No council district shall be drawn with race as the predominate factor in violation of the principles established by the United States Supreme Court in *Shaw v. Reno*, 509 U.S. 630 (1993), and its progeny.

### California Criteria for Cities (to the extent practicable and in the following order of priority):

1. Geographically contiguous (areas that meet only at the points of adjoining corners are not contiguous. Areas that are separated by water and not connected by a bridge, tunnel, or ferry service are not contiguous).
2. Undivided neighborhoods and "communities of interest" (Socio-economic geographic areas that should be kept together for purposes of its effective and fair representation).

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3. Easily identifiable boundaries.
4. Compact (do not bypass one group of people to get to a more distant group of people).
5. Prohibited: “Shall not favor or discriminate against a political party.”

Other Traditional Districting Principles:

1. Respect voters' choices / continuity in office.
2. Future population growth.

Number of Districts and Format of Mayor

After receiving community input during the first public hearing held September 7, 2021, the City Council decided to establish that proposed district maps will involve four (4) council districts and an at-large Mayor.<sup>2</sup> However, final determination of the number of districts and whether the Mayor would be at-large or appointed by the City Council from among its members must occur as part of the adoption of the Ordinance Transitioning to District-Based Elections at the conclusion of the process, as outlined in the following section.

Adopting an Ordinance Transitioning to District-Based Elections

Transitioning to district-based elections is effectuated by the City Council enacting an ordinance pursuant to Government Code section 34886, provided that the ordinance includes a declaration that it is being adopted to further the purposes of the CVRA. Under this method, the City Council would need to determine whether it wants to have a mayor elected at-large, with the remaining seats chosen through a district-based election process (with four, six, or eight voting districts). If the City Council chooses not to have a mayor elected at-large, it has the option of establishing five, seven, or nine voting districts.<sup>3</sup>

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<sup>2</sup> An “at-large” Mayor would be elected by the voters on a City-wide basis, and candidates for that office could come from any of the four council districts.

<sup>3</sup> Cal. Gov’t Code § 34871.

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These decisions will be made by the City Council based on information from the public hearings, and other appropriate considerations at its future meetings.

Community Engagement

The City has developed a comprehensive community engagement plan intended to maximize awareness, education and participation through each step of the district formation process. The aggressive outreach effort is designed to reach the entire Tustin community about the potential shift to by-district elections.

*District Map Boundary Tool*

To help community members provide their input on how potential district boundaries are drawn, the City is creating a map that will be available to download and print from DrawTustin.org. Community members can use the maps to identify “communities of interest” and suggest where district lines should potentially be drawn. Community members can submit their ideas and proposed district maps to [drawtustin@tustinca.org](mailto:drawtustin@tustinca.org).

The deadline for community members to submit their ideas and proposed district maps will be announced on DrawTustin.org no later than Friday September 17. Submissions received before the deadline will be reviewed by the demographer and incorporated into various alternative draft maps which will be publicly posted at DrawTustin.org on Saturday, October 2 at 10 a.m., as required, in advance of being considered by the City Council during the third public hearing set for October 9 at 10:00 a.m. The community may also provide input during the public hearing, but only draft maps that have been posted seven days in advance of the hearing may legally be considered by the City Council on October 9.

*Implemented outreach and engagement efforts September 2 – 10, 2021:*

- First Public Hearing held on September 7 to educate community members about the process and solicit input on the composition of districts.
- Proactive email contact with more than 50 community leaders and community-based organizations regarding the September 7 Public Hearing.
- Distribution of a press release announcing the September 7 Public Hearing.

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- Two posts on Facebook regarding the September 7 Public Hearing (including paid ad boosting) that together reached 9,024 community members and gained 381 post engagements.
- Social media posts on Twitter with 520 impressions
- Updates to the City’s dedicated districting website, [www.DrawTustin.org](http://www.DrawTustin.org) to include resources from the August 31 Public Workshop. These resources include video recordings of the workshop in English and Spanish, Public Comments from the workshop, and the workshop slides in English, Spanish, Chinese (traditional), Korean and Vietnamese.
- Updates to the City’s dedicated districting website, [www.DrawTustin.org](http://www.DrawTustin.org) to include resources from the September 7 Public Hearing. These resources include video recordings of the hearing in English and Spanish, Public Comments from the hearing, and the hearing slides in English, Spanish, Chinese (traditional), Korean and Vietnamese.
- Public Notice of the September 17 Public Hearing posted/published.

*Implemented outreach and engagement efforts August 24 – September 1, 2021:*

- Rollout of a new dedicated website, [www.DrawTustin.org](http://www.DrawTustin.org), serving as a one-stop shop for information and tools regarding potential district formation. Extensive resources are available for the public to learn about the process, access all the materials and meeting information, and to share feedback.
- A Public Workshop was held on August 31 to educate community members about the potential shift to by-district elections and to answer questions about the process. The information session, facilitated by Tripepi Smith and featuring the National Demographics Corporation, had more than 20 participants.
- Three social media posts on Facebook (in English, Spanish, Chinese (traditional), Korean and Vietnamese), reaching a total of 1,746 individuals.
- Two social media posts on Twitter with 892 impressions
- Over 10,000 Emails sent regarding the first workshop
- Post to NextDoor with 751 impressions



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- A button on the [City website homepage](#) that links to [www.DrawTustin.org](http://www.DrawTustin.org)
- Workshop info posted to city Calendar
- A featured News Flash on the homepage
- Proactive email and/or phone contact with more than 50 organizations to outreach to community leaders and community-based organizations.
- Placement of 210 lawn signs across the City of Tustin publicizing the potential shift to by-district elections in English, Spanish, Chinese (traditional), Korean and Vietnamese.
- Media outreach including the distribution of a press release announcing the public workshop held on August 31 and the launch of the new dedicated website, [www.DrawTustin.org](http://www.DrawTustin.org). Publication of the August 31st Workshop Notice and the September 7th Public Hearing Notice in the Orange County Register.
- Creation of an email subscription list, which community members can sign up for to receive regular updates on the process at [www.DrawTustin.org](http://www.DrawTustin.org).

#### Next Steps

A second Community Workshop will be held virtually via Zoom on Thursday, September 30 at 7:00 p.m. regarding ways in which the public can actively participate, tools to draw and submit proposed maps and district boundaries. However, this date is subject to change and may be held earlier in the month of September. Please check [DrawTustin.org](http://DrawTustin.org) to stay informed of any scheduling changes.

The dates for the remaining public hearings are as follows:

- Public Hearing # 3: Saturday, October 9: 10:00 a.m.
- Public Hearing # 4: Monday, October 25: 7:00 p.m.
- Public Hearing # 5: Monday, November 1: 7:00 p.m.

Public Hearings #3, #4 and #5 are expected to be held in-person/open to the public, inside the City Council chambers, and tentatively, may also be accessible virtually via Zoom.