



## City Council Agenda Report

**Meeting Date:** May 28, 2024

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**Approved By:** Gabriel Engeland, City Manager

**Subject:** Adopt a Resolution Declaring Intent to Transition from an At-Large Election System to a District-Based Election System Pursuant to California Elections Code Section 10010, with the Transition Taking Effect at the November 2026 and 2028 Elections

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### COUNCIL PRIORITY AREA

- Business Communities
- Circulation Safety and Efficiency
- Environmental Sustainability
- Housing
- Neighborhood Safety Infrastructure
- General Government

### RECOMMENDATION

Adopt a Resolution Declaring Intent to Transition from an At-Large Election System to a By-District Elections System Pursuant to California Elections Code Section 10010, Government Code 34886, and the California Voting Rights Act (CVRA) with the Transition Taking Effect at the November 2026 and 2028 Elections.

### BACKGROUND

The City of Los Altos ("City") currently has an at-large election system, where each of the City's five Councilmembers are elected by voters throughout the City. Councilmembers are elected for a four-year term and the Mayoral seat is rotated annually among the Councilmembers.

On April 18, 2024, the City received a Notice of Violation of the CVRA from attorney Kevin Shenkman and his law firm, Shenkman & Hughes, PC of Malibu, CA. The letter asserts that the City's elections are characterized by racially polarized voting. Racially polarized voting" means voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters of a protected class based on their ethnicity, rather than in the electoral choices that may be preferred by the voters in the rest of the electorate. The notice demands that the City immediately transition from an at-large elections system to a district-based one.

Should the City decline to voluntary transition to a district-based system, Mr. Shenkman stated his intention would be to take legal action against the City to compel district-based elections. Cities throughout the State of California with at-large election systems have faced similar legal challenges under the CVRA by Mr. Shenkman and other CVRA plaintiffs' attorneys. Mr.

Shenkman has filed a number of lawsuits against public agencies related to alleged CVRA violations which have resulted in adverse judgments and millions of dollars of attorneys' fees. The City does not believe it is in violation of the CVRA, and is confident that its minority populations have been well-represented by the current at-large system. However, as discussed in more detail below, City staff is recommending that the City Council approve the Resolution and then make the transition to by-district elections.

As noted above, the City currently has an at-large election system, where each of the City's five Councilmembers are elected by voters throughout the City. A district-based election system is one in which the City is divided into separate districts, each with one councilmember who resides in that district and who is elected only by voters residing in that particular district.

The CVRA is violated when there is racially polarized voting and dissolution of minority voting power due in an at-large election system jurisdiction. If the City were to adopt a by-district method of election, the City would be immune from challenge. The City Council would have the option to retain an at-large mayor under a by-district method of election (with four Councilmembers elected by district under a district-based election system), or have five Councilmembers elected by district, with a rotating mayor.

#### **FISCAL IMPACT**

The City of Los Altos will be required to retain the services of a demographer in order to successfully transition to district elections. The cost of such services is approximately \$50,000. The City also must retain outside legal counsel to oversee the project in its entirety. The cost of outside legal services is approximately \$35,000. Lastly, it is contemplated that Shenkman & Hughes, the author of the letter received on April 18, 2024, will send an invoice to the City at the end of the transition process as allowed under the CVRA for costs associated with the investigation that gave rise to the letter received on April 18, 2024 – usually for the services of a demographer and also attorneys' fees. The amount of that invoice is capped by the statute at \$30,000 (plus an annual adjustments for inflation since passage of the statute) if the City meets the CVRA time limits. The City has sufficient costs to cover these anticipated costs, but may need to request special allocations for final payments.

#### **ENVIRONMENTAL REVIEW**

None.

#### **PREVIOUS COUNCIL CONSIDERATION**

The City Council held Closed Session meetings to discuss this topic before the regular meetings of April 30 and May 14, 2024.

#### **DISCUSSION/ANALYSIS**

##### The California Voting Rights Act

The CVRA was signed into law in 2002, and only applies to jurisdictions, like the City, that utilize an at-large election method where voters of the entire jurisdiction elect each of the members of the City Council. The CVRA prohibits an at-large method of election that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election.

The law's intent is to significantly expand protections against vote dilution over those provided by the Federal Voting Rights Act of 1965 ("FVRA"). Compared with the FVRA, it is easier for plaintiffs to prove a violation of the CVRA against public entities. Under the CVRA, proof of intent on the part of voters or elected officials to discriminate against a protected class is not required. As a result, cities, school districts, and numerous other special districts throughout the State of California have faced legal challenges to their at-large electoral systems. Most jurisdictions that have faced such a legal challenge have taken advantage of the CVRA's safe-harbor process of transition for at-large elections to those based in five districts. Those jurisdictions that have opposed CVRA transition in court have lost and had the district-based electoral system imposed upon them – and been ordered to pay many millions of dollars in attorneys' fees in addition to paying their own attorneys.

As referenced above, a prevailing plaintiff in a CVRA case can recover their reasonable attorneys' fees and expert witness costs. The cases are both complex and expensive. Jurisdictions that litigate CVRA cases lose, and thus must pay sizeable awards or settle with the prevailing plaintiff. Seven figure amounts are not uncommon:<sup>1</sup> both the Cities of Santa Clara and Palmdale paid a \$4.5 million dollar settlements; the City of Modesto paid a \$3 million settlement; and, the City of Anaheim paid a \$1.1 million dollar settlement. These amounts do not include these jurisdictions costs for their own lawyers. Further, all of these jurisdictions lost control over the districting process, and had district maps imposed on them by the plaintiffs and/ or the courts. Here, a voluntarily transition to districts allows the City and its own citizens to retain control of the future district boundaries.

In response to the substantial costs imposed upon cities and other public agencies in the defense of CVRA suits, in 2016, the California Legislature amended the Elections Code (AB 350) to simplify the process of converting to by-district elections and to provide a "safe harbor" process to protect agencies and allow them to change voluntarily their electoral systems in exchange for a capping of fees and costs for the plaintiff demanding the change.

A plaintiff and their lawyer – in this case the Southwest Voter Education Fund and Mr. Sherkman – wishing to challenge an at-large electoral system must send a "demand letter" to the public agency before filing any action in court. The City received Mr. Sherkman's letter on April 18, 2024. Under the CVRA, the City has 45 days to pass a resolution proclaiming its intent to transition for at-large elections to district-based elections, outlining the steps it will take to fully facilitate the entire transition, and the estimated time-frame to complete the transition. If the City fails to pass such a resolution, the plaintiff can file suit to compel the City to make the change to district elections, which commences expensive and unnecessary litigation. Should the City pass such a resolution within the requisite time period, then the CVRA plaintiff may not file any action with the court for 90 days after the adoption of the resolution (Elec. Code § 10010, subd. (3)), which gives the City the time to make the transition from at-large to district-based elections.

The City and the CVRA plaintiffs may enter into a written agreement to extend that 90 day time period to provide additional time to conduct public outreach, encourage public participation, and receive public input, as well as to take account of time periods when the City Council will not meet

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<sup>1</sup> The City of Santa Monica fought a CVRA case in trial court, in the Court of Appeal, all the way to the California Supreme Court, and lost. At the end of the day, it is likely that the amount that Santa Monica will pay in attorneys' fees dwarfs the amounts paid by Santa Clara, Palmdale, and Modesto.

– here, the Council will not meet from July 8 to August 24, 2024. Here, the City has negotiated such an extension with Mr. Shenkman, and must complete the transition by October 31, 2024.

Ultimately, the City will adopt an ordinance transitioning to district-based elections, pursuant to Government Code Section 34886. However, prior to adopting the ordinance, the City must first hold a number of noticed Public Hearings to take public input for help in identifying communities of interest within the City, and to hear from the public about how the districts should be drawn. Determine district boundaries for the City. Elections Code Section 10010 sets forth the steps the City must take in the effort to assess and transition to a district-based election system, which is laid out in further detail below. Finally, the City's liability is capped at \$30,000 (plus annual inflation adjustments) if it follows this safe harbor process after receiving the demand letter; plaintiff of course must show documentation that these costs were actually incurred by the plaintiff and their lawyer.

#### The Public Hearing Process for the Transition from At-Large to By-District Elections Pursuant to Elections Code Section 10010

Staff will utilize the assistance of outside legal counsel, as well as a demographer to assist in this process. Under Elections Code section 10010, the City is required to hold at least four public hearings within the allotted 90 day "safe harbor" period – here that period is extended by approximately 60 days to October 31, 2024. The first two public hearings will include presentations about the districting process by the demographer. The public is invited to learn about the process and to provide input on what and where the various "communities of interest" are in the City of Los Altos, and upon the composition of the districts before any maps are drawn.

subsequently, draft district maps will be drawn and two additional public hearings (hearings three and four) will be held for the public to provide input on the content of the draft maps and proposed sequence of elections. The maps must be published at least seven (7) days before the public hearings. At the fifth and final public hearing, the City Council will consider an ordinance that selects the City's electoral map for district-based elections. This final map will be published for at least seven (7) days before the final map is adopted. At this final public hearing, the City Council will also consider the order of those elections in 2026 and 2028 as Councilmembers' terms are staggered. The districting process will have no impact on the length of any current Councilmember's term.

Should the City adopt a Resolution of Intention to proceed to a district-based elections system, the first district elections for the City of Los Altos would be in 2026. Given the time required to complete the process, the City will not have its districts drawn and adopted by the ballot deadline for the November 2024 election, and thus cannot transition to districts in time for this year's elections.

In moving to district-based elections, the City Council must also the threshold question as to the number of districts:<sup>2</sup>

- Four district-based Council seats with a Mayor elected at-large; or,
- Five districts-based Council seats with a rotating Mayor chosen from among the five Councilmembers.

The entire creation and eventual approval of voting district maps is a transparent public process, where public input is sought, encouraged and welcomed. Although five hearings are the minimum required under Elections Code Section 10010, City may have as many hearings in as many locations as it desires to increase public engagement as much as possible, time permitting. In terms of the type of outreach and notice that is required for the hearings, with the exception of publishing a draft map at least seven (7) days before consideration at a hearing, there are no additional requirements regarding the noticing or scheduling of those meetings than for ordinary meetings/hearings under the Brown Act.

However, the City has the option of engaging in a more robust public process before it draws and adopts new maps. The FAIR MAPS Act codifies best practices as it relates to districting/redistricting and provides that in to allow the public to provide maximum input regarding their City's new districts, of the four hearings, at least two must be held on a Saturday, Sunday, or after 6 pm on a weekday. (Elec. Code § 21150.1.) The FAIR MAPS Act also requires online notice of hearings at least five (5) days in advance, though other public agencies provide additional time so interested residents have enough time to plan to attend each hearing. This is also not required here, but is another option the City might consider.

District maps must be prepared in compliance with state and federal requirements, including the consideration of communities of interest, natural geographical boundaries, and the “one person, one vote” standard, which requires that all voting districts be as nearly equal in population as possible. (Elec. Code § 21150; 21130.)

During the districting process, the City will host a webpage dedicated to the transition to district-based elections, and all information gathered in the process will be posted to that webpage. This will include any and all staff reports, resolutions, ordinances, draft maps, public feedback and eventually, the final ordinance and adopted map, and detail on the final sequencing of district elections for Los Altos.

## **ATTACHMENTS**

### **1. Resolution of Intention**

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<sup>2</sup> As a General Law City, the City currently elects five Councilmembers, who then make an internal selection for the seat of Mayor annually in December of each year.