



City of Palm Springs

Office of the City Attorney

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Open Advisory Letter

To: Residents of the City of Palm Springs
From: Palm Springs City Attorney's Office
Date: September 25, 2018
Re: California Voting Rights Act Issues

**CITY COUNCIL MEETING: 09/27/2018
STUDY SESSION ITEM A**

The City of Palm Springs is transitioning from “at large” City Council elections to a “by district” system. This move is intended to help remove barriers to minority voter representation, as well as to address certain claims recently made by an attorney against the City under the California Voting Rights Act (“CVRA”). While charter cities are exempt from some State laws, the courts have made it clear that the CVRA applies to charter cities. (*Jauregui v. City of Palmdale - 2014*)

The City Council has received input from the community, having established a subcommittee and formed a citizen working group to look into this matter in detail. Ultimately, the plan is for the Council to adopt an ordinance by the end of this year, making the transition to “by district” elections official.

Is a Charter Amendment Required?

“At large” elections are expressly required in the City Charter (Sections 301 and 302). The general rule in California is that a city charter may only be amended by the voters; meaning an election. Those realities prompt the question: will an election will be required to make this CVRA transition? The answer is no, because there is an exception in the law.

Government Code 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 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 . . .”

¹ It is noted that these CVRA legal claims are being made against many cities and public agencies throughout California and nearly all have responded by transitioning from “at large” to “by district” elections to address these claims.

Therefore, the City Attorney's Office believes that the Council may, by ordinance and without a charter amendment election, make this transition because the City is acting in furtherance of the CVRA. Nonetheless, after the Council adopts an ordinance, it may also direct the City Attorney's Office to seek court review to legally confirm the ordinance (termed a "validation action").

Five Districts or Four? – Consistency with the Charter.

Another significant issue that has arisen during these discussions. Should the City transition to five Councilmembers elected by district (with the Mayor being chosen from amongst the five Councilmembers annually), or to four Councilmembers elected by district with an at large elected Mayor. The question has been asked whether one form is more consistent with the current City Charter than the other.

Under the Charter, the Mayor is a co-equal member of the City Council. The Mayor has one vote on the Council and possesses no greater powers than any other Councilmember. After the CVRA transition, the Mayor's powers would remain unchanged whether elected at large or by district. While reasonable minds may believe that a retained at large Mayor will have more *influence* than a Mayor chosen from amongst the Council, the Mayor's *legal* power (one vote) will remain the same.

That being said, transitioning to five districts would be more consistent with the CVRA. Under the CVRA, a city must normally make a change that results in no "at large" elements remaining in the election process. A five-district scenario is more consistent because it leaves no "at large" elements. Regardless, several California cities have retained at large elected Mayors after going through the CVRA process. Further, the CVRA attorney who most frequently litigates these cases, and who also filed the claim against Palm Springs, appears to be cooperating with this approach. Nevertheless, this is no guarantee that another plaintiff's attorney would not legally challenge a "4 + 1" structure. Therefore, while this remains a viable approach for the Council to consider, it does not address the CVRA issue as completely as a five-district scenario.