



Department: Attorney
Cost Center: 1501, 1001, 1021
For Agenda of: 11/19/2024
Placement: Business
Estimated Time: 120 Minutes

FROM: Christine Dietrick, City Attorney
Marguerite Leoni, outside Legal Counsel

SUBJECT: CONSIDER RECOMMENDATION TO APPROVE PRE-LITIGATION SETTLEMENT OF CALIFORNIA VOTING RIGHTS ACT DISTRICT ELECTION DEMAND

RECOMMENDATION

1. Approve a tentative settlement agreement and related settlement documents to resolve the February 17, 2023 California Voting Rights Act District Election Demand (CVRA Demand) served on the City by Kevin Shenkman on behalf of Southwest Voter Registration Education Project (SVREP), including:
 - a. Settlement Agreement
 - b. Draft CVRA Complaint to be filed by SVREP alleging CVRA violations
 - c. Draft City Answer to Complaint denying CVRA allegations
 - d. Stipulated judgment directing transition to Citywide Single Vote Council elections, beginning November 2026
2. Authorize the Mayor, City Attorney and City Manager to execute and file documents and take administrative actions necessary to implement the Settlement Agreement.
3. Appropriate \$75,000 from the Fiscal Year 2023-24 General Fund Undesignated Fund Balance to be used for SVREP Attorneys' fees to date as described in the settlement agreement.

REPORT-IN-BRIEF

The purpose of this report is to seek final approval of a pre-litigation settlement package with SVREP in response to a California Voting Rights Act ("CVRA") demand letter served on the City by attorney Kevin Shenkman on behalf of his client SVREP on February 17, 2023. Staff is requesting Council confirmation that the package of settlement documents fully and accurately reflects and implements Council direction provided during closed session litigation settlement discussions and that the settlement terms are consistent with the settlement authority provided to staff by the Council. If approved, the settlement will result in the City transitioning to a "Citywide Single Vote" model for electing Councilmembers, beginning in the 2026 election cycle. In short, this would mean that the City would move from the current "vote-for-two candidates to elect two Councilmembers" model, to a "vote-for-one candidate to elect two Councilmembers" model, whereby the top two candidates receiving the most single votes are elected to Council.

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The City has been served with two demand letters under CVRA since November 2019, the first of which was resolved in 2022, without litigation and with no electoral structure changes.

To date, the City of Santa Monica is the only California city to have prevailed in its defense of a CVRA litigation demand at the appellate court level (after appealing a trial court ruling against the city); however, in September 2023, the California Supreme Court reversed that appellate court victory. The litigation has been ongoing for approximately eight years and is continuing. As of the date of this report, the case has been remanded back to the trial court that originally ruled against the City of Santa Monica, prompting the city's appeal, and there is a pending motion by the plaintiffs to update and reinstate the trial court ruling against the city (see full timeline with links to court filings here: santamonica.gov - [Santa Monica Election Litigation](#)). Santa Monica has expended millions of dollars in attorneys' fees for its own defense (which would not be recoverable by the city even if it ultimately prevailed) and, at present, the city remains exposed to a prevailing party attorneys' fees award of tens of millions of dollars in the event the ruling in favor of plaintiffs ultimately becomes final.

The current demand letter served on the City of San Luis Obispo arose in the context of the Santa Monica litigation, and SVREP's attorney, Kevin Shenkman, is also the plaintiffs' counsel in the Santa Monica case. Notwithstanding that context, the City of San Luis Obispo concluded, based on its data analyses related to the first CVRA demand letter it received, and as subsequently updated, that San Luis Obispo is significantly differently situated from Santa Monica as it relates to voter equity concerns under CVRA and the ability to prove a CVRA violation under the City's current at-large election structure. Specifically, it is the City's position that the City of San Luis Obispo demographics, Latinae voter dispersion, community-wide coalition building capacity, candidate election history, and City commitments to and investments in advancing its Diversity, Equity and Inclusion Major City Goal programs support a conclusion that the City's electoral system is not encumbered by the type of discriminatory racial polarization or minority vote dilution that CVRA seeks to remediate.

As a result of the City's analyses, the City requested, and Mr. Shenkman and his client agreed, to toll the generally applicable statutory timelines under the CVRA in order to facilitate data sharing and discussion of alternatives to litigation or a move to district voting for City elections. At Council's direction, as part of confidential settlement negotiations, staff shared with Mr. Shenkman both election data analysis and information regarding City initiatives to advance equity. Following ongoing direction from the City Council received in Anticipated Litigation Closed Sessions, City staff, outside counsel, and Mr. Shenkman engaged in a series of information exchanges and highly constructive settlement discussions that have resulted in the settlement package that is now recommended for Council approval.

Throughout settlement discussions, the parties focused on the following:

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1. Data based discussions and proposals regarding the efficacy of district elections to advance, in San Luis Obispo, the purpose and intent of CVRA.
2. Viable alternatives to district elections that could more effectively advance CVRA objectives in the specific context of San Luis Obispo.
3. SVREP's primary objective to achieve a structural change in the City's method of electing Councilmembers as a condition of any settlement.
4. Implementation of provisions that align with and advance City Diversity, Equity and Inclusion goals.
5. Advancement of enhanced voter education, outreach and participation goals.
6. Further refinement of the proof necessary to support a CVRA lawsuit and guidance regarding potential alternatives to district elections that was provided by the California Supreme Court decision in the *Pico Neighborhood Association and Maria Loya v. City of Santa Monica* case.
7. Dispute resolution processes designed to facilitate ongoing collaboration between the parties and avoid future litigation over disagreements in data analysis or conclusions related to future elections.
8. A mechanism (stipulated judgment) by which to assure court oversight and ongoing jurisdiction over the proposed settlement.

The components of the tentative settlement negotiated over nearly two years include:

1. Agreement that the City will transition its current at large "vote for two to elect two" Council Members election process to a single vote, "vote for one to elect two" system, to be called "Citywide Single Vote" beginning with the November 2026 election and in all subsequent elections.
2. Agreement to share data and analyses following the 2026 and 2028 elections to evaluate the effectiveness of the new system as compared to a hypothetical district election model proposed by Mr. Shenkman.
3. A process by which the Council will consider a transition to district elections if subsequent data analyses following the 2026/2028 elections supports that the purpose and objectives of CVRA are not being achieved under the Citywide Single Vote model and would be achieved under the hypothetical district election model.
4. A dispute resolution process if the parties cannot agree on the conclusions reached from 2026/2028 post-election data analyses and/or if the Council declines to implement districts that both parties concur are supported by the data analyses.
5. Limitation of costs and plaintiffs' attorneys' fees to be borne by the City related to agreed upon dispute resolution processes.

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6. Agreement that SVREP will not be required to serve a subsequent demand letter on the City, and that the City will waive any objection to the standing of SVREP to sue, in the event that all dispute resolution processes under the settlement agreement are exhausted without resolution and SVREP determines it needs to proceed with a CVRA lawsuit following the outcome of the 2026/2028 elections analyses and settlement processes.
7. City commitment to voter education and outreach efforts and programs to enhance diverse candidate and voter education, development, and participation in local elections.
8. Ability of the City to implement district elections at any time it may determine districts to be an effective structure for the City based on evolving data and demographics analysis, and to be relieved of future obligations under the settlement agreement in the event the City does transition to districts.
9. Payment of attorneys' fees (\$75,000) to SVREP to compensate for its costs of participation to date in negotiations with the City to avoid litigation.
10. Agreement to limited payments to SVREP to offset its costs of participation in future data analyses of the 2026/28 elections and support it may provide to the education and outreach efforts (not to exceed \$10,00 per election cycle).

While the Council could have approved the settlement agreement in a closed session meeting, Council instead directed staff to place the final approval of the proposed settlement on a public meeting agenda to provide transparency as to the terms of the proposed agreement and the process by which tentative agreement was reached, and to facilitate an open community discussion on this important local election process change. Staff is aware that there have been community discussions of alternatives to the Citywide Single Vote system proposed in the settlement, including the potential to consider ranked choice or cumulative voting. For reasons discussed in greater detail below, those alternatives were considered during settlement negotiations and rejected in favor of the current Citywide Single Vote proposal.

While public comment and feedback on the proposed settlement terms are being sought through this Council agenda item, it is important to keep in mind that the terms being proposed are the product of lengthy and extensive settlement negotiations focused on avoiding costly and time-consuming litigation. Any significant changes to the negotiated terms cannot be imposed upon the plaintiffs and could remove any litigation protections the City would have under the terms of the agreement. In other words, significant substantive changes to the terms of the proposed agreement may result in SVREP filing a lawsuit against the City. Additionally, the parties agree that the recommended proposal presents a mutually beneficial opportunity to enhance equity and participation among both candidates and voters in the City's local elections. Therefore, staff recommends that the Council approve the proposed settlement package.

Staff suggests that any alternatives or considerations of interest to the community that may emerge from public meeting comments be addressed via direction to staff to pursue subsequent discussions with SVREP as follow-up conversations following approval of the current negotiated settlement. Alternatively, Council could direct staff to complete further analysis and return to Council for further presentation of information regarding other alternatives, subject to ongoing compliance with the settlement terms.

POLICY CONTEXT

State Law

The California Voting Rights Act (“CVRA”), enacted in 2002, and codified as California Elections Code, Section 14027-14032, is a law enacted by the California State Legislature to provide minority groups in California a legal tool to address claims that their votes are being diluted by “at-large” elections in which all members of a community vote for all candidates for local offices. CVRA is similar to but expanded upon, and lessened the burden of proof for similar claims under, the Federal Voting Rights Act of 1965 (FVRA). CVRA makes it easier for plaintiffs under the state law to prove vote dilution than under federal law.

Under federal law, as interpreted by various court cases, a plaintiff under the FVRA must prove: that the affected minority group is sufficiently large to elect a representative of its choice; that the minority group is politically cohesive; and that white majority voters vote sufficiently as a bloc to usually defeat the minority group's preferred candidates. CVRA does not require plaintiffs to demonstrate a specific geographic district where a minority is concentrated enough to establish a majority. Rather, 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. “Ability to influence” is not defined under CVRA and the California Supreme Court recently declined to define the term more precisely in its ruling in a CVRA case against the City of Santa Monica.

In 2016, following a significant volume of litigation against cities under CVRA resulting in significant attorneys’ fees awards against even cities that opted to transition to district elections, the California legislature passed legislation amending Section 10010 of the Elections Code to provide a 45-day “safe harbor” limit after the receipt of a letter from potential plaintiffs in CVRA cases. The amendment prevents lawsuits during the 45-day period. If the city makes legal moves towards district elections during that 45-day period, it cannot be sued for an additional 90 days after it makes a legal declaration. The city must then hold at least two public hearings on the matter within 30 days. The amendments to Section 10010 also put a limit [initially \$30,000, increased by CPI annually, now roughly \$38,000] on the amount the city must pay to potential litigants if the city moves to district elections within the 90-day period. If a city declines to adopt a resolution of intent to transition to district elections, or thereafter fails to complete the process to implement districts, the city becomes subject to litigation and there is no limitation on the attorneys’ fees that can be recovered by the plaintiff who served the demand, if they prevail. Litigation fee awards in these cases have ranged generally in the millions of dollars. For example, the fee award in the CVRA case against the City of Highland, which was on

remedy only, was about \$1 million; the award against the City of Modesto was \$3.5 million; the award against the City of Palmdale was \$4.5 million. Plaintiffs in the CVRA action against the City of Santa Monica are reportedly seeking \$22 million for legal services through trial. The CVRA and Section 10010 also apply to charter cities, but the section's application to enable charter cities to use an ordinance to go to district elections where the charter provides for at large elections (such as would be applicable to the City of San Luis Obispo), has not been finally resolved by courts.

Santa Monica Supreme Court Case

As noted above, the California Supreme Court recently considered the scope of CVRA in the case of *Pico Neighborhood Assn. v. City of Santa Monica*, in which the Court explained “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.” *Pico Neighborhood Assn. v. City of Santa Monica*, 15 Cal. 5th 292, 310, 534 P.3d 54, 61 (2023), as modified (Sept. 20, 2023).

The Court ultimately held as follows:

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 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.

Pico Neighborhood Assn. v. City of Santa Monica, 15 Cal. 5th 292, 324, 534 P.3d 54, 71 (2023), as modified (Sept. 20, 2023)

City Charter

The San Luis Obispo City Charter, Section 402-Election at Large, provides:

The Mayor shall be elected at the general municipal election on a general ticket from the City at large.

The Council Members shall be elected at the general municipal election from the City at large, two being selected biennially.

The Citywide Single Vote election model, as discussed in more detail in this report and reflected in the proposed settlement agreement, is still an at-large form of election and its implementation would not require a Charter amendment. In the absence of an admission of a CVRA violation (which the City denies) or court adjudication of a CVRA violation compelling the implementation of district elections as a remedial measure, implementation of district elections in the City would require a Charter amendment. Charter amendments must be approved at an election by the voters of the City.

DISCUSSION

Background

In November 2019, the City received its first CVRA demand letter from Robert Goodman, Attorney-at-Law, on behalf of his client Jamie Gomez. The letter asserted that the City of San Luis Obispo's method of conducting elections with at-large voting may violate the California Voting Rights Act ("CVRA") and demanded that the City Council adopt a Resolution of Intent to transition from at-large to district elections.

In response to that first demand, the City retained outside counsel with CVRA expertise, Marguerite Leoni, and worked with legal counsel and an experienced demographics consultant to perform independent demographics, vote dilution, and racially polarized voting analyses. The City also was monitoring the California Supreme Court, *Pico Neighborhood Association v. City of Santa Monica*, CVRA case, which was being litigated by Mr. Shenkman and raised issues pertaining to proof of vote dilution under CVRA that are of particular relevance to the City of San Luis Obispo.

Based on analyses performed by the City's expert consultants, the City and Mr. Goodman agreed to enter into a tolling agreement and engage in settlement discussions. That demand was ultimately resolved in November 2022 through a settlement that provided for the payment of minimal attorney's fees, with no changes to the City's election structure.

The City received its second demand letter from Mr. Shenkman and SVREP just a few months later. Staff and the City's consultants evaluated the demand, consulted with the Council in closed session, updated the City's elections data analysis and requested discussions with Mr. Shenkman that began a constructive series of negotiations leading to the current proposed settlement agreement.

Settlement Discussion Context

Although the City disputed the assertion that the City's updated demographics, racial polarization and dilution data supported a conclusion that the City was in violation of CVRA, the Council did not dismiss SVREP's demand out of hand, but rather directed staff to attempt to further explore the basis for the demand with Mr. Shenkman. Based on that direction, the parties began open discussions regarding the potential alignment between the City's Diversity Equity and Inclusion (DEI) efforts, CVRA objectives, and the voter and candidate equity objectives of Mr. Shenkman's client, SVREP.

The City initially shared an overview of its prior analysis with Mr. Shenkman and requested that he share his impressions of the City's data conclusions. Additionally, the City shared the Council's DEI objectives, as well as the City's efforts to enhance access to elected office through such steps as increasing the salary of council members, re-instituting and restructuring a Community Academy to foster interest and educate a more diverse cross section of residents about city government, and developing and funding a robust DEI program in city government, including hiring a DEI Manager and staff and funding programs to enhance diversity, awareness, and access in the community. In that context, the parties considered the demographics of the City, the relative racial and ethnic heterogeneity of its neighborhoods, the dispersion of the City's Latinae population across the City, and the consequent likelihood of significant dispute as to the ability to create meaningful opportunities for Latinae eligible voters to elect or influence the election of chosen candidates through a districting plan. The parties engaged in good faith negotiations to identify areas of alignment in objectives and measures on which SVREP and the City could agree would enhance equity in local elections and support the underlying purposes of CVRA, with an alternative to district elections.

Why Citywide Single Vote?

Citywide Single Vote contrasts with the City's current voting system, in which a voter can select as many candidates as there are open seats. As noted above, under the Citywide Single Vote methodology, City voters would have one fewer vote than the number of Council seats available. The City would continue with staggered Council elections, wherein two Council seats with four-year terms would be up for election every two years. Under the proposed new system, City voters would vote for only one candidate and the top two candidates receiving the most single votes would be elected to serve. This single vote would also occur if the City were to transition to a vote-by-district system. However, in a district system, voters would be limited to voting only for a candidate that lives in the same district in which the voter resides, and would only vote for their single Council representative every other election year because Councilmembers serve four year terms, and only one candidate would be elected for each district. In other words, a voter in one district would have no vote as to which candidate is elected in another district. Under the Citywide Single Vote structure, all voters would vote for a single Councilmember every two years and there would be no geographic barriers to Citywide coalition building to coalesce support around a single candidate.

The purpose of single voting is to prevent the same majority from controlling all of the available seats and to create opportunities for non-majority groups to build coalitions of support to elect at least one of their preferred candidates, or at a minimum to prevent the

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election of a non-preferred candidate. Single voting often benefits minority groups that are not numerous enough to form a majority of the voting population. Voters from the minority group can focus their single vote on the candidate who best represents their interests, which can increase the chances that the minority group will have a voice in the election, especially if the majority is fragmented and does not unite behind a single candidate.

Single voting is a methodology that has been adopted as an alternative voting method in the United States in response to Federal Voting Rights Act challenges. Single voting (sometimes called “bullet voting” or “limited voting”) is currently used for elections in dozens of jurisdictions across the United States, including many parts of Alabama, Connecticut, Pennsylvania, and North Carolina. While not formally adopted locally, several local council candidates over the years have shared that single voting has been broadly used on an informal basis in past City elections for precisely the purpose stated above. A review of the past three City elections showed that a significant number of voters only cast one vote, even under the current structure, when they could have voted for two, which supports the anecdotal experience of local candidates and voters. In the 2022, 2020 and 2018 elections this “undervote” for City Council was 53%, 41% and 44%, respectively.

Further collaboration with the San Luis Obispo County Clerk Recorder’s Office will be necessary regarding continued consolidated administration of City elections by the County.

Why Not Districts?

The short answer to this question is that the City could not conclude that the data supports that implementation of district elections in San Luis Obispo would actually advance the voter equity objectives underlying CVRA. Additionally, the City’s analyses and conversations with Latinae leaders throughout the settlement process raised questions whether implementing districts could actually slow the broader progress on DEI goals the community has made through City DEI initiatives and investments. There were also concerns that implementing districts could fracture and inhibit ongoing citywide community coalition building in a manner that could have the unintended consequence of diminishing Latinae community influence in the City’s elections.

Additionally, due to the small number of Latinae community members and the fact that there is no concentration of community members in any particular area of the City, the traditional data analysis of voter preference yields unreliable results due to extremely high margins of error and does not yield any clear path to a likely effective districting model.

Since receiving the original Goodman/Gomez demand letter in 2019, the City’s legal counsel and demographics consultants have evaluated the City’s ability to create a majority Latinae single-member electoral district. Under the 2020 Census data, the total population of the City has grown from about 45,173 in the 2010 Census to about 47,160, or by about 1,987 people. The growth appears to be entirely in the Latinae population which increased from 6,630 to 8,755 people.

Latinae residents who are eligible to vote (“Citizens of Voting-Age” or “CVAP”) increased from an estimate of 12.58% to an estimated 13.45%, but Spanish surnamed registration¹ held steady at about 9.43% - 9.70% of registration from November of 2018 to March of 2020. Even considering the growth in Latinae population, it is not possible to create a majority Latinae eligible voter (“LCVAP”) district in the City. There are only about seven census blocks in the City that are over 50% Latinae in eligible voter population, and they are sufficiently distant from each other that highly irregular boundaries would be required to include them in a single district. These data are based on the Census Bureau estimates for the period 2015 – 2019, which were the most recent at the time of publication of the 2020 Census data. The parties agree that the strongest Latinae district that could be formed, even in a five-district election system, whereby the Mayor would no longer be directly elected, would be comprised of approximately 21% Latinae residents (see Attachment E).

The parties disagree on whether reliable evidence of statistically significant racially polarized voting or identification of clearly Latinae preferred candidates in the City’s past elections could be produced. However, even assuming sufficient evidence could be produced, the California Supreme Court recently held that

[t]he 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.

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.) Pico Neighborhood Assn. v. City of Santa Monica, 15 Cal. 5th 292, 315, 534 P.3d 54, 65 (2023), as modified (Sept. 20, 2023)

Why Not Ranked Choice or other Cumulative Voting Method?

The Secretary of State is authorized under the California Elections Code to certify voting systems. Section 19216 states, in relevant part: "If a voting system or a part of a voting system has been certified or conditionally approved by the Secretary of State, it shall not be changed or modified until the Secretary of State has been notified in writing and has determined that the change or modification does not impair its accuracy and efficiency sufficient to require a re-examination and recertification, or conditional approval, pursuant to this article." See also Elec. Code 19101. It is the position of the Secretary of State that

¹ Staff acknowledges concerns that Spanish surname registration is not a precise proxy for Latinae voter registration; however, it is nonetheless the standard methodology of identifying Latinae voters in CVRA litigation.

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any voting system that has not been certified or tested for the purpose for which it is intended to be used requires at a minimum notification to the Secretary and possibly testing and certification by that office. The Secretary of State has objected to the use of voting systems to implement cumulative voting in other CVRA cases (e.g., Santa Clarita, Mission Viejo). No jurisdiction to date has proposed the use of a single vote system, which is far less complicated than cumulative voting and could be implemented in the same manner as standard district elections, with the only significant modification being a fairly simple change to the ballot instructions provided to City voters (e.g., along the lines of “vote for one; top two win”).

For these and other voter understanding and local resource constraint concerns, the San Luis Obispo County Clerk Recorder has indicated that her office’s resources could not support the City implementation of a Ranked Choice or Cumulative voting election system, even if Secretary of State approval could be obtained, which the City’s elections experts assess as unlikely. Therefore, the County Clerk Recorder could not recommend that the County administer the City’s elections, if the City proceeded with a ranked-choice or a cumulative voting system, and the City would therefore need to run its own separate elections, potentially involving a hand count of ballots. The ongoing costs and inefficiencies of doing so would be significant.

Proposed Settlement Terms

The general outline of the negotiated settlement agreement (included in full as Attachment A) is as follows:

1. SVREP will file a complaint alleging a CVRA violation against the City. Mr. Shenkman has provided a draft of the complaint to counsel for the City who has commented with suggestions and revisions which appear to be mostly acceptable to Mr. Shenkman (Attachment B).
2. The City will answer the complaint *denying liability* (Attachment C).
3. The parties will then stipulate to entry of judgment which will track the terms of the settlement and include other terms that are typical in stipulated judgments (Attachment D).
4. The City will use a single vote process (called “Citywide Single Vote” in the agreement) for its City Council elections in 2026 and 2028 (but not for the office of Mayor) and in subsequent elections if Citywide Single Vote satisfies criteria specified in the agreement as relevant under the CVRA.
5. The parties will cooperate in a voter education program concerning single voting in advance of the 2026 City Council elections.
6. The parties agree to specified criteria to evaluate the effectiveness of Citywide Single Vote on electoral outcomes and whether the Latinae preferred candidate, if any, was elected in the Citywide Single Vote system

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in 2026 and/or 2028, and, if not, whether the evidence indicates the outcome likely would have been different in District 1 of the SVREP demonstration single-member district map (Attachment E).

7. The settlement agreement further provides that after the 2026 and the 2028 elections, SVREP and the City would share information about whether Citywide Single Vote satisfied the criteria in that election. If the parties agree that Citywide Single Vote has not satisfied the relevant criteria, the City Council will have the opportunity to consider adopting single-member districts for future elections. If the City Council determines to stick with Citywide Single Vote, notwithstanding the parties' agreement that Citywide Single Vote has not satisfied the relevant criteria, SVREP may sue the City immediately without further notice, safe-harbor tolling, or an attorneys' fee cap, and the City agrees not to challenge SVREP's standing to sue as an organizational plaintiff.
8. If the parties disagree whether Citywide Single Vote satisfies the relevant criteria, the matter will be referred to a referee who will receive evidence and briefing from the parties, make findings and recommendations, including potential changes to the City's electoral system, and provide a written opinion.
9. In the event the referee decides against the City, the referee's decision will be formally presented at a City Council meeting to consider making the recommended changes. If the City Council chooses not to make changes, the referee's decision would be submitted to the Superior Court judge with jurisdiction over the stipulated judgement. The Court's decision on the Referee's determination would be binding on the parties and non-appealable.
10. The City may at any time choose to transition to district elections without penalty, in which case it would no longer be bound by any of the above settlement terms.
11. The City will pay plaintiff attorneys' fees in the amounts set forth in the fiscal impact section below (with some fees certain and some fees avoidable based on the City's response to conclusions of future data analyses).

PUBLIC ENGAGEMENT

The City will use its Public Engagement and Noticing Manual to develop a comprehensive public engagement plan that will inform residents of the Citywide Single Vote update to our at-large election system. This will primarily focus on communications from the City to community members to inform them of the upcoming change and will include a mix of English and Spanish communications using paid advertisements, digital media and channels, direct mail, signage, informational meetings and in-person outreach at various events, partnering with key partner organizations and trusted messengers, and working with the local media to help raise awareness of why, when and how the change is

occurring and what people can expect.

During the course of negotiations toward settlement, City staff requested and received feedback from Latinae community leaders to understand whether they were aware of significant Latinae community interest in district elections or other electoral changes and what measures the community leaders viewed as best serving their communities.. Those consulted included representatives of the Diversity Coalition, SLO County UndocuSupport, the Latino Outreach Council, Corazon Latino and other Latinae community leaders.

None of those consulted expressed that they were receiving feedback from the communities they serve supporting district elections. In fact, there were unanimous concerns about the potential unintended adverse consequences of districts in disrupting the momentum of local DEI, education, outreach and civic inclusion initiatives, as well as the potential of districts to fragment the coalition building capacity of Latinae community groups and voters in San Luis Obispo.

CONCURRENCE

The City Clerk and DEI Manager have been involved in ongoing settlement discussions and concur with the recommendation.

ENVIRONMENTAL REVIEW

The recommended action is not a project with the potential to result in direct or indirect physical change to the environment and, therefore, does not require environmental review.

FISCAL IMPACT

Budgeted: Yes

Budget Year: 2024-25

Funding Identified: Yes

Fiscal Analysis:

Funding Sources	Total Budget Available	Current Funding Request	Remaining Balance	Annual Ongoing Cost
General Fund	\$75,000	\$75,000	\$	\$
State				
Federal				
Fees				
Other:				
Total	\$75,000	\$75,000	\$	\$

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Costs for the current fiscal year to implement the Settlement Agreement are \$75,000 for SVREP attorneys' fees to date. This payment is proposed to come from the fiscal year 2023-24 General Fund undesignated fund balance. The current unaudited fiscal year 2023-24 fund balance is \$7,735,567. Additional commitments and recommendations for use of this funding will be presented to the Council at the February 18, 2025, meeting with the Mid-Year Budget Report.

Additional attorneys' fees, some of which are avoidable by the City depending on future data analyses and Council actions, may occur in future fiscal years, and are capped as detailed in the fee schedule below which is included in the Settlement Agreement:

\$75,000.00	SVREP Attorneys' Fees to Date
Not to Exceed \$10,000.00	Facilitation of SVREP's Participation in Analysis Following the 2026 & 2028 City Council Elections
Not to Exceed \$200,000.00 (avoidable cost)	SVREP Attorneys' Fees if Dispute Goes to Judicial Reference Process
Not to Exceed \$50,000.00 (avoidable cost)	Referee Fees
No Cap	If the matter goes to Court after the judicial reference procedures

Should the Council approve the Settlement Agreement, staff will also prepare a corresponding budget request for the 2025-27 Financial Plan to implement the additional outreach and engagement commitments included in the agreement. This will include the tasks referenced above in the Public Engagement section of the report as well as the commitment to conduct a Community Academy and/or other type of candidate education and development offering annually. The total costs for this budget request is not expected to exceed \$150,000 total for the 2025-27 Financial Plan.

The City's own costs in this matter for demographics consulting and outside counsel, for work through the end of October 2024, are just over \$216,000.

ALTERNATIVES

1. ***Council could elect to proceed with implementation of single member districts***, which would foreclose a subsequent legal challenge, and eliminate the need for settlement. This alternative is not recommended due to lack of data supporting the efficacy of that remedy and, as previously discussed, potentially adverse consequences of districts given the City's current demographics and dispersion data. Mr. Shenkman would still be entitled to attorneys' fees per statute, currently approximately \$38,000.

2. ***Council could decline to approve the recommended settlement and direct staff to abandon further discussions with SVREP and decline to implement single member districts***, which would permit SVREP to sue the City to compel district election implementation. This alternative is not recommended because it would invite a lawsuit, would likely result in significant legal defense costs to the City, and could expose the City to a significant attorneys' fees award to SVREP in the event SVREP prevailed in litigation.

ATTACHMENTS

- A - Proposed Settlement Agreement
- B - Revised Complaint (referenced as Exhibit A in the Settlement Agreement)
- C - Draft Answer of the City (referenced as Exhibit B in the Settlement Agreement)
- D - Proposed Stipulated Judgment (referenced as Exhibit C in the Settlement Agreement)
- E - SVREP demonstration single-member district map, (referenced as Exhibit D in the settlement agreement)