

6/26/18

regular
meeting

City of Santa Clara

Response to Court Order Regarding Current Election System

City Council Meeting

June 26, 2018



City of
Santa Clara
The Center of What's Possible

Brown Act

- The Council may place this item on the agenda under Government Code Section 54954.2(b)(2):
“Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted.”



Background

- On June 26, at 8:43 a.m., the City received a Court Order regarding its current election system that requires the City to take the following actions:
 - a) Hold two public hearings before July 9th
 - b) July 10th the parties shall serve and file proposed district maps
 - c) Between July 11th and July 22nd, hold two additional public hearings
 - d) Court will hold an evidentiary hearing on remedies commencing July 23rd
 - e) Court expects to make a final decision on remedies on or before August 3rd

3



Proposed Meetings (Times and Locations TBD)

- Tuesday, July 3rd
- Thursday, July 5th
- Wednesday, July 11th
- Saturday, July 21st

Note: With receipt of the referenced Court Order, this presentation provides, to best of our ability, a proposed work plan that may be subject to further refinement.

4



Budget Authority

Council Direction to the City Manager :

- a) Allocate \$300,000 from Budget Stabilization Reserve for professional demographer consultant services, document production and publication, public engagement and outreach
- b) Grant City Manager authority to draw additional funds, up to an additional \$300,000 for implementation of unanticipated duties related to compliance with the Court Order, with a report back to the City Council outlining purpose of expenditures
- c) Authorize City Manager to execute necessary agreements

5



Concerns

- Lack of Sufficient Public Outreach/Input Into the Process
 - Holiday week (July 4th) impacts availability
 - Short notice of meetings
 - Not able to conduct proper community outreach to ensure robust participation
 - Ability to obtain consultants to conduct multiple language translations

6



Concerns

- Statutory Requirements

- Elections Code Section 12262 requires that District Maps be in place 125 days prior to the election (July 5):

“Boundary changes must occur no less than 125 days before an election for boundary changes to be effective.”

- Elections Code Section 12223 requires that when a precinct boundary is changed or established, the boundary must be set 88 days prior to the election (August 10)

“Whenever a jurisdiction is divided into election precincts or whenever the boundary of an established precinct is changed or a new precinct is created, the precinct boundary shall be fixed in a manner so that the number of voters in the precinct does not exceed 1,000 on the 88th day prior to the day of election, unless otherwise provided by law.”

7



Concerns

- Timing

- Election Process

- Nomination Period (July 17- August 10)
 - Inability to issue nomination papers and verify requisite signatures to run for Council until after Court makes a final decision on remedies (August 3)
- Potential candidates already seeking information to run for office
- Precinct map data already delivered to ROV
- ROV is still completing processes related to the June election so new data can not be entered into system
- ROV expressed concern and has indicated a number of processes will be delayed

8



Concerns

- Does not appear that this schedule will work for holding a District election in November.
- Council Recess (July 20 – August 20) – Reconsideration may be required
- Significant redirection of staff resources and capacity, hardship on other priorities.

9



City Council Action Required

- a) Appoint a minimum of 3 councilmembers to an ad-hoc committee
- b) Appropriate funds for costs associated with compliance of this Court Order (\$600,000)
- c) Authorize City Manager to execute necessary agreements

10



City of Santa Clara

The Center of What's Possible



**City of
Santa Clara**
The Center of What's Possible

City Attorney's Office
Memorandum

Date: June 26, 2018

To: Mayor and Council Members

From: City Attorney

Subject: *Yumori-Kaku v. City of Santa Clara, et al.*, Santa Clara County Superior Court
Case No. 17CV319862

The City received the attached *Order* today in the above referenced case. We are requesting that you add discussion and possible action in response to this *Order* to both the closed session and the open session.

A handwritten signature in black ink, appearing to read "B. Doyle", written over a horizontal line.

Brian Doyle
City Attorney

cc: Acting City Clerk
City Manager

i:\council\closed session and special meetings\2018\06-26-18 order re exist lit.doc

POST MEETING MATERIAL

Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 6/26/2018 8:43 AM
Reviewed By: R. Walker
Case #17CV319862
Envelope: 1660919

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

LADONNA YUMORI KAKU et al.,

Plaintiffs,

vs.

CITY OF SANTA CLARA, and DOES 1 to 50,

Defendants.

Case No. 17CV319862

**ORDER RE: SCHEDULE FOR THE
REMEDIES PHASE OF TRIAL**

On June 6, 2018, the Court issued a Statement of Decision that found the City of Santa Clara's (the "City") at-large method of election for City Council members impairs the ability of Asian Americans to elect candidates as a result of the dilution and abridgment of their voting rights. Having found the City liable under the California Voting Rights Act ("CVRA"), the Court is required under law to "implement appropriate remedies including the imposition of district-based elections that are tailored to remedy the violation." (Elec. Code § 14029.)

The parties have discussed the concern that if an appropriate remedy is not selected for the November 2018 elections, those elections may be jeopardized. Just a few years ago this happened in Palmdale, California, when CVRA violations were not corrected before its 2013 elections. (*Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 791.) There, the court

1 enjoined Palmdale from certifying the results of its City Council elections. The Court and the
2 parties are committed to avoiding that result here.

3 Drawing City Council districts that comply with the CVRA is not going to be an easy
4 task. The Court must adopt a remedy that ensures all City voters are able to exercise their voting
5 rights to the fullest extent, including but not limited to Asian Americans. During the liability
6 phase of trial, both sides retained well-respected statistics experts who carefully collected and
7 analyzed precinct-level data. The parties and the Court discussed several months ago the need to
8 use that same data for a possible remedies phase. Plaintiffs have also retained an expert
9 demographer. The tools the parties have invested in are commonly used in both federal and state
10 actions. Consequently, having invested substantial time and money in retaining experts to
11 analyze all relevant data, the Court believes both parties will be prepared to present proposals
12 that comply with both the CVRA and Section 2 of the federal Voting Rights Act.

13 In drawing districts, the law requires the Court to consider factors such as topography,
14 geography, cohesiveness, contiguity, integrity, compactness and community of interests.
15 (Elections Code § 21601.) One way of assessing these factors is to consider public input, and for
16 this reason, Section 10010 of the Elections Code requires political subdivisions (here, the City)
17 to hold public meetings before and after proposed districting plans are considered.

18 The City, of course, has been soliciting public input on its election methods since those
19 methods were challenged in 2011. Over these years the City has commissioned lengthy reports
20 that summarize comments and concerns on districting plans. These reports are posted on the
21 City's website. (See, e.g., Jeanne Gobalet, *Choosing a Council District Plan & Deciding*
22 *Election Sequencing* (April 12, 2018) [a 31 page presentation for the Ad Hoc Advisory
23 Committee on Council Districting that analyzed eight redistricting plans].) The Court is keenly
24 aware that the schedule set forth below for selecting a remedy to the CVRA violation has short
25 deadlines. The schedule, however, is driven by the need to conduct a fair election in November
26 2018. The Court hopes and expects that the combination of additional public meetings in June
27 and July, and summaries of input received from the public by the City over the past seven years,
28 will assist the Court and the parties in drawing district lines.

1 At the June 20, 2018 case management conference, the Court outlined a proposed
2 schedule for selecting a remedy, including the City's obligation to comply with Elections Code
3 section 10010. The Court asked Plaintiffs to propose a draft schedule, and for the City to
4 provide comments for the Court to consider.

5 It is in this context that the Court was surprised by the City's comments, which were filed
6 on June 25, 2018. The City did not provide constructive suggestions on how the proposed
7 schedule might be improved. Instead, the City's comments suggested it would be impossible to
8 hold public meetings on such short notice, and that any attempt to order the City to comply with
9 Elections Code section 10010 could be immediately appealed, and as a consequence, the City
10 could not be ordered to do anything.¹ Instead of making best efforts to ensure the November
11 2018 elections comply with the California Voting Rights Act, the City submitted comments that
12 described how the City might bring those efforts to a halt.

13 To ensure the City fulfills its obligation to comply with Elections Code section 10010,
14 and that a CVRA-compliant election takes place in November 2018, the Court sets the following
15 schedule:

16 1. The City shall use its best efforts to hold two public meetings at which the public
17 is invited to provide input regarding the composition of the districts. (Elections Code § 10010,
18 subd. (a)(1).) These meetings shall take place on or before July 9, 2018. The Court is aware that
19 the City utilizes many facilities for public meetings. It suggests as possibilities the Central Park
20 Library, the Northern Branch Library, the Staff Conference Room at City Hall and City Hall
21 Council Chambers. The City should also make best efforts to publicize these meetings including
22 making announcements at City Council meetings, using email lists of residents including those
23 who participated in earlier redistricting efforts, posting notices on the City's website, posting
24 notices at libraries, and perhaps using print publications for notice. The notices should, to the
25 best of the City's ability, be translated into the many languages spoken by City residents. Like
26 other City meetings, the City Clerk (or a delegate) should keep minutes.

27
28 ¹ The City argues the Plaintiff's proposed scheduling order would amount to a mandatory injunction that could be immediately appealed, which under California law would result in an automatic stay. As the party subject to the alleged mandatory injunction, the City would be the party that would need to file the appeal.

1 2. On July 10, 2018, the parties shall serve and file proposed district maps, make
2 them available to the public, and propose the sequence of the elections. (Elections Code
3 § 10010, subd. (a)(2).) To ensure input from residents throughout the City, the Court is hopeful
4 the City will post these maps on its website.

5 3. Between July 11, 2018 and July 22, 2018, the City shall make best efforts to hold
6 two additional meetings at which the public will have the opportunity to provide input on the
7 draft maps and the proposed sequence of elections (Elections Code § 10010, subd. (a)(2).) The
8 suggestions above about the location, public notice and recordkeeping for the meetings apply to
9 these meetings, too.

10 4. The Court will hold an evidentiary hearing on remedies that will commence on
11 July 23, 2018 at 9:00 a.m. in Department 5. Pre-trial briefs, including requests for interim relief,
12 shall be filed on or before July 19, 2018. If the parties so stipulate, direct testimony can be
13 presented in the form of a declaration. Such declarations will need to be filed and served on or
14 before July 19, 2018. The Court is hopeful that the City will inform the Court of any input it
15 receives at the public meetings.

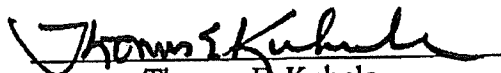
16 5. If a draft map is revised at, or following, the evidentiary hearing, the City shall
17 make best efforts to post it on its website and make it available in its Clerk's Office. (Elections
18 Code § 10010, subd. (a)(2).)

19 6. The Court expects to make a final decision on remedies on or before August 3,
20 2018. The Court is hopeful that with this information the City will set an appropriate
21 nominations period and be prepared to have all election materials timely prepared and
22 distributed.

23 The Court understands that the City will need to take immediate action to reserve
24 meetings spaces, notify the public of the time and place of the meetings, and provide staff to
25 keep minutes. These tasks, however, are manageable. The Court also understands that a longer
26 timetable might result in more public input. The Court is optimistic, however, that the City can
27 take advantage of its exhaustive efforts spent in the last seven years soliciting public comments
28

on districting, including comments received on the specific proposals developed by the City, to be able to inform the Court of the needs and preferences of its residents.

Dated: June 26, 2018


Thomas E. Kuhnle
Judge of the Superior Court