



## Frequently Asked Questions (FAQs) Transitioning to By-District Elections

### **1. Why is the City of Brea considering changing the election process?**

On May 6, 2019, the City received a letter from Shenkman & Hughes, P.C. (“S&H”) alleging that the City’s at-large election system violates the California Voting Rights Act (“CVRA”). The City and S&H subsequently executed an Extension Agreement, in which S&H agreed to refrain from filing a CVRA action as long as the City took specified steps to transition to a by-district election system.

In accordance with the Extension Agreement, on June 20, 2019, the City Council adopted Resolution No. 2019-049, declaring its intent to transition from at-large elections for City Council to district-based elections for City Council.

Pursuant to that resolution, the City Council intends to consider adoption of an ordinance to transition to a district-based election system in accordance with applicable laws including Government Code Section 34886 and Elections Code Section 10010. That resolution directed staff to work with the City Clerk, City Attorney, a demographer and other appropriate consultants as needed, to provide a detailed analysis of the City’s current demographics and any other information or data necessary to prepare a draft map that divides the City into voting districts in a manner consistent with the intent and purpose of the CVRA and the Federal Voting Rights Act.

### **2. What are the Federal and California Voting Rights Acts?**

The Federal Voting Rights Act (“FVRA”) was enacted by Congress in 1965 and is intended to protect the rights of all citizens to participate in the voting process. The California Voting Rights Act (“CVRA”) was enacted by the California Legislature in 2001, based on the Legislature’s belief that minorities and other members of protected classes were being denied the opportunity to have representation of their choosing at the local level because of a number of issues associated with at-large elections. Upon finding a violation of the CVRA, a court must “implement appropriate remedies, including the imposition of district-based elections, that are tailored to remedy the violation.” As such, the default remedy specified by the Legislature is district-based elections.

Read about the [FVRA](#) and the [CVRA](#).

### **3. Have other cities encountered this? What did they do?**

Dozens of cities, school districts and other local agencies in California have faced similar California Voting Rights Act (“CVRA”) allegations in recent years. Most have voluntarily changed their at-large election system to a by-district election system to avoid litigation. A small number have attempted to defend their at-large election system in the court system. Of the litigation that has concluded to date, none of those agencies have been successful and each of them incurred significant legal costs, because the CVRA gives plaintiffs the right to recover attorney fees. The City of Santa Monica currently has a CVRA case pending before the California Supreme Court.

#### **4. What kind of legal costs can be incurred from a CVRA lawsuit?**

Settlements are typically in the six, or even seven, figure range. For example:

- Palmdale: \$4.7 million
- Modesto: \$3 million
- Highland \$1.3 million
- Anaheim \$1.1 million
- Whittier: \$1 million
- Santa Barbara: \$600,000
- Camarillo: \$233,000

#### **5. Why haven't cities prevailed in challenging CVRA allegations?**

The threshold to establish liability under the CVRA is much lower than the threshold to establish liability under the FVRA. Courts use a four-part test to determine whether there is a FVRA voting rights violation and that test considers the totality of the circumstances. The courts use a two-part test to determine whether there is a CVRA voting rights violation and that test focuses on statistics.

#### **6. Shouldn't this go to the voters for approval?**

Even if the voters oppose switching to a by-district election system, an at-large election system can be deemed to be in violation of the California Voting Rights Act. Therefore, state law does not require that a by-district election system ordinance be approved by voters.

#### **7. What are by-district elections?**

A by-district election process means voters within a designated electoral district elect one City Council Member who must also reside in and be a registered voter of that district.

#### **8. What is the City's current City Council election process?**

The City of Brea currently uses an at-large election system, in which all voters in the City have the opportunity to vote for candidates for all five seats on the City Council. City Council candidates may reside anywhere in the City and they each provide citywide representation.

#### **9. Is avoidance of incumbent head-to-head contests a legitimate criteria when drafting district boundaries?**

Yes, avoidance of head-to-head contests is a common criterion in the "other category" that a City Council may instruct staff (and/or a consultant) to consider while drafting district boundaries. However, this would be considered secondary to those criteria prescribed by federal and state law. In addition, application of this criterion would only be to the extent that is feasible and reasonable.

## 10. What are the Pros and Cons of by-district elections?

### Pros

- Each geographic area of the city is represented
- Viewpoints that might not be citywide can be represented
- Minority candidates (racial or political) have a better opportunity to be elected
- It will likely cost less to run for City Council because citywide campaigning is not required
- Each voter has a specific Council Member to contact for assistance
- Voter's choice is simplified with less candidates to learn about

### Cons

- Council Members may represent only the interests of their districts, not the whole city
- Candidates may be elected with few votes
- District lines have to be reviewed and possibly redrawn after each census and significant annexation
- Depending on staggered terms, not all voters may be voting each election, reducing overall turnout

## 11. What are communities of interest?

A "community of interest" is a neighborhood or group that would benefit from being in the same district because of shared interests, views, or characteristics. Relationships with political parties, incumbents, or political candidates are not a basis for identifying a community of interest. The Fair Maps Act defines communities of interest as "socio-economic geographic areas that should be kept together to the extent possible for their effective and fair representation." Possible community features include, but are not limited to:

- A. School attendance areas;
- B. Natural dividing lines such as major roads, hills, or highways;
- C. Areas around parks and other neighborhood landmarks;
- D. Common issues, neighborhood activities, or legislative/election concerns; and
- E. Shared demographic characteristics, such as:
  1. Similar levels of income, education, or linguistic insolation;
  2. Languages spoken at home; and
  3. Single-family and multi-family housing unit areas.

## 12. How will the change to by-districts affect me?

Beginning in 2022, voters will only be eligible to vote in elections in which their district has a vacant seat available. Subsequently, residents will be able to vote for one (1) City Council candidate who resides in their district every four (4) years.

**13. Can the City adopt by-district elections and later go back to at-large elections?**

Yes. If the City Council adopts an ordinance to transition to by-district elections, the City Council can later adopt an ordinance to go back to at-large elections. Returning to at-large elections potentially could result in the City receiving a new California Voting Rights Act violation allegation.

**14. How many districts will there be? Can there be more than 5 districts?**

State law requires that a by-district election system have five, seven, or nine districts. Alternatively, a by-district election system may have four, six, or eight districts with an elective mayor.

**15. What happens if no one runs for a district?**

The City Council may appoint an eligible elector or may hold the election anyway. If the City Council chooses to fill the seat by appointment, the City Council may solicit applications and publicly interview interested persons.

**16. Who creates district boundaries?**

The City of Brea has retained a professional demographer to create proposed district boundaries. Tools are available for the public to draw and submit maps. Residents are able to provide input on boundaries and suggested criteria for creating boundaries, beyond what is legally required and submit maps. The district process will be transparent and accessible to all residents. Ultimately, the City Council adopts an ordinance establishing district boundaries.

**17. What criteria are used to create Council electoral districts?**

When creating the district boundaries, the City must ensure compliance with the following state and federally-mandated criteria:

**Federal Criteria for Cities:**

1. Each council district shall contain a nearly equal population as required by law; 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 predominant 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 (from AB 849, the Fair Maps Act of 2019):**

1. Geographically contiguous
2. Undivided neighborhoods and “communities of interest” (socio-economic geographic areas that should be kept together)
3. Easily identifiable boundaries
4. Compact (do not bypass one group of people to get to a more distant group of people)
5. Partisan registration and voting may not be used as a consideration

## **Other Traditional Districting Principles:**

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

The City Council adopted a resolution indicating its intent to transition to by-district elections and will hold at least four public hearings to receive public testimony, suggestions, and allow for community input in developing maps meeting these elements.

## **18. How can I participate?**

Residents of Brea can attend Public Hearings in the Council Chambers at the Brea Civic & Cultural Center, 1 Civic Center Circle, to learn about next steps in determining the process. Meetings will also be available via Zoom and will also be broadcast live and available for replays on the City's cable channel and [online](#).

### **Pre-Draft Map Public Hearings:**

Monday, September 27 at 7:00 p.m.

Wednesday, October 27 at 7:30 p.m.

### **Districting Mapping Workshops**

Wednesday, January 12, 6 – 7:30 p.m.

Saturday, February 12, 10 – 11:30 a.m.

### **Post-Draft Map Public Hearings on Draft Maps**

February 2022\* and March 2022\*

### **Final Map Adoption**

April 2022

*\*Dates are tentative and subject to change.*

The City's [website](#) will be updated as new information becomes available.

## **19. Where can I learn more?**

Visit the City's website at [www.cityofbrea.net/districting](http://www.cityofbrea.net/districting) for further information.

To provide written comments, please contact the City Clerk's Office at [districting@cityofbrea.net](mailto:districting@cityofbrea.net).