



MEMORANDUM

DATE: April 9, 2018

TO: Mayor and Council

FROM: Jonathan Young, City Attorney's Office

RE: Washington Voting Rights Act

CC: Eric Holmes, City Manager

Last week, several Councilmembers expressed interest in learning more about the recently passed Washington Voting Rights Act (the Act),¹ including (a) when its obligations are triggered, and (b) what proactive steps the Vancouver City Council could take to avoid disenfranchising minority subsets of our community. A summary of a few key features of the Act follow below:

- In general, the Act will now allow most cities² to change their voting systems for election of their legislative bodies from “at large” elections to district-based elections if needed to remedy potential voting rights violations.
- **A city’s obligation to take action is triggered when it receives notice from a voter of a challenge to the existing system.** The citizen notice must be in writing and must provide information demonstrating that the subdivision’s elections show polarized voting that dilutes or abridges the right to vote, specifying:
 - Identification of protected class(es) impacted;
 - Reasonable analysis of the data regarding vote dilution and polarized voting; and
 - Proposed remedies.
- Upon receipt of a citizen challenge, a city has 180 days³ to evaluate the challenge and determine whether to accept or oppose the proposed change in election practice. The citizen may not properly file a lawsuit challenging a city’s election method until the required notice and evaluation period has been provided. During the evaluation period,

¹ The Washington Voting Rights Act, Laws of 2018, ch. 113, will be effective June 7, 2018. Full text available online: <http://lawfilesexternal.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/Senate/6002-S.SL.pdf#page=1>

² The Act extends to cities as well as other local governments including counties and school districts.

³ 90 days after July 1, 2021.

the city is expected to work in good faith with the voter to evaluate the challenge and proposed remedy.

- A city need not oppose a citizen challenge. If a citizen-initiated change is supported by appropriate data, a city may voluntarily adopt the proposed change subject to ratification by the superior court. Alternatively, a city may defend its existing election method, or propose a different change to the voting method as warranted by all of the available data (that which has been supplied by the petitioner as well as the data gathered by the city).
- The County Superior Court must review all proposed changes to the voting system. In conducting this review, courts look to factors including:
 - Prior election of candidates⁴, ballot measure elections, and elections that affect the rights and privileges of the protected class;
 - Election (or non-election) of candidates who are in the protected class;
 - History and effects of discrimination;
 - Voting practices that diluted protected class votes;
 - Denial of access to election processes; and
 - Use of overt or subtle racial appeals in political campaigns.
- A citizen who prevails in a lawsuit to enforce the Act may be awarded attorney's fees, expert witness fees, and costs.
- In lieu of waiting for a challenge, **a city may proactively seek to change its election method. However, the Act refers to self-initiated changes being permitted if such a change is needed "to remedy a suspected violation of the Act."** This verbiage suggests that proactive modifications should be limited to those necessary to address suspected violations (i.e., objective evidence of polarized voting that dilutes or abridges the rights of citizens to vote).
- Whether self-initiated or in response to a citizen challenge, prior to instituting any change, various notice provisions must be satisfied. These include requirements to notify the public:
 - When a citizen challenge to the voting system has been received;
 - Upon issuance of a court decision involving the Act; and
 - Prior to making any self-initiated changes to address suspected violations of the Act.

While the verbiage of the Act does not encourage proactive changes to a city election system other than to address suspected violations, this is not to suggest that municipalities should not work to increase the transparency and accessibility of their meetings and actions to community members through other avenues. A number of helpful resources can be found online at: <http://mrsc.org/Home/Explore-Topics/Governance/Citizen-Participation-and-Engagement/Guidance-and-Resources-for-Public-Participation.aspx>.

⁴ Pending races may not be considered.