



**Item Number: 17**

**City Council / Board of Directors**

**Written Communications**

**Meeting of: July 20, 2021**

**Submitted By:**

Andre de Bortnowsky, City Attorney  
Keith C. Metzler, City Manager

**Subject:**

Language Access Services

**Recommendation:**

That staff be directed to re-evaluate, on an annual basis, as there isn't a definitive legal requirement or a demonstrated need by the community for expanded language access services.

**Fiscal Impact:**

There is no fiscal impact associated with this item.

**Background:**

At the April 6<sup>th</sup>, 2021 meeting, Mayor Jones proposed an agenda item to address whether the City of Victorville is required to provide Language Access Services. The request was supported by a unanimous vote of the Council. The request was to:

1. Address legal requirements and metrics for providing language access services during City Council meetings.
2. Address how compliance with the law is assessed.
3. Address how to provide an appropriate level of service if language assistance is required.
4. Provide the current statistics of the number of Spanish speakers who cannot communicate effectively in English.
5. Provide various options for interpreting services along with associated costs and the ability to assess actual usage.

**Discussion:**

The requirement to provide Language Access Services is governed by both State and Federal law.

**1. Federal Law**

There are certain Federal laws that seem to presume the provision of Language Access Services, which may include translation in certain settings, especially when Federal funding is involved.

**A. Title VI of the Federal Civil Rights Act (42 U.S.C. §2000d)**

Title VI provides that “no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”

**B. Executive Order No. 13166 (implementing Title VI of the Federal Civil Rights Act)**

As explained in the LOCAL OFFICIAL'S GUIDE TO LANGUAGE ACCESS LAWS (2013) 10 Hastings Race & Poverty L. J. 31, 39 (hereinafter “LANGUAGE ACCESS LAWS”), Title VI of the Federal Civil Rights Act and Executive Order 13166 “require recipients of federal funds to ‘take reasonable steps to ensure meaningful access to programs and activities’ by limited English-proficient (“LEP”) speakers.” The U.S. Census Bureau defines LEP speakers as “those who speak English less than very well.” LANGUAGE ACCESS LAWS at note 4.

There are various tests and requirements applicable to agencies that receive such Federal funding, for example a city that receives funding from HUD. If such funding is received, the LEP requirements apply to all “programs or activities” (as defined in Section 2000d-4a of Title VI) conducted by the local agency, not just the department that receives the funding. LANGUAGE ACCESS LAWS, pp 38-39. To assist Federal funding recipients in determining the extent of LEP services to be provided, the Department of Justice provided a four-factor test as part a guidance document issued in 2002:

- 1) How many limited English-proficient speakers does the program serve or encounter?
- 2) How often do limited English-proficient speakers come into contact with the program?
- 3) What kind of program, activity, or service does the agency provide and how important is it to people’s lives?

4) How much will it cost to provide language access services and what resources are available to the program?

LANGUAGE ACCESS LAWS, pp 40-49; see also 67 Fed. Reg. 41455 (June 18, 2002)

To comply with Federal requirements and avoid possible claims that failure to provide LEP services rises to the level of intentional discrimination under Title VI, it appears that many cities that receive federal funding have implemented LEP programs. Failure to provide LEP services could also result in the loss of Federal funding to the non-compliant program.

## **2. State Laws**

### **A. The Dymally-Alatorre Bilingual Services Act, Government Code Section 7290 et seq., (hereinafter the "Act")**

Excerpts from the Act:

#### ***§ 7292. State agencies; bilingual employees***

- (a) Every state agency, as defined in Section 11000, except the State Compensation Insurance Fund, directly involved in the furnishing of information or the rendering of services to the public whereby contact is made with a substantial number of non-English-speaking people, shall employ a sufficient number of qualified bilingual persons in public contact positions to ensure provision of information and services to the public, in the language of the non-English-speaking person. [...]

#### ***§ 7293. Local public agencies; bilingual employees***

Every local public agency, as defined in Section 54951, serving a substantial number of non-English-speaking people, shall employ a sufficient number of qualified bilingual persons in public contact positions or as interpreters to assist those in such positions, to ensure provision of information and services in the language of the non-English-speaking person. *The determination of what constitutes a substantial number of non-English-speaking people and a sufficient number of qualified bilingual persons shall be made by the local agency.*

(Local agencies under Section 54951 include counties, general law and charter cities, towns, municipal corporations, and other local public agencies)

#### ***§ 7295. Non-English translations***

Any materials explaining services available to the public shall be translated into any non-English language spoken by a substantial number of the public served by the agency. Whenever notice of the availability of materials explaining services available is given, orally or in writing, it shall be given in English and in the non-English language into which any materials have been translated. The determination of when these materials are necessary when dealing with local agencies shall be left to the discretion of the local agency.

**§ 7296.2. “Substantial number of non-English speaking people” defined**

As used in Sections 7292, 7295.2, 7295.4, 7299.3, and 7299.4, a “substantial number of non-English-speaking people” are members of a group who either do not speak English, or who are unable to effectively communicate in English because it is not their native language, and who comprise 5 percent or more of the people served by the statewide or any local office or facility of a state agency.

You will note that in Section 7296.2: (1) the list of sections to which the definition therein applies does not include Section 7293; and (2) that non-English speaking people are further defined as: “members of a group **who either do not speak English, or who are unable to effectively communicate in English because it is not their native language, and who comprise 5 percent or more the people served . . .**” So, the Act cannot simply be construed as meaning that if 5 percent or more of a local agency’s population speaks Spanish such local agency it is automatically required to provide translation services and translators at every public meeting.

Moreover, Section 7293 specifically gives local agencies, including a charter city such as Victorville (the “City”), discretion to make the determination of what constitutes a substantial number of non-English speaking people. If the Legislature wanted the definition in Section 7296.2 to apply to local agencies like it does to the State in Section 7292, it likely would have done so.

Whether to translate materials into another language is also left to the discretion of a local agency under the Act. For example, Victorville has provided to its residents in the past Spanish translations of Proposition 218 rate increase notices.

That said, given the broad legislative intent and policy statement in Section 7291 of the Act (attached), it is difficult to predict what a court might do on first impression when tasked with the question of how a local agency like the City should make the various determinations noted above. Given the scant case law available in this area, courts may look to the standards that are imposed on agencies of the State for guidance.

There are no specific penalty or enforcement provisions in the Act; however, claims of unlawful discrimination and lawsuits are not precluded.

**B. The California Civil Rights Act (Government Code Section 11135 et seq.)**

This law prohibits discrimination on the basis of “sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation” in “any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.”

Various provisions of the California Code of Regulations provide further guidance and interpretation of this law (2 Cal. Code Regs. §11140 et seq.), and the state funding threshold is low: \$10,000 “in the aggregate per State fiscal year or in an amount in excess of \$1000 per transaction, by grant, contract or otherwise, directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the State support.” 2 Cal. Code Regs. §11150.

If it were the case that a large percentage of people in the City speak Spanish and/or “speak English less than very well,” then the City might be required to provide greater Language Access Service than it currently does, and such could help the City avoid claims of unlawful discrimination under the California Civil Rights Act and/or loss of certain types of State funding.

C. Assembly Bill (AB) 339 (proposed amendments to the Brown Act)

Potential translation and interpretation requirements have been raised by the currently pending version of AB 339. This bill has undergone many amendments, and the following provision was recently added to the end of proposed revised Section 54953(a), evincing a **definite** legislative intent to provide greater access and equality to the open meeting process to ensure compliance with the State and Federal laws discussed listed above:

*Local agencies shall conduct meetings subject to this chapter consistent with applicable state and federal civil rights laws, including, but not limited to, the language access and other nondiscrimination obligations of Section 11135 and Subchapter V (commencing with Section 2000d) of Chapter 21 of Title 42 of the United States Code.*

**Victorville Statistics:**

To estimate the number of people who are unable to communicate effectively in English we have reviewed the latest census data:

City population: 122,399

Limited English-speaking households: 2241

Percentage: 1.83%

As such, based on the statistical information available from the U.S. census, it does not appear that under the State law threshold of 5%, Victorville would be required to provide translation services at this time, presuming of course State law were changed to make Government Code Section 7296.2 applicable to cities like Victorville.

Beyond the statistical measure, we have had recent experience during our General Plan update and our Parks and Recreations Master Plan meetings. In both of those efforts, we hosted a public meeting using an in-person translator. In both of those cases, not a single person participated from the limited English proficiency community. Additionally,

staff sent out a community housing survey for our Housing Element update, both in English and in Spanish. Staff even increased its effort to promote the Spanish translated survey by sending it out on multiple occasions. From measurable results, we received 101 responses to the English formatted survey and zero responses from the Spanish formatted survey.

Notwithstanding, the foregoing, staff researched options available to the City should it choose to pursue offering translation services. Options available include the use of closed captioning of meetings (recorded or live broadcast) on the City's YouTube or PrimeGov broadcast.

Other options include the use of a live translator, either in audience or via dedicated translation channel on a Zoom broadcast. The cost varies, however, for our regularly scheduled Council meetings, it is estimated that for closed captioning services, the City could spend \$9,000 annually and an estimated \$43,000 annually for live translation provided by two translators per meeting.

Resulting from staff's review of this matter, staff does not find existing law on point. Even if it chose to consider a statistical measure of 5%, which is currently applicable to the State, it appears that Victorville doesn't meet the threshold. Considering recent experience of having offered a translation service at a planning or community meeting, the lack of attendance by any limited English proficient individual appears to demonstrate that offering such a service isn't increasing participation in public meetings by limited English proficient persons. While staff doesn't believe a demonstrated need exists, staff would recommend re-evaluation on an annual basis.

Staff remains available for any questions or comments you might have.

**Attachments:**    None