

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL

FROM: SUE GALLAGHER, CITY ATTORNEY

SUBJECT: PUBLIC HEARING – DISTRICT BASED CITY COUNCIL
ELECTIONS: COMPOSITION OF DISTRICTS (CALIFORNIA
VOTING RIGHTS ACT)

AGENDA ACTION: RESOLUTION

RECOMMENDATION

It is recommended by the City Attorney that the City Council (1) adopt a resolution confirming the schedule for public hearings under the California Voting Rights Act; and (2) hold a public hearing to receive input from the community regarding the composition of new voting districts and sequence of elections to be established for the district-based election of Council members beginning in 2018, in accordance with Elections Code Section 10010.

EXECUTIVE SUMMARY

On August 29, 2017, the City Council adopted a resolution declaring its intent to initiate proceedings to transition the City from at-large to district-based Council member elections pursuant to Elections Code Section 10010 and Government Code Section 34886 (RES-2017-13).

The Council's resolution set forth a schedule of public hearings in connection with the drawing of the electoral districts. The first of those public hearings took place on October 3, 2017. The remaining public hearings were postponed due to the impacts of the wildfires that swept into the City beginning on October 8, 2017.

The City is now ready to resume proceedings to transition the City to district-based elections. Pursuant to Elections Code Section 10010, the City Council is required to hold five public hearings in connection with the establishment of electoral districts and the sequencing of elections, before the Council may consider an ordinance to transition the City to district-based elections. On January 23, 2018, the Council, by motion, approved a schedule for those five hearings. That schedule calls for the first public

hearing to take place on February 6th, and the final public hearing on April 10th. In order to comply with the provisions of a legal stipulation, the City Attorney recommends that the Council reaffirm that schedule by resolution.

Consistent with that schedule, the City Attorney recommends that the Council proceed with the first of the public hearings. Under the Elections Code, two of the five required public hearings must be held *before* any map or maps of the boundaries of the proposed voting districts are drawn. These two initial public hearings provide the public an opportunity to provide input regarding the criteria for the composition of the proposed districts and for the sequence of elections.

The two additional public hearings will be held *after* the proposed maps are drawn. The second set of hearings will provide the public an opportunity to react to, and to provide input on specific proposed district boundary lines as well as on any proposed sequencing of elections. A final public hearing will be held in connection with the City Council's adoption of an ordinance establishing district-based elections.

BACKGROUND

A. Allegation of Violation of California Voting Rights Act

Pursuant to Section 4 of the City Charter, the City of Santa Rosa currently elects its Council members through an at-large voting system. Elections are held every other year, in even numbered years. On a staggered schedule, four seats are filled in one election cycle and the remaining three seats are filled two years later, in the next election cycle. In each cycle, the candidates that receive the most votes city-wide earn a four-year term on the Council. There is no limit to the number of terms that a Council member may serve.

On July 17, 2017, the City received a certified letter from attorney Kevin Shenkman, representing the Southwest Voter Registration Education Project. The letter alleges that the City's at-large election system impairs the voting strength of the City's Latino voters and thus violates the California Voting Rights Act. The letter threatens litigation if the City does not voluntarily transition to a district-based election system. Similar letters have been received by cities, school districts and other local governments across the state.

The California Voting Rights Act (CVRA) was enacted in 2002 and is set forth in California Elections Code sections 14025 through 14032. The CVRA expressly applies to Charter Cities, like Santa Rosa. (§14026(c).)

In its key provision, the CVRA prohibits the use of an at-large election system in a manner that impairs the ability of a protected class to elect candidates of its choice or to influence the outcome of an election. An at-large election system will be disallowed if:

- Presence of protected class: There are voters within the jurisdiction who are members of a race, color or language minority group, as defined by the Federal Voting Rights Act. Latino voters qualify as a protected class.
- Racially polarized voting: Voters in the protected class prefer candidates and electoral choices that are different from those preferred by voters in the rest of the electorate, as defined in federal case law. In his certified letter, Mr. Shenkman alleges that Latinos in Santa Rosa vote differently than the rest of the Santa Rosa electorate. A review of recent election results reveals evidence, in some instances, of racially polarized voting.
- Impairment of voting rights: The votes of those *not* in the protected class have the effect of defeating the preferences of the protected class. A review of recent election results reveals that, in some instances, the votes of non-Latino voters have overruled the preferences of the City's Latino voters.

It is important to note that no finding of racial animus or intent to discriminate is required to find a violation of the CVRA. Liability under the CVRA rests solely upon the presence of racially polarized voting that results in impairment of the voting rights of a protected class of voters.

If a violation of the CVRA is confirmed, the remedies can be substantial. The CVRA gives the courts wide discretion to tailor remedies to address violations, including the imposition of court-ordered district-based elections, with the court potentially setting the district boundaries and determining the sequence of elections. Moreover, if a lawsuit is filed and plaintiffs prevail, plaintiffs may be entitled to their costs and attorneys' fees. Such costs and attorneys' fees routinely exceed \$1 million.

In light of the relatively low threshold for liability under the CVRA and the high costs and risks of litigation, the Council, on August 29, 2017, determined to initiate proceedings to transition the City from at-large to district-based Council member elections.

B. Safe Harbor Provisions

Elections Code section 10010 provides a "safe harbor" that limits a public entity's potential liability under the CVRA if the public entity complies with certain timelines:

- Within 45 days of receipt of demand letter, the public entity adopts a resolution stating its intent to transition to district-based elections ("Resolution of Intent").

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- Within 90 days of adoption of the Resolution of Intent, the public entity conducts a series of five public hearings and adopts an ordinance establishing voting districts and a sequence for district elections.

If those timelines are met, the public entity's liability under the CVRA is limited to the cost of preparing the initial demand letter, not to exceed \$30,000.

As of last October, the City was on course to meet these timelines. The Council had adopted the Resolution of Intent within 45 days of receipt of the demand letter from Mr. Shenkman, and had established a schedule of public hearings that would have had the City taking final action on a proposed ordinance within the 90 day period following the adoption of the Resolution. The October fires, however, upended that schedule. The City's resources were redirected to the emergency response, and the work on district elections was suspended.

Mr. Shenkman has acknowledged the emergency conditions and has executed a written stipulation allowing the City additional time to complete the process, provided that district-based elections are in place for the November 2018 elections. The stipulation requires that the Council, by resolution, memorialize its schedule for the required public hearings and decision-making process.

On January 23, 2018, the Council approved a new schedule for public hearings and final action on district elections that meets the time requirements of the stipulation. Unfortunately, due to inadvertent error, the matter was presented for action by motion rather than by resolution. The attached resolution will correct that error. No change to the schedule is proposed.

PRIOR CITY COUNCIL REVIEW

On August 8, 2017, Council discussed the threatened litigation in closed session.

On August 29, 2017, Council adopted a resolution stating its intent to initiate proceedings to transition the City from at large to district-based elections.

On October 3, 2017, Council held its first public hearing concerning district-based elections.

On January 23, 2018, Council, by motion, approved a renewed schedule for public hearings and decision-making on district-based elections.

ANALYSIS

A. Resolution Confirming Schedule

In order to comply with the terms of the stipulation granting the City additional time to transition to district-based elections under Elections Code Section 10010, the City Attorney recommends that the Council adopt a resolution confirming the schedule of public hearings previously approved by motion.

B. Conduct Public Hearing

This is the first of a series of five public hearings to be held by the City under Elections Code Section 10010. The purpose of this initial public hearing is to inform the public about the districting process, and hear from residents on factors they believe should be taken into consideration when creating the new voting districts, including suggestions for the drawing of district boundary lines.

Certain legally required criteria apply to the creation of districts and must be observed. These are:

- Each council district shall contain a nearly equal population;
- A districting plan shall be drawn in a manner that complies with the Federal Voting Rights Act and the Equal Protection Clause of the U.S. Constitution; and
- Council districts shall not be drawn with race as the predominate factor in violation of the principles established by the United State Supreme Court in *Shaw v. Reno*, 509 U.S. 630 (1993).

In addition to these state and federal law requirements, the City Charter requires that there be seven Council members, that each Council member be elected to a four year term, and that the elections be staggered such that four Council members are elected in one election and three in the next election cycle. The Charter provides that the Mayor will be selected by vote of the seven elected Council members.

In addition to these mandatory criteria, other factors may be considered in drafting district boundary lines. Examples of such factors are found in Elections Code section 21620 and in judicial opinions. A few of those examples are:

- Council districts may take into consideration communities of interest;
- Council districts may take into account the boundaries of other jurisdictions within the City to the extent relevant (such as school districts, community college districts, or water districts);

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- The territory of each council district should be compact and contiguous;
- The cohesiveness and integrity of the territory may be considered;
- Each council district border should follow visible natural and man-made geographical and topographical features to the extent feasible;
- Each council district should include public facilities to the extent feasible; and
- Each council district should include commercial interests to the extent feasible.
- In addition, the community and the Council may wish to consider how best to incorporate the newly annexed Roseland community and how to address or allocate the downtown area.

The above list of additional factors provides examples only, and not all the factors are necessarily applicable or appropriate for the City of Santa Rosa. The public is encouraged to provide input on some or all of these factors, and to suggest other criteria not mentioned above. The Council will be informed by the public input, but it retains discretion to balance criteria and choose to apply some, all, or none of these additional factors. Moreover, within the parameters of state and federal law and the City Charter, the Council remains free to develop alternative criteria that Council believes are appropriate to designing a districting plan for the City.

The next public hearing before the Council is scheduled for Tuesday, February 13, 2018. At that hearing, the Council will receive and consider further input from the public concerning criteria for the composition of voting districts and the sequencing of elections. One or more proposals for draft district boundaries and election sequence will be proposed by the City shortly thereafter, followed by additional public hearings.

A full schedule of proposed public hearings is attached.

FISCAL IMPACT

Not known at this time.

ENVIRONMENTAL IMPACT

This action is exempt from the California Environmental Quality Act (CEQA) because it is not a project which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guideline section 15378.

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

Not applicable.

NOTIFICATION

Not applicable.

ATTACHMENTS

- Timeline for District-Based Election
- Resolution

CONTACT

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