

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) – SECOND PUBLIC HEARING

AGENDA ACTION: PUBLIC HEARING

RECOMMENDATION

It is recommended by the City Attorney that the City Council hold a second public hearing to receive community input regarding the composition of new voting districts to be established for the district-based election of Council Members beginning in 2018. At the close of the public hearing, it is recommended that the Council provide instruction and direction to the City's demographic consultant concerning considerations and criteria to guide the drafting of districting map alternatives and a proposed sequencing of elections for each map alternative.

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).

Pursuant to Elections Code Section 10010, the City Council is holding five public hearings in connection with the establishment of electoral districts. Two of the public hearings must be held *before* any 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, and composition of the proposed districts before the drafting begins. This is the second of those two initial public hearings.

After receipt of public comments, staff recommends that the Council provide direction to the City's demographer regarding the key criteria for the mapping of district boundaries and the sequencing of district elections.

Three 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. At the conclusion of the fifth and final public hearing, it is anticipated that the City Council will adopt an ordinance establishing district-based elections, including district maps and a sequence for district elections.

BACKGROUND

Pursuant to Section 4 of the City Charter, the City of Santa Rosa currently elects its Council members through an at-large voting system. In each election cycle, the candidates that receive the most votes city-wide earn a four-year term on the Council.

On July 17, 2017, the City received a certified letter alleging that the at-large voting system impairs the voting rights of the City's Latino population 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. (Elections Code §14026(c).)

In its key provision, the CVRA prohibits the use of an at-large election system if racially polarized voting and the at-large election system combine to impair the ability of a protected class to elect candidates of its choice or to influence the outcome of an election. It is important to note that no finding of racial animus or intent to discriminate is required to find a violation of the CVRA.

As staff has noted before, if a violation of the CVRA is confirmed, the remedies are 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 the timing of the election. 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.

PRIOR CITY COUNCIL ACTION

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, Council held the first of a series of five public hearings to hear community comment on the composition of the proposed districts.

ANALYSIS

This is the second of a series of five public hearings to be held by the City under Elections Code section 10010. The purpose of this second public hearing is to continue to inform the public about the districting process, and to hear from residents on the factors they believe should be taken into consideration when creating the new voting districts. The community is encouraged to offer its suggestions for both the drawing of district boundary lines and the sequencing of elections.

A. Legal Requirements for Mapping:

Certain federal and state legal requirements apply to the creation of districts and must be observed. These include:

- 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 requirements, the City Charter requires:

- There be seven Council members;
- Each Council member be elected to a four year term;
- The elections be staggered such that four Council members are elected in one election and three in the next election cycle; and
- The Mayor be selected by vote of the seven elected Council members.

B. Optional Criteria for Mapping:

In addition to the above 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:

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- 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);
- The territory of each council district should be compact and contiguous;
- The cohesiveness and integrity of the territory may be considered;
- Topography and geography may be considered. In general, 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;
- Each council district should include commercial interests to the extent feasible; and
- 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.

As noted previously, the above list of additional factors offers 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.

C. Potential criteria for sequencing of elections:

Once district lines are drawn, the Council will be required to establish a sequence of elections. Pursuant to the City Charter, just three Council seats will be up for election in November 2018. After receiving public comment, the Council must determine which of the newly drawn districts will be first for district representation. Among other options, the community may wish to discuss and the Council may wish to consider the following alternatives:

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- Districts in which no incumbent resides up for election in 2018, with the sequencing of elections for the other districts determined by one of the methods described below.
- Random selection of the sequence of elections in the districts without regard to incumbency, understanding that the result may be that a particular district could have two incumbents, one newly elected by the voters in the district for a four-year term, and an incumbent elected at-large completing the last two years of his or her four-year term ending in 2020.
- Selection based upon current Council terms to allow for continuity, for example:
 - Those districts that have one resident currently serving as Council member could transition to district election at the time the current member's term ends;
 - Those districts that have more than one resident currently serving as a Council member could transition to district election at the time the first of those members' terms end; or
 - Those districts that have more than one resident currently serving as Council members could transition to district election at the time the last of those members' terms are up.
- Selection based on one of the above alternatives "giv[ing] special consideration to the purposes of the California Voting Rights Act of 2001 (Chapter 1.5 (commencing with Section 14025) of Division 14 of this code), and [taking] into account the preferences expressed by members of the districts" (Election Code § 10010(b)), which, depending on all the facts and circumstances, could suggest that any new district with significant Latino population be up for election at the earliest possible time in 2018, or alternatively, that any new district with significant Latino population be up for election in the Presidential election year, 2020, when turnout may be greater.

The public is encouraged to provide input on these options, and to suggest other alternatives not mentioned above. As with the drawing of the maps, the Council will be informed by the public input and the advice of its demographers. The Council, however, retains discretion to weigh these and other alternatives in determining the most appropriate sequencing approach for the City.

D. Related Issues:

At the first public hearing, the Council and the community raised a number of questions. The following is a brief summary of responses.

- Selection of Mayor:

Section 15 of the City Charter provides for selection of the Mayor by vote of the seven elected Council members. Any change to that process would require a voter-approved Charter amendment. No such change is proposed at this time.

- Change in the Number of Council Members:

Section 4 of the City Charter provides that the Council will have seven members. Any change to that number would require a voter-approved Charter amendment. No such change is proposed at this time.

- Primary elections:

Section 30 of the City Charter provides for general municipal elections on the first Tuesday after the first Monday in November of each even-numbered year. The initiation of primary elections would require a voter-approved Charter amendment. No such change is proposed at this time.

- Options for Hybrid or Cumulative Voting Systems:

Suggestions have been made that the City might adopt either (a) a hybrid voting system, in which some Council members would be elected by District and others by city-wide vote, or (b) a cumulative voting system, in which voters are given a certain number of votes and may allocate those votes to one or more candidates as they choose. While the City may have effective defenses, both hybrid voting systems and cumulative voting systems remain vulnerable to challenge under the CVRA. As a result, any such change would likely require a voter-approved Charter amendment.

E. Next Steps:

The demographers will begin to draft proposed district boundaries and to compose a proposed sequence of elections for each set of maps. It is anticipated that two or more alternatives will be offered. Draft maps and proposed election sequences are expected to be published in mid-October, and will be posted on the City's website (<https://srcity.org>) as soon as they are available.

The next public hearing before the Council is scheduled for Wednesday, November 1, 2017, at 5:00 p.m. At that hearing, the Council will receive and consider comments from the public concerning the proposed district maps and the proposed sequence of district elections.

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Additional public hearings are scheduled for Tuesday, November 14, 2017, at 5:00 p.m., and for Tuesday, November 21, 2017, also at 5:00. It is anticipated that, after receiving public comment at the meeting on November 14, 2017, the Council may introduce an ordinance to adopt district boundaries and to establish district elections. It is anticipated that the Council may consider final action on the ordinance after the public hearing on November 21, 2017.

In addition to the formal public hearings before the Council, staff will be holding several community meetings to provide additional opportunities for public discussion and comment on the formulation of the City's new electoral districts. A schedule of those meetings will be posted on the City's website.

A full schedule of proposed public hearings and related events is attached as Exhibit A.

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

- Attachment 1 – Tentative Timeline

CONTACT

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