

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: PUBLIC HEARING

RECOMMENDATION

It is recommended by the City Attorney that the City Council hold a public hearing to receive input from the community regarding the composition of new voting districts 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).

Pursuant to Elections Code Section 10010, the City Council is required to hold at least five public hearings in connection with the establishment of electoral districts, before the Council moves to consider an ordinance to transition the City to district-based elections. Two of the 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, and the composition of the proposed districts. This is the first of those two initial public hearings.

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

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 scheduled, 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.

The four essential elements of a violation under the CVRA are:

- At-large election system: Voters of the entire city vote for, and elect, all members of the City Council. As noted above, by Charter, Santa Rosa has an at-large election system, in which the top vote-getters across the City are elected to the City Council.
- Presence of protected class: Class of voters 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. Although Mr. Shenkman offers no statistical evidence of racially polarized voting, staff's initial review of recent election results indicates *potential* evidence 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. Mr. Shenkman's letter alleges that the non-Latino majority in Santa Rosa vote as a bloc and thereby defeat the preferences of the City's minority Latino voters. Again, however, he offers no statistical evidence to support the allegation.

It is important to note that no finding of racial animus or intent to discriminate is required to find a violation of the CVRA. Nor is there any requirement that the protected class be concentrated in a single geographic area. For purposes of liability under the CVRA, it is irrelevant whether a voting district could reasonably be designed such that the protected class constitutes a majority of the voting district. 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 are substantial. The CVRA gives the courts wide discretion to tailor remedies to address violations, including the imposition of court-ordered district-based elections. In *Jaregui v. City of Palmdale*, 226 Cal. App. 781 (2014), the Court of Appeal ruled a trial court, once it had determined liability, could also enjoin certification of an election. The trial court in the Palmdale case, in addition to imposing single-member districts, changed the City's election date, shortened terms of office of incumbents, and ordered a special election to replace all council members elected at-large. Moreover, if a lawsuit is filed and plaintiffs prevail, plaintiffs may be entitled to their costs and attorneys' fees. Such costs and attorneys' fees can be substantial. Attorneys' fees in recent CVRA cases have ranged from approximately \$50,000 in the case of a quick settlement to over \$4.5 million, plus interest, for a case fully litigated.

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 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.

ANALYSIS

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

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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);
- 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.

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- 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, October 10, 2017, at 5:00 p.m. At that hearing, the Council will receive and consider further input from the public concerning criteria for the composition of voting districts and suggestions for the location of boundary lines. One or more proposals for draft district boundaries will be proposed by the City shortly thereafter, followed by additional public hearings.

A full schedule of proposed public hearings and related events 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

- Attachment 1 – Tentative Timeline

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CONTACT

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