



AGENDA REPORT

DATE: September 17, 2019

TO: Mayor and City Council

FROM: Sean P. Quinn, Interim City Manager 

SUBJECT: Resolution 2019-218 of the City Council of the City of Fairfield Delaring its Intention to Transition from At-Large to District-Based Elections for Members of the City Council, Outlining Specific Steps to be Undertaken to Facilitate the Transition, and Estimating a Time Frame for Action Pursuant to Elections Code Section 10010

RECOMMENDED ACTION

Adopt resolution.

STATEMENT OF ISSUE

On August 21, 2019, the City received a Demand Letter from Mr. Kevin Shenkman of the law firm of Shenkman & Hughes, PC. alleging that the City’s at-large election system violates the California Voting Rights Act (“CVRA”). The Demand Letter urges the City to voluntarily transfer to district-based elections or face litigation. Elections Code Section 10010 sets forth the process for a jurisdiction’s voluntary transition from at-large to district-based elections.

DISCUSSION

City’s Election System

The City of Fairfield currently elects four Councilmembers and the Mayor through an at-large election system, where a Council candidate can reside anywhere in the City limits. Councilmembers are elected by the voters of the entire City and provide citywide representation. A district-based election system, on the other hand, is one in which the City is physically divided into separate districts, each with one Councilmember who resides in the district and is chosen by the voters living in that particular district.

Demand Letter

On August 21, 2019, the City received a Demand Letter from the law firm of Shenkman & Hughes, PC, alleging that the City’s current at-large election system “has resulted in minority vote dilution, and, therefore, the City’s at-large elections violate the California Voting Rights Act of 2001 (“CVRA”).” The Demand Letter alleges that the City’s election history illustrates the dilutive effect of the City’s at-large election system and cites to previous candidates from protected classes who ran for City Council and lost. The City strongly disagrees with that assertion as for the past 25 years, its City Councils have had members from protected classes. Nonetheless, in order to avoid costly litigation, the City is now considering a voluntary transition to district-based elections.

Legal Background

The CVRA (California Elections Code Sections 14025-14032) prohibits the use of an at-large election system if it impairs the ability of a protected class to elect candidates of its choice or influence the outcome of elections because of the dilution or abridgment of the rights of the voters who are members of the protected class. The term “protected class” is broadly defined as a “class of voters who are members of a race, color, or language minority group, as this class is referenced and defined in the federal Voting Rights Act of 1965 (52 U.S.C. § 10301 et seq.)”

Over the past several years, cities, school districts, and community college districts throughout the State of California have been changing from at-large to district-based elections to comply with the CVRA and/or to avoid litigation. The threshold for proving a CVRA violation is lower than that for the federal Voting Rights Act (“FVRA”), eliminating key requirements including geographical compactness of a protected class and their ability to form a majority in a proposed

district. By eliminating these important elements in the federal law, the State law thereby made it easier for plaintiffs to sue and prevail under the CVRA. To date, no jurisdiction has prevailed on the merits in a CVRA action, and several jurisdictions have paid millions of dollars in litigation and pursuant to settlement agreements.

Process of Transitioning to District-Based Elections

Section 10010 of the California Elections Code sets forth the process of transitioning to district-based elections and the timeline for doing so. Upon receiving a demand letter, the City has 45 days to pass a resolution of intent to transition to district-based elections. Once the resolution of intent is passed, the City has 90 days to hold a series of five public hearings as follows:

- *Public Hearings 1 and 2:* Before drawing draft map(s) of the proposed boundaries of the districts, the City must hold at least two public hearings over a period of no more than 30 days. The purpose of the hearings is to invite the public to provide input regarding the composition of the districts.
- *Draft Map(s):* The City makes available to the public at least one draft map of the proposed districts. The City shall also make available to the public the proposed sequence of elections (i.e. which districts will be elected in which general municipal election) if the councilmembers will be elected at different times to maintain staggered terms of office. The draft map(s) must be published at least seven days before consideration at a hearing.
- *Public Hearings 3 and 4:* The City shall hold at least two additional hearings over a period of no more than 45 days, at which the public is invited to provide input regarding the content of the draft map(s) and the proposed sequence of elections, if applicable.
- *Public Hearing 5:* The City Council votes to approve or defeat the ordinance establishing district-based elections.

Under the current timeline, if the Council votes to approve the Resolution of Intent on September 17, it would be required to vote to adopt an ordinance no later than December 16, 2019.

In addition to the efforts set forth above, staff would also prepare a public information web page on the City's website where information on districts, the process, timeline, opportunities for input, draft maps, and the agendas and staff reports for the public hearings can be posted.

Possibility of Extension

Subdivision (e) of Elections Code Section 10010 allows a prospective plaintiff and the City to enter into an agreement to extend the 90 day time period set forth above for an additional 90 days in order to provide more time to conduct public outreach, encourage public participation, and receive public input.

The City is concerned that under the current 90-day timeline, some of the public hearings will be conducted around the holiday season in November and December, leading to a decrease in public participation. To that end, the City has contacted Mr. Shenkman to propose a 90-day extension in order to allow additional time to conduct public outreach, such as holding community meetings, encourage public participation, and receive public input.

If the parties enter into an extension agreement, the tentative schedule will be amended to reflect the additional time and events to be held.

Demographics Services

In order to comply with the requirements outlined in state law and to appropriately draw district boundaries, the City is in the process of retaining a demographer who is experienced with these types of issues. A demographer would assist with questions, both from Council and the public, provide demographic information to assist in deciding the composition of the districts, and create draft maps.

FINANCIAL IMPACT

If the City Council adopts the Resolution of Intent to transition to district-based elections, the City will incur immediate costs but will also save the City potential legal costs and liability for plaintiff's attorneys' fees and costs, if the plaintiff prevails in litigation.

In addition to significant staff time, estimated costs of voluntarily transitioning to district-based elections would be between \$100,000 to \$125,000. Costs will include hiring a demographer, public outreach, and legal fees. Legal fees include those of the perspective plaintiff, which will be capped at \$30,000 if the move to district elections is made voluntarily pursuant to Elections Code Section 10010. Funding for this project will be paid for from the General Fund

(Fund 011, Division and Responsibility Code 99307, Contingency).

If the City Council decides not to pursue a move to district-based elections, the City would be exposed to litigation and required to pay legal fees not only for the City's defense, but potentially for plaintiff's costs and fees in the event plaintiff prevails in the litigation. To date, no jurisdiction has prevailed on the merits in a lawsuit brought under the CVRA. Other jurisdictions have spent in excess of \$1 million in litigation involving the CVRA and related settlements.

PUBLIC CONTACT/ADVISORY BODY RECOMMENDATION

We will seek extensive public input for the creation of the districts.

ALTERNATIVE ACTION

Instead of initiating the process of transitioning to district-based elections, the City Council can choose to maintain its current at-large election system and defend any potential action filed pursuant to the CVRA. As set forth above, to date, no jurisdiction has prevailed on the merits of a CVRA action and fees and costs associated with litigation generally exceed \$1 million.

STAFF CONTACT

Laura Snideman, Assistant City Manager
(707) 428-7400
lsnideman@fairfield.ca.gov

COORDINATED WITH

City Attorney's Office, Finance Department

ATTACHMENTS:

Proposed Resolution
Demand Letter to City of Fairfield
Extension Request Letter to Shenkman & Hughes, PC

REVIEWERS:

Reviewer	Action	Date
Snideman, Laura	Approved	9/12/2019 - 8:05 PM
Snideman, Laura	Approved	9/12/2019 - 8:24 PM
Dominguez, Yessika	Approved	9/12/2019 - 8:25 PM