



Staff Reports

File #: 3-2020, **Version:** 1

To: Honorable Mayor and Members of City Council

From: Tiffany Carranza, City Clerk

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TITLE:

Transition from At-Large Elections to District-Based Elections for Councilmembers

RECOMMENDED ACTION:

Adopt a resolution Declaring the City's Intention To Transition from At-Large Elections to District-Based Elections of Councilmembers; Outlining Specific Steps to Facilitate the Transition (Including Public Outreach to Solicit Public Input, and Public Hearings); and Estimating a Timeframe for the Transition

DISCUSSION:

The City of Napa currently has an at-large election system for the five members of City Council (including the Mayor and four Councilmembers), which means that voters from the entire City choose each of the four Councilmembers and the Mayor. Under the at-large system, the incumbent members of (and future candidates for) the City Council may reside anywhere within the City limits. The Councilmembers and the Mayor are elected to four-year terms. The terms of office for Councilmembers are staggered, which means that two Councilmembers are up for election every two years.

A district-based election system is one in which the city is divided into four separate geographic districts. For each district, the voters residing in that particular district vote for one Councilmember who also resides in that district.

On January 2, 2020, the City of Napa received a certified letter (attached hereto as Attachment 1) from Scott J. Rafferty (an attorney representing the Napa County Progressive Alliance), asserting that the City is required by the California Voting Rights Act ("CVRA") to transition from the current at-large election system to a district-based election system for the four Councilmembers, and to complete that transition so that the district boundaries will be in place for the General Municipal Election on November 3, 2020. Under the proposed transition to district-based elections for the four Councilmembers, the office of the Mayor would remain a separate office and be directly elected by the voters citywide.

The California Voting Rights Act (CVRA)

The CVRA was signed into law in 2002 and prohibits an at-large method of election that impairs the ability of a protected class to: (a) elect candidates of its choice, or (b) influence the outcome of an

election. The law's intent is to expand protections against vote dilution over those provided by the Federal Voting Rights Act of 1965 (FVRA). The CVRA was motivated, in part, by plaintiffs' lack of success in challenging at-large electoral systems brought under the FVRA.

The passage of the CVRA made it much easier for plaintiffs to prevail in lawsuits against public entities (such as cities, school districts, and special districts) that elect their governing body members through at-large elections. A plaintiff need only prove the existence of "racially polarized voting" to establish liability under the CVRA. Proof of intent on the part of voters or elected officials to discriminate against a protected class is not required. In other words, the burden of proof to show the existence of racially polarized voting is lower than under the FVRA.

As defined by the California Voting Rights Act (CVRA), "racially polarized voting" means voting in which there is a difference between: (a) the choice of candidates or other electoral choices that are preferred by voters in a protected class, and (b) the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. (Elections Code Section 14026(e).) Mr. Rafferty's letter asserts that the City's at-large electoral system dilutes the ability of Latinos (a protected class) to elect candidates of their choice or otherwise influence the outcome of City Council elections and that, as a result, the City's at-large election system for Councilmembers violates the CVRA.

As a result of the lower standard for proving a violation under the CVRA (as compared to the FVRA), cities throughout California have increasingly faced legal challenges to their at-large systems of electing Councilmembers. Almost all have settled claims out of court by agreeing to voluntarily shift to district-based elections. Those cities that have litigated CVRA challenges in court have ultimately either voluntarily adopted, or have been forced to adopt, district-based election systems.

If a CVRA challenge is litigated, a prevailing plaintiff has the right to recover attorneys' fees and expert witness fees. This has resulted in the payment of large amounts of money in attorneys' fees by cities that have chosen to litigate a CVRA challenge. On the other hand, even if a city prevails in CVRA litigation, it cannot recover either its attorneys' fees or costs. In addition, prevailing in one CVRA lawsuit does not prevent the filing of future lawsuits by different plaintiffs.

Fee awards to plaintiffs' attorneys and expert witnesses in CVRA litigation have reached close to \$5 million. For example, in February of 2015, the City of Santa Barbara reportedly paid \$900,000 in attorneys' fees and expert costs to settle its CVRA lawsuit. In addition, the City of Palmdale was ordered to pay plaintiffs' attorney's fees in excess of \$4.6 million in its unsuccessful attempt to defend against a CVRA lawsuit.

Staff and legal counsel are unaware of any city that has prevailed in defending its "at-large" system of election against a CVRA claim. To date, multiple cities in surrounding counties, including Santa Rosa, Rohnert Park, Antioch, Concord, Martinez, and Brentwood have received CVRA demand letters and have voluntarily adopted ordinances to transition from at-large to district-based elections.

It is important to note that a California appellate court has concluded that, if there is dilution of a protected class's voting rights, the CVRA is a matter of statewide concern to remedy the dilution or abridgment of a protected class's voting rights, and to implement the equal protection and voting rights provisions of the state Constitution. (See *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781.) This means that the CVRA supersedes and preempts the City's charter city authority to establish its own election systems, and the City is required to comply with the CVRA and convert

from at-large to district-based elections for the four Councilmembers. Following the 2014 decision in the Palmdale case, in 2015, the California Legislature enacted Government Code Section 34886 which authorizes the transition of an at-large election system to a district-based election system by ordinance, and without seeking voter approval, in order to comply with the CVRA.

“Safe Harbor” Provisions that Limit Plaintiffs’ Attorneys’ Fees and Costs

In 2016, the State Legislature enacted Elections Code Section 10010 (Assembly Bill 350). This legislation provides a “safe harbor” to limit the costs of CVRA litigation for cities that choose to voluntarily transition to a district-based election system.

Under Elections Code Section 10010, if a city receives a written demand to transition from at-large to district-based elections, in general, the city has 45 days to adopt a resolution of intention: 1) declaring its council’s intent to transition from at-large to district-based elections; 2) outlining specific steps to be undertaken to facilitate the transition; and 3) estimating a time frame for action. After adoption of the resolution of intention, the city has an additional 90-day period in which the city must hold at least four public hearings and introduce an ordinance establishing the maps describing the district boundaries for a district-based election system. Of the four public hearings, the first two are required to be conducted without a proposed district boundary map, and the last two are required to be conducted with a proposed district boundary map.

If Council adopts the recommended resolution of intention on February 11, the 90-day period in which the hearings must be completed would end on May 11, 2020. While the City could seek mutual agreement from the proponent of the written demand (Mr. Rafferty) to provide an extension to the timeframes defined by Section 10010, as a practical matter any such extension would be limited. It is anticipated that the City will be required to have the district boundary maps finalized by June 19, 2020, to provide sufficient time for the County Registrar to make all required preparations for the next general municipal election on November 3, 2020.

If the City follows the timing requirements of Elections Code Section 10010, the City’s obligation to reimburse the legal costs incurred by the proponent of the written demand is capped at \$30,000 (plus annual cost of living adjustments since 2015).

Process and Timing

As discussed above, the City received a certified letter on January 2, 2020 from Mr. Rafferty on behalf of the Napa County Progressive Alliance. City staff recommends that the City Council determine that the public interest would be best served by transitioning to a district-based election system for Councilmembers, and adopt the resolution of intention, because:

- the CVRA clearly favors district elections, making it very difficult to prevail in a CVRA lawsuit;
- it would be extraordinarily costly to defend against a CVRA lawsuit, including costs incurred by the City, as well as reimbursing costs incurred by the proponent/plaintiff (that would not be capped by the \$30,000 limit under Elections Code Section 10010);
- the risk of losing such a lawsuit could result in district maps being drawn by a superior court judge (or his or her designee), resulting in a loss of local control regarding the establishment of district boundaries; and

- the City's liability for proponent's/plaintiff's reimbursable costs and attorneys' fees would be capped by the \$30,000 limit under Elections Code Section 10010.

If the Council chooses to adopt the Resolution of Intention to Transition from At-Large Elections to District-Based Elections of Councilmembers, then staff will begin the public outreach process to inform the community of the public hearings that will be held to draw the district maps. These public hearings are proposed to commence February 25, 2020. Outreach efforts regarding the mapping process will include press releases, social media postings, notices displayed at various City facilities, updates via the City's electronic newsletter "Napa News Weekly," and distributing information on the City's website in both Spanish and English.

The City is required to adopt the resolution of intent to convert from at-large to district-based elections no later than 45 days after receipt of the certified letter received by Mr. Rafferty. Therefore, the deadline to adopt the resolution of intent to convert from at-large to district-based elections would be February 18, 2020.

If the City follows the process summarized in this report to establish district-based elections for Councilmembers for the November 3, 2020 election, the two incumbents elected in the 2018 election (Councilmembers Alessio and Luros) would maintain their seats on Council through their four-year terms (through the November 2022 election). Therefore, for the 2020 election, candidates for the two remaining seats on City Council would be required to reside in two newly created districts. The Mayoral election would still occur in 2020 and all city voters would vote for the office of Mayor, and it would not be impacted by the district election process.

As stated above, if the City Council approves the transition to district-based elections, there must be two public hearings for input on district composition before maps are drawn; two more public hearings on the draft maps; and then an introduction and adoption of an ordinance that puts the district-based election system into place.

A schedule setting forth the proposed meeting and public hearing dates is attached as Exhibit A to the Resolution. The resolution authorizes the City Manager to adjust the schedule as necessary, provided that such adjustments will not prevent the City from complying with the time frames specified by Elections Code Section 10010.

These public hearings will be primarily focused on establishing the boundaries of the four Council districts. Per Elections Code Section 21621(c), certain criteria must be considered to establish the boundaries of the four Council districts including the following, in order of priority:

- Equal population of residents in each district based on census data
- Compliance with the Constitutions of the United States and California, and with the federal Voting Rights Act
- Geographic contiguity
- Maintaining neighborhoods and local communities of interest: common social or economic interests (such as shopping, schools, home ownership, unemployment, median income). Note: Communities of interest do not include relationships with political parties, incumbents, or political candidates
- Boundaries easily identifiable and understandable to residents
- Geographic compactness is encouraged

FINANCIAL IMPACTS:

If the City Council adopts the resolution of intent, there will be significant staff time needed to transition to district-based elections and to administer the process, including the need for at least four (4) public hearings. The City will also incur the costs for a demographer, special legal counsel, translation services and public outreach. Staff anticipates these costs being approximately \$50,000 - \$70,000. Additionally, it is anticipated that the City will be required to reimburse the proponent of the request for district-based elections for their documented attorney's fees and costs up to a combined total of \$30,000, plus cost of living adjustments from 2017. At this time, staff is recommending no additional budget adjustments. There is a possibility current budget savings may absorb costs that will occur for the remainder of FY 2019-20. The related costs that will occur in FY 20-21 will initially be absorbed with current budget and if additional appropriation is required staff will return to council during the FY 2020-21 mid-cycle budget review.

CEQA:

The City Clerk has determined that the recommended action described in this agenda report is not subject to CEQA, pursuant to CEQA Guidelines Section 15060(c).

DOCUMENTS ATTACHED:

ATCH 1 - Certified Letter from Scott J. Rafferty received on 1/2/2020

ATCH 2 - Resolution with Exhibit A (Draft Tentative Timeline)

NOTIFICATION:

None.