



STAFF REPORT

DATE: July 6, 2021

TO: Joshua McMurray,
Interim City Manager

Approved and Forwarded to the City Council

FROM: Derek P. Cole, City Attorney

SUBJECT: A Resolution of the City Council of the City of Oakley Outlining its Intention to Transition from At-Large Elections for the City Council to District-Based Elections for the City Council Pursuant to Elections Code Section 10010

Discussion

The City Clerk received a certified letter on March 13, 2020 from Kevin Shenkman ([Attachment 1.](#)) The 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 Antioch council elections. As a result, Attorney Shenkman contends the City violates the California Voting Rights Act ("CVRA") by allowing "racially polarized voting" to occur.

The City currently utilizes an at-large election system, which means that the electors from the entire City choose each of the five Councilmembers and separately. A district-based election system, in contrast, 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 electors residing in that particular district.

Cities throughout the State have increasingly been facing legal challenges such as this to their "at-large" systems of electing councilmembers. Almost all have settled claims out of court by voluntarily shifting to district-based elections.

On September 28, 2016, the Governor signed AB 350 into law, which attempts to provide a "safe harbor" from CVRA litigation for cities. If a city receives a demand letter, such as in the City's case, the city is given 45 days of protection from litigation to assess its situation. If within that 45 days, a city adopts a resolution declaring the Council's intent to transition from at-large to district-based elections, outlining specific steps to be undertaken to facilitate the transition, and estimating

a time frame for action, then a potential plaintiff is prohibited from filing a CVRA action for an additional at least 90 or 180 days. If this “safe harbor” is utilized, the attorney fees for the threatened CVRA litigation are capped at \$30,000 in 2016 dollars. (Presently the amount, adjusted for inflation, is about \$33,000.)

Shortly after receipt of the demand letter, the City Council met in Closed Session to consider the threatened CVRA litigation and, after weighing the legal implications and potential costs of such litigation, directed the City Attorney to move forward with the resolution of intent to transition from at-large to district-based elections in order to take advantage of the “safe harbor” allowances under AB 350.

There has been over a year delay since receipt of the March 2020 demand letter. This is because, as part of a comprehensive set of executive orders in response to the COVID-19 pandemic, the Governor suspended CVRA deadlines in light of the limitations on public meetings. Those executive orders effectively expired on June 30, 2021. The initial 45-day period resumed as of July 1, and the City Council must act at its meeting on July 13. (The 45-day period will have expired before the Council’s next regular meeting in August.)

Under the “safe harbor,” the City is required to hold five public hearings within the allotted 90-day framework. The public hearings will give the community an opportunity to weigh in on the composition of the districts and to provide input regarding the content of the draft maps and the proposed sequence of elections. The final public hearing will be when Council votes to consider an ordinance establishing district-based elections.

Because of the agenda deadline for submission of this staff report, a proposed schedule for the five required public hearings could not be included within. As of the date of this submission, the City Attorney and Staff are presently working to develop a schedule in association with obtaining the necessary professional and consulting services that will be necessary.

To assist in the transition to district elections, the City has retained the services of an exceptionally qualified demographer, Karin MacDonald, whose firm Q2 Data and Research, LLC, has handled several CVRA districting and redistricting processes throughout the state. In 2018, Ms. MacDonald and her firm coordinated the City of Antioch’s conversion to district elections. She and her firm have facilitated conversions in several for several other cities and special districts.

Ms. MacDonald will be available at the July 13, 2021 meeting to provide an overview of the CVRA process. She will provide a presentation to facilitate the Council’s consideration of this item.

Fiscal Impact

If the City Council concurs with the recommendation above, there will be significant staff time needed to transition to district-based elections and to administer the process including the need for five public hearings. The City will also incur the costs for a demographer and potentially other consultants, and such costs could approach \$50,000. Additionally, the City will be required to reimburse the plaintiff for its documented attorney's fees and costs up to \$33,000. All of these costs have been incorporated into the City's 2021/22 Fiscal Year Budget.

Recommendation

The City Attorney recommends the City Council adopt the Resolution of the City Council of the City of Oakley Outlining its Intention to Transition from At-Large Elections for the City Council to District-Based Elections for the City Council Pursuant to Elections Code Section 10010.

Attachments

1. March 13, 2020 Demand Letter from Shenkman & Hughes Law Firm
2. Resolution Authorizing Transition to District Elections