

Town Council Agenda Report

Date: April 9, 2019 Item No. 6

To: Honorable Mayor and Town Council

Subject: PUBLIC HEARING #2 TO RECEIVE PUBLIC COMMENTS ON
TRANSITION TO DISTRICT-BASED ELECTIONS UNDER THE
CALIFORNIA VOTING RIGHTS ACT

From: Douglas B. Robertson, Town Manager

Submitted by: Thomas A. Rice, Town Attorney

Budgeted Item: Yes No N/A

RECOMMENDED ACTION

That the Town Council:

- (A) Open the public hearing, receive input regarding the composition of the districts, and close the public hearing; and
- (B) Provide direction to staff related to the composition of districts.

BACKGROUND

In recent years, a number of cities in California have been sued under the CVRA. Typically, plaintiffs allege that the defendant city's at-large election system has resulted in "racially polarized" voting, which is defined in the CVRA as "voting in which there is a difference . . . in the choice of candidates of other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate." (Elec. Code, § 14026 (e).) The lawsuits usually request that the defendant city transition to a by-district system. In a by-district election system, a council candidate must reside within an election district that is a divisible part of the jurisdiction and is elected only by voters residing within that election district.

Since the CVRA was signed into law, many local government entities have converted (or are in the process of converting) to by-district elections. The move toward by-district election systems is not surprising in light of the cost of litigating under the CVRA. For example, Palmdale settled a CVRA lawsuit in 2015 for \$4.5 million, Modesto paid \$3 million to settle a similar case in 2008, and Anaheim settled in 2014 for an amount reported to be possibly as high as \$2 million. These numbers do not include the cities' costs in paying their own attorneys to defend the lawsuits. In recent months, the City of Santa Monica has attempted to defend its at-large election system in the Los Angeles

Superior Court. Though the final judgment has not been issued, the tentative decision of the Court is against the City and it has been reported that the City spent \$10 million on the matter.

In 2016, the California legislature adopted AB 350 amending Elections Code section 10010 to cap the attorneys' fees a prospective plaintiff may recover if a public agency adopts a resolution of intention to change to a by-district system of elections within 45 days following the receipt of a letter from that prospective plaintiff alleging a CVRA violation.

On January 2, 2019, the Town received a letter from Kevin Shenkman of Shenkman & Hughes, PC, alleging that the Town's at-large election system diluted the ability of certain protected classes of persons within the Town to elect candidates of their choice.

On February 15, 2019, at a special meeting, the Town Council adopted a resolution of intent under Elections Code section 10010. On February 27, 2019, the Town entered into a tolling agreement with Mr. Shenkman's client to extend the period during which the Town must transition from at-large to by-district elections from 90 to 180 days. With the tolling agreement in place, the Town Council must complete the following steps by August 14, 2019:

- (1) Conduct public outreach to explain the districting process and to encourage public participation;
- (2) Hold at least two public hearings at which the public is invited to provide input regarding the composition of the districts and to consider district boundaries as provided in Elections Code Section 10010;
- (3) Publish draft maps based on those hearings;
- (4) Hold at least two more public hearings at which the public is invited to provide input regarding the content of the draft map or maps and the proposed sequence of elections;
- (5) Hold a public hearing at which the Town Council will consider the introduction of an ordinance establishing district elections, including the adoption of a district boundary map and the sequence of the district elections; and
- (6) Adopt an ordinance at a regular meeting of the Town Council.

The Town published the following tentative schedule on its website for the completion of these steps. The Town is currently at the second public hearing.

Date and Time	Event	Location
March 26, 6:30 p.m.	Public Hearing #1	Council Chambers 14955 Dale Evans Parkway Apple Valley, CA 92307
April 3, 5 p.m.	Public Workshop	Conference Center South 14975 Dale Evans Parkway Apple Valley, CA 92307

<i>April 9, 6:30 p.m.</i>	<i>Public Hearing #2</i>	<i>Council Chambers 14955 Dale Evans Parkway Apple Valley, CA 92307</i>
May 3	Release of Maps	Available online and in the Town Clerk's Office
May 14, Time TBD	Public Hearing #3	Council Chambers 14955 Dale Evans Parkway Apple Valley, CA 92307
TBD (Week of May 20)	Public Workshop	TBD
June 11, Time TBD	Public Hearing #4	Council Chambers 14955 Dale Evans Parkway Apple Valley, CA 92307
July 9, 6:30 p.m.	Public Hearing #5 and Introduction of Ordinance	Council Chambers 14955 Dale Evans Parkway Apple Valley, CA 92307
July 23, 6:30 p.m.	Adoption of Ordinance	Council Chambers 14955 Dale Evans Parkway Apple Valley, CA 92307

On March 26, the Town Council conducted the first public hearing. At that hearing, members of the public provided comments on the possible composition of the districts. One individual suggested that the local school district lines be used as the initial basis for drawing the Town's district lines, with adjustments made to account for population differences and differences in the size of territory covered. Another individual suggested that Town Hall function as the center of the map with radials drawn from that point to the edges and then adjusted for population.

On April 3, the Town Attorney conducted a public workshop. The purpose of the workshop was to provide a less formal environment for the public to provide thoughts on the creation of district boundaries. Several members of the public attended the workshop and participated in a good discussion about the criteria to be used. The following Town features, organized by category, were suggested be considered:

- Geography
 - Use major roadways as dividing lines, e.g., Highway 18, Apple Valley Road, Bear Valley Road, Central.
 - Consider future growth areas
- Communities of Interest
 - Keep distinct communities together, e.g., Jess Ranch (including all constituent HOAs), Stone Gate, other gated communities.
 - Consider trying to place some commercial property in every district to make sure all council members have an obligation to commercial interests.
- Cohesiveness, Contiguity, Integrity, and Compactness of Territory

- Accept that it will be natural for their to be a wide variation in district size due to lack of density in various parts of Town. Do not prioritize trying to make districts the same size in area terms.

Public comments on the transition and the proposed district maps are very important and all residents within the Town are encouraged to participate in these hearings.

ANALYSIS

The purpose of this meeting is to conduct the second public hearing at which the public is invited to provide input regarding the composition of the districts. Following the conclusion of the hearing, staff is seeking direction from Town Council on the key factors to be considered.

Criteria for Establishing Districts

The drawing of districts is regulated by both state and federal law, including the CVRA and the Federal Voting Rights Act. For example, under federal law, districts may not be drawn with race as the predominate factor. (*Shaw v. Reno* (1993) 509 U.S. 630.) Further, under Health and Safety Code section 13846 (e) and Elections Code section 22000, districts must be drawn as nearly equal in population as may be according to the latest federal decennial census. In establishing the boundaries, the Town Council may give consideration to the following factors:

- (1) Topography (e.g., rivers, mountains, cliffs, and lakes);
- (2) Geography (e.g., land use patterns, major roadways, and railway lines);
- (3) Cohesiveness, Contiguity, Integrity, and Compactness of Territory; and
- (4) Community of Interest of the Divisions (e.g., homeowner's associations, historic communities, school districts, and downtown areas).

The professional demographer retained by the Town to draw districts will ensure the districts are compliant with these standards.

Based on the input received at the public hearing, the Town Council may wish to identify additional criteria to guide the establishment of districts. For example, among other criteria, the Town Council may wish to respect the previous electoral choices of Town voters by avoiding the creation of head-to-head contests between council members previously elected by the voters of the Town (insofar as this does not conflict with Federal or State Law). Additionally, given the significance of the change to by-district elections, the Town Council may wish to consider other governance options including, for example, expanding the Town Council or inclusion of a directly elected Mayor.

FISCAL IMPACT

None associated with the public hearing.