



Council Agenda Report

From: Iris Yang, City Attorney
Jim Cogan, Assistant City Manager

Subject: First Public Hearing on a By-District Council Election System

Date: November 20, 2018

Facts

1. The City of Paso Robles currently elects its City Council through an “at-large” electoral system in which each Councilmember may reside anywhere within the City’s boundaries, and each Councilmember is elected by the entire electorate.
2. A district-based election system is one in which a jurisdiction is divided into separate districts, each with one representative who resides in the district and is elected only by the voters residing in that district. In a district-based system, voters within each district may only vote for one candidate every four years.
3. The California Voting Rights Act (“CVRA”) allows for legal challenges alleging that the at-large system has resulted in racially polarized voting within a jurisdiction and seeking a court order that a jurisdiction convert to a by-district election system. The CVRA also allows successful plaintiffs to recover attorneys’ fees.
4. On August 13, 2018, the City received a letter from Kevin Shenkman of the law firm of Shenkman & Hughes, alleging that the City’s at-large electoral system violates the CVRA. Mr. Shenkman claims there is evidence of Latino “polarized voting” in the City electorate and threatens litigation if the City does not adopt a by-district electoral system.
5. A violation of the CVRA may be established if it is shown that racially polarized voting has combined with an at-large voting system to impair the ability of a protected class of voters to elect candidates of its choice or to influence the outcome of an election.
6. “Racially polarized voting” under the CVRA means voting in which there is a difference between the choice of candidates or other electoral choices that are preferred by voters in a protected class and in the choice of candidates and electoral choices preferred by voters in the rest of the electorate.
7. The CVRA does not require proof that racially polarized voting actually resulted in the defeat of a group’s preferred candidate. Nor does the CVRA require a plaintiff to show racial discrimination by the jurisdiction or other discriminatory intent.
8. No public entity has successfully defended itself against a CVRA challenge; some jurisdictions have paid millions of dollars in plaintiffs’ attorney fees.
9. On September 25, 2018, the City Council approved a resolution expressing the City’s intent to transition from an at-large to a by-district election system.
10. The City hired NDC, a demography consulting firm with extensive experience working with local municipalities, school districts, and special districts in converting to by-district elections.
11. The City Attorney is in the process of negotiating a tolling agreement with Mr. Shenkman to extend the City’s required timeframe for transitioning to by-district elections, as permitted by the CVRA. However, the timeframe is still constrained.

Options

1. Take no action;
2. Conduct a public hearing to solicit community input on the boundaries and composition of councilmanic districts;
3. Provide alternative direction to staff.

Analysis and Conclusions

Timeline. The City is required to hold at least four public hearings during this process. The first two hearings are to help develop criteria for creating the proposed districts. These criteria may include:

- School attendance areas
- Natural neighborhood dividing lines, such as highway or major roads, rivers, canals, and/or hills
- Areas around parks and other neighborhood landmarks
- Common issues, neighborhood activities, or legislative/election concerns
- Shared demographic characteristics
- Such as similar levels of income, education, or linguistic isolation.

The two initial public hearings must be held within 30 days of each other (November 20 and December 18; see Attachment 1 is a draft timeline for transitioning to by-district elections). In addition, the City is scheduling two community meetings (the first on December 5th at 6:30 in the Council Chamber) to provide information about the process and solicit feedback from the public, which will be used to draft preliminary district maps. In addition to the required public hearings and community meeting, staff intends to engage the public through traditional and social media. Staff is interested in feedback on the timeline and any suggestions the Council has for additional public engagement.

The map drawing process begins after the initial two public hearings. The City's demographer will prepare options for the Council's consideration. In addition, members of the public may propose maps, all of which will be considered. After the draft maps are prepared, the Council must hold at least two additional public hearings. The maps must be available for at least seven days prior to each of these public hearings. These final two public hearings (which will be scheduled sometime in the new year) must be held within 45 days of each other. Thereafter the City Council may adopt a map establishing districts.

Sequencing. During the third and fourth public hearings, the City Council will also need to determine the "sequencing" of the district elections. This means that the Council will need to decide which districts will have elections first. There is no requirement that the sequencing must be based on where incumbents reside. In fact, recent legislative amendments set forth in AB 350 (Elections Code section 10010(b)) state that special consideration should be given to the CVRA's purposes in determining which districts have the first elections.

Voting Options. While some jurisdictions have attempted to propose alternative election methods that might satisfy the CVRA, none has been successful to date. There may be options for alternative election methods under certain circumstances, including but not limited to, an amendment to State law, and/or a City election to become a charter city. Staff intends to schedule two study sessions for Council and the public in early 2019, the first on the pros and cons of being a charter city and the process for becoming a charter city. The second study session will be on the available voting options if the City were to become a charter city. It is important to note that these options are available for a long-term solution, as they could not be implemented prior to 2022. However, given that we would otherwise need to completely re-analyze our districts at the same time, based on data from the 2020 census, and the Council would have been able to observe the impacts of the district election in 2020, this timing is not a major negative.

Fiscal Impact

None.

Recommendation

Conduct a public hearing to solicit community input on the boundaries and composition of City Council districts.

Attachments

1. Timeline for transitioning to by-district elections



DISTRICT ELECTIONS PROCESS TIMELINE

City Clerk's Office
 1000 Spring Street, Paso Robles, CA 93446
 805-237-3888

Timeline (as of November 15, 2018; subject to change)		
Dates	Event	Status
August 13, 2018	City received demand letter. Has 45 days to adopt Resolution of Intent to change to District Elections. 45 days ends 9/27/18	Completed
September 25, 2018	City Council unanimously adopts Resolution of Intent (Resolution No. 18-137) at a special meeting to transition from at-large to district-based elections. (Prospective plaintiff may not sue for at least 90 days from date of resolution passage, i.e., 12/26/18)	Completed
September 25 – November 19	Retain district-mapping consultant; tolling agreement with Sherkman for additional time due to holidays/elections/public outreach; 2-2-1 briefings with Council; public outreach time	Underway
November 20, 2018	1st Public Hearing: gather public input on the composition of zones	
December 5, 2018	1st Community Meeting: Presentation to community regarding process and purpose of transition from at-large to by-district election system	
December 10, 2018	2nd Community Meeting: Presentation to community regarding process and purpose of transition from at-large to by-district election system	
December 18, 2018	2nd Public Hearing: gather public input on the composition of zones	
January 2019	City Council and community outreach to educate and encourage public participation in mapping options	
Early February 2019	Hold public workshop where citizens can provide comments and suggestions for district map; publish at least one draft map and potential election sequence before 3rd hearing	
March 5, 2019	3rd Public hearing: public input on draft maps and election sequencing	
March 26, 2019 or April 2, 2019 (if map revised)	4th Public hearing: public input on draft maps and election sequencing; possible map selection and introduction of ordinance establishing district-based elections	
April 2, 2019 or April 16, 2019	Second Reading and final adoption of ordinance establishing district-based elections	
April 2019	Official map submitted to San Luis Obispo County Registrar of Voters	
November 2020	First by-district election in two districts on November 3, 2020	
2021	Districts redrawn to reflect 2020 census data	
November 2022	First by-district election for remaining seats	