

BUSINESS OF THE COUNCIL OF THE CITY OF HALF MOON BAY

AGENDA REPORT

For the meeting of: **April 17, 2018**

TO: Honorable Mayor and City Council

VIA: David Boesch, Interim City Manager

FROM: Jessica Blair, City Clerk
Catherine Engberg, City Attorney

TITLE: RESOLUTION OF INTENTION TO TRANSITION TO DISTRICT-BASED ELECTIONS

RECOMMENDATION:

Adopt a resolution declaring the City Council’s intention to transition from at-large to district-based elections pursuant to California Elections Code Section 10010.

FISCAL IMPACT:

Transitioning to district elections will require the City to retain the services of a demographer. The cost of such services will be roughly \$45,000. The City could also receive an invoice from Shenkman & Hughes for costs associated with sending the letter alleging a CVRA violation. The invoice will be required to be supported by documentation justifying the amount requested and cannot exceed \$30,000. There are sufficient funds in the City Clerk’s Operating Budget to cover costs for the demographer.

STRATEGIC ELEMENT:

This recommendation supports the Inclusive Governance Element of the Strategic Plan.

BACKGROUND:

Cities throughout the State of California have increasingly been facing legal challenges under the California Voting Rights Act (CVRA). The Legislature has added a “Safe Harbor” under the CVRA that requires a prospective plaintiff to first send a demand letter to the political subdivision before filing an action in court and prohibits filing an action within 45 days of the City’s receipt of the letter. Upon receipt of the written demand, the City has 45 days to pass a resolution outlining its intention to transition from at-large to district elections, the specific steps it will take to facilitate this transition, and the estimated time frame for doing so. If this resolution is passed, a prospective CVRA plaintiff shall not file an action within 90 days of the passage of the resolution. The City then has the ability to enact an ordinance transitioning to district elections, pursuant to Government Code Section 24886. To do so, the City must first hold a number of public hearings to determine district boundaries.

If an ordinance transitioning to by-district elections is adopted, Elections Code Section 10010(f) provides that the prospective plaintiff who sent the letter may make a demand upon the City for reasonable costs incurred to send the letter, but that cost is capped at \$30,000, adjusted annually to the CPI.

On March 6, 2018, the City received a Notice of Violation of the CVRA from attorney Kevin Shenkman. The notice asserts that City elections are characterized by racially polarized voting and minority vote dilution. The notice demands that the City transition to district-based elections. Further, if the City declines to voluntarily transition, Mr. Shenkman states his intention to seek legal action to compel district-based elections.

On April 3, 2018, the City Council received a report on the issue of transitioning to district elections and, by consensus, directed staff to return with a Resolution of Intention.

DISCUSSION:

District Elections and Other Types of Voting Options

If the City adopts the Resolution of Intention and proceeds with transitioning to district elections, the first district election for Half Moon Bay would be in 2020. The County of San Mateo's Elections Division has a deadline of July 3, 2018 for the November 2018 election.

As a general law city, the transition to district elections would likely result in either:

- A mayor elected at-large, with the remaining seats chosen through a by-district election process (four voting districts); or
- Five voting districts with a rotating mayor.

According to information provided by the National Demographics Corporation (NDC), slightly more than half of the cities making the change to by-district elections have either kept or added an at-large mayor. In three CVRA lawsuits, plaintiffs have raised CVRA claims regarding the at-large mayor system. Those claims were part of larger challenges and, in any event, were unsuccessful in the trial court.

"Safe Harbor" Public Hearing Process

Prior to adopting an ordinance to transition to district elections, the City Council is required to establish district boundaries and the sequencing of district elections. Elections Code Section 10010 sets forth the City Council public hearing process for establishing district boundaries and the sequencing of district elections. This process requires a series of noticed public hearings during which the public has a right to provide input on proposed district boundaries.

Specifically, the City must hold at least two "clean slate" hearings at which the public can provide input on district boundaries before any maps are prepared. Thereafter, the City must hold at least two public hearings to consider draft maps. Finally, the City must hold a public

hearing at which the map is adopted, and sequencing of district elections is established. The map and sequencing must be approved by ordinance.

The creation and approval of voting district maps is intended to be a transparent public process. Voting district maps must be prepared in compliance with certain state and federal requirements, including consideration of communities of interest, natural geographic boundaries, and, perhaps most importantly, the “one person, one vote” standard, which requires that all voting districts be as nearly equal in population as possible.

The City has contracted with NDC to prepare demographic and election history profiles. Staff is looking into contracting with NDC for work on drafting district maps and public outreach. NDC has worked with a majority of the cities who have switched to district elections over the past few years.

Community Engagement

At the April 3, 2018 meeting, several Councilmembers expressed a preference for an at-large mayor with four districts. Additionally, the Council expressed interest in maximized public outreach with the potential of a districting committee. Mayor Penrose expressed interest in amending the City’s campaign finance ordinance.

Regarding public outreach, City staff is prepared to work with the City’s communications consultant, Malcolm Smith, on designing a webpage dedicated to districting process. The public outreach process would include consideration of various forms of voting options, including the at-large mayor.

Regarding a potential districting committee, staff can bring back information on forming a committee if the Council so desires. Staff has contacted other cities who have switched to district elections over the past two years and the majority found the greatest public participation at City Council public hearings and through map drawing tools on the city websites. The recommendation from many was that for a city of Half Moon Bay’s size, public meetings would be more beneficial to the community than a committee.

Staff will bring back the City’s campaign finance ordinance for Council review and potential direction for modifications.

Next Steps

The attached resolution of intention to transition to district-based elections declares the City’s intention to transition to district-based elections for the 2020 general municipal election, and provides the following timeline for the adoption of an ordinance approving district-based elections:

1. Within 30 days of adoption of the resolution of intention, City staff and the demographer will develop a schedule of the steps necessary to transition to district-

based elections by ordinance, as provided by Elections Code Section 10010(a), including conducting maximized public outreach and all necessary public hearings. This schedule shall be presented to the City Council for approval.

2. The City Council shall adopt an ordinance transitioning to district-based elections within the 90-day safe harbor period (July 16, 2018), unless tolled.

If the Council adopts the proposed schedule, the City Attorney will work with Mr. Shenkman on a tolling agreement to allow the City time to maximize public outreach.

ATTACHMENT:

Resolution of Intention

Resolution No. C-2018-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HALF MOON BAY DECLARING ITS INTENTION TO TRANSITION FROM AT-LARGE TO DISTRICT-BASED ELECTIONS PURSUANT TO CALIFORNIA ELECTIONS CODE SECTION 10010

WHEREAS, the City Council is currently elected in at-large elections, in which each councilmember is elected by the registered voters of the entire city; and

WHEREAS, California Government Code Section 34886, in certain circumstances, authorizes the legislative body of a city of any population to adopt an ordinance to change its method of election from an at-large system to a district-based system in which each councilmember is elected only by the voters in the district in which the candidate resides; and

WHEREAS, on March 6, 2018, the City received a Notice of Violation of the California Voting Rights Act (CVRA) from attorney Kevin Shenkman asserting that City elections are characterized by racially polarized voting and minority vote dilution and threatening litigation if the City declines to voluntarily transition to a district-based elections system; and

WHEREAS, although the letter was not accompanied by any evidence to support the claim of a CVRA violation, the City Council has directed staff to initiate the process to establish by-district elections to avoid costs associated with defending a lawsuit based on the CVRA; and

WHEREAS, the City denies its election system violates the CVRA or any other provision of law and asserts the City's election system is legal in all respects and further denies any wrongdoing whatsoever in connection with the manner in which it has conducted its City Council elections; and

WHEREAS, despite the foregoing, the City Council has determined that it is in the best interest of the City and in furtherance of the purposes of the California Voting Rights Act to transition from at-large to district-based elections; and

WHEREAS, the City Council desires to declare its intention to adopt an ordinance pursuant to Government Code Section 34886 transitioning from at-large to district-based elections for the 2020 general municipal election, establish specific steps it will undertake to facilitate this transition, and establish an estimated time frame for doing so; and

WHEREAS, the CVRA provides a 90-day Safe Harbor to complete these tasks from the date of adoption of this resolution without threat of litigation; and

WHEREAS, prior to the City Council's consideration of an ordinance to establish district boundaries for a district-based electoral system, California Elections Code Section 10010 requires the following:

1. Prior to drawing a draft map or maps of the proposed boundaries of the districts, the City shall hold at least two (2) public hearings over a period of no more than thirty (30) days, at which the public will be invited to provide input regarding the composition of the districts;
2. After all draft maps are drawn, City shall publish and make available for release at least one draft map and, if members of the City Council will be elected in their districts at different times to provide for staggered terms of office, the potential sequence of the elections shall also be published. The City Council shall also hold at least two (2) additional hearings over a period of no more than forty-five (45) days, at which the public shall be invited to provide input regarding the content of the draft map or maps and the proposed sequence of elections, if applicable. The first version of a draft map shall be published at least seven (7) days before consideration at a hearing. If a draft map is revised at or following a hearing, it shall be published and made available to the public for at least seven (7) days before being adopted; and

WHEREAS, the City is in the process of retaining an experienced demographer to assist the City with transitioning to a district-based electoral system; and

WHEREAS, the adoption of a district-based elections system will not affect the terms of any sitting councilmember, each of whom will serve out his or her current term.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF HALF MOON BAY HEREBY:

Section 1. The City Council hereby resolves to consider adoption of an ordinance, pursuant to Government Code Section 34886 to transition the election of its city council members from an at-large electoral system to a district-based system, as provided by Government Code Section 34871(a).

Section 2. City staff is directed to work with the City's demographer, and other appropriate consultants as needed, to provide a detailed analysis of the City's current demographics and any other information or data necessary to prepare a draft map that divides the City into voting districts in a manner consistent with the intent and purpose of the California Voting Rights Act and the Federal Voting Rights Act.

Section 3. The City Council hereby approves the tentative timeline as set forth in Exhibit A, attached hereto and made a part of this resolution, for conducting a public process to

solicit public input and testimony on proposed district-based electoral maps before adopting any such map.

Section 4. The tentative timeline may be adjusted by the Interim City Manager as necessary, especially if an agreement tolling safe harbor deadlines is reached with the Plaintiff's attorney to allow additional time for public input.

Section 5. The City Council directs staff to post information regarding the proposed transition to a district-based election system, including maps, notices, agendas, and other information, and to establish a means of communication to answer questions from the public.

I, the undersigned, hereby certify that the foregoing resolution was duly passed and adopted on the 17th day of April, 2018 by the City Council of Half Moon Bay by the following vote:

AYES, Councilmembers:

NOES, Councilmembers:

ABSENT, Councilmembers:

ABSTAIN, Councilmembers:

ATTEST:

APPROVED:

Jessica Blair, City Clerk

Deborah Penrose, Mayor

EXHIBIT A

TENTATIVE TIMELINE: CONSIDERATION AND IMPLEMENTATION OF DISTRICT-BASED ELECTIONS SYSTEM (USING 90-DAY SAFE HARBOR)

DATE	EVENT	COMMENT
March 6, 2018	City received Notice of Violation of CVRA	City has 45 days (April 20, 2018) to adopt a Resolution of Intention to transition to district elections.
April 3, 2018	Informational Report	Staff presented a report to the City Council on the Notice of Violation
April 17, 2018	Resolution of Intention	90-Day Safe Harbor begins (July 16, 2018)
May 1, 2018	First Public Hearing	Council hearing regarding composition of districts. No maps to be drawn yet.
May 15, 2018	Second Public Hearing	Council hearing regarding composition of districts. No maps to be drawn yet. <i>First and second public hearings must occur within a period of 30 days.</i>
May 17, 2018	Post Draft Maps and Potential Sequence of Elections	Draft maps and proposed sequence must be posted publicly at least 7 days before next hearing.
June 5, 2018	Third Public Hearing	Council hearing regarding published drafts maps. <i>Third and fourth public hearings must occur within a period of 45 days.</i>
June 7, 2018	Post Draft Maps and Potential Sequence of Elections	Draft maps and proposed sequence must be posted publicly at least 7 days before next hearing.
June 19, 2018	Fourth Public Hearing	Council hearing regarding published drafts maps. <i>If selected map is amended, ordinance cannot be introduced</i>

		<i>until 7 days after the amended map is published.</i>
June 21, 2018	Post Amended Draft Maps	Draft maps and proposed sequence must be posted publicly at least 7 days before next hearing.
July 3, 2018	Fifth Public Hearing	Council introduces ordinance establishing district elections, selects map, includes district boundaries and elections sequence
July 10, 2018	Ordinance Adoption	Second Reading and adoption of ordinance.
July 16, 2018	Day 90	Safe Harbor is expired on this date.
August 2018	County Elections Division	Staff and the demographer will work with the San Mateo County Elections Division to implement districts into the County's elections database.
November 2020	General Municipal Election	First election utilizing adopted district boundaries.