



AGENCY: City Council
MEETING DATE: May 2, 2018
DEPARTMENT: City Manager
PRESENTED BY: Tabatha Miller
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AGENDA ITEM SUMMARY

TITLE:

Receive Report and Provide Direction on Mr. Patterson's 45-Day Notice Letter Received April 17, 2018, the California Voting Rights Act of 2001 ("CVRA"), the California Elections Code "Safe-Harbor Provision" Capping Reimbursement of Prospective Plaintiff's Costs to Generate the 45-Day Notice Letter to \$30,000, and Possible Transition from At-Large to District-Based Elections

ISSUE:

On April 17, 2018 the City received a letter from a local attorney (Attachment 1). The letter states that based on a thorough investigation and analysis of demographic and electoral information concerning past Fort Bragg elections, the represented Committee believes the City's current at-large election system may violate the California Voting Rights Act of 2001 (CVRA).

The local attorney's letter points out that none of the California jurisdictions with at-large voting systems that have been charged with alleged violations of the CVRA have prevailed in court action. Under the CVRA, the prevailing plaintiff is allowed attorney's fees, which have, in some cases, reached into the millions of dollars.

ANALYSIS:

The City of Fort Bragg currently elects its five City Council Members at-large. Under this voting system, each Fort Bragg registered voter has the right and opportunity to vote for all open City Council seats in a City Council election. For example, under the current voting system, voters will have the opportunity to vote for three candidates for the three open City Council Member seats in November, 2018. Under a district-based election system, voters within a district have the opportunity to vote for only one candidate running for City Council within their district.

The CVRA expands on the Federal Voting Rights Act of 1965 and makes it easier for minority groups to successfully sue and eliminate at-large election systems. Under the CVRA, minimal evidence of racially polarized voting can result in a court order requiring a city to change from at-large to district-based voting. "Racially polarized voting" occurs when there is a difference between the choice of candidates preferred by voters in a protected class and the choice of candidates preferred by voters in the rest of the electorate. Proponents of district-based elections assert that minority groups have a better chance of getting representation on City Council with district-based systems.

More recent legislation created a "safe harbor provision" to protect jurisdictions from CVRA litigation costs and attorneys' fees. Under Elections Code Section 10010, a prospective plaintiff must send the clerk of the city a written notice asserting that the City's election process may violate the CVRA. Mr. Patterson's letter serves as this notice. If, within 45

days of the city receiving this notice, the city adopts a resolution outlining its intention to transition from an at-large to a district-based election system, the potential plaintiff is barred from suing the city for 90 days after the resolution is passed. So long as the city implements district-based elections within those 90 days, the legal fees that a prospective plaintiff can recover are capped at \$30,000.

RECOMMENDED ACTION:

Provide direction to staff regarding the following:

1. Presenting a Resolution at the May 29, 2018 City Council Meeting establishing the City's intent to transition to district-based elections.
2. Hiring a demographer to compile demographic and election history profiles and conduct a polarized voting analysis for the three prior City Council Member elections.
3. Approve use of the litigation reserve funds for payment of the demographer and other potential pre-litigation costs.

ALTERNATIVE ACTION(S):

1. Direct staff to not present the City Council with a Resolution establishing the City's intent to transition to district-based elections and take no further action. City may be sued under the CVRA and need to respond to litigation at that time.
2. Direct staff to hire an attorney and demographer to begin work on a defense to a possible CVRA law suit. In this case, the City would be better prepared for potential litigation.
3. In addition to or in place of any of the recommended or alternative actions, direct staff to pursue legislative changes to the existing CVRA and safe harbor provisions. This is not likely to occur in time to protect the City from litigation.
4. Request that Mr. Patterson revoke his 45-day letter, in order to allow the City more time to research district elections and the impact on the City. This would not necessarily protect the City from other potential litigants.

FISCAL IMPACT:

Staff estimates that a demographer will cost between \$40,000 and \$50,000 to complete preliminary analysis and to prepare draft district maps and assist with public input. Potential plaintiff's legal fees and costs are capped at \$30,000, if the City meets the safe harbor provision requirements. City attorney's fees are estimated at \$20,000, if the safe harbor provision is selected. If the City elects not to participate in the safe harbor, attorneys' fees for both City representation and potential plaintiffs' fees could reach hundreds of thousands of dollars. Funds of \$200,000 have been set aside in the City's Litigation Reserve.

CONSISTENCY:

N/A

IMPLEMENTATION/TIMEFRAMES:

No.	Task	Date/Timeline	Notes
1	Patterson Letter of 4/16/18 Received	April 17, 2018	
2	City Council Closed Session	April 23, 2018	
3	Council Meeting – Initial Consideration of Topic – Item to Introduce Topic, Seek Council Direction on How to Proceed	May 2, 2018 Special Meeting	
4	Council Meeting to Adopt Resolution /	May 29, 2018	Before Map(s) Drawn

	Public Hearing #1		– EC 10010(a)(l)
5	Council Meeting / Public Hearing #2	June 11, 2018	Before Map(s) Drawn – EC 10010(a)(l). Within 30 days of Public Hearing #1
6	Council Meeting / Public Hearing #3	June 25, 2018	Within 30 days of Public Hearing #2
7	Draft Map(s) Drawn	July 9, 2018	
8	Publish Draft Map(s) and Sequencing	July 16, 2018	EC 10010(a)(2). Published Once at Least 7 Days Prior to Public Hearing #4
9	Council Meeting / Public Hearing #4	July 23, 2018	After Map(s) and Sequencing Published, EC 10010(a)(2), More than 7 Days After Draft Map(s) and Sequencing Publication
10	Council Meeting / Public Hearing #5 – Introduction / First Reading of Ordinance	August 13, 2018	After Map(s) and Sequencing Published, EC 10010(a)(2), within 45 days of Public Hearing #4
11	Council Meeting – Second Reading of Ordinance	August 27, 2018	
12	Ordinance Effective 30 Days After Adoption	September 26, 2018	
13	Councilmembers Transition to Representing their Respective Districts via Ordinance	November 2020 (or sooner if special election)	

ATTACHMENTS:

1. Mr. Patterson's Letter
2. National Demographics Corporation (NDC) Proposal
3. Public Comment

NOTIFICATION:

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