



AGENCY:	City Council
MEETING DATE:	July 9, 2018
DEPARTMENT:	City Manager
PRESENTED BY:	Tabatha Miller
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## AGENDA ITEM SUMMARY

### **TITLE:**

**Receive Report, Conduct Public Hearing #1 and Consider Adoption of a Resolution Outlining: The City's Intention to Transition from At-large to District-Based Councilmember Elections; Approving a Tentative Timeline for Conducting Public Hearings; Drafting and Reviewing District Maps and Election Systems; and Presenting an Ordinance to City Council for Decision**

### **ISSUE:**

On April 17, 2018, the City received a letter from local attorney, Mr. Patterson (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).

On May 25, 2018, the City received a second letter from Mr. Patterson (Attachment 2), which withdrew the April 17, 2018 letter and concurrently submitted the second letter in its place. The result was a resetting or extension of the 45-day notice discussed below. This provided the City with additional time to research the matter.

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 letters served 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.

The City Council must decide tonight whether to adopt the resolution of intent and pursue the safe harbor option, which includes transitioning to a district-based election system.

### **ANALYSIS:**

The City of Fort Bragg currently elects its five City Councilmembers 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. Individuals seeking the City Councilmember seat may reside anywhere in the City and if elected serve the citywide purposes of the electorate. Under the current voting system, voters have the opportunity to vote for three candidates for the three open seats in November 2018 and for two candidates for the two open seats in November 2020. The candidates that receive the most citywide votes are elected to the open City Council seats. Under a district-based

election system, voters within a district have the opportunity to vote for only one candidate from their district every four years.

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. There are four elements of a violation under the CVRA:

1. **At-large election system:** Voters of the entire City vote for and elect all City Councilmembers. Fort Bragg elects its City Councilmembers at-large.
2. **Presence of protected class:** Members of a protected class are a minority group defined by race, color or language. Latinos/Hispanics qualify as a protected class.
3. **Racially polarized voting:** Voters in the protected class prefer candidates that are different from those preferred by the rest of the electorate. The Coast Committee for Responsive Representation alleges racially polarized voting in Fort Bragg, but has not provided any evidence to support the allegation.
4. **Impairment of voting influence:** The votes of the non-protected class have the effect of defeating the preferences of the protected class. The Coast Committee for Responsive Representation alleges that the non-Latino and non-Hispanic majority control a voting bloc that prevents Latino/Hispanic voters from electing candidates of their choice, but has not provided any evidence to support the allegation.

Unlike the Federal Voting Rights Act of 1965, the CVRA does not require a finding of intent to discriminate or that the protected class is concentrated in a single geographical area. Liability under the CVRA does not take into account whether a voting district could be reasonably designed so that the protected class could constitute a majority of the voting district. This raises the question as to how successful district-based elections are in increasing choice and representation by a protected class.

Instead, under the CVRA liability is based on the presence of racially polarized voting. It is this low evidentiary bar, which is at least in part why no other city has been successful in defending against allegations of CVRA violations. In order for the City to defend the claim under the CVRA, it must establish that 1) no racially polarized voting exists in the City or 2) that there is polarized voting, but it does not impair the voting influence of a federally protected class. Typically, evidence of polarized voting and impairment of voting influence involves complex analysis of demographics and historical voting patterns. The success of candidates for office from the protected class is a key factor.

Typically, statistical regression analysis, which compares precinct by precinct election results relative to the percentage of each precinct comprised of the protected class, is used to establish evidence of voter preference. The City's demographer has performed such analysis for the 2016, 2014 and 2012 elections but the report is still in draft form. It will be made public once a final report has been issued.

Many cities have been deterred from defending allegations of CVRA violations because of the significant legal costs that have been incurred by other cities. All have been forced by court order or out of court settlement to convert to district-based elections. The CVRA provides for the plaintiff's right to recover attorney's fees and costs. A few examples of cities' legal costs:

- Palmdale: \$4.5 million
- Modesto: \$3 million
- Anaheim: \$1.1 million
- Whittier: \$1 million
- Santa Barbara: \$800k
- Escondido: \$385k
- West Covina: \$220k

The safe harbor provisions of Elections Code Section 10010 have further encouraged many cities and other jurisdictions, like Fort Bragg, to voluntarily convert to district-based elections. The financial risk weighted with the relatively low threshold for liability under the CVRA, is a strong argument for voluntary transition under the terms of the safe harbor provision.

In light of the significant financial risk, staff recommends the City Council adopt the proposed intent to transition resolution and over the course of the next 90 days, adopt a district-based election system that would be used in the November 2020 City Council election. Staff also recommends that the City Council direct staff to continue to pursue potential legislative fixes to the CVRA.

**RECOMMENDED ACTION:**

Staff recommends that the Council adopt a Resolution declaring its intention to transition to district-based elections and providing an estimated timeline for conducting public hearings, drafting and reviewing district maps and election systems, and presenting an Ordinance to City Council for decision (Attachment 3).

In addition, staff recommends that the City Council direct staff to pursue legislative exemptions, stronger thresholds for establishing liability and/or safe harbor provisions that allow alternative voting systems that could be more effective in increasing representation in smaller less geographically concentrated cities.

**ALTERNATIVE ACTION(S):**

Do not adopt the Resolution and provide staff direction on the following alternative actions:

1. Do nothing
2. Respond to Plaintiff's Counsel, asserting no violation of the California Voting Rights Act (CVRA)
3. Prepare for possible litigation
4. Seek declaratory relief in Superior Court
5. Evaluate alternative election systems and make future recommendation to City Council

**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	Revised Patterson Letter of 5/25/18 Received	May 25, 2018	
2	City Council Closed Session	June 25, 2018	
3	Council Meeting to Adopt Resolution / Public Hearing #1	July 9, 2018	Before Map(s) Drawn – EC 10010(a)(1)
4	Council Meeting / Public Hearing #2	July 23, 2018	Before Map(s) Drawn – EC 10010(a)(1). Within 30 days of Public Hearing #1
5	Council Meeting / Public Hearing #3	August 13, 2018	Within 30 days of Public Hearing #2
6	Publish Draft Map(s) and Sequencing	August 31, 2018 ( <i>September 3, 2018 is a holiday</i> )	EC 10010(a)(2). Published Once at Least 7 Days Prior to Public Hearing #4
7	Council Meeting / Public Hearing #4	September 10, 2018	After Map(s) and Sequencing Published, EC 10010(a)(2), More than 7 Days After Draft Map(s) and Sequencing Publication
8	Council Meeting / Public Hearing #5 – Introduction / First Reading of Ordinance	September 24, 2018	After Map(s) and Sequencing Published, EC 10010(a)(2), within 45 days of Public Hearing #4
9	Council Meeting – Adoption / Second Reading of Ordinance	October 1, 2018 <i>Special Meeting</i>	
10	Ordinance Effective 30 Days After Adoption	October 31, 2018	
11	Councilmembers Transition to Representing their Respective Districts via Ordinance	November 2020 (or sooner if special election)	

**ATTACHMENTS:**

1. Patterson Letter 4-17-18
2. Patterson Letter 5-25-18
3. Resolution

#### 4. Public Hearing Notice

**NOTIFICATION:**  
Jacob Patterson