

TOWN OF WINDSOR AGENDA REPORT

Town Council Meeting Date: February 13, 2019

To: Mayor and Town Council
From: Robin Donoghue, Town Attorney
Subject: Third Public Hearing Under the California Voting Rights Act

Recommendation to Council:

Conduct a third public hearing to draw and receive community input regarding draft district maps and election sequencing and provide input to staff regarding the transition to district-based elections.

Background and Discussion:

On October 22, 2018, the Town received a certified letter from Kevin Shenkman on behalf of his client, the Southwest Voter Registration Education Project (“Project”), alleging a violation of the California Voting Rights Act (“CVRA”). The letter claims that the Town’s current at-large election system dilutes the ability of Latino voters to elect candidates of their choice or otherwise influence the outcome of Town Council elections. Specifically, the letter states that (1) Rosa Reynoza ran for Town Council in 2016 and lost despite receiving the support of Latino voters in the Town, and (2) Latinos comprise approximately 31.8% of the Town’s population but no Latino has served on the Town Council. The letter threatens litigation if the Town declines voluntarily to change to a district-based election system. Attorney Shenkman has submitted similar claims against cities, counties and school districts throughout California and has filed lawsuits alleging violation of the CVRA.

On November 28, 2018, the Town Council conducted a special meeting study session for the purpose of providing information about the CVRA, asking questions, and receiving public comment. No action by the Council was agendaized for or taken at the study session. However, information was provided by the Town Attorney and demographer Karin Mac Donald and GIS Specialist Jaime Clark with Q2 Data and Research, LLC (“Q2”).

On December 5, 2018, the Council heard further public comment and adopted a Resolution of Intent to initiate transition to district-based elections. Pursuant to the “safe harbor” provisions of the California Elections Code, adoption of such a resolution prohibits the filing of a lawsuit for 90 days from adoption (with a potential additional 90-day extension if agreed to by the prospective plaintiff). If, within the 90-day or 180-day period, as applicable, the local government adopts an ordinance establishing district-based elections, the prospective plaintiff is limited to recovery of the costs incurred in preparing the CVRA demand letter, not to exceed \$30,000. This cap contrasts with substantially larger plaintiff recoveries for the successful prosecution or settlement of CVRA litigation.

On January 15, 2019, the Council heard additional public comment and directed staff to proceed with scheduling meetings to implement the transition to district elections. Pursuant to California Elections Code Section 10010, the Council is required to hold at least five public hearings in connection with the establishment of districts. Two hearings must be held before

any map or maps of district boundaries are drawn. These initial hearings provide an opportunity for the public to give input on the criteria for and composition of the proposed districts. The first two initial hearings were held at a special Council meeting on January 30, 2019, and a regular Council meeting on February 6, 2019. The emphasis at these meetings was to determine “communities of interest” in Windsor for purposes of drawing districts of roughly equal population that comply with the Federal Voting Rights Act.

In addition, a community meeting was held on Saturday, February 2, 2019, from 10:00 a.m. to 12:00 p.m. at the Mary Agatha Furth Center, located at 8400 Old Redwood Highway. Another community meeting will be held at the same location on Saturday, February 16, 2019, from 10:00 a.m. to 12:00 p.m.

Two additional public hearings will focus on draft maps to be prepared by Q2. At tonight’s hearing, Q2 demographers will lead the discussion and an interactive live map-drawing session. The public will have an opportunity to react to and provide input on specific proposed district boundary lines as well as on any proposed sequencing of elections. The resulting draft map or maps will be posted on the Town’s website immediately following the hearing and publicized prior to a fourth public hearing at the Council’s regular meeting on February 20, 2019. Notice of tonight’s hearing, in both English and Spanish, has been posted on the Town’s website and distributed at various sites within the Town. Spanish translation of the meeting will also be available.

Staff expects that a district election ordinance will be adopted at the Council’s regular meeting on March 6, 2019, following a further public hearing on February 27, 2019. The public is welcome to participate in the process by drawing district lines and submitting proposed district maps. However, the CVRA requires that all Town draft district maps must be available to the public seven days prior to their consideration at a public hearing. The final selected map must also be published seven days prior to adoption by the Council. It is anticipated that a district election ordinance will be adopted by the Council’s regular meeting on March 6, 2019, following a further public hearing on February 27, 2019.

A schedule of public hearings and related events is attached. The schedule is tentative and may be subject to change should counsel for the Project grant an extension of time to the Town, or as other circumstances may dictate.

Fiscal Impact:

The fiscal impact of providing notice of the public hearing is negligible. As noted above, liability to the Project (and any future plaintiffs) may be capped at \$30,000 in the event of a voluntary transition to district-based elections. Costs of expert analysis and assistance in drawing district boundaries are preliminarily estimated at \$50,000.

Environmental Review:

The action of considering a response to a CVRA challenge is exempt from the California Environmental Quality Act (“CEQA”) because it is not a project which has the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect change in the environment, pursuant to CEQA Guidelines Section 15378.

Attachment:

1. Tentative Schedule

Prepared by:

Robin Donoghue
Town Attorney

Reviewed by:

Maria De La O
Town Clerk

Recommended by:

Ken MacNab
Interim Town Manager

***Proposed Timeline for Consideration and Implementation of District-Based Elections
Without an Agreed Extension of Time Under AB 2123 (2018)***

DATE	EVENT	COMMENT
October 22, 2018	Town received the demand letter from Shenkman & Hughes	
December 5, 2018	Town Council adopted Resolution declaring its intention to transition from at-large to district-based elections.	
January 30, 2019	1st Public Hearing (Special Meeting)	No maps for review, but take public comments on composition of districts and preference for district lines.
February 2, 2019	Community Meeting	Community meeting to take public comments on composition of districts and preference for district lines.
February 6, 2019	2nd Public Hearing (Regular Meeting)	No maps for review, but take public comments on composition of districts and preference for district lines.
February 13, 2019	3rd Public Hearing (Special Meeting)	Live map drawing and public comment on same. Draft maps and proposed sequencing must be published at least 7 days before consideration at the 4 th public hearing.
February 16, 2019	Community Meeting	Community meeting to draw live map and take public comments.
February 20, 2019	4th Public Hearing (Regular Meeting) Publish for review new or amended district election maps (if any) and potential sequence of elections.	Take public comments on proposed maps. <i>-Council may introduce ordinance if final map is selected at this 4th public hearing.</i> <i>- If selected map is amended, ordinance cannot be introduced until 7 days after amended map is published.</i>
February 27, 2019	5th Public Hearing (Special Meeting)	Council introduces ordinance establishing district elections.
March 6, 2019	6th Public Hearing (Regular Meeting)	Council adopts ordinance at second reading.