

RESOLUTION NO. 2019-96

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
DECLARING THE CITY OF MARINA'S INTENT TO TRANSITION FROM
AT-LARGE TO DISTRICT-BASED COUNCIL MEMBER ELECTIONS,
OUTLINING SPECIFIC STEPS TO BE UNDERTAKEN TO FACILITATE THE
TRANSITION, AND ESTIMATING A TIME FRAME FOR ACTION.

WHEREAS, members of the City Council of the City of Marina ("City") are currently elected in "at-large" elections, in which each City Council Member 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 for an "at-large" system to a "district-based" system in which each council member is elected only by the voters in the district in which the candidate resides; and

WHEREAS, under Elections Code Section 14028(a), a California Voting Rights Act ("CVRA") violation is established if it is shown that racially polarized voting occurs in elections. "Racially polarized voting" means voting in which there is a difference in 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 that are preferred by voters in the rest of the electorate (Elections Code Section 14026 (e); and

WHEREAS, the City denies that racially polarized voting occurs in its elections and that its at-large council member electoral system violates the CVRA or any other provision of law; and

WHEREAS, the California Legislature in amendments to Elections Code Section 10010, has approved a method whereby a jurisdiction can change to a by-district election system and limit litigation to initiate the change with resulting attorneys' fees; and

WHEREAS, the city council has directed staff to initiate a process for council to consider moving to district elections to avoid costs associated with potential lawsuits based on the CVRA to which the City is vulnerable because the City has at-large elections; and

WHEREAS, California Elections Code Section 10010 states that a City that is changing from at-large to district-based elections shall do all of the following before a public hearing at which the City Council votes to approve or defeat an ordinance establishing district-based elections:

1. Before drawing a draft map or maps of the proposed boundaries of the districts, the political subdivision shall hold at least two public hearings over a period of no more than thirty days, at which the public is invited to provide input regarding the composition of the districts. Before these hearings, the political subdivision may conduct outreach to the public, including to non-English-speaking communities, to explain the districting process and to encourage public participation;
2. After all draft maps are drawn, the political subdivision shall publish and make available for release at least one draft map and, if members of the governing body of the political subdivision will be elected in their districts at different times to provide for staggered terms of office, the potential sequence of the elections. The political subdivision shall also hold at least two additional hearings over a period of no more than 45 days, at which the public is 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 days before the 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 days before being adopted; and

WHEREAS, the City is contracting with an experienced demographer to assist the City to develop a proposal for a district-based electoral system; and

WHEREAS, the adoption of a district-based electoral system will not affect the terms of any sitting Council Member, each whom must be allowed to serve out his or her current term by law.

NOW, THEREFORE BE IT RESOLVED AS FOLLOWS:

Section 1. The City Council hereby acknowledges to consider adoption of an ordinance to transition to a district-based election system as authorized by Government Code Section 34886 for use in the City's General Municipal Election for City Council Members with a proposed implementation date of November 2020.

Section 2. The City Council directs staff to work with the City Attorney, the 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 state and federal Constitutions, 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 to 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, noting that the City Manager may adjust the timeline as necessary so long as the adjustment comports with Elections Code Section 10010.

Section 4. In order to assist the city council in its consideration on the acceptance or rejection of the proposed ordinance 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 outreach to receive public input and to answer questions from the public.

Section 5. This Resolution shall become effective immediately upon its passage and adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Marina at an adjourned regular meeting duly held on the 5th day of September 2019, by the following vote:

AYES, COUNCIL MEMBERS: Berkley, Urrutia, Morton, Delgado

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: O'Connell

ABSTAIN, COUNCIL MEMBERS: None

Bruce Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

Tentative Timeline for Public Meetings

September 17, 2019	Public hearing without maps to provide input on criteria to be used for drawing districts.
October 1, 2019	Second Public hearing without maps to provide input on criteria to be used for drawing districts. Council to provide direction to demographer.
October 4, 2019	Maps can be drawn.
November 5, 2019	Public hearing with maps produced by the demographer (7 days before the hearing) for consideration and feedback by the public and City Council.
November 12, 2019	Public hearing with revised maps for consideration and selection of one of the published maps to be introduced as part of the ordinance to establish district.
December 3, 2019	Public hearing on the first reading of the ordinance.

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of September 4, 2019

**CITY COUNCIL OF THE CITY OF MARINA CONSIDER ADOPTING
RESOLUTION NO. 2019-, DECLARING THE CITY OF MARINA'S
INTENT TO TRANSITION FROM AT-LARGE TO DISTRICT-BASED
COUNCIL MEMBER ELECTIONS, OUTLINING SPECIFIC STEPS TO
BE UNDERTAKEN TO FACILITATE THE TRANSITION, AND
ESTIMATING A TIME FRAME FOR ACTION**

REQUEST:

It is requested that the City Council:

1. Adopt Resolution No. 2019-, declaring the City of Marina's intent to transition from at-large to district-based elections; and,
2. Receive a staff report, give direction to staff regarding the specific steps to be undertaken to facilitate the transition and approve a tentative timeline.

ENVIRONMENTAL DETERMINATION:

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines sections 15320, 15378 and 15061(B)(3) as it is an organizational structure change and does not have the potential to result in either a direct or reasonably foreseeable indirect physical change in the environment.

BACKGROUND:

The City of Marina currently has an at-large election system, which means that the electors for the entire City choose each of the four Council Members, and a directly elected Mayor. A district-based election is one in which the city is geographically divided into separate districts, each with one Council Member who resides in the district and is chosen by the electors residing in that particular district. The office of the Mayor would still be elected at large.

On July 22, 2019, the City received a Notice of Violation of California Voting Rights Act from an attorney from Santa Barbara, California. The City Attorney's office rejected the Notice, as it was not properly lodged nor in the proper format. Even though the City does not have an active Notice of Violation, the California Voting Rights Act ("CVRA") makes it such that the City's process for at-large elections will be challenged in the future on the basis that "racially polarized voting" occurs in the City. The majority of the cities in the State of California which have at-large election systems have been challenged on this basis. The term "racially polarized voting" means voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in a protected class (based on races, color or language minority group), and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate (Elections Code Sec. 14026(e)). Under the CVRA, the bar is low for establishing that "racially polarized voting" occurs in the City, as will be discussed below. Because of this, no city or district has prevailed in defending its "at-large" system of election against a claim filed by any individual or group under the CVRA. The unsuccessful defense to challenges have cost these cities millions of dollars in their own legal fees. Further, since attorneys' fees are available to the Plaintiffs, the cities have had to pay millions of dollars in legal fees and experts for the plaintiffs.

ANALYSIS:

The California Voters Rights Act (CVRA)

The CVRA was signed into law in 2002. The CVRA prohibits an at-large method of elections that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election. The law's intent is to expand protections against vote dilution over those provided by the Federal Voting Rights Act of 1965. The law was also motivated, in part, by the lack of success by plaintiffs in California in lawsuits challenging at-large electoral systems brought under the Federal Act. The passage of the CVRA made it much easier for plaintiffs to prevail in lawsuits against public entities that elected their members to its governing body through "at-large" elections. A plaintiff need only prove the existence of "racially polarized voting" to establish liability under the CVRA. Proof of intent on the part of the voters or elected officials to discriminate against a protected class is not required. Marina does not admit to racially polarized voting.

As a result of the passage of the CVRA, cities throughout the State have increasingly been facing legal challenges to their "at-large" systems of electing city council members. Almost all have settled claims out of court by agreeing voluntarily to shift to district-based elections. Those that have defended CVRA challenges in the courts have ultimately either voluntarily adopted, or have been forced to adopt, district-based elections. The CVRA grants a prevailing plaintiff the right to recover reasonable plaintiff's attorneys' fees by cities that have chosen to litigate the CVRA challenge. Due to the costs involved and the unlikelihood of any measure of success, many cities in California have abandoned at-large elections. In many cases, those cities have been like Marina where there is insufficient evidence of racially polarized voting but there was no other choice but to adopt district-based elections to save the citizens from the cost of a lawsuit that the city was bound to lose.

AB 350 Safe Harbor

On September 28, 2016, the Governor signed AB 350 into law, codified as Elections Code Sec. 10010. The legislation attempts to provide a "safe harbor" from CVRA litigation for cities that chose voluntarily to transition to a district election system. In adherence to AB 350, a city can adopt a resolution declaring the Council's intent to transition from at-large to district-based elections, outlining specific steps to be undertaken to facilitate the transition, and estimating a time frame for action. Then a potential plaintiff is prohibited from filing a CVRA challenge for a 90-day period. This provides the City with a safe harbor to assess and implement a transition to a district-based election during which a lawsuit may not be filed. The legislation sets forth a number of steps a city must take in the effort to assess and transition to a district-based election system, including at least four public hearings to determine district boundaries to adopt an ordinance establishing districts.

Process and Timing

Should the Council choose to adopt the Resolution of Intention to establish district elections at the public meeting of September 4, 2019, staff will begin the process to notify the community of the public hearings that will be held to draw the district maps. An estimation of the time line for the meeting is set forth below. By law, no sitting Council Member may have their terms extended or cut through this process. The first election to include districts will occur in 2020. Two Council Member seats will be contested in that election. After that election, these district lines will have to be redrawn, so as to be based on the 2020 census. The two remaining districts will have elections in 2022.

Estimated Timeline for Public Meetings

September 17, 2019	Public hearing without maps to provide input on criteria to be used for drawing districts.
October 1, 2019	Second Public hearing without maps to provide input on criteria to be used for drawing districts. Council to provide direction to demographer.
October 4, 2019	Maps can be drawn.
November 5, 2019	Public hearing with maps produced by the demographer (7 days before the hearing) for consideration and feedback by the public and City Council.
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December 3, 2019	Public hearing on the first reading of the ordinance.

The chart above displays the state mandated public hearings, should the Council proceed. Within 30 days of September 4, that is, by October 4, the Council would have to have held two public hearings (Election Code § 10010(a) (1)) before district maps can be drafted but while the demographer is working with the 2010 census data. Public hearings at the regularly scheduled Council meetings of September 17 and October 1 would meet this deadline.

Maps can be drawn after October 4.

Within 45 days of October 4, that is, by November 18, the Council would need to hold two more public hearings to receive input on the draft maps (Election Code §10010(a) (2)). First versions of any map and any revision to a map must be “published” at least seven days before a hearing where the map will be considered. Public hearings at the regularly scheduled Council meeting of November 5 and at a special meeting on a date to be determined for that purpose before November 18 would meet this deadline.

By December 3 (90 days after September 4 adoption of the resolution of intent to transition) Council would then have the opportunity to pass or reject an ordinance implementing district voting for the 2020 election.

Council should direct staff on a public outreach strategy on the transition to district elections. This could consist of press releases, social medial outreach, and information on the City’s website.

FISCAL IMPACT:

Significant staff time and City Attorney time will be needed to transition to district-based elections and to administer the process, including the need for at least four public hearings to determine district boundaries and adopt an ordinance establishing districts. The City will also incur the costs for a demographer. The staff report for approval of that contract and the costs will be presented to the City on the same date as this report.

CONCLUSION:

It is recommended that the City Council adopt the attached Resolution of Intent to Transition and give Staff direction regarding the process and approve a tentative time line.

Respectfully submitted,

Deborah Mall
Assistant City Attorney
City of Marina

REVIEW AND CONCUR

Layne Long
City Manager
City of Marina