



CITY OF HEALDSBURG RSA AGENDA STAFF REPORT

MEETING DATE: November 18, 2024

SUBJECT: District Elections - Resolution of Intent

PREPARED BY: Raina Allan, City Clerk

STRATEGIC INITIATIVE(S):
Effective & Efficient Government

RECOMMENDED ACTION(S):

Adopt a Resolution declaring the City's intent to initiate procedures to transition from at-large elections to district-based elections pursuant to California Elections Code Section 10010, and approving the tentative timeline and other related actions.

COMMUNITY ENGAGEMENT/OUTREACH:

City Staff have initiated outreach to advise residents of the City's possible transition to district-based elections. Outreach includes posting on social media channels, including Facebook, Instagram and Nextdoor. The City has also shared information on the City's website and in the bi-weekly City Manager's Update. Going forward, the City will continue to distribute information via the City social channels, City Manager's Update, a dedicated webpage on the City's website, and distribution of printed materials at City and community facilities. The City Council will also be holding numerous public meetings to discuss the transition and determination of district boundaries, including five public hearings and, potentially, additional community meetings.

BACKGROUND:

The California Voting Rights Act (CVRA) was enacted in 2001, in part, to provide minority groups in California with tools to prevent dilution of votes in "at-large" election systems – meaning each Councilmember is elected by the registered voters of the entire City. The CVRA prohibits any at-large voting system that hinders the ability of a protected class to elect candidates of its choice or influence the outcome of an election. A violation of the CVRA is established if racially polarized voting occurs in elections for Councilmembers or other matters submitted to the voters.

The CVRA defines "protected class" as a class of voters who are members of a race, color, or language minority group, as referenced and defined in the Federal Voting Rights Act of 1965

(FVRA). “Racially polarized voting” is voting in which there is a difference in the choice of candidates or other electoral choices preferred by voters in a protected class, as compared to the rest of the electorate (i.e., the protected class members vote as a bloc, but the majority bloc usually defeats the protected class’s preferred candidate).

The CVRA does not require showing that the City, the voters, or the elected officials intended to discriminate against a protected class. Similarly, the fact that members of a protected class are not geographically concentrated does not preclude a finding of racially polarized voting. Instead, a violation of the CVRA may be established by showing that both racially polarized voting and dilution occur in elections for members of the governing body. Dilution can be shown where the protected class can show that the at-large election prevents them from electing, either on their own or with the support of crossover voters, their preferred candidate.

The City of Healdsburg currently elects its Councilmembers at-large. On October 3, 2024, the City received a letter from a potential plaintiffs’ attorney, Shenkman & Hughes PC, alleging a violation of the CVRA and threatening litigation unless the City voluntarily transitions to a district-based election system for electing Councilmembers. The letter is attached as Exhibit A and, broadly, alleges that the City at-large election system violates the CVRA because the system allegedly dilutes the power of Latino voters.

DISCUSSION/ANALYSIS:

Given the low threshold for establishing a violation of the CVRA, and the fact that no city has yet successfully defended a challenge under the CVRA (despite some spending millions in legal fees), staff advises that Healdsburg transition to district-based elections on the timeline described below.

Elections Code section 10010 outlines the “safe harbor” for a city to transition to district-based elections – meaning, if the city transitions on the timeframe prescribed by statute, the City is able to limit its exposure to litigation to \$30,000. The timeline is quick, though: the City must adopt a resolution outlining its intent to transition from at-large to district-based elections within forty-five (45) days of receiving a demand letter. Healdsburg received a demand letter on October 3, 2024-, so the last day for the City to adopt a resolution of intent is November 18. After adopting the resolution of intent, the statute permits the City ninety (90) days to complete the transition.

Tentative Timeline for Transition

If the Council decides to proceed with transitioning to district-based elections, the City will be required to hold at least two public hearings over the next 30 days, at which the public is invited to provide input regarding the composition of the districts. No official maps can be drawn before the completion of these two public meetings. Once the initial two meetings are complete, a demographer and the public can begin to draw maps that will be considered in the districting process. The City would then hold at least two additional hearings over the next 45 days, at which the public is invited to provide input regarding the content of the draft maps and the proposed sequence of elections. Once a map is selected, it must be published at least seven days before consideration at a hearing for introduction of an ordinance to adopt the district map.

The City will also need to comply with the Fair and Inclusive Redistricting for Municipalities and Political Subdivisions (Fair Maps) Act, which provides criteria that the City must use when establishing election district boundaries or when undertaking the redistricting process (which must occur every ten years after each population census). This criteria includes compliance with the United States Constitution, the California Constitution, and the FVRA. The Fair Maps Act also prohibits the adoption of district boundaries for the purpose of favoring or discriminating against an incumbent councilmember, political candidate or political party.

Staff has prepared a tentative timeline that identifies the preliminary schedule for the required public hearings and public outreach and complies with Elections Code 10010 (see Exhibit A to Attachment 1). This timeline may change depending on the level of community involvement and the complexity of the map drawing process.

Given the short timeframes to transition to district-based elections and the upcoming holiday season, City Staff met with the potential plaintiff's attorney regarding an additional sixty days beyond the ninety-day statute. Elections Code section 10010 provides that a city may enter into a written agreement to extend the 90-day period in order to provide additional time to conduct public outreach, encourage public participation, and receive public input. If the resolution of intent is adopted, Staff will memorialize that extension of 60 days. With the extension, Staff anticipates completing the transition to district elections by April 2025.

Demographer

A demographer will assist by walking elected officials, staff and the public through the background of the CVRA districting process, facilitating community input on potential new district boundaries, and overseeing the technical aspects of implementing the new boundaries. Per the City's Purchasing Policy, City staff solicited proposals from seven demographer firms and are in the process of selecting a demographer. The demographer will attend the public hearings and provide the City Council with analysis and recommendations regarding the maps that will be prepared during the transition process.

ENVIRONMENTAL STEWARDSHIP:

Not applicable.

ALTERNATIVES:

Council could choose not to move forward with transitioning to district-based elections. If this alternative is selected, staff requests further direction.

FISCAL IMPACT:

If the City Council decides to transition to district-based elections, there will be a fiscal impact due to the costs associated with that transition. Costs include the demographer, which are estimated to be less than \$50,000, legal costs, and payment of the plaintiffs' attorney costs of \$30,000. A budget amendment covering these anticipated costs will be presented separately as part of a financial update to the City. Alternatively, if the City Council decides not to transition to district-based elections, the City could incur significant costs relating to litigation. There have been numerous cities that have received a similar letter from various plaintiff's attorneys threatening legal action under the CVRA. These types of lawsuits are expensive, with cities

paying millions of dollars in attorneys' fees to defend their at-large election system. To date, however, no public agency has prevailed in such a lawsuit.

ENVIRONMENTAL ANALYSIS:

This item does not constitute a project as defined by the California Environmental Quality Act (Public Resources Code § 21000, et seq.) (CEQA) as the adoption of the resolution does not have the potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment (14 Cal. Code Regs. § 15378).

ATTACHMENT(S):

Resolution

Tentative Timeline - Implementing District Based Elections

Exhibit A

CITY OF HEALDSBURG

RESOLUTION NO. -2024

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HEALDSBURG DECLARING THE CITY OF HEALDSBURG'S INTENT TO INITIATE PROCEDURES TO TRANSITION FROM AT-LARGE ELECTIONS TO DISTRICT-BASED ELECTIONS PURSUANT TO CALIFORNIA ELECTIONS CODE SECTION 10010, APPROVING THE TENTATIVE TIMELINE AND OTHER RELATED ACTIONS

WHEREAS, members of the Healdsburg City Council are currently elected in “at-large” elections, in which each City 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 October 3, 2024, the City of Healdsburg (“City”) received a certified letter from a potential plaintiffs’ attorney, alleging a violation of the California Voting Rights Act (the “CVRA”) and threatening litigation if the City declines to voluntarily transition to a district-based system for electing Councilmembers; and

WHEREAS, the letter was not accompanied by any evidence to support the claim of a CVRA violation, and the Council denies that its election system violates the CVRA or any other provision of law, asserts that the City’s election system is legal in all respects, and further denies any wrongdoing whatsoever in connection with the manner in which City Council elections have been conducted; and

WHEREAS, the City is committed to diversity and inclusion with respect to its elections and the Council has determined that the public interest is better served by initiating a process for transition to a district-based election system and thereby avoiding the high costs associated with defending a lawsuit under the CVRA; and

WHEREAS, Elections Code Section 10010 provides a method whereby a jurisdiction can expeditiously transition to a district-based election system and thereby avoid the high cost of litigation under the CVRA if the jurisdiction complies with the “safe harbor” provisions of Elections Code Section 10010; and

WHEREAS, California Elections Code Section 10010 will delay CVRA litigation and cap attorneys’ fees associated with a CVRA claim at \$30,000, if, within forty-five (45) days of receipt of a claim under the CVRA, the City adopts a resolution stating its intent to transition to district-based elections, and within ninety (90) days thereafter (or as otherwise stipulated by the parties),

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the City adopts an ordinance transitioning to a district-based election system consistent with the intent and purpose of the California Voting Rights Act.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Healdsburg does hereby make the following findings and determinations:

Section 1. The above recitals are true and correct and incorporated by reference herein.

Section 2. The City Council hereby expresses its intent to transition from an at-large election system to a district-based election system as authorized by Government Code section 34886 and Elections Code section 10010 for use in the City’s General Municipal Election for City Councilmembers commencing in November 2026.

Section 3. The City Clerk is directed to publicize and post information regarding the proposed transition to a district-based election system, including relevant maps, notices, agendas and other information and to establish a means of communication to receive comments and answer questions from the public.

Section 4. 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 public hearings to solicit and receive public input regarding proposed district-based electoral maps and district-based election systems, and for the City Council’s evaluation, possible refinement and ultimate adoption of a district-based election system for election of City Council members.

Section 5. The tentative timeline contained in Exhibit A may be adjusted by the City Manager as he deems necessary or appropriate, provided that the extension is agreed to by the potential plaintiff’s attorney and that the adjustments conform to Elections Code section 10010.

Section 6. The City Council directs the City Manager to continue to work with the City Attorney and the retained demographer, to resolve all legal issues necessary to give effect to this Resolution and to meet the tentative timelines set forth in Exhibit A.

Section 7. Nothing contained herein shall preclude the City Council from selecting an alternative election system or making any alternative decision, should public input and other evidence indicate that an alternative system or decision is appropriate for the City.

Attachment: Resolution (4675 : District Elections - Resolution of Intent)

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PASSED, APPROVED AND ADOPTED, by the City Council of the City of Healdsburg this 18th day of November 2024, by the following vote:

AYES: Councilmembers: ()

NOES: Councilmembers: ()

ABSENT: Councilmembers: ()

ABSTAINING: Councilmembers: ()

SO ORDERED:

ATTEST:

David Hagele, Mayor

Raina Allan, City Clerk

Attachment: Resolution (4675 : District Elections - Resolution of Intent)

Tentative Timeline for Consideration and Implementation of District-Based Elections

Date	Event	Code §	Comment
10/3/24	City received certified demand letter from Shenkman & Hughes	EC§10010(e)(1)	Before commencing an action to enforce Sections 14027 and 14028, a prospective plaintiff shall send by certified mail a written notice to the clerk of the political subdivision ("City") against which the action would be brought asserting that the City's method of conducting elections may violate the California Voting Rights Act.
		EC§ 10010(e)(2)	A prospective plaintiff shall not commence an action to enforce Sections 14027 and 14028 within 45 days of the City's receipt of the written notice described above (CVRA lawsuit cannot be commenced until November 17, 2024. Since this is a Sunday use the November 18, 2024 date).
11/18/24	Resolution is considered at City Council Meeting	EC§ 10010 (3)(A)	Within 45 days of receipt of a notice, the City may pass a resolution outlining its intention to transition from at-large to district-based elections, specific steps it will undertake to facilitate this transition, and an estimated time frame for doing so. (CVRA lawsuit cannot be commenced until November 17, 2024. Since this is a Sunday use the November 18, 2024 date).
11/18/24	Resolution is adopted at City Council Meeting	EC§ 10010(e)(3)(B)	If the City begins the process of switching to districts within 45 days and adopts a resolution to that effect a potential plaintiff cannot commence an action within 90 days of the resolution's passage. (CVRA lawsuit cannot be commenced until February 16, 2025 with 60 day extension, the new date would be April 17, 2025).
Before First Public Hearing and throughout process	Conduct public outreach, encourage public participation, and receive public input	EC§ 10010(a)(1)	The City may conduct outreach to the public, including to non-English-speaking communities, to explain the districting process and to encourage public participation. (i.e. farmers market, public library, public schools, places of worship, homeowners associations, and community organizations)
12/16/24	1st Public Hearing (Regular Meeting)	EC§ 10010(a)(1)	First and second public hearings must occur within a period of 30 days. No maps for review, but take public comments on composition of districts and preferences for district lines.
1/13/25	2nd Public Hearing (Regular Meeting)	EC§ 10010(a)(1)	No maps for review, but take public comments on composition of districts and preferences for district lines.
2/10/25	Publish for review first drafts of district election maps and	EC§ 10010(a)(2)	After all draft maps are drawn, at least 7 days before the 3 rd public hearing, the City shall publish and make available for release at least one draft map and, if city councilmembers

Attachment: Tentative Timeline - Implementing District Based Elections (4675) : District Elections -

	potential sequence of elections		will be elected in their districts at different times to provide for staggered terms of office, potential sequence of the elections.
2/18/25	3rd Public Hearing (Regular Meeting)	EC§ 10010(a)(2)	The City shall also hold at least two additional hearings over a period of no more than 4 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.
3/10/25	Post any new or amended maps	EC§ 10010(a)(2)	Maps available for review at least 7 days before consideration at the 4th public hearing.
3/17/25	4th Public Hearing (Regular Meeting)	EC§ 10010(a)(2)	Take public comments on proposed maps. Council may introduce ordinance adopting a map at this meeting if map is not changed and selected at this public hearing. If map is changed at this meeting, the map will need to be published again for 7 days and ordinance cannot be introduced until 7 days after amended map is published.
4/7/25	5th Public Hearing (Regular Meeting)		<ul style="list-style-type: none"> • If Council makes revisions to map introduced on 3/3/25, Council can re-introduce ordinance establishing district elections, including district boundaries and election sequence and adopt ordinance at next regular meeting on 4/7/25; or adjourn this regular meeting on 3/17/25 to another date to adopt ordinance; <p>Or</p> <ul style="list-style-type: none"> • If no revisions to map prior to second reading of the ordinance adopting the map, Council can adopt ordinance at this meeting; <p>Or</p> <ul style="list-style-type: none"> • Make further changes to map without introduction of the ordinance adopting the map;
DEADLINE 4/17/25		EC§ 10010(e)(3)(B)	

Attachment: Tentative Timeline - Implementing District Based Elections (4675) : District Elections -

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RECEIVED

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VIA CERTIFIED MAIL

September 28, 2024

CITY OF HEALDSBURG

Raina Allan- City Clerk
City of Healdsburg
401 Grove Street
Healdsburg, CA 95448*Re: Violation of California Voting Rights Act*

I write on behalf of Southwest Voter Registration Education Project, its members residing within the City of Healdsburg (“Healdsburg” or “City”). Healdsburg relies upon an at-large election system for electing candidates to its governing board. Moreover, voting within the City is racially polarized, resulting in minority vote dilution, and, therefore, the City’s at-large elections violate the California Voting Rights Act of 2001 (“CVRA”).

The CVRA disfavors the use of so-called “at-large” voting – an election method that permits voters of an entire jurisdiction to elect candidates to each open seat. *See generally Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 667 (“*Sanchez*”). For example, if the U.S. Congress were elected through a nationwide at-large election, rather than through typical single-member districts, each voter could cast up to 435 votes and vote for any candidate in the country, not just the candidates in the voter’s district, and the 435 candidates receiving the most nationwide votes would be elected. At-large elections thus allow a bare majority of voters to control *every* seat, not just the seats in a particular district or a proportional majority of seats.

Voting rights advocates have targeted “at-large” election schemes for decades, because they often result in “vote dilution,” or the impairment of minority groups’ ability to elect their preferred candidates or influence the outcome of elections, which occurs when the electorate votes in a racially polarized manner. *See Thornburg v. Gingles*, 478 U.S. 30, 46 (1986) (“*Gingles*”). The U.S. Supreme Court “has long recognized that multi-member districts and at-large voting schemes may operate to minimize or cancel out the voting strength” of minorities. *Id.* at 47; *see also id.* at 48, fn. 14 (at-large elections may also cause elected officials to “ignore [minority] interests without fear of political consequences”), citing *Rogers v. Lodge*, 458 U.S. 613, 623 (1982); *White v. Register*, 412 U.S. 755, 769 (1973).

Attachment: Exhibit A (4675 : District Elections - Resolution of Intent)

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“[T]he majority, by virtue of its numerical superiority, will regularly defeat the choices of minority voters.” *Gingles*, at 47. When racially polarized voting occurs, dividing the political unit into single-member districts, or some other appropriate remedy, may facilitate a minority group's ability to elect its preferred representatives. *Rogers*, at 616.

Section 2 of the federal Voting Rights Act (“FVRA”), 42 U.S.C. § 1973, which Congress enacted in 1965 and amended in 1982, targets, among other things, at-large election schemes. *Gingles* at 37; see also Boyd & Markman, *The 1982 Amendments to the Voting Rights Act: A Legislative History* (1983) 40 Wash. & Lee L. Rev. 1347, 1402. Although enforcement of the FVRA was successful in many states, California was an exception. By enacting the CVRA, “[t]he Legislature intended to expand protections against vote dilution over those provided by the federal Voting Rights Act of 1965.” *Jauregui v. City of Palmdale* (2014) 226 Cal. App. 4th 781, 808. Thus, while the CVRA is similar to the FVRA in several respects, it is also different in several key respects, as the Legislature sought to remedy what it considered “restrictive interpretations given to the federal act.” Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001-2002 Reg. Sess.) as amended Apr. 9, 2002, p. 2.

The California Legislature dispensed with the requirement in *Gingles* that a minority group demonstrate that it is sufficiently large and geographically compact to constitute a “majority-minority district.” *Sanchez*, at 669. In *Pico Neighborhood Association v. City of Santa Monica* (August 24, 2023) 15 Cal.5th 292, the California Supreme Court recently confirmed this commonsense reading of the CVRA. Also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, p. 3 (“Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown).”)

To establish a violation of the CVRA, a plaintiff must generally show that “racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision.” Elec. Code § 14028(a). The CVRA specifies the elections that are most probative: “elections in which at least one candidate is a member of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of a protected class.” Elec. Code § 14028(a). The CVRA also makes clear that “[e]lections conducted prior to the filing of an action ... are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action.” *Id.*

Factors other than “racially polarized voting” that are required to make out a claim under the FVRA – under the “totality of the circumstances” test – “are probative, but not necessary factors to establish a violation of” the CVRA. Elec. Code § 14028(e). These “other factors”

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include “the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns.” *Id.*

As of the most recent data released by the United States Census Department, Latinos comprise 34.6%, of the City’s population of 11,340. Yet, Latino representation on the City’s governing board has been sparse and fleeting to non-existent. The City’s at-large system dilutes the ability of Latinos (a “protected class”) – to elect candidates of their choice or otherwise influence the outcome of the City’s elections.

In light of the City’s underrepresentation of Latinos, it is no wonder why Latino residents do not emerge as candidates. In most elections over the past two decades, there appears to have been no Latino candidates for the Healdsburg City Council. Even when Latinos have been appointed to the council, they do not subsequently seek election to the same office to which they were appointed. And, in the very rare instance where a Black Latina was elected, she resigned due to hostility to her service both within Healdsburg’s city government and among the city’s electorate more generally. Opponents of fair, district-based elections may attempt to attribute the lack of Latino candidates to a lack of interest from the Latino community within Healdsburg. On the contrary, the virtual absence of Latino candidates reveals vote dilution. *See Westwego Citizens for Better Government v. City of Westwego*, 872 F. 2d 1201, 1208-1209, n. 9 (5th Cir. 1989).

The City’s election history is further illustrative. In the 2022 election, for example, Matias Lopez Jr. lost his bid for a seat on the Council despite significant support from Latino voters, due to a lack of support from non-Latino voters. This falls in line with what the U.S. Supreme Court has identified as racially polarized voting. (See *Thornburg v. Gingles* (1986) 478 U.S. 30, 80-81, appendix A [affirming finding of racially polarized voting in House District 39, where black candidate received 29% and 36% support from black voters, and 8% and 18% from white voters in two successive elections].)

At-large elections are well known to cause elected officials to “ignore [minority] interests without fear of political consequences.” (*Gingles* 478 U.S. at 48, n. 14). The remarks in June 2020, in the wake of George Floyd’s murder, by the then-mayor and then-mayor-pro-tem – in refusing the request of another councilmember to discuss the use of force by Healdsburg police, is emblematic of the unresponsiveness to the minority community that at-large elections breed. At that time, the Press Democrat called those remarks “one more example of white blindness in the face of overwhelming evidence of systemic bias and racism.”

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As you may be aware, in 2012, we sued the City of Palmdale for violating the CVRA. After an eight-day trial, we prevailed. After spending millions of dollars, a district-based remedy was ultimately imposed upon the Palmdale city council, with districts that combine all incumbents into one of the four districts.

Given the racially polarized elections for the city council in Healdsburg, we urge the City to voluntarily change its at-large system of electing its City Council. Otherwise, on behalf of residents within the jurisdiction, we will be forced to seek judicial relief. Please advise us no later than November 18, 2024 as to whether you would like to discuss a voluntary change to your current at-large system.

We look forward to your response.

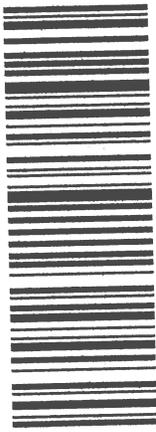
Very truly yours,



Kevin I. Shenkman

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