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Staff Report

Item No: 1-1

To: Lemoore City Council

From: Nathan Olson, Interim City Manager

Date: December 8, 2017

Meeting Date: December 27, 2017

Subject: A Resolution of the City Council of the City of Lemoore, California Declaring Its Intent to Transition from At-Large Elections for City Council Members to District-Based Elections for City Council Members Pursuant to Elections Code Section 10010 – Resolution 2017-36

Strategic Initiative:

- | | |
|--|--|
| <input type="checkbox"/> Safe & Vibrant Community | <input type="checkbox"/> Growing & Dynamic Economy |
| <input type="checkbox"/> Fiscally Sound Government | <input checked="" type="checkbox"/> Operational Excellence |
| <input type="checkbox"/> Community & Neighborhood Livability | <input type="checkbox"/> Not Applicable |

Proposed Motion:

Adopt Resolution 2017-36, declaring the City of Lemoore's intent to transition from at-large to district-based elections, outlining specific steps to be undertaken to facilitate the transition, and estimating a timeframe for action.

Subject/Discussion:

The City of Lemoore currently utilizes an at-large election system, which means that the electors from the entire City choose each member of the City Council. A district-based election system is one in which the city is physically divided into separate districts, each with one councilmember who resides in the district and is chosen by the electors residing in that district.

The City's at-large election system has a history of inclusionary voting, as Latino Candidates have regularly been elected to the Lemoore City Council since at least 1984. Additionally, many other ethnical groups have also historically been represented, including but not limited to, African American candidates.

The California Voting Rights Act was signed into law in 2002. In the past few years, despite the diversity of the City Counsel, staff and the City were preparing to hire a demographer to review and opine on the election districts for the City of Lemoore. However, due to several changes in the administration of the City and the City's financial status, the process had not been completed.

The City received a certified letter on November 15, 2017, from Kevin Shenkman, an attorney with the law firm of Shenkman & Hughes in Malibu, California. The letter asserts that the City's at-large electoral system dilutes the ability of Latinos (a protected class) to elect candidates of their choice or otherwise influence the outcome of the City's council elections. As a result, the letter asserts that the City's at-large electoral system violates the California Voting Rights Act ("CVRA"). Mr. Shenkman claims "polarized voting" may be occurring and threatens litigation if the City declines to voluntarily convert to district-based elections for the City Council.

Cities throughout the State of California have increasingly been facing legal challenges such as this to their "at-large" systems of electing councilmembers. Almost all have settled claims out of court by voluntarily shifting to district-based elections. On September 28, 2016, the Governor signed Assembly Bill 350 into law, which attempts to provide a "safe harbor" from CVRA litigation for cities. If a city receives a demand letter, such as in Lemoore's case, the city is given 45 days of protection from litigation to assess its situation. Specifically, if within that 45 days, a city adopts 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 action for an additional 90-day period.

After evaluation, staff believes that taking advantage of the safe harbor language under Assembly Bill 350 is the most appropriate action for the City to take. Under this "safe harbor", the City is required to hold five (5) public hearings within the allotted 90-day framework. The public hearings will give the community an opportunity to weigh in on the composition of the districts and to provide input regarding the content of the draft maps and the proposed sequence of elections. The final public hearing will be when Council votes to consider an ordinance establishing district-based elections.

Financial Consideration(s):

Specific costs unknown, but such costs will include the hiring of a demographer.

Alternatives or Pros/Cons:

Council can choose not to adopt the Resolution.

Staff Recommendation:

Staff recommends that City Council adopt Resolution 2017-36.

Attachments:

- Resolution: 2017-36
- Ordinance:
- Map
- Contract
- Other

Review:

- Finance
- City Attorney
- City Manager 12/08/17
- City Clerk 12/14/17

Date:

RESOLUTION NO. 2017-36

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMOORE,
CALIFORNIA, DECLARING ITS INTENT TO TRANSITION FROM
AT-LARGE ELECTIONS FOR CITY COUNCIL MEMBERS TO
DISTRICT-BASED ELECTIONS FOR CITY COUNCIL MEMBERS
PURSUANT TO ELECTIONS CODE SECTION 10010**

WHEREAS, the five members of the City Council of the City of Lemoore (City) are currently elected in “at-large” elections, in which each City Councilmember is elected by the registered voters of the entire City; and

WHEREAS, 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 “by-district” system in which each councilmember is elected only by the voters in the district in which the councilmember resides; and

WHEREAS, in 2015 and 2016, the City Manager and City Staff anticipated budgeting in the 2017-2018 budget the funds to hire a professional demographer to review and opine on election districts; and

WHEREAS, since January 2017, the City had a number of staff changes, including two interim City Managers; and

WHEREAS, the publically available information shows that City has a history of inclusionary voting as Latino candidates having been regularly elected to the City Council since at least 1984 and the counsel has also included other ethnicities, including African American candidates being elected; and

WHEREAS, the City denies that its at-large election system violates the California Voting Rights Act (“CVRA”) or any other provision of law and asserts that Lemoore’s election system is legal in all respects and further denies any wrongdoing whatsoever in connection with the manner in which it has conducted its City Council elections; and

WHEREAS, in spite of the City's inclusionary voting and election record, the CVRA's elimination of the U.S. Supreme Court requirements under *Thornburg v. Gingles*, 478 U.S. 30 (1986), as applied to the Federal Voting Rights Act, claims for violation of the CVRA are easily made on the basis of an argument of "racial polarization," regardless of whether racial minorities have successfully elected preferred candidates under an at-large system or whether there is any history of discrimination based on the totality of circumstances; and

WHEREAS, the cost of defending a challenge under the CVRA could be several hundred thousand dollars and that the risk of losing such a challenge includes the payment of attorneys' fees to the plaintiff. However, the City may voluntarily begin the transition process to district-based elections under the AB 350 "safe harbor" provisions in which "catalyst" attorneys' fees are capped at \$30,000; and

WHEREAS, the City Council has concluded that the public interest would be better served by transitioning to a district-based electoral system pursuant to the "safe harbor" provisions because: 1) the extraordinary cost to defend against a CVRA lawsuit, 2) the risk of losing such a lawsuit would require the City to pay attorney fees to plaintiff should they prevail; and

WHEREAS, the City had already begun the process of contemplating a transition to district-based elections, prior to November 15, 2017 when the City received a threat of litigation letter from Malibu-based attorney, Kevin Shenkman dated November 10, 2017; and

WHEREAS, the City Council finds that the November 10, 2017 Shenkman letter was not accompanied by any evidence to support the claim of a CVRA violation and that such letter was not the catalyst in its decision to transition to district-based elections; and

WHEREAS, prior to the City Council's consideration of an ordinance to establish boundaries for a district-based electoral system, Elections Code Section 10010 requires all of the following:

- 1) Prior to drawing a draft map or maps of the proposed boundaries of the districts, the City shall hold at least two (2) public hearings over a period of no more than thirty (30) days, at which the public will be invited to provide input regarding the composition of the districts.
- 2) After all draft maps are drawn, the City shall publish and make available for release at least one draft map and, if members of the City Council will be elected in their districts at different times to provide for staggered terms of office, the potential sequence of the elections shall also be published.
- 3) The City Council shall also hold at least two (2) additional hearings over a period of no more than forty-five (45) days, at which the public shall be invited to provide input regarding the content of the draft map or maps and the proposed sequence of elections, if applicable.
- 4) The first version of a draft map shall be published at least seven (7) days before 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 (7) days before being adopted; and

WHEREAS, the City will be utilizing the services of a professional 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 of whom will serve out his or her current term.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LEMOORE, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. The City Council hereby resolves to consider adoption of an ordinance to transition to a district-based electoral system as authorized by Government Code Section 34886 for use in the City’s General Municipal Election for Members of the City Council beginning in November 2018.

SECTION 2. The City Council directs staff to formally secure and work with a professional 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 CVRA and the Federal Voting Rights Act.

SECTION 3. The City Council hereby approves the tentative timelines as set forth in Exhibit A, attached to and made 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.

SECTION 4. The timeline contained in Exhibit A may be adjusted by the City Manager as deemed necessary, provided that such adjustments shall not prevent the City from complying with the time frames specified by Elections Code Section 10010.

SECTION 5. The City Council directs staff to post information regarding the proposed transition to a district-based electoral system, including maps, notices, agendas and other information and to establish a means of communication to answer questions from the public.

SECTION 6. The City Clerk of the City of Lemoore shall certify to the passage and adoption of this resolution and its approval by the City Council and shall cause the same to be listed in the records of the City.

PASSED and ADOPTED by the City Council of the City of Lemoore at a special meeting held on the 27th day of December by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINING:

ATTEST:

APPROVED:

Mary J. Venegas, City Clerk

Ray Madrigal, Mayor

EXHIBIT A

**TENTATIVE TIMELINE¹: CONSIDERATION AND IMPLEMENTATION OF
"DISTRICT-BASED" ELECTION METHOD**

DATE	EVENT	COMMENT
December 27, 2017	Day 1 Resolution of Intention: City Council adopts Resolution declaring its intention to transition from at-large to district-based elections.	CVRA Action cannot be commenced for 90 days.
December 28 – January 9, 2017	Public Outreach	Re: Process & Participation NO MAPS YET DRAWN
January 9, 2017	1st Public Hearing	Re: Composition of Districts NO MAPS YET DRAWN
January 16, 2017	2nd Public Hearing	Re: Composition of Districts NO MAPS YET DRAWN
January 25, 2017	Post Draft Maps and Potential Sequence of Elections	
February 6, 2017	3rd Public Hearing	Re: Draft Maps
February 9, 2017	Any Amended Maps Posted	
February 20, 2017	4th Public Hearing Select Map Council introduces ordinance establishing district elections, including District Boundaries and Election Sequence	Re: Draft Maps If selected map is amended, ordinance cannot be introduced until 7 days after amended map is published.

¹ The timeline provided in this chart is an estimated timeframe in accordance with Elections Code section 10010(e)(3)(A). This timeline may be adjusted, as the City may deem necessary, so long as any adjustments remain in compliance with Elections Code section 10010 and other applicable laws.

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March 6, 2018	5th Public Hearing 2nd reading of ordinance establishing district elections: approval or denial of ordinance	
March 27, 2018	Day 90	
April 5, 2018	Effective date of ordinance establishing district elections	
June 5, 2018	Council adopts resolutions calling for election, requesting consolidation, etc.	
July - August 2018	Candidate nomination period	
November 6, 2018	First election using new district-based election system	