



*City
Council
Report*

Item: 13
 Category: PUBLIC HEARINGS AND
 INTRODUCTION OF
 ORDINANCES
 Meeting Date: July 2, 2019

TITLE: Public Hearing to Receive Public Comment Concerning the Districting Map Boundaries and Sequence of the Elections for City Council Seats; Second Reading and Adoption of Ordinance 2248 Establishing a By-District Election Process and Election Sequence for Five Council Districts According to the Selected Map 111B (Ordinance/Roll Call Vote)

RECOMMENDED ACTION

That the City Council approve the second reading and adopt Ordinance 2248 establishing a by-district election process and election sequence for five council districts according to map 111b.

BACKGROUND

In 2002, the Legislature enacted the California Voting Rights Act (CVRA) (Elec. Code §§14025 –14032), which prohibits California public agencies from imposing or applying an at-large election method “that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election.” (Elec. Code §14027) A protected class is defined by the CVRA as “a class of voters who are members of a race, color, or language minority group, as this class is referenced and defined in the federal Voting Rights Act of 1965.”

The CVRA defines an at-large method of election to include the election method used by the City of Campbell, in which the voters of the entire City elect all the members of the City Council. In a lawsuit brought pursuant to the CVRA, a plaintiff who establishes a history of “racially polarized voting” under a city’s at-large election system can require a city to change to a district-based election system.

On December 3, 2018 the City received a letter that threatens to seek judicial relief if the City does not go to district-based elections. The letter stated allegations that the City’s at-large election system violates the California Voting Rights Act (CVRA). The letter was written by Malibu-based law firm Shenkman & Hughs, PC on behalf of clients, Southwest Voter Registration Education Project and its members. The letter alleges that there is evidence of “racially polarized voting” in the City of Campbell’s at-large election system. The letter alleges that the City of Campbell’s at large system dilutes the ability of Latinos (a “protected class”) and impedes the emergence of Latino candidates from the protected communities.

Under the CVRA, any evidence of racially polarized voting is sufficient to require a court to order a change from at-large voting to district-based voting, even without actual evidence of an electoral injury such as the inability of a protected class to elect a candidate of its choice. Racially polarized voting occurs when there is a difference between the choice of candidates preferred by voters in a protected class and the choice of candidates preferred by voters in the rest of the electorate.

On January 15, 2019, the City Council discussed transitioning from an at-large election to a district-based election and received comments from the community. At that meeting Council adopted Resolution 12402 declaring the intent to transition to district-based elections and approved a tentative timeline, which outlined the public hearing dates and deadlines.

On March 19, 2019, the City Council held the first public hearing to receive input from the community regarding the creation of a district based election system. The consultant from National Demographics Corporation (NDC) Doug Johnson gave a presentation regarding the districting process. Council received comments from the community and discussed the importance of community engagement during this process. Council also discussed district options and criteria for creating district boundaries.

On April 2, 2019, the City Council held the second public hearing to receive input from the community regarding the creation of a district based election system. Consultant from NDC Jeff Tilton gave a presentation on the districting map process. Council received comments from the community and discussed the specifications of criteria to guide the establishment of electoral districts. After discussing, each item listed on the criteria guide Council decided to remove the criteria stating "District borders shall respect the previous choices of voters by avoiding the creation of head-to-head contest between Councilmembers previously elected by the voters, insofar as this does not conflict with Federal and State Law." Council then adopted Resolution 12423 approving a five district electoral system to be implemented in the November 2020 election and approving the criteria to guide the establishment of City Council electoral districts.

On June 4, 2019, the City Council held the third public hearing to receive public comment regarding the draft maps for the City Council voting district boundaries and the sequencing of district elections. The purpose of this meeting was to allow an opportunity for the Council and the public to consider any draft district map that had been published. Consulting demographer from NDC, Doug Johnson, gave a brief presentation on the districting process and briefly reviewed the posted draft maps. Council received public comment on the maps, and discussed maps 108, 109, 110, 111, 112, 120, 121, 124. After an extensive discussion, Council narrowed the focus to maps 111, 112, and 120 with minor modifications. Council discussed the modifications for each map and a motion was made to direct the demographer to revised the maps accordingly. The motion was approved by a 3-2 vote (Councilmember Resnikoff and Mayor Waterman voted no). Council then discussed having the consultant prepare an alternative map the allow for more flexibility in trying to incorporate all their comments and a motion was

made. The motion was approved by a 4-1 vote (Mayor Waterman voted no).

On June 18, 2019, the City Council held the fourth public hearing to review the published focus maps and proposed sequencing and receive public comment on new proposed district boundaries. The purpose of this meeting was to allow an opportunity for the Council and the public to consider the review the focus maps and select one of the published maps and proposed sequencing. After public comment, Council discussed and debated the focus maps. Council then selected map 111b as the desired district boundary map along with the associated sequence of the elections for those districts. Council took first reading of Ordinance 2248 establishing the boundaries of the districts and the sequence of the elections for those districts, beginning with the next general municipal election in November 2020.

DISCUSSION

The purpose of this fifth public hearing is to receive public comment concerning the districting map boundaries and sequence of the elections for City Council seats and to take second reading to adopt Ordinance 2248 establishing a by-district election process and election sequence for five council districts according to the selected map 111b. On June 18, the City Council introduced and took first reading of Ordinance 2248 by a unanimous vote. Ordinance 2248 will become effective 30 days following the second reading and adoption.

Since July 15, 2019, is the final day to adopt the ordinance to comply with the statutory timeline, deferring adoption beyond the proposed date may expose the City to possible litigation.

Notices of the public hearings were published in the Campbell Express ten days prior to the public hearing. In addition, notices were also translated in Spanish, Vietnamese and Chinese and published in La Oferta, Vietnam Daily News, Philippine News, and The World Journal. Notices are posted on the City's website and have also been pushed out throughout the City's social media platforms.

FISCAL IMPACT

The City has budgeted \$95,000 to cover the cost of the contract with NDC to provide demographic and mapping services, the outside legal counsel and any and all publications and/or mailers. The City may also be required to reimburse the plaintiff for its attorneys' fees and costs in accordance to the amount prescribed on Government Code Code 10010 (3).



Prepared by: _____

Wendy Wood, City Clerk

Approved by:



Brian Loventhal, City Manager

Attachment:

1. Ordinance2248

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL
ESTABLISHING A BY-DISTRICT ELECTION
PROCESS IN FIVE COUNCIL DISTRICTS**

WHEREAS, the City of Campbell supports the full participation of all residents in electing members of the City Council; and

WHEREAS, the City of Campbell is incorporated and operates under the general laws of the State of California; and

WHEREAS, the City currently has a five-member City Council with each Councilmember elected at-large by the electorate of the City; and

WHEREAS, in the at-large election system candidates may reside in any part of the City, and each City Council member is elected by the voters of the entire City; and

WHEREAS, in a by-district election system a candidate for City Council must reside in the district which he or she wishes to represent, and only the voters of that district are entitled to vote to decide who their representative will be; and

WHEREAS, on December 3, 2018, the City received a letter from an attorney asserting the City's at-large electoral system violated the California Voting Rights Act, and threatening litigation if the City declined to adopt by-district elections; and

WHEREAS, the City disputes the proffered evidence of a violation, but the cost of defending against a claim under the California Voting Rights Act would likely be extremely high; and

WHEREAS, the elections to fill the City Council are conducted in the manner provided for by general law; and

WHEREAS, California Government Code section 34886, as amended effective January 1, 2017, provides:

Notwithstanding Section 34871 or any other law, the legislative body of a city may adopt an ordinance that requires the members of the legislative body to be elected by district or by district with an elective mayor, as described in subdivisions (a) and (c) of Section 34871, without being required to submit the ordinance to the voters for approval. An ordinance adopted pursuant to this section shall include a declaration that the change in the method of electing members of the legislative body is being made in furtherance of the purposes of the California Voting Rights Act of 2001 (Chapter 1.5 (commencing with Section 14025) of Division 14 of the Elections Code;) and

WHEREAS, California Government Code section 34871(a) provides for the election of members of the legislative body of a city by districts in five districts; and

WHEREAS, pursuant to California Government Code section 34886, it is declared the change in the method of electing members of the City Council of the City of Campbell made by this ordinance is to further the purposes of the California Voting Rights Act (Chapter 1.5 (commencing with Section 14025) of Division 14 of the Elections Code,) and to implement the guarantees of Section 7 of Article I and of Section 2 of Article II of the California Constitution, as set forth in Section 14031 of the California Voting Rights Act; and

WHEREAS, under the provisions of California Elections Code Section 10010, a city that changes from an at-large City Council method of election to a district-based City Council method of election requires a total of four public hearings, which includes at least two public hearings regarding potential voting district boundaries prior to the release and consideration of any draft voting district maps, and two public hearings following the release of draft voting district map(s); and,

WHEREAS, at its regular meeting on January 15, 2019, the City Council adopted Resolution No. 12402 that initiated the process of establishing a district-based election system and adopting a proposed schedule therefore; and

WHEREAS, pursuant to California Elections Code Section 10010(a)(1), before any maps of the proposed boundaries of the districts were drawn, the City Council held public hearings on March 19, 2019, and April 2, 2019, at which time input from the public on the proposed district boundaries was invited and heard; and

WHEREAS, at the public hearing on April 2, 2019, the City Council adopted Resolution No. 12423 setting forth criteria to guide the establishment of City Council Electoral Districts and setting the number of districts to be established and instructed its demographic consultant to develop redistricting plan options in accordance with that criteria; and

WHEREAS, on May 22, 2019, consistent with the provisions of California Elections Code section 10010, the City published and made available for release, 25 draft maps for consideration by the Council, one of which was prepared by the City's demographic consultant and 24 of which were prepared and submitted to the City by members of the public, together with the potential sequence of the elections; and

WHEREAS, on June 11, 2019, consistent with the provisions of California Elections Code section 10010, the City published and made available for release, an additional five draft maps that were prepared by the City's demographic consultant for consideration by the Council, together with the potential sequence of the elections; and

WHEREAS, as required by California Elections Code section 10010 and as detailed hereafter, the City held at least two additional hearings within a period of no more than 45 days from the date that the last draft map was published, at which the public was again invited to provide input regarding the content of the draft maps and the potential sequence of elections; and

WHEREAS, on June 4, 2019 and June 18, 2019, pursuant to California Elections Code Section 10010(a)(2), the City Council held public hearings where the public was invited to provide input regarding the content of the draft maps that had been released at least seven (7) days before the meetings, and the proposed sequence of elections, and the City Council of the City of Campbell considered and discussed the same; and

WHEREAS, on June 18, 2019, the City Council held a public hearing on the proposal to establish district boundaries, reviewed additional public input, formally selected the voting district map and the election sequence attached to, incorporated in, and set forth in this Ordinance, which was introduced for a first reading at the meeting of the City Council of the City of Campbell; and,

WHEREAS, the City Council has scheduled another public hearing for July 2, 2019, on the proposal to establish district boundaries, review additional public input, and adopt this Ordinance, approving the selected district map and election sequence; and

WHEREAS, throughout the foregoing process, the City engaged in a significant amount of public outreach and engagement as required by California Elections Code Section 10010; and,

WHEREAS, the purpose of this Ordinance is to enact, pursuant to California Government Code section 34886, an ordinance providing for the election of the members of the City Council of the City of Campbell by-district in five single-member districts;

WHEREAS, the term limits provisions of Campbell Municipal Code section 2.04.160 will apply to Councilmembers elected by-district as well as Councilmembers currently elected at-large;

THE CITY COUNCIL OF THE CITY OF CAMPBELL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The foregoing recitals are true and correct.

SECTION 2. Sections 2.04.170 and 2.04.180 are hereby added to Chapter 2.04 of the Campbell Municipal Code to read as follows:

2.04.170 By-district electoral system.

- A. Pursuant to California Government Code sections 34886 and 34871(a), Councilmembers shall be elected by-districts in five (5) single-member districts.
- B. Beginning with the general municipal election in November of 2020, Councilmembers shall be elected in the electoral districts reflected on the District Map as adopted and periodically modified by ordinance of the City Council as provided by State law. Elections shall take place on a by-district basis as that term is defined in California Government Code section 34871, meaning one member of the City Council shall be elected from each district, by

the voters of that district alone with each Councilmember serving a four-year term until his or her successor has qualified.

- C. Except as provided in subsection D hereof, the Councilmember elected to represent a district must reside in that district and be a registered voter in that district, and any candidate for City Council must live in, and be a registered voter in the district in which he or she seeks election at the time nomination papers are issued, pursuant to California Government Code section 34882 and Elections Code section 10227. Termination of residency in a district by a Councilmember shall create an immediate vacancy for that council district unless a substitute residence within the district is established within thirty (30) days after the termination of residency.
- D. Notwithstanding any other provision of this section, each of the Councilmembers in office at the time this section takes effect shall continue in office until the expiration of the full term to which he or she was elected and until his or her successor is qualified. Vacancies in Councilmember offices elected at-large may be filled from the City at-large. At the end of the term of each Councilmember, that member's successor shall be elected on a by-district basis in the districts shown on the District Map adopted by ordinance of the City Council, as may subsequently reapportioned as provided by State law. A vacancy in a Councilmember office elected by-district shall be filled by a person qualified to hold the office, who is a resident and a registered voter of the district.

2.04.180 Election schedule for Council members elected by-district.

- A. Except as otherwise required by California Government Code Section 36512, Councilmembers from Districts one and two shall be elected beginning at the General Municipal Election in November of 2020, and every four years thereafter.
- B. Except as otherwise required by California Government Code Section 36512, Councilmembers from Council Districts three, four and five shall be elected beginning at the General Municipal Election in November 2022, and every four years thereafter.

SECTION 3. The official District Map showing the districts described in this Ordinance and referenced in newly adopted section 2.04.170 of the Campbell Municipal Code is attached hereto as Attachment A and adopted herein by reference.

SECTION 4. If necessary to facilitate the implementation of this Ordinance, the City Manager or his or her designee is authorized to make technical adjustments to the district boundaries that do not substantively affect the populations in the districts, the eligibility of candidates, or the residence of elected officials within any district. The City Manager shall consult with the City Attorney concerning any technical adjustments deemed necessary

and shall advise the City Council of any such adjustments required in the implementation of the districts.

SECTION 5. The City Council finds that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations, Section 15061 (b)(3) in that it is not a project which has the potential for causing a significant effect on the environment.

SECTION 6. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision or decisions shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 7. To the extent the terms and provisions of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior City ordinance, motion, resolution, rule or regulation governing the same subject, the terms of this Ordinance shall prevail with respect to the subject matter thereof.

SECTION 8. In interpreting this Ordinance or resolving any ambiguity, this Ordinance shall be interpreted in a manner that effectively accomplishes its stated purpose.

SECTION 9. A summary of this Ordinance shall be published and a certified copy of the full text of this Ordinance shall be posted in the office of the City Clerk at least five (5) days prior to the Council meeting at which it is adopted.

This Ordinance shall be in full force and effect thirty (30) days after its final passage, and the summary of this Ordinance shall be published within fifteen (15) days after the adoption, together with the names of those Councilmembers voting for or against same, in the Campbell Express, a newspaper of general circulation published and circulated in the City of Campbell, Santa Clara County, State of California.

Within fifteen (15) days after adoption, the City Clerk shall also post in the office of the City Clerk a certified copy of the full text of this Ordinance, along with the names of those Councilmembers voting for or against the Ordinance.

PASSED AND ADOPTED this ____ day of _____, 2019 by the following roll call vote:

AYES:
NOES:
ABSENT:

ATTEST:

APPROVED:

Richard M. Waterman, Mayor

Wendy Wood, City Clerk

Attachment: Ordinance 2248 (Public Hearing for Second Reading of Ordinance 2248)

