



City of Gilroy

STAFF REPORT

Agenda Item Title: Consider the Adoption of a Resolution Declaring an Intent to Transition from an At-Large Election System to a District-Based Election System Pursuant to California Elections Code Section 10010, with the Transition Taking Effect in time for the November 2026 and 2028 Elections

Meeting Date: February 24, 2025

From: Jimmy Forbis, City Administrator
Andy Faber, City Attorney

Department: Administration

Submitted By: Andy Faber, City Attorney

Prepared By: Andy Faber, City Attorney

STRATEGIC PLAN GOALS

Not Applicable

RECOMMENDATION

Given that this matter concerns the way in which City Councilmembers are elected to their four-year terms, there is no staff recommendation.

BACKGROUND

The City of Gilroy ("City") currently has an at-large election system, where each of the City's six Councilmembers are elected to staggered four-year terms by voters throughout the City. The mayor is also elected at-large to a four-year term.

1. Letter Alleging Violation of the CVRA.

On December 16, 2024, the City received a letter from attorney Kevin Shenkman of Shenkman & Hughes in Malibu, California ("Plaintiffs' Counsel") -on behalf of his client the Southwest Voter Registration Education Project- alleging that the City is in violation of the California Voting Rights Act ("CVRA") because the City elects its Councilmembers at-large, and that the City's elections are characterized by racially

polarized voting. Racially polarized voting occurs where there is a sufficient/ significant correlation between the race or ethnicity of voters and those voters' choice of candidates or other electoral choices, as compared to the choice of candidates or electoral choices preferred by the rest of the electorate. Plaintiffs' Counsel's letter demands that the City immediately transition from an at-large elections system to a district-based one. As noted above, the City currently has an at-large election system, where each of the City's six Councilmembers are elected by voters throughout the City. A district-based election system is one in which the City is divided into separate districts, each with one Councilmember who resides in that district and who is elected only by voters residing in that district. There are two district-based options to consider: the creation of six districts and the retention of the at-large mayor position; or, the creation of seven districts where one of the City Councilmembers serves as mayor on a rotating basis.

Should the City decline to transition voluntarily to a district-based system under the Safe Harbor Provisions of the Cal. Elections Code, Plaintiffs' Counsel threatens legal action against the City in the form of a civil action brought in the state court to compel district-based elections. If a plaintiff is successful in compelling the imposition of districts by the state court, the plaintiff is entitled to attorneys' fees from the public entity. If a city or other public entity is successful in defending against the claim, there is no corresponding entitlement to attorney's fees.

2. *The CVRA Rubric/ Violations of the CVRA*

The CVRA was signed into law in 2002, and only applies to jurisdictions like the City that utilize an at-large election method where voters of the entire jurisdiction elect each of the members of the City Council. The CVRA prohibits an at-large method of election that impairs the ability of a protected class to elect candidates of their choice or their ability to influence the outcome of an election. The impairment occurs where there is racially polarized voting – that is, when voters' candidate or other electoral choices correlate in a statistically significant way with the race or ethnicity of the voter. The correlation makes it more difficult for members of racial or ethnic minorities to elect candidates of their choice as there is potential vote dilution in an at-large electoral system.

Given the statutory language and the way in which the California courts have interpreted that language, defending these claims is difficult. . Some level of racially polarized voting is not uncommon in California or anywhere in the country for that matter; people of one race or ethnic group might be more likely – in a statistically significant mathematical correlative sense - to vote for one candidate or electoral choice over another. One might be able to demonstrate similar correlations by gender, socio-economic position, religion, etc., but the Legislature has designated racial polarization as the one that results in a CVRA violation.

Indeed, the law's intent was to significantly expand protections against vote dilution over those provided by the Federal Voting Rights Act of 1965 ("FVRA"). Compared with the

FVRA, it is easier for plaintiffs to prove a violation of the CVRA against public entities. Under the CVRA, proof of intent on the part of voters or elected officials to discriminate against a protected class is not required. The Legislature also mandated that those who mount a successful challenge under the CVRA recover their attorneys' fees. Furthermore, a violation of the CVRA (but not the FVRA) can exist even if it would not be possible through districting to create one or more "majority-minority" districts.

As a result, cities, school districts, and numerous other special districts throughout the State of California have faced legal challenges to their at-large electoral systems under the CVRA. The cases are complex and expensive to bring and to defend. Those jurisdictions that have opposed CVRA transition in court have lost and had a district-based electoral system imposed upon them; they also have been ordered to pay many millions of dollars in attorneys' fees in addition to paying their own attorneys' bills for defending against the claims. Seven figure amounts are common: both the Cities of Santa Clara and Palmdale paid \$4.5 million dollar settlements; the City of Modesto paid a \$3 million settlement; and the City of Anaheim paid a \$1.1 million dollar settlement. These amounts do not include these jurisdictions' costs for their own lawyers and expert witnesses. Further, these jurisdictions lost control over the districting process and had district maps imposed on them by the plaintiffs and/ or the courts.

3. *The CVRA's Safe Harbor Provision*

In response to the substantial costs imposed upon cities and other public agencies in the defense of CVRA suits, in 2016, the California Legislature amended the Elections Code (AB 350) to simplify the process of converting to district-based elections. It provided a "safe harbor" process to protect agencies and allow them to change voluntarily their electoral systems in exchange for a capping of fees and costs available to plaintiffs demanding the change.

Most jurisdictions that have faced such a legal challenge since 2017 have taken advantage of the CVRA's safe-harbor process of transitioning from at-large to district-based election systems.

A plaintiff and their lawyer wishing to challenge an at-large electoral system must send a "demand letter" to the public agency before filing any action in court. As noted above, the City received such a letter on December 16, 2024. Under the CVRA, the City had 45 days to pass a resolution proclaiming its intent to transition from at-large elections to district-based elections, outlining the steps it will take to fully facilitate the entire transition, and the estimated timeframe to complete the transition. Because the letter was received right before the holidays, the City negotiated an extension of that 45-day deadline to February 28, 2025. While the City does not believe it is in violation of the CVRA and is confident that its minority populations have been well-represented in the current at-large system, the City is also well aware of the risks inherent in fighting a CVRA lawsuit.

If the City does not pass such a resolution before the deadline, the plaintiff can file suit to compel the City to make the change to district-based elections. Should the City pass such a resolution before the deadline, then the CVRA plaintiff may not file any action with the court for 90 days after the adoption of the resolution (Elec. Code § 10010, subd. (e)(3)), which gives the City the time to make the transition from at-large to district-based elections. By way of example, were the City to pass this resolution at the February 24, 2025, meeting, it must complete the transition to district-based elections by May 27, 2025.

Successful completion of this process under the Safe Harbor Provision also limits the fees and costs that might be available to the Plaintiffs' Counsel should they file suit. In fact, the City's liability is capped at approximately \$37,500 in Plaintiffs' attorney's fees and expert costs, assuming the City meets the safe harbor deadlines.

4. *The Transition Process under the Safe Harbor Provision*

The transition process from at-large to district-based elections requires that the City comply with the dictates of Cal. Elections Code Section 10010, which provides the process rules for the transition. The City must hold at least five Public Hearings to take public input, to present draft maps, and to decide the order of elections under the new district-based system as explained in more detail below. At least one of the public hearings must be on a Saturday or after 6:00 p.m. on a weekday. The entire process of creating, and the eventual selection of, district maps is a transparent one, where public input is sought, encouraged and welcomed. If the City embarks on the transition process, the City will host a webpage dedicated to the transition to district-based elections, and all information gathered in the process will be posted to that webpage. This will include all staff reports, resolutions, ordinances, draft maps, public feedback and eventually, the final ordinance and adopted map, plus detail on the final order of district elections for Gilroy. City residents will also be able to participate in map drawing using on-line map drafting tools.

The first two hearings, Public Hearing 1 & 2, are for the purpose of taking public input on the potential contours of the six (or seven) districts that will be drawn and selected and will include presentations about the districting process by the demographer. The public is invited to learn about the process and to provide input on what and where the various "communities of interest" exist in the City of Gilroy, and upon the composition of the districts before any maps are drawn. Communities of interest are what connects people, be it by geography or natural features, by commercial districts or roadways, by other interests, by proximity to schools or school districts, etc. Those first two hearings must occur within 30 days of the adoption of the City Council Resolution of Intent.

The purpose of the second two public hearings, Public Hearings 3 & 4, is to present and discuss draft districting maps. The demographer will have collected the information provided in public comments at Public Hearings 1 & 2 and will use that testimony to draw draft maps, keeping communities of interest together where possible. In drawing the draft maps, the demographer will utilize sound demographic principles in an attempt

to create compact and contiguous districts that are logical and make sense. District maps must be prepared in compliance with state and federal requirements, including the consideration of communities of interest, natural geographical boundaries, and the “one person, one vote” standard, which requires that all voting districts be as equal in population as possible. (Elec. Code § 21601.) The City Council also may consider draft maps drawn by City residents using map-drafting tools, so long as those maps comply with the relevant drafting principles.

Any maps to be presented at Public Hearings 3 or 4 will be available on the City's website for at least seven days. The demographer will present one or more draft maps for review and discussion by the Council and the public at Public Hearings 3 & 4. The map presentation process need not be completed in two meetings if the Council wants to continue to review draft maps.

Finally, the fifth and final Public Hearing is to allow the City Council to select a draft map as the final map, and to take testimony on and decide the issue of which of the three (or four) new districts will be on the ballot in November of 2026, and which will be on the November 2028 ballot as the four-year terms for the six (or seven) City Councilmembers are staggered. This decision must be made in "the spirit of the CVRA." The districting process will have no impact on the length of any current Councilmember's or the Mayor's term. All who were elected at large finish out their at-large terms.

FISCAL IMPACT/FUNDING SOURCE

The City of Gilroy must retain the services of a demographer to successfully transition to district elections. The cost of such services is \$45,000 to \$50,000. The City also must retain outside legal counsel to assist in the transition from at-large to district-based elections, the cost of which will be \$35,000 – 45,000. Lastly, it is contemplated that Shenkman & Hughes, the author of the letter received on December 16, 2024, will send an invoice to the City at the end of the transition process as allowed under the CVRA for fees and costs associated with the investigation that gave rise to the letter received on December 16, 2024 – usually for the services of a demographer and also attorneys' fees. The amount of that invoice is capped by the statute at approximately \$37,500 if the City meets the CVRA time limits. The total anticipated cost will range from \$117,500 to \$132,500 and would be paid from the City's General Fund (100). Should the Council adopt the Resolution of Intent, staff will proceed with engaging the demographer and outside legal counsel and the funding would be accommodated within the existing appropriations in FY25 as typically there are year-end savings.

ENVIRONMENTAL REVIEW

None.

PREVIOUS COUNCIL CONSIDERATION

None.

Attachments:

1. Resolution of Intent

RESOLUTION NO. 2025-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GILROY DECLARING ITS INTENTION TO TRANSITION FROM AN AT-LARGE ELECTION SYSTEM TO A DISTRICT-BASED ELECTION SYSTEM PURSUANT TO CALIFORNIA ELECTIONS CODE 10010

WHEREAS, the City of Gilroy ("the City") is a Charter City with six elected members of the City Council elected to staggered four-year terms, and an elected mayor who also serves a four-year term; and

WHEREAS, the City Council is charged with managing the City's affairs, setting City policy, and adopting ordinances and resolutions necessary for efficient governmental operations; and

WHEREAS, members of the City Council and Mayor are currently elected to staggered four-year terms in "at-large" elections in which each City Councilmember and the Mayor are 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 or district-based system with an elected mayor in which each Councilmember is elected only by the registered voters in the district in which the candidate resides; and

WHEREAS, the City desires that its electoral system be fair and representative and provide the opportunity for all City residents to elect candidates of their choice to the City Council, and

WHEREAS, the City through its City Council and Mayor believes that a move to district-based City Council elections will enhance the opportunity for all City residents, including minority groups, to elect candidates of their choice in fair and representative elections; and

WHEREAS, on December 16, 2024, the City received a letter from attorney Kevin Shenkman asserting that the City's at-large City Councilmember electoral system violates the California Voting Rights Act ("CVRA"); and

WHEREAS, the City of Gilroy denies that its current at-large electoral system violates the CVRA or any other law in any aspect, and asserts that its current at-large system is fair and representative in all respects; and

WHEREAS, the City intends to make this transition from an at-large electoral system for members of the City Council to a district-based system in accordance with

the procedural rules outlined in Government Code Section 34886 and Elections Code 10010, and intends to do so within 90 days unless that time is extended; and

WHEREAS, the City will work with an experienced demographer to assist the City in making the transition to district-based elections to elect members of the City Council; and

WHEREAS, the City will hold at least two public hearings within 30 days of the adoption of this resolution, the purposes of which are: (1) to hear presentations on both the CVRA and the move to district-based elections for members of the City Council; (2) to receive public input about the City in terms of communities of interest and the contours of districts; and, (3) to assist both the City Council and the City's demographer in understanding what district boundaries might make sense; and, (4) to explain to City residents the rules and parameters regarding drawing districts that comply with both state and federal election law; and

WHEREAS, these first hearings will occur and public input be received before the demographer draws any maps for consideration of the City Council; and

WHEREAS, there is no limitation as to the number of public hearings or meetings the City may hold for the purpose of receiving input from City residents; and

WHEREAS, the City will then hold at least additional two public hearings at which the demographer will present draft maps drawn in accordance with both state and federal law and which take into account public input received at the first two public input hearings; and

WHEREAS, at least one of these hearings of the two to collect public input and the two to present draft maps will be held after 6:00 p.m. on a weekday or on a Saturday; and

WHEREAS, any draft maps of new electoral districts presented for consideration at these additional public hearings will be published on the City's website and available for public release and review at least seven days before any hearing to consider those maps; and

WHEREAS, once the City Council has selected a draft map or is further along in the draft map process, the City will take public input at its public hearings on draft maps regarding the proposed sequence of elections, because given the City's staggered elections for City Council three new districts will be on the ballot in November of 2026 and the other three will be on the November 2028 ballot; and

WHEREAS, in making the determination as to the order of elections, the City Council will do so in furtherance of "the spirit of the CVRA"; and

WHEREAS, at a fifth or final meeting, the City Council will select one of the draft

maps and set the order of elections.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Gilroy hereby finds and resolves as follows:

1. The above recitals are true and correct and are incorporated herein by this reference.
2. The City Council hereby resolves, pursuant to Elections Code Section 10010, to bring the transition to a district-based election system for members of the City Council by ordinance as authorized by California Government Code Section 34886, for use in the City's Municipal Election for City Councilmembers in November 2026 and November 2028, and intends to do so within 90 days of this resolution absent an extension.
3. The City Council further resolves to retain a qualified demographer and to hold at least five public hearings for public input, with the first two hearings being for the purpose of public input on communities of interest and how maps should be drawn, with at least two more hearings at which draft maps will be presented. Any map that the City Council will consider will be published on the City's website and available to the public at least seven days in advance of that hearing. In these later hearings, the City Council will also receive public input on the sequence of elections to further the purposes of the CVRA. The City will publicly release a draft schedule of the public hearings in advance, within a reasonable timeframe from this Resolution, and post the same on its website.
4. At a fifth or final meeting, the City Council will select a map, and also set the order of elections in 2026 and 2028 in the spirit of the CVRA.
5. Working with the demographer, staff is directed to publicize relevant maps, information, notices, agendas and other materials regarding district-based elections and to establish means of communication to answer questions from the public.
6. All public hearings shall be noticed on the City's website, and in addition, as follows: posting on the City's website at least 7 calendar days in advance of the hearing and publication at least 7 days in advance of the hearing by means contemplated to provide notice to City residents including publication in local newspapers or other means; at least one of the CVRA hearings will occur on a Saturday or after 6 pm on a weekday.
7. The City will adopt a proposed schedule to complete the transition from an at-large elections system to a district-based elections system. The currently proposed schedule of the required public hearings is as follows. This schedule may be changed or augmented by future Council action.

Date	Event
March 3, 2025	Public Hearing No. 1
March 17, 2025	Public Hearing No. 2
April 7, 2025	Public Hearing No. 3
April 21, 2025	Public Hearing No. 4
May 5, 2025	Public Hearing No. 5

1. The City Administrator is authorized to take any and all other necessary actions to give effect to this Resolution.
2. This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED this 3rd day of March, 2025 by the following roll call vote:

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**

APPROVED:

Greg Bozzo, Mayor

ATTEST:

Beth Minor, Interim City Clerk

CERTIFICATE OF THE CLERK

I, **BETH MINOR**, Interim City Clerk of the City of Gilroy, do hereby certify that the attached **Resolution No. 2025-XX** is an original resolution, or true and correct copy of a City Resolution, duly adopted by the Council of the City of Gilroy at a Regular Meeting of said held on Council held **Monday, February 24, 2025**, with a quorum present.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of the City of Gilroy this **Date**.

Beth Minor
Interim City Clerk of the City of Gilroy

(Seal)

From: [Armando Be](#)
To: [Public Comments](#)
Subject: EXTERNAL - Public Hearing: 8.1 Resolution for District Elections.
Date: Thursday, February 20, 2025 1:13:56 PM

CAUTION: This email originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Mayor Bozzo, City Council Members, and City Manager,

I am writing to express my strong support for the implementation of District Elections for the City. District Elections will serve to ensure that every neighborhood has a representative who is directly accountable to the people they serve and the city at large. I have examined the voting patterns of the City over the last 24 years and have found that, except for a few exceptions, those elected to serve in the council reside in the west side of town. District elections will ensure that areas that share a community of interest from the east side of town have a representative serving on the Council. District elections also serve to foster greater inclusivity and ensure that diverse voices are represented in the governance decision-making, especially to better reflect the population demographics of the city.

The current system, as I have noted, results in areas of the city that are overrepresented by elected members while other areas of the City appear overlooked and greatly underrepresented. District elections will give community members and families in every corner of the City a stronger voice, which will create a more equitable and effective governance body. Representative elected from specific districts are more intimately familiar with the challenges and aspirations of their constituents, which will lead to a more thoughtful and comprehensive targeted City policy outcomes.

District elections will also provide a greater opportunity to increase civic engagement. By giving the community citizens the chance to vote for a representative who truly understands and advocates for their community, your vote for District elections will encourage a more engaged and informed electorate. We know that the more people feel connected to the process, the more that they will participate in the process.

I urge each of you to consider the many benefits of District elections and that you vote to take the next step to implement them in this City. Your support for district elections for Gilroy will be a step forward for a more accountable, responsive, and representative governance of this GREAT City.

Thank you for your time and consideration.

Armando Benavides

bcc: Interested Community members.