

HAYWARD CITY COUNCIL

RESOLUTION NO. 24-\_\_\_\_\_

Introduced by Council Member \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD  
DECLARING ITS INTENT TO TRANSITION FROM AT-LARGE TO  
BY-DISTRICT COUNCIL MEMBER ELECTIONS UNDER ELECTIONS  
CODE § 10010

WHEREAS, members of the Hayward City Council, including the Mayor, 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 council members are elected only by the voters in the district in which the candidate resides; and

WHEREAS, the City received letters from Scott Rafferty, Attorney at Law, asserting that the City's at-large council member electoral system violates the California Voting Rights Act ("CVRA") and demanding that the City change to a district-based election system for electing council members for the November 2024 election; the letters are dated May 28, 2021, March 10, 2024, March 21, 2024 and March 22, 2024. The May 28, 2021 letter was sent via certified mail to the City Clerk. The remaining letter were addressed to the Mayor and City Council; and

WHEREAS, under Elections Code Section 14028(a), a CVRA violation is established if it is shown that racially polarized voting and vote dilution 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 California Legislature in amendments to Elections Code Section 10010, has provided a method whereby a jurisdiction can change to a by-district election system and cap its attorney's fees liability at \$30,000 subject to adjustment annually pursuant to the Consumer Price Index ("CPI"); and

WHEREAS, the City Council intends to direct staff to initiate the process to establish by-district elections to avoid costs associated with defending a lawsuit based on the CVRA, even if that lawsuit settles; and

WHEREAS, Scott Rafferty and his clients may not commence an action under the CVRA against the City until July 15, 2024, provided the City follows the deadlines set forth in Elections Code section 10010(e);

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

WHEREAS, despite the foregoing, the City Council has determined that the public interest would be served by transitioning to a district-based electoral system because of: 1) the extraordinary cost to defend against a CVRA lawsuit, 2) the risk of losing such a lawsuit which would require the City to pay the prevailing plaintiffs' attorneys' fees, and 3) the reimbursable costs and attorneys' fees would be capped at a maximum of \$30,000 by following the procedures set forth in Elections Code Section 10010 as amended by AB 350; and

WHEREAS, California Elections Code Sections 10010 and 21130 require 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 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
3. The final map must comply with the criteria provided in Elections Code section 21130.

WHEREAS, the City has retained special legal counsel 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 must be allowed to serve out their current term by law.

NOW, THEREFORE BE IT RESOLVED AS FOLLOWS:

Section 1. The City Council of the City of Hayward hereby resolves 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 Councilmembers with a proposed implementation date of November 2026.

Section 2. The City Council directs staff to work with the City's special legal counsel, a 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, the California FAIR Maps Act and the Federal Voting Rights Act.

Section 3. The City Council hereby directs staff to perform public outreach to solicit public input and testimony on proposed district-based electoral maps before adopting any such map.

Section 4. 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. The City Council directs staff to schedule the public hearings required by the Elections Code to ensure adoption of a district map and an ordinance establishing district elections by July 15, 2024, subject to potential extension by agreement as allowed by law.

Section 6. This resolution shall become effective immediately upon its passage and adoption.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2024

ADOPTED BY THE FOLLOWING VOTE:

AYES:            COUNCIL MEMBERS:  
                     MAYOR:

NOES:           COUNCIL MEMBERS:

ABSTAIN:       COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward

