



San Miguel Fire & Rescue

Legal Counsel Report

Date: March 27, 2019

To: Board of Directors

From: Best Best & Krieger, LLP

Subject: Public Hearing #2 to Receive Public Comments on Transition to “By-Division” Electoral System under the California Voting Rights Act and Regarding Boundaries and Composition of Electoral Divisions to be Established

Background:

The District presently has an “at-large” electoral system (where the entire jurisdiction votes for each member of the District Board). This is in contrast to a “by-division” election system (where the jurisdiction is divided into divisions, a Board candidate must reside within an election division and is elected only by voters residing within that election division).

In recent years, a number of cities and other public agencies in California have been sued under the California Voting Rights Act (“CVRA”). These lawsuits usually demand that the defendant agency transition to a by-district/by-division system. Successful plaintiffs are entitled to have their attorney’s fees paid by the public agency defendant. For more background regarding the CVRA and its litigation history, Staff would refer you to its March 13, 2019 report.

In 2016, the California Legislature adopted AB 350 to cap the attorneys’ fees a prospective plaintiff may recover to \$30,000, if a public agency adopts a resolution of intention to change to a by-district/by-division system of elections within 45 days following the receipt of a letter from that prospective plaintiff alleging a CVRA violation and completes the transition process (see below).

While the Fire Protection District has not yet received such a demand letter from a prospective plaintiff, the Board of Directors anticipated that such a letter would eventually come and desired to take proactive means to avoid the high costs and legal risks associated with a potential CVRA lawsuit. Therefore, on February 27, 2019, the Board took the first step by adopting Resolution No. 19-1, a resolution declaring the District’s intention to transition from at-large to by-division elections pursuant to AB 350. The Board also took the next step on March 13, 2019 by conducting the first of two “pre-map” public hearings to solicit public input regarding this process.

Discussion:

AB 350 Procedure

AB 350 (Elections Code section 10010) sets forth a specific process for the adoption of a resolution to transition to by-division elections. The process includes a series of public hearings at which the public is invited to provide input regarding the composition of the electoral divisions.

The proposed schedule for the transition is as follows:

February 27, 2019 – Adopt Resolution of Intention (already adopted)

March 13, 2019 - Public Hearing No. 1 (already conducted)

March 27, 2019 - Public Hearing No. 2 (this evening)

April 3, 2019 - Publication of Draft Map(s)

April 10, 2019 - Public Hearing No. 3

April 24, 2019 - Public Hearing No. 4

May 8, 2019 – Adoption of Resolution Making Transition to By-Division Elections

Tonight, the Board is conducting Public Hearing No. 2 to solicit input from the public with regard to these issues. This is the last of two “pre-map” public hearings required by AB 350, after which the District’s retained professional demographer (NDC Corporation) will prepare draft maps illustrating electoral divisions.

Based on the public input received at the public hearing, the Board may wish to identify additional criteria to guide the establishment of election divisions. For example, among other criteria, the Board may wish to respect the previous choices of District voters by avoiding the creation of head-to-head contests between Board members previously elected by the voters of the District (insofar as this does not conflict with Federal or State Law).

Lastly, the Board has directed staff to ultimately prepare two sets of electoral division maps for adoption. The first will divide the District into seven divisions, which reflects the current number of Directors. However, the Board has been considering a proposal to reduce the number of Directors from seven to five. Therefore, a second set of maps will be drafted that will divide the District into five divisions. Legal counsel has advised that while the District may transition from an “at-large” to a “by-division” electoral system by adopting a resolution and without an election, a change to the number of Directors will require placing a measure on a future election ballot (Calif. Health and Safety Code section 13845). The Board has requested both sets of maps be drafted to address either scenario.

CEQA ANALYSIS

The transition from at-large to division-based elections is exempt from environmental review under the California Environmental Quality Act (“CEQA”) (Pub. Resources Code, § 21000 et seq.) pursuant to State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.) sections 15061(b)(3), 15320, and 15378(b)(3). The transition process is an organizational and administrative activity of the District, does not have the potential to result in either a direct or reasonably foreseeable indirect physical change in the environment, and is therefore not a project for purposes of CEQA. (State CEQA Guidelines, §§ 15061(b)(3); 15378(b)(5).) In the event the transition process does constitute a project, it is categorically exempt under the Class 20 (Changes in the Organization of Local Governments) categorical exemption. (State CEQA Guidelines, § 15320.) None of the exceptions to the exemptions found in State CEQA Guidelines section 15300.2 apply.

Recommendation:

That the Board of Directors open and conduct a public hearing to receive public input regarding the composition of the divisions.

Fiscal Impact:

None associated with this public hearing. However, the cost of transitioning to by-division elections is estimated to be approximately \$50,000. This cost is insignificant in comparison to the cost of defending a potential lawsuit over the District’s at-large election, which would likely cost the District several million dollars even if the District were to be successful and, as noted previously, no public agency to date has prevailed in one of these lawsuits.