

REPLY TO:
 ROSEVILLE MONTEREY
 ONTARIO

MEMORANDUM

TO: Special District Clients

FROM: Betsy Martyn

DATE: May 5, 2017

RE: SPECIAL DISTRICT SWITCH TO BY-DISTRICT VOTING

As you may know, there have been a number of recent issues regarding compliance with the provisions of the California Voting Rights Act (Elections Code Sections 14025 et seq., hereafter the “Act”). The Act is intended to protect the rights of voters belonging to a protected class, which means a class of voters who are members of a race, color, or language minority group. If their rights are not protected, there may be “racially polarized” voting. At-large voting may result in racially polarized voting, requiring a change to “by-district” voting.

Many special districts use the at-large method to elect directors: i.e. all voters in the district vote for all Board candidates. In contrast, under the “by-district system” a candidate must live in the district he or she represents and be elected only by the voters in that district.¹

In order to determine if there could be “racially polarized” voting within a district, one looks at factors such as a history of electoral losses by protected class candidates or a history of unresolved issues disproportionately affecting a protected class community coupled with a significant proportion of the population that are ethnic or racial minorities.

If any of these factors are present, the special district may wish to work with a demographic consultant to determine statistically if there could be an issue under the Act. That determination is made based upon population from the last decennial census (2010). If there were an issue, then the district would consider changing to a by-district voting system for the election of Directors.

Effective January 1, 2017, the Elections Code has been amended to allow special districts to change from at-large voting to a by-district voting by resolution rather than by requiring an election to vote on the change. Such legislation has been in place for cities for several years. (See, for example, Govt. Code Sections 34870 et seq).

Elections Code Section 10650 provides that the governing body of a special district may be required a change from at-large to by-district elections upon making a finding that to do so is in furtherance of the Act. The process for that change is set out in the Act and in other Elections

¹ The third type of method (and one rarely used) is “from districts;” that method provides that each elected official must live within a district, although voters in the entire district elect those officials.

Code sections referenced in the Act. Although the Elections Code amendment simply refers to the Act, the actual process of changing to district voting requires compliance with a variety of state and federal rules regarding the size of districts and the process for their adoption after structured public input.

The issues include the following:

1. Number of Districts: The number of districts is determined by the physical size of the agency and population areas, as the population in each district generally must be equal. For a five-person Board, there may be five districts; that decision is part of the conversion process.
2. Permissible Criteria to Establish Voting District Boundaries:
 - a. Each district generally must be equal in population with no more than a 10% deviation in population between districts. (Elections Code Section 22000 - 22001).
 - b. The Board also may consider topography, geography, cohesiveness, contiguity, integrity and compactness as well a community of interest. (Elections Code Section 21601)
 - c. Other appropriate criteria include where current council members live, following political boundaries, use of census blocks, and location of streets and other facilities; in certain cases, race may be considered.
3. Public Input and Hearing Process: Districts changing to by-district voting must include public input in the process. Legally, only one duly noticed public hearing is required. However, the district may decide to hold community meetings or provide information on the website to allow greater public input into the determination of the boundaries of the district.
4. Election of Board Members: A change to by-district voting applies prospectively and does not cut short current Board terms. When a Board seat is up for re-election, the Board member must be a registered voter in the district that he/she will represent at the time nomination papers are issued. (See Elections Code Section 22000-22001). No change in boundaries can be made less than 180 days before a Board election.
5. Adjustment of Voting District Boundaries: Once established, voting district boundaries must be reviewed, at a minimum, every 10 years after the federal census, or when there is a change in the district's boundaries.