

Olivehurst Public Utility District



Agenda Item Staff Report

Meeting Date: July 15, 2021

Item description/summary:

Consider approval of process and timing for Consideration of District-Based Voting (Strategic Plan VS-6, CV-1, 6.0, 8.0).

Background:

As previously reported to the Board, the California Voting Rights Act (Elections Code Sections 14025, et seq.) is intended to protect the rights of voters and to avoid “racially polarized” voting. Many special districts, including OPUD, currently use the at-large method to elect directors. To avoid any allegation of racially polarized voting in an at-large voting approach, various special districts are moving from at-large to by-district voting. In an at-large approach, all voters in the District vote for all Board candidates. By contrast, in a by-district system, a Board candidate must live in the district he or she represents and be elected only by the voters in that district.

OPUD Directors on November 20, 2014 approved Resolution 2288 approving a transition from the at-large method of electing Directors to ward-based elections. Resolution 2288 required implementation of the transition over two election cycles in 2016 and 2018. The Resolution further required that one or more public hearings be scheduled to obtain public input on proposals regarding the geographic composition of sub-areas/wards.

(Discussion continued on attached page.)

Fiscal Analysis:

None.

Employee Feedback

None.

Sample Motion:

Move to approve the proposed timeline and process for adoption of a Resolution transitioning from At-Large to District-Based voting.

Prepared by:

Deirdre Joan Cox, OPUD Legal Counsel

At the time Resolution 2288 was approved, there was no legal authority for transitioning from the at-large to by-district voting by resolution. Effective January 1, 2017, the Elections Code was 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.

Elections Code Section 10650 (attached) permits a governing body of a special district to require, by resolution, that members of its governing body be elected using district-based elections without being required to submit the resolution to voters for approval. A resolution adopted pursuant to this provision must include a declaration that the change in the method of electing members of the governing body is being made in furtherance of the purposes of the California Voting Rights Act of 2001.

In addition to declaring that the change in the method of electing members of the governing body is being made in furtherance of the purposes of the California Voting Rights Act of 2001, the District must also comply with a variety of state and federal rules regarding the size of districts and the process for the transition 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 transition 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 as 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, OPUD 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. (Elections Code Section 22000-22001).
5. **No change in boundaries can be made less than 180 days before a Board election.** Thus, OPUD's deadline to pass a Resolution transitioning from at-large to district-based elections is May, 2022. Because OPUD's Board meets only once a month, OPUD's deadline to pass its Resolution would be April, 2022.
6. **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.

Recommended Path Forward:

- Because there was no explicit legal authority for Resolution 2288, it is recommended that OPUD pass (on or before April, 2022) a new Resolution that comports with newly enacted Elections Code Section 10650. The Resolution must include a declaration that the change in the method of electing members of the governing body is being made in furtherance of the purposes of the California Voting Rights Act of 2001.
- Prior to enacting a replacement Resolution, the District must also comply with state and federal rules regarding the size of districts and the process for the transition after structured public input.
- Although OPUD has already held one public meeting in which a potential map of new districts was shared by outside consultant David Ely of Compass Demographics, now that we have new census data and a new mapping consultant, it is recommended that OPUD schedule another public meeting to review a new potential map prepared by the new consultant.
- It is recommended that OPUD then hold 1-2 additional public hearings and that OPUD consider conducting at least one of those hearings as a community forum to enhance the opportunity for community feedback.
- OPUD may then adopt its new Resolution in either March, 2022 or April, 2022, still well in advance of the May, 2022 deadline for the November, 2022 election.

California Code, Elections Code –

ELEC § 10650

(a) Notwithstanding any other law, a governing body of a special district may require, by resolution, that the members of its governing body be elected using district-based elections, as defined in [subdivision \(b\) of Section 14026](#), without being required to submit the resolution to the voters for approval. A resolution adopted pursuant to this subdivision shall include a declaration that the change in the method of electing members of the governing 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](#)).

(b) For purposes of this section, “special district” means an agency of the state formed pursuant to general law or special act for the local performance of governmental or proprietary functions within limited boundaries. “Special district” does not include a city, county, city and county, school or community college district, special assessment district, or district with appointed members on its governing body.