

Chino Valley Independent Fire District STAFF REPORT

DATE: JANUARY 13, 2021

TO: SARAH RAMOS-EVINGER, PRESIDENT
ALL MEMBERS OF THE BOARD

FROM: TIM SHACKELFORD, FIRE CHIEF

SUBJECT: RESOLUTION NO. 2021-06, ADOPTING RESOLUTION OF INTENT TO
TRANSITION TO BY-DIVISION ELECTIONS AND AUTHORIZATION
TO ENGAGE NATIONAL DEMOGRAPHIC CORPORATION TO
PROVIDE DEMOGRAPHIC SERVICES

PURPOSE:

The purpose of this report is for the Board of Directors to consider adopting Resolution No. 2021-06, declaring its intention to transition from at-large to by-division elections pursuant to the California Voting Rights Act (CVRA) and associated statutes, and authorize the Fire Chief to engage National Demographic Corporation (NDC) to provide demographic services, with a not-to-exceed amount of \$57,500.

BACKGROUND:

The Chino Valley Independent Fire District presently has an “at-large” electoral system, where voters from the entire District vote for all members of the District Board of Directors. This is in contrast to a “by-division” election system, where the jurisdiction is divided into smaller divisions and a Board candidate must reside within that division in order to be elected by voters residing within that division.

The California Voting Rights Act (“CVRA”) was adopted in 2002 and applies to at-large election voting systems. The CVRA seeks to eliminate elections that prevent members of a protected class from electing their chosen candidates to a local public agency’s governing board, or otherwise impairs the ability of voters from a protected class to influence elections. A “protected class” is a class of voters who are members of a race, color, or language minority group, as defined by the federal Voting Rights Act. In recent years, a number of cities and other local public agencies in California have been sued under the CVRA. Typically, plaintiffs allege that the defendant agency’s at-large electoral system has resulted in “racially polarized” voting, which is defined as “voting in which there is a difference ... in the choice of candidates of 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.” (Cal. Elec. Code, § 14026 (e).) These lawsuits usually demand that the defendant public agency transition to a by-division system.

Since the CVRA was signed into law, many local agencies, including thirty five (35) special districts and one hundred forty two (142) cities, have converted (or are in the process of converting) to by-division elections. This move is not surprising in light of the cost of litigating under the CVRA. For example, the City of Palmdale settled a CVRA lawsuit in 2015 for \$4.5 million in

plaintiff's fees and costs. The City of Modesto paid \$3 million to settle a similar case in 2008, and Anaheim settled in 2014 for an amount reported to be possibly as high as \$2 million. More recently, the City of Santa Monica lost a CVRA case at the trial court level and the plaintiffs were awarded \$22 million in attorneys' fees/costs. These numbers do not include each of these cities' own attorney's fees and costs to defend the lawsuits. Palmdale and Modesto each spent approximately \$1.8 million and Santa Monica spent \$8 million on their own attorneys' fees and costs.

In 2016, the California legislature adopted Assembly Bill 350, amending Elections Code section 10010, to limit the attorneys' fees that a prospective plaintiff may recover if a local public agency adopts a resolution of intention to change to a by-division system of elections after receiving a demand letter from a potential plaintiff. And, that liability can be further reduced, if not eliminated altogether, if a local agency elects to move to by-division elections prior to receiving such a demand letter.

In recent years, both the Cities of Chino and Chino Hills have moved to by-division elections. The County of San Bernardino has, like most counties in California, been divided into supervisorial districts for many years. While the District has not yet received a demand from any prospective plaintiff under the CVRA, the Board of Directors anticipates that such a demand could be made in the near future. In addition to the potential threat of litigation, the recent completion of the 2020 federal census provides an appropriate opportunity to initiate a transition to by-division elections within the District.

DISCUSSION:

The Fire Protection District Law of 1987 (Calif. Health and Safety Code, § 13800, et seq.) historically left the question of at-large vs. by-division voting systems to the voters, as a local ballot measure (Health & Saf. Code, § 13846.) However, in 2016, the California legislature adopted a statute (Elec. Code 10650), which allows the District's Board of Directors to change the election system. This statute was prompted by a concern that local public agencies whose voters did not vote in favor of a transition would create liability for those local public agencies, which as described above, can be many millions of dollars.

As a result, California Elections Code Section 10650 authorizes the Board of Directors, without an election, to adopt a resolution or ordinance that causes the Board to be elected by-division. This process is initiated by the Board's adoption of a "resolution of intention" to move to by-division elections. If the District moves to a by-division electoral system, that transition cannot result in reducing the term of any incumbent Board member. Therefore, the transition process will include not only the drawing and establishment of division boundaries, but also the sequencing of the future Board elections, so that no incumbent's term is adversely affected.

In establishing the boundaries of the divisions, the Board may give consideration to the following factors: (1) topography, (2) geography, (3) cohesiveness, contiguity, integrity, and compactness of territory, and (4) community of interests of the divisions. (Health & Saf. Code, § 13846(e).)

Resolution of Intention

The resolution of intention must outline: (1) the Board's intention to transition from at-large to division-based elections, (2) specific steps the District will undertake to facilitate this transition,

and (3) an estimated timeframe for doing so. The accompanying resolution does so. It states the Board's intention to move from at-large elections to by-division elections.

With regard to the specific steps that the District will need to undertake in order to facilitate this transition, the following is a summary of those items that District staff and Legal Counsel believe are the minimum requirements to achieve a successful transition:

- Engage a demographer, in order to assist the District in establishing divisions, in compliance with the CVRA;
- Conduct public outreach to explain the process of forming divisions and to encourage public participation;
- Before drawing any draft map of the proposed division boundaries, hold at least two public hearings over a period of no more than thirty (30) days, at which the public is invited to provide input regarding the composition of the divisions and to consider division boundaries, as provided in Elections Code Section 10010;
- After drawing a draft map, publish the draft map and the potential sequence of the division elections, and hold at least two noticed public hearings over a period of no more than forty-five (45) days, at which the public will be invited to provide input regarding the content of the draft map and the proposed sequence of elections; and
- Hold a public meeting at which the Board of Directors will consider a resolution establishing by-division elections, including the adoption of a division boundary map and the sequence of the division elections.

The Fire District Protection Law provides that if a district board is elected by divisions, the Board must adjust the boundaries of the election divisions before November 1 of the year following the year in which the federal census is taken. Since the last federal census was taken in 2020, that would mean that the boundaries should be established by November 1, 2021.

Demographer

With regard to the first action to be taken above (engaging a demographer), District staff and Legal Counsel have reached out to National Demographics Corporation (NDC). NDC assisted both the cities of Chino and Chino Hills when they moved to division elections, and will likely be assisting those cities as they re-draw their divisions as a result of the 2020 census. In addition, NDC is expected to assist the County of San Bernardino as it re-draws its supervisorial districts following the 2020 census. As such, NDC will have ready access to the demographic data of the Fire District. In addition, NDC has assisted numerous other local public agencies transition to by-division elections. As such, District staff and Legal Counsel would recommend that the District Board authorize the Fire Chief to engage NDC, as the District's demographer for this process.

NDC has quoted a base rate of \$21,500 for all elements of the process, except for meetings requiring the participation of NDC (\$2,750 per in-person meeting, \$1,250 per virtual meeting) and optional project elements, such as a more complex project website (\$4,000). NDC's project tasks covered by the base rate include:

- Assisting the District with project planning, outreach and public engagement.
- Building a demographic database of the 2020 federal Census, American Community

Survey, and California Statewide Database for the project.

- Adding in any GIS data that the District wishes to include (and can provide) in the project.
- Providing the simple online tool for residents to use to draw communities of interest and/or proposed maps of election divisions.
- Processing any map submissions from residents.
- Drawing 3 to 4 NDC draft map proposals and making any District-requested revisions to them.
- Providing web-friendly .pdf maps and demographic details for all draft maps.
- Creating an interactive map where Board Members, staff and residents can review (but not draw or edit) proposed draft maps in detail.
- Working with the County Registrar to implement the District's adopted map.

Including a 15% project contingency for unforeseen costs, a total budget allocation of up to \$57,500 would need to be provided to fund the proposed demographic services. Based on expenditures for the first six months of the fiscal year, it appears there would be sufficient funds available from the legal services budget to fund this project through a budget transfer.

RECOMMENDATION:

It is recommended that the Board of Directors review, approve and adopt Resolution No. 2021-06, declaring its intention to transition from at-large to by-division elections by November, 2021, and authorize the Fire Chief to engage National Demographic Corporation (NDC) to provide demographic services in an amount not-to-exceed \$57,500, authorizing a budget transfer from the services – legal budget to services – other for this amount.

ATTACHMENTS:

Resolution No. 2021-06