

ORDINANCE NO. 2019-04

**AN ORDINANCE OF THE CITY OF MARINA
ESTABLISHING A BY-DISTRICT ELECTION PROCESS IN FOUR COUNCIL
DISTRICTS PURSUANT TO CALIFORNIA ELECTIONS CODE § 10010) & CALIFORNIA
GOVERNMENT CODE §§ 34871(c) & 34886**

WHEREAS, the City of Marina supports the full participation of all residents in electing members of the City Council; and

WHEREAS, in an election held on March 7, 1978, the voters in the City of Marina approved the election of a mayor and four councilmembers for a term of office of two and four years respectively commencing with the General Municipal Election to be held in 1980; and

WHEREAS, in an election held on June 2, 1998, the voters in the City of Marina approved a Home-Rule City Charter which provisions did not alter the composition of the City Council as consisting of four councilmembers and a mayor; and

WHEREAS, in an election held on November 8, 2016, the voters approved the addition to the City Charter of Section 1.04 of Article 6 to provide for the direct election of the mayor to serve a term of four years; and

WHEREAS, the City of Marina currently elects four of its City Council members using an at-large election system, with a separately elected Mayor, who is also a member of the City Council; and

WHEREAS, in the at-large election system candidates may reside in any part of the City, and each City Council member is elected by the voters of the entire City; and

WHEREAS, in a by-district election system a candidate for City Council must reside in the district which he or she wishes to represent, and only the voters of that district are entitled to vote to decide who their representative will be; and

WHEREAS, on August 28, 2019, the City received a letter from an attorney asserting the City's at-large electoral system violated the California Voting Rights Act, and threatening litigation if the City declined to adopt by-district elections; and

WHEREAS, the letter did not contain any evidence of a violation, but the cost of defending against a claim under the California Voting Rights Act is extremely high; and

WHEREAS, Section 2.06.010 of Chapter 2 of the Marina Municipal Code provides that that the general municipal election in the City shall be held on the same date as the statewide general election in November of even-numbered years; and

WHEREAS, California Government Code section 34886, as amended effective January 1, 2017, provides:

“Notwithstanding Section 34871 or any other law, the legislative body of a city may adopt an ordinance that requires the members of the legislative body to be elected by district or by district with an elective mayor, as described in subdivisions (a) and (c) of Section 34871, without being required to submit the ordinance to the voters for approval. An ordinance adopted pursuant to this section shall include a declaration that the change in the method of electing members of the legislative 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);” and

WHEREAS, California Government Code section 34871 (c) provides for the election of members of the legislative body of a city by districts in four districts, with a separately elected mayor; and

WHEREAS, at an adjourned regular meeting on September 5, 2019, the City Council adopted a resolution of intent to transition from at-large to district-based Council member elections pursuant to Elections Code section 10010; and

WHEREAS, pursuant to California Government Code section 34886, it is declared the change in the method of electing members of the City Council of the City of Marina made by this ordinance is to implement the guarantees of Section 7 of Article I and of Section 2 of Article II of the California Constitution, as set forth in Section 14031 of the California Voting Rights Act; and

WHEREAS, under the provisions of California Elections Code section 10010, a political subdivision that changes from an at-large method of election to a by-district method of election 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 drawing a draft map or maps of the proposed boundaries of the districts; and

WHEREAS, before any maps of the proposed boundaries of the districts were drawn, the City Council held public hearings on September 17, 2019, and October 1, 2019, at which time input from the public on the proposed district boundaries was invited and heard; and

WHEREAS, at the public hearing on October 1, 2019, the City Council instructed its demographic consultant to develop redistricting plan options in accordance with the information received on September 17, 2019 and October 1, 2019; and

WHEREAS, to facilitate participation in the submission of draft maps for consideration, two outreach events were held; the first in conjunction with the Fire Prevention Open House on October 8, 2019, and the second held at the Marina Public Library on October 16, 2019, and outreach to the public was conducted via the City's social media accounts, website, direct email, Newsflash announcement, announcements of City Council meetings and newspaper advertisements; and

WHEREAS, on October 29, 2019, consistent with the provisions of California Elections Code section 10010, the City published and made available for release, ten draft maps for consideration by the Council, two of which were prepared by the City's demographic consultant and eight of which were prepared and submitted to the City by members of the public; and

WHEREAS, as required by California Elections Code section 10010 and as detailed hereafter, the City held at least two additional hearings within a period of no more than 45 days from October 29, 2019, at which the public was again invited to provide input regarding the content of the draft maps and the potential sequence of elections; and

WHEREAS, as required by California Elections Code section 10010, the City held a public hearing on November 5, 2019, at which the public was invited to provide input regarding the content of the draft maps and the potential sequence of elections; and

WHEREAS, on November 11, 2019, consistent with the provisions of California Elections Code section 10010, the City published, and made available for release, five additional/ draft maps prepared and submitted by the City's demographer and three draft maps submitted by members of the public for consideration by the public and the City Council; and

WHEREAS, as required by California Elections Code section 10010, the City held a public hearing on November 19, 2019, at which the public was invited to provide input regarding the content of the draft maps and the potential sequence of elections; and

WHEREAS, on November 19, 2019, the City Council directed that Map 109b submitted by the City's demographer be revised and that map, as revised (Map 109c) was selected to be the single map to be provided for Council consideration for adoption on December 3, 2019; and

WHEREAS, on November 26, 2019, consistent with the provisions of California Elections Code section 10010, the City published and made available for release, one additional/revised draft map (Map 109c) for consideration by the public and the City Council; and

WHEREAS, as required by California Elections Code section 10010, the City held a public hearing on December 3, 2019, at which the public was invited to provide input regarding the content of the map selected for consideration by the Council (Map 109c) published and made available for release on or before November 26, 2019, and on the potential sequence of elections; and

WHEREAS, the purpose of this Ordinance is to enact, pursuant to California Government Code section 34886, an ordinance providing for the election of the members of the City Council of the City of Marina by district in four single-member districts, retaining a separately elected office of Mayor.

NOW, THEREFORE, the City Council of the City of Marina does ordain as follows:

Section 1.

Chapter 2.06 of the Marina Municipal Code, entitled "Municipal Elections", is hereby amended by adding Section 2.06.020 thereof to read as follows:

“2.06.020. By-district electoral system for four City Councilmembers; Mayor separately elected.

A. Pursuant to the City Charter and California Government Code sections 34886 and 34871 (c), councilmembers shall be elected by-districts in four (4) single-member districts. As required by the City Charter, the Mayor will be separately elected by a citywide vote.

B. (1) Beginning with the general municipal election in November 2020, councilmembers shall be elected in the electoral districts whose boundaries and district numbers are reflected on the map contained in **Exhibit A** attached hereto and incorporated herein by this reference and as subsequently reapportioned as provided by State law. Elections shall take place on a by-district basis as that term is defined in California Government Code section 34871, meaning one member of the City Council shall be elected from each district, by the voters of that district alone, except for the Mayor, who shall be elected citywide. In accordance with the general law and the City Charter, each councilmember and the Mayor, shall serve a four-year term until his or her successor has qualified.

(2) Except as provided in subdivision (B)(3) hereof, the councilmember elected to represent a district must reside in that district and be a registered voter in that district, and any candidate for City Council must live in, and be a registered voter in, the district in which he or she seeks election at the time nomination papers are issued, pursuant to California Government Code section 34882 and Elections Code section 10227. Termination of residency in a district by a councilmember shall create an immediate vacancy for that council district unless a substitute residence within the district is established within 30 days after the termination of residency.

(3) Notwithstanding any other provision of this section, each of the councilmembers in office at the time this Chapter takes effect shall continue in office until the expiration of the full term to which he or she was elected and until his or her successor is qualified. Vacancies in councilmember offices elected at large may be filled from the City at-large. At the end of the term of each councilmember, that member's successor shall be elected on a by-district basis in the districts established in Subsection A and the map contained in Exhibit A hereto, as may subsequently reapportioned as provided by State law. A vacancy in a Councilmember office elected by-district shall be filled by a person qualified to hold the office, who is a resident of the district.”

Chapter 2.06 of the Marina Municipal Code, entitled "Municipal Elections", is hereby amended by adding Section 2.06.030 thereof to read as follows:

“2.02.030. Election schedule for Council members elected by-district.

A. Councilmembers shall be elected in Council Districts 2 and 3 beginning at the General Municipal Election in November 2020, and every four years thereafter.

B. The Councilmembers from Council Districts 1 and 4 shall be elected beginning at the General Municipal Election in November 2022, and every four years thereafter.”

Chapter 2.06 of the Marina Municipal Code, entitled "Municipal Elections", is hereby amended by adding Section 2.06.050 thereof to read as follows:

“2.02.030 Nominations and Elections to Public Office and Elections on Measures.

Nominations and all elections to fill public offices and elections on measures shall be made, held and conducted in the manner provided for by general law.”

Section 2.

If necessary, to facilitate the implementation of this Ordinance, the City Manager or his or her designee is authorized to make technical adjustments to the district boundaries that do not substantively affect the populations in the districts, the eligibility of candidates, or the residence of elected officials within any district. The City Manager shall consult with the City Attorney concerning any technical adjustments deemed necessary and shall advise the City Council of any such adjustments required in the implementation of the districts.

Section 3.

The City Council finds that the proposed amendments to the Marina Municipal Code are exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations, Section 15061 (b)(3) in that it is not a project which has the potential for causing a significant effect on the environment.

Section 4.

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have adopted the Ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that anyone or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Section 5

This Ordinance shall be in full force and effect thirty (30) days after its final passage, and the Ordinance shall be posted within fifteen (15) days after the adoption.

THE FOREGOING ORDINANCE was introduced following a public hearing held at a regular meeting of the City Council of the City of Marina on December 3, 2019 and will come for adoption as an Ordinance of the City of Marina at a regular meeting of the Council to be held on the December 17, 2019.

AYES, COUNCIL MEMBERS: Berkley, O'Connell, Morton

NOES, COUNCIL MEMBERS: Urrutia, Delgado

ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None

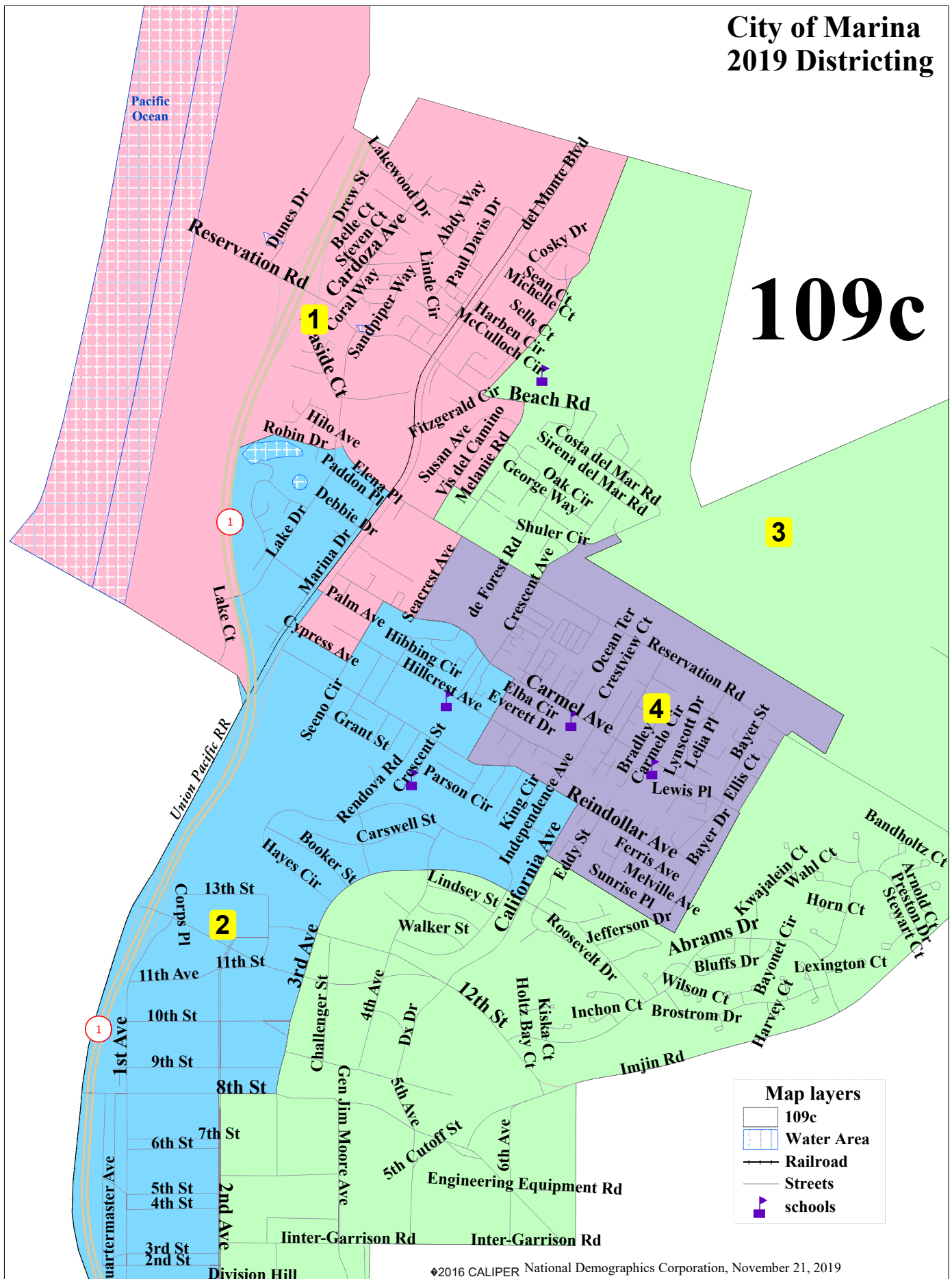
Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

City of Marina 2019 Districting

109c



City of Marina - Map 109c						
District		1	2	3	4	Total
	Total Pop	4,978	4,840	4,784	5,116	19,718
	Deviation from ideal	48	-90	-146	186	332
	% Deviation	0.97%	-1.83%	-2.96%	3.77%	6.73%
Total Pop	% Hisp	24%	35%	25%	25%	27%
	% NH White	38%	31%	36%	38%	36%
	% NH Black	8%	8%	10%	7%	8%
	% Asian-American	24%	20%	22%	22%	22%
Citizen Voting Age Pop	Total	3,447	3,122	3,720	4,132	14,422
	% Hisp	14%	24%	21%	12%	17%
	% NH White	47%	42%	42%	48%	45%
	% NH Black	9%	8%	13%	7%	9%
	% Asian/Pac.Isl.	27%	21%	17%	27%	23%
Voter Registration (Nov 2018)	Total	2,798	2,313	2,546	2,814	10,471
	% Latino est.	23%	25%	21%	22%	23%
	% Spanish-Surnamed	21%	23%	19%	20%	21%
	% Asian-Surnamed	9%	9%	7%	9%	9%
	% Filipino-Surnamed	3%	4%	3%	4%	3%
	% NH White est.	58%	56%	52%	59%	56%
	% NH Black	10%	10%	19%	9%	12%
Voter Turnout (Nov 2018)	Total	1,723	1,383	1,507	1,775	6,389
	% Latino est.	21%	23%	16%	19%	20%
	% Spanish-Surnamed	19%	21%	15%	17%	18%
	% Asian-Surnamed	6%	6%	6%	7%	7%
	% Filipino-Surnamed	2%	3%	3%	4%	3%
	% NH White est.	62%	60%	57%	64%	61%
	% NH Black	11%	11%	21%	10%	13%
Voter Turnout (Nov 2016)	Total	2,067	1,704	1,647	2,055	7,473
	% Latino est.	21%	23%	20%	20%	21%
	% Spanish-Surnamed	19%	21%	18%	18%	19%
	% Asian-Surnamed	7%	7%	6%	7%	7%
	% Filipino-Surnamed	3%	4%	3%	4%	3%
	% NH White est.	61%	58%	55%	58%	58%
	% NH Black est.	8%	8%	16%	10%	11%
ACS Pop. Est.	Total	5,186	4,924	5,417	5,674	21,200
Age	age0-19	23%	22%	32%	26%	26%
	age20-60	55%	55%	54%	53%	54%
	age60plus	23%	23%	14%	21%	20%
Immigration	immigrants	24%	23%	19%	27%	24%
	naturalized	63%	53%	54%	53%	56%
Language spoken at home	english	65%	64%	67%	59%	64%
	spanish	14%	17%	17%	19%	17%
	asian-lang	17%	15%	11%	18%	15%
	other lang	4%	4%	6%	5%	5%
Language Fluency	Speaks Eng. "Less than Very Well"	16%	17%	12%	24%	17%
Education (among those age 25+)	hs-grad	53%	57%	54%	56%	55%
	bachelor	21%	20%	20%	16%	19%
	graduatedegree	12%	11%	11%	10%	11%
Child in Household	child-under18	26%	25%	34%	24%	27%
Pct of Pop. Age 16+	employed	62%	63%	52%	59%	59%
Household Income	income 0-25k	16%	15%	21%	24%	19%
	income 25-50k	21%	22%	21%	24%	22%
	income 50-75k	20%	18%	17%	19%	19%
	income 75-200k	39%	40%	39%	31%	37%
	income 200k-plus	4%	6%	2%	2%	3%
Housing Stats	single family	60%	65%	56%	55%	59%
	multi-family	40%	35%	44%	45%	41%
	rented	52%	51%	72%	58%	57%
	owned	48%	49%	28%	42%	43%
Total population data from the 2010 Decennial Census.						
Surname-based Voter Registration and Turnout data from the California Statewide Database.						
Latino voter registration and turnout data are Spanish-surname counts adjusted using Census Population Department undercount estimates. NH White and NH Black registration and turnout counts estimated by NDC. Citizen Voting Age Pop., Age, Immigration, and other demographics from the 2013-2017 American Community Survey and Special Tabulation 5-year data.						

December 9, 2019

Item No: **8l(1)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of December 17, 2019

**CITY COUNCIL TO CONSIDER ADOPTING SECOND READING OF
ORDINANCE NO. 2019, ESTABLISHING A BY-DISTRICT ELECTION
PROCESS IN FOUR COUNCIL DISTRICTS**

REQUEST:

It is requested that the City Council consider:

1. approving second reading of Ordinance No. 2019, establishing a by-district election process in four Council Districts.

BACKGROUND:

The City received letters asserting the City's at-large electoral system violates the California Voting Rights Act (CVRA), and threatening litigation if the City declined to adopt a resolution of its intent to transition to district-based elections. The letters assert that the City of Marina's present at-large method of conducting elections has resulted in vote dilution for residents of protected classes, as defined in the CVRA, and has denied them effective representation and participation in elections for members of the Marina City Council. The City does not necessarily agree with the assertion but has taken this item under advisement with legal counsel and reviewed its options.

In response to a threat of potential CVRA litigation, one option is to defend the lawsuit, which comes at a significant cost; furthermore, no public agency has ever prevailed in defending a CVRA lawsuit. In the end, these agencies have either voluntarily implemented district-based election through a negotiated settlement or been forced to do so by a court order. A second option in response to a CVRA challenge is to voluntarily transition to district elections.

On September 4, 2019, the City Council adopted a resolution declaring its intent to initiate proceedings to transition the City from at-large to district-based Council Member elections pursuant to Elections Code Section 10010 and Government Code Section 34886 (RES-2017-13). In approving this resolution, the City is now in a "safe harbor" in which the transition to district-based elections can be completed without further threat of litigation.

The City of Marina currently has an at-large election system, which means that the electors for the entire City choose each of the four Council Members, and a directly elected Mayor. A district-based election is one in which the city is geographically divided into separate districts, each with one Council Member who resides in the district and is chosen by the electors residing in that particular district. The City Charter currently provides for the office of Mayor to be directly elected at large and therefore it would require a vote of the people to change the method established by the City Charter by which the Mayor is selected. Elections Code (Sec. 34886 and Sec. 34872) provides that a city can have an at-large elected mayor while having council members elected by districts.

Pursuant to Elections Code Section 10010, the City Council was required to hold at least five public hearings in connection with the establishment of electoral districts, before the Council moves to consider an ordinance to transition the City to district-based elections. The purpose of the first two public hearings was to inform the public about the districting process and to hear from the community on what factors should be taken into consideration while creating district boundaries. On September 17th and October 1st, the City Council held the first two public hearings to invite public input regarding the composition of the City's voting districts.

Following the initial two public hearings, the City Council also held two public hearings to discuss draft maps of proposed districts themselves. These final two hearings were held on November 5th and November 19th.

On December 3rd, the City Council held the final public hearing concerning the adoption of the final district map and introduction of an Ordinance establishing a by-district election process and election sequencing in four Council Districts.

ANALYSIS:

The City has retained the services of National Demographics Corporation (NDC) to assist in the creation of City Council District boundaries for voter consideration on the November 2020 ballot.

Until November 7th, the City solicited district maps prepared by residents to supplement the draft boundary maps prepared by NDC. To facilitate this input, map drawing tools were made available on the City's District Elections webpage and two outreach events were held: one at the Fire Prevention Open Housing on October 8th and one at the Marina Public Library on October 16th. Additionally, the outreach communications have taken place via the City's social media accounts, website, direct email Newsflash announcements, City Council meeting announcements, and newspaper ads. Furthermore, there have been four public hearings to date that have been televised and which have served to further inform the public and sought public input.

The first draft boundary maps were released on October 29, 2019 by NDC. These maps were posted seven days in advance of the public hearing at www.cityofmarina.org/933/District-Elections. The Council considered these maps and directed staff and NDC to make certain modifications to draft maps 104, 109 and 110.

The second draft boundary maps were released on November 11, 2019, by NDC. These maps were also posted seven days in advance of this public hearing at www.cityofmarina.org/933/District-Elections. The second draft maps consist of draft maps 104b, 109b, 110b, 111, 112, 113, 112b, and 113b. The Council considered these maps and directed staff and NDC to make modifications to draft map 109b that includes adding 100 total people to District 2 as depicted on draft map 109b.

In response to the City Council's direction at the November 19th public hearing, NDC has prepared draft map 109c (**EXHIBIT "A"**) which is the result of adding 100 total people to District 2 on draft map 109b. Draft map 109c has also been prepared in accordance with law including the following:

- Each Council District shall contain a nearly equal population as required by law.
- Council District boundaries shall be drawn in a manner that complies with the Federal Voting Rights Act and avoids racial gerrymandering.
- Council Districts shall consist of contiguous territory in as compact form as possible.
- Council Districts shall respect communities of interest as much as possible.
- Council Districts shall follow visible natural and man-made geographical and topographical features as much as possible.
- District borders shall be designed, insofar as this does not conflict with Federal or State law, to provide for an orderly transition to a district-based system as existing incumbent terms naturally expire.

NDC's draft Map 109c creates four City Council Districts, with the Mayor continuing to be elected at large. As the statistics indicate in **EXHIBIT "A"**, draft map 109c is population balanced and well balanced across all protected classes. Draft Map 109c has been available to the public since November 25, 2019 at www.cityofmarina.org/933/District-Elections.

Proposed Ordinance

The attached Ordinance proposes to amend MMC Chapter 2.06 “Municipal Elections.” The amendments include establishing a by-district electoral system for four City Councilmembers with the Mayor separately elected. Beginning with the general municipal election in November 2020, councilmembers shall be elected in the electoral districts whose boundaries and district numbers are reflected on the adopted map (**EXHIBIT “A”** to the draft Ordinance, proposed as Map 109c). Councilmembers must live in the district they represent and if there is a change in residency by a Councilmember to an address outside of the district they are elected to represent, the Councilmember must immediately vacate their seat unless they are able to reestablish an address in the district within 30-days. Each of the councilmembers in office at the time this Chapter takes effect shall continue in office until the expiration of the full term to which he or she was elected and until his or her successor is qualified. Election sequencing is proposed as follows:

- A. Councilmembers shall be elected in Council Districts 2 and 3 beginning at the General Municipal Election in November 2020, and every four years thereafter.
- B. The Councilmembers from Council Districts 1 and 4 shall be elected beginning at the General Municipal Election in November 2022, and every four years thereafter.”

Following the December 3rd public hearing, the City Council voted to approve the first reading of the proposed Ordinance establishing a by-district election process in four Council Districts and election sequencing in four Council Districts according to “Map 109c”.

ENVIRONMENTAL DETERMINATION:

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines sections 15320, 15378 and 15061(B)(3) as it is an organizational structure change and does not have the potential to result in either a direct or reasonably foreseeable indirect physical change in the environment.

COUNCIL PRIORITIES

At the March 2019 City Council retreat, the council identified a number of priorities. This item does not address any of the established priorities.

FISCAL IMPACT:

On September 4, 2019, the City Council approved a contract with National Demographics Corporation (NDC) for a not-to-exceed amount of \$36,625. Should the Council chose to approve the resolution introducing an ordinance establishing a By-District Election process and election sequencing in four Council Districts according to “Map 109c”, the total NDC contract cost will be \$24,000.

It is also anticipated that the claimant will seek the statutory maximum of \$30,000 for costs of bringing the matter before the City.

Finally, staff anticipates that the City’s November 2020 election costs will almost certainly be higher than in past elections, since the costs are calculated based upon the number of distinct contests in the election. Once a district-based election system is established, there will be a separate contest in each of two City Council districts rather than just one contest for all open City Council seats as has occurred in the past under the City’s at-large election system.

CONCLUSION:

It is recommended that the City Council approving a second reading of an ordinance establishing a by-district election process in four Council Districts.

Respectfully submitted,

Matt Mogensen
Assistant City Manager
City of Marina

REVIEWED/CONCUR:

Layne P. Long
City Manager
City of Marina