

## [5/28/26] Agenda Item 7A: Transition to Districts - First Public Hearing

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From Kevin Maguire <kmaguire831@gmail.com>

Date Wed 5/27/2026 3:55 PM

To City Clerk <cityclerk@cityofcapitola.gov>; City Council <citycouncil@cityofcapitola.gov>

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Subject: Public Comment — May 28, 2026 — Item 7A District Elections First Public Hearing

Dear Mayor Morgan, Vice Mayor Jensen, and Council Members Clarke, Orbach, and Westman,

I submit this written comment for the official record of tonight's first public hearing on the transition to district-based elections.

### **ON THE LEGAL PROCESS**

Marc Warshaw's written comment raises points that deserve a direct response on the record tonight. There is no court order, no regulatory directive, and no government finding that Capitola has violated anyone's voting rights. What the City has received is a demand letter from a private law firm with a documented financial interest in the outcome. MALDEF — the nation's leading Latino civil rights organization — does not bring CVRA actions against cities under 50,000 people. Capitola is approximately 10,000. And Enrique Dolmo Jr. — whose elections are cited as the primary statistical evidence in the demand letter — publicly stated at a prior hearing that he opposed his name being used in this process.

I ask the City Attorney to state on the record 5/28/2026 whether an independent legal opinion specifically addressing the impact of Louisiana v. Callais on Capitola's CVRA obligations has been prepared. Multiple residents have raised this question. It deserves a direct answer.

### **ON STRUCTURE — FOUR DISTRICTS PLUS ELECTED MAYOR, TWO-YEAR TERM**

I support four council districts with a citywide elected mayor on a two-year term. Capitola is a tourism-dependent city where the Village, beach, and infrastructure decisions affect every neighborhood. An elected mayor chosen by all residents provides the citywide perspective and democratic accountability that no single district representative can have. Two-year mayoral terms ensure the mayor faces voters on the same cycle as council members.

I ask that NDC model both four-district and five-district configurations before the Council makes a final structural commitment. The community should see what both options actually look like on

Capitola's map before the framework is locked in.

## **ON SEQUENCING — TERM EXPIRATION, NOT RACE**

This is a critical question the Council must address on the record tonight.

The November 2026 election proceeds at-large as normal — three seats. The two seats expiring in 2028 are held by Vice Mayor Jensen and Council Member Orbach. Those seats naturally become the first two district elections in 2028 based purely on term expiration — not on demographic composition, not on racial concentration, and not on any race-based sequencing rationale.

This matters legally. If the Supreme Court's ruling in *Louisiana v. Callais* establishes that race-conscious district drawing without proof of intentional discrimination is constitutionally problematic, then sequencing districts based on racial concentration — rather than on the neutral, objective fact of which terms expire first — creates unnecessary constitutional exposure. Term expiration is the legally clean, race-neutral sequencing rationale. It produces the same result — Jensen and Orbach's seats go first in 2028 — without any racial targeting justification that could be challenged under *Callais*.

I also ask: when is the first mayoral election scheduled under a four-district structure — 2028 alongside D1 and D2, or 2030 alongside D3 and D4? The mayor's seat is a new position with no existing term. Its first election timing significantly affects the political character of this transition. The community deserves to understand that timeline before the Council provides structural direction tonight.

## **ON CONFLICT OF INTEREST**

In a city of 1.7 square miles, district representatives will frequently face recusal conflicts under the Political Reform Act — specifically the 500-foot property interest threshold — on exactly the neighborhood decisions they were elected to oversee.

Vice Mayor Jensen recused himself from the Bay Avenue item at the May 14 meeting due to the proximity of his residence to the proposed project. Under districts, Bay Avenue falls within his district. The representative most accountable to those residents is also the one most likely to need recusal from their decisions.

The *Betts* doctrine provides limited relief — when more than 50 similarly situated neighbors share the same governmental impact, no individual official has a disqualifying financial interest. But *Betts* was developed in at-large contexts where a councilmember represents the entire city. Under district representation, where a member's primary accountability is to the specific neighborhood being affected, the *Betts* analysis changes fundamentally. The question is no longer whether 50 neighbors share the impact — it's whether the district representative's property interest is materially distinguishable from their constituents' interests when their entire constituency is the affected neighborhood. That question is unresolved.

Tonight's Item 7B — the 41st Avenue Corridor Plan — affects the same geography as proposed District 1. This is not hypothetical. I ask the City Attorney to provide a formal written opinion on Political

Reform Act conflict of interest implications under the Betts doctrine for district representatives before any maps are drawn.

## **ON COMMUNITIES OF INTEREST AND RESIDENCY**

No district lines can be drawn until both pre-map hearings are complete. I urge bilingual outreach to the 41st Avenue corridor, Jewel Box, Depot Hill, the Village, Cliffwood Heights, and our mobile home park community before June 11.

I also renew my request that the City Attorney bring a mandatory candidate residency ordinance to Council — modeled on Upland Municipal Code sections 2.02.110–2.02.150, San Bernardino Resolution 2023-140, and Fresno’s Council and Mayor Residency Act — requiring documentary verification before nomination papers are issued and annual re-verification by sitting members.

Thank you.

Kevin Maguire  
Capitola, CA

PS: Attached Example of 4 districts:

