



CITY of BRISBANE

Charter City & Election Issues Subcommittee Agenda

Thursday, April 25th, 2024 at 3:00PM • Hybrid Meeting
Brisbane City Hall, Large Conference Room, 50 Park Place, Brisbane, CA

The public may observe/participate in the Subcommittee meetings by using remote public comment options or attending in person. Subcommittee members shall attend in person unless remote participation is permitted by law. The Subcommittee may take action on any item listed in the agenda.

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Location: 50 Park Place, Brisbane, CA 94005 - [Large Conference Room](#)

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Email: IPadilla@brisbaneca.org

SPECIAL ASSISTANCE

If you need special assistance to participate in this meeting, please contact Ingrid Padilla at (415) 508-2113 or IPadilla@brisbaneca.org. Notification in advance of the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

SUBCOMMITTEE MEMBERS:

Councilmember Davis, Councilmember Lentz

ROLL CALL

- A. Consider any request of a City Councilmember to attend the meeting remotely under the “Emergency Circumstances” of AB 2449

PRESENTATIONS AND DISCUSSION ITEMS

- B. Discuss Brisbane Election Options

PUBLIC COMMENT

ADJOURNMENT

File Attachments for Item:

B. Discuss Brisbane Election Options



CITY COUNCIL SUBCOMMITTEE AGENDA REPORT

To: Council Subcommittee regarding Election Issues
Meeting Date: April 25th, 2024
From: Interim City Manager
Subject: Data Information for April 25th meeting

Background

To better understand the City's demographics, we will review with the subcommittee information from our latest census. We will also provide a couple of slides of information from a demographic study the Brisbane School District did in the last year.

The information will be provided at the meeting. We have a few graphics to show that provide some information on city demographics. The information is not conclusive and indeed generates more questions than it answers. To be fair, the question that would be asked in forming district elections has not been a direct subject of either our census or the school district work. Keep in mind that census data by nature lags in time and that the school district boundaries are not the same as the city.

At the March meeting of the City Council, I provided some general information on how much it would cost to hire a demographer. One of the demographers that I met with had a two-part process. That was noted in the staff report. The second demographer provided their complete services in one package. As I have mentioned before, if that is a direction the city ultimately would like to pursue, I would recommend that the subcommittee interview two or more firms. This will allow for exploration of the work to be done as well as to understand the various steps involved.

Attachment: CC March 21, 2024 Evaluating Various Election Issues Agenda Report



CITY COUNCIL AGENDA REPORT

Meeting Date: March 21, 2024

From: Clay Holstine, City Manager

Subject: Report back from Council Subcommittee evaluating various Election Issues

COMMUNITY GOAL RESULTS

Community Building

Purpose

The purpose of this agenda item is to get a sense of the City Council so that we can have as much clarity as possible on next steps as well as determine Councilmembers’ ideas and concerns.

Recommendation

City Council review and discuss election issues and seek guidance from the City Attorney.

Background

The City Council appointed a subcommittee of Davis and Lentz to review three election issues.

- Term Limits for Councilmembers
- District Elections for City Council races
- Directly elected Mayor.

The Subcommittee met and reviewed these items and discussed next steps. City Council has had a policy that if an issue is taking more than two hours of staff and/consultant resources an estimate of potential staff time and consultant cost be brought back to the Council as Whole for discussion.

At our meeting we discussed the need to do the following:

- Have the City Clerk review **term limits** in other cities in San Mateo County and compile an analysis. Staff believes this may take up to 10 hours of time as responses from various cities often require follow-up to clarify data and input. Term limits must be approved by the voters.
- **District Elections** is a complicated issue requiring the use of outside subject matter experts. An inquiry was made by a firm that conducted a study of the Town of Woodside. Step 1 of the process includes developing a Demographic Analysis that would include total population and voting population by counts of race and ethnicity. Step 2 would be an analysis of feasibility of drawing one or more majority-minority

districts. This analysis may be complicated by the fact that Brisbane has only one census tract. Data will have to be teased out. This analysis would then provide information as to whether the Council wants to continue to evaluate different District options. Step 1 would cost \$6,500. Step 2 would cost approximately \$ 12,500. Additional cost for publicizing and community engagement would be on top of this cost. Staff oversight of the consultant is anticipated to take upwards of 20 hours for Step 1.

- **Directly elected Mayor.** A directly elected mayor is an option for California General Law cities like Brisbane. Whether to pursue this is a question for the City Council. Brisbane voters must approve of having the mayor directly elected.

Discussion

City Council review and discuss above information and seek guidance from the City Attorney, specifically on the following questions:

- What is the legal framework and issues related to Term limits.
- What is the legal framework and issues related to District Elections.
- What is the responsibility and authority of an elected Mayor contrasted with the responsibilities and authority of a Mayor selected by members of the City Council? Does having an elected Mayor alter the responsibilities and authority of the City Manager?

It is anticipated that each of these items will take no more than five hours of legal research and analysis, probably less.

After the City Council reviews and discussion there are several potential next steps. The Council could do any of the following:

- Direct staff to move forward with one or more of the three items or request additional information. Additional information could be brought back to the Council as Whole or sent to the Subcommittee.
- Council could set a Workshop to focus on one or more of these issues.

Fiscal Impact

It's important to note that elections costs are difficult to estimate since no two elections are alike with costs and the number of registered voters vary considerably from election to election. Cost estimates can also vary based on the number of jurisdictions participating in an election. The estimated cost to place 1 ballot on an even-year election is between \$19,000 to \$27,000.

Clay Holstine

Clayton Holstine, Interim City Manager



**CHARTER CITY AND ELECTION ISSUES
SUBCOMMITTEE AGENDA REPORT
MEETING DATE: APRIL 25, 2024
FROM: Ingrid Padilla, City Clerk
SUBJECT: Election Issues**

Purpose:

The purpose of this report is to provide further information on election issues as it pertains to the Cities and Towns of San Mateo County as well as provide case studies on cities having similar population size as the City of Brisbane.

Recommendation:

Direct staff on next steps regarding the election issues of term limits for councilmembers, by-district elections for City Council races and directly elected Mayor.

Background:

Staff was directed by council at their meeting on March 21, 2024 to return to the City Charter/Elections Subcommittee with more information and to continue to review 3 election issues:

- Term Limits for Councilmembers
- District Elections for City Council races
- Directly elected Mayor

Discussion:

The City of Brisbane has a population of 4,851. There are 2,966 registered voters in the City of Brisbane. In terms of language selected by the registered voters: 2,882 selected English, 21 selected Spanish, 46 selected Chinese, 1 selected Tagalog and 16 selected other languages.

The City of Brisbane currently holds at-large elections to elect their councilmembers. An at-large election is the selection of an officeholder by the voters of an entire governmental unit rather than by voters of a specific district or subdivision. This type of election allows candidates to be elected or appointed to represent an entire population or membership rather than a subset.

As an alternative choice, under a district-based election system, the City would be divided into equally-populated districts. A candidate for a seat on the City Council must reside within that seat's district and is elected only by voters residing within that same district. One possible scenario is that the City Council Members (each elected to a four- year term) each represent one district while the Mayor (elected for a two-year term) continues to represent the City as a whole, and is elected via at-large elections. Another possible scenario is that all City Council Members (each elected to a four-year term) each represent one district and the Mayor is selected by the Council.

Cities and Towns in San Mateo County:

Out of the 20 Cities and Towns within San Mateo County, 10 Cities and 1 Town hold by-district elections as a method to elect councilmembers. The City of Belmont and the City of San Bruno elect their Mayors (for two-year terms) directly via at-large elections. As for council term limits, 6 Cities in San Mateo County have council term limits.

Case Studies:

The majority of smaller municipalities hold at-large elections for councilmember elections. There are 2 cities, the City of Solvang and the City of Ojai, and 1 town, the Town of Woodside that are similar in population size to Brisbane that have switched to by-district elections as a method to elect councilmembers. The City of Solvang and the City of Ojai also hold at-large elections to elect their Mayors for two-year terms. The City of Solvang and the City of Ojai received demand letters containing allegations that their City's at-large electoral system prevents members of the Latino community from electing their preferred candidate(s) and violates the California Voting Rights Act ("CVRA"). The letter threatened the City of Solvang and the City of Ojai with litigation if their City declines to adopt a district-based electoral system.

The Town of Woodside initially had "from-district" elections to elect their councilmembers. Woodside historically had 7 districts, and the "from district" meant that the Councilmembers needed to live in that district; however, anyone in Town could vote for that candidate. Votes did not need to come from their specific districts as they do now. The Town on Woodside did not receive a demand letter. It was noted that moving forward with by-district elections will save the Town costs associated with either litigating a potential CVRA lawsuit or settling the issue with prospective plaintiffs that may issue a demand letter. They held 5 public hearings for public engagement.

Attachments:

Attachment 1: Survey of Cities and Town in San Mateo County

Attachment 2: Case Studies of City of Solvang (Page 9), City of Ojai (page 53), and Town of Woodside (Page 70)



Ingrid Padilla, City Clerk

Attachment 1: Survey of Cities and Towns in San Mateo County

City/Town/etc.	Municipal type	Population (2020 Census)	Charter or General Law City	District or At Large	Rotation or Elected Mayor	Term Limits
1. San Mateo	City	105,661	Charter	District (5)	Rotation	Maximum three consecutive terms in office
2. Daly City	City	104,901	General Law	At Large	Rotation	
3. Redwood City	City	84,292	Charter	District (7)	Rotation, Mayor term of 2 years	Maximum four consecutive terms in office
4. South San Francisco	City	66,105	General Law	District (5)	Rotation, The Mayor and Vice Mayor are selected by the Council from its members in non-election years. During election years, the Mayor and Vice Mayor are selected after election	

City/Town/etc.	Municipal type	Population (2020 Census)	Charter or General Law City	District or At Large	Rotation or Elected Mayor	Term Limits
					results have been tabulated.	
5. San Bruno	City	43,908	General Law	District (4)	At Large Mayor elected 2 year term (Note- same power as Councilmember- - The Mayor chairs the City Council meetings, issues proclamations of recognition, represents the City in certain intergovernmental affairs and is the ceremonial head of the City. Although the Mayor is expected to provide political leadership on City	No person may hold the office of mayor for more than six terms in succession or the office of councilmember for more than three terms in succession. This provision does not prohibit holding office for more than twelve years, provided that terms of office are not consecutive.

City/Town/etc.	Municipal type	Population (2020 Census)	Charter or General Law City	District or At Large	Rotation or Elected Mayor	Term Limits
					<p>issues, the Mayor has no greater authority than any other City Council member. The Mayor and City Council as a collective body is the power of authority. The Mayor and City Council members have no authority as individuals; they must act by a majority to achieve their objectives.)</p>	
<p>6. Pacifica</p>	<p>City</p>	<p>38,640</p>	<p>General Law</p>	<p>District (5)</p>	<p>Rotation</p>	<p>Max two (2) terms of office as a Pacifica City Councilmember</p>

B.

City/Town/etc.	Municipal type	Population (2020 Census)	Charter or General Law City	District or At Large	Rotation or Elected Mayor	Term Limits
7. Foster City	City	33,805	General Law	At large	Rotation	No more than two terms in succession
8. Menlo Park	City	33,780	General Law	District	Rotation	
9. Burlingame	City	31,386	General Law	District	Rotation	
10. San Carlos	City	30,722	General Law	At large	Rotation	
11. East Palo Alto	City	30,034	General Law	At large	Rotation	

12. Belmont	City	28,335	General Law	District (4)	At Large Mayor to serve 2 year term	
13. Millbrae	City	23,216	General Law	District (5)	Rotation	Maximum two successive four-year terms
14. Half Moon Bay	City	11,795	General Law	District (5)	Rotation	
15. Hillsborough	Town	11,387	General Law	At Large	Rotation, maximum of two 1 year term	
16. Atherton	Town	7,188	General Law	At Large	Rotation	
17. Woodside	Town	5,309	General Law	District (5)	Rotation	
18. Brisbane	City	4,851	General Law	At Large	Rotation	
19. Portola Valley	Town	4,456	General Law	At Large	Rotation	
20. Colma	Town	1,507	General Law	At Large	Rotation	

Attachment 2

Case Study: City of Solvang

The City of Solvang received a letter via certified mail from attorney Kevin I. Shenkman of Shenkman & Hughes on behalf of his client Southwest Voter Registration Education Project. The letter contains unsubstantiated allegations that the City's at-large electoral system prevents members of Solvang's Latino community from electing their preferred candidate(s) and violates the California Voting Rights Act ("CVRA"). The letter threatens the City with litigation if the City declines to adopt a district-based electoral system. The City of Solvang's City Council started District Voting process in 2020 and in 2022 they transitioned to District Voting. The City of Solvang worked with NDC: National Demographics Corporation to produce the maps and provide demographic data. They held 5 public hearings and a map hearing for public engagement.

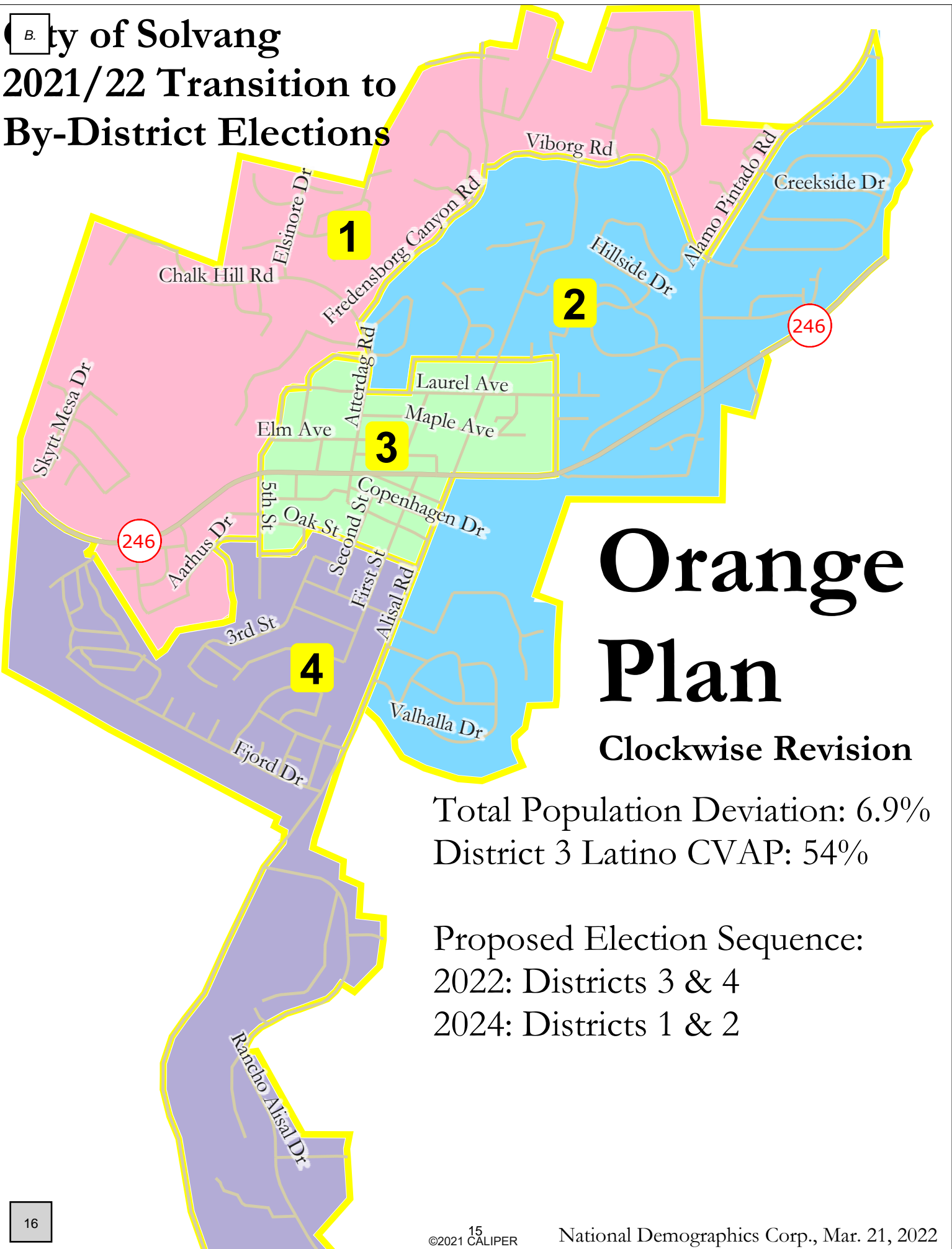
Total Area	City or Town	Population	Charter or General Law	District or At Large	Rotation or Elected Mayor	Term Limits
2.4 Square Miles	City	6,126	Charter	District (4)	Elected Mayor (2 year terms)	None

District Elections

New: The City Council voted to adopt the Clockwise Revision of the Orange Plan as the map for the new City Council districts, with the sequence of elections as posted on the map.

The City of Solvang, like hundreds of cities and school districts across the state, is making a change in how voters elect its City Council. Beginning in 2022, voters will vote for one City Council Member who lives in their district. This will replace the current

City of Solvang
2021/22 Transition to
By-District Elections



Orange Plan

Clockwise Revision

Total Population Deviation: 6.9%
District 3 Latino CVAP: 54%

Proposed Election Sequence:
2022: Districts 3 & 4
2024: Districts 1 & 2

B.

City of Solvang - Orange Plan

Category	Field	1	2	3	4	Total
2020 Census	Total Population	1,606	1,558	1,492	1,479	6,135
	Population Deviation	72	24	-42	-55	127
	Pct. Deviation	4.69%	1.56%	-2.74%	-3.59%	8.28%
Total Pop.	Hispanic/Latino	26%	14%	55%	26%	30%
	NH White	67%	78%	39%	68%	63%
	NH Black	1%	2%	0%	1%	1%
	NH Asian/Pac.Isl.	6%	5%	4%	3%	4%
	NH Native Amer.	0%	1%	1%	1%	1%
Citizen Voting Age Pop	Total	1,000	1,233	1,031	1,320	4,584
	Hisp	16%	9%	56%	16%	23%
	NH White	79%	88%	40%	80%	73%
	NH Black	1%	1%	0%	0%	1%
	Asian/Pac.Isl.	5%	2%	4%	4%	3%
	Native Amer.	1%	0%	0%	3%	1%
Voter Registration (Nov 2020)	Total	1,124	1,032	774	1,088	4,018
	Latino est.	14%	8%	37%	11%	16%
	Spanish-Surnamed	13%	8%	34%	11%	15%
	Asian-Surnamed	1%	2%	2%	1%	1%
	Filipino-Surnamed	0%	1%	0%	0%	0%
	NH White est.	86%	89%	66%	88%	84%
	NH Black	0%	1%	0%	0%	0%
Voter Turnout (Nov 2020)	Total	1,028	949	653	1,000	3,630
	Latino est.	12%	7%	33%	10%	14%
	Spanish-Surnamed	11%	7%	31%	10%	13%
	Asian-Surnamed	1%	2%	2%	1%	1%
	Filipino-Surnamed	0%	1%	0%	0%	0%
	NH White est.	86%	89%	66%	88%	84%
	NH Black	0%	1%	0%	0%	0%
Voter Turnout (Nov 2018)	Total	820	773	425	794	2,812
	Latino est.	11%	7%	23%	7%	11%
	Spanish-Surnamed	10%	7%	22%	7%	10%
	Asian-Surnamed	1%	1%	3%	0%	1%
	Filipino-Surnamed	0%	1%	1%	0%	0%
	NH White est.	87%	90%	73%	91%	87%
	NH Black est.	0%	1%	0%	0%	0%
Age	age0-19	23%	16%	21%	25%	21%
	age20-60	49%	51%	60%	45%	51%
	age60plus	28%	33%	19%	30%	28%
Immigration	immigrants	17%	18%	16%	15%	16%
	naturalized	58%	58%	58%	58%	58%
Language spoken at home	english	64%	79%	58%	85%	72%
	spanish	31%	16%	34%	11%	23%
	asian-lang	1%	2%	2%	1%	1%
	other lang	4%	3%	6%	4%	4%
Language Fluency	Speaks Eng. "Less than Very Well"	21%	8%	18%	8%	14%
Education (among those age 25+)	hs-grad	42%	50%	51%	39%	45%
	bachelor	21%	30%	19%	31%	26%
	graduatedegree	14%	8%	11%	13%	12%
Child in Household	child-under18	26%	19%	28%	27%	25%
Pct of Pop. Age 16+	employed	73%	65%	79%	58%	68%
Household Income	income 0-25k	17%	10%	14%	11%	13%
	income 25-50k	13%	17%	17%	11%	14%
	income 50-75k	23%	14%	21%	21%	20%
	income 75-200k	30%	47%	38%	43%	40%
	income 200k-plus	16%	13%	9%	14%	13%
Housing Stats	single family	72%	92%	67%	89%	80%
	multi-family	28%	8%	33%	11%	20%
	rented	42%	45%	49%	29%	41%
	owned	58%	55%	51%	71%	59%

Total population data from California's adjusted 2020 Census data. Citizen Voting Age Population, Age, Immigration, and other demographics from the 2015-2019 American Community Survey and Special Tabulation 5-year data. Turnout and Registration data from California Statewide Database ("Latino" figures calculated by NDC using Census Bureau's Latino undercount by surname estimate).

system of at-large citywide elections in which voters have the ability to vote for all City Council Members. However, the Mayor will continue to be elected at-large.

Calendar of Workshops and Public Hearings

Date & Time	Location	Meeting Type	Links to Documents & Recordings
August 9, 2021 at 6:45pm	City Hall/Virtual	Public Hearing 1 Held prior to release of draft maps. Receive input on composition of districts.	Agenda Video (Time Stamp: 0 hr, 44 min)
August 23, 2021 at 9:00pm	City Hall/Virtual	Public Hearing 2 Held prior to release of draft maps. Receive input on composition of districts.	Agenda Video (Time Stamp: 3 hr, 12 min)
September 13, 2021 at 8:00pm	City Hall/Virtual	Public Hearing 3 Held prior to release of draft maps.	Agenda Video (Time Stamp: 1 hr, 52 min)

Date & Time	Location	Meeting Type	Links to Documents & Recordings
		Receive input on composition of districts.	
<p><i>California Data Release Early October 2021</i></p>		California Statewide Database releases California’s official ‘prisoner-adjusted’ 2020 population data.	
<p><i>Release Draft Maps February 7, 2022</i></p>		Must be posted 7 days prior to Public Hearing 4.	
<p>March 7, 2022 at 5:00 pm</p>	<p>City Hall/Virtual</p>	<p>Public Hearing 4 Discuss and revise the draft maps and discuss election sequence.</p>	<p>Agenda Video (Time Stamp: 0 hr, 2 min)</p>
<p>March 28, 2022 at 7:00 pm</p>	<p>City Hall/Virtual</p>	<p>Public Hearing 5 Discuss draft maps and election sequence. Select</p>	<p>Agenda Video (Time Stamp: 1 hr, 40 min)</p>

Date & Time	Location	Meeting Type	Links to Documents & Recordings
		map and introduce ordinance.	
April 11, 2022 at 7:00 pm	City Hall/Virtual	Map Adoption Hearing Final map adoption and second reading of ordinance.	Agenda Video (Time Stamp: 0 hr, 39 min)

FAQ: What criteria will our City Council use when drawing district lines?

1. Federal Laws
 - o Equal Population (based on total population of residents as determined by the most recent Federal decennial Census and adjusted by the State to reassign incarcerated persons to the last known place of residence)
 - o Federal Voting Rights Act
 - o No Racial Gerrymandering
2. California Criteria for Cities (to the extent practicable and in the following order of priority)
 - o Geographically contiguous (areas that meet only at the points of adjoining corners are not contiguous. Areas that are separated by water and not connected by a bridge, tunnel, or ferry service are not contiguous.
 - o Undivided neighborhoods and “communities of interest” (Socio-economic geographic areas that should be kept together for purposes of its effective and fair representation)

- Easily identifiable boundaries
 - Compact (Do not bypass one group of people to get to a more distant group of people)
 - Prohibited: “Shall not favor or discriminate against a political party.”
3. Other Traditional Districting Principles
- Respect voters’ choices / continuity in office
 - Future population growth

FAQ: What are Communities of Interest?

A community of interest is a “contiguous population that shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation.”

Below are useful excerpts from the Local Government Redistricting Toolkit by Asian Americans Advancing Justice – Asian Law Caucus (2020).

Communities of interest are the overlapping sets of neighborhoods, networks, and groups that share interests, views, cultures, histories, languages, and values and whose boundaries can be identified on a map.

The following elements help define communities of interest:

- shared interests in schools, housing, community safety, transit, health conditions, land use, environmental conditions, and/or other issues;
- common social and civic networks, including churches, mosques, temples, homeowner associations, and community centers, and shared use of community spaces, like parks and shopping centers;
- racial and ethnic compositions, cultural identities, and households that predominantly speak a language other than English;
- similar socio-economic status, including but not limited to income, home-ownership, and education levels;
- shared political boundary lines from other jurisdictions, such as school districts, community college districts, and water districts.

Resources

New releases and other districting-related materials will be added here as they become available.

Online publications and guides to districting/redistricting:

- [From MALDEF, the NAACP and the Asian Justice Center](#)
- [From the Asian Americans Advancing Justice](#)
- [From the Brennan Center](#)
- [From the League of Women Voters](#)
- [From the California Independent Redistricting Commission FAQs](#)



Solvang City Council

STAFF REPORT

PREPARED BY: Chip Wullbrandt, City Attorney

MEETING DATE: May 11, 2020

SUBJECT: DEMAND BY ATTORNEY FOR SOUTHWEST VOTER REGISTRATION EDUCATION PROJECT THAT CITY CHANGE TO BY-DISTRICT ELECTORATE SYSTEM

RECOMMENDATION:

Consider demand letter received, take public comment and direct staff to prepare Resolution of Intent to change to by-district electoral system for Council members for consideration at Council meeting prior to June 18, 2020.

DISCUSSION:

In 2001, the California Legislature adopted the California Voter Rights Act (CVRA). The CVRA allows plaintiffs to challenge “at large” elections for Council members based on the theory that such method of election is racially biased. The CVRA sets a very low threshold of proof for the plaintiff, and financial incentives for attorneys representing such plaintiffs to bring litigation. Based on claims concerning the 2016 City Council election, the City has received the attached demand letter from an attorney for the “Southwest Voter Registration Education Project” and its Solvang members. As discussed in the attached League of California Cities general session presentation from May 2018 on legislation and Litigation Outcomes concerning the CVRA, the likely costs for a City sued under the CVRA are substantial and so far no city in California has successfully defended such a suit. The 2018 League of Cities discussion also explains a “safe harbor” process the City can follow if it adopts a Resolution of Intent to change to by-district elections within 45 days of receipt of a demand letter. In 2018, the City of Buellton received such a demand, and will be shifting to by-district elections for 2022. Lompoc and Santa Maria have similarly responded to such a demand.

FISCAL IMPACT:

There are no direct fiscal impacts associated with this item.

ATTACHMENTS:

B.

Attachment A – Demand Letter

Attachment B – League of California Cities –“The Voting Rights Act” Publication



28905 Wight Road
Malibu, California 90265
(310) 457-0970
kshenkman@shenkmanhughes.com

AP
MAY 4 20
RECEIVED

VIA CERTIFIED MAIL

April 30, 2020

Lisa Martin - City Clerk
City of Solvang
1644 Oak Street
Solvang, CA 93463

Re: *Violation of California Voting Rights Act*

I write on behalf of our client, Southwest Voter Registration Education Project and its members residing in Solvang. The City of Solvang (“Solvang” or “City”) relies upon an at-large election system for electing candidates to its City Council. Moreover, voting within the City is racially polarized, resulting in minority vote dilution, and therefore Solvang’s at-large elections violate the California Voting Rights Act of 2001 (“CVRA”).

The CVRA disfavors the use of so-called “at-large” voting – an election method that permits voters of an entire jurisdiction to elect candidates to each open seat. *See generally Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 667 (“*Sanchez*”). For example, if the U.S. Congress were elected through a nationwide at-large election, rather than through typical single-member districts, each voter could cast up to 435 votes and vote for any candidate in the country, not just the candidates in the voter's district, and the 435 candidates receiving the most nationwide votes would be elected. At-large elections thus allow a bare majority of voters to control every seat, not just the seats in a particular district or a proportional majority of seats.

Voting rights advocates have targeted “at-large” election schemes for decades, because they often result in “vote dilution,” or the impairment of minority groups’ ability to elect their preferred candidates or influence the outcome of elections, which occurs when the electorate votes in a racially polarized manner. *See Thornburg v. Gingles*, 478 U.S. 30, 46 (1986) (“*Gingles*”). The U.S. Supreme Court “has long recognized that multi-member districts and at-large voting schemes may operate to minimize or cancel out the voting strength” of minorities. *Id.* at 47; *see also id.* at 48, fn. 14 (at-large elections may also cause elected officials to “ignore [minority] interests without fear of political consequences”), citing *Rogers v. Lodge*, 458 U.S.

613, 623 (1982); *White v. Register*, 412 U.S. 755, 769 (1973). “[T]he majority, by virtue of its numerical superiority, will regularly defeat the choices of minority voters.” *Gingles*, at 47. When racially polarized voting occurs, dividing the political unit into single-member districts, or some other appropriate remedy, may facilitate a minority group's ability to elect its preferred representatives. *Rogers*, at 616.

Section 2 of the federal Voting Rights Act (“FVRA”), 42 U.S.C. § 1973, which Congress enacted in 1965 and amended in 1982, targets, among other things, at-large election schemes. *Gingles* at 37; see also Boyd & Markman, *The 1982 Amendments to the Voting Rights Act: A Legislative History* (1983) 40 Wash. & Lee L. Rev. 1347, 1402. Although enforcement of the FVRA was successful in many states, California was an exception. By enacting the CVRA, “[t]he Legislature intended to expand protections against vote dilution over those provided by the federal Voting Rights Act of 1965.” *Jauregui v. City of Palmdale* (2014) 226 Cal. App. 4th 781, 808. Thus, while the CVRA is similar to the FVRA in several respects, it is also different in several key respects, as the Legislature sought to remedy what it considered “restrictive interpretations given to the federal act.” Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001-2002 Reg. Sess.) as amended Apr. 9, 2002, p. 2.

The California Legislature dispensed with the requirement in *Gingles* that a minority group demonstrate that it is sufficiently large and geographically compact to constitute a “majority-minority district.” *Sanchez*, at 669. Rather, the CVRA requires only that a plaintiff show the existence of racially polarized voting to establish that an at-large method of election violates the CVRA, not the desirability of any particular remedy. See Cal. Elec. Code § 14028 (“A violation of Section 14027 *is established* if it is shown that racially polarized voting occurs ...”) (emphasis added); also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, p. 3 (“Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown).”)

To establish a violation of the CVRA, a plaintiff must generally show that “racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision.” Elec. Code § 14028(a). The CVRA specifies the elections that are most probative: “elections in which at least one candidate is a member of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of a protected class.” Elec. Code § 14028(a). The CVRA also makes clear that “[e]lections conducted prior to the filing of an action ... are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action.” *Id.*

Factors other than “racially polarized voting” that are required to make out a claim under the FVRA – under the “totality of the circumstances” test – “are probative, but not necessary factors to establish a violation of” the CVRA. Elec. Code § 14028(e). These “other factors” include “the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns.” *Id.*

The City of Solvang’s at-large system dilutes the ability of Latinos (a “protected class”) – to elect candidates of their choice or otherwise influence the outcome of the City’s council elections.

As of the 2010 Census, Latinos comprised 29.2% of the City’s population, and likely a greater proportion today. However, Latinos have generally not been represented on the Solvang City Council, despite their significant proportion of the population and electorate. The contrast between the significant Latino proportion of the electorate and the historical underrepresentation of Latinos to be elected to the Solvang City Council is outwardly disturbing and fundamentally hostile towards participation from members of this protected class.

In light of the City’s underrepresentation of Latinos, it is no wonder why Latino residents do not emerge as candidates, feel marginalized, and have historically been excluded from meaningful participation in the City’s governance. During the City’s history, there have been only a few Latinos to emerge as candidates for the Oakley City Council. Most recently, Justin Rodriguez applied to fill a vacancy on the Solvang City Council. Though Mr. Rodriguez was acknowledged by all of the Solvang City Council members as being qualified for that position, the Solvang City Council nonetheless appointed a non-Hispanic white candidate, thus maintaining the complete homogeneity of the council and further discouraging potential Latino candidates. Opponents of fair, district-based elections may attempt to attribute the glaring lack of candidates within protected classes to a lack of interest from their respective communities within the City. On the contrary, the virtual absence of protected class candidates to seek election to the Solvang City Council reveals vote dilution. *See Westwego Citizens for Better Government v. City of Westwego*, 872 F. 2d 1201, 1208-1209, n. 9 (5th Cir. 1989).

The City of Solvang's election history is additionally illustrative. In 2016, for example, Brian Baca received significant support from the City's Latino community, Mr. Baca lost that election. This election evidences vote dilution which is directly attributable to the City's unlawful at-large election system.

In addition to the "endogenous" elections involving candidates who are members of the protected class, the CVRA also directs an analysis of "elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of a protected class." *See* Elec. Code § 14028. Typically, Propositions 187, 209 and 227 are analyzed for this purpose in California voting rights cases. Each of these propositions, though strongly opposed by the Latino community, were supported by the majority non-Hispanic white electorate in Solvang.

As you may be aware, in 2012, we sued the City of Palmdale for violating the CVRA. After an eight-day trial, we prevailed. After spending millions of dollars, a district-based remedy was ultimately imposed upon the Palmdale City Council, with districts that combine all incumbents into one of the four districts.

More recently, after a 7-week trial, we also prevailed against the City of Santa Monica, after that city needlessly spent millions of dollars defending its illegal election system – far in excess of what was spent in the Palmdale litigation - taxpayer dollars which could have been more appropriately spent on indispensable municipal services and critical infrastructure improvements. Just prior to the trial in that case, counsel for the City of Santa Monica – Kahn Scolnick, a partner at Gibson Dunn & Crutcher LLP proclaimed that, "the reality is that if Santa Monica fails the CVRA test, then no city could pass, because Santa Monica is doing really well in terms of full representation and success of minority candidates." ("In Rare California Voting Rights Trial, Gibson Dunn Steps Up for Santa Monica", Law.com, August 1, 2018). Notwithstanding Mr. Scolnick's prediction, Plaintiffs succeeded in proving that Santa Monica's election system was in violation of the CVRA and the Equal Protection Clause of the California Constitution.

Given the historical lack of representation of those from this protected class on the Solvang City Council in the context of racially polarized elections, we urge the City of Solvang to voluntarily change its at-large system of electing city council members. Otherwise, on behalf of residents within the jurisdiction, we will be forced to seek judicial relief. Please advise us no later than June 20, 2020 as to whether you would like to discuss a voluntary change to your current at-large system.

We look forward to your response.

Very truly yours,



Kevin I. Shenkman



The California Voting Rights Act: Recent Legislation & Litigation Outcomes

Thursday, May 3, 2018 General Session; 9:00 – 10:30 a.m.

Youstina N. Aziz, Richards, Watson & Gershon
Douglas Johnson, President, National Demographics Corporation
James L. Markman, City Attorney, Brea, La Mirada, Rancho Cucamonga and Upland

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The California Voting Rights Act: Recent Legislation & Litigation Outcomes

Prepared by:
James L. Markman
Youstina N. Aziz
714.990.0901



And
Dr. Douglas Johnson
310.200.2058



The California Voting Rights Act: Recent Legislation & Litigation Outcomes

You are sitting at your office on a Thursday afternoon, and the city manager sends you an email letting you know that the city received a demand letter about a voting rights issue. You review the demand letter and realize that it is a letter from a prospective plaintiff's attorney alleging that the city's election system is in violation of the California Voting Rights Act ("CVRA") and threatening litigation if the city does not voluntarily change its elections system. What do you do?

At least 88 cities have made the change to by-district elections and two more, the City of Goleta and the City of Carpinteria, agreed to make the change for 2022. Other cities, such as the City of San Clemente have decided to put the matter on the 2018 ballot for voters' approval. Approximately eighteen other cities are in some form of legal dispute but have not yet decided to make the change to by-district elections. For context, only 28 cities employed by-district elections prior to passage of the CVRA. Cities are not the only public entities susceptible to a CVRA challenge. Thirty two community college districts, over 165 school districts, and at least 12 other special districts have made the change to by-district elections.

This paper provides an overview of the CVRA and recent developments in both legislation and litigation surrounding the CVRA. It summarizes the options cities have in responding to CVRA demand letters, the process cities are required to go through in order to change their election system, and issues that have arisen in the process of jurisdictions transitioning from at-large to district-based elections. This paper focuses on the process for changing to district-based elections for general law at-large cities; the process may be slightly different for charter cities depending on whether they have to amend their charter to change their election system.

I. Introduction

The CVRA, Elections Code Sections 14025-14032, was enacted to implement the California constitutional guarantees of equal protection and the right to vote.¹ The CVRA provides a private right of action to members of a protected class where, because of "dilution or the abridgment of the rights of voters," an at-large election system "impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election."² The CVRA defines a "protected class" broadly as a class of voters who are members of a race, color, or language minority group.³

To establish a violation under the CVRA, a plaintiff must show that "racially polarized voting" occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters.⁴ Racially polarized voting means voting in which there is a difference in the choices of candidates or other electoral choices that

¹ Elec. Code § 14031.

² Elec. Code §§ 14027, 14032.

³ Elec. Code § 14026(d).

⁴ Elec. Code § 14028(a).

are preferred by voters in a protected class and the choices of the voters in the rest of the electorate.⁵ The occurrence of racially polarized voting is determined by examining (1) results of elections, with more weight given to elections in which at least one candidate is a member of a protected class, or (2) elections involving ballot measures or other electoral choices that affect the rights of the members of the protected class.⁶

While modeled after the federal Voting Rights Act of 1965 (“FVRA”), the CVRA lowers the threshold required to establish a voting rights violation. For example, unlike the FVRA, a protected class does not have to be geographically compact or concentrated to allege a violation of CVRA.⁷ Moreover, proof of intent on the part of the voters or elected officials to discriminate against a protected class is not required.⁸ The CVRA also eliminates the “totality of circumstances” test set forth in the FVRA, precluding introduction of other evidence as to why preferred candidates of the protected class lost elections. The deletion of the totality of circumstances factors makes CVRA litigation purely a statistical exercise.

Because of that lower threshold of proof, no jurisdiction has prevailed in a CVRA action as of the time this paper was written. Lacking an example of a successful defense, and because of the enormous financial cost involved in defending against – much less losing – such claims, and the majority of jurisdictions that receive a demand letter change to by-district elections without analyzing their election system to determine whether there is, in fact, racially polarized voting. The short time frame jurisdictions have in order to implement district-based elections under Elections Code Section 10010 also pushes jurisdictions toward by-district elections.

II. Recent Legislation

a. *Ability to Transition to District-Based Elections by Ordinance*

Before January 1, 2017, Government Code Section 34886 allowed cities with populations less than 100,000 to transition to district-based elections by ordinance. Cities with populations greater than 100,000 were required to place the issue on the ballot for voters to approve the transition. The population cutoff created an issue for larger cities that received demand letters to change their election system. For example, the City of Rancho Cucamonga received a letter on December 23, 2015 alleging that the city’s election system was in violation of the CVRA and urging the city to voluntarily change its at-large system of electing council members or face litigation. Because Rancho Cucamonga’s population was greater than 100,000, the city had to place the measure on the ballot for voters’ approval. After the city began analyzing its election system, but before it was able to place the issue on the November 2016 ballot, a CVRA action was filed against the city on March 10, 2016. After the voters approved the transition to district-based elections, the plaintiffs refused to dismiss the action alleging that the election system adopted by the city was flawed.

Recent legislative amendments to Government Code Section 34886 allow a city, regardless of population, to adopt an ordinance establishing district-based elections without

⁵ Elec. Code § 14026(e).

⁶ Elec. Code § 14028(b).

⁷ Elec. Code § 14028(c).

⁸ Elec. Code § 14028(d).

being required to submit the ordinance to the voters for approval. The elimination of the population cutoff in Section 34886 helps large cities avoid the scenario that occurred in Rancho Cucamonga by giving them the ability to adopt district-based elections by ordinance. Still some jurisdictions contemplate placing the issue on the ballot for voters' approval after they receive a letter alleging that the city's at-large election system violates the CVRA. If that is the case, the city should work with the potential plaintiff to reach a settlement to that effect. If a city decides to place the measure on the ballot, there is a risk that the voters will turn it down, leaving the city to choose between facing litigation or acting contrary to the voters' decision.

b. Amendments to Elections Code 10010 - "Safe-Harbor Provision"

Following efforts to provide some protection to jurisdictions from the costs involved in CVRA-related litigation, the California Legislature amended Section 10010 of the Elections Code to include a "Safe-Harbor" provision that would give jurisdictions the opportunity to change their election system once they receive a demand letter, while capping the amount of attorney's fees and costs that are recoverable by a prospective plaintiff(s).

Effective January 1, 2017, Elections Code Section 10010 requires a prospective plaintiff to send a written notice to the clerk of the city asserting that the city's method of conducting elections may violate the CVRA.⁹ Section 10010 puts a 45-day stay on a prospective plaintiff's ability to bring an action allowing the city to adopt a resolution outlining its intention to transition from at-large to district-based elections.¹⁰ If the city begins the process of switching to districts before receiving a notice letter or within 45 days of receipt of a notice and adopts a resolution to that effect, under Section 10010, a potential plaintiff cannot commence an action within 90 days of the resolution's passage.¹¹

After adopting the resolution of intention, the city is required to hold two public hearings over a period of no more than 30 days before drawing draft maps.¹² During those hearings, the public is invited to provide input regarding the composition of the districts.¹³ After the city's demographer draws the draft maps, the city must publish at least one draft map and, if members of the governing body of the city will be elected in their districts at different times to provide for staggered terms of office, the potential sequence of the elections.¹⁴ The city then holds at least two additional hearings over a period of no more than 45 days, at which the public is invited to provide input regarding the content of the draft maps and the proposed sequence of elections.¹⁵ The city has to publish the draft maps and sequencing at least seven days before those hearings.¹⁶

In short, a jurisdiction receiving a CVRA demand letter has 45 days to declare their intent to change their election system and then 90 days after that declaration to adopt the change.¹⁷ If

⁹ Elec. Code § 10010(e)(1).

¹⁰ Elec. Code § 10010(e)(2)-(3).

¹¹ Elec. Code § 10010(e)(3)(B).

¹² Elec. Code § 10010(a)(1).

¹³ *Id.*

¹⁴ Elec. Code § 10010(a)(2).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Elec. Code § 10010(e)(3)(A)-(B).

the city misses either of those deadlines, it could find itself in court and facing attorney fee demands well into the six or even seven figures.

Elections Code 10010 also offers some protection to jurisdictions in terms of exposure to a prospective plaintiff's attorneys' fees. If the jurisdiction meets the deadlines outlined above, the prospective plaintiff who sent the demand letter may only recover up to \$30,000 in attorneys' fees and costs from the city.¹⁸ The prospective plaintiff has to make the demand for reimbursement of costs with 30 days of the ordinance's adoption.¹⁹ If more than one prospective plaintiff requests a reimbursement of attorneys' fees and costs, the city shall reimburse the prospective plaintiffs in the order in which they sent the demand letter, but the cumulative amount of reimbursement to all prospective plaintiffs is capped at \$30,000.

c. Application of the Safe Harbor Provision

Back to your city: the first step after receiving the demand letter is to calculate 45 days from the date of the city's receipt. The date the letter is received is crucial because the city has 45 days of receipt of the letter to determine whether to change its elections system. If the city adopts a resolution by that date outlining its intention to transition from at-large to district-based elections, the prospective plaintiff is precluded from commencing an action under the CVRA for 90 days during which time the city goes through the process set forth above for transitioning to districts.

Second, you should place the matter on the next closed session agenda to inform the council of receipt of the demand letter and get direction regarding how they would like to proceed. Because of the 45-day deadline, you have limited opportunity to place the matter on closed session. Due to the complexity of the CVRA and related legislation, the city council may need more than one closed session to discuss the matter. You may also hold special closed sessions to discuss the matter, if necessary.

Third, because the council will most likely want to assess the accuracy of the allegations in the demand letter and the potential exposure, the jurisdiction's legal counsel should engage a demographer once you have received the demand letter. The demographer is instrumental in two aspects. First, if the city council decides to conduct a racially polarized voting analysis prior to determining whether to transition to district-based elections, the demographer conducts the analysis and presents it to the city council. Second, if the city council decides to initiate the process of transitioning to district-based elections, the demographer creates the district maps for the city council's consideration. In engaging the demographer, the city should consider retaining him or her through its city attorney in order to protect their work product to the extent possible.

Fourth, you should retrieve the election results for the city's most recent elections. Often times the demand letter contains allegations that are not entirely accurate because a prospective plaintiff's attorney is not familiar with the city's election history. For example, with some cities, prospective plaintiffs cited the absence of minorities on the city council as evidence of racially polarized voting. Because a prospective plaintiff relied on surnames to determine whether

¹⁸ Elec. Code § 10010(f)(3).

¹⁹ Elec. Code § 10010(f)(1).

minority candidates were elected to city council, plaintiff's allegations failed to account for minority candidates who do not necessarily have minority surnames, such as a minority candidate who changed his or her last name after marriage. Reviewing the city's election history to fact-check the allegations in the demand letter helps the city council make an informed decision.

d. District-Drawing Process

If the city council decides to proceed with the transition to district-based elections after analyzing the issue, the city council should adopt a resolution setting forth its intention to change its election system. Subsequently, the city must hold at least four public hearings before holding a hearing at which to vote on the ordinance establishing district-based elections. Two of the public hearings must be held before drawing the draft map(s). During those two public hearings, the city council would receive public input regarding the composition of the districts. Usually, these public hearings are held during regularly scheduled city council meetings; however, the city can also schedule them during special meetings. While Elections Code Section 10010 does not set forth the notice requirement for the first two public hearings, it is prudent for the city to apply the same notice requirement in Section 10010 for the second two public hearings which requires that any draft maps be published at least seven days before the hearing at which they would be considered. The city council cannot start the map drafting process without first holding those two public hearings. The first two hearings can be noticed in a single published hearing notice.

The focus of the first two hearings is on answering resident questions about the process and identifying the neighborhoods and communities of interest that should be used as the 'building blocks' to develop the draft district maps. Issues such as whether a community wants to be united in one district or included in multiple districts are often debated at this time. Most residential neighborhoods tend to lean toward being united in one district, while downtown business districts, port or industrial areas, and large active living senior communities typically lean toward having multiple representatives.

After the first two public hearings are held, the demographer drafts at least one draft map, but often times multiple maps are drawn. Interested residents may also submit maps, either using their own means or using tools provided by the demographer. Section 10010 requires that the first version of a draft map be published at least seven days before consideration at a hearing. If a draft map is revised at or following a hearing, it must be published and made available to the public for at least seven days before being adopted. After holding the four public hearings, the city council can then vote to approve or defeat the ordinance establishing district-based elections.

There are various ways residents can be encouraged and empowered to propose draft maps (in addition to the map(s) drafted by the City's official demographer). Depending on the level of public interest, the Council may have only the demographer's maps to consider, or as many as 20 or 40 resident-drawn proposals. Experienced demographers can provide tools to empower residents to draw maps as well as assistance guiding the city council through reviewing the pool of maps and arriving at a final selection.

The seven-day draft map publication provisions of Section 10010(a)(2) complicate the consideration of draft maps. The public is not barred from proposing new maps at each hearing, but the city council is barred from “considering” any new map that was not published at least seven days in advance. Section III. *a.*, *infra*, discusses the publication requirement set forth in Section 10010.

The timeline set forth in Elections Code 10010 does not leave much room for cities to conduct very robust community outreach programs regarding the city’s transition to district-based elections. While not required under Elections Code Section 10010, cities should still make the effort to hold community meetings and forums to get feedback from the public and answer questions regarding the process. Extensive outreach and notification about the transition to district-based elections will reduce the voters’ surprise and possible objections when the first by-district election is held.

e. Application of Process to Charter Cities

A charter city would need to review its charter to determine whether a charter amendment is necessary to change the city’s election system and whether the proposed charter amendment would be placed on the ballot. If the jurisdiction is a charter city, there is a preliminary question of whether the public hearing requirements of Elections Code 10010 would apply. On the one hand, Section 10010 specifically states that “[a] political subdivision that changes from an at-large method of election to a district-based election . . . shall do all of the following before a public hearing at which the governing body of the political subdivision votes to approve or defeat **an ordinance** establishing district based elections” (Emphasis added). On its face, Section 10010 applies only when a city changes its election system by ordinance. At the same time, the CVRA explicitly provides that it applies to charter cities,²⁰ and Section 10010 specifically references the CVRA and incorporates some of the CVRA’s provisions.²¹

In placing a charter amendment on the ballot, a charter city needs to determine whether to apply the requirements set forth in Elections Code Section 10010. While there are no binding court decisions on the issue, it is prudent for a charter city to follow the process set forth in Elections Code Section 10010 to avoid potential challenges to its process. The city also needs to determine whether to hold the public hearings before or after it places the charter amendment on the ballot. On the one hand, there is an argument that the public hearings must be held before a charter amendment is placed on the ballot, because if the proposed amendment passes, that establishes district-based elections for the city council. On the other hand, because Section 10010 states specifically that it applies to an ordinance establishing district-based elections, there is an argument that a charter amendment is not an ordinance that is subject to the requirements set forth in that section.

A charter city should review its municipal laws to determine the process set forth therein for changing its election system and potential issues that may arise in attempting to comply with the requirements of Elections Code Section 10010.

²⁰ Elec. Code § 14026(c).

²¹ See Elec. Code § 10010(b), (d).

III. Notable Issues

There are a number of unresolved issues surrounding both the CVRA and the process of transitioning to district-based elections. While this paper does not attempt to discuss all the issues, it highlights a few topics that are important to keep in mind.

a. Notice and Publication

Section 10010(a)(2) requires that maps be “published at least seven days before consideration at a hearing,” but it does not define “publish” or specify how the maps are to be “published.” The Black’s Law Dictionary definition for “publish” is “to distribute copies (of a work) to the public.” Other provisions of the Elections Code requiring publication of materials specify that they be published in newspapers of general circulation with the alternative being posting the material conspicuously in three public places in the city.²²

While some cities have been able to publish their maps in newspapers of general circulation, smaller cities that have a local newspaper are often restricted by the newspaper’s timelines since they are published once a week. And cities that successfully encouraged public participation in the drafting of maps have ended up with more than twenty draft maps, making publishing all of them in a newspaper prohibitively expensive. Many cities have resorted to publishing notices of the public hearings in newspapers and listing a number of locations throughout the city where the maps will be available. If the City has a website that it maintains, it can also post the maps on its website and include that link in the notice.

Another issue to keep in mind is the federal Voting Rights Act requirement that election material be translated in various languages depending on the county where the election is held. For example, in Orange County, election material must be translated into at least four languages: Spanish, Chinese, Korean, and Vietnamese.²³ While the notices and other materials concerning a city’s transition to district-based elections does not relate to a specific election, the city should consider translating the materials concerning the public hearings in languages that are prevalent in that city.

b. At-Large Mayor Position Under California Law

There is a question of whether a by-district election system with an at-large mayor qualifies as an at-large election system that is vulnerable to a CVRA challenge. Only at-large election systems are susceptible to a CVRA challenge.²⁴ However, the CVRA’s definition of an at-large method of election is somewhat broad and misleading. Under the CVRA, an “at-large method of election” encompasses not only a system in which the voters of the entire jurisdiction elect the members of city council, but it also encompasses from-district election systems (election systems in which the candidates are required to reside in districts but are elected by the

²² See, e.g., Elec. Code §§ 9205, 12110-12111.

²³ <https://www.ocvote.com/voting/translatedelectionmaterials/>, last visited: April 11, 2018.

²⁴ Elec. Code § 14027.

voters of the entire city) and combination systems.²⁵ A combination system is an elections system that “combines at-large elections with district-based elections.”²⁶

The combination system can include a system in which a primary election may be conducted “by-district”, but the general election is conducted “from” those same districts, e.g., the top two vote winners in the primary in each district run for election “at-large” in the general election. A combination system may also be an election system in which some seats are elected at large and some are elected by-district. For example, a jurisdiction that has a seven-member city council with three members elected at-large and four members elected by-district is a combination system. Based on the plain language of the CVRA, however, a plaintiff can claim that a by-district election system with an at-large mayor qualifies as a “combination system.”

While the issue of whether a by-district election system with an at-large mayor qualifies as an at-large system has arisen in previous CVRA cases, there are no binding, appellate decisions on the issue. In previous CVRA cases, plaintiffs have made the argument that the election of even one member of a city council at-large, regardless of his or her title, makes the election system at-large and subject to challenge under the CVRA. For example, in the action involving the City of Rancho Cucamonga, the city placed the question of whether it should change its election system from at-large to a district-based system with an at-large mayor. Even after the ballot measure passed, plaintiffs refused to dismiss the case, arguing in part, that the city’s new election system remains an at-large system that violates the CVRA.²⁷ The parties in that case reached a settlement; therefore, the question was not decided by a court. Notably, the settlement agreement in the Rancho Cucamonga case kept the at-large mayor position intact.

In the case of *Jauregui v. City of Palmdale*, the trial court found that the mayor of Palmdale is a separately elected office and noted that Government Code Section 34900 expressly authorizes that form of government.²⁸ The court noted that while the mayor is a voting member of the council, he or she has additional duties, powers, and obligations. Therefore, the court found that the mayor in that case was a separately elected office, and the elimination of this office was not an appropriate remedy to address the CVRA violation.

Other provisions of California law provide support for the view that a by-district election system with an at-large mayor is a district-based election system, not an at-large system that is vulnerable to a CVRA challenge. The Government Code specifically allows for an at-large mayor position on the city council. Effective January 1, 2017, Government Code Section 34886 provides that the council “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.”

²⁵ Elec. Code § 14026(a).

²⁶ Elec. Code § 14026(a)(3).

²⁷ *Southwest Voter Registration Education Project v. City of Rancho Cucamonga*, San Bernardino Superior Court Case No. CIVDS 1603632.

²⁸ *Jauregui v. City of Palmdale*, Los Angeles Superior Court Case No. BC483039, Final Statement of Decision dated December 23, 2013.

Subdivisions (a) and (c) of Government Code Section 34871 in turn provide:

[T]he legislative body may submit to the registered voters an ordinance providing for the election of members of the legislative body in any of the following ways:

(a) By districts in five, seven, or nine districts . . . [¶]

(c) By districts in four, six, or eight districts, with an elective mayor

Section 34886 states that “[a]n 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.” (Emphasis Added). Section 34886 provides support for the position that a by-district system with an at-large mayor is not susceptible to CVRA violation because that Section specifically allows the adoption of that election system “in furtherance of the purposes” of the CVRA. Nonetheless, the broad definition of at-large election systems in the CVRA can provide the basis for a prospective plaintiff to challenge a jurisdiction’s adoption of an at-large mayor position.

The risk of such a challenge is higher if creating an at-large mayor seat would potentially dilute the voting power of a protected class.²⁹ A jurisdiction’s decision to establish an at-large mayor seat would involve it adding a district it otherwise wouldn’t have or eliminating a district that it would otherwise have. Depending on the jurisdiction’s demographics and concentration of members of protected classes, dividing the city into more or less districts can affect the voting power of the city’s protected class(es). If changing the number of districts decreases the voting power of a protected class in the city, that would bolster a prospective plaintiff’s argument that the city’s decision to create an at-large mayor position violates the CVRA.

c. District Elections Ordinance and the Power to Petition for Referendum

Article 2, Section 9(a) of the California Constitution provides that “[t]he referendum is the power of the electors to approve or reject statutes or parts of statutes except urgency statutes, statutes calling elections, and statutes providing for tax levies or appropriations for usual current expenses of the state.” Based on the plain language of that provision, districting or reapportionment ordinances do not fall under any of these exceptions because they are not a statute calling elections; rather, the ordinances set forth the system of election and the conduct of the elections in the future. In dicta, the court in *Assembly of State of Cal. v. Deukmejian*, 30 Cal.3d 638, 654 (1982) noted that “[w]hile it is obvious that a reapportionment statute relates to elections, it is equally clear that such statutes do not call elections.” That case concerned a writ of mandate challenging the placement on the ballot of referenda challenging the state’s reapportionment statutes, and the Assembly, State Senate, and Congressional redistricting maps were successfully referended in 1982. In *Vandermost v. Bowen*, 53 Cal.4th 421, 437 (2012), the court noted that “if a referendum that is directed at a newly adopted redistricting map qualifies

²⁹ The CVRA defines a “protected class” as “a class of voters who are members of a race, color, or language minority group, as this class is referenced and defined in the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.)” Elec. Code § 14026(d).

for the ballot, triggering a stay of the new redistricting map pending the electorate's vote on the referendum, this court has the responsibility of determining which voting district map should be used for the upcoming interim electoral cycle." (Internal citations omitted). In *Ortiz v. Board of Supervisors*, 107 Cal.App.3d 866, 872 (1980), the court stated that "[c]hanges in supervisorial district boundaries is a legislative function and thus subject to the referendum." (Internal citations omitted).

Even though these cases discuss reapportionment or redistricting plans, the same general principles would apply to ordinances establishing district elections because they do not fall under any of the exceptions set forth in Article 2, Section 9(a) of the Constitution, and districting ordinances are similar to reapportionment statutes in that while they relate to elections, they do not "call elections." Therefore, an ordinance establishing district-based elections would ordinarily be effective 30 days after adoption.³⁰

In the past, perspective plaintiffs have made the argument that a local ballot measure cannot contravene state law (such as the CVRA) or policy, nor can a local ballot measure contravene the state's delegation of power to a local governing body. That argument also relies on the fact that California law was amended effective Jan. 1, 2017 to delegate the power to adopt district elections to city councils. However, there is nothing in the Elections Code that prevents a city from deciding to place the issue on the ballot for its voters, despite having the authority to change its election system by ordinance. Charter cities whose charters specify at-large elections must decide whether CVRA overrides the Charter or if a public vote on a charter amendment is necessary.

Making the ordinance effective thirty days after adoption creates an opportunity for referendum. If a petition for referendum is filed, however, and the matter has to be placed on the ballot, the city may face legal action by a prospective plaintiff claiming that the city's election system violates the CVRA. There seems to be a gray area in the law and a need to balance between the power to petition for referendum and the need to apply state law.

IV. Litigation Update

a. *Southwest Voter Registration Education Project v. City of Rancho Cucamonga*

On December 23, 2015, the City of Rancho Cucamonga received a demand letter alleging violation of the CVRA. After receiving the letter, the city began analyzing the issue. On March 10, 2016, plaintiff Southwest Voter Registration Education Project³¹ filed an action against the city alleging that the city's at-large election system violated the CVRA.³² On May 4, 2016, the City Council adopted a resolution submitting the question of district elections to the voters at the regular municipal election on November 8, 2016. The city's electorate approved the measure at the November 2016 election.

³⁰ Gov. Code § 36937.

³¹ The plaintiff subsequently amended its complaint to add an individual plaintiff to the action.

³² *Southwest Voter Registration Education Project, et al. v. City of Rancho Cucamonga*, San Bernardino Superior Court Case No. CIVDS1603632.

Nonetheless, the plaintiffs pressed forward with the action on the ground that the adopted by-district election system with an at-large mayor was an at-large election system that was subject to the CVRA. The plaintiffs also challenged the map that the city's voters approved as part of the measure.

In November of 2017, the parties settled the action, and the only remaining issue to be decided in arbitration is plaintiffs' recovery of attorneys' fees from the city. The settlement agreement kept in place the election system approved by the voters during the November 2016 election. Pursuant to the settlement agreement, the parties shall work on adjusting the district map following the 2020 federal census.

b. Pico Neighborhood Association, et al. v. City of Santa Monica

On April 12, 2016, plaintiffs Pico Neighborhood Association, Maria Loya, and Advocates for Malibu Public Schools filed an action against the City of Santa Monica alleging, among other things that the city's election system violates the CVRA.³³ As of the date of drafting this paper, the case is set for trial on July 30, 2018.

On March 29, 2018, the City of Santa Monica filed a motion for summary judgment, or in the alternative, summary adjudication, on the ground that expert demographic analysis proves that no constitutionally or statutorily permissible remedy could enhance the Latino voting strength in the city. The city argues, therefore, that plaintiffs cannot meet their burden of demonstrating that an electoral scheme other than the city's current system would enhance Latino voting power. Based on the city's pleadings, the city's Latino population constitutes roughly 13 % of the city's citizen voting age population, and not a single voting precinct is majority-Latino. Therefore, the city argues, a district-based election system would dilute, not enhance, Latino voting strength. The city contends that a proof of racially polarized voting alone is not sufficient to establish a violation of the CVRA; rather, the plaintiff must show that the at-large election system has diluted the minority group's vote.

Alternatively, the city argues that the remedy plaintiff seeks—establishment of district-based elections—is not a constitutional remedy because any court order implementing district-based elections would separate voters on the basis of race. Such a remedy, the city argues, has to be narrowly tailored to accomplish a compelling state interest. The city argues that any district that attempts to group the city's Latino population in one district would be highly irregular in share that it would constitute racial gerrymandering.

The city is also seeking summary judgment on plaintiffs' claim for violation of the Equal Protection Clause on the ground that plaintiffs cannot draw a connection between the city's at-large system of election and any impact on Latino voting power in the city.

The city's motion is currently set for hearing on June 14, 2018.

³³ *Pico Neighborhood Association, et al. v. City of Santa Monica*, Los Angeles Superior Court Case No. BC616804.

c. Higginson v. Xavier Becerra, et al.

On October 4, 2017, plaintiff Don Higginson, a former mayor of the City of Poway, filed a federal action challenging the constitutionality of the CVRA.³⁴ The action was filed against Attorney General Xavier Becerra and the City of Poway after the City adopted district-based elections in response to a demand letter. The plaintiff alleged a cause of action under 42 U.S.C. §§ 1983 and 1988 for violation of his rights under the Fourteenth Amendment and alleged that the CVRA and the city’s adopted map violated the equal protection clause. The plaintiff sought an order declaring that the CVRA and the district map adopted by the city were unconstitutional and enjoining their enforcement and use.

Subsequently, on October 19, 2017, the plaintiff filed a motion for a preliminary injunction to temporarily enjoin the Attorney General from enforcing the CVRA and the city from using the district-map for elections during pendency of the action. The city took a neutral position in the litigation. On November 22, 2017, the Attorney General filed a motion to dismiss the claim asserting that the plaintiff lacked standing to bring the action and that he failed to state a claim upon which relief can be granted.

The court granted the Attorney General’s motion to dismiss on the ground that the plaintiff lacked standing to bring the action, and there was no subject matter jurisdiction. The court found that: (1) plaintiff has failed to plead facts to demonstrate that his injury is “fairly traceable” to requirements imposed on the City by the CVRA; (2) the complaint did not allege any existing or threatened enforcement action under the CVRA by the Attorney General or other state agency which motivated the city’s switch to by-district elections; and (3) plaintiff did not allege facts supporting an inference that the decision to adopt by-district elections was motivated by an effort to address racially-polarized voting in the City’s at-large elections or an effort to address a CVRA violation because the City stated during the process that this was a business decision to avoid litigation. The court also dismissed the case as to the City for the same reasons.

Based on the court’s decision with respect to the motion to dismiss, the court denied the preliminary injunction motion, noting that it cannot conclude that plaintiff has demonstrated a likelihood of success on the merits in light of the determination that the complaint failed to allege sufficient facts to establish subject matter jurisdiction.

On April 6, 2018, the plaintiff filed a notice of appeal in the Ninth Circuit.³⁵

V. Conclusion

While the constitutionality of the CVRA is currently being challenged in both federal and state courts, cities and other jurisdictions with an at-large election system remain susceptible to

³⁴ *Higginson v. Xavier Becerra, et al.*, United States District Court for the Southern District of California, Case No. 3:17-CV-02032-WQH-JLB.

³⁵ *Higginson v. Becerra, et al.*, 9th Cir. Case No. 18-55455.

B.

receiving a CVRA demand letter. Elections Code Section 10010 provides a safe harbor for cities and other jurisdictions that decide to abide by its timeline and transition to district-based elections once they receive a demand letter. The process for charter cities may vary depending on the charter provisions that govern elections and charter amendments as well as the application of Section 10010 in light of the cities' municipal laws.



Solvang City Council

STAFF REPORT

PREPARED BY: Xenia Bradford, City Manager/City Clerk

MEETING DATE: August 9, 2021

SUBJECT: **PUBLIC HEARING TO RECEIVE INPUT FROM THE COMMUNITY REGARDING THE CREATION OF A DISTRICT-BASED ELECTION SYSTEM**

I. RECOMMENDATION:

Hold the first Public Hearing to receive input from the community regarding the creation of a district-based election system.

II. DISCUSSION:

On June 22, 2020, the City Council adopted Resolution No. 20-1112, declaring its intention to transition from at-large to district-based elections for the City Council commencing with the **General Municipal Election in November 2022**. Districting Process requires four public hearings. The second public hearing will be held on August 23, 2021 prior to release of draft maps. A dedicated website will be established for the redistricting process. Following education and solicitation of public input on the communities in the City, draft maps will be posted on the project website. Two public hearings will be held to discuss and revise the draft maps and to discuss the election sequence. Final maps will be posted for public review at least seven days prior to adoption of ordinance/resolution.

The purpose of today’s public hearing is 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. National Demographic Corporation will be assisting the City in complying with the various requirements necessary to implement district-based elections. NDC has assisted many California communities in this process, and their representatives are available to respond to questions from the community regarding the process.

The public is requested to provide input regarding communities of interest and other local factors that should be considered while drafting district maps. A community of interest is a neighborhood or group that would benefit from being in the same district because of shared interests, views, or characteristics. Possible community features include, but are not limited to:

- A. School attendance areas
- B. Natural dividing lines such as major roads, hills, or highways
- C. Areas around parks and other neighborhood landmarks
- D. Common issues, neighborhood activities, or legislative/election concerns
- E. Shared demographic characteristics, such as:
 - (1) Similar levels of income, education, or linguistic insolation
 - (2) Languages spoken at home
 - (3) Single-family and multi-family housing unit areas

The City must ensure compliance with the following state and federally-mandated criteria:

- Each district shall contain a nearly equal population
- Each district shall be drawn in a manner that complies with the Federal Voting Rights Act and the California Voting Rights Act
- Each district shall not be drawn with race as the predominant factor in violation of the principles established by the U.S. Supreme Court in Shaw v. Reno, 509 U.S. 630 (1993), and its progeny

III. ALTERNATIVES:

There are no alternative recommendations at this time.

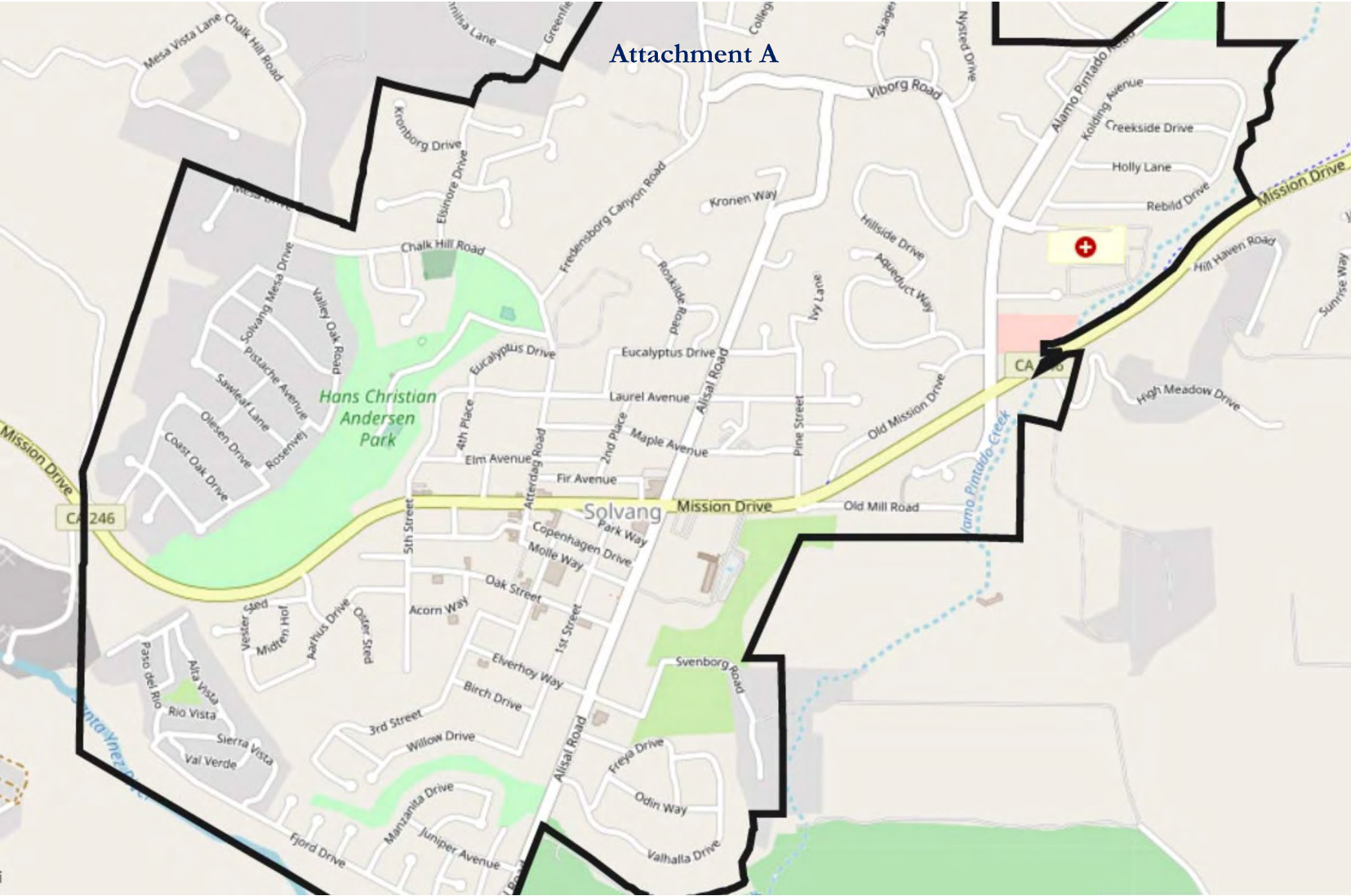
IV. FISCAL IMPACT:

The contract with National Demographic Corporation for re-districting was previously approved by City Council and there is no additional fiscal impact.

V. ATTACHMENTS

Attachment A – Power Point Presentation

B.



City of Solvang Introduction to Districting

Election Systems

1. “At Large”
2. “From District” or “Residence” Districts
3. “By District”

**The California Voting Rights Act
was written to specifically
encourage by-district elections**

B. California Voting Rights Act (CVRA)

- Under the Federal Voting Rights Act (passed in 1965), a jurisdiction must fail 4 factual tests before it is in violation of the law.
- The California VRA makes it significantly easier for plaintiffs to force jurisdictions into “by-district” election systems by eliminating two of the US Supreme Court Gingles tests:
 - ▣ Can the protected class constitute the majority of a district?
 - ▣ Does the protected class vote as a bloc?
 - ▣ Do the voters who are not in the protected class vote in a bloc to defeat the preferred candidates of the protected class?
 - ▣ Do the “totality of circumstances” indicate race is a factor in elections?
- Liability is now determined only by the presence of racially polarized voting

CVRA Impact

B.

- Switched (or in the process of switching) as a result of CVRA:
 - At least 240 school districts
 - 34 Community College Districts
 - 154 cities
 - 1 County Board of Supervisors
 - 35 water and other special districts.
- Cases So Far:
 - Palmdale, Santa Clara and Santa Monica went to trial on the merits. Palmdale and Santa Clara lost. Santa Monica is awaiting a decision.
 - Modesto and Palmdale each spent about \$1.8 million on their defense (in addition to the attorney fee awards in those cases).
 - Santa Monica has spent an estimated \$7 million so far. Plaintiffs in Santa Monica requested \$22 million in legal fees after the original trial.
- Key settlements:
 - Palmdale: \$4.7 million
 - Modesto: \$3 million
 - Highland: \$1.3 million
 - Anaheim: \$1.1 million
 - Whittier: \$1 million
 - Santa Barbara: \$600,000
 - Tulare Hospital: \$500,000
 - Camarillo: \$233,000
 - Compton Unified: \$200,000
 - Madera Unified: about \$170,000
 - Hanford Joint Union Schools: \$118,000
 - Merced City: \$42,000
- An estimated \$16 million in total settlements and court awards so far.

Districting Process

Step	Description
Initial Pre-Draft Hearings: August 9 & 23	Held prior to release of draft maps. Education and to solicit input on the communities in the City. Identify “neighborhoods,” “communities of interest,” and “secondary areas.”
Initial deadline for draft maps: TBD	Deadline for the public to submit draft maps for inclusion in the next hearing packet and presentation
Release draft maps: TBD	Draft maps posted to project website
Two hearings on draft maps: TBD	Two meetings to discuss and revise the draft maps and to discuss the election sequence.
Map adoption: TBD	Map adopted via ordinance/resolution. Final map must be posted at least 7 days prior to adoption.

Districting Rules and Goals

1. Federal Laws

- ❑ Equal Population
- ❑ Federal Voting Rights Act
- ❑ No Racial Gerrymandering



2. California Criteria for Cities

1. **Geographically contiguous**
2. **Undivided neighborhoods and “communities of interest”**
(Socio-economic geographic areas that should be kept together)
3. **Easily identifiable boundaries**
4. **Compact**
(Do not bypass one group of people to get to a more distant group of people)

Prohibited:

“Shall not favor or discriminate against a political party.”

3. Other Traditional Districting Principles

- ❑ **Respect voters’ choices / continuity in office**
- ❑ **Future population growth**

B. Demographic Summary

Estimates using official 2020 demographic data and NDC's estimated total population figures.

Each of the 4 districts must contain about 1,500 people.

Solvang							
Category	Field	Count	Pct	Category	Field	Count	Pct
	2020 Est. Tot. Pop.	5,939					
Citizen Voting Age Pop	Total	4,487		Age	age0-19	1,267	21%
	Hisp	1,038	23%		age20-60	3,017	51%
	NH White	3,275	73%		age60plus	1,655	28%
	NH Black	23	1%	Immigration	immigrants	970	17%
	Asian/Pac.Isl.	99	2%		naturalized	567	58%
Voter Registration (Nov 2020)	Total	4,098		Language spoken at home	english	4,193	72%
	Latino est.	688	17%		spanish	1,307	23%
	Spanish-Surnamed	618	15%		asian-lang	71	1%
	Asian-Surnamed	54	1%		other lang	234	4%
	Filipino-Surnamed	17	0%	Language Fluency	Speaks Eng. "Less than Very Well"	797	14%
	NH White est.	3,281	80%		Education (among those age 25+)	hs-grad	2,021
NH Black	35	1%	bachelor	1,148		26%	
Voter Turnout (Nov 2020)	Total	3,703		graduatedegree	514	12%	
	Latino est.	549	15%	Child in Household	child-under18	605	25%
	Spanish-Surnamed	493	13%	Pct of Pop. Age 16+	employed	3,428	68%
	Asian-Surnamed	51	1%		Household Income	income 0-25k	312
	Filipino-Surnamed	16	0%	income 25-50k		344	14%
	NH White est.	3,034	82%	income 50-75k		485	20%
NH Black	33	1%	income 75-200k	950		39%	
Voter Turnout (Nov 2018)	Total	2,608		income 200k-plus	317	13%	
	Latino est.	296	11%	Housing Stats	single family	2,118	80%
	Spanish-Surnamed	266	10%		multi-family	530	20%
	Asian-Surnamed	28	1%		rented	975	40%
	Filipino-Surnamed	9	0%		owned	1,433	60%
	NH White est.	2,248	86%				
NH Black est.	18	1%					

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 Population, Age, Immigration, and other demographics from the 2015-2019 American Community Survey and Special Tabulation 5-year data. 2020 Est. Tot. Pop calculated by NDC starting from 2010 Census counts and adding in ACS-identified population growth, then subtracting out state prison populations.

Defining Neighborhoods

1st Question: what is your neighborhood?

2nd Question: what are its geographic boundaries?

Examples of physical features defining a neighborhood boundary:

- Natural neighborhood dividing lines, such as highway or major roads, rivers, canals and/or hills
- Areas around parks or schools
- Other neighborhood landmarks

In the absence of public testimony, planning records and other similar documents may provide definition.



Beyond Neighborhoods: Defining Communities of Interest

1st Question: what defines your community?

- Geographic Area, plus
- Shared issue or characteristic
 - *Shared social or economic interest*
 - *Impacted by city policies*
- Tell us “your community’s story”

2nd Question:

Would this community benefit from being “included within a single district for purposes of its effective and fair representation”?

- Or would it benefit more from having multiple representatives?

Definitions of Communities of Interest may not include relationships with political parties, incumbents, or political candidates.

Interactive Review Map

- Simple tool for viewing multiple data layers at once, and for reviewing draft maps once they are posted
- Can be found at this [link](#)
- Examples of data layers:
 - ▣ Voting eligible population by race/ethnicity
 - ▣ Land use/zoning
 - ▣ Renter housing
 - ▣ Education levels
 - ▣ Income levels
 - ▣ School attendance areas

Public Hearing & Discussion

- What are the neighborhoods of the city, and what are their boundaries?
- What other notable areas are in the city, and what are their boundaries?
- Any questions about the interactive review map?

Case Study: City of Ojai

The City of Ojai received a letter via certified mail from attorney Kevin I. Shenkman of Shenkman & Hughes on behalf of his client Southwest Voter Registration Education Project. The letter contains unsubstantiated allegations that the City's at-large 1 electoral system prevents members of Ojai's Latino community from electing their preferred candidate(s) and violates the California Voting Rights Act ("CVRA"). The letter threatens the City with litigation if the City declines to adopt a district-based electoral system. They held 4 public hearings.

Total Area	City or Town	Population	Charter or General Law	District or At Large	Rotation or Elected Mayor	Term Limits
10 miles (16 km) long by 3 miles (5 km) wide	City	7,610	General Law	District (4)	At Large Elected Mayor (2 year term)	None



Administrative Report

PUBLIC HEARING

TO: CITY COUNCIL

FROM: Steve McClary, City Manager
Matthew Summers, City Attorney

DATE REPORT PREPARED: October 17, 2018

MEETING DATE: October 23, 2018

SUBJECT: Public Hearing to Receive Input from the Community Regarding the Creation of a City Council District-Based Electoral System Pursuant to Elections Code Section 10010

Recommendation

Staff recommends the City Council conduct a Public Hearing (the first of four upcoming hearings) to receive public testimony on the composition, factors, and community characteristics to consider in drawing potential district maps for a district-based City Council electoral system pursuant to Elections Code section 10010.

Commission Recommendation

This item has not been considered by any City Commission.

Background

The City of Ojai currently elects its City Councilmembers and Mayor through an “at-large” electoral system in which each Councilmember and the Mayor can reside anywhere in the City and are elected by the voters of the entire electorate to provide citywide representation. At present, all voters are afforded the opportunity to elect three or one Councilmembers every two years, and the Mayor every two years, resulting in a five-member City Council elected to serve the entire City. On the November 6, 2018 ballot, the City’s voters will consider Measure J, which if adopted would repeal 2014’s Measure A (which created a directly-elected Mayor) and return the Mayor to an appointed position from among five elected City Councilmembers. The November 6, 2018 ballot also contains Measure K, which if adopted and Measure J fails, sets the directly-elected Mayor’s term at four years rather than the current two years. If the Council adopts district-based elections, the number of districts will be determined by the voters’ decision on Measure J, to be either four Council districts and a directly-elected Mayor or five Council districts, with the Mayor chosen by the City Council members.

On September 4, 2018, the City of Ojai received a letter via certified mail from attorney Kevin I. Shenkman of Shenkman & Hughes on behalf of his client Southwest Voter Registration Education Project. The letter contains unsubstantiated allegations that the City’s at-large

electoral system prevents members of Ojai’s Latino community from electing their preferred candidate(s) and violates the California Voting Rights Act (“CVRA”). The letter threatens the City with litigation if the City declines to adopt a district-based electoral system.

A district-based electoral system is one in which a city is divided into separate districts, each with one Councilmember who resides in the district and is chosen by the voters residing in that district. In a district-based electoral system, voters within each district may only vote for one candidate every four years. If adopted, a district-based electoral system in Ojai would either have four City Council districts and a Mayor elected at-large or five City Council districts, depending on the results of the November 6, 2018 election. If the voters retain the current directly-elected Mayor, the CVRA permits that position to remain elected at-large.

Elections Code section 10010 provides an opportunity for cities to limit their exposure to legal liability under the CVRA to \$30,000. Under Elections Code section 10010, a city must adopt a resolution of intention to transition to district-based elections, hold at least four public hearings over the course of ninety (90) days, and adopt an ordinance creating district maps and establishing district-based elections. A city does not admit any guilt or wrongdoing by taking advantage of the “safe harbor” provisions of Elections Code section 10010. Rather, it is an attempt to preserve a city’s resources and protect against potentially costly litigation.

On October 16, 2018, the City Council adopted the Resolution of Intention declaring the Council’s intent to consider whether to transition from at-large to district-based elections, and directing staff to analyze these matters in further detail as the process proceeds.

The adoption of the Resolution of Intent does not directly impact the upcoming November 6, 2018 elections. If the City Council adopts the ordinance approving a district-based electoral system, then the Council offices up for reelection in November 2020 would be elected from districts. The number of districts will be determined after November 6, 2018, once the electorate votes upon whether the Mayor will be elected or appointed. Depending on the results, the district-based electoral system will provide for an elected Mayor and four City Council districts or five City Council districts.

Procedural Steps

Elections Code section 10010, subdivision (a)(1), provides that before any map or maps of the boundaries for the proposed districts are drawn, the City must conduct two (2) Public Hearings over a period of no more than thirty (30) days from the adoption of the resolution of intention, at which time the public is invited to provide input regarding the composition of said districts. The first such Public Hearing is scheduled for October 23, 2018.

The purpose of the First Public Hearing is to inform the public about the CVRA, the difference between at-large and district-based elections, and the “safe harbor” process under Elections Code section 10010, and to hear from the community regarding what factors to consider in creating district boundaries. The City Council may consider the following non-exclusive list of factors in creating district boundaries:

1. Topography;
2. Zoning designations;
3. Contiguity, integrity, and compactness of territory; and
4. Communities of interest.

The public is requested to provide input regarding communities of interest and other local factors that should be considered while drafting district maps. A community of interest is a neighborhood or group that would benefit from being in the same district because of shared interests, views, or characteristics. Possible community features include, but are not limited to:

1. School attendance areas;
2. Natural dividing lines such as major roads, hills, or other geographic features;
3. Areas around parks and other neighborhood landmarks;
4. Common issues, neighborhood activities, or legislative/election concern; and
5. Shared demographic characteristics.

Ultimately, the City Council may choose to include some, all, or none of these criteria; or may choose to rely on unique criteria it believes are applicable to Ojai. However, the City must ensure compliance with the following federal and state-mandated criteria:

1. Each district shall contain a nearly equal population, measured by natural persons.
2. Each district shall be drawn in a manner that complies with the Federal Voting Rights Act.
3. Each district shall not be drawn with race as a predominant factor in violation of the principles established by the U.S. Supreme Court in *Shaw v. Reno* (1993) 509 U.S. 630 and its progeny.

The *Shaw v. Reno* ruling still allows for race to be considered among other factors in drawing districts, but requires that race be only one of many factors evaluated. In this case, North Carolina had drawn a Congressional district that was long and narrow, widening only to encompass various urban areas with no apparent common connection to each other beyond a large African-American population. The Court held that a district with a shape and composition “so bizarre on its face that it is unexplainable on grounds other than race” is subject to strict scrutiny. (509 U.S. 630, 644 [citation omitted].) Strict scrutiny requires a challenged government action to further a compelling government interest, to be narrowly tailored to accomplish that interest, and to be the least restrictive means to do so. Applying that standard, the Court held that this district failed to survive strict scrutiny because it was evidently drawn with the sole purpose of creating a majority-minority district, without consideration of other factors such as communities of interest, compactness, contiguity, and other geographical and jurisdictional boundaries.

Next Steps

At the City Council Meeting on November 13, 2018, staff recommends that the City Council conduct a Second Public Hearing to seek community input and to provide direction on “communities of interest” and the composition of districts to its demographer. This would meet the requirement of holding the first two public hearings within 30 days of the adoption of the resolution of intent.

At the City Council Meeting on November 27, 2018, staff recommends that the City Council conduct a Third Public Hearing to seek public input on the composition of the draft district map(s) and sequence of elections. The City Council will be requested to select a preferred map and direct amendments as necessary. Draft maps under consideration at this Third Public Hearing will be published online and in the newspaper for public review and evaluation at least

7 days in advance of the hearing.

Staff recommends the City Council conduct a fourth Public Hearing on January 8 to adopt a preferred district map and to consider whether to adopt an ordinance to transition to a district-based electoral system. Alternatively, Council could choose to schedule the fourth Public Hearing and consider adoption on December 11.


Finally, a third option would be to schedule Special City Council meetings to hold the hearings. Council could also choose to hold the fourth Public Hearing and consider adopting an ordinance at separate meetings, but would need to complete the process within 90 days of adopting the resolution of intent.

City Council Goals

The City of Ojai is a sustainable and resilient City that preserves and protects its quality of life. Discussion of this item will allow the City Council, and members of the public, to discuss the composition of districts and their effect on residents' quality of life.

Fiscal Impact

There will be significant staff and City Attorney time needed to transition to a district-based electoral system due to the need to conduct multiple Public Hearings. In addition, the City will incur the cost of a demographics consultant, National Demographic Corporation, to assist in drafting district maps. Staff estimates these costs to be around \$15,000-\$20,000. Should the City Council adopt an ordinance transitioning to a district-based electoral system, the City could have to reimburse the plaintiff for its attorneys' fees and costs up to \$30,000, but will not be exposed to additional legal fees in defense of a CVRA lawsuit if it completes the transition in compliance with Elections Code section 10010. These additional expenses will need to be considered and budgeted for at the expected mid-year budget adjustment.



Prepared by:
Matthew T. Summers, City Attorney



Submitted by:
Steve McClary, City Manager

Attachment:
A — Resolution No. 18-51

City of Ojai
City Council Resolution No. 18-51

**City of Ojai
RESOLUTION NO. 18-51**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF OJAI DECLARING ITS INTENT TO TRANSITION
FROM AT-LARGE ELECTIONS FOR CITY COUNCIL TO
DISTRICT-BASED ELECTIONS FOR CITY COUNCIL
PURSUANT TO ELECTIONS CODE SECTION 10010**

WHEREAS, the Mayor and four members of the City Council of the City of Ojai (“City”) are currently elected in “at-large” elections, in which the Mayor and each City Councilmember are elected by the registered voters of the entire City; and

WHEREAS, Ojai has had a directly elected Mayor since 2016, when a ballot measure approved by a majority of the City’s voters in November 2014 took effect creating a directly elected at-large Mayor; and

WHEREAS, Government Code section 34886, in certain circumstances, authorizes the legislative body of a city of any population to adopt an ordinance to change its method of election from an “at-large” system to a “by-district” system in which each Councilmember is elected only by the voters in the district in which the Councilmember resides; and

WHEREAS, the City began evaluating the California Voting Rights Act’s implications for the City’s existing at-large electoral system in March 2018; and

WHEREAS, the City received a letter via certified mail on September 4, 2018, from Kevin I. Shenkman, Esq., on behalf of his client Southwest Voter Registration Education Project, containing unsubstantiated allegations that the City’s at-large electoral system prevents members of Ojai’s Latino community from electing their preferred candidate and violates the California Voting Rights Act (“CVRA”) and threatening litigation if the City declined to adopt a district-based electoral system; and

WHEREAS, despite Mr. Shenkman’s claims, the City has a history of inclusionary voting and supports the rights of all members of the City of Ojai community, including minority community members to elect the candidate of their choice; and

WHEREAS, the City denies that its at-large election system violates the CVRA or any other provision of law and asserts that Ojai’s election system is legal in all respects and further denies any wrongdoing whatsoever in connection with the manner in which it has conducted its Mayoral and City Council elections; and

WHEREAS, even with the City’s inclusionary voting and election record, the City Attorney has advised that, given the CVRA’s elimination of two elements of the U.S. Supreme Court’s requirements to establish a federal Voting Rights Act challenge under *Thornburg v. Gingles* (1986) 478 U.S. 30, a CVRA challenge is more easily made on the basis of an argument

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that “racially polarized voting” exists based solely on past voting records, regardless of whether racial minorities have successfully elected preferred candidates in the past under an at-large electoral system nor whether there is any history of racial discrimination in the electoral system based on the totality of the circumstances; and

WHEREAS, the City has a history of inclusive voting, including recent a Latino City Council Member having been elected to the City Council; and

WHEREAS, the cost of defending a challenge under the CVRA can exceed several hundred thousand dollars, no City has ever prevailed to date in defending a CVRA lawsuit challenging at-large electoral systems, and the risk of losing such a challenge includes the possible award of attorneys’ fees to the plaintiffs by a court; and

WHEREAS, the City may voluntarily begin the transition process to district-based elections under the AB 350 “safe harbor” provisions in which any attorneys’ fees, if owed, are capped at \$30,000; and

WHEREAS, although the demand letter cited above lacked any evidence of racially polarized voting, the City Council has concluded, with the advice of the City Attorney, that the public interest would be better served by considering a transition to a district-based electoral system pursuant to the “safe harbor” provisions of Elections Code section 10010 because of (1) the extraordinary cost to defend against a CVRA lawsuit, (2) the risk of losing such a lawsuit could result in a court order for the City to pay plaintiff’s attorney’s fees, and (3) reimburseable costs and plaintiff’s attorneys’ fees, if owed, are capped at a maximum of \$30,000 under the “safe harbor” provisions; and

WHEREAS, prior to the City Council’s consideration of an ordinance to establish boundaries for a district-based electoral system, Elections Code Section 10010 requires all of the following:

- 1) Prior to drawing a draft map or maps of the proposed boundaries of the districts, the City shall hold at least two (2) Public Hearings over a period of no more than thirty (30) days, at which the public will be invited to provide input regarding the composition of the districts.
- 2) After all draft maps are drawn, the City shall publish and make available for release at least one draft map and, if members of the City Council will be elected in their districts at different times to provide for staggered terms of office, the potential sequence of the elections shall also be published.
- 3) The City Council shall also hold at least two (2) additional Public Hearings over a period of no more than forty-five (45) days, at which the public shall be invited to provide input regarding the content of the draft map or maps and the proposed sequence of elections, if applicable.

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4) The first version of a draft map shall be published at least seven (7) days before consideration at a Public Hearing. If a draft map is revised at or following a Public Hearing, it shall be published and made available to the public at least seven (7) days before being adopted.

WHEREAS, the City will be utilizing the services of a professional demographer to assist the City to develop a proposal for a district-based electoral system; and

WHEREAS, the number of districts will be determined after the November 6, 2018 elections, once the electorate has an opportunity to vote upon whether the Mayor will continue to be elected at large or will instead be appointed from among the five Council Members, as the CVRA permits a directly elected Mayor, if retained by the voters, to be elected at large; and

WHEREAS, the adoption of this Resolution will not affect the seats up for election nor the results of the November 6, 2018 elections; and

WHEREAS, the adoption of a district-based electoral system will not affect the terms of any sitting Councilmember or Mayor in office at the time of the adoption of an ordinance instituting a district-based voting system, each of whom will serve out his or her current term.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Ojai that:

SECTION 1. The City Council hereby resolves to consider adoption of an ordinance to transition to a district-based electoral system as authorized by Government Code Section 34886 for use in the City’s General Municipal Election beginning in November 2020 for Members of the City Council and the Mayor, if the voters decide on November 6, 2018 that the Mayor shall be appointed from among the members of the City Council and not directly elected. If the voters decide on November 6, 2018 to reject Measure J and retain a directly elected Mayor, then the City Council would consider adoption of an ordinance creating a district-based electoral system just for the four City Council Members and the Mayor would continue to be elected at-large.

SECTION 2. The City Council directs the City Clerk, City Manager, and City Attorney to work with a professional demographer, and other appropriate consultants as needed, to further investigate the history of voting in the City of Ojai and the feasibility of transitioning to districts, to provide a detailed analysis of Ojai’s current demographics and any other information or data necessary to prepare a draft map that divides Ojai into voting districts in a manner consistent with the intent and purpose of the CVRA and the Federal Voting Rights Act. The City Council further directs staff to demand the basis for the Southwest Voter Registration Education Project’s allegations.

SECTION 3. The City Council directs staff to finalize a timeline for conducting a public process to solicit public input and testimony on proposed district-based electoral maps before adopting any such map.

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SECTION 4. The City Council directs the City Clerk to post information regarding the proposed transition to a district-based electoral system on the City's website including maps, notices, agendas and other information.

SECTION 5. The City Clerk of the City of Ojai shall certify to the passage and adoption of this resolution and its approval by the City Council and shall cause the same to be listed in the records of the City.

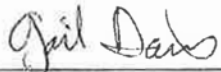
PASSED, APPROVED and ADOPTED this 16th day of October, 2018 by the following vote:

- AYES: Blatz, Francina, Haney, Johnston, Weirick
- NOES: None
- ABSENT: None
- ABSTAIN: None

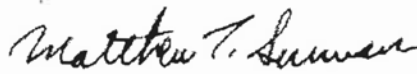
CITY OF OJAI, CALIFORNIA


 John F. Johnston, Mayor

 Date signed

ATTEST:


 Gail Davis, Deputy City Clerk

APPROVED AS TO FORM:


 Matthew Summers, City Attorney

CITY OF OJAI
ORDINANCE NO. 889

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OJAI, CALIFORNIA, ADDING A NEW CHAPTER 6 (“ELECTIONS”) OF TITLE 2 (“ADMINISTRATION”) TO THE OJAI MUNICIPAL CODE TO CHANGE THE CITY’S ELECTORAL SYSTEM FROM AT-LARGE TO BY-DISTRICT ELECTIONS WITH RESPECT TO ELECTING MEMBERS OF THE CITY COUNCIL, ESTABLISHING DISTRICT BOUNDARIES, AND SEQUENCING OF ELECTIONS WITHIN THE DISTRICTS AND DECLARING THE URGENCY THEREOF IN ACCORDANCE WITH GOVERNMENT CODE SECTIONS 36934 AND 36937

WHEREAS, the Mayor and four members of the City Council of the City of Ojai (“City”) are currently elected in “at-large” elections, in which the Mayor and each City Councilmember are elected by the registered voters of the entire City; and

WHEREAS, Ojai has had a directly elected Mayor with a two-year term since 2016, when a ballot measure approved by a majority of the City’s voters in November 2014 took effect creating a directly elected at-large Mayor, a system recently reconfirmed by the voters at the November 2018 election; and

WHEREAS, Government Code Section 34886, in certain circumstances, authorizes the legislative body of a city of any population to adopt an ordinance to change its method of election from an “at-large” system to a “by-district” system in which each Councilmember is elected only by the voters in the district in which the Councilmember resides; and

WHEREAS, the City received a letter via certified mail on September 4, 2018, from Kevin I. Shenkman, Esq., on behalf of his client Southwest Voter Registration Education Project, containing unsubstantiated allegations that the City’s at-large electoral system prevents members of Ojai’s Latino community from electing their preferred candidate and violates the California Voting Rights Act (“CVRA”) and threatening litigation if the City declined to adopt a district-based electoral system; and

WHEREAS, despite Mr. Shenkman’s claims, the City has a history of inclusionary voting and supports the rights of all members of the City of Ojai community, including minority community members to elect the candidate of their choice; and

WHEREAS, the City denies that its at-large election system violates the CVRA or any other provision of law and asserts that Ojai’s election system is legal in all respects and further denies any wrongdoing whatsoever in connection with the manner in which it has conducted its Mayoral and City Council elections; and

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WHEREAS, although the demand letter cited above lacked any evidence of racially polarized voting, the City Council has concluded, with the advice of the City Attorney, that the public interest would be better served by transitioning to a district-based electoral system under the “safe harbor” provisions of Elections Code Section 10010 because of (1) the extraordinary cost to defend against a CVRA lawsuit, (2) no City has ever prevailed to date in defending a CVRA lawsuit challenging at-large electoral systems, (3) the risk of losing such a lawsuit could result in a court order for the City to pay plaintiff’s attorney’s fees, and (4) reimburseable costs and plaintiff’s attorneys’ fees, if required to be paid, are capped at a maximum of \$30,000 under the “safe harbor” provisions; and

WHEREAS, at its regular meeting on October 16, 2018, the City Council adopted Resolution No. 18-51 declaring the Council’s intent to consider whether to transition from an at-large to district-based electoral system, thereby initiating the “safe harbor” period; and

WHEREAS, Elections Code Section 10010(a)(1), provides that before any map or maps of the boundaries for the proposed districts are drawn, the City must conduct two (2) Public Hearings over a period of no more than thirty (30) days from the adoption of the resolution of intention, at which time the public is invited to provide input regarding the composition of the districts; and

WHEREAS, the first public hearing took place on October 23, 2018 and the second public hearing on November 13, 2018, during which City staff informed the public about the CVRA, the difference between at-large and district-based elections, and the “safe harbor” process under Elections Code Section 10010, and heard from the community regarding what factors to consider in creating district boundaries; and

WHEREAS, Elections Code Section 10010(a)(2), provides that the City Council shall also hold at least two (2) additional Public Hearings over a period of no more than forty-five (45) days, at which the public shall be invited to provide input regarding the content of the draft map or maps and the proposed sequence of elections; and

WHEREAS, the third public hearing took place on November 27, 2018 and the fourth public hearing took place on December 11, 2018, during which the City Council received public comment on the boundaries of draft district-based election maps; and

WHEREAS, if the CVRA is amended in a manner which qualifies the City to return to at-large elections, the City Council declares its desire for appropriate actions to be taken; and

WHEREAS, Government Code Section 36937, subdivision (b), authorizes the adoption of ordinances that take effect immediately if they relate to elections, provided such ordinances are approved by a majority vote of the City Council

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NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OJAI DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The above set forth Recitals and findings are true and correct and incorporated herein by reference, as if set forth herein in full.

SECTION 2. Text Amendment. Ojai Municipal Code Chapter 6 (“Elections”) of Title 2 (“Administration”) is hereby added to read as follows:

“Chapter 6 ELECTIONS

Article 1. City Council Members Elected By-District

Section 2-6.101. Purpose

The City Council declares that this change in method of electing members of the City of Ojai City Council is enacted in furtherance of the California Voting Rights Act of 2001.

Section 2-6.102. By-District Elections

Beginning with the municipal election in November 2020, the four members of the City Council shall be elected in the electoral districts established by Section 2-6.103 and subsequently reapportioned as provided by State law. Elections shall take place by-district 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. Each member of the City Council shall serve a four-year term.

Section 2-6.103. District Maps

Members of the City Council shall be elected on a by-district basis from the four (4) City Council districts hereby established. The boundaries and identifying number of each district shall be as described on the City Council District Map attached hereto as “Exhibit A” and incorporated by reference.

Section 2-6.104. Election Sequence

Commencing with the general municipal election in November 2020 and every four years thereafter the voters in District 4 shall elect a member of the City Council by-district for a full four (4) year term. At the general municipal election in November 2022 and every four years thereafter, the voters in Districts 1, 2, and 3 shall elect members of the City Council by-district for full four (4) year terms.

Section 2-6.105. City Council Residency

Each member of the City Council elected by-district must reside in that district and be a registered voter in that district, and any candidate for City Council must reside in, and be a registered voter in, the district in which he or she seeks election at the time nomination papers are

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issued pursuant to Government Code Section 34882 and Elections Code Section 10227. It is the intent of the City Council that no term of any member of the City Council that commenced on the same day as or before the effective date of this ordinance shall be affected by this Chapter. Any sitting City Council member elected at-large may reside anywhere within the City during the pendency of his or her term in effect on the effective date of this ordinance.

Section 2-6.106. Voter Residency

Registered voters signing nomination papers or voting for a member of the City Council shall be residents of the geographical area making up the district from which the candidate is to be elected.

Section 2-6.107. Termination of Residency

Termination of residency in a district by a member of the City Council elected by-district shall create a vacancy for that City Council District unless a substitute residence within the district is immediately declared and established within (30) days after the termination of residency. In the event that a vacancy is created as a result of termination of residency as provided herein, such vacancy shall be filled pursuant to the provisions of the Elections Code.

Section 2-6.108. Technical Amendments

If necessary to facilitate the implementation of this Article, the City Clerk 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 Clerk shall consult with the City Manager and 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.

Article 2. Mayor Elected At-Large

Section 2-6.201. Mayor Elected At-Large

The office of Mayor of the City of Ojai is a separate office with a term of two (2) years, which shall continue to be elected at-large, as approved by a majority of the City’s electorate in November 2014 by adoption of Measures A and B, under the provisions of Government Code section 34900. The at-large electoral system for the Mayor may only be changed by a vote of the City’s electorate.

SECTION 3. Urgency Findings. The City Council finds this Ordinance should take effect immediately as an “Urgency Ordinance” as it is an ordinance relating to the conduct of the City’s elections pursuant to Government Code Section 36937, subdivision (a).

SECTION 4. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have adopted this Ordinance,

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and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, phrases or portions might be declared invalid or unconstitutional.

SECTION 5. Certification. Upon adoption of this Urgency Ordinance, the Mayor shall sign and the City Clerk shall attest to the passage of this Urgency Ordinance. The City Clerk shall cause this Ordinance to be published once, within fifteen (15) calendar days after its passage, in the *Ojai Valley News*, a newspaper of general circulation, printed, published and circulated in the City, and shall cause a copy of this Ordinance and its certification, together with proof of publication, to be entered in the Book of Ordinances of the City.

SECTION 6. Effective Date. This Urgency Ordinance shall take effect immediately after its passage and adoption pursuant to California Government Code Section 36937, shall supersede any conflicting provision of any City of Ojai ordinance, and shall continue in effect until terminated by further action of the City Council in accord with applicable law.

CITY OF OJAI, CALIFORNIA


By 
John F. Johnston, Mayor
1-14-19

ATTEST:



Gail Davis, Deputy City Clerk

APPROVED AS TO FORM:




Matthew T. Summers, City Attorney

STATE OF CALIFORNIA)
COUNTY OF VENTURA)
CITY OF OJAI)

City of Ojai
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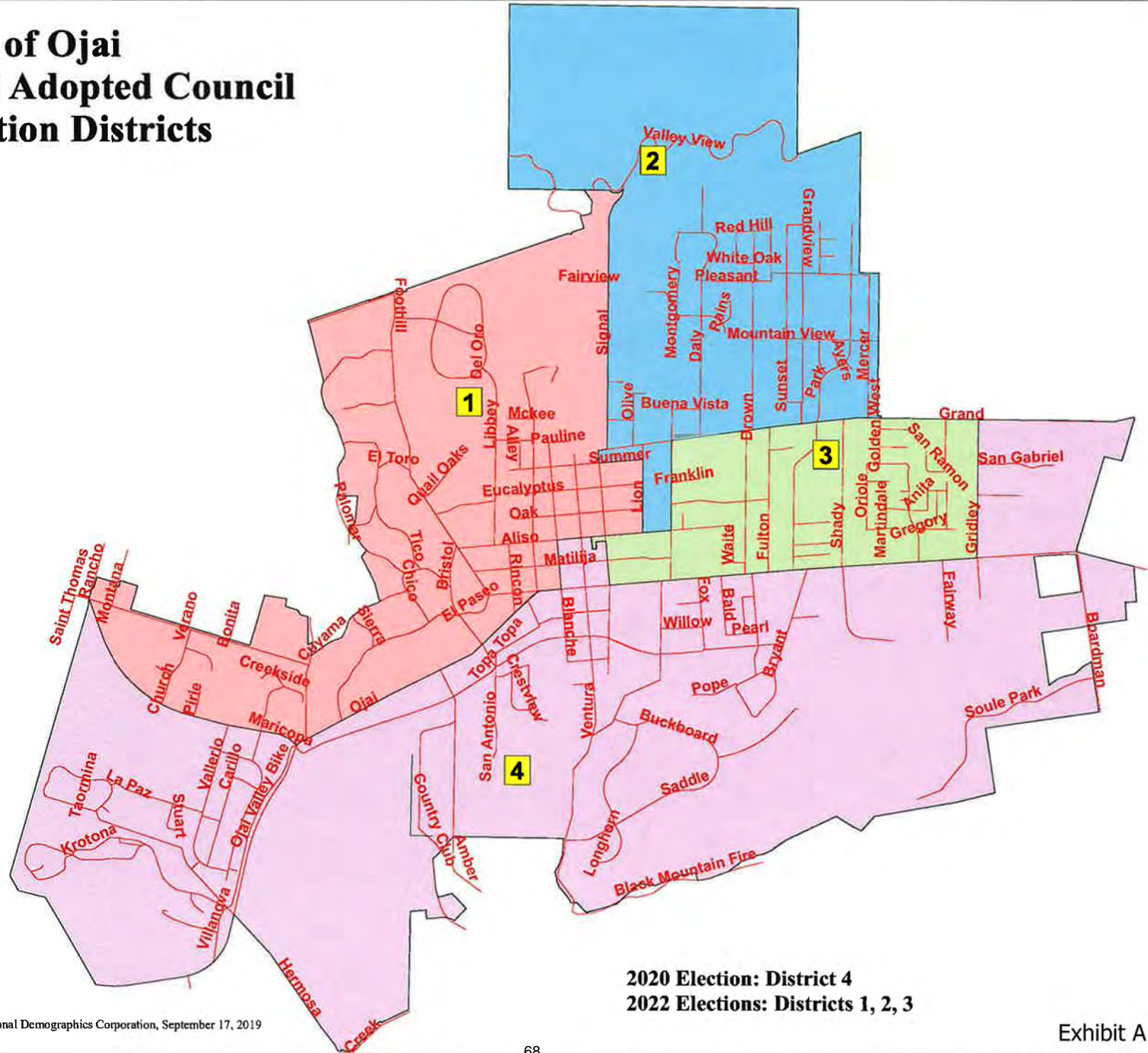
I, Gail Davis, Deputy City Clerk of the City of Ojai do hereby certify that the foregoing Urgency Ordinance was introduced at a regular meeting of the City Council of the City of Ojai held on December 11, 2018, and adopted by the following vote:

- AYES: Blatz, Francina, Haney, Johnston
- NOES: Weirick
- ABSTAIN: None
- ABSENT: None



 Gail Davis
 Deputy City Clerk for the City of Ojai

City of Ojai 2018 Adopted Council Election Districts



National Demographics Corporation, September 17, 2019

City of Ojai - Draft Map 101b

District		1	2	3	4	Total
Ideal	Total Pop	1,919	1,863	1,817	1,862	7,461
1,865	Deviation from ideal	54	-2	-48	-3	102
	% Deviation	2.90%	-0.11%	-2.57%	-0.16%	5.47%
Total Pop	% Hisp	14%	13%	28%	16%	18%
	% NH White	81%	82%	67%	78%	77%
	% NH Black	1%	0%	0%	1%	1%
	% Asian-American	3%	2%	2%	3%	3%
Citizen Voting Age Pop	Total	1,464	1,541	1,254	1,390	5,650
	% Hisp	11%	12%	21%	8%	13%
	% NH White	84%	87%	75%	88%	84%
	% NH Black	0%	0%	0%	2%	1%
	% Asian/Pac.Isl.	4%	1%	3%	0%	2%
Voter Registration (Nov 2016)	Total	1,249	1,326	1,112	1,343	5,030
	% Latino est.	9%	12%	13%	11%	11%
	% Spanish-Surnamed	8%	11%	11%	10%	10%
	% Asian-Surnamed	1%	1%	1%	2%	1%
	% Filipino-Surnamed	1%	0%	0%	1%	0%
	% NH White est.	81%	87%	86%	79%	83%
Voter Turnout (Nov 2016)	Total	1,082	1,098	926	1,129	4,235
	% Latino est.	8%	10%	11%	10%	10%
	% Spanish-Surnamed	7%	9%	10%	9%	9%
	% Asian-Surnamed	1%	1%	1%	2%	1%
	% Filipino-Surnamed	1%	0%	0%	0%	0%
	% NH White est.	81%	88%	88%	80%	84%
Voter Turnout (Nov 2014)	Total	739	937	378	758	2,812
	% Latino est.	5%	7%	7%	7%	6%
	% Spanish-Surnamed	4%	6%	6%	6%	6%
	% Asian-Surnamed	1%	1%	1%	1%	1%
	% Filipino-Surnamed	0%	0%	0%	0%	0%
	% NH White est.	86%	92%	92%	86%	89%
ACS Pop. Est.	Total	1,881	1,807	1,755	1,829	7,272
	Age					
Age	age0-19	20%	21%	21%	20%	21%
	age20-60	43%	51%	54%	48%	49%
	age60plus	37%	29%	25%	31%	31%
Immigration	immigrants	14%	15%	15%	10%	13%
	naturalized	71%	56%	50%	43%	56%
Language spoken at home	english	84%	84%	84%	83%	84%
	spanish	8%	10%	11%	13%	10%
	asian-lang	1%	1%	2%	0%	1%
	other lang	7%	5%	4%	4%	5%
Language Fluency	Speaks Eng. "Less than Very Well"	3%	5%	6%	6%	5%
Education (among those age 25+)	hs-grad	44%	44%	44%	49%	45%
	bachelor	27%	27%	27%	23%	26%
	graduatedegree	22%	20%	18%	18%	19%
Child in Household	child-under18	21%	24%	27%	17%	22%
Pct of Pop. Age 16+	employed	48%	55%	58%	55%	54%
Household Income	income 0-25k	19%	17%	16%	24%	19%
	income 25-50k	19%	17%	16%	15%	17%
	income 50-75k	16%	18%	20%	14%	17%
	income 75-200k	33%	33%	33%	31%	32%
	income 200k-plus	13%	15%	16%	16%	15%
Housing Stats	single family	77%	82%	86%	89%	83%
	multi-family	23%	18%	14%	11%	17%
	rented	41%	42%	42%	35%	40%
	owned	59%	58%	58%	65%	60%

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 2012-2016 American Community Survey and Special Tabulation 5-year data.

Case Study Town of Woodside

The Town of Woodside had “from-district” elections to elect their councilmembers. Woodside historically had 7 districts, and the “from district” meant that they needed to live in that district; however, anyone in Town could vote for that candidate. Votes did not need to come from their specific districts as they do now. The Town on Woodside did not receive a demand letter. It was noted that moving forward with by-district elections will save the Town costs associated with either litigating a potential CVRA lawsuit or settling the issue with prospective plaintiffs that may issue a demand letter. They held 5 public hearings for public engagement.

Total Area	City or Town	Population	Charter or General Law	District or At Large	Rotation or Elected Mayor	Term Limits
11.73 square miles	Town	5,309	General Law	District (5)	Rotation	None

ORDINANCE NO. 2022 - 626

ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF WOODSIDE REPEALING SUBSECTION 30.02, RESIDENCY OF COUNCIL MEMBERS IN DISTRICTS OF REPRESENTATION, TITLE III, ADMINISTRATION, CHAPTER 30, TOWN COUNCIL, OF THE WOODSIDE MUNICIPAL CODE AND ADDING SUBSECTION 30.02, ELECTION OF MEMBERS OF THE TOWN COUNCIL BY DISTRICT TO PROVIDE FOR THE ELECTION OF MEMBERS OF THE TOWN COUNCIL BY FIVE DISTRICTS, ESTABLISHING THE BOUNDARIES AND IDENTIFICATION NUMBER OF EACH DISTRICT, AND ESTABLISHING THE ELECTION ORDER OF EACH DISTRICT; CEQA DETERMINATION: EXEMPT PURSUANT TO STATE CEQA GUIDELINES SECTION 15378(b)(5), 15601(b)(3)

WHEREAS, the Town of Woodside has historically used a “from district” method of electing members to the Town Council, which is consistent with the guarantees of Section 7 of Article 1 and of Section 2 of Article II of the California Constitution; and

WHEREAS, California Government Code Section 34886 permits the Town Council to change the method of election by ordinance to a “by-district” system in which each member of the Town Council is elected only by the voters in the district in which the candidate resides, in accordance with California Government Code Section 34871; and

WHEREAS, a by-district system can also be consistent with the guarantees of Section 7 of Article I and of Section 2 of Article II of the California Constitution; and

WHEREAS, on March 23, 2021, the Town Council adopted Resolution Number 2021-7398 that initiated the process of establishing a by-district election system; and

WHEREAS, under the provisions of California Elections Code Section 100100, a town that changes from an at-large method of electing councilmembers to a by-district method of electing councilmembers must hold a total of five public hearings, which includes at least two public hearings regarding potential voting district boundaries prior to the release and consideration of any draft voting district maps, and two public hearings following the release of draft voting district maps; and

WHEREAS, on November 16, 2021 and December 9, 2021, pursuant to California Elections Code Section 10010(a)(1), the Town Council held public hearings where the public was invited to provide input regarding the composition of the Town’s voting districts before any draft maps were drawn, and the Town Council of the Town of Woodside considered and discussed the same; and

WHEREAS, on February 28, 2022 and March 15, 2022, pursuant to California Elections Code Section 10010(a)(2), the Town Council held public hearings where the public was invited to provide input regarding the content of the draft maps that had been released and published at least seven (7) days before each meeting, and the proposed sequence of the elections, and the Town Council of the Town of Woodside considered and discussed the same; and

WHEREAS, at its meeting on March 15, 2022, the Town Council directed staff to prepare a proposed ordinance adopting a voting district map for the Town Council’s consideration; and

WHEREAS, on April 5, 2022, the Town Council held a final public hearing on the proposal to establish district boundaries, reviewed and considered additional public input, formally selected the voting district map and the election sequence attached to, incorporated in, and set forth, in this Ordinance as Exhibit A, which was introduced for a first reading at the same meeting; and

WHEREAS, throughout the foregoing process, the Town engaged in a significant amount of public outreach and engagement above and beyond the public hearings and other procedures required by California Elections Code Section 10010; and

WHEREAS, the purpose of this Ordinance is to enact, pursuant to California Government Code Section 34886, an ordinance providing for the election of members of the Town Council of the Town of Woodside by district in five single-member districts as reflected in the voting district map attached as Exhibit A to this Ordinance, in furtherance of the California Voting Rights Act of 2001 (Chapter 1.5 [commencing with Section 14025] of Division 14 of the Elections Code) to encourage by-district elections as one method to implement the guarantees of Section 7 of Article I and of Section 2 of Article II of the California Constitution.

IT IS HEREBY ORDAINED by the Town Council of the Town of Woodside as follows:

SECTION ONE: The recitals set forth above are true and correct and are hereby incorporated herein by this reference as if fully set forth in their entirety.

SECTION TWO: Chapter 30, Town Council, of Title III, Administration, of the Woodside Municipal Code is hereby amended to repeal Section 30.02, Residency of Council Members in districts of representation, in its entirety.

SECTION THREE: A new Section 30.02, Election of members of the Town Council by district, is added to Chapter 30, Town Council of Title III, Administration, of the Woodside Municipal Code to read as follows:

Section 30.02 Election of members of the Town Council by district.

- (A) *Districts Established.* Five Town Council districts are hereby established in the Town of Woodside. The boundaries and identifying numbers of each district shall be as described and shown on the Council District Map attached as Exhibit A, and incorporated by reference.
- (B) *Election of members of the Town Council by-district.*
 - (1) Following the effective date of this Ordinance and upon the commencement of “by-district” elections in the order established by this Code Section, members of the Town Council shall be elected “by-district” as defined in the California Government Code Section 34871 or any successor statute. Any candidate for Town Council must have been a resident and elector of the

district in which they seek election by the time they pull nomination papers for such office, or such person’s appointment to fill a vacancy therein. No term of any member of the Town Council that commenced prior to the effective date of this Ordinance shall be affected by the adoption of this Ordinance. Should a vacancy occur in an office elected for a term scheduled to terminate after the November 2024 election prior to the scheduled end of that term, the Council may fill that vacancy for the remainder of that term pursuant to regular process of filling Council vacancies and, if by special election, that special election shall be “from district.”

- (2) Registered voters voting for a member of the Town Council shall be residents of the geographical area making up the district from which the member is to be elected.
- (3) The terms of the office of each member elected to the Town Council shall remain four (4) years.

(C) *Commencement of district elections.*

- (1) Commencing on the General Municipal Election in 2022 and every four years thereafter the voters in districts 2 and 3, shall elect members of the Town Council by district for four (4) year terms. At the General Municipal Election in 2024, and every four years thereafter, the voters in districts 1, 4, and 5, shall elect members of the Town Council by district for four (4) year terms.
- (2) The term of office of any councilmember who has been elected and whose term of office has not expired shall not be affected by any change in the boundaries of the district from which they were elected.

SECTION FOUR: Technical Adjustments and Metes-and-Bounds. If necessary to facilitate the implementation of this Ordinance, the Town Clerk 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 Town Clerk shall consult with the Town Manager and Town Attorney concerning any technical adjustments deemed necessary and shall advise the Town Council of any such adjustments required in the implementation of the districts. The Town Clerk shall also direct the Town’s demographer to provide a metes-and-bounds description of each district as shown on the map attached as Exhibit A and incorporated herein by reference, which shall be submitted to the Town Council at its next regular meeting and kept on file in the Town Clerk’s office for public review.

SECTION FIVE: CEQA Determination. This Ordinance is not subject to the California Environmental Quality Act (CEQA) because it is not a “project” within the meaning of Section 15378 of the State CEQA Guidelines, since there is no potential of the Ordinance to result in direct or indirect physical change to the environment. In addition, the Ordinance is not subject to CEQA pursuant to State CEQA Guidelines section 15061(b)(3), as it can be seen with certainty that there is no possibility the Ordinance may have a significant effect on the environment.

SECTION SIX: If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional or invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of the Ordinance or any part thereof. The Town Council

hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective.

SECTION SEVEN: Pursuant to Section 36937(a) of the Government Code of the State of California, the Ordinance shall take effect immediately upon its passage.

SECTION EIGHT: The Town Clerk shall cause this Ordinance to be published in accordance with the requirements of Section 36933 of the Government Code of the State of California.


* * * * *

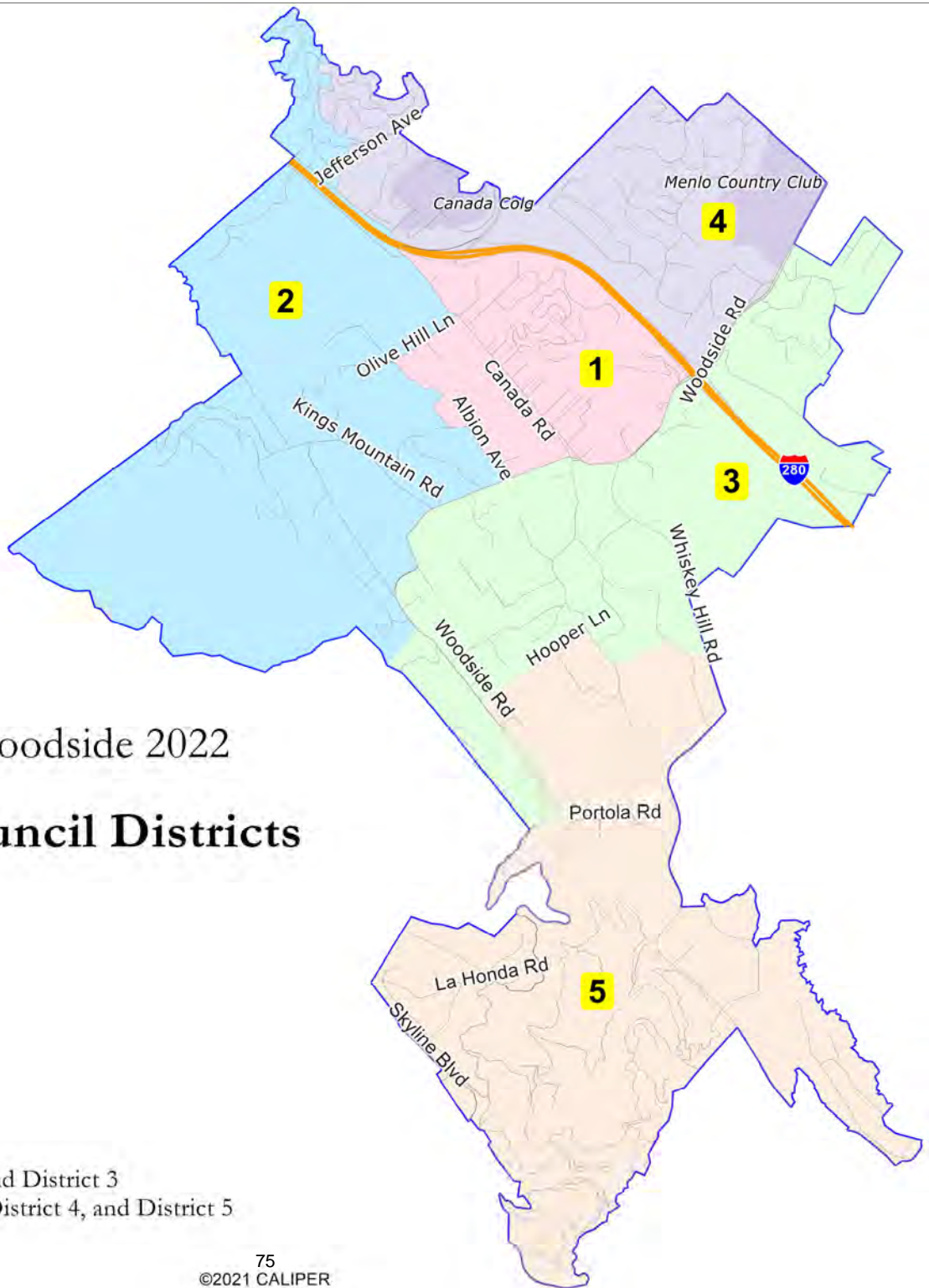
I, the undersigned, hereby certify that the foregoing Ordinance is a full, true and correct copy of Ordinance No. 2022-626 of the Town of Woodside entitled as above; that it was introduced on the 5th day of April, 2022 and was passed and adopted by the Town Council on the 12th day of April of, 2022, by the following vote:

AYES, Councilmembers: Carvell, Dombkowski, Shaw, and Mayor Brown
NOES, Councilmembers: Fluet
ABSENT, Councilmembers: Scott and Wall
ABSTAIN, Councilmembers:


Clerk of the Town of Woodside

APPROVED:


Mayor of the Town of Woodside



Town of Woodside 2022
Adopted Council Districts

2022 Elections: District 2 and District 3
2024 Elections: District 1, District 4, and District 5

Public 101 Revised

B.	District	1	2	3	4	5	Total
	Total Pop	1,047	1,085	1,031	1,074	1,076	5,313
	Deviation from ideal	-16	22	-32	11	13	54
	% Deviation	-1.51%	2.07%	-3.01%	1.03%	1.22%	5.08%
Total Pop	% Hisp	6.1%	7%	6%	5%	13%	8%
	% NH White	82%	79%	78%	73%	72%	77%
	% NH Black	1%	1%	1%	1%	1%	1%
	% Asian-American	9%	9%	10%	18%	10%	11%
Citizen Voting Age Pop	Total	756	705	822	898	849	4,030
	% Hisp	4%	7%	3%	4%	10%	6%
	% NH White	90%	85%	85%	78%	85%	84%
	% NH Black	0%	0%	3%	3%	0%	1%
	% Asian/Pac.Isl.	6%	8%	9%	15%	6%	9%
Voter Registration (Nov 2020)	Total	857	828	881	910	798	4,274
	% Latino est.	4%	3%	5%	2%	4%	3%
	% Spanish-Surnamed	4%	3%	5%	2%	4%	3%
	% Asian-Surnamed	4%	4%	6%	7%	6%	6%
	% Filipino-Surnamed	0%	0%	1%	0%	0%	0%
	% NH White est.	91%	93%	86%	89%	88%	89%
	% NH Black	0%	0%	2%	1%	0%	1%
Voter Turnout (Nov 2020)	Total	774	713	773	803	692	3,755
	% Latino est.	4%	3%	4%	2%	3%	3%
	% Spanish-Surnamed	4%	3%	4%	2%	3%	3%
	% Asian-Surnamed	4%	4%	6%	8%	7%	6%
	% Filipino-Surnamed	0%	0%	1%	0%	0%	0%
	% NH White est.	91%	93%	86%	88%	88%	89%
	% NH Black	0%	0%	2%	1%	0%	1%
Voter Turnout (Nov 2018)	Total	642	663	589	665	625	3,184
	% Latino est.	4%	2%	4%	2%	3%	3%
	% Spanish-Surnamed	4%	2%	4%	2%	3%	3%
	% Asian-Surnamed	4%	4%	4%	5%	4%	4%
	% Filipino-Surnamed	0%	0%	0%	0%	0%	0%
	% NH White est.	92%	93%	88%	91%	91%	91%
	% NH Black est.	0%	0%	3%	1%	0%	1%
ACS Pop. Est.	Total	1,148	1,018	1,073	1,142	1,177	5,559
Age	age0-19	33%	25%	24%	22%	22%	25%
	age20-60	47%	41%	42%	38%	54%	45%
	age60plus	21%	34%	34%	40%	24%	30%
Immigration	immigrants	18%	18%	17%	18%	15%	17%
	naturalized	78%	67%	69%	79%	62%	71%
Language spoken at home	english	85%	83%	84%	83%	84%	84%
	spanish	7%	4%	4%	4%	7%	5%
	asian-lang	4%	4%	3%	3%	4%	3%
	other lang	5%	9%	10%	10%	6%	8%
Language Fluency	Speaks Eng. "Less than Very Well"	0%	5%	3%	5%	5%	4%
Education (among those age 25+)	hs-grad	20%	14%	16%	16%	12%	16%
	bachelor	32%	31%	35%	31%	32%	32%
	graduatedegree	41%	45%	41%	47%	48%	45%
Child in Household	child-under18	47%	29%	29%	25%	36%	33%
Pct of Pop. Age 16+	employed	53%	58%	54%	56%	72%	59%
Household Income	income 0-25k	10%	5%	7%	3%	6%	6%
	income 25-50k	6%	5%	6%	7%	10%	7%
	income 50-75k	7%	3%	4%	3%	5%	4%
	income 75-200k	25%	27%	25%	17%	21%	23%
	income 200k-plus	52%	61%	57%	71%	58%	60%
Housing Stats	single family	100%	96%	98%	100%	100%	99%
	multi-family	0%	4%	2%	0%	0%	1%
	rented	13%	12%	14%	1%	17%	11%
	owned	87%	88%	86%	99%	83%	89%

Total population data from the 2020 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 2015-2019 American Community Survey and Special Tabulation 5-year data.

TOWN OF WOODSIDE

Report to Town Council

Agenda Item A

From: Kevin Bryant, Town Manager

November 16, 2021

SUBJECT: REDISTRICTING: RECEIVE INPUT FROM THE COMMUNITY REGARDING THE TRANSITION FROM A "FROM-DISTRICT" TO A "BY-DISTRICT" TOWN COUNCIL ELECTION SYSTEM

RECOMMENDATION

It is recommended that the Town Council consider the districting process and permissible criteria to be considered to create district boundaries and conduct a public hearing to receive input on district boundaries.

BACKGROUND

On March 23, 2021, the Town Council adopted Resolution 2021-7398 initiating the process to transition from a "from-district" election system to "by-district" election system. Since the California Voting Rights Act (CVRA) was enacted in 2002, several cities and special districts throughout the State have received demand letters, requiring that those cities/special districts move to "by-district" elections to avoid a lawsuit alleging a violation of the CVRA. Under a "by-district" election system, residents from each district only vote for candidates vying for their district's seat, rather than for candidates from each district.

The Town did not receive a letter threatening a CVRA lawsuit. The Council did determine that voluntarily transitioning to "by-district" elections would save the costs associated with either litigating a potential CVRA lawsuit or settling the issue with prospective plaintiffs that may issue a demand letter in the future. In unanimously approving the Request for Proposals for demographers to assist with the transition to "by-district" elections, the Council also identified exploring the question of whether seven or five Council members best serves the Town.

DISCUSSION

The first step in the transition process is to hold two public hearings to invite public input regarding the composition of the Town's new voting districts before any maps are drawn. After these two public hearings are complete, the Town Council must hold at least two additional public hearings on the draft map(s) of the districts themselves. The maps must be publicly available for at least seven days before the public hearing, and if a change is made to the map(s) after the first public hearing, the revised map(s) must be available at least seven days before the districts are adopted by ordinance.

The purpose of the first two public hearings is 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. The public is requested to provide input regarding communities of interest and other local factors that should be considered while drafting district maps. A "community of interest" is a neighborhood or group that would benefit from being in the same district because of shared interests, views, or characteristics. Possible community features include, but are not limited to:

- School attendance areas;
- Natural dividing lines such as major roads, hills, or highways;
- Areas around parks and other neighborhood landmarks;
- Common issues, neighborhood activities, or legislative/election concerns; and
- Shared demographic characteristics, such as:
 - o Similar levels of income, education, or linguistic insolation;
 - o Languages spoken at home; and
 - o Housing types.

In creating the district boundaries, the Town must ensure compliance with the following state and federally-mandated criteria:

Federal Laws:

1. Each council district shall contain a nearly equal population as required by law; and
2. Each council district shall be drawn in a manner that complies with the Federal Voting Rights Act. No council district shall be drawn with race as the predominate factor in violation of the principles established by the United States Supreme Court in *Shaw v. Reno*, 509 U.S. 630 (1993), and its progeny.

California Criteria for Cities:

1. Geographically contiguous
2. Undivided neighborhoods and "communities of interest" (socio-economic geographic areas that should be kept together)
3. Easily identifiable boundaries
4. Compact (Do not bypass one group of people to get to a more distant group of people)

Other Traditional Districting Principles:

1. Respect voters' choices/continuity in office
2. Future population growth

NEXT STEPS

At a meeting on December 9, 2021, a second Public Hearing will be held to seek additional public input. Following that hearing, draft district maps and proposed election sequencing will be posted to the Town's redistricting website and be available at Town Hall. The draft maps will be posted at least seven days prior to Public Hearings #3 and #4, which will take place between January and March.

CONCLUSION

Transition from a "from-district" election system to a "by-district" election system will ensure that the Town is compliant with the California Voting Rights Act.