



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: City Attorney

Prepared by: Lisa Goldfien
Assistant City Attorney

City Manager Approval: _____

TOPIC: DISTRICT-BASED CITY ELECTIONS

SUBJECT: SECOND PUBLIC HEARING AND ADOPTION OF RESOLUTION APPROVING CRITERIA TO BE USED IN ESTABLISHING FOUR VOTING DISTRICTS FOR THE CITY COUNCIL ELECTIONS IN 2020

RECOMMENDATION:

Hold a public hearing to receive further public comment concerning how the four City Council electoral districts should be drawn, and then adopt the attached resolution approving the criteria to be used to guide the establishment of the districts.

BACKGROUND:

In 2002, the Legislature enacted the California Voting Rights Act (CVRA) (Elec. Code §§14025 – 14032), which prohibits California public agencies from imposing or applying an at-large election method “that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election.” (Elec. Code §14027) A protected class is defined by the CVRA 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.”

The CVRA defines an at-large method of election to include the election method used by the City of San Rafael, in which the voters of the entire City elect all the members of the City Council. In a lawsuit brought pursuant to the CVRA, a plaintiff who establishes a history of “racially polarized voting” under a city’s at-large election system can require a city to change to a district-based election system.

Since 2015, the City’s Latino Civic Leadership Initiative group has been working to increase minority representation on San Rafael’s boards, commissions and ultimately the City Council, and the City is committed to working collaboratively with all of its residents to address any voting or representation concerns. Despite this work, on November 20, 2017 the City received a letter from Malibu attorney Kevin Shenkman urging the City to change its at-large voting system to a district-based voting system, asserting that “San Rafael’s at-large system dilutes the ability of Latinos (a ‘protected class’) - to elect

FOR CITY CLERK ONLY

File No.: _____

Council Meeting: _____

Disposition: _____

candidates of their choice or otherwise influence the outcome of San Rafael's council elections." (See Attachment 4.)

According to the California Elections Code, receipt of this letter starts a 45-day timeline for the City "to pass a resolution outlining its intention to transition from at-large to district-based elections, specific steps it will undertake to facilitate this transition, and an estimated time frame for doing so." (Elec. Code §10010.) A potential plaintiff may not file a lawsuit under the CVRA until this 45-day period has elapsed. Moreover, if the City passes such a resolution, it will have a further 90 days to adopt an ordinance implementing district-based elections before a lawsuit may be filed under the CVRA.

The City Council held a [study session on November 20, 2017](#), at which the City's outside attorney, Christopher Skinnell of the law firm of Nielsen Merksamer, provided a general briefing on the federal and California Voting Rights Acts, as well as an overview of the City's voter demographics to set the stage for further conversation on the subject. Subsequently, the City Council held public hearings at its regular meetings on December 4 and December 18, 2017, and, after receiving an extension of time from Mr. Shenkman, again on January 16, 2018. At these hearings the Council received public input about whether the City should switch to a district-based election system.

After the public hearing on January 16, 2018, the City Council deliberated and voted unanimously to adopt Resolution No. 14453 (Attachment 2), expressing the City Council's intention to transition to district-based elections for the City's four City Council seats, starting with the election of November 3, 2020. The City Council's adoption of this resolution means that the City is shielded from a possible CVRA lawsuit until April 16, 2018, by which time the Council must have officially adopted an ordinance establishing the boundaries of, and the sequence of elections for, the four new election districts.

Elections Code section 10010 specifies the following steps the City Council must follow during that time period:

- a. Before drawing a draft map or maps of the proposed boundaries of the districts, the City Council must hold at least two public hearings over a period of no more than 30 days, at which the public is invited to provide input regarding the composition of the districts.
- b. After all draft maps are drawn, the City must 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.
- c. After the draft map or maps are published, the City Council must hold 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 map or maps and the proposed sequence of elections, if applicable. The first version of a draft map must 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.
- d. The City Council must hold a fifth public hearing prior to adoption of an ordinance that will establish the boundaries of the four election districts for City Council elections beginning with the November 3, 2020 election.

Exhibit A to Resolution No. 14453 sets forth a tentative timeline for the required hearings.

ANALYSIS:

Following the procedure described above, at this meeting, the City Council must hold the second of two required public hearings to allow the public to offer input regarding the composition of the districts prior to the preparation of draft maps of the proposed boundaries of the districts. The City Council held the first of these hearings at its regular meeting on February 5, 2018. At that meeting, Mr. Skinnell gave a PowerPoint presentation explaining the factors that may be considered in drawing the districts.

Mr. Skinnell's presentation included the following points:

- All the districts must have substantially equal shares of the City's total population. In the case of San Rafael, with a population of nearly 58,000, there will be four districts with 14,500 people each, plus or minus up to 5 percent.
- The districts must comply with the Federal Voting Rights Act ("FVRA"), which requires the creation of minority districts if the voting-eligible population of the minority group can form the majority in a single member district that otherwise complies with the law. Mr. Skinnell pointed out that such a "50 percent-plus-one minority" district is not possible in San Rafael, so that FVRA will not be a substantial consideration in the formation of the City's electoral districts.
- Gerrymandering (traditionally, drawing districts so as to give one political party an electoral majority in a large number of districts while concentrating the voting strength of the opposition in as few districts as possible) is not permitted. For this reason, race may not be used as the predominant criterion in drawing the districts, although that does not mean that race may not be considered at all in redistricting.
- The focus should be on neutral criteria that traditionally would be considered in determining what the districts should look like, such as topography, geography, cohesiveness, contiguity, compactness and integrity of territory; and "communities of interest" which are listed in state law, but other non-discriminatory, evenly applied criteria may be considered.

This second public hearing is another opportunity for the City Council to hear from the public as to what factors should be considered in drawing the lines of the City's voting districts. At the conclusion of this public hearing, staff recommends that the City Council adopt a resolution to specify the factors that should guide the establishment of the districts and which the City's demographic consultant, National Demographics, Inc., should consider in creating one or more draft district maps (Attachment 1).

The demographer's draft maps and proposed election sequence will be published no later than February 26, 2018 for public review prior to the March 5, 2018 Council meeting. At that meeting, the City Council will hold another public hearing to consider the draft maps and election sequences.

If the City Council requests preparation of any new or revised maps at that time, the new maps must be published for public review no later than March 12, 2018 for the public hearing scheduled for March 19, 2018. At that meeting, the City Council will take additional public comment on the proposed maps, and may then approve a final district map by introducing an ordinance to establish the districts. Final action on the ordinance must be taken by April 16, 2018 to comply with the statutory 90-day timeline.

COMMUNITY OUTREACH:

The City is partnering with community groups to communicate information throughout the community. A website, <https://www.cityofsanrafael.org/departments/district-elections/> has been created to provide information about the topic, a schedule of meetings, and an online form for public feedback. Meetings have been announced via the City's website, email notifications, the City Manager's newsletter, and via

social media. The City Council considered this issue at a Study Session on November 20, and at its regular meetings on December 4 and December 18, 2017, and January 16, 2018. The Canal Alliance, Canal Welcome Center, Alcohol Justice, Youth for Justice, and United Marin Rising organizations sponsored a public meeting at the Albert Boro Community Center on Saturday January 13 for the purpose of providing information to and receiving input from interested members of the public. A notice of public hearing is also posted in the Marin IJ ten days prior to each public hearing. Printed information prepared by or on behalf of the City in connection with this issue, including PowerPoint presentations, has been made available in English and in Spanish on the City's website. Bilingual City staff has also disseminated informational flyers directly to the public.

Finally, the City will be providing on its website an interactive online tool that the public will be able to use to draw and submit proposed districting plans.

FISCAL IMPACT:

The full extent of the fiscal impacts of a change to district elections is unknown at this time. The City has retained National Demographics, Inc. to provide demographic information and prepare optional district maps. The City's costs for demographic services, including an interactive online tool for use by the public in drawing and submitted proposed district maps, will be a maximum of \$39,500. There are sufficient funds to support this contract in the City Clerk's department budget in the City's General Fund.

The City's additional costs for the services of outside counsel during the transition process are estimated at \$35,000. There are sufficient funds to support this contract in the City Attorney's department budget in the City's General Fund.

In addition, upon adoption of the ordinance establishing the electoral districts for the 2020 election, the City will be liable for the payment attorney Kevin Shenkman's attorney's fees incurred in this matter, subject to documentation and capped at \$30,000. There are sufficient funds to support this obligation in the City Clerk's department budget in the City's General Fund.

OPTIONS:

The City Council has the following options to consider on this matter:

1. Adopt the attached resolution as presented;
2. Adopt the resolution with modifications to the criteria for establishing the City Council districts;
3. Take no action and continue action until March 5, 2018. Staff does not recommend this option as it will leave less time for public consideration of draft district maps.

RECOMMENDED ACTION:

Staff recommends that the City Council hold a public hearing to receive further comments and then adopt the attached resolution specifying criteria to guide the establishment of the four City Council districts.

ATTACHMENTS:

1. Resolution Specifying the Criteria to Guide the Establishment of Electoral Districts and to Further Specify the Deadline for Submission of Proposed Maps by the Public, with attached Exhibit A (criteria)
2. Resolution No. 14453, with Exhibit A (Timeline)
3. San Rafael summary demographic profile (prepared by National Demographics, Inc.)
4. November 10, 2017 letter from Kevin Shenkman
5. Questions and Answers
6. Public Hearing Notice, both English and Spanish

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL
SPECIFYING THE CRITERIA TO GUIDE THE ESTABLISHMENT OF
ELECTORAL DISTRICTS AND TO FURTHER SPECIFY THE DEADLINE FOR
SUBMISSION OF PROPOSED MAPS BY THE PUBLIC**

WHEREAS, on January 16, 2018, the City Council of the City of San Rafael ("City") adopted Resolution No. 14453, stating its intention to adopted district-based elections pursuant to Elections Code section 10010 and the California Voting Rights Act; and

WHEREAS, the City has retained an experienced demographer and special legal counsel to assist the City in establishing a by-district electoral system; and

WHEREAS, on February 5, 2018, and February 20, 2018, the City Council received presentations from its special counsel concerning the current demographics of the City under the 2010 census and American Community Survey, and the procedures and legal and policy criteria governing districting, and received public comment regarding appropriate criteria; and

WHEREAS, on February 5, 2018, and February 20, 2018, the City Council further conducted duly noticed public hearings at which it received testimony from the public regarding appropriate districting criteria; and

WHEREAS, the City Council has fully considered the presentations of its consultants and all of the public comments received; and

WHEREAS, the City Council now wishes to adopt criteria to guide the establishment of electoral districts consistent with legal requirements, including reasonably equal population and Section 2 of the federal Voting Rights Act, and which address other concerns and considerations important to the City; and

WHEREAS, the City has made available on its website materials, including an online mapping program, that are designed to enable members of the public to submit proposed district maps for consideration by the Council; and

WHEREAS, in adopting Resolution No. 14453, the City Council also adopted a timeline for the consideration of proposed maps; and

WHEREAS, to facilitate full consideration of proposed maps at public hearings scheduled for March 5, 2018, March 19, 2018, and April 16, 2018, the Council wishes to adopt a deadline for submission of proposed maps from the public;

NOW, THEREFORE, BE IT RESOLVED, the above recitals are true and correct; and

BE IT FURTHER RESOLVED, that the City Council hereby adopts the criteria identified in Exhibit A to this Resolution as criteria to guide the establishment of electoral districts to be implemented beginning with the November 2020 City Council elections; and

BE IT FURTHER RESOLVED, that the City's redistricting/demographic consulting firm, acting under the supervision of the City Manager, is hereby authorized and directed to formulate one or more electoral district plan scenarios based upon the criteria specified in Exhibit A for

review by the public and by the City Council at three public hearings (or more if necessary), in accordance with the adopted timeline; and

BE IT FURTHER RESOLVED, that the City Council hereby adopts a deadline of March 8, 2018, for submission of proposed maps by the public for consideration by the City Council at future public hearings; and

BE IT FURTHER RESOLVED, that the City Manager shall consult with legal counsel to resolve all legal issues necessary to give effect to this Resolution.

I, LINDSAY LARA, Interim City Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of San Rafael, held on Tuesday, the 20th of February 2018, by the following vote, to wit:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

Lindsay Lara, Interim City Clerk

EXHIBIT A

Specification of Criteria to Guide the Establishment of Electoral Districts

1. The boundaries of the electoral districts shall be established so that the electoral districts are equal in population as defined by law.
2. The boundaries of the electoral districts shall not be gerrymandered in violation of the principles established by the United States Supreme Court in *Shaw v. Reno*, 509 U.S. 630 (1993), and its progeny.
3. The boundaries of the electoral districts shall be established so that the electoral districts do not result in a denial or abridgement of the right of any citizen to vote on account of race or color as provided in Section 2 of the federal Voting Rights Act.
4. The boundaries of the electoral districts shall observe communities of interest as identified in public comment or identified by the city council, including, but not limited to social interests; historical areas; industrial or service industry interests; residential and commercial areas, the location of city facilities and historical sites, and the like, insofar as practicable.
5. The boundaries of the electoral districts shall be compact, insofar as practicable.
6. The boundaries of the electoral districts shall be created to contain cohesive, contiguous territory, insofar as practicable. A district shall not be determined to be non-contiguous within the meaning of this criterion if it is connected by Census blocks comprised of water, and the Council may also take into account the existence of numerous unincorporated islands within the boundaries of the City that are not part of incorporated San Rafael in assessing contiguity.
7. The boundaries of the electoral districts may observe topography and geography, such as the existence of mountains, flat land, forest lands, man-made geographical features such as highways, major roadways and canals, etc., as natural divisions between districts, insofar as practicable.
8. Unless otherwise required by law, the electoral districts shall be created using whole census blocks, insofar as practicable.
9. The boundaries of the electoral districts may avoid the "pairing" of incumbents in the same electoral district, insofar as this does not conflict with the constitution and laws of the State of California and the United States.
10. The boundaries of the electoral districts shall comply with such other factors which become known during the districting process and are formally adopted by the City Council.

RESOLUTION NO. 14453

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL
DECLARING ITS INTENTION TO TRANSITION FROM AT-LARGE TO
DISTRICT-BASED ELECTIONS FOR CITY COUNCIL PURSUANT TO
ELECTIONS CODE SECTION 10010(E)(3)(A), EFFECTIVE
FOR THE NOVEMBER 2020 GENERAL MUNICIPAL ELECTION**

WHEREAS, the City of San Rafael is a charter city duly organized and existing pursuant to the Constitution and laws of the State of California; and

WHEREAS, Article VI of the Charter of the City of San Rafael ("City Charter") provides for the election of four city councilmembers and a separately elected mayor at the general municipal election; and

WHEREAS, Article IV of the City Charter provides that all elections to fill public offices shall be held and conducted as provided by general state law; and

WHEREAS, the City currently uses an at-large election system for electing the mayor and city councilmembers; and

WHEREAS, on November 20, 2017, the City Clerk received by certified mail a letter from attorney Kevin I. Shenkman asserting that the City's at-large election system violates the California Voting Rights Act of 2001 (Elections Code §§14025-14032) ("CVRA") and threatening to sue the City unless the City transitions to a district-based election system for its city council; and

WHEREAS, a violation of the CVRA is established if it can be proven that "racially polarized voting" occurs in the City's at-large election system. Racially polarized voting means voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in a "protected class", an in the choice of candidates or other electoral choices that are preferred by voters in the rest of the electorate (Elections Code §14026(e)); and

WHEREAS, the City Council has been advised that defending a lawsuit filed pursuant to the CVRA will require the City to incur legal fees and costs potentially in the hundreds of thousands of dollars for the City's own defense, and additional liability of potentially hundreds of thousands of dollars in legal fees and costs payable to the prevailing plaintiffs if the City is unsuccessful; and

WHEREAS, California Government Code Section 34886, in certain circumstances, authorizes the legislative body of a city to adopt an ordinance to change its method of election from an "at-large" to "district-based" in which each council member is elected only by the voters residing in the district in which the candidate resides; and

WHEREAS, the California Legislature, in amendments to Elections Code section 10010, has provided a method whereby a jurisdiction, including a charter city, can expeditiously change to a by-district election system and avoid litigation under the CVRA; and

WHEREAS, if the City elects to transition to a district-based election system within the timeframe established in Elections Code section 10010, then the City is protected from the filing

of a CVRA lawsuit with its incumbent costs, and its liability to the potential plaintiffs for legal fees will be capped at \$30,000; and

WHEREAS, although Mr. Shenkman's letter was not accompanied by any evidence to support his claim of a CVRA violation, the City Council finds that the City should act within the safe-harbor timeframe provided by Elections Code Section 10010 to transition from an at-large election system to a district-based election system for electing the city councilmembers; and

WHEREAS, prior to the City Council's consideration of an ordinance to establish district boundaries for a district-based electoral system, California 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, 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. The City Council shall also hold at least two (2) additional 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. The first version of a draft map shall be published at least seven (7) days before consideration at a hearing. If a draft map is revised at or following a hearing, it shall be published and made available to the public for at least seven (7) days before being adopted; and

WHEREAS, the City will retain an experienced demographer to assist the City to develop a proposal for a district-based electoral system; and

WHEREAS, the adoption of a district-based electoral system will not affect the term of any sitting Council Member, each of whom will serve out his or her current term;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of San Rafael as follows:

1. The City Council shall consider an ordinance to change to a district-based election system for use in the City's General Municipal Election for City Council Members beginning in November 2020.
2. The City Council directs staff to work with the City's retained demographer, and other appropriate consultants as needed, to provide a detailed analysis of the City's current demographics and any other information or data necessary to prepare a draft map that divides the City into voting districts in a manner consistent with the intent and purpose of the California Voting Rights Act and the Federal Voting Rights Act.
3. The City Council approves the tentative timeline set forth in Exhibit A, attached to and made a part of this resolution, for conducting a public process to solicit public input on proposed district-based electoral maps before adopting any such map.

4. The City Council directs staff to institute a program for public outreach and to inform the residents of San Rafael of this resolution and the process set forth in Exhibit A, and to facilitate and encourage public participation.
5. The timeline contained in Exhibit A may be adjusted as deemed necessary, provided that such adjustments shall not prevent the City from complying with the time frames specified by Election Code Section 10010.

I, LINDSAY LARA, Interim City Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of San Rafael held on the 16th day of January, 2018, by the following vote, to wit:

AYES: COUNCILMEMBERS: Bushey, Colin, Gamblin, McCullough & Mayor Phillips

NOES: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None

A handwritten signature in cursive script, appearing to read "L. Lara", written in black ink.

Lindsay Lara, Interim City Clerk

EXHIBIT A

**TENTATIVE TIMELINE
TRANSITION TO DISTRICT-BASED ELECTIONS PER ELECTIONS CODE §10010**

NO.	TASK	DATE
1	Adopt Resolution of Intention	January 16, 2018
2	1 ST Public Hearing: Consider composition of districts	February 5, 2018
3	2 nd Public Hearing: Consider composition of districts	February 20, 2018
4	Publication of draft maps and proposed election sequence	By February 26, 2018
5	3 rd Public Hearing: Consider draft maps and election sequence	March 5, 2018
6	Publication of any new or revised draft maps and/or proposed election sequences	By March 12, 2018
7	4 th Public Hearing: Consider draft maps election sequence, and introduce ordinance establishing district elections	March 19, 2018
8	Publication of any new or revised draft maps and/or proposed election sequences	By April 9, 2018
9	5 th Public Hearing: Adopt ordinance establishing district	April 16, 2018
10	Day 90	April 16, 2018
11	Effective date of ordinance	
12	First district-based election	November 3, 2020

City of San Rafael Demographic Profile					
Race/Ethnic Profile	Count	Percent	ACS Profile	Count	Percent
Total Population	57,713		ACS Total Population	59,476	3%
Latino	17,302	30%	Age 0 - 19	13,439	23%
NH White	34,031	59%	Age 20 - 60	31,890	54%
NH Black/African-American	1,242	2%	Age 60+	14,147	24%
NH Native American	313	1%			
NH Asian-American	4,189	7%	Immigrant	16,172	27%
NH Pacific Islander	137	0%	Naturalized (pct of total immigrants)	5,342	33%
NH Other	257	0%	Age 5+	55,785	
NH Multi-Race	242	0%	Speak English at home	35,764	64%
Voting Age Population total	46,581		Speak Spanish at home	14,073	25%
VAP Latino	12,550	27%	Speak an Asian language at home	2,459	4%
VAP NH White	29,103	62%	Speak other language at home	3,489	6%
VAP NH Black/African-American	971	2%	Speak English only "well" or less	10,490	19%
VAP NH Native American	242	1%	Age 25+	43,126	
VAP NH Asian-American	3,249	7%	Age 25+, no HS degree	6,135	14%
VAP NH Pacific Islander	104	0%	Age 25+, HS degree (only)	17,065	40%
VAP NH Other	181	0%	Age 25+, bachelor degree (only)	11,507	27%
VAP NH Multi-Race	181	0%	Age 25+, graduate degree (only)	8,419	20%
Citizen VAP total	37,118		Households	22,986	
CVAP Latino	4,131	11%	Child under 18 in Household	6,685	29%
CVAP NH White	28,509	77%	Income \$0-25k	4,009	17%
CVAP NH African-American	1,459	4%	Income \$25-50k	4,160	18%
CVAP NH Asian & Pacific Islander	2,569	7%	Income \$50-75k	2,880	13%
CVAP Other	449	1%	Income \$75-200k	8,274	36%
Voter Registration (Nov. 2014)	28,223		Income \$200k+	3,663	16%
Latino Reg	2,063	7%	Housing units	24,067	
Asian-Surnamed Reg.	1,011	4%	Single-Family	14,116	59%
Filipino-Surnamed Reg.	155	1%	Multi-Family	9,951	41%
Est. NH White Reg.	24,190	86%	Vacant	1,081	4%
Est. African-Amer. Reg	656	2%	Occupied	22,986	96%
Democratic Reg.	15,528	55%	Rented	10,619	46%
Republican Reg.	4,871	17%	Owned	12,367	54%
Other/No Party Reg.	7,825	28%			
Voters Casting Ballots (Nov. 2014)	16,838	60%	Voters Casting Ballots (Nov. 2012)	25,300	86%
Latino voters	869	5%	Latino voters	1,644	6%
Asian-Surnamed voters	507	3%	Asian-Surnamed voters	800	3%
Filipino-Surnamed voters	80	0%	Filipino-Surnamed voters	137	1%
Est. NH White voters	14,942	89%	Est. NH White voters	22,059	87%
Est. African-Amer. Reg	378	2%	Est. African-Amer. Reg	561	2%
Democratic voters	9,661	57%			
Republican voters	3,297	20%			
Other/No Party voters	3,880	23%			

Sources: 2010 Census, California Statewide Database (2012 and 2014 November elections), 2011-2015 American Community Survey Special Tabulation of Citizen Voting Age data, and 2011-2015 American Community Survey data. "Latino" registration and turnout numbers are Spanish-surnamed data adjusted with US Census

VIA CERTIFIED MAIL

November 10, 2017

Esther Beime, City Clerk
City of San Rafael
1400 Fifth Ave., Rm. 209
San Rafael, CA 94901

Re: Violation of California Voting Rights Act

I write on behalf of our client, Southwest Voter Registration Education Project. The City of San Rafael ("San Rafael") relies upon an at-large election system for electing candidates to its City Council. Moreover, voting within San Rafael is racially polarized, resulting in minority vote dilution, and therefore San Rafael'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.*

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

The entire election history of San Rafael over several decades is illustrative: not a single Latino candidate competed in any of the council contests. Opponents of fair, district-based elections may attribute the lack of Latinos vying for City Council positions to a lack of Latino interest in local government. On the contrary, the alarming absence of Latino candidates seeking election to the San Rafael 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).

According to recent data, Latinos comprise approximately 30% of the population of San Rafael. However, there are currently no Latino representatives on the San Rafael City Council. This lack of Latino representation is perpetuated by the City of San Rafael – it appears that only *one* of the City’s 82 appointed officials is Latino, and city council candidates often get their start in municipal government through such appointed positions. Not only is the contrast between the significant Latino proportion of the electorate and the total absence of Latinos to be elected to the City Council outwardly disturbing, it is also fundamentally hostile towards Latino participation.

The overwhelming majority of San Rafael's Latinos reside in the Canal Area, which is located in the central part of the city. As of 2013, a substantial 80% of residents in the Canal Area were Latino. Housing in the Canal Area has not increased, nor has it become any less expensive than other areas in San Rafael; however, in the Canal Area, overcrowding goes largely ignored and unregulated, and so low-income, Latino families are all but forced to live there. The Canal Area has been largely neglected and, as a result, is ranked the lowest in community well-being in Marin County (*Marin County Human Development Report 2012*). The City Council is simply not reflective of the people of the Canal Area, the majority of whom work low-income, service-industry jobs in order to support their families and afford overcrowded homes in the poorest part of San Rafael.¹ Canal Area residents and the Latino community that largely resides there would greatly benefit from a district-based election, which would allow them to elect candidates that understand the issues facing their neighborhood.

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.

Given the historical lack of Latino representation on the city council in the context of racially polarized elections, we urge San Rafael to voluntarily change its at-large system of electing council members. Otherwise, on behalf of residents within the jurisdiction, we will be forced to seek judicial relief. Please advise us no later than December 31, 2017 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

¹ Councilman Andrew McCullough apparently resides in East San Rafael, the eastern portion of the Canal Area; however, East San Rafael comprises the small, *affluent* portion of the Canal Area, which is culturally and socially different from the rest of the Canal Area.

ATTACHMENT 4

QUESTIONS AND ANSWERS RE DISTRICT-BASED ELECTIONS

The following is a list of questions and answers concerning district-based elections, for discussion by the City Council and the public.

The questions below were asked of staff prior to the City Council's November 20 Study Session:

1. Did the City receive a letter from attorney Kevin Shenkman?

RESPONSE: *Yes, Kevin Shenkman's letter dated November 10, 2017, addressed to the City Clerk was received by her on November 20, 2017.*

2. What made the City decide to take proactive action on district elections rather than just wait for pressure from the various groups? What does the City hope to accomplish?

RESPONSE:

The City began to do research, hired outside counsel, and started to schedule public hearings on the issue of district-based elections when it learned of the impending receipt of Mr. Shenkman's letter. The City hopes to provide an opportunity for all interested persons to provide input to the City Council on the issue of district-based elections, and to ensure that the City's electoral system best serves the entire City, in compliance with state and federal law.

3. Is the City considering forming a citizens committee to look at the issue?

RESPONSE:

Given the very strict timelines that the Legislature has imposed for this process under the CVRA, and the substantial number of hearings that must be held in a short time, a citizen commission is impractical at this point. Nothing would prevent the Council from appointing such a committee in 2021, when lines are redrawn following the next Census.

4. Assuming the City moves to district elections and set the districts in 2018, what districts will be open in the next election in 2020? For example, if the Mayor and two Councilmembers are up for reelection in 2020, will it be the districts the two incumbents are in that get to vote? What if there is another district with no Councilmembers currently living there? If the Mayor runs for re-election and he lives in a district that has no Councilmember, is that district Councilmember seat up for election as well?

RESPONSE: *(See response to No. 8.) The City Council will be determining the sequence of elections as part of the process of establishing the voting districts.*

5. Under what circumstances would a vote of the people be required when setting up districts and at-large versus rotating Mayor?

RESPONSE:

Article IV, Section 2 of the Charter provides that “all elections to fill public offices and elections on measures shall be made, held and conducted in the manner provided by law.” Thus, Staff has concluded that under this provision, a vote of the people is not required to change to district-based elections for the four Councilmember seats. It is staff’s opinion, however, that converting the office of Mayor to a fifth district-based seat would require a charter amendment, that would require a vote of the electorate.

6. How does the timing of the City’s decision play into likely outcomes?

RESPONSE: *If the City transitions to district-based elections within the timeline established by the CVRA, the City will be liable for the attorney’s fees of the potential plaintiffs, capped at \$30,000. If the City chooses not to make the transition within that timeline but does so after being sued, it is possible that the City will be liable for substantially higher litigation costs and attorneys’ fees of the plaintiffs, and the expense of the City’s own defense attorneys will also likely be higher. The amounts are unknown but will increase the longer the action is litigated prior to settlement.*

Sued in 2008, Madera Unified School District ended up paying plaintiffs’ counsel over \$100,000 for six weeks of uncontested litigation, and that was after a substantial reduction of the fees that were requested (which exceed \$1 million).

An additional consideration is that the Council may have less control over the districting process if a court is involved.

7. If the City is sued, could the City appeal to the judge to give us a five-year period to come into compliance and demonstrate increased diversity on the Council?

RESPONSE: *Once a lawsuit is filed under the CVRA, we do not believe there is any authority for a judge to stay the case for five years; even if a judge is willing to approve a five-year transition period, it seems unlikely that this would be a basis for refusing to award the plaintiffs their attorney’s fees and costs.*

8. Do we need to collapse the 2020 and 2022 elections? How does it work when only three of the 5 positions are up in 2020?

RESPONSE:

No. The seats just rotate in. Each current member of the Council serves out the rest of the term to which he or she was elected, and then must run for re-election in the districts. It potentially gets a little more complicated if two councilmembers are paired in

a single district, but everybody still serves out his or her full current term. As part of the establishment of City electoral districts, the Council will determine the districts that will have an open seat at the 2020 election.

9. Could this process force the City to do a 2018 election under any scenario?

RESPONSE:

Staff is not aware of any circumstance that would require the City to hold an election for City Council in 2018.

10. Are the districts set by population or registered voters? If population, wouldn't that create significant disparity of registered voters over the districts?

RESPONSE:

*Districts are set by total population. It can create a significant disparity, but that is the basis that has been approved by the courts, including—most recently—the Supreme Court in *Evenwel v. Abbott*. The chief exception is that prisoners can be excluded from the population base.*

11. The City of Encinitas spent \$150K on the attorneys and \$45K on the demographer and \$30K to reimburse plaintiff. Should we expect similar costs? Any others?

RESPONSE:

The City's outside counsel advises that those figures appear to be realistic for the demographer and the plaintiff. Fees for the City's attorneys would likely be less, since minimal travel time would be required.

12. Will attorney Shenkman be required to prove that he spent \$30K before the City is required to reimburse him?

RESPONSE:

Mr. Shenkman must provide documentation to back up the demand, but in past cases the documentation has not been very specific and the fees have been negotiated.

The questions below were asked by the public at the City Council's public meetings:

13. The cost of running for office disadvantages certain members, in particular Latino members, of the community. Will the cost of running for office in either a district or citywide election be one of the considerations in court and is that something the City will also consider?

RESPONSE:

This is a matter for further public input and discussion by the City Council as it considers the composition of the electoral districts.

14. What sets San Rafael apart from the rest of the County with regard to an at large mayor as opposed to a rotating mayor? What benefit to the City transition to 5 districts and rotating mayor vs current to 4 districts and at large mayor?

RESPONSE:

The Mayor's office in San Rafael is elected pursuant to Article VI, Section 2 of the City's Charter, which was approved by the voters in 1912. Other cities in Marin County governed by general state law, rather than by a charter city; however, general law cities may also put a measure before their voters to have a separately elected mayor. Generally speaking, the larger the city, the more likely it is that the city will have a separately elected mayor, although there is no formal size requirement.

15. Does the City have a choice between 4 or 5 districts? What input can community give regarding 5 districts? What input can we make to ensure City investigates 5 districts thoroughly, as opposed to 4 districts?

RESPONSE:

See response to No. 5.

16. Can the City delay creating district voting until the census and can that decision be negotiated? What would the cost be to delay? Has it been done in other jurisdictions? How would the Council delay the implementation of districts and any related cost? What is the optics of waiting until the 2020 census to create districts? What is the community opinion? And are there examples of other communities that have done similar?

RESPONSE:

The City's outside counsel advises that the City has the option to delay implementing district-based elections until after the 2020 Census, and a number of jurisdictions took this approach preceding the last Census (in 2010). However, litigation under the CVRA has become substantially more active since that time, and this approach would not necessarily avoid litigation. In the course of litigation, a judge might deem this to be a reasonable course of action for the City rather than having to redistrict for two successive elections. There is case law under the federal Voting Rights Act recognizing that redrawing districts for two successive elections would be confusing and disruptive. Based upon an assessment of the risks, the City Council voted on January 16, 2018 to proceed with the transition to district elections for the next election in 2020.

17. What is the real candidate's cost to run a citywide election vs. a district wide election? Can we project cost to run for a contested district seat?

RESPONSE:

The costs vary based upon the candidate's approach. There are no City-mandated costs under either system.

18. Is there data that can evaluate the pluses and minuses of a less homogenous council? For example, data that would show if you have regional or district elections do you have a much more contentious council advocating for its own district rather than the entire city?

RESPONSE:

City staff is not aware of any quantitative data that addresses this, though there is qualitative scholarship and case law recognizing the possibility that districts could lead to more concern for one's district at the expense of a "big-picture" view. However, the extent to which this is true varies by jurisdiction.

19. Can information be translated into Spanish from meetings?

RESPONSE:

Yes, the City has arranged for Spanish translations of written agenda materials on this matter, and for the presence of a Spanish-speaking translator at the public meetings.

20. Can you provide a summary of pros and cons from the Palmdale decision to go to trial? Can we apply those to our community?

RESPONSE:

CVRA cases are highly fact- and jurisdiction-specific, so applying the result in one jurisdiction to another is very difficult. San Rafael has far different demographics and electoral history, and there were a number of unique aspects to the Palmdale case. This is especially the case as there is no Court of Appeal decision (on the merits) in Palmdale that would be binding on any lower court. Staff developed a preliminary list of the pros and cons of transitioning to district-based elections as requested by Mr. Shenkman, which was included in the staff report for the December 4, and December 18, 2017 City Council meetings. The City of Palmdale incurred expenses of approximately \$4.5 million litigating its case through trial and appeals. The high cost of litigation is the primary lesson of the Palmdale case and the argument for making the change during the statutorily allowed time period.

21. How will the City involve the entire community in the public process and keep them involved? How will the City ensure people affected, i.e. people of color, have opportunity to speak and be involved beyond just public comment?

RESPONSE:

The City held a study session on November 20 and has held public hearings on December 4, December 18 and January 16 to receive public input. Now that the City Council has decided to transition to district-based elections, the City Council will hold multiple meetings over a period of not more than 90 days in order to make a final decision by April 16, 2018. These hearings will give the public the opportunity to speak to the Council about how the new electoral districts should be formed. In addition, the

City is entering into an agreement with National Demographics, Inc. that will make an interactive online system available so that the public can review and propose optional district maps. Finally, the City has been and will continue to be posting informational materials to its website and on sound recordings, and will be partnering with community organizations to get the word out.

22. Will there be an effort in the County to engage the Latino community to become citizens? i.e. People that may be eligible to become citizens.

RESPONSE:

Such engagement efforts are not a requirement of the CVRA, which only addresses the change from at-large elections to district-based elections, nor of the decision to be made by the City Council whether to transition to district-based elections during the time period allowed by the law. It is a related matter, however, which may be the subject of further discussion by the City Council either in connection with the current matter, or at a later date.

23. If the City moves to districts for the 2020 election will the City then have to redraw the districts in 2021 after the 2020 census data?

RESPONSE:

Yes. The City's next election is 2020, and the lines would have to be reconsidered upon the release of the Census the following year. See Elec. Code § 21620 which states "After the initial establishment of the districts, the districts shall continue to be as nearly equal in population as may be according to the latest federal decennial census or, if authorized by the charter of the city, according to the federal mid-decade census."

CITY OF SAN RAFAEL

NOTICE OF PUBLIC HEARING

The City Council of the City of San Rafael will hold a public hearing:

DATE/TIME/PLACE: Tuesday, February 20, 2018, at 7:00 p.m.
City Hall Council Chambers, 1400 Fifth Avenue, San Rafael

PURPOSE: Public Hearing: On February 20, March 5, March 19, and April 16, 2018, at 7:00 p.m., in the City Council Chambers located at 1400 Fifth Avenue, the City Council of the City of San Rafael will conduct Public Hearings regarding establishing single-member council districts in which to conduct by-district elections for the City Council members, and the potential sequence of elections in such districts. At the February 20 hearing, the public is invited to provide input regarding the composition of the districts and the appropriate criteria to consider in creating the districts. At the two public hearings in March, the public is invited to provide input regarding the content of the draft map or maps and the proposed sequence of elections. At the final public hearing, the City Council will vote to approve or defeat an ordinance establishing district-based elections. Comments can also be submitted via e-mail to Lindsay.lara@cityofsanrafael.org. More information about the establishment of single-member districts for by-district elections, including draft maps when they become available, will be included on the City's website at <https://www.cityofsanrafael.org/district-elections>. It is anticipated that draft maps will be made available on approximately February 26, 2018. In the event changes are necessary to the public hearing schedule noted above, a new notice will be published in accordance with law.

IF YOU CANNOT ATTEND: You may send a letter to Lindsay Lara, Interim City Clerk, City of San Rafael, P.O. Box 151560, San Rafael, CA 94915-1560. You may also hand deliver a letter to the City Clerk prior to the meeting.

FOR MORE INFORMATION: You may contact Lisa Goldfien, Assistant City Attorney, at (415) 485-3081. Office hours are Monday through Friday, 8:30 a.m. to 5:00 p.m.

SAN RAFAEL CITY COUNCIL

/s/ LINDSAY LARA
LINDSAY LARA, Interim City Clerk

(Please publish in the Marin Independent Journal on **Friday, February 9, 2018**)

CIUDAD DE SAN RAFAEL

AVISO DE AUDIENCIA PÚBLICA

El Concejo Municipal de la Ciudad de San Rafael tendrá una audiencia pública:

FECHA / HORA / LUGAR: Lunes, 5 de febrero de 2018, a las 7:00 p.m.
Cámaras del Consejo Municipal, 1400 Fifth Avenue, San Rafael

PROPÓSITO: Audiencia pública: el 5 de febrero, el 20 de febrero, el 5 de marzo, el 19 de marzo y el 16 de abril de 2018, a las 7:00 p.m., en las cámaras del concejo municipal ubicadas en 1400 Fifth Avenue, el concejo municipal de la Ciudad de San Rafael conducirá audiencias públicas con respecto al establecimiento de distritos municipales de un solo miembro en los cuales se llevarán a cabo elecciones para los miembros del concejo municipal, y la posible secuencia de elecciones en dichos distritos. En las dos primeras audiencias públicas, se invita al público a proporcionar información sobre la composición de los distritos y los criterios apropiados a considerar al crear los distritos. En las segundas dos audiencias públicas, se invita al público a proporcionar su opinión sobre el contenido del mapa o mapas preliminares y la secuencia propuesta de elecciones. En la audiencia pública final, el concejo municipal votará para aprobar o rechazar una ordenanza que establezca elecciones por distritos. Se anticipa que los borradores de mapas estarán disponibles aproximadamente el 26 de febrero de 2018. En el caso de que sean necesarios cambios al calendario de audiencia pública mencionado anteriormente, se publicará un nuevo aviso de acuerdo con la ley.

SI NO PUEDE ASISTIR: Puede enviar una carta a Lindsay Lara, Secretaria Municipal Interina, City of San Rafael, P.O. Box 151560, San Rafael, CA 94915-1560. Usted también puede entregar una carta a la secretaria municipal antes de la reunión. Los comentarios también pueden enviarse por correo electrónico a Lindsay.lara@cityofsanrafael.org.

PARA OBTENER MÁS INFORMACIÓN:

Se incluirá más información sobre el establecimiento de distritos de un solo miembro para elecciones por distrito, y borradores de mapas cuando estén disponibles, en el sitio web de la ciudad en <https://www.cityofsanrafael.org/district-elections>. También puede comunicarse con Lisa Goldfien, Fiscal Asistente Municipal, al (415) 485-3081. El horario de oficina es de lunes a viernes, de 8:30 a.m. a 5:00 p.m.

CONCEJO MUNICIPAL DE SAN RAFAEL

/f/ LINDSAY LARA

LINDSAY LARA, SECRETARIA MUNICIPAL INTERINA