



AGENDA OF A SPECIAL MEETING
NATIONAL CITY COUNCIL
ONLINE ONLY MEETING
<https://www.nationalcityca.gov/webcast>
LIVE WEBCAST
COUNCIL CHAMBERS
CIVIC CENTER
1243 NATIONAL CITY BOULEVARD
NATIONAL CITY, CALIFORNIA
TUESDAY, DECEMBER 21, 2021 – 6:00 PM

ALEJANDRA SOTELO-SOLIS
Mayor

MARCUS BUSH
Vice Mayor

RON MORRISON
Councilmember

MONA RIOS
Councilmember

JOSE RODRIGUEZ
Councilmember

1243 National City Blvd.
National City, CA 91950
619-336-4240

Meeting agendas and
minutes available on the
City's website at
WWW.NATIONALCITYCA.GOV

NOTICE: The health and well-being of National City residents, visitors, and employees during the COVID-19 outbreak remains our top priority. The City of National City is coordinating with the County of San Diego Health Human Services Agency, and other agencies to take measures to monitor and reduce the spread of the novel coronavirus (COVID-19). **The World Health Organization has declared the outbreak a global pandemic and local and state emergencies have been declared providing reprieve from certain public meeting laws such as the Brown Act.**

As a result, the City Council Meeting will occur only online to ensure the safety of City residents, employees and the communities we serve. A live webcast of the meeting may be viewed on the city's website at www.nationalcityca.gov. **For Public Comments see "PUBLIC COMMENTS" section below.**

ORDER OF BUSINESS: Public sessions of all Regular Meetings of the City Council / Community Development Commission - Housing Authority (hereafter referred to as Elected Body) begin at 6:00 p.m. on the first and third Tuesday of each month. Public Hearings begin at 6:00 p.m. unless otherwise noted. Closed Meetings begin in Open Session at 5:00 p.m. or such other time as noted, and after announcing closed session items, convenes into a Closed Meeting. If a workshop is scheduled, the subject and time of the workshop will appear on the agenda. The Mayor and Council members also sit as the Chairperson and Members of the Board of the Community Development Commission (CDC).

REPORTS: All open session agenda items and reports as well as all documents and writings distributed to the Elected Body less than 72 hours prior to the meeting, are available for review on the City's website at www.nationalcityca.gov. Regular Meetings of the Elected Body are webcast and archived on the City's website at www.nationalcityca.gov.

PUBLIC COMMENTS: There are multiple ways you can make sure your opinions are heard and considered by our City Council as outlined below:

Submit your public comment prior to the meeting: To submit a comment in writing, email PublicComment@nationalcityca.gov, provide the agenda item number and title of the item in the subject line of your email. Public comments or testimony is limited to up to three (3) minutes. If the comment is not related to a specific agenda item,

indicate General Public Comment in the subject line. All email comments received by 4:00 p.m. on the day of the meeting will be read into the record at the City Council meeting, emailed to the City Councilmembers, and retained as part of the official record. All comments will be available on the City website within 48 hours following the meeting.

Questions about public comment or City Council protocols? Please contact the City Clerk's Office at (619) 336-4228 or via email at Clerk@nationalcityca.gov.

WRITTEN AGENDA: With limited exceptions, the Elected Body may take action only upon items appearing on the written agenda. Items not appearing on the agenda must be brought back on a subsequent agenda unless they are of a demonstrated emergency or urgent nature, and the need to take action on such items arose after the agenda was posted.

Upon request, this agenda can be made available in appropriate alternative formats to persons with a disability in compliance with the Americans with Disabilities Act. Please contact the City Clerk's Office at (619) 336-4228 to request a disability-related modification or accommodation. Notification 24-hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

AVISO: La salud y el bienestar de los residentes, visitantes y empleados de National City durante el brote de COVID-19 sigue siendo nuestra máxima prioridad. El Ayuntamiento de la Ciudad de National City se está coordinando con la Agencia de Salud y Servicios Humanos del Condado de San Diego y otras agencias para tomar medidas con el fin de monitorear y reducir la propagación del nuevo coronavirus (COVID-19). La Organización Mundial de la Salud declaró el brote como una pandemia global y se han manifestado emergencias locales y estatales que resultan en la suspensión de ciertas leyes de reuniones públicas, tal como la Ley Brown.

Como resultado de ello, la junta del Concejo Municipal del Ayuntamiento se llevará a cabo solamente en línea para garantizar la seguridad de los residentes, empleados y comunidades locales que atendemos. Se podrá ver una transmisión en vivo de la junta en el sitio web del Ayuntamiento en www.nationalcityca.gov. **Para comentarios públicos, vea la sección "COMENTARIOS PÚBLICOS" más adelante.**

ORDEN DEL DÍA: Las sesiones públicas de todas las juntas ordinarias del Concejo Municipal/Comisión de Desarrollo Comunitario - Autoridad de Vivienda (en lo sucesivo denominado Órgano Electo) inician a las 6:00 p.m. el primer y tercer martes de cada mes. Las audiencias públicas inician a las 6:00 p.m., a menos que se indique lo contrario. Las juntas cerradas inician en sesión abierta a las 5:00 p.m. o en cualquier otro momento que se indique, y tras anunciar los temas de la sesión cerrada, la junta se realiza como sesión cerrada. Si se programa una reunión de discusión y análisis, el tema y la hora de la misma aparecerán en la agenda. La Alcaldesa y los Concejales se reúnen por igual que el Presidente y los integrantes del Consejo de la Comisión de Desarrollo Comunitario.

INFORMES: Todos los temas e informes de la agenda de la sesión abierta, así como todos los documentos y escritos entregados al Órgano Electo menos de 72 horas antes de la sesión, aparecerán en el sitio web del Ayuntamiento. Las juntas ordinarias del Órgano Electo se transmiten por Internet y se archivan en el sitio web del Ayuntamiento en www.nationalcityca.gov.

COMENTARIOS PÚBLICOS: Hay varias formas en las que puede asegurarse de que sus opiniones sean escuchadas y consideradas por nuestro Concejo Municipal como se describe a continuación:

Envíe su comentario público antes de la sesión: Para enviar un comentario por escrito, envíe un correo electrónico a PublicComment@nationalcityca.gov. Por favor, indique el número del tema del programa y el título del tema en la línea de asunto de su correo electrónico. Los comentarios o testimonios públicos están limitados a tres (3) minutos. Si el comentario no está relacionado con un tema específico del programa, indique Comentario público general en la línea de asunto. Todos los comentarios recibidos por correo electrónico antes de las 4:00 p.m. del día de la reunión serán leídos en el registro en la reunión del Concejo Municipal, enviados por correo electrónico a los Concejales de la Ciudad, y retenidos como parte del registro oficial. Todos los comentarios estarán disponibles en el sitio web de la ciudad dentro de las 48 horas posteriores a la reunión.

¿Preguntas sobre comentarios públicos o protocolos del Concejo Municipal? Comuníquese con la Oficina de la Secretaria del Ayuntamiento al teléfono (619) 336-4228, o por correo electrónico a Clerk@nationalcityca.gov.

AGENDA ESCRITA: Con contadas excepciones, el Órgano Electo puede tomar medidas únicamente sobre los temas que aparecen en la agenda escrita. Los temas que no aparezcan en la agenda deben aparecer en una agenda subsecuente, a menos que sean de emergencia o urgencia demostrada, y la necesidad de tomar medidas sobre esos temas haya surgido después de haber sido publicada la agenda.

Previa solicitud, esta agenda puede estar disponible en formatos alternativos apropiados para personas con discapacidades, en observancia de la Ley de Estadounidenses con Discapacidades. Llame al teléfono (619) 336-4228 de la Oficina del Secretario del Ayuntamiento para solicitar una modificación o adaptación de acceso relativa a la discapacidad. Notificar 24 horas antes de la sesión permitirá al Ayuntamiento hacer arreglos razonables para garantizar la accesibilidad a esta junta.

OPEN TO THE PUBLIC

OPEN SESSION

CALL TO ORDER

ROLL CALL

PUBLIC COMMENT: (Public Comment will be restricted to Agenda Items only)

CONSENT CALENDAR

1. Resolution of the City Council of the City of National City, California, amending the Agreement between the City and Colantuono, Highsmith & Whatley, PC for legal services in the specialized area of Election Law by increasing the not-to-exceed amount by \$80,000 for a new total not-to-exceed amount of \$105,000 and authorizing an increase of \$80,000 in General Fund appropriations and use of General Fund fund balance for said legal services. (City Attorney)
2. Resolution of the City Council of the City of National City, California, authorizing registering in the National Opioid Settlement and authorizing the City Attorney to execute the necessary registration documents. (City Attorney).

NON CONSENT RESOLUTION

3. Resolution of the City Council of the City of National City, California, 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. (City Attorney)

ADJOURNMENT

Next Regular City Council Meeting: Tuesday, January 18, 2022, 6:00 p.m., City Council Chambers, Civic Center – National City, California.



NOTICE OF SPECIAL MEETING

**NATIONAL CITY COUNCIL
ONLINE ONLY MEETING
<https://www.nationalcityca.gov/webcast>
LIVE WEBCAST**

**COUNCIL CHAMBERS
CIVIC CENTER, 1243 NATIONAL CITY BOULEVARD
NATIONAL CITY, CALIFORNIA
TUESDAY, DECEMBER 21, 2021 – 6:00 PM**

NOTICE IS HEREBY GIVEN, that the City Council of the City of National City will hold a Special Meeting on **Tuesday, December 21, 2021, at 6:00 p.m.**, or as soon thereafter as the matter may be considered, in the Council Chambers at the Civic Center, 1243 National City Boulevard, National City, California, 91950. The business to be transacted at said meeting will be for the City Council to consider the following:

OPEN TO THE PUBLIC

OPEN SESSION

CALL TO ORDER

ROLL CALL

PUBLIC COMMENT: (Public Comment will be restricted to Agenda Items only)

CONSENT CALENDAR

1. Resolution of the City Council of the City of National City, California, amending the Agreement between the City and Colantuono, Highsmith & Whatley, PC for legal services in the specialized area of Election Law by increasing the not-to-exceed amount by \$80,000 for a new total not-to-exceed amount of \$105,000 and authorizing an increase of \$80,000 in General Fund appropriations and use of General Fund fund balance for said legal services. (City Attorney)
2. Resolution of the City Council of the City of National City, California, authorizing registering in the National Opioid Settlement and authorizing the City Attorney to execute the necessary registration documents. (City Attorney).

NON CONSENT RESOLUTION

3. Resolution of the City Council of the City of National City, California, 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. (City Attorney)

ADJOURNMENT

Next Regular City Council Meeting: Tuesday, January 18, 2022, 6:00 p.m., City Council Chambers, Civic Center – National City, California.

**CITY OF NATIONAL CITY, CALIFORNIA
COUNCIL AGENDA STATEMENT**

MEETING DATE: 12/21/2021

AGENDA ITEM NO. 1

ITEM TITLE:

Resolution of the City Council of the City of National City, California, amending the Agreement between the City and Colantuono, Highsmith & Whatley, PC for legal services in the specialized area of Election Law by increasing the not-to-exceed amount by \$ 80,000 for a new total not-to-exceed amount of \$105,000 and authorizing an increase of \$80,000 in General Fund appropriations and use of General Fund fund balance for said legal services.

PREPARED BY: Charles E. Bell, Jr., City Attorney

DEPARTMENT: City Attorney's Office

PHONE: Ext. 4222

APPROVED BY: *Charles E. Bell, Jr.*

EXPLANATION:

On October 28, 2021, the City entered into an agreement with Colantuono, Highsmith & Whatley, PC for specialized election-related services for an amount not to exceed \$25,000.00.

The City Attorney's Office desires to increase the not-to-exceed amount by \$80,000 for a new not-to-exceed amount total of \$105,000 due to the increased scope of services.

FINANCIAL STATEMENT:

APPROVED: *Molly Brown* **Finance**

ACCOUNT NO.

APPROVED: _____ **MIS**

001-405-000-213-0000 Professional Services. This appropriation requires the use of General Fund unassigned fund balance of \$80,000.

ENVIRONMENTAL REVIEW:

This action does not constitute a project under California Environmental Quality Act (CEQA) Guidelines Section 15378(b)(2).

ORDINANCE: **INTRODUCTION:** **FINAL ADOPTION:**

STAFF RECOMMENDATION:

Adopt Resolution authorizing amending the Agreement between the City and Colantuono, Highsmith & Whatley, PC for legal services in the specialized area of Election Law by increasing the not-to-exceed amount by \$80,000 for a new total not-to-exceed amount of \$105,000 and authorizing an increase of \$80,000 in General Fund appropriations and use of General Fund fund balance for said legal services

BOARD / COMMISSION RECOMMENDATION:

ATTACHMENTS:

- Amendment to Agreement
- Resolution

**AMENDMENT TO THE AGREEMENT
BY AND BETWEEN
THE CITY OF NATIONAL CITY
AND
COLANTUONO, HIGHSMITH & WHATLEY, PC**

THIS FIRST AMENDMENT TO THE AGREEMENT is entered into this 21st day of December 2021, by and between the CITY OF NATIONAL CITY, a municipal corporation ("CITY"), and COLANTUONO, HIGHSMITH & WHATLEY, PC, a professional corporation (the "CONTRACTOR").

RECITALS

WHEREAS, the CITY and the CONTRACTOR entered into an Agreement on October 28, 2021 ("the Agreement"), wherein the CONTRACTOR agreed to provide election-related services for a not-to-exceed amount of \$25,000; and

WHEREAS, the parties desire to amend the Agreement to cover the cost of providing the increased scope of services from \$25,000 to the not-to-exceed amount by \$80,000, for a total not-to-exceed amount of \$105,000.

AGREEMENT

NOW, THEREFORE, the parties hereto agree that:

1. The October 28, 2021, Agreement is hereby amended to cover the cost of the increased scope of services from the original contract amount of \$25,000 to the not-to-exceed amount by \$80,000, for a total not-to-exceed amount of \$105,000.
2. The parties further agree that, with the foregoing exceptions, each and every other term and provision of the October 28, 2021, Agreement shall remain in full force and effect.

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IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to the Agreement on the date and year first above written.

CITY OF NATIONAL CITY

By: _____
Alejandra Sotelo-Solis,
Mayor

APPROVED AS TO FORM:

By: _____
Charles E. Bell Jr.,
City Attorney

**COLANTUONO, HIGHSMITH &
WHATLEY, PC**

(Corporation – signatures of two
corporate officers)

By:  _____
_ Holly O. Whatley, Esq.

 _____
Michael G. Colantuono

RESOLUTION NO. 2021 -

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, AMENDING THE AGREEMENT BETWEEN THE CITY OF NATIONAL CITY AND COLANTUONO, HIGHSMITH & WHATLEY, PC FOR LEGAL SERVICES IN THE SPECIALIZED AREA OF ELECTION LAW BY INCREASING THE NOT-TO-EXCEED AMOUNT BY \$ 80,000 FOR A NEW TOTAL NOT-TO-EXCEED AMOUNT OF \$105,000 AND AUTHORIZING AN INCREASE OF \$80,000 IN GENERAL FUND APPROPRIATIONS AND USE OF GENERAL FUND FUND BALANCE FOR SAID LEGAL SERVICES

WHEREAS, on October 28, 2021, the City of National City ("City") entered into an agreement with Colantuono, Highsmith & Whatley, PC for specialized election-related services for an amount not-to-exceed of \$25,000; and

WHEREAS, the City Attorney's Office desires to increase the not-to-exceed amount by \$80,000 for a new not-to-exceed amount total of \$105,000 due to the ongoing costs and increased scope of services; and

WHEREAS, City staff recommends City Council authorize increasing the not-to-exceed amount by \$80,000 for a new not-to-exceed amount total of \$105,000 and authorize an increase of \$80,000 in General Fund appropriations and use of General Fund fund balance for said legal services.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1: Authorizes amending the Agreement between the City of National City and Colantuono, Highsmith & Whatley, PC for election-related legal services by increasing the not-to-exceed amount by \$80,000 for a new total not-to-exceed amount of \$105,000.

Section 2: Authorizes an increase of \$80,000 in General Fund appropriations and use of General Fund fund balance for said legal services.

Section 3: The City Clerk shall certify the passage and adoption of this Resolution and enter it into the book of original Resolutions.

///

PASSED and ADOPTED this 21st day of December, 2021.

Alejandra Sotelo-Solis, Mayor

ATTEST:

Luz Molina, City Clerk

APPROVED AS TO FORM:

Charles E. Bell Jr., City Attorney

**CITY OF NATIONAL CITY, CALIFORNIA
COUNCIL AGENDA STATEMENT**

MEETING DATE: 12/21/2021

AGENDA ITEM NO. 2

ITEM TITLE:

Resolution of the City Council of the City of National City, California, authorizing registering in the National Opioid Settlement and Authorizing the City Attorney to execute the necessary registration documents.

PREPARED BY: Charles E. Bell, Jr., City Attorney

DEPARTMENT: City Attorney

PHONE: 4222

APPROVED BY: *Charles Bell Jr.*

EXPLANATION:

Two major national cases have been underway seeking to hold various parties responsible for the role prescription drugs have played in the opioid crisis. These two cases involve McKesson, AmerisourceBergen, Cardinal Health (Distributors) and Johnson & Johnson (Janssen). A National Opioid Settlement has been reached in both cases in which the Distributors will fund settlement of approximately \$21 Billion and Janssen approximately \$5 Million.

On December 9, 2021, City Council convened in Closed Session and voted unanimously providing staff direction to register the City of National City to receive the necessary documents for it to consider participation in the National Opioid Settlement upon the terms and conditions set forth in the Distributor Settlement Agreement, the Janssen Settlement Agreement, and the California State-Subdivision Agreement.

FINANCIAL STATEMENT:

APPROVED: _____ **Finance**

ACCOUNT NO.

APPROVED: _____ **MIS**

ENVIRONMENTAL REVIEW:

This action does not constitute a project under California Environmental Quality Act (CEQA) Guidelines Section 15378(b)(2).

ORDINANCE: INTRODUCTION: **FINAL ADOPTION:**

STAFF RECOMMENDATION:

Adopt Resolution authorizing the City of National City's registering in the National Opioid Settlement and Authorizing the City Attorney to execute the necessary registration documents.

BOARD / COMMISSION RECOMMENDATION:

ATTACHMENTS:

- Resolution

RESOLUTION NO. 2021 -

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, AUTHORIZING REGISTERING IN THE NATIONAL OPIOID SETTLEMENT AND AUTHORIZING THE CITY ATTORNEY TO EXECUTE THE NECESSARY REGISTRATION DOCUMENTS

WHEREAS, two major national cases have been underway seeking to hold various parties responsible for the role prescription drugs have played in the opioid crisis; and

WHEREAS, these two cases involve McKesson, AmerisourceBergen, Cardinal Health (“Distributors”) and Johnson & Johnson (“Janssen”); and

WHEREAS, a National Opioid Settlement has been reached in both cases in which the Distributors will fund settlement of approximately \$21 Billion and Janssen approximately \$5 Million; and

WHEREAS, the City of National City desires to register to receive the necessary documents for it to consider participation in the National Opioid Settlement upon the terms and conditions set forth in the Distributor Settlement Agreement, the Janssen Settlement Agreement, and the California State-Subdivision Agreement.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1: Authorizes the City of National City’s registration to receive the necessary documents for it to consider participation in the National Opioid Settlement upon the terms and conditions set forth in the Distributor Settlement Agreement, the Janssen Settlement Agreement, and the California State-Subdivision Agreement.

Section 2: Authorizes the City Attorney to execute all necessary document and take all actions necessary to register the City of National City to receive the necessary documents for it to consider participation in the National Opioid Settlement.

Section 3: The City Clerk shall certify the passage and adoption of this Resolution and enter it into the book of original Resolutions.

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PASSED and ADOPTED this 21st day of December, 2021.

Alejandra Sotelo-Solis, Mayor

ATTEST:

Luz Molina, City Clerk

APPROVED AS TO FORM:

Charles E. Bell Jr., City Attorney

**CITY OF NATIONAL CITY, CALIFORNIA
COUNCIL AGENDA STATEMENT**

MEETING DATE: 12/21/2021

AGENDA ITEM NO. 3

ITEM TITLE:

Resolution of the City Council of the City of National City, California, 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

PREPARED BY: Charles E. Bell, Jr., City Attorney

PHONE: Ext. 4222

DEPARTMENT: City Attorney's Office

APPROVED BY: *Charles Bell Jr.*

EXPLANATION:

See attached Staff Report.

FINANCIAL STATEMENT:

APPROVED: _____ **Finance**

ACCOUNT NO.

APPROVED: _____ **MIS**

ENVIRONMENTAL REVIEW:

This action does not constitute a project under California Environmental Quality Act (CEQA) Guidelines Section 15378(b)(2).

ORDINANCE: **INTRODUCTION:** **FINAL ADOPTION:**

STAFF RECOMMENDATION:

Adopting the resolution of the City Council of the City of National City, California, declaring the City Council's intention to transition from at-large elections for City Council to district-based elections for City Council pursuant to Elections Code section 10010.

BOARD / COMMISSION RECOMMENDATION:

ATTACHMENTS:

- Staff Report
- Resolution



CITY OF NATIONAL CITY STAFF REPORT

DATE: December 21, 2021

TO: Mayor and City Council

FROM: Charles E. Bell, Jr., City Attorney
Aleks R. Giragosian, Colantuono, Highsmith & Whatley, PC

SUBJECT: Resolution of the City Council of the City of National City, California, declaring the City Council's intention to transition from at-large elections for City Council to district-based elections for City Council pursuant to Elections Code section 10010.

Background:

On November 8, 2021, the City of National City ("City") received a letter via certified mail from attorney Audie J. de Castro of de Castro, P.C., claiming to represent members of the City's Filipino/API community.¹ The letter contains unsubstantiated allegations that the City's at-large elections system prevents members of the City's Filipino/API community from electing their preferred candidate(s) and violates the California Voter Rights Act ("CVRA"). The letter demands that the City transition from an at-large to a by-district election system to remedy this alleged violation.

On November 29, 2021, Mr. de Castro sent another letter encouraging the City to take steps toward transitioning to district-based elections.² He asserted that his claims are being made on behalf of Ditas Yamane and Florfina Acre, both residents of National City.

On December 2, 2021, the City received further correspondence from Mr. de Castro, insisting that the transition to district-based elections be completed in time for the November 2022 elections.³

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¹ Attachment A is a copy of the November 8th letter.

² Attachment B is a copy of the November 29th letter.

³ Attachment C is a copy of the December 2nd letter.

Analysis of the California Voting Rights Act:

The CVRA is modeled on the Federal Voting Rights Act ("FVRA") but makes it easier for plaintiffs to challenge alleged discriminatory voting practices by lowering the evidentiary burden and reducing the legal and economic risk of suing. Under the CVRA, a plaintiff is only required to show that "racially polarized" voting exists, e.g., that members of a minority group express a preference for a particular candidate or measure. Unlike the FVRA, there is no requirement to show that a sufficiently large and geographically compact minority group exists, overriding any majority bloc voting. The CVRA eliminates the first federal precondition that plaintiffs must prove that the minority group is sufficiently large and geographically compact to form a majority in a single-member district. (Elec. Code, §14026(c).) The CVRA also eliminates the federal requirement that plaintiffs prove discrimination under the totality of circumstances test. (Elec. Code, §14028(e).)

Stated differently, under the CVRA, a plaintiff challenging an at-large election system as unlawful can win by convincing a reviewing court that there is evidence that the candidates preferred by members of the protected class, e.g., a racial minority group, are different than the candidates preferred by members of the rest of the electorate, e.g., by racial majority voters, and that the majority's preferred candidates defeat the minority's preferred candidates. This is often shown by comparing the voting results precinct-by-precinct for candidates in an election as precinct-level data shows both the racial composition of the precinct and how the precinct voted. As shown in the table below, this is a much lower standard than the FVRA standard, as the plaintiff does not have to also show that the minority group is large enough that it could be the majority of at least one election district nor that the rest of the City's circumstances show that race is a factor in elections.

Federal Voting Rights Act standard to prove Racially Polarized Voting:	California Voting Rights Act standard to prove Racially Polarized Voting:
1) Can the protected class constitute the majority of a district?	Not applicable.
2) Does the protected class vote as a bloc?	1) Does the protected class vote as a bloc?
3) Do the voters who are not in the protected class vote in a bloc to defeat the preferred candidates of the protected class?	2) Do the voters who are not in the protected class vote in a bloc to defeat the preferred candidates of the protected class?
4) Do the "totality of circumstances" indicate race is a factor in elections?	Not applicable.

The cities of Palmdale, Santa Clara, and Santa Monica have all gone to trial on the merits of CVRA claims. In *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, after a loss at the superior and appellate court, Palmdale was forced to transition to district-based voting. It also settled with plaintiffs for \$4.7 million and incurred nearly \$1.8 million in its own attorneys' fees. Cities are at risk even where the minority population does not have sufficient numbers to form a majority-minority district. In *Yumori-Kaku v. City of Santa Clara* (2020) 59 Cal.App.5th 385, the court noted that Santa Clara has approximately 115,000 residents, roughly 46% white or black and another 40% Asian. No precinct has an Asian population of more than 42%. Santa Clara argued the CVRA incorporates the definition of racially polarized voting by referencing the federal case law definition. Under that definition, there is not a high enough concentration of Asian-Americans in any precinct to warrant district-based elections. The court disregarded Santa Clara's argument as geographic compactness is not an element of a CVRA lawsuit.

After taking into account (1) the plaintiff's expert's analysis, which found that five of the ten City Council elections showed racially polarized voting and six districts showed cohesive Asian voting, (2) the undisputed fact that no Asian-Americans had ever been elected to City Council, (3) Santa Clara's use of an at-large election system, and (4) the history of discrimination against Asian-Americans in the City, the Court held Santa Clara violated the CVRA. The City paid the plaintiffs \$3.8 million and \$712,500 in attorneys' fees.

Even where the minority group's preferred candidates win elections, cities are at risk. In *Pico Neighborhood Association v. City of Santa Monica*, Los Angeles Superior Court Case No. BC616804, the court found that Santa Monica had violated the CVRA, despite the City's evidence that "Latino-preferred candidates usually win." In its defense, Santa Monica argued that (1) district-based voting would not enhance the voting power of its Latino residents, who comprised 16% of the City's population of approximately 90,000, and (2) because the CVRA focuses on voter preference, not the candidate's ethnicity, Santa Monica has not violated the CVRA because an overwhelming majority of candidates favored by Latinos won their elections. The City appealed the decision, and the Court of Appeals ruled that dilution of minority votes was a required element of a CVRA claim and that plaintiffs had failed to prove dilution. As a result, the Court of Appeal ordered judgment to be entered in favor of the City on this claim. The plaintiffs appealed to the California Supreme Court, which has heard oral arguments but has yet to decide.

As of 2020, Santa Monica has spent over \$10 million in legal fees defending its at-large elections. It is expected that plaintiffs will seek at least double that amount in attorneys' fees if they prevail at the Supreme Court.

Because of the low threshold established by the CVRA, cities and other jurisdictions throughout California have been facing challenges to their at-large elections systems, with little or no regard to whether a district-based elections system will dilute minority voting power rather than empower it. Many jurisdictions have voluntarily switched to district-based elections systems instead of facing litigation.

Analysis of Safe Harbor Provisions:

In 2014, the State Legislature adopted safe harbor provisions to provide some relief to cities facing expensive CVRA litigation. Elections Code section 10010 states that a potential litigant may not commence an action under the CVRA within 45 days of the City's receipt of the written notice. (Elec. Code§10010(e)(2).) During that 45-day period, the City "may 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 timeframe for doing so." (Elec. Code§10010(e)(3)(A).)

Within 45 days of receiving de Castro, PC's letter	Adopt a resolution of intention to transition to district-based elections
Over a period of no more than 30 days	Hold at least two public hearings to solicit input regarding communities of interest
Over a period of no more than 45 days	Hold at least two public hearings to solicit input regarding draft maps and election sequencing
Within 90 days of adopting the resolution of intention	Adopt an ordinance transitioning to district-based elections

One of the primary shortcomings of the Safe Harbor process is the short timeline during which the City must conduct a minimum of four public hearings and adopt election district maps. The short timeline may prevent members of the public from adequately engaging in the map-drawing process or limit the City Council's ability to consider each proposed map adequately. Elections Code section 10010, subdivision (e)(3)(C), allows the City to contract with de Castro, PC to extend the process for up to an additional 90 days, but no more than six months before the 2022 elections.

Recommendation:

Adopt the resolution of the City Council of the City of National City, California, declaring the City Council's intention to transition from at-large elections for City Council to district-based elections for City Council pursuant to Elections Code section 10010.

Fiscal Impact Statement:

Suppose the City follows the procedures under Elections Code section 10010 and transitions to district-based elections. In that case, de Castro P.C.'s attorneys' fees for any work related to researching or drafting his demand letters will be capped at \$30,000. The transition under the Safe Harbor process will cost the City approximately \$150,000. Those costs include \$80,000 for a demographer, \$25,000 in legal fees, \$15,000 in public outreach, and up to \$30,000 in attorneys' fees paid to de Castro, P.C.

ATTACHMENT A

de Castro, P.C.

Attorneys & Counselors

VIA ELECTRONIC MAIL AND U.S. CERTIFIED MAIL

RECEIVED

November 8, 2021

NOV 15 2021

City of National City
Hon. Luz Molina, City Clerk
1243 National City Boulevard
National City, CA 91950

Office of the City Clerk
City of National City

Re: Notice of Violation of California Voting Rights Act of 2001

Clerk of the City of National City,

This notice is being sent to you pursuant to California Elections Code §10010(e)(1). We represent several residents and communities-of-interest in the City of National City (the "City") who are members of the Filipino/API community. This community represents the 2nd largest ethnic group in the City. There is also substantial private investment in the City because of it— which substantially contributes to the City's economy and culture.

Yet, the City's at-large elections have resulted in vote-dilution and political disempowerment for the Filipino/API community. It has been denied adequate representation on the City's five-member council for decades. In the last twenty years alone, the City has not been successful in electing more than a single Filipino/API candidate, despite having several candidates run for office.¹ In addition, the at-large elections have denied the community the fair opportunity to just influence the outcome of an election. The City's at-large election system violates the California Voting Rights Act of 2001 ("CVRA"). Cal. Elec. Code §§14025 et. seq.

On behalf of the constituents working with this firm, we demand the City adopt a resolution within 45 days of receipt of this notice outlining its intention to transition from at-large to district-based elections, specific steps it will undertake to facilitate this transition, and an estimated timeframe for doing so in accordance with Cal. Elec. Code §10010(e)(3)(a).

If the City fails to comply with this request, this firm will seek injunctive relief and all other available remedies to enforce §§14027, 14027, and any other applicable sections of the CVRA. As you are probably well aware, the City will be responsible for all legal fees and costs, including experts, if the represented parties prevail. As the likelihood of prevailing on such an action is very high, it would be more prudent for the City to adopt an ordinance to transition to district based elections.

¹ Former Councilmember Fideles Ungab served on the Council as an appointment to fill a vacancy.

City Clerk, City of National City
November 8, 2021, continued

Please submit this notice to the City Council for consideration at the earliest available meeting, but no later than the time frame necessary to comply with the CVRA.

If you have any questions, please feel free to contact me.

Sincerely,



Audie J. de Castro
DE CASTRO, P.C.

cc: Hon. Alejandra Sotelo-Solis, Mayor (via email)
Hon. Jose Rodriguez, Vice-Mayor (via email)
Hon. Ron Morrison, Councilmember (via email)
Hon. Marcus Bush, Councilmember (via email)
Hon. Mona Rios, Councilmember (via email)

de Castro, P.C.
Attorneys & Counselors
701 B Street Suite 1745
San Diego, CA 92101

CERTIFIED MAIL



SAN DIEGO CA 920

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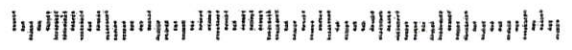
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City of National City
Hon. Luz Molina, City Clerk
1243 National City Boulevard
National City, CA 91950

RECEIVED
NOV 15 2021
Office of the City Clerk
City of National City

91950-465709



ATTACHMENT B

de Castro, P.C.

Attorneys & Counselors

RECEIVED

DEC 07 2021

Office of the City Clerk
City of National City

VIA ELECTRONIC MAIL AND U.S. MAIL

November 29, 2021

City of National City
Charles Bell, City Attorney
1243 National City Boulevard
National City, CA 91950

Alena Shamos, Esq.
Aleks R. Giragosian, Esq.
Colantuono, Highsmith & Whatley, PC
440 Stevens Avenue, Suite 200
Solana Beach, CA 92075

Re: Further Notice of Violation of California Voting Rights Act of 2001

Counsel,

This letter is in furtherance of the November 8, 2021 notice sent to the National City Clerk pursuant to California Elections Code §10010(e)(1). As we previously stated, we represent several residents (and communities-of-interest in the City), including the prospective plaintiffs, Ms. Ditas Yamane and Ms. Florfina Arce. They are residents of National City.

As the City's at-large election system violates the California Voting Rights Act of 2001 ("CVRA"), the plaintiffs have demanded the City adopt a resolution within 45 days outlining its intention to transition from at-large to district-based elections in accordance with Cal. Elec. Code §10010(e)(3)(a). The 45 day period ends December 23, 2021.

While counsel have had preliminary discussions about the possibility of stipulating to an extension beyond the first 45 day period, no such stipulations have been entered into. Until that occurs, the City should consider taking progressive steps toward adopting a resolution in case the parties are unable to agree. Otherwise, the prospective plaintiffs will be prepared to seek injunctive relief and take other actions shortly after the expiration of the statutory deadline.

I am hoping there can be more progress within the next week so that neither of our clients will be placed in a time sensitive position as the deadline approaches.

City Attorney, City of National City, et. al.
November 30, 2021, continued

If you have any questions, please let me know.

Sincerely,



Audie J. de Castro
DE CASTRO, P.C.

cc: City Clerk, National City

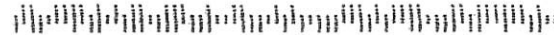
de Castro, P.C.
Attorneys & Counselors
701 B Street Suite 1745
San Diego, CA 92101

SAN DIEGO CA 920
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City of National City
Hon. Luz Molina, City Clerk
1243 National City Boulevard
National City, CA 91950

01950-409700



ATTACHMENT C

de Castro, P.C.

Attorneys & Counselors

VIA ELECTRONIC MAIL

December 5, 2021

City of National City
Charles Bell, City Attorney
1243 National City Boulevard
National City, CA 91950

Alena Shamos, Esq.
Aleks R. Giragosian, Esq.
Colantuono, Highsmith & Whatley, PC
440 Stevens Avenue, Suite 200|
Solana Beach, CA 92075

**Re: *Yamane, Arce, et. al. v. City of National City*
Notice of CVRA Violation dated November 8, 2021 (“CVRA Notice”)**

Counsel,

Further to our CVRA Notice, and in response to your specific inquiry, my clients have decided to move forward with pursuing district voting elections effective for the year 2022. In light of the holidays, an extension on the December 23, 2021 deadline to January 13, 2022 is agreeable so long as the parties can agree to all the terms and conditions of the written stipulation. Beyond that date will not be acceptable if it interferes with the 2022 effective date. It is apparent that the only hurdle to the City’s schedule is its own meeting schedule. The Council has full control of that schedule and may conduct special meetings for this important voting rights issue.

Please instruct the City to plan accordingly to ensure this process is timely. Thank you.

Sincerely,



Audie J. de Castro
DE CASTRO, P.C.

cc: City Clerk, National City

City Attorney, City of National City, et. al.
November 30, 2021, continued

RESOLUTION NO. 2021 -

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, 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 National City (“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, 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 dated November 8, 2021 from Audie J. de Castro, Esq. containing unsubstantiated allegations that the City’s at-large electoral system prevents members of National City’s Filipino/API 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. de Castro’s claims, the City has a history of inclusionary voting and supports the rights of all members of the National City community, including minority community members to elect the candidate of their choice; and

WHEREAS, the City denies that it’s at-large election system violates the CVRA or any other provision of law and asserts that National City’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 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 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) reimbursable 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.
- 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 City Council will seek an extension of the 90-day window under the “safe harbor” provisions to maximize public engagement in the map drawing process; 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, THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1: 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 2022 for Members of the City Council.

Section 2: 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 National City and the feasibility of transitioning to districts, to provide a detailed analysis of National City’s current demographics and any other information or data necessary to prepare a draft map that divides National City into voting districts in a manner consistent with the intent and purpose of the CVRA and the Federal Voting Rights Act.

Section 3: 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.

Section 4: 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 shall certify the passage and adoption of this Resolution and enter it into the book of original Resolutions.

///

Resolution No. 2021 –
Page Four

PASSED and ADOPTED this 21st day of December, 2021.

Alejandra Sotelo-Solis, Mayor

ATTEST:

Luz Molina, City Clerk

APPROVED AS TO FORM:

Charles E. Bell Jr., City Attorney