



# CITY OF PETALUMA

POST OFFICE BOX 61  
PETALUMA, CA 94953-0061

Teresa Barrett  
Mayor

October 8, 2021

Brian Barnacle  
D'Lynda Fischer  
Mike Healy  
Dave King  
Kevin McDonnell  
Dennis Pockay  
Councilmembers

Kevin Shenkman  
Shenkman and Hughes  
28905 Wight Road  
Malibu, California 90265

**Via First Class Mail and email at: [kishenkman@shenkmanhughes.com](mailto:kishenkman@shenkmanhughes.com)**

**Re: City of Petaluma Response to Demand Letter under the California Voting Rights Act**

Dear Mr. Shenkman:

This letter is on behalf of my client the City of Petaluma and is in response to your August 19, 2021 letter alleging that the Petaluma at-large election system violates the California Voting Rights Act (CVRA), and urging the City to voluntarily change its at-large election system. On October 4, 2021, the Petaluma City Council adopted Resolution no. 2021-164 N.C.S outlining its intention to transition from at-large elections to district-based elections in accordance with the requirements of Elections Code Section 10010(e)(3)(A). The resolution took effect on October 7, 2021. Accordingly, the City is subject to the safe harbor provisions of Election Code Section 10010(e)(3)(B). A copy of the City Council resolution is attached.

In addition to confirming that the City has begun the process of transitioning to district elections, I also wanted to correct a number of factual inaccuracies in your August 19 letter, which appears to be largely identical to letters you have sent to municipalities and other public agencies throughout California. In your letter you assert the following:

Petaluma's at-large system dilutes the ability of Latinos (a "protected class") – to elect candidates of their choice or otherwise influence the outcome of the City's elections. The City's election history is illustrative. It appears that in the past 20 years, the City's elections have been almost completely devoid of Latino candidates, and while opponents of voting rights may claim that indicates an apathy among the Latino community, the courts have held that is an indicator of vote dilution. (See *Westwego Citizens for Better Government v. City of Westwego*, 872 F.2d 1201, 1208-1209, n.9 (5<sup>th</sup> Cir. 1989).)

Additionally illustrative is the fate of Latino candidates, when they do emerge, in the City's elections. In 2014, Ken Quinto emerged as a candidate for City Council, yet despite significant support from Latino voters, he still lost his bid for a seat on the Petaluma City Council due to a lack of support from non-Hispanic white voters. Mr. Quinto resided in the Northeast portion of the City, which has generally been underrepresented on the Petaluma City Council. This election evidences vote dilution which is directly attributable to the City's unlawful at-large election system.

**City Attorney**  
11 English Street  
Petaluma, CA 94952

Phone (707) 778-4362

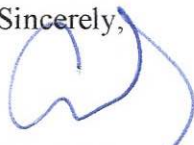
E-Mail:  
[cityattorney@cityofpetaluma.org](mailto:cityattorney@cityofpetaluma.org)

Your letter appears to assume Mr. Quinto is Latinx. On the contrary, we are informed he is of Italian rather than Latinx heritage. In addition, during the 20-year period cited in your letter, two Latinx candidates have successfully won seats on the Petaluma City Council, and served for a combined total of more than three terms. Tiffany Renee, a Latinx woman, served on the Petaluma City Council from 2009-2012. Gabe Kearney, a Latinx man, was appointed to a vacancy during the 2009-2012 term, and then was elected and served during the 2013-2016 term and was re-elected and served during the 2017-2020 term.

I would also like to note that the City of Petaluma is committed to conducting City Council elections in accordance with both the letter and intent of the CVRA and all other applicable law, including the City Charter, which permits transitioning to district elections. The City Council has made clear in its direction to staff that the end result of reviewing Petaluma voting history and engaging in the district election transition process pursuant to the CVRA should be a voting system for Petaluma City Council elections that maximizes the participation of protected-class and all other City voters so that Petaluma City Councils reflect the voting preferences of the entire electorate as required by law. City staff are committed to working with the City Council and the entire Petaluma community to accomplish that result.

We will keep you updated regarding the district election transition process in Petaluma. In the meantime, if you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Eric W. Danyl", written over the word "Sincerely,".

Eric W. Danyl  
City Attorney

CC: Honorable Mayor and City Council Members  
Peggy Flynn, City Manager  
Kendall Rose, City Clerk  
Ingrid Alverde, Economic Development and Open Government Director

## Resolution No. 2021-164 N.C.S. of the City of Petaluma, California

### **RESOLUTION DECLARING ITS INTENT TO INITIATE PROCEDURES TO CONSIDER TRANSITION FROM AT-LARGE ELECTIONS TO DISTRICT-BASED ELECTIONS PURSUANT TO CALIFORNIA ELECTIONS CODE SECTION 10010, APPROVING A TENTATIVE SCHEDULE FOR CONDUCTING PUBLIC HEARINGS AND RELATED ACTIONS**

**WHEREAS**, Section 10 of the Petaluma City Charter states that, “The mayor and councilmen shall be elected at the general municipal election on a general ticket from the city at large”; and

**WHEREAS**, on August 23, 2021, the City of Petaluma City Clerk received a letter (“Letter”) from Kevin Shenkman, an attorney, alleging violations of the California Voting Rights Act. (Elections Code §§14025-14032); and

**WHEREAS**, a violation of the CVRA is established if it is shown that racially polarized voting occurs in elections (Elections Code section 14028(a)); and

**WHEREAS**, “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, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate (Elections Code §14026(e)); and

**WHEREAS**, the California Legislature has provided a procedure whereby a jurisdiction can expeditiously change to a district-based election system and avoid the high cost of litigation under Elections Code §10010. Under that procedure, a jurisdiction can limit the amount of its liability to prospective plaintiffs and their attorneys to a maximum amount of approximately \$30,000 for reimbursable expenses and costs (the “safe harbor provision”); and

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

**WHEREAS**, despite the foregoing, the City Council has determined that the public interest would be served by transitioning to a district-based electoral system because of: (1) the high cost to defend against a CVRA lawsuit, (2) the risk of losing such a lawsuit, which would require the City to pay the prevailing plaintiffs’ attorneys’ fees, and (3) the availability of changing to district elections under the safe harbor provision; and

**WHEREAS**, California Elections Code §10010 requires that a City changing to district-based elections under the safe harbor provision do all of the following within 90 days from the date this resolution is approved:

1. Before drawing a draft map or maps of the proposed boundaries of the districts, the political subdivision shall 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. Before these hearings, the political subdivision may conduct outreach to the public, including to non-English-speaking communities, to explain the districting process and to encourage public participation;

2. After draft maps are drawn, the political subdivision shall publish and make available for release at least one draft map and, if members of the governing body of the political subdivision will be elected in their districts at different times to provide for staggered terms of office, the potential sequence of the elections. The political subdivision shall also 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. The first version of a draft map shall be published at least seven 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 days before being adopted;
3. Adopt an ordinance establishing district-based elections pursuant to Elections Code §10010(a).

**WHEREAS**, Exhibit A attached hereto sets forth a tentative schedule for the proposed statutorily prescribed public hearing dates pursuant to Elections Code §10010; and

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

**WHEREAS**, the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15378(b)(5), in that adopting a Resolution declaring the City's intent to initiate procedures to consider transition from at-large elections to district-based elections and approving a tentative schedule for conducting public hearings does not meet CEQA's definition of a "project," because the action does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment, and because the action constitutes organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

**NOW THEREFORE BE IT RESOLVED**, by the City Council of the City of Petaluma as follows:

1. The above recitals are hereby declared to be true and correct and are incorporated into this resolution as findings of the City Council.
2. The proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15378(b)(5), in that adopting a Resolution declaring the City's intent to initiate procedures to consider transition from at-large elections to district-based elections and approving a tentative schedule for conducting public hearings does not meet CEQA's definition of a "project," because the action does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment, and because the action constitutes organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.
3. The City Council hereby resolves its intent to consider adoption of an ordinance to transition to a district-based election system as authorized by Government Code Section 34886 beginning in November 2022.

4. The City Council directs staff to work with the City's 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, the Federal Voting Rights Act, and all other federal and state laws.
5. The City Council hereby approves the tentative schedule set forth in Exhibit A, attached hereto, for conducting a public process to solicit input and testimony on proposed district-based electoral maps before adopting any such map and transitioning to district elections.
6. The tentative schedule may be adjusted by the City Manager as necessary, especially if an agreement tolling safe harbor deadlines is reached with the plaintiff's attorney to allow additional time for public input or otherwise as appropriate.
7. The City Council directs staff to post information regarding the proposed transition to a district-based election system, including maps, notices, agendas and other information and to establish a means of communication to answer questions from the public.
8. This Resolution shall become effective on October 7, 2021.

Under the power and authority conferred upon this Council by the Charter of said City.

**REFERENCE:** I hereby certify the foregoing Resolution was introduced and adopted by the Council of the City of Petaluma at a Regular meeting on the 4<sup>th</sup> day of October 2021, by the following vote:

Approved as to

DocuSigned by:

*[Signature]*

CITY ATTORNEY

**AYES:** Mayor Barrett; Barnacle, Healy, King, McDonnell, Pocekay

**NOES:** None

**ABSENT:** Fischer

**ABSTAIN:** None

**ATTEST:**

DocuSigned by

*[Signature]*

CITY CLERK

DocuSigned by

*[Signature]*

MAYOR

## DRAFT SCHEDULE

Activity	135-day Timeline Established by Elections Code §10010 (Adopt Ord. by 1/5/22)
Received Demand Letter	8/23/2021
2020 Census Data released	9/20/2021
Adopt a <b>Resolution of Intention, effective 10/7/2021</b> , to transition from at-large to district-based elections	10/4/2021
Launch Districting Website Page	TBD
<b>Public Hearing #1</b> to gather public testimony about communities of interest (no draft maps are drawn until these are complete)	10/18/2021 or 11/1/2021
<b>Public Hearing #2</b> to gather input public testimony about communities of interest (no draft maps drawn until these are complete)	11/1/2021 or 11/15/2021
Launch mapping tools on website for public to submit proposed maps	TBD
Initial draft maps posted on website at least 7 days prior to public hearing	11/29/2021
<b>Public Hearing #3</b> to gather public input on draft maps and election sequencing	12/6/2021
Changes to initial draft maps posted on website at least 7 days prior to public hearing	12/22/2021
<b>Public Hearing #4</b> to gather public input on draft maps and election sequencing and adoption of Ordinance to establish district-based elections	1/3/2022
Six months prior to next regular election the Ordinance must be adopted	5/8/2022
First district-based election to be held	11/8/2022

\*All dates shown are City Council Regular Meeting dates. Public Hearings other than the hearing to Adopt the Ordinance could be scheduled for Special Meeting dates.