

CITY OF SIMI VALLEY
MEMORANDUM

October 15, 2018

TO: City Council

FROM: Office of the City Clerk / Office of the City Attorney

SUBJECT: A SECOND PUBLIC HEARING TO CONSIDER THE COMPOSITION OF CITY VOTING DISTRICTS FOR A TRANSITION FROM AN AT-LARGE ELECTION SYSTEM TO A BY-DISTRICT ELECTION SYSTEM, INCLUDING THE PROCESS AND REQUIREMENTS FOR DISTRICTING, AND ADOPTION OF A RESOLUTION ADOPTING LINE DRAWING CRITERIA AND DESIRED NUMBER OF DISTRICTS FOR ESTABLISHING CITY COUNCIL DISTRICT BOUNDARIES

STAFF RECOMMENDATION

Staff recommends that the City Council take the following actions:

1. Hold a public hearing for the purpose of receiving public comment regarding composition and criteria to establish boundaries of yet-to-be-formed voting districts;
2. Receive a presentation from the City's demographic consulting firm, National Demographics Corporation; and
3. Adopt a resolution specifying line drawing criteria and desired number of districts for establishing City Council district boundaries to be considered during the map evaluation process (page 10); and
4. Close the public hearing and set the next public hearing for November 14, 2018.

CITY MANAGER'S RECOMMENDATION

Based on the process to establish Districts, the consultant will prepare up to 4 potential legal maps for the City Council to consider based on public input into the mapping process.

The more direction that the City Council provides after the second Public Hearing will help to identify potential map choices for the third public hearing. The City Manager recommends that the City Council consider using this meeting to ***identify the number of Districts*** to enable the public to focus in how those Districts should be formed.

BACKGROUND AND OVERVIEW

On August 6, 2018, the City received a certified letter from attorney Kevin I. Shenkman, on behalf of his client, Southwest Voter Registration Education Project, requesting that the City move to district-based elections. On August 13, 2018, the City Council directed that the matter be presented for consideration in open session at the August 27, 2018 City Council meeting. At the August 27 meeting, the City Council voted to direct staff to initiate the process to voluntarily transition to a district-based election system, and approved a schedule developed to meet the statutory timelines required under California Elections Code Section 10010 *et seq.* On September 17, 2018, the City Council adopted a Resolution of Intention to transition to district-based elections, and held the first of a series of public hearings to receive a presentation on the districting process and associated requirements from its demographer, National Demographics Corporation (NDC), and to receive public testimony from residents. On September 25, 2018, a Community Meeting was held to offer an additional opportunity for residents to become informed about the process, ask questions, learn about the mapping tools available to develop and submit their own proposed district maps, and to provide feedback to the City Council regarding the criteria to be considered as part of the development of the City's yet-to-be-formed voting districts. Approximately 35 residents attended the Community Meeting and the comments collected are summarized in Attachment A, (page 12). Tonight represents the second in a series of public hearings required under the Elections Code to provide information and receive public input on the composition on City voting districts and the criteria that should be considered by the City Council as part of the districting process. The next public hearing, scheduled as special public hearing on November 14, 2018, will be the first meeting where map submittals will be discussed. In order to remain within the "safe harbor" provided by the Elections Code, the City Council must adopt a district elections ordinance no later than December 16, 2018 (90 days following the adoption of a Resolution of Intention).

DISCUSSION AND ALTERNATIVES

Summary of First Public Hearing

On September 17, 2018, the City Council held the first of two public hearings on the composition of City voting districts and the criteria that Council must follow in drawing districts, and additional optional criteria that the Council may also wish to consider as part of the process. Additionally, a formal presentation was provided by the City consultant, Dr. Douglas Johnson, President of NDC, on the districting process, criteria, and the tools available to residents for use in developing maps.

The presentation outlined the federal criteria that must be followed, that is, the districts must have equal populations (up to a legally-accepted variance) that are tied to the decennial Census, districts cannot be drawn to divide the voting strength of a protected class, and race cannot be the predominate factor in establishing districts. A portion of the demographer's role is to ensure that the districts maps proposed for the City meets

the legal requirements. The demographer presented other traditional criteria and goals which can be considered in the districting process including respecting “communities of interest”, that districts be compact and contiguous, that districts respect visible boundaries (natural or man-made, i.e., watercourse or railroad tracks), and respect for voters’ wishes and continuity in office. A community of interest is generally defined as a neighborhood or community of shared interests, views, problems, or characteristics which can include aspects such school attendance areas, areas around a park or landmark, shared demographic characteristics or linguistically isolated populations.

At the first public hearing, there were three public speakers who shared the following thoughts:

- One speaker suggested that, due to the growth of the City since its inception, the City Council consider forming six districts and maintaining an at-large Mayor at large;
- One speaker commented on the importance of Council Member transparency and accountability as part of the districting process;
- One speaker commented that the economic status and income levels of citizens be considered as part of the districting process due to the relationship between financial status and campaign contributions;
- Additionally two of the speakers suggested that three of the existing City Council Members recuse themselves from the districting process as they are currently running for office, or will be seeking election in the 2020 cycle.

Following comments from the City Council Members and the Mayor, the first public hearing was closed.

Community Meeting Summary

The City hosted a Community Meeting on September 25, 2018 in the City Council Chamber to offer another opportunity for the public to receive education and ask questions regarding the districting process, and to explain and demonstrate the tools available for the public to participate in the process by drawing and submitting their own maps. Approximately 35 members of the public attended the Community Meeting which was facilitated by Robert McEntire of NDC. A summary of the questions and answers is provided in Attachment A (page 12).

The majority of questions and discussion focused on three subject areas; the timeframe mandated for the transition and possible options for providing the public additional time to consider district composition and configuration; the number of districts that should be formed; and the mayoral seat (should it be rotational among the City Council Members or should it be directly elected, and if so, at-large or by-district).

Attendees were informed that the Elections Code establishes the timeframe for the transition to district elections, and provides a “safe harbor” provision that limits the City’s financial exposure related to a California Voting Rights Act violation allegation. Participants were advised of the substantial risk of litigation against the City if it does not complete the transition process within the prescribed timeframes, the lack of success

that other jurisdictions have had with challenging similar allegations, and that the City Council assessed these risks as part of its decision to move forward with establishing district-based elections.

Attendees also asked questions to clarify the number of districts proposed, and were informed that this is one of the areas where public input is desired. Participants were briefed on the four, five, and six-district options that have been prepared and are available on the City's webpage dedicated to District Elections. There was a general consensus among participants that a seven-district option should also be considered, and a tool for residents to create a seven-district map be provided.

The question of a rotating Mayor versus a directly-elected Mayor was also discussed. The demographic consultant explained that an odd number of districts would include a rotational Mayor while an even number of districts would require a directly-elected Mayor. It was also noted that the matter of a Mayor directly elected through an at-large system has not been ruled upon by the courts with respect to the California Voting Rights Act, and therefore there is still some element of risk, albeit potentially low, associated with this method of Mayoral election.

Second Public Hearing

Tonight's public hearing is the second hearing required on the composition of voting districts; that is, the criteria that will be applied to yet-to-be-formed districts. The City's districting consultant, NDC, will also demonstrate the online tool for drawing maps in addition to discussing the tool which utilizes an Excel spreadsheet to calculate the resulting population numbers. In addition to seeking further public input on composition and criteria, tonight the City Council is being asked to provide criteria for drawing district lines and designate the number of districts defining the number of seats held by City Council Members.

The City Council has several options with respect to the number of districts. It may establish four, six, or eight districts for City Council Members, with the Mayor continuing to be elected at-large; or establish five, seven or nine districts for City Council Members with a Mayor chosen by the City Council. If the City Council chooses to fix the number of districts and/or whether the Mayor is directly elected, the attached draft resolution contains two options for selection by the City Council. These criteria will be used by the City's demographer and staff for the purposes of the demographer's preparation of maps for City Council evaluation in addition to those submitted by members of the public. A copy of the staff report from the meeting of September 17 is attached as Exhibit 1 which outlines the required and optional criteria (see pages 3 and 4) for City Council consideration.

In addition to considering public input concerning the composition of the City's yet-to-be formed voting districts at this public hearing and the mandatory criteria that the City Council must apply to the creation of districts, there are other factors which the City Council may also consider. These factors, which are not exclusive, include: (a) topography, (b) geography, (c) cohesiveness, contiguity, integrity, and compactness of territory, and (d) community of interests of the districts. The City Council may also plan

for future growth, consider boundaries of other political subdivisions, and consider physical/visual, geographical and topographical features (natural and man-made). The City Council may choose to include some, all, or none of the criteria, or may choose to create unique criteria that it believes to be applicable to the City. A draft resolution (page 10) has been prepared which includes the opportunity for the City Council to define the number of districts it wishes to consider. Upon its selection of the number of districts, if the Council makes such a selection at this meeting, a final resolution will be prepared removing the brackets and sentences not selected by the City Council. The resolution also includes the mandatory districting criteria and states that the criteria of communities of interest and other features should be taken into account in the process.

Next Steps

Upon the City Council's direction, the City's demographer will develop up to four voting district maps incorporating the composition/criteria considerations which will be prepared in compliance with the mandatory elements that must be met (population-balanced, race cannot be the predominate factor in mapping, and mapping does not dilute minority voting rights). The maps prepared, along with those submitted by members of the public, must be published no later than November 7 in order for them to be considered at the next public hearing scheduled for November 14. Any maps received after this date cannot be considered at the November 14 meeting, and would have to be presented for evaluation at the November 26 public hearing.

The November 14, 2018, public hearing will also include a discussion of election sequencing; that is, which districts will be voted upon in the 2020 election, and which districts will be voted upon in the 2022 election. City Council direction regarding the sequence of district elections will be sought at this meeting in order for ordinance language to be developed for presentation at the November 26, 2018 meeting.

The public hearing on November 26 is currently the last hearing scheduled in the transition process, and is the date identified for adoption of a district election map and introduction of an ordinance establishing the City's district election process and sequence in which future district elections will take place.

In the event that the City Council wishes to consider additional maps that may be submitted after the November 14 meeting, or make further changes to maps considered prepared by the City's consultant and presented on November 26, a **subsequent special City Council meeting will be required** in order to meet the "safe harbor" timeframes prescribed in the Elections Code. Without an extension from the potential plaintiff, the last day for the City Council to introduce an ordinance for first reading and meet required newspaper publications for the second reading is Tuesday, December 4, 2018. The City Council would need to conduct a second reading and adoption of a district elections ordinance no later than Sunday, December 16, 2018.

These dates are relevant only if additional maps are considered following the November 26 City Council meeting. Under the current timeline adopted by the City Council, the City Council is anticipated to adopt the final district map following the conclusion of the November 26 public hearing.

ALTERNATIVES

The following alternatives are available to the City Council:

1. Hold a public hearing for the purpose of receiving public comment regarding composition and criteria to establish boundaries of yet-to-be-formed voting districts; and
2. Receive a presentation from the City's demographic consulting firm, National Demographics Corporation on the mapping tools provided for public participation; and
3. Adopt a resolution after the hearing adopting line drawing criteria and the desired number of districts for establishing City Council district boundaries;
4. Direct the City's demographic consulting firm to prepare up to four districting map options for evaluation by the City Council in addition to maps submitted by members of the public; and
5. Close the public hearing and set the next public hearing for November 14, 2018.
6. Provide staff with further direction.
7. Take no action.

Staff recommends Alternative Nos. 1 through 5.

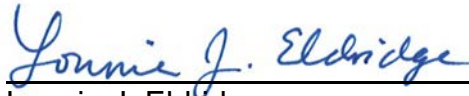
SUGGESTED CITY COUNCIL MOTION

I move to adopt a resolution adopting the line drawing criteria and desired number of districts for establishing City Council District boundaries, and to direct the City's demographer to prepare [insert number] district election map(s) for consideration by the City Council at the public hearing to be scheduled on November 14, 2018.

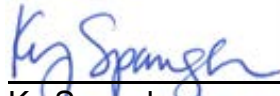
SUMMARY

On August 6, 2018, the City received a letter from attorney Kevin I. Shenkman, on behalf of his client, Southwest Voter Registration Education Project, requesting that the City move to district-based elections. On August 27, 2018 the City Council voted to voluntarily transition from at-large to a by-district election system, adopted a schedule for this transition in compliance with Election Code timelines, and directed staff to begin the process of establishing district elections. On September 17, 2018, the City Council adopted a Resolution of Intention to transition to district-based elections, and held the first public hearing required pursuant to the Elections Code to receive public testimony and input. On September 25, the City hosted a Community Meeting to provide an additional opportunity for public education and participation in the districting process. Tonight is the second public hearing in the series, also seeking public input on the composition of voting districts. Further, it is requested that the City Council provide

direction to the City’s demographer regarding the criteria to be considered in the preparation of up to four district maps for evaluation at the next public hearing. It is recommended that the City Council receive public testimony this evening, adopt a resolution adopting line drawing criteria and the desired number of districts for establishing City Council district boundaries, provide the demographer with direction on the preparation of draft maps for consideration, and set the next public hearing for November 14, 2018.



Lonnie J. Eldridge
City Attorney



Ky Spangler
City Clerk

Prepared by: Ky Spangler, City Clerk

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PUBLIC HEARING PROCEDUREHEARING DATE: October 15, 2018

1. MAYOR: This is the time and place set for a second public hearing to consider the composition of City voting districts for a transition from an at-large election system to a by-district election system, including the process and requirements for districting, and adoption of a resolution adopting line drawing criteria and desired number of districts for establishing City Council district boundaries.

May I have a reading of the proposed resolution?
2. CLERK: (Reads resolution)
3. MAYOR: May we have an oral report on this matter by staff and consultant?
4. STAFF & CONSULTANT: (Report)
5. ANY COUNCIL MEMBER : (Questions of staff and staff response)
6. MAYOR: Is there anyone in the City Council Chamber wishing to be heard on this matter?
7. AUDIENCE: (Comments)
8. MAYOR: The hearing is closed. Are there any comments or questions from members of the City Council?
9. ANY COUNCIL MEMBER : (Comments)
10. MAYOR: The Chair will now entertain a motion.

11. ANY COUNCIL MEMBER : City Council Actions (by motion of any Council Member):
- 1) Accept the public testimony received this evening, adopt Resolution No. 2018-54 adopting line drawing criteria and the desired number of districts [state number of districts] for establishing City Council district boundaries, direct the City's demographic consulting firm to prepare up to **[insert number]** districting map options for evaluation by the City Council, and set a third public hearing on November 14, 2018 for consideration of district maps and sequencing of district elections.

(requires a second and vote)
- * Any action to refer the matter back to staff or to continue the matter requires a second and a vote.
12. ANY COUNCIL MEMBER : Second
13. MAYOR: (Call for vote)
14. MAYOR: Proceed to the next item.

RESOLUTION NO. 2018-54

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SIMI VALLEY ADOPTING LINE DRAWING CRITERIA AND DESIRED NUMBER OF DISTRICTS FOR ESTABLISHING CITY COUNCIL DISTRICT BOUNDARIES

WHEREAS, the City of Simi Valley currently operates under an “at large” elections system whereby Members of the City Council are elected by voters of the entire City; and

WHEREAS, the City is considering a change to district-based elections whereby each candidate for a district-based election to the City Council must reside within a designated district boundary and is elected only by voters of that district; and

WHEREAS, the Federal Voting Rights Act (42 U.S.C. Section 1973) prohibits the use of any voting qualification or prerequisite to voting, or standard practice or procedure in a manner which results in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color; and

WHEREAS, federal law and the equal protection clause require that each district be equal in population to ensure compliance with the “one person one vote” rule; however, deviations of approximately five to ten percent may pass muster under the equal protection clause where required to meet official criteria; and

WHEREAS, the City will develop draft and final maps that fully comply with legal requirements.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SIMI VALLEY DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1.

- a) Each City Council District shall contain a nearly equal number of inhabitants;
- b) Council District borders shall be drawn in a manner that complies with the Federal Voting Rights Act;
- c) Council Districts shall consist of contiguous territory in as compact form as possible;
- d) Council District borders should consider communities of interest (school district boundaries, neighborhood boundaries, retail/commercial districts, voting precincts, etc.), and as may be finally approved by the City Council;

e) Council District borders should consider visible natural and man-made geographical and topographical features, and as may be finally approved by the City Council.

SECTION 2. The following requirements will apply to any draft districts considered, and these requirements will be utilized as the districting process continues:

[City Council to Elect One of The Following Options, Filling In Blanks]:

OPTION 1: The number of City Council Districts shall equal _____ with the Mayor directly elected at large.

[NOTE: Can only select 4, 6, or 8 Districts]

OPTION 2: The number of City Council Districts shall equal _____ with the Mayor selected by the City Council.

[NOTE: Can only select 5, 7, or 9 Districts]

SECTION 3. The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the Office of the City Clerk.

PASSED and ADOPTED this 15th day of October 2018.

Attest:

Ky Spangler, City Clerk

Robert O. Huber, Mayor of the City of
Simi Valley, California

Approved as to Form:

Approved as to Content:

Lonnie J. Eldridge, City Attorney

Eric J. Levitt, City Manager

Community Meeting – District Elections Presentation
September 25, 2018
Summary of Public Comments

Following staff introductions, a presentation on the Districting process was provided by Robert McEntire, a representative from the City's demographic consulting firm, National Demographics Corporation. The presentation included an overview of why the City is transitioning from an at-large to a by-district election system, the requirements and timeframes associated with a districting transition, and an explanation and demonstration of the mapping tools posted on the City's dedicated District Elections webpage which provide residents with the opportunity to participate in the process by drawing and submitting their own proposed district maps for consideration.

Questions were taken during and following the presentation and have been grouped into general subject areas.

General Questions concerning the process

- Q: It seems this process is being rushed; why is the timeframe to make the change so short?
- A: The process for transitioning to district-based elections is defined in the California Elections Code and includes a "safe harbor" provision which limits the financial exposure to lawsuit. A jurisdiction has 90 days following the adoption of a Resolution of Intention to transition to district-based elections or face the threat of a lawsuit. The City Council adopted this resolution on September 17 and must adopt a district map and ordinance establishing districts by December 16.
- Q: Is going to district elections a "sure thing"? Why can't we take a survey or citizen poll to see if residents want district-based elections?
- A: If the City Council wanted to wait and consult the residents rather than taking advantage of the "safe harbor" provision, the City would be open to litigation and would have to expend significant taxpayer dollars to defend itself against a lawsuit.
- Q: Can the City request more time from the court to complete the process?
- A: The timeframes to complete the process are defined in the Elections Code. The City Council voted to move forward with the process within the required timeframe in part because no jurisdiction has successfully defended itself from a California Voting Rights Act lawsuit and the risk of incurring costly legal fees is high.
- Q: Why are no City Council Members at the Community Meeting?
- A: The purpose of the Community Meeting is to provide an additional opportunity for members of the public to receive education on the districting process and required timeframes, and to receive a demonstration and hands-on assistance

with the mapping tools which allow residents the opportunity to submit their own proposed maps. The City Council received the same presentation during the Public Hearing held on September 17.

Q: Will there be more meetings on this topic?

A: Yes, there will be a second public hearing on the composition of City Council voting districts on October 15, and two additional public hearings to discuss the proposed district maps, and to adopt a map and ordinance establishing the districts and election sequence. The dates and meeting schedule are posted on the City's webpage for District Elections.

Q: The City Council will adopt a district map following the November 2018 election. Following the adoption of the map, and if there two Council Members that then reside in one district, does one need to step down?

A: No, if two Council Members reside in the same district when the districts are established, one Council Member does not have to step down. City Council districts will be effective for the 2020 Election.

Q: Other cities that have gone through the districting process have created an independent committee to consider and develop district maps. Wouldn't this be a more beneficial approach for the City?

A: Due to the timeframe limitations in the Elections Code, the City would not be able to convene an independent committee and conduct all of the required public hearings in time to meet the "safe harbor" provisions of the Code.

Maps

Q: When can the public begin submitting maps?

A: The public can begin submitting maps now; however, the City Council cannot consider maps until the third public hearing scheduled on November 14.

Q: Shouldn't the map (populations) be based on the number of registered voters?

A: The districting process requires that 2010 Census population numbers be used as the basis for developing district maps, and it based on the total population, not just registered voter numbers.

Q: How can the public draw unbiased district maps if the City Council has the final decision?

A: All of the maps submitted by the public will be taken into consideration and brought to the City Council for evaluation prior to a final decision; however, ultimately City Council will vote to adopt the final district map.

Q: If the maps have to meet specific criteria, how will residents know if the map they submit is good? Isn't the demographer better able to draw maps that meet the requirements?

- A: All maps submitted will be reviewed by National Demographics Corporation against the legal requirements, and if a map doesn't meet the requirements, suggestions can be offered to the Council on adjustments to reach compliance. The demographer will also prepare maps for consideration based on direction provided by the City Council.
- Q: Do districts have to be contiguous?
- A: Yes. The only "break" that is allowed in a district is if there is county property (a county island) in which case the district can wrap around the territory.
- Q: Why can't the City voting districts follow the existing Neighborhood Council district lines?
- A: Voting district maps must be population balanced and the existing Neighborhood Councils boundaries have not been evaluated to see if they meet the criteria. NDC will evaluate this possible district configuration if the City Council so directs.
- Q: How are the population zones in the online tools created?
- A: The mapping software groups Census blocks together to generate population numbers. Census blocks are drawn as neighborhoods are constructed.
- Q: Are Census blocks roughly equal in population and/or size?
- A: No, Census blocks are drawn as neighborhoods are constructed and some neighborhoods are more or less dense resulting in varying populations.
- Q: Can you "split" or "draw through" a Census block using the online tool?
- A: No, however, residents can draw directly on a map and note specifically where the desired break would be, and submit it to NDC for consideration.
- Q: How do you know that you are not splitting a religious community?
- A: Statistical data does not include religious affiliations. Additionally, religion is not a protected class and therefore is not considered in the district mapping process.

Number of Districts

- Q: How many districts should be formed?
- A: The City Council directed that four, five, and six-district mapping tools be provided for residents to consider. The final number of districts that will be established is ultimately the City Council's decision, but the decision will be influenced by resident input at public hearings as well as the proposed maps submitted by members of the public.
- Q: Can a seven-district option and mapping tool be provided for consideration?
- A: City staff will look into the request.
- Q: When will residents know how many districts will be formed and the corresponding population numbers required for the number of districts?

- A: At the next public hearing scheduled on October 15, the City Council will receive further public input on the number of districts and will be providing further direction on the number of districts to be considered.
- Q: If the City has four districts and a separately elected mayor, would one district then have two members in it?
- A: As currently structured, the City Council has five members with one that is directly elected as the mayor. Yes, if the City formed four districts and maintained a separately elected mayor, then one Council Member and the mayor would reside in the same district.
- Q: Why are we using the 2010 Census numbers and how difficult is it to add a district later?
- A: The districting process requires the most current Census numbers be utilized for population purposes. Following each Census (every 10 years), jurisdictions must re-evaluate existing districts based on current population numbers to determine redistricting requirements. The City Council is required to have public hearings as part of the re-districting process, and could consider the addition of another Council district at that time. The Council cannot choose to add or remove a district without public hearings.

Mayoral Selection/Election

- Q: Who will make the decision about whether the mayor is directly elected or appointed from among the elected Council Members, and how long the mayoral term will be?
- A: Based on input from the public, the City Council will make the decision regarding mayoral appointment or election, and the length of the mayoral term.
- Q: If we decided to have four districts and a mayor elected at-large, would the mayor oversee all of the districts?
- A: As is the situation today, the mayor would be elected at-large by all registered voters participating in an election, and could reside in any location within the jurisdiction. The mayor would preside over City Council meetings and would have one vote like each of the other Council Members.
- Q: Could there be another lawsuit if the City chooses to continue to have its mayor elected at-large?
- A: The courts have not ruled on whether the at-large election of a mayor would be found to be a violation of the California Voting Rights Act.
- Q: If there are five districts, how is the mayor selected?
- A: The mayor would be nominated and appointed by the five Council Members.

**CITY OF SIMI VALLEY
MEMORANDUM**

August 27, 2018

TO: City Council

FROM: Office of the City Attorney / Office of the City Clerk

SUBJECT: DISCUSSION AND POSSIBLE ACTION, INCLUDING THE POTENTIAL AUTHORIZATION OF INITIATION OF THE DISTRICTING PROCESS OR OTHER ACTION, IN RESPONSE TO A DEMAND LETTER RECEIVED AUGUST 6, 2018, REGARDING THE IMPLEMENTATION OF ELECTORAL DISTRICTS IN SIMI VALLEY

CITY MANAGER'S RECOMMENDATION

Due to the Demand Letter and potential future liability, the City Manager recommends that the City Council consider initiating the districting process. If the City Council determines it is best to initiate the districting process, the City Manager recommends choosing one of the two scheduling options to stay in compliance with AB 350.

If authorized to move forward with the districting process, we will schedule future agenda items in compliance with the preferred schedule.

The City Manager intends to move forward in hiring a demographer within his contracting authority, due to the need for a demographer with whichever approach the City Council prefers.

CITY ATTORNEY'S RECOMMENDATION

The City Attorney recommends that the City Council discuss and potentially take action, including but not limited to the authorization of the districting process or other action.

OVERVIEW

On August 6, 2018, the City received a letter from attorney Kevin J. Shenkman, on behalf of his client, Southwest Voter Registration Education Project, requesting that the City move to district-based elections (Attachment A, page 11). Mr. Shenkman is well-known for threatening litigation against numerous cities if those cities refuse to change from an at-large voting system to a by-district voting system. Currently, Simi Valley has four Council Members and a Mayor, all elected at-large, for a total of five Council Members. On August 13, 2018, due to the threat of litigation as set forth in the letter, the matter was placed on the City Council closed session agenda, however by a unanimous vote, the City Council decided to not have discussion in closed session and to place the entire matter in open session for consideration at the next available City Council meeting, which is the present meeting (August 27, 2018).

Due to this letter, the City is now subject to a statutory timeline if it wishes to limit the potential attorneys' fees that Mr. Shenkman can receive. In sum, if the City passes a resolution of intention to move to district elections within 45 days of the receipt of his letter (by September 22, 2018), and further thereafter passes an ordinance moving to district-based elections within 90 days of the resolution, then plaintiff's attorneys' fees are limited to \$30,000.

The City is not required to transition to district-based elections because of Mr. Shenkman's letter. However, as detailed below, based on research no city has successfully fought Mr. Shenkman or the other attorneys who are engaged in sending such letters to cities, and any such legal battle would be quite costly and time consuming. Attachment B (page 15) provides an overview of the outcomes in other California cities. If the City wishes to consider district-based elections, there are several choices available to the Council to be determined in the process regarding the number and electoral timing of such districts, and including whether the Mayor shall remain a citywide elected position or rotated among members of the Council. Those choices are further outlined below.

BACKGROUND AND LEGAL ANALYSIS (PROVIDED BY CITY ATTORNEY'S OFFICE)

A. History of California Voting Rights Act Challenge Letters

Over the past two years, over forty California cities that had conducted their city council elections by means of an "at-large" election system have received letters threatening to sue their city for alleged violations of the California Voting Rights Act (Cal. Election Code (EC) Sections 14025-14032) ("CVRA"), unless those cities voluntarily transitioned to a "district-based" election system. In addition to cities, many school, community college and health care districts have received these CVRA letters. Other groups or attorneys similarly have targeted public entities in the northern part of the State.

The CVRA only applies to jurisdictions (including the City of Simi Valley) that utilize an "at-large" election method, where voters of the entire jurisdiction elect the members of the City Council. The threshold to establish liability under the CVRA is extremely low, and prevailing CVRA plaintiffs are guaranteed to recover their attorneys' fees and costs. As a result, as far as we are aware, every government that has challenged the forced transition to district-based elections has either lost in court or agreed by way of settlement to implement district-based elections, and has been forced to pay at least some portion of the plaintiffs' attorneys' fees and costs. Several cities that had extensively litigated CVRA cases have been forced to pay multi-million-dollar fee awards. However, currently, we are aware of a few cities that are either in, or considering, litigation over this issue.

B. Federal Voting Rights Act and California Voting Rights Act

FVRA

Plaintiffs may challenge an “at large” voting system under the Federal Voting Rights Act 53 U.S.C. Section 10301 et seq. (“FVRA”). Plaintiffs must show that:

- (1) a minority group be sufficiently large and geographically compact to form a majority of eligible voters in a single-member district;
- (2) there is racially polarized voting; and
- (3) there is majority-bloc voting sufficient usually to prevent minority voters from electing candidates of their choice.

If, and only if, all three of these preconditions are proven, the court then proceeds to (4) consider whether under the “totality of the circumstances” the votes of minority voters are diluted.

CVRA

Plaintiffs may also challenge an “at large” voting system under California law. The California Voting Rights Act (“CVRA”) was enacted in 2001 after several jurisdictions in California successfully defended claims under the FVRA. However, a case under the CVRA is less burdensome for a plaintiff. The CVRA removes two of the four factors necessary to prove liability under the FVRA: (1) the “geographically compact” FVRA precondition (i.e., can a majority-minority district be drawn?); and (2) the “totality of the circumstances” or “reasonableness” test. Despite its removal of key safeguards contained in the FVRA, California courts have held that the CVRA is constitutional. See, e.g., *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660.

A CVRA violation may be established by showing “racially polarized” voting occurs in elections for the City Council (EC Section 14028). The Elections Code indicates that racially polarized voting may be determined by “the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class, as determined by an analysis of voting behavior, have been elected to the governing body.” EC Section 14028. In addition, polarization can be shown by other factors such as the number of candidates who have run for office or the electoral choices made on particular issues which may be preferred by a minority group. EC 14026(e). Under the CVRA scheme, if a protected class consistently votes differently – as a group – than the rest of the electorate, then a violation of the CVRA may be triggered. Considering the definitions in the statutes and case law, the term “racially polarized voting” is still quite ambiguous and therefore difficult to defend against. A judge has broad authority to implement appropriate remedies that are tailored to address specific CVRA violations. See EC Section 14029. The most common remedy has been to order a municipality to change from at-large elections to district-based elections.

Thus, under the CVRA, the only “element” a plaintiff must establish is that racially polarized voting occurs in a jurisdiction with at-large elections.

C. What is the Likelihood of Success if a Jurisdiction Contests the Letter?

After investigation, the City Attorney's Office is not aware of any local agency that has successfully defended a CVRA lawsuit, although a few cities have chosen to litigate and at least one city is still in that process. The most high-profile battle underway is the City of Santa Monica, which is litigating a case brought by Mr. Shenkman and the same litigation team that tried a case against the City of Palmdale beginning in 2012. We understand that the City of Carson has also received a CVRA letter (on May 22, 2018) and is considering which actions to take.

The City of Huntington Beach received a similar CVRA letter from Mr. Shenkman, and declared in a response letter that it will not voluntarily transition to by-district voting. So far, no lawsuit has been filed against Huntington Beach, however if a lawsuit is filed the cap on attorneys' fees is not applicable.

Due to the combination of the CVRA's lower burden to allow a court to impose district-based elections and its mandatory attorneys' fees provision, all CVRA cases that have been filed have ended with the defendant governmental agency implementing a district-based election system and making some sort of attorneys' fee payment. Over the relatively short 15-year history of the CVRA, and only after an initial challenge to it was resolved in 2006, public agencies have paid a total of over \$16 million to CVRA plaintiff attorneys. This is further delineated in the chart regarding other city outcomes in Attachment B. It is possible for a city to recover some costs, but only if successful, and further provided that a court finds the plaintiff's action to be frivolous, unreasonable or without foundation. See EC Sec. 14030.

To provide a few examples, the City of Modesto, which challenged the CVRA's constitutionality, ultimately paid \$3 million in plaintiffs' attorneys' fees. See *Sanchez v. City of Modesto*, 145 Cal.App.4th 660 (2006). The City of Palmdale, which also aggressively litigated a CVRA claim, ultimately paid \$4.5 million in attorneys' fees. The City of Santa Barbara agreed to pay approximately \$600,000 to settle a CVRA lawsuit in 2015. Recently in Ventura County (October 2017), the City of Oxnard was served with a letter demanding districting and adopted an ordinance in March 2018 transitioning from at-large to district-based elections. Significantly, these figures do not include the sums spent by those cities paying for their own attorneys and associated staff and defense costs, which could exceed \$1 million or more for a thorough defense.

Given the number and variety of cities that have unsuccessfully challenged a districting letter under the CVRA, a successful challenge by Simi Valley to a districting lawsuit, would be difficult and costly. It should be noted that, if the City chooses to implement districts, it is not any admission of a violation of the CVRA or the FVRA.

D. AB 350: A Legislative "Safe Harbor" Provision Passed in 2016

In 2016, responding to the substantial costs imposed upon cities and other public agencies in defending against CVRA suits, the California Legislature adopted AB 350, thereby amending the Elections Code (effective January 1, 2017) to simplify the process of transitioning to district-based elections and to provide a "safe harbor" process to protect agencies from expensive litigation. The safe harbor has two timeline steps: a city may pass a resolution of intention to transition to district based elections within 45 days of receipt of a demand letter; and a City must thereafter pass an ordinance within 90 days of the resolution of intention. If these steps are followed, the plaintiff's attorneys' fees are capped at \$30,000.

In order to bring a CVRA lawsuit, a prospective plaintiff must first send by certified mail a notice to the local government agency or city alleging the agency's at-large elections may violate the CVRA. The prospective plaintiff may not file the lawsuit until 45 days after the city receives the notice. EC Sec. 10010(e). (The first timeline).

If, within 45 days after receiving a notice from a prospective CVRA plaintiff, the city adopts a resolution declaring its intention to transition from at-large to district-based elections, outlining the specific steps it will undertake to facilitate the transition along with an estimated timeframe for doing so, then the prospective plaintiff may not bring a lawsuit until 90 days after the adoption of the resolution (Elections Code Sec. 10010(e)(3)). (The second timeline).

However, if the city does not adopt the resolution of intent within that 45-day period or does not adopt an ordinance changing to district-based elections within the prescribed 90-day period following adoption of the resolution of intent, and a lawsuit is actually filed, then there is no cap on attorney's fees and costs.

REVIEW OF OPTIONS IF CITY COUNCIL WISHES TO CONSIDER DISTRICT-BASED ELECTIONS

A. The Council May Select the Number of Council Members, and Whether the Mayor is Directly Elected

Pursuant to the Government Code, the City, by ordinance, may change from at-large elections for the City Council to district-based elections by either establishing four, six, or eight districts for members of the City Council, with the Mayor continuing to be elected at-large; or, establishing five, seven or nine districts for members of the City Council, with the Mayor chosen by the City Council. See GC 34871 (a) & (c) and 34886. Although the City of Simi Valley submitted the question of an elected mayor and four Council Members to the electorate in December 1981, the Government Code currently allows the City Council to include or not include a citywide elected mayor in a districting ordinance without submitting the question to the voters. The City Council would also have the discretion to determine whether the Mayor would have a two-year or four-year term. All Council Members are required to have a four-year term under state law.

Although the question of whether the Mayor should be elected was submitted previously to the voters as described above, because of the CRVA, if the Council wished to submit the question to the voters again, it would not meet the “safe harbor” timeline, and potentially subject the City to uncapped attorneys’ fees.

B. To Create Districts, Five Public Hearings Are Required; Two For Public Input, Two For Mapping, and a Final Hearing Introducing an Ordinance

Elections Code Section 10010 sets forth several requirements the City would need to satisfy before adopting an ordinance establishing district-based elections. A total of five (5) public hearings must be held: four for community input, and a final hearing to introduce an ordinance. The first two public hearings are prior to drawing any district maps, over a period of no longer than 30 days, in order to receive public input and discuss the composition of the voting districts. Most cities have the council itself hold these hearings, although the City Council could designate another body or subcommittee to do so if it wished, except for the final hearing introducing the ordinance, which must be conducted by the Council.

The third and fourth public hearings, over a period of no more than 45 days, are held to receive public input on the draft maps. Before a hearing can be held on a particular draft map, the 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 shall be published and made available to the public for at least seven days before being adopted. EC Sec. 10010 (a)(2). The draft district maps must also contain the proposed sequence of elections, if the district elections are to be implemented over the course of more than one election to account for staggered terms of office. After at least four public hearings are held, the City may introduce the ordinance establishing district-based elections at a final fifth hearing (this fifth hearing may be on the same day as the fourth provided the proposed draft district map is not changed). The ordinance then would take effect thirty days after the second reading and adoption of the ordinance. Some cities have passed the ordinance on the first reading after a finding of urgency with a 4/5ths vote.

C. Other Alternative Voting Systems or Districts May Be Considered, Such as Cumulative Voting, but there are Statutory and/or Constitutional Difficulties As Well As Potential CVRA Challenges

It should be noted that a number of alternative voting and/or district structures have been contemplated by various cities over time. “Cumulative voting,” for example, in which voters can place more than one vote for a particular candidate (up to the total amount of candidates running), was recently considered by the City of Santa Clarita, but the California Secretary of State has indicated that this type of voting is not valid in California. Voting “from” districts, as opposed to “by” districts, allows all voters in the City to vote from candidates who reside in particular districts. (In voting “by” districts, both the candidates and the voters must reside in the same district). This option also is not clearly compliant with the Federal Voting Rights Act, and would also have to be submitted to a vote of the people, thus losing the safe harbor.

D. Under District-Based Elections, the Council Can Choose to “Stagger” the Terms of the Future Districts

The Council is empowered to set the timing of the elections if it creates new districts. The Council has wide discretion in deciding on this sequence. There are a few ground rules that apply:

(1) For each draft districting plan, a proposed election sequence must be specified for that plan at the time the plan is published. EC Sec. 10010(a);

(2) No term of office may be cut short. Gov. Code Sec. 34873.

(3) The City Council may consider the expiration of terms of office in setting the election rotation. Gov. Code Sec. 34878.

(4) In determining the final sequence of the district elections, the Council is required to give “special consideration” to the purposes of the CVRA. Although this provision is not completely clear, it could be read to suggest that any district with a majority or otherwise significant number of voters in a protected class be scheduled for an election earlier rather than later (EC Sec. 10010(b)); and

(5) The preferences of the voters in the districts “shall be taken into account”. EC Sec. 10010(b).

E. Certain Rules Apply to the Drawing of Districts, and It is Advisable to Engage a Demographer to Assist the City

There are a number of factors that should be taken into consideration when creating new voting districts, including the following legally required criteria that apply to the creation of the districts:

--Each council district shall contain a nearly equal population (EC Sec. 21601).

--A districting plan shall be drawn in a manner that complies with the Federal Voting Rights Act (e.g. compactness, regularity, and other factors); and

--Each council district shall not be drawn with race as the “predominate factor” in accordance with the principles established by the U.S. Supreme Court in *Shaw v. Reno*, 509 U.S. 630 (1993).

Additional criteria have been used by various communities when defining districts including topographical and geographical boundaries or landmarks (major roads, freeways, creeks, railroad lines or other features) and communities of interest (school district boundaries, neighborhood boundaries, retail/commercial districts, voting precincts etc.).

In order to draw districts that comply with both the CVRA and FVRA, and provide assistance to the City in conducting the districting process, it is generally considered necessary to engage the services of an expert demographer on an expedited basis.

PROPOSED SCHEDULING ALTERNATIVES FOR THE DISTRICTING PROCESS

Elections Code Section 10010 outlines the procedure for transitioning from an at-large voting system to a district election system, and provides a safe harbor timeline of 135 days in which to complete the process thereby limiting attorneys' fees to \$30,000. E.C. 10010 defines specific timeframes in which public hearings must be held to receive public input on the composition of voting districts and the sequencing of elections to provide for staggered terms of office. As noted, the timeline requires a total of five (5) public hearings, four to receive input and one to introduce the ordinance for approval. The timeline does not specify or require additional community meetings beyond the public hearings prescribed in the Elections Code. Using the Elections Code timeframes, two proposed scheduling alternatives have been prepared for consideration by the City Council.

The scheduling options have been developed utilizing the 2018 City Council adopted meeting dates to the greatest degree possible. Because of the City's long-standing practice of conducting community outreach to solicit resident input, Option 1 incorporates a Community Meeting in addition to the required public hearings; however, this Option requires one of the public hearings be held on a Special Meeting date. Option 2 does not include this additional community meeting.

Options 1 and 2 are summarized below; a more detailed version of the schedules is included as Attachment C (page 22). It should be noted that, should the Council choose to adopt the Resolution of Intention at its September 17, 2018 meeting, the second reading of the Ordinance establishing district elections must be adopted by the Council's meeting on December 17, 2018. It is also critical to note that district maps must be published seven (7) days prior to a public hearing held to adopt a map.

Option 1		Option 2	
9/17/18	Public Hearing #1 and Resolution of Intention	9/17/18	Public Hearing #1 and Resolution of Intention
9/25/18	Community Meeting	10/15/18	Public Hearing #2
10/15/18	Public Hearing #2	10/29/18	Public Hearing #3
11/14/18*	Public Hearing #3	11/19/18	Public Hearing #4
11/26/18	Public Hearing #4	12/10/18	Ordinance second reading
12/10/18	Ordinance second reading		

*denotes Special City Council meeting

Whether the City Council elects to defend against the alleged CVRA violation, or elects to move forward with transitioning to district elections, the City will require the services of a demographer to provide the resources and tools needed develop balanced district maps and establish election sequencing criteria for consideration. To that end, staff has contacted demographic firms to identify their ability to perform under the aggressive timeframes required by the Elections Code, and to obtain cost proposals for the services necessary to complete the transition. Staff anticipates that the cost will range from \$45,000 to \$75,000 depending on the specific services requested. The cost of the anticipated professional services required fall within the City Manager's contract purchasing authority. Therefore, in the event that the Council selects a Scheduling Option and directs staff to move forward with the district election transition process, the City Manager's Office will negotiate the final scope of work and cost with a qualified firm, and execute a contract to permit work to commence.

FINDINGS AND ALTERNATIVES

It is recommended that the City Council discuss and provide direction regarding potential districting in the City of Simi Valley.

The following alternatives, among others, are available to the City Council:

1. Discuss the City's position with regard to the potential implementation of districts in Simi Valley and the demand letter.
2. Authorize City staff to begin the background work for districting, schedule hearings and bring back resolutions in accordance with this staff report and the Council's desired Scheduling Option.
3. Do not begin the process of districting and prepare for potential litigation if it should be filed against the City.
4. Provide staff with further direction.
5. Take no action.


It is recommended that the City Council consider all alternatives. If the Council wishes to begin the process of implementing districts in the City, staff recommends Alternative Nos. 1 and 2.

SUGGESTED CITY COUNCIL MOTION

No suggested City Council motion.

SUMMARY

On August 6, 2018, the City received a letter from attorney Kevin J. Shenkman, on behalf of his client, Southwest Voter Registration Education Project, requesting that the City move to district-based elections. No city in California, regardless of its particular situation, has been able to successfully fight such a districting demand letter, and if litigation is unsuccessful, the City would have to pay uncapped attorneys' fees. The City Council may wish to consider initiating the process of districting, or considering whether to potentially litigate this matter. If the City Council chooses to initiate the process of districting, there are tight scheduling requirements that must be met, as set forth in this staff report.



Lonnie J. Eldridge
City Attorney



Ky Spangler
City Clerk

Prepared by: Lonnie J. Eldridge, City Attorney
Ky Spangler, City Clerk

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RECEIVED
CITY OF SIMI VALLEY

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Malibu, California 90265
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2018 AUG -6 PM 4:08 kshenkman@shenkmanhughes.com

OFFICE OF CITY CLERK
BY *Ky Spangler*

VIA CERTIFIED MAIL

August 3, 2018

Ky Spangler
City Clerk
City of Simi Valley
2929 Tapo Canyon Road
Simi Valley, CA 93063

Re: Violation of California Voting Rights Act

I write on behalf of our client, Southwest Voter Registration Education Project. The City of Simi Valley (“Simi Valley”) relies upon an at-large election system for electing candidates to its City Council. Moreover, voting within Simi Valley is racially polarized, resulting in minority vote dilution. Therefore, Simi Valley’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.*

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

Simi Valley’s election history is illustrative. In the last twenty years, Glen Becerra and Paul Luna Delgado were the only Latino candidates to run for City Council; further, Paul Luna Delgado lost in 2002. The fact that only two Latino candidates have sought election to the Simi Valley City Council does not indicate a lack of Latino interest in local government. On the contrary, the paucity of Latino candidates to seek election to the City Council exemplifies the powerful consequences of vote dilution. When a minority group feels disenfranchised by their city’s local government and its election system, their participation in either understandably decreases. *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 23.29% of the population of Simi Valley. The contrast between the significant Latino proportion of the electorate and the near absence of Latinos to be elected to the City Council is telling.

As the Latino population of a city continues to grow, its city government must become increasingly more receptive and representative of Latino interests. Such is not the case in Simi Valley. In fact, the Simi Valley City Council just voted for a *second* time to overturn California’s sanctuary law, Senate Bill 54. At the most recent City Council meeting, residents opposed to the sanctuary law expressed their misguided, xenophobic beliefs, and demanded that the Council make Simi Valley “safe” again. While 78 attendees spoke in favor of the sanctuary law, only 43 spoke against it; additionally, via cards, nearly three times as many attendees expressed their support of the law than attendees who expressed their opposition to the law.

August 3, 2018

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Disregarding the overwhelming pleas of those urging acceptance of SB54, the City Council voted unanimously against the California law.

Simi Valley shamefully leads the way in Ventura County, being the first and, so far, only city in Ventura to oppose the sanctuary law. As such, perhaps no city in Ventura needs district-based elections as desperately as Simi Valley. The divisive atmosphere among residents, reciprocated at the governmental level, needs a counter in City Council. The current City Council has neglected the Latino minority, and has utterly failed to deal with the city's problematic social climate. The action of the Simi Valley City Council only serves to perpetuate fear amongst Latinos who feel unwanted, unsafe, and unrepresented in Simi Valley.

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 Simi Valley 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 September 22, 2018 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

City / Political Subdivision Defendant	Date of Settlement	Settlement Conditions	Attorney's Fees	Notes	Council Make Up
City of Palmdale	2015	Agreed to have voters choose elected officials by districts, including two with Latino majorities	\$4,500,000	City lost trial on the merits, held an election that plaintiffs argued was illegal, and unsuccessfully challenged an injunction stopping the City from certifying the results of that election; settlement subsequently reached	4/1
City of Modesto	2007	Moved to District elections; voters had already approved a move to districts before settlement	\$3,000,000	Settlement; Additional \$1,700,000 to defense attorneys	6/1
Madera Unified School District; Madera County Board of Education	2012 (Court of Appeal Ruling)	Moved to "by trustee area" elections via admission of liability	\$162,500	Court award	
City of Compton	2012	Moved to by-district elections via ballot measure; kept mayor at large	Undisclosed	Settlement	4/1
Tulare Local Healthcare District	2010	Agreed to hold an election re changing to district elections in 2012 and agreed to cancel 2010 elections	\$500,000	Settlement	

City / Political Subdivision Defendant	Date of Settlement	Settlement Conditions	Attorney's Fees	Notes	Council Make Up
City of Tulare	2011	City agreed to place a ballot measure before voters regarding a move to district elections	\$225,000	Settlement	5
Hanford Unified School District	2004	Agreed to move to by-trustee district elections	\$110,000	Settlement	
Compton Community College District	2011	Agreed to move to by-district elections	\$40,000	Settlement	
Ceres Unified School District	2009	Moved to by-trustee district elections before litigation was filed	\$3,000	Settlement	
Cerritos Community College District		Moved to by-trustee district elections	\$55,000	Settlement	
San Mateo County	2013	County moved to by-District elections (through a ballot measure) and further agreed to redraw its previously-approved District boundaries by forming a nine-person redistricting committee	\$650,000	Settlement	

City / Political Subdivision Defendant	Date of Settlement	Settlement Conditions	Attorney's Fees	Notes	Council Make Up
City of Anaheim	2014	Agreed to place ballot measure on November 2016 ballot re moving to by district elections	\$1,200,000	Settlement after first litigating; expected costs include at least another \$800,000	6/1
City of Highland	2014	Placed issue on ballot, which was rejected by the voters; districts ultimately ordered by the Court, who chose Plaintiffs map	\$1,300,000		
City of Whittier	2014	Case dismissed as moot when City changed voting system; unsuccessful post-election challenge re at large mayor	\$1,000,000	Court awarded fees under catalyst theory, even though case was dismissed	4/1
Santa Clarita Community College District		Moved to by trustee voting	\$850,000	Settlement	
City of Garden Grove	2015	Moved to by district elections via stipulated judgment	\$290,000	Settlement	6/1
City of Escondido	2013	Settled via court order (consent decree) after vote of the people failed to adopt by district elections	\$385,000	Settlement	4/1

City / Political Subdivision Defendant	Date of Settlement	Settlement Conditions	Attorney's Fees	Notes	Council Make Up
City of Santa Clarita	2017	Attempted move to cumulative voting method, court overruled	\$600,000	Settlement	
City of Visalia	2014	Stipulated judgment, court ordered by districts	\$125,000	Settlement	5
City of Santa Barbara	2015	Agreed to move to by district; mayor remains elected at large	\$599,500	Settlement	6/1
City of Fullerton	2015	Agreed to pay attorney's fees - negotiate in good faith; required placing measure on November 2016 ballot to move to districts	Undisclosed	Settlement	5
City of Merced	2014	Settled before lawsuit tiled; agreed to ballot measure	\$43,000	Settlement	6/1
City of Bellflower	2014	Agreed to place ballot measure on November 2016 ballot; measure adopted	\$250,000	Settlement	5
Sulphur Springs School District	2013	Agreed to move to by district elections	\$144,000	Settlement	

City / Political Subdivision Defendant	Date of Settlement	Settlement Conditions	Attorney's Fees	Notes	Council Make Up
City of Costa Mesa	2016	Moved to districts before lawsuit was filed	\$55,000	Pre-litigation settlement	6/1
City of West Covina	2017	Waited until after lawsuit was filed to hire demographer and voluntarily move to by district elections via ordinance	\$220,000	Settlement	5
Newport Mesa School District		Settled, moved to by trustee elections	\$106,000	Settlement	
City of Rancho Cucamonga	2016	Settled after litigation and voter approved move to by district elections	Not yet determined	Settlement	4/1
City of San Marcos	2017	Moved to districts within safe harbor, before lawsuit	<=\$30,000	Transitioned to districts before lawsuit	4/1
City of Carlsbad	2017	Moved to districts within safe harbor, before lawsuit	<=\$30,000	Transitioned to districts before lawsuit	4/1
City of Poway	2017	Moved to districts within safe harbor, before lawsuit	<=\$30,000	Transitioned to districts before lawsuit	4/1

City / Political Subdivision Defendant	Date of Settlement	Settlement Conditions	Attorney's Fees	Notes	Council Make Up
City of Duarte	2017	Moved to districts within safe harbor, before lawsuit	<=\$30,000	Transitioned to districts before lawsuit	7
City of Oxnard	2018	Moved to districts within safe harbor, before lawsuit	<=\$30,000	Transitioned to districts before lawsuit	6/1
City of Ventura	2018	Moved to districts within safe harbor, before lawsuit	<=\$30,000	Transitioned to districts before lawsuit	7
City of Atwater	2017	Moved to districts within safe harbor, before lawsuit	<=\$30,000	Transitioned to districts before lawsuit	4/1
City of Encinitas	2017	Moved to districts within safe harbor, before lawsuit	<=\$30,000	Transitioned to districts before lawsuit	4/1
City of Fremont	2017	Moved to districts within safe harbor, before lawsuit	<=\$30,000	Transitioned to districts before lawsuit	6/1
City of Lake Forest	2017	Moved to districts within safe harbor, before lawsuit	<=\$30,000	Transitioned to districts before lawsuit	5
City of Morgan Hill	2017	Moved to districts within safe harbor, before lawsuit	<=\$30,000	Transitioned to districts before lawsuit	4/1

City / Political Subdivision Defendant	Date of Settlement	Settlement Conditions	Attorney's Fees	Notes	Council Make Up
City of Torrance	2018	Moved to districts within safe harbor, before lawsuit	<=\$30,000	Transitioned to districts before lawsuit	6/1
City of Stanton	2017	Moved to districts within safe harbor, before lawsuit	<=\$30,000	Transitioned to districts before lawsuit	4/1
City of Oceanside	2017	Moved to districts within safe harbor, before lawsuit	<=\$30,000	Transitioned to districts before lawsuit	4/1
City of Vista	2017	Moved to districts within safe harbor, before lawsuit	<=\$30,000	Transitioned to districts before lawsuit	4/1
City of Los Alamitos	2018	Moved to districts within safe harbor, before lawsuit	<=\$30,000	Transitioned to districts before lawsuit	5
City of Dana Point	2018	Moved to districts within safe harbor, before lawsuit	<=\$30,000	Transitioned to districts before lawsuit	5
TOTAL PAYMENTS TO PLAINTIFFS' ATTORNEYS			\$16,413,000		

OPTION 1 - Includes Community Meeting in addition to Public Hearings

Meeting date	Action	Publication Date	Deadline to Newspaper
08/27/2018	Regular Meeting: Staff report outlining process to transition to District-based elections and request for Council direction	N/A	N/A
09/17/2018	Regular Meeting: Staff report for adoption of Resolution of Intention to transition to District elections <i>Begins 90-day clock to complete Public Hearing process (if Resolution is adopted on 9/17, Ordinance adoption <u>must occur by 12/17/2018</u>)</i>	N/A	N/A
09/17/2018	Regular Meeting/Public Hearing #1: Composition of Voting Districts	09/07/2018	09/04/2018
09/25/2018	Community Meeting <i>To receive input from Neighborhood Councils, Council On Aging, Youth Council, and other interested community participants</i>		
10/15/2018	Regular Meeting/Public Hearing #2: Composition of Voting Districts <i>Must take place within 30 days of Public Hearing #1</i>	10/05/2018	10/02/2018
11/14/2018	Special Meeting/Public Hearing #3: Discussion of Maps and Sequence of Elections <i>Must Publish Proposed Maps 7 days prior to Public Hearing #3 (11/7/2018)</i>	11/04/2018	11/01/2018
11/26/2018	Regular Meeting/Public Hearing #4: Adoption of Map, Ordinance introduced <i>Note 1: If changes to District Map are made at this Public Hearing, the revised Map must be published 7 days prior to meeting where adoption is considered)</i> <i>Note 2: The meeting would include two separate hearings; one to adopt the District Map, and a second to introduce the Ordinance. If District Map is changed, hearings to adopt Map and introduce Ordinance would need to be continued.</i>	11/16/2018	11/13/2018
12/10/2018	Regular Meeting: Second reading & adoption of Ordinance (effective 1/9/2019) <i>Summary Ordinance must be published 5 days before second reading</i>	12/05/2018	12/01/2018

Letter received: 8/6/18

45-day deadline: 9/20/18

90-day deadline: 12/19/2018*

OPTION 2 - Does not include separate Community Meeting outside of required hearings

Meeting date	Action	Publication Date	Deadline to Newspaper
08/27/2018	Regular Meeting: Staff report outlining process to transition to District-based elections and request for Council direction	N/A	N/A
09/17/2018	Regular Meeting/Public Hearing #1: Composition of Voting Districts & adoption of Resolution of Intention to transition to District elections <i>Begins 90-day clock to complete Public Hearing process (if Resolution is adopted on 9/17, Ordinance adoption <u>must occur by 12/17/2018</u>)</i>	09/07/2018	09/04/2018
10/15/2018	Regular Meeting/Public Hearing #2: Composition of Voting Districts <i>Must take place within 30 days of Public Hearing #1</i>	10/05/2018	10/02/2018
10/29/2018	Regular Meeting/Public Hearing #3: Discussion of Maps and Sequence of Elections <i>Must Publish Proposed Maps 7 days prior to Public Hearing #3 (10/22/18)</i>	10/19/2018	10/16/2018
11/19/2018	Regular Meeting/Public Hearing #4: Adoption of Map, Ordinance introduced <i><u>Note 1</u> : If changes to District Map are made at this Public Hearing, the revised Map must be published 7 days prior to meeting where adoption is considered) <u>Note 2</u> : The meeting would include two separate hearings; one to adopt the District Map, and a second to introduce the Ordinance. If District Map is changed, hearings to adopt Map and introduce Ordinance would need to be continued.</i>	11/09/2018	11/06/2018
12/10/2018	Regular Meeting: Second reading & adoption of Ordinance (effective 1/9/2019) <i>Summary Ordinance must be published 5 days before second reading</i>	12/05/2018	12/01/2018

Letter received: 8/6/18

45-day deadline: 9/20/18

90-day deadline: 12/19/2018*