

1 **BEFORE THE CITY COUNCIL OF THE CITY OF CONCORD**
2 **COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA**

3 **A Resolution Declaring the City of Concord's Intent**
4 **to Transition from At-Large to District-Based**
5 **Councilmember Elections, Outlining Specific Steps to**
6 **be Undertaken to Facilitate the Transition; and**
7 **Estimating a Time Frame for Action Pursuant to**
8 **Elections Code Section 10010**

Resolution No. 18-7

9 **WHEREAS**, members of the City Council of the City of Concord ("City") are currently
10 elected in "at-large" elections, in which each City Councilmember is elected by the registered voters
11 of the entire City; and

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

16 **WHEREAS**, the City received a demand letter from Scott Rafferty, Attorney at Law, asserting
17 that the City's at-large council member electoral system violates the California Voting Rights Act
18 ("CVRA") and threatening litigation if the City declines to voluntarily change to a district-based
19 election system for electing council members; the letter was dated November 14, 2017, was emailed
20 to the City Clerk on November 14, 2017, at 5:33 pm, and received by certified mail on November 20,
21 2017; and

22 **WHEREAS**, the City received a demand letter from the Shenkman & Hughes law firm also
23 asserting that the City's at-large council member electoral system violates CVRA and threatening
24 litigation if the City declines to voluntarily change to a district-based election system for electing
25 council members; the letter was dated November 10, 2017, and received by certified mail on
26 November 17, 2017; and

27 **WHEREAS**, under Elections Code Section 14028(a), a CVRA violation is established if it is
28 shown that racially polarized voting occurs in elections. "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

1 voters in the rest of the electorate (Elections Code Section 14026(e)); and

2 **WHEREAS**, the California Legislature in amendments to Elections Code Section 10010, has
3 provided a method whereby a jurisdiction can expeditiously change to a by-district election system
4 and trigger a \$30,000 reimbursement cap; and

5 **WHEREAS**, if more than one prospective plaintiff is entitled to reimbursement, Elections
6 Code Section 10010 has a process whereby reimbursements are allocated among plaintiffs, with the
7 cumulative amount of reimbursements to all prospective plaintiffs still capped at \$30,000.

8 **WHEREAS**, the City Council has directed staff to initiate the process to establish by-district
9 elections to avoid costs associated with defending a lawsuit based on the CVRA, even if that lawsuit
10 settles; and

11 **WHEREAS**, the City denies that its at-large council member electoral system violates the
12 CVRA or any other provision of law; and

13 **WHEREAS**, despite the foregoing, the City Council has determined that the public interest
14 would be served by transitioning to a district-based electoral system because of: 1) the extraordinary
15 cost to defend against a CVRA lawsuit, 2) the risk of losing such a lawsuit which would require the
16 City to pay the prevailing plaintiffs' attorneys' fees, and 3) the reimbursable costs and attorneys' fees
17 would be capped at a maximum of \$30,000 by following the procedures set forth in Elections Code
18 Section 10010 as amended by AB 350; and

19 **WHEREAS**, California Elections Code Section 10010 requires that a City that is changing
20 from at-large to district-based elections shall do all of the following before a public hearing at which
21 the City Council votes to approve or defeat an ordinance establishing district-based elections:

- 22 1. Before drawing a draft map or maps of the proposed boundaries of the districts, the
23 political subdivision shall hold at least two public hearings over a period of no more than
24 thirty days, at which the public is invited to provide input regarding the composition of the
25 districts. Before these hearings, the political subdivision may conduct outreach to the
26 public, including to non-English-speaking communities, to explain the districting process
27 and to encourage public participation; and

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1 2. After all draft maps are drawn, the political subdivision shall publish and make
2 available for release at least one draft map and, if members of the governing body of
3 the political subdivision will be elected in their districts at different times to provide for
4 staggered terms of office, the potential sequence of the elections. The political
5 subdivision shall also hold at least two additional hearings over a period of no more
6 than 45 days, at which the public is invited to provide input regarding the content of the
7 draft map or maps and the proposed sequence of elections, if applicable. The first
8 version of a draft map shall be published at least seven days before consideration at a
9 hearing. If a draft map is revised at or following a hearing, it shall be published and
10 made available to the public for at least seven days before being adopted; and

11 **WHEREAS**, the City has retained special legal counsel (who in turn has retained an
12 experienced demographer) to assist the City to develop a proposal for a district-based electoral
13 system; and

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

16 **NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CONCORD DOES**
17 **RESOLVE AS FOLLOWS:**

18 **Section 1.** The City Council hereby resolves to consider adoption of an ordinance to transition
19 to a district-based election system as authorized by Government Code Section 34886 for use in the
20 City's General Municipal Election for City Councilmembers with a proposed implementation date of
21 November 2020.

22 **Section 2.** The City Council directs staff to work with the City's special legal counsel, the
23 demographer, and other appropriate consultants as needed, to provide a detailed analysis of the City's
24 current demographics and any other information or data necessary to prepare a draft map that divides
25 the City into voting districts in a manner consistent with the intent and purpose of the California
26 Voting Rights Act and the Federal Voting Rights Act.

27 **Section 3.** The City Council hereby approves the tentative timeline as set forth in Exhibit A,
28 attached to and made a part of this resolution, for conducting a public process to solicit public input

1 and testimony on proposed district-based electoral maps before adopting any such map.

2 **Section 4.** The timeline contained in Exhibit A may be adjusted by the City Manager as
3 deemed necessary, provided that such adjustments shall not prevent the City from complying with the
4 time frames specified by Elections Code Section 10010.

5 **Section 5.** The City Council directs staff to post information regarding the proposed transition
6 to a district based election system, including maps, notices, agendas and other information and to
7 establish a means of communication to answer questions from the public.

8 **Section 6.** This resolution shall become effective immediately upon its passage and adoption.

9 **PASSED AND ADOPTED** by the City Council of the City of Concord on January 2, 2018,
10 by the following vote:

11 **AYES:** Councilmembers - L. Hoffmeister, R. Leone, T. McGallian, C. Obringer, E. Birsan

12 **NOES:** Councilmembers - None


13 **ABSTAIN:** Councilmembers - None

14 **ABSENT:** Councilmembers - None

15 **I HEREBY CERTIFY** that the foregoing Resolution No. 18-7 was duly and regularly
16 adopted at a regular meeting of the City Council of the City of Concord on January 2, 2018.

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20 Joelle Fockler, MMC
City Clerk

21 **APPROVED AS TO FORM:**

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23 Susanne Meyer Brown
City Attorney

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25 Attachment: Exhibit A - Schedule
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1 Exhibit A

2 Schedule

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Topic	Date
Resolution of Intent	January 2, 2018
Public Hearing #1 without maps	January 16, 2018
Public Hearing #2 without maps	January 23, 2018
Public Hearing #1 with maps *	February 6, 2018
Public Hearing #2 with Maps and Introduction of Ordinance	February 27, 2018
Adoption of Ordinance	March 13, 2018

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14 *Publish draft maps on or by January 30, 2018