

CITY OF DANA POINT
AGENDA REPORT

Reviewed By:	
DH	_____
CM	__X__
CA	__X__

DATE: APRIL 3, 2018

TO: CITY MANAGER/CITY COUNCIL

FROM: CITY ATTORNEY

SUBJECT: THIRD PUBLIC HEARING TO TAKE INPUT REGARDING POTENTIAL
TRANSITION TO BY-DISTRICT ELECTIONS FOR CITY COUNCIL
MEMBERS AND CONSIDER DRAFT VOTING DISTRICT MAPS

RECOMMENDED ACTION:

It is recommended that the Council receive public comment and discuss the draft voting district maps presented (Attachment A) pursuant to Elections Code section 10010(a)(2). It is further recommended that the Council consider eliminating any draft maps that it no longer wishes to consider adopting, as well as determining the number of districts the Council will ultimately adopt.

BACKGROUND:

On February 2, 2018, the City received a letter from attorney Russell D. Myrick of the law firm RDM Legal Group threatening to sue the city for alleged violations of the California Voting Rights Act ("CVRA") (Elec. Code §§ 14025-14032) unless the city voluntarily converts to a by-district election system. The CVRA only applies to jurisdictions, like the City of Dana Point, that utilize an at-large election method, where voters of the entire jurisdiction elect each of the members of the City Council. Similar letters have been served and lawsuits have been filed in recent years against dozens of cities and other public agencies for alleged CVRA violations, including many nearby cities. A copy of Mr. Myrick's letter is attached to this staff report (Attachment B).

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, every government defendant in the history of the CVRA that has challenged the conversion to district elections has either lost in court or settled/agreed to implement district elections, and been forced to pay at least some portion of the plaintiffs' attorneys' fees and costs. Several cities that have extensively litigated CVRA cases have been eventually forced to pay multi-million dollar fee awards.

In order to avoid the potentially significant litigation expenses that are likely to occur if the City retains its at-large election method of election, at the City Council's February 20, 2018 hearing, the Council adopted Resolution No. 18-02-20-04 outlining its intention to transition from at-large to by-district elections, pursuant to Elections Code section 10010(e)(3)(A). (Attachment C.) As stated in that Resolution, the City Council took that action in furtherance of the purposes of the CVRA.

Pursuant to Elections Code section 10010(a)(1), the City held two public hearings (before drawing any draft maps of proposed voting districts) in order to receive public input regarding the composition of the districts. The first such hearing was held on March 6, and the second hearing was held on March 20. This will be the third public hearing, and the first with the draft voting district maps prepared by the City's demographer. The purpose of this meeting is to take public comment, discuss these proposed maps and provide any further input to the demographer. While not required, staff recommends that at this hearing, the Council decide how many districts it will ultimately adopt. This will allow the demographer to focus on maps solely with the correct number of districts. The Council should also eliminate any maps that it no longer wishes to consider. The Council will hold a second public hearing concerning draft voting district maps on April 17, 2018.

DISCUSSION:

- **The California Voting Rights Act**

The CVRA was specifically enacted in 2002 to eliminate several key burden of proof requirements that exist under the federal Voting Rights Act of 1965 ("FVRA") (52 U.S.C. § 10301 *et seq.*) after several jurisdictions in California successfully defended themselves in litigation brought under the FVRA. The intent of the legislature was to facilitate private suits that ultimately force public entities to shift from "at-large" to "by-district" elections.

Specifically, the CVRA removes two elements that must be met in order to establish a violation under the FVRA: (1) the "geographically compact" FVRA precondition (e.g., can a majority-minority district be drawn?), and; (2) the "totality of the circumstances" or "reasonableness" test, whereby the defendant can defeat a lawsuit by demonstrating that certain voting trends – such as racially polarized voting – occur for reasons other than race, or that minority voters are still able to elect their candidate of choice. Under the CVRA, the only "element" a plaintiff must establish is that racially polarized voting occurs in a jurisdiction with at-large elections, without regard for why it might exist. (Elec. Code § 14028.) Despite its removal of key safeguards contained in the FVRA, California courts have held that the CVRA is constitutional. (See *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660.)

Most recently, on February 23, 2018, the U.S. District Court for the Southern District of California dismissed a lawsuit challenging the constitutionality of the CVRA and of the City of Poway's adopted district map. The lawsuit was initiated by the former mayor of Poway, Don Higginson, who alleged that the CVRA and Poway's by district map adopted pursuant thereto violate the equal protection clause of the U.S. Constitution. Higginson

sought an order declaring both the CVRA and Poway's map unconstitutional and enjoining their enforcement and use. The Court not only denied Higginson's motion for a preliminary injunction, but also dismissed the case in its entirety based on lack of standing. (See *Higginson v. Becerra, et al.* (Feb. 23, 2018, Case No. 17cv2032-WQH-JLB))

Over the relatively short history of the CVRA, plaintiff public agencies have paid over \$15 million to CVRA plaintiff attorneys, including a recent settlement in West Covina for \$220,000. (See Table of Results of CVRA Litigation (Attachment D).) The City of Modesto, which challenged the CVRA's constitutionality, ultimately paid \$3 million to the plaintiffs' attorneys, and the cities of Palmdale and Anaheim, who also aggressively litigated CVRA claims, ultimately paid \$4.5 million and \$1.2 million in attorneys' fees, respectively. These figures do not include the tens of millions of dollars government agency defendants have spent on their own attorneys and associated defense costs. All of the above cities – like all other CVRA defendants – ultimately ended up converting to district elections.

Recognizing the heavy financial burden at-large jurisdictions are now facing, in 2016, the California Legislature amended the Elections Code to simplify the process of converting to by-district elections to provide a "safe harbor" process designed to protect agencies from litigation. (Elec. Code § 10010(e)(3).) If a city receives a demand letter, such as the RDM letter here, the city is given 45 days of protection from litigation to assess its situation. If within that 45 days, the city adopts a resolution declaring the Council's intent to transition from at-large to district based elections, the potential plaintiff is prohibited from filing a CVRA action for an additional 90 day period, during which time the process outlined below must occur. (Elec. Code § 10010(e)(3).)

- **Process For Switching To By-District Elections**

In order to avoid the significant litigation expenses that are likely to occur if the City retains its at-large election method of election, at the City Council's February 20, 2018 hearing, the Council adopted Resolution No. 18-02-20-04 outlining its intention to transition from at-large to by-district elections, pursuant to Elections Code section 10010(e)(3)(A). (Attachment C.) As a result, no potential plaintiff can file a CVRA lawsuit against the City before May 21, 2018.

Having adopted a resolution of intent, the first steps in the City's process of converting from its current at-large method of election to a by-district system was to hold two public hearings to receive public comment regarding the composition of the yet to be formed voting districts. (Elec. Code § 10010(a)(1).) The first such hearing was held on March 6, 2018, and the second such hearing was held on March 20, 2018.

The City's districting consultant, National Demographics Corporation ("NDC"), has now drawn multiple proposed district maps pursuant to input provided by both the Council and the public. (See, Attachment A). Pursuant to the Council's direction, NDC prepared

variations of maps with 5 voting districts, as well as maps with 4 districts and an at-large mayoral office.

The purpose of this meeting is to take public comment, discuss these proposed maps and provide any further input to NDC that the Council deems necessary. While not required, staff recommends that at this hearing, the Council decide how many districts it will ultimately adopt. This will allow NDC to focus on maps solely with the correct number of districts. The Council should also eliminate any maps that it no longer wishes to consider.

The Council will hold a second public hearing concerning draft voting district maps on April 17, 2018. Any maps the public would like the Council to consider at this April 17, 2018 meeting must be received by the City no later than April 7, 2018 in order to be publically posted for the legally required amount of time. The public may submit a hand-drawn district map and reference the City's online districting tool.

- **Criteria to be Considered**

While all public input concerning the composition of the City's proposed voting districts should be considered, there are several mandatory criteria that the City will have to comply with when the actual districts are created:

1. Population equality across districts. (Elec. Code § 21601; Gov. Code § 34884 ["The districts shall be as nearly equal in population as may be."].)
2. Race cannot be the "predominant" factor or criteria when drawing districts. (*Shaw v. Reno* (1993) 509 U.S. 630; *Miller v. Johnson* (1995) 515 U.S. 900.)
3. Compliance with the FVRA, which, among other things, prohibits districts that dilute minority voting rights, and encourages a majority-minority district if the minority group is sufficient large and such a district can be drawn without race being the predominant factor. (See, *Bartlett v. Strickland* (2009) 556 U.S. 1.)

Additionally, pursuant to Elections Code section 21601 and Government Code section 34884, the City Council *may* consider the following factors when establishing districts (which are not exclusive): (a) topography, (b) geography, (c) cohesiveness, contiguity, integrity, and compactness of territory, and (d) community of interests. 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 these criteria, or may choose to come up with unique criteria that Council believes is applicable to the City. In addition, members of the community may suggest additional or alternative criteria that the Council may want to consider.

- **Permissible Forms of By-District Government**

In addition to the above criteria, the City has several options when it comes to the number of districts permitted. A city may adopt an ordinance that requires the members of the legislative body to be elected in five, seven, or nine districts (Gov. Code § 34871(a)); or in four, six, or eight districts, with an elective mayor (Gov. Code § 34871(c)). Thus, the City should consider (in conjunction with NDC) the number of districts to be established.

Although permitted by Government Code 34871(c), there is an open legal question as to whether a City that adopts a by-district method of election but establishes a separately elected at-large mayoral office is insulated from liability under the CVRA. The CVRA defines “at-large method of election” to include any method of election “that combines at-large elections with district-based elections.” (Elec. Code § 14026(a)(3).) This definition could arguably include district elections where the mayor is separately elected at large. Only an at-large method of election can violate the CVRA. (Elec. Code § 14027.)

This issue was being litigated in an action involving the City of Rancho Cucamonga, although that case has now settled. As part of the settlement, the City is required to paid the plaintiff’s legal fees (an amount that we have yet to determine.). Until a court of appeals rules on the issue, there is no certainty as to whether a City may avoid CVRA liability if it has a directly elected, at-large mayor. In short, notwithstanding the City’s ongoing efforts to comply with the CVRA safe harbor provision, ***the City is at risk of being sued for a CVRA violation*** if the City adopts a by-district method of election but establishes a separately elected at-large mayoral office. The plaintiff bar position on this issue is perhaps best exemplified by the following excerpt from a document filed with the court by the plaintiff’s attorney in the Rancho Cucamonga case, in which he addresses the alleged inadequacies of the at-large mayoral system:

For more than fifty years, courts have recognized that when addressing the violation of voting rights, “the court has not merely the power, but the duty, to render a decree which will, so far as possible, eliminate the discriminatory effects of the past as well as bar like discrimination in the future.” *Louisiana v. United States*, 380 U.S. 145, 154 (1965). Ignoring this established principle, Defendant asks this Court to declare Plaintiffs’ case moot and, in so doing, neither “eliminate the discriminatory effects of the past,” as unlawfully-elected council members would remain in office until December 2020, nor “bar like discrimination in the future,” as one council seat would continue to be elected in the same at-large manner that has proven to dilute the Latino vote in Rancho Cucamonga and the other four would be elected pursuant to a district map that emulates the previous at-large system. *Id.*

While Defendant’s newly adopted plan, to be phased in over the next four years, may be marginally better than its previous system of electing all five of its council members through at-large elections, it does not go nearly far enough. Under that new plan, one of the five council seats, coined the “mayor,” would be elected in the same at-large manner, and thus the new

plan is still a suspect “at-large method of election,” as that phrase is explicitly defined in the California Voting Rights Act (“CVRA”). With nothing more in that new plan to eliminate the racially polarized voting that has plagued Defendant’s city council elections, that new plan violates the CVRA just like its predecessor. Moreover the four-district map drawn by the self-interested city council without the oversight of this Court, was not drawn to remedy the years of vote dilution suffered by Latinos in Rancho Cucamonga as any remedy for the violation of the CVRA must be; it was drawn to perpetuate the political careers of its unlawfully elected authors and frustrate this case.

In keeping with the established principle that voting rights violations should be *completely* remedied when they are called to the attention of the courts, the Legislature enacted the CVRA, commanding this Court to formulate what *it* believes are “appropriate remedies.” Elec. Code 14029. With its motion, Defendant seeks to substitute its own judgment for that of this Court, hoping that this Court will abdicate its “duty...to eliminate the discriminatory effects of [Defendant’s] past [violation of the CVRA] as well as bar [violations of the CVRA] in the future. *Louisiana v. United States*, 380 U.S. 145, 154 (1965). The law does not permit Defendant to usurp the role of this Court by adopting a half-measure that will continue to dilute the Latino vote. Plaintiffs’ claim is plainly not moot because there is plenty of relief that the Court could, and should, order. For example:

- a truly district-based election system with all district-elected council members;
- a district map tailored to remedy the years of dilution of the Latino vote in Rancho Cucamonga; and
- a special election to have a district-elected council as soon as practicable;

All of that is the same sort of relief that has been ordered by other courts addressing CVRA violations, and federal courts addressing violations of the analog federal Voting Rights Act (“FVRA”). This Court should decide whether those measures, or perhaps something completely different, are “appropriate remedies” in this case once it has heard all of the evidence at trial. Having been denied their most fundamental of rights for decades, the Latino residents of Rancho Cucamonga deserve nothing less.

At this point, it is unclear whether such arguments will ultimately be upheld by the Courts. The point however is that the City Council should be aware that the issue is still unsettled, and the City is at risk of not getting the benefit of the CVRA safe harbor provisions if it chooses to adopt a separately elected at-large mayoral system.

- **Remedies Other Than Districting**

At the Council's last meeting on this topic, there was significant discussion regarding Mission Viejo's approach to CVRA compliance, i.e., acknowledging racially polarized voting exists, but then asserting the appropriate remedy is something other than districting. There may in fact be other ways of remedying violations of the CVRA, however if the City Council decides to pursue a different remedy, the City will lose the benefit of the safe harbor provisions in Elections Code Section 10010(e)(3). This means that the City will be at risk of being sued, and having to prove in court that its chosen remedy is appropriate. At a minimum this means that the City would incur significant legal fees, and it plainly puts the City at risk of losing what is known to be very costly litigation.

To date, no remedy other than districting has been "approved" by the courts. In response to the Mission Viejo approach, the plaintiffs' lawyer is quoted in the Voice of OC as saying that while there may be other ways to remedy a violation, the only option the Courts currently recognize is districting:

"This is maybe a bit of a nuance here -- but in my view, districts would be a remedy, but likely not the best remedy in Mission Viejo," Shenkman said. "But to say that districts are not a remedy is a mischaracterization ... districts are the only really safe harbor (under state law) for better or for worse. And we operate based on what the law is and not what the law should be."

The entire article is included herein as Attachment E. On March 22nd, a lawsuit was filed against the City of Mission Viejo seeking to enjoin its approach and asserting that it has violated the CVRA because of the admitted existence of racially polarized voting, as well as an alleged history in the city that comprises "an atmosphere of racial hostility." It is worth noting that the Complaint seeks to enjoin the current at large system. It remains to be seen if the Plaintiff will seek an injunction in connection with the 2018 election to prevent it from going forward as an at large election, and seek to impose district elections, cumulative voting, or other remedies as part of this election cycle. That approach would be similar to what occurred in Palmdale where the result was districts drawn by the plaintiff and all five seats being put up for election at once. Staff will monitor the litigation and advise the Council of any material developments.

CONCLUSION:

It is recommended that the Council receive public comment and discuss the draft voting district maps presented (Attachment A) pursuant to Elections Code section 10010(a)(2). It is further recommended that the Council consider eliminating any draft maps that it no longer wishes to consider adopting, as well as determining the number of districts the Council will ultimately adopt.

FISCAL IMPACT:

There is no fiscal impact associated with holding this public hearing.

The fiscal impact of moving forward with the transition to district elections, including the demographic consultant cost, the City's anticipated legal fees, and the amount likely to be paid to RDM under the CVRA safe harbor provision, is estimated to be approximately \$80,000. Additional legal costs could be incurred for additional analysis and public hearings. The City's good faith and voluntary approach to transition to by-district elections may forestall further threats and demands for attorneys' fees, but that cannot be guaranteed as other jurisdictions have suffered such demands even after initiating such efforts.

Should the Council choose not to voluntarily convert to district elections and defend the threatened lawsuit, the costs are projected to be significant due to the requirement that the City pay the plaintiff's fees and costs. As demonstrated in Attachment C, awards in these cases have reached upwards of \$4,500,000. When sued, even the settlements reached by cities have included paying the plaintiff's attorneys' fees. If the City Council chooses to maintain its at-large elections and defend the threatened lawsuit, it should budget a significant amount for its own attorneys' fees, and should consider a contingency budget for use to pay the plaintiff's legal fees in the event of a loss.

ALTERNATIVE ACTION:

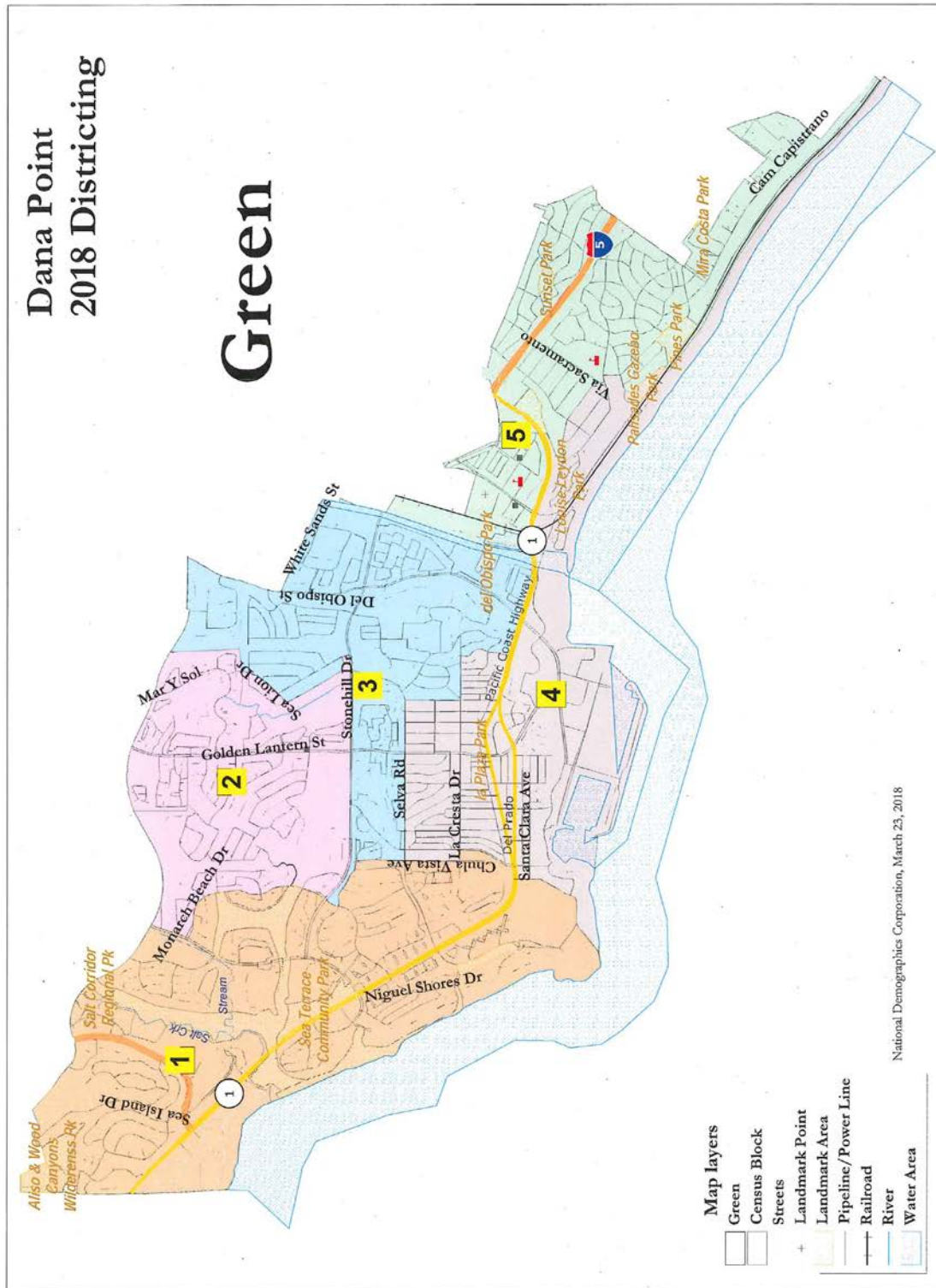
The City Council could provide other direction.

SUPPORTING DOCUMENTS:

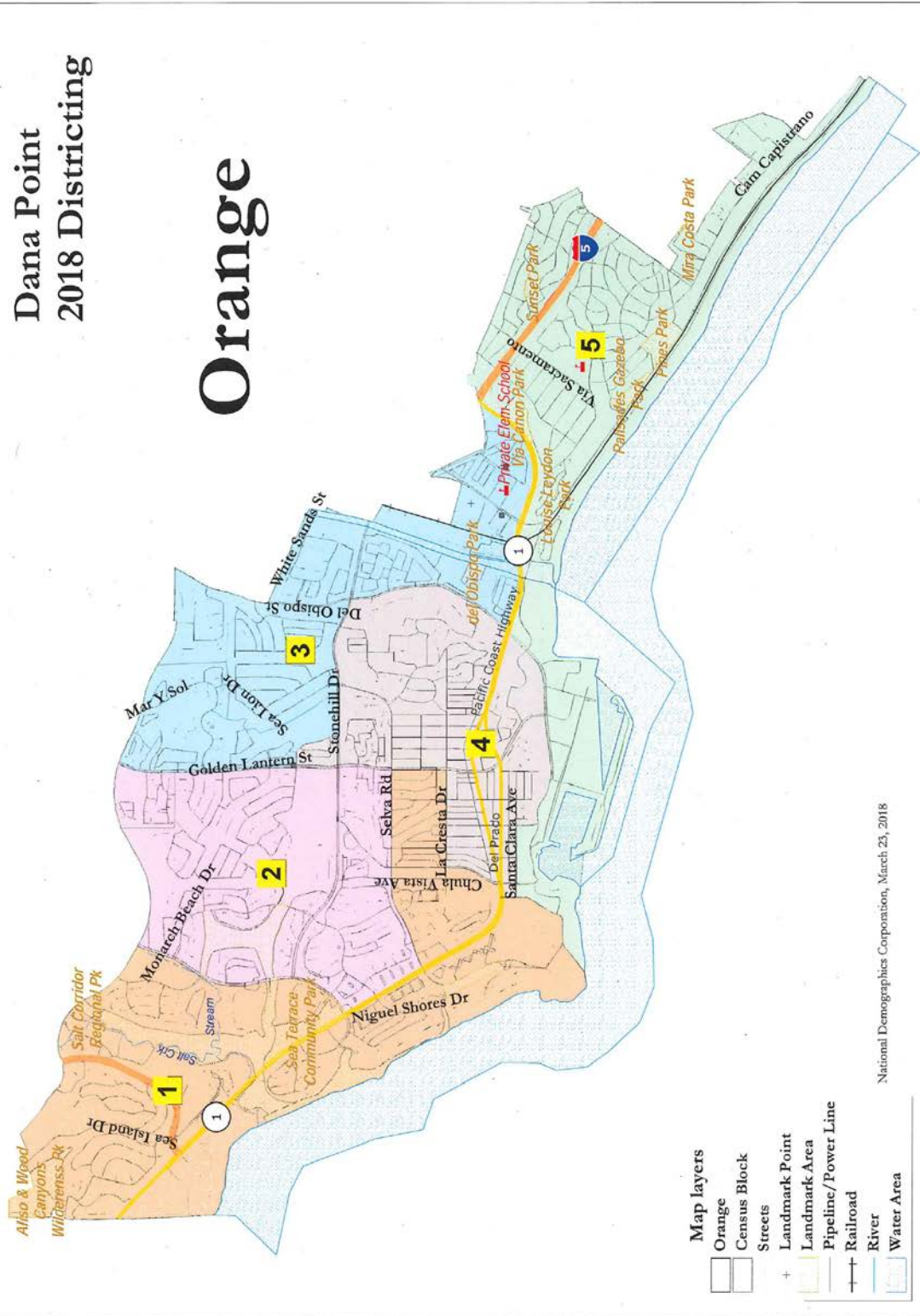
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Supporting Document A



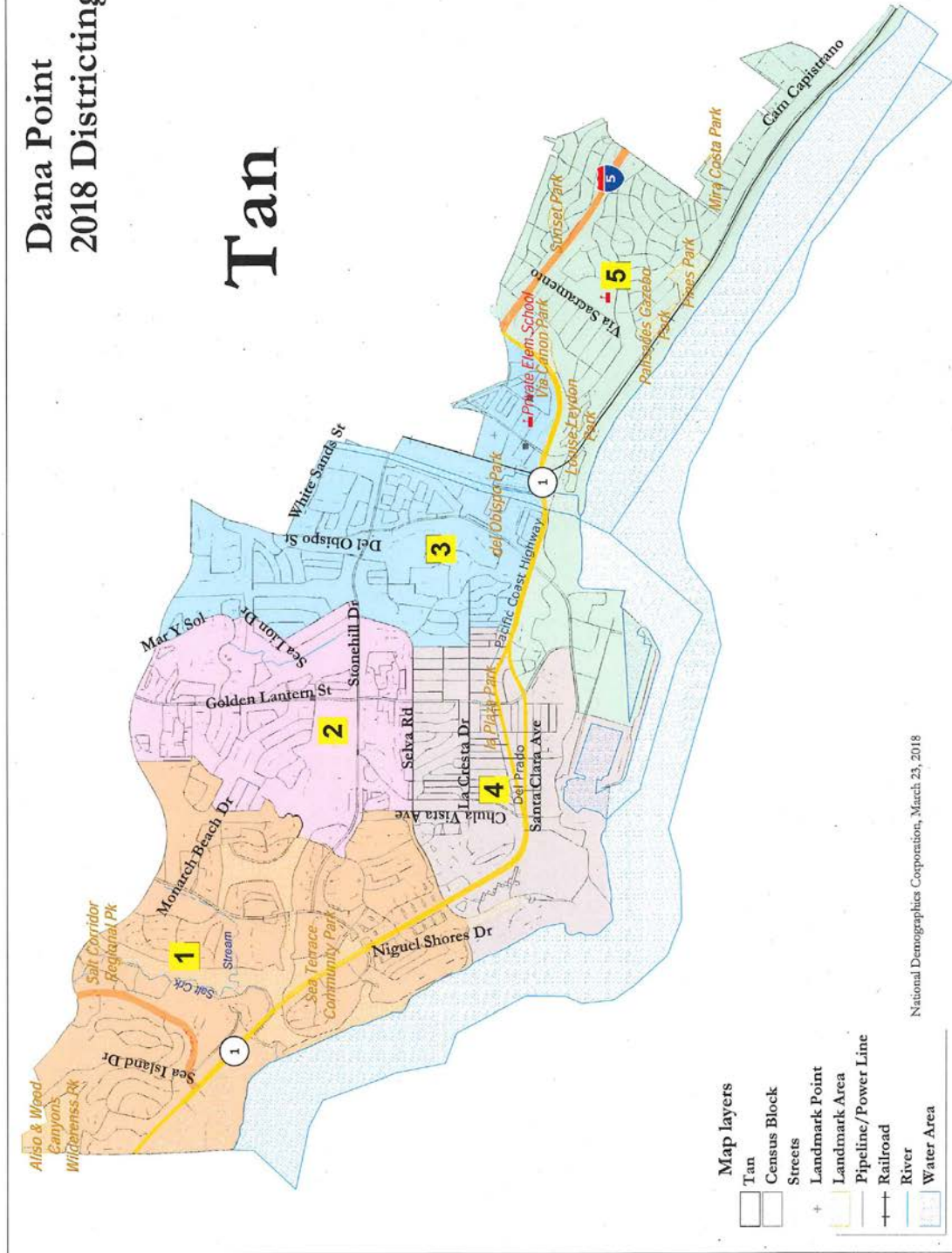
Dana Point Green Map							
District		1	2	3	4	5	Total
Ideal	Total Pop	6,766	6,665	6,760	6,674	6,486	33,351
6,670	Deviation from ideal	96	-5	90	4	-184	280
	% Deviation	1.44%	-0.08%	1.35%	0.06%	-2.76%	4.20%
Total Pop	% Hisp	8%	15%	13%	29%	21%	17%
	% NH White	85%	78%	80%	65%	73%	76%
	% NH Black	1%	1%	1%	1%	1%	1%
	% Asian-American	5%	5%	4%	3%	4%	4%
	Total	5,908	5,161	5,288	5,670	4,652	26,679
Citizen Voting Age Pop	% Hisp	6%	9%	12%	18%	18%	12%
	% NH White	89%	82%	83%	79%	75%	82%
	% NH Black	0%	1%	0%	1%	3%	1%
	% Asian/Pac.Isl.	5%	5%	4%	2%	3%	4%
	Total	4,924	4,273	4,759	3,608	4,306	21,870
Voter Registration (Nov 2016)	% Latino est.	6%	8%	10%	12%	11%	9%
	% Spanish-Surnamed	5%	7%	9%	10%	10%	8%
	% Asian-Surnamed	2%	2%	2%	1%	1%	2%
	% Filipino-Surnamed	1%	1%	1%	1%	0%	1%
	% NH White est.	86%	87%	86%	84%	82%	85%
	% NH Black	0%	1%	0%	2%	3%	1%
	Total	4,096	3,560	3,975	2,856	3,550	18,038
Voter Turnout (Nov 2016)	% Latino est.	5%	7%	9%	10%	10%	8%
	% Spanish-Surnamed	5%	7%	8%	9%	9%	7%
	% Asian-Surnamed	2%	3%	2%	1%	2%	2%
	% Filipino-Surnamed	1%	1%	1%	1%	0%	1%
	% NH White est.	87%	87%	87%	85%	82%	85%
	% NH Black	0%	1%	0%	2%	3%	1%
	Total	2,589	2,018	2,438	1,515	1,803	10,363
Voter Turnout (Nov 2014)	% Latino est.	4%	6%	6%	8%	8%	6%
	% Spanish-Surnamed	4%	6%	5%	7%	7%	6%
	% Asian-Surnamed	1%	2%	2%	1%	2%	2%
	% Filipino-Surnamed	0%	0%	0%	0%	0%	0%
	% NH White est.	91%	89%	86%	88%	80%	87%
	% NH Black est.	0%	0%	0%	1%	1%	0%
	ACS Pop. Est.	Total	6,961	6,981	7,012	7,669	6,294
Age	age0-19	14%	20%	21%	17%	16%	18%
	age20-60	49%	52%	52%	63%	52%	54%
	age60plus	37%	28%	26%	19%	31%	28%
Immigration	immigrants	14%	17%	19%	19%	12%	16%
	naturalized	74%	69%	40%	29%	69%	53%
Language spoken at home	english	85%	80%	73%	73%	78%	78%
	spanish	3%	11%	21%	23%	19%	15%
	asian-lang	3%	2%	2%	0%	1%	2%
	other lang	10%	7%	4%	5%	2%	5%
Language Fluency	Speaks Eng. "Less than Very Well"	1%	5%	11%	16%	6%	8%
Education (among those age 25+)	hs-grad	36%	42%	48%	59%	53%	47%
	bachelor	34%	29%	27%	19%	26%	27%
	graduatedegree	28%	23%	16%	12%	12%	18%
Child in Household	child-under18	17%	21%	27%	20%	16%	20%
Pct of Pop. Age 16+	employed	58%	57%	60%	70%	60%	61%
Household Income	income 0-25k	9%	10%	17%	17%	14%	13%
	income 25-50k	13%	17%	13%	18%	19%	16%
	income 50-75k	17%	14%	18%	21%	15%	17%
	income 75-200k	37%	46%	39%	33%	38%	38%
	income 200k-plus	24%	14%	12%	11%	14%	15%
Housing Stats	single family	73%	70%	72%	50%	80%	69%
	multi-family	27%	30%	28%	50%	20%	31%
	rented	30%	36%	33%	57%	31%	38%
	owned	70%	64%	67%	43%	69%	62%
Total population data from the 2010 Decennial Census.							
Surname-based Voter Registration and Turnout data from the California Statewide Database.							
Latino voter registration and turnout data are Spanish-surname counts adjusted using Census Population Department undercount estimates. NH White and NH Black registration and turnout counts estimated by NDC. Citizen Voting Age Pop., Age, Immigration, and other demographics from the 2012-2016 American Community Survey and Special Tabulation 5-year data.							



District		1	2	3	4	5	Total
Ideal	Total Pop	6,869	6,687	6,650	6,688	6,457	33,351
6,670	Deviation from ideal	199	17	-20	18	-213	412
	% Deviation	2.98%	0.25%	-0.30%	0.27%	-3.19%	6.18%
Total Pop	% Hisp	13%	9%	22%	28%	13%	17%
	% NH White	80%	83%	72%	66%	80%	76%
	% NH Black	1%	1%	1%	1%	1%	1%
	% Asian-American	4%	5%	3%	4%	4%	4%
	Total	6,127	5,628	4,802	4,799	5,323	26,679
Citizen Voting Age Pop	% Hisp	10%	9%	13%	14%	17%	12%
	% NH White	86%	83%	80%	83%	77%	82%
	% NH Black	1%	1%	1%	1%	3%	1%
	% Asian/Pac.Isl.	3%	6%	4%	2%	2%	4%
	Total	4,559	4,866	4,275	3,760	4,409	21,870
Voter Registration (Nov 2016)	% Latino est.	7%	7%	10%	10%	10%	9%
	% Spanish-Surnamed	6%	7%	9%	9%	9%	8%
	% Asian-Surnamed	2%	2%	2%	2%	1%	2%
	% Filipino-Surnamed	1%	1%	1%	1%	0%	1%
	% NH White est.	84%	89%	81%	88%	84%	85%
	% NH Black	0%	1%	1%	1%	3%	1%
Voter Turnout (Nov 2016)	Total	3,730	4,088	3,536	3,046	3,638	18,038
	% Latino est.	6%	7%	9%	9%	10%	8%
	% Spanish-Surnamed	6%	6%	9%	8%	9%	7%
	% Asian-Surnamed	2%	2%	2%	2%	1%	2%
	% Filipino-Surnamed	1%	1%	1%	1%	0%	1%
	% NH White est.	84%	89%	81%	89%	85%	85%
Voter Turnout (Nov 2014)	% NH Black	0%	1%	1%	1%	3%	1%
	Total	2,137	2,472	1,983	1,653	2,118	10,363
	% Latino est.	5%	6%	6%	7%	8%	6%
	% Spanish-Surnamed	4%	5%	6%	6%	7%	6%
	% Asian-Surnamed	1%	2%	2%	2%	2%	2%
	% Filipino-Surnamed	0%	0%	0%	0%	0%	0%
ACS Pop. Est.	% NH White est.	92%	88%	86%	86%	82%	87%
	% NH Black est.	0%	0%	1%	1%	1%	0%
	Total	7,344	6,865	6,813	7,605	6,290	34,917
	age0-19	15%	18%	21%	19%	17%	18%
Age	age20-60	53%	52%	51%	61%	52%	54%
	age60plus	32%	30%	28%	20%	31%	28%
Immigration	immigrants	16%	15%	18%	19%	12%	16%
	naturalized	57%	77%	47%	30%	67%	53%
Language spoken at home	english	82%	83%	73%	73%	78%	78%
	spanish	8%	7%	22%	22%	19%	15%
	asian-lang	2%	3%	1%	1%	1%	2%
	other lang	8%	8%	4%	5%	2%	5%
Language Fluency	Speaks Eng. "Less than Very Well"	5%	4%	10%	15%	6%	8%
Education (among those age 25+)	hs-grad	42%	39%	47%	56%	53%	47%
	bachelor	30%	32%	26%	21%	26%	27%
	graduatedegree	24%	25%	16%	14%	12%	18%
Child in Household	child-under18	18%	20%	26%	22%	15%	20%
Pet of Pop. Age 16+	employed	61%	56%	59%	68%	61%	61%
	income 0-25k	11%	9%	18%	16%	14%	13%
	income 25-50k	14%	16%	14%	17%	19%	16%
	income 50-75k	18%	14%	17%	20%	15%	17%
	income 75-200k	35%	43%	40%	36%	38%	38%
	income 200k-plus	21%	17%	11%	12%	14%	15%
Housing Stats	single-family	67%	71%	75%	52%	79%	69%
	multi-family	33%	29%	25%	48%	21%	31%
	rented	37%	34%	32%	53%	32%	38%
	owned	63%	66%	68%	47%	68%	62%
Total population data from the 2010 Decennial Census.							
Surname-based Voter Registration and Turnout data from the California Statewide Database.							
Latino voter registration and turnout data are Spanish-surname counts adjusted using Census Population Department undercount estimates. NH White and NH Black registration and turnout counts estimated by NDC. Citizen Voting Age Pop., Age, Immigration, and other demographics from the 2012-2016 American Community Survey and Special Tabulation 5 year data.							

Dana Point 2018 Districting

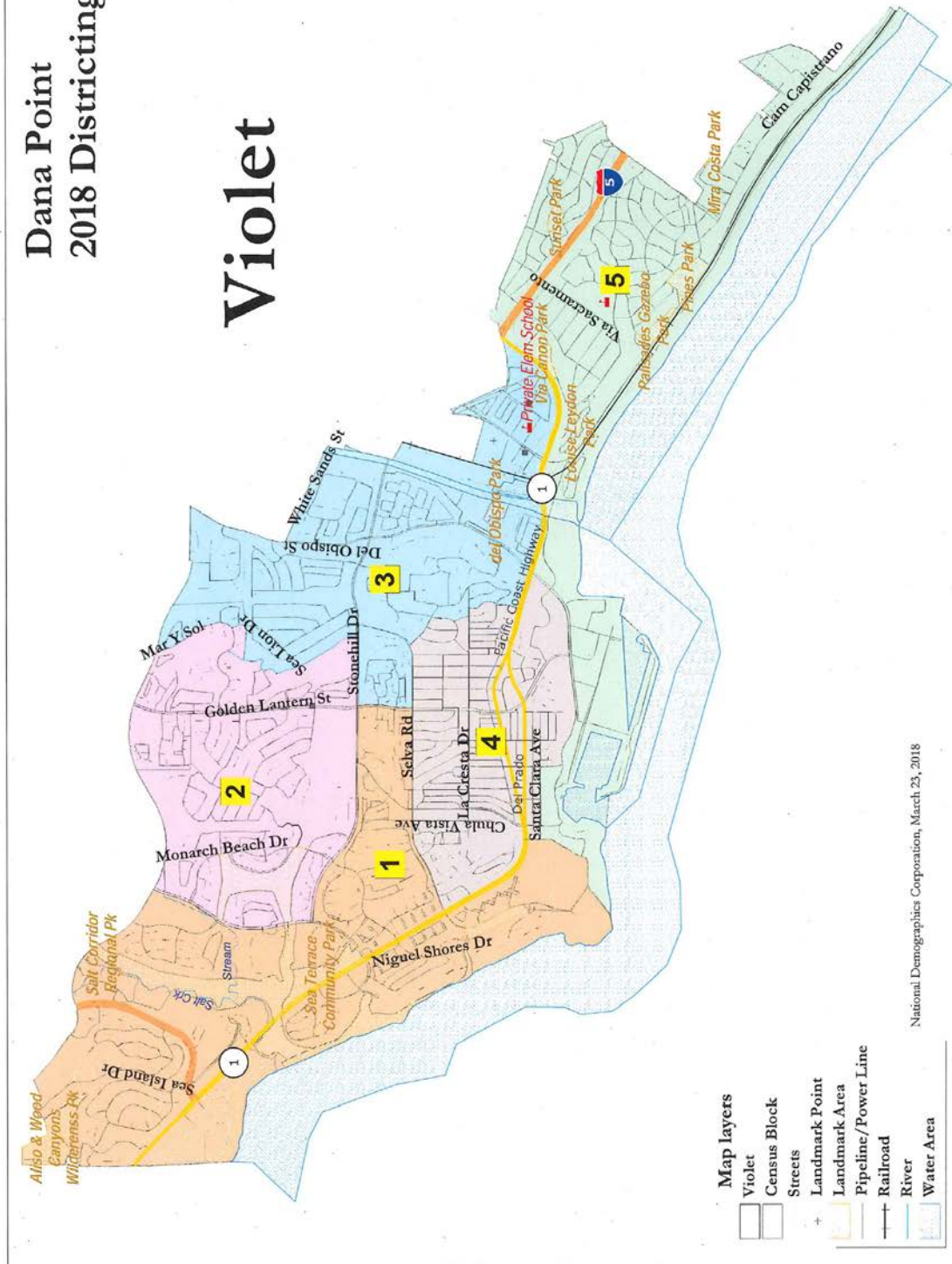
Tan



Dana Point - Tan Map							
District		1	2	3	4	5	Total
Ideal	Total Pop	6,641	6,801	6,748	6,604	6,557	33,351
6,670	Deviation from ideal	-29	131	78	-66	-113	244
	% Deviation	-0.43%	1.96%	1.17%	-0.99%	-1.69%	3.66%
Total Pop	% Hisp	8%	15%	20%	29%	13%	17%
	% NH White	85%	78%	73%	66%	80%	76%
	% NH Black	1%	1%	1%	1%	1%	1%
	% Asian-American	5%	4%	4%	3%	4%	4%
	Total	5,642	5,444	4,657	5,482	5,455	26,679
Citizen Voting Age Pop	% Hisp	7%	12%	12%	14%	17%	12%
	% NH White	86%	81%	82%	83%	77%	82%
	% NH Black	0%	1%	0%	1%	3%	1%
	% Asian/Pac.Isl.	6%	5%	5%	2%	2%	4%
	Total	4,868	4,431	4,530	3,590	4,450	21,870
Voter Registration (Nov 2016)	% Latino est.	6%	9%	10%	10%	10%	9%
	% Spanish-Surnamed	5%	8%	9%	9%	9%	8%
	% Asian-Surnamed	2%	2%	2%	1%	1%	2%
	% Filipino-Surnamed	1%	1%	1%	1%	0%	1%
	% NH White est.	86%	84%	85%	86%	85%	85%
	% NH Black	0%	1%	0%	1%	3%	1%
Voter Turnout (Nov 2016)	Total	4,045	3,702	3,757	2,861	3,672	18,038
	% Latino est.	6%	8%	10%	9%	10%	8%
	% Spanish-Surnamed	5%	7%	9%	8%	9%	7%
	% Asian-Surnamed	2%	2%	2%	2%	1%	2%
	% Filipino-Surnamed	1%	1%	1%	1%	0%	1%
	% NH White est.	87%	84%	85%	86%	85%	85%
	% NH Black	0%	1%	0%	1%	3%	1%
Voter Turnout (Nov 2014)	Total	2,525	2,067	2,148	1,480	2,144	10,363
	% Latino est.	4%	6%	6%	8%	8%	6%
	% Spanish-Surnamed	4%	5%	6%	7%	7%	6%
	% Asian-Surnamed	1%	2%	2%	1%	2%	2%
	% Filipino-Surnamed	0%	0%	0%	1%	0%	0%
	% NH White est.	90%	88%	86%	88%	83%	87%
	% NH Black est.	0%	1%	0%	1%	1%	0%
ACS Pop. Est.	Total	6,851	7,250	6,841	7,566	6,408	34,917
Age	age0-19	15%	20%	21%	17%	17%	18%
	age20-60	49%	52%	53%	62%	53%	54%
	age60plus	36%	28%	26%	21%	31%	28%
Immigration	immigrants	15%	17%	18%	18%	12%	16%
	naturalized	74%	66%	38%	33%	66%	53%
Language spoken at home	english	85%	79%	73%	74%	78%	78%
	spanish	4%	12%	23%	19%	19%	15%
	asian-lang	3%	2%	1%	1%	1%	2%
	other lang	9%	7%	3%	6%	2%	5%
Language Fluency	Speaks Eng. "Less than Very Well"	2%	6%	12%	14%	7%	8%
Education (among those age 25+)	hs-grad	38%	42%	50%	55%	53%	47%
	bachelor	33%	28%	26%	22%	26%	27%
	graduatedegree	27%	24%	13%	15%	12%	18%
Child in Household	child-under18	18%	22%	26%	21%	16%	20%
Pct of Pop. Age 16+	employed	57%	58%	60%	69%	61%	61%
	income 0-25k	9%	11%	19%	14%	14%	13%
	income 25-50k	14%	16%	14%	17%	19%	16%
	income 50-75k	16%	15%	18%	21%	16%	17%
	income 75-200k	38%	46%	37%	34%	38%	38%
	income 200k-plus	22%	13%	13%	14%	14%	15%
Housing Stats	single family	74%	67%	75%	51%	78%	69%
	multi-family	26%	33%	25%	49%	22%	31%
	rented	31%	38%	32%	55%	33%	38%
	owned	69%	62%	68%	45%	67%	62%
Total population data from the 2010 Decennial Census.							
Surname-based Voter Registration and Turnout data from the California Statewide Database.							
Latino voter registration and turnout data are Spanish-surname counts adjusted using Census Population Department undercount estimates. NH White and NH Black registration and turnout counts estimated by NDC. Citizen Voting Age Pop., Age, Immigration, and other demographics from the 2012-2016 American Community Survey and Special Tabulation 5-year data.							

Dana Point 2018 Districting

Violet

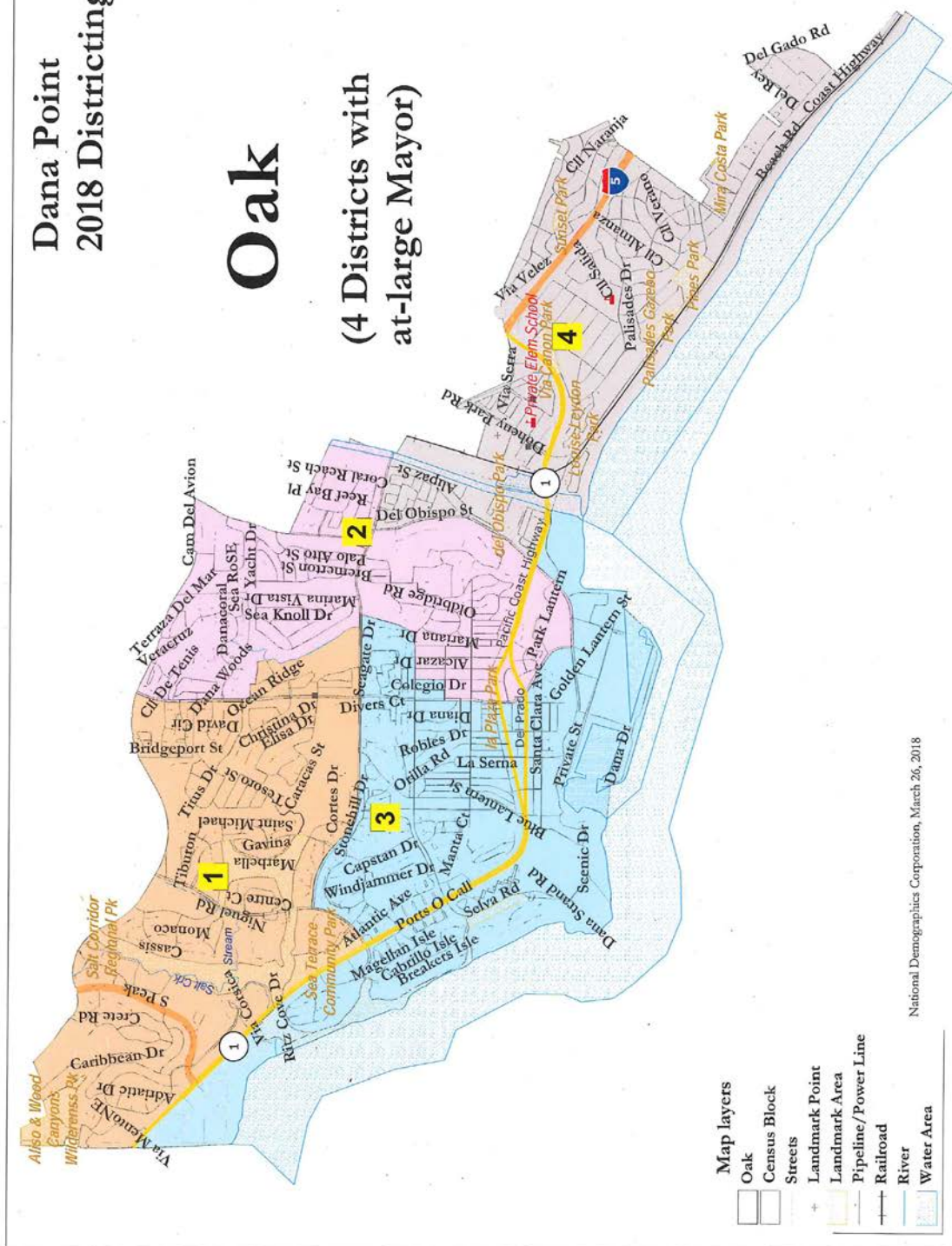


Dana Point - Violet Map							
District		1	2	3	4	5	Total
Ideal	Total Pop	6,576	6,698	6,720	6,900	6,457	33,351
6,670	Deviation from ideal	-94	28	50	230	-213	443
	% Deviation	-1.41%	0.42%	0.75%	3.45%	-3.19%	6.64%
Total Pop	% Hisp	9%	14%	19%	29%	13%	17%
	% NH White	84%	79%	74%	65%	80%	76%
	% NH Black	1%	1%	1%	1%	1%	1%
	% Asian-American	5%	4%	4%	3%	4%	4%
	Total	5,702	5,304	4,678	5,672	5,323	26,079
Citizen Voting Age Pop	% Hisp	9%	9%	13%	14%	17%	12%
	% NH White	86%	82%	82%	82%	77%	82%
	% NH Black	0%	1%	0%	1%	3%	1%
	% Asian/Pac.Isl.	5%	5%	4%	2%	2%	4%
	Total	4,662	4,288	4,573	3,938	4,409	21,870
Voter Registration (Nov 2016)	% Latino est.	6%	8%	11%	10%	10%	9%
	% Spanish-Surnamed	5%	7%	10%	9%	9%	8%
	% Asian-Surnamed	2%	2%	2%	1%	1%	2%
	% Filipino-Surnamed	1%	1%	1%	1%	0%	1%
	% NH White est.	86%	86%	83%	87%	84%	85%
	% NH Black	0%	1%	0%	1%	3%	1%
	Total	3,906	3,569	3,780	3,144	3,638	18,038
Voter Turnout (Nov 2016)	% Latino est.	6%	7%	10%	9%	10%	8%
	% Spanish-Surnamed	5%	7%	9%	8%	9%	7%
	% Asian-Surnamed	2%	3%	2%	2%	1%	2%
	% Filipino-Surnamed	1%	1%	1%	1%	0%	1%
	% NH White est.	86%	86%	83%	88%	85%	85%
	% NH Black	0%	1%	0%	1%	3%	1%
	Total	2,343	2,068	2,244	1,590	2,118	10,363
Voter Turnout (Nov 2014)	% Latino est.	4%	6%	6%	7%	8%	6%
	% Spanish-Surnamed	4%	6%	6%	6%	7%	6%
	% Asian-Surnamed	1%	2%	2%	1%	2%	2%
	% Filipino-Surnamed	0%	0%	0%	1%	0%	0%
	% NH White est.	93%	86%	86%	89%	82%	87%
	% NH Black est.	0%	0%	0%	1%	1%	0%
	ACS Pop. Est.	Total	6,856	7,046	6,711	8,015	6,290
Age	age0-19	15%	20%	21%	18%	17%	18%
	age20-60	49%	52%	51%	63%	52%	54%
	age60plus	36%	28%	28%	19%	31%	28%
Immigration	immigrants	15%	16%	18%	19%	12%	16%
	naturalized	71%	72%	41%	29%	67%	53%
Language spoken at home	english	84%	81%	73%	73%	78%	78%
	spanish	4%	10%	22%	21%	19%	15%
	asian-lang	3%	2%	2%	0%	1%	2%
	other lang	9%	7%	3%	6%	2%	5%
Language Fluency	Speaks Eng. "Less than Very Well"	2%	5%	11%	15%	6%	8%
Education (among those age 25+)	hs-grad	37%	42%	48%	57%	53%	47%
	bachelor	33%	29%	28%	20%	26%	27%
	graduatedegree	28%	23%	15%	14%	12%	18%
Child in Household	child-under18	18%	21%	26%	21%	15%	20%
Pct of Pop. Age 16+	employed	58%	57%	58%	70%	61%	61%
Household Income	income 0-25k	9%	10%	19%	16%	14%	13%
	income 25-50k	13%	17%	13%	18%	19%	16%
	income 50-75k	17%	14%	17%	21%	15%	17%
	income 75-200k	37%	46%	38%	33%	38%	38%
	income 200k-plus	23%	14%	13%	12%	14%	15%
Housing Stats	single family	71%	70%	78%	47%	79%	69%
	multi-family	29%	30%	22%	53%	21%	31%
	rented	31%	37%	28%	59%	32%	38%
	owned	69%	63%	72%	41%	68%	62%
Total population data from the 2010 Decennial Census.							
Surname-based Voter Registration and Turnout data from the California Statewide Database.							
Latino voter registration and turnout data are Spanish surname counts adjusted using Census Population Department undercount estimates. NH White and NH Black registration and turnout counts estimated by NDC. Citizen Voting Age Pop., Age, Immigration, and other demographics from the 2012-2016 American Community Survey and Special Tabulation 5-year data.							

Dana Point
2018 Districting

Oak

**(4 Districts with
at-large Mayor)**

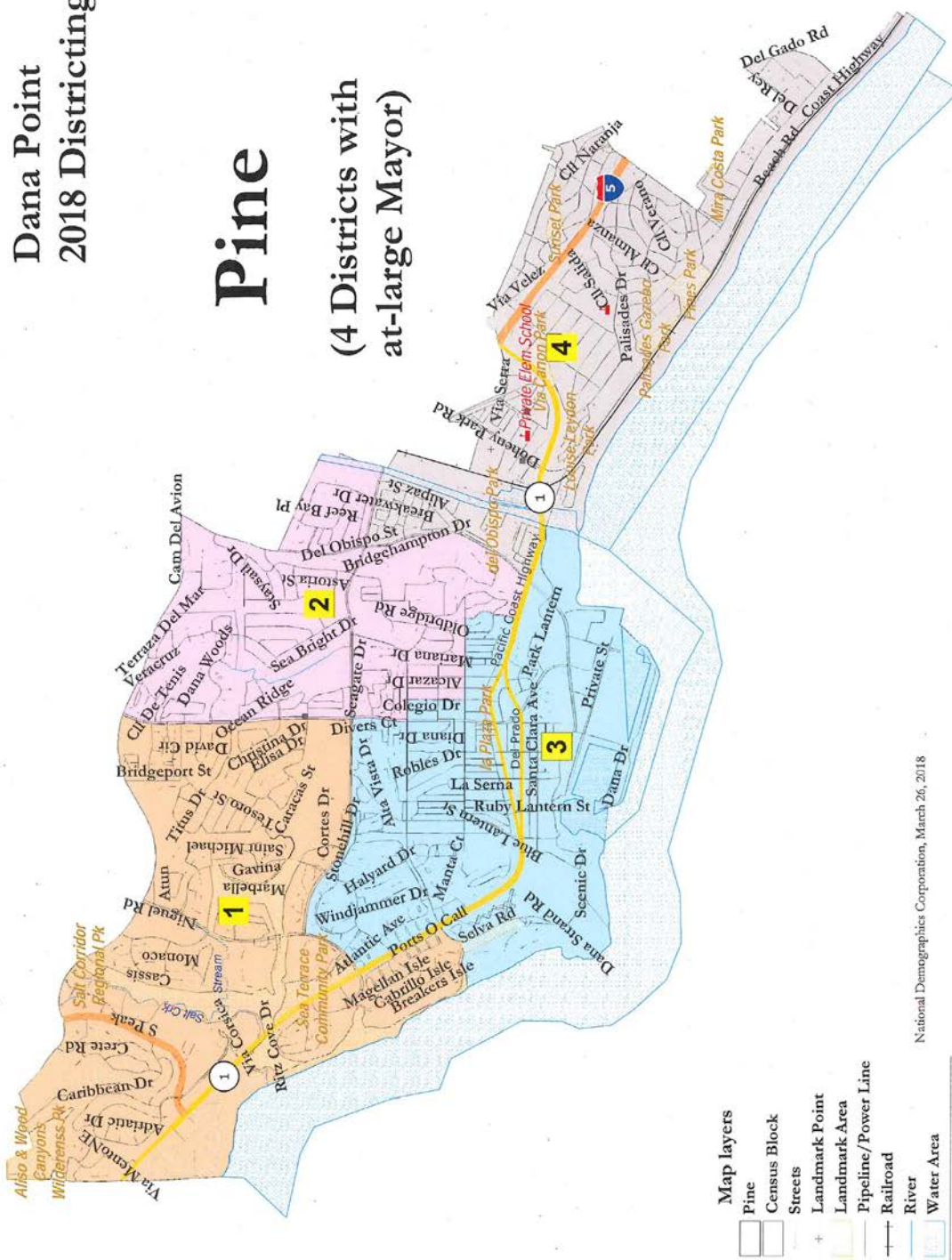


Dana Point - Oak 4-District Map							
District		1	2	3	4	Total	
Ideal	Total Pop	8,562	8,307	8,256	8,226	33,351	
8,338	Deviation from ideal	224	-31	-82	-112	336	
	% Deviation	2.69%	-0.37%	-0.98%	-1.34%	4.03%	
	% Hisp	13%	18%	18%	19%	17%	
	% NH White	80%	76%	75%	74%	76%	
	% NH Black	1%	1%	1%	1%	1%	
Total Pop	% Asian-American	5%	4%	4%	4%	4%	
	Total	6,876	6,062	7,462	6,278	26,679	
	% Hisp	10%	9%	13%	19%	12%	
	% NH White	83%	86%	83%	75%	82%	
	% NH Black	0%	1%	1%	3%	1%	
Citizen Voting Age Pop	% Asian/Pac.Isl.	5%	4%	3%	2%	4%	
	Total	5,620	5,523	5,457	5,270	21,870	
	% Latino est.	8%	9%	8%	11%	9%	
	% Spanish-Surnamed	7%	8%	7%	10%	8%	
	% Asian-Surnamed	2%	2%	1%	1%	2%	
Voter Registration (Nov 2016)	% Filipino-Surnamed	1%	1%	1%	0%	1%	
	% NH White est.	86%	85%	87%	82%	85%	
	% NH Black	0%	1%	1%	2%	1%	
	Total	4,642	4,559	4,496	4,341	18,038	
	% Latino est.	7%	8%	7%	10%	8%	
Voter Turnout (Nov 2016)	% Spanish-Surnamed	6%	8%	7%	9%	7%	
	% Asian-Surnamed	3%	2%	1%	2%	2%	
	% Filipino-Surnamed	1%	1%	1%	0%	1%	
	% NH White est.	86%	86%	87%	82%	85%	
	% NH Black	0%	1%	1%	2%	1%	
Voter Turnout (Nov 2014)	Total	2,476	2,664	2,870	2,352	10,363	
	% Latino est.	6%	6%	5%	8%	6%	
	% Spanish-Surnamed	5%	6%	5%	7%	6%	
	% Asian-Surnamed	2%	2%	1%	2%	2%	
	% Filipino-Surnamed	0%	0%	0%	0%	0%	
ACS Pop. Est.	% NH White est.	92%	86%	87%	83%	87%	
	% NH Black est.	0%	0%	1%	1%	0%	
	Total	8,937	8,876	9,060	8,045	34,917	
	age0-19	17%	20%	17%	17%	18%	
	age20-60	50%	56%	57%	52%	54%	
Age	age60plus	32%	24%	26%	30%	28%	
	immigrants	16%	19%	17%	13%	16%	
	naturalized	74%	34%	47%	65%	53%	
Immigration	english	83%	73%	78%	77%	78%	
	spanish	7%	21%	13%	21%	15%	
	asian-lang	3%	1%	1%	1%	2%	
	other lang	8%	4%	8%	2%	5%	
Language spoken at home	Speaks Eng. "Less than Very Well"	4%	12%	9%	8%	8%	
	Education (among those age 25+)	hs-grad	41%	50%	46%	53%	47%
Education (among those age 25+)	bachelor	31%	25%	27%	25%	27%	
	graduatedegree	24%	16%	21%	11%	18%	
	child-under18	19%	24%	20%	18%	20%	
Child in Household	Pct of Pop. Age 16+	employed	56%	63%	65%	61%	61%
	income 0-25k	10%	16%	12%	16%	13%	
Household Income	income 25-50k	17%	14%	15%	19%	16%	
	income 50-75k	15%	18%	19%	16%	17%	
	income 75-200k	41%	39%	37%	36%	38%	
	income 200k-plus	18%	12%	18%	13%	15%	
	single family	73%	64%	59%	80%	69%	
Housing Stats	multi-family	27%	36%	41%	20%	31%	
	rented	34%	41%	45%	31%	38%	
	owned	66%	59%	55%	69%	62%	
Total population data from the 2010 Decennial Census.							
Surname-based Voter Registration and Turnout data from the California Statewide Database.							
Latino voter registration and turnout data are Spanish-surname counts adjusted using Census Population Department undercount estimates. NH White and NH Black registration and turnout counts estimated by NDC. Citizen Voting Age Pop., Age, Immigration, and other demographics from the 2012-2016 American Community Survey and Special Tabulation 5-year data.							

Dana Point
2018 Districting

Pine

(4 Districts with
at-large Mayor)



Dana Point - Pine 4-District Map						
District		1	2	3	4	Total
Ideal	Total Pop	8,499	8,237	8,389	8,226	33,351
8,338	Deviation from ideal	161	-101	51	-112	273
	% Deviation	1.93%	-1.21%	0.61%	-1.34%	3.27%
Total Pop	% Hisp	9%	18%	22%	19%	17%
	% NH White	83%	75%	72%	74%	76%
	% NH Black	1%	1%	1%	1%	1%
	% Asian-American	5%	4%	3%	4%	4%
Citizen Voting Age Pop	Total	6,971	6,077	7,352	6,278	26,679
	% Hisp	8%	10%	13%	19%	12%
	% NH White	85%	84%	83%	75%	82%
	% NH Black	0%	1%	1%	3%	1%
	% Asian/Pac.Isl.	5%	4%	3%	2%	4%
Voter Registration (Nov 2016)	Total	5,855	5,430	5,315	5,270	21,870
	% Latino est.	7%	10%	8%	11%	9%
	% Spanish-Surnamed	6%	9%	7%	10%	8%
	% Asian-Surnamed	2%	2%	1%	1%	2%
	% Filipino-Surnamed	1%	1%	1%	0%	1%
	% NH White est.	86%	85%	88%	82%	85%
	% NH Black	0%	1%	1%	2%	1%
Voter Turnout (Nov 2016)	Total	4,855	4,493	4,349	4,341	18,038
	% Latino est.	6%	9%	8%	10%	8%
	% Spanish-Surnamed	6%	8%	7%	9%	7%
	% Asian-Surnamed	3%	2%	1%	2%	2%
	% Filipino-Surnamed	1%	1%	1%	0%	1%
	% NH White est.	86%	85%	88%	82%	85%
	% NH Black	0%	1%	1%	2%	1%
Voter Turnout (Nov 2014)	Total	2,844	2,719	2,448	2,352	10,363
	% Latino est.	5%	6%	6%	8%	6%
	% Spanish-Surnamed	5%	5%	6%	7%	6%
	% Asian-Surnamed	2%	2%	1%	2%	2%
	% Filipino-Surnamed	0%	0%	1%	0%	0%
	% NH White est.	90%	85%	90%	83%	87%
	% NH Black est.	0%	1%	1%	1%	0%
ACS Pop. Est.	Total	8,757	8,724	9,392	8,045	34,917
Age	age0-19	17%	20%	17%	17%	18%
	age20-60	50%	53%	59%	52%	54%
	age60plus	33%	26%	24%	30%	28%
Immigration	immigrants	15%	19%	18%	13%	16%
	naturalized	76%	40%	41%	65%	53%
Language spoken at home	english	84%	74%	76%	77%	78%
	spanish	5%	20%	16%	21%	15%
	asian-lang	3%	2%	1%	1%	2%
	other lang	8%	5%	7%	2%	5%
Language Fluency	Speaks Eng. "Less than Very Well"	3%	10%	11%	8%	8%
Education (among those age 25+)	hs-grad	40%	47%	50%	53%	47%
	bachelor	32%	26%	24%	25%	27%
	graduatedegree	25%	18%	19%	11%	18%
Child in Household	child under18	19%	24%	20%	18%	20%
Pct of Pop. Age 16+	employed	56%	61%	67%	61%	61%
Household Income	income 0-25k	9%	16%	13%	16%	13%
	income 25-50k	16%	14%	16%	19%	16%
	income 50-75k	15%	17%	20%	16%	17%
	income 75-200k	40%	42%	36%	36%	38%
	income 200k-plus	20%	12%	16%	13%	15%
Housing Stats	single family	74%	67%	55%	80%	69%
	multi-family	26%	33%	45%	20%	31%
	rented	32%	37%	50%	31%	38%
	owned	68%	63%	50%	69%	62%
Total population data from the 2010 Decennial Census.						
Surname-based Voter Registration and Turnout data from the California Statewide Database.						
Latino voter registration and turnout data are Spanish-surname counts adjusted using Census Population Department undercount estimates. NH White and NH Black registration and turnout counts estimated by NDC. Citizen Voting Age Pop., Age, Immigration, and other demographics from the 2012-2016 American Community Survey and Special Tabulation 5-year data.						

Supporting Document B

San Francisco | Orange County | San Diego

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CITY OF DANA POINT
RECEIVED
CITY CLERK'S DEPARTMENT
FEB 2 P 12:58

February 2, 2018

SENT VIA PERSONAL SERVICE

Ms. Kathy Ward
City Clerk
City of Dana Point
33282 Golden Lantern
Dana Point, CA 92629
Phone: (949) 248-3505
Email: <kward@danapoint.org>

RE: VIOLATION OF CALIFORNIA VOTING RIGHTS ACT

Dear Ms. Ward:

I write on behalf of several concerned citizens residing in the City of Dana Point ("Dana Point"). Dana Point relies upon an at-large election system for electing candidates to its City Council. Moreover, voting within Dana Point is racially polarized, resulting in minority vote dilution, and therefore Dana Point'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. Modesto* (2006) 145 Cal.App.4th 660, 667 ("*Sanchez*"). For example, if the U.S. Congress were elected through a nationwide 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 selected. 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

Uncompromising excellence in legal services.

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 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 elections 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 the 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 (2001-2001 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 “minority-majority 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 CBRA, 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); see also Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001-2001 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 voters of the political subdivision.” Elec. Code § 14028(a). The CVRA specifies the elections that are the 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 an action.” *Id.*

Factors other than “racially polarized voting” that are required to make out a claim under the FVRA – under the “totality of circumstances” test – “are probative, but not necessary factors to establish a violation of” the CVRA. Elec. Code § 14028(c). These “other factors” include “the history of discrimination, the use of electoral devices or other 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.*

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

The last ten elections are illustrative. During that twenty-year period, three Latinos ran for City Council –and only one of them, Carlos Olvera – was actually elected. Raquel Olamendi and Mario Melendez were not elected in 1998 and 2006 respectively, despite garnering support from Latino voters, due to the bloc voting of the non-Latino majority. Besides the three aforementioned individuals, no other Latino candidates have sought positions on the Dana Point Council in the last twenty years. Opponents of fair district-based elections may attribute the lack of Latinos vying for City Council positions to a lack of Latino interest in local government. On the contrary, the alarming absence of Latino candidates seeking election to the Dana Point City Council reveals vote dilution. See *Westwego Citizens for Better Government v. City of Westwego*, 872 F.2d 1201, 1208-1209, n. 9 (5th Cir. 1989).

According to recent data, Latinos comprise 17.8% of the population of Dana Point. However, there are no Latinos on the City Council – and there is only *one* single candidate in the last twenty years who has been able to successfully secure a City Council seat. The contrast between the significant Latino proportion of the electorate and the near absence of Latinos elected to the City Council is telling.

As you may be aware, in 2012, a similar lawsuit was brought against the City of Palmdale for violating the CVRA. That lawsuit was successful after an eight-day trial. After spending millions of dollars, a district-based remedy was ultimately imposed upon the Palmdale City Council, with districts that combined all four 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 Dana Point to voluntarily change its at-large system of electing council members. Otherwise, on behalf of several concerned residents of the City of Dana Point, we will be forced to seek judicial relief. Please advise us no later than March 19, 2018 as to whether you would like to discuss a voluntary change to your current at-large system.

We look forward to your response.

Regards,



RUSSEL MYRICK, ESQ.

Supporting Document C**RESOLUTION NO. 18-02-20-04**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, EXPRESSING THE CITY COUNCIL'S INTENTION, PURSUANT TO ELECTIONS CODE SECTION 10010(e)(3)(A), TO CONSIDER INITIATING PROCEDURES FOR ESTABLISHING AND IMPLEMENTING BY-DISTRICT ELECTIONS FOR CITY COUNCIL MEMBERS

WHEREAS, the City of Dana Point, California ("City") is a general law city, duly organized under the constitution and laws of the State of California; and

WHEREAS, the members of the Dana Point City Council are currently elected in at-large elections, in which each City Council member is elected by all registered voters of the entire City; and

WHEREAS, Section 34886 of the Government Code authorizes any city to change to a by-district system or by-district system with an elective mayor without the need to put such a change to voters; and

WHEREAS, the City Council has determined that it is in the best interest of the City to move from its current at-large electoral system to a by-district election for members of the City Council, in response to the provisions of the California Voting Rights Act; and

WHEREAS, the City intends to make this transition from an at-large system to a by-district system in accordance with the procedural rules outlined in Government Code Section 34886 and Elections Code 10010; and

WHEREAS, the City received a letter threatening action under the California Voting Rights Act on February 2, 2018 less than forty-five (45) days before the date of this Resolution; and

WHEREAS, the City will begin by working with an experienced demographer to assist the City in establishing maps for a by-district electoral system; and

WHEREAS, before drawing a draft map of the proposed boundaries of the districts, the City will hold at least two (2) public hearings over no more than thirty (30) days, at which time the public is invited to provide input regarding the composition of the districts; and

WHEREAS, the City will then publish and make available for release at least one (1) draft map of the new electoral districts, including the potential sequence of elections shown; and

WHEREAS, once the draft map(s) have been publicized for at least seven (7) days, the City will hold at least two (2) additional public hearings, over no more than forty-five (45) days,

Resolution No. 18-02-20-04
Establishing and Implementing By-District Elections
Page 2

at which time the public is invited to provide input regarding the content of the draft map and the proposed sequence of elections prior to the public hearing at which the City Council adopts a map; and

WHEREAS, if a draft map is revised at or following a public hearing, the revised map will be published and made available to the public at least seven (7) days before the City chooses to adopt it; and

WHEREAS, in determining the final sequence of staggered district elections, the City Council will give special consideration to the purposes of the CVRA, and will take in to account the preferences expressed by the members of the districts; and

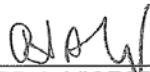
NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Dana Point, California, as follows:

1. The above recitals are true and correct and are incorporated herein by this reference.
2. The City Council hereby resolves, pursuant to Elections Code section 10010, to consider adopting a by-district election system by ordinance as authorized by California Government Code section 34886, for use in the City's General Municipal Election for City Council Members.
3. The City Council further resolves to retain a qualified demographer, hold at least five (5) public hearings and publish at least one (1) draft map and staggering sequence, pursuant to the proposed tentative hearing schedule attached hereto as Exhibit "1".
4. The city's redistricting/demographic consulting firm, acting under the supervision of the City Attorney, is hereby authorized to direct and formulate one or more electoral district scenarios for review by the public and City Council at two or more public hearings if necessary, in accordance with the city's proposed tentative timeline.
5. Working with the demographic consulting firm, staff is directed to publicize relevant maps, information, notices, agendas and other materials regarding by-district elections and to establish means of communication to answer questions from the public.

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Establishing and Implementing By-District Elections
Page 3

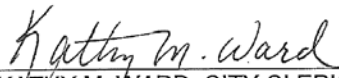
6. All public hearings shall be noticed on the City's website, and in addition, as follows: posting on the city's website at least ten (10) calendar days in advance of the hearing and publication at least ten (10) days in advance of the hearing in the newspaper adjudicated to provide notice within the City.
7. The City Manager and City Attorney are authorized to take any and all other necessary actions to give effect to this Resolution.
8. This Resolution shall become effective immediately upon its adoption.

PASSED, APPROVED AND ADOPTED at a Regular Meeting of the City Council of the City of Dana Point on the 20th day of February, 2018, by the following vote:



RICHARD A. VICZOREK, MAYOR

ATTEST:



KATHY M. WARD, CITY CLERK

(SEAL)

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Establishing and Implementing By-District Elections
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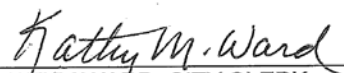
STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF DANA POINT)

I, Kathy Ward, City Clerk of the City of Dana Point, do hereby certify that the foregoing Resolution No. 18-02-20-04 was duly adopted and passed at a regular meeting of the City Council on the 20th day of February 2018, by the following roll-call vote, to wit:

AYES: Council Members Lewis, Tomlinson, Wyatt, Mayor Pro Tem Muller, and
 Mayor Viczorek

NOES: None

ABSENT: None


KATHY WARD, CITY CLERK

Supporting Document D

<u>City/Political Subdivision Defendant</u>	<u>Settlement Conditions</u>	<u>Attorneys' Fees</u>	<u>Notes</u>
City of Palmdale	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
City of Modesto	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
Madera Unified School District; Madera County Board of Education	Moved to "by trustee area" elections via admission of liability	\$162,500	court award
City of Compton	Moved to by-district elections via ballot measure; kept mayor at large	confidential	settlement
Tulare Local Healthcare District	Agreed to hold an election re changing to district elections in 2012 and agreed to cancel 2010 elections	\$500,000	Settlement
City of Tulare	City agreed to place a ballot measure before voters regarding a move to district elections	\$225,000	Settlement
Hanford Unified School District	Agreed to move to by-trustee district elections	\$110,000	Settlement
Compton Community College District	Agreed to move to by-district elections	\$40,000	Settlement
Ceres Unified School District	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	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	Settlement after first litigating; expected costs include at least another \$800,000
City of Anaheim	Agreed to place ballot measure on November 2016 ballot re moving to by district elections	\$1,200,000	
City of Whittier	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
Santa Clarita Community College District	Agreed to conduct cumulative voting, and by trustees	\$850,000 Settlement	
City of Garden Grove	Moved to by district elections via stipulated judgment	\$290,000 Settlement	
City of Escondido	Settled via court order (consent decree) after vote of the people failed to adopt by district elections	\$385,000 Settlement	
City of Santa Clarita	Agreed to move to cumulative voting method	\$600,000 Settlement	
City of Visalia	Stipulated judgment, court ordered by districts	\$125,000 Settlement	
City of Santa Barbara	Agreed to move to by district; mayor remains elected at large	\$599,500 Settlement	

City of Fullerton	Agreed to pay attorneys fees - negotiate in good faith; required placing measure on November 2016 ballot to move to districts	undisclosed	Settlement
City of Merced	Settled before lawsuit filed; agreed to ballot measure	\$43,000	Settlement
City of Bellflower	Agreed to place ballot measure on November 2016 ballot; measure adopted	\$250,000	Settlement
Sulphur Springs School District	Agreed to move to by district elections	\$144,000	Settlement
City of Costa Mesa	Moved to districts before lawsuit was filed	\$55,000	pre-litigation settlement
City of West Covina	Waited until after lawsuit was filed to hire demographer and voluntarily move to by district elections via ordinance	\$220,000	Settlement
City of Rancho Cucamonga	Ongoing; currently being litigated	ongoing	ongoing
City of San Marcos	Moved to districts within safe harbor, before lawsuit could be filed	\$0	transitioned to districts before lawsuit could be filed
City of Carlsbad	Moved to districts within safe harbor, before lawsuit could be filed	\$0	transitioned to districts before lawsuit could be filed
City of Poway	Ongoing; moving to districts within safe harbor	ongoing	ongoing
TOTAL PAYMENTS TO PLAINTIFFS' ATTORNEYS		\$15,007,000	

Supporting Document E

DISTRICT ELECTIONS

Suit or No Suit? Confusion Over Voting Rights Issue in Mission Viejo



SPENCER CUSTODIO, *Voice of OC*

The Mission Viejo City council members conduct their district elections public hearing on Jan. 23, 2018.

By SPENCER CUSTODIO (<https://voiceofoc.org/author/scustodio/>) March 19, 2018

25
SHARES



23



2



Is Mission Viejo guaranteed it won't be sued for not creating individual districts to elect its five city council members?

"Bottom line here folks is that Mission Viejo is no longer threatened with a lawsuit demanding we move to district voting in the city," Mayor Ed Sachs wrote March 10 in a personal newsletter to his subscribers.

Not so fast, responded election rights attorney Kevin Shenkman, who sparked the city's study of district elections as a possible replacement for the current citywide elections.

"I think the most important thing is I didn't say that or anything remotely close to that," Shenkman said in a phone interview. "But Mayor dickhead (Sachs) decided to jump the gun and decided to talk about how district elections are off the table, before even attempting to gain understanding of other potential remedies."

What caused the confusion?

Mission Viejo has been considering district elections since it received a Sept. 29 letter from Shenkman warning the city it had a racially polarized voting system and demanding it fix it.

It's an issue that has hit a number of Orange County cities in recent years, including [Anaheim](https://voiceofoc.org/2015/01/anaheim-makes-moves-toward-district-elections/) (<https://voiceofoc.org/2015/01/anaheim-makes-moves-toward-district-elections/>), [Fullerton](http://v/) (<http://v/>) and [Lake Forest](https://voiceofoc.org/2017/11/lake-forest-finalizes-map-to-create-city-council-districts/) (<https://voiceofoc.org/2017/11/lake-forest-finalizes-map-to-create-city-council-districts/>). [Santa Ana](https://voiceofoc.org/2018/03/santa-ana-asking-court-to-put-district-elections-on-june-ballot/) (<https://voiceofoc.org/2018/03/santa-ana-asking-court-to-put-district-elections-on-june-ballot/>) is in the middle of a political fight (<https://voiceofoc.org/2018/03/after-dramatic-days-santa-ana-district-elections-now-appear-dead-for-june-ballot-but-maybe-not/>) over whether it should put the district elections issue on the June primary election ballot.

The five Mission Viejo City Council members never gave their views on being elected by district, until the fifth and final public hearing. In the end, a unanimous council voted Feb. 13 to reject the switch from at-large elections to district-based elections and instead explore "alternative" options to fix the voting problem it admits is racially polarized under the California Voting Rights Act.

Shenkman's Sept. 29 letter warned the city [its at-large city council districts violate state law](https://voiceofoc.org/2017/11/mission-viejo-to-consider-district-elections/) (<https://voiceofoc.org/2017/11/mission-viejo-to-consider-district-elections/>) by diluting the Latino vote. In his letter,

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<https://voiceofoc.org/2018/03/suit-or-no-suit-confusion-over-voting-rights-issue-in-mission-viejo/>

1/4

According to the 2010 Census report (https://factfinder.census.gov/servlet/table?_lang=en&_ss=CF&_ds=1&_tid=1&_p=1&_c=1&_d=1&_r=1&_s=1&_t=1&_u=1&_v=1&_w=1&_x=1&_y=1&_z=1), there are 93,300 residents in Mission Viejo. Nearly 70 percent are white, 17 percent are Latino, nine percent are Asian and just over one percent are black. But when the city looked at ways to draw district boundaries that would give Latinos and Asians a stronger voice, it found minority voters were too scattered throughout the community to draw sensible district lines.

The council now is looking at alternatives, possibly including a system called "cumulative voting," an idea proposed by City Attorney Bill Curley during the Feb. 13 final council hearing on district elections.

Cumulative voting gives registered voters more than one vote, based on how many city council seats are up for election. For example, if three seats are up, a voter can cast one vote for each of three candidates. Or the voter could vote twice for one candidate and once for a second candidate. Finally, the voter could opt to cast all three votes for a single candidate.

Sachs said his news letter was based on a report he received from Curley, who spoke by phone with Shenkman after the Feb. 13 city council meeting that turned down the district election option.

Curley said in a March 14 phone interview with a reporter that he discussed the council's decision with Shenkman and later Shenkman called him again.

"He (Shenkman) called me about two weeks later, and said 'I had my experts look at it and they agree with you. It is kind of a unique situation that you can't really do something with districts.'

"Practically, Shenkman agrees that districts are not really feasible, so why would he sue and say 'court, compel them to go to districts even though I agree they don't make any sense in that city?'" Curley asked.

In his newsletter, sent from his personal email, Sachs wrote an account of the conversation between Curley and Shenkman but later said it was a "joke."

After the March 13 council meeting, Sachs told Voice of OC the emailed account of the conversation was part of his "imagination."

"That isn't a transcript of the conversation," Sachs said. "The end result isn't a joke ... It wasn't meant as a rib or anything. It was just a joyous representation of the city's path."

Shenkman clarified that he didn't throw away the possibility of districts.

"This is maybe a bit of a nuance here -- but in my view, districts would be a remedy, but likely not the best remedy in Mission Viejo," Shenkman said. "But to say that districts are not a remedy is a mischaracterization ... districts are the only really safe harbor (under state law) for better or for worse. And we operate based on what the law is and not what the law should be."

He also said the city may think Shenkman is backing off and "we're (Shenkman and his client) not going to do anything, [the city] got Shenkman to back down and that's just not what happened."

During the March 13 meeting, Councilwoman Wendy Bucknam asked Curley to summarize his conversations with Shenkman about the city's rejection of districts and its potential alternatives.

"They (Shenkman and his staff) had confirmed that our findings were correct: that districting would not solve the racial polarization in town," Curley said.

"That he appreciated, that the council did an above board -- took responsibility, acted in a professional manner. That we are moving forward to a solution," Curley said. "To look to a solution that makes sense and that's where we left it ... I told him we'd be forming an ad hoc committee to help us."

The council appointed Mayor Pro Tem Greg Rath and Councilwoman Trish Kelley to the ad hoc committee.

But Sherkman said the committee could complicate things.

"There's no reason for a committee for this kind of thing ... I've litigated these issues," Sherkman said. "And frankly having a city council committee on this thing probably just gets in the way."

In addition to sending the newsletter to his email list subscribers, Sachs tweeted a link to the newsletter March 10 and declared "Mission Viejo WINS!"

"We're going to fix it, we don't see districting as a viable solution. If someone wants to consider that a victory, then fine," Curley said March 14.

Sherkman said Sachs is using the district elections issue to further his political career.

"It was political grandstanding, let's call it what it is. And I get that, you know, in some cities, in some circles, I'm the boogeyman and politicians can score political points by claiming that they slayed the boogeyman," Sherkman said in a March 14 phone interview.

According to the Registrar of Voters candidate list, Sachs is running for the 73rd Assembly District seat against fellow Republican Bill Brough, who was first elected in 2014.

Former Mayor Cathy Schlicht told the council it should have discussed alternatives to solving racially polarized voting well before its decision to reject districts.

"At the public hearings, other remedies available were never discussed, and what case law do you have to back up those other unknown remedies?" Schlicht said. "Listening to this council speak at the February 13th public hearing, it was obvious to me that you do not have a grasp on the purpose of the CVRA (California Voting Rights Act). You were using sound bites as if they were Kodak moments. I think this process is over your head."

Schlicht concluded, "Wendy Bucknam announced at the Costa del Sol Republican Club on Sunday that the city is not going to be sued. And now Ed (Sachs) has declared in his latest newsletter that Mission Viejo wins, Mission Viejo vindicated."

Curley aggressively responded to Schlicht's comments.

"What you just heard cannot be more legally, factually or intellectually wrong. I can only conclude it's a calculated effort to attack the city. It is so grossly wrong that I'm embarrassed for the speaker," Curley said. "But everything we've said, everything we've done is well within the law and when it comes to who doesn't grasp it, I think we just had a demonstration of who doesn't."

Kelley, during council comments at the end of the meeting, reminded everyone Mission Viejo's word of the month is "integrity."

"Our character word, for March, is 'integrity,' Kelley said.

Spencer Custodio is a Voice of OC reporter who covers south Orange County and Fullerton. You can reach him at scustodio@voiceofoc.org.

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