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A PROFESSIONAL CORPORATION

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November 9, 2017

Kevin I. Shenkman, Esq.
Shenkman & Hughes
28905 Wight Road
Malibu, CA 90265
kshenkman@shenkmanhughes.com

Re: City of Lake Elsinore's Response to Letter concerning California Voting Rights Act

Dear Mr. Shenkman:

I am writing in response to your letter dated September 19, 2017, urging the City of Lake Elsinore (City) to voluntarily change its at-large system of electing council members. According to your letter, if the City fails to change the system, you claim you will be forced to seek judicial relief.

At the outset, your letter is factually inaccurate. You state that “[t]here is currently only one Latino council member on Lake Elsinore’s city council. The contrast between the significant Latino population of the electorate and the near absence of Latinos to be elected to the City Council is telling.” Contrary to your statement, of the five Lake Elsinore City Council Members currently serving, one is African-American, two are Latino, and two are Caucasian. Consequently, 60% of the Lake Elsinore City Council is minority and 40% is Latino. Had you conducted any research to familiarize yourself with the current City Council beyond the gross generalizations and flawed assumptions, you would have known better.

In the last election, three of the five candidates for the three City Council seats were Latino. One Latino candidate received the lowest number of votes which you apparently attribute to “racially polarized” voting resulting in “minority vote dilution.” However, had you undertaken even a moment to investigate, you would have learned that two Latino candidates were elected and one of those Latino candidates received the highest number of votes. The vote dilution you claim simply does not exist in the City of Lake Elsinore.

In addition to its racial diversity, the Lake Elsinore City Council is also geographically diverse with its members residing in different areas of the City. Had you ever attended a Lake Elsinore City Council meeting or spent time in our community, you would have seen a diverse and professional City Council debating issues, articulating individual views, and without exception working together to serve all of the residents of Lake Elsinore and promote the health, safety and welfare of the City as a whole. This is true today and has been true throughout the City’s history.

Had you examined the history of Lake Elsinore or even peeked into Wikipedia, you would have learned that Mayor Thomas R. Yarborough who served as Mayor of Lake Elsinore from 1966 – 1969 was the first black mayor in the State of California. Had you reviewed the City Council records, you would know that the City Council has taken a proactive approach to evaluating its election process. In 2004, the City of Lake Elsinore City Council appointed an Electoral Reform Ad Hoc Advisory Committee comprised of City residents to evaluate several election-related issues, including a review of the possibility of transitioning to district-based City Council elections. After studying these issues for about one year, the Committee made two recommendations on the question of district-based elections:

- That the City Council maintain the existing structure of Citywide elections of Council members and revisit the possibility of districting after the 2010 US Census if the City's population is at least eighty thousand (80,000) and the City is at least eighty percent (80%) built-out.
- If the City Council considers districts in the future, the Committee recommends that the Council be elected "from" district because such method ensures a representative City Council (i.e. one from each Council district) while allowing the electorate to vote for each seat, as opposed to being limited to voting only for the Council member from the voter's actual district.

The Electoral Reform Committee's recommendations were supported by several findings, including:

- The Committee finds that the election of City Council members by or from districts is premature at this time because:
 - ✓ the current population of the City is approximately 30,000 and each district would be comprised of fewer than 10,000 residents (and even fewer voters);
 - ✓ the projected increase in the City's population over the next several years would necessarily require redistricting very soon;
 - ✓ the projected increase in the City's population over the next several years and the projected location of the population bursts would provide for disproportionate numbers of voters in each district until appropriate redistricting could occur, and
 - ✓ the City's budget, including the capital improvement budget, is insufficient at this time to support an equal distribution of projects among districts and could result in political tug-of-war to the benefit of a few and the detriment of the City as a whole (for example, funding for Lake projects could be compromised).

Kevin I. Shenkman, Esq.
November 9, 2017
Page 3

The Electoral Reform Committee's recommendations have served to guide the City which, at this time is only about 30% built out with a population of approximately 62,000. Yet in spite of a rich diverse history and a racially and geographically diverse City Council with an eye to self-evaluation of its election system, you threaten to judicially challenge the City on behalf of your client's "members redising [*sic*] in the City of Lake Elsinore." I have had the opportunity to carefully review your letter and compare it to letters you have sent to other cities in California. I am struck by the fact that all the letters are nearly identical. Each of the letters I reviewed contained approximately 13 paragraphs. Eleven of those paragraphs contain boilerplate recitations about the CVRA and case law interpreting it and are identical in all the letters. Only two of the paragraphs in the letters are different (containing information about the council members in the city to which the letter is addressed), and even these paragraphs contain boilerplate language common to all.

For the reasons stated above, we believe your allegations are entirely without merit and wonder if your motivations are less to protect the City's rich Latino population and are more to increase the bounty you collect from municipalities threatened by your same form letter. In spite of the cursory nature of your analysis and apparent selfish motivations, the City Council is protective of the City's financial resources and is unwilling to devote public funds to litigate your claims. Consequently, on November 7, 2017, the City Council adopted Resolution 2017-121 "A Resolution of The City Council of The City of Lake Elsinore, California, Declaring Its Intent To Transition From At-Large To By-District Council Member Elections, Outlining Specific Steps To Be Undertaken To Facilitate The Transition And Estimating A Time Frame For Action Pursuant To Elections Code Section 10010" (copy enclosed).

In closing, the City is aware of the provisions of Elections Code section 10010 (f) which allows a prospective plaintiff, within 30 days of the adoption of an ordinance establishing district-based elections, to demand reimbursement for the cost of work generated to support the notice (i.e., your letter dated September 19, 2017 and received by the City on September 25, 2017). The City will look very carefully at any demand your office may submit, especially in light of the factual inaccuracies in your letter and the paucity of information that is different from your nearly identical letters sent to other cities in California.

Sincerely,

LEIBOLD MCCLENDON & MANN, PC



By: Barbara Leibold
City Attorney, City of Lake Elsinore

Mayor and City Council Members
Grant Yates, City Manager
Susan M. Domen, City Clerk

RESOLUTION NO. 2017-121

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKE ELSINORE, CALIFORNIA, DECLARING ITS INTENT TO TRANSITION FROM AT-LARGE TO BY-DISTRICT COUNCIL MEMBER ELECTIONS, OUTLINING SPECIFIC STEPS TO BE UNDERTAKEN TO FACILITATE THE TRANSITION AND ESTIMATING A TIME FRAME FOR ACTION PURSUANT TO ELECTIONS CODE SECTION 10010

Whereas, the City Council of the City of Lake Elsinore (City) were elected under an "at-large" election system, where Council Members were by the voters of the entire City; and,

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

Whereas, the City Clerk received a certified letter on September 25, 2017, from Kevin Shenkman of the law firm of Shenkman & Hughes asserting that the City's At-Large Council Member electoral system violates the California Voting Rights Act ("CVRA") and threatening litigation if the City declines to voluntarily change to a district-based election system for electing Council Members; and,

Whereas, a violation of the CVRA is established if it is shown that racially polarized voting occurs in elections (Elections Code Section 14028(a)). "Racially polarized voting" means voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate (Elections Code Section 14026(e)); and,

Whereas, the California Legislature in amendments to Elections Code Section 10010, has provided a method whereby a jurisdiction can expeditiously change to a by-district election system and avoid the high cost of litigation under the CVRA; and,

Whereas, the public interest would be better served by council consideration of a proposal to transition to a district-based electoral system because of: 1) the extraordinary cost to defend against a CVRA lawsuit, 2) the risk of losing such a lawsuit which would require the City to pay the prevailing plaintiffs' attorneys' fees, and 3) the reimbursable costs and attorneys' fees would be capped at a maximum of \$30,000.00 by following the procedures set forth in Elections Code Section 10010 as amended by AB 350; and,

Whereas, prior to the City Council's consideration of an Ordinance to establish district boundaries for a district-based electoral system, California Elections Code Section 10010 requires all of the following:

1. Prior to drawing a draft map or maps of the proposed boundaries of the districts, the City shall hold at least two (2) public hearings over a period of no more than thirty (30) days, at which the public will be invited to provide input regarding the composition of the districts;

2. After all draft maps are drawn, City shall publish and make available for release at least one draft map and, if members of the City Council will be elected in their districts at different times to provide for staggered terms of office, the potential sequence of the elections shall also

be published. The City Council shall also hold at least two (2) additional hearings over a period of no more than forty-five (45) days, at which the public shall be invited to provide input regarding the content of the draft map or maps and the proposed sequence of elections, if applicable. The first version of a draft map shall be published at least seven (7) 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 (7) days before being adopted; and

Whereas, the City has retained special legal counsel and an experienced demographer to assist the City to develop a proposal for a district-based electoral system; and

Whereas, the adoption of a district-based elections system will not affect the terms of any sitting Council Member, each of whom will serve out his or her current term.

Whereas, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKE ELSINORE DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. The Recitals set forth above are true and correct and incorporated herein by reference.

Section 2. The City Council hereby resolves to consider adoption of an Ordinance to transition to a by-district election system as authorized by Government Code Section 34886 for use in the City's General Municipal Election for City Council Members beginning in November 2018.

Section 3. The City Council directs the City Attorney (or special legal Counsel) and City Clerk to work with a professional demographer, and other appropriate consultants as needed, to provide a detailed analysis of the City's current demographics and any other information or data necessary to prepare a draft map that divides the City into voting districts in a manner consistent with the intent and purpose of the California Voting Rights Act and the Federal Voting Rights Act.

Section 4. The City Council hereby approves the tentative timeline as set forth in Exhibit A, attached to and made a part of this Resolution, for conducting a public process to solicit public input and testimony on proposed district-based electoral maps before adopting any such map.

Section 5. The timeline contained in Exhibit A may be adjusted by the City Attorney and City Clerk as deemed necessary, provided that such adjustments shall not prevent the City from complying with the time frames specified by Elections Code Section 10010.

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

Section 7. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

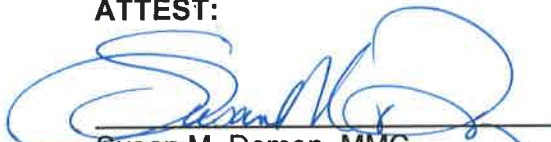
Section 8. This Resolution shall take effect from and after the date of its passage and adoption.

Passed and Adopted on this 7th day of November 2017.



Robert E. Magee
Mayor

ATTEST:



Susan M. Domen, MMC
City Clerk

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF LAKE ELSINORE)

I, Susan M. Domen, MMC, City Clerk of the City of Lake Elsinore, California, do hereby certify that Resolution No. 2017-121 was adopted by the City Council of the City of Lake Elsinore, California, at a Special meeting on November 7, 2017, and that the same was adopted by the following vote:

AYES: Council Member Hickman, Manos, and Tisdale; Mayor Pro Tem Johnson and Mayor Magee
NOES:
ABSENT:
ABSTAIN:



Susan M. Domen, MMC
City Clerk