RESOLUTION NO. 3492-18

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WINDSOR DECLARING ITS INTENT TO INITIATE PROCEDURES TO TRANSITION FROM AT-LARGE ELECTIONS TO DISTRICT-BASED ELECTIONS PURSUANT TO CALIFORNIA ELECTIONS CODE SECTION 10010 AND TAKING RELATED ACTIONS

WHEREAS, members of the Town Council of the Town of Windsor ("Town") are currently elected in "at-large" elections, in which each Town Councilmember is elected by the registered voters of the entire Town; and

WHEREAS, California Government Code Section 34886, in certain circumstances, authorizes the legislative body of a city or town 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 councilmember is elected only by the voters in the district in which the candidate resides; and

WHEREAS, on October 22, 2018, the Town received a certified letter from Kevin Shenkman of the law firm of Shenkman & Hughes, on behalf of his client the Southwest Voter Education Project, alleging that the Town's at-large councilmember electoral system violates the California Voting Rights Act ("CVRA") and threatening litigation if the Town does not voluntarily change to a district-based system for electing councilmembers; and

WHEREAS, pursuant to California Elections Code Section 14028, a violation of the CVRA may be established if it is shown that racially polarized voting occurs in elections. Pursuant to California Elections Code Section 14026(e), "racially polarized voting" means voting in which there is a difference in the choice of candidates that are preferred by voters in a protected class, and the choice of candidates that are preferred by voters in the rest of the electorate; and

WHEREAS, the letter itself was not accompanied by any evidence to support the claim of a CVRA violation, and the Town Council denies that its election system violates the CVRA or any other provision of law, asserts that the Town's election system is legal in all respects, and further denies any wrongdoing whatsoever in connection with the manner in which Town Council elections have been conducted; and

WHEREAS, nevertheless, the Town is committed to diversity and inclusion with respect to its elections; and

WHEREAS, the Town Council is aware of the exorbitant cost that multiples of public entities have faced in defending and/or settling CVRA litigation, and the impact that the expenditure of such costs could have on the ability to provide essential services to the Town's residents and businesses; and

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

WHEREAS, the public interest would be served by Council consideration of a proposal to transition to a district-based election system because of the uncertainty of litigation and the potentially extraordinary cost of defending a CVRA lawsuit, even if the Town ultimately were to prevail; and

WHEREAS, pursuant to California Elections Code Section 10010 as amended by AS 350 in 2016 and AB 2123 in 2018, if the Town Council adopts a resolution outlining its intention to transition from at-large to district-based elections, the specific steps it will take to facilitate this transition, and an estimated time frame for doing so, then a prospective plaintiff may not bring a lawsuit within 90 days after the resolution's adoption (or, if the prospective plaintiff grants a 90-day extension as authorized by law, may not bring a lawsuit within 180 days after the resolution's adoption), and the prospective plaintiff's attorneys' fees would be capped at a maximum of $30,000; and

WHEREAS, prior to the Town Council's consideration of an ordinance to establish district boundaries for a district-based election 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 Town Council 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 maps are drawn, the Town shall publish and make available for release at least one (1) draft map and, if members of the Town Council will be elected in their districts at different times to provide for staggered terms, the potential sequence of the elections shall also be published.

3. The Town 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.

4. 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 Town Attorney has retained an experienced demographer to assist the Town to develop a proposal for a district-based electoral system; and

WHEREAS, the adoption of a district-based election system will not affect the terms of any sitting Councilmember, each of whom will serve out his or her current term.

NOW, THEREFORE BE IT RESOLVED that the Town Council of the Town of Windsor does hereby resolve, and order as follows:

Section 1. The above recitals are true and correct and are incorporated by reference herein.

Section 2. The Town Council intends to and shall consider adoption of an ordinance to transition to a district-based election system as authorized by California Government Code Section 34886 for use in the Town's General Municipal Election for Town Councilmembers, beginning in November 2020, pursuant to California Elections Code Section 21066(c) and Section 10522. The Town Council does not, at this time, decide the nature of such district-based election. Rather, the details of such system shall be determined only after community outreach and appropriate public hearings.

Section 3. The Town Council directs staff to work with a demographer and other appropriate consultants as needed, to provide a detailed analysis of the Town's current demographics and any other information or data necessary to prepare a draft map that divides the Town 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 Town Clerk is directed to administer a comprehensive public outreach program regarding the proposed transition to district-based elections, including overseeing a dedicated page on the Town's website, arranging for Spanish translation services, posting relevant maps, notices, agendas and other information and establishing a means of communication to receive comments and answer questions from the public.

Section 5. The Town Council hereby approves the tentative timelines as set forth in Exhibit A, attached hereto 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 the Town Council adopts any such map.

Section 6. The timelines contained in Exhibit A may be adjusted by the Town Manager or designee as deemed necessary, provided that any such adjustments shall not prevent the Town from complying with the timeframes specified in California Elections Code Section 10010 or such other timeframes as may be stipulated by Shenkman & Hughes.

Section 7. This resolution shall become effective immediately upon its passage and adoption.

Section 8. The Town Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED AND ADOPTED this 5th day of December 2018, by the following vote:

AYES:	**COUNCILMEMBERS FUDGE, MILLAN, SALMON, VICE MAYOR FOPPOLI AND MAYOR OKREPKIE**
NOES:	**NONE**
ABSTAIN:	**NONE**
ABSENT:	**NONE**

BRUCE OKREPKIE, MAYOR

ATTEST:

MARIA DE LA O, TOWN CLERK

Attachment:

- **Exhibit A** – Tentative Timeline

Exhibit A

Tentative Timeline for Consideration and Implementation of District-Based Elections <u>Without</u> a Written Agreement Under AB 2123 (2018)

DATE	EVENT	COMMENT
October 22, 2018	Town received the demand letter from Shenkman & Hughes	CVRA lawsuit cannot be commenced for 45 days (Elec. Code § 10010(e)(2)-(3)(A). *- 45 days runs on <u>December 6, 2018</u>.*
December 5, 2018	Town Council adopts Resolution declaring its intention to transition from at-large to district-based elections.	CVRA lawsuit cannot be commenced for 90 days (Elec. Code § 10010(e)(3)(B)). *- 90 days runs on <u>March 5, 2019</u>.*
December 19, 2019	1st Public Hearing (Regular Meeting)	No maps for review, but take public comments on composition of districts and preference for district lines. *- First and second public hearings must occur within a period of 30 days (Elec. Code § 10010(a)(1)).*
January 16, 2019	2nd Public Hearing (Regular Meeting)	No maps for review, but take public comments on composition of districts and preference for district lines.
January 30, 2019 (or sooner)	Publish for review first drafts of district election maps and potential sequence of elections	Draft maps and proposed sequence must be published at least 7 days before consideration at the 3rd public hearing (Elec. Code § 10010(a)(2)).
February 6, 2019	3rd Public Hearing (Regular Meeting)	Take public comments on proposed maps. *- Third and fourth public hearings must occur within a period of 45 days (Elec. Code § 10010(a)(2)).*
February 13, 2019 (or sooner)	Post any new or amended maps	Maps available for review at least 7 days before consideration at the 4th public hearing (Elec. Code § 10010(a)(2)).
February 20, 2019	4th Public Hearing (Regular Meeting)	Take public comments on proposed maps. *- If selected map is amended, ordinance cannot be introduced until 7 days after amended map is published. (Elec. Code § 10010(a)(2)).* *-Council may introduce ordinance if final map is selected at this public hearing.*
Tuesday March 5, 2019	5th Public Hearing (Special Meeting)	Council introduces ordinance establishing district elections, including district boundaries and election sequence. *- This is the deadline to meet the 90 day safe harbor under AB 350 (2016). (Note: per Gov't Code § 36937, ordinances*

		pertaining to an election take effect immediately.)

Tentative Timeline With a Written Agreement Under AB 2123 (2018)

DATE	EVENT	COMMENT
October 22, 2018	Town received the demand letter from Shenkman & Hughes	CVRA lawsuit cannot be commenced for 45 days (Elec. Code § 10010(e)(2)-(3)(A). *- 45 days runs on December 6, 2018.*
December 5, 2018	Town Council adopts Resolution declaring its intention to transition from at-large to district-based elections.	CVRA lawsuit cannot be commenced for 180 days (Elec. Code § 10010(e)(3)(C)). *- 180 days runs on June 3, 2019.* *-Post tentative schedule within 10 days of entering into a written agreement.*
	Conduct public outreach, encourage public participation, and receive public input	I.e. farmers market, public library, public schools, places of worship, homeowners associations, and community organizations
February 20, 2019	1st Public Hearing (Regular Meeting)	No maps for review, but take public comments on composition of districts and preference for district lines. *- First and second public hearings must occur within a period of 30 days (Elec. Code § 10010(a)(1)).*
March 20, 2019	2nd Public Hearing (Regular Meeting)	No maps for review, but take public comments on composition of districts and preference for district lines.
April 10, 2019 (or sooner)	Publish for review first drafts of district election maps and potential sequence of elections	Draft maps and proposed sequence must be published at least 7 days before consideration at the 3rd public hearing (Elec. Code § 10010(a)(2)).
April 17, 2019	3rd Public Hearing (Regular Meeting)	Take public comments on proposed maps. *- Third and fourth public hearings must occur within a period of 45 days (Elec. Code § 10010(a)(2)).*
May 8, 2019 (or sooner)	Post any new or amended maps	Maps available for review at least 7 days before consideration at the 4th public hearing (Elec. Code § 10010(a)(2)).
May 15, 2019	4th Public Hearing (Regular Meeting)	Take public comments on proposed maps. *- If selected map is amended, ordinance cannot be introduced until 7 days after amended map is published. (Elec. Code § 10010(a)(2)).* *-Council may introduce ordinance if final map is selected at this public hearing.*

Monday June 3, 2019	5th Public Hearing (Special Meeting)	Council introduces ordinance establishing district elections, including district boundaries and election sequence. *- This is the deadline to meet the extended 90 day safe harbor under AB 2123 (2018).*