City of San Juan Capistrano
Agenda Report

TO: Honorable Mayor and Members of the City Council

FROM: Jeffrey Ballinger, City Attorney
     Ben Siegel, City Manager

DATE: February 16, 2016

SUBJECT: Authorize Staff to Commence Process to Transition from At-Large Elections to By-District Elections Consisting of Either Five Districts or Four Districts and an Elected Mayor for the November 8, 2016 Municipal Election; and Authorize the City Manager to Enter into Agreement with National Demographics Corporation

RECOMMENDATION:

By motion,

That the City Council:

1) Authorize staff to commence the process to transition from at-large elections to by-district elections for the November 8, 2016 election, consisting of either five (5) districts or four (4) districts and an elected Mayor; and,

2) Bring back to the City Council for approval a mapping process that includes no less than three (3) community forums; and,

3) Authorize the City Manager to enter into an Agreement with National Demographics Corporation to provide demographic services in connection with the establishment of by-district elections in an amount not to exceed $50,000.

EXECUTIVE SUMMARY:

The City Council, upon receipt of correspondence from Shenkman & Hughes, dated December 16, 2015, and after consultation with the City Attorney, has determined that it is in the City of San Juan Capistrano's best interest to transition the City Council's election process from at-large elections to by-district elections for the November 8, 2016, Municipal Election. Under a recent amendment to the California Government Code, the City Council has authority to adopt an ordinance requiring that the City Council be elected by district, or by district with an elective mayor, without submitting the ordinance to the voters for approval, if the ordinance is enacted in furtherance of the purposes of the California Voting Rights Act (Elections Code §§ 14025, et seq.; hereinafter the "CVRA").
Staff is recommending that the City Council authorize staff to commence the process of transitioning the council election process to by-district elections, including establishing a process for determining the district boundaries, which includes no less than three (3) public forums to engage the voters of the city in the district boundary mapping process. Additionally, staff is requesting that the City Manager be authorized to enter into an Agreement with National Demographics Corporation, in an amount not-to-exceed $50,000, in order to assist staff in establishing and implementing a community engagement process, providing demographic support, and preparing district maps to be presented to the City Council for consideration.

DISCUSSION/ANALYSIS:

The members of the City Council are currently elected through an at-large election system, which means that the electors from the entire city vote for the council members. In December 22, 2015, the City Council received correspondence from Shenkman & Hughes, alleging that the City of San Juan Capistrano's at-large election system has resulted in "racially polarized" voting, which is defined in the CVRA as, "voting in which there is a difference...in the choice of candidates of 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 § 14026(e). The correspondence further stated, among other things, that if the City Council did not voluntarily change its election system to a by-district system, a lawsuit would be filed against the City under the CVRA. In a by-district election system, the City Council candidate must reside within an election district that is a divisible part of the City and is elected only by voters residing within that election district. Although the City Council had agendized the matter in closed session and representatives from Shenkman & Hughes were aware that the matter was under review by the City Attorney, on January 27, 2016, an action was filed against the City by Shenkman & Hughes on behalf of the Southwest Voter Registration Education Project and two (2) individual residents alleging that the City’s at-large election system violates the CVRA.

According to recent census data Latinos comprise roughly 40% of the population of San Juan Capistrano. Additionally, for at least the last five (5) elections cycles, no Latino has been elected to the San Juan Capistrano City Council. While not dispositive, these facts are relevant to determining whether racially polarized voting exists.

There have been a number of cities throughout the state, including in Orange County, faced with similar claims of racially polarized voting in violation of the CVRA, and threats of litigation if the city does not voluntarily change its election system from an at-large system to a by-district election system. Given the low threshold which must be met in order to establish a valid claim under the CVRA and the cost to the city of defending such actions, most cities have elected to initiate the process to change from an at-large to a by-district election system in order to avoid costly litigation.
Prior to January, a city could not change its election system from at-large to by-district elections without approval by the voters of the city. Effective January 1, 2016, however, Government Code § 34886 authorizes a City Council of a city with a population of less than 100,000 people to adopt an ordinance that requires the city council to be elected by district or by district with an elective mayor without being required to submit the ordinance to the voters for approval, provided that the ordinance include a declaration that the change in the voting method is being made in furtherance of the purposes of the CVRA. If the City transitions to a by-district election system, that transition cannot result in reducing the term of any incumbent City Council member. (Government Code §34873). Thus, the transition process will include not only the drawing and establishment of district boundaries, but also the sequencing of the elections so that an incumbent’s term is not adversely affected.

After discussing the letter from Shenkman & Hughes in closed session with the City Attorney, the City Council directed that the City Attorney bring this matter back to the City Council for consideration in open session. The City Council may choose one of the following options:

1) Direct the staff to commence the process to change the City Council election system from at-large to by-district elections for the November 8, 2016, Municipal Election, with the creation of five (5) districts;

2) Direct the staff to commence the process to change the City Council election system from at large to by-district elections for the November 8, 2016, Municipal Election with the creation of four (4) districts with an elective Mayor; or

3) Take no action to change the city council election system.

If the City Council determines to take either options 1 or 2 above, staff recommends that the process of creating the district maps to present to the City Council for approval include no less than three community forums so that the voters of the City can have meaningful input in the district mapping process. Once a mapping process is developed, staff can bring that process back to the City Council for approval.

Staff also recommends that the City Manager be authorized to enter into an Agreement with National Demographics Corporation ("NDC") to assist the City in the transition process. NDC has substantial experience in assisting cities throughout the state with the transition from at-large to by-district elections. Closer to home, NDC assisted the Capistrano Unified School District in moving from at-large to by-district elections, and, therefore, is very familiar with the demographics of the City. Attached to this staff report is the Curriculum Vitae of NDC President Douglas Johnson (Attachment 1), who would be primarily responsible for working with staff and the City Attorney on this process.
Although Mr. Johnson estimates that the cost to assist with the districting process could run close to $39,000, depending on the process ultimately selected by the City Council, staff is recommending that the City Manager be authorized to enter into an Agreement with NDC for an amount not-to-exceed $50,000 to account for any contingencies in the work to be performed.

ATTACHMENTS:

Attachment 1 - Curriculum Vitae of Douglas Johnson, National Demographics Corporation.
Douglas Mark Johnson

P.O. Box 5271 mobile: (310) 200-2058
Glendale, CA 91221 office: (909) 624-1442
djohnson@NDResearch.com fax: (818) 254-1221

Employment
President, National Demographics Corporation, 2006 – present.
Fellow, Rose Institute of State and Local Government, 2001 – present.
Project Manager and Senior Manager at three internet startup companies, 1999 – 2001.

Education
Claremont Graduate University, Ph.D. in Political Science, 2015. Dissertation: “Independent
Redistricting Commissions: Hopes and Lessons Learned.”
UCLA Anderson Graduate School of Management, MBA, 1999.
Claremont McKenna College, BA in Government (Political Science), 1992.

Academic Honors
Graduated Cum Laude from Claremont McKenna College.
Phi Beta Kappa. Philip Roland Prize for Excellence in Public Policy.

Publications and Articles
Los Angeles Times Opinion Articles:
“A neighbor’s help on redistricting” June 24, 2007.
“A Trojan horse primary for the GOP” February 25, 2007.
“Where a porn palace stood” (article on redevelopment), July 30, 2006.
Restoring the Competitive Edge: California’s Need for Redistricting Reform and the Likely
Latinos and Redistricting: "Californios For Fair Representation” and California Redistricting in

Speaker or Panelist
California School Board Association Annual Education Conference panelist: “The California
Associated Cities of California – Orange County, Keynote Speaker, Newly Elected Officials’
California League of Cities, City Manager Department, 2015 Department Meeting: “Opportunity to
California League of Cities, City Clerk Department, 2014 Annual Meeting: “Whose Line Is It
Anyway: Making the transition from at-large to by-district elections.” September 3, 2014.
National Conference of State Legislatures, Redistricting and Elections Standing Committee: 2007
Spring Forum, "The Arizona Independent Redistricting Commissions’ experiences with the
first-ever independent redistricting."
National Conference of State Legislatures, Redistricting and Elections Standing Committee: 2008
Spring Forum, "Communities of Interest In Redistricting: A Practical Guide."
Douglas Mark Johnson

National Conference of State Legislatures, Redistricting and Elections Standing Committee: 2009 Fall Forum, "The Key to Successful Redistricting."

National Conference of State Legislatures, Redistricting and Elections Standing Committee: 2010 Spring Forum, "Communities of Interest in Redistricting: A key to drawing 2011 plans (and for their defense)."

National Conference of State Legislatures, Redistricting and Elections Standing Committee: 2011 Winter Forum, "Citizen Voting Age Data from a line-drawer's viewpoint."

Luncheon Keynote Speaker, Santa Barbara’s Channel Cities Club, "California’s next experiment independent, public redistricting," January 18, 2011.


Arizona Election Law 2010 Continuing Legal Education Conference, "Communities of interest and technology in redistricting," sponsored by the Arizona State Bar Association, March 2010

California’s New Independent Redistricting Commission, sponsored by the Irvine Foundation and the California Redistricting Collaborative, December 15, 2009


Building a National Reform Movement, Salt Lake City, Utah, 2006, conference on redistricting reform hosted by the League of Women Voters, Campaign Legal Center, and The Council for Excellence in Government

Texas Tech University, “A Symposium on Redistricting,” May, 2006

California League of Cities, "Introduction to the California Voting Rights Act."

Voices of Reform, a project of the Commonwealth Club of San Francisco: multiple forums on redistricting and / or term limits, 2006 – 2007

Classroom speaker at Pepperdine University, the University of La Verne, Pomona College and Claremont McKenna College

Racial Bloc Voting Consulting

Extensive experience with all racial bloc voting statistical methods: homogeneous precinct analysis, Ordinary Least Squares (OLS) regression, Weighted OLS, Seemingly Unrelated Regression (SUR) and EZ1 ecological inference analysis.

Attorney-client privilege bars the listing of most of NDC’s specific clients, but NDC has performed racial bloc voting analysis for clients of the following law firms:

Law firm of Nielsen, Merksamer, Parrinello, Gross & Leoni:

- Compiled and analyzed data for over 120 different jurisdictions facing voting rights litigation;

Law firm of Lozano, Smith:

- Performed/performing analysis of racial bloc voting in 4 separate jurisdictions.

Law firm of Atkinson, Andelson, Loya, Ruud & Romo:

- Performed/performing analysis of racial bloc voting in 3 separate jurisdictions.

Law firm of Dooley, Herr & Pelzter

- Performed racial bloc voting analysis of 7 elections in 4 different election years. Also advised attorneys on rebuttal of plaintiff’s racial bloc voting analysis.
Douglas Mark Johnson

Districting/Redistricting Clients

States
Arizona Independent Redistricting Commission
Florida State Senate
New Jersey Redistricting Commission

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Community College Districts

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Water, Irrigation & Conservation Districts

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County Offices of Education

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<td>San Joaquin County</td>
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School Districts
Alpine Union
Alpine Union Elementary
Alta Vista
Bakersfield City Schools
Bonsall Union Elementary
Borrego Springs Unified
Buena Park Elementary
Burton Elementary
 Cajon Valley Union
Cajon Valley Union Elementary
Calistoga Joint Unified
Capistrano Unified
Capistrano Unified School District
Cardiff Elementary
Carlsbad Unified
Caruthers
Cayucos
Centinela Valley
Central Unified
Centralia Elementary
Chula Vista Elementary
Chula Vista Elementary
Clay Elementary
Clovis Unified
Coalinga-Huron
Coronado Unified
Dehesa Elementary
Del Mar Union Elementary
Dinuba Unified
Eastern Sierra Unified
Eastside Union Elementary
Elk Grove Unified
Encinitas Union Elementary
Escalon Unified
Escondido Union Elementary
Escondido Union High
Exeter Elementary
Exeter High
Exeter Unified
Fallbrook Union Elementary
Fallbrook Union High
Firebaugh-Las Deltas Unified
Fresno Unified
Fullerton Union High
Glendale Unified
Greenfield
Grossmont Union High
Hughson Unified
Jamul-Dulzura Union Elementary
Julian Union Elementary
Julian Union High
Kerman Unified
Kern High
Keyes Union
Kings Canyon Unified School District
Kings River
Kingsburg Elementary
Kingsburg High
La Mesa-Spring Valley
Lake Elsinore
Lakeside Union Elementary
Lakeside Union School
Lancaster Elementary
Lemon Grove Elementary
Lindsay Unified
Lucia Mar
Madera Unified
Magnolia Elementary
Merced Union High School District
Modesto City Schools
Modoc Unified
Monson Soltana
Morgan Hill Unified
Mountain Empire Unified
Napa Valley Unified
National Elementary
Newhall Elementary
Newman Crows Landing
Oak Grove Elementary School District
Oceanside Unified
Pacific Union
Panama Buena Vista
Pasadena Unified
Pixley Union
Pleasant View
Pomona Unified
Porterville
Poway Unified
Ramona Unified
Rancho Santa Fe Elementary
Richland School District
Riverbank
Riverdale Unified
Salida Union
San Diego Union High
San Marcos Unified
San Pasqual Union Elementary
San Ysidro Elementary
Santee Elementary
Selma Unified
Solana Beach Elementary
South Bay Union
Spencer Valley Elementary
Strathmore Elementary
Sundial Union Elementary
Sweetwater Union High
Tulare City Elementary
Tulare City High
Tulelake
Turlock Unified
Twin Rivers Unified
Vallecitos Elementary
Valley Center Pauma Unified
Visalia Unified
Vista Unified
Walnut Valley Water
Warner Unified
Washington Union
Waterford Union
Whittier Union High
Woodlake Union
Douglas Mark Johnson

Other Special Districts
Jurupa Community Service District
Kings River Conservation District
Tulare Health Care District
Westside Community Health Care District