

**CITY OF SAN MATEO**  
**City Council Regular Meeting**  
**June 21, 2021**  
**7:00 PM**



**COUNCIL MEMBERS**  
Eric Rodriguez, Mayor  
Rick Bonilla, Deputy Mayor  
Joe Goethals  
Amourance Lee  
Diane Papan

## **AGENDA ITEM**

**DUE TO THE STATE OF CALIFORNIA'S DECLARATION OF EMERGENCY – THIS MEETING IS BEING HELD  
PURSUANT TO AUTHORIZATION FROM  
GOVERNOR NEWSOM'S EXECUTIVE ORDERS –  
CITY COUNCIL AND COMMISSION MEETINGS ARE NO LONGER OPEN TO IN-PERSON ATTENDANCE.  
ANYONE CAN WATCH AND PROVIDE COMMENTS REMOTELY IN THE WAYS  
DESCRIBED AT THE END OF THE AGENDA.**

To join via Zoom – click here: [June 21, 2021 Zoom Meeting](#)

To join via telephone: (408) 638-0968

Conference ID: 856 9863 2450 Passcode: 394052

**25. Transition to Elections By District – Resolution of Intention**

Adopt a Resolution to declare the City Council's intention to transition from at-large to by-district elections pursuant to California Elections Code Section 10010; adopt a Resolution to appropriate \$150,000 from the available fund balance in the General Fund to the City Clerk's operating budget for fiscal year 2021-22 for purposes of funding a demographer study and public outreach for the move to elections by district; and adopt a revised City Council Meeting calendar to add back the July 6, 2021 and August 2, 2021 regular meetings to the calendar.



# CITY OF SAN MATEO

City Hall  
330 W. 20th Avenue  
San Mateo CA 94403  
[www.cityofsanmateo.org](http://www.cityofsanmateo.org)

## Agenda Report

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Agenda Number: 25

Section Name: {{section.name}}

File ID: {{item.tracking\_number}}

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**TO:** City Council

**FROM:** Drew Corbett, City Manager

**PREPARED BY:** Patrice Olds, City Clerk  
Prasanna Rasiah, City Attorney

**MEETING DATE:** June 21, 2021

**SUBJECT:**  
Transition to Elections By District – Resolution of Intention

### RECOMMENDATION:

Adopt a Resolution to declare the City Council's intention to transition from at-large to by-district elections pursuant to California Elections Code Section 10010; adopt a Resolution to appropriate \$150,000 from the available fund balance in the General Fund to the City Clerk's operating budget for fiscal year 2021-22 for purposes of funding a demographer study and public outreach for the move to elections by district; and adopt a revised City Council Meeting calendar to add back the July 6, 2021 and August 2, 2021 regular meetings to the calendar.

### BACKGROUND:

On May 24, 2021, the City of San Mateo received a certified letter from attorney Scott J. Rafferty, alleging that the City's current at-large election system violates the California Voting Rights Act (CVRA) (Elections Code §§ 14025-14032) (Attachment 3).

Under its Charter, San Mateo employs an at-large elections system. This means that voters of the entire City elect the five Council Members. An election "by-district" is one in which the City is divided into separate districts, each with one Council Member who resides in the district and is chosen by the voters in that district.

The CVRA applies to jurisdictions with "at-large" elections. Many dozens of cities and other public agencies in California have been sued under the CVRA. The threshold to establish liability under the CVRA is extremely low, and prevailing CVRA plaintiffs are guaranteed to recover their attorneys' fees and costs. With the exception of one case still being litigated, all public entities that have tried to contest the conversion to elections by district have either lost or have agreed to make the transition. In either instance, these jurisdictions have paid at least a portion of the plaintiff's attorney's fees and costs. Further, those cities that have litigated CVRA cases have paid millions of dollars in fees and were still forced to transition to by-district elections.

Many jurisdictions in the Bay Area have received letters claiming a violation of the CVRA. These jurisdictions have either completed or begun the change to by-district elections. These include the County of San Mateo, the cities of Brentwood, Concord, Fremont, Half Moon Bay, Martinez, Menlo Park, Napa, Pacifica, Redwood City, Richmond, San Bruno, San Rafael, Santa Clara, Santa Rosa, and South San Francisco; Redwood City School District, San Mateo Union High School District, Sequoia Union High School District, and the San Mateo County Harbor District. The San Mateo – Foster City Elementary School District also recently received a CVRA letter from Mr. Rafferty on May 11, 2021.

Cities that have contested the transition to elections by district have paid the following in plaintiff's attorney's fees before either settling or losing in court:

- City of Palmdale: \$4.7 million (plus reportedly \$2 million in their own legal fees)
- City of Santa Clara: \$3.1 million
- City of Anaheim: \$1.1 million
- City of Whittier: \$1 million
- City of Santa Barbara: \$600,000

While the City of Santa Monica prevailed in the trial court and in the Court of Appeal in its CVRA litigation, that case is currently on appeal before the California Supreme Court, and the cost to Santa Monica is reportedly more than \$20 million.

#### CVRA Process and “Safe Harbor”

State law provides a “safe harbor” to protect agencies from litigation. Under the Elections Code, a public agency can adopt a resolution of intention to change to a by-district system of elections. The resolution must be adopted within 45 days after the receipt of a letter from that prospective plaintiff alleging a CVRA violation. A prospective plaintiff may not bring a CVRA lawsuit within 90 days after passage of the resolution. This allows the City to determine and adopt a district map on its own rather than through a court order. If the agency completes the transition process within 90 days after the adoption of that initial resolution, the plaintiff’s attorney’s fees would remain capped at \$30,000, which is adjusted by the CPI.

Staff has prepared a draft Resolution of Intention for establishing and implementing by-district elections for City Council consideration. The recommendation to approve the resolution is not based on any admission or concession that the City would ultimately be found to have violated the CVRA. Rather, the public interest may be ultimately better served by voluntarily transitioning to district-based elections due to the uncertainty of litigation to defend against a CVRA lawsuit and the potentially extraordinary cost of such a lawsuit, even if the City were to prevail.

The proposed resolution outlines the City’s intention to transition from an at-large to district-based elections, specific steps it will undertake to facilitate this transition, and an estimated timeframe for doing so is contained in Exhibit A to the resolution. Exhibit A includes two timelines – one using the standard CVRA timeline and one alternate if an extension is agreed to by the potential plaintiff. The proposed standard schedule envisions City Council adoption of an election district map and election sequence on or before September 7, 2021, followed by the first by-district City Council election in November 2022.

#### How a CVRA Violation is Established

A violation of the CVRA is established if it is shown that racially polarized voting occurs in elections (Elections Code §14028(a)). “Racially polarized voting” occurs where there is a difference in the choice of candidates (or other electoral choices) preferred by voters in a protected class, as compared to the rest of the electorate (Elections Code §14026(e)). A plaintiff does not need to show discriminatory intent on the part of the City. Under the CVRA, an at-large election system cannot be imposed in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or abridgement of the rights of voters who are members of a protected class (Elections Code §14027).

#### *Rafferty Arguably Does Not Substantiate a CVRA Violation*

In Mr. Rafferty’s letter, he claims that there is a chronic absence of minority candidates and that this constitutes a CVRA violation, and further argues that moving to district elections will boost the turnout of minority voters. He then presents the results of Council elections since 2001, with the number and percentage of votes cast. Mr. Rafferty also presents information regarding the participation rate of Latino voters, and states that this group votes differently than the City at large. What the letter does not do however is address the fact that a majority of the Council today are members of minority groups, other than referring to one Council Member in a footnote.

The letter was not accompanied by sufficient evidence to support the claim of a CVRA violation, and the City does not concede to Mr. Rafferty's allegations. However, the sending of this letter is a precursor to the filing of a lawsuit under the CVRA. This letter triggers a very short timeline for the City to act and implement City Council districts to avoid substantial attorneys' fees.

This transition timeline is compressed to meet the requirements of the CVRA. The tight schedule is very challenging, but it is imposed by State law. Following the adoption of a resolution of intent, the CVRA requires that the City Council hold two public hearings to consider the "composition" of districts within thirty days of each other. These two hearings are required before the City Council may consider any draft maps. Next, the City Council must hold at least two additional public hearings during a 45-day period on the map(s) of the districts themselves. The final district map is adopted at a fifth public hearing. The first version of a draft map must be publicly available for at least seven days before consideration at a public hearing, and if a change is made to the draft map at or following a public hearing, the revised map must be available at least seven days before being adopted. In order to meet the standard timeframe Council will need to add back the July and August regular meetings that are usually cancelled to allow for a summer recess. The revised schedule adding back these meetings is contained in Attachment 4.

The ordinance establishing the City Council districts will also assign an election year to each of the districts. If the current five-Council Member system is retained, three of the districts would be assigned a November 2022 election and two districts would be assigned a November 2024 election. This is referred to as the "sequencing" of elections. All current City Council Members will serve as at-large City Council Members until the end of their terms in 2022 and 2024, at which time they would have to run for re-election by-district, if they reside in one of the districts up for election that year, or simply finish their current term and leave the Council. Since each seated Council Member was elected "at-large," until their term expires, they can be serving in an "at-large" capacity and are allowed to live anywhere in the City.

If the City Council adopts the resolution, there will be significant staff time needed to transition to by-district-based elections and to administer the process, including the need for five public hearings and community outreach. The community outreach will include a webpage dedicated to the district election issue that will be updated throughout the process. In addition, City staff would need to determine the timing of an amendment to the City Charter to reflect the change to elections by-district. Charter amendments must be approved by the voters.

Alternatively, the City Council can choose to retain the current at-large City Council election system. It is likely Mr. Rafferty and his client would then initiate a lawsuit under the CVRA to attempt to force the City to convert to by-district elections. If the City were to lose that litigation, a judge would then decide on what district map to impose on the City.

Finally, the City is anticipating that updated information from the 2020 federal Census will be provided in Fall 2021. City staff recommends relying on this updated information rather than current data in order to identify district boundaries. Given the timing of the receipt of this information, City staff will be exploring with Mr. Rafferty how to best achieve this goal while still protecting the City from litigation as it transitions to elections by-district.

### Next Steps

Following the CVRA standard timing, at the July 6, 2021, and July 19, 2021, City Council meetings, the City Council will conduct public hearings to seek public input and provide direction on communities and criteria to be considered while drafting district maps. Either at or following these two hearings, the City Council would be asked to provide direction on whether to proceed with by-district elections (and for how many districts) or to pursue another alternative option. If the City Council continues with by-district elections, draft district maps and proposed election sequencing will be posted to the City website and available at City Hall, and those maps (and any possible new or revised maps) will be discussed at City Council hearings on August 2 and August 16 of 2021, with the preferred map adopted by ordinance by September 7, 2021. The City has retained the services of a demographer firm, Redistricting Partners, to assist the City with preparing draft maps and navigating this process.

**BUDGET IMPACT:**

There are not funds currently budgeted for a transition to district elections. Demography basic services are projected to be \$42,000, with additional modules available for added communication services with that contract. In addition, there will be a need for graphic design, printing, mailing, publishing, translating, interpreting and mapping costs associated with this effort with various vendors and public outreach costs. The total cost for this transition is expected to be \$150,000, which would need to be funded by an appropriation from available fund balance in the General Fund to the City Clerk's fiscal year 2021-22 operating budget.

**ENVIRONMENTAL DETERMINATION:**

This Resolution of Intention and budget appropriation are not projects subject to CEQA, because they are organizational or administrative activities that will not result in direct or indirect physical changes in the environment. (CEQA Guidelines Section 15378(b)(5).)

**NOTICE PROVIDED**

All meeting noticing requirements were met.

**ATTACHMENTS**

Att 1 – Proposed Resolution of Intention with Exhibit A Proposed Schedule

Att 2 – Proposed Appropriation Resolution

Att 3 – Scott J. Rafferty Letter

Att 4 – Revised Council Meeting Calendar

**STAFF CONTACT**

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**CITY OF SAN MATEO**  
**RESOLUTION NO. \_\_\_\_ (2021)**

**DECLARING AN INTENT TO TRANSITION FROM AT-LARGE TO  
BY-DISTRICT COUNCIL MEMBER ELECTIONS UNDER ELECTIONS CODE SECTION 10010**

WHEREAS, under the City Charter of the City of San Mateo (the “City”) members of the City Council are currently elected in “at-large” elections, in which each Council Member is elected by the registered voters of the entire City; and

WHEREAS, on May 24, 2021, the City received a certified letter from attorney Scott J. Rafferty asserting that the City’s at-large council member electoral system violates the California Voting Rights Act (“CVRA”); 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, although Mr. Rafferty’s letter was not accompanied by evidence of the existence of racially polarized voting or evidence supporting the claim of a CVRA violation, the City Council has directed staff to initiate the process to establish by-district elections to avoid costs associated with defending a lawsuit based on the CVRA; and

WHEREAS, the California Legislature has provided a procedure whereby a jurisdiction can expeditiously change to a by-district election system and avoid the high cost of litigation under Elections Code section 10010. Under that procedure, a jurisdiction can limit the amount of its liability to prospective plaintiffs and their attorneys to a maximum amount of approximately \$30,000 for reimbursable expenses and costs (the “safe harbor provision”); and

WHEREAS, the City denies that its at-large election system violates the CVRA or any other provision of law and asserts the City’s election system is legal in all respects. The City further denies any wrongdoing whatsoever in connection with how it has conducted its City Council elections; and

WHEREAS, despite the foregoing, the City Council has determined that the public interest would be served by transitioning to a district-based electoral system because of: (1) the high 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 availability of changing to district elections under the safe harbor provision; and

WHEREAS, California Elections Code section 10010 requires that a City changing to district-based elections under the safe harbor provision do all of the following within 90 days from the date this resolution is approved:

1. Before drawing a draft map or maps of the proposed boundaries of the districts, the political subdivision shall hold at least two public hearings over a period of no more than 30 days, at which the public is invited to provide input regarding the composition of the districts. Before these hearings, the political subdivision may conduct outreach to the public, including to non-English-speaking communities, to explain the districting process and to encourage public participation;
2. After all draft maps are drawn, the political subdivision shall publish and make available for release at least one draft map and, if members of the governing body of the political subdivision will be elected in their districts at different times to provide for staggered terms of office, the potential sequence of the elections. The political subdivision shall also hold at least two additional hearings over a period of no more than 45 days, at which the public is invited to provide input regarding the content of the draft map or maps and the proposed sequence of elections. The first version of a draft map shall be published at least seven 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 days before being adopted;
3. Adopt an ordinance establishing district-based elections pursuant to Elections Code section 10010(a).

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

WHEREAS, the City has retained an experienced demographer to assist the City to develop a proposal for a district-based electoral system.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN MATEO, CALIFORNIA, HEREBY RESOLVES AS FOLLOWS:

1. This Resolution of Intention is not a project subject to CEQA, because it is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment. (CEQA Guidelines Section 15378(b)(5).)
2. The City Council hereby resolves to consider adoption of an ordinance to transition to a district-based election system for use in the City's General Municipal Election for City Councilmembers beginning in November 2022.
3. The City Council directs staff to work with the City's 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, the Federal Voting Rights Act, and all other federal and state laws.
4. The City Council hereby approves the tentative timeline set forth in Exhibit A for conducting a public process to solicit public input and testimony on proposed district-based electoral maps before adopting any such map and transitioning to district elections.

5. The tentative timeline may be adjusted by the City Manager as necessary, especially if an agreement tolling safe harbor deadlines is reached with the plaintiff's attorney to allow additional time for public input or otherwise as appropriate.
6. The City Council directs staff to post information regarding the proposed transition to a district-based election system, including maps, notices, agendas and other information and to establish a means of communication to answer questions from the public.



## Exhibit A - Tentative Timeline

Activity	Estimated Timing	If Extension Agreed to by Potential Plaintiff
Received Demand Letter	5/24/2021	5/24/2021
Launch Districting Website Page	6/17/2021	6/17/2021
Adopt a Resolution of Intention	6/21/2021	6/21/2021
Hold <b>Public Hearing #1</b> to gather input from communities of interest (no draft maps drawn until these are complete)	7/6/2021	8/2/2021
Hold <b>Public Hearing #2</b> to gather input from communities of interest (no draft maps drawn until these are complete)	7/19/2021	8/16/2021
Launch Website for public to submit proposed maps	7/20/2021	8/17/2021
all initial draft maps posted on website at least 7 days prior to next round of public hearings	7/26/2021	9/28/2021
Projected Census Data Release	9/30/2021	9/30/2021
Hold <b>Public Hearing #3</b> to gather public input on draft maps and election sequencing	8/2/2021	10/5/2021
Changes to initial draft maps posted on website at least 7 days prior to next public hearing	8/9/2021	10/25/2021
Hold <b>Public Hearing #4</b> to gather public input on draft maps and election sequencing; and introduce the ordinance to establish district elections	8/16/2021	11/1/2021
Hold <b>Public Hearing #5</b> - Adopt the ordinance and District Map	9/7/2021	11/15/2021
Six Months before the next regular election the ordinance must be adopted	5/2/2022	5/2/2022
First District Election	11/8/2022	11/8/2022

**CITY OF SAN MATEO**  
**RESOLUTION NO. \_\_\_\_ (2021)**

**AUTHORIZING AN APPROPRIATION FOR PAYING FOR SERVICES AND MATERIALS NEEDED TO MOVE FROM AT-LARGE ELECTIONS TO DISTRICT ELECTIONS**

WHEREAS, the adoption of Resolution No. \_\_ (2021) declaring the City's intention to transition from at-large to district-based elections pursuant to California Elections Code Section 10010 was adopted on June 21, 2021; and

WHEREAS, an appropriation of \$150,000 from available fund balance in the General Fund is required to pay for the services and supplies related to district elections.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN MATEO, CALIFORNIA, HEREBY RESOLVES that:

1. This Resolution of Intention and budget appropriation is not a project subject to CEQA, because it is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment. (CEQA Guidelines Section 15378(b)(5).)
2. The Council authorizes the appropriation of \$150,000 of available fund balance in the General Fund to the City Clerk's operating budget for the 2021-22 Budget.

# SCOTT J. RAFFERTY

## ATTORNEY AT LAW

1913 WHITECLIFF COURT  
WALNUT CREEK CA 94596

(202)-380-5525  
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May 19, 2021

'21 MAY 24 1:35PM

Ms. Patrice Olds  
Clerk, City of San Mateo  
330 West 20th Avenue  
San Mateo, CA 94403

VIA CERTIFIED MAIL

Re: Neighborhood Elections for San Mateo City Council

Dear Ms. Olds:

San Mateo's former congressman, the late Don Edwards, was a key author of the Voting Rights Act of 1965. Ten years later, as Chairman of the House Subcommittee on Constitutional Rights, he supported extending the protections of the Act to language minorities, *i.e.*, Asian-Americans, Native Americans, and Latinos. As a result, Congress applied provisions of the Voting Rights Act to four counties in California on the same basis as the seven Southern states that it covered in 1965. But Congressman Edwards surprised civil rights activists when he privately told them that removing barriers to registration was not enough in the case of his home state. While reforms would make it easier for Anglos to vote, he predicted that Latino communities would not be incorporated into local political life until they had candidates from their own neighborhoods to support. He described a vicious cycle in which Latino neighborhoods were neglected by political parties, suppressing the Latino vote up and down the ballot. No one they know runs for office. No one asks for their vote. To increase Latino turnout, it was essential to implement single-member constituencies.<sup>1</sup>

After 1965, the rest of the country voluntarily abolished most at-large elections<sup>2</sup>, but they persisted in California. In the 1980s and 1990s, numerous bills sought to

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<sup>1</sup> Notes of this meeting are in my personal papers at the John F. Kennedy Library, but are not currently accessible due to the pandemic. <https://www.jfklibrary.org/asset-viewer/archives/SRPP>

<sup>2</sup> In 1965, two-thirds of America's largest cities elected at-large. Today, only one retains a pure at-large system. Forty-one state legislatures had multi-member districts. In 1982, the Supreme Court made it difficult to challenge legislatures that selectively used double and triple districts, often to dilute minority influence, by requiring a showing that it was possible to create a "minority-majority district." Today, these hybrid plans persist only in New Hampshire and Vermont, and only because their assemblies are so large single member districts would have less than 3500 constituents.

abolish at-large in all but the smallest jurisdictions, but they faced certain veto by Republican governors. On local government issues, legislators often look to the League of Cities and California School Board Association. These organizations saw no reason for reform, perhaps reflecting memberships that were not very diverse. Only ½ of one percent of school board trustees in the State were Latino when the Legislature finally enacted the California Voting Rights Act (CVRA) in 2001.

Unfortunately, Congressman Edwards' prophecy has proven accurate in San Mateo. The 2020 presidential election was critical to Latino rights and interests. Yet, if census estimates are accurate, less than 50% of adult Latino citizens voted in the most Latino precincts. Latinos often have the large families and significant needs, but they have no dedicated voice on the San Mateo city council or the bodies that govern the schools their children attend.

The time has come for San Mateo to embrace neighborhood elections. San Mateo is now the eighth largest city in California to remain at-large. Its electorate is more sympathetic to minority rights than most of the State, but it is important to incorporate minorities into local political life so they can speak (and vote) for themselves. As Chairman Edwards understood, the need to campaign across the entire city is a formidable barrier to grass-roots candidates from immigrant and minority neighborhoods. On behalf of Latino, Asian, and other minority voters, Neighborhood Elections Now (NEN) is required by Section 10010 to give notice that the election of the city council at-large elections may violate the CVRA, diluting minority voting rights. But we also the Council to make this transition because it is the most democratic system, which will promote competitive elections and ensure representation of the diversity of viewpoints, to the benefit of voters of all races.

#### I. SINGLE-MEMBER DISTRICTS GIVE MINORITIES A DEDICATED VOICE.

Given the repeated failure to enact bills to abolish at-large elections categorically and without regard to race, the Legislature took the approach of modifying the "effects test" in the 1965 federal law to the special circumstances of California.<sup>3</sup> The CVRA dispensed with any requirement that a single minority demonstrate a majority of voters

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<sup>3</sup> At least until the beginning of this century, few white voters in the South supported Black candidates. Even fewer Black voters supported a white candidate when a Black was running. California politics were not so Black and white. There are many minorities in California, and they were used to forming coalitions. Anglos had a long tradition of supporting Latino candidates who were not the preference of the Latino community. In the 1990s, a young Abel Maldonado campaigned on the basis that voting for him would show that Santa Maria was "not racist" and help get a federal Voting Rights Act dismissed.

in a possible single-member district. It was also unnecessary to show that “white bloc voting” achieved the “usual defeat” of the minority-preferred candidate. All that was required was a showing that a minority group voted differently than the rest of the electorate. Elections Code, Section 14026(e). It is sufficient to demonstrate RPV using ballot questions that affected the rights and interests of the minority. Since racial and ethnic minorities, as a group, have different life experiences, values, needs, and priorities, “racially polarized voting” (RPV) is a nearly universal phenomenon.

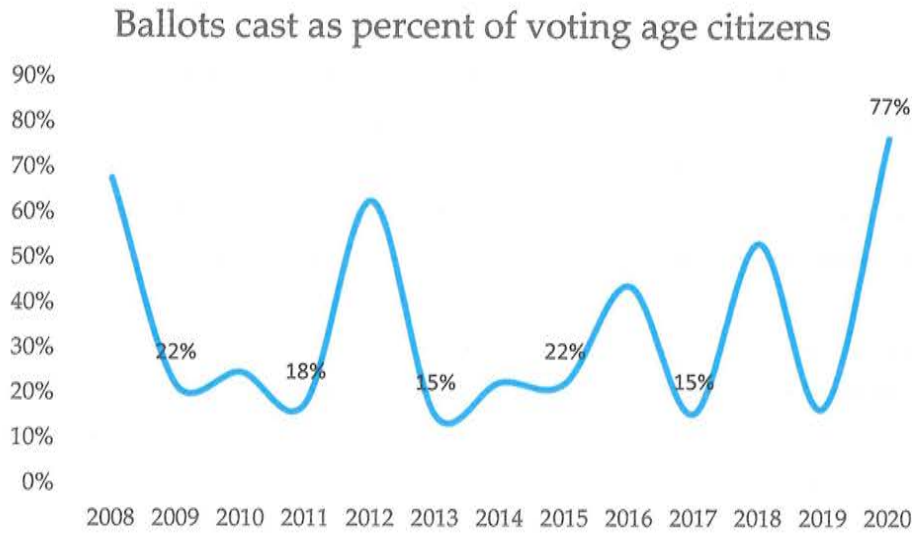
Districting equalizes the voting power of minority neighborhoods. RPV is demonstrated by the statistical correlation between election results by precincts and the minority’s share of voters in that precinct. In racially homogenous jurisdiction, where the minority vote share in every precinct is exactly the same, RPV cannot be demonstrated even if individual Latinos do vote differently than non-Latinos, nor would districting be an effective remedy. San Mateo is not such a case. If Latinos do share voting behaviors that are distinct from the at-large majority, a single high-Latino district improves representation for Latinos throughout the city. Eliminating winner-take-all slates makes the council more representative of all constituencies. Philosophical minorities and common interests (such as renters) are likely to have more concentrated influence in one of the districts. Without a dedicated voice, the interests of these communities may be unable to influence public policy.

## II. UNTIL 2020, A VERY SMALL PERCENTAGE OF ELIGIBLE VOTERS CHOSE THE CITY COUNCIL.

Until they were consolidated the statewide general in November of even years, only 15-25% of eligible voters even cast ballots in city elections. Anglo turnout falls in gubernatorial years, but nowhere near as much as Latino turnout.<sup>4</sup> Although there is no official tabulation of the ethnicity of voters in odd-year elections, the impact is likely even more dramatic. These small groups of voters were almost certainly disproportionately white and Anglo.

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<sup>4</sup> For this reason, A.B. 350 amended Section 10010(b) to require minority districts to elect in the presidential year. See Senate floor statement, August 16, 2016, at 7.



As the following history shows, no council person since 2005 has received more than 9123 votes in a contested election. This is only 14% of the eligible voters.

#### ELECTION RESULTS AND VOTER PARTICIPATION SINCE 2005

			votes	% vote	eligible voters	% eligible voters
2020	DIANE PAPAN		26770	39%	67041	40%
	AMOURENCE LEE		23701	35%	67041	35%
	LISA NASH		17937	26%	67041	27%
2017	JOE GOETHALS		7,018	22%	66537	11%
	RICK BONILLA		6,376	20%	66537	10%
	ERIC RODRIGUEZ		6,266	20%	66537	9%
	CHELSEA BONINI		5,347	17%	66537	8%
	CHARLIE DRECHSLER		2,894	9%	66537	4%
	ROBERT G. NEWSOM JR.		2,314	7%	66537	3%
	MARK DE PAULA		1,143	4%	66537	2%
2015	DIANE PAPAN		9,123	37%	65275	14%
	MAUREEN FRESCHET		8,627	35%	65275	13%
	THOMAS R. MORGAN II		3,991	16%	65275	6%
	KAREN SCHMIDT		2,660	11%	65275	4%
2015 ST	RICK BONILLA		10,580	100%	65275	16%



2015	RICK	BONILLA	appointed			
2013	DAVID G.	LIM	7,675	28%	63642	12%
	JOE	GOETHALS	6,486	23%	63642	10%
	ROBERT	ROSS	6,485	23%	63642	10%
	JOSHUA	HUGG	3,665	13%	63642	6%
	KAREN E.	SCHMIDT	3,407	12%	63642	5%
2011	MAUREEN	FRESCHET	7,412	52%	62900	12%
	JACK	MATTHEWS	6,755	48%	62900	11%
2009	DAVID G.	LIM	7,019	24%	62900	11%
	ROBERT	ROSS	6,103	21%	62900	10%
	BRANDT	GROTTE	5,768	19%	62900	9%
	FREDERICK	HANSSON	5,580	19%	62900	9%
	BERTHA	SANCHEZ	5,218	18%	62900	8%
2007	JOHN	LEE	4,838	26%	62100	8%
	JACK	MATTHEWS	4,739	26%	62100	8%
	BERTHA	SANCHEZ	3,696	20%	62100	6%
	ANNE	ARNOLD	3,040	17%	62100	5%
	PETE	TYO	2,024	11%	62100	3%
2005	JAN	EPSTEIN	13,228	31%	61700	21%
	CAROLE	GROOM	13,164	31%	61700	21%
	BRANDT	GROTTE	11,147	26%	61700	18%
	RON	MAHURIN	5,100	12%	61700	8%
2003	JACK	MATTHEWS	6,271	39%	60900	10%
	JOHN	LEE	5,830	36%	60900	10%
	PETE	TYO	3,913	24%	60900	6%
2001	SUE	LEMPERT	8,227	31%	60100	14%
	CAROLE	GROOM	7,337	27%	60100	12%
	JAN	EPSTEIN	7,074	26%	60100	12%
	PETE	TYO	4,064	15%	60100	7%

Consolidation did not instantly mobilize Latino citizens who had limited experience with voting. The 2020 presidential election was extremely critical to Latino rights and interests. Since there were no close state or federal contests, there were limited appeals urging Latino communities to register and vote. Despite default registration among those who maintain driver's licenses, a third of eligible Latinos in high-Latino neighborhoods do not even register. As a result, less than half of these

Latinos voted even for president in 2020. Unfortunately, this confirms Congressman Edward's prediction. Latinos need neighborhood candidates to incorporate them into the political life of their city and state.

	citizens under 18	ADULT CITIZENS	adult citizens who register	registered voters who cast ballot	true partici- pation rate	1 voter represents
Latinos in Downtown North	167%	100%	64%	76%	48%	3.5 people
Latinos in Village, Southeast	142%	100%	70%	80%	56%	2.5 people
Rest of City including Latinos	130%	100%	88%	89%	78%	1.7 people

Latino voters represent the interests of their entire community. Districting provides a measure of equality to young people and immigrants who are not yet eligible to vote. Their needs are at least as great as those of other citizens, and they deserve the attention of officials elected to serve the entire city. Latino neighborhoods feature large, multigenerational families that include more children and more immigrants, many of whom are not naturalized or even documented. Even without adjusting for non-citizens, each Latino voting in the northern precincts between El Camino and the freeway speaks for twice as many residents as voters elsewhere in the city.

Economic hardship and limited education are often seen as natural causes of low voter participation. But they are also consequences of a political system that is not fully inclusive. The social and economic challenges that immigrant and minority communities face is in part the result of the limited voice and influence they have in the making of public policies. You should empower these needy communities by ensuring that a district gives them a permanent, dedicated voice in local government.

### III. SAN MATEO LATINOS VOTE DIFFERENTLY THAN THE CITY AT-LARGE.

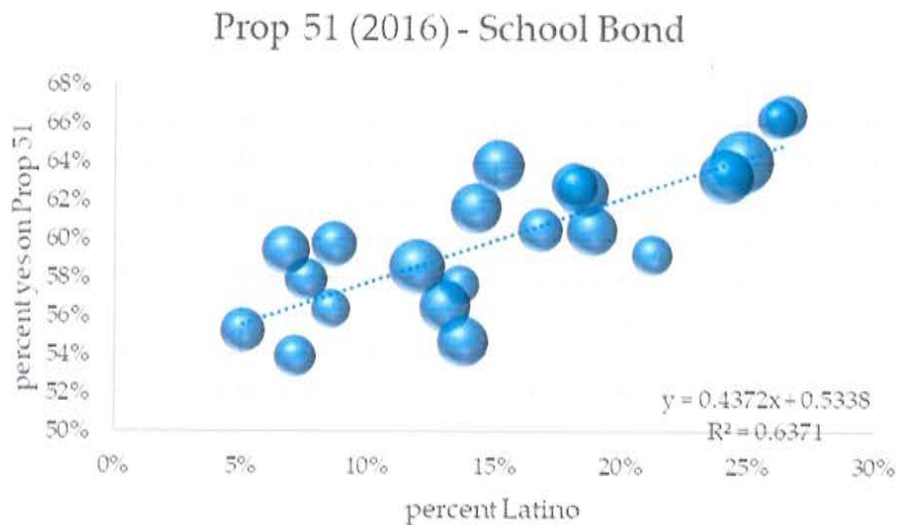
Elections by district is a long-term reform. It is about the rights of all voters to have more competitive elections, not about any particular incumbent or challenger. Those Latinos who do vote have demonstrated that they understand and support their communities' needs to a greater extent than the rest of the electorate. The equality of their political interest is protected by creating districts.

#### A. The 2016 Propositions

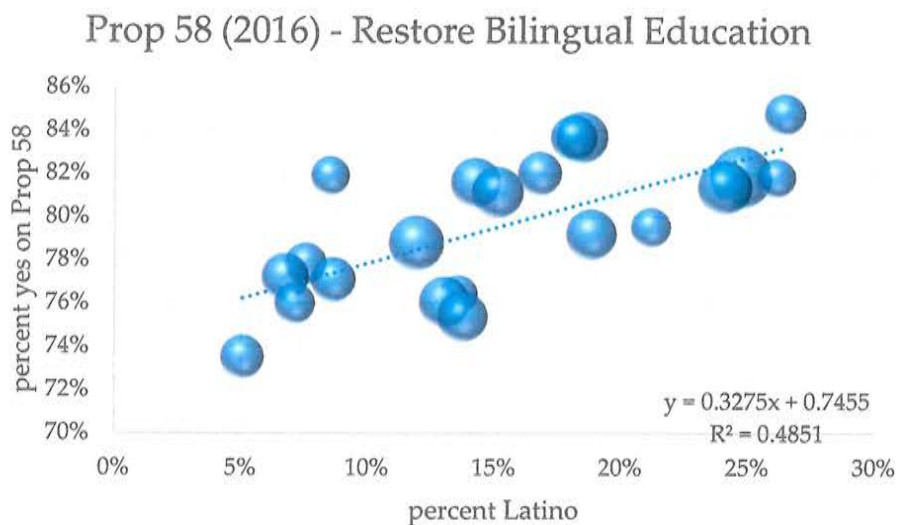
The 2016 statewide ballot questions provide several illustrations of how Latinos vote differently from the rest of the electorate. On a statewide basis, most non-Latinos voted against Prop 51, the \$9 billion statewide bond for schools. It was carried only



because of overwhelming Latino support. Non-Latinos in San Mateo were more favorable; there is 80% confidence that between 53 and 59 percent supported the measure. This does not overlap with the Latino “yes” vote, which was at least 76 percent.

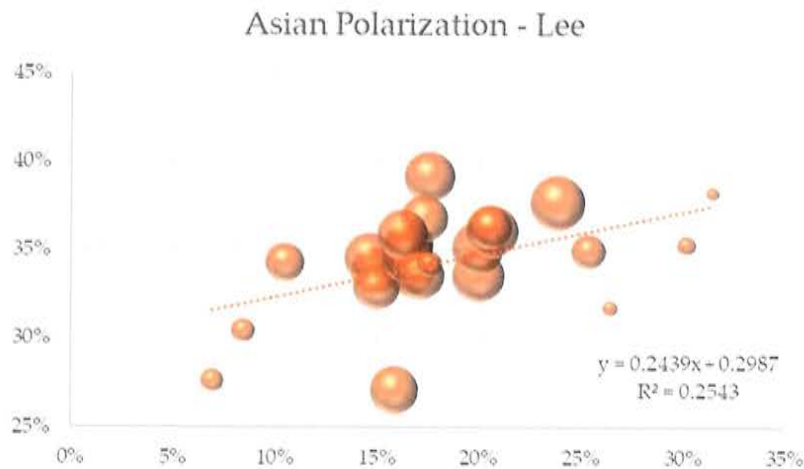
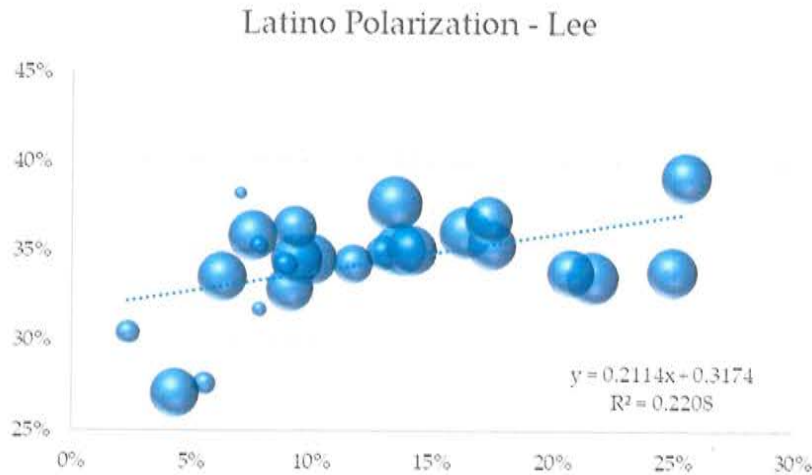


Proposition 58, which eliminated the prohibition on bilingual education, was another issue that affected the interests of the Latino community. Non-Latino support was between 73 and 78 percent. Not surprisingly, Latino support was even higher, no less than 92 percent.



## B. The 2020 City Council Election

The 2020 contest, the first held on the date of the statewide general election, elected a Latino and Asian candidate of choice who lives in a high-Latino neighborhood of North Downtown. Amourence Lee placed second citywide with approximately 54% of the Asian vote and 53% of the Latino vote, but only about 30% of the rest of the electorate.<sup>5</sup>

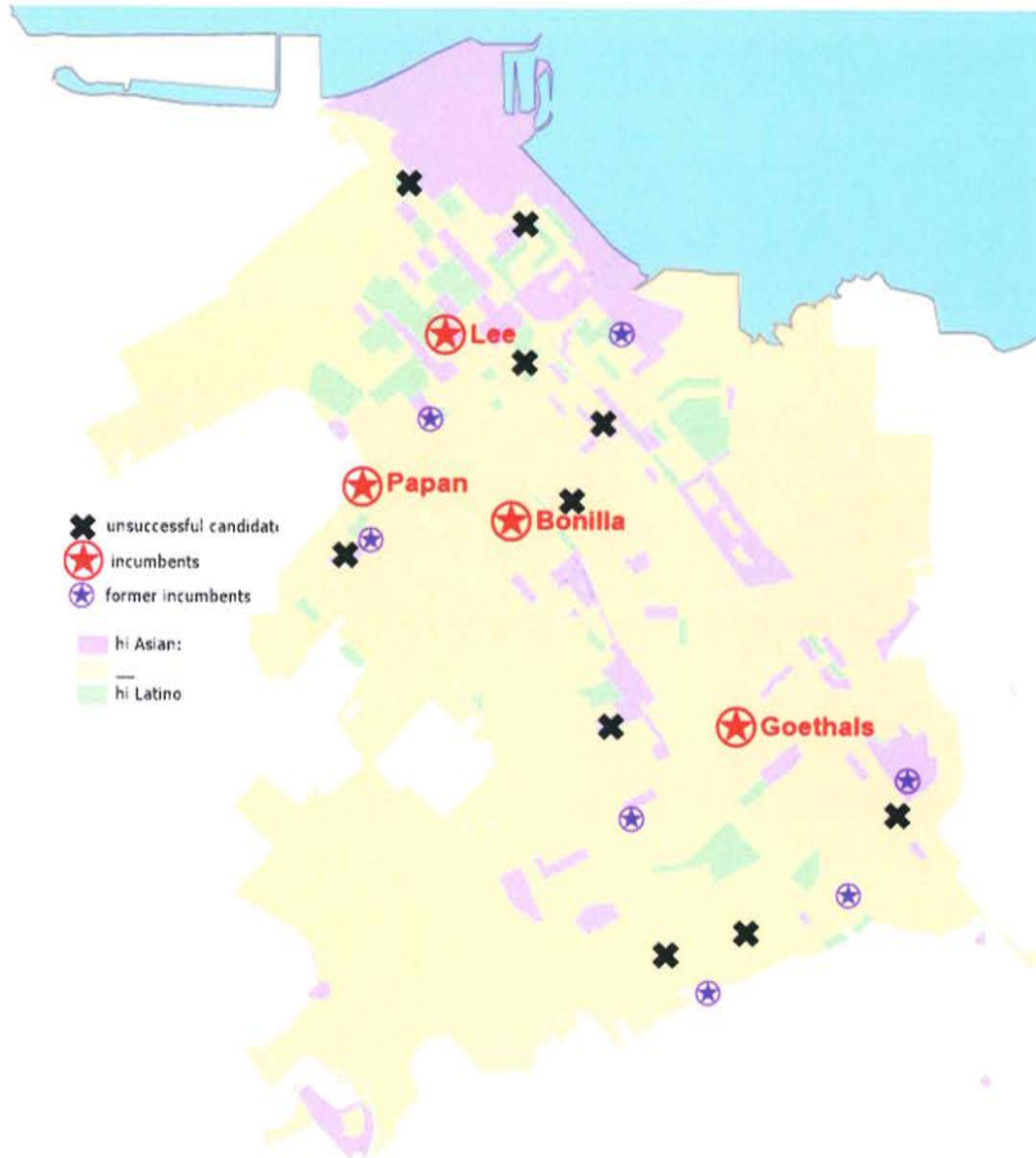


<sup>5</sup> These findings are robust whether precincts are weighted or unweighted. They meet the “no overlap” test set forth in Yumori-Kaku v. City of Santa Clara (2020) 59 Cal. App. 5th 385, 407.

	rest of voters	Asian	Latino	r-squared	T-stat
midpoint	30%	54%			
80% confidence*	27-32%	41-68%		0.22	2.6
midpoint	32%		53%		
80% confidence*	30-33%		40-65%	0.25	2.8
* unweighted					

Although Ms. Lee is not herself Latino, district elections are about voters, not incumbents. She is clearly the Latino candidate of choice, as are some other non-Latino officials. Maxine Waters, Mark Takano, and Steve Bradford all serve majority Latino constituencies.

The remaining council members do not live near each other, but no other incumbent lives near an area where at least 30% of the voters are Latino (green) or 30% are Asian (purple).<sup>6</sup>



<sup>6</sup> The voting address of Mayor Rodriguez could not be determined.

### C. Prior Elections

The chronic absence of any minority candidates of choice is generally sufficient to show dilution of their voting power.<sup>7</sup> Prior to 2020, the Latino community had sponsored only one candidate – the late Bertha Sanchez in 2007 and 2009.

Ms. Sanchez was strongly favored by Latino voters both years, even though she was Filipino and spoke Chinese. In the city as a whole, Asian voters did not polarize in favor of Ms. Sanchez. A possible interpretation is that she did not appeal to Asian voters in precincts in the west of the city.

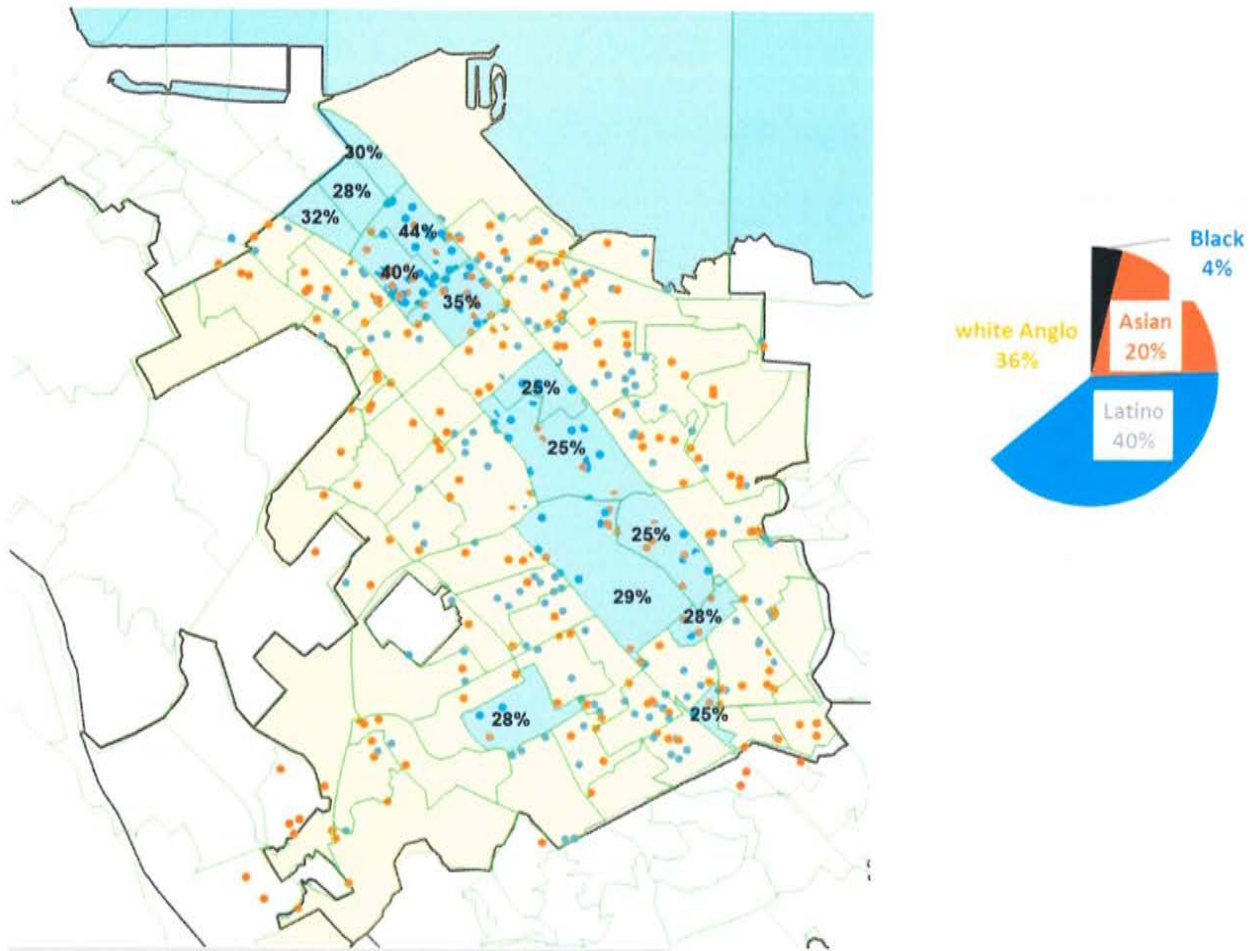
In many cases, the first minority candidate loses every precinct because they are forced to campaign across the entire city and appeal to all its voters. This does not mean that such candidates will not prevail in a district election. But Ms. Sanchez actually carried 13 of 68 precincts in 2007, shown in blue with her share of the vote on the map below. Many of these voters cast only one “bullet” vote, even though two positions were being elected. The precincts she won between El Camino and the freeway include over 25% of the city’s population, so she carried areas large and compact enough to be a district. Each blue dot is 100 Latinos; each orange dot, 100 Asians.

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<sup>7</sup> Member Bonilla was appointed in 2015 and elected unanimously at the election later that year. In 2017, he was supported by Anglos just as strongly as by Latinos. There is no correlation As such, he is not counted as an organic candidate of choice, even if he is highly regarded by the community or supportive of Latino causes.



### Sanchez 2007 Winning Precincts



#### IV. THE COUNCIL SHOULD ALLOW THE PUBLIC TO DEFINE COMMUNITIES OF INTEREST.

A.B. 849 (2019), the FAIR MAPS Act, requires charter cities to use the following criteria in drawing districts:

- Compliance with the Constitution and federal law. This includes “substantial equality” of population, as measured by the census after an adjustment attributes incarcerated persons to their prior domicile.
- Geographic contiguity
- Respecting the integrity of communities of interest and minimizing their division. (Affiliation with parties, incumbents, or candidates may not be considered in defining these communities.)
- Identifiable boundaries, such as streets and natural and artificial barriers.

- Compactness, i.e., not bypassing nearby populations in favor of more distant ones
- Favoring or disfavoring any political party is prohibited.

The public will define the relevant communities of interest at the five required hearings. They may define these communities as they see fit, provided that none favors political parties or is based on support for a specific candidate. The public may find these resources helpful:

- Neighborhoods are one of the essential building blocks, although they can be defined many ways.
  - As named and defined by developers or the real estate industry. See <https://sternsmith.com/communities/san-mateo/>
  - Neighborhood associations recognized by the city. See <https://www.cityofsanmateo.org/DocumentCenter/View/4615/-Map-of-All-HOAs?bidId=>
- Common areas where neighbors congregate, including:
  - School attendance areas <http://www.smfcsd.net/en/about-smfcsd/district-map.html>  
*See also private ratings* <https://www.neighborhoodscout.com/ca/san-mateo/schools> <https://www.greatschools.org/california/san-mateo/schools/> <https://www.niche.com/k12/d/san-mateo-foster-city-school-district-ca/>
  - Common transit sites  
[https://www.cityofsanmateo.org/DocumentCenter/View/55126/ADU\\_IADU-Half-Mile-Radius-of-Public-Transit-Stops?bidId=](https://www.cityofsanmateo.org/DocumentCenter/View/55126/ADU_IADU-Half-Mile-Radius-of-Public-Transit-Stops?bidId=)
  - Libraries, community centers, pools  
<https://www.cityofsanmateo.org/574/Community-Centers-and-Pools>  
<https://www.cityofsanmateo.org/514/Locations-Hours>
  - Shopping areas  
[https://www.yelp.com/search?cflt=shoppingcenters&find\\_loc=San+Mateo%2C+CA](https://www.yelp.com/search?cflt=shoppingcenters&find_loc=San+Mateo%2C+CA)
  - Community based organizations  
<https://census.ca.gov/wp-content/uploads/sites/4/2019/09/CA-CENSUS-Community-Based-Organizations-and-Sector-Contacts.pdf>
- Similar housing values and characteristics  
<https://www.questrealestate.com/SanMateoMap>  
[https://www.zillow.com/homes/San-Mateo,-CA\\_rb/](https://www.zillow.com/homes/San-Mateo,-CA_rb/)  
<https://bestneighborhood.org/best-neighborhoods-san-mateo-ca/>



- Common demographics <http://www.bayareacensus.ca.gov/small/small.htm>  
<https://www.neighborhoodscout.com/ca/san-mateo/demographics>  
<https://statisticalatlas.com/county/California/San-Mateo-County/Race-and-Ethnicity>
- Zoning and land use <https://www.cityofsanmateo.org/1125/Planning-Maps>
- Communities can be defined by the hazards they face, including:
  - Crime rates, as shown on the police department's map  
<https://smpd.crimegraphics.com/2013/default.aspx> or private tabulations  
<https://www.neighborhoodscout.com/ca/san-mateo/crime>  
<https://www.city-data.com/crime/crime-San-Mateo-California.html>
  - Seismic hazards <https://planning.smcgov.org/documents/san-mateo-county-hazards-earthquake-liquefaction-shaking>
  - Flood zone  
<https://www.cityofsanmateo.org/DocumentCenter/View/50821/Preliminary-Flood-Insurance-Rate-Map-Feb-2017?bidId=>
  - Wildfire hazard <https://planning.smcgov.org/documents/san-mateo-county-hazards-california-state-fire-severity-zones>
- School trustee areas. Allowing the high-minority district and high-minority trustee areas for the elementary and high school districts to coincide may enable the community to slate candidates of choice. Otherwise, the school likely has different priorities in setting its boundaries.
- Special district boundaries. No legislative or congressional boundary splits the district. The city's interests probably differ from those appropriate in setting the boundaries of other local jurisdictions. The city should not optimize around following precinct boundaries, except possibly to avoid any very small deviations that would create an additional "micro-precinct" unnecessarily.

Additional geographic data may be found at the following official sources:

<https://isd.smcgov.org/gis> (county)

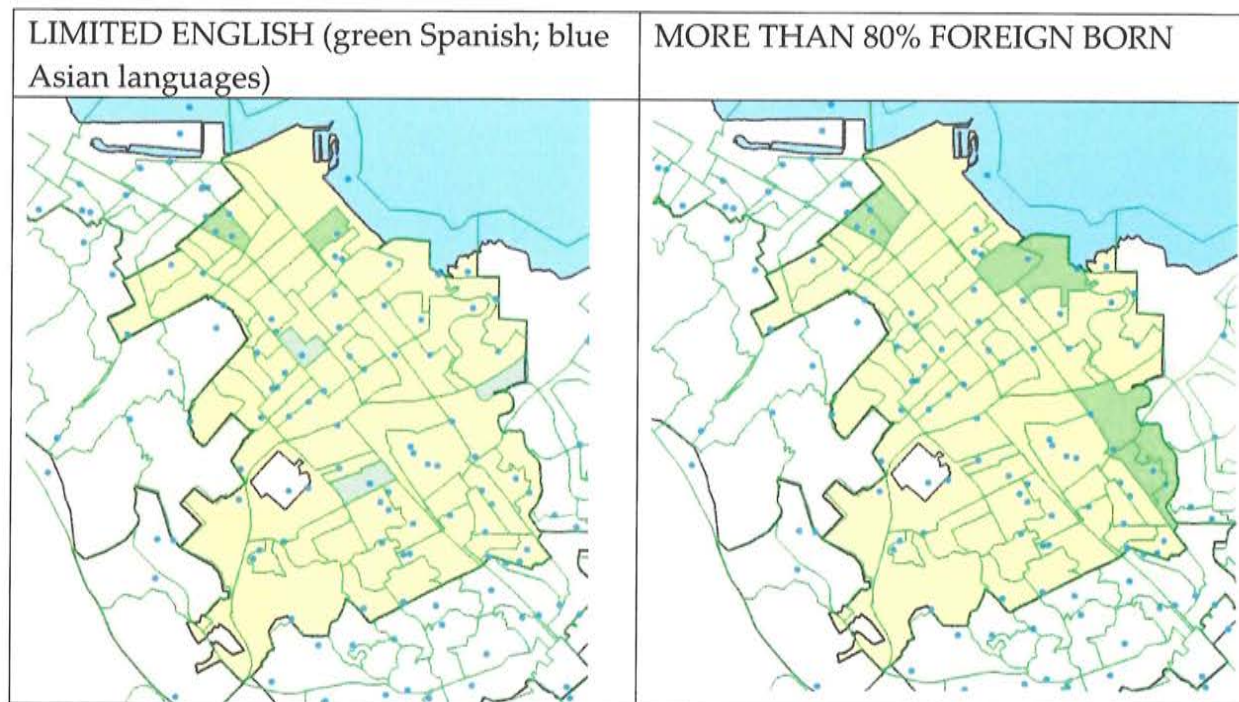
<https://abag.ca.gov/tools-resources/data-tools> (Assoc. Bay Area Governments)

<https://arcg.is/0uz5bv> (state)

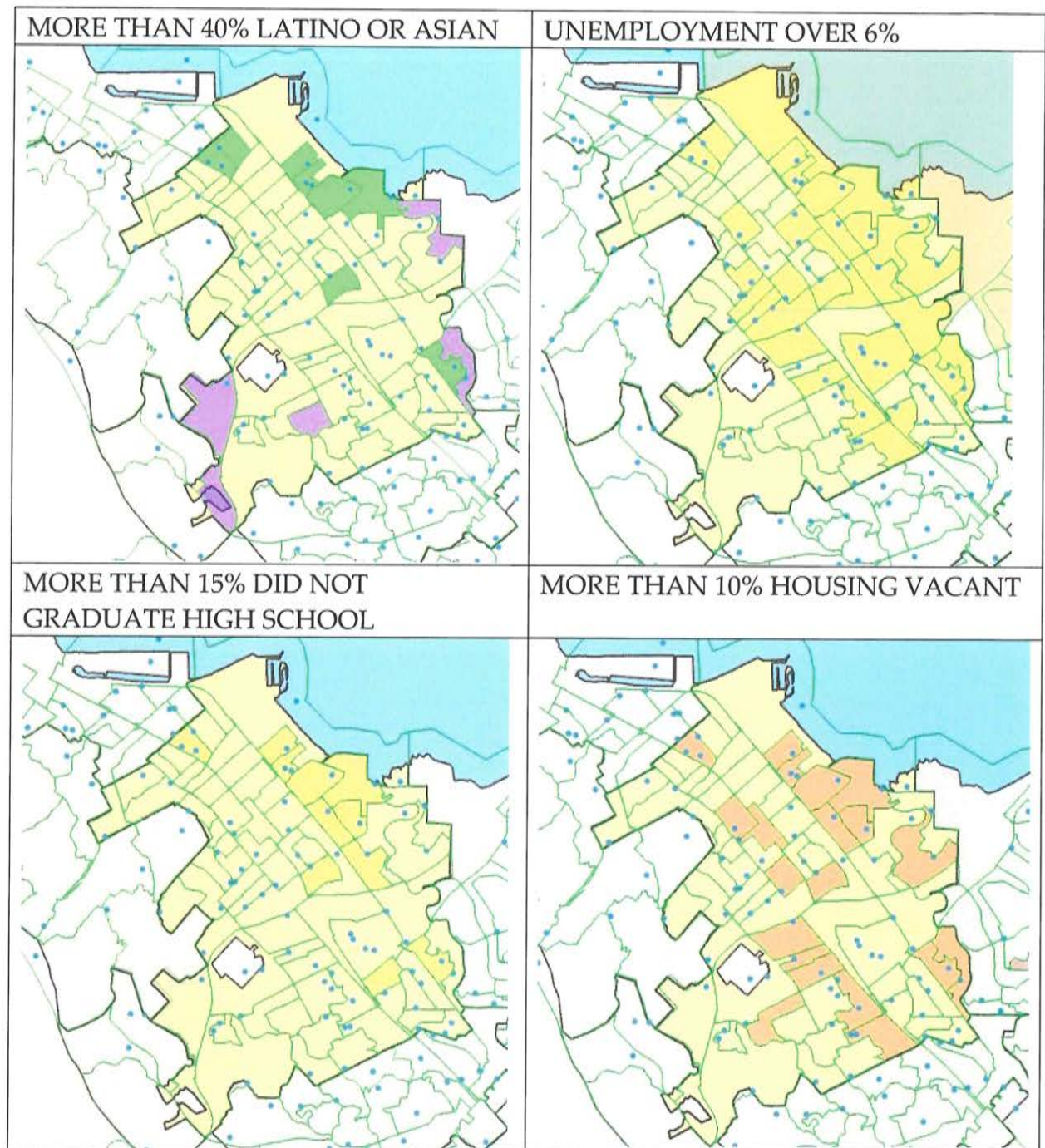
V. THE CITY SHOULD ENSURE THAT AT LEAST ONE DISTRICT EMPOWERS NEEDY COMMUNITIES OF INTEREST WITH LOW RATES OF PARTICIPATION.

The first priority of districting should be to ensure that those who have not been fully represented as a result of the at-large system have a permanent, dedicated voice on the council. The communities with the greatest need are often those least visible to government and least effective at advocating at council meetings. High concentrations of children and immigrants increase these needs, which is why districts are apportioned by total population. If a corner of the city has one-fifth of the population, but only 5% of the active voters, they still deserve one-fifth of the attention of the council and one-fifth of the influence over decision-making.

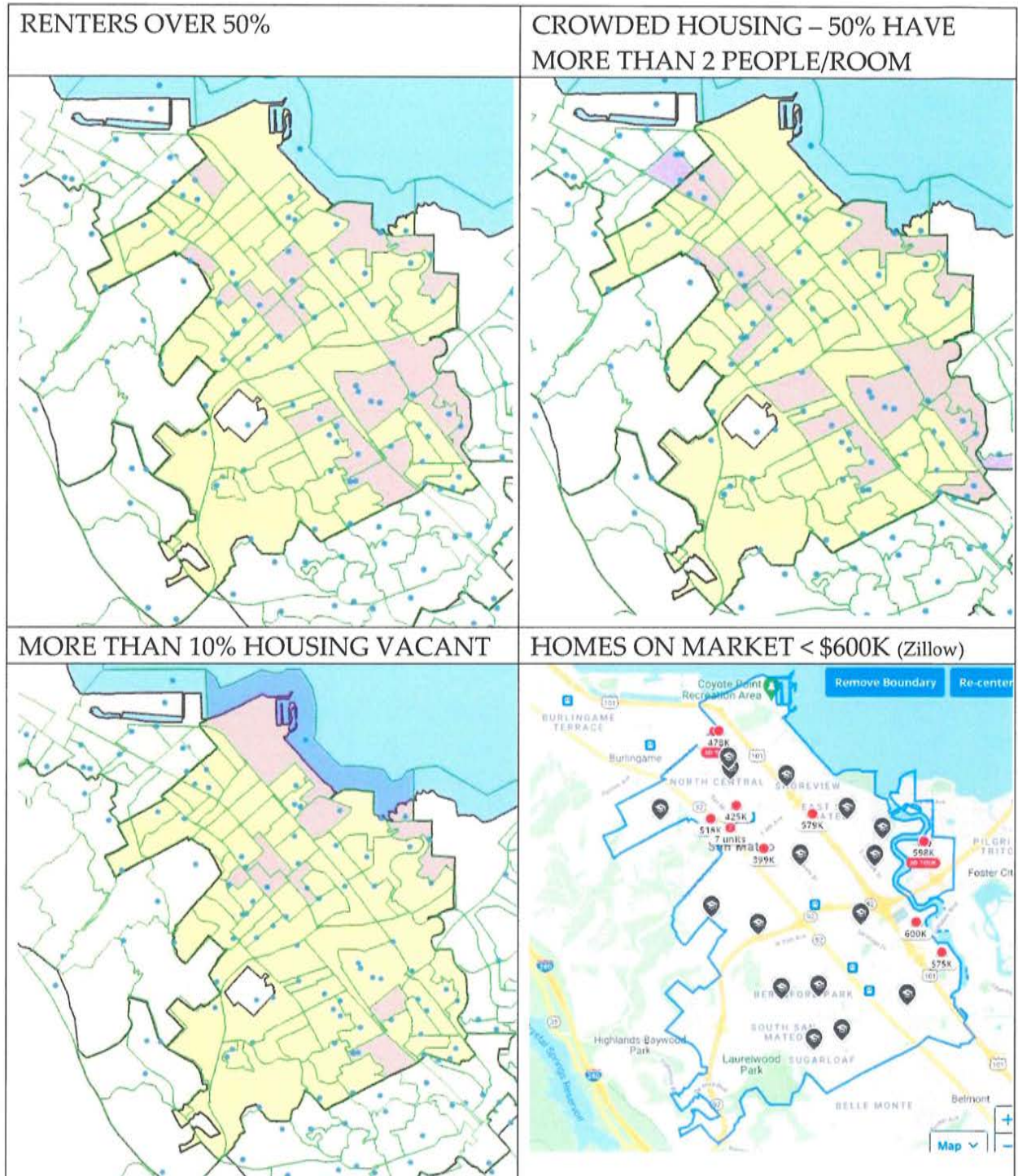
Therefore, my clients would ask the public and council to consider these measures of special need. The information has been compiled from the Bureau of Census (<https://data.census.gov/cedsci/all?q=San%20Mateo%20city,%20California>) and the California Census Office <https://arcg.is/0uz5bv> and mapped to census block groups











VI. THE COUNCIL SHOULD RESOLVE TO CREATE DISTRICTS AND  
COMPLETE THE HEARING PROCESS

The city has 45 days from its receipt of this letter to resolve its intent to comply before the next regular election in November 2022. Normally there are two pre-map hearings followed by three hearings at which maps are presented. In order to sustain public attention, the hearing process must complete within 90 days, *i.e.*, early October 2021.

The Bureau of Census has committed to release the redistricting file on September 30, 2021, but an additional five weeks will be necessarily to adjust these files so that incarcerated persons will be counted at their previous homes. Since the census enumeration data does not include demographic data, it can only be used to determine the size of each district for the purposes of population equality. The FAIR MAPS Act normally requires four hearings to adjust the boundaries in light of the new population data. Elections Code, Section 21627.1.

Minority voters have also asked NEN to petition San Mateo-Foster City Elementary School District. Our petition is attached. The high school district also committed to comply with the CVRA on April 16, 2021.<sup>8</sup> Latino and Asian immigrants care passionately about education, so school boards can be as important to them as city councils. Ultimately, the maps may reflect differences in the missions of each jurisdiction and how they segment their communities, but a coordinated process will make it easier for the public to understand the process and to participate.

Elections Code, Section 10010(e)(3)(C)(i) allows an extension of up to 90 days, but requires a firm commitment to implement district elections 2021. If the city is prepared to make that commitment, NEN would be pleased to discuss a coordination of dates with the other jurisdictions and a schedule that would promote the most effective public participate. We will ask that the city commit to comply with the transparency requirements of the FAIR MAPS Act (Section 21628), notwithstanding subdivision (i). We would ask that the City provided real-time video access to the meetings, including the ability to make oral comments remotely or to have written comments posted.

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<sup>8</sup> The settlement and prior correspondence does not appear to be posted.

## CONCLUSION

District elections will make elections more competitive, and the council more representative, to the benefit of all voters. I hope that the council will embrace this reform and look forward to working together to ensure that the public, including the Latino minority, contributes effectively to an open and successful transition process.

Sincerely,

A handwritten signature in black ink that reads "Scott Rafferty". The signature is written in a cursive, flowing style.

Scott J. Rafferty

Attachment 1. Petition to SMFCESD

# SCOTT J. RAFFERTY

## ATTORNEY AT LAW

1913 WHITECLIFF COURT  
WALNUT CREEK CA 94596

(202)-380-5525  
RAFFERTY@GMAIL.COM

May 11, 2021

Shara Watkins, Clerk  
San Mateo-Foster City Elementary School District  
1170 Chess Drive  
Foster City, CA 94404

Re: Conducting Elections by Trustee Area  
VIA CERTIFIED MAIL – 7020 0640 0001 7156 5792 2:32pm

Dear Ms. Watkins:

Latino and Asian voters in San Mateo-Foster City Elementary School District (District) have asked the Bay Area Voting Rights Initiative to send this notice that the District may be in violation of the California Voting Rights Act (CVRA). Due to at-large (or “winner-take-all”) voting, a majority of the overall District can slate and elect every member of the Board, which excludes minority viewpoints. This method of electing trustees has impaired the ability of District’s Latino and Asian minorities to elect candidates of their choice (or at least to influence the outcome of trustee elections in coalition with other language and racial minorities protected by the CVRA). Independent of the CVRA, District is simply too big to elect at-large. It is the second largest elementary school in the state not to elect its trustees from single-member districts.

As the attached amicus letter to the Supreme Court details, Colonial America pioneered the democratic election of local officials. Three-and-a-half centuries of experience have proven that single-member constituencies keep government close to the people it serves. This promotes the election of skilled negotiators who ensure that social choices reflect the needs and values of every segment of society. America’s success as a melting pot depended upon giving immigrant neighborhoods an opportunity to elect their own dedicated voice. This was not universally popular. At the beginning of the 20<sup>th</sup> century, Hiram Johnson, a prominent California politician, sought to exclude Chinese from entering the country, Japanese from acquiring citizenship, and South Asians from holding land. He also launched a nationwide crusade to exclude immigrants, first-generation Americans, and the working class from political life. California had never allowed immigrants to vote before obtaining citizenship, but almost half the states did. His campaign eliminated this practice almost completely. In 1910, his “Progressive” party won landslide victories and reorganized local government in California to entrench these incumbents and the successors they promoted. Many reforms had at least some merit, such as reducing the size of city



councils and district boards, lengthening and staggering terms (which had been two years), eliminating elected positions (such as surveyor or engineers, which ethnic professionals often held), and strengthening the role of city managers. But combined with at-large voting, the new system entrenched white, Anglo-Saxon men, usually neighbors from the wealthiest areas, for decades. “Civic leagues” spread these principles of “professionalized” government throughout the nation, and two-thirds of major cities began electing at-large. After the 1960s, most jurisdictions in the rest of the county reverted to single-member constituencies. Most in California did not.

Single-member constituencies will make trustee elections more competitive, to the benefit of voters of all races. Most critically, a more representative school board will benefit students. It will have the experience and accountability necessary to improve the performance of schools in every neighborhood.

The District has escaped some of the most baneful consequences of winner-take-all elections. Early in the 20<sup>th</sup> century, the high cost of running for office at large enabled Southern Pacific to control the mayor and supervisors of San Francisco. The railroads found the Los Angeles city council more resistant, perhaps because its members answered to constituents who were also their neighbors. Corruption has continued to plague at-large jurisdictions, as illustrated by the bond scandals that resulted from the construction industry’s control over elections to the West Contra Costa USD board. Many at-large jurisdictions discriminate against minority neighborhoods who cannot influence their elections. In the midst of extraordinary affluence, San Juan USD maintains some of the most segregated schools in the state. Encina High has a D+ facility rating and 61% of its students transferring out. In another district linking two adjoining cities, the wealthier city purged the Board of every trustee

Election Margins	
2001 (short)	20%
2001	4%
2003	3%
2005	7%
2007	11%
2009	7%
2011	2%
2013	appointed in lieu
2015	9%
2017	2%
2019	0.9%
2020	appointed in lieu

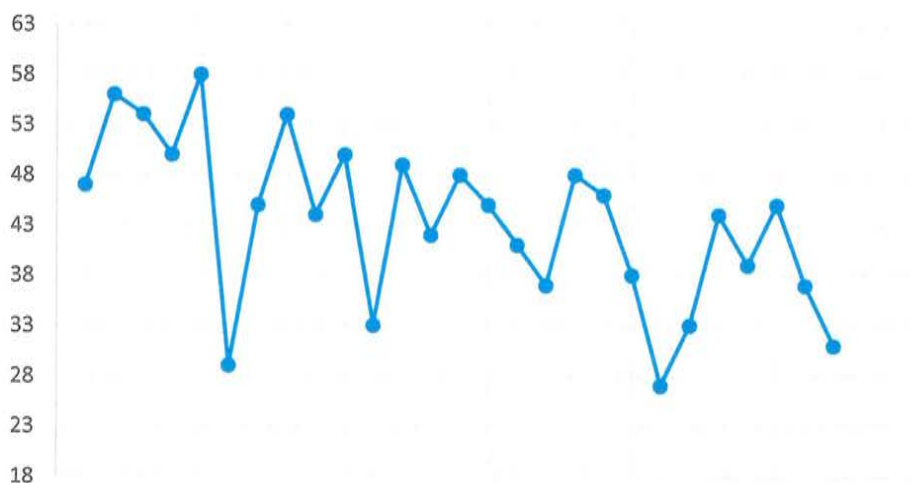
from the city that had the great majority of students in need. It is unusual, given its at-large Board, that this District has maintained a high standard of equity among schools serving communities with significant economic differences. Another unusual quality is that no trustee has not clung to power for decades; since 2000, no incumbent has served more than two terms.

Creating trustee areas is a long-term reform. The Board may see itself as diverse and fully representative of its constituents; trustee areas will keep in that way. It will make elections more competitive, which is entirely new. Trustees have been elected with as few as 6174 votes, reflecting the choice of about 7% of the eligible voters. Over the past 20 years, the average winning candidate has received votes from just over 10% of those eligible. These low-participation elections are not close. The runner up has come within

4 percent of election in only four of the last twelve elections. Moving elections to even years did not solve the problem because it did not enable candidates to run and win in their own neighborhoods. In 2020, the District did not have an election at all.

While the current board may take pride in its youth and diversity, but these are recent developments. Twenty years ago, the average trustee was 12 years older than the average parent; the current board is a full decade younger. And this diversity has been achieved by a majority of trustees who were appointed in lieu of election.

Age of last 25 trustees at time of election



The trustee areas are based on population. Immigrant and minority areas typically have more persons who are not yet 18 or not yet citizens; Latino and Asian turnout is low even among those who are eligible. But the needs of these neighborhoods are at least as great as any in the District. Creating trustee areas gives them an equal voice on the Board; it ensures that the Board is knowledgeable of their particular needs. Trustee area elections mean that whenever a difficult choice must be made, the Board has a trustee who is committed and accountable to each affected neighborhood. Even when there is contention over limited resources, each interest will entrust their member to represent their needs, interests, and values.

#### CANDIDATE SUPPRESSION

Federal law assumes that dilution occurs as a result of the mathematical submergence that occurs when white Anglo voters who are able to form a majority in a larger territory and outvote the minority neighborhoods. The map on page 7 shows the areas in which either Latinos or Asians have a majority of eligible voters, but this is not true of the District as a whole.

In California, additional factors are at work. Grass-roots minority candidates are simply not viable to run in the District at-large. They cannot afford the expense of



campaigning in a large jurisdiction, and often face linguistic and cultural problems in crafting a message to reach the entire school District, which spans two cities and 43 square miles. Without candidates, entire neighborhoods are disempowered and fail to participate in local political life. A spiral of political disincorporation results. Political parties and interest groups do not invest because they perceive limited voter turnout. Generation of children grow up without imagining that someone from their neighborhood with their background and identity could be elected to office. The long-term effect of this imbalance, which exists in so many parts of the State, is unhealthy for California democracy.

This Board has never been a launching pad for state or federal office. Trustees serve one or two terms. One former trustee heads the educational foundation; another serves on the County Board of Education. The Board should continue this tradition of public service by embracing this reform. It should draw maps that will provide equal voting rights for a decade, rather than lines that attempt to provide short-term protection to current incumbents.

#### RACIALLY POLARIZED VOTING (RPV)

From 1980 to 2000, there was broad support in the Legislature for bills that would outlaw at-large with very limited exceptions (*e.g.*, school districts with less than 1000 students). They faced certain veto. In 2001, the Legislature adopted the Voting Rights Act of 1965 to California. The California School Board Association opposed the law, which may have reflecting the fact that only ½ of one person of school trustees in the state were Latino.

The CVRA eliminates the requirement that the minority group prove that it constituted a majority in a potential district, on the basis that California has multiple minorities. It is also not the case (as it had been the case in the South) that whites in California would never vote for a minority candidate (or that minorities would always support any minority candidate). So, the CVRA suggests using ballot questions, not just the election of officials, to demonstrate RPV.

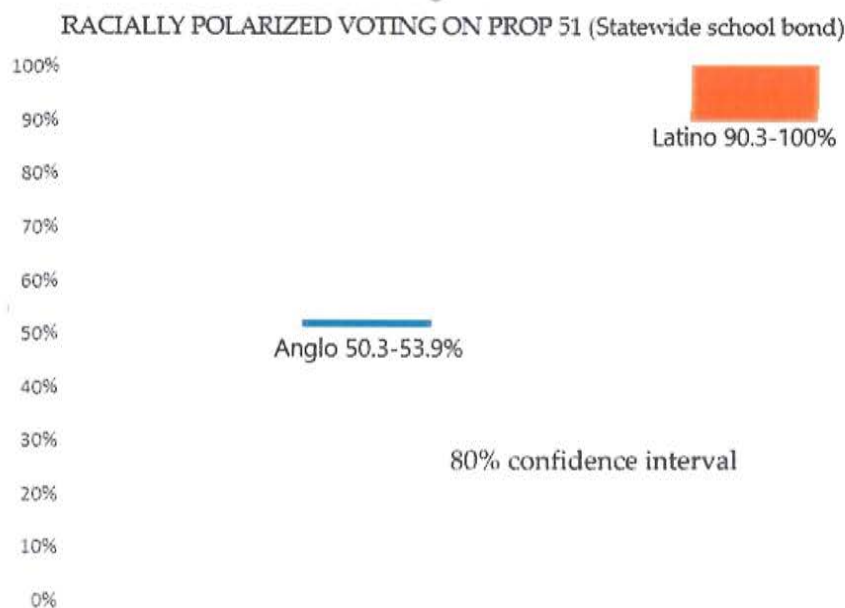
The predicate for the CVRA is “racially polarized voting,” which means that “there is a difference... in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.” [Elections Code, Section 14026\(e\)](#). This is a nearly universal phenomenon. Latino families have different life experiences, different needs, and different values than other communities. As a result, their voting behaviors are different. In California, the majority often supports equity in addressing ballot questions and other issues; but there are subjects that voters from a specific minority vote by even higher margins.



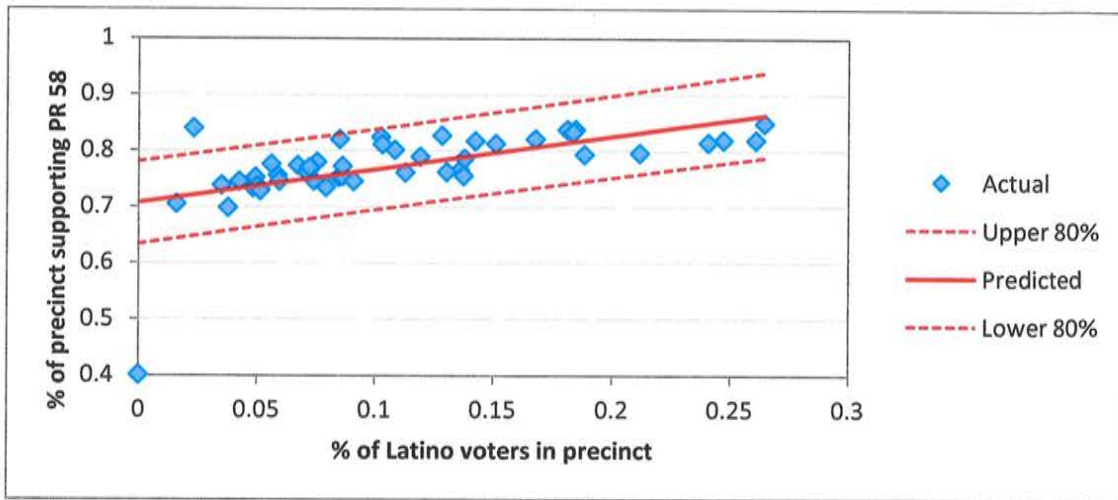
The 2019 contest for trustee was racially polarized. The Latino community and the Asian community each supported one candidate to a greater extent than the rest of the electorate. In this case, there voted in coalition, since it was the same candidate. When a group collectively supports one candidate, one or more of the other candidates is usually negatively polarized. But these data are easily misinterpreted. If the community provides strong support one candidate, it is a statistical reflection that there will be a negative correlation with other candidates, including incumbents. This does not reveal anything about the policies of the incumbent or their rapport with the Latino community – except relative to the candidate of choice. Therefore, in order to promote consensus, it is our preference not to identify which candidates are favored and disfavored by Latino voters.

Furthermore, the analysis does not always reveal how the candidates would perform under trustee area elections. The reform fundamentally changes the rules of politics. Able to run without District-wide recognition or substantial funding, a group of neighborhood-based candidates may gain an advantage over traditional challengers.

Latinos and Asian minorities both care passionately about education. In 2016, Latinos statewide provided the margin statewide to pass the \$9 billion statewide school bond, which was supported by less than a majority of white Anglo voters. Statistical inferences show, both statewide and in the District, that practically every Latino who voted supported this measure. Almost every Latino voter always supported Prop 58, eliminating the ban on bilingual education. San Mateo County supported both propositions at higher rates than the rest of the state, but still not at the same levels as Latinos.



Proposition 58 eliminated the ban on bilingual education. This is another ballot question which the Latino community supported to a greater extent than the rest of the electorate.



On this issue, polarization with the District was so significant that the traditional regression analysis produced results that were “out of bounds.” In other words, there are not enough Latino voters to explain the disparity. One reason is that trustee area elections are about neighborhoods. Non-Latino voters in high-Latino neighborhoods likely share many of their values and preferences, reinforcing how single-trustee areas will bring new perspectives to the Board.

#### MINORITY MAJORITY, MINORITY INFLUENCE, AND COALITION TRUSTEE AREAS

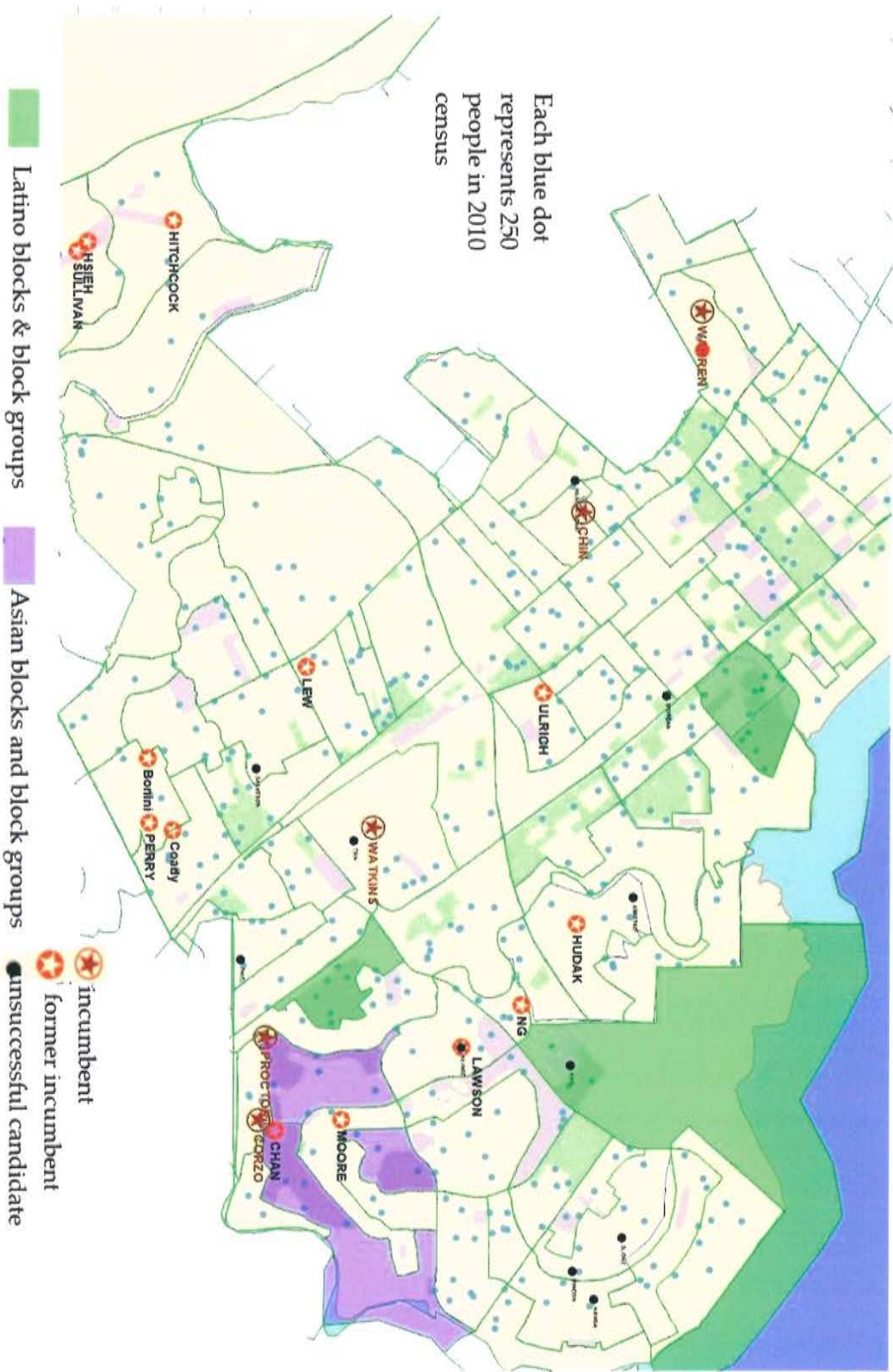
Section 2 of the Federal Voting Rights Act requires the elimination of at-large voting provided a trustee area can be created in which a majority of eligible voters belong to a protected class. As noted above, Latinos sometimes vote in coalition with Asian voters, which could support a claim for a coalition district. It would improve representation, however, if each community had a trustee area in which it had a majority or at least an influential share of the population.

The Asian vote share has increased sharply over the past five years, and the Latino vote share has also shown a recent increase. It is quite possible that next year’s annual demographic data, coupled with the sharp growth in overall population, will show a majority Asian area in Foster City. The Latino community is more dispersed (and faces serious risk of an undercount in the forthcoming census data) but a trustee area in northeast San Mateo will likely have more than 30% Latino voters, enough to create an “influence” district.

The inequality of influence by the Latino neighborhoods is illustrated in the following map.



Location of Trustee Candidates; Majority Latino and Majority Asian Neighborhoods



Until Ms. Corzo became a trustee last year, when the election was not contested, there had not been a Latino trustee during the past two decades. Indeed, there had only been two Latino candidates. There have been Asian trustees in the past; but neither of the current trustees who live in the majority Asian area is herself Asian.

We have conducted a preliminary cartographic survey of minority voters in the District, and it does not appear likely that it is possible to create a majority Latino trustee area. There is some prospect for a “coalition” trustee area combining protected groups, but this should be considered only in conjunction with other socioeconomic factors, such as income, education, employment, and language proficiency.

The CVRA has a lower hurdle, as it prohibits at-large systems that “impair the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election.” [Elections Code, Section 14027](#). As noted, the Latino community does not have a sufficient concentration to seek a majority Latino trustee area. It does not expect a trustee area that will effectively enable it to elect the Latino candidate of its choice. Rather, it seeks to enhance “its ability to influence the outcome” of the election, working in coalition with other minorities and seeking support from sympathetic cross-over voters of all races who understand the particular needs of the minority trustee areas. [Elections Code, Section 14027, 14028\(a\)](#).

Even where a majority area is not possible, federal law prohibits any dilution of minority influence, intentional or not, that results from “packing” them into a single area or “cracking” a minority community by splitting in among multiple areas. Race and Latino ethnicity should not be predominant factors in district and should be considered in conjunction with other socio-economic factors. The Board should focus on communities of all races that are underrepresented on the Board or have distinctive educational and economic characteristics. A.B. 350 requires school districts to sequence their elections so that the minority trustee areas elect in the presidential cycle, especially when this is the next election, since minority turnoff falls off dramatically in gubernatorial cycles. [Elections Code, Section 10010\(b\)](#).<sup>1</sup>

#### THE CHANGING DEMOGRAPHY OF THE DISTRICT

Except for the age and ethnicity of individuals, every demographic datum we know (including citizenship and eligibility to vote) comes from the Census Bureau’s American Community Survey. The decennial census data are only used to determine

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<sup>1</sup> “In determining the final sequence of the district elections conducted in a political subdivision in which members of the governing body will be elected at different times to provide for staggered terms of office, the governing body shall give special consideration to the purposes of the California Voting Rights Act of 2001, and it shall take into account the preferences expressed by members of the districts.”



the ideal size of each trustee area. Estimates suggest that Foster City has grown somewhat faster than San Mateo (11% v. 7.5%) since the last census, and both have grown faster than the rest of the State. At the city level, the effect is marginal; Foster City has grown from 24% to 25% of the combined population. In most regards, both cities are more affluent, more educated and more advantaged than most of California. Both cities are also distinctive for the high numbers of foreign-born and speakers of Spanish or Asian languages.

	Foster City	San Mateo	San Mateo Foster City	California
Population estimates, July 1, 2019	33,901	104,430	138,331	39,512,223
Population, Census, April 1, 2010	30,567	97,207	127,774	37,253,956
Population change since census	10.90%	7.40%	8.28%	6.10%
2010 CENSUS DATA				
School age children (5-18)	16.1%	14.0%	15.7%	16.5%
White alone, not Latino	36.9%	40.9%	39.9%	36.5%
Asian/PI alone	47.8%	26.6%	31.9%	16.0%
Latino	8.4%	25.1%	20.9%	39.4%
Black alone	2.5%	2.0%	2.1%	6.5%
American Indian/Alaska Native	0.2%	0.4%	0.4%	1.6%
AMERICAN COMMUNITY SURVEY 2015-19				
Foreign born persons	45.1%	34.7%	37.4%	26.8%
Owner-occupied homes	57.1%	54.4%	55.1%	54.8%
Median value of owner-occupied home	\$ 1,245,800	\$ 1,098,400	\$ 1,136,724	\$ 505,000
Median homeowner costs with mortgage	\$3,638	\$3,600	\$ 3,610	\$2,357
-without mortgage	\$909	\$758	\$ 797	\$594
Median gross rent	\$3,209	\$2,475	\$ 2,666	\$1,503
Home language other than English	53.2%	43.2%	45.8%	44.2%
Homes with computer	98.0%	95.1%	95.9%	93.0%
Homes with broadband	96.3%	91.6%	92.8%	86.7%
High school graduates (of >25)	96.3%	89.7%	91.4%	83.3%
Bachelor's degree or higher	70.3%	54.2%	58.4%	33.9%
Disabled (of <65)	3.2%	5.0%	4.5%	6.7%
no health insurance (of <65)	2.1%	4.8%	4.1%	8.9%
Total retail sales per capita, 2012	\$9,494	\$18,239	\$ 15,965	\$12,665
Median household income	\$158,529	\$124,842	\$ 133,601	\$75,235
Per capita income	\$70,705	\$62,784	\$ 64,843	\$36,955
Persons in poverty	4.40%	7.50%	6.69%	11.80%
Population per square mile, 2010	8,138	8,014	8,046	239
Land area in square miles, 2010	3.76	12.13	15.89	155,779.22

At the census block group level, ACS data reveal social and economic differences within each city, some of which are described below. These data are released annually in March, but the 2020 data are expected early – on December 9, 2021. Although we use these estimates to determine the Latino and Asian share of eligible voters (or CVAP – citizen-of-voting-age population), ACS data reflect a five-year moving average with a significant lag. 20% of the current observations were taken in 2015. The data do not update the age of a 13-year-old reported in 2015, who is now eligible to vote. Since Latino and Asian families in San Mateo and Foster City tend to have larger families, this understates minority voting strength. For demographic variables growing at a consistent rate, the 2018-2022 ACS data should correspond to the census day 2020, but that dataset may not be available until early 2024.

Over the last five years, the ACS data show Asian and Latino eligible voters increasing at a compound rate of 4%. In the case of the Latino community, this growth appears in the two most recent surveys.<sup>2</sup>

	2010 census	<----American Community Survey - 5-year data---->					
		2011-15	2012-16	2013-17	2014-18	2015-19	CAGR
Asian pop	27778	40720	41885	44750	43000	48015	4.2%
Asian CVAP		22090	22540	24085	23310	25715	3.9%
Latino pop	26212	26815	27355	26475	28580	29015	2.0%
Latino CVAP		10625	10550	10745	12210	12610	4.4%
TOTAL pop	127774	133710	135190	137030	137820	138330	0.9%
CVAP		83880	83690	85005	85025	84795	0.3%
Asian CVAP share		26.3%	26.9%	28.3%	27.4%	30.3%	
Latino CVAP share		12.7%	12.6%	12.6%	14.4%	14.9%	
combined share		39.0%				45.2%	
Asian pop share	21.7%	30.5%	31.0%	32.7%	31.2%	34.7%	
Latino pop share		20.1%	20.2%	19.3%	20.7%	21.0%	

In just five years, there has been an increase from 39% Latino-Asian vote share to more than 45%, based on data with an average lag of four years. This is a compelling case to create trustee areas for each community, which may already be required by federal law.

<sup>2</sup> These data reflect the incorporated areas of the two cities. It does not include more than 3000 people in Highlands, who are about 30% Asian. The U.S. Department of Education sponsors a special tabulation of ACS data by school district, but it has limited cross-tabulations (e.g., no CVAP by ethnicity) and is lagged an additional year.

## COMMUNITIES OF INTEREST AND MAP CRITERIA

Election by trustee area is a long-term reform, unrelated to the any specific incumbent or any potential challenger. This election cycle may be opportune in that, with the exception of two trustees near the Foster City boundary, the incumbents are more dispersed that they have been in past cycles.

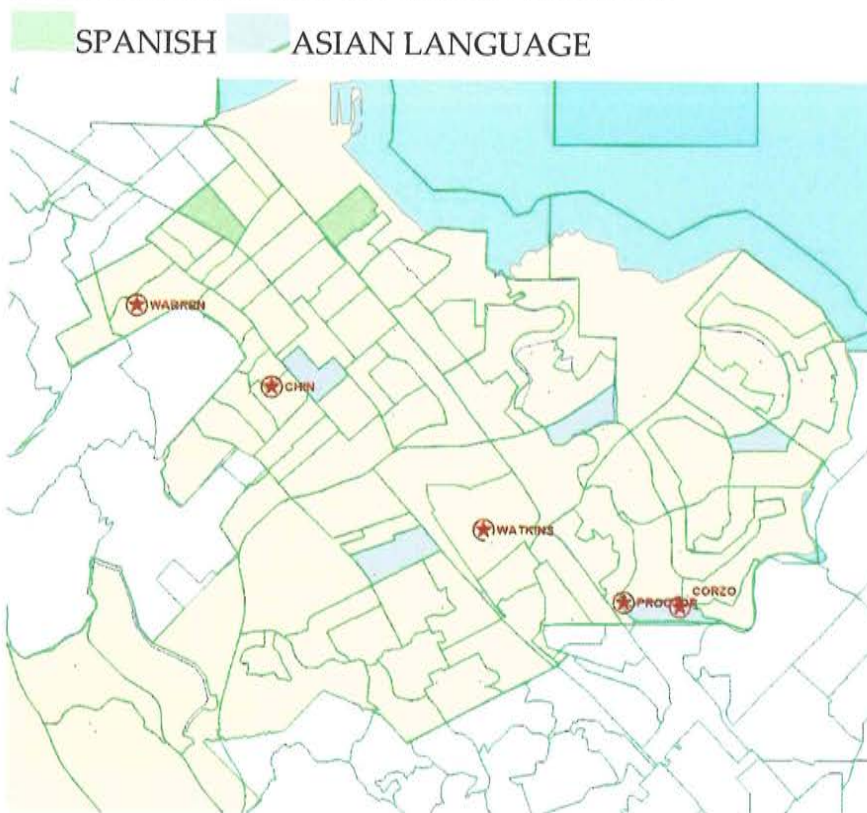
The size of each trustee area is based on total population because the District serves all students and taxpayers, whether they are entitled to vote or not. Latino neighborhoods may have great needs, but they often have larger than average numbers of residents who are not entitled to vote, either because they are not yet 18 years old or are not yet citizens. Each area has 20 percent of the population and one trustee, even if has only 10 percent of the at-large vote. Latino voters, especially those with non-citizens in their households, speak for those who are unable to vote. Because voting is racially polarized, a minority trustee area improves representation for Latinos or Asians throughout the District, even if they do not live with the area's boundaries.

The public will propose communities of interest. It is important to consider areas whose residents are likely to use the same shopping areas, parks and libraries; whose children attend the same schools. City boundaries should be considered, as may natural barriers and major streets or highways.

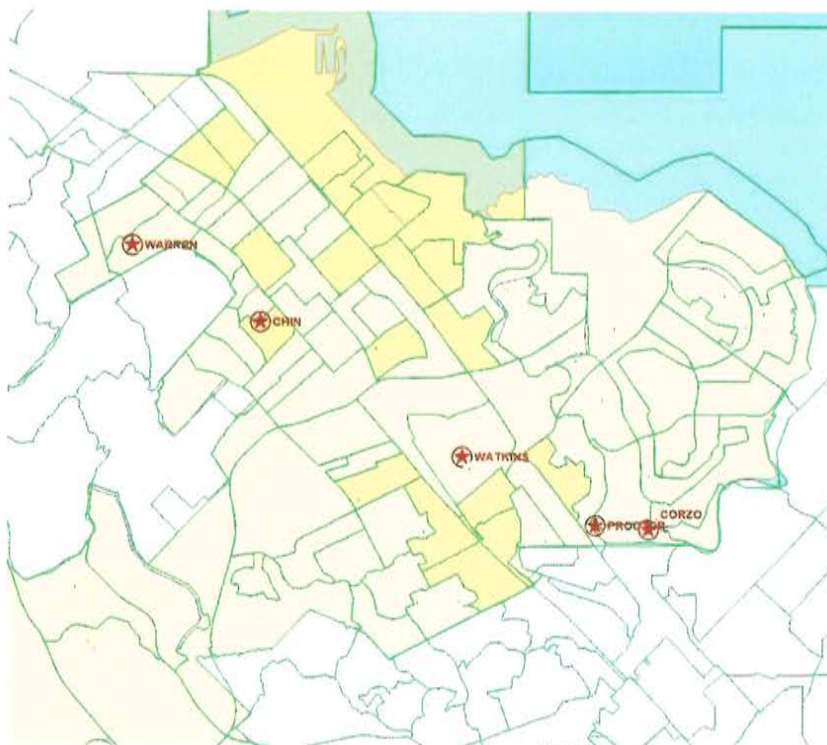
Race should not be the predominant factor, but it correlates with important socio-economic factors related to the school district. The Board should give special consideration to areas that may have been underrepresented because of the challenges faced by its families. The following maps identify census block groups that the state considered most vulnerable to undercount in the 2020 census. It is important to look for patterns and common boundaries suggested by these needs before the trustee area map are drawn, not simply to tabulate or compare socio-economic characteristics after the fact.



MORE THAN 5% SPEAK LIMITED ENGLISH

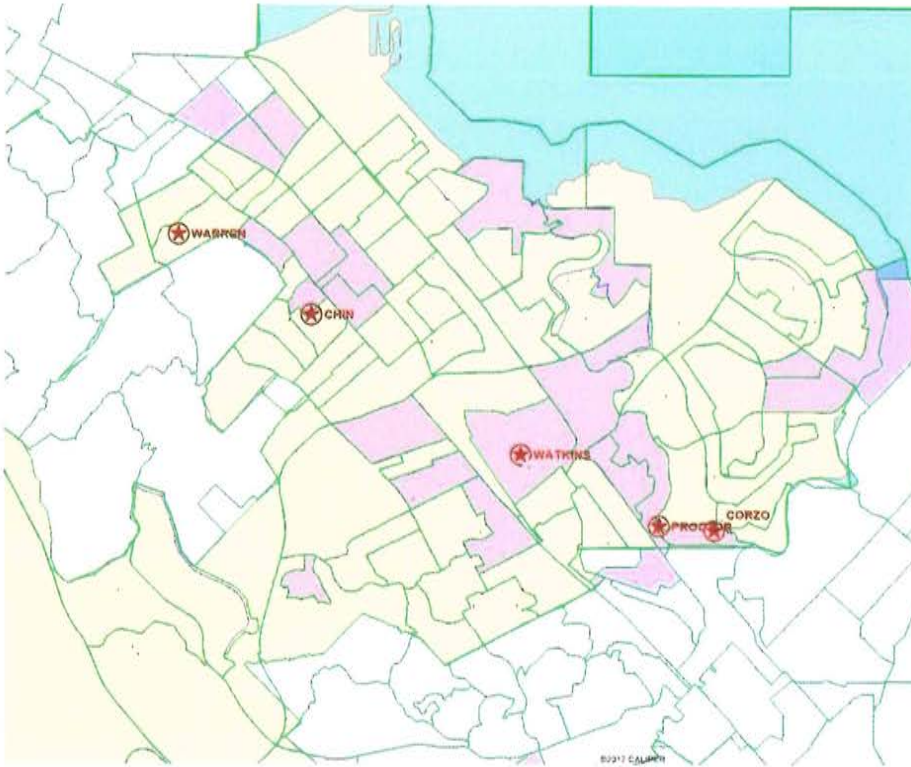


MORE THAN 10% OF ADULTS DID NOT GRADUATE HIGH SCHOOL

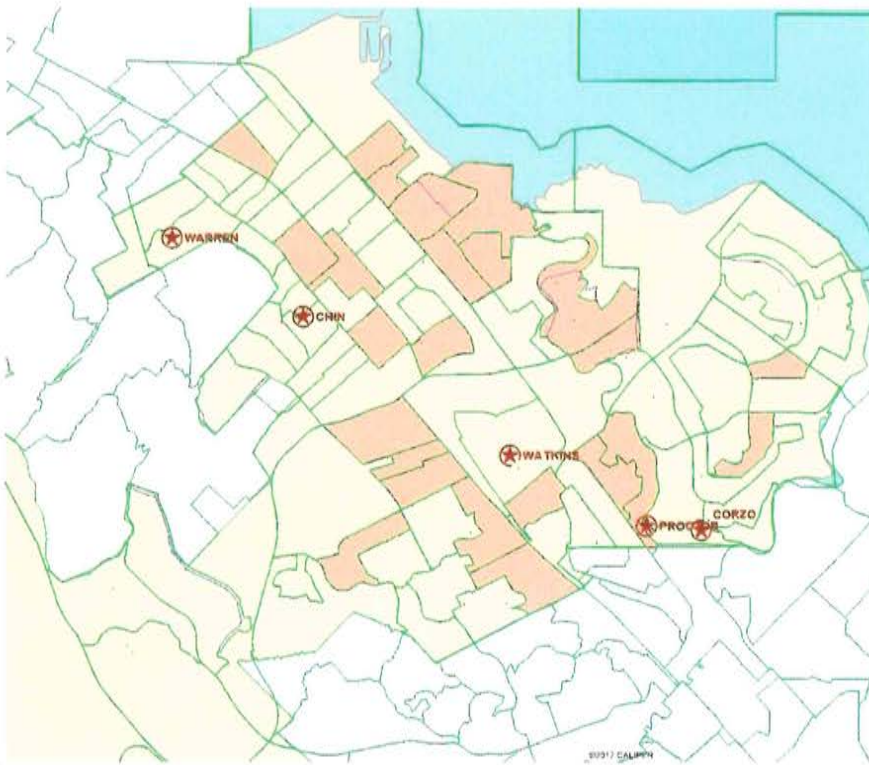




MORE THAN HALF OF HOMES HAVE MORE THAN TWO PEOPLE PER ROOM



MORE THAN 10 PERCENT BEFORE 150 PERCENT OF POVERTY LINE



The sequencing of trustee areas must allow for the minority areas to elect trustees during the presidential cycle, at least when this is the next election. Elections Code, Section 10010(c). Once this mandate is satisfied, we believe that the Board should consider electing trustees from areas at the expiration of the term of any incumbent who resides in the district and wishes to continue to serve.

#### PROCESS FOR TRANSITIONING TO TRUSTEE AREAS

To preserve its safe harbor, the District must declare an intention to move to trustee area elections within 45 days of its receipt of this letter. At this point, the District can have up to 90 more days to specify its plan. There must be a series of four public hearings, two before the city presents maps and two after. [Elections Code, Section 10010\(a\)](#). It is generally understood that the criteria correspond to those codified for population-based reapportionments and generally for municipalities: topography; geography; cohesiveness, contiguity, integrity, and compactness of territory; and community of interest. [Elections Code 22000\(a\)](#) (special districts); [Education Code, Section 1002](#) (county board); [Government Code, Section 34884\(a\)\(1\)](#) [A.B. 278 (2016)]. However, the strict procedures and criteria recently enacted for cities and counties do not expressly apply. [A.B. 849 \(2019\)](#). The mapping of trustee areas, the sequence in which trustees are elected, and other procedural change cannot have the effect of diminishing the ability of citizens of a race, color or language minority group to elect the candidates of their choice. [52 U.S.C. §10301\(b\)](#).

The Board will need to obtain a waiver of the statutory provisions regarding voter approval. The State Board of Education has implemented a policy of granting waivers to the requirement that districting for purposes of complying with the CVRA be submitted to the voters for approval. See [Education Code, Section 33050.17](#). This requires a process of consultation with employee and parent groups. As a condition of this waiver, a school district must still obtain approval of its map from the county committee under [Education Code, Section 5019\(a\) or 5020\(d\)](#). Therefore, the Board should also schedule a meeting of the County Committee, so that it can approve the maps proposed by the Board at the conclusion of its hearing process and in time to submit to the registrar.

An action to comply with the California Voting Rights Act opens opportunities for other reforms in electoral practices and governance, which can be accomplished without the usual (and costly) requirement of voter approval. The Board could decide to increase the number of trustees to seven.

The Board will need to revise its boundaries after the census. The Education Code requires school boards to use population data validated by the State Department of Finance, but in practice the state does not adjust census data at any level that is normally useful for redistricting. [Education Code, Section 5019.5](#). University of

California researchers concluded that the 2010 census substantially undercounted Latinos in California. There are much greater concerns that the 2020 count will undercount the population of California, and even skew it within the district.

#### CONCLUSION

The transition to trustee areas will improve the performance of the District by making its Board more fully aware of the needs of each community within its jurisdiction. More competitive elections will increase the representativeness of the Board and its accountability to the community, which may be more prepared to support bonds and parcel taxes. This is a reform that will benefit students, parents and taxpayers of all races, in all parts of the District.

Sincerely,

A handwritten signature in black ink that reads "Scott Rafferty". The signature is written in a cursive, flowing style.

Scott J. Rafferty



APPENDIX

## ELECTION RESULTS -- 2001-2020

2001 short term

MELODIE	LEW	6,174	47.31%
LARRY	SALVESON	3,767	28.86%
JANE	KLINGE	3,110	23.83%

2001

JACK E.	COYNE	8,013	23.17%
PHYLLIS	MOORE	7,181	20.76%
W. CHARLES	PERRY	6,889	19.92%
ALLY	NUSCHY-LENAT	6,876	19.88%
ROSIE	VELASCO-DODGE	5,626	16.27%

2003

MELODIE	LEW	7,993	37.98%
MARK D.	HUDAK	8,000	33.36%
MEL	THOMPSON	6,312	30.00%

2005

ELLEN MALLORY	ULRICH	10,094	28.54%
LORY LORIMER	LAWSON	9,863	27.89%
JACK E.	COYNE JR	12,585	20.55%
CATHY	RINCON	10,856	17.72%
W. CHARLES	PERRY	8,366	13.66%
FRED	SLONE	4,269	6.97%
PHILLIP BRUCE	RILEY	4,160	6.79%

2007

COLLEEN	SULLIVAN	10,670	44.50%
MARK D.	HUDAK	8,000	33.36%
GINA	KUO	5,308	22.14%

2009

ELLEN MALLORY	ULRICH	10,094	28.54%
LORY LORIMER	LAWSON	9,863	27.89%
JULIE S.	CHAN	8,875	25.09%
JOHN	MILLER	6,534	18.48%

Election results, 2001-2020, cont.

2011

COLLEEN MARIE SULLIVAN	9,540	38.65%
AUDREY NG	7,806	31.62%
FEL ANTHONY AMISTAD	7,339	29.73%

2013

CHELSEA MC GINBONINI	AIL
EDMUND TIMOTI COADY	AIL
LORRAINE ALICE LAWSON	AIL

AUDREY NG	12,538	40.96%
NANCY KOHN HSIEH	10,492	34.28%
BRYAN WILLIAMS	7,581	24.77%

2017

SHARA WATKINS	10,036	25.69%
NOELIA CORZO	8,561	21.92%
REBECCA HITCHCOCK	5,934	15.19%
SHIRAZ ZACK KANGA	4,993	12.78%
THOMAS MORGAN	4,271	10.93%
JACOB THIEL	2,740	7.01%
ALEXANDER H HAISLIP	2,528	6.47%

2019

ALISON PROCTOR	8,929	35.20%
KEN CHIN	8,326	32.82%
ANNIE TSAI	8,114	31.98%

2020

NOELIA CORZO	AIL
LISA WARREN	AIL
SHARA WATKINS	AIL

note:map on page 7 reflects current registration address (if found)



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PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT  
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

**CERTIFIED MAIL®**



7020 0640 0001 7178 6517

**SCOTT J. RAFFERTY**  
ATTORNEY AT LAW

1913 WHITECLIFF COURT  
WALNUT CREEK CA 94596

Ms. Patrice Olds  
Clerk, City of San Mateo  
330 West 20th Avenue  
San Mateo, CA 94403



1000



94403

U.S. POSTAGE PAID  
FCM LG ENV  
ALAMO, CA  
94507  
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OAKLAND CA 946

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## **\*REVISED 2021 City Council Calendar of Regular Meetings**

All meetings start at 7:00 p.m. and at this time are being held remotely.

This is subject to change at some point in the future.

Day	Date	Notes
Monday	January 4, 2021	
Tuesday	January 19, 2021	(moved because of Martin Luther King Jr. Day)
Monday	February 1, 2021	
Tuesday	February 16, 2021	(moved because of Presidents' Day holiday)
Monday	March 1, 2021	
Monday	March 15, 2021	
Monday	April 5, 2021	
Monday	April 19, 2021	
Monday	May 3, 2021	
Monday	May 17, 2021	
Monday	June 7, 2021	
Monday	June 21, 2021	
*Tuesday	July 6, 2021	
Monday	July 19, 2021	
*Monday	August 2, 2021	
Monday	August 16, 2021	
Tuesday	September 7, 2021	(moved because of Labor Day holiday)
Monday	September 20, 2021	
Monday	October 4, 2021	
Monday	October 18, 2021	
Monday	November 1, 2021	
Monday	November 15, 2021	
Monday	December 6, 2021	
Monday	December 20, 2021	Cancelled – regular holiday schedule