

**City of Brea**

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**COUNCIL COMMUNICATION**

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**TO:** Honorable Mayor and City Council Members  
**FROM:** Bill Gallardo, City Manager  
**DATE:** 04/20/2021  
**SUBJECT:** District-Based Elections Update

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**BACKGROUND/DISCUSSION**

On May 6, 2019, the City of Brea received a notice letter from Shenkman & Hughes, P.C. (“S&H”) alleging that the City’s at-large election system violates the California Voting Rights Act (“CVRA”). The City and S&H subsequently executed an Extension Agreement in which S&H agreed to refrain from filing a CVRA action as long as the City took specified steps to transition to district-based elections. In accordance with the Extension Agreement, on June 20, 2019, the City Council adopted Resolution No. 2019-049, declaring its intent to transition from at-large elections for City Council to district-based elections for City Council.

Pursuant to that resolution, the City Council intends to consider adoption of an ordinance to transition to district-based elections in accordance with applicable laws including Government Code Section 34886 and Elections Code Section 10010. That resolution directed staff to work with the City Clerk, City Attorney, a 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 CVRA and the Federal Voting Rights Act (“FVRA”).

Pursuant to the adopted resolution, within 90 days of receipt of the 2020 Census results, the City must conduct at least four (4) public hearings before the final map adoption, in accordance with the following legal requirements:

- At least two (2) public hearings before maps are drawn, within a 30-day period
- At least two (2) public hearings after maps are drawn, within a 45-day period
- Ordinance introduction to establish district-based elections and adopt map
- Ordinance adoption at a regular meeting

In anticipation of receiving the 2020 Census data, the City issued a Request for Proposals for Electoral Districting Services on April 6, 2021. The offer due date is April 27, 2021, and the Professional Services Agreement is tentatively scheduled to go before the Finance Committee on May 11, 2021 and the City Council on May 18, 2021.

**RESPECTFULLY SUBMITTED:**

William Gallardo, City Manager

Prepared by: Victoria Popescu, Deputy City Clerk

Concurrence: Lillian Harris-Neal, City Clerk

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**Attachments**

Extension Agreement

Resolution No. 2019-049

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## EXTENSION AGREEMENT

This Extension Agreement is being made by and among Shenkman & Hughes, P.C. ("Shenkman Firm"), on the one hand, and the City of Brea ("City"), on the other hand (collectively, "the Parties").

### **1. Recitals**

- 1.1. The City is a municipal corporation, duly incorporated and existing under the Constitution and the laws of the State of California.
- 1.2. On May 6, 2019, the City received a notice letter ("Notice") from the Shenkman Firm on behalf of its clients alleging that the City's at-large election system violates the California Voting Rights Act of 2001 ("CVRA") and stating that it will seek judicial relief if the City does not voluntarily change its at-large system of electing its city council members.
- 1.3. If the City transitions to district based elections prior to the 2020 Census, it may be required to adjust the district boundaries again in approximately two years following the decennial federal census under Elections Code 21600, *et al.*
- 1.4. In order to avoid duplicative costs and efforts of establishing then adjusting the district boundaries in less than two years, it is now the mutual desire of the Parties hereto to allow the City to wait until after the results of the 2020 Census to conduct the process of transitioning to district-based elections.
- 1.5. The Parties hereto, and each of them, believe that the Extension Agreement contained herein constitutes a fair, reasonable, equitable, and good faith agreement with respect to the timeline for the City's transition to district-based elections.

### **2. Settlement**

- 2.1. The City agrees to consider adopting a resolution of intent to transition to district-based elections pursuant to Elections Code Section 10010(e)(3)(A), within 45 days of receipt of the Notice, which day is June 20, 2019.
- 2.2. The 90-day period set forth in Elections Code Section 10010(e)(3)(B) shall only start to run on the day that the City receives the results of the 2020 Census.
- 2.3. Within ten (10) days of the City receiving the results of the 2020 Census, the City shall notify the Shenkman Firm in writing of the availability of the Census results.
- 2.4. The Shenkman Firm shall not file an action against the City under the CVRA unless the City (1) fails to adopt a resolution of intent within 45 days of receipt of the Notice, or (2) fails to adopt an ordinance establishing district-based elections within 90 days of receiving the results of the 2020 Census.
- 2.5. Except as set forth in Section 2.6, the City agrees to reimburse the Shenkman Firm for the cost of the work product generated to support the Notice as set forth in and in accordance with Elections Code Section 10010(f).

2.6. If the City receives another written notice from a prospective plaintiff that causes it to begin the process of transitioning to district-based elections before the timeline set forth in this Extension Agreement, the apportionment provisions of Elections Code Section 10010(f) shall apply.

### 3. General Settlement Provisions

3.1. The advice of legal counsel has been obtained by each of the Parties prior to the execution of this Extension Agreement. Each of the Parties hereby executes this Extension Agreement voluntarily and with full knowledge of its significance.

3.2. (a) Each of the Parties has read and understands the contents of this Extension Agreement.

(b) This Extension Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors, and assigns of the respective Parties hereto and to any parent, subsidiary, or affiliated entity of each of such Parties.

(c) Each of the Parties of this Extension Agreement and their respective attorneys, hereby represent, warrant, and agree, each to the other, that they have full power and authority to execute this Extension Agreement, to execute and file all papers contemplated herein, to pay any sums provided for herein, and to do any and all things reasonably required to effectuate the terms of this Extension Agreement.

3.3. This Extension Agreement may be executed in counterparts and shall not become effective until all Parties required to execute this Extension Agreement have done so.

3.4. This Extension Agreement may not be amended, canceled, revoked, or otherwise modified except by written agreement executed by all of the Parties.

WHEREFORE, the Parties hereto have executed this Extension Agreement on the dates set forth opposite their respective signatures.

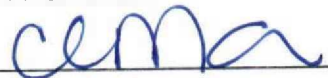
Dated: 6-18-19

SHENKMAN & HUGHES P.C.

  
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Kevin Shenkman

Dated: 6-18-19


CITY OF BREA

  
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Approved as to form:

RICHARDS, WATSON & GERSHON, A Professional Corporation

By:   
Terence Boga  
City Attorney, City of Brea

## RESOLUTION NO. 2019-049

### A RESOLUTION OF THE BREA CITY COUNCIL DECLARING ITS INTENT TO TRANSITION FROM AT-LARGE ELECTIONS FOR CITY COUNCIL TO DISTRICT-BASED ELECTIONS FOR CITY COUNCIL PURSUANT TO ELECTIONS CODE SECTION 10010 AFTER RECEIPT OF THE 2020 CENSUS RESULTS

#### A. RECITALS:

(i) City Council Members are currently elected in "at-large" elections, in which each City Council Member is elected by the registered voters of the entire City.

(ii) On May 6, 2019, the City received a claim from Shenkman & Hughes, P.C. ("Shenkman Firm") alleging that the City's at-large election system violates the California Voting Rights Act.

(iii) Government Code Section 34886 authorizes the legislative body of a city of any population to adopt an ordinance to change its method of election from an "at-large" system to a "by-district" system in which each Council Member is elected only by the voters in the district in which the Council Member resides.

(iv) Elections Code Section 10010 establishes a process by which a jurisdiction can change to a district-based election system through the legislative approval process and avoid the high cost of litigation under the California Voting Rights Act.

(v) Prior to the City Council's consideration of an ordinance to establish district boundaries for a district-based election system, Elections Code Section 10010 requires that all of the following be completed within a 90-day period:

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

2. After all draft maps are drawn, City shall publish and make available for release at least one draft map and, if members of the City Council will be elected in their districts at different times to provide for staggered terms of office, the potential sequence of the elections shall also be published. The City Council shall also hold at least two additional public hearings over a period of no more than 45 days, at which the public shall be invited to provide input regarding the content of the draft map or maps and the proposed sequence of elections, if applicable. The first version of a draft map shall be published at least seven days before consideration at a public hearing. If a draft map is revised at or following a public hearing, it shall be published and made available to the public for at least seven days before being adopted; and

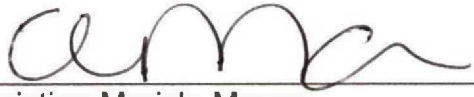
(vi) On June 18, 2019, the City and the Shenkman Firm executed an Extension Agreement to enable the City to avoid duplicative costs and efforts of establishing district boundaries and then adjusting such boundaries in less than two years upon receiving the results of the 2020 Census. Pursuant to the Extension Agreement, the City and the Shenkman Firm have agreed that the 90-period set forth in Elections Code Section 10010 shall start to run on the day that the City receives the results of the 2020 Census.

**B. RESOLUTION:**

**NOW, THEREFORE**, it is found, determined and resolved by the Brea City Council as follows:

1. The facts as set forth in the Recitals are true and correct.
2. The City Council hereby resolves to consider, within 90 days of receipt of the 2020 Census results, adoption of an ordinance to transition to a district-based election system in accordance with applicable laws including Government Code Section 34886 and Elections Code Section 10010.
3. The City Council directs staff to work with the City Clerk, City Attorney, demographer, and other appropriate consultants as needed, to provide a detailed analysis of the City's current demographics and any other information or data necessary to prepare a draft map that divides the City into voting districts in a manner consistent with the intent and purpose of the California Voting Rights Act and the Federal Voting Rights Act.
4. 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 for the public.
5. The City Clerk shall certify to the passage and adoption of this resolution.

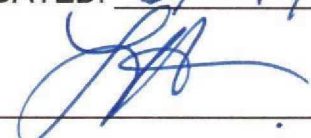
APPROVED AND ADOPTED this 20<sup>th</sup> day of June, 2019.

  
Christine Marick, Mayor

ATTEST:   
Lillian Harris-Neal, City Clerk

I, Lillian Harris-Neal, City Clerk of the City of Brea, do hereby certify that the foregoing Resolution was adopted at a regular meeting of the City Council of the City of Brea, held on the 20<sup>th</sup> day of June, 2019, by the following vote:

AYES:	COUNCIL MEMBERS: Marick, Simonoff, Hupp, Parker, Vargas
NOES:	COUNCIL MEMBERS: None
ABSENT:	COUNCIL MEMBERS: None
ABSTAIN:	COUNCIL MEMBERS: None

DATED: 6/27/19  
  
Lillian Harris-Neal, City Clerk

RESO NO. 2019-049  
June 20, 2019