AGENDA ITEM REQUEST FORM

Department: City Attorney's Office/City Clerk's Office  
Department Head: Bruce R. Goodmiller/Pamela Christian  
Phone: 62-6509/620-6513

Meeting Date: 1/21/2020  
Final Decision Date Deadline:_____

STATEMENT OF THE ISSUE: On September 11, 2019, the City received a demand letter from attorney Scott J. Rafferty ("Rafferty") which threatens legal action against the City under the California Voting Rights Act ("CVRA") if the City does not transition from at-large to district-based elections of City Councilmembers.

INDICATE APPROPRIATE BODY

☐ City Council  ☐ Redevelopment Agency  ☐ Housing Authority  ☐ Surplus Property Authority  ☐ Joint Powers Financing Authority

☐ Finance Standing Committee  ☐ Public Safety Public Services Standing Committee  ☐ Rules and Procedures Standing Committee  ☐ Local Reuse Authority  ☐ Other_____

ITEM_____

☐ Presentation/Proclamation/Commendation (3-Minute Time Limit)  
☐ Public Hearing  ☐ Ordinance  ☒ Other CONSENT CALENDAR

☐ Contract/Agreement  ☐ Council As Whole  
☐ Grant Application/Acceptance  ☐ Claims Filed Against City of Richmond

☐ Resolution  ☐ Video/PowerPoint Presentation (contact KCRT @ 620.6759)

RECOMMENDED ACTION: ADOPT an ordinance (second reading) adopting sections 2.16.050 (City Council Election Districts and Sequencing) and 2.16.060 (City Council Residency) of the Richmond Municipal Code to transition from at-large to by-district elections of City Councilmembers - City Attorney's Office/City Clerk's Office (Bruce Reed Goodmiller 620-6509/Pamela Christian 620-6513).

REVIEWS/APPROVALS DO NOT WRITE IN THIS SPACE

Only items submitted by City Staff have been reviewed and approved by the FINANCE DIRECTOR, CITY ATTORNEY, and CITY MANAGER.
CITY ATTORNEY'S OFFICE

DATE: January 21, 2020

TO: Mayor Tom Butt and Members of the City Council

FROM: Bruce Reed Goodmiller, City Attorney
Pamela Christian, City Clerk

SUBJECT: Adopt Ordinance Establishing City Council Election Districts and Sequencing and City Council Residency

STATEMENT OF THE ISSUE:

On September 11, 2019, the City received a demand letter from attorney Scott J. Rafferty (“Rafferty”) which threatens legal action against the City under the California Voting Rights Act (“CVRA”) if the City does not transition from at-large to district-based elections of City Councilmembers.

Recent efforts to protect jurisdictions from costs related to CVRA litigation (which include plaintiffs’ attorneys’ fees and litigation expenses) led to an amendment of the Elections Code section 10010 to include a “safe-harbor” provision that gives jurisdictions the opportunity to change their election system once they receive a demand letter and caps legal fees recoverable by a plaintiff at $30,000 if a jurisdiction:

- Adopts a resolution of intention to transition to district-based elections that outlines specific steps and estimates a time frame, within forty-five (45) days of receiving the demand letter; and

- Holds at least four (4) public hearings and adopts an ordinance within ninety (90) days of adopting the resolution of intention.

RECOMMENDED ACTION:

ADOPT an ordinance (second reading) adopting sections 2.16.050 (City Council Election Districts and Sequencing) and 2.16.060 (City Council Residency) of the Richmond Municipal Code to transition from at-large to by-district elections of City Councilmembers.
FINANCIAL IMPACT OF RECOMMENDATION:

There is no specific financial impact from tonight’s public hearing, although the consideration of transitioning to a district-based election system involved retaining demographers and counsel. There will also be a small increase in the cost of future elections to account for multiple races rather than one, at-large race for Council.

DISCUSSION:

On September 11, 2019, the City received a demand letter from Mr. Rafferty asserting that the City’s at-large council member electoral system violates the Federal Voting Rights Act (FVRA) and the CVRA by denying Latino voters an opportunity to elect candidates of their choice that is equal to the opportunity enjoyed by non-Latino voters and by diluting the electoral influence of Richmond’s Asian and African-American communities. More recently Mr Rafferty has asked whether districts prepared by the City’s consulting demographers have divided the City’s Lao community.

The letter threatened litigation if the City declined to voluntarily change to a district-based election system.

Federal and California Voting Rights Acts

The FVRA was enacted in 1965 to overcome legal barriers at the state and local levels that prevented minority groups from exercising their right to vote as granted by the U.S. Constitution. Cities with at-large electoral systems have been challenged under Section 2 of the FVRA on the premise that the at-large system dilutes minority voting rights.

The CVRA was enacted in 2001 to implement the California constitutional guarantees of equal protection and the right to vote. The CVRA is broader than the FVRA and provides a private right of action to members of a protected class where, because of “dilution or the abridgment of the rights of voters,” an at-large election system “impairs the ability of a protected class to elect candidates of its choice or its ability to include the outcome of an election.” A violation of CVRA is established if racially polarized voting occurs in elections.

- “Racially polarized voting” means voting where there is a difference between candidates or other electoral choices preferred by voters in a protected class and those preferred by voters in the rest of the electorate.” Intent to discriminate is not necessary to find evidence of racially polarized voting.

The essential difference between the federal and state statutes is that federal law applies only if a reasonably compactly and continuous “majority-minority district” (i.e., a district in which a majority of residents are of a minority group) can be drawn while the state law applies whether or not this is so.

Attorney Fees

In many cases, the apparent motivation for a claim under the CVRA (as opposed to the
FVRA) is the attorney fees often awarded to successful plaintiffs.\textsuperscript{1} For example, Modesto settled a CVRA claim for $3 million in attorney fees.\textsuperscript{2} Notably, no attorney fees award is available to the defending jurisdiction, even if it wins — which none has yet done.\textsuperscript{3}

Under the CVRA, a plaintiff need not obtain a court judgment to recoup attorney fees. Under the “catalyst theory,” a party may seek attorney fees if a matter is settled or the defendant agency accedes to the plaintiff’s demands before judgment. To obtain catalyst fees, a plaintiff must demonstrate his or her suit or demand was “a substantial factor contributing to” the agency’s decision to adopt districts.\textsuperscript{4}

**Safe-Harbor Under the CVRA**

Recent efforts to protect jurisdictions from costs related to CVRA litigation led to an amendment of the Elections Code section 10010 to include a “safe-harbor” provision that gives jurisdictions the opportunity to change their election system once they receive a demand letter and caps legal fees recoverable by a plaintiff at $30,000 if a jurisdiction:

- Adopts a resolution of intention to transition to district-based elections that outlines specific steps and estimates a time frame, within forty-five (45) days of receiving the demand letter; and

- Holds at least four (4) public hearings and adopts an ordinance within ninety (90) days of adopting the resolution of intention.

On October 22, 2019, the City adopted Resolution of Intention No. 99-19 to transition from at-large to district-based elections of City Councilmembers. Under the “safe-harbor” provision, the ordinance to transition to district elections must be adopted no later than January 20, 2020.

**Public Hearings on District Formation**

Following adoption of the Resolution of Intention, a minimum of four public hearings must be held in 90 days. The first two public hearings are held prior to drawing maps to consider communities of interest and other interests which should influence map design. The third and fourth public hearings are held to receive public input on the draft maps provided by the City’s contract demographer, those submitted by Mr. Rafferty, and other map proposals submitted by others.

The City Council held public hearings on November 5, November 19, 2019 and December 3, 2019, and December 17, 2019. In addition to the four public hearings, staff also held City Council Voting District Community Workshops on November 14 and November 18, 2019, at the Council Chamber; December 5, 2019, at Hilltop Community Church (Activity Room), 3118 Shane Drive, Richmond; December 10, 2019, at Booker T. Anderson

\textsuperscript{1} FVRA cases have been brought by non-profit impact litigation groups, while CVRA cases have been brought by private, for-profit attorneys, sometimes suing for such groups.

\textsuperscript{2} Ashton, “Settlement in Latino voting case will set Modesto back $3 million,” The Modesto Bee (June 6, 2008).

\textsuperscript{3} Elec. Code, § 14030.

Community Center, 960 S. 47th Street, Richmond, and January 6, 2020, at Veteran’s Hall, 968 23rd Street.

**Analysis of Richmond’s Laotian-American Community**

Analysis of the impacts of districts on the City’s African-American and Latinx communities has infused all discussions to date. It seems plain that districts that meet the Federal Voting Rights Act can be drawn for both Latinx and African-American voters.

Mr. Rafferty suggested by letter and an email to the City’s special counsel that maps proposed by the City’s demographer, Douglas Johnson of National Demographics Corporation (“NDC”) needlessly divided the City’s Lao community. NDC researched Mr. Rafferty’s claim and reports:

Recent estimates of the total number of Laotians in the entire City of Richmond: according to the most recent American Community Survey data – the same data we are using for income, language spoken at home, etc. – are that there are 882 people born in Laos in Richmond, with a margin of error of +/- 382. And the latest estimate of people citing Lao ‘Race’ (essentially those who trace their heritage to people from Laos) in the City as a whole is 1,134, with a margin of error of 443. (Those born in Laos – the 882 – would also be counted in the estimate of Laotian Race, so the two numbers cannot be added together).

Even if we assume every one of those 1,134 people live in a geographic area that could be included in a single district, and if we VERY favorably assume 90% of them are adults and 100% are citizens, they would reach a maximum at 15% of [Citizen Voting Age Population or “CVAP”] in the lowest-total-CVAP district of Map 101.

More realistically, Laotians are at most 5% of CVAP in that district. Note that only 24% of the City’s total Latino CVAP live in District 1 of Map 101. Laotians may be more-concentrated than Latinos, but even if a very-unlikely 50% of all Laotians are in a single district, that would work out to a count of only 567 Laotians in a district of over 17,000 residents.

The Laotian numbers in Richmond are so small that the Census Bureau does not provide any breakdown of Laotians within the City — not by Census Block, Census Block Group, nor by Census Tract.

There were too few Laotians in the United States for the academic author of ‘Asian’ surname list used by the official California Statewide Database to create a list of Laotian surnames. So the California Statewide Database also does not provide any data on Laotians within the City. As a result the ‘BSIG’ method cited by Mr. Rafferty (combining surname data and geographic data) cannot be applied using official California data (nor, as noted above, can it be done with official Census data). A voter list company called "Political Data" is probably the best-known source of 'BSIG'-method data. But I checked their listing of the all of the fields they compile, and they also do not have sufficient data -- even at the statewide level -- to compile counts of Laotians.
So the only available data – from government or commonly-used private sources – on the geographic concentration of Laotians in Richmond would be anecdotal. But we know from the Census Bureau's official counts that Laotians, even in an absolute-highest-case scenario, are going to be no more than 15% of CVAP in a single District, and more realistic assumptions would put them at about 5% of CVAP.

If any individual or group comes forward with any data on Laotian numbers and locations in the City that they have compiled (and for which they can cite the methodology used), NDC is happy to evaluate it further. But in the Federal and State databases, the counts of Laotians in Richmond are so small that the Federal and State databases cannot provide any counts by any level of geography below the citywide total.

At the City's January 6th community forum, Lao community members that spoke at the forum indicated that Lao residents of Richmond live in all sections of the city and are not particularly concentrated in any one neighborhood.

Accordingly, NDC does not recommend alteration of the maps it has proposed to account for the distribution of Lao residents of the City.

**Analysis and Recommendation**

The City initially received 17 proposed maps from members of the public, of which NDC determined five were duplicates of earlier submitted maps. NDC initially proposed three additional maps. The City published those the 15 intial draft maps on November 26, 2019. After its third public hearing on December 3, 2019, the City received three more maps from the public, and NDC proposed one additional map. The City published 19 revised draft maps on December 10, 2019. An additional map from a member of the public arrived after the deadline and too late to process and post it seven days prior to this hearing. That additional map proposed changes to Map 114 and NDC’s presentation of Map 114 will include discussion of the feedback on that map.

Council selected Map 115b, which respects neighborhood boundaries and the other state requirements, meet the constitutional requirements for equal population and meets the federal voting rights act goal of including a district in which Latinos are effectively able to elect their preferred candidates (i.e., 45–51% of Citizen Voting Age Population, or CVAP, with a 15 to 30% advantage over the next-largest group’s share of CVAP).

City staff sought to provide residents with as many hearings and workshops as possible to increase participation in the district drawing and election sequencing process. Accordingly, the City desires to take full advantage of Elections Code section 10010’s 90-day “Safe Harbor Period” by introducing an ordinance on January 14, 2020 and adopting the ordinance on or before the 90th day. The 90th day falls on January 20, 2020, Martin Luther King Jr. Day, a legal holiday. Under Civil Code section 11, the 90-day deadline is extended to the next business day, which is January 21, 2020.

Should a court fail to recognize the legal effect of Civil Code section 11, the City acted to protect itself by adopting an urgency ordinance within the “Safe Harbor Period” on January 14, 2020. The regular ordinance includes a section repealing the urgency ordinance,
thereby ensuring that either the urgency ordinance or regular ordinance will be in effect, but not both.

This two-step approach best serves the City’s interests in increasing residents’ participation while completing a legally defensible transition to district-based elections within the “Safe Harbor Period.”

DOCUMENTS ATTACHED:
Public Hearing and Community Workshop Schedule
Draft Ordinance
Map 115B
<table>
<thead>
<tr>
<th>DATE</th>
<th>EVENT</th>
<th>COMMENT</th>
</tr>
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<tbody>
<tr>
<td>November 5, 2019</td>
<td>1st Public Hearing</td>
<td>Council to receive input from community to be used to draw preliminary district maps. No maps yet drawn.</td>
</tr>
<tr>
<td>November 14, 2019</td>
<td>Community Workshops</td>
<td>Staff provides a presentation regarding the move to district elections, demonstrates the mapping tools and receives input on map designs.</td>
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<td>November 18, 2019</td>
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<td>November 19, 2019</td>
<td>2nd Public Hearing</td>
<td>Council to receive additional input from community to be used to draw preliminary district maps. No maps yet drawn.</td>
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<td>November 21, 2019</td>
<td>Initial Map Submission Deadline</td>
<td>Deadline to submit maps that will be posted November 26 and considered by Council at third public hearing.</td>
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<td>November 26, 2019</td>
<td>Publish Draft Maps and Potential Sequence of elections.</td>
<td>Maps will be posted at least 7 days prior to the third public hearing.</td>
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<tr>
<td>December 3, 2019</td>
<td>3rd Public Hearing</td>
<td>Regarding draft maps and proposed sequence of elections. Opportunity for public to respond and make recommendations regarding the proposed district boundaries and sequence of elections.</td>
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<td>December 5, 2019</td>
<td>Community Workshop #3</td>
<td>Staff to receive input from community regarding draft maps submitted for review.</td>
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<tr>
<td>December 6, 2019</td>
<td>Revised Maps Deadline</td>
<td>Deadline to submit revisions to posted maps that will be posted December 10 and considered by Council at fourth public hearing.</td>
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<tr>
<td>December 10, 2019</td>
<td>Community Workshop #4</td>
<td>Staff to receive input from community regarding posted maps.</td>
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<td>December 17, 2019</td>
<td>4th Public Hearing</td>
<td>Regarding draft maps and proposed sequence of elections. Opportunity for public to respond and make recommendations regarding the proposed district boundaries and sequence of elections.</td>
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<td>January 6, 2020</td>
<td>Publish Draft Maps &amp; Sequence of Elections</td>
<td>Maps will be posted at least 7 days prior to the 5th public hearing on January 14, 2020.</td>
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<td>January 14, 2020</td>
<td>5th Public Hearing</td>
<td>Council will select map to establish district boundaries, introduce an ordinance and adopt an urgency ordinance establishing district elections, and determine election sequence.</td>
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<tr>
<td>January 21, 2020</td>
<td>Regular Meeting</td>
<td>Expected that Council will adopt an ordinance establishing district elections.</td>
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ORDINANCE NO. ___

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND
ADOPTING SECTION 2.16.050 (CITY COUNCIL ELECTION DISTRICTS AND
SEQUENCING) AND SECTION 2.16.060 (CITY COUNCIL RESIDENCY) OF
CHAPTER 2.16 (ELECTIONS) OF ARTICLE II (ADMINISTRATION AND CITY
GOVERNMENT) OF THE RICHMOND MUNICIPAL CODE TO TRANSITION
FROM AT-LARGE TO BY-DISTRICT ELECTIONS OF CITY
COUNCILMEMBERS AND REPEALING ORDINANCE NO ___-U

Section 1. Findings

WHEREAS, under the City Charter, members of the City Council are elected at large; and

WHEREAS, on September 11, 2019, the City received a certified letter from Attorney Scott Rafferty asserting the City’s at-large councilmember electoral system violates the California Voting Rights Act (“CVRA”) and threatening litigation if the City declines to voluntarily change to a district-based electoral system; and

WHEREAS, the City denies that its at-large electoral system violates the CVRA, or any other law, and continues to support the full participation of all voters in its elections; and

WHEREAS, the City Council concludes the public interest is served by transitioning to by-district elections to avoid the cost of disputing the matter; and

WHEREAS, the City Council adopted Resolution No. 99-19 on October 22, 2019, stating its intention to transition to by-district elections pursuant to Elections Code section 10010 and section 3 of article III of the Richmond City Charter; and

WHEREAS, any provision of the City Charter conflicting with the CVRA is preempted under Jauregui v. City of Palmdale (2014) 226 Cal.App.4th 781, 802, which held the dilution of votes of a protected class and the transition to district-based elections are matters of statewide concern; and

WHEREAS, Resolution No. 99-19 triggered Elections Code section 10010’s 90-day safe harbor provision, which shields the City from litigation under the California Voting Rights Act while it holds public hearings and considers proposed maps regarding its intention to transition to district-based elections; and

WHEREAS, 90 days from October 22, 2019 is January 20, 2020, Martin Luther King Jr. Day, a legal holiday, and under Civil Code section 11, the 90-day deadline is extended to the next business day which is January 21, 2020; and
WHEREAS, the City held public hearings on November 5, 2019, November 19, 2019, December 3, 2019, December 17, 2019, and January 14, 2020 as required under Elections Code section 10010, subdivision (a)(2), to receive input regarding communities of interest and the composition of districts; and

WHEREAS, the City held five supplementary community workshops on November 14, 2019, November 18, 2019, December 5, 2019, December 10, 2019, and January 6, 2020 to receive input regarding communities of interest and the composition of districts; and

WHEREAS, the City created a separate page on its website to inform voters of the process to transition to by-district elections, and posted a description of the process, the schedule of hearings and meetings, frequently asked questions, draft maps, notices, correspondence, presentations, resolutions, and staff reports; and

WHEREAS, the City contracted with National Demographics Corporation (“NDC”) to draw district maps and analyze submissions by the public and contracted with Compass Demographics to provide a peer review of NDC’s work; and

WHEREAS, the City provided a link on its website to data kits which allow members of the public to propose maps for NDC’s consideration; and

WHEREAS, the City received 17 proposed maps from members of the public, and NDC determined 5 were duplicates; and

WHEREAS, NDC proposed three additional maps; and

WHEREAS, the City timely published 15 draft maps on November 26, 2019; and

WHEREAS, after its third public hearing on December 3, 2019, the City received three more maps from the public, and NDC proposed one additional map; and

WHEREAS, the City timely published 19 revised draft maps on December 10, 2019; and

WHEREAS, on December 17, 2019, the City Council identified four maps, plus a fifth to be submitted by Compass Demographics, as those to be the focus of further community dialog and directed further efforts to seek community input before the Council’s January 14, 2020 meeting; and

WHEREAS, the adoption of districts will not affect the term of any sitting Councilmember, each of whom will serve the term to which he was elected; and

WHEREAS, The Council adopted an Ordinance substantively identical to this as an urgency ordinance in one reading and with immediate effectiveness on January 14, 2020, and it is now appropriate to replace that urgency ordinance with this ordinance adopted on two readings and with 30-day effectiveness.
NOW THEREFORE, the Council of the City of Richmond does ordain as follows:

Section 2. Amendment of Municipal Code

Chapter 2.16 (Elections) of Article II (Administration and City Government) of the Richmond Municipal Code is hereby amended to add a new Section 2.16.050 as follows:

2.16.050 City Council Election Districts; Sequencing

(a) District Boundaries. Commencing with the City’s regular election in 2020, the City Council will be elected from the six districts described on the map attached hereto as Exhibit A and incorporated by this reference. The districts identified in Exhibit A shall be subsequently reapportioned as required by law.

(b) Election Sequencing. Commencing with the City’s regular election in 2020 and every four years thereafter, voters in Districts 1, 5, and 6 will elect members of the City Council for four-year terms. Commencing with the regular election in 2022 and every four years thereafter, the voters in Districts 2, 3, and 4 will elect members of the City Council for four-year terms.

Section 3. Amendment of Municipal Code

Chapter 2.16 (Elections) of Article II (Administration and City Government) of the Richmond Municipal Code is hereby amended to add a new Section 2.16.060 as follows:

2.16.060 Residency; Vacancies

(a) City Council.

1) Commencing with the City’s regular election in 2020, any candidate for the City Council must reside in, and be a registered voter of, the district which he or she seeks to represent and shall maintain status as a registered voter there during his or her service on the Council. Unless applicable law otherwise requires, to be eligible for office, a candidate must be such a resident and registered voter of the district at the time nomination papers are issued to the candidate as provided in Elections Code section 10227.

2) If a City Council member elected by district ceases to be a registered voter in that district, that fact creates a vacancy unless he or she obtains another domicile within the district within 30 days after cessation of residency. Any vacancy arising for that reason, or otherwise under Government Code section 1770 or other applicable law, must be filled pursuant to section 2.16.090 of this Code and section 10 of article III of the City Charter by the remaining members of the City Council appointing a qualified resident and registered voter of the district to which the vacancy pertains.

(b) Mayor. Qualifications for and vacancies in the office of Mayor are governed by article III, sections 3 and 5 of the City Charter.
Section 4. Recordation; Publication

The City Clerk shall file a copy of the Ordinance with the Contra Costa County Clerk-Recorder’s office within 30 days of its passage and adoption and shall give notice of it as required by section 2.08.010 of the Municipal Code and record it in the Ordinance Book as required by section 2.08.020 of that Code.

Section 5. Severability

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision will not affect the validity of the remaining portions of the Ordinance. The City Council hereby declares that it would have adopted the Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any other portion of the Ordinance would be subsequently declared invalid.

Section 6. Effective Date

The Ordinance shall be effective 30 days after passage and adoption.

Section 7. Repealer

Ordinance No. ___-U is hereby repealed.
First read at a meeting of the Council of the City of Richmond held on January 14, 2020, and finally passed and adopted at a regular meeting thereof held on January 21, 2020, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

PAMELA CHRISTIAN
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:

TOM BUTT
Mayor

Approved as to form:

BRUCE GOODMILLER
City Attorney

State of California  }  
County of Contra Costa : ss.  
City of Richmond }  

I certify that the foregoing is a true copy of Ordinance No. ___, passed and adopted by the City Council of the City of Richmond at a regular meeting held on January 21, 2020.

Pamela Christian, City Clerk of the City of Richmond
Exhibit A
District Map
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</table>

City of Richmond - Draft Map 115

Total population data from the 2010 Decennial Census.
Surname-based Voter Registration and Turnout data from the California Statewide Database.
Latino voter registration and turnout data are Spanish-surname counts adjusted using Census Population Department undercount estimates. NH White and NH Black registration and turnout counts estimated by NDC. Citizen Voting Age Pop., Age, Immigration, and other demographics from the 2013-2017 American Community Survey and Special Tabulation 5-year data.