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15 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 IN AND FOR THE COUNTY OF LOS ANGELES

17 NICHOLAS GUTIERREZ,
18 *Plaintiff,*
19 vs.
20 CITY OF BURBANK, and DOES 1 through 100,
inclusive,
21 *Defendants.*

Case No.: 23 ST CV 25587
**DEFENDANT CITY OF
BURBANK'S NOTICE OF
DEMURRER AND DEMURRER
TO FIRST AMENDED
COMPLAINT; MEMORANDUM
OF POINTS AND AUTHORITIES**
*[Request for Judicial Notice,
Declaration of Marguerite Mary Leoni]*
Reservation No. 247941171087
DATE: May 24, 2024
TIME: 8:30 AM
DEPT: 30
JUDGE: Hon. Barbara M. Scheper

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD**

2 **PLEASE TAKE NOTICE** that on May 24, 2024, at 8:30 a.m., or as soon thereafter as the
3 matter may be heard in Department 30 of the above-captioned court, located at 111 North Hill Street,
4 Los Angeles, California, 90012, defendant City of Burbank (“City”) will, and hereby does, demur to
5 the First Amended Complaint (FAC) filed herein pursuant to Code of Civil Procedure section 430.10
6 subdivision (e) on the following grounds:

7 **GROUND FOR DEMURRER TO FIRST AMENDED COMPLAINT**

8 **Demurrer To Plaintiff’s First Cause Of Action**

9 **For A Violation Of The California Voting Rights Act (“CVRA”)**

10 The First Cause of Action of Plaintiff’s First Amended Complaint fails to state facts sufficient
11 to constitute a cause of action. (Code Civ. P. § 430.10, subd. (e).)

12 **Demurrer To Plaintiff’s Second Cause Of Action**

13 **For A Violation Of California’s Equal Protection Clause**

14 The Second Cause of Action of Plaintiff’s First Amended Complaint fails to state facts
15 sufficient to constitute a cause of action. (Code Civ. P. § 430.10, subd. (e).)

16 Through counsel, the Defendant met and conferred by letter and telephonically with Plaintiff
17 on Thursday, March 14, 2023 under Code of Civil Procedure section 430.41, subdivision (a), but
18 Plaintiff declined to amend the FAC to address the deficiencies identified in Defendant’s meet and
19 confer letter or dismiss the FAC. The City therefore brings this demurrer. (Decl. of Leoni.)

20 This demurrer is based on (1) this notice of demurrer and demurrer; (2) the attached
21 memorandum of points and authorities; (3) the concurrently filed request for judicial notice and all
22 other matters of which this Court may take judicial notice under sections 451, 452, and 453 of the
23 California Evidence Code; (4) the Declaration of Marguerite Mary Leoni; (5) the Declaration of

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1 David J. Lazarus; (6) the records and files in this matter; and (7) such other evidence and argument
2 of counsel as this Court may permit.

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Dated: April 17, 2024

NIELSEN MERKSAMER
PARRINELLO GROSS & LEONI LLP


By: 
Marguerite Mary Leoni
Christopher E. Skinnell
David J. Lazarus
Attorneys for Defendant

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The FAC levels serious allegations of race-based discrimination against the defendant City
4 of Burbank (“City”), without alleging any of the facts the law clearly requires. Plaintiff Nicholas
5 Gutierrez (“Plaintiff”) claims that the City’s failure to change its longstanding system of at-large
6 elections discriminates against residents based on their race and ethnicity, and that City elections are
7 plagued by racially polarized bloc voting that impairs the ability of minorities to elect their candidates
8 of choice. These are particularly salacious charges to level without support against a City recognized
9 for its diversity and inclusivity.

10 Plaintiff filed the original complaint on October 19, 2023, alleging the same two causes of
11 action for violation of the CVRA and of the Equal Protection Clause of the California Constitution.
12 Defendant generally demurred to both causes of action, and to the entire complaint because it failed
13 to set forth whose voting rights were allegedly impaired by Defendant’s use of at-large voting for
14 City Council members. The Court sustained the demurrer with leave to amend but did not rule on
15 the general demurrers to the First or Second Causes of Action.

16 Plaintiff filed a FAC on February 14, 2024, alleging he is a Latino voter of the City and
17 “Latino American voters, a protected class, are harmed under [Burbank’s] current at-large voting
18 system.” (FAC ¶ 34.) Plaintiff alleges that “[t]he at-large system in Burbank, . . . , leads to scenarios
19 where the majority voting as a bloc consistently outvotes minority communities, . . . , exemplifying
20 the harm that Nick Gutierrez, as a member of this protected class, experiences under the current
21 electoral system.” (*Ibid*, ¶ 35.)

22 Apparently conceding deficiencies in the two causes of action alleged in the Complaint,
23 Plaintiff added allegations to those as well. In the First Cause of Action for violation of the CVRA,
24 Plaintiff alleges that 61 candidates have run for election to the City Council. This number includes
25 five successful Latino candidates (who won over multiple election cycles), and four other persons of
26 Latino origin, one person of African-American origin, and one person of Korean origin who were

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1 unsuccessful in their electoral bids.¹ Plaintiff does not allege any of the unsuccessful candidates were
2 the chosen candidates of Latino voters or opposed by non-Latino voters. (FAC ¶¶ 25-29 & 47.)

3 In the Second Cause of Action for violation of California’s Equal Protection Clause, Plaintiff
4 alleges the City’s electorate voted in 2018 to move City Council elections from odd-numbered years
5 to November of even-numbered years but the City Council did not place on that ballot a measure to
6 transition from at-large to by-district voting even though many other cities were making that change.
7 (FAC ¶¶ 7, 8, & 9)

8 These insubstantial tweaks to the FAC do not solve the pleading defects in the original
9 complaint. Like its prior version, the FAC fails to set forth facts to support its contention under the
10 CVRA that racially polarized voting or vote dilution has occurred in Burbank. Fact pleading
11 standards require more than reciting a list of candidates who lost elections with the conclusory
12 contention that “[t]here is evidence of racially polarized voting” in the City. (FAC ¶ 46.)

13 The core of a CVRA claim is intensely factual and intensely local, and decades of state and
14 federal case law clearly establish the plaintiff’s burden to allege racially polarized voting by stating
15 facts showing that local elections feature 1) cohesive voting by protected class voters, 2) cohesive
16 voting by the majority of other voters, and 3) a clash of those blocs that results in the defeat of the
17 protected class’s preferred candidates. (*Thornburg v. Gingles* (1986) 478 U.S. 30, 46 (“*Gingles*”);
18 *Pico Neighborhood Assn v. City of Santa Monica* (2023) 15 Cal.5th 292, 306, 318 (“*Pico*”).) The
19 FAC does not provide any such facts.

20 Plaintiff similarly fails to plead facts to establish the necessary element of dilution. (*Pico*,
21 *supra*, 15 Cal.5th at 315 [a plaintiff cannot prevail [on a claim under the CVRA] based “solely on
22 proof of racially polarized voting,” dilution of the ability to elect chosen candidates is “a separate
23 element under the CVRA”].) Contrary to the California Supreme Court’s detailed explanation of the
24 elements of dilution, Plaintiff does not allege facts demonstrating that district-based elections would
25 improve the protected class’s ability to elect preferred candidates. (*Id.* at 315, 322.) The FAC’s
26 threadbare invocation of the term “dilution” like a mantra does not suffice. (See FAC ¶¶ 5, 6, 8, 33,
27 34, 41, 42, 46, 72, 91, 94.)

28 ¹ Plaintiff alleges that four persons of Armenian origin have run for City Council, but these persons
are not within the definition of “protected class” in the CVRA. (Elec. Code § 14026(d).)

1 Finally, the FAC fails to allege facts constituting a violation of California’s Equal Protection
2 Clause. Plaintiff is required to allege facts showing that a substantial motivation of the City Council
3 in using at-large elections was to discriminate against protected class voters. (Cf. *Dem. Nat’l Comm.*
4 *v. Hobbs* (9th Cir. 2020) 948 F.3d 989, 1038 (“*Hobbs*”).) In addition, Plaintiff must allege
5 impairment or abridgment of the right to vote. Plaintiff has not alleged facts to demonstrate either.

6 Plaintiff appears to believe he can satisfy his factual pleading burden by invoking Code of
7 Civil Procedure § 128.7. Section 128.7 is not a substitute for fact pleading. To the contrary, Section
8 128.7 looks to the *facts alleged* and provides that the signing and filing of the pleading constitutes a
9 certification that evidence exists to support those factual allegations.

10 **II. FACTUAL BACKGROUND AND ALLEGATIONS OF THE FAC.**

11 ***a. City of Burbank Formation and Elections***

12 The City of Burbank was incorporated on July 8, 1911, and adopted a charter on January 13,
13 1927. (Cal. Uncod. Init. Measures & Stats Deer 1927-18 Burbank City Charter.) Since then, elections
14 for the five members of the City Council have been conducted at-large. (FAC ¶¶ 22 & 23.)

15 ***b. The City’s Diversity and Inclusivity***

16 A point of pride for the City and its residents is its diversity. Plaintiff alleges that the total
17 population of the City is 44.2 percent races other than non-Latino white. (FAC ¶ 6.) Plaintiff is Latino
18 (FAC ¶ 34), and the Latino population of the City according to the 2020 Census is approximately 24
19 percent. (RJN Ex.1.) Latinos who are eligible to vote constitute approximately 22 percent of all
20 eligible voters. (RJN Ex. 2.) The Urban Institute’s recent nationwide survey of community levels of
21 inclusivity, measured in terms of income segregation, rent burden, share of population who are not
22 in school and have not graduated, and working poor, concluded that the City ranked 8th out of 274
23 cities across the country in terms of overall inclusion. (RJN Ex. 3.)

24 ***c. City Diversity as Reflected in Its Leadership***

25 According to the FAC, the City is and historically has been led by a council of diverse
26 members. (See FAC ¶ 24 [alleging the election of a person of Hispanic origin to the City Council in
27 2001, 2005, 2009, 2013, 2017, and 2022].) Of the current five members of the City Council, (1)
28 Council Member Nikki Perez is descended from immigrants from El Salvador and Guatemala, and

1 is an indigenous and openly LGBTQIA+ elected official (she received a record breaking 17,958
2 votes in the 2022 election) (RJN Ex. 4 & 5); (2) Council Member Zizette Mullins was born in Cairo,
3 Egypt, and emigrated to the United States from Egypt at the age of 13, not speaking a word of English
4 (RJN Ex. 6); and (3) Mayor Konstantine Anthony is the first openly autistic elected official in the
5 western part of the United States (he received then a record breaking 17,529 votes in the 2020
6 election). (RJN Ex. 7 & 8; see also FAC ¶ 33.)

7 In addition to current City Council member Perez, candidates from a wide range of diverse
8 backgrounds have experienced electoral success over the past twenty years, including Latino Jef
9 Vander Borgh, elected for two terms in 1999 and 2003 (RJN Ex. 9), Latina Marsha Ramos, who
10 was elected for two terms (2001 and 2005), Latino Jess Talamantes, who was elected to three terms
11 (2009, 2013, and 2017), and Latino Robert Frutos, who was elected to two terms (2013 and 2017).
12 Of the twenty-seven open City Council seats from 2001 to the present, at least nine, or thirty-three
13 percent, were won by individuals who self-identify as Hispanic or Latino, a percentage that exceeds
14 proportional representation for the 22 percent of eligible Latino voters of the City. (FAC. ¶ 24.)

15 ***d. The City's Consideration of a Transition to District-Based Elections***

16 The FAC alleges that, when the City received correspondence from Plaintiff's counsel in
17 August 2022 claiming voting rights violations, it acted quickly and seriously. It hired counsel, a
18 demographer, and outreach consultants at substantial expense; it adopted a Resolution of Intent
19 ("Resolution") to make a transition from at-large to by-district systems; it created a new website and
20 mapping tools to enable the public to shape the process of map drawing; it engaged in extensive
21 public outreach, including convening six public hearings and eight community forums to consider a
22 transition to by-district elections; and it thoroughly debated the merits of a wide range of potential
23 maps most of which had been submitted by members of the public. (RJN Ex. 10.) The City Council
24 then paused to await the decision of the California Supreme Court in *Pico Neighborhood Association*
25 *v. City of Santa Monica*, which involved the interpretation of several key provisions of the CVRA,
26 including the requirement of proving vote dilution. Following issuance of the decision, and after
27 thoroughly debating the merits, all five members of the council voted not to adopt a district map at
28 this time. Rather, the council voted to study an alternative reform, cumulative voting, while referring

1 additional questions about the structure of City government to the City’s Charter Review
2 Commission. (FAC fn. 15 [commencing at 1:55:35].) Further, the council invited Plaintiff, who had
3 not participated in the process, to provide feedback “to ensure any potential outcome addresses the
4 concerns posed by the initial notice” of a voting rights violation. (*Id.*; FAC ¶¶ 48-67).

5 **III. LEGAL STANDARD**

6 “[T]he party against whom a complaint . . . has been filed may object, by demurrer,” including
7 on the grounds that “[t]he pleading does not state facts sufficient to constitute a cause of action.”
8 (C.C.P. § 430.10, subd. (e).) “The reviewing court accepts as true all facts properly pleaded in the
9 complaint in order to determine whether the demurrer should be overruled.” (*Guardian N. Bay, Inc.*
10 *v. Superior Court* (2001) 94 Cal.App.4th 963, 971.) However, courts do not assume the truth of
11 “contentions, deductions or conclusions of fact or law.” (*Cansino v. Bank of Am.* (2014) 224
12 Cal.App.4th 1462, 1468; *Ankeny v. Lockheed Missiles & Space Co.* (1979) 88 Cal.App.3d 531, 537
13 [“It is settled law that a pleading must allege facts and not conclusions, and that material facts must
14 be alleged directly and not by way of recital.”].) In addition, only “reasonable inferences” may be
15 drawn from factual allegations (*Bank of New York Mellon v. Citibank, N.A.* (2017) 8 Cal.App.5th
16 935, 952) and a court ignores allegations in the body of the complaint that are contrary to documents
17 incorporated by reference² and treats the documents as controlling over their characterization in the
18 pleading. (*Exec. Landscape Corp. v. San Vicente Country Villas IV Ass’n* (1983) 145 Cal.App.3d
19 496, 499.) Finally, the CVRA is a statutory cause of action which must be pleaded with particularity.
20 (See *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790; *Lopez v. So. Cal. Rapid*
21 *Transit Dist.* (1985) 40 Cal.3d 780, 795.) A plaintiff must allege the who, where, when, what, and
22 how. (See *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645).

23 **IV. ARGUMENT**

24 **A. The First Cause of Action for Violation of the CVRA Should Be Dismissed For** 25 **Failure to Properly Allege Racially Polarized Voting or Dilution of the Ability to** 26 **Elect Chosen Candidates of the Protected Class Voters.**

27 **I. There are no factual allegations of racially polarized voting.**

28 _____
² The FAC includes 19 footnotes incorporating links to electronic versions of official documents of the City of Burbank. For the Court’s convenience, copies of relevant documents are filed with this demurrer.

1 Both the CVRA and the Federal Voting Rights Act (“VRA”) “require a plaintiff to show
2 racially polarized voting – i.e., that protected class members vote as a politically cohesive unit, while
3 the majority votes ‘sufficiently as a bloc usually to defeat’ the protected class’s preferred candidate.”
4 (*Pico*, 15 Cal.5th at 306, 313, quoting *Gingles*, 478 U.S. at 56; *League of United Latino American*
5 *Citizens v. Perry* (2006) 548 U.S. 399, 425-426 [bloc voting facts are a “threshold condition[] for
6 establishing a § 2 violation”])³; accord Elec. Code § 14028(a.) “At the *heart* of vote dilution law is
7 the concept of racially polarized voting.” (Chris Elmendorf, *Racially Polarized Voting*, U. Chi. L.
8 Rev. (2016) 587, 589; *McNeil v. Springfield Part Dist.* (7th Cir. 1988) 851 F.2d 937, 942-943 [bloc
9 voting is critical threshold that “appropriately clos[es] the courthouse to marginal cases”].)

10 The CVRA specifies that racially polarized voting is evaluated based on standards in federal
11 cases interpreting and applying Section 2 of the federal VRA. (Elec. Code § 14026(e); *Yumori-Kaku*
12 *v. City of Santa Clara* (2020) 59 Cal.App.5th 385, 395 [“CVRA directs California courts assessing
13 racially polarized voting to federal case law on section 2 of the federal Voting Rights Act of 1965”].)

14 Though the FAC mentions racially polarized voting in several paragraphs,⁴ nowhere does it
15 address the factual elements of racially polarized voting i.e., “that the protected class members vote
16 as a politically cohesive unit [for particular candidates or positions], while the majority votes
17 ‘sufficiently as a bloc usually to defeat’ the protected class’s preferred candidate.” (*Pico*, 15 Cal.5th
18 at 306.) The FAC lacks a single fact showing that any racial minority group in the City is politically
19 cohesive. (See, e.g., *Gomez v. City of Watsonville* (9th Cir. 1988) 830 F.2d 1407, 1414-1417
20 [analyzing “political cohesiveness of Hispanics”].) Nor does it contain a single fact showing that any

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22 ³ It is widely accepted that the *Gingles* factors serve an “essential manageability function” that would
23 otherwise make the concept of vote dilution “open-ended [and] subject to no principled means of application”
24 (*McGhee v Granville County, North Carolina* (4th Cir. 1988) 860 F.2d 110, 116) and that would require courts
to decide vote dilution cases on the basis of “highly political judgments” (*Bartlett v. Strickland* (2009) 556
U.S. 1, 17 (Kennedy) (plurality); see Elmendorf, *infra*, at 604.)

25 ⁴ See FAC ¶¶ 26 [“Elections held within the City of Burbank are characterized by racially polarized
26 voting”], 27 [“Racially polarized voting exists within the City of Burbank”], ¶ 28 [definition of racially
27 polarized voting], 29 [“[R]acially polarized voting and vote dilution have the effect of impeding opportunities
28 for protected class voters to elect candidates of their choice”], 30 [“Voters from protected classes are harmed
by racially polarized voting”], 31 [“There is evidence of racially polarized voting and vote dilution in the City
of Burbank on state ballot measures since 2008”], 33 [“There is also evidence of racially polarized voting and
vote dilution in the City of Burbank on ballot measures at the local level in recent years, and for candidates
for local and state office in the City of Burbank”], and 75 [“Racially polarized voting has occurred, and
continues to occur, in elections in the City of Burbank”].

1 group votes as a bloc against the preferred candidate of plaintiff-protected class. In fact, the FAC
2 does not allege a single instance of a minority-preferred candidate that was defeated due to majority
3 bloc voting. (Cf. *Gingles*, 478 U.S. at 56 [third *Gingles* factor is “legally significant” majority bloc
4 voting that enables it “usually to defeat the minority’s preferred candidates”].) Thus, Plaintiff fails
5 the threshold pleading requirement – to “demonstrate the existence of racially polarized voting.”
6 (*Pico*, 15 Cal.5th at 318.)

7 The FAC’s list of four Latino candidates who lost elections does not establish the elements
8 of racially polarized voting. (FAC ¶¶ 25-29, 42.) The FAC alleges that in all but one of the elections
9 in which one or more of these unsuccessful Latino candidates ran, a different Latino/a was elected
10 (in 2001 Ramos defeated Dominguez and Gonzalez; in 2003 Vander Borcht defeated Espinoza; in
11 2013 Talamantes prevailed over Guillen; in 2017 Frutos prevailed over Guillen). (FAC ¶¶ 24, 29.)
12 Clearly Latino/a candidates have electoral success in the City of Burbank, a fact inconsistent on its
13 face with an inference of racially polarized voting.

14 Listing statewide ballot measure elections (assuming they are even relevant given the robust
15 electoral success of Latino candidates in City Council elections⁵) does not satisfy Plaintiff’s pleading
16 burden. A plaintiff must still allege the *Gingles* factors regarding those ballot measure elections. The
17 FAC fails to set forth any facts about the ballot measure elections, e.g. what were the positions
18 preferred by protected class voters and the positions preferred by a majority bloc of the remaining
19 voters, were the positions different, the outcomes of those elections, and whether the positions of the
20 protected class voters were defeated. Moreover, Plaintiff has not alleged that the statewide ballot
21 measures have a unique bearing on the rights of protected class members, such that they are relevant
22 to a polarized voting analysis. (See Elec. Code § 14028(b); *Montes v. City of Yakima* (2014) 40
23

24 ⁵ *Exogenous* elections are far less probative than *endogenous* elections, and they should not be relied
25 upon, or supplant, endogenous elections where, as here, there are a substantial number of relevant endogenous
26 elections of City Council members alleged in the FAC. (See *Sanchez v. Colorado* (10th Cir. 1996) 97 F.3d
27 1303, 1324-1325 [exogenous elections are “less probative than elections involving the specific office at
28 496, 502, *cert. denied*, 492 U.S. 905 (1989)]; *Clay v. Board of Educ.* (8th Cir. 1996) 90 F.3d 1357, 1361 fn.
9 [“expert’s analysis relies on exogenous elections, which should be used only to supplement the analysis of
the specific election at issue.”].)

1 F.Supp.3d 1377, 1402 [single ballot measure included in list of ten candidate elections because it
2 involved issue of “importance” to minority group].)

3 **2. The FAC similarly fails to set forth facts alleging dilution.**

4 The California Supreme Court has recently specified the elements of the dilution prong of a
5 CVRA claim. Under *Pico*, a vote dilution plaintiff must: (1) “identify a reasonable alternative voting
6 practice to the existing at-large electoral system” (*Pico*, at 315); (2) allege facts demonstrating the
7 lawful alternative would improve the plaintiff class’s ability to elect preferred candidates and would
8 not make the class worse off by a loss of its potential to elect candidates of choice elsewhere in the
9 locality (*id.* at 322); and (3) allege facts going to the totality of the circumstances demonstrating vote
10 dilution (e.g., number of candidates running; campaign appeals; polarization in voting) (*id.* at 308).

11 Plaintiff includes the word “dilution” throughout the FAC.⁶ No paragraph contains any of
12 the facts required by *Pico*. The FAC does allege in paragraphs 74 and 83, “An alternative method of
13 election exists — district-based elections — that will provide an opportunity for the members of
14 protected classes as defined by the CVRA to elect candidates of their choice in City of Burbank
15 elections.” This conclusion is insufficient to plead dilution. The FAC does not set forth any facts
16 showing a comparison between anticipated Latino electoral success under district-based elections
17 and success under the current at-large elections. (Cf. *Pico*, *supra*, 15 Cal.5th at 318 [the plaintiff
18 must show that, “assuming the same degree of racial polarization, the greater concentration of
19 protected class voters in the hypothetical district would nonetheless be sufficient to enable them to
20 elect their preferred candidate when combined with the available crossover votes” or “demonstrate
21 sufficient voting strength where racially polarized voting by other voters in the hypothetical district
22 is lower than in the community as a whole”]; *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th
23 660, 670 [discussing cross-over and coalitional districts].)

24 The FAC provides no facts to satisfy Plaintiff’s burden to “demonstrate that some lawful
25 alternative method of election would improve the protected class’s overall ability to elect its preferred
26

27 ⁶ See FAC ¶¶ 5 [at-large election method “has resulted in vote dilution”], 41 [“polarized voting and
28 vote dilution have the effect of impeding opportunities”], 42 [“There is evidence of [] vote dilution [] on state
ballot measures”], 46 [“There is also evidence of ... vote dilution in the City of Burbank on ballot measures
at the local level in recent years, and for candidates for local and state office in the City of Burbank.”].

1 candidates.” (*Pico*, at 322.) The FAC does not allege which candidates preferred by protected class
2 voters have been unable to win elections in the City’s at-large electoral system or whether these
3 candidates would have been successful in a district-based electoral system. Nor does the FAC allege
4 Latino voters can form the majority of voters in a single-member district or would be better off
5 attempting to elect a single candidate in a single-member district than voting for candidates for two
6 or three council seats in the at-large electoral system in which there are multiple winners.

7 To illustrate, the FAC alleges that from 2001 to 2022, there was at least one Latino/a member
8 of the Council, and from 2013 to 2022 two elected members of the City Council were Latino. (FAC
9 ¶ 24.) Plaintiff fails to allege that protected class voters preferred different candidates from those
10 elected. Even assuming Latinos had preferred different candidates, the FAC does not allege any facts
11 demonstrating the protected class voters could form a sufficiently large voting bloc in a single-
12 member district in which they could overcome the effect of racially polarized voting and have an
13 opportunity to elect their hypothetical alternative candidates. The allegation in paragraph 32 that
14 Latinos are “concentrated” in certain neighborhoods says nothing about the opportunity of Latino
15 voters to elect chosen candidates in a district-based electoral system in which the populations in these
16 neighborhoods would be submerged in the larger population of a district.

17 On the other hand, if the elected candidates were the chosen candidates of protected class
18 voters, the FAC does not allege a single fact demonstrating that the plaintiff class would not be
19 “worse off” concentrated in a single-member district compared to the success they have achieved in
20 the at-large voting system. And finally, the FAC does not allege facts substantiating how improved
21 performance would result under the specific “characteristics” of the City considering the totality of
22 the circumstances. (*Pico*, 15 Cal.5th at 320 [“intensely local appraisal” of contested electoral
23 mechanism and proposed alternative methods is required].)

24 Furthermore, the facts alleged in the FAC and the City’s historic Latino representation on the
25 council undercut any notion of Latino vote dilution. Of the twenty-seven open seats on the Council
26 since 2001 (see FAC ¶ 24), at least nine were won by persons of Latino origin, a 33-percent success
27 rate that exceeds proportional representation for the 22 percent of the City’s eligible voter population
28 that is Latino. Persistent proportional representation undermines the allegation that the ability of

1 Latino voters to elect their preferred representatives is not equal to that enjoyed by other voters. (See
2 *Gingles*, 478 U.S. at 77; see Elec. Code § 14028(b) [considering the “extent to which candidates who
3 are members of a protected class and who are preferred by voters of the protected class [] have been
4 elected to the [relevant] governing body”]; cf. *Montes, supra*, 40 F. Supp. 3d at 1405 [fact that no
5 Latino candidate had ever been elected to Yakima City Council, despite Latinos representing one-
6 third of voting age population and one-quarter of CVAP is “powerful evidence” that majority will
7 usually defeat Latino minority’s preferred candidate].)

8 **B. Plaintiff Fails to Allege any Facts That Plausibly Support the Second Cause of
Action for Violation of California’s Equal Protection Clause.**

9 A plaintiff bringing a racial discrimination claim under the Equal Protection Clause must
10 allege facts showing purposeful discrimination and discriminatory effects. (*Washington v. Davis*
11 (1976) 426 U.S. 229, 239; *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.* (1985) 429 U.S.
12 252, 265; *Kim v. Workers’ Comp. Appeals Bd.* (1999) 73 Cal.App.4th 1357, 1361-1362.) This
13 standard applies to voting rights claims under both the U.S. and California Constitutions. (*Jauregui*
14 *v. City of Palmdale* (2014) 226 Cal.App.4th 781, 800 [both constitutions provide “comparable
15 protections in voting rights cases”].) Such claims “require a showing of intentional discrimination,”
16 which is “notoriously difficult” to make “absent direct evidence of a discriminatory rationale.” (*Smith*
17 *v. Henderson* (D.D.C. 2013) 982 F.Supp.2d 32, 49.) Plaintiff has not cleared the hurdle.

18 Plaintiff alleges that three actions that *did not happen* support his cause of action for
19 intentional discrimination: 1) the City *did not change* to by-district elections in 2023 when Plaintiff
20 demanded it do so, 2) the City *did not change* to by-district elections when it changed its general
21 election date, and 3) the City *did not perform* its purported “duty” to change to by-district elections
22 when other cities were doing so. (FAC ¶¶ 88-90.) An inference of racial discrimination does not arise
23 from bare allegations of actions the City did not take. Indeed, the FAC’s substantive factual
24 allegations of two decades of Latino electoral success in City Council elections are inconsistent with
25 a racially discriminatory electoral system.

26 **I. Plaintiff must allege facts demonstrating that a discriminatory purpose was
27 a motivating factor in using at-large elections.**

28 Direct evidence of a racially discriminatory motive in enacting legislation rarely exists, but

1 this does not absolve Plaintiff of his burden to allege facts from which an inference of discriminatory
2 motivation may reasonably and logically be drawn. (See *Arlington Heights*, 429 U.S. at 264-268.)
3 The plaintiff bears the initial burden of pleading facts demonstrating that a discriminatory purpose
4 was a “substantial or motivating factor” behind the enactment or maintenance of the violative law.
5 (*Hobbs*, *supra*, 948 F.3d 989, 1038; *N.C. State Conf. of the NAACP v. McCrory* (4th Cir. 2016) 831
6 F.3d 204, 233 [“discriminatory racial intent [must] motivate[] the enactment” of challenged
7 provision] (“*McCrory*”).) Such facts could include (1) a historical pattern of laws producing
8 discriminatory results; (2) departures from the normal legislative process that shed light on the
9 decisionmaker’s purposes; (3) the legislative history, specifically statements by legislators evincing
10 a racial or pretextual motivation; and (4) whether the law has a disparate impact on a particular racial
11 group. (*Hobbs*, *supra*, 948 F.3d at 1038, citing *Arlington Heights*, *supra*, 429 U.S. 252.)

12 **2. Case law requires robust allegations under *Arlington Heights*.**

13 Conclusory allegations of discriminatory purpose, without supporting facts, are insufficient
14 to state a claim for purposeful discrimination. (See *Moss v. United States Secret Serv.* (9th Cir. 2009)
15 572 F.3d 962, 970-971 [dismissing discrimination claim that was unsupported by actual facts].) In
16 *McCrory*, plaintiffs made a thorough showing of purposeful race-based discrimination when the
17 North Carolina Legislature adopted a sweeping omnibus elections bill that passed along party lines
18 and without the vote of a single African-American legislator, and which created a strict photo
19 identification requirement, shortened the early voting period, eliminated same-day voter registration,
20 and eliminated pre-registration for 16 and 17-year olds, among other restrictive changes. The State
21 itself conceded that voting restrictions were targeted for counties that “were disproportionately
22 black.” (831 F.3d at 218-224.) Specific facts in that case established that “North Carolina has a long
23 history of race discrimination generally and race-based vote suppression,” among other forms of
24 official discrimination, federal courts and the DOJ had determined repeatedly that the General
25 Assembly “acted with discriminatory intent,” and the legislation had been rushed through the
26 process.” (*Id.* at 223-224.)

27 Similarly, in *Hobbs*, plaintiffs challenged Arizona’s policy of discarding ballots cast in the
28 wrong precinct and criminalizing the collection and delivery of another person’s ballot. The court

1 found that the “Arizona legislature has a long history of race-based discrimination,
2 disenfranchisement, and voter suppression,” that the measure’s adoption was preceded by a racially-
3 tinged advocacy video, and that DOJ had previously rejected legislation to criminalize the collection
4 of another person’s ballot because the drafter himself had admitted the provision was “targeted at
5 voting practices in [] Hispanic areas.” (948 F.3d at 1007-1008, 1039; see also *Williams v. Dallas*
6 (N.D. Tex. 1990) 734 F. Supp. 1317, 1408-1410 [discrimination found when configuration of single-
7 member districts packed and cracked African-American population to maintain “political power of
8 whites,” and where there was a history of racial appeals in elections, a previous judicial finding of
9 intentional discrimination, and other indicia of invidious discrimination]; *Political Civil Voters*
10 *Organization v. Terrell* (N.D. Tex. 1983) F. Supp. 338, 340-342 [candidates in at-large system
11 required to own real property, a “direct governmentally sanctioned exclusion similar to the poll tax,”
12 and City discarded popular vote result to hold by-district elections].)

13 A plaintiff cannot meet their burden of alleging purposeful racial discrimination by simply
14 alleging, as Plaintiff does here, that a city uses at-large elections and did not change its electoral
15 system after enactment of the CVRA. Using an “at-large electoral system” is not unconstitutional on
16 its face. (See *Rodgers v. Lodge* (1982) 458 U.S. 613, 617 [at-large elections are not unconstitutional
17 *per se*; rather, to violate Equal Protection, at-large elections must be conceived and operated as
18 purposeful devices to further racial discrimination].)

19 **3. *The FAC does not allege facts supporting a racially discriminatory purpose***
20 ***in the establishment and maintenance of an at-large voting system.***

21 The FAC does not offer any facts constituting direct evidence of a discriminatory purpose.
22 Rather, Plaintiff relies entirely on unsupported inference. (See Evid. Code § 600 [“An inference is a
23 deduction of fact that may *logically and reasonably* be drawn from another fact or group of facts
24 found or otherwise established in the action”].) Plaintiff here does not allege any facts comparable
25 to those in the Arizona or North Carolina cases above, from which an inference of purposeful
26 discrimination might be drawn under *Arlington Heights*. Plaintiff does not set forth a shred of
27 historical background or legislative history showing that the City initially adopted its system of at-
28 large elections for the purpose of discriminating against racial minorities. (See generally *City of*
Mobile v. Bolden (1980) 446 U.S. 55, 70 fn.15 [at-large elections were “universally heralded not

1 many years ago”].) Nor does he set forth any historical background showing that the City maintained
2 its current election system for an impermissible purpose or departures from the normal process or
3 sequence demonstrating an invidious purpose. Plaintiff offers no official discriminatory actions or
4 statements. The fact that the Council adopted a resolution in 2020 acknowledging past *private*
5 discrimination in the City during parts of the 20th Century and committing to “review and assess City
6 policies, procedures, ordinances, values, goals, and missions through an anti-racism lens to foster an
7 unbiased and inclusive environment that is free of discrimination”— cuts deeply *against* Plaintiff’s
8 allegation that the City maintains at-large voting for the purpose of racial discrimination. Such an
9 inference cannot “reasonably” be drawn, and contrary to Plaintiff’s characterization, the resolution
10 states that “no official ordinance or law of the City of Burbank has been found imposing sundown
11 restrictions.” (FAC ¶¶ 43-45 & fn. 7; RJN Ex. 11.) The City’s acknowledgment of past private
12 discrimination, and its commitment to use its public tools to advance racial equity should be
13 applauded, not cynically hung around its neck as an albatross.

14 Plaintiff notes in new paragraphs 7 and 8 of the FAC that the City changed the date of its
15 general municipal election in 2018, lamenting that the City did not adopt by-district elections at the
16 same time when other cities were doing so pursuant to the CVRA. (FAC ¶¶ 7 & 8.) Placing a measure
17 on the ballot to change the date of the general municipal election does not plausibly infer a
18 discriminatory motive in *not placing* a district elections measure on the same ballot. Plaintiff does
19 not allege that anybody demanded that the City change to by-district elections or that it had before it
20 any evidence of racially polarized voting or vote dilution. Plaintiff misrepresents the CVRA when
21 he alleges it imposes a “duty” on the City to change to by-district elections. The CVRA does no such
22 thing. Rather, the CVRA prohibits the use of an at-large voting system when there is racially
23 polarized voting resulting in vote dilution. Plaintiff has not alleged facts supporting either.

24 Plaintiff suggests that the City Attorney’s recommendation to adopt a districting plan
25 supports the conclusion that the failure to adopt a plan was purposefully discriminatory. This is at
26 odds with the facts set forth in the FAC. (See FAC ¶ 13 & fn. 4; RJN Ex. 10.) The City Attorney’s
27 staff report does not raise any concerns about discrimination. In fact, the Resolution of Intent, passed
28 by the City Council on January 24, 2023, expressly states that the Council does not believe the City

1 is in violation of the CVRA or any law and that it is considering by-district elections to avoid
2 expensive litigation under the CVRA. (FAC ¶ 50 & fn. 10; RJN. Ex. 12.)

3 The FAC’s factual allegations show that the City followed standard procedures following
4 receipt of Plaintiff’s demand letter; it adopted a Resolution of Intent to initiate a transition to district
5 elections in light of the high cost of defense in CVRA litigation, and it held two initial public hearings
6 and three community forums, followed by four public hearings and five additional community
7 forums to consider and debate potential district maps, all within seven months of adoption of the
8 Resolution. (FAC ¶¶ 10-11 & 48-67.) The City’s process was consistent with the statutory procedures
9 governing transitions to district elections. (Elec. Code § 10010.) The FAC offers no statements by
10 officials evincing a purpose to discriminate against City residents (there are none). That the City’s
11 process was more extensive than the statutory requirements or the process pursued by the local school
12 district (FAC ¶ 12 & fn. 2-3; *id.* ¶ 68(a) & fn. 18, 19, & 20) does not support a cause of action for
13 intentional discrimination.⁷

14 While the FAC alleges that the Council deferred adopting an ordinance transitioning to by-
15 district elections, it fails to set forth facts showing that the deferral was racially motivated. To the
16 contrary, the FAC alleges that the City first delayed a decision to await the California Supreme
17 Court’s seminal decision in *Pico* construing the CVRA (FAC ¶ 60 & fn. 14), and then ultimately
18 deferred adopting by-district elections to: (1) consider other options such as cumulative voting (as
19 suggested in *Pico, supra*, 15 Cal. 5th at 317 [“Though the parties have focused in this court on district
20 elections, the trial court found that, in addition to district elections, several alternative at-large
21 election methods—cumulative voting, limited voting, and ranked choice voting—would each
22 enhance Latino voting power and their ability to elect candidates of their choice.”]); (2) refer certain
23 questions to the Charter Review Committee; and (3) reach out to Plaintiff about his concerns. (FAC
24 ¶¶ 62 & 63 & fn. 15 & 16; RJN Ex. 10.) Each of these alternatives is race-neutral; none plausibly
25 supports an inference that council’s deferral had a racially discriminatory purpose.

26
27 ⁷ Plaintiff misstates the law in asserting the City was required to adopt a districting plan within 90
28 days of adopting its Resolution and failed to meet that deadline. (FAC ¶ 11(c) & (d), citing Elec. Code §
10010(a)(1)(B) which does not exist.) There is no deadline for the City to act under Section 10010, however
if it does adopt a districting plan within 90 days of adopting a Resolution, it is protected from litigation during
that period. (Elec. Code § 10010(e)(3)(B).)

1 The FAC also lacks a single fact showing that the City has engaged in a pattern of official
2 discrimination, such as would be established through past judicial or administrative fact-finding. (Cf.
3 *Williams v. Dallas*, 734 F. Supp. at 1408-1410.) That a Charter Review Committee of diverse citizen
4 leaders at first proposed to study by-district elections for City Council elections, along with other
5 structural changes, then decided not to do so, does not “acknowledge[] the existence of
6 discrimination within Burbank” as Plaintiff unreasonably concludes. (FAC ¶¶ 48-49 & fn. 8, 9; RJN
7 Ex 13.) Such facts cannot reasonably suggest that the Committee viewed the City’s at-large election
8 system as a form of race-based discrimination. Finally, true to the adage “no good deed goes
9 unpunished,” the Committee’s recommendation to insert a social equity and anti-discrimination
10 clause into the Charter (FAC ¶ 49) does not support a conclusion the City maintained *its election*
11 *system* for the purpose of discriminating on the basis of race. Rather, the recommendation
12 demonstrates the Committee’s dedication to equity.

13 Finally, Plaintiff alleges that a race-neutral and non-discriminatory purpose animated the City
14 Council’s decision to defer adopting districts. The FAC alleges the decision was “politically
15 motivated.” (FAC ¶ 93.) Plaintiff further pleads on information and belief that the Council postponed
16 adopting a districting map because certain members of the Council are worried that district elections
17 “could mean the end of the line for some of the councilmembers.” (FAC ¶ 63.) Such allegations,
18 even if true, do not support the second cause of action. (See *League of Women Voters of Chi. v. Wolf*
19 (N.D. Ill. 2013) 965 F. Supp. 2d 1007, 1017 [“The political motivation alleged, to favor certain
20 incumbent alderman and to disadvantage certain ‘independent’ aldermen, does not by itself implicate
21 the Equal Protection Clause.”]; cf *Garza v. County of Los Angeles* (1990) 918 F.2d 763, 771 [30-
22 year history of redistricting the Latino voting bloc to prevent the evolution of a Latino majority
23 supervisorial district demonstrated intent to create the very discriminatory result that occurred].)

24 **V. CONCLUSION**

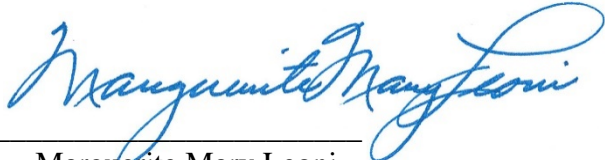
25 For the foregoing reasons, Plaintiff does not allege the facts necessary to meet his burden.
26 Because Plaintiff has demonstrated he cannot allege any facts on which he could proceed, Defendant
27 respectfully requests the demurrer be sustained with prejudice.

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Dated: April 17, 2024

Respectfully submitted,
NIELSEN MERKSAMER
PARRINELLO GROSS & LEONI LLP



By: _____
Marguerite Mary Leoni
Christopher E. Skinnell
David J. Lazarus
Attorneys for Defendants



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NICHOLAS GUTIERREZ vs CITY OF BURBANK

Case Number: 23STCV25587 Case Type: Civil Unlimited Category: Civil Rights/Discrimination
Date Filed: 2023-10-19 Location: Stanley Mosk Courthouse - Department 30

Reservation

Case Name:	NICHOLAS GUTIERREZ vs CITY OF BURBANK
Case Number:	23STCV25587
Type:	Demurrer - without Motion to Strike
Status:	RESERVED
Filing Party:	City of Burbank (Defendant)
Location:	Stanley Mosk Courthouse - Department 30
Date/Time:	05/09/2024 8:30 AM
Number of Motions:	1
Reservation ID:	805503337226
Confirmation Code:	CR-UJ6B543ZLMQNHVM32

Fees

Description	Fee	Qty	Amount
Demurrer - without Motion to Strike *** Fees Exempted by Gov Code 6103.1***	0.00	1	0.00
TOTAL			\$0.00

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Telephone Number * Extension

Primary Email *

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14
15 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 IN AND FOR THE COUNTY OF LOS ANGELES

17 NICHOLAS GUTIERREZ,) Case No.: 23 ST CV 25587
18)
Plaintiff,) **DEFENDANT CITY OF BURBANK'S**
19) **REQUEST FOR JUDICIAL NOTICE IN**
vs.) **SUPPORT OF DEMURRER TO FIRST**
20) **AMENDED COMPLAINT;**
CITY OF BURBANK, and DOES 1 through) **MEMORANDUM OF POINTS AND**
21) **AUTHORITIES; SUPPORTING**
100, inclusive,) **DECLARATION OF DAVID J. LAZARUS**
22)
Defendants.) **Reservation No. 247941171087**
23) **DATE: May 24, 2024**
24) **TIME: 8:30 AM**
25) **DEPT: 30**
JUDGE: Hon. Barbara M. Scheper

1 **TO PLAINTIFF AND THEIR ATTORNEYS OF RECORD**

2 **PLEASE TAKE NOTICE** that on May 24, 2024, at 8:30 a.m., or as soon thereafter as the
3 matter may be heard in Department 30 of the above-captioned court, located at 111 N. Hill St., Los
4 Angeles, CA 90012, defendant City of Burbank will, and hereby does, request the Court to take
5 judicial notice of the documents listed herein:

6 1. A complete copy of Table P9 of the U.S. Census Bureau's 2020 Decennial Census,
7 depicting the race and ethnicity of the population of the City of Burbank. (a true and correct copy of
8 which is attached as Exhibit 1).

9 2. A complete copy of the Staff Report of the City of Burbank City Attorney's Office
10 regarding consideration of Adoption of a Resolution of Intent to Initiate a Transition to District
11 Elections, dated January 24, 2023 (a true and correct copy of which is attached as Exhibit 2).

12 3. A complete copy of the Urban Institute's assessment of the inclusivity of the City of
13 Burbank, measured as part of its report entitled *Measuring Inclusion in America's Cities*, last updated
14 September 15, 2020 (a true and correct copy of which is attached as Exhibit 3).

15 4. A screenshot of a website of the City of Burbank depicting the biographical
16 information of City Council Member Nikki Perez (a true and correct copy of which is attached as
17 Exhibit 4).

18 5. A complete copy of Resolution No. 22-29,390 of the City Council of the City of
19 Burbank depicting the results of the November 8, 2022 general election (a true and correct copy of
20 which is attached as Exhibit 5).

21 6. A complete copy of a news article interview of then-City Council candidate Zizette
22 Mullins, dated September 27, 2022 (a true and correct copy of which is attached as Exhibit 6).

23 7. A screenshot of a website of the City of Burbank depicting the biographical
24 information of Mayor Konstantine Anthony (a true and correct copy of which is attached as Exhibit
25 7).

26 8. A complete copy of Resolution No. 20-29,200 of the City Council of the City of
27 Burbank depicting the results of the November 3, 2020 general election (a true and correct copy of
28 which is attached as Exhibit 8).

1 **Points and Authorities**

2 A court may take judicial notice of “[f]acts and propositions that are not reasonably subject
3 to dispute and are capable of immediate and accurate determination by resort to sources of reasonably
4 indisputable accuracy” under Evidence Code § 452(h). California courts recognize that U.S. Census
5 Bureau statistics and data are subject to judicial notice. (See *Moehring v. Thomas* (2005) 126
6 Cal.App.4th 1515, 1523 fn. 4.; *People v. Howard* (1990) 1 Cal.4th 1132, 1160 fn. 6; see also *Sanchez*
7 *v. City of Modesto* (2006) 145 Cal.App.4th 660, 666 fn. 1 [judicial notice of facts revealed by U.S.
8 Census].)

9 Judicial notice may be taken of the official acts of government entities under Evidence Code
10 § 452(c) (“Official acts of the legislative, executive, and judicial departments of the United States
11 and of any state of the United States.”). This basis for judicial notice extends to municipal and county
12 records. (*Cooke v. Superior Court* (1989) 213 Cal.App.3d 401, 416 [taking judicial notice of county
13 resolution and “records of a county”]; *Cedar Fair, L.P. v. City of Santa Clara* (2011) 194 Cal.App.4th
14 1150, 1156-1158 [judicial notice taken of City Council resolutions, meeting agendas, and minutes];
15 *Physicians Committee for Responsible Medicine v. Los Angeles Unified School Dist.* (2019) 43
16 Cal.App.5th 175, 183-184 [taking judicial notice of school district wellness policies].) Records of
17 the acts of government entities include documents published by the entity (see *Serrano v. Priest*
18 (1971) 5 Cal. 3d 584, 591; *Moore v. Superior Court* (2004) 117 Cal.App.4th 401, 407 fn.5), as well
19 as the files of such entities (*Washington v. County of Contra Costa* (1995) 38 Cal.App.4th 890, 897,
20 901; *Wolfe v. State Farm Cas. & Ins. Co.* (1996) 46 Cal.App.4th 554, 567 fn.16; *Fowler v. Howell*
21 (1996) 42 Cal.App.4th 1746, 1750; *Hogen v. Valley Hospital* (1983) 147 Cal.App.3d 119, 125.)

22 A court may also take judicial notice of “[f]acts and propositions that are not reasonably
23 subject to dispute and are capable of immediate and accurate determination by resort to sources of
24 reasonably indisputable accuracy” under Evidence Code § 452(h). Courts recognize that websites of
25 local government agencies are judicially cognizable under the Evidence Code. (*Howard Jarvis*
26 *Taxpayers Ass’n v. Bay Area Toll Auth.* (2020) 51 Cal.App.5th 435, 443 fn. 3.) Likewise, courts
27 regularly take judicial notice of commentary and explanation by knowledgeable persons (Evid. Code
28 § 452 [1965 Law Revision Commission Comments stating that cognizable sources include “treatises,
encyclopedias, and the like”]; *Gould v. Md. Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137,

1 1145), as well as articles and other content published by news sources and other organizations of
2 “reasonably indisputable accuracy,” for the undisputed fact that the entities have published certain
3 information (but not for the truth of the facts stated therein). (See *Seelig v. Infinity Broadcasting*
4 *Corp.* (2002) 97 Cal. App. 4th 798, 807 fn. 5 [taking judicial notice of news articles]; *McKelvey v.*
5 *Boeing North American, Inc.* (1999) 74 Cal. App. 4th 151, 157 162 [taking judicial notice of
6 newspaper articles]; *Hofman Co. v. E.I. Du Pont de Nemours & Co.* (1998) 202 Cal.App.3d 390, 395
7 fn. 3 [taking judicial notice of newspaper article].)

8 Exhibits 1-13 are all subject to judicial notice. Most of the Exhibits are official government
9 records and websites (Exhibits 1, 2, 4, 5, 7, 8, 10-13), with the remainder being publications of news
10 outlets and reputable non-profit organizations (Exhibits 3, 6, 9). The accuracy of these materials is
11 not reasonably subject to dispute, and they may be verified by visiting websites, including for most
12 exhibits, websites maintained by the City of Burbank.

13 In addition, each of the Exhibits is of central relevance to this action. Exhibit 1 contains U.S.
14 Census Bureau statistics regarding the racial and ethnic composition of the City of Burbank, and
15 Exhibit 3 contains key statistics measuring the City’s inclusivity. Exhibits 2, 10, and 12 contain the
16 City of Burbank’s consideration of a proposal to adopt district-based elections. Exhibits 4-9 contain
17 biographical details and election results of successful candidates elected to the Burbank City Council.
18 Exhibits 11 and 13 contain information on facts alleged by Plaintiff to demonstrate his allegation
19 that the City engages in race-based discrimination (it does not). The Exhibits are material to the key
20 allegations in the Complaint.

21 Respectfully submitted,

22 Dated: April 17, 2024

23 NIELSEN MERKSAMER
24 PARRINELLO GROSS & LEONI LLP

25 By: .



26 Marguerite Mary Leoni
27 Christopher E. Skinnell
28 David J. Lazarus
Attorneys for Defendant

Declaration of David J. Lazarus
In Support of Request for Judicial Notice

I, DAVID J. LAZARUS, declare under penalty of perjury as follows:

1. I am one of the attorneys for Defendants in this action.

2. On December 18, 2023, I accessed a website of the United States Census Bureau at <https://data.census.gov/table/DECENNIALDHC2020.P9?q=Burbank%20city,%20California&t=Race%20and%20Ethnicity> and downloaded Table P9 of the 2020 Decennial Census for the City of Burbank (a true and correct copy of which is attached as Exhibit 1).

3. On December 18, 2023, I accessed a website of the City of Burbank at https://burbank.granicus.com/MetaViewer.php?view_id=42&clip_id=10035&meta_id=407108 and downloaded the Staff Report of the City of Burbank City Attorney's Office regarding consideration of Adoption of a Resolution of Intent to Initiate a Transition to District Elections, dated January 24, 2023 (a true and correct copy of which is attached as Exhibit 2).

4. On December 18, 2023, I accessed a website of the Urban Institute at https://apps.urban.org/features/inclusion/index.html?city=burbank_CA and downloaded the Urban Institute's assessment of the inclusivity of the City of Burbank, measured as part of its report entitled *Measuring Inclusion in America's Cities*, which was last updated September 15, 2020 (a true and correct copy of which is attached as Exhibit 3).

5. On December 18, 2023, I accessed a website of the City of Burbank at <https://www.burbankca.gov/nikki-perez> and downloaded a copy of the website depicting the biographical information of City Council Member Nikki Perez (a true and correct copy of which is attached as Exhibit 4).

6. On December 18, 2023, I accessed a website of the City of Burbank at https://burbank.granicus.com/MetaViewer.php?view_id=49&clip_id=10008&meta_id=405699 and downloaded a copy of Resolution No. 22-29,390 of the City Council of the City of Burbank depicting the results of the November 8, 2022 general election (a true and correct copy of which is attached as Exhibit 5).

7. On December 18, 2023, I accessed a website of myBurbank.com at <https://myburbank.com/burbank-city-council-candidate-profile-zizette-mullins/> and downloaded a

1 copy of a news article interview of then-City Council candidate Zizette Mullins, dated September 27,
2 2022 (a true and correct copy of which is attached as Exhibit 6).

3 8. On December 18, 2023, I accessed a website of the City of Burbank at
4 <https://www.burbankca.gov/konstantine-anthony> and downloaded a copy of the website depicting the
5 biographical information of Mayor Konstantine Anthony (a true and correct copy of which is attached
6 as Exhibit 7).

7 9. On December 18, 2023, I accessed a website of the City of Burbank at
8 https://burbank.granicus.com/MetaViewer.php?view_id=49&clip_id=9269&meta_id=377568 and
9 downloaded a copy of Resolution No. 20-29,200 of the City Council of the City of Burbank depicting
10 the results of the November 3, 2020 general election (a true and correct copy of which is attached as
11 Exhibit 8).

12 10. On December 18, 2023, I accessed a website of the Los Angeles Times at
13 [https://www.latimes.com/socal/burbank-leader/news/tn-blr-xpm-2005-10-28-blr-stateofcity29-](https://www.latimes.com/socal/burbank-leader/news/tn-blr-xpm-2005-10-28-blr-stateofcity29-story.html)
14 [story.html](https://www.latimes.com/socal/burbank-leader/news/tn-blr-xpm-2005-10-28-blr-stateofcity29-story.html) and downloaded a copy of a news article depicting the ethnicity of Mayor Jef Vander
15 Borght, dated October 28, 2005 (a true and correct copy of which is attached as Exhibit 9).

16 11. On December 18, 2023, I accessed a website of the City of Burbank at
17 https://burbank.granicus.com/MetaViewer.php?view_id=42&clip_id=10285&meta_id=419221 and
18 downloaded a copy of the Staff Report of the City of Burbank City Attorney's Office regarding
19 Introduction of an Ordinance to adopt a district map, dated October 3, 2023 (a true and correct copy
20 of which is attached as Exhibit 10).

21 12. On December 18, 2023, I accessed a website of the City of Burbank at
22 https://burbank.granicus.com/MetaViewer.php?view_id=49&clip_id=9269&meta_id=377566 and
23 downloaded a copy of Resolution No. 20-29,199 of the City Council of the City of Burbank
24 acknowledging the prevalence of "sundown" practices in Burbank's past (a true and correct copy of
25 which is attached as Exhibit 11).

26 13. On December 18, 2023, I accessed a website of the City of Burbank at
27 https://burbank.granicus.com/MetaViewer.php?view_id=42&clip_id=10035&meta_id=407339 and
28 downloaded a copy of Resolution No. 23-29,395 of the City Council of the City of Burbank, a


1 Resolution of Intent to initiate procedures for a transition to district-based Council elections (a true
2 and correct copy of which is attached as Exhibit 12).

3 14. On December 18, 2023, I accessed a website of the City of Burbank at
4 https://burbank.granicus.com/MetaViewer.php?view_id=49&clip_id=9899&meta_id=400985 and
5 downloaded a copy of correspondence submitted by the City of Burbank Citizen Charter Review
6 Committee, dated August 9, 2022 (a true and correct copy of which is attached as Exhibit 13).

7 I declare under penalty of perjury under the laws of the State of California that the foregoing
8 is true and correct and if called as a witness I could testify competently thereto.

9 Executed on April 17, 2024, at San Rafael, California

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David J. Lazarus

EXHIBIT 1

Defendant's RJN in Support of Demurrer to First Amended Complaint
Nicholas Gutierrez v. City of Burbank
Los Angeles County Superior Court
Case No. 23STCV25587

Table: DECENIALDHC2020.P9

Label	Burbank city, California
Total:	107,337
Hispanic or Latino	25,961
Not Hispanic or Latino:	81,376
Population of one race:	76,461
White alone	60,350
Black or African American alone	2,891
American Indian and Alaska Native alone	222
Asian alone	12,282
Native Hawaiian and Other Pacific Islander alone	98
Some Other Race alone	618
Population of two or more races:	4,915
Population of two races:	4,621
White; Black or African American	701
White; American Indian and Alaska Native	644
White; Asian	2,191
White; Native Hawaiian and Other Pacific Islander	76
White; Some Other Race	630
Black or African American; American Indian and Alaska Native	56
Black or African American; Asian	106
Black or African American; Native Hawaiian and Other Pacific Islander	14

Table: DECENNIALDHC2020.P9

Label	Burbank city, California
Black or African American; Some Other Race	64
American Indian and Alaska Native; Asian	13
American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	1
American Indian and Alaska Native; Some Other Race	2
Asian; Native Hawaiian and Other Pacific Islander	86
Asian; Some Other Race	35
Native Hawaiian and Other Pacific Islander; Some Other Race	2
Population of three races: White; Black or African American; American Indian and Alaska Native	264
White; Black or African American; Asian	59
White; Black or African American; Some Other Race	56
White; Black or African American; Native Hawaiian and Other Pacific Islander	3
White; Black or African American; Some Other Race	36
White; American Indian and Alaska Native; Asian	22
White; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	1

Table: DECENNIALDHC2020.P9

Label	Burbank city, California
White; American Indian and Alaska Native; Some Other Race	4
White; Asian; Native Hawaiian and Other Pacific Islander	65
White; Asian; Some Other Race	6
White; Native Hawaiian and Other Pacific Islander; Some Other Race	0
Black or African American; American Indian and Alaska Native; Asian	2
Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	1
Black or African American; American Indian and Alaska Native; Some Other Race	4
Black or African American; Asian; Native Hawaiian and Other Pacific Islander	1
Black or African American; Asian; Some Other Race	2
Black or African American; Native Hawaiian and Other Pacific Islander; Some Other Race	0

Table: DECENNIALDHC2020.P9

Label	Burbank city, California
American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	1
American Indian and Alaska Native; Asian; Some Other Race	1
American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	0
Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	0
Population of four races:	28
White; Black or African American; American Indian and Alaska Native; Asian	8
White; Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	0
White; Black or African American; American Indian and Alaska Native; Some Other Race	6
White; Black or African American; Asian; Native Hawaiian and Other Pacific Islander	7

Table: DECENNIALDHC2020.P9

Label	Burbank city, California
White; Black or African American; Asian; Some Other Race	4
White; Black or African American; Native Hawaiian and Other Pacific Islander; Some Other Race	0
White; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	2
White; American Indian and Alaska Native; Asian; Some Other Race	0
White; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	0
White; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	1
Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	0
Black or African American; American Indian and Alaska Native; Asian; Some Other Race	0

Table: DECENNIALDHC2020.P9

Label	Burbank city, California
Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	0
Black or African American; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	0
American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	0
Population of five races:	2
White; Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	0
White; Black or African American; American Indian and Alaska Native; Asian; Some Other Race	2
White; Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	0
White; Black or African American; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	0

Table: DECENNIALDHC2020.P9

Label	Burbank city, California
White; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	0
Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	0
Population of six races:	0
White; Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	0



HISPANIC OR LATINO, AND NOT HISPANIC OR LATINO BY RACE

Note: The table shown may have been modified by user selections. Some information may be missing.

DATA NOTES	
TABLE ID:	P9
SURVEY/PROGRAM:	Decennial Census
VINTAGE:	2020
DATASET:	DECENNIALDHC2020
PRODUCT:	DEC Demographic and Housing Characteristics
UNIVERSE:	Total population
MLA:	U.S. Census Bureau. "HISPANIC OR LATINO, AND NOT HISPANIC OR LATINO BY RACE." Decennial Census, DEC Demographic and Housing Characteristics, Table P9, 2020, . Accessed on October 27, 2023.
FTP URL:	https://www2.census.gov/programs-surveys/decennial/2020/data/
API URL:	https://api.census.gov/data/2020/dec/dhc
USER SELECTIONS	
TOPICS	Race and Ethnicity
GEOS	Burbank city, California
VINTAGES	2020
EXCLUDED COLUMNS	None
APPLIED FILTERS	None
APPLIED SORTS	None
PIVOT & GROUPING	

Table: DECENNIALDHC2020.P9

PIVOT COLUMNS	None
PIVOT MODE	Off
ROW GROUPS	None
VALUE COLUMNS	None
WEB ADDRESS	https://data.census.gov/table/DECENNIALDHC2020.P9?q=race+and+ethnicity+in+burbank+california+in+2020
TABLE NOTES	<p>Note: For information on data collection, confidentiality protection, nonsampling error, subject definitions, and guidance on using the data, visit the 2020 Census Demographic and Housing Characteristics File (DHC) Technical Documentation webpage.</p> <p>To protect respondent confidentiality, data have undergone disclosure avoidance methods which add "statistical noise" - small, random additions or subtractions - to the data so that no one can reliably link the published data to a specific person or household. The Census Bureau encourages data users to aggregate small populations and geographies to improve accuracy and diminish implausible results.</p> <p>Source: U.S. Census Bureau, 2020 Census Demographic and Housing Characteristics File (DHC)</p>
COLUMN NOTES	None

EXHIBIT 2

Defendant's RJN in Support of Demurrer to First Amended Complaint *Nicholas Gutierrez v. City of Burbank*
Los Angeles County Superior Court
Case No. 23STCV25587

STAFF REPORT



CITY ATTORNEY'S OFFICE

DATE: January 24, 2023

TO: Justin Hess, City Manager

FROM: Joseph McDougall, City Attorney

BY: Jill Vander Borgh, Senior Assistant City Attorney

SUBJECT: Adoption of Resolution of Intent to Initiate a Transition to District Elections

RECOMMENDATION

Adopt A RESOLUTION OF THE COUNCIL OF THE CITY OF BURBANK DECLARING ITS INTENT TO INITIATE PROCEDURES FOR A TRANSITION FROM AT-LARGE TO DISTRICT-BASED COUNCIL MEMBER ELECTIONS PURSUANT TO ELECTIONS CODE SECTION 10010 AND GOVERNMENT CODE SECTION 34886, AUTHORIZING THE CITY ATTORNEY TO HIRE NATIONAL DEMOGRAPHICS CORPORATION; AND APPROVING A TENTATIVE TIMELINE FOR CONDUCTING PUBLIC HEARINGS, FORMULATING PROPOSED DISTRICT MAPS, AND PRESENTING A DRAFT ORDINANCE TO COUNCIL FOR DECISION (Attachment 1).

BACKGROUND

On August 23, 2022, the City received a notice of a potential violation of the California Voting Rights Act (CVRA) on behalf of a Latino voter in the City of Burbank, Mr. Nick Gutierrez (Elec. Code §§14027-14032; Attachment 2 - "CVRA Notice"). The CVRA Notice included a demand that the City change its at-large voting system to by-district. In a by-district electoral system, the City is divided into districts of equal population and only the voters residing in each district may vote for the candidates for City Council for that district, who themselves must also be residents and voters of that district. Currently, in our at-large voting electoral system, all voters in the City are entitled to vote for all candidates running for City Council.

One potential option in response is for the City Council to adopt a Resolution of Intent to transition from at-large voting to by-district voting by establishing single-member districts for City Council elections. Such a resolution would trigger a safe-harbor period of 90 days,

which can be extended for another 90 days during which the City Council would engage in the statutory process for creating single-member electoral districts. The bare-bones process requires a minimum of five public hearings and compliance with other criteria, timeframes, and procedures. At the earliest, by-district elections would be implemented in 2024. A tentative timeline is provided as Exhibit A to Attachment 1. The City Attorney may bring as-needed updates to the timeline on future Council consent agendas.

DISCUSSION

The CVRA was enacted in 2001 and applies only to at-large electoral systems. It alters established paradigms of proof and defenses under the federal Voting Rights Act, making it easier for plaintiffs to challenge the electoral system of any city or district that does not elect its governing board by-district. The CVRA also expands the ability of plaintiffs to recover their attorneys' fees and expenses, making such an award mandatory. In contrast, defendants, even if successful, cannot recover either attorneys' fees or costs.

The CVRA purports to protect electoral "influence" as well as the ability to elect chosen candidates. This means that minority groups that cannot form a majority in a single-member district may still file a lawsuit under the CVRA attempting to demonstrate that at-large voting impairs their electoral "influence."

It is not statistically possible to create a single-member electoral district in Burbank in which Latino eligible voters (citizens of voting age population or "CVAP") constitute a majority. Both the Latino and the Asian populations of the City are disbursed throughout. The total population of the City under the 2020 Census adjusted as required by state law is 107,614. The City is ~24.24% Latino in total population and ~21.69% Latino in CVAP. The next largest non-Hispanic group is Asians at ~13.45% of total population and 11% of CVAP. The largest racial group, non-Hispanic White, is 56.13% of total population and 63.37% of CVAP.

The ability to create majority-Latino CVAP district is not a prerequisite under the CVRA, which protects the ability to "influence" elections. While Burbank has a long history of electing persons of Latino/a background to the City Council, smaller electoral areas or districts could increase the "influence" of Latino voters by concentrating voting strength so that it is greater than Latino strength city-wide. There may be other reasons to establish by-district elections for City Council. Studies reflect that smaller electoral areas could encourage more interest in running for City Council and possibly reduce the cost of running for City Council. Based on an initial analysis, the City Attorney's Office recommends Council adopt this Resolution of Intent to Initiate a Transition to District Elections.

The Resolution includes authorization to hire National Demographics Corporation (NDC) as a consultant demographer to help us complete a robust process for the community.

NDC is a full-service demographics company based in Glendale, California. NDC is a nationwide company, with a solid track record and strong ties to and an awareness of the local community. NDC is also being retained by the Burbank Unified School District (BUSD) as they undergo their transition to by-trustee district elections. NDC will partition the work for the City and BUSD within their office while allowing for potential cost savings and cooperation where at all possible. A summary of the Company's background and experience is provided in Attachment 3.

Issues Under the City Charter.

As a Charter City, our Charter dictates our elections process. Section 305 of the City Charter provides for "five (5) persons elected at-large" for the City Council and section 800 requires, "Except as otherwise provided by this Charter or ordinance, all municipal elections shall be held in accordance with the election laws of the State of California." The CVRA is a law of the State of California. Government Code section 34886 states:

"Notwithstanding Section 34871 or any other law, the legislative body of a city may adopt an ordinance that requires the members of the legislative body to be elected by district or by district with an elective mayor, as described in subdivisions (a) and (c) of Section 34871, without being required to submit the ordinance to the voters for approval. An ordinance adopted pursuant to this section shall comply with the requirements and criteria of Section 21601 or 21621 of the Elections Code, as applicable, and include a declaration that the change in the method of electing members of the legislative body is being made in furtherance of the purposes of the California Voting Rights Act of 2001 (Chapter 1.5 (commencing with Section 14025) of Division 14 of the Elections Code)."

Government Code section 34886 arguably could apply as it permits the City to transition to single-member districts without a vote to amend the City Charter "in furtherance of the purposes of the CVRA," but there is counterargument that the section does not expressly reference charter cities and therefore a charter amendment may be required.

As a result, and subsequent to a formal transition process, a Charter amendment measure could then be placed on the ballot at a statewide primary or general election to bring the Charter into conformance with Council's action and resolve the issue (Elec. Code § 1415).

ENVIRONMENTAL REVIEW

This activity involves organizational and administrative activities of the government related to election procedures and eligibility requirements, and such internal procedural and eligibility changes have no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the

environment. As such, this action is not a "project" subject to the requirements of the California Environmental Quality Act (CEQA) 14 Cal. Code Regs § 15378.

FISCAL IMPACT

Staff is requesting City Council authority to amend the Fiscal Year (FY) 2022-23 Adopted Budget by appropriating \$100,000 from account number 001.ND000.30010.0000.00000.000000 (General Fund, Non-Departmental, Unassigned Fund Balance) to expenditure account number 001.ND01A.62085.0000.00000.000000 (General Fund, Non-Departmental, Other Professional Services). Funds will be used to hire National Demographics Corporation (NDC) as a consultant and for the purpose and intent to transition from at-large voting to by-district voting by establishing single-member districts for City Council elections.

CONCLUSION

The City Attorney recommends the Council adopt the Resolution with the tentative calendar and approve the retention of the recommended consultant.

ATTACHMENTS

Attachment 1 – Resolution

Attachment 2 – California Voting Rights Act Notice

Attachment 3 – National Demographics Corporation Information Sheet

EXHIBIT 3

Defendant's RJN in Support of Demurrer to First Amended Complaint
Nicholas Gutierrez v. City of Burbank
Los Angeles County Superior Court
Case No. 23STCV25587

Burbank, CA

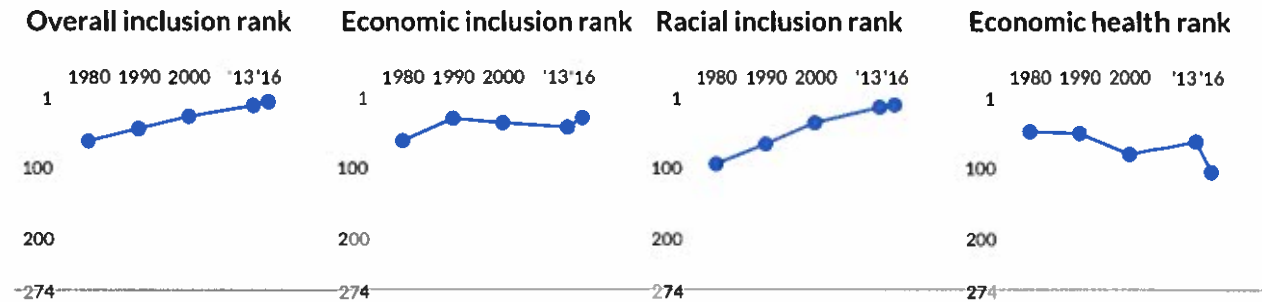
Population in 2016: 104,275

Everyone should have the opportunity to contribute to and benefit from economic prosperity. This is our definition of inclusion and is a goal toward which all cities should strive. Being more inclusive can make cities stronger and more stable and can give all residents a chance to improve their quality of life.

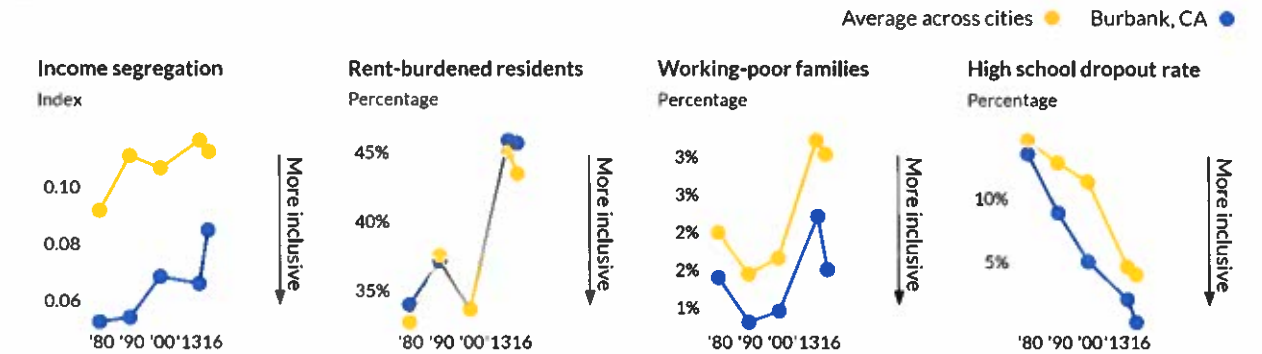
To better understand what makes cities inclusive, we collected data on 274 of the largest US cities and ranked those cities on economic, racial, and overall inclusion across four decades. This ranking allows cities to track their progress over time and compare themselves with peer cities.

We also measured economic health to see whether cities could harness growth to improve inclusion.

In 2016, Burbank ranked 8th out of 274 cities on overall inclusion, 29th on economic inclusion, and 11th on racial inclusion. From 2013 to 2016, Burbank's economic health rank decreased from 62nd to 104th. Over the same time period, the city became more inclusive, rising from 13th to 8th in the overall inclusion rankings. Dive deeper into Burbank's economic health and inclusion measures below.



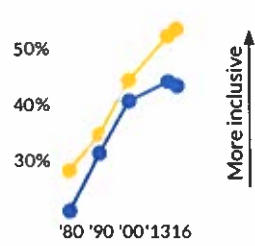
Economic inclusion



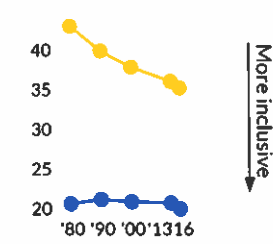
Racial inclusion

Average across cities ● Burbank, CA ●

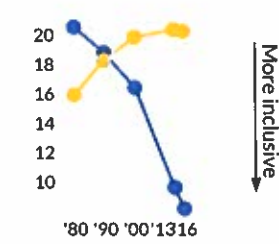
People of color as a share of the population
Percentage



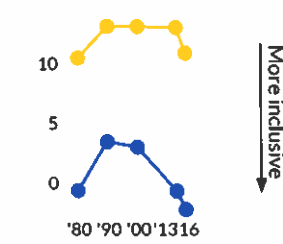
Racial segregation Index



Racial homeownership gap
Percentage point difference

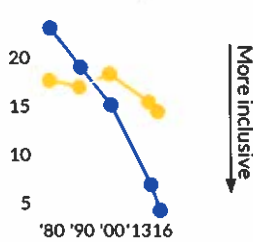


Racial poverty gap
Percentage point difference



Racial education gap

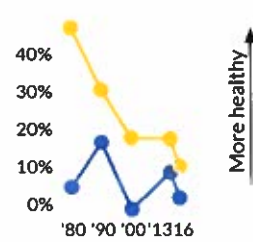
Percentage point difference



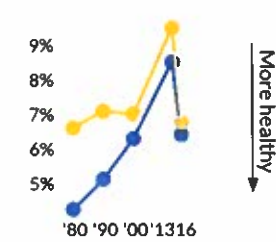
Economic health

Average across cities ● Burbank, CA ●

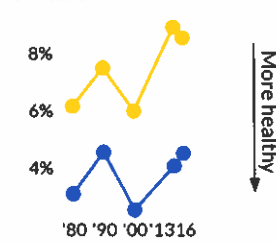
Employment growth
Percentage change



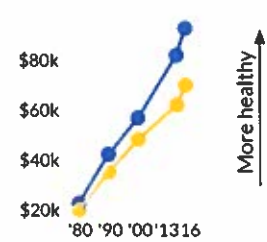
Unemployment rate
Percentage



Housing vacancy rate
Percentage



Median family income
Dollars



How do we measure inclusion?

“Overall inclusion” reflects the ability of *historically excluded populations*—in this case, lower-income residents and people of color—to contribute to and benefit from economic prosperity. We measure this by combining economic inclusion and racial inclusion.

- “Economic inclusion” reflects the ability of *residents with lower incomes* to contribute to and benefit from economic prosperity. We measure this by looking at income segregation, housing affordability, the share of working poor residents, and the high school dropout rate.
- “Racial inclusion” reflects the ability of *residents of color* to contribute to and benefit from economic prosperity. We measure this by examining racial segregation; racial gaps in homeownership, poverty, and educational attainment; and the share of the city’s population who are people of color.

Although our measures capture inclusion for residents within a city, they may lead to higher scores for cities that have limited disparities by race or income within their boundaries but have excluded lower-income residents from residing within city boundaries in the first place. Similarly, although our measures of racial inclusion capture inclusion for residents of color versus white non-Hispanic residents, they may mask inequities between different racial and ethnic groups that experience exclusion in different ways. Therefore, we encourage users to use the rankings to track cities over time rather than focusing on absolute rankings.

To learn more about why we selected these indicators and how we measured them, click [here](https://www.urban.org/research/publication/inclusive-recovery-us-cities) (<https://www.urban.org/research/publication/inclusive-recovery-us-cities>).

How do we measure economic health?

Economic health captures the strength of a city’s local economy. We measure this by looking at employment growth, the unemployment rate, the housing vacancy rate, and median family income.

What can cities do to become more inclusive?

Although no single model for success exists, we can learn a lot from cities that have become more inclusive, particularly as they recovered from downturns. How did those cities try to ensure that all residents shared in the economic recovery?

To answer this question, we met with leaders from four cities that improved their racial and economic inclusion as they recovered from economic distress. By combining their insights with previous research about inclusive growth, we identified the following eight building blocks for inclusion growth.

1. **Adopt a shared vision** early on, and get buy-in from local stakeholders.
2. **Inspire and sustain bold leadership** from committed public officials or other dedicated stakeholders.
3. **Recruit partners from across sectors**, including resident groups, the media, and business leaders. Diverse partners can create buy-in, generate and elevate insights, and support solutions.
4. **Build voice and power** within traditionally underrepresented or disenfranchised communities. Ensure diverse representation in planning and political processes.
5. **Leverage assets and intrinsic advantages**, such as a city’s physical spaces and the potential of its residents.
6. **Think and act regionally**. Job and housing markets cross jurisdictional lines, and residents often live, work, and use services outside their city. Regional partnerships can

help secure broadly shared prosperity.

7. **Reframe inclusion as integral to growth** to encourage progress in both areas. A growing body of evidence suggests that diversity and inclusion are catalysts for economic development.
8. **Adopt policies and programs to support inclusion.** Policies and programs that promote inclusion in education, housing, economic development, and fiscal policy can lead to long-term success.

To learn more about our case-study cities, the lessons learned from them, and examples of these building blocks in action, see the report [Inclusive Recovery in US Cities](https://www.urban.org/research/publication/inclusive-recovery-us-cities) (<https://www.urban.org/research/publication/inclusive-recovery-us-cities>).

ABOUT THE DATA

This dashboard was published on April 25, 2018, and updated on September 15, 2020, with new data. The measures here are calculated from data compiled by the US Census Bureau's 1980 Decennial Census, 1990 Decennial Census, 2000 Decennial Census, 2011–15 American Community Survey, and 2014–18 American Community Survey and accessed through the National Historical Geographic Information System's online portal (IPUMS NHGIS, University of Minnesota, www.nhgis.org (<http://www.nhgis.org/>)). The racial segregation measure was obtained from Brown University's American Communities Project for the years 1980, 1990, and 2000.

The racial inclusion index is made up of five measures: racial segregation (white/person of color dissimilarity index), homeownership gap, educational attainment gap, poverty rate gap, and share of people of color. All racial gap measures calculate the disparity between white non-Hispanic residents and residents of color. For this analysis, we define people of color as any person identifying in US Census Bureau records as Black or African American, American Indian or Alaska Native, Asian, Native Hawaiian or other Pacific Islander, other race, two or more races, or Hispanic or Latino white. We recognize the issues that arise with placing all these groups under one umbrella—both in defining identity in comparison with whiteness and in papering over differences in how different groups experience state-sanctioned, institutionalized, systemic, and individual forms of racism. This broad racial disparity measure allows us to compare cities with differing demographic patterns while limiting the size of sampling error for groups within cities that have small populations.

The economic inclusion index is made up of four measures: income segregation (rank-order information theory index), rent burden, share of 16- to 19-year-olds who are not in school and have not graduated, and working poor. The overall inclusion index is the composite of the racial and economic inclusion indices. The economic health index is made up of four indicators: percentage change in employed people period over period, median family income, unemployment rate, and housing vacancy rate.

We chose to focus on cities rather than metropolitan areas because local decisions around policies, taxes, and services happen more often at the city level than the regional level. We include only incorporated cities in our analysis and exclude [census-designated places](https://www.federalregister.gov/documents/2018/11/13/2018-24571/census-designated-places-cdps-for-the-2020-census-final-criteria) (<https://www.federalregister.gov/documents/2018/11/13/2018-24571/census-designated-places-cdps-for-the-2020-census-final-criteria>) because they lack a municipal government that can adopt policies that support economic growth or inclusion.

PROJECT CREDITS

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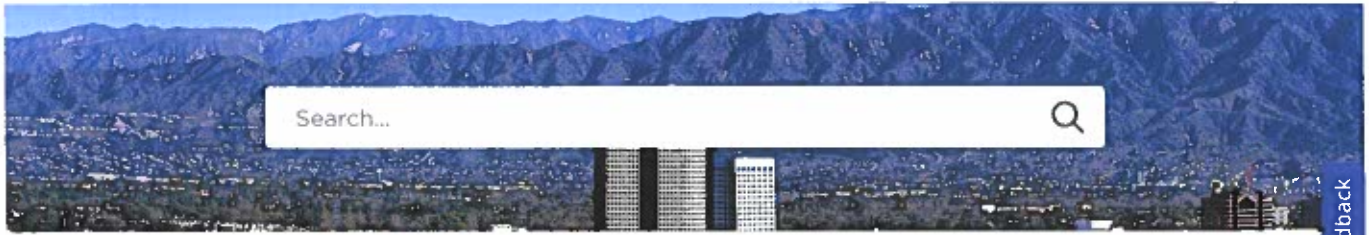
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Serena Lei

View this project on [GitHub](https://github.com/UrbanInstitute/inclusion) (<https://github.com/UrbanInstitute/inclusion>)

EXHIBIT 4

Defendant's RJN in Support of Demurrer to First Amended Complaint
Nicholas Gutierrez v. City of Burbank
Los Angeles County Superior Court
Case No. 23STCV25587

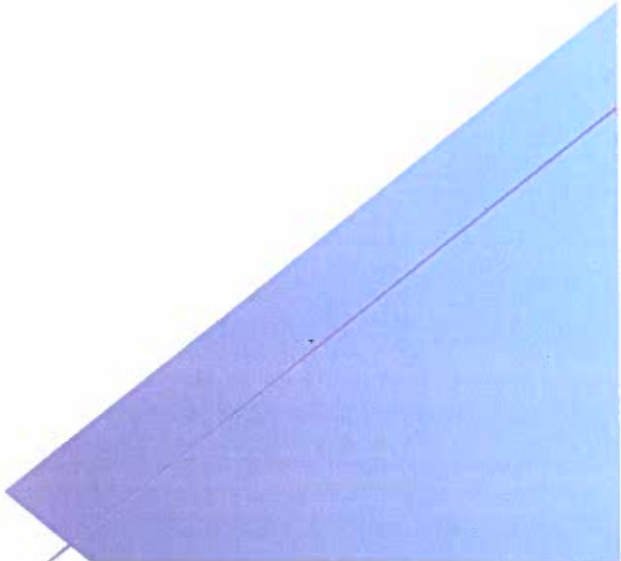


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Nikki Perez, Council Member



Nikki was born & raised in Burbank and has always been passionate about serving her community - from her first job as a City of Burbank CREST worker all the way to her most recent role as the Chair of the Burbank Library Board of Trustees.

She was raised by parents who immigrated here from El Salvador and Guatemala and is a product of our local BUSD schools. She received her B.A. In Psychology and B.A. in Music Performance from UC Riverside and a Master of Social Welfare from the UCLA Luskin School of Public Affairs. In 2022, She was elected with a record breaking 17,958 votes becoming the first indigenous and openly LGBTQIA+ Council Member in the City of Burbank.

As a Social Worker, Nikki has dedicated her career to public service and advocacy for vulnerable populations. She currently serves as the Project Manager for Kids First, a City of Los Angeles program that she developed to bring nonprofit, government, and LAUSD partners together in order to increase academic success for unhoused students in the San Fernando Valley. Previously, she has served as a Communications Director in the State Assembly and as an Education & Workforce Development Coordinator with the Los Angeles Area Chamber of Commerce.

You can find Nikki around town on a long distance run with her dog or enjoying a cup of coffee in Magnolia Park. She looks forward to grabbing a cup of coffee to discuss how we can all work together to keep the beautiful city we love while building the future we deserve!



Terms & Contact Information

Current Term of Office
December 2022 - December 2026

Contact Information
Phone: [\(818\) 238-5750](tel:8182385750)
Fax: (818) 238-5757
Email: nperez@burbankca.gov

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CITY OF BURBANK

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Burbank City Hall
275 East Olive Avenue Burbank, CA 91502

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EXHIBIT 5

Defendant's RJN in Support of Demurrer to First Amended Complaint
Nicholas Gutierrez v. City of Burbank
Los Angeles County Superior Court
Case No. 23STCV25587

RESOLUTION NO. 22-29,390

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BURBANK, CALIFORNIA, RECITING THE FACT OF THE GENERAL MUNICIPAL ELECTION CONSOLIDATED WITH THE GENERAL ELECTION HELD IN SAID CITY ON TUESDAY, NOVEMBER 8, 2022, DECLARING THE RESULTS THEREOF AND SUCH OTHER MATTERS AS PROVIDED BY LAW.

WHEREAS, a General Municipal Election was consolidated with the General Election held and conducted in the City of Burbank, California, on Tuesday, November 8, 2022, as required by law; and,

WHEREAS, the City Council of the City of Burbank, California, by Resolution Nos. 22-29,324 and 22-29,325, adopted on June 7, 2022, did cause to be noticed to the qualified electors of the City, a General Municipal Election to be held in the City of Burbank for the purpose of electing candidates to the following Offices for a four (4) year term ending December 14, 2026: three (3) Offices for Member of the City Council, one (1) Office of the City Clerk, and one (1) Office of the City Treasurer.

- A. Three (3) offices of Council Member, succeeding Council Members Robert 'Bob' Frutos, Sharon Springer, and Jess A. Talamantes, whose terms expire December 19, 2022.
- B. One (1) Office of City Clerk, succeeding City Clerk Zizette Mullins, whose term expires December 19, 2022.
- C. One (1) Office of City Treasurer, succeeding City Treasurer Krystle Palmer, whose term expires December 19, 2022.

WHEREAS, the notice of the election was given in time, form and manner as prescribed by law; the Los Angeles County Registrar-Recorder/County Clerk properly established voting precincts, appointed election officers and that in all respects the election was held and conducted and the votes were cast, received and canvassed and the returns made and declared in time, form and manner as required by the provisions of the Burbank Charter, Municipal Code and where applicable Elections Code of the State of California, for the holding of elections; and,

WHEREAS, the City's vendor, the Los Angeles County Register-Recorder/County Clerk, has canvassed the returns of the election and has certified the results as attached hereto made a part hereof as "Exhibit A."

WHEREAS, the City's vendor, the Los Angeles County Register-Recorder/County Clerk, has additionally provided a precinct map as attached hereto made a part hereof as "Exhibit B."

THE COUNCIL OF THE CITY OF BURBANK RESOLVES:

Section 1. A General Municipal Election was conducted in the City of Burbank, County of Los Angeles, State of California, on Tuesday, November 8, 2022, in the time, form and manner required by law.

Section 2. That the whole number of registered voters in the City was 69,775, a total of 36,443 ballots were casted for the City representing a 52.23 percent return rate for all elected offices.

Section 3. That the following Candidates were placed on the ballot (in ballot order) and displays the votes received and percentage.

A. Member of the City Council (Full term of four years, ending December 14, 2026)

CANDIDATES	VOTES RECEIVED	PERCENTAGE
Nikki Perez	17,958	24.75%
Tamala Takahashi	15,849	21.84%
Sharon Springer	13,816	19.04%
Zizette Mullins	14,328	19.75%
Carmenita Helligar	10,614	14.63%

B. Office of the City Clerk (Full term of four years, ending December 14, 2026)

CANDIDATES	VOTES RECEIVED	PERCENTAGE
Kimberley Clark	15,029	53.27%
Jamal El-Amin	3,460	12.26%
Viviana Garzon	9,724	34.47%

C. Office of the City Treasurer (Full term of four years, ending December 14, 2026)

CANDIDATES	VOTES RECEIVED	PERCENTAGE
Krystle Palmer	25,351	100.00%

Section 4. Nikki Perez, Tamala Takahashi, and Zizette Mullins were the candidates receiving the highest number of votes for the Member of the City Council and are therefore declared to be duly and regularly elected to said office for a full term of four years, ending on December 14, 2026.

Section 5. Kimberley Clark was the candidate receiving the highest number of votes for the Office of the City Clerk and is therefore declared to be duly and regularly elected to said office for a full term of four years, ending on December 14, 2026.

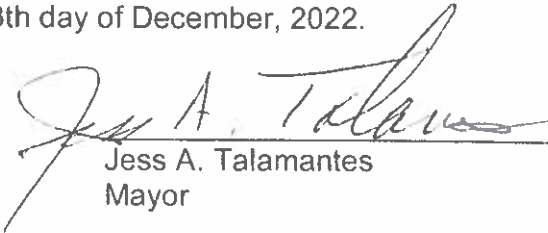
Section 6. Krystle Palmer was the only candidate nominated and therefore receiving the highest number of votes for the Office of the City Treasurer and is therefore declared to be duly and regularly elected to said office for a full term of four years, ending on December 14, 2026.

Section 7. As prescribed by Burbank Municipal Code Section 2-3-152, the City Clerk shall enter on the records of the City Council of the City of Burbank, a statement of the results of said election, showing:

- A. The whole number of votes cast in the City;
- B. The names of the persons voted for;
- C. The measures or propositions voted upon; *(no measures or propositions)*
- D. For what office each person was voted for;
- E. The number of votes given at each precinct, if applicable, to each person, and for and against each measure or proposition; *(no measures or propositions)*
- F. The number of votes given in the City to each person, and for and against each measure or proposition.

Section 8. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original resolutions.

PASSED and ADOPTED this 13th day of December, 2022.



 Jess A. Talamantes
 Mayor

Approved as to Form:
Office of the City Attorney

Attest:



 Zizette Mullins, MMC, City Clerk

By: 

 Jina Oh
 Chief Assistant City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF BURBANK)

I, Zizette Mullins, MMC, City Clerk of the City of Burbank, do hereby certify that the foregoing Resolution was duly and regularly passed and adopted by a vote of the Council of the City of Burbank at its regular meeting held on the 13th day of December, 2022, by the following vote:

AYES: Frutos, Schultz, Springer, Anthony and Talamantes.

NOES: None.

ABSENT: None.



Zizette Mullins, MMC, City Clerk



**LOS ANGELES COUNTY
REGISTRAR-RECORDER/COUNTY CLERK**

DEAN C. LOGAN
Registrar-Recorder/County Clerk

December 5, 2022

Zizette Mullins, City Clerk
City of Burbank
275 East Olive Avenue
Burbank, California 91502

Dear City Clerk:

Enclosed are the Official Canvass Certificate and the Official Statement of Votes Cast by precinct for the City of Burbank General Municipal Election consolidated with the General Election held on November 8, 2022.

Please call the Election Planning Section at (562) 462-2317, if you have any questions.

Sincerely,

DEAN C. LOGAN
Registrar-Recorder/County Clerk

SONIA CORONA, Head
Election Planning Section

Enclosures
Official Canvass Certificate
Official Statement of Votes Cast

12022EF General Elec Nov 2022 Canvass Cert City Letter

Los Angeles County
Registrar-Recorder/County Clerk

Certificate of the Canvass of the Election Returns

I, DEAN C. LOGAN, Registrar-Recorder/County Clerk of the County of Los Angeles, of the State of California, DO HEREBY CERTIFY that pursuant to the provisions of Section 15300 et seq. of the California Elections Code, I did canvass the returns of the votes cast for each elective office and/or measure(s) for

Burbank City

at the General Election, held on the 8th day of November, 2022.

I FURTHER CERTIFY that the Statement of Votes Cast, to which this certificate is attached, shows the total number of ballots cast in said jurisdiction, and that the whole number of votes cast for each candidate and/or measure(s) in said jurisdiction in each of the respective precincts therein, and the totals of the respective columns and the totals as shown for each candidate and/or measure(s) are full, true and correct.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 5th day of December, 2022.



Dean C. Logan

DEAN C. LOGAN
Registrar-Recorder/County Clerk
County of Los Angeles

FINAL OFFICIAL STATEMENT OF VOTES CAST BY PRECINCT		BURBANK CITY GENERAL MUNI COUNCILMEMBER									
LOCATION	REGISTRATION	BALLOTS CAST	MIKI PEREZ	TAKAHASHI	SHARON SPRINGER	ZETTE MILLINS	CARMENITA HELIGAR				
BURBANK - 0950001A	SERIAL 0112	226	86	73	97	112	46				
VOTE BY MAIL		1109	502	531	443	494	296				
TOTAL	2533	1335	588	604	540	606	341				
BURBANK - 0950005B	SERIAL 0113	222	101	69	72	86	60				
VOTE BY MAIL		1147	615	518	386	368	367				
TOTAL	3175	1369	716	587	458	452	427				
BURBANK - 0950006A	SERIAL 0114	247	92	94	88	94	59				
VOTE BY MAIL		1112	566	522	423	407	374				
TOTAL	3194	1359	678	616	491	501	433				
BURBANK - 0950009E	SERIAL 6173	23	10	5	8	9	4				
VOTE BY MAIL		87	30	31	43	37	11				
TOTAL	251	110	40	36	51	46	15				
BURBANK - 0950010A	SERIAL 0115	298	111	96	89	125	68				
VOTE BY MAIL		1381	684	610	467	474	445				
TOTAL	3812	1679	795	706	556	599	511				
BURBANK - 0950014A	SERIAL 0116	367	158	146	135	141	109				
VOTE BY MAIL		1969	1049	884	660	603	685				
TOTAL	3953	2336	1207	1030	796	744	774				
BURBANK - 0950018A	SERIAL 0117	182	73	66	42	67	39				
VOTE BY MAIL		600	352	267	180	184	211				
TOTAL	2043	782	425	333	222	251	250				
BURBANK - 0950022A	SERIAL 0118	250	103	78	91	87	60				
VOTE BY MAIL		1403	763	642	498	435	509				
TOTAL	3491	1653	866	720	577	522	589				
BURBANK - 0950029A	SERIAL 6174	95	34	20	34	50	14				
VOTE BY MAIL		404	197	177	143	164	126				
TOTAL	1083	489	231	197	177	214	140				
BURBANK - 0950132A	SERIAL 0119	293	111	86	101	129	64				
VOTE BY MAIL		1439	706	632	503	564	426				
TOTAL	3397	1732	817	718	604	683	490				
BURBANK - 0950140A	SERIAL 0120	344	122	111	129	188	57				
VOTE BY MAIL		1448	663	605	660	683	363				
TOTAL	3240	1732	785	716	779	881	410				
BURBANK - 0950141A	SERIAL 0121	242	84	55	91	142	33				
VOTE BY MAIL		1188	470	423	500	702	226				
TOTAL	2628	1430	554	478	591	844	259				
BURBANK - 0950146A	SERIAL 0122	240	101	56	87	121	50				
VOTE BY MAIL		1019	540	427	373	412	398				
TOTAL	2512	1259	641	483	480	533	358				
BURBANK - 0950150A	SERIAL 0123	218	54	61	104	120	27				
VOTE BY MAIL		963	356	326	488	468	194				
TOTAL	2372	1181	410	387	582	588	221				

FINAL OFFICIAL STATEMENT OF VOTES CAST BY PRECINCT	LOCATION	REGISTRATION	BALLOTS CAST	BURBANK CITY GENERAL MUNI COUNCILMEMBER				
				MIKE PEREZ	TAMALA TAKAHASHI	SHARON SPRINGER	ZIETTE MILLINS	CARMENITA HELGARA
BURBANK - 0950153A* VOTE BY MAIL	SERIAL 6175		87	27	27	44	50	12
TOTAL		1032	470	180	174	230	270	105
BURBANK - 0950163A VOTE BY MAIL	SERIAL 0124		331	125	114	131	149	70
TOTAL		3524	1792	931	857	742	775	515
BURBANK - 0950166B VOTE BY MAIL	SERIAL 0125		2123	1056	971	873	924	585
TOTAL		3268	1586	838	755	685	605	502
BURBANK - 0950167A* VOTE BY MAIL	SERIAL 6176		1835	927	842	783	725	564
TOTAL		1708	122	42	45	35	46	23
BURBANK - 0950168A VOTE BY MAIL	SERIAL 0126		530	246	234	187	160	161
TOTAL		3355	652	288	279	222	206	190
BURBANK - 0950175A VOTE BY MAIL	SERIAL 0127		1120	661	528	347	281	383
TOTAL		3803	1395	779	610	425	373	464
BURBANK - 0950184A VOTE BY MAIL	SERIAL 0128		299	125	108	117	131	73
TOTAL		2144	1938	1038	958	690	696	601
BURBANK - 0950185A VOTE BY MAIL	SERIAL 0129		2237	1163	1066	807	827	674
TOTAL		3411	197	74	66	69	101	38
BURBANK - 0950189A VOTE BY MAIL	SERIAL 0130		947	540	424	332	362	289
TOTAL		3048	1144	614	490	401	463	327
BURBANK - 0950190A VOTE BY MAIL	SERIAL 0131		300	137	119	98	104	73
TOTAL		3313	1815	1006	905	682	627	610
BURBANK - 0950198A VOTE BY MAIL	SERIAL 0132		284	142	113	90	120	78
TOTAL		3048	1558	886	786	578	576	533
BURBANK - 0950271A* BALLOT GROUP 27 - 99900271A	SERIAL 8027		1842	1028	899	688	696	611
TOTAL		0	289	132	112	97	115	80
BURBANK - 0950271A* VOTE BY MAIL	SERIAL 8027		1568	837	777	593	578	503
TOTAL		3485	1857	969	889	690	693	563
BURBANK - 0950271A* VOTE BY MAIL	SERIAL 8027		289	118	99	122	131	70
TOTAL		0	1871	913	868	877	765	548
BALLOT GROUP 27 - 99900271A* VOTE BY MAIL	SERIAL 8027		2170	1031	967	999	896	618
TOTAL		0	0	0	0	0	0	0
TOTAL		0	0	0	0	0	0	0

BURBANK CITY GENERAL MUNI COUNCILMEMBER

FINAL OFFICIAL STATEMENT OF VOTES CAST BY PRECINCT	LOCATION	REGIST-RATION	BALLOTS CAST	COUNCILMEMBER				
				MIKKI PEREZ	TAMALA TAKAHASHI	SHARON SPRINGER	ZIZETTE MULLINS	CARMENYA HELGAR
PRECINCT TOTAL		69775	5979	2369	1988	2128	2820	1343
VBM TOTAL			30464	15589	13861	11688	11708	9271
GRAND TOTAL			36443	17958	15949	13816	14328	10614

FINAL OFFICIAL STATEMENT OF VOTES CAST BY PRECINCT

BURBANK CITY GENERAL MUNI CITY CLERK

LOCATION	REGISTRATION	BALLOTS CAST	KIMBERLEY CLARK	JAMAL EL-AMIN	YVONNE GAZON
BURBANK - 0950001A		226	67	20	72
VOTE BY MAIL	SERIAL 0112	1109	416	117	295
TOTAL	2533	1335	483	137	367
BURBANK - 0950005B		222	90	25	53
VOTE BY MAIL	SERIAL 0113	1147	465	122	306
TOTAL	3175	1369	555	147	399
BURBANK - 0950006A		247	87	26	61
VOTE BY MAIL	SERIAL 0114	1112	413	124	326
TOTAL	3194	1359	500	150	387
BURBANK - 0950009E		23	7	2	3
VOTE BY MAIL	SERIAL 6173	87	34	6	19
TOTAL	251	110	41	8	22
BURBANK - 0950010A		298	102	41	76
VOTE BY MAIL	SERIAL 0115	1381	516	140	350
TOTAL	3812	1679	618	181	426
BURBANK - 0950014A		367	130	57	85
VOTE BY MAIL	SERIAL 0116	1969	794	184	469
TOTAL	3953	2336	924	241	554
BURBANK - 0950018A		182	62	19	50
VOTE BY MAIL	SERIAL 0117	600	247	50	197
TOTAL	2043	782	309	69	247
BURBANK - 0950022A		250	82	25	56
VOTE BY MAIL	SERIAL 0118	1403	501	155	388
TOTAL	3481	1653	583	180	444
BURBANK - 0950029A*		95	32	10	30
VOTE BY MAIL	SERIAL 6174	404	177	18	116
TOTAL	1083	499	209	28	145
BURBANK - 0950132A		293	114	30	89
VOTE BY MAIL	SERIAL 0119	1439	586	154	399
TOTAL	3397	1732	700	184	488
BURBANK - 0950140A		344	111	50	95
VOTE BY MAIL	SERIAL 0120	1448	639	144	366
TOTAL	3240	1792	750	194	461
BURBANK - 0950141A		242	73	28	68
VOTE BY MAIL	SERIAL 0121	1188	461	116	323
TOTAL	2628	1430	534	144	391
BURBANK - 0950146A		240	90	19	85
VOTE BY MAIL	SERIAL 0122	1019	443	84	326
TOTAL	2512	1259	533	103	411
BURBANK - 0950150A		218	69	24	61
VOTE BY MAIL	SERIAL 0123	963	342	77	278
TOTAL	2372	1181	411	101	339

FINAL OFFICIAL STATEMENT OF VOTES CAST BY PRECINCT		BURBANK CITY GENERAL MUNI CITY CLERK		KIMBERLEY CLARK		JAMAL EL-MINI		VINANA GARZON	
LOCATION	REGISTRATION	BALLOTS CAST							
BURBANK - 0950153A* VOTE BY MAIL		87	33	8	23				
TOTAL	1032	470	184	38	133				
BURBANK - 0950163A VOTE BY MAIL		331	136	29	86				
TOTAL	3524	1792	820	122	485				
BURBANK - 0950166B VOTE BY MAIL		249	107	29	69				
TOTAL	3268	1598	715	142	410				
BURBANK - 0950167A* VOTE BY MAIL		122	47	24	20				
TOTAL	1708	530	191	71	124				
BURBANK - 0950168A VOTE BY MAIL		652	238	95	144				
TOTAL	3355	275	103	31	61				
BURBANK - 0950175A VOTE BY MAIL		1120	425	117	344				
TOTAL	3903	1385	528	148	405				
BURBANK - 0950184A VOTE BY MAIL		299	136	29	77				
TOTAL	1938	887	166	466					
BURBANK - 0950184A VOTE BY MAIL		2237	1023	195	543				
TOTAL	197	92	16	50					
BURBANK - 0950184A VOTE BY MAIL		947	438	62	242				
TOTAL	2144	1144	530	78	292				
BURBANK - 0950185A VOTE BY MAIL		300	147	33	54				
TOTAL	3411	1815	854	184	436				
BURBANK - 0950189A VOTE BY MAIL		2115	1001	217	490				
TOTAL	3313	284	140	27	65				
BURBANK - 0950190A VOTE BY MAIL		1558	690	125	459				
TOTAL	1842	830	152	524					
BURBANK - 0950190A VOTE BY MAIL		269	116	31	80				
TOTAL	3048	1568	721	128	403				
BURBANK - 0950198A VOTE BY MAIL		1857	837	159	483				
TOTAL	3465	299	104	31	82				
BURBANK - 0950198A VOTE BY MAIL		1871	793	150	513				
TOTAL	0	2170	897	181	595				
BALLOT GROUP 27 - 995027A* VOTE BY MAIL		0	0	0	0				
TOTAL	0	0	0	0	0				



LOS ANGELES COUNTY
REGISTRAR-RECORDER/
COUNTY CLERK

CITY OF BURBANK
2022 GENERAL ELECTION



- Legend**
- City of Burbank
 - Election Precincts
 - Streets
 - Minor
 - Secondary
 - Primary
 - Highway
 - Freeway



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Telephone: (818) 338-1111

Version: 06-18-2021

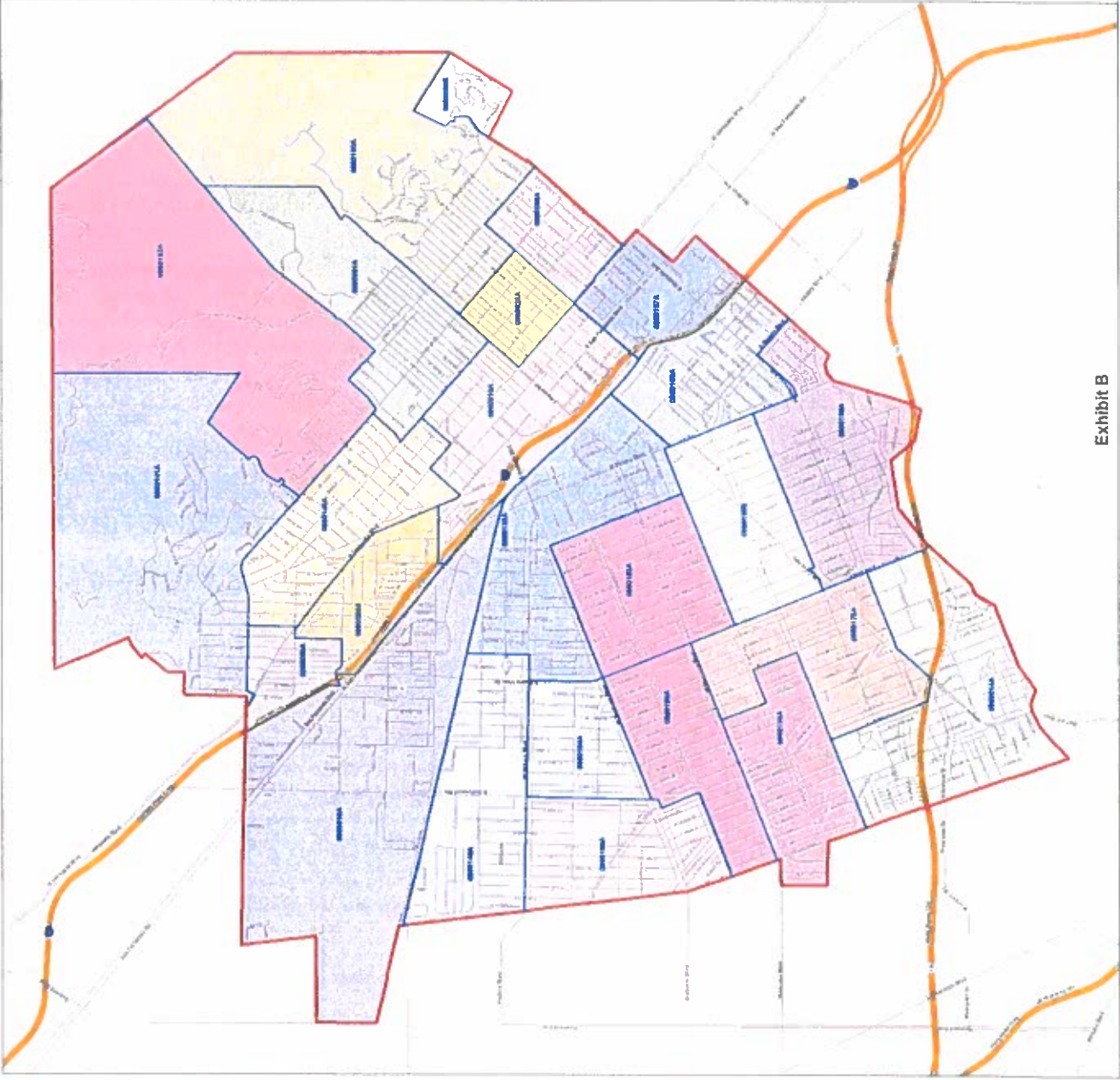


Exhibit B

EXHIBIT 6

Defendant's RJN in Support of Demurrer to First Amended Complaint
Nicholas Gutierrez v. City of Burbank
Los Angeles County Superior Court
Case No. 23STCV25587

Burbank City Council Candidate Profile: Zizette Mullins

By Devin Herenda - September 27, 2022



Search

City Clerk Zizette Mullins, a Burbank resident of more than 40 years, shares her history with the city for her Burbank City Council candidate profile. Mullins has held the position of city clerk for a decade, previously owned her own Burbank business, and is a 2013 graduate of Burbank Leadership, a local nonprofit that offers preparation to emerging leaders. As she visited Castaway in her adolescent years, Mullins “fell in love with [her] home,” she says, and she continues to enjoy the “small-town charm” of the area to this day.

New Burbank Urgent Care Now Open 

 OPEN 7 DAYS A WEEK  EXTENDED EVENING HOURS [Choose Providence](#)

How long have you been a Burbank resident? What first brought you to the city?

I moved to Burbank over 40 years ago. When I was a teenager, my family often went to the Castaway restaurant. I so enjoyed the drive to the restaurant through the beautiful neighborhoods. Even then I recognized the feeling of community and the energy that makes Burbank such an inviting city. I fell in love with my home when I first moved here, and that feeling has grown every year.

What do you enjoy most about Burbank?

There are many things that make Burbank special for me. Our city has retained its small-town charm but also offers everything much larger cities have – excellent public service,



fine dining, entertainment, a widely recognized film and television industry and a culturally diverse population, to name just a few. I also feel that Burbank is a very safe community with an excellent school system, making it a great place to raise a family.

Where is your go-to place to have a good time in Burbank?

Burbank has many great restaurants and venues to enjoy, which makes it difficult to pick just one place. However, my family and I always feel at home at Tequilas restaurant. I love the outdoor atmosphere accompanied by the delicious food.

Tell us a little bit about your background leading up to your candidacy.

I was born in Cairo, Egypt, immigrated with my family to the United States in 1977 when I was 13 years old, and attended Hollywood High School. As a student, I enjoyed playing volleyball, acted in local theater and enjoyed summers at the beach listening to the best hits of the 1980s. After graduating high school, I worked for Wells Fargo as a customer service representative before becoming an employee of the City of Glendale Water and Power Department.



Climbing within the department and city, I served in roles in the Finance Department, Economic Development Department, and the Glendale City Manager's Office. Respected by my peers, I was elected president of the Glendale City Employees Association, where I managed employee grievances and bargained compensation and benefits on behalf of over 1,500 city employees. As a union leader, I believed in maintaining amicable relationships with all I worked with and delivered for the members without creating adversarial relationships with the city's management team.

While working for the City of Glendale, my sister and I opened Rocky Mountain Chocolate Factory in Burbank, where I had lived since 1982. As a small business owner, I learned how to juggle even more responsibilities, from customer service to payroll. Rocky Mountain Chocolate Factory was a fixture in downtown Burbank for nearly a decade, bringing smiles and sweet treats to all generations of Burbankians.

In June 2012, after the retirement of the Burbank City Clerk, Margarita Campos, I applied and was unanimously appointed by the Burbank City Council to be city clerk and would later win a full term when I was elected by voters in 2013. I was subsequently re-elected to a second term in 2017.

As city clerk, I expanded the mission and work of the City Clerk's Office. Beyond the maintenance of city records and administration of municipal elections, I partnered with the Burbank Unified School District to launch voter registration initiatives targeted at high school students, increasing the youth voter registration rate in the city. Additionally, I launched the passport services program at the Clerk's Office, which has led to the generation of over \$2.8 million in new revenue for the city's general fund.

I am a proud mother of two graduates of Burbank schools and a stepmother to one. I am married to Mike, and we live in Magnolia Park with our dog, Zoe. My children are grown, and I am also a proud grandmother to five incredible grandchildren.

What is a fun fact about yourself that you'd like to share?

I love spending my spare time with my family, especially my five grandchildren. I also love to travel and see the world; my favorite city is Paris. I fell in love with it as soon as I landed.

Note: Some answers have been edited for clarity. All answers are provided by candidates and do not denote verification on behalf of myBurbank.

Devin Herenda

Devin Herenda is an issue-oriented reporter for myBurbank

EXHIBIT 7

Defendant's RJN in Support of Demurrer to First Amended Complaint
Nicholas Gutierrez v. City of Burbank
Los Angeles County Superior Court
Case No. 23STCV25587

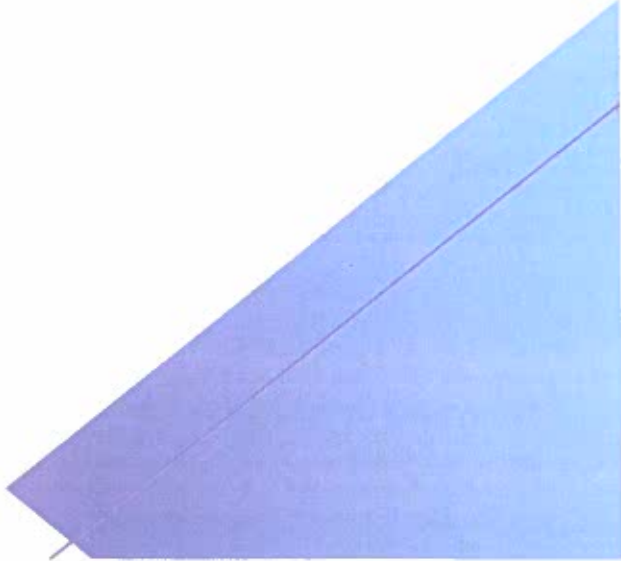


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Konstantine Anthony, Mayor



Konstantine Anthony grew up in the small suburban town of Castro Valley, just outside of Oakland, CA. He spent his middle school years in rural Iowa and studied film at San Francisco State University with a diverse group of students from all over the world. In 2004, he moved to Burbank and became a union actor in film and television.

With 20 years of experience in improv comedy, Konstantine has appeared in numerous television shows and movies. That experience, and a passion for social justice, made running for office in the Media Capital a natural next step. On his second run for Burbank City Council, he won a seat with a record-setting 17,529 votes. In doing so, he also became the first openly autistic elected official west of the Mississippi.

Konstantine has been a SAG-AFTRA member since 2006 and a member of SEIU 2015 since 2019. He has served with the Burbank Advisory Council on Disabilities since 2018, as executive board of Burbank PFLAG since 2019, and with the Burbank Transportation Commission from 2017-2020, resigning from his position as Chair to take his City Council seat. It is through these networks of advocacy that he takes on the issues facing our fair city.

When not deliberating on the dais, you can find Konstantine driving around town in his blue Prius, taking constituents to their destinations through various rideshare apps. He hopes to meet you one day and get you involved in local politics, too.



Terms & Contact Information

Current Term of Office

December 2020 - December 2024

Mayor	Vice Mayor
2022 - 2023	2021 - 2022

Contact Information

Phone: [\(818\) 238-5750](tel:(818)238-5750)

Fax: (818) 238-5757

Email: kanthony@burbankca.gov

STAY CONNECTED



CITY OF BURBANK

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Burbank City Hall
275 East Olive Avenue Burbank, CA 91502

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EXHIBIT 8

Defendant's RJN in Support of Demurrer to First Amended Complaint
Nicholas Gutierrez v. City of Burbank
Los Angeles County Superior Court
Case No. 23STCV25587

RESOLUTION NO. 20-29,200

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BURBANK, CALIFORNIA, RECITING THE FACT OF THE GENERAL MUNICIPAL ELECTION CONSOLIDATED WITH THE GENERAL ELECTION HELD IN SAID CITY ON TUESDAY, NOVEMBER 3, 2020, DECLARING THE RESULT THEREOF AND SUCH OTHER MATTERS AS PROVIDED BY LAW.

WHEREAS, a General Municipal Election was consolidated with the General Election held and conducted in the City of Burbank, California, on Tuesday, November 3, 2020, as required by law; and

WHEREAS, the City Council of the City of Burbank, California, by Resolution Nos. 20-29,157 and 20-29,158, adopted on June 23, 2020, did cause to be noticed to the qualified electors of the City, a General Municipal Election to be held in the City of Burbank for the purpose of electing candidates to two (2) Members of the City Council for a four (4) year term ending December 16, 2024 and the Office of City Treasurer for an unexpired term ending December 19, 2022.

- A. Two (2) offices of Council Member, succeeding Council Members Emily Gabel-Luddy, and Timothy M. Murphy, whose terms expire December 14, 2020.
- B. One (1) Office of City Treasurer, succeeding City Treasurer Krystle Palmer, who was appointed to a partial term which expires on December 14, 2020.

WHEREAS, the City Council of the City of Burbank, California, by Resolution Nos. 20-29,168 and 20-29,169, adopted on August 7, 2020, did cause to be noticed to the qualified electors of the City, a General Municipal Election to be held in the City of Burbank, for the purpose of a ballot measure as follows:

<u>Measure RC - The 2020 Burbank Just Cause Eviction And Rent Regulation</u>	Yes	No
Shall the measure adding an ordinance with just cause eviction provisions and relocation fees, rent regulations applicable to units built before February 1, 1995 with exemptions, limits of 0 to 7% increase in annual rent based on CPI, an updated five member Landlord Tenant Commission to implement provisions and administration including establish a budget, assess fees, hire staff including attorneys, and initiate lawsuits while acting independently of Burbank City Council, Burbank City Manager and Burbank City Attorney be adopted?	_____	_____

WHEREAS, the notice of the election was given in time, form and manner as prescribed by law; the Los Angeles County Registrar-Recorder/County Clerk properly established voting precincts, appointed election officers and that in all respects the election was held and conducted and the votes were cast, received and canvassed and the returns made and declared in time, form and manner as required by the provisions of the Burbank Charter, Municipal Code and where applicable Elections Code of the State of California, for the holding of elections; and

WHEREAS, the City's vendor, the Los Angeles County Register-Recorder/County Clerk, has canvassed the returns of the election and has certified the results as attached hereto made a part hereof as "Exhibit A."

WHEREAS, the City's vendor, the Los Angeles County Register-Recorder/County Clerk, has additionally provided a precinct map as attached hereto made a part hereof as "Exhibit B."

THE COUNCIL OF THE CITY OF BURBANK RESOLVES:

Section 1. A General Municipal Election was conducted in the City of Burbank, County of Los Angeles, State of California, on Tuesday, November 3, 2020, in the time, form and manner required by law.

Section 2. That the whole number of registered voters in the City was 73,044, a total of 58,964 ballots were casted for Member of the City Council, 59,043 ballots were casted for Office of the City Treasurer, and 59,041 ballots were casted for Measure RC representing approximately 80.75 percent return rate.

Section 3. That the following Candidates and Measure were placed on the ballot (in ballot order) and displays the votes received and percentage.

A. Member of the City Council (Full term of four years, ending December 16, 2024)

CANDIDATES	VOTES RECEIVED	PERCENTAGE
Linda Bessin	7,362	8.58%
Konstantine Anthony	17,529	20.42%
Tamala Takahashi	12,686	14.78%
Michael Lee Gogin	5,492	6.40%
Paul Herman	11,969	13.94%
Nick Schultz	13,105	15.27%
Sharis Manokian	7,450	8.68%
Tim Murphy	10,245	11.94%

B. Office of the City Treasurer (Unexpired term ending December 19, 2022)

CANDIDATES	VOTES RECEIVED	PERCENTAGE
Krystle Palmer	24,434	56.49%
Darin B. Shea	9,050	20.92%
Lindsey Francois	9,773	22.59%

C. Measure RC - The 2020 Burbank Just Cause Eviction and Rent Regulation
Votes cast in favor "Yes": 17,994 (36.21%)
Votes cast in opposition "No": 31,697 (63.79%)

Section 4. Konstantine Anthony and Nick Schultz were the candidates receiving the highest number of votes for the Member of the City Council and are therefore declared to be duly and regularly elected to said office for a full term of four years, ending on December 16, 2024.

Section 5. Krystle Palmer was the candidate receiving the highest number of votes for the Office of the City Treasurer and is therefore declared to be duly and regularly elected to said office for an unexpired term ending on December 19, 2022.

Section 6. The City Council does declare and determine that Ballot Measure RC – The 2020 Burbank Just Cause Eviction and Rent Regulation did not pass since it received less than a majority of affirmative votes.

Section 7. As prescribed by Burbank Municipal Code Section 2-3-152, the City Clerk shall enter on the records of the City Council of the City of Burbank, a statement of the results of said election, showing:

- A. The whole number of votes cast in the City;
- B. The names of the persons voted for;
- C. The measures or propositions voted upon;
- D. For what office each person was voted for;
- E. The number of votes given at each precinct, if applicable, to each person, and for and against each measure or proposition;
- F. The number of votes given in the City to each person, and for and against each measure or proposition.

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

PASSED and ADOPTED this 8th day of December, 2020.


Sharon Springer
Mayor

Approved as to Form:
Office of the City Attorney

By: 
Amy Albano, City Attorney

Attest:


Zizette Mullins, MMC, City Clerk


STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF BURBANK)

I, Zizette Mullins, MMC, City Clerk of the City of Burbank, do hereby certify that the foregoing Resolution was duly and regularly passed and adopted by a vote of the Council of the City of Burbank at its regular meeting held on the 8th day of December, 2020, by the following vote:

AYES: Frutos, Gabel-Luddy, Murphy, Talamantes and Springer.

NOES: None.

ABSENT: None.



Zizette Mullins, MMC, City Clerk



Los Angeles County Registrar-Recorder/County Clerk

DEAN C. LOGAN
Registrar-Recorder/County Clerk

November 30, 2020

Ms. Zizette Mullins, City Clerk
City of Burbank
275 East Olive Avenue
Burbank, California 91502

Dear Ms. Mullins:

Enclosed are the Official Canvass Certificate and the Official Statement of Votes Cast by precinct for the City of Burbank General Municipal Election consolidated with the General Election held on November 3, 2020.

Please call the Election Planning Section at (562) 462-2317, if you have any questions.

Sincerely,

DEAN C. LOGAN
Registrar-Recorder/County Clerk

LATICIA MCCORKLE, Assistant Division Manager
Election Information and Preparation Division

Enclosures
Official Canvass Certificate
Official Statement of Votes Cast

Los Angeles County
Registrar-Recorder/County Clerk

Certificate of the Canvass of the Election Returns

I, DEAN C. LOGAN, Registrar-Recorder/County Clerk of the County of Los Angeles, of the State of California, DO HEREBY CERTIFY that pursuant to the provisions of Section 15300 et seq. of the California Elections Code, I did canvass the returns of the votes cast for each elective office and/or measure(s) for

Burbank City

at the General Election, held on the 3rd day of November, 2020.

I FURTHER CERTIFY that the Statement of Votes Cast, to which this certificate is attached, shows the total number of ballots cast in said jurisdiction, and that the whole number of votes cast for each candidate and/or measure(s) in said jurisdiction in each of the respective precincts therein, and the totals of the respective columns and the totals as shown for each candidate and/or measure(s) are full, true and correct.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 30th day of November, 2020.



Dean Logan
DEAN C. LOGAN
Registrar-Recorder/County Clerk
County of Los Angeles

FINAL OFFICIAL STATEMENT OF VOTES CAST BY PRECINCT	BURBANK CITY GENERAL MUNI COUNCILMEMBER			
	LOCATION	REGISTRATION	BALLOTS CAST	
BURBANK - 0950001A	SERIAL 0152	1918	339	
VOTE BY MAIL			1239	
TOTAL			1578	
BURBANK - 0950002A	SERIAL 0153	2701	383	
VOTE BY MAIL			1663	
TOTAL			2046	
BURBANK - 0950005B	SERIAL 0154	2448	421	
VOTE BY MAIL			1511	
TOTAL			1932	
BURBANK - 0950008A	SERIAL 0155	2701	525	
VOTE BY MAIL			1677	
TOTAL			2202	
BURBANK - 0950012A	SERIAL 0156	2489	344	
VOTE BY MAIL			1773	
TOTAL			2117	
BURBANK - 0950013A	SERIAL 0157	2552	491	
VOTE BY MAIL			1714	
TOTAL			2205	
BURBANK - 0950019A	SERIAL 0158	2288	361	
VOTE BY MAIL			1412	
TOTAL			1773	
BURBANK - 0950025A	SERIAL 0159	2545	379	
VOTE BY MAIL			1832	
TOTAL			2211	
BURBANK - 0950029A	SERIAL 0160	2027	398	
VOTE BY MAIL			1224	
TOTAL			1822	
BURBANK - 0950031A	SERIAL 0161	2485	385	
VOTE BY MAIL			1591	
TOTAL			1976	
BURBANK - 0950042A	SERIAL 0162	2099	335	
VOTE BY MAIL			1273	
TOTAL			1608	
BURBANK - 0950132A	SERIAL 0163	2867	403	
VOTE BY MAIL			1819	
TOTAL			2222	
BURBANK - 0950139C	SERIAL 0164	2930	430	
VOTE BY MAIL			1912	
TOTAL			2242	
BURBANK - 0950141A	SERIAL 0165	2630	498	
VOTE BY MAIL			1691	
TOTAL			2189	
			28	LINDA BESSIN
			45	K ANTHONY
			47	TAKAHASHI
			58	MICHAEL LEE
			86	PAUL HERMAN
			67	NICK SCHULTZ
			55	SHARIS
			228	MANOKIAN
			288	TM MURPHY
			355	
			84	
			366	
			412	
			58	
			259	
			317	
			116	
			294	
			200	
			410	
			71	
			325	
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			443	
			532	
			65	
			140	
			200	
			350	
			63	
			272	
			335	
			29	
			147	
			176	
			88	
			348	
			436	
			36	
			237	
			482	
			273	
			83	
			394	
			318	

FINAL OFFICIAL STATEMENT OF VOTES CAST BY PRECINCT		BURBANK CITY GENERAL MUNI COUNCILMEMBER											
LOCATION	REGIST-RATION	BALLOTS CAST	LINDA BESSIN	K ANTHONY	TAMALA TAKAHASHI	MICHAEL LEE GOGGIN	PAUL HERMAN	NICK SCHULTZ	SHARIS MANOKIAN	TIM MURPHY			
BURBANK - 0950144A		442	39	106	75	62	104	97	60	62			
VOTE BY MAIL	SERIAL 0166	1606	198	538	343	137	284	376	224	283			
TOTAL		2048	237	644	418	199	368	473	284	345			
BURBANK - 0950146A		351	42	66	67	72	117	55	19	73			
VOTE BY MAIL	SERIAL 0167	1492	226	479	375	115	304	319	198	330			
TOTAL		1843	268	545	442	187	421	374	157	403			
BURBANK - 0950148A		386	51	78	67	55	97	79	35	51			
VOTE BY MAIL	SERIAL 0168	1711	241	528	419	140	338	468	181	286			
TOTAL		2097	292	606	486	195	435	547	216	337			
BURBANK - 0950155A		390	43	77	57	33	59	58	91	51			
VOTE BY MAIL	SERIAL 0169	1403	133	426	272	104	244	304	374	234			
TOTAL		1793	176	503	329	137	303	362	465	285			
BURBANK - 0950157A		417	29	99	56	42	53	51	88	29			
VOTE BY MAIL	SERIAL 0170	1486	178	489	312	98	204	311	305	189			
TOTAL		1903	207	588	368	140	257	362	393	218			
BURBANK - 0950160A		388	37	96	77	45	56	70	47	50			
VOTE BY MAIL	SERIAL 0171	1589	222	554	382	140	270	373	189	219			
TOTAL		1977	259	632	459	185	326	443	236	269			
BURBANK - 0950163A		380	38	92	77	56	114	85	31	68			
VOTE BY MAIL	SERIAL 0172	1657	254	521	374	155	332	399	130	344			
TOTAL		2037	292	613	451	211	446	484	161	412			
BURBANK - 0950166B		343	39	94	69	41	72	67	45	57			
VOTE BY MAIL	SERIAL 0173	1821	232	702	440	139	330	415	122	298			
TOTAL		2164	271	796	509	180	402	482	167	355			
BURBANK - 0950177A		360	43	72	93	70	85	51	37	49			
VOTE BY MAIL	SERIAL 0174	1702	205	605	434	139	320	430	158	282			
TOTAL		2062	248	677	527	209	405	481	195	341			
BURBANK - 0950178A		297	37	88	58	39	75	51	22	39			
VOTE BY MAIL	SERIAL 0175	1654	200	638	367	129	284	404	161	256			
TOTAL		1951	237	728	425	168	359	455	183	295			
BURBANK - 0950181A		307	34	70	61	48	90	70	14	66			
VOTE BY MAIL	SERIAL 0176	1645	259	590	378	129	387	428	108	305			
TOTAL		1952	293	660	439	177	477	498	122	371			
BURBANK - 0950186A		339	39	71	66	39	88	72	24	56			
VOTE BY MAIL	SERIAL 0177	1595	275	434	375	116	328	401	149	285			
TOTAL		1934	314	505	441	155	416	473	173	341			
BURBANK - 0950190A		379	40	63	70	54	109	74	30	71			
VOTE BY MAIL	SERIAL 0178	1410	188	438	332	120	287	355	107	283			
TOTAL		1789	228	501	402	174	396	429	137	354			
BURBANK - 0950191A		353	35	78	72	39	92	75	33	57			
VOTE BY MAIL	SERIAL 0179	1398	203	474	338	116	290	340	112	287			
TOTAL		1751	238	552	410	155	382	415	145	344			

FINAL OFFICIAL STATEMENT OF VOTES CAST BY PRECINCT	BURBANK CITY GENERAL MUNI COUNCILMEMBER										
	LOCATION	REGISTRATION	BALLOTS CAST	LINDA BESSIN	K ANTHONY	TAMALA TAKAHASHI	MICHAEL LEE GOGIN	PAUL HERMAN	NICK SCHULTZ	SHARIS MANOKIAN	TM MURPHY
BURBANK - 0950193A			296	47	72	51	51	81	46	20	44
VOTE BY MAIL	SERIAL 0180		1430	234	531	338	128	271	331	109	238
TOTAL		1988	1726	281	603	389	179	352	377	129	282
BURBANK - 0950197A			326	40	69	78	46	63	71	90	46
VOTE BY MAIL	SERIAL 0181		1688	243	574	435	139	261	436	155	229
TOTAL		2351	2014	283	643	513	185	324	507	185	275

COUNTY OF LOS ANGELES - GENERAL ELECTION

BURBANK CITY GENERAL MUNI
TREASURER TERM ENDS 12/22

FINAL OFFICIAL
STATEMENT OF VOTES CAST
BY PRECINCT

LOCATION	REGIST- RATION	BALLOTS CAST	CRYSTLE PALMER	DARIN B SHEA	LINDSEY FRANCOIS
BURBANK - 0950001A VOTE BY MAIL		339	104	101	38
TOTAL	1919	1579	841	322	211
BURBANK - 0950002A VOTE BY MAIL		383	96	75	53
TOTAL	2701	2050	773	261	403
BURBANK - 0950005B VOTE BY MAIL		421	155	87	56
TOTAL	2448	1935	778	253	360
BURBANK - 0950008A VOTE BY MAIL		525	135	139	99
TOTAL	2701	2207	832	484	236
BURBANK - 0950012A VOTE BY MAIL		344	124	80	49
TOTAL	2489	1778	956	266	330
BURBANK - 0950013A VOTE BY MAIL		491	144	146	49
TOTAL	2552	2210	924	441	249
BURBANK - 0950019A VOTE BY MAIL		361	99	73	58
TOTAL	2288	1775	690	212	350
BURBANK - 0950025A VOTE BY MAIL		379	144	96	46
TOTAL	2545	2215	1043	303	345
BURBANK - 0950029A VOTE BY MAIL		398	125	104	44
TOTAL	2027	1625	666	289	215
BURBANK - 0950031A VOTE BY MAIL		1227	541	185	171
TOTAL	2485	1976	813	296	406
BURBANK - 0950042A VOTE BY MAIL		335	97	86	54
TOTAL	2099	1613	825	242	332
BURBANK - 0950132A VOTE BY MAIL		403	127	97	69
TOTAL	2667	2228	906	335	416
BURBANK - 0950139C VOTE BY MAIL		430	102	103	53
TOTAL	2930	2223	771	326	419
BURBANK - 0950141A VOTE BY MAIL		498	152	155	42
TOTAL	2630	2195	785	571	228

BURBANK CITY GENERAL MUNI MEASURE RC

FINAL OFFICIAL STATEMENT OF VOTES CAST BY PRECINCT

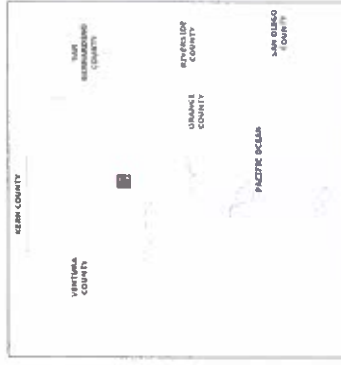
LOCATION	REGIST-RATION	BALLOTS CAST	YES	NO
BURBANK - 0950193A		296	63	193
VOTE BY MAIL		1435	433	812
TOTAL	1988	1731	496	1005
BURBANK - 0950197A		326	90	178
VOTE BY MAIL		1690	604	805
TOTAL	2351	2016	694	983

COUNTY OF LOS ANGELES
DEPARTMENT OF REGISTRAR-RECORDER/COUNTY CLERK
FINAL OFFICIAL CANVASS ELECTION RETURNS
GENERAL ELECTION, November 03, 2020

BONITA UNIFIED SCHOOL DISTRICT			BURBANK UNIFIED SCHOOL DISTRICT			CARSON CITY		
GOVERNING BOARD MEMBER			GOVERNING BOARD MEMBER			MEMBER, CITY COUNCIL, 3RD DISTRICT		
VOTE FOR: 3			VOTE FOR: 3			VOTE FOR: 1		
BRITTANY ALLISON	9,004	12.96%	ARMOND AGHAKHANIAN	24,158	23.62%	CEDRIC L HICKS SR	4,589	40.20%
GREG PALATTO	16,361	23.55%	STEVE FERGUSON	23,445	22.92%	DANIEL VALDEZ	2,636	23.09%
JOE OTTO	6,850	9.86%	EMILY WEISBERG	32,442	31.71%	B WILLIAMS-MURDOCK	4,190	36.71%
C E MATTSO	8,074	11.62%	ROBERTA G REYNOLDS	22,251	21.75%	WRITE-INS	26	
KRISTA CHAKMAK	9,024	12.99%	WRITE-INS	491		** TOTAL BALLOTS CAST	12,621	
GLENN A CREIMAN	9,098	13.10%	** TOTAL BALLOTS CAST	58,964		** TOTAL PRECINCTS	9	
AFSHIN KAIVAN-MEHR	3,364	4.84%	** TOTAL PRECINCTS	30				
TOMMY LEE RANDLE	2,754	3.96%						
C JONES-BACON	4,933	7.10%	CALABASAS CITY			CARSON CITY - K		
WRITE-INS	148		MEMBER, CITY COUNCIL			ESTABLISH A 3/4 CENT SALES TAX		
** TOTAL BALLOTS CAST	36,881		VOTE FOR: 2			VOTES REQUIRED: MAJORITY OF VOTES CAST		
** TOTAL PRECINCTS	34		S FREDERICKS-PLOUSSARD	3,097	15.12%	YES	22,018	53.92%
			PETER KRAUT	5,218	25.47%	NO	18,819	46.08%
			DENNIS WASHBURN	3,018	14.73%	** TOTAL BALLOTS CAST	45,776	
			ALICIA WEINTRAUB	9,152	44.68%	** TOTAL PRECINCTS	35	
			WRITE-INS	139		CENTRAL BASIN MUNICIPAL WATER DISTRICT		
			** TOTAL BALLOTS CAST	14,604		MEMBER, BOARD OF DIRECTORS, DIVISION 1		
			** TOTAL PRECINCTS	7		VOTE FOR: 1		
						XOCHITL SANDOVAL	21,233	21.20%
			CALABASAS CITY - C			M CAMACHO-RODRIGUEZ	78,917	78.80%
			CANNABIS BUSINESS TAX			WRITE-INS	366	
			VOTES REQUIRED: MAJORITY OF VOTES CAST			** TOTAL BALLOTS CAST	123,271	
			YES	7,732	61.12%	** TOTAL PRECINCTS	112	
			NO	4,919	38.88%	CENTRAL BASIN MUNICIPAL WATER DISTRICT		
			** TOTAL BALLOTS CAST	14,645		MEMBER, BOARD OF DIRECTORS, DIVISION 4		
			** TOTAL PRECINCTS	7		VOTE FOR: 1		
			CARSON CITY			JOSE TORRES	22,505	29.44%
			MAYOR			L VASQUEZ WILSON	45,171	59.09%
			VOTE FOR: 1			M UYAT-FRANCO	8,764	11.47%
			FALEA'ANA A MENI	5,327	12.38%	WRITE-INS	211	
			LULA DAVIS-HOLMES	14,050	32.65%	** TOTAL BALLOTS CAST	90,136	
			JIM DEAR	13,656	31.74%	** TOTAL PRECINCTS	111	
			ALBERT ROBLES	9,996	23.23%	CENTRAL BASIN MUNICIPAL WATER DISTRICT		
			WRITE-INS	120		MEMBER, BOARD OF DIRECTORS, DIVISION 5		
			** TOTAL BALLOTS CAST	45,756		VOTE FOR: 1		
			** TOTAL PRECINCTS	35		PHILLIP D HAWKINS	41,841	39.98%
			CARSON CITY			SARA P HUEZO	29,575	28.26%
			MEMBER, CITY COUNCIL, 1ST DISTRICT			JOSE DE LEON	8,569	8.19%
			VOTE FOR: 1			R CORTES BARRAGAN	24,664	23.57%
			CHARLES THOMAS	2,073	18.35%	WRITE-INS	374	
			JAWANE HILTON	5,786	51.21%	** TOTAL BALLOTS CAST	137,538	
			ELITO M SANTARINA	1,098	9.72%	** TOTAL PRECINCTS	93	
			VINCENT KIM	2,342	20.73%	CERRITOS COMMUNITY COLLEGE DISTRICT		
			WRITE-INS	44		GOVERNING BOARD MEMBER		
			** TOTAL BALLOTS CAST	12,288		TRUSTEE AREA NO. 1		
			** TOTAL PRECINCTS	11		VOTE FOR: 1		
			BURBANK CITY			MARIANA PACHECO	9,980	41.78%
			MEMBER, CITY COUNCIL			MAZEN NABULSI	4,493	18.81%
			VOTE FOR: 2			M CAMACHO-RODRIGUEZ	9,415	39.41%
			LINDA BESSIN	7,362	8.58%	WRITE-INS	67	
			K ANTHONY	17,529	20.42%	** TOTAL BALLOTS CAST	28,740	
			TAMALA TAKAHASHI	12,686	14.78%	** TOTAL PRECINCTS	22	
			MICHAEL LEE GOGIN	5,492	6.40%			
			PAUL HERMAN	11,969	13.94%			
			NICK SCHULTZ	13,105	15.27%			
			SHARIS MANOKIAN	7,450	8.68%			
			TIM MURPHY	10,245	11.94%			
			WRITE-INS	234				
			** TOTAL BALLOTS CAST	58,964				
			** TOTAL PRECINCTS	30				
			BURBANK CITY - RC					
			RENT REGULATIONS ORDINANCE					
			VOTES REQUIRED: MAJORITY OF VOTES CAST					
			YES	17,994	36.21%			
			NO	31,697	63.79%			
			** TOTAL BALLOTS CAST	59,041				
			** TOTAL PRECINCTS	30				



LOS ANGELES COUNTY
 REGISTRAR-RECORDER/
 COUNTY CLERK
 CITY OF BURBANK
 ELECTION PRECINCTS
 2020 GENERAL ELECTION



Legend

0950001A	0950002A	0950005B	0950008A	0950012A	0950013A	0950014A	0950016A	0950017A	0950018A	0950025A	0950029A	0950031A
0950163A	0950168B	0950177A	0950178A	0950181A	0950186A	0950190A	0950191A	0950193A	0950197A			



THIS MAP IS SUBJECT TO CHANGE WITHOUT NOTICE.
 THE INFORMATION ON THIS MAP IS FOR INFORMATIONAL PURPOSES ONLY.
 THE CITY OF BURBANK, CALIFORNIA

Map No. 1001-00001-01

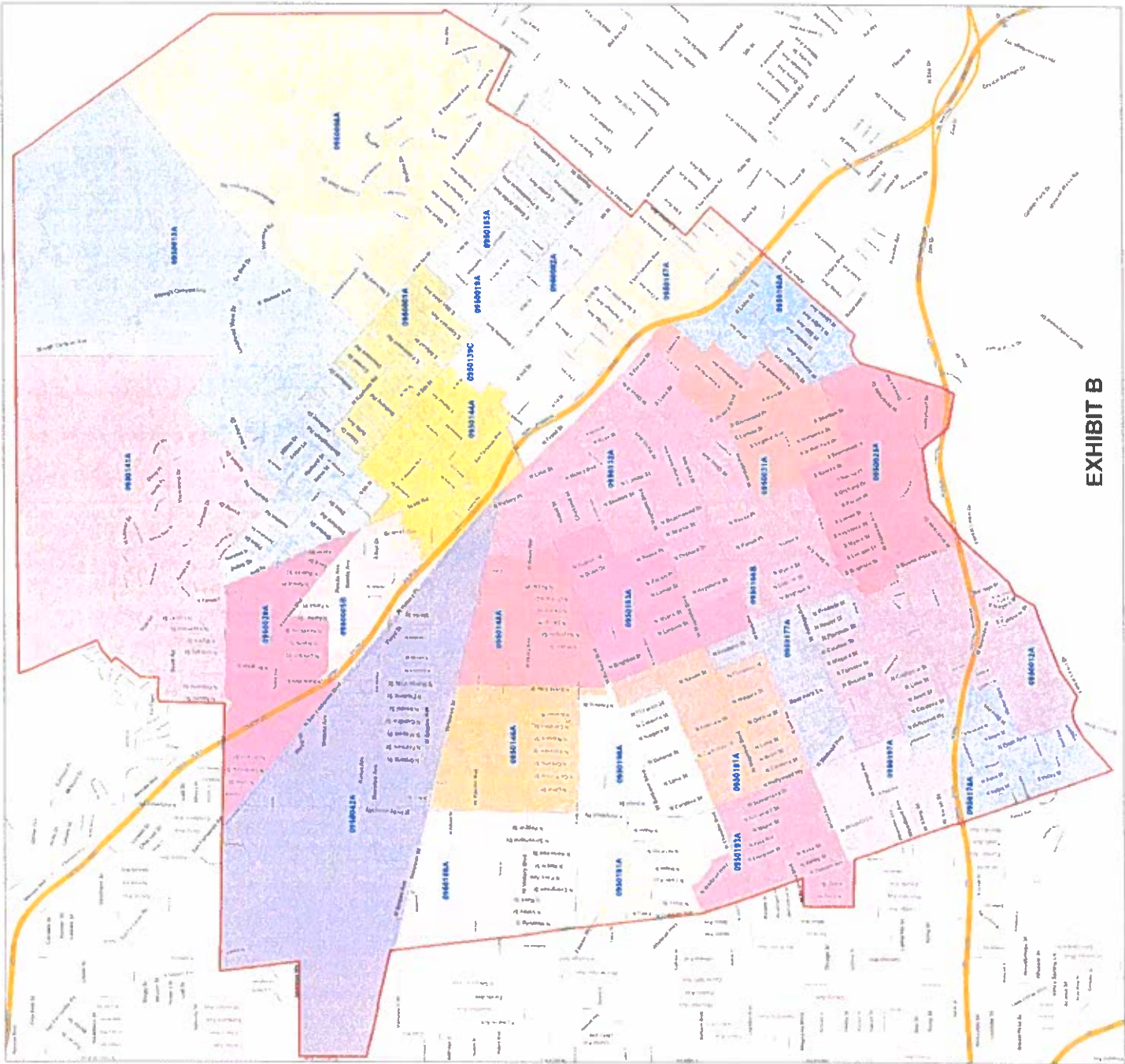


EXHIBIT B

EXHIBIT 9

Defendant's RJN in Support of Demurrer to First Amended Complaint
Nicholas Gutierrez v. City of Burbank
Los Angeles County Superior Court
Case No. 23STCV25587



NEWS

City's successes highlighted at mayor's address

BY BY MARK R. MADLER

OCT. 28, 2005 12 AM PT

In annual address sponsored by business group, Mayor Jef Vander Borghht asks residents to get more involved. **MEDIA DISTRICT NORTH** -- Following the advice of his father, Mayor Jef Vander Borghht used the annual State of the City address on Thursday as a means to encourage public participation in how the city is run.

A crowd of nearly 400 attended the event sponsored by the Burbank Chamber of Commerce at the Hilton Burbank Airport and Convention Center.

Vander Borghht relayed two important lessons from his father -- where there's a will, there's a way, and that he needed other people to get anything accomplished. Vander Borghht wants to apply those lessons to how the city is run.

"This is a reminder to be involved in the community," he said. "The council cannot do anything without the ability of you telling us what you want. Together we can keep Burbank moving toward a great future."

Vander Borghht is serving in his first term as a council member and was elected as mayor by his colleagues in May. He holds that position for a year.

His address touched on economic development in the city, redevelopment and transit improvements.

The city has seen an increase in household income, a boom in construction with 1.5 million square feet of commercial and retail development and another 471,000 square feet of planned development, including more housing stock, Vander Borcht said.

“This is the type of housing our businesses want their employees to have access to,” Vander Borcht said of proposed condominium projects, such as the Collection and the Burbank Media Center.

Audience member Mike Chapman supported the mayor’s talk.

“He has an understanding of the needs of the community,” Chapman said. “He has the ability to focus on certain issues, such as transportation and developing our cities future.”

That Vander Borcht started out his speech giving an historical perspective of what the city was like in 1968 -- the year he came to the United States from his native Peru -- was a help to Barbara Howell, executive director of the Burbank Temporary Aid Center.

As something of a newcomer to the city, Howell said she was still learning what the important issues are. She was most interested in what Vander Borcht had to say about affordable housing.

The city’s redevelopment agency spends about 20% of its budget on affordable housing and the Burbank Housing Corp. has 200 units around the city for low- to moderate-income residents, Vander Borcht said.

“We receive eight to 10 calls a week from people who are about to lose their homes,” Howell said. “I’m pleased and relieved the city is taking it seriously.”

EXHIBIT 10

Defendant's RJN in Support of Demurrer to First Amended Complaint
Nicholas Gutierrez v. City of Burbank
Los Angeles County Superior Court
Case No. 23STCV25587

STAFF REPORT



CITY ATTORNEY'S OFFICE

DATE: October 3, 2023

TO: Justin Hess, City Manager

FROM: Joseph H. McDougall, City Attorney
BY: Jill Vander Borght, Senior Assistant City Attorney

SUBJECT: Introduction of an Ordinance to Adopt a 5-District Map and Sequencing for Future Council Elections and, Subsequently, Introduction of an Ordinance to Amend the Burbank Municipal Code to Conform with District Elections

RECOMMENDATION

1. Introduce AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BURBANK ADDING A NEW ARTICLE 3 TO TITLE 2 OF THE BURBANK MUNICIPAL CODE TO CHANGE THE CITY'S ELECTORAL SYSTEM FROM AT-LARGE TO BY-DISTRICT ELECTIONS WITH RESPECT TO ELECTING CITY COUNCIL MEMBERS, ESTABLISHING DISTRICT BOUNDARIES, SCHEDULING ELECTIONS WITHIN THE DISTRICTS, AND MAKING CERTAIN FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (Attachment 1).
2. Introduce AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BURBANK AMENDING SECTIONS 2-3-104, 2-3-111, 2-3-122, 2-3-127, 2-3-129, and 2-3-131 OF CHAPTER 3 OF TITLE 2 OF THE BURBANK MUNICIPAL CODE, KNOWN AS THE CITY ELECTIONS CODE, AND MAKING CERTAIN FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (Attachment 2).

BACKGROUND

On August 23, 2022, the City received a notice of a potential violation of the California Voting Rights Act (CVRA) on behalf of a Latino voter in the City of Burbank, Mr. Nick Gutierrez. (Elec. Code §§14027-14032.) Gutierrez provided both a report allegedly evidencing racially polarized voting (Attachment 3) and a draft complaint (Attachment 4) for future litigation with the notice of potential violation.

On January 24, 2023, Council adopted a Resolution of Intent to Initiate a Transition to District Elections and authorized staff in paragraph 3 of the Resolution to retain National Demographics Corporation (NDC), proven expert demographers serving local governments in California in successful districting, to guide the process. In consultation with NDC, staff developed and fulfilled a robust timeline of workshops and public hearings for the districting process. Council also directed, and staff and a communications partner, Arellano Associates, delivered substantial and wide-reaching outreach to the community regarding the process and various opportunities to engage.

Council held two pre-map public hearings on March 14, and April 11, with three community forums on March 30, April 6, and April 8. Prior to the initial June 2 deadline, 26 draft maps were submitted along with 14 submissions in the "Draw Your Neighborhood" tool. On June 14, Council held its first public hearing to consider maps submitted by the June 2 deadline. At that hearing, Council considered the maps submitted and provided direction to staff and the demographer on specific focus maps. At Council's direction, the City hosted five additional community forums on June 15, 22 (one virtual and one live), 24 and 29 to allow constituents multiple opportunities to discuss and debate Council's five "focus" maps and other direction provided at the June 14 hearing. The City received thirteen additional maps and one more "Draw Your Neighborhood" submission by the second July 7 deadline. Council held a fourth public hearing on July 18 at which it considered the additional submissions and directed the demographer to create two variations of Map 130. The demographer created Map 130 and four variations (two more than Council requested to allow for discussion of the consequences of the directions provided by Council), with corresponding sequencing proposals were posted on July 28 and are attached hereto for reference (Attachment 5). Council also requested a side-by-side comparison chart of Map 130 and its variants (Attachment 6).

Council considered map 130 and its variants at a public hearing on August 23, but directed staff to return for future discussion following the outcome of the California Supreme Court decision in the *Pico Neighborhood Ass'n v. City of Santa Monica* case. On August 24, the California Supreme Court issued an opinion reversing the Court of Appeal that had sided with the City of Santa Monica and remanding the case to the trial court for further proceedings consistent with the Supreme Court's analysis. That matter will likely take many additional months to resolve and will depend on the specific evidence presented by the City and challenger in additional proceedings.

Additional information and updates on the districting process, community forums, public hearings, and more are available on the City's districting website at www.burbankcouncildistricting.com. The California Supreme Court ruling is available at <https://www.courts.ca.gov/opinions/documents/S263972.PDF>.

DISCUSSION

This report follows the Council's public hearing on August 23, 2023, and is designed for Council to consider and discuss focus Map 130 and the requested variants of the same (Elections Code § 10010(a)(2)). The Council may choose one of the maps presented and a sequence of elections for that map, and introduce an ordinance to adopt this map for Council district elections commencing in 2024.

First Draft Ordinance (Five-district map and sequencing of elections)

Staff has prepared two draft ordinances, the first will allow for the adoption of a five-district map and election sequencing by adding a new Article 3 to Title 2 of the Burbank Municipal Code (BMC) to change the City's electoral system from at-large to by-district elections for City Council elections, establish district boundaries, and schedule elections within the newly established districts (Attachment 1).

Second Draft Ordinance ("Clean-up" Ordinance)

The second "clean-up" ordinance will become necessary following introduction of the first and will coordinate the City's Elections Code with the new by-district electoral system with regard to such matters as durational residency requirement for candidates for election to a district seat, and the circulation and signing of nomination papers (Attachment 2).

Any ordinance the Council introduces tonight will need to be adopted at a subsequent meeting. The first ordinance will require a public hearing to adopt, the second can be added to a regular agenda for future adoption.

Sequencing Of District Elections

Elections Code § 10010 has provisions for the sequencing of elections in the new districts:

- 1) The draft districting plans that are subject to the second round of public hearings must include a "potential" sequencing of elections for each draft plan. (Elec. Code § 10010(a)(2).)
- 2) Elections Code § 10010(b) specifies two criteria for "consideration" in setting the sequencing. Those criteria are "consideration to the purposes of the California Voting Rights Act" and "tak[ing] into account the preferences expressed by members of the districts." There is no judicial guidance about what either of these criteria means. Nevertheless, CVRA advocates contend this provision requires the district with the highest percent of citizens of voting age who are Latino ("LCVAP" or "Latino CVAP") to be placed on the ballot in the presidential election cycle. However, assigning an election cycle based predominantly on the race of the voters in the district presents potential constitutional issues. In practice, cities transitioning to by-district elections have

not uniformly placed the district with the highest Latino CVAP on an election cycle in the presidential year.

The sequencing of elections published with the draft plans, however, is only “potential.” The sequencing of elections in the districts of the finally adopted new districting plan is at the discretion of the Council. In anticipation of litigation, the bases for the exercise of that discretion should be made part of the record of the districting process, including compliance with the requirements of Elections Code § 10010(b). In addition to the considerations required by Section 10010(b), cities commonly consider:

a. Completion of the terms of incumbents elected at-large. For example, a Council Member whose term ends in 2026 serves out the full four-year term even if that member resides in the same district as an incumbent whose term ends in 2024 and that district is placed on the 2024 ballot. This is consistent with Sections 300 and 305 of the Charter of the City of Burbank.

b. Scheduling elections in a particular district based on the expiration of the term of office of the incumbent who resides in the district. For example, a district in which an incumbent resides with a term ending in 2024 could be placed on the ballot in 2024. A district in which two incumbents reside with respective terms ending in 2024 and in 2026 could be placed on the ballot in 2024 or 2026. If in 2026, the incumbent with a term ending in 2024 would be out of office after the 2024 elections, but he or she could run again in 2026 for the district seat in which he or she resides.

If the district seat were placed on the ballot in 2024, the incumbent with the term ending in 2026 would serve out the full four-year at-large term to which elected, and then could seek election in 2028 for the district seat. Alternatively, that incumbent could run for the district seat in 2024 and, if elected, resign from the at-large seat on the City Council, creating a vacancy to be filled in accordance with the city’s laws.

c. Scheduling elections in a district in which no current incumbent resides at the earlier election cycle consistent with maintaining the appropriate number of Council Members.

The following is a schematic demonstrating the impact of the alternative proposed sequencing in draft Map 130. The alternative proposed sequencing is the same in the variations of draft Map 130. As stated above, sequencing is in the discretion of the Council. It is not bound by the proposed sequencing published with the draft maps:

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Sequencing Options Map 130 and Variations.

(Name & number in parentheses = City Council Member who resides in district and year in which term ends. X = district up for election in indicated year.)

Sequence 1

Election	District 1	District 2	District 3	District 4	District 5	Council Members after Elect.	Notes
2024 Presidential			X (Anthony 24)	X (Schultz 24, Perez 26, Takahashi 26)		D3 – New D4 – New Perez, Mullins & Takahashi complete at-large terms.	Perez and Takahashi can run for D4 seat in 2024 and resign from at-large seat if elected.
2026 Gubernatorial	X	X			X (Mullins 26)	D1 – New D2 – New D3 – Filled in 2024 D4 – Filled in 2024 D5 - New	

Sequence 2

Election	District 1	District 2	District 3	District 4	District 5	Council Members after Elect.	Notes
2024 Presidential		X	X (Anthony 24)			D2 – New D3 – New Perez, Mullins & Takahashi complete at-large terms.	
2026 Gubernatorial	X			X (Perez 26, Takahashi 26)	X (Mullins 26)	D1 – New D2 – Filled in 2024 D3 – Filled in 2024 D4 - New D5 – New	Schultz resides in D4. His at-large term ended in 2024.

"Clean-up" Ordinance

The clean-up ordinance for certain provisions of the City Elections Code updates subsections regarding the qualifications for running for office and for circulating and signing nomination papers to coordinate those provisions with a system of by-district elections for City Council Members. The amendments also correct a few miscellaneous typographical errors in the City Elections Code and coordinate particular provisions with updated provisions of the California Elections Code. The amendments specify that a candidate for the office of City Council Member must be a resident of the district for which the candidate seeks election at least 29 days prior to filing nomination papers and a qualified elector (citizen, 18 years of age, and registered voter) of the district at the time of filing nomination papers, that eligible signers may sign nomination papers for only one candidate for the district office, the consequences if more than one nomination paper is signed, and the requirements for nomination petition circulation and the affidavit of the circulator coordinating these provisions to the requirements of state law. State law provides that only a person who is an eligible registered voter at the time of signing the nominating petition is entitled to sign the petition and that provision is already incorporated into the City Elections Code. See California Elec. Code § 100.

Phase 2

After a district map is adopted pursuant to Elections Code Section 10010 and Government Code Section 34886 with five Council Members pursuant to the City Charter, the Council requested a second phase process by which the Council and the public could consider alternative proposals that might involve Charter amendments such as increasing the number of Council Members from five to seven, a directly elected Mayor (rather than rotating Mayorship among existing Council Members), or other alternatives. Based on the timeline by which Council has conducted Phase 1, any Phase 2 proposed amendment(s) to the City's Charter to allow for alternatives to an electoral system with five-Council Members elected by-district for placement on the March 2024 ballot and implementation in November 2024 would not allow for robust public input or engagement in the process and would have to rely solely on the election cycle and voters for public input because to be timely, such amendments must be finalized, and appropriate resolutions passed on or before December 8, 2023, the deadline established by the County Clerk/Register Recorder. The process of drafting and finalizing these documents will therefore need to occur immediately, in October/November 2023.

Alternatively, should Council place such Charter amendment alternatives on the November 2024 or June 2026 ballot these are the same elections where Council's districts would be run for the first time. Adding a Charter amendment vote to the City's first district elections is not ideal and is likely to create confusion.

ENVIRONMENTAL REVIEW

This activity involves organizational and administrative activities of the government related to election procedures and eligibility requirements, and such internal procedural and eligibility changes have no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. As such, this action is not a "project" subject to the requirements of the California Environmental Quality Act (CEQA) 14 Cal. Code Regs § 15378.

FISCAL IMPACT

None.

CONCLUSION

Staff recommends Council select a five-district map and introduce an executing ordinance and a "clean-up" ordinance amending the BMC elections provisions to conform with by-district elections.

ATTACHMENTS

Attachment 1 – Ordinance

Attachment 2 – "Clean-Up" Ordinance

Attachment 3 – Gutierrez Report

Attachment 4 – Gutierrez Draft Complaint

Attachment 5 – Maps 130, 130B, 130C, 130D, 130E

Attachment 6 – Side-by-side Comparison Chart of Map 130 and Variants

EXHIBIT 11

Defendant's RJN in Support of Demurrer to First Amended Complaint
Nicholas Gutierrez v. City of Burbank
Los Angeles County Superior Court
Case No. 23STCV25587

RESOLUTION NO. 20-29,199

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BURBANK ACKNOWLEDGING THE PREVALENCE OF "SUNDOWN" PRACTICES IN BURBANK'S PAST AND ADVANCING THE CITY'S COMMITMENT TO RACIAL EQUITY

THE COUNCIL OF THE CITY OF BURBANK FINDS:

A. In spite of the United States Declaration of Independence proclaiming, "We hold these truths to be self-evident that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness," this goal, after more than 200 years, has yet to be fully realized.

B. Racial disparities have existed since the birth of this nation, to the detriment of Black communities and people of color, and can be seen in gaps in wealth, health, education, the criminal justice system, and beyond.

C. Although no official ordinance or law of the City of Burbank has been found imposing sundown restrictions, oral and written history, public accounts, and newspaper articles plainly demonstrate the prevalence of sundown practices in Burbank for a significant portion of the 20th century.

D. Historically some of our citizens and institutions actively discouraged – often by social and cultural means – members of non-white racial and ethnic groups, particularly Black people, from settling and living here by means of "sundown town" activities, where members of non-white racial groups were discouraged from being within the city limits after sundown.

E. Sundown towns throughout the State of California, along with towns and cities in many other states, excluded – often by social and cultural means, including police profiling - members of non-white racial and ethnic groups, particularly Black people, from living in said jurisdictions or even being within the city limits after sundown.

F. Many real estate subdivisions created in Burbank adopted and enforced racially restrictive covenants and deed restrictions that kept Black people and people of color from purchasing property and living in those subdivisions for several decades in the 20th century.

G. In the City of Burbank, core community members, faith leaders, businesses, social service organizations, and educational institutions are working together to tell the compelling stories of our increasingly diverse community – including acknowledging our community's failings – all for the good of Burbank now and in the future.

H. The City of Burbank understands the importance of examining what role it has played in institutional racism, both historically and currently, and is ready to embark on a journey toward racial literacy and equity.

NOW THEREFORE, WE, THE CITY COUNCIL OF THE CITY OF BURBANK RESOLVES TO:

1. Acknowledge, apologize for, and condemn all racist, discriminatory, or exclusionary aspects of Burbank's history, and deeply regrets the pain and suffering such policies have caused.
2. Review and assess City policies, procedures, ordinances, values, goals, and missions through an anti-racism lens to foster an unbiased and inclusive environment that is free of discrimination, retaliation and harassment toward any person or group.
3. Follow the example and counsel of the Reverend Dr. Martin Luther King, Jr. by examining our own hearts today, then seeking to eliminate from our thoughts, words, and actions all racism, prejudice, and discrimination, replacing those negative characteristics with the positive attributes of respect, acceptance, compassion, and a spirit of love.
4. Pledge to work toward the common good in building a warm and welcoming community where all people of goodwill – regardless of race, color, gender identity or expression, religion, sexual orientation, national origin or ancestry, age, disability, marital status, physical appearance, political activity and familial status – can live, be free, and pursue happiness.

5. Advance the City's commitment to racial equity and in line with the City's Legislative Platform, advocate for Federal, State, and local measures that promote equitable access, elimination of barriers deriving from systemic prejudices, and community engagement on issues of racism, discrimination, and social justice.

PASSED and ADOPTED this 8th day of December, 2020.

s/Sharon Springer
Sharon Springer
Mayor

Attest:

Approved as to Form:
Office of the City Attorney

s/Zizette Mullins
Zizette Mullins, MMC, City Clerk

By: s/Amy Albano
Amy Albano, City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF BURBANK)

I, Zizette Mullins, MMC, City Clerk of the City of Burbank, do hereby certify that the foregoing Resolution was duly and regularly passed and adopted by a majority vote of the Council of the City of Burbank at its regular meeting held on the 8th day of December, 2020, by the following vote:

AYES: Frutos, Gabel-Luddy, Murphy, Talamantes and Springer.

NOES: None.

ABSENT: None.

s/Zizette Mullins
Zizette Mullins, MMC, City Clerk

EXHIBIT 12

Defendant's RJN in Support of Demurrer to First Amended Complaint
Nicholas Gutierrez v. City of Burbank
Los Angeles County Superior Court
Case No. 23STCV25587

RESOLUTION NO. 23-29,395

A RESOLUTION OF THE COUNCIL OF THE CITY OF BURBANK DECLARING ITS INTENT TO INITIATE PROCEDURES FOR A TRANSITION FROM AT-LARGE TO DISTRICT-BASED COUNCIL MEMBER ELECTIONS PURSUANT TO ELECTIONS CODE SECTION 10010 AND GOVERNMENT CODE SECTION 34886, AUTHORIZING THE CITY ATTORNEY TO HIRE NATIONAL DEMOGRAPHICS CORPORATION; AND APPROVING A TENTATIVE TIMELINE FOR CONDUCTING PUBLIC HEARINGS, FORMULATING PROPOSED DISTRICT MAPS, AND PRESENTING A DRAFT ORDINANCE TO COUNCIL FOR DECISION

THE COUNCIL OF THE CITY OF BURBANK RESOLVES:

WHEREAS, pursuant to Section 305 of the City Charter, members of the Council of the City of Burbank are currently elected through at-large elections, that is, each member is elected through a city-wide vote; and

WHEREAS, California Elections Code Section 14027 prohibits the implementation of an at-large electoral system 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 the abridgment of the rights of voters who are members of a protected class; and

WHEREAS, California Government Code Section 34886 authorizes the legislative body of a city, under certain circumstances, to adopt an ordinance to change its method of election from an at-large system to a district-based system in which either each council member is elected only by the voters in the district in which the candidate resides; and

WHEREAS, Section 800 of the City Charter requires, "Except as otherwise provided by this Charter or ordinance, all municipal elections shall be held in accordance with the election laws of the State of California"; and

WHEREAS, on August 23, 2022, the City received by certified letter a notice of a potential violation of the California Voting Rights Act (CVRA) on behalf of a Latino voter in the City ("Certified Letter"). The Certified Letter asserts that the City's at-large council member election system may violate the California Voting Rights Act ("CVRA") and threatens litigation if the City does not voluntarily transition to a district-based election system for electing its council members; and

WHEREAS, the City has a long history of electing persons of Latino background to its City Council and therefore the City does not believe that its election system violates the CVRA or any other provision of law and asserts that Burbank's election system is legal in all respects; and

WHEREAS, the CVRA manifests a preference for California jurisdictions to implement by-district elections because by-district elections are not subject to challenge under the CVRA and the Council has determined that the public interest is better served

by initiating a process for transition to a district-based election system and thereby avoiding the risk and costs associated with defending a lawsuit under the CVRA; and

WHEREAS, the California Legislature amended Elections Code Section 10010 and enacted Government Code Section 45886 to provide a method whereby a jurisdiction can expeditiously transition to a district-based election system and thereby avoid the high cost of litigation under the CVRA; and

WHEREAS, California Elections Code Section 10010 will delay CVRA litigation and place a cap on the recovery of attorneys' fees associated with a CVRA claim, if, within ninety (90) days of passage of this resolution (or as otherwise stipulated by the parties), the City adopts an ordinance transitioning to a district-based election system consistent with the intent and purpose of the CVRA; and

WHEREAS, prior to the City Council's consideration of an ordinance to establish district boundaries for a district-based electoral system and holding a public hearing on that proposed ordinance, California Elections Code Section 10010 requires all of the following:

1. Prior to drawing a draft map or maps of the proposed boundaries of the districts, the City shall hold at least two (2) public hearings over a period of no more than thirty (30) days, at which the public will be invited to provide input regarding the composition of the districts.

2. After all 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.

3. The City Council shall also hold at least two (2) additional hearings over a period of no more than forty-five (45) days, at which the public shall be invited to provide input regarding the content of the draft map or maps and the proposed sequence of elections, if applicable.

4. The first version of a draft map shall be published at least seven (7) days before consideration at a hearing. If a draft map is revised at or following a hearing, it shall be published and made available to the public for at least seven (7) days before being adopted; and

WHEREAS, the City desires to retain an experienced, qualified demographer National Demographics Corporation to assist the City in the development of a proposal for a district-based electoral system; and

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Burbank declares, directs and orders as follows:

1. The City Council hereby resolves to consider adoption of an ordinance, as authorized by Government Code Section 34886 and consistent with Elections Code Section 10010, to transition to a district-based election system for use in the City's General Municipal Election for City Council members beginning in November 2024.

2. The City Council authorizes the City Attorney or their designee to retain National Demographics Corporation, to prepare a detailed analysis of the City's demographics and to formulate, for review by the public and the City Council, one or more electoral district scenario maps, each fully consistent with the intent and purpose of the California Voting Rights Act, the Federal Voting Rights Act, and California Elections Code section 21621.

3. Working with National Demographics Corporation, staff is directed to publicize and post information regarding the proposed transition to a district-based election system, including relevant maps, notices, agendas and other information and to establish a means of communication to receive comments and answer questions from the public.

4. The City Council hereby approves the tentative timeline as set forth in Exhibit A, attached to and made a part of this resolution, for conducting public hearings to solicit and receive public input and testimony on proposed district-based electoral maps and for the City Council's evaluation, possible refinement and ultimate adoption of a district-based election system for election of City Council members.

5. The timeline contained in Exhibit A may be adjusted by the Council in future consent calendars as the City Attorney deems necessary or appropriate to enhance the process of receiving public input and City Council consideration of districting options, provided that such adjustments shall not prevent the City from complying with the general time frames specified by Elections Code Section 10010 for public hearings, or such other timeframes as may be convenient and appropriate.

6. City Council authorizes an amendment to the Fiscal Year (FY) 2022-23 Adopted Budget by appropriating \$100,000 from account number 001.ND000.30010.0000.000000.000000 (General Fund, Non-Departmental, Unassigned Fund Balance) to expenditure account number 001.ND01A.62085.0000.000000.000000 (General Fund, Non-Departmental, Other Professional Services). Funds will be used to hire National Demographics Corporation (NDC) as a consultant and for the purpose and intent to transition from at-large voting to by-district voting by establishing single-member districts for City Council elections.

PASSED and ADOPTED this 24th day of January, 2023.

s/Konstantine Anthony
Konstantine Anthony
Mayor

Approved as to Form:
Office of the City Attorney

Attest:

s/Kimberley Clark
Kimberley Clark, City Clerk

By: s/Joseph H. McDougall
Joseph H. McDougall
City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF BURBANK)

I, Kimberley Clark, City Clerk of the City of Burbank, do hereby certify that the foregoing Resolution was duly and regularly passed and adopted by a vote of the Council of the City of Burbank at its regular meeting held on the 24th day of January, 2023, by the following vote:

AYES: Mullins, Perez, Takahashi, Schultz, and Anthony.

NOES: None.

ABSENT: None.

 s/Kimberley Clark
Kimberley Clark, City Clerk

EXHIBIT A
TENTATIVE TIMELINE: CONSIDERATION AND IMPLEMENTATION OF "DISTRICT-BASED" ELECTION SYSTEM

TENT. DATE	EVENT	COMMENT
January 24, 2023	Resolution of Intention	CVRA Action cannot be commenced for 90 days.
January 25 – February 13, 2023	Public Outreach & Workshops	Re: Process & Participation No Maps Yet Drawn
February 2023	Two Public Hearings	Re: Composition of Districts No Maps Yet Drawn
March 7, 2023	Publish Draft Maps and Potential Sequence of Elections	At least 7 Days Before Public Hearings re Content of Maps
March 2023	Two Public Hearings	Re: Content of Draft Maps and Sequencing of Elections
April 4, 2023	Publish Amended Draft Maps and potential sequence of Elections and Election Sequence	7 Days Before Introduction of Districting Ordinance
April 11, 2023	Hold Public Hearing Select Map Introduce Ordinance Establishing By-district Elections, Including District Boundaries & Sequence	
April 25, 2023	2nd Reading and Adoption of Ordinance Establishing By-District Elections	
April 25, 2023	Day 90	
November 2024	Elections in Two New Districts in Accordance With Ordinance	
November 2026	Elections in Three New Districts in Accordance With Ordinance	

EXHIBIT 13

Defendant's RJN in Support of Demurrer to First Amended Complaint
Nicholas Gutierrez v. City of Burbank
Los Angeles County Superior Court
Case No. 23STCV25587

August 9, 2022

Dear Honorable Mayor Talamantes and City Council Members:

Article 14, Section 1400 of Burbank's City Charter (Charter) requires that every five (5) years a citizenry review of the Charter occur.

On March 15, 2022 you each selected a Burbank resident to convene as a municipal charter review committee (Committee). The Committee was tasked to review the Charter and to advise you whether (1) no review is advised, (2) a full and comprehensive review is recommended, or (3) a limited and focused Charter review is proposed.

The initial Committee meeting took place on March 31, 2022. The first four meetings took place virtually with subsequent meetings taking place in-person. The final Committee meeting took place on June 16, 2022. City Attorney Joseph McDougall, Assistant City Manager Judie Wilke and Administrative Analyst Viviana Garzon were present at the meetings with Assistant City Attorney Iain McMillan substituting in for City Attorney McDougall for the April 27, 2022 meeting. All agendas and minutes from each meeting were recorded and are available to the public on the Burbank City website.

The members of the Committee each submitted a list of the Charter Sections to be discussed, together with a list of possible deletions or additions to the Charter. The subject of discussion among the members were many and varied, including, in part:

- Election of full time Mayor;
- Creation of districts;
- Forfeiture of council office for failure to attend three consecutive meetings without prior permission;
- Term limits for Council Members and Board and Commission members;
- Frequency of Council meetings;
- Continuation of hybrid public comment period;
- Social inequity and discrimination clauses;
- Creation of an Ethics, DEI and Women's Advisory Board/CSW;
- Police Commission authority.

A complete list of the various topics of discussion are attached as Attachment 2.

Assistant City Manager Judie Wilke and City Attorney Joseph McDougall provided information and a historical framework for many of the topics of discussion.

Burbank City Clerk, Zizette Mullins, provided the Committee with in-depth information on topics such as current City Council model, districts, eligibility to run for council and independently elected mayor.

Burbank Chief of Police, Michael Albanese, appeared together with members of the Police Commission who appeared on their own behalf to request greater authority. These presentations gave the Committee a greater understanding of the functions, operations, responsibilities and obligations of the city government, its employees and its Police Commission.

The Committee offers guidance to the Council as follows:

Recommendations on the Charter:

Term Limits: A full review of term limits for City Council members and Board and Commission members.

The Council should receive a report from the City Clerk on the issue of term limits and then consider whether Charter Sections 305 and 700, *The City Council and Boards, Commissions and Committees*, respectively, in addition to the Burbank Municipal Code, should be amended to provide term limits.

Social Inequity and Discrimination Clauses: In light of the possibility that the City may be tasked to create a Diversity, Equity and Inclusion program in the future, the Committee recommends that the Charter be amended to include social inequity and discrimination clauses. For example:

"It shall be unlawful for any employee of the City to discriminate against any individual because of age, race, color, religion, sex, disability, national origin, familial status, sexual orientation, transgender, gender identity or gender expression in any manner." and

"The City shall coordinate efforts to eliminate racial, ethnic, and gender disparities in criminal justice, economic development, education, governance, health, housing, and transportation."

Municipal Charter Review: The Committee recommends that the Charter be amended to allow for a citizen committee to be appointed every eight (8) years, and at a minimum one year prior to an election year, rather than every five (5) years to consider the Charter and make recommendations for its revision, if necessary.

As shown in Attachment 2, the Committee considered a wide array of topics as presented in the Charter; however, those few listed above deserve a full review. We strongly recommend to City Council that it give strong consideration to the Committee's recommendations.

The Committee members expended time and effort in discussing the various aspects of the Charter and very much appreciate the opportunity and honor to serve the City in this capacity.

Respectfully submitted,



Christopher Rizzotti, Chair



Gloria Salas, Vice Chair



Gavin Cho, Committee Member



Alejandro Escobar, Committee Member



Kevin Muldoon, Committee Member

1 JILL A. VANDER BORGHT, Sr. Assist. City Attorney
(S.B. No. 240004)
2 JOSEPH MCDOUGALL, City Attorney
(S.B. No. 197689)
3 275 E. Olive Avenue
4 Burbank, California 91510
Telephone: (818) 238-5707
5 Fax: (818) 238-5724
6 Email: JVanderBorgh@burbankca.gov

**Filing Fee Exempt
Pursuant to Gov. Code § 6103**

7 NIELSEN MERKSAMER
PARRINELLO GROSS & LEONI LLP
8 Marguerite Mary Leoni, Esq. (S.B. No. 101696)
Christopher E. Skinnell, Esq. (S.B. No. 227093)
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13 E-mail: cskinnell@nmgovlaw.com

14 *Attorneys for Defendant City of Burbank*

15 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 IN AND FOR THE COUNTY OF LOS ANGELES
17

18 NICHOLAS GUTIERREZ

19 *Plaintiff,*

20 vs.

21 CITY OF BURBANK, and DOES 1 through 100,
22 inclusive,

23 *Defendants.*
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Case No.: 23 ST CV 25587

**DECLARATION PURSUANT TO
C. C. P. § 430.41(a)(3)(A)**

Reservation No. 247941171087

DATE: May 24, 2024

TIME: 8:30 AM

DEPT: 30

JUDGE: Hon. Barbara M. Scheper

1 I, Marguerite Mary Leoni, declare:

2 1. I am one of the attorneys of record for defendant, City of Burbank. I am duly admitted to
3 the practice of law in California. I am over 18 years of age and I make this declaration of my personal
4 knowledge.

5 2. This declaration is filed in support of defendant's demurrer to the First Amended
6 Complaint herein ("FAC") filed and served on February 15, 2024. Pursuant to Code of Civil
7 Procedure § 430.41(a), I made a good faith attempt to meet and confer with counsel for plaintiff by
8 preparing a letter dated March 8, 2024 addressed to counsel for plaintiff for the purpose of
9 determining whether an agreement can be reached that would resolve the objections to be raised in
10 the demurrer ("meet and confer letter" herein). A true and correct copy of the meet and confer letter
11 is attached hereto as Exhibit 1 and incorporated herein by reference.

12 3. I caused the meet and confer letter to be emailed to counsel for plaintiff on March 8, 2024.
13 A true and correct copy of the email transmission to counsel for plaintiff is attached hereto as Exhibit
14 2, p. 2 and incorporated herein by reference.

15 4. I also caused the meet and confer letter to be delivered to counsel for plaintiff by First
16 Class Mail. A true and correct copy of the Proof of Service is attached hereto as Exhibit 3.

17 5. The meet and confer letter proposed that counsel for the parties continue the meet and
18 confer process in a telephone call on Monday, March 11, 2024 or Tuesday March 12, 2024.

19 6. I received an email from counsel for plaintiff on Tuesday, March 12, 2024, proposing that
20 the parties meet & confer on Thursday, March 14, which is later than five days before the date the
21 responsive pleading to the First Amended Complaint is due. See Exhibit 2, p. 2. Accordingly, the
22 parties were not able to meet and confer as provided in Code of Civil Procedure § 430.41(a)(2).

23 7. The parties, however, did meet and confer on March 14, 2024. Counsel for Plaintiff
24 proposed amendments to the First Cause of Action of FAC. The parties did not reach an agreement
25 about the adequacy of those amendments to resolve the objections raised in the demurrer to the First

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1 Cause of Action. Counsel for Plaintiff did not propose amendments to the Second Cause of Action
2 of the FAC.

3 I declare under penalty of perjury that the foregoing is true and correct and if called as a
4 witness I could testify competently thereto.

5 Executed this 17th day of April 2024 at Kentfield, California.

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7 _____
8 Marguerite Mary Leoni

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EXHIBIT 1

March 8, 2024

Jason Dominguez
P.O. Box 20040
Santa Barbara, CA 93120

VIA EMAIL & U.S. MAIL
jdominguez@druven.law

Re: *Gutierrez v. City of Burbank*
Los Angeles Superior Court Case # 23STCV25587

Dear Mr. Dominguez:

As you know, we represent the City of Burbank in the defense of the voting rights action you filed against the City on October 19, 2023 alleging a violation of the California Voting Rights Act and the Equal Protection Clause of the California Constitution (Complaint). The City demurred to the complaint on December 18, 2023. Judge Scheper sustained the demurrer with leave to amend. Plaintiff filed a First Amended Complaint on February 16, 2024. The purpose of this letter is to meet and confer pursuant to Code of Civil Procedure § 430.41 prior to filing a demurrer to the First Amended Complaint. The demurrer would be to both causes of action for failure to state a cause of action.

First Cause of Action for Violation of the California Voting Rights Act.

The first cause of action fails for two reasons. First, there are no factual allegations of racially polarized voting. Second, the allegations of dilution of the opportunity to elect chosen candidates similarly lack factual underpinnings. Plaintiff added to this cause of action in the First Amended Complaint allegations about 10 candidates for City Council who ran and lost since 2001. Four of these candidates are not members of protected classes. There is no allegation whether any of these candidates was the chosen candidate of Latino voters or whether they were opposed by non-Latino voters. That fact that these candidates lost elections proves nothing standing alone, especially when Plaintiff alleges that in the same timeframe several other Latino candidates have consistently won elections. The reference to Code of Civil Procedure § 128.7 does not substitute for factual allegations in the First Amended Complaint. Indeed, that subdivision *presumes* factual allegations are alleged and by signing and filing the complaint, the attorney certifies those allegations have or are likely to have evidentiary support.

Racially Polarized Voting. Both the CVRA and the Federal Voting Rights Act (“VRA”) “require a plaintiff to show racially polarized voting – i.e., that the protected class members vote as a politically cohesive unit, while the majority votes ‘sufficiently as a bloc usually to defeat’ the protected class’s preferred candidate.” (*Pico Neighborhood Ass’n v. City of Santa Monica* (2023) 15 Cal.5th 292, 306, 313 (“*Pico*”) quoting *Thornburg v.*

Gingles (1986) 478 U.S. 30, 56 (“*Gingles*”); accord Elec. Code § 14028(a).) The CVRA specifies that racially polarized voting is evaluated based on standards established in federal case law interpreting and applying Section 2 of the federal VRA. (Elec. Code § 14026(e); *Yumori - Kaku v. City of Santa Clara* (2020) 59 Cal.App.5th 385, 395 [the CVRA “directs California courts assessing racially polarized voting to federal case law on section 2 of the federal Voting Rights Act.”].) In addition, plaintiffs are required to allege a pattern of legally significant racially polarized voting over time. (*Thornburg v. Gingles, supra*, at 57, 63.)

A CVRA plaintiff must allege these *Gingles* factors at the outset of their case and with particularity. (*League of United Latin Am. Citizens v. Perry* (2006) 548 U.S. 399, 425-426 [bloc voting facts are a “threshold condition[] for establishing a § 2 violation”]; *Pico, supra*, at 313.) As explained by the Ninth Circuit, “the issue of political cohesiveness [shall] be judged primarily on the basis of the voting preferences expressed in actual elections.” (*Gomez v. City of Watsonville* (9th Cir 1988) 863 F.2d 1407, 1415 [courts look “primarily” to actual votes and “actual voting patterns”].) Conclusory allegations that elections are characterized by racially polarized voting (such as those in paragraphs 38, 39, 40, 41, 42, 46, 47 & 82) and there is a difference in electoral choices between protected-class voters and other voters (e.g., ¶ 39) do not satisfy a CVRA plaintiff’s pleading burden. Moreover, the CVRA is a statutory cause of action. Statutory causes of action must be pleaded with particularity (see *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal. 4th 771, 790; *Lopez v. So. Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 795), meaning pleading the who, where, when, what, and how (see *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645).

The Complaint alleges that plaintiff is Latino. The Complaint, however, does not contain a single fact showing that Latinos are politically cohesive. Nor does it contain a single fact showing that the other voters vote as a bloc against the choices of Latino voters. The Complaint does not identify a single instance of a Latino-preferred candidate, let alone a Latino-preferred candidate that was defeated because of bloc voting by the majority, or indeed a pattern over time. (Cf. *Gingles*, 478 U.S. at 56 [third requisite *Gingles* factor is “legally significant” majority bloc voting that enables it “usually to defeat the minority’s preferred candidates”].) Thus, the complaint fails the very “first” pleading requirement for alleging a violation of the CVRA – to “demonstrate the existence of racially polarized voting.” (*Pico*, 15 Cal.5th at 318.) Allegations that some Latino candidates win elections and some lose does not satisfy the *Gingles* factors. Neither does the assertion there is “evidence” that there are 30 or more elections, including candidate and measure elections, in which racially polarized voting occurred. If that is accurate, which candidates or positions did Latino voters prefer, were those candidates and positions opposed by a bloc-voting majority, and did that opposition result in the defeat of Latino preferences?

The bare listing in the First Amended Complaint of candidates who have run for City Council and lost (most do) and of past *statewide ballot measures* also does not satisfy plaintiff's burden to allege racially polarized voting in City elections. (Compl. ¶ 31; see *Montes v. City of Yakima* (2014) 40 F.Supp.3d 1377, 1402 [single ballot measure pertaining to establishment of district-based elections included in list of ten elections because it involved issue of "importance" to minority group].) Even if voter preferences on these statewide ballot measures were relevant, the Complaint's single paragraph does not allege the position preferred by Latino voters on these measures, the position preferred by the other voters, whether the latter differed from the position of Latino voters, and finally the results of the elections on the measures, in other words, was the position supported by Latino voters defeated in the election.

Finally, the new allegations in paragraphs 44 and 45 of the First Amended Complaint do nothing to overcome the lack of allegations of the factual elements of racially polarized voting. Those allegations of private "sundown town" activities might go to an analysis of the totality of the circumstances in an appropriate case, but they do not supply the necessary elements of racially polarized voting in the First Amended Complaint.

The First Amended Complaint should be amended if possible to state facts to properly allege racially polarized voting.

Dilution of the Ability to Elect Chosen Candidates. The Complaint fails to set forth facts showing dilution, that "the protected class has less ability to elect its preferred candidate ... than it would have if the at-large system had not been adopted." (*Pico, supra*, 15 Cal.5th at 314-315.)

The California Supreme Court has specified what must be alleged to establish dilution; *Pico* states that a vote dilution plaintiff "must identify a reasonable alternative voting practice to the existing at-large electoral system." (*Id.* at 315.) "What is required to establish 'dilution' of a protected class's 'ability ... to elect candidates of its choice' (Elec. Code, § 14027) is proof that, under some lawful alternative electoral system, the protected class would have the potential, on its own or with the help of crossover voters, to elect its preferred candidate" (*id.* at 307-308). But it is not sufficient to simply allege the opportunity to elect in single-member districts. In this regard, the Supreme Court was explicit: "The dilution element also ensures the protected class is not made worse off. To replace at-large with district elections under a dilution theory, a successful plaintiff must show not merely that the protected class would have a real electoral opportunity in one or more hypothetical districts, but also that the incremental gain in the class's ability to elect its candidate of choice in such districts would not be offset by a loss of the class's potential to elect its candidates of choice elsewhere in the locality." (*Pico, supra*, at 322.) A plaintiff

must allege and eventually prove vote dilution under the totality of the circumstances with an intensely local appraisal of electoral mechanisms in the City of Burbank. (*Pico, supra*, at 308.)

The Complaint does not set forth a single fact that is sufficient to allege dilution under the Supreme Court’s guidance. The Complaint alleges in conclusory language in paragraph 74 that, “An alternative method of election exists — district-based elections — that will provide an opportunity for the members of protected classes as defined by the CVRA to elect candidates of their choice in City of Burbank election.” This does not satisfy the pleading standards set forth in *Pico*. The existence of vote dilution requires a comparison between Latino electoral opportunity in the current electoral system and a lawful alternative. The Complaint alleges that plaintiff is Latino but there are no factual allegations based on actual elections supporting the inability of Latinos to elect chosen candidates under the current at-large electoral system. Further, there are no factual allegations supporting the notion that Latino voters would have a “real” opportunity to elect chosen candidates in hypothetical single-member districts. Nor is there a comparison based on actual elections between Latino voters’ potential opportunity to elect under a lawful alternative and Latino voters’ opportunity under the current system of at-large elections. Given the strong history of Latino candidates elected to the City Council for more than 20 years, Plaintiff must allege that confining Latino voting strength would not make Latinos “worse off” in their opportunity to elect chosen candidates. Finally, the complaint does not allege facts substantiating how real electoral opportunity would result under the specific “characteristics” of elections and voter behavior in the City. (*Pico*, 15 Cal.5th at 320 [“intensely local appraisal” of contested electoral mechanism and proposed alternative methods is required].)

The complaint should be amended if possible to properly allege dilution of the opportunity to elect chosen candidates.

Second Cause of Action for Violation of California’s Equal Protection Clause.

The second cause of action attempts to allege a violation of California’s Equal Protection Clause, in other words, intentional racial discrimination in the adoption and maintenance of an at-large method of election. However, there are no factual allegations in the complaint that support such a cause of action.

To plead an intentional discrimination claim, the plaintiff must allege that a discriminatory purpose was a “substantial or motivating factor” behind the enactment or maintenance of the challenged law. (*Democratic Nat’l Comm. v. Hobbs* (9th Cir. 2020) 948 F.3d 989, 1038 [en banc]; *N.C. State Conf. of the NAACP v. McCrory* (4th Cir. 2016) 831 F.3d 204, 233.) The plaintiff must allege indicia of a prohibited discriminatory

purpose, such as: (1) a historical pattern of laws producing discriminatory results; (2) substantive or procedural departures from the normal legislative process that shed light on the decisionmaker's purposes; (3) the legislative history, specifically contemporaneous statements by legislators evincing a racial or pretextual motivation; and (4) whether the law has a disparate impact on a particular racial group. (*Democratic Nat'l Comm.*, *supra*, 948 F.3d at 1038, citing *Arlington Heights v. Metropolitan Housing Develop. Corp.* (1977) 429 U.S. 252.) Further, an allegation of intentional discrimination requires more than knowledge of consequences, meaning that a body's awareness of a racially disparate impact is not enough to prove intent to discriminate by race. (*Personnel Admin. of Mass v. Feeney* (1979) 442 U.S. 256, 270, 274-281.)

Compared to these legal requirements, the Second Cause of Action alleges actions defendant City of Burbank *did not take*: (1) convert to district-based elections when Plaintiffs demanded a change; (2) convert to district-based elections when the City consolidated the date of its general municipal election with the statewide election in November; or (3) convert to district-based elections since enactment of the CVRA. (FAC ¶¶ 88-90.) None of these allegations are sufficient to show a discriminatory purpose was a "substantial or motivating factor" behind use of the at-large voting system in City Council elections. Conclusory statements about "intentionally discriminatory decisions" are meaningless without supporting facts. (FAC ¶ 94.) And again, the reference to Code of Civil Procedure § 128.7 does not substitute for factual allegations of discriminatory purpose and effect in the First Amended Complaint.

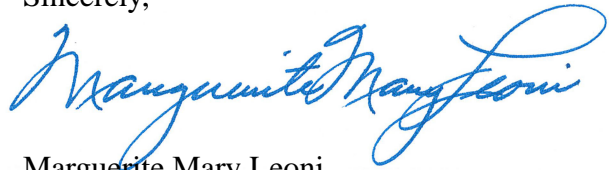
Further, the allegations in the FAC about failure to convert to district-based elections show the City had a non-discriminatory purpose in maintaining at-large elections. For instance, the complaint alleges the City maintains at-large elections because of "decades-old politically motivated decisions to reject district-based elections." (FAC ¶ 93.) The complaint further alleges that certain members of the Burbank City Council are worried that district elections "could mean the end of the line for some of the councilmembers." (*Id.* ¶ 63.) Bare allegations of political motivation are not sufficient to support a cause of action for intentional discrimination. (See, *League of Women Voters of Chi. v. Wolf* (N.D. Ill. 2013) 965 F. Supp. 2d 1007, 1017 ["The political motivation alleged, to favor certain incumbent alderman and to disadvantage certain "independent" aldermen, does not by itself implicate the Equal Protection Clause."]; cf *Garza v. County of Los Angeles* (1990) 918 F.2d 763, 771 ["The Supervisors intended to create the very discriminatory result that occurred."].) Also, the Charter Review Committee's decisions to address social inequity and not to address district-based elections does not support a cause of action for intentional racial discrimination.

Jason Dominguez
March 8, 2024
Page 6

The complaint should be amended if possible to allege facts to support a cause of action for intentional racial discrimination under the *Arlington Heights* standards, or this cause of action should be stricken.

We look forward to your response to this letter. We are available to meet and confer by telephone on Monday, March 11, 2024 between 10:00 A.M. – 11:00 A.M., 3:00 P.M. – 4:00 P.M., or Tuesday between 10:00 A.M. and 12:00 P.M.

Sincerely,



Marguerite Mary Leoni

MML/pas
2355.020

cc: Jill VanderBorgh
Burbank City Attorney's Office
JVanderBorgh@burbankca.gov

1 *Gutierrez v. City of Burbank*
2 Los Angeles Superior Court, Case # 23STCV25587

3 **PROOF OF SERVICE**

4 I, the undersigned, declare under penalty of perjury that:

5
6 I am a citizen of the United States employed in the County of Marin. I am
7 over the age of 18 and not a party to the within cause of action. My business
8 address is 2350 Kerner Blvd., Suite 250, San Rafael, California. I am readily
9 familiar with my employer's practices for collection and processing of
10 correspondence for mailing with the United States Postal Service and for pickup by
11 Federal Express.

12 On March 8, 2024, I served a true copy of the foregoing MEET & CONFER
13 LETTER RE DEMURRER TO FAC on the following parties in said action, by
14 serving:

15 Jason Dominguez 16 P.O. Box 20040 17 Santa Barbara, CA 93120	Attorneys for Defendant Nicholas Gutierrez
18 Jason Dominguez 19 1925 Century Park E Ste. 1700 20 Los Angeles, CA 90067-2740	Courtesy copy via email jdominguez@druven.law

21 X **BY U.S. MAIL:** By following ordinary business practices and placing for
22 collection and mailing at 2350 Kerner Blvd., Suite 250, San Rafael, CA 94901, a
23 true copy of the above-referenced document(s), enclosed in a sealed envelope; in the
24 ordinary course of business, the above documents would have been deposited for
25 first-class delivery with the United States Postal Service the same day they were
26 placed for deposit, with postage thereon fully prepaid.

27 Executed in San Rafael, California, on March 8, 2024.

28 I declare under penalty of perjury, that the foregoing is true and correct.



Paula Scott

EXHIBIT 2

Marguerite Leoni

From: Jason Dominguez <jdominguez@druven.law>
Sent: Tuesday, March 12, 2024 3:03 PM
To: David Lazarus; Marguerite Leoni; Vander Borght, Jill
Subject: Re: Gutierrez v City of Burbank

Security Notice: This is an external email. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Thank you all for the prompt replies. Let's say 4 to 5 pm? Given that this is the second time around for us, I think we will be more efficient than we were last time.

From: David Lazarus <dlazarus@nmgovlaw.com>
Sent: Tuesday, March 12, 2024 2:43 PM
To: Marguerite Leoni <MLEoni@nmgovlaw.com>; Vander Borght, Jill <JVanderBorght@burbankca.gov>; Jason Dominguez <jdominguez@druven.law>
Subject: RE: Gutierrez v City of Burbank

That window works for me, too.

David Lazarus, Partner

NIELSEN MERKSAMER PARRINELLO GROSS & LEONI LLP

2350 Kerner Boulevard, Suite 250
San Rafael, California 94901
t: 415.389.6800 • f: 415.388.6874
e: dlazarus@nmgovlaw.com

NIELSEN MERKSAMER

Please visit www.nmgovlaw.com for more information about our firm
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U.S. TAX DISCLOSURE: We inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any transaction or matter addressed herein.

From: Marguerite Leoni <MLEoni@nmgovlaw.com>
Sent: Tuesday, March 12, 2024 2:41 PM
To: Vander Borght, Jill <JVanderBorght@burbankca.gov>; Jason Dominguez <jdominguez@druven.law>; David Lazarus <dlazarus@nmgovlaw.com>
Subject: Re: Gutierrez v City of Burbank

I am available 3:30 – 5 on Thursday.

From: Vander Borght, Jill <JVanderBorghht@burbankca.gov>

Date: Tuesday, March 12, 2024 at 2:39 PM

To: Jason Dominguez <jdominguez@druven.law>, David Lazarus <dlazarus@nmgovlaw.com>, Marguerite Leoni <MLeoni@nmgovlaw.com>

Subject: RE: Gutierrez v City of Burbank

Security Notice: This is an external email. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello, on Thursday I am available from 8:30-9:30 and 3:30-5, on Friday from 8:30-10 and 2:30-5.

Jill

From: Jason Dominguez <jdominguez@druven.law>

Sent: Tuesday, March 12, 2024 1:32 PM

To: David Lazarus <dlazarus@nmgovlaw.com>; Marguerite Leoni <MLeoni@nmgovlaw.com>; Vander Borght, Jill <JVanderBorghht@burbankca.gov>

Subject: Re: Gutierrez v City of Burbank

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Counsel,

I read the first half of the letter yesterday and was interrupted by an emergency matter. I didn't see the times that you had proposed at the end of the letter until I picked it up now. Could you please let us know when you are available on Thursday or Friday? I will try my best to accommodate. Thank you.

Kind regards,

Jason

From: Paula Scott <Pscott@nmgovlaw.com>

Sent: Friday, March 8, 2024 11:46 AM

To: Jason Dominguez <jdominguez@druven.law>

Cc: David Lazarus <dlazarus@nmgovlaw.com>; Marguerite Leoni <MLeoni@nmgovlaw.com>; Vander Borght, Jill <JVanderBorghht@burbankca.gov>

Subject: RE: Gutierrez v City of Burbank

Good morning Mr. Dominguez,

Attached please find a Meet & Confer letter re Demurrer to FAC prepared by Marguerite Leoni.

Paper copies will follow via First Class US Mail to your address listed on the State Bar website (1925 Century Park E Ste 1700, Los Angeles, CA 90067-2740) as well as to the address listed on your pleadings (P.O. Box 20040, Santa Barbara, CA 93120).

Paula Scott, Administrative Assistant to Litigation Section

**NIELSEN MERKSAMER
PARRINELLO GROSS & LEONI LLP**

2350 Kerner Boulevard, Suite 250
San Rafael, California 94901
t: 415.389.6800 • f: 415.388.6874
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EXHIBIT 3

1 *Gutierrez v. City of Burbank*
2 Los Angeles Superior Court, Case # 23STCV25587

3 **PROOF OF SERVICE**

4 I, the undersigned, declare under penalty of perjury that:

5
6 I am a citizen of the United States employed in the County of Marin. I am
7 over the age of 18 and not a party to the within cause of action. My business
8 address is 2350 Kerner Blvd., Suite 250, San Rafael, California. I am readily
9 familiar with my employer's practices for collection and processing of
10 correspondence for mailing with the United States Postal Service and for pickup by
11 Federal Express.

12 On March 8, 2024, I served a true copy of the foregoing MEET & CONFER
13 LETTER RE DEMURRER TO FAC on the following parties in said action, by
14 serving:

13 Jason Dominguez 14 P.O. Box 20040 15 Santa Barbara, CA 93120 16 Jason Dominguez 17 1925 Century Park E Ste. 1700 18 Los Angeles, CA 90067-2740	13 Attorneys for Defendant 14 Nicholas Gutierrez 15 Courtesy copy via email 16 jdominguez@druven.law
--	--

19 X **BY U.S. MAIL:** By following ordinary business practices and placing for
20 collection and mailing at 2350 Kerner Blvd., Suite 250, San Rafael, CA 94901, a
21 true copy of the above-referenced document(s), enclosed in a sealed envelope; in the
22 ordinary course of business, the above documents would have been deposited for
23 first-class delivery with the United States Postal Service the same day they were
24 placed for deposit, with postage thereon fully prepaid.

25 Executed in San Rafael, California, on March 8, 2024.

26 I declare under penalty of perjury, that the foregoing is true and correct.

27 

28 Paula Scott

1 JILL A. VANDER BORGHT, Sr. Assist. City Attorney
(S.B. No. 240004)
2 JOSEPH MCDOUGALL, City Attorney
(S.B. No. 197689)
3 275 E. Olive Avenue
4 Burbank, California 91510
5 Telephone: (818) 238-5707
6 Fax: (818) 238-5724
7 Email: JVanderBorgh@burbankca.gov

**Filing Fee Exempt
Cal. Gov't Code § 6103**

7 NIELSEN MERKSAMER
8 PARRINELLO GROSS & LEONI LLP
9 Marguerite Mary Leoni, Esq. (S.B. No. 101696)
10 Christopher E. Skinnell, Esq. (S.B. No. 227093)
11 David J. Lazarus, Esq. (S.B. No. 304352)
12 2350 Kerner Boulevard, Suite 250
13 San Rafael, California 94901
14 Telephone: (415) 389-6800
15 Fax: (415) 388-6874
16 Email: mleoni@nmgovlaw.com
17 Email: dlazarus@nmgovlaw.com

Attorneys for Defendants

15 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 IN AND FOR THE COUNTY OF LOS ANGELES

17 NICHOLAS GUTIERREZ,

Plaintiff,

19 vs.

20 CITY OF BURBANK, and DOES 1 through 100,
21 inclusive,

Defendants.

Case No.: 23 ST CV 25587

PROOF OF SERVICE

Reservation No. 247941171087

DATE: May 24, 2024

TIME: 8:30 AM

DEPT: 30

JUDGE: Hon. Barbara M. Scheper

1 I, the undersigned, declare under penalty of perjury that:

2 I am a citizen of the United States employed in the County of Marin. I am over the age of
3 18 and not a party to the within cause of action. My business address is 2350 Kerner Blvd., Suite
4 250, San Rafael, California. I am readily familiar with my employer's practices for collection and
5 processing of correspondence for mailing with the United States Postal Service and for pickup by
6 Federal Express.

7 On April 17 2024, I served true copies of

- 8 • DEFENDANT CITY OF BURBANK'S NOTICE OF DEMURRER AND
9 DEMURRER TO FIRST AMENDED COMPLAINT; MEMORANDUM OF POINTS
10 AND AUTHORITIES
- 11 • DEFENDANT CITY OF BURBANK'S REQUEST FOR JUDICIAL NOTICE IN
12 SUPPORT OF DEMURRER TO FIRST AMENDED COMPLAINT;
13 MEMORANDUM OF POINTS AND AUTHORITIES; SUPPORTING
14 DECLARATION OF DAVID J. LAZARUS
- 15 • DECLARATION PURSUANT TO C. C. P. § 430.41(a)(3)(A)

16 on the following parties in said action, by serving:

17 Jason Dominguez 18 P.O. Box 20040 19 Santa Barbara, CA 93120	Attorneys for Defendant Nicholas Gutierrez
20 Jason Dominguez 21 1925 Century Park E Ste. 1700 22 Los Angeles, CA 90067-2740	Courtesy copy via email jdominguez@druven.law

23 X **BY U.S. MAIL:** By following ordinary business practices and placing for collection and
24 mailing at 2350 Kerner Blvd., Suite 250, San Rafael, CA 94901, a true copy of the above-
25 referenced document(s), enclosed in a sealed envelope; in the ordinary course of business,
26 the above documents would have been deposited for first-class delivery with the United
27 States Postal Service the same day they were placed for deposit, with postage thereon fully
28 prepaid.

X **BY ELECTRONIC SERVICE:** I electronically filed the document(s) with the Clerk of the
Court by causing the documents to be sent to One Legal/Nationwide Legal, the Court's
Electronic Filing Services Provider for electronic filing and service. Electronic service will
be effected by One Legal's/Nationwide Legal's case-filing system at the electronic mail
address(es) indicated above

Executed in San Rafael, California, on April 17, 2024.

I declare under penalty of perjury, that the foregoing is true and correct.



Paula Scott