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20 *Attorney for Petitioners/Plaintiffs*
21 *Jack Wu and Neighborhood Elections Now, Inc.*

22 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
23 COUNTY OF ALAMEDA
24 (UNLIMITED JURISDICTION)

25 JACK WU AND NEIGHORHOOD ELECTIONS
26 NOW, INC.,
27
28 Petitioners/Plaintiffs,

vs.

CITY OF HAYWARD,

Respondent/Defendant.

No.: 24CV070229

ASSIGNED FOR ALL PURPOSES TO
JUDGE REBEKAH B. EVENSON
DEPARTMENT 24

Action Filed: April 2, 2024

**STIPULATION FOR ENTRY OF
JUDGMENT AND ~~PROPOSED~~ FINAL
JUDGMENT**

**No Filing Fees:
Gov. Code, § 6103**

1 **WHEREAS**, on April 2, 2024, Petitioners Jack Wu and Neighborhood Elections Now
2 (“Petitioners”) filed this action for writ of mandate to order access to public meetings and records and
3 complaint for violation of the California Voting Rights Act against the City of Hayward (“the City”);
4 and

5 **WHEREAS**, on April 16, 2024, the City adopted a resolution of intent to transition to a
6 district-based election system by July 15, 2024, as authorized by Government Code section 34886 for
7 use in the City’s General Municipal Election for City Councilmembers with a proposed
8 implementation date of November 2026 and directed staff to conduct public outreach to solicit public
9 input and testimony on a proposed district-based electoral map; and

10 **WHEREAS**, the City has established a districting website, conducted outreach, and
11 scheduled public hearings to inform the public about the districting process and to encourage the
12 public, including Petitioners, to provide public comment to help guide the City in developing district
13 maps; and

14 **WHEREAS**, on May 9, 2024, the City of Hayward filed its answer to the petition for
15 writ of mandate; and

16 **WHEREAS**, the parties have engaged in extensive settlement negotiations and believe
17 that a stipulated judgment consistent with the terms set forth below is in the best interests of all parties
18 and of the public at large;

19 **NOW THEREFORE**, Petitioners and the City stipulate as follows:

- 20 1. The Court has jurisdiction to enter judgment in this action.
- 21 2. The parties consent to the Court having continuing jurisdiction for purposes of
22 enforcing the Judgment.
- 23 3. In making this stipulation, no party admits to any conclusions of law or
24 concedes any arguments or defenses, except as expressly stated herein.
- 25 4. The parties request that the Court enter the [Proposed] Judgment attached
26 hereto.
- 27 5. The parties waive notice of entry of the Judgment and notice and service of the
28 entered Judgment.

1 6. The parties waive their right to appeal the Judgment.

2 7. The parties agree that the City may have an additional 90-days in which to adopt
3 a map for district-based elections on or before October 14, 2024. The map and sequence will comply
4 with Elections Code sections 10010(b) and 21130 and 52 U.S.C. section 10301(b). An ordinance will
5 specify the boundaries and sequence of elections and will be filed with the Court for incorporation into
6 the judgment. Provided the map complies with Elections Code sections 10010(b) and 21130 and 52
7 U.S.C. section 10301(b), Plaintiffs will not seek further or different remedies for the alleged violation
8 of the California Voting Rights Act.

9 8. The parties agree that the City will institute elections for six City Council seats
10 by single-member districts beginning with the 2026 City Council election. The Mayor will continue to
11 be elected at-large. The City agrees that it will not reduce the number of Council districts and that
12 there will be at least six Council districts, with the Mayor elected at large. This paragraph expires on
13 November 6, 2032.

14 9. Preparing the District Map.

15 a. The parties agree that public involvement is an essential component in creation
16 of districts and that it will require extensive public outreach and education about
17 the districting process. The City will continue to conduct a robust outreach
18 campaign to all stakeholders, and it will solicit information from Petitioners
19 regarding groups or communities of interest that Petitioners feel should be
20 included in the outreach campaign. The City will hold at least four public
21 hearings to elicit community input and involvement in the districting process.

22 b. The City will continue to provide a districting website with educational
23 information about the districting process, details about how members of the
24 public can submit comments or proposed maps either electronically, in-person at
25 one of the hearings, or in hard copy addressed to the City Clerk.

26 c. Members of the public will be allowed five minutes each to address the City
27 Council at each of the four public hearings. Neighborhood Elections Now may
28 (1) present public comment through a spokesperson who may speak for not less

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than 15 minutes, and (2) propose draft maps that will be promptly posted and labelled as being proposed by Neighborhood Elections Now.

d. Notwithstanding Elections Code sections 21150(a) and 21160(j), the hearings will comply with the procedural requirements set forth in sections 21150 and 21160 for the remainder of the districting process, and the City will also conduct the two additional pre-map hearings and comply with the additional requirements specified in section 10010. Provided the City makes a good faith consultation with plaintiffs regarding the date, these pre-map hearings need not be completed within the 30-day period set forth in section 10010(a)(1).

10. Sequence of Elections and Transition procedures.

a. Pursuant to Elections Code section 21626, the term of office of any council member who has been elected and whose term of office has not expired shall not be affected by the change to district elections, and those members shall continue to represent the constituents of the City at large for the duration of their term of office. With the exception of the Mayor, upon expiration of the full term of each Council member elected at large, that Council member's successor shall be elected on a by-district basis in the districts established pursuant to this Stipulation.

b. If a vacancy occurs in any at-large seat prior to the time the City has made the full transition to a City Council elected by districts adopted pursuant to this Stipulation, the parties agree to meet and confer promptly regarding the most appropriate method of filling the vacancy that is consistent with the purposes of the California Voting Rights Act and the interests of the public and the protected class. If the parties are unable to agree, they will promptly submit the matter to the Court for resolution.

c. The City will solicit and consider public input, including from Petitioners, regarding which districts will be used for the 2026 City election and which districts will be used in the 2028 election and shall provide the special

1 consideration required by Elections Code section 10010(b). To the extent
2 permitted by applicable law, the City will attempt to accommodate the views of
3 petitioners and other members of the public with respect to sequencing.

- 4 11. Petitioners' Attorneys' Fees and Litigation Expenses.
 - 5 a. The City will pay \$125,000 to petitioners within 30 calendar days of the Court's
6 approval of this Stipulation and entry of judgment for time and expenses spent
7 since March 10, 2024, and yet to be spent by Plaintiffs' counsel of record,
8 Mr. Scott Rafferty, on the preparation and conduct of this lawsuit and in
9 connection with the City's legislative process for development and adoption of a
10 final map for district-based City Council elections. Petitioners will not seek
11 further compensation for work product generated prior to March 10, 2024.
 - 12 b. If the City fails to comply with the terms of this Order, petitioners may request
13 additional attorneys' fees or expenses limited to the enforcement of this Order
14 and may also request fees pursuant to the standards set forth in Elections Code
15 section 14030, if they prevail in establishing that the map adopted by Ordinance
16 fails to comply with state or federal law, including 51 U.S.C. section 10301,
17 Elections Code sections 10010(b) and 21100, et seq.
 - 18 c. Mr. Rafferty's participation is contingent on his health and availability, and the
19 extent of his participation, if any, does not affect the liquidated payment set
20 forth in subparagraph (a).
- 21 12. Stay of litigation and retention of jurisdiction. Upon full execution of this
22 Agreement and its submission to the Court, all litigation activities relating to the
23 Action will be suspended, other than (1) those necessary to respond to any
24 requests made or orders entered by the Court or (2) claims regarding failure to
25 comply with the terms of this Stipulation.
 - 26 a. The parties further agree that upon adoption of the ordinance establishing
27 district-based elections beginning in November 2026, the City will be in full
28 compliance with the California Voting Rights Act, provided that petitioners

1 reserve the right to seek relief in the event they believe that the new districts do
2 not comply with state or federal law, including noncompliance of any ordinance
3 with 51 U.S.C. section 10301 and Elections Code sections 10010(b) and 21100,
4 et seq.

5 b. Petitioners, including any current or future subsidiaries, parent organizations, or
6 affiliates under the direction or control of Neighborhood Elections Now, may
7 not file or assist in any way (for example, and without limitation, by soliciting
8 new potential plaintiffs, referring new potential plaintiffs to petitioners' counsel,
9 or providing pleadings, briefs, reports, investigations or any other document or
10 matter prepared in connection with, or anticipation of this lawsuit) any other
11 person or entity to investigate, analyze, prepare for or file, another lawsuit
12 against the City, asserting a violation of the California Voting Rights Act, the
13 federal Voting Rights Act, the Equal Protection Clause, California or federal
14 anti-discrimination statutes, or any other statute or any state or federal
15 constitutional provision addressing or implicating voting rights based on the
16 facts alleged (or that could have been alleged) in this lawsuit. This paragraph
17 does not prohibit legal actions premised on new facts that were not (or that could
18 not have been) alleged in this lawsuit, including noncompliance of any
19 ordinance with 51 U.S.C. section 10301 and Elections Code sections 10010(b)
20 and 21100, et seq. This paragraph expires on November 6, 2032.

21 Respectfully submitted,

22 Dated: May 15, 2024

23 OFFICE OF THE CITY ATTORNEY –
24 CITY OF HAYWARD

25 By: Michael Lawson
26 Michael S. Lawson, City Attorney

27 Attorneys for Respondent/Defendant
28 City of Hayward

1 Dated: May 15, 2024

2
3 By: Scott Rafferty
4 Scott Rafferty

5 Attorneys for Petitioners/Plaintiffs
6 Jack Wu and Neighborhood Elections Now, Inc.
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1 **PROOF OF SERVICE**

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

3 I am a citizen of the United States, over the age of 18, and not a party to the within
4 cause of action. My business address is 1901 Harrison Street, Suite 1550, Oakland, CA 94612.

5 On May 15, 2024, I served a true copy of the following document(s):

6 **Stipulation for Entry of Judgment and [Proposed] Final Judgment**

7 on the following party(ies) in said action:

8 Scott Rafferty
9 1913 Whitecliff Court
10 Walnut Creek, CA 94596
11 Phone: (202) 380-5525
12 Email: rafferty@gmail.com

*Attorney for Petitioners/Plaintiffs
Jack Wu and Neighborhood Elections Now,
Inc.*

- 11 **BY UNITED STATES MAIL:** By enclosing the document(s) in a sealed
12 envelope or package addressed to the person(s) at the address above and
 - 13 depositing the sealed envelope with the United States Postal Service, with
the postage fully prepaid.
 - 14 placing the sealed envelope for collection and mailing, following our
15 ordinary business practices. I am readily familiar with the business’s
16 practice for collecting and processing correspondence for mailing. On
17 the same day that correspondence is placed for collection and mailing, it
is deposited in the ordinary course of business with the United States
Postal Service, located in Oakland, California, in a sealed envelope with
postage fully prepaid.
- 18 **BY OVERNIGHT DELIVERY:** By enclosing the document(s) in a sealed
19 envelope or package provided by an overnight delivery carrier and addressed to
the persons at the addresses listed. I placed the sealed envelope or package for
20 collection and overnight delivery at an office or a regularly utilized drop box of
the overnight delivery carrier.
- 21 **BY MESSENGER SERVICE:** By placing the document(s) in a sealed envelope
or package addressed to the persons at the addresses listed and providing them to
22 a professional messenger service for service.
- 23 **BY FACSIMILE TRANSMISSION:** By faxing the document(s) to the persons
at the fax numbers listed based on an agreement of the parties to accept service by
24 fax transmission. No error was reported by the fax machine used. A copy of the
fax transmission is maintained in our files.
- 25 **BY EMAIL TRANSMISSION (ONE LEGAL):** By electronically submitting
for filing and service the document(s) listed above through One Legal, an
26 electronic filing vendor approved by this Court. The name of the vendor and the
transaction receipt I.D. are given in the vendor’s emailed Notification of Service.

1 I declare, under penalty of perjury, that the foregoing is true and correct. Executed on
2 May 15, 2024, in Gardnerville, Nevada.

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5 *Nina Leathley*
Nina Leathley _____

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[PROPOSED] JUDGMENT AND ORDER

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26

No.: 24CV070229

ASSIGNED FOR ALL PURPOSES TO
JUDGE REBEKAH B. EVENSON
DEPARTMENT 24

Action Filed: April 2, 2024

~~PROPOSED~~ JUDGMENT AND ORDER

**NO FILING FEE
GOV. CODE, § 6103**

1 Pursuant to the Stipulation for Entry of Judgment filed concurrently herewith and
2 attached hereto (“the Stipulation”), and for good cause shown, IT IS HEREBY ORDERED,
3 ADJUDGED, AND DECREED as follows:

- 4 1. That the City of Hayward shall institute elections for six City Council seats by
5 single-member districts with an at-large Mayor beginning with the 2026 City
6 Council election, pursuant to and consistent with the procedures described in the
7 attached Stipulation. The boundaries and sequence shall comply with Elections
8 Code sections 10010(b) and 21130, and 52 U.S.C. section 10301(b).
- 9 2. That notwithstanding Elections Code section 4000, in the event of a City
10 Council vacancy as described in paragraph 10(b) of the Stipulation, the parties
11 shall meet and confer regarding the most appropriate method of filling the
12 vacancy. If the parties agree that a special election is appropriate and can be
13 conducted without interfering with any regularly scheduled City election, the
14 City may conduct the special election wholly by mail.
- 15 3. That the City of Hayward shall pay \$125,000 to Petitioners within 30 calendar
16 days of entry of this Order, pursuant to paragraph 11 of the Stipulation.
- 17 4. That the Court will retain jurisdiction of this matter solely for purposes of
18 ensuring compliance with the terms of the Stipulation.

19 DATED: 05/16/2024

20
21 
22 THE HON. REBEKAH B. EVENSON
23 JUDGE OF THE SUPERIOR COURT

24 **Rebekah Evenson / Judge**