

**SUPPLEMENTAL REPORTS & COMMUNICATIONS I**  
**Office of the City Clerk**

**City Council of the City of Napa**  
**Regular Meeting**

**March 3, 2020**

**FOR THE CITY COUNCIL OF THE CITY OF NAPA:**

**AFTERNOON SESSION:**

**SUPPLEMENTAL COMMUNICATIONS:**

- Email dated February 27, 2020 from Scott Rafferty requesting that the City annex the unincorporated island known as “West Pueblo/Linda Vista.”
- Email dated March 2, 2020 from City Attorney Barrett in response to Mr. Rafferty’s email.

**From:** Scott Rafferty

**Sent:** Thursday, February 27, 2020 1:36 PM

**To:** Michael Barrett <mbarrett@cityofnapa.org>; Tiffany Carranza <tcarranza@cityofnapa.org>; Marguerite Leoni <MLEoni@nmgovlaw.com>; jbrax@countyofnapa.org

**Cc:** Carly Graf <cgraf@napanews.com>

**Subject:** Annexation of Redlined Latino "Island" in West Pueblo

[EXTERNAL]

I hope it is a misapprehension, but my clients left Tuesday's meeting under the impression that the Latino islands within the city, particularly West Pueblo, would not be annexed prior to the preparation of maps (absent a court order).

Since the last meeting, my clients had collected a panoply of complaints from the disenfranchised Latinos living in West Pueblo. As LAFCO has shown, exclusion from the City of Napa is economically disadvantageous to these residents in terms of taxes and utility fees. Latinos inside the redlined area are also exposed to economic discrimination in a number of forms - loss of scholarship eligibility, nonresident charges for recreation programs, ineligibility for city programs and facility privileges. Generations of school children have been denied the sidewalks that all the surrounding Anglo neighborhoods enjoy. The boundary is so complex that residents cannot resolve basic land use issues (such as complaints regarding ditches and fences) with either the city or county.

The exclusionary boundaries is more irregular than that condemned by the Supreme Court in Gomillion v. Lightfoot, which dispensed with any requirement that plaintiffs show discriminatory intent. In contrast to Gomillion, the city's exclusion of the West Pueblo Latinos departs from affirmative mandates and policies codified in state law and clearly articulated in the recent Lafco report. It also violates the annexation policies articulated decades ago in the General Plan.

Of course, the violation of these resident's political rights has persisted for many years. Fundamentally, this is a matter of disenfranchisement in violation of the constitution and Voting Rights Act. Few, if any, of the council's constituents would support such official discrimination if it were publicly known. None of this discriminatory effects could have persisted if the islands had a district representative or even the right to cast a diluted vote for an at-large member of this council. As a candidate for council at-large has explained to us, the island is also a formidable barrier to Latino candidates who seek to campaign on neighborhood streets and gathering places, because many of the residents do not know whether or not they are eligible to vote in city elections. It will impair the demographer's ability to draw a strong Latino district. This is a clear violation of Section 2 and of Sections 1983 and 1985(3) of Title 42.

If necessary to file for legal relief, we would also expect to include a class action seeking damages for decades of economic injuries inflicted on the residents of redlined island due to the deprivation of and discrimination in the provision of municipal services. Again, Gomillion establishes that exclusionary municipal boundaries violate the Fourteenth and Fifteenth Amendments without any showing of discriminatory intent. Under the Arlington Heights test, however, procedural irregularities and implausible rationalizations are likely sufficient to prove intent. It was irrational for the Council to claim that developers demanded the area be redlined, because it was fully built out prior to the General Plan, which provided the basis for transferring areas from the county to the city as they were developed, which was consistently applied to the surrounding Anglo neighborhoods.

Like President Kennedy's promise to end federal discrimination against minority neighborhoods, this is a constitutional violation that can be ended with "the stroke of a pen" - in this case the city and county signing a request that Lafco will grant summarily. My clients request that the city make a commitment and timeframe to make this request to Lafco by Monday.

In the alternative, we propose to negotiate a schedule to seek expedited judicial intervention. Thanks for your prompt attention.

Scott Rafferty  
1913 Whitecliff Ct  
Walnut Creek CA 94596  
mobile 202-380-5525

**From:** Michael Barrett <mbarrett@cityofnapa.org>

**Sent:** Monday, March 02, 2020 6:38 PM

**To:** Scott Rafferty

**Cc:** Steve Potter <spotter@cityofnapa.org>; Tiffany Carranza <tcarranza@cityofnapa.org>; Vincent Smith <vsmith@cityofnapa.org>; Julie Lucido <jlucido@cityofnapa.org>; Marguerite Leoni <MLEoni@nmgovlaw.com>; jbrax@countyofnapa.org; Carly Graf <cgraf@napanews.com>

**Subject:** Process for Annexing Unincorporated Islands into the City

Mr. Rafferty:

This email is in response to your email dated February 27, 2020, to several representatives of the City, the County, and the Napa Valley Register (copied on this response).

During several recent public meetings, including the Council meeting on February 25, 2020, the City has summarized that it is in the process of establishing an updated plan for annexing unincorporated islands into the City, as a part of the City's ongoing process of updating its General Plan. The City has generally described that the process for annexing unincorporated islands into the City includes a technical evaluation of the property to be annexed and the public facilities needed to serve that property. For example, Government Code Sections 56652, 56653, and 56654 require the City to establish a plan for providing services within the affected territory, including:

- (1) A resolution of application to the Local Agency Formation Commission of Napa County ("LAFCO") initiating the proposal.
- (2) A statement of the nature of each proposal.
- (3) A map and description, acceptable to the LAFCO executive officer, of the boundaries of the affected territory for each proposed annexation.
- (4) Any data and information as may be required by any LAFCO regulation (including the requirements documented on the [LAFCO webpage](#)).
- (5) Any additional data and information, as may be required by the LAFCO executive officer, pertaining to any of the matters or factors which may be considered by LAFCO.
- (6) An enumeration and description of the services currently provided or to be extended to the affected territory.
- (7) The level and range of those services.
- (8) An indication of when those services can feasibly be extended to the affected territory, if new services are proposed.
- (9) An indication of any improvement or upgrading of structures, roads, sewer or water facilities, or other conditions the local agency would impose or require within the affected territory if the annexation is completed.
- (10) Information with respect to how those services will be financed.
  - a. NOTE: One of the issues that the City will need to evaluate is whether or not it will be feasible to install sidewalks after annexation of the "West Pueblo/Linda Vista" unincorporated island (as was suggested in your email, and by speakers at the Council meeting on February 25); and, if sidewalks are feasible, how will the improvements be financed. There are many older neighborhoods throughout the City that do not have sidewalks; and the City has a backlog of sidewalks in need of maintenance (see City's webpages on [Sidewalks, Curbs, & Gutters](#); and the [Napa Neighborhood Streets and Sidewalks Program](#)).
  - b. NOTE: residents of an unincorporated island on Penny Lane who requested connection to the City's water service were required to participate in a proportionate share of the

costs of the water lines as a condition of approval of the annexation (see [City Council meeting of February 18, 2020](#), Item 4H).

- (11) Additionally, Government Code Section 56375.3 requires the City to provide additional information to establish the status of the affected territory as an unincorporated island. This section also includes the possibility of negotiating a separate property tax transfer agreement between the City and the County.
- (12) Additionally, the City is required to document compliance with the California Environmental Quality Act (“CEQA”), Public Resources Code Sections 21000, *et seq.*

After the City has established the plan for the proposed annexation of unincorporated islands, the City is required to conduct a public hearing, with at least 21 days prior notice (per Government Code Sections 56654 and 56755). If, after considering public testimony at the public hearing, the Council adopts a resolution to initiate annexation proceedings, the City would submit the application to LAFCO, and LAFCO processes the application in accordance with its processes (including Government Code Section 56658). In general, LAFCO reviews each application for completeness and provides specified notices to affected parties before LAFCO issues its certificate of filing; and, after the certificate of filing, LAFCO conducts a public hearing to consider the application with at least 21 days prior notice.

For some factual context, over the past fifteen years, the City has successfully processed more than a dozen applications for annexations of unincorporated islands within the City’s sphere of influence, in response to applications filed by property owners of the affected territory. As I explained to you during our face-to-face conversation on February 11, 2020, when the City receives annexation applications, the City contacts neighboring property owners and considers any comments or concerns the property owners may have regarding the proposed annexation, as required by Government Code Section 56755. While the City has generally not approved an annexation of property over the objection of the property owner, there have been occasions when property has been annexed without a request or approval from the property owner in order to facilitate the orderly growth of the City (see [City Council meeting of May 20, 2014](#), Item 15A, regarding the annexation of properties on West Pueblo Avenue at 2063, 2065, 2075, 2083, and 2091).

As an alternative to the annexation processes outlined above, your client may file a petition with LAFCO to annex property to the City, under the processes set forth in Government Code Sections 56700, *et seq.*

*Michael.*

**Michael W. Barrett**  
City Attorney

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