

RESPONSE TO COUNCIL QUESTIONS RE: 12/11/18 CITY COUNCIL AGENDA

Agenda Item #: 2

Title: Approval of Community Engagement and Outreach Plan Regarding City Council By-District Elections and the California Voting Rights Act, Award a Contract Amendment to PlaceWorks, Inc. and Approve Budget Modification No. 12

Council Question: The proposed timeline has us drawing the maps before the public vote. Is this an item up for discussion and determination during this meeting, or has this somehow been determined to be necessary/required prior to the vote?

Staff Response: Yes, the Council may discuss the timing for drawing the maps. The timing for adopting maps is a policy issue for Council to decide as discussed below. It may occur before, during or after the public vote. There are, however, some important issues for the Council to consider that factored into the staff recommendation for the timing and timeline of drawing the maps. First, the timeline in the plan for drawing the maps spans approximately 6 months. While map drawing could certainly be accomplished in a period as short as 90 days, the City's outside counsel and the potential plaintiffs have acknowledged that such a short period is not ideal for ensuring robust and widespread engagement in the process. The series of meetings recommended over a longer timeline was designed to allow for a less rushed, more thoughtful process. Second, staff has heard concerns by some that it may be important to have maps drawn earlier in the process to give potential candidates more time to decide whether to run. This issue would be of greater concern if the Charter Amendment Ballot Measure was placed on the March 2020 ballot as potential candidates would need to file their Candidate Intention Statements in early August 2020 and this would shorten the time that potential candidates would have to decide whether to run.

Council Question: Would adopting district maps after the vote make a March 2020 vote more feasible?

Staff Response: As discussed above, timing for adopting maps is a policy issue for the Council to decide. If the Council chose to wait until after the March 2020 election, it would still be possible to complete the maps for the November 2020 election (recall that Santa Clara did so after a court order in June 2018), but the number of meetings for map drawing would likely need to be reduced and those considering running for Council would have less time to decide.

Council Question: Regarding the special outreach to under-served communities, the example list of communities strikes me as the list I might come up with myself (with the notable absence of the Sunnyvale Hindu Temple). But I'm not a member of any of those communities, and as near as I can tell, neither is city staff or the consultants who drafted this plan. So what effort is being made to find out from actual minority communities the best places and times to do outreach to their members? We're being charged with failing to engage with under-represented communities - taking guesses as to the best ways to do outreach would seem to be a second-best approach to getting those communities to advise us on best practices for reaching their members. It would seem like the best approach would be to identify key members of under-represented communities, solicit their advice on how to best reach their members, and then do just that. But I don't see that as an explicit part of the plan.

Staff Response: The consultant will provide more detail on this issue at the meeting as it is a key part of the Plan. PlaceWorks started the process of identifying key stakeholders in these communities and

held a set of meetings with community stakeholders in developing this Plan for the specific purpose of identifying these groups and developing a list of contacts to assist with identifying the best ways to reach members. Staff will continue working with PlaceWorks to identify and engage with formal and informal leaders in under-represented communities to refine the engagement strategy.

Council Question: Will the attempts to publicize the outreach efforts include paid social media advertisements (paid FB and Twitter ads)? Again, if we're accused of failing to reach out to minority communities, depending solely on existing channels of communication (city website, city Facebook pages, NextDoor) would seem to be self-defeating

Staff Response: The Plan includes a variety of paid and unpaid outreach methods (both traditional and social media) beyond the City's standard social media channels, specifically designed to reach a broader audience and target the City's diverse communities.

Additional Questions and Responses for Item #2

Council Question 1: Has any charter city, after receiving the letter informing them that they were in violation of the CVRA, gone to district elections by ballot measure?

Staff Response: There is currently no comprehensive survey of the 86 charter cities in California and their status with respect to the California Voting Rights Act. As discussed at the November 20 City Council meeting, several charter cities with charter provisions less specific than Sunnyvale's about the election method for council election, have used Government Code Section 34886 to implement district elections by ordinance rather than charter change. Please see the November 20 Report to Council ([18-1025](#)) for an analysis and explanation of this issue.

Council Question 2: Have all charter cities that have gone to district elections, after receiving the letter similar to the one Sunnyvale received from GBDH, done so by either court order or by ordinance invoking CA Govt. code #34886?

Staff Response: See response to question 1. Some charter cities have transitioned to district elections by court order (e.g., Santa Clara), while others have done so by ordinance (e.g., Vallejo).

Council Question 3: Could a non-charter city go to district elections by simple ordinance without invoking CA Govt. code #34886?

Staff Response: As Sunnyvale is a charter city, staff has not researched rules applicable to non-charter cities at this time. However, staff does note that Government Code section 34871 which enables a non-charter city to change to district elections provides for a vote: "[T]he legislative body may submit to the registered voters an ordinance providing for the election of members of the legislative body ... (a) By districts in five, seven, or nine districts." (See also, Government Code section 34876.5: "If a majority of the voters voting on the proposed ordinance vote in its favor, members of the legislative body shall be elected in the manner approved by the voters beginning at the first election following approval of the district boundaries pursuant to Section 34877.5, and for which the election consolidation deadlines established in the Elections Code have not passed.")

Council Question 4: If a ballot measure is required to go to district elections, what would happen if a charter city received the letter such as the one Sunnyvale received from GBDH over a year before the general election and were not given an extension?

Staff Response: The risk of not getting an extension to the 90-day safe harbor period is litigation. See RTC [18-1025](#) where this question was covered in the report and discussed extensively at the November 20 City Council meeting.

Council Question 5: What happens if ballot measure(s) to go to district elections fail? Are we required to keep holding ballot measures until one passes?

Staff Response: The City would likely get sued. The initiation of litigation would not prevent the City from concurrently submitting a new ballot measure(s) to the voters at eligible elections while responding to the litigation.

Council Question 6: Why are other cities – charter or not – larger and smaller in both population and geographical size – able to get public outreach and district maps done within 90 days and Sunnyvale isn't?

Staff Response: Outreach and mapping can be accomplished in 90 days. However, since the first discussions on this issue, a majority of the Council directed a more robust education and outreach process. The proposed outreach plan implements the Council's direction to date, but could be reduced if the Council so directed. Also, we note that when the Senate finally passed AB 2123 in 2018 permitting an extension of the safe-harbor period beyond 90 days, it commented in bill analysis: "[A]fter the enactment of AB 350, local governments and voting rights organizations have both found that additional time is often needed to implement a successful transition to district-based elections. With additional time to mobilize, underrepresented communities would be better equipped to advocate for their interests in the drawing of district boundaries. Additional time would also allow local governments to engage in more outreach to ensure that public input is heard while prospective districts are being drawn." The bill was supported by the Asian Americans Advancing Justice, MALDEF, ACLU, and the League of California Cities, among others.

Council Question 7: If the measure(s) to go to district elections fail, will we be able to go to district elections by ordinance or will we be forced to do so after a lawsuit and under court order like Palmdale and Santa Clara?

Staff Response: If a measure to change to district elections fails, the City would likely be sued and would have to evaluate its options at that time. Were the City to lose the lawsuit, a court order to move to district elections would be a likely outcome if the court determined that there was racially polarized voting in Sunnyvale. The City would be given the first opportunity to develop a remedial districting plan. For example, in Santa Clara the City was given a short timeframe to hold meetings and make a recommendation on district maps, which the court considered and ultimately approved.

Council Question 8: If Sunnyvale is forced to go to district elections by court order is a ballot measure necessary to go to district elections?

Staff Response: A court order directing district elections in Sunnyvale would take precedence over the existing charter provisions. A ballot measure would not be necessary to implement district elections in that case, but a clean-up measure reflecting the court order would likely be desirable at some point since the charter language would conflict with the court order and create confusion for the public.

Council Question 9: Suppose a charter city were informed, as Sunnyvale was, in October that they were in violation of the CVRA. That is clearly too late to go to district elections by the coming November. If they were not given an extension of the 90 days from the date of their “resolution of intent” would they be liable to a lawsuit? If so, wouldn’t that mean it is impossible for a charter city to comply with the CVRA without using CA Govt. Code #34886?

Staff Response: Please see responses to questions 4 and 5 above. A city could complete district mapping in 90 days and adopt a resolution calling an election for a charter amendment at the next eligible election.