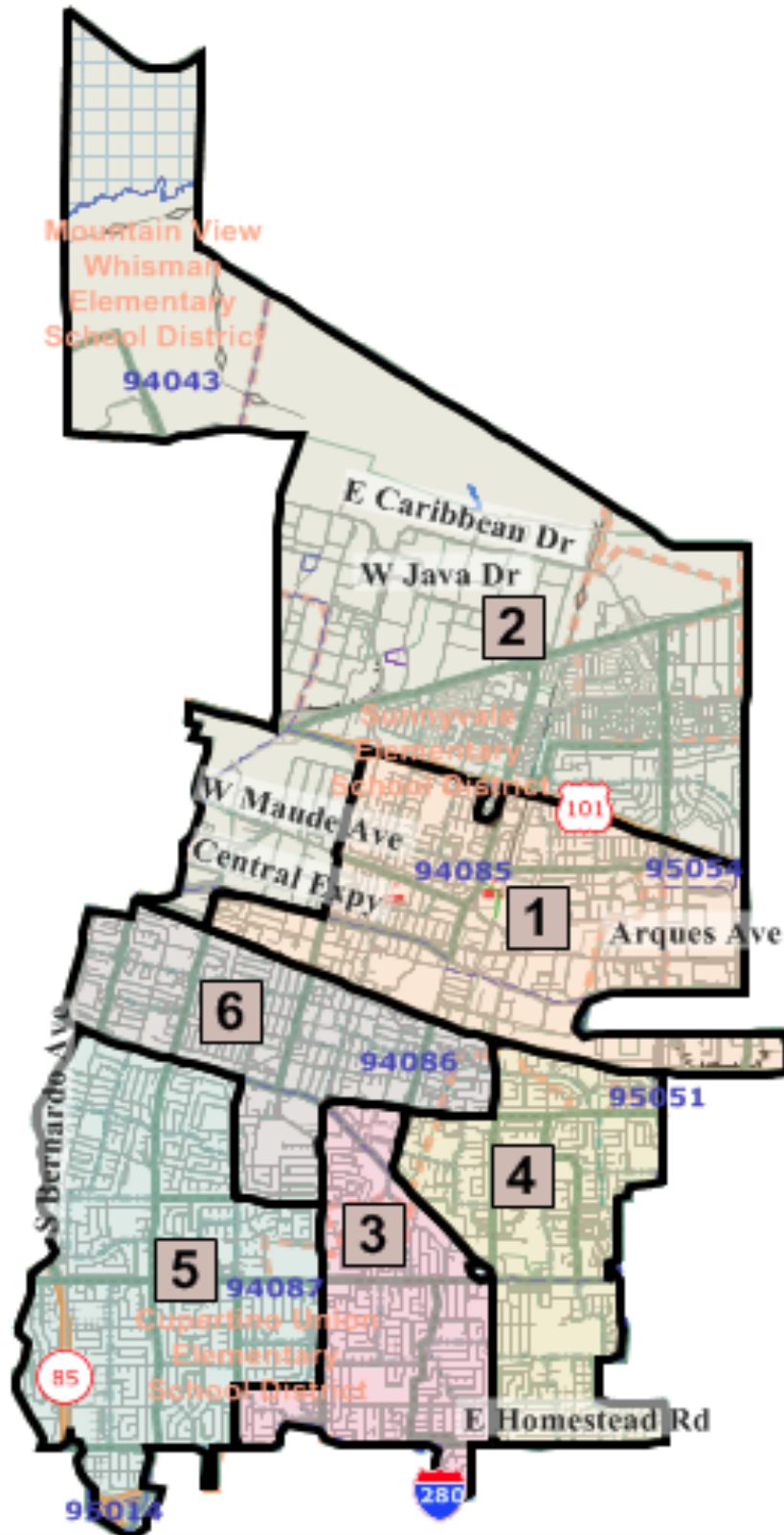


FINAL Unity Map: Community of Interest Testimony and Preferred Sequencing



Map Sign-Ons

- . Services, Immigrant Rights and Education Network (SIREN)
- . Srivats Iyer - District 1
- . Armida Ramirez - District 1
- . Bowman Ching - District 1
- . Kathy Higuchi - District 1
- . Karina Guzman - (former Sunnyvale resident with family currently living in District 1)
- . Valérie Suarès - District 1
- . Richard Mehlinger - District 1
- . Diane Gleason - District 1
- . Janette Brambila - District 2
- . Ram Agarwal - District 2
- . Cal Cornwell - District 3
- . Samir Kalra - District 3
- . Galen Davis - District 3
- . Janet Takahashi (active at Congregational Church located in District 5)
- . Elsa Amboy - District 5
- . Coleen Hausler - District 5
- . Donna Beres - District 5
- . Yuan Raymond Xu - District 5
- . Linda Sell - District 5
- . Judi Pogue - District 5
- . Naomi Nakano-Matsumoto - District 5
- . Evelyn Rocha - District 6
- . Ann Stevenson - (active at St. Thomas Episcopal Church located in District 6)

Community of Interest Testimony for Final Unity Map

The Unity group, consisting of diverse Sunnyvale residents who hail from different neighborhoods and communities, including the mobile home park community, SNAIL, the Latinx community, the Asian American community, the Hindu community, and multiple faith communities across the City met over many months to create a map that meets the needs of all our communities. Thank you for your consideration.

Key Point: We have responded to Council's request for smoother lines and revised Unity Map 120C to create a Final Unity Map that follows major roads and keeps communities of interest whole.

A. Differences Between Map 120C and the Final Unity Map

- District 1's southern border now follows the train tracks and extends farther West. Because Council had concerns about the portion of District 1 that extended South to include St. Martin's Parish, we smoothed out this section.
- District 2 no longer has two "arms" that cross highway 101. Instead, district 1 now extends farther East to the Sunnyvale border. District 2 also now extends slightly farther South to keep Mary Manor mobile home park together with the rest of the mobile home parks in North Sunnyvale.
- District 3's western border extends along Alberta Ave. instead of Cheyenne in order to keep the Nimitz neighborhood whole.
- District 4 no longer follows the Sunnyvale Elementary School District and SCUSD boundary line. In order to smooth this northern border of District 4, we followed the train tracks, S. Wolfe Road, Old SF Road, and Fair Oaks instead.
- District 6 no longer crosses El Camino Real in two places (along Bernardo Ave. and Mathilda). Instead District 6 crosses El Camino Real in one section along major roads (between Hollenbeck and Sunnyvale Saratoga down until Remington Ave).

B. Community of Interest Testimony for District Maps

District 1

- We smoothed out District 1's southern border so it now extends East to West along the train tracks.
- This district keeps the SNAIL neighborhood (bounded by Fair Oaks, Maude, Mathilda, and the 101 freeway) whole. The SNAIL neighborhood should be kept whole because it is a tight-knit community that also has its own official 501(c) 4 non-profit status. SNAIL distributes 1,200 monthly newsletters door to door, hosts the largest and most popular National Night Out, and has an active web presence.

- This district also keeps the San Miguel neighborhood whole.
- This district keeps low and middle-income communities in North central Sunnyvale together. Socio-economically, SNAIL residents have strong similarities to folks living South of Maude and north of the train tracks such as the Lowlanders neighborhood. It also keeps SNAIL together with San Miguel. Both neighborhoods are made up mostly of single-family homes.
- This district keeps stores used by the Latinx community, such as Chavez Supermarket, Mi Ranchito Produce, and Guadalajara Market together.
- This district keeps important community services (Columbia Neighborhood Center, Sunnyvale Community Services) together in a central district in the City. Columbia Neighborhood Center offers many extra-curricular activities and sports to under-resourced families.
- This district also results in a Latino influence district.
- District 1 includes Mayview Community Health Clinic, a primary care clinic devoted to providing high-quality healthcare to low-income families and individuals.

District 2

- This district keeps the following mobile home parks, including Mary Manor mobile home park, in North Sunnyvale together in one district so that residents can advocate together on issues that impact their community, like traffic, office development, rent stabilization, and more: Willow Ranch, Cape Cod, Fox Hollow, Fair Oaks, El Dorado, Casa De Amigos, Plaza del Rey, Mary Manor, and Adobe Wells.
- This district only crosses the highway 101 on the western side of the City along Mathilda Avenue (we removed the eastern “arm” that previously extended South along Lawrence Expressway).
- This district includes both Moffett Park and Peery Park and many of the neighborhoods that have been most affected by the office development in these areas.
- Historically, North Sunnyvale has been geographically underrepresented on the City Council and a North Sunnyvale district ensures that a North Sunnyvale resident gets elected to the Council.
- This district contains the Sunnyvale Hindu Temple on Persian drive, which is the largest Hindu temple in the South Bay and serves a large Hindu community, including a significant population of Hindus who live in the surrounding area.
- District 2 includes the Cold Weather Shelter, which is an important shelter for many homeless families and individuals.

District 3

- District 3 extends West along Alberta Avenue instead of Cheyenne, thus keeping Nimitz neighborhood whole.
- The northern part of District 3 follows major roads, including Sunnyvale Saratoga Road, Old San Francisco Road, Fair Oaks Avenue, and El Camino Real.
- District 3 respects the boundary between Cupertino Union Elementary School District and Santa Clara Unified School District by following Wolfe Road south of El Camino Real. Parents are actively involved in their children's education in CUSD where there is a special focus on math and music. Council district lines that align with school district boundaries is important for the Asian American community so that the Council can be responsive to issues important to students and their parents.
- Louis E. Stocklmeir Elementary School is in this district. At around 1,200 students, this is the largest elementary school in the entire Bay Area. With a very involved parent community, Stocklmeir has the highest test scores of any public school in the city.
- Next to Stocklmeir Elementary School is Ortega Park which attracts folks from all around District 3 and beyond for picnics, playgrounds, walks, sports, yoga, and tai chi. The school and the park are the hub for people of District 3 to meet and be in community.
- This district keeps King's Seafood Center (just north of El Camino Real) together with the large Asian American customer base in the rest of District 3 (south of El Camino), to honor the wishes of the manager of this business.
- This district also creates an Asian American empowerment district. Asian Americans have been attracted to this area by a combination of the quality of the schools and close proximity to different Asian restaurants, grocery stores, and places of worship.

District 4

- The northern border of District 4 now follows major roads and transit corridors, including the train tracks, S. Wolfe Road, Old SF Road, and Fair Oaks.
- District 4 keeps most of the Santa Clara Unified School District area within Sunnyvale whole.
- District 4 also respects the boundary between Cupertino Union Elementary School District and Santa Clara Unified School District by following Wolfe Road south of El Camino Real. Aligning council district lines with school district lines has been identified as a priority for many Sunnyvale residents, including many in the Asian American community.

- This district keeps the Sunnyvale portions of the attendance zones for Ponderosa, Laurelwood, and Braly Elementary schools together. These three zones combine for a close community around Peterson Middle School.

District 5

- Includes Cherry Chase, Cumberland, Cherry Hill, and West Valley.
- This district keeps together areas that have high rates of home ownership and higher income levels than the city at large.
- The Bar Yohai Sephardic Minyan synagogue and Chabad of Sunnyvale, which both serve the Jewish community, are located in this district.

District 6

- District 6 now eliminates the “feet” that were in the previous Unity Map 120C. It now crosses El Camino Real once between Hollenbeck and Sunnyvale Saratoga down until Remington. This enables us to population balance District 6 while sticking to major roads and smoothing out the previously mentioned feet.
- District 6 keeps a high concentration of renters and apartment units together. It also keeps the apartment buildings South of El Camino Real and North of Las Palmas park together with the apartment buildings North of El Camino Real.
- District 6 keeps St. Cyprian’s Parish (195 Leota Ave) together with the large Latinx congregation that attends it. This church is a sanctuary for the Latinx community in D6 that attends its Spanish mass.
- It also keeps a number of Indian grocery stores along El Camino Real together in one district.

Preferred Sequencing

Districts 1, 2, and 3 are up first for election in 2020 and Districts 4, 5, and 6 in 2022

- This sequencing ensures that the communities that have historically lacked representation on City Council, that have historically had lower voter turnout, and that will see their voting power increased because of the transition to district elections will have an opportunity to vote in the first district-based elections in 2020.

SEQUENCING HYPOTHETICALS FOR PREFERRED MAPS AND SUBMITTED REFINED PREFERRED MAPS

NOTES:

- 1. The sequencing hypotheticals for each map assumes elections in three districts each election year**
- 2. Data is from published NDC Maps**
- 3. The dividing line for the Geographic Distribution column is the Union Pacific rail road tracks**

Redistricting Criteria	107A	120A	120C	120D	121A
<i>Highest% Asian CVAP</i>	5, 6, 1 or 4	3, 4, 5	3, 1 & 2, 4, or 5	3, 4, 5	2, 6, & 3, 4, or 5
<i>Highest% Latino CVAP</i>	2, 3, 1	1, 2, 6	1, 2, 6	1, 2, 6	5, 4, 1
<i>Highest% Asian Registration</i>	5, 4, 6	3, 5, 4	3, 5, 4	3, 5, 4	2, 3, 6
<i>Highest% Latino Registration</i>	2, 1, 3 ^a	1, 2, 6 ^b	1, 2, 6 ^b	1, 2, 6 ^b	5, 4, 1 ^a
<i>Highest% Asian Turnout 2016</i>	5, 6, 4	3, 4, 5	3, 4, 5	3, 4, 5	2, 6, 3
<i>Highest% Latino Turnout 2016</i>	2, 1, 3 ^c	1, 2, 6 ^d	1, 2, 6 ^e	1, 2, 6 ^e	5, 4, 1 ^{**f}
<i>Lowest Off-Year Turnout</i>	2, 3, 1	1, 2, 3	1, 2, 3	1, 2, 3	5, 4, 1
<i>Highest Off-Year Turnout</i>	4, 6, 5	5, 4, 6	5, 4, 6	5, 4, 6	3, 6, 2
<i>Lowest Presidential Election Turnout</i>	3, 2, 5	1, 3, 2	1, 3, 6	1, 3, 6	5, 1, 2
<i>Highest Presidential Election Turnout</i>	4, 6, 1	5, 4, 6	5, 4, 2	5, 4, 2	3, 6, 4
<i>Highest Off-Year Turnout Drop-off</i>	1, 2, 4	2, 1, 5	2, 1, 5	2, 1, 5	4, 5, 3
<i>Geographic Distribution: An election in each part of the City every two yrs.</i>	1 or 2, & two of 3, 4, 5, 6	2 or 1, & two of 3, 4, 5, 6	2 or 1, & two of 3, 4, 5, 6	1 or 2, & two of 3, 4, 5, 6	4 & 1 or 5, & one of 2, 3, 6
<i>Geographic Representation: Districts with no resident Council member elected post-2013</i>	5 ^g , 2, 1	3 ^g , 1, 2	3 ^g , 1, 2	3 ^g , 1, 2	2 ^g , 5, 4

^a These are also the districts with the highest estimated percentage of over-all Protected Class registration

^b Districts 1 & 2 are also the districts with the highest estimated percentage of over-all Protected Class registration

^c In District 2, Protected Class voters are estimated to be the majority of the turnout; that changes in the November 2018 election in which Non-Hisp. White voters are estimated to be the majority of the turnout.

^d In Districts 1 & 2, Protected Class voters are estimated to be the majority of the turnout; that changes in the November 2018 election in which Non-Hisp. White voters are estimated to be the majority of the turnout.

^e In District 1, Protected Class voters are estimated to be the majority of the turnout; that changes in the November 2018 election in which Non-Hisp. White voters are estimated to be the majority of the turnout.

^f In Districts 4 & 5, Protected Class voters are estimated to be the majority of the turnout; that changes in the November 2018 election in which Non-Hisp. White voters are estimated to be the majority of the turnout.

^g There has not been a resident Council member in this territory at least since 2009.

**RESPONSES TO
COUNCIL QUESTIONS POSED
AT OCTOBER 26, 2019 MEETING**

1. *Can the City Charter contain a provision prohibiting the current councilmembers elected to Seats 1, 2 and 3 in the November 2018 election from running for the office of Mayor or the office of councilmember in one of the newly created districts in the November 2020 election?*

There is case law indicating that there is no “fundamental” right to run for office under the *federal* constitution. The United States Supreme Court has held that “[f]ar from recognizing candidacy as a ‘fundamental right,’ we have held that the existence of barriers to a candidate’s access to the ballot ‘does not of itself compel close scrutiny.’” *Clements v. Fashing*, 457 U.S. 957, 963 (1982).

California law, however, appears to be different, but evolving in the direction of federal law. Some older cases have referred to the right to seek office as a “fundamental” right and have accordingly applied strict scrutiny. (*Johnson v. Hamilton*, 15 Cal.3d 461, 466-68 (1975); *Zeilenga v. Nelson*, 4 Cal.3d 716, 721-22 (1971)). On the other hand, these cases striking down overly-long residency requirements were also premised in part on voters’ rights (which are intertwined with candidate’s rights, per *Johnson*), but also on the fundamental right to travel.

Moreover, as noted in an unpublished decision issued on October 28, 2019, those older cases cited above “were decided before *Clements*, *Anderson v. Celebrezze*, 460 U.S. 780 (1983), *Legislature v. Eu*, 54 Cal.3d 492 (1991), and *Burdick v. Takushi*, 504 U.S. 428 (1992), and no longer control.” *Friedman v. Gates*, 2019 Cal. App. Unpub. LEXIS 7180, *13 (Oct. 28, 2019); see also *Boyer v. County of Ventura*, 33 Cal.App.5th 49, 57-58 (2019) (declining to apply strict scrutiny to candidate qualifications case); *Rawls v. Zamora*, 107 Cal.App.4th 1110, 1115-16 (2003).

None of the above cases are directly on-point regarding an outright ban on running for office based on current incumbency. Rather, they address qualification and residency requirements. Nevertheless, it appears that the evolving standard in California is the balancing test articulated by the U.S. Supreme Court in *Burdick*, and adopted by the California Supreme Court in *Edelstein v. City and County of San Francisco*, 29 Cal.4th 164 (2002), in which the level of scrutiny depends on the severity of the burden imposed. (*Id.* at 174 (noting “[T]he rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights. Thus, as we have recognized when those rights are subjected to ‘severe’ restrictions, the regulation must be ‘narrowly drawn to advance a state interest of compelling importance.’” *Norman v. Reed* (1992), 502 U.S. 279, 289)). But when a state election law provision imposes only ‘reasonable, nondiscriminatory restrictions’ upon the First and Fourteenth Amendment rights of

voters, “the State's important regulatory interests are generally sufficient to justify' the restrictions.” *Anderson, supra*, 460 U.S. at 788-89 and n.9. In light of above analysis, and in the absence of an intent to discriminate, the permissibility of restricting a candidate elected in November 2018 from running for a district-based seat would likely turn on a determination of the severity of the restriction, and the strength of the rationale for the restriction.

2. *Proposed Charter Section 603(b) states that “every member of the Council elected by District shall remain a qualified voter in the District...throughout the full term of his or her office.” A request was made to clarify the terms residency and domicile and how these terms would affect a councilmember’s qualifications for office.*

In order to be a qualified voter, you must be registered to vote and a resident of the City of Sunnyvale and District in which you reside. California Elections Code section 349 defines residence for the purpose of voting as a person's domicile:

- (a) “Residence” for voting purposes means a person's domicile.
- (b) The domicile of a person is that place in which his or her habitation is fixed, wherein the person has the intention of remaining, and to which, whenever he or she is absent, the person has the intention of returning. At a given time, a person may have only one domicile.
- (c) The residence of a person is that place in which the person's habitation is fixed for some period of time, but wherein he or she does not have the intention of remaining. At a given time, a person may have more than one residence.

One scenario that was raised related to a councilmember needing to be out of the City for 60 days due to a work-related assignment. This scenario would likely meet the domicile test in Elections Code section 349(b) and not affect Sunnyvale qualified voter status because the councilmember’s intention would be to return to his or her residence upon the completion of the assignment.

However, note that such a scenario could raise issues other than residence or voter status. For example, Charter Section 604(a)(2) (renumbered to section 606 in proposed charter), an unexcused absence from meetings for more than 60 consecutive days triggers a vacancy.

3. *How do the term limit provisions of the proposed Charter Section 603 impact the Councilmembers whose terms were extended by 1 year to a one-time 5-year term as a result of Measure A (switch from odd to even year elections)?*

Measure A extended the terms of councilmembers elected to Seats 4, 5, 6 and 7 (elected in November 2011) by one year, which resulted in their term of office ending in January 2017 instead of January 2016. Mayor Klein was elected to fill a vacancy in Seat 4 at a special election in August 2016. The councilmembers elected to Seats 5, 6 and 7 in 2011 are no longer serving on City Council. As Mayor Klein’s initial term of office was 4 months and 8 days (130 days), under the proposed Charter Section 603

(current Charter section 602), this term of office would not be considered a full term because it was less than two years, and the limitation on his service in office would be that he could not serve more than 12 years in a 16-year period, commencing with his assuming office on January 10, 2017.

4. If a vacancy results from a councilmember submitting a letter of resignation, can the Councilmember add an effective date set at a specific date in the future, and, if so, can the councilmember subsequently elect to withdraw their resignation?


Charter Amendment Section 602 states that a vacancy occurs upon resignation. The section also states: "In the event of a vacancy on the City Council, the Council shall officially declare the seat vacant within thirty days of the commencement of any vacancy." The Charter does not provide for the resigning Councilmember to specify a specific future date when the resignation would be effective. In contrast, pursuant to Government Code section 1770(c)(2) a letter of resignation may specify a date on which the resignation becomes effective. A resignation takes effect by its terms and need not be accepted. *Meeker v. Reed*, 70 Cal.App 119, 123 (1924). Although a resignation can be withdrawn before it becomes effective, once effective, it may not be withdrawn. *American Fed'n. of Teachers v. Bd. of Educ.* 107 Cal.App.3d 829, 840 (1980); *Armistead v. State Personnel Bd.* 22 Cal.3d 198, 206 (1978).

Proposing amendments to this provision to clarify issues pertaining to the ability of a Councilmember to specify the effective date of her/his resignation and the effect of such specification in light of other Charter language, is not material to the issue of establishing district-based elections. Hence, it is our recommendation that these issues be deferred to future Charter study.



Sunnyvale

OFFICE OF THE CITY ATTORNEY
MEMORANDUM

Date: November 5, 2019
To: Honorable Mayor and City Council
From: JOHN A. NAGEL 
City Attorney
Subject: Supplemental Clarifying Response to Question No. 3 of the Responses to Council Questions Posed at October 29, 2019 Meeting

Question 3: *How do the term limit provisions of the proposed Charter Section 603 impact the Councilmembers whose terms were extended by 1 year to a one-time 5-year term as a result of Measure A (switch from odd to even year elections)?*

I would like to make a clarification to my earlier response to note that the provisions of Measure A extended the terms of all council seats by one year, not just seats 4-7. Measure A specifically provided that the terms of all seats expiring in January 2016 and 2018 would be extended by one year, notwithstanding the 4-year term limits set forth in the charter. The proposed Charter provisions do not purport to change the even-year general municipal elections or the associated provisions approved by voters to extend terms by one year to facilitate that change. These terms are still considered “four year elective terms” for purposes of interpreting the Charter because the councilmembers were initially elected to four-year terms, which were later extended by operation of law when voters approved the change to even-year elections. As a result, this exception to the four-year term limit would apply for any councilmember(s) whose terms would have expired in January 2016 (extended to January 2017) and January 2018 (extended to January 2019).

Though Measure A did not make its impact to the Charter’s total term limit provisions explicitly clear, it is my opinion that the extension didn’t alter councilmembers’ base elective term of four years for the purposes of term limit calculations. If the Council determines it wishes to make this explicit in the proposed Charter revisions, then they could consider adding a subsection (d) to the new section 604 (Term limits.), which could read as follows:

(d) Notwithstanding the four-year City Councilmember term limits set forth in this article, the elective terms for City Councilmembers whose terms of office would have expired in January 2016 and 2018 and that were extended by one year pursuant to the voter’s adoption of Measure A (2013) shall be considered four-year elective terms for purposes of calculating total term limits pursuant to this section.