

RESOLUTION NO. 907-18

**A RESOLUTION OF THE CITY OF SUNNYVALE CITY
COUNCIL, PURSUANT TO CALIFORNIA ELECTIONS
CODE SECTION 10010(E)(3)(A)**

WHEREAS, the City of Sunnyvale is a Charter City pursuant to the Constitution of the State of California, article XI, section 3; and

WHEREAS, in accordance with article XI, section 5 of the Constitution of the State of California, section 601 of the Charter of the City of Sunnyvale provides for a system of elections for City Council members, which reads, in relevant part:

Each member of the City Council shall be elected from the City at large at the General Municipal Election for a term of four years. The term shall commence at the first regular meeting in January, at which the City Council shall certify the election results, and shall continue until a successor is elected and qualified.

The office of each member of the Council is a separate elective office to be separately filled at any election.

The person receiving the highest number of all the votes cast for a particular elective office at any election shall be deemed and declared elected to that office.

Each Council seat shall be designated by a number from 1 through 7 and shall be known as "Councilmember Seat Number ____." The designation given to each elective office shall be used in all elections, nomination papers, certificates of election, and all other papers pertaining to such office, and to designate the incumbent of such office.

WHEREAS, the voters of the City approved this electoral system, which the City has used since 1968; and

WHEREAS, the voters of the City of Sunnyvale have elected many Asian and Latino candidates to represent them on the many elective boards and legislative bodies overlapping the City of Sunnyvale, including the City Council; and

WHEREAS, the provisions of section 601 of the Sunnyvale Charter can be changed by a vote of the people (Cal. Const., article XI, section 3); and

WHEREAS, the California Elections Code allows the City hold an election for a ballot measure on the Charter Amendment in either March 2020, or November 2020 (Cal. Elections Code section 1415); and

WHEREAS, on September 5, 2018, the City Council held a special meeting for the purpose of providing direction to staff regarding “Public Outreach and Submitting a Charter Amendment to Voters Regarding Changing At-large with Numbered Seats to District-Based “Elections (“Charter Amendment”, herein); and

WHEREAS, at the September 5, 2018 special meeting, staff proposed that the City Council consider the following specific steps for submitting such a Charter Amendment to Sunnyvale voters:

Phase 1: Public Outreach and Education on District Elections.

- Timeline: Winter- Spring 2019.
- Scope: Public engagement and education regarding the issue of changing to district-based elections. Details of outreach plan to be determined/approved by City Council in Fall 2018.

Phase 2: Decision on 2020 Ballot Measure for District Elections.

- Timeline: Summer 2019
- Scope: (a) Council consideration of public outreach and decision on whether to submit question of changing to district based elections to voters in 2020.

Phase 3: Election regarding Charter Change to District Elections.

- Timeline: November 2020 general election
- Scope: Voter consideration of proposed change to City Charter to eliminate city council at-large, numbered-seat elections, and implement district-based elections.

Phase 4: District Implementation (assuming voter approval of charter amendment)

- Timeline: Public process establishing districts in Winter- Summer 2021 based on 2020 Census results, with first district elections beginning 2022 when existing seats 1-3 would be up for election; remaining district seats to be filled in 2024 when existing seats 4-7 would be up for election.
- Scope: Generally, when implementing district-based elections, the terms of sitting Councilmembers are not to be cut short, so cities that make the change to district-based elections generally implement them as terms of existing incumbents end. Thus, council seats based on districts would not be fully implemented until the 2024 elections. Additionally, the City Council would be required to update district boundaries based on 2020 census data.

WHEREAS, at the September 5, 2018, the City Council provided the following direction to staff:

Scope a public outreach and education plan for receiving public input on whether the Council should place a measure on the November 2020 ballot for voters to decide whether to amend the City Charter to change from at large with numbered seats to district based elections or other approaches that are tailored as pertain to the California Voting Rights Act, and

Return to Council by November 2018 for approval of the outreach plan which includes outreach in multiple languages and resources necessary to implement that plan; and creation of a citizens' advisory committee where staff can consider the appropriate groups to be included in it.

WHEREAS, in accordance with instruction from the City Council, staff retained a community engagement consultant, Placeworks, Inc., and has commenced developing a program of public engagement and education regarding the issue of changing to district-based elections, including preliminary stakeholder meetings to assist in identifying interest groups to ensure that the proposed plan includes provisions for engaging the full community; and

WHEREAS, the City received a certified letter on October 9, 2018, from the law firm of Goldstein, Borgen, Dardarian, & Ho ("GBDH") notifying the City of GBDH's belief that the City's electoral system violates the California Voting Rights Act ("CVRA") and threatening litigation if the City declines to change voluntarily to a district-based election system for electing council members; and

WHEREAS, the City has no record of notice from any party asserting that the City's electoral system may violate the CVRA prior to receipt of the certified letter from GBDH; and

WHEREAS, the City immediately reached out to GBDH and the City Attorney met with the law firm on October 9, 2018, and expressed a desire to work cooperatively toward submitting a Charter Amendment to the voters of Sunnyvale; and

WHEREAS, the California Legislature, in amendments to Elections Code section 10010, has specified the minimum requirements of a process whereby a jurisdiction can change to a by-district election system and, for certain periods of time, be protected from litigation under the CVRA; and

WHEREAS, Elections Code section 10010(e)(3)(A) permits a political subdivision, within 45 days of receipt of a written notice by certified mail that its method of conducting elections may violate the California CVRA, to pass a resolution outlining its intention to transition from at-large to district-based elections, specific steps it will undertake to facilitate this transition, and an estimated time frame for doing so; and

WHEREAS, upon the adoption of a resolution of intention Elections Code section 10010(e)(3)(B) prohibits a prospective plaintiff from commencing an action to enforce

California Election Code sections 14027 and 14028 within 90 days of the resolution's passage; and

WHEREAS, the adoption of this resolution of intention will permit the Council to consider the comprehensive public outreach and engagement plan it directed staff to develop on this issue in September 2018, and additional public input regarding the transition from at-large to district-based elections prior to the date an action may be filed to enforce California Election Code sections 14027 and 14028; and

WHEREAS, the City Council's instruction to staff on September 5, 2018 met all the requirements of a resolution pursuant to Elections Code section 10010(e)(3)(A); and

WHEREAS, the City Council now wishes to memorialize those instructions to staff in a resolution in accordance with Elections Code section 10010(e)(3)(A).

NOW, THEREFORE, BE IT RESOLVED, THE CITY COUNCIL OF THE CITY OF SUNNYVALE, CALIFORNIA, DOES RESOLVE AS FOLLOWS:

1. The foregoing recitals are true and correct.
2. The City Council shall consider an ordinance to place on the ballot a Charter Amendment or Charter Amendments amending section 601 of the Charter to eliminate at-large elections with numbered seats and to establish a district-based election system for City Council elections.
3. Following the community engagement process, the City Council shall consider adopting a resolution in a timely manner calling a municipal election for the purpose of submitting to City voters a ballot measure to place such Charter Amendment or Charter Amendments on the ballot as early as March 2020, but recognizing November 2020, as an alternative election date.
4. To facilitate the process, the City Council directs staff to retain a qualified demographer and such other consultants as may be necessary to educate the public regarding the issue of changing to district-based elections.
5. To facilitate the process, the City Council directs staff to bring back to the Council at a December 11, 2018 special meeting, a proposed program of public engagement and education regarding the issue of changing to district-based elections, which program shall include public input on whether a Charter Amendment should be placed on the March 2020 ballot, or on the November 2020 ballot, and public input on various options for district-based and other electoral systems for City Council elections.
6. Upon the City Council's approval of the program of public engagement and education, this resolution shall be amended to include additional specific steps to facilitate the process as approved by the City Council.

Adopted by the City Council at a special meeting held on November 20, 2018, by the following vote:

AYES: HENDRICKS, KLEIN, LARSSON, GRIFFITH, MELTON, SMITH
NOES: GOLDMAN
ABSTAIN: NONE
ABSENT: NONE
RECUSAL: NONE

ATTEST:



KATHLEEN FRANCO SIMMONS
City Clerk
(SEAL)

APPROVED:



GLENN HENDRICKS
Mayor

APPROVED AS TO FORM:



MELISSA C. TRONQUET
Assistant City Attorney