



File #: 19-0362, Version: 1

REPORT TO COUNCIL

SUBJECT

Summary of California Voting Rights Act Phase 1 Community Input, Direction on Number of City Council Districts for a March 2020 Ballot Measure to Amend the City Charter to Implement City Council By-District Elections, and Summary of Phase 2 Next Steps.

BACKGROUND

On September 5, 2018, the City Council held a public hearing regarding changing the City's current at-large with numbered seats system for electing City Council members to a district-based form of elections RTC No. 18-0776. Council directed staff to scope a public outreach and education plan for receiving public input on transitioning to district-based elections.

In October 2018, the City received a certified letter from attorney Laura Ho of the law firm Goldstein, Borgen, Dardarian & Ho, alleging on behalf of potential plaintiff Samir Kalra that the City's current electoral system violates the California Voting Rights Act ("CVRA") because it "dilutes the voting power of Asian American voters." Three additional potential plaintiffs, Sunnyvale residents Galen Kim Davis, Kathy Higuchi, and Bowman Ching, joined the CVRA challenge in January.

Council adopted a resolution of intent to change to district-based elections pursuant to Elections Code section 10010 in November 2018, which provided a 90-day "safe harbor" period during which the City could not be sued. In adopting that resolution, the Council restated its prior direction to move forward with a change to district based elections, and its commitment to do so with public outreach and engagement.

In December 2018, Council adopted a community outreach plan and directed staff to return in February 2019 with an update on initial outreach. Based on the results of initial public outreach as well as legal issues and risks, Council adopted an amended Resolution of Intent, Resolution No. 931-19 (See Attachment 1), on March 19, 2019 to place a charter amendment on the ballot in March 2020.

Staff presented information on outreach efforts from December 2018 through April 2019, public input and polling results regarding the preferred structure of a district-based Council election system, as well as legal analysis on a community alternative (the 4+3 model) at a study session on June 11, 2019 (RTC No. 19-0524).

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" with the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines sections 15320, 15378 and 15061 (b)(3) as it is an organizational structure change and does not have the potential to result in either a

direct or reasonable foreseeable indirect physical change in the environment.

DISCUSSION

As part of the City's CVRA Phase 1 outreach efforts, staff gathered community input on important decision points like the number of Council districts and process for selecting the mayor preferred by residents. In addition, the City contracted with Godbe Research to conduct a poll of likely March 2020 voters. Results from community input surveys collected in March and April 2019 show a slight preference for seven districts with selection of the mayor from within Council (49%) compared to six districts and a directly elected mayor (44%). A summary of the community outreach process was presented to Council in a study session on June 11, 2019 (RTC 19-0524, Attachment 1).

A poll of 528 likely March 2020 voters in Sunnyvale was conducted between May 15-18, 2019 that focused on the selection process for the mayor. Results of the poll were also presented to Council in a study session on June 11, 2019 (RTC 19-0524, Attachment 2).

Randomly selected Sunnyvale voters were asked about their level of support for sample ballot questions that focused on either seven districts or six districts and a directly elected mayor. Results were as follows:

- When initially asked about whether they would support seven districts, 48.1% said definitely/probably yes.
- When initially asked about whether they would support six districts and a directly elected mayor, 52.6% said definitely/probably yes.

After participants heard both supporting and critical statement about the potential ballot measure, they were asked the same question about their support for the measure. Results are as follows:

- When asked about whether they would support seven districts, 58.5% said definitely/probably yes.
- When asked about whether they would support six districts and a directly elected mayor, 54.9% said definitely/probably yes.

It is important to note that the preference between the two options is not statistically significant. Based on the sample size, the margin of error was approximately 6% for these split-sample questions. However, as Charles Hester of Godbe Research stated at the June 11 Council study session, based on the final polling questions, the 7-district system has less risk of failing given the margin of error on the low end is above the required 50% voter approval required for either ballot measure to be successful.

In addition to these two options, a group of community members proposed a "4+3 district" alternative in which a 4-district map is used for council elections in presidential years, and a 3-district map is used in gubernatorial years with every voter living in two overlapping districts and is represented by two council members. Legal counsel advised that this model is legally untested and may subject the City to further litigation if a plaintiff contends that it is not a "district-based" system within the meaning of the CVRA. Further legal risks could exist under the Federal Voting Rights Act if the Census 2020 data demonstrate that a majority-minority district could be drawn with a six or seven district system. Lastly, the potential plaintiffs have expressed opposition to this option arguing that the 4+3 option is not a full remedy for the alleged violation of the CVRA (See Attachment 2).

Staff requests Council direction on whether the Council desires seven districts or six districts with an at-large mayor. Direction on this broad issue will (1) allow staff to begin drafting Charter amendments for Council review and approval, and (2) inform the next phase of outreach focused on developing district boundaries. This direction will ensure that Council has ample time for public review of proposed Charter amendment language and adopts district maps by December 2019 pursuant to the Council Election Outreach Plan (Attachment 3) approved by Council on December 11, 2018 (RTC 18-1059).

Next Steps

Phase 2 of the District Elections process involves two parallel paths. First, Council with guidance from City Attorney's Office and public input, will direct staff to draft a proposed Charter Amendment and ballot measure language for the March 2020 election. Second, staff will implement a community-driven district map development process. Both are described below.

Charter Amendment

Based on the Council's direction, staff will draft a Charter amendment that reflects Council direction regarding number of districts and other changes necessary to align existing Charter provisions with the district system selected by the Council. Staff's goal in drafting Charter amendments for Council review will be to add necessary provisions for district elections while maintaining all other existing concepts and principles in the Charter to the extent they are not in conflict, and unless otherwise directed by Council. One or more study sessions will be held in September and October 2019 for the Council to review, discuss, and receive public comment on the proposed Charter amendment language.

A resolution approving the final language and placing the measure on the ballot must be adopted no later than 88 days before the election. However, the City Clerk's preferred date for this action is the November 12, 2019 Council meeting or earlier. Adoption of a resolution placing the final measure on the ballot is currently scheduled for November 12. Attachment 4 provides the full schedule of meetings planned for discussion of the charter measure and district map drawing.

District Map Development

The City is committed to continuing a robust public engagement process in Phase 2 as we work with the community to develop proposed maps for Council consideration. As shown in the Phase 2 draft schedule, this community-driven process will begin with a kick-off meeting on July 15. At this time, residents will have access to an online mapping tool to create proposed maps for new council districts. Residents can attend three training sessions or watch a "how to" video prior to creating a map. A demographer hired by the City will guide the process; from explaining the legal requirements and the mapping tool to helping the community identify viable options and select preferred maps.

There are strict legal requirements for creating district boundaries. The City is required to hold a minimum of four public hearings and make maps under consideration publicly available for at least seven days before a public hearing, including revised maps. In creating the district boundaries, map developers must ensure compliance with the following state and federally mandated legal criteria:

1. each council district shall contain a nearly equal population as required by law; and
2. each council district shall be drawn in a manner that complies with the Federal Voting Rights

Act; and

3. no council district shall be drawn with race as the predominant factor in violation of the principles established by relevant caselaw.

In addition to these legal criteria, other factors may be considered, such as communities of interest and geographic boundaries. Residents will be encouraged to comment on maps created by others at community meetings, pop-ups, surveys, and four Council hearings all prior to the City Council selecting a final map in November. The City Council will be informed of public input, but has the discretion to balance criteria and input when making a final selection.

FISCAL IMPACT

No new fiscal impacts are anticipated at this time from the issues discussed in this report.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

ALTERNATIVES

Staff is seeking Council direction on the number of districts and selection of the mayor, which may include the following alternatives:

1. Direct staff to prepare a ballot measure amending the City Charter to change the electoral system from seven at-large numbered seats to seven district seats and engage in a public process for district-map drawing to determine the boundaries for seven city council districts.
2. Direct staff to prepare a ballot measure amending the Charter to change the electoral system from seven at-large numbered seats to six district seats and an at-large, directly elected mayor and engage in a public process for district-map drawing to determine the boundaries for six city council districts.
3. Other action as determined by the Council.

STAFF RECOMMENDATION

Staff makes no recommendation.

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ATTACHMENTS

1. Resolution No. 931-19
2. June 6, 2019 letter from plaintiffs regarding 4+3 option
3. Council Election Outreach Plan
4. Draft District Elections Phase 2 Schedule