



# City of Sunnyvale

## Agenda Item

18-0776

Agenda Date: 9/5/2018

### REPORT TO COUNCIL

#### SUBJECT

Direction Regarding Public Outreach and Submitting a Charter Amendment to Voters Regarding Changing At-large with Numbered Seats to District-Based Elections

#### REPORT IN BRIEF

Cities throughout the state have increasingly been facing legal challenges to “at-large” systems of electing city councilmembers. The California Voting Rights Act (“CVRA”) was adopted to address vote dilution caused by at-large election systems in the presence of racially polarized voting. Almost all cities challenged under the CVRA have settled claims out of court by voluntarily shifting to district-based elections. In the Bay Area, cities including, among others, Fremont, Menlo Park, and Morgan Hill, have recently switched to district-based elections.

This issue made headlines in our neighboring city of Santa Clara over the last several months. Santa Clara, which has a charter provision with an at-large, numbered-seat system nearly identical to Sunnyvale’s system, was sued by the South Asian Law Alliance claiming that the system violated the CVRA by diluting the vote of Asian voters. Santa Clara chose to litigate the issue and the case went to trial in April 2018. The Santa Clara County superior court judge agreed with plaintiffs, holding that Santa Clara’s system violated the CVRA. The second phase of the trial to determine remedies was held in July 2018, and the court ordered Santa Clara to shift to district-based elections (six districts and a separately-elected mayor) beginning in November 2018.

Although most cities that have changed their electoral systems have done so under the threat of CVRA litigation, staff is bringing this issue forward and recommending that the Council make the voluntary choice to submit the issue to Sunnyvale voters as a charter amendment to comply with the CVRA’s disfavor of at-large electoral systems and eliminate the City’s exposure to litigation. The fact that Santa Clara’s substantially similar system was recently struck down makes this issue timely for the Council’s consideration. As discussed in detail below, Sunnyvale would likely face a high burden if sued, CVRA litigation is tremendously costly, and the outcome of litigation would be highly uncertain. Voluntarily initiating the process to switch to by-district elections will give the Council greater flexibility to determine the process, and the community greater opportunity for input, than the City would have if CVRA litigation is threatened or commenced.

#### BACKGROUND

##### 1. The California Voting Rights Act Makes it Easier for Plaintiffs to Prevail in Lawsuits Challenging At-Large Voting Systems

The CVRA was signed into law in 2002. Broadly, the CVRA prohibits an at-large method of election that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election. The law’s intent is to expand protections against vote dilution over those

provided by the Federal Voting Rights Act of 1965 (“FVRA”). The law was also motivated, in part, by the lack of success by plaintiffs in California in lawsuits challenging at-large electoral systems brought under the FVRA. The passage of the CVRA made it much easier for plaintiffs to prevail in lawsuits against public entities that elect members to their governing bodies through “at-large” elections. To establish liability under the CVRA, a plaintiff must prove the existence of “racially polarized voting,” which is defined as “voting in which there is a difference, as defined in case law regarding enforcement of the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.), in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and the electoral choices that are preferred by voters in the rest of the electorate.” Other factors are also relevant in determining liability. Proof of intent on the part of voters or elected officials to discriminate against a protected class is not required. In addition, plaintiffs are not required to prove that the protected class can form the majority of the eligible voters in a single-member district in order to proceed to trial, a significant change from the proof required under the FVRA.

As a result of the CVRA, public agencies throughout the state have increasingly been facing legal challenges to their “at-large” election systems. Only 28 of California’s 482 cities had by-district election systems prior to the passage of the CVRA. Between 2011 and 2016, that number doubled to 56. Today, at least 88 cities have transitioned to by-district elections, with an estimated two dozen or more at various stages of switching or litigating the issue. School districts and counties have also been targets for CVRA litigation, and like cities, have made the switch to district elections as a result of threatened litigation, or to settle litigation. Almost all agencies challenged have settled CVRA claims out of court by essentially agreeing to voluntarily shift to district-based elections. Those that have defended CVRA challenges in the courts have ultimately either voluntarily adopted, or have been forced to adopt, district-based elections.

Sunnyvale is subject to the CVRA because it has an electoral system that provides for at-large elections. Sunnyvale’s system includes an additional feature, candidates run for specific seats but on a citywide basis. See Charter Section 601. This type of system is commonly referred to as a “numbered post” or “numbered-seat” system. Although uncommon at the local level in California, a few cities historically used this type of system. Our research indicates that all except Sunnyvale have switched to district elections, either through settlement of litigation or by court order.

## **2. Litigation Outcome under the CVRA is Highly Uncertain**

The CVRA is largely untested in the California Courts of Appeal, with only three precedential rulings. Significantly, the California Court of Appeal for the Fifth District upheld the CVRA against a facial constitutional challenge in *Sanchez v. City of Modesto*, 145 Cal. App. 4th 660 (2006). Both the California and United States Supreme Courts denied review, and Modesto ultimately settled the litigation.

Litigation has also been filed against several cities and jurisdictions, but nearly all have settled at various stages of the litigation. Only three CVRA cases have gone to trial. In the first, *Jauregui v. City of Palmdale*, 226 Cal. App. 4th 781 (2014), the City lost in the trial court and was forced into district-based elections formulated by the plaintiffs. An interlocutory appeal in the case determined that the CVRA applies to charter cities. The appeal on the merits settled before a final determination on appeal. The second, *Kaku v. City of Santa Clara*, resulted in a trial court decision discussed in more detail below, holding that Santa Clara’s at-large electoral system with numbered-seats violates the

CVRA. Further, at the remedies phase, the court ordered immediate district-based elections. The third, *Pico Neighborhood Association v. City of Santa Monica*, is in the middle of trial as of the writing of this report, with the city arguing, among other defenses, that it's at-large system does not violate the CVRA because districts will not meaningfully enhance minority representation.

Another case, *Higginson v. City of Poway*, was brought by the former mayor of that City after it switched to district-based elections in response to a threat of litigation. Former Mayor Higginson, as plaintiff, is arguing that the decision to switch to district-based elections violated his constitutional rights as a racial gerrymander that directly affected him by reducing the number of candidates for which he can vote. The case is now pending in federal district court in Southern California after the Ninth Circuit Court of Appeals reversed an earlier dismissal.

Decisions are not expected on the merits of either the Santa Monica or Higginson cases for some time, and it appears likely that both will be appealed once trial court decisions are issued.

a. *Kaku v. City of Santa Clara*

The Santa Clara case is important for Sunnyvale to consider because of the similarities between the demographics and the electoral systems in both cities, as well as their geographic proximity. Plaintiff in this case alleged that Santa Clara's at-large, numbered-seat system for electing city council members impaired the ability of Asians to elect preferred candidates.

CVRA trials are held in two phases. First, liability, determining whether a City's electoral process violates the CVRA. Second, if a CVRA violation is found, a remedies phase to determine how the violation should be corrected.

A primary factor in determining liability in a CVRA case is statistical analysis of voting patterns over time and election results for minority candidates who are preferred by minority voters. The plaintiffs' expert in *Santa Clara* presented analysis showing that five of ten city council elections, as well as six of nine county and school board elections, exhibited racially polarized voting. The City argued, among other arguments, that the usual statistical methods to analyze racially polarized voting could not produce reliable results because there is not a high enough concentration of Asians in any precinct, and that, even if statistical methods did have some probative value, they did not show racially polarized voting. The court not only rejected all of Santa Clara's arguments on these points, but also accepted a lower standard of reliability for the statistical analysis in order to establish racially polarized voting in some elections: 80% rather than the typical 95% standard for such statistical analysis.

In addition to statistical analysis on whether voting is racially polarized, other factors, such as the extent to which minority representatives have been elected, a history of discrimination, or voting practices that enhance the potential for discrimination, may also be considered in determining liability. The court was convinced that many of these other factors also weighed in favor of finding a CVRA violation in Santa Clara. For example, the court noted that "at-large voting systems are disfavored under both federal and California voting rights laws because it is well-understood that such election systems can dilute the votes of racial minority groups." (Citing *Thornburg v. Gingles* (1986) 478 U.S. 30, 47). Although nearly 40% of Santa Clara residents and 30% of eligible voters are Asian, voters had never elected an Asian to the City Council, and the City had considered but failed to address the

issue on several occasions even though plaintiff had put Santa Clara on notice of the alleged violation as early as 2011. The court also noted that the “numbered-seat” system of at-large elections has been held in numerous cases to disadvantage minority voters, in part by preventing them from concentrating their votes behind a single minority-preferred candidate and withholding votes from less preferred candidates. (Citing, e.g., *City of Rome v. United States* (1980) 446 U.S.156). Thus, the court concluded that both the statistical evidence and other evidence demonstrated that Santa Clara’s system violated the CVRA.

In the remedies phase, the court enjoined further at-large elections, ordered the City to conduct a highly expedited process to develop proposed electoral districts, and then ordered future City Council elections to be conducted by-district elections. Following a ten-hour trial, the court selected a six-district map with a separately elected mayor proposed by the City, and directed the City and the Registrar of Voters to implement district elections beginning with the November 2018 election.

There are three important takeaways from this case for the Sunnyvale City Council to consider. First, the court, the same court in which a case against the City of Sunnyvale would likely be tried, was willing to accept statistical evidence that did not meet usual standards of reliability. Second, the court could find that other factors-particularly the at-large, numbered-seat system that is nearly identical to the system at issue in *Santa Clara*- weigh in favor of finding a CVRA violation. Finally, the outcome if Sunnyvale was sued could be a court-ordered switch to by-district elections, eliminating the opportunity for the City to determine the process for community input, discussion, and education on an issue that arguably goes to the core of city governance, and truncating the community’s ability to participate meaningfully.

### **1. The Potential Costs of CVRA Litigation are Extremely High**

The CVRA has a mandatory provision that awards reasonable attorney fees and costs, including expert fees, to the prevailing plaintiff. This requirement applies even if the case settles and districts are instituted after the lawsuit is filed. Fees and expenses in a voting rights lawsuit, which requires generally two or more experts, can be quite high. Cities that attempted to defend their “at-large” systems of city council elections in court have incurred significant legal costs for defense, and paid huge amounts in plaintiffs’ attorney fees. Attorneys’ fee awards in cases that have gone to trial have reportedly reached \$3,500,000 and beyond. Even cases that settle typically have included paying substantial amounts (six-figures or more) in plaintiff’s attorneys’ fees. To date, staff is unaware of any city that has prevailed in defending its “at large” system of election under a claim filed by any individual or group under the CVRA.

Moreover, even if a city prevailed, it would be responsible for its own defense costs because the CVRA does not allow fee or cost recovery for prevailing defendants. Defense costs for a complete trial under the CVRA are likely to exceed \$1 million. Also, without changing its electoral system, the City would continue to remain vulnerable to subsequent litigation brought under the CVRA by different plaintiffs.

## **DISCUSSION**

### **1. Sunnyvale Elections, Census Data, and Election History**

As noted above, Sunnyvale has an electoral system specified in its charter that provides for at-large elections, with candidates running for specific seats on a citywide basis. This system is subject to challenge under the CVRA.

Under the most recent estimates (2012-2016) available from the United States Census Bureau's American Community Survey, approximately 52 percent of Sunnyvale's eligible voters, (i.e., Citizens of Voting Age, or "CVAP") are members of a minority group:

<b>City of Sunnyvale - Summary Demographics</b>	<b>Count</b>	<b>Percent</b>
Total Population (2010 Census)	140,081	
Ideal District Size	20,012	
Voting Age Population (2010 Census)	108,646	
Citizen Voting Age Population (2012-2016 Special Tabulation)	77,125	
Hispanic/Latino CVAP (2012-2016 Special Tabulation)	10,687	13.86
Non-Hispanic White CVAP (2012-2016 Special Tabulation)	37,035	48.02
Non-Hispanic Black CVAP (2012-2016 Special Tabulation)	2,560	3.32
Non-Hispanic Asian CVAP (2012-2016 Special Tabulation)	25,679	33.30
Non-Hispanic Pacific Islander CVAP (2012-2016 Special Tabulation)	338	0.44
Non-Hispanic Indian CVAP (2012-2016 Special Tabulation)	457	0.59
Non-Hispanic "Other" & Multi-racial CVAP (2012-2016 Special Tabulation)	370	0.48
Total Registered Voters (2016 General Election)	60,926	
Spanish-Surnamed Registered Voters (2016 General Election)	7,352	12.07
Asian-Surnamed Registered Voters (2016 General Election)	13,226	21.71
Total Actual Voters (2016 General Election)	50,586	
Spanish-Surnamed Actual Voters (2016 General Election)	5,757	11.38
Asian-Surnamed Actual Voters (2016 General Election)	10,756	21.26

With regard to Asian and Latino eligible voters, Sunnyvale's demographics are similar to the City of Santa Clara's.

Over the years, Sunnyvale has had City Council candidates and Councilmembers that identify as a minority race or ethnicity.

- In 2013, Magana ran for City Council and lost to Hendricks.
- In 2011, Chang lost to Meyering; and Pan lost to Milius.
- In 2009 and 2003, Flores lost to Moylan and Swegles, respectively.
- In 2003, Chu won but was not reelected in 2007, when he lost to Whittum.
- Lee won in 2003 and served a term as mayor. Lee was not challenged in 2007 and served another term.

While Asian candidates have had success running for election to the Sunnyvale City Council, plaintiffs could argue that more recent losses (Magana, Chang, Pan, Flores, and Chu) are more probative of the current ability of minority candidates to get elected, if there is racially polarized voting. Potential plaintiffs would also introduce evidence of the electoral success of minority candidates for other jurisdictions. For example, Flores ran for election to the Sunnyvale School District Board of Trustees in 2005, and was not elected. On the other hand, Trustee Mah has represented Sunnyvale School District on the Board of Education for three terms.

As noted above, proof of intent to discriminate against a protected class is not required. Moreover, the CVRA does not require, at the liability stage, that plaintiffs demonstrate the possibility of creating a district that is majority-minority in terms of the Citizens of Voting Age Population.

## **2. Types of Voting Systems**

There are five major types of voting systems in use throughout California, discussed below. As a charter city, Sunnyvale has the flexibility to choose any of these methods, or a different method. However, as a practical matter, it is constrained because (a) if a court concludes that the City is in violation of the CVRA, by-district elections is the only remedy to date imposed by a court under the CVRA, and (b) even if it was clear that some of the other methods, discussed below, met CVRA requirements, the Santa Clara County registrar of voters, which administers Sunnyvale elections, does not currently have the ability to implement the last two methods (i.e., cumulative voting and ranked choice voting). Consequently, Staff is recommending that Council focus narrowly on the question of switching to by-district elections at this time in order to address the immediate issues related to CVRA compliance. Other methods or related considerations could be evaluated separately as future study issues.

a. At Large: In at-large elections, voters of the entire city elect all members of a city council every two years. Depending on the number of open positions on a city council, the top three or four vote-getters (e.g., in a city with seven council members) win a seat on the City Council. At-large elections can also have the added feature of numbered-seats, in which candidates must run for specific seats on the City Council, and only the top vote-getter for each seat is elected. Advocates of at-large elections argue that governance is improved when elected officials answer to the entire community and not the interests of their district alone, and contend that officials elected by-districts tend to have too much influence over decisions affecting their district or make decisions to benefit their individual districts, rather than the community as a whole. Also, in at-large elections, all voters vote for city council candidates every two years; in by-district elections, voters vote only every four years. *The plain language of the CVRA explicitly targets elimination of at large elections.*

b. From-District: Another version of an at-large elections system is a “from-district” elections system where each council member is elected by voters from the entire city, but the city is divided into districts and each council member must reside within a particular district. This hybrid system provides some assurance of geographical representation for all parts of the City, while also promoting citywide decision making. *However, this system is not immune from a CVRA challenge.*

c. By-District: In a by-district election system, a city is divided into equipopulous districts and one council member is elected by only the registered voters in that particular district. Advocates of by-district-based elections argue that officials elected by-districts are more responsive to the constituents in the district and all areas of the City are represented. Also, as all CVRA lawsuits assert,

by-district voting allegedly makes it easier for members of protected classes to elect candidates of their choice because theoretically, minority voters would be concentrated in a particular number of districts increasing their voting strength. Additionally, some argue that non-incumbents fare better in by-district elections because a by-district system likely makes running for election more accessible in terms of campaign time and costs since citywide campaigning is not required, and voter choices are simplified with fewer candidates to learn about. Cities around the state are now moving to by-district elections regardless of size, although historically by-district elections were commonly utilized primarily in large cities with distinct neighborhoods. Sunnyvale has experienced significant growth over the last several decades and now has a population size that historically would have made by-district elections a stronger consideration, independent of the CVRA. *By-district elections are the only form of election that is immunized from a CVRA challenge.*

d. Cumulative Voting: Cumulative voting allows a voter to cast more than one vote per candidate. For example, if there are three Council seats up for election, a voter can cast all three votes for one candidate, or two votes for one candidate and one for a second candidate, or one vote each for three candidates. Mission Viejo recently settled a CVRA lawsuit by agreeing to implement cumulative voting beginning in 2020, and is believed to be the first municipal entity in the state to use this method. Also, in the CVRA lawsuit against the City of Santa Clarita, the parties proposed a settlement by implementing cumulative voting, but the California Secretary of State filed a letter with the Court noting there was no authority for cumulative voting in cities in California. *There is no definitive authority that cumulative voting remedies a CVRA violation, the Santa Clara County Registrar of Voters cannot currently implement this system and staff is unaware of any time table for the Registrar of Voters to implement this system.*

e. Ranked Choice Voting

Ranked-choice voting ("RCV"), sometimes called instant-runoff voting, gives voters the option of choosing multiple candidates in order of preference. After the ballots are first counted, if no candidate receives a majority of the votes, the candidate with the fewest top-rank votes is eliminated and the next choices of that candidate's supporters are apportioned among the remaining candidates. The process continues until one candidate gets a majority. Section A(5) of Council Policy 7.0 (Long-term Advocacy Positions - Planning and Management) supports "Instant Runoff Voting if/when it is determined to be economically and technologically feasible for the county." RCV can be combined with by-district elections, which is currently done in San Francisco, Oakland, Berkeley and San Leandro. *Like cumulative voting, no authority approves RCV alone (i.e., without underlying districts) as remedy to CVRA violations, and the Santa Clara County Registrar of Voters is not currently able to implement this method.*

### **3. Voluntarily Switching to District Elections Will Requires a Charter Amendment and Subsequent Actions to Establish the Process for Drawing District Boundaries**

Sunnyvale's process for electing council members is established in Article VI of the City Charter. Thus, absent a judicial finding that the City is in violation of the CVRA, voter approval is required to amend the Charter to change its electoral system. If the City Council chooses to voluntarily submit to the voters the question of changing to district-based elections, and voters approved that change, the City could follow the phased approach to implementing district-based elections that most communities have taken.

In drawing district boundaries, many factors may be considered, including topography, geography, cohesiveness, contiguity, integrity, and compactness of territory, and community of interests of the districts, among others. (See Government Code section 34884; Elections Code section 21601.) Federal law states that districts cannot be drawn with race as a predominate consideration. (See, e.g., *Miller v. Johnson* (1995) 515 US. 900, 917-19.) Because these factors involve inherently local considerations and knowledge, it is important for the City Council and community to have the opportunity for robust discussion and for the community to provide substantive input to the City Council on this issue.

#### **4. Recommended Strategy for Addressing CVRA Exposure**

As discussed in section 2 above, by-district elections are currently the only method that insulates an agency from CVRA litigation. While staff acknowledges that there are a number of other election systems that may have desirable components, and that related governance issues might arise in discussion about election methods, we recommend a phased approach that first addresses the narrow issue of district-based elections in order to mitigate the immediate challenge presented by the CVRA and to provide meaningful public participation in that discussion, which could be curtailed if the City is sued or even threatened with litigation, as discussed in section 5 below. Layering issues onto the immediate CVRA concern risks complicating and prolonging the process, which the court viewed with disfavor in the Santa Clara case.

Therefore, staff recommends a phased approach as follows:

##### **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.

### **Subsequent/Standalone Phases: Consideration of Other Voting Methods and Related Issues**

- Timeline: As approved by the City Council study issue process.
- Scope: Other issues that might arise in discussions about the electoral process include, but may not be limited to, alternate forms of voting, a directly elected mayor, and City Council size. These matters can be treated as standalone issues as they do not have the same immediacy as the CVRA/district election issue. The City Council could consider any of these issues through the standard study issue process. For example, the City could study alternate forms of voting if/when the Santa Clara County Registrar of Voters becomes able to implement new or different voting methods such as RCV, and/or as new decisions in CVRA cases clarify the availability of new methods as acceptable remedies.

## **5. Options if the City Does Not Take Voluntary Action**

Based on the statewide trends in CVRA litigation and the structure of Sunnyvale's current electoral system, the City could be named as defendant in a CVRA lawsuit; particularly if City Council decides not to voluntarily initiate action to address CVRA exposure. Prior to initiating litigation, a potential plaintiff is required by law to notify the City of her/his belief that the City is in violation of the CVRA. In that event, the City would have the option of litigating or using Elections Code section 10010, which provides a type of limited "safe harbor" from CVRA litigation for cities that choose to voluntarily transition to a district-based election system. Elections Code section 10010 applies to charter cities.

The process under Elections Code section 10010 would be as follows:

- a. If the City receives a demand letter from a potential plaintiff, it will have 45 days to assess its situation before a lawsuit can be filed.
- b. If, within that 45 days, the City adopts a resolution declaring the City Council's intent to transition from at large to district-based elections, outlining specific steps to be undertaken to facilitate the transition, and estimating a time frame for action, then the potential plaintiff is prohibited from filing a CVRA lawsuit for an additional 90-day period.
- c. Within that period, the City would then follow the steps set forth in Elections Code section 10010 to complete the transition to a district based election system, including a minimum of five (5) public hearings and adoption of an ordinance establishing districts and district-based elections.

If the City receives a CVRA demand letter and chose this process, its liability for plaintiff's attorney fees would be capped at \$30,000. The benefits of this approach are that it provides certainty and limits costs for cities (from the city perspective), and encourages cities to make the switch more quickly than they otherwise might (from a plaintiff perspective). The obvious drawback is that the statute provides an extremely short period to complete the process, and that the accelerated public hearing schedule may not provide full opportunity for a robust community discussion of such an important local governance issue.

**EXISTING POLICY**

Sunnyvale City Charter section 601 currently provides for at-large elections with seven numbered City Council seats.

**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.

**FISCAL IMPACT**

The cost to voluntarily implement changes will likely depend on the scope of public outreach the City Council desires. In other cities, demographics consultants hired to assist with public meetings and district boundaries have been in the range of \$50,000-\$75,000, but may be more depending on the extent of public outreach the City Council chooses to direct. Should council direct staff to return on this issue, the report back will include a detailed discussion of staff and other consultant resources needed or recommended and estimated costs.

As noted above, if the City Council chooses not to voluntarily initiate a change and receives a CVRA letter, it could choose to implement the “safe harbor” process to switch to district-based elections. Consultant and related costs would run in the range mentioned above, and City would also be responsible for attorney fees up to \$30,000. If the City Council choose to maintain at-large elections and defend a potential lawsuit, the defense costs and attorneys’ fees would likely exceed \$1 million, with additional exposure exceeding \$1 million for plaintiff attorneys’ fees should the City not prevail. This would result in a significant and unexpected impact to the General Fund.

**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**

1. Direct staff to 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, numbered seat elections to district-based elections, and return to Council by November 2018 for approval of the outreach plan and resources necessary to implement that plan.
2. Take no action at this time related to potential changes to the City’s election system.
3. Alternate direction determined by Council.

**RECOMMENDATION**

Alternative 1: Direct staff to 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, and return to Council by November 2018 for approval of the outreach plan and resources necessary to implement that plan.

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Reviewed by: Teri Silva, Assistant City Manager

Approved by: Kent Steffens, City Manager

### **ATTACHMENTS**

1. California Elections Code Sections 14025 - 14032 (California Voting Rights Act)
2. *Kaku v. City of Santa Clara*, Statement of Decision, June 6, 2018
3. *Kaku v. City of Santa Clara*, Amended Statement of Decision re Remedies Phase of Trial, July 24, 2018