



# City of Sunnyvale

## Agenda Item

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19-0044

Agenda Date: 2/26/2019

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### REPORT TO COUNCIL

#### SUBJECT

Update on California Voting Rights Act Community Education and Outreach and Potential Direction on Next Steps for City Council By-District Elections

#### BACKGROUND

On September 5, 2018, the City Council held a public hearing regarding changing from 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, with the goal of placing 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.

On October 9, 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."

On November 20, 2018, Council adopted a resolution of intent to change to district-based elections pursuant to Elections Code section 10010, which provides a 90-day "safe harbor" period during which the City cannot 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, and identified possible election dates of March 2020 or November 2020 for amending the City Charter to allow for by-district elections. However, the Council did not make a final determination about the timing and substance of such a ballot measure.

On December 11, 2018, Council adopted the community outreach plan and directed staff to return in February 2019 with an update on initial outreach. On January 18, 2019, the City received a second letter (Attachment 1) from Ms. Ho notifying the City that her firm now represents three additional potential plaintiffs who are Sunnyvale residents, Galen Kim Davis, Kathy Higuchi, and Bowman Ching, who are joining the original CVRA challenge.

This report summarizes outreach efforts since December 2018, discusses the legal issues and risks associated with determining the election date for a Charter amendment, and provides alternatives for the Council to consider to address those issues.

#### DISCUSSION

##### **Outreach Summary**

Based on the community outreach plan adopted by Council, staff has worked closely with consultant

Placeworks to begin engaging Sunnyvale residents as part of Phase I of the Outreach Plan. The purpose of Phase I is to educate the community about the CVRA, the process to move to district elections, and receive public input on the following specific issues:

- The preferred timeline for submitting a charter measure proposing a change to district-based elections to the voters, either on the March 2020 or November 2020 ballot.
- Preferences related to number of districts. For example, seven districts, six districts with an at-large mayor, or some other composition.
- Other considerations for a charter amendment(s), including preferences related to future redistricting.
- Standards and criteria the community considers important in establishing districts.

Below is a summary of Phase I outreach efforts:

#### *Education Workshops*

Two introductory Open Houses were held on Wednesday, February 6 at the Sunnyvale Community Center and Saturday, February 9 at Columbia Middle School. The purpose of these Open Houses was to educate the community about the CVRA, how it impacts Sunnyvale, and options for responding to a CVRA lawsuit. The meetings had a drop-in format with informational poster boards that allowed participants to gather information and ask questions at their own pace in addition to offering a short overview presentation followed by a question and answer period.

The overview presentation was also given at a regularly scheduled quarterly meeting of Neighborhood Association leaders representing Sunnyvale's 28 Neighborhood Associations on February 11, 2019. This gave the Neighborhood leaders an opportunity to learn and ask questions about the issue. Staff also shared upcoming outreach efforts and requested that leaders share this information with their neighbors.

Over 60 community members participated in the these initial education efforts. After each presentation, participants were asked to fill out a voluntary survey. A total of 36 responses were received. Survey data results indicate that participants learned of the meetings in a variety of different ways, including social media, the Mercury News, City emails, and Council announcements. Participants were also asked if they preferred to vote on a Charter Amendment in March 2020 or November 2020 with 81% of respondents preferring March over November. The survey also included optional demographic questions to gage the effectiveness of outreach efforts to engage all Sunnyvale demographics. All respondents reported being Sunnyvale residents with varied household incomes. However, respondents were older, whiter, and more likely to live in central or south Sunnyvale.

#### *Citizen's Advisory Committee*

Council appointed nine members and one alternate to the Citizen's Advisory Committee (CAC) on February 5, 2019. The first CAC meeting was held on February 20, 2019 and was open to the public. The CAC provided input on methods and key community contacts for outreach. Results from the option demographic questions in the survey show that more needs to be done to increase participation from Asian and Latino residents as well as residents from North Sunnyvale. Our goal is that the CAC can play a critical role in engaging these hard to reach communities.

### *Community Input Workshops*

The City is hosting three Community Input Workshops to gather feedback on preferences related to number of districts, with options for seven districts, six districts with a directly-elected at-large mayor, or some other composition; criteria and standards important to the community for establishing district boundaries; and other considerations for City voters, including preferences related to future redistricting.

- Input Workshop #1: March 21, 2019, 6:00 p.m. at Sunnyvale Community Center - Ballroom, 550 E. Remington Dr., Sunnyvale
- Input Workshop #2: April 4, 2019, 6:00 p.m. at Lakewood Park Building, 834 Lakechime Dr., Sunnyvale
- Input Workshop #3: April 11, 2019, 6:00 p.m. at Murphy Park Building, 250 N. Sunnyvale Ave., Sunnyvale

### *Pop-Up Events*

These special outreach efforts provide an opportunity to engage residents who are already attending another event or gathering by going to where people are rather than asking them to come to us. Each interaction will provide an opportunity for the participant to learn more, provide input, and encourage further engagement. Many of our scheduled pop-ups are purposely located at venues where hard-to-reach communities congregate. Nine of the ten pop-up events have been confirmed:

- March 2, 2019, 10:00 a.m. - 12:00 p.m. at Columbia Neighborhood Center, 785 Morse Ave., Sunnyvale
- March 2, 2019, 10:00 a.m. - 2:00 p.m. at Shiv Durga Temple, 1170 Kern Ave., Sunnyvale
- March 12, 2019, 5:00 - 8:00 p.m. at Chung Tai Zen Center, 50 E Arques Ave., Sunnyvale
- March 16, 2019, 9:00 a.m. - 1:00 p.m. at Sunnyvale Farmers' Market, 121 West Washington Ave., Sunnyvale
- March 27, 2019, 11:00 a.m. - 3:00 p.m. at Sunnyvale Community Center - Community Room, 550 E Remington Dr., Sunnyvale
- March 28, 2019, 6:00 - 8:00 p.m. at Homestead Park Apartments, 1601 Tenaka Pl., Sunnyvale
- April 6, 2019, 10:00 a.m. - 1:00 p.m. at Sunnyvale Library, 665 W Olive Ave., Sunnyvale
- April 24, 2019, 7:00 - 8:00 p.m., Mobile Home Park Alliance (location TBD)
- April 27, 2019, 11:00 a.m. - 3:00 p.m., Fit and Fun Fair, Columbia Neighborhood Center, 785 Morse Ave., Sunnyvale

Staff anticipates returning to Council in June with a report on Phase I community input and seek direction on the substance of a ballot measure, including the number of districts.

### **Update on Legal Issues**

On November 20, 2018, City Council adopted a Resolution of Intent pursuant to Elections Code section 10010 to switch to district-based elections. The legal effect of that action was to create a 90-day "safe harbor" period during which the potential plaintiffs were prohibited from filing a CVRA action against the City. The safe harbor period was due to expire on February 18, 2019, before the initial

community outreach efforts were scheduled to be complete.

The January 18, 2019 letter adding three new potential plaintiffs does not have any legal impact to that timeline, but is notable for a few reasons. The fact that three new Sunnyvale residents joined the case as potential plaintiffs suggests that there may be broader concern in the community related to maintaining the City's at-large with numbered seat election system. It also reinforces the previous statements of the potential plaintiffs that they are committed to a process that results in the first district elections in Sunnyvale occurring in November 2020. They stated this directly to the Council at the December 11, 2018 meeting. Their recent letter states that "we remain concerned that the City's current transition and outreach plan does not provide a reliable timeline for the implementation of a new election system by November 2020," and suggests that this meeting "would be an opportune time for the City to resolve that the change to district elections will be implemented in time for the November 2020 election."

They recently agreed to extend the safe harbor period through March 29, 2019. After that date they could file a CVRA lawsuit against the City. While representatives of the potential plaintiffs have been actively cooperating with the City on the community outreach efforts, they have also consistently made clear that they are not willing to compromise on their goal of implementation of by-district elections in November 2020. Consequently, staff believes that there is a very high likelihood that the potential plaintiffs will file a CVRA lawsuit sometime after March 29, 2019, if the Council does not take follow up action to choose March 2020 as the date for an election proposing a Charter amendment to change to by-district elections, or if the Council chooses November 2020 as the date for the charter measure.

### **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**

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**

After hearing the update on community outreach, the Council has the option of providing additional direction to staff regarding details of changing to by-district elections, which may include the following alternatives:

1. Direct staff to return before March 29, 2019 with an amendment to the Resolution of Intent to Change to By-District Elections setting a March 2020 election for amending Article VI of the Charter.
2. Direct staff to return before March 29, 2019 with an amendment to the Resolution of Intent to

Change to By-District Elections setting a November 2020 election for amending Article VI of the Charter.

3. Take no action to amend the Resolution of Intent to change to By-District Elections.
4. Other action as determined by the Council.

### **RECOMMENDATION**

Alternative 1: Direct staff to return before March 29, 2019 with an amendment to the Resolution of Intent to Change to By-District Elections setting a March 2020 election for amending Article VI of the Charter.

Alternative 1 would put the City on the path toward the potential plaintiffs' desired outcome of the first district elections in November 2020. Alternatives 2, 3 and 4 would likely result in a CVRA lawsuit against the City of Sunnyvale. In addition, because there is a significant amount of time before the November 2020 election, it is likely that any lawsuit would be put on a track for resolution before that election.

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### **ATTACHMENT**

1. January 18, 2019 Letter Adding Potential Plaintiffs