

ORDINANCE NO. 3174-21

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE TO ADD CHAPTER 2.31 (REDISTRICTING) TO TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE SUNNYVALE MUNICIPAL CODE TO ESTABLISH A PUBLIC PROCESS FOR REDISTRICTING

WHEREAS, on March 3, 2020, Sunnyvale voters approved an amendment to the Sunnyvale City Charter to implement a six-district Council election system with a directly-elected mayor (Measure B); and

WHEREAS, Sunnyvale City Charter section 609(b) requires the City Council to adopt an ordinance establishing a public process for redistricting; and

WHEREAS, the City Council discussed options for a public redistricting process at its Council Strategic Session on January 28, and provided direction on key components of a draft ordinance on February 2, February 23, and March 16; and

WHEREAS, to implement the requirement of Sunnyvale City Charter section 609(b), the City of Sunnyvale desires to amend Title 2 (Administration and Personnel) of the Sunnyvale Municipal Code to add a new chapter establishing a public process for redistricting.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 2.31 ADDED. Chapter 2.31 (Redistricting) of Title 2 (Administration and Personnel) of the Sunnyvale Municipal Code is hereby added to read as follows:

Chapter 2.31

REDISTRICTING

2.31.010. Purpose and intent.

The purposes and intent of this chapter are to:

- (a) Implement the requirement of Sunnyvale Charter Section 609(b) by establishing a public process for redistricting;
- (b) Establish a redistricting process that is open and transparent and allows public participation, including a process for the public to draw and submit draft maps for city council district boundaries;

- (c) Ensure that city council district boundaries are drawn according to the redistricting criteria set forth in applicable State and Federal laws; and
- (d) Facilitate a redistricting process that is conducted with integrity, fairness, and without personal or political considerations.

2.31.020 Duties and Authority of Redistricting Commission and City Council.

(a) Redistricting Commission Established. A redistricting commission of seven members and three to six alternates is hereby established. The duties of the redistricting commission shall be to meet, hold public meetings and hearings as required by law, and recommend to the city council maps of six districts by which councilmembers will be elected, as further described in this Chapter.

(b) City Council Approval of Redistricting Schedule, Outreach Plan, Budget. Within a reasonable period before the city receives the final Federal Decennial Census information, city staff shall prepare and submit to the city council for approval a community outreach plan and meeting schedule for the redistricting process. The plan and schedule will take into account all relevant state law related to redistricting. The city council shall appropriate adequate funds for the work of the redistricting commission, including funds necessary for community outreach, costs for city staff time associated with supporting the work of the redistricting commission, and hiring a demographer and any other necessary consultants or outside counsel.

(c) City Council District Map Adoption Process. The redistricting commission shall recommend, and the city council shall adopt, new districts in the following manner:

(1) The redistricting commission shall hold public hearings as required by law. The redistricting commission shall select three to five proposed district maps to recommend to the city council (the “proposed district maps”). The redistricting commission shall also indicate the proposed district map that it prefers the city council adopt (the “preferred map”). Selection of the proposed district maps and the redistricting commission’s preferred map shall require the affirmative vote of four commissioners and shall occur consistent with the outreach plan and schedule. All other redistricting commission actions require only a majority vote of those present, provided that a majority of the members of the commission are present.

(2) Prior to the redistricting commission’s meeting to select proposed district maps and the preferred map, the redistricting commission and the city council shall hold a joint meeting to review map submissions and draft maps, and provide the city council the opportunity to comment on possible maps.

(3) Not earlier than seven days after the redistricting commission’s proposed district maps have been made available to the public, the city council shall hold at least one public meeting to receive input on the redistricting commission’s proposed district maps. After the public hearing, the city council may approve and adopt one of the proposed district maps. The city council may not make any changes to a proposed district map unless adjustments are required to comply with state law, the United

States Constitution, or the federal Voting Rights Act, commencing at 52 U.S.C. Section 10101. If the city council approves a proposed district map, it shall become the final district map and shall be implemented.

(4) If the city council fails to adopt one of the proposed district maps as provided in section 2.31.020(c)(3), it may take one or more of the following actions:

(i) By majority vote, return one or more proposed district maps to the redistricting commission with comments. The redistricting commission shall then consider the city council's comments and may approve changes to the city council's returned district map(s) or reaffirm their approval of the returned map(s). The redistricting commission shall also select a new preferred map or reaffirm its prior decision on the preferred map. After such consideration, the redistricting commission shall resubmit to the city council the original maps returned by the council, any revised maps developed by the redistricting commission in response to the city council's comments, and its final preferred district map. The city council shall hold another public hearing not earlier than seven days after the proposed district maps have been made available to the public to select one of the redistricting commission's original proposed district maps, or one of the proposed district maps resubmitted by the commission.

(ii) Disapprove a proposed district map(s) with an affirmative vote of at least five council members. A map that is disapproved pursuant to this subsection shall not be reconsidered by the redistricting commission or the city council.

(5) Inaction by Redistricting Commission and/or City Council in Selecting Maps. Time is of the essence in completing the redistricting process. Notwithstanding any other provisions of this chapter, the following rules shall apply:

(i) If the redistricting commission fails to select proposed district maps and a preferred district map by the date set forth in the outreach plan and schedule approved by the city council, the latest maps considered by the redistricting commission shall be forwarded to the city council. The city council will review those maps, may make changes to any of those maps, and shall make a final decision on a district map.

(ii) If the city council fails to adopt one of the redistricting commission's proposed district maps and returns maps to the redistricting commission for reconsideration as provided in section 2.31.020(4)(i), and the redistricting commission does not complete the process to reconsider and resubmit maps to the city council by the date set forth in the outreach plan and schedule approved by the city council, the city council shall reconsider and choose from the proposed district maps originally submitted to the city council.

(iii) If the City Council fails to select a district map by the deadline set by election authorities for submitting district maps the most recently approved version of the redistricting commission's preferred district map shall be deemed adopted and shall go into effect immediately.

(6) The redistricting map approved and adopted pursuant to this section shall be subject to referendum as provided in Article XIV of the City Charter.

2.31.030 Eligibility and appointment of Redistricting Commissioners.

(a) Composition of Redistricting Commission. The redistricting commission shall consist of seven commissioners and three to six alternates. The city council will use its best efforts to make appointments that achieve the goal of having at least one and not more than two members per district on the redistricting commission, based on residency at the time of application, and at least one but not more than two alternates per district. However, these numbers are not required if a majority of councilmembers agree to a different composition that achieves the other standards described in this section.

(b) Role of Alternates. Alternates are subject to the same terms of office, qualifications, restrictions, and standards of conduct as other commissioners under this section, and may fully participate in redistricting commission deliberations but may not vote and may not be counted towards the establishment of a quorum except as follows:

(1) Commissioner Absence. If a regular commission member is absent from a meeting of the redistricting commission, an alternate shall fulfill all responsibilities of that commissioner, including voting. Alternates shall be selected to fill the role of an absent commissioner based on the following criteria: (1) If an alternate is present who resides in the same district as the absent commissioner, that alternate shall fill the role of the absent commissioner. However, if more than one alternate resides in the same district, the Mayor shall designate a primary alternate for that district before the first redistricting commission meeting. (2) If there is not an alternate present who resides in the same district as the absent commissioner, the alternate to fill the role of an absent commissioner will be selected based on a ranked list of alternates established by the mayor before the first redistricting commission meeting

(2) Commissioner Vacancy. If one of the seven commissioners becomes unable to serve for any reason, the Mayor will appoint one of the alternates to fill the vacancy, considering the goal of achieving representation of at least one and not more than two members per district.

(c) Appointment of Redistricting Commissioners. Redistricting commission members and alternates shall be selected and appointed by the city council as provided in this section.

(1) Open Application Process. Commissioners shall be selected through an open application process that aligns with the city council policy for selecting members of other boards and commissions, except (a) as provided in this section, and (b) that the city council may choose a different voting process than outlined in the policy to achieve the goals described in subsection 2.31.030(a). Commissioners and alternates shall be appointed by the city council at a public hearing from the pool of qualified applicants.

(2) Desirable Qualifications of Applicants. The city council should select applicants that are best qualified to carry out the redistricting commission's duties and that, as a group, reasonably reflect the diversity of the City, provided that no quotas, formulas, or ratios may be applied for this purpose. In evaluating applications, the city council shall consider each applicant's:

- (i) interest in and ability to carry out the responsibilities of the redistricting commission;
- (ii) demonstrated ability to serve with impartiality in a nonpartisan role;
- (iii) relevant analytical skills;
- (iv) familiarity with the City's neighborhoods and communities;
- (v) appreciation for the diverse demographics of the City, including but not limited to geography, race and ethnicity, gender, age, and economic class;
- (vi) demonstrated ability to work cooperatively with other commissioners;
- (vii) relevant civic and/or volunteer activities; and
- (viii) ability to devote time required of a commissioner under the approved redistricting schedule and outreach plan.

(3) Required Qualifications of Applicants. To be eligible for appointment to the redistricting commission, a person must, at the time of their appointment, be a resident of the city; have resided in the city for at least one year; and will be at least eighteen years of age by the date of the city council election for which the redistricting will be effective.

(4) Ineligibility to Serve on Redistricting Commission. A person is not eligible for appointment if:

- (i) The person or his or her spouse has, in the four years preceding the person's application, served as an officer of, employee of, or paid consultant to, a campaign committee or a candidate's campaign for elective office of the local jurisdiction.
- (ii) The person or his or her spouse has, in the four years preceding the person's application, contributed one thousand five hundred dollars (\$1,500) or more in a year to any single candidate other than the candidate him/her self, for an elective office of the local jurisdiction, which the city will adjust by the cumulative change in the California Consumer Price Index, or its successor, in every year ending in zero.

(5) Redistricting Commissioner Restrictions During and After Service. To promote public confidence in the redistricting process, redistricting commissioners and alternates shall be designated employees for purposes of the conflict of interest code adopted by the city council and shall perform their service on the redistricting commission with impartiality and integrity. In addition, redistricting commissioners and alternates shall not:

- (i) While serving on the redistricting commission, endorse, work for, volunteer for, or make a campaign contribution to, a candidate for an elective office of the city.
- (ii) Be a candidate for an elective office of the city if less than four years has elapsed since the date of the commissioner's appointment to the redistricting commission.
- (iii) For four years commencing with the date of his or her appointment to the redistricting commission, receive a noncompetitively bid contract with the city.
- (iv) For four years commencing with the date of his or her appointment to the redistricting commission, accept an appointment to the office of City Manager, City Attorney, or department head.

(6) Redistricting Commissioner Terms. The term of office of each redistricting commissioner and alternate begins with their appointment to the redistricting commission and ends when a new final district map is adopted. Commissioners and alternates may be removed in accordance with the city council policy for boards and commissions.

2.31.040 Redistricting Criteria.

After ensuring that proposed districts comply with the United States Constitution, California Constitution, and applicable federal and state laws, including the federal Voting Rights Act, commencing at 52 U.S.C. Section 10101, the redistricting commission may consider the following criteria in determining the boundaries of each city council district in its final proposed district maps and preferred alternative:

- (1) Districts are composed of whole census units as developed by the United States Bureau of the Census; and
- (2) Ensure to the extent practicable that voters who did not vote for a city council candidate in 2020 are able to vote in a district that will be on the ballot in 2022.

2.31.050 Severability.

If any portion of this chapter is held to be invalid, unconstitutional, or unenforceable by a court of competent jurisdiction, that decision shall not affect the validity of the remaining portions of this chapter. The city council declares that this chapter and each portion would have been adopted without regard to whether any portion of this chapter would be later declared invalid, unconstitutional, or unenforceable.

SECTION 2. CEQA - EXEMPTION. The City Council finds, pursuant to Title 14 of the California Code of Regulations, sections 15320,15378 and 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) because it is not "project" within the meaning of the California Environmental Quality Act ("CEQA"), as it is an organizational structure change and does not have the potential to result in either a direct or reasonably foreseeable indirect physical change in the environment.

SECTION 3. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision or decisions shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 5. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on March 30, 2021, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on April 6, 2021, by the following vote:

AYES: KLEIN, HENDRICKS, LARSSON, MELTON, FONG, CISNEROS, DIN
NOES: NONE
ABSTAIN: NONE
ABSENT: NONE
RECUSAL: NONE

ATTEST:

DocuSigned by:

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DAVID CARNAHAN
City Clerk

Date of Attestation: 04/07/2021

APPROVED:

DocuSigned by:

36C5F28A37A9448...

LARRY KLEIN
Mayor

(SEAL)

APPROVED AS TO FORM:

DocuSigned by:

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JOHN A. NAGEL
City Attorney