



# Memorandum

**TO:** CITY COUNCIL

**FROM:** Toni J. Taber, CMC  
City Clerk

**SUBJECT:** Redistricting Commission

**DATE:** October 22, 2020

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## SUPPLEMENTAL MEMORANDUM

At the Rules and Open Government Committee meeting of October 14, 2020, the committee directed the City Clerk to return with an analysis of the Mayor's proposal, research on the group Common Cause, and a look at other redistricting commissions in the State of California.

### **ANALYSIS OF RECOMMENDATIONS FOR THE APPLICATION PROCESS:**

- 1. Hold an open application process: Let all San José residents apply to serve on the commission. Construct an open and public process that makes applicants' applications – their resumes and answers to short essay questions – known to the public. Create a website where members of the public can submit public comment on applications. Require councilmembers to appoint someone from the pool of people who apply from their district. • CA Common Cause can provide useful examples of applications from other city and county redistricting commissions and consult on designing the application process.*
- 2. Eliminate conflicts of interest: Prohibit the appointment of an elected official's family members, employees, current or past campaign staffers, or current or past campaign consultants; current and past candidates and officeholders; registered city lobbyists; and major campaign donors (e.g. \$500+). • CA Common Cause can provide disqualifying conflict of interest criteria from other redistricting commissions. Disqualifying conflict of interest criteria of this kind are used by the state commission and commissions in many cities and counties, including Menlo Park, Oakland, Los Angeles County, and San Diego County.*
- 3. Ensure diversity on the commission: Require elected officials to make their appointments "provisional" and public for a two-week period, so the City Clerk or City Attorney can provide an evaluation of whether the proposed appointees as a whole would compose a commission that is in fact racially/ethnically representative of the City. Require that the final appointments be made together at a noticed council meeting so that councilmembers can deliberate and make adjustments as needed to ensure diversity.*

4. *Enable public input on commissioner selections before they are final: Permit the public to comment on the proposed commissioners during this provisional period.*

In order to have a two-week review period, provisional appointments would need to be made on January 12, 2021 at the latest, with final appointment on January 26, 2021 as the City Charter requires the commission to be fully seated by February 1, 2021. Memos for January 12, 2021 meeting would need to be received prior to the furlough in order to post, so we would need the appointments by December 23, 2020. Our current application process allows for public comment on the applications after they are posted from Council as part of the agenda packet. Our application system does not allow for live application comments prior to nomination. We can work with Common Cause if they know of software that would allow for this, but that would delay the time the application period opens and reduce the length of time for applicants to apply and for Council to review and appoint.

The City Council may want to evaluate the \$500 limit for major donors, as there were 553 donors who contributed \$500 or more in the 2018 election. Additionally, clarification is needed on whether the ban on major donors would only apply to a donor contributing to the councilmember appointing him or her or to any council candidate.

The City Clerk can work with the City Manager's Office or designated staff to get accurate demographic data to provide an evaluation of the nominated list. It's important to note that the demographic data collected by applicants may be incomplete as the applicant has the option to decline to state ethnicity and gender. The final determination of the nominated list, however, should rest with the City Council.

***Recommendations for the Commission, Post-Selection:***

5. *Ban closed-door, backroom communications: Increase independence and public trust by prohibiting commissioners from having ex parte communications on redistricting. Such bans have been adopted by the state commission and by several large cities in California, such as Long Beach and Sacramento. Adopt the provisions for California's Citizens Redistricting Commission in state code section 8253.a3, which states: "Commission members and staff may not communicate with or receive communications about redistricting matters from anyone outside of a public hearing. This paragraph does not prohibit communication between commission members, staff, legal counsel and consultants retained by the commission." Require all communication with commissioners concerning redistricting from elected officials to be made orally during public comment at a commission meeting or in written comment submitted to the commission and published online.*

The Mayor's proposal would limit any entity from lobbying the redistricting commission outside of a public meeting including elected officials. This would mean all correspondence as well as all oral testimony would be received by the commission during a public meeting with letters published in the agenda packet. The redistricting commission is not limited to having one meeting per month, so multiple public hearings can be scheduled to receive public input. There could also be a procedure

put in place that written correspondence that is received by the Office of the City Clerk outside the meeting schedule is posted to a public website upon receipt allowing both the public and the commission to receive the written correspondence at the same time keeping all correspondence transparent. This would assume a ban on meetings and phone calls would be in place.

Both Long Beach and Sacramento have provisions banning ex-parte communications with substantially the same language (both were passed through ballot measures)

(d) Commission members and staff may not communicate with or receive communications about redistricting matters from anyone except at a public meeting or through the process established for accepting written public comment. This subsection does not prohibit: (1) communication between Commission members, staff, legal counsel, and consultants retained by the Commission that is otherwise permitted by State and City open meeting requirements; or (2) commissioners, staff, legal counsel, or consultants from engaging in public education and outreach, including explaining how the Commission functions and encouraging public participation in the redistricting process.

At least three non-partisan groups all recommend a ban or severe limitation on ex-parte communication.

1. In the white paper "[Drawing Lines: A Public Interest Guide to Real Redistricting Reform](#)," a document to assist policy makers, advocates and media about how a proposal for an independent redistricting commission should look. This report states on page 16 that a commission should "Bar ex parte communications regarding redistricting except those that are exclusively between commissioners and staff" and that they should "Make available to the public all personal ex parte communication (such as email, memos, and phone calls) between commissioners and staff once the Final Plan has been proposed." The paper was put together by Center for Governmental Studies, Demos: A Network for Ideas & Action, and the James Irvine Foundation.
2. The Brennan Center for Justice, a nonpartisan law and policy institute, [recommends](#) redistricting bodies should "Limit off-the-record communications between the redistricting authority and parties with an interest in the final plan. Discussions and negotiations regarding the redistricting process should be as public as possible. This includes not only public and community organizations, but legislators and their staff, members of congress and their staff, members of national, state and regional political parties and staff and any other entities with a clearly stated desire for a specific outcome in the final plan."
3. In the [Activist Handbook on Redistricting](#), Common Cause states "Decision makers should not be allowed to have off-the-record communications with members of the legislature, representatives of parties or others regarding how the redistricting maps should be drawn."

The [California Local Redistricting Project's report "California Local Redistricting Commissions: Landscape, Considerations and Best Practices"](#) states on page 60 that "A ban on ex parte

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communication promotes redistricting in full view of the public, but may impede commissioners from having conversations with community leaders or attending neighborhood meetings that might improve their understanding of community boundaries.”

The danger of ex-parte communications can be illustrated with the State of California with the City of Los Angeles’s redistricting process for the 2010 census.

On February 17, 2012, the Los Angeles Times published “[L.A.’s flawed redistricting process](#),” they noted the commission is selected by the city’s incumbent elected officials, and met numerous times in public meetings. However, the article noted that the commissioners met behind closed doors, and that public comments were organized to ensure selected people got to speak early in the meeting while others waited five hours. The Op-Ed noted that councilmembers are not held accountable because the commission is a buffer, but with communication held outside of public meetings, the councilmembers are still directing the commission.

On August 7, 2012, another [Los Angeles Times news article](#) noted that council President Herb Wesson stated that he was able to use the redistricting commission to preserve African American seats on the council. A lawsuit was filed regarding his statements (see below). His statements show that there were potential backroom deals discussed with the redistricting commission.

In 2012, [KCET](#) reported on the alleged backroom deals the Los Angeles redistricting commission made to radically shift district lines on behalf of the Council president Wesson. As reported on [citywatchla.com](#) as well as numerous other sources, A lawsuit was filed ([Lee v. City Of Los Angeles \(15-55478\)](#)) alleging the city redrew boundaries primarily for racial intent. In November 2018, the panel held that although evidence showed that race was a motivation, the record failed to show it was the main driver.

After Councilmember José Huizar was indicted in July 2020, [Los Angeles Times](#) Op-Ed stated the 2011 Los Angeles redistricting commission made backroom deals that were “used to punish enemies and reward friends and supporters” of then-Council president Herb Wesson and his allies.” They noted, one of Mr. Wesson’s allies, Councilmember Huizar was the biggest recipient of these backroom deals in that his district received a large portion of the Downtown area. The LA Times noted that high priced projects allowed Councilmember Huizar to “line his pockets” with bribes for the projects which were located in these new areas. That same article described the redistricting process in Los Angeles in 2011 which included a redistricting commission with each member appointed by Councilmember, as the San José Redistricting Commission is also structured. The Times suggested increasing transparency for 2020. Council-member Huizar was [indicted](#) on 34 charges including bribery, mail and wire fraud, extortion, interstate and foreign travel in aid of racketeering, money laundering, structuring, and obstruction of justice.

*6. Prevent interference with the commission’s work: Permit removal of a commissioner by the appointing elected official for good cause only (e.g. health problems or moving out of San Jose) and with confirmation via a majority vote of the redistricting commission.*

*7. Direct city staff to return with options for placing a charter amendment on the 2022 ballot to create an independent redistricting commission, which would adopt council district boundaries in all future redistricting cycles. Staff should work with California Common Cause to identify best practices recommendations and model charter language from other California cities.*

With the convening of a Charter Review Commission (CRC) set for next year, redistricting could be added to the commission workload. Since the CRC was created to look at forms of government in the City as well as lobbying and other items related to the elected officials, redistricting would not be too far outside the scope of the CRC.

## **REDISTRICTING IN OTHER CALIFORNIA CITIES**

**Sacramento:** The [Sacramento City Charter](#) was amended by [Measure L](#) in November 2016 to form an independent Redistricting Commission made up entirely of community members to set those boundaries in a process that is free from special interests, politics and political influence. The commission, approved by the voters of the City of Sacramento in 2016, will have 13 commissioners. Eight of the commissioners – one from each existing council district – will be selected from a pool of qualified applicants by the Sacramento Ethics Commission. Then those eight persons will then select the remaining five commissioners, plus two alternates. This commission has exclusive authority to redraw council-district boundaries, ensuring that the process is powered by the people of Sacramento.

- d) Commission members and staff may not communicate with or receive communications about redistricting matters from anyone except at a public meeting or through the process established for accepting written public comment. This subsection does not prohibit: (1) communication between commission members, staff, legal counsel, and consultants retained by the commission that is otherwise permitted by state and city open meeting requirements; or (2) commissioners, staff, legal counsel, or consultants from engaging in public education and outreach, including explaining how the commission functions and encouraging public participation in the redistricting process.

**San Francisco:** After the census is completed, the Charter requires the Director of Elections to determine whether the existing supervisorial districts meet the legal requirements established by federal, state and local law. If the existing supervisorial districts no longer comply with these legal requirements, the Charter requires the Board of Supervisors to convene an Elections Task Force to redraw the supervisorial district lines. The process of redrawing the supervisorial district lines is known as redistricting.

**Los Angeles:** There shall be a Redistricting Commission to advise the Council on drawing of Council district lines. The commission members shall be appointed in the following manner: one by each Council member except that the Council President shall appoint two members, three by the Mayor, one by the City Attorney, and one by the Controller. No City officer or employee shall be eligible to serve on the commission. The Redistricting Commission shall appoint a director and



other personnel, consistent with budgetary approval, which positions shall be exempt from the civil service provisions of the Charter.

[San Diego](#): The Redistricting Commission is appointed by a panel of three retired judges who served in any of the following courts: the Superior Court of the State of California, an appellate court of the State of California, or a U.S. District Court located within California. Names of the retired judges willing to serve will be submitted to the City Clerk and drawn at random by the City Clerk, using procedures for judicial nominees and appointees as set forth in the San Diego Municipal Code, following established criteria. The Appointing Authority shall attempt to appoint one commission member from each of the nine Council districts to the extent practicable, given the other requirements of this Charter Section, and considering the extent of the applicant pool and an individual's qualifications to serve. Persons who accept appointment as members of the commission, at the time of their appointment, shall file a written declaration with the City Clerk stating that within five years of the commission's adoption of a final redistricting plan, they will not seek election to a San Diego City public office. A stated goal is for the commission to make every reasonable effort to afford maximum public access to its proceedings.

[Long Beach](#): the City [Charter](#) of Long Beach was amended by [Measure DDD](#) in November 2018 to form an independent Redistricting Commission selected by the Ethics Commission. If no Ethics Commission exists they are selected by a panel consisting of one retired judge, one retired government/law/public policy professor, and one member of a non-profit with a history of good government reform in the City. If neither of the above options are available, a panel consisting of the City Clerk, City Attorney, and City Auditor shall make the selections. Long Beach also has the following provision:

(d) Commission members and staff may not communicate with or receive communications about redistricting matters from anyone except at a public meeting or through the process established for accepting written public comment. This subsection does not prohibit: (1) communication between Commission members, staff, legal counsel, and consultants retained by the Commission that is otherwise permitted by State and City open meeting requirements; or (2) commissioners, staff, legal counsel, or consultants from engaging in public education and outreach, including explaining how the Commission functions and encouraging public participation in the redistricting process.

[Berkeley](#): On November 8, 2016, Berkeley voters approved Measure W1, amending the City's Charter to transfer responsibility for drawing electoral boundaries from the City Council to an Independent Redistricting Commission (the "Commission"). Composed of thirteen members with broad community representation, the commission will act as an independent body to engage the public and adopt an updated map of City Council district boundaries.

[Oakland](#): In November 2014, Oakland approved a ballot measure creating an Independent Redistricting Commission that will redraw district boundary lines for City Council and School Board of Directors districts. A three-member Screening Panel will review all applicants that meet the minimum qualifications. The Screening Panel will recommend a pool of 30 applicants, with at

least two applicants per existing district. The City Clerk will randomly select six names from the list and those six people will be on the Redistricting Commission. The six members will then select nine other members (seven voting members and two alternates) to join them on the Redistricting Commission. At least one member per existing district is required. The selection of the nine members will be conducted at a public meeting.

Chula Vista: Four members of the Redistricting Commissioners are appointed by the Charter Review Commission with the assistance of the City Clerk to provide a random selection of qualified applicants. The remaining members are selected by the four randomly selected members. The members of the Charter Review Commission shall not communicate with any member of the City Council, or their representatives, about any matter related to the nomination process or the applicants, prior to the swearing in of the four members.

Modesto: The commission consists of nine (9) qualified electors residing within the City and shall be appointed by the City Council pursuant to the provisions below: (A) Strong consideration shall be given to composing the commission of: (i) a retired Stanislaus County judge as chairperson; (ii) one (1) member from a bona fide local taxpayer's association with tax-exempt status under the relevant provisions of the Internal Revenue Code; (iii) one (1) member from a bona fide local nonpartisan political organization, with tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, dedicated to encouraging informed and active participation in government; (iv) one (1) member from a bona fide local civil rights organization with tax-exempt status under Section 501(c)(3) of the Internal Revenue Code; (v) one (1) member from a former Civil Grand Jury who has served in that role within the previous five (5) years; (vi) additional members who have demonstrated civic involvement and a capacity to serve in an honest, independent, and impartial fashion, while upholding public confidence in the integrity of the redistricting process.

## **WHO IS COMMON CAUSE?**

Common Cause is watchdog group formed in 1970 by John W. Gardner, former Secretary of Health, Education, and Welfare in the Johnson administration, and chair of the National Urban Coalition as the People's Lobby. ([Common Cause website](#)) Their Mission Statement is "Common Cause is a nonpartisan, grassroots organization dedicated to upholding the core values of American democracy. We work to create open, honest, and accountable government that serves the public interest; promote equal rights, opportunity, and representation for all; and empower all people to make their voices heard in the political process." ([Common Cause website](#))

Capital Research Center's [Influence Watch](#) website (a conservative/libertarian non-profit) states that Common Cause is a "progressive advocacy group focusing on campaign finance law, so-called 'fair redistricting,' and general liberal policy." [Mediabiasfactcheck.com](#) states Common Cause has a "left-center bias" but also noted "the information found on Common Cause is factually sourced to credible sources and minimal loaded words are used."

In California, Common Cause states it is “dedicated to building a democracy that includes everyone. We work on voting rights, redistricting reform, government transparency, and money in politics to end structural inequities in our state and local democracies and to create governments at all levels that are accountable to and reflective of California's communities.”

The [core campaigns](#) for California Common Cause are:

- Ethics & Accountability
- Money & Influence
- Gerrymandering & Representation
- Voting & Elections
- Media & Democracy
- Constitution, Courts, & Other Democracy Issues

California Common Cause has published a list of their [redistricting principles](#).

1. Full and accurate counts of all communities;
2. Improved Census outreach and data collection;
3. Elimination of prison gerrymandering;
4. Protection of racial minorities;
5. Strong consideration of communities of interest;
6. Open and accessible meetings of decision-makers;
7. Outreach to communities and access to redistricting tools to allow meaningful participation;
8. Decision-makers who reflect the diversity of the population being redistricted and disclosure of potential conflicts of interest;
9. Clear and evenly applied rules for disclosure of relationships between decision-makers and non-decision-making participants; and
10. Access to information about any non-public discussions of redistricting between decision-makers.

Endorsing organizations include:

- Advancement Project
- American Civil Liberties Union (ACLU)
- Asian American Legal Defense and Education Fund (AALDEF)
- Asian Americans Advancing Justice (AAJC)
- Brennan Center for Justice
- Campaign Legal Center
- CHANGE Illinois
- Common Cause
- Demos
- Lawyers' Committee for Civil Rights Under Law



- Lawyers' Committee for Civil Rights of the San Francisco Bay Area Latino Justice PRLDEF
- Mexican American Legal Defense and Educational Fund (MALDEF)
- NAACP LDF
- NALEO Educational Fund
- Prison Policy Initiative
- Sierra Club
- Southern Coalition for Social Justice

The [State Advisory Board for California Common Cause](#) is:

- Mindy Romero, chair. Ms. Romero is the founder and director of the California Civic Engagement Project (CCEP). She currently serves as President of the Board of Mutual Housing California, and is a member of the Social Service Commission for the City of Davis. Romero is a political sociologist and holds a Ph.D. in Sociology from UC Davis. Her scholarly work focuses on the intersection of political behavior and race/ethnicity/age.
- Dr. Sam Blakeslee, Vice-Chair. Dr. Blakeslee is a former Assemblymember and State Senator and founded the Institute for Advanced Technology and Public Policy at Cal Poly San Luis Obispo. In 2016 Sam served as co-proponent with Charles Munger Jr. to pass Proposition 54, a Constitutional Amendment that brought transparency to the CA State Legislature.
- Brian Brennan is Senior Vice President at the Silicon Valley Leadership Group. Brian has a Ph.D. in comparative government from the University of Oxford, where he studied electoral accountability in California's special districts, and related degrees from Princeton and Stanford.
- Mary Elizabeth Hanna-Weir is a senior attorney at the U.S. Department of Education, Office of Civil Rights and currently serves on the board on the American Constitution Society and Lutheran Outdoor Ministries of Northern CA.
- Norman Kline is the CEO and founder of LibraryWorld, Inc., an Internet library automation company. He has formally served on the San Jose Planning Commission, Chair of the Valley Medical Center Foundation, Board Member on the Silicon Valley Leadership Group Foundation, Board member on the Guadalupe River Park Conservancy, Council and as Mayor of the City of Saratoga and Chair of the City of Santa Clara Planning Commission.
- Zabrae Valentine. Since 2016, Ms. Valentine has convened and facilitated the Economic Mobility Collaborative, a multi-partisan group of policy and political leaders who believe current barriers to economic security in CA present a critical threat to the state's future both economically and socially, and who want to accelerate change that enables all Californians to be secure, feel valued, and thrive. She serves on the Oakland Go Public Schools Advisory Board.
- Gary Ferdman. Along with his wife, Myriam Miedzien, Mr. Ferdman founded Monumental Women, creators of the first state of real women in New York's Central Park. Additionally,

He founded Business Leaders for Sensible Priorities/TrueMajority with Ben Cohen of Ben & Jerry's. Mr. Ferdman served on the boards of The Shalom Center, Morningside Center for Teaching Social Responsibility, Nuclear Information and Resource Service, Peace Action and Prepare Tomorrow's Parents, and volunteers with the California Women's Museum.

- Hinnaneh Qazi is an analyst at the California Department of Finance. Prior to her work at the Department of Finance, Ms. Qazi served as a consultant for the California Health in All Policies Task Force, analyzing racial and gender pay inequities across the state's civil service workforce. Hinnaneh also previously worked for the Berkeley Institute for the Future of Young Americans, where she conducted research exploring the rise of anxiety disorder among young adults.
- James Woodson is the Policy and Strategic Projects Manager at California Calls Education Fund. He manages California Calls' work around the 2020 census, redistricting, and the Voters Choice Act. He is a member of the Secretary of State's VCA Task Force as well as the Voters Choice Los Angeles Steering Committee. He is also on the leadership team of the Black Census and Redistricting Hub. James served in a variety of capacities within the Democratic National Committee, the NJ Democratic State Committee, Obama For America, and the NJ Health Care for America Now campaign. James is a licensed attorney in the states of New Jersey and New York. He served as co-Counsel for the New Jersey Congressional Redistricting Commission in 2012. In addition, James was the Founding Director of the Friendship Development Corporation.

Full biographies of the [State Advisory Board for California Common Cause](#) can be found on their website.

The Common Cause Executive Director is [Jonathan Mehta Stein](#). Mr. Stein became the Executive Director of California Common Cause on May 1, 2020, after 10 years on the California Common Cause Board of Directors and four years as Board Chair. Jonathan previously spent four years as the head of the Voting Rights & Census Program at Asian Americans Advancing Justice – Asian Law Caucus. His work at AAAJ-ALC included California's passage of the strongest state-level law in the nation ensuring language access in voting, multiple appellate litigation wins that expanded access to democracy for communities of color, five poll monitoring programs including the nation's largest in November 2016, and several community organizing campaigns that won better election systems at the local level for historically disenfranchised communities.

The Common Cause Organizer working in the Silicon Valley is [Helen Grieco](#). Ms. Grieco was the founder BRAVE People and is a former executive director of the California National Organization for Women. She leads educational events, lobbying campaigns and actions to address campaign finance reform, government accountability, voting rights/reform, redistricting, media reform, fair elections campaigns, legislation and ballot initiatives.

Additional resources reviewed but not quoted above:

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- William and Mary Law Review, *Redistricting and Transparency*  
<https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=3753&context=wmlr>
- League of Women Voters, *When People Draw the Lines*.  
<https://cavotes.org/sites/default/files/jobs/RedistrictingCommission%20Report6122013.pdf>