

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE CALLING AND GIVING NOTICE OF, ON ITS OWN MOTION, THE SUBMISSION TO THE ELECTORS OF THE CITY OF SAN JOSE AT A SPECIAL MUNICIPAL ELECTION, TO BE CONSOLIDATED WITH THE STATEWIDE GENERAL ELECTION ON NOVEMBER 3, 2020, A BALLOT MEASURE PROPOSAL TO AMEND THE CITY CHARTER TO EXPAND THE REVIEW AUTHORITY FOR THE INDEPENDENT POLICE AUDITOR IN ACCORDANCE WITH THE AMENDED SIDE LETTER AGREEMENT BETWEEN THE CITY OF SAN JOSE AND THE SAN JOSE POLICE OFFICERS ASSOCIATION; CHANGE THE SIZE AND COMPOSITION OF THE PLANNING COMMISSION FROM 7 TO 11 MEMBERS WITH COUNCIL APPOINTING ONE MEMBER FROM EACH COUNCIL DISTRICT AND ONE "AT-LARGE" MEMBER; AND ALLOW THE COUNCIL BY ORDINANCE TO ESTABLISH TIMELINES TO CONDUCT REDISTRICTING WHEN CENSUS RESULTS ARE LATE**

**WHEREAS**, San José City Charter Section 1600 authorizes the City Council to set the date for a Special Municipal Election; and

**WHEREAS**, the City Council desires to submit to the electors of the City of San José at a Special Municipal Election a ballot measure proposal to amend various sections of the San José City Charter;

**NOW, THEREFORE**, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

**SECTION 1.** A Special Municipal Election is hereby called and ordered to be held in the City of San José on November 3, 2020 for the purpose of voting on a ballot measure to amend various sections of the San José City Charter, which shall be deemed ratified, pursuant to Government Code Section 34459, if a majority of the electors voting on the

measure vote to approve the measure. The full text of the proposed City Charter amendment is attached to this Resolution as Exhibit A and incorporated by reference in this Resolution.

**SECTION 2.** The ballot measure will be placed on the ballot for the November 3, 2020 election in the following form:

**MEASURE \_\_\_\_**

Shall the City Charter be amended to: expand the Independent Police Auditor's oversight, including unredacted review of officer-involved shootings and use of force incidents causing death or great bodily injury, review of department-initiated investigations against officers, and other technical amendments; increase the Planning Commission to 11 members with Council appointing one member from each Council District and one "at-large" member; and allow the Council to establish timelines for redistricting when Census results are late?	YES	
	NO	

**SECTION 3.** The City Council hereby requests the Board of Supervisors of the County of Santa Clara, California to permit the Registrar of Voters of Santa Clara County ("Registrar of Voters") to render to the City of San José such services as the City Clerk of the City of San José may request relating to the conduct of the above-described Special Municipal Election with respect to the following matters:

Coordination of election precincts, polling places, voting booths, voting systems and election officers; Printing and mailing of voter pamphlets; Preparation of tabulation of result of votes cast; and all other services necessary to conduct an election.

**SECTION 4.** The City Council hereby requests that the Registrar of Voters consolidate the Special Municipal Election called and ordered to be held on November 3, 2020 with any other election that may be held on that date.

**SECTION 5.** The City Council hereby authorizes the Board of Supervisors of Santa Clara County, California to canvass the returns of the Special Municipal Election.

**SECTION 6.** The City Council hereby directs the City Clerk to reimburse the County of Santa Clara in full for any of the above-mentioned services which may be performed by the Registrar of Voters, upon presentation of a bill to the City, with funds already appropriated to the City Clerk for election purposes.

**SECTION 7.** The City Council hereby directs the City Clerk to take all actions necessary to submit the measure to the Registrar of Voters for placement on the November 3, 2020 ballot and facilitate the Special Municipal Election in the time frame specified herein and comply with provisions of the Elections Code of the State of California, City Charter, Ordinances, Resolutions and Policies regarding the conduct of the Special Municipal Election.

**SECTION 8.** The City Council hereby directs the City Clerk to: (a) pursuant to Section 12111 of the California Elections Code, cause a synopsis of the proposed measure to be published at least one time not later than one week before the election in the Mercury News, a newspaper of general circulation within the City of San José; (b) consolidate the Notice of Measure to be Voted with the Notice of Election into a single notice; (c) cause the statement set forth in Section 9280 of the California Elections Code regarding notice of availability of a copy of the measure to be printed in the impartial analysis to be prepared by the City Attorney; and (d) do all other things required by law to submit the specified measure above to the electors of the City of San José at the Special Municipal Election, including causing the full text of the proposed

measure to be made available in the Office of the City Clerk at no cost and posted on the City Clerk's website.

**SECTION 9.** Pursuant to Sections 9282 and 9285 of the California Elections Code, the City Council hereby approves the submittal of direct arguments for and against the ballot measure, if any, [and authorizes the City Council or any member or members of the Council to author and submit a ballot measure argument in favor of the ballot measure] [but determines that rebuttal arguments will not be allowed] OR [and approves the submittal of rebuttal arguments in response to arguments for and against the ballot measure and authorizes the City Council or any member or members of the City Council to author and submit a rebuttal, if any.]

**SECTION 10.** The City Council hereby directs the City Clerk to transmit a copy of the measure qualifying for placement on the ballot to the City Attorney for preparation of an impartial analysis in accordance with Section 9280 of the California Elections Code.

**SECTION 11.** The City Council hereby acknowledges that the consolidated election will be held and conducted in the manner prescribed in California Elections Code Section 10418.

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ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk

**EXHIBIT A TO RESOLUTION NO. \_\_\_\_\_ OF THE CITY OF SAN JOSE**

That the citizens of the City of San José do hereby enact the following amendments to the City Charter :

Section 1. That Section 403 of the City Charter be amended to read as follows:

**SECTION 403. Elections by Districts.**

For the purpose of electing members of the Council, excepting the Mayor, the City shall be divided into ten (10) numbered Districts as nearly equal in population as practicable. The boundaries of the ten Districts shall be established initially by reference to that certain map of the City of San José, entitled "Election Districts of the City of San José", filed and displayed in the office of the City Clerk, and drafted according to data contained in the official census of the City as taken in 1975 and certified by the City Clerk. Thereafter the boundaries of such Districts shall be subject to alteration and change under the provisions of this Section.

Following the taking of each federal decennial census, commencing with the 1980 federal decennial census, the Council shall, by ordinance, redistrict the City into ten (10) numbered Districts. If time permits, such ordinance shall be enacted no earlier than three (3) month and no later than eight (8) months following receipt by the City Clerk of data containing an enumeration of population by blocks derived from such census. In no event shall such ordinance be enacted later than October 31 in the year following the decennial census. Notwithstanding the foregoing, the Council may enact an ordinance to adjust the deadline to enact the redistricting ordinance if the results of the federal decennial census are not delivered to the States by April 1 in the year following such census.

The redistricting ordinance shall be adopted according to the provisions of Article VI, Section 604 of this Charter and shall become effective at the expiration of thirty (30) days after adoption of the ordinance; provided, however, that if the redistricting ordinance becomes effective on or after the first day on which nomination papers may be filed for an election to the office of member of the Council, excepting the Mayor, then the ordinance shall not apply, or be deemed to apply, to that election or to the person elected to the office of member at such election.

By no later than February 1 in the year following the decennial census, the Council shall appoint an Advisory Commission whose purpose shall be to study and make appropriate recommendations with respect to such redistricting. This Advisory Commission shall consist of one (1) member from each District, who shall be appointed by the Council member from that District, and a Chairperson chosen from the City at large, who shall be appointed by the Mayor. The membership of the Commission shall be representative of the ethnic make-up of the City at large, to the extent practicable.

The Advisory Commission shall conduct at least three public hearings, at various locations in the City, concerning its recommendations regarding District boundaries, and shall submit its report and recommendations to the Council within ~~one hundred twenty (120) days following its appointment.~~ the time prescribed by the Council. If the Council fails to prescribe a time, the Advisory Commission shall submit its report and recommendations to the Council one hundred twenty (120) days following its appointment.

The Council shall duly consider the report and recommendations of the Advisory Commission and in adopting any redistricting ordinance. However, the Council is required to adopt an ordinance within the period of time required under this Section even if the Advisory Commission fails to provide recommendations or reports as specified in this Section.

Except as provided hereinabove, such Districts shall be used for all elections of members of the Council, including their recall, and for filling any vacancy in the office of member of the Council, subsequent to the effective date of such ordinance and until new Districts are established.

Any territory which is annexed to or consolidated with the City but not included within a District shall, prior to or concurrently with completion of the proceedings therefor, be added to an adjacent District or Districts by the Council by ordinance, which shall become effective at the expiration of thirty (30) days after adoption and shall apply to all elections held on and after its effective date.

Any ordinance adopted by the Council and establishing, changing, or altering the boundaries of any District shall describe the new boundaries by reference to a map on file in the office of the City Clerk and/or by a metes-and-bounds description.

In any redistricting, the Council shall make the Districts as nearly equal in population as may be practicable, and may, in establishing the boundaries of the Districts, give consideration to (a) natural boundaries, street lines and/or City boundaries; (b) geography; (c) cohesiveness, contiguity, integrity and compactness of territory; and (d) community of interests within each District.

Upon any redistricting pursuant to the provisions of this Charter, each incumbent member of the Council will continue, during the remainder of the member's term, to hold office and to represent the District by which the member was elected prior to such redistricting, notwithstanding any provision of Section 404 requiring a member to be a resident of the District represented by such member.

Section 2. That Section 809 of the City Charter be amended to read as follows:

### **SECTION 809. Office of the Independent Police Auditor**

The Office of the Independent Police Auditor is hereby established. The Independent Police Auditor shall be appointed by the Council. Each such appointment shall be made as soon as such can reasonably be done after the expiration of the latest incumbent's term of office. Each such appointment shall be for a term ending four (4) years from and after the date of expiration of the immediately preceding term; provided, that if a vacancy should occur in such office before the expiration of the former incumbent's terms, the Council shall appoint a successor to serve only for the remainder of said former incumbent's term.

The Office of Independent Police Auditor shall become vacant upon the happening before the expiration of his or her term of any of the events set forth in subsections (a), (b), (c), (d), (e), (h), (i), (j), (k) and (l) of Section 409 of this Charter. The Council, by resolution adopted by not less than ten (10) of its members may remove an incumbent from the office of the Independent Police Auditor, before the expiration of his or her term, for misconduct, inefficiency, incompetence, inability or failure to perform the duties of such office or negligence in the performance of such duties, provided it first states in writing the reasons for such removal and gives the incumbent an opportunity to be heard before the Council in his or her own defense; otherwise, the Council may not remove an incumbent from such office before the expiration of his or her term.

The Independent Police Auditor shall have the following powers and duties:

- (a) Review Police Department investigations of complaints initiated by members of the public and administrative investigations initiated by the Police Department against police officers to determine if the investigation was complete, thorough, objective and fair.
- (b) Make recommendations with regard to Police Department policies and procedures based on the Independent Police Auditor's review of investigations of complaints against police officers.
- (c) Make recommendations with regard to Police Department policies and procedures.
  - (1) For the purposes of making recommendations in accordance with this subsection (c), the Independent Police Auditor shall have access to and authority to examine reports and records that are not exempt from disclosure and available for public inspection under the law for officer-involved shootings and uses of force resulting in death or great bodily injury, regardless of whether a complaint has been made. The Police



Department shall make these reports and records available to the Independent Police Auditor without redaction, but the Police Department may withhold such reports and records from the Independent Police Auditor until any criminal or administrative investigation involving the police officer or police officers specifically involved in the incident is complete. For the purpose of this subsection (c)(1), "great bodily injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of any bodily member or organ, a wound requiring extensive suturing, and serious disfigurement.

(2) In addition to the records and reports described in subsection (c)(1), the Independent Police Auditor shall have access to and authority to examine redacted records and reports of the Police Department, including, but not limited to, use of force statistics, police reports, and body worn camera footage, for the purposes of making recommendations in accordance with this subsection (c), subject to the following limitations:

- i. Records and reports sought by the Independent Police Auditor must be directly related to a topic that is the subject of a complaint or administrative investigation; and
- ii. Records and reports sought by the Independent Police Auditor must be directly related to a topic that is part of a work plan submitted to the Council by the Independent Police Auditor and approved by the Council; and
- iii. In addition to any other redactions authorized under State law, the Police Department shall redact police officer names and personally identifiable information of police officers in any record and report provided to the Independent Police Auditor under this subsection (c)(2); and
- iv. Any recommendation from the Independent Police Auditor that is based on the records and reports that were examined by the Independent Police Auditor under this subsection (c)(2) shall be reviewed by the City Manager, Chief of Police, City Attorney, and the Council, if appropriate, in accordance with the closed session provisions of California Government Code section 54950 et seq., before disclosure.

(d) Conduct public outreach to educate the community on the role of the Independent Police Auditor and to assist the community with the process and procedures for investigation of complaints against police officers.

- (e) Contract with any entity consistent with the powers and duties under this Charter and subject to any limitation imposed by Council.
- (f) Perform such other duties consistent with this Charter as may be required of him or her by the Council subject to any requirement to meet and confer with the recognized employee organization for police officers, including the exhaustion of applicable impasse resolution procedures.

Section 3. That Section 1000 of the City Charter be amended to read as follows:

### **SECTION 1000. Planning Commission.**

There shall be, and there is hereby established, a Planning Commission to consist of ~~seven (7)~~ eleven (11) members appointed by the Council with one member appointed from each Council District and one member appointed as an "at-large" member. It shall be deemed to be a continuation of the Planning Commission established by and pursuant to this Section as it read immediately prior to the effective date of this Section as it now reads.

A person shall not be eligible to take or hold office as a member of the Planning Commission unless he or she satisfies all of the following conditions:

- (a) He or she must have been a citizen of the United States for at least one year immediately preceding the commencement of the four-year term or lesser period of time for which he or she is appointed, and he or she must be a citizen of the United States during his or her incumbency;
- (b) He or she must have been a resident of the City of San José for at least one year immediately preceding the commencement of the four-year term or lesser period of time for which he or she is appointed, and he or she must be a resident of the City of San José during his or her incumbency;
- (c) He or she must have been a registered elector of the City of San José at the time of his or her appointment and thereafter to and including the date of commencement of the four-year term or lesser period of time for which he or she is appointed.

The City Manager, the City Attorney and such other officers as the Council may designate, or their representatives, may meet with the Planning Commission and may participate in its discussions but shall not have a vote.

Those persons who immediately prior to the effective date of this Section (as it now reads) were members of the Planning Commission established by and pursuant to this Section as it read immediately prior to the effective date of this Section (as it now reads) shall continue to be members of this Planning Commission and, subject to other

provisions of this Charter, shall hold such offices until the expiration of the terms for which they were appointed, to wit: the three members appointed for terms expiring on June 30, ~~1970~~ 2022, shall continue in office until the end of June 30, ~~1970~~ 2022, and the four members appointed for terms expiring on June 30, ~~1972~~ 2024, shall continue in office until the end of June 30, ~~1972~~ 2024. The Council shall appoint an eighth and ninth member for a term expiring on June 30, 2022, and a tenth and eleventh member shall be appointed for a term expiring on June 30, 2024. Thereafter, the Council shall appoint commissioners for four-year terms commencing on the first day of July of each even-numbered year to fill the offices of those members whose terms expire as of the end of the 30th day of June of such year.

The office of a member shall become vacant if during his or her term of office he or she ceases to be a resident of the City of San José or ceases to be a citizen of the United States. Also, the office of a member shall become vacant upon the happening before the expiration of his or her term of any of the events set forth in subsections (a), (b), (c), (e), (g), (h), (i), (j), (k), and (l) of Section 409 of this Charter, or upon such member's absence from five (5) consecutive regular meetings other than adjourned regular meetings, of the Commission, unless excused by resolution of Council. Also, the Council may remove a member from office at any time for misconduct, inefficiency or willful neglect in the performance of the duties of his or her office providing it first states in writing the reasons for such removal and gives such member an opportunity to be heard before the Council in his or her own defense. If a vacancy occurs before the expiration of a member's term appointed to represent a specific Council District, the Council shall appoint a qualified person from that same Council District to fill such vacancy for the remainder of the unexpired term of such member.

The Planning Commission shall have the following powers and duties:

- (a) Make recommendations to the Council respecting the adoption, amendment, or repeal of master, general, comprehensive, precise or specific plans for future physical development of the City or any part thereof, and periodically review the same;
- (b) Make recommendations to the Council respecting the adoption, amendment or repeal of land use and development regulations, including but not limited to zoning and subdivision regulations;
- (c) Make recommendations to the Council respecting the adoption, amendment or repeal of plans or programs for the redevelopment, rehabilitation or renewal of any areas of the City;
- (d) Make recommendations to the Council respecting capital improvement programs; and
- (e) Exercise such other powers and perform such other functions and duties as may be expressly given to it by other provisions of this Charter, or exercise such other powers or perform such other functions as may be

prescribed by the Council not inconsistent with the provisions of this Charter.

*NOTE: Additions to the text are underlined and deletions are shown in ~~strike~~through.*