



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Councilmember Jimenez
Councilmember Peralez
Councilmember Carrasco
Councilmember Esparza
Councilmember Arenas

SUBJECT: SEE BELOW

DATE: 10/21/2020

Approved *Sergio Jimenez Raul Peralez* Date: 10/21/2020
Magdalena Carrasco Maya Esparza Sylvia Arenas

SUBJECT: REDISTRICTING COMMISSION

RECOMMENDATION

1. Accept the City Clerk's recommendations.
2. Refer Redistricting Commission changes to the San José Board of Fair Campaign and Political Practices to evaluate and bring back to Council for consideration before final appointment of commissioners. The Commission should consider holding a special meeting in November to evaluate reforms. Reforms should include prohibiting communication between Commissioners and the Mayor/Councilmembers, as well as candidates for those offices, campaign staff, and their spouses, as well as providing for strict disclosure requirements of all communications between Commissioners and outside parties to ensure transparency. Reforms should ensure:
 - a. Increase community participation and communication with historically underserved and underrepresented communities through extensive and effective community engagement, based on best practices:
 - i. Meetings in each Council District -- per Brennan Center for Justice and consistent with the 2010 San José Redistricting process.
 - ii. Multiple meetings in all 3 common languages: Spanish, Vietnamese, English.
 - iii. Extensive and effective noticing for the public -- including ensuring that notices are placed in newspapers of record -- per Brennan Center for Justice
 - iv. Include Vietnamese, Spanish, and English papers for language specific meetings.
 - v. Hold an additional public hearing on the subject of redistricting principles proposed in today's action.

- vi. Provide free childcare options for those who need it to participate in public hearings – when possible under public health guidelines.
 - vii. Allow sufficient time after public hearings to incorporate feedback.
- b. Serve the City Charter’s stated goal under Article 403 that “The membership of the Commission shall be representative of the ethnic make-up of the City at large, to the extent practicable” and ensure sufficient resources to meet Council direction and best practices:
- i. Direct the City Clerk to produce a budget and plan to address these community needs -- including staffing and consulting needs.
 - ii. Direct the City Manager's Office to bring forward sufficient funding in the Mid-Year budget, for Council approval.
3. Provide an open and accessible website with key information available to the public -- including: listing commissioners, data used, and access to data. Hearing notices, recordings, transcripts, and lives stream links.
4. Reaffirm and clarify equity principles in Redistricting Commission criteria list:
- a. Direct the City Attorney to submit an amicus brief in ongoing litigation to prevent the Trump Administration from excluding undocumented community members from census data that will form the basis of redistricting data.
 - b. Direct the Redistricting Commission to:
 - i. Create Districts that provide racial minorities with an equal opportunity to participate in the political process, and that do not dilute or diminish their ability to elect candidates of choice whether alone or in coalitions with others -- per Brennan Center for Justice.
 - ii. Educate Commission members on the importance of avoiding proposed maps that would result in "stacking", "cracking", or "packing" communities of color and thereby reducing their voice in municipal governance

BACKGROUND

Each decade, we undertake the monumentally important process of redistricting in our City. This process is crucial to ensuring fair and representative Council Districts so our communities have equitable representation in our city government. This process can have significant impacts to the power of the vote in our diverse communities. As we confront locally the ramifications of the largest national movement for racial justice since the Civil Rights Movement of the 1960s, as well as the severe and disparate impacts of a global pandemic and economic crisis, we believe it is our responsibility to ensure that our redistricting process be as inclusive as possible. As President Trump and his allies nationally attempt to undermine the votes and voices of so many of our communities, we must combat this through community engagement and ensuring that the voices of our community are heard.

Timing

We share the Mayor's desire to see a redistricting commission that is independent, fair, diverse, transparent, and filled with qualified commissioners. However, we are deeply concerned that the Mayor has brought forward a broad swath of recommended changes to our redistricting process at the last minute, only weeks away from an election, and without time for staff analysis or significant community engagement. The redistricting process is a critically important foundation for our local democracy that will profound impacts on our communities for the next decade, and as such it is imperative that we have time to carefully consider proposed changes, and that residents have the opportunity for engagement in this process. Just a few months ago the Council voted unanimously to refer another set of potential changes to our city government structure to a public and transparent process.

Per the City Charter, the deadline to appoint Commissioners for the Redistricting Commission is February 1, 2021. This allows sufficient time for recommendations to be evaluated by our City's Board of Fair Campaign and Political Practices at a special meeting in November or their next scheduled meeting on December 9, 2020, and brought to Council before our final commission appointments. Furthermore, due to the extended timeline under SB 970 and AB 1276, which moved the 2022 Primary Election to June 7, 2022, and the deadline for Council approval and completion of redistricting is December 15, 2021. Currently the deadline for the federal government to deliver the 2020 Census data to the states is April 1, 2021, and the deadline for Commission to submit its findings to Council is 120 days following its appointment, but this deadline may change subject to voter approval of Measure G, which will allow council to establish the Commission's deadline.

The current timeline does not warrant rushing through extensive reforms with little or no input from the Board of Fair Campaign and Political Practices, from City staff, and from our community, and we believe that any good faith effort at reform requires us to recognize this.

What problems are we trying to solve with this set of reforms? All of our commissions, including the Redistricting Commission, are subject to a wide variety of local and state laws to ensure accountability and transparency, including the state Brown Act, the California Public Records Act, the Political Reform Act, and Council Policy 0-15: The Code of Ethics. We have had substantive discussions at Council over the past few months around the Planning Commission, as well as the redistricting process itself, and during neither of these discussions were these concerns raised. Why now and only for this commission?

We are deeply concerned with the impact the Mayor's proposal for an independent commission will have on our communities of color. The Mayor's memo recommends adopting provisions from the California Citizens Redistricting Commission as well as the City of Long Beach's independent redistricting process. It is important to note that these commissions themselves are deeply flawed. The California Citizens Redistricting Commission has suffered from a significant underrepresentation of Latinos, with only 21.4% in 2010 and 28.6% in 2020, despite Latinos making up nearly 40% of the state's population. Furthermore, the City of Long Beach's application process produced only 29 Latino applicants out of 159 total applicants in a City with 40% Latino population. We believe it is dangerous to hold up this model as an ideal example of

how to conduct redistricting in an equitable and inclusive manner being that this model has produced underrepresentation of the Latino communities.

The sweeping changes to our redistricting process must be discussed, developed, and vetted by the community in a public setting. These changes must not be piecemealed together, as such is recommended in the Mayor's proposal, to avoid unintended consequences as seen in the California Citizens Redistricting Commission and City of Long Beach.

California Common Cause and City of Los Angeles

We appreciate the work of California Common Cause around the state and specifically in the City of Los Angeles to better the democratic process. The City of Los Angeles has a long-standing history of controversy related to the redistricting process with the most recent lawsuit stemming from the redistricting that occurred following the 2010 census. The recommendations brought forth in a letter to the City of Los Angeles from California Common Cause and other organizations, many of which are the same recommendations brought forth in the Mayor's memo, address some of the issue the City of Los Angeles faces in their redistricting process.

However, the desired outcome of this letter is to promote public trust and encourage greater public participation. These desired outcomes cannot be achieved without input from the public throughout the process including the very changes the Mayor is proposing.

History

As discussed in the City Clerk's Memo, the 2000 Redistricting Commission established ten criteria to guide the Redistricting process, which were also used by the 2010 Commission. Those criteria are as follows:

1. Comply with all applicable laws, including the avoidance of gerrymandering.
2. Equalize the population count in each District within 10%.
3. Where boundaries meet charter requirements, maintain continuity of existing Council Districts as much as possible.
4. Minimize the dilution of votes, and avoid the fragmentation or the over compaction of ethnic communities.
5. Maintain cohesive neighborhoods within Districts and, where possible, keep neighborhood associations within a single District.
6. Avoid unseating current City Council members.
7. To the extent possible, recognize the importance of parks and public facilities in Districts.
8. Where possible, do not divide school districts between separate Council Districts.
9. To the extent possible, provide income diversity within Districts.
10. Strive to balance District interests with City-wide interests, but not at the expense or exclusion of individual Districts.

The 2010-2011 Commission held 15 meetings, including 10 public hearings, with one hearing in each Council District, significantly beyond what is currently required by either state law or the City Charter. The 2010 Redistricting Commission sought to minimize population transfer between districts, which meant adhering to the maximum allowable population variance of 10%. The commission advised that a future Council may wish to stipulate if there is a different (smaller) preferred variance, but noted this would necessitate greater population transfers between districts.

The Redistricting Commission also reaffirmed a prior recommendation from the 2000 Redistricting Commission to consider a Charter Amendment changing the 120 day timeline from the appointment of the Commission to the delivery of census data to the states by the federal government, noting the challenge of a significant portion of the 120 days falling before the census data was available in March.

Equity

The history of discrimination here in San José, and what it really means to strive for equity as a City, is a topic that this Council has confronted before, through two study sessions, and numerous robust Council debates. But it is a topic we return to again and again because of its profound impacts on our communities today. From the decades of redlining policies that created segregated communities, particularly in East and South Central San José, to an at-large system of representation that resulted in just two minority councilmembers between 1953 and 1978, San José has a long history of systemic discrimination that has shaped our communities today, and drastically curbed the voices of minorities in our political process.

Between 1916 and 1973, San José also held isolated, off-year elections. These elections schedules were often put in place in part to discourage participation from lower-class ethnic voters. Voter turnout in San José's last isolated election in 1973 was only 16%, which jumped to 60% with the first concurrent election in 1974.¹ Today our precincts with the lowest voter participation continue to be overwhelmingly in formerly redlined, low-income communities of color.²

Given the long, indisputable shadow that discrimination has cast over our communities and our local political processes, we believe it is absolutely imperative that any recommended reforms to our redistricting process focus twofold on increasing community participation and input, while advancing the City Charter's stipulation that "The membership of the Commission shall be representative of the ethnic make-up of the City at large, to the extent practicable."

Ex Parte Communications

We emphatically oppose any attempt to stifle community engagement and input, and we are particularly concerned with the proposed ban on ex parte communications, which will severely

¹ Christensen, Terry, and Hogen-Esch, Tom. Local Politics: A Practical Guide to Governing at the Grass Roots. 2006. M.E. Sharpe. Pg. 215

² <https://www.siliconvalleycf.org/sites/default/files/documents/grantmaking/voter-outreach-neighborhood-profiles.pdf>

hinder the ability of neighborhoods, community organizations, and residents to communicate substantively with the members of the commission.

According to the California Local Redistricting Project, a ban on ex parte communication does promote redistricting in full view of the public, however, it also may impede commissioners from having conversations with community leaders or attending neighborhood meetings that might improve their understanding of community boundaries³.

As stated in the City of San José City Charter, 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.

Given the mandate in the City’s Charter to give consideration not to split communities of interest, we must not limit the information a redistricting commissioner can receive by banning the ability to contact our neighborhood associations or community leaders to understand the boundaries of our communities of interest.

We cannot expect a commissioner from Almaden Valley or Willow Glen to understand the boundaries of a communities of interest such as the Washington community, Welch Park community, or Owsley community.

With the understanding of this issue, very few cities outright ban ex parte communication. While the Mayor’s memo cites Long Beach and Sacramento as cities that prohibit ex parte communication, cities and counties such as San Francisco, Oakland, Los Angeles County, City of Los Angeles, San Diego County, and Menlo Park do not prohibit ex parte communication.

	San Jose	Oakland	San Francisco	Stockton	Los Angeles	Los Angeles County	Menlo Park	Berkeley	San Diego County	Long Beach	Sacramento
Permits Ex Parte Communications	X	X	X	X	X	X	X	X	X		

Communities of interest are often the communities that are underrepresented, underserved, and have limited participation in our public meetings due to a number of challenges including the current challenge of a digital divide creating barriers to access online public meetings. With limited participation from our communities of interest, the commission will not have the information needed to ensure compliance with our City Charter. Understanding the importance of the redistricting process, we must not rely on luck or happenstance to ensure our communities of interest are not split.

Furthermore, the current proposal to ban ex parte communication expands the power of the Redistricting Commission’s Chair, who is appointed by the Mayor. By restricting public communication to the public comment of meetings themselves, the ban empowers the Chair of

³ Heidorn, Nicolas. California Local Redistricting Commissions. 2017. California Redistricting Project.

the commission to potentially shut down meaningful debate or silence criticism. This issue is further compounded being the Redistricting Commission will only hold three public meetings in this redistricting process. This certainly doesn't promote a fair, diverse, and transparent redistricting process.

CONCLUSION

Public trust is built upon seeking input from the community and implementing this input in the decision-making process. Bypassing committees of appointed community members whose role is to discuss, seek public input, and recommend council action is not only delegitimizing our committees, but harming the public's trust in our government.

The process of Redistricting provides a crucial once-in a decade opportunity for us to ensure a more equitable representation for our communities in their city government. This is not a process to be taken lightly, and definitely not something to be rushed haphazardly. Any reforms must be vetted through the San José Board of Fair Campaign and Political Practices. These reforms must focus on increasing community engagement and input, while ensuring a fair and transparent process that we can all agree upon.

The signers of this memorandum have not had, and will not have, any private conversation with any other member of the City Council, or that member's staff, concerning any action discussed in the memorandum, and that each signer's staff members have not had, and have been instructed not to have, any such conversation with any other member of the City Council or that member's staff.