



STAFF REPORT

AGENDA NO: 9a

MEETING DATE: January 3, 2022

To: Honorable Mayor and City Council

Date: January 3, 2022

From: Meaghan Hassel-Shearer, City Clerk – (650) 558-7203

Subject: Introduction of An Ordinance Repealing Chapter 2.19 of Title 2 of the Burlingame Municipal Code; and Adding Chapter 2.18 to Title 2 of the Burlingame Municipal Code to Provide for the Election of Members of the City Council By Five Districts, Establishing the Boundaries and Identification Number of Each District, and Establishing the Election Order of Each District; CEQA Determination: Exempt Pursuant to State CEQA Guidelines Section 15378, 15601(B)(3)

RECOMMENDATION

Staff recommends that the City Council conduct a public hearing to introduce an Ordinance repealing Chapter 2.19, "General Municipal Election," of Title 2 of the Burlingame Municipal Code and adding Chapter 2.18, "City Council By-District Elections," to Title 2 of the Burlingame Municipal Code regarding district elections by:

1. Requesting the City Clerk to read the title of the proposed Ordinance
2. By motion, waiving further reading and introducing the proposed Ordinance
3. Conducting a public hearing on the proposed Ordinance
4. Discussing the proposed Ordinance and by motion determining whether to bring it back for a second reading and adoption
5. Directing the City Clerk to publish a summary of the Ordinance at least five days prior to the proposed adoption.

BACKGROUND

On January 17, 2020, the City of Burlingame received a letter from Kevin Shenkman, of the law firm Shenkman & Hughes, alleging that the City's current at-large election system violates the California Voting Rights Act of 2001 ("CVRA"). In his letter, Mr. Shenkman alleged that the City's current voting system has "dilute[d] the ability of Asians ... to elect candidates of their choice or otherwise influence the outcome of the City's current elections." This argument is based primarily on the fact that while Asian-Americans comprise around 20% of the City's population, an Asian-American has never been elected to the City Council. The population data used is based on the 2010 census.

The letter that the City received is one of dozens of similar letters that cities across the state have received alleging violations of the CVRA. These letters have generally alleged that, in the target

communities, minorities who comprise a meaningful percentage of the population have not been elected to public office. Mr. Shenkman urges each city to consider the use of by-district elections to cure the violation. The letters also make clear that if a city does not declare its intent to do so, a lawsuit under the CVRA will follow.

The CVRA prohibits at-large elections when it can be shown that they impair the ability of a protected class to elect candidates of their choice or to influence elections in a significant way. The law was passed in part due to a lack of success by plaintiffs utilizing the CVRA's federal counterpart, the Federal Voting Rights Act, to challenge at-large election systems through federal law. Under the CVRA, plaintiffs need only show that "racially polarized voting" exists in the jurisdiction; they do not need to show any intent of voters or City officials to discriminate against the underrepresented class. They also do not need to prove that changing to district elections would increase representation on the elected body in question.

The Council met in closed session on March 2, 2020, to consider the letter and the various options available to the City. Then on March 16, 2020, the Council adopted Resolution Number 032-2020 reflecting its intent to transition from at-large to by-district Council elections.

On January 4, 2021, the City Council adopted Resolution Number 004-2021 authorizing the City Manager to enter into a professional services agreement with Redistricting Partners for the purpose of transitioning from at-large elections to by-district elections.

With the assistance of Redistricting Partners, the City has held four public hearings on the transition to district elections:

1. February 1, 2021 Public Hearing:

At the first public hearing, Redistricting Partners, the City's consultant, outlined the California Voting Rights Act, the Fair Maps Act, and the history of districting. Redistricting Partners CEO Paul Mitchell reviewed the State regulations for districts:

- Relatively equal population size (people not registered voters)
- Contiguous – districts should not hop/jump
- Maintain communities of interest
- Follow city/county/local government lines
- Keep districts compact in both appearance and function

Mr. Mitchell explained that the City would need to collect information from the public on how residents defined their neighborhood and communities of interest through the use of Community of Interest Forms and map drawing tools. He stated that the information the City collected would be combined with the 2020 Census data to draw the City's district lines. He noted that while the Census data is usually released in the spring, it would be delayed until the fall because of the pandemic and other complications.

2. May 3, 2021 Public Hearing:

At the second public hearing, Redistricting Partners again reviewed the history of districting and the regulations that the City's district map must meet. Additionally, staff reviewed the extensive public outreach that they were conducting to educate the public on the transition and obtain input from residents.

More importantly, this hearing was a second chance for members of the public who had missed the first hearing to ask questions about the process and understand why the City was transitioning from at-large elections to by-district elections for Council seats.

3. November 1, 2021 Public Hearing:

Redistricting Partners reviewed the three draft map plans that they had created. Each draft plan included information on the demographic breakdowns of the districts, population counts, and Citizen Voting Age Population ("CVAP") counts. Additionally, Redistricting Partners' presentation included information about which neighborhoods, according to the historically named neighborhoods, remained together, and which were split.

After the presentation, the Council and the public provided Redistricting Partners with feedback, questions, and comments on which maps they preferred and what they thought should be changed.

4. December 6, 2021 Public Hearing

At the fourth hearing, staff reviewed questions and concerns that were raised by the community at the third hearing. Redistricting Partners then introduced a fourth draft map plan that was based on the feedback the City received at the third hearing. Additionally, Mr. Mitchell reviewed the demographic breakdowns, neighborhoods, and deviations of each map. After the presentation, the Council and public asked questions of staff and Redistricting Partners.

At the end of the public hearing, the City Council unanimously selected draft map plan D, and the Council asked staff to prepare an ordinance formally adopting draft map D for use beginning with the November 2022 election.

DISCUSSION

The proposed Ordinance transitions the City to district elections, determines the numbering of the districts, and establishes the election order.

In November 2022, the following districts will be up for election:

District 1 previously labelled District D on Draft Map D
District 3 previously labelled District C on Draft Map D
District 5 previously labelled District B on Draft Map D

In order to run for office in one of these districts, the individual must be registered to vote in that district (an individual's voter registration address is their main residence). To vote in that district, an individual must be a registered voter of that district.

In November 2024 the following districts will be up for election:

District 2 previously labelled District E on Draft Map D

District 4 previously labelled District A on Draft Map D.

In order to run for office in one of these districts, the individual must be registered to vote in that district (an individual's voter registration address is their main residence). To vote in that district, an individual must be a registered voter of that district.

After the adoption of the proposed Ordinance, the City's consultant, Redistricting Partners, will work with San Mateo County's Election Office to finalize the lines and implement the districts.

FISCAL IMPACT

There is no fiscal impact.

Exhibits:

- Proposed Ordinance
- Exhibit A

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF BURLINGAME REPEALING CHAPTER 2.19 OF TITLE 2 OF THE BURLINGAME MUNICIPAL CODE AND ADDING CHAPTER 2.18 TO TITLE 2 OF THE BURLINGAME MUNICIPAL CODE TO PROVIDE FOR THE ELECTION OF MEMBERS OF THE CITY COUNCIL BY FIVE DISTRICTS, ESTABLISHING THE BOUNDARIES AND IDENTIFICATION NUMBER OF EACH DISTRICT, AND ESTABLISHING THE ELECTION ORDER OF EACH DISTRICT; CEQA DETERMINATION: EXEMPT PURSUANT TO STATE CEQA GUIDELINES SECTION 15378, 15601(B)(3)

WHEREAS, the City of Burlingame has historically used an at-large method of election, which is consistent with the guarantees of Section 7 of Article 1 and of Section 2 of Article II of the California Constitution; and

WHEREAS, California Government Code Section 34886 permits the City Council to change the method of election by ordinance to a “by-district” system in which each member of the City Council is elected only by the voters in the district in which the candidate resides, in accordance with California Government Code Section 34871; and

WHEREAS, a by-district system can also be consistent with the guarantees of Section 7 of Article I and of Section 2 of Article II of the California Constitution; and

WHEREAS, on March 16, 2020, the City Council adopted Resolution Number 032-2020 that initiated the process of establishing a by-district election system; and

WHEREAS, under the provisions of California Elections Code Section 100100, a city that changes from an at-large city council method of election to a by-district council method of election must hold a total of five public hearings, which includes at least two public hearings regarding potential voting district boundaries prior to the release and consideration of any draft voting district maps, and two public hearings following the release of draft voting district maps; and

WHEREAS, on February 1, 2021 and May 3, 2021, pursuant to California Elections Code Section 10010(a)(1), the City Council held public hearings where the public was invited to provide input regarding the composition of the City’s voting districts before any draft maps were drawn, and the City Council of the City of Burlingame considered and discussed the same; and

WHEREAS, on November 1, 2021 and December 6, 2021 pursuant to California Elections Code Section 10010(a)(2), the City Council held public hearings where the public was invited to provide input regarding the content of the draft maps that had been released and published at least seven (7) days before each meeting, and the proposed sequence of the elections, and the City Council of the City of Burlingame considered and discussed the same; and

WHEREAS, at its meeting on December 6, 2021, the City Council directed staff to prepare a proposed ordinance adopting a voting district map for the City Council's consideration; and

WHEREAS, on January 3, 2022, the City Council held a final public hearing on the proposal to establish district boundaries, reviewed and considered additional public input, formally selected the voting district map and the election sequence attached to, incorporated in, and set forth, in this Ordinance as Exhibit A, which was introduced for a first reading at the same regular meeting; and

WHEREAS, throughout the foregoing process, the City engaged in a significant amount of public outreach and engagement above and beyond the public hearings and other procedures required by California Elections Code Section 10010; and

WHEREAS, the purpose of this Ordinance is to enact, pursuant to California Government Code Section 34886, an ordinance providing for the election of members of the City Council of the City of Burlingame by district in five single-member districts as reflected in the voting district map referred to as Map D and attached as Exhibit A to this Ordinance, in furtherance of the California Voting Rights Act of 2001 (Chapter 1.5 [commencing with Section 14025] of Division 14 of the Elections Code) to encourage by-district elections as one method to implement the guarantees of Section 7 of Article I and of Section 2 of Article II of the California Constitution.

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

Section 1. The recitals set forth above are true and correct and are hereby incorporated herein by this reference as if fully set forth in their entirety.

Section 2. Chapter 2.19 "General Municipal Election," of Title 2 of the Burlingame Municipal Code is hereby repealed and deleted in its entirety.

Section 3. A new Chapter 2.18 "City Council By-District Elections" is added to Title 2 of the Burlingame Municipal Code to read as follows:

Chapter 2.18 CITY COUNCIL BY-DISTRICT ELECTIONS

Sections:

02.18.005 Date of Election

02.18.010 Declaration of Purpose

02.18.020 City Council Districts Established

02.18.030 Election of Members of the City Council By-District

02.18.040 Commencement of District Elections

Section 02.18.005 Date of Election

Pursuant to Elections Code Sections 1301 and 10403.5, the general municipal election in the city of Burlingame for the offices of city councilmember shall be the first Tuesday following the first Monday in November of even-numbered years commencing in November 2022. (Ord. 1940 § 2, (501))

Section 02.18.010 Declaration of Purpose.

The City Council hereby declares that the purpose of this Ordinance is to change the method of electing members of this Council to a by-district method as defined in the California Voting Rights Act of 2021.

Section 02.18.020 City Council Districts Established.

Five City Council districts are hereby established in the City of Burlingame. The boundaries and identifying numbers of each district shall be as described and shown on the Council District Map attached as Exhibit A, and incorporated by reference.

Section 02.18.030 Election of Members of the City Council By-District.

(A) Following the effective date of this Ordinance and upon the commencement of “by-district” elections in the order established in Section 02.18.040 of this Code, members of the City Council shall be elected “by-district” as defined in the California Government Code Section 34871 or any successor statute. Any candidate for City Council must have been a resident and elector of the district in which they seek election by the time they pull nomination papers for such office, or such person’s appointment to fill a vacancy therein. No term of any member of the City Council that commenced prior to the effective date of this Ordinance shall be affected by the adoption of this Ordinance. A vacancy in an office filled by at-large election shall be filled by appointment or election from the City

at-large.

(B) Registered voters signing nomination papers or voting for a member of the City Council shall be residents of the geographical area making up the district from which the member is to be elected.

(C) The terms of the office of each member elected to the City Council shall remain four (4) years.

Section 02.18.040 Commencement of District Elections.

(A) Commencing on the General Municipal Election in 2022 and every four years thereafter the voters in districts 1, 3, and 5, shall elect members of the City Council by district for four (4) year terms. At the General Municipal Election in 2024, and every four years thereafter, the voters in districts 2 and 4, shall elect members of the City Council by district for four (4) year terms.

(B) The term of office of any councilmember who has been elected and whose term of office has not expired shall not be affected by any change in the boundaries of the district from which they were elected.

Section 4. Technical Adjustments and Metes-and-Bounds. If necessary to facilitate the implementation of this Ordinance, the City Clerk is authorized to make technical adjustments to the district boundaries that do not substantively affect the populations in the districts, the eligibility of candidates, or the residence of elected officials, within any district. The City Clerk shall consult with the City Manager and City Attorney concerning any technical adjustments deemed necessary and shall advise the City Council of any such adjustments required in the implementation of the districts. The City Clerk shall also direct the City's demographer to provide a metes-and-bounds description of each district as shown on the map attached as Exhibit A and incorporated herein by reference, which shall be submitted to the City Council at its next regular meeting and kept on file in the City Clerk's office for public review.

Section 5. CEQA Determination. This Ordinance is not subject to the California Environmental Quality Act (CEQA) because it is not a "project" within the meaning of Section 15378 of the State CEQA Guidelines, since there is no potential of the Ordinance to result in direct or indirect physical change to the environment. In addition, the Ordinance is not subject to CEQA pursuant to State CEQA Guidelines section 15061(b)(3), as it can be seen with certainty that there is no possibility the Ordinance may have a significant effect on the environment.

Section 6. If any section, subsection, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion or sections of the Ordinance. The City Council of the City of Burlingame hereby declares that it would have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or

phrases be declared unconstitutional.

Section 7. This Ordinance shall become effective 30 days after its adoption. The City Clerk is directed to publish this Ordinance in a manner required by law.

Section 8. Sections 2 and 3 of this Ordinance shall be codified in the Burlingame Municipal Code. Sections 1, 4, 5, 6, and 7 shall not be so codified.

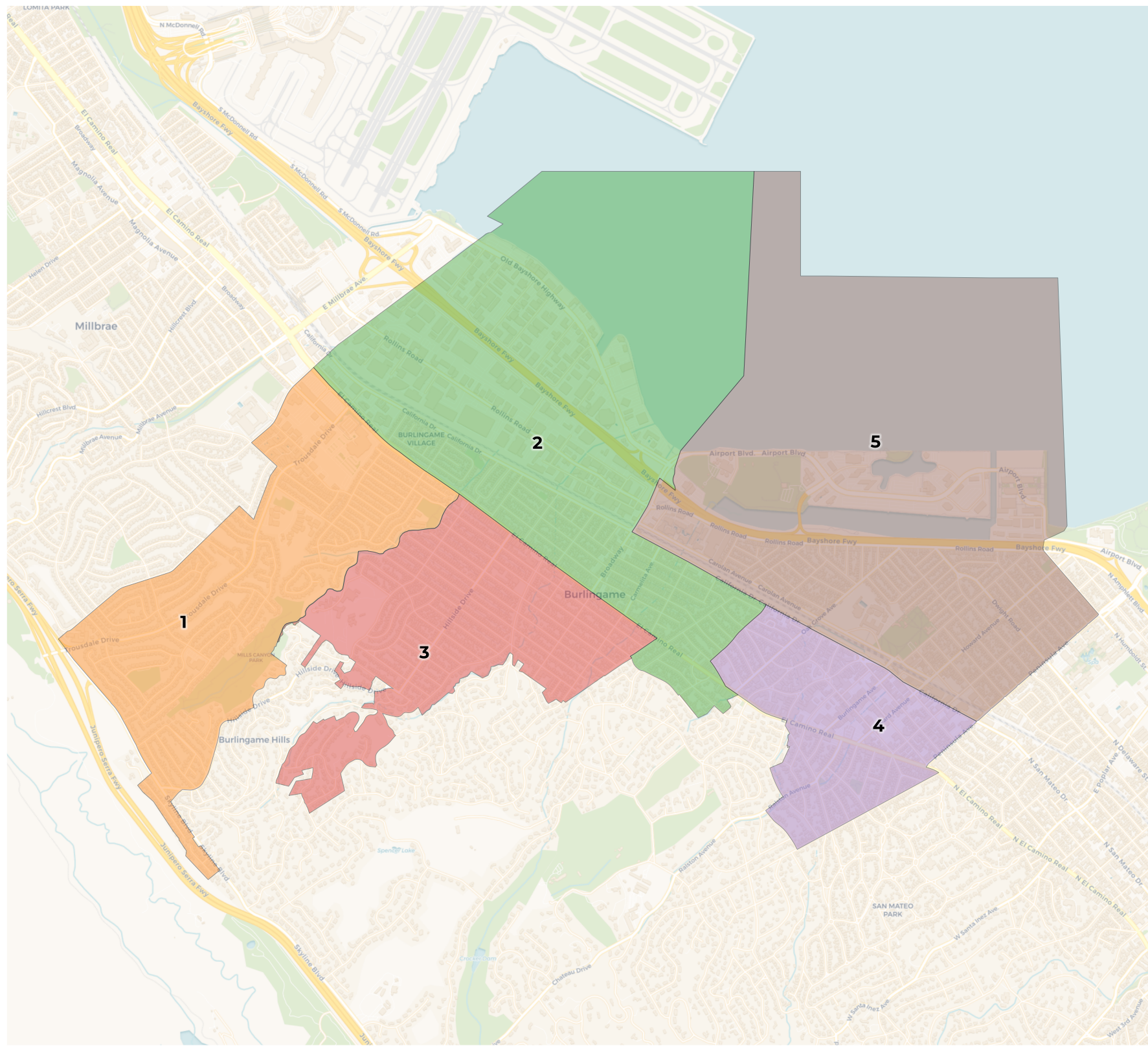
Ricardo Ortiz, Mayor

I, Meaghan Hassel-Shearer, City Clerk of the City of Burlingame, certify that the foregoing Ordinance was introduced at a public hearing at a regular meeting of the City Council held on the 3rd day of January, 2022, and adopted thereafter at a regular meeting on the ____ day of _____, 2022, by the following vote:

| | |
|---------|-----------------|
| AYES: | Councilmembers: |
| NOES: | Councilmembers: |
| ABSENT: | Councilmembers: |

Meaghan Hassel-Shearer, City Clerk

Exhibit A



9. **PUBLIC HEARINGS**

- a. **INTRODUCTION OF AN ORDINANCE REPEALING CHAPTER 2.19 OF TITLE 2 OF THE BURLINGAME MUNICIPAL CODE AND ADDING CHAPTER 2.18 TO TITLE 2 OF THE BURLINGAME MUNICIPAL CODE TO PROVIDE FOR THE ELECTION OF MEMBERS OF THE CITY COUNCIL BY FIVE DISTRICTS, ESTABLISHING THE BOUNDARIES AND IDENTIFICATION NUMBER OF EACH DISTRICT, AND ESTABLISHING THE ELECTION ORDER OF EACH DISTRICT; CEQA DETERMINATION: EXEMPT PURSUANT TO STATE CEQA GUIDELINES SECTION 15378, 15601(B)(3)**

City Clerk Hassel-Shearer explained that this was the fifth hearing regarding the City's transition to district elections for City Council seats. She briefly explained that the City received a letter from the law firm Shenkman and Hughes telling the City that it had violated the California Voting Rights Act. She noted that this letter was sent to many other cities, special districts, and school districts throughout the state, and the majority of these agencies decided to transition to district elections. She stated that the City held four public hearings and has conducted extensive public outreach. She explained that tonight's hearing is to introduce an ordinance that adopts Draft Map D for district elections and establishes the election order.

City Clerk Hassel-Shearer explained that districts one, three, and five will go to elections first, in November 2022, as Councilmember O'Brien Keighran, Vice Mayor Brownrigg, and Mayor Ortiz's terms are all up in 2022. She added that districts two and four will be up for election in November 2024, and those line up with the terms of Councilmember Beach and Councilmember Colson.

Mayor Ortiz asked the City Clerk to read the title of the proposed ordinance. City Clerk Hassel-Shearer read the title.

Councilmember Beach made a motion to waive further reading and introduce the ordinance; seconded by Councilmember O'Brien Keighran. The motion passed unanimously by roll call vote, 5-0.

Vice Mayor Brownrigg asked Redistricting Partners to explain how public input was received and processed. Redistricting Partners CEO Paul Mitchell explained that districting has become a much more front facing process over the years. He noted that the City has conducted extensive public outreach to obtain community input on what the lines should be. He explained that the job of Redistricting Partners is to review that input and determine how best to keep neighborhoods together while ensuring compliance with State districting regulations. He stated that as his firm goes from the community of interest testimony to the map finalization process, they have to make choices and decisions around how to balance the various communities of interest. He noted that there can be instances where they try to keep a community together, but in doing so it violates some criteria that invalidates a potential map.

Mr. Mitchell stated that Burlingame has been one of the best organizations in promoting the district elections process, and that he has used Burlingame as an example for other cities.

Vice Mayor Brownrigg thanked Mr. Mitchell for his explanation.

Mayor Ortiz opened the public hearing. No one spoke.

Councilmember Colson made a motion to bring back the ordinance for a second reading; seconded by Vice Mayor Brownrigg. The motion passed unanimously by roll call vote, 5-0.

10. STAFF REPORTS AND COMMUNICATIONS

a. CONSIDERATION OF ONE APPOINTMENT TO THE MEASURE I CITIZENS' OVERSIGHT COMMITTEE

Mayor Ortiz opened the item up for public comment. No one spoke.

City Clerk Hassel-Shearer asked Council to text her their votes. She read their votes.

Congratulations to Bee Hui Yeh on her appointment to the Measure I Citizens' Oversight Committee.

b. CONSIDERATION OF ONE APPOINTMENT TO THE PLANNING COMMISSION TO FILL THE REMAINDER OF A TERM

Mayor Ortiz opened the item up for public comment. No one spoke.

City Clerk Hassel-Shearer had Council text her their votes. She read their votes.

Congratulations to Jennifer Pfaff on her appointment to the Planning Commission.

c. ADOPTION OF A RESOLUTION SETTING A PARKLET RENT STRUCTURE

CDD Gardiner explained that at the December 6, 2021 City Council meeting, Council approved extending the parklet program through December 31, 2022. However, he noted that Council requested that rent be charged for the use of publicly-owned space and that cleaning fees be assessed at a later date. He stated that the City Council passed a motion to adopt a \$1,500 per year rent program, with cleaning fees to be adopted in the future, and with any future fee escalation to be approved by the Council.

CDD Gardiner explained that the intent of setting a rent structure is to capture the value of publicly-owned land, so that the use of space is not considered a gift of public funds, as gifts of public funds are not allowed under the State Constitution. He added that 2022 would be a trial run for this program to see if it would work long term.

CDD Gardiner explained that the program is modeled off of Mountain View's parklet program. He noted that the parklets in Burlingame, like those in Mountain View, are typically 300 square feet, so this would suggest an annual parklet rent of \$4.95 per square foot, which equates to \$1,485 per year. This number was then rounded up to \$1,500. He noted that the fee structure for sidewalk cleaning is still under review, but that it should be ready for the January 18 Council meeting.