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MEMORANDUM

TO: MEMBERS, Redistricting Task Force
FROM: Ana Flores *Ana Flores*
Deputy City Attorney
DATE: September 27, 2021
RE: Duties and Obligations of the Redistricting Task Force

In this memorandum, we summarize the Redistricting Task Force's duties and responsibilities, and the procedures it should bear in mind in performing these tasks. The City Attorney's Office is available to provide guidance regarding these topics on request, and further guidance is available in the City Attorney's Office's Good Government Guide, available under the "Good Government" tab at sfcityattorney.org.

I. THE TASK FORCE'S COMPOSITION

The Board of Supervisors ("Board"), through Ordinance No. 94-21, convened the Redistricting Task Force ("Task Force"). As required by the San Francisco Charter ("Charter"), the Task Force has nine members. The Mayor, the Board of Supervisors, and the Elections Commission each appointed three members.

As set forth in the ordinance convening the Task Force, Task Force members will serve until the Task Force completes its duties in connection with the 2020 decennial census. The ordinance also specifies that any vacancies occurring in the voting membership of the Task Force will be filled by the appointing authority for the seat that becomes vacant. Task Force members serve at the pleasure of their appointing authority.

Task Force members must file a Form 700 Statement of Economic Interests within 30 days of assuming their public office. For the purpose of calculating this 30-day period, a member assumes office by either receiving the oath of office or attending their first meeting, whichever occurs first. Members of the Task Force are assigned to Disclosure Category 3 and must disclose all investments and business positions in business entities and income from any source that manufactures or sells supplies, materials, equipment or professional services of the type used by the Task Force. Task Force members must electronically file their Form 700s through the Ethics Commission's filing system. Additionally, within 30 days of assuming office, Task Force members must complete trainings on the San Francisco Sunshine Ordinance and State and local ethics laws. These trainings are also available through the Ethics Commission's electronic filing system. After completing these trainings, the certificates documenting compliance will be available on the Ethics Commission's NetFile system.

II. THE TASK FORCE'S RESPONSIBILITIES

The Task Force is responsible for redrawing supervisorial district lines in accordance with the law and for making appropriate adjustments based on public input provided at

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community meetings. The legal requirements for redistricting are described in the accompanying memorandum.

Under the Charter, the Task Force must complete its redrawing of supervisorial district lines by April 15, 2022. Those district lines will apply to the election of Board members at the November 8, 2022 general municipal election.

The Task Force must take steps to encourage residents, including those in underrepresented and non-English speaking communities, to participate in the redistricting public review process. (Elec. Code, § 21628.) These steps must include a good faith effort to provide information to media organizations that provide City news coverage, including media organizations that serve language minority communities. (*Id.*) The Task Force must also provide information through good government, civil rights, civic engagement, and community groups or organizations that are active in the City, including those active in language minority communities, and those that have requested to be notified concerning City redistricting. (*Id.*) Additionally, the Task Force must provide translation, if a request for these services is made at least 48 hours in advance of a Task Force meeting. (S.F. Ord. No. 94-21.) Lastly, the Task Force must translate Task Force meeting notices, agendas and supplemental materials explaining the redistricting process. (*Id.*)

III. TASK FORCE PROCEDURES

Because the Task Force is a City policy body, all Task Force meetings are subject to the Brown Act and the Sunshine Ordinance. Likewise, Task Force documents and Task Force members' communications regarding Task Force-related matters are public records subject to disclosure. Note that some of the requirements below may change during the Task Force's tenure, as public meeting and public records rules under COVID-19 continue to develop.

A. Attendance and Quorum

Following the inaugural meeting, the Task Force must hold a regular meeting not less than once each month. Any member who misses three regular meetings of the Task Force within a six-month period, without the express approval of the Task Force at or before each missed meeting, will be deemed to have resigned from the Task Force 10 days after the third unapproved absence. (S.F. Ord. No. 94-21.)

A meeting occurs whenever a quorum of the Task Force comes together at the same time and place, or convenes electronically, such as through a phone or video conference call. (S.F. Admin. Code § 67.3(b)(1).) A majority of the members of a policy body constitutes a quorum for the transaction of business. (S.F. Charter § 4.104(b); *see generally* Cal. Govt. Code, § 54952.2(a).) For quorum purposes, a "majority" is measured by the number of members of the policy body designated by law, not the number of seats actually filled. That means at least five members of the Task Force must be present to hold a meeting. When less than a quorum of members is together at the same time or place, even if they are communicating about matters within the jurisdiction of the body, there is no "meeting."

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B. Notice Requirements for Meetings

Before the Task Force holds any meeting, it must provide adequate notice to the public about the date, time, and location of the meeting and a meeting agenda that describes the matters to be discussed or acted on at that meeting.

The Task Force must publish the date, time, and location for any public hearing or workshop on the internet at least five days before the hearing or workshop. (Elec. Code, § 21628.) But when there are fewer than 28 days until the deadline to adopt boundaries, the Task Force must post its agenda on the internet for at least three days before each meeting. (*Id.*) The agenda must state the meeting time and place and must contain a brief general description of each item of business that the Task Force will discuss at the meeting. (Gov. Code, § 54954.2.) The description must be sufficiently clear and specific to alert people of average intelligence and education whose interests are affected that they may have reason to attend the meeting or seek more information on the item. (*Id.*) The Task Force may discuss or act only on items listed on the meeting agenda.

In addition to these specific notice and agenda requirements, as mentioned above the Task Force must take steps to encourage residents, including those in underrepresented communities and non-English speaking communities, to participate in the redistricting process. (Elec. Code, § 21628.)

Task Force members should be mindful that their communications with each other do not trigger an unlawful meeting. Communications among a majority of the members outside of a noticed public meeting may result in a “seriatim” (or “serial”) meeting. Such communications, if substantive in nature, are generally unlawful. A letter, email, text message or other written communication from a member of a policy body to a majority of the members regarding matters within the body’s jurisdiction is not in itself unlawful. The risk lies where the initial one-way lawful communication could result in a seriatim meeting if a majority of the body ends up responding and effectively deliberating on or discussing a substantive matter.

C. Time and Place Requirements for Meetings

At the current time, all City commissions are meeting remotely under the Mayor’s COVID-related emergency orders. If the Mayor terminates those orders in the coming months, the Task Force may hold meetings at City Hall or in different neighborhoods in the City. Our Office will update the Task Force when such in-person meetings may be held.

Before the Task Force adopts a final redistricting plan, the Task Force must hold at least four public meetings. (Elec. Code, § 21627.1.) And the Task Force must hold at least one public hearing or public workshop on a Saturday, on a Sunday, or after 6 p.m. on a weekday Monday through Friday. (*Id.*)

D. Public Comment

Each Task Force meeting must also provide opportunities for public comment on the matters before the Task Force. There are two types of public comment – specific public comment on agenda items, and general public comment on matters not on the agenda but within the subject matter jurisdiction of the Task Force.

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For specific public comment on agenda items, the public has a right to speak before the Task Force acts on the item. Task Force members may wait to propose a motion until after public comment, but that is not legally required; the law only requires that the public have an opportunity to comment before the Task Force acts. With agenda items that are for discussion only, the public must be allowed to speak before or during the Task Force's discussion – in other words, sometime before the Task Force moves to the next item. The Task Force must also allow the public to submit testimony or draft maps in writing and electronically. (Elec. Code, § 21628(e).) The Task Force's agendas for regular meetings must also provide at least one opportunity for general public comment on items not on the agenda but within the jurisdiction of the Task Force. (Gov. Code § 54954.3(a); S.F. Admin. Code § 67.15(a).) Most commissions schedule a time for general public comment either at the beginning or end of each meeting.

For each type of public comment, the Task Force must allow each member of the public to speak once on each agenda item for up to three minutes and must apply time limits uniformly to members of the public. (S.F. Admin. Code § 67.15(c).) Where many people are offering public comment on the same agenda item, the presiding officer may encourage speakers to avoid repeating the comments of others.

Task Force members may ask questions of a speaker who is giving public comment, so long as the questions seek to clarify that public comment rather than interfere with it. But the Task Force may not count the time for the question and answer against the speaker's allotted time. Similarly, following the public comment period for an agenda item, if a Task Force member wishes to ask questions of a person who has previously offered public comment on the item, the speaker may respond, even if the speaker's time for public comment has elapsed.

The Task Force must either record or prepare a written summary of each public comment made at its meetings. (Elec. Code, § 21628(f).) The Task Force must also make the meeting recording or written summary available to the public within two weeks after the meeting. (*Id.*)

E. Public Records

Public records consist of any writing, regardless of physical form or characteristics that contains information relating to the conduct of the public's business, prepared, owned, used or retained by a state or local agency. (Gov. Code § 6252(e); S.F. Admin. Code § 67.20(b).) The public has the right to request to inspect or obtain a copy of a public record concerning the Task Force's conduct. (Gov. Code, §§ 6253, 6252(a) and 54952; S.F. Admin. Code § 67.21.) Records subject to disclosure include emails, text messages and voicemail recordings related to Task Force business. Additionally, public records on personal electronic devices – such as personal mobile phones and personal laptops – may be subject to disclosure too, so long as they contain records regarding the public's business. Task Force members should be mindful that any writing concerning the Task Force and Redistricting may likely be subject to disclosure to the public through a records request.

Additionally, once the Task Force adopts the new district boundaries, the City must establish a webpage dedicated to redistricting. (Elec. Code, § 21628(f).) The webpage must be maintained for at least 10 years after the Task Force finally adopts the plan. (*Id.*) The webpage must include a general explanation of the redistricting process in English and applicable languages; a description of public comment procedures; meeting notices and agendas; meeting

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recordings and summaries; draft maps considered at each public meeting; and a final map. (Elec. Code, § 21628(g).)

IV. THE ROLE OF THE CITY ATTORNEY'S OFFICE

The City Attorney's Office is the legal counsel for the City – including this Task Force and its members, with respect to Task Force-related duties. The three Deputy City Attorneys assigned to advise the Task Force are Ana Flores (ana.flores@sfcityatty.org), Gus Guibert (gus.guibert@sfcityatty.org), and Andrew Shen (andrew.shen@sfcityatty.org). At least one of us will attend Task Force meetings in the coming months to answer questions, as needed. Please feel free to contact any of us regarding the topics addressed in this memorandum, or the accompanying memorandum regarding legal requirements for redistricting.

When you consult with our Office, please bear in mind that a conversation between you and the City Attorney's Office outside of a public meeting for the primary purpose of seeking or giving legal advice is a confidential communication subject to the attorney-client privilege. This privilege applies to all conversations whether over the phone or through email. We will endeavor to mark our communications with you as subject to attorney-client privilege, to remind you of these confidentiality obligations. If you have any questions about whether the contents of our communications are confidential and privileged, or are public and can be shared with others, please do not hesitate to ask.

CONCLUSION

We hope this information is helpful. Please feel free to contact us at any time if you have additional questions about any of the above. We look forward to working with you.