

## CITY COUNCIL AGENDA ITEM NO. 2

**Meeting Date:** June 25, 2019

**Subject/Title:** An Ordinance Establishing City Council Member Election Districts; Setting Forth a District Election Process and the Sequencing of District Elections; Making Conforming Revisions to Brentwood Municipal Code Chapter 2.10 General Municipal Elections; and Authorizing Staff to Take Actions Necessary to Implement the Provisions of the Ordinance.

**Prepared by:** Margaret Wimberly, City Clerk

**Submitted by:** Gustavo "Gus" Vina, City Manager  
Damien Brower, City Attorney

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### RECOMMENDATION

Introduce and waive the first reading of an ordinance establishing City Council member election districts; setting forth a district election process and the sequencing of district elections; making conforming revisions to Brentwood Municipal Code Chapter 2.10 General Municipal Elections; and authorizing staff to take actions necessary to implement the provisions of this ordinance.

### CITY COUNCIL STRATEGIC INITIATIVE

Not Applicable.

### PREVIOUS ACTION

On January 22, 2019, the City Council adopted Resolution 2019-12 declaring its intent to transition from at-large to district-based City Council member elections, outlining specific steps to be taken to facilitate the transition, estimating a time frame for action, and establishing the number of City Council districts.

On February 11, 2019, the City Council held the first of four public hearings to receive input from the community regarding boundaries and composition of districts for City Council Member district-based elections.

On March 11, 2019, the City Council held the second of four public hearings to receive input from the community regarding boundaries and composition of districts for City Council Member district-base elections; and provided direction to the demographer on desired criteria to be used for drawing district maps.

On April 3, 2019, the City Council held the third of four public hearings to receive draft maps from the demographer and receive input from the community regarding boundaries and composition of districts for City Council Member district-based elections; and directed staff and the demographer regarding changes to the draft maps.

On May 1, 2019, the City Council held the fourth of four public hearings to receive draft maps from the demographer and receive community input regarding boundaries and composition of districts for City Council Member district-based elections; by Motion, the City Council voted on a preferred map, which consisted of Plan Purple with adjustments to districts 2 and 4; and by Motion, approved the election of Council Members in Districts 1 and 3 in 2020 and the election of Council Members in Districts 2 and 4 in 2022.

## **BACKGROUND**

Pursuant to Elections Code Section 10010, following the City Council's adoption of resolution of intention to transition from at large to district-based elections, the City was required to hold at least two public hearings before boundary maps for the proposed voting districts were drawn and two public hearings after the maps were drawn. Among other things, the public hearings provided residents and interested community groups an opportunity to inform the City Council of the community's views regarding district boundaries and composition.

On February 11, 2019, the City Council held the first of these public hearings and received a presentation from the demographer which provided an overview of the districting process. This overview included possible district formation criteria.

On March 11, 2019, after hearing public testimony the City Council directed that the demographer in preparing the draft maps:

- Follow traditional districting criteria;
- Consider any community of interest testimony unless it was in direct conflict with other Council direction. These considerations included placing Shadow Lakes/Deer Ridge communities in one district, placing Trilogy and Summerset communities in one district; and taking into account the north Brentwood Boulevard corridor;
- To the extent possible, not to overpopulate areas where data suggests there has been higher growth in the last 10 years; and
- To look at school district boundary enrollment zones.

On April 3, 2019, after the demographer presented four draft maps and the public provided comments on the maps and districts in general, the Council directed the demographer to draft variants of maps Red and Purple that addressed issues relating to the Brentwood Hills area, and that confirmed that the downtown would be kept whole in the new maps to the extent census geography permitted. The second round of draft map alternatives were posted on the City's District Election webpage on April 19, 2019, and published in the Brentwood Press on April 19, 2019.

On May 1, 2019, the demographer gave an overview of the revised district maps and the public provided comments on the maps and districts. Following the demographer's presentation and public comment, the City Council, by motion, approved a revision of Plan Purple with changes to the boundaries for proposed Districts 2 and 4, and authorized the demographer to make any technical, non-substantive changes to the map. Regarding district election sequencing, the City Council, by motion, approved the election of Council Members in Districts 1 and 3 in 2020 and the election of Council Members in Districts 2 and 4 in 2022.

The preferred map was published in the Brentwood Press and posted on the City's website on June 14, 2019.

The proposed ordinance establishes the district boundaries as described below; sets forth a district election process and district election sequencing; makes minor revisions to the eligibility affidavits to take into account the new election districts; confirms the Mayor being elected at large for a four year term; renumbers the Municipal Code's General Municipal Election chapter and removes an outdated section from that chapter; and authorizes staff to take any actions necessary to implement the provisions of the ordinance.

The district boundaries on the preferred map are as follows:

**District 1:** All the portion of the City of Brentwood lying northwesterly of the following described line: Beginning at the intersection of the Union Pacific rail line and the northerly boundary of the City of Brentwood, and proceeding southeasterly along the Union Pacific rail line to Marsh Creek, and proceeding southwestly along Marsh Creek to drainage creek, and proceeding westerly along drainage creek to Fairview Avenue, and proceeding southerly along Fairview Avenue to gravel road, and proceeding northwesterly along gravel road to path, and proceeding southwestly along path to longitude of 37°56'10.7"N, and proceeding westerly along longitude of 37°56'10.7"N to westerly boundary of the City of Brentwood.

**District 2:** All the portion of the City of Brentwood lying northeasterly of the following described line: Beginning at the intersection of Oak Street and the easterly boundary of the City of Brentwood, and proceeding northwesterly along Oak Street to Garin Parkway, and proceeding northerly along Garin Parkway to Sycamore Avenue, and proceeding westerly along Sycamore Avenue to Central Boulevard, and proceeding westerly along Central Boulevard to Walnut Boulevard, and proceeding southeasterly along Walnut Boulevard to McClarren Road, and proceeding westerly along McClarren Road to Sarah Street, and proceeding northerly along Sarah Street to Dainty Avenue, and proceeding westerly to Central Boulevard, and proceeding westerly along Central Boulevard to Minnesota Avenue, and proceeding northerly along Minnesota Avenue to drainage creek, and proceeding easterly along drainage creek to Marsh Creek, and proceeding northeasterly along Marsh Creek to the Union Pacific rail line, and proceeding northwesterly along the Union Pacific rail line to northerly boundary of the City of Brentwood.

**District 3:** All the portion of the City of Brentwood lying southwestly of the following described line: Beginning at the intersection of Marsh Creek and the southerly boundary of the City of Brentwood, and proceeding northeasterly along Marsh Creek to Balfour Road, and proceeding westerly along Balfour Road to Fairview Avenue, and proceeding northerly along Fairview Avenue to gravel road, and proceeding northwesterly along gravel road to path, and proceeding southwestly along path to longitude of 37°56'10.7"N, and proceeding westerly along longitude of 37°56'10.7"N to westerly boundary of the City of Brentwood.

**District 4:** All the portion of the City of Brentwood lying southeasterly of the following described line: Beginning at the intersection of Oak Street and the easterly boundary of the City of Brentwood, and proceeding northwesterly along Oak Street to Garin Parkway, and proceeding northerly along Garin Parkway to Sycamore Avenue, and proceeding westerly along Sycamore Avenue to Central Boulevard, and proceeding westerly along Central Boulevard to Walnut Boulevard, and proceeding southeasterly along Walnut Boulevard to McClarren Road, and proceeding westerly along McClarren Road to Sarah Street, and proceeding northerly along Sarah Street to Dainty Avenue, and proceeding westerly to Central Boulevard, and proceeding westerly along Central Boulevard to Minnesota Avenue, and proceeding northerly along Minnesota Avenue to drainage creek, and proceeding westerly along drainage creek to Fairview Avenue, and proceeding southerly along Fairview Avenue to Balfour Road, and proceeding easterly along Balfour Road to Marsh Creek, and proceeding southwestly along Marsh Creek to southerly boundary of the City of Brentwood.

### **Previous and Next Steps**

A detailed schedule setting forth the prior and proposed meeting and public hearing dates is as follows:

<b>City Council Meeting Number</b>	<b>Topic</b>	<b>Date</b>
1.	Public Hearing without maps to provide input on criteria to be used for drawing districts	Complete
2	Public hearing without maps to provide input on criteria to be used for drawing districts  Council to provide direction to demographer on desired criteria to be used for drawing maps	Complete
3	Public hearing with draft maps produced by the demographer for consideration and feedback by the public and Council	Complete
4	Public hearing with revised map(s) produced by the demographer for consideration; selection of one of the draft maps to be introduced as the final map to be included in the ordinance to establish districts; and public input and City Council direction concerning the sequencing of district elections to be included in the ordinance	Complete
5	Public hearing to introduce an ordinance establishing the district election process	June 25, 2019
6	Public meeting to adopt the introduced ordinance	July 9, 2019

The City Council is the final decision-making body on adopting district boundaries. To ensure that the City falls within the “safe harbor provision” of the California Voting Rights Act, which would limit the City’s potential liability to prospective plaintiffs to the statutory limit of no more than \$30,000 plus an inflation adjustment, adoption of the ordinance must occur no later than July 21, 2019.

### **FISCAL IMPACT**

There has been significant staff time needed to transition to district-based elections and to administer the process. The City has also incurred the costs for a demographer, and special legal counsel. Staff estimates the final cost for these services to be approximately \$150,000, which will be funded through the General Fund. Additionally, the City is required by the California Voting Rights Act to reimburse the prospective plaintiffs for their documented attorney’s fees and costs up to a combined total of \$30,000 plus an inflation adjustment. Costs relating to the transition to district-based elections have been included in the applicable operating budgets.

Attachments:

- a) Proposed Ordinance (with preferred Final Map)

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE ESTABLISHING CITY COUNCIL MEMBER ELECTION DISTRICTS; SETTING FORTH A DISTRICT ELECTION PROCESS AND THE SEQUENCING OF DISTRICT ELECTIONS; MAKING CONFORMING REVISIONS TO BRENTWOOD MUNICIPAL CODE CHAPTER 2.10 GENERAL MUNICIPAL ELECTIONS; AND AUTHORIZING STAFF TO TAKE ACTIONS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS ORDINANCE**

**WHEREAS**, the City of Brentwood currently elects its Council Members using an at-large election system that allows candidates to live in any part of the City, and each Council Member is elected by the voters of the entire City; and

**WHEREAS**, on November 15, 2017, the City received, by certified mail, a demand letter dated November 13, 2017, from attorney Scott J. Rafferty on behalf of the Bay Area Voting Rights Initiative (BAVRI), asserting that the City's at-large council member electoral system violated the California Voting Rights Act ("CVRA") and threatening litigation if the City declined to voluntarily change to a district-based election system for electing Council Members; and

**WHEREAS**, in a district-based election system, a candidate for City Council must live in the district which he or she wishes to represent, and only the voters of that district are entitled to vote to decide who their representative will be; and

**WHEREAS**, the City denies that its at-large City Council Member electoral system violates the CVRA or any other provision of law; and

**WHEREAS**, despite the foregoing, the City Council has determined that the public interest would be best served by transitioning to a district-based electoral system because of: 1) the CVRA clearly favoring district elections, making it very difficult to prevail in a CVRA lawsuit; 2) the extraordinary cost to defend against a CVRA lawsuit; 3) the risk of losing such a lawsuit which would require the City to pay the prevailing plaintiffs' attorneys' fees and potentially having district maps drawn by a superior court judge or his or her designee; and 4) the applicable statutory limit on the City's liability for plaintiff's reimbursable costs and attorneys' fees under the safe harbor provisions; and

**WHEREAS**, the City, Mr. Rafferty, and his clients agreed to extend the safe-harbor period under Elections Code section 10010(e) by which the City (1) would consider a resolution outlining its intent to transition to district-based elections, by and including January 31, 2019; and (2) would consider for adoption, an ordinance establishing district-based elections within 180 days after adoption of its resolution of intent, or by July 31, 2019, whichever was earlier; and

**WHEREAS**, under the provisions of Elections Code section 10010 and subject to any further agreement between the parties, Mr. Rafferty and his clients would not commence a CVRA action if the City Council adopted an ordinance establishing district elections by July 21, 2019; and

**WHEREAS**, under the provisions of California Elections Code Section 10010, a city that changes from an at-large city council method of election to a district-based city council method of election must hold a total of four 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 at least two public hearings following the release of draft voting district maps; and

**WHEREAS**, at a regular meeting of the City Council held on January 22, 2019, the City Council adopted Resolution No. 2019-12, which initiated the process of establishing a district-based election system and adopted a public hearing schedule; and

**WHEREAS**, pursuant to Elections Code Section 10010, on February 11, 2019 and March 11, 2019, the City Council held public hearings to consider input from the public on the composition of the Council districts, including the number of districts and criteria for determining district boundaries. The City Council considered all oral and written information, testimony, and comments received during the public review process and on March 11, 2019, the City Council directed its demographer to develop map options containing four districts each; and

**WHEREAS**, the districting criteria that the City Council directed the demographer to use in preparing the draft maps was as follows:

- Follow traditional districting criteria;
- Consider any community of interest testimony unless it was in direct conflict with other Council direction. These considerations included placing Shadow Lakes/Deer Ridge communities in one district, placing Trilogy and Somerset communities in one district; and taking into account the north Brentwood Boulevard corridor;
- To the extent possible, not to overpopulate areas where data suggests there has been higher growth in the last 10 years; and
- To look at school district boundary enrollment zones; and

**WHEREAS**, consistent with the provisions of California Elections Code Section 10010 and based on City Council direction regarding district formation criteria, the demographer prepared four draft map alternatives that were posted on the City's District Elections webpage on March 22, 2019, and published in the Brentwood Press on March 19, 2019, and

**WHEREAS**, on April 3, 2019, the City Council considered the draft maps and comments received, and provided direction to the demographer to draft three additional maps, which were variations of two of the previously drafted maps; and

**WHEREAS**, the second round of draft map alternatives were posted on the City's District Election webpage on April 19, 2019, and published in the Brentwood Press on April 19, 2019; and

**WHEREAS**, as required by California Elections Code Section 10010, the City held public hearings on April 3, 2019 and May 1, 2019 where the public was invited to provide comments and input on the draft maps and sequence of elections; and

**WHEREAS**, at a public hearing on May 1, 2019, the City Council made additional revisions to one map and decided to proceed with that map, attached hereto as Exhibit A, and commence district elections in 2020 for Districts 1 and 3; with elections held in 2022 for Districts 2 and 4; 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 Brentwood by district in four single-member districts, with the Mayor still being elected at large by voters of the entire City; and

**WHEREAS**, this change in the method of electing members of the legislative body is being made in furtherance of the purposes of the California Voting Rights Act of 2001 (commencing with Section 14025) of Division 14 of the Elections Code).

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

**Section 1.** The City Council finds that the proposed amendments to the Brentwood Municipal Code are exempt from the requirements of the California Environmental Quality Act pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

**Section 2.** Sections 2.10.020 through 2.10.060 of the Brentwood Municipal Code are hereby replaced in their entirety with the sections set forth in the attached Attachment "1".

**Section 3.** If necessary to facilitate the implementation of this Ordinance, the City Clerk is authorized to make minor 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 will consult with the City Manager and the City Attorney concerning any technical adjustments deemed necessary and will advise the City Council of any such adjustments required in the implementation of the districts.

**Section 4.** The City Manager, City Attorney, and City Clerk are authorized to take any additional actions necessary to implement the provisions of this ordinance.

**Section 5.** If any part of this ordinance is declared invalid by a court, such invalidity will not affect any of the remaining parts.

**Section 6.** This ordinance will be published in accordance with Government Code Section 36933. This ordinance will take effect 30 days after its adoption. The City Clerk is directed to cause the municipal code text to be entered in the Brentwood Municipal Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Brentwood held on June 25, 2019, by the following vote:

## Attachment "1"

### **"2.10.020 District-Based Elections System.**

A. Pursuant to California Government Code Section 34886 and 34871(c), Council Members will be elected on a district-based elections system in four single-member districts. For purposes of this chapter, the term "district-based elections system" will mean the election of Members of the City Council by the voters of the district alone.

B. Except as provided in subsection (C) of this section, the Council Member elected to represent a district must live in that district and be a registered voter in that district, and any candidate for City Council must live in, and be a registered voter in, the district in which he or she seeks election at the time nomination papers are issued, pursuant to California Government Code Section 34882 and Elections Code Section 10227.

C. A Council Member in office at the time this section takes effect will continue in office until the expiration of the full term to which he or she was elected or appointed and until his or her successor is qualified. If vacancies in Council Member offices elected at-large occur before expiration of the full term thereof, such vacancies will be filled according to law from the city at-large.

### **2.10.030. Districts.**

A. Subject to section 2.10.020, City Council Members will be elected on a by-district basis from the Council districts described in subsection (B) below and depicted on the map attached to this Ordinance as Exhibit A and incorporated by this reference. To the extent there is a conflict between the map incorporated herein and the descriptions contained in subsection (B) below, the description will prevail.

B. The Districts are as follows:

1. District 1: All the portion of the City of Brentwood lying northwesterly of the following described line: Beginning at the intersection of the Union Pacific rail line and the northerly boundary of the City of Brentwood, and proceeding southeasterly along the Union Pacific rail line to Marsh Creek, and proceeding southwesterly along Marsh Creek to drainage creek, and proceeding westerly along drainage creek to Fairview Avenue, and proceeding southerly along Fairview Avenue to gravel road, and proceeding northwesterly along gravel road to path, and proceeding southwesterly along path to longitude of 37°56'10.7"N, and proceeding westerly along longitude of 37°56'10.7"N to westerly boundary of the City of Brentwood..
2. District 2: All the portion of the City of Brentwood lying northeasterly of the following described line: Beginning at the intersection of Oak Street and the easterly boundary of the City of Brentwood, and proceeding northwesterly

along Oak Street to Garin Parkway, and proceeding northerly along Garin Parkway to Sycamore Avenue, and proceeding westerly along Sycamore Avenue to Central Boulevard, and proceeding westerly along Central Boulevard to Walnut Boulevard, and proceeding southeasterly along Walnut Boulevard to McClarren Road, and proceeding westerly along McClarren Road to Sarah Street, and proceeding northerly along Sarah Street to Dainty Avenue, and proceeding westerly to Central Boulevard, and proceeding westerly along Central Boulevard to Minnesota Avenue, and proceeding northerly along Minnesota Avenue to drainage creek, and proceeding easterly along drainage creek to Marsh Creek, and proceeding northeasterly along Marsh Creek to the Union Pacific rail line, and proceeding northwesterly along the Union Pacific rail line to northerly boundary of the City of Brentwood.

3. District 3: All the portion of the City of Brentwood lying southwesterly of the following described line: Beginning at the intersection of Marsh Creek and the southerly boundary of the City of Brentwood, and proceeding northeasterly along Marsh Creek to Balfour Road, and proceeding westerly along Balfour Road to Fairview Avenue, and proceeding northerly along Fairview Avenue to gravel road, and proceeding northwesterly along gravel road to path, and proceeding southwesterly along path to longitude of 37°56'10.7"N, and proceeding westerly along longitude of 37°56'10.7"N to westerly boundary of the City of Brentwood.
4. District 4: All the portion of the City of Brentwood lying southeasterly of the following described line: Beginning at the intersection of Oak Street and the easterly boundary of the City of Brentwood, and proceeding northwesterly along Oak Street to Garin Parkway, and proceeding northerly along Garin Parkway to Sycamore Avenue, and proceeding westerly along Sycamore Avenue to Central Boulevard, and proceeding westerly along Central Boulevard to Walnut Boulevard, and proceeding southeasterly along Walnut Boulevard to McClarren Road, and proceeding westerly along McClarren Road to Sarah Street, and proceeding northerly along Sarah Street to Dainty Avenue, and proceeding westerly to Central Boulevard, and proceeding westerly along Central Boulevard to Minnesota Avenue, and proceeding northerly along Minnesota Avenue to drainage creek, and proceeding westerly along drainage creek to Fairview Avenue, and proceeding southerly along Fairview Avenue to Balfour Road, and proceeding easterly along Balfour Road to Marsh Creek, and proceeding southwesterly along Marsh Creek to southerly boundary of the City of Brentwood.

C. The Council districts specified in subsections (A) and (B) of this section will continue in effect until they are amended or repealed in accordance with law.

#### **2.10.040. Election Schedule.**

A. Except as otherwise required by California Government Code Section 36512, Council Members will be elected in Council Districts 1 and 3 beginning at the General Municipal Election in November 2020, and every four years thereafter. Council

Members will be elected in Council Districts 2 and 4 beginning at the General Municipal Election in November 2022, and every four years thereafter.

B. Following the adoption of a ballot measure on November 7, 2006, by City voters, and beginning with the November 2008 General Municipal Election, the Mayor is elected by the voters of the entire City every four years.

**2.10.050 Conduct of succeeding general municipal elections**

The municipal general election in 1984 and each municipal general election thereafter will be conducted on the date specified by this chapter, in accordance with the Government and Elections Codes, unless this chapter is later repealed by the city council”

**2.10.060 Affidavit of eligibility for elected officials**

A. Each candidate either nominated for an elective office, or proposed for appointment in the case of a vacancy in an elective office, will sign under penalty of perjury an affidavit declaring that the candidate is eligible to hold office. The affidavit will be in a form as shown in subsection C of this section. The affidavit will be submitted to the city clerk no later than the time the candidate assumes office.

B. Each official in an elective office will annually sign under penalty of perjury an affidavit declaring that the official continues to be eligible to hold office. The affidavit will be in a form as shown in subsection D of this section. The affidavit will be submitted to the city clerk no later than the time required by law for the annual filing of “Statements of Economic Interests” with the Fair Political Practices Commission, or June 1st, of each year, whichever is later.

C. Form—Affidavit of Eligibility for Candidates.

**AFFIDAVIT OF ELIGIBILITY FOR CANDIDATES**

STATE OF CALIFORNIA, )  
COUNTY OF CONTRA COSTA ) ss.  
CITY OF BRENTWOOD )

I, [name] solemnly swear that I am eligible to hold elective office in the City of Brentwood in that I am a registered voter of the City of Brentwood at the time nomination papers were issued to me by the City Clerk and I am an elector of the City at the time of assuming office because my legal residence is located at [address] in the City of Brentwood, and, in the case of City Council candidates, in the district in which I am running for election. For the duration of my term in office I will retain legal residence within the City of Brentwood and, in the case of City Council candidates, in the district in which I am running for election.

I declare under penalty of perjury that the foregoing is true and correct.

[signature]

Subscribed and sworn to before me the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(SEAL) \_\_\_\_\_

Notary Public in and for the County

of \_\_\_\_\_, State of California

D. Form—Affidavit of Eligibility for Elective Office Holders.

AFFIDAVIT OF ELIGIBILITY FOR  
ELECTIVE OFFICE HOLDERS

STATE OF CALIFORNIA                    )  
COUNTY OF CONTRA COSTA        ) ss.  
CITY OF BRENTWOOD                    )

I, [name] solemnly swear that I continue to be eligible to hold elective office in the City of Brentwood. In particular, my legal residence is in the City of Brentwood at [address] , which, in the case of City Council office holders, is in the district from which I was elected. For the duration of my term in office I will retain legal residence within the City of Brentwood and, in the case of City Council office holders, in the district from which I was elected.

I declare under penalty of perjury that the foregoing is true and correct.

[signature]

Subscribed and sworn to before me the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(SEAL) \_\_\_\_\_

Notary Public in and for the County

of \_\_\_\_\_, State of California

City of Brentwood  
Final

