DRAFT FOR MAP C-2b

ORDINANCE NO. XX-2017

AN ORDINANCE OF THE CITY OF FREMONT AMENDING FREMONT MUNICIPAL CODE CHAPTER 2.05 CONCERNING ELECTIONS TO ESTABLISH A BY-DISTRICT ELECTION PROCESS AND AMEND CHAPTER 2.05 TO MAKE OTHER CONFORMING AND TECHNICAL CHANGES

WHEREAS, the City of Fremont supports the full participation of all residents in electing members of the City Council; and

WHEREAS, pursuant to a 1977 voter initiative, Measure A, as amended by the voters in 1996, Measure AA, the City of Fremont currently elects four of its City Councilmembers using an at-large election system, with a separately elected Mayor, who is also a member of the City Council; and

WHEREAS, in the at-large election system, candidates may reside in any part of the City and each City Councilmember is elected by the voters of the entire City; and

WHEREAS, in a by-district election system, a candidate for City Council must reside 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, on February 15, 2017, the City received a letter from an attorney, Kevin Shenkman, asserting the City's at-large electoral system violated the California Voting Rights Act, and threatening litigation if the City declined to adopt by-district elections; and

WHEREAS, the letter did not contain any evidence of a violation, but the cost of defending against a claim under the California Voting Rights Act is extremely high; and

WHEREAS, California Government Code Section 34886, as amended effective January 1, 2017, provides:

Notwithstanding Section 34871 or any other law, the legislative body of a city may adopt an ordinance that requires the members of the legislative body to be elected by district or by district with an elective mayor, as described in subdivisions (a) and (c) of Section 34871, without being required to submit the ordinance to the voters for approval. An ordinance adopted pursuant to this section shall include a declaration that the 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 (Chapter 1.5 (commencing with Section 14025) of Division 14 of the Elections Code); and

WHEREAS, California Government Code Section 34871(c) provides for the election of members of the legislative body of a city by districts in six districts, with an elective mayor; and

WHEREAS, at its regular meeting on March 21, 2017, the City Council adopted a resolution of intent to establish a by-district voting process pursuant to Elections Code Section 10010; and

WHEREAS, pursuant to California Government Code Section 34886, it is declared the change in the method of electing members of the City Council of the City of Fremont made by this ordinance is to implement the guarantees of Section 7 of Article I and of Section 2 of Article II of the California Constitution, as set forth in Section 14031 of the California Voting Rights Act, and

WHEREAS, under the provisions of California Elections Code Section 10010, a political subdivision that changes from an at-large method of election to a by-district method of election shall hold at least two public hearings over a period of no more than thirty days, at which the public is invited to provide input regarding the composition of the districts before drawing a draft map or maps of the proposed boundaries of the districts; and

WHEREAS, before any maps of the proposed boundaries of the districts were drawn, the City Council held public hearings on April 4, 2017 and April 18, 2017, at which time input from the public on the proposed district boundaries was invited and heard; and

WHEREAS, at the public hearing on April 18, 2017, the City Council instructed its demographic consultant to develop redistricting plan options containing six Council Districts; and

WHEREAS, on April 27, 2017, consistent with the provisions of California Elections Code Section 10010, the City published and made available for release, all of the draft maps under consideration; and

WHEREAS, the potential sequence of elections was also published; and

WHEREAS, as required by California Elections Code Section 10010, the City held additional hearings within a period of no more than 45 days, the first on May 2, 2017, the second on May 16, 2017, and a third on June 6, 2017, at which the public was invited to provide input regarding the content of the draft maps and the potential sequence of elections; and

WHEREAS, the purpose of this Ordinance is to enact, pursuant to California Government Code Section 34886, an ordinance providing for the election of the members of the City Council of the City of Fremont by-district in six single-member districts, retaining a separately elected office of Mayor, as reflected in Exhibit 1 to this Ordinance and to make other conforming and technical changes to Fremont Municipal Code Chapter 2.05.

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

<u>SECTION 1.</u>   FMC CHAPTER 2.05, AMENDED

Fremont Municipal Code Chapter 2.05 is amended to read as follows:

Chapter 2.05
CITY COUNCIL AND MAYOR

Sections:

Sec. 2.05.010   Time of regular meetings of council – Council recesses.

The regular meetings of the city council shall be held on the first three Tuesdays of each month at 7:00 p.m.; provided, that when any such regular meeting time falls on a public holiday, no regular meeting shall be held on that day, but shall be held on the next business day as specified by the city council to be held as an adjourned regular meeting prior to the next regular meeting. The council shall be in recess for the first, second, third and fourth Tuesdays in August, and the fourth Tuesday in December.

Sec. 2.05.020   Reserved~~Schedule for regular meetings and regular study sessions of council – Council recesses.~~

~~The regular meetings of the city council shall be held on the first, second and third Tuesday of each month at 7:00 p.m. Provided, that when any such regular meeting date falls on a public holiday, no regular meeting shall be held on that date, but shall be held on the next business day as specified by the city council to be held as an adjourned regular meeting prior to the next regular meeting. The council shall be in recess for the first, second, third and fourth Tuesdays in August, and the fourth Tuesday in December.~~

Sec. 2.05.030   Place of council meetings.

All regular meetings of the council shall be held in the city council chamber in the Fremont City Hall, 3300 Capitol Avenue, Fremont, California.

Sec. 2.05.040   Place of regularly scheduled study sessions.

Regularly scheduled study sessions ~~held in accordance with Section~~ 2.05.020 shall be held in the city council chamber in the Fremont City Hall, 3300 Capitol Avenue, Fremont, California.

Sec. 2.05.050   Special meetings of council.

At any time, ~~three~~ four city ~~councilmen~~councilmembers, or the mayor, or in his/her absence from the city or his/her disability, the mayor pro tempore, may call a special meeting by delivering written notice to each ~~councilman~~ councilmember and to each local newspaper of general circulation, radio or television station requesting notice in writing and posting a notice on the city's website. Such notice must be delivered personally or by any other means~~mail~~ at least 24 hours before the time of such meeting as specified in the notice. Each ~~councilman~~ councilmember shall at all times have on file with the city clerk an address to which such notices may be mailed in compliance herewith. The call and notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings by the council. Written notice ~~to the councilmen~~ may be dispensed with as to any councilmember who at or prior to the time the meeting convenes files with the city clerk a written waiver of notice. ~~if all councilmen give their written consent to the meeting and the consent is filed in the city clerk's office when the meeting is held. A councilman~~ The waiver may be given~~give such consent~~ by telegram. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. All special meetings shall be held at the same place as provided in this chapter for the holding of regular meetings of the council and at such hour as is designated in the notice and call.

Sec. 2.05.060   Compensation of mayor and councilmembers.

   (a)   Each member of the council other than the mayor shall receive a salary of $2,118.89 per month.

   (b)   The mayor shall receive a salary of $3,764.52 per month.

   (c)   Compensation increases shall be reviewed during each budget cycle and increases shall be considered commensurate with the Consumer Price Index – All Urban Consumers, San Francisco-Oakland-San Jose in an amount not to exceed four percent. Any increase to the councilmembers' salaries shall become effective only upon commencement of a new council term of office following adoption of an ordinance authorizing the increase. Any increase to the mayor's additional compensation (the amount that exceeds the councilmembers' salary amount) shall become effective as set forth in the ordinance adopting the increase.

Sec. 2.05.070   Reimbursement.

The salaries prescribed for ~~councilmen~~ councilmembers in Section 2.05.060 are and shall be exclusive of any amounts payable to each member of the council as reimbursement for actual and necessary expenses incurred by him/her in the performance of official duties for the city.

Sec. 2.05.080 **General municipal election date to fill city council offices.**

Pursuant to Cal. Gov't Code §36503.5, the general municipal election of the city of Fremont shall be held on the same day as the statewide general election, as set forth in Cal. Elec. Code §25501301.

Editor's Note: Section 2.05.080 was originally adopted by Ord. No. 1500 following an advisory vote of the voters of the city of Fremont in April 1982, changing the general municipal election date from April in even-numbered years to November in odd-numbered years (the first election under this provision was held in November 1983, and the last in November 1991). Section 2.05.080 was amended by Ord. No. 1977, subject to the approval of and subsequently approved by the voters of the city of Fremont in November 1991, voting on a binding nonadvisory measure, changing the general municipal election date from November in odd-numbered years to same day as the statewide general election which, pursuant to Cal. Elec. Code §25501301, is held on the first Tuesday after the first Monday in November in each even-numbered year (the first election under this provision was set for November 1994). Ord. No. 1977 set forth numerous findings in support of changing the date of the general municipal election to the same day as the statewide general election, including the larger number of voters participating in consolidated elections for national, state, regional and local agency candidates and measures; the cost benefits of consolidated elections; and the general benefits of consolidating the general municipal election with the governing board elections of several other local agencies with the same or substantially the same electorate (in 1991, this included the Alameda County water district, Fremont unified school district, Fremont-Newark (Ohlone) community college district, and the Washington Township hospital district).

Sec. 2.05.090 **Filling council vacancies.**

(a) If a vacancy occurs in an office of councilmember ~~or in the office of mayor~~, the city council shall, within 60 days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to ~~,~~ fill the vacancy. ~~in accord with the provisions of this section.~~ If the council fills the vacancy by appointment, the person appointed shall reside in the council district where the vacancy occurred and hold office as set forth in California Government Code Section 36512(b)(2).

(b) If the vacancy in an office of councilmember is due to resignation, the resigning city council member may cast a vote on the appointment if the resignation will go into effect upon the appointment of a successor subject to the limitations set forth in California Government Code Section 36512(e).

(c) If a vacancy occurs in the office of the mayor, the council shall fill the vacancy by appointment in accordance with California Government Code Section 34902. If the council fails to fill it within 60 days, it shall call an election to fill the vacancy to be held on the next established election date to be held not less than 114 days thereafter. A person appointed or elected to fill a vacancy shall hold office for the unexpired term of the former incumbent.

(d) If the council calls a special election, the special election shall be held on the next regularly established election date not less than 114 days from the call of the special election. A person elected to fill a vacancy shall reside in the council district where the vacancy occurred and hold office for the unexpired term of the former incumbent.

~~(b) The city council may appoint a person to fill the vacancy, to hold office until the date of the certification of the results of a special election, which shall immediately be called to~~

be held on either the date of the next regularly established election or on the date of the next regularly scheduled municipal election, to be held throughout the city and not less than 90 days from the call of the special election.

(c) If the city council fails to appoint a person to fill the vacancy, the city council shall immediately call a special election to be held on the date of the next regularly established election.

(d) Notwithstanding subsections (b) and (c) of this section, a special election called to fill a vacancy caused by a recall of a councilmember or mayor shall be called in accordance with Cal. Elec. Code § 27333

Sec. 2.05.100   Term limits.

(a) No mayor who has served terms comprising eight consecutive years as mayor shall be qualified for further service in that office until he or she has a break in service in that office of at least four years.

(b) No councilmember who has served terms comprising eight consecutive years as a councilmember shall be qualified for further service in that office until he or she has a break in service in that office of at least four years.

(c) The disqualifications imposed by this section shall not prevent a person who is disqualified from serving as mayor from serving as a councilmember or a person who is disqualified from serving as a councilmember from serving as mayor. However, any person who has served terms comprising 16 consecutive years in the offices of mayor and councilmember shall be disqualified from further service in either office until he or she has a break in service from both offices of at least four years.

(d) Time spent in office while serving less than a full term shall not be counted in computing consecutive years in any office.

(e) Time spent in office prior to the enactment of this section shall not be counted in computing consecutive years in any office.

(f) In computing the number of years served, full, four-year terms shall count as four years of service even though the period encompassed by such terms may not be exactly four years in duration.

Sec. 2.05.110   Term of office for mayor and councilmembers.

The term of office for the mayor and each councilmember shall be four years.

Sec. 2.05.120   By-district electoral system for six city council members.

(a) Pursuant to California Government Code Sections 34886 and 34871(c), councilmembers shall be elected by-districts in six (6) single-member districts. The Mayor will be separately elected by a citywide vote.

(1) Beginning with the general municipal election in November 2018, councilmembers shall be elected in the electoral districts established by Section 2.05.130 and as subsequently reapportioned as provided by State law. Elections shall take place on a by-district basis as that term is defined in California Government Code Section 34871; meaning one member of the City Council shall be elected from each district, by the voters of that district alone, except for the Mayor, who shall be elected citywide. In accordance with Section 2.05.110, and except as provided in Section 2.05.140(b), each councilmember, including the Mayor, shall serve a four-year term until his or her successor has qualified.

(2) Except as provided in subdivision (b)(3) hereof, the councilmember elected to represent a district must reside 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. Termination of residency in a district by a Council Member shall create an immediate vacancy for that council district unless a substitute residence within the district is established within 30 days after the termination of residency.

(3) Notwithstanding any other provision of this section, the councilmembers in office at the time this Chapter takes effect, shall continue in office until the expiration of the full term to which he or she was elected and until his or her successor is qualified. Notwithstanding Section 2.05.090, vacancies in councilmember offices elected at-large may be filled from the City at-large. At the end of the term of each councilmember, that member's successor shall be elected on a by-district basis in the districts established in Section 2.05.130 and as provided in Section 2.05.140. A vacancy in a councilmember office elected by-district shall be filled by a person qualified to hold the office, who is a resident of the district.

**Sec. 2.05.130	Establishment of city council electoral districts.**

(a) Subject to Section 2.05.120(b)(3), councilmembers shall be elected on a "by-district" basis from the council districts described as follows:

District 1:

All of the lands, within the city of Fremont, lying northwesterly of California State Highway 84, also known as Decoto Road.

District 2:

All that portion of the city of Fremont lying within the following boundary, described as follows:

Beginning at the intersection of California State Highway 84, also known as Decoto Road, and Interstate 880, said point being the north most corner in the city of Newark boundary; thence northeasterly along Decoto Road to the intersection with Alameda Creek , said creek being the boundary between Fremont and Union City; thence northeasterly along said boundary to the intersection with the Union Pacific Railroad; thence southeasterly along said line to Alameda

Creek; thence southwesterly along said creek to the projection of Appletree Court; thence southerly along Appletree Court to the intersection with Riverwalk Drive; thence southwesterly along Riverwalk Drive to the intersection with Paseo Padre Parkway ; thence southerly along Paseo Padre Parkway to the intersection with Highway 84, also known as Peralta Boulevard ; thence southwesterly along Peralta Boulevard to the intersection with Parish Avenue; thence southwesterly along Parish Avenue to the intersection with Fremont Boulevard; thence southeasterly along Fremont Boulevard to the intersection with Eggers Drive; thence southwesterly along Eggers Drive to the intersection with Logan Drive; thence southeasterly along Logan Drive to the intersection with Richmond Avenue; thence southwesterly along Richmond Avenue to the intersection with Blacow Road; thence southeasterly along Blacow Road to the intersection with Mowry Avenue; thence southwesterly along Mowry Avenue to the intersection with Interstate 880; thence northwesterly along Interstate 880 to the point of beginning.

District 3:

All that portion of the city of Fremont lying within the following boundary, described as follows:

Beginning at the most easterly corner in the boundary of the city of Newark, said point being in the intersection of Stevenson Boulevard and Interstate 880; thence northeasterly along Stevenson Boulevard to the intersection with Paseo Padre Parkway; thence northwesterly along Paseo Padre Parkway to the intersection with Walnut Avenue; thence northeasterly along Walnut Avenue to the intersection with Civic Center Drive; thence northwesterly along Civic Center Drive to the intersection with Mowry Avenue; thence northeasterly along Mowry Avenue to the intersection with State Highway 238, also known as Mission Boulevard; thence northwesterly along Mission Boulevard to the intersection with the Union Pacific Railroad; thence southeasterly along the Union Pacific Railroad line to the intersection with Alameda Creek; thence southwesterly along said creek to the projection of Appletree Court; thence southerly along Appletree Court to the intersection with Riverwalk Drive; thence southwesterly along Riverwalk Drive to the intersection with Paseo Padre Parkway; thence southerly along Paseo Padre Parkway to the intersection with Highway 84, also known as Peralta Boulevard; thence southwesterly along Peralta Boulevard to the intersection with Parish Avenue; thence southwesterly along Parish Avenue to the intersection with Fremont Boulevard; thence southeasterly along Fremont Boulevard to the intersection with Eggers Drive; thence southwesterly along Eggers Drive to the intersection with Logan Drive; thence southeasterly along Logan Drive to the intersection with Richmond Avenue; thence southwesterly along Richmond Avenue to the intersection with Blacow Road; thence southeasterly along Blacow Road to the intersection with Mowry Avenue; thence southwesterly along Mowry Avenue to the intersection with Interstate 880; thence southeasterly along interstate 880 to the point of beginning.

District 4:

All that portion of the city of Fremont lying, northerly and easterly of the following described line:

Beginning at the intersection of Interstate 680 with the northeasterly boundary of the city of

Fremont; thence southwesterly to the intersection with Washington Boulevard; thence westerly along Washington Boulevard to the intersection with Driscoll Road; thence northeasterly along Driscoll Road to the intersection with Paseo Padre Parkway; thence northwesterly along Paseo Padre Parkway to the intersection with Walnut Avenue; thence northeasterly along Walnut Avenue to the intersection with Civic Center Drive; thence northwesterly along Civic Center Drive to the intersection with Mowry Avenue; thence northeasterly along Mowry Avenue to the intersection with State Highway 238, also known as Mission Boulevard; thence northwesterly along Mission Boulevard to the intersection with the Union Pacific Railroad; thence southwesterly and northwesterly along said railroad line to the intersection with the city of Fremont Boundary.

Excepting therefrom Districts 2 and 5, as described in this document.

District 5:

All that portion of the city of Fremont lying southerly of the following described line:

Beginning at the most easterly corner in the boundary of the city of Newark, said point being the intersection of Stevenson Boulevard and Interstate 880; thence southeasterly along Interstate 880 to the intersection with Auto Mall Parkway; thence northeasterly along Auto Mall Parkway to the intersection with Interstate 680; thence northeasterly along Interstate 680 to the intersection with the city of Fremont boundary.

District 6:

All that portion of the city of Fremont lying within the following boundary, described as follows:

Beginning at the intersection of Washington Boulevard and Interstate 680; thence southerly along Interstate 680 to the intersection with Auto Mall Parkway; thence southwesterly along Auto Mall Parkway to the intersection with Interstate 880 thence northwesterly along Interstate 880 to the intersection with Stevenson Boulevard; thence northeasterly along Stevenson Boulevard to the intersection with Paseo Padre Parkway; thence southeasterly along Paseo Padre Parkway to the intersection with Driscoll Road; thence southwesterly along Driscoll Road to the intersection with Washington Boulevard; thence easterly along Washington Boulevard to the point of beginning.

   (b) The council districts specified in subdivision (a) shall continue in effect until they are amended or repealed in accordance with law.

Sec. 2.05.140   Election schedule for councilmembers elected by-district.

   (a) Councilmembers shall be elected in Council Districts ____, ____, ____, and ____ [Districts 2 & 3 must be included for election in 2018; and District 5 excluded] beginning at the General Municipal Election in November 2018, and every four years thereafter, except as provided in the Section 2.05.140(b) and subject to the term limits set forth in Section 2.05.100.

   (b) Notwithstanding subsection (a), above, and subject to subsection (d), below, the

councilmember elected from Council District _____ in 2018, shall serve a two year term.

(c) The councilmembers from Council Districts ___ and ___ [District 5 must be included for election in 2020] shall be elected beginning at the General Municipal Election in November 2020, and every four years thereafter, subject to the term limits set forth in Section 2.05.100.

(d) The councilmember elected from Council District ___ in 2018, shall be subject to election again in November 2020, and every four years thereafter, subject to the term limits set forth in Section 2.05.100.

SECTION 2.   DISTRICT MAP

A map showing the districts described in this Ordinance is attached hereto as Exhibit 1 and incorporated by this reference. To the extent there is a conflict between the descriptions contained in the Ordinance codified in this Chapter and the map incorporated herein, the map shall prevail. If necessary to facilitate the implementation of this Ordinance, the City Manager or his or her designee 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 Manager shall consult with the 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.

SECTION 3.   CEQA

The City Council finds that the proposed amendments to the Fremont Municipal Code are exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3) in that it is not a project which has the potential for causing a significant effect on the environment.

SECTION 4.   EFFECTIVE DATE

This ordinance shall take effect 30 days after adoption.

SECTION 5.   SEVERABILITY

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this ordinance. Such section, subsection, sentence, clause or phrase, instead, shall be superseded and replaced by the corresponding provisions, if any exist, of Title 24 of the California Code of Regulations. The City Council of the City of Fremont hereby declares that it would have passed this ordinance and each section or subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 6.   PUBLICATION

This ordinance must be published once in a newspaper of general circulation, printed and published in Alameda County and circulated in the City of Fremont, within fifteen (15) days after its adoption.

<div align="center">* * *</div>

The foregoing ordinance was introduced before the City Council of the City of Fremont at the regular meeting of the City Council, held on the __th day of _____, 2017 and finally adopted at a regular meeting of the City Council held on the ___ day of _____, 2017 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____
Mayor

ATTEST: APPROVED AS TO FORM:

_____   _____
City Clerk   Assistant City Attorney