Redistricting: What You Need to Know Before, During and After the Census

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League of California Cities
City Clerks New Law & Elections Seminar

The City Clerk’s Official Role

Both the Elections Official and a Government Official
Government Code § 36501

The government of a general law city is vested in:

(a) A city council of at least five members.
(b) A city clerk.
(c) A city treasurer.
(d) A chief of police.
(e) A fire chief.
(f) Any subordinate officers or employees provided by law.
Assembly Bill No. 849

CHAPTER 557

An act to amend Sections 21500, 21501, 21556, 21567, 21600, 21601, 21605, 21606, and 21607 of, to add Sections 21580.1, 21580.2, 21580.3, 21580.4, 21580.5, 21580.6, 21580.7, 21580.8, 21580.9, 21580.10, 21580.11, 21580.12, 21580.13, 21580.14, 21580.15, and 21580.16 of, the Elections Code, and to amend Sections 34813, 34817.1, 34818, and 34886 of the Government Code, relating to elections.

[Approved by Governor October 06, 2019, Filed with Secretary of State October 08, 2019.]

LEGISLATIVE COUNSEL’S DIGEST

AB-849, Soto. Elections: city and county redistricting.

Existing law establishes criteria and procedures pursuant to which cities and counties adjust or adopt council and supervisorial district area boundaries, as applicable, for the purpose of existing members of the governing body or each of those local jurisdictions.
Comparing to Existing Statutes

December 12, 2019

Staff Analysis and Legislative History

December 12, 2019
What is the California Voting Rights Act?
California Voting Rights Act (CVRA)

Enacted in 2002 (S.B. 976) by Governor Davis
Took effect January 1, 2003
Elections Code §§ 14025 to 14032
Generally based on the Federal Voting Rights Act of 1965

CVRA Purpose

The CVRA prohibits the use of an at-large election system if racially polarized voting and the at-large election system combine to either impair the ability of protected class voters to elect candidates of their choice or impair their ability to influence the outcome of an election.

(Elections Code § 14027)
Definitions: Election Systems

**At-Large** election system is where voters of the entire city elect all members to the city council.

**From District** election system is where each council member is elected by voters from the entire city, but the city is divided into districts and each council member must reside within a particular district.

**By District** election system is where a city is divided into districts and one council member is elected by only the registered voters in that particular district.

Definitions: Voting Rights

**Protected Class**: Class of voters who are members of a race, color, or language minority group, as defined by the federal Voting Rights Act. Basically includes Latinos, Asian-Americans, African-Americans, and Native Americans.

**Racially Polarized Voting**: Voting where there is a difference in the choice of candidates, or other electoral issues, preferred by voters in a protected class and the choice of candidates, or other electoral issues, preferred by voters in the rest of the electorate.

(Elections Code § 14026; 42 U.S.C. § 1973 et seq.)
CVRA Impact

- Switched (or in the process of switching) as a result of CVRA:
  - At least 215 school districts
  - 34 Community College Districts
  - 126 cities
  - 1 County Board of Supervisors
  - 35 water and other special districts.

Financial Impact

- Key settlements:
  - Palmdale: $4.7 million
  - Santa Clara: $3.16 million
  - Modesto: $3 million
  - Highland: $1.3 million
  - Anaheim: $1.1 million
  - Whittier: $1 million
  - Santa Barbara: $600,000
  - Tulare Hospital: $500,000
  - Madera Unified: about $170,000

- Palmdale, Santa Clara and Santa Monica fought “on the merits.” They all lost (so far).
  - Santa Monica and Santa Clara are appealing.
  - Palmdale spent about $1.8 million on its defense.
  - Santa Clara has spent over $800,000.
  - Santa Monica spent between $6 and $10 million.
  - Santa Monica’s plaintiffs requested a $22 million award (no ruling yet).
  - No jurisdiction has won a case.
Previous Legislation

Related to Cities and the California Voting Rights Act (CVRA)

Transition via Ordinance

AB 2220 (Effective 1/1/2017)

- Any general law city and any charter city whose charter is silent on the election system, regardless of population, may voluntarily switch from an at-large election system to district election system via the ordinance process without voter approval.

- The ordinance 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.

- At the same time, some cities choose to modify council configuration to increase (or decrease) the number of seats and/or to create (or eliminate) an elective mayor position.

  - Government Code § 34886
The Transition Process

AB 350 (Also effective 1/1/2017)

- Limited safe-harbor provisions for cities voluntarily switching from at-large to district election system (45 Days + 90 Days).
- Requires five public hearings: two before and two after drawing preliminary map(s) of district boundaries, with a fifth for the adoption of the ordinance.
- Requires draft maps be published seven days prior to Council consideration.
- Establishes $30,000 cap and procedures for reimbursement to prospective plaintiff’s attorney whose notice prompted change.

- Elections Code § 10010

Be Ready, Just in Case

“The ordinance 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.”

If CVRA is declared invalid by a court, all such ordinances are in immediate jeopardy and elections might “snap back” to at-large.
Fair Maps Act

AB 849 (Effective 1/1/2020)

- Known as “Fair and Inclusive Redistricting for Municipalities and Political Subdivisions Act” or FAIR MAPS Act
- Applies to both general law and charter cities electing members of the legislative body by districts or from districts
- Specifies criteria and deadlines for cities and counties to adopt or adjusting new district boundaries.
- Specifies hearing procedures that would allow the public to provide input on the placement of boundaries and on proposed boundary maps.
- Requires the governing body to take specified steps to encourage the residents of the local jurisdiction to participate in the redistricting process.
  - Elections Code § 21601 et seq. (as of 1/1/2020)
AB 849 (Effective 1/1/2020)

- Following each decennial federal census, and using that census as a basis, the council shall, by ordinance or resolution, adopt boundaries for any or all of the council districts of the city so that the council districts shall be substantially equal in population.

- The boundaries shall be adopted no earlier than August 1 in each year ending in the number one, but not later than 151 days before the city’s next regular election occurring after March 1 in each year ending in the number two thereafter.

- The council may hold public hearings or workshops on the placement of council district boundaries before August 1.

  - Elections Code § 21601 et seq. (as of 1/1/2020)
New Requirements for Hearings, Part I

Before adopting a final map, the council shall hold at least four public hearings at which the public is invited to provide input regarding the composition of one or more council districts.

- (1) At least one public hearing before the council draws draft map(s).
- (2) At least two public hearings after the council has drawn draft map(s).
  - At least one public hearing or public workshop shall be held on a Saturday, on a Sunday, or after 6 p.m. on a weekday Monday through Friday.
  - The public hearing shall begin at a fixed time regardless of its order on the agenda, and the time of the public hearing shall be noticed to the public.
  - The council may have city staff, a consultant, or an advisory redistricting commission conduct the pre-draft map hearing(s).

- Elections Code § 21607 (as of 1/1/2020)

New Requirements for Hearings, Part II

- Provide live translation of a public hearing or workshop if requested. Generally request must be made at least 72 hours in advance.
- Publish the date, time, and location for any public hearing or workshop on the internet at least five days before the hearing or workshop. A calendar listing that includes the time and location of the public hearing or workshop satisfies the notice requirement.
- Record or prepare a written summary of each public comment and council deliberation made at every public hearing or workshop and make available to the public within two weeks.

- Elections Code § 21608 (as of 1/1/2020)
Outreach

Good faith efforts to encourage participation in the redistricting public review process

The council shall take steps to encourage residents, including those in underrepresented communities and non-English speaking communities, to participate in the redistricting public review process. A good faith effort satisfies the requirement and includes:

- Providing information to media organizations that provide city news coverage, including media organizations that serve language minority communities.
- Providing information through good government, civil rights, civic engagement, or community groups or organizations that are active in the city, including those active in language minority communities, or that have requested to be notified concerning city redistricting.

Elections Code § 21608 (as of 1/1/2020)
The council shall allow the public to submit testimony or draft maps in writing and electronically.

The city shall either record or prepare a written summary of each public comment and council deliberation made at every public hearing or workshop held pursuant to this article. The city shall make the recording or written summary available to the public within two weeks after the public hearing or workshop.

Elections Code § 21608(e) and (f) (as of 1/1/2020)

Establish, and maintain for at least 10 years after the adoption of new council district boundaries, a redistricting-dedicated multi-lingual website, including:

(1) A general explanation of the redistricting process for the city
(2) The procedures for a member of the public to testify during a public hearing or to submit written testimony directly to the council.
(3) A calendar of all public hearing and workshop dates.
(4) The notice and agenda for each public hearing and workshop.
(5) The recording or written summary of each public hearing and workshop.
(6) Each draft map considered by the council at a public hearing.
(7) The adopted final map of council district boundaries.

Elections Code § 21608(g) (as of 1/1/2020)
Good News!

[T]he Secretary of State shall publish on the internet a template explaining the city redistricting process that meets the requirements …

The Secretary of State shall publish the template in all of the languages into which ballots are required to be translated in the state.

Elections Code § 21608(j) (as of 1/1/2020)

Criteria for Maps
New Map Criteria Requirements

To the extent practicable, the council shall adopt district boundaries using the following criteria as set forth in the following order of priority:

Council districts shall be geographically contiguous. Areas within districts that meet only at the points of adjoining corners are not contiguous.

The geographic integrity of any local neighborhood or local community of interest should be respected and included within a single district for purposes of its effective and fair representation in a manner that minimizes its division. A “community of interest” is a population that shares common social or economic interests that should be included within a single district for purposes of its effective and fair representation.

Council district boundaries should be easily identifiable and understandable by residents. To the extent practicable, council districts shall be bounded by natural and artificial barriers, by streets, or by the boundaries of the city.

Council districts shall be drawn to encourage geographical compactness in a manner that nearby areas of population are not bypassed in favor of more distant populations and where doing so does not conflict with higher-ranked criteria.

Elections Code § 21601(c) (as of 1/1/2020)

Table of Rules & Principles for Redistricting

1. Federal Laws
   - Equal Population
   - Federal Voting Rights Act
   - No Racial Gerrymandering

2. California Criteria for Cities
   1. Geographically contiguous
   2. Undivided neighborhoods and "communities of interest"
   3. Easily identifiable boundaries
   4. Compact

3. Other Traditional Redistricting Principles
   - Respect voters’ choices / continuity in office
   - Future population growth

December 12, 2019
### Old vs New Comparison

<table>
<thead>
<tr>
<th>Before AB 849</th>
<th>After AB 849</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Cities where districts were now out of population balance</td>
<td>- Cities where districts are now out of population balance</td>
</tr>
<tr>
<td></td>
<td>- Cities where districts do not meet AB849 criteria, even if population balanced?</td>
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</tbody>
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## Timeline to Redistrict

<table>
<thead>
<tr>
<th>Before AB 849</th>
<th>After AB 849 *</th>
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</thead>
<tbody>
<tr>
<td>□ Finish by October 1, 2021</td>
<td>□ Begin process anytime</td>
</tr>
<tr>
<td>□ Cannot adopt map prior to August 1, 2021</td>
<td>□ Cannot adopt map prior to August 1, 2021</td>
</tr>
<tr>
<td>□ Must adopt 151 days prior to next election</td>
<td>□ Must adopt 151 days prior to next election</td>
</tr>
<tr>
<td>□ March: Oct. 8, 2021</td>
<td>□ March: Oct. 8, 2021</td>
</tr>
<tr>
<td>□ Nov.: June 10, 2022</td>
<td>□ Nov.: June 10, 2022</td>
</tr>
<tr>
<td>□ Some County Registrars have earlier administrative deadlines</td>
<td>□ Some County Registrars have earlier administrative deadlines</td>
</tr>
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* Charter cities can specify an alternative timeline in their charter.

## Hearing Requirements

<table>
<thead>
<tr>
<th>Before AB 849</th>
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</thead>
<tbody>
<tr>
<td>□ 1 public hearing</td>
<td>□ 4 public hearings</td>
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<tr>
<td></td>
<td>□ 1 prior to drawing draft maps</td>
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<tr>
<td></td>
<td>□ At least 2 after drawing</td>
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<tr>
<td></td>
<td>□ 7 day map posting requirement</td>
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<td>□ 5 day hearing notice requirement</td>
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## Outreach Requirements

<table>
<thead>
<tr>
<th>Before AB 849</th>
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</tr>
</thead>
<tbody>
<tr>
<td>□ Hearing notices</td>
<td>□ Extensive outreach requirements</td>
</tr>
<tr>
<td></td>
<td>□ Extensive record-keeping requirements</td>
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## Rules for Maps

<table>
<thead>
<tr>
<th>Before AB 849</th>
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</thead>
<tbody>
<tr>
<td>□ Federal requirements</td>
<td>□ Federal requirements</td>
</tr>
<tr>
<td>□ “may consider” state guidelines</td>
<td>□ State requirements (in priority order)</td>
</tr>
<tr>
<td>□ Consideration of incumbent locations allowed</td>
<td>□ Neighborhoods must be unified whenever possible</td>
</tr>
<tr>
<td>□ Neighborhoods could be unified or they could have multiple representatives</td>
<td>□ Consideration of incumbent locations only allowed if adjusted map equally satisfies extensive state requirements</td>
</tr>
</tbody>
</table>
What is Legal?
Other New Legislation

Related to Cities and the California Voting Rights Act (CVRA)

Independent Redistricting Commissions

SB 1108 (2016)
Authorizes the City Council to transfer redistricting authority to an independent redistricting commission.
The manner of appointment is set by the Council, but commissioners cannot be appointed directly by the Council.
Commissioners must pass an extensive list of possible disqualifications.
A city may contract with a County’s independent redistricting commission to also draw the City council districts.

Elections Code § 23001 et seq. (as of 1/1/2017)
Independent Redistricting Commission Rules

SB 1108 (2016)

The commission shall be subject to the same redistricting deadlines, requirements, and restrictions that would otherwise apply to a legislative body.

The commission shall publish a map of the proposed new district boundaries at least seven days before that map may be adopted.

The commission shall not draw districts for the purpose of favoring or discriminating against a political party or an incumbent or political candidate.

Elections Code § 23001 et seq. (as of 1/1/2017)

Change to Advisory Committee Rules

SB 1108 (2016)

A person who is an elected official of the local jurisdiction, or a family member, staff member, or paid campaign staff of an elected official of the local jurisdiction, shall not be appointed to serve on the commission.

Elections Code § 23002 (c) (as of 1/1/2017)
Litigation Danger

SB 1108 (2016)

“The commission shall not draw districts for the purpose of favoring or discriminating against a political party or an incumbent or political candidate.”

This requirement exposes any City using an independent commission to significant litigation risk if any commission members know where Councilmembers live.

Elections Code § 23003(k) (as of 1/1/2017)

The Big Picture
A Painful and Contentious Process

Even jurisdictions whose districts are population-balanced may have to redistrict to comply with the new criteria.

Most City Councils will have to balance the risk of a legal challenge to their map against the possibility one or more Councilmembers lose the opportunity to run again.

Opponents of the Council are significantly empowered to propose maps “drawing out” multiple Councilmembers.

The smaller the city, the more significant the impact of the new criteria.

Council Conflicts

Most cities will see some Councilmembers paired and/or one or more Councilmembers “drawn out” of a district.

“Drawn out” and/or paired Councilmembers may run against an incumbent separately elected Mayor.

(Now more than ever, staff should not draw draft maps!)
Options

Staff and Council must anticipate hard and divisive Council deliberations. Consider the timing – when would the process be least disruptive to City operations?

- For cities with November 2022 elections, start after March 1, 2021 and finish no later than June 10, 2022 (May, 2022, deadline in some counties.)

Consider the venue for discussions:

- Public Forums or Hearings without Councilmembers
- Independent Commissions
- Advisory Commissions

Hope Councilmembers thinking of retiring in 2020 will decide to serve one more term.

Thank You.

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