

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

Douglas Johnson
President, National Demographics Corporation (NDC)

Shalice Tilton
Retired City Clerk
NDC Senior Consultant

December 12, 2019

League of California Cities
City Clerks New Law & Elections Seminar

2

The City Clerk's Official Role

Both the Elections Official and
a Government Official

December 12, 2019

Statutory Government of Cities

3

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.

December 12, 2019

<https://leginfo.legislature.ca.gov>

4

The screenshot shows the California Legislative Information website. The browser address bar displays <https://leginfo.legislature.ca.gov/faces/codes.shtml>. The page header includes the California state seal and the text "California LEGISLATIVE INFORMATION". A navigation menu contains the following items: Home, Bill Information, **California Law** (circled in red), Publications, Other Resources, My Subscriptions, and My Favorites. Below the menu, the page title is "California Law >> Code Search". There are two tabs: "Code Search" (selected) and "Text Search". The main content area displays a grid of code categories, including:

- California Constitution - CONS
- Business and Professions Code - BPC
- Civil Code - CIV
- Code of Civil Procedure - CCP
- Commercial Code - COM
- Corporations Code - CORP
- Education Code - EDC
- Elections Code - ELEC
- Evidence Code - EVID
- Family Code - FAM
- Financial Code - FIN
- Fish and Game Code - FGC
- Food and Agricultural Code - FAC
- Government Code - GOV
- Harbors and Navigation Code - HNC
- Health and Safety Code - HSC
- Insurance Code - INS
- Labor Code - LAB
- Military and Veterans Code - MVC
- Penal Code - PEN
- Probate Code - PROB
- Public Contract Code - PCC
- Public Resources Code - PRG
- Public Utilities Code - PUC
- Revenue and Taxation Code - RTC
- Streets and Highways Code - SHC
- Unemployment Insurance Code - UIC
- Vehicle Code - VEH
- Water Code - WAT
- Welfare and Institutions Code - WIC

December 12, 2019

Legislative Bill Lookup

5

California LEGISLATIVE INFORMATION

Home **Bill Information** California Law Publications Other Resources My Subscriptions My Favorites

Bill Information >> Bill Search

Bill Search Text Search

Bill Number: Session Year: Keyword(s):
House: Author: For a phrase: "Surround it with Quotes"
Statute Year: Code:
Chapter Number: Code Section:

December 12, 2019

Legislative Text and Details

6

Home Bill Information California Law Publications Other Resources My Subscriptions My Favorites

Bill Information >> Bill Search >> Text

PDF | [Add To My Favorites](#) | [Track Bill](#) | Version: 10/08/19 - Chaptered |

AB-849 Elections: city and county redistricting. (2019-2020)

Text Votes History Bill Analysis Today's Law As Amended Compare Versions Status Comments To Author

SHARE THIS: Date Published: 10/09/2019 09:00 PM

Assembly Bill No. 849
CHAPTER 557

An act to amend Sections 21500, 21501, 21506, 21507, 21600, 21601, 21606, and 21607 of, to add Sections 21500.1, 21507.1, 21508, 21509, 21605, 21607.1, 21608, 21609, 21622, 21623, 21625, 21626, 21627, 21627.1, 21628, and 21629 to, to repeal Sections 21502, 21504, and 21604 of, and to repeal and add Sections 21503, 21602, 21603, 21620, and 21621 of, the Elections Code, and to amend Sections 34874, 34877.5, 34884, and 34886 of the Government Code, relating to elections.

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

LEGISLATIVE COUNSEL'S DIGEST

AB 849, Bonta. Elections: city and county redistricting.
Existing law establishes criteria and procedures pursuant to which cities and counties adjust or adopt council and supervisory district area boundaries, as applicable, for the purpose of electing members of the governing body of each of those local jurisdictions.

December 12, 2019

Comparing to Existing Statutes

7

California LEGISLATIVE INFORMATION

skip to content home accessibility FAQ feedback sitemap login

Quick Search: Bill Number AB1 or ab 1 or ABX go

Home Bill Information California Law Publications Other Resources My Subscriptions My Favorites

Bill Information >> Bill Search >> Today's Law As Amended

PDF | Add To My Favorites | Track Bill | Version: 10/08/19 - Chapter | Go

AB-849 Elections: city and county redistricting. (2019-2020)

Text Votes History Bill Analysis **Today's Law As Amended** Compare Versions Status Comments To Author

SECTION 1. This act shall be known, and may be cited, as the Fair And Inclusive Redistricting for Municipalities And Political Subdivisions (FAIR MAPS) Act.

SEC. 2. Section 21500 of the Elections Code is amended to read:

21500. (a) Following each ~~decennial~~ federal decennial census, and using that census as a basis, the board shall adjust the boundaries of any or all of the supervisory districts of the county so that the supervisory districts shall be ~~as nearly~~ substantially equal in population as ~~may be and shall comply with the applicable provisions of Section 10301 of Title 52 of the United States Code, as amended. In establishing the boundaries of the supervisory districts the board may give consideration to the following factors: (a) topography, (b) geography, (c) cohesiveness, contiguity, integrity, and compactness of territory, and (d) community of interests of the supervisory districts.~~ required by the United States Constitution.

(1) Population equality shall be based on the total population of residents of the county as determined by that census.

(2) Notwithstanding paragraph (1), an incarcerated person, as that term is used in Section 21003, shall not be counted as part of a county's population, except for an incarcerated person whose last known place of residence may be assigned to a census block in the county, if information about the last known place of residence for incarcerated persons is included in the computerized database for redistricting that is developed in accordance with subdivision (b) of Section 8253 of the Government Code, and that database is made publicly available.

(b) The board shall adopt supervisory district boundaries that comply with the United States Constitution, the California Constitution, and the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.).

(c) The board shall adopt supervisory district boundaries using the following criteria as set forth in the following order of priority:

(1) To the extent practicable, supervisory districts shall be geographically contiguous. Areas that meet only at the points of adjoining corners are not contiguous. Areas that are ~~separated by water and not connected by a bridge, tunnel, or regular ferry service are not contiguous.~~

December 12, 2019

Staff Analysis and Legislative History

8

California LEGISLATIVE INFORMATION

skip to content home accessibility FAQ feedback sitemap login

Quick Search: Bill Number AB1 or ab 1 or ABX go

Home Bill Information California Law Publications Other Resources My Subscriptions My Favorites

Bill Information >> Bill Search >> Bill Analysis

PDF | Add To My Favorites | Track Bill | Version: 10/08/19 - Chapter | Go

AB-849 Elections: city and county redistricting. (2019-2020)

Text Votes History **Bill Analysis** Today's Law As Amended Compare Versions Status Comments To Author

Bill Analysis

06/08/19 - Assembly Floor Analysis
09/05/19 - Senate Floor Analysis
09/03/19 - Senate Floor Analysis
08/20/19 - Senate Associations
08/21/19 - Senate Associations
07/09/19 - Senate Governance And Finance
06/13/19 - Senate Elections And Constitutional Amendments
05/21/19 - Assembly Floor Analysis
05/13/19 - Assembly Associations
04/23/19 - Assembly Local Government
04/08/19 - Assembly Elections And Redistricting

December 12, 2019

Date of Hearing: April 10, 2019

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Marc Berman, Chair

AB 849 (Bonta) – As Amended March 14, 2019

9

SUBJECT: Elections: local redistricting.

SUMMARY: Revises the criteria and process to be used by local jurisdictions when they adopt or adjust the boundaries of the electoral districts that are used to elect members of the jurisdictions' governing bodies. Standardizes the criteria and process so that it is generally consistent across all levels of local government. Requires local jurisdictions to comply with substantial public hearing and outreach requirements as part of the process for adopting or adjusting boundaries. Specifically, **this bill:**

- 1) Requires counties, cities, special districts, school districts, community college districts, and county boards of education, when adopting or adjusting the boundaries of districts or trustee areas within the jurisdiction, to develop districts that comply with the following criteria:
 - a) Requires the districts to be substantially equal in population as determined by the census, as specified. Prohibits inmates of a state correctional facility from being counted in the jurisdiction's population except for those inmates whose last known place of residence can be assigned to a census block in the jurisdiction, as specified.
 - b) Requires the districts to comply with the United States and California Constitutions, and the federal Voting Rights Act (VRA).
 - c) Requires the district boundaries to be established using the following criteria in the following order of priority:
 - i) Requires districts to be geographically contiguous to the extent practicable, as specified.
 - ii) Requires districts to respect the geographic integrity of local neighborhoods and communities of interest to the extent practicable, as specified. Provides that the term "communities of interest" does not include relationships with political parties, incumbents, or political candidates.

December 12, 2019

10

What is the California Voting Rights Act?

December 12, 2019

California Voting Rights Act (CVRA)

11

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



December 12, 2019

CVRA Purpose

12

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)



December 12, 2019

Definitions: Election Systems

13

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.



December 12, 2019

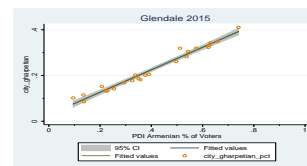
Definitions: Voting Rights

14

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.)



December 12, 2019

CVRA Impact

15

- 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.

December 12, 2019

Financial Impact

16

- 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.



December 12, 2019

Previous Legislation

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

December 12, 2019

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



December 12, 2019

The Transition Process

19

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



December 12, 2019

Be Ready, Just in Case

20

“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.

December 12, 2019

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)

New Timeline

23

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)

December 12, 2019



24

Public Hearings and Procedures

December 12, 2019

New Requirements for Hearings, Part I

25

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)

December 12, 2019



New Requirements for Hearings, Part II

26

- 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)

December 12, 2019



Outreach

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

New Outreach Requirements

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)



New Documentation Requirements, Part I

29

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)



December 12, 2019

New Documentation Requirements, Part II

30

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)



December 12, 2019

Good News!

31

[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)



December 12, 2019

32

Criteria for Maps

December 12, 2019

New Map Criteria Requirements

33

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)

December 12, 2019

Table of Rules & Principles for Redistricting

34

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

Who has to redistrict?

Before AB 849

- Cities where districts were now out of population balance

After AB 849

- Cities where districts are now out of population balance
- Cities where districts do not meet AB849 criteria, even if population balanced?

Timeline to Redistrict

37

Before AB 849

- Finish by October 1, 2021

After AB 849 *

- Begin process anytime
- Cannot adopt map prior to August 1, 2021
- Must adopt 151 days prior to next election
 - ▣ March: Oct. 8, 2021
 - ▣ Nov.: June 10, 2022
 - ▣ Some County Registrars have earlier administrative deadlines

December 12, 2019

* Charter cities can specify an alternative timeline in their charter.

Hearing Requirements

38

Before AB 849

- 1 public hearing

After AB 849

- 4 public hearings
 - ▣ 1 prior to drawing draft maps
 - ▣ At least 2 after drawing
 - ▣ 7 day map posting requirement
 - ▣ 5 day hearing notice requirement

December 12, 2019



Outreach Requirements

39

Before AB 849

- Hearing notices

After AB 849

- Extensive outreach requirements
- Extensive record-keeping requirements



December 12, 2019

Rules for Maps

40

Before AB 849

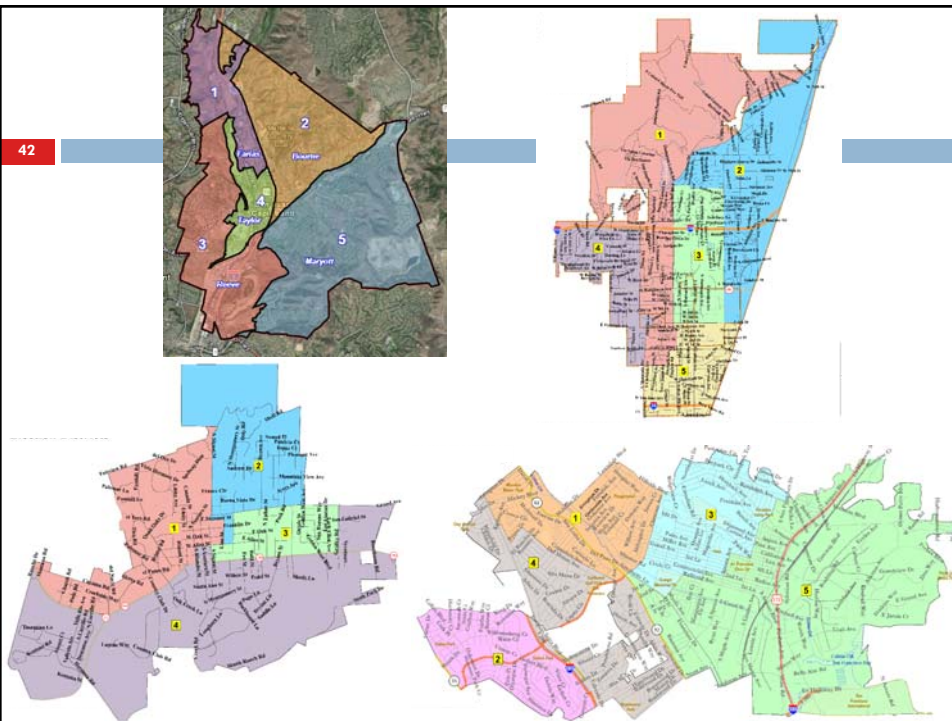
- Federal requirements
- “may consider” state guidelines
- Consideration of incumbent locations allowed
- Neighborhoods could be unified or they could have multiple representatives

After AB 849

- Federal requirements
- State requirements (in priority order)
- Neighborhoods must be unified whenever possible
- Consideration of incumbent locations only allowed if adjusted map equally satisfies extensive state requirements

December 12, 2019

What is Legal?



Other New Legislation

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

December 12, 2019

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)



December 12, 2019

Independent Redistricting Commission Rules

45

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)



December 12, 2019

Change to Advisory Committee Rules

46

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)

December 12, 2019

Litigation Danger

47

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)



December 12, 2019

48

The Big Picture

December 12, 2019

A Painful and Contentious Process

49

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.



December 12, 2019

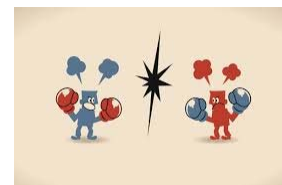
Council Conflicts

50

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!)



December 12, 2019

Options

51

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.



December 12, 2019

Thank You.

52



Douglas Johnson
djohnson@NDCresearch.com



Shalice Tilton
stilton@NDCresearch.com

December 12, 2019