



# AGENDA REPORT

## CITY OF SAN CLEMENTE

### City Council Meeting

910 Calle Negocio  
2nd Floor  
San Clemente, California  
www.san-clemente.org

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**Meeting Date:** 7/18/2023

**Agenda Item:** 7A

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**Department:** City Clerk  
**Prepared By** Laura Campagnolo, City Clerk

**Subject:**  
**BY-DISTRICT ELECTIONS - CONTINUATION OF PUBLIC HEARING**

**Summary:**

On June 15, 2023, City Councilmembers received a letter from the Law Offices of Michelle R. Jackson alleging that the City's at-large election process violates the California Voting Rights Act of 2001 ("CVRA"). Staff published a notice of public hearing for July 18, 2023, in the event that the City Council decided to start the districting process in response to the letter.

Subsequent to receiving the letter, the Law Offices of Michelle R. Jackson hand delivered a letter to the City Clerk (provided as Attachment 1 to the Administrative Report) on July 10, 2023, withdrawing the June 15, 2023, letter. In short, the new letter extends the date by which the City Council must decide whether or not to pursue district elections. This delay will allow staff to gather additional information and provide the City Council with a more complete list of options for consideration.

Given these events, Staff recommends continuing the Public Hearing to the meeting of August 15, 2023.

**Council Options:**

- Continue the Public Hearing to the Regular City Council meeting of August 15, 2023.
- Take no action.
- Request additional information from Staff.

**Fiscal Impact:**

\$200 to readvertise the Public Hearing for August 15, 2023.

**Environmental Review/Analysis:**

This is not a "project" under the California Environmental Quality Act.

**Recommended Actions:**

Staff Recommendation

Staff recommends the City Council continue the Public Hearing to the Regular City Council meeting of August 15, 2023 and direct the City Clerk to re-advertise the Public Hearing.

***Attachment:***

1. Letter from the Law Offices of Michelle R. Jackson dated July 10, 2023
2. California Elections Code section 10010

***Notification:***

Public Hearing Notice advertised in the San Clemente Times on August 3, 2023.

*Law Offices of Michelle R. Jackson*34189 PCH, Suite 204  
Dana Point, CA 92629  
(949)606-2674

City of San Clemente

JUL 10 2023

City Clerk Department

**VIA HAND DELIVERY**

July 10, 2023

Attn: Laura Campagnolo  
City Clerk  
City of San Clemente  
San Clemente City Hall  
910 Calle Negocio  
San Clemente, CA 92673*Re: Violations of the California Voting Rights Act*

Dear Ms. Campagnolo,

On June 8, 2023, this office sent a letter to the City of San Clemente on behalf of one of its clients (see attached). It has been brought to our attention that the letter was incorrectly addressed to the San Clemente City Council rather than the San Clemente City Clerk per the California Elections Code § 10010(e)1. Given the error made by this office as well as the importance that this office and our client places on ensuring that residents in the City of San Clemente (“San Clemente” or the “City”) are not disenfranchised, we are withdrawing the demand letter sent on June 8, 2023, and resending this letter of demand for clarification, which will also extend the date by which the City has to respond to my client’s demand.

Again, I write on behalf of my client, a minority resident of, and voter in the City of San Clemente (“San Clemente” or the “City”) concerned about other minority citizens residing and voting in the City.

San Clemente relies upon an at-large election system for electing candidates to its City Council. Moreover, a review of San Clemente’s voting results appears to illustrate that they are racially polarized, resulting in minority vote dilution. Therefore, San Clemente’s at-large elections violate the California Voting Rights Act of 2001 (“CVRA”).

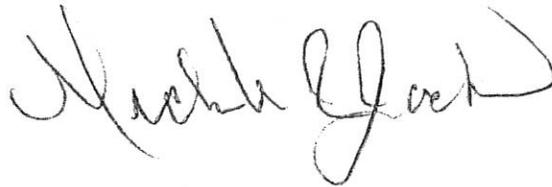
The CVRA disfavors the use of “at-large” voting since this method effectively prevents a protected class from having a sufficient opportunity to elect a candidate of choice. *See generally Sanchez v Modesto* (2006) 145 Cal App 4th 660, 667. Further, these at-large election systems often result in the dilution or impairment of minority voters and their ability to elect candidates more representative of their neighborhoods by allowing a bare majority of voters to control *every* seat, not just a proportional majority of seats. *See Thornburg v Gingles* (1986) 478 U.S. 30, 46.

To find a violation, the CVRA only requires that there be a showing of racially polarized voting. *See* Cal. Elec. Code § 14028 (“A violation of Section 14027 is established if it is shown that racially polarized voting occurs . . .”). It is my client’s position that San Clemente’s system of at-large elections dilutes the ability of Latinos, a protected class, to elect candidates of their choice or otherwise influence the outcome of San Clemente’s elections for its City Council Members.

During the last twenty (20) years, only one Latino has been elected to the San Clemente City Council. There has been only one Latino candidate in the past 20 years despite Latinos currently comprising the second largest race and ethnicity population in San Clemente with more than 18% of the population identifying as Latino. This lack of Latino participation in seeking election to the city council is prima facie evidence of voter dilution on the part of the City. *See generally Westwego Citizens for Better Government v City of Westwego* 872 F2d 1201 (5<sup>th</sup> Cir. 1989). There is a clear disconnect between the significant Latino population in San Clemente and the complete absence of Latinos on the City Council further evidencing the inherent discrimination of the elections process in San Clemente.

In accordance with the above, it is respectfully requested that San Clemente change the manner in which it elects councilmembers to its city council and adopt a district system. Please be advised that if we do not have some movement with regard to this issue by August 24, 2023, we will be forced to seek judicial relief on behalf of residents within the jurisdiction.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle R. Jackson". The signature is fluid and cursive, written in a professional style.

Michelle R. Jackson, Esq.

Attachment

CC: City Council  
City Manager

*Law Offices of Michelle R. Jackson*

34189 PCH, Suite 204  
Dana Point, CA 92629  
(949)606-2674

**VIA CERTIFIED MAIL**

June 8, 2023

Attn: City Council  
City of San Clemente  
San Clemente City Hall  
910 Calle Negocio  
San Clemente, CA 92780

*Re: Violations of the California Voting Rights Act*

Dear City Council,

I write on behalf of my client who is concerned about minority citizens residing and voting in the City of San Clemente ("San Clemente").

San Clemente relies upon an at-large election system for electing candidates to its City Council. Moreover, a review of San Clemente's voting results appears to illustrate that they are racially polarized, resulting in minority vote dilution. Therefore, San Clemente's at-large elections violate the California Voting Rights Act of 2001 ("CVRA").

The CVRA disfavors the use of "at-large" voting since this method effectively prevents a protected class from having a sufficient opportunity to elect a candidate of choice. *See generally Sanchez v Modesto* (2006) 145 Cal App 4th 660, 667. Further, these at-large election systems often result in the dilution or impairment of minority voters and their ability to elect candidates more representative of their neighborhoods by allowing a bare majority of voters to control every seat, not just a proportional majority of seats. *See Thornburg v Gingles* (1986) 478 U.S. 30, 46.

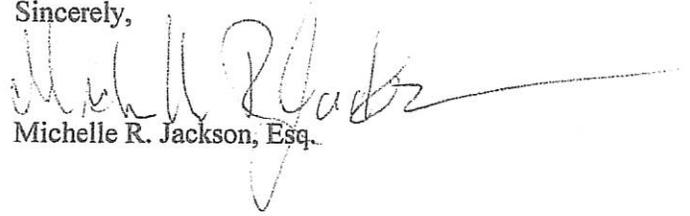
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During the last twenty (20) years, only one Latino has been elected to the San Clemente City Council. There has been only one Latino candidate in the past 20 years despite Latinos currently comprising the second largest race and ethnicity population in San Clemente with more than 18% of the population identifying as Latino. This lack of Latino participation in seeking

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In accordance with the above, it is respectfully requested that San Clemente change the manner in which it elects councilmembers to its city council and adopt a district system. Please be advised that if we do not have some movement with regard to this issue by August 10, 2023, we will be forced to seek judicial relief on behalf of residents within the jurisdiction.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle R. Jackson", with a long horizontal flourish extending to the right.

Michelle R. Jackson, Esq.

*Law Offices of Michelle R. Jackson*

34189 PCH, Suite 204

Dana Point, CA 92629

(949)606-2674

**VIA HAND DELIVERY**

July 10, 2023

Article Addressed to:

Attn: Laura Campagnolo

City Clerk

City of San Clemente

San Clemente City Hall

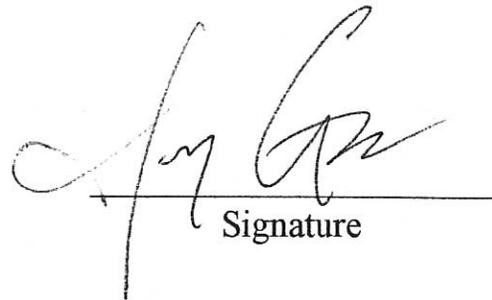
910 Calle Negocio

San Clemente, CA 92673

City of San Clemente

JUL 10 2023

City Clerk Department

  
Signature

Jason Chase

Received by (printed name)

July 10, 2023  
Date Signed



## State of California

### ELECTIONS CODE

#### Section 10010

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10010. (a) A political subdivision that changes from an at-large method of election to a district-based election, or that establishes district-based elections, shall do all of the following before a public hearing at which the governing body of the political subdivision votes to approve or defeat an ordinance establishing district-based elections:

(1) Before drawing a draft map or maps of the proposed boundaries of the districts, the political subdivision shall hold at least two public hearings over a period of no more than 30 days, at which the public is invited to provide input regarding the composition of the districts. Before these hearings, the political subdivision may conduct outreach to the public, including to non-English-speaking communities, to explain the districting process and to encourage public participation.

(2) After all draft maps are drawn, the political subdivision shall publish and make available for release at least one draft map and, if members of the governing body of the political subdivision will be elected in their districts at different times to provide for staggered terms of office, the potential sequence of the elections. The political subdivision shall also hold at least two additional hearings over a period of no more than 45 days, at which the public is invited to provide input regarding the content of the draft map or maps and the proposed sequence of elections, if applicable. The first version of a draft map shall be published at least seven days before consideration at a hearing. If a draft map is revised at or following a hearing, it shall be published and made available to the public for at least seven days before being adopted.

(b) In determining the final sequence of the district elections conducted in a political subdivision in which members of the governing body will be elected at different times to provide for staggered terms of office, the governing body shall give special consideration to the purposes of the California Voting Rights Act of 2001, and it shall take into account the preferences expressed by members of the districts.

(c) This section applies to, but is not limited to, a proposal that is required due to a court-imposed change from an at-large method of election to a district-based election.

(d) For purposes of this section, the following terms have the following meanings:

(1) "At-large method of election" has the same meaning as set forth in subdivision (a) of Section 14026.

(2) "District-based election" has the same meaning as set forth in subdivision (b) of Section 14026.

(3) "Political subdivision" has the same meaning as set forth in subdivision (c) of Section 14026.

(e) (1) Before commencing an action to enforce Sections 14027 and 14028, a prospective plaintiff shall send by certified mail a written notice to the clerk of the political subdivision against which the action would be brought asserting that the political subdivision's method of conducting elections may violate the California Voting Rights Act of 2001.

(2) A prospective plaintiff shall not commence an action to enforce Sections 14027 and 14028 within 45 days of the political subdivision's receipt of the written notice described in paragraph (1).

(3) (A) Before receiving a written notice described in paragraph (1), or within 45 days of receipt of a notice, a political subdivision may pass a resolution outlining its intention to transition from at-large to district-based elections, specific steps it will undertake to facilitate this transition, and an estimated timeframe for doing so.

(B) If a political subdivision passes a resolution pursuant to subparagraph (A), a prospective plaintiff shall not commence an action to enforce Sections 14027 and 14028 within 90 days of the resolution's passage.

(C) (i) A political subdivision and the prospective plaintiff who first sends a notice pursuant to paragraph (1) may enter into a written agreement to extend the time period described in subparagraph (B) for up to an additional 90 days in order to provide additional time to conduct public outreach, encourage public participation, and receive public input. The written agreement shall include a requirement that the district boundaries be established no later than six months before the political subdivision's next regular election to select governing board members. However, in a political subdivision that holds a primary election as part of its process for selecting governing board members, the written agreement shall include a requirement that district boundaries be established no later than six months before the political subdivision's next regular primary election.

(ii) No later than 10 days after a political subdivision enters into a written agreement pursuant to clause (i), the political subdivision shall prepare and make available on its internet website a tentative schedule of the public outreach events and the public hearings held pursuant to this section. If a political subdivision does not maintain an internet website, the political subdivision shall make the tentative schedule available to the public upon request.

(f) (1) If a political subdivision adopts an ordinance establishing district-based elections pursuant to subdivision (a), a prospective plaintiff who sent a written notice pursuant to paragraph (1) of subdivision (e) before the political subdivision passed its resolution of intention may, within 30 days of the ordinance's adoption, demand reimbursement for the cost of the work product generated to support the notice. A prospective plaintiff shall make the demand in writing and shall substantiate the demand with financial documentation, such as a detailed invoice for demography services. A political subdivision may request additional documentation if the provided documentation is insufficient to corroborate the claimed costs. A political subdivision shall reimburse a prospective plaintiff for reasonable costs claimed, or in an amount to which the parties mutually agree, within 45 days of receiving the written demand,

except as provided in paragraph (2). In all cases, the amount of the reimbursement shall not exceed the cap described in paragraph (3).

(2) If more than one prospective plaintiff is entitled to reimbursement, the political subdivision shall reimburse the prospective plaintiffs in the order in which they sent a written notice pursuant to paragraph (1) of subdivision (e), and the 45-day time period described in paragraph (1) shall apply only to reimbursement of the first prospective plaintiff who sent a written notice. The cumulative amount of reimbursements to all prospective plaintiffs shall not exceed the cap described in paragraph (3).

(3) The amount of reimbursement required by this section is capped at thirty thousand dollars (\$30,000), as adjusted annually to the Consumer Price Index for All Urban Consumers, United States city average, as published by the United States Department of Labor.

(Amended by Stats. 2019, Ch. 497, Sec. 105. (AB 991) Effective January 1, 2020.)