



AGENDA REPORT

CITY OF SAN CLEMENTE

CITY COUNCIL MEETING

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

Meeting Date: September 5, 2023

Agenda Item: 8A

Department: City Clerk

Prepared By Laura Campagnolo, City Clerk

Subject:

PUBLIC HEARING #2 REQUESTING PUBLIC INPUT REGARDING THE COMPOSITION OF POTENTIAL COUNCIL ELECTION DISTRICTS

Fiscal Impact:

None.

Background:

The City Council was elected under an at-large election system, whereby Council Members are elected by voters of the entire City. On July 10, 2023, the City received the most recent letter demanding a change in the election system under threat of litigation under the California Voting Rights Act (CVRA). On August 15, 2023, the Council adopted a Resolution No. 23-85 declaring its intent to change election systems. Moving to by-district elections would require a Council Member (and all candidates for that position) to reside within a designated district boundary, and each Council Member would be elected only by voters of the appropriate district. This change requires a series of public hearings.

Pico Neighborhood Association v. City of Santa Monica

As noted in the August 15, 2023 staff report, most local governments that have received demand letters under the CVRA have decided to switch to by-district elections rather than fighting expensive litigation under the CVRA. The City of Santa Monica, one of the few cities that had chosen to litigate through trial, lost at the trial court, won in the Court of Appeal and recently had its case reviewed by the California Supreme Court. On August 24, 2023, the California Supreme Court issued its decision in *Pico Neighborhood Association v. City of Santa Monica*, reversing Santa Monica's win in the Court of Appeal and finding that the Court of Appeal had misinterpreted the CVRA and applied the wrong standard. The case was remanded to the Court of Appeal for further proceedings.

Santa Monica's loss in the Supreme Court means that city will incur additional attorney fees if it decides to continue to fight its loss at the trial court level. It is estimated that Santa Monica has incurred approximately \$8-10 million in its own attorney fees to date. The prevailing plaintiffs are seeking recovery of an additional \$22 million in fees from Santa Monica through trial, which does not include appellate fees and costs.

Had the Supreme Court upheld the Court of Appeal's ruling, there may have been a better chance of successfully defeating a claim under the CVRA. However, since Santa Monica was not successful, the decision has no impact on the City of San Clemente. Accordingly, staff

recommends continuing with the process to change election systems consistent with the City Council's resolution of intention adopted on August 15, 2023.

The districting process

As required by Elections Code Section 10010, the City will hold at least two (2) public hearings prior to drawing or releasing any draft maps of Council election districts. Council will then hold at least additional two (2) public hearings to solicit public input regarding the content of the draft maps, the proposed sequence of elections and will introduce an ordinance. If necessary, an additional public hearing will be held prior to the adoption of an ordinance implementing a Council election district map.

The first public hearing in the district process was duly noticed and held on August 15, 2023. Today's hearing is the second public hearing and fulfills the requirement of California Elections Code Section 10010 that states:

“(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 thirty days, at which the public is invited to provide input regarding the composition of the districts.”

The intention of this hearing is to hear public input regarding the composition of the districts. The public is invited and encouraged to identify the neighborhoods, other “communities of interest,” and other local factors that should be considered or used as “building blocks” when the drawing of draft maps begins. The public is also welcome to provide any other relevant input, like on the number of districts, the sequencing of the elections, and can propose complete districting maps, but that is not required.

This second hearing will also be the public launch of the City's public mapping tool and interactive map review website, provided by our districting consultant (National Demographics Corporation, or NDC).

ANALYSIS:

The City conducted its first public hearing soliciting public input on the composition of the districts on August 15, 2023. The purpose of the first two public hearings is to inform the public about the districting process and to hear from the community on what factors should be taken into consideration when creating district boundaries. At the first public hearing Council received public comment. At this second public hearing, the public is requested to provide input regarding communities of interest and other local factors that should be considered when drafting district maps.

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. Possible community features include, but are not limited to:

- A. School attendance areas;
- B. Natural dividing lines such as major roads, railroads, or highways;
- C. Areas around parks and other neighborhood landmarks;
- D. Common issues, neighborhood activities, or legislative/election concerns;

E. Shared demographic characteristics, such as: (1) Similar levels of income, education, or linguistic isolation; (2) Languages spoken at home; and (3) Single-family and multi-family housing unit areas.

In creating the district boundaries, the City must ensure compliance with the following state and federally-mandated criteria:

Legal Requirements:

1. Each council district shall contain a nearly equal population as required by law;
2. Each council district shall be drawn in a manner that complies with the Federal Voting Rights Act. No council district shall be drawn with race as the predominate factor in violation of the principles established by the United States Supreme Court in *Shaw v. Reno*, 509 U.S. 630 (1993), and its progeny.

The City shall adopt district boundaries using the following criteria as set forth in the following order of priority:

1. To the extent practicable, council districts shall be geographically contiguous. Areas within districts that meet only at the points of adjoining corners are not contiguous.
2. To the extent practicable, 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.
3. 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.
4. To the extent practicable, and where it does not conflict with the preceding criteria, 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.
5. Where doing so does not conflict with higher-ranked criteria, the City Council may consider other traditional principles in the development of districts. For example, to the extent practicable, each council district shall respect the previous choices of voters by avoiding the creation of head-to-head contests between councilmembers previously elected by the voters, insofar as this does not conflict with Federal or State law.

Additionally, and although it can also be discussed in the next two hearings, the public is also invited to offer opinions regarding the number of districts and the sequencing of elections at this hearing.

Following the close of the second public hearing, the demographers will begin to draft proposed district boundaries and to compose a proposed sequence of elections for each set of maps. The draft maps and proposed election sequences are expected to be published no later than September 21, 2023, and will be posted on the City's website when available. These draft maps will be considered by the Council, along with public input at the third public hearing, which is currently scheduled to take place on Tuesday, October 3, 2023. The fourth public hearing is currently scheduled for Tuesday, October 17, 2023.

It is anticipated that, after receiving public comment at the meeting on October 17, 2023, the Council may hold a fifth public hearing and introduce an ordinance to adopt district boundaries and to establish district elections. It is anticipated that the Council may conduct a sixth public hearing and second reading and consider final action to adopt the ordinance on November 7, 2023.

Residents are invited and encouraged to draw and propose their own district maps. A page has been created on the City website that will include information in both English and Spanish, and will allow the public to provide input and suggestions for maps. Maps may be hand-delivered to the City Clerk's office, mailed to the attention of the City Clerk at 910 Calle Negocio, San Clemente, 92673 or, emailed to districtelections@san-clemente.org or. As submitted maps are produced, they will be posted on the City's website.

The deadline for residents to submit proposed maps, to be considered for the October 3, 2023 Council meeting is September 14, 2023. All draft maps will be posted seven days in advance of the City Council hearing of October 3, 2023 and will be available for view on the Draft Maps page of the City's website (san-clemente.org/districtelections). The deadline for residents to submit proposed maps, to be considered for the October 17, 2023 Council meeting is October 5, 2023.

4 vs 5 Districts

California Government Code Section 34886 enables cities to change to by-district elections by ordinance:

“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 comply with the requirements and criteria of Section 21601 or 21621 of the Elections Code, as applicable, and 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.”

As referenced in Government Code Section 34886, part of the districting process includes the decision whether to have 4 districts with an elective mayor, or to have 5 districts with a Council-selected rotating mayor. Reference to this choice was included in Section 1 E. of Resolution 23-85, the Resolution of Intention declaring the City's intention to transition from at-large to by-district elections, which reads “The City Council directs staff to instruct the demographic consultant to prepare for City Council review at the appropriate time proposals for districting plans with options

for both four districts with an elective mayor and five districts pursuant to Government Code §§ 34871(b) and (c) and 34886.”

In NDC’s experience, the districting process goes smoother the earlier the decision is made regarding the number of districts because residents can then focus on how to draw and select the best 4- or 5-district map, rather than on whether to have 4 or 5 districts. The resulting recommendation is for the Council to give (non-binding) direction to NDC on whether to develop 4-district or 5-district scenarios at the end of the second public hearing. If the Council is so inclined, it could also provide non-binding direction on other options for more districts, but that is not recommended.

It should be noted that the Council can reverse its decision on the number of districts at any time prior to the second reading of the districting ordinance, however changing this decision may require scheduling additional hearings prior to final adoption and could take the process outside the timeline set forth in Elections Code section 10010.

Council Options:

- Conduct the Second Public Hearing to receive public input regarding the composition of districts.
- Determine whether to change to 4 districts with an elective mayor, or to 5 districts with a Council-selected rotating mayor and give direct NDC to draw draft maps with either 4 or 5 districts.
- Do not determine the number of districts and direct NDC to draw draft maps with options for both 4 and 5 districts.
- Direct Staff to return to Council with additional information.

Environmental Review/Analysis:

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

Recommended Actions:

Staff Recommendation

1. Conduct the public hearing and receive public input regarding the composition of the potential Council election districts.
2. Provide direction to NDC on the Council’s preference for 5 Council districts with a rotating Mayor, or for 4 Council districts with a citywide-elected Mayor. If 4 districts with a Citywide-elected Mayor is preferred, provide guidance on whether the Mayoral term should be 2 years or 4 years.

Attachment:

1. Timeline: Consideration and Implementation of By-District Elections

Notification:

San Clemente Times Ads in Spanish and English

Timeline: Consideration and Implementation of By-District Elections
(All meetings in Council Chambers at City Hall)

Date	Event	Comment
July 10, 2023	Receipt of demand letter	
August 15, 2023 Regular City Council Meeting	City Council adopts Resolution declaring its intention to transition from at-large to by-district elections and holds first public hearing.	Mapping tools will be made available shortly after adoption of the Resolution of Intention.
August 24, 2023	45 Days from July 10, 2023	See Elections Code section 10010.
September 5, 2023 Regular City Council Meeting	Second Public Hearing	Before maps are drafted by demographer. Must occur within 30 days of first public hearing.
September 14, 2023	Deadline for the public to submit any proposed maps.	Draft maps must be posted for at least 7 days before the third public hearing.
September 21, 2023	Posting deadline for all maps (public and consultant).	Draft maps must be posted for at least 7 days before the third public hearing.
October 3, 2023 Regular City Council Meeting	Third Public Hearing	Regarding content of draft maps and sequence of elections.
October 10, 2023	Post any new or amended maps and potential sequence of elections	Draft maps must be posted at least 7 days before fourth public hearing
October 17, 2023 Regular City Council Meeting	Fourth public hearing: Select Map. Fifth public hearing: Council introduces ordinance establishing district elections, including district boundaries and election sequence	Regarding content of draft maps and sequence of elections. Fourth public hearing must be within 45 days of third public hearing. If selected map is amended, there must be time for posting (at least 7 days) and another public hearing to introduce the ordinance before expiration of the 90-day safe harbor period.
October 25, 2023 (Special Meeting)	Optional meeting	Only necessary if posted map is changed.
November 7, 2023, Regular City Council Meeting	Sixth public hearing: 2 nd reading of Ordinance and Ordinance adopted	Last regular City Council meeting before 90 days expire

November 13, 2023	90 days after August 15, 2023	See Elections Code section 10010.
November 5, 2024	First election using district-based seats	
November 3, 2026	Second election using district based seats	