



# 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:** October 17, 2023

Agenda Item: 8B

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**Department:** City Clerk

**Prepared By** Laura Campagnolo, City Clerk

**Subject:**

**PUBLIC HEARING #5 TO INTRODUCE FOR FIRST READING AN ORDINANCE ADDING SECTIONS 2.04.010 THROUGH 2.04.012 TO THE SAN CLEMENTE MUNICIPAL CODE TO TRANSITION TO BY-DISTRICT ELECTIONS AND SETTING MAYORAL TERM LIMITS**

**Fiscal Impact:**

None.

**Summary:**

The purpose of this Fifth Public Hearing is to receive public input and introduce and conduct a first reading of a proposed ordinance transitioning from at large to by-district elections for City Council and setting a life-time term limit of three full terms (six years, plus any partial appointed terms) for the Mayor by adding Sections 2.04.010 through 2.04.012 to the San Clemente Municipal Code.

**Background:**

On August 15, 2023, the City Council adopted Resolution No. 23-85 Declaring the City of San Clemente's Intent to Initiate Procedures to Consider Transition from At-Large Elections to By-District Elections. Pursuant to Elections Code section 10010, the City Council held public hearings on August 15, September 5, and October 3 and 17, 2023 and received public input regarding the number of districts, the composition of the districts, the potential election sequencing and draft maps. City staff also conducted public outreach regarding the districting process at various City commission, committee and community meetings.

The final step in the districting process is to introduce and adopt an Ordinance transitioning to by-district elections before November 7, 2023. If a final map is selected at the fourth public hearing (right before this item), and no changes to the map are required, City Council may conduct this fifth public hearing on the same night to introduce an ordinance to transition to by-district elections. If Council selects a map, but changes are needed, the revised map must be posted for at least seven (7) days before the Ordinance is introduced.

Ordinance Components

The proposed Ordinance has the following components:

1. Adoption of the chosen map with four districts;

2. A directly elected at-large Mayor with a two-year term beginning with the November 2026 election;
3. Maximum three full terms life-time limit (six years) for the Mayor;
4. Sequencing of the district elections with some in November 2024 and some in 2026, depending on the map; and
5. A “poison pill” provision, whereby if the California Voting Rights Act of 2001 is ever found to be unconstitutional or amend in a manner so that it would not apply to the City, the Ordinance will automatically sunset.

After selecting the map, the City Council must decide which districts are up for election in 2024, with the others thus being up for election in 2026. Under Section 10010(b) of the California Elections Code:

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 (Chapter 1.5 (commencing with Section 14025) of Division 14 of this code), and it shall take into account the preferences expressed by members of the districts.

The proposed sequencing, which is the timeline for implementing the district-based election system, is as follows, depending on which map the Council selects:

Current Terms: 2024: Duncan and Loeffler 2026: Cabral, Enmeier, and Knoblock

**4-District Maps, Mayor elected in 2026**

Map	2024 Elections	2026 Elections
109	3 (Loeffler) and 4 (vacant)	Mayor, 1 (Cabral), and 2 (Duncan, Enmeier, & Knoblock)
111	2 (Duncan) and 3 (Loeffler)	Mayor, 1 (Cabral) and 4 (Enmeier & Knoblock)
112	2 (Duncan) and 3 (Loeffler)	Mayor, 1 (Cabral) and 4 (Enmeier & Knoblock)
114	3 (Loeffler) and 4 (vacant)	Mayor, 1 (Cabral), and 2 (Duncan, Enmeier, & Knoblock)

117	2 (Duncan) and 3 (Loeffler)	Mayor, 1 (Cabral, Enmeier, & Knoblock), and 4 (vacant)
118	2 (Duncan) and 3 (Loeffler)	Mayor, 1 (Cabral) and 4 (Enmeier & Knoblock)
119	2 (Duncan) and 3 (Loeffler)	Mayor, 1 (Cabral) and 4 (Enmeier & Knoblock)

Given the statutory timing requirements, it is recommended that by the end of the City Council meeting on October 17, 2023, the Council complete this fifth public hearing, and introduce the attached Ordinance with the blanks being filled in regarding the sequencing based on the map selected. The Ordinance would then be brought forward for adoption at the sixth public hearing, which is scheduled to take place at the City Council meeting on November 7, 2023. The City Council may make changes to the proposed Ordinance before conducting the first reading tonight, and as long as the changes do not involve changes to the selected map, the timeline under Elections Code section 10010 can be met.

At this time, staff recommends the City Council select its preferred map, designate their preferred election years for each district, and introduce the proposed Ordinance, establishing four districts for election and an at-large elected Mayor and setting Mayoral term limits by adding Sections 2.04.010 through 2.024.012 to the San Clemente Municipal Code.

**Council Options:**

- Conduct the fifth Public Hearing to receive public input and introduce and conduct the first reading of Ordinance No. 1762 to transition to by-district elections and set a life-time three full term limit for the directly elected at-large Mayor.
- Conduct the fifth Public Hearing and modify, introduce and conduct the first reading of Ordinance No. 1762.
- Direct Staff to return to Council with additional information or a revised map.

**Environmental Review/Analysis:**

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

**Recommended Actions:**

Staff Recommendation

1. Open a public hearing and invite members of the public to provide feedback on the proposed Ordinance.

2. Introduce and conduct the first reading of Ordinance No. 1762 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, ADDING SECTIONS 2.04.010 THROUGH 2.04.012 TO THE SAN CLEMENTE MUNICIPAL CODE, ESTABLISHING A BY-DISTRICT ELECTION PROCESS IN FOUR COUNCIL DISTRICTS WITH AN ELECTIVE OFFICE OF MAYOR PURSUANT TO CALIFORNIA ELECTIONS CODE § 10010 AND CALIFORNIA GOVERNMENT CODE §§ 34871(C) AND 34886 AND SETTING MAYORAL TERM LIMITS.

***Attachment:***

1. Ordinance No. 1762

***Notification:***

San Clemente Times 1/8 Page Ad in English and Spanish

**ORDINANCE NO. 1762****AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, ADDING SECTIONS 2.04.010 THROUGH 2.04.012 TO THE SAN CLEMENTE MUNICIPAL CODE, ESTABLISHING A BY-DISTRICT ELECTION PROCESS IN FOUR COUNCIL DISTRICTS WITH AN ELECTIVE OFFICE OF MAYOR PURSUANT TO CALIFORNIA ELECTIONS CODE § 10010 AND CALIFORNIA GOVERNMENT CODE §§ 34871(C) AND 34886 AND SETTING MAYORAL TERM LIMITS**

**WHEREAS**, the City of San Clemente currently elects its five City Councilmembers using an at-large election system, and the City Council selects a Mayor and Mayor Pro Tem from among its members; 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**, the City's current electoral system observes the guarantees of Section 7 of Article I and Section 2 of Article II of the California Constitution, the Equal Protection Clause of the United States Constitution, and the federal Voting Rights Act; 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 July 10, 2023, the City received a letter from the Law Offices of Michelle R. Jackson, 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, even if the City is successful, and at this time such an expensive defense would severely burden the City's budget and curtail the City's ability to provide needed services to its residents; and

**WHEREAS**, under the provisions of California Government Code sections 34870-34884, a proposal to adopt a by-district method of election in a general law city must ordinarily be submitted to the voters of the city; and

**WHEREAS**, California Government Code section 34886 permits the City Council, to change the City's method of election by ordinance, with certain formalities, to a "by-district" system; and

**WHEREAS**, California Government Code section 34886, as amended effective January 1, 2020, 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 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); and

**WHEREAS**, California Government Code section 34871(c) provides for the election of members of the legislative body of a city by districts in four districts, with a separately elected mayor; and

**WHEREAS**, the City wishes to avoid litigation and take advantage of the provisions of Government Code section 34886, and therefore, 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 San Clemente made by this Ordinance also implements 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**, at its regular meeting of August 15, 2023, the City Council adopted a resolution of intent to establish a by-district voting process pursuant to Elections Code section 10010, Resolution No. 23-85; 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 August 15, 2023 and September 5, 2023, at which time input from the public on the proposed composition of the districts was invited and heard; and

**WHEREAS**, on September 21, 2023, consistent with the provisions of California Elections Code section 10010, the City published and made available for public review, thirteen (13) draft maps for consideration by the Council, two of which were prepared by the City's demographic consultant, and the rest of which were submitted by members of the public; and

**WHEREAS**, the potential sequence of elections for each such map was also published at that time; and

**WHEREAS**, between October 4, 2023 and October 10, 2023, the City published six (6) more draft maps submitted by the public and NDC, in addition to those already published on September 21, 2023, together with potential sequences of elections for each of those maps; and

**WHEREAS**, as required by California Elections Code section 10010, the City held a third public hearing on October 3, 2023, at which the public was invited to provide input regarding the content of the draft maps and the potential sequence of elections; and

**WHEREAS**, after the close of the public hearings on October 3, 2023, the City Council provided instruction to the City's demographic consultant about making revisions to draft maps and identified map numbers 109, 111 and 112, which had been submitted by members of the public and NDC, as "Focus Maps"; and

**WHEREAS**, revised maps and the "Focus Maps", in addition to more maps submitted by the public, were made available for public review on October 10, 2023, and the potential sequence of elections for those maps was published as well; and

**WHEREAS**, as required by California Elections Code section 10010, the City held a fourth public hearing on October 17, 2023, at which the public was again invited to provide input regarding the content of the draft maps and the potential sequence of elections; and

**WHEREAS**, as required by California Elections Code section 10010, the City held a fifth public hearing on October 17, 2023, at which the public was again invited to provide input regarding Ordinance No. 1762; and

**WHEREAS**, it is the considered view of the City Council that revised draft map ---, attached hereto as **Exhibit A** and incorporated into this Ordinance by reference, will serve the best interests of the City of San Clemente; 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 San Clemente by-district in four single-member districts, and a separately elected office of Mayor.

**NOW, THEREFORE**, the City Council of the City of San Clemente, California, does ordain as follows:

Section 10: SAN CLEMENTE MUNICIPAL CODE SECTION 2.04.10, ADDED

Section 2.04.10 of the San Clemente Municipal Code is hereby added as follows:

**2.04.10 Four City Councilmembers and Elective Mayor.**

Pursuant to California Government Code sections 34886 and 34871(c), commencing with the November 2024 general municipal election, the members of the San Clemente City Council shall be elected by-districts in four (4) single-member districts with an elective Mayor. Each Councilmember shall serve a term of four years subject to the term limit set forth in section 2.04.090. The Mayor shall be elected at large by the people of San Clemente and shall serve a term of two years, with a life-time term limit of three full terms, and without the ability to run for Mayor again after completing three full terms.

Section 2: SAN CLEMENTE MUNICIPAL CODE SECTION 2.04.11, ADDED

Section 2.04.11 of the San Clemente Municipal Code is hereby added as follows:

**2.04.11. By-District Electoral System for Four City Councilmembers.**

A. Beginning with the general municipal election in November 2024, Councilmembers shall be elected in the electoral districts reflected on the map contained in **Exhibit A** hereto, which is incorporated fully herein by this reference, and as subsequently reapportioned as provided by 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 2.04.10, each Councilmember shall serve a four-year term until his or her successor has qualified.

B. Except as provided in subdivision (C) 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, 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 Councilmember 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, each of the Councilmembers in office at the time this article 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. 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 Subsection A and the map contained in Exhibit A hereto, as subsequently reapportioned as provided by law. 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.

Section 4: SAN CLEMENTE MUNICIPAL CODE SECTION 2.04.12, ADDED

Section 2.04.12 of the San Clemente Municipal Code is hereby added as follows:

**2.04.12 Election Schedule for Councilmembers Elected By-District.**

A. Consistent with Sections 2.04.10 and 2.04.11, Councilmembers from **Council Districts - and -** shall be elected beginning at the General Municipal Election in November **2024**, and every four years thereafter.



B. Consistent with Section 2.04.11, the Mayor and Councilmembers from Council Districts - and - shall be elected beginning at the General Municipal Election in November 2026, and every four years thereafter.

#### Section 5: IMPLEMENTATION

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 6: ENVIRONMENTAL REVIEW

The City Council finds that the proposed amendments to the San Clemente 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 that has the potential for causing a significant effect on the environment.

#### Section 7: 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 San Clemente 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 8: INCONSISTENCIES

To the extent the terms and provisions of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior City ordinance, motion, resolution, rule or regulation governing the same subject, the terms of this Ordinance shall prevail with respect to the subject matter thereof.

#### Section 9: INTERPRETATION

In interpreting this Ordinance or resolving any ambiguity, this Ordinance shall be interpreted in a manner that effectively accomplishes its stated purposes.

Section 10: SUNSET PROVISIONS

This Ordinance shall be of no further force and effect if the California Voting Rights Act, Elections Code sections 14025 through 14032, as it now exists or may hereafter be amended, is repealed, or declared by a court of competent jurisdiction to be facially unconstitutional, in whole or in part, or unconstitutional, in whole or in part, as applied to the City of San Clemente, or is amended such that its provisions no longer apply to the City of San Clemente. In the event that this Ordinance is of no further force and effect pursuant to this section, the City Council shall immediately consider an ordinance repealing Sections 2.04.10 through 2.04.12 of the Municipal Code of the City of San Clemente. In the event that this Ordinance is of no further force and effect pursuant to this section, the incumbent Councilmembers elected pursuant to the provisions of this Ordinance shall complete their terms of office until their successors are qualified, and their successors shall be elected at-large in the order in which the terms of the then-incumbent Councilmembers expire and in accordance with all other provisions of law, until such time as a different method of election City Councilmembers is approved in accordance with applicable law.

**EFFECTIVE DATE:** This Ordinance shall be effective thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk of the City of San Clemente shall cause this Ordinance to be published pursuant to the provisions of Government Code § 36933.

**Section 11:** The City Clerk shall certify to the passage of this ordinance and cause the same to be published as required by law, and the same shall take effect as provided by law.

APPROVED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2023.

ATTEST:

\_\_\_\_\_  
City Clerk of the City of  
San Clemente, California

\_\_\_\_\_  
Mayor of the City of San  
Clemente, California

STATE OF CALIFORNIA            )  
COUNTY OF ORANGE            ) ss.  
CITY OF SAN CLEMENTE        )

I, **LAURA CAMPAGNOLO**, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. \_\_\_\_\_ having been regularly introduced at the meeting of \_\_\_\_\_, was again introduced, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and said ordinance was adopted by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
CITY CLERK of the City of  
San Clemente, California

APPROVED AS TO FORM:

\_\_\_\_\_  
Elizabeth A. Mitchell, CITY ATTORNEY