



To: Volunteer Citizen-Based Charter Committee

From: Cathy Standiford, Partner

Subject: Process for Establishing or Modifying Voting Districts

Date: August 25, 2015

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At its August 11, 2015 meeting, the Charter Committee directed Management Partners to research the process for changing the number of wards and the implications of such a change. The purpose of this memorandum is to transmit the results of our research. It is organized into the following sections.

- Background
- Laws for Establishing or Modifying the Number of Wards
- Process for Modifying Ward Boundaries
- Best Practices
- Financial Implications

Each is discussed in detail below.

## **Background**

The existing City Charter vests all legislative power in the Common Council. The Mayor's voting privileges are limited to breaking ties between Council members present, which has occurred only 14 times since 2000. A review of the charters of comparable cities indicates the common practice is for the Mayor to have the same legislative powers as City Council members. In 15 of the 17 agencies studied, the Mayor's voting privileges are identical to those of City Council members. Only Riverside and Bakersfield limit the mayor's voting to breaking a tie vote of the City Council.

On August 11, 2015, the Charter Committee approved a preliminary recommendation to give full voting powers to the Mayor. Doing so, however, would result in an even number of voting members. Alternatives that have been discussed include retaining the same number of wards (i.e., seven elected Council members), or changing the number of wards to avoid the possibility of a tie vote.

## ***The Implications of Tie Votes***

It is appropriate for the Committee to be concerned about establishing a governing body with an even number of voting members. Not only is it virtually unheard of in local government, the

National Civic League Model Charter recommends against it. The primary reason is to prevent the public's business from being stalled or stopped in the event of an even split between elected officials. In fact, San Bernardino's current charter provision giving the Mayor the power to break ties is intended to resolve this potential problem.

There are numerous examples of polarized governing bodies whose elected officials appear to cast votes based primarily on political or personality differences. (This is not to suggest such behavior is appropriate, but to acknowledge it sometimes happens.) While a tie vote may seem acceptable for significant (i.e., controversial) decisions, it has the potential to create chaos for routine government operations such as the payment of warrants. Consequently, it would be better for the Charter Committee to either recommend changing the number of wards or recommend retaining the current charter provision (i.e., the Mayor as tie-breaker).

### **Laws for Establishing or Modifying the Number of Wards**

San Bernardino Charter Article I, Section 3 gives the Mayor and Common Council the authority to establish wards by ordinance and states the area of the City shall be divided:

*into seven (7) wards of approximately equal population and thereafter shall periodically change the boundaries of the wards to maintain them in compact form and as nearly equal in population as possible, provided that such changes shall not be made more than once in any two (2) year period nor within ninety (90) days of any general municipal election.*

The rules for modifying the number of wards are governed by federal and state law, and are the same as those for establishing wards.

#### ***Applicable Federal and State Laws***

The United States Constitution, as implemented through the California State Elections Code Section 21620, requires electoral districts to, "be as nearly equal in population as may be according to the latest federal decennial census." These laws are what trigger redistricting for cities such as San Bernardino every 10 years. "Population" is defined as the total population residing in the proposed districts, not the voting age population, the number of legal citizens or the number of voters.

City councils may give consideration to additional factors in establishing district boundaries, as authorized by Elections Code Section 21620. These factors are "(1) topography, (2) geography, (3) cohesiveness, contiguity, integrity and compactness of territory, and (4) community of interest of the districts."

The Federal Voting Rights Act of 1965 prevents denial of the right to vote on account of race or color. Section 2 of the Act requires districts to be configured such that persons of color have equal power to elect candidates of choice and prohibits racial gerrymandering. In 1993 the U.S. Supreme Court held that race may be considered as evidence of a community of interest, but



may not be the sole consideration for district boundaries, absent highly unusual circumstances (Shaw v. Reno, 509 U.S. 630, 1993). The U.S. Supreme Court has identified and approved the following justifiable reasons for small deviations from equal population within districts.

- *Communities of Interest.* These are shared problems or concerns as defined by the community, such as schools, public safety services, parks, street lighting, and new development.
- *Visible Boundaries.* Visible man-made or natural boundaries make it easy for residents of a district to understand its borders and to engage in precinct walking or other election activities.
- *Compactness and Contiguity.* These features also make it easier for voters to understand a district's borders.
- *Population Growth*
- *Ability to Provide Voters the Opportunity to Retain their Elected Representatives, if they choose.*

State law and the City Charter authorize the Mayor and Common Council to establish ward boundaries, and this responsibility may not be delegated to others. However, an advisory body may make recommendations.

### **Process for Modifying Ward Boundaries**

Management Partners was unable to identify a recent occurrence of a California city that has reduced the number of districts or wards. However, a number of cities are transitioning from at-large to district elections in response to lawsuits filed pursuant to the California Voting Rights Act (CVRA). The CVRA made changes to minority voting rights law in California, making it easier for plaintiffs to challenge allegedly discriminatory voting practices. The CVRA places a lighter burden of proof on plaintiffs to establish a violation and mandates the award of costs, attorney fees and expert expenses to prevailing plaintiffs. The law is less applicable to cities and special districts that elect governing board members by district.<sup>1</sup>

Cities transitioning to district elections include Anaheim, Whittier, and Palmdale. The City of Santa Clarita was sued under CVRA, but in a settlement agreed to change the date of elections to November of even numbered years effective in 2016 and implement cumulative voting (i.e., voters have three votes and may allocate more than one vote to a candidate if desired.) The City of Highland was similarly challenged and put the matter to voters in November 2014. The voters rejected a by-district electoral system election. (Note: There is at least one legal opinion that the rejection of a by-district electoral system by voters may not protect a jurisdiction, "if the by-district system was rejected in an election characterized by a racially-polarized vote."<sup>2</sup>

Management Partners reviewed the processes being used to establish districts in Anaheim, Whittier, and Palmdale, using publicly available sources. We also conducted interviews with

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<sup>1</sup> The California Voting Rights Act, White paper by Marguerite Mary Leoni and Christopher E. Skinnell. League of California Cities website, accessed August 13, 2015.

<sup>2</sup> Ibid., p. 9.



the city clerks of Anaheim and Palmdale to obtain clarification about a few areas. Table 1 summarizes the characteristics of each of these cities and the changes being implemented.

*Table 1. Characteristics of Cities Implementing By-District Electoral Systems*

City	Current Election Characteristics	Changes Being Implemented
<b>Anaheim</b>	Mayor and four Councilmembers, all elected at large for four-year terms Election in November, even numbered years	Mayor elected at large Six Councilmembers elected by district (increase in number of Councilmembers from four to six)
<b>Palmdale</b>	Mayor and four Councilmembers, all elected at large for four-year terms Election in November, odd-numbered years	Mayor elected at large Four Councilmembers elected by district Election in November, even numbered years
<b>Whittier</b>	Mayor and four Councilmembers, all elected at large Election in April of even numbered years	Mayor elected at large for a two-year term Four Councilmembers elected by district, four-year terms No change in election date

The Whittier and Anaheim City Councils retained their authority to approve the specific district boundaries in their respective negotiated settlement agreements. The specific district boundaries in Palmdale were established within the settlement agreement, and were consequently approved by a judge, not the Palmdale City Council. In hindsight, the City would have preferred to retain City Council authority to approve the district boundaries.

***Transition Plans***

Each city has had to establish a “transition plan” to migrate from the current at-large system to a by-district system. Both Whittier’s and Anaheim’s transition plans were incorporated into charter amendments approved by the voters to establish by-district elections. Whittier’s amendment specifies that Districts 1 and 3 will hold elections in April 2016 and Districts 2 and 4 elections will be held in April 2018. The City Council assigned numbers to each district when they were adopted in May of 2015. The new districts and election cycle commence with the City’s next election in April 2016.

Anaheim’s charter amendment increases number of council seats from four to six effective with the November 2016 election. Two existing council seats that would already be on the ballot, plus two newly created seats will be on the 2016 ballot. All four will be elected by district. Following the November 2016 election, one of the four elected council members will be randomly selected to serve a shorter, two-year term. The remaining newly-elected council members will serve four-year terms. The two council seats that are not up for election in 2016 will be in November 2018. These two seats will be elected by district, along with the council seat randomly selected for an abbreviated term following the November 2016 election. Anaheim’s transition plan does not reduce any term of office or impose a district residency requirement on current City Council members.



Palmdale's transition plan was established through the settlement agreement and resulted in the cancellation of the November 2015 election, essentially extending the terms of two council members by two years (i.e., until the November 2016 election).

San Bernardino would need to develop a transition plan if the number of wards is changed. Whittier, Anaheim and Palmdale offer three different alternatives, with Anaheim's being most comparable due to similarities in the number of districts.

### **Best Practices**

Based on our review, Anaheim is applying several best practices in establishing electoral districts. These are recommended for San Bernardino should it decide to modify its current ward system. Each is summarized below.

#### ***Advisory Committee Comprised of Retired Judges***

Anaheim's settlement agreement required the City Council to appoint a five-member Advisory Committee. The purpose of the committee is to assist in developing district boundaries to recommend for adoption by the City Council. The agreement further specifies that the Advisory Committee be comprised of retired Orange County Superior Court judges residing within Orange County, with preference given to those who are Anaheim residents.

The City Attorney's Office conducted a "notice, inquiry and outreach process" to identify qualified candidates for the Advisory Committee. Fourteen retired judges submitted applications to serve, one of whom is an Anaheim resident. This individual was named chair of the committee. The other four seats were selected by random draw from the pool of applicants. Two alternate replacements were also randomly selected and will serve only in the case of an unexpected vacancy. The Advisory Committee members receive no compensation for their service.

According to City staff, the appointment of randomly selected retired superior court judges to the Advisory Committee has removed politics from the districting process, and has added credibility and neutrality that may not have been possible with a committee of residents. The Advisory Committee's familiarity and knowledge of the law, and experience conducting hearings and receiving testimony is also proving to be helpful to the process. Anaheim expects the Advisory Committee to complete its work in September. The City Council is scheduled to hold required public hearings beginning in October and approve electoral district maps by December 2015.

#### ***Demographic Consultant***

All three cities have hired a professional demographer to analyze census data and develop alternatives for district configurations that comply with applicable federal and state laws. However, Anaheim's demographic consultant has been asked to provide a higher level of service than employed by the other two cities. The scope of work for Anaheim's consultant includes:



- Providing census data to the City, including analysis and evaluation of the population;
- Providing tools to create and comment on district maps and on communities of interest;
- Providing computerized districting programs for public access and review;
- Attending community meetings, advisory meetings, and City Council meetings; and
- Preparing and presenting draft maps based on community input and Advisory Committee direction for City Council approval.

The interactive, web-based tools created by the demographic consultant are readily available on the City’s website and are impressive in their clarity and ease of use.

The last time San Bernardino conducted a redistricting process, the census data analysis was performed internally by staff, who presented recommendations for boundary modifications to the Common Council. This practice may be adequate for minor adjustments, but is not advised for larger scale electoral system modifications due to the legal complexities and heightened attention being paid to compliance with the California Voting Rights Act.

***Extensive Community Outreach Plan***

Whittier and Anaheim engaged the help of a consultant to develop a comprehensive community outreach plan because of a lack of in-house staff capacity and/or expertise. Because the outcome of Palmdale’s districting was determined by settlement agreement, community outreach is being conducted after the fact and is focused on informing residents of their electoral district and its boundaries. Regardless of the level of community outreach, a new state law requires three public hearings to be held before district boundaries may be approved.

Features of the Whittier and Anaheim communications plans are summarized in Table 2.

*Table 2. Comparison of Community Outreach Plan Components*

<b>Outreach Plan Component</b>	<b>Anaheim</b>	<b>Whittier</b>
<b>Contract with demographic consultant</b>	X	X
<b>Contract with an outreach specialist</b>	X	X
<b>Hold public outreach and input meetings<sup>1</sup></b>	X	X
<b>Appoint an Advisory Committee</b>	X	
<b>Have an interpreter at all meetings</b>	X	
<b>Accept proposed maps from the public</b>	X	X
<b>Have dedicated email address for voting district communications</b>	X	X
<b>Provide website and printed materials in multiple languages<sup>2</sup></b>	X	X
<b>Have a webpage dedicated to redistricting</b>	X	X
<b>Provide an interactive district mapping tool on website</b>	X	
<b>Partner with various community groups, citywide</b>	X	X
<b>Issue press releases</b>	X	X
<b>Use email blasts (subscribers)</b>	X	



Outreach Plan Component	Anaheim	Whittier
Develop Public Service Announcements	X	X
Develop YouTube videos about the process	X	
Have a social media presence (Facebook, Twitter)	X	
Promote the issue on Community Television	X	
Provide information in utility bill inserts	X	
Place information and materials in City facilities	X	X

<sup>1</sup>Whittier held two rounds of outreach meetings with the demographer and staff. Three more community meetings were held at various schools to allow input on the draft proposals and public submissions prior to the three City Council public hearings required by state law.

<sup>2</sup>Anaheim provides agendas and other materials in English, Spanish, Vietnamese, Chinese and Korean. Whittier released agendas and other districting communications in English and Spanish.

### Financial Implications

Modification (and creation) of electoral districts is a labor-intensive process lasting approximately 12 months, based on the experiences of Whittier and Anaheim. The Whittier districting process cost approximately \$117,000 for the professional demographer and public outreach efforts. Costs for City staff time could not be determined.

The contract for Anaheim’s demographic consultant is a not-to-exceed amount of \$75,000, although the City Clerk estimates actual costs will range between \$45,000 and \$50,000. The outreach specialist is being used as needed to produce materials and is estimated to cost approximately \$15,000. Interpretation and translation costs are “significant,” but could not be specifically quantified. In addition, Advisory Committee meetings held outside of City Council chambers are being videotaped. Not including staff time, total costs for Anaheim are estimated to range between \$150,000 and \$175,000. San Bernardino could expect similar costs if it chooses to modify the number of wards consistent with the best practices of the Anaheim districting process.

