

# REQUEST FOR COUNCIL ACTION



CITY COUNCIL MEETING DATE:

SEPTEMBER 4, 2018

TITLE:

**PUBLIC HEARING: ESTABLISH HEARING DATES AND HOLD FIRST OF FOUR PUBLIC HEARINGS TO MODIFY THE WARD BOUNDARIES (STRATEGIC PLAN NO. 5, 1)**



CITY MANAGER

CLERK OF COUNCIL USE ONLY:

APPROVED

- As Recommended
- As Amended
- Ordinance on 1<sup>st</sup> Reading
- Ordinance on 2<sup>nd</sup> Reading
- Implementing Resolution
- Set Public Hearing For \_\_\_\_\_

CONTINUED TO \_\_\_\_\_

FILE NUMBER \_\_\_\_\_

## RECOMMENDED ACTIONS:

1. Establish the following Public Hearing dates of September 4, September 18, October 16, and October 30, 2018, and the adoption of new boundaries at the Regularly scheduled City Council Meeting on November 20, 2018 to consider Ward Re-boundaries.
2. Open and Close the first Public Hearing that will explain the re-boundary process, review the criteria used to modify Ward boundaries, and allow residents to submit their ideas for potential "communities of interest" to consider in the new boundaries.

## DISCUSSION

By certified letter received on March 14, 2018, the Asian-Americans Advancing Justice advised the City that it believes the City's current at-large method of electing City Councilmembers violates the California Voting Rights Act ("CVRA").

On April, 17, 2018, staff received Council direction to prepare the necessary resolutions to place a Charter amendment before the voters at the November 6, 2018 General Municipal Election to transition from at-large to By-Ward Election of Santa Ana City Councilmembers.

The Public Hearings scheduled on September 4, September 18, October 16, October 30 and November 20, 2018 are required pursuant to Elections Code Section 10010. Staff has scheduled two Hearings to receive input from the community about their ideas for potential "communities of interest" and to provide criteria for mapping of new Ward boundaries. The culmination of these two Hearings will result in the development of proposed new Ward map(s) for consideration at the subsequent Hearings scheduled on October 16 and October 30. The Hearing on November 20, 2018 will be for the City Council to consider adoption of ordinance setting new Ward boundaries. A timeline of events is attached as reference in Exhibit 1. The City Charter requires new Ward Boundary Map to be approved by a 2/3 affirmative vote and at least 120 days before an election, which will be November of 2020.

Staff has hired the firm of Redistricting Partners to assist the City in conducting the community meetings and public hearings and preparing the maps for consideration that will comply with the Federal and California law, including, but not limited to, the CVRA. Also, the firm ESRI will provide a web-based platform for residents to review proposed maps and engage the community throughout the process.

## **Background**

The City of Santa Ana received a certified letter on March 14, 2018 from Asian Americans Advancing Justice threatening litigation under the CVRA if the City does not change to By-Ward Elections. The letter asserts that the City's current practice of nominating by Ward and electing at-large dilutes the ability of Asians (a protected class) to elect candidates of their choice or otherwise influence the outcome of Santa Ana's council elections. Below is information about the California Voting Rights Act (CVRA) and the provisions in the City Charter as related.

The CVRA was signed into law in 2002. The CVRA prohibits an at-large method of election that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election. The law's intent is to expand protections against vote dilution over those provided by the Federal Voting Rights Act of 1965 (FVRA). The law was also motivated, in part, by the lack of success by plaintiffs in California in lawsuits challenging at-large electoral systems brought under the FVRA. The passage of the CVRA made it much easier for plaintiffs to prevail in lawsuits against public entities that elected their members to its governing body through "at-large" elections. A plaintiff need only prove the existence of "racially polarized voting" to establish liability under the CVRA. Proof of intent on the part of voters or elected officials to discriminate against a protected class is not required.

### **California Voter Rights Act Reform (AB 350), a "Safe Harbor"**

On September 28, 2016, the Governor signed AB 350 into law, codified as Elections Code section 10010 (effective on January 1, 2017). The legislation attempts to provide a "safe harbor" from CVRA litigation for cities. If a city receives a demand letter, such as in Santa Ana's case, the city is given 45 days of protection from litigation to assess its situation.

With respect to the re-boundary process, the City Charter provides that census data be analyzed to account for shifts and changes in the population. According to the 2010 Census, Santa Ana's population was 324,528, a decrease of more than 13,400 residents from the 2000 Census. The population shifts within each Ward were significant enough that required new boundary lines to be redrawn. The City Council approved the existing Ward Map boundaries in January of 2012, Exhibit 2 and 3.

This proposed re-boundary process is categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15320 – Class 20 (Changes in Organization of Local Agencies) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, since it involves a proposed reorganization of the City Council Wards and does not change the geographical area in which previously existing powers are exercised.

## What is Re-boundary and why do it?

Re-boundary is the redrawing or adjusting of Ward lines to ensure that legislative representation is fair and balanced. It is done every ten years, after the census data is compiled, to account for population shifts and growth over the last decade. The purpose is to bring Wards back into compliance with equal population representation. The number of Wards in the City are to remain the same.

## Re-boundary Standards

When deciding upon a proposed map, the City Council must keep in mind certain standards in order to comply with the law, Exhibit 4. The following are mandatory for any proposed map:

- The Wards must be as nearly equal in population as may be (Elections Code § 2 1601). Exact equality of population is not required for the Wards, but they should strive to create Wards that have a total population deviation of no more than 10% between their most heavily populated Ward and the least populated Wards. *Gaffney v. Cummings*, 412 U.S. 772 (1973).
- Current Councilmembers shall not lose their current seat or allow a term limit reset for members that have served three consecutive terms of four-years each.
- The City Council *may* also rely upon the following “traditional” re-boundary factors when deciding upon a map:
- Cohesiveness, continuity, integrity, and compactness of territory (Elections Code § 21601)
- Community of interest (Elections Code § 21601)
- Finally, the following are additional criteria which are also *acceptable* to consider:
- Traditional boundaries
- Preservation of core of prior Wards
- Race may be a factor considered in establishing the districts, but it may not be the predominant motivating factor in creating the districts. *Miller v. Johnson*, 515 U. S. 900, 916 (1995). Race is a predominant factor if the legislature “subordinate[s]” other factors—compactness, respect for political subdivisions, partisan advantage, what have you—to “racial considerations.” *Id.*

Santa Ana, like most communities have taken a phased approach to implementing Ward-based elections.

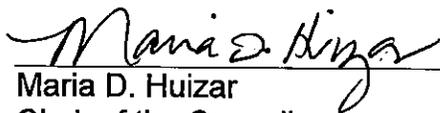
The City Council encourages the community to be engaged in the process. Comments may be sent to [Ecomments@santa-ana.org](mailto:Ecomments@santa-ana.org) prior to each hearing to be considered during the deliberation process.

### **STRATEGIC PLAN**

Approval of this item allows us to meet Goal #5. Community Health, Livability, Engagement & Sustainability, Priority #1, Establish a comprehensive community engagement initiative to expand access to information and create opportunities for stakeholders to play an active role in discussing public policy and setting priorities.

### **FISCAL IMPACT**

There is no fiscal impact associated with this action. The contract to conduct outreach and development of Ward maps with Redistricting Partners has been previously approved and executed accordingly.



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Maria D. Huizar  
Clerk of the Council

#### Exhibits:

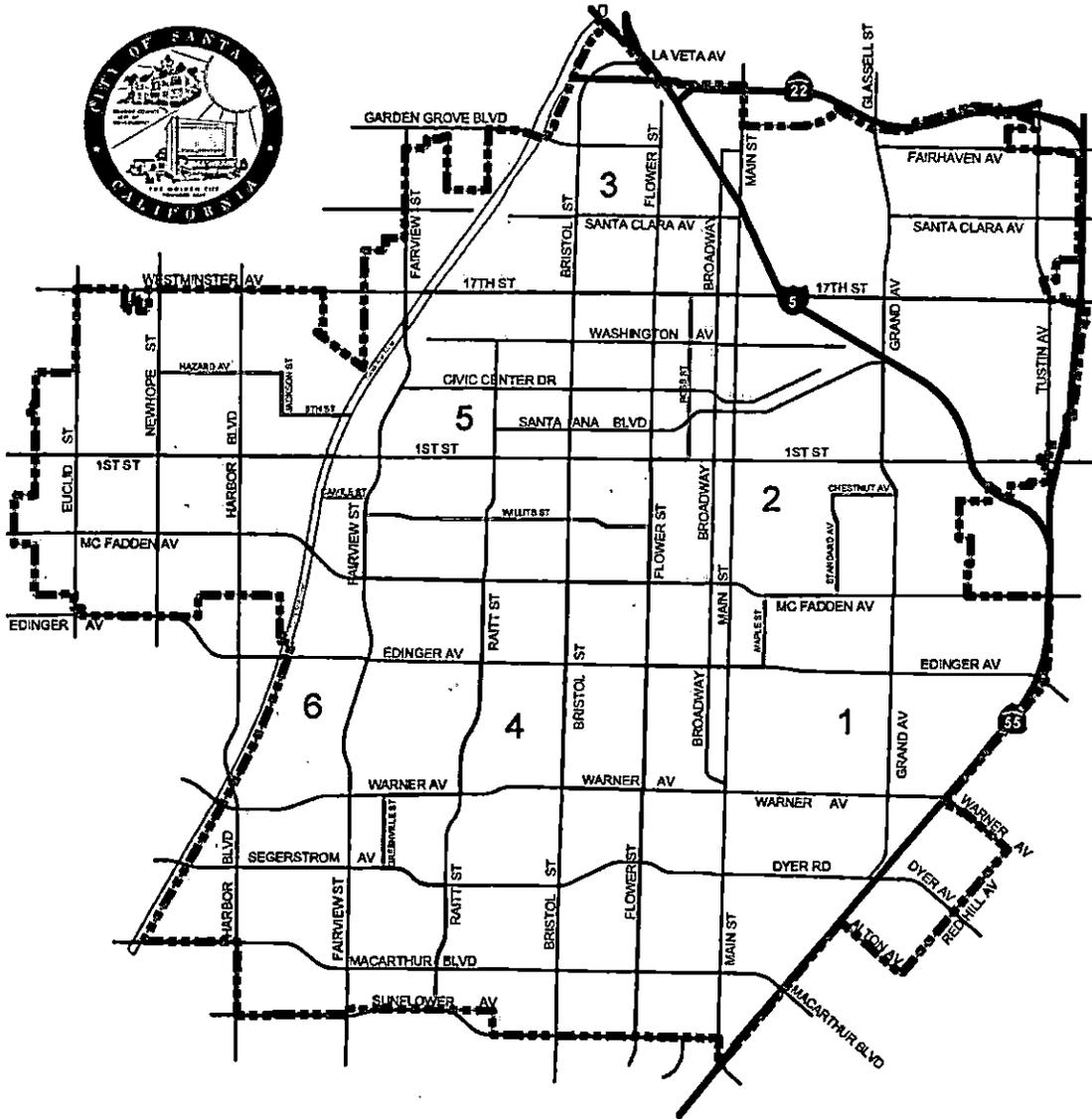
1. Timeline: Ward Re-boundary Process
2. Current Ward Boundary Map
3. City of Santa Ana Charter Provisions
4. Elections Code Provisions

**EXHIBIT 1:****TIMELINE OF EVENTS  
WARD-RE-BOUNDARY PROCESS**

<b>DATE</b>	<b>DESCRIPTION OF EVENT / ACTION</b>
August 27	Published Notice of Community Meetings and Public Hearings in English, Spanish, Vietnamese, Chinese and Korean.  Notices sent to religious organizations, Neighborhood Associations, a City Press Release and website developed with information
August 30	COMMUNITY MEETING #1 - Thursday, August 30, 2018 at 10 a.m. at Iglesia De Dios Pentecostal, 1025 W. Memory Lane, Santa Ana, CA
September 4	PUBLIC HEARING #1 – City Council Meeting
September 6	COMMUNITY MEETING #2 - Thursday, September 6, 2018 at 6 p.m. at Southwest Senior Center, 2201 W. McFadden Ave., Santa Ana, CA
September 10	COMMUNITY MEETING #3 - Monday, September 10, 2018 at 6 p.m. at Delhi Community Center, 505 E. Central Ave, Santa Ana, CA
September 15	COMMUNITY MEETING #4 - Saturday, September 15, 2018 at 10 a.m. at Salgado Recreation Center 706 N. Newhope St., Santa Ana, CA
September 18	PUBLIC HEARING #2 - City Council Meeting. <i>(Pre-Map Formation)</i>
September 19	Publish Public Hearing Notice MUST be published at least 7 days before Hearing. (To be published on ??? for Hearings on October 16 and October 30 <sup>th</sup> )
October 16	PUBLIC HEARING #3 – (Map Development Session) <ul style="list-style-type: none"> <li>Review Proposed Maps as published. If any changes, will need to republish (NOTE: requires 7 days of publication prior to Hearing and adoption)</li> <li>Adjourn Hearing #3 to Hearing #4 for further consideration.</li> </ul>
October 30	PUBLIC HEARING #4 – Tuesday, October 30, 2018 at 5:45 p.m. (Map Development Session Cont.) <ul style="list-style-type: none"> <li>Review Proposed Maps as published and considered at previous Meeting. If any changes, will need to republish (NOTE: requires 7 days of publication prior to Hearing and adoption)</li> <li>Approve first reading of Ordinance and authorize publication of Ordinance <i>(Requires five affirmative votes.)</i></li> </ul>

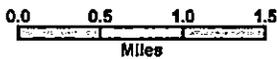
October 31	Send Publication of Ordinance, including map(s) with new Ward boundary lines to OC Register for publication
November 20	PUBLIC HEARING #5 - Adoption (2nd reading) of Ordinance establishing New Ward Boundaries.
	Effective Date of Ordinance establishing New Boundary Wards (MUST be adopted before 120 days pursuant to Charter and 125 days per AB1730).

# EXHIBIT 2: CURRENT WARD BOUNDARIES



## City of Santa Ana Council Wards

Adopted January 17, 2012





**EXHIBIT 3:  
CITY OF SANTA ANA CHARTER PROVISIONS**

**Sec. 101.1. - Wards of the city.**

Prior to the general election in 1988 the City Council shall divide the City into six (6) wards by ordinance according to the following formula:

Each of the wards is to be as nearly equal in population as possible. The wards shall be composed of contiguous and compact territory and bounded by natural boundaries of street lines wherever possible. Any territory hereafter annexed to or consolidated with the City shall become a part of the ward to which it is most contiguous, pending any redistricting necessary to promote equality of population among the wards.

(Prop. of 4-9-57, approved on 4-16-57; Prop. of 2-4-63, approved on 4-2-63; Res. No. 63-027; Ord. No. NS-1316, 8-24-76, approved at election 11-2-76; Ord. No. NS-1521, 3-17-80, approved at election 6-3-80; Ord. No. NS-1864, 8-19-86, approved at election 11-4-86)

**Sec. 101.2. - Wards, boundary changes.**

Ward boundaries shall not be altered except as reasonably necessary to promote greater equality of population among the wards when such necessity is shown by the most recent federal decennial census, or by more current census data certified by the City Council as sufficiently reliable and detailed to serve as a basis for ward boundary alteration, or by annexation or consolidation of territory. ***Such boundary alteration shall be made only by ordinance adopted by affirmative vote of at least two-thirds ( 2/3 ) of the full membership of the City Council in accordance with section 101.4.*** Any such ordinance adopted within one hundred twenty (120) days immediately preceding any election of council members shall not become effective until the day following such election.

(Prop. of 4-9-57, approved on 4-16-57; Prop. of 2-4-63, approved on 4-2-63; Res. No. 63-027; Ord. No. NS-1316, 8-24-76, approved at election 11-2-76)

**Sec. 101.4. - Same—Notice and public hearing.**

Before making any change, modification or realignment of ward boundaries or numbers of wards, the City Council **shall** pass a resolution declaring its intention to make such changes. Such resolution shall set forth a convenient day, hour and place when and where any persons having any interest therein, or any objection to the making thereof, may appear before the City Council and be heard thereon. ***The City Council shall direct the Clerk of the Council to give notice by publishing said resolution once a week for two (2) weeks in the official newspaper prior to the date set for hearing. Said hearing in the event of increasing the number of wards shall be held not less than sixty (60) days prior to the succeeding general municipal election. In any event, not less than thirty (30) days prior to the general municipal election, publication shall be made by map diagram in the official newspaper showing the new boundary lines of each and every ward.***



**EXHIBIT 4:  
ELECTION CODE 10010 Requirements:**

**Before Maps Drawn - Two Public Hearings** required before drawing boundary districts to seek input regarding the process of the districts – explain the process and encourage participation.

**After Maps Drawn – Publish draft map and hold two public hearings within 45 days.** Publish at least 7 days before consideration at a hearing. If revised, re-publish before adopting.

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**DIVISION 10. LOCAL, SPECIAL, VACANCY, AND CONSOLIDATED  
ELECTIONS [10000 - 10735]**

*( Division 10 enacted by Stats. 1994, Ch. 920, Sec. 2. )*

**PART 1. GENERAL PROVISIONS [10000 - 10010]**

*( Part 1 enacted by Stats. 1994, Ch. 920, Sec. 2. )*

**CHAPTER 2. District Boundaries [10010- 10010.]**

*( Chapter 2 added by Stats. 2014, Ch. 873, Sec. 1. )*

**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 time frame 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.

(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 \$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. 2017, Ch. 561, Sec. 51. (AB 1516) Effective January 1, 2018.)*