

Assembly Bill No. 849

Passed the Assembly September 10, 2019

Chief Clerk of the Assembly

Passed the Senate September 9, 2019

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2019, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 21500, 21501, 21506, 21507, 21600, 21601, 21606, and 21607 of, to add Sections 21500.1, 21507.1, 21508, 21509, 21605, 21607.1, 21608, 21609, 21622, 21623, 21625, 21626, 21627, 21627.1, 21628, and 21629 to, to repeal Sections 21502, 21504, and 21604 of, and to repeal and add Sections 21503, 21602, 21603, 21620, and 21621 of, the Elections Code, and to amend Sections 34874, 34877.5, 34884, and 34886 of the Government Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

AB 849, Bonta. Elections: city and county redistricting.

Existing law establishes criteria and procedures pursuant to which cities and counties adjust or adopt council and supervisorial district area boundaries, as applicable, for the purpose of electing members of the governing body of each of those local jurisdictions.

This bill would revise and recast these provisions. The bill would require the governing body of each local jurisdiction described above to adopt new district boundaries after each federal decennial census, except as specified. The bill would specify redistricting criteria and deadlines for the adoption of new boundaries by the governing body. The bill would specify hearing procedures that would allow the public to provide input on the placement of boundaries and on proposed boundary maps. The bill would require the governing body to take specified steps to encourage the residents of the local jurisdiction to participate in the redistricting process. By increasing the duties of these local jurisdictions, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

21620. (a) This article applies to charter cities that elect members of the charter city's legislative body by districts or from districts, as defined in Section 34871 of the Government Code.

(b) This article shall not be interpreted to limit the discretionary remedial authority of any federal or state court.

SEC. 29. Section 21621 of the Elections Code is repealed.

SEC. 30. Section 21621 is added to the Elections Code, to read:

21621. (a) Following each federal decennial census, and using that census as a basis, the council shall, by ordinance or resolution, adopt boundaries for all of the council districts of the city so that the council districts shall be substantially equal in population as required by the United States Constitution.

(1) Population equality shall be based on the total population of residents of the city as determined by the census.

(2) Notwithstanding paragraph (1), an incarcerated person, as that term is used in Section 21003, shall not be counted towards a city's population, except for an incarcerated person whose last known place of residence may be assigned to a census block in the city, if information about the last known place of residence for incarcerated persons is included in the computerized database for redistricting that is developed in accordance with subdivision (b) of Section 8253 of the Government Code, and that database is made publicly available.

(b) The council shall adopt council district boundaries that comply with the United States Constitution, the California Constitution, and the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.).

(c) The council 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 that meet only at the points of adjoining corners are not contiguous. Areas that are separated by water and not connected by a bridge, tunnel, or regular ferry service are not contiguous.

(2) To the extent practicable, the geographic integrity of any local neighborhood or local community of interest shall be respected 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. Communities of interest do

not include relationships with political parties, incumbents, or political candidates.

(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 in this subdivision, 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.

(d) The council shall not adopt council district boundaries for the purpose of favoring or discriminating against a political party.

SEC. 31. Section 21622 is added to the Elections Code, to read:

21622. (a) The boundaries of the council districts shall be adopted by the council no earlier than August 1, 2021, and August 1 in each year ending in the number one thereafter, but no later than 151 days before the city's next regular election occurring after March 1, 2022, and after March 1 in each year ending in the number two thereafter. However, this subdivision does not prohibit the council from holding public hearings or workshops on the placement of council district boundaries before August 1.

(b) This section does not apply to a charter city that has adopted a different redistricting deadline by ordinance or in its city charter before October 1, 2021, and October 1 of each year ending in the number one thereafter.

SEC. 32. Section 21623 is added to the Elections Code, to read:

21623. (a) If the boundaries of a city expand by the addition of new territory, including through annexation of unincorporated territory or consolidation with another city, the council shall add that new territory to the nearest existing council district without changing the boundaries of other council district boundaries.

(b) Notwithstanding subdivision (a), the council may adopt new boundaries for each council district if both of the following conditions are met:

(1) There are more than four years until the council is next required to redistrict pursuant to Section 21621.

(2) The population of the new territory being annexed or consolidated is greater than 25 percent of the city's population as determined by the most recent federal decennial census.

(c) This section does not apply to a charter city that has adopted, by ordinance or in its city charter, a different standard for adding new territory to existing council districts.

SEC. 33. Section 21625 is added to the Elections Code, to read:

21625. (a) After redistricting or districting pursuant to Section 21621 or 21623, a council shall not adopt new council district boundaries until after the next federal decennial census, except under the following circumstances:

(1) A court orders the council to redistrict.

(2) The council is settling a legal claim that its council district boundaries violate the United States Constitution, the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.), or this article.

(3) The boundaries of the city expand by the addition of new territory pursuant to Section 21623.

(b) This section does not prohibit a council from adopting council districts between federal decennial censuses if the council is adopting council districts for the first time, including when a city adopts council districts for the purpose of transitioning from electing its council members in at-large elections to elections by districts or from districts.

(c) This section does not apply to a charter city that has adopted different rules for mid-cycle redistricting in its city charter.

SEC. 34. Section 21626 is added to the Elections Code, to read:

21626. (a) The term of office of any council member who has been elected and whose term of office has not expired shall not be affected by any change in the boundaries of the district from which the council member was elected.

(b) At the first election for council members in each city following adoption of the boundaries of council districts, a council member shall be elected for each district under the new district plan that has the same district number as a district whose incumbent's term is due to expire.

(c) The successor to the office in a council district for which the boundaries have changed shall be a resident and voter of that council district.

SEC. 35. Section 21627 is added to the Elections Code, to read:

21627. Before adopting the boundaries of a council district pursuant to Section 21621, 21623, or 21624, or for any other reason, the council shall hold public hearings on the proposal, in

accordance with Section 21627.1. This section does not apply when a city transitions from at-large to district-based elections.

SEC. 36. Section 21627.1 is added to the Elections Code, to read:

21627.1. (a) Before adopting a final map, the council shall hold at least four public hearings at which the public is invited to provide input regarding the composition of one or more council districts.

(1) At least one public hearing shall be held before the council draws a draft map or maps of the proposed council boundaries.

(2) At least two public hearings shall be held after the council has drawn a draft map or maps of the proposed council boundaries.

(b) At least one public hearing or public workshop shall be held on a Saturday, on a Sunday, or after 6 p.m. on a weekday Monday through Friday.

(c) Public hearing buildings shall be accessible to persons with disabilities.

(d) If a public hearing is consolidated with a regular or special meeting of the council that includes other substantive agenda items, the public hearing shall begin at a fixed time regardless of its order on the agenda, except that the council may first conclude any item being discussed or acted upon, including any associated public comment, when that time occurs. The time of the public hearing shall be noticed to the public.

(e) The council may have city staff or a consultant conduct one or more public workshops in lieu of holding one of the public hearings required by paragraph (1) of subdivision (a).

(f) The council may establish an advisory redistricting commission pursuant to Section 23002 to hold the public hearings required by paragraph (1) of subdivision (a).

SEC. 37. Section 21628 is added to the Elections Code, to read:

21628. (a) The council shall take steps to encourage residents, including those in underrepresented communities and non-English speaking communities, to participate in the redistricting public review process. These steps shall include a good faith effort to do all of the following:

(1) Providing information to media organizations that provide city news coverage, including media organizations that serve language minority communities.

(2) Providing information through good government, civil rights, civic engagement, or community groups or organizations that are active in the city, including those active in language minority communities, or that have requested to be notified concerning city redistricting.

(b) The council shall arrange for the live translation of a public hearing or workshop held pursuant to this article in an applicable language if a request for translation is made at least 72 hours before the hearing or workshop, unless less than five days' notice are provided for the hearing or workshop, in which case the request shall be made at least 48 hours before the hearing or workshop.

(c) Notwithstanding Section 54954.2 of the Government Code, the council shall publish the date, time, and location for any public hearing or workshop on the internet at least five days before the hearing or workshop. However, if there are fewer than 179 days until the city's next regular election, the council may publish the agenda on the internet for at least three days before the hearing or workshop.

(d) (1) A draft map shall be published on the internet for at least seven days before being adopted as a final map by the council provided that, if there are fewer than 179 days until the city's next regular election, the draft map may instead be published on the internet for at least three days.

(2) Each draft map prepared by a member of the council or by employees of the city shall be accompanied with information on the total population, citizen voting age population, and racial and ethnic characteristics of the citizen voting age population of each proposed council district, to the extent the city has that data.

(e) The council shall allow the public to submit testimony or draft maps in writing and electronically.

(f) The city shall either record or prepare a written summary of each public comment and council deliberation made at every public hearing or workshop held pursuant to this article. The city shall make the recording or written summary available to the public within two weeks after the public hearing or workshop.

(g) The council shall establish, and maintain for at least 10 years after the adoption of new council district boundaries, an internet web page dedicated to redistricting. The web page may be hosted on the city's existing internet website or another internet website

maintained by the city. The web page shall include, or link to, all of the following information:

(1) A general explanation of the redistricting process for the city in English and any applicable language.

(2) The procedures for a member of the public to testify during a public hearing or to submit written testimony directly to the council in English and any applicable language.

(3) A calendar of all public hearing and workshop dates. A calendar listing that includes the time and location of the public hearing or workshop satisfies the notice required by subdivision (c).

(4) The notice and agenda for each public hearing and workshop.

(5) The recording or written summary of each public hearing and workshop.

(6) Each draft map considered by the council at a public hearing.

(7) The adopted final map of council district boundaries.

(h) For purposes of this section, “applicable language” means any language that is spoken by a group of city residents with limited English proficiency who constitute 3 percent or more of the city’s total population over four years of age for whom language can be determined. Before January 1, 2021, and before January 1 in every year ending in the number one thereafter, the Secretary of State shall post the applicable languages for each city in a conspicuous location on the Secretary of State’s internet website. To determine the applicable languages for each city, in 2020 and in each year ending in the number zero thereafter, the Secretary of State, in consultation with the Statewide Database, shall request a special tabulation from the United States Bureau of the Census of the most recent data on limited English proficiency from the bureau’s American Community Survey that satisfies this subdivision. If the bureau is unable to produce that data, the Secretary of State shall base the Secretary of State’s determination on the table from the American Community Survey enumerating the number of residents with limited English proficiency that has the largest number of languages included, that is publicly available, and that was produced within the previous ten years.

(i) This section does not apply when a city transitions from at-large to district-based elections.

(j) Before January 1, 2021, and before January in each year ending in the number one thereafter, the Secretary of State shall

publish on the internet a template explaining the city redistricting process that meets the requirements of paragraphs (1) and (2), inclusive, of subdivision (g). The Secretary of State shall publish the template in all of the languages into which ballots are required to be translated in the state pursuant to subdivision (h). The template shall be published in the same conspicuous location on the Secretary of State's internet website that is described in subdivision (h).

SEC. 38. Section 21629 is added to the Elections Code, to read:

21629. (a) If the council does not adopt council district boundaries by the deadlines set forth in Section 21622 or subdivision (a) or (b) of Section 21624, the council shall immediately petition the superior court in the county in which the city is located for an order adopting council district boundaries. If the council does not petition the superior court within five days after the deadline, any resident of the city may file that petition and shall be entitled to recover the resident's reasonable attorney's fees and costs from the city for doing so.

(b) (1) Upon finding that a petition filed pursuant to this subdivision is valid, the superior court shall adopt council district boundaries in accordance with the criteria set forth in Section 21621, which shall be used in the city's next regular election. The superior court may also order the adjustment of electoral deadlines as necessary to implement the new council district boundaries in the next regular election.

(2) The superior court may appoint a special master to assist the court with adopting the council district boundaries. The city shall pay the cost for the special master and associated costs.

(3) The superior court or the special master shall hold one or more public hearings before the superior court adopts the council district boundaries.

(4) Subject to the approval of the superior court, the special master may employ redistricting experts or other consultants or counsel, independent experts in the field of redistricting and computer technology, and other necessary personnel to assist them in their work. In addition, the special master may seek the full cooperation of the city in producing and using whatever data, computer models and programs, and technical assistance that was made available to the council and city personnel who are knowledgeable in the mechanics of drafting redistricting legislation.

The superior court may assist the special master in securing the necessary personnel and the physical facilities required for their work, and to prepare for the prompt submission to the city of a request for city funding for the necessary expenses of the special master and the special master's staff.

(5) The council district boundaries adopted by the superior court shall be immediately effective in the same manner as if the court's order were an enacted resolution or ordinance of the city council.

(c) This section does not apply to a charter city that has adopted in its city charter a different method for adopting city council district boundaries when a redistricting deadline is missed.

SEC. 39. Section 34874 of the Government Code is amended to read:

34874. (a) An amendatory ordinance altering the boundaries of the legislative districts established pursuant to this article shall not be submitted to the registered voters until the ordinance has been submitted to the planning commission of the city or, in absence of a planning commission, to the legislative body of said city for an examination as to the definiteness and certainty of the boundaries of the legislative districts proposed.

(b) An amendatory ordinance altering the boundaries of legislative districts shall comply with the requirements and criteria of Section 21601 or 21621 of the Elections Code, as applicable.

SEC. 40. Section 34877.5 of the Government Code is amended to read:

34877.5. (a) After an ordinance is passed by the voters pursuant to Section 34876.5, or after an ordinance is enacted by the legislative body pursuant to Section 34886, the legislative body shall prepare a proposed map that describes the boundaries and numbers of the districts for the legislative body. In preparing the proposed map, the legislative body shall comply with the requirements and criteria of Section 21601 or 21621 of the Elections Code, as applicable, and shall seek public input, including accepting proposed maps submitted by the public.

(b) If the legislative body is changing from an at-large method of election to a district-based election, as those terms are defined in Section 14026 of the Elections Code, the legislative body shall hold public hearings pursuant to Section 10010 of the Elections Code. If the legislative body is otherwise adjusting the district boundaries, the legislative body shall hold public hearings on the

proposed district boundaries pursuant to Section 21607 or 21627 of the Elections Code, as applicable.

SEC. 41. Section 34884 of the Government Code is amended to read:

34884. (a) If, at the time a vote is held on the subject of incorporation of a new city, a majority of the votes cast is for incorporation and, if, in accordance with Section 57116, a majority of the votes cast on the question of whether members of the city council in future elections are to be elected by district or at large is in favor of election by district, all of the following procedures apply:

(1) Before the first day on which voters may nominate candidates for election at the next regular municipal election, the legislative body shall, by ordinance or resolution, establish the boundaries of the districts of the legislative body. The districts shall be substantially equal in population as required by the United States Constitution. The districts shall comply with the requirements and criteria of Section 21601 or 21621 of the Elections Code, as applicable.

(2) The terms of office of the two members elected with the lowest vote shall expire on the Tuesday succeeding the next regular municipal election. At that election, members shall be elected by district in the even-numbered districts and shall hold office for four years.

(3) The terms of office of the three members elected with the highest vote shall expire on the Tuesday succeeding the second regular municipal election following the incorporation. At that election, members shall be elected by district in the odd-numbered districts and shall hold office for four years.

(b) The result of the vote cast on the question of whether members of the city council in future elections are to be elected by district or at large shall not preclude the submission to the voters at any future election of a measure in accordance with Section 34871.

SEC. 42. Section 34886 of the Government Code is amended to read:

34886. 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).

SEC. 43. The district boundary criteria specified in this act apply to supervisorial and council district boundaries that are adopted or readopted on or after January 1, 2020. Supervisorial and council district boundaries adopted before January 1, 2020, shall comply with the applicable district boundary criteria in effect at the time of their adoption.

SEC. 44. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.