



TO BE PUBLISHED AS A PUBLIC OPINION

OFFICE OF THE CITY ATTORNEY

City of Sacramento, California

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OPINION	:	No. 22-001
of	:	April 5, 2022
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THE CITY CLERK of the City of Sacramento has requested an opinion on the following question:

Which council district boundary applies for a proposed recall election for the District 4 councilmember: (a) the one that existed at the time of the councilmember’s election in 2020; or (b) the one that exists at the time the proposed recall process begins in 2022?

**CONCLUSION**

The recall proposed as to the District 4 councilmember is controlled by the district from which the councilmember was elected in 2020. Proponents must be registered voters there; petition signers must be registered voters there; and any election must be conducted with respect to that area.

## BACKGROUND

The City of Sacramento has eight council districts, from which councilmembers are elected for four-year terms, with staggered elections alternating every two years between odd- and even-numbered districts. District 4 was contested in 2020; the next regular election for that seat will be in 2024.

In December 2021, the Sacramento Independent Redistricting Commission adopted new council districts to reflect 2020 Census data. The charter states the map was effective immediately upon adoption, such that its boundaries will be used for the upcoming 2022 primary elections in odd-numbered districts. The 2021 map made substantial changes to the boundaries of District 4.

Residents have served a Notice of Intention to Recall on the District 4 councilmember.

## ANALYSIS

The Sacramento City Charter reserves the power of recall to Sacramento voters, under statutory procedures for general law cities: “The holder of any elective office may be recalled, in the manner provided by state law applicable to cities, by the electors after such person has held office six months.”<sup>1</sup> Thus, unless the charter displaces it, general law governs the question presented.

No provision of the charter displaces general law on this point. The charter provides that councilmembers must be a resident in their districts “at the date of candidacy or election or appointment” but “no boundary change under article XII shall disqualify a member from serving the remainder of the term.”<sup>2</sup> This last phrase might imply that the boundary adjustment changed the district a councilmember represents and provides a temporary exception to the residency rule. But general law is to the same effect and is not construed in that way, as discussed below.

Neither Sacramento City Charter article X (“Elections”)<sup>3</sup> nor any provision of the city’s election code<sup>4</sup> address recall elections.

Regarding the use of post-redistricting map for upcoming elections, the charter provides:

A commission-adopted final map has the force and effect of law and is effective immediately upon adoption, unless on the date of adoption there are less than six

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<sup>1</sup> Sacramento City Charter (“SCC”), § 163.

<sup>2</sup> SCC, § 27.

<sup>3</sup> SCC, §§ 150-155.

<sup>4</sup> Sacramento City Code, chapter 1.16.

months until the next primary city election, in which case the final map shall go into effect after that election and any applicable run-off election.<sup>5</sup>

Precedent construes similar language with respect to redistricting of the State Legislature and California’s congressional seats to mean that the map is effective with the next general election to each body, but does not apply to special elections or appointments that occur sooner.<sup>6</sup>

Accordingly, the general law controls the question presented here both because (1) section 163 of the charter says so and (2) neither the charter nor ordinances of the city expressly displace the general law on recall procedure.<sup>7</sup>

Under general law, the “old” district applies to the proposed recall. A number of authorities confirm that the proposed recall election must be conducted in the area from which the District 4 councilmember was elected in 2020. First, the 2021 FAIR MAPS Act<sup>8</sup> provides:

(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, **excluding a special election to fill a vacancy or a recall election**, 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. This subdivision does not apply when a city transitions from at-large to district-based elections.

(c) Except as provided in subdivision (a), a person is not eligible to hold office as a member of a city council unless that person meets the requirements of Section 201 of the Elections Code and Section 34882 of the Government Code.

Subdivision (a) provides that a district change does not affect “the term of office” of incumbent councilmembers until that term expires. Subdivision (b) provides that maps govern the next regularly scheduled election — primary or general — for a council term, “excluding a special election to fill a vacancy or recall election.” The Sacramento City Charter defines all

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<sup>5</sup> SCC, § 171(b). See also, SCC, § 171(f) [“Notwithstanding the time restrictions set forth in subsections (a), (b), and (c) above, for the map based on the 2020 United States decennial census, the commission shall adopt the final map establishing new council districts no later than 130 days before the 2022 primary city election; and any map that is effective before the councilmember candidate nomination period opens may be used for the 2022 elections.”]

<sup>6</sup> See *Legislature v. Deukmejian* (1983) 34 Cal.3d 658 [redistricting map was immediately “effective” so as to preclude a second redistricting in a single decade]; *Sloan v. Donaghue* (1942) 20 Cal.2d 607, 609 [Congressional vacancy filled after new map adopted by election from pre-redistricting district]; *Gaona v. Anderson* (9th Cir. 1993) 989 F.2d 299 [same as to State Senate seat, no equal protection violation in this rule (applying California law)].

<sup>7</sup> *Green Valley Landowners Assn. v. City of Vallejo* (2015) 241 Cal.App.4th 425, 436 [general law controls when a charter does not provide specific guidance on a municipal matter].

<sup>8</sup> Elections Code, § 21626 [emphasis added].

elections other than a primary or a general (and therefore recalls) as “special elections.”<sup>9</sup> And subdivision (c) provides an exception to the residency rule comparable to Sacramento City Charter section 27 discussed above.

This statute makes plain that the new districts do not govern until the next “regular” election for a given council seat. The Attorney General has recently so concluded.<sup>10</sup> Additionally, the California Elections Code section quoted at length above is substantially identical to the code section applicable to county supervisors. The Attorney General recently construed that section to conclude that for a special election at the June primary election in San Luis Obispo County to fill the remainder of a deceased incumbent’s term, the controlling district boundaries are those that existed before the 2021 redistricting.<sup>11</sup>

The Attorney General opinions referenced above cite the scant caselaw available on this issue, all of which are consistent with the conclusion that the “old” district boundary applies.<sup>12</sup>

Thus, the recall proposed as to the District 4 councilmember is controlled by the district from which the councilmember was elected in 2020. Proponents must be registered voters there;<sup>13</sup> petition signers must be registered voters there;<sup>14</sup> and any election must be conducted with respect to that area.<sup>15</sup>

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<sup>9</sup> Sacramento City Charter, § 152.

<sup>10</sup> 97 Ops. Cal. Atty. Gen. 12 (2014) [in general-law city, appointment to council vacancy required residency in “old” district].

<sup>11</sup> Cal. Atty. Gen. Op. No. 21-1103.

<sup>12</sup> *Sloan v. Donoghue* (1942) 20 Cal.2d 607, 609 (congressional vacancy filled from “old” district by special election after new map adopted); *Gaona v. Anderson* (9th Cir. 1993) 989 F.2d 299 [same as to State Senate seat]. *Sloan* was cited with approval by the Massachusetts Supreme Judicial Court in *Opinion of the Justices* (1972) 361 Mass. 897, advising the Commonwealth’s Governor that an expected congressional vacancy was to be filled from the “old” district following the redistricting after the 1970 Census.

<sup>13</sup> Elections Code, § 11005.

<sup>14</sup> Elections Code, § 11045.

<sup>15</sup> Elections Code, § 11328.