



IN BRIEF:

## Which Local Jurisdictions Can Establish a Redistricting Commission?

Redistricting is the once-a-decade process, mandated by the U.S. Constitution, where the boundaries of election districts are redrawn to ensure they remain substantially equal in population. While the public mostly associates redistricting with Congress or the state legislature, it occurs at the local level too wherever a local government's governing board is elected by district.

For the most part, California state law assigns the task of local redistricting to the governing board of each local government. So, generally, a city council will redraw its own council districts; a county board of supervisors its own supervisorial districts; a school board its own trustee areas; etc. However, this is only a default rule. In most cases a local jurisdiction may, if it wishes, create an independent commission and assign the responsibility for local redistricting to that commission. Local governments may also create advisory commissions to take public comment and recommend district boundaries to the governing body.

With the success of the state independent Citizens Redistricting Commission, many local governments have followed suit by establishing their own local redistricting commissions. A recent report by Common Cause found that 36 percent of cities that have by district elections either used a redistricting commission in 2011 or have since created one. In 2016, the California State Legislature passed new legislation to give more local government the option to establish commissions, if they so choose.

**Under current law, all cities, counties, school districts, and community college districts may establish independent redistricting commissions. For county boards of education, state law already assigns the redistricting of trustee areas to a separate "committee on school district organization." State law does not expressly authorize special districts to create independent commissions, so they presumably cannot. However, all local jurisdictions, including special districts, may establish advisory commissions to recommend new election district boundaries.**

The chart below and the breakout on the following pages summarizes which local jurisdictions can establish independent redistricting commissions, and how.

### Which Jurisdictions Can Adopt Independent Redistricting Commissions:

Jurisdiction	District Name	Default Redistricting Body	Independent Commissions Authorized?	Citation
<b>County</b>	Supervisorial District	Board of Supervisors	Yes	Cal. Const. Art. XI, § 4; Elec. Code §§ 21500 & 23001.
<b>Charter City</b>	Council District (or Ward)	City Council	Yes	Cal. Const. Art. XI, § 5; Elec. Code § 21620.
<b>General Law City</b>	Council District	City Council	Yes	Elec. Code §§ 21601 & 23001.
<b>County Board of Education</b>	Trustee Area	County Committee on School District Organization	Unspecified, Likely No	Educ. Code § 1002.
<b>Community College or School District</b>	Trustee Area	Governing Board	Yes	Cal. Const. Art. IX, § 16; Educ. Code § 5019.5.
<b>Special District</b>	Division	Governing Board	Unspecified, Likely No	Elec. Code § 22000.

## Counties

Under the California Constitution, the State Legislature may provide how charter and general law counties redistrict.<sup>1</sup> State law specifies that, by default, each county's board of supervisors draws its own supervisorial district boundaries.<sup>2</sup> Until 2017, counties were only allowed to establish advisory redistricting commissions.<sup>3</sup> The State Legislature created two exceptions for San Diego and Los Angeles counties, establishing independent redistricting commissions for both counties in the state Elections Code.<sup>4</sup>

Effective January 1, 2017, all counties now have the authority to establish independent redistricting commissions, in addition to advisory redistricting commissions, by resolution or ordinance.<sup>5</sup> State law imposes minimal requirements on advisory commissions. The county may decide how commissioners are appointed, provided that no county elected official, their family, or their staff are appointed to the commission.<sup>6</sup>

For independent redistricting commissions, commissioners must be selected through an open application process and must meet more robust qualifications designed to ensure impartiality.<sup>7</sup> The commission must hold at least three public hearings, abide by open government and public records laws, and cannot consider an incumbent or candidate's residence in drawing district boundaries.<sup>8</sup> Commissioners' local political activity is limited while serving on the commission and, after their service, commissioners are prohibited from engaging in certain activity like running for office in the new districts they helped draw.<sup>9</sup>

## Charter Cities

Charter cities are cities that have adopted a city charter, which is akin to the constitution for that city. There are 123 charter cities in California.<sup>10</sup> Under California's constitution, charter cities enjoy greater autonomy from state law than other cities, especially as concerns "the manner in which, the method by which, the times at which, and the terms for which the several municipal officers ... shall be elected."<sup>11</sup>

State law specifies that the city council controls redistricting in a charter city;<sup>12</sup> however, because of the constitutional autonomy granted to charter cities to conduct their municipal elections, these cities may instead choose to fully turn over the redistricting process to an independent commission. This can be done by resolution or ordinance. However, in cities where the charter specifically designates the city council as the responsible party for redistricting, a voter-approved charter amendment would be required to establish an independent redistricting commission.

According to a 2016 Common Cause survey of city election practices, 22 charter cities have established redistricting commissions.<sup>13</sup> This includes seven cities<sup>14</sup> that have created independent redistricting commissions in their city charters: Berkeley, Chula Vista, Modesto, Oakland, Sacramento, San Diego, and San Francisco.

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<sup>1</sup> Cal. Const. Art. XI, § 7 (general law counties are able to make their own laws so long as not in conflict with state laws) & 4(a) (charter counties are "subject to statutes that relate to apportioning population of governing body districts").

<sup>2</sup> Cal. Elec. Code § 21500. However, if a county board of supervisors fails to draw new district boundaries by a set deadline, authority to redraw district boundaries is transferred to a redistricting commission composed of countywide elected officials. *Id.* §§ 21501 & 21502.

<sup>3</sup> See Former Cal. Elec. Code § 21505. *Repealed by* Senate Bill 1108 (Allen) (Ch. 784, Stats. of 2016).

<sup>4</sup> See Cal. Elec. Code, Div. 21, Chs. 6.3 & 6.5.

<sup>5</sup> See Cal. Elec. Code, Div. 21, Ch. 9.

<sup>6</sup> Cal. Elec. Code § 23002(b) & (c).

<sup>7</sup> Cal. Elec. Code § 23003(b) & (c).

<sup>8</sup> Cal. Elec. Code § 23003(g) & (h).

<sup>9</sup> Cal. Elec. Code § 23003 (d).

<sup>10</sup> The League of California Cities maintains a list of all California charter cities available at: <http://www.cacities.org/Resources/Charter-Cities>.

<sup>11</sup> Cal. Const. Art. XI, § 5(b).

<sup>12</sup> Cal. Elec. Code § 21620.

<sup>13</sup> Nicolas Heidorn, *California Municipal Democracy Index 2016*, California Common Cause 35 (Dec. 2016), available at: <http://www.commoncause.org/sites/california/research-and-reports/california-municipal.pdf>.

<sup>14</sup> See Berkeley Charter Art. V, § 9.5; Chula Vista Charter § 300.5; Modesto Charter § 501; Oakland Charter § 220; Sacramento Charter Art. XII; San Diego Charter § 5.1; & San Francisco Charter § 13.110.

## General Law Cities

General law cities are cities that have not adopted a city charter and, as a result, are bound by the state's general laws, including those relating to municipal redistricting. Three-quarters of California's 482 cities are general law cities. By default, the city council of a general law city is responsible for redistricting.<sup>15</sup>

Since January 1, 2017, general law cities are also authorized to establish independent redistricting commissions.<sup>16</sup> These commissions are subject to the same restrictions imposed on county redistricting commissions, as outlined above.<sup>17</sup>

## County Boards of Education

The county boards of education are the only local government agencies in California that, by state law, cannot draw their own election districts. Instead, state law provides that a county's "committee on school district organization" ("committee") must redraw county board of education trustee areas after each census, or upon request of the board.<sup>18</sup> Each county is required to have a committee which is otherwise primarily responsible for making recommendations to the State Board of Education on the formation, dissolution, and boundaries of school districts within the county.<sup>19</sup>

The composition of a county's committee is determined by the number of school districts within the county:

- **One District:** In counties where only one unified school district encompasses the whole county, the governing board of the unified school district serves as the committee.<sup>20</sup>
- **Two to Five Districts:** In counties with fewer than six school or community college districts, the county superintendent of schools determines the size of the committee and appoints its members.<sup>21</sup>
- **Six or More Districts:** In counties with six or more districts, the committee has 11 members<sup>22</sup> elected at an annual convening of all the school boards in the county by the representatives of each school board.<sup>23</sup>

There are few restrictions on who can be a committee member. Committee members, who serve for four years,<sup>24</sup> cannot be an employee of a school district or community college district, or the county superintendent of schools.<sup>25</sup> School and community college governing board members, on the other hand, are expressly authorized to serve as committee members.<sup>26</sup> At least two committee members must be registered voters of each supervisorial district in the county.<sup>27</sup> Because every county in California (except San Francisco, which is a city *and* a county) has five supervisorial districts, in counties with more than six school or community college districts at least 10 of the 11 committee members must meet these residency requirements.

Because state law provides, with specificity, that the committee is responsible for county board of education redistricting, a county board could not create its own independent commission without passing new state legislation.<sup>28</sup>

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<sup>15</sup> Cal. Elec. Code § 21601.

<sup>16</sup> Cal. Elec. Code § 23001.

<sup>17</sup> Cal. Elec. Code §§ 23002 & 23003.

<sup>18</sup> Cal. Educ. Code § 1002.

<sup>19</sup> Cal. Educ. Code § 35720.

<sup>20</sup> Cal. Educ. Code § 4001.

<sup>21</sup> Cal. Educ. Code § 4002.

<sup>22</sup> Cal. Educ. Code § 4003.

<sup>23</sup> Cal. Educ. Code § 4006.

<sup>24</sup> Cal. Educ. Code § 4009.

<sup>25</sup> Cal. Educ. Code § 4007.

<sup>26</sup> *Id.*

<sup>27</sup> Cal. Educ. Code § 4008.

<sup>28</sup> See *People v. Whitmer*, 230 Cal. App. 4th 906, 917 (2014) ("the expression of certain things in a statute necessarily involves exclusion of other things not expressed") (citations omitted).

## School and Community College Districts

School and community college governing boards are responsible for redistricting their own trustee areas.<sup>29</sup> State law does not expressly authorize school or community college districts to establish independent redistricting commissions.

However, under the California Constitution and the state Education Code,<sup>30</sup> the city charter of a city overlapping any district may, upon approval of a majority of the voters of the district, provide for the “manner in which” school and community college district governing board members are elected. This can include the creation of an independent redistricting commission.<sup>31</sup>

For example, in Pasadena, a redistricting commission created in the city charter is responsible for proposing trustee area boundaries for the Pasadena school board (but not city council district boundaries).<sup>32</sup> These maps automatically go into effect unless amended by two-thirds vote of the board.<sup>33</sup> In Oakland, an independent commission redraws voting district boundaries for both the city council and the school board, whose trustee areas by law are coextensive with the city’s council districts.<sup>34</sup>

## Special Districts

State law requires a special district’s governing board to redraw its own election divisions.<sup>35</sup> There is no express authorization in state law for a special district to turn over its redistricting responsibilities to an independent commission.

## Interested in setting up a commission?

With the 2020 Census and subsequent redistricting approaching, the University of the Pacific’s McGeorge School of Law and California Common Cause have set up a joint program to assist local governments interested in starting their own redistricting commissions. Please visit [www.localredistricting.org](http://www.localredistricting.org) for more information regarding local redistricting law; sample redistricting ordinances from across the state; best practices recommendations; and customizable ordinance language.

If you are interested in having a presentation on local redistricting, would like help with drafting a redistricting ordinance, or would like other technical assistance, please contact:

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<sup>29</sup> Cal. Educ. Code § 5019.5.

<sup>30</sup> Cal. Const. Art. IX, § 16. *See also* Cal. Educ. Code §§ 5019(a)(1), 5221, 5222, & 5301.

<sup>31</sup> *See generally, Hazzard v. Brown*, No. A095375, 2002 WL 863186 (Cal.

App. 1st Dist. May 7, 2002) (city charter can control the manner in which a board of education is elected even if it conflicts with state general law).

<sup>32</sup> Pasadena Charter § 713.

<sup>33</sup> Pasadena Charter § 713.

<sup>34</sup> Oakland Charter §§ 203 & 404.

<sup>35</sup> Cal. Elec. Code § 22000.

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