

**2022 - 2023
Ventura County Grand Jury**



Final Report

**Addressing District-Based
Representation for the Ojai City
Council**

May 4, 2023

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Addressing District-Based Representation for the Ojai City Council

SUMMARY

The California Voting Rights Act of 2001 (enacted in 2002), established the requirements for cities to adopt district-based representation in municipal elections. Pursuant to the Act, the Ojai City Council voted to implement district-based representation for their city council in December 2018. The Council approved four geographic districts within the city. They have since conducted two elections, filling all four city council seats with members elected by district.

As part of the election process, the Ojai City Clerk's Office verifies district residency of candidates prior to elections. However, the clerk's office does not perform periodic re-verification of incumbent officials' compliance with district residency requirements after election.

At the time of this report, one Ojai City Council Member is no longer residing within the district from which they were elected. According to California Elections Code, although a person may have more than one residence, they may only have one permanent, fixed domicile. The Council Member has not maintained a permanent, fixed domicile within the district from which they were elected since December 2021.

Pursuant to Ojai Municipal Code, the seat occupied by the non-compliant Council member became vacant thirty days after violating the district residency requirement. However, the Council Member continues in that position.

The Grand Jury recommends that Ojai City officials implement a procedure to ensure ongoing compliance with district residency requirements in the future.

The Grand Jury recommends Ojai City officials acknowledge that the council seat is vacant due to the continuing failure to comply with the district residency requirements.

The Grand Jury recommends that the seat be filled by a person residing in the district, either by special election or by appointment until the next regular election is conducted.

The Grand Jury recommends, should the non-compliant Council Member remain in office, the Ojai City Council direct the Ojai City Attorney to submit a Quo Warranto application to the California Attorney General to seek to file suit to determine if the

Council Member has the legal right to hold the public office that the Council Member occupies.

METHODOLOGY

The Grand Jury conducted interviews with Ojai City officials.

The Grand Jury also reviewed the following documents in making its findings:

1. The California Voting Rights Act of 2001
2. Ojai City Ordinances and Municipal Code
3. Ojai City roster of elected officials (residential addresses)
4. Ojai City website (public information regarding districts and elections)
5. Ventura County Board of Elections certified election results
6. California Nomination Papers and Declarations of Candidacy
7. California Fair Political Practices Commission Forms 410
8. Legal Opinions of the Attorney General – Quo Warranto – Right to Public Office
9. California Government Code, Regulations, and Code of Civil Procedures
10. California Elections Code

BACKGROUND

The California Voting Rights Act of 2001 states: “An at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class” and that “the implementation of district-based elections” is an appropriate remedy. (Ref-01)

In December 2018, the Ojai City Council enacted Ordinance No. 889, which added “... a new Chapter 6 (Elections) of Title 2 (Administration) to the Ojai Municipal Code to change the city’s electoral system from at-large to by-district elections with respect to electing members of the City Council, establishing district boundaries, and sequencing of elections within the districts” (Ref-02) There have been two elections conducted since that time, November 2020, and November 2022, to which this ordinance applied. Those elections filled the seats on the Ojai City Council in compliance with district residency requirements. (Ref-03)

Ojai Municipal Code Ordinance No. 889, Section 2.6-105 states that “Each member of the City Council elected by-district must reside in that district and be a registered voter in that district, and any candidate for City Council must reside in, and be a registered voter in, the district in which he or she seeks election at the time nomination papers are issued pursuant to Government Code Section 34882” (Ref-04)

Ojai Municipal Code Ordinance No. 889, Section 2.6-107 states: "Termination of residency in a district by a member of the City Council elected by-district shall create a vacancy for that City Council District unless a substitute residence within the district is immediately declared and established within (30) days after the termination of residency. In the event that a vacancy is created as a result of termination of residency as provided herein such vacancy shall be filled pursuant to the provisions of the Elections Code." (Ref-05)

California Code of Elections Section 349 states:

"(a) 'Residence' for voting purposes means a person's domicile.

(b) The domicile of a person is that place in which his or her habitation is fixed, wherein the person has the intention of remaining, and to which, whenever he or she is absent, the person has the intention of returning. At a given time, a person may have only one domicile.

(c) The residence of a person is that place in which the person's habitation is fixed for some period of time, but wherein he or she does not have the intention of remaining. At a given time, a person may have more than one residence." (Ref-06)

California Government Code Section 1770 (e) states: "An office becomes vacant if any of the following events occurs before the expiration of the term: ... (e) His or her ceasing to be an inhabitant of the state, or if the office be local and one for which local residence is required by law, of the district, county, or city for which the officer was chosen or appointed, or within which the duties of his or her office are required to be discharged." (Ref-07)

California Government Code Section 34882 states: "A person is not eligible to hold office as a member of a municipal legislative body unless he or she is otherwise qualified, resides in the district and both resided in the geographical area making up the district from which he or she is elected and was a registered voter of the city at the time nomination papers are issued to the candidate as provided in Section 10227 of the Elections Code." (Ref-08)

California Government Code Section 36512 (b) states: "If a vacancy occurs in an elective office provided for in this chapter, the council shall, within 60 days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy." (Ref-09)

California Government Code Section 36512 (b)(1) states: "If the council calls a special election, the special election shall be held on the next regularly established election date not less than 114 days from the call of the special election. A person elected to fill a vacancy holds office for the unexpired term of the former incumbent." (Ref-09)

California Government Code Section 36512 (b)(2) states: "If the council fills the vacancy by appointment, the person appointed to fill the vacancy shall hold office pursuant to one of the following:

- (A) If the vacancy occurs in the first half of a term of office and at least 130 days prior to the next general municipal election, the person appointed to fill the vacancy shall hold office until the next general municipal election that is scheduled 130 or more days after the date the council is notified of the vacancy, and thereafter until the person who is elected at that election to fill the vacancy has been qualified. The person elected to fill the vacancy shall hold office for the unexpired balance of the term of office.
- (B) If the vacancy occurs in the first half of a term of office, but less than 130 days prior to the next general municipal election, or if the vacancy occurs in the second half of a term of office, the person appointed to fill the vacancy shall hold office for the unexpired term of the former incumbent." (Ref-09)

In California, the right of an elected official to legally hold office may be challenged through a Quo Warranto action. Such an action may be pursued by a private person or a local agency but may not be filed without the approval of the California Attorney General. After review, the Attorney General may grant leave to sue in Superior Court to determine if the elected official has the legal right to hold the public office that the elected official occupies. (Ref-10, Ref-11)

DISCUSSION (Statements of Fact)

- SF-01.** Candidates for the Ojai City Council are required to reside in the district for which they seek election. (Ref-04)
- SF-02.** The Ojai Records Manager within the Ojai City Clerk's Office used California Nomination Papers and Affidavits of Nominees for Ojai City Council candidates and the California Form 410 submitted by each candidate to verify district residency compliance prior to the 2020 and 2022 elections. (Ref-12, Ref-13, Ref-14, Ref-15)
- SF-03.** Ojai Municipal Code requires elected officials to maintain their district residency while in office. (Ref-04, Ref-05)
- SF-04.** The Ojai Municipal Code does not require a city council member to notify the City Council, the City Manager, or the City Clerk of a change in residency. (Ref-02)
- SF-05.** The Ojai City Clerk's Office has not performed re-verification of council members' district residency compliance after the 2020 and 2022 elections. (Ref-12, Ref-15)

- SF-06.** In December 2021, one Ojai City Council Member moved their residence out of the district they were elected to represent. (Ref-15)
- SF-07.** The City Council Member did not re-establish district residency within 30 days. (Ref-15)
- SF-08.** The Ojai City Council failed to acknowledge the city council seat is vacant pursuant to existing Ojai Municipal Code, California Government Code Sections 1770(e) and 34882. (Ref-02, Ref-07, Ref-08, Ref-15, Ref-16)
- SF-09.** The non-compliant Council Member continues to remain in office despite residing outside their district. (Ref-15, Ref-16)

FINDINGS

- F-01.** The Grand Jury finds that all Ojai City Council members elected in 2020 and 2022 were in compliance with the provisions of Ordinance No. 889 at the time of their election. [SF-01, SF-02]
- F-02.** The Grand Jury finds there is no requirement for city council members to report a change of residency as defined in the California Election Code upon moving out of their district. [SF-03, SF-04]
- F-03.** The Grand Jury finds that, after an election, there is no provision for the Ojai City Clerk to periodically re-verify city council members continue to reside within their district in compliance with Ojai Municipal Code No. 889, Section 2.6-105. [SF-05]
- F-04.** The Grand Jury finds one Ojai City Council seat is vacant pursuant to the requirements of Ojai Municipal Code Ordinance No. 889, Sections 2.6-105 and 2.6-107. [SF-06, SF-07]
- F-05.** The Grand Jury finds Ojai City officials have failed to acknowledge that a vacancy exists on the Ojai City Council. [SF-08, SF-09]
- F-06.** The Grand Jury finds that interim appointment from within the district, special election, or the Quo Warranto process are suitable remedies to address the vacancy on the Ojai City Council. [SF-08, SF-09]

RECOMMENDATIONS

- R-01.** The Grand Jury recommends that Ojai City officials develop and implement a procedure to not only ensure proper pre-election verification of residency compliance of candidates per California Elections Code, but also timely notification of residency change and periodic re-verification of residency compliance for elected council members. The Grand Jury recommends this procedure be implemented within 90 days of the receipt of this report. [F-01, F-02, F-03]
- R-02.** The Grand Jury recommends Ojai City officials acknowledge within 30 days of the receipt of this report a vacancy exists on the City Council for the seat occupied by the City Council Member who is not in compliance with the district residency requirement in the Ojai Municipal Code. [F-04, F-05]
- R-03.** The Grand Jury recommends, pursuant to the California Government Code, Ojai City officials conduct a new election for that district or fill the vacated seat by appointing an individual from that district until a new election can be conducted. [F-04, F-05]
- R-04.** The Grand Jury recommends, should the non-compliant Council Member remain in office, the Ojai City Council direct the Ojai City Attorney to submit a Quo Warranto application to the California Attorney General to seek to file suit to determine if the Council Member has the legal right to hold the public office that the Council Member occupies. [F-04, F-05, F-06]

RESPONSES

Responses required from:

The following elected officer within 60 days:

Ojai City Clerk (F-03) (R-01)

The following governing bodies within 90 days:

Ojai City Council (F-01, F-02, F-03, F-04, F-05, F-06) (R-01, R-02, R-03, R-04)

REFERENCES

- Ref-01.** California Voting Rights Act of 2001, enacted July 2002
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB182 Accessed April 17, 2023
- Ref-02.** City of Ojai Ordinance No. 889, enacted December 2018
https://drive.google.com/file/d/1N29kT_G5iIMMDOUqLfGxOV0mqQA_FGA5/view Accessed April 17, 2023
- Ref-03.** Ventura County certified election results for the November 3, 2020 Presidential General Election and November 8, 2022 General Election
<https://recorder.countyofventura.org/elections/elections/election-resultscanvass-of-the-vote/prior-election-vote-totals/> Accessed April 17, 2023
- Ref-04.** City of Ojai Ordinance No. 889, section 2.6-105, effective December 2018
https://drive.google.com/file/d/1N29kT_G5iIMMDOUqLfGxOV0mqQA_FGA5/view Accessed April 17, 2023
- Ref-05.** City of Ojai Ordinance No. 889, section 2.6-107 effective December 2018
https://drive.google.com/file/d/1N29kT_G5iIMMDOUqLfGxOV0mqQA_FGA5/view Accessed April 17, 2023
- Ref-06.** California Elections Code Section 349, effective 1994
https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=ELEC&division=0.5.&title=&part=&chapter=4.&article= Accessed May 01, 2023
- Ref-07.** California Government Code section 1770(e)
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=1770 Accessed April 17, 2023
- Ref-08.** California Government Code Section 34882
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=34882&lawCode=GOV Accessed April 17, 2023
- Ref-09.** California Government Code Section 36512
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=36512 Accessed April 17, 2023
- Ref-10.** California Code of Regulations, Title 11- Law, Division1 – Attorney General, Chapter 1 – Regulations Governing Proceedings in the Nature of Quo Warranto
<https://casetext.com/regulation/california-code-of-regulations/title-11-law/division-1-attorney-general/chapter-1-regulations-governing-proceedings-in-the-nature-of-quo-warranto> Accessed April 17, 2023
- Ref-11.** California Attorney General Opinion re Quo Warranto
<https://oag.ca.gov/opinions/quo-warranto> Accessed April 17, 2023

Ref-12. Ojai City Records Manager job description, July 2002

Ref-13. California Fair Political Practices Commission Forms 410, Statement of Organization, Recipient Committee <https://www.fppc.ca.gov/forms.html> Accessed April 17, 2023

Ref-14. California Nomination Paper and Declaration of Candidacy <https://www.sos.ca.gov/elections/prior-elections/statewide-election-results/statewide-direct-primary-election-june-3-2014/2014-california-election-calendar/section-2-nomination-requirements> Accessed April 17, 2023

Ref-15. Interviews

Ref-16. Ojai City Council minutes from 12/14/21 to date of this report <https://ojai.ca.gov/city-council-minutes1/#gsc.tab=0> Accessed April 17, 2023

DISCLAIMER

Two jurors chose to recuse themselves from the investigation and vote.

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