

Agenda Report

TO: CITY COUNCIL

DATE: July 30, 2001

FROM: CITY ATTORNEY

SUBJECT: REDISTRICTING

RECOMMENDATION:

It is recommended that the City Council discuss the redistricting process and give direction to staff on the steps to be taken. Based upon this direction, staff will return to City Council with a workplan and schedule for this project.

BACKGROUND:

At its June 25 meeting, City Council received the report of the City Manager as to the results of the Year 2000 federal census. City Council also received information from the City Attorney as to the steps involved in the process: to review applicable legal criteria; to review and analyze census data; to consider alternative districting plans; and to evaluate proposed plans in relation to the legal criteria.

The goal is to achieve equality of voting rights and representation in government, and to build a record which demonstrates that City Council considered the appropriate legal criteria and arrived at a reasoned decision supported by consideration of the available census data and feasible alternative districting plans.

Emerging from the June 25 City Council discussion were two follow-up items: i) retention of a consultant to provide specialized expertise in the districting process; and ii) further briefing as to the applicable legal principles. City Council reserved the decision whether to undertake the process itself, or whether to appoint a citizens' task force, for a future meeting.

Retention of a Consultant:

At the June 25 Council meeting, staff was directed to begin the RFP (Request for Proposals) process for hiring a redistricting consultant. Boilerplate language in the redistricting RFP used a

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decade ago has been updated, but more detailed information as to the scope of work is needed before the RFP can be finalized. Staff identified potential vendors and created a vendor list for RFP distribution. Information included in the last RFP provided the size of the Task Force, anticipated number of Task Force meetings/public forums, length of assignment, and laid out the charge to the Task Force and legal criteria to be used.

When Council has determined the redistricting process to be used, the RFP will be quickly updated to reflect the scope of work, anticipated time frame, and legal criteria to be used based on Council direction. A Notice Inviting Bids will be published and RFPs would then be mailed out to identified persons/firms. Approximately two to three weeks should be allowed from date of publishing of notice to the deadline to submit proposals. Proposals would then need to be evaluated and scored. In the last redistricting process, a panel of five members of the Task Force evaluated and screened the proposals, invited the most qualified proposers to an interview, and made a recommendation to the full Task Force. The full Task Force then made a recommendation to City Council, and City Council awarded the contract.

If City Council creates a Task Force for the redistricting process, unless otherwise directed by Council, it would be assumed the Task Force would want to follow this same process, as the consultant would be working directly for the Task Force. If Council decides to undertake the redistricting process itself, the Council may want to consider appointing a subcommittee of the Council to follow a similar process, as the consultant would be working directly for the Council in this scenario.

Outreach Consultant:

For the last redistricting effort, an outreach consultant was also hired that organized and conducted a leadership breakfast attended by 80 people; scheduled 14 engagements for Task Force members to speak to community organizations; provided notice (beyond Brown Act postings) to newspapers, radio, television and community organizations of upcoming Task Force meetings; prepared and distributed media kits; provided regular contact and coordination with all media; did direct mailings of postcards and flyers; and attended all Task Force meetings and forums. Funds are available in the Redistricting budget to hire a public outreach consultant. If Council so directs, staff will be prepared to move forward to solicit proposals from outreach consultants.

THE LEGAL FRAMEWORK FOR REDISTRICTING:

1. Procedure:

City Charter Section 1201 provides that the City Council shall, by ordinance, establish seven council districts. The process culminates with the adoption of an ordinance amending Chapter 1.20 of the Pasadena Municipal Code, which sets forth existing district boundaries.

Elections Code Section 21620.1 requires at least one hearing by City Council prior to the Council vote to adopt a redistricting plan.

There is no legal requirement to create a task force; however, the effort to be undertaken is clearly substantial, as demonstrated by the many activities of the 1990 Redistricting Task Force (these activities were summarized in the City Attorney's April 30, 2001 agenda report). Another consideration, besides the significant amount of work involved, is that a task force (and a consultant) may provide what the public might view as relatively independent and objective contributions to the City Council's deliberations. Given time demands, complexity of data interpretation and presentation, and the opportunity for extended public input which are necessary or desirable in the development of a final districting ordinance, the task force/consultant approach appears to be a practical expedient.

2. Legal Requirements:

There are three basic legal requirements applicable to redistricting: (1) population equality, (2) 'traditional' districting principles, and (3) the equality of opportunity for protected class persons to participate in the electoral process and to elect representatives of their choice. The California Attorney General has opined that there is a 'hierarchy' among the requirements, such that it is proper to accord a particular requirement greater weight than another in drawing district boundaries. The principle of population equality is "pre-eminent," followed by the second constitutional criteria of protecting minority rights against racial discrimination, followed by the 'traditional' districting principles (74 OpsAttyGen 136 , 142-143, August 9, 1991, citing with approval the approach followed by the court in Carstens v. Lamm (D.Colo. 1982) 543 F.Supp. 68).

Each requirement is reviewed below.

A. Population Equality

Charter Section 1201 states that council districts shall be "as nearly equal in population as practicable". Elections Code Section 21620 describes the requirement in a slightly different way but to the same effect: "districts shall be as nearly equal in population as may be." This

principle—"one person, one vote"—is also protected as a constitutional right under the Equal Protection clause of the Fourteenth Amendment to the federal Constitution (Reynolds v. Sims (1964) 377 U.S. 533, 577).

Dividing the Year 2000 census total population in Pasadena (133,936) by seven (the number of districts) results in an "ideal" district population of 19,134 persons. Some districts exceed this ideal (e.g. District 3 with 23,519 persons under the Year 2000 census, or 4,385 people more than the ideal district population) while other districts fall short (e.g. District 5 with 14,930 under the Year 2000 census, or 4,204 less than the ideal district population). To the extent the district in question is more populous than the ideal, the variance or deviation is positive, and the district is under-represented. To the extent the district in question is less populous than the ideal, the variance is negative, and the district is over-represented.

Based on Year 2000 census data presented to City Council at the June 25 meeting, the number and percentage variances from the ideal district population are as follows:

	<u>Population</u>	<u>Variance from Ideal (number)</u>	<u>Percentage</u>
District 1	20,361	1,227	6.4%
District 2	19,537	403	2.1%
District 3	23,519	4,385	23.0%
District 4	19,012	(122)	(.06%)
District 5	14,930	(4,204)	(22.0%)
District 6	18,622	(512)	(2.7%)
District 7	17,955	(1,179)	(6.2%)

How far a municipality may depart from the one person, one vote requirement depends upon the facts which justify such departure. The Supreme Court in a series of rulings has delineated the constitutional boundaries of population variations among state legislative districts. For state legislative districts, it appears that maximum deviations of less than 10 percent from the one person, one vote norm meet the Court's prima facie test of constitutional validity; deviations between 10 and 16.4 percent receive greater judicial scrutiny, but may be justified if based on legitimate state policy goals such as preserving the integrity of political subdivisions, creating compact and contiguous districts or following natural or historical boundaries. (See Swan v. Adams, 385 U.S. 440 (1967). State legislative reapportionment plans which depart more than 16.4 percent from the one person, one vote ideal are likely to be found unconstitutional regardless of otherwise legitimate public policy goals underlying the deviations (see Connor v. Finch, 431 U.S. 407, at 419.).

The Supreme Court has suggested that "slightly greater percentage deviations may be tolerable" for local government apportionment schemes (Abate v. Mundt, 403 U.S. 182, 185 (1971)). In Abate, the Supreme Court permitted an 11.5 percent maximum deviation for a county board of supervisors where the district as drawn was demonstrably able to provide enhanced governmental services.

B. 'Traditional' Districting Principles

Courts refer to certain types of factors as 'traditional' since they generally promote the ability of citizens to relate to each other and their representatives and the ability of representatives to relate effectively to their constituencies. The factors are reflected in the requirements of Elections Code Section 21620, which provides in pertinent part:

"In establishing the boundaries of the districts, the council may give consideration to the following factors: (1) topography, (2) geography, (3) cohesiveness, contiguity, integrity, and compactness of territory, and (4) community of interest of the districts."

Some of these terms are less familiar than others. "Compactness" is the notion that district boundaries are of roughly equal distance from their center or that they reflect a regular geometric shape. "Contiguity" is the idea that territory within a given district is not separated by another district's territory. These factors suggest, but do not assure, that district boundaries are not gerrymandered. Municipalities may pursue the goals of compactness and contiguity in their redistricting plans so long as the districts reasonably approximate the one person, one vote requirement discussed above (see Reynolds v. Sims, 377 U.S. 533, 578 (1964)).

3. Equality of opportunity for protected class persons to participate in the electoral process and to elect representatives of their choice.

The Voting Rights Act of 1965 (42 U.S.C. Section 1971 et seq.) attempts to alleviate racial discrimination in matters relating to voting. The heart of the Voting Rights Act is Section 2, which provides in pertinent part as follows:

"(a) No...standard, practice, or procedure shall be imposed or applied by any...political subdivision in a manner which results in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color....

(b) A violation of subsection (a)...is established if, based on the totality of circumstances, it is shown that the political processes leading to...election in the...political subdivision are not equally open to participation by members of a class of citizens protected by

subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the ...political subdivision is one circumstance which may be considered: provided, that nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.”

To summarize, subsection (a) proscribes districts that have a racially discriminatory effect, as well as those that came about because of discriminatory intent. Subsection (b) defines the prohibited voting practices as those that limit minority groups opportunities both for political participation and for electing representatives of their choice. Although minority electoral success is relevant to this inquiry, the Act specifically rejects proportional representation. Finally, a court must review the “totality of the circumstances” in a voting rights lawsuit to determine whether a districting plan violates the Act.

The Supreme Court has identified specific factors to apply in Voter Rights Act litigation: (1) the geographical compactness of a minority group, (2) minority political cohesion, and (3) racially polarized block voting (i.e. whether there is a consistent relationship between the race of the voter and the way in which the voter votes) Thornburg v. Gingles, 478 U.S. 30, 50-51 (1986). The teaching of Thornburg is that a municipality must determine in its districting process whether there are minority communities which exhibit these characteristics. If it finds them, the municipality should create majority-minority districts in order to comply with Section 2 of the Voting Rights Act.

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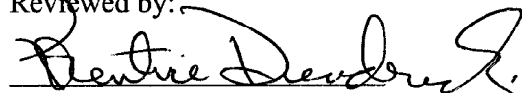
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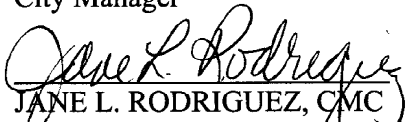
In the Fiscal Year 2002 adopted budget, there is a total of \$115,800 in the City Clerk's Department for costs associated with the redistricting process (see attached Budget). The budget was based on consultant costs for the last redistricting process, plus inflation, and estimated costs based on similar meeting set-up and agenda packet distribution costs incurred by the recent Charter Reform Task Force.

Respectfully submitted,


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