

# Agenda Report

July 25, 2011

**TO:** Honorable Mayor and City Council

**FROM:** Office of the City Attorney  
Office of the City Clerk

**SUBJECT: WORKSHOP ON CITY COUNCIL REDISTRICTING: ADMINISTRATIVE  
PROCESS AND LEGAL FRAMEWORK**

## **RECOMMENDATION:**

It is recommended that the City Council, as part of a workshop, receive information regarding the administrative process and legal framework on redistricting.

## **BACKGROUND:**

Following the results of the federal decennial census, the City is required to examine changes in population and demographics to determine whether the current boundaries of the seven City Council voting districts conform to applicable legal requirements. On June 20, 2011, the City Council established a nine-member citizen-based Redistricting Task Force to recommend a redistricting plan for Council consideration. The work of the Task Force is expected to begin in late August 2011, with the Board scheduled to meet twice monthly for a period of approximately six to eight months. At the conclusion, the City Council will receive the Task Force's Final Report and recommended redistricting plan.

Information to be analyzed by the Task Force includes the 2010 Census data on Housing and Population at the census block level, voter registration data, and other sources that may be appropriate. A professional redistricting consultant, working under the supervision and direction of the Task Force, will be contracted to guide the Board and the public through the redistricting process. As part of a specialized scope of work, the consultant will analyze the Census results, provide detailed data analysis, draft Council district boundary maps illustrating alternative plans, revise alternative plans based on the Task Force's direction and input from the public, and prepare the Final Report to the City Council with the recommended redistricting alternative from the Task Force.

At the conclusion of the work by the Task Force, the City Council will then receive the Final Report, conduct a public hearing to receive public comment on the final selected plan, and then conduct first and second reading of an ordinance that will formally adopt the plan and establish the new districts. A timeline is included (Attachment A) to provide an estimation of each stage of the process.

### **Request for Proposals**

Staff has prepared and is ready to circulate a Request for Proposals for Professional Redistricting Consulting services. There are a number of individuals and companies that provide this type of specialized service and an effort will be made to circulate the RFP to known interested parties in order to receive a robust and competitive response. Staff is also planning to post the RFP on the City's website in an effort to attract any local consultant services that might be available.

It is anticipated that the RFP will be released on Tuesday, July 26, 2011 and will circulate for a three-week period, with responses due on Tuesday, August 16, 2011 at 2:00 p.m. It is recommended that the initial responses be reviewed by a committee comprised of members of staff, Chair Crowfoot, and Vice Chair McDonald. The top two or three candidates will then be invited to participate in an interview by the full Task Force at the August 2011 initial meeting. A final recommendation will be forwarded to the City Council for approval of a consultant contract at the September 12, 2011 meeting.

### **Outreach**

An important aspect of any redistricting effort is community input and public involvement. With that in mind, staff will be working with the City's Public Information Office to develop a Public Outreach Plan that will be presented to the Task Force for review and direction. In the past, an Outreach Consultant was utilized to handle this aspect of the process; however, given the fiscal challenges of the City, it was determined that City staff could develop a plan that would meet any outreach goals. If, upon presentation to the Task Force, issues or concerns arise from this approach, staff can then return to the City Council with alternative approaches, including the use of an outreach consultant and also provide information on any resulting budgetary impacts.

In addition, City staff has started developing a Redistricting Webpage located on the City's website and accessible from the main City page, the City Clerk's page, and City Council's page. The site will provide the public with historical data on previous redistricting efforts; access to the Task Force's agendas, minutes, staff reports, and available meeting video/audio recordings; access to online redistricting software that can be used to create individualized redistricting plans; and any public announcements on the work of the Task Force. The design of the site will focus on public outreach and transparency, as well as enhancing the public's participation and understanding in the process.

### **County Deadline**

Once the redistricting effort is completed and the ordinance establishing the district boundaries is adopted by the City Council, the City Clerk's Office will then work with the Los Angeles County Registrar of Voters to ensure that the updated information is incorporated and finalized in time for the 2013 City Council elections. The County has set a deadline of May 15, 2012 for cities and agencies conducting redistricting to submit adopted plans. Staff has requested and received an extension to this deadline to accommodate both the Pasadena Unified School District's initial districting schedule and the City Council's redistricting schedule. Given that the results of the PUSD Charter Amendment to establish voting districts will not be finalized until late June, the County has agreed to the requested extension, to work with the City and School District in ensuring that the updated district boundaries will be accurately implemented for the next City and PUSD elections.

In mentioning the PUSD Charter Amendment and Districting Task Force, this separate but related process has started and will follow a similar timeline as the City's process. Periodic updates will be provided to the City Council regarding the Charter Amendment portion of the work being undertaken.

### **Meeting Location/Televised Meetings**

As mentioned, the Task Force will be meeting twice monthly for a period of six to eight months. The regular meetings of the Task Force will take place in City Hall, with two to three community input meetings to be located in various parts of the City. These community meetings will allow the public to receive information and provide comment on the alternative redistricting plans under consideration by the Task Force. All meetings will be open to the public and subject to Brown Act meeting requirements.

Videotaping of the community input meetings will be coordinated jointly by City staff and KPAS. Broadcasts of the meetings will be played on the public access channel, as well as available via video streaming on the Redistricting website. The associated costs for videotaping the community meetings have been included in the adopted budget approved by the City Council.

## **THE LEGAL FRAMEWORK FOR REDISTRICTING**

### **I. Procedure**

Pursuant to the Pasadena City Charter, Section 1201, there are seven council districts whose boundaries have been established by ordinance. The redistricting process will result in adoption of an ordinance amending Chapter 1.20 of the Pasadena Municipal Code to establish revised district boundaries. As usual, and pursuant to the City Charter, the ordinance will become effective upon publication after a second reading.

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

Although not legally required to do so, Pasadena has a history of conducting redistricting efforts in the public through use of a Redistricting Task Force. A Task Force to conduct the tasks necessary to present a 2011 redistricting plan to the Council has already been formed and will begin meeting in late August 2011.

## II. Legal Requirements

The redistricting process requires that districts be based on: (1) population equality; (2) equality of opportunity for protected classes of persons to participate in the electoral process and to elect representatives of their choice; and (3) consideration of "traditional" districting principles. The requirements are listed above to reflect the California Attorney General's opinion 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 "traditional" districting principles. (74 Ops.Atty.Gen. 136, 142-143, August 9, 1991, citing with approval Carstens v. Lamm (D.Colo. 1982) 543 F.Supp. 68.) Each requirement is reviewed below.

### a. Population Equality

The Pasadena City Charter, Section 1201, states that council districts "shall be as nearly equal in population as practicable and such redistricting shall be in compliance with applicable laws." Likewise, California Elections Code Section 21620 requires, "After the initial establishment of the districts, the districts shall continue to be as nearly equal in population as may be according to the latest federal decennial census. . ." This principle of "one person, one vote" is also a constitutionally protected right under the Equal Protection Clause of the Fourteenth Amendment to the federal Constitution. (Reynolds v. Sims (1964) 377 U.S. 533, 577.)

As mandated by state law, the City will use census data to determine population equality. Given this requirement, the City may not consider other factors to calculate population equality, such as number of registered voters (see also Burns v. Richardson (1966) 384 U.S. 73, 93-94). It is anticipated that in mid-August the City Manager will present to the Council the 2010 census population data that will support the "ideal" district population figure.

If a district contains more than the "ideal" population, the district is under-represented, and likewise if the district contains less than the "ideal population, the district is over-represented. How far a district may deviate from the "one person, one vote" requirement depends on the facts justifying the departure. The Supreme Court has delineated the constitutional boundaries of population variations among state legislative districts. In that case, it appears the maximum deviations of less than 10 percent from

the “ideal” population meets 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 (1967) 385 U.S. 440.) State legislative reapportionment plans which depart more than 16.4 percent from the “ideal” population are likely to be found unconstitutional regardless of otherwise legitimate public policy goals underlying the deviation. (See Connor v. Finch (1977) 431 U.S. 407, 419.)

With regard to local government districting, the Supreme Court has suggested that “slightly greater percentage deviations may be tolerable.” (Abate v. Mundt (1971) 403 U.S. 182, 185.) In that case, 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. Equal Opportunity for Protected Classes of Persons to Participate in the Electoral Process and to Elect Representatives of Their Choice

The federal Voting Rights Act of 1965 (42 U.S.C. Section 1971 et seq.) attempts to alleviate racial discrimination in voting. Section 2 of the VRA provides in pertinent part:

“(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any . . . political subdivision in a manner which results in a denial or abridgement 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.”

Subsection (a) above prohibits 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 the opportunities of minority groups for political participation and for electing representatives of their choice. Although minority electoral success is relevant to this inquiry, the VRA 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 VRA.

The Supreme Court has identified specific factors to apply in VRA litigation, namely: (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 (1986) 478 U.S. 30, 50-51.) Thornburg requires that a municipality must determine in its redistricting process whether there are minority communities that exhibit these characteristics. If it finds them, the municipality should create a majority-minority district to comply with Section 2 of the VRA.

However, more recently the Supreme Court gave further redistricting guidance and held in Easley v. Cromartie (2001) 532 U.S. 234 that the 14<sup>th</sup> Amendment's Equal Protection clause imposes an obligation not to create majority-minority districts where the reason for doing so is predominantly racial, as opposed to political or traditional. The Court upheld (on a 5-4 vote) a majority-minority African American district plan on the basis that North Carolina had a legitimate non-racial explanation for its districting decision, namely the need for a "safe" Democratic district to achieve partisan balancing of all congressional districts.

c. "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 California Elections Code Section 21620, which provides in relevant part:

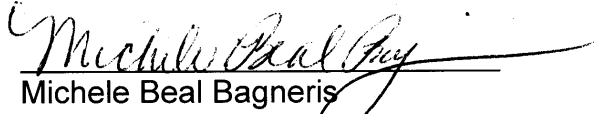
" . . . In establishing the boundaries of the districts, the council may give consideration to the following factors: (1) topography, (2) geography, (3) cohesiveness, contiguity, integrity, and compactness of territory, and (4) community of interest of the districts."

"Compactness" is the notion that district boundaries are of roughly equal distance from their center or that they reflect a regular geometric shape. "Contiguity" refers to 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. (See Reynolds v. Sims (1964) 377 U.S. 533, 578.)

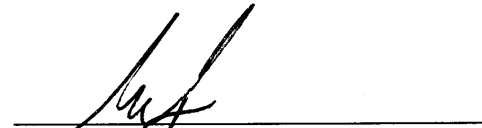
**FISCAL IMPACT:**

It is estimated that the total cost of the City Council Redistricting process will be approximately \$135,000. Funds have been budgeted and recognized in the City Clerk's Budget 261000 for this purpose.

Respectfully submitted,

  
Michele Beal Bagneris  
City Attorney/City Prosecutor

Respectfully submitted,

  
Mark Jornskey  
City Clerk, CMC

Attachment A – Timeline

Attachment B – City of Pasadena District Map (Current)