

# Agenda Report

March 15, 2021

**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, including COVID-19 impacts affecting the release of census data and the timing of redistricting.

**BACKGROUND:**

The U.S. Constitution requires the federal government to conduct a census and count how many people live in each state every 10 years. Following each decennial census, the City of Pasadena utilizes census data and conducts a redistricting process where City Council election districts are redrawn to account for changes in population. With the 2020 Census count now concluded, the City will need to prepare for redistricting to determine how the current boundaries of the seven Council voting districts (Attachment A) might change to conform to applicable legal requirements. This report will review the redistricting process and provide detailed information regarding the legal requirements governing that process.

**Redistricting Task Force**

As was done in prior redistricting efforts, it is anticipated that the City Council will appoint a citizen-based Redistricting Task Force to examine census population and demographic data in order to ultimately recommend a redistricting plan to the City Council for adoption. The Task Force will receive training on the legal requirements and framework governing redistricting ahead of consideration of potential changes to Council District boundaries. One of the benefits of the Task Force is to provide a public process that is singularly focused on the issue of redistricting, allowing members in the community to propose their own plans, comment on plans under consideration, and provide feedback to the Task Force regarding issues of importance and impacts that may occur related to redistricting.

At the end of the process, the Task Force will consider and vote to recommend a redistricting proposal, and with the help of the consultant and City staff, prepare a final report that will be used to submit the final recommended redistricting plan to the City Council for consideration. The work of the Task Force is labor intensive and requires a significant time commitment for those members wishing to serve in this capacity. Prior efforts have required the Task Force to meet at least twice monthly, with meetings occurring in the evening and from time to time on weekends.

Following is information on prior citizen-based redistricting bodies appointed by the City Council, in 2001:

<b>NAME</b>	<b>DISTRICT/AT LARGE</b>	<b>NOMINATED BY</b>
William Crowfoot	At-Large Nomination	Mayor Bogaard
Marguerite Hougasian	Mayoral Nomination	Mayor Bogaard
Timothy Wendler	District 1 Nomination	Councilmember Streator
Michael Coppess	District 2 Nomination	Councilmember Little
Joel Bryant	District 3 Nomination	Councilmember Holden
Vannia De La Cuba	District 4 Nomination	Councilmember Haderlein
Dr. Gilbert Cadena	District 5 Nomination	Councilmember Gordo
Richard McDonald	District 6 Nomination	Councilmember Madison
Jean Owen	District 7 Nomination	Councilmember Tyler

And in 2011:

<b>NAME</b>	<b>DISTRICT/AT LARGE</b>	<b>NOMINATED BY</b>
Elizabeth Trussell	Mayor Nomination	Mayor Bogaard
Michael Alvarez	Mayor Nomination	Mayor Bogaard
Wendelin Donahue	District 1 Nomination	Councilmember Robinson
Alex Guerrero	District 2 Nomination	Councilmember McAustin
Alan Caldwell	District 3 Nomination	Councilmember Holden
James Marlatt	District 4 Nomination	Councilmember Masuda
William Crowfoot	District 5 Nomination	Councilmember Gordo
Richard McDonald	District 6 Nomination	Councilmember Madison
Mary Machado Schammel	District 7 Nomination	Councilmember Tornek

Pursuant to City Charter Section 1201, "The City Council shall, by ordinance, establish seven districts which shall be used for all elections of Councilmembers. Said districts shall be as nearly equal in population as practicable and such redistricting shall be in compliance with applicable laws." Therefore, the basis of the work of the Task Force is to review population changes in the City and determine the ideal/equalized population target for each district. Any redistricting plan submitted to the City Council for consideration must comply with this provision of the City Charter.

### **Redistricting Consultant**

A professional redistricting consultant and demographer, working under the supervision and direction of the Task Force and ultimately the City Council, will be contracted to guide the City through the redistricting process. As part of a specialized scope of work, the consultant will analyze census data results collected during the 2020 Census Count, provide detailed data analysis on population and demographics, help to draft varying redistricting plans and Council district boundary maps illustrating alternative plans, revise alternative plans based on the Task Force's direction, and assist in the preparation and submittal of the Task Force's Final Report and Redistricting Plan to the City Council.

As noted above, the City Council will then review the Final Report and recommended plan, conduct a number of required public hearings to receive public comment, and ultimately conduct first and second reading of an ordinance that will formally adopt a redistricting plan with the newly established Council districts to be used in all elections of Councilmembers until the next redistricting effort.

### **Request for Proposals**

Staff is in the process of preparing a Request for Proposals seeking Professional Redistricting and Demographer Consulting services. While there may be limits in the number of individuals and companies able to perform the specialized services needed for this effort, staff will seek out and contact any local vendors with relevant experience, and actively circulate the RFP to encourage a robust vendor pool. Staff will also ensure that the RFP is posted prominently on the City's website and on Planet Bids.

It is anticipated that the RFP will be released on March 18, 2021 and will circulate for approximately three-weeks. In the past, the Redistricting Task Force has participated in the selection process for the consultant, including working with staff to review proposals, conduct an interview process, and select the consultant(s) to recommend to the City Council for approval. As before, staff is proceeding in a similar fashion utilizing criteria related to (in order of importance) experience, cost, availability, and local/minority/women-owned business. A final recommendation from the Task Force and action by the City Council to award the contract is expected in early to mid-May 2021.

### **Outreach**

An important component of any redistricting effort is community input and public involvement to ensure a wide range of voices are considered during the redistricting process. Changes to state law now require a certain number of public meetings and public hearings to occur at various stages of the redistricting process to meet legal compliance. To support public participation, staff is requesting that a public engagement professional be retained to lead outreach and public engagement. Duties will include

crafting messaging, utilizing social media platforms, coordinating with City Public Information staff, and ensuring compliance with language requirements.

In 2011, City staff constructed a Redistricting Webpage, which is currently located on the City's website and is accessible from a number of access points on the City's platform, including the City Clerk's page and City Council's page. The site provides 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 mapping software for members of the public to create individualized redistricting plans; and any public announcements on the work of the Task Force. The purpose of the site is to promote public outreach and transparency, as well as enhance the public's ability to participate in the process and understand the core concepts and criteria related to redistricting.

### **County Deadline**

Following the work of the Redistricting Task Force and the community, the City Council will consider the adoption of an ordinance to codify and establish the new Council District boundaries. Once the adoption process is complete (first and second reading, followed by publication), 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 2022 City Council elections. The County has set a deadline of December 9, 2021 for cities and agencies conducting redistricting to submit adopted plans, while the statutory deadline for submission of plans is December 15, 2021.

### **COVID-19 Impacts on Release of Census Data and Redistricting Timeline**

The impacts of COVID-19 on the 2020 Census and the Redistricting timelines have been significant and are ongoing. In response to the pandemic, the United States Census Bureau adjusted key dates for the census count, which resulted in a delayed deadline to complete the census counting process (the July 31, 2020 response deadline was pushed back to October 15, 2020). The ripple effect of this action, as well as issues related to the US Census data processing effort, have in turn impacted the release of redistricting data to cities, which ultimately results in a major reduction in the amount of time available for cities to examine population changes and to consider changes to district boundaries.

On February 12, 2021, the US Census Bureau announced that the redistricting census data will not be available until September 30, 2021, which is six months later than the normal release date of March 31, 2021 (Attachment B). For agencies such as the City of Pasadena, whose upcoming election cycle begins with the June 7, 2022 Primary Election date, changes to district boundaries are required by statute to be completed no later than 174 days prior to the election, or December 15, 2021. According to the Los Angeles County Registrar-Recorder/County Clerk, new election boundary information must be delivered no later than December 9, 2021. The net effect of this is a significant reduction in time to study population and demographic data to draw new boundaries;

from as many as eight months to as few as ten weeks. Below is a side by side comparison of the “normal” previously planned schedule vs. COVID-19 impacted schedule to better illustrate the timing issues that the upcoming redistricting effort will face in this next cycle:

<b>DESCRIPTION</b>	<b>PLANNED SCHEDULE</b>	<b>COVID-19 SCHEDULE</b>
Completion of Census	July 31, 2020	October 15, 2020
Deliver Apportionment Counts	December 31, 2020	April 30, 2021
Redistricting Data to States	March 31, 2021	September 30, 2021
Statutory Deadline to Submit Redistricting Plan Prior to June 2022 Primary Election	December 15, 2021	December 15, 2021

**Potential Timeline for 2021 Redistricting Process**

Taking into account the extremely limited timeframe that will be available to the Redistricting Task Force to review and utilize the actual redistricting data, staff is moving forward with organizing the Task Force now, ensuring that Task Force members and the public receive information on the redistricting process, allow for public input and comments on community priorities related to redistricting, consider other sources of data that might reflect the population and demographic data to be released on September 30<sup>th</sup>, and allow for the drafting of unofficial redistricting plans for public consideration and comment. This proposed timeline is suggested as a starting point, with the City Council and the Task Force able to make necessary changes and amend the work plan as further information and issues come to light. Applications to serve on the City’s Citizen-Based Redistricting Task Force are available now using the City’s Commission Application format.

**March 18, 2021** – City staff to circulate Request for Proposals for Redistricting Consultant/Demographer Services (staff will also circulate a Request for Proposals for Outreach Consultant Services on or shortly after this date).

**April 1, 2021** – Deadline for members of the public interested in serving on the City’s Redistricting Task Force to submit applications.

**April 8, 2021** – Deadline for Councilmembers to submit nominations to the Mayor’s Office in advance of City Council’s action to appoint representatives to serve on the Redistricting Task Force.

**April 12, 2021** – City Council action to appoint the Redistricting Task Force.

**April 16, 2021** – Deadline for Submittal of Redistricting Consultant/Demographer Services Proposals and Outreach Consultant Proposals.

**April & May 2021** – Redistricting Task Force to conduct two – three meetings, including initial meeting regarding Brown Act and Redistricting process overview, with Chair and subcommittee to meet with staff and review redistricting consultant RFP proposals. Full Task Force to conduct a meeting to interview and select consultant to recommend to the City Council.

**May 17, 2021** – City Council action to approve redistricting consultant contract.

**May & June 2021** – Redistricting Task Force to review redistricting principles and legal framework with Redistricting Consultant, establish goals in reviewing Census data, and review and approve draft work plan of consultants. Task Force to conduct two to three meetings.

**July & August 2021** – Redistricting Task Force to receive from consultant preliminary redistricting data and estimated changes in population and demographics in Pasadena. Task Force to conduct three to four meetings.

**September 2021** – Redistricting Task Force to receive public input on possible approaches to redistricting. Task Force to conduct two meetings.

**September 30, 2021** – US Census Bureau to release Redistricting Data to states

**October 2021** – Redistricting Task Force to receive US Census Bureau redistricting data presented by consultant. Task Force to draft, review, and consider various redistricting plans presented by consultant and public. Task Force to conduct two – three meetings.

**November 2, 2021** – Task Force to conduct public meeting to receive comments on redistricting plan chosen for City Council approval, approve Final Report and conclude final meeting.

**November 8, 2021** – City Council to receive Final Report and recommended redistricting plan.

**November 15, 2021** – City Council to conduct a public hearing to consider the recommended plan and Final Report of the Redistricting Task Force.

**November 22, 2021** – City Council to conduct a second public hearing and conduct first reading of ordinance to set the district boundaries.

**December 6, 2021** – City Council to adopt the ordinance setting the district boundaries.

### **Meeting Location/Televised Meetings/COVID-19**

As mentioned, the Task Force will be meeting numerous times over the course of five to six months. Until COVID-19 restrictions are lifted, meetings of the Task Force will take place virtually, similar to the meeting format used by the City Council and City Commissions. Staff will work with the selected demographer/redistricting consultant and the Department of Information and Technology to ensure that meetings will be successful and allow for public participation. At the point that COVID-19 restrictions are lifted and the City is allowed to participate via an in-person meeting format, such meetings will be held at City Hall, and potentially at locations in various parts of the City. All meetings whether held virtually or in-person will be subject to Brown Act compliance, open to public participation, allowing the community to receive information, provide comments on alternative redistricting plans under consideration by the Task Force, and submit alternative redistricting plans for consideration.

The broadcasting and recording of Task Force 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 through the City's webpage and Pasadena Media.

### **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.

#### II. Legal Requirements

State law regarding the redistricting process has changed radically since the last time the City went through the process in 2011. While Pasadena was not required to undergo any particular redistricting process in the past (but did so voluntarily), the passage of AB 849 in 2019 codified the Fair And Inclusive Redistricting for Municipalities And Political Subdivisions ("FAIR MAPS") Act (as amended by AB 1276 in 2020), and set forth specific procedures and timelines for redistricting that all cities and counties must follow (except those with independent redistricting commissions or advisory bodies). The FAIR MAPS Act also reprioritized the criteria that must be considered when redistricting.

Pursuant to the FAIR MAPS Act, there must be at least four hearings before the Council adopts a final map. At least one of these public hearings (or workshops) must be held before the Redistricting Task Force draws a draft map. Further, the City Council must

hold at least two hearings after the Redistricting Task Force draws a draft map for Council consideration.

Districts must be based on the following, in order of priority:

**Federal criteria:** The districts must be drawn so that they are “substantially equal in population as required by the United States Constitution.” (Cal Elections Code § 21621(a).) The districts must also comply with the Federal Voting Rights Act (VRA) (Section 2), which prohibits voting practices or procedures that discriminate on the basis of race, color, or membership in one of the language minority groups identified in Section 4(f)(2) of the Act.

**State criteria:** The California Constitution (Article XXI) requires “reasonably equal” districts. Equality is based on total population of residents of the city based on the census. Incarcerated persons are not counted within the City unless the last known place of residence of the individual is within Pasadena. (Cal Elections Code § 21621(a).) The FAIR MAPS Act prohibits drawing districts for the purpose of favoring or discriminating against a political party.

Prior to the FAIR MAPS Act, state law provided, in 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.”

The biggest change arising from the FAIR MAPS Act is its mandate that the drawing of district boundaries must use the following criteria in order of priority:

1. Districts must be geographically contiguous.
2. The “geographic integrity” of local neighborhood or “local community of interest” shall be respected “in a manner that minimizes division.”
3. District boundaries must be easily identifiable and understandable by residents, using natural and artificial barriers when possible.
4. If practicable, and when not in conflict with prior criteria, district shall be drawn to encourage geographical compactness in a manner that nearby areas of population are not bypassed in favor of more distant populations.

The FAIR MAPS Act does not expressly prohibit consideration of a councilmember’s or candidate’s residence when drawing maps, but it is clear that the above factors must take priority before other, non-specified factors, may be considered.

#### 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 21621(a) requires,



that “council districts shall be substantially equal in population as required by the United States Constitution.” This principle of “one person, one vote” is 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).

How far a district may deviate from the “one person, one vote” requirement depends on the facts justifying the departure. The U.S. 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 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 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.

In Easley v. Cromartie (2001) 532 U.S. 234, the Supreme Court provided further guidance 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. See also Cooper v. Harris (2017) 137 S.Ct. 1455.


Finally, consideration of the following factors is necessary as well. “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 \$180,000. Sufficient funds remain in the City Clerk's FY 2020-21 Election Budget 10113002 to cover the anticipated expenses associated with this effort.

Respectfully submitted,

Respectfully submitted,

  
Michele Beal Bagneris  
City Attorney/City Prosecutor

  
Mark Jomsky  
City Clerk, CMC

- Attachment A – City of Pasadena District Map
- Attachment B – February 12, 2021 US Census Bureau Press Release
- Attachment C – 2011-12 Redistricting Task Force Final Report