

**City of Long Beach***Working Together to Serve***Memorandum****Office of the City Attorney**

DATE: April 15, 2021

To: Honorable Members of the Independent Redistricting Commission

FROM: Amy R. Webber, Deputy City Attorney
Taylor M. Anderson, Deputy City Attorney

SUBJECT: Use of Current Council Districts in the Redistricting Process

The purpose of this memo is to clarify that current City Council districts may be used as a starting point by the Independent Redistricting Commission (“IRC”) in drawing district boundaries. In fact, it is the recommendation of this office that the IRC begin with those current districts.

Item 2 on the April 21, 2021 agenda requests the Commission to adopt criteria to be used in the redistricting process. Criterion 11 in the document states

“ 11) Others that do not conflict – after considering all the above criteria, utilizing other criteria that can be incorporated without weakening the plan among other criteria. Some examples include:.....

- Considering the existing districts or preserving their cores.”

The Commission is required by Charter section 2506 (d) to provide for some continuity between the existing districts and the new districts to the extent that is consistent with other criteria. By requiring that as many residents as possible remain in the same numbered district in which they previously resided, this criterion requires that the Commission attempt to preserve the core of existing districts. Put differently, this requirement is not simply a numbering convention, such as requiring districts to be numbered sequentially from north to south, but instead requires the core of existing districts to be preserved.

In addition to supporting this criterion, using current Council Districts as a starting point has the critical advantage of efficiently using available time and minimizing public confusion.

We have attached a memorandum from the City’s outside redistricting counsel for background.

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If you have questions regarding this memo, please let us know.

ARW/TMA
Att.

document2

MEMORANDUM

TO: Amy Webber and Taylor Anderson, Deputy City Attorneys

FROM: Robin Johansen and Tom Willis

DATE: January 12, 2021

RE: Consideration of Existing Districts When Redistricting

INTRODUCTION

You have asked whether the City of Long Beach's Independent Redistricting Commission can consider and begin with the existing City Council districts when it redraws district boundaries. We believe it can because the redistricting criteria set forth in the City Charter expressly contemplate that the Commission must consider preserving core populations in existing districts. Further, a decision by the Commission to start with the City's existing redistricting architecture and apply the redistricting criteria to those boundaries would be a reasonable decision entitled to deference by reviewing courts.

ANALYSIS

I. The Commission Can Begin the Redistricting Process by Applying the Redistricting Criteria to Existing Districts

In 2018, the City voters approved Measure DDD, which established a new Independent Redistricting Commission and set forth redistricting criteria that the new Commission must follow when redrawing the nine City Council districts.

Section 2506 of the City Charter now requires the Commission to draw districts as nearly equal as practicable in total population, in compliance with all federal and state laws (including the federal Voting Rights Act), and that are geographically contiguous. Once those criteria are met, the Commission "shall consider" in order of priority a list of eight criteria set forth in subdivision (b), including: (1) neighborhoods; (2) communities of interest; (3) neighborhoods and communities sharing a common language, history, culture and identity; (4) topography and geographic features; (5) natural and artificial barriers for boundary lines; (6) compactness; (7) maintaining whole census blocks; and (8) any other criteria the Commission approves that do not conflict with the other requirements.

While that list does not include respecting existing district boundaries, subdivision (d) of section 2506 separately requires the Commission to "number each Council district such that, for as many residents as possible, the number of the Council district they reside in remains the same." That provision requires the Commission to provide for some

continuity between the existing districts and the new districts to the extent that is consistent with other criteria. By requiring that as many residents as possible remain in the same numbered district in which they previously resided, this criterion requires that the Commission attempt to preserve the core of existing districts. Put differently, this requirement is not simply a numbering convention, such as requiring districts to be numbered sequentially from north to south, but instead requires the core of existing districts to be preserved. For example, the California Constitution requires only that State district boundaries be numbered consecutively starting at the northern border moving southward, without the additional requirement, found in the Long Beach Charter, that as many residents as possible remain in the same numbered district. Cal. Const., art XXI, § 2(f). In fact, the requirement in subdivision (d) is arguably as important as the eight criteria set forth in subdivision (b) of section 2506, since it is mandatory in nature (“shall”) as opposed to being lumped together with the eight criteria in subdivision (b) that the Commission shall “consider.”

Section 2506 does not establish any rule for how the Commission should start its task, nor does it identify any particular districting architecture that should be the starting point for redistricting. The procedures for selecting the Commission and receiving public input, however, underscore the point that the existing districts provide an obvious starting point for drawing the new plan. The Commission consists of 13 members, but the first nine must represent each of the existing nine council districts. Long Beach Charter § 2505(b). Moreover, prior to adopting a final map, the Commission must hold at least one public meeting in each of the nine existing districts. *Id.* at § 2507(b). These provisions embed in the process the importance of the existing districts, and they will likely form the natural baseline from which the public and Commissioners will advocate for change or continuity. This makes the City’s current districting plan the obvious place to start. Put differently, if the framers of Measure DDD were seeking to have the City start from scratch and draw an entirely new map, divorced from the existing architecture, they almost certainly would have said so and would not have set up a process that is so dependent on the existing district lines.

The legislative history of Measure DDD also supports the conclusion that the Commission must consider existing districts when redistricting. Specifically, the Impartial Analysis for Measure DDD told voters that the Commission must consider preservation of existing districts when adjusting boundaries:

The Commission must also consider the following criteria when drawing a map: existing neighborhoods and community boundaries, communities of interest, integrity and compactness of territory, geography and topography, natural and artificial barriers and boundaries, *preservation of population cores that*

have consistently been associated with each Council district, and any other Commission-adopted criteria.

Impartial Analysis for Measure DDD, Los Angeles County
Voter Pamphlet, November 6, 2018, at 74-75
(emphasis added).

Moreover, as a general matter, providing for continuity between decennial redistricting plans by attempting to keep the core of existing districts unchanged is considered an appropriate and neutral traditional redistricting criterion. *See Chen v. City of Houston*, 206 F.3d 503, 521 (5th Cir. 2000) (“Maintenance of established district lines is itself a traditional districting principle”). Over time, voters become familiar with their districts and often create local organizations and networks around those districts for purposes of increasing representation and electoral choices. Respecting the core of existing districts often means respecting those communities of interest and informal networks.

That is particularly true when the prior districts have been widely accepted by the community as fair and have not been challenged. We understand that is the case with the City’s 2011 redistricting plan. The plan was not the subject of a legal challenge, was broadly accepted by the community, and a visual examination of the 2011 map reveals that the districts are compact. Further, many of the criteria set forth in Charter section 2506 were included in the criteria used to redistrict in 2011, meaning that the goals of the 2011 redistricting plan were broadly consistent with the current criteria. *Compare* Charter § 2506 with 2011 Redistricting Criteria, adopted March 22, 2011. Thus, even if subdivision (d) of Section 2506 did not expressly require the Commission to consider preserving the core of existing districts, the Commission could have adopted it as an appropriate, neutral criterion under subdivision (b)(8).

Given all of these facts – the centrality the existing districts play in the criteria and procedures established by Measure DDD and the absence of any indication the framers intended that the Commission begin the redistricting from some other starting point – we believe the Commission can start with the existing architecture as the baseline from which to make changes and apply the criteria set forth in section 2506. However, it is important to keep in mind that the Commission must also adhere to the hierarchy of priorities set out in section 2506, and if adhering to current boundaries conflicts with one of the other criteria, it may have to give way and the boundary may have to be adjusted.

II. Courts Should Give Deference to a Decision by the Commission to Start with Existing Districts When Applying the Redistricting Criteria

A decision by the Commission to start the redistricting process with the City's existing districts and then apply the criteria set forth in section 2506 to adjust those boundaries should be given deference by any reviewing court.

Courts have long held that redistricting plans adopted by legislative bodies are entitled to "significant judicial deference." *Nadler v. Schwarzenegger*, 137 Cal.App.4th 1327, 1337 (2006). This deference extends to local legislative redistricting. *See Griswold v. County of San Diego*, 32 Cal.App.3d 56, 62 (1973) ("Apportionment is peculiarly a political function addressed to the legislative branch and involves matters not appropriate for courts to decide.")

The need for judicial deference in this area derives from two sources. First, there is the traditional separation of powers concern that legislative bodies must be allowed to weigh and balance the underlying policies and factual considerations when making law without being second-guessed by the judiciary. *S.F. Tomorrow v. S.F.*, 229 Cal.App.4th 498, 516 (2014); *see also Conn. Indem. Co. v. Superior Court*, 23 Cal.4th 807, 814 (2000), citation omitted ("We begin with the proposition that a court's authority to second-guess the legislative body is extremely limited. It is a 'well-settled principle that the legislative branch is entitled to deference from the courts because of the constitutional separation of powers.'")

Second, redistricting in particular requires the weighing of criteria that are often incompatible or directly at odds (for example, a community of interest may extend beyond the boundaries of a neighborhood or cross over a natural boundary that would otherwise make an obvious dividing line between districts), making judicial review particularly difficult:

Because, as a practical matter, the reapportionment process involves give and take in resolving conflicts among the various standards and in considering the concerns, desires, and objections of numerous interested persons and groups (*see Wilson v. Eu*, 1 Cal.4th at 720-721), a result "which may appear ideal for one place or another must be subordinated to the goal of fair and reasonable reapportionment of the whole state. . . ." (*Legislature v. Reinecke*, 10 Cal.3d at 403). Therefore, courts must approve a reapportionment plan if it appears to reflect a reasonable application of the standards, "even though

alternatives . . . may appear equally reasonable.”
(citations omitted)

Nadler, 137 Cal.App.4th at 1340.

Further, as the *Nadler* court held “the difficulty of reapportionment” requires legislatures be allowed the discretion necessary to balance competing interests. *Id.* at 1338, citing *Miller v. Johnson*, 515 U.S. 900, 915 (1995). Courts should not be “second-guessing what has consistently been referred to as a political task for the legislature, a task that should not be monitored too closely [by the courts].” *Id.*, citing *Davis v. Bandemer* 478 U.S. 109, 133 (1986). Finally, “a reasonable, comprehensive reapportionment plan should not be rejected simply because equally reasonable alternative plans may be suggested.” *Id.* at 1341. “The policy of deference to a comprehensive, overall plan – and against judicial tinkering with individual districts at the behest of particular persons or groups – is even stronger where, as here, the Legislature enacted and the Governor approved the plans under consideration.” *Id.* at 1341-42.

In summary, a decision by the Commission to start the redistricting process by examining the current districts and applying the criteria as required by Section 2506 to those districts is a reasonable one supported by the text and legislative history of Measure DDD, and should be afforded deference by the courts if subsequently challenged.