

# CITY OF OAKLAND

## CITY ATTORNEY'S OFFICE

### Legal Opinion

TO: Council President Kernighan and Members of the Oakland City Council

FROM: Barbara J. Parker  
City Attorney

DATE: April 26, 2013

RE: **Legal Requirements and Legal Status Report Regarding the City of Oakland's 2013 Redistricting Effort**

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#### I. Introduction

This opinion outlines the legal requirements with respect to redistricting to assist the Council in the 2013 redistricting process.

#### II. Background

The Oakland City Charter mandates that the City Council form new districts every ten years beginning in 1993. (Oakland Charter § 203.) The City Council must approve changing district boundaries by ordinance. (Oakland Charter § 203.)

The City Council drew the current district boundaries in 2003. The Council found that the 2003 districts met the Charter qualifications, namely

“that the Council districts as set forth . . . are composed of contiguous territory and are as equal as practicable in population as shown by the 2000 Federal Census, are as geographically compact as practicable, and take into consideration the topography, geography, cohesiveness, contiguity, integrity, compactness of territory, the City Charter’s requirement of preserving incumbents within their existing districts, and communities of interests . . . .”

Oakland Ordinance No. 12495 C.M.S. A copy of Ordinance No. 12495 is attached hereto.

To prepare for the 2013 redistricting effort, the City of Oakland Department of Planning, Building and Neighborhood Preservation conducted an initial study of the total population using data from the 2010 census. The results of this assessment indicated that three districts – Districts 2, 3, and 5 – had the most significant population deviations from the other districts. Accordingly the redistricting effort will focus initially on these three districts. Then, the other districts will be examined to ensure that the populations of each district are as equal as possible within the parameters of the law as discussed below.

### **III. Legal Analysis**

#### **A. The City Charter mandates that Oakland conduct a redistricting effort**

The California Constitution vests charter cities, such as Oakland, with plenary authority over municipal affairs, such as redistricting, subject only to constitutional limitations.<sup>1</sup> However, all redistricting efforts must comply with the Federal Voting Rights Act and the United States Constitution.

Oakland's redistricting requirements are governed by the Oakland City Charter. The Oakland City Charter states that the City Council shall form new districts every ten years and that those districts shall be as equal as possible in population and as geographically compact as practicable. (Oakland City Charter § 203.<sup>2</sup>) The Charter also states that no change in the boundary of a district shall operate to exclude an incumbent from office before the expiration of his or her term. (Oakland City Charter § 203.)

#### **B. Oakland's Redistricting Effort Must Comply with the Federal Voting Rights Act and the Fourteenth Amendment to the United States Constitution**

Redistricting efforts raise legal issues in two areas: principles of equal protection under the Fourteenth Amendment to the United States Constitution, and Section 2 of

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<sup>1</sup> The California Constitution specifies redistricting requirements only for the State Senate, Assembly Congressional, and Board of Equalization districts. Cal. Const. Art. 21 §§ 1-3.

<sup>2</sup> Section 203 of the City Charter provides: "Nomination and Election of Councilmembers. Seven Councilmembers shall be nominated from districts and one shall be nominated at large. The Councilmembers shall be nominated and elected by the qualified electors of their respective districts. The districts shall be as they exist upon the taking effect of this section, until revised by ordinance. In the year 1993, and every ten years thereafter, and whenever any substantial territory is annexed to or consolidated with the City, the Council shall form new districts not exceeding seven. Districts shall be composed of contiguous territory, as equal as possible in population, and as geographically compact as possible. No change in the boundary of a district shall operate to exclude an incumbent from office before the expiration of the term for which he was elected or appointed."

the Federal Voting Rights Act (42 U.S.C. § 1973). The Fourteenth Amendment essentially mandates one person, one vote – or that districts have a population as equal as practicable.<sup>3</sup> The Voting Rights Act prevents a redistricting process under which some people, based on their race, “have less opportunity than other members of the electorate to participate in the process and to elect representatives of their choice.” (42 U.S.C. § 1973.)

During redistricting Oakland must make a good-faith effort to construct its districts to be as nearly equal in population as is practicable. *Gaffney v. Cummings*, 412 U.S. 735, 742-743 (1973). In reviewing redistricting processes the courts have held that a population deviation between districts of less than ten percent is considered only a “minor deviation” and will be presumed to have resulted from an honest and good faith effort to draw districts. *Brown v. Thomas*, 462 U.S. 835, 842 (1983), *Daly v. Hunt*, 93 F.3d 1212, 1220 (4<sup>th</sup> Cir. 1996). Accordingly, a population deviation of less than ten percent, *by itself*, will not support a legal challenge. However, a deviation of less than ten percent is not an absolute safe harbor; the presumption of good faith effort is subject to rebuttal and can be overcome on a showing that the process was tainted with arbitrariness or discrimination, or based on other data that indicates that racial minorities or other political groups are disadvantaged in representation. *Brown*, 462 U.S. 835, 842; *Larios*, 300 F.Supp.2d 1320, 1340; *Daly*, 93 F.3d 1212, 1220. Possible criteria for use in a good faith effort are described in Section III(C) below.

A deviation greater than ten percent is evidence of a violation of the Fourteenth Amendment and Oakland would be required to justify the population disparity by showing a legitimate policy for the redistricting plan. *Id.*; *Larios v. Cox*, 300 F.Supp.2d 1320, 1340 (N.D.Ga. 2004, *aff'd* , 542 U.S. 947 2004).

The fact that there may be a possibility of drafting a better plan is insufficient to show a violation of the Fourteenth Amendment. *Daly*, 93 F.3d 1212, 1220.

A redistricting effort that draws districts with perfectly equal populations is also not immune from legal challenge if it minimizes or cancels out the voting strength of a racial or political group. *Gaffney*, 412 U.S. 735, 751. For this reason, redistricting should typically be done with both census data and political data. *Id.* at 753-754.

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<sup>3</sup> Article 1, section 2 of the U.S. Constitution mandates that “one man’s vote in congressional election is to be worth as much as another’s.” This standard for federal redistricting only permits limited population variances which are unavoidable despite a good faith effort to achieve absolute equality. *Gaffney v. Cummings*, 412 U.S. 735 (1973). In *Reynolds v. Sims*, 377 U.S. 533 (1964) the Supreme Court interpreted the Equal Protection Clause of the Fourteenth Amendment as requiring the states to also apportion their congressional districts and legislative seats according to this principle of “one person, one vote.” *Id.* The standard explained in *Reynolds* was that states reapportion their districts as nearly of equal population as practicable and so long as the divergences from the strict population standard are based on legitimate considerations for the effectuation of a rational state policy they were constitutional. *Id.* This standard applies to local jurisdictions as well. See *Daly*, 93 F.3d 1212, 1217 (citing *Avery v. Midland County*, 390 U.S. 474 (1968)).

### **C. Other Standard Redistricting Criteria to be Considered During the Process**

In state and local redistricting, deviations from the equal population requirement are allowed in order to satisfy some common redistricting criteria. *Larios*, 300 F.Supp.2d 1320, 1331. These population deviations are only constitutional when “divergences are based on legitimate considerations incident to the effectuation of a rational ... policy”, and they are applied consistently throughout the districts. *Larios*, 300 F.Supp. 2d 1320, 1341. Any deviation must be free from discrimination or bias towards any particular interest or geographic area, and must not be arbitrarily applied. *Id* at 1341.

A rational policy may include that the:

- districts shall be composed of contiguous territory,
- districts shall be as geographically compact as practicable,
- no change in district shall exclude an incumbent before the expiration of his or her term,
- districts preserve relevant boundaries within the district,
- districts preserve the core of each district, and
- districts preserve communities of interest.<sup>4</sup>

*Larios*, 300 F.Supp.2d 1320, 1331-1337,1349 (citing *Karcher v. Daggett*, 462 U.S. 725 (1983)). The City Charter already mandates contiguousness, geographic compactness, and precludes the exclusion of incumbents. (Oakland Charter § 203.)

### **IV. Conclusion**

The City Charter governs the redistricting process for the City of Oakland. The City must undertake the process every ten years. The City Charter, federal law and the U.S. Constitution require that the City establish districts that are as equal in population as practicable, but that also take into account communities of interest, such as racial minorities and political groups, incumbent residency and the preservation of other relevant political boundaries within the district.

Prior to embarking on the redistricting effort the City Council may wish to adopt a resolution setting forth the City of Oakland redistricting criteria for the redistricting effort. This resolution would set a legislative policy statement of factors to be considered during the redistricting process and serve as a guide to the staff and public throughout

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<sup>4</sup> Communities of interest are local communities or neighborhoods that share social and economic interests and that should be kept together in a district for purposes of fair representation.

the process. This resolution is not a legal requirement. The redistricting effort may include public outreach, such as multiple public meetings in the affected districts, in order to obtain public input on some of the aforementioned criteria, such as identification of different communities of interest, and neighborhood and political boundaries in the affected districts.<sup>5</sup>

We recommend that when the Council ultimately adopts the redistricting ordinance, the ordinance set forth new districts whereby all seven Council Districts are as equal in population as practicable but also account for communities of interest, incumbent residency and the preservation of other relevant political boundaries within each district.

Very truly yours,



BARBARA J. PARKER  
City Attorney

cc: Mayor Quan  
City Administrator Santana  
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<sup>5</sup> The City Charter already mandates that the Oakland Unified School District (OUSD) Boundaries must be contiguous with the City Council district boundaries. See Oakland Charter § 404.