

QUESTIONS AND ANSWERS REGARDING REDISTRICTING

1. What legal principles govern the redistricting process?

The main legal principles governing redistricting are a) one person/one vote, b) Section 2 of the Voting Rights Act, c) Section 5 of the Voting Rights Act and d) the *Shaw v. Reno* line of cases arising from Voting Rights Act Litigation.

a. One Person/One Vote

The One Person/One Vote requirement arises from the Equal Protection Clause of the 14th Amendment to the United States Constitution (Constitution) and requires that City Council members be elected from voting districts of substantially equal population. A series of United States Supreme Court (Supreme Court) cases beginning in 1973 has established that a ten percent (10%) deviation from the least populated district to the most populated district is evidence of substantially equal population.

b. Section 2 of the Voting Rights Act

Section 2 of the Voting Rights Act (Section 2) prohibits the use of any election practice or procedure, including a redistricting plan, that “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color” or because of membership in a language minority group. The Supreme Court has set out three threshold elements that a minority group must prove in order to establish discriminatory intent: (1) that the minority group is large enough and sufficiently concentrated geographically to make up a majority in a single-member district; (2) that the minority group is politically cohesive; and (3) that the Anglo majority usually votes together to defeat the minority group’s candidate. If the minority group can satisfy these three requirements, a court will look at whether the minority group’s voting strength is diluted, based on the totality of the circumstances.

c. Section 5 of the Voting Rights Act

Section 5 of the Voting Rights Act requires that changes in a voting standard, practice or procedure of covered entities, including changes to the boundaries of single-member City Council districts, be approved before the change is implemented. Section 5 applies only to specific covered jurisdictions, primarily consisting of Texas and other southern states. During the Section 5 review, the retrogression standard is applied. In other words, the new plan cannot reduce the “effective exercise of the electoral franchise” when compared to the benchmark plan. The benchmark plan is the districting plan currently in effect.

d. *Shaw v. Reno*

Prior to a series of United States Supreme Court decisions beginning with *Shaw v. Reno* in 1993, the DOJ also looked at whether a proposed redistricting plan would provide the maximum possible number of minority districts. In the *Shaw* case, the state of North Carolina submitted a congressional voting plan with one majority-minority district. The DOJ

objected to the plan on the grounds that a second majority-minority district could have been created. North Carolina submitted a revised plan to the DOJ with a second majority-minority district, which was 160 miles long and oddly shaped. Several North Carolina residents challenged the plan. The Court held that a redistricting plan violates the Equal Protection Clause if a district is so bizarrely shaped that it cannot be explained on grounds other than race. Subsequent Supreme Court cases have held that race can be considered in drawing district boundaries, but may not be the “predominant” criterion.

2. How does the City meet its duty under Section 2 of the Voting Rights Act without violating the *Shaw v Reno* standard?

The City should follow the redistricting criteria adopted by the City Council on June 14, 2011, Resolution No. 3998-06-2011 [copy attached].

3. What do the terms “retrogression”, “cracking”, “packing”, “gerrymandering” mean?

- a. **Retrogression** is returning a minority group to a worse condition than exists under the current districting plan
- b. **Cracking** is the fragmentation of a minority group among different districts so that it is a majority in none. Another term for “cracking” is “fracturing.”
- c. **Packing** is a term used when one particular minority group is consolidated into one or more districts, thus reducing its electoral influence in surrounding districts.
- d. **Gerrymandering** the deliberate drawing of a district to secure an advantage for a particular group.

4. What process will be used to obtain preclearance of the City’s redistricting plan?

The City will submit its redistricting plan to the United States Department of Justice (DOJ) for preclearance. Title 28 of The Code of Federal Regulations details the items which are to be included in the submission, including documentation of the public participation process.

The United States Supreme Court has stated that the purpose of the preclearance requirement is to prevent changes in voting standards, practices or procedures that “would lead to retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise,” that is, it would cause minority voters to lose ground in the exercise of their voting rights compared with the preceding single-member district plan.

The City Council single-member district plan adopted by the City Council will be submitted to the DOJ and must satisfy objections, if any, raised by the DOJ. After a thorough review of the submitted redistricting documentation, the DOJ issues its finding. If the DOJ preclears the redistricting plan, it will issue a letter to the City stating “The Attorney General does not interpose any changes to the specified changes.”