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MEMORANDUM

TO: MEMBERS, Redistricting Task Force

CC: Mayor London N. Breed
MEMBERS, Board of Supervisors
MEMBERS, Elections Commission
John Arntz, Director of Elections
Angela Calvillo, Clerk of the Board of Supervisors

FROM: Andrew Shen
Ana Flores
Gus Guibert
Deputy City Attorneys

DATE: April 19, 2022

RE: Redistricting–Deadline and Process

In this memorandum, we provide guidance on the Redistricting Task Force’s (“RDTF’s”) deadline and process going forward. This guidance adds to the public memoranda that our Office provided to the RDTF on September 27, 2021, regarding the RDTF’s [duties and obligations](#) and [legal requirements for redistricting](#), and to the public memorandum that our Office provided the RDTF on [voting rights issues](#). (Those memoranda are available on [our Office’s website](#) and on [the RDTF’s website](#).) This guidance also reflects advice that we have given orally to the RDTF at previous public meetings.

1. What is the deadline for the RDTF’s approval of a final map, and what are the consequences of failing to meet that deadline?

Charter Section 13.110(d) requires the RDTF to “complete redrawing district lines before the fifteenth day of April of the year in which the first election using the redrawn lines will be conducted.” Because the City will use the new district lines for the supervisorial elections to be held on November 8, 2022, the Charter deadline for the RDTF’s final map was April 14, 2022.

The California Elections Code’s (“EC’s”) deadlines for local redistricting do not apply to San Francisco. EC Section 21622 establishes deadlines for local jurisdictions’ redistricting processes but provides that its deadlines do not apply to “a charter city that has adopted a different redistricting deadline by ordinance or in its city charter.” Since San Francisco has adopted such a deadline in Charter Section 13.110(d), the EC’s deadlines do not apply.

The Charter does not provide for an extension of the deadline. Nor does the Charter anticipate a failure to meet the deadline or provide for a remedy in such an event of failure. Now that the RDTF has failed to meet the Charter deadline, there is a risk of possible litigation by a third party. But regardless of any litigation, the RDTF still has a duty under the Charter to complete its work and approve a final map with new district lines in time for the November 8, 2022 election.

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2. What are the next steps now that the RDTF has failed to meet the Charter deadline to adopt new district lines?

Even though it has failed to meet the Charter deadline, the RDTF must complete its legal duty under the Charter to adopt new district lines.

The Department of Elections (“Elections”) has publicly shared that, as an operational matter, the RDTF must complete its work no later than May 2, 2022. Elections arrived at this date to allow it to complete the necessary steps in advance of the nomination period for the upcoming supervisorial elections. That nomination period begins on May 20, 2022.

The Clerk of the Board of Supervisors (“Clerk”) has made available to the RDTF three public meeting dates—April 21, 25, and 28. With these three meeting dates, the RDTF has sufficient time to complete its task of redrawing district lines. But there is no cushion in this schedule for any further delays.

3. Does the RDTF have sufficient time to adopt a final map by Elections’ May 2, 2022 operational deadline?

Yes, as mentioned under question no. 2 above, but there can be no further delays. And the RDTF must adopt a new final draft map at its next meeting, scheduled for Thursday, April 21, 2022, under the current schedule proposed by the Clerk.

The EC imposes hearing and online posting requirements between the adoption of a final draft map and a final map. These procedural requirements apply to the City’s redistricting process under its Charter. EC Section 21627.1(a)(2) requires two hearings to be held after the redistricting body has drawn a draft map and before its adoption as a final map. EC Section 21628(d)(1) requires that a draft map be posted online for at least three days before its final adoption. Also, as we have consistently advised the RDTF in public, after adopting a final draft map, the RDTF may make only technical changes before adopting the final map. Such technical changes include corrections or minor clean-up, but not substantive changes that reverse prior decisions voted on by the RDTF.

Because we understand from the Clerk that only three more meeting dates are available to the RDTF, and because state law requires two additional hearings after a new draft map is adopted, the RDTF must adopt a new final draft map at its next meeting. Otherwise, the RDTF will miss its May 2, 2022 operational deadline and compromise the City’s elections-related deadlines in advance of the November 8, 2022 election.

4. When is the RDTF’s next meeting and what are its options at that meeting?

On Monday, April 18, 2022, the RDTF posted its notice and agenda for a meeting to be held on Thursday, April 21, 2022, beginning at noon. The agenda includes a mapping item for further live line drawing. The agenda further provides that the RDTF will begin its live line drawing with Map 7 (as described below), but the RDTF may also discuss and modify any map that it considered at an earlier meeting.

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Accordingly, there are two main options for the RDTF to act to adopt a new final draft map at this April 21, 2022 meeting.

a. After further live line drawing, the RDTF may adopt a modified version of Map 7 as a final draft map that it could later approve as a final map.

At the conclusion of the RDTF’s April 13, 2022 meeting, the majority of the body expressed an intent to continue mapping but with what some members have referred to variously as the “blow-up,” “harmony,” or “healing” map as the starting point for discussions. The RDTF’s Redistricting Consultant has since made that map available on the [RDTF map viewer](#), as Map 7. If at its meeting on April 21, 2022 the RDTF makes further changes to Map 7, and adopts the modified version as a final draft map, then the RDTF may adopt this modified Map 7 as the final map after two additional meetings. To satisfy the EC requirements described above, the modified Map 7 would undergo two additional hearings. The Clerk informed you that April 25 and April 28 are potential additional RDTF meeting dates. If those meetings are scheduled, the RDTF could finally approve the modified Map 7 as a final map on April 28.

b. After further live line drawing, the RDTF may adopt a modified version of any prior visualization as a final draft map that it could later approve as a final map.

As an alternative to adopting a modified Map 7, the RDTF may choose to further discuss or modify any prior map it considered at one of its earlier meetings and approve any such map at the conclusion of the April 21 meeting as a new final draft map. Such a final draft map would also require the additional hearings described above—on April 25 and 28—and the RDTF could finally approve it on April 28.

If the RDTF does not adopt a final draft map at its April 21, 2022 meeting, then, under the current meeting schedule described under question no. 2 above, the RDTF could not complete drawing new district lines by May 2, 2022.

5. If the RDTF adopts a final map by May 2, 2022, are the new district lines subject to further approval by any City bodies or officials?

No. Charter Section 13.110(d) provides that after the RDTF approves a final map, the “Board of Supervisors may not revise the district boundaries established by the Task Force.” Likewise, the Charter does not provide the Mayor with any legal authority to modify the final map.

6. Once the RDTF adopts a final map, when are the new district lines legally effective?

Upon the RDTF’s adoption of a final map, the new district lines are immediately effective. The Charter does not provide for a delayed effective date, and because the Board of Supervisors does not take any legislative action to approve the final map, it is not subject to

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referendum. Further, as a practical matter Elections must immediately employ the new district lines to prepare for the upcoming supervisorial elections.

7. Under the Charter, what legal criteria must any new district lines satisfy?

The Charter limits population variation between districts. The Charter presumptively limits population variation to plus or minus 1% between districts, but allows population variation up to plus or minus 5% in the following circumstances:

- if necessary to prevent minority vote dilution under the Federal Voting Rights Act (“VRA”), or
- if necessary to keep recognized neighborhoods intact.

The new district lines must also reflect communities of interest and adjustments, as appropriate, based on public input at public hearings. As we have advised, the Charter does not define communities of interest, but that term generally includes contiguous populations with common social or economic interests.

In addition to the Charter, any new district lines must satisfy the Equal Protection Clause of the Fourteenth Amendment and the VRA.

We discussed all of these legal requirements in further detail in a public [memorandum](#) that our Office provided to the RDTF on September 27, 2021. More recently, on March 14, 2022, our Office provided the RDTF with a public [memorandum](#) regarding the VRA. (Again, these memoranda are also available on [our Office’s website](#) and on [the RDTF’s website](#).)

8. Are Board members, the Mayor or any other City officials legally prohibited from expressing their views on the RDTF’s process or communicating with RDTF members?

No. Generally, City officials are not legally prohibited from expressing their views or communicating with RDTF members. (An exception might apply for a particular official if the particular line drawing would affect that official’s own eligibility to run for elective office, in which instance that official may have a financial conflict of interest.) But to avoid any interference with the RDTF’s process, our Office continues to recommend that City officials refrain from any such expressions or communications, unless they are made publicly.

9. Must the RDTF adopt a final report regarding its final map?

No, the Charter does not require the RDTF to adopt a final report. But in at least the last two redistricting processes, the previous task force bodies adopted a final report in addition to a final map. For the 2011-12 redistricting process, the final report provided an overview of the criteria that the body used, a description of the process, a description of the key considerations that the body made in making decisions to redraw district lines, and recommendations for future redistricting processes.

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Here, the RDTF should consider adopting a final report to explain its decision-making to the public and provide an opportunity for recommendations for the future. As to the timing of adopting a final report, the RDTF is not required to adopt a final report when it adopts its final map. The RDTF may do so at a later meeting. The RDTF may delegate the drafting of the final report to one or more of its members. The final report may include contributions or submissions from the RDTF’s consultants and City departments, such as Elections and the Clerk, as the RDTF deems appropriate. And, the final report may also include dissenting or minority viewpoints from RDTF members.

10. Can the Board of Supervisors seek judicial relief under EC Section 21629, now that the RDTF has missed the Charter deadline?

No. EC Section 21629 provides that if a redistricting body like the RDTF fails to meet “the deadlines set forth in Section 21622,” a city council may petition a local superior court for an order adopting new district lines, including seeking appointment of a special master to do so. But as explained under question no. 1 above, the deadlines in EC Section 21622 do not apply to San Francisco, thus foreclosing this remedy. For the same reason, a San Francisco resident also may not file a petition under EC Section 21629. But, as also mentioned above, a third party, such as a San Francisco resident, might seek to file a lawsuit based on the missed Charter deadline.

We hope that this guidance provides a helpful framework for the RDTF to complete its work by May 2, 2022. As mentioned above, this guidance primarily reflects advice that we have given to the RDTF in earlier public memoranda or during public meetings, and we do not intend that it constitutes any waiver of the attorney-client or work product privileges.