

January 20, 2022

Honorable Chair Hebrank and Commissioners,

Subject: Independent Redistricting Commission/No Council or Mayor Interference

I have some concerns about the 2020 Redistricting Commission's proposed recommendations regarding the Bylaws to be used by the 2030 Redistricting Commission.

The Independent Redistricting Commission was created so that there would be no interference by the Mayor or Councilmembers. In particular,

Charter section 5.1 was enacted by the voters in 1992 to create an independent Redistricting Commission to draw City Council districts in compliance with the law. The Charter provides there is to be no role for the City Council in the redistricting process, other than to appropriate funds adequate to carry out the Commission's duties and to consider the budget approved for the Commission by the Presiding Judge. Charter Section 5.1 also directs that district boundary lines will "not be drawn for the purpose of advantaging or protecting incumbents." (Ref. May 6, 2011 Memorandum of Law to the City Council from City Attorney Jan Goldsmith, Deputy City Attorney Sharon Spivak SUBJECT: Role of City Council and City Attorney in Redistricting Process – Attachment 1)

This is discussed in a contemporaneous article by the Voice of San Diego on May 8, 2011. (Attachment 2)

Unfortunately, the recommendations from the 2020 Redistricting Commission to the 2030 Redistricting Commission include a provision that they start with the 2010 Bylaws and keep Article 5, Section 6 of the 2010 Bylaws.

The Commission suggests that the next Commission begin with this document [the 2010 Bylaws] and consider whether revisions are needed. The Commission suggests that the next panel preserve Article 5, Section 6 of the 2010 Commission Bylaws governing comments between Commissioners and the public, press, and government officials.

Why not use the 2020 Bylaws for this section?

There is an important difference between the 2020 and 2010 Bylaws for Article 5, Section 6.

The third paragraph from Article 5, Section 6 of the 2010 Bylaws (Attachment 3) is:

*Commissioners shall not, however, communicate outside of a public meeting with the Mayor or any member of the San Diego City Council, or their representatives, regarding redistricting matters. **If the Mayor or any member of the City Council, or their representatives, wish to present testimony or public comment, such testimony or public comment shall only be accepted if it is presented orally at a public meeting or presented in writing and disclosed to the public either before or during a public meeting. [emphasis added]** This paragraph shall not restrict the Commission Chair from communicating with City staff regarding administrative matters of the Commission.*

The sentence in bold was not included in the 2020 Bylaws. Hence there was no provision for the Mayor, Councilmembers or their representatives to present public comment or testimony to the Redistricting Commission.

Additionally, the sixth paragraph under Article 5, Section 6 in the 2010 Bylaws was not included in the 2020 Bylaws. It stated:

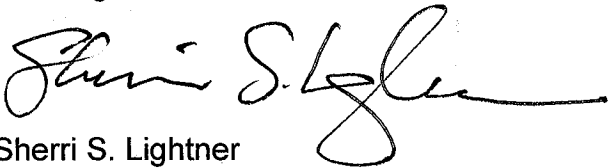
The Commission shall keep a log of all substantive communications between Commissioners and the Mayor or any member of the City Council, or their representatives, the public, organizations and interest groups, that occur outside public meetings. The log will include the name of the person or organization, date of contact, and general description of the communication. The log will be published on the Redistricting Commission website and regularly updated.

The first sentence of this sixth paragraph does not make sense given the first sentence of the third paragraph, which says that there is not to be any communication outside the public meetings.

In summary, the 2030 Commission should start with the 2020 Redistricting Commission Bylaws and make sure that it is clear the Mayor, Councilmembers or their representatives are not to participate in the process in any manner.

Any draft Bylaws that are considered by the 2030 Commission should be reviewed by the City Attorney's office to assure that they are in compliance with and properly implement the Charter and municipal code requirements for Redistricting.

Best regards,

A handwritten signature in black ink, appearing to read "Sherri S. Lightner", with a long, sweeping horizontal line extending to the right.

Sherri S. Lightner

Attachments

1. May 6, 2011 Memorandum of Law to the City Council from City Attorney Jan Goldsmith, Deputy City Attorney Sharon Spivak SUBJECT: Role of City Council and City Attorney in Redistricting Process
2. May 8, 2011 Voice of San Diego Article by Adrian Florido, "City Attorney to Council: Butt Out."
3. 2010 Redistricting Commission Bylaws

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 236-6220

DATE: May 6, 2011
TO: City Council
FROM: City Attorney Jan Goldsmith
Deputy City Attorney Sharon Spivak
SUBJECT: Role of City Council and City Attorney in Redistricting Process

Our office would like to reiterate the role of the City Council and the City Attorney in the City of San Diego's redistricting process and with regard to the independent Redistricting Commission.

Charter section 5.1 was enacted by the voters in 1992 to create an independent Redistricting Commission to draw City Council districts in compliance with the law. The Charter provides there is to be no role for the City Council in the redistricting process, other than to appropriate funds adequate to carry out the Commission's duties and to consider the budget approved for the Commission by the Presiding Judge. Charter Section 5.1 also directs that district boundary lines will "not be drawn for the purpose of advantaging or protecting incumbents."

Moreover, although the City Attorney's Office provides legal advice to the Redistricting Commission under Charter sections 5.1 and 40, our office does not draft the map and its boundaries and does not sign off on a redistricting plan. The independent Redistricting Commission has exclusive authority to draft the map and sign the plan.

The Commission's bylaws preclude Redistricting Commissioners from speaking with City Councilmembers outside of a public hearing regarding matters related to redistricting. Councilmembers may, however, testify at public meetings of the Commission.

JAN I. GOLDSMITH, City Attorney

By

Sharon B. Spivak
Deputy City Attorney

cc: Mayor Jerry Sanders
Redistricting Commission

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City Attorney to Council: Butt Out

Jan Goldsmith reminds City Council it has no role in redistricting after Councilwoman Lorie Zapf attempts to influence the process.

Adrian Florido

May 8, 2011



San Diego City Attorney Jan Goldsmith's office shot off [a memo](#) to City Council members on Friday, telling them the city charter provides no role for the council in redistricting, except to fund the independent Redistricting Commission's work.

The memo came a day after the IT services agency that

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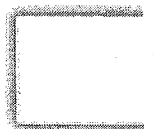
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commission in any way, citing conflict of interest concerns raised by Councilwoman Lorie Zapf.

That decision threw the commission's next steps up in the air as it pushes to meet a late summer deadline for adopting a new redistricting plan. On April 21, it rejected four private consultants' proposals to help commissioners with that work and had said it would pursue a contract with the San Diego Data Processing Corp., the city-created IT services agency.

The agency originally said it could perform the work. Then Wednesday it told the commission the job was too much for its staff to handle, though it was still willing to help commissioners acquire online software that the public could use to submit their own proposed boundary maps, something the commission would like the public to be able to do. Its executive director finally told the commission Thursday it would not do even that to avoid a potential conflict of interest.

Zapf first raised those concerns on April 21, when she asked the city attorney to examine whether the commission's intention to pursue a contract with DPC could create conflicts. As the city moves to outsource its IT services, the City Council will decide on the winning bidder, and Zapf said she was concerned that DPC's responsibility to draw fair district boundaries for the commission could be compromised by its interest



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Goldsmith's office responded by telling Zapf that was not enough to disqualify DPC, and that the Redistricting Commission was free to contract with whoever it pleased. The city attorney also reminded Zapf that the City Council has no role in the redistricting process.

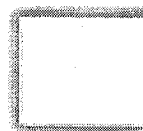
Nonetheless, Zapf on Thursday sent a letter to DPC's board chairman explicitly asking the agency not to work with the Redistricting Commission and reiterating that she was concerned about a possible conflict.

Just before the Redistricting Commission's meeting that day, DPC's executive director, Larry Morgan, informed the commission's chief of staff that the agency would recuse itself from any involvement because of the potential for a conflict.

Morgan informed Zapf's spokesman of that decision in an email a couple of hours later. Morgan told the spokesman the decision had already been made by the time he saw Zapf's request.

"I agree with Councilmember Zapf and SDDPC has already recused itself from this project to avoid the very issues that were raised. I believe that this is the best posture for SDDPC and the city," he said in the email.

Please contact Adrian Florido directly at



BYLAWS
&
OPERATING PROCEDURES
of the
CITY OF SAN DIEGO 2010 REDISTRICTING COMMISSION

ARTICLE 1 Name and Purpose

- Section 1. The name of this commission is the CITY OF SAN DIEGO 2010 REDISTRICTING COMMISSION, hereinafter referred to as the Commission, with each member registered to vote in the City of San Diego. All of the activities of this Commission will be conducted in its official name.
- Section 2. The sole and exclusive authority to adopt plans which specify the boundaries of districts for the City Council is vested in the Commission. After the decennial census, the Commission will adopt plans that redistrict the City into nine (9) Council Districts designated by one (1) to nine (9) inclusively. Those districts will be used for all elections of Council Members, including their recall, and for filling any vacancy in the office of member of the Council. No change in the boundary or location of any district by redistricting as herein provided will operate to abolish or terminate the term of office of any member of the Council prior to the expiration of the term of office for which such member was elected.
- Districts formed will each contain, as nearly as practicable, one ninth (1/9) of the total population of the City as shown by the Federal census immediately preceding such formation of districts.
- Section 3. It is the intent of the Commissioners to perform their duties to ensure fair and equitable redistricting for all racial, ethnic and language minorities, and be in conformance with the requirements of the U.S. Constitution and federal statutes as amended and the San Diego Charter.
- Section 4. To the extent it is practical to do so, districts will preserve identifiable communities of interest; be geographically compact-populous contiguous territory will not be bypassed to reach distant populous areas; be composed of whole census units as developed by the United States Bureau of the Census; be composed of contiguous territory with reasonable access

between population centers in the district, and not be drawn for the purpose of advantaging or protecting incumbents.

- Section 5. Positions and opinions of the Commission will not be established or determined by any other criteria than contained in Section 5 of the San Diego Charter.

ARTICLE II - Commissioners

- Section 1. Members of the Commission will be composed of seven (7) persons who have been appointed by three (3) retired Judges of the Superior Court, San Diego Judicial District drawn at random by the City Clerk pursuant to Section 5.1 of the San Diego Charter.
- Section 2. The Judges will appoint women and men who will give the Commission geographic, social and ethnic diversity, and who in their judgment, have a high degree of competency to carry out the responsibilities of the Commission. The appointees will include individuals with a demonstrated capacity to serve with impartiality in a non-partisan role.
- Section 3. Any vacancy in the Commission which occurs after the Commission is constituted will be filled within seven (7) calendar days by the same procedure and using the same criteria as the appointment of the initial Commissioners.
- Section 4. Any vacancy created by continuous absences (without approval of the Chair) will not exceed three (3). Upon such occurrence the Commission, by the majority vote, can recommend to the Appointing Authority, removal of the member for cause.

ARTICLE III - Officers and Chief of Staff

- Section 1. Officers will include a Chair and Vice Chair.

Their duties are as follows:

The Chair will convene and conduct regularly scheduled and or special Commission meetings, order committee meetings and other activities germane to the Commission.

All public statements will be the responsibility of the Chair and any inquiries will be directed to his or her attention.

The Vice Chair will chair meetings and duties in the absence or instruction of the Chair.

- Section 2. The Commission shall employ a Chief of Staff who shall serve at the Commission's pleasure, exempt from Civil Service, and shall contract for needed staff, technical consultants and services, using existing City staff to the extent possible. Aye votes by 5 members of the Commission shall be required for the appointment of its chief of staff.

The duties of the Chief of Staff will be consistent with the job description approved by the Commission, and consistent with such other instructions or requests that are later provided by the Commission.

- Section 3. The Chairperson of the 2010 Redistricting Commission will be the point of contact for the Chief of Staff and will supervise the Chief of Staff's work for the purpose of performance evaluation. The Vice-Chairperson will be the designated alternate should the Chairperson not be available.

The Redistricting Commission requires that the process of redistricting be open and transparent to the fullest extent possible. It is only with the trust and cooperation of the public that the Commission can succeed in its task. To ensure that the Commission's standards are met, Commissioners require the Chief of Staff to abide by the following:

- The Chief of Staff shall keep a log of all substantive communications the Chief of Staff has with the public, organizations or interest groups. This log will be published on the Redistricting Commission website. The log will include the name of the person or organization, date of contact and general description of the communication.
- The Chief of Staff will also collect information for a similar log from Commissioners and publish this on the Redistricting Commission website.
- The Chief of Staff shall not have private meetings or discussions with the Mayor, or any member of the City Council, or their representatives. This provision, however, is not intended to

prohibit the discussion by the Chief of Staff with such persons of procedural information, such as discussion of the time, place and list of items on the agendas of upcoming meetings, conversations necessary to coordinate the holding of public meetings, or conversations necessary to conduct the day-to-day operations of the Commission.

- The Chief of Staff must keep the website current.

ARTICLE IV - Meetings

- Section 1. Commission meetings will be open to the public and all records and data will be available at no charge to the public for inspection in the Office of the City Clerk during normal business hours. Copies of records and plans shall be provided, for a reasonable fee, for any interested person.
- Section 2. The Chair will establish regular and special meetings according to the requirements of the activities of the Commission and provide notices to the public thereof.
- Section 3. The Commission shall make every reasonable effort to have meetings to afford maximum public access to its proceedings. It will solicit public comment and will hold at least four (4) public hearings in various geographic areas of the City before the preparation of a preliminary redistricting plan.
- Section 4. Commission staff shall make its best efforts to count the number of members of the public attending a meeting and enter such tally into that meeting's minutes. Commission staff shall also make its best efforts to include the number of phone calls, emails, and visits staff fielded from the public in the previous month. Commission staff shall report at each regular meeting the status of receipt of final Census data until such information is officially received.
- Section 5. Within sixty (60) days after the Commissioners are appointed, the Commission will adopt a budget and submit it to the Appointing Authority. If it is approved, the budget will be forwarded to the City Council for its consideration. The City Council shall appropriate adequate funds to the Commission and to the City to carry out their duties

- Section 6. At least thirty (30) days prior to the adoption of the final plan, the Commission will file a preliminary plan with the City Clerk, along with a written statement of findings and reasons for adoption which includes notation of all criteria employed in the process and a full analysis and explanation of decisions made by the Commission.
- Section 7. During the thirty (30) day period after the filing, the Commission will hold at least three (3) public hearings in various geographic areas of the City before it adopts a final plan. Upon approval of the final plan, the Commission will adjust the boundaries of any or all of the Council districts of the City pursuant to the final plan. The final redistricting plan will be effective thirty (30) days after adoption and will be subject to the right of referendum in the manner as are ordinances of the City Council. If rejected by referendum, the same Commission will create a new plan pursuant to the criteria set forth in Sections 5 and 5.1 of the City Charter.

ARTICLE V - Policies

- Section 1. Decision for comportment or action of the Commission will be by majority vote of members.
- Section 2. Commissioners will request acknowledgment from the Chair to speak to an issue.
- Section 3. Commissioners are expected to attend all meetings.
- Section 4. Persons who accept appointment to the Commission, at the time of their appointment, shall file a written declaration with the City Clerk stating within five (5) years of the Commission's adoption of a final redistricting plan, they will not seek election to a San Diego City public office. The members of the Commission will serve until the redistricting plan is adopted and becomes effective and all legal and referendum challenges have been resolved.
- Section 5. To avoid conflicts of interest, all Commissioners will be governed by the highest standards of conduct in compliance with any applicable conflict of interest laws regarding their actions or decisions on issues of redistricting matters which may be of personal or financial benefit to themselves, members of their immediate or extended family and associates.

Section 6. Commissioners shall be mindful that the City Charter requires that they have "a demonstrated capacity to serve with impartiality in a non-partisan role." Commissioners should avoid any action or communication that could be interpreted to compromise their ability to serve in that regard.

In addition, the Commission is committed to transparency, fairness and openness with the public. Thus, to the extent possible, Commissioners should attempt to avoid communications regarding Redistricting Commission business outside of public meetings.

Commissioners shall not, however, communicate outside of a public meeting with the Mayor or any member of the San Diego City Council, or their representatives, regarding redistricting matters. If the Mayor or any member of the City Council, or their representatives, wish to present testimony or public comment, such testimony or public comment shall only be accepted if it is presented orally at a public meeting or presented in writing and disclosed to the public either before or during a public meeting. This paragraph shall not restrict the Commission Chair from communicating with City staff regarding administrative matters of the Commission.

Commissioners shall publicly disclose all substantive communications they have regarding redistricting with any member of the public, or organizations or interest groups, regarding redistricting outside of public meetings. This provision is not intended to prohibit the discussion of procedural information, such as discussion of the time, place and list of items on the agendas of upcoming meetings.

Communications include all oral, written and electronic communications. Copies of all written and electronic materials received by a Commissioner regarding redistricting matters shall be forwarded to the Chief of Staff for distribution to all Commissioners and the public.

The Commission shall keep a log of all substantive communications between Commissioners and the Mayor or any member of the City Council, or their representatives, the public, organizations and interest groups, that occur outside public meetings. The log will include the name of the person or organization, date of contact, and general description of the communication. The log will be published on the Redistricting Commission website and regularly updated.

Section 7. Commissioners and Commission staff should not publish opinions about Commission redistricting matters on social networking websites. This

paragraph is not intended to prohibit the publication of information regarding the time, place and agendas of upcoming meetings.

- Section 8. Commissioners and Commission staff shall make reasonable effort to archive operational information such as selection of IT and office resources, off-site locations, meeting attendance, budget matters, PR/marketing logistics and other such operational information that will be beneficial to the 2020 Redistricting Commission. Creating such an "Institutional Memory" is intended to facilitate and make more efficient future Redistricting Commissions. The City Clerk shall be asked to maintain such archives.

ARTICLE VI - Amendments

- Section 1. These Bylaws may be amended by majority vote of the Commissioners and be submitted to the Chief of Staff to be sent out with regular Commission notices.

These Bylaws were approved at a meeting of the CITY OF SAN DIEGO 2010 REDISTRICTING COMMISSION on November 22, 2010 and amended on February 3, 2011.