Memorandum

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| To: | Newberg City Council |
| From: | James Walker |
| Subject: | Redistricting re 2020 U.S. Census |
| Date: | July 9, 2021 |
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**I. QUESTIONS PRESENTED**

1. What is the purpose of redistricting?

2. What are the applicable requirements provided by the City Charter, state law, the Oregon Secretary of State, or federal law for redistricting?

3. Is there a process for redistricting?

4. What is the timeline? Is there a specific deadline, or any special considerations?

**II. SHORT ANSWERS**

1. The U.S. Census data and redistricting accounts for population changes to ensure that political representation at the local, state, and federal electoral level is equal. The City Charter provides that councilors are nominated from each district but elected at large. For the City, depending on population shifts, redistricting may affect residential requirements for city councilors.

2. The City Charter provides that districts should represent, as near as practical, the same number of electors. State law provides statutory guidance for the Oregon legislature to consider when redistricting. The Oregon Secretary of State issues redistricting directives, which includes many of the same requirements as the state statue. The main criteria include that the district be contiguous, utilize existing geographic or political boundaries, not divide communities of interest, be connected by transportation links, be of equal population, not drawn to favor a political party, incumbent, or other person, and cannot dilute the voting strength of any language or ethnic minority. Similar to state law, federal law provides that districts be of equal population, and cannot dilute the voting power of a language or ethnic minority population.

3. The City Charter and state law do not include specific procedures for local governments to comply with during redistricting. The Secretary of State adopts a directive with each new census that is prudent to follow. The 2011 Secretary of State directive recommends that cities engaged in redistricting work closely with the County Clerk, and notify the Clerk once the City completes redrawing district lines.

4. The City Charter provides that redistricting should be done within a reasonable time after the U.S. Census data is available, or when the city orders. Currently, the Oregon Legislature is awaiting the U.S. Census data to complete redistricting and has until September to create a plan. The entire redistricting process should be complete by February. One of the main concerns is completing redistricting before the next election to ensure candidates can submit all necessary information and ascertain their representative districts when running for office.

**III. DISCUSSION**

**A. Background**

Redistricting occurs every ten (10) years, allowing the Oregon legislature to redraw the boundaries of electoral districts for the purposes of future elections. District boundaries can affect where a candidate lives, a representative's constituents, or who can vote for certain candidates. The U.S. Census provides detailed population counts and demographic information to ensure that redrawing the maps is proportional and upholds the constitutional aim of "one man, one vote."[[1]](#footnote-1) Redistricting occurs for the purposes of federal, state, and local elections. This year the COVID-19 pandemic delayed the U.S. Census data.

After the delay became evident, the Oregon Legislature and Oregon Secretary of State engaged in a legal battle over which entity would be responsible for redistricting.[[2]](#footnote-2) Oregon law provides that the legislature must complete redistricting by July 1 of the year following the U.S. Census.[[3]](#footnote-3) If the legislature fails to meet this deadline, then the Oregon Secretary of State is required to make a reapportionment plan by August 15.[[4]](#footnote-4) The Oregon Supreme Court concluded that the power should remain with the legislature, and provided the legislature with a new deadline of September 27, 2021.[[5]](#footnote-5) Under the plan, the process should be completed no later than February 8th, which provides sufficient time before the next election cycle.

On April 26, 2021, the U.S. Census Bureau announced the apportionment results of the 2020 Census.[[6]](#footnote-6) The results show that Oregon will gain a sixth congressional district. The data necessary for redistricting, however, will not be available until August.

**B.**  **Newberg Districts and Representation.**

The Newberg City Charter provides that the City must be "divided into six geographical areas representing as near as practical, the same number of electors."[[7]](#footnote-7) Councilors are nominated from the districts and elected at-large.[[8]](#footnote-8) Each councilor "must have and maintain their residence in the district from which they were nominated during the term of their office, except as provided in the reapportionment."[[9]](#footnote-9) During redistricting, however, a "councilor in office shall not lose their qualification for office by reason of the boundary change for the remainder of their term, unless otherwise disqualified."[[10]](#footnote-10)

**C. The City Charter, state law, Oregon Secretary of State, and federal law address redistricting, providing similar requirements.**

a. The City Charter does not provide any concrete requirements for redistricting.

The City Charter does not provide any specific guidance on redistricting, aside from stating that there must be six districts that "as near as practical" represent "the same number of electors."[[11]](#footnote-11) The Charter also provides that reapportionment must occur "whenever the United States Census is taken and within a reasonable time after the data is available, or when the city so orders."[[12]](#footnote-12)

b. State law provides guidance on redistricting for the Legislative Assembly and Congress.

Under ORS 188.010, the Oregon Legislature and Secretary of State, consider the following criteria when apportioning districts:

1. Each district, as nearly as practicable, shall:
   1. Be contiguous;
   2. Be of equal population;
   3. Utilize existing geographic or political boundaries;[[13]](#footnote-13)
   4. Not divide communities of common interest;[[14]](#footnote-14) and
   5. Be connected by transportation links.[[15]](#footnote-15)
2. No district shall be drawn for the purpose of favoring any political party, incumbent legislator, or other person.
3. No district shall be drawn for the purpose of diluting the voting strength of any language or ethnic minority group.

Similar to federal law, discussed below, the Oregon Constitution provides an equal population requirement. The Oregon Constitution does not require strict equality across, but the exact amount of imbalance that is permitted is unclear. The Oregon Supreme Court has yet to opine on what amount of deviation would violate equal population requirements.[[16]](#footnote-16)

c. The Oregon Secretary of State issues redistricting directives that cities and local governments must follow.

Under ORS 246.410, after the U.S. Census, the Secretary of State must prepare a detailed and comprehensive directive providing guidance for fixing electoral district boundaries.[[17]](#footnote-17) The directive is provided to local governments,[[18]](#footnote-18) and local governments that fix electoral districts based on U.S. Census data are to do so in accordance with the directive of the Secretary of State.[[19]](#footnote-19)

In 2011, the Secretary of State directive stated that each district, as nearly as practicable, must be contiguous; utilize existing geographic or political boundaries; not divide communities of common interest; be connected by transportation links, and be of equal population.[[20]](#footnote-20) No district can be drawn to favor a political party, incumbent, or other person, and no district can be drawn to dilute the voting strength of any language or ethnic minority group.

The 2011 directive also provides that County Clerks should "coordinate with and consider newly drawn legislative and congressional district boundaries as well as the boundaries of neighboring jurisdictions when drawing districts."[[21]](#footnote-21) County Clerks must also, as nearly as practicable, "contain precincts wholly within one state House district and Congressional district, and should seek to minimize the change to current precincts."[[22]](#footnote-22) To the extent possible, County Clerks should also consider forecasted population trends.

The 2021 directive for redistricting has not yet been released.

d. Federal Law provides that districts must be of equal population, and not drawn to dilute the voting power of language or ethnic minorities.

Federal law also requires that local electoral districts be roughly equal in population.[[23]](#footnote-23) This is often referred to as the "one-person, one-vote" rule. This requirement prevents diluting one person's vote when they live in a more populated area. Courts have found that redistricting complies with the one-person, one-vote requirement if the deviation between the population of the largest and smallest district does not exceed 10 percent.[[24]](#footnote-24) When the U.S. Census data is available, the City should ensure that existing districts continue to comply with the equal population requirement.

The Voting Rights Act of 1965 protects against the dilution of the voting power of language and ethnic minorities.[[25]](#footnote-25) A violation of the Voting Rights Act occurs when there is a dilution of the voting power based on a totality of the circumstances.[[26]](#footnote-26) Dilution can occur when redistricting divides minority groups into various districts, or packs a minority group into a few districts.

Federal law also prohibits racial gerrymandering. Racial gerrymandering occurs when race is a predominant factor in redrawing district lines.[[27]](#footnote-27) Therefore, the City must balance dilution under the Voting Rights Act while not making race a predominant consideration.[[28]](#footnote-28)

**D. Process**

There does not appear to be any clear requirements for the City or local governments in adopting or creating a redistricting plan. The City Charter and state law do not provide similar requirements for the City as it does for the Oregon Legislature, such as the number of public hearings before and after the adoption of the plan.[[29]](#footnote-29) The 2011 directive provides a notification recommendation—that the City should notify the County Clerk when a plan is adopted.[[30]](#footnote-30) Additionally, the directive recommends close consultation with County Clerks in drawing new boundaries.[[31]](#footnote-31)

In 2010, the City announced that it would be redistricting using the following guidelines:

1. Definition of "elector" - number of persons 18 years or older as defined by census.
2. Deviation allowed - redistricting guidelines allow a 10 percent deviation between the population of the largest and smallest district.
3. General boundary guidelines:
   1. Each district as nearly as practicable, shall:
      1. Be contiguous and compact;
      2. Follow readily recognizable geographic boundaries, such as major road, rail lines or creeks;
      3. Follow existing political boundaries. Note that the City is currently only in one state and federal election district, so the only political boundary is the existing council district;
      4. Include recognized neighborhoods in the same district, and not divide communities of common interest; and
      5. Connected to transportation links.
      6. Allow for growth so that districts will retain roughly equal numbers of electors until the next census.
   2. No district shall be drawn for the purpose of favoring any political party, incumbent councilor, or other person.
   3. No district shall be drawn for the purpose of diluting the voting strength of any language or ethnic minority group.

**E. Timeline**

The City Charter does not provide a strict timeline for redistricting. The City must redistrict "within a reasonable time after the [U.S. Census] data is available, or when the city so orders."[[32]](#footnote-32) The U.S. Census data will be available to the Oregon Legislature in late August. The Oregon Legislature will have until September 27, 2021 to create a redistricting plan. The process should be complete by February 8, before the next election cycle.

**IV. CONCLUSION**

Although the timeline for redistricting has been postponed, the City, like the state, may be operating on an expedited timeline to finalize new district maps before the next election cycle. The guidelines and considerations for redistricting are similar under state and federal law, which mirrors the previously adopted city guidelines for 2010.

The City may have additional considerations beyond the legal parameters for redistricting, including hiring a firm to conduct the data analysis, provide the mathematical calculations, and/or proposed various redistricting options.

1. Reynolds v. Sims, 377 US 533 (1964) (equal protection requires that state legislative districts should be roughly equal by populations). [↑](#footnote-ref-1)
2. *See* State ex rel Kotek v. Fagan, 367 Or 803 (2021) (discussing Article IV, section 6 of the Oregon Constitution). [↑](#footnote-ref-2)
3. Kotek, 367 Or at 806. [↑](#footnote-ref-3)
4. *Id*. [↑](#footnote-ref-4)
5. *Id*. at 821 (Appendix 2); *see also Dirk VanderHart*, [Oregon justices side with Legislature, grant extension on redrawing political maps](https://www.opb.org/article/2021/04/09/oregon-redistricting-census-shemia-fagan-legislature/), OPB (Apr. 9, 2021) ("In most redistricting years, the Legislature has three months to analyze census data and complete maps. The court's timeline will give lawmakers less than 45 days, assuming the Census Bureau delivers data by Aug. 15."). [↑](#footnote-ref-5)
6. Oregon State Legislature, [*Oregon Redistricting*](https://www.oregonlegislature.gov/redistricting)("the block-level data used for redistricting will not be available until August"). [↑](#footnote-ref-6)
7. [Newberg City Charter](https://www.newbergoregon.gov/citycouncil/page/city-charter), Ch. VII - Elections, Section 28(b). [↑](#footnote-ref-7)
8. Newberg City Charter, Ch. III – Council, Section 8. [↑](#footnote-ref-8)
9. Newberg City Charter, Ch. VII - Elections, Section 28(b). [↑](#footnote-ref-9)
10. *Id*. [↑](#footnote-ref-10)
11. *Id*. [↑](#footnote-ref-11)
12. *Id*. [↑](#footnote-ref-12)
13. OAR 165-008-0060(2)(a) ("When possible, districts will be drawn to utilize county lines and to maintain cities within a single district"). [↑](#footnote-ref-13)
14. OAR 165-008-0060(2)(b) ("Where urban neighborhoods, rural communities or other communities can be identified, an effort will be made to retain that community within a single district. Consideration will be given to market areas covered by local media"). [↑](#footnote-ref-14)
15. OAR 165-008-0060(2)(c) ("Road connections of at least a county road should be available within the district from one area of the district to another. This does not apply to unpopulated areas of the district."). [↑](#footnote-ref-15)
16. Ater v. Keisling, 312 Or 207 (1991) (absolute equality is difficult or impossible to achieve, but adoption of a plus-or-minus one percent standard furthers the constitutional mandate); Hartung v. Bradbury, 332 Or 570 (2001) ("the mere fact that a particular reappointment may result in a shift in political control in some legislative districts" falls short of demonstrating that the redistricting was for the purpose of favoring a political party). [↑](#footnote-ref-16)
17. ORS 246.410(1)(a). [↑](#footnote-ref-17)
18. ORS 246.410(1)(b)(B) [↑](#footnote-ref-18)
19. ORS 246.410(2)(b). [↑](#footnote-ref-19)
20. Office of the Secretary of State, Directive re Redistricting (June 1, 2011). [↑](#footnote-ref-20)
21. *Id*. [↑](#footnote-ref-21)
22. *Id*. [↑](#footnote-ref-22)
23. US Const. Amend XIV. [↑](#footnote-ref-23)
24. Evenwel v. Abbott, 136 S Ct 1120, 1124 (2016) ("Where the maximum population deviation between the largest and smallest district is less than 10%, the Court has held, a state or local legislative map presumptively complies with the one-person, one-vote rule."). [↑](#footnote-ref-24)
25. Thornburg v. Gingles, 478 US 30, 43 (1986). [↑](#footnote-ref-25)
26. *Id*. [↑](#footnote-ref-26)
27. Michael J. Pitts, *What has twenty-five years of racial gerrymandering doctrine achieved?*, 9 UC Irvine L. Rev. 229 (2018); *see also* Shaw v. Reno, 509 US 630, 657 (1993). [↑](#footnote-ref-27)
28. Office of the Secretary of State, Directive re Redistricting (June 1, 2011). [↑](#footnote-ref-28)
29. *See* ORS 188.016 (the Oregon legislature must hold at least 10 public hearings throughout the state prior to proposing a reapportionment plan); *see also* OAR 165-008-0030 (conducting public hearings on reapportionment). [↑](#footnote-ref-29)
30. Office of the Secretary of State, Directive re Redistricting (June 1, 2011). [↑](#footnote-ref-30)
31. *Id*. [↑](#footnote-ref-31)
32. Newberg City Charter, Ch. VII - Elections, Section 28(b). [↑](#footnote-ref-32)