

**LEGISLATIVE #**

**120311-B**



Office of the City Attorney

Phone: 334-5011/Fax 334-2229  
Box 46

TO: Citizen Election District Review Committee      DATE: July 18, 2012  
FROM: City Attorney  
SUBJECT: **Municipal Redistricting Standards and Legal Principles**

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### INTRODUCTION

Section 2.02 of the Charter Laws of the City of Gainesville apportions the City into four election districts for the purpose of electing district commissioners to the City Commission. The City is currently undergoing the process of redistricting the four election districts in accordance with the Charter's requirement to redistrict within the second year following the 2010 census. This memo describes the standards and legal principles guiding this adjustment to the boundaries of the City's election districts.

Standards for constructing local election districts come from federal and state constitutional, statutory, and case law, as well as the provisions in municipal charters. The overriding goals of districting standards are to create equitable and effective representational units and to limit the degree to which district boundaries can be manipulated for personal and partisan purposes. In drawing districts to accomplish these goals in accordance with law, jurisdictions generally apply what has been termed "traditional districting principles,"<sup>1</sup> which include:

- **Population Equality**
- **Compliance with Section 2 of the Voting Rights Act**
- Contiguity
- Compactness
- Respect for Political Subdivisions
- Respect for Communities of Interest
- Preservation of the Cores of Existing Districts

It is important to note that only the first two traditional districting principles (those in bold) are absolute legal mandates for municipal election districts, whereas the other districting principles are important, recommended objective factors that should be balanced in the municipal redistricting process.

### MANDATORY MUNICIPAL DISTRICTING PRINCIPLES

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<sup>1</sup> *Shaw v. Reno*, 509 U.S. 630 (1993); *Bush v. Vera*, 517 U.S. 952 (1996).

The Supreme Court of the United States has held that the Equal Protection Clause of the Fourteenth Amendment requires all state and local election districts to comply with the principle of “one person, one vote.”<sup>2</sup> The “one person, one vote” standard requires substantial population equality in voting districts so that each person’s vote may be given equal weight, at least as nearly as practicable, in the election of representatives.<sup>3</sup> While it is impossible to have districts that are exactly equal in population, there must be a faithful adherence to a plan of population-based representation, with only such minor deviations as may occur that are free from arbitrariness or discrimination.<sup>4</sup> Although it has been held that local government election districts may have greater population percentage deviations than state or congressional districts,<sup>5</sup> the Supreme Court of the United States has stated that there is a presumption of discrimination in violation of the “one person, one vote” standard when state election districts have a population deviation greater than 10%.<sup>6</sup> In accordance with this constitutional requirement, the one substantive redistricting standard in Section 2.02 of the City’s charter is that election districts must be “ratably or equally proportioned.”

The second mandatory municipal districting principle is compliance with Section 2 of the Voting Rights Act. Section 2 of the Voting Rights Act of 1965 prohibits voting practices or procedures that discriminate on the basis of race, color, or membership in certain language minority groups.<sup>7</sup> A violation of Section 2 can be established if evidence shows that, in the context of the “totality of the circumstance of the local electoral process,” the standard, practice, or procedure being challenged had the result of denying a racial or language minority an equal opportunity to participate in the political process (e.g. dilution of the minority vote).<sup>8</sup> Essentially, race-based considerations shall not predominate in the redistricting process over traditional, race-neutral factors;<sup>9</sup> if they do, courts will apply “strict scrutiny” in a legal challenge and municipalities must show: 1) the race-based factors were used in furtherance of a “compelling state interest,” and 2) their application was “narrowly tailored” or used only to the minimum extent necessary to accomplish the compelling state interest.<sup>10</sup>

## RECOMMENDED MUNICIPAL REDISTRICTING PRINCIPLES

The Supreme Court of the United States has stated that the remainder of the “traditional districting principles,” including contiguity, compactness, and respect for community subdivisions, are not constitutionally required.<sup>11</sup> However, the Court emphasized that these are important, recommended principles that may defeat any claim of political or racial gerrymandering in violation of either the “one person, one vote” standard or Section 2 of the

<sup>2</sup> *Board of Estimate of City of New York v. Morris*, 489 U.S. 688 (1989); *Reynolds v. Sims*, 377 U.S. 533 (1964).

<sup>3</sup> *Brown v. Thomson*, 462 U.S. 835 (1983).

<sup>4</sup> *Roman v. Sincock*, 377 U.S. 695 (1964); *Reynolds v. Sims*, 377 U.S. 533 (1964).

<sup>5</sup> *Montano v. Suffolk County Legislature*, 268 F. Supp. 2d 243 (E.D. New York, 2003).

<sup>6</sup> *Brown v. Thomson*, 462 U.S. 835, 842-843 (1983).

<sup>7</sup> 42 U.S.C.A. § 1973.

<sup>8</sup> 42 U.S.C.A. § 1973(b).

<sup>9</sup> The fact that a jurisdiction is aware of race – just as it is a variety of other demographic factors – does not lead inevitably to impermissible race discrimination, and when members of a racial group live together in one community, a redistricting plan that concentrates members of the group in one district and excludes them from others may reflect wholly legitimate purposes, such as compactness, contiguity, and respect for political subdivision lines. *Shaw v. Reno*, 509 U.S. 630 (1993).

<sup>10</sup> *Id.*

<sup>11</sup> *Shaw v. Reno*, 509 U.S. 630, 647 (1993).

Voting Rights Act.<sup>12</sup> Therefore, unless required by state law or local charters, Florida municipalities with a rational basis for doing so have the home rule authority to deviate from a strict adherence to the remainder of the traditional districting principles.

Regarding municipal election districts, neither Florida law nor the City's Charter mandates adherence to the remainder of the traditional districting principles, which include: contiguity, compactness, respect for political subdivisions, respect for communities of interest, and preservation of the cores of existing districts. For example, while the Florida Constitution requires contiguity in congressional and legislative districts<sup>13</sup> and requires counties to be divided into contiguous voting districts,<sup>14</sup> there is no such constitutional requirement for municipalities. In addition, while Florida statutory law requires contiguity for municipal annexations,<sup>15</sup> Florida statutory law is silent regarding contiguity or other traditional districting principles in regards to municipal election voting districts.<sup>16</sup> Therefore, given an appropriate rational basis for doing so and as long as it does not result in the dilution of the minority vote when judged by the "totality of the circumstances," Florida municipalities may deviate from a strict adherence to the remainder of the listed traditional districting principles.

For example, and regarding the City of Gainesville's redistricting process, the Alachua County Supervisor of Elections Pam Carpenter has communicated to Dr. Kenneth Wald, the City's redistricting consultant, that the City may not "split" or otherwise alter the election precincts established by the Board of County Commissioners when it adjusts the boundaries of its local election districts. In other words, according to the Alachua County Supervisor of Elections, each of the election precincts established by the Board of County Commissioners that fall within City limits may only be included in a single City election district. Because of this, and after accounting for the mandatory municipal redistricting principles while balancing the remainder of the recommended municipal redistricting principles, each of Professor Wald's redistricting plans include a district with a small portion of land that can be considered noncontiguous. However, because avoiding the splitting of precincts is a rational, race-neutral consideration and because each of Professor Wald's redistricting plans seems to provide only a deviation from the one recommended municipal redistricting principle of contiguity, allowing such a noncontiguity would be within the City's authority as long as it does not result in the dilution of the minority vote. In sum, any City redistricting plan should meet the traditional districting principles to the extent described above while also respecting the Board of County Commissioners' election precincts.

## CONCLUSION

As the City of Gainesville undergoes the process of adjusting the boundaries of its four election districts, the City must adhere to the constitutional principle of maintaining substantial population equality amongst the four districts. While drawing districts that are exactly equal in population is impossible, a population deviation greater than 10% must be avoided. The City must also comply with Section 2 of the Voting Rights Act by not drawing districts where the

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<sup>12</sup> *Id.*

<sup>13</sup> Art III, §§ 20 and 21, Fla. Const.; Art III, § 16(a), Fla. Const.

<sup>14</sup> Art VIII, § 1(e), Fla. Const.

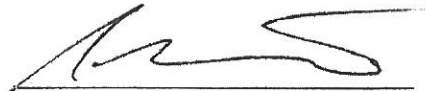
<sup>15</sup> § 171.043(1), Fla. Stat. (2012).

<sup>16</sup> *See Op. Att'y Gen. Fla. 75-143 (1975)* (advising that voting districts in city elections are not required to be contiguous by the U.S. Constitution, the Florida Constitution, or Florida statutory law, and therefore need not be contiguous unless required by the city charter.).

result (not necessarily the intention) is the dilution of the minority vote. Because any alleged dilution of the minority vote would be viewed in light of the "totality of the circumstances," the safest way to avoid this type of violation is to ensure that race-based considerations do not predominate over the other race-neutral traditional districting principles.

Because of this, the traditional districting principles of contiguity, compactness, respect for political subdivisions, and respect for communities of interest are important not because they are mandated by law, they are not, but because they may defeat any claim of political or racial gerrymandering in violation of either the "one person, one vote" standard or Section 2 of the Voting Rights Act. Therefore, the City should strive to follow these principles as it redistricts, but has the authority to deviate from a strict adherence to them given an appropriate rational basis for doing so.

Prepared by:



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Prepared  
and submitted by:



Marion J. Radson  
City Attorney



Office of the City Attorney

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Box 46

TO: Citizen Election District Review Committee Members    DATE: June 13, 2012

FROM: Sean McDermott, Assistant City Attorney I *S.M.*  
Danisa M. Borges, University of Florida College of Law – Legal Extern *DMB*

SUBJECT: **Applicability to the City of Gainesville of the 2010 adoption of Article III –  
Legislature, Section 21 – Standards for establishing legislative district  
boundaries of the Florida Constitution.**

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#### BRIEF ANSWER

Article III, Section 21 of the Florida Constitution, which was added in 2010 through citizen initiative, is not applicable to the City Of Gainesville redistricting process.

#### ANALYSIS

In 2010, two citizen initiatives were adopted that added to the Florida Constitution standards for state legislative and congressional redistricting. Specifically, Amendments 5 and 6 added Sections 20 and 21 to Article III of the Florida Constitution. The crux of the additional redistricting standards is a prohibition on establishing district boundaries to favor or disfavor an incumbent or political party. Please see attached Exhibit A for Article III, Sections 20 and 21 of the Florida Constitution.

According to the Florida House of Representatives Staff Analysis HJR 7231-SJR 2288 and the Florida Senate Bill Analysis & Impact Statement SJR 2288, Section 21 of Article III of the Florida Constitution is not applicable to the local redistricting process. In addition, Section 21 was added to Article III of the Florida Constitution, which applies strictly to the Legislature. Furthermore, multiple municipalities and counties, such as the City of Jacksonville, City of Orlando, and Miami-Dade County, are in agreement that Article III, Section 21 of the Florida Constitution is not applicable to the local redistricting process.

**Exhibit A.**

**Constitution of the State of Florida**

**Article III Legislature**

**SECTION 20.** Standards for establishing congressional district boundaries.—In establishing congressional district boundaries:

(a) No apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party or an incumbent; and districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice; and districts shall consist of contiguous territory.

(b) Unless compliance with the standards in this subsection conflicts with the standards in subsection 1(a) or with federal law, districts shall be as nearly equal in population as is practicable; districts shall be compact; and districts shall, where feasible, utilize existing political and geographical boundaries.

(c) The order in which the standards within subsections 1(a) and (b) of this section are set forth shall not be read to establish any priority of one standard over the other within that subsection.

History.—Proposed by Initiative Petition filed with the Secretary of State September 28, 2007; adopted 2010.

**SECTION 21.** Standards for establishing legislative district boundaries.—In establishing legislative district boundaries:

(a) No apportionment plan or district shall be drawn with the intent to favor or disfavor a political party or an incumbent; and districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice; and districts shall consist of contiguous territory.

(b) Unless compliance with the standards in this subsection conflicts with the standards in subsection 1(a) or with federal law, districts shall be as nearly equal in population as is practicable; districts shall be compact; and districts shall, where feasible, utilize existing political and geographical boundaries.

(c) The order in which the standards within subsections 1(a) and (b) of this section are set forth shall not be read to establish any priority of one standard over the other within that subsection.

History.—Proposed by Initiative Petition filed with the Secretary of State September 28, 2007; adopted 2010.



# MEMORANDUM

## Office of the City Attorney

TO: MAYOR AND CITY COMMISSION      DATE: March 1, 2012

FROM: CITY ATTORNEY

SUBJECT: Review of City Commission Election Districts (NB)

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**Recommendation:** The City Commission: 1) hear a presentation from the City Attorney's Office; 2) authorize the City Attorney to enter into a contract for professional services; and 3) authorize the creation and selection of a Citizen Election District Review Committee to submit reports and recommendations to the City Commission.

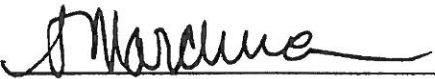
Section 2.02 of the Charter Laws of the City of Gainesville apportions the City into election districts for the purpose of electing district commissioners to the City Commission. The Charter also requires the City Commission to adjust the boundary lines of the districts whenever, in its judgment, the districts are not ratably or equally proportioned in accordance with the Florida Constitution and the Constitution of the United States, but not less frequently than within the second year following each decennial census. The City Commission last redistricted the City in 2001 taking into account data from the 2000 census. Therefore, in accordance with Section 2.02 of the Charter, the City Commission is required to redistrict within the second year following the 2010 census.


In 1986, 1991, 2001, and 2009, the City Commission contracted with an expert in the field of redistricting and apportionment. The City Manager and City Attorney recommend that the City Commission follow the process utilized in previous years by retaining the services of a professional consultant, as well as appointing a citizen committee to review and recommend any changes in the size and areas of the four election districts. Dr. Kenneth Wald, Professor of the Political Science Department of the University of Florida, previously performed these services and he has informed us that he is available to perform these services again. In addition, it is recommended that the City Commission appoint a Citizen Election District Review Committee consisting of residents of the City of Gainesville to review and recommend any changes in the size and areas of the four election districts. The Committee could consist of seven persons with the Mayor and each City Commissioner appointing one City resident to the Committee. If the Commission agrees with this recommendation, then such appointments should be submitted to the Clerk of the Commission by April 5, 2012.

The City Commission and the Citizen Election District Review Committee should also hold public hearings on any revisions to the districts. The Citizen Election District Review Committee should commence its work during the late spring and summer months of 2012. The Committee should be requested to complete their recommendation and report to the City Commission in late summer of 2012. The City Attorney's Office will provide clerical assistance to the Committee.



Fiscal Note: Funds for professional services in the amount of \$25,000.00 are requested for appropriation from the General Fund Undesignated Fund Balance.

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Approved and  
submitted by:   
Marion J. Radson, City Attorney