

DATE: August 12, 1988

TO: Councilman Bob Filner
FROM: City Attorney
SUBJECT: Redistricting Procedures

This is in response to your memorandum of June 24, 1988 containing several questions regarding redistricting procedures.

First, you ask for a clarification of that portion of Section 7, Article III, of the San Diego City Charter that reads: "No Councilmember shall forfeit office as a result of redistricting." Specifically, you ask whether this means: a) that no redistricting involving a Councilmember's residence can take place, or b) that, after redistricting, a Councilmember whose residence is located in another district would continue to serve. The second alternative is the correct interpretation.

Section 7 must be read in light of other provisions of the Charter. Section 12, Article III, of the Charter provides in relevant part:

Upon any redistricting pursuant to provisions of this Charter, incumbent Councilmembers will continue to represent the district in which they reside, unless as a result of such redistricting more than one incumbent resides within one district, in which case the City Council may determine by lot which Council member shall represent each district.

This language was added to Section 12 by vote of the people on September 17, 1963. At the same time, the voters adopted amendments to Sections 4 and 7 of Article III (Proposition B, Special Election of September 17, 1963). The "no forfeiture" language in Section 7 had been present prior to the 1963 election. The amendments to Section 12 were made in apparent recognition of a possible problem resulting from redistricting,

namely, that two (or more) incumbent Councilmembers could end up living in the same (new) Council district. Although the then City Attorney Alan M. Firestone prepared a Report to The Honorable Mayor and Council on October 16, 1963, explaining the effect of this and the other Charter amendments adopted on September 17, the issue was not specifically treated in that Report. Apparently the language was considered self-explanatory. The sample ballot of the September 17 election does not discuss why the language about drawing lots in the event two (or more) Councilmembers end up in one district following redistricting was added to Section 12. There is no case law interpreting the

"no forfeiture" provisions of Charter Section 7 or of the 1963 "drawing lots" amendment to Section 12.

In any case, the express language of Section 12 is clear. The section would act to prohibit an incumbent Councilmember from forfeiting office altogether following redistricting. The section, however, would not prohibit the possibility of an incumbent representing a district with strikingly different boundaries from that which he or she was initially nominated.

You next ask: "can a Councilmember, as a result of redistricting, be forced to move his residence in order to run for re-election?" The answer is "no." The Councilmember may choose to do so, however, depending on the results of the drawing of lots by Councilmembers and the location of incumbent Councilmembers' residences prior to the drawing of lots. Assume, for example, that after redistricting two Councilmembers actually reside in "new" District A. Further assume that after the Council draws lots one Councilmember is "assigned" to District A and another to District B. It follows that the Councilmember assigned to District A would have to move to District B to be nominated to run for office from District B. On the other hand, the Councilmember could choose to keep his or her residence in District A and run for office against the incumbent Councilmember assigned by lot to that district after the incumbent's term expires.

Your last two questions involve Section 5, Article II, of the City Charter. The section reads in relevant part:

. . . The City shall be redistricted by ordinance for the purpose of maintaining approximate equality of registered voting population, at least once in every ten years . . .

. . . .

In any redistricting, the districts shall be comprised of contiguous territory and made as equal in registered voters as shown by the registration records, and as geographically compact as possible,

and the districts so formed shall, as far as possible, be bounded by natural boundaries, by street lines and/or by City boundary lines.

First it must be pointed out that the term "population" in this Charter section should be substituted for the term "registered voters." This section of the Charter was successfully challenged in 1972 in *D'Adamo v. Cobb*, 27 Cal.App. 3d 448 (1972), hearing denied October 18, 1972. The court found the "registered voter" language unconstitutional. See attached City Attorney Opinion 77-2, dated February 23, 1977, for a full

discussion of the issue.

There is no definition in the City Charter of the term "approximate equality." The meaning of the term is discussed in former Assistant City Attorney Robert S. Teaze's memorandum of September 14, 1978 to former Councilman Mitchell, at page 2, attached hereto. Constitutional law and this Charter provision essentially require the Council to get as close to equality as possible in redistricting, although the law recognizes that precise mathematical equality may be impossible.

You last ask how much deviation between district populations remained after previous redistricting has occurred. For the answer to that question I refer you to "Redistricting" Ordinance No. 15370, adopted October 27, 1980, and the companion Report to The Honorable Mayor and Council by the Planning Department dated August 29, 1980, including the attachment labeled "Alternative 1B" (copies attached). For your information, also attached is Planning Department Report to The Honorable Mayor and Council dated August 13, 1980, and its attachments. See especially Table I of that report regarding deviation in Council districts from 1973 to 1980.

If you have further questions on past deviation, I suggest you get in touch with the Planning Department. If you have other questions on law regarding redistricting, please do not hesitate to ask our office.

JOHN W. WITT, City Attorney

By

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Deputy City Attorney

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Attachments

ML-88-76