

PEMBROKE PINES CITY COMMISSION

Frank C. Ortis
MAYOR
954-450-1020
fortis@ppines.com

Thomas Good, Jr.
VICE MAYOR
DISTRICT 1
954-450-1030
tgood@ppines.com

Angelo Castillo
COMMISSIONER
DISTRICT 4
954-450-1030
acastillo@ppines.com

Iris A. Siple
COMMISSIONER
DISTRICT 3
954-450-1030
isiple@ppines.com

Jay D. Schwartz
COMMISSIONER
DISTRICT 2
954-450-1030
jschwartz@ppines.com

Charles F. Dodge
CITY MANAGER
954-450-1040
cdodge@ppines.com

INTER-OFFICE CORRESPONDENCE

MEMORANDUM NO. 2021-164

TO: Frank C. Ortis, Mayor
Members of the City Commission

CC: Charles F. Dodge, City Manager
Aner Gonzalez, Assistant City Manager
Marlene D. Graham, City Clerk

FROM: Samuel S. Goren, City Attorney *SSG*
Quentin E. Morgan, Assistant City Attorney *QEM*

DATE: October 19, 2021

RE: City of Pembroke Pines ("City") / Redistricting
Matters

Pursuant to your request, the City Attorney's Office has examined the City's process for expanding and/or contracting commission districts. This memorandum examines the City's legal responsibility for redistricting under the City Charter and State law and considers those responsibilities in conjunction with coordination with the Broward County Supervisor of Elections' Office ("SOE") as it relates to the City's March 2022 election.

I. Summary

We are of the considered view that the City Commission can uphold its duty under the City Charter (and under the circumstances of the late release of Census data and the SOE's position) should it finalize the City Commission maps prior to the March 2022 election and delay the effective date of the maps until after the March 2022 election. Also, the City Commission can uphold its duty under the Charter if the process employed by the City Commission to review the district maps is concluded after the March 2022 election. In making our conclusions, we have reviewed Florida law regarding redistricting and examined the City's Charter in light of Florida law, Broward County Special Acts 76-336 and 75-350, and the district analysis conducted by Florida Atlantic University.

II. Background - Florida Law

a. Generally

Florida must comply with constitutional equal population¹ requirements. Florida law further asks that districts be as nearly equal in population as is practicable, if doing so does not interfere with minority rights; the state Supreme Court has interpreted this language to include some flexibility, just as the constitution does. [*Fla. Const.* art. III, §§ 20(b), 21(b); *In re Sen. J. Res. of Legis. Apportionment* 1176, 83 So.3d 597, 630 (Fla. 2012)]

Florida must also, like all states, abide by the Voting Rights Act and constitutional rules on race. Florida law further requires that districts “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.” The Florida Supreme Court has interpreted this language to mirror the federal Voting Rights Act’s emphasis on functional electoral performance, triggered not by minority demographic percentages, but by evaluation of a minority community’s practical opportunities to elect candidates of choice. [*Fla. Const.* art. III, §§ 20(a), 21(a); *League of Women Voters v. Detzner*, 172 So.3d 363, 404-06 (Fla. 2015); *In re Sen. J. Res. of Legis. Apportionment* 1176, 83 So.3d 597, 620-27 (Fla. 2012)]

Florida law also provides that districts must be contiguous, and where doing so does not conflict with minority rights, must utilize existing political and geographical boundaries where feasible. The state also requires that, where doing so does not conflict with minority rights, districts must be compact, in the sense that lines should not have an “unusual” or “bizarre” shape, with “unnecessary appendages”. [*Fla. Const.* art. III, §§ 20(a)-(b), 21(a)-(b); *League of Women Voters v. Detzner*, 172 So.3d 363, 402-03, 406 (Fla. 2015); *In re Sen. J. Res. of Legis. Apportionment* 1176, 83 So.3d 597, 632-636 (Fla. 2012)]. In addition, no plan or individual district may be drawn with the intent to favor or disfavor a political party or incumbent. [*Fla. Const.* art. III, §§ 20(a), 21(a); *In re Sen. J. Res. of Legis. Apportionment* 1176, 83 So.3d 597, 615-19 (Fla. 2012)].

b. Timing

Florida law does not impose a particular deadline for drawing congressional lines. State legislative lines must be drawn in the legislative session in the second year after the federal Census is conducted. If the legislature does not meet this deadline, it will be reconvened in a special 30-day session to draw legislative districts; if it again fails to pass a plan, the Attorney General must ask the state Supreme Court to draw the district lines. [*Fla. Const.* art. III, §§ 3,

¹ State and local legislative districts have a bit more flexibility on the numbers; they have to be “substantially” equal. Courts have generally accepted that a plan will be constitutionally suspect if the largest and smallest districts are more than ten percent (10%) apart. This is not a hard line: a state plan may be upheld if there is a compelling reason for a larger disparity, and a state plan may be struck down if a smaller disparity is not justified by a good reason.

16(a)-(b)] Florida law ties the drawing of state legislative lines to the Census, and might therefore be construed to prohibit redrawing lines mid-decade; there is no similar provision pertaining to congressional lines. [*Fla. Const.* art. III, § 16(a)]

III. The City Charter

a. Generally

Section 3.02(d) of the City Charter establishes four (4) commission districts. This provision expressly states, as follows:

The City of Pembroke Pines shall be divided into four (4) election districts. The geographic boundaries of the four (4) election districts shall be composed of roughly equal populations, and shall be compact, proportional and logically related to the natural boundaries of the neighborhoods within the City. The principles of nondiscrimination and one person/one vote shall be strictly adhered to. The boundaries of the districts within the limits of the City as now existing are continued and may be amended as provided in Section 3.02(e) of the Charter.

Section 3.02(e) of the Charter provides for redistricting “following the decennial census in 2010, and every ten (10) years thereafter, or sooner if it is determined by the Commission that districts shall have become unbalanced due to the population shifts.” The City is required to contract with a Florida accredited four (4) year college or university for this purpose.

Section 3.02(b) of the City Charter further sets forth the election schedule for the four (4) commission districts and provides for staggered terms for members of the City Commission.

The City is currently utilizing a division within Florida Atlantic University (“FAU”) to perform a district analysis. The City Commission in the past found that FAU possessed the knowledge, ability, professional skills and qualifications to perform services and covenants to carry out the terms of the district analysis pursuant to the Charter and has chosen FAU again to comply with the City Charter.

b. FAU Report

In late September, FAU issued its report on redistricting alternatives for the City, which is currently under review and consideration by the City Commission. FAU prepared a side-by-side analysis of population balance among the districts that accounts for both the 2020 U.S. Census population count, and an estimated population for the year 2023. This was done so that the Commission may consider not only the population balance of the present, but also look toward future growth. The rationale used by FAU to develop district alternatives are in line with

standard redistricting criteria; i.e., reasonable population equality across districts, geographic contiguity and appropriate compactness, and political criteria (minimize the degree of change for the citizens).

Delays in the reporting of the 2020 U.S. Census have compressed the typical process in which the City Commission would consider redrawing the district maps. Detailed, block-level census data was originally due by March 31, 2021. The Census Bureau ultimately released redistricting data on August 12, 2021. The Census Bureau has confirmed that the rate of missing information was higher in the 2020 census than that of 2010, likely the cause in the delay.

Following its review of Census data and City future development trends, FAU concluded that “[w]hile the Current Districts are not heavily unbalanced, the existing deviation is sufficient to warrant redistricting.” Upon finding a necessity for redistricting, under both current and projected populations, FAU developed three alternatives all of which meet standard districting guidelines and the requirements of the City Charter for review and discussion by the City Commission. Discussion with the City Commission, FAU, and the public are on-going.

c. Timing

The City Charter does not impose a particular deadline for drawing district lines. The delay in release of Census data has complicated redistricting efforts for the City.

IV. Redistricting Options

a. Generally

Pursuant to Section 3.02(b) of the City Charter, the City will hold a regular election of the City Commission members on the second (2nd) Tuesday of March 2022. Commission members representing District 1 and District 4. The City made an inquiry to the SOE as to whether the SOE would be able to facilitate a City election in March 2022 with anticipated new districts² created by the City in November of 2021. The SOE stated that, “[i]t will not be feasible for us to complete the necessary configuration changes before candidate qualifying which begins on January 3, 2022.” and provided further rationale to support this conclusion.³ According to the SOE, the earliest regular county-wide election for which updated district maps throughout the county would go into effect would be for the August 2022 primary which aligns with district maps being created for the federal, state, county, and school board districts.

² If the Commission districts remained unchanged, the status quo would remain and no further review would be required.

³ A copy of the Correspondence from the SOE is attached hereto, as Exhibit “A”.

b. Timing

As stated above, the City Charter does not impose a particular deadline for drawing district lines. Due to the lateness of the release of US Census data, the Commission is just now beginning to engage in that thoughtful process and has expressed the desire not to rush the process. Upon conclusion of its review, the City Commission would need to finish its Charter-driven duty to identify and designate the four (4) election districts within the City and transmit that data to the SOE. The SOE has provided its schedule for accomplishing its coordination role for the district map changes and elections for the county. So, the City's March 2022 election⁴, which is required by the Charter⁵, will have to take place with the current City district maps and precincts.

Note, however, that any change to the composition of the commission districts would require an ordinance. The Florida Supreme Court has held that the legislation may provide that it shall go into effect upon the happening of a contingency, such as a point in time in the future or by an affirmative vote at an election. See, *Gillete v. City of Tampa*, 57 So.2d 27, 30 (Fla.1952); *Voorhees v. City of Miami*, 199 So. 313 (Fla.1940). As such, the ordinance approving the chosen districts of the City does not have any force until it becomes the law of the land and that is when, by its terms, it takes effect and is to be understood as speaking from the time it goes into operation and not from the time of its passage. *Neisel v. Moran*, 85 So. 346, 358–359 (Fla.1920). In light of its duty under the Charter, the City Commission may determine when the district maps takes effect so long as it comports with the principles of nondiscrimination and fairness set forth in the Charter. Thus, should the City Commission conclude its review and select district maps that change the current district maps prior to the City's March 2022 election, the City Commission given the direction by the SOE and the authority affirmed by the Florida Supreme Court would be within and compliant with the City Charter if the City Commission chose an effective date for the redistricting ordinance to follow the City's March 2022 election.

V. Conclusion

We have examined the City Commission's legal responsibility for redistricting under the City Charter. The City actions, to date, are in compliance with the City Charter. The City Charter

⁴ A Special Act of Broward County, Laws of Florida, Chapter 75-350§3, requires that "[a]ny election relating to a municipal office held in a municipality in Broward County shall be held on the second Tuesday in March of the calendar year." Amending this section as to Pembroke Pines to delay or postpone the March 2022 election would require a referendum.

⁵ Amending the Charter to delay or postpone the March 2022 is likely not feasible given the timeframes to conduct a referendum. To amend the Charter, Section 2(a), Article VIII, Florida Constitution, provides that municipal charters may be amended pursuant to general law or special law. Section (1) of section 166.031, Florida Statutes, sets forth the method for amending municipal charters. According to that subsection, the governing body of the municipality, by ordinance, or the electors of the municipality, by petition signed by 10 percent of the registered electors, may propose an amendment to any section or all of the municipal charter with the exception of that part setting out the municipal boundaries. The municipal governing body is directed to place the proposed amendment on the ballot at the next general election or at a special election called for that purpose.

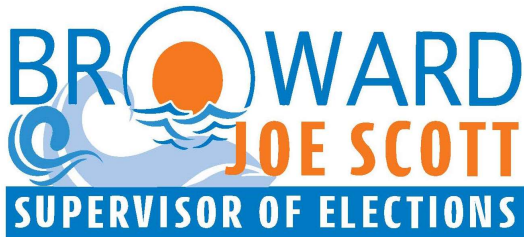
requires the work to begin following the decennial census but does not provide a timeframe to conclude the review and potential redistricting. The City has hired FAU to perform a district analysis and the City Commission has begun to engage the public and review the City Commission district maps that will be in effect likely for the next ten (10) years. While the City initially intended for revised district maps to go into effect for the March 2022 election, with the delay in receiving the US Census data slowing the City's process, the SOE has informed the City that it will not be achievable to complete the necessary configuration changes in City districts before candidate January 2022 qualifying period for the City's March 2022 election. In addition, given the SOE position for redistricting for March 2022, it isn't likely that the City could hold a referendum any election prior to the March 2022 election if the City Commission desired to postpone or delay the March 2022 election by referendum.

As such, we are of the considered view that the City Commission can uphold its duty under the Charter. Given the circumstances of the late release of Census data and the SOE's position on changing the City's commission districts, the City Commission could finalize City Commission maps prior to the March 2022 election and delay the effective date of the maps until after the March 2022 election. Also, the City Commission can uphold its duty under the Charter if the process employed by the City Commission to review the FAU report and proposed districts concluded after the March 2022 election particularly given the circumstances of the late release of US Census data.

It is important to note, given the correspondence from the SOE, the implementation of new district maps will not occur prior to August 2022. For this reason, we propose to further discuss with the City Commission the potential effective date for new district maps and the implications thereto.

Please contact our office if there is any additional information that we can provide.

Exhibit A



Joe Scott, Supervisor of Elections
115 S. Andrews Ave, Rm. 102
Fort Lauderdale, FL 33301
(954) 357-VOTE • www.browardvotes.gov

October 11, 2021

Sam Goren, City Attorney
Quentin Morgan, Asst. City Attorney
City of Pembroke Pines
601 City Center Way
Pembroke Pines, FL 33025

Dear Messrs. Goren and Morgan:

I received your message asking if our Office would be able to facilitate a city election in March 2022 with new districts created by the City in November of 2021. It will not be feasible for us to complete the necessary configuration changes before candidate qualifying which begins on January 3, 2022. We are currently engaged in a Special Primary Election to fill the vacancy of the office of U.S. Representative in Congress, District 20. As qualifying is taking place for the March Municipal Elections, we will be in the middle of early voting for the Congressional Special General Election.

Updating the County precincts and the statewide redistricting is a complicated process that happens once a decade. Because of the complexity of multiple levels of redistricting at the federal, state, county, and local levels, the drawing of new precincts and their approval by the Board of County Commissioners (which is required by statute) will not be finalized until after the March Municipal Elections. By mid-March, we expect to have all the district maps we need including Congressional Districts, State Senate Districts, State House Districts, County Commission Districts, and School Board Districts. Once all these districts have been drawn, we will be able to overlay the maps and create precincts that work with the new districts and assign voters accordingly. The drawing of new precincts, including setting polling places, will require mailing out new voter registration cards to every voter in the County in advance of the August election.

If the City of Pembroke Pines implements new districts and intends to have them apply to the March 2022 election, there are additional costs for the election that would be incurred by our office and would need to be paid by the City. The logistics of a last-minute change to districts would require our office to draw new precinct maps just for this election, determine polling places just for this election, and mail out the new cards to all of Pembroke Pines' voters well in advance of the January qualifying period for the city's elections in March. Pembroke Pines has the second-largest number of precincts in the County and 118,603 voters. Mailing out the cards to these voters alone will cost the City an additional \$82,110 on top of the regular election costs for March. Additionally, since staff time will be incurred in creating new precincts and handling the district revisions on an expedited basis, and not as part of our overall changes that will be implemented for August, there will be an additional staff cost incurred of potentially as much as \$25,000, which will also be charged to the City.

In addition to the logistical issues and significant additional costs that the city would be responsible for, there is also the issue of voter confusion that will be created by this last-minute change. Every time a polling place or precinct number changes, and new voter registration cards are sent out, our office receives

a significant number of inquiries from voters asking about the changes and how it impacts them. Our office tries to make these types of changes as infrequently as possible to avoid situations where voters (especially those who may require special accommodations or have transportation difficulties) become confused about where they are supposed to vote and may go to the polling place they traditionally vote at, only to be told that they cannot vote there. The city's request would not only have our office mail out these polling place and precinct changes to voters shortly before an election but would also require us to send out a new set of voter registration cards later in the Spring because, inevitably, precincts and polling places will again change for Pembroke Pines voters for the August Primary Election.

All of the district maps being created for the federal, state, county, and school board districts for 2022 are intended to go into effect for the August 2022 primary, which will allow our office sufficient time to create appropriate precincts and ensure polling places for that election.

I wish we could accommodate your city's request for a special precinct-creation process to accommodate the March 2022 elections, but it simply isn't feasible at this time.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Scott", with a stylized, cursive script.

Joe Scott
Supervisor of Elections