



CITY OF HOUSTON
Legal Department

Interoffice

Correspondence

To: Mayor and Council Members
Annis Parker, City Controller
via Marty Stein

From: Arturo G. Michel *AGM*
City Attorney

Date: February 27, 2007

Subject: Population Estimates

The Planning Department recently estimated the population of the City to be in excess of 2.1 million. It is my opinion that this estimate does not meet the Charter standard of "best available information" for purposes of City Council's determination of population for redistricting.

The Houston City Charter requires that City Council determine the population of the City and of each Council District in each year in which the City conducts its General Election (Art. V, Sec. 3). The Charter requires that this Council determination of the City's population "shall be based upon the *best available data*, including but not limited to the most recent federal census" (emphasis added). When, "pursuant to this Charter," City Council determines that the population is 2.1 million or more, the Charter provides that two additional single-member districts be created (Art. V, Sec. 2, para. 2).

The foregoing provisions must be evaluated in the context of all applicable laws. To create two additional Council Districts, a City-wide redistricting is necessary ("...if the number of Council Members increases from fourteen to sixteen, then the City Council shall establish new boundaries for the election of District Council Members" Art. V, Sec. 3, para.4). Federal law, which pre-empts state and local laws, sets a stringent standard for use of data other than decennial census data for redistricting. Our charter must be interpreted consistently with this federal law.

The standard is:

[C]ensus figures are presumed accurate until proven otherwise. Proof of changed figures must be thoroughly documented, have a high degree of accuracy, and be clear, cogent, and convincing to override the presumptive correctness of the prior decennial census.

Valdespino v. Alamo Heights Ind. Sch. Dist., 168 F. 3d 848, 853-54 (5th Cir. 1999), *cert. denied*, 528 U.S. 1114 (2000). This standard has been upheld by several federal appellate courts. Because of this standard, the challengers to the 2003 Texas congressional redistricting were unable to supplant the state's use of decennial census data with mid-decade data.

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Further, the boundaries of the various Council Districts must be re-drawn in a manner that ensures that (i) such districts are not materially unbalanced (as to population) and (ii) minority voting strength is not adversely affected (i.e., diluted or weakened). This exercise requires significantly detailed information about the population and not only the total numbers.

While it is certainly possible that the City could conduct the detailed, expensive, and time consuming study needed to meet the federal redistricting data standard, it is my view that our most recent estimate of population may be appropriate for many purposes, but should not trigger redistricting, because it would not overcome the federal presumption.

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cc: Susan T. Taylor
Don Cheatham

ARTICLE V. OFFICERS AND ELECTIONS

Note--The history of individual sections of this article is difficult to accurately state by section number because it has been substantially rewritten on several occasions. Many of these revisions retained language from prior iterations, but transferred the language from one section to another.

Sec. 1. Governing Body.

The governing body of the City of Houston, Texas, shall be the City Council. The City Council shall be composed of the Mayor and the number of Council Members hereinafter prescribed. (Added by amendment August 15, 1942; amended May 29, 1951, August 11, 1979)

Sec. 2. Council Members.

For terms of office for Council Members commencing in 1980, and continuing until such time as the number of Council Members is increased as provided below, there shall be fourteen Council Members designated as follows:

District Council Members

- Council Member, District A
- Council Member, District B
- Council Member, District C
- Council Member, District D
- Council Member, District E
- Council Member, District F
- Council Member, District G
- Council Member, District H
- Council Member, District I

At Large Council Members

- Council Member, At-Large Position 1
- Council Member, At Large Position 2

Council Member, At-Large Position 3

Council Member, At-Large Position 4

Council Member, At-Large Position 5

If, upon any determination of the population of the City pursuant to this Charter, such population is determined to be 2,100,000 persons or more, then the number of Council Members for the regular terms next commencing and continuing thereafter shall increase from fourteen to sixteen. The two additional members shall be District Council Members designated as follows:

Council Member, District J

Council Member, District K

The number of Council Members shall not be decreased, notwithstanding any decrease in population.

All references in this Charter to "Councilmen," "Commissioners" or "Aldermen" shall be construed to be references to "Council Members," and all references in this Charter to a "Councilman" shall be construed to be references to a "Council Member." The "members" of the City Council shall include the Mayor and all Council Members, each of whom shall be a "member" thereof. (Added by amendment August 11, 1979)

Sec. 3. Establishment of District Boundaries; Determinations of Population.

It shall be the duty of the City Council to establish the boundaries of districts covering the entire City for the purpose of electing District Council Members. Such boundaries shall be established by ordinance, which shall be final for purposes of this Charter. The first such establishment shall be made as soon as practicable prior to the first City General Election following adoption of this section. Any subsequent establishment shall be made when required by this Charter.

Promptly following the addition of territory to the City by a boundary change, the City Council shall, by ordinance, add such territory to an adjacent district or districts.

In each year during which a City General Election is to be held, the City Council shall conduct an investigation and determine the population of the City and the population of each of the districts from which District Council Members are to be elected. Each such determination shall be based upon the best available data, including, but not limited to, the most recent federal census. Each such

determination shall be expressed in a ordinance, which shall be a final determination for purposes of this Charter.

After any such determination, if the distribution of population among the various districts is determined by the City Council to be materially unbalanced, or if the number of Council Members increases from fourteen to sixteen, then the City Council shall establish new boundaries for the election of District Council Members. (Added by amendment August 11, 1979)

Section 4. Qualifications for Elected Officers.

To serve as Mayor, City Controller or Council Member, a person must be a qualified voter and resident of the City; additionally, a District Council Member must reside in the City Council District from which the member was elected at all times during the member's term of office. To file for office as Mayor, City Controller or At-Large Council Member, a person must be a qualified voter of the City who has resided in the City for 12 months immediately preceding the election day. To file for office as a District Council Member, a person must be a qualified voter of the City who has resided in the territory encompassed by the City Council District to be served for 12 months immediately preceding the election day. As provided by applicable state law, residence in areas annexed into the City shall be considered as residence in the City for purposes of this section. The City Council shall be the judge of the election and qualifications of Council Members, subject to review by the courts in case of contest. (Added by amendment August 11, 1979, November 2, 1999)

Sec. 5. Elections.

A City General Election shall be held on the first Tuesday after the first Monday in November of every odd-numbered year or such other day as may be prescribed by the general laws of the State of Texas. At each City General Election, the Mayor, the Council Members and the City Controller shall be elected for the terms of office next commencing. Such officers shall assume their offices on the second day of January next thereafter, shall perform the duties and discharge the obligations conferred and imposed by the provisions of this Charter, and shall hold their offices for two years and until their successors are elected and qualified, unless removed therefrom by impeachment or recall or otherwise as prescribed in this Charter

The Mayor, the City Controller and the At-Large Council Members shall be elected by the qualified voters of the entire City. Each District Council Member shall be elected by the qualified voters of each respective district. The Mayor, the City Controller and the Council Members shall constitute all of the elected officers of the