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MEMORANDUM

Date: March 2, 2018

To: Jim Iles, City Attorney, City of Everett

Re: Rules of the Road for City Council Districts in Washington State

This memo provides the legal “Rules of the Road” for structuring city council districts in Washington.

Everett is a charter city, so Art. XI, Sec. 10 of the state constitution provides Everett citizens with tremendous flexibility in structuring the form of city government. Obviously, that includes the ability to opt for city-wide council elections and/or council districts in whatever number the Charter provides—so long as the Charter provision is consistent with statutes applicable to first class (charter) cities.

The key state law here is Chap. 29A.76 RCW. RCW 29A.76.010 requires that council districts follow a “plan” based on the most recent federal census data, revised after the release of new census data every 10 years. Under that statute, a city’s plan must observe the following basic rules:

- Each district has to be “as nearly equal in population as possible.”
- Districts should, to the extent feasible, coincide with “existing recognized natural boundaries” and “to the extent possible, preserve existing communities of related and mutual interest.”
- Each district must consist of a geographically contiguous area, *i.e.*, no “islands.”
- Each district must be as compact as possible. In *Killbury v. Franklin County*, 151 Wn.2d 552 (2004), the State Supreme Court ruled that “compact” doesn’t necessarily mean “small.” Instead, it means that the shapes of the districts can’t be “tortured, extremely elongated,” or “absurd” or “grotesque.” The compact district requirement is to prevent gerrymandering.
- The census population data can’t be used to favor or disfavor any racial group of political party.
- When adopting a districting plan, the City must “ensure that full and reasonable public notice of its actions is provided” and must hold at least one public hearing on the plan at least a week before adoption.
- After Council adoption of the districting plan, any registered voter may within 15 days file a challenge in superior court. If the superior court finds the plan consistent with RCW 29A.76.010, it takes effect immediately. The court can also remand the plan to the Council for corrective action.
- Local councils have substantial discretion in designing districts. For example, in *Killbury*, the Supreme Court suggested that the phrases “recognized natural boundaries” and “communities of related and mutual interest” were not crystal clear, but that it would reject a districting plan only if the governing body acted arbitrarily or capriciously.

Apart from the public notice and public hearing requirements, RCW 29A.76.010 does not prescribe how a city can draw its council districts. That can be dictated by a city charter or simply by ordinance.

The Washington State Legislature appears likely to adopt SB 6002, the “Washington Voting Rights Act of 2018,” which prohibits local government district boundaries where the districting impairs the ability of members of a protected class to have an equal opportunity to elect candidates of their choice as a result of the dilution or abridgment of the rights of voters in that protected class. A “protected class” is a group of voters who are members of a race, color, or language minority group. Following redistricting after the 2020 census, the new statute would provide a new process for challenging a local government’s districting plan if that plan causes “polarized voting” in a way that denies, to voters in a protected class, equal opportunity to elect candidates of their choice.

The primary purpose of SB 6002 is to provide a remedy in state courts, and special court procedures, if members of a protected class challenge a local government’s districting practices. Under that legislation, if a voter challenges a city’s districting plan, the city may then engage in a public process to reconsider the districts, following the parameters outlined in RCW 29A.76.010 plus an additional one: district boundaries may not be drawn in a way that “creates or perpetuates the dilution of the votes of the members of a protected class or classes.” When the city develops a new districting plan, that city must follow additional notice requirements aimed at people with limited English proficiency so that they are informed of the process and their rights under the new statute. The special notice requirements are applicable to voters in language groups that comprise five percent of the community or 500 people, whichever is fewer.

It is important to emphasize that the provisions of SB 6002 will not directly affect the City of Everett *unless* there is a future challenge to the City’s districting plan. Nevertheless, the Council may wish to consider steps that, from a practical standpoint, would reduce the possibility of a later challenge under either SB 6002 or simply a challenge under the existing provisions of RCW 29A.76.010:

- The City might provide, in charter language or a districting ordinance, for the use of a professional geographer or demographer to assist in developing options for district lines. Whether the issue is the design of electoral districts, or water rates, or police training protocols, courts like to defer to independent experts who have been charged with helping a jurisdiction develop choices. In this instance, the expert would be asked to propose alternate district boundaries based on the parameters in RCW 29A.76.010 (plus, in an abundance of caution, the extra parameter in SB 6002, *i.e.*, the avoidance of protected class voter dilution).
- One of the criteria in RCW 29A.76.010(4)(e) needs more definition: district boundaries that “preserve existing communities of related and mutual interest.” It may be helpful, in developing the districting plan, to elicit from the public what types of “communities of related and mutual interest” are important, and then to define that term with more specificity.
- The City may wish to provide much more public notice and participation than is strictly called for in RCW 29A.76.010, including holding hearings in several locations in Everett and voluntarily publishing and broadcasting notices in all of the significant language groups in the community. More notice and more public participation (particularly from voters in protected classes) is likely to reduce the possibility of a successful challenge under either RCW 29A.76.010 or SB 6002.
- The use of a broad, independent committee or commission to make districting recommendations to the Council, or even to make the final districting decision, will reduce the appearance of “political” or self-interested decision making and reduce the possibility of a successful challenge.