



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: CITY ATTORNEY

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Assistant City Attorney**

City Manager Approval: _____

TOPIC: 2021-2022 CITY COUNCIL REDISTRICTING PROCESS

SUBJECT: INFORMATIONAL REPORT ON (1) LEGAL AND POLICY CRITERIA GOVERNING REDISTRICTING; AND (2) PRELIMINARY DEMOGRAPHICS OF EXISTING COUNCIL DISTRICTS BASED ON CENSUS “LEGACY” DATA

RECOMMENDATION:

By motion, accept the informational report.

BACKGROUND:

In 2018, the City Council adopted “by-district” voting for City Council elections, in which each member of the Council must reside in a district and is elected only by the voters within that district. After several public hearings to receive public input regarding the composition of the districts, guidelines for the preparation of draft district maps, and considering 14 different draft district maps prepared either by the City’s demographic consultant or by members of the public, the City Council adopted [Ordinance No. 1956](#) on [April 16, 2018](#), establishing a by-district electoral system and election sequence for four City Council districts according to the map designated as “[Canal 3B](#)”.

The City’s first general municipal election using the new City Council districts was held on November 3, 2020, for the City Council seats in District Districts 1/South and 4/North. The first elections in Districts 2/West and 3/East will be held on November 8, 2022.

Even though the City created its four electoral districts only three years ago, Elections Code § 21621 requires that the redistricting process occur again following each federal decennial census to rebalance the districts’ populations in light of the most recent data available. The most recent decennial census was conducted in 2020, and the Bureau released its “PL94-171” redistricting data on August 12, 2021. The California Statewide Database at UC Berkeley is currently “adjusting” the Census Bureau’s data to account for legislatively-required reallocation of incarcerated felons within the State. (See Elec. Code § 21621(a)(2).) Those adjusted data are expected to be released in late-September.

At its [July 19 meeting](#), the City Council received a presentation regarding the redistricting process from the City’s special counsel, Chris Skinnell of Nielsen Merksamer Parrinello Gross & Leoni, and its

FOR CITY CLERK ONLY

Council Meeting: _____

Disposition: _____

demographic consultant, Kristen Parks of National Demographics Corporation, after which the Council approved the timeline for the redistricting process. This presentation is the next step in the process.

ANALYSIS:

Mr. Skinnell and Ms. Parks will be present at the City Council meeting to provide information regarding (1) the substantive criteria governing the readjustment of the district boundaries, and (2) a preliminary view of the demographics of the existing districts based on the unadjusted Census Bureau PL94-171 data.

The following is a summary of the main substantive legal requirements for the redistricting process:

- 1) The districts must be “substantially equal in population as defined by the Supreme Court.
- 2) The districts must comply with the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.)
- 3) The districts must comply with constitutional restrictions on “racial gerrymandering.”
- 4) Subject to the constitutional and federal law requirements noted in paragraphs (1) – (3), voting districts must be established according to four statutory criteria, ranked in order of priority:
 - To the extent practicable, council districts shall be geographically contiguous. Areas that meet only at the points of adjoining corners are not contiguous. Areas that are separated by water and not connected by a bridge, tunnel, or regular ferry service are not contiguous.
 - To the extent practicable, the geographic integrity of any local neighborhood or local community of interest shall be respected in a manner that minimizes its division. A “community of interest” is a population that shares common social or economic interests that should be included within a single district for purposes of its effective and fair representation. Communities of interest do not include relationships with political parties, incumbents, or political candidates.
 - Council district boundaries should be easily identifiable and understandable by residents. To the extent practicable, council districts shall be bounded by natural and artificial barriers, by streets, or by the boundaries of the city.
 - To the extent practicable, and where it does not conflict with the preceding criteria in this subdivision, council districts shall be drawn to encourage geographical compactness in a manner that nearby areas of population are not bypassed in favor of more distant populations.

The unadjusted PL94-171 data indicate that the current districts’ “total deviation” is approximately 9.97%—right on the cusp of the 10% maximum allowable deviation prescribed by the Supreme Court. This deviation is driven primarily by Districts 3 and 4. District 3 is approximately 4.93% underpopulated, and District 4 is approximately 5.04% overpopulated. Districts 1 and 2 are closer to balance. District 1 is approximately 1.59% underpopulated, and District 2 is approximately 1.48% overpopulated.

COMMUNITY OUTREACH:

No community outreach has occurred yet, other than the July 2021 City Council meeting. However, during the redistricting process, staff intends to establish a City website with all pertinent documents in both English and Spanish, and to conduct one or more community meetings to acquaint the public with the process and the online mapping tool. Staff also intends to include an online training for use of the online mapping tool.

FISCAL IMPACT:

There is no fiscal impact from the recommended City Council action. Completion of the redistricting process will incur expenses of approximately \$50,000 in consulting attorney's fees and \$60,000 in consulting demographer's fees (including the online mapping tool), in addition to regular staff time. Sufficient funds have been included in the budget to cover these expenses.

OPTIONS:

The City Council has the following options to consider on this matter:

1. Accept the informational report.
2. Direct staff to return with more information.
3. Take no action.

RECOMMENDED ACTION:

Move to accept the informational report regarding the City Council redistricting process.

ATTACHMENTS:

1. PowerPoint Presentation

2020 Census Preparing for Redistricting

A Presentation to the
San Rafael City Council

September 13, 2021

Recap of Process & Timeline

Key Dates – Beginning and End

- **August 12, 2021:** Census Bureau released PL94-171 redistricting data
 - Usually released in Feb/March of year following Census
- **Late-September:** anticipated release of adjusted data by Statewide Database
 - Have to wait 1-3 weeks after data are released before maps can be drawn
- **March 21, 2022:** anticipated completion date (to allow ample time for implementation by the Marin County Elections Office)
 - If necessary, additional action can be taken at Board Meeting on Feb. 2, 2022
- **April 17, 2022:** Legal deadline for completion of redistricting process.

Redistricting Process: Anticipated Council Meetings/Hearings

| | |
|---------------------------------------|--|
| September 20, 2021 Council Meeting | Presentations at Council meeting re (1) legal and policy criteria governing redistricting, and (2) preliminary demographics of existing council districts based on Census legacy data or appropriate estimates. |
| November 8, 2021 Council Meeting | Demographer provides updated demographic analysis of existing districts with final adjusted Census numbers; Council conducts first public hearing to solicit testimony regarding criteria to be used for redistricting, especially communities of interest. |
| January 18, 2022 Council Meeting | Council conducts second public hearing to solicit testimony regarding criteria to be used for redistricting, especially communities of interest; Council adopts criteria for redistricting, identifies communities of interest, instructs demographic consultant to prepare draft district plans. |
| February 21, 2022 Council Meeting | Demographic consultant to present initial draft district plan(s). Council holds public hearing on draft plan(s). Council may order modifications to any of the plan(s). |
| March 21, 2022 Council Meeting | Demographer presents one or more additional draft plans and modified plans, incorporating public testimony as appropriate; Council holds public hearing on draft plans, votes to choose one plan, adopts resolution setting actual boundaries. If the Council instead orders modifications to any of the plans, another public hearing will be required. |

*** Dates are subject to change**

Process: Effect on Current Councilmembers

- No councilmember's term cut short (*see* Elec. Code § 21626(a)), but
- When his or her term ends, an incumbent can only run from the new district in which he or she resides.

Legal & Policy Criteria

Federal Criteria:

- Equal Population
- Voting Right Act
- No Racial Gerrymandering

Statutory Criteria:

1. Geographically contiguous
2. Minimize division of neighborhoods and “communities of interest” to the extent practicable
3. Easily identifiable boundaries (major streets, etc.)
4. Compactness of population

Traditional Criteria:

- Keep incumbents in their current districts/respect voters’ choices/avoid head-to-head elections
- Minimize election year changes
- Future population growth

Federal Criteria: Equal Population

- Overriding criterion is total population equality, *see Reynolds v. Sims*, 377 U.S. 533 (1964).
- Unlike congressional districts, local electoral districts do not require perfect equality—some deviation acceptable to serve valid governmental interests.
- Total deviation less than 10% presumptively constitutional. (Caution: the presumption *can* be overcome!)

Federal Criteria: Equal Population (cont.)

| | | | | | | | |
|--------------------|---------|--------|--------|--------|--------|--------|--------|
| Total Population: | 414,076 | | 1 | 2 | 3 | 4 | 5 |
| Ideal: | 82,815 | Pop. | 84,687 | 82,167 | 83,661 | 80,568 | 82,997 |
| Deviation Range: | 4,115 | Dev. | 1,868 | -648 | 846 | -2,247 | 182 |
| Total Deviation %: | 4.97% | Dev. % | 2.26% | -0.78% | 1.02% | -2.71% | 0.22% |

1. Divide the **total population** by the **number of seats** to get the **ideal population**
2. Subtract the **smallest district's population** from the **largest**
3. Divide #2 by #1 to get the **total plan deviation**

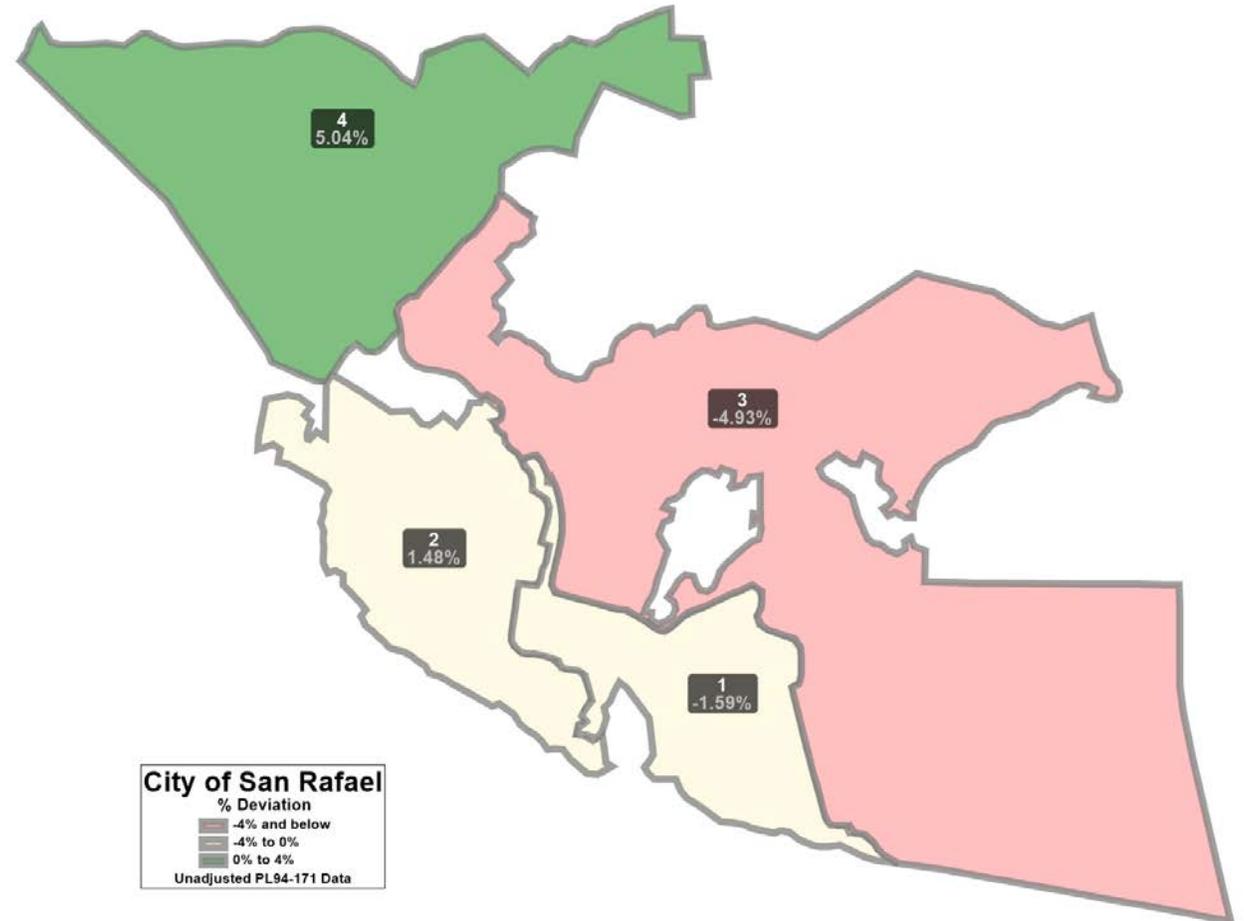
Population Equality: State Law

- Elec. Code § 21621(a)(2): “[A]n incarcerated person ... shall not be counted towards a city’s population, except for an incarcerated person whose last known place of residence may be assigned to a census block in the city ...”

Preliminary Demographics

| Dist. | Est. Pop. | Dev.* | % Dev. |
|--------------|---------------|--------------|--------------|
| 1 | 15,074 | -244 | -1.59% |
| 2 | 15,544 | 226 | 1.48% |
| 3 | 14,563 | -755 | -4.93% |
| 4 | 16,090 | 772 | 5.04% |
| Total | 61,271 | 1,527 | 9.97% |

* Ideal District Population:
15,318 total persons

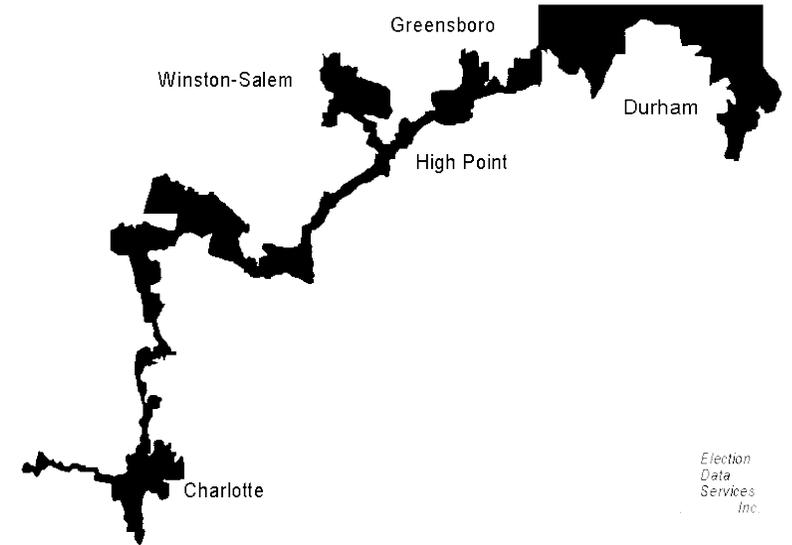


Federal Criteria: Voting Rights Act

- Section 2 of the federal Voting Rights Act prohibits electoral systems (including district plans), which dilute racial and language minority voting rights by denying them an equal opportunity to nominate and elect candidates of their choice.
- “Language minorities” are specifically defined in federal law to mean persons of American Indian, Asian American, Alaskan Natives or Spanish heritage.
- Creation of minority districts required only if the minority group can form the majority in a single member district that otherwise complies with the law. *Bartlett v. Strickland*, 556 U.S. 1 (2009).

Federal Criteria: No Racial Gerrymandering

- The Fourteenth Amendment restricts the use of race as the “predominant” criterion in drawing districts and the subordination of other considerations. *Shaw v. Reno*, 509 U.S. 630 (1993); *Miller v. Johnson*, 515 U.S. 900 (1995).
 - Such predominant use must be justified as narrowly tailored to fulfill a compelling state interest – *i.e.*, strict scrutiny
- Bizarrely shaped electoral districts can be evidence that racial considerations predominate, but bizarre shape is not required for racial considerations to “predominate.”
- Fourteenth Amendment does not, however, prohibit all consideration of race in redistricting. *Easley v. Cromartie*, 532 U.S. 234 (2001).
- **Focus on communities of interest.**

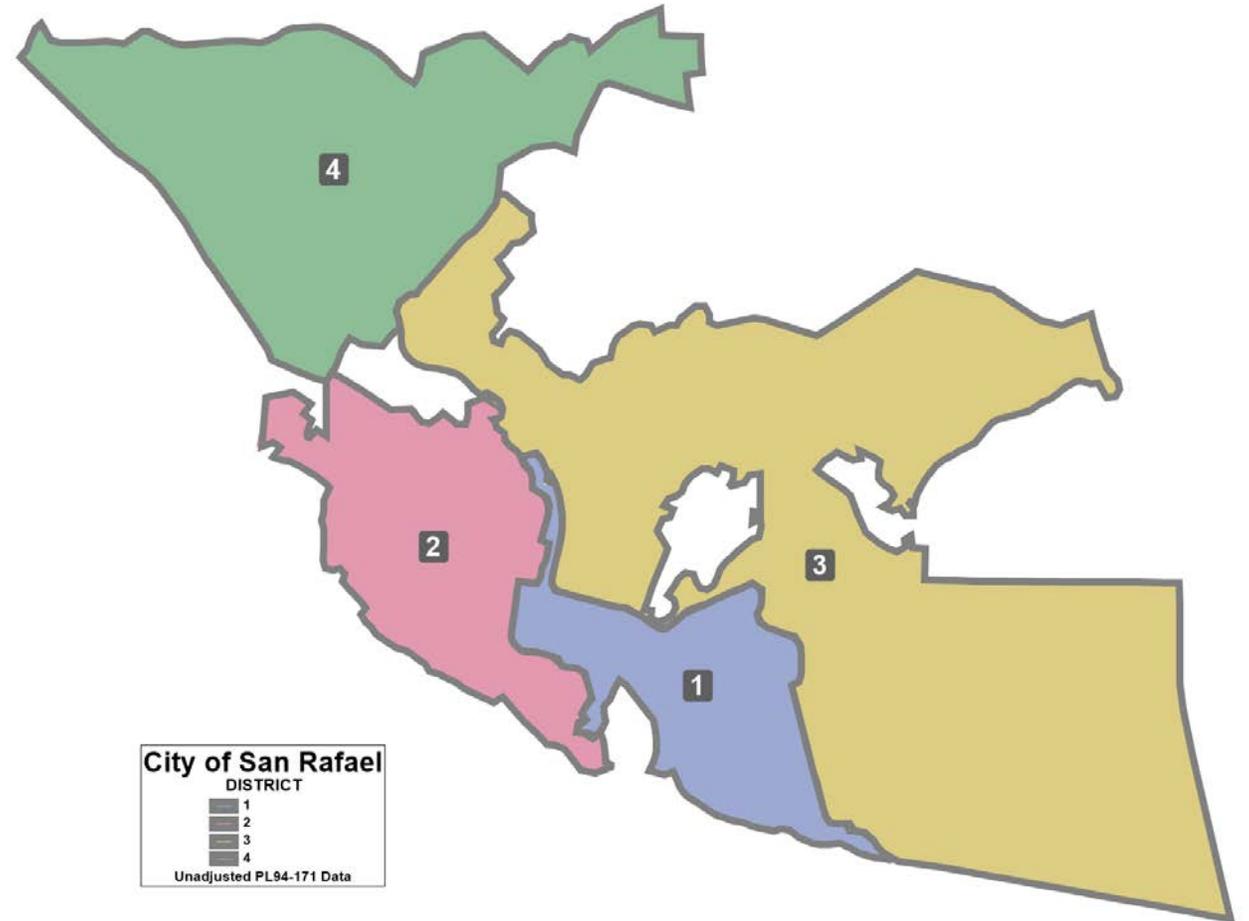


Election
Data
Services
Inc.

Preliminary Demographics

| Dist. | % Latino CVAP | % NH Black CVAP | % NH Asian CVAP | % NH White CVAP |
|-------|---------------|-----------------|-----------------|-----------------|
| 1 | 38.64% | 2.55% | 11.95% | 46.26% |
| 2 | 7.19% | 3.41% | 4.78% | 84.10% |
| 3 | 8.74% | 2.79% | 8.00% | 78.07% |
| 4 | 7.70% | 1.11% | 8.13% | 81.46% |
| Total | 11.33% | 2.46% | 7.50% | 77.33% |

“CVAP” = citizen voting age population



State Law Criteria (FAIR MAPS Act):

Used to be discretionary (even in 2018); now mandatory & ranked:

1. Contiguity
2. Geographic integrity of Neighborhoods/Communities of Interest (COIs)
3. Easily identifiable natural and artificial boundaries
4. Compactness of population

Elections Code § 21621(c):

(c) The council shall adopt district boundaries using the following criteria as set forth in the following order of priority:

(1) To the extent practicable, council districts shall be geographically contiguous. Areas that meet only at the points of adjoining corners are not contiguous. Areas that are separated by water and not connected by a bridge, tunnel, or regular ferry service are not contiguous.

(2) To the extent practicable, the geographic integrity of any local neighborhood or local community of interest shall be respected in a manner that minimizes its division. A “community of interest” is a population that shares common social or economic interests that should be included within a single district for purposes of its effective and fair representation. Communities of interest do not include relationships with political parties, incumbents, or political candidates.

(3) Council district boundaries should be easily identifiable and understandable by residents. To the extent practicable, council districts shall be bounded by natural and artificial barriers, by streets, or by the boundaries of the city.

(4) To the extent practicable, and where it does not conflict with the preceding criteria in this subdivision, council districts shall be drawn to encourage geographical compactness in a manner that nearby areas of population are not bypassed in favor of more distant populations.

(d) The council shall not adopt council district boundaries for the purpose of favoring or discriminating against a political party.

COIs: What Are They?

- State Law Definition: “a population that shares common social or economic interests that should be included within a single district for purposes of its effective and fair representation”
- Application:
 - Must have a common social or economic interest
 - That has a connection to City policy
 - Can be geographically described
 - And benefits from being in a single district
- NOT a community of interest: “Communities of interest do not include relationships with political parties, incumbents, or political candidates.”

COIs: What Could They Include?

- Lifestyle: *e.g.*, community character, recreation, shared social gatherings
- Economy: *e.g.*, major employer/industry, commercial areas
- Demography: *e.g.*, race*, income, education, language, immigration status, housing, etc.
- Geography: *e.g.*, urban/suburban/rural, mountainous, coastal
- Political subdivisions: CSDs, planning areas, etc.
- Place-based issues/needs: *e.g.*, public safety (wildfire concerns), environmental (air pollution)

COIs: 2011 State Commission Examples

- “Its primary **shared economic interest is agriculture**, both valley agricultural bases, such as wheat, corn, tomatoes, alfalfa and various tree crops, and the wine-growing regions of Napa, Lake, and Sonoma counties.”
- The district “includes communities of Crestline to Big Bear that share the **common lifestyle of the mountain forest area** of the county and **similar interests in wildlife and emergency services concerns regarding wildfire danger.**”
- “This district also joins a **community of interest made up of Asian Americans and Pacific Islanders with shared economic and social ties based on income status, housing, language, and immigration status**, including a large Hmong immigrant community.”
- “It includes the communities that surround Folsom Lake with its **shared recreational interests.**”
- “This district includes the **core neighborhoods containing the Lesbian Gay Bisexual Transgender (“LGBT”) community**, as well as several **lower-income, immigrant and working-class neighborhoods.**”
- “This district is characterized by the interests of the western Coachella Valley, and includes tourism, a **retirement community with needs for health care access**, and bedroom communities.”
- “The district reflects **shared concerns about education, safety, and economic interests, along with transportation interests** among cities that share the 605 Freeway as a major corridor”
- “This district is characterized by common interests of the communities of western Riverside County, **animal-keeping interests of Jurupa Valley and Norco**; and shared interests between Eastvale, Norco, and Corona. Corona and Norco **share a common school district.**”
- “Cities and communities surrounding LAX **work together in addressing jet noise mitigation** issues and managing airport traffic.”

Communities of Interest: Identifying Them

- Demographic data: *e.g.*, American Community Survey data, etc.
- Official county and city neighborhood maps/business districts
- Neighborhood groups/neighborhood watch groups/NextDoor groups/HOA Associations
- Welcome signs/gateway monument signs
- Online mapping tools

• **Community testimony**

- What bonds your community – what do you see as the common links in your community?**

- Where is your community located – what are the boundaries of your community?**

- Why should the community be kept together – or separate from another area?**

“[T]he identification of a ‘community of interest,’ a necessary first step to ‘preservation,’ requires insights that cannot be obtained from maps or even census figures. Such insights require an understanding of the community at issue, which can often be acquired only through direct and extensive experience with the day-to-day lives of an area’s residents.” *Favors v. Cuomo, 2012 U.S. Dist. LEXIS 36910, *27 (E.D.N.Y. Mar. 19, 2012) (footnote omitted).*

Possible Role of Other Traditional Criteria

- Minimize shifting voters from one election year to another/retaining core of existing districts
 - Voters currently in districts scheduled to vote in 2022 could be redistricted into a 2024 district, meaning there would be a six-year gap between their voting in Board elections
- Avoid head-to-head contests
- Anticipating future growth?
- Other political subdivisions' boundaries (*e.g.*, community service districts, school districts)

Questions?