



Office of the City Attorney

Michael R. Haas, City Attorney

Patricia A. Lauten, Deputy City Attorney

ASSISTANT CITY ATTORNEYS

Steven C. Brist
Jason Donker
Janae F. Hochmuth
Lara M. Mainella
Amber R. McReynolds
Marci A. Paulsen
Adriana M. Peguero

Kevin B. Ramakrishna
Matthew D. Robles
Kate M. Smith
Jaime L. Staffaroni
Doran E. Viste
Brittany A. Wilson
Jennifer Zilavy

City-County Building, Room 401
210 Martin Luther King, Jr. Boulevard
Madison, Wisconsin 53703-3345

(Telephone) 608-266-4511
(Facsimile) 608-267-8715
attorney@cityofmadison.com

LITIGATION ASSISTANT
Patricia V. Gehler

MEMORANDUM

TO: Mayor Satya Rhodes-Conway
Common Council Members
Ad Hoc Redistricting Committee

FROM: Michael Haas

DATE: September 22, 2021

RE: Redistricting Process Issues -- **Alders Will Represent the New Boundaries of Their Current District on the Effective Date of the Redistricting Ordinance**

I have been asked to review and outline several issues related to the current redistricting process, which will culminate in new boundaries for both wards and aldermanic districts for the City of Madison. As you probably are aware, the delay in the release of the U.S. Census data due to COVID-19 has accelerated the process of redistricting at the municipal and county levels. This has resulted in a compressed timeline to create ward and aldermanic boundary lines as well as a shorter period of time for policymakers and the public to understand and consider the nuances of the process and the consequences of redistricting. I hope that this memorandum will help answer some questions, which relate both to issues that arise during every redistricting process and issues that are unique to this year's process.

Effective Date of New Boundaries

During previous redistricting cycles following the decennial census process, there has been considerable discussion regarding the effective date of the new boundaries and the impact on which Alder represents a particular district, particularly if redistricting results in an Alder residing in a district that is different than the one in which they were elected.

Former City Attorney Mike May issued two thorough legal opinions addressing the effective date of a redistricting ordinance in 2011. Attorney May's opinions confirmed the conclusions of other legal authorities including the Attorney General, the state elections agency, and the League of Wisconsin Municipalities. In short, the redistricting ordinance will become effective upon

publication or at a later effective date established in the ordinance, which must be no later than January 1, 2022. *See Wis. Stat. § 5.15(1)(c).*

Redistricting has two practical effects and the more obvious one pertains to elections. Once the ordinance is in effect, the elections will be conducted, and candidates will campaign, in the newly-established districts. The City's next regular election for Common Council will be held in 2023 and, barring a special election to fill a vacancy, there will not be an election for Alder in the spring of 2022. Therefore, for purposes of the City's elections, it is not necessary for the new districts to be in effect by the beginning of the nomination paper circulation period for candidates in the 2022 spring election, which begins on December 1, 2021. Wisconsin Statute § 5.15(1)(c) requires that the new wards shall govern local elections beginning on January 1, 2022.

The second effect of redistricting – on the Aldermanic representation of specific districts -- is sometimes less obvious but is equally important as well as more immediate in the case of the City of Madison which does not have local elections until 2023. After all, the point of redistricting is to ensure that residents of the various districts have an equal voice in City government. In other words, one Alder should not represent a significantly smaller population base which would result in residents in the smaller district having an outsized voice and representation in City government. As Attorney May concluded in 2011, new wards and aldermanic districts go into effect immediately when the ordinance is published or at a delayed effective date as established in the ordinance. The key is that the City can have only one set of maps (wards and aldermanic districts) at a time.

It is important to also note that, as with constituents, new districts may result in an Alder's current residence being located in a different district than an Alder was elected from. That is not unusual or unique to this redistricting process as it occurs for various local, state and federal elected officials after every census and redistricting. When an Alder's residence is located in a different district, the Alder continues to represent the numbered district from which the Alder was elected until the end of the term. No vacancy is created due to redistricting. Opinions of the Attorney General dating back to at last 40 years confirm this result under the Statutes.

Following the last redistricting, the Common Council also codified this conclusion in MGO 3.21 which states, in part:

Any alderperson who no longer resides in the same-numbered district from which he or she was elected, due to the redistricting, may serve out the remaining portion of his or her term representing the new district of the same number.

Therefore, an Alder that is elected from District X and is redistricted out of the new District X continues to represent the newly-configured District X through the end of the current term. The new wards and districts will govern the next regular election as well as any special elections in the interim. Alders residing in a new district, just as any other candidate who is not an incumbent, can decide to run for office in their new district where they reside or relocate to another district.

As noted above, the Council may choose to establish an effective date for the redistricting ordinance (relating to Alder Districts) that is no later than January 1, 2022. But the new wards need to be designated in early November so that the County's process for establishing County

Board Supervisor districts can be finalized by December 1, 2021, which is the beginning of the nomination paper circulation period for Supervisory candidates. There may be some benefit in creating a delayed effective date in order to provide constituents and Alders some adjustment period and to operate under new boundaries at the beginning of a calendar year.

Finally, I would note that while it is natural and customary for Alders to focus primarily on the needs and interests of the district they represent, the question of representation is partly theoretical or philosophical. Even though Alders are elected from specific geographic districts and assigned those district numbers, they are not prohibited from providing assistance to or representing the interests of residents from the previous district, or residents of any other part of the City for that matter.

Town of Madison Attachment

Under the Town of Madison Cooperative Plan, the Town of Madison will be dissolved as of October 30, 2022 and approximately three-quarters of the Town's population will become residents of the City. At the time new territory is attached to the City, the residents of that territory are assigned to existing wards or the City must create new wards for the territory. This is a decision made by the Council through a change in the ordinances approving an attachment or annexation.

The City's Ad Hoc Redistricting Committee has discussed the impact of the Town of Madison attachment at length. The Committee is recommending that the Common Council adopt new maps that anticipate (but do not include) the addition of 4,846 residents from the Town of Madison. Under a series of court decisions, boundaries of a district are presumed to be constitutional if they do not vary by more than 10%; in other words, plus-or-minus 5% from the ideal population. The Redistricting Committee chose a population range of 10% (plus-or-minus 5%) to govern its recommendations, with the pending Town of Madison population included in the overall calculations.

The Committee's recommended maps intend to begin with a lower population in the aldermanic districts which will eventually absorb the incoming residents from the Town of Madison. At that point, which will occur within one year of the new maps being adopted and prior to the next regular City election, the districts will become more equivalent in population to the City's other districts. Some of the Committee's recommended wards might begin with lower populations as well.

Population growth in the City occurs during the 10-year period, both from adding territory and the construction of new housing units in existing parts of the City, and therefore the new districts become more unequal as time progresses. In fact, the City is already using population figures from the Census which are somewhat outdated. In the case of the Town of Madison, the City can anticipate the transfer of residents which has already been agreed to by the municipalities. Creating new maps in anticipation of that growth is both justifiable as a legal matter and will avoid making certain wards and districts become significantly out of balance only one year into the ten-year period which will be governed by the boundaries.

I hope this information is helpful and I am available to discuss these issues for any Alders or Committee members who may have questions.