

From: [Christina Turner](#)
To: [Michelle Bigelow](#)
Cc: [Donald Larkin](#)
Subject: FW: [EXTERNAL] REDISTRICTING: CA ELECTION CODE SECTION 21534 PROVIDES INSIGHT TO THE DEGREE OF DISCRETION THE CA LEGISLATORS GRANTED CITIES.
Date: Friday, February 11, 2022 11:07:15 AM

Please supplement.

From: Armando Be [REDACTED] >
Sent: Friday, February 11, 2022 9:16 AM
To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; John McKay <john.mckay@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>; Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>; Donald Larkin <Donald.Larkin@morganhill.ca.gov>
Subject: [EXTERNAL] REDISTRICTING: CA ELECTION CODE SECTION 21534 PROVIDES INSIGHT TO THE DEGREE OF DISCRETION THE CA LEGISLATORS GRANTED CITIES.

Mayor Constantine, Council Members, and City Manager,

We strongly believe that our State Legislators grant the City sufficient discretion and flexibility to apply the factors in Election Code 21601 ©(1-4) in a way that best serves Morgan Hill. It is difficult to believe that our State Legislators chose to give paramount importance to contiguity and that it boxed the Council into a corner and completely removed the Council's discretion to decide the degree of "contiguity", when the word is qualified with the clause "to the extent practicable".

The correct standard to ascertain the meaning of statutory language is to look at the plain meaning of the words, the legislative history, and finally *to the reasonableness of the proposed construction*.

It is safe to assume that the Legislature carefully chose its word to denote the degree of discretion and flexibility it granted cities to apply the 4 factors to draw districts. The use of "shall" *with no qualifying words* commands *100% contiguity*, regardless of the consequences to achieve. On the other hand, the legislature uses words like "may give consideration" to denote flexible discretion. Within the continuum of the words "shall" and "may consider" lies the degree of discretion the Legislature grants cities when it includes the phrase "to the extent practicable".

The continuum denoted by the words in the CA Elections Code section 21534 ©(1-5) provides valuable insight to the degrees of discretion. This redistricting statute was amended in 2020 and took effect on January 1, 2021, the same as Election Code section 21601. It notes:

ELECTION CODE SECTION 21534

In order of priority*

"©(3) Districts **shall** be geographically contiguous."

"©(4) The geographic integrity of any city, local neighborhood, or local community

of interest shall be respected in a manner that minimizes its division **to the extent possible** without violating the requirements of paragraphs (1) to (3)."

"©(5) **To the extent practicable**, and where this does not conflict with paragraphs (1) to (4) inclusive, districts shall be drawn to encourage geographical compactness such that nearby areas of populations are not bypassed for more distant areas of population."

*Section 21534 ranking of the factors include the Federal requirements.

Section 21534 clearly marks a continuum of degrees of discretion the Legislature granted that can be applied to Section 21601 (c)(1-4). The phrase "to the extent practicable" is third in the ranking of priority below "to the extent possible".

This word difference in the two clauses is important because the City Attorney says that the Section 21601 contiguous factor, qualified with "to the extent practicable", means "if it is possible and could be done, then it should be done". If that was the intended meaning the Legislature clearly would just have used the qualifying words "to the extent possible" (forced continuity) or 'shall be" without a qualifier clause to the continuity factor as it did in Section 21534. That the Legislators did not, is compelling evidence that the intent of the legislature was to grant cities some discretion and flexibility in applying the factors, including contiguity.

The "to the extent possible" clause best captures the city attorney's meaning "If it is possible and could be done, then it should be done". And, in Code section 21534 that clause is ranked one higher in the order of priority over "to the extent practicable". The definition of "to the extent practicable" does not appear to naturally capture the phrase "If it is possible and could be done, then it should be done".

The Section 21534 statutory words provide valuable insight and can assist in interpreting the Section 21601 (c) (1-4) factors. Since in section 21601 the contiguity factor is qualified by the phrase 'to the extent practicable" instead of "to the extent possible" that may be viewed as reasonable evidence that the Legislature did not require 100% contiguity or forced contiguity. In fact it is evidence that it left the city council discretion to declare District D as being contiguous to the "extent practicable".

The discretion granted by the CA Legislators is a discretion that the City should want to exercise, especially when the issue deals with the protection of voter's rights, preserving the integrity of communities of interest and protecting minority communities.

Relying on the opinion of the City Attorney, one council member commented "The Voters Rights Act was intended to protect voters and protect communities of interest .. and here we are, we come down with something from the State that says well that is not our primary concern, the primary concern is contiguity .. I don't see the logic, but it's the law, ... Sacramento, boy they missed the point." Even this councilmember appeared dismayed at the thought that the Legislators were abandoning the protection of communities of interest and minority communities.

As noted above, the courts apply a three-prong test to ascertain the meaning of the words in a statute- apply the plain meaning of the words, examine the legislative history, and finally assess *the reasonableness of the proposed construction*.

It does not appear reasonable to force a council member to conclude that the Legislators have forsaken the protection of communities of interest and the protection of minority communities. That the Legislators carefully chose the clause “to the extent practicable” for the continuity factor and not “to the extent possible, and not “shall” without a qualifier, is compelling evidence that our Legislators did in fact intended to protect communities of interest and minority communities.

We commend the Mayor and council members who have faith in our Legislative leaders. We applaud those council members who carefully assess the words “to the extent practicable”, and give them the meaning that best reflects the legislative intent to protect our communities of interest and minority communities. We applaud those council members who are willing to exercise the degree of discretion inherent in the Legislators' word choice that protects minority communities and communities of interest.

We hope that the Mayor and council members recognize that our CA Elected Officials are more interested in protecting and advancing the communities of interest and minority communities over contiguity, especially when the boundary barriers are natural or jurisdictional.

It is our position that Public Map 103 would best serve Morgan Hill. The map retains the district boundaries that were drawn in 2017 to increase the probability that a representative of minority groups will get elected to the Council. It also respects the very important community of interests that runs along the Monterey Road corridor represented by District B and of Districts A,C, and D that branch out East and West from the corridor.

It is noted that the Asian Law Alliance wrote in an email to the council: “In our view, Public Map 103 does not violate the contiguity requirement of the Fair Maps Act. In fact, Public Map 103 is the only map that will keep the communities of interest in current District B together. As you well know, when the Election Code was amended, those amendments were intended to protect minority communities. We disagree with the City Attorney's opinion that districts must be 100% contiguous. The code clearly states that “to the extent practicable”. We agree with the analysis by Armando Benevides (sp) in his February 8, 2022 email.”

Please exercise the discretion and flexibility granted by the Legislature to the City and *declare* District D contiguous to the “extent practicable” in Map 103 or contiguous under the “Areas Separated by Water Connected by a Bridge” principle. We believe either declaration is legally appropriate to allow the Council to fairly consider the benefits of Public Map 103.

Regards,

Armando Benavides, Sally Casas, Mario Montemayor, Kathy Napoli, Rick Badillo, Ernesto Gomez, Delia Gomez, Roberto Aguirrez, Brenda Cayme, Yolanda Barba, Rob Guynn, Edith Duran, Alicia Cortez, Ruben Garcia, James Leslie, Sylvia Topete,

Patricia Darling, Luz Guerra, Juan Cardona, Alexandria Cayme, Emmanuel Vasquez, Cheryl Paxton, Joe Baranowski

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