Submitted by: ASSEMBLY MEMBER OSSIANDER
Prepared by: Dept. of Law
For reading: November 27, 2012

CLERK'S OFFICE
APPROVED
Date: 12-18-12

ANCHORAGE, ALASKA
AO No. 2012-117

AN ORDINANCE OF THE ANCHORAGE ASSEMBLY AMENDING THE BOUNDARIES OF THE DOWNTOWN ASSEMBLY ELECTION DISTRICT (DISTRICT ONE) AND THE CENTRAL ANCHORAGE ASSEMBLY ELECTION DISTRICT (DISTRICT FOUR –"MIDTOWN").

WHEREAS, after the federal census and the State of Alaska's adoption of a final state redistricting plan, the Assembly declared itself malapportioned (AR 2012-181), and having determined redistricting will result in properly apportioned districts; and

WHEREAS, a number of alternatives were explored, keeping in mind the mandates of federal, state and local law, including principles of "one person, one vote", equal protection, and the requirement to maintain compact and contiguous districts containing as nearly as practicable relatively integrated socioeconomic areas;

WHEREAS, the Assembly approved AO 2012-108 on November 13, 2012;

WHEREAS, the Assembly's approval included an amendment to the proposed map moving all of precinct 520 from District 1 (Downtown) to District 4 (Central Anchorage); and

WHEREAS, returning precinct 520 to its traditional division along Debarr Road so that the North part of the precinct stays in District 1 and the South part of the precinct stays in District 4 results in a deviation of 2.45%, illustrated as follows:

DISTRICT	Total All Persons	*Target*	*Deviation*	*Difference*
1	26533	26,530	**0.01%**	3
2	52281	53,059	**-1.47%**	-778
3	52891	53,059	**-0.32%**	-168
4	53370	53,059	**0.59%**	311
5	53578	53,059	**0.98%**	519
6	53173	53,059	**0.21%**	114

Now, therefore, THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1. The official Assembly apportionment map approved by AO 2012-108 is amended as indicated in Exhibit A (attached).

Section 2. The revisor of ordinances shall replace the existing map in Anchorage Municipal Code section 2.25.010 with a map reflecting the changes made by Exhibit A.

Section 3. This ordinance shall be effective immediately upon passage and approval by the Assembly.

PASSED AND APPROVED by the Anchorage Assembly this 18th day of December, 2012.

Ernie Hall
Chair of the Assembly

ATTEST:

Barbara A. Jones
Municipal Clerk

MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. AM 689-2012

Meeting Date: November 27, 2012

From: **DEBBIE OSSIANDER, ASSEMBLY MEMEBER**

Subject: **AN ORDINANCE OF THE ANCHORAGE ASSEMBLY AMENDING THE BOUNDARIES OF THE DOWNTOWN ASSEMBLY ELECTION DISTRICT (DISTRICT ONE) AND THE CENTRAL ANCHORAGE ASSEMBLY ELECTION DISTRICT (DISTRICT FOUR – "MIDTOWN").**

At the November 13, 2012 Assembly meeting, AO 2012-108 was amended on the floor before passage and approval. The amendment to the 1 DT Vers 3.1 map placing all of Precinct 520 into Assembly Election District 4 raised the population deviation from 5.84% to 8.53%. The Department of Law evaluated this amendment's effect and is concerned the resulting increased total deviation will be significantly difficult to defend if challenged. In the 2001 state redistricting litigation, the Alaska Supreme Court stated:

"We conclude that the [state redistricting] board failed to offer an acceptable justification for the Anchorage deviations [9.5%]. The board considered and rejected Anchorage plans with significantly lower maximum deviations, apparently because these plans did not respect the board's conception of neighborhood boundaries. But as we held in *Groh v. Egan,* Anchorage neighborhood patterns cannot justify "substantial disparities" in population equality across Anchorage districts. Anchorage is by definition socioeconomically integrated, and its population is sufficiently dense and evenly spread to allow multiple combinations of compact, contiguous districts with minimal population deviations. Accordingly, the Anchorage deviations are unconstitutional, and require the board on remand to make a good faith effort to further reduce the deviations."

The deviation created by the amendment to AO 2012-108 may not withstand a legal challenge because there is insufficient evidentiary support in the record for the change increasing the total deviation, when measured against the Alaska constitutional requirement to try to have as low a deviation as practical. While one assembly member spoke in general terms to the importance of that precinct and its minority population, there was no evidence about how that precinct's retention in District 4 was necessary to meet any federal, state or municipal law requirement, such as a showing of minority composition or minority voting history for Voting Rights Act (VRA) purposes.

According to the available 2010 Census data, the South part of the precinct, which has historically been in District 4, is predominately white. The North part of the

precinct, which has historically been in District 1, is predominately comprised of minorities, particularly Alaska Natives. The census data shows the amendment placing the whole precinct in District 4 resulted in decreasing the percentage of Alaska Natives of voting age in District 1 by 1.37% from the Benchmark, compared to a 0.84% decrease in the 1 DT Vers 3.1 plan. In District 4 the amendment increased the percentage of voting age Alaska Natives by 0.38% over the Benchmark, compared to a 0.83% increase in the 1 DT Vers 3.1 plan. The fractional percentages affecting Alaska Natives voting strength are insufficient to justify the increase in the total deviation from the ideal for the "one person, one vote" rule. Compared to the historical district map (or "Benchmark" districts) that has been in place since 2002, the amendment essentially moves the North part of the precinct into District 4. Thus, the North part of the precinct, which is predominately comprised of minority groups, has had no bearing on the success of minority candidates in District 4, while the South part of the precinct, which has been part of District 4 and is predominately white, cannot be said to have prevented minority candidates from being elected in District 4. On the other hand, it is clear that moving the North part of the precinct from District 1 to District 4 arguably diminishes the voting strength of Alaska Natives in District 1 by more than 1%.

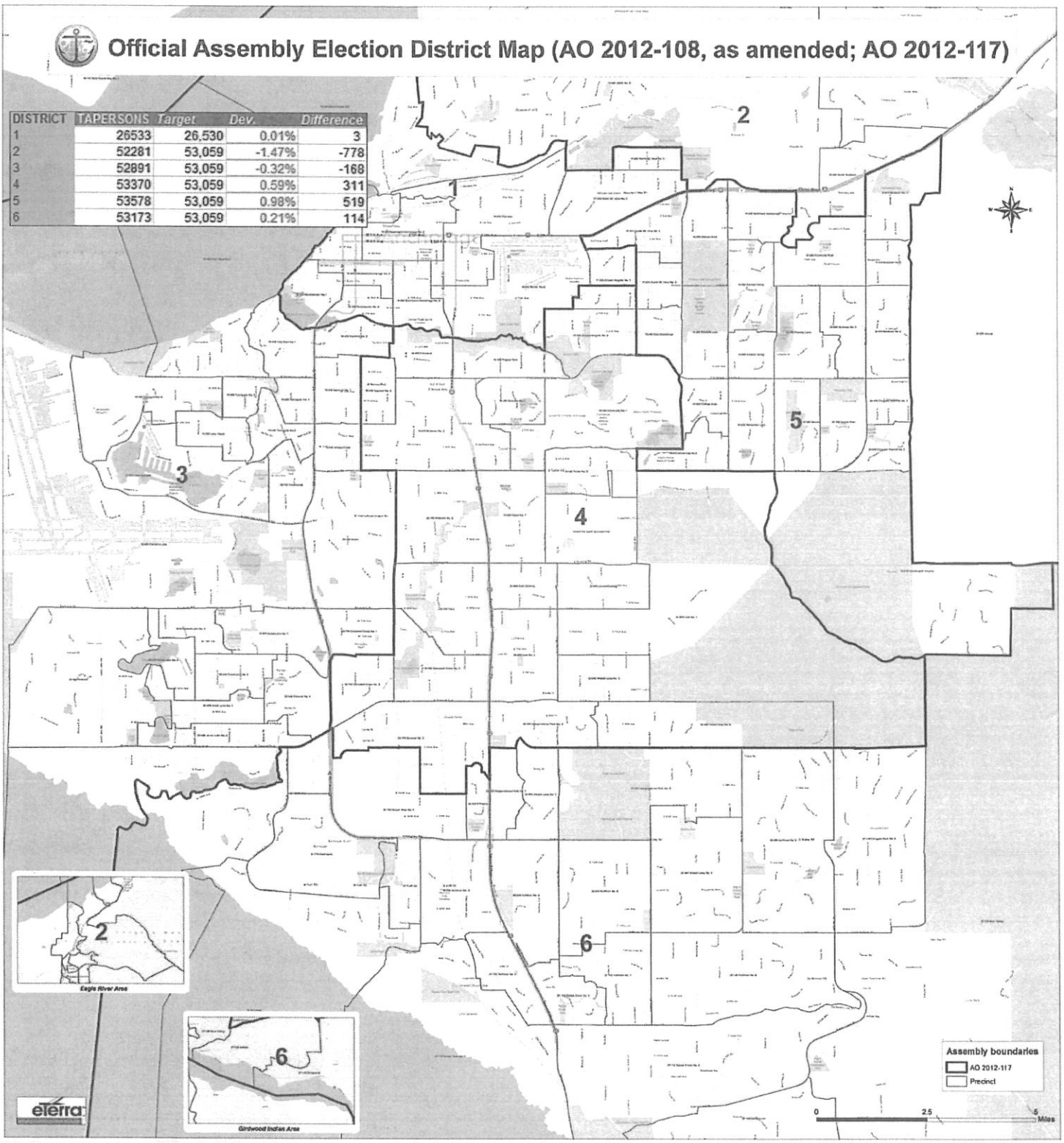
The factors the DOJ considers to determine whether a reapportionment plan complies with Section 5 of the VRA includes: (1) whether minority voting strength is reduced; (2) whether minority concentrations are fragmented among different districts; (3) whether minorities are over-concentrated in one or more districts; (4) whether alternative plans satisfying legitimate governmental interests exist and were considered; (5) whether the reapportionment plan departs from objective redistricting criteria applicable to the MOA, or ignores relevant factors such as compactness and contiguity, or disregards available natural or artificial boundaries; and (6) whether the plan is inconsistent with MOA's reapportionment standards.

The DOJ does not rely on any fixed demographic percentage in making this assessment. Instead, it is a functional analysis of electoral behavior that looks at electoral participation within portions of a population, election history, voting patterns, voter registration and turnout, and other information important to this determination. A reapportionment plan that preserves current minority voting strength is entitled to preclearance. A plan that reduces voting strength in specific districts is not retrogressive if it can be shown those losses are offset by gains in other districts in the overall plan. Finally, it is not considered retrogressive when a plan adjusts minority group numbers in specific districts so they reflect the percentage of minorities in the area overall.

In total, based on the federal standards described above, the evidence does not tend to support the amendment. Still, even if the Assembly's record had supporting data suggesting that moving the North part of the precinct into District 4 was necessary under federal law, we have not explored all options to, at the same time, make sure we meet the state constitutional law requirement to establish a low deviation so that the Districts are as close as possible to the target population for proportionality. In redistricting, compliance with Equal Protection – "one person, one vote" – is a primary objective, which should only be compromised to the extent necessary to comply with the VRA or other requirements such as avoiding split precincts.

The proposed ordinance would return Precinct 520 to its previous configuration in the Benchmark boundaries as a split precinct, retaining the North half of the precinct in District 1. The result is more favorable to Alaska Natives of voting age than both the 1 DT Vers 3.1 plan and the adopted plan with the amendment: it decreases the percentage of Alaska Natives of voting age in District 1 by only 0.53% and increases it in District 4 by 0.33%. This ordinance minimizes the effect on Alaska Native voting strength and at the same time it places the Equal Protection constitutional requirements as the highest priority in this reapportionment, demonstrated by the 2.45% total deviation. All other data being equal, this arrangement is entitled to preclearance under federal law and better meets the state constitutional law requirements to be as near as practicable to the "one person, one vote" standard.

Prepared by: Dennis A. Wheeler, Municipal Attorney
Respectfully submitted: Debbie Ossiander, Assembly Member

Official Assembly Election District Map (AO 2012-108, as amended; AO 2012-117)

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