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LEGAL AND CONFIDENTIAL

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TO: Common Council, City of Hudson  
FROM: Crystal R. Peck, Esq.  
RE: Redistricting Process

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Please find below an outline of the legal standards and procedure which apply to changing the boundaries of the wards in the City of Hudson.

It should be noted initially that a question has been raised as to whether the City must comply with a mandatory referendum in its redistricting process or whether that requirement pertains only to the County. My legal opinion on this matter is that the City must follow mandatory referendum requirements set forth in the General Municipal Law. This opinion was arrived at after reviewing the pertinent laws, the legislative history of pertinent General Municipal law sections, the legislative history of the City of Hudson Charter, and reviewing this issue with NYCOM counsel, the City's Corporation Counsel, and the Columbia County Board of Elections.

My synopsis below outlines the laws governing the City's redistricting process as well as the notification and time frames required in handling same.

## General Requirements for Redistricting

Legislative apportionment must comply with the Equal Protection Clause. The guiding principles for any redistricting must be one of equal representation for equal number of people, without regard to race, sex, economic status, or place of residence within the municipality.

In this respect, § C1-4(c) of the City Charter provides for the fair and equal apportionment of wards in the City. This section provides that wards in the City shall have substantially equal populations as determined by the Census and in conformance with State and Federal law. The Charter provisions is a general codification of the federal requirement of "one person, one vote" – one citizen's vote is equal to another citizen's vote. *Reynolds v. Sims*, 377 U.S. 533 (1964). This rule is applicable to both State legislatures and local legislative bodies.

In determining compliance, one begins with reviewing population deviations. The general rule is that population deviations for apportionment purposes with a maximum deviation under 10% is considered minor but with a larger deviation there is a presumption of discrimination unless justified by the municipality. *Brown v. Thomson*, 462 U.S. 835 (1983). New York's highest Court, the Court of Appeals, has stated that "the more thought that was given to the local situations, the more it became apparent it was more desirable to preserve traditional unit representation even if that led to a slight degree of disparity in voting power." *Franklin v. Krause*, 298 N.Y.2d 234 (1973) (upholding a deviation in reapportionment plan where difference was 7.3% in population); *Abate v. Mundt*, 25 N.Y.2d 309 (1969)(upholding a deviation in reapportionment plan for Rockland County where the difference between the largest and smallest districts was 12%). Essentially, as long as the population inequalities are based on "legitimate consideration incident to the effectuation of a ration policy" an apportionment will pass constitutional muster. *Suffolk County Democratic Committee v. Gaffney*, 196 A.D.2d 799 (2d Dept. 1993)(discussing a reapportionment plan with a 20.85% deviation). The question is whether there was arbitrariness or discrimination in allowing for the higher deviation. *Brown*, 462 U.S. 835, 847-48.

Section C1-4(c) provides the following with respect to the reapportionment of ward boundaries:

"The wards shall have substantially equal populations as determined by the United States Census Bureau and New York State law such that such populations are in conformance with applicable federal and New York State law. If after any decennial federal census, the population of the wards is not in compliance with the law, the Common Council by not later than July 1 of each year ending in "2" shall reapportion the wards and change their boundaries in order to cause their respective populations to be in conformance with the law."

In determining what is "substantially equal" the City would first look at the 10% rule set out by the United States Supreme Court. If deviations are under 10%, then the apportionment presumptively complies with the one person, one vote rule and, thus, is "substantially equal". If the deviation is over 10%, then the question is whether there is a legitimate non-discriminatory or arbitrary basis for the increased deviation.

The 2020 Census has resulted in a population deviation between the 1<sup>st</sup> and 4<sup>th</sup> Ward of 12.38%. Given this disparity, the reapportionment of these wards is being considered by the Law Committee and, ultimately, the City Council.

#### Procedure Required to Reapportion City Wards

In order to reapportion the Wards the following procedure applies:

A local law subject to mandatory referendum must be adopted to amend the Ward boundaries as set forth in the Charter (C1-4(a)-(b)).

This requires the following:

- (i) The local law is introduced at a meeting of the Council.
- (ii) The local law must be on the desks of the Council members at least 7 days prior to its final passage (exclusive of Sundays) or, if mailed, be mailed 10 days prior to its passage by the Council.
- (iii) The Mayor must then schedule a public hearing within 10 days after being presented with the law. Five (5) days must lapse between the notice of the public hearing and the public hearing being held.
- (iv) Following the hearing, the local law is then presented to the Council for a final vote on its adoption.
- (v) A certified statement of the local law is then submitted to the Board of Elections no later than August 8<sup>th</sup> which allows for the law to appear as a proposition on the ballot at the November 8<sup>th</sup> General Election.

Pursuant to the City Charter, the local law must be adopted by the Council by July 1<sup>st</sup> subject to mandatory referendum.

#### Mandatory Referendum Requirement

A question as to whether a change in boundaries must go through referendum has been raised by Steven Dunn who has provided guidance to the Law Committee regarding the reapportionment of the wards.

Municipal Home Rule Law § 23(2)(h) provides a local law is subject to mandatory referendum if:

“In the case of a city, changes the boundaries of wards, or other districts, from which members of the county board of supervisors, chosen as such in such city to represent the city, are elected.”

Section C4-2 of the City Charter provides that “the officers to be elected by the electors of each ward shall be one Supervisor and two Alderman”. I confirmed with the County Attorney that Columbia County is a statutory County which follows the provisions of NYS County Law. There is not a separate County law for how Supervisors are to be elected. Thus, the election of County Supervisors for the City of Hudson is dependent entirely on the ward boundaries as established in the City Charter.

I have also evaluated whether the referendum requirement of Municipal Home Rule Law § 23(2)(h) does not apply to the City because the City Charter pre-dates the enactment of the Municipal Home Rule Law statute. My research has shown that the referendum requirement in Municipal Home Rule Law § 23(2)(h) was initially established in the City Home Rule Law. The City Home Rule law was superseded by the Municipal Home Rule

Law when it went into effect in 1964. However, in doing so the State Legislature expressly stated that any provision of City Home Rule Law that was added in 1963 shall be deemed to be added to the Municipal Home Rule law and given full effect. MHRL § 57. The only opinion I have been able to find on-point to this issue is a 1964 Attorney General Opinion opining that since City Home Rule Law was a general law and carried over by § 57 of the Municipal Home Rule law that the mandatory referendum requirement applies despite the fact that a city's charter pre-dates the enactment of Municipal Home Rule Law.

As such, a change in ward boundaries will require a mandatory referendum. This opinion was vetted with NYCOM counsel as well as the City's corporation counsel which agreed with the conclusion reached.

#### Timing

A question has also been raised as to whether a referendum in November will comply with the City's Charter deadline of July 1<sup>st</sup>. I have corresponded with the Columbia County Board of Elections on this issue. New York State Election Law Section 4-100 requires that any revisions to an election district must be completed by February 15<sup>th</sup> of each year and take effect on April 1<sup>st</sup>. Thus, any revisions to the ward boundaries to be effective July 1<sup>st</sup> of this year would be in violation of the Election Law. The boundary change could not be effective until 2023.

In discussion the matter with NYCOM it was agreed that a fair interpretation of the City Charter is that is the Council votes on the local law by the July 1<sup>st</sup> deadline, subject to a referendum at the General Election, the Council has complied with the Charter.

I understand that there is a concern about what would happen if the proposition was not approved at the general election. First, the fact that there is a 12.38% deviation does not, on its own, mean the apportionment is unconstitutional. The question is whether there is legitimate justification for that deviation. Justification notwithstanding, if the proposition was not approved the ward boundaries would remain the same unless challenged. The Council also has the option of amending its Charter to change the manner in which County Supervisors are elected so that a referendum is not required.

#### Recommendation for Future Amendments

Given the referendum requirement involved with the redistricting process, it is recommended that the Council consider future amendments to the Charter that would separate how the City's County Supervisors are elected from the City's ward boundaries.