



## Colorado Independent Redistricting Commissions Staff

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## MEMORANDUM

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August 13, 2021

**TO:** Members of the Independent Congressional and Legislative Redistricting Commissions

**FROM:** Colorado Independent Redistricting Commissions Staff

**SUBJECT:** Procedures for Requesting and Considering Amendments and Additional Plans

### Summary

Article V, sections 44.4 (4) and 48.2 (4) of the Colorado Constitution permit a commissioner or group of commissioners to “request nonpartisan staff to prepare additional plans or amendments to plans.” The constitution requires commissioners to make the request in a public meeting, but does not require commission approval of the request.<sup>1</sup> Furthermore, the constitution states that additional plans or amendments drafted by nonpartisan staff in response to these requests are separate from staff plans.<sup>2</sup> Aside from these provisions, the constitution is silent on procedures for additional plans and amendments.

Consequently, nonpartisan staff recommends the following considerations and procedures to help facilitate the efficient and effective production of additional plans and amendments.

### When may commissioners request additional plans or amendments?

Nonpartisan staff will prepare, publish, and present staff plans.<sup>3</sup> The commissions may vote on whether to adopt any of these plans as the final plan. For a vote to adopt a plan as the final plan to succeed, it must receive eight affirmative votes, including two affirmative votes from commissioners who are unaffiliated with a political party.<sup>4</sup> Furthermore, this vote can occur no earlier than seventy-two hours after the plan is proposed to the commission in a public meeting, unless the commission unanimously waives this seventy-two hour requirement.<sup>5</sup>

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<sup>1</sup> Colo. Const. art. V, sec. 44.4 (4), sec. 48.2 (4).

<sup>2</sup> Colo. Const. art. V, sec. 44.4 (4), sec. 48.2 (4).

<sup>3</sup> Colo. Const. art. V, sec. 44.4 (3), sec. 48.2 (3).

<sup>4</sup> Colo. Const. art. V, sec. 44.2 (2), sec. 48 (2).

<sup>5</sup> Colo. Const. art. V, sec. 44.2 (2), sec. 48 (2).

The commission should consider if it will hold a vote on adopting a plan as a final plan for every plan, and if so, whether it will hold the vote at least seventy-two hours after the presentation of the plan or waive the requirement and hold the vote at an earlier public meeting (perhaps immediately at the current public meeting).

Because requests for additional plans or amendments must be made in a public meeting,<sup>6</sup> commissioners should be prepared to request additional plans or amendments at the same public meeting as a staff plan presentation. Alternatively, if the commission will convene another public meeting (possibly seventy-two hours after the presentation of a staff plan in order to vote on the adoption of the plan as a final plan or to consider additional plans or amendments requested by other commissioners) a commissioner may wait to offer a request at that later public meeting.

In deciding when to request an additional plan or amendment, a commissioner should consider the amount of time staff will need to draft the requested additional plan or amendment and any other requested additional plans or amendments. Additionally, a commissioner should consider when the requested additional plan or amendment will be ready to present to the commission in relation to when any possible vote on a plan may occur, when other meetings are scheduled, or if any additional meetings may be necessitated due to the timing of their request.

For example, nonpartisan staff is scheduled to present the first Congressional staff plan on September 6 and the second Congressional staff plan on September 16.

- If a commissioner requests an additional plan or amendment on September 6 (at the same meeting that the staff plan is presented) nonpartisan staff can start drafting that request right away.
- If a commissioner waits until the next public meeting (perhaps at a meeting seventy-two hours after the staff plan presentation if the commission wants to vote on whether to adopt the plan, or perhaps at a meeting where other commissioners' previously requested additional plans or amendment are presented) this will necessitate an additional meeting to present that additional plan or amendment. This may occur closer to September 16, and possibly too close in time for the nonpartisan staff to integrate any feedback concerning the requested additional plan or amendment into the development of the second staff plan.

As illustrated by these examples, the commission must balance the timing of requesting additional plans or amendments against the schedule's demands. On the one hand, the commission must allow itself adequate time to both consider the staff plans and contemplate specifics for additional plans or amendments. On the other hand, it must also be careful not to postpone opportunities to request additional plans or amendments too long.

For these reasons, nonpartisan staff strongly recommends that commissioners request additional plans or amendments as soon as possible, and as collectively as possible, to ensure efficiency.

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<sup>6</sup> Colo. Const. art. V, sec. 44.4 (4), sec. 48.2 (4).

## How do I request an additional plan or amendment?

Nonpartisan staff recommends that the chair of both the Independent Congressional Redistricting Commission and the Independent Legislative Redistricting Commission provide a formal opportunity at public meetings to recognize a commissioner who wants to request an additional plan or amendment. Additionally, nonpartisan staff recommends certain procedural formalities to help ensure an organized and efficient process.

First, nonpartisan staff recommends that commissioners offer amendment and additional plan requests in a uniform manner, so that actual requests for drafting can be properly identified from brainstorming. Nonpartisan staff recommends the following form:

“I request, in accordance with article V, section [44.4 (4)/48.2(4)], that nonpartisan staff draft a [plan/amendment] to [specific details of the request]”.

After a commissioner reads the request into the record, he or she must copy and paste a written copy of the request into the chat function of the Zoom meeting so that nonpartisan staff can record the request for future reference.

Second, nonpartisan staff requests that during the same meeting, the commission’s chair provides an opportunity for staff to engage with the commissioner who requests the additional plan or amendment in order to seek any necessary clarity concerning the specific details or goals of the request that will assist with efficient and effective drafting.

Third, nonpartisan staff recommends that the commission chairs assign and announce a unique identifier to each additional plan or amendment requested to ensure organization and efficiency. Certainly, a commission may develop any format that it wishes. For amendments, nonpartisan staff recommends A.#.Surname as a simple identifier. For additional plans, nonpartisan staff recommends P.#.Surname as the identifier. This clarifies that the discussion is about an amendment or additional plan number as opposed to a staff plan number (e.g. if the discussion were simply about 001, is the reference to staff plan 001, additional plan 001, or amendment 001?), while the subsequent number changes for each request, and the requester’s surname is an easy way to identify from whom it was requested.

- Commissioner McCartney requests an amendment.
  - Chair Lennon assigns this as A.001.McCartney.
- Commissioner Harrison requests an additional plan.
  - Chair Lennon assigns this as P.001.Harrison.
- Commissioner Starr requests an amendment.
  - Commissioner Lennon assigns this as A.002.Starr.
- Commissioner McCartney reconsiders his amendment A.001.McCartney.
  - Commissioner McCartney withdraws A.001.McCartney.
- After withdrawing A.001.McCartney, Commissioner McCartney requests a different amendment.
  - Commissioner Lennon assigns this as A.003.McCartney.

See attachment A to this memo for additional considerations when requesting an amendment.

### **When will I see and present the draft of my requested additional plan or amendment?**

At a later meeting, after the additional plan or amendment is drafted, the requesting commissioner may present the additional plan or amendment to the rest of the commission. Nonpartisan staff will be available to assist with explaining the details of the additional plan or amendment.

As mentioned above, the commissions must be mindful of scheduling meetings to review and consider any additional plans or amendments presented by commissioners. The commissions must balance the amount of time necessary for commissioners to formulate ideas for additional plans and amendments, for nonpartisan staff to draft all of the requested additional plans and amendments, for commissioners to consider drafted additional plans and amendments, and for commissioners to have a discussion about the additional plans and amendments that may inform the drafting of subsequent plans.

### **What do we do with an additional plan or amendment?**

The commissions have two options of what to do with an additional plan or amendment.

First, a commission may choose not to do anything with the additional plan or amendment.

Second, a commission may choose to utilize the additional plan or amendment in some manner. It may vote to adopt the additional plan or amended plan as the final plan for submission to the Colorado Supreme Court (after seventy-two hours, unless unanimously waived).

### **May the commissions adopt an additional plan or an amended plan as the final plan?**

The commissions may vote on whether to adopt any plan presented to them as the final plan.

As discussed above, the seventy-two hour requirement means that the vote can occur no earlier than seventy-two hours after the commissioner has presented the plan, unless the commission unanimously waives the requirement.

If a commission does not adopt the additional plan or amended plan as a final plan for submission to the Colorado Supreme Court, the procedures described in this document continue to apply for subsequent plans or preceding plans.

### **Attachment**

Attachment A – Amendment and Additional Plan Considerations

## **Attachment A - Amendment and Additional Plan Considerations**

### **Summary**

Staff advises members of the Independent Congressional Redistricting Commission and the Independent Legislative Redistricting Commission to consider certain variables when requesting amendments and additional plans. Specifically, the amount of technical direction required for the drafting of an amendment or additional plan, the legal considerations for the drafting of an amendment or additional plan, the primary goal of an amendment or additional plan, and how long it will take nonpartisan staff to draft an amendment or additional plan.

\* The degree of consideration and specificity that a commissioner articulates for an amendment governs the staff's ability to reflect the commissioner's goals accurately and efficiently. \*

### **What is the technical direction for the amendment?**

In requesting an amendment or additional plan, commissioners should be as specific as possible.

- What county, municipality, or neighborhood must be preserved or severed? In what district must it be included? From what district must it be excluded?
- Where must the new district boundary to be drawn? A political subdivision border, road, railroad, airport, river, forest, etc.? Where must the boundary line end and redirect?

### **What are the legal considerations of the amendment?**

Commissioners should consider the effects to the amended district and other districts consequently.

- How many people are affected by the request made by the commissioner? Does the commissioner want to amend other boundaries to equalize population across all districts?
- Will it keep all districts contiguous?
- Does it comply with the Voting Rights Act? Will it deny or abridge the right of any citizen to vote on account of that person's race or membership in a language minority group, or dilute the impact of that racial or language minority group's electoral influence?
- Are communities of interest united or severed?
- Are political subdivisions united or severed?
- Will the amendment or additional plan make districts more or less compact?
- Will the amendment or additional plan make districts more or less politically competitive?

### **What is the primary goal of the amendment or additional plan?**

Articulating the primary goal a commissioner intends for an amendment or additional plan to achieve is beneficial. This will enable nonpartisan staff to make necessary technical drafting

decisions consistent with the commission's goal in instances where specific direction is absent or ambiguous; identify and inform you of technical directions, legal considerations, or consequences that may conflict with your intent or goal during the public meeting when the request is made; and draft the amendment more accurately and efficiently.

### **How long will it take nonpartisan staff to prepare an amendment?**

The degree of consideration and specificity that you articulate for an amendment or additional plan governs the nonpartisan staff's ability to reflect your goals accurately and efficiently.

If a commissioner provides specific technical direction, considers or anticipates the legal effects of an amendment or additional plan, and articulates the goal of an amendment or additional plan, staff will be able to draft the amendment or additional plan more efficiently.

However, if a commissioner only provides general or conceptual direction, does not fully consider or anticipate the legal effect of an amendment or additional plan, or does not articulate the primary goal of the amendment or additional plan, nonpartisan staff will be poorly equipped to draft an amendment efficiently and in a way entirely consistent with a commissioner's intent.