

**IN THE CHANCERY COURT FOR THE ELEVENTH JUDICIAL DISTRICT  
OF TENNESSEE at HAMILTON COUNTY**

CHATTANOOGA PUBLISHING COMPANY	)	
	)	
Plaintiff,	)	NO. 22-0902
	)	
v.	)	PART 1
	)	
CITY OF CHATTANOOGA, CHATTANOOGA	)	
CITY COUNCIL,	)	
	)	
and	)	
	)	
CHIP HENDERSON, JENNY HILL, KEN SMITH,	)	
DARRIN LEDFORD, ISIAH HESTER, CAROL B.	)	
BERZ, RAQUETTA DOTLEY, MARVENE NOEL,	)	
and DEMETRUS COONROD, IN THEIR OFFICIAL	)	
CAPACITY AS MEMBERS OF THE CHATTANOOGA	)	
CITY COUNCIL,	)	
	)	
Defendants.	)	

**ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

This cause came on for hearing on February 12, 2025, upon Defendants' Motion for Summary Judgment filed on November 6, 2024; Brief in Support of Defendants' Motion for Summary Judgment; Defendants' Statement of Material Facts Not in Dispute (DSUMF); Supplemental Submission of Evidentiary Materials in Support of Defendants' Motion for Summary Judgment; Stipulation as to Facts on Which Further Proof is Unnecessary; Joint Notice of Filing of Supplement to Exhibit A to Stipulation as to Facts on Which Further Proof is Unnecessary; Plaintiff's Response and Opposition to Defendants' Motion for Summary Judgment; Plaintiff's Memorandum of Law in Support of Its Response and Opposition to Defendants' Motion for Summary Judgment; Plaintiff's Response to Defendants' Statement of Material Facts Not in Dispute and Statement of

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Additional Material Facts (PSAMF); Defendants' Response to Plaintiffs' [sic] Statement of Additional Material Facts; Reply Brief in Support of Defendants' Motion for Summary Judgment; Plaintiff's Motion for Summary Judgment; Plaintiff's Memorandum of Law in Support of Motion for Summary Judgment; Plaintiff's Statement of Undisputed Material Facts (PSUMF); Defendants' Brief in Opposition to Plaintiff's Motion for Summary Judgment; Defendants' Response to Plaintiff's Statement of Undisputed Material Facts; and argument of counsel. On April 17, 2025, at the request of the Court, the Parties filed "Hearing Stipulations," wherein the Parties stipulated to certain exhibits. The Court took the matter under advisement.

#### BACKGROUND FACTS NOT IN DISPUTE

Chattanooga Publishing Company, (Plaintiff) filed this action against the City of Chattanooga (City), the Chattanooga City Council (Council) and the individual members of the Council (Councilmembers) to enforce the Tennessee Public Meetings Act T.C.A. 8-44-101 *et. seq.* (PMA). Pursuant to the City Code 8.9, every ten years following publication of the federal census, the Council must reorganize and adjust by ordinance the boundaries of the districts currently established. This process is known as "redistricting."

The Parties stipulated as follows:

- (i) On November 17, 2021 City Staff presented the map identified as Exhibit 1 to Committee Chair Berz;
- (ii) On December 9, 2021 the City Staff presented to the RC the map identified as Exhibit 2;
- (iii) On February 15, 2022, City Staff presented to Council the map identified as Exhibit 3;

- (iv) On March 1, 2022 City Staff presented to Council the map identified as Exhibit 4;
- (v) On April 5, 2022 City Staff presented to Council the map identified as Exhibit 5;
- (vi) On April 19, 2022, City Staff presented to Councilmember Noel the map that is identified as Exhibit 6;
- (vii) On April 19, 2022, City Staff presented to Council the map that is identified as Exhibit 7;
- (viii) Exhibit 8 is a map that shows the current new council districts and the old council district prior to the adoption of Ordinance No. 13815.

In the Complaint, Plaintiff asserts that by employing a coordinated strategy of conducting non-public redistricting meetings, the Council violated both the language and the spirit of the PMA. Plaintiff alleges in Count One of its Complaint that the Defendants violated the PMA, because the Redistricting Committee did not conduct meetings open to the public. In Count Two of its Complaint the Plaintiff alleges that the Redistricting Committee instructed City Staff to meet with individual Councilmembers regarding redistricting, which meetings were not conducted in public, in violation of the PMA. For relief Plaintiff requests that this Court enjoin the Defendants from conducting meetings in violation of the PMA, and for a period of one year, require the Defendants to report semi-annually to the Court regarding its compliance with the PMA.

#### LEGAL STANDARD

In *CAO Holdings, Inc. v. Trost*, 333 S.W.3d 73, 82 (Tenn. 2010) Justice Koch, in discussing cross motions for summary judgment, opined that just because both sides move

for summary judgment, it does not necessarily follow that summary judgment must be granted to one side or the other, even though both sides are arguing that no genuine issues of material fact exist. Rather, with regard to each motion the court must 1) determine whether genuine disputes of material fact with regard to that motion exist and 2) whether the party seeking the summary judgment has satisfied Rule 56's standards for a judgment as a matter of law. Further the court must take care to resolve competing rational inferences in the light most favorable to the party opposing each motion.

Defendants filed this motion for summary judgment stating, "Defendants would show the Court that there is no issue as to any material fact set forth in Plaintiff's Open Meeting Act complaint and that they are entitled to judgment as a matter of law."

In *Jennings v. Sewell – Allen Piggly Wiggly*, 173 S.W.3d 710 (Tenn. 2005), the movant, in its Rule 56 motion stated that it "moves this court for Summary Judgment and for grounds would state to the Court that there is no genuine issue of material fact and Plaintiff [sic] is entitled to judgment as a matter of law. In support of this motion Plaintiff [sic] would rely on its supporting memorandum of law and the entire record in this cause." The Tennessee Supreme Court held that the motion failed to comply with T.R.C.P. 7.02(1) which requires that motions state with particularity the grounds therefor. The Supreme Court explained that the particularity requirement in Rule 7.02(1) obliges parties to inform the court what relief they want and to give the court enough information to process the motion correctly. Similarly, in this case, Defendants, by not stating with particularity the grounds for their motion, likewise fail to meet the requirement of Rule 7.02(1). Further the legal standard to adjudicate a motion for summary judgment is dependent upon whether the movant bears the burden of proof at trial on the issue raised in the motion.

In their Reply Brief however, Defendants stated that their grounds for summary judgment as to Count One were that no deliberations occurred during any of the three meetings of the Redistricting Committee, therefore the Redistricting Committee meetings did not have to comply with the Public Meetings Act. And as to Count Two, Defendants assert that any “meetings” between City Staff and Councilmembers regarding redistricting did not involve at least two members from the Council. Thus Defendants argue then, that those meetings were likewise not covered by the Public Meetings Act.

Because the Defendants do not bear the burden of proof at trial on either of the two above issues, then T.C.A. 20-16-101 is the legal standard by which this Court must adjudicate those grounds.

T.C.A. 20-16-101 entitled, “Burden of proof in summary judgment motions,” provides

In motions for summary judgment in any civil action in Tennessee, the moving party who does not bear the burden of proof at trial shall prevail on its motion for summary judgment if it:

- (1) Submits affirmative evidence that negates an essential element of the nonmoving party’s claim; or
- (2) Demonstrates to the court that the nonmoving party’s evidence is insufficient to establish an essential element of the nonmoving party’s claim.

In *Rye v. Women's Care Ctr. Of Memphis, M PLLC*, 477 S.W.3d 235, 264-65 (Tenn. 2015), the Supreme Court defined and clarified Tennessee’s summary judgment standards:

[W]hen the moving party does not bear the burden of proof at trial, the moving party may satisfy its burden of production either (1) by affirmatively negating an essential element of the nonmoving party’s claim or (2) by demonstrating that the nonmoving party’s evidence at the summary judgment stage is insufficient to establish the nonmoving

party's claim or defense. . . . "[W]hen a motion for summary judgment is made [and] ... supported as provided in [Tennessee Rule 56]," to survive summary judgment, the nonmoving party by affidavits or one of the other means provided in Tennessee Rule 56, must "set forth specific facts" at the summary judgment stage "showing that there is a genuine issue for trial." Tenn. R. Civ. P. 56.06. . . . The nonmoving party then must demonstrate the existence of specific facts in the record which could lead a rational trier of fact to find in favor of the nonmoving party. . . .

In *TWB Architects, Inc. v. Braxton, LLC*, 578 S.W.3d 879, 887 (Tenn. 2019) the Court noted that when ruling on summary judgment motions, courts accept as true the evidence presented by the non-movant, allow all reasonable inferences in favor of the non-movant and resolve any doubts about the existence of a genuine issue of material fact in favor of the non-movant.

At oral argument, Defendants for the first time raised laches as grounds for their motion for summary judgment. The Court determines it is inappropriate under T.R.C.P. 56.04 to first raise an issue for summary judgment at oral argument as the opposing party did not have at least 30 days' notice. Laches is an affirmative defense which must be raised in an appropriate pleading. *Darnell v. Brown*, W2006-01084-COA-R3-CV, 2007 WL 241029 at \*4 (Tenn. Ct. App. January 30, 2007). Additionally Defendants would bear the burden of proving laches at trial. *Id.* Because the Defendants bear the burden of proving laches at trial, the legal standard by which this Court would adjudicate this ground is found in *TWB Architects, Inc. v. Braxton, LLC*, *supra*, 578 S.W.3d at 888, which provides that when the moving party bears the burden of proof on the challenged claim at trial, that party must produce at the summary judgement stage, evidence that, if uncontroverted at trial, would entitle it to a directed verdict. The burden then shifts to the

nonmoving party to produce evidence showing that there is a genuine issue of fact for trial.

Further laches is predicated upon the court's finding of inexcusable, negligent or unreasonable delay on the party asserting the claim which results in prejudice to the defending party. *Gleason v. Gleason*, 164 S.W.3d 588, 592 (Tenn. Ct. App. 2004). Thus laches is fact-sensitive and is therefore generally inapplicable to summary judgment. As the last meeting of the Redistricting Committee occurred on February 15, 2022, and the Plaintiff filed its Complaint that same year, on December 15, 2022, it is unclear how the Defendants can claim laches. Regardless, the Court determines that the issue of laches is not before the Court.

#### APPLICABLE LAW

T.C.A. 8-44-101 provides, "The general assembly hereby declares it to be the policy of this state that the formation of public policy and decisions is public business and shall not be conducted in secret."

T.C.A. 8-44-102 provides in pertinent part

(b)(1) "Governing body" means:

(A) The members of a public body which consists of two (2) or more members, excluding a county mayor in accordance with § 5-6-106(b)(1)(B), with the authority to make decisions for or recommendations to a public body on policy or administration. . . .

...

(2) "Meeting" means the convening of a governing body of a public body to make a decision or to deliberate toward a decision on any matter. "Meeting" does not include any on-site inspection of any project or program.

T.C.A. 8-44-102(c) provides in pertinent part that “No such chance meetings, informal assemblages, or electronic communication shall be used to decide or deliberate public business in circumvention of the spirit or requirements of this part.”

Section 8.2 of the City Code provides

The City shall be divided into nine (9) districts within the geographic boundaries of the city. The city council shall be composed of nine (9) members with each member elected from one of such single districts. The candidate for each council position who receives the majority of his or her district shall be elected. No person shall be elected or appointed as a member of the council who is not at least 21 years of age and who has not been a resident of the district for at least one year preceding his or her election.

Section 8.9 of the City Code provides:

Following publication of each new official decennial federal census, the council shall reorganize and adjust by ordinance the boundaries of the districts currently established. The council’s reorganization and adjustment of the district boundaries shall be completed no later than one (1) year prior to the next city election; provided, however, that the council shall have not less than six (6) calendar months within which to reorganize the districts. The adjusted districts shall be as equal in population as practicable. Such reorganization and adjustment of district boundaries shall not affect the qualifications of any council member to fulfill his or her remaining unexpired term.

## LEGAL ANALYSIS

### I. COUNT ONE

In Count One, Plaintiff alleges that an *ad hoc* committee of the City Council (Council), the Redistricting Committee (RC), met and deliberated on redistricting without observing the formalities of the Public Meetings Act. Defendants assert that no deliberations occurred at any of the Redistricting Committee meetings, therefore those meetings were not subject to the requirements of the Public Meetings Act.

It is undisputed that: the Redistricting Committee met three times, on September 30, 2021, on December 9, 2021, and February 15, 2022. No votes were taken at any of these three meetings. The meetings were not noticed nor were minutes taken of any of the three meetings. Members of the City Mayor’s administration, including Mr. Anderson and



Mr. Seigny, (hereinafter “City Staff”), also worked on the project. The Mayor’s Chief of Staff at the time was Joda Thongnopnua. (hereinafter “Chief”). The Council met on March 1, 2022 to discuss redistricting at a noticed public meeting. The new map of the districts was approved at a public meeting on May 3, 2022.

## **SEPTEMBER 30, 2021 MEETING OF THE RC**

### Defendants’ Proof in Support of their Motion for Summary Judgment

In support of their motion for summary judgment Defendants filed a Statement of Material Facts Not in Dispute (DSUMF). Defendants also submitted the Affidavit of Emily O’Donnell, the City Attorney at the time of the events at issue.

While not raised as grounds for their motion, Defendants assert in their Answer that the RC is not a “governing body” under T.C.A. 8-44-102(b)(1) and therefor is not covered by the PMA.

At DSUMF 6, Defendants assert that at the strategic planning meeting of the Council on September 21, 2022, Council Chair Henderson announced the appointment of an *ad hoc* redistricting committee (Redistricting Committee or RC) consisting of Councilmembers Berz, Smith, Dotley, and Hester. Council Chair Henderson named Councilmember Berz as RC Chair. The RC was to gather data and bring back timelines for the redistricting process.

The first meeting of the *ad hoc* Redistricting Committee occurred on September 30, 2021 at City Hall. At that meeting, RC Chair Berz and RC member Dotley met with City Staff and the City Attorney. City Staff brought to the September 30, 2021, RC meeting (1) the 2011 redistricting process following the prior decennial census, (2) the

various legal and practical requirements outlined in the State Comptroller's "A Guide to Local Government Redistricting in Tennessee," (State Guide), and (3) a map of the then-current districts shown with their new 2020 census numbers. (page one of Ex. 9 to the Hearing Stipulations). (The Court will refer to this as Map One).

At DSUMF 7 Defendants assert that the Redistricting Committee was formed to conform with the State Guide. Defendants then claimed that the State Guide had guidelines such as keeping neighborhoods together by using the neighborhood boundary file as well as considering arterial roadways and natural features.

The City Attorney testified that it was her understanding that the purpose of the *ad hoc* committee was to educate the members of the RC on the legal and practical steps required to comply with the law in the redistricting process. She also testified she advised the RC that there should be no deliberations or decisions made at the meetings. She further testified that the RC meetings were merely informational, and she did not witness the Councilmembers deliberating at the RC meetings. Additionally the City Attorney testified that the meetings of the RC were "informal."

From all of which the Court determines that Defendants have submitted affirmative evidence that that no deliberations occurred at the September 30, 2021 meeting of the RC. This therefor negates an essential element of Plaintiff's claim, i.e. that meetings of the Redistricting Committee violated the PMA. Thus the Court determines that Defendants have shifted the burden of production to Plaintiff to demonstrate a genuine issue of material fact for trial as to whether deliberations regarding redistricting did, in fact, occur at the September 30, 2021, RC meeting.

### Plaintiff's Proof in Opposition

To begin with, as to Defendants' assertion in its answer that the RC is a not "governing body" subject to the PMA, the Court notes that T.C.A. 8-44-102(b)(1)(A) defines "governing body" as (i) the members of a public body; (ii) which consists of two (2) or more members; and (iii) with the authority to make decisions for or recommendations to a public body on policy or administration.

It is undisputed that Council is a public body. The RC is comprised of Councilmembers. Thus criteria one is met. The RC consists of four Councilmembers. Thus the second criteria is also met. The issue then, is whether the RC had the authority to *make decisions for or recommendations to Council* on policy or administration.

The Court notes that the minutes of the September 21, 2021 Council meeting reflect that Council Chair Henderson stated that, "I have asked Councilwoman Berz to lead a small ad hoc committee consisting of Vice Chair Smith, Councilwoman Dotley, and Councilman Hester. **And what this ad hoc committee would do is basically kind of do the grunt work for us** to gather some data **and look at some options of what a redistricting map could look like.** And so I've **tasked** them with *bringing us something forward for discussion* so that we can begin to start the conversation of redistricting."

By Council Chair tasking the RC to do the grunt work for the Council, to look at options of a redistricting map, and then to bring something forward to the Council for discussion, this Court determines the RC had the authority to make decisions for and/or recommendations to Council. Thus the third criteria for a "governing body" under T.C.A. 8-44-102(b)(1)(A) is likewise met. The Court thus concludes as a matter of law that the Redistricting Committee is a "governing body."

At DSUMF 6, Defendants assert that the purpose of the RC was “to gather data and bring back timelines” for the redistricting process to the entire Council. Plaintiff disputes this was the only purpose and states that the Redistricting Committee was also tasked with looking at some options for what a redistricting map could look like and bringing something forward to the Council for discussion, so that Council could begin to start the conversation of redistricting. (See also PSUMF 27 which Defendants did not dispute.) Further as stated above, Council Chair stated, “**what this ad hoc committee would do is basically kind of do the grunt work for us to gather some data and look at some options of what a redistricting map could look like.** As so I’ve tasked them with *bringing us something forward for discussion* so that we can begin to start the conversation of redistricting.”

In *Neese v. Paris Special School District*, 813 SW.2d 432, 435 (Tenn. Ct. App. 1990) the court opined that for purposes of the PMA to deliberate is to examine and consult in order to form an opinion.

In viewing the evidence in the light most favorable to the non-movant then, if the RC was to do the grunt work of the Council, to select options for a redistricting map, and bring this forward to Council from which the Council would then choose, this then would mean the RC would **deliberate** on Council matters in meetings that were not open to the public.

Additionally Defendants admitted at PSAMF 129 that prior to the Council’s redistricting, Hamilton County had engaged in a chaotic and argumentative redistricting which caused an uproar in the community. RC Chair Berz stated, “I made the decision that we would excuse me, not we. That Council’s districts should be disrupted as little as possible.” “I’d make the comment again today, *given all that was happening with the*

*county*, make as little disruption as possible.” At the March 29, 2022, Council Meeting, RC Chair Berz states that “And sometimes when we start politicizing, as we saw our brothers and sisters doing in the county, you can end up having a very difficult situation.” She further testified that “I, as point person, said, ‘make as little disruption as possible,’ **based on what was going on with the County at the time.**”

Further in her deposition, Committee Chair Berz testified that the RC is the only *ad hoc* committee of the Council of which she was aware, in her 14 years on the Council. Four Councilmembers testified that other than the RC, they could not recall another committee that never met in public. (PSAMF 125).

Then viewing the evidence in the light most favorable to the non-movant, and drawing all reasonable inferences therefrom, a reasonable trier of fact could infer that the *ad hoc* RC was formed so as to avoid public scrutiny by meeting secretly to avoid an uproar over city redistricting such as what the county commission had experienced over redistricting.

As to Defendants’ contention that the State Guide provided the parameters for the redistricting map so that Defendants had to follow arterial roadways and natural land features, Plaintiff disputed that is the verbiage in the State Guide. At PSAMF 126 Defendants then changed their position on this and admitted that the State Guide does not mandate that a public body follow arterial roadways and natural land features for redistricting.

As to Defendants’ assertion that no deliberations or decisions among Councilmembers occurred at the September 30, 2021, RC meeting, Plaintiff disputed this at DSUMF 14 noting that RC Chair Berz advised City Staffer Anderson to disrupt districts as little as possible, particularly the neighborhood associations, when creating the map. In

her depo at page 74 Chair Berz said, "Chris had--held three education sessions, which you have records of which you referred to. **I, as point person**, said, 'make as little disruption as possible,' based on what was going on with the County at the time." In her deposition, RC Chair Berz tried to explain this by stating, "It wasn't even a discussion. It was Chris presenting the information, as I've told you, then presenting the various ways the State looked at information, then presenting the various physical boundaries that Chattanooga has." And I do remember saying, "Well you know what? Council has to make the final decision, but I think you probably should disrupt things as little as possible, particularly neighborhood associations." She also stated "***I made the decision that we would excuse me, not we. That Council's districts should be disrupted as little as possible.***"

However on October 4, 2021, Committee Chair Berz had emailed Councilmembers Smith, Ledford, and Hester that "**our Redistricting Committee** has met once, has requested data and will be **carefully considering** a variety of models that (1) will interrupt the present model as little as possible; and (2) will legally meet the numbers requirement."

Berz's October 4, 2021 email, was much closer in time to the actual event than her deposition, and was written prior to the filing of this suit in which she was named a Defendant. In that email, as opposed to her depo, Chair Berz said the **RC** will be "**carefully considering**" a variety of redistricting models. Viewing the evidence in the light most favorable to the non-movant, a reasonable trier of fact could determine that since the RC would be "carefully considering" a variety of redistricting models, then the RC would be in fact "deliberating" about a variety of redistricting models in non-public meetings.

Further, while the City Attorney may have advised the Redistricting Committee not to deliberate at their meetings, the issue is whether in fact deliberations did occur during the RC meetings.

At DSUMF 8 Defendants state that City Staffer Anderson took the lead in developing a process for redistricting. Plaintiff disagreed with this stating that the process was instead approved by the RC. In support of this Plaintiff submitted an email from RC Chair Berz to members of the RC, and copied Council Chair, that said “in order to get us ready for *our task*, ***I am setting up several education sessions with the mayor’s staff*** just for us to get up to speed ***before we make any presentation to the entire Council.***” This at a minimum creates an issue of fact as to whether the RC took the lead in the redistricting process.

Since the Defendants assert that in the redistricting process they relied in part on “the various legal and practical requirements outlined in the State Guide,” this Court likewise reviewed the State Guide, and determined that while it is specifically mentions “counties,” “**the purpose of this guide is to assist local government** officials with their redistricting responsibilities.” Mr. Sevigny also admitted that the State Guide addresses legal and technical concepts to assist local government in developing new district plans. PSAMF 127.

The Court notes that the State Guide at Chapter 3, entitled “A Guide to Local Redistricting” provides that Step 1 is “County legislative bodies must decide who will be responsible for drawing the district lines. The whole legislative body itself can work in this capacity, but it may be more appropriate to select a redistricting committee. There are no specific regulations for the composition of the redistricting committee, and it does not have to be limited to members of the county commission.” Further the Guide states that

“one member should serve as chair of the redistricting committee. This person will be the main point of contact and will be responsible for communicating with state officials from the Comptroller’s Office and the County Technical Advisory Service (CTAS).”

This Court notes that Council followed the State Guide as to Step 1, as Council Chair Henderson appointed an *ad hoc* Redistricting Committee on September 21, 2021 consisting of Councilmembers Berz, Smith, Dotley, and Hester. Further the Council followed the State Guide as to the next step as Council Chair appointed Councilmember Berz as chair and “point person” of the RC.

Step 3 of the State Guide then advises, “First: Determine if the committee wants to adopt guidelines under which the district lines will be drawn.” In response to the Defendants’ argument that the boundaries are “baked in” such that there could be no deliberations, the Plaintiff notes that the State Guide does not mandate that a public body follow arterial roads or natural boundaries. Defendants at PSUMF 126-128 then admitted that the State Guide does not mandate that a public body align district boundaries with neighborhood boundaries.

Rather Plaintiff asserts, these were instructions from RC Chair Berz. In support of this Plaintiff submits the deposition of Mr. Sevigny who testified in response to “how did you determine that those guidelines would be the ones adopted? He answered, “we proposed them to Carol Berz,” and “she agreed with it.” Following the September 30, 2021 meeting of the RC, City Staff then followed RC Chair Berz’s instruction to undertake the process of generating a map with proposed little disruption to existing district boundaries and avoiding breaking up neighborhood associations. Further RC Chair Berz testified that “I made the decision that...Council’s districts should be disrupted as little as possible.”



Moreover, the Mayor's Chief of Staff confirmed this at the March 29, 2022 Council meeting stating "and I do want to be very clear that this administration has no position on the council's redistricting process whatsoever. And we firmly believe that ya'll have the responsibility and purview over the process to choose your maps. And so I just want to underscore that, you know, we were acting on the clear purview and guidance from the redistricting committee."

In viewing the evidence in the light most favorable to the non-movant, deciding whether to adopt guidelines to construct the Map is a "decision". And this decision was made by the RC. Further deciding to disrupt the districts as little as possible is likewise a decision that was made by the RC at the September meeting.

Defendants assert, and RC Chair Berz's testified, that the process from September until February was not deliberative but basically an educational process undertaken by City Staff. Berz testified that Council acts as a whole, and that process never kicked in until it came to the public meeting and then the vote.

However, the Court notes that the first public meeting on redistricting was on March 1, 2022. The final map was adopted on May 13, 2022. If it is true that September through February was just educational, and the process of redistricting did not start until the first public meeting of March 1, 2022, then the redistricting process would have been completed in a total of less than three months. However, City Code 8.9 provides that the council's reorganization and adjustment of the district boundaries . . . shall have **not less** than six (6) calendar months within which to reorganize the districts." Thus the deliberative process would have violated the City Code. Moreover, in drawing all reasonable inferences in the light most favorable to the nonmovant, it makes no sense that the three RC meetings would be just educational. Why educate only part of Council three

times, then have to educate the rest of Council a fourth time? Or why only educate part of Council, then expect the correct messaging to be delivered by that segment of Council to the remainder of Council without any errors?

Further, as to Defendants' assertion that City staff took the lead in developing the process for redistricting, City Code 8.9 states that "following publication of each new decennial federal census the **council** shall reorganize and adjust by ordinance the boundaries of the district currently established." Thus, since the Council--not City Staff--is the body responsible for redistricting, then the City Staff would have violated the City Code if they had performed the redistricting themselves.

Defendants then argue that Berz, as a single person, cannot violate the PMA because a single person cannot convene with himself/herself to either decide as a body or to deliberate toward a decision under the Public Meetings Act, citing *Fain v. Faculty of College of Law*, 552 S.W.2d 752, 754 (Tenn. Ct. App. 1977).

To begin with since Councilmember Dotley also attended that September meeting, then Dotley had to have either agreed with Berz's decision, or acquiesced by silence to Berz's instructions to City Staff. Or if Dotley did object, then there is no record of that, and she obviously was then was overruled by Chair Berz, because City Staff followed Berz's instructions to disrupt things as little as possible, particularly neighborhood associations. The lack of record-keeping of the meeting further demonstrates the importance of following the PMA.

At the November 9, 2021, Council meeting, a member of the public asked if there was a deadline for the redistricting because "there's been such a [sic] uproar in the community as to how the County did theirs," to which Council Chair Henderson replied, Councilwoman Berz is **working** on that." This remark demonstrates that certainly the

Council Chair expected the RC to be working on redistricting, not just attending educational meetings.

Then RC Chair Berz said, "We have started looking at data. I chair the committee for redistricting. And we --we have a long way to go . . . But **our committee has started working**, and we have a ways to go. . . We have a ways to go yet. . . So **we're being very deliberate**. And right now we can tell you that its' not going to be- -we're not adding any districts. It's not going to be a panic change. It'll be a very slight change. We have to do it according to the census. And we'll be getting those data. We're still looking at--at how various groups are classified, et cetera. We're waiting for an Attorney General's opinion." In viewing the evidence in the light most favorable to the nonmovant, if the RC was "working" on redistricting, "looking at" how various groups are classified and being very "deliberate," then the RC was "deliberating."

Defendants argue that the Council did not have the power to add districts per the City Charter thus Berz's comment that the RC would not add districts does not demonstration a violation of the PMA. However, the point, is that the RC Chair admitted that the Redistricting Committee was working, was being deliberate and would make recommendations to the Council. This would constitute a violation of the PMA. Further in viewing the evidence in the light most favorable to the nonmovant, if the RC was being very "deliberate" and had "started working" then the RC was not just attending educational sessions.

Additionally, the transcript from the Council's February 15, 2022, Agenda Session, reflects that RC Chair Berz advised the Council that "the **Redistricting Committee has its report ready**, and we would like to present it to council on March 1<sup>st</sup>. Then at the Council's strategic planning committee meeting of March 1, 2022, Council

Chair Henderson stated that he was turning the floor over to Councilwoman Berz “*to address the redistricting committee report*”. RC Chair Berz then stated, “Okay. So, the redistricting committee that you appointed **has met on a regular basis** and we have **our report ready**. . .” Thus the chair of the RC herself stated on the record that the Redistricting Committee, not just Chair Berz, had a report ready. And the RC had met on a regular basis so they had convened. This, at a minimum, creates an issue of fact as to whether the RC deliberated in nonpublic meetings.

Thus in viewing the evidence in the light most favorable to the non-movant, Plaintiff has demonstrated that the only ever *ad hoc* committee of the Council, the RC was formed to avoid public scrutiny so as to avoid a blow up similar to what the County Commission had experienced. Further the RC, in the September non-public meeting made decisions as to how the new map of the districts should appear. This at a minimum creates a genuine issue of material fact as to whether the RC, a governing body, violated the PMA in the September meeting.

## **DECEMBER 9, 2021 MEETING OF THE RC**

### Defendants’ Proof in Support of its Motion

Defendants assert that City Code Sections 8.2 and 8.9, contain several “baked in” requirements for redistricting including (i) that there should be nine districts, (ii) the adjusted districts shall be as equal in population as practicable, (iii) the redistricting process to take six months, (iv) but to be completed one year before the next City elections. Defendants argue that these “baked in” requirements necessarily limited substantial discussion during the redistricting process.

Defendants also assert that *Baker v. Carr*, 369 U.S. 186 (1962) requires there to be no more than 10% variation among the districts. Thus Defendants argue that there could be no deliberation as to these matters since they are required by law.

Defendants asserts that with those parameters established then, the census data was placed into a software program by City Staff that generated a map. The process used by City Staff was to apply existing Council boundaries to the new census data. Districts 5, 8, and 9 needed to increase based on population while Districts 3, 4, and 7 had room to decrease. Defendants assert that the neighborhood boundary file was used by City Staff as guidelines based on the State Guide.

From this, a map that the Court will identify as Map Two, was first shown to the RC by City Staff on December 9, 2021, at the second Redistricting Committee meeting. (See Ex 9 Hearing Stipulations)

At DSUMF 19 Defendants state that Berz, Dotley and Hester attended the December 9, 2021, RC meeting. Plaintiff noted that Councilmember Smith also attended the meeting.

Defendants admit that after the December 9, 2021 RC meeting, City Staff briefed Councilmember Smith individually on Map 2 on December 14. Defendants admit that on January 11, 2022 Mr. Anderson briefed Council Chair Henderson individually on how the proposed map affected Henderson's district. On January 11, 2022, Mr. Anderson briefed Councilmember Ledford individually on how the proposed map affected Ledford's district. On January 18, 2022, Mr. Anderson briefed Councilmember Hill individually on how the proposed map affected Hill's district. On February 3, 2022, Mr. Anderson had a zoom meeting with Councilmember Coonrod as to how the proposed map affected her district. Then on February 10, 2022 at a meeting with Councilmember Coonrod, City

Staffer Anderson presented a map that included Highland Park, Mill Town and the grocery store on Glass Street in District 9. City Staffer Anderson had individual telephone calls relative to the proposed map, Map 2, with Councilmembers Dotley, Hester and Berz.

Defendants assert that the December 9, 2021, meeting of the RC did not violate the PMA because no deliberations occurred at this meeting.

#### Plaintiff's Proof in Opposition

On December 9, 2021, RC Chair Berz emailed Council Chair Henderson stating "Redistricting Committee met this morning. **As part of the process** each of our Council members will have an individual session with the data people to be educated about the **latest iteration of the district map.**"

Thus in viewing the evidence in the light most favorable to the nonmovant the deliberative process had begun at least by December 9, 2021, as there was a new iteration of the map. This is three months before the first public Council meeting regarding redistricting on March 1, 2022. Moreover, since the redistricting map had changed to a new iteration, then decisions about the map were made in meetings that were not open to the public in violation of the PMA.

Further at the December meeting another decision was made by the RC about redistricting, i.e., that City Staff would meet individually with each Councilmember about their respective district. RC Chair Berz testified that she was the one who made the decision to request City Staff to meet with individual Councilmembers. And she did that as Chair of the Redistricting Committee. Councilmember Dotley testified that at the December 9, 2021 meeting, the Redistricting Committee decided "staff was going to meet with councilmembers to do the same presentation so that everyone was informed."

Defendants argue that this is “a statement by an obviously confused Councilperson Dotley that can be construed differently.” However, at this summary judgment stage, the proof is construed in the light most favorable to the nonmovant, and this Court is to accept as true the evidence presented by the non-movant. *TWB Architects, Inc.*, 578 S.W.3d at 887. *Supra*.

As to the reason why City Staff would meet with Councilmembers individually, RC Chair Berz testified that “I felt like the Council members should have the same information we had. . . I felt it was only correct that each councilperson, before they met with their districts, be advised on whatever information they needed. . . to show courtesy as colleagues, as individual members, **to get them fully up to par.**” So that he/she could speak with their district and make informed decisions. “It seemed proper. As far as I know Chris, *me*, or whoever **met with them and got them up to snuff**, and then it was all brought to a public meeting. They [Council] weren’t having to sit there like deer in the headlights **and being the first to hear about it.**”

It is axiomatic that Council should have the same information that the RC had regarding redistricting. That is the entire basis of Plaintiff’s argument, i.e. that an *ad hoc* committee of only part of Council cannot meet in secret and make decisions that affect the public.

Moreover, RC Berz testified that “as far as I know Chris, *me*, or whoever met with them *and got them up to snuff.*” Thus if Councilmember Berz was the one who met with another Councilmember about how the map affected their district, as she testified, and got that Councilmember up to snuff about the outcome, then that would be a meeting of two councilmembers in violation of the PMA. This then at a minimum creates a genuine issue

of material fact that precludes summary judgment on Defendants' grounds that two or more councilmembers did not convene so the PMA did not apply to RC meetings.

Further in viewing the evidence in the light most favorable to the non-movant, then if Council had to be brought "fully up to par" and "up to snuff" then some decision(s) had been made previously about the redistricting of which full Council was not aware. Further by Berz stating that she did not want her colleagues to hear about it first at the same time as the public, that likewise demonstrates that some decision or decisions were made outside of a public meeting.

Moreover, following this meeting, City Staff met with Councilmembers individually concerning Map Two, the December 9, 2021 Map. This December 9, 2021, Map Two, was not the same map that was finally adopted by the City Council.

The Court will also discuss the impact of these meetings under Count II, *infra*.

On December 14, 2021, City Staff briefed RC member Smith individually on the Proposed Map. On January 11, 2022, City Staffer Anderson briefed Councilmember Ledford individually on how the proposed map affected Mr. Ledford's district. On January 18, 2022, City Staffer Anderson briefed Councilmember Hill individually on how the proposed map affected Ms. Hill's district.

On January 11, or 14, 2022, Mr. Anderson briefed Councilmember Henderson individually on how the Proposed Map affected Henderson's district. Council Chair Henderson voiced an objection or concern to the proposed transfer of a northern portion of his District 1 to District 3. On a later iteration of the Proposed Map, the area Council Chair Henderson objected to losing to District 3 was restored to his District 1.

Council Chair Henderson told City Staff that "part of my Hixson district that had . . . just come in to District 1 in 2013 was removed, and I felt like that was sort of battenning



around.” He also told City Staff that he “didn’t feel comfortable with the change,” and that he had concerns about that,” and he “couldn’t support the map or at least had objections to the map as it was proposed.”

Following this meeting between Council Chair Henderson and Mr. Anderson, City Staff changed the map to include Hixson in District 1 as shown in the March 1, 2022 map. It is undisputed that Map 2 restored that portion of District One of which Council Chair Henderson had raised an objection as to its transfer to District 3.

Thus in viewing the evidence in the light most favorable to the non-movant, this at a minimum creates a genuine issue of material fact that decisions were made regarding the redistricting map outside of a public meeting.

On February 3, 2022, City Staffer Anderson had a Zoom meeting with Councilmember Coonrod as to how the proposed map affected her district. Councilmember Coonrod requested revisions to the proposed map that moved Mill Town and Highland Park from District 8 to her District 9. Councilmember Coonrod also asked Mr. Anderson to move a grocery store on Glass Street into her district.

At a meeting on February 10, 2022, Mr. Anderson presented a map to Councilmember Coonrod that included Highland Park, Mill Town and the grocery store on Glass Street in her District 9. At that time, the seat for District 8 was vacant. Thus is viewing the evidence in the light most favorable to the non-movant, a redistricting decision was made that affected District 8 in a secret meeting when that district was not even represented.

According to Ms. Coonrod, the map on February 10, 2022 also reflected a request be Councilmember Hester to Mr. Anderson to retain Gaylon Heights in his District 5. Councilmember Hester denied making a request relative to Gaylon Heights. Mr. Anderson

stated he did not believe any changes were made based on his contact with Mr. Hester, and Mr. Seigny recalled that the change could have been from a request or could have been just a cascading of boundaries. All of this just demonstrates additional genuine issues of material fact as to what occurred in these meetings in which no records were kept to inform as to the actions.

In either January or February of 2022 Mr. Anderson also had individual telephone calls relative to the proposed map with Councilmembers Dotley, Hester, and Berz. There were no changes to the Proposed Map as a result of these calls.

Council did not discuss whether the December 9, 2021, Proposed Draft (Map Two) should be considered by council at a properly noticed public meeting of the Council. Defendants further admit that the December 9 map, with a few tweaks after staff met individually with members of Council, became the map that was presented to the public on March 1, 2022. PSAMF 135.

Thus in viewing the evidence in the light most favorable to the nonmovant the Redistricting Committee determined not to present Map Two, the December 9, 2021, map, to the City Council. Rather, the Redistricting Committee instead decided to present Map 3, the February 15, 2022, Map to the entire Council. Further the RC made the decision in a nonpublic meeting to have City staff meet individually with each Councilmember about their district. Thus this was another decision that was not made in public about the redistricting map. Thus Plaintiff at a minimum has demonstrated a genuine issue of material fact as to whether deliberations occurred regarding redistricting at the December 9, 2021 meeting that were not open to the public in violation of the PMA.

## **FEBRUARY 15, 2022 MEETING OF THE RC**

### Defendants' Proof in Support of Their Motion

On February 15, 2022, City Staff met again with the RC, for the third and last meeting of the Redistricting Committee, wherein City Staff presented a slide presentation entitled, "Redistricting 2/15/22." No votes or deliberations occurred at this meeting. The February 15, 2022, meeting was attended by Redistricting Committee members Berz, Dotley, Hester, and Smith.

At this meeting City Staff advised the Redistricting Committee that they had created a new map (Map Three) for the Redistricting Committee's consideration.

On February 17, 2022, City Staff met with Councilmember Coonrod.

On March 1, 2022, the proposed district boundary map, Map 3, was presented at the Council's public strategic planning meeting.

Defendants assert that no deliberations occurred at the February 15, 2022, meeting of the RC, thus the meeting did not violate the PMA.

### Plaintiff's Proof in Opposition

However, in opposition Plaintiff submits the depo of Mr. Sevigny, who testified that Committee Chair Berz decided at the February 15, 2022, meeting of the Redistricting Committee to place the February 15, 2022 Map, Map Three, on the Council agenda for consideration and deliberation at the March 1, 2022 Strategic Planning meeting. As a result of this decision then, the RC had to have likewise determined not to present proposed Map 2 at the Council meeting.

The minutes of the City Council's February 15, 2022 Agenda Session reflect that "Councilmember Berz requested that the **report** from the Redistricting Committee be brought before the Council at the next strategic planning meeting."

The transcript from the February 15<sup>th</sup> agenda session says, "Councilwoman Berz made introductory remarks about **the process** for the ad hoc committee **working** on a redistricting **recommendation**." T.C.A. 8-44-102 (b)(1) provides that the PMA applies to meetings of governing bodies with authority to make "recommendations" to a public body. Thus Council record reflects that the RC made a recommendation. This recommendation came as a result of nonpublic meetings of the RC.

At the Council's February 15, 2022, Agenda Session, Committee Chair Berz advised the Council that "the **Redistricting Committee has its report ready**, and we would like to present it to council on March 1<sup>st</sup>. We want to make it clear that none of this has anything to do with the District 8 matters. These districts will stay--all our districts will stay the way they are . . . we followed proper process, and we're ready to bring it forward to Council."

Thus in viewing the evidence in the light most favorable to the non-movant, then if the Redistricting Committee had been working on a report for a recommendation on redistricting, then the RC, at a minimum, had examined and consulted and thus deliberated under *Neese* regarding redistricting, to present a recommendation to Council.

The transcript from the strategic planning committee meeting of March 1, 2022, reflects that Council Chair Henderson stated that he was turning the floor over to Councilwoman Berz "*to address the redistricting committee **report***". RC Chair Berz then stated, "Okay. So, the redistricting committee that you appointed has met on a regular basis and we have **our report ready**. . . We met with the folks that had all the demographics for redistricting. We've been through all the rules. At no time did we do any decision-making at all. What we did is that we were educated to the process, to the existing numbers, and then each councilperson met individually with the team as Chris is

going to describe with you in just a minute and *now we have the report*. **We think that we have covered everything.** We think that council people are--our council people are satisfied. **And we're required to make a public report, so we're going to do that today.** And then at some point on the agenda this needs to be approved." RC member Dotley stated, "Yes, I just want to say **I enjoyed the process.** I think it is fair, I think it is equitable, and I'm excited to see the report today." Council Chair Henderson asked if there a requirement for any kind of public hearing input session from the public before we vote? RC Chair Berz said, "There is not a requirement for a public hearing."

City Staffer Anderson then spoke and said "I really appreciate all of the one-on-one quality time I've gotten to spend with all of you at various times *during that process*. I think that what you're going to see today will offer no surprises. It will be what I think everyone is expecting." RC Chair Berz then stated, "One thing that we talked about, that Councilman Hester and Councilwoman Dotley and I **talked about at great length.** None of this affects the District 8."

City Staffer Sevigny stated, "We also used the neighborhood boundary file as guidelines. I think we really wanted to stress keeping neighborhoods together. I've heard and I'm sure you-all have heard some issues where neighborhoods felt like they were broken up among council districts. So we're going to keep neighborhoods together. . . **And then we also used, as Chris stated, individual council input.**" Mr. Anderson later showed the proposed map and stated, "there are no changes to that map, to anyone's district, that that person hasn't seen. There's probably a few tweaks here and there that **some of you haven't seen all, but it's not your districts that have been tweaked if you haven't seen it.**"

In viewing the evidence in the light most favorable to the non-movant and drawing all reasonable inferences in Plaintiff's favor, then decisions were made about redistricting that occurred in the individual meetings that were not public between a Councilmember and City Staff. Not only that, but because it was done in secret not even the entire Council was aware of what the proposed map would be prior to the March 1, 2022 meeting. Rather each Councilmember only knew how their district appeared.

The Plaintiff at 123 asserted that the March 1, 2022 Proposed Map was the Redistricting Committee's recommendation to the full Council. The City admitted this for purposes of the Summary Judgment that the proposed map was portrayed as such at the March 1 meeting.

In her deposition RC member Dotley stated that the presentation to Council on redistricting was the recommendation of the Redistricting Committee. The Chief, in his email of March 6, 2022, *which copied the Council* states, "this is a process that is primarily guided and driven by Chattanooga City Council. This year, as in prior administrations, we believe it is appropriate that Chattanooga City Council direct the development and process of determining their new boundaries. The Kelly administration simply helped provide data and render maps **with changes requested by council members** as guided by the process outlined by Chattanooga City Council. **Every member of the City Council has been engaged throughout the process.**" This process the Chief addresses, occurred before the first public meeting.

RC Chair Berz in her deposition testified that the Chief's email "wasn't correct because the correct process that happened was exactly as I explained it. There was nothing for us to be in charge of. City Council acts as a committee of the whole. We had three education sessions, period, that we have been over a number of times."

However, there is no proof in the record of any Councilmember emailing the Chief in response to his email advising that he was incorrect as to how the redistricting process occurred. In fact in her depo, RC member Dotley testified that the Chief's email accurately described the Kelly Administration's involvement in the redistricting process. Mr. Sevigny in his depo testified that this accurately reflected the redistricting process. He also testified that the RC was responsible for asking the City Staff to draw the district lines. City staff proposed to Berz that a neighborhood boundary file along with arterial roadways and natural land features should be used as guidelines, and Berz agreed with it.

In his deposition, Council Chair Henderson stated that the report given to Council **was a recommendation from the RC**. Council Chair Henderson also testified that he did not have any information nor was he privy to what went on between the *ad hoc* committee and the administration. Thus this demonstrates decisions made by the RC outside of a public meeting.

On April 12, 2022, discussion of redistricting took place at the Council's agenda and regular council meetings. Mr. Sevigny advised that changes to Districts 7, 8, and 9 would be necessitated by incorrect data from the State that overrepresented the African-American population in the City thereby resulting in two of the three preferred minority districts losing their predominantly minority status.

When the defect in the data was discovered, City Staff determined there were two options to redraw the area of District 8 to include a greater number of African-Americans in District 8. By this time Councilmember Noel had been appointed to serve District 8. The choice of the two options was left to Councilmember Noel (it is not clear who decided this) because Councilmember Noel had not been involved with the process prior to that point. Councilmember Noel selected Option 2.

Councilmembers Hester, (District 5), and Councilmember Dotley, (District 7), were not consulted relative to the two options. Councilmember Coonrod was informed of the change but was not asked to approve it.

On April 19, 2022, discussion of redistricting took place at the Council's agenda meeting. The amended map was approved by the Council without dissent at the agenda meeting on April 19, 2022.

On April 26, 2022, discussion and public comment on Ordinance 13815 occurred at the regular Council meeting.

On May 3, 2022, Ordinance #13185 was approved which established the current and final redistricting map. Thus the public was never made aware of the discussions that led to the December Map, Map 2, nor to the February Map, Map 3. Nor was the public made aware of why Map 3 was selected over Map 2.

The transcript of the **March 1, 2022** Council's Strategic Planning Committee reflects that City Staffer Anderson stated "And I want to stress that **this is the proposal based on your input.**" Later he states, "And, again, this is a presentation from the administration, this is not our dictating to you what it is. You're free to make these changes. I think I've spent a lot of time with each of you, **making changes that you wanted to your districts.** We're happy to make more if you have them. **But the last word I had from every member of the council is that you were fine with this.**" This is a decision.

The first public Council meeting on redistricting was March 1, 2022. Thus before the first public meeting of March 1, 2022, Map 3 was ready for the meeting. Map 3 was based on changes that each Councilmember wanted in his/her districts. This proposed Map 3 was created by deliberations made by Councilmembers in nonpublic meetings.



At the close of the meeting Council Chair Henderson states, "All right. Councilwoman Berz, you did such a fantastic job with that **report**, I'm going to turn the next one over to you as well."

At the March 8, 2022, Council meeting there was a question about the lack of transparency regarding the redistricting process. RC Chair Berz stated, "So there's some miscommunication out there. . . What happened was, there was no secret deliberative meetings. . . What our city did was, our data collection folks came forward with the census and the law and **we**--they massaged some of the district lines to meet the requirements and then presented it to us, along with the law as it stands now. . . So the vote hasn't been taken yet." That is different from what City Staffer Anderson said to Council at the March 1, 2022, strategic planning committee when he stated, "And I want to stress that **this is the proposal based on your input.**" "And, again, this is a presentation from the administration, this is not our dictating to you what it is."

Berz later added, "I believe the only people that had the right to make a statement *about what the **process** was* would be the people on the committee. And I---and that is Councilwoman Dotley, Councilman Smith, Councilman Hester, and myself." In viewing the evidence in the light most favorable to the nonmovant if the only people who had a right to make a statement about what the process was were the members of the RC, then the Redistricting Committee must have engaged in the process of redistricting. And since Proposed Map 3 is what was presented, then the process of the RC resulted in the redistricting map.

The transcript of the March 15, 2022, Strategic Planning Committee reflects that Council Chair Henderson states the first thing on our agenda this afternoon is redistricting

concerns. . . And I'm going to ask Councilwoman Berz who is the chairperson of the redistricting committee, if she would maybe just address these concerns . . ."

RC Chair Berz then says, "So, let me say again that there were no secret meetings. There weren't many meetings at all. And what I'm going to do is turn it over to two of my colleagues who were on the committee to make any comments they want about that issue." RC Chair Berz adds, "we had--our first meeting was in October to get educated on what the law was and what the numbers show. . . there was no discussion, other than to tell the numbers people to lay out the maps that met the law. And then we met a second time to look at them. Again, we didn't discuss them. This was, gosh, I'm just guessing, in January or February. And as chair I said: We're not going to have any big discussions now. Take the maps to each of the council members, **get their input, get their suggestions and approval and then we'll bring it forth to the public.**" Thus even the RC Chair admitted that City Staff obtained the approval of Councilmembers regarding a proposed redistricting map prior to the first public meeting of Council on redistricting.

Later in the meeting RC Chair Berz asks the City Attorney whether any Sunshine regulations have been obviated to which the attorney stated, "Well, I wasn't present in the meetings in that regard."

At the March 29, 2022, Council agenda session, RC Chair Berz says "mayor's office had nothing to do with any of this. We got the data from the office that crunches the numbers and does the data because they had the program. They gave us the data. Their only instruction was--and it came from me, I take full responsibility, is follow the law." Council Chair Henderson asks, "So, are there any lingering questions about how the map was put together, how the data was collected?"

At that point Councilmember Coonrod advised that when she asked for information she was told to "go to the committee," then she adds, "Which the committee was with you three." Later Councilmember Coonrod responds to the RC that "**Before you created this map** based on the numbers that you already had. . ." And she states, "**We just got presented with the information after the fact of whoever drew the map.**" This at a minimum creates a genuine issue of material fact that Map 3 was created by the RC without the full input of Council, and outside of a public meeting.

RC Chair Berz responds "And where **we drew the lines**, as far as I understand, we were looking at people, not what color they were." Thus Berz stated that the RC drew the lines. This is echoed by RC member Hester who said, "So we're just trying to be fair and balanced **when we make the decision to stretch our boundaries.**" Thus according to RC member Hester the RC made a "decision" in a nonpublic meeting. He continued, "We were--we wasn't looking at people--I mean, we wasn't looking at ethnicity, we're just looking at numbers of people. It just happened that--when we stretched, doing our boundaries, there was still minorities in those areas. So we were very fair about that." These comments also reflect that the RC meetings were more than just educational sessions as Defendants assert. Rather the RC deliberated about redistricting.

RC Chair Berz then stated that "And sometimes when we start politicizing, as we saw our brothers and sisters doing in the county, you can end up having a very difficult situation." "And so this county has--this committee--**and it's been a committee of the whole**--there have been no secret meetings of the smaller group--has acted honorably and according to law. *If there's anyone that feels that there have not been sufficient meetings, I have all the copies of the law that people have sent in, tonight and next week will cure*

*that.*” Council Chair Henderson then said “I’m going to take two more comments on redistricting.”

The Council meeting of March 29, 2022, followed the above agenda meeting at which time RC Chair stated, “ I, as chair of the committee, saying follow the law--the instructions were: Follow the law, apply the numbers from the census, which is what the law requires, and make as little disruption to districts as possible.”

At the regular Council meeting held April 26, 2022, RC member Hester stated “there’s a lot of folks out here concerned did we have adequate time, did we investigate this thoroughly.” RC Chair Berz said “you were part of it sir. I guess I could ask you the same thing. But yeah, you were on the original committee.” Councilmember Coonrod stated, *“And I would like to have been presented or seen a district--the redistricting map to be inclusive of all the council people and not just, you know, a committee of three.”* She added *“I would absolutely love for the council to, you know, delay this vote and we really think about redoing it as an entire council together.”*

Viewing the evidence in the light most favorable to Plaintiff, as the non-movant, the Court determines this constitutes yet another genuine issue of material fact from which a rational trier of fact could determine that deliberations were made during the nonpublic redistricting committee meetings.

Additionally returning to the State Guide the Court notes that Step 4 of the State Guide advises,

**After receiving maps with population data, and evaluating the existing districts, the actual redistricting will begin.** CTAS and the Comptroller’s Office can provide counties with technical assistance during this step.

“First: Determine if the committee wants to adopt guidelines under which the district lines will be drawn. The redistricting committee should keep complete records and minutes of meetings and district plans. **Tennessee’s Open Meetings Act requires that the**

**committee take and maintain complete minutes and provide adequate public notice of committee meetings.** Guidelines can provide how the committee documents its consideration of traditional districting principles, such as keeping districts compact and contiguous, adhering to the ten-percent standard, and the need to consider majority-minority districts. Documentation is also critical when, on the rare occasion, district plans exceed an overall range of ten percent. Based on disproportionate population distribution between urban and rural area and county physiography problems (e.g. ridge and valley in East Tennessee), it may be difficult to create plans that have an overall range of less than ten percent. **Keeping detailed and accurate records of why and how the committee developed a district plan may prove beneficial if challenged in court. All records, minutes, and district plans are subject to the Tennessee Public Records Act."**

The State Guide continues on page 7 states, "It is important to note that county legislative bodies and redistricting committees should collect and maintain minutes and records for all redistricting meetings. These bodies should give proper public notice every time they meet. All records generated from these meetings are considered public records and should be available for public inspection." At page 26 the State Guide poses the question: **"Are local redistricting meetings subject to the open meetings/public records acts?" The Guide then provides the answer, "Yes,** Meeting minutes and records should be collected and maintained for all redistricting meetings. Adequate public notice should be given every time the redistricting committee meets. All records generated from these meetings are public records."  
(emphasis added)

Viewing the evidence in the light most favorable to the non-movant, a rational trier of fact could find that Council acknowledged the importance of following the State Guide, followed the State Guide as to some items, but intentionally did not follow the State Guide with respect to the requirements of the Public Meetings Act so as to avoid the uproar the County had experienced.

From all of the above, the Court determines that Plaintiff has demonstrated numerous genuine issues of material fact as to whether the redistricting committee deliberated about redistricting in non-public meetings. Thus Defendants' motion for summary judgment on Count One is not well-taken.

## **II. COUNT TWO**

Plaintiff, in Count Two of its Complaint, alleges that Councilmembers individually met with City Staff and made decisions about the redistricting map as pertained to their respective districts in violation of T.C.A. 8-44-102(c).

T.C.A. 8-44-102(c) provides in pertinent part that “No such chance meetings, informal assemblages, or electronic communication shall be used to decide or deliberate public business in circumvention of the spirit or requirements of this part.”

### Defendants’ Proof in Support of Their Motion

It is undisputed that on December 14, 2021, City Staff briefed Councilmember Smith individually on the Proposed Map.

It is undisputed that in January of 2022, Mr. Anderson briefed Councilmember Henderson individually on how the Proposed Map affected Henderson’s district.

On January 11, 2022, Mr. Anderson briefed Councilmember Ledford individually on how the proposed map affected Mr. Ledford’s district.

On January 18, 2022, Mr. Anderson briefed Councilmember Hill individually on how the proposed map affected Ms. Hill’s district.

On February 3, 2022, Mr. Anderson had a Zoom meeting with Councilmember Coonrod as to how the proposed map affected her district. In either January or February of 2022 Mr. Anderson also had individual telephone calls relative to the proposed map with Councilmembers Dotley, Hester, and Berz. There were no changes to the Proposed Map as a result of these calls.

On March 8, 2022, Ms. Noel was appointed to represent District 8. On April 13, 2022 she met with City Staff. On April 14, 2022, City Staff emailed Noel two options for her district. Councilmember Noel chose Option 2.

First the Defendants argue that the individual Councilmembers meeting with City Staff to discuss the redistricting map as it pertains to their respective districts is not a violation of the PMA, because was no intent or attempt to circumvent the PMA statute. However the General Assembly intended this Sec 102(c) to be a loophole closer. *State ex rel. Matthews v. Shelby County Bd. Of Commissioners*, 1990 WL 29276 at \* 5. (Tenn. Ct. App. March 21, 1990). Thus intent to violate is not required. A violation of the PMA can occur regardless of whether the parties involved have a nefarious intent to evade the law. *Johnston v. Metro Govt. v. Davidson County*, 320 S.W.3d 299, 312 (Tenn. Ct. App. 2009).

The Defendants also argue without any factual support to the record that neither Mr. Anderson nor Mr. Seigny acted as a conduit for deliberations among the Councilmembers outside of public meetings and did not strive to achieve a consensus. However, this position requires this Court to view the evidence in the light most favorable to the movant rather than the nonmovant, which is not the standard for adjudicating a summary judgment motion. Thus the Court rejects that argument.

Defendants have submitted evidence that two members of Council never met at the same time with City Staff regarding the map. Defendants then assert that the PMA requires a convening of at least two members of the City Council. Thus Defendants argue that the Councilmembers' meetings individually with City Staff does not constitute an informal assemblage under TCA 8-44-102(c). The Court determines Defendants have shifted the burden of production to Plaintiff to demonstrate a genuine issue of fact for trial.

### Plaintiff's Proof in Opposition

In his depo, Mr. Sevigny testified that City Staff spent an average of maybe an hour or two with each individual Councilmember regarding their respective district.

Defendants admit that in his meeting with City Staff, Council Chair Henderson voiced an objection or concern to the proposed transfer of a northern portion of his District 1 to District 3. Henderson told City Staff that "part of my Hixson district that had . . . just come in to District 1 in 2013 was removed, and I felt like that was sort of battenning around." He also told City Staff that he "didn't feel comfortable with the change," and that he had concerns about that," and he "couldn't support the map or at least had objections to the map as it was proposed." On a later iteration of the Proposed Map, the area Councilmember Henderson objected to losing to District 3 was restored to his District.

Defendants admit there is a factual issue as to whether Councilmember Hill requested anything in her meeting on January 18, 2022, with Mr. Anderson. PSAMF 139

At the February 3, 2022, zoom meeting between City Staff and Councilmember Coonrod, Ms. Coonrod requested from Anderson adjustments to the proposed map specifically that Mill Town and Highland Park had moved from District 8 to her District 9. She also asked City Staffer Anderson to move a grocery store on Glass Street into her district. Then on February 10, 2022 at a meeting with Councilmember Coonrod, City Staffer Anderson presented a map that included Highland Park, Mill Town and the grocery store on Glass Street in District 9. These requested changes by Councilmember Coonrod affected the boundary of her District 9 with District 8, and at that time, the District 8 council seat was vacant.



Councilmember Coonrod claims the map on February 10, 2022 also reflected a request be Councilmember Hester to Mr. Anderson to retain Gaylon Heights in his District 5. Councilmember Hester denied making a request relative to Gaylon Heights. City Staffer Anderson testified that he did not believe any changes were made based on his conversations with Councilmember Hester. Mr. Sevigny recalled that a change could have been made from a request or just a cascading of boundaries. At a minimum this demonstrates genuine issues of material fact as to what occurred in these nonpublic meetings in which no records were kept to inform as to the actions.

Mr. Anderson also discussed Map 2 with RC Chair Berz and Councilmembers Dotley and Hester by telephone, but no changes to the map were made as a result of these telephone conferences.

On March 1, 2022, Mr. Anderson told the City Council, "I think I've spent a lot of time with each of you **making the changes you wanted to your district**. Thus City Staff revised the proposed maps based on feedback it received during its meetings with individual Councilmembers.

The transcript of the March 15, 2022, Strategic Planning Committee meeting reflects that Berz stated, "And as chair I said: We're not going to have any big discussions now. Take the maps to each of the council members, **get their input, get their suggestions and approval and then we'll bring it forth to the public.**" Thus according to Berz, the proposed map was discussed and approved by individual Councilmembers in non-public meetings.

Further in viewing the evidence in the light most favorable to the non-movant, then contrary to Defendants' argument, City Staff was the conduit to whom the individual Councilmembers met to convey their "vote," so to speak, regarding the proposed

redistricting maps, outside of a public meeting. Thus if the “vote” by a Councilmember on their district was “yes” then City Staff did not revise the map. If the “vote” by the Councilmember was “no” then the City Staff revised the map accordingly until that Councilmember approved. And this was done outside of a public meeting.

At the regular Council meeting held April 26, 2022, Councilmember Coonrod stated, *“And I would like to have been presented or seen a district--the redistricting map to be inclusive of all the council people and not just, you know, a committee of three.”* She added *“I would absolutely love for the council to, you know, delay this vote and we really think about redoing it as an entire council together.”* Thus even a member of Council stated that decisions were made about the redistricting map outside of a public Council meeting.

RC Chair Berz told City Staff to get the individual Councilmembers’ **approval** of the map before bringing it to the public. City Staffer Anderson stated the last word I had from every member of the council is that you were fine with this. Also Councilmember Coonrod stated she was told by City Staff “you don’t want to be the councilperson that’s not going along” with this. In viewing the evidence in the light most favorable to the nonmovant that sounds like trying to reach a consensus.

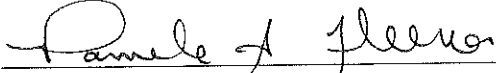
In viewing the evidence in the light most favorable to the nonmovant and resolving any doubt about the existence of a genuine issue of material fact, then a rational trier of fact could find that Defendants circumvented the PMA by holding a series of private discussions between Councilmembers and City Staff wherein decisions regarding redistricting occurred. These individual meetings resulted in map changes. Thus decisions were made about redistricting in meetings that were not open to the public.

Accordingly, from all of the above, the Court determines that genuine issues of material fact preclude the grant of summary judgment as to whether the City Staff meeting with individual Councilmembers regarding the redistricting map to obtain Council approval prior to taking it to the public were used to circumvent the spirit and requirements of T.C.A. 8-44-102(c).

WHEREFORE it is hereby

**ORDERED** that Defendants' Motion for Summary Judgment is **DENIED**, on all grounds because genuine issues of material fact preclude summary judgment as to both Count One and Count Two of Plaintiff's complaint.

**ENTER:**

  
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**PAMELA A. FLEENOR**  
**CHANCELLOR, PART 1**

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this Order has been placed in the United States Mail addressed to the following:

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Attorneys for Defendants

This the 3<sup>rd</sup> day of July, 2025.

**Robin L. Miller, Clerk and Master**

By: SWK 4N  
Deputy Clerk