

To: Members of the Charter Review Committee for the City of Gresham  
From: Professors Todd Lochner and Ellen Seljan  
Date: January 02, 2023  
Re: Answers to Questions Posed in December 2022

The CRC asked us to respond to several questions in December 2022 for presentation at the January 04, 2023 meeting. Our answers are outlined below, though we begin with three important points of clarification.

## **I. Points of Clarification**

**First**, it is our understanding that the CRC has opted to pursue ranked-choice voting (RCV). All answers below assume this fact.

**Second**, many of the questions below use the phrase “proportional representation” without clearly defining it. Because our answers are contingent upon a common understanding of the phrase, we need to specify exactly what we take the phrase to mean. We offer four possible meanings of “proportional representation” and explain which are tenable for your situation, as well as alternative phrases one might use.

- *Proportional representation* (strictly defined). When social scientists and lawyers use this phrase, they refer to an electoral system where a political party’s seats in the legislature are proportionate to the party’s share of the popular vote. For example, if the Libertarian Party won 15% of the popular vote, they would receive 15% of the seats in the legislature. This phrase is not appropriate for your purposes for two reasons. First, city elections are nonpartisan, so there are no parties with which to proportionately apportion seats. Second, this electoral system is only possible for large governmental bodies—for example, a 100-seat legislature—and could not be used to constitute a city council.
- *Demographic proportionality*. Perhaps the CRC envisions an electoral system that works to ensure that city council members are demographically representative of the citizens of the City of Gresham. This use of the phrase is theoretically possible, but problematic for two reasons. First, it is unclear what demographic characteristics you care about—gender, area of employment, marital status, etc. Absent this clarification, we cannot give input as to how a given electoral system would improve or impede the demographic representation. Second, there are some demographic characteristics, such as race, that would likely be illegal to pursue. Hypothetically, were the CRC to say “We want to design an electoral system to ensure that the city council is racially proportionate to the underlying racial demographics of the City of Gresham” that would be dangerously close to making race the “predominant factor” in your decision making—and this could result in

a legal claim that you engaged in a racial gerrymander in violation of the 14th Amendment. As we have stated in prior memoranda, **we do not provide legal advice.** Still, if this is what you mean by proportional representation, we would encourage you in the strongest possible terms to seek the advice of legal counsel before proceeding any further. We will assume that this is not what you mean when you use the phrase “proportional representation.”

- *Non-majoritarian systems.* Perhaps when you use the phrase “proportional representation” you don’t mean proportionality per se; rather, you are speaking of a preference for an electoral system that maximizes the possibility of non-majoritarian outcomes. That is, you wish to create a system whereby a candidate with some significant amount of support less than 50% (say 20-25%) could win. If this is what you mean, it is a perfectly reasonable goal and some electoral systems will achieve it better than others. For the sake of clarity, we will use the phrase “**non-majoritarian systems**” when referring to such arrangements.
- *Minimizing wasted votes.* Finally, perhaps you are speaking of a desire to maximize the probability that everyone’s vote counts as much as possible. Not everyone’s vote gets to select a winner, of course, but social scientists do have a concept of “wasted votes” that we spoke about in our first memorandum. Wasted votes are defined as votes in excess of what a candidate needs to win a seat. Indeed, many variations of ranked-choice voting are designed for the very purpose of “**minimizing wasted votes.**”

To summarize, our answers to the questions below will consider both non-majoritarian systems and the goal of minimizing wasted votes whenever relevant.

**Third**, many of the questions below use the term “multi-member” districts. We think we can avoid some confusion here if we distinguish between two concepts: multi-member and multi-winner. A multi-member district is any district with more than one council seat; i.e., a system that divides a city in districts rather than using at-large elections, and assigns more than one seat to a given district. A multi-winner system is one in which more than one council seat is determined *in the same election*. Consider three examples.

- The fictional City of Laconia has a four-member city council. Laconia is divided into two districts, A and B, and city council members serve staggered four-year terms. In 2018, Seats A1 and B1 have elections, and in 2020 Seats A2 and B2 have elections. This system is multi-member (because District A is represented by two councilors), but not multi-winner (because there is only a single seat up for grabs in each district in any even election year). Medford uses a multi-member, single-winner system.

- The real City of Lake Oswego has at-large, top-three elections. In each election, voters get to cast three votes, and the top-three vote getters are elected. This system is not multi-member (because elections are at-large rather than using districts), but it is multi-winner.
- The fictional City of Rosieville has an eight-member city council. Rosieville is divided into two districts, A and B, and city council members serve staggered four-year terms. Furthermore, *and this is crucial*, elections in each district use a top-two model (any number of candidates can run, and the top-two vote-getters win). In 2018 voters select seats A1 and A2, as well as B1 and B2. In 2020, voters select seats A3 and A4, as well as B3 and B4. This would be an example of a multi-district *and* multi-winner system.

In our answers below, we will clarify whether we are speaking of an electoral system that is multi-member (versus single-member or at-large), multi-winner (versus single-winner) or both.

## II. Answers to Questions Posed

*Question: What are the advantages/disadvantages of electing City Councilors on staggered terms both in-District (the two Councilors representing a district are elected at the same time) and by-District (for example, Councilors serve in terms that expire in alternate 2-year terms such that there is always an Incumbent Councilor in the District)?*

As mentioned in our Memorandum of March 06, 2022, 81% of city councils nationally use staggered terms. There are significant advantages and very few disadvantages to using staggered terms. First, staggered terms promote institutional memory—the incumbent council member can help the new council member understand how the job works. Second, staggered terms lower information costs for voters. Staggering elections ensures that only half of all city council seats are up for election in a given cycle. All things equal, the more candidates in a given election, the more information each voter would have to process. Third, staggering elections allows the City Council to more quickly respond to changes in voter preference. Assuming four-year terms, every even-numbered year would bring one or more new councilors to city government. We cannot think of any serious disadvantages to using staggered elections, unless one were to view increased responsiveness by councilors to voters as disadvantageous. (Theoretically, there could be cost savings if one didn't use staggered elections, and there was nothing else up for vote in city elections that year, because the City of Gresham would not have to hold any elections. But this scenario seems unlikely.) Of course, if one were to make a purposeful decision to have a top-two system within a given district, and had only two seats from that district, then one couldn't have staggered elections.

*Will multi-member districts create proportional representation in Gresham?*

We take this question to ask “Will multi-member districts promote non-majoritarian outcomes and/or minimize wasted votes?” Remember that RCV itself tends to minimize wasted votes (if your preferred candidate has the least number of votes, and the election outcome is still indeterminate, then your vote will go to your next-most-preferred candidate). If one is using districts with only one winner, then the non-majoritarian goal is not realized—the winning candidate will by definition end up having a majority of the vote. However, if one is using districts and one *also uses multi-winner elections* in those districts, using multi-winner RCV theoretically increases the odds of electing non-majoritarian candidates. How much those odds are increased will depend on a variety of factors (total number of seats up for grabs, etc.). And of course, non-majoritarian outcomes need not always be proportional, particularly when the number of legislators to be selected is small.

We also remind readers of a crucial point: Electoral rules and institutions have some effect on diversity of candidates and election outcomes, but other things such as voter mobilization, voter interest in a given election, interest group influence, campaign finance regulation, salaries of city councilors, etc., probably matter as much or more.

*What is needed to achieve proportional representation, such as number of districts and number of Councilors? What should be considered to achieve proportionality?*

We take these two questions together. As discussed above, it is very difficult for us to answer these questions, as we are unsure what the author intends. We can, however, make the following observations. First, RCV helps to minimize wasted votes. Second, if RCV is used for a single seat, it will guarantee majoritarian outcomes insofar as the candidate that ultimately wins will have received a majority of the votes cast (this doesn’t necessarily mean a majority of all Gresham citizens, because not all citizens vote). Third, if multi-winner RCV is used, it will tend to promote non-majoritarian outcomes (insofar as the second place winner may have received substantially fewer votes than the first place winner). Fourth, given the realistic size limits of a city council, it is not possible to guarantee that a city council will accurately and proportionately represent the views of all citizens. Fifth, increasing the size of the city council (for example, to twenty members) would marginally help to ensure that the city council would accurately and proportionately represent the views of all citizens, but would come at enormous costs such as more expensive maintenance, more administrative burdens, and far less competitive elections. As we noted in our Memorandum of March 06, 2022, only 10% of city councils nationwide have eight or more councilors.

*Which approach/approaches are commonly used for a city the size of Gresham (8-Districts/Single City Councilor versus 8-Districts/Multi-Member City Councilors)?*

As discussed in our Memorandum of March 06, 2022, of the seven cities most directly comparable to Gresham in terms of population, three have eight-member city councils (Eugene, Medford, and Salem) and four have six-member city councils (Beaverton, Bend, Hillsboro and Springfield). As discussed in our Memorandum of September 22, 2022, Eugene and Salem both use single-member, single-winner districts whereas Medford uses multi-member, single-winner districts.

*In a multi-member district, what has been adopted by cities of similar size to Gresham?*

Medford has four districts, two councilors per district. Albany has three districts, two councilors per district.

*Has it been found that districts—single-member and multi-member—advantage or disadvantage grassroots, marginalized, and/or unaffiliated candidates?*

We are not sure exactly what groups the author intends when they say grassroots; we take “marginalized” to refer to racial minorities and people of lower socio-economic status. We also assume the question presupposes that 1) these groups vote cohesively for candidates that are 2) not favored by the majority (making no judgment as to whether these assumptions are correct as applied to the City of Gresham). The short answer is “it depends.” Both single-member districts and multi-member districts have been used to dilute the political power of racial minorities in the past; by the same token, the creation of single-member majority-minority districts has been used pursuant to Sections Five and Sections Two of the Voting Rights Act to mitigate previous racial discrimination. We would reiterate the points made above. Given the use of RCV, multi-member, multi-winner districts could marginally help non-majoritarian candidates. The only situation in which single-member districts would help a non-majoritarian candidate is if their supporters are geographically homogenous and segregated. Finally, all candidates for city council are unaffiliated given that the elections are nonpartisan.

*Have elections by District—single-member and multi-member—been found to dilute or weaken the traditional, well-funded, power base?*

We are unsure what the author intends by traditional, well-funded power base, as those three qualities do not always co-exist together. Consider three examples: an extremely wealthy technology start-up business (not really traditional, certainly well-funded, indeterminate power base); a labor union (traditional, possibly well-funded, possibly

strong power base); an evangelical church group (traditional, unlikely to be well-funded, but likely a strong power base if it has a large congregation composed of single-issue voters). We suspect that the motivation for this question is whether the creation of districts will meaningfully alter the degree to which campaign contributions affect the outcome of elections. Our answer is necessarily speculative, but we would suggest three points. First, we should distinguish between two related but independent concepts: the cost of a given election to a campaign, and the total amount of money spent in elections inclusive of non-campaign spending such as independent expenditures. Second, the City of Gresham is large enough that moving to districts probably would decrease campaign costs to some degree, but the effects likely would be marginal. Third, the total amount of money spent in city elections depends on a wide range of factors such as campaign finance rules, the nature of a given campaign, the candidates running (remember that campaigns where incumbents run unopposed are very inexpensive), the presence or absence of salient ballot propositions, etc. In short, one probably will not meaningfully reduce the amount of money in elections by changing a city's electoral institutions.

*Have multi-member districts been shown to reduce entry barriers for minority and/or low-income individuals?*

We would generally refer the reader to pages 12-13 of our September 26, 2022 Memorandum. The creation of single-member districts is unlikely to yield more diversity of candidates unless the groups supporting those candidates are geographically concentrated. Using Trounstine and Valdani's "isolation index" Professor Seljan did not believe that this situation likely applies to the City of Gresham. As for multi-member districts and alternative voting mechanisms like RCV, the data are ambiguous. Some research found that RCV increased the number of racial minority candidates but not victors, some research indicates that multi-winner RCV tends to result in racially-proportionate effects, and some experimental research found no statistically significant impact whatsoever. In short, the evidence is mixed. If one is interested in incentivizing low-income individuals to run for city council, we suspect that other proposals, such as public financing of city elections and/or increasing the salaries of city council members, would matter more than electoral institutions.

*Please discuss the "10% Rule" as it applies to district lines being redrawn.*

In Reynolds v. Sims (1964), the Supreme Court created the "One Man One Vote" (today, "One Person One Vote") standard which required that seats in a state legislature be apportioned on a substantially equal population basis. Although malapportionment—where one district has far more people in it than another district—used to be acceptable, Reynolds held that malapportioned districts can violate the Equal Protection Clause of the 14th Amendment. Additional cases

applied the OPOV standard to most, but not all, political subdivisions within a state, including city government. The question becomes exactly *how* precise must the populations in each district be? For example, what if one district had 17,500 people and another district had 17,825? Would that violate the constitution? A general rule of thumb, articulated in Gaffney v. Cummings (1973) seemed to suggest that city or state legislative districts could have population deviance of up to 10% without creating a legal problem. But the 10% Rule is just that—a rule of thumb. It sometimes is possible to have even larger population deviance under certain conditions, such as the need to respect previously-existing political boundaries (though this applies more to state legislative districting rather than city districting). Similarly, the 10% Rule is *not* a safe harbor provision (what lawyers call a “Get Out of Jail Free Card”). Population deviance below 10% may still be illegal if it is due to an arbitrary or otherwise impermissible purpose. If the City of Gresham decides to adopt districts, we would encourage it to work with the Oregon Secretary of State's Office and appropriate legal counsel in this matter.