

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ESTABLISHING)	ORDINANCE NO. 93-477A
CRITERIA FOR COUNCIL DISTRICT)	
APPORTIONMENT, AND DECLARING)	INTRODUCED BY THE
AN EMERGENCY)	GOVERNMENTAL AFFAIRS
)	COMMITTEE

WHEREAS, The voters of Metro approved the 1992 Metro Charter at the November 3, 1992 General Election; and

WHEREAS, Section 16 of the Metro Charter prescribes that beginning January 2, 1995, the governing body of Metro is to be a seven-member council with each Councilor elected from a single district within the Metro area; and

WHEREAS, Section 16(3) of the Metro Charter creates a Metro apportionment commission, for the purpose of creating an apportionment plan which establishes the seven Council districts; and,

WHEREAS, Section 16(3)(h) of the Metro Charter establishes the minimum criteria for Council districts, requiring them to be as nearly as practicable of equal population and "contiguous and geographically compact;" and,

WHEREAS, Section 16(3)(h) of the Metro Charter further provides that "the council may by ordinance prescribe additional criteria for districts that are consistent with the requirements of this subsection;" NOW, THEREFORE,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. In addition to the criteria for Council district apportionment contained in Section 16(3)(h) of the Metro Charter, which require that "all council districts shall be of equal population and each shall be contiguous and geographically

compact," the Metro apportionment commission shall also meet the following requirements in developing an apportionment plan:

1. The apportionment shall comply with applicable federal law pertaining to the voting rights of minority populations.

2. No district shall vary in population more than 5.0% from the average population of a district. "Average population" shall be that amount equal to one-seventh the total Metro area population. For the purpose of this subsection, all population figures shall be based upon 1990 census data. This maximum variance of 5.0% shall be construed to mean that no district may be more than 5.0% larger nor more than 5.0% smaller in population than the average population.

3. While observing the maximum 5.0% population variance based on the 1990 census data stipulated in #2, above, the commission shall make every effort to create districts with population variances of 0% (zero percent) based upon the most recent and reliable population estimates prepared by Metro's Data Resource Center.

4. To the maximum extent possible after meeting all other applicable criteria, each of the three counties with territory in the Metro area shall have at least one district wholly within that county.

5. The commission shall give consideration to existent precincts and, to the maximum extent possible after meeting all other applicable criteria, maintain communities of interest. Communities of interest are represented in counties, cities under

15,000 population, established neighborhood associations, neighborhood planning organizations, community planning/participation organizations, or other similar groups as specifically defined by the commission.

6. The apportionment commission shall hold at least one public hearing in the Metro area not more than thirty days following appointment of the commission's seven members. This hearing shall be for the purpose of gathering information from interested parties and the general public regarding district apportionment and the apportionment process.

The apportionment commission shall hold at least one public hearing in each of the seven districts proposed in its draft apportionment plan, following completion of the draft plan. These hearings shall be for the purpose of hearing from interested parties and the general public regarding the content of the draft plan. These hearings shall be held on dates which will allow time for the commission to consider the testimony received and, if necessary, to amend the draft apportionment plan prior to the July 1, 1993 filing deadline.

7. The apportionment commission shall complete a draft plan by May 15, 1993, in order to provide sufficient time for public hearing and review.

Section 2. This ordinance being necessary for the health, safety, or welfare of the Metro area, for the reason that the work of the apportionment commission must proceed without delay as stipulated

in the Metro Charter, an emergency is declared to exist and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this 28th day of January, 1993.


Judy Wyers, Presiding Officer

ATTEST:


Pauline Allen
Clerk of the Council

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ESTABLISHING)	ORDINANCE NO. 93-477A
CRITERIA FOR COUNCIL DISTRICT)	
APPORTIONMENT, AND DECLARING)	INTRODUCED BY THE
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3. While observing the maximum 5.0% population variance based on the 1990 census data stipulated in #2, above, the commission shall make every effort to create districts with population variances of 0% (zero percent) based upon the most recent and reliable population estimates prepared by Metro's Data Resource Center.

4. To the maximum extent possible after meeting all other applicable criteria, Each of the three counties with territory in the Metro area shall have at least one district wholly within that county.

5. The commission shall give consideration to existent precincts and, to the maximum extent possible in after meeting all other applicable criteria, maintain communities of interest as the commission defines such communities of interest. Communities of interest are represented in counties, cities under 15,000

population, established neighborhood associations, neighborhood planning organizations, community planning/participation organizations, or other similar groups as specifically defined. The commission may further define communities of interest.

6. The apportionment commission shall hold at least one public hearing in the Metro area not more than thirty days following appointment of the commission's seven members. This hearing shall be for the purpose of gathering information from interested parties and the general public regarding district apportionment and the apportionment process. The apportionment commission shall hold at least one public hearing in each of the seven districts proposed in its draft apportionment plan, following completion of the draft plan. These hearings shall be for the purpose of hearing from interested parties and the general public regarding the content of the draft plan. These hearings shall be held on dates which will allow time for the commission to consider the testimony received and, if necessary, to amend the draft apportionment plan prior to the July 1, 1993 filing deadline.

7. The apportionment commission shall complete a draft plan by May 15, 1993, in order to provide sufficient time for public hearing and review.

Section 2. This ordinance being necessary for the health, safety, or welfare of the Metro area, for the reason that the work of the apportionment commission must proceed without delay as stipulated in the Metro Charter, an emergency is declared to exist and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this _____ day of
January, 1993.

Judy Wyers, Presiding Officer

GOVERNMENTAL AFFAIRS COMMITTEE REPORT

ORDINANCE NO. 93-477A, ESTABLISHING CRITERIA FOR COUNCIL DISTRICT APPORTIONMENT, AND DECLARING AN EMERGENCY.

Date: January 26, 1993

Presented by: Councilor Moore

COMMITTEE RECOMMENDATION: At its January 21, 1993 meeting the Governmental Affairs Committee voted 5-0 to recommend Council adoption of Ordinance No. 93-477A. Councilors Gates, Gardner, Hansen, Moore, and Wyers all voted in favor.

COMMITTEE DISCUSSION/ISSUES: The Governmental Affairs Committee held three work sessions in November and December, 1992, to develop Ordinance No. 93-477, which was first read on December 22, 1992. The committee held work sessions and public hearings on the ordinance at its meetings of January 7 and 21.

The original ordinance contained five criteria for the apportionment commission to observe in developing a plan to establish seven Council districts by July 1, 1993. Those were:

- Comply with applicable federal law pertaining to the voting rights of minority populations;
- No district could vary more than 5.0% from average population, based on 1990 census data;
- "Make every effort" to have no population variance between districts, based on "the most recent and reliable population estimates;"
- Ensure that each county has one district wholly contained within it;
- Give consideration to existent precincts and, "to the extent possible" in meeting all other criteria, maintain communities of interest as defined by the commission.

Chair Gates held a public hearing at each of the two January meetings. Dave Kanner of the City of Wilsonville testified at the January 7 meeting, forwarding a request that Wilsonville not be split between two districts. No one testified at the January 21 hearing.

The committee identified five issues for consideration, which it resolved at its January 21 meeting. In the order considered at the meeting, those issues were as follows. (For the text of each amendment, please see the engrossed ordinance, attached to this report.)

1. Designation of the provider of the "most recent and reliable" population estimates.

Councilor Moore had earlier asked for the ordinance to clarify who was to be responsible for preparing the estimates. She moved an amendment to specify that Metro's Data Resource Center would prepare the estimates. That amendment passed 5-0.

2. Representation by County of Residence.

Committee members, and other Councilors, had expressed a desire to craft a criterion regarding representation by county of residence that would ensure the most equitable representation. The issue focused on Clackamas County, which was asked its preference of how such a criterion should be stated. Clackamas County Commissioner Judie Hammerstad polled the cities and special districts in the area of the county within Metro, and sent a letter to Chair Gates stating that the majority of those jurisdictions recommended "that one council district be wholly within Clackamas County, and the second seat be divided between Clackamas County and Washington County." The committee also received a letter from Lake Oswego Mayor Alice Schlenker expressing her City Council's unanimous preference for "two districts, predominantly in Clackamas County, with the smaller portions of the districts being in Washington and Multnomah Counties."

Councilor Devlin stated his opposition to the criterion in the ordinance, and supported by Clackamas County, on the grounds that it was too inflexible. He said such a criterion prejudged communities of interest in Clackamas County. He listed two alternatives to the current language: delete the criterion, which is his preference; or make the criterion one that the commission should try to meet, but not mandate it. He suggested an amendment to criterion #4, adding a statement that each county would have at least one district wholly within it, "to the maximum extent possible after meeting all other applicable criteria." His intention was to increase the commission's flexibility by making this criterion subservient to other criteria. Councilor Hansen moved that amendment. Councilor Moore discussed the possibility of including counties in a definition of "community of interest" under criterion #5.

Councilor Wyers asked Councilor Devlin why he was opposed to the original language. Councilor Devlin responded that the original language implied that counties are communities of interest, that the preservation of county affiliation runs counter to the establishment of a regional entity. Councilor Wyers expressed her disagreement with Councilor Devlin's point, saying that counties are established communities of interest and that acknowledging Clackamas County's preference would recognize reality and promote good relations.

Councilor McLain suggested the committee focus on what they were trying to accomplish through this criteria, and suggested that determination of communities of interest would be better accomplished by the apportionment commission through a series of public hearings. Councilor Gates said Metro has two or three constituencies: the citizens who elect officials; the jurisdictions within Metro; and different groups the agency works with. He said counties are established means for communication, and that a majority of Clackamas County jurisdictions had expressed

a preference for ensuring one district within the county. There was some discussion of how clear that majority preference was. Councilor Gardner said that public identification with the region was an incremental process, and Metro could take small steps to promote that public identification. He said he saw merit on all sides of this issue but he supported a more flexible approach to determining communities of interest which would include counties, rather than preserving counties in a separate category. Councilor Hansen spoke in favor of giving the commission more latitude to determine communities of interest through its public hearings.

Further discussion focused on the relation between the amendment on the floor and Councilor Moore's proposal to define communities of interest, which definition would include counties; the relation between representation and place of residence; and Clackamas County's expressed preference. Councilor Gardner added that including counties in both criteria #4 and #5 would be somewhat redundant, but that redundancy was less of a problem than not giving considerable importance to county identity. He also said there would be considerable opportunity, at the Council meeting when this ordinance is considered and at the apportionment commission's public hearings, to address the issue of county representation.

A roll call vote on the amendment resulted in the amendment being approved 3-2. Voting in favor were Councilors Gardner, Hansen, and Moore; in opposition were Councilors Gates and Wyers.

3. Definition of Communities of Interest.

Councilor Moore moved an amendment to criterion #5, as follows (Please note that the language in this committee report is the language introduced by Councilor Moore. It differs slightly from the language as included in the ordinance before you; staff erred in drafting the amendment, and Councilor Moore will ask the Council to correct that error.):

"The commission shall give consideration to existent precincts and, to the maximum extent possible ~~in~~ after meeting all other applicable criteria, maintain communities of interest ~~as the commission defines such communities of interest.~~ Communities of interest are represented in counties, cities under 10,000 population, established neighborhood associations, neighborhood planning organizations, community planning/participation organizations, or other similar groups as specifically defined by the commission.

Chair Gates asked Council Analyst Casey Short why he had proposed, in a separate document, to include cities under 10,000 population in a definition of "community of interest" instead of the 20,000 figure that had been discussed earlier. Mr. Short said it was to provide flexibility to the commission. He said that a threshold of 10,000 or 12,000 population would impose less constraint on the commission than the larger figure, and added that a population

level of 15,000 would probably not pose a problem. Councilor Moore amended her motion to replace "10,000" with "15,000." (Note: There are 12 cities in the Metro area with populations under 10,000, and two cities - Gladstone and Forest Grove - between 10,000 and 15,000.)

There was no further discussion, and the amendment passed, 5-0.

4. Apportionment Commission Public Hearings.

Councilor Moore moved to add a criterion that would require the commission to hold a public hearing in each of the seven proposed districts, after completion of a draft apportionment plan. Councilor Gardner suggested adding the requirement that the commission hold a hearing early in their process, within the first 30 days. Councilor Moore agreed to include that as a friendly amendment, and the committee voted 5-0 in favor of the full amendment.

5. Deadline for Completion of Draft Plan.

Councilor Wyers suggested including a deadline for completion of a draft apportionment plan, in order to have time to hold public hearings on the plan and revise it as needed. Following a brief discussion of the commission's timeline, Councilor Wyers moved to establish a deadline of May 15, 1993 for completion of a draft plan. That motion was approved 5-0.



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

DATE: January 14, 1993
TO: Governmental Affairs Committee
FROM: Casey Short *CS*
RE: Apportionment Criteria

Item #1 on the Governmental Affairs Committee's January 21 agenda is consideration of Ordinance No. 93-477, establishing criteria for Council District apportionment. The committee discussed several issues concerning Ordinance No. 93-477 at its January 7 meeting, which I will summarize below.

1. Community of Interest Guidelines

As currently drafted, Criterion #5 states:

The commission shall give consideration to existent precincts and, to the maximum extent possible in meeting all other applicable criteria, maintain communities of interest as the commission defines such communities of interest.

Committee discussion centered on whether to provide guidelines from the Council to the apportionment commission regarding a definition of "community of interest." Councilors who discussed this issue indicated that if such guidelines were added to the criteria, they should not be absolute, but in the form of examples. Following this direction, I propose the following for your consideration:

The commission shall give consideration to existent precincts and, to the maximum extent possible in meeting all other applicable criteria, maintain communities of interest. Communities of interest shall include cities under 10,000 population, and well-defined and active neighborhood associations and neighborhood planning organizations. The commission may further define communities of interest.

Including small cities and neighborhood organizations would give guidance to the apportionment commission in determining communities of interest without going into great detail. The criterion as drafted above would be consistent with the City of Wilsonville's request; it would also continue to have communities of interest be the last criterion to be observed, and only after the other criteria are met.

2. Public Hearings

My December 31, 1992 memo on apportionment criteria includes a proposed amendment that would require the apportionment commission to hold at least one public hearing early in their process and at least one public hearing in each county on their draft apportionment plan. Councilor discussion of this issue at the January 7 meeting included a suggestion that the commission hold a hearing in each of the seven proposed districts; that suggestion received little support. The issue of public hearings was not resolved, and should be addressed at the January 21 meeting.

3. Deadline for Completion of a Draft Apportionment Plan

There was a suggestion that the criteria include a requirement that a draft apportionment plan be completed well in advance of the July 1 deadline, in order to provide sufficient time for public hearings and review. No action was taken on this suggestion.

4. Use of Data Resource Center Estimates

There was a question regarding the proposed stipulation of Metro's Data Resource Center as the agency which would determine population estimates. A representative of the Data Resource Center will be present at the January 21 meeting to answer any questions Councilors may have on this issue.

5. Representation by County of Residence

The issue of representation by county of residence has been discussed at some length throughout the committee's deliberations on this ordinance. Officials of Clackamas County and its cities are expected to testify on January 21 regarding their preference on this issue.

As stated earlier, this memo's purpose is to summarize the discussion and issues raised at the January 7 committee meeting. Other issues raised at earlier meetings are discussed in the enclosed materials; I will try to summarize the deliberations to this point, and point out the unresolved issues, at the January 21 meeting.

City of
WILSONVILLE
in OREGON

30000 SW Town Center Loop E
Wilsonville, Oregon 97070
FAX (503) 682-1015
(503) 682-1011

December 28, 1992

Mr. Jim Gardner, presiding officer
Metropolitan Service District
2000 SW First Ave.
Portland, OR 97201


Dear Mr. Gardner:

The Wilsonville City Council wishes to urge you and your fellow councilors in the strongest possible terms to include the entire City of Wilsonville in a single Metro Council district when new district boundaries are drawn up in the months ahead. If possible, we would like to see this included as a criterion for apportionment in Ordinance No. 93-477, which the Governmental Affairs Committee and Metro Council will be considering next month.

The City of Wilsonville is already divided between two counties, four school districts, two Oregon House districts and two Metro districts, in addition to being divided east and west by a freeway and divided north and south by the Willamette River. That's too many divisions for a city as small as ours. We would view the inclusion of our city in a single Metro district as a significant action, particularly in light of the fact that Metro is preparing to locate a major solid waste disposal facility in Wilsonville.

Your attention to this matter is deeply appreciated. Thank you for your consideration.

Sincerely,



Gerald A. Krummel
Mayor

cc: Metro Councilors



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

DATE: December 31, 1992
TO: Governmental Affairs Committee
FROM: Casey Short, ^{CS} Council Analyst
RE: Ordinance No. 93-477 - Apportionment Criteria

Ordinance No. 93-477, establishing criteria for the apportionment commission, is on the Governmental Affairs Committee's January 7 agenda for public hearing and committee consideration. The committee has held three work sessions to develop this ordinance, but there are still a few issues for you to consider in determining whether to recommend its adoption by the Council. I will outline the issues here as I see them, most of which arose in the committee's last work session, on December 17.

1. Representation by County.

The ordinance now calls for each of the three counties to have at least one district wholly within the county. Councilor Devlin has questioned whether this would present the best form of representation. He and others have discussed this issue with representatives of local governments in Clackamas County, and have requested those officials to indicate their preferences. Other Councilors have questioned whether county residence should be a consideration in apportionment.

In early discussions of this issue at Governmental Affairs, there was some concern that each county should have at least one resident on the Council. Establishing the criterion that each county have at least one district within it addressed this concern, but it has raised other questions. Those questions include those of equity - does this approach present the fairest alternative for ensuring the proper county representation?; of appropriateness - should county residence be a criterion in apportionment?; and of responsiveness to local governments - how do local government officials want the Council to address this issue?

Alternative approaches could include:

A. Establishing a criterion that each county include at least two districts with a majority of population in the county.

Clackamas County's population (1990 census figures) warrants 1.27 seats on a seven-member Council; Washington County 1.88 seats; and Multnomah County 3.85 seats. In establishing this criterion, Clackamas and Washington counties would each have two districts with majority populations, and Multnomah County would likely have three majority districts.

B. Establishing a criterion limiting the number of districts in each county.

The purpose of such a criterion would be to discourage gerrymandering. If Clackamas County could have no more than three districts in it, for example, and Washington County no more than four, that would eliminate the possibility of diluting each county's representation by having several small parts of districts within a county.

Such a criterion would limit the flexibility of the apportionment commission to make adjustments that might be necessary to meet the other criteria. The Council had such flexibility in its 1991 reapportionment, and made use of it by including a small portion of Multnomah County in District 4. There might not even be a need to take steps to discourage gerrymandering, because of the counties' representation on the commission and the expectation that the commission will endeavor to ensure fair representation on the Council under all criteria.

C. Remaining silent on the issue.

The Council could choose to not address the issue of representation by county of residence, which would leave any decisions on the matter up to the apportionment commission. The commission would then make its decisions based on the information it receives from Councilors, local government officials, and interested members of the public.

2. Apportionment Commission Public Hearings.

Councilor Devlin requested me to draft language, for consideration as an amendment, requiring the apportionment commission to hold public hearings. He suggested a process similar to that followed by the Governmental Affairs Committee in the 1991 reapportionment, which included a public hearing at the beginning of the process and a public hearing in each of the counties on a draft plan after it had been developed.

I suggest language as follows be included in the ordinance, as criterion #6:

The apportionment commission shall hold at least one public hearing in the Metro area not more than thirty days following appointment of the commission's seven members. This hearing shall be for the purpose of gathering information from interested parties and the general public regarding district apportionment and the apportionment process.

The apportionment commission shall hold at least one public hearing in each of the three counties with territory in the Metro area following completion of a draft apportionment plan, for the purpose of hearing

from interested parties and the general public regarding the content of the draft plan. These hearings shall be held within the Metro area and shall be held on dates which will allow time for the commission to consider the testimony received and, if necessary, to amend the draft apportionment plan prior to the July 1, 1993 filing deadline.

3. Source of Population Data

Criterion #3 in the current version of the ordinance states:

While observing the maximum 5.0% population variance based on the 1990 census data stipulated in #2, above, the commission shall make every effort to create districts with population variances of 0% (zero percent) based upon the most recent and reliable population estimates.

Councilor Moore suggested the term, "most recent and reliable" be clarified to ensure there was no conflict between the two criteria of "recent" and "reliable." She also suggested the ordinance stipulate the agency which would prepare the population estimates. I offer the following language as a possible amendment:

. . . the commission shall make every effort to create districts with population variances of 0% (zero percent) based upon the most recent and reliable estimates prepared by Metro's Data Resource Center.

This amendment would clarify that the Data Resource Center is to prepare the estimates for apportionment commission use, and would give the Data Resource Center staff the flexibility to determine what constitutes, in their professional view, "the most recent and reliable" information.

4. Definition of "Community of Interest"

Criterion #5 now states:

The commission shall give consideration to existent precincts and, to the maximum extent possible in meeting all other applicable criteria, maintain communities of interest as the commission defines such communities of interest.

There was some discussion in committee regarding the responsibility of defining "community of interest." Should the Council attempt to define this term or allow the apportionment commission to do so? There was no consensus in committee to change this criterion, but the discussion indicated that some members might want to consider this item again.

STAFF REPORT

ORDINANCE NO. 93-477, ESTABLISHING CRITERIA FOR COUNCIL DISTRICT APPORTIONMENT, AND DECLARING AN EMERGENCY.

Date: December 16, 1992

Presented by: Casey Short

BACKGROUND

Voter approval of the Metro Charter at the November 3, 1992 general election requires appointment of a Metro apportionment commission, as prescribed in Section 16 of the Charter. The Charter allows the Council to prescribe, by ordinance, criteria for the commission to observe in creating its plan to apportion the Metro area into seven single-member districts.

The Governmental Affairs Committee has conducted work sessions on apportionment criteria at its November 19 and December 3, 1992 meetings (and has scheduled another work session for its December 17 meeting). Discussion focused on the following issues:

- Preservation of concentrations of minority populations within a single district.

General Counsel Dan Cooper suggested that an ordinance establishing additional criteria contain a reference to federal law regarding equal protection in representation. He counseled against adopting a criterion specifically directing the commission to keep in a single district a concentration of ethnic minority population, advising that a directive to observe federal law would suffice.

- Population variances to account for projected growth.

There was considerable discussion whether to adopt a criterion directing the apportionment commission to take into account projected population growth in establishing the districts. Councilors opposed to this idea preferred to base the districts on known population because nobody can precisely project growth figures. Others said that it is possible to estimate general areas where growth will occur, and some population variations could be built in; in that case, expected - if not inevitable - population discrepancies would be minimized in the eight years until reapportionment. Councilor Devlin reported that the 1991 Council district reapportionment included small adjustments for growth, within a narrow tolerance. (The 1991 reapportionment produced districts with a total population variance of 4.96%, with the largest district being 2.67% above average and the smallest being 2.29% below average.)

- Population statistics.

There was some discussion whether to use 1990 census figures or a recent reliable estimate. Mr. Cooper said he believed the Council could use updated estimates if it could justify their use, perhaps with a demonstration of the reliability of the

estimates. It was determined that a precedent exists for using estimates, as the Secretary of State used estimated population figures in creating the original Council district configuration in 1978.

- Population variances generally.

Discussion centered on the guidelines to be given the apportionment commission regarding the maximum population variance between districts. Mr. Cooper advised that a 5% deviation from average population has been held to be the acceptable variance in apportionments for state and local offices. He added that the Charter's use of the term, "as nearly as practicable," could possibly be held to mean the districts are to approach 0% population variance.

- Representation by County.

The committee discussed whether to direct the commission to ensure that each of the three counties within the Metro area was assured of representation by a county resident. There was some discussion that regional government should transcend the question of county lines, which would argue against inclusion of this criterion. The majority of the committee determined that county representation was, at this time, an important issue to elected representatives of the counties and should be included.

- Minimize number of sitting Councilors in any district.

The committee discussed a suggestion that the criteria include a direction that the seven districts be drawn to minimize the number of sitting Councilors in any new district. The committee chose not to include this as a criterion.

- Other criteria.

The committee reviewed the criteria for reapportionment contained in ORS 268, which the Council used in its 1991 reapportionment. That statutory language reads:

In apportioning subdistricts the council shall give consideration to existent precincts, maintaining historic and traditional communities and counties as opposed to following existent city or special district boundaries or the political boundaries of state representative or state senate election districts except when these political boundaries coincide with natural boundaries.

Mr. Cooper advised the committee that the Council is not bound to observe the statutory criteria for reapportionment in establishing criteria for the apportionment commission.

ANALYSIS

Ordinance No. 93-477 contains five criteria for Council district apportionment. The first incorporates Mr. Cooper's suggestion that the commission be aware of, and observe, applicable federal

equal protection laws pertaining to the voting rights of minority populations.

The second criterion would establish a 5.0% figure for variance above or below average population, based upon the 1990 census. This figure was selected because it is consistent with legal interpretations of maximum population variances for single-member districts of state and local governing bodies.

The third criterion calls for the apportionment commission to "make every effort" to have the seven districts equal in population, based on recent population estimates from a reliable source of such estimates. There was some discussion of the source of these estimates; the estimates will most likely be those from Metro's Data Resource Center.

The result of criteria #2 and 3 would be a direction to the apportionment commission to observe legal guidelines for apportionment by staying within a 5% variance using census data, but to go beyond those guidelines by directing that the districts shall be as close as possible to equal in population based on recent population estimates. There is no criterion that addresses anticipated growth within the district.

Criterion #4 calls for each county to have at least one district wholly within it. This would guarantee that Clackamas County, whose population would now justify 1.27 seats on a seven-member council, would have a resident on the Council. Washington and Multnomah counties, whose populations would translate to 1.88 and 3.85 seats respectively, will also have at least one resident on the new council. There is no further provision regarding representation by county of residence.

The last criterion directs the commission to observe existent precincts, for ease of election administration. It further directs the commission to establish definitions of "communities of interest," and observe those definitions in preparing an apportionment plan. This last direction, however, is to be observed only to the extent possible while observing other criteria; it is, in essence, the lowest priority criterion.

The ordinance contains an emergency clause, in order for the criteria to be in effect immediately for the guidance of the apportionment commission.



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

DATE: December 10, 1992
TO: Governmental Affairs Committee
FROM: Casey Short, Council Analyst
RE: Draft Ordinance No. 93-477 - Apportionment Criteria

Item #5 on the Governmental Affairs Committee's December 17 agenda is a work session to consider Draft Ordinance No. 93-477, which is to establish criteria for the Metro apportionment commission to observe in establishing an apportionment plan for Metro Council districts. This draft incorporates changes from the draft the committee considered at its December 3 meeting, and has been reviewed by General Counsel Dan Cooper.

Attached is a clean draft of the latest version of the ordinance, and a "red-line" copy showing the changes from the previous version. A discussion of each change follows.

Page 1: No changes.

Page 2

lines 1-2: There is a minor language change suggested by counsel, which calls for the commission to "meet the following requirements," rather than "observe the following criteria."

#1. Language changes suggested by counsel are incorporated; these changes do not change the intent of the subsection.

#2. The maximum population variance increases from 2.5% to 5.0%. Reference to a specific source of population estimates is deleted. A statement is added that says 1990 census data are to be used for purposes of this subsection.

#3. In the previous draft, this section called for adjustments based on projected population growth. That language has been deleted, and replaced with language directing the commission to "make every effort" to create districts of equal population based on 1992 population estimates.

#4. This subsection in the draft before you is new, and calls for each of the three counties within the Metro area to have at least one Council district wholly contained within it.

#5. This subsection takes pieces of the old #4, retaining the direction that the commission is to observe existent precincts. It directs the commission to maintain communities of interest after the commission defines "communities of interest." The language here calls for these communities to be maintained "to the maximum extent possible in meeting all other applicable criteria," implying that the other criteria addressing population equality and county representation take precedence over this criterion.

Section 2. The emergency clause is amended to say the ordinance is necessary for the "health, safety, or welfare" of the Metro area, to be consistent with Charter language.

STAFF REPORT

DRAFT ORDINANCE NO. 92-477, FOR THE PURPOSE OF ESTABLISHING CRITERIA FOR COUNCIL DISTRICT APPORTIONMENT.

Date: November 27, 1992

Presented by: Casey Short

BACKGROUND

Voter approval of the Metro Charter at the November 3, 1992 general election requires appointment of a Metro apportionment commission, as prescribed in Section 16 of the Charter. The Charter allows the Council to prescribe, by ordinance, criteria for the commission to observe in creating its plan to apportion the Metro area into seven single-member districts.

The Governmental Affairs Committee conducted a work session on apportionment criteria at its November 19, 1992 meeting. Discussion focused on the following issues:

- Preservation of concentrations of minority populations within a single district.

General Counsel Dan Cooper suggested that an ordinance establishing additional criteria contain a reference to federal law regarding equal protection in representation. He counseled against adopting a criterion that specifically directed the commission to keep in a single district a concentration of ethnic minority population, advising that a directive to observe federal law would be sufficient.

- Population variances to account for projected growth.

There was considerable discussion whether to adopt a criterion directing the apportionment commission to take into account projected population growth in establishing the districts. Councilors opposed to this idea preferred to base the districts on known population because nobody can precisely project growth figures. Others said that it is possible to estimate general areas where growth will occur, and some population variations could be built in; in that case, expected - if not inevitable - population discrepancies would be minimized in the eight years until reapportionment. Councilor Devlin reported that the 1991 Council district reapportionment included small adjustments for growth, within a narrow tolerance. (The 1991 reapportionment produced districts with a total population variance of 4.96%, with the largest district being 2.67% above average and the smallest being 2.29% below average.)

- Population statistics.

There was some discussion whether to use 1990 census figures or a reliable, more recent, estimate. Mr. Cooper said he believed the Council could use updated estimates if it could justify their use, perhaps with some demonstration of the reliability of the estimates.

ANALYSIS OF DRAFT ORDINANCE

Draft Ordinance No. 92-477 contains four suggested criteria for Council district apportionment. The first incorporates Mr. Cooper's suggestion that the commission be aware of, and observe, applicable federal equal protection laws.

The second criterion would establish a 2.5% figure for variance above or below average population. This figure was selected because it would keep the variance under 5%, and it approximates the variance approved by the Council in its 1991 reapportionment. In directing the commission to make "every effort" to keep within the suggested variances, it does provide some latitude for the commission to exceed that figure if deemed necessary. There is some presumption, however, that deviation from the 2.5% maximum would call for justification by the commission. If the Council chooses to include a figure for maximum variance, it may wish to require the final plan to justify a deviation from that maximum. This criterion would also direct the commission to use updated estimates from the Portland State University Population Research and Census Center, rather than 1990 census figures.

The third criterion would address the issue of population variance related to projected growth by directing the commission to incorporate those variances within the 2.5% maximum variance suggested in #2, above. Alternatives could include a direction that projected growth is not to be considered; that projected growth could be considered to a greater degree (plus or minus 5%, for example, rather than 2.5%); or the Council could choose not to address the issue and let the commission decide this issue without Council guidance.

The final criterion in the draft ordinance incorporates those criteria in ORS Chapter 268, which the Council observed in its 1991 reapportionment. These issues were not directly addressed at the November 19 work session, but they are included in the draft ordinance because they are workable criteria that serve to promote the preservation of traditional communities. The only difference is that the draft ordinance deletes the requirement that consideration be given to county lines. This was deleted because the Council has not yet had the opportunity to address the issue of Council representation by county. (See page 2 of Casey Short's November 12 memo on the apportionment commission, attached.) The Governmental Affairs Committee may want to take this up at its December 3 meeting.



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

DATE: November 12, 1992
TO: Governmental Affairs Committee
FROM: Casey Short, ^{CS} Council Analyst
RE: Apportionment Commission

BACKGROUND

The 1992 Metro Charter establishes an Apportionment Commission, which is charged with adopting a plan creating seven Council districts by July 1, 1993 (see Section 16 (3) of the Charter, attached). Councilors are to appoint Apportionment Commission members by February 1, 1993. The Council may also establish apportionment criteria in addition to those enumerated in the Charter.

This memo is to suggest possible approaches to fulfilling the Charter mandate to appoint Apportionment Commission members, and promote discussion of criteria the Council may wish the Commission to observe in establishing the seven Council districts.

ADDITIONAL APPORTIONMENT CRITERIA

Charter criteria for apportionment are listed in subsection (h) of Section 16 (3), and require only that "as nearly as practicable, all council districts shall be of equal population and each shall be contiguous and geographically compact." The Charter does explicitly give the Council the authority to prescribe additional criteria through adoption of an ordinance.

In determining whether to add apportionment criteria, I suggest the committee consider those criteria in ORS 268.150(2) which the Council observed in effecting the 1991 Council district reapportionment. They are:

In apportioning subdistricts the council shall give consideration to existent precincts, maintaining historic and traditional communities and counties as opposed to following existent city or special district boundaries or the political boundaries of state representative or state senate election districts except when these political boundaries coincide with natural boundaries.

Other possible criteria for Committee and Council discussion include:

- District representation by counties.

The 1990 census figures showed 55.0% of Metro's population is in Multnomah County, 26.8% in Washington County, and 18.2% in Clackamas County. For a seven-member Council, these percentages translate to 3.85 seats from Multnomah County, 1.88 from Washington, and 1.27 from Clackamas. Do you want to direct the Apportionment Commission to create the districts to ensure, for example, a resident of Clackamas County holds at least one seat? This could be done by creating a district that is entirely within Clackamas County. Alternatives could include placing a majority of territory in two districts in Clackamas County, or not addressing the issue at all.

Note: General Counsel Dan Cooper will discuss the following three issues at the committee meeting, to clarify the laws.

- Ethnic representation

Federal law has some requirements regarding the maintenance of ethnic population concentration in a single district. It would probably be appropriate for the Council to include a criterion directing the Apportionment Commission to maintain in one district any concentration of minority populations, such as the African-American population now in Districts 11 and 12.

- Population variance

Court rulings have held that state and local government apportionments must stay within a population variance of 5% above and below the average. In Metro's case, with a 1990 census population of 1,051,000 million, the average population in the seven districts would be 150,000. The variance could range from 157,500 to 142,500. The Council may want to establish a narrower range for the Apportionment Commission to observe.

- Use of 1990 census data

The Charter does not stipulate what population figures the Apportionment Commission is to use. The Council may want to direct them to use the 1990 census figures, or use estimates from Portland State University to reflect growth since the census.

APPOINTMENT PROCESS

Section 16 (3) (a) of the Charter calls for the Council to "divide itself into five pairs of councilors and one group of three councilors" for the purpose of making appointments to the Apportionment Commission. Each of these six groups of Councilors shall appoint one Commission member, who must live in one of the Council districts from which the appointment is made. The

Presiding Officer shall appoint one member at large and name the Chair from among the seven members. Each county within Metro must have at least two residents on the Commission. All appointments must be made by February 1, 1993; if the Council does not meet this deadline the Executive Officer shall appoint all Commission members by March 1, 1993.

The requirement that each county have at least two members on the Apportionment Commission will effectively mean that restrictions will be placed on the ability of certain Councilors to name a Commission member from their own districts. Rather than attempt to explain, in words, a number of different possible combinations, I am attaching four possibilities sketched on a Council District map. These possible combinations do not constitute any recommendations, but are for purposes of illustration only. All have some shortcomings.

TIMING

Council actions necessary to create and guide the Apportionment Commission will come in three forms. Any additional criteria for apportionment must be done by ordinance. The grouping of Councilors for the purpose of appointing Commission members could be done by resolution. The appointments themselves are less formal actions of the groups of Councilors, which do not require action by the entire Council.

An ordinance establishing additional criteria should probably be adopted, with an emergency clause, at the second Council meeting in January, in order to have them in effect before the Commission begins work early in February. This would call for the ordinance to be drafted and have its first reading either at the last meeting in December or the first meeting in January.

The resolution establishing the appointing authorities should come to the Council at its first meeting in January (Jan. 14). This will allow the 1993 Council to vote on it, and give maximum time for Councilors to make their appointments. That maximum time, it should be noted, is only 17 days.

<u>Item</u>	<u>Action</u>	<u>Date</u>
Additional Criteria Ordinance	1st Reading	12/22/92 or 1/14/93
Councilor Groups Resolution	Council Consideration	1/14/93
Additional Criteria Ordinance	2nd Reading	1/28/93
Commission Appointments (deadline)	File with clerk	2/1/93

Section 13. Prior Consultation for Tax Imposition. Before imposing any new tax for which voter approval is not required, the council shall establish and seek the advice of a tax study committee that includes members appointed from the general population, and from among businesses and the governments of cities, counties, special districts and school districts, of the Metro area.

Section 14. Limitations on Expenditures of Certain Tax Revenues.

(1) **Generally.** Except as provided in this section, for the first fiscal year after this charter takes effect Metro may make no more than \$12,500,000 in expenditures on a cash basis from taxes imposed and received by Metro and interest and other earnings on those taxes. This expenditure limitation increases in each subsequent fiscal year by a percentage equal to (a) the rate of increase in the Consumer Price Index, All Items, for Portland-Vancouver (All Urban Consumers) as determined by the appropriate federal agency or (b) the most nearly equivalent index as determined by the council if the index described in (a) is discontinued.

(2) **Exclusions from limitation.** This section does not apply to (a) taxes approved by the voters of Metro or the Metropolitan Service District and interest and other earnings on those taxes, (b) payroll taxes specified in section 11 of this charter, and (c) tax increment financing charges on property.

Section 15. Limitations on Amount of User Charges. Except to the extent receipts in excess of costs from food and beverage sales, parking and other concessions are dedicated to reducing charges for the provision of goods or services to which the concession directly relates, charges for the provision of goods or services by Metro may not exceed the costs of providing the goods or services. These costs include, but are not limited to, costs of personal services, materials, capital outlay, debt service, operating expenses, overhead expenses, and capital and operational reserves attributable to the good or service.

**CHAPTER IV
FORM OF GOVERNMENT**

Section 16. Metro Council.

(1) **Creation and Powers.** The Metro council is created as the governing body of Metro. Except as this charter provides otherwise, and except for initiative and referendum powers reserved to the voters of Metro, all Metro powers are vested in the council.

(2) Composition. Beginning January 2, 1995, the council consists of seven councilors, each nominated and elected from a single district within the Metro area. Until that date the council consists of the 13 members of the governing body of the Metropolitan Service District whose terms begin or continue in January 1993 and whose districts continue until replaced as provided in this section. The terms of those members expire January 2, 1995.

(3) Apportionment of council districts. (a) Creation and appointment of apportionment commission. A Metro apportionment commission of seven commissioners is created. To appoint the commission the council shall divide itself into five pairs of councilors and one group of three councilors. Each pair and group of councilors shall be from contiguous districts and appoints one commissioner. The presiding officer appoints one commissioner and the commission chair. At least two commissioners must be appointed from each of the three counties within the Metro area, and each commissioner appointed by a pair or group of councilors shall reside in one of the districts from which the councilors making the appointment are elected or appointed. All appointments to the commission shall be made by February 1, 1993.

(b) Appointment by executive officer. If all appointments to the commission are not made by February 1, 1993, the executive officer shall appoint all commissioners and designate its chair by March 1, 1993. The executive officer shall appoint at least two commissioners from each of the three counties within the Metro area and may not appoint more than one commissioner from a single council district.

(c) Disqualifications from commission membership. No commissioner, or his or her spouse, children, or stepchildren may (1) be a Metro councilor, executive officer or employee, (2) be an elected officer or employee of any city, county or special district, (3) have an economic interest which is distinct from that of the general public in any policy or legislation adopted by Metro or the Metropolitan Service District within the previous two years or which is being considered for adoption, or (4) be engaged, directly or indirectly, in any business with Metro which is inconsistent with the conscientious performance of the duties of commissioner. No commissioner may be a candidate for the office of councilor or executive officer in the first primary and general elections after adoption of this charter. Any challenge of the qualifications of a commissioner shall be made by May 1, 1993.

(d) Commission vacancies. A vacancy on the commission is filled by action of the authority that appointed the commissioner whose position is vacant.

(e) Filing of apportionment plan. Not later than July 1, 1993, the commission shall adopt and file with the council an apportionment plan dividing the Metro area into seven council districts. Councilors from those districts are first elected in the first statewide primary and general elections after adoption of this charter for a term of office beginning January 2, 1995. The affirmative vote of four commissioners is required to adopt the apportionment plan.

(f) Appointment of apportionment referee. If the commission fails to file an apportionment plan by July 1, 1993, the council shall appoint an apportionment referee by July 15, 1993. The provisions of subsection (3)(c) of this section apply to appointment of the

referee. The referee shall prepare and file with the council an apportionment plan within 60 days after his or her appointment.

(g) Effective date of apportionment plan. An apportionment plan filed under this subsection becomes effective on the 30th day after filing unless a voter of Metro petitions for judicial review of the plan as provided by law.

(h) Criteria for districts. As nearly as practicable, all council districts shall be of equal population and each shall be contiguous and geographically compact. The council may by ordinance prescribe additional criteria for districts that are consistent with the requirements of this subsection.

(i) Appropriation of funds. The council shall appropriate sufficient funds to enable the commission and referee to perform their duties under this section.

(j) Abolition of commission. The commission is abolished upon filing the apportionment plan required by this section or on July 2, 1993, whichever is earlier.

(k) Repeal of subsection. Subsection (3) of this section is repealed January 1, 1994. Upon repeal its provisions shall be stricken from this charter and the other subsections of this section renumbered.

(4) Initial terms of office. The terms of office of the four councilors receiving the highest number of votes among the seven councilors elected in 1994 end January 4, 1999. The terms of office of the other three councilors end January 6, 1997. Thereafter the term of office of councilor is four years.

(5) Council presiding officer. At its first meeting each year the council shall elect a presiding officer from its councilors.

(6) Council meetings. The council shall meet regularly in the Metro area at times and places it designates. The council shall prescribe by ordinance the rules to govern conduct of its meetings. Except as this charter provides otherwise, the agreement of a majority of councilors present and constituting a quorum is necessary to decide affirmatively a question before the council.

(7) Quorum. A majority of councilors in office is a quorum for council business, but fewer councilors may compel absent councilors to attend.

(8) Record of proceedings. The council shall keep and authenticate a record of council proceedings.

Section 17. Metro Executive Officer.

(1) Creation. The office of Metro executive officer is created. The executive officer is elected from the Metro area at large for a term of four years. The executive officer serves

METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

December 3, 1992

Councilor Tanya Collier
Chair, Governmental Affairs Committee
Metropolitan Service District
2000 S. W. First Avenue
Portland, OR 97201-5398

Dear Councilor Collier:

Re: Apportionment of New Council

Section 16(3) of the 1992 Metro Charter requires that the Council appoint an apportionment commission to divide the District into subdistricts for the election of seven Council members to take office commencing January 1, 1995. Subsection 16(3)(h) of the Charter provides:

"As nearly as practicable, all council districts shall be of equal population and each shall be contiguous and geographically compact. The council may by ordinance prescribe additional criteria for districts that are consistent with the requirements of this subsection."

The Committee has asked that I address several issues related to this section of the Charter.

Question #1 - Ethnic Representation

The first question raised by the Committee is a question of ethnic representation. The Committee has asked "since federal law has some requirements regarding the maintenance of ethnic population concentration in the single district, is it appropriate for the Council to include a criterion directing the apportionment commission to maintain in one district any concentration of minority populations, such as the African American population now in districts 11 and 12?"

Federal law (42 U.S.C.S. § 1973) provides:

"(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set

Executive Officer
Rena Cusma

Metro Council

Jim Gardner
Presiding Officer
District 3

Judy Wyers
Deputy Presiding
Officer
District 8

Susan McLain
District 1

Lawrence Bauer
District 2

Richard Devlin
District 4

Edward P. Gronke
District 5

George Van Bergen
District 6

Ruth McFarland
District 7

Tanya Collier
District 9

Roger Buchanan
District 10

Ed Washington
District 11

Sandi Hansen
District 12

Councilor Tanya Collier

Page 2

December 3, 1992

forth in section 4(f)(2) [42 U.S.C.S. § 1973 b(f)(2)], as provided in subsection (b).

"(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population."

Federal law (42 U.S.C.S. § 1973 b(f)(2)) provides:

"(2) No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote because he is a member of a language minority group."

This provision of federal law is more commonly known as the Federal Voting Rights Act. This act and related provision of federal law provides substantial guarantees that restrictions on the right to vote and standards, practices or procedures used in elections will not effectively deny the rights of citizens to participate in the election process on account of race, color, or membership in a language minority group.

Pursuant to these statutes, some courts have held in some circumstances that the creation of district boundaries which dilute the percentage of minority population by splitting one community or concentration of minority voters into two separate districts is a violation of this act. Armour v. Ohio, 895 F2d 1078 (6th Cir 1990). However, in doing so, the courts have looked at a totality of circumstances greater than just the single issue of concentration of minority voters. Other factors considered by the courts in those cases have included issues related to the polarization of the electorate along racial lines, the existing of racial voting blocks, and the past history of minority participation in elections and the ability of minority

Councilor Tanya Collier
Page 3
December 3, 1992

candidates to be elected to a wide variety of offices. Armour v. Ohio, *supra*, The courts have been very clear in stating that there is no one clear path for determining violations.

For example, in one case a court stated:

"To establish a vote dilution claim under 42 USCS @ 1973 plaintiffs must prove (1) that the minority group is underrepresented in proportion to its percentage of total electorate, (2) that minority groups had sufficient geographic and political cohesion to allow creation of one or more minority controlled single-member districts, (3) that totality of circumstances, with special emphasis on vote polarization and extent of past minority electoral success, permits inference that the current electoral system is driven by racial bias in the community or its political system, and (4) that the same evidence also leads to the conclusion that the challenged electoral system would continue to deny minorities equal access to political process. Solomon v. Liberty County, (1988, CA11) 865 F2d 1566."

No one factor can be given predominance:

"When analyzing racial polarization in voting it is important to realize that no one statistical theory is appropriate for all vote dilution cases, and care must be taken to examine each case individually while keeping in mind totality of circumstances approach; statistics can be very useful analytically but they also can be quite deceiving if applied narrowly and automatically without proper scope; it will often be necessary to examine factors other than race that may also correlate highly with election outcomes—campaign expenditures, party identification, income, media advertising, religion, name recognition, position on key issues, etc. McCord v. Ft. Lauderdale, (1986, CA11 Fla) 787 F2d 1528."

There may be other factors or issues that come before the apportionment commission that raise questions about possible violations of federal law. Since there is no one clear statement of how to avoid violating the law, it is our advice that in an ordinance adopting criteria the Council should state "the apportionment shall also comply with provisions of applicable federal law". This would give the apportionment commission the direction that the Federal Voting Rights Act must be complied with in drawing the new district boundaries, and at the same time not

Councilor Tanya Collier
Page 4
December 3, 1992

direct a particular remedy that may in fact under some circumstances not be appropriate or sufficient to avoid violating the law.

The federal courts, pursuant to federal law, have full authority to enforce the act regardless of whether the Council includes a reference to the act in the criteria the Council adopts. By including a general reference to the federal law, the Council would be highlighting to the apportionment commission the need to comply with the federal law. The federal law by its terms is enforceable by any aggrieved party and regardless of whether the Council adds this language to any criteria it must be taken into account by the commission.

Question #2 – Population Variance

The Committee has asked what the criteria are for population variance for the new districts. The language utilized in the Charter "as nearly as practicable all Council districts shall be of equal population" is identical to the words used by the United States Supreme Court in describing the criteria it finds mandated in Article I, § 2, of the United States Constitution pertaining to the distribution of seats in the United States House of Representatives. The Court has described this standard as permitting only the limited population variances which are unavoidable despite a good faith effort to show absolute equality, or for which justification is shown, "Karcher v. Daggett, 462 US 725, 103 S Ct 2653, 77 L Ed2d 133 (1983).

The standard set by the U.S. Supreme Court for population disparities in state and local government districts pursuant to the equal protection clause of the United States Constitution is considerably different. There the Court has held that where population disparities between districts are less than a total deviation of no greater than 5 percent larger or 5 percent smaller than the "norm" the disparity is not sufficient to require any justification to meet the equal protection requirements of the fourteenth amendment. White v. Regester, 412 US 755, 37 L Ed2d 314 93 S Ct 2332 (1973). This is the same standard that the Oregon Court of Appeals has previously held applied to the Metropolitan Service District pursuant to the provisions of ORS ch 268. Kane v. Paulus, 41 Or App 455, 599 P2d 1154 (1979).

Question #3 – Census Data

The third and last question asked by the Council Committee is whether the 1990 census data is to be used or whether other population estimates may be appropriate to establish district boundaries.


Councilor Tanya Collier

Page 5

December 3, 1992

For purposes of determining compliance with the Equal Protection requirements as set forth above, the courts have held that the U.S. Census data and not estimates are to be utilized. White v. Regester, supra. Because the Charter itself is an untested document, it is an open question whether the Council may, through the adoption of an appropriate ordinance establishing criteria, direct that to the extent not inconsistent with Equal Protection requirements the apportionment commission should consider relevant estimates of population in achieving "the as nearly as practical equal in size" criteria.

Yours very truly,



Daniel B. Cooper,
General Counsel

gl
1642

cc: Metro Council
Rena Cusma

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ESTABLISHING)	ORDINANCE NO. 93-477
CRITERIA FOR COUNCIL DISTRICT)	
APPORTIONMENT, AND DECLARING)	INTRODUCED BY THE
AN EMERGENCY)	GOVERNMENTAL AFFAIRS
)	COMMITTEE

WHEREAS, The voters of Metro approved the 1992 Metro Charter at the November 3, 1992 General Election; and

WHEREAS, Section 16 of the Metro Charter prescribes that beginning January 2, 1995, the governing body of Metro is to be a seven-member council with each Councilor elected from a single district within the Metro area; and

WHEREAS, Section 16(3) of the Metro Charter creates a Metro apportionment commission, for the purpose of creating an apportionment plan which establishes the seven Council districts; and,

WHEREAS, Section 16(3)(h) of the Metro Charter establishes the minimum criteria for Council districts, requiring them to be as nearly as practicable of equal population and "contiguous and geographically compact;" and,

WHEREAS, Section 16(3)(h) of the Metro Charter further provides that "the council may by ordinance prescribe additional criteria for districts that are consistent with the requirements of this subsection;" NOW, THEREFORE,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Section 1. In addition to the criteria for Council district apportionment contained in Section 16(3)(h) of the Metro Charter, which require that "all council districts shall be of equal population and each shall be contiguous and geographically

compact," the Metro apportionment commission shall also meet the following requirements in developing an apportionment plan:

1. The apportionment shall comply with applicable federal law pertaining to the voting rights of minority populations.

2. No district shall vary in population more than 5.0% from the average population of a district. "Average population" shall be that amount equal to one-seventh the total Metro area population. For the purpose of this subsection, all population figures shall be based upon 1990 census data. This maximum variance of 5.0% shall be construed to mean that no district may be more than 5.0% larger nor more than 5.0% smaller in population than the average population.

3. While observing the maximum 5.0% population variance based on the 1990 census data stipulated in #2, above, the commission shall make every effort to create districts with population variances of 0% (zero percent) based upon the most recent and reliable population estimates.

4. Each of the three counties with territory in the Metro area shall have at least one district wholly within that county.

5. The commission shall give consideration to existent precincts and, to the maximum extent possible in meeting all other applicable criteria, maintain communities of interest as the commission defines such communities of interest.

Section 2. This ordinance being necessary for the health, safety, or welfare of the Metro area, for the reason that the work of the

apportionment commission must proceed without delay as stipulated in the Metro Charter, an emergency is declared to exist and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this _____ day of January, 1993.

Presiding Officer



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

DATE: February 1, 1993
TO: Rena Cusma, Executive Officer
FROM: Paulette Allen, Clerk of the Council
RE: TRANSMITTAL OF ORDINANCE NOS. 93-474 AND 93-477A

Attached for your consideration are true copies of the ordinances referenced above adopted by the Council on January 28, 1993.

If you wish to veto any of the ordinances referenced above, I must receive a signed and dated written veto message from you no later than 5:00 p.m., Thursday, February 4, 1993. The veto message, if submitted, will become part of the permanent record. If no veto message is received by the time and date stated above, these ordinances will be considered finally adopted.

I, Paulette Allen, received this memo and true copies of Ordinance Nos. 93-474 and 93-477A from the Clerk of the Council on

1-2-93