



Upcoming Changes to City's Election System

VIRGINIA BEACH CITY COUNCIL

JUNE 1, 2021

Outline

- History
- Current Election System
- Holloway Case History
- General Assembly Action
- Holloway Opinion & Order
- Next Steps

History

1963 Modern City of Virginia Beach created by merger

- Post-merger, City's election system had 7 boroughs
- Six magisterial districts of Princess Anne County each elected one member by and from the district
- Former City of Virginia Beach became single district with five members elected by and from the district

1967 Dusch v. Davis SCOTUS case

- Resulted in 7-4 system that became foundational framework for current system
- Seven members reside in each of the seven districts; all seven elected at large ("residence districts")
- Four members elected by and from the city at large

1988 City adopted at-large election of mayor

- Previously chosen by City Council members

History

- 1990** Mayor's Commission recommended seven districts of equal population with one Council member elected from and by the voters of each district ("wards") (4 at large, 11 total Council members)
- 1994** Referendum passed supporting equal population of districts and implementation of seven wards
 - City Council passed resolution asking General Assembly to change City Charter to require equal population and implement wards
- 1995** General Assembly granted equal population requirement for residence districts but declined to implement wards
 - Directed City to conduct another referendum in 1996
- 1996** Second referendum supported residence districts over wards
- 1997** U.S. District Court ruled City's election system did not violate §2 of VRA
- 2008** Local elections moved from May to November

Current Election System

- Existed in current form since 1996 (substantially same since 1967)
- Governed by City Charter §3.01 (enacted by General Assembly)
 - 11 members
 - 4 members (incl. mayor) elected at large (may reside anywhere in city)
 - 7 members elected at large (must reside in one of 7 districts)
 - Residence districts of approximately equal population
- District boundaries adjusted after each decennial census
- School Board elected using same method (City Charter §16.04)
 - Chair elected by members of School Board, not public
 - Chair does not have to be an at large member

Criticisms of Current Election System

- Historically, a primary critique: At large election of all 11 members dilutes votes of minority groups
- Majority gets to elect all 11 members of Council

At Large

All voters

Elect

All Council members

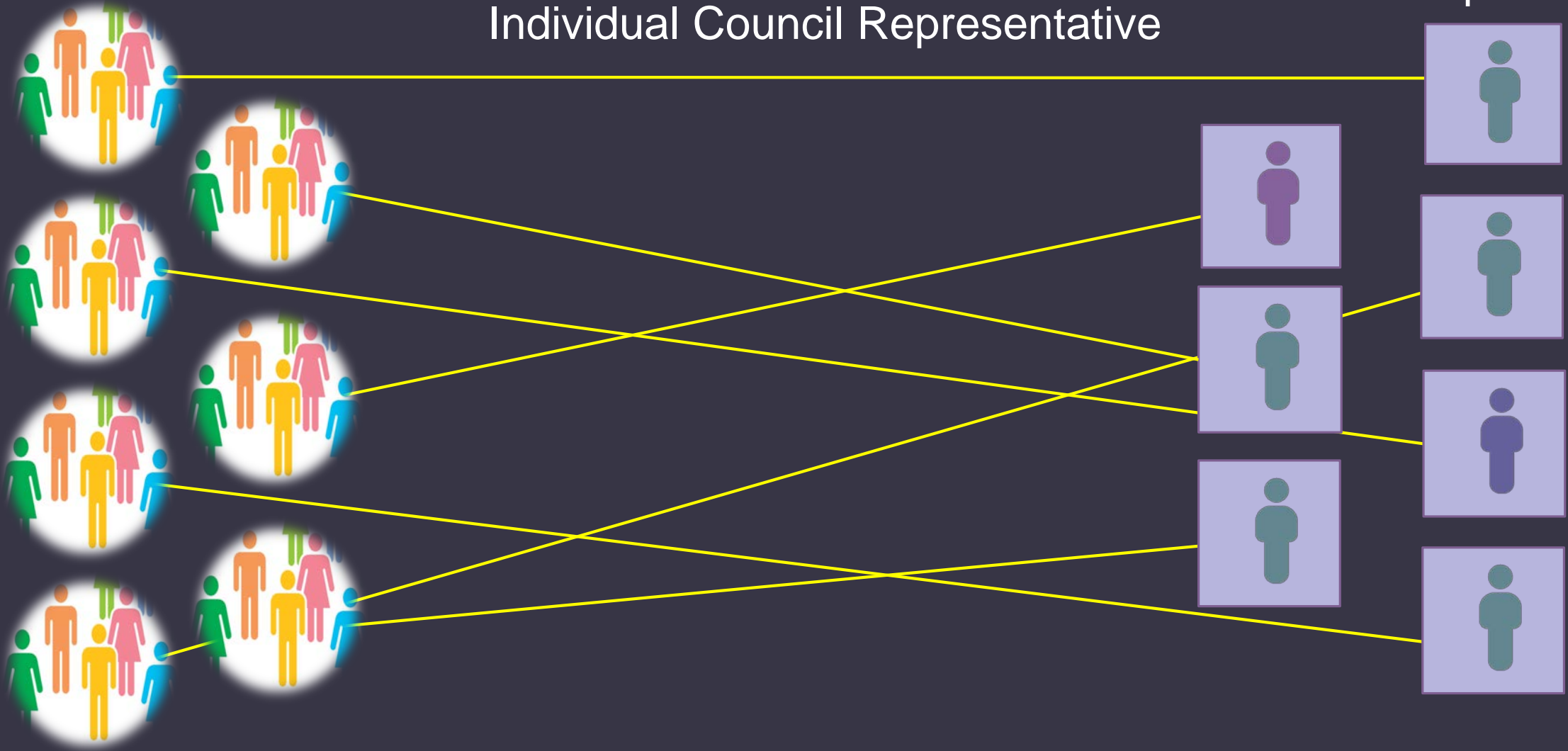


Ward System

Voting
Districts

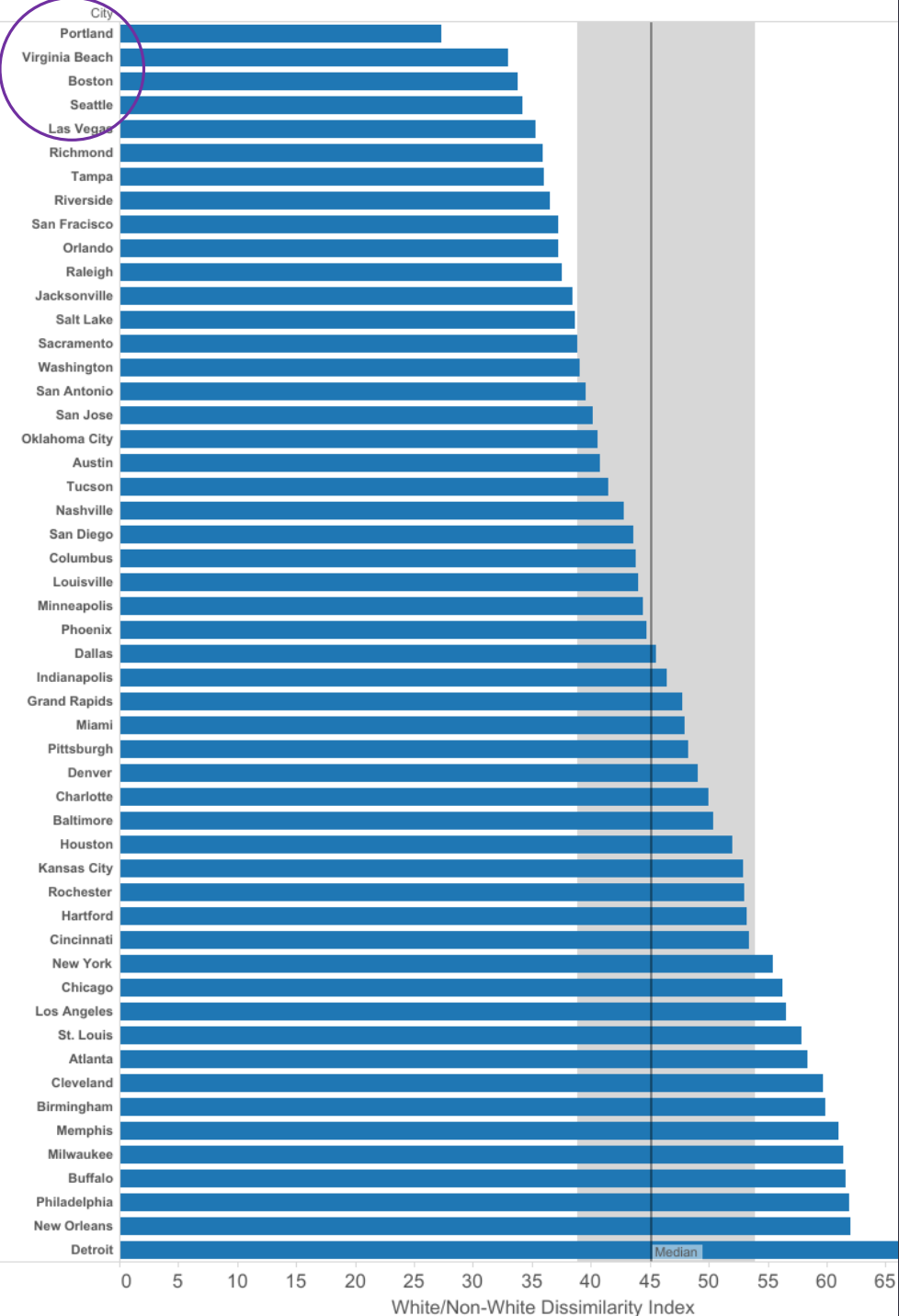
Voters in Each Ward Elect Their
Individual Council Representative

Council
Representatives



Response to Criticism of System

- Historically - not possible to draw a majority-minority district for a single minority in Virginia Beach
 - Virginia Beach is one of most racially integrated (least segregated) larger cities in America
 - Minority communities are dispersed throughout city
 - Not feasible through 2010 redistricting process to draw a district in which a single minority would constitute a majority in that district
- Virginia Beach minority communities are not politically cohesive
 - Not accurate to say majority of Black, Asian and Hispanic voters prefer same candidates
 - Combining minority groups into districts would not advance candidates preferred by single minority
- Plaintiffs in Holloway case assert that Black, Asian and Hispanic voters in Virginia Beach are politically cohesive and that a combined minority-majority map would address vote dilution



America's Least Segregated Cities

Source: U.S. Census Bureau, White to Non-White Racial Dissimilarity Index [RACEDISPARITY], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/RACEDISPARITY>, August 10, 2020 via CityObservatory.org.

Recent Developments Affecting the City's Election System

- Holloway et al. v. City of Virginia Beach Opinion & Order
 - Case filed in United States District Court in 2017
 - Trial October 6-14, 2020
 - Court's Opinion March 31, 2021
- 2021 Changes to Virginia Law
 - HB2198
 - HB1890/SB1395

Holloway v. City of Virginia Beach

- Plaintiffs Latasha Holloway and Georgia Allen
 - Now represented by Campaign Legal Center, a D.C. public interest law firm
- Key allegation – City’s at large election system violates Section 2 of federal Voting Rights Act
 - Dilutes minority voting strength
 - Prevents a combined group of Black, Hispanic and Asian minority groups from electing candidates of their choice (“coalition” claim)
- City disputes facts alleged and legal assertions
- Bench trial October 6-14, 2020

Virginia House Bill 2198

Adopted by 2021 Virginia General Assembly

Notwithstanding any other provision of law, general or special, in a locality that imposes district-based or ward-based residency requirements for members of the governing body, the member elected from each district or ward shall be elected by the qualified voters of that district or ward and not by the locality at large.

Also applicable to School Boards

Virginia Voting Rights Act (HB1890 & SB1395)

Adopted by 2021 Virginia General Assembly

An at-large method of election, including one that combines at-large elections with district- or ward-based elections, shall not be imposed or applied by the governing body of any locality in a manner that impairs the ability of members of a protected class, as defined in § 24.2-125, to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgement of the rights of voters who are members of a protected class.

Establishes pre-clearance process with State Attorney General

Also applicable to School Boards

Combined Effect of 2021 General Assembly Actions

Even without Holloway case...

- Current system must change for 2022 election
- 7 residence districts become wards without further action by General Assembly
- Citizens will no longer elect all 11 City Council representatives
- Vote on single representative for their ward and at large seats including Mayor
- 3 at large districts under current system subject to potential later challenge in state court even if City prevails in appeal

Holloway v. City of Virginia Beach

- District Court's Opinion and Order (March 31, 2021) found that City's election system violates Section 2 and is unlawful:

By a preponderance of the evidence, Plaintiffs have demonstrated that the at-large system of elections for the Virginia Beach City Council denies Hispanics, African Americans, and Asians equal access to the electoral and political process, in contravention of Section 2 of the Voting Rights Act.
- Prohibits further elections under current system
- Court to determine appropriate remedy in future phase of litigation
- Court to award attorneys' fees and costs to Plaintiffs (subject to later determination of amount)

Holloway Case Status

- District court has thrown out current election system
- Plaintiffs preparing petition itemizing attorneys' fees and litigation costs per court's order
 - Seeking at least \$3.88 million, with additional costs accruing during appeal
- City and Plaintiffs preparing for future hearings on remedy phase
- City has filed notice of appeal and appeal is in progress

Possible Remedies for Section 2 Violation

Change some or all at large Council positions to ward or super ward seats. Residence districts function as at large positions.

Residence District	Ward	Super Ward Larger geographical area within city that overlaps two or more wards
Each candidate must reside within the district	Each candidate must reside within geographical boundary of district they serve	Each candidate must reside within geographical boundary of district they serve
Elected by voters of the entire city	Elected solely by registered voters residing within that district	Elected solely by registered voters residing within that district

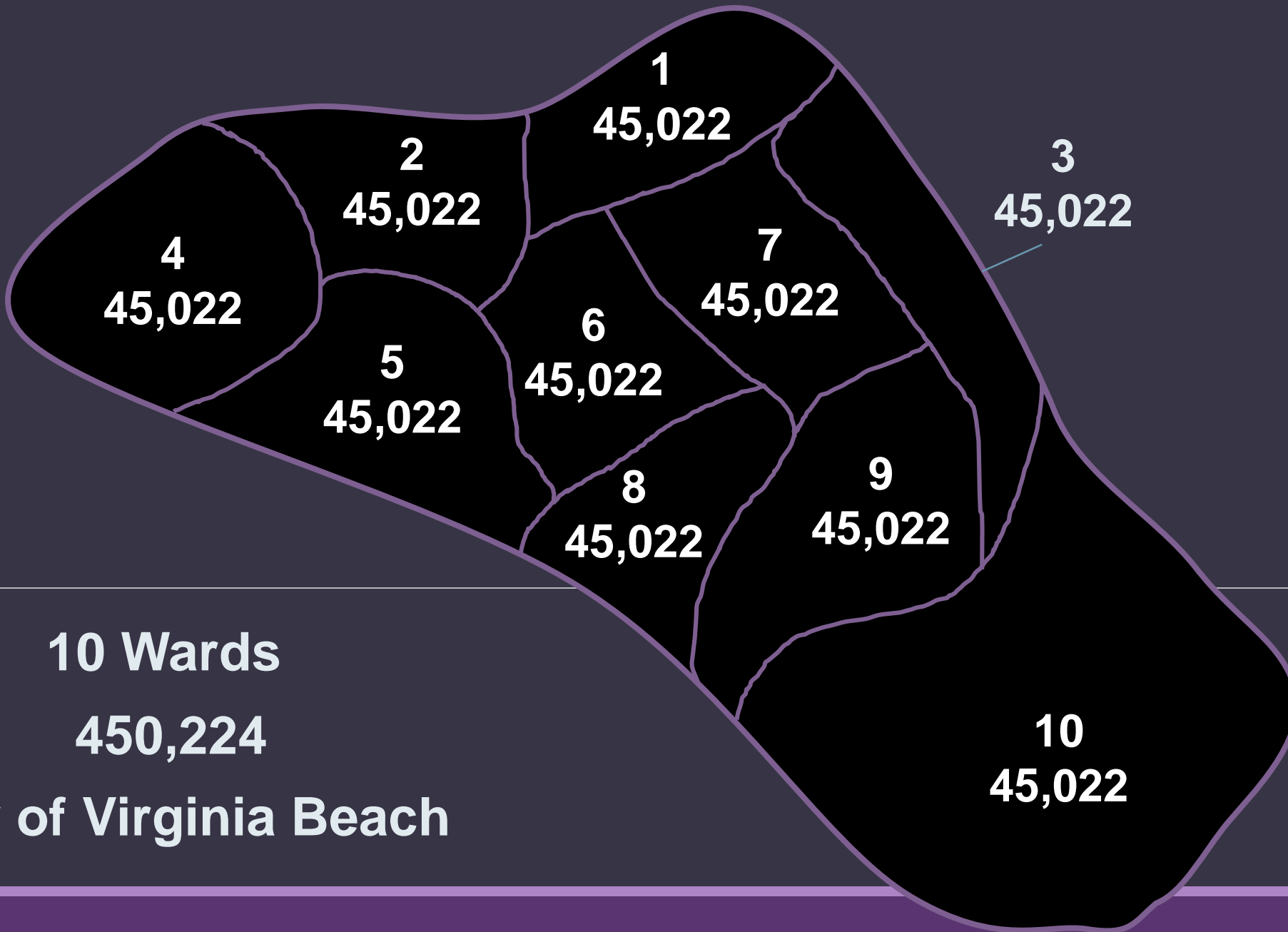
Minority populations can represent a greater proportion of a ward than entire city; therefore, greater ability to elect preferred candidate.

Plaintiffs: remedial plan should create at least two districts in which minority groups could elect preferred candidates (“opportunity districts”)

**Mayor Elected
At Large**

450,224

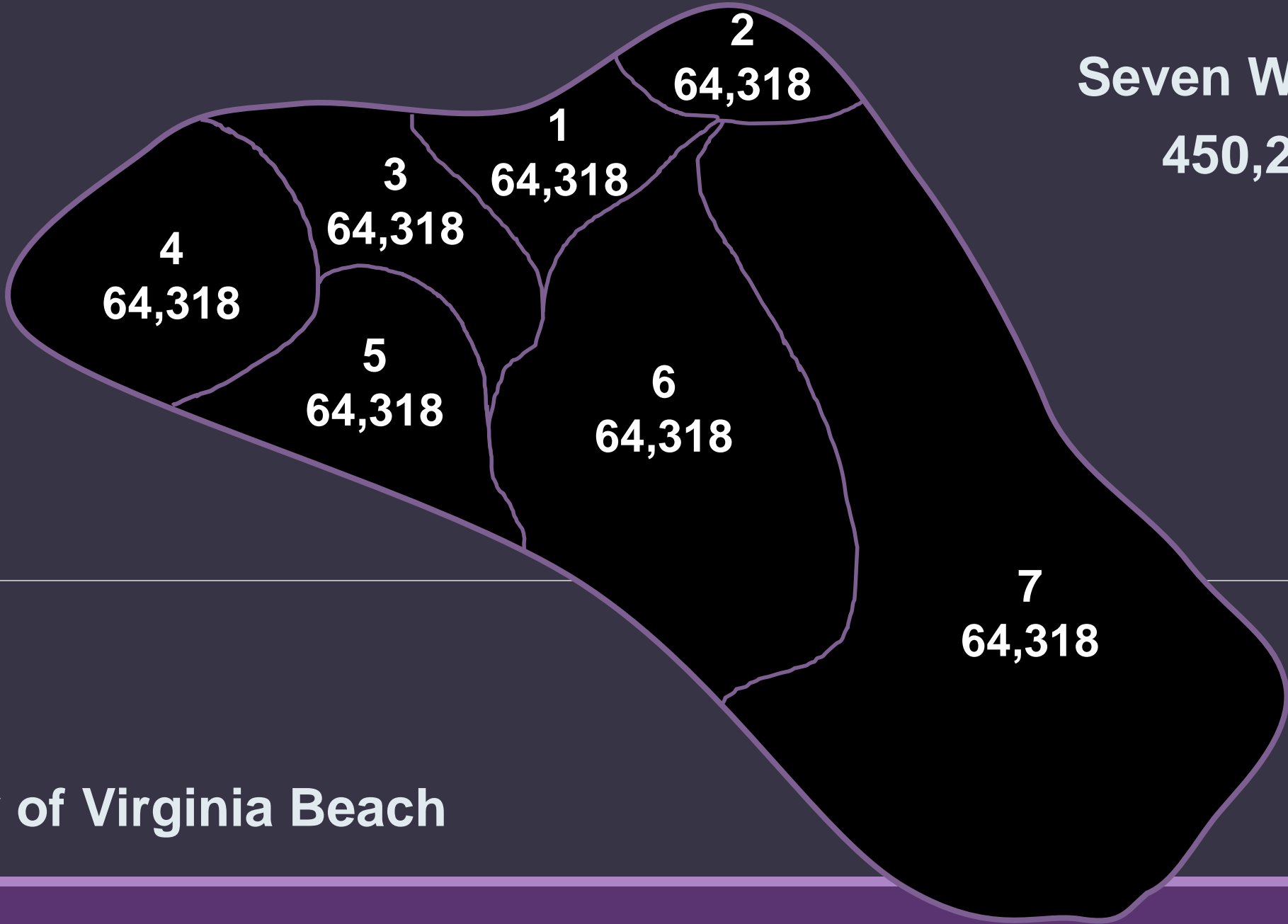
City of Virginia Beach



10 Wards

450,224

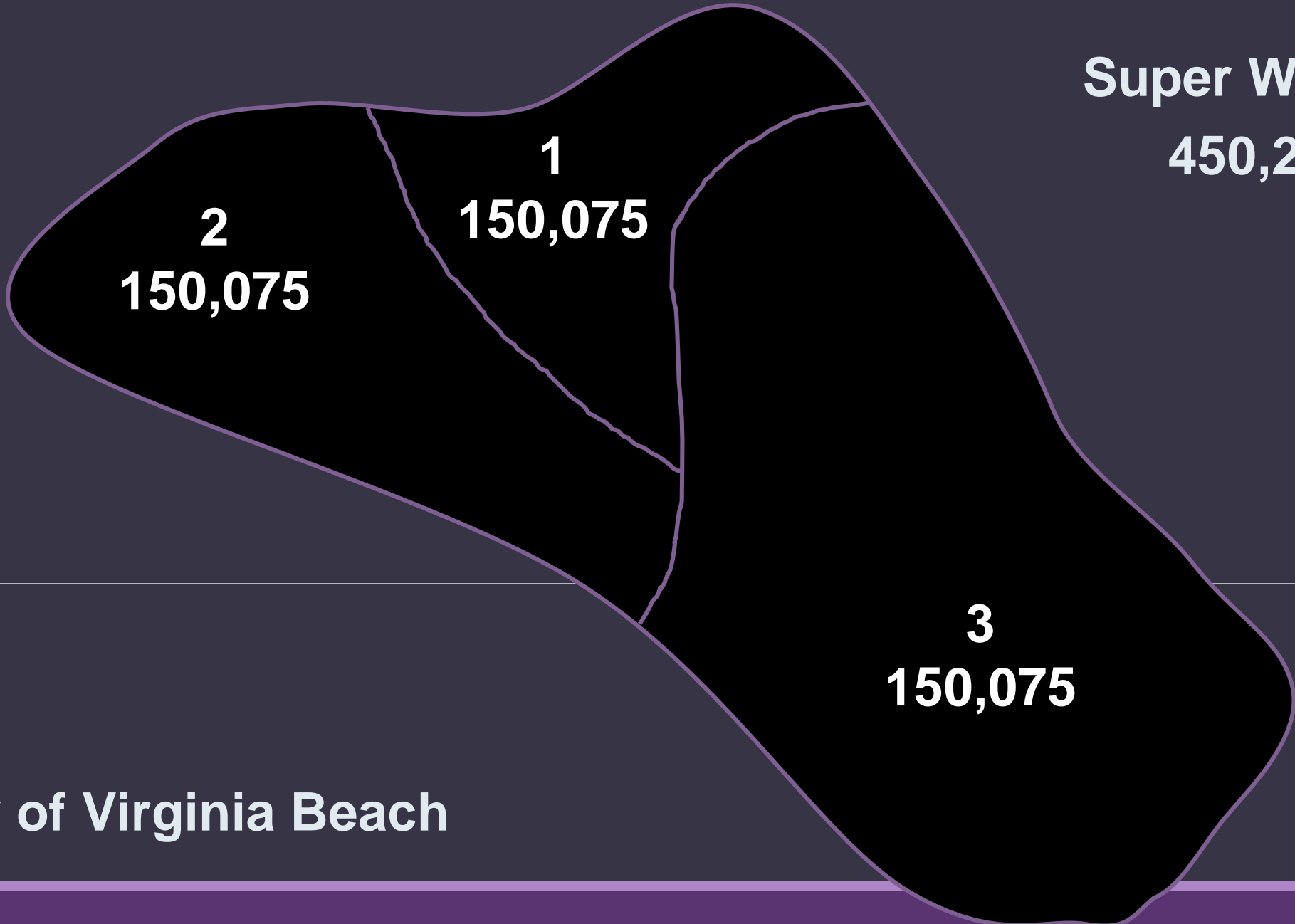
City of Virginia Beach



Seven Wards
450,224

City of Virginia Beach

Super Wards
450,224



City of Virginia Beach

What Comes Next

Trial Court

- Parties submit proposed remedial plans to trial court – July 1
- Court will appoint Special Master, review plans and implement remedy – Fall 2021
- Remedy will involve creation 3 minority opportunity seats from wards/super wards, only mayor at large
- City will actively participate in remedy phase
 - Propose system and remedial maps
 - Seeking public input on preferred system
 - Minimum of 3 minority “opportunity” districts
 - Could be 10 wards or seven ward/three super ward system
- If remedy imposed prior to release of census data, boundaries will have to be adjusted
- Attorneys’ fees and costs award determination

Holloway Case Appellate Issues

- Whether minority groups may be combined to state claim under Section 2 as a matter of law
 - U.S. Supreme Court has not ruled on viability of “coalition” claims
 - Fourth Circuit has suggested, but not formally ruled, that it did not approve of “coalition” claims
 - Other circuits are split
- Whether those minority groups in Virginia Beach tend to support the same candidates as a matter of factual proof
- Standing, mootness and ripeness of Plaintiffs’ claims
- Other appellate considerations
 - Appellate outcomes involve high level of uncertainty; no outcome can be reliably predicted
 - Expensive and time consuming to reach final result even if favorable
 - Next general City Council election is November 2022; Candidates need to know system and districts early in 2022

What Comes Next

Court of Appeals

- City will seek expedited review with briefs filed in June – early August timeframe
- Will seek to have oral argument and decision by year end or early Q1 2022
- If City prevails, City could seek to re-draw maps to implement seven ward, four at large system
 - Further appeal and or stay possible
 - Virginia Attorney General would still have to approve new plan and maps under new Virginia VRA
- If appeals court sustains trial court's ruling
 - Further appeal to United States Supreme Court likely
 - 2022 election will likely be under trial court's remedial plan

Impact on School Board Elections

- School Board is not a party in Holloway case
 - Ruling refers only to City Council elections
- By City Charter, School Board members are elected in same manner and according to same schedule as Council members
- HB2198 changes School Board's residence districts to wards
- Most likely result: System adopted by district court will apply to School Board
- Ambiguity as to 11th School Board member
 - School Board has 7 district and 4 at large members
 - School Board chair is selected by Board, not by the public
- Charter change likely required after new City Council system is determined

Public Information and Input on Remedy

Council Goal: Use variety of City channels to disseminate information and provide residents with opportunities to provide feedback

In Person

Public Briefings

- May 11 Council Chamber
- June 1 Council Chamber
- Others: VB Vision, VBHA, VBRA, CBDA
VB Chamber of Commerce, Virginia
Farm Bureau Local Board

Council Townhalls/Community Meetings

- As determined or requested by
Councilmembers

Public Hearings

- June 8
- June 15

Digital/Media/Virtual

- Virtual Town Hall
- VBGov.com – headlines, update case page on site
- City Page
- City Manager Update
- Direct Mailing (Mailed May 26th)
- Media briefings/placements
- Social Media (Facebook, Twitter, NextDoor, YouTube, Instagram)
- VBTV

Questions/Discussion