

# Election System Update & Possible Charter Change Referendum

CITY COUNCIL PUBLIC BRIEFING

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# Pre-2022 Election System

- System 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 from residence districts at large
  - 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

# Timeline of Events Affecting City's Election System

- Holloway et al. v. City of Virginia Beach et al.
  - Originally filed in United States District Court in 2017
  - Trial October 6-14, 2020
  - Trial court ruled Charter system violates Section 2 of VRA and enjoined further use (March 2021)
  - Trial court issued remedial order requiring 10-1 system and drawing district maps (December 2021)
  - U.S. Court of Appeals vacated trial court orders as moot due to HB2198 (July 2022)
    - Returned case to trial court for further proceedings
  - Plaintiffs voluntarily dismissed case after City Council adopted 10-1 system via decennial redistricting in August 2023
- General Assembly Significantly Changed Virginia Law (Winter 2021)
  - HB2198 – Converted Residence Districts to Single-Member (Ward) Districts
    - Basis of Court of Appeals vacating trial court ruling as moot
  - Virginia Voting Rights Act (VAVRA) adopted
    - Heightened scrutiny of when at large districts may be used in localities
- 2022 Election Held Using 10-1 System Due to Prior Court Order

# Combined Effect of 2021 General Assembly Actions

Even without Holloway case...

- Pre-2022 system changed because of state law (HB 2198)
  - 7 residence districts became single member ward districts
  - Citizens no longer elect all 11 City Council representatives at large
  - Vote only on single representative for their ward, 3 at large seats, and Mayor
- 3 remaining at large districts subject to private citizen challenge even if approved by Attorney General (VAVRA)
  - Broader definition of vote dilution (influence districts)
  - Eliminates *Gingles* 1 test (compactness)
  - VAVRA also prohibits retrogression
  - Creates favorable standard of review for plaintiffs
  - Allows recovery of attorneys' fees
  - Claim allowed even if system/districts pre-cleared by Attorney General

# 2022 Election

## November 2022 Election held using Court's 10-1 system

- Appeals court ruling came too late to change system
- Candidates had already qualified for ballot (*Purcell* doctrine)

# Timeline of Events Affecting City's Election System

- 2023 Decennial Redistricting & Charter Change Process
  - Without court order imposing 10-1 system for 2024, City had to complete its decennial redistricting process in 2023
  - City Council hired UVA Weldon Cooper Center to conduct a Public Input Process, a Statistically Validated Survey, and Provide Recommendations
    - Survey showed 81% public support for 10-1 system
    - Survey showed 63% support for referendum
  - Decennial Redistricting Ordinance approved by Council (August 2023)
    - Redistricted to 10-1 system using district maps previously court ordered and utilized for 2022 election
  - Council held public hearing, then voted to request General Assembly approve Charter and/or general law changes to harmonize state statutory law with adopted redistricting ordinance (November 2023)
  - General Assembly passed Charter change legislation (2/3 majority in each chamber) and general law changes (simply majority in each chamber)
  - Governor Youngkin vetoed all bills, citing *Branch et al. v. City of Virginia Beach et al.*

# Timeline of Events Affecting City's Election System

- Branch et al. v. City of Virginia Beach et al. (filed January 2024)
  - Challenged 2022 election outcome and validity of 10-1 system adoption in August 2023 redistricting ordinance
  - May 2024 hearing on preliminary motions
  - August 2024 Court ruled
    - 2022 election results using 10-1 system upheld
    - Plaintiffs' injunction request to prevent 2024 election from using 10-1 system denied
    - Lawfulness of adoption of 10-1 system beyond 2024 via redistricting ordinance unresolved pending 2025 trial (VAVRA application to redistricting ordinance)
  - Plaintiffs recently filed motion for summary judgment

# 2024 Election

- November 2024 election held using 10-1 system and district maps adopted in 2023 redistricting ordinance
  - *Branch* case denied injunction to prevent 10-1 system election in 2024
  - *Kowalewitch* case seeking court finding that all Council and School Board seats are vacant was dismissed on Friday

# Future Elections

- Decennial redistricting ordinance adopted 10-1 system through 2031
  - *Branch* legal challenge continues
  - City Council may only adopt a single redistricting ordinance per decennium with limited exceptions
    - Court order is one exception
- City Charter (as modified by HB2198 (2021))
  - 7 single member ward districts, 3 at large districts
  - 3 at large districts subject to private citizen challenge under VVRA
  - 7 district boundaries would need to be adjusted using 2020 Census data
  - *Holloway* Plaintiffs have threatened immediate federal court legal challenge if City Council takes any steps toward using the modified Charter system for future elections
- Council frequently discussed possibility of referendum where people could ask General Assembly directly to change charter if that is public's will
  - Attorney staff has briefed Council regarding pending litigation and conflict between redistricting ordinance and Charter provision in closed session, and sought direction on how best to proceed
- Referendum is one possibility to potentially break stalemate in General Assembly
- No election system referendum has been held since legal challenges began in 2017
  - Last election system referendum was 1996

# Charter Change Referendum Basics

- Referendum to seek Charter change authorized by Va. Code § 15.2-201
  - Must be a “yes” or “no” question – i.e., Should Charter be amended?
  - Question must be briefly stated using plain English
  - If referendum question passes, proposed Charter amendment must be delivered to member(s) of Virginia Beach General Assembly delegation for introduction at next General Assembly session
  - Referendum question submitted to/approved by Circuit Court no later than August 15, 2025
  - Referendum question appears on November 4, 2025 general election ballot citywide
  - City staff cannot advocate for or against referendum question
    - May educate public
    - May disseminate neutral explanation of question written by City Attorney
  - City Council members may advocate for or against referendum question
  - City Council may be unable to implement public’s preferred method regardless of outcome

# Proposed Referendum Question

**Should the method of city council elections set forth in the Virginia Beach City Charter be changed from a modified 7-3-1 system to a 10-1 system?**

**A “yes” vote means that you support the 10-1 system, which was used in the 2022 and 2024 city council elections. In the 10-1 system, the city is divided into 10 districts and the voters of each district elect a single council member with the mayor elected at-large (city-wide).**

**A “no” vote means you support the 7-3-1 system described in the current city charter as modified by a general law change that occurred in 2021. In the modified 7-3-1 system, the city is divided into 7 districts and the voters of each district elect a single council member, with three other council members and the mayor elected at-large (city-wide).**

# Explanation of Referendum Question

- This referendum asks whether the public wishes to request the General Assembly amend the City Charter to reflect the 10-1 election system used in the 2022 and 2024 elections (YES) or to retain the 7-3-1 election system stated in the Charter as amended by general law in 2021 (NO)
- The purpose of this referendum is to address a conflict between the Charter and the City's redistricting ordinance. A "YES" vote would re-submit the 10-1 Charter amendment to the General Assembly. A "NO" vote would indicate a desire to use the modified 7-3-1 system in future elections

# Public Education

- 63% of respondents in June 2023 University of Virginia Weldon Cooper Center for Public Service community survey supported Council doing referendum on election system options
- Total # of Voters: 348,643 (as of January 1, 2025) - 66% voter turnout Nov. 2024
- Past public education campaign budgets: \$383,174.85 for election system input; \$251,263.66 for redistricting
- Increase in early voter turnout impacts communication efforts/timeline
- 2022 Resident Survey: Top Four Preferred Communication Sources from City
  - #1 -- Local TV
  - #2 -- City Website
  - #3 -- Facebook
  - #4 -- Direct Mail

# Public Education: Disseminate & Educate

Owned Media (free)	Earned Media (free)	Shared Media (free/almost free)	Paid Media
#2 - City Website*	#1 - Published Content by Media Partners*	Distribute Materials at Community Events – <i>Grassroots!</i>	#4 - Direct Mail Postcard* (\$150,000)
#3 - City Social Media*		Digital Toolkit for Neighborhood Associations (192)	
Email Databases 15K+ (Previous SpeakUpVB participants, Be In the Know, Community Meeting attendees)		Community Public Forum Support	
City Staff Intranet (7,500 employees)		Business Community – Shared QR Code	
AccessVB Cable Channel		Service Bill Insert	
Library/Rec/CVB/EcoDev/Cultural Affairs Collab – Distribution Lists			

# Public Education

- Increase **reach and frequency** of "on the ballot" message to the public requires paid media budget
  - Print advertising: 500 word explanation in the newspaper approx. \$2,000 Note: Publishing the explanation is mandatory for a bond referendum but discretionary for other referenda. 24.2-687.A
  - Previous campaigns: TV \$71K, Radio \$25K, Print \$14K, Digital \$30K – for early fall
- REMINDER: City staff cannot advocate for or against referendum question
  - May educate public
  - May disseminate neutral explanation of question written by City Attorney

# Next Steps

- City Council would direct the City Attorney to draft resolution and put it on a future City Council agenda for vote
- Proposed timeline
  - Public Comment – April 15, 2025 Formal Session
  - Council Vote – May 6, 2025 Formal Session

# City Council Questions/Discussion/Direction