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TO: Detroit City Council

FROM: David Whitaker, Director
Legislative Policy Division

DATE: October 4, 2023

RE: Redistricting the City's seven Council Districts based on the 2020 Census results

The Legislative Policy Division (LPD) provides this report to update this Honorable Body on the need to redraw the boundaries of the City's seven Council Districts based on the 2020 Census results.

BACKGROUND
The Law Department provided a memo dated May 3, 2022 detailing the legal requirements for redistricting the City's seven Council Districts based on the results of the 2020 Census. The following is a summary of that memo and the full memo is attached for reference.

The 2012 Detroit City Charter establishes in Sec. 3-108 that the City be divided into seven non at-large districts and one at-large district. The City Council is authorized to create the districts and is instructed to ensure that they are contiguous, compact, and as of equal population as possible.

The Charter defers to the Home Rule City Act (HRCA) for the regulations regarding the reapportionment of the non at-large districts. The HRCA directs that the population for the districts is based on the most recent United States decennial census.

The timeline for reapportioning the districts is no earlier than 120 days following the release of the census data. The most recent census data was released on August 12, 2021 which was less than 120 days prior to the general election held on November 2, 2021. The next general election for City Council offices is scheduled for November 4, 2025 with the primary scheduled for August 5, 2025. The deadline for filing is April 22, 2025.

The Charter specifies that candidates maintain their principal residence in their district for one year immediately preceding election or appointment. In addition, candidates are required to be residents of the City of Detroit for at least one year immediately preceding filing for office. Thus, candidates for the November 4, 2025 general election for City Council must reside in their districts as of November 4, 2024.

REDISTRICTING REGULATIONS AND PROCEDURE

Per the 2020 U.S. Census, the population of the City of Detroit is 639,800. Dividing the total by seven yields a target population of 91,400 residents per district. The population of the districts is not required to be exactly equal but can vary slightly to achieve compact and contiguous districts which also respect political subdivisions. One of these political subdivisions is election precincts—dividing an election precinct between City Council Districts would make elections very difficult to administer.

Based on case law regarding redistricting, a gap of up to 10% between the most and least populous districts is acceptable. For the current redistricting, this sets the minimum district population at 86,830 and the maximum population at 95,970.

Another consideration, when redistricting, is consistency with the current City Council Districts, and the larger communities created with the establishment of the original Council Districts. In order to minimize confusion among the public, changes to the existing districts were minimized to the greatest extent possible, working along the boundaries in an effort to preserve the core of each district.

While considering alternatives for the reapportioned districts, the preceding considerations and regulations were followed. Each alternative was commenced from a different starting point in order to access the extent of variance in the apportionment of the population. Specifically, each of the new district possibilities follows four key principles:

- Districts as compact and contiguous as possible
- Districts with as equal population as possible
- Districts that follow election precinct boundaries and do not divide any other minority group
- As little change to existing Districts as possible

Three possibilities for the newly apportioned Districts are attached, each of which meets the redistricting requirements. The first option prioritizes even boundaries along major roads over exactly equal population. This option still meets the required gap of less than 10% difference between the most and least populous district. The second option prioritizes equal population over even boundaries—some of the boundaries are more irregular than the first option in order to achieve the least difference in population between districts. The third option aims to keep

District 5 as close as possible to its current boundaries as the first two options change it more extensively than the remaining districts.

ELECTION PRECINCT ISSUES

As a result of hand-drawn maps being converted to digital maps, the boundaries of several dozen election precincts cut directly through parcels instead of following streets as was intended. These will be corrected over the next few years, and will not affect the redrawn City Council Districts as most are not on the edge of a potential district and the few that are on an edge do not have any residents (they are vacant land or commercial/non-residential buildings).

NEXT STEPS

The Law Department has recommended adoption of the new district boundaries by January of 2024. City Council has until then or November 21, 2023, if you elect to address this matter before your scheduled winter recess, to review and socialize these options with the public and adopt new district boundaries. Council should determine your next steps in this process. LPD suggests an initial presentation and discussion in a Committee of the Whole meeting, public forums in each district and a city-wide public hearing, culminating in adoption of the new district boundaries via resolution.

Attachments: Potential New Districts
Law Dept Redistricting Memo

cc: Tonja Long, Law Department
Sharon Blackmon, Law Department
Adam Saxby, Law Department
Daniel Baxter, Elections
Greg Moots, PDD
Thomas Veldman, DoIT

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TO: Tonja Long
Chief Administrative Corporation Counsel

FROM: Sharon Blackmon
Senior Assistant Corporation Counsel

DATE: May 3, 2022

RE: City Council Redistricting

You have asked for a memo detailing the legal requirements for redistricting the city's seven council wards based on the results of the 2020 Census.

FACTS

The 2020 census revealed that Detroit's population had declined by 10.5 percent.[1] This shrinkage varied considerably among the districts, but all districts lost population. District 4 had the steepest decline, losing 20.2 percent of its 2010 population. District 1 suffered the lowest decline, losing only 3.8 percent of its 2010 population. Generally, the far westside districts fared best, while all the remaining districts suffered double digit losses.

These disparities in the percentage of decline require a redrawing of council district lines to maintain reasonably equal population numbers among the districts.

LAW AND ANALYSIS

DETROIT CITY CHARTER AND THE HOME RULE CITY ACT

On November 3, 2009, Detroit voters approved the district election of seven of nine council members after more than nine decades of representative government based on the at-large election of all council members. The 2012 Detroit City Charter implemented this mandate. Section 3-108 of the 2012 Detroit City Charter provides as follows:

> There shall be seven (7) non at-large districts and one (1) at large district established in the City and one (1) member shall be elected from each non at-large district and two (2) members shall be elected from the at-large district.

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[1] Data Driven Detroit, *Census 2020 & Detroit City Council Districts,* <https://datadrivendetroit.org/blog/2021/12/16/census-2020-detroit-city-council-districts> (accessed April 11, 2022). All census information in this memo was provided by this website.

> New district boundaries created within one hundred twenty (120) days of a City Primary Election shall become effective after the General Election.
>
> City Council shall establish district wards that are as nearly of equal population as practicable, contiguous, compact and in accordance with any other criteria permitted by law.
>
> District wards shall be apportioned in subsequent years as required by, and in accordance with the Home Rule city Act, MCL 117.27a, and other applicable law.

The first district-elected council members were seated in January 2014.

The Charter defers to the Home Rule City Act, for reapportionment of the seven districts. The relevant provisions of the Home Rule City Act, MCL 117.27a (HRCA), provide as follows:

> (1) For the purposes of this section:
>
> > (a) "Local legislative body" means the council, common council or commission of a city.
> >
> > (b) "Ward" means a district comprising less than all of the area of a city which constitutes the political unit from which 1 or more members of the local legislative body is nominated, elected or nominated and elected.
>
> (2) The population of each city subject to the provisions of this section shall, in the first instance, be determined from the most recent official United States decennial census. Other governmental census figures of total city population may be used if taken subsequent to the latest decennial United States census and the last decennial United States census figures are inadequate for the purposes of this section. Each city shall have the power to conduct its own census for this purpose.
>
> (3) This section shall be applicable to all cities that do not elect all the members of their local legislative body at large. This section shall not repeal any charter provisions meeting the standards established herein but shall be applicable to all charters that fail in whole or in part, to meet the standards herein, or the constitutional requirements of this state or United States constitution.

(4) In each such city subject to the provisions of this section the local legislative body, not later than December 1, 1967, **shall apportion the wards of the city in accord with this section. In subsequent years, the local legislative body, prior to the next general municipal election occurring not earlier than 4 months following the date of the official release of the census figures of each United States decennial census, shall apportion the wards of the city in accord with this section.**[2]

(5) The local legislative body shall file the apportionment plan with the city clerk and make copies available at cost to any registered voter of the city. Such plan shall provide for wards which are as nearly of equal population as is practicable and contiguous and compact. Residents of state institutions who cannot by law register in the city as electors shall be excluded from population computations where the number of such persons is identifiable in the census figures available.

(6) Any registered voter of the city within 30 days after the filing of the apportionment plan for his city, or within 30 days after such apportionment plan shall be submitted, may petition the circuit court to determine if the plan meets the requirements of the laws and constitution of this state and the United States. (Emphasis added.)

The Charter dictates that reapportionments are to be undertaken as required by the HRCA. The HRCA provides that city council shall reapportion the districts prior to the next general municipal election which takes place no earlier than 120 days following the release of the census data. The US Census bureau released the data required for redistricting to the states on August 12, 2021,[3] which date was less than 120 days prior to the general election held on November 2, 2021. The city's next general election is scheduled for Tuesday, November 4, 2025. The primary election preceding this general election is scheduled for August 5, 2025. The deadline for filing for the 2025 primary is Tuesday April 22, 2025. MCL 168.644f.

[2] This standard is less stringent and less definitive than the standards imposed for reapportionment of congressional, state legislative, and county commission districts. Congressional and state legislative districts must be completed by November 1 of the year following the census. Const 1963, art 4 § 6(7). The Apportionment of County Boards of Commissioners Act, MCL 46.401 *et seq,* creates county apportionment commissions and requires these commissions to submit county commission apportionments within 60 days following the publication of the official decennial census figures. MCL 46.401, 46.403.

[3] US Census Bureau, *2020 Census Timeline of Important Milestones,* < https://www.census.gov/programs-surveys/decennial-census/decade/2020/planning-management/release/timeline.html> (accessed April 25, 2022).

Candidates are required by Charter to "maintain their principal residence in their districts for one (1) year immediately preceding election or appointment . . ." 2012 Detroit City Charter, Section 3-111(2).[4] Thus, candidates for the district-based council seats should reside in their district as of November 4, 2024.

To allow a reasonable amount of time for any challenge to be heard and reviewed well in advance of November 4, 2024, the City Council should submit its redistricting plan no later than January 1, 2024.

Both the Charter and the HRCA mandate that districts have nearly equal populations "as is practicable" and that districts are compact and contiguous. Although neither the Charter or the HRCA list any additional criteria beyond reasonably equal population, compactness, and contiguity, the Charter allows for apportionment "in accordance with any other criteria permitted by law."[5] Such districts must also comply with federal law including the United States Constitution and the Voting Rights Act of 1965 (codified as amended at 52 USC 10301 et seq) (VRA). Those laws are considered below.

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[4] This requirement is in addition to and not in replacement of the requirement that all candidates for elective office must be residents of the City for at least one year **prior to filing for office**. 2012 Detroit City Charter, Section 3-111 (1). Accordingly, to be eligible to run for any city office, a potential candidate should have his or her principal residence in the city by April 22, 2024. To be eligible for election to a district council seat, the same individual should have their primary residence in that district no later than November 4, 2024.

[5] By contrast, the Michigan Constitution provision governing the apportionment of congressional and state legislative districts identifies the following criteria:

> (13) The commission shall abide by the following criteria in proposing and adopting each plan, in order of priority:
>
> > (a) Districts shall be of equal population as mandated by the United States constitution, and shall comply with the voting rights act and other federal laws.
> > (b) Districts shall be geographically contiguous. Island areas are considered to be contiguous by land to the county of which they are a part.
> > (c) Districts shall reflect the state's diverse population and communities of interest. Communities of interest may include, but shall not be limited to, populations that share cultural or historical characteristics or economic interests. Communities of interest do not include relationships with political parties, incumbents, or political candidates.
> > (d) Districts shall not provide a disproportionate advantage to any political party. A disproportionate advantage to a political party shall be determined using accepted measures of partisan fairness.
> > (e) Districts shall not favor or disfavor an incumbent elected official or a candidate.
> > (f) Districts shall reflect consideration of county, city, and township boundaries.
> > (g) Districts shall be reasonably compact.
>
> Const 1963, art 4, § 6(13).

UNITED STATES CONSTITUTION - EQUAL PROTECTION CLAUSE, US CONST AM XIV
ONE-PERSON, ONE-VOTE

Until 1963, the US Supreme Court refrained from intervening in legislative redistricting. Consequently, an increasingly urban population often found itself underrepresented in state legislatures as rural based legislators had no incentive to create new districts reflective of the changing population. This political imbalance ultimately led the Supreme Court to rule in *Baker v Carr*, 369 US 186 (1962) that legislative districts must be relatively equal in population based on the provisions of the Equal Protection Clause of the Fourteenth Amendment. *Baker* and its progeny recognized that "the fundamental principle of representative government in this country is one of equal representation for equal numbers of people, without regard to race, sex, economic status, or place of residence within a State." *Reynolds v Sims*, 377 US 533, 560 – 561 (1964).

Although *Baker* and *Reynolds* targeted state legislative bodies, the Court quickly expanded this principle to local legislative bodies. In *Avery v Midland County*, 390 US 474, 485-485 (1968), the Court applied the one-person, one-vote rule to the apportionment of local legislative districts.

Perfect equality of population for state and local legislative districts is not required. In *Evenwel v Abbott*, 578 US 54, 59 – 60, (2016), the court outlined the requirements of the clause as follows:

> [T]he Court has several times elaborated on the scope of the one-person, one-vote rule. States must draw congressional districts with populations as close to perfect equality as possible. But, when drawing state and local legislative districts, jurisdictions are permitted to deviate somewhat from perfect population equality to accommodate traditional districting objectives, among them, preserving the integrity of political subdivisions, maintaining communities of interest, and creating geographic compactness. Where the maximum population deviation between the largest and smallest district is less than 10%, the Court has held, a state or local legislative map presumptively complies with the one-person, one-vote rule. Maximum deviations above 10% are presumptively impermissible.

Thus, the one-person, one-vote rule applies to any redistricting in Detroit. As the City's current population is approximately 639,000, redistricting should yield districts containing 91,000 persons. Exact equality is not required especially considering traditional principles governing redistricting such as compactness, contiguity, and respecting political subdivisions. In the context of municipal redistricting, this could encompass respecting precinct divisions.[6]

[6] Neither the HRCA nor the City Charter contain explicit directives regarding precinct borders. By contrast, state law governing the apportionment of county boards of commissioners, expressly lists precinct boundaries as a factor

The population gap between the largest district and the smallest district, however, should not exceed 10%. Deviations greater than 10% create a rebuttable presumption which may be overcome if "justified by valid state concerns" such as respecting jurisdictional boundaries or maintaining contiguity and compactness. *In re Apportionment of State Legislature – 1992*, 439 Mich 715, 730 - 732 (1992).

RACIAL GERRYMANDERING AND EQUAL PROTECTION

Although political gerrymandering is not unconstitutional,[7] *Rucho v Common Cause*, 139 S Ct 2484, 2494 (2019), the Equal Protection Clause bars racial gerrymandering. In *Cooper v Harris,* 581 US ____, 137 S Ct 1455, 1463-1465 (2017), the US Supreme Court outlined the elements of an equal protection claim for racial gerrymandering as follows:

> The Equal Protection Clause of the Fourteenth Amendment limits racial gerrymanders in legislative districting plans. It prevents a State, in the absence of "sufficient justification," from "separating its citizens into different voting districts on the basis of race." *Bethune–Hill v. Virginia State Bd. of Elections,* 580 U.S. ——, ——–, 137 S.Ct. 788, 797 (2017) (internal quotation marks and alteration omitted). When a voter sues state officials for drawing such race-based lines, our decisions call for a two-step analysis.
>
> First, the plaintiff must prove that "race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Miller v. Johnson,* 515 U.S. 900, 916 (1995). That entails demonstrating that the legislature "subordinated" other factors—compactness, respect for political subdivisions, partisan advantage, what have you—to "racial considerations." *Id.* The plaintiff may make the required showing through "direct evidence" of legislative intent, "circumstantial evidence of a district's shape and demographics," or a mix of both. *Id.*

in redistricting. The statute describes the applicable factors in declining order of importance. MCL 46.404(f) provides that "precincts shall be divided only if necessary to meet the population standards." This is the fifth of seven factors listed. MCL 46.404

[7] States are free to regulate political gerrymandering and Michigan chose to do so regarding congressional, state legislative, and county commission apportionment. See Const 1963, art 4, § 6(13)(d)("Districts shall not provide a disproportionate advantage to any political party"); and MCL 46.404, ("Districts shall not be drawn to effect partisan political advantage").

> Second, if racial considerations predominated over others, the design of the district must withstand strict scrutiny. See *Bethune–Hill,* 580 U.S., at ——, 137 S.Ct., at 800. The burden thus shifts to the State to prove that its race-based sorting of voters serves a "compelling interest" and is "narrowly tailored" to that end. *Ibid*. This Court has long assumed that one compelling interest is complying with operative provisions of the Voting Rights Act of 1965 (VRA or Act), 79 Stat. 437, as amended, 52 U.S.C. § 10301 *et seq*. See, *e.g., Shaw v. Hunt,* 517 U.S. 899, 915, 116 S.Ct. 1894, 135 L.Ed.2d 207 (1996) (*Shaw II*).

Cooper, supra, 1463–1464. Accordingly, a jurisdiction may defend against a claim of unconstitutional race discrimination by asserting compliance with the Voting Rights Act as a compelling state interest justifying what would otherwise be unconstitutional racial discrimination.

THE VOTING RIGHTS ACT OF 1965

In direct response to filmed police violence directed against voting rights demonstrators in the south, President Lyndon Johnson sought and obtained passage of the Voting Rights Act of 1965, 52 USC §10301 *et seq* (VRA). This law was "an effort to achieve at long last what the Fifteenth Amendment had sought to bring about 95 years earlier: an end to the denial of the right to vote based on race." *Brnovich v Democratic Natl Comm*, 141 S Ct 2321, 2330 (2021)

The VRA significantly altered voting practices and federal supervision in what had previously been considered local matters. It eliminated such practices as literacy qualifications for the ballot and bypassed local authorities by appointing federal registrars to enroll minority voters in jurisdictions having low numbers of minority voters. See *South Carolina v Katzenbach*, 383 US 301, 333-336 (1966). Until Section 5 of the Act was stricken in *Shelby County v Holder*, 570 US 529, (2013), the Act required covered jurisdictions (generally located in southern states with an extensive history of race based legal and extra-legal methods of restricting access to the ballot) to submit any changes in voting, including relocating voting locations, to the US Attorney General for review and approval prior to implementation.[8] See *Katzenbach, supra*, at 334-335. Jurisdictions aggrieved by the Attorney General's decision were required to present their objections to a three judge district court in Washington D.C. rather than in the affected jurisdiction. *Id.*, at p 335. In addition to being forced to litigate in Washington DC, the aggrieved jurisdictions also had the burden of proof. *Id*.

[8] In the last list of covered jurisdictions issued prior to *Holder*, ten states were covered in their entirety. Eight of those ten states were in the south. Parts of seven additional states were also listed, including two townships in Michigan. See 28 CFR 51, App. In an earlier decision the Supreme Court recognized the extraordinary nature of this intervention, stating that the preclearance requirement "represents an intrusion into areas of state and local responsibility that is otherwise unfamiliar to our federal system." *Nw Austin Mun Util Dist No One v Holder*, 557 US 193; 129 S Ct 2504, 2505–2506 (2009)

Although the now-stricken Section 5 of the VRA was limited to qualifying covered (generally southern) jurisdictions, Section 2 of the VRA, applies to all jurisdictions, including municipalities such as Detroit. That provision states as follows:

> (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 forth in section 10303(f)(2) of this title, 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. (Emphasis added.)

Section 2 bars vote dilution. Vote dilution in redistricting can occur in one of two ways. In *Johnson v De Grandy*, 512 US 997, 1007 (1994) the Supreme Court held that "manipulation of district lines can dilute the voting strength of politically cohesive minority group members, whether by fragmenting the minority voters among several districts where a bloc-voting majority can routinely outvote them, or by packing them into one or a small number of districts to minimize their influence in the districts next door." Section 2, the Court held, prohibits both these tactics if, in combination with social and historical circumstances, they impair the ability of minorities to elect their preferred candidates. *Id.*

Unlike Equal Protection claims, VRA claims require no proof of discriminatory intent or motive. The Supreme Court outlined the elements necessary to establish a Section 2 claim in its landmark decision in *Thornburg v Gingles*, 478 US 30 (1986). There the Court outlined the three primary elements of a Section 2 vote dilution claim as follows:

> First, the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district.
>
> Second, the minority group must be able to show that it is politically cohesive. . . . Third, the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances, such as the minority candidate running unopposed . . . to defeat the minority's preferred candidate. *Thornburg v Gingles*, 478 US 30, 51 (1986).

If these three factors are established, courts then evaluate the "totality of circumstances" a series of factors provided in the Senate Report that accompanied the 1982 VRA amendments. *Gingles, supra*, at 43 – 46. Those factors include the history of official discrimination, the extent of racially polarized voting, the history of using various voting devices or procedures that historically disadvantage minorities, the socio-economic effects of discrimination as evidenced in educational attainment, employment disparities, and health which hinder participation in the elections and the extent to which minorities have been elected. *Id.* In addition, such factors as responsiveness to the special needs of the minority community and the justification for the procedure being challenged are also reviewed. *Id.* In addition to the factors outlined in the Senate Report, the Supreme Court has held that proportionality, that is, the ability of minorities to elect preferred candidates in proportion to the minorities' share in the relevant population, is also a factor to be weighed. *DeGrandy v Johnson*, 512 US 997, 1017-1018 (1994).

Size and Compactness

The first *Gingles* factor concerns the numerical size of the minority community and its geographic compactness. Without this potential for electing representatives of their choice, there is no claim for injury. *United States v Eastpointe*, 378 F Supp 589, 602 (ED Mich 2019). Since the city has seven districts, any minority group comprising 7.15 percent or more of the city's population could in theory select at least one councilperson and would meet the numerical portion of this factor.

That minority group, however, must be located in a reasonably compact geographic area. Districts should have a "rational shape." *Mallory v Ohio*, 173 F3d 377, 382-383 (6th Circ 1999). In *League of United Latin Am Citizens v Perry*, 584 US 399, 402 (2006), the Court ruled that, "A district that reaches out to grab small and apparently isolated minority communities is not reasonably compact." Similarly, in *Cooper v Harris,* 581 US____, 137 S Ct 1455, 1472 (2017), the Court ruled that, "When a minority group is not sufficiently large to make up a majority in a reasonably shaped district, § 2 does not apply."

In this context, traditional redistricting guidelines are important. In *Luna v County of Kern*, 291 F Supp 3d 1088, 1108 (ED Cal, 2018) the court outlined the role of these guidelines as follows:

> Plaintiffs must separately demonstrate that the relevant minority population is sufficiently "geographically compact" to constitute a voting majority in a second single-member district. *See Gingles*, 478 U.S. at 50; *see also Old Person II*, 312 F.3d at 1040. In this context, "compactness" refers not to the shape of the district, but whether the minority community is sufficiently concentrated to constitute a majority of the CVAP in a single-member district. *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 433 (2006) [hereinafter *LULAC*]. "While no precise rule has emerged governing § 2 compactness, the inquiry should take into account traditional districting principles such as maintaining communities of interest and traditional boundaries." *Id.* (citations and internal quotations omitted); *see also Ruiz*, 160 F.3d at 558. Other "traditional districting principles" typically include population equality, contiguity, respect for political subdivisions, protection of incumbents,[9] and preservation of preexisting majority-minority districts. *See, e.g.*, *Easley v. Cromartie*, 532 U.S. 234, 239–40, (2001); *Abrams v. Johnson*, 521 U.S. 74, 94, (1997); *Shaw v. Reno*, 509 U.S. 630, 647, 651,(1993).

Jurisdictions may subordinate traditional redistricting guidelines to create majority-minority districts, but the subordination must be necessary to accomplish that goal. In general, "the district drawn to satisfy § 2 must not subordinate traditional districting principles to race substantially more than is "reasonably necessary" to avoid § 2 liability." *Bush v Vera*, 517 US 952, 979 (1996).

The VRA does not require jurisdictions to establish districts which merely enhance a minority group's influence on election outcomes. *Bartlett v Strickland*, 556 US 1, 13 (2008). The VRA may require the creation of majority-minority district when "a minority group composes a numerical, working majority of the voting age population." *Id.* In *Bartlett*, counties challenged North Carolina's redistricting map because it breached the state constitution's prohibition on crossing county lines. North Carolina interposed the VRA as a defense to this charge. In splitting the county, however North Carolina did not create a majority-minority district, instead it created a district with a 39.36% black voting age population. Without violating the county line and the North Carolina constitution, the district would have a black voting age population of 35.33%. That level of improved strength did not justify the breach of the county line. The Court rejected the argument that Section 2 "entitles minority groups to the maximum possible voting strength." *Id.* at pp 15 -16.

[9] Although not directly applicable here, the Michigan constitutional provision governing congressional and state legislative redistricting emphatically rejects protection of incumbents as an appropriate factor in redistricting. See Const 1963, art 4, § 6(13)(c) and (e). The statute governing county commission redistricting bars apportionment "drawn to effect partisan political advantage." MCL 46.404.

Voting Cohesion

This element requires proof that the minority community generally votes in a cohesive manner. The reasoning supporting this element is that "if a minority group does not tend to vote together, the challenged electoral system cannot be responsible for the group's alleged inability to elect candidates of its choice." *Mallory v Ohio*, 173 F3d 377, 383 (CA 6, 1999). Statistical proof of voting cohesion is generally the most persuasive proof. Courts have relied upon three methods of analyzing election data to determine if minority voting cohesion exists; those are homogenous precinct analysis, ecological regression, and ecological inference. *US v City of Euclid*, 580 F Supp 2d 584, 596 (ND Ohio, 2008).

Racial Bloc Voting

In *Cooper v Harris* 581 US _____, 137 S Ct 1455, (2017), the Court reviewed another equal protection challenge to a North Carolina reapportionment map. There North Carolina had replaced an existing house district with a black voting age population of 48.6 and created a new district with black voting age majority 52.7% The new district was oddly configured. *Id*., at 1468.

The evidence established that the mapmakers "purposefully established a racial target . . . African-Americans should make up no less than a majority of the voting-age population." *Cooper, supra,* at 1468. In doing so, they deliberately transgressed traditional redistricting practices such as respecting county or precinct lines. *Id*., at 1469. These traditional factors were subordinated to the goal of creating a majority-minority district. Given such evidence, the Court concluded that as to District 1, the plaintiffs established a racial motive. *Id*.

North Carolina interposed the Voting Rights Act as a compelling state interest in its defense against the plaintiff's claim. In *Alabama Legislative Black Caucus v Alabama*, 575 US 254, 278 (2015) the Court ruled that when the VRA is used as a defense, the state must establish that it had "a strong basis in evidence" for believing that the VRA required the action taken. In *Cooper, supra*, at 1470, Court ruled that "If a State has good reason to think that all the '*Gingles* preconditions' are met, then so too it has good reason to believe that § 2 requires drawing a majority-minority district. . . . But if not, then not."

In *Cooper,* the *Gingles* preconditions were not met. Although constituting a minority in the district, African-Americans had enjoyed consistent success in electing their preferred candidates for more than twenty years. *Cooper, supra*, at 1470. Thus, the needed element of majority bloc-voting consistently obstructing minority-preferred candidates was absent. In analyzing the VRA defense in *Cooper,* the Court held that a review of the electoral history "provided no evidence that a §2 plaintiff could demonstrate the third *Gingles* prerequisite – effective white bloc-voting." *Id.,* at 1470. The Court elaborated as follows:

> To have a strong basis in evidence to conclude that §2 demands such race-based steps, the State must carefully evaluate whether a plaintiff could establish the *Gingles* preconditions - including effective white bloc-voting in a new district created without those measures.

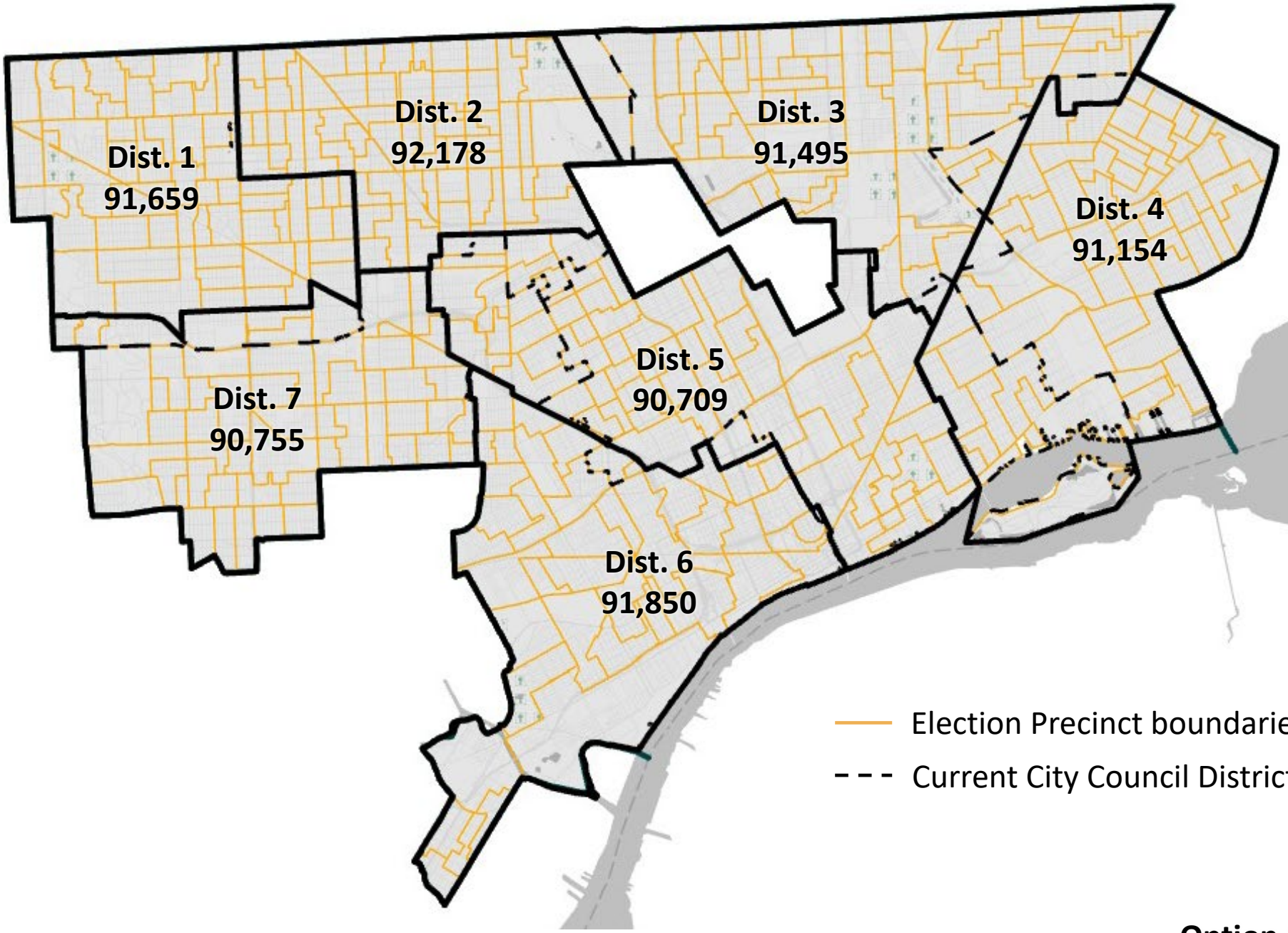
In the absence of effective majority bloc-voting, the VRA does not mandate or justify the creation of a majority-minority district. The Court noted, "unless *each* of the three *Gingles* prerequisites is established, there neither has been a wrong nor can be a remedy." *Id*., at 1455. (Emphasis in the original.) (Citations omitted.) See also *In re Apportionment of State Legislature -1992, supra,* p 740-741.

SUMMARY

Given the 2020 Census results, Detroit must reapportion its seven council districts to restore balance to the population level of the districts. Relevant law requires the City to establish seven council districts of reasonably equal size. Based on the current census data, each district should contain approximately 91,000 persons. To avoid equal protection challenges premised on unequal population, the deviation between the most populated and the least populated district should not be greater than 10%. Deviations greater than that create a rebuttable presumption of an equal protection violation.

The VRA mandates the creation of majority-minority districts only if all three of the *Gingles* requirements are met. Independent of a violation, the VRA does not mandate gerrymandering for the purpose of creating majority-minority districts. Caution should be exercised in splitting communities of interest.

Finally, to ensure that adequate time is allowed for the resolution of any court challenges to the redistricting and give potential candidates sufficient opportunity to establish residency in the newly drawn districts, City Council should submit its plan by January 1, 2024.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Dist. 2
92,178
Dist. 3
91,495
Dist. 4
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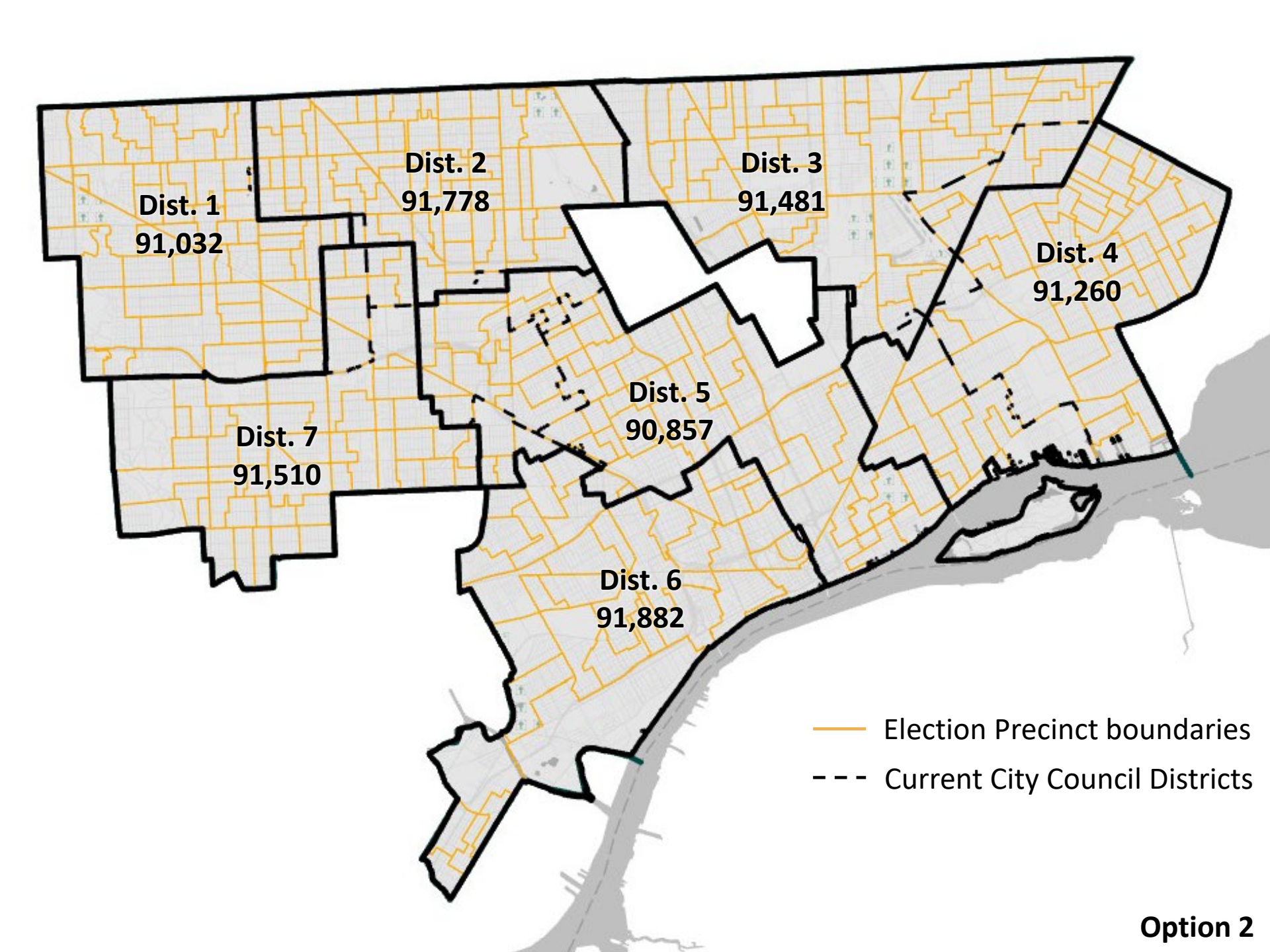
Dist. 5
90,709
Dist. 6
91,850
Dist. 7
90,755
Election Precinct boundaries
Current City Council Districts

Option 1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Dist. 3
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Dist. 4
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Dist. 5
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Dist. 6
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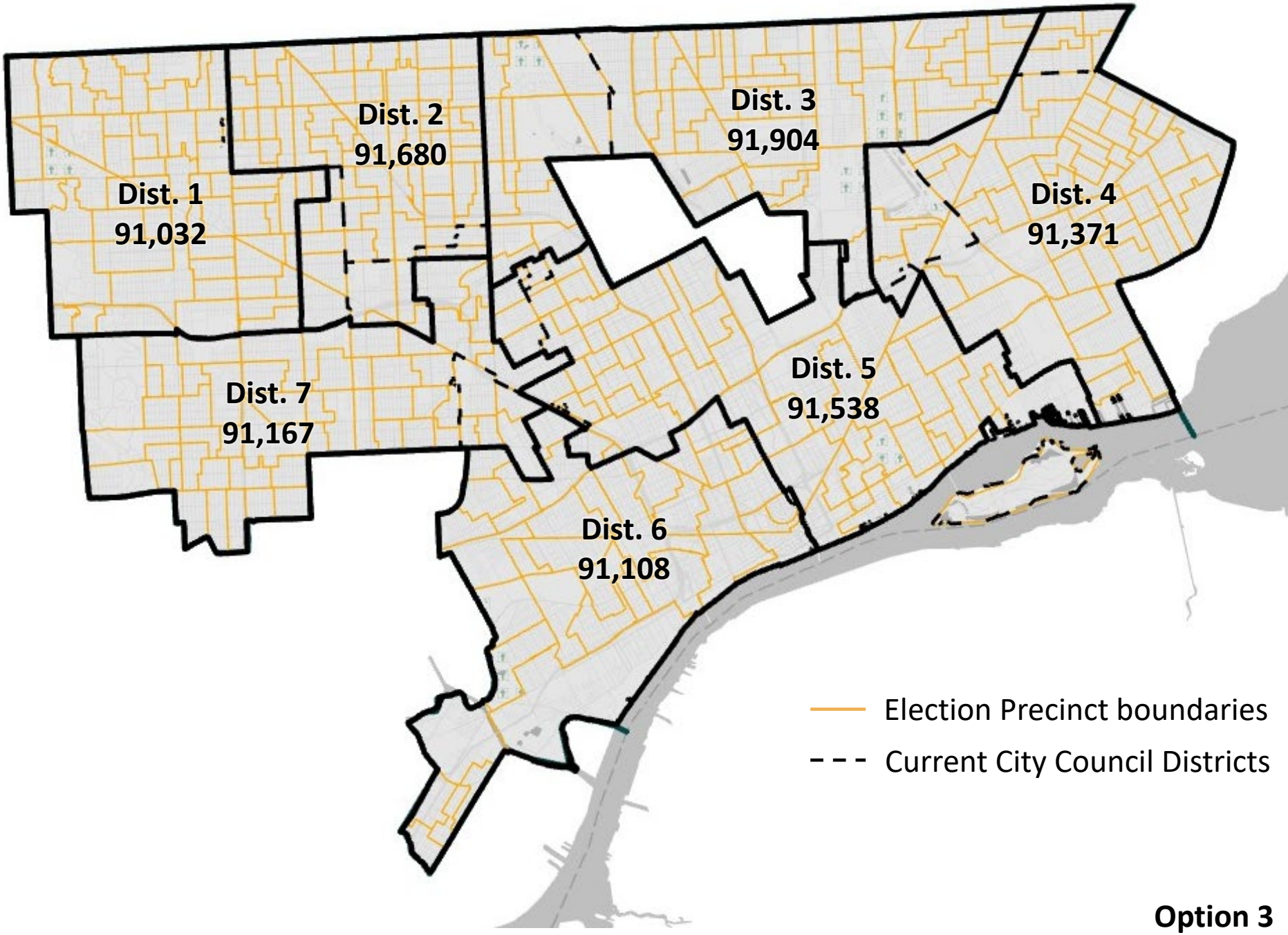
Dist. 7
91,510
Election Precinct boundaries
Current City Council Districts

Option 2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Dist. 5
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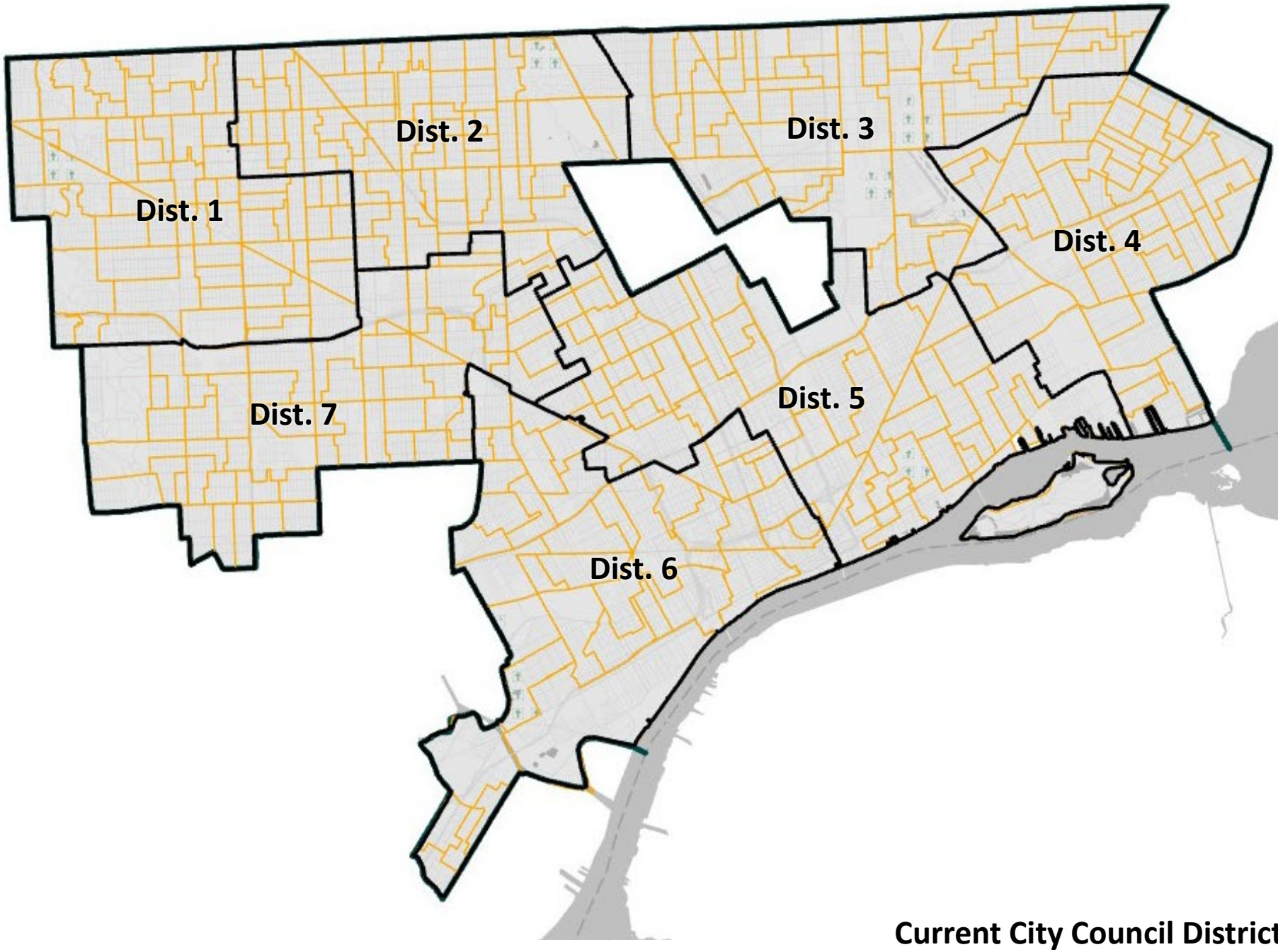
Dist. 6
91,108
Dist. 7
91,167
Election Precinct boundaries
Current City Council Districts

Option 3



Current City Council Districts