



DATE: October 7, 2024

TO: Mayor and Members of the City Council

VIA: Stefan Chatwin, City Manager

FROM: Priscilla Schaus, Communications Director/City Clerk
Benjamin L. Stock, City Attorney

DEPARTMENT: Communications/City Clerk

SUBJECT: TO START AT A TIME CERTAIN OF 7:00 P.M. -
FIRST PUBLIC HEARING TO RECEIVE INPUT ON
COMPOSITION OF DISTRICTS AND NUMBER OF DISTRICTS
FOR DISTRICT BASED COUNCIL ELECTIONS

RECOMMENDATION

It is recommended that the City Council conduct the first public hearing to receive community input and provide input to staff regarding the composition of voting districts and number of districts.

EXECUTIVE SUMMARY

On August 19, 2024, the City Council discussed a letter received from a potential plaintiffs' attorney, Shenkman & Hughes PC, on July 22, 2024, alleging a violation of the California Voting Rights Act (the "CVRA")¹ and threatening litigation if the City declines to voluntarily change to a district-based election system for electing Councilmembers. While the Council strongly disagreed with the allegations in the letter, a majority of the Council gave direction to staff to proceed with agendaing the resolution of intent in order to take advantage of the safe harbor provisions of Elections Code Section 10010 and avoid costly litigation.

At the September 3, 2024 Council meeting, the Council adopted City Resolution No. 2024-91 to transition to district based elections, to allow the City to take advantage of the safe harbor provisions of Elections Code Section 10010.

¹ Cal. Elec. Code §§ 14025-14032.

This meeting will be the first of two public hearings that are required to be held over a period of no more than 30 days, at which the public is invited to provide input regarding the composition of the districts. Pursuant to Elections Code Section 21130, the public hearing must be scheduled to start at a time certain if it is consolidated with a regular or special meeting of the governing body that includes other substantive agenda items, to begin at a fixed time regardless of its order on the agenda.

BACKGROUND

The City of Foster City currently elects its Councilmembers at-large, which means that each Councilmember is elected by the registered voters of the entire City.

The CVRA was enacted in 2001, in part, to provide minority groups in California with tools to prevent dilution of votes in “at-large” election systems and is more expansive than the Federal Voting Rights Act of 1965 (“FVRA”). An at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class 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.² A violation of the CVRA is established if it is shown that racially polarized voting occurs in elections for members of the governing body or in elections incorporating other electoral choices by the voters of the political subdivision.³ Any voter who is a member of a protected class and who resides in a political subdivision where a violation of the CVRA is alleged may file an action in the superior court in which the political subdivision is located.⁴

Pursuant to Elections Code Section 10010, a city may rely on the “safe harbor” provisions that allows a city to adopt a resolution outlining its intention to transition from at-large to district-based elections within forty-five (45) days of receiving a demand letter from a potential plaintiffs’ attorney.⁵ These “safe harbor” provisions allow a city to transition in accordance with a statutory timeline and, if followed, insulate a city from litigation arising from alleged CVRA violations and caps attorneys’ fee liability to a maximum of \$30,000.⁶

Under those “safe harbor” provisions, a prospective plaintiff is required to send a written notice to the clerk of a city asserting that the city’s method of conducting elections may violate the CVRA.⁷ A forty-five (45) day stay is then imposed on a prospective plaintiff’s ability to bring an action.⁸ That forty-five (45) day stay allows a city to adopt a resolution outlining its intention to transition from at-large to district-based elections.⁹ If a resolution of intention is adopted by a city council to move to district-based elections, a prospective plaintiff may not commence an action within ninety (90) days of the resolution of

² Cal. Elec. Code §§ 14026 and 14027.

³ Cal. Elec. Code §14028(a); see also § 14027.

⁴ Cal. Elec. Code §14032.

⁵ Cal. Elec. Code § 10010(e)(2).

⁶ Cal. Elec. Code § 10010(f)(1)-(3).

⁷ Cal. Elec. Code § 10010(e)(1).

⁸ Cal. Elec. Code § 10010(e)(2).

⁹ Cal. Elec. Code § 10010(e)(1)-(3).

intention's passage.¹⁰

Transition to District Based Elections

Since the Council adopted City Resolution No. 2024-91 to transition to district-based elections on September 3, 2024, a prospective plaintiff may not commence an action within ninety (90) days of the resolution of intention's passage.

As a part of the transition process, the City needs to hold at least two public hearings over a period of no more than 30 days, at which the public is invited to provide input regarding the composition of the districts.¹¹ No official maps can be drawn before completion of these two public meetings. Once the initial two meetings are complete, the demographer and public can begin to officially draw maps that will be considered in the districting process. The City would then hold at least two additional hearings over a period of no more than 45 days, at which the public is invited to provide input regarding the content of the draft maps and the proposed sequence of elections.¹² Once a map is selected, it would need to be published at least seven days before consideration at a hearing for introduction of an ordinance to adopt the district map.¹³

The City will also need to comply with the Fair and Inclusive Redistricting for Municipalities and Political Subdivisions (Fair Maps) Act in adopting the districts,¹⁴ which provides criteria that the City must utilize when establishing election district boundaries or when undertaking the redistricting process (which must occur every ten years after each population census). This criteria are summarized below.

(a) The election districts must be substantially equal in population based on the most recent census.

(b) The districting body shall adopt election district boundaries that comply with the United States Constitution, the California Constitution, and the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.) and consistent with the federal Voting Rights Act, the districting body shall determine whether it is possible to create an election district or districts in which a minority group is sufficiently large and geographically compact to constitute a majority in a single-member district, as set forth in *Thornburg v. Gingles*, 478 U.S. 30 (1986).

c) The districting body shall adopt election district boundaries using the following criteria as set forth in the following order of priority:

(1) To the maximum extent practicable, election districts shall be geographically contiguous. Areas that meet only at the points of adjoining corners are not contiguous. Areas that are separated by water and not connected by a bridge, tunnel, or regular ferry service are not contiguous.

¹⁰ Cal. Elec. Code § 10010(e)(1)-(3).

¹¹ Cal. Elec. Code § 10010(a)(1).

¹² Cal. Elec. Code § 10010(a)(2).

¹³ *Ibid.*

¹⁴ Cal. Elec. Code § 21100 et seq.

(2) To the maximum extent practicable, and where it does not conflict with the preceding criterion, the geographic integrity of any local neighborhood or local community of interest shall be respected in a manner that minimizes its division.

(3) To the maximum extent practicable, and where it does not conflict with the preceding criteria, election districts shall be bounded by natural and artificial barriers, by streets, or by the boundaries of the local jurisdiction. Election district boundaries should be easily identifiable and understandable by residents.

(4) To the maximum extent practicable, and where it does not conflict with the preceding criteria, election districts shall be drawn to encourage geographical compactness in a manner that nearby areas of population are not bypassed in favor of more distant populations.

(d) The districting body shall not adopt election district boundaries for the purpose of favoring or discriminating against an incumbent, political candidate, or political party.¹⁵

Within 21 days of adopting final election district boundaries, the City Council will be required to issue a report that explains the basis on which it made its decisions in achieving compliance with the requirements and criteria of the Fair Maps Act, including, as to each neighborhood, community of interest, city, or census designated place that was split into two or more districts, the reason for that split.¹⁶

Staff has prepared a tentative timeline, which identifies the preliminary schedule for the required public hearings and public outreach, which complies with Elections Code Section 10010 (Attachment 1). This timeline may change depending on the level of community involvement and the complexity of the map drawing process. If the timeline needs to adjust beyond the 90 days, then the City may enter into a written agreement to extend the 90-day period up to an additional 90 days in order to provide additional time to conduct public outreach, encourage public participation, and receive public input.¹⁷

ANALYSIS

At the first public hearing on October 7, 2024, the community is encouraged to participate during the public hearing by providing input on the composition of the districts by sharing specific thoughts on communities of interest that the public identifies with in Foster City.

The Fair Maps Act defines a “community of interest” as a population that shares common social or economic interests that should be included within a single election district for purposes of its effective and fair representation. Characteristics of communities of interest may include, but are not limited to, shared public policy concerns such as education, public safety, public health, environment, housing, transportation, and access to social services. Characteristics of communities of interest may also include, but are not limited

¹⁵ Cal. Elec. Code § 21130 (a)-(d).

¹⁶ Cal. Elec. Code § 21130(f).

¹⁷ Cal. Elec. Code § 10010(e)(3)(C)(i).

to, cultural districts, shared socioeconomic characteristics, similar voter registration rates and participation rates, and shared histories. Communities of interest do not include relationships with political parties, incumbents, or political candidates.

Some examples of communities of interest in Foster City may include the existing neighborhoods identified by the City, school districts, parks, etc.

The Asian Americans Advancing Justice website provides a helpful testimonial for communities of interest which may help members of the public identify their communities of interest (Attachment 2). Members of the public can return the testimonials to the City Clerk or if desired, provide testimony during the public hearing.

Outreach Efforts

City staff has taken initial steps to begin outreach to advise its residents of this meeting including posting on social media channels such as the City's Facebook, Twitter, and Nextdoor pages. Social media posts sharing information regarding the City Council's consideration of adopting a resolution of intent to transition from at-large to district-based elections began days after the August 19 meeting, and continued over the following weeks in advance of the September 3 meeting. Additional outreach regarding the matter was conducted via the City newsletter on August 22, and a listserv notification was sent notifying community members the matter would be on the September 3 City Council agenda. Printed outreach material notifying residents of the meeting was placed in City Hall as well at kiosks posted along the Levee. It was also posted on the marquee and posting boards at the Council Chambers, Recreation Center, and Library.

To grant ample opportunities for residents and community members to have their voice heard, City staff will be attending a variety of community events for outreach and along with the consultants, will be hosting workshops over the coming weeks and months, and also mailing printed materials to residents informing them of the forthcoming shift and opportunities to participate in the process. The City has also created a website dedicated to this district transition process which can be found here:
<https://www.fostercity.org/districtelections>.

Information will be available to provide the public with background information about the districting process, upcoming hearing dates, and supporting documents. This webpage will be continuously updated with dates and locations where community members can share their feedback on this issue. The website will also feature a virtual mapping tool which community members can use to draw their own district boundaries and a feature allowing submission of community interest forms.

Demographer

Based on the direction provided by Council on August 19, 2024, the City Manager retained the services of Redistricting Partners, which will attend the five public hearings and provide the City Council with analysis and recommendations of the maps that will be prepared during the transition process.

CALIFORNIA EQUALITY QUALITY ACT

This item does not constitute a project as defined by the California Environmental Quality Act (Public Resources Code § 21000, et seq.) (CEQA) as the adoption of the resolution does not have the potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment (14 Cal. Code Regs. § 15378.).

FISCAL IMPACT

There is no direct fiscal impact associated with this action. By transitioning to district-based elections, the costs that potential plaintiff's attorney will receive is capped at \$30,000. The City will also pay the demographer for their services, which totals \$49,500.

CITY COUNCIL VISION, MISSION, AND VALUE/PRIORITY AREA

City Council Operations and Improved Community Engagement.

ATTACHMENTS

Attachment 1 - Tentative Timeline

Attachment 2 - Asian Americans Advancing Justice Communities of Interest Testimonial