

- 7.1.** A Public Hearing to Hear and Receive Community Input Regarding the Composition of Voting Districts and Number of Districts
- a) Staff Report
  - b) Open Public Hearing
  - c) Receive Public Testimony
  - d) Close Public Hearing
  - e) Action – Conduct the first public hearing to receive community input and provide input to staff regarding the composition of voting districts and number of districts



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

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## 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")<sup>1</sup> 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.

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<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup> A forty-five (45) day stay is then imposed on a prospective plaintiff’s ability to bring an action.<sup>8</sup> 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.<sup>9</sup> 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

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<sup>2</sup> Cal. Elec. Code §§ 14026 and 14027.

<sup>3</sup> Cal. Elec. Code §14028(a); see also § 14027.

<sup>4</sup> Cal. Elec. Code §14032.

<sup>5</sup> Cal. Elec. Code § 10010(e)(2).

<sup>6</sup> Cal. Elec. Code § 10010(f)(1)-(3).

<sup>7</sup> Cal. Elec. Code § 10010(e)(1).

<sup>8</sup> Cal. Elec. Code § 10010(e)(2).

<sup>9</sup> Cal. Elec. Code § 10010(e)(1)-(3).

intention's passage.<sup>10</sup>

### ***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.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup>

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,<sup>14</sup> 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.

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<sup>10</sup> Cal. Elec. Code § 10010(e)(1)-(3).

<sup>11</sup> Cal. Elec. Code § 10010(a)(1).

<sup>12</sup> Cal. Elec. Code § 10010(a)(2).

<sup>13</sup> *Ibid.*

<sup>14</sup> 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.<sup>15</sup>

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.<sup>16</sup>

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.<sup>17</sup>

## 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

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<sup>15</sup> Cal. Elec. Code § 21130 (a)-(d).

<sup>16</sup> Cal. Elec. Code § 21130(f).

<sup>17</sup> 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

Tentative Timeline for Consideration and Implementation of District-Based Elections

Date	Event	Code §	Comment
July 22, 2024	City received certified demand letter from Shenkman & Hughes	EC§10010(e)(1)	Before commencing an action to enforce Sections 14027 and 14028, a prospective plaintiff shall send by certified mail a written notice to the clerk of the political subdivision ("City") against which the action would be brought asserting that the City's method of conducting elections may violate the California Voting Rights Act of 2001.
		EC§ 10010(e)(2)	A prospective plaintiff shall not commence an action to enforce Sections 14027 and 14028 within 45 days of the City's receipt of the written notice described above (CVRA lawsuit cannot be commenced until September 5, 2024.)
9/3/24	Resolution is considered at City Council Meeting	EC§ 10010 (3)(A)	Within 45 days of receipt of a notice, the City may pass a resolution outlining its intention to transition from at-large to district-based elections, specific steps it will undertake to facilitate this transition, and an estimated time frame for doing so (Resolution to be considered no later than September 5, 2024)
9/3/24	Resolution is adopted at City Council Meeting	EC§ 10010(e)(3)(B)	If the City begins the process of switching to districts within 45 days and adopts a resolution to that effect a potential plaintiff cannot commence an action within 90 days of the resolution's passage. (CVRA lawsuit cannot be commenced until December 3, 2024)
TBD	Conduct public outreach, encourage public participation, and receive public input	EC§ 10010(a)(1)	Before public hearings, the City may conduct outreach to the public, including to non-English-speaking communities, to explain the districting process and to encourage public participation. I.e. farmers market, public library, public schools, places of worship, homeowners associations, and community organizations
10/7/24	1st Public Hearing (Regular Meeting)	EC§ 10010(a)(1)	First and second public hearings must occur within a period of 30 days. No maps for review, but take public comments on composition of districts and preference for district lines.
10/21/24	2nd Public Hearing (Regular Meeting)	EC§ 10010(a)(1)	No maps for review, but take public comments on composition of districts and preference for district lines.
10/28/24	Publish for review first drafts of district election maps and potential sequence of elections	EC§ 10010(a)(2)	After all draft maps are drawn, at least 7 days before the 3 <sup>rd</sup> public hearing, the City shall publish and make available for release at least one draft map and, if city councilmembers will be elected in their districts at different times to provide for staggered terms of office, the potential sequence of the elections.



11/4/24	3rd Public Hearing (Regular Meeting)	EC§ 10010(a)(2)	The City shall also 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 map or maps and the proposed sequence of elections, if applicable.
11/11/24	Post any new or amended maps	EC§ 10010(a)(2)	Maps available for review at least 7 days before consideration at the 4th public hearing.
11/18/24	4th Public Hearing (Regular Meeting)	EC§ 10010(a)(2)	Take public comments on proposed maps. If selected map is amended, ordinance cannot be introduced until 7 days after amended map is published  Council may introduce ordinance if final map is selected at this public hearing
11/25/24 or 12/2/24  DEADLINE 12/2/24	(Special) 5th Public Hearing or Regular Meeting	EC§ 10010(e)(3)(B)	Council introduces ordinance establishing district elections, including district boundaries and election sequence if map is changed at 11/18/24 meeting.  Council adopts ordinance

# COMMUNITIES OF INTEREST TESTIMONY

## A worksheet for community members

Sharing your “community of interest” testimony at a redistricting hearing is a powerful way of shaping your community’s district maps for the next decade to come. With just a little preparation, it can be easy to do.



### IMAGINE DESCRIBING YOUR COMMUNITY TO A FRIEND WHO WANTS TO MOVE THERE.

Your community can be as small as your block, your neighborhood association, or the network of parents who all send their kids to the same school or participate in the same Little League. Or it can be expansive, including everyone in your city or county that speaks the same language as you, everyone who rents their homes and struggles to pay the bills, or everyone in a particular part of town that suffers from under-investment and poor services.

### WHAT IS A COMMUNITY OF INTEREST?

**A community of interest is your community.** It can be a neighborhood, network, or group of people who have common interests in the community and would benefit from being grouped into a single district. Think about a simple way to describe what you and your neighbors share in common, and what makes your community unique when compared to surrounding communities. Remember -- you are the expert on your community!

### WHY IS A COMMUNITY OF INTEREST IMPORTANT?



**Keeping communities of interest together is an important principle in redistricting.** It can be especially helpful to communities that have been traditionally left out of the political process. Community members can define their communities by telling their own stories and describing their concerns to line-drawers who are leading the redistricting process.

Keeping communities of interest whole in the redistricting process is may be a redistricting criterion in your state or recognized by courts as a relevant consideration. This worksheet will guide you through the basic elements to help you describe your community to your redistricting body, which could be your city council, board of supervisors, or school district, state legislature or redistricting commission.

*Tip: Check out who is in charge of redistricting. Find out if there are time limits on speaking. Plan ahead.*

Hi, my name is \_\_\_\_\_. I have **[lived/worked]** in the **[community/city]** of \_\_\_\_\_ for \_\_\_\_\_ years. I'd like you to keep my community, **[name of community]**, together.

**[DESCRIBE YOUR COMMUNITY...]**

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**Name your community.** Describe your community by stating your shared interests and shared characteristics. This can include describing the people who live in your community, stories about your community's history and culture, or the special needs of your community. There is no right or wrong way to describe your community. **Just make sure to talk about what connects the people in your community.** Think about these questions as you craft how to describe your community of interest:



- Who lives in your community?
- What kinds of things do they do for a living?
- What kind of housing is common?
- What kind of government services do people need?
- Are there social or civic groups that people belong to?
- Are there important places where people come together, like community centers, schools, churches, temples, neighborhood associations, or parks?
- Do you have common interests in local political issues, like school funding, access to hospitals, health or environmental problems, or other issues?
- Do you have a common race or ethnicity? Immigration history? Language spoken?
- Does your community have shared socioeconomic characteristics, like income level or education level?
- Does your neighborhood have celebrations or traditions, like street festivals or parades?
- What nonprofits or service-providers serve the community?
- Are there large employers? Are there lots of small businesses?
- What is the history of how your community came together? How has your community changed over time?

**MY COMMUNITY IS LOCATED:**

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The people in charge of drawing the official district maps need to know where your community is physically located so they can keep it whole and within a single district. Here are questions that will help you *describe the location of your community*:



- What are the streets or boundaries that mark your community’s borders?
- What are the significant landmarks: rivers, parks, shopping areas, historic sites, etc.?
- What are the gathering places and service providers: schools, community centers, religious places, and social service agencies?
- Do the current political district boundaries divide your community? Or do they keep your community together?

**MY COMMUNITY IS SIMILAR TO THESE NEIGHBORHOODS:**

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**MY COMMUNITY IS DIFFERENT FROM THESE NEIGHBORHOODS:**

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**WHAT MAKES MY COMMUNITY SPECIAL:**

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**Highlight community issues and histories** (tell a personal story, if possible) that help demonstrate the importance of having elected officials who understand and respond to community needs. *Share stories and data about community concerns* to show how your community needs to be heard by your elected representative.

- Has your community come together to advocate for important services, like more translated information, or health centers in your neighborhood?
- Have you won victories together, or established traditions together?
- What harms have been caused because your voice has been ignored, like poor health caused by pollution from a nearby plant or freeway? What are the barriers to solving these issues?

**IN CONCLUSION...**

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**Emphasize why it's important for your community to be kept together in the new district maps.** Thank the members of the redistricting body (city council, school board, commission, etc.), provide them with any written testimony and materials, acknowledge your community members and partners in attendance, and restate your goals.