

RESOLUTION NO. 2024-91

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FOSTER CITY DECLARING THE CITY OF FOSTER CITY'S INTENT TO INITIATE PROCEDURES TO TRANSITION FROM AT-LARGE ELECTIONS TO DISTRICT-BASED ELECTIONS PURSUANT TO ELECTIONS CODE SECTION 10010; APPROVING THE TENTATIVE TIMELINE AND OTHER RELATED ACTIONS

CITY OF FOSTER CITY

WHEREAS, members of the City Council are currently elected in "at-large" elections, in which each City Councilmember is elected by the registered voters of the entire City; and

WHEREAS, California Government Code section 34886, in certain circumstances, authorizes the legislative body of a city of any population to adopt an ordinance to change its method of election from an "at-large" system to a "district-based" system in which each councilmember is elected only by the voters in the district in which the candidate resides; and

WHEREAS, on July 22, 2024, the City of Foster City ("City") received a certified letter from a potential plaintiffs' attorney, alleging a violation of the California Voting Rights Act (the "CVRA") and threatening litigation if the City declines to voluntarily change to a district-based election system for electing Councilmembers; and

WHEREAS, the letter itself was not accompanied by any evidence to support the claim of a CVRA violation, and the Council denies that its election system violates the CVRA or any other provision of law, asserts that the City's election system is legal in all respects, and further denies any wrongdoing whatsoever in connection with the manner in which City Council elections have been conducted; and

WHEREAS, nevertheless, the City is committed to diversity and inclusion with respect to its elections and the Council has determined that the public interest is better served by initiating a process for transition to a district-based election system and thereby avoiding the high costs associated with defending a lawsuit under the CVRA; and

WHEREAS, Elections Code Section 10010 provides a method whereby a jurisdiction can expeditiously transition to a district-based election system and thereby avoid the high cost of litigation under the CVRA if the jurisdiction complied with the "safe harbor" provisions of Elections Code Section 10010; and

WHEREAS, California Elections Code Section 10010 will delay CVRA litigation and place a cap on the recovery of attorneys' fees associated with a CVRA claim at a maximum of \$30,000, if, within forty-five (45) days of receipt of a claim under the CVRA, the City adopts a resolution stating its intent to transition to district-based elections, and,

within ninety (90) days thereafter (or as otherwise stipulated by the parties), the City adopts an ordinance transitioning to a district-based election system consistent with the intent and purpose of the California Voting Rights Act.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Foster City does hereby make the following findings and determinations:

Section 1. The above recitals are true and correct and are incorporated by reference herein.

Section 2. The City Council hereby expresses its intent to consider transition from an at-large election system to a district-based election system as authorized by Government Code section 34886 and Elections Code section 10010 for use in the City's General Municipal Election for City Councilmembers commencing in November 2026.

Section 3. The City Clerk is directed to publicize and post information regarding the proposed transition to a district-based election system, including relevant maps, notices, agendas and other information and to establish a means of communication to receive comments and answer questions from the public.

Section 4. The City Council hereby approves the tentative timeline as set forth in Exhibit A, attached to and made a part of this resolution, for conducting public hearings to solicit and receive public input and testimony on proposed district-based electoral maps and district-based election systems, and for the City Council's evaluation, possible refinement and ultimate adoption of a district-based election system for election of City Council members.

Section 5. The tentative timeline contained in Exhibit A may be adjusted by the City Manager as he deems necessary or appropriate, provided that such adjustments shall not prevent the City from complying with the time frames specified by Elections Code Section 10010, or such other timeframes as may be stipulated by claimants under the CVRA.

Section 6. The City Council directs the City Manager to continue to work with the City Attorney and the retained demographer, to resolve all legal issues necessary to give effect to this Resolution and to meet the tentative timelines set forth in Exhibit A.

Section 7. Nothing contained herein shall preclude the City Council from selecting an alternative election system or making any alternative decision, should the public input and testimony and other evidence at the hearings indicate that an alternative system or decision is appropriate for the City.

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PASSED AND ADOPTED as a resolution of the City Council of the City of Foster City at the regular meeting held on the 3rd day of September, 2024, by the following vote:

AYES: Councilmembers Froomin, Hindi, Kiesel, and Mayor Sullivan

NOES: Vice Mayor Jimenez

ABSENT: None

ABSTAIN: None

DocuSigned by:

Patrick Sullivan

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PATRICK SULLIVAN, MAYOR

ATTEST:

Signed by:

Katherine Estrada

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PRISCILLA SCHAUS, CITY CLERK

BY: KATHERINE ESTRADA, DEPUTY CITY CLERK

EXHIBIT A-TENTATIVE TIMELINE

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.

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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 rd 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
11/25/24 or 12/2/24 DEADLINE 12/2/24	(Special) 5th Public Hearing or Regular Meeting	EC§ 10010(e)(3)(B)	Council may introduce ordinance if final map is selected at this public hearing Council introduces ordinance establishing district elections, including district boundaries and election sequence if map is changed at 11/18/24 meeting. Council adopts ordinance