



DATE: September 3, 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: RESOLUTION 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

RECOMMENDATION

It is recommended that Council adopt a resolution declaring the City's intent to initiate procedures to consider transition from at-large elections to district-based elections pursuant to California Elections Code section 10010; approving the tentative timeline and other related actions.

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. (See Attachment 2). 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

¹ Cal. Elec. Code §§ 14025-14032.

provisions of Elections Code section 10010 and avoid costly litigation. Staff has prepared the attached resolution of intent to transition to district-based elections, which will allow the City to take advantage of the safe harbor provisions of Elections Code section 10010 to prevent any litigation from proceeding while the City is transitioning to district-based elections.

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

The CVRA defines “protected class” as a class of voters who are members of a race, color, or language minority group, as referenced and defined in the FVRA⁵ and “racially polarized voting” as voting in which there is a difference, as defined in case law under the FVRA, in the choice of candidates or other electoral choices preferred by voters in a protected class, as compared to the rest of the electorate (*i.e.*, the protected class members vote as a politically cohesive unit, while the majority votes sufficiently as a bloc usually to defeat the protected class’s preferred candidate).⁶

The CVRA does not require a plaintiff to prove intent on the part of the voters or elected officials to discriminate against a protected class nor does the fact that members of a protected class are not geographically compact or concentrated preclude a finding of racially polarized voting.⁷ Instead, a violation of the CVRA may be established by showing that both racially polarized voting and dilution occur in elections for members of the governing body.⁸

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 §14026(d) citing 52 U.S.C. Sec. 10301 *et seq.*

⁶ Cal. Elec. Code §14026(e) citing 52 U.S.C. Sec. 10301 *et seq.*; *Thornburg v. Gingles (1986) 478 U.S. 30, 56.*

⁷ Cal. Elec. Code §14028(c) and (d).

⁸ Cal. Elec. Code §§14026(e), 14028(a); *Pico Neighborhood Ass’n v City of Santa Monica (2023) 15 C5th 292, 314.*

ANALYSIS

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.

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.⁹ 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 \$30,000.¹⁰

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.¹¹ A forty-five (45) day stay is then imposed on a prospective plaintiff’s ability to bring an action.¹² 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.¹³ 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 intention’s passage.¹⁴

Tentative Timeline for Transition

If the Council adopts the proposed resolution, the City will need to comply with the timelines set forth in Elections Code 10010, in order to transition to district-based elections and to take advantage of the statutory “safe harbor” provisions.

If the Council decides to proceed with transitioning to district-based elections, 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.¹⁵ 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

⁹ Cal. Elec. Code § 10010(e)(2).

¹⁰ Cal. Elec. Code § 10010(f)(1)-(3).

¹¹ Cal. Elec. Code § 10010(e)(1).

¹² Cal. Elec. Code § 10010(e)(2).

¹³ Cal. Elec. Code § 10010(e)(1)-(3).

¹⁴ Cal. Elec. Code § 10010(e)(1)-(3).

¹⁵ Cal. Elec. Code § 10010(a)(1).

elections.¹⁶ 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.¹⁷

The City will also need to comply with the Fair and Inclusive Redistricting for Municipalities and Political Subdivisions (Fair Maps) Act,¹⁸ 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 includes, among other things, compliance with the United States Constitution, the California Constitution, and the FVRA.¹⁹ The Fair Maps Act also prohibits the adoption of district boundaries for the purpose of favoring or discriminating against an incumbent, political candidate or political party.²⁰

Staff has prepared a tentative timeline, which identifies the preliminary schedule for the required public hearings and public outreach, which complies with Elections Code 10010 (see Exhibit A to 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.²¹

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. Staff will also be creating a page on the City's website dedicated to this transition, whereby information will be available.

Demographer

Based on the direction provided by Council on August 19, 2024, City staff has met with

¹⁶ Cal. Elec. Code § 10010(a)(2).

¹⁷ *Ibid.*

¹⁸ Cal. Elec. Code § 21100 *et seq.*

¹⁹ Cal. Elec. Code § 21130.

²⁰ Cal. Elec. Code § 21130(d).

²¹ Cal. Elec. Code § 10010(e)(3)(C)(i).

three demographer firms, and the City Manager is in the process of finalizing an agreement to retain the services of a demographer pursuant to his purchasing authority set forth in section 3.04.140(B)(1) of the Foster City Municipal Code. The demographer will attend the up to five public hearings and provide the City Council with analysis and recommendations of the maps that will be prepared during the transition process.

California Environmental 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

If the City Council decides to transition to district-based elections there will be a fiscal impact due to the costs associated with that transition including the demographer costs, which are estimated to be less than \$50,000 and payment of the plaintiffs' attorney costs of \$30,000. Alternatively, if the City Council decides not to transition to district-based elections, the City could incur significant costs relating to litigation.

CITY COUNCIL VISION, MISSION, AND VALUE/PRIORITY AREA

City Council Operations and Improved Community Engagement

ATTACHMENTS:

Attachment 1 – Resolution

Exhibit A - Tentative Timeline

Attachment 2 - July 22, 2024, Letter from Shenkman & Hughes