



DATE: December 2, 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. - FIFTH PUBLIC HEARING TO RECEIVE COMMUNITY INPUT AND ADOPT ORDINANCE TO PROVIDE FOR THE ELECTION OF COUNCILMEMBERS BY FIVE DISTRICTS; ESTABLISH DISTRICT BOUNDARIES AND ELECTION ORDER OF DISTRICTS

RECOMMENDATION

It is recommended that the City Council take the following actions:

- 1) Conduct the fifth public hearing to receive community input regarding the selected Final Map, Map B2 Live Edits and sequence of elections for district-based council elections (Districts 1 & 2 in 2026 and Districts 3, 4 and 5 in 2028); and
- 2) Adopt Ordinance of the City Council of the City of Foster City Amending Title 2 "Administration and Personnel" of the Foster City Municipal Code to Add Section 2.56.025 "District Elections" to Provide for the Election of Members of the City Council by Five Districts; Establish the District Boundaries; and Election Order of Each District.

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 agendizing 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.

On October 7, 2024 and October 21, 2024, the City Council conducted the first and second public hearing to receive input regarding the composition of the districts and sequencing of the elections.

On November 4, 2024, the City Council conducted the third public hearing to receive community input and provide direction to staff regarding the submitted draft maps and sequence of elections for district-based council elections. At that meeting, the Council reviewed the draft maps submitted by the public and the City’s demographer, Redistricting Partners, and provided direction to staff and the demographer regarding the various maps, including that the preference was to use Draft Map B as a basis for revised maps. It was further directed for the demographer to create a live edit Draft Map B2 which divided the northern business district of the City into separate districts. Direction was also given for the demographer to create an additional map with revisions to Draft Map B to include maintaining as a community of interest, Asian Citizen Voting Age Population (CVAP) in District 1.

On November 18, 2024, the City Council conducted fourth public hearing and ultimately selected Final Map, Map B2 Live Edits (Attachment 1) and sequence of elections for district-based council elections (Districts 1 & 2 in 2026 and Districts 3, 4 and 5 in 2028) and introduced the Ordinance Amending Title 2 “Administration and Personnel” of the Foster City Municipal Code to Add Section 2.56.025 “District Elections” to Provide for the Election of Members of the City Council by Five Districts; Establish the District Boundaries; and Election Order of Each District (“Ordinance”)(Attachment 2).

This final fifth public hearing will be conducted to receive public input and consider adoption of the Ordinance. The public hearings 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.

¹ Cal. Elec. Code §§ 14025-14032.

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 intention’s passage.¹⁰

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).

¹⁰ Cal. Elec. Code § 10010(e)(1)-(3).

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.

Staff 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 3).

Transition to District Based Elections: First and Second Public Hearings

As a part of the transition process, the City is required 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 communities of interest that would help to define the composition of the districts.¹¹

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 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.

The City conducted the initial two public hearings on October 7, 2024 and October 21, 2024. At the first and second public hearings, the Council received a report from the City's demographer, Redistricting Partners, about the basics of the districting process and identifying communities of interest. The video and presentation from the first and second meeting can be found on the City's dedicated redistricting webpage which can be found here: <https://www.fostercity.org/community/page/transition-district-elections>.

The City received thirteen submissions of the Community of Interest forms which were posted on the City's website. The responses from those thirteen submissions are summarized as follows:

- Four people submitted testimony requesting to not transition to district elections;
- Encouraged the City Council to base criteria on three things: 1) geographic proximity; 2) dwelling type; and 3) traffic and noise;
- Homeowners Association Consideration;
- School boundary consideration;
- Renters;
- Lagoon homes (multiple submissions); and
- Elementary School communities (multiple submissions, including a specific

¹¹ Cal. Elec. Code § 10010(a)(1).

- reference to Brewer Island.
- San Mateo County Association of REALTORS’s market areas

Transition to District Based Elections: Third and Fourth (and Fifth) Public Hearings

The City must 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. The third public hearing was held on November 4, 2024. A fourth public hearing was held on November 18 to review the submitted draft maps and to receive public input on the draft maps and the sequence of elections. At this fifth public hearing, the Council will receive community input on the selected map and the sequencing of the elections and conduct a second reading and adoption of the ordinance.

In selecting Final Map (Map B2 Live Edits), the City complied with the Fair and Inclusive Redistricting for Municipalities and Political Subdivisions (Fair Maps) Act in adopting the districts,¹² 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.

(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.

¹² Cal. Elec. Code § 21100 et seq.

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.¹³

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.¹⁴ Staff and Redistricting Partners will prepare the report for the Council's consideration at its December 16, 2024 meeting after the Ordinance is adopted.

ANALYSIS

Redistricting Partners has prepared a summary of the Final Map (Map B2 Live Edit).

Map B2 Live Edits is based on Map B and was which was discussed and edited at the Council meeting on November 4, 2024. Map B was inspired by Public Map 1 and drawn in a way that balanced that public map while maintaining Home Owners Associations (HOAs), when possible.

Map B2 Live Edit

Total Population Deviation: 4.5%

- District 1: Consists of the southern portion of the City, using main roads (Beach Park Blvd, Edgewater Blvd, and Foster City Blvd) and waterways. Due to population balance and the requirement of following census blocks given to us by the US Census Bureau, minor roads were used as dividers, as well. One HOA (Marina Point) has a minor split consisting of a parking lot and tennis courts. All residents of Marina Point are maintained in District 1.
- District 2: Consists of the middle southern portion of the City, predominantly using waterways as dividers. District 2 crosses Foster City Blvd in order to achieve balanced population.
- District 3: Consists of the eastern portion of the City commonly found in publicly drawn maps.
- District 4: Consists of the middle northern portion of the City commonly found in publicly drawn maps.

¹³ Cal. Elec. Code § 21130 (a)-(d).

¹⁴ Cal. Elec. Code § 21130(f).

- District 5: Consists of the western portion of the City and uses main roads (Shell Blvd, Foster City Blvd, Beach Park Blvd, and Edgewater Blvd) and waterways when possible. Minor roads were used as dividers to ensure population balance.

Ordinance

The Ordinance, if adopted, would amend Title 2, Chapter 2.56 of the Foster City Municipal Code to add a new section 2.56.025, "District Elections" and would provide for the election of Councilmembers by establishing five districts and identify the district boundaries by including the Final Map (Map B2 Live Edits). The Ordinance would also specify that the commencement of the district elections shall be in the next general municipal election in 2026 and provide for Districts 1 and 2 being elected in 2026 and Districts 3, 4 and 5 in 2028. Finally, the Proposed Ordinance authorizes Redistricting Partners to make non-substantive, technical adjustments to the map as necessary to prepare a GIS shapefile, which will be submitted to San Mateo County by the City Clerk.

Outreach Efforts

City staff regularly notifies residents of meetings and other engagement opportunities by posting on social media channels such as the City's Facebook, Twitter, and Nextdoor pages, as well as attending community events, sending printed mailers, promoting in the City newsletter, and hosting community workshops. 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 continues. These efforts include updating the nature of the outreach material throughout the process to encourage the community to get involved by submitting community of interest forms, drawing district maps, reviewing submitted maps, providing public comment, and more.

Printed outreach material notifying residents of the meetings has been placed in City Hall as well at kiosks posted along the Levee, and other City facilities. Digital content has also been posted on the marquee and posting boards at the Council Chambers and Library. The two printed mailers sent to each residential address in Foster City promoted participation in the Community Workshops and invited community members to attend the public hearings. Outreach material such as the mailers, website, and other printed documents have been translated to Mandarin as well.

To grant ample opportunities for residents and community members to have their voice heard, City staff have attended a variety of community events including the following:

- September 20, 8:30am-10am: Second Harvest Food Bank Free Grocery Program at the Foster City Library.
- September 21, 9am-11:00am: Community Bike Ride at Booth Bay Park.
- September 28, 9am-11am: Foster City Farmers Market at 1010 Metro Center Blvd.

- September 29, 10am-12pm: Clean Air Day celebration at the Foster City Library.
- October 2, 5pm-7pm: Off the Grid at Leo Ryan Park.
- October 6, 11am-1pm: Baybasi Autumn Festival at Leo Ryan Park.
- October 16, 5pm-6:30 pm: Off the Grid at Leo Ryan Park
- October 19, 9am-11am: Foster City Farmers Market at 1010 Metro Center Blvd.
- October 23, 5pm-6:30pm: Off the Grid at Leo Ryan Park.
- October 26, 11am-12:30pm: Foster City Halloween Festival at Leo Ryan Park.
- October 30, 5pm-6:30pm: Off the Grid at Leo Ryan Park.
- November 1, 8:30 am-10:00 am: Second Harvest Food Bank Free Grocery Program at the Foster City Library.
- November 2, 10am-11:30 am: Friends of the Library Book Sale at the Foster City Library.
- Wednesday, November 6, 10am-11:30am: Baby Bounce Story Time at the Foster City Library.
- Thursday, November 7, 11am-12:30pm: Starbucks at 780 Alma Lane.
- Friday, November 15, 8:30 am-10:00 am: Second Harvest Food Bank Free Grocery Program at the Foster City Library.
- Sunday, November 17, 11am-12pm: Indian Classical Dance Show at the Foster City Library.

City staff and the consultant also hosted workshops on October 20, 2024, and November 13, 2024, which were well attended. The workshops were held in a hybrid format for in-person attendance at the Council Chambers and online via Zoom, and the videos were also recorded and uploaded to the City's YouTube channel for on-demand playing.

The City has created a website dedicated to this district transition process which can be found here:

<https://www.fostercity.org/districtelections>.

Information is available on the City's website that provides the public with background information about the districting process and supporting documents. This webpage will be continuously updated with dates and locations where community members can share their feedback on this issue.

Once a final map is adopted, staff will continue outreach via newsletter, social media, the project website, and a press release sharing information regarding district boundaries, election sequencing, and other associated impacts.

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

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 – Final Map (Map B2 Live Edits)

Attachment 2 – Ordinance

Attachment 3 – Tentative Timeline