

Folsom City Council Staff Report

MEETING DATE:	3/8/2022
AGENDA SECTION:	Public Hearing
SUBJECT:	Public Hearing No. 5 Under the California Voting Rights Act a. Ordinance No. 1324 - An Ordinance of the City of Folsom Establishing a By-District Election Process in Five Council Districts Pursuant to California Elections Code Section 10010 and Adding New Sections to Chapter 2.06 of the Folsom Municipal Code to Provide for City Council Election Districts (Introduction and First Reading)
FROM:	City Attorney's Office

RECOMMENDATION / CITY COUNCIL ACTION

Staff recommends that the City Council hold the last of five public hearings to: (1) receive community input on the “preferred” map selected by the City Council on February 22, 2022, (2) adopt a final district map by introducing and conducting first reading of Ordinance No. 1324, an Ordinance of the City of Folsom Establishing a By-District Election Process in Five Council Districts Pursuant to California Elections Code Section 10010 and Adding New Sections to Chapter 2.06 of the Folsom Municipal Code to Provide for City Council Election Districts.

BACKGROUND / ISSUE

On July 27, 2021, the City Council adopted a Resolution of Intention to transition from at-large to by-district elections. This is the last of five required public hearings to start the transition process.

POLICY / RULE

California Government Code Section 34886 authorizes the legislative body of a city to adopt an ordinance that requires the members of the legislative body to be elected “by district”. The change must be made in furtherance of the purposes of the California Voting Rights Act.

ANALYSIS

1. SUMMARY OF PAST PUBLIC HEARINGS

The process to transition to by-district election requires five public hearings where the community is invited to provide input regarding the composition of future City Council districts. Pursuant to California Elections Code Section 10010, the first two public hearings to inform the public about the districting process (held on September 14 and October 12, 2021) are required before any map of district boundaries for the proposed voting districts can be drawn. The Council reviewed proposed maps at the third public hearing on January 11, 2022 and identified 8 focus maps.

The City Council held the fourth public hearing on February 8, 2022, reviewed the focus maps, received public input and comments, worked on a draft “preferred” map with the City’s demographer and the public, and discussed election sequencing. The City Council voted to continue the fourth public hearing to February 15, 2022 to give the community an opportunity to provide further input on the draft “preferred” map.

At the February 15th meeting, the City Council received further public comments and, with the assistance of the City’s demographer, prepared two draft “preferred” maps with input from the City Council and the public. The City Council also discussed election sequencing in that members of the City Council from Council Districts 1, 3, and 5 shall be elected on a by-district basis beginning in 2022, and members of the City Council from Council Districts 2 and 4 shall be elected on a by-district basis beginning in 2024. At the end of the public hearing on February 15, 2022, the City Council voted to further continue the hearing to February 22, 2022 in order to solicit further community comments and feedback on the 2 draft “preferred” maps.

Following public comments and further discussions on February 22, 2022, the City Council selected “Preferred Map 2” as the final “preferred” map, and determined that members of the City Council from **Council Districts 1, 3, and 5** shall be elected on a by-district basis beginning with the General Municipal Election **in 2022**, and members of the City Council from **Council Districts 2 and 4** shall be elected on a by-district basis beginning with the General Municipal Election **in 2024**.

2. ELECTION SEQUENCING

As the City transitions from at-large to by-district elections, the City Council must set a “sequence of elections” as required by the Elections Code so that the terms of the Councilmembers remain staggered pursuant to the City Charter, with 3 Councilmembers

elected for a four-year term in 2022 and every 4 years thereafter, and 2 Councilmembers elected for a four-year term in 2024 and every 4 years thereafter.

Accordingly, when the City Council adopts a final district map, the Council will also have to identify which 3 Council Districts will be up for election in 2022 and which 2 Council Districts will be up for election in 2024. In determining the sequence of the district elections, the City Council is required to give special consideration to the purpose of the California Voting Rights Act (i.e., not to impair the ability of voters who are members of a race, color or language minority group to elect candidates of their choice or their ability to influence the outcome of an election) and shall take into account the preferences expressed by members of the districts.

In a Council District sequenced for election in 2022 or 2024 that has no currently serving Councilmember, any eligible registered voter in that Council District may run for election in that District.

A Councilmember whose term ends in 2022 residing in a Council District sequenced for the 2022 election can run for election in 2022 to represent that Council District. Similarly, a Councilmember whose term ends in 2024 residing in a Council District sequenced for the 2024 election can run for election in 2024 to represent that Council District.

A Councilmember whose term ends in 2022 residing in a Council District sequenced for the 2024 election will leave office at the end of his or her term in 2022, and can run for election when that District is up for election in 2024.

A Councilmember whose term ends in 2024 residing in a Council District sequenced for the 2022 election has the option to either serve out his or her term representing the City at-large until 2024, or run for election in 2022 to represent that Council District for a new four-year term. If the Councilmember chooses to run in 2022 and wins a new four-year term representing the District, a vacancy for the remaining two years of that Councilmember's at-large term will be filled by the City Council by appointment or special election.

3. MAPPING CRITERIA

Cities must comply with the following legally required criteria under federal and state law:

1. Each district must have substantially equal population as determined by the census.
2. Race cannot be the predominant factor or criteria when drawing districts.
3. Council districts shall not be adopted for the purpose of favoring or discriminating against a political party.
4. Incarcerated persons may not be counted toward a city's population, except if their last known place of residence is assigned to a census block in the city.

5. The districting plan must comply with the Federal Voting Rights Act, which prohibits districts from diluting minority voting rights and encourages a majority-minority district if the minority group is sufficiently large and such a district can be drawn without race being the predominant factor.
6. The City Council shall adopt district boundaries using the following criteria as set forth in the following order of priority:
 - A. To the extent practicable, council 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.
 - B. To the extent practicable, the geographic integrity of any local neighborhood or local community of interest shall be respected in a manner that minimizes its division. A “community of interest” is a population that shares common social or economic interests that should be included within a single district for purposes of its effective and fair representation (e.g., school district boundaries, neighborhood boundaries, homeowners’ associations, retail/commercial districts, etc.). Communities of interest do not include relationships with political parties, incumbents, or political candidates.
 - C. Council district boundaries should be easily identifiable and understandable by residents. To the extent practicable, council districts shall be bounded by natural and artificial barriers, by streets, or by the boundaries of the city.
 - D. To the extent practicable, and where it does not conflict with the preceding criteria, council 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.

4. FIFTH AND LAST PUBLIC HEARING

At this fifth and last public hearing, the City Council is requested to adopt “Preferred Map 2” as the final district map and to complete the transition process by introducing and conducting first reading of Ordinance No. 1324.

5. PUBLIC HEARING SCHEDULE

The City Council is the final decision-making body on adopting district boundaries. The required public hearings have been scheduled and held as follows:

Date	Meeting Type	Public Hearing	Item Topic at Meeting
9/14/2021	Public Hearing	1	Completed. Public input on composition of districts (before maps are drawn, hold 2 public hearings on composition of districts over period of no more than 30 days)
10/12/2021	Public Hearing	2	Completed. Continue to receive public input on composition of districts (must be held within 30 days of Public Hearing No. 1)
1/11/2022	Public Hearing	3	Completed. Discussion of proposed district maps. First draft of map must be published 7 days before Public Hearing No. 3
2/8/2022	Public Hearing	4	Completed. Public input and identify preferred District Map (hold 2 public hearings within 45 days of Public Hearing No. 3). Discuss sequence of elections
2/15/2022	Special Meeting – Continued Public Hearing	4	Completed. Public input and identify preferred District Map. Discuss sequence of elections
2/22/2022	Continued Public Hearing	4	Completed. Public input and identify preferred District Map. Discuss sequence of elections
3/8/2022	Public Hearing	5	Adoption of final District Map, transition to district elections Ordinance introduced
3/22/2022	Regular Meeting		Second reading of Ordinance (effective 30 days after)

To increase public awareness of the transition to district elections, the City has activated a variety of public communication channels to engage the Folsom community. Districting information is featured on the City’s website and City newsletters. Numerous frequently asked questions have been posted on the dedicated districting webpages on the City’s website.

FINANCIAL IMPACT

The services of a demographer are required to assist the City transition to a by-district election system under specific aggressive timelines as required by the California Elections Code. Staff anticipates the cost to be approximately \$40,000.

ENVIRONMENTAL REVIEW

The California Environmental Quality Act (CEQA) does not apply to activities that will not result in a direct or reasonably foreseeable indirect physical change in the environment (CEQA Guidelines §15061(c)(3)), or is otherwise not considered a project as defined by Public Resources Code §21065 and CEQA Guidelines §15060(c)(3) and §15378. The Council's decision regarding by-district elections meets the above criteria and is not subject to CEQA. No environmental review is required.

ATTACHMENT

1. "Preferred Map 2" selected by the City Council on February 22, 2022 as the final "preferred" map
2. Ordinance No. 1324, an Ordinance of the City of Folsom Establishing a By-District Election Process in Five Council Districts Pursuant to California Elections Code Section 10010 and Adding New Sections to Chapter 2.06 of the Folsom Municipal Code to Provide for City Council Election Districts (Introduction and First Reading)

Respectfully submitted,

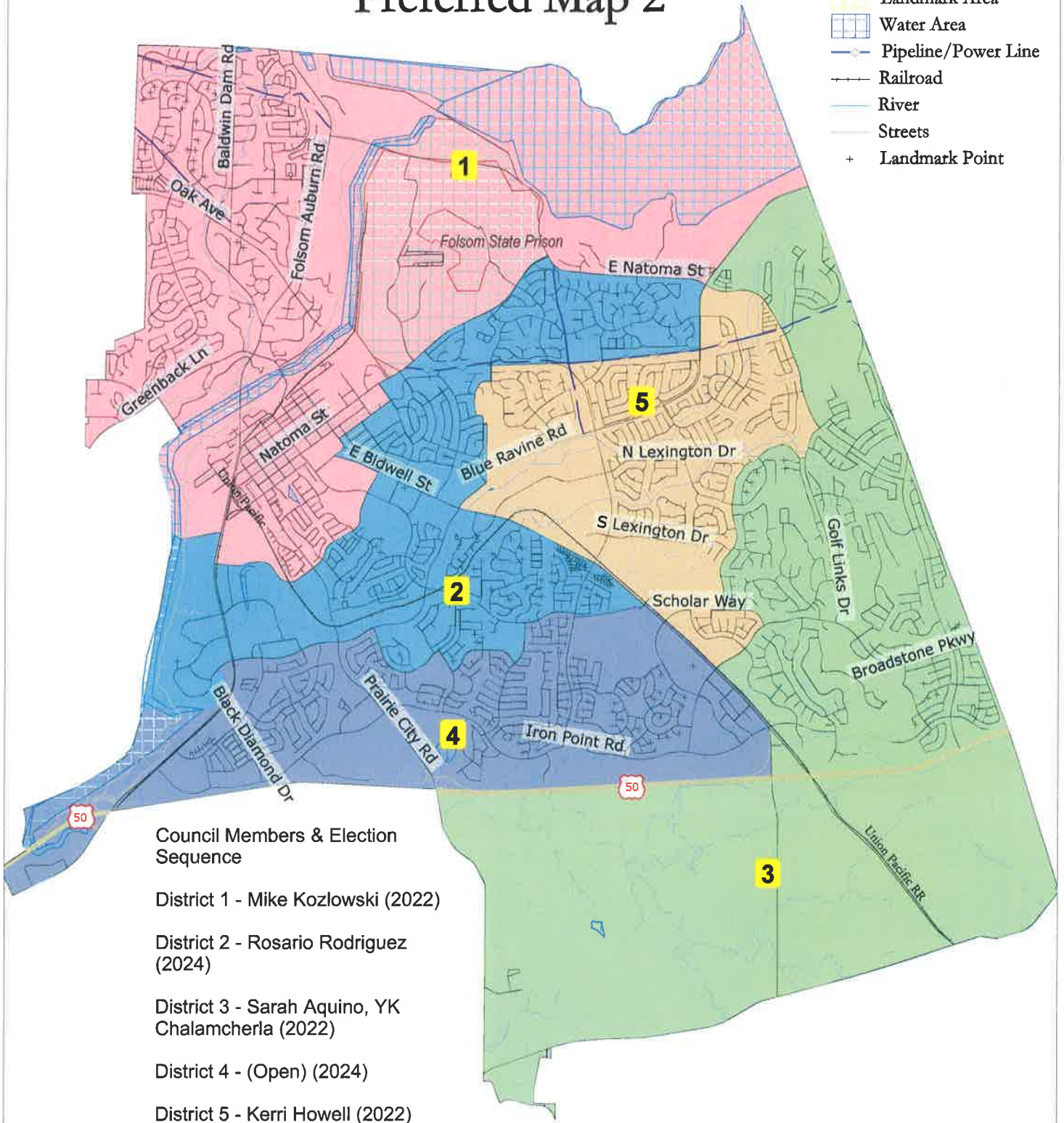
Steven Wang, City Attorney

ATTACHMENT 1

Folsom 2022 Districting

Preferred Map 2

- Map layers
- Preferred Map 2
 - Landmark Area
 - Water Area
 - Pipeline/Power Line
 - Railroad
 - River
 - Streets
 - Landmark Point



ATTACHMENT 2

ORDINANCE NO. 1324

AN ORDINANCE OF THE CITY OF FOLSOM ESTABLISHING A BY-DISTRICT ELECTION PROCESS IN FIVE COUNCIL DISTRICTS PURSUANT TO CALIFORNIA ELECTIONS CODE SECTION 10010, AND ADDING NEW SECTIONS TO CHAPTER 2.06 OF THE FOLSOM MUNICIPAL CODE TO PROVIDE FOR CITY COUNCIL ELECTION DISTRICTS

WHEREAS, the City of Folsom currently elects its five City Councilmembers using an at-large election system; and

WHEREAS, in the at-large election system, candidates may reside in any part of the City and each City Councilmember is elected by the voters of the entire City; and

WHEREAS, in a by-district election system, a candidate for City Council must reside in the district which he or she wishes to represent, and only the voters of that district are entitled to vote to decide who their representative for that district will be; and

WHEREAS, on October 30, 2020, the City received a letter from attorney Scott Rafferty asserting that the City's at-large electoral system violated the California Voting Rights Act and threatening litigation if the City declined to adopt by-district elections; and

WHEREAS, while Mr. Rafferty's letter did not contain any evidence of a violation, the cost of defending against a claim under the California Voting Rights Act is extremely high, no public agency has ever successfully defended such a claim, and spending such an expense would severely burden the City's resources and curtail the City's ability to provide essential services to Folsom residents; and

WHEREAS, Section 34886 of the Government Code permits the City Council to adopt an ordinance to change the City's method of election to a "by-district" system without being required to submit the ordinance to the voters for approval, subject to certain conditions; and

WHEREAS, the City wishes to avoid litigation and to take advantage of the provisions of Government Code section 34886, and therefore, pursuant to California Government Code section 34886, it is declared that this change in the method of electing members of the Folsom City Council is being made in furtherance of the purposes of the California Voting Rights Act of 2001 (Elections Code sections 14025 *et. seq.*); and

WHEREAS, at its regular meeting on July 17, 2021, the City Council adopted Resolution No. 10575, a resolution of intent to transition to a by-district election system pursuant to Section 10010 of the Elections Code; and

WHEREAS, pursuant to Section 10010 of the Elections Code, a city that changes from an at-large method of election to a by-district method of election shall hold at least two public hearings over a period of no more than thirty days, at which the public is invited to provide input regarding

the composition of the districts before drawing a draft map or maps of the proposed boundaries of the districts; and

WHEREAS, before any maps of the proposed boundaries of the districts were considered, the City held public hearings on September 14, 2021, and October 12, 2021, at which time input from the public on the proposed composition of the districts were invited and heard; and

WHEREAS, on and prior to holding the third public hearing on January 11, 2022, pursuant to Section 10010 of the Elections Code, the City published and made available for public review draft maps for consideration by the City Council; and

WHEREAS, pursuant to Section 10010 of the Elections Code, the City held a third public hearing on January 11, 2022, at which the public was invited to provide input regarding the content of the draft maps and the potential sequence of elections; and

WHEREAS, after the close of the public hearing on January 11, 2022, the City Council provided input as to the draft maps, published and made available for public review eight “focus” draft maps selected by the City Council for further consideration pursuant to Section 10010 of the Elections Code; and

WHEREAS, pursuant to Section 10010 of the Elections Code, the City held a fourth public hearing on February 8, 2022, where the public provided input regarding the content of the “focus” maps, and the City Council worked on a “preferred” map with the City’s demographer and discussed the potential sequence of elections; and

WHEREAS, at the end of the public hearing on February 8, 2022, the City Council voted to continue the hearing to February 15, 2022, in order to solicit further community comments and feedback on the draft “preferred” map prepared by the City’s demographer with input from the City Council and the public on February 8, 2022; and

WHEREAS, at the continued public hearing on February 15, 2022, the City Council selected two draft “preferred” maps prepared by the City’s demographer with input from the City Council and the public (“Preferred Map 1” and “Preferred Map 2”), and voted to further continue the hearing to February 22, 2022, in order to solicit further community comments and feedback on the two draft “preferred” maps; and

WHEREAS, following public comments and further discussions, the City Council at the end of the continued fourth public hearing on February 22, 2022, selected “Preferred Map 2” as the final “preferred” map; and

WHEREAS, pursuant to Section 10010 of the Elections Code, the City held a fifth public hearing on March 8, 2022, where the public provided input prior to the City Council adopting a final district map and considering an ordinance that would establish a by-district election system; and

WHEREAS, it is the position of the City Council that map “Preferred Map 2”, attached hereto as Exhibit A, will serve the best interests of the City of Folsom and be consistent with the California Voting Rights Act and applicable laws; and

WHEREAS, map identified as “Preferred Map 2”, attached hereto as Exhibit A, is selected and adopted by the City Council as the final district map in the creating of a by-district election system in the City of Folsom.

NOW, THEREFORE, the City Council of the City of Folsom does hereby ordain as follows:

SECTION 1 PURPOSE

The purpose of this Ordinance is to enact, pursuant to Government Code Section 34886, an ordinance providing for the by-district election process to elect members of the Folsom City Council in five (5) single-member districts pursuant to California Elections Code Section 10010.

SECTION 2 DECLARATION

Pursuant to Government Code section 34886, it is declared that this change in the method of electing members of the City Council of the City of Folsom is being made in furtherance of the purposes of the California Voting Rights Act of 2001 (Elections Code Sections 14025 *et. seq.*)

SECTION 3 CITY COUNCIL DISTRICTS

The City of Folsom is hereby divided into five (5) City Council Districts with the boundaries of the districts as shown in Exhibit A attached hereto and incorporated herein by reference.

SECTION 4 ADDITION TO CODE

Sections 2.06.090, 2.06.100, and 2.06.110 are hereby added to the Folsom Municipal Code to read as follows:

2.06.090 City council by-district electoral system.

Pursuant to Government Code Section 34886 and the schedule established in Section 2.06.100 of this Chapter, commencing with the November 2022, General Municipal Election, each member of the Folsom City Council shall be elected by district in five (5) single-member districts. The City’s by-district electoral system shall be conducted in accordance with California Government Code Section 34871(a).

2.06.100 Establishment of city council electoral districts.

A. Pursuant to Section 2.06.090 of this Chapter, members of the Folsom City Council from Council Districts 1, 2, and 3 shall be elected on a by-district basis as that term is defined in Government Code Section 34871(a), beginning with the General Municipal Election in November 2022 and every four years thereafter, as such Council Districts may be amended from time to time pursuant to applicable law.

B. Pursuant to Section 2.06.090 of this Chapter, members of the Folsom City Council from Council Districts 2 and 4 shall be elected on a by-district basis as that term is defined in Government Code Section 34871(a), beginning with the General Municipal Election in November 2024 and every four years thereafter, as such Council Districts may be amended from time to time pursuant to applicable law.

C. Except as provided in subsection (E) below, all candidates for the City Council and all appointed and elected Councilmembers shall fully comply with applicable law including but not limited to Government Code Section 34882 and Elections Code Section 10227. Termination of residency in a Council District by a Councilmember shall create an immediate vacancy for that Council District unless a substitute residence within that district is established within thirty (30) calendar days after the termination of residency.

C. Only the registered voters residing in the Council District may vote for candidates running for City Council in that District.

E. Notwithstanding any other provision of this Section, each of the Councilmembers in office at the time this Chapter takes effect shall continue in office until the expiration of the full term to which he or she was elected and until his or her successor is qualified. Vacancies in Councilmember offices elected at-large at the time this Chapter takes effect may be filled by the City Council from the City at-large pursuant to applicable law until the expiration of that at-large term. At the end of the term of each Councilmember, that member's successor shall be elected on a by-district basis in the Council Districts established herein and as subsequently reapportioned as provided by law. A vacancy in a Councilmember office elected by-district shall be filled by a person qualified to hold the office in that vacant Council District pursuant to applicable law.

2.06.110 Map of council districts.

The City Clerk shall maintain a map of the City showing the current boundaries and numbers of each Council District as they are established and may be amended from time to time by ordinance of the City Council. The map of the initial Council Districts is attached hereto as Exhibit A and incorporated herein by reference.

SECTION 5 SCOPE

Except as set forth in this Ordinance, all other provisions of the Folsom Municipal Code shall remain in full force and effect.

SECTION 6 NO MANDATORY DUTY OF CARE

This Ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 7 SEVERABILITY

If any section, subsection, sentence, clause, or phrase in this Ordinance or any part thereof is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council declares that it would have passed each section irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared unconstitutional, invalid, or ineffective.

SECTION 8 EFFECTIVE DATE

This Ordinance shall become effective thirty (30) days from and after its passage and adoption, provided it is published in full or in summary within twenty (20) days after its adoption in a newspaper of general circulation in the City.

This Ordinance was introduced and the title thereof read at the regular meeting of the City Council on March 8, 2022, and the second reading occurred at the regular meeting of the City Council on March 22, 2022.

On a motion by Council Member _____ seconded by Council Member _____, the foregoing Ordinance was passed and adopted by the City Council of the City of Folsom, State of California, this 22nd day of March, 2022 by the following roll-call vote:

AYES: Councilmember(s):

NOES: Councilmember(s):

ABSENT: Councilmember(s):

ABSTAIN: Councilmember(s):

Kerri M. Howell, MAYOR

ATTEST:

Christa Freemantle, CITY CLERK

EXHIBIT A

