



Folsom City Council Staff Report

MEETING DATE:	7/27/2021
AGENDA SECTION:	Old Business
SUBJECT:	Resolution No. 10575 - A Resolution of the City Council of the City of Folsom Declaring Its Intent to Initiate Procedures to Transition from At-Large Elections to District-Based Elections Pursuant to California Elections Code Section 10010 and Authorize Related Actions
FROM:	City Attorney's Office

RECOMMENDATION / CITY COUNCIL ACTION

Staff respectfully recommends that the Council pass and adopt Resolution No. 10575 - A Resolution of the City Council of the City of Folsom Declaring Its Intent to Initiate Procedures to Transition from At-Large Elections to District-Based Elections Pursuant to California Elections Code Section 10010 and Authorize Related Actions.

BACKGROUND / ISSUE

This matter was first heard by the City Council at its regular meeting on January 12, 2021. Following public comment, the Council tabled the matter to a future meeting and gave direction to staff to engage in public outreach and solicit input regarding Folsom voters' preferences.

The prescribed timelines in the California Voting Rights Act (CVRA) had been suspended during the COVID-19 public health emergency by Governor Newsom through Executive Orders N-34-20 (signed March 20, 2020) and N-48-20 (signed April 9, 2020). Under Executive Order N-08-21 (signed June 11, 2021), the suspension was lifted effective July 1, 2021, hence it is time to bring this matter back to the Council for further consideration.

By way of background, Section 2.01 of the Folsom City Charter provides that members of the Folsom City Council are elected "at large" to serve a four-year term. The terms of the

Councilmembers are staggered, with three Councilmembers elected at one General Municipal Election, and two Councilmembers elected at the following General Municipal Election two years after. Once elected, each Councilmember represents all citizens throughout the City.

CVRA was signed into law in 2002, and it prohibits an at-large method of election that impairs the ability of a protected class (e.g., race, color or language minority group) to elect candidates of their choice or their ability to influence the outcome of an election. An “at-large” method of election means that the electors from the entire city vote for members of their city council, regardless where they reside in the city (as opposed to a “by-district” election system, which means that the councilmember is elected only by the voters residing within that councilmember’s district).

In passing CVRA, the California Legislature made the process easy for plaintiffs to sue and prevail in lawsuits against public entities that have an at-large election system whenever “racially polarized voting” can be shown. Racially polarized voting occurs when there is a difference in the choice of candidates that are preferred by voters of a protected class, and in the choice of candidates that are preferred by voters in the rest of the electorate. This phenomenon has been demonstrated consistently in CVRA lawsuits, often and typically without any discriminatory intent.

Proving a CVRA violation does not require proof of discriminatory intent or historic discrimination. Partly (or specifically) due to the extremely low threshold in proving a CVRA violation, no cities have prevailed in defending CVRA lawsuits. If the plaintiff wins the CVRA lawsuit, the court may impose by-district election on the city, and can determine district boundaries with input solely from the plaintiff’s attorney and consultants without input from the City Council or the local community. A prevailing plaintiff may also recover attorneys’ fees and costs, which could be substantial. Some cities, after spending a significant amount of taxpayers’ money (hundreds of thousands of dollars to over \$5 million) in legal fees and costs, eventually transitioned to by-district elections as a result of settlement or enforcement of an adverse court order.

Here in the greater Sacramento metropolitan area, many cities that used to have at-large elections have received demand letters from law firms representing voters challenging their at-large election system. Due to threats of CVRA litigation, in the past couple of years, the cities of Citrus Heights, Elk Grove, and Roseville , as well as the Folsom Cordova Unified School District ,have voluntarily transitioned to a “by-district” election system. If a city follows the prescribed steps and voluntarily transitions to “by-district” election after receiving a demand letter, the plaintiff is only entitled to claim up to \$30,000 in fees and costs (adjusted annually by the Consumer Price Index).

The City received such a demand letter on October 30, 2020 from CVRA attorney Scott Rafferty, representing Neighborhood Elections Now, the Bay Area Voting Rights Initiative, the Folsom Area Democratic Club, and a number of registered voters in Folsom having legal standing to sue the City under CVRA. Following the Council’s decision to table the

proposed Resolution of Intention on January 12, 2021, the City was served with a CVRA lawsuit on January 20, 2021. The lawsuit was filed on January 5, 2021 by Hari Shetty, Kavita Sood, and Neighborhood Elections Now.

CVRA prohibits the filing of a lawsuit until 45 days have elapsed after the targeted political entity has received the demand letter and fails to pass a Resolution of Intention to transition from at-large to by-district elections. Due to the fact that the demand letter was sent after the Governor suspended the CVRA timelines, the 45-day deadline had not kicked in, and the City was able to successfully demur to the plaintiff’s complaint and have the lawsuit dismissed on this technical ground on March 17, 2021. Following the lifting of the CVRA timelines, the City’s 45-day safe harbor window started to run on July 1, 2021, and this matter is being brought back to the City Council for consideration in order to meet the 45-day timeline.

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”, without being required to submit the ordinance to the voters for approval. The change must be made in furtherance of the purposes of the California Voting Rights Act.

ANALYSIS

To create districts, five public hearings are required to meet legal requirements:

- Two public hearings to receive public input and discuss composition of the voting districts before proposed district maps can be drawn.
- Two additional public hearings to receive public input on the proposed district maps, with the maps published at least seven days before consideration by the City Council.
- A final public hearing to introduce an Ordinance establishing by-district elections, with the Ordinance taking effect thirty days after the second reading and adoption.

The timeline for the aforementioned events cannot yet be determined since the U.S. 2020 Census data for the City is not yet available. However, the typical framework for the required public hearings and community engagement can be described as follows:

Date	Meeting Type	Public Hearing	Item Topic at Meeting
TBD	Public Hearing	1	Public input on composition of districts (before maps drawn hold 2 public hearings on composition of districts over

			period of no more than 30 days)
TBD	Public Hearing	2	Further public input on composition of districts (must held within 30 days of Public Hearing 1)
TBD	Public Hearing	3	Discussion of proposed district maps and sequence of elections. First draft of map must be published 7 days before Public Hearing No. 3
TBD	Public Hearing	4	Public input and possible revisions to proposed District Map (hold 2 public hearings within 45 days of Public Hearing No. 3)
TBD	Public Hearing	5	Adoption of District Map, transition to district elections Ordinance introduced
TBD	Regular Meeting		Second reading of Ordinance (effective 30 days after)

As directed by the City Council, the City published information regarding CVRA on its website, and mailed 30,836 informational mailers to Folsom residents. In the mailer, there was a request for public feedback, and the City received a total of 474 feedback forms from Folsom residents as follows:

In favor of at-large elections: 295
 In favor of by-district elections: 154
 Undecided: 25

While there is no evidence of “racially polarized voting”, vote dilution, or violation of the CVRA in Folsom Municipal Elections, ultimately the decision to transition to a “by-district” election is one based on financial considerations to avoid paying substantial legal fees and lose local control over the districting process. Voluntarily committing to making a switch to by-district election safeguards the City’s financial resources and maintains local control over how the City’s districts will be drawn.

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, 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 district-based elections meets the above criteria and is not subject to CEQA. No environmental review is required.

ATTACHMENT

Resolution No. 10575 - A Resolution of the City Council of the City of Folsom Declaring Its Intent to Initiate Procedures to Transition from At-Large Elections to District-Based Elections Pursuant to California Elections Code Section 10010 and Authorize Related Actions.

Respectfully submitted,

Steven Wang, City Attorney

RESOLUTION NO. 10575

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FOLSOM DECLARING ITS INTENT TO INITIATE PROCEDURES TO TRANSITION FROM AT-LARGE ELECTIONS TO DISTRICT-BASED ELECTIONS PURSUANT TO CALIFORNIA ELECTIONS CODE SECTION 10010 AND AUTHORIZE RELATED ACTIONS

WHEREAS, members of the City Council of the City of Folsom (“City”) are currently elected in “at-large” elections, in which each councilmember is elected by the registered voters of the entire City without regard to where the candidates reside; and

WHEREAS, throughout California, including in the Sacramento region, litigants are alleging that cities and special districts who conduct at-large elections violate the California Voting Rights Act (“CVRA”), and the City is aware of the threat of litigation if the City does not voluntarily change to a “district-based” system for electing our councilmembers; and

WHEREAS, courts have opined that the CVRA and its goal of preventing voter dilution is a matter of statewide concern and, therefore, applies to charter cities; and

WHEREAS, pursuant to California Elections Code section 14028, a violation of the CVRA may be established if it is shown that racially polarized voting occurs in elections. Pursuant to California Elections Code section 14026(e), “racially polarized voting” is voting in which there is a difference in the choice of candidates that are preferred by voters in a protected class and between the choice of candidates that are preferred by voters in the rest of the electorate; and

WHEREAS, the City Council denies that its election system violates the CVRA or any other provision of law, and 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, the City is committed to diversity and inclusion with respect to its elections; and

WHEREAS, the City Council is aware of the exorbitant cost that multiple cities and other public entities have faced in defending and/or settling CVRA litigation, and the impact that the expenditure of such costs could have on the City’s ability to provide essential services to the City’s residents and businesses; and

WHEREAS, the California Legislature, in amendments to California Elections Code Section 10010, has provided a method whereby a jurisdiction can expeditiously transition to a “district-based” election system and thereby avoid the high cost and risk of litigation under the CVRA; and

WHEREAS, under a “by-district” election system, each City councilmember will be elected only by the voters in the district in which the candidate resides;

WHEREAS, Government Code section 34886 authorizes the City to adopt an ordinance to change to a “by-district” system of electing City Councilmembers without submitting the ordinance to the voters for approval; and

WHEREAS, public interest would be served and the purposes of CVRA would be furthered by the City Council consideration of a proposal to transition to a “district-based” election system because of the uncertainty of litigation and the potential extraordinary cost of defending a CVRA lawsuit, even if the City ultimately were to prevail; and

WHEREAS, prior to the City Council’s consideration of an ordinance to establish district boundaries for a “district-based” election system, California Elections Code Section 10010 requires all of the following:

1. Prior to drawing a draft map or maps of the proposed boundaries of the districts, the City Council shall hold at least two public hearings over a period of no more than 30 days, at which the public will be invited to provide input regarding the composition of the districts.
2. After all maps are drawn, the City shall publish and make available for release at least 1 draft map and, if members of the City Council will be elected in their districts at different times to provide for staggered terms, publish the potential sequence of the elections.
3. The City Council shall also hold at least 2 additional hearings over a period of no more than 45 days, at which the public shall be invited to provide input regarding the content of the draft map or maps and the proposed sequence of elections, if applicable.
4. The first version of a draft map shall be published at least 7 days before consideration at a hearing. If a draft map is revised at or following a hearing, it shall be published and made available to the public for at least 7 days before adoption; and

WHEREAS, the U.S. 2020 Census data needed to develop a proposal for a “district-based” election system is not yet available from the United States Census Bureau; and

WHEREAS, the adoption of a “district-based” election system will not affect the terms of any sitting Councilmember, each of whom will serve out his or her current term.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Folsom as follows:

SECTION 1. The City Council hereby expresses its intent to transition to a “by-district” (district-based) system of election of its five City Councilmembers, as set forth herein.

SECTION 2. The City Council intends to and shall consider adoption of an ordinance to transition to a “by-district” (district-based) election system as authorized by California Government Code Section 34886 for use in the City’s general municipal election for

councilmembers, beginning in November 2022 or the next earliest municipal election if the Sacramento County Voter Registration and Elections Department is unable to implement the new “district-based” election areas for the November 2022 election. The City Council does not, at this time, decide the nature of such “district-based” election. Rather, the details of such system shall be determined only after community outreach and appropriate public hearings.

SECTION 3. The City Council intends to commence the process for drawing of district maps for district boundaries consistent with the procedures set forth in Elections Code section 10010, including the holding of public hearings and meetings as required by Elections Code section 10010 and/or other applicable law, once the U.S. 2020 Census data (California redistricting file) is made available from the United States Census Bureau.

SECTION 5. The City Council directs staff to work with the City’s demographer, and with other appropriate consultants as needed, to provide a detailed analysis of the City’s current demographics and any other information or data necessary to prepare a draft map that divides the City into voting districts in a manner consistent with the intent and purpose of the CVRA and the Federal Voting Rights Act.

SECTION 6. Once the process has been initiated following receipt of the U.S. 2020 Census data (California redistricting file), the City Council directs staff to post or have the demographer post information regarding the proposed transition to a “by-district” (district based) election system, including maps, notices, agendas and other information, to establish a means of communication to answer questions from the public, and to otherwise take the steps necessary to comply with the applicable provisions of the Elections Code.

SECTION 7. As soon as the U.S. 2020 Census data (California redistricting file) is released by the U.S. Census, the City will set forth tentative timelines for conducting a public process to solicit public input and testimony on proposed “district-based” electoral maps before the City Council adopts any such map.

SECTION 8. If any provision or clause of this Resolution is held invalid, unconstitutional, or otherwise repealed by act of law, such invalidity shall not affect any other provisions or clauses of the same which can be given effect without the invalid provision, clause, or application. To this end, the provisions and clauses of this Resolution hereto are declared to be severable.

SECTION 9. This Resolution shall become effective immediately upon its passage and adoption.

PASSED AND ADOPTED this 27th day of July, 2021 by the following roll call vote:

AYES: Councilmember(s):
NOES: Councilmember(s):
ABSENT: Councilmember(s):
ABSTAIN: Councilmember(s):

Michael D. Kozlowski, MAYOR

ATTEST:

Christa Freemantle, CITY CLERK

This page is intentionally left blank.