Folsom City Council
Staff Report

MEETING DATE:	1/9/2024
AGENDA SECTION:	New Business
SUBJECT:	Ordinance No. 1341 - An Ordinance of the City Council of the City of Folsom Repealing Chapter 2.42 of the Folsom Municipal Code Pertaining to Initiative, Referendum and Recall Petitions (Introduction and First Reading)
FROM:	City Attorney's Office

RECOMMENDATION / CITY COUNCIL ACTION

Staff recommends that the City Council introduce and conduct first reading of Ordinance No. 1341 - An Ordinance of the City Council of the City of Folsom Repealing Chapter 2.42 of the Folsom Municipal Code Pertaining to Initiative, Referendum and Recall Petitions.

BACKGROUND / ISSUE

Relying on previous (outdated) sections in the California Elections Code, the Folsom City Council in 1996 added Chapter 2.42, "Initiative, Referendum and Recall Petitions" to the Folsom Municipal Code to regulate circulators gathering signatures for local initiatives, referendum, and recall elections. Chapter 2.42 requires that the circulators be: (1) Folsom residents; (2) registered voters; (3) registered with the Chief of Police; and (4) licensed if they are paid to gather signatures.

Since 1996, several cases and a California Attorney General opinion have made the requirements in Chapter 2.42 unconstitutional and unenforceable:

1. The US Supreme Court in 1998 decided in *Buckley v. American Constitutional Law Foundation* (525 U.S. 182) that the requirement where signature gatherers must be registered voters is unconstitutional.

2. The California Attorney General in 1999 opined that restricting signature gatherers to residents of the city is unconstitutional (82 Ops.Cal.Atty.Gen 250 (1999)).

3. The California Court of Appeals for the Fourth Appellate District in 2008 decided in *Preserve Shorecliff Homeowners v. City of San Clemente* (158 Cal.App.4th 1427) that requiring signature gatherers to reside and be eligible to vote in a city is unconstitutional.

POLICY / RULE

Section 6.01(B) of the City Charter defaults initiatives, referendum and recall procedures to the State law:

> Section 6.01. Election Procedures:
>
> **B. Initiative, Referendum and Recall**. The electors of the City reserve to themselves the powers of initiative and referendum and the recall of elective officers, to be exercised in the manner prescribed by the State Elections Code.

ANALYSIS

The provisions in Chapter 2.42 of the Folsom Municipal Code governing signature gatherers for initiatives, referendum, and recall petitions have been found unconstitutional by courts deciding similar provisions in other cities over the years. The relevant State laws in the California Elections Code have since been updated to conform with court decisions and the State Attorney General's Opinion where signature gatherers no longer must be residents or registered voters of a city.

The City Charter already defaults initiatives, referendum and recall procedures to the State law, which have been updated by the State Legislature to remove the unconstitutional requirements. State law provides detailed procedures, requirements, and safeguards for signature gatherers in Chapter 2, "Petitions and Petition Signers" (Elections Code Sections 100 to 108), and the City does not need to have duplicative provisions in the Folsom Municipal Code that may be confusing or contrary to law.

To avoid confusion, staff respectfully recommend that the City Council introduce and conduct first reading of Ordinance No. 1341 - An Ordinance of the City Council of the City of Folsom Repealing Chapter 2.42 of the Folsom Municipal Code Pertaining to Initiative, Referendum and Recall Petitions.

FINANCIAL IMPACT

This item has no impact on the City's general fund.

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 are otherwise not considered a project as defined by Public Resources Code §21065 and CEQA Guidelines §15060(c)(3) and §15378. This Council action meets the above criteria and is not subject to CEQA. No environmental review is required.

Respectfully submitted,

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Steven Wang, City Attorney

ORDINANCE NO. 1341

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FOLSOM REPEALING CHAPTER 2.42 OF THE FOLSOM MUNICIPAL CODE PERTAINING TO INITIATIVE, REFERENDUM AND RECALL PETITIONS

The City Council of the City of Folsom does hereby ordain as follows:

SECTION 1 PURPOSE

The purpose of this Ordinance is to repeal Chapter 2.42, "Initiative, Referendum and Recall Petitions" in the Folsom Municipal Code to eliminate unconstitutional local laws and conform the initiative, referendum, and recall petition processes with the California Elections Code pursuant to Section 6.01(B) of the City Charter.

SECTION 2 REPEAL TO CODE

Chapter 2.42, "Initiative, Referendum and Recall Petitions" of the Folsom Municipal Code is hereby repealed in its entirety. All proceedings with respect to initiatives, referendum, and recall petitions shall be consistent with the requirements in the California Elections Code.

SECTION 3 SCOPE

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

SECTION 4 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 5 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 January 9, 2024, and the second reading occurred at the regular meeting of the City Council on January 23, 2024.

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 23th day of January, 2024 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

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