



March 23, 2018

TO: LOCSO Board of Directors
FROM: Roy A. Hanley, General Counsel
SUBJECT: Agenda Item 7A – 4/5/2018 Board Meeting
Appointment to Fill Vacancy on Board or Discussion of Method

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DESCRIPTION

Past Board Member Jon-Erik Storm submitted his written resignation from the Board of Directors effective March 20, 2018. The Board of Directors has two choices in regards to the method to fill that vacancy. One choice is to appoint a successor. The second choice is to have a special election. If the Board chooses to appoint a successor, it may do so at this meeting.

STAFF RECOMMENDATION

Staff recommends that the vacancy be filled by appointment, and if the Board agrees, staff recommends a motion as follows:

Motion: I move that the Board fill the current vacancy on the Board of Directors by appointment and that this matter be set on the next regular Board Meeting agenda to make the selection.

Alternatively, if the Board feels ready to make an appointment to fill the vacancy staff recommends a motion as follows:

Motion: I move that the Board fill the current vacancy by appointment and that (insert name of proposed appointee) be appointed to fill the existing unexpired term.

Alternatively, the Board may feel that a special election should be used to fill the vacant seat, and in that event staff recommends a motion as follows:

Motion: I move that the Board set a special election in the time frames provided by law to fill the existing unexpired term.

DISCUSSION

Jon-Erik Storm tendered a written resignation from his position on the Board of Directors effective March 20, 2018. Government Code §61042(c) provides that vacancies on the Board of Directors of the Los Osos Community Services District are to be filled pursuant to Government Code §1780.

Government Code §1780 requires that within 15 days of the effective date of a resignation the District (not the Board of Directors, but the District) post notice of said vacancy in three conspicuous places in the District and that notice of said vacancy be delivered to the elections official. Those two steps have been taken care of by staff.

While Staff may prepare, post and deliver the notice, only the Board of Directors may fill the vacancy. The Board has two choices: (1) it can call a special election for that purpose in the time frame and manner provided by the code; or (2) it may fill the vacancy by appointment. Should the Board of Directors fail to either call an election pursuant to option one and in fact not make an appointment within 60 days of the vacancy (which date would be May 19, 2018) a special election must be called and the option of making an appointment to fill the vacancy is lost.

The time frame to make an appointment is short. The Board meets regularly once a month. There are no mandated legal procedures to follow to make an appointment except for compliance with the Brown Act, and the posted agenda, this staff report and the posted, delivered and circulated notice of vacancy all make clear that while not mandated, the Board may take action at this regular meeting to make an appointment if it chooses to do so. While the District must post notice of the vacancy, there is no requirement that applications be taken and there is no requirement that the appointment be made to any particular person except that they be qualified as if to run for the Board of Directors. Because the time frame is short, and the Board meets regularly on the first Thursday of the month, staff elected to provide the public with the ability to make their desire to receive an appointment known by making application to the District. The Board, should it elect to fill by appointment, is not required to appoint only from persons that have delivered an application. The Board is also not required to make an appointment at the meeting of April 5, 2018. The Board may delay making the appointment to the next regular meeting in May, or indeed to a special meeting set for that purpose at any time on or before May 19, 2018. The Board may also choose a procedure to follow in terms of seeking more applications and direct staff as to same.

The law does not set any preferences that must be given in making an appointment. While Board members may consider a person's service on advisory bodies, service to the community, and even having stood for election for the Board of Directors previously, the law does not require any such consideration and does not require any preference for such prior activities. The Board, collectively, is free to make an appointment by a 3-1 vote and individual Board members may cast their vote on any motion to appoint for any reason they deem fit.

FINANCIAL IMPACT

There is financial impact from a decision to go to a special election. This would likely be a stand-alone election and the District would have to pay the entire cost of it. The General Manager has contacted the elections office for an estimate, and has not heard back at the time of preparation of this staff report. It is not unreasonable to assume that it could cost \$40,000.00 or more.