



June 4, 2020

TO: LOCSO Board of Directors
FROM: Ron Munds, General Manager
Jeff Minnerly, District Legal Counsel

SUBJECT: Agenda Item 6J – 6/4/2019 Board Meeting
Resolution of the Board 2020-10 to Amend Section 3 of Resolution 2019-08 to Resolve the Election Term Variance Created By the 2018 Election.

President
Charles L. Cesena

Vice President
Christine M. Womack

Directors
Matthew D. Fourcroy
Vicki L. Milledge
Marshall E. Ochylski

General Manager
Ron Munds

District Accountant
Robert Stilts, CPA

Unit Chief
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DESCRIPTION

After the November 2018 election, it was discovered that there was an inadvertent error when determining the length of the term of office remaining by the Board of Director seat vacated by Jon-Erik Storm. This led to confusion on the status of the seat which was resolved by the District's Board at their February 7, 2019 meeting with adoption of Resolution 2019-08. With the upcoming November 2020 election approaching, this report explains the necessary action needed to synchronize the election sequence for the seat currently held by Director Womack.

STAFF RECOMMENDATION

This item will be approved along with the Consent Calendar unless it is pulled by a Director for separate consideration. If so, Staff recommends that the Board adopt the following motion:

Motion: I move that the Board adopt Resolution No. 2020-10 to ratify Resolution 2019-08 with the amendment to Section 3 regarding Board Member term.

DISCUSSION

After the November 2018 election it was discovered that the seat vacated by Jon-Erik Storm should have been for a four year term instead of two. To resolve this issues, at the February 7, 2019 Board meeting, the Board adopted Resolution 2019-08 (attached) which confirmed the seating of Director Womack to a two year term ending upon the qualification and seating of a successor at the November 2020 election. In Section 3 of the resolution, it is stated that the seating of the successor will be for a four year term.

After discussing the upcoming election with the Clerk-Recorder, Tommy Gong, it was agreed that the action taken by the Board in 2019 disrupts the sequencing of the terms for the five director seats as established when the District was formed in 1999. To correct the quandary, staff and District Counsel is recommending that the Board adopt Resolution 2020-10 amending Section 3 to state the following:

SECTION 3. While the Board concludes that no vacancy exists on the Board, in the alternative and if a competent court concludes otherwise, the Board of Directors hereby reappoints Christine M. Womack to a vacancy on the Los Osos Community Services District Board of Directors, ending upon the qualification and seating of a successor at the November 2020 election for a ~~four~~two-year term.

Assuming the resolution is adopted, the seat will then be back on schedule as a four-year term position for the November 2022 election.

Attachment: Resolution 2019-08
Resolution 2020-10

RESOLUTION NO. 2019-08

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE LOS OSOS COMMUNITY SERVICES DISTRICT
AFFIRMING THAT DIRECTOR CHRISTINE WOMACK IS A LAWFUL MEMBER OF THE
BOARD OF DIRECTORS FOR A TWO-YEAR TERM EXPIRING UPON THE QUALIFICATION
AND SEATING OF HER SUCCESSOR AFTER THE NOVEMBER 2020 ELECTION**

WHEREAS, under the Uniform District Elections Law, Elections Code section 10501 et seq., the San Luis Obispo County Registrar-Recorder conducts elections for the Los Osos Community Services District (the "District").

WHEREAS, on April 5, 2018, the District's Board of Directors (the "Board") appointed Christine Womack to a vacancy on the Board with a term to last until the qualification and seating of a successor after the November 2018 election.

WHEREAS, on May 17, 2018, the San Luis Obispo County Clerk-Recorder notified the District that the November 2018, election would contest three, four-year District Boards terms.

WHEREAS, on June 8, 2018, the District confirmed to the Clerk-Recorder that three, four-year term Board seats would be contested at the November 2018 election.

WHEREAS, on July 18, 2018, the Clerk-Recorder erroneously published a Notice of Election stating that two, four-year term and one, two-year term on the District Board would be contested at the November 2018 election. The Clerk-Recorder provided a copy of that notice to the District on July 26, 2018.

WHEREAS, upon receipt of erroneous notice, the Assistant Clerk-Recorder informed the District General Manager that the Clerk-Recorder had determined that a short, two-year term should be contested because one seat was then held by an appointed incumbent. District staff, relied on this decision and posted the notice of election, as Elections Code section 12113 requires.

WHEREAS, several candidates timely filed to run for the four-year terms, but none filed for the two-year term. On August 9, 2018, the Clerk-Recorder notified Director Womack he would accept her requested ballot designation of "Appointed Incumbent" only if she ran for the two-year term. Director Womack accepted this decision and authorized the Clerk-Recorder's changes to her Declaration of Candidacy form to that effect.

WHEREAS, only Director Womack timely filed to run for the two-year term. As Elections Code section 10515 required, the San Luis Obispo County Board of Supervisors appointed Director Womack to the Board on November 6, 2018.

WHEREAS, after the election, the Clerk-Recorder's earlier errors were recognized and the Clerk-Recorder stated the District must determine how to proceed and opined that the Board of Supervisors' November 6, 2018 appointment of Director Womack was invalid. On November 20, 2018, the San Luis Obispo County Board of Supervisors adopted Resolution No. 2018-289 purporting to rescind that appointment.

WHEREAS, the Clerk-Recorder and Board of Supervisors' are unauthorized to adjust Directors' terms. Government Code section 61042, subdivision (a) defines Directors' terms as four years.

WHEREAS, a Director, once appointed or elected, serves until the qualification and seating of a successor under Government Code section 61042, subdivision (a). Accordingly, Director Womack holds office under this statute by her April 5, 2018 appointment until a successor is qualified and takes the seat.

WHEREAS, Elections Code section 10515 required the Board of Supervisors' November 6, 2018 appointment of Director Womack. Director Womack thereafter holds the office as if she had been elected to it under subdivision (a) of that statute. Nothing in that section authorizes the Board of Supervisors to rescind an appointment once made. Other than by recall, an appointed or elected official may be removed from office only a court acting in quo warranto under Government Code section 1770, subdivision (j).

WHEREAS, under these statutes, Director Womack was lawfully appointed on November 6, 2018 to, and currently holds, a two-year term, ending upon the qualification and seating of a successor at the November 2020 election not because the Board of Supervisors or County Registrar had the legal power to alter her term, but because she sought a two-year term and she, other candidates contested the election, and voters shared, an understanding that her term would be two years. The Board of Supervisors' rescinding of Director Womack's appointment was unauthorized and therefore had no effect. If it had, however, a vacancy would exist which the District Board may fill by appointment under Government Code, sections 1780 and 61042, subdivision (c).

NOW THEREFORE, THE BOARD OF DIRECTORS OF THE LOS OSOS COMMUNITY SERVICES DISTRICT DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The foregoing recitals are true and correct, and incorporated by reference as if set forth herein.

SECTION 2. Director Christine M. Womack was lawfully appointed on November 6, 2018 by the San Luis Obispo County Board of Supervisors under Elections Code section 10515 and Government Code section 61042, subdivision (a) to a two-year term on the Los Osos Community Services District Board of Directors, ending upon the qualification and seating of a successor at the November 2020 election.

SECTION 3. While the Board concludes that no vacancy exists on the Board, in the alternative and if a competent court concludes otherwise, the Board of Directors hereby reappoints Christine M. Womack to a vacancy on the Los Osos Community Services District Board of Directors, ending upon the qualification and seating of a successor at the November 2020 election for a four-year term.

SECTION 4. This Resolution shall take effect immediately and the District's Board Secretary shall certify to the adoption of this Resolution.

On the motion of Director Ochylski, seconded by Director Fourcroy
and on the following roll call vote, to wit:
Ayes: Ochylski, Fourcroy, Milledge, Casanova
Nays: _____
Absent: _____
Conflicts: Womack

The foregoing resolution is hereby passed, approved, and adopted by the Board of Directors of the Los Osos Community Services District this 7th day of February 2019.

Marshall E. Ochylski
Marshall E. Ochylski
President, Board of Directors
Los Osos Community Services District

ATTEST:

Renee Osborne
Renee Osborne
General Manager and Secretary to the Board

APPROVED AS TO FORM:

Roy A. Hanley
Roy A. Hanley
District Legal Counsel

RESOLUTION NO. 2020-10

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE LOS OSOS COMMUNITY SERVICES DISTRICT
RATIFYING AND AMENDING RESOLUTION NO. 2019-08**

WHEREAS, on February 7, 2019, the Los Osos Community Services District (the "District") Board of Directors (the "Board") adopted Resolution 2019-08 regarding the appointment of Christine Womack to fill a vacancy on the Board.

WHEREAS, Section 3 of Resolution 2019-08 provides that Christine M. Womack shall serve on the Board until the qualification and seating of a successor at the November 2020 election for a four-year term.

WHEREAS, upon further investigation and discussions with the San Luis Obispo County Clerk-Recorder, it has become evident that Ms. Womack's tenure on the Board should be followed by a two-year term and not a four-year term.

WHEREAS, the Board desires to ratify Resolution 2019-08 with an amendment to Section 3 as provided herein.

NOW THEREFORE, THE BOARD OF DIRECTORS OF THE LOS OSOS COMMUNITY SERVICES DISTRICT DOES HEREBY RESOLVE AS FOLLOWS:

- 1. Section 3 of Resolution 2019-08 is revised and amended as follows:

SECTION 3. While the Board concludes that no vacancy exists on the Board, in the alternative and if a competent court concludes otherwise, the Board of Directors hereby reappoints Christine M. Womack to a vacancy on the Los Osos Community Services District Board of Directors, ending upon the qualification and seating of a successor at the November 2020 election for a ~~four~~two-year term.

- 2. Except as specifically amended, the Board ratifies and affirms Resolution 2019-08.

On the motion of Director _____, seconded by Director _____, and on the following roll call vote, to wit:

Ayes: _____

Nays: _____

Absent: _____

Conflicts: _____

The foregoing resolution is hereby passed, approved, and adopted by the Board of Directors of the Los Osos Community Services District this 4th day of June, 2020.

Charles L. Cesena
President, Board of Directors
Los Osos Community Services District

ATTEST:

APPROVED AS TO FORM:

Ron Munds
General Manager and Secretary to the Board

Jeff Minnery
District Legal Counsel