



Local Agency Formation Commission of Napa County
Subdivision of the State of California

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We Manage Local Government Boundaries, Evaluate Municipal Services, and Protect Agriculture

Agenda Item 7d (Action)

TO: Local Agency Formation Commission

PREPARED BY: Brendon Freeman, Executive Officer

MEETING DATE: December 4, 2017

SUBJECT: Expiring Public Member Term

RECOMMENDATION

It is recommended the city and county members provide direction to the Executive Officer to initiate an open recruitment for the Public Member position currently held by Brian J. Kelly and schedule a future hearing date to consider the appointment of a Public Member.

BACKGROUND

California Government Code Section 56325(d) states the composition of LAFCOs shall include one member representing the general public, referred to as the “Public Member”. This statute also states that LAFCOs may designate one Alternate Public Member. The Public Member and Alternate Public Member are each appointed to four-year terms and by statute cannot be officers or employees with local governmental agencies. Additionally, to be appointed, the Public Member and Alternate Public Member must receive at least one vote from each a county and city member.

The Commission’s *Policy on the Appointment of a Public Member and Alternate Public Member* (“the Policy”) was adopted in October 2001 and most recently amended in April 2008 (Attachment One). The Policy directs the Executive Officer to notify the Commission no less than 120 days prior to an impending vacancy and whether the incumbent is eligible to seek reappointment. Upon notification, the Commission must direct the Executive Officer to (a) recruit candidates and schedule a hearing to make an appointment or (b) schedule a hearing to expedite the reappointment of the incumbent if they are eligible and have served no more than all, or a portion of, one term.

Commissioner Brian J. Kelly’s term as Public Member expires on Monday, May 7, 2018. The Commission originally appointed Commissioner Kelly as Public Member beginning in May 2006 to fill former Commissioner Guy Kay’s expired term. The Commission reappointed Commissioner Kelly to new four-year terms as Public Member beginning May 2010 and May 2014.

Vacant, Commissioner
Councilmember, City of Napa

Margie Mohler, Commissioner
Councilmember, Town of Yountville

Kenneth Leary, Alternate Commissioner
Councilmember, City of American Canyon

Brad Wagenknecht, Chair
County of Napa Supervisor, 1st District

Diane Dillon, Commissioner
County of Napa Supervisor, 3rd District

Ryan Gregory, Alternate Commissioner
County of Napa Supervisor, 2nd District

Brian J. Kelly, Vice Chair
Representative of the General Public

Gregory Rodeno, Alternate Commissioner
Representative of the General Public

Brendon Freeman
Executive Officer

DISCUSSION

Commissioner Kelly is eligible to seek reappointment under Commission policy. This includes being a resident of Napa County while not being employed by a local public agency or serving as a member on a local public body with the authority to make advisory or final decisions relative to land use or the provision of municipal services. However, because he has served more than one full term as Public Member, Commissioner Kelly is not eligible for an expedited reappointment; the Commission must open the recruitment and appointment process to the general public.

It is important to note Commissioner Kelly has communicated to the Chair and the Executive Officer that he will not seek reappointment as Public Member. Therefore, it is recommended the Commission consider providing direction to the Executive Officer with respect to organizing the recruitment and appointment process. This may involve outreach efforts and/or scheduling interviews with candidates in a manner that is not contemplated in the adopted Policy.

ALTERNATIVES FOR COMMISSION ACTION

Staff has identified two alternatives for Commission consideration.

Alternative Action One (Recommended):

Direct the Executive Officer to initiate an open recruitment for the Public Member position and schedule a future public hearing date consistent with the procedures identified in the Policy. The Commission may provide additional direction as desired with respect to organizing the recruitment and appointment process.

Alternative Action Two:

Continue consideration of the item to a future meeting and direct staff to provide additional information as necessary.

ATTACHMENT

- 1) Policy on the Appointment of a Public Member and Alternate Public Member



LOCAL AGENCY FORMATION COMMISSION OF NAPA COUNTY

Policy on the Appointment of a Public Member and Alternate Public Member

(Adopted: October 11, 2001; Last Amended: April 7, 2008)

Authority

California Government Code Section 56325(d) states the composition of the Commission shall include one member representing the general public, hereinafter referred to as “public member.” This code section also states that the Commission may designate one alternate public member. The selection of the public member and alternate public member shall be subject to the affirmative vote of at least one of the members appointed by each of the Board of Supervisors and City Selection Committee.

Eligibility

The public member and alternate public member shall be a resident of Napa County. No person may serve as public member or alternate public member if at the same time he or she is an officer or employee of a local public agency. No person may also serve as public member or alternate public member if he or she is member of a local public board, commission, or committee with the authority to make advisory or final decisions relative to land use or the provision of municipal services.

Term of Office

The term of office for public member and alternate public member shall be four years and shall end on the first Monday in May of the year in which the term expires. The public member and alternate public member shall continue to serve until his or her successor is appointed.

Appointment Procedures

New Term for Public Member or Alternate Public Member

It is the policy of the Commission that in anticipation of the expiration of a four-year term for the public member or alternate public member, the following procedures will be taken:

1. At a regular meeting no less than 120 days prior to the scheduled expiration of public member or alternate public member’s term, the Executive Officer shall inform the Commission of the impending vacancy and whether the incumbent is eligible to seek reappointment. The Commission shall take either of the following two actions set forth in 1.a) or 1.b).
 - a) Direct the Executive Officer to recruit candidates and schedule a hearing date to consider making an appointment to the position. Tasks of Executive Officer shall include, but not limited to, the following:

- i) Issue a notice announcing the vacancy and that the Commission is accepting applications for the position no less than 60 days prior to the scheduled hearing for the appointment. The notice shall be posted at the LAFCO office and on its website, sent to all local agencies, and published in the Napa Valley Register.¹ The notice shall indicate if the incumbent is eligible for reappointment.
 - ii) Determine the filing period to receive applications for the position. All applications shall be made available to each city and county member on the Commission no less than 14 days prior to the scheduled hearing for the appointment.
 - iii) If it becomes necessary for the Commission to cancel or reschedule the meeting at which the hearing for the appointment has been scheduled, the Executive Officer shall reschedule the hearing for the next regular meeting.
- b) If the incumbent is eligible and has served no more than all or a portion of one term, the Commission may direct the Executive Officer to schedule a public hearing to consider approving reappointment. Tasks of Executive Officer shall include, but not limited to, the following:
- i) Issue a notice announcing the scheduled reappointment of the incumbent. The notice shall be posted at the LAFCO office and on its website and sent to all local agencies. The notice shall be posted no less than 21 days prior to the hearing for which the reappointment has been scheduled.
 - ii) If it becomes necessary for the Commission to cancel or reschedule the meeting at which the hearing for the reappointment has been scheduled, the Executive Officer shall reschedule the hearing for the next regular meeting.

Mid-Term Vacancy for Public Member

If the position of public member becomes vacant prior to the expiration of the term, it is the policy of the Commission that it may fill the unexpired term through one of the following:

1. Choose from among the remaining applicants for the position if no more than 12 months have passed since the appointment of the public member.
2. Appoint the alternate public member.
3. Fill the position in the manner prescribed for the appointment for a public member to a new term.

An appointment to fill an unexpired term shall be preceded by posting a notice of vacancy. The notice will be posted at the LAFCO office and on its website and sent to all local

¹ For purposes of this policy, notice to local agencies is fulfilled by sending a copy of the notice to the clerk or secretary of the legislative body of each local agency in Napa County.

agencies. The notice will be posted no less than 21 days prior to the meeting at which time the Commission will consider taking action to fill the unexpired term.

Mid-Term Vacancy for Alternate Public Member

If the position of alternate public member becomes vacant prior to the expiration of the term, it is the policy of the Commission that it may fill the unexpired term through one of the following:

1. Choose from among the remaining applicants for the position if no more than 12 months have passed since the appointment of the alternate public member.
2. Fill the position in the manner prescribed for the appointment of an alternate public member to a new term.

An appointment to fill an unexpired term shall be preceded by posting a notice of vacancy. The notice will be posted at the LAFCO office and on its website and sent to all local agencies. The notice will be posted no less than 21 days prior to the meeting at which time the Commission will consider taking action to fill the unexpired term.

Conducting Public Hearings for Appointing a Public Member or Alternate Public Member

It is the policy of the Commission that a public hearing to appoint either the public member or alternate public member shall be conducted as follows:

1. The Chair shall open the public hearing and first invite candidates to address the Commission. The Chair shall then invite public comments from the audience.
2. Upon the close of the public comment period, the Chair shall ask each commissioner to make one nomination. Commissioners may nominate anyone from the applicant pool, and an applicant may receive more than one nomination.
3. After each commissioner has made a nomination, the Chair shall ask if there is a second to any of the nominations. If there is a second, the Chair shall call for a vote on that nomination. If the vote is in the affirmative, the appointment is made. If the vote is not in the affirmative, the Chair shall call for a second to another of the nominations. This process shall continue until an appointment is made or all of the nominations are exhausted.
4. If all of the nominations are exhausted, the Chair may 1) begin the entire procedure again by calling for one nomination from each commissioner or 2) call for the use of the ballot system as described in Paragraph 5.
5. If the Chair calls for use of a ballot system, then the Clerk shall provide each commissioner with a ballot that has been preformatted to label their printed name. Each commissioner shall mark the ballot with the name of a candidate from

among the applicants. The ballots are then submitted to the Clerk for tabulation. The Clerk determines the number of votes for each candidate. If a candidate receives at least three votes, the Clerk announces the name of the candidate and the number votes. The Commission then formally votes to appoint that candidate. If no candidate receives at least three votes, the Clerk shall announce which candidates received votes and shall provide each commissioner with a second ballot that has been preformatted to label their printed name. Each commissioner shall mark the ballot with the name of candidate from among those candidates that received votes in the previous round of voting. The ballots are then submitted to the Clerk for tabulation. The Clerk determines the number of votes for each candidate. If a candidate receives at least three votes, the Clerk announces the name of the candidate and the number votes. The Commission then formally votes to appoint that candidate. If no candidate receives at least three votes, the Clerk shall announce which candidates received votes and the Commission shall engage in another round of voting. This shall continue until a candidate is selected.

As mentioned, California Government Code Section 56325(d) specifies that the appointment of a public or alternate public member requires the vote of at least one commissioner appointed by the Board of Supervisors and one commissioner appointed by the City Selection Committee. If a candidate receives at least three votes, this requirement is fulfilled.