

MONTEREY COUNTY



OFFICE OF THE COUNTY COUNSEL

MEMORANDUM

DATE: May 11, 2021

TO: Board of Supervisors

FROM: Leslie J. Girard, County Counsel

SUBJECT: East Garrison Community Services District Election to Determine if the Board of Directors is Directly Elected.

INTRODUCTION

This memorandum addresses the timing of an election to determine if the Board of Directors of the East Garrison Community Service District ("District"), currently the Board of Supervisors, should be directly elected.

QUESTION PRESENTED

When may or must the election occur to determine if the Board of Directors of the District is directly elected?

SHORT ANSWER

The Board of Supervisors has discretion to determine when the election, which is a special election, should be held, whether in 2021 or 2022, but it must be on election dates established in the Elections Code. If the election is held in 2022, either the by-laws of the District must be amended to provide that the initial terms be one and three years rather than two and four, in order to align general District elections with odd-numbered years as required by the Community Services District Law ("CSD Law"), or the Board of Supervisors must determine that general District elections be held on and consolidated with the statewide general election held in even-numbered years.

BACKGROUND

The formation, governance and powers of a Community Services District are generally set forth in the CSD Law, Division 3 of Title 6 of the Government Code (Section 61000 et seq.). The District was formed in October of 2005, and Government Code section 61029.5 provides that the Board of Directors of the District is the Board of Supervisors until conversion to a directly elected board. The Board of Supervisors is directed to place the question of whether to have a directly elected board on a ballot upon the happening of one of four events: (1) the registrar of voters certifies that the number of voters in the District has reached or exceeded 500; (2) the registrar of voters certifies that the number of voters in District has reached or exceeded a lower number specified

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by the Local Agency Formation Commission as a term and condition of approving the formation of the District; (3) ten years after the effective date of the District's formation; or (4) the Local Agency Formation Commission has required, as a term and condition of approving the formation of the District, placing the question of having an elected board of directors on the ballot in less than 10 years after the effective date of the District's formation. There is no specific time set forth in the statute for when the election is to occur. The election will have two parts: a) should the Board of Directors be directly elected; and, b) election of Directors. The election of Directors will be effective only if the first question is passed. The first threshold, number of registered voters, has been met, triggering the requirement for the election.

Except as may be set forth in the CSD Law, elections for the District are governed by the Uniform District Election Law, Part 4 of Division 10 of the Elections Code (Section 10500 et seq.), and other provisions of the Elections Code. Pursuant to Elections Code section 1400, a District special election may be held on any of the election dates set forth in the Elections Code, which includes "[t]he first Tuesday after the first Monday in November of each year." Elections Code section 1303 provides that general District elections for Directors must be in the odd-numbered years.¹ Directly elected directors take office at noon on the first Friday in December following their election.

By Resolution No. E/G 06-002, adopted by the Board of Supervisors acting as the Board of Directors of the District on March 14, 2006, by-laws for the District Board were approved. Section 2.03 of the by-laws provides for the initial election of a directly elected Board, and creates two classes of directors; one to be initially elected for terms of two years, and the other to be elected for terms of four years. Thereafter, all terms will be four years. A copy of the by-laws is enclosed as Attachment 1.

ANALYSIS

Because the time for holding the EGCS D election is not specifically set forth, it is by definition a "special election." Elections Code section 356.² As a special election, the California Voter Participation Rights Act ("Act") (Elections Code section 14050 et seq.)³

¹ That section provides in relevant part: "(a) Unless the principal act of a district provides that an election shall be held [on a different specified date], a general district election to elect members of the governing board shall be held in each special district subject to [the Uniform District Election Law] on the first Tuesday following the first Monday in November of each odd-numbered year."

This requirement does not apply when the Board of Supervisors is acting as the Board of Directors because Supervisors are elected in even-numbered years. Accordingly, this requirement will apply when Directors are directly elected, unless modified as set out later in this memorandum.

² That section provides: "'Special election' is an election, the specific time for the holding of which is not prescribed by law."

³ Generally, the Act provides that local elections must be consolidated with statewide elections when voter turnout at a prior non-consolidated local election resulted in a

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does not apply. Elections Code section 14056.⁴ Nevertheless, as mentioned above, Elections Code section 1400 provides that a District special election may be held on any of the designated election dates set forth in the Elections Code. These include:

- (a) The first Tuesday after the first Monday in March of each even-numbered year that is evenly divisible by four.
- (b) The first Tuesday after the first Monday in March of each odd-numbered year.
- (c) The second Tuesday of April in each even-numbered year.
- (d) The first Tuesday after the first Monday in June in each even-numbered year that is not evenly divisible by four.
- (e) The first Tuesday after the first Monday in November of each year.

In addition, the Elections Code establishes the following as statewide elections dates:

- (a) An election held in November of an even-numbered year.
- (b) An election held in June of an even-numbered year that is not evenly divisible by four and in March of each even-numbered year that is evenly divisible by four.

Thus, the Board of Supervisors may set the special election for the District on any of these established election dates; however, if set in 2022, the by-laws of the District must be amended to provide that the initial terms of the two classes of directly elected directors be one and three years, respectively, so as to align with the odd-numbered year requirement for general District elections (no such change is necessary if the election is held in 2021).

Alternatively, if the Board desires to set the election in 2022, and rather than amend the by-laws, it can provide that District elections be held in even-numbered years. Both the CSD Law and various provision of the Elections Code provide that District elections may be held on and consolidated with the statewide general election, which is held on the first Tuesday after the first Monday in November of each even-numbered year. See e.g. Elections Code section 10404, Government Code section 61008 (b). To do so, when the election for 2022 is called, the Board of Supervisors, acting as the Board of Directors, must request the Board of Supervisors to make that change. The Board of Supervisors, acting for the County, must then approve that change. There are some procedural steps to take, which are laid out in Elections Code section 10404, a copy of which is enclosed as Attachment 2.

CONCLUSION

The Board of Supervisors has discretion to set the special election to determine if directors of the District are directly elected; however, it must be set on one of the

significant reduction in voter turnout (as defined).

⁴ That section provides: "This chapter [the Act] does not apply to special elections."

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specified election dates in the Elections Code. If set in 2022, either the by-laws of the District must be amended or the Board of Supervisors must set the general elections for the District to be held on and consolidated with the statewide general election in even-numbered years.



Leslie J. Girard
County Counsel

LJG:ljb
Enclosures (2)
cc: Claudio Valenzuela, Registrar of Voters
Randy Ishii, PWFP Director
Anne Brereton, Deputy County Counsel
Kristi Markey, Deputy County Counsel

ATTACHMENT 1

**Board of Directors of the
East Garrison Community Services District**

Resolution No: E/G 06-002

Adopt By-Laws for the East Garrison)
Community Services District.....)

WHEREAS, the East Garrison Community Services District ("EGCSD") has organized itself under the Community Services District Law (Government Code Sections 61000 et seq.); and

WHEREAS, the Board of Supervisors of the County of Monterey has appointed the Board of Directors of the EGCSD pursuant to Government Code Section 61029.5; and

WHEREAS, Government Code Section 61045(f) requires the EGCSD to establish rules or bylaws for the conduct of its business;

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

Section 1. The Bylaws of the East Garrison Community Services District (Bylaws), in the form attached hereto and incorporated herein by reference, are hereby adopted.

PASSED AND ADOPTED this 14th day of March, 2006, by the following vote, to wit:

AYES: Supervisors Armenta, Calcagno, Potter and Smith

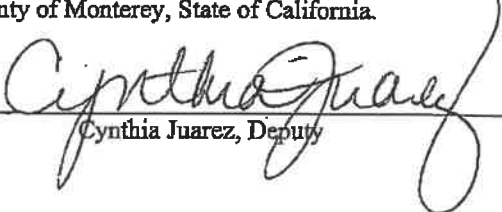
NOES: None

ABSENT: Supervisor Lindley

I, Lew C. Bauman, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the forgoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof Minute Book 73, on March 14, 2006.

Dated: March 14, 2006

LEW C. BAUMAN, Clerk of the Board of Supervisors,
County of Monterey, State of California.

By 
Cynthia Juarez, Deputy

BYLAWS OF THE
EAST GARRISON COMMUNITY SERVICES DISTRICT

THE DISTRICT

Section 1.01. Name of District. The official name of the District shall be the "East Garrison Community Services District".

Section 1.02. Seal of District. The seal of the District shall be in the form of a circle and shall bear the name of the District and the year of its organization.

Section 1.03. Office of District and Place of Meeting. The office of the District shall be at 168 West Alisal Street, Salinas, California, or as designated by resolution. There is currently no facility within the District boundary where meetings of the Board of Directors (Board) may be held. Therefore, the District meetings shall be held in the Monterey County Board of Supervisors Chambers, 168 West Alisal Street, Salinas, California, until the Board designates a location within the District boundary to meet. This is the closest meeting facility outside of the District, as is required by the Ralph M. Brown Act (the "Brown Act", Gov. Code, § 54950 et seq.).

Section 1.04. Powers. The powers of the District shall be vested in the Board thereof then in office, who reserve unto themselves the right to delegate by resolution such powers as are appropriate and permissible by law.

ARTICLE 2. DIRECTORS

Section 2.01. Directors. A legislative body of five members known as the Board shall govern the District.

Section 2.02. Term of Office. The term of office of each member of the Board is four years or until his or her successor qualifies and takes office. Members of the Board shall take office as provided by the Community Services District Law (Government Code Section 61000 et seq.).

Section 2.03. Election. So long as the Monterey County Board of Supervisors serves as the Board, the election of members of the Board shall be governed as they would be for the County Board of Supervisors. When the conversion to a directly elected independent Board is accomplished under Government Code Section 61029.5, elections will be conducted pursuant to state law. Members of the Board shall be classified into two classes. One class shall have three members and the other class shall have two members. For the class that has three members, the terms of office that begin after the first general District election pursuant to Government Code Section 61029.5 shall be four years. For the class that has two members, the initial terms of offices that begin after the first general District election pursuant to Government Code Section 61029.5 shall be two years. Thereafter, the terms of all members shall be four years.

Section 2.04. Compensation. Members of the Board shall receive such compensation as the Board prescribes, but said compensation shall not exceed what is permissible under the Community Services District Law, currently One hundred Dollars (\$100.00) per member for each meeting of the Board attended by the member, provided no member shall receive compensation for attending more than six (6) meetings of the Board during any calendar month. In addition, members shall receive their actual and necessary expenses, including traveling expenses incurred in the discharge of their duties, in accordance with Government Code Section 61047.

Section 2.05. Vacancies. Any vacancy in the office of a member elected to the Board shall be filled pursuant to Government Code Section 1780.

ARTICLE 3. BOARD AND DISTRICT OFFICERS; POWERS

Section 3.01. Officers. The officers of the Board shall be a President and Vice President. Until conversion to a directly elected Board, the Board shall elect a President and Vice President annually. District officers shall be a General Manager and a Treasurer.

Section 3.02. President. The Board shall elect a President of the District within 45 days after each general election. The President shall serve until the following general election, at which point the Board shall either elect a new President within 45 days or re-elect the incumbent. The President shall preside at all meetings of the Board. Except as otherwise authorized by resolution of the Board or the provisions of these Bylaws, the President shall sign all contracts, deeds and other instruments made by the District.

Section 3.03. Vice President. The Board shall elect a Vice President within 45 days after each general election. The Vice President shall serve until the following general election, at which point the Board shall either elect a new Vice President within 45 days or re-elect the incumbent. The Vice President shall perform the duties of the President in the absence or incapacity of the President. In case of the resignation or death of the President, the Vice President shall perform such duties as are imposed on the President until such time as the Board shall elect a new President.

Section 3.04. General Manager. The Board shall appoint a General Manager, who shall serve at the pleasure of the Board. The General Manager shall have general supervision over the administration of District business and affairs, including the supervision of District facilities, services, and finances, subject to the direction of the Board. The General Manager shall be responsible for the appointment, supervision, discipline, and dismissal of the District's employees, consistent with the District's employee relations system.

Section 3.05. Treasurer. The County Treasurer shall serve as the Treasurer of the District. If the Board designates an alternative depository pursuant to Government Code Section 61053, the Board shall appoint a District Treasurer, who shall serve at the pleasure of the Board.

Section 3.06. Clerk. The Board shall appoint a Clerk, who shall serve at the pleasure of the Board. The Clerk shall keep the records of the District, act as secretary at meetings of the Board, record all votes and keep a record of the proceedings of the Board in a journal of proceedings to be kept for such purpose, and perform all duties incident to the Clerk's office.

Section 3.07. Counsel. The Board shall engage legal Counsel, who shall serve at the pleasure of the Board. Counsel shall be responsible for the preparation of all proposed resolutions, laws, rules, contracts, bonds and other legal papers for the District. Counsel shall give advice or opinions in writing to the President or other Board or District officers whenever requested to do so. Counsel shall attend to all suits and other matters to which the District is a party or in which the District may be legally interested and provide such other legal services as the Board may request.

Section 3.08. Compensation. The Board shall set the compensation, if any, of all Board and District officers and employees, provided that no compensation for President or Vice President may be in excess of the limits in Section 2.04 of this Article.

Section 3.09. Additional Duties. The officers of the Board and the District shall perform such other duties and functions as may from time to time be required by the Board or the Bylaws or rules of the District.

Section 3.10. Absences and Vacancies. In the temporary absence of the President and Vice President, the Board shall elect a member present as temporary President for the purpose of conducting meetings and performing the duties of the President.

ARTICLE 4. MEETINGS

Section 4.01. Meetings. The Secretary shall give notice of, and the Board shall conduct, regular or special meetings in accordance with the Brown Act and the Community Services District Law. The day, time, and location of regular meetings of the Board shall be as set forth by Resolution.

Section 4.02. Right of Public to Appear and Speak. At every regular meeting, members of the public shall have an opportunity to address the Board on matters within the District's subject matter jurisdiction. Except for matters scheduled for formal public hearing, public input and comment on matters on the agenda, as well as public input and comment on matters not otherwise on the agenda, shall be made during the time set aside for public comment provided, however, that the Board may provide that public input and comment on matters on the agenda be heard when the matter regularly comes up on the agenda.

The President or presiding officer may limit the total amount of time allocated for public discussion of particular issues and the time allocated for each individual speaker.

Section 4.03. Non-Agenda Items. Matters brought before the Board at a regular meeting that were not placed on the agenda of the meeting shall not be acted upon by the Board at that meeting unless action on such matters is permissible pursuant to the Brown Act. Those non-agenda items brought before the Board that the Board determines will require Board consideration and action and where Board action at that meeting is not so authorized shall either be placed on the agenda for the next regular meeting or referred to staff as directed by the President or the presiding officer.

Section 4.04. Quorum. Three (3) members of the Board shall constitute a quorum for the purpose of conducting District business, exercising District powers and for all other purposes, but a smaller number may adjourn from time to time until the quorum is obtained. Every official act of the Board shall be adopted by a majority vote. A majority vote shall mean a majority of the total membership of the Board, except as otherwise specifically provided by law.

Section 4.05. Order of Business. At the regular meetings of the Board, the following shall be the order of business provided, however, that the President may address items out of order for the efficient conduct of the meeting:

- I. Roll call;
- II. Approval of the minutes of the previous meeting;
- III. Public communications and comment;
- IV. Bills and correspondence;
- V. Acknowledgments, awards and announcements;
- VI. Business items and matters; and
- VII. Adjournment.

All resolutions shall be in writing and designated by number, reference to which shall be inscribed in the Minutes and an approved copy of each resolution filed in the official book of resolutions of the Board.

Section 4.06. Manner of Voting. The Board shall act only by ordinance, resolution or motion. The minutes of the Board shall record the ayes, noes and members present not voting for the passage of all ordinances, resolutions or motions.

ARTICLE 5. AMENDMENTS

Section 5.01. The Board may amend these Bylaws at any regular or special meeting by majority vote provided that no such amendment shall be adopted unless at least seven (7) days

written notice thereof has been previously given to all members of the Board. Such notice shall identify the section or sections of the Bylaws proposed to be amended.

ARTICLE 6. CONFLICT PROVISIONS

Section 6.01. Consistency With Law. In the event any provision contained herein is inconsistent with the Brown Act, the Community Services District Law, or any other mandatory and applicable provision of law, as such law currently exists or as it may be subsequently amended, the mandatory and applicable provision of law shall prevail.

Section 6.02. Conflicts. Conflicts shall be determined and governed by a Conflict of Interest Code to be adopted by the Board.

ATTACHMENT 2



ELECTIONS CODE - ELEC

DIVISION 10. LOCAL, SPECIAL, VACANCY, AND CONSOLIDATED ELECTIONS [10000 - 10735] (*Division 10 enacted by Stats. 1994, Ch. 920, Sec. 2.*)

PART 3. CONSOLIDATION OF ELECTIONS [10400 - 10418] (*Part 3 enacted by Stats. 1994, Ch. 920, Sec. 2.*)

- 10404.** (a) This section applies only to special districts electing members of the governing body in odd-numbered years. As used in this section, “special district” means an agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries, except a city, county, city and county, school or community college district, or special assessment district.
- (b) Notwithstanding any other law, a governing body of a special district may, by resolution, require that its elections of governing body members be held on the same day as the statewide general election.
- (1) The resolution setting the election shall also include dates that are consistent with the primary or general election with respect to nominations, notices, canvass of votes, certification of election, and all other procedural requirements of this code pertaining to the primary or general election.
- (2) The resolution shall be submitted to the board of supervisors no later than 240 days prior to the date of the currently scheduled district election.
- (c) The board of supervisors shall notify all districts located in the county of the receipt of the resolution to consolidate and shall request input from each district on the effect of consolidation.
- (d) The elections official shall prepare and transmit to the board of supervisors an impact analysis of the proposed consolidation.
- (e) The board of supervisors, within 60 days from the date of submission, shall approve the resolution unless it finds that the ballot style, voting equipment, or computer capacity is such that additional elections or materials cannot be handled. Prior to the adoption of a resolution to either approve or deny a consolidation request, the board or boards of supervisors shall each obtain from the elections official a report on the cost-effectiveness of the proposed action.
- (f) Within 30 days after the approval of the resolution, the elections official shall notify all registered voters of the districts affected by the consolidation of the approval of the resolution by the board of supervisors. The notice shall be delivered by mail and at the expense of the district.
- (g) Public notices of the proceedings in which the resolution is to be considered for adoption shall be made pursuant to Section 25151 of the Government Code.
- (h) If a special district is located in more than one county, the special district may not consolidate an election if any county in which the special district is located denies the request for consolidation.
- (i) If, pursuant to subdivision (b), a special district election is held on the same day as the statewide general election, those governing body members whose terms of office would have, prior to the adoption of the resolution, expired prior to that election shall, instead, continue in their offices until their successors are elected and qualified, but in no event shall the term be extended beyond December 31 of the year following the year in which the request for consolidation is approved by the board of supervisors.
- (j) If a board of supervisors approves the resolution pursuant to subdivision (e), the special district election shall be conducted on the date specified by the board of supervisors, in accordance with subdivision (a), unless the approval is later rescinded by the board of supervisors.
- (k) If the date of a special district election is changed pursuant to this section, at least one election shall be held before the resolution, as approved by the board of supervisors, may be subsequently repealed or amended.