



April 7, 2016

TO: LOCSD Board of Directors

FROM: Peter J. Kampa, Interim General Manager

SUBJECT: Agenda Item 12A – 4/7/2016 Board Meeting
Approve Policies Relating to Hiring, Evaluation and Release of District Legal Counsel and District Engineer

STAFF RECOMMENDATION

Staff recommends that the Board approve the following action:

Motion: I move that the Board adopt Resolution 2016-12 approving policies for the selection, hiring, setting performance standards for and evaluation of the District Legal Counsel and District Engineer.

DISCUSSION

Pursuant to California Government Code Section 61050, the Board of Directors is responsible for the appointment of a General Manager who is then responsible to manage the day to day affairs of the District. Government Code Section 61060 authorizes the Board to engage (legal) counsel and other professional services necessary for the efficient and effective implementation of the authorized services.

The General Manager, District Counsel and District Engineer can either be an employee of the District, typically under employment contract, or an independent consulting contractor appointed to their respective positions with responsibilities detailed in law and District policy. Due to the nature of the water utility services delivered by a small special district such as LOCSD, the positions of General Counsel and District Engineer are most commonly contracted to outside firms, based on the specific needs of the District.

The Board of Directors has directed staff to prepare draft policies to guide the process of selection of District Counsel and Engineer; and their appointment as well as setting performance and evaluation standards. Implementing such policies supports the intended District culture of government transparency and accountability. Most special districts are familiar with hiring employees and evaluating their performance. Very few special districts establish and enforce performance expectations for consultants, and these proposed policies will do just that for the LOCSD.

Draft policies for the District Counsel and for the District Engineer are included in this agenda packet, and are recommended for approval by adoption of Resolution 2016-12.

FINANCIAL IMPACT

Adoption of the policies will have no direct financial impact on the District; however, the level of management and Board effort to implement the policies will increase. At the same time, productivity and quality of work will increase through policy implementation.

Attachments

President

Marshall E. Ochylski

Vice President

Jon-Erik G. Storm

Directors

Charles L. Cesena
Louis G. Tornatzky
R. Michael Wright

Interim General Manager

Peter J. Kampa

Temporary District Accountant

Dale G. Flynn

Unit Fire Chief

Scott M. Jalbert

Battalion Chief

Tom McEwen

Mailing Address:

P.O. Box 6064
Los Osos, CA 93412

Offices:

2122 9th Street, Suite 102
Los Osos, CA 93402

Phone: 805/528-9370

FAX: 805/528-9377

www.losososcsd.org

RESOLUTION NO. 2016-12

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE LOS OSOS COMMUNITY SERVICES DISTRICT
APPROVING POLICIES FOR THE SELECTION, HIRING, SETTING PERFORMANCE STANDARDS FOR
AND THE EVALUATION OF THE DISTRICT LEGAL COUNSEL AND THE DISTRICT ENGINEER**

WHEREAS, Government Code Section 61060 authorizes the Board to engage (legal) counsel and other professional services necessary for the efficient and effective implementation of the authorized services; and

WHEREAS, the District desires to adopt policy guidance to ensure that the District receives the highest level of competent legal advice and professional services from its consultants; and

WHEREAS, said policies shall set forth the process for the selection, appointment, setting performance standards for and the evaluation of performance for both District Legal Counsel and District Engineer; and

WHEREAS, proposed policy language has been developed and included herein for consideration by this Board.

NOW, THEREFORE, BE IT RESOLVED that the Los Osos Community Services District Board of Directors does hereby adopt and approve policies for the selection, appointment, setting performance standards for and the evaluation of performance for District Legal Counsel and District Engineer.

BE IT FURTHER RESOLVED that said policies shall become effective upon their adoption.

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 7th day of April 2016.

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

ATTEST:

APPROVED AS TO FORM:

Peter J. Kampa
Interim General Manager and Secretary to the Board

Michael W. Seitz
District Legal Counsel

District Legal Counsel

PURPOSE: This policy establishes the process to select and hire a Legal Counsel for the District, and sets forth the duties of the Legal Counsel.

Method. The Board by resolution shall employ by contract or other appropriate means an attorney to serve as Legal Counsel for the District.

Selection Process. The process to select a Legal Counsel may include, but not be limited to, the following: 1) issuance by the Board of a Request for Proposals, 2) appointment by the President of an ad hoc Board committee, which may include the President, to review the proposals in cooperation with the General Manager, 3) selection by the committee of leading candidates to be interviewed by the Board in open session (or in closed personnel session as described below), 4) background check of the leading candidate or candidates, and 5) selection of a Legal Counsel by the Board in open session.

A fee schedule and other conditions of employment, including provisions for evaluation shall be negotiated between the Board and the legal counsel during a Regular Board Meeting in open session. If the above negotiation must include discussion of confidential matters such as performance approach or expectations in ongoing litigation, the performance portions of the selection process may be completed in a properly noticed closed session of the Board.

Annual Review. District Counsel's performance will be measured based on how well he/she met the duties as legal advisor as described herein. The following general performance measurements will be addressed in the review as applicable:

- A. **Litigation or other legal action.** Did the District face any unforeseen legal action? Could/should the action have been avoided? Could the situation have been avoided with appropriate advice in advance by Counsel? How well did Counsel address this situation? Was the Board fully advised on the options? Is Counsel thorough and effective in addressing existing litigation, while respecting the District budget?
- B. **Accuracy of work.** Are the recommendations of Counsel facilitating the District's full compliance with law? Are their recommendations correct, clear and implementable? Is their written work correct and to the appropriate professional standard? Has the District seen any problems associated with implementing Counsel's recommendations?
- C. **Timeliness of work and availability.** Is Counsel's work delivered on time or on an appropriate schedule? Is Counsel able to perform on short notice when necessary? Does legal Counsel make themselves or acceptable alternate personnel available at all hours of the day; non-business hours and weekends? Is Counsel available to attend Board and Committee meetings as requested?
- D. **Advice on general governance and administrative matters.** Is Counsel competent and responsive in the general legal, contracting, personnel and other issues associated with the general administrative matters of the District, including Brown Act, Public Records Act, Meyers-Milias-Brown Act, tort claims and others? Are recommendations of Counsel typically adopted?

- E. **Proactive Work.** Does Legal Counsel recommend the adoption of policies and procedures to reduce District liability, avoid grievances and maintain compliance with laws and standards when adopted or updated?
- F. **Advice specific to services and operations.** Is Counsel competent in the general legal, contracting, personnel and other issues associated with the services provided by the District?

The District Counsel's evaluation will be prepared by the General Manager for the Board's consideration. After the Board's consideration and concurrence, the evaluation will be presented to District Counsel. This performance evaluation should occur at the Regular Board Meeting in April of each year. The performance evaluation is likely to contain sensitive, confidential information related to the handling of specific District legal matters and should be considered in a properly noticed closed session.

Adviser. The Legal Counsel shall advise the Board and General Manager concerning their respective legal responsibilities for full compliance with all laws pertaining to the governing, administering, and operating of the District. The Legal Counsel shall review and comment on all appropriate District matters that come before the Board or other District matters as requested by the General Manager

Duties. Specific duties of the Legal Counsel shall include, but not be limited to, preparing and reviewing contracts, leases, deeds, agreements, and other legal documents; handling legal aspects of land and right-of-way actions; preparing and processing petitions and other documents involved in annexations; handling legislative matters of interest to or affecting the District; making all necessary preparations for Board elections and reviewing election procedures and returns; bringing to the Board's attention matters of interest or concern; advising the Board on labor-law requirements; performing other tasks as requested by the Board.

Attendance. The Legal Counsel shall attend all meetings as needed. Meeting attendance may not be necessary as determined by the General Manager, in consultation with the Board President.

Relationship to General Manager. The Legal Counsel shall advise the General Manager on appropriate legal matters and shall perform other duties as requested by the General Manager.

District Engineer

PURPOSE: This policy establishes the process to select and hire a consulting civil engineer to serve as the Engineer for the District, and sets forth the duties of the Engineer.

Method. The Board by resolution shall employ by contract or other appropriate means an engineer to serve as the Engineer for the District.

Selection Process. The process to select the Engineer may include, but not be limited to, the following: 1) issuance by the Board of a Request for Proposals, 2) appointment by the President of an Ad hoc Board committee, which may include the President, to review the proposals in cooperation with the District Manager, 3) selection by the committee of leading candidates to be interviewed by the Board in closed personnel session, 4) background check of the leading candidate or candidates, and 5) selection of the Engineer by the Board in open session. A fee schedule and other conditions of employment, including specific scopes of work, performance criteria and provisions for evaluation shall be negotiated between the Board and the Engineer in open session.

Annual Review. The District Engineer's evaluation should be conducted during a regular Board Meeting in April of each year. The District Engineer's evaluation will be prepared by the District Manager for the Board's consideration. After the Board's consideration and concurrence and/or modification, the evaluation will be presented to the Engineer.

Adviser. The Engineer shall review, comment and advise the Board and District Manager concerning all engineering matters that come before the Board or other District matters as requested by the District Manager

Duties. Specific duties of the Engineer shall may include, but not be limited to the following services: reviewing contracts, leases, deeds, agreements, annexations, ordinances and other legal documents with the District's Legal Counsel; reviewing applications for service and plans and specifications for proposed extensions of the District's infrastructure; reviewing planning and or environmental documents forwarded by the County planning departments for potential impacts on the District and reporting these to the General Manager and the Board; performing land surveys and preparing and establishing legal descriptions and plat maps as requested by the General Manager or the Board; preparing and establishing Standard Specifications and Details for additions to or for the rehabilitation of the District's water system; updating maintaining maps of the District's water system; assisting the Manager and District staff with the maintenance of the District's Geographical Information System (GIS); preparing plans, specifications and estimates for improvements to the District's water system when requested by the General Manager or the Board; assisting with the General Manager with the engagement and coordination of the services of other professional consulting engineers retained by the District to study or design improvements to the District's source water, wells, pumps, pumping, treatment and disposal systems; coordinating, soliciting and obtaining and assisting the General Manager and the Board with public bids for Contract's for improvements to District facilities; assisting the General Manager and Staff with the preparation and maintenance of the permits required for operation and improvement of the District's water system and for maintenance of the distribution system, stormwater pumping system; assisting the General Manager and Staff with the

reports to the State Water Boards; assisting the General Manager and Staff with the preparation and implementation of an annual budget, with the District's Long Range and 5-Year Capital Improvement Plans and other financial matters; assisting the General Manager, Staff and the Board with the establishment of water rate structures and other funding; assisting the General Manager and Staff with source control and pollution prevention measures; attending public meetings and representing the District before public agencies and the community when requested by the General Manager or the Board; preparing staff reports and assisting the General Manager with scheduling matters to be brought before the Board; and performing other tasks as may be requested by the General Manager or the Board.

Attendance. The Engineer shall attend all meetings of the Board and Committees of the Board as requested. Meeting attendance may not be necessary as determined by the General Manager.

Relationship to General Manager. The Engineer shall advise the General Manager on appropriate engineering matters and shall perform other duties as requested by the General Manager.