

DATE	September 3, 2024
TITLE	Discussion on Filling Ward 4 Vacancy on the East Bay Regional Park District Board of Directors
DIVISION	General Manager's Office
FROM	Sabrina Landreth, General Manager
APPROVED	Sabrina Landreth, General Manager 

RECOMMENDATION

The Board President and General Manager recommend that the Board of Directors discuss the filling of Ward 4 Board vacancy and take corresponding action through a formulation of a motion.

BACKGROUND

On August 09, 2024, the East Bay Regional Park District ("Park District") was deeply saddened to learn of the passing of Ward 4 Director Ellen Corbett, thereby creating a vacancy on the Park District Board of Directors. Director Ellen Corbett was elected to the Board of Directors ("Board") in November 2016 and was reelected in 2020.

On August 13, 2024, and in adherence with California Government Code 1780, the Park District notified Alameda County Registrar of Voters of this vacancy, which occurred in the second half of Director Corbett's term of office and four months shy from completing her term.

Under the governing statutes of the Park District found in Public Resources Code section 5536 (d), filling vacancies on the Board of Directors is governed by Government Code section 1780, which provides authority to the remaining Board members to either appoint or call for an election to fill the Board vacancy for the unexpired balance of Director Corbett's term of office.

Also, the Park District's Board Operating Guidelines ("BOG") set forth the Board's policy on a Board appointment process, which was followed in past years when Board vacancies occurred in 1991, 2006, 2016, and 2019. The last Board appointment occurred in 2019 to fill a vacancy in Ward 1 with the retirement of Director Whitney Dotson.

The Board of Director's Ward 4 seat is on the General Election ballot for November 05, 2024, and the Semi-Final listing of candidates for this office shows six candidates, as posted on the Official Election (web) Site of Alameda County. The General Election is sixty-three (63) days away.

ANALYSIS

State statute and Park District's Board policy provide two pathways for the Board of Directors to consider in responding to the vacancy in Ward 4 for the duration of the unexpired term as (1) conduct an interim appointment of a new Board member, which can be a "caretaker" or (2) call for an election. The decision points in front of the Board are framed by certain timelines set forth in some of the policy provisions, and the upcoming General Election on November 5, 2024, as described below.

October 8, 2024 is the statutory deadline to fill the Board vacancy in Ward 4, which represents communities in Alameda, parts of Hayward, a portion of Oakland, San Leandro, and in portions of unincorporated areas including Ashland, Castro Valley, Cherryland and San Lorenzo. If the Board decides to proceed with an appointment, the appointee would serve until January 05, 2025; since, the successful candidate in the November 05, 2024, General Election will be sworn in no later than

December 20, 2024, and will assume office on January 06, 2025.

- **Government Code Section 1780**

Public Resources Code section 5536 provides that the Park District shall follow the process set out in Government Code section 1780 et. seq. to fill a vacancy on its governing board. Government Code section 1780 provides that the Park District may appoint a successor to fill a vacancy and must do so within sixty (60) days subsequent to the office becoming vacant. It also provides that in lieu of making an appointment, the Board may call an election within sixty (60) days subsequent to the office becoming vacant. Specifically, California Government Code 1780 states that:

“(c) The remaining members of the district board may fill the vacancy either by appointment pursuant to subdivision (d) or by calling an election pursuant to subdivision (e).

(d) (1) The remaining members of the district board shall make the appointment pursuant to this subdivision within 60 days after either the date on which the district board is notified of the vacancy or the effective date of the vacancy, whichever is later. The district shall post a notice of the vacancy in three or more conspicuous places in the district at least 15 days before the district board makes the appointment. The district shall notify the county elections official of the appointment no later than 15 days after the appointment.

(2) If the vacancy occurs in the first half of a term of office and at least 130 days prior to the next general district election, the person appointed to fill the vacancy shall hold office until the next general district election that is scheduled 130 or more days after the date the district board is notified of the vacancy, and thereafter until the person who is elected at that election to fill the vacancy has been qualified. The person elected to fill the vacancy shall hold office for the unexpired balance of the term of office.

(3) If the vacancy occurs in the first half of a term of office, but less than 130 days prior to the next general district election, or if the vacancy occurs in the second half of a term of office, the person appointed to fill the vacancy shall fill the balance of the unexpired term of office.

(e) (1) In lieu of making an appointment the remaining members of the board may within 60 days of the date the district board is notified of the vacancy or the effective date of the vacancy, whichever is later, call an election to fill the vacancy.

(2) The election called pursuant to this subdivision shall be held on the next established election date provided in Chapter 1 (commencing with Section 1000) of Division 1 of the Elections Code that is 130 or more days after the date the district board calls the election.”

There is no requirement to make an appointment following notice of a vacancy. The Board has the option of either making an appointment or calling an election to complete the term. However, pursuant to Govt. Code 1780, the election held to fill a vacancy “shall be held on the next established election date” that is 130 or more days after the call for the election. This precludes the Board from calling for the election before the general election of November 5, 2024.

Within ninety (90) days of being notified of the vacancy, there is an obligation to either “fill” the vacancy or call for an election, but in this case, the Ward 4 seat is set for the General Election of November 5, 2024 and that is the earliest opportunity under state law to hold an election to fill the vacancy.

- **Board Operating Guidelines Section 2.1.3 Vacant Board Positions**

The Board Operating Guidelines provides a description of the specific practices and procedures required for appointing an individual to fill a Board vacancy, which references Government Code Section 1780. In the case of any potential conflict or ambiguity, state law controls. Specifically, BOG states that if the Board decides to make an appointment, the Board President must then appoint a three-member committee to screen and recommend to the Board at least three candidates, or consider a “caretaker”. A “caretaker” is an individual who is not a candidate for the Board seat and who agrees to assume the office on a temporary basis until an election is held. The BOGs also require the posting of notices of the vacancy in three conspicuous places, including newspapers of general circulation, and on social media, at least fifteen (15) days before making an appointment. The full Board of Directors is required to make the appointment in open session. Lastly, the Park District is required to notify the Elections official no later than fifteen (15) days after the appointment. Attachment A provides a tentative timeline for this procedure.

ALTERNATIVES

The Board of Directors may consider the following alternatives should it wish to make an appointment to fill the vacancy, as described below (also see Attachment A):

- (1) Appointing a Caretaker – The BOG Section 2.1.3 Vacant Board Positions provides the option for the Board to appoint a “*caretaker*” for a period of less than one year. The appointment of a caretaker will be made at a regular Board meeting open to the public with at least (15) days public notice of vacancy before an appointment is made. There is no specific deadline under the BOG for this action; however, state law requires this action to be made within sixty (60) days of the vacancy, or prior to October 8, 2024.
- (2) Conducting a Short-Term Appointment - The BOG Section 2.1.3 Vacant Board Positions authorizes the Board President to appoint a three (3) member Board ad hoc committee to solicit, screen, and conduct initial interviews with potential candidates for appointment to Ward 4. After the screening process, the Board Vacancy Nominating Committee shall forward at least three (3) candidates to the full Board for consideration and for action at a Board meeting open to the public with at least fifteen (15) days public notice of vacancy before an appointment is made. This appointment would be made within sixty (60) days of the vacancy, or prior to October 8, 2024, with a duration of office of approximately 88 days including five (5) Board meetings.
- (3) No action – Alternatively the Board may consider taking no action and leaving the office vacant pending the election of a candidate on November 5, 2024.

FISCAL IMPACT

There are no costs associated with this item.

ATTACHMENTS

Attachment A – Tentative Timeline for a Potential Board Appointment