

EL DORADO LAFCO

LOCAL AGENCY FORMATION COMMISSION

AGENDA OF SEPTEMBER 22, 2021

REGULAR MEETING

TO: John Hidahl, Chair, and
Members of the El Dorado County Local Agency Formation
Commission

PREPARED BY: Mala Subramanian, LAFCO Legal Counsel

AGENDA ITEM #9: DISCUSS AND CONSIDER REQUEST FROM
COMMISSIONERS THOMAS AND NEAU TO REMOVE
PUBLIC MEMBER COMMISSIONER POWELL FROM THE
COMMISSION, ALTERNATIVELY, AT THE REQUEST OF THE
CHAIR CONSIDER WHETHER COMMISSIONER POWELL'S
CONDUCT IS IN VIOLATION OF THE CODE OF CONDUCT
AND DECORUM POLICY AND WHETHER TO IMPOSE
REMEDIAL ACTIONS

RECOMMENDATION

Staff recommends the Commission discuss and consider the requests from Commissioners Thomas and Neau and Chair Hidahl.

BACKGROUND

On July 28, 2021, the Commission received correspondence from Commissioners Thomas and Neau that was read into the record of the meeting that requested the Commission to consider a discussion on the removal of the Public Member Commissioner Powell. A copy of that letter is attached as Attachment A.

In response to this letter, Commissioner Powell has submitted two letters attached as Attachments B and C.

Chair Hidahl has also requested that the Commission consider whether Commissioner Powell's Conduct is in violation of Sections 1.8.1.6 and 1.8.1.8 of the Code of Conduct and Decorum Policy and whether the Commission should impose remedial actions rather than removal.

ANALYSIS

The Cortese-Knox-Hertzberg Act (Act) provides that “Any member may be removed at any time and without cause by the body appointing that member.” (Gov. Code 56334.) The Commission is the appointing body for the Public Member and the Public Member Alternate. Therefore, under the Act, the Commission can remove the Public Member and/or Alternate at any time and without cause.

Separate from the removal option under the Act, the Commission adopted Policies and Guidelines (Policies) attached as Attachment D that provide for remedial actions that are less severe than removal.

Section 1.8.3.1 of the Policies provides:

“**1.8.3.1 Presiding Officer.** The presiding officer shall request that a person who is breaching the rules of decorum be orderly and comply with this Policy. After receiving a warning from the presiding officer, the presiding officer may agendize an item for the next LAFCO meeting to discuss the conduct and have the Commission determine if the conduct is in violation of this Policy. If a super-majority of the Commission determines the conduct was in violation of this Policy, the Commission’s super-majority may impose any of the following remedial actions:

- (a) Issue a letter of warning from the Commission;
- (b) Adopt a resolution expressing disapproval of the conduct of the commissioner and censure by the Commission;
- (c) Remove the Commissioner from their position on any LAFCO committees;
- (d) Deny or reduce payment of stipend and/or expense reimbursement for meetings of outside organizations, if applicable; or
- (e) Deny or reduce payment of stipend and/or expense reimbursement for the LAFCO meetings at which the violations(s) occurred.”

If a super-majority of the Commission determines that a Commissioner is in violation of the Policy, the Commission by super-majority vote may impose any of the remedial actions noted above. This is separate and apart from the Act, which allows the appointing body to remove a Commissioner.

Chair Hidahl recently warned Commissioner Powell that he felt he was breaching Sections 1.8.1.6 and 1.8.1.8 of the Policies.

Section 1.8.1.6 states:

“**1.8.1.6 Refrain from abusive conduct, personal charges, or verbal attacks upon the character, motives, ethics, morals, or comments of other Commissioners, staff, or the public.”**

Section 1.8.1.8 states:

“**1.8.1.8 Recognize and accept legitimate differences of opinion. Act with integrity in accepting, supporting and defending LAFCO. Once the Commission takes action, all Commissioners should respect the decision of LAFCO and not create barrier to the implementation of said action. The dissenting Commissioner(s) should acknowledge the decision of the Board and current position of LAFCO.”**

Specifically Chair Hidahl warned Commissioner Powell that he felt that he was breaching Section 1.8.1.6 with his repeated verbal conduct directed to the former Executive Officer regarding his time commitments and work ethic. Furthermore, Chair Hidahl warned Commissioner Powell that he felt that he was breaching Section 1.8.1.8 because after the Commission adopted the budget Commission Powell repeatedly discussed the budget in terms of reallocating funds already directed to consultants to hiring staff.

Section 1.3.6 of the Policies references removal of members where the Commission may recommend to the appointing authority that a member may be removed for absence, malfeasance of office, dereliction of duty, refusal to sign and comply with the Code of Ethics, or failure to complete financial disclosures in a timely manner. This section applies to those members that the Commission does not appoint and does not take away the ability of the Commission to remove a member that is has appointed without cause as provided for under the Act.

CONCLUSION AND OPTIONS

The Commission can:

1. Remove Commissioner Powell from the Commission.
2. Alternatively, the Commission by super-majority vote can impose remedial actions as described above, if the Commission finds that Commissioner Powell violated the Code of Conduct and Decorum Policy.
3. Lastly, the Commission can take no action.

Attachments:

Attachment A: Correspondence from Commissioners Thomas and Neau dated 7/28/21

Attachment B: Correspondence from Commissioner Powell dated 8/24/21

Attachment C: Correspondence from Commissioner Powell dated 9/8/21

Attachment D: Policies and Guidelines