

**OFFICE OF COUNTY COUNSEL
COUNTY OF KERN
MEMORANDUM**

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TO: Board of Supervisors

FROM: Margo A. Raison, County Counsel *MR*
Kendra L. Graham, Assistant County Counsel *KLG*

DATE: June 28, 2022

SUBJECT: Report on Proposed Initiative Measure to Impose Term Limits for the Board of Supervisors

**I.
REFERRAL**

On June 14, 2022, your Board made a referral to County Counsel to prepare a report on the initiative measure to impose term limits for the Kern County Board of Supervisors. You requested that the report contain any information that may be of interest to the Board concerning the initiative measure. This memorandum will serve as such report.

**II.
INITIATIVE**

The Kern County Board of Supervisors Term Limits Measure (the “**Measure**”), if approved by the voters, would amend the Kern County Ordinance Code to add a section imposing a maximum two (2) term limits for any person serving on the Board of Supervisors. The limitations of two (2) terms imposed by the measure applies to any person regardless of district represented.

The Measure further provides that any person will be deemed to have served a full term where the individual is selected or appointed to an unexpired term as a Supervisor after the effective date of this section and who serves more than one-half of a full term of office.

A person will also be deemed to have served a full term where a Supervisor resigns or is removed from office with less than one-half of a full term remaining until the expiration of the term.

The Measure applies prospectively so that any current or former Supervisor will be prohibited from serving more than two additional terms.

The Measure may only be amended by a majority vote of Kern County voters. However, section 5 of the proposed ordinance provides that, "In the event that this measure and another measure limiting or changing the number of terms a person may serve on the board of supervisors shall appear on the same election ballot, the provisions of the other measure shall be deemed in conflict with this measure; and in the event this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the other measure shall be void."

III. DISCUSSION

A. Factual and Legal Background

1. Authority for Report

The Measure (a citizens initiative petition), was filed for Title and Summary on September 7, 2021, and was titled and summarized by the Office of County Counsel as the "County Board of Supervisors Term Limits Measure." The Measure was submitted to the County Elections Department on March 17, 2022, for verification of signatures. On June 14, 2022, the Kern County Clerk of the Board/Registrar of Voters certified to the Board of Supervisors that the Measure contained the minimum number of sufficient signatures. Pursuant to this certification and Elections Code § 9118, you Board ordered the preparation of this report pursuant to Elections Code § 9111.

Section 9111 provides, in pertinent part, that before taking action to adopt or place on the ballot an initiative that has been certified as containing a sufficient number of signatures,

... the board of supervisors may refer the proposed initiative measure to a county agency or agencies for a report on any or all of the following:

- (1) Its fiscal impact.
- (2) Its effect on the internal consistency of the county's general and specific plans, including the housing element, the consistency between planning and zoning, and the limitation on county actions under Section 65008 of the Government Code and Chapters 4.2 (commencing with Section 65913) and 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.
- (3) Its effect on the use of land, the impact on the availability and location of housing, and the ability of the county to meet its regional housing needs.
- (4) Its impact on funding for infrastructure of all types, including, but not limited to, transportation, schools, parks, and open space. The report may also discuss whether the measure would be likely to result in increased infrastructure costs or savings, including the costs of infrastructure maintenance, to current residents and businesses.
- (5) Its impact on the community's ability to attract and retain business and employment.

- (6) Its impact on the uses of vacant parcels of land.
 - (7) Its impact on agricultural lands, open space, traffic congestion, existing business districts, and developed areas designated for revitalization.
 - (8) Any other matters the board of supervisors requests to be in the report.
- (Elec. Code § 9111(a).)

Pursuant to § 9111(b), the report must be presented to the Board of Supervisors within 30 days after certification of sufficiency of the Measure is presented to the Board of Supervisors.

2. Authority for Measure

California Government Code § 25000(b) authorizes a board of supervisors to adopt, or the residents of a county to propose by initiative, a proposal to limit the number of terms a member of the board of supervisors may serve. Pursuant to § 25000(b):

. . . the board of supervisors . . . may adopt or the residents of the county may propose, by initiative, a proposal to limit to no fewer than two terms or repeal a limit on the number of terms a member of the board of supervisors may serve on the board of supervisors. Any proposal to limit the number of terms a member of the board of supervisors may serve on the board of supervisors shall apply prospectively only and shall not become operative unless it is submitted to the electors of the county at a regularly scheduled election and a majority of the votes cast on the question favor the adoption of the proposal.

B. Measure Text

The Measure states that its purpose is to “restrict any person from serving more than two terms on the County Board of Supervisors, beginning with any term of office that commences after the effective date of this measure.” The Measure’s purpose statement further acknowledges that, pursuant to Government Code § 25000, the Initiative “shall apply prospectively so that any current or former member of the Board of Supervisors will be prohibited from serving more than two **additional** terms.” (Emphasis added.)

The Initiative has three operative provisions that it proposes to add to the Kern County Code of Ordinances as follows:

2.04.030 – Term limits of board members.

- (a) A person may not serve more than two terms as a member of the board of supervisors for terms commencing after the effective date of this section.
- (b) A person who is elected or appointed to the board of supervisors after the effective date of this section, and who serves more than one-half of a full term, shall be deemed to have served a full term for purposes of this section.
- (c) The board of supervisors may not amend this ordinance. This ordinance may only be amended by majority vote approval by County voters.

C. Interpretation of the Measure

The term limits proposed are not district-specific and are permanent, lifetime limits, as discussed more fully below. There is no ability for persons who serve on the Board of Supervisors for the allowed two-term limit to ever run again, even if they move and represent a different electorate. The terms served do not need to be consecutive in order to trigger the permanent ban on serving more than two terms. If adopted by the voters, “[t]he ordinance shall be considered as adopted upon the date the vote is declared by the board of supervisors, and **shall go into effect 10 days after that date.**” (Elec. Code § 9122, emphasis added). The effective date would likely be some time in mid-December 2022.

The Measure expressly states that it may not be amended by the Board of Supervisors and may only be amended by a majority vote of County electors. This is consistent with generally applicable state law, which provides that “[n]o ordinance proposed by initiative petition and adopted either by the board of supervisors without submission to the voters or adopted by the voters shall be repealed or amended except by a vote of the people, unless provision is otherwise made in the original ordinance.” (See Elec. Code § 9125).

D. Impact of Initiative on Current and Future Members of the Board of Supervisors

If the Measure is approved by the voters, it will impact the current members of the Board of Supervisors as follows, under the requirement for “prospective” application:

Supervisors who were elected to their current terms in 2020 (Districts 1, 4, and 5) will be eligible for two more terms after the expiration of their current terms. This means that they may run for reelection in 2024, and if they are re-elected in 2024, may run again in 2028. Pursuant to the terms of the Measure, if they are re-elected in 2028 they will be “termed out” after the expiration of that term and will not be eligible to run for another term in 2032 or thereafter. This applies in general to Supervisors in Districts 1, 4, and 5; however, see further discussion regarding District 5 below.

Supervisors elected to a new term in the 2022 election (Districts 2 and 3), with their term of office to commence in January of 2023 (which will be after the effective date of the Measure), will be eligible to run again in 2026. If they are re-elected in 2026, they will then be “termed out” after the expiration of that term and will not be eligible to run for another term in 2030 or thereafter. This applies to both Districts 2 and 3.

As noted above, the District 5 Supervisor (Leticia Perez) was elected to her current term in 2020, which is set to expire in January of 2025. However, Supervisor Perez is running for election to the California State Assembly and is on the ballot in November 8, 2022 general election. If elected to the California State Assembly, her term will begin the first Monday in December following her election (see Cal. Const. art. IV, § 2(a)(3)), creating a vacancy on the Board of Supervisors for District 5 as of December 2022.

The partial term Supervisor Perez served would not count against her should she ever wish to run again for the Board of Supervisors. However, whether the partial term of the person appointed to replace Supervisor Perez counts towards the two term limit depends on when that person is appointed, as pursuant to proposed § 2.04.030(b) of the Initiative, “[a] person who is elected or appointed to the board of supervisors after the effective date of this section, and who serves *more than one-half of a full term*, shall be deemed to have served a full term for purposes of this section.”

E. Potential Alternatives

Section 5 of the Initiative, titled “Conflicting Measures,” provides:

In the event that this measure and another measure limiting or changing the number of terms a person may serve on the board of supervisors shall appear on the same election ballot, the provisions of the other measure shall be deemed in conflict with this measure; and in the event this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the other measure shall be void.

Elections Code § 9140 provides in pertinent part:

The board of supervisors may submit to the voters, without a petition, an ordinance for the repeal, amendment, or enactment of any ordinance. The Ordinance shall be voted upon at any succeeding regular or special election
....

As such, the Board of Supervisors could submit its own measure relating to term limits as an alternative to the citizens’ Measure. A measure submitted by the Board of Supervisors could contain similar language regarding conflicting measures, providing that any other measures limiting the number of terms a person may serve on the Board of Supervisors appearing on the same ballot shall be deemed to be in conflict with the Board’s measure, and the measure receiving the greatest number of affirmative votes shall prevail in its entirety.

California Government Code § 25000, which provides the authority for limiting the number of terms a member of a county board of supervisors may serve, was amended last year to provide that, after January 1, 2022, a term limits proposal may limit the number of terms a member of the board of supervisors may serve to “no fewer than two terms.” The Measure therefore proposes to limit the number of terms a member of the Kern County Board of Supervisors may serve to the minimum allowed by law.

At least ten California Counties have term limits for members of the Board of Supervisors. Of these ten other counties with term limits, at least seven of them prohibit serving more than a specified number of “consecutive” or “successive” terms, unlike the Measure proposal discussed herein, which prohibits serving more than two terms *total*, and would impose a lifetime ban on serving additional terms, regardless of whether or not subsequent

terms are consecutive. Five of these other counties have three-term limits; five have two-term limits. Below is a summary of term limits in other counties:

- **County of El Dorado** (Two consecutive four-year terms; limitation resets after a four-year hiatus from service on the Board; contains provisions for partial terms)
- **County of Los Angeles** (Three consecutive terms; contains provisions for partial terms)
- **County of Orange** (Two consecutive four-year terms; “No other limitation on the number of terms a person may serve is intended”)
- **County of San Bernardino** (Three terms; contains provisions for partial terms)
- **County of San Diego** (Two terms; contains provisions for partial terms)
- **City and County of San Francisco** (Two consecutive four-year terms: limitation resets after a four-year hiatus from service on the Board; contains provisions for partial terms)
- **County of San Joaquin** (Two terms; text of measure has not been codified)
- **County of San Mateo** (Three consecutive terms; contains provisions for partial terms)
- **County of Santa Clara** (Three consecutive four-year terms; limitation resets after a four-year hiatus from service on the Board; contains provisions for partial terms; “The above shall not disqualify any person from running for election to the Board of Supervisors for any term or terms which are not successive”)
- **County of Ventura** (Three consecutive four-year terms; limitation resets after a four-year hiatus from service on the Board; contains provisions for partial terms)

Based on the foregoing examples of term limits in other jurisdictions, potential alternatives that could be considered for a measure proposed by the Kern County Board of Supervisors include:

- Add the requirement that terms served be consecutive in order for the limitation to apply, i.e. a person is prohibited from serving more than two consecutive terms as a member of the Board of Supervisors;
- Increase the number of terms allowed, i.e. a person is prohibited from serving more than three terms as a member of the Board of Supervisors;
- Some combination of the two, i.e. a person is prohibited from serving more than three consecutive terms as a member of the Board of Supervisors;

If the Board of Supervisors wishes to place an alternative measure on the November 8, 2022 ballot, the deadline to do so is August 12, 2022 (88 days before the election). The Board’s last regularly scheduled meeting before this deadline is August 9, 2022.