

(9) CITY INCORPORATION REQUIREMENTS THROUGH LAFCO

**ATTACHMENT 1
TULARE COUNTY LAFCO POLICIES**

- E. The boundary configurations will not create or result in areas difficult to serve.
- F. The boundaries of the proposed formation must be definite and certain and must conform to lines of assessment whenever possible.
- G. The boundaries must not conflict with boundaries of other public agencies possessing the same powers unless properly justified.

1.8. Standards for City Incorporation

Incorporation will be given more favorable consideration if:

- A. A community is geographically located some distance from any other municipality;
- B. There is a demonstrable public need for additional governmental services and controls, or a need for a higher level of some or all of those being provided; and
- C. The needed governmental services can be shown to be most quickly and economically provided by incorporation.
- D. The area to be incorporated is compact and contiguous and possesses a community identify.
- E. The proposed incorporation must reflect and consider the general plans of the County and affected cities.
- F. The proposed incorporation must not conflict with the logical growth of adjacent cities as reflected in Commission approved spheres of influences.
- G. The proposed incorporation does not represent an attempt to incorporate only revenue-producing territories to preempt neighboring cities.
- H. The proposed boundaries do not create or result in areas that are difficult to serve.
- I. The proposed boundaries must be definite and certain and wherever possible should conform to lines of assessment.
- J. The effect of incorporation on Special Districts must be considered.
- K. Within the proposal there must be a cost versus benefits justification of the proposed incorporation.
- L. Sufficient revenue to supply required municipal services is evident in the incorporation proposal.
- M. Consideration will be given to the effect of incorporation upon adjacent landowners, governmental agencies, and the County.

Policies and Procedures

Tulare County Local Agency Formation Commission

Policy Number: C-2

Effective Date: October 6, 2004

Authority: GC §56000 et. Seq., LAFCO Resolutions: 04-036, 05-051, 05-080, 06-012, 07-030, 10-030, 11-003

Title: Change of Organization/Reorganization

Policy: It is the policy of Tulare County LAFCO to conform to the requirements outlined in the Cortese-Knox-Hertzberg Reorganization Act of 2000 (C-K-H Act of 2000) when processing proposals for a change in organization or reorganization.

Purpose: To provide a summary of the procedure by which all proposals for changes of organization may be processed by the manners prescribed in the C-K-H Act of 2000. (Note: This summary is not intended to conflict with the CKH Act. In the event of any conflicts with CKH, CKH shall control).

Scope: This procedure applies to all changes of organization submitted to LAFCO.

History: This policy was added to the Manual on 10/6/04. The Waiver of Protest Hearing Requirements section (C-2.11) was added on 8/23/05. References to Forms E-1 and E-8 were added on 12/7/05. The Waiver of Public Notice and Hearing section (C-2.10) was added on 3/1/06. Requirements were added for projects that qualify for waiver of public notice and hearing (C-2.10) on 6/6/07. The procedure was amended on 12/8/10 to add more detail to the LAFCO process and to adjust for changes in State law. The procedure was amended on 3/9/11 to add the fiscal impact assessment process.

Procedure:

2.1. General Procedures for Changes in Boundaries or Organization to be processed by the Local Agency Formation Commission.

The procedures for proposals considered by LAFCO are guided by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code Section 56000 et seq.), and any proposal submitted must conform to the requirements outlined in the Act. The procedures outlined below represent broad guidelines as to the steps required.

2.2. Initiation

Generally, proposals for changes in boundaries, formations, or changes of organization can be submitted for the consideration of LAFCO by petition of the

registered voters or affected landowners; however, prior to the circulation of any petition, a "Notice of Intent to Circulate" must be presented to the LAFCO Executive Officer. A proposal may also be initiated by a resolution adopted by the governing body of any related public body (county, city, or special district). The proposal must be submitted on forms available from the LAFCO staff office, or on the LAFCO website, along with the applicable number of maps, legal descriptions, and filing fees to cover the proposal submitted. The contents of a complete application are listed in Form E-1.

2.3. LAFCO Staff Review Process

Upon receipt of an application, the LAFCO staff does the following:

- A. A Notice of New LAFCO Case with a copy of the applying agency's application materials is distributed to various County departments. Information and comments are sent back to LAFCO staff when applicable.
 - I. The Elections Division will provide the number of registered voters within the change of organization area.
 - II. The County Surveyor will check the map and legal description for accuracy and consistency with the standards issued by the State Board of Equalization (BOE).
 - III. The Assessor will provide a list the Assessor Parcel Numbers (APNs) within the change of organization area.
 - IV. The Auditor will assign the tax rate area (TRA) or areas for the change of organization area and provide a Statement of TRA Assignment.

NOTE: There is master property tax sharing agreement currently in effect in the County. If that agreement is ever terminated, no proposal can be considered by the Commission until LAFCO receives from the County Board of Supervisors (for itself and affected districts) and any affected city, a resolution approving any changes in ad valorem tax distribution which is caused by the proposed change.
 - V. Other County departments such as Project Review, Countywide Planning, Community Development, County Counsel and Public Works may also provide comments.
- B. A Notice of Filing is sent to all interested (each agency that currently provides facilities or services in the affected territory) and subject (the proposing agency) agencies. In addition, this notice is required to be sent to the County Committee on School District Organization and each school superintendent whose school district overlies the change of organization area. (This notice can be sent by the applying agency prior to the submittal of the application to LAFCO.) [GC §56658(b)(1), GC §56654(c)]

- C. If a city change of organization area includes land under Williamson Act contract, within 10 days of receiving the application, a notice must be sent to the Director of the Department of Conservation. *[GC §56753.5]*
- D. After an application is determined to be complete, a Certificate of Filing is sent to the applicant. The Certificate of Filing can not be issued until at least 20 days after the Notice of Filing is issued. *[GC §56658(e)]*
- E. If the application is determined to be incomplete, a Notice of Incomplete Filing is sent to the applicant. This notice shall specify what parts of the application are incomplete and the manner in which it can be made complete. *[GC §56658(h)]*
- F. If the appropriate fees have been paid and no Certificate of Filing or Notice of Incomplete Filing has been issued then the application is deemed accepted for filing after 30 days from submittal. *[GC §56658(f)]*

2.4 Fiscal Impact Assessment (outside of change of organization area)

Pursuant to Policy C-1.4(D), a fiscal impact assessment may be required. ("Interested" and "subject" agencies are defined in C-2.3(B) and GC §§56047.5, 56077.)

- A. After LAFCO staff issues the Notice of Filing, an interested agency or existing contractor must notify LAFCO staff within 20 days if the change of organization would impact the interested agency's ability to provide service outside of the change of organization area. This notice shall include what service(s) would be impacted.
- B. After receipt of the notice from the interested agency or existing contractor, LAFCO staff shall issue a Notice of Incomplete Filing to the subject agency and attach a copy of the interested agency's notice.
- C. The responsibility for the fiscal impact assessment is determined as follows:
 - I. The fiscal impact assessment must be completed by the subject agency or contractor if the subject agency will use a sole source contractor to provide the service. (See subsections H and I.)
 - II. The fiscal impact assessment must be completed by the interested agency or existing contractor if the subject agency will not be using a sole source contractor to provide the service. (See subsections F and G.)
 - III. Upon agreement by both the interested agency and the subject agency, the agencies may request that LAFCO complete the fiscal impact assessment. The cost of the assessment would need to be determined on a case by case basis and would be paid for equally by both the subject and the interested agencies.

- D. For services that are being provided within a contract or license area, the fiscal impact assessment shall be limited to within the affected contract or license area of the interested agency.
- E. The scope and detail of fiscal impact assessments may vary substantially depending on the specific situation and services involved. However, the fiscal impact assessment shall include at minimum the following:
 - I. A description of the area proposed to be served by the subject agency and of the affected area currently being served by the interested agency. This includes a geographic description of the areas involved and the number of customers, hook-ups or other applicable measure of service.
 - II. Address the fiscal ability of the interested agency or existing contractor to continue to provide service to the remainder of the applicable service area. This should include an analysis of existing conditions within the affected service area and an analysis of conditions of the affected service area if the subject area is removed.
 - III. Address minimum level of service requirements pursuant to applicable federal, state and local regulations and ordinances.
 - a. For solid waste collection, the analysis must show that the impacted license area can still achieve a 35% diversion rate as currently required by County of Tulare ordinance.

Process for when the interested agency or contractor is responsible for the fiscal impact assessment

- F. Within 45 days of the interested agency's or existing contractor's notice of service impact, the interested agency or existing contractor shall provide a fiscal impact assessment of the affected service(s) to LAFCO staff and the subject agency.
 - I. Upon request by the interested agency or existing contractor, the Commission may extend the time period for the completion of the assessment if it is determined that additional time is warranted.
 - II. If the assessment isn't submitted within the required time period, the change of organization application will be deemed complete (if all other application requirements have also been met) and a Certificate of Filing will be issued to the subject agency.
- G. Within 45 days of the submittal of the interested agency's or existing contractor's fiscal impact assessment, the subject agency may provide comments or provide their own fiscal impact assessment.

- I. Upon request by the subject agency, the Commission may extend the time period for comments or the completion of the assessment if it is determined that additional time is warranted.
- II. The change of organization application will be deemed complete (if all other application requirements have also been met) and a Certificate of Filing will be issued to the subject agency after the subject agency provides comments or their own assessment or after the response time period has elapsed, whichever is sooner.

Process for when the subject agency or contractor is responsible for the fiscal impact assessment

- H. Within 90 days of the interested agency's or existing contractor's notice of service impact, the subject agency or its contractor must provide a fiscal impact assessment of the affected service(s) to LAFCO staff and the interested agency.
 - I. Upon request by the subject agency or its contractor the Commission may extend the time period for the completion of the assessment if it is determined that additional time is warranted.
 - II. The interested agency or existing contractor must provide all necessary information to the subject agency or its contractor for the completion of the assessment within 45 days of the interested agency's notice of service impact. If the interested agency doesn't provide the information, upon request by the subject agency or its contractor, the Commission may waive the assessment requirement and the Executive Officer may issue a Certificate of Filing to the subject agency. Notwithstanding any provision to the contrary, nothing herein is intended to require the interested agency or existing contractor to provide confidential and proprietary information to the subject agency or the contractor.
 - III. If the assessment isn't submitted within the required time period, the change of organization application will be terminated.
 - IV. The change of organization application will be deemed complete (if all other application requirements have also been met) and a Certificate of Filing will be issued to the subject agency after the subject agency or its contractor provides the fiscal impact assessment.
- I. Within 45 days of the submittal of the subject agency's or its contractor's fiscal impact assessment, the interested agency or existing contractor may provide comments or provide their own fiscal impact assessment.
 - I. Upon request by the interested agency or existing contractor, the Commission may extend the time period for comments or the

completion of the assessment if it is determined that additional time is warranted.

2.5. Environmental Review

Environmental determinations are reviewed and considered prior to Commission evaluation of the proposal (*see Policy B-3*). The LAFCO review process cannot continue without a determination that the proposal:

- A. Qualifies for an exemption as defined within the California Environmental Quality Act (CEQA) and the Commission's environmental guidelines;
- B. Receives a Negative Declaration approved by the lead agency which indicates that, if approved, the project will have no adverse effects; or
- C. There is a completed Environmental Impact Report certified by the lead agency for the project.

2.6 Executive Officer's Report Preparation

LAFCO Staff prepares and distributes the Executive Officer's Report making a recommendation to the Commission relating to the proposal. The Report includes recommended actions, findings and conditions of approval (when applicable). The factors and standards considered in the development of the Report are outlined in Policy C-1.

- A. The Report shall be completed not less than five days prior to date of the public hearing and shall be distributed to the following [GC §56665]:
 - I. The designees as listed in the change of organization application.
 - II. Each local agency whose boundaries or sphere of influence.
 - III. Each affected local agency which has filed a request for a report with the Executive Officer.
 - IV. The Executive Officer of another affected county when a district is or will be located in that other county.
 - V. Each affected city. (defined in GC §56011)

2.7 Conditions of Approval

The Cortese-Knox-Hertzberg Reorganization Act of 2000 has given LAFCOs broad power to apply conditions of approval to changes of organization [GC §§56375, 56885, 56885.5, 56886 *et. Seq.*]. However, the Commission can not impose any conditions that would directly regulate land use density, intensity, property development, or subdivision requirements [GC §56375(a)(6)]. Conditions of approval may include but are not limited to the following:

- A. The inclusion of a surrounded or substantially surrounded unincorporated island. *[GC §56375(a)(5)]*
- B. The exclusion of land that would create a surrounded or substantially surrounded unincorporated island. *[GC §56744]*
- C. The initiation, conduct or completion of proceedings for another change of organization or a reorganization. *[GC §56885.5(a)(2)]*
- D. No subsequent change may be made to the general plan for the annexed territory or zoning that is not in conformance to the rezoning designations for a period of two years after the completion of the annexation, unless the legislative body for the city makes a finding at a public hearing that a substantial change has occurred in circumstances that necessitate a departure from the rezoning in the application to the Commission. *[GC §56375(e)]*
- E. The provision of services outside of the change of organization area and within the subject agency's sphere of influence (SOI). Services can be extended beyond the subject agency's SOI if the Commission finds that the condition would mitigate effects which are a direct result of the annexation. *[GC §56376]*
- F. Conditions relating to city annexation of Williamson Act land:
 - I. If the Commission determines that a city has a valid Williamson Act contract protest and the city exercises its option to not succeed to the contract, a Certificate of Contract Termination must be recorded at the same time as the Certificate of Completion. *[GC §§51243.5(h), 57330.5(b)]*
 - II. If there is no valid protest, the city shall not provide services to the site which support uses not allowed by the Williamson Act during the remaining life of the contract. *[GC §56754(a)]*
 - III. If there is no valid protest, the city shall adopt (if not already adopted) the rules and procedures required by the Williamson Act, including but not limited to the rules and procedures required by GC §§51231, 51237 and 51237.5. *[GC §56889]*
- G. The provision of a map and legal description which meets the State Board of Equalization's filing requirements. *[GC §54901(a)]*

2.7. Public Notice

For changes of organization that are subject to a public hearing, public notice must be provided at least 21 days prior to the public hearing.

- A. The notice must include the following:
 - I. Type of proposal

- II. Case number
 - III. Time, date and location of the public hearing
 - IV. Type and location of the environmental document used for the proposal
 - V. A description of the location of the proposal
 - VI. Contact information
- B. Notice of a public hearing must be posted in at least one newspaper of general circulation within the affected county, city or district. *[GC 56153]*
 - C. Notice of a public hearing must be mailed to the following:
 - I. Landowners owning land within the affected territory. *[GC 56661(h)]*
 - II. Registered voters residing within the affected territory. *[GC 56661(i)]*
 - III. Each affected city, district, county, the proponents and persons requesting special notice. *[GC §56661(a)(b)(c)]*
 - IV. The Director of the Department of Conservation if the change of organization involves a city annexation of land under Williamson Act contract. *[GC §56753, 56661(g)]*
 - V. To each city within three miles of a change of organization. *[GC §56661(d)]*
 - VI. To the Director of Forestry and Fire protection if the change of organization involves fire protection services within a state responsibility area. *[GC §56661(f)]*
 - D. Posted notice must be placed on or near the doors of the meeting room of the Commission or upon any official bulletin board used for the purpose of posting public notices by the Commission. *[GC §56158]*
 - E. Notice must be posted on Tulare County LAFCO's website: <http://www.co.tulare.ca.us/lafco/> *[GC §56300(f)]*

2.8. Public Hearing/Commission Action

The change of organization is considered by the Commission at a public hearing, and it either approves or denies the proposal.

- A. If the Commission denies the proposal, no further proceedings shall be taken on the proposal and no similar proposal involving the same or substantially the same territory shall be initiated for one year after the date of the adoption of the resolution terminating proceedings. However, the Commission may waive these requirements if it finds they are detrimental to the public interest. *[GC §56884]*
- B. If the Commission approves the proposal, LAFCO staff will provide a published Notice of Protest Proceeding announcing the date for

consideration of protest and the procedure and requirements for a valid written protest to the proposal. However, this process may be waived if the proposal is shown to meet the requirements of GC §56663(c) (for uninhabited proposals) or §56663(d) (for inhabited proposals).

- I. The protest hearing must be set within 35 days of Commission approval of the proposal. The hearing can not be held prior to the expiration of the 30 day reconsideration period. *[GC §57002(a)]*
 - II. The LAFCO Executive Officer will consider the item at the time and date indicated on the protest hearing notice, and will make a determination of the level of protest submitted. A recommendation for action to approve, deny, or submit the proposal to an election based on the amount of written protest received shall be submitted to the Commission at its next available hearing date. The protest hearing process is further defined in Policy C-4.
- C. Any person or affected agency may file a written request with the Executive Officer requesting amendments to or reconsideration to the change of organization within 30 days of the Commission's action *[GC §56895]*. The reconsideration process is further defined in Policy C-12.
- D. Upon the successful completion of the protest process and fulfillment of any required conditions of approval, LAFCO Staff files a "Certificate of Completion" with the appropriate bodies. The date on which the Certificate of Completion is recorded is the effective date of the action, unless a specific date is set by LAFCO pursuant to GC §56886(p).
- I. If a Certificate of Completion has not been filed within one year after the Commission approves a proposal, the proposal shall be deemed abandoned unless the Commission authorizes an extension of time. *[GC §57001]*
- E. After the recording of the Certificate of Completion, LAFCO Staff must file a Statement of Boundary Change or Creation with the State Board of Equalization with a filing fee from the subject agency. *[GC §57204(a)]*
- I. This filing does not apply to districts which are not funded by property taxes.

2.9. Waiver of Public Notice & Hearing

- A. Certain proposals may qualify for waiver of public notice and hearing and will be placed on the Consent Calendar. The requirements are as follows:
 - I. There is 100% signed consent of landowners within the annexation, detachment or reorganization area pursuant to GC §56663(a) and,

- II. The subject city/district gives written consent waiving the requirement of mailed notice and, consents to the Commission to make determinations without notice and hearing pursuant to GC §56663(b) and,
 - III. A mailed Notice of Filing has been sent by LAFCO staff to all affected agencies (as defined by GC §56014) and,
 - IV. No affected agency has submitted a written demand for a public hearing within 10 days of the mailing of the Notice of Filing pursuant to GC §56663(b) and,
 - V. The project must have been found to be exempt from CEQA by the lead agency or a Negative Declaration has been adopted by the lead agency unless the Executive Officer finds that a shift in lead agency is required under Guidelines §15052 and,
 - VI. For cities and urban districts*, the project must not exceed 30 acres or more than 10% of the total acreage of land within the existing city or district, whichever is less, and,

**For purposes of this policy, 'urban districts' are defined as districts which will provide urban services such as domestic water and/or wastewater collection.*
 - VII. For cities and urban districts, the project must not create or further envelope a County island (as defined by Policy C-10.1.C) and,
 - VIII. For cities and urban districts, the project must not contain any land under Williamson Act contract.
- B. Proposals which qualify for the waiver of public notice and hearing are still subject to all other applicable laws and policies and the Commission retains the option to pull these items for discussion.

2.10. Waiver of Protest Hearing Requirements

- A. Uninhabited annexations - Pursuant to GC §56663(c), the Commission may waive protest proceedings if both of the following apply:
 - I. All the owners of land within the affected territory have given their written consent to the change of organization or reorganization, and
 - II. No subject agency has submitted written opposition to a waiver of protest proceedings.
- B. Inhabited annexations – Pursuant to GC §56663(d), the Commission may waive protest proceedings if both of the following apply:
 - I. The Commission has provided written notice of commission proceedings to all registered voters or landowners within the affected territory and no written opposition from registered voters or landowners

within the affected territory is received prior to the conclusion of the commission meeting. The written notice shall disclose to the registered voters and landowners that unless written opposition is received regarding the proposal or the commission's intention to waive protest proceedings, that there will be no subsequent protest and election proceedings, and

- II. No subject agency has submitted written opposition to a waiver of protest proceedings.
- C. In addition to GC §56048(b), an "owner of land" or "landowner" does not include a public agency which owns highways, rights of way, easements, waterways, or canals, or the underlying fee-title holders of those highways, rights of way, easements, waterways, or canals if those underlying ownerships are not shown on the most recent assessment roll as separate parcels.