

Graham, Amanda

From: Fey, David
Sent: Thursday, August 22, 2019 11:00 AM
Subject: Amendment of LAFCo Policy Manual Section 107 (MSR Program/Policy)
Attachments: MSR Policy Amdt 09112019.doc

Good morning,

Pursuant to the Commission's 2019-20 work plan, staff is preparing an update of the Fresno LAFCo policy manual section 107 (MSR Program/Policy). The update proposes amendments to streamline the MSR program.

Attached is a word document of the proposed amendment showing tracked-changes. You may view the proposed amendment without tracked changes by selecting "No markup" in the "Review" tab.

Proposed Policy Amendments

1. Repeal "Minor Amendments" section. The primary amendment repeals section 107.033, the "Minor Amendments" portion of the MSR policy. Staff deems this language to be longer practical. This section was initially written to provide an alternative to updating an MSR for a less than significant sphere of influence ("SOI") amendment, but as staff's knowledge and experience preparing contemporary MSRs grows, several aspects of this section are either unnecessary or not in compliance with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH). First, an MSR is required by CKH for an update of a SOI. There is no discretion for the commission to not perform a MSR for an update of an SOI, however minor. Second, given that the SOI is the Commission's plan for the probable physical boundaries and service area of a local agency, it is staff's position that any change to the SOI, whether minor or major, should be sufficiently examined, regardless whether it supports a public or private use.
2. Streamline discussion of municipal services. When the MSR Program was initially approved by the Commission in 2014, it separated local agencies into two categories based on the nature of their services (municipal services versus non-municipal services) with the intent that once a non-municipal local agency's MSR 2.0 was complete the Commission had no further interest in updating the MSR, and could focus its resources on municipal local agencies. This intent is now also deemed not practical because the Commission, and the public at large, has determined the value in maintaining up-to-date MSRs for all local agencies, in particular special districts. Rather than separate local agencies by municipal services versus non-municipal services, this section refines the Commission's interest in all local agencies without regard for the nature of the service or services that the agency provides.
3. Clarify role of MSR template. A proposed amendment presents the option that a local agency may use an existing, approved MSR as an administrative template or may use a MSR template provided by LAFCo staff. In either example, the amendment articulates that a submittal based on a template or earlier MSR is an administrative draft document subject to LAFCo's review and amendment.
4. Miscellaneous corrections. Additional minor amendments are proposed for clarity.

This item is scheduled for consideration by the Commission on September 11, 2019, at 1:30 in the Board of Supervisors chamber. If you have any comments and would like to include them in staff's report, please provide them to me prior to September 4.

Sincerely,
David E. Fey
Executive Officer
Fresno LAFCo

107 Municipal Service Review policy

107.01 Background

Pursuant to ~~Government Code (GC) §56430(a)(and as amended)~~, in order to prepare and to update spheres of influence (SOI) in accordance with GC §56425, the Commission shall conduct a service review of the municipal services provided by a local agency. A municipal service review (MSR) is a comprehensive study prepared by LAFCo ~~designed~~ to inform local agencies, the ~~public~~community, and LAFCo about municipal services provided by local agencies within a designated geographic area. LAFCo evaluates the municipal services provided by one or more local agencies, makes determinations based upon this information and ~~may often~~ recommends actions to promote the efficient provision of those services.

~~An MSR is required in order to prepare (that is, incorporating a new city or forming a new special district) or update (meaning amending) an SOI.~~ An MSR need not be prepared if no action to prepare or update a SOI is proposed, though LAFCo may choose to prepare a MSR at its discretion.

Pursuant to GC §56430CKH, LAFCo must make the following written determinations regarding the following areas:

1. Growth and population projections for the affected area.
2. The location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence (see Policy 106, LAFCo DUC Policies).
3. Present and planned capacity of public facilities and adequacy of public services, including infrastructure needs or deficiencies including needs or deficiencies related to sewers, municipal and industrial water, and structural fire protection in any disadvantaged, unincorporated communities within or contiguous to the sphere of influence.
4. Financial ability of agencies to provide services.
5. Status of, and opportunities for, shared facilities. Accountability for community service needs, including governmental structure and operation efficiencies.
- ~~5-6.~~ Any other matter related to effective or efficient service delivery, as required by commission policy.

An MSR concludes with adoption of the determinations by the Commission. While the Commission is not required by law to make any changes to a SOI based upon MSRs, the Commission may at its discretion opt to shrink or expand an SOI, or approve, deny, or approve with conditions any change of organization or reorganization impacting the governmental agency as a result of the information contained in the MSR. The Commission's determinations may result in recommendations to the subject local agency regarding the areas specified by the statute. When recommendations are made, they will be conveyed to the local agency for response and/or action.

107.02 MSR goals

The goal of the Fresno LAFCo MSR program is to provide cities and special districts with an assessment on their provision of services, make recommendations regarding areas of improvement, and determine whether or not an agency is equipped to effectively provide services within its existing or expanded SOI.

In order to achieve this goal, MSRs will:

1. Evaluate a local agency—including, but not limited to, services delivered by the agency or other agencies, the agency’s compliance with its principal act, activities of its ~~board of directors~~legislative body, the agency’s managerial practices, sufficiency of its annual budget, presence of an agency’s long-range plan for services, opportunities for public participation ~~with district board~~at its legislative body’s meetings, and the ~~board’s~~agency’s compliance with "sunshine" laws, such as the Brown Act—in order to present thoughtful and accurate information in support of Commission determinations;
2. Provide recommendations to encourage effective and efficient municipal service delivery; and
3. Build and maintain effective relationships between LAFCo and local agencies.

LAFCo actively encourages local agencies affected by these policies to include LAFCo at the beginning of any city planning application that may result in an annexation or SOI amendment or extension of services.

107.03 Discussion

107.031 Municipal Services and Local Agencies

The term “municipal services” relates to services provided by cities and many special districts to relatively dense populations at comparatively high levels of service, including:

- Public safety (police, fire, building inspection, etc.);
- ~~Local streets, roads, transit, and airports;~~
- Public utilities including ~~(usually~~ solid waste collection and disposal, wastewater collection and ~~or~~ treatment, domestic water and electricity);
- Land use authority including planning, code enforcement, and building code enforcement;
- Parks and recreation;
- ~~Public Facilities;~~
- Public facilities;
- Airports;
- Public transit;
- Improvement, maintenance, repair, and operation of streets and highways;
- ~~Road, Right-of-way maintenance;~~
- Flood control; and
- Water supply, drainage, storage, and conservation.

“Municipal service” also encompasses a service or function provided to one local agency by a contract with another local agency, as permitted by GC §54981.

~~There are In contrast, other types of services provided by local agencies -that may not be- not considered “municipal,” and do not in themselves facilitate or induce growth. However, LAFCo deems it appropriate to include the local agencies that provide these services in the MSR program as ~~although~~ their services relate to ~~necessary~~ services that were deemed necessary when the local agency was formed and are provided within a specified geographic area under the authority of the California Code. Further, performance of a MSR for a non-municipal service provider permits the full expression of LAFCo goals with all local agencies under its jurisdiction. ~~These services do not in themselves facilitate or induce growth. These “non-municipal” special districts typically do not frequently request or experience modifications to their district service boundaries or update sphere of influences. Non-municipal special district services include, but are not limited to:~~~~

- ~~Cemetery districts;~~
- ~~Conservation districts;~~
- ~~Drainage districts;~~
- ~~Flood Control districts;~~
- ~~Hospitals districts;~~
- ~~Irrigation districts;~~
- ~~Levee districts;~~
- ~~Memorial districts;~~
- ~~Mosquito abatement and pest control districts;~~
- ~~Reclamation; and~~
- ~~Resource conservation districts~~

107.032 SOI Planning Horizon

As described in ~~Government Code~~ §56076, a "Sphere of influence" means a plan for the probable physical boundaries and service area of a local agency, as determined by the Commission. Determining a local agency's SOI is a significant role of the LAFCo. The Commission will determine the probable physical boundaries of the agency using a 20-year planning horizon, meaning the probable expansion of the agency's service area within 20 years of the SOI approval. The Commission will evaluate proposed SOI amendments in light of many of the local agency's own adopted plans and policies including, but not limited to, its general or master plan and related CEQA documents, service plans, annual budgets, fee structure, and capital improvement plans.

107.033 Minor Amendments Repealed

~~Minor amendments to a SOI that are not substantial may at the Commission's sole discretion be approved without an MSR if they meet all of the following criteria:~~

- ~~The requested amendment is either less than 40 acres or less than 5 percent of the total acreage of the area located within the subject agency's existing SOI, whichever is more, inclusive of incorporated territory;~~

~~There are no objections from other agencies that are authorized to provide the services the subject agency provides and whose SOI underlies or is adjacent to the subject territory; and~~

~~The territory subject to the minor amendment and the LAFCo action on the SOI amendment is within the scope of a previously approved CEQA document, for which the subject local agency is the lead agency under CEQA; or~~

~~The proposed minor amendment is solely intended to accommodate planned public facilities or public services.~~

107.034 Environmental Determination

Local agencies that request a SOI amendment that is consistent with the agency's associated with general or master plan growth projections, are expected to be that will trigger a MSR will be the lead agency as defined by the California Environmental Quality Act (CEQA,) (PRCGC §21067). The lead agency has the principal responsibility for carrying out or approving a project which may have a significant affect upon the environment. The lead agency will conduct all necessary environmental determination~~s~~ as appropriate under CEQA (i.e., notice of exemption, negative declaration, environmental impact report). Under this circumstance, LAFCo will be considered at the responsible agency as defined by CEQA guidelines (PRCGC §21069). This relationship should be clearly identified in the lead agency's CEQA documentation, as well as the requested actions (annexations and/or detachments) anticipated by the lead agency in its environmental analysis.

In the event that LAFCo initiates at the MSR, it will be the lead agency and will prepare the appropriate documentation pursuant to the CEQA. Early coordination between the applicant and LAFCo is essential.

107.035 MSR Preparation

The Commission shall conduct a programmatic update of a local agency's MSR before, or in conjunction with, but no later than the time it is considering an action to establish or update an SOI.

The Executive Officer will assess ~~municipal and non-municipal~~ local agencies' SOI every five years, or as necessary, by reviewing the current MSR, evaluating progress on recommendations, and contacting the local agency city or special district to determine the following:

- the local agency's its progress on the Commission's earlier MSR recommendations,
- the adequacy of interest in updating its current SOI/SOI, and,
- These agencies will be asked to verify whether the current SOI is consistent with its general long-range plans.
- ~~and if it is not, will coordinate the schedule to update the MSR and SOI.~~

If staff determines that an amendment to an SOI may be necessary, it may provide local agencies with an MSR questionnaire for them to complete and may request additional information. Once this information is received, staff will prepare a draft MSR. A local agency may also be provided with a MSR template to complete and submit as an administrative draft document subject to LAFCo staff's review for documentation, completeness and thorough analysis.

The adoption of a MSR is not subject to a statutory public hearing (GC §56430). However, to allow for public participation that demonstrates a transparent decision-making process, the following actions will take place:

- The draft MSR shall be posted on the Commission's website ~~forwith~~ a ~~minimum~~-21-day public review period;
- Notice of the public review period will be posted at the offices of Fresno ~~LAFCo~~LAFCo and the Clerk of the Board of Supervisors ~~Office~~ and ~~posted~~ on the Commission's website;
- Notice will be mailed or e-mailed to the subject local agency to be posted in its jurisdiction.

107.04 MSR Policies

The following policies will assist LAFCo staff in preparing MSRs and complying with CKH. These policies are based on circumstances unique to Fresno LAFCo and as such will ensure that municipal services are evaluated in an orderly, logically, and efficient manner.

Policy 1: The SOI should reflect a 20 to 25 year planning horizon and may include additional areas that may relate to the agency's planning. This boundary shall be reviewed and either affirmed or, if necessary, updated on average of every five years thereafter.

Policy 2: MSRs may be updated independently from an SOI modification, either to facilitate review of an agency's service deficiencies or in response to other LAFCo actions.

Policy 3: The Commission reserves the right to have an MSR prepared by a consultant under contract ~~with~~ the Commission and associated expenses may be borne by the requesting local agency.

~~Policy 4: An SOI that is not changed may be affirmed by the Commission without an MSR.~~

Adopted: November 5, 2014

Revised: December 14, 2016, DATE