

**FRESNO LOCAL AGENCY FORMATION COMMISSION (LAFCo)
EXECUTIVE OFFICER'S REPORT**

AGENDA ITEM NO. 7

DATE: December 10, 2014
TO: Local Agency Formation Commission
FROM: David E. Fey, AICP, Executive Officer 
SUBJECT: Commission Workshop on Extensions of LAFCo Approval

RECOMMENDATION: Conduct workshop, receive public testimony and provide direction to staff as needed

Executive Summary

At its November 5, 2014 meeting, the Commission directed staff to return in December with a briefing on the extension process. Pursuant to direction given to staff, this report provides statutory and policy background on the current extension procedure. Commission will then provide staff with appropriate direction.

The Commission's approval of a proposal is a discretionary action. Once a project is approved, the typical tasks involved with completing a project are largely administrative and ministerial. The executive officer has very little discretion to not complete a project if and when the various conditions imposed by the Commission are satisfied. Requests for authorization of extension of time for the completion of reorganizations are also discretionary actions guided by statute and LAFCo policy.

Background on the Statute and LAFCo Policy

Govt. Code §57001 states,

If a certificate of completion for a change of organization or reorganization has not been filed within one-year after the commission approves a proposal for that proceeding, the proceeding shall be deemed terminated unless prior to the expiration of that year the commission authorizes an extension of time for that completion. The extension may be for any period deemed reasonable to the commission for completion of necessary prerequisite actions by any party.

As explained above, once the Commission has approved an application, the applicant has one-year to satisfy the conditions of approval. During that time, the Commission may not reconsider its prior action (unless a reconsideration is filed with LAFCo within 30 days of approval of the resolution). The Commission's sole remedy would be to deny a request for extension.

Fresno LAFCo is authorized under GC §56375(g), "to adopt written procedures for the evaluation of proposals, including written definitions consistent with existing state law." Pursuant to this authorization, in 1993, the Commission adopted policies to evaluate requests for extension of time to complete reorganizations. This section has undergone several amendments since then. For example, in 1999, staff noted a "backlog of uncompleted annexations" and the Commission

expressed that requests should not be granted unless it can be shown that unusual circumstances exist, and the projects are still viable; Commission added section 315-03 to require that "imminent need for the proposal still exists, the project is still viable, and progress is being made toward completion."

Current state statutory authority and Fresno LAFCo policy regarding extension of commission approval of an annexation are provided in Attachment 1.

By 2008, in response to Commission concerns related to the numbers of request for extensions, staff recommended that the Commission consider limiting the number of times an extension could be granted, or approve a graduated fee schedule for extension requests in order to deter numerous extension requests. At that time, other LAFCos indicated that very few extensions were being requested and that fees charged were comparable to what Fresno LAFCo charged. The Commission amended the policy so that requests should be calendared as "Public Hearing" items rather than "Consent Agenda" items. Proponents requesting extensions would then have the opportunity of explaining to the Commission why an extension was needed and the basis for such request.

In 2009, the Commission amended section 315 to allow consideration of economic hardship as justification for approving extensions of time, and also approved placing the first and second extension request on the Commission's consent agenda.

In 2010, the Commission amended section 315 to move all such requests to the consent calendar.

Other LAFCo's Experiences

Fresno LAFCo staff has frequently used the resources of the CALAFCO EO-list serve to determine whether proposed changes to local policies are reflected in the experience of other LAFCos. Staff recently posed this question to the other LAFCos: "How prevalent are 57001 extensions with your LAFCo?" The responses are:

- LA LAFCo: We have not had any such requests since I arrived at LA LAFCO in January of 2011.
- Ventura LAFCo: We do very few. I recall only two or three in the seven years I've been here.
- Sonoma LAFCo: None extant here in Sonoma County.
- Santa Cruz LAFCo: Still a few in Santa Cruz. Approximately one per year.
- El Dorado LAFCo: Infrequently.
- Riverside LAFCo: Over the last 20+ years we've probably done dozens. They have been routinely approved. The great majority of them completed proceedings within the one-year extension they were granted. A few failed to complete and were abandoned. I would guess that less than five received more than one extension. I can only recall one that received three extensions (and then I think it died).
- San Mateo LAFCo: In the 23 years at San Mateo I think we have processed three extensions and we don't have any policies. I think the main reason for extensions is that a condition of approval had not been met.
- Contra Costa LAFCo: Since I started here in 2005, we've only done one extension per 57001 and that was in 2007. The annexation was conditioned on the city legally splitting a parcel – which took longer than we anticipated.

- San Bernardino LAFCo: We have only had three or four of these in my entire 35-year career. Since 2009 there have been no such requests.
- Alameda LAFCo: I can only recall processing one request for a six month extension to a condition of approval. That condition was met and the annexation was finalized within the six months.
- Tulare LAFCo: One extension in the past 10 years, several recently where fault was with staff. In the past 10 years we have had only one annexation expire due to the failed completion of a condition of approval.

Staff concludes:

- That statewide, the practice of authorizing extensions of time to complete reorganizations is limited but not uncommon;
- Fresno LAFCo experiences a larger number of repeated requests for extension than the responding LAFCos; and
- Fresno LAFCo's section 315 does not discourage repeated requests for extension.

Policy Foundation

A policy question to consider is whether repeated, multiple-year requests for extensions are consistent with LAFCo policy, or whether circumstances have changed to the degree that such requests should be deemed inconsistent with local policy. Attachment 2 presents relevant excerpts from LAFCo Policy.

LAFCo policies are intended to address and/or resolve issues of local concern. Two of these issues are relevant to authorization of extensions of time to complete a reorganization:

- Premature proposals and lack of development proposals; and
- Phasing of agency expansion/growth.

It is important to note that most approvals are completed in the time allowed by §57001. Currently, the Commission has 13 approved—but not completed—projects. Of that number, nine have been extended from five to eight times. Economic hardship was a dominant theme of the requests for extension of time.

Commission policy encourages orderly growth of local agencies:

- 101-02: Requires sufficient information to determine that adequate services, facilities, and improvements can be provided and financed by the agencies responsible for the provision of such services, facilities, and improvements;
- 102-01: Encourages agencies to implement an orderly, phased annexation program;
- 103-01: Encourages well-planned, orderly, and compact urban development patterns for all developing areas.
- 103-01: Annexation proposals to cities ... shall show that urban development is imminent for all or a substantial portion of the proposal area; that urban development will be contiguous with existing or proposed development; and that a planned, orderly, and compact urban development pattern will result....; and
- 210-06: Proposal shows that there is existing substantial development or gives indication of future development, thereby requiring urban services. If no existing substantial development, a condition assuring that substantial development will occur upon annexation shall be made a part of the proposal.

Policy 210-06 is not frequently used given that most annexation proposals comply with LAFCo policy and are subject to development approvals by the annexing city. Staff notes that the 13 approved—but not completed—projects all presented evidence of imminent development in the form of tentative subdivision maps.

Statewide Implications of the Recession and amendment to other Statutes

Section 315 has been amended to allow economic and market impediments to suffice as logical reasons to support extension of time. This is consistent with the legislature's repeated amendments of the Subdivision Map Act to extend the life of approved tentative subdivision maps. Building Industry Association CEO Mike Prandini expressed to staff that since the legislature has extended the life of tentative maps, LAFCo policy should support this action and allow for extensions of time to complete reorganizations.

Staff notes Subdivision Map Act paragraph (c) of GC §66452.21, which lends support to Mr. Prandini's comment,

GC §66452.21

(a) The expiration date of any tentative or vesting tentative subdivision map or parcel map for which a tentative or vesting tentative map, as the case may be, has been approved that has not expired on the date that the act that added this section became effective and that will expire before January 1, 2011, shall be extended by 12 months.

(b) The extension provided by subdivision (a) shall be in addition to any extension of the expiration date provided for in Section 66452.6, 66452.11, 66452.13, or 66463.5.

(c) *Any legislative, administrative, or other approval by any state agency that pertains to a development project included in a map that is extended pursuant to subdivision (a) shall be extended by 12 months, if this approval has not expired on the date that the act that added this section became effective.* This extension shall be in addition to any extension provided for in Section 66452.13.

This language is not, however, binding to the Commission.

Options Available to the Commission

Staff offers several policy questions for the Commission's consideration and discussion:

- Should Section 315 be retained as-is and continue to guide the Commission's evaluation of requests for authorization of extension of time for the completion of reorganizations on a case-by-case basis?
- Are repeated extensions of time consistent with orderly, logical, and efficient growth of cities?
- Should the test for imminent development be amended to ensure viability?
- Should LAFCo policy be amended to factor in, among other things, changed circumstances related to the underlying application?
- Should there be a limit on the number of extensions of time?

- What is sufficient evidence of economic hardship and should that evidence also be used to determine the continued viability of the completion of a project?
- How “viable” is a project that has been subject to multiple extensions of time?
- Should economic hardship justification be removed from Section 315?

The Following Have Received Copies of This Report

- LAFCo Commissioners and Alternates
- Ken Price, LAFCo Counsel, Baker, Manock, and Jensen
- Bernard Jimenez, Deputy Director, Fresno County Planning Department
- Will Kettler, Fresno County Public Works and Planning Department
- All City Managers

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**Relevant Excerpt from
Cortese-Knox-Hertzberg Local Government
Reorganization Act of 2000**

Govt. Code §57001 (emphasis added)

If a certificate of completion for a change of organization or reorganization has not been filed within one year after the commission approves a proposal for that proceeding, the proceeding shall be deemed terminated unless prior to the expiration of that year the commission authorizes an extension of time for that completion. The extension may be for any period deemed reasonable to the commission for completion of necessary prerequisite actions by any party. If a proceeding has not been completed because of the order or decree of a court of competent jurisdiction temporarily enjoining or restraining the proceedings, this shall not be deemed a failure of completion and the one-year period shall be tolled for the time that order or decree is in effect.

**Current Fresno LAFCo Policy Regarding
Extensions of Commission Approval**

315 EXTENSION OF ONE YEAR TO COMPLETE PROCEEDINGS

- 01 A notice of the one-year expiration of the Commission resolution will be sent to the proponent, with the option to request a one-year extension of time (57001). Any proposal requested by a public agency for public agency purposes may be extended for a five-year period. However, the public agency shall annually give to the Commission office a letter of intent as to the continued purpose of the annexation being for public purpose.

A copy of the Commission agenda and the Executive Officer report on the request for a one-year extension shall be mailed at least 5 days prior to the hearing to the following: the Commission, the persons named in the application, each subject agency, and any person or landowner requesting notice of hearing for the application.

Prior to a proposal's expiration, the extension request will be placed on the agenda for Commission action as a Consent Agenda item. The item may be pulled from the Consent Agenda at any time by the Commission for further consideration. Notwithstanding this, the extension request may be placed on the Commission's agenda as a "Public Hearing" item should circumstances warrant such as determined by the Executive Officer.

- 02 Extensions of time shall only be granted when it can be shown that the imminent need for the proposal still exists, the project is still viable, and progress is being made toward completion. The Commission may

consider economic hardships beyond the control of the proponents as appropriate justification supporting the extension request.

To enable the Commission to make these determinations, the proponent shall be requested to provide the following information, which shall be addressed in the Executive Officer's report:

- Any circumstances that have changed in the vicinity of the project since the proposal was approved that could affect its suitability for annexation.
- Actions that have been taken by the proponent to ensure that the conducting authority proceedings can be completed within the requested extension period.
- If the proponent has been unable to satisfy a condition subsequent to the Commission's approval due to adversarial market and/or economic conditions, such condition(s) shall be identified and supporting documentation provided. In addition, the applicant as a part of the extension request shall submit to LAFCo written confirmation from the city or district representative to which annexation is proposed supporting the extension request and validating the presence of the adversarial market or economic conditions justifying the extension. If the proposal is to annex to a district located within the unincorporated area, written correspondence in support of the extension request shall also be provided from the County of Fresno.

The Executive Officer's report shall also indicate when the application was initially approved, how many previous extensions have been granted, and discuss any other factors that bear on the viability of the proposal.

Adopted: June 16, 1993

Revised: April 5, 1995

June 23, 1999

January 9, 2008

April 15, 2009

November 3, 2010

Relevant Excerpts from Fresno LAFCo Policies

SECTION – 000

002 ISSUES:

In Fresno County the Commission has identified the following list of problems and needs locally, which pertain to the Commission's responsibilities, and have developed policies, standards, and procedures in this document in order to help resolve the problems and meet needs within the Commission's jurisdiction.

- * Need for more cooperation/coordination among local agencies
- * Premature proposals and lack of development proposals
- * Phasing of agency expansion/growth

SECTION – 100

**101 ENCOURAGING ORDERLY FORMATION AND DEVELOPMENT OF AGENCIES:
(Government Code Section 56301)**

02 Any proposal for a change of organization or reorganization shall contain sufficient information to determine that adequate services, facilities, and improvements can be provided and financed by the agencies responsible for the provision of such services, facilities, and improvements.

05 Among the purposes of the Commission are discouraging urban sprawl, preserving open-space and prime agricultural lands, efficiently providing government services, and encouraging the orderly formation and development of local agencies based upon local conditions and circumstances (Code sec. 56301).

102 ENCOURAGING CONSISTENCY WITH SPHERES OF INFLUENCE AND RECOMMENDED REORGANIZATION OF AGENCIES: (Government Code Section 56425)

01 All proposals reviewed by the Commission, including changes of organization or reorganization, shall be consistent with the agency adopted spheres of influence and Commission policies. Within the sphere of influence each agency should implement an orderly, phased annexation program.

05 All developed urban land inside a city's sphere of influence shall be encouraged to annex to the city. The burden of proof as to why any such areas should not be annexed shall rest with the residents and owners of the property being annexed. Likewise the city shall develop plans to annex such developed urban areas. All islands of unincorporated territory and areas substantially surrounded located within the city sphere of influence shall be encouraged to annex to the city, as the logical provider of services and controls.

103 ENCOURAGING ORDERLY URBAN DEVELOPMENT AND PRESERVATION OF OPEN SPACE PATTERNS: (Government Code Section 56300)

- 01 The Commission encourages well-planned, orderly, and compact urban development patterns for all developing areas. ...
- 03 Annexation proposals to cities or districts providing urban services to undeveloped or agricultural parcels shall show that urban development is imminent for all or a substantial portion of the proposal area; that urban development will be contiguous with existing or proposed development; and that a planned, orderly, and compact urban development pattern will result. Proposals resulting in a leap frog, non-contiguous urban development patterns shall be discouraged.

SECTION - 200

210 STANDARD FOR ANNEXATION TO CITIES AND URBAN SERVICE DISTRICTS (Government Code Section 56375)

- 01 Proposal is consistent with the adopted spheres of influence and does not conflict with the goals and policies of the Commission.
- 06 Proposal shows that there is existing substantial development or gives indication of future development, thereby requiring urban services. If no existing substantial development, a condition assuring that substantial development will occur upon annexation shall be made a part of the proposal.
- 07 Proposal shows that development can be provided all urban services and improvement or facilities necessary, as shown by the service plan and application.