INTRODUCTION

The purpose of San Diego LAFCO’s Incorporation Guidelines is to outline the incorporation process as set forth in Government Code Section 56000 et seq. (§56000). The guidelines are divided into two parts. The first part, or overview, presents general information on the incorporation process. It is intended to be used as a basic citizen’s guide to the entire incorporation process.

The second part contains more specific information regarding the requirements of the laws governing incorporations and the criteria that is used to evaluate an incorporation proposal. It also cites Government Code Sections as reference for further research. The second part of this procedural guide is intended to be used by those more directly involved with incorporations.

ACKNOWLEDGEMENTS

San Diego LAFCO wishes to thank El Dorado LAFCO for their incorporation guidelines, Christensen & Wallace Management Consultants for their manual on incorporation proposals, and Joyce Crosthwaite of Project Design Consultants, Inc, who assisted in preparing San Diego LAFCO’s Incorporation Guidelines, A Guide to the LAFCO Process for Incorporations in San Diego County.

DISCLAIMER

These are Proposed Incorporation Guidelines and have not been adopted by San Diego LAFCO. Portions of this document reference existing State of California law and adopted San Diego LAFCO policies. However, this document in its entirety will be subject to future review and approval by the Commission.
A CITIZEN'S GUIDE TO THE INCORPORATION PROCESS

A. PURPOSES OF INCORPORATION

Incorporation of a city is defined as the formation of a city with corporate powers. The process shifts local government responsibility for an unincorporated area under the jurisdiction of a county board of supervisors to a newly established city council. This process is accomplished under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, the law governing Local Agency Formation Commissions (LAFCOs) and local government organizational changes.

The reasons for incorporation efforts varies from place to place and include, but are not limited to, the following:

- To improve local public services,
- To capture increased revenues to support local services,
- To give a community local control over land use planning,
- To create a politically accountable governing body (a city council) in a limited geographic area, and
- To pursue local policy goals

B. INCORPORATION PROCESS

The procedure for the incorporation of an unincorporated community in the State of California is a lengthy and very complex process requiring at least a year of formal review. The purpose of the process is to ensure that any proposed incorporation is economically feasible and in the best interests of the community. An incorporation proposal must also be environmentally and logically sound from a public service standpoint. The procedures for incorporation should be followed to avoid unnecessary delays and to reduce the risk of potential litigation.

The processing of an incorporation proposal can be divided into five separate stages. These are:

1. Developing the incorporation proposal
2. Initiating the incorporation proposal
3. LAFCO staff review of the Incorporation proposal
4. LAFCO Commission proceedings
5. Election and the first year

1. Developing the Incorporation Proposal

Incorporations don't just "happen"—they are created by people who devote long hours, money and hard work to the project. The impetus for an incorporation typically starts with a group of residents forming an ad hoc "committee" to explore the possibility of incorporating their community. While each community is unique and has its own
reasons for exploring incorporation, a committee of interested local residents is, almost without exception, the driving force of an incorporation. An incorporation committee defines and articulates incorporation goals on behalf of the community, raises funds, collects signatures, assembles application materials, works with LAFCO staff and consultants, testifies at hearings and negotiates changes in the proposal.

For any incorporation to succeed, it must have widespread community support since all successful incorporations must be approved by the voters. Therefore, ensuring that the residents within the area proposed for incorporation received complete information is a crucial task while developing the incorporation proposal and throughout the entire process. Since incorporation is often controversial, all people residing in the incorporation area as well as residents in adjoining communities may be directly affected by an incorporation. It is recommended that the incorporation committee meet with all affected groups.

Fund raising is another crucial task in developing an incorporation proposal. A by-product of the complexity of incorporation is its expense. Incorporation proponents are responsible for the costs of an incorporation proposal which may exceed $100,000 as evidenced by recent incorporations. Under specified conditions, incorporation proponents may request funding from the State for portions of the incorporation process. However, the funding is not certain and may not cover all costs of incorporation. In addition, the Commission will take no action on the incorporation proposal while the request for funding is pending before the State. Specific San Diego County incorporation processing fees and deposit requirements are available upon request.

2. Initiating the Incorporation Proposal

There are certain basic requirements which must be met prior to initiation. First, existing State law requires that areas proposed for incorporation include at least 500 registered voters, that the area be entirely within the boundaries of one county and that the incorporating territory be contiguous and without islands of unincorporated territory surrounded by the proposed city.

After meeting the basic legal requirements for incorporation, the proposal can be initiated in one of two ways. One way is through a public agency. A resolution of application can be adopted by the legislative body of an affected agency which is defined as any city, district or county which contains territory within the proposed incorporation boundaries.

Incorporations can also be initiated by a petition signed by at least 25% of the registered voters or 25% of the number of landowners who own not less than 25% of the assessed value of the land in the incorporation area. The Register of Voters or County Assessor must verify the petitions and may charge a fee for verification of each signature. The costs of verification will be charged in the same manner and by the same agencies which bear the costs for verifying signatures for an initiation petition.
If the Registrar of Voters or County Assessor finds irregularities with petition signatures, they will disqualify the invalid signatures and reduce the number needed to reach the required 25% threshold. Most incorporation proponents collect more signatures than required to allow for disqualifications. The incorporation proponents are required to file a "Notice of Intention to Circulate a Petition" with the LAFCO Executive Officer prior to collecting signatures. Since State Law is very specific regarding the form and time limits for collecting signatures, it is strongly recommended that the incorporation proponents meet with San Diego LAFCO staff prior to filing the Notice and to collecting signatures.

A completed LAFCO application for incorporation must also accompany the petition or resolution initiating the incorporation proposal. The application must include a map and legal description of the boundaries of the proposed incorporation area, a feasibility study, including a fiscal analysis of the proposed incorporation, justification for the proposal, a plan for the transfer and provision of public services to a new city, special studies and other information as requested by the San Diego LAFCO Executive Officer.

3. LAFCO Staff Review of the Incorporation Proposal

In its evaluation of the merits of an incorporation proposal, the LAFCO staff completes multiple tasks. The staff reviews all the application materials submitted, conducts its own analyses, performs the environmental review, determines the property tax transfer and revenue neutrality amounts, solicits comments and produces a final report. As the Executive Officer deems appropriate, the submittal of additional information or studies, preparation of a new fiscal feasibility study or changes in the proposal may be required. This process can take as long as twelve (12) months.

Throughout the entire process, LAFCO staff works cooperatively with all interested parties to ensure that a thorough, complete and accurate proposal is developed for LAFCO consideration. When the proposed incorporation is ready for a public hearing, the San Diego Executive Officer will issue a Certificate of Filing, schedule the item for a public hearing and prepare a report with a recommendation which will be sent to the LAFCO Commission for a public hearing.

Noticing requirements for LAFCO proposals require publishing in a paper of general circulation. LAFCO is generally not required to mail a notice to every resident within a proposed incorporation boundary. Residents with an interest in an incorporation proposal should send a request to San Diego LAFCO asking that they be added to the incorporation mailing list.

The following is a list of guidelines and policies which applies to incorporations in California as well as specifically within San Diego County.
• San Diego LAFCO may approve incorporation if it finds that the proposal complies with the policies and standards applicable in State law and local procedures.

• San Diego LAFCO has adopted a policy that recognizes that special efforts should be made to recognize the integrity of unincorporated communities and, when appropriate, preserve their cohesive identity. The policy includes standards to determine when it is appropriate to exclude territory from a proposed incorporation boundary.

• All subject agencies whose service responsibility or territory would be changed as a result of the incorporation proposal shall participate in revenue neutrality negotiations to mitigate negative fiscal impacts of incorporation.

4. LAFCO Commission Proceedings

LAFCO (the Commission) is the body which is empowered by the State Legislature to deliberate on an incorporation proposal. The San Diego LAFCO is comprised of eight representatives—three from cities in San Diego County, two County of San Diego supervisors, two representatives of special districts and one public member.

A public hearing will usually be scheduled within 30 days after the San Diego LAFCO Executive Officer issues a Certificate of Filing. At the public hearing, the Commission hears the report of its staff and accepts the testimony of interested parties both supporting and opposing the incorporation. The Commission may continue the hearing to a future date or close the public hearing and act on the proposal.

The Commission has the authority to approve, deny or modify and approve the incorporation proposal. It also has the ability to add terms and conditions. If the Commission approves the proposed incorporation, it will, at the same hearing, adopt a resolution of approval, determine the final boundaries, establish the governmental structure of the new city, determine the base property tax and the provisional appropriations limit and establish mitigation measures, if needed, for the impacts of revenue neutrality. It also establishes an effective date for the incorporation and may adopt a sphere of influence for the new city. If the Commission denies the proposed incorporation, no similar application can be filed for at least one year unless the Commission waives that prohibition.

Assuming approval by the Commission, the incorporation proposal is heard by the conducting authority which is LAFCO. The purpose of the conducting authority hearing is to count written protests. If 50% or more of registered voters in the proposed incorporation area submit written protest, the conducting authority terminates the incorporation process. If less than 50% protest is submitted, the incorporation is scheduled for an election. If approved by voters, the incorporation becomes effective on the date determined by LAFCO.
5. **Election and First Year**

The incorporation proposal is placed on the ballot for voter approval at the next available election. If the incorporation is successful, the new city will be liable for payment of election costs. In the event the incorporation is rejected by the voters, the county absorbs the election costs. If incorporation proponents request an earlier election than the next general election, they will be required to reimburse the County for the costs of the special election.

A simple majority of those voting is required to approve the incorporation. Included on the ballot, along with approval of the incorporation, are the names of those people running for the city council and an appropriations limit as required by law. The ballot may also call for the selection of the name of the new city and can include the question of whether the number of city council members shall be 5 or 7 and whether subsequent city council elections shall be by district or at-large. By State law, the first election is conducted at-large. Following confirmation of the proposed incorporation by the voters, the LAFCO Executive Officer, as a final action, files a certificate of completion.

On the effective date following approval by the voters, the five (5) people receiving the highest number of votes are sworn in as the new city council. The three (3) persons receiving the lowest number of votes serve until the next general election and the two (2) persons receiving the highest number of votes serve until the second general election. The new city council begins to organize the new city's administrative structure at their first meeting by adopting the existing ordinances of San Diego County. These ordinances remain in place for at least 120 days following incorporation or until the new city council adopts ordinances superseding the County ordinances, whichever occurs first.

Generally a new city provides no direct services during the transition period which is the time between the effective date and July 1 of the first fiscal year following the effective date. The County continues to provide municipal services during the transition year to provide time for the new city to "gear up" until the beginning of the next fiscal year. A new city, at its own cost, may opt to assume responsibility for services at any time during the transition year. At the end of the transition year, the new city begins to provide the services that it is authorized to provide. At that time, the responsibility for service transfers from the County to the new city.

*FOR MORE DETAILED INFORMATION ON THE INCORPORATION PROCESS, CALL SAN DIEGO LAFCO AT (619) 531-5400*
THE INCORPORATION PROCESS

A. INITIATION OF PROCEEDINGS

The Cortese-Knox-Hertzberg Act of 2000 requires that areas proposed for incorporation include at least 500 registered voters (§56043), that the area be entirely within the boundaries of San Diego County and that the incorporating territory be contiguous and without exclusions (islands). State law also empowers each LAFCO to adopt additional standards for incorporation proposals (§56375).

Incorporations can be initiated in two ways. A resolution of application can be adopted by the legislative body of an affected agency. An affected agency is any city, district or county which contains territory within the proposed incorporation boundaries.

Incorporations can also be initiated by a petition signed by at least 25% of the registered voters or at least 25% of the landowners owning at least 25% of the assessed value of land within the incorporation area (§56764). The Register of Voters or County Assessor must verify the petitions. Both means of initiating an incorporation are described in detail below.

1. Initiation by Petition of Registered Voters

Before circulating any petition for a change of organization, including an incorporation, the proponents shall file with the San Diego LAFCO Executive Officer a "Notice of Intention" to circulate a petition that shall include the name and mailing address of the proponent and a written statement, not to exceed 500 words, setting forth the reasons for the proposal (§56700.4(a)).

A petition for incorporation of a new city requires the signatures of not less than 25% of the total number of registered voters residing in the area to be incorporated (§56764(a)) or by not less than 25% of the total number of landowners (owning property valued at a minimum of 25% of the total assessed value of land in the incorporating area) (§56764(b)). A sample petition is included in the appendices to this document. The text of a petition for city incorporation must include the following (§56700 et seq.):

- A statement that the proposal is made pursuant to Government Code Section 56000 et seq.
- A brief statement of the nature of the proposal and listing other changes of organization
- A map and description of the incorporation boundaries
- Proposed terms and condition.
- A statement of the reason(s) for the proposed incorporation.
• A statement as to whether the petition is signed by registered voters or landowners.

• The names of three chief petitioners.

• A request that further proceedings be taken by San Diego LAFCO pursuant to the provisions cited.

• A statement of whether the proposed incorporation is consistent with the spheres of influence previously adopted by LAFCO.

• The proposed name of the new city (optional)

• Any provisions for appointment of a city manager and appointment of elected officials except for city councils members (optional)

The form of the petition must provide for each signer's printed name, street address (post office boxes are not sufficient), signature and the date of signature (§56704). Each signer of the petition must be either a registered voter or landowner within the boundaries of the proposed incorporation. For landowner petitions, each signature must be accompanied by a description of property owned within the incorporation area, such as an assessor's parcel number.

All signatures must be gathered within a six-month period from the date of the first signature (§56705). The LAFCO Executive Officer must be notified of the date of the first petition signature in order to establish the total number of registered voters in the proposal area and to establish a numerical signature requirement. Incorporation petitions must be submitted to LAFCO for filing within 60 days of the date of the last signature on the petition.

The total number of valid signatures necessary to meet the 25% requirement for a petition of registered voters will be established by the registrar of voters as of the date of the last voter registration report prior to the date the first signature on the petition (§56375[h]).

2. Application by Resolution of an Affected Agency

Any affected agency in the area proposed for incorporation may become the applicant by adopting a resolution of application (§56658). At least twenty days (20) prior to adoption of the resolution, the agency may give mailed notice to LAFCO and other agencies. The contents of the resolution must include all of the same components as an application petition except for the signature requirements and shall be submitted with a plan for services (§56653). The agency board assumes the leadership role in the complex incorporation process and is responsible for completion of all application requirements including the payment of fees.
3. **Processing of Petitions**

Within 30 days after the date the petition is filed with LAFCO, the Executive Officer shall cause the petition to be examined and shall issue a “Certificate of Sufficiency” or “Notice of Insufficiency” (§56706(a)). Registered voter petitions are examined by the County Registrar of Voters office to determine the number of required signatures and the number of valid signatures (§56707). Landowner petitions are examined by the County Assessor’s Office to determine their validity based on the “most recent equalized assessment roll” (§56708).

If the petition is determined to be insufficient based upon the number of signers, the LAFCO Executive Officer will notify the chief petitioners by certified mail. The proponents have 15 days after the date of this notice to submit a supplemental petition to the LAFCO Executive Officer (§56706(b)1). It is important to note that this is the only chance to additionally collect the required number of signatures.

Within 10 days of the date the supplemental petition is filed, the LAFCO Executive Officer will have the petition examined and certify in writing the result of his/her examination. If the petition is found to be insufficient, it will be filed as a public record “without prejudice” to any future filing (§56709).

For incorporation proceedings where the petition is determined to be sufficient, the Commission may, upon receipt of a certification by the proponents of insufficient funds, take no action on the proposal and request a loan from the General Fund of the State. Repayment of the loan shall be made a condition of approval of the incorporation and shall be repaid within two years of the effective date of a successful incorporation. If the incorporation is denied by the Commission or is defeated at an election, the loan shall be forgiven (§56383(g))

**San Diego LAFCO Suggestions for Incorporation Petition Efforts**

In addition to the many requirements for petitions described in State law, San Diego LAFCO offers the following suggestions:

- **San Diego LAFCO encourages incorporation proponents to collect at least 10% to 15% more signatures than the minimum requirement in order to compensate for signatures found to be invalid.**

- **San Diego LAFCO encourages each circulator to review the map of the area with each signer of the petition to confirm his/her residence within the proposed incorporation boundary. This helps reduce the number of invalid signatures.**

- **San Diego LAFCO encourages incorporation proponents to set a deadline for collection of all petitions. This helps circulators finish their task in time to meet the mandatory legal time limits.**
B. CONTENTS OF INCORPORATION APPLICATION

Any application for changes of organization filed with San Diego LAFCO must be accompanied by a feasibility study. This study is in addition to all other information required in an application. (§56652). Completion of a standard LAFCO application form is required as part of the feasibility study. Sections 56652 (d) and (e) provide the Commission and its LAFCO Executive Officer with authority to require additional information as needed to process the incorporation proposal.

San Diego LAFCO requires that five (5) copies of the feasibility study be submitted to the San Diego LAFCO office as soon as they are available. Upon formal initiation of the proposal, additional copies of the final version of the report may be required.

An incorporation feasibility study must include the following information:

- A completed application.

- A brief discussion of the relevant history and characteristics of the proposed incorporation area.

- A plan for providing services to the incorporating area (§56653). This should include a description of the local agencies which presently serve the community, the range and level of services currently provided, improvements or upgrades or other conditions the local agency would impose or require, the information about how services would be financed and of the increased range and level of services potentially available in the community if incorporated.

- A rationale for the boundaries proposed for incorporation and a description of possible boundary alternatives. While a description of possible boundary options is not mandatory, LAFCO staff will analyze possible boundary alternatives. Most incorporation proponents include possible boundary alternatives to ensure, as much as possible, that areas consistent with incorporation goals are included. The rationale for boundaries should include a discussion of the effects of incorporation upon adjacent communities, special districts and the county.

- It is also recommended that a proposed sphere of influence be included with the incorporation application. As with alternate incorporation boundaries, most proponents include a proposed sphere of influence with the incorporation proposal to ensure that areas which may annex in the future are compatible with the new city. LAFCO staff will recommend a sphere of influence for the new city.

A sphere of influence proposal must also include a service review of the services provided in the incorporation area (§56430). Service review must include, at a minimum, infrastructure needs or deficiencies, populations projections and growth rates, financing constraints, cost avoidance opportunities, opportunities
for rate restructuring, governmental structure options, evaluation of management efficiencies and local accountability and governance.

- A draft comprehensive fiscal analysis (CFA). Following submission of an incorporation proposal, the Executive Officer will prepare, or cause to be prepared by contract, a comprehensive fiscal analysis (§56665). Data used in the CFA shall be from the most recent fiscal year (the fiscal year preceding the issuance of the certificate of filing) for which data is available. The CFA shall document the source and methodology used.

The CFA (and any review of that analysis by the State Controller) becomes a part of the LAFCO Executive Officer's report. The CFA must be completed and distributed not less than five days prior to the date of the commission's hearing. Distribution of the report must include the principal petitioners and/or officers designated in the application, each agency whose boundaries or sphere of influence would be affected by the incorporation and all other parties filing written request for notice.

A CFA includes a forecast of revenues and expenditures for the new city during the first three full fiscal years following incorporation. However, during the first seven (7) years a new city receives some state subventions based on a formula of three times the number of registered voters. After the seventh year, the distribution of those state subventions changes to a formula based on the actual population of a city. In order to accurately analyze the long-term financial feasibility of a proposed incorporation, San Diego LAFCO requires budget projections for eight (8) years for a new city to allow for a more complete estimate of a new city's long-term financial feasibility.

In preparing a CFA all direct and indirect costs which reflect actual or estimated costs shall be included as well as general fund costs used to support a fee-supported service where costs are not fully recovered through fees. The CFA shall also identify where transfer of services (and related costs) results in an administrative cost reduction to the county. The CFA shall use, as a comparison, the cost of services provided in cities similar in size and population. The direct and indirect cost of services to be assumed by the new city that are provided by state agencies shall also be included (§56800{1}).

A CFA also includes a discussion of revenue neutrality (§ 56815). Incorporations should not occur primarily for financial reasons and should result in a similar exchange of both revenue and responsibility for service delivery among affected agencies. Negative financial impacts to affected agencies must be identified and mitigation measures proposed. A more specific set of guidelines for determining revenue neutrality is contained in the appendices of this report.
• Fees. At the time of submittal of the application, incorporation proposals are required to pay a deposit and will also be required to pay 50% of actual LAFCO review costs. The deposit will allow staff to open a file and initiate the determination of sufficiency of a petition and begin meetings with the proponents to develop a time frame and cost estimates. The actual costs for processing the application may be higher than the initial deposit. Because the actual costs occur incrementally, a proposed payment schedule should be developed for each incorporation application linking fee payment to processing of the application. A San Diego LAFCO fee schedule is included in the appendices to this document.

• Map and Legal Description and Sphere of Influence. For incorporation applications, a map of proposed and alternative boundaries is submitted with the application. It is recommended that the incorporation map & legal description include alternative boundaries and a proposed sphere of influence. The final map and sphere of influence is developed following LAFCO approval. Incorporation proponents are responsible for the cost of preparing the final map & legal description. The following will be considered by San Diego LAFCO when determining final incorporation boundaries, alternative and sphere of influence lines:

Service Delivery. San Diego LAFCO will ensure that all residents within the proposed boundaries are provided adequate, efficient and economical levels of service.

Land Use. San Diego LAFCO has no direct authority to set or alter existing land use patterns. However, it is important to include a variety of land uses within an incorporation area to ensure a balanced and viable economic base for the new city.

Topography, Geography, and History. San Diego LAFCO will consider topography and geography in determining a logical incorporation boundary and alternatives. The validity of historic boundaries as a factor of consideration in the formation of city boundaries will also be considered.

Existing Cities, Communities and Spheres of Influence. San Diego LAFCO will consider existing city boundaries and sphere of influence boundaries when determining an incorporation boundary and possible alternatives. The effects of the proposed incorporation upon adjacent communities, special districts and the county will also be considered.

Simplicity. San Diego LAFCO encourages simple and logical boundaries. Parcels should not be split by city boundaries.

Existence of Service Districts. San Diego LAFCO encourages consideration of existing special district boundaries to ensure the ease and economy of service delivery.
San Diego LAFCO has adopted a policy "Recognition of Unincorporated Communities" which is contained in the appendices to this document. The intent of the policy is to provide guidance to San Diego LAFCO in recognizing and preserving unincorporated communities during incorporations and for spheres of influence boundaries. The policy requires LAFCO to consider several factors such as the existing spheres of influence, the cohesiveness of the unincorporated community and the impacts of the proposed incorporation on service delivery.

C. COMMISSION PROCEEDINGS

After required application documents and fees have been submitted to San Diego LAFCO, the application will be processed by staff. The preparation of the LAFCO Executive Officer’s report, the State Controller’s review (if requested) and the Commission’s public hearing are all considered part of the LAFCO Commission proceedings.

1. LAFCO EXECUTIVE OFFICER’S REPORT AND RECOMMENDATION

The LAFCO Executive Officer shall prepare a report on the incorporation application. The report shall address, but not be limited to, the following sections.

- Incorporation Boundaries (§56375): LAFCO will consider alternatives to the proposed incorporation boundaries and shall also establish a sphere of influence for the proposed new city.

- Plan for Services.

- Comprehensive Fiscal Analysis: The Executive Officer will notify all interested parties that the CFA is available for public review by publishing notice in a newspaper of general circulation serving the proposed incorporation area and by mailing notice to all affected agencies, the chief proponents and all persons who have filed a written request for notification. The notice shall specify the locations where the fiscal analysis can be reviewed and the time period in which the Controller’s review can be requested.

- Terms and Conditions: LAFCO may specify terms and conditions which may include, but are not limited to, the following:
  - Continuation of services following incorporation.
  - Payments and taxes required by changes in service responsibilities or for revenue neutrality.
  - Disposition of money, property and rights of use, such as water or utility capacity rights.
— Disposition of special district responsibilities, district governing boards and employees.
— The effective date of incorporation.
— Continuation of fees and charges
— Imposition of special and general taxes

• Environmental Determination: Incorporations are a project under the California Environmental Quality Act (CEQA) and require environmental review. The three possible determinations which LAFCO can make are:
  — An incorporation proposal is exempt under §15320 of the CEQA.
  — If the CEQA initial study process shows no substantial evidence that the project will create significant adverse environmental impacts, the Commission may adopt a negative declaration.
  — If the initial study concludes that the project may produce significant environmental impacts, the preparation of an environmental impact report is required. Proponents will be required to pay LAFCO's actual costs associated with conducting environmental review.

• Property Tax Distribution: The task of calculating the property tax transfer is normally performed as part of the CFA. (§56842).

• Provisional Appropriations Limit Determination: An interim appropriations limit or "spending ceiling" for the new city will be established as required by Article XIIIB of the California Constitution. The initial appropriations limit is calculated in the manner described in §56842.6. The permanent appropriations limit shall be set at the first municipal election following the first full fiscal year of operation and shall not be considered a change in the appropriations limit.

2. REVIEW OF CFA BY STATE CONTROLLER

Not be less than 30 days following mailed and published notice that the CFA is complete and available for public review, any interested party may request that the State Controller's Office review the CFA (§56801). A request for a Controller's review shall specify, in writing, the elements of the fiscal analysis which the Controller is requested to review and the reasons for requesting the review. The request must include the LAFCO processing fee and a deposit of $5,000 which will be credited toward the total costs of the Controller's review.
Within 45 days of receiving the request, the Controller shall issue a report. Time limits imposed upon the LAFCO process shall be tolled while the Controller completes the report (§56801(c)). The Controller’s report shall be included in the Executive Officer’s report.

After a request for the Controller’s review has been submitted to San Diego LAFCO, the Executive Officer will contract with the Controller for review of the CFA. The contract shall specify the elements to be reviewed and the estimated cost of the review. Prior to executing the contract, the party requesting the review will deposit with the Executive Officer the remainder of the Controller’s total estimated cost of conducting the review. This estimate shall include the estimated charge by the State Controller, LAFCO staff costs, and costs for any consultants required to assist the State Controller with the review. If the Executive Officer is notified that the Controller expects to exceed the estimated cost, the party requesting the review shall be notified and will be responsible for depositing the additional amount with the Executive Officer prior to the Controller proceeding with completion of the review.

3. LAFCO PUBLIC HEARING

When an application for incorporation is deemed complete, the LAFCO Executive Officer will issue a certificate of filing, specifying the date of the commencement of LAFCO hearings on the proposal. The public hearing must be set within 90 days of the issuance of the certificate of filing and meet the requirements for notice.

The Commission will hold public hearings on the incorporation proposal. All meetings must meet the legal requirements for public notice. At the public hearing, the Commission will hear testimony from all who wish to testify, although it may set guidelines for the length and order of testimony.

Commission Actions

At the conclusion of the public hearing, LAFCO may approve, amend and approve, or deny the proposed incorporation. The Commission must adopt a resolution of determination within 35 days of the close of the public hearing. If the proposal is denied, no similar proposal for incorporation involving the same or substantially the same area shall be initiated for one year after the date of adoption of the resolution terminating proceedings (§56880).

If LAFCO approves the incorporation proposal, the Commission’s action must include a series of findings and determinations specifically addressing incorporation issues in the language of the resolution of approval.

4. CONDUCTING AUTHORITY HEARING

LAFCO is designated by law as the "conducting authority" for city incorporations for the purpose of holding a hearing to count protest for an incorporation proposal.
Conducting Authority Fees

San Diego LAFCO is the conducting authority for any incorporation in San Diego County and may charge a fee for conducting authority proceedings.

Conducting Authority Hearing

Within 35 days of LAFCO’s adoption of its resolution of approval, the Clerk of the Conducting Authority issues a “Notice of Hearing” scheduling the date for the Conducting Authority hearing on the incorporation proposal. The notice is published in a newspaper of general circulation in the incorporating area. The proponents (and others requesting notice) also receive the notice by mail. The purpose of the hearing is to collect and count written protest from registered voters residing within the incorporation area. San Diego LAFCO does not have the discretion at this point to modify the incorporation proposal or to terminate incorporation proceedings without sufficient protest being recorded. The conducting authority hearing must take place not less than 15 days from the date the notice was issued but may be continued for up to 60 days.

Written protest submitted at the Conducting Authority hearing will be verified and tabulated, and the Conducting Authority will take one of the following actions within 30 days of the conclusion of the hearing:

- Terminate the proceedings if more than 50% of the registered voters residing in the incorporation area submit written protest; or

- Call an election on the question of incorporation if written protest is submitted by less than 50% of registered voters residing in the incorporation area.

Following the protest determination, the County Registrar of Voters begins the process of preparing the issue for a vote at the next general election. If proceedings are terminated by majority protest or by the voters, no substantially similar proposal for the same territory may be filed within two years of the date of adoption of the resolution terminating proceedings (§57090).

5. ELECTION

Elections for incorporation are usually on the ballot of the next general election. If a special election is requested, the incorporation proponents may be required to pay for the costs of the special election. If the incorporation is successful, the new city will be liable for payment of election costs. In the event the issue fails, the county absorbs the election costs.

The LAFCO Executive Officer must draft an impartial analysis of the incorporation issue for inclusion in the incorporation ballot. The Commission may review the text of the impartial analysis and approve or modify it, if a review procedure has been instituted by
the Commission. San Diego LAFCO may adopt policies for a review procedure for the impartial analysis at a later date. The review must be completed in sufficient time to consider and approve or modify the analysis and submit the analysis to the officials conducting the election not later than the last day for submitting rebuttal arguments (§56859).

6. COMPLETION

Following a successful incorporation election, the County Board of Supervisors will certify the election results by adoption of a resolution and forward a copy to LAFCO: LAFCO staff will prepare a “Certificate of Completion” (the document which signals the end of the incorporation process) and a “Statement of Boundary Change”. The effective date of the new city will be clearly shown on these documents. LAFCO staff will assemble documents to accompany the Certificate of Completion for recordation by the County Recorder’s office. LAFCO staff is also responsible for filing incorporation completion documents with a variety of State agencies and affected departments of the county government.

ATTACHMENTS

- Sample Petition Form
- San Diego LAFCO Revenue Neutrality Guidelines
- San Diego LAFCO Fee Schedule
- Recognition of Unincorporated Communities Policy
PETITION FOR PROCEEDINGS PURSUANT TO THE CORTESE-KNOX-HERTZBERG
LOCAL GOVERNMENT REORGANIZATION ACT OF 2000

Part I: NOTICE OF INTENT TO CIRCULATE PETITION

Proponents are required to file a NOTICE OF INTENT TO CIRCULATE PETITION with the Executive Officer of the San Diego Local Agency Formation Commission before a petition to initiate a change of organization or reorganization can be circulated (Govt. Code § 56700.4).

1. Notice is hereby given to circulate a petition proposing to: __________________________________________

2. The reason(s) for the proposal are: ______________________________________________________________

   ____________________________________________________________________________________________

   ____________________________________________________________________________________________

   ____________________________________________________________________________________________

   ____________________________________________________________________________________________

Proponent’s Name (print) ___________________________________________________________ Signature of proponent or representative __________________________

Proponent’s Address ________________________________________________________________ Cty. State. Zip __________________________

Pursuant to Section 56700.4 of the California Government Code, this NOTICE OF INTENT TO CIRCULATE PETITION was filed with me on __________________________ Date __________________________

MICHAEL D. OTT, Executive Officer

PART II: DISCLOSURE REQUIREMENTS

The Political Reform Act prohibits a person appointed to the Local Agency Formation Commission from soliciting or accepting campaign contributions of more than $250 within the preceding 12 months from parties, participants, or their agents while a proceeding is pending before LAFCO and for three months following the decision. LAFCO commissioners who receive such contributions are required to disqualify themselves from participating in the proceedings. Both commissioners and contributors who are parties to the proceeding are required to disclose the contributions received or made. Names of current LAFCO commissioners and LAFCO disclosure forms are available at www.sdlafco.com or by calling 619/531-5400.

Expenditures for political purposes related to a change of organization or reorganization proposal which has been submitted to a commission, and contributions in support of, or in opposition to such measures, shall be disclosed and reported to the same extent and subject to the same requirements as provided for local initiative measures to be presented to the electorate [Govt. Code § 56700.4(a)].
Part III: PETITION FOR CHANGE OF ORGANIZATION OR REORGANIZATION

This proposal is made pursuant to Part 3, Division 3, Title 5 of the California Government Code, Section 56000 et seq. of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000.

(a) The specific change(s) of organization proposed is/are: 

(b) The boundary of the territory included in the proposal is as described in the attached legal description and map and is by this reference incorporated herein.

(c) The proposed action(s) will be subject to the following terms and conditions: 

(d) The reason(s) for the proposal is/are: 

(e) Signers of this petition have signed as (select one): ☐ landowner, ☐ registered voter.

(f) The name(s) and mailing address(s) of the chief petitioner(s) (not to exceed three) is/are:

1. Name of chief petitioner (print) mailing address 

2. Name of chief petitioner (print) mailing address 

3. Name of chief petitioner (print) mailing address 

(g) It is requested that proceedings for this proposal be taken in accordance with Section 56000 et seq. of the Government Code.

(h) This proposed change of organization (select one) ☐ is ☐ is not consistent with the sphere-of-influence of any affected city or district.

(i) The territory included in the proposal is (select one) ☐ inhabited (12 or more registered voters) ☐ uninhabited (11 or less registered voters).

(j) If the formation of a new district(s) is included in the proposal:

1. The principal act under which said district(s) is/are proposed to be formed is/are: 

2. The proposed name(s) of the new district(s) is/are: 

3. The boundary(ies) of the proposed new district(s) is/are described in the attached legal description and map and are by this reference incorporated herein.

(k) If an incorporation is included in the proposal:

1. The name of the proposed city is: 

2. Provisions are requested for appointment of: ☐ city manager ☐ city clerk ☐ city treasurer

(l) If the proposal includes a consolidation of special districts, the proposed name of the consolidated district is:
Part IVa: REGISTERED VOTER PETITION

Petitions must meet minimum signature requirements (see Part V). Signatures must be secured within six months of the date on which the first signature was affixed. Petitions must be submitted to the LAFCO Executive Officer within 60 days after the last signature is affixed (Govt. Code § 56705).

Each of the undersigned states:
- I personally signed this petition.
- I am a registered voter within the County of San Diego.
- I personally affixed hereto the date of my signing this petition and my place of residence, or if no street or number exists, then a designation of my place of residence that will enable the location to be readily ascertained.

<table>
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<tr>
<th>Name of Signer</th>
<th>Residence Address</th>
<th>Date Signed</th>
<th>Official Use</th>
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San Diego Local Agency Formation Commission • 1600 Pacific Highway • Room 452 • San Diego, CA 92101 • 619/531-5400
Part IVb: LANDOWNER PETITION

Petitions must meet minimum signature requirements (see Part V). Signatures must be secured within six months of the date on which the first signature was affixed. Petitions must be submitted to the LAFCO Executive Officer within 60 days after the last signature is affixed (Govt. Code § 56705).

Each of the undersigned states:
- I personally signed this petition.
- I am a landowner of the affected territory.
- I personally affixed hereto the date of my signing this petition and the Assessor's Parcel Number(s), or a description sufficient to identify the location of my land.

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<tr>
<th>Name of Signer</th>
<th>Assessor's Parcel Number(s)</th>
<th>Date Signed</th>
<th>Official Use</th>
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Reorganization—Signatures must comply with the applicable signature requirements for each of the changes proposed (Govt. Code § 56864.1).

District Formation—Signatures as required by the principal act under which the new district is proposed to be formed (Govt. Code § 56860).

Dissolution of a District—For registered voter district: signatures by (a) not less than 10% of the registered voters within the district; or (b) not less than 10% of the number of landowners within the district who also own not less than 10% of the assessed value of land within the district.

—For landowner-voter districts: signatures by not less than 10% of the number of landowners within the district who also own not less than 10% of the assessed value of land within the district.

—If dissolution is for inactivity, the petition must be signed by three or more registered voters or landowners within the subject district and include statement and recitations as required by Govt. Code 56871 (Govt. Code § 56870).

Consolidation of Districts—For registered voter districts: signatures by not less than 5% of the registered voters within each of the districts.

—For landowner-voter districts: signatures by landowners-voters constituting not less than 5% of the number of landowner-voters owning land within each of the several districts who also own not less than 5% of the assessed value of land within each of the districts (Govt. Code § 56865).

Merger of District with City or Establishment of a Subsidiary District—For a registered voter district: signatures by (a) 5% of the registered voters of the district; or (b) 5% of the registered voters residing within the territory of the city outside the boundaries of the district.

—For a landowner-voter district: signatures by (a) 5% of the number of landowner-voters within the district; or (b) 5% of the registered voters residing within the territory of the city outside the boundaries of the district (Govt. Code § 56866).

District Annexation or Detachment—For a registered voter district: signatures by (a) not less than 25% of the number of registered voters within the territory proposed to be annexed or detached; or (b) not less than 25% of the number of landowners within the territory proposed to be annexed or detached who also own not less than 25% of the assessed value of land within the territory.

—For a landowner-voter district: signatures by not less than 25% of the number of landowners owning land within the territory proposed to be annexed or detached who also own not less than 25% of the assessed value of land within the territory (Govt. Code § 56864).

Incorporation of a City—Signatures by: (a) not less than 25% of the registered voters residing in the area to be incorporated; or (b) not less than 25% of the number of owners of land within the territory proposed to be incorporated who also own not less than 25% of the assessed value of land within the territory proposed to be incorporated (Govt. Code § 56764).

Disincorporation of a City—Signatures by not less than 25% of the registered voters residing in the city proposed to be disincorporated (Govt. Code § 56766).

Consolidation of Cities—Signatures by not less than 5% of the registered voters of each affected city (Govt. Code § 56766).

Annexation to a City—Signatures by: (a) not less than 5% of the number of registered voters residing within the territory proposed to be annexed; or (b) not less than 5% of the number of owners of land within the territory proposed to be annexed who also own 5% of the assessed value of land within the territory (Govt. Code § 56767).

Detachment from a City—Signatures by: (a) not less than 25% of the number of registered voters residing within the territory proposed to be detached; or (b) not less than 25% of the number of owners of land within the territory proposed to be detached who also own 25% of the assessed value of land within the territory (Govt. Code § 56768).
REVENUE NEUTRALITY PROCEDURES

The provisions of Government Code §56815 declare that the incorporation of new cities will result in a similar exchange of both revenue and responsibility for service delivery among the county, the proposed city and other affected agencies. Further, the incorporation should not occur primarily for financial reasons.

The provisions of Government Code §56815 also declare LAFCO shall not approve an incorporation unless it finds that the two following quantities are substantially equal:

1) Revenues currently received by the county (or subject agency) that would accrue to the proposed new city.

2) Expenditures, including direct and indirect expenditures, currently made by the County (or subject agency) that would be assumed by the proposed new city.

If the proposed incorporation is not revenue neutral, then the Commission must make a finding that either (§56815):

1) The County and all subject agencies agree to the proposed transfer or,

2) The negative fiscal effect has been adequately mitigated by tax sharing agreements, lump sum payments, payments over a fixed period of time, or any other terms and conditions pursuant to §56886.

LAFCO Policies

For determining negative impacts and mitigation measures for revenue neutrality, San Diego LAFCO has adopted the following provisions:

- For purposes of complying with revenue neutrality requirements, the Commission may exercise discretion in its determination that revenues and expenditures are substantially equal and these determinations will be made on a case-by-case basis.

- Mitigation measures may range from one-time payments to ongoing annual transfers of revenues or taxes. The mitigation time period proposed in the feasibility study will evaluate any unique circumstances associated with the incorporation. Based on that evaluation, the feasibility study should propose whether mitigation should be based on tax sharing agreements, lump sum payment or payments over a fixed period of time.

- In determining fiscal impacts to affected agencies, expenditures and revenues will be based on the most recent prior fiscal year for which data are available.
• Fiscal impacts to restricted revenues and general fund revenues will be evaluated separately and one revenue will not be used to offset a surplus or deficit in the other.

• Revenues and expenditures that are considered full-cost recovery (i.e., current planning, building inspections etc) need not be identified.

• All identifiable service related expenditures being transferred to the proposed city, including costs for jail bookings, general government services, etc., will be considered in determining revenue neutrality.

• Separate revenue neutrality determinations will be made by LAFCO between the proposed city and the county and between the proposed city and any affected special district(s).

The process for determining revenue neutrality impacts shall include the following:

• LAFCO staff will convene a revenue neutrality negotiating committee composed of representatives of the county and representatives of the proponents of incorporation. LAFCO staff will attend meetings of this committee in order to facilitate discussions and compliance with this policy.

• The revenue neutrality committee will have up to 90 days to negotiate and propose terms and conditions to meet the requirements of §56815. Any proposals for the terms and conditions of revenue neutrality must adhere to the standards for content described in this policy. Any proposal for the terms and conditions for revenue neutrality should also include criteria and a process for modification of the agreement after incorporation and a description of methodologies and assumptions leading up to the terms of the agreement.

• At the conclusion of the meetings of the revenue neutrality committee or the end of the 90 day negotiating period, the LAFCO Executive Officer will certify that agreement about the revenue neutrality terms and conditions has been reached or has not been reached. If the participants have agreed and concur with the negotiated terms and conditions, then the agreement will be documented by adoption of a resolution by the County Board of Supervisors and each affected special district and by a letter from the authorized representative of the incorporation committee. The documents demonstrating agreement to the proposed terms and conditions are returned to LAFCO staff for inclusion in the comprehensive fiscal analysis, staff report and recommendations.

• If agreement to proposed terms and conditions for revenue neutrality does not occur within the 90-day negotiating period, LAFCO staff will draft proposed terms and conditions for use in the comprehensive fiscal analysis and for recommendation to the Commission at its public hearing.
SAN DIEGO LAFCO PROCESSING FEE SCHEDULE

Annexation, Detachment, or Sphere Amendment Fees*

<table>
<thead>
<tr>
<th>Acres</th>
<th>Fee</th>
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<tbody>
<tr>
<td>.50 acre and less</td>
<td>$1,800</td>
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<tr>
<td>.51 - .99 acre</td>
<td>$2,300</td>
</tr>
<tr>
<td>1 - 9.9</td>
<td>$2,800</td>
</tr>
<tr>
<td>10 - 19.9</td>
<td>$3,300</td>
</tr>
<tr>
<td>20 - 49.9</td>
<td>$3,850</td>
</tr>
<tr>
<td>50 - 99.9</td>
<td>$4,480</td>
</tr>
<tr>
<td>100 - 149.9</td>
<td>$5,200</td>
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<tr>
<td>150 - 199.9</td>
<td>$6,000</td>
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<tr>
<td>200 + ($6,000 plus an acreage fee of $60 for every 100 acres over 200 acres)</td>
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<tr>
<td>Incorporation</td>
<td>$10,000 deposit, plus 50% of actual LAFCO review costs</td>
</tr>
<tr>
<td>District Formation</td>
<td>$7,000</td>
</tr>
<tr>
<td>Consolidation/Merger/Dissolution/Subsidiary District</td>
<td>$4,000</td>
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<tr>
<td>Dissolution for Inactivity</td>
<td>$500</td>
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* The above fees are charged for each jurisdictional change and sphere amendment associated with a proposal and apply to cities and districts. For contractual service agreements, payment of the applicable annexation or detachment fees must be made upon submittal of a contractual service agreement application. Fees for activation or expansion of latent powers shall be based on the above acreage categories, not to exceed $11,500. Proponents shall be responsible for actual hearing notification and mailing costs for public hearing items.

SURCHARGE

There will be a 30% surcharge for consideration of contractual service agreements. This surcharge is due prior to LAFCO consideration of the related annexation/detachment application. The surcharge does not apply to service agreements involving health or safety concerns where the property is eligible for immediate annexation.

CITY AND DISTRICT SPHERE OF INFLUENCE UPDATE**

Base rate for all city and district sphere update proposals .................................. $4,000
Acreage fee for every 100 acres included in the sphere update proposal beyond the current sphere .............................................................. $300

** No processing fee will be charged for sphere updates that involve reaffirmations or minor amendments. The acreage component for district sphere updates may be waived for financial hardship or other circumstances affecting the ability of a district to pay fees. Proposals (e.g., consolidations, dissolutions, etc., deemed consistent with LAFCO objectives) will not be charged a processing fee, if the applicant pays a sphere update fee and submits a sphere update study and supplemental feasibility report accepted as complete by the Executive Officer.
REQUEST FOR RECONSIDERATION/TIME EXTENSION

Request for reconsideration of LAFCO determination ........................................... $ 750
Request for extension of time to complete proceedings ....................................... 250

PETITION FILING FEES

In addition to the proposal processing fee, each application submitted by petition will be charged LAFCO=s actual costs to verify the signatures.

ENVIRONMENTAL REVIEW
(P.R.C. Section 21089)

CEQA Exemption ........................................................................................................ No charge
Review of Initial Study and preparation of Negative Declaration, OR determination that EIR
is required .................................................................................................................. Actual cost
Extended Initial Study (if required) ........................................................................ Actual cost
Preparation of EIR ..................................................................................................... Actual cost

Department of Fish and Game Fee: Effective January 1, 1991

Negative Declaration ............................................................................................... $1,250
EIR ............................................................................................................................ 850
County Clerk - handling fee .................................................................................. 25

INCORPORATION FISCAL ANALYSIS REVIEW

Processing of Request for State Controller=s Review of an incorporation
fiscal analysis................................................................................................................ $ 2,900
State Controller=s review of fiscal analysis .............................................................. Actual cost

PAYMENT OF FEES: Fees are due when proposals are submitted to LAFCO. A supplemental fee may be charged and collected prior to the LAFCO hearing if additional acreage or actions are required.

EXCEPTIONS: Fees may be waived or reduced by the Executive Officer if financial hardship is demonstrated, OR if application is in response to a LAFCO condition or recommendation.

Effective: July 1, 2000
Subject

RECOGNITION OF UNINCORPORATED COMMUNITIES

Purpose

To provide guidance to the San Diego Local Agency Formation Commission in recognizing and preserving unincorporated communities during incorporation and city sphere of influence update proceedings.

Background

The San Diego LAFCO acknowledges that special efforts should be made to recognize unincorporated communities and, when appropriate, preserve their cohesive identity. The policy for identifying unincorporated communities does not supersede the factors specified in Government Code \( \text{156841} \), which LAFCO is required to consider in the review of proposals for jurisdictional boundary changes. Rather, the policy furthers the intent of these factors as they relate to incorporation proposals and city sphere of influence updates. In particular, the policy is consistent with: (1) LAFCO goals of consolidating service responsibility and encouraging logical and efficient delivery of public services; and (2) the relevant portions of the Regional Growth Management Strategy, as defined by the Memorandum of Agreement between San Diego LAFCO and the San Diego Association of Governments.

Policy

It is the policy of the San Diego Local Agency Formation Commission to:

1. Determine whether it is appropriate to exclude territory from a proposed incorporation boundary or city sphere of influence update after considering the following factors:
   a. The sphere of influence of any neighboring city;
   b. Whether affected territory is surrounded or substantially surrounded by a city;
c. The present and planned land uses in the area and if public services are adequately provided by special districts, county departments or private entities;

d. The cohesiveness of a community; whether it is separated from neighboring jurisdictions by distinct geographic, political, economic or social characteristics or community plan boundaries, service provision, or historical development patterns; and

e. An evaluation of impacts on an existing or proposed city=s plans to improve or consolidate services.

Adopted: November 11, 1993
Reviewed: May 4, 1998
REVENUE NEUTRALITY MATERIALS

1. Revenue Neutrality Statute
2. Orange County LAFCO Revenue Neutrality Policy
3. Revenue Neutrality Agreement Recitals/Findings
DATE: April 8, 1998

TO: Local Agency Formation Commission

FROM: Dana M. Smith, Executive Officer
       Peter Banning, Project Manager

SUBJECT: Draft Revenue Neutrality Policy for Incorporations - Comments of Affected Agencies and Incorporation Committees - Revised Draft

Background

The Commission began its review of a Draft Revenue Neutrality Policy at its February meeting and received comments on the draft in the following month. The staff report of March 11 discusses comments received as of that date. Consideration of adoption of the policy was continued at the March 11, 1998 meeting in order to allow more extensive consultations between LAFCO and County staffs.

This staff report summarizes the comments of the County and the Foothill Ranch Homeowners Association and describes how comments received by staff have resulted in changes to the proposed Draft Policy. Attachments to this staff report include:

1. March 31, 1998 Draft Revenue Neutrality Policy (Revised)
2. Comments of Michael M. Ruane, Assistant CEO, Strategic Affairs
3. Comments of Foothill Ranch Homeowners Association
4. Comments of Orange County Fire Authority
5. Staff report of March 11, 1998 with attachments

Comments received by staff prior to the March meeting resulted in changes to the policy’s language on re-opening revenue neutrality agreements after incorporation and countywide services. Those changes are described in the staff report of March 11, 1998 and its attachments.
During the past month, staff has held several meetings with County staff and received additional written comments. As a result of those meetings, significant changes have been made to the Draft Policy in two areas: Procedural Guidelines (pages 2 & 3) and Duration of Fiscal Impact Mitigation (page 5). The revised Draft Policy shows deletions in **strikeout type** and additional language in **bold italic type**.

**Changes to Procedural Guidelines**

The comments of the Rancho Santa Margarita Cityhood Committee suggested that the 90-day period for revenue neutrality negotiations specified in the original Draft Policy would be longer than required. Additionally, County staff commented that the negotiation process should provide additional steps to respond to cases where an impasse develops in the negotiations. In such cases, the involvement of the Commission would be helpful to the negotiating parties and help insure that the incorporation process is not unnecessarily delayed. Accordingly, the revised Draft provides for an initial negotiating period of up to 45 days. If no agreement is reached in that period, the Executive Officer would refer the status of the negotiations to a Commission workshop for discussion of unresolved issues. An additional 45-day negotiating period would follow the Commission workshop. These proposed changes are shown in the process flow chart on page 2 and in text changes on page 3 of the revised policy.

**Changes to Duration of Fiscal Impact Mitigation**

In the development of the Draft Policy, an attempt was made to establish a maximum number of years that fiscal impact mitigation payments would be made to the county by a new city. The guiding assumption was that a maximum term could be long enough to allow the County to take action to adapt to incorporation, but limited so that new cities would not be burdened by the mitigation payments indefinitely. There are several problems with this approach. First, the revenue neutrality statute specifically provides for permanent, ongoing sharing of revenues as one possible basis for agreement. Second, County staff objected to the 10-year maximum for mitigation payments in the previous draft as too short a time to mitigate the effects of incorporations. Third, an incorporating city might have financial reasons to seek a mitigation period of longer than 10 years.

Overall, staff concluded that setting a 10-year (or any other specific maximum) term for revenue neutrality agreements might unreasonably constrain the negotiations. The revised draft provides a process for the parties to negotiate the term of the agreement by first establishing a lump sum sufficient to offset the County’s total annual net revenue losses extending into the future and then negotiating terms for financing that amount. The revised Draft Policy calls for the term of revenue neutrality agreements to be determined by the negotiating committee in the following three steps:
1. Determine the annual net revenue loss to the County and other affected agencies resulting from the proposed incorporation.

2. Determine a lump sum sufficient to yield in interest funds equal to the annual net revenue loss to the County and other affected agencies.

3. The duration of mitigation payments will be calculated using the annual mitigation payment amount and inflation and discount rates established by negotiation.

The lump sum to be determined by the committee could be described as the net present value of the stream of revenue transferred to the new city or as an endowment in an amount that would yield in annual interest funds equal to the County's annual net revenue losses.

The negotiating parties could either choose a target number of years for the duration of the agreement and then establish appropriate inflation and discount rates for calculation of the annual payment amount necessary to pay the lump sum amount, or target a maximum annual payment amount and calculate the number of years necessary to pay the lump sum amount.

The inflation and discount rates to be established in the negotiations would be important dimensions of revenue neutrality agreements. The inflation rate would account for expected increases in value of revenues transferred to the new city at the time of incorporation. The discount rate would account for the increase in the value mitigation payments assuming that they are accumulated in an investment account established by the County. The negotiating parties could either agree on set rates for the duration of the agreement or agree to use published indices of inflation, yields of treasury bills etc. for annual adjustment of mitigation payments.

The above process for determining the duration of mitigation payments provides for a ceiling on the total amount and duration of mitigation payments (as suggested by incorporation proponents) and at the same time addresses the County's view that the fiscal impacts of incorporation may extend indefinitely into the future. It is appropriate that the balance between these opposing interests be struck in the negotiation process for each incorporation individually.

Although the County Board of Supervisors has not yet reviewed the revised Draft Policy, County staff has expressed support for the proposed changes described above. The County Board will review the revised policy on April 7, 1998.

In the opinion of staff, the changes incorporated in the revised Draft Policy serve the stated purposes of the policy and will contribute to its effectiveness. The contributions of the County staff and incorporation proponents to the development of the Draft Policy have been very helpful.
RECOMMENDED ACTION:

Staff recommends that the Commission adopt the proposed Revenue Neutrality Policy as revised.

Respectfully submitted.

Dana M. Smith
Executive Officer

Peter V. Banning
Consultant

Attachments

F:\LAFCO\April98min\revneut13.wpd
March 31, 1998 Draft
Policy for the Implementation of Revenue Neutrality for Incorporation of Cities (Government Code Section 56845)

PURPOSE

The provisions of Government Code Section §56845 declare the intent of the Legislature that the incorporation of new cities result in a similar exchange of both revenue and responsibility for service delivery among the county, the proposed city and other subject agencies and as a result minimize the long term negative fiscal effects incorporations have on counties. The text of §56845 is attached to this policy as Exhibit A.

Uncertainties likely to arise in the interpretation of §56845 may act to impede incorporation of viable cities and/or invite inter-jurisdictional disputes following incorporation. The purpose of this policy is to establish incorporation guidelines that provide a framework for the development of terms and conditions related to the balancing of revenues and service responsibilities, otherwise known as “revenue neutrality,” and:

- To institute a process for analysis and mitigation of the fiscal impacts of incorporation on the county that results in stable, predictable financial outcomes for both the county and the new city.
- To define the terms and budget items to be negotiated under revenue neutrality requirements of §56845.
- To mitigate potential fiscal losses to the county without making incorporation impossible for local communities ready for self-governance or precluding an adequate fiscal base for new cities.
- To specify how participants in the incorporation process can develop proposed terms and conditions of incorporation that will meet revenue neutrality criteria and the standards of this commission in making the findings required by §56845 and §56375 for approval of incorporations.

POLICY STATEMENT

It is the policy of this Commission that implementation of revenue neutrality provisions of Government Code Section §56845 shall insure adequate protection of the county's financial stability of the county and other affected agencies while at the same time permitting the incorporation of communities demonstrating the necessary resources and capacities for self-governance. The legislative mandates for achieving revenue neutrality shall be implemented through a rational and predictable process for gathering information, determining the appropriate content of revenue neutrality agreements and providing for the revision of those agreements.
Revenue Neutrality Negotiation & Fiscal Analysis Process

Incorporation Petition Filed

Preliminary Fiscal Report prepared by applicants

Review Departmental Costs & Revenues Provided by the County, LAFCO Staff Reviews & Agrees or Amends

Initiate Comprehensive Fiscal Analysis

Convene Revenue Neutrality Committee for Negotiations — 45 days

Draft Comprehensive Fiscal Analysis

No Agreement

Agreement

Board of Supervisors & Chief Petitioners Adopt Agreement

Commission Workshop

Re-Convene Revenue Neutrality Committee for Negotiations — 45 days

No Agreement

Agreement

Board of Supervisors & Chief Petitioners Adopt Agreement

LAFCO Staff Drafts Revenue Neutrality Proposal

LAFCO Staff Drafts Terms & Conditions, Staff Report & Recommendation

Public Hearing Draft Comprehensive Fiscal Analysis

LAFCO Hearing
PROCEDURAL GUIDELINES

Figure 1 illustrates the portions of the incorporation process involving the development of revenue neutrality actions that must be taken by the Commission. A preliminary fiscal analysis (PFA) is a prerequisite to revenue neutrality negotiations. Incorporation proponents are required to submit a preliminary fiscal analysis (PFA) for evaluation by LAFCO staff. The PFA is augmented by LAFCO staff as necessary with county revenue and departmental cost data, the calculation of the property tax allocation and analysis of fiscal and service level assumptions. After formal acceptance of the PFA, The PFA is used as a starting point for the comprehensive fiscal analysis prepared by the Executive Officer or her designee. LAFCO staff convenes a revenue neutrality negotiating committee composed of representatives of the county, other affected agencies and the chief petitioners for the incorporation when the first draft of the comprehensive fiscal analysis is available. LAFCO staff will attend meetings of this committee in order to facilitate discussions and compliance with this policy.

The revenue neutrality committee will have up to 90 an initial period of 45 days to negotiate and propose terms and conditions an agreement to meet the requirements of §56845. At the conclusion of negotiations or the end of the 90 45 day negotiating period, LAFCO Executive Officer will certify that an agreement has been reached or has not been reached. If an agreement is reached, ratification by resolution of the County Board of Supervisors and by letter of the incorporation committee is returned to LAFCO staff for inclusion in the comprehensive fiscal analysis, staff report and recommendations.

If the negotiating parties do not reach agreement, the status of the negotiations will be referred to the Commission for workshop discussion of outstanding issues at the first available meeting as determined by the Executive Officer. If revenue neutrality issues are not resolved during the course of the workshop, the Commission will direct the negotiating committee to resume negotiations for an additional 45 day period.

If no agreement is reached by the revenue neutrality committee and ratified by the County Board of Supervisors and the incorporation committee after two negotiating periods, LAFCO staff will draft proposed terms and conditions for use in the comprehensive fiscal analysis and for recommendation to the Commission at its public hearing.

Revenue neutrality agreements should adhere to the standards for content described in this policy. Such agreements should include criteria and a process for modification of the agreement after incorporation and a description of methodologies and assumptions leading up to the terms of the agreement. Revenue neutrality agreements should also provide for a process of adjustment after incorporation in order to account for unforeseen economic or legislative events significantly affecting the flow of local revenue.
CONTENT

Analytical Standards: Revenues/Expenditures considered for revenue neutrality purposes

The provisions of revenue neutrality agreements negotiated pursuant to this policy shall adhere to the following standards:

- Revenue neutrality agreements shall be based on county costs and revenues for the most recent prior year for which data are available. Only identifiable and recurring revenues and expenditures should be evaluated for purposes of determining revenue neutrality. Anticipated or projected revenue growth should not be included.

- Expenditures for services transferred to a new city should be evaluated on a "net cost" basis. Services funded on a full cost recovery basis (such as building inspection) are by definition revenue neutral and should not be included in the analysis.

- Costs of capital improvements are not recurring costs and should not be included.

- Countywide costs of general government, including the CEO, Clerk of the Board, Auditor-Controller, Personnel and other administrative government for regional services and administrative functions which are required to support county governance of both incorporated and unincorporated areas should not be included in defining services transferred to the new city.

- Inflationary factors should not be included in the analysis of revenue neutrality provisions unless the resulting agreement provides for annual adjustment of mitigation payments based on actual data.

- Restricted and unrestricted revenues should be evaluated separately. An agency may pay a portion of its annual revenue neutrality payment with restricted funds if both agencies agree and a legal exchange mechanism can be created.

- Fees charged by the county for services to other jurisdictions (such as property tax administration fees) should be considered as an offsetting county revenue in the calculation of fiscal effects on the county.

Permissible Types of Terms and Conditions

Terms and conditions for implementation of revenue neutrality may include provisions for tax sharing agreements, lump-sum payments, payments over a fixed period of time, modification of incorporation boundaries or any other terms and conditions permitted under Section §56844.
Duration of Fiscal Impact Mitigation

The duration of mitigation payments should extend no more than 10 years, based on the county's ability to implement general plan amendments and take other measures necessary to adjust to or compensate for the loss of revenue due to the incorporation of a new city.

The term of mitigation payments may be either ongoing or limited to a specific number of years. Ongoing revenue neutrality agreements may provide for the permanent sharing of revenues between the new city and affected agencies. Agreements that limit revenue neutrality payments should establish the term of payments in the following steps:

1. Determine the annual net revenue loss to the County and other affected agencies resulting from the proposed incorporation.

2. Determine a lump sum sufficient to yield in interest funds equal to the annual net revenue loss to the County and other affected agencies.

3. The duration of mitigation payments will be calculated using the annual mitigation payment amount and inflation and discount rates established by negotiation.

Method of Annual Payment

In instances in which revenue neutrality requires tax sharing or mitigation payments to the county, payment should be effected as directly from the revenue source as permitted by State law.

Effective Date of Incorporation

The effective date of incorporation should be considered in revenue neutrality agreements. The effective date should be set to establishing adequate initial account balances for the new city as it assumes service responsibilities, but should not otherwise conflict with the intent of fiscal neutrality or exacerbate County revenue losses.
REVENUE NEUTRALITY AGREEMENT

THIS REVENUE NEUTRALITY AGREEMENT ("Agreement") is entered into between the County of Orange, a subdivision of the State of California ("County") and the City of Aliso Viejo, a municipal corporation ("City"). The County and the City are collectively referred to herein as the "Parties." This Agreement is made with respect to the following Recitals:

RECITALS

A. In or about August of 1999, the Aliso Viejo Cityhood 2000 Committee submitted an application for the incorporation of the City of Aliso Viejo (the "Incorporation"). The Incorporation includes the following unincorporated areas of the County of Orange: the planned community of Aliso Viejo, the Aliso Viejo Golf Course and Resort, the communities known as "New World," and the Wellingtons Senior Apartment Community.

B. Pursuant to California Government Code section 56845, such City incorporations should result in a similar exchange of both revenue and responsibility for service delivery between the affected county and the proposed city.


D. The express intent of the LAFCO Policy and of this Agreement is to mitigate potential fiscal losses to the County without making incorporation impossible for local communities ready for self-governance or precluding an adequate fiscal base for new cities.

E. Under Section 56845 and the LAFCO Policy, LAFCO may not approve the Incorporation unless it finds either (1) pursuant to Government Code section 56845(b), that revenues currently received by the County which would accrue to the City are substantially equal to the expenditures currently made by the County for those services which will be assumed by the City, (2) pursuant to Government Code subsection 56845(c)(1), that the County agrees to a transfer of revenues without regard to the transfer of service responsibility, or (3) pursuant to Government Code subsection 56845(c)(2), that the County agrees to an alternative transfer of revenues and service responsibility.

F. Pursuant to Government Code section 56833.1 and the LAFCO Policy, the Aliso Viejo Cityhood Committee funded and LAFCO caused to be prepared a Comprehensive Fiscal Analysis of the Proposed Incorporation of Aliso Viejo (the "CFA") to serve as the basis for this Agreement.

G. Based upon the CFA, the Parties have agreed that this Agreement will mitigate the fiscal impacts of the Incorporation to a level acceptable to the County. In addition, the Parties will separately negotiate the development of programs which mitigate regional service needs that are not directly addressed by this Agreement, including, but not limited to, health and human services, economic/work force development, at-risk youth programs, and other prevention programs.
Policy for the Implementation of Revenue Neutrality for Incorporation of Cities (Government Code Section 56845) Adopted by Orange County LAFCO April 8, 1998

PURPOSE

The provisions of Government Code Section §56845 declare the intent of the Legislature that the incorporation of new cities result in a similar exchange of both revenue and responsibility for service delivery among the county, the proposed city and other subject agencies and as a result minimize the long term negative fiscal effects incorporations have on counties. The text of §56845 is attached to this policy as Exhibit A.

Uncertainties likely to arise in the interpretation of §56845 may act to impede incorporation of viable cities and/or invite inter-jurisdictional disputes following incorporation. The purpose of this policy is to establish incorporation guidelines that provide a framework for the development of terms and conditions related to the balancing of revenues and service responsibilities, otherwise known as “revenue neutrality,” and:

- To institute a process for analysis and mitigation of the fiscal impacts of incorporation on the county that results in stable, predictable financial outcomes for both the county and the new city.
- To define the terms and budget items to be negotiated under revenue neutrality requirements of §56845.
- To mitigate potential fiscal loses to the county without making incorporation impossible for local communities ready for self-governance or precluding an adequate fiscal base for new cities.
- To specify how participants in the incorporation process can develop proposed terms and conditions of incorporation that will meet revenue neutrality criteria and the standards of this commission in making the findings required by §56845 and §56375 for approval of incorporations.

POLICY STATEMENT

It is the policy of this Commission that implementation of revenue neutrality provisions of Government Code Section §56845 shall insure adequate protection of the financial stability of the county and other affected agencies while at the same time permitting the incorporation of communities demonstrating the necessary resources and capacities for self-governance. The legislative mandates for achieving revenue neutrality shall be implemented through a rational and predictable process for gathering information, determining the appropriate content of revenue neutrality agreements and providing for the revision of those agreements.
Insert flow chart
PROCEDURAL GUIDELINES

Figure 1 illustrates the portions of the incorporation process involving the development of revenue neutrality actions that must be taken by the Commission. Incorporation proponents are required to submit a preliminary fiscal analysis (PFA) for evaluation by LAFCO staff. The PFA is augmented by LAFCO staff as necessary with county revenue and departmental cost data, the calculation of the property tax allocation and analysis of fiscal and service level assumptions. The PFA is used as a starting point for the comprehensive fiscal analysis prepared by the Executive Officer or her designee. LAFCO staff convenes a revenue neutrality negotiating committee composed of representatives of the county, other affected agencies and the chief petitioners for the incorporation when the first draft of the comprehensive fiscal analysis is available. LAFCO staff will attend meetings of this committee in order to facilitate discussions and compliance with this policy.

The revenue neutrality committee will have an initial period of 45 days to negotiate an agreement to meet the requirements of §56845. At the conclusion of negotiations or the end of the 45 day negotiating period, LAFCO Executive Officer will certify that an agreement has been reached or has not been reached. If an agreement is reached, ratification by resolution of the County Board of Supervisors and by letter of the incorporation committee is returned to LAFCO staff for inclusion in the comprehensive fiscal analysis, staff report and recommendations.

If the negotiating parties do not reach agreement, the status of the negotiations will be referred to the Commission for workshop discussion of outstanding issues at the first available meeting as determined by the Executive Officer. If revenue neutrality issues are not resolved during the course of the workshop, the Commission will direct the negotiating committee to resume negotiations for an additional 45 day period.

If no agreement is reached by the revenue neutrality committee and ratified by the County Board of Supervisors and the incorporation committee after two negotiating periods, LAFCO staff will draft proposed terms and conditions for use in the comprehensive fiscal analysis and for recommendation to the Commission at its public hearing.

Revenue neutrality agreements should adhere to the standards for content described in this policy. Such agreements should include a description of methodologies and assumptions leading up to the terms of the agreement. Revenue neutrality agreements should also provide for a process of adjustment after incorporation in order to account for unforeseen economic or legislative events significantly affecting the flow of local revenue.
CONTENT

Analytical Standards: Revenues/Expenditures Considered for Revenue Neutrality Purposes

The provisions of revenue neutrality agreements negotiated pursuant to this policy shall adhere to the following standards:

- Revenue neutrality agreements shall be based on county costs and revenues for the most recent prior year for which data are available. Only identifiable and recurring revenues and expenditures should be evaluated for purposes of determining revenue neutrality. Anticipated or projected revenue growth should not be included.

- Expenditures for services transferred to a new city should be evaluated on a “net cost” basis. Services funded on a full cost recovery basis (such as building inspection) are by definition revenue neutral and should not be included in the analysis.

- Costs of capital improvements are not recurring costs and should not be included.

- Countywide costs for regional services and administrative functions which are required to support county governance of both incorporated and unincorporated areas should not be included in defining services transferred to the new city.

- Inflationary factors should not be included in the analysis of revenue neutrality provisions unless the resulting agreement provides for annual adjustment of mitigation payments based on actual data.

- Restricted and unrestricted revenues should be evaluated separately. An agency may pay a portion of its annual revenue neutrality payment with restricted funds if both agencies agree and a legal exchange mechanism can be created.

Permissible Types of Terms and Conditions

Terms and conditions for implementation of revenue neutrality may include provisions for tax sharing agreements, lump-sum payments, payments over a fixed period of time, modification of incorporation boundaries or any other terms and conditions permitted under Section §56844.
EXHIBIT A

California Government Code Section 56845

56845. (a) It is the intent of the Legislature that any proposal that includes an incorporation should result in a similar exchange of both revenue and responsibility for service delivery among the county, the proposed city, and other subject agencies. It is the further intent of the Legislature that an incorporation should not occur primarily for financial reasons.

(b) The commission shall not approve a proposal that includes an incorporation unless it finds that the following two quantities are substantially equal:

(1) Revenues currently received by the local agency transferring the affected territory which, but for the operation of this section, would accrue to the local agency receiving the affected territory.

(2) Expenditures currently made by the local agency transferring the affected territory for those services which will be assumed by the local agency receiving the affected territory.

(c) Notwithstanding subdivision (b), the commission may approve a proposal that includes an incorporation if it finds either of the following:

(1) The county and all of the subject agencies agree to the proposed transfer.

(2) The negative fiscal effect has been adequately mitigated by tax sharing agreements, lump-sum payments, payments over a fixed period of time, or any other terms and conditions pursuant to Section 56844.

(d) Nothing in this section is intended to change the distribution of growth on the revenues within the affected territory unless otherwise provided in the agreement or agreements specified in paragraph (2) of subdivision (c).

(e) Any terms and conditions that mitigate the negative fiscal effect of a proposal that contains an incorporation shall be included in the commission resolution making determinations adopted pursuant to Section 56851 and the terms and conditions specified in the questions pursuant to Section 57134. (Former Section 56845 repealed by Stats. 1988, Ch. 826. Added by Stats. 1992, Ch. 697. Amended by Stats. 1992, Ch. 1369.)
Duration of Fiscal Impact Mitigation

The term of mitigation payments may be either ongoing or limited to a specific number of years. Ongoing revenue neutrality agreements may provide for the permanent sharing of revenues between the new city and affected agencies. Agreements that limit revenue neutrality payments should establish the term of payments in the following steps:

1. Determine the annual net revenue loss to the County and other affected agencies resulting from the proposed incorporation.

2. Determine a lump sum sufficient to yield in interest funds equal to the annual net revenue loss to the County and other affected agencies.

3. The duration of mitigation payments will be calculated using the annual mitigation payment amount and inflation and discount rates established by negotiation.

Method of Annual Payment

In instances in which revenue neutrality requires tax sharing or mitigation payments to the county, payment should be effected as directly from the revenue source as permitted by State law.

Effective date of Incorporation

The effective date of incorporation should be considered in revenue neutrality agreements. The effective date should be set to establishing adequate initial account balances for the new city as it assumes service responsibilities, but should not otherwise conflict with the intent of fiscal neutrality.