

CHAPTER III: MERCED LAFCO PROCEDURES

The following guide details procedures followed by the Merced County Local Agency Formation Commission (LAFCo) in implementing the Cortese/Knox/Hertzberg Act (AB 2838).

A. COMMISSION

The following outlines procedures the Commission will follow to conduct the LAFCO business.

1. Meetings:

The regular meetings of the Merced County Local Agency Formation Commission shall be held on the fourth Thursday of each and every month, unless canceled by the Executive Officer due to lack of business, commencing at the hour of 2 p.m. at the County Administration Building, 2222 "M" Street, Merced California 95340. When a regular meeting falls on a holiday, the regular meeting of the Commission shall be held at the same place and at the same time on the next Thursday that is not a holiday. The November and December meetings are combined into one meeting to be held on the first Thursday in December.

When the business of a regular meeting cannot be concluded, the meeting may be adjourned to a time certain providing that the meeting is held prior to the next regularly scheduled meeting.

Any adjourned meeting of a regular meeting or adjourned regular meeting is part of the regular meeting.

2. Commission Formation and Organization

Commission membership shall consist of two members appointed by the Board of Supervisors from their own membership. Two member selected by the city selection committee in the county, each of whom shall be a mayor or council member. The Board of Supervisors and the city selection committee shall appoint one alternate member from each panel who shall act as an alternate member in the event an appointed member is absent. The alternate member shall serve and vote in place of any appointed member on the commission who is absent or who disqualifies themselves from participating on a particular item. In addition, one member representing the general public and an alternate shall be appointed by the other members of the commission (§56325 GC).

3. Chairperson – Vice Chairperson

The members of the Commission shall elect a Chairperson and a Vice Chairperson at the first meeting of the Commission in **November of each year**. The Chairperson and Vice Chairperson shall serve for a period of one year or until a successor is selected.

The Chairperson when present, shall preside at all meeting of the Commission and shall conduct the business of the Commission in the manner prescribed herein. The chairman shall preserve order and decorum and shall decide all questions of order, subject to the action of a majority of the Commission.

4. Quorum

A majority of the members of the Commission shall constitute a quorum for the transaction of business.

No act of the Commission shall be valid or binding unless a majority of all Commission members (3) concur therein. A tie vote shall constitute a denial.

In the absence of a quorum, the members present shall adjourn the meeting. If all members are absent, the Executive Officer may adjourn the meeting.

In the absence of, or inability to act of, the Chairman, the Vice Chairman shall have all the powers and duties of the Chairman. In the absence of both the Chairman and Vice Chairman, the Executive Officer shall call the Commission to order, then the members present shall select one of the members present as Temporary Chairman.

5. Conduct of Meetings

The business of each regular meeting of the Commission shall be transacted as far as possible in the following order:

- a. Roll Call
- b. Disposition of minutes of previous meeting(s)
- c. Scheduled Public Hearings
- d. Continued Items
- e. Business from the Floor
- f. Special Orders
- g. Miscellaneous Business
- h. Information Items

This order can be changed at the discretion of the Chairman.

Items may be added to the agenda at any time at the discretion of the Chairman.

A motion made by any member of the Commission requires a second. Following the motion and any discussion, a voice vote shall be taken. The Chairman may make and second motions.

The roll call need not be called in voting upon a motion except when requested by a member. If the roll is not called, in the absence of a "Nay" vote, the Chairman may order the motion unanimously approved. When the roll is called on any motion, any member present who does not vote in an audible voice shall be recorded as "Aye". A stated abstention does not count as a "Nay" or "Aye" vote and shall be recorded as an abstention.

Each roll call of the Commission shall be in alphabetical order, except that the Chairman shall be called last.

Persons desiring to address the Commission shall first secure the permission of the Chairman. They shall then give their name and address, before proceeding to address the Commission.

The staff shall make its report first. The proponents shall then present their testimony. After the staff and proponents have presented testimony, the Commission shall hear testimony of those opposing the proposed action and such further testimony as the Chairman shall determine. At the conclusion of the testimony, as determined by the Chairman, the hearing shall be closed and the matter referred to the Commission for action.

Unless the presiding officer in his discretion shall direct otherwise, the following rules of evidence shall apply: (1) The hearings need not be conducted according to judicial rules of evidence; (2) Any relevant evidence may be admitted if it's the sort of evidence on which responsible persons are accustomed to rely and the conduct of serious affairs; (3) Witnesses will not ordinarily be sworn unless a specific request is made therefore prior to the hearing; (4) Any person wishing to direct questions to an opposing witness shall submit such questions to the Chairman, who will in turn ask the questions of the witness.

6. Minutes

The Commission shall keep minutes of its meetings. Minutes shall be approved by the Commission and, upon approval, shall be signed by the Executive Officer or another person designated by the Executive Officer.

B. APPLICATION PROCEDURES

The following is given as a guide to assist those interested in submitting general local government organizational changes. For procedural information regarding other types of activities involving LAFCO, please see the appropriate Sections within this manual.

1. Preliminary Steps

- a. Pre Application Meeting: Applicants are encouraged to schedule a pre application meeting with LAFCO staff. These meetings will serve to offer direction and to inform applicants of the necessary steps in an attempt to prevent unnecessary time delays. Applicants are encouraged to bring a Sphere of Influence Map and/or boundary map indicating all Assessors Parcel Numbers and boundaries involved in the proposed project
- b. Notice of Intent: Before circulating any petition for a change of organization, the proponent shall file with the Executive Officer a notice of intention, which shall include the name and mailing address of the proponent and a written statement, not to exceed 500 words in length, setting forth the reason for the proposal. The notice shall be signed by a representative of the proponent, and shall be substantially in the following form (§56700.4a):

Notice of Intent to Circulate Petition

Notice is hereby given of the intention to circulate a petition proposing to _____.

The reasons for the proposal are _____.

After filing the required Notice of Intent to Circulate Petition, the petition may be circulated for signature. Upon receiving such notice, the Executive Officer shall notify any affected jurisdiction (56700.4c).

Upon receipt of a proposed change of organization not filed by a local agency that includes the detachment of territory from any city, or annexation of territory to any district, the Executive Officer shall place the proposal on the agenda for the next Commission meeting for information purposes only, and shall transmit a copy of the proposal and agenda to the affected city or district. If the affected city or district transmits a resolution to the Commission requesting termination of proceedings, the Commission shall terminate the proceedings (56751, 56857).

- c. Application Preparation: All proposals must include the following (§56652):
 - 1) A certified resolution or a petition of landowners/registered voters making application. A resolution must contain the same information as petition, except for signatures. A petition shall include all of the following (§56653):
 - a) A statement of the nature of each proposal.
 - b) Maps and legal description of the proposed boundary change of organization.
 - c) Any data and information as may be required by any regulation of the Commission.
 - d) Environmental Documents
 - e) Fees
 - f) Names of those persons, not to exceed three, who are to be furnished with copies of the report by the Executive Office and who are to be given mailed notice of the hearing.

2. Commission Proceedings

- a. Application Submittal: (§56652)
- b. Application Received Notice: Mailed notice that application has been received is given to interested agencies, subject agency, the county committee on school district organization, and each school superintendent whose school district overlies the subject area. See §56658 for notice content.
- c. Input Letters: Letters requesting review and information are sent to appropriate County departments, affected agencies, and other affected county LAFCOs (56658). Comments are to be received by LAFCO within 20 days.
- d. Sufficiency Determination: Executive Office Determination of Sufficiency
 - 1) The Executive Officer must make a determination of sufficiency within 30 days of application submittal.
 - a) Appropriate Property Tax Sharing Agreements are on file with LAFCO.
 - b) Determination is made that application is complete (and that all property tax sharing agreement are on file) and issues a certificate of filing, setting the commission hearing within 90 calendar days;
 - c) Determination is made that application is incomplete and notifies the applicant according to provisions in §56652.
 - 2) Certificate of Filing is mailed along with Receipt of funds.
- e. Legal Notice: The Executive Officer, at least 21 calendar days prior to the date set for hearing, give notice (, 56600, 56661):
 - 1) Publication in a newspaper of general circulation,
 - 2) Posting on the LAFCO Web Site and near the door of the hearing room (§56300f, 56661),
 - 3) To the proponents, each person requesting special notice, the county clerk (for incorporations), and each affected local agency (by giving notice to each elected

local official, each member of the governing body, and the executive officer of the agency) (§56661a)

- 4) To all registered voters and property owners, as shown on the most recent assessment roll, within the affected area and 300 feet of the exterior boundary of the proposal. If this requirement would necessitate a mailing of over 1,000, notice may alternatively be provided pursuant to Government Code Section 65091 (56157, 56661h).

3. Commission Hearing Process

- a. Waiver of Notice, Hearing or Election: The Commission may approve or disapprove the change of organization without notice, hearing, or an election under the following circumstances (§56663):
 - 1) Inhabited Land:
 - a) If a petition is signed by all owners of land within the affected territory of the proposed change of organization.
 - b) If a resolution of application by a legislative body of an affected entity is accompanied by proof, satisfactory to the commission, that all owners of land within the affected territory have given their written consent to that change of organization.
 - 2) Uninhabited Land:
 - a) All owners of land within the affected territory have given their written consent to the change of organization.
 - b) All affected local agencies that will gain or lose territory as a result of the change of organization have consented in writing to a Waiver of Protest Proceedings
- b. Executive Officer's Report: The Executive Officer has the application analyzed and a written report prepared (§56665). The report shall include at least an analysis of those factors as stated under §56668 and a recommendation. The report shall be completed not less than five (5) days prior to the date of the hearing.
- c. Mailed Report: The completed report is mailed at least five days prior to the hearing to each commissioner, each person named in the application to receive a report, each affected local agency requesting a report, each agency whose boundaries or sphere of influence will be changed, and the Executive Officer of the LAFCO of any other affected county (§56665).
- d. Public Hearing: The Commission hears the proposal on the noticed date and time. The hearing may be continued for up to 70 calendar days.
- e. Resolution of Determination: Within 35 calendar days of the hearing the commission will adopt a resolution of determination taking the following actions (§56880, 56881, 56882, 57000):
 - 1) Approve or deny with or without conditions or revisions to the proposal. If denied, no new proposal can be made for one year unless waived by LAFCO. If the proposal included incorporation or consolidation of a city, no new proposal can be made for two years unless waived by LAFCO (§56880, 56881, 57090).
 - 2) Determine if the territory is inhabited or uninhabited (inhabited territory means territory within which there resides 12 or more registered voters).
 - 3) Assign a short form designation.

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- 4) Authorize proceedings without notice, hearing, or an election, if there is 100% consent and involves only annexations, detachments, and Community Service Areas (CSA) formations (§56837). See below item number 13 – Waiver of Protest.
 - 5) Establish conditions as authorized by §56885.5, 56886, 56886.3, 56886.5, 56887, 56887.5, 56888, 56889 and 56890.
 - 6) A copy of the adopted resolution shall be mailed to the chief petitioners where the proceedings for change of organization were initiated by petition and each affected agency whose boundaries would be changed by the proposal.
 - 7) Resolution Amendment: The Executive Officer may, before the completion of a proceeding, on good cause being shown, correct clerical errors or mistakes made through inadvertence, surprise, or excusable neglect that may be contained in the resolution adopted by the commission making determinations, upon written request by any member of the commission, by the executive officer, or by any affected agency. A correction made pursuant to this section shall not be cause for filing a request pursuant to §56883.
 - 8) In any action or proceeding to attack, review, void or annul a determination by a commission on grounds of noncompliance with this division, any inquiry shall extend to whether there was fraud or a prejudicial abuse of discretion (§56107[c]).
- f. Reconsideration: When a commission has adopted a resolution making determinations, any person or affected agency may file a written request for amendments to or reconsideration of the resolution (§56895) based on the following requirements:
- 1) The request must state the specific modification to the resolution.
 - 2) The request shall state what new or different facts that could not have been presented previously, are claimed to warrant the reconsideration.
 - 3) Requests for reconsideration filed by a school district must be considered by the commission at a public hearing.
 - 4) All requests for reconsideration shall be filed within thirty (30) days of the adoption of the resolution making determinations.
 - 5) Notice for reconsideration of the request must be given in the same manner as the original resolution.
- g. Follow up from Petitioners: The Executive Officer gathers follow up materials from applicant, including revised maps and ensures all conditions have been met.
- h. Waiver of Protest: Section 56663 (c, d)
- 1) Inhabited Land: The commission may waive protest proceedings if all of the following conditions apply:
 - a) The commission has provided written notice of commission proceedings to all registered voters and landowners within the affected territory and no opposition from registered voters or landowners within the affected territory is received prior to or during the commission meeting.
 - b) The written notice shall disclose to the registered voters and landowners that unless opposition is expressed regarding the proposal or the commission's intention to waive protest proceedings, that there will be no subsequent protest and election proceedings

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- c) All affected local agencies that will gain or lose territory as a result of the change of organization have consented in writing to a waiver of protest proceedings.
- 2) Uninhabited Land: The commission may waive protest proceedings entirely if all of the following conditions apply:
 - a) All owners of land within the affected territory have given their written consent to the change of organization.
 - b) All affected local agencies that will gain or lose territory as a result of the change of organization have consented in writing to a waiver of protest proceedings.
 - c) The commission has provided written notice of commission proceedings to all property owners and registered voters within the subject territory and no opposition is received prior to or during the commission meeting.
- i. Protest Proceedings: Shall occur when the commission does not waive hearing and protest proceedings.
 - 1) The Executive Officer shall set the proposal for protest hearing within 35 calendar days of the Commission's adoption of a resolution making determinations of a Change of Organization and following the reconsideration period (§57002).
 - 2) The Executive Officer shall give notice of that hearing by mailing, publication, and posting, as provided in §57025 and 57026 to all of the following:
 - a) Each affected county, city or district.
 - b) Each proponent noted in the petition.
 - c) Each landowner within the affected territory as shown upon the most recent assessment roll at the time a resolution of application is adopted.
 - d) Each registered voter within the inhabited territory who was registered at the time a resolution of application was adopted.
 - e) Persons requesting special notice.
 - f) Notice shall be published in one newspaper of general circulation 21 days prior to the hearing (§56153 – 56154).
 - g) Notice shall be posted near the doors of the protest hearing room 21 days prior to the hearing (§56158 – 56159).
- j. Protest Hearing (§ 57050, 57051, 57076 &57077)
 - 1) The Executive Officer must summarize the commission's resolution at the start of the protest hearing and receive and hear all oral or written protests, objections, or evidence which is made, presented or filed.
 - 2) Any owner of land or any registered voter (within inhabited territory) proposed to be annexed or detached may file a written protest against the annexation or detachment anytime prior to the conclusion of the hearing, and shall include contents as noted in Section 57051.
 - 3) Within thirty (30) days following the protest hearing the commission must make a finding as to the value of written protest filed and not withdrawn and take one of the following actions:
 - a) Inhabited Territory (12 or more registered voters):
 - 1 Terminate proceeding if a majority protest exists (§57078)

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- 1) If the commission has waived protest proceedings in accordance with C.1 above and the commission's resolution includes all actions, no further conducting authority proceedings are necessary, and a "Certificate of Completion" will be issued (See #13).
- 2) However, when a protest hearing has occurred and an insufficient number of protests were submitted to require an election, as noted in C.10 above, or the proposal passed the election process as noted in C.11, a resolution ordering the change shall be placed on the LAFCO agenda as a consent calendar item within 30 days (§57075).
- 3) If a majority of votes were cast against the change of organization at an election (or a majority of landowners submitted a petition opposed to the change of organization) the commission shall execute a "Certificate of Termination of Proceedings", and the file will be closed.

m. Completion and Effective Date:

- 1) The Executive Officer issues a "Certificate of Completion", which completes the proceedings. The certificate is recorded with the County Recorder. If no effective date is specified in the commission resolution, the recordation date is the effective date for the Change of Organization. A statement of boundary change or creation is issued by the Executive Officer and filed with the appropriate fees with the State Board or Equalization for any boundary change for an agency that receives taxes through the equalized assessment role. If the proposal involves a change to a city's boundary, a notice is also given to the Secretary of State.
- 2) Notice of completion and effective date is given to all affected agencies and affected county departments.
- 3) Proceedings for completion of a governmental reorganization must occur within one year of commission approval unless the commission authorizes an extension (§57001).

C. FEES

1. A fee is required by Merced County LAFCO for processing all applications with payment required at the time of application submittal. The approved Schedule of Fees shows fees for each of the applications under LAFCO jurisdiction. These fees do not necessarily represent the total cost to process an application. In some large applications, LAFCO reserves the right to charge applicants the full cost of application processing. (§56383).
2. State Board of Equalization Fees: These fees are charged by the State for all reorganizations involving agencies that collect taxes using the equalized assessment role and are based on the number of acres involved in each single area transaction. The State Board fees are collected after LAFCO approves the respective application and prior to recordation of the Certificate of Completion.