

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

AGENDA ITEM NO. 7

DATE: January 14, 2015

TO: Local Agency Formation Commission

FROM: David E. Fey, AICP, Executive Officer 

SUBJECT: Consider Approval: Amendment to Fresno LAFCo Policy Regarding Extension of Time to Complete Proceedings

RECOMMENDATION: Approve Amendment to Fresno LAFCo Policy as described in this report

Executive Summary

Pursuant to the Commission's December 10, 2014, direction, staff is presenting to the Commission with a draft amendment of Fresno LAFCo Policy 315—Extension of One Year to Complete Proceedings—and related amendments to Policy 103.

Staff proposes an amendment to the policy to (i) better define the Commission's interest in orderly growth by linking it to timely development, (ii) require more specific information from applicants including how much time an applicant reasonably needs to complete the project, and (iii) establish a limit of the number of extensions to just one.

Background

Government Code §57001 provides for termination of proceedings not completed within one year of approval by the Commission. This section also permits extension of proceedings at the discretion of the Commission:

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

The Commission's approval of a proposal is a discretionary action. Once a project is approved, the typical tasks involved with completing a project are largely administrative and ministerial. The executive officer has little discretion to not complete a project if the conditions imposed by the Commission are satisfied.

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

Fresno LAFCo Policy 315 authorizes extensions of time provided that the applicant submits an explanation of the circumstances that have caused a delay in completion. Requests for authorization of extension of time for the completion of reorganizations are also discretionary actions guided by statute and LAFCo policy. There is no limit in either statute or policy to the number of requests that can be approved. There is a maximum fee of \$750 for this service.

As noted, once the Commission has approved an application, the applicant has one-year to satisfy the conditions of approval in order for the executive officer to issue a certificate of completion. During that time, the Commission may not reconsider its prior action unless a reconsideration is filed with LAFCo within 30 days of approval of the resolution pursuant to GC §56895. The Commission's sole remedy after the reconsideration period expires would be to deny a request for an extension.

The Commission currently has 13 approved but not completed projects, and, of that number, nine have been reauthorized annually from five to eight times. Two informal surveys of other LAFCOs, taken in 2009 and 2014, indicate that approval of repeated, multiple-year requests for extensions of time is not a prevalent practice statewide.

Fresno LAFCo policies support orderly, logical, and efficient growth of cities and include additional policies that call for evidence of imminent development to support annexation applications. Repeated requests for extensions of time may demonstrate that the projects are in fact not imminent which may conflict with LAFCo policies considered during the project's approval.

In addition, LAFCo is a responsible agency under CEQA and when approving a project also makes the necessary CEQA findings based on the environmental assessment of the lead agency. The passage of time may adversely alter the circumstances of project approval to the degree where it may be prudent to update a CEQA assessment.

Given the dynamics of the development industry, it is in Fresno LAFCo's interest to continue to consider each request for extension of time on its own merits at a public hearing. However, in the interest of orderly growth—that is, the sequence and process of development—a limit on the number of requests may be warranted.

Should the Commission determine that its policies should discourage repeated, multiple-year extensions, staff proposes an amendment to policy to better define the Commission's interest in orderly growth by relating it to timely development, require more specific information of applicants including how much time an applicant needs to complete the project, and establish a limit of one request for extension of time.

The recommended amendment to LAFCo policies are presented in Attachment 1.

Summary of Recommended Amendment

The recommended amendment proposes to first establish the Commission's interest in imminent development by adding a subparagraph 04 to Policy 103 (Encouraging Orderly Urban Development and Preservation of Open Space Patterns) to read,

"Orderly growth of cities is supported by applications for change of organization and reorganization that demonstrate development of the subject projects is imminent."

By relating the Commission's policy of orderly growth to timeliness of completion, the revised policy is designed to provide context for the proposed additional language of an amendment to Policy 315.

The proposed amendment has many features currently in the policy in that staff will contact project proponents prior to the date of expiration and provide the project proponent the opportunity to submit a request for an extension of time. The fundamental difference is that there is a more detailed explanation required of the applicant about the circumstances of the extension, the applicant must now specify a period of time to complete the project, and a limit of "one extension of time may be authorized by the Commission."

In the event that proceedings are terminated the applicant may reapply for reorganization without prejudice.

A second amendment of Policy 103 is also recommended,

"The Executive Officer shall record the approved application once he or she has determined that the facts present during the time of recording are materially similar as those considered by the Commission when the application was approved."

This policy would take into account substantial changes with respect to the facts considered by the Commission when it approved a project including, but not limited to, the expiration of fire transition agreements that were in place when a project was approved.

The Following Have Received Copies of This Report

- LAFCo Commissioners and Alternates
- Ken Price, LAFCo Counsel, Baker, Manock, and Jensen
- Bernard Jimenez, Deputy Director, Fresno County Planning Department
- All City Managers
- Mike Prandini, Building Industry Association

**Proposed Amendment to LAFCo Policies
January 14, 2015**

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

04 Orderly growth of cities is supported by applications for change of organization and reorganization that demonstrate development of the subject projects is imminent.

05 The Executive Officer shall record the approved application once he or she has determined that the facts present during the time of recording are materially similar as those considered by the Commission when the application was approved.

315 EXTENSION OF ONE YEAR TO COMPLETE PROCEEDINGS

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

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

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

~~02 Extensions of time shall only be granted when it can be shown that the imminent need for the proposal still exists, the project is still viable, and progress is being made toward completion. The Commission may consider economic hardships beyond the control of the proponents as appropriate justification supporting the extension request.~~

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

~~Any circumstances that have changed in the vicinity of the project since the proposal was approved that could affect its suitability for annexation.~~

~~Actions that have been taken by the proponent to ensure that the conducting authority proceedings can be completed within the requested extension period.~~

~~—— If the proponent has been unable to satisfy a condition subsequent to the Commission's approval due to adversarial market and/or economic conditions, such condition(s) shall be identified and supporting documentation provided. In addition, the applicant as a part of the extension request shall submit to LAFCo written confirmation from the city or district representative to which annexation is proposed supporting the extension request and validating the presence of the adversarial market or economic conditions justifying the extension. If the proposal is to annex to a district located within the unincorporated area, written correspondence in support of the extension request shall also be provided from the County of Fresno.~~

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

01 Prior to the date of expiration, staff shall notify the proponent of the pending termination of the proceedings.

02 The proponent may request an extension of time to be considered by the Commission at a public hearing. The complete application for an extension of time shall comprise the following, including any additional information deemed necessary by the executive officer:

- a. Written request for an extension of time, including the requested period of time.
- b. Description of the changed circumstances of the project that have delayed completion of proceedings.
- c. Demonstration of project viability and what progress is being made toward completion of necessary prerequisite actions by any party.
- d. Written confirmation from the city or district representative to which annexation is proposed supporting the extension request; a district located within the unincorporated area, written correspondence in support of the extension request shall also be provided from the County of Fresno.

03 A copy of the Commission agenda and the Executive Officer report on the request for an extension shall be conveyed via US Mail at least five days prior to the hearing to the Commission and alternates, the persons named in the original application, each affected agency, and any person or landowner requesting notice of hearing for the application.

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

05 No more than one extension of time may be authorized by the Commission. Notwithstanding, any project in furtherance of the provision of governmental services on property owned by a governmental agency shall be eligible for additional extensions beyond one year at the discretion of the Commission.