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

AGENDA ITEM No. 8

DATE: September 11, 2013

TO: Fresno Local Agency Formation Commission

FROM: David E. Fey, AICP, Executive Officer

SUBJECT: **Consider Approval** – Amendment to the Commission's Policies, Standards, and Procedures Section 102-04 (Fire Transition Policy) concerning "transition agreements" between fire protection districts and cities

RECOMMENDATION:

Confirm August action on this policy; alternately, approve revision to the policy, or provide direction.

BACKGROUND

On August 7, 2013, the Commission considered amendments to LAFCo Policies, Standards, and Procedures, section 102-04 relating to Fire Transition Agreements.

After public testimony, the Commission voted 4-1 on a motion to approve "Option 2" and included direction that developers are encouraged to participate in the development of the agreement during the mediation phase.

Since that meeting, several cities and District management have asked for clarification whether agreements would continue to be *required*, and whether the lack of a required agreement would trigger termination of an existing agreement between the Fresno County Fire Protection District (Fire District) and the City of Clovis.

Staff has also reviewed the amendment and recommends changes to facilitate administration of the policy.

Consistency with Commission Direction

Staff has reviewed the administrative record, including recorded proceedings of the meetings where this topic was discussed, conferred with Fire District management, and a delegation of city managers and city fire chiefs, and has concluded that the adopted August 7th policy amendment was responsive to the Commission's general direction that the policy support transition agreements, create a level playing field, provide incentives for timely negotiation of agreements, and create a mediation component to resolve impasses. There was, however, extensive discussion during the debate at the *August* meeting on the motion about whether the Commission intended to *require* agreements on this point and how each of the options addressed the point of requiring agreements.

District management has expressed concern that the lack of a requirement for an agreement may cause Clovis to consider terminating its agreement, citing language under "Termination Due to Change in LAFCo Policies:"

...Should LAFCo make changes in its policies pertaining to transition agreements between cities and fire districts, which eliminates the *requirement* of a transition agreement as a prerequisite for the annexation or detachment of district territory, City shall have a right to terminate this agreement upon thirty (30) days written notice to District. A recommendation by LAFCo for a transition agreement shall not be interpreted as a requirement for a transition agreement (Emphasis added).

The policy adopted by the Commission states that ". . . the Commission *may* require the parties to provide evidence to the Executive Officer that a transition agreement is in place . . ." (Emphasis added.) However, the policy as adopted requires the Fire District and the applicable city to engage in a process to negotiate and enter into a transition agreement and, if they are unable to do so, the Commission may impose conditions of approval to provide for the orderly transition of services. From staff's perspective, irrespective of whether or not the policy states "may" or "shall" provide for a transition agreement, the policy will operate in exactly the same fashion.

Staff has contacted Clovis management who is aware of this language and the amended policy. Clovis has taken no action to date to terminate the agreement. Kingsburg's agreement with the District does not include this language. Approval of revision #2 to require agreements would address this issue.

Options for Commission Action:

- If the Commission determines that the August policy amendment accurately reflected its intention at the time the motion was approved, no action is necessary;
- Revision #2 would require transition agreements (recommended).

Other recommended policy revisions:

- Revision #3 recognizes that certain terms are required by this policy;
- Revision #4 reinforces the 'requirement' by making the agreement part of a complete application; and
- Revision #5 addresses a procedural inconsistency between the amended policy and timeline of California Government Code Section 56658.

Direction to Cities to Encourage Developer Participation

The August motion included language to encourage developers to participate in the mediation phase of the agreement. At that time, staff advised the Commission that developer participation in the mediation phase raises the issue whether a particular developer's input is practical for an agreement that may have a term of many years and cover multiple projects.

Secondly, the developer's interest in the agreement is proportional to the expense of the agreement that is passed on to the developer. If the city's general fund is used to support the expense, the developer may have no financial interest in the agreement. On the other hand, if the developer (or subsequent buyers) pays a fee to support the agreement, that developer may

have a direct interest in the policy.

Staff has had a follow-up conversation with the Building Industry Association's management who concurred with this assessment.

Options for Commission Action:

- Revision #1 encourages cities to include developers in the preliminary formulation of agreements (recommended); or
- Revision #7 encourages cities to include developers in the mediation phase.

Mediation Report to Executive Officer

In the event that the Fire District and city are unable to negotiate a fire transition agreement, it would be important for LAFCo to understand the outstanding issues preventing a resolution. Mediation is typically a confidential process, which may preclude the Executive Officer from receiving an impartial report about the issues in controversy from the mediator. In the interest of a full and impartial report from the mediator to inform the Commission's decision on a project, staff recommends a revision to the policy that the mediation portion conclude with a summary from the mediator about outstanding issues preventing an agreement between the parties and that the parties agree to disclosure such a summary.

Option for Commission Action:

- Revision #6 revises the policy to allow greater access to information by the Executive Officer (recommended).

Attachment Policy Revision Options

[Explanatory notes are provided after each revision and are not intended to be included in the final policy.]

LAFCo POLICY AND PROCEDURE NO. 102-04

Where a special district is within a city's sphere of influence, the city is encouraged to develop annexation policies that will anticipate the total inclusion of the district's territory rather than a portion of its territory so as not to impose an unbearable tax burden upon citizens within the balance of the district's territory. The city's proposed services in the affected territory to be annexed to the city should be of equal or higher quality than the detaching special district's services provided in that territory.

Because the terms of each city's transition agreement may vary, cities are encouraged to include stakeholders, which may include the development community, in the preliminary formulation of agreements.

[Revision #1 explanatory note: this language is an alternative to the developer participation direction in revision #7.]

LAFCo POLICY AND PROCEDURE NO. 102-04-041

- 041 When a proposed reorganization includes annexation of territory to a city and detachment from a fire protection district (hereinafter, a "City/Fire Protection District Reorganization"), a transition agreement shall be required to provide for the orderly transition of services from the district to the city.

If the city and the district are unable to execute a transition agreement, the Commission may impose its own conditions of approval to ensure an orderly transition of services. Such conditions shall be deemed to satisfy this policy.

~~When a proposed reorganization includes the annexation of territory to a city and detachment from a fire protection district (a "City/Fire Protection District Reorganization"), the Commission may require the parties to provide evidence to the Executive Officer that a transition agreement is in place to provide for the orderly transition of services from the district to the city. If the city and the district are unable to agree upon a transition agreement, the Commission may impose its own conditions of approval to ensure an orderly transition of services.~~

[Revision #2 explanatory note: this revision would require transition agreements.]

- | 1. The terms of any fire transition agreement may include, but not be limited to, the length of the agreement, the transfer of stations, personnel, equipment, and

property taxes, all as mutually determined by the city and the district. The transition agreement must provide a rationale for the terms contained therein (the "Transition Plan"). The Transition Plan must specify how generally the fire district will use any payments made by the city to the district, what service changes will be made to nearby areas, if any, and how the district will adjust its service plans for the loss of property tax revenues associated with the City/Fire Protection District Reorganization Proposal. In lieu of specific terms specified in the agreement, the Transition Plan may be attached to the transition agreement or incorporated by reference. The Commission recognizes that the negotiation of a transition agreement may be a lengthy and complex process and strongly encourages the city and district to craft an agreement that would last a period of years and cover multiple City/Fire Protection District Reorganizations.

2. The Commission is not a party to these agreements and other than the terms specified in section 1, above, will not dictate the terms of the transition agreement. The intent of the transition agreement is to provide for the orderly transition of services. Therefore, the Commission expects the parties to negotiate the transition agreements in good faith and to obtain terms and conditions in such agreements that are reasonable under the circumstances.

[Revision #3 explanatory note: this revision recognizes that certain terms in the transition agreement are required by LAFCo under this policy.]

- 4.3. Applicants for a City/Fire Protection District Reorganization—whether by application of the city, by a private party, or by petition—shall include a copy of the transition agreement as part of their complete application.

[Revision #4 explanatory note: this revision reinforces the ‘requirement’ by making the agreement part of a complete application]

In the case of a City/Fire Protection District Reorganization, the Executive Officer shall request written verification of an existing transition agreement between the city and the district in the mailed notice to the District in accordance with section 56658(b)(1).~~No less than thirty (30) days prior to issuing a certificate of filing under Government Code section 56658 for a City/Fire Protection District Reorganization, the Executive Officer shall provide written notice to the applicable district of a pending application. Such notice shall request written verification of an existing transition agreement between the city and the district.~~

[Revision #5 explanatory note: this revision addresses a procedural inconsistency between the amended policy and timeline of section 56658.]

- 2.4. In the event that the district and the city are not parties to a transition agreement affecting the subject territory, the Executive Officer shall request that the city and the district immediately commence discussions regarding entering

into a transition agreement affecting the subject territory and, if possible, future City/Fire Protection District Reorganizations.

5. The city and district shall have thirty (30) days to enter into a transition agreement providing for the requirements contained herein. If, at the end of this period, the parties are unable to agree upon the terms of a transition agreement, the parties shall engage in a mediation process to resolve any outstanding disagreements regarding the transition agreement. The city and district shall immediately agree upon a qualified mediator to assist in and commence negotiations. The cost of the mediator shall be borne equally by the city and district unless the parties agree to alternate arrangements. No less than thirty (30) days after the commencement of mediation, either party may inform the Executive Officer that the city and district are unable to resolve their differences.

In the event of an impasse, mediator shall prepare an impartial mediation summary for the Executive Officer, which shall include a summary of each parties' points and the mediator's observations regarding the obstruction to an agreement.

[Revision #6 explanatory note: this revision addresses the potentially confidential nature of typical mediations.]

Cities are encouraged to permit developers to participate in the mediation phase of the agreement.

[Revision #7 explanatory note: this revision addresses direction to encourage developers to participate in the mediation phase. Alternative policy language is presented as revision #1.]

3-6. Once the Executive Officer receives notice from either the district or the city that the parties are unable to come to terms on a mediated resolution to the transition agreement, the Executive Officer shall then issue certificate of filing for City/Fire Protection District Reorganization proposal, if all other Commission requirements are complete.

4.7. Upon issuing the certificate of filing and establishing a date for hearing for the City/Fire Protection District Reorganization Proposal, the Executive Officer shall request in writing the following information from the District and the City, as applicable to each party: (i) whether the parties believe that a transition agreement is necessary, (ii) what the issues are preventing the parties from entering into a transition agreement; (iii) whether the City/Fire Protection District Reorganization Proposal will have any specific adverse effects on the district; (iv) if the fire protection district alleges that the City/Fire Protection District Reorganization Proposal will have specific adverse impacts on the district, a detailed analysis of those specific adverse impacts; (v) a description of any instant/mutual aid agreements between the district and city; and (vi) answers to

any other questions by the Executive Officer concerning the proposed reorganization. The Executive Officer may also require local agencies to provide records, information, or studies that may be necessary to prepare the staff report for the Commission hearing on a proposed City/Fire Protection District Reorganization.

5-8. The Executive Officer shall make reasonable attempts to obtain such information prior to the Commission's consideration of the City/Fire Protection District Reorganization. After reviewing the information, the Executive Officer shall prepare a staff report for the City/Fire Protection District Reorganization proposal, which among other things describes the parties' efforts to negotiate a transition agreement, states that efforts for the parties to enter into a transition agreement have failed, and may include the recommendation to the Commission that it impose certain conditions of approval to provide for the orderly transition of services.

6-9. The Commission's imposition of conditions shall be consistent with Government Code section 56886 and include, but not be limited to, the transfer of fire stations, personnel, equipment, and/or property tax revenues. The Commission may at its discretion include additional conditions of approval not otherwise contained in the staff report.

The Commission reserves the right to waive the mediation requirements contained herein with respect to any one particular City/Fire Protection District Reorganization, if the Commission determines, in its sole discretion, that it is in the public's interest to waive such requirements for that particular City/Fire Protection District Reorganization.