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

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AGENDA ITEM No. 7

**DATE:** September 14, 2016

**TO:** Fresno Local Agency Formation Commission

**FROM:** David E. Fey, AICP, Executive Officer 

**SUBJECT: Request for Reconsideration:** A request by the City of Fresno that the Commission reconsider its July, 2016, Fresno sphere of influence resolution removing the condition related to specific or community planning north of McKinley Avenue.

**Applicant:** City of Fresno

**RECOMMENDATION:** Continue consideration of the request for reconsideration to the LAFCo's October 12, 2016 hearing to permit time for a meeting of City representatives and the Fresno LAFCo ad hoc committee

**Executive Summary**

Balancing the Commission's interest in orderly growth with Fresno City Manager Mr. Rudd's request that the Commission remove the subject condition from its southeast Fresno sphere of influence (SE SOI) resolution, staff and the ad hoc committee recommend that the Commission continue consideration of this request for reconsideration to its October meeting to permit the city and the ad hoc committee to meet and address the remaining questions concerning timing of the SE SOI planning process.

**Background**

At its July 13, 2016 meeting, the Fresno LAFCo approved the Fresno Municipal Service Review and Sphere of influence reaffirmed the SE SOI with conditions including the following (hereafter the "subject condition"):

1. That the City take action by August 2016, to identify and allocate funding and approve a schedule to commence the specific or community planning anticipated by LAFCo's 2006 resolution USOI-144 for the portion of the southeast sphere of influence north of McKinley Avenue.

If the City has not taken action by no later than August 2016, LAFCo staff is directed to confer with LAFCo's Fresno Sphere of Influence Ad Hoc Committee to prepare a report and recommendation for the Commission to consider action to remove part or all of the southeast sphere of influence from the City's sphere of influence during the September LAFCo hearing.

As directed by the Commission, staff communicated the Commission's action to the City of Fresno. Fresno City Manager Bruce Rudd responded in two letters, July 26 and August 30,

2016 (attached as Exhibits A and B, respectively); the first requesting reconsideration of the subject condition, the second elaborating on the points made in the first letter.

Gov. Code section 56895 governs reconsideration. Specifically, the request for reconsideration shall state the specific modification to the resolution requested and what new or different facts that could not have been presented at the time of the hearing where the resolution was adopted. Staff performed an analysis of Mr. Rudd's request for reconsideration and found it in compliance with Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH) section 56895 reconsideration process and Fresno LAFCo policy. The analysis and evidence in support of the conformity finding is attached as Exhibit C.

### **Basis for the City's Request for Reconsideration**

In his July 26 letter, Mr. Rudd responded to the Commission's SE SOI resolution

*The (subject condition) made by LAFCo fails to recognize that the City of Fresno has recently adopted a Fiscal Year 2017 Budget, which included funding for a number of the recommendations in the MSR...*

*Therefore it appears that LAFCo's demand to now have the Fresno City Council identify and allocate funding for a SEDA specific or community Plan by August, at an estimated cost of \$500,000 to \$1 million, ignores the city's budgetary process, and more importantly the funding priorities already set by the Mayor and the City Council...*

*...I am asking that the LAFCo commissioners reconsider their previous recommendation to require the City to identify and allocate funding by August this year for a SEDA specific or community plan for the following reasons:*

- the city council has previously committed to fund this effort in FY 2018/19;*
- this time line will ensure that the plan will be completed prior to the CUSD facilities being constructed;*
- the city will not know the amount of excess carryover until September/October this year; and*
- it is the role of the Mayor and City council, not the LAFCo commissioners, to establish policies and associated funding priorities for the residents of Fresno*

Mr. Rudd observed in his August 30 letter, that the subject condition,

*...Failed to take into account the City's other planning budget priorities. In light of our cooperation with the Commission, it is not clear as to what statute, policy, or public purpose the subject condition is intended to satisfy, nor is it clear what LAFCo's intent is in attempting to accelerate the City's planning process for an area whose stakeholders, including Clovis Unified School District, concur with the 2018-2019 timeframe.*

He concluded,

*Given the commitment by the Fresno City Council to initiate a SEDA community or specific plan in FY 2018-19, I would respectfully request that LAFCo revisit this issue within the next 2-3 years and/or when Fresno's MSR is updated and to approve the City of Fresno's MSR and existing sphere of influence as recommended by staff.*

### **Analysis**

Staff will first respond with Mr. Rudd's concern about the validity of Fresno LAFCo's interest in the order of growth, development, and service provision as manifest in the subject condition.

The Commission's authority to regulate the SOIs of local agencies is found in Cal Govt Code Section 56001 which presents the Legislature's findings (emphasis added),

The Legislature finds and declares that it is the policy of the state to encourage orderly growth and development which are essential to the social, fiscal, and economic well-being of the state.

The Legislature recognizes that the logical formation and determination of local agency boundaries is an important factor in promoting orderly development and in balancing that development with sometimes competing state interests of discouraging urban sprawl, preserving open-space and prime agricultural lands, and efficiently extending government services. The Legislature also recognizes that providing housing for persons and families of all incomes is an important factor in promoting orderly development.

Therefore, the Legislature further finds and declares that this policy should be effected by the logical formation and modification of the boundaries of local agencies, with a preference granted to accommodating additional growth within, or through the expansion of, the boundaries of those local agencies which can best accommodate and provide necessary governmental services and housing for persons and families of all incomes in the most efficient manner feasible.

These findings are further refined in Fresno LAFCo policy 101 ("Encouraging orderly formation and development of agencies") (emphasis added),

101-01 The sphere of influence determined by the Commission shall take into account the provision of an adequate level and range of services to each community within the county. Likewise any governmental reorganization recommended by the Commission shall encourage the provision of adequate services to each community. The sphere of influence shall give consideration of those areas of the county which currently do not have adequate services, and recommendations for governmental reorganization or formation of new agencies shall be made by the Commission where justified.

101-06 One of the objects of the Commission is to make studies and to obtain and furnish information which will contribute to the logical and reasonable development of local agencies in the County and to shape the development of local agencies so as to advantageously provide for the present and future needs of the County and its communities....

Staff concludes that the Commission was within its legislative authority to adopt the subject condition.

The next question to resolve is whether the condition should be reconsidered in light of the information Mr. Rudd presents in his correspondence. As noted earlier, the subject condition calls for the City take action by no later than August 2016, to identify and allocate funding and approve a schedule to commence the specific or community planning anticipated by LAFCo's 2006 resolution USOI-144 for the portion of the southeast sphere of influence north of McKinley Avenue.

Broadly considered, given that the territory north of McKinley lies within the generally-accepted boundary of the SE SOI, the City Council's June 2, 2016 action to affirm that the specific or community planning for the SE SOI would be programmed for FY 2018-19 can be considered

compatible with the Commission's condition.

A factor that contributes to the City's response is its perception as to the necessity of the subject condition. The city observed, among other things, "...LAFCo's ...is...attempting to accelerate the City's planning process for an area whose stakeholders, including Clovis Unified School District, concur with the 2018-2019 timeframe."

As described earlier in this report, the Commission clearly has the authority to make SOI determinations that take into account the efficient extension of government service to accommodate additional growth, and to seek coordination between governmental agencies to promote orderly development. Coordination of services and the order of development in the SE SOI appear to be at the heart of the issue related to the subject condition. Notwithstanding the City's perspective vis-à-vis the SE SOI stakeholders, as late as last week, the executive officer's communication with CUSD's Don Ulrich, Assistant Superintendent, Facility Services, indicated a lack of understanding by the District of the City's timing of the planning process as it related to major development decisions needed by the District.

Balancing the Commission's interest in orderly growth with Mr. Rudd's arguments to remove the subject condition, staff and the ad hoc committee met on September 2, 2016 and after considering Mr. Rudd's letters, concluded to recommend that the Commission continue consideration of this request for reconsideration to its October meeting to permit the city and the ad hoc committee to meet and address the question about timing of the SE SOI planning process.

Staff recommends that this item be continued to allow for the ad hoc committee to meet. By statute this item may only be continued for 35 days meaning that the City's request for reconsideration must be heard by the October 12 meeting or LAFCo must have a special meeting to consider the request by no later than October 19 in order to meet the statutory timing requirements.

### **Individuals and Agencies Receiving this Report**

- Commissioners and Alternates
- Ken Price, LAFCo Counsel
- Bruce Rudd, Fresno City Manager
- Fresno City Council members



**BRUCE RUDD**  
City Manager

July 26, 2016

Mr. David Fey, Executive Officer  
Fresno Local Agency Formation Commission  
2607 Fresno Street  
Fresno, CA 93721

RE: Fresno Municipal Review/Sphere of Influence Update

Dear Mr. Fey,

I am in receipt of your letter dated July 19, 2016, related to the approval of the City of Fresno's Municipal Service Review (MSR). As we have discussed, Fresno's MSR delved into a number of topics not contained in any MSR previously conducted by LAFCo for the City of Fresno or any other city. For example, the last City of Fresno MSR that was completed in 2007 was approximately 11 pages compared to the current MSR, which is more than 250 pages long and included additional topics such as Fresno Convention and Entertainment Center and the distribution of park space.

Nevertheless, the City is generally supportive of the Determinations/Recommendations contained in the current MSR, in particular those that are already underway. For example, the City of Fresno has already awarded a \$3.6 million contract to acquire a new land management system that will significantly improve the manner in which land uses, conditional use permits, plans, infrastructure, etc., are managed and processed.

However, it is important to note that a number of Determinations/Recommendations cannot be achieved without support from other public agencies, in particular the County of Fresno and the recommendations related to annexation of County islands, Community Service Areas, and Disadvantaged Unincorporated Communities. While there may be some efficiency associated with implementing these recommendations, there does not appear to have been any financial analysis conducted related to the required capital cost or the potential impacts to rate payers and/or County residents. Recent events related to a proposed Fort Washington water/sewer infrastructure improvement project and the lack of support by members of the County of Fresno Board of Supervisors to honor an existing agreement that requires County residents to connect to the to the City sewer system is indicative of how the financial and political

the role of the Mayor and City Council, not the LAFCo Commissioners, to establish policies and associated funding priorities for the residents of Fresno.

Please feel free to contact me at (559) 621-7784 or at [bruce.rudd@fresno.gov](mailto:bruce.rudd@fresno.gov). if you have any questions or need further information concerning this matter.

Respectfully,



Bruce Rudd  
Fresno City Manager

- c. Mayor Ashley Swearengin  
Paul Caprioglio, Fresno City Council President  
Fresno City Councilmembers  
LAFCo Commissioners, Counsel  
Jean Rousseau, Fresno County Administrative Officer



**BRUCE RUDD**  
City Manager

August 30, 2016

Mr. David Fey, Executive Officer  
Fresno Local Agency Formation Commission  
2607 Fresno Street  
Fresno, CA 93721

RE: Reconsideration/Fresno Municipal Review

Dear Mr. Fey,

As a follow up to my letter dated July 26, 2016, and in anticipation of LAFCo's September 14, 2016, meeting, I am requesting that the Commission reconsider its SEDA sphere of influence condition requiring that the Fresno City Council allocate funding for a community or specific plan no later than August, 2016.

I respectfully bring to the Commission's attention that the City has fulfilled all the previous requirements of LAFCo's Municipal Service Review (MSR) and concurs with the majority of the recommendations contained in that document. In addition, and consistent with LAFCo staff recommendations of November 4, 2015, the City has also adopted policies "*specific to SEDA that ensure the area is developed in an orderly fashion and consistent with the City's development priorities in other areas*" as well as defined "*a period with which the City must report back and provide the status of its efforts at conducting specific planning or identifying a timeline for when specific planning will occur*". All three of these previous requests/recommendations were further adopted by Resolution 2016-105 by the Fresno City Council on June 9, 2016.

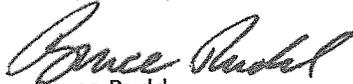
Out of the dozen of recommendations outlined in the MSR, including the condition to commit to planning of SEDA, the City's July 26<sup>th</sup> letter identified only one substantive point of disagreement, which is the condition requiring the Fresno City Council to commit funding for a specific/community plan for the North of McKinley portion of SEDA no later than August, 2016 (the subject condition). As explained in my letter, this condition fails to take into account the City's other planning and budget priorities. In light of our cooperation with the Commission, it is not clear as to what statute, policy, or public purpose the North of McKinley condition is intended to satisfy. Nor is it clear what LAFCO's intent is in attempting to accelerate the City's planning process for an area whose stakeholders, including Clovis Unified School District, concur with the 2018-2019 timeframe.

Without the support of policy and lacking concurrence from key stakeholders (e.g., school districts) the subject condition appears to lack any purpose of justification. Therefore, the condition to require the City of Fresno to set aside funding for a future planning process when there are other planning and budgetary priorities that need to be addressed, some of which that were also identified in the Fresno MSR (e.g., public safety, parks space), has no nexus and appears to be, at best, arbitrary.

In closing, and given the commitment by the Fresno City Council to initiate a SEDA community or specific plan in Fiscal Year 2018/2019, I would respectfully request that LAFCo revisit this issue within the next 2-3 years and/or when Fresno's MSR is update and to approve the City of Fresno's MSR and existing sphere of influence as recommended by staff.

Please feel free to contact me at (559) 621-7784 or at [bruce.rudd@fresno.gov](mailto:bruce.rudd@fresno.gov) if you have any questions or need further information concerning this matter.

Respectfully,



Bruce Rudd  
Fresno City Manager

- c. Mayor Ashley Swearengin  
Paul Caprioglio, Fresno City Council President  
Fresno City Councilmembers  
LAFCo Commissioners, Counsel

## Analysis of Reconsideration Request

This analysis of the Fresno city manager's July 27, 2016, letter requesting reconsideration examines statute and policy and concludes that the requirements have been met to reconsider the matter of the condition of the SE SOI north of McKinley Avenue.

### Background

On July 13, 2016, the Fresno LAFCo took the following actions related to the Fresno MSR/SOI:

- A. Reaffirm the southeast sphere of influence with the following conditions:
  1. That the City take action no later than August 2016, to identify and allocate funding and approve a schedule to commence the specific or community planning anticipated by the 2006 resolution for the portion of the specific or community planning anticipated by the 2006 resolution for the portion of the SE SOI north of McKinley Avenue.

If the City has not taken action by the end of August, staff is to confer with the Fresno SOI Ad Hoc Committee to prepare a report and recommendation for the Commission to consider action to remove part or all of the SE SOI at the September LAFCo hearing.
  2. That the City perform specific or community planning for the balance of the SE SOI by 2018-19, consistent with Fresno City Council Resolution No. 2016-05.
- B. Revise the sphere of influence by adding the Friant-Copper territory and the Regional Wastewater Reclamation Facility; and
- C. Approve, but suspend further action on, the addition of territory to the Fresno sphere of influence for the High Speed Rail heavy maintenance facility until such time as the HSR Commission determines a location for the facility.

On July 19, 2016, the executive officer, as directed by the Commission, sent letters to the city manager, mayor and council members, informing them of the commission's determination, recommendation, and conditions of approval for the SE SOI.

On July 27, 2016, the Fresno city manager responded to the Commission direction in writing. The city manager's letter asked that the LAFCo reconsider its recommendation to require the city to identify and allocate funding by August, 2016, for a SEDA specific or community plan for the following reasons.

- the City Council has previously committed to fund this effort in Fiscal Year 2018/2019;
- this time line will ensure that the plan will be completed prior to the any CUSD facilities being constructed;
- the City will not know the amount of excess carryover (available to fund major planning projects) until September/October of this year; and
- it is the role of the Mayor and City Council, not the LAFCo commissioners, to establish policies and associated funding priorities for the residents of the City of Fresno.

**Conformity with Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000**

*GC sec. 56895. (a) When a commission has adopted a resolution making determinations, any person or affected agency may file a written request with the executive officer requesting amendments to or reconsideration of the resolution.*

Finding 1: City manager Rudd's July 27, 2016 letter requested reconsideration.

*The request shall state the specific modification to the resolution being requested and shall state what new or different facts that could not have been presented previously are claimed to warrant the reconsideration.*

Finding 2: Specific objections were presented by the city manager. No specific modifications were presented, though the objections would appear to be resolved by the removal of condition A.1. The city manager's comments regarding budget limitations and their effect on the city's ability to commit to unanticipated planning projects this fiscal year were not known to the Commission at the time it took action on the SE SOI and are understood to be 'new or different' facts.

*(b) Notwithstanding Section 56106, the deadlines set by this section are mandatory. The person or agency shall file the written request within 30 days of the adoption of the initial or superseding resolution by the commission making determinations. If no person or agency files a timely request, the commission shall not take any action pursuant to this section.*

Finding 3: The city manager's letter was presented within the 30-day period.

*(c) Upon receipt of a timely request, the executive officer shall not take any further action until the commission acts on the request.*

Finding 4: The executive officer has not taken any further action since receiving the letter.

*(d) Upon receipt of a timely request by the executive officer, the time to file any action, including, but not limited to, an action pursuant to Section 21167 of the Public Resources Code and any provisions of Part 4 (commencing with Section 57000) governing the time within which the commission is to act shall be tolled for the time that the commission takes to act on the request.*

Finding 5: Not applicable.

*(e) The executive officer shall place the request on the agenda of the next meeting of the commission for which notice can be given pursuant to this subdivision. The executive officer shall give notice of the consideration of the request by the commission in the same manner as for the original proposal. The executive officer may give notice in any*

*other manner as he or she deems necessary or desirable.*

Finding 6: This letter was received on July 27, 2016. Notice of the next meeting of the commission for which notice can be given is August 18, 2016 (Fresno Business Journal) for the September, 14, 2016 hearing. Additionally, the interested individuals and affected agencies who received notice of the hearing will also be noticed of the reconsideration.

*(f) At that meeting, the commission shall consider the request and receive any oral or written testimony. The consideration may be continued from time to time but not to exceed 35 days from the date specified in the notice. The person or agency that filed the request may withdraw it at any time prior to the conclusion of the consideration by the commission.*

Finding 7: The commission shall consider the request and receive any oral or written testimony at its September, 14, 2016 hearing.

*(g) At the conclusion of its consideration, the commission may approve with or without amendment, wholly, partially, or conditionally, or disapprove the request. If the commission disapproves the request, it shall not adopt a new resolution making determinations. If the commission approves the request, with or without amendment, wholly, partially, or conditionally, the commission shall adopt a resolution making determinations that shall supersede the resolution previously issued.*

*(h) The determinations of the commission shall be final and conclusive. No person or agency shall make any further request for the same change or a substantially similar change, as determined by the commission.*

*(i) Notwithstanding subdivision (h), clerical errors or mistakes may be corrected pursuant to Section 56883.*

Finding 8: These sections of statute are applicable to the conduct of the reconsideration hearing, and are not applicable to the executive officer's evaluation of the request for reconsideration.

### **Conformity with Fresno LAFCo Policy**

#### **1. LAFCo Policy 312 (Amendments to/Reconsideration of Commission Resolution)**

*In accordance with the Commission's authority under Code section 56895, a request to amend or reconsider a Commission resolution shall comply with the provisions of this section.*

*01 When the Commission has adopted a resolution making determinations, any person or affected agency may file a written request with the Executive Officer*

*requesting amendments to or reconsideration of the resolution. The request shall state the specific modification to the resolution being requested and shall state what new or different facts that could not have been presented previously, or applicable new law, are claimed to warrant the reconsideration. If the request is filed by a school district that received notification pursuant to Code section 56658, the Commission shall consider that request at a public hearing.*

See findings 1, 2, and 3.

*02 Notwithstanding Code section 56106, the deadlines set by Code section 56895 are mandatory. The person or agency shall file the written request within 30 days of the adoption of the initial or superseding resolution by the Commission making determinations. If no person or agency files a timely request, the Commission shall not take any action pursuant to Code section 56895.*

See finding 3.

*03 Upon receipt of a timely request, the Executive Officer shall not take any further action until the Commission acts on the request.*

See finding 4.

*04 The Executive Officer shall place the request on the agenda of the next meeting of the Commission for which notice can be given as follows. The Executive Officer shall give notice of the consideration of the request by the Commission in the same manner as for the original proposal. The Executive Officer may give notice in any other manner as he or she deems necessary or desirable.*

See finding 6.

*05 At that meeting, the Commission shall consider the request and receive any oral or written testimony. The consideration may be continued from time to time but not to exceed 70 days from the date specified in the notice. The person or agency which filed the request may withdraw it at any time prior to the conclusion of the consideration by the Commission.*

See finding 7.

*06 At the conclusion of its consideration, the Commission may approve or disapprove with or without amendment, wholly, partially, or conditionally, the request. If the Commission disapproves the request, it shall not adopt a new resolution making determinations. If the Commission approves the request, with or without amendment, wholly, partially, or conditionally, the Commission shall adopt a resolution making determinations which shall supersede the resolution previously issued.*

07 *The determinations of the Commission shall be final and conclusive. No person or agency shall make any further request for the same change or a substantially similar change, as determined by the Commission.*

08 *Notwithstanding section 07, above, clerical errors or mistakes may be corrected pursuant to section 09, below.*

09 *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 for reconsideration.*

See finding 8.

2. Fresno LAFCo fee for Request for Commission Review/Reconsideration.

*Request to reconsider Commission Resolution: 10% of annexation fee schedule to a maximum of \$750.00*

Finding 9: There is not a comparable annexation fee as the issue to resolve relates to a SE SOI policy. The executive officer has advised the city that the reconsideration fee will be \$500 to cover the expense of report preparation and published and mailed notice.

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