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

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**AGENDA ITEM No. 6**

**DATE:** December 10, 2014

**TO:** Local Agency Formation Commission

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

**SUBJECT: Consider Approval:** Amendment to LAFCo Policies, Standards, and Procedures Manual to include Annexation Program Guidelines

**RECOMMENDATION:** Amend LAFCo Policies, Standards, and Procedures Manual to include Annexation Program Guidelines

### **Executive Summary**

The proposed Annexation Program Guidelines will support cities' annexation programs. Additionally, improvements to the Fresno LAFCo website resources are underway and regular training and familiarization for all local agencies will be scheduled.

### **Background**

In the course of its work, the Commission considers a range of actions related to the growth and development of cities: reorganizations, spheres of influence, peninsula policies, transition agreements, and so forth. Each of these actions is linked to a city's individual growth and development characteristics.

When a city's development and annexation practice is not consistent with LAFCo policy, or when LAFCo policy is not clear to a city, the ability of both agencies to function at optimal levels is impacted. This can be relieved by LAFCo outreach and instruction to develop mutually-beneficial practices for a city to use to coordinate its growth activities with the Commission's statutory obligations and policy requirements.

Based on LAFCo policy 102-01 ("Within the sphere of influence each agency should implement an orderly, phased annexation program"), the Commission's FY 2014-15 work plan included "Development of a Model Annexation Program" to balance cities' development and annexation practices with the Commission's statutory and policy requirements.

The product of that work item is the proposed Annexation Program Guidelines (hereafter "Program") is to develop practices that facilitate the implementation of a city's general plan and coordinate those actions with the LAFCo's application process to enhance efficient and timely extension of services to serve planned growth.

The proposed Annexation Program Guidelines can be immediately put into action in part or whole as needed by a city.

## LAFCo Statute and Fresno LAFCo Policies

LAFCo's role as a planning and regulatory agency overseeing the growth of local agencies in Fresno County begins with the legislature's objective of the commission to "contribute to the logical and reasonable development of local agencies in each county and to shape the development of local agencies so as to advantageously provide for the present and future needs of each county and its communities." (GC §56301)

Among LAFCo's responsibilities is to determine spheres of influence for local agencies in each county. A "Sphere of influence" is "a plan for the probable physical boundaries and service area of a local agency, as determined by the commission." (GC §56076)

The SOI plays a pivotal role with LAFCo's decisions as "every determination made by a commission ... shall be consistent with the spheres of influence of the local agencies affected by those determinations." (GC §56375.5)

Pursuant state statutory requirements (GC §56300), Fresno LAFCo has adopted "written procedures for the evaluation of proposals, including written definitions consistent with existing state law." (GC §56375 (g)) These are contained in the Policies, Standards, and Procedures Manual (Manual).

The Manual includes many issues of concern and commission goals that are relevant to the Model Annexation Program, such as:

### Issues of Concern

- Need for more cooperation/coordination among local agencies
- Inadequate level or range of services in county/community
- Illogical, gerrymandered agency boundaries, islands, surrounded areas
- Illogical agency service areas
- Conflicts between urban and rural/agricultural land uses
- Premature proposals and lack of development proposals
- Phasing of agency expansion/growth
- Determining consistency with city or county general plans
- Urban sprawl and leap frog urban development
- Opposition of proposals by residents and popularity of proposals by landowners/developers

### Goals

- Encouraging Orderly Formation and Development of Agencies
- Encouraging Orderly Urban Development and Preservation of Open Space

Fresno LAFCo policy 102-01 is the foundation for the Program:

Within the sphere of influence each agency should implement an *orderly, phased annexation program*. A proposal should not be approved solely because the area falls within the sphere of influence of an agency. (emphasis added)

The proposed Annexation Program Guidelines are therefore intended to facilitate consistency between city annexation efforts and Commission policy.

## **The Annexation Program**

The Program presents a list of actions which may be employed by a city to coordinate its development and annexation activities with LAFCo statute and policies.

All local agencies should have a functional understanding of the role of LAFCo in the fulfillment of their long-range plans. The Program activities can benefit special districts as well as cities. However, because cities' applications generate the majority of active applications, the focus of the Program is on cities.

The proposed Program is presented in Attachment 1 and consists of ten basic principles that cities may employ as an "orderly, phased annexation program." Each activity is annotated to explain its purpose, the issue it is intended to resolve, and/or its statutory or policy basis. The activities are:

1. The annexation program is consistent with LAFCo's Sphere of Influence (SOI) for the city.
2. The annexation program clearly implements the city's general plan.
3. The annexation program emphasizes the use of city's resolution of application versus property owner petitions.
4. The annexation program supports orderly growth by identifying areas to be annexed, general time frames for growth, and a plan for extension of services to these areas.
5. The annexation program anticipates changes of organization of existing service districts and service areas in the SOI or adjacent to SOI.
6. The annexation program anticipates location of Disadvantaged Unincorporated Communities within a city's sphere of influence.
7. The annexation program informs citizens in annexation areas of their rights, benefits, and changes that will occur on annexation.
8. The annexation program will be coordinated with LAFCo's MSR for the city.
9. The annexation program is managed by an assigned and responsible city staff member.
10. City entitlement analysis is integrated with LAFCo policies.

## **Website Revision**

Another activity based on the city interviews is a more accessible Fresno LAFCo website. For example, staff is working on a revision to the "Applications and Documents" which, though replete with information and documents, was found to be difficult to navigate. Rather than provide the reader with a long list of documents, the revision will guide the reader with a series of slides that each explain the actions and processes needed to comply with LAFCo statute and policies. Each slide will also provide resources along the way to link to the document, statute, or policy. A work-in-progress is presented in Attachment 2.

## **Additional Training**

In response to cities' interest in further training and familiarization, staff will establish regular annual training for local agencies, occasional specific training focused on particular processes or issues, and has offered agency-specific training on demand.

## **Outreach to Cities**

Staff conducted extensive outreach to the 15 cities in the County. Staff held a local agency (city) workshop on July 10, 2014, and briefed the attendees on the Program. Staff also attended the Five Cities JPA Board Meeting on July 28, 2014, to brief the board of directors on the Program and

encourage their staffs' participation. In early September, staff contacted all city managers and their planning directors to inform them that the development of the Program was underway and to request a meeting to begin the discussion of the following program development elements:

- The purpose of the LAFCo policy;
- Understanding their city's annexation practice and history; and
- Developing a Program that supports implementation of their general plan in a manner consistent with LAFCo policy.

Staff has met with all 15 city managers and other management staff in development of the proposed Program.

During meetings, staff presented a draft of the attached annexation program to the cities for their review and comment, and in the course of the meetings, heard a broad array of perspective and opinion, all relevant to the question of LAFCo policy 102-01. These comments were constructive in the development of the proposed Program.

Two ancillary issues were raised during staff's meetings with cities that may be of interest to the Commission. The first was that staff found that not all city staff are familiar with the terms of their respective city-county memoranda of understanding, and frequently do not distinguish between the function of the MOU and LAFCo's responsibilities. This may be due to the legacy of the Commission's earlier dependence on the County of Fresno for funding and staffing and by the loss of institutional memory among several cities through employee attrition. Though this is not a direct problem for LAFCo, staff believes that it may lead to a misinterpretation of LAFCo actions.

The second issue is that several cities remarked that the terms and "Standards of Annexation" in the current city/county MOUs have occasionally made planned city growth within its SOI difficult. The challenge has been to balance the exercise of land use authority by the city within its limits with that of the County outside of city limits but within the SOI determined by the Commission.

The Commission's interest in this matter is that once it determines the sphere of influence of each city and each special district, it shall "enact policies designed to promote the logical and orderly development of areas within the sphere" GC §56425 (a). Further, the city and county development standards are intended by LAFCo statute to "ensure that development within the sphere occurs in a manner that reflects the concerns of the affected city and is accomplished in a manner that promotes the logical and orderly development of areas within the sphere."

The Commission may consider a workshop to explore whether the current MOU practice is consistent with LAFCo's responsibility to promote orderly growth within the cities' SOIs

All city managers and planning directors have received a copy of this report and its attachments. They have been encouraged to attend the hearing and provide independent testimony about the proposed Program and any other issue relevant to LAFCo's statutory role in the County.

#### **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
- Will Kettler, Fresno County Public Works and Planning Department
- City Managers and Planning Directors

## **Fresno LAFCo Annexation Program Guidelines**

It is Fresno LAFCo policy (102-01) that “within the sphere of influence each agency should implement an orderly, phased annexation program. A proposal should not be approved solely because the area falls within the sphere of influence of an agency.” LAFCo recommends that each local agency fulfill this policy through the exercise of one or more of the following basic principles and actions.

**1. The annexation program is consistent with LAFCo’s Sphere of influence (SOI) for the city.**

Suggested actions:

- City and county shall reach agreement on development standards and planning and zoning requirements within the sphere to ensure that development within the sphere occurs in a manner that reflects the concerns of the affected city and is accomplished in a manner that promotes the logical and orderly development of areas within the sphere. GC §56425
- City responds to a request to extend service outside of its city limits and SOIs in consultation with GC §56133 and Fresno LAFCo policy.

Background:

LAFCOs have numerous powers under the Act, but those of primary concern are the power to act on local agency boundary changes and to adopt spheres of influence for local agencies:

A "Sphere of influence" means a plan for the probable physical boundaries and service area of a local agency, as determined by the commission. GC §56076

The SOI is an important component of a city’s general plan implementation:

Every determination made by a commission regarding the matters provided for by subdivisions (a), (m), and (n) of Section 56375 and by subdivision (a) of Section 56375.3 shall be consistent with the spheres of influence of the local agencies affected by those determinations. GC §56375.5

The annexation program should also anticipate needed updates of the city’s sphere of influence and the appropriate development standards developed in consultation with the County to promote the logical and orderly development of areas within the sphere. GC §56425

Because cities provide multiple municipal services, they occasionally extend service outside of their city limits and SOIs. The statute allows these extensions—with LAFCo authorization—subject to certain conditions, though not as an alternative to annexation or amendment of the SOI. GC §56133.

**2. The annexation program clearly implements the city's general plan.**

**Suggested actions:**

- City annexation applications shall describe how the proposal implements the city's general plan, and support these statements with information from other official sources such as the annual budget, capital improvement plan, and so forth.
- A rezoning ordinance shall not be encumbered with conditions that must be satisfied after the date of submission of the annexation application to LAFCo. Once the application for annexation is heard by the LAFCo Commission, all rezoning conditions must be satisfied or the territory is not rezoned.

**Background:**

The decision of the commission with regard to a proposal to annex territory to a city shall be based upon the general plan and rezoning of the city. When the development purposes are not made known to the annexing city, the annexation shall be reviewed on the basis of the adopted plans and policies of the annexing city or county. A commission shall require, as a condition to annexation, that a city rezone the territory to be annexed or present evidence satisfactory to the commission that the existing development entitlements on the territory are vested or are already at build-out, and are consistent with the city's general plan. However, the commission shall not specify how, or in what manner, the territory shall be rezoned. 56375(a)(7)

**3. The annexation program emphasizes the use of cities' resolution of application versus property owner petitions.**

**Suggested action:**

- For the city to consider discouraging property owner petition-initiated reorganizations as these would not have proceeded through the process of city development review and approval, which is an important step in the management of a city's general plan and instead anticipate probable annexations and prepare to process these in a timely manner through resolution-initiated petitions.

**Background:**

The LAFCo statute permits property owner petition-initiated reorganizations and SOI amendments. While Fresno LAFCo must comply with the statute, in many cases property-owner petitions complicate the process, increase liabilities, and otherwise thwart the orderly completion of LAFCo's responsibilities. Some cities encourage petitions because they don't have the resources to process annexations, or for other reasons. The challenge is that all cities in Fresno County have MOUs with the County to comply with Revenue and Tax Code section 99 regarding property tax revenue transfer upon annexation. These MOUs also include "standards of annexations." The LAFCo is not a party to the MOUs, though it often hosts the MOU section 2.2 Notice of Intent to File meetings and otherwise plays a third-party role as cities and the County coordinate their MOU activities.

Property-owner petitions may actually add inefficiencies to the MOU process. For example, in order to complete an approved annexation, LAFCo staff require certain documents from the city (right-to-farm, addressing, tentative map acceptance, etc.) and the city staff may not be prepared to respond in a timely manner. This could be remedied by earlier coordination between LAFCo and city staff if the staff were assisting with the application.

While it is possible to independently develop solutions for service delivery to a parcel, this practice does not promote the overall planning, construction and integration of facilities into the municipal service delivery network. Proper long-range land use planning must recognize and balance competing interests and the need to provide for future roadways and coordination with other service providers that would be affected by planned growth. There is a civic obligation on the city's part that it assertively manage the implementation of its general plan beginning with the review and approval of planning applications, then make application to LAFCo for annexation, and finally take responsibility for the construction compliance with building and safety codes.

**4. The annexation program supports orderly growth by identifying areas to be annexed, general time frames for growth, and a plan for extension of services to these areas.**

**Suggested actions:**

- Capital improvement plan and/or facilities plans include all lands within the SOI;
- Development impact fees that fund the extension of services are established and maintained;
- Impacts to service delivery are assessed in the city's EIR or project-specific CEQA documents and appropriately-scaled mitigation is approved and implemented.
- the city coordinates its public policy documents in support of the annexation program.

**Background:**

The annexation program should coordinate the policies, facilities, funding, and construction of city service infrastructure by linking the general plan land use diagram and policies, capital improvement plans, service delivery plans (such as a fire department's Standards of Cover), and annual budget. The product of this work can serve as the foundation for development policies that direct growth to certain areas whether all or part of the city's sphere, or restrict growth to defined areas until certain actions (funding, studies, etc.) are complete.

LAFCo's interest in cities' growth and development can be summarized by three words: order, logic, and efficiency.

- Order is a state in which all components or elements are arranged logically, comprehensibly.
- Logic describes the use of valid reasoning in some activity. These elements are already in a city's plans, policies, budget, etc.

- Efficiency in general describes the extent to which time, effort or cost is well used for the intended task or purpose, it is measured by a comparison of production with cost (as in energy, time, and money) "Efficiency is doing things right, while Effectiveness is doing the right things."

An official document is created to describe how annexations implement the city's General Plan growth and development policies.

By coordinating the city's plans and policies, the annexation program also supports the efficient delivery of urban services throughout the rest of the city.

**5. The annexation program anticipates changes of organization of existing service districts and service areas in the SOI or adjacent to SOI.**

Suggested action:

- The Program should describe the transition of services that will occur when the city annexes/detaches (CID, NCFPD, FCFPD, KRCD, etc.); inversely, the document describes the status of or continuation of services when annexations do not result in detachment (FID, FMFCD, etc.).

**6. The annexation program anticipates the location of Disadvantaged Unincorporated Communities within a city's sphere of influence.**

Suggested action:

- Cities should become proficient in implementing their responsibilities under Senate Bill 244, should review Fresno LAFCo DUC policy and review Senate Bill 244 Technical Advisory (attached).

Background:

The statute requires LAFCo to make determinations regarding "disadvantaged unincorporated communities" ("DUCs") when considering a change of organization, reorganization, a sphere of influence amendment and municipal service reviews (an "MSR"). Generally, LAFCo will not approve annexations of territory greater than ten (10) acres if there is DUC contiguous to the proposal.

GC §65302.10 defines "Disadvantaged unincorporated community" as a fringe, island, or legacy community in which the median household income is 80 percent or less than the statewide median household income and requires that cities identify DUCs in their general plan land use element. GC §56033.5 further refines this definition for the purposes of annexations and Fresno LAFCo policy 106 establishes procedures to evaluate DUCs in light of nearby annexation proposals.

LAFCo is working with the County, the Fresno Council of Governments to establish and update a County-wide map of DUCs. This will be available to cities.



**7. The annexation program informs citizens in annexation areas of their rights, benefits, and changes that will occur on annexation.**

Suggested actions:

- City to establish and maintain on its website a description of the information above, how citizens can engage the process, how the city engages citizens and stakeholders and other information related to annexation. This information should include a description of the SOI, protest processes, and how LAFCo is involved.
- For those portions of a city's SOI that contain a large number of rural residential parcels that are planned for urban uses, the city is strongly encouraged to develop a long-term plan to annex and serve these areas.

**8. The annexation program will be coordinated with LAFCo's MSR for the city.**

Suggested action:

- City applications should include an assessment of current MSR determinations and recommendations.

Background:

Municipal Service Reviews are a major feature of LAFCo's responsibilities. The MSR is essential for the Commission to determine a local agency's sphere of influence. MSRs include 'determinations' based on facts and information provided by the local agencies to advise the Commission's decision on SOI updates. In approving an MSR, the Commission may also make recommendations to a local agency on matters related to the order, logic, and efficiency of that agency's operation. LAFCo staff will evaluate whether progress has been made by a local agency on the MSR recommendations when analyzing annexations and SOI updates.

**9. The annexation program is managed by an assigned and responsible city staff member.**

Suggested action:

- City identifies a staff member to serve as a genuine point of contact with LAFCo, that is, a staff member responsible and accountable for managing applications, knowledgeable of the project and of LAFCo's process, and empowered to facilitate the city's annexation program.

**10. City entitlement analysis is integrated with LAFCo policies.**

Suggested action:

- Local agencies, including Fresno County, are strongly advised to include Fresno LAFCo in their initial request for comments.

- When initial planning applications that will eventually require annexation are submitted to cities, they are encouraged to submit a pre-application to LAFCo so that LAFCo can track the project at its beginning, and provide comments that would facilitate annexation in time for these to be considered in a timely and efficient manner.

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## Steps for Annexation Application Process

1. Complete Pre-Application Process with LAFCo
2. Send Letter of Intent to the County
3. Resolution or Petition by Applicant requesting LAFCo Proceedings
4. Resolution by Lead Agency of CEQA Findings, Notice of Determination - if separate from Resolution Requesting LAFCo Proceedings

## Steps for Annexation Application Process (continued...)

5. Complete Application Checklist
6. Complete and Signed LAFCo Application Form
7. LAFCo Fees
8. City or Special District, Project Composition Documents

## Step 1. Applicant Pre-Application Meeting

- City annexation representative schedules meeting with LAFCo to review proposal.
- Proposal is reviewed in respect to LAFCo policies and County standards for annexation.
- Consideration of Disadvantaged Unincorporated Communities (SB 244).
- Project Description is refined with applicant.
- If territory is inhabited, a neighborhood meeting is held with affected landowners prior to application submittal.

Click Pre-Application link:

## Step 2. Send Letter of Intent to County

- Cities shall provide at least a 30 day notice of intent to the County prior to filing an annexation application with LAFCo.
- County CAO response letter to Notice of Intent to the applicant.

### Step 3. Resolution or Petition by Applicant for LAFCo Proceedings

- Annexations may be initiated by city resolution, or petition with required signatures of landowners or registered voters
- Pre-Zoning Ordinance (required)

Example of City Resolution:

Example of District Resolution:

Example of Petition:

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### Step 4. Resolution by Lead Agency of CEQA Findings, Notice of Determination

- Submittal of CEQA Review Documentation (1 Paper Copy, 1 Electronic) adopted findings:
  - Notice of Exemption by Lead Agency
  - Initial Study, Draft and Final EIR
  - Negative Declaration, or Mitigated Negative Declaration
  - Final Negative Declaration or Final Mitigated Negative Declaration

Example Notice of Determination:

Example Notice of Exemption:

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## Step 5. Complete Application Checklist

- Items Necessary for a Complete Application:
  - Map & Legal Description, State Board of Equalization Standards
  - County Assessor, Map & Legal to be approved by County Assessor
  - Project Location Map
  - Vicinity Map
  - General Plan / Zoning Maps
  - Tract Map or Site Plan Maps

Click for Complete Application Checklist link:

## Step 6. Complete and Signed LAFCo Application Form

Complete appropriate application:

- City Annexation Application

Click Application Link:

- Special District Application (Urban Services):

Click Application Link:

- Special District Application (Rural Service Areas):

Click Application Link:

## Step 7. LAFCo Fees

- Local Agency Formation Commission Fee Schedule
- Post Conducting Authority fees
  - CEQA filing fee
  - State Board of Equalization Fees

Click LAFCo Fee Schedule Link:

## Step 8. City or Special District, Project Composition Documents

- Project Service Plan (1 Paper and 1 Electronic)
- Williamson Act Contracts; if applicable
  - Williamson Act Contracts, Copy of Contract
  - City Resolution Protesting Contract (if applicable)
  - Board of Supervisor's or LAFCo Resolution Upholding the Protest
  - Procedures to Succeed from Williamson Act Contract\*

\*(Example to be included)

## City or Special District, Project Composition Documents (continued...)

- If multiple entitlements are adopted by City Council for the Project, include associated documents
  - Tract Map
  - Conditional Use Permit
  - Rezone
  - General Plan Amendment
  - Variance

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