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

AGENDA ITEM No. 5

DATE: **April 9, 2008**

TO: **Fresno Local Agency Formation Commission**

FROM: **Rick Ballantyne, Executive Officer**

SUBJECT: **Conducting Authority Proceedings - City of Fresno "McKinley-Brawley No. 4 Reorganization"**. A proposed reorganization to annex 41.89 acres to the City of Fresno and detach from the North Central Fire Protection District and the Kings River Conservation District for territory located at the northwest corner of W. McKinley and N. Brawley Avenues (**LAFCo File No. RO-07-24**).

Background and Summary

- This protest hearing is being conducted pursuant to the California Government Code commencing with Section 57000 which requires LAFCo to carry out Conducting Authority Proceedings.
- At its January 9, 2008 meeting, the Commission conditionally approved the "McKinley-Brawley No. 4 Reorganization" by adopting Resolution No. RO-07-24, attached to this Report as Exhibit "A", and incorporated herein by this reference. This protest hearing is required because not all landowners or registered voters had signed consent forms prior to the Commission's action.
- The approved reorganization consists of the annexation of 41.89 acres to the City of Fresno and detachment from the North Central Fire Protection District and the Kings River Conservation District for territory located at the northwest corner of W. McKinley and N. Brawley Avenues.
- At today's hearing, prior to consideration of protests, the Commission's resolution making determinations will be summarized. The Commission will then hear and receive any oral or written protests, objections, or evidence made, presented, or filed.
- All property owners and registered voters within the affected territory were sent written notice of this hearing, instructions on how to protest, and an official protest form (see Exhibit "B"). At this writing, staff has not received any official written protests.
- At any time prior to the conclusion of this hearing any landowner within the affected territory may file a written protest against the annexation.
- Should insufficient valid protests be received and not withdrawn, the Commission's determination to conditionally approve the reorganization stands.¹

¹ Not longer than 30 days following this hearing in accordance with Government Code Sections 56100, 57075, and 57078.

Recommendation

Direct staff to determine the value of valid protests received and not withdrawn and report these results to the Commission within the time prescribed by State law. If feasible, report these results at this hearing.

Conducting Authority Proceedings

Executive Officer's Summary

The following is a summary of the Commission's Resolution making determinations, which must be presented at the hearing prior to the Commission's consideration of protests.

- At its January 9, 2008 meeting, having considered all relevant factors and heard all interested parties wishing to speak regarding the proposal, the Commission determined that the environmental effects of the project as shown in the CEQA documents submitted by the Lead Agency were legally adequate pursuant to the CEQA Guidelines and that the proposed reorganization was consistent with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 and LAFCo Policies, Standards and Procedures.
- The Commission, therefore, approved the proposed Reorganization subject to conditions as contained within the adopted Fresno LAFCo Commission Resolution (see Exhibit "A").
- Having determined that the affected territory is inhabited but that not all landowners and registered voters residing within the territory consented to the annexation in writing, the Commission directed staff to set a protest hearing pursuant to the requirements of California Government Code Section 57000.

Public Testimony

Prior to making its determination for this proposal the Commission must hear and receive any oral or written protests, objections, or evidence made, presented, or filed. The Chairman may call for any final protests to be filed or withdrawn prior to closing the public hearing. The annexation will be terminated if written protests filed with the Executive Officer (and not withdrawn) are sufficient to overturn the Commission's action. Protest procedures for inhabited annexations are outlined below:

Commission Action

In the case of an inhabited proposal for a City where a change of organization consists of an annexation and detachment, the Commission is required to make a finding regarding the value of written protests filed and not withdrawn, and take one of the following actions not more than 30 days after the conclusion of the hearing:

Termination:

The change of organization or reorganization will be terminated if written protests are filed with the LAFCo Executive Officer (and not withdrawn) representing a majority (50% or more) of the registered voters residing in the affected territory (Government Code Section 57078).

Election:

The proposal area has been determined to be "inhabited", therefore it will be subject to confirmation by the registered voters residing in the affected territory (i.e., by an election) if protests are filed (and not withdrawn) by either:

- At least 25%, but less than 50%, of the registered voters residing in the affected territory, or
- At least 25% of owners of land within the affected territory whose properties also constitute at least 25% of the assessed value of land within the affected territory (Government Code Section 57075).

Annexation Ordered

The change of organization (annexation) will be ordered if the number of protests filed with the LAFCo Executive Officer (and not withdrawn) falls below the threshold numbers stated above, subject to the previously mentioned condition.

Calculating the Value of Protests Received

At the close of the public hearing, staff may be directed to determine the value of valid protests received and not withdrawn. Should substantial valid protests be received and not withdrawn, staff may be directed to determine the value of all protests and issue written results to the Commission within 30 days. The reorganization will stand as approved if the number of protests filed with LAFCo (and not withdrawn) falls below the thresholds described above.

Exhibit "A"

RESOLUTION NO. RO-07-24

FRESNO LOCAL AGENCY FORMATION COMMISSION
FRESNO COUNTY, CALIFORNIA

In the Matter of:

LAFCo Determination:

A REQUEST BY THE CITY OF FRESNO)
FOR APPROVAL OF THE "MCKINLEY--)
BRAWLEY NO. 4 REORGANIZATION")

APPROVED WITH CONDITIONS

WHEREAS, reorganization proceedings were initiated by the City of Fresno to annex 41.89 acres of territory to the City of Fresno and detach from the North Central Fire Protection District and the Kings River Conservation District for territory located at the northwest corner of W. McKinley and N. Brawley Avenues; and

WHEREAS, an application was submitted to this Commission by the City of Fresno as required by State Law, and the application for said proposed reorganization was accepted for filing by the Executive Officer and set for hearing on the 9th day of January, 2008, at the hour of 1:30 p.m.; and

WHEREAS, notice of said hearing was given as required by State Law; and

WHEREAS, the North Central Fire Protection District and the City of Fresno have a transition agreement in full force and effect that applies to fire protection services within the affected territory on file with the Commission; and

WHEREAS, a Master Property Tax Sharing Agreement exists between the City of Fresno and the County of Fresno, the responsible local agencies for the exchange of property tax revenues covering this reorganization; and

WHEREAS, the County of Fresno submitted a letter to this Commission stating that the County has determined that the proposed annexation of the affected territory to the City of Fresno is consistent with the Master Property Tax Sharing Agreement; and

WHEREAS, the Executive Officer reviewed the application and prepared a report to this Commission, including a recommendation for approval upon certain conditions, said report having been mailed at least five days before the public hearing; and

WHEREAS, said report was duly considered by this Commission pursuant to State Law; and

WHEREAS, this Commission reviewed and considered the information in the Master Environmental Impact Report (MEIR) No. 10130, prepared and certified for the 2025 Fresno General Plan by the Lead Agency, the City of Fresno, which was included in the Executive Officer's report to this Commission; and

WHEREAS, this Commission considered all relevant factors and evidence and heard all interested parties wishing to speak on said application; and

WHEREAS, the annexation of the subject territory without annexing property located immediately adjacent to the west of the subject territory (contained in the proposed McKinley-Blythe No. 1 Reorganization) will result in the adjacent territory being “substantially surrounded” by the City of Fresno; and

WHEREAS, “substantially surrounded” territory is defined in the LAFCo Policies, Standards, and Procedures Manual Section 005 as either (a) at least three sides contiguous with city boundaries; or (b) at least 75% of the property’s perimeter is contiguous with city boundaries; and

WHEREAS, the County of Fresno requested that the Commission condition the annexation of the subject territory on the certificate of recordation of the McKinley-Blythe No. 1 Reorganization; and

WHEREAS, the representative for the developer, Mr. Dirk Poeschel, requested that the Commission not impose the condition recommended by the County of Fresno because the land owner and/or developer of the subject territory would have no ability to ensure that the McKinley-Blythe No. 1 Reorganization be completed, and as a result, the annexation of the subject territory could be delayed; and

WHEREAS, LAFCo Counsel stated that LAFCo laws and policies disfavor the creation of substantially surrounded territories, which may result in an island of unincorporated territory; and

WHEREAS, LAFCo Counsel advised the Commission that in order to comply with the LAFCo Policies, Standards, and Procedures Manual it would be advisable to make a finding as required by Government Code Section 56375(m) that, in order to waive restrictions on islands as per Government Code Section 56744, the Commission should make the determination that the annexation of the subject territory is necessary to promote orderly development, and that the annexation of the adjoining territory cannot, at this time, be reasonably annexed to the City of Fresno; and

WHEREAS, the representative for the developer, Mr. Poeschel, did provide evidence in support of the requested exception stating that the extension of public utilities to his property from existing lines to the north would make future extensions to serve the Ennis property to the west (McKinley-Blythe No. 1 Reorganization) more orderly; and

WHEREAS, the Commission was informed by the City of Fresno that, while the application by resolution for the McKinley-Blythe No. 1 Reorganization was not ready to be submitted to LAFCo, the City anticipated the application for annexation shall be submitted to the Commission within the next few months; and

WHEREAS, this Commission did consider the request for waiver of the condition and found that requiring recordation of the McKinley-Blythe No. 1 Reorganization prior to recordation of the subject proposal would be detrimental to orderly development.

NOW, THEREFORE, BE IT RESOLVED that the Fresno Local Agency Formation Commission does HEREBY STATE, FIND, RESOLVE, DETERMINE, AND ORDER as follows:

Section #1. Acting as a Responsible Agency under CEQA Guidelines, this Commission considered the information in the Initial Study and the Finding of Conformity with the 2025 Fresno General Plan Master Environmental Impact Report (MEIR No. 10130) prepared for this Proposal by the City of Fresno prior to making its determination and finds as follows:

1. The subsequent Proposal is within the scope of the (overall) project covered by the MEIR prepared and certified for the 2025 Fresno General Plan.
2. The proposed Proposal will have no additional significant effect, as defined by subdivision (d) of Section 21158 of the Public Resources Code, on the environment that was not identified in the MEIR.
3. No new or additional mitigation measures or alternatives are required in order to avoid or mitigate a significant environmental effect (CEQA Section 15177).
4. The Lead Agency's Initial Study and "Finding of Conformity with the MEIR" were prepared in accordance with the requirements of CEQA Guidelines and are consistent with State law.
5. The City's environmental documents and findings prepared for this Proposal are determined to be legally adequate pursuant to CEQA Guidelines Section 15096.

Section #2. This Commission finds that the proposed reorganization is consistent with LAFCo Policies, Standards and Procedures Section 210 - Standards for Annexation to Cities and Urban Service Districts (01-10), and the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000.

Section #3. This Commission assigns the distinctive short form designation "McKinley-Brawley No. 4 Reorganization" and approves the reorganization (annexation and detachments) subject to the following conditions of approval:

1. *The City of Fresno shall submit to the Executive Officer verification that a Right-to-Farm Covenant is required and made a part of the City's development agreement and that this legal covenant will be recorded with the final tract map approved by the City for the affected territory.*
2. Satisfactory verification that the City has accepted a final tract map shall be submitted to the Executive Officer prior to completion (recordation) of the annexation.
3. Ownership of land permitting, the reorganization shall include the full existing right-of-way width of adjacent streets.

Section #4. This Commission finds and determines that the annexation of the subject territory is necessary to promote orderly development, and that the annexation of the adjoining territory to the West cannot, at this time, be reasonably annexed to the City of Fresno.

EXHIBIT "B"

FRESNO LOCAL AGENCY FORMATION COMMISSION (LAFCO)

NOTICE OF PROTEST HEARING

PLEASE BE ADVISED THAT A PROTEST HEARING will be held by the Fresno Local Agency Formation Commission (LAFCo) **on Wednesday, April 9, 2008, at 1:30 p.m., or as soon thereafter as possible**, in Room 301, Hall of Records, Tulare and "M" Streets, in downtown Fresno concerning the following:

City of Fresno "McKinley-Brawley No. 4 Reorganization". A reorganization to annex 41.89 acres to the City of Fresno and detach from the North Central Fire Protection District and the Kings River Conservation District for territory located at the northwest corner of W. McKinley and N. Brawley Avenues (**LAFCo File No. RO-07-24**).

At its January 9, 2008 hearing, the Fresno Local Agency Formation Commission approved this reorganization (annexation and detachments). Because your property is located in the affected territory, you have the right to protest this decision should you disagree with it. For a complete description of the proposed reorganization, including its boundaries, terms, and conditions, you may request a copy of LAFCo's Resolution approving the proposal at the address below.

HOW TO FILE A PROTEST: Owners of land or registered voters within the boundaries of the affected territory may file a written protest(s) in opposition to the proposed annexation. Protests may either be mailed or delivered to Fresno LAFCo, 2115 Kern Street, Suite 310, Fresno, CA 93721, or presented to the Commission before the end of the protest hearing. You need not attend the hearing to file a protest, but each protest form must state that you are a landowner and/or registered voter and must include your name, mailing address and street address (if different) or an Assessor Parcel Number (APN) identifying the location of your property within the affected territory. Written protests must be filed and received no later than the conclusion of the hearing to be considered valid. Each protest filed will be counted separately. An **Official LAFCo Protest Form** is attached if you wish to file a protest. This form may be copied. The results of protests received will be determined within 30 days following the hearing in accordance with California Government Code Sections 57075 and 57078.

MAJORITY PROTEST: In the case of inhabited territory (**like yours**), proceedings will be **terminated** if the Commission finds that written protests filed and not withdrawn prior to the conclusion of the hearing represent a majority protest. A majority protest is defined as the filing of valid protests by 50 percent or more of the registered voters residing in the affected territory.

ELECTION: An election may also be called to decide this matter. An election will be called if at least 25 percent, but less than 50 percent, of the registered voters residing in the affected territory file valid protests or if at least 25 percent of the numbers of owners of land who also own at least 25 percent of the assessed value of land within the affected territory file valid protests.

**OFFICIAL LAFCo PROTEST FORM
CITY OF FRESNO "McKINLEY-BRAWLEY NO. 4 REORGANIZATION"**

Each of the undersigned is the landowner of the property located within the proposal area described below and/or a registered voter residing in the territory. The undersigned hereby protests the proposed "McKinley-Brawley No. 4 Reorganization" as provided for in Section 57051 of the California Government Code.

NAME OF PROPOSAL: "McKINLEY-BRAWLEY NO. 4 REORGANIZATION", RO-07-24

Land Owner Registered Voter (may indicate both landowner and registered voter if applicable)

Date _____ **Name** _____
(Please type or print)

Full Legal Signature _____

Address _____
Number Street City or town

Description of affected property if not at above address _____
Assessor's Parcel Number if known

Address or other description

NAME OF PROPOSAL: "McKINLEY-BRAWLEY NO. 4 REORGANIZATION", RO-07-24

Land Owner Registered Voter (may indicate both landowner and registered voter if applicable)

Date _____ **Name** _____
(Please type or print)

Full Legal Signature _____

Address _____
Number Street City or town

Description of affected property if not at above address _____
Assessor's Parcel Number if known

Address or other description

NAME OF PROPOSAL: "McKINLEY-BRAWLEY NO. 4 REORGANIZATION", RO-07-24

Land Owner Registered Voter (may indicate both landowner and registered voter if applicable)

Date _____ **Name** _____
(Please type or print)

Full Legal Signature _____

Address _____
Number Street City or town

Description of affected property if not at above address _____
Assessor's Parcel Number if known

Address or other description

PLEASE NOTE - This official protest form must be utilized to submit a valid protest. The use of any other form will invalidate your protest. It is understood that for landowner protests involving a parcel with more than one owner listed on the County's Assessment Roll, only the signer's proportionate share of the value of the property will be credited in the protest.