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

AGENDA ITEM No. 6

DATE: April 15, 2009

TO: Local Agency Formation Commission

FROM: Rick Ballantyne, Executive Officer
Darrel Schmidt, Deputy Executive Officer

SUBJECT: **Consider Approval** – Amend Section 315 (Extension of One Year to Complete Proceedings) of *LAFCo's Adopted Policies, Standards, and Procedures* to: 1) Allow Consideration of Economic Hardships as Justification for Approving Extensions of Time; 2) Consider Placement of First and Second Time Extension Requests on the Commission's Consent Agenda.

Background:

The Commission has expressed concern related to numerous time extension requests for reorganizations based solely upon "economic hardships". Applicants have inquired as to whether such hardships serve as a basis for allowing extensions in light of current adopted policies that require: 1) that the imminent need for the proposal still exists; 2) that the project is still viable; and 3) that progress is being made towards completion. Given the current economic downturn it has been difficult to demonstrate that progress is being made, even if the project appears to be viable and there is continued interest and support.

At the Commission's March 11, 2009 hearing, staff presented an informational item stating that extension of time requests based solely upon economic hardships were creating a challenge in that such a justification did not meet LAFCo's current standards for allowing time extensions. Staff also reported that Fresno LAFCo's experience in processing time extension requests was somewhat unique in comparison with other LAFCOs throughout California in that other LAFCOs generally receive very few extension requests. Fresno LAFCo may have experienced an abundance of extension requests because, prior to January, 2008, the Commission had routinely required as a condition of approval that a final map be submitted to and accepted by the City prior to recordation. This condition was imposed as an attempt to ensure that development would occur within a reasonable time after annexation. Our review indicates that this standard has not been routinely imposed by other LAFCOs (although other Commissions may impose conditions designed to promote eminent development).

The Commission has since determined that the final map acceptance condition should not be required as a standard condition of approval. We hope that, without this condition, recordation activity may proceed on a timelier basis.

At its hearing, the Commission directed staff to prepare a report and amendment to its *Policies, Standards, and Procedures* that addressed the issue of economic hardships as appropriate justification for allowing for one or more time extensions. The Commission also expressed a desire to consider placing first and second time extension requests on the "consent agenda" in cases where it was evident that substantial progress was being made towards recordation and that such extension requests were supported by the annexing city or district.

Policies and Standards:

Section 315 of Fresno LAFCo Policies, Standards, and Procedures related to time extensions state:

Extensions of time shall only be granted when it can be shown that the imminent need for the proposal still exists, the project is still viable, and progress is being made toward completion. To enable the Commission to make these determinations, the proponent and the conducting authority shall be requested to provide the following information which shall be addressed in the Executive Officer's report:

- *Any circumstances that have changed in the vicinity of the project since the proposal was approved that could affect its suitability for annexation.*
- *Actions that have been taken by the proponent to ensure that the conducting authority proceedings can be completed within the requested extension period.*

State law requirements under Government Code Section 57001 set forth the following:

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

Discussion:

Consideration of Economic Hardships as Extension Justification:

During its March 11th meeting, the Commission indicated that recent negative market and economic conditions should be considered as justification when approving extension of time requests. Questions were raised as how to best judge whether economic hardships really existed and/or whether some sort of "benchmark" or standard could be applied to determine whether present economic conditions beyond the control of the proponent justified the extension.

Staff believes that it may be difficult to apply criteria or specific standards uniformly in determining economic hardships. This is because economic conditions are dependent on a myriad of factors and are always subject to change. Further, an established benchmark may not be reflective of local conditions and can vary greatly within different parts of the County.

Rather than revising the Commission's time extension policies to identify a benchmark or other specific standard, staff believes that it would be appropriate to require proponents to include local conditions when submitting extension requests. These requests should provide specific information supporting the existence of poor market and economic conditions. Additionally, the annexing city or district should also support and confirm such factors.

Staff solicited comments from other LAFCos statewide to ascertain whether they have also experienced similar issues with respect to numerous time extensions. Responses were received from Amador, El Dorado, Nevada, San Mateo, Santa Barbara, Stanislaus, and Tulare LAFCos. Each of these LAFCos indicated that they had not experienced problems with timely recordation requiring time extensions.

Permitting First and Second Time Extensions to Be Placed on Consent Agenda:

LAFCo records indicated that the Commission approved all first and second time extension requests processed between the years 2000 and 2009. While Commission action is necessary in order to grant a time extension, the granting of first and second time extensions have become routine. Because of the additional hearing time and public attendance requirements, the Commission expressed its collective desire that first and second extension requests should be considered as "Consent Agenda" items.

While the first and second extension requests appear to be routine in nature, the Commission had recommended that some assurances be provided by the annexing city or district that the proposal is still consistent with the city or agency's plans/policies and is a valid project. The policy should also be revised to require the support of the County of Fresno where the annexation is to a district located within the unincorporated area since the County maintains land use planning authority within the unincorporated area.

Per the Commission's suggestion, staff has proposed that the time extension policies be revised to state that, if an extension is pulled for discussion, it will be continued to the next Commission hearing and placed on the Commission's regular agenda. This way, applicants do not necessarily have to attend the hearing if the item has been placed on the consent agenda, and will be given opportunity to comment or answer any questions at the following hearing should an item be pulled for discussion. In order to ensure that a proposal, which is pulled for discussion and continued to the following hearing, will not expire in the interim, staff has proposed that extension requests be placed on the Commission's consent calendar no less than 40 days prior to the expiration of the proposal.

The proposed Policy revisions contained within Exhibit "A" provide the Executive Officer the discretion to place first and second time extension requests on the Commission's regular hearing agenda if circumstances are such that the Executive Officer believes are necessary for Commission consideration. Based upon prior experience, however, staff believes that it would be rare for the Executive Officer to find it necessary to do so. It is also noted that any policies that are approved should not impinge upon the Commission's abilities to approve or deny such requests.

Recommendation: Approve revisions to the Commission's Policies and Procedures, Section 315, as proposed in Exhibit "A".

EXHIBIT "A"

Additions are underlined. Deletions are shown by ~~crossed words~~.

315 EXTENSION OF ONE YEAR TO COMPLETE PROCEEDINGS

- 01 Following approval by the Commission, all proposals for changes of organization will be scheduled by the Commission office for follow-up of the conducting authority action after 95 days, in accordance with provision of Section 57005. A notice of necessary conducting authority action will be sent to the conducting authority if resolutions acting on the proposals are not received in the 95 day period.
- 02 Follow-up of completion of proceedings will occur 300 days from final Commission action on a proposal. A notice of the one year expiration of the Commission resolution will be sent to the conducting authority and proponent after the 300 days, with the option to request a one year extension of time (57001). Any proposal requested by a public agency for public agency purposes may be extended for a five year period. However, the public agency shall annually give to the Commission office a letter of intent as to the continued purpose of the annexation being for public purpose.

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

~~Prior to the date of~~ No less than 40 days prior to the expiration the matter of the application, the extension request will be placed on the agenda for Commission action as a Consent Agenda item, provided the extension is the first or second extension request for the proposal. If the item is taken off of the Consent Agenda, the Commission shall continue the item until the next regularly scheduled Commission hearing to consider the extension request. Notwithstanding this, the extension request may be placed on the Commission's agenda as a "Public Hearing" item should circumstances warrant such as determined by the Executive Officer.

Should the proposal require more than two extensions, the item will be placed on the Commission's Agenda as a "Public Hearing" item rather than as a Consent Agenda item and a staff report will be prepared. If no request is received by the hearing date time the agenda is posted, no action will be taken and the proposal will expire. If a request for extension is received, the reasons will be considered, and if approved, an additional one year granted. After the first extension, a A second request for extension may also be granted if warranted, and will be noticed and placed on the agenda as described above. Following the second notice and request, no additional notices shall be sent.

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

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

- Any circumstances that have changed in the vicinity of the project since the proposal was approved that could affect its suitability for annexation.
- Actions that have been taken by the proponent to ensure that the conducting authority proceedings can be completed within the requested extension period.
- If the proponent has been unable to satisfy a condition subsequent to the Commission's approval due to adversarial market and/or economic conditions, such condition(s) shall be identified and supporting documentation provided. In addition, the applicant as a part of the extension request shall submit to LAFCo written confirmation from the city or district representative to which annexation is proposed supporting the extension request and validating the presence of the adversarial market or economic conditions justifying the extension. If the proposal is to annex to a district located within the unincorporated area, written correspondence in support of the extension request shall also be provided from the County of Fresno.

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

Adopted: June 16, 1993
Revised: April 5, 1995
Revised: June 23, 1999
Revised: January 9, 2008
Revised: April 15, 2009