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MEMORANDUM

To: Fresno LAFCo Commissioners
Mr. Rick Ballantyne, LAFCo Executive Officer

From: Kenneth J. Price
Baker Manock & Jensen, PC

Re: CONSIDER APPROVAL – ITEM NO. 16: Consider Amendment to AB 745
Policy Requiring the Disclosure of Contributions and Expenditures Made for the
Purpose of Affecting or Influencing Petitions for Changes of Organization,
Reorganization, and Protest Hearings

Date: January 2, 2008

Last month, the Commission unanimously approved a policy requiring the disclosure of contributions and expenditures made for the purpose of affecting or influencing petitions for changes of organization, reorganization, and protest hearings. Attached to this memorandum is a copy of the staff report from the December 5, 2007, Commission hearing regarding this new policy.

The proposed policy I forwarded to the Commission substantially mirrored the policy developed by a number of California attorneys on behalf of CALAFCO. However, the policy contained an error. The policy stated that the disclosure requirements only applied to “[a]ny person who makes an expenditure of \$1,000.00 or more in support of or in opposition to a change of organization or reorganization (such as an annexation and/or detachment) submitted to LAFCo via *petition*” and that such persons must disclose such contributions to the Commission.” (Emphasis Added.) The policy limited the disclosure requirements only to applications received by the Commission via petition, rather than by resolution of application from a public agency. This is incorrect.

CALAFCO has sent revised language to the LAFCO’s around California informing them that the policy applies to *all* applications made for a change of organization or reorganization, whether by petition or by resolution of application by a public agency. The Commission’s policies and procedures should be revised to reflect this change.

Fresno LAFCo Commissioners
Mr. Rick Ballantyne, LAFCo Executive Officer
January 2, 2008

Additionally, attached hereto is language that CALAFCO has recommended be added to each LAFCo application form informing them of the policy.

Recommendation

Approve revised policy.

Fresno LAFCo Commissioners
Mr. Rick Ballantyne, LAFCo Executive Officer
January 2, 2008

Compliance with Political Expenditure and Contribution Disclosure Requirements

Pursuant to Government Code Sections 56700.1 and 57009 of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, and 82015 and 82025 of the Political Reform Act applicants for LAFCo approvals and those opposing such proposals are required to report to LAFCo all contributions and expenditures with respect to the proposal for political purposes once expenditures exceed a total of \$1,000. LAFCo has adopted policies to implement the law which are attached to this application. By your signature to this application, you are binding the applicant to abide by these disclosure requirements. You are further agreeing that should LAFCo be required to enforce these requirements against you (or if the agency is the formal applicant, against the real party in interest) that you will reimburse LAFCo for all staff costs, legal fees, and litigation expenses incurred in that enforcement process.

Baker Manock & Jensen

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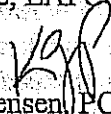
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MEMORANDUM

To: Fresno LAFCo Commissioners
Mr. Rick Ballantyne, LAFCo Executive Officer

From: Kenneth J. Price 
Baker Manock & Jensen PC

Re: **CONSIDER APPROVAL – AGENDA ITEM NO. 18(A): Consider Adoption of AB 745 Policy Requiring the Disclosure of Contributions and Expenditures Made for the Purpose of Affecting or Influencing Petitions for Changes of Organization, Reorganization, and Protest Hearings**

Date: November 28, 2007

Per a recent change in the law, I recommend that you adopt a policy requiring the disclosure of contributions and expenditures made for the purpose of affecting or influencing petitions for changes of organization, reorganization, and protest hearings.

Background

The Governor signed into law AB 745 (Silva), effective January 1, 2008, which modifies two sections of the Cortese-Knox-Hertzberg Act, and adds a new section to the law to address issues related to campaign disclosure requirements for LAFCO proceedings. In short, the new law essentially extends campaign disclosure and advocacy rules that apply to ballot initiatives and independent expenditure campaigns to certain LAFCO proceedings. Those sections are outlined below with the new language shown in italics:

1. 56100.1. A commission may require, through the adoption of written policies and procedures, the disclosure of contributions, as defined in Section 82015, expenditures, as defined in Section 82025, and independent expenditures, as defined in Section 82031, made in support of or opposition to a proposal. Disclosure shall be made either to the commission's executive officer, in which case it shall be posted on the commission's website, if applicable, or to the board of supervisors of the county in which the commission is located, which may designate a county officer to receive the disclosure. Disclosure pursuant to a requirement under the authority provided in this section shall be in addition to any disclosure

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required by *Section 56700.1, the Political Reform Act (Title 9 (commencing with Section 81000)) or by local ordinance.*

2. 56700.1. Expenditures for political purposes related to a *proposal for a change of organization or reorganization that will be conducted pursuant to this part* and contributions in support of, or in opposition to, those proceedings shall be disclosed and reported to the same extent and subject to the same requirements of the *Political Reform Act (Title 9 (commencing with Section 81000))* as provided for local initiative measures.

3. 57009. *Expenditures for political purposes related to proceedings for a change of organization or reorganization that will be conducted pursuant to this part, and contributions in support of, or in opposition to, those proceedings shall be disclosed and reported to the commission to the same extent and subject to the same requirements of the Political Reform Act (Title 9 (commencing with Section 81000)), as provided for local initiative measures.*

This new law is intended to inform the public and government officials about who is funding campaigns and how much they are spending to place a change of organization or reorganization proposal before LAFCo. The law also applies to expenditures relating to conducting authority proceedings, such as a protest proceeding. Campaign activities include initiating petitions, preparing advocacy documents, and soliciting support for a particular application. AB 745 does not change the duties or obligations under the Political Reform Act that requires disclosure once an item is placed upon a ballot.

In summary, the disclosure rules are as follows:

- (1) Any person who makes an expenditure of \$1,000.00 or more in support of or in opposition to a change of organization or reorganization (such as annexation and/or detachment) submitted to LAFCo via petition must disclose such contributions to the Commission.
- (2) Any person who makes an expenditure of \$1,000.00 or more in support of or opposed to any conducting authority proceeding for a change of organization or reorganization (such as a protest hearing) held by LAFCo must disclose such contributions to the Commission.

The 58 LAFCOs in California, through CALAFCO, collectively sought assistance from the LAFCO legal community to address the implementation of these new requirements. Accordingly, several attorneys (including Fresno LAFCo special counsel Nancy Miller) prepared the attached draft disclosure policy that I have revised for your consideration.

The proposed policy recommends that LAFCOs use existing Fair Political Practices Commission forms to provide such information to the Commission. These forms

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include Form 410 – Statement of Organization, Form 460 – Recipient Committee Campaign Statement, and 497 – Late Contribution Report. Copies of these forms will be available at LAFCo offices and counsel will instruct staff about how to complete these forms in the event that the public has questions. Staff recommends that the Commission approve adding a general disclaimer about these disclosure requirements to the bottom of each Fresno LAFCo agenda and on our website.

Recommendation

Approve policy.

DMS: 577228_1

The first part of the report deals with the general situation of the country and the position of the various groups. It is followed by a detailed account of the events of the past few days, and a summary of the results of the operations. The report concludes with a number of recommendations for the future.

CONCLUSIONS

The operations have been carried out in a most efficient and successful manner. The results have been most satisfactory, and the objectives have been fully achieved. It is hoped that the same success will be attained in the future.

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Fresno Local Agency Formation Commission
Disclosure of Political Expenditures Regarding Certain Proceedings

Pursuant to Government Code Sections 56700.1 and 57009, effective January 1, 2008, expenditures for political purposes related to a proposal for a change of organization or reorganization initiated by petition and contributions in support of or in opposition to any proposal at the conducting authority stage of the LAFCO process are subject to the reporting and disclosure to the same extent as required for local initiative measures under the Political Reform Act, Government Code Section 81000 et seq., and the regulations of the Fair Political Practices Commission implementing that law.

Fresno LAFCO adopts the following reporting and disclosure requirements to implement Government Code Sections 56700.1 and 57009:

1. Definitions

- a. "Contribution" as used herein shall have the same definition as provided in Government Code Section 82015, as amended.
- b. "Expenditure" as used herein shall have the same definition as provided in Government Code Section 82025, as amended.
- c. "Independent expenditure" as used herein shall have the same definition as provided in Government Code Section 82031, as amended, except that the term "measure" as used in Section 82031 shall be replaced with the term "proposal for organization or reorganization."
- d. "Political Purposes" as used herein shall mean for the purpose(s) of:
 - (i) influencing public opinion; (ii) lobbying public officials; and/or,
 - (iii) influencing legislative or administrative action as defined in Government Code § 82032. It shall not include for the purpose(s) of complying with legal requirements and LAFCO rules for the processing of a proposal, including, but not limited to and by way of example only, preparation of a comprehensive fiscal analysis for an incorporation (Government Code Section 56800) or documents necessary to comply with the California Environmental Quality Act, Public Resources Code Section 21000 et seq., such as a mitigated negative declaration or environmental impact report.

2. Disclosure Requirements for Petitions for Proposals for Organization or Reorganization

- a. Any person or combination of persons who directly or indirectly makes an expenditure or independent expenditure for political purposes of \$1,000 or

more in support of, or in opposition to, a change of organization or reorganization submitted to the commission to which Government Code Section 56700.1 applies, shall comply with the reporting and disclosure requirements of the Political Reform Act (Government Code §§ 81000 et seq.), to the same extent and subject to the same requirements as for local initiative measures. Such reporting and disclosure requirements, except as otherwise excluded herein, extend to those required by the Fair Political Practices Commission Regulations regarding such disclosures and shall include disclosure of contributions, expenditures and independent expenditures.

- b. Disclosures made pursuant to this Section shall be filed the commission's executive officer as designated in Section 5 below.
- c. For purposes of determining the deadlines by which such reports and disclosures must be filed, the term "election" as used in the Political Reform Act for determining such deadlines shall mean the date of the originally scheduled commission hearing on a proposal for organization or reorganization. If no hearing date has been scheduled at the time a person becomes subject to disclosure under this policy, he or she shall request that the executive officer establish a date to serve as the "election" date for this purpose. The executive officer shall establish a date, such as, but not limited to, the date which is 6 months after the first filing with the commission regarding the proposal, and inform the requestor of that date in writing.
- d. In the event the originally scheduled hearing date for the proposal for organization or reorganization is rescheduled or continued to a later date, the obligation to file continues reports shall be filed on or before the 10th day of each month following the original hearing date with respect to contributions and expenditures received in the previous calendar month up to and including the third calendar month following final action by the commission on the proposal.

3. Disclosure Requirements for Conducting Authority Proceedings

- a. Any person or combination of persons who directly or indirectly makes an expenditure for political purposes of \$1,000 or more related to conducting authority proceedings for a change of organization or reorganization to which Government Code Section 57009 applies, or in support of or in opposition to those conducting authority proceedings, shall comply with the reporting and disclosure requirements of the Political Reform Act (Government Code §§ 81000 et seq.), to the same extent and subject to the same requirements as for local initiative measures. Such reporting and disclosure requirements, except as otherwise excluded herein, extend to those required by the Fair Political Practices Commission Regulations

regarding such disclosures and shall include disclosure of contributions, expenditures and independent expenditures.

- b. Disclosures made pursuant to this Section shall be filed with the commission's executive officer as designated in Section 5 below.
- c. For purposes of determining the deadlines by which such reports and disclosures must be filed, the term "election" as used in the Political Reform Act for determining such deadlines shall mean the date of the originally scheduled conducting authority hearing on the proposal for organization or reorganization. If no hearing date has been scheduled at the time a person becomes subject to disclosure under this policy, he or she shall request that the executive officer establish a date to serve as the "election" date for this purpose. The executive officer shall establish a date, such as, but not limited to, the date which is 6 months after the first filing with the commission regarding the proposal, and inform the requestor of that date in writing.
- d. In the event the originally scheduled conducting authority hearing date for a proposal for organization or reorganization is rescheduled or continued to a later date, the obligation to file continues and reports shall be filed on or before the 10th day of each month following the original hearing date with respect to contributions and expenditures received in the previous calendar month up to and including the third calendar month following final action by the commission on the proposal.

4. Certain Reports and Disclosures Excluded

This policy requires that the persons subject to it disclose via reports to the commission's executive officer contributions, expenditures and independent expenditures with respect to expenditures for political purposes related to a petition to the commission for a proposal for an organization or reorganization and does not impose on such persons the regulations regarding the names of campaign committees, disclosures of the sources of mass mailings, and disclosures of the source of automated telephone calls under Government Code Sections 84501 et seq. and the regulations of the Fair Political Practices Commission implementing those sections.

This policy also requires that the persons subject to it comply with the regulations regarding the names of campaign committees, disclosures of the sources of mass mailings, and disclosures of the source of automated telephone calls under Government Code Sections 84501 et seq. and the regulations of the Fair Political Practices Commission implementing those sections.

5. Where to File

All reports and disclosures required hereunder shall be filed with the commission's Executive Officer.

6. Reporting requirements are non-exclusive

The disclosure and reporting requirements herein are in addition to any other requirements that may be otherwise applicable under provisions of the Political Reform Act or by local ordinance.

7. Sunset provision

This policy is intended to implement Government Code Sections 56700.1 and 57009 and shall be of no further force and effect upon the effective date of legislation repealing or amending those sections to transfer responsibility for enforcing disclosure of expenditures for political purposes affecting commission proceedings to the Fair Political Practices Commission or otherwise terminates the responsibility of this commission to adopt and implement this policy.