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

AGENDA ITEM No. 14

DATE: January 9, 2008

TO: Fresno Local Agency Formation Commission

FROM: Rick Ballantyne, Executive Officer

SUBJECT: **Consider Approval – Amend Sections 315 (Extension of One Year to Complete Proceedings) and 350 (LAFCo Fee Schedule) of Fresno LAFCO's Adopted Policies, Standards, and Procedures to Consider Increasing Fees for One-Year Time Extensions**

Background:

During the Commission's December 5, 2007 meeting, Commissioner Fortune voiced concern related to the numbers of requests for extensions of time that LAFCo has been asked to approve. He stated that the granting of numerous continuances could result in territories being tied up for years without any development taking place. Commissioner Fortune requested that the Commission consider: (1) Limiting the number of times an extension could be granted; or (2) approve a "graduated" fee schedule for extension requests in order to deter numerous extension requests.

Fresno LAFCo's adopted *Policies, Standards, and Procedures* sets forth regulations governing time extensions for completion of proceedings under Section 315 (see Exhibit "A"). It also sets forth fees for requested time extensions under Section 350 (see Exhibit "B").

Under Section 315-02, the Commission has the ability to grant a one-year extension for just cause—the reasons being stipulated under Section 315-03. The adopted Policies state that 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 policies place the burden of proof upon the proponents to demonstrate how progress is being made, etc.

Fresno LAFCO's Fee Schedule was adopted on July 1, 1995. It contains a variety of fees intended to cover expenses for processing individual LAFCo applications. It was the Commission's desire at the time of adoption of the Fee Schedule to charge a substantial amount in order to cover application processing expenses and, therefore, reduce the contribution amounts required of the County and Cities for funding the agency. Section 11 of the Fee Schedule sets forth an Extension Fee for completion of proceedings (i.e. recordation). Said fee is equivalent to 10% of the original annexation fee—but is not to exceed \$500.

A review of Fresno LAFCo records indicates that for calendar year 2006, the Commission approved a total of nine extension requests. During 2007, the Commission approved a total of 25 extension requests. Most of the extension requests were for first requests.

Staff Analysis:

Staff solicited comments from other LAFCO Agencies related to their experiences with time extension requests. In most instances, other LAFCOs have experienced very few extension requests. The following comments were offered:

- San Bernardino County - We have not had this issue come up.
- Stanislaus County - Our adopted fee is \$500—but we haven't had anyone request one in the six years that I have been here.
- Riverside County - Over 90% of our proposals are completed within a year. The majority of those requesting extensions are completed within the first one year extension. Since it has not been a big problem, we treat them as very routine. Our fee is \$230
- Yolo County - We have a \$150 fee for extension requests.
- Tulare County – LAFCO currently has no extension fees. Over the course of the last three years, we've only had three one-year extensions requested.
- Sonoma County - We don't have an extension of time in our Fee Schedule. Once someone applies to LAFCO, and if their proposal is approved, they want the reorganization to happen. I can't recall anyone's requesting more time to submit their paperwork.
- Ventura County - Of the very few time extensions requested of us in the last several years, none have been excessively protracted. We charge \$2,650.
- Santa Cruz - We charge for staff time and materials—so there is no extra deposit for a time extension. Usually, there are no issues, and it doesn't take very long to write a short staff report. In one case our Commission was concerned about the lack of progress and continued the extension request one month with direction that the applicant either complete the annexation or show up at the next meeting to plead why another extension was in order.
- Santa Barbara – LAFCO doesn't charge any processing fee for time extensions. First, they are not a frequent occurrence. Next, the feeling is that the original fee covered the costs of evaluating the proposal and the expense to place the request for extension on the agenda is a minor cost. On the other hand, the Commission is not of a mind to approve extensions where there is no valid reason. Having 12 months to finish a boundary change approved by the Commission should in almost every case be sufficient. Or perhaps the application was premature when it was submitted.

Based upon these responses, the following facts are evident:

1. Fresno LAFCo's experience related to the numbers of extensions is not shared by other LAFCOs. Most LAFCOs have entertained very few extension requests.
2. Fresno LAFCo's fees charged for extensions are comparable to other LAFCOs—if not more.
3. Because of the very few extension requests processed by other LAFCOs, similar concerns have not been raised requiring remedial action.

It is evident that a major goal of LAFCOs is to insure that annexation of lands provides, to the extent possible, continuity of a City or District boundary. When it becomes evident that lands being annexed may not have been imminent for development when approved, it creates problems with service extensions and may lead to the creation of City peninsulas and perhaps County islands.

The comments offered by Santa Barbara County that “having twelve months to finish a boundary change approved by the Commission should in almost every case be sufficient—or perhaps the application was premature when it was submitted” holds very true. Practically all other LAFCOs contacted had experienced very few extension requests.

Additionally, the requirements that Fresno LAFCo places upon its approved annexations do not appear to be onerous necessitating significant amounts of time to comply with very few conditions. Standard conditions require that a final map be “accepted” by the City. This standard condition does not require approval of a final map (since a final map cannot be approved by a City until the property is within the City’s jurisdiction). The proponents also have to provide a legal map prepared to be approved by the Assessor’s Office for recordation purposes. Neither requirement should take 12 months to complete.

While it has been suggested that the extension fees be increased, it does not appear that our fees are out of line with fees charged throughout California. Also, the fees charged normally cover the costs associated with the action. To what extent a significant increase in fees would deter extension requests is questionable. Also, at what level should the fees be raised to invoke attention is not known.

The Commission through its existing policies does have the right to deny requests for time extensions. Other LAFCOs it would appear, take extension requests more seriously. Fresno LAFCo has routinely placed extension requests on its “consent agenda” with little discussion or public testimony offered. Perhaps what is necessary is that extension requests be handled as “public hearing” items on the Commission’s Agenda and that the City representatives and/or land owner petitioners be required to testify and provide sufficient justification as to why they could not comply with the one year time limit. It would then be placed in the hands of the Commission to take appropriate action. Such policy might gain attention and result in fewer requests for time extensions, especially if it becomes known that the Commission takes extension requests very seriously.

Recommendation:

Staff believes that Fresno LAFCO’s current policies provide sufficient standards and directions for considering extensions of time and that the fees charged for such extensions are sufficient to recover staff expenses. Staff would recommend, however, that the Commission direct that all requests for extensions of time be placed upon the Commission Agendas as “public hearing” items and the proponents be advised that they are to appear before the Commission to provide justification as to why an extension should be granted.

Staff would further recommend that the third paragraph of Section 315-02 of its adopted policies be amended as shown in Exhibit A.

EXHIBIT "A"

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 expiration the matter of the extension will be placed on the agenda for Commission action **as a "Public Hearing" item rather than as a Consent Agenda item** and a staff report prepared. If no request is received by the hearing date, 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 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. 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.

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

Exhibit "B"

FRESNO LOCAL AGENCY FORMATION COMMISSION FEE SCHEDULE

Effective July 1, 1995

SECTION - 350

01 Application Processing

Annexation or Detachment - acreage shall be determined by rounding to nearest whole number the combined net parcel area shown on the Assessor's Map.

Under 3 acres	\$ 750.00
3 to 5 acres	\$ 1,500.00
6 to 10 acres	\$ 3,000.00
11 to 20 acres	\$ 4,500.00
21 to 40 acres	\$ 6,000.00
41 to 80 acres	\$ 7,500.00
81 to 160 acres	\$ 9,000.00
Over 160 acres	\$10,500.00
Dissolution of District (for inactivity, no fee)	\$ 1,500.00
Merger or Subsidiary District	\$1,500.00
Consolidation	\$5,000.00
Incorporation	\$14,000.00
Formation of Special District	\$11,000.00
Disincorporation	\$7,500.00

Reorganization

If a reorganization consists of annexations and detachment only, use fee schedule for one change of organization only, whichever is larger. If other types of changes of reorganization are included, fee for each other change may be added.

Sphere of Influence Revision

Use fee schedule for annexations. If annexation is concurrent and boundaries coterminous, add 25% for sphere revision above annexation fee.

Sphere of Influence Update
(Effective September 1, 1998)

Cities and Urban Service Districts will be billed in accordance with the following schedule based on the January 1998 population estimate of the State Department of Finance.

Over 50,000	\$9,000
8,000 – 49,999	6,000
4,000 – 7,999	3,000
2,000 – 3,999	1,500
Under 2,000	750

Urban Service Districts are those districts or types of districts that do or are authorized to provide services of community water and/or sewer service.

Request for Inclusion

Use fee schedule for annexation, where request for inclusion is made in accordance with Section 311 of the Commission Regulations, giving credit for prior fee.

Request for added Special District Powers, Service, or Function.

	Each requested additional Power or Service	\$1,250.00
	Maximum	\$3,500.00
	Maximum fee for change of organization in an adopted urban service area or for changes not providing an urban service.	\$3,500.00
02	<u>Petition Check</u>	\$40.00
	Plus signature check, per signature	\$.65
03	<u>Environmental Assessment and Environmental Impact Report</u>	Deposit of Estimated Amount Required
04	<u>Financial Feasibility Report</u>	Deposit of Estimated Amount Required
	Applies only when the Commission is requested to study the feasibility of incorporation, formation, etc.	

05 Property Tax Report Deposit of Estimated
Amount Required

Applies only when the Commission is requested data for purposes of negotiating property tax exchange under Revenue & Taxation Code Sec. 99 and 99.1.

06 Subscription Service for Mailing

Executive Officer's Reports and Agenda
(monthly mailing) \$100.00 per year

Agenda (monthly mailing) \$20.00 per year

Completion Notices (monthly mailing) \$35.00 per year

07 Copies of Papers on File

Any request for copies of any documents on file in the office of the Commission will be subject to a fee as necessary to recover costs of making such copies and any mailing costs. \$.50 each page
\$.10 after 10 pages

08 Exceptions to Required Fees

The Commission may waive any processing fee by a four-fifths affirmative vote if the imposition of such fee would be detrimental to the public interest, as determined by the Commission. Any change specifically recommended by the Commission in a study approved by Commission may not require a fee.

Any terminated or expired proposal other than by vote or protest, and a similar proposal is submitted within 3 years, the new fee shall be 25% of the current fee schedule.

09 Deferment of Fees

The Commission may defer the payment of a processing fee for any district change until the time the district receives its first revenue, or if terminated, until 30 days after receipt of the resolution of termination or disapproval. The deferment shall only be granted where the fee payment will create a hardship to the community for which change is proposed, and no single landowner or developer project will benefit from the proposal. The Commission shall determine the deferment to be in the public interest.

10 Cost of Mailed Notice

Any proponent may request the executive officer to conduct the required mailed notice to affected landowners and residents. The actual cost of mailing shall be paid by the proponent at the time of billing. A deposit to cover estimated costs may be required by the executive officer at the time the application is submitted.

11 Request for Commission Review

Request for extension of the one year time for completion of proceedings; request to reconsider Commission Resolution; request for Commission review of services outside agency boundaries (Sec. 56133).

10% of annexation fee schedule, maximum \$500

12 Proposal Map and Metes and Bounds Description Check

Deposit of Estimated Amount Required

13 Legal Fees for Proposal Processing

Deposit of Estimated Amount Required

Adopted: December 1, 1978

Revised: July 1, 1984

February 19, 1987

April 16, 1987

December 10, 1987

July 1, 1991

July 1, 1992

June 16, 1993

May 25, 1994

June 28, 1995

July 1, 1995

August 23, 1995