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

AGENDA ITEM No. 7

DATE: March 11, 2009

TO: Local Agency Formation Commission

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

SUBJECT: **Informational Item** – Fresno LAFCo Policies Related to Extension of Time Requirements.

Background:

During recent months the Commission has expressed concern related to numerous extensions of time requests for reorganizations based solely upon current economic conditions and hardships. Applicants have inquired as to whether or not economic hardships may be considered as justification for extensions in light of current adopted policies.

Between March, 2008 and February, 2009, the Commission considered 23 extensions of time requests for previously approved reorganizations. Of these requests, seven were first time requests and 16 had been granted at least one prior extension.

A majority of these extensions cited poor market/economic conditions for new housing and tightening of the credit market as primary justification. While staff has consistently recommended approval of these extension requests, such recommendation was often tempered by a statement recommending that “no future extensions be granted unless the proponent can demonstrate substantial progress toward completion in the coming year”.

At its February 4, 2009 hearing, the Commission directed staff to return with a report addressing its current time extension policies.

Discussion:

Pursuant to State Government Code Section No. 57001, if a change of organization or reorganization is not completed within one year of the Commission's approval, it shall be deemed abandoned unless, prior to the expiration, the Commission authorizes an extension for that completion. The extension may be for any period deemed reasonable to the Commission for completion of necessary prerequisite actions by any party.

The Commission's Policies and Procedures, Section 315, specify that time extension requests shall be for one year and do not limit the number of time extensions available to a particular proposal. The Commission's adopted policies include the following criteria that must be met in order to approve an extension of time request:

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.***

A challenge that has presented itself within the last year is whether many projects requesting time extensions in recent months fully satisfy these requirements. While most proponents have indicated at least some minimal progress has been made toward completion, many have also indicated that their projects have largely been placed on hold until market/economic conditions improve.

Given the specificity of the Commission's policies as to what types of circumstances warrant the granting of an extension, staff has found it difficult to account for the current economic conditions when making a recommendation to approve or deny a time extension request. It is for this reason that staff had sought to provide "fair warning" to proponents by indicating in its recommendation that, while an extension may be recommended for approval at this time, additional extensions may not be granted unless substantial progress toward completion can be demonstrated within the one year extension period.

What initially appeared to be an impediment for completion of reorganizations was a condition requiring that a **"final map be submitted and accepted by the City."** This condition often resulted in several extensions being submitted to the Commission until such time as developers could provide approved engineering plans and bond for construction. This requirement was designed to ensure that development was "imminent" and to avoid leap-frog types of development should development for some reason not occur. However, the Commission determined this condition to be a hardship and, therefore, decided not to require the acceptance of a final map as a standard condition for organizations/reorganizations.

While many of the extensions that had come before the Commission during the last several years were due to non-compliance of the final map condition, they have routinely been approved because it was clear to LAFCo staff that progress was being made towards completion of the requirements and acceptance of a final map. Of course, this was a fairly standard procedure during good economic times when developers could access capital to build and fill a market demand timely.

The situation today is quite different in that poor economic conditions have held hostage many development projects from moving forward. This is of little to no fault of the development community, but is a reality that the Federal and State governments and investment companies (i.e. banks, lenders, insurance companies, etc.) are trying to address. It may be that it will take several years to be able to build homes on lands that are in the process of being annexed.

It is likely that the Commission will hear additional time extension requests related to the economy in coming months. LAFCo records indicate that 17 reorganizations are due to expire between April and October of this year if they are not completed or time extensions granted. If extension requests are filed, six proposals will be requesting their first extension and nine of the remaining 11 reorganizations would be requesting their third extension.

If the Commission desires to consider additional factors, such as general economic conditions or other factors negatively affecting the housing/construction market when considering a time

extension request, it may wish to provide direction to staff so that staff can include such criteria within its analysis. Also, if this appears to be a valid reason that may justify and support an extension request, it would be appropriate to direct staff to prepare an amendment to Commission *Policies, Standards, and Procedures*. State law does provide the Commission with the flexibility necessary for determining the types of just cause necessary for approving time extensions for organizations and reorganizations.

Recommendation: Informational. The Commission may wish to direct staff to bring back to the Commission an amendment to its *Policies, Standards, and Procedures Manual* that allows consideration of economic conditions as additional criteria for allowing time extensions.