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

AGENDA ITEM No. 8

DATE: February 11, 2015

TO: Local Agency Formation Commission

FROM: David E. Fey, AICP, Executive Officer

SUBJECT: Consider Approval: Amendment to Fresno LAFCo Policy Regarding Extension of Time to Complete Proceedings (Continued from January 14, 2015 Hearing)

RECOMMENDATION: Approve Amendment to Fresno LAFCo Policy as described in this report

Executive Summary

Pursuant to the Commission's December 10, 2014, direction, on January 14, 2015, staff presented the Commission with a proposed amendment of Fresno LAFCo Policy 315 and related amendments to Policy 103.

Staff recommends an amendment of Fresno LAFCo Policy 315—Extension of One Year to Complete Proceedings—and related amendments to Policy 103, to (i) better define the Commission's interest in orderly growth by linking it to timely development, (ii) require more specific information from applicants including how much time an applicant reasonably needs to complete the project, and (iii) establish a limit of the number of extensions to just one.

Refinements have been made to the proposed amendment pursuant to Commission direction.

Commission's January, 2015 Direction

At its January meeting, there was broad support by the Commission for an amendment to the current policy favoring a single extension of time in the range of one to three years based on qualifying reasons for such a request. The Commission directed staff to develop criteria that could be used to evaluate and justify a request for one year or longer.

In response to Commission direction, staff notes that the proposed amendment requires the requesting party to provide information which will serve as the basis for staff's recommendation.

Staff has revised the proposed amendment to require:

- c. Demonstration *An explanation of the project's feasibility* and what progress *will be made to complete conditions of approval and all* necessary prerequisite actions by any party.

The information to be provided by the requesting party will reflect project-specific criteria to be evaluated by staff. It could include financial feasibility of the project; comparison of the expense of conditions of approval with the current market conditions; changes in the market position of the project and what additional changes the developer anticipates that will assist with the completion of

the project; and what actions will be taken by the applicant to satisfy Commission conditions of approval.

Because the conditions of each project may vary widely, staff suggests that specific criteria not be defined in the policy but allow the conditions of each project to speak to the merit of the request. The reasons will then be evaluated by staff in light of the Commission's goals and policies.

Supporting statutory and policy analysis can be found in Attachment "A."

The Following Have Received Copies of This Report

- LAFCo Commissioners and Alternates
- Ken Price, LAFCo Counsel, Baker, Manock, and Jensen
- Bernard Jimenez, Deputy Director, Fresno County Planning Department
- All City Managers
- Mike Prandini, Building Industry Association

Attachment A Legislative and Policy Background

The determination of whether or not the Commission should grant an extension of time to complete proceedings should be considered in the context of the legislative intent of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH) and the Fresno LAFCo's own policies. This section provides an overview of statute and policy.

First, the Commission implements the Legislature's declared policy:

GC §56001. The Legislature finds and declares that it is the policy of the state to encourage orderly growth and development which are essential to the social, fiscal, and economic well-being of the state....

The Legislature recognizes that the logical formation and determination of local agency boundaries is an important factor in promoting orderly development and in balancing that development with sometimes competing state interests of discouraging urban sprawl, preserving open-space and prime agricultural lands, and efficiently extending government services....

...This policy should be effected by the logical formation and modification of the boundaries of local agencies, with a preference granted to accommodating additional growth within, or through the expansion of, the boundaries of those local agencies which can best accommodate and provide necessary governmental services and housing for persons and families of all incomes in the most efficient manner feasible.

The Commission is authorized to liberally construe CKH to effectuate its purposes as it implements the legislature's policy.¹ GC §56300(a) also authorizes each LAFCo to "establish written policies and procedures and exercise its powers pursuant to this part in a manner consistent with those policies and procedures and that encourages and provides planned, well-ordered, efficient urban development patterns with appropriate consideration of preserving open-space and agricultural lands within those patterns." Pursuant to this authorization and GC §56375(g), the Commission established policies in 1993 to evaluate requests for extension of time to complete reorganizations. This section has undergone several amendments since then.

Staff concludes that the statute authorizes its liberal interpretation by each LAFCo, and authorizes each LAFCo to adopt policies that reflect local conditions and concerns. The question is now whether extending the time to complete a project, sometimes multiple times, is consistent with LAFCo policy that supports timely completion of development proposals.

Commission Policy Related to Imminent Development

Staff now reviews Commission policies to determine how they describe "orderly growth." As shown in the following excerpts from LAFCo policy, Fresno LAFCo policies generally address an expectation of orderly growth (emphasis added):

002 - Issues

In Fresno County, the Commission has identified the following list of problems and needs locally, which pertain to the Commission's responsibilities, and have

¹ GC §56107(a)

developed policies, standards, and procedures in this document in order to help resolve the problems and meet needs within the Commission's jurisdiction.

- *Need for more cooperation/coordination among local agencies*
- *Premature proposals and lack of development proposals*
- *Phasing of agency expansion/growth*
- *Urban sprawl and leap frog urban development*

005 DEFINITIONS

03 Development

The placement or construction of an urban use (commercial, industrial, or urban density residential).

Indication of future development for annexation application includes the filing of a preliminary or pre application, or of a development application for a discretionary or ministerial entitlement, or amendment to the zoning ordinance.

Assurance of development (by LAFCo condition) includes filing of final tract map, application for site plan or building permit, with the city.

103-01 *The Commission encourages well-planned, orderly, and compact urban development patterns for all developing areas.*

103-03 *Annexation proposals to cities or districts providing urban services to undeveloped or agricultural parcels shall show that urban development is imminent for all or a substantial portion of the proposal area; that urban development will be contiguous with existing or proposed development; and that a planned, orderly, and compact urban development pattern will result. Proposals resulting in a leap frog, non-contiguous urban development patterns shall be discouraged.*

Typical measures considered to assess whether development is assured are:

- Consistency with the City/County MOU. Most cities' MOUs contain language in the recitals to the effect that, "*Annexation which results in the development of urban uses in response to a clearly demonstrated community demand (or, in response to need) is appropriate.*"
- Proving that substantial development is planned for the affected territory is based on the development that is processed by a city prior to application to LAFCo. This may include a Site Plan Review or Tentative Subdivision Map and may also include General Plan amendment, rezoning of the subject property consistent with the General Plan, and examination of service plans to the property; and
- A determination by the Commission that, based on the materials provided with the application, the project would carry out LAFCo's purposes and responsibilities for planning and shaping the logical and orderly development and coordination of local governmental agencies so as to advantageously provide for the present and future needs of the County and its communities.

These policies are put into effect by project-specific conditions of approval. In fact, a review of conditions imposed by the Commission on various approvals (that is, the certification and completion of the annexation) between 2000 and 2006 indicates the Commission's desire to see continued progress of the development between the time of Commission approval and the one year to complete the conditions, etc. This was to be demonstrated by progress of the final map in accordance with LAFCo policy 005-03:

- 2000: The reorganization shall not become final until an acceptable Final Map has been submitted to the City.
- 2002: The City shall submit to the Executive Officer verification that a final tract map has been submitted to and accepted by the City of Fresno.
- 2005: Satisfactory verification that the City has approved a final Vesting Tract Map for development covering 50% or more of the affected territory shall be submitted to the Executive Officer prior to the completion (recordation) of the annexation.
- 2006 and thereafter: satisfactory verification be submitted showing that the city has accepted the Final Map prior to completion of the annexation.

Prior to the Recession, most annexation applications approved by the Commission did not require additional extensions because of the incentive of a strong housing market. Once the recession struck in 2008, the number of extensions based on poor economic conditions rose, due in part because preparing a final map application involved time and expense on the part of the developer, significant filing fees to the city, and possible commitment to additional expenses for public improvements, all without the certainty that the per-lot sale price would balance these expenses.

These liabilities could be deferred almost indefinitely by requesting authorization by the LAFCo for an extension of time at the relatively minimal expense of a maximum of \$750.

Proposed Amendment to LAFCo Policies
February 11, 2015

Recommended changes to proposed policies are shown in
underlined bold italics or ~~strikeout~~

103 ENCOURAGING ORDERLY URBAN DEVELOPMENT AND PRESERVATION
OF OPEN SPACE PATTERNS: (Government Code Section 56300)

04 Orderly growth of cities is supported by applications for change of organization and reorganization that demonstrate development of the subject projects is imminent.

05 The Executive Officer shall record the approved application once he or she has determined that the facts pertaining to the application during the time of recording are materially similar to those facts considered by the Commission when the application was approved. Facts, as used in the proceeding sentence, is defined to include, but not be limited to, whether or not the proposed project is materially similar to the project described in any application before the Commission.

315 ~~EXTENSION OF ONE YEAR TO COMPLETE PROCEEDINGS~~

~~01 A notice of the one-year expiration of the Commission resolution will be sent to the proponent, 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, each subject agency, and any person or landowner requesting notice of hearing for the application.~~

~~Prior to a proposal's expiration, the extension request will be placed on the agenda for Commission action as a Consent Agenda item. The item may be pulled from the Consent Agenda at any time by the Commission for further consideration. 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.~~

~~02 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 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.~~

Please note that extensions of time are generally disfavored by the Commission.

01 Prior to the date of expiration, staff shall notify the proponent of the pending termination of the proceedings.

02 The proponent may request an extension of time to be considered by the Commission at a public hearing. The request for an extension of time shall be comprised of the following, including any additional information deemed necessary by the executive officer:

- a. Written request for an extension of time, including the requested period of time **and appropriate fee as described in Commission fee schedule section 350.**
- b. Description of the changed circumstances of the project that have delayed completion of proceedings.
- c. **An explanation of the project's feasibility and what progress will be made to complete conditions of approval and all necessary prerequisite actions by any party.**
- d. Written confirmation from the city or district representative to which annexation is proposed supporting the extension request; a district located within the unincorporated area, written correspondence in support of the extension request shall also be provided from the County of Fresno.

03 A copy of the Commission agenda and the Executive Officer report on the request for an extension shall be conveyed via US Mail at least five days prior to the hearing to the Commission and alternates, the persons named in the original application,

each affected agency, and any person or landowner requesting notice of hearing for the application.

04 The Executive Officer's report shall 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.

05 No more than one extension of time may be authorized by the Commission. Notwithstanding, any project in furtherance of the provision of governmental services on property owned by a governmental agency shall be eligible for additional extensions ~~beyond one year~~ at the discretion of the Commission.