

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

AGENDA ITEM NO. 9

DATE: November 14, 2018

TO: Fresno Local Agency Formation Commission

FROM: David E. Fey, Executive Officer 

SUBJECT: Correspondence: Veterans Memorial District Formation Memorandum

RECOMMENDATION: Receive and File

Executive Summary

On September 5, 2018, the Executive Officer and LAFCo Counsel Ken Price, Supervisor Quintero, Fresno City Councilmembers Caprioglio and Chavez, and City of Fresno management staff met to discuss the Legion of Valor's ("LOV") board's interest in forming a veteran's memorial district. Also attending were Clovis Memorial District Board President Tom Wright and General Manager Lorenzo Rios, LOV representatives Mike Harris and Bob Specht.

After discussion, the group decided by consensus that the LOV leadership would be responsible to spearhead the formation committee, which would include participation by local veteran groups to ensure their cooperation along the way. Mr. Price and the Fresno City Attorney agreed to work on a formation paper to inform the formation committee about the process. Of particular interest was sorting out the parallel but dissimilar formation proceedings presented in both veteran's memorial district law and LAFCo law.

The attached memorandum from Mr. Price effectively describes the laws of governing a memorial district formation, and explains how to initiate a formation of a district, pursuant to a resolution. Mr. Price has copied the attached memorandum to the City of Fresno staff and councilmembers.

The memorandum is presented to the Commission as an informational item and to respond to any questions from the Commission. No action is requested.

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MEMORANDUM

TO: David Fey
Executive Officer
FRESNO LOCAL AGENCY FORMATION COMMISSION

FROM: Kenneth Price
Craig Armstrong
BAKER MANOCK & JENSEN, PC

DATE: October 29, 2018

RE: Fresno LAFCo – Memorial District Formation

INTRODUCTION & PURPOSE

This memorandum provides a general description of the laws governing memorial district formation in California. Specifically, this memorandum explains how to initiate formation of a district pursuant to a resolution of application, a specific procedure provided by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (the “LAFCo Law”).¹

BACKGROUND

LAFCo Law is the principal act in California governing procedures for local government organization, including but not limited to special district formation.² To meet the goals established by the Legislature, the LAFCo Law establishes local independent commissions working within the boundaries of each California county to regulate the borders of cities and special districts and to discourage sprawl and encourage orderly government.³ The Fresno Local Agency Formation Commission (“Fresno LAFCo”) is the LAFCo in Fresno County.

One role of LAFCo is to “review and approve or disapprove with or without amendment, wholly, partially, or conditionally, proposals for changes of organization or reorganization.”⁴ The formation of a memorial district is a type of “change of organization” under the LAFCo Law.⁵ The LAFCo Law establishes procedures and sets timelines for changes

¹ Gov. Code, § 56000 et seq.

² Gov. Code, § 56100.

³ Gov. Code, §§ 56001, 56325.

⁴ Gov. Code, § 56375(a); emphasis added.

⁵ Gov. Code, § 56021.

of organization.⁶ A LAFCo must take several criteria into consideration when discharging its authority. Any change of organization or boundary change for an agency must be consistent with its sphere of influence.⁷ Ultimately, any change of organization, including the formation of a memorial district, must be approved by LAFCo.⁸

LAFCo Law provides that “[p]roceedings for the formation of a district shall be conducted as authorized in the principal act of the district proposed to be formed and Section 56100 [of the Government Code].”⁹ “Principal acts” are statutes established for an entire category of special districts. “Principal act” means, in the case of a district, the law under which the district was or may be formed.¹⁰ In most instances, local voters create and govern special districts under the authority of these principal acts. Each special district type has its own principal act. For memorial districts, the principal act is the Military and Veterans Code.¹¹ The Military and Veterans Code, for example, provides that memorial district boards are comprised of five directors elected for fixed terms.¹² It also requires that a majority of the seats on a memorial district board be designated for veterans.¹³

According to the California Special Districts Association, there are 27 veteran memorial districts in the State of California.¹⁴ Two are in Fresno County: Clovis Veterans Memorial District, formed in 1946; and Riverdale Memorial District, also formed in 1946. Each was formed prior to the time the LAFCo Law had been established, with the approval of the Fresno County Board of Supervisors.

APPLICABLE LAW

A. LAFCo Law and the Military and Veterans Code

1. The Two Legal Schemes Generally

As stated above, LAFCo Law provides that “[p]roceedings for the formation of a district shall be conducted as authorized in the principal act of the district proposed to be formed and Section 56100 [of the Government Code].”¹⁵ Also as stated above, the Military and Veterans Code is the principal act from which memorial districts are formed.¹⁶ Government Code section 56100, subdivision (b), provides in part as follows:

⁶ For example, LAFCo considers 16 factors when conducting any change of organization or boundary change. (Gov. Code, § 56668.) LAFCos also conduct sphere of influence amendments (Gov. Code, § 56428.) and municipal service reviews (Gov. Code, § 56430.).

⁷ Gov. Code, § 56375.5.

⁸ Gov. Code, §§ 56884, 56375.

⁹ Gov. Code, § 56859.

¹⁰ Gov. Code, § 56065.

¹¹ Mil. & Vet. Code, § 1170 et seq.

¹² Mil. & Vet. Code, § 1197.

¹³ Mil. & Vet. Code, § 1197.

¹⁴ California Special Districts Association, *Laws Governing Special Districts*, p. 19.

¹⁵ Gov. Code, § 56859.

¹⁶ Mil. & Vet. Code, §§ 1170-1259.

Notwithstanding any other law, proceedings for the formation of a district shall be conducted as authorized by the principal act of the district proposed to be formed, except that the commission shall serve as the conducting authority and the procedural requirements of this division shall apply and shall prevail in the event of conflict with the procedural requirements of the principal act of the district. In the event of such a conflict, the commission shall specify the procedural requirements that apply, consistent with the requirements of this section.¹⁷ (Emphasis added.)

Stated another way, Section 56100 requires that memorial districts be formed as authorized by the Military and Veterans Code; however, if the procedural requirements of the Military and Veterans Code conflict with the LAFCo Law, the local LAFCo serves as the conducting authority and LAFCo's procedural requirements apply. The local LAFCo must “specify the procedural requirements that apply, consistent with the requirements” of Section 56100.

Importantly, the LAFCo Law does not require a principal act, such as the Military and Veterans Code, to reference or incorporate LAFCo Law in order for LAFCo Law to apply:

It is not necessary for the principal act of any district to adopt or incorporate this division by reference and any change of organization or reorganization provided for by this division may be made by, or with respect to, any district. ...¹⁸

Furthermore, it is a tenet of state caselaw that “[i]f conflicting statutes cannot be reconciled, later enactments supersede earlier ones [citation], and more specific provisions take precedence over more general ones [citation].”¹⁹ The LAFCo Law was enacted in 2000, well after the Military and Veterans Code provisions for forming a memorial district were enacted.

2. Conflict Between the Two Legal Schemes

A review of the two legal frameworks shows there is a conflict with the procedural requirements of the LAFCo Law and the Military and Veterans Code. At a minimum, conflicts exist between the two schemes regarding the following:

1. Pre-petition/application requirements, including LAFCo’s Resolution of Application requirements (described below);
2. Criteria/factors included for consideration in the application/petition;²⁰

¹⁷ Gov. Code, § 56100; emphasis added.

¹⁸ Gov. Code, § 56119.

¹⁹ *Collection Bureau of San Jose v. Rumsey* (2000) 24 Cal.4th 301, 310; see also 99 Ops.Cal.Atty.Gen. 82, (2016).

²⁰ Gov. Code, §§ 56700(a), 56859; Mil. & Vet. Code, §§ 1174-1185.

3. Reviewing/approving body: LAFCo is specified in the LAFCo Law versus the Board of Supervisors in the Military and Veterans Code;²¹ and
4. Post-petition/application requirements, including notice, publication, and hearing requirements.²²

Because these conflicts exist, the LAFCo Law's procedural requirements apply and take precedence over the more general provisions contained in the Military and Veterans Code.

MEMORIAL DISTRICT FORMATION WITH FRESNO LAFCO

A. Initiation

Under LAFCo Law, proceedings to form a memorial district may be initiated three ways:

1. Resolution of Application²³
2. Petition²⁴
3. Commission Initiation²⁵

The Resolution of Application process is described at length in the next section of this memorandum. The petition and commission initiated processes are briefly explained below.

1. Petition

Initiating proceedings by way of petition requires the filing of a proposal for a change of organization.²⁶ Although the term "petition" is not expressly defined in the LAFCo Law, the LAFCo Law states that a petition must do nine specific things, including (a) set forth a description of the boundaries of the proposed district and provide a map showing the boundaries; (b) state the reason or reasons for the proposal; (c) state whether the petition is signed by registered voters or owners of land; and (d) state whether or not the proposal is consistent with the sphere of influence of any affected city or affected district.²⁷

LAFCo Law specifies that, for a proposal for formation of a new district, the petition shall comply with the signature requirements and content of a petition for formation set forth in the principal act.²⁸ The Memorial District Law dictates that petitions to form a district must be signed by registered electors.²⁹ Registered electors residing within the boundaries of a

²¹ *Id.*

²² Gov. Code, §§ 1174-1177.6.

²³ Gov. Code, §§ 56650, 56821.

²⁴ Gov. Code, § 56650.

²⁵ Gov. Code, §§ 56375(a), 56821.

²⁶ Gov. Code, § 56700.

²⁷ *Id.*

²⁸ Gov. Code § 56860

²⁹ Gov. Code, § 1173.

proposed memorial district—equal to the number of at least 8% of the votes cast within the boundaries of the proposed memorial district for the office of Governor at the last general election at which a Governor was elected—may propose the formation of a district.³⁰ The petition must be signed, at a minimum, by the above-described 8% qualified registered voters.³¹

Prior to circulating a petition to form a district, a proponent must file with LAFCo a “notice of intention” that must include the name and mailing address of the proponent and a written statement, not to exceed 500 words in length, setting forth the reasons for the proposal.³² The notice must be signed by the proponent and be in the form provided in Government Code section 56700.4.³³

Fresno LAFCo cannot accept a petition for filing unless the signatures on the petition are secured within 6 months of the date on which the first signature on the petition was affixed and the petition is submitted to the Executive Officer for filing within 60 days after the last signature is affixed.³⁴ Because a petition to form a memorial district must be signed by registered voters, the Executive Officer must compare the names of the signers on the petition to the voters’ register in the office of the county clerk or registrar of voters and “ascertain both of the following: (a) The number of registered voters in the affected territory; and (b) The number of qualified signers appearing upon the petition.”³⁵

2. Commission Initiation

In rare circumstances, local LAFCOs themselves initiate changes of organization.³⁶ A LAFCo may adopt a resolution initiating proceedings proposing representation of a special district upon the commission.³⁷ In that case, the Executive Officer must call a meeting of an “independent special district selection committee” referred to in Government Code section 56332.³⁸ The independent special district selection committee must consider the resolution adopted by the LAFCo.³⁹ The selection committee must, by majority vote of those district representatives voting on the issue, either approve or disapprove the resolution adopted by the LAFCo.⁴⁰

PROCEEDING BY RESOLUTION OF APPLICATION

A Resolution of Application is the document adopted by a local agency initiating a change of organization.⁴¹ The document must be adopted by the legislative body of an

³⁰ Gov. Code, § 1173.

³¹ Gov. Code, § 1174.

³² Gov. Code, § 56700.4.

³³ *Id.*

³⁴ Gov. Code, § 56705(a).

³⁵ Gov. Code, § 56707.

³⁶ Gov. Code, §§ 56375(a), 56821.

³⁷ Gov. Code, § 56821.

³⁸ Gov. Code, § 56821.1

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Gov. Code, § 56703.1.

“affected local agency” proposing the change of organization.⁴² “Affected local agency” is defined to include “any city ‘that contains, or would contain, or whose sphere of influence contains or would contain, any territory for which a change of organization is proposed....’” (§ 56014; see § 56054 [“‘local agency’” includes cities].)⁴³

Under the Resolution of Application process, the affected entity—in this case, the City of Fresno—would need to follow the process and meet the timelines outlined below, which include: (a) adopt a Resolution of Application; (b) prepare and submit an application; and, (c) prepare and submit a plan for services. Each of these steps are described below.

A. Adoption of Resolution of Application

The affected local agency must adopt a resolution proposing a change of organization to form the memorial district.⁴⁴ At least 21 days before the adoption of the resolution, the local agency may give notice of its intention to adopt a Resolution of Application to LAFCo and to each interested agency and each subject agency. The notice must generally describe the proposal and the affected territory.⁴⁵

The Resolution of Application must contain all of the matters specified for a petition in Section 56700, which includes:⁴⁶

- (1) State that the proposal is made pursuant to this part.
- (2) State the nature of the proposal and list all proposed changes of organization.
- (3) Set forth a description of the boundaries of affected territory accompanied by a map showing the boundaries.
- (4) Set forth any proposed terms and conditions.
- (5) State the reason or reasons for the proposal.
- (6) State whether the petition is signed by registered voters or owners of land.
- (7) Designate up to three persons as chief petitioners, setting forth their names and mailing addresses.
- (8) Request that proceedings be taken for the proposal pursuant to this part.
- (9) State whether the proposal is consistent with the sphere of influence of any affected city or affected district.

⁴² Gov. Code, § 56654.

⁴³ *City of Patterson v. Turlock Irrigation Dist.* (2014) 227 Cal.App.4th 484, 493.

⁴⁴ Gov. Code, § 56654(a).

⁴⁵ Gov. Code, § 56654(c).

⁴⁶ Gov. Code, §§ 56654(d), 56700.

B. Application

The application submitted with the proposal must contain all of the following information:⁴⁷

- (a) A Resolution of Application initiating the proposal.
- (b) A statement of the nature of each proposal.
- (c) A map and description, acceptable to the executive officer, of the boundaries of the subject territory for each proposed change of organization or reorganization.
- (d) Any data and information as may be required by any regulation of the commission.
- (e) Any additional data and information, as may be required by the executive officer, pertaining to any of the matters or factors which may be considered by the commission.
- (f) The names of the officers or persons, not to exceed three in number, who are to be furnished with copies of the report by the executive officer and who are to be given mailed notice of the hearing.

C. Plan for Services

The proposal to form the memorial district must be accompanied by a plan for providing services within the affected territory.⁴⁸ The plan must include all of the following information and any additional information required by LAFCo:

- (1) An enumeration and description of the services currently provided or to be extended to the affected territory.
- (2) The level and range of those services.
- (3) An indication of when those services can feasibly be extended to the affected territory, if new services are proposed.
- (4) An indication of any improvement or upgrading of structures, roads, sewer or water facilities, or other conditions the local agency would impose or require within the affected territory if the change of organization or reorganization is completed.
- (5) Information with respect to how those services will be financed.

There are additional requirements for the plan for services if the district includes a disadvantaged unincorporated community. See Government Code section 56653 for those requirements.

⁴⁷ Gov. Code, § 56652.

⁴⁸ Gov. Code, § 56653.

D. Review of Application for Completeness and Issuance of Certificate of Filing

Except when a commission is the lead agency under CEQA, the Executive Officer must determine, within 30 days of receiving an application, whether the application is complete and acceptable for filing or whether the application is incomplete.⁴⁹ When an application is accepted for filing, the Executive Officer must issue a certificate of filing to the applicant.⁵⁰ The certificate of filing will specify the date upon which the proposal will be heard by the LAFCo.⁵¹ If an application is determined not to be complete, the Executive Officer must transmit that determination to the applicant specifying the parts of the application which are incomplete and the manner in which they can be made complete.⁵²

Following the issuance of the certificate of filing, the Executive Officer must set the proposal for hearing and give published notice of the hearing.⁵³ The date of the hearing must be not more than 90 days after issuance of the certificate of filing or after the application is deemed to have been accepted, whichever is earlier.⁵⁴ The Executive Officer must give notice of any hearing by LAFCo by publication.⁵⁵

E. Public Hearing

Where LAFCo desires to provide for notice and hearing prior to making a determination on a matter which LAFCo is authorized, but not required, to determine without notice and hearing, the LAFCo must order a public hearing on that matter and set a date, time, and place for the hearing.⁵⁶ The date of hearing cannot be more than 90 days after the date of the order.⁵⁷

F. Executive Officer's Report

The Executive Officer will review the application and prepare a report including his or her recommendations on the application.⁵⁸ The Executive Officer shall furnish copies of the report to each of the following:⁵⁹

- (a) The officers or persons designated in the application.
- (b) Each local agency whose boundaries or sphere of influence would be changed by the proposal or recommendation.

⁴⁹ Gov. Code, § 56658.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ Gov. Code, § 56658.

⁵⁴ *Id.*

⁵⁵ Gov. Code, § 56660.

⁵⁶ Gov. Code, § 56664.

⁵⁷ *Id.*

⁵⁸ Gov. Code, § 56665.

⁵⁹ *Id.*

- (c) Each affected local agency which has filed a request for a report with the executive officer.
- (d) The executive officer of another affected county when a district is or will be located in that other county.
- (e) Each affected city.

G. Review of Proposal

LAFCo will review the proposal in consideration of various factors including, but not be limited to, the following: (a) Population and population density; land area and land use; per capita assessed valuation; topography, natural boundaries, and drainage basins; proximity to other populated areas; the likelihood of significant growth in the area, and in adjacent incorporated and unincorporated areas, during the next 10 years. (b) The need for organized community services; (c) The effect of the proposed action and of alternative actions, on adjacent areas, on mutual social and economic interests, and on the local governmental structure of the county; (d) The conformity of both the proposal and its anticipated effects with both the adopted commission policies on providing planned, orderly, efficient patterns of urban development; (e) The effect of the proposal on maintaining the physical and economic integrity of agricultural lands; (f) The definiteness and certainty of the boundaries of the territory, the nonconformance of proposed boundaries with lines of assessment or ownership, the creation of islands or corridors of unincorporated territory, and other similar matters affecting the proposed boundaries; (g) Certain regional transportation plans; (h) The proposal's consistency with city or county general and specific plans; (i) The sphere of influence of any local agency which may be applicable to the proposal being reviewed; (j) The comments of any affected local agency or other public agency; (k) The ability of the newly formed or receiving entity to provide the services which are the subject of the application to the area, including the sufficiency of revenues for those services following the proposed boundary change; and various other factors.⁶⁰

H. Fresno LAFCo's Standards for District Formation

In addition to the LAFCo Law, Fresno LAFCo has adopted *Commission Policies, Standards and Procedures Manual* (the "Fresno LAFCo Policies") which proponents must consider when preparing the application. Pursuant to Section 230 of the Fresno LAFCo Policies, a proposed district formation must meet certain standards, as follows:

- 230.01 If development requires one or more urban-type services, such service cannot be provided by the following (in descending order of preference):
- 01. Annexation to an existing city.
 - 02. Annexation to a county service area.
 - 03. County Service Area formation.
 - 04. Annexation to a district.

⁶⁰ Gov. Code, § 56668.

If proposal is for other than urban type services that these services cannot be provided by an existing district.

230.02 District proposed is the best suited to the purpose and better alternate types are not available.

230.03 Proposal shows a demonstrated need for services and a service plan showing that such services can be adequately provided and financed.

230.04 The proposal shows that the amount of revenue transferred from an agency or agencies currently providing service in the subject territory to the proposed service-providing agency equals the expense which the current service provider bears in providing the services to be transferred.

In the event the expense to the current service provider exceeds the amount of revenue transferred, the current service provider and new service providing agency agree to revenue transfer provisions to compensate for the imbalance. Such provisions may include, but are not limited to tax-sharing, lump-sum payments and payments over a fixed period of time, which may be ensured by proposal conditions.

230.05 Boundaries of the proposal include all of the service area.

230.06 Proposal is consistent with adopted spheres of influence and the adopted general plan of the city and county.

230.07 To the extent applicable, there is a timely availability of water supplies adequate for projected needs as specified in Code section 65352.5.

CONCLUSION

This memorandum summarizes the memorial district formation process with Fresno LAFCo and describes, in general, the steps a proponent would need to take to form a district by Resolution of Application. Given the nature of a summary, this memorandum is not exhaustive or all-inclusive. Proponents interested in finding out more about the process and timeline discussed herein should contact and work closely with Fresno LAFCo staff to ensure they understand all of the requirements under state and local law, ordinance, and regulation.

KJP:CWA