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November 18, 2009 (Agenda)

Contra Costa Local Agency Formation Commission  
 651 Pine Street, Sixth Floor  
 Martinez, CA 94553

**Policies & Procedures Update**

Dear Members of the Commission:

RECOMMENDATION

It is recommended that the Commission approve the proposed revisions to the Commissioner Handbook [Section 1.4 Rules and Procedures (Selection of Officers), and Section 2.1 – Policies and Standards (Indemnification Policy and Revenue Neutrality - Standards)] as recommended by the Policies and Procedures Committee and summarized below.

DISCUSSION

The Cortese Knox Hertzberg Local Government Reorganization Act of 2000 (“CKH Act”) requires each LAFCO to establish written policies and procedures. Presently, we have the Commissioner Handbook, which contains a mix of policies and procedures. In addition, we have various applications and related forms. Periodically, the Commission adopts updates and revisions to these documents in accordance with changes in State law or Commission policy.

In 2006, Commissioners Tatzin and Uilkema were appointed to a committee charged with reviewing and recommending revisions to the Commission’s policies and procedures. The review involves both clean-up and more substantial policy revisions. Since 2006, the Commission has approved a series of updates and amendments to the Handbook, with the most recent revisions in 2008.

On November 2, the Committee met to discuss additional revisions to the Handbook, as summarized below.

**Section 1.4 Rules and Procedures - Selection of Officers**

At the request of Commissioner David Piepho, the Committee reviewed the LAFCO policies relating to selection of officers (“officers” refers to Chair and Vice Chair); more specifically, the rotation of the Public Member as LAFCO Chair.

The current policy provides that members of the Commission elect officers in January of each year. Officers serve for one-year terms and are selected from the categories of members in the following order: County, Public, Special District and City.

Although not a matter of statute or policy, the Commission's practices have been as follows:

- elevate the Vice Chair to Chair
- appoint only "regular" members to the Chair and Vice Chair offices
- alternate appointments among the two City, two County and two Special District regular members

Given there is only one regular Public Member, this position serves as LAFCO Chair every four years. Further, the LAFCO policy limits the term of the Public Members to a maximum of two consecutive terms. Consequently, the individual serving as the regular Public Member may have the opportunity to serve as LAFCO chair twice in eight years. The other member categories, each of which has two regular members, may result in these individuals serving as Chair once in eight years. It should be noted that the City, County and Special District members have no term limits per LAFCO policy.

The CKH Act provides no guidance regarding the selection of officers; thus, it is at the discretion of each LAFCO. LAFCO staff polled the other 57 LAFCOs for alternatives; a limited number of responses were received. In addition, LAFCO staff reviewed a number of other LAFCO policies online. Several LAFCOs reported that they have no specific policy regarding selection of officers. We understand that some LAFCOs retain the same Chair for extended periods. A review of other LAFCO policies indicate that a number of LAFCOs appoint a Chair and Vice Chair annually, but do not provide for a specific rotation policy.

Two LAFCOs provided specific options as summarized below.

*Santa Barbara LAFCO* automatically rotates the alternate public member into the regular public member seat after four years, thus limiting the regular public member seat to one 4-year term and providing an automatic rotation into the Chair seat.

*Placer LAFCO* has adopted the following 7-year rotation guideline.

As a general guideline, officers should be selected from the categories of members in the following order:

- Special District
- City
- County
- Special District
- City
- Public Member
- County

In addition to these options, the Committee discussed a range of options as utilized by various State, regional and local agencies. Based on this review, the Committee offers the following options and recommendations.

#### Options

1. Retain the existing LAFCO policy
2. Adopt a policy similar to the Placer LAFCO policy (two options shown below)

3. Adopt a policy similar to the Santa Barbara LAFCO policy
4. Appoint Alternate Commissioners as officers
5. Appoint permanent officers
6. Appoint officers to 4-year terms (in lieu of one year terms)
7. Appoint officers by tenure (i.e., longest seated Commissioner who has not yet served as Chair)
8. Appoint officers to a 6-month term

**Recommendations** - The Committee recommends retaining the existing policy (Option #1). The Committee believes that this policy has served the Commission well. Further, given the two-term limit for the Public Members, the currently policy provides for an adequate rotation.

However, should the Commission wish to amend the existing policy, the Committee would then recommend a 7-year rotation policy similar to Placer LAFCO (Options #2a and #2b), as follows:

2a. 7-Year Rotation

County (2009)  
Public (2010)  
Special District (2011)  
City (2012)  
County (2013)  
Special District (2014)  
City (2015)

2b. 7-Year Rotation (alternating among member categories)

County Member 1 (2009)  
Public Member (2010)  
Special District Member 1 (2011)  
City Member 1 (2012)  
County Member 2 (2013)  
Special District Member 2 (2014)  
City Member 2 (2015)

In order to maximize the Committee's time, the Committee also reviewed two other policies; and submits the following recommendations:

**Section 2.1 – Policies and Standards - Indemnification Policy**

The current policy provides that as a condition of LAFCO's approval, applicants are required to submit an indemnification agreement in the event of a legal challenge of a Commission decision.

The practice, however, has been to require an indemnification agreement upon submittal of the application. This is due to the fact that some proposals (e.g., incorporations, district formations, complex boundary reorganizations, etc.) could take in excess of a year to process, and there is some exposure to LAFCO during this time.

In order to make the policy consistent with the practice, the following revision is recommended:

B. Indemnification Policy

~~As a condition of LAFCO's approval,~~ **Upon submitting any proposal to LAFCO,** applicants are required to enter into an agreement to indemnify LAFCO in the event of a legal challenge of a Commission decision.

*Recommendation* - The Committee recommends approving the revision as proposed.

**Section 2.1 – Policies and Standards - Revenue Neutrality – Standards**

The Commissioner Handbook provides policies and standards relating to incorporation and revenue neutrality.

The Committee expressed concern regarding the following policy and previously added the notation in **red**.

M. Revenue Neutrality

3) Costs of capital improvements are not recurring costs and need not be included in the analysis, except by agreement of the parties. **This provision is currently under review by the Commission**

The Committee recognizes that inclusion of capital costs is not typically reflected in fiscal analyses (i.e., incorporation) and revenue neutrality agreements, and is somewhat difficult to project. However, the Committee also recognizes that capital costs are common to local agencies, and should somehow, be reflected. After some discussion, the Committee agreed to leave the policy as is for now and will revisit with the next round of policy updates.

*Recommendation* - The Committee recommends revisiting this policy with the next round of policy updates.

As indicated above, the last round of policy revisions were made in 2008. Due to the significant amount of time devoted to Municipal Service Reviews (MSRs) and Sphere of Influence updates in 2009, policy review was put on hold.

As the MSR work subsides, it is expected that the Committee will resume its policy work in 2010. A number of bills recently signed into law will necessitate updates to the LAFCO policies and procedures. Further, we have several substantial policy reviews pending, including, but not limited to, the following:

- Annexations
- SOIs
- Water
- Agriculture
- CEQA guidelines specific to LAFCO

Please contact the LAFCO office if you have any questions.

Sincerely,

LOU ANN TEXEIRA  
EXECUTIVE OFFICER