

October 4, 2001 (Agenda)

Local Agency Formation Commission
105 East Anapamu Street
Santa Barbara CA 93101

Procedures for Conducting Protest Hearings

Dear Members of the Commission

RECOMMENDATION

It is recommended that should the Commission wish to authorize the Executive Officer to conduct protest hearings it add the enclosed policy to the Commissioner Handbook.

DISCUSSION

Introduction

The role of the “conducting authority” in the boundary change process is to hold a public hearing to receive any written protests filed against the change. The hearing occurs after LAFCO makes a decision to approve a proposal. The outcome is based entirely upon the protests received.

The Commission on Local Governance for the 21st Century concluded that LAFCO should serve as the “conducting authority” for boundary changes on the premise that the conducting authority performs a ministerial act without any discretion to modify LAFCO’s determinations.

Assembly Bill 2838 (Hertzberg) implemented this recommendation and established LAFCO as the conducting authority. Previously the conducting authority was a city council, a district board of director or the board of supervisors.

Government Code §57000(c) permits the Commission to delegate all or any of the conducting authority function to its Executive Officer.

Recommendation of the ad hoc Procedures Committee

After reviewing this matter, the ad hoc Procedures Committee of Commissioners DeWees and Fox, with Chair Campbell attending, recommends that the Commission authorize the Executive Officer to conduct protest hearings.

This authorization will allow hearings to be held at times other than monthly LAFCO meetings, thereby expediting boundary change procedures. The results of the hearing will be presented to the Commission at the next LAFCO meeting for adoption of the appropriate resolution based on the protests received.

Conducting Authority Procedures

Following LAFCO's approval of a boundary change (unless the Commission waives the conducting authority proceedings), a protest hearing must be held to provide the opportunity for landowners and/or registered voters to file written protests against the change.

- Setting the hearing

The action to schedule the hearing must be taken within 35 days of the date LAFCO adopts its resolution of approval. The hearing must be not held less than 15 nor more than 60 days after the date of the notice.

Notice of the protest hearing is given by publication, posting and mailing to a specified list of recipients..

- Conducting the Hearing, Calculating Protests – The hearing is held to receive protests from registered voters or landowners, depending on the type of boundary change in question.

At the hearing the Commission's resolution making determinations is summarized and all oral and written protests, objections or evidence is accepted. Anyone who files a written protest can withdraw the protest prior to the conclusion of the hearing.

Following the close of the hearing, and not more than 30 days later, a numerical finding is made regarding the value of written protests that are filed and not withdrawn.

The percentage of written protests determines the outcome of the proceeding, as follows:

- A. Uninhabited annexations and detachments
 - o Terminate the proceeding if protests are filed by at least 50% of the landowners who own 50% or more of the assessed value of the land.
 - o Order the change if protests represent less than 50% of the landowners.
- B. Inhabited annexations and detachments:
 - o Terminate the proceeding if written protests represent 50% or more of the registered voters residing within the affected territory.
 - o Order the change subject to a confirmation election if written protests represent more than 25% of the registered voters or more than 25% of the landowners.
 - o Order the change without election if protests are fewer than 25%.
- C. Dissolutions, incorporations, disincorporations, establishment of subsidiary districts, consolidations or mergers,
 - o Terminate the proceeding if written protests represent 50% or more of the registered voters residing within the affected territory.
 - o Order the change subject to a confirmation election.
 - o Order the change without election if the proceeding meets certain requirements set forth in the statute which differ with the type of boundary change.
- Calling and Conducting Elections – In the enabling statute LAFCO is not authorized to call and conduct elections. The is the responsibility of a county or a city.

If LAFCO orders a proposal subject to an election, it informs either the Board of Supervisors or the City Council, which direct their elections officials to conduct the election.

Conclusion

Local Agency Formation Commission

October 4, 2001 (Agenda)

Page 4

The staff agrees with the recommendation of the ad hoc Procedures Committee. Scheduling and conducting protest hearings is a ministerial act the LAFCO staff can perform if directed, with attendant savings in time for applicants and the Commission.

Please contact the LAFCO office if you have any questions.

Sincerely,

BOB BRAITMAN

Executive Officer

PROPOSED ADDITION TO COMMISSIONER HANDBOOK

G. Conducting Authority Hearings

Section 1. The Commission delegates to the Executive Officer the responsibility to conduct protest hearings as provided for in Government Code § 57000 (c)

Section 2. The purpose is to increase scheduling flexibility, to avoid extending Commission meetings to conduct non-discretionary procedures and to expedite the boundary change process.

Section 3. The staff will comply with statutory requirements respecting noticing, scheduling and conducting protest hearings. At the conclusion of the hearing the Executive Officer shall determine the value of written protests filed and not withdrawn and prepare a report to the Commission.

Section 4. Within thirty (30) days of the hearing the Commission shall adopt a resolution regarding the value of protests filed and either order the change, terminate the proposal or, when required, request the County or city to call and conduct an election.