

LAFCO

Santa Barbara Local Agency Formation Commission

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August 7, 2014 (Agenda)

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

**Consideration of Changes to the LAFCO Application Process and Chapter 7 of the
Commissioner Handbook – Cost Accounting and Indemnification**

Dear Members of the Commission

RECOMMENDATION

- 1) Consider changes to the LAFCO Application Process to:
 - a) Authorize a Cost Accounting and Indemnification Agreement with applicants and petitioners for Changes of Organization and Reorganization proposals.
 - b) Add a Policy to Chapter 7 of the Commissioner Handbook for Cost Accounting and Indemnification Agreements with applicants and petitioners for Changes of Organization and Reorganization proposals.

DISCUSSION

Santa Barbara LAFCO's Schedule of Processing Fees reads: "Staff hours in excess of those shown in parentheses shall be charges at an hourly rate of \$175. Such fees shall be received prior to the time the staff records the proposed boundary change."

Annexation and Detachment fees are based on acreage as follows:

<u>Acreage</u>	<u>Proposed Fee</u>
Less than 5	\$ 1,750 (10 hours)
5+ to 10	2,450 (14 hours)
10+ to 25	2,975 (17 hours)
25+ to 99	5,250 (30 hours)
100+	Fee is on a cost reimbursement basis

Commissioners: Bob Short, Chair ♦ Roger Aceves ♦ Doreen Farr ♦ Craig Geyer ♦ Jeff Moorhouse ♦ Bob Orach ♦ Janet Wolf ♦ John Fox ♦ Steve Lavagnino ♦ Jim Richardson ♦ Roger Welt ♦ **Executive Officer:** Paul Hood

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Many LAFCO's have found it beneficial to approve a Cost Accounting and Indemnification Agreement as part of the LAFCO application process. Such an agreement ensures that from a legal standpoint, applicants agree to pay the actual cost of processing a LAFCO application. This is particularly beneficial for more complex and time consuming applications. Such an arrangement requires more staff time to track actual costs, however, it also means that the LAFCO funding agencies (County, Cities and Special District) do not subsidize the processing of applications.

The second part of the agreement deals with indemnification. By signing the Cost Accounting and Indemnification Agreement "the landowner and/or responsible applicant not only agrees to pay the actual cost of processing an application, but also agrees to defend, indemnify, hold harmless and release Santa Barbara LAFCO, its officers, employees, attorneys, or agents from any claim, action or proceeding brought against any of them, the purpose of which is to attack, set aside, void, or annul, in whole or in part, LAFCO's action on the proposal or on the environmental documents submitted to or prepared by LAFCO in connection with the proposal."

Both of the provisions of the Cost Accounting and Indemnification Agreement, should be added as a policy in Section 7 of the Commissioner Handbook and be made a new LAFCO Policy Guidelines and Standards XIV (becoming the last policy in this section).

Please contact me if you have any questions.

Sincerely,



PAUL HOOD
Executive Officer

COST ACCOUNTING AND INDEMNIFICATION AGREEMENT

Applicant: _____

Mailing Address: _____

Telephone: _____

Fax: _____

E-mail Address: _____

The cost of processing an application may exceed the initial deposit required. In order to recover any additional costs associated with processing your application, the Local Agency Formation Commission, LAFCO, has found it necessary to implement a provision of the Fee Schedule that provides full cost recovery for processing an application.

I, _____, the landowner and/or responsible Applicant, agree to pay the actual costs pursuant to the Fee Schedule attached hereto, plus copying charges and related expenses incurred in the processing of this application. I also understand that if payment on any billings prior to final action is not paid within thirty (30) days, I agree that processing of my application will be suspended until payment is received. In the event of default, I agree to pay all costs and expenses incurred by LAFCO in securing the performance of this obligation, including the cost of any suit and reasonable attorney fees.

As part of this application, Applicant agrees to defend, indemnify, hold harmless and release the Santa Barbara Local Agency Formation Commission (LAFCO), its officers, employees, attorneys, or agents from any claim, action or proceeding brought against any of them, the purpose of which is to attack, set aside, void, or annul, in whole or in part, LAFCO's action on the proposal or on the environmental documents submitted to or prepared by LAFCO in connection with the proposal. This indemnification obligation shall include, but not be limited to, damages, costs, expenses, attorneys' fees, and expert witness fees that may be asserted by any person or entity, including the Applicant, arising out of or in connection with the application. In the event of such indemnification, LAFCO expressly reserves the right to provide its own defense at the reasonable expense of the Applicant. ***If the applicant is in non-compliance with an existing agreement, the applicant shall be subject to LAFCO Policy Guidelines and Standards XIV, which identifies additional steps that must be satisfied before a new application may be accepted.***

In order to implement the cost accounting and indemnification provisions, please sign and date this statement indicating your agreement to the cost accounting procedure and indemnification agreement. This signed agreement is required for your application to be accepted for processing. Checks may be made payable to LAFCO and delivered or mailed to the LAFCO Office at 105 East Anapamu Street, Rm 407, Santa Barbara, CA 93101. If you have questions regarding your application, please contact the LAFCO Office at (805) 568-3391.

Applicant's Signature

Date

XIV. Cost Accounting and Indemnification Agreements.

A. As part of any application, the Executive Office is authorized to require any applicant and/or jurisdiction to execute a Cost Accounting and Indemnification Agreement.

B. The following policy shall be applied to any applicant and/or jurisdiction that is not in compliance with an existing LAFCO Cost Accounting and Indemnification Agreement as determined by the Executive Officer and Legal Counsel:

1. The Executive Officer, in consultation with Legal Counsel, shall determine, on review of an application, whether an applicant and/or jurisdiction has previously failed to comply with the LAFCO Indemnification Policy and/or the LAFCO Cost Accounting and Indemnification Agreement.
2. Prior to acceptance for processing of an application from an applicant and/or jurisdiction, which the Executive Officer determines to have failed to comply with the Policy and Agreement referenced in paragraph 1 of this policy above, the LAFCO Executive Officer shall advise the Commission at a regularly scheduled meeting regarding the applicant's prior breach of the obligations of the Policy, Agreement, or both. The Executive Officer, in consultation with Legal Counsel, shall make a recommendation to the Commission regarding the amount of a bond or other commercially reasonable undertaking to be required of the applicant before the application will be accepted.
3. On the basis of the Executive Officer's recommendation, the Commission shall establish a bond or other commercially reasonable undertaking as a condition for acceptance of the application. The purpose of this security requirement is to indemnify LAFCO from future liability in connection with the application. In addition, the applicant shall be required to satisfy any past due obligation owed to LAFCO from previous applications, prior to processing any new application.

Compliance with this policy does not relieve the applicant of responsibility to submit other information as requested by LAFCO to process the application, to otherwise comply with applicable law and these policies, or cure any outstanding non-compliance with the Policy and Agreement referenced in paragraph a. of this policy above.