

**SOLANO LAFCO**  
**PROCEDURES FOR PROCESSING AN INCORPORATION PROPOSAL**

Adopted June 10, 2024

These procedures (Procedures) are intended to summarize and supplement the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, the State Office of Planning and Research (OPR) “A Guide to the LAFCO Process for Incorporations,” and the Solano LAFCO Policies and Procedures.

“Where these policies differ from the OPR Guide, these Procedures shall apply. These Procedures are not intended to preempt state law. Should these Procedures conflict with the provision of law, the provisions of the CKH Act and related statutes shall prevail. Unless otherwise specified herein, proposals for incorporation are subject to all applicable polices and requirements that apply to proposals and applications submitted to Solano LAFCO.”

**General Statement**

Incorporation is a complex and lengthy process. In accordance with State law, it is important that once the application for incorporation is initiated it be processed in a timely manner to ensure that the data used in the fiscal analysis does not become stale.

Proponents for an incorporation project shall complete the application requirements within a period of 24 months following the opening of the incorporation file. LAFCO staff will notify the proponents at least 90 days before the 24-month deadline. If the application remains incomplete after 24 months, the file will be closed, unless the proponents request a time extension. A time extension is subject to approval by the Commission.

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## I. APPLICATION MATERIALS

### A. Filing Fees

The actual costs for processing the incorporation application are the proponent's responsibility.

Application costs include LAFCO processing fees, costs associated with the CFA and environmental review documents, and other related expenses. Some of these fees are fixed, and others are based on actual costs. Please refer to the current LAFCO Schedule of Processing Fees.

Consultants may be hired to assist with the preparation of the CFA and CEQA documents. Consultants may be asked to divide the project tasks into sub tasks. LAFCO staff will provide costs estimates, whenever possible; actual costs will be determined after consultant contracts are negotiated.

Payment, other than payment in full (e.g., installment payments) are subject to approval by the Commission. The terms of any payment schedule will be stated in an agreement to be executed between LAFCO and the proponents. LAFCO staff will not authorize the consultant to commence or continue work until the required funds are received.<sup>1</sup> (See "Processing" Section A regarding Loans.)

If installment payments are delinquent, work on the project will be suspended until the payments are brought up to date.

### B. Resolution or petition - area proposed for incorporation must have a minimum of 500 voters (56043).

If the proposal is filed by resolution, LAFCO staff will review the resolution to ensure compliance with the relevant sections of the Government Code.

If the proposal is filed by landowner petition, LAFCO staff will submit the petition to the County Assessor's office for verification. This process can take from a few weeks to months depending on workload and other factors.

If the proposal is filed by registered voter petition, LAFCO staff will submit the petition to the County Registrar of Voters office for verification. This process can take from a few weeks to months depending on workload and other factors.

If it is found that the petition has insufficient valid signatures, the incorporation applicant has 15 days to acquire the sufficient number of valid signatures (56706).

### C. LAFCO Application

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<sup>1</sup> For an incorporation that has been initiated by a successful petition, LAFCO (§56383(g)) may forward a request for a loan from the Controller of the State of California. The State, not LAFCO, can approve the loan which then becomes an obligation of the new city. Repayment of the loan must be made within 2 years of the effective date of the incorporation.

LAFCO staff will review the application for accuracy and completeness. LAFCO staff will coordinate review of proposal with all affected local agencies and interested parties to determine potential impacts. The results of this review will be included with the LAFCO staff report to the Commission.

#### D. Boundary Map

LAFCO staff, affected agencies and interested parties will review the boundary map to determine consistency with existing local agencies and to ensure that the boundaries are logical and reasonable.

A more detailed map and legal description meeting the requirements of the Solano County Surveyor will need to be completed prior to the incorporation proposal being set for hearing before the Commission.

The incorporation applicant should discuss potential boundary alternatives with LAFCO staff early in the process. The preliminary analysis and CFA should identify and assess boundary options.

The Commission may modify proposed boundaries and order the inclusion or deletion of territory to ensure orderly boundaries.

In addition to approving the boundary of a new City, LAFCO must also approve a sphere of influence (SOI) within one year of incorporation (56426.5). The SOI must be consistent with other affected local agencies (56375.5).

Incorporation proposals, which would result in certain conditions, are prohibited by law, including incorporations, which would result in unincorporated islands (56744) and annexation of land within a Farmland Security Zone (56749).

#### E. Plan for Services

A proposal for incorporation must include a Plan for Services that addresses the items identified in Government Code §56653. Solano LAFCO's adopted policy for a Plan for Service can be found in the policies, procedures, and forms packet.

#### F. Environmental Review under the California Environmental Quality Act (CEQA)

Incorporations are projects subject to CEQA and require environmental review. LAFCO, as Lead Agency for an incorporation, must prepare the required documentation. Depending upon the circumstances of each incorporation proposal, LAFCO will make one of three environmental determinations with respect to the potential environmental effects of the incorporation. The project, in rare cases, may qualify for an exemption from CEQA. If an exemption is not appropriate, LAFCO will prepare, or cause to be prepared, an Initial Study to determine whether a Negative Declaration or an Environmental Impact Report must be prepared.

The applicant shall be responsible for all reasonable costs associated with preparing the environmental document in accordance with the LAFCO Fee Schedule.

#### G. Comprehensive Fiscal Analysis (CFA)

Section 56800 of the Government Code requires the LAFCO Executive Officer to prepare, or cause to be prepared, the CFA. The CFA is used to project the fiscal condition of the proposed new city and must contain specific information per the Government Code.

## II. PRE-APPLICATION and FISCAL ANALYSIS

### A. Pre-Application

Prior to initiating an incorporation proposal, the applicant should prepare a preliminary fiscal study to determine the feasibility of incorporation. It is important to conduct a preliminary feasibility study at an early stage to avoid the time and expense associated with pursuing an incorporation proposal that is financially infeasible. The preliminary feasibility study should be completed no later than filing a Notice of Intent to Circulate a Petition or adopting a resolution of application to LAFCO.

### B. Comprehensive Fiscal Analysis Contents and Details

At a minimum, the CFA must contain the following information:

1. The costs to the proposed city of providing public service and facilities for a minimum of eight years following incorporation.
2. The revenues of the proposed city during for a minimum of eight years following incorporation.
3. The effects on the costs and revenues of any affected local agency for a minimum of eight years following incorporation.
4. An analysis, consistent with Government Code §56815, relating to revenue neutrality.
5. Any additional information required by Government Code section 56800.
6. Any other information and analysis needed to make the findings per the Cortese-Knox-Hertzberg Local Government Reorganization Act (CKH Act).

LAFCO staff may contract with an independent consultant to prepare the CFA, and the cost will be paid by the applicant. LAFCO staff manages the consultant's work as long as there are funds on deposit.

The selection process for selection of the independent consultant to prepare the CFA will generally involve the following:

- A Request for Proposals will be prepared by LAFCO staff and circulated to prospective qualified consultants. A
- A review panel representing diverse interests including the incorporation proponents will evaluate and/or score the responses.
- The LAFCO Executive Officer will prepare a recommendation for Commission approval and authorization of the contract. The Commission will give final approval of the selected consultant and authorize the contract to prepare the CFA.

Upon receipt of the CFA, LAFCO staff will publish a legal notice setting a 30-day review period for the CFA. LAFCO staff will also notify all affected agencies, the chief proponents, and all persons who have filed a written request for notification. Notice shall be given in the same manner as specified in Section 56153.

During the 30-day review period, any interested person may request the State Controller's Office to review the CFA. (See Government Code section 56801). Such a request must be accompanied by a deposit to be determined by the LAFCO Executive Officer, to cover the cost of the Controller's review.

The request for the Controller's review shall specify the portion or portions of the CFA to be reviewed and a brief explanation of why the review is being requested. This information will assist the Controller in completing a timely review, and help reduce the cost of the review to the requesting party.

A Certificate of Filing deeming the application complete shall not be issued until the CFA is complete.

### C. Revenue Neutrality

Revenue neutrality intends that any proposal that includes an incorporation should result in a similar exchange of both revenue and responsibility for service delivery among the county, the proposed city, and other subject agencies. It is the further intent of the Legislature that an incorporation should not occur primarily for financial reasons (§56815). Pursuant to Government Code §56815 LAFCO will make findings and/or impose conditions/mitigations to equalize the transfers of revenue and service.

- a. The revenue neutrality agreement or any proposal for LAFCO terms and conditions for revenue neutrality shall **include**:
  - A criteria and a process for modification by the affected agency and the city after incorporation
  - A description of methodologies and assumptions leading up to the terms of the agreement
  - Identifiable and recurring revenues and expenditures only
- b. The revenue neutrality agreement or any proposal for LAFCO terms and conditions for revenue neutrality shall **exclude**:
  - Anticipated or projected revenue growth or sources of revenue dependent on discretionary actions by a future city council
  - Services funded on a cost recovery basis (such as permits/building inspection) which are, by definition, revenue neutral
  - Costs of capital improvements
- c. The following additional policies apply to the revenue neutrality agreement or any proposal for LAFCO terms and conditions for revenue neutrality:
  - Fiscal impacts to restricted and unrestricted revenues should be evaluated separately. A city may pay a portion of its annual revenue neutrality

payment with restricted funds if both agencies agree, and if a legal exchange mechanism can be created to do so.

- Fees charged by the county for services to other jurisdictions (such as property tax administration fees or jail booking fees) should be included as an off-setting county revenue in the calculation of fiscal effects on the county.
- Countywide costs of regional services and general government, including the County Administration, Clerk of the Board, Auditor-Controller and other administrative government functions which are required to support county governance of both incorporated and unincorporated areas should not be included in defining services or revenues transferred to the new city.

Negative fiscal impacts to affected agencies must be identified with proposed mitigation measures. For purposes of determining negative impacts and mitigation measures, the following procedures will be used by Solano LAFCO:

1. For purposes of complying with revenue neutrality requirements, the Commission may exercise discretion in its determination that revenues and expenditures are substantially equal and these determinations will be made on a case-by-case basis.
2. Mitigation measures may range from one-time payments to ongoing annual transfers of revenue or taxes. The mitigation time period proposed in the feasibility study will evaluate any unique circumstances associated with the incorporation. Based on the evaluation, the feasibility study should propose whether mitigation should be based on tax sharing agreements, lump sum payments, or payments over a fixed period of time.
3. In determining fiscal impacts to affected agencies, expenditures and revenues will be based on the most recent fiscal year for which data are available, provided that the data are not more than one fiscal year old.
4. Fiscal impacts to restricted revenues and general fund revenues will be evaluated separately, and one revenue will not be used to offset a surplus or deficit in the other.
5. Revenues and expenditures that are considered full-cost recovery, e.g., current planning, building inspections, etc., need not be identified.
6. All identifiable service related expenditures being transferred to the proposed city, including costs for jail bookings, general government services, medical and mental health, etc., will be considered in determining revenue neutrality. The analysis will be based on historical statistical data.
7. Separate revenue neutrality determinations will be made between the proposed city and the county, and between the proposed city and any affected special district (s).

### **III. PROCESSING**

#### **A. Loan for Incorporation**

For incorporation proceedings initiated by the filing a registered voter petition with a sufficient number of voter signatures that have been verified by the County Registrar of

Voters, Section 56383(g) provides that the Commission may, upon the receipt of a certification by the proponents that they are unable to raise sufficient funds to reimburse fees, service charges, or deposits for the LAFCO proceedings, take no action on the proposal and request a loan from the State Controller's Office to cover the incorporation processing expenses, subject to availability of an appropriation for those purposes and in accordance with any provisions of the appropriation. If the loan is granted, repayment of the loan shall be made a condition of approval of the incorporation, if successful, and shall become an obligation of the newly formed city. Repayment shall be made within two years of the effective date of incorporation. If the proposal is denied by the Commission or defeated at an election, the loan shall be forgiven.

#### B. Application

An application submittal will be reviewed for completeness, subject to the materials listed in Section I above. If documents or materials are missing, a detailed incomplete letter will be provided as soon as possible. If the information is insufficient, staff may work with the applicant to obtain sufficient information to make the required findings.

#### C. Commission Proceedings

LAFCO staff prepares an analysis of the proposal and issues the Executive Officer's report and recommendations (56665).

The Commission holds a public hearing to review the LAFCO staff analysis and receive oral and written testimony (56666).

The Commission then adopts a resolution approving, modifying, or disapproving the proposal (56880) and must make the findings specified in Section 56720, and Section 56803.

If the incorporation is approved, the Commission determines the final boundaries, the base property tax, the provisional appropriations limit for the proposed city, and any terms and conditions of approval.

At the time of approval, the Commission may also determine the sphere of influence (SOI) of the proposed city. The Commission shall, in any event, determine the SOI for any newly incorporated city within one year of the incorporation (56426.5).

If LAFCO wholly disapproves the proposal, no new proposal involving the same or substantially the same territory shall be initiated for one year, unless this provision is waived by the Commission (56884)

#### D. Request for Reconsideration

Within 30 days of the adoption of the LAFCO resolution either approving or disapproving the proposal, any interested party can request the Commission to reconsider its action (56895). Such a request requires the payment of a fee per the current LAFCO Fee Schedule.

Upon receipt of a timely request, LAFCO will hold a legally noticed public hearing on the reconsideration request.

#### E. Election

An election is held (conducted by the County), usually on the next established election date. If the majority of votes are cast supporting the incorporation, the Commission shall adopt a resolution ordering the incorporation.

An incorporation election may also provide for the election of the city council members and other officers, and on the question of whether the city council in future elections shall be elected by district or at large (57116). Or the city council election can be conducted at a later specified date (56724).