

SHASTA LAFCO

POLICIES & PROCEDURES

CHAPTER 8 POLICIES & PROCEDURES PERTAINING TO INCORPORATION PROPOSALS

Section 1. Introduction

1.1 Legislative Intent and Statutory Authority

Pursuant to Section 56300(a) of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (hereinafter “LAFCO Statute” or “LAFCO Act”), “It is the intent of the Legislature that each commission, not later than January 1, 2002, shall establish written policies and procedures and exercise its powers pursuant to this part in a manner consistent with those policies and procedures”

Pursuant to Section 56815.2 of the LAFCO Act, the Governor’s Office of Planning and Research (OPR) has created statewide guidelines for the incorporation process. The purpose of the guidelines is to serve as advisory to LAFCOs in reviewing incorporation proposals. LAFCOs may adopt supplemental policies and procedures that further the purposes of but which are not in conflict with the OPR guidelines.

The statute further specifies that the OPR guidelines are to be considered as *minimum* statewide guidelines for the incorporation process. To ensure a fair and equitable deliberation by LAFCO on incorporation proposals, it is important that LAFCO adopt policies and procedures prior to consideration of an incorporation proposal.

1.2 Chapter Purpose

The principal purpose of this Chapter is to establish the policy and procedural framework for the consistent processing of incorporation proposals submitted to the Shasta Local Agency Formation Commission (hereinafter “Shasta LAFCO”, “LAFCO”, or “Commission”) by proponents or a local governmental agency.

1.3 Chapter Limitation

This chapter is limited to policies and procedures pertaining to the incorporation of a city. Policies and procedures pertaining to other changes or organization or reorganization are set forth in separate chapters of the Shasta LAFCO manual of policies and procedures. Further, the policies and procedures set forth in this chapter, or in any other document that is by reference incorporated herein, are not to be considered all-inclusive. In all cases, the LAFCO Act is the prevailing document.

1.4 Attribution

In addition to the provisions in the LAFCO Act pertaining to incorporation, the policy statements and procedures set forth in this chapter are also reflective of policy and procedure language

found in the document entitled, A Guide to the LAFCO Process for Incorporations, Governor's Office of Planning and Research, January 9, 2002.

Section 2. Definitions

Unless the policy provision or procedural context otherwise requires, the selected definitions provided under Chapter 3, Section 2 of Shasta LAFCO Policies and Procedures, as well as any other applicable definitions in the LAFCO Act shall hereafter govern the construction of this chapter. The definition of a word also applies to any of that word's variants. For the purposes of this chapter, the following definitions shall also apply:

- 2.1 Comprehensive Fiscal Analysis (CFA): A comprehensive analysis of the projected fiscal condition of the new city, as required under Section 56800 of the LAFCO statute.
- 2.2 Contract City: A city that provides many municipal-level services through contracts with service providers such as special districts, the County, or private companies providing contract municipal services.
- 2.3 Fiscal Feasibility: A finding that the proposed city is expected to receive revenues sufficient to provide public services and facilities and a reasonable reserve during the three fiscal years following incorporation.
- 2.4 Full Service City: A city that provides all municipal level services through city employees in departments governed by the city council.
- 2.5 Infrastructure: The basic, underlying framework or features of a system or organization; the fundamental facilities serving a county, city, or area, such as but not limited to transportation systems, sewer, water and power utilities, streets and roads, police and fire protection.
- 2.6 Municipality: A city, town, village, or borough possessing corporate existence and its own local government; the primary form of government for the delivery of municipal services in urban areas.
- 2.7 Municipal Services: Services typically provided by a city, including but not limited to water storage, treatment, distribution; wastewater collection, treatment, disposal; power generation, distribution; streets and roads; police and fire protection; land use planning, development and regulation; building inspection; parks, and recreation.
- 2.8 Revenue Neutrality: The amount of revenues the new city receives from the County and affected agencies after incorporation is substantially equal to the amount of savings the county or affected agencies would attain from no longer providing services to the proposed incorporation area.
- 2.9 Urban/Urbanize: Of, pertaining to, or comprising a city or town; characteristic of cities; to make or cause to become urban, as a locality.

Section 3. Overview of the Incorporation Process

3.1 Reasons for Incorporation

Though the precise reasons for seeking to incorporate vary from place to place depending on local issues and circumstances, the movement to shift an area from the jurisdiction of a county board of supervisors to a newly-established city council is typically driven by a perception that cityhood will:

- improve local public services,
- capture increased revenues from state or federal sources to support local services,
- give a local community control over land-use planning,
- create a politically accountable governing body in a more limited geographic area,
- resist inclusion within the boundaries of other local government jurisdictions,
- allow the community to pursue other local policy goals.

3.2 Complexity and Cost

In California, the incorporation process is a long, complex, and expensive undertaking. The process is complex in order to ensure that a proposed incorporation is fiscally feasible, is environmentally and organizationally sound, and in the best interests of the affected community and its residents. The procedures for incorporation must be followed precisely if long delays and potential litigation are to be avoided.

The incorporation process is often controversial because it proposes to change how local services are provided, which elected officials are accountable for them, how local residents participate in government, how services are paid for, and often, how much services cost. All persons in the area proposed to be organized into a new city, as well as residents in adjoining areas, other cities, the County, and special districts may be directly affected by the changes brought about by the incorporation.

Given the complexity of the incorporation process, it is an expensive undertaking. Incorporation proponents are responsible for most of the costs. The costs for processing and filing fees, petition verification, mapping, consultant services, and an election on the question may exceed \$100,000, as evidenced by recent incorporations in California.

3.3 Before Incorporation Starts

Incorporation proceedings generally begin when either a group of local citizens or an existing local governmental agency (often an independent special district) assumes the responsibility to prepare the application to LAFCO.

3.3.1 Organization and Support: The existence of a broad-based community organization is a practical requirement for developing and pursuing incorporation efforts. An incorporation “proponent committee” is typically established to represent, define, and articulate incorporation goals on behalf of the community-at-large.

3.3.2 Chief Petitioners: The LAFCO Act requires that three persons, typically chosen from the proponent committee, be designated as the “chief petitioners” for the purpose of receiving any notice authorized or required to be given to the incorporation proponents. The chief petitioners should also be prepared to participate in a lengthy and interactive

process. They will be closely and continually involved in developing the application, proposing and negotiating terms and conditions, and other key decisions leading up to LAFCO action on the proposal.

3.4 Role of LAFCO

LAFCO plays several roles in the incorporation process including educating the public, facilitating communication between affected local governments and community groups, and reviewing and taking formal action on the proposal.

3.4.1 Commission: The role of the Commission in the incorporation process is to act as a neutral hearing body in evaluating the merits of the proposal without having a stake in the outcome of the effort. As a practical matter, it is likely that a series of hearings and meetings will be held in order for the Commission to receive information and testimony, give consideration and make determinations on each of the components of the proposed incorporation. At the conclusion of the process, the Commission may approve, amend and approve, or deny the proposed incorporation.

3.4.2 LAFCO Staff: LAFCO staff is responsible to organize the review of the proposal and formulate a recommendation to the Commission. As the effects of the proposed incorporation become known and conflicting interests of affected parties emerge, LAFCO staff is often in the role of moderator or facilitator, assuring that adequate information is developed and that basic legal requirements are met. Staff will also work cooperatively with proponents to ensure that the most thorough, complete and most accurate proposal is developed for the Commission's consideration.

3.5 Consultation With LAFCO

The following is taken from A Guide to the LAFCO Process for Incorporations (hereafter Guide), published by the Governor's Office of Planning and Research: "Of all the actions incorporation proponents can take to help ensure a successful incorporation process, early and frequent consultation with LAFCO is the most important. Proponents can often become overwhelmed by the technical, legal and procedural requirements of incorporation. LAFCO staff . . . [is] . . . available to assist in understanding the process, in facilitating communication among all the affected agencies, and in helping all parties avoid the most common pitfalls in an incorporation."

3.6 Logical Incorporation Boundary

From the Guide: "Developing a logical incorporation boundary is the first and most fundamental step in an incorporation effort. It is strongly recommended that proponents develop the boundary in conjunction with LAFCO staff early in the process – even before deciding to move forward with any incorporation efforts. Developing logical boundaries and alternatives early in the process with LAFCO staff can save time and money for proponents." The Guide identifies the following characteristics of a logical incorporation boundary:

- It recognizes the jurisdictional and sphere of influence boundaries of other agencies, particularly other cities.
- It realistically recognizes political constraints and opportunities.
- It includes a variety of land uses for a balanced community, particularly fiscal balance.
- It considers topography and geography, as well as history.
- It does not split parcels.

- It recognizes the statutory prohibition against creation of unincorporated “islands”.
- It recognizes “communities of interest” or areas may have financial, geographic or other links to the area proposed to be incorporated.
- It is consistent with the stated purpose and goals of incorporation.

3.7 Initial Fiscal Feasibility Review

From the Guide to the LAFCO Process for Incorporations: “If proponents decide to take a closer look at incorporation, it may be helpful to perform a preliminary assessment of the fiscal resources available to a potential new city. The preliminary assessment, or initial fiscal feasibility review, is designed to help community groups conduct a quick appraisal of the potential for incorporation.

The Guide goes on to say, “An initial fiscal feasibility review . . . can be used by incorporation proponents to determine if revenues will be available to support municipal level services. The initial fiscal feasibility [review] is NOT intended to be used as a substitute for a CFA [Comprehensive Fiscal Analysis]. It is only intended to be used as a means to educate proponents regarding the fiscal potential for incorporation.

Further from the Guide, “Incorporations must be financially feasible. While this is often seen as the primary test for incorporation, it is only one of many standards of review a LAFCO will use to evaluate the proposal. Since preparation of the CFA is generally the most expensive step in the incorporation process, an initial feasibility review can help to reduce costs to incorporation proponents who typically bear the financial burden of preparing a CFA.”

Section 4. Policies Pertaining to Incorporation Proposals

In addition to the statutory factors which a Commission is required to consider in the course of reviewing and acting on a proposed change of organization or reorganization, including an incorporation proposal, and in addition to the general policies adopted under Chapter 3 pertaining to changes of organization and reorganization, Shasta LAFCO will also apply the following policies to its consideration of incorporation proposals:

4.1 Need for Incorporation

Shasta LAFCO will favorably consider an incorporation proposal where it can be found that there is a significant unmet need for municipal and urban services within the proposed incorporation area. In determining whether such a need for municipal and urban services exists, the Commission will consider:

- 4.1.1 Community Services: The range and level of infrastructure and community services presently provided in the subject area, and whether or not there is a demonstrated need to convert to the level of urban and municipal services typically provided by a city.
- 4.1.2 Urbanization: Whether the area proposed for incorporation is already substantially urbanized, as defined, and whether applicable General Plans, Specific Plans, or area plans and/or realistic population and growth projections demonstrate the need for urbanization of the affected area within the foreseeable future (generally within five to ten years).

4.1.3. Spheres of Influence: The sphere of influence plans for the jurisdictions currently providing services to the area.

4.1.4 Community Preference: The preferences of the community proposing to incorporate.

4.2 Services Efficiencies/Services Jurisdiction

Shasta LAFCO will favorably consider a proposal for incorporation where it can be found that establishment of a new city will result in the most efficient and cost-effective delivery of consolidated forms of urban services to the affected population. Toward that end, Shasta LAFCO will favorably consider incorporation proposals where the new city will assume jurisdiction over as many services in the incorporation area as are feasible. To accomplish this, Shasta LAFCO encourages incorporation proposals that would also propose concurrent special district dissolution or detachment proceedings where it can be demonstrated that such concurrent proceedings would result in a more efficient and cost-effective delivery of the services previously provided by the special district.

4.3 Public Benefit

Shasta LAFCO will favorably consider an incorporation proposal where it can be demonstrated that incorporation will benefit the population as a whole rather than a select group. Absent other considerations, LAFCO will not favorably consider an incorporation proposal that amounts to a grant of governmental powers to a special interest group.

4.4 Prime Agricultural and Open Space Land

Prime agricultural and open space land that is not designated for conversion to land uses which are more characteristic of land uses typically found in a city within the next five years of the date of the application for incorporation is received shall not be included within the boundaries of a proposed city unless the Commission determines that the proposal is structured to insure the long-term preservation of open-space and agricultural land.

4.5 Fiscal Feasibility

Shasta LAFCO will favorably consider a proposal for an incorporation where a finding can be made that the proposed city is expected to receive revenues sufficient to provide public services and facilities and a reasonable reserve during the three fiscal years following incorporation.

4.6 Revenue Neutrality

It is the position of Shasta LAFCO that an incorporation should not occur primarily for financial reasons. Accordingly, and pursuant to Section 56815 of the LAFCO Act, Shasta LAFCO will favorably consider an incorporation proposal where a finding can be made that the following two quantities are substantially equal: (A) Revenues currently received by the local agency transferring the affected territory which, but for the effect of incorporation, would accrue to the local agency receiving the affected territory; (B) Expenditures currently made by the local agency transferring the affected territory for those services which will be assumed by the local agency receiving the affected territory.

Shasta LAFCO may, in the alternative, favorably consider an incorporation proposal if it finds that either the County and all of the subject agencies agree to the proposed transfer, or any

negative fiscal effect has been adequately mitigated by tax sharing agreements, lump-sum payments, payments over a fixed period of time, or other terms and conditions which are satisfactory to the Commission and consistent with the statute.

Section 5. Procedures Pertaining to Incorporation Proposals

In addition to the statutory factors and the general procedures set forth under Chapter 4 of Policies & Procedures, an incorporation proposal shall be subject to the procedural framework presented below and more specifically set forth in the LAFCO Act and in a document entitled A Guide to the LAFCO Process for Incorporations, Governor's Office of Planning and Research, January 9, 2002.

5.1 Minimum Population

Section 56043 of the LAFCO Act requires that areas proposed for incorporation include at least 500 registered voters.

5.2 Initiation of Proceedings

The legal process for incorporating a new city can be formally initiated in three ways:

5.2.1 Agency Resolution: The legislative body of an affected agency can adopt a resolution of application to Shasta LAFCO requesting initiation of incorporation proceedings. An affected agency is any city, special district or county that contains territory within the proposed incorporation boundaries.

5.2.2 Registered Voter Petition: A petition, in a form consistent with the LAFCO statute, requesting initiation of incorporation proceedings, signed by at least 25% of the registered voters in the proposed incorporation area, may be submitted to Shasta LAFCO. The Registrar of Voters must verify the number of valid signatures on petitions, the cost for said verification to be borne by the chief proponents, as defined by LAFCO.

5.2.3 Landowner Petition: An incorporation can also be initiated by petitions signed by at least 25% of the landowners owning at least 25% of the assessed value of the land within the proposed incorporation area. The County Assessor's Office must verify the petitions of landowners, the cost for said verification to be borne by the chief proponents, as defined by LAFCO.

5.3 Responsible Party

In the case of initiation of proceedings by resolution, the governing body of the agency that gives notice of its intention to adopt a resolution shall assume the leadership role in the incorporation process and be responsible for completion of all application requirements, preparation and submission of any data and information as may be required or requested by LAFCO, and payment of all applicable fees and charges associated with incorporation proceedings.

In the case of initiation of proceedings by either registered voter or landowner petition, the proponent or "proponent committee" (see 2.3.1 above) that gives notice of intention to circulate a petition shall assume the leadership role in the incorporation process and be responsible for completion of all application requirements, preparation and submission of any

data and information as may be required or requested by LAFCO, and payment of all applicable fees and charges associated with incorporation proceedings.

5.4 Notice of Intent

Before a resolution can be adopted or a petition circulated, a Notice of Intent to adopt a resolution or circulate a petition must be filed with the Executive Officer. The form and contents of the notice shall be the same as those forth under Sections 3.2 of Chapter 4 of Commission Policies & Procedures.

5.5 Content of Petition or Resolution

In addition to the content requirements for a petition or resolution as set forth under Sections 3.3 and 3.4 of Chapter 4 of Commission Policies & Procedures, the petition or resolution requesting initiation of incorporation proceedings shall also include the following: (A) A statement of whether the proposed incorporation is consistent with the spheres of influence previously adopted by LAFCO; (B) A proposed name or a list of proposed names for the new city; (c) A statement of provisions for appointment of a city manager and other city officials.

5.6 Timing of Petitions

All signatures must be gathered within a six-month period from the date of the first signature. Incorporation petitions must be submitted to LAFCO for filing within sixty (60) days of the date of the last signature on the petition. The total number of valid signatures necessary to meet the 25% requirement for a petition of registered voters will be established as of the date of the last voter registration report prior to the date of the first signature on the petition.

5.7 Petition Sufficiency/Notice of Insufficiency

Within thirty (30) days after the date a petition is received by LAFCO, the Executive Officer shall cause the petition to be examined and shall issue a "Certificate of Sufficiency" or "Notice of Insufficiency" after the results of the examination are received.

If the petition is determined to be insufficient based upon the number of signers, the Executive Officer will notify the proponents by certified mail. The proponents have fifteen (15) days thereafter to submit a supplemental petition to the Executive Officer. Within ten (10) days after the supplemental petition is filed, the Executive Officer will have the petition examined and certified. If the petition is found to be insufficient, it will be filed as a public record "without prejudice" to any future incorporation effort in the same area. (The filing "without prejudice" permits proponents to begin the process to initiate another incorporation without waiting a specified period of time.)

5.8 Application Standards and Document Requirements

5.8.1 Minimum Components: An application for an incorporation shall be in the form prescribed by Shasta LAFCO and shall contain certain minimum components as set forth in the LAFCO Act and in Shasta LAFCO's ". . . Application Standards and Documents Requirements" (see Exhibits section of manual of Policies & Procedures).

5.8.2 Filing & Processing Fees: Fees for incorporation proposals vary and are set by each LAFCO. Shasta LAFCO has adopted a schedule of fees and charges that requires an

initial deposit to be credited against total actual processing costs accrued and payable by the applicant.

5.8.1.1 State Controller Loan: As proved under Section 56833(g) of the LAFCO Act, for incorporation proceedings initiated by a successful petition, LAFCO may, upon receipt of substantial proof submitted by the proponents that they are unable to raise sufficient funds, take no action on the proposal and forward a written request for a loan to the controller of the State Controller of California. Repayment of the loan shall be made a term and condition of LAFCO approval. If the incorporation is successful, the loan shall become a legal obligation of the newly formed city and shall be shown as an expense in the budget projections for the new city. Repayment must be made within two years of the effective date of incorporation. If the incorporation proposal is denied by LAFCO or defeated in an election, the loan shall be forgiven.

5.9 Additional Data and Information

The LAFCO Act provides the Commission and the Executive Officer with the authority to require additional information as needed to process the incorporation proposal. As well, LAFCO's may adopt additional written procedures for the evaluation of proposals. In addition to the minimum components set forth under Section 5.8.1, Shasta LAFCO will require the applicant to submit the following:

5.9.1 Initial Fiscal Feasibility: Consistent with policy statement 3.7 above, an application to Shasta LAFCO for an incorporation shall include an initial review of the fiscal feasibility of the proposal. It is left to each LAFCO to determine the level of detail required in the initial review. Shasta LAFCO reserves the right to determine the level of detail following initial consultations with the proponents. In all cases, a subsequent Comprehensive Fiscal Analysis (CFA) will be required, as discussed under Section 7.1.

5.9.2 Incorporation Narrative: An incorporation proposal submitted to Shasta LAFCO shall provide a written narrative that addresses at least the following:

5.9.2.1 Reasons for Incorporation: The narrative shall speak to the reasons for proposing incorporation, such as, but not limited to: improving local public services; capturing increased revenues to support local services; giving a community local control over land use planning; creating a locally accountable governing body; and, pursuing local policy.

5.9.2.2 Existing Governmental Structure: The narrative shall include a clear statement of concerns, issues, or problems, if any, with the existing governmental structure as an indicator of the need for incorporation.

5.9.2.3 Public Services Conversion: The narrative shall identify any changes proposed from the way public services are currently being provided. For example, if the incorporation proposes dissolution, consolidation, or reorganization of special districts as part of the incorporation, those governmental changes, and the related changes in the delivery of the services provided by those districts, must be addressed in the narrative.

- 5.9.2.4 Area History: The narrative shall include a brief history of the incorporation area, as further specified during initial consultation, including the results of any previous incorporation efforts.
- 5.9.2.5 Base Data: The narrative data shall include demographic, geographic, and economic data that describes the incorporation area. The information can readily be obtained from the United States Census Bureau or other public agencies.
- 5.9.3 Service Plan: A proposed service plan shall be submitted by the incorporation proponents. The plan is to indicate whether the new city will be a “full-service city” (see Definition 2.4) or a “contract city”, and explain in detail the range and level of services to be provided under the identified scenario. Further, the plan will be prepared in accordance with Section 56653 of the LAFCO statute, and shall be sufficient in detail so as to be used in the subsequent Comprehensive Fiscal Analysis.
- 5.9.4 Boundary Narrative: In addition to the map and legal description required under Section 5.8.1 above, the application shall include a narrative discussion of the rationale for the boundaries proposed, as well as a description and discussion of boundary alternatives. If proponents do not propose alternatives, a rationale for that decision shall also be included.

Incorporation proponents who do not consult with LAFCO with respect to the boundary, or who fail to consider boundary alternatives in the narrative, may be required to fund revisions to the original incorporation application. However, if incorporation proponents have developed an incorporation boundary and alternatives in consultation with LAFCO prior to submitting an application, the costs of additional analysis resulting from any changes in the boundaries or addition of alternative boundaries as directed by LAFCO should be borne by LAFCO.

- 5.9.5 Spheres of Influence: In addition to a proposed jurisdictional boundary, the proponents shall also develop and submit a proposed sphere of influence boundary for the new city. Proponents are to consult with LAFCO as to the definition and purposes of a sphere of influence prior to submitting the proposed sphere of influence. Thereafter the application is to include a sphere boundary map, as well as a narrative discussion of the basis for the proposed sphere of influence.
- 5.9.6 Municipal Services Reviews: Incorporation proponents shall consult with LAFCO to determine how and when a municipal services review will be prepared for an incorporation proposal or a newly incorporated city.

Section 6. Application Acceptance

6.1 Notice of Filing of Application

Upon receipt of the incorporation application and minimum filing fees, a notice of receipt of the application shall be mailed to all interested and affected agencies pursuant to Section 56658 of the LAFCO statute.

6.2 CEQA Compliance

Incorporations are “projects” subject to the California Environmental Quality Act (CEQA). LAFCO, as the lead agency for environmental review, will prepare the required documentation and may charge the incorporation proponents (the applicant) fees to cover the costs. Shasta LAFCO will carry out the environmental review process in accordance with the statute and its adopted policies and procedures pertaining to environmental review (See Chapter 7 of Policies & Procedures).

6.2.1 Limitation: The environmental documentation prepared by LAFCO, or caused to be prepared by LAFCO, will address the possible environmental impacts resulting from the incorporation. It will not speculate on impacts that may result from future city council actions.

6.2.2 Timing: Shasta LAFCO will commence CEQA compliance activities as soon as possible after submittal of the incorporation application.

6.2.3 Environmental Determinations: LAFCO will make one of the three environmental determinations permitted under CEQA. (See Chapter 7)

6.3 Application Completeness Determination

LAFCO staff has thirty (30) days to review the application and make an initial determination as to “completeness”. Given the complexity of the components, and the level of initial analysis required, it is rare that an application for an incorporation proposal will be deemed to be “complete” within 30 days after the application is submitted; therefore, Shasta LAFCO reserves the statutory right to issue, within 30 days, a “Notice of Insufficiency” which specifies those parts of the application which will need further information. The “Notice of Insufficiency” may also establish a deadline to respond to the notice and provide the additional information. Failure to timely satisfy the requirements under the Notice of Insufficiency could result in termination of all further proceedings.

Once an application is deemed to be complete in its statutory and local requirements and components, the Executive Officer will issue a Certificate of Filing pursuant to Section 56651 of the LAFCO Act.

Section 7. Comprehensive Review

LAFCO staff must analyze the merits of the proposal, evaluate it for consistency with existing laws and adopted LAFCO policies and procedures, conduct the environmental review, prepare or cause to be prepared a Comprehensive Fiscal Analysis, complete the revenue neutrality process, and prepare the Executive Officer’s report and recommendation. As necessary and as provided in the LAFCO statute, the Executive Officer can also request additional information to process the incorporation application. What follows is a more specific discussion of the various activities and components of a comprehensive review.

7.1 Comprehensive Fiscal Analysis (CFA)

Pursuant to Section 56800 of the LAFCO Act, “For any proposal which includes an incorporation, the Executive Officer shall prepare, or cause to be prepared by contract, a comprehensive fiscal analysis. This analysis will become part of the Executive Officer’s Report. Data used for the

analysis shall be from the most recent fiscal year for which data are available, provided that the data are not more than one fiscal year old. When data from the most recent fiscal year are unavailable, the Executive Officer may request supplemental data. The analysis shall review and document each of the following:

- (a) The costs to the proposed city of providing public services and facilities during the three fiscal years following incorporation.
- (b) The revenues of the proposed city during the three fiscal years following incorporation.
- (c) The effects on the costs and revenues of any affected local agency during the three fiscal years following incorporation.
- (d) Any other information and analysis needed to make the findings required by Section 56720.”

7.1.1 Notice of Preparation: The CFA must be completed and distributed not less than five (5) days prior to the date of the Commission’s first public hearing on the proposed incorporation. The Executive Officer will issue a notice of preparation of the CFA in the manner prescribed by statute, and the notice shall specify the locations where the CFA can be reviewed and the time period in which the State Controller’s review can be requested.

7.1.2 State Controller’s Review: As provided under LAFCO Act Section 56801, any agency or interested party may request that the CFA be reviewed by the State Controller. A request must be made within thirty (30) days from the date of the notice that the CFA is complete and available for public review. The request must specify, in writing, whether the request is that the CFA be reviewed in its entirety or whether the request is that a specific element be reviewed. The request is also to state the reasons for the requested review.

The Executive Officer will, after consultation with the State Controller’s office, prepare an estimate of the cost of the review, the estimate to include the charge by the State controller, LAFCO staff costs, and costs for any consultants required to assist the Controller with the review. The individual or agency requesting the review must deposit the estimated cost of the review with the LAFCO Executive Officer. Should the actual costs of the review exceed the estimate, the agency or interested party will be responsible to remit the balance prior to release of the results of the State Controller’s review.

The State Controller is obliged to issue a report to the Executive Officer within forty-five (45) days of receiving the CFA, said report to address the accuracy and reliability of the information, methodologies, and documentation in the CFA.

7.2 Revenue Neutrality

With respect to establishment of revenue neutrality (see Definition 2.8), Shasta LAFCO shall proceed pursuant to Section 56815 of the LAFCO Act, as follows:

- “(a) It is the intent of the Legislature 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.

- “(b) The Commission shall not approve a proposal that includes an incorporation unless it finds that the following two quantities are substantially equal: (1) Revenues currently received by the local agency transferring the affected territory which, but for the operation of this section, would accrue to the local agency receiving the affected territory. (2) Expenditures current made by the local agency transferring the affected territory those services which will be assumed by the local agency receiving the affected territory.
- “(c) Notwithstanding subdivisions (b), the Commission may approve a proposal that includes an incorporation if it finds either of the following: (1) The county and all of the subject agencies agree to the proposed transfer. (2) The negative fiscal effect has been adequately mitigated by tax sharing agreements, lump-sum payments, payments over a fixed period of time, or any other terms and conditions pursuant to Section 546886.
- “(d) Nothing in this section is intended to change the distribution of growth on the revenues within the affected territory unless otherwise provided in the agreement or agreements specified in paragraph (2) of subdivisions (c).
- “(e) Any terms and conditions that mitigate the negative fiscal effect of a proposal that contains an incorporation shall be included in the commission resolution making determinations adopted pursuant to Section 56880 and the terms and conditions specified in the questions pursuant to Section 57134.”

- 7.2.1 Revenue Neutrality Negotiations: Revenue neutrality negotiations are initiated during the preparation of the CFA. The parties to negotiations are the County, the incorporation proponents. The role of LAFCO staff in the revenue neutrality process is to facilitate discussions and to ensure compliance with the statutory provisions pertaining to revenue neutrality.
- 7.2.2 Agreement Deadline: The parties have ninety (90) days to negotiate an agreement, after which the Executive Officer will certify than an agreement has been reached or has not been reached.
- 7.2.3 Ratification: If an agreement is reached, ratification will be resolution of the County Board of Supervisors and by letter of the incorporation proponents. The documents demonstrating agreement shall be transmitted to LAFCO for inclusion in the CFA, as well as the staff report and recommendations to be presented at the LAFCO public hearing. The terms of the agreement shall also be incorporated into the Commission’s resolution approving the proposed incorporation.
- 7.2.4 Failure to Reach Agreement: If the negotiating parties do not reach agreement, the status of negotiations will be referred to the Commission for discussion at the first available meeting as determined by the Executive Officer. If revenue neutrality issues are not resolved, the Commission shall direct the Executive Officer to draft proposed

terms and conditions dictating revenue neutrality terms for use in the CFA and for recommendation to the Commission at its public hearing.

Section 8. Executive Officer's Report and Recommendation

8.1 Statutory Requirement

The Executive Officer is required to prepare a final report on the incorporation application. The report is to include a recommendation to approve or disapprove the incorporation.

8.2 Elements and Components

The Executive Officer's report will address, but not be limited to, the following:

- Incorporation Boundary, including consideration of alternatives to the boundary proposed by proponents, and including a proposed sphere of influence.
- Plan for Services
- Comprehensive Fiscal Analysis
- Terms and Conditions

The Executive Officer's report will also include findings with respect to:

- Consistency with the intent of the LAFCO Act.
- Consistency with spheres of influence of affected agencies.
- Review of the CFA and Controller's Report (if prepared).
- Revenue neutrality.
- Environmental determination.
- Terms and conditions.

The Executive Officer's report may specify and recommend terms and conditions that may include, but are not limited to, the following:

- Continuation of services following incorporation.
- Payments and taxes required by changes in service responsibilities or for revenue neutrality.
- Disposition of money, property and rights of use, such as water or utility capacity rights.
- Disposition of special district responsibilities, district governing boards, and district employees.
- The effect date of incorporation.

Section 9. Commission Hearing and Actions

9.1 General Information

Once the date for the first public hearing on the proposed incorporation has been set, notice of the hearing will be given in the manner prescribed by statute. Incorporation proceedings typically require more than one public hearing. Shasta LAFCO will endeavor to conduct the initial public hearing in the community proposing incorporation in order to allow residents an opportunity to provide input; however, Shasta LAFCO reserves the right to conduct all hearings in its regular meeting location.

At the public hearing, all interested parties may appear and testify; however, Shasta LAFCO reserves its right to place a time limitation on testimony, provided the time limitation is equally applied to all who testify, with the exception of affected agencies who have been asked to give a specific presentation.

Written testimony may also be submitted. In order for the Commission to review written materials prior to the hearing, Shasta LAFCO reserves the right to establish a deadline for submittal of written materials. Written materials may be submitted during the hearing; however, the Commission is not obliged to pause proceedings in order to review the material.

The public hearing process may be continued, but may not be postponed more than seventy (70) days from the date specified in the original public hearing notice. Prior to any continuance, Shasta LAFCO will give the proponents an opportunity to address any potential impacts or hardships on the incorporation effort that may result from a delay. The Commission will consider the potential impacts prior to making a decision on the duration of any continuance.

9.2 Conflicting Proposals

As provided by statute, if two or more proposals pending before Shasta LAFCO conflict or are in any way inconsistent with one another (as determined by the Commission), Shasta LAFCO may determine the relative priority for hearing the proposals. In the absence of a determination by the Commission, priority shall be given to the proposal first filed with Shasta LAFCO.

9.3 Commission Actions

Pursuant to LAFCO Act Section 56375, at the conclusion of the public hearing, Shasta LAFCO may approve, amend and approve, or deny the proposed incorporation. If the Commission approves the incorporation proposal, the Commission's resolution will include a series of findings and determinations specifically addressing incorporation issues including, but not limited to:

- Revenue Neutrality
- Incorporation Boundary, as Proposed or Modified
- Acceptance or Rejection of Findings
- Terms and Conditions
- Environmental Determination
- Property Tax Determination
- Provisional Appropriations Limit

As provided under Section 56884, the Commission must adopt its resolution within thirty-five (35) days of the close of the public hearing. If the proposal is denied, no similar proposal for incorporation involving the same or substantially the same area shall be initiated for at least one year after the date of adoption of the resolution terminating proceedings.

9.4 Request for Reconsideration

Any person or affected agency may file a written request with the Executive Officer requesting reconsideration of any resolution approving incorporation. The request must comply with Section 56895 and any policies or procedures adopted by Shasta LAFCO. Shasta LAFCO may also impose a fee for filing a reconsideration request.

The request must state the specific change request, and include a narrative as to what new or different facts or applicable new law or laws warrant the reconsideration. The request must be filed within thirty (30) days of the adoption of a resolution by LAFCO.

If LAFCO receives a request for reconsideration, it shall not take any further action on the incorporation proposal until the Commission takes action on the request for reconsideration. The Executive Officer will place the request on the agenda of the next available LAFCO meeting. The matter shall be scheduled for a public hearing to receive oral or written testimony on the request. The hearing may be continued from time to time, but the continuance shall not exceed thirty-five (35) days from the date in the public hearing notice. The person or agency that filed the request for reconsideration may withdraw it at any time prior to the conclusion of the LAFCO hearing.

At the conclusion of its consideration, the Commission may approve or disapprove, with or without amendment, wholly, partially, or conditionally, the request. The determination of Shasta LAFCO shall be final and conclusive. No person or agency shall make any further request for the same change or substantially similar change, as determined by LAFCO.

Section 10. Conducting Authority Hearing

10.1 Purpose & Limitation

LAFCO is designated as the “Conducting Authority” for an incorporation proposal. The Conducting Authority is responsible to hold a public hearing that is solely for the purpose of receiving valid written protest to the proposed incorporation. The Conducting Authority does not have the discretion to modify the incorporation proposal or to termination incorporation proceedings without sufficient protest being recorded. (For a further discussion of the purpose of and limitation on Conducting Authority proceedings, see Chapter 4, Section 8 of Shasta LAFCO Policies & Procedures.)

10.2 Notice of Hearing

Within thirty-five (35) days of Shasta LAFCO’s resolution approving an incorporation proposal, a notice of the hearing before the Conducting Authority will be issued. The notice will be published in a newspaper of general circulation in the incorporation area. The proponents and others requesting notice will receive a mailed copy of the notice.

10.3 Written Protest

Registered voters in the proposed incorporation area may submit written protest at any time after the hearing notice has been given and before the conclusion of the public hearing. The protest instrument must provide and name of the registered voter as it appears on the affidavit of registration, and shall show the date that the signature was affixed. All signatures without a date or bearing a date prior to the published notice shall be disregarded.

10.4 Protest Value

At the conclusion of the hearing, the Conducting Authority shall determine, or cause to be determined, within thirty (30) days of the conclusion of the hearing, the value of written protest filed and not withdrawn.

10.5 Conducting Authority Resolution

Following determination of the value of written protest, the Conducting Authority is obliged to adopt a resolution that does one of the following:

- Terminates all further proceedings based upon verification of more than 50% valid written protest of the registered voters residing in the corporation area; or,
- Calls for an election on the question of incorporation based upon verification that less than 50% of the registered voters residing in the incorporation area have submitted valid written protest.

When proceedings are terminated due to majority protest, no substantially similar proposal for incorporation of the same territory may be filed for two years. If an election is ordered, the County Registrar of Voters carries out the next steps in the process.

Section 11. Incorporation Election

11.1 General

Incorporation elections are considered county elections for the purpose of administering the Election Code and Political Reform Act. An incorporation proposal is usually on the next available general election ballot unless a special election has been requested and approved by LAFCO. If a special election is requested, the incorporation proponents may be required to pay for the costs of the special election. In the case of a general election, if the incorporation is successful, the new city will be liable for payment of election costs. In the event the issue fails, the County absorbs the election costs.

11.2 Impartial Analysis

The Executive Officer is statutorily responsible to draft an impartial analysis of the incorporation issue for inclusion in the incorporation ballot. The Commission may review the text of the impartial analysis and approve or modify it. This review must be completed in sufficient time to submit the analysis to the officials conducting the election not later than the last day for submitting rebuttal arguments.

11.3 Certification of Election Results

Following an election, the County Board of Supervisors is to certify the election results. If voters have approved the incorporation, the Board of Supervisors is to adopt a resolution certifying the successful election. The resolution will be forwarded to LAFCO.

Section 12. Completion of the Incorporation

12.1 Certificate of Completion

Upon receipt of the resolution of the Board of Supervisors certifying a successful election on the incorporation, the LAFCO Executive Officer will issue a "Certificate of Completion" which will be recorded in the office of the County Recorder.

12.2 Effective Date

The effective date of the incorporation shall be the date of execution and recordation of the Certificate of Completion unless another effective date has been fixed in the terms and conditions in the Commission's resolution of approval.

Section 13. Periodic Review and Update

13.1 Commission Review

The policies and procedures pertaining to incorporation of a new city, as set forth in the sections above, shall be subject to periodic review by the Commission. Based upon the review, the Commission may direct changes and additions to the policy and procedural statements.

13.2 Statutory Update

The policies and procedures presented in this chapter shall also be subject to immediate change in the event of statutory changes which would have the effect of rendering Shasta LAFCO's policies and procedures pertaining to incorporation inconsistent or out of compliance with the LAFCO Act.

Approved and Adopted Nov. 7, 2002
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