

SAN MATEO



LOCAL AGENCY FORMATION COMMISSION

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To: LAFCo Commissioners

From: Rob Bartoli, Executive Officer
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Subject: LAFCo Dissolution Process – Information Only

Background

LAFCos have countywide jurisdiction over changes in organization and boundaries of cities and special districts including annexations, detachments, incorporations, formations and dissolutions. At the March 2023 LAFCo meeting, the Commission directed staff to provide an overview of the LAFCo dissolution process.

As defined by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH), a "Dissolution" means the disincorporation, extinguishment, or termination of the existence of a special district and the cessation of all its corporate powers, except as the Commission may otherwise provide pursuant to specific terms and conditions or for the purpose of winding up the affairs of the district.

LAFCo Dissolution Process

CKH establishes procedures for local government changes of organization, including dissolutions. A dissolution of an active special district may be initiated by either the subject district by resolution, an outside agency (such as a county, city, or school district) by resolution, registered voters or property owners by petition, or by LAFCo by resolution. LAFCo can initiate a dissolution by resolution of a district if the action is consistent with a recommendation or determination documented in municipal service review or sphere of influence update (Government Code Sections 56378, 56425, 56430).

LAFCo must hold a noticed public hearing on the dissolution proposal (56662(b)). The proposal must include a plan service (56653) that includes:

- A list and description of the services currently provided by the subject agency
- The level and range of those services

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ALTERNATES: CHRIS MICKELSEN, SPECIAL DISTRICT ▪ ANN SCHNEIDER, CITY ▪ JAMES O'NEILL, PUBLIC ▪ NOELIA CORZO, COUNTY

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- An indication of when those services can feasibly be extended to the affected area
- An indication of any improvements or upgrading of structures or other conditions that the successor agency would require
- Information on how those services will be financed

When reviewing the proposal, the Commission shall consider the following factors including, but not limited to:

- Population and density, land area and land use, assessed valuation, proximity to other populated areas, growth projections
- The need for organized community services, the current and projected cost and adequacy of services and controls, and probably effect of the proposed dissolution
- Impact of dissolution on adjacent areas
- The ability of successor agency to provide services to the affected area (56668)

For a LAFCo initiated dissolution, the Commission must make both of the following determinations:

- 1) Public service costs of a proposal that the Commission is authorizing are likely to be less than or substantially similar to the costs of alternative means of providing the service.
- 2) A change of organization or reorganization that is authorized by the commission promotes public access and accountability for community services needs and financial resources. (56881(b))

Within 35 days of approving by resolution a proposal to dissolve a district, LAFCo must schedule a protest hearing date. The protest hearing must occur at least 21 days and no more than 60 days from the date of hearing notice (57002(a)).

Valid, written protests must be received by LAFCo prior to the conclusion of the protest hearing (57051). The Commission shall adopt the proposal to dissolve the district without an election unless there is sufficient protest to order an election.

The threshold to submit the dissolution to a vote for a LAFCo initiated action (57094) is either a minimum of 10% of the registered voters within the district or a minimum of 10% of the number of landowners within the district who also own at least 10% of the assessed value of land within the district.

The threshold to submit the dissolution to a vote for an action not initiated by LAFCo (57092) is either a minimum of 25% of the registered voters within the district or a minimum of 25% of the number of landowners within the district who also own at least 25% of the assessed value of land within the district.

If the protest threshold is met, the Commission shall order an election. If the protest threshold is not met, the Commission shall issue a certificate of completion (57200).

57077.1(c) provides another process. The Section states that if the change of organization consists solely of the dissolution of a district that is consistent with a prior action of the commission pursuant to Section 56378 (studies), 56425 (MSR), or 56430 (SOI), and the proposal was initiated by an affected agency, the Commission, or petition, the dissolution can be approved after holding one public hearing. If there is majority protest then the proceeding is terminated. If there is no majority, then it is approved. There is no election related to this process.

If an election is held and the majority of voters vote against dissolution of the district, the dissolution proposal is terminated, and the Commission must issue a certificate of termination proceedings (57179) within 30 days. Conversely, if the majority of voters vote in favor of the dissolution of the district, dissolution proposal is successful, and the Commission must issue a certificate of completion confirming the order of the dissolution and (57176) within 30 days.

LAFCo Initiated Dissolution Using SB 938

In July 2022, Governor Newsom signed SB 938, developed by the California Association Local Agency Formation Commission (CALAFCO) and the California Special District Association (CSDA), and supported by San Mateo LAFCo, into law (56375.1). The legislation creates a higher voter protest threshold for LAFCo-initiated dissolutions that meet specific criteria. In order to be eligible for the higher threshold, the Commission must adopt a study that includes a finding (based on a preponderance of the evidence) that at least one of the following conditions is met:

- One or more documented chronic service provision deficiencies that substantially deviate from industry standards or other government regulations, and its board or management is not actively engaged in efforts to remediate the documented service deficiencies.
- Expenditure of public funds in an unlawful or reckless manner inconsistent with the principal act or statute governing the district and no action has been made to prevent similar future spending.
- Will neglect and failure to adhere to the California Public Records Act and other public disclosure laws.
- Failure to meet the minimum number of times required in its principal act in the prior calendar year and no action has been made to ensure future meetings are conducted on a timely basis.
- Consistent failure to perform timely audits in the prior three years, or failure to meet the minimum financial requirements over the prior five years as an alternative to an audit.
- Recent audits show chronic issues with the district's fiscal controls and no action has been taken to remediate the issues.

In addition, the Commission, at a noticed public hearing, must adopt a resolution of intent to initiate dissolution based on one or more of the above. The resolution must provide a remediation period of at least 12 months during which time the district may take steps to remedy the specified deficiencies and provide a mid-point report on the remediation efforts at a Commission meeting.

At the end of the remediation period and based on the district's actions, the Commission may adopt a resolution to dissolve the district in accordance with the considerations noted above (or rescind the notice of intent to dissolve the district at a noticed public hearing).

The noticing requirement for the protest hearing is the same as described above, but the date of the hearing for LAFCo initiated dissolutions completed in accordance with 56375.1 shall be at least 60 days and no more than 90 days from the date the notice is given (57002(c)). The new protest threshold is a minimum of 25% of the registered voters within the district or a minimum of 25% of the number of landowners within the district who also own at least 25% of the assessed value of land within the district. The 25% threshold is the same threshold that would be required if the dissolution were initiated by another agency or by petition.

If the protest threshold is met, the Commission shall order an election. If the protest threshold is not met, the Commission shall issue a certificate of completion (57200).

If an election is held and the majority of voters vote against dissolution of the district, the dissolution proposal is terminated, and the Commission must issue a certificate of termination proceedings (57179) within 30 days. Conversely, if the majority of voters vote in favor of the dissolution of the district, dissolution proposal is successful, and the Commission must issue a certificate of completion confirming the order of the dissolution and (57176) within 30 days.

Considerations of a LAFCo Initiated Dissolution

The Commission should consider several factors when contemplating the initiation of a dissolution.

Successor Agency & Plan for Service: If LAFCo initiates a dissolution, staff will be tasked with outreaching to various agencies for future service providers.. If a district was to dissolve, and the service area of the district was located solely of unincorporated land, the county is the successor agency (57451).

In addition, LAFCo will need to work with the successor agency to develop a plan for services that addresses all the factors noted above. This could include the formation of a county service area or other type of district.

If the district or outside agency initiates dissolution, the district and/or outside agency will be responsible for both identifying the successor agency and creating a plan for service. In this scenario, LAFCo staff would play a support role in identifying the successor agency and developing a plan for service in line with CKH requirements.

The plan for service must address the district's liabilities, if any, and ensure that there is not a negative fiscal impact to the general public and that funds will be sufficient to provide service (57450-57463).

Protest threshold: If LAFCo initiates a dissolution, the protest threshold to submit the topic of dissolution to a vote is 10%.

If LAFCo initiates a dissolution using SB 938 or an outside agency initiates dissolution, the protest threshold increases to 25%.

If an affected agency initiates dissolution, the protest threshold increases to 25%.

If the subject district initiates dissolution and the action is consistent with prior action of the Commission, LAFCo may immediately approve and order the dissolution without an election or protest proceedings (57077.1(c)(1)) .

Election costs: If the appropriate threshold to force an election is met, the agency that initiates a dissolution is responsible for the cost of holding the election. The initiating agency will want to understand if there is sufficient community and stakeholder support for the dissolution to preclude an election.

Dissolution timelines estimates: A regular LAFCo-initiated dissolution proposal could take up to 12 months to complete. This timeline includes 6 months to develop a service plan and an additional 4-5 months to go through the LAFCo process. The dissolution process could be extended past 12 months if the protest hearing results in an election.

A LAFCo-initiated dissolution proposal using SB 938 could take up to 20 months to complete. This timeline includes 2 to 4 months needed for staff to produce an MSR and for the Commission to adopt the determinations and recommendations in the MSR in order to formally initiate dissolution using SB 938. It also includes the minimum 12-month remediation period, during which time LAFCo staff could be working with affected agencies to identify a successor agency and develop a plan for service, and 4 months to go through the LAFCo process. The dissolution process could be extended past 20 months if the protest hearing results in an election.

Alternatively, LAFCo could continue working with the District and affected agencies to address the issues the District is facing and arrive at a solution that is supported by other agencies and potentially the District. The outcome may nevertheless result in dissolution and the transfer of District responsibilities to another agency. However, the benefit of this approach is that there would have been a multi-agency effort to work with the District, and the outcome may be viewed more favorably by residents.

Examples

In the last 20 years, there have only been two district dissolutions processed by San Mateo LAFCo. Both of these, one to dissolve the Skyline County Water District in 2009 and the other to dissolve the Los Trancos County Water District in 2015, were initiated by each of the district's respective boards. In a review of actions from other LAFCos across the state, with the exception for the dissolutions of district pursuant to SB 488, which established a process for LAFCos to dissolve inactive special districts, LAFCo-initiated dissolutions are not common.

Contra Costa LAFCo is currently reviewing a potential LAFCo initiated dissolution of a County

Service Area. The County Service Area provides park and recreational functions but does not have a secure source of revenue to provide these services. However, Contra Costa LAFCo voted for a 12-month pause to reevaluate this option.

Recommended Action

Receive the report. If desired, the Commission can also direct staff to produce follow-up reports or additional studies related to the dissolution process to be reviewed at future LAFCo meetings.