

SACRAMENTO LOCAL AGENCY FORMATION COMMISSION
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November 5, 2003

TO: Sacramento Local Agency Formation Commission

FROM: Peter Brundage, Executive Officer

RE: Incorporation Fee Policy Options

RECOMMENDATION

1. Direct staff to finalize the incorporation fee policy for one of the options identified in this report, or as further directed by the Commission.
2. If surplus funds are available, establish a General Reserve account in the FY 2004-05 Budget for non-budgeted projects.

DISCUSSION

On October 16, the Incorporation Fee Policy Subcommittee [Commissioners Illa Collin, Roberta MacGlashan, Charles Rose] met to discuss various options for fee policies on incorporation proposals. The Subcommittee discussed several fee options and their related impacts to proponents, to the County, to cities and to special districts. Although several options were discussed, the Subcommittee did not agree on any specific cost recovery methodology.

Previously, staff recommended full cost recovery [all costs of processing an incorporation proposal] from incorporation proponents.¹ The basis of this recommendation is founded on LAFCo's budget constraints and the potential effect of incorporation expenses on those agencies which contribute to LAFCo's budget.

I propose four fee recovery funding options for Commission consideration regarding incorporation proposals:

1. ***Existing Fee Policy (Partial Cost Recovery)***
2. ***Full Cost Recovery***
3. ***Partial Cost Recovery from Proponent/ Full Cost Recovery from New City***
4. ***No Cost Recovery***

¹ Proposed June 4, 2003; August 3, 2003.

1. EXISTING FEE POLICY (Partial Cost Recovery)

Currently, incorporation proponents are responsible for (1) the cost of petition verification and (2) the environmental document. LAFCo absorbs all other costs related to the incorporation including fiscal analysis, legal fees, staff time, and special studies (if required). These costs will be recovered in the annual assessment (or could be recovered through a special mid-year assessment) invoiced to those agencies which contribute to LAFCo's budget: the County, cities, and special districts. The current Commission fee policy was used for the incorporation of Elk Grove and the incorporation of Rancho Cordova. During these incorporation proposals, the County of Sacramento was the sole contributor to LAFCO's budget.

2. FULL COST RECOVERY

The incorporation proponents would be obligated to pay all of the costs related to processing an incorporation proposal. In addition to the preparation of their maps and legal descriptions (required for application), proponents would be required to pay the total of the following costs:

- Petition Signature Check
- Environmental Document
- Fiscal Analysis
- LAFCo Staff Time
- Legal Costs
- Other Special Studies and/or LAFCo Consultant Costs
- Filing fees to State Board of Equalization [New city responsibility.]²

The payment plan for **Full Cost Recovery** should include a minimum deposit of \$25,000; payment to be made as expenses are incurred as invoiced by LAFCo staff. All costs that can be invoiced would be reimbursed prior to the public hearing on the incorporation proposal; after hearing, additional costs to be invoiced and reimbursed.

Analysis of Full Cost Recovery

Most LAFCo's have a full cost recovery policy for proponent-initiated proposals. However, proponents typically have a very difficult time raising funds to pay for incorporation costs. A significant amount of time and effort is required to obtain the required number of signatures for the petition and the funding to pay for signature verification on the petition. On the other hand, incorporations are generally difficult and very costly to process and without some form of assistance are likely to be very difficult for a grass roots group to fully fund.

² Filing fees are paid to the State Board of Equalization after a successful election. The State Board of Equalization will defer the cost until after the effective date of the incorporation. Thus, these fees are not a consideration for LAFCo outlay of funding, however, LAFCo has paid these fees in the past and been reimbursed by the new city.

**# 3. PARTIAL COST RECOVERY FROM PROPONENT/
FULL COST RECOVERY FROM NEW CITY**

This option is a modification of Sacramento LAFCo's current fee policy. It demands partial payment up-front from the proponents and complete payment of costs from the new city upon a successful election. In addition to the preparation of their maps and legal description, proponents would be required to pay the following costs *prior to a public hearing on the proposal*:

Petition Signature Check
Environmental Document

LAFCo funds the remainder of project costs (fiscal analysis; funds for special studies and/or consultant costs, legal fees and staff time) until these costs can be billed to a new city.

New option, Full Cost Deferred

This option can be viewed as a LAFCo loan to the proposed new city. *If successful, the new city would be obligated to pay LAFCo for the fiscal analysis, legal costs, LAFCo staff time, and any other direct costs related to the incorporation incurred by LAFCo staff in the processing of the project, to be invoiced upon the effective date of the new city.* However, in the event the incorporation is not successful, LAFCo would absorb all costs incurred *except* petition signature check and environmental documentation.

The payment plan for **Partial Cost Recovery from Proponent/ Full Cost Recovery from New City** should require a \$25,000 refundable deposit upon submission of the application. The deposit would be used to begin the environmental work. Petition signature check remains the responsibility of the proponents and is invoiced by the Registrar of Voters directly to the proponents. If the petition is sufficient, LAFCo would select an environmental consultant and negotiate payment terms. The proponents would be required to reimburse LAFCo in accordance with the negotiated payment schedule. If required payments are not made by the proponent, LAFCo will direct the environmental consultant to cease work until payments are brought current; LAFCo will cease work on the fiscal analysis, and any other required studies or staff time, until payments for the environmental documentation are brought current. The Commission retains the right to waive this requirement upon request.

LAFCo funds the fiscal analysis, legal costs, staff time and special studies, and upon a successful election, bills the new city for all costs upon the effective date of the new city. ***NOTE: A special assessment to LAFCo's contributors may be required depending upon the time of year an application is filed.***

**Analysis of Partial Cost Recovery from Proponent/
Full Cost Recovery from New City**

This option represents no change from LAFCo's existing policy in the proponent's up-front payment for the petition verification and the environmental document. Proponents are still required to pay for petition verification and environmental documentation prior to a public hearing on the proposal. LAFCo funds the remainder of project costs.

However, *with the new option, the new city is obligated to reimburse any funds expended by LAFCo.* If the incorporation is successful, at a future date, the new city would be obligated to pay LAFCo back for the fiscal analysis, legal costs, LAFCo staff time, and any other direct costs. Under this option, it may be necessary to impose a special assessment, or increase annual assessments to LAFCo's contributors, in order to have sufficient cash to pay for the required special studies. If the incorporation is not successful, LAFCo absorbs the incorporation costs expended on the project. These costs would be shared by the contributors to LAFCo's budget.

4. NO COST RECOVERY

Proponent submits application with legal description, map and pays for signature check. LAFCo funds the entire costs for environmental document, fiscal analysis, special studies, legal fees, and staff time. **No Cost Recovery** does not appear to be a viable option for two reasons: Proponents would have no financial vested interest in the process of incorporation; LAFCo staff would not have sufficient funding to conduct its business without imposing a potentially very large special assessment to its contributing agencies. No Cost Recovery means that fee recovery for processing incorporation proposals is placed directly upon LAFCo's contributing agencies: the County, cities and special districts.

STAFF RECOMMENDATION

I recommend the Commission adopt the **Partial Cost Recovery From Proponent/ Full Cost Recovery from New City** option for incorporation proposals, including the obligation that the new city is required to reimburse LAFCo for all funds it expends on the processing of the project, including LAFCo staff time.

Establishment of a General Reserve

If your Commission approves the **Partial Cost Recovery from Proponent/ Full Cost Recovery from New City** option, it would be prudent to begin to set aside funds in a general reserve account. This reserve could be used for not only incorporation proposals but other unanticipated projects that may be submitted. The general reserve will provide funding for

non-budgeted projects and reduce the need for increased annual assessments to LAFCo's contributing agencies. The reserve would allow annual assessments to remain relatively constant and allow funds to be set aside for non-budgeted projects that require significant analysis and the use of specialized consultants.

PB:Maf
Attachments

(Incorporation Fee Policy Options)

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