A Citizen's Guide to the Incorporation Process

Purpose of Incorporation

Incorporation of a city is defined as the formation of a city with corporate powers. The process shifts local government responsibility for an unincorporated area under the jurisdiction of a County Board of Supervisors to a newly established city council. This process is accomplished under the Cortese-Know-Hertzberg Local Government Reorganization Act of 2000, the law governing Local Agency Formation Commissions (LAFCOs) and local government organizational changes. Reasons for pursuing incorporation vary from place to place but is usually sought for the following objectives:

- To improve local public services;
- To capture increased revenues to support local services;
- To give a community local control over land use planning;
- To create politically accountable governing body (a city council) in a limited geographic area; and
- To pursue local policy goals.

Incorporation Process

The procedure for the incorporation of an unincorporated community in the State of California is a lengthy and very complex process requiring at least a year of formal review. The purpose of the process is to ensure that any proposed incorporation is economically feasible and in the best interests of the community. An incorporation proposal must also be environmentally and logically sound from a public service standpoint. The procedures for incorporation should be followed to avoid unnecessary delays and to reduce the risk of potential litigation.

Processing an incorporation proposal can be divided into five separate stages: (1) developing the incorporation proposal; (2) initiating the incorporation proposal; (3) LAFCO staff review of the incorporation proposal; (4) LAFCO proceedings; and (5) election and the first year.

1. Developing the Incorporation Proposal

Incorporations don't just "happen"—they are created by people who devote long hours, money and hard work to the project. The impetus for an incorporation typically starts with a group of residents forming an ad hoc "committee" to explore the possibility of incorporating their community. While each community is unique and has its own reasons for exploring incorporation, a committee of interested local residents is, almost

without exception, the driving force of an incorporation. An incorporation committee defines and articulates incorporation goals on behalf of the community, raises funds, collects signatures, assembles application materials, works with LAFCO staff and consultants, testifies at hearings, and negotiates changes in the proposal.

For any incorporation to succeed, it must have widespread community support since all successful incorporations must be approved by the voters. Therefore, ensuring that the residents within the area proposed for incorporation receive complete information is a crucial task during development of the incorporation proposal, and throughout the entire process. Incorporation is often controversial. Because people residing in the incorporation area as well as residents in adjoining communities may all be directly affected by an incorporation, it is recommended that the incorporation committee meet with all affected groups and prepare a preliminary incorporation feasibility study.

Fund raising is another crucial task in developing an incorporation proposal. A by-product of the complexity of incorporation is its expense. Incorporation proponents are responsible for the costs. Under specified conditions, incorporation proponents may request LAFCO to seek funding from the State for portions of the incorporation process (Government Code Section §56383 (g)). However, the funding is not certain and may not cover all the costs of incorporation. In addition, the Commission will take no action on the incorporation proposal while the request for funding is pending before the State.

2. Initiating the Incorporation Proposal

There are certain basic requirements that must be met prior to initiation. First, existing State Law requires that areas proposed for incorporation include at least 500 registered voters, that the area be entirely within the boundaries of one county, and that the incorporating territory be contiguous and without island of unincorporated territory surrounded by the proposed city.

After meeting the basic legal requirements for incorporation, the proposal can be initiated in one of two ways. One way is through a public agency. A resolution of application can be adopted by the legislative body of an affected agency, which is defined as any city, district or county that contains territory within the proposed incorporation boundaries.

Incorporations can also be initiated by a petition signed by at least 25% of the registered voters **or** 25% of the number of landowners who own not less than 25% of the assessed value of the land in the incorporation area. The Registrar of Voters or County Assessor must verify the petitions and may charge a fee for verification of each signature. The costs of verification will be charged in the same manner and by the same agencies that bear the costs for verifying signatures for an initiation petition.

If the Registrar of Voters or County Assessor finds irregularities with petition signatures, the invalid signatures will be disqualified. Thus, to allow for potential disqualifications,

most incorporation proponents collect more signatures than required. The incorporation proponents are required to file a *Notice of Intention to Circulate a Petition* with the LAFCO Executive Officer prior to collecting signatures. Since State Law is very specific regarding the form and time limits for collecting signatures, it is strongly recommended that the incorporation proponents meet with Stanislaus LAFCO staff prior to filing the Notice and to collecting signatures.

A completed LAFCO application for incorporation must also accompany the petition or resolution initiating the incorporation proposal. The application must include a map and legal description of the boundaries of the proposed incorporation area, a feasibility study, including a fiscal analysis of the proposed incorporation, justification for the proposal, a plan for the transfer and provision of public services to a new city, special studies and other information as requested by the Stanislaus LAFCO Executive Officer.

3. LAFCO Staff Review of the Incorporation Proposal

In its evaluation of the merits of an incorporation proposal, the LAFCO staff complete multiple tasks. The staff reviews all the application materials submitted, conducts its own analyses, performs the environmental review, determines the property tax transfer and revenue neutrality amounts, solicits comments and produces a final report. As the Executive Officer deems appropriate, the submittal of additional information or studies, preparation of a new fiscal feasibility study or changes in the proposal may be required. This process can take in excess of twelve (12) months.

Throughout the entire process, LAFCO staff works cooperatively with all interested parties to ensure that a thorough, complete and accurate proposal is developed for LAFCO consideration. When the proposed incorporation is ready for a public hearing, the Stanislaus Executive Officer will issue a Certificate of Filing, schedule the item for a public hearing and prepare a report with a recommendation, which will be sent to the Commissioners prior to the public hearing.

Noticing requirements for LAFCO proposals require publishing in a paper of general circulation. LAFCO is generally not required to mail a notice to every resident within a proposed incorporation boundary. Residents with an interest in an incorporation proposal should send a request to Stanislaus LAFCO asking that they be added to the incorporation mailing list.

The following is a list of guidelines and policies that apply to incorporation in California, as well as, specifically within Stanislaus County.

- Stanislaus LAFCO may approve incorporation if it finds that the proposal complies with the policies and standards applicable in State Law and local procedures.

- Stanislaus LAFCO recognizes that special efforts should be made to recognize the integrity of unincorporated communities and, when appropriate, preserve their cohesive identify. This includes standards to determine when it is appropriate to exclude territory from a proposed incorporation boundary.

- All subject agencies whose service responsibility or territory would be changed as a result of the incorporation proposal shall participate in revenue neutrality negotiations to mitigate negative fiscal impacts of incorporation.

4. LAFCO Commission Proceedings

LAFCO (the Commission) is the agency that is empowered by the State Legislature to deliberate on an incorporation proposal. Stanislaus County LAFCO is comprised of five (5) regular members and three (3) alternate members:

- 2 Representatives of the Board of Supervisors and 1 Alternate Supervisor appointed by Board of Supervisors;

- 2 Representatives of cities and 1 Alternate City Representative appointed by City Selection Committee; and

- 1 Public Member-at-Large and 1 Alternate Public Member appointed by the Commission.

A public hearing will usually be scheduled within 30 days after the Stanislaus LAFCO Executive Officer issues a Certificate of Filing. At the public hearing, the Commission hears the report of its staff and accepts the testimony of interested parties both supporting and opposing the incorporation. The Commission may continue the hearing to a future date or close the public hearing and act on the proposal.

The Commission has the authority to approve, deny or modify and approve the incorporation proposal. It also has the ability to add terms and conditions. If the Commission approves the proposed incorporation, it will, at the same hearing, adopt a resolution of approval, determine the final boundaries, establish the governmental structure of the new city, determine the base property tax and the provisional appropriations limit, and establish mitigation measures, if needed, for the impacts of revenue neutrality. It also establishes an effective date for the incorporation and may adopt a sphere of influence for the new city. If the Commission denies the proposed incorporation, no similar application can be filed for at least one year unless the Commission waives that prohibition.

5. Election and First Year

The incorporation proposal is placed on the ballot for voter approval at the next available regular election. If the incorporation is successful, the new city will be liable for payment of election costs. The incorporation election is considered a special election and must be called on a regular election date. In the event the incorporation is rejected by the voters, the County absorbs the election costs. If incorporation proponents request a regular election that is earlier than the next general election, then LAFCO will require the proponents to reimburse the County for the costs of the special election.

A simple majority of those voting is required to approve the incorporation. Included on the ballot, along with approval of the incorporation, are the names of those people running for the city council and an appropriations limit as required by law. The ballot may also call for the selection of the name of the new city and can include the question of whether the number of city council members shall be 5 or 7, and whether subsequent city council elections shall be by district or at-large. By State Law, the first election is conducted at-large. Following confirmation of the proposed incorporation by the voters, the LAFCO Executive Officer, as a final action, files a certificate of Completion.

On the effective date following approval by the voters, the five (5) people receiving the highest number of votes are sworn in as the new city council. The three persons receiving the lowest number of votes serve until the next general election and the two (2) persons receiving the highest number of votes serve until the second general election. The new city council begins to organize the new city's administrative structure at their first meeting by adopting the existing ordinances of Stanislaus County. These ordinances remain in place for at least 120 days following incorporation, or until the new city council adopts ordinances superseding the County ordinances, whichever occurs first.

Generally a new city provides no direct services during the transition period, which is the time between the effective date and July 1 of the first fiscal year following the effective date. The County continues to provide municipal services during the transition year to provide time for the new city to assume corporate responsibilities. A new city, at its own cost, may opt to assume responsibility for services at any time during the transition year. At the end of the transition year, the new city begins to provide the services that it is authorized to provide. At that time, the responsibility for service transfers from the County to the new city.

City Incorporation

Definition

Incorporation means the formation of a city with corporate powers. Any area proposed for incorporation as a new city shall have at least 500 registered voters residing within the affected area at the time proceedings are initiated with Stanislaus LAFCO (56043).

Initiation of Proceedings

Incorporation proceedings may be initiated either by a resolution of an affected local agency, a school district, or by petition. A petition must be signed by not less than 25% of the registered voters residing in the area to be incorporated, or by not less than 25% of the land owners who also own not less than 25% of the assessed value of land within the territory to be incorporated (56764).

Pre-Application

Prior to initiating an incorporation proposal, the applicant (usually a citizens' incorporation committee or an affected local agency) shall be responsible for preparing a preliminary study to determine the feasibility of incorporation based on proposed and alternate boundary configurations and government organization. It is important to conduct a preliminary feasibility study at an early stage (i.e. prior to initiation by a resolution or petition) to avoid the time and expense associated with pursuing an incorporation proposal that is financially infeasible. LAFCO staff may coordinate the collection of this data on behalf of the incorporation committee or the incorporation committee's consultant, depending on workload constraints and staffing availability. Prior to the collection of this data, a deposit will be required to cover the LAFCO staff time and materials expended in collecting the data. Any portion of the deposit remaining after the data has been collected will be credited toward the incorporation processing fee. If an incorporation proposal is not submitted, any remaining deposit will be returned to the incorporation committee.

Application

1. An application for incorporation must be accompanied by a feasibility study. This study is to be provided in addition to all other information listed in the general procedures section of this guide. An incorporation feasibility study should include the following information:

    A. A brief discussion of the relevant history and characteristics of the study area;

B. A description of the local agencies that presently serve the community, with a discussion of the range and level of services currently provided;

C. A rationale for the boundaries proposed for incorporation, and a description of the proposed sphere of influence (if applicable) and possible boundary alternatives;

D. At a minimum, a forecast of revenues including estimate of property tax distribution and expenditures for the new city during the eight fiscal years following incorporation;

E. The effects on the costs and revenues of any affected local agency during the eight fiscal years following incorporation;

F. A discussion of the negative fiscal impacts of the incorporation on affected local agencies and measures proposed to mitigate the negative impacts;

G. A discussion of the range and level of services potentially available to the community after incorporation; and

H. A discussion of the effects of the incorporation upon adjacent communities, special districts, and the county.

2. Other elements may be necessary (for example, a discussion of commercial/industrial land use potential), based on the circumstances of the community in question.

3. Five copies of the draft version of the feasibility study should be submitted to the LAFCO office as soon as they are available. Upon formal initiation of the proposal, additional copies of the final version of the report will be required.

4. When the incorporation proposal has been initiated, the feasibility study will be released for public review in conjunction with Stanislaus LAFCO's preliminary staff report. Public comments on the feasibility study will be considered in the preparation of the Executive Officer's Comprehensive Fiscal Analysis as well as the Executive Officer's Report and Recommendation to the Commission.

State General Fund Loan

Following a determination by the Registrar of Voters or the County Assessor that a sufficient number of petitions have been submitted, the Commission may, upon the receipt of a certification by the proponents that they are unable to raise sufficient funds to reimburse fees for the proceedings, take no action on the proposal and request a loan from the State General Fund of an amount sufficient to cover those expenses. The loan shall be contingent upon the availability of an appropriation for those purposes and in accordance with any provisions of the appropriation.

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.

Review of Comprehensive Fiscal Analysis

Following submission of an incorporation proposal, the Executive Officer will prepare, or cause to be prepared by contract, a comprehensive fiscal analysis, and will release the analysis for public review. During a specified review period, any interested person may request the State Controller's Office to review the comprehensive fiscal analysis prior to issuance of the Executive Officer's report and recommendation (56801). The party requesting the review will be responsible for all costs associated with the review.

1. The Executive Officer will notify all interested parties that the comprehensive fiscal analysis is available for public review by publishing notice in a newspaper of general circulation serving the proposed incorporation area and by mailing notice to all affected agencies, the chief proponents, and all persons who have filed a written request for notification. The notice will specify the locations where the fiscal analysis can be reviewed and the time period in which the Controller's review can be requested. The time period must be at least 30 days, and will begin 21 days after the notice is published.

2. A request for Controller's review shall specify in writing the elements of the fiscal analysis that the Controller is requested to review, and the reasons the Controller is requested to review them. The request must include the LAFCO processing fee and a deposit, which will be credited toward the total cost of the Controller's review.

3. After a request for the Controller's review has been submitted to Stanislaus LAFCO, the Executive Officer will contract with the Controller for review of the comprehensive fiscal analysis. The contract will specify the elements to be reviewed and the estimated cost of the review. Prior to executing the contract, the person requesting the review will deposit with the Executive Officer the remainder of the Controller's total estimated cost of conducting the review. If the Executive Officer is notified that the Controller expects to exceed the estimated cost, the person requesting the review will be notified and will be responsible for depositing the additional amount with the Executive Officer prior to the Controller proceeding with completion of the review.

Revenue Neutrality

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 any other subject agencies. Further, the incorporation should not occur primarily for

financial reasons. The Stanislaus LAFCO may approve a proposal that includes an incorporation if it finds either of the following (56815).

1. The county and all of the subject agencies agree to the proposed transfer; or

2. The negative fiscal effect has been adequately mitigated by tax sharing agreements, lump-sum payments, and payments over a fixed period of time, or any other terms and conditions pursuant to Section 56886.

In preparing an incorporation feasibility study, negative fiscal impacts to affected agencies must be identified and mitigation measures proposed. For purposes of determining negative impacts and mitigation measures, the following procedures will be used by Stanislaus 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, etc., will be considered in determining revenue neutrality.

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).

Commission Proceedings

Upon receiving a complete application, the following actions will be taken:

1. If the proponents have certified that they are unable to raise sufficient funds to reimburse fees for the proceedings, LAFCO shall take no action on the proposal and request a loan from the State General Fund of an amount sufficient to cover those expenses (56383).

2. Stanislaus LAFCO staff conducts an analysis of the proposal.

3. Any interested party may request the State Controller's Office to review LAFCO's fiscal analysis prior to issuance of the Executive Officer's Report and recommendation (56801). The party requesting the review will be required to pay for all costs associated with the review.

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

5. The Commission then adopts a resolution approving, modifying, or disapproving the proposal (56880).

6. If the incorporation is approved, the Commission determines the final boundaries, government structure, the base property tax, and the provisional appropriations limit for the proposed city (56810 & 56812), and any terms and conditions of approval.

7. At the time the Stanislaus LAFCO approves an incorporation, or a reorganization that includes an incorporation, it may also determine the sphere of influence for the proposed new city. The Commission shall, in any event, determine the sphere of influence for any newly incorporated city within one year of the effective date of incorporation (56426.5). In determining the sphere of influence, the Commission will conduct a service review of municipal services (56430).

If the Stanislaus LAFCO wholly disapproves a proposal, no new proposal involving the same or substantially the same territory shall be initiated for one year after the date of the Commission's resolution unless this provision is waived by the Commission (56884).

Conducting Authority Protest Proceedings

If a change of organization or reorganization includes an incorporation or disincorporation, the Commission shall order the change of organization or reorganization subject to confirmation by the voters. No (Conducting Authority) protest proceedings shall be held (57077). LAFCO will inform and direct the Board of Supervisors and Elections Official to call an election. The Executive Officer will prepare

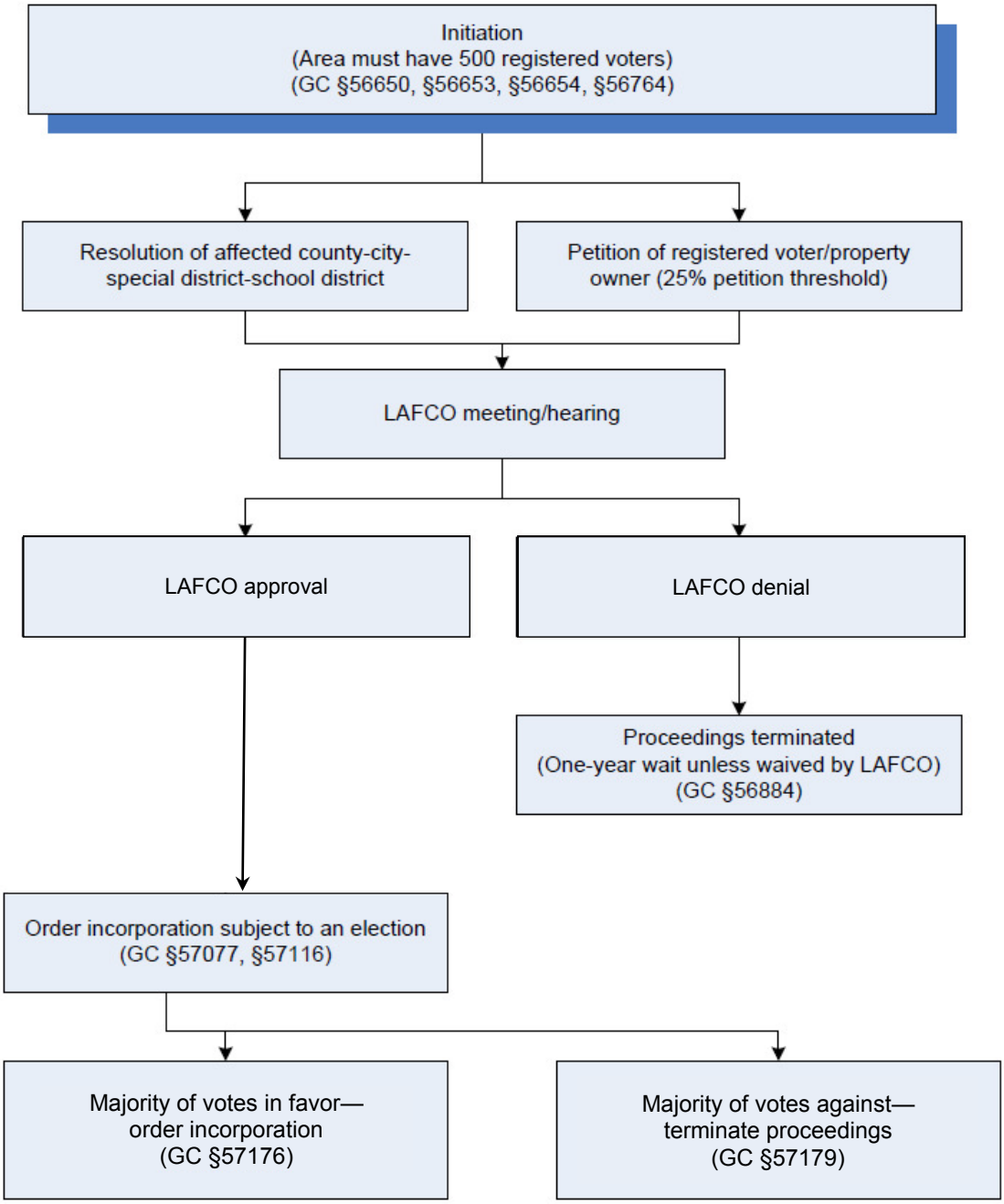
and the Commission will review an impartial analysis of the ballot proposition [56898, 57000(d)].

Election

An election is held, usually at the next general election. If the majority of votes are cast for incorporation, the Commission shall execute a Certificate of Completion. An incorporation election also provides for the election of city council members and other officers, and whether the city council shall be elected by district or at large in future elections (57116). The Commission may also request the voters to express a preference for the name of the proposed city. These and other matters will be included in the Commission's resolution making determinations. In addition to other requirements, a Certificate of Completion for an Incorporation must include the name of the new City; declare the person receiving the higher number of votes to be elected; and whether the city manager form of government was favored (57178).

If a majority of votes are not cast for incorporation, then no substantially similar proposal may be filed with the Commission for two years after the date of the Commission's Certificate of Termination (56020.7). This requirement may be waived, however, if the Commission finds that the requirement would be detrimental to the public interest (57090).

City Incorporation



This chart summarizes provisions of the California Government Code and is subject to change. Please refer to the Government Code sections referenced for further information. (Updated on August 2013)