

APPENDIX A

INCORPORATION PRIMER

The purpose of this document is to provide basic information and practical advice on the entire incorporation process—starting with a group of residents discussing their community’s future to the first months of a newly incorporated city’s life. It is hoped this will help both citizens and Local Agency Formation Commission (LAFCO) staff unfamiliar with incorporations to avoid potential risks or pitfalls.

I. INTRODUCTION

This primer is **NOT** intended to be an all-inclusive and definitive guide to the requirements for incorporations. Interested parties should obtain a copy of The Governor’s Office of Planning and Research (OPR) Incorporation Guidelines which explain the minimum legal requirements of the

LAFCO’S ROLE IN AN INCORPORATION

Incorporation proposals are often motivated by dissatisfaction with the status quo.

One of LAFCO’s roles is to be an intermediary and facilitator that is required, by law, to identify issues and to resolve them in an equitable manner.

LAFCO staff must communicate clearly the standard of review, the requirements, the estimated cost and the probable timing of an incorporation proposal.

Cortese-Knox-Hertzberg Act of 2000. In addition, many individual LAFCOs have adopted policies and procedures augmenting the minimum legal requirements. It is critical that any individual, group, agency or community interested in incorporation carefully review the OPR Incorporation Guidelines and meet with your LAFCO staff.

II. BEFORE YOU START

Incorporations usually start with a group of residents forming a committee to explore the possible incorporation of their community. An incorporation committee defines and articulates incorporation goals, raises funds, collects signatures, assembles application materials, works with LAFCO staff and consultants, testifies at hearings and negotiates changes in the proposal. While each incorporation is unique, a committee of interested local residents is typically the impetus for incorporation.

A. Be Realistic

For any incorporation to succeed, it must have widespread community support since the voters

INCORPORATIONS CAN BE EXPENSIVE

Proponents are generally required to pay for LAFCO fees and staff costs, consultant costs, preparation of the CFA, application, map and legal descriptions as well as environmental review. It is not unusual for an incorporation to cost more than \$100,000.

must approve all successful incorporations. Therefore, ensuring that the residents are educated about the incorporation is critical during the incorporation process. It is recommended that the incorporation committee meet with people living in the incorporation area and in adjoining communities which may be directly affected by the proposal. Fund raising is another crucial task because the proponents of the incorporation are responsible for developing the information that will go into an

application and for paying the costs of processing the application.

B. Look at Alternatives

Most unincorporated communities face the same challenges that cities face—changes in the character of their community, housing/jobs balance, provision of services, increased traffic and growth. Some communities see incorporation as a means to help address their problems without being aware of other alternatives. OPR strongly encourages any community investigating incorporation to explore a range of alternatives with their fellow residents, elected representatives, LAFCO and county officials before embarking on an incorporation effort.

WHAT IS A LOGICAL INCORPORATION BOUNDARY?

A logical incorporation boundary does the following:

- Is realistic in its recognition of political opportunities and constraints.
- Recognizes existing jurisdictional boundaries of other agencies including special districts and cities.
- Includes a variety of land uses for a balanced community. While LAFCO has no direct authority to set or alter existing land use patterns, it will consider if a proposed new city will have a variety of land uses for fiscal balance.
- Considers topography, geography, historic boundaries and urban limit lines if adopted.
- Recognizes existing spheres of influence (SOI).
- Recognizes communities of interest or areas which may have financial, geographic or other various links to the incorporation area.
- Recognizes the ability and readiness of the area to provide municipal level services.
- Is consistent with the stated goals of incorporation. If the goal of incorporation is to give an area control over land use decisions, then the boundary should include areas which might have an impact on land use decisions.
- A logical incorporation boundary should not, if at all possible: Split a parcel by city boundaries.
- A logical incorporation boundary should not, if at all possible: Create islands which are unincorporated areas surrounded by incorporated territory. LAFCO is prohibited by law from creating islands.
- A logical incorporation boundary should not, if at all possible: Use school districts, zip codes, postal addresses or other boundaries which often serve multiple jurisdictions.

C. Consult with LAFCO

Of all the actions incorporation proponents can take which will help to ensure a successful incorporation process, early and frequent consultation with LAFCO is the most important. The incorporation process can seem long and complicated and LAFCO staff can help the incorporation proponents avoid the most common pitfalls. It is strongly recommended that proponents develop the proposed boundaries of the new city with LAFCO staff early in the process—even before deciding to move forward with any incorporation efforts. The inclusion (or exclusion) of territory has a profound impact on the incorporation proposal and the preparation of the comprehensive fiscal analysis (CFA).

D. Why Incorporate?

Incorporation shifts local government responsibility for an unincorporated area under the jurisdiction of a county board of supervisors to a newly established city council. The reasons for incorporation efforts may vary and can include, but are not limited to, the following:

SERVICES: Incorporations can be proposed to improve local public services. Cities can provide extensive services but are also required to fund their share of the cost to provide countywide services though a process called “revenue neutrality” which is explained in following sections.

WHO PROVIDES WHAT SERVICES AFTER INCORPORATION?	
<p style="text-align: center;">Services Which A New City May Assume</p> <ul style="list-style-type: none"> • Law enforcement • Fire protection and paramedics (some cases) • Water and sewer (some cases) • Planning (land use, environmental review, zoning, building inspection, etc.) • Public works (streets, engineering, traffic signals, streetlights, drainage, etc.) • Local parks and recreation • Libraries (in some cases) • Animal control 	<p style="text-align: center;">Services that the County May Continue to Provide</p> <ul style="list-style-type: none"> • Special services (welfare, child protective services, etc.) • Health services • Criminal justice (courts, prosecution, jails, probation, etc.) • Regional parks • Elections and voters services • General government (assessor, treasurer, recorder, tax collector, etc.)

REVENUES: Incorporation may be proposed to capture increased revenues to support local services.

LOCAL CONTROL: An incorporation may be proposed to give a community more local control over land use, growth, planning policy and other governmental activities.

MUNICIPAL REVENUES

Cities can use a variety of revenue. A good source of information about the types of revenues available to cities is the California State Controller’s Annual Cities report which is available online. Another source is the League of California Cities’ library which contains many city budgets.

REPRESENTATION: Incorporations may also be proposed to create a politically accountable governing body (a city council) in a limited geographic area. Some incorporations are proposed because residents feel that a city council may be more accessible, more visible and responsive to the needs of their particular community.

E. But Can It Fly? An Initial Feasibility Review

If incorporation seems to be a potentially feasible option, the next step may be to conduct an initial fiscal analysis of the proposed incorporation. Some communities have found that a preliminary assessment of the potential to incorporate a community has been valuable. An initial feasibility review is designed to help community groups conduct a quick appraisal of the potential for incorporation. Many incorporation groups focus on the fiscal impacts of incorporation—does the community have the financial resources to support a municipality? However, there are other issues which must also be addressed which would help a community determine if incorporation is right for them.

WARNING!

An initial feasibility review is NOT a comprehensive fiscal analysis (CFA). It is only an educational tool. Use of the initial feasibility review as a CFA may result in inadequate financial information, longer processing times and more expense

At a minimum, any community which is considering incorporation should first think about the following questions (taken from Institute of Governmental Affairs booklet “Choices for the Unincorporated Community”):

- What is the problem, if any, driving the desire for change in the existing governmental structure? Can the problem be addressed by other, more efficient means?
- What is the role of the County government in the community? Is the county willing or able to address the identified problems?
- What is the community's relationship to other adjacent communities?
- What would the proposed boundaries look like and how would that affect other agencies and communities?
- What is the past history of local efforts to incorporate?
- How is the community changing?
- What is the community's capacity for self-governance?
- How are services currently provided and how would they change?
- Who is likely to benefit from a change and who is likely to lose?

Incorporations have to be financially feasible. While this is often seen as the primary test for incorporation, it is only one of many standards of review LAFCO will use.

F. The Comprehensive Fiscal Analysis (CFA)

The primary issue for most incorporations is the fiscal feasibility of the proposed new city and the law requires that a Comprehensive Fiscal Analysis (CFA) be prepared. Determining the fiscal feasibility of an incorporation through preparation of the CFA can be expensive and the cost is usually borne by the incorporation proponents. The OPR Incorporation Guidelines recommend that a CFA be started after an application is submitted to LAFCO to help keep costs at a minimum.

The OPR Incorporation Guidelines contain detailed information on the preparation of a CFA, sources of revenues, examples of financial calculations and a one-year fiscal feasibility spreadsheet to help incorporation proponents.

III. THE MAIN STEPS IN THE INCORPORATION PROCESS

The procedure for the incorporation of an unincorporated community in the State of California may require at least a year of formal review. The purpose of such a process is to ensure that any proposed incorporation is economically feasible, in the best interests of the community and environmentally and logically sound. The procedures for incorporation should be followed carefully to avoid delays and to reduce the risk of potential litigation.

The processing of an incorporation proposal can be divided into several separate stages. These are:

- 1) Initiating the incorporation process;
- 2) Application to LAFCO;
- 3) LAFCO staff review;
- 4) LAFCO Commission hearing;
- 5) Election and the first year;

A. Initiating the Incorporation Process

Incorporation can be initiated in one of three ways--by resolution of a public agency, by petition of registered voters or by petition of landowners. A notice of the proponents' intent to circulate a petition must be filed with LAFCO before starting and there are strict, legal time limits for gathering signatures. Proponents and LAFCO should use the "Notice of Intent" filing as an opportunity to review the petition and schedule to ensure legal conformance.

Once enough signatures are collected, the petitions are submitted to LAFCO and must be verified by the appropriate agency. If there are irregularities with petitions or signatures, some signatures may be disqualified which may mean that additional signatures may need to be obtained.

COLLECT MORE THAN YOU NEED

Incorporation proponents should plan on collecting at least 10% to 15% more signatures than the minimum requirement to compensate for invalid signatures.

B. Application to LAFCO

Once the petitions are verified, proponents must prepare a LAFCO application. The application must include:

- A map and legal description of the boundaries of the proposed incorporation area;
- Justification for the proposal;
- A plan for the transfer/provision of public services; and
- Other information as requested by LAFCO.

FIRST THINGS FIRST!

It is recommended that the incorporation boundaries be developed with LAFCO prior to submitting an application but that the CFA be started after submitting the application to LAFCO.

If the application is deemed complete by LAFCO, the Executive Officer will issue a Certificate of Filing and schedule a public hearing.

C. LAFCO Staff Review

The staff reviews all the application materials submitted, conducts its own analyses, performs the environmental review, determines the property tax transfer and revenue neutrality payments, solicits comments and produces a final report. The comprehensive fiscal analysis (CFA) is also usually prepared at this stage.

The CFA is one of the crucial elements of an incorporation application. It provides the financial information LAFCO needs to ensure that the proposed new city is fiscally stable, self-sufficient and the reallocation of revenues among affected agencies is equitable. The preparation of a CFA is complex, must satisfy legal requirements and should not be started without consulting with LAFCO.

REVENUE NEUTRALITY

The law states that an incorporation should not occur primarily for financial reasons and should result in a substantially equal exchange of both revenue and service responsibility. LAFCO cannot approve an incorporation unless it finds that the revenues currently received by the county are substantially equal to expenditures for services being transferred to the new city. Consult the OPR Incorporation Guidelines for more information on revenue neutrality.

LAFCO's Executive Officer can request the submittal of additional information/studies or make changes in the original proposal. LAFCO's staff review can take as long as twelve (12) months.

Incorporation proponents are required to pay fees and costs for processing of the application and providing any additional information requested by LAFCO.

LAFCO staff works cooperatively with all interested parties to ensure that a thorough, complete and accurate proposal is developed for LAFCO's Commission's consideration. When the proposed incorporation is ready for a public hearing, LAFCO's Executive Officer will schedule the item for a public hearing and prepare a report with a recommendation which will be sent to the proponents, interested parties and LAFCO's Commission prior to the public hearing.

WHY WASN'T I NOTIFIED?

LAFCO is NOT required to mail a notice to all residents living within the incorporation boundaries. Residents may request, in writing, to be placed on the appropriate mailing list for notices of incorporation hearings and/or distribution of incorporation reports.

D. LAFCO Commission Hearing

LAFCO's Executive Officer is responsible for preparing a staff report that will be considered at the public hearing. At the public hearing, LAFCO's Commission hears the staff report and testimony of interested parties both supporting and opposing the incorporation. LAFCO's Commission may continue the hearing to a future date or close the public hearing and act on the proposal.

LAFCO's Commission has the authority to approve, deny or conditionally approve the incorporation proposal. If LAFCO's Commission approves the proposed incorporation, it must adopt a written resolution approving the incorporation and it must contain the following information:

- Confirmation that LAFCO has considered all the information and factors that it is legally required to consider,
- Written findings regarding consistency between the incorporation and the intent of the Cortese-Knox-Hertzberg Act,
- Conditions of approval, if any,
- Any other terms and conditions,
- A description of the final boundaries of the incorporating area,
- A temporary name for the new city if none has been assigned, and
- The effective date of the incorporation.

If LAFCO's Commission denies the proposed incorporation, no similar application can be filed for at least one year unless LAFCO's Commission waives that prohibition.

E. Request for Reconsideration

Any person or agency may file a request for reconsideration with LAFCO's Commission within 30 days after the resolution of approval is adopted. LAFCO must not take any further action on the incorporation proposal until a public hearing is held and the Commission acts on the request.

F. Protest Hearing

If the approval of the incorporation still stands after a request for reconsideration, LAFCO's Commission will hold a public hearing to count protests to the incorporation. A protest hearing will be held after being duly noticed. LAFCO does not have the discretion to modify the incorporation proposal. LAFCO must terminate the incorporation proceeding if a majority protest is recorded.

G. Election and First Year

If not terminated by a majority protest, the incorporation will be placed on the ballot of the next general election (unless a special election is requested). LAFCO's Executive Officer must draft an impartial analysis of the incorporation issue for inclusion on the ballot. The Commission may review and approve the impartial analysis. A simple majority vote is required for final approval of the incorporation.

After the incorporation is approved by the voters, LAFCO's work is complete. However, the work of the new city has just begun. It is recommended that all new cities contact the League of California Cities which offers several publications, classes and workshops for new city councils.

AFFORDABLE HOUSING AND THE NEW CITY

State law recognizes the vital role local governments play in the affordability of housing. Every city council in California is required to adopt a comprehensive, long-term housing element in its general plan which provides for, and does not unduly constrain, affordable housing development. Housing element law also requires the Department of Housing and Community Development (HCD) to review local housing elements for compliance with State law.