

**LOCAL AGENCY FORMATION COMMISSION OF
ORANGE COUNTY**

REGULAR MEETING AGENDA

**Wednesday, September 13, 2023
8:15 a.m.**

**County Administrative North (CAN)
First Floor Multipurpose Room 101
400 W. Civic Center Drive, Santa Ana, CA 92701**

Any member of the public may request to speak on any agenda item at the time the Commission is considering the item.

- 1. CALL THE MEETING TO ORDER**
- 2. PLEDGE OF ALLEGIANCE**
- 3. ROLL CALL**
- 4. ANNOUNCEMENT OF SUPPLEMENTAL COMMUNICATION
(Communications received after agenda distribution for agendized items.)**
- 5. PUBLIC COMMENT**

This is an opportunity for members of the public to address the Commission on items, not on the agenda, provided that the subject matter is within the jurisdiction of the Commission and that no action may be taken by the Commission on off-agenda items unless authorized by law.

6. CONSENT CALENDAR

a.) August 9, 2023 – Regular Commission Meeting Minutes

The Commission will consider approval of the August 9, 2023 meeting minutes.

b.) Legislative Report (September 2023)

The Commission will receive an update on the current legislation of LAFCO interest and an overview of proposed legislative efforts currently being proposed by the California Association of Local Agency Formation Commissions for the 2024 legislative session.

c.) Revised OC LAFCO 2023 Meeting and Events Calendar

The Commission will consider amending the 2023 Meeting and Events Calendar to observe California Native American Day on September 22, 2023.

7. PUBLIC HEARING

No public hearing items are scheduled.

8. COMMISSION DISCUSSION AND ACTION

a.) Policy and Guidelines for Conducting Protest Hearings

The Commission will consider proposed amendments to the agency's policy and guidelines for conducting protest hearings to align with State law.

b.) Second Amendment to Professional Services Agreement with Berkson and Associates

The Commission will consider approval of an amendment to the professional services agreement with Berkson Associates for continued consulting services.

9. COMMISSIONER COMMENTS

This is an opportunity for Commissioners to comment on issues not listed on the agenda, provided that the subject matter is within the jurisdiction of the Commission. No discussion or action may occur or be taken except to place the item on a future agenda if approved by the Commission majority.

10. EXECUTIVE OFFICER'S REPORT

Executive Officer's announcement of upcoming events and brief report on activities of the Executive Officer since the last meeting.

11. INFORMATIONAL ITEMS & ANNOUNCEMENTS

No informational items and announcements are scheduled.

12. CLOSED SESSION

a.) PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Pursuant to Government Code section 54957

Title: Executive Officer

b.) CONFERENCE WITH LABOR NEGOTIATORS

Pursuant to Government Code Section 54957.6

Agency designated representative: Commission Chair

Unrepresented employee: Executive Officer

13. ADJOURNMENT OF REGULAR COMMISSION MEETING

The next Regular Commission Meeting will be held on Wednesday, October 11, 2023, at 8:15 a.m. at the County Administrative North (CAN), First Floor Multipurpose Room 101, 400 W. Civic Center Drive, Santa Ana, CA 92701.

PUBLIC PARTICIPATION:

The Local Agency Formation Commission of Orange County welcomes your participation. The public may share general comments or comments on agenda items through the following options:

- 1) **In-person** comments may be provided during the general comment period on off-agenda items and during the hearing of a specific agenda item. In accordance with the OC LAFCO guidelines, each speaker's comments may not exceed three (3) minutes for the respective item. If you have documents for the Commission, please bring 15 copies and submit to the Commission Clerk for distribution.
- 2) **Written** general comments or comments on specific agenda items may be submitted by email to the Commission Clerk at ccarter-benjamin@oclafco.org. Comments received no less than twenty-four (24) hours prior to the regular meeting will be distributed to the Commission and included in the record.

Pursuant to Government Code Section 54957.5, public records that relate to open session agenda items that are distributed to a majority of the Commission less than seventy-two (72) hours prior to the meeting will be made available to the public on the OC LAFCO website at www.oclafco.org.

State law requires that a participant in an OC LAFCO proceeding who has a financial interest in a decision and who has made a campaign contribution of more than \$250 to any commissioner in the past year must disclose the contribution. If you are affected, please notify the Commission's staff before the hearing.

AMERICANS WITH DISABILITIES ACT (ADA)

All regular meeting agendas and associated reports are available at www.oclafco.org. Any person with a disability under the Americans with Disabilities Act (ADA) may receive a copy of the agenda or associated reports upon request. Any person with a disability covered under the ADA may also request a disability-related modification or accommodation, including auxiliary aids or services, to participate in a public meeting. Requests for copies of meeting documents and accommodations shall be made with OC LAFCO staff at (714) 640-5100 at least three business days prior to the respective meeting.

2023 MEETING AND EVENTS CALENDAR

Approved November 9, 2022

2023



January						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

April						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

July						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

October						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

February						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28				

May						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

August						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

November						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

March						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

June						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

September						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

December						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

- OC LAFCO Regular Meeting (*begins at 8:15 a.m.*)
Location: County Administrative North, First Floor Multipurpose Room 101, 400 W. Civic Center Dr., Santa Ana, CA 92701.
- Office closure due to legal holidays and flexible work schedule.
- CALAFCO Annual Conference - October 18 - 20, 2023 at Hyatt Regency Monterey.

DRAFT MINUTES

OC LAFCO REGULAR MEETING

Wednesday, August 9, 2023
8:15 a.m.

County Administrative North (CAN)
First Floor Multipurpose Room 101
400 W Civic Center Drive, Santa Ana, CA. 92701

1. CALL TO ORDER

Chair Davert called the meeting of the Local Agency Formation Commission of Orange County (OC LAFCO) to order at 8:15 a.m.

2. PLEDGE OF ALLEGIANCE

Commissioner Do led the Pledge of Allegiance.

3. OATH OF OFFICE

The Oath of Office was administered to **Commissioner Do** by the Commission Clerk, and **Commissioner Foley's** oath was completed electronically.

4. ROLL CALL

The following Commissioners were present:

City Members

Wendy Bucknum
Carol Moore **(Alt.)**

County Members

Donald Wagner **(Vice Chair)**
Andrew Do

Special District Members

Douglass Davert
James Fisler
Kathryn Freshley **(Alt.)**

Public Members

Derek J. McGregor
Lou Penrose **(Alt.)**

The following staff members and general counsel were present:

- Executive Officer Carolyn Emery
- Assistant Executive Officer Luis Tapia
- Policy Analyst Gavin Centeno

- Policy Analyst Amanda Castro
- Commission Clerk Cheryl Carter-Benjamin
- General Counsel Paula C. De Sousa

**5. ANNOUNCEMENT OF SUPPLEMENTAL COMMUNICATION
(Received After Agenda Distribution)**

The Executive Officer noted that no supplemental communication was received.

6. PUBLIC COMMENT

Chair Davert requested public comments on any non-agenda items. The Commission Clerk noted two requests to speak from the public on Agenda Item 8b.

Chair Davert closed the hearing of public comments.

7. CONSENT CALENDAR

Chair Davert called for a motion on the consent calendar. There was no Commissioner discussion, and the Commission Clerk noted that there were no requests from the public to speak on the item. **Commissioner McGregor** motioned for approval of the consent calendar, and **Vice Chair Wagner** seconded the motion.

7a. – August 9, 2023 Regular Commission Meeting Minutes

MOTION: Approve the Consent Calendar. (Derek J. McGregor)
SECOND: Donald Wagner
FOR: Derek J. McGregor, Donald Wagner, Wendy Bucknum,
Andrew Do, James Fisler, Carol Moore, Douglass Davert
AGAINST: None
ABSTAIN: None

MOTION PASSED: 7-0.

8. PUBLIC HEARING

8a. – Municipal Service Review and Sphere of Influence Reviews for West Region (MSR 22-09 and SOI 22-10)

Assistant Executive Officer Luis Tapia introduced the municipal service review and noted that a 30-day public review and comment period was conducted for the West Region MSR draft and stated that agency comments were received from the City of La Palma and Midway City Sanitary District requesting non-substantive changes. Mr. Tapia introduced Consultant Mark

Sawicki, representing RSG, Inc., who gave a presentation on the West Region MSR and SOI. Mr. Tapia concluded the presentation with recommended actions for Commission consideration.

Chair Davert called for Commission discussion and public comments. There was no Commissioner discussion, and the Commission Clerk noted that there were no requests from the public to speak on the item. **Chair Davert** closed the public hearing and called for a motion on the item.

Vice Chair Wagner motioned to approve staff recommended actions, and **Commissioner Bucknum** seconded the motion.

MOTION: Receive and file the Municipal Service Review for the West Region; Approve OC LAFCO Resolution No. MSR 22-09 adopting the MSR Statement of Determinations; Approve OC LAFCO Resolution No. SOI 22-10 adopting the SOI Statement of Determinations and reconfirming the SOIs for the cities and special districts; Approve the Notice of Exemption for MSR 22-09 and SOI 22-10. (Donald Wagner)

SECOND: Wendy Bucknum

FOR: Donald Wagner, Wendy Bucknum, Andrew Do, James Fisler, Derek J. McGregor, Carol Moore, Douglass Davert

AGAINST: None

ABSTAIN: None

MOTION PASSED: 7-0.

8b. – Municipal Service Review and Sphere of Influence Reviews for Southwest Region (MSR 22-11 and SOI 22-12)

Policy Analyst Gavin Centeno introduced the municipal service review and noted that a 30-day public review and comment period was conducted for the Southwest MSR draft and stated that comments were received by Emerald Bay Service District and Moulton Niguel Water District requesting non-substantive and substantive changes. Mr. Centeno introduced Consultant Wesley Smith, representing RSG, Inc., who gave a presentation on the Southwest Region MSR. Mr. Centeno concluded the presentation with recommended actions for Commission consideration and noted that the Commission consider postponing the sphere of influence review for the South Coast Water District to allow the stakeholders to continue discussions on a potential annexation of an area in South Laguna Beach to the District.

Chair Davert called for Commission discussion and public comments. Commissioners made general comments and asked questions related to housing projections, rezoning, the annexation timeline for the area in South Laguna Beach to the South Coast Water District,

agency reserves, and working capital. The Commission Clerk noted the public speakers requesting to address the Commission on the item.

Michael P. Dunbar, General Manager of Emerald Bay Service District, commended the MSR process and thanked OC LAFCO staff and consultant for the great work on the MSR.

Jody Brennan, Executive Services Manager/Clerk of the Board of South Coast Water District, made general comments and expressed the agency's support of the Southwest MSR.

Chair Davert closed the public hearing and called for any additional discussion by the Commission. Commissioners made general comments. **Chair Davert** called for a motion on the item. **Vice Chair Wagner** motioned to approve the staff recommended actions, and **Commissioner McGregor** seconded the motion.

MOTION: Receive and file the Municipal Service Review for the West Region; Approve OC LAFCO Resolution No. MSR 22-09 adopting the MSR Statement of Determinations; Approve OC LAFCO Resolution No. SOI 22-10 adopting the SOI Statement of Determinations and reconfirming the SOIs for the cities and special districts; Approve the Notice of Exemption for MSR 22-09 and SOI 22-10. (Donald Wagner)

SECOND: Derek J. McGregor

FOR: Donald Wagner, Derek J. McGregor, Wendy Bucknum, Andrew Do, James Fisler, Carol Moore, Douglass Davert

AGAINST: None

ABSTAIN: None

MOTION PASSED: 7-0.

9. COMMISSION DISCUSSION AND ACTION

9a. – Fiscal Year 2022-2023 Year-End Comprehensive Report

Executive Officer Carolyn Emery presented the staff report and recommended actions for Commission consideration.

Chair Davert called for Commission discussion and public comments. Commissioners made general comments, and the Commission Clerk noted that there were no requests from the public to speak on the item. **Vice Chair Wagner** left the meeting at 8:56 a.m.

Chair Davert called for a motion on the item. **Commissioner Bucknum** motioned to approve staff recommended actions, and **Commissioner Do** seconded the motion.

MOTION: Receive and file the Year-End Comprehensive Report for Fiscal Year 2022-2023; Approve update to the 2022-2025 Work Plan. (Wendy Bucknum)
SECOND: Andrew Do
FOR: Wendy Bucknum, Andrew Do, James Fisler, Derek J. McGregor, Carol Moore, Douglass Davert
AGAINST: None
ABSTAIN: None

MOTION PASSED: 6-0.

9b. – Legislative Report (August 2023)

General Counsel Paula De Sousa recused herself, stepped away from the dais after noting the representation of one of the two constituents discussed in the staff report, and was available to answer questions.

Assistant Executive Officer Luis Tapia presented the staff report and recommended action for Commission consideration. **Vice Chair Wagner** returned to the meeting at 9:04 a.m.

Chair Davert called for public comments and Commission discussion. The Commission Clerk noted that there were no requests from the public to speak on the item. Commissioners made general comments and asked questions involving ratepayers, water authorities, and member agencies. **Commissioner McGregor** recommended a substitute motion that the Commission take a watch position, and **Commissioner Do** seconded the motion.

Chair Davert called for a motion on the item. **Commissioner McGregor** motioned to adopt a watch position, and **Commissioner Do** seconded the motion.

MOTION: Adopt a *Watch* position on AB 399. (Derek J. McGregor)
SECOND: Andrew Do
FOR: Derek J. McGregor, Andrew Do, Wendy Bucknum, James Fisler, Carol Moore, Donald Wagner, Douglass Davert
AGAINST: None
ABSTAIN: None

MOTION PASSED: 7-0.

9c. – Limited English Proficiency Services (LEP) Policy

Policy Analyst Amanda Castro presented the staff report and recommended action for Commission consideration.

Chair Davert called for Commission discussion and public comments. Commissioners made general comments, and the Commission Clerk noted that there were no requests from the public to speak on the item.

Chair Davert called for a motion on the item. **Commissioner Do** motioned to approve the staff recommended action, and **Commissioner Bucknum** seconded the motion.

MOTION: Adopt the “Limited English Proficiency (LEP) Services Policy.” (Andrew Do)
SECOND: Wendy Bucknum
FOR: Andrew Do, Wendy Bucknum, James Fisler, Derek J. McGregor, Carol Moore, Donald Wagner, Douglass Davert
AGAINST: None
ABSTAIN: None

MOTION PASSED: 7-0.

9d. – Bi-Annual News (“The Pulse”)

Commissioner Freshley started the conversation by noting concerns about the distribution of the Pulse. Commissioners made general comments, and **Commissioner Bucknum** suggested including the city and special district clerks in the distribution process of the bi-annual newsletter. Executive Officer Emery stated that the city and special district clerks will be added to the list for future distributions.

10. COMMISSIONER COMMENTS

Commissioners made general comments.

11. EXECUTIVE OFFICER’S REPORT

The Executive Officer noted that there were no items to report.

12. INFORMATIONAL ITEMS & ANNOUNCEMENTS

12a. – CALAFCO Annual Conference

Chair Davert noted that registration for the conference was open until August 31, and if interested in attending, contact staff.

13. CLOSED SESSION

13a. – Closed Session

The Commission adjourned to closed session at 9:40 a.m. on the following item:

Conference with Legal Counsel- Anticipated Litigation
Significant exposure to litigation pursuant to Government Code section 54956.9(d)(2)
Number of potential cases: 1

Vice Chair Wagner and **Commissioner Do** left at 10:05 a.m. The Commission reconvened in open session at 10:10 a.m., and General Counsel Paula C. De Sousa noted that the Commission discussed the closed session item, and there were no reportable actions.

14. ADJOURNMENT OF THE REGULAR COMMISSION MEETING

Chair Davert adjourned the Regular Commission Meeting at 10:11 a.m. to September 13, 2023.

Douglas Davert, Chair
Orange County Local Agency Formation Commission

ATTEST:

By: _____
Cheryl Carter-Benjamin
Commission Clerk

REGULAR MEMBERS

CHAIR

Douglass Davert
Special District Member

VICE CHAIR

Donald P. Wagner
County Member

IMMEDIATE PAST CHAIR

Derek J. McGregor
Public Member

Wendy Bucknum
City Member

Andrew Do
County Member

James Fisler
Special District Member

Bruce Whitaker
City Member

ALTERNATES

Katrina Foley
County Member

Kathryn Freshley
Special District Member

Carol Moore
City Member

Lou Penrose
Public Member

STAFF

Carolyn Emery
Executive Officer

Scott Smith
General Counsel

September 13, 2023

TO: Local Agency Formation Commission
of Orange County

FROM: Executive Officer
Assistant Executive Officer

SUBJECT: Legislative Report (September 2023)

BACKGROUND

The 2023 legislative session is in its final stage, with legislation moving through the House and Senate to meet the October 14th deadline for Governor Newsom to sign or veto bills. The table on the following page provides a status update of the bills previously reviewed by the Commission during the 2023 legislative session.

As the 2023 legislative session comes to a close in November, the California Association of Local Agency Formation Commissions (CALAFCO) Legislative Committee is gearing up for the upcoming 2024 legislative session. During the Committee's most recent meeting on August 25, 2023, CALAFCO staff provided an update on its proposed legislative efforts for the upcoming legislative session. This report includes a preview of CALAFCO's proposed legislative efforts for the 2024 legislative session that begins in December.

UPDATE ON PREVIOUSLY REVIEWED LEGISLATION

During the 2023 legislative session, the Commission adopted positions on eight bills. The bills covered several topics, including a confirmation vote from residents residing within the San Diego Water Authority (SDWA) service area for a member agency to detach from SDWA, allowing public agencies the ability to meet via teleconference during a declared state of emergency, technical corrections to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, allow local elected officials to be concurrently seated on the Coastal Commission, LAFCO and Joint Powers Authority, website domain requirements for counties and cities and the Yearly Validating Acts. A status update of each bill reviewed by the Commission is included in the table on the following page.

Bill	Description	Adopted Position	Status
AB 399	Proposes to require that the process for an agency seeking detachment from the San Diego Water Authority (SDWA) must have a confirmation vote from the registered voters residing within the agency seeking the detachment and a confirmation vote from the registered voters residing within the entire SDWA service boundary.	Watch	AB 399 is currently under review in the Senate. Next hearing date not identified as of September 6, 2023.
AB 557	Proposes to remove the sunset date of January 1, 2024, which would terminate the ability for local agencies to hold meetings by teleconference during a state of emergency previously established through the signing of AB 361 by the Governor.	Support	AB 557 is currently under review in the Senate. Next hearing date not identified as of September 6, 2023.
AB 1637	Proposes that by January 1, 2029, a city or county maintains an internet website for public use and employee emails to use “.gov” top-level or a “.ca.gov” second-level domains.	Neutral	SB 1637 is currently under review in the Senate. Next hearing date not identified as of September 6, 2023.
AB 1753	Makes minor and/or non-substantive changes to the CKH Act.	Support	Signed by the Governor on June 29, 2023.
SB 360	Proposes to expand the list of offices that a locally elected official may be seated on concurrently involving the Coastal Commission, LAFCO, and Joint Powers Authority.	Support	Signed by the Governor on July 21, 2023.
SB 878 SB 879 SB 880	Yearly Validating Acts are meant to retroactively fix typographical, grammatical, and procedural errors that might invalidate boundary changes or bond issues.	Support	Signed by the Governor on June 29, 2023.

PREVIEW OF CALAFCO's 2024 LEGISLATIVE EFFORTS

In anticipation of the upcoming 2024 legislative session, the CALAFCO Legislative Committee is preparing for the session by identifying its legislative priorities. The following are the committee's priorities:

- o The 2024 Omnibus Bill will propose technical and non-substantive amendments to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH Act).
- o Propose legislation to add clarifying language to the CKH Act on the provision of services by an agency outside of its jurisdictional boundary (Government Code Section 56133).
- o Propose legislation to add language to explicitly provide LAFCOs the authority to require indemnification from applicants.

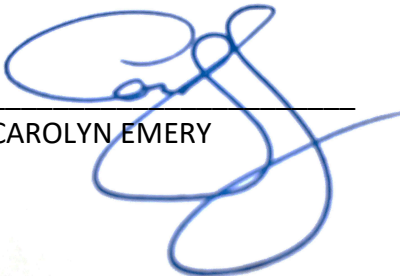
Staff will continue to monitor the activity of CALAFCO's legislative priorities and legislation of LAFCO interest as the new 2024 legislative session begins in December.

RECOMMENDED ACTION

Staff recommends the Commission:

1. Receive and file the September legislative report.

Respectfully submitted,



CAROLYN EMERY



LUIS TAPIA

September 13, 2023

6c | Consent
Calendar

REGULAR MEMBERS

CHAIR
Douglass Davert
Special District Member

VICE CHAIR
Donald P. Wagner
County Member

IMMEDIATE PAST CHAIR
Derek J. McGregor
Public Member

Wendy Bucknum
City Member

Andrew Do
County Member

James Fisler
Special District Member

Bruce Whitaker
City Member

ALTERNATES

Katrina Foley
County Member

Kathryn Freshley
Special District Member

Carol Moore
City Member

Lou Penrose
Public Member

STAFF

Carolyn Emery
Executive Officer

Scott Smith
General Counsel

TO: Local Agency Formation Commission
of Orange County

FROM: Executive Officer
Commission Clerk

SUBJECT: Revised OC LAFCO 2023 Meeting and Events Calendar

At the November 9, 2022 meeting the Commission approved the OC LAFCO 2023 Regular Meeting Calendar. At that time, the calendar included the office closure dates in observation of legal holidays aligned with the County of Orange's list of holidays.

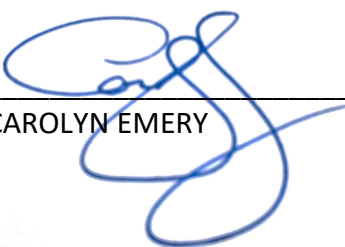
Following a review of the recently modified County of Orange list of holidays, the staff is recommending observing California Native American Day on September 22, 2023.

RECOMMENDED ACTION

Staff recommends that the Commission:

1. Approve the revised OC LAFCO 2023 Meeting and Events Calendar.

Respectfully submitted,



CAROLYN EMERY



CHERYL CARTER-BENJAMIN

2023 MEETING AND EVENTS CALENDAR

Revised and Approved _____, 2023

2023



January						
S	M	T	W	T	F	S
	1	2	3	4	5	6
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

April						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

July						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

October						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

February						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28				

May						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

August						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

November						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

March						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

June						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

September						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

December						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

- OC LAFCO Regular Meeting (*begins at 8:15 a.m.*)
Location: County Administrative North, First Floor Multipurpose Room 101, 400 W. Civic Center Dr., Santa Ana, CA 92701.
- Office closure due to legal holidays and flexible work schedule.
- CALAFCO Annual Conference - October 18 - 20, 2023 at Hyatt Regency Monterey.

September 13, 2023

8a | Commission
Discussion

REGULAR MEMBERS

CHAIR

Douglass Davert

Special District Member

VICE CHAIR

Donald P. Wagner

County Member

IMMEDIATE PAST CHAIR

Derek J. McGregor

Public Member

Wendy Bucknum

City Member

Andrew Do

County Member

James Fisler

Special District Member

Bruce Whitaker

City Member

ALTERNATES

Katrina Foley

County Member

Kathryn Freshley

Special District Member

Carol Moore

City Member

Lou Penrose

Public Member

STAFF

Carolyn Emery

Executive Officer

Scott Smith

General Counsel

TO: Local Agency Formation Commission
of Orange County

FROM: Executive Officer
Policy Analyst I

SUBJECT: Proposed Amendments to the “Policy & Procedural
Guidelines for Conducting Protest Hearings”

BACKGROUND

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH Act) requires each LAFCO to adopt written policies and procedures. A compilation of the Commission’s adopted policies and procedures is housed in the “Orange County LAFCO Bylaws, Policies and Procedures Handbook”. The Handbook is divided into five major sections: (I) Commission Bylaws, (II) Accounting and Financial Policies and Procedures, (III) Personnel Policies and Procedures, (IV) Administrative Policies and Procedures, and (V) Project Processing Policies. The policies and procedures contained within the handbook are intended to supplement State law and guide the Commission in carrying out its legislative and local missions.

The Commission’s Handbook includes the “Policy & Procedural Guidelines for Conducting Protest Hearings” which was first adopted by the Commission in 2001 and last revised in 2012. A revision of the policy is necessary to make non-substantive updates to the policy according to recent amendments to the CKH Act. The protest provisions were amended as part of CALAFCO’s sponsored Senate Bill 938 (Hertzberg) signed by Governor Newsom in July 2022. The amendments allowed for the restructuring and simplification of the protest provisions.

Staff is recommending several amendments to align with the Commission policy and procedural guidelines for conducting protest proceedings with State law. For ease of review, the proposed amendments are indicated in redline format in Attachment 1 and are summarized in the table on the next page of this report.

Table 1: Summary of Proposed Changes

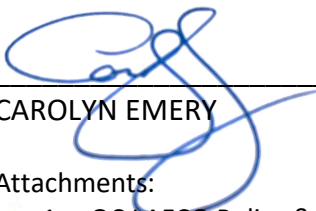
Section	Pages	Summary Changes
Policy & Procedural Guidelines	1-2	Updated noticing criteria for consistency with current agency noticing provisions.
LAFCO Protest Proceedings and Thresholds	5-9	Updated protest proceedings for changes of organization and reorganization to align with statute amendments.
Contents of Commission Resolution Ordering a Change of (Re)organization Subject to Confirmation by the Voters	10-12	Non-substantive additions to subsections of government code.

RECOMMENDED ACTION

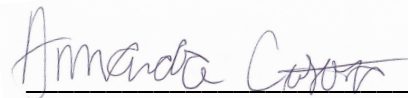
Staff recommends that the Commission:

1. Adopt the Policy & Procedural Guidelines for Conducting Protest Hearings, as amended.

Respectfully Submitted,



CAROLYN EMERY



AMANDA CASTRO

Attachments:

1. OC LAFCO Policy & Procedural Guidelines for Conducting Protest Hearings (Redline)
2. OC LAFCO Policy & Procedural Guidelines for Conducting Protest Hearings (As Amended)

Policy & Procedural Guidelines for Conducting Protest Hearings

I. GUIDELINES

Prior to January 1, 2000, upon approval of a change of organization or reorganization, LAFCO designated an affected agency as the conducting authority and directed the conducting authority to conduct protest proceedings pursuant to Government Code §57000 et seq. With the passage of AB 2838 (Hertzberg – Chapter 761, Statutes of 2000), the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code §56000 et seq.) establishes LAFCO as the “conducting authority” for protest proceedings.

II. PURPOSE

To carry out its functions and responsibilities of conducting authority pursuant to G.C. §57000, ~~the Orange County~~ Local Agency Formation Commission of Orange County (OC LAFCO) establishes the following procedural guidelines. Protest proceedings for changes of organization and reorganization shall be conducted by the Commission in accordance with these guidelines.

III. POLICY & PROCEDURAL GUIDELINES

In addition to these guidelines, please refer to Exhibit A for further discussion on the protest proceedings, including background information, flowcharts, and protest thresholds.

- A. In its resolution making determinations and approving a change of organization or reorganization for which protest proceedings are not waived pursuant to G.C. §56663, the Commission, pursuant to G.C. ~~§56886(e),~~ §57002(a), shall include in its terms and conditions a term and condition specifying a timeframe (between 21 and 60 days) for the collection and filing of written protests.
- B. Within 35 days of the adoption of the Commission’s resolution making determinations and approving a change of organization or reorganization, the Executive Officer shall notice the protest hearing and, in the notice, set the hearing date as prescribed by the Commission in its terms and conditions.

- C. Notice of the hearing shall be provided pursuant to G.C. §56150 et seq., as follows:
1. Notice must be published, posted, and mailed to affected agencies, proponents, and any persons requesting special notice.
 2. Mailed notice must be provided to all affected landowners if the proposal:
 - a. Involves the formation of, annexation to, or detachment from an improvement district.
 - b. Involves the annexation of 150 acres or less to a city.
 - c. Would result in the extension of a previously authorized special tax or benefit assessment.
 3. The time, date, and location of the hearing shall be specified in the notice as determined by the Executive Officer.
 4. The protest hearing must be held in the affected territory if the hearing is a proposal initiated by the Commission pursuant to G.C. §56375(a)(2) for a district consolidation, dissolution, or merger, or the establishment of a subsidiary district.
- D. At the protest hearing, the Executive Officer, or designee, shall:
1. Summarize the Commission's resolution.
 2. Hear and receive any oral or written protests, objections, or evidence.
 - a. Written protests may be filed by any affected landowner or registered voter.
- E. The Executive Officer, or designee, may continue the protest hearing from time to time, but not more than 60 days from the date specified in the notice.
- F. At the conclusion of the protest hearing:
1. If no written protests have been filed, the Executive Officer, or designee, shall adopt a form of resolution ordering the change of organization or reorganization without an election.
 2. If written protests have been filed, the Executive Officer, or designee,

shall within 30 days after the conclusion of the hearing, make determinations on the value of written protests filed and not withdrawn.

3. To determine the value of written protests filed and not withdrawn, the Executive Officer, or designee, shall cause the names of the signers on the protests to be compared with:
 - a. The voters' register in the office of the Registrar of Voters pursuant to §56707; and/or
 4. The names of the owners of land on the most recent assessment roll pursuant to §56708 and §56710.
- G. Upon determination of the value of written protests filed and not withdrawn, the Executive Officer, or designee, shall take one of the following actions, depending on the nature of the change of organization or reorganization:
1. Issue a Certification of Termination, terminating proceedings.
 2. Adopt a form of resolution making determinations and ordering the change of organization or reorganization without an election.
 3. Adopt a form of resolution making determinations and ordering the change of organization or reorganization subject to confirmation by the voters.
- H. If an election is required, the Executive Officer, or designee, pursuant to §57000(d), shall inform the legislative body of the affected agency of OC LAFCO's determination and request the legislative body to direct the elections official to conduct the election.

OC LAFCO AS CONDUCTING AUTHORITY (*Government Code §56029, §57000 et seq.*)

REQUIREMENT

Pursuant to §57000(c), the Commission has the option of delegating any or all of the functions and responsibilities of conducting authority to the Executive Officer. Any references made to the “Commission” or “LAFCO” in the following discussion also pertains to the Executive Officer for any functions he or he will perform on behalf of the Commission. It should also be noted that, pursuant to §57008, the Commissioner or Executive Officer is required to hold the protest hearing in the affected territory if the proposal was initiated by the Commission pursuant to §56375(a) (district consolidation, dissolution, merger, establishment of a subsidiary district, or a reorganization that includes any of the previous).

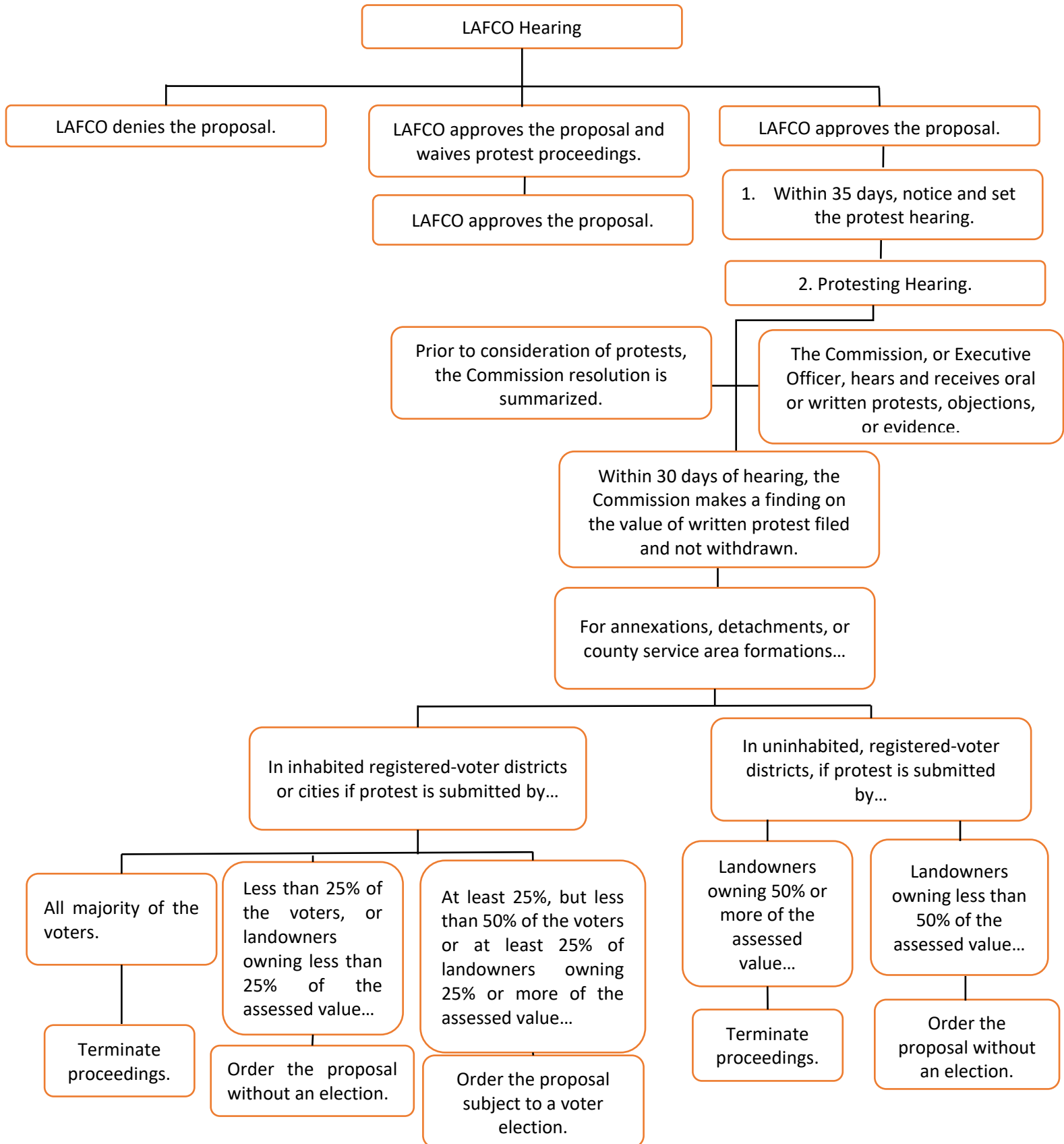
Following summarization of the Commission’s resolution at the protest hearing, the Commission hears and receives any oral or written protests, objections, or evidence. Anyone who has filed a written protest can withdraw that protest prior to the conclusion of the hearing. Within 30 days after the hearing, OC LAFCO makes a finding on the value of written protests filed and not withdrawn. The percentage thresholds for OC LAFCO to terminate or order the change of (re)organization with or without an election is consistent with existing law. (Please see flowcharts on the following pages.) LAFCO, however, does not have statutory authority to conduct an election if one is required.

Therefore, if OC LAFCO’s determination on a proposal is subject to confirmation by the voters and an election must be conducted, OC LAFCO, pursuant to §57000(d), is required to inform the board of supervisors or city council of the affected city of the Commission’s determination and request the board or council to direct the elections official to conduct the election.

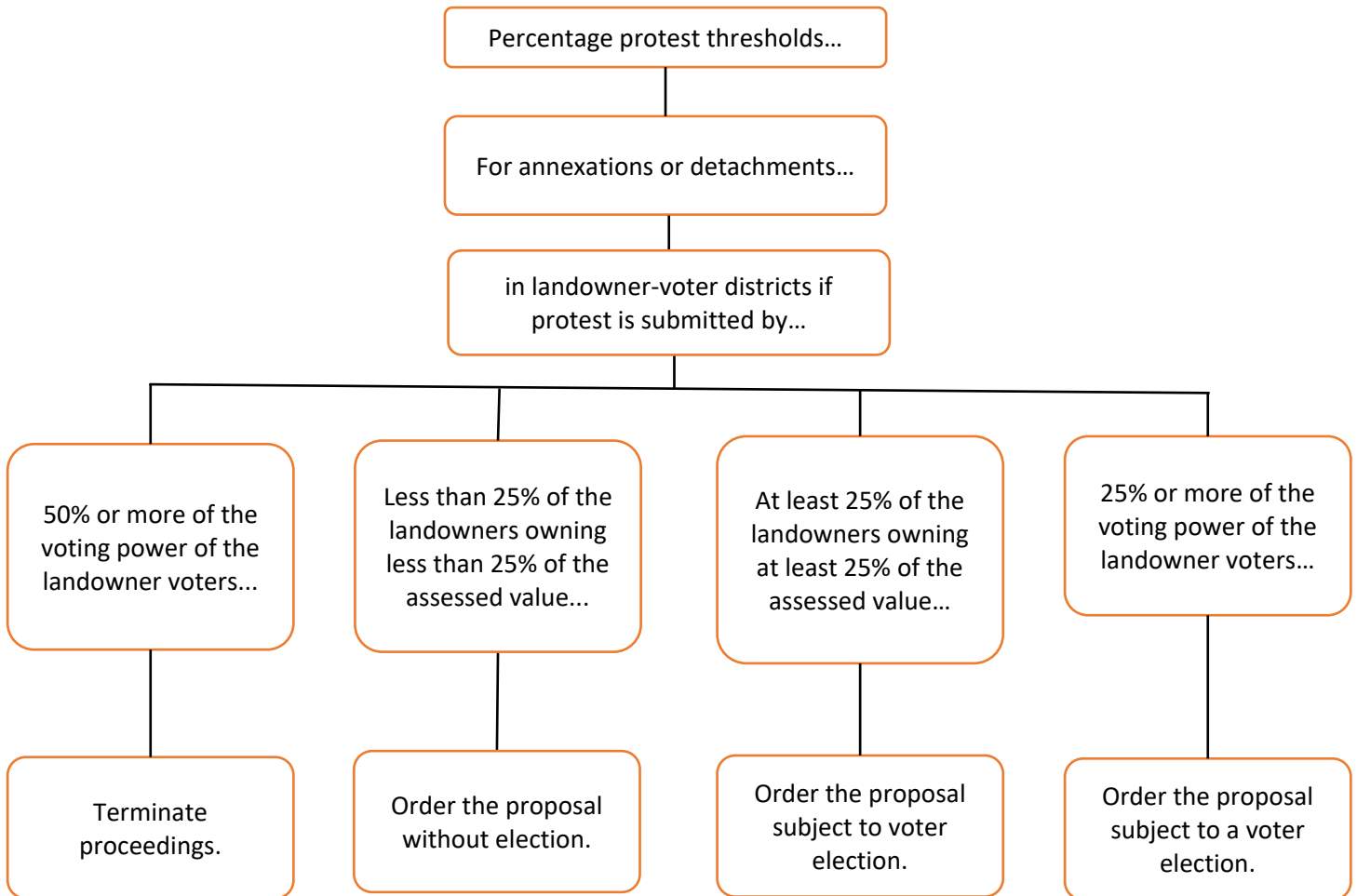
Exhibit "A"

LAFCO PROTEST PROCEEDINGS - §57075 and 57091(a)

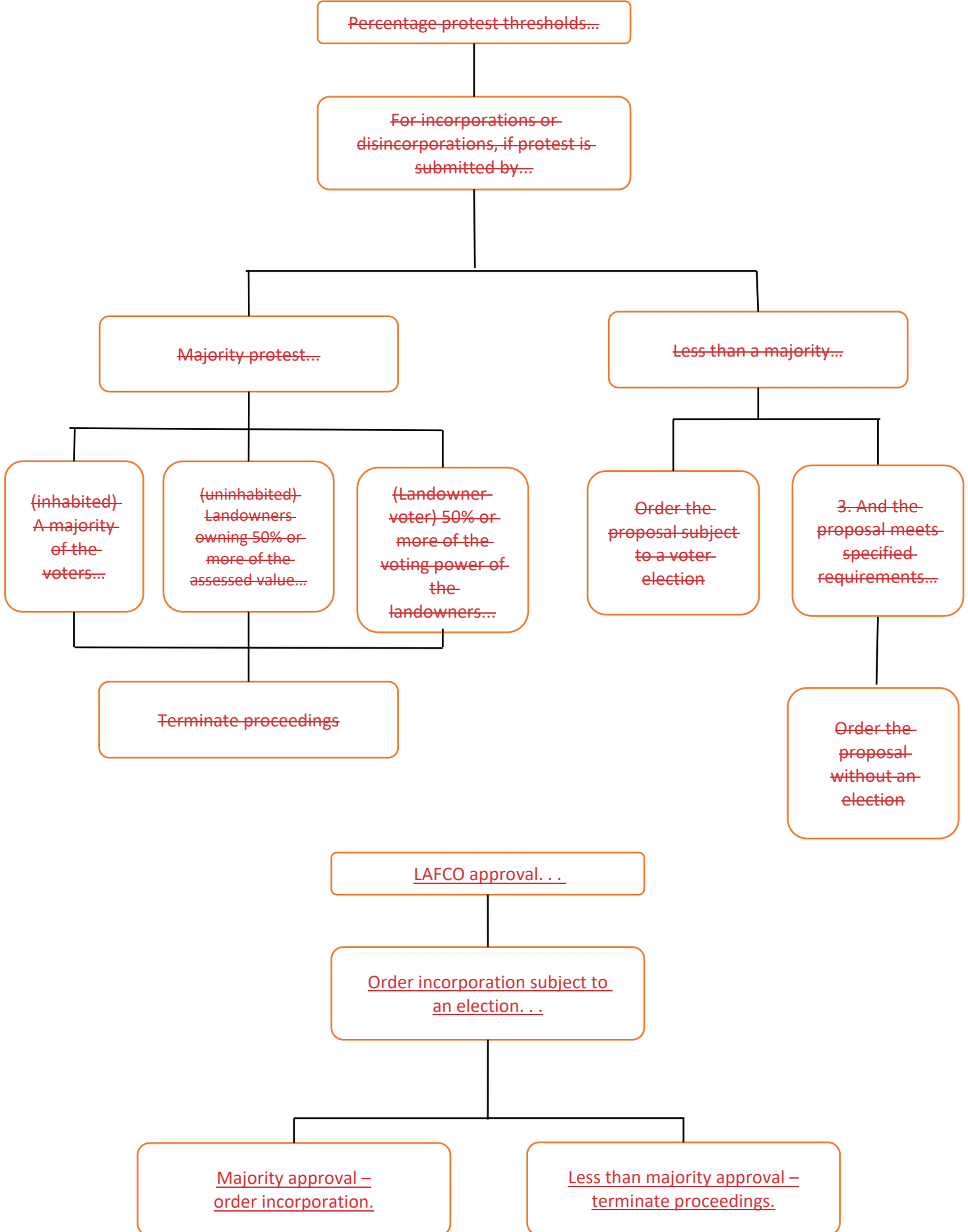
(For annexations, detachments, or county service area formations in registered- voter districts or cities)



LAFCO PROTEST THRESHOLDS - §57075 and 57091(b)
(For annexations, detachments, or county service area formations in landowner – voter districts)



LAFCO PROTEST THRESHOLDS §57077
(For incorporations and disincorporations)



LAFCO PROTEST THRESHOLDS - §57092, 57093, 57094
(For dissolutions, consolidations, mergers, and subsidiary district establishments)

The percentage protest thresholds for a dissolution, consolidation, merger, or the establishment of a subsidiary district differ from the previous changes of organization discussed in the previous sections. ~~While §57077 addresses the requirements for these changes of organization, §56854 supersedes those provisions. The provisions of §56854 (previously §56839.1) was the product of recent legislation passed in 1997.~~ Pursuant to §57077.1, 57077.2, 57077.5, OC LAFCO is required to order a dissolution, consolidation, merger, or the establishment of a subsidiary district without an election unless certain protest requirements are met. Those requirements are enumerated in the outline below. However, pursuant to 57077.5 (c)(b), the Commission is prohibited from ordering a merger or the establishment of a subsidiary district without ~~the consent~~ a resolution of non-objection of from the affected city.

The Commission is required to order a dissolution, consolidation, merger, or the establishment of a subsidiary district **subject to confirmation of the voters**, only if there are written protests as follows:

1. Where the proposal was not initiated by the Commission, and where an affected city or district has not objected by resolution to the proposal:
 - a. In the case of inhabited territory, a petition signed by:
 - i. At least 25% of the registered voters residing, or owning land, within the affected territory; or
 - ii. At least 25% of the number of landowners who own at least 25% of the assessed value of land within the affected territory.
 - b. In the case of a landowner-voter district, and the territory is uninhabited, a petition signed by:
 - i. At least 25% of the number of landowners owning at least 25% of the assessed value of the land within the affected territory.

NOTE: However, pursuant to §57102(b)57114(b), in the case of a proposal for the dissolution of one or more districts and the annexation of all or substantially all of their territory to another district, the voter requirements outlined above do not apply if each affected district has consented to the proposal by a resolution adopted by a majority of its board of directors.

2. Where the proposal was initiated by the Commission, and regardless of whether an affected city or district has objected to the proposal by resolution:
 - a. In the case of inhabited territory where there are 300 or more landowners or registered voters within the affected territory, a petition signed by:
 - i. At least 10% of the number of landowners who own at least 10% of the assessed value of land within the affected territory; or

- ii. At least 10% of the registered voters residing, or owning land, within the affected territory.
- b. In the case of inhabited territory where there are less than 300 landowners or registered voters within the affected territory, a petition signed by:
 - i. At least 25% of the number of landowners who own at least 25% of the assessed value of land within the affected territory; or
 - ii. At least 25% of the registered voters residing, or owning land, within the affected territory.
- c. In the case of a landowner-voter district where the territory is uninhabited and there are 300 or more landowner voters entitled to vote, a petition signed by:
 - i. At least 10% of the number of landowners who own at least 10% of the assessed value of land within the affected territory.
- d. In the case of a landowner-voter district where the territory is uninhabited and there are less than 300 or more landowner voters entitled to vote, a petition signed by:
 - i. At least 25% of the landowner voters are entitled to vote.

ADDITIONAL REQUIREMENTS**Contents of Commission Resolution Ordering a Change of (Re)organization (§57100 – §57102)**

The Commission's resolution ordering a change of (re)organization must contain a number of statements (see #'s 1-8 below and §57100), and in some cases findings (see #'s 9 and 10 below and §57101 and §57102). The required statements and findings are as follows. (Please see the following section for additional requirements for resolutions ordering a change of (re)organization subject to confirmation by the voters.)

1. A statement that the action is being taken pursuant to §57000.
2. A statement of the type of change of (re)organization.
3. A description of the boundaries of the affected territory.
4. The name(s) of any new or consolidated city or district.
5. All of the terms and conditions approved by the Commission (often incorporated by reference to the Commission's resolution).
6. The reasons for the change of (re)organization.
7. A statement as to whether the regular county assessment roll or another assessment roll will be utilized.
8. A statement that the affected territory will or will not be taxed for existing general bonded indebtedness of any agency whose boundaries are changed.
9. For city annexations of territories subject to a Williamson Act contract, a finding as to whether the city intends to not succeed to the contract.
10. For dissolutions, findings upon one or more of the following:
 - a. That the corporate powers have not been used for three years, as specified in §56871, by the district and that there is a reasonable probability that those powers will not be used in the future.
 - b. That the district is a registered-voter district and is uninhabited.
 - c. That the board of directors of the district has, by unanimous resolution, consented to the dissolution.

Contents of Commission Resolution Ordering a Change of (Re)organization Subject to Confirmation by the Voters (§57115 – §57120)

If the Commission orders a change of (re)organization subject to an election, the Commission is required to inform the board of supervisors or city council of the affected city of the Commission's determination and request the board or council to direct the elections official to conduct the election. Accordingly, the Commission forwards to the board or council its resolution ordering the change of (re)organization subject to confirmation by the voters. The resolution must do, in addition to the requirements listed in the above section, all of the following:

1. Determine that a resolution for a change of organization or reorganization for confirmation by voters shall include the following I (§57115)
 - a. Designated the affected territory within which the special election or elections are to be held. ~~(§57115)~~ Provide the question(s) to be submitted to the voters. ~~(§57115)~~
 - b. Specify any terms and conditions the proposal is subject to. ~~(§57115)~~
 - c. State the vote required for confirmation of the proposal. ~~(§57115)~~
2. Determine that an election will be held: (§57118)
 - a. Within the territory of each city or district order to be incorporated, formed, disincorporated, dissolved, or consolidated.
 - b. Within the entire territory of each district ordered to be merged with or established as a subsidiary district of a city, or both within the district and within the entire territory of the city outside the boundaries of the district.
 - c. If a sufficient protest petition has been submitted pursuant to §57108, within the territory of the district ordered to be merged with or established as a subsidiary district of a city.
 - d. Within the territory ordered to be annexed or detached.
 - e. If ordered by the Commission for annexation to, or detachment from, a district pursuant to §56876, both within the territory ordered to be annexed or detached and within all or the part of the district which is outside of that territory.
 - f. If, pursuant to §56759, the proposal includes annexation of inhabited territory to a city where the assessed value of land within the annexation territory equals one-half or more of that within the city, or the number of registered voters of the annexation territory equals one-half or more of that within the city, both within the annexation territory and affected city.

Policy & Procedural Guidelines for Conducting Protest Hearings

I. GUIDELINES

Prior to January 1, 2000, upon approval of a change of organization or reorganization, LAFCO designated an affected agency as the conducting authority and directed the conducting authority to conduct protest proceedings pursuant to Government Code §57000 et seq. With the passage of AB 2838 (Hertzberg – Chapter 761, Statutes of 2000), the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code §56000 et seq.) establishes LAFCO as the “conducting authority” for protest proceedings.

II. PURPOSE

To carry out its functions and responsibilities of conducting authority pursuant to G.C.§57000, Local Agency Formation Commission of Orange County (OC LAFCO) establishes the following procedural guidelines. Protest proceedings for changes of organization and reorganization shall be conducted by the Commission in accordance with these guidelines.

III. POLICY & PROCEDURAL GUIDELINES

In addition to these guidelines, please refer to Exhibit A for further discussion on the protest proceedings, including background information, flowcharts, and protest thresholds.

- A. In its resolution making determinations and approving a change of organization or reorganization for which protest proceedings are not waived pursuant to G.C.§56663, the Commission, pursuant to G.C.§57002(a), shall include in its terms and conditions a term and condition specifying a timeframe (between 21 and 60 days) for the collection and filing of written protests.
- B. Within 35 days of the adoption of the Commission’s resolution making determinations and approving a change of organization or reorganization, the Executive Officer shall notice the protest hearing and, in the notice, set the hearing date as prescribed by the Commission in its terms and conditions.

- C. Notice of the hearing shall be provided pursuant to G.C. §56150 et seq., as follows:
1. Notice must be published, posted, and mailed to affected agencies, proponents, and any persons requesting special notice.
 2. Mailed notice must be provided to all affected landowners if the proposal:
 - a. Involves the formation of, annexation to, or detachment from an improvement district.
 - b. Involves the annexation of 150 acres or less to a city.
 - c. Would result in the extension of a previously authorized special tax or benefit assessment.
 3. The time, date, and location of the hearing shall be specified in the notice as determined by the Executive Officer.
 4. The protest hearing must be held in the affected territory if the hearing is a proposal initiated by the Commission pursuant to G.C. §56375(a)(2) for a district consolidation, dissolution, or merger, or the establishment of a subsidiary district.
- D. At the protest hearing, the Executive Officer, or designee, shall:
1. Summarize the Commission's resolution.
 2. Hear and receive any oral or written protests, objections, or evidence.
 - a. Written protests may be filed by any affected landowner or registered voter.
- E. The Executive Officer, or designee, may continue the protest hearing from time to time, but not more than 60 days from the date specified in the notice.
- F. At the conclusion of the protest hearing:
1. If no written protests have been filed, the Executive Officer, or designee, shall adopt a form of resolution ordering the change of organization or reorganization without an election.
 2. If written protests have been filed, the Executive Officer, or designee,

shall within 30 days after the conclusion of the hearing, make determinations on the value of written protests filed and not withdrawn.

3. To determine the value of written protests filed and not withdrawn, the Executive Officer, or designee, shall cause the names of the signers on the protests to be compared with:
 - a. The voters' register in the office of the Registrar of Voters pursuant to §56707; and/or
 4. The names of the owners of land on the most recent assessment roll pursuant to §56708 and §56710.
- G. Upon determination of the value of written protests filed and not withdrawn, the Executive Officer, or designee, shall take one of the following actions, depending on the nature of the change of organization or reorganization:
1. Issue a Certification of Termination, terminating proceedings.
 2. Adopt a form of resolution making determinations and ordering the change of organization or reorganization without an election.
 3. Adopt a form of resolution making determinations and ordering the change of organization or reorganization subject to confirmation by the voters.
- H. If an election is required, the Executive Officer, or designee, pursuant to §57000(d), shall inform the legislative body of the affected agency of OC LAFCO's determination and request the legislative body to direct the elections official to conduct the election.

OC LAFCO AS CONDUCTING AUTHORITY (*Government Code §56029, §57000 et seq.*)REQUIREMENT

Pursuant to §57000(c), the Commission has the option of delegating any or all of the functions and responsibilities of conducting authority to the Executive Officer. Any references made to the “Commission” or “LAFCO” in the following discussion also pertains to the Executive Officer for any functions he or he will perform on behalf of the Commission. It should also be noted that, pursuant to §57008, the Commissioner or Executive Officer is required to hold the protest hearing in the affected territory if the proposal was initiated by the Commission pursuant to §56375(a) (district consolidation, dissolution, merger, establishment of a subsidiary district, or a reorganization that includes any of the previous).

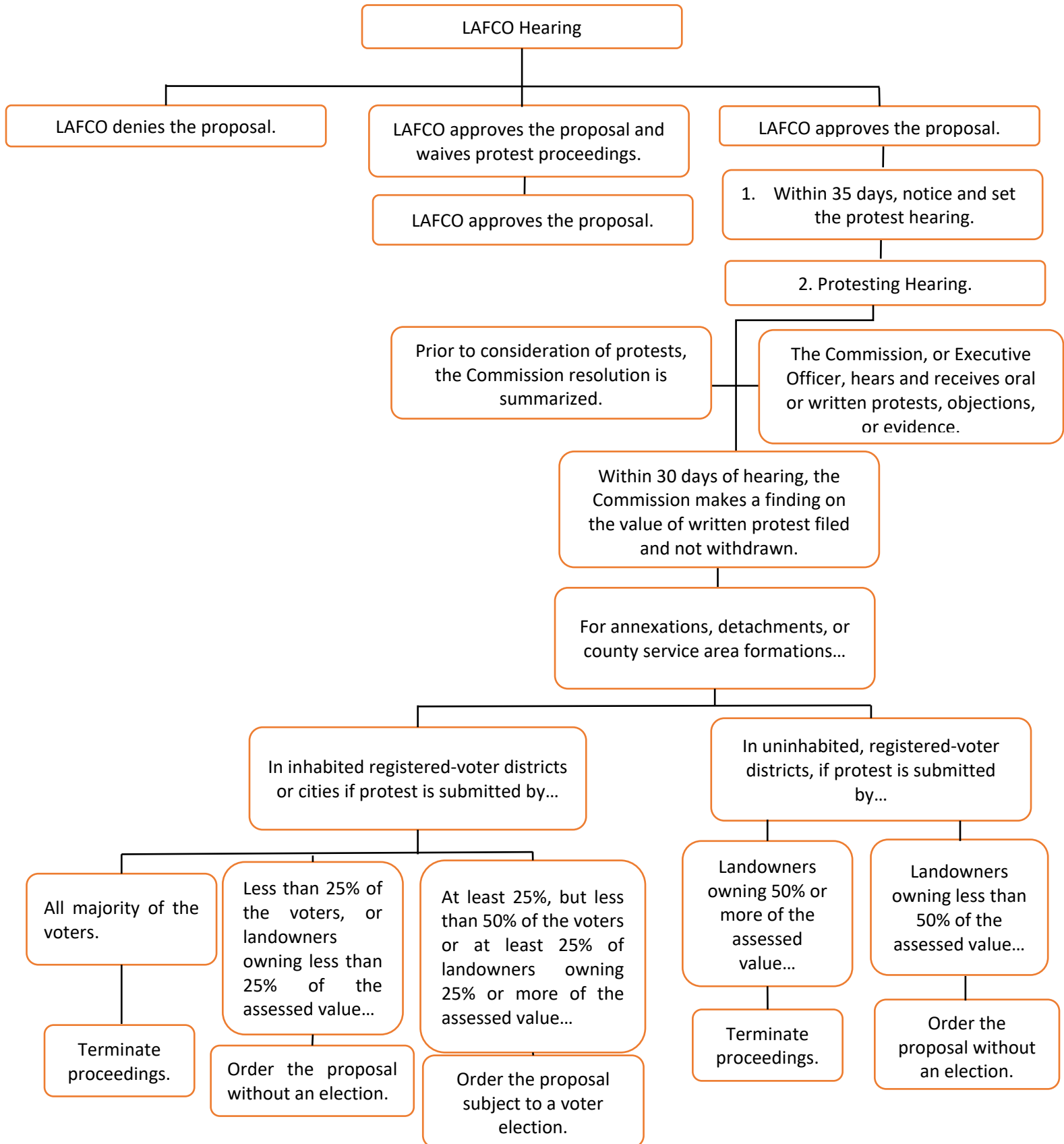
Following summarization of the Commission’s resolution at the protest hearing, the Commission hears and receives any oral or written protests, objections, or evidence. Anyone who has filed a written protest can withdraw that protest prior to the conclusion of the hearing. Within 30 days after the hearing, OC LAFCO makes a finding on the value of written protests filed and not withdrawn. The percentage thresholds for OC LAFCO to terminate or order the change of (re)organization with or without an election is consistent with existing law. (Please see flowcharts on the following pages.) LAFCO, however, does not have statutory authority to conduct an election if one is required.

Therefore, if OC LAFCO’s determination on a proposal is subject to confirmation by the voters and an election must be conducted, OC LAFCO, pursuant to §57000(d), is required to inform the board of supervisors or city council of the affected city of the Commission’s determination and request the board or council to direct the elections official to conduct the election.

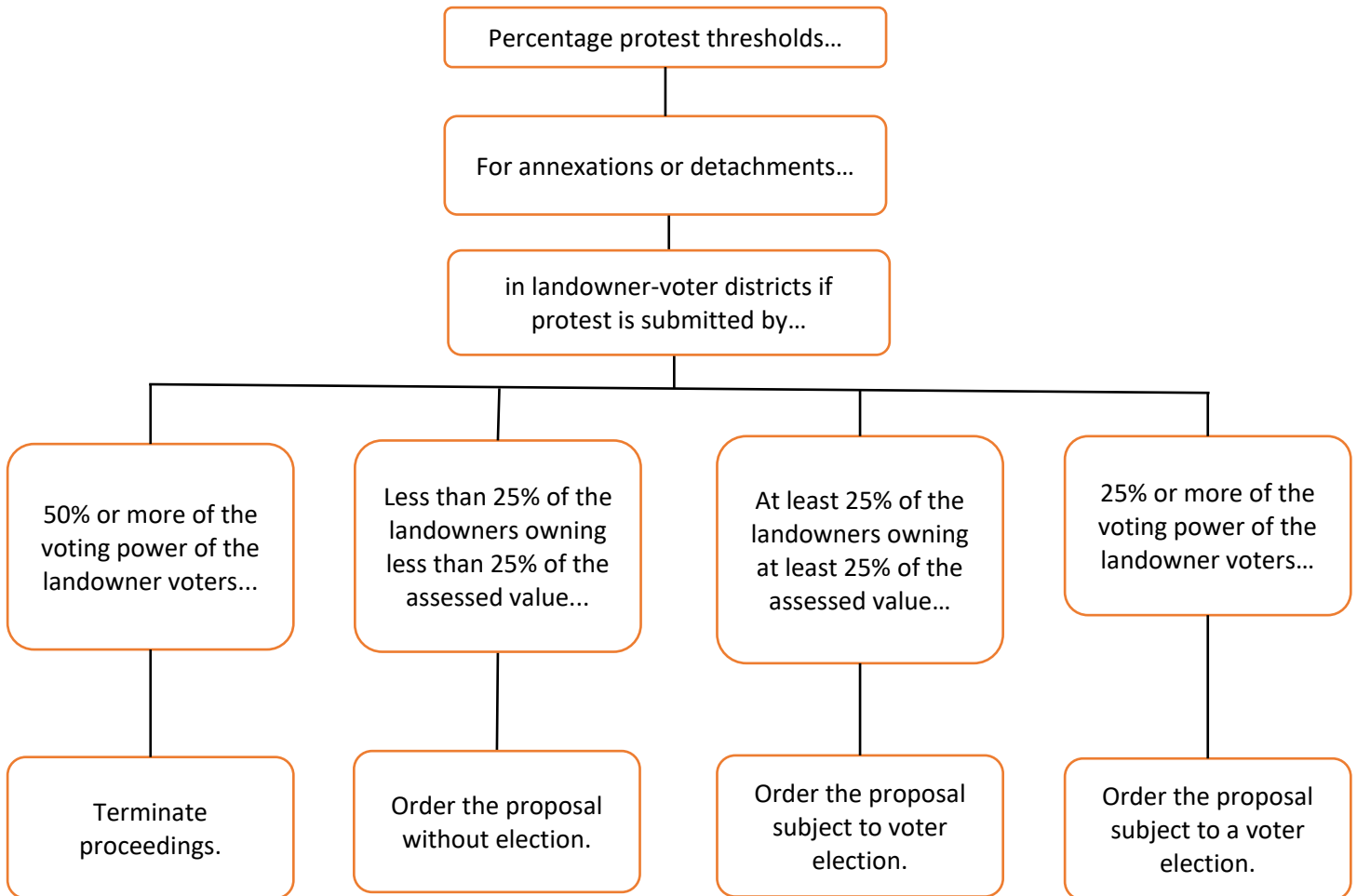
Exhibit "A"

LAFCO PROTEST PROCEEDINGS - §57075 and 57091(a)

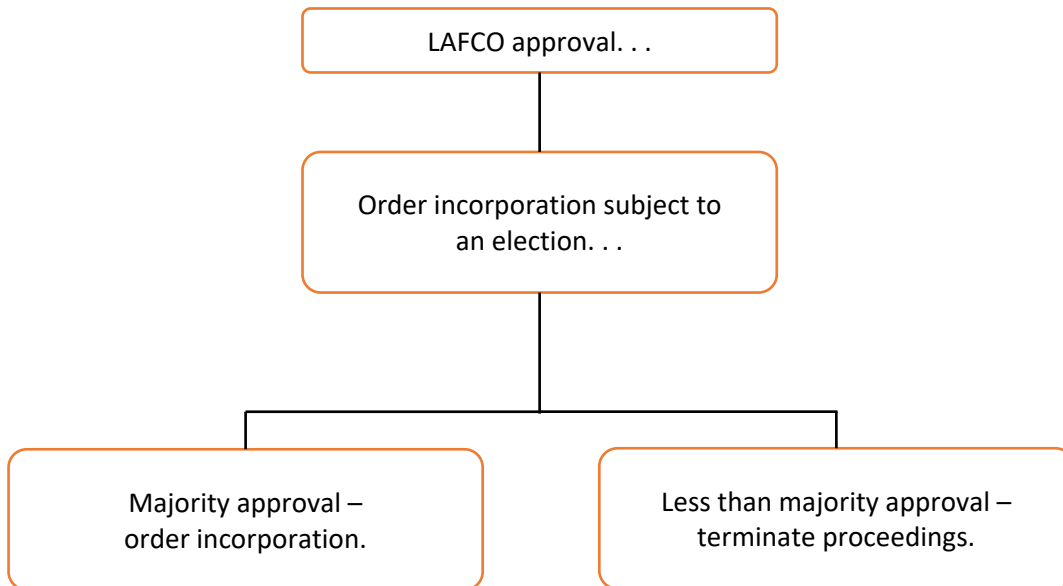
(For annexations, detachments, or county service area formations in registered- voter districts or cities)



LAFCO PROTEST THRESHOLDS - §57075 and 57091(b)
(For annexations, detachments, or county service area formations in landowner – voter districts)



LAFCO PROTEST THRESHOLDS §57077
(For incorporations and disincorporations)



LAFCO PROTEST THRESHOLDS - §57092, 57093, 57094
(For dissolutions, consolidations, mergers, and subsidiary district establishments)

The percentage protest thresholds for a dissolution, consolidation, merger, or the establishment of a subsidiary district differ from the previous changes of organization discussed in the previous sections. Pursuant to §57077.1, 57077.2, 57077.5, OC LAFCO is required to order a dissolution, consolidation, merger, or the establishment of a subsidiary district without an election unless certain protest requirements are met. Those requirements are enumerated in the outline below. However, pursuant to 57077.5 (c), the Commission is prohibited from ordering a merger or the establishment of a subsidiary district without a resolution of non-objection from the affected city.

The Commission is required to order a dissolution, consolidation, merger, or the establishment of a subsidiary district **subject to confirmation of the voters**, only if there are written protests as follows:

1. Where the proposal was not initiated by the Commission, and where an affected city or district has not objected by resolution to the proposal:
 - a. In the case of inhabited territory, a petition signed by:
 - i. At least 25% of the registered voters residing, or owning land, within the affected territory; or
 - ii. At least 25% of the number of landowners who own at least 25% of the assessed value of land within the affected territory.
 - b. In the case of a landowner-voter district, and the territory is uninhabited, a petition signed by:
 - i. At least 25% of the number of landowners owning at least 25% of the assessed value of the land within the affected territory.

NOTE: However, pursuant to §57102(b), in the case of a proposal for the dissolution of one or more districts and the annexation of all or substantially all of their territory to another district, the voter requirements outlined above do not apply if each affected district has consented to the proposal by a resolution adopted by a majority of its board of directors.

2. Where the proposal was initiated by the Commission, and regardless of whether an affected city or district has objected to the proposal by resolution:
 - a. In the case of inhabited territory where there are 300 or more landowners or registered voters within the affected territory, a petition signed by:
 - i. At least 10% of the number of landowners who own at least 10% of the assessed value of land within the affected territory; or
 - ii. At least 10% of the registered voters residing, or owning land, within the affected territory.

- b. In the case of inhabited territory where there are less than 300 landowners or registered voters within the affected territory, a petition signed by:
 - i. At least 25% of the number of landowners who own at least 25% of the assessed value of land within the affected territory; or
 - ii. At least 25% of the registered voters residing, or owning land, within the affected territory.

- c. In the case of a landowner-voter district where the territory is uninhabited and there are 300 or more landowner voters entitled to vote, a petition signed by:
 - i. At least 10% of the number of landowners who own at least 10% of the assessed value of land within the affected territory.

- d. In the case of a landowner-voter district where the territory is uninhabited and there are less than 300 or more landowner voters entitled to vote, a petition signed by:
 - i. At least 25% of the landowner voters are entitled to vote.

ADDITIONAL REQUIREMENTS**Contents of Commission Resolution Ordering a Change of (Re)organization (§57100 – §57102)**

The Commission's resolution ordering a change of (re)organization must contain a number of statements (see #'s 1-8 below and §57100), and in some cases findings (see #'s 9 and 10 below and §57101 and §57102). The required statements and findings are as follows. (Please see the following section for additional requirements for resolutions ordering a change of (re)organization subject to confirmation by the voters.)

1. A statement that the action is being taken pursuant to §57000.
2. A statement of the type of change of (re)organization.
3. A description of the boundaries of the affected territory.
4. The name(s) of any new or consolidated city or district.
5. All of the terms and conditions approved by the Commission (often incorporated by reference to the Commission's resolution).
6. The reasons for the change of (re)organization.
7. A statement as to whether the regular county assessment roll or another assessment roll will be utilized.
8. A statement that the affected territory will or will not be taxed for existing general bonded indebtedness of any agency whose boundaries are changed.
9. For city annexations of territories subject to a Williamson Act contract, a finding as to whether the city intends to not succeed to the contract.
10. For dissolutions, findings upon one or more of the following:
 - a. That the corporate powers have not been used for three years, as specified in §56871, by the district and that there is a reasonable probability that those powers will not be used in the future.
 - b. That the district is a registered-voter district and is uninhabited.
 - c. That the board of directors of the district has, by unanimous resolution, consented to the dissolution.

Contents of Commission Resolution Ordering a Change of (Re)organization Subject to Confirmation by the Voters (§57115 – §57120)

If the Commission orders a change of (re)organization subject to an election, the Commission is required to inform the board of supervisors or city council of the affected city of the Commission's determination and request the board or council to direct the elections official to conduct the election. Accordingly, the Commission forwards to the board or council its resolution ordering the change of (re)organization subject to confirmation by the voters. The resolution must do, in addition to the requirements listed in the above section, all of the following:

1. Determine that a resolution for a change of organization or reorganization for confirmation by voters shall include the following I (§57115)
 - a. Designated the affected territory within which the special election or elections are to be held. Provide the question(s) to be submitted to the voters.
 - b. Specify any terms and conditions the proposal is subject to.
 - c. State the vote required for confirmation of the proposal.

2. Determine that an election will be held: (§57118)
 - a. Within the territory of each city or district order to be incorporated, formed, disincorporated, dissolved, or consolidated.
 - b. Within the entire territory of each district ordered to be merged with or established as a subsidiary district of a city, or both within the district and within the entire territory of the city outside the boundaries of the district.
 - c. If a sufficient protest petition has been submitted pursuant to §57108, within the territory of the district ordered to be merged with or established as a subsidiary district of a city.
 - d. Within the territory ordered to be annexed or detached.
 - e. If ordered by the Commission for annexation to, or detachment from, a district pursuant to §56876, both within the territory ordered to be annexed or detached and within all or the part of the district which is outside of that territory.
 - f. If, pursuant to §56759, the proposal includes annexation of inhabited territory to a city where the assessed value of land within the annexation territory equals one-half or more of that within the city, or the number of registered voters of the annexation territory equals one-half or more of that within the city, both within the annexation territory and affected city.

- g. If a sufficient protest petition has been submitted pursuant to 57077.4 for a proposal for the dissolution of one or more districts and annexation of all, or substantially all, of their territory to another district, separately within the territory of each affected district that has filed a petition.
- 3. For a special reorganization, determine that an election will be held in both the territory to be detached from the city and the entire territory of the affected city (§57119).
 - 4. For an incorporation: (§57116)
 - a. Provide for the election of the officers of the proposed city unless:
 - i. The applicant has requested, and the Commission’s resolution specifies, that the first election of city officers is to be held after voter approval of the incorporation, pursuant to §56724; and/or
 - ii. The incorporation petition included provisions for appointment of a city manager and appointment of elective city officials, except city council members, pursuant to §56723.
 - b. Provide for the election on the question of whether city council members in future elections are to be elected by district or at large.
 - c. If requested in the petition, state that the voters may express a preference as to whether or not the city shall operate under the city manager form of government.
 - d. If requested in the petition, state that the voters may express a preference between names for the new city.
 - 5. For a city consolidation: (§57117)
 - a. Provide for the election of the officers of the successor city.
 - b. State that the voters may express a preference as to the name of the successor city.
 - 6. For an incorporation or formation, provide for the establishment of the appropriations, or “Gann,” limit as determined pursuant to §56811 (§57120).

Original Adoption Date: 2/14/2001
Date of Last Review: 3/8/2023
Date of Last Revision: 9/13/2023

8b | Commission
Discussion

September 13, 2023

REGULAR MEMBERS

CHAIR

Douglass Davert
Special District Member

VICE CHAIR

Donald P. Wagner
County Member

IMMEDIATE PAST CHAIR

Derek J. McGregor
Public Member

Wendy Bucknum

City Member

Andrew Do

County Member

James Fisler

Special District Member

Bruce Whitaker

City Member

ALTERNATES

Katrina Foley

County Member

Kathryn Freshley

Special District Member

Carol Moore

City Member

Lou Penrose

Public Member

STAFF

Carolyn Emery

Executive Officer

Scott Smith

General Counsel

TO: Local Agency Formation Commission
of Orange County

FROM: Executive Officer
Policy Analyst II

SUBJECT: Second Amendment to Professional Services Agreement
with Berkson Associates

BACKGROUND

The OC LAFCO Professional Consultant Services Agreement with Berkson Associates was initially approved by the Commission in 2022 to provide services to support the development of the fiscal indicators for the Southwest and West Municipal Service Review (MSRs) regions. To date, Mr. Berkson has developed the indicators included in the MSRs for each of the 13 cities and 11 special districts from interviews and data submitted by the agencies. Additionally, Mr. Berkson provided his expertise in refining the fiscal indicators throughout the process of preparing the public MSR draft and final MSR reports.

During the process of completing the Southwest and West MSRs, staff and Mr. Berkson engaged with several agencies to address comments and questions related to the fiscal indicators. As the two MSRs served as prototypes for the fiscal indicators, it became apparent that modifications to the fiscal indicators were necessary to address the comments and inquiries of the agencies. Based on the feedback received during the MSRs, it is anticipated that additional refinements to the fiscal indicators will be needed on a case-by-case with agencies for the duration of the 4th Cycle of MSRs.

Amendment to Professional Services Agreement with Berkson Associates

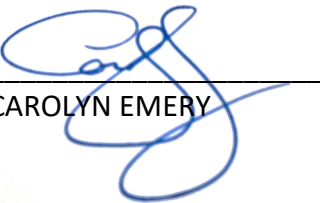
As part of the OC LAFCO 4th Cycle MSR program, the next scheduled MSRs include the Central and Southeast regions and the Orange County Mosquito and Vector Control District. Mr. Berkson's expertise will be needed to update the fiscal indicators for these MSRs and to assist staff in addressing inquiries from the agencies. As such, staff is recommending an amendment to Berkson Associates contract to assist with the fiscal analysis of the 4th Cycle MSRs and continued updates to the fiscal indicators as provided in Attachment 1.

RECOMMENDED ACTION

Staff recommends the Commission:

1. Approve the Second Amendment to OC LAFCO Professional Consultant Services Agreement with Berkson Associates and authorize the Executive Officer to execute the amendment.

Respectfully Submitted,



CAROLYN EMERY



GAVIN CENTENO

Attachments:

1. Second Amendment to OC LAFCO Professional Consultant Services Agreement with Berkson Associates
2. Professional Consultant Services Agreement with Berkson Associates

ORANGE COUNTY LOCAL AGENCY FORMATION COMMISSION

SECOND AMENDMENT TO PROFESSIONAL CONSULTANT SERVICES AGREEMENT WITH
BERKSON ASSOCIATES**1. PARTIES AND DATE.**

This Second Amendment to the Agreement for Professional Consultant Services (“Second Amendment”) is entered into on the ____ day of September 2023, by and between the Orange County Local Agency Formation Commission, organized and operating pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Government Code Section 56000 et seq., with its principal place of business at 2677 North Main Street, Suite 1050, Santa Ana, CA, 92701 (“OC LAFCO”) and Berkson Associates, a sole proprietorship, with its principal place of business at 34 Terrace Avenue, San Anselmo, CA 94996 (“Consultant”). OC LAFCO and Consultant are sometimes individually referred to herein as “Party” and collectively as “Parties.”

2. RECITALS.

2.1 Agreement. On April 13, 2022, the Parties entered into that certain Professional Consultant Services Agreement (“Agreement”) for consulting services to assist in updating the fiscal indicators web-based program for agencies located within the Southwest and West MSR regions (“the Project”); and

2.2 Second Amendment. The Parties now desire to amend the Agreement in order to continue the provision of consulting services for fiscal analysis by Berkson Associates for the completion of the 4th Cycle MSRs under Exhibit “A” to the agreement.

3. TERMS.

3.1 Scope of Services. Exhibit “A” of the Agreement is hereby amended in its entirety in the form of Attachment “1” to this Second Amendment, attached hereto and incorporated herein by reference.

3.2 Compensation. Section 3, subdivision (b) of the Agreement is hereby amended in its entirety and restated to read as follows:

“Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement set forth in “Exhibit A” attached hereto and incorporated herein by reference. The total compensation shall not exceed TWENTY THOUSAND DOLLARS (\$20,000) per fiscal year without written approval of the OC LAFCO Commission or OC LAFCO Executive Officer, as applicable.”

3.3 Remaining Provisions of Agreement. Except as provided in this Second Amendment, the remaining provisions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Second Amendment as of the date first written above.

**ORANGE COUNTY LOCAL AGENCY
FORMATION COMMISSION**

BERKSON ASSOCIATES

By: _____
Carolyn Emery
Executive Officer

By: _____
Richard Berkson
Consultant

Dated: _____

Dated: _____

Approved as to form:

General Counsel, Orange County Local
Agency Formation Commission

ATTACHMENT “1” TO SECOND AMENDMENT

EXHIBIT “A”
SCOPE OF SERVICES

Agreement: Work with Commission staff and agencies to review and finalize the fiscal analysis for the public and final drafts of the MSRs for the 4th Cycle MSRs.

Tasks	Deliverables	Estimate
Task 1- Review of MSR Fiscal Section	<ul style="list-style-type: none"> Assist with the MSR fiscal analysis including the fiscal indicators and determinations. 	\$10,000
Task 2- Update the Annual Financial Data for the Indicators Web-Based Program and Training	<ul style="list-style-type: none"> Update the primary fiscal indicators spreadsheet and website as financial audits become available. 	\$5,000
Task 3- Updates and Revisions to Fiscal Indicators	<ul style="list-style-type: none"> Review and respond to agency questions and comments regarding fiscal indicators. Based on agency discussions, revise and update fiscal indicators as needed. 	\$5,000
TOTAL		\$20,000

**ORANGE COUNTY LOCAL AGENCY FORMATION COMMISSION
PROFESSIONAL CONSULTANT SERVICES AGREEMENT**

This Agreement is made effective, April 13, 2022, by and between ORANGE COUNTY LOCAL AGENCY FORMATION COMMISSION (hereinafter referred to as “LAFCO”), organized and operating pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, as amended (Government Code Sections 56000 et seq.), and Berkson Associates (hereinafter referred to as “Consultant”).

RECITALS

A. LAFCO is a public agency of the State of California and is in need of professional consulting services to assist in updating the fiscal indicators web-based program for agencies located within the Southwest and West MSR regions (hereinafter referred to as “the Project”).

B. Consultant is qualified by virtue of experience, training, education and expertise to provide such services.

C. This Agreement is to establish the terms and conditions for LAFCO to retain Consultant to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Term and Time of Performance.

The term of this Agreement shall be from the effective date through August 31, 2022, unless terminated in accordance with the procedures outlined in Section 15 of this Agreement. Consultant shall perform its services hereunder in a prompt and timely manner and shall commence performance upon the execution of this Agreement.

2. Services.

Consultant shall provide LAFCO with the services described in the Scope of Services attached hereto as Exhibit “A.”

3. Compensation.

a. Subject to paragraph 3(b) below, LAFCO shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit “B.”

b. The compensation for services rendered by Consultant pursuant to Exhibit “A” shall not exceed \$15,000.

c. Consultant shall invoice monthly for completed tasks and actual costs, as shown in Exhibit B.

d. Consultant shall submit to LAFCO a statement for services rendered. LAFCO shall cause payment to be made to Consultant within thirty (30) working days from receipt of statement for services and LAFCO's determination that Consultant has adequately performed those services for which LAFCO has been invoiced.

4. Additional Work

If changes in the work seem merited by Consultant or LAFCO, and informal consultations with the other party indicate that a change is warranted, it shall be processed by LAFCO in the following manner: Consultant shall forward a letter outlining the changes to LAFCO with a statement of estimated changes in fee or time schedule. An amendment to the Agreement shall be prepared by LAFCO and executed by both parties before performance of such services or LAFCO will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

5. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the Agreement period and for four (4) years from the date of final payment under the contract for inspection by LAFCO.

6. Delays in Performance.

Neither LAFCO nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government.

b. Consultant shall assist LAFCO in obtaining and maintaining all permits required of Consultant by Federal, State and local regulatory agencies.

8. Standard of Care.

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Sub-consultant.

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of LAFCO, which may be withheld for any reason. Nothing contained herein shall prevent Consultant from employing independent associates and sub-consultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Contractor.

It is agreed that Consultant shall act and be an independent contractor and is not an agent or employee of LAFCO and is not entitled to participate in any compensation plans or other benefits LAFCO provides for its employees. All services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the services, subject to the requirements of this Agreement. Any additional personnel performing the services under this Agreement on behalf of Consultant shall also not be employees of LAFCO and shall at all times be under Consultant's exclusive direction and control. Consultant shall be responsible for all reports and obligations respecting such personnel, including but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance and workers' compensation insurance.

11. Integration.

This Agreement represents the entire understanding of LAFCO and Consultant as to those matters contained herein and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by both parties hereto. This is an integrated Agreement.

12. Insurance.

Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, all insurance set forth in "Exhibit C" hereto, in a form and with insurance companies acceptable to LAFCO.

13. Indemnification.

To the fullest extent permitted by law, Consultant shall defend, indemnify and hold LAFCO, its Board, members of the Board, employees, and authorized volunteers free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to the alleged negligent acts, errors or omissions caused by the negligence, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorney's fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

In addition, Consultant shall defend, with counsel of LAFCO's choosing and, to the extent permitted by Civil Code Section 2782.8, at Consultant's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by this section arising out of, pertaining to, or incident to the alleged negligent acts, errors or omissions caused by the negligence, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services or this Agreement that may be brought or instituted against LAFCO or its Board, members of the Board, employees, and authorized volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against LAFCO or its Board, members of the Board, employees, and authorized volunteers as part of any such claim, suit, action or other proceeding. Consultant shall also reimburse LAFCO for the cost of any settlement paid by LAFCO or its Board, members of the Board, employees, or authorized volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for LAFCO's attorney's fees and costs, including expert witness fees. Consultant shall reimburse LAFCO and its Board, members of the Board, employees, and/or authorized volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by LAFCO, its Board, members of the Board, employees, or authorized volunteers. Consultant shall have no duty or obligation to defend, indemnify, and/or pay settlement expenses of LAFCO, its Board, its Board members, employees, or authorized volunteers due to the negligence, errors or omissions caused by the sole negligence, and/or willful misconduct of LAFCO, its Board, its Board members, employees or authorized volunteers.

14. Laws, Venue, and Attorneys' Fees.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Orange, State of California. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorney's fees, as determined by the court.

15. Termination or Abandonment.

a. LAFCO may terminate this Agreement for any reason or no reason by giving thirty (30) calendar days' written notice of termination. LAFCO shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by LAFCO and Consultant of the portion of such task completed but not paid prior to said termination. LAFCO shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to LAFCO only in the event of substantial failure by LAFCO to perform in accordance with the terms of this Agreement through no fault of Consultant.

16. Key Personnel.

Consultant shall assign Richard Berkson as the Principal Consultant. The Principal Consultant shall not be removed from the Project or reassigned without the prior written consent of LAFCO.

17. Notice.

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

LAFCO:
Carolyn Emery, Executive Officer
OC LAFCO
2677 N. Main Street, Suite 1050
Santa Ana, CA 92705

Consultant:
Richard Berkson, Principal
Berkson Associates
34 Terrace Avenue
San Anselmo, CA 94996

and shall be effective upon receipt thereof.

18. Third Party Rights.

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than LAFCO and the Consultant.

19. Severability.

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

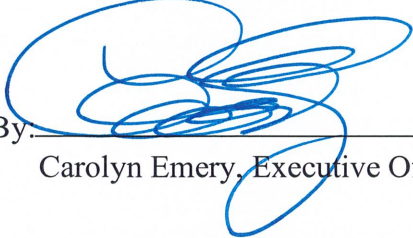
20. Acknowledgment.

Consultant acknowledges that by executing this agreement, they are also, in good faith, determining that the appointment meets each of the requirements set forth in Government Code Section 7522.56, including the unemployment insurance requirement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**ORANGE COUNTY LOCAL AGENCY
FORMATION COMMISSION**

BERKSON ASSOCIATES

By: 

Carolyn Emery, Executive Officer


By: 

Richard Berkson, Principal

Dated: 5/10/2022

Dated: 5/3/2022

Approved as to form:



Scott C. Smith, General Counsel
Orange County Local Agency Formation Commission

Attest:



Cheryl Carter-Benjamin Commission
Clerk

EXHIBIT “A”**SCOPE AND SCHEDULE OF SERVICES****Task 1: Compile past revenues, expenditures, and balance (reserve) data for each agency from financial reports.**

Compile financial documents for each of the 24 agencies being reviewed for the Southwest and West MSR regions. The documents shall include financial audits from FY 2017-18 through FY 2020-21 and adopted budgets for the same period plus FY2021-22 and FY2022-23. Consultant will coordinate the request for financial documents with the MSR consultant, as part of the MSR preparation/survey process.

Deliverable: Data summary in spreadsheet tables for revenue, expenditure, and balance (reserve) information.

Schedule: June 1 – June 31

Task 2: Prepare Fiscal Indicators for each Agency (24 agencies)

Provide key indicators of financial capacity for each item (total revenue, expenditure, and balances over time). These items are primary indicators of the financial conditions of an agency that can point towards and be supplemented by more in-depth analysis by LAFCO.

Deliverable: Brief paragraph synopsis to highlight key findings of indicators that include:

- Revenue changes annually and over time, compared to expenditures
- Expenditure changes annually and over time, compared to long-term inflation
- Reserves vs. expenditures

Schedule: June 15 – July 15

Task 3: Provide spreadsheets with the data and indicators

Develop spreadsheets that include the data compiled and indicators for ongoing use and update by LAFCO for the purpose of identifying and reporting fiscal trends and indicators.

Deliverable: Spreadsheets with data and indicators for LAFCO use only.

Schedule: July 31

**EXHIBIT “B”
SCHEDULE OF CHARGES/PAYMENTS**

Fee Schedule for
Berkson Associates

The following fee schedule shall apply to work performed under this Agreement:

Name, Title	Hourly Rate
Richard Berkson, Consultant	\$250.00
Data Entry Staff	\$50.00
Task 1: Compile past Financial data	\$8,000
Task 2: Prepare Fiscal Indicators (24 agencies)	\$4,000
Task 3: Provide spreadsheets with data and indicators	<u>\$3,000</u>
Total not to Exceed	\$15,000

*Charges assume that all meetings are held by conference calls or video conferencing.

Consultant shall bill LAFCO for the actual hours incurred in performing the services required under this Agreement in accordance with the fee schedule set forth in this Exhibit B and subject to the provisions of Section 3 of this Agreement.

**EXHIBIT “C”
INSURANCE REQUIREMENTS**

1. Commercial General Liability

- a. The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to LAFCO.
- b. Coverage for Commercial General Liability insurance shall be at least as broad as the following: ISO Commercial General Liability coverage (Occurrence Form CG 0001)
- c. Commercial General Liability Insurance must include coverage for the following:
 - i. Bodily Injury and Property Damage
 - ii. Personal Injury/Advertising Injury
 - iii. Premises/Operations Liability
- d. All such policies shall give LAFCO, its Board, members of the Board, employees, and authorized volunteers insured status using ISO endorsement CG2010, CG2033, or equivalent.
- e. The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by LAFCO.

2. Automobile Liability

- a. At all times during the performance of the work under this Agreement the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to LAFCO.
- b. Coverage for Automobile Liability Insurance shall be at least as broad as: ISO Form Number CA 0001 covering automobile liability (Coverage Symbol 1, any auto).
- c. The automobile liability program may utilize deductibles, but not a self-insured retention, subject to written approval by LAFCO.

3. Workers' Compensation/Employer's Liability

- a. Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for

workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

- b. Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the “Workers' Compensation and Insurance Act,” Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period covered by the work under this Agreement, workers' compensation of the same type and limits as specified in this section.
- c. Such insurance shall include an insurer's Waiver of Subrogation in favor of LAFCO and will be in a form and with insurance companies acceptable to LAFCO.

4. Minimum Policy Limits Required

- a. The following insurance limits are required for the Agreement:

	Combined Single Limit
Commercial General Liability	\$1,000,000 per occurrence/\$2,000,000 aggregate for bodily injury, personal injury and property damage
Automobile Liability	\$1,000,000 per occurrence for bodily injury and property damage
Employer's Liability/ Workers' Compensation	\$1,000,000 per occurrence/ Statutory

5. Evidence Required

- a. Prior to execution of the Agreement, the Consultant shall file with LAFCO evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 2010 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (ACORD Form 25-S or equivalent). All evidence of insurance shall be signed by a properly authorized officer, agent or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

6. Required Policy Provisions

- a. Certificates of insurance and policy endorsements shall require 30 days (10 days for non-payment of premium) notice of cancellation to LAFCO. Statements that the carrier “will endeavor” and “that failure to mail such notice shall impose no obligation and liability upon the company, its agents or representatives,” will not be acceptable on certificates. If any of the required coverage expires during the term of this Agreement, the Contractor shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to LAFCO at least ten (10) days prior to the expiration date.
- b. The Commercial General Liability policy shall contain a provision stating that Consultant's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by LAFCO or any named insureds shall not be called upon to contribute to any loss.
- c. The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three (3) years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period i) if the retroactive date is advanced past the effective date of this Agreement; ii) if the policy is canceled or not renewed; or iii) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

7. Qualifying Insurers

- a. All policies required shall be issued by acceptable insurance companies, as determined by LAFCO, which satisfy the following minimum requirements:
- b. Insurance carriers shall have a current AM Best rating of not less than “A-” policyholder's rating and a financial rating of not less than “Class VII,” unless otherwise approved in advance by LAFCO.

8. Additional Insurance Provisions

- a. The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by LAFCO, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.
- b. If at any time during the life of the Agreement, the Consultant fails to maintain in full force any insurance required by the Agreement documents LAFCO may terminate the Agreement.

- c. The Consultant shall include all subconsultants as insureds under its policies or shall furnish separate certificates and endorsements for each subconsultant. All coverages for subconsultants shall be subject to all of the requirements stated herein.
- d. LAFCO may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.
- e. Neither LAFCO, its Board, members of the Board, employees, or authorized volunteers shall be personally responsible for any liability arising under or by virtue of the Agreement.