

DRAFT MINUTES

OC LAFCO REGULAR MEETING

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

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 Fisler led the Pledge of Allegiance.

3. ROLL CALL

The following Commissioners were present:

City Members

Wendy Bucknum (arrived at 8:20 a.m.)
Bruce Whitaker
Carol Moore **(Alt.)**

County Members

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

Special District Members

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

Public Member

Derek J. McGregor

The following staff members and general counsel were present:

- Assistant Executive Officer Luis Tapia
- Policy Analyst Gavin Centeno
- Policy Analyst Amanda Castro
- Commission Clerk Cheryl Carter-Benjamin
- General Counsel Scott Smith

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

The Assistant Executive Officer noted that no supplemental communication was received.

5. PUBLIC COMMENT

Chair Davert requested public comments on any non-agenda items. The Commission Clerk noted no speaker cards were received.

Chair Davert closed the hearing of public comments.

6. CONSENT CALENDAR

Chair Davert asked if there were any requests by Commissioners to pull any of the consent items for discussion and from the public to speak on the item. **Chair Davert** requested Agenda Item 6c be pulled for discussion. The Commission Clerk noted no request from the public to speak on the items.

Chair Davert called for a motion to approve the remaining consent calendar items. **Vice Chair Wagner** motioned for approval of the consent calendar, and **Commissioner Whitaker** seconded the motion.

6a. – August 9, 2023 - Regular Commission Meeting Minutes

6b. – Legislative Report (September 2023)

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

MOTION PASSED: 6-0.

6c. – Revised OC LAFCO 2023 Meeting and Events Calendar

Chair Davert asked staff to clarify the proposed revision to the OC LAFCO 2023 Meeting and Events calendar. The Assistant Executive Officer noted that if approved by the Commission, California Native American Day would be observed as a holiday beginning this year in place of Columbus Day.

Vice Chair Wagner inquired about the procedure for execution of agenda documents during the Executive Officer’s leave of absence and if September documents were reviewed and approved by the Executive Officer. The Assistant Executive Officer noted that the Executive Officer provided and reviewed the staff reports in advance, and her electronic signature was applied to all agenda documents. **Vice Chair Wagner** recommended going forward that final reports indicate the date the signature was applied to the report.

Commissioner Bucknum arrived at 8:20 a.m.

Chair Davert called for a motion on the item. **Vice Chair Wagner** motioned to approve staff recommended action, and **Commissioner Do** seconded the motion. **Commissioner Bucknum** noted an abstention for the consent calendar item due to her delayed arrival.

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

MOTION PASSED: 6-0-1.

7. PUBLIC HEARING

No public hearing items scheduled.

8. COMMISSION DISCUSSION AND ACTION

8a. – Policy and Guidelines for Conducting Protest Hearings

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

Chair Davert called for Commission discussion and public comments. **Commissioner Do** asked clarifying questions regarding proposed changes to the policy. Assistant Executive Officer Luis Tapia responded that proposed changes to the policy were made to align with current state law. 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 staff recommended action, and **Vice Chair Wagner** seconded the motion.

MOTION: Adopt the Policy and Procedural Guidelines for Conducting Protest Hearings, as amended. (Andrew Do)
SECOND: Donald Wagner
FOR: Andrew Do, Donald Wagner, Wendy Bucknum, James Fisler, Derek J. McGregor, Bruce Whitaker, Douglass Davert
AGAINST: None
ABSTAIN: None

MOTION PASSED: 7-0.

8b. – Second Amendment to Professional Services Agreement with Berkson and Associates

Policy Analyst II Gavin Centeno presented the staff report and recommended action 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 called for a motion on the item. **Commissioner Do** motioned to approve staff recommended action, and **Commissioner Fisler** seconded the motion.

MOTION: Approve the Second Amendment to OC LAFCO Professional Consultant Services Agreement with Berkson Associates and authorize the Executive Officer to execute the amendment. (Andrew Do)
SECOND: James Fisler
FOR: Andrew Do, James Fisler, Wendy Bucknum, Derek J. McGregor, Donald Wagner, Bruce Whitker, Douglass Davert
AGAINST: None
ABSTAIN: None

MOTION PASSED: 7-0.

9. COMMISSIONER COMMENTS

Commissioner Do noted for the record his objection to the process of withholding documents and information involving closed session items, including an employee’s evaluation and potential litigation. He also noted his repeated requests for documents and briefings on the items and received only verbal summaries for an allegedly done process and conclusion that he must abide by to formulate an opinion. **Commissioner Do** expressed that he has requested a reconsideration of the process used for the closed session items as it is not transparent, denies Commissioners access to information, and is an antithesis of good governance. He concluded comments by stating that, under protest, he will not be

participating in the closed session due to the lack of information necessary to formulate an understanding or conclusion of the closed session items.

Chair Davert noted that today's closed session items are not relevant to **Commissioner Do's** description, and whether he participates was his decision.

Chair Davert asked General Counsel to clarify the closed session items for the Commission today. General Counsel noted that the matter before the Commission for closed session is to discuss the standards for reviewing the Executive Officer's performance and salary for Fiscal Year 2022-23. Following General Counsel's clarification of the process for the closed session, **Commissioner Do** noted that his objection stands.

10. EXECUTIVE OFFICER'S REPORT

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

11. INFORMATIONAL ITEMS & ANNOUNCEMENTS

No informational items and announcements scheduled.

12. CLOSED SESSION

Commissioner Do left at 8:29 a.m.

12a. – Closed Session

The Commission adjourned to closed session at 8:29 a.m. on the following items:

12a. – PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Pursuant to Government Code section 54957
Title: Executive Officer

12b. – CONFERENCE WITH LABOR NEGOTIATORS

Pursuant to Government Code Section 54957.6
Agency designated representative: Commission Chair
Unrepresented employee: Executive Officer

The Commission reconvened in open session at 9:02 a.m., and General Counsel Scott Smith noted that the Commission discussed the closed session items, and there were no reportable actions.

13. ADJOURNMENT OF THE REGULAR COMMISSION MEETING

Chair Davert adjourned the Regular Commission Meeting at 9:03 a.m. to October 11, 2023.

Douglass Davert, Chair
Orange County Local Agency Formation Commission

ATTEST:

By: _____
Cheryl Carter-Benjamin
Commission Clerk