

# 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 Government Code Section §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 Government Code Section §56663, the Commission, pursuant to Government Code Section §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 Government Code Section §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 Government Code Section §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. 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
  - b. 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.

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).

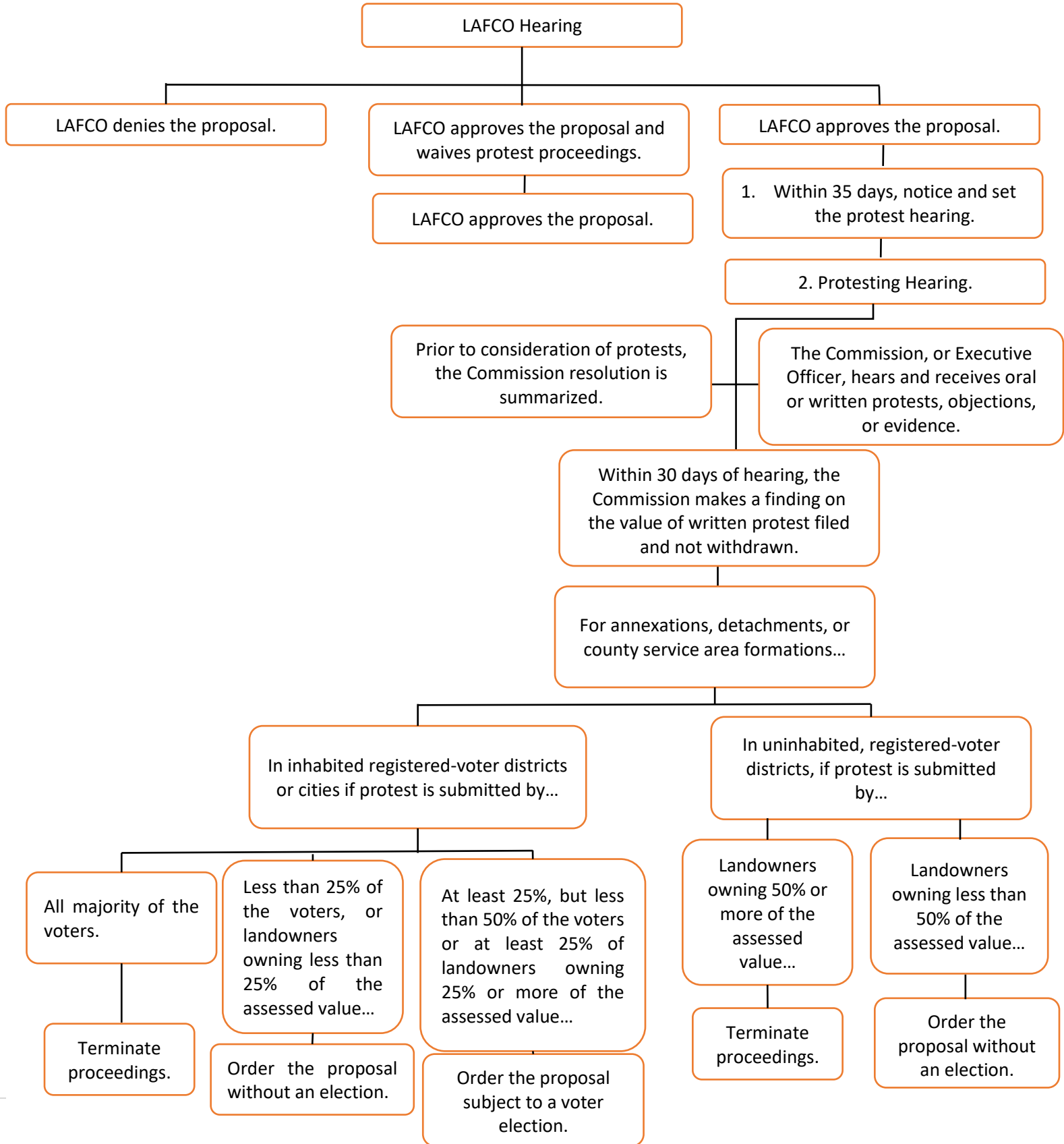
Following summarization of the Commission’s resolution at the protest hearing, the Commission hears and receives any oral or written protests, objections, or evidence. Anyone who has filed a written protest can withdraw that protest prior to the conclusion of the hearing. Within 30 days after the hearing, 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.

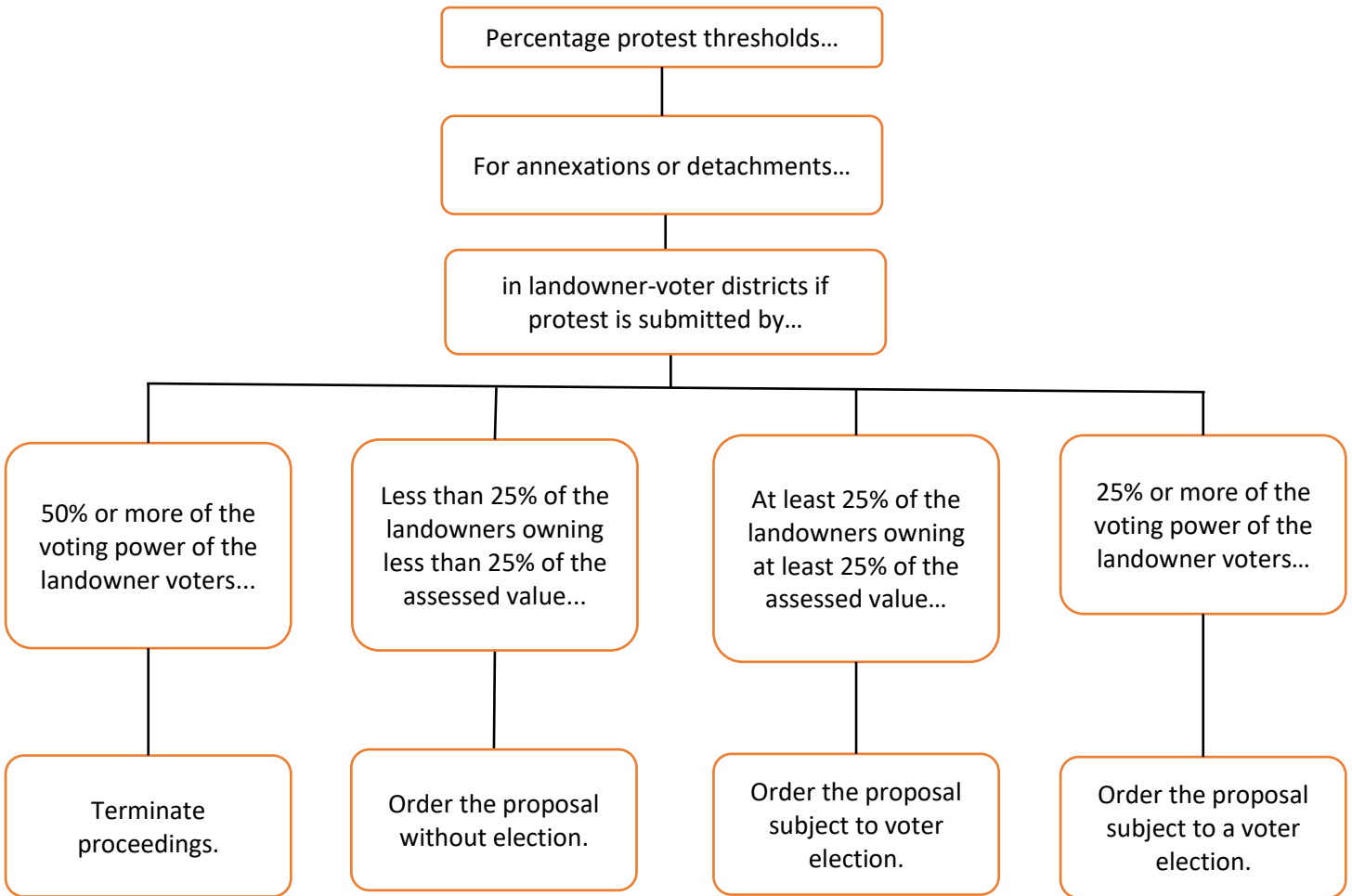
Exhibit "A"

LAFCO PROTEST PROCEEDINGS - §57075 and 57091(a)

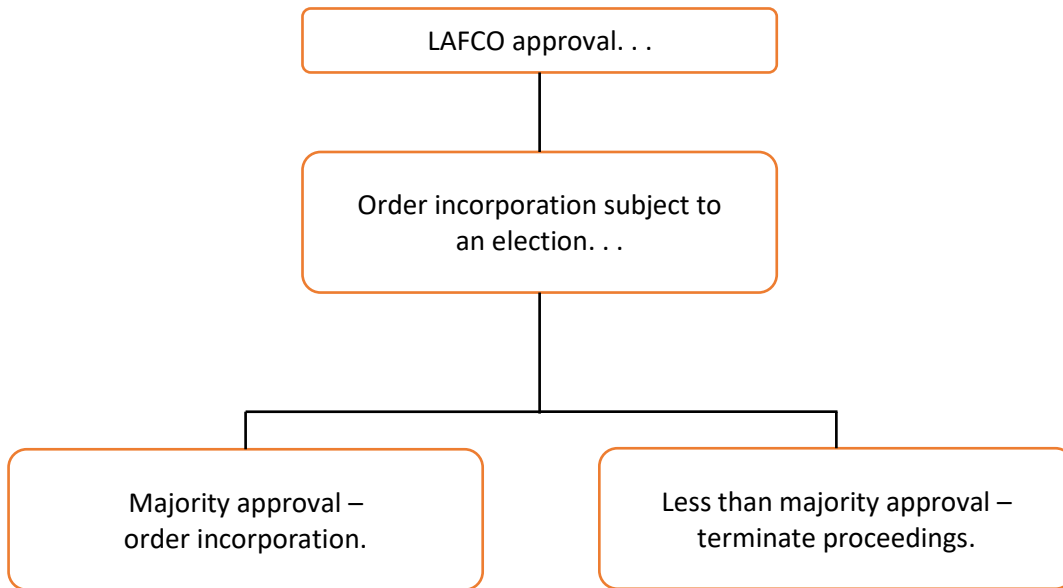
(For annexations, detachments, or county service area formations in registered- voter districts or cities)



**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:
    - 1) At least 25% of the registered voters residing, or owning land, within the affected territory; or
    - 2) 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:
    - 1) 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:
    - 1) At least 10% of the number of landowners who own at least 10% of the assessed value of land within the affected territory; or
    - 2) 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:
  - 1) At least 25% of the number of landowners who own at least 25% of the assessed value of land within the affected territory; or
  - 2) 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:
  - 1) 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 landowners entitled to vote, a petition signed by:
  - 1) At least 25% of the landowners 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:
      - 1) 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
      - 2) 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).

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