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Scott Smith
General Counsel

MEETING DATE: February 19, 2025

TO: Local Agency Formation Commission
of Orange County

FROM: Assistant Executive Officer

SUBJECT: Policy for the Indemnification of OC LAFCO by
Applicants

BACKGROUND

Periodically, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH Act) is modified, requiring the Commission to amend an agency’s respective policy. During the 2024 legislative session, Senate Bill 1209, authored by Senator Cortese and signed by the Governor, modified the CKH Act by explicitly authorizing LAFCOs to require applicants to indemnify LAFCOs against litigation. The Commission adopted a support position on the bill. This report includes recommended amendments to the “Policy for the Indemnification of OC LAFCO by Applicants” to align with the implementation of Senate Bill 1209.

For ease of review, proposed amendments to the policy are indicated in redline format in Attachment 1 and are summarized in the table below.

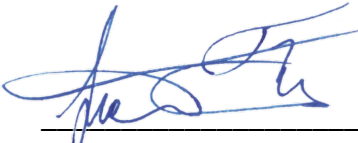
Proposed Policy Amendments		
Section	Page	Amendment Summary
Section I: Background	1	Updated language for consistency with recent amendments to the CKH Act, which clarifies that any application submitted to the Commission should have a signed indemnification agreement by the applicant.
Section II: Policy Statement	2	Updated language for consistency with recent amendments to the CKH Act.
Section II: Policy Statement	3	Updated language to the indemnification agreement according to recent amendments to the CKH Act.

RECOMMENDED ACTION

Staff recommends the Commission:

1. Adopt the Policy for the Indemnification of OC LAFCO by Applicants, as amended.

Respectfully Submitted,



LUIS TAPIA

Attachments:

1. Policy for the Indemnification of OC LAFCO by Applicants (Section 2, redline)
2. Policy for the Indemnification of OC LAFCO by Applicants (Section 2, as amended)

Policy for the Indemnification of OC LAFCO by Applicants

I. PURPOSE

To establish a policy requiring that all applicants to OC LAFCO, as real parties in interest, defend, indemnify, and hold harmless the Commission, its agents, officers, ~~attorneys,~~ and employees from any claim, action or proceeding against the Commission suits brought to attack, set aside, void, or annul challenge the discretionary approvals of proposals by the Commission.

II. BACKGROUND

Applicants to the Commission for discretionary approvals of proposals for changes of organization are typically the real parties in interest and therefore have financial interest in the Commission's decisions on their applications. Applicants to OC LAFCO who are not the real parties in interest also have interest in the outcome of their applications. Therefore, OC LAFCO believes that it is fair and equitable for applicants and real parties in interest to defend, indemnify, and hold harmless OC LAFCO the Commission, its agents, officers, and employees from any claim, action or proceeding against the Commission suits brought to attack, set aside, void, or annul challenge the discretionary approvals of their applications by the Commission. OC LAFCO also believes that the indemnification of OC LAFCO furthers good government practices and public policy by providing applicants and real parties in interest incentive to assist the Commission in complying with all laws, including those intended to ensure public rights.

III. POLICY STATEMENT

To further the good government practices and policies of the Commission and protect the integrity of the Commission's ability to make good government decisions, it is the policy of this Commission that:

- A. As a condition for processing a change or organization or reorganization, a sphere amendment or a sphere update, or any other action or determination requested from the Commission, As part of any application submitted to the Commission, the applicant shall be required to submit a signed agreement to defend, indemnify, and hold harmless the Commission, its agents, officers, ~~attorneys,~~ and employees from any claim, action, or proceeding against the Commission suits brought to attack, set aside, void, annul challenge the discretionary approval of their application by the Commission in the form prescribed in "Exhibit A."
- B. In the event that a suit is brought to challenge the discretionary approval of a

proposal by the Commission, the Commission shall promptly notify the applicant and real party(ies) in interest of the existence of the legal challenge.

- C. The Executive Officer shall not issue a Certificate of Filing for an application if an indemnification agreement in the form prescribed in "Exhibit A" has not been executed and submitted to the Executive Officer by the applicant.

Originally Adopted: 2/10/1999

Last Reviewed: ~~3/8/2023~~ 2/19/2025

Last Revised: ~~Not Applicable~~ 2/19/2025

“EXHIBIT A”

INDEMNIFICATION AGREEMENT

As part of this application, applicant and real party in interest, if different, agree to defend, indemnify, and hold harmless, ~~and release~~ the Orange County Local Agency Formation Commission (OC LAFCO), its agents, officers, ~~attorneys~~, and employees from any claim, action, or proceeding brought against any of them, the purpose of which to attack, set aside, void, or annul the approval of this application or adoption of the environmental document which accompanies it. This indemnification obligation shall include, but not be limited to, damages, costs, expenses, attorney fees, or expert witness fees that may be asserted by any person or entity, including the applicant, arising out of or in connection with the approval of this application, whether or not there is concurrent passive or active negligence on the part of the Orange County Local Agency Formation Commission (OC LAFCO), its agents, officers, ~~attorneys~~, or employees.

An applicant who is a party to this agreement is not responsible to defend, indemnify, or hold harmless if OC LAFCO fails to notify the applicant or cooperate fully in the defense, and is not required to pay or perform any settlement relating to the agreement, unless the applicant approves the settlement.

Nothing in this agreement are to be construed to prohibit OC LAFCO from participating in the defense of any claim, action, or proceeding to attack, set aside, void, or annul an approval by the Commission if OC LAFCO bears its own attorney’s fees and costs of the claim, action, or proceeding and the commission defends the claim, action, or proceeding in good faith.

Executed at _____, California on the day of _____, _____.

APPLICANT

By: _____

Title: _____

Mailing Address:

REAL PARTY IN INTEREST

(If different from Applicant)

By: _____

Title: _____

Mailing Address:

Policy for the Indemnification of OC LAFCO by Applicants

I. PURPOSE

To establish a policy requiring that all applicants to OC LAFCO, as real parties in interest, defend, indemnify, and hold harmless the Commission, its agents, officers, attorneys, and employees from any claim, action or proceeding against the Commission brought to attack, set aside, void, or annul the discretionary approvals of proposals by the Commission.

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- B. In the event that a suit is brought to challenge the discretionary approval of a

proposal by the Commission, the Commission shall promptly notify the applicant and real party(ies) in interest of the existence of the legal challenge.

- C. The Executive Officer shall not issue a Certificate of Filing for an application if an indemnification agreement in the form prescribed in “Exhibit A” has not been executed and submitted to the Executive Officer by the applicant.

Originally Adopted: 2/10/1999

Last Reviewed: 2/19/2025

Last Revised: 2/19/2025

“EXHIBIT A”

INDEMNIFICATION AGREEMENT

As part of this application, applicant and real party in interest, if different, agree to defend, indemnify, and hold harmless the Orange County Local Agency Formation Commission (OC LAFCO), its agents, officers, and employees from any claim, action, or proceeding brought against any of them, the purpose of which to attack, set aside, void, or annul the approval of this application or adoption of the environmental document which accompanies it. This indemnification obligation shall include, but not be limited to, damages, costs, expenses, attorney fees, or expert witness fees that may be asserted by any person or entity, including the applicant, arising out of or in connection with the approval of this application, whether or not there is concurrent passive or active negligence on the part of the Orange County Local Agency Formation Commission (OC LAFCO), its agents, officers, or employees.

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Executed at _____, California on the day of _____, _____.

APPLICANT

By: _____

Title: _____

Mailing Address:

REAL PARTY IN INTEREST

(If different from Applicant)

By: _____

Title: _____

Mailing Address:

