

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

215 North D Street, Suite 204, San Bernardino, CA 92415-0490
(909) 383-9900 • Fax (909) 383-9901
E-MAIL: lafco@lafco.sbcounty.gov
www.sbclafco.org

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FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer
SAMUEL MARTINEZ, Assistant Executive Officer
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: **Agenda Item #6: Consideration of Amendment to Fee Waiver/Reduction Policy and Fee Schedule Related to LAFCO Filing Fees**

RECOMMENDATION:

Staff recommends that the Commission:

1. Approve the revised fee waiver/reduction policy (Policy # 8 of the Accounting and Financial Policies) as shown below:

8. **LAFCO FILING FEE WAIVER/REDUCTION PROVISIONS** *(Adopted June 10, 1981 (effective July 1, 1981); Amended March 20, 1996, July 18, 2001, May 17, 2006, May 16, 2007, and November 20, 2013)*

a. Automatic Waivers:

For proposals that correct a boundary alignment problem (i.e., a divided assessor's parcel or inadvertent exclusion), the LAFCO Filing Fee will be automatically waived. All required deposits (anticipated direct costs for legal counsel, environmental review, and registered voter/landowner notification) including any completion fees/deposits applicable will be charged at full cost.

For reorganization proposals that require a concurrent sphere of influence amendment (expansion and/or reduction) and reorganization (annexation and/or detachment) for the same area, the Sphere of Influence Update/Service Review filing fee will be automatically waived – provided the reorganization/sphere proposal does not exceed 100 acres for areas within the Valley or Mountain region or 640 acres for areas within the Desert region (North or South Desert). The Annexation, Detachment, or Reorganization

filing fee including all other deposits and any completion fees/deposits applicable will be charged at full cost.

b. Automatic Reductions:

City annexations of island areas that comply with Government Code Section 56375.3 will be assessed one-half of the LAFCO filing fee for each area of consideration. All required deposits and any completion fees/deposits applicable will be charged at full cost.

The readjustment of agency boundaries as a result of the realignment of a roadway will be reduced to a single Annexation, Detachment, or Reorganization filing fee per entity involved no matter how many changes or separate areas are included in the proposal. All required deposits and any completion fees/deposits applicable will be charged at full cost.

c. Request for Waiver or Reduction of Fees (to be reviewed and approved by the Commission):

Any applicant may request for a waiver or reduction of the LAFCO filing fee to be charged. The request must be submitted in writing and accompany the submission of the application to the LAFCO Executive Officer. The request shall include a justification for the request and the fee(s) it is requesting to be waived or the dollar amount of fees being reduced. The Executive Officer shall present the waiver/reduction request for Commission review on the consent calendar at the next regular hearing. The Commission may waive/reduce the filing fee if it determines that payment would be detrimental to the public interest pursuant to Government Code Section 56383(d). A waiver/reduction of fees is limited to those costs incurred by the Commission in processing the proposal. The Commission may authorize a waiver or reduction of the LAFCO filing fee based upon the special circumstances of the proposal, if any. Processing of the application shall be held in abeyance until a decision is rendered by the Commission regarding the request for fee waiver/reduction.

2. Review the proposed changes to the Fee Schedule related to the LAFCO Filing Fees, provide staff with further direction on changes or amendments to be included, and schedule the final review and adoption of the revised Schedule of Fees, Deposits, and Charges for the January 15, 2014 hearing.

BACKGROUND:

At the October 2013 hearing, the Commission reviewed a request for reduction of filing fees for LAFCO 3175. As a part of the discussion questions were raised as to whether there was the need to change the fee schedule to remove such requests for the future. In addition, the Commission directed staff to look into reducing the filing fees for annexations/reorganizations that include very large areas particularly in the Desert region.

Fee Waiver Provisions

Government Code Section 56383(d) provides the ability for the Commission to address the issue of a reduction or waiver of a fee charge or deposit. The language of this Section reads as follows:

(d) The commission may reduce or waive a fee, service charge, or deposit if it finds that payment would be detrimental to the public interest. The reduction or waiver of any fee, service charge, or deposit is limited to the costs incurred by the commission in the proceedings of an application.

This Commission has utilized this section to adopt its fee waiver policy since its original adoption in 1981. Over the years, amendments have been made but the intent is to allow a mechanism for the Commission to address inequities that may arise from unique proposals. The current policy related to fee waiver and/or reduction reads as follows:

8. FEE WAIVER PROVISIONS

a. *Automatic Waivers:*

The LAFCO filing fee for proposals that correct a boundary alignment problem (i.e., a divided assessor's parcel or inadvertent exclusion) will be automatically waived provided, however, that a deposit will be required for the anticipated direct costs for environmental review and the required registered voter and landowner notification. Compliance with these conditions is to be determined by the LAFCO Executive Officer.

b. *Automatic Reductions:*

City annexations of island areas that comply with Government Code Section 56375.3 will be assessed one-half of the LAFCO filing fee for each area of consideration within the proposal. All other fees and deposits will be assessed at full cost.

The realignment of city or special district boundaries required by the realignment of a roadway will be reduced to a single change of organization fee per entity involved no matter how many changes or separate areas are included in the proposal. The Executive Officer is authorized to notify the entities involved and no further action is required for this reduction.

c. *Request for Waiver or Reduction of Fees (to be reviewed by the Commission):*

Any applicant may appeal for a waiver or reduction of the LAFCO filing fee to be charged. An appeal must be submitted in writing and accompany the submission of the application to the LAFCO Executive Officer. The Executive Officer shall present the waiver/reduction request at the next regular hearing for Commission consideration on the consent calendar. The Commission may waive the filing fee

if it first determines that payment would be detrimental to the public interest (required by Government Code Section 56383). A waiver of fees is limited to those costs incurred by the Commission in processing the proposal. The Commission may authorize a reduction in the LAFCO filing fee based upon the special circumstances of the proposal, if any. Processing of the application shall be held in abeyance until a decision is rendered by the Commission regarding the appeal of fees.

Over the past 10 years, the Commission considered applicant requests for waiver or reduction of fees a total of nine times for a variety of reasons. Only two of the requests were similar, those that required a sphere of influence expansion and annexation concurrently for the same area. The Commission approved the request for reduction and charged both proposals a single fee - assessing only the annexation filing fee and waiving the filing fee for the sphere amendment. At this time staff is recommending that the Commission include this as an automatic waiver reducing the filing fees. This type of concurrent sphere amendment and annexation where the boundaries of the sphere of influence expansion and annexation are contiguous has occurred many times in the past and are considered at the same hearing with a single legal advertisement and environmental assessment.

However, such a sphere of influence amendment also requires a service review. Since, a service review can get complicated particularly if it involves larger areas of vacant land proposed for development, staff is recommending that this policy be limited to proposals that are less than 100 acres in size for the Valley and Mountain regions and 640 acres for the Desert regions. By limiting the size component, the review of the proposal can be isolated to a single parcel development or smaller types of development that may not require a comprehensive service review and sphere change.

With regard to the other seven requests that were made in the last 10 years, none of them were for the same reason. Some members of the Commission identified concern at the last hearing on the processing of the waiver request and recommendation of support by staff; questioning whether the proposed action necessitated a policy change. The current policy and procedure allows the Commission to review the rationale for requesting a reduction or waiver of filing fees as they directly relate to the costs incurred by the Commission in processing the application as allowed by law. Therefore, staff believes that the policy addresses existing law as well as allowing for the flexibility for the Commission to make its determination on the merits of each request.

Having said that, it is impossible to predict ever circumstance in which a potential applicant would request for a waiver or reduction of fees. Therefore, LAFCO staff is proposing to slightly modify the language for Item C to include a provision that requires the applicant to provide a justification for the request and identify the fee or deposit it is requesting to be waived or specify the dollar amount of the fee, deposit or charge to be reduced. In the future, such requests will be included automatically on the consent calendar for consideration and will only be deliberated if the Commission wishes to pull the item for review and discussion.

The proposed changes to the fee waiver/reduction policy, including the additional clean-up language are included as Attachment #1 to this report. The amended policy shows additions in blue bold text and deletions in red strikeout.

Fee Schedule

As a part of the overall discussion of the fee reduction, the Commission requested staff to look into ways to address very large reorganization proposals that occur particularly in the desert region. The desert region usually has larger parcel configurations as compared to the valley and/or mountain region. This is due to the fact that the types of land uses in the desert region are predominantly Rural Living (minimum of 2.5 acre lots) and Resource Conservation (minimum of 40 acre lots) while the valley and mountain region have the typical single family residential land uses that are usually less than 10,000 square feet per lot. Because the LAFCO change of organization filing fee is generally based on total acreage, many of the desert region proposals are being assessed a much larger fee. Therefore, staff is proposing to keep the current fee structure that would apply only to the valley and/or mountain regions, and have a separate fee structure for the desert region (which includes north and south desert areas):

Valley and Mountain Region

	Under 20 acres	20 – 150 acres	151 – 275 acres	Over 275 acres
City	\$5,500	\$7,000	\$9,000	\$9,000 plus \$1 per acre over 640 acres
District	\$5,000	\$6,000	\$7,500	\$7,500 plus \$1 per acre over 640 acres

Desert Region

	Under 150 acres	150 – 640 acres	641 – 1,920 acres	Over 1,920 acres
City	\$5,500	\$7,000	\$9,000	\$9,000 plus \$1 per acre over 1,920 acres
District	\$5,000	\$6,000	\$7,500	\$7,500 plus \$1 per acre over 1,920 acres

The new Desert Region fee structure has the same number of columns as the original structure. Although the divisions for each column are not based on any mathematical formula, the rationale of each division is as follows:

- Under 150 acres - This column takes into account smaller proposals that are less than 150 acres, which also includes those proposals that would qualify under the 150-acre limit for city island annexation.
- 150-640 acres - This column includes those proposals that are more than 150 acres up to a section of a survey township (usually a square mile). Most of the parcels in the desert that have not been subdivided would be an entire section of land.
- 641-1,920 acres - This column includes those proposals that are more than a square mile up to three sections of a survey township (3 square miles).
- Over 1,920 acres - The fourth and final column takes in anything generally over 3 square miles with a \$1 charge for every acre over 1,920 acres.

The proposed changes to the fee schedule are included as Attachment #2 to this report. The amended fee schedule shows additions in blue bold text and deleted sections in red strikeout.

Since changes to the fee schedule requires the advertisement of the item in a newspaper of general circulation, staff is recommending that the Commission signal its intent to approve the changes proposed by staff, including any other further direction or amendments given by the Commission, and add the item to the January 2014 hearing for final approval.

Should the Commission have any questions, staff will be happy to answer them prior to or at the hearing.

KRM/SM

Attachments:

1. [Proposed Changes to the Fee Waiver/Reduction Provisions](#)
2. [Proposed Changes to the Fee Schedule related to the LAFCO Filing Fees for Annexation, Detachment, Reorganization](#)