

**DRAFT – ACTION MINUTES OF THE – DRAFT
LOCAL AGENCY FORMATION COMMISSION
HEARING OF FEBRUARY 21, 2018**

REGULAR MEETING

9:00 A.M.

FEBRUARY 21, 2018

PRESENT:

COMMISSIONERS:

Jim Bagley	Larry McCallon
Kimberly Cox, Chair	James Ramos
Jim Curatalo	Diane Williams
Steve Farrell, Alternate	Acquanetta Warren
Robert Lovingood	

STAFF:

Kathleen Rollings-McDonald, Executive Officer
Clark Alsop, LAFCO Legal Counsel
Samuel Martinez, Assistant Executive Officer
Michael Tuerpe, Project Manager
Jeffrey Lum, LAFCO Analyst
La Trici Jones, Commission Clerk
Bob Aldrich, LAFCO Consultant

ABSENT:

Janice Rutherford, Alternate

**CONVENE REGULAR SESSION OF THE LOCAL AGENCY FORMATION COMMISSION
– CALL TO ORDER – 9:00 A.M. – NORTON REGIONAL EVENT CENTER**

Chair Cox calls the regular session of the Local Agency Formation Commission to order and leads the flag salute.

ITEM 1. Chair Cox calls for comments from the public regarding the closed session items. There are none.

ITEM 2. Convene Closed Session of the Local Agency Formation Commission

Conference with Legal Counsel – Existing Litigation (Government Code Section 54956.9(d)(1) – San Antonio Heights Association v. County of San Bernardino et al, San Bernardino County Superior Court Case No CIVDS1712771 and San Antonio Heights Association v. Local Agency Formation Commission for San Bernardino County et al Superior Court Case No. CIVDS1715504

RECONVENE PUBLIC SESSION – 9:26 A.M.

Chair Cox asks LAFCO Legal Counsel Clark Alsop to report on the closed session. Mr. Alsop states that no reportable action was taken in closed session.

CONSENT ITEMS:

The following consent items are expected to be routine and non-controversial and will be acted upon by the Commission at one time without discussion, unless a request has been received prior to the hearing to discuss the matter.

- ITEM 3.** Approval of Minutes for Regular Meeting of January 17, 2018
- ITEM 4.** Approval of Executive Officer's Expense Report
- ITEM 5.** Ratify Payments as Reconciled for Month of December 2017 and Note Cash Receipts
- ITEM 6.** Consent Items Deferred for Discussion

Commissioner McCallon moves approval of the Consent Items, Second by Commissioner Ramos. There being no opposition, the motion passes with the following roll call vote: Ayes: Bagley, Cox, Curatalo, McCallon, and Ramos. Noes: None. Abstain: None. Absent: Lovingood and Williams

DISCUSSION ITEMS:

ITEM 7 REVIEW AND CONSIDERATION OF POLICY RELATED TO RETENTION OF ELECTRONIC COMMUNICATIONS (Continued from January 17, 2018)

Executive Officer Rollings-McDonald states that this item was continued from the hearing on January 17, 2018 due to the absence of LAFCO's Legal Counsel.

Executive Officer Rollings-McDonald introduces the item and states that staff is proposing a policy related to the San Jose v. Superior Court decision on disclosure of public official records. She states that the Court determined that electronic messages, sent or received on a public official's private devices or accounts, are subject to disclosure under the California Public Records Act. Ms. McDonald states that staff has worked closely with LAFCO legal counsel which has drafted a policy for all of its municipal clients. She states that the proposed San Bernardino LAFCO policy is consistent with those efforts.

Project Manager Michael Tuerpe presents the staff report, a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference here. Mr. Tuerpe states that LAFCO staff is recommending that the Commission consider and adopt the proposed electronic communications policy and amend the records retention policy to comply with the court's decision. He states that pursuant to this proposed policy, each Commissioner would be assigned a LAFCO email account.

Mr. Tuerpe states that 30 days following the adoption of this policy, each LAFCO official will be required to search their own files for any LAFCO related material and forward it to their LAFCO email account.

He states that if a LAFCO official conducts or receives an electronic message regarding LAFCO business on his/her non-LAFCO electronic messaging account, the LAFCO official shall:

- a. Copy ("cc") any communication from the LAFCO official's personal electronic messaging account to his/her LAFCO electronic messaging account; or
- b. Forward the associated electronic communication to his/her LAFCO account no later than 10 days after the original creation or transmission of the electronic communication.

Chair Cox states that since our government accounts are already discoverable under the Public Records Act, is this a necessary additional step?, to which Executive Officer Rollings-McDonald states that staff believes it is a necessary step and describes how it can be a potential problem for officials in communication with constituents. She states that there was a recent instance at a City Council meeting in the City of Chino in which an attorney quoted verbatim a text message exchange between a city council person and a constituent in public session.

Mr. Tuerpe states that staff has identified two products to obtain a LAFCO email address: Microsoft 365 (via County ISD) or Gmail Business, with the ultimate recommended choice being provision through County ISD. Mr. Tuerpe states that staff is also recommending that a footer message be placed at the bottom of personal or other public agency email addresses that directs LAFCO business to the LAFCO email addresses. He states that the recommended language is:

CONFIDENTIALITY NOTICE:

This Email address is intended for LAFCO business. This email and any files or attachments transmitted with it may contain privileged or otherwise confidential information. If you are not the intended recipient, or believe that you may have received this communication in error, please advise the sender via reply email and immediately delete the email you received.

Mr. Tuerpe states that the LAFCO Records Retention Policy is currently localized to finances but is now proposed to be expanded to include electronic communications. He states that communications related to the conduct of public business are not excluded from being public records under the California Public Records Act simply because they were sent or received using a personal account or personal device. He further states that the California Supreme Court ruled it is the local agency itself that is in the best position to adopt policies that will reduce the likelihood of public records being held in private accounts of employees or officials that pertain to the public's business.

Mr. Tuerpe states that staff is requesting that the Commission provide any additional changes, corrections or amendments to the proposed policies.

Chair Cox asks for comments from the Commission.

Commissioner Bagley states that \$15.00 per user, per month, will add up. He states that as a private individual, he is not thrilled about paying \$15.00 a month to retain electronic records. He states that as a LAFCO Commissioner he does not believe that any communication he has with anyone about LAFCO is privileged.

Executive Officer Rollings-McDonald states that this is for ease and simplicity. She states that with Commissioners coming and going, it's important to have access to documents. She states that in one recent instance of anticipated litigation, staff was required to retrieve all electronic communications from their personal accounts. She states that the cost of going through a subpoena process is far more expensive than the cost of setting up Commissioner Email accounts.

Commissioner Farrell states that he would like to know if the email will be incoming as well as out-going? He asks if he could have the email forwarded, automatically? To which Mr. Tuerpe states that this is something that staff did not look into, but will get an answer. Commissioner Farrell states that if we have a six-month retention policy, does the Commission need to search for emails further back? Executive Officer Rollings-McDonald states that she does not believe so, but asks LAFCO Counsel Clark Alsop to answer the question. Mr. Alsop states that there is no need to go back further than six months. Commissioner Farrell states that it concerns him that we would retain paper records for seven years, but emails only six months since we have some proposals that can be delayed for eight months or longer, questioning whether six months is an adequate time period? To which Counsel Alsop states that six months is just for regular communication. He states that if LAFCO is aware it will be involved in some type of long-term project activity, then legal counsel will send out a request to maintain all information, even if it goes beyond the records retention time.

Commissioner Farrell directs that the Policy include language that emails regarding a LAFCO proposal be retained for six months following completion of the proposal. Executive Officer Rollings-McDonald notes that the Status Reports identify when proposals are completed (through issuance of the Certificate of Completion).

Discussion ensues.

Commissioner Ramos states that with the suggested changes, it would be best to put this action off until the Commission has the final version of the policy.

Executive Officer Rollings-McDonald states that the bulk of the policy remains unchanged, but this is a decision for the Commission.

Chair Cox states that under item #7, it refers to electronic communication per the County of San Bernardino's record retention policy. She states that she would like to see the language of the County's policy. Executive Officer Rollings-McDonald states that if this is the case, we can continue to the March 21, 2018 hearing.

Chair Cox asks the Commission for comment. She states the Commission can either defer to March or move on it, understanding that minor changes will be made to the final version.

Commissioner Lovingood states that if Commissioner Ramos made a motion based on his comments, he would second and continue to the March hearing.

Commissioner Ramos moves approval to continue to March 21, 2018 hearing, Second by Commissioner Lovingood. There being no opposition, the motion passes with the following roll call vote: Ayes: Bagley, Cox, Curatalo, Lovingood, McCallon, Ramos and Williams. Noes: None. Abstain: None. Absent: None.

ITEM 8 MID-YEAR BUDGET REVIEW FOR FISCAL YEAR 2017-18: (Continued from January 17, 2018)

- **FINANCIAL REPORT FOR PERIOD JULY 1 THROUGH DECEMBER 31, 2017**
- **AUTHORIZATION TO FUND TRANSFER TO ADDRESS INCREASED REVENUES AND EXPENDITURES DUE TO INCREASED ACTIVITY RELATED TO LITIGATION**

Executive Officer Kathleen Rollings-McDonald presents the staff report for the Mid-Year Budget Review, a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference here. Executive Officer Rollings-McDonald states that this is the mid-year review for Fiscal Year 2017-18 where staff provides the Commission with information on expenditures and revenues to date and projections for the end-year.

She states that as the Commission is well aware, this year has had profound issues. One of those is the transition of the LAFCO staff office to the Santa Fe Depot assuring a potential home for the Commission for up to 15 years.

Ms. Rollings-McDonald states that LAFCO to date has expended 49% of approved budget authority for salaries and benefits. She states that services and supplies, which are the bulk of the discretionary costs for the Commission, had expenditures of 66% of approved budget authority through December 30, 2017.

Ms. Rollings-McDonald states that LAFCO has expended \$86,000 for legal costs for non-recoverable items. She states that to accommodate these unanticipated expenditures, staff is requesting that the Commission take a series of actions to account for the increase in legal costs which include: Approving an increase in expenditure account 2400 (Legal Counsel) by \$95,814 to \$130,114 by: (a) Transferring \$40,000 from account 2310 (Postage); (b) Transferring \$25,229 from reserve account 6025 (Legal Reserve), resulting in a balance of \$200,000, and (c) Increasing reserve account 9555 (Legal Services) by \$30,585 to a total of \$40,185.

Commissioner Lovingood states that he will move staff's recommendation as long as in April the Commission will have an opportunity to look for additional budget adjustments if there will be a long-term deficit.

Commissioner Lovingood moves approval of Staff Recommendation, Second by Commissioner McCallon. There being no opposition, the motion passes with the following

roll call vote: Ayes: Bagley, Cox, Curatalo, Lovingood, McCallon, Ramos and Williams.
Noes: None. Abstain: None. Absent: None.

**ITEM 9 UPDATE ON LAFCO 3187 – COUNTYWIDE WATER SERVICE REVIEW
REQUIRED CONTINUED MONITORING FOR:**

- a. County Service Area 70 Zone CG (Cedar Glen)
- b. County Service Area 70 Zone 70 J (Oak Hills)
- c. Daggett Community Services District
- d. County Service Area 70 Zone W-4 (Pioneertown)

Executive Officer McDonald states that staff is recommending that Item 9 be continued to the March 21, 2018 hearing due to notification issues.

Commissioner Curatalo moves approval of staff's recommendation for continuance, Second by Commissioner Ramos. There being no opposition, the motion passes with the following roll call vote: Ayes: Bagley, Cox, Curatalo, Lovingood, McCallon, Ramos and Williams. Noes: None. Abstain: None. Absent: None.

INFORMATION ITEMS:

ITEM 10 LEGISLATIVE ORAL REPORT

Executive Officer Rollings-McDonald states that the Legislative session is in full steam. She states that CALAFCO works with the Assembly Local Government Committee each year on an omnibus bill to address non-substantive technical changes for the Cortese Hertzberg Knox statute. She states there are seven items included in that bill.

Chair Cox states that staff has presented the Commission with the legislative report and has asked the Commission to accept and indicate support of the omnibus bill

Commissioner Curatalo moves approval of Staff Recommendation, Second by Commissioner Bagley. There being no opposition, the motion passes with the following roll call vote: Ayes: Bagley, Cox, Curatalo, Lovingood, McCallon, Ramos and Williams. Noes: None. Abstain: None. Absent: None.

ITEM 11 EXECUTIVE OFFICER'S ORAL REPORT

Executive Officer Rollings-McDonald states that staff anticipates the submission of the East Valley Water District proposal and staff is currently processing a sphere of influence amendment for an exchange of territory between the cities of Loma Linda and Colton. Additionally, staff is processing an exchange of territory between IEUA and the San Bernardino Valley Municipal Water District.

She states that following last month's review and discussion regarding the audit presentation, staff has reviewed the issue with the auditor. She states that a presentation by the auditor to the Commission will be provided for all considerations.

Ms. Rollings-McDonald states that the recruitment for the Executive Officer opened on February 1, 2018 and Bob Aldrich is handling the initial review of the applications.

ITEM 12 COMMISSIONER COMMENTS

Commissioner Lovingood states that if anyone happens to be in the High Desert on February 22, he would like them to join him at the "Made in the High Desert" Job Fair which introduces students to well-paying careers with local manufacturers.

ITEM 13 COMMENTS FROM THE PUBLIC

There are none.

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COMMISSION, THE HEARING IS ADJOURNED AT 10:35 A.M

ATTEST:

LA TRICI JONES
Clerk to the Commission

LOCAL AGENCY FORMATION COMMISSION

KIMBERLY COX, Chair