

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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POLICY AND PROCEDURE MANUAL; **SECTION II - ACCOUNTING AND FINANCIAL;** **CHAPTER 2: FINANCIAL POLICIES FOR APPLICATION PROCESSING**

POLICY 1 – LAFCO 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 Annexation, Detachment, or Reorganization 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. The Annexation, Detachment, or Reorganization filing fee including all required deposits and any completion fees/deposits applicable will be charged at full cost.

Compliance with any of these automatic waiver conditions is to be determined by the LAFCO Executive Officer, who is authorized to notify the applicant(s) involved.

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.

Compliance to any of the automatic reduction conditions is to be determined by the LAFCO Executive Officer, who is authorized to notify the applicant(s) involved.

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.

POLICY 2 – LAFCO FILING FEE REFUND *(Originally Adopted May 21, 1991 as part of the Fee Schedule; Added to Policy Manual on May 17, 2006; Amended August 21, 2013)*

If withdrawal of an application is requested, the LAFCO Filing Fee paid for processing will be refunded in the following manner:

- A. Following issuance of the Notice of Filing but prior to the commencement of the property tax negotiations for changes of organization or Department Review Committee consideration for sphere of influence amendment: 75% refund.
- B. Following commencement of the property tax negotiations or Department Review Committee process but prior to the advertisement of the Commission's consideration: 50% refund.

- C. Following advertisement of the Commission's consideration but prior to the Commission's consideration: 25% refund.
- D. Following the Commission's consideration: no refund.

Deposits are subject to individual refund procedures outlined on the Schedule of Fees, Deposits, and Charges.

POLICY 3 - INDEMNIFICATION *(Adopted May 19, 1993; effective June 1, 1993; Amended May 17, 2006, Amended August 19, 2015)*

It is the policy of this Commission that for any application submitted for a change of organization or reorganization, a sphere of influence amendment, or a review of an out-of-agency service contract/agreement, the applicant and/or the real party in interest shall agree to defend, indemnify, and hold harmless San Bernardino LAFCO, its agents, officers, attorneys, and employees from any claim, action, proceeding brought against any of them. A real party in interest includes the landowner and/or a registered voter of an application subject property.

PROCEDURES:

- A. When a local agency adopts a resolution of application to initiate an application for a change of organization or reorganization, or a sphere of influence amendment, the resolution shall include a provision acknowledging the Commission's requirement for indemnification as outlined in this Manual.
- B. In signing the certification on the Application form, on any of the supplement forms or on the Application for Extension of Service by Contract form, the person signing acknowledges the Commission's requirement for indemnification as outlined in this Manual.
- C. The Commission shall impose a condition within its resolution of approval that requires the applicant and/or the real party of interest to defend, indemnify, and hold harmless the Commission, its agents, officers, attorneys, and its employees from any claims, actions or proceedings against them to attack, set aside, void, or annul such approval.
- D. The Executive Officer shall promptly notify the applicant or real party of interest of any legal action brought challenging the Commission's action, and the Commission, its agents, officers, attorneys, and employees shall cooperate fully in the defense of that action.
- E. The applicant may provide their own counsel in the defense of the action taken, or the applicant may elect to use the services of San Bernardino LAFCO Counsel

in that defense. In the latter case, the Executive Officer may require a deposit of funds sufficient to cover the anticipated expense of the litigation.

POLICY 4 - RESPONSIBILITY FOR PAYMENT OF SPECIAL LEGAL COUNSEL COSTS *(Adopted May 17, 2006, Amended August 19, 2015)*

It is the policy of this Commission that the costs for Special Counsel shall be the responsibility of the applicant subject to the following determinations:

- A. If Special Counsel is required due to a representation conflict with the applicant of the proposal, the applicant will be responsible for all Special Counsel charges.
- B. Special Counsel is required due a representation conflict outside the control of the applicant, the applicant shall be responsible for paying the regular LAFCO Legal Counsel hourly rate. The balance of Special Counsel costs will be the responsibility of the Commission.

PROCEDURES:

The adopted procedure for the Responsibility for Payment of Special Legal Counsel Costs Policy is as follows:

Once a determination has been made pursuant to Commission Policy for Waiver of LAFCO Legal Counsel Conflicts of Interest that Special Counsel is required, the following procedure shall be followed:

- A. The Executive Officer shall promptly notify the proponents of the proposal that Special Counsel is required.
- B. An item shall be placed on the next available Commission Agenda to approve the contract for Special Counsel and to determine the method for apportioning the cost to the applicant.
- C. Once a determination is made regarding the apportionment of the cost, the Executive Officer may require a deposit of the estimated costs for Special Counsel.
- D. All Special Counsel costs that are the responsibility of the applicant shall be paid prior to issuance of the Certificate of Completion.