

**LOCAL AGENCY FORMATION COMMISSION  
COUNTY OF SAN BERNARDINO**

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**DATE:** JULY 11, 2005  
**FROM:** KATHLEEN ROLLINGS-McDONALD, Executive Officer  
**TO:** LOCAL AGENCY FORMATION COMMISSION

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**SUBJECT: Agenda Item #8:** Consideration of Request Submitted by  
Bloomington Incorporation Commission for City Annexation  
Moratorium

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**RECOMMENDATION:**

That the Commission:

1. Deny the request for annexation moratorium on the basis that (1) LAFCO lacks the legal ability to impose a annexation moratorium; and (2) LAFCO 2981, sphere of influence reductions proposed for the Cities of Fontana and Rialto, is the first application in line for consideration and, if approved, will preclude any annexation by either City within the area.
2. Retain Jeffrey Goldfarb, of the law firm Rutan and Tucker, as Special Counsel for LAFCO 2981.

**BACKGROUND:**

The Bloomington Incorporation Commission (hereinafter "BIC") has submitted letters to the Commission which request that specific actions be taken. They are:

- That Commissioners Hansberger, Gonzales and Nuaimi not participate in the hearings on the spheres of influence reductions proposed by BIC (letter dated June 29, 2005 – copy included as Attachment #1).

- Establish an annexation moratorium until the community can vote on the possibility of incorporation (letter dated June 5, 2005 – copy included as Attachment #2).

The staff's response to each of these requests is outlined below.

**1. REQUEST FOR ABSTENTION FOR COMMISSIONERS**

The letter received from BIC indicates that it perceives Commissioners Hansberger, Gonzales, and Nuaimi to “have allegiances that are not furthered by Bloomington’s incorporation” and that they have a “concern with bias and lack of objectivity”. No explanation or proof of these assertions has been provided within the letter or thereafter.

Staff's response is that State law indicates that once appointed to LAFCO, all representatives are requested to provide their expertise for the best interests of the citizens of the County as a whole, not the appointing entity's perspective. This is specifically identified in Government Code Section 56325.1 which states:

*“While serving on the commission, all commission members shall exercise their independent judgment on behalf of the interests of residents, property owners, and the public as a whole in furthering the purposes of this division. Any member appointed on behalf of local government shall represent the interests of the public as a whole and not solely the interests of the appointing authority. This section does not require abstention of any member on any matter, nor does it create a right of action in any person.”*

Therefore, it is the position of LAFCO staff that there is no requirement that any of these Commissioners recuse themselves from participating in matters involving the current sphere of influence reductions (LAFCO 2981) or any potential future action affecting the Bloomington community based upon their government affiliation.

**2. ESTABLISH ANNEXATION MORATORIUM WITHIN THE BLOOMINGTON COMMUNITY IDENTIFIED IN THE BIC APPLICATION FOR SPHERE CHANGE**

On June 5, 2005, Eric Davenport, Chairman of BIC, submitted an outline of the group's activities, noting their request that an annexation moratorium for six months be imposed so that they can complete their processing of the incorporation (Attachment #2). This request was an outgrowth of two applications for annexation to the City of Rialto

initiated by property owner petition within the Bloomington community. Copies of maps of these areas are included as Attachment #3 to this report.

Upon receipt of this request, LAFCO staff forwarded the letter to the Cities of Fontana and Rialto, noting that such a moratorium would be for a two-year period, the approximate time necessary to conduct an incorporation review including the mandatory preparation of a comprehensive fiscal analysis. The letter requested that each City provide a response on the possible moratorium. In each case, the Cities have responded in opposition to a moratorium. Copies of their letters are included in Attachment #4 to this report.

It should be noted that there is precedent for the BIC request. In 1971, the Commission granted a five-year moratorium on annexations by either the City of Fontana or the City of Rialto within Bloomington to allow community members to determine the best form of governance for their community. A chronology of the Commission's involvement with the community of Bloomington on the issue of incorporation/annexation/governance is included as Attachment #5 to this report. At the time the moratorium was considered, the laws governing incorporation were much different; LAFCO was governed by three separate, and sometimes conflicting, statutes; and annexations were not required to be a part of an agency's sphere of influence for consideration.

In the present circumstance, however, changes in the law preclude BIC's request. This is because the Commission lacks the legal authority to adopt or impose a moratorium on all annexations. For instance under Government Code Section 56375.3, the commission is required to approve certain "island annexations" in certain circumstances. Given that State Law imposes upon the commission a mandatory duty to approve such annexations, the commission lacks the power to adopt a moratorium on all annexations.

It is also important to note a moratorium may be unnecessary. The Commission is to be guided by two sections of law, Government Code Sections 56655 and 56657 relating to conflicting proposals, and Government Code Section 56375.5 regarding consistency with sphere determinations. Those code sections read as follows:

**56655.** *"If two or more proposals pending before the commission conflict or in any way are inconsistent with each other, as determined by the commission, the commission may determine the relative priority for conducting any further proceedings based on any*

*of those proposals. That determination shall be included in the terms and conditions imposed by the commission. In the absence of that determination, priority is given to that proceeding which shall be based upon the proposal first filed with the executive officer.*

**56657.** *Notwithstanding Section 56655, the commission shall not approve a proposal for incorporation, consolidation of districts, dissolution, merger, or establishment of a subsidiary district, or a reorganization that includes any of these changes of organization until it has considered any other change of organization which conflicts with the subject proposal and which was submitted to the commission within 60 days of the submission of the subject proposal.*

**56375.5.** *Every determination made by a commission regarding the matters provided for by subdivisions (a) (changes of organization or reorganization), (m) (waiver of restriction on islands), and (n) (maintenance of County Service Areas after annexation to a City) of Section 56375 and by subdivision (a) of Section 56375.3 shall be consistent with the spheres of influence of the local agencies affected by those determinations.” (Summarized descriptions of Subsections (a), (m), and (n) provided by LAFCO staff.)*

Of the three proposals currently on file affecting the community of Bloomington, only LAFCO 2981, the sphere of influence reductions for the Cities of Fontana and Rialto, has submitted the necessary materials to be circulated for review and comment. LAFCO 2983 and LAFCO 2986, the property owner initiated applications for annexation to the City of Rialto, do not have all the elements on file to allow for circulation. Specifically, in each case a certified Plan for Service and pre-zoning action through the City of Rialto is required. The property owners and City of Rialto have been notified that they are not deemed to be complete filings until the information is received.

Pursuant to the provisions of Section 56655, unless otherwise determined by the Commission, priority for consideration will be given to LAFCO 2981 as the first application received. If the sphere of influence reductions are approved, no annexations to either City will be allowed for that area removed from either cities sphere as they will not comply with the provisions of Government Code Section 56375.5, requiring sphere consistency. If the sphere of influence reductions are denied, then incorporation cannot be submitted as outlined by the Commission’s first policy declaration within its Incorporation Guidelines. That policy reads as follows:

*“Incorporation proposals involving land within an existing city sphere of influence will not be accepted for filing. Incorporation proponents must first initiate, and the Commission must approve, a sphere of influence amendment to exclude the study area from that sphere prior to circulation of formal incorporation petitions.”*

Therefore, it is the staff’s position that a moratorium for annexation consideration is unnecessary based on the statutes and policies as outlined above.

### **3. LEGAL COUNSEL**

LAFCO Legal Counsel Clark Alsop is a partner in the firm of Best Best and Krieger and is also the City Attorney for the City of Fontana. The City of Fontana is a part of the present considerations in that its sphere of influence is proposed for reduction along its southeastern edge. Because of this dual representation, and the potential controversy associated with the processing of the application, Mr. Alsop has indicated he will abstain from participating as LAFCO Legal Counsel.

LAFCO staff has contacted Jeffrey Goldfarb of the law firm of Rutan and Tucker to represent the Commission as Special Counsel during this consideration and into the future. Mr. Goldfarb has indicated his willingness and ability to serve as Special Counsel for this consideration. Since this matter was not presented to the Commission prior to the hearing, and there was a need for legal representation prior to the hearing date, staff is recommending that the proponents be notified that all future costs associated with Special Counsel following the July 20<sup>th</sup> hearing will be their responsibility for payment.

KRM/

#### Attachments:

1. Letter from Bloomington Incorporation Commission dated June 29, 2005
2. Letter from Bloomington Incorporation Commission dated June 5, 2005
3. Maps of Proposed Annexations to the City of Rialto Pending within the Bloomington Community
4. Letters from the Cities of Fontana and Rialto Opposing the Annexation Moratorium

5. Chronology of Governance Studies with LAFCO for the  
Bloomington Community