

# Agenda Item 3



Balancing Community and Commerce

44 N. SAN JOAQUIN STREET ■ SUITE 374 ■ STOCKTON, CA 95202 ■ 209-468-3198

**DATE:** April 11, 2024

**TO:** LAFCo Commissioners

**FROM:** J.D. Hightower, Executive Officer

**PROJECT:** Potential Policy Manual amendments regarding Annexations and Alternate Member participation in Closed Sessions

**PROPOSAL:** Review and authorize the Executive Officer to bring back policies for adoption.

**APPLICANT:** San Joaquin Local Agency Formation Commission

**LOCATION:** N/A

**PURPOSE:** Public workshop and discussion regarding four (4) separate policies:

- 1) Annexation and reorganization boundaries to include all types of public rights-of-way needed to support the proposed development;
- 2) LAFCo time limits to be coordinated with other project approvals;
- 3) Alternate Commissioner Participation in Closed Sessions; and,
- 4) Authorize the Executive Officer to approve.

**PROCESS:** This is an item for public information and discussion amongst all Commissioners, alternate Commissioner's insights and comments are considered important for this item.

**RECOMMENDATION:** Hold a public discussion on the policies for Annexation and Alternate Members.

The four (4) policies proposed for amendment are intended to clarify Commission expectations. Two (2) of the policies are within the Change of Organization Policies and Procedures (Including Annexations and Reorganizations section); and the other is within the Rules of the San Joaquin Local Agency Formation Commission section.

The amendments to the Change of Organization involve policies for City Annexation. The first proposed policy amendment would clarify the intent of an existing policy that an annexation area must include all needed municipal rights-of-way needed to serve the development. The second amendment allows the Commission to approve time extensions that are consistent with the time limits of associated and approved Development Agreements and Tentative Subdivision Maps that the cities have approved as part of the same project.

## **CITY ANNEXATIONS**

### 1. Annexation of Streets Public Right-of-Way

Annexations shall reflect the logical allocation of streets and rights of way as follows:

- Territory should be included within the annexation to assure that the city reasonably assumes the burden of providing all needed urban services for the planned land use intensity and population density for adequate roads to the property to be annexed. LAFCo will require cities to annex streets where adjacent lands that are in the city will generate additional traffic or where the annexation will isolate sections of county road. Cities shall include all contiguous public roads that can be included without fragmenting governmental responsibility by alternating city and county road jurisdiction over short section of the same roadway. Similarly, the Commission will require annexation of public right-of-way required to serve the proposed development, including but not limited to parks, storm water drainage basins, water storage and well sites, water distribution lines and valves; and, wastewater collection lines and pump stations.

### 3. Time Limit of Approval

Pursuant to Cortese-Knox-Hertzberg Act Section 57001, if a certificate of completion for a change of organization or reorganization has not been filed within one year after the commission approves a proposal for that proceeding, the proceeding shall be deemed terminated unless prior to the expiration of that year the commission authorizes an extension of time for that completion. The extension may be for any period deemed reasonable to the commission for completion of necessary prerequisite actions by any party. For projects that have the benefit of a duly executed Development Agreement (DA) or Tentative Subdivision Map (TSM), LAFCo will extend the date to record a certificate of completion to the closest regularly scheduled meeting within the term specified by the applicable DA or TSM, whichever is sooner.

The policy regarding Alternate Commissioner participation in closed sessions is necessitated by a State Attorney General (AG) opinion 98-101.

In that opinion the AG found that Alternate Commissioners may not participate in closed sessions unless sitting in place of an absent or disqualified regular Commissioner or otherwise deemed required and essential for the matter. The proposed policy clarifies that Alternate Commissioners play an important role for SJLAFCo by providing a fuller representative spectrum of diversity, inclusion and equity of the San Joaquin region. The policy will require that the voting quorum take a roll call vote as to the participation of Alternate Commissioners in the public hearing, prior to the convening of a closed session.

### **CHAPTER III**

#### **Election, Powers, Duties of Chairman and Chairman Pro Tem, Conduct of Meetings**

Section 14. Closed sessions, which may be periodically conducted on matters permitted by the Brown Act, Government Code Section 54962 (potential litigation, litigation, security threat, personnel actions, labor negotiations, real estate negotiations, etc.) are an important tool in forming public policy on those matters. The State Attorney General has opined that, "Unless sitting in place of an absent or disqualified member, an alternate may not attend a closed session without converting the session into an unauthorized 'semi-closed meeting.' A LAFCO may not enact parliamentary rules that contravene statutory law, in this case, the Ralph M. Brown Act," the opinion says. In quoting the AG's 1994 handbook on the Brown Act (Government Code §§54950-54962), the opinion states, "Persons without an official role in the meeting should not be present."

San Joaquin County has experienced a rapid rate of growth and is projected to continue to grow through 2060. In playing an important role in ensuring growth consistent with State goals, San Joaquin LAFCo has found that Alternate Commissioners (AC) play an essential role in the decision-making process. By representing different geographic areas, backgrounds, knowledge and skills, AC's provide a more representative profile of our region. The inclusion of AC's facilitate a more a diverse, equitable and inclusionary discussion and consideration of each closed session matter.

The urban population densities and intensive residential, commercial, and industrial development experienced within the San Joaquin County and its

cities and districts often will benefit from the inclusion of the broadest spectrum of Commissioners. Including the diversity that collectively all Commissioners represent into discussions allows SJLAFCo to understand proposals and gain perspective more fully on issues. In doing so, at times AC insights help facilitate the orderly growth and development essential to the social, fiscal, and economic well-being of all San Joaquin residents.

Furthermore, AC's may at any time be called upon to vote in place of a Regular Commissioner.

SJLAFCo is expected to balance the sometime competing needs of public's right to transparency with the need for SJLAFCo to have timely, diverse, equitable and inclusionary discussions on closed session matters. Before convening a closed session, the Commission will consider the need to balance these needs. On one side the benefit that AC insights and perspectives may have on the matter and on the other side the public's right to transparency in decision making. Voting members of a quorum will consider if the participation of AC's may lead towards a more equitable action for all residents of San Joaquin County. Prior to convening a closed session, the Commission will consider the matter and the need for a spectrum of diversity, equity and inclusionary insights on that matter.

The voting quorum at a Commission meeting will need to balance the sometimes competing needs of transparency and promoting diversity, equity and inclusion. The voting quorum will decide if an AC has a needed perspective on a closed session matter(s). The voting quorum will also consider the official, required and/or essential role that an AC will have by participating in that closed session matter. This consideration will be reflected with a motion, second and roll call vote of Commissioners within a public meeting prior to the convening of the closed session.

The review and approval of out-of-agency service agreements currently requires approval by the Commission. This has been done under the consent calendar of the agenda. The current arrangement requires cities and districts to wait until Commission meetings and approval to provide nearby services. This works well except when periodically meetings are cancelled. To streamline the process, the proposal is authorize the Executive Officer to approval out of agency service agreements and then report at the next meeting the agreements that have been approved since the last meeting. Section 56133 of the CKH states that, "The commission or executive officer shall approve, disapprove, or approve with conditions the extended services."

## **OUT-OF-AGENCY SERVICE AGREEMENTS**

## B. PROCEDURES.

1. **Filing Requirements.** The city or district requesting LAFCo approval shall submit an application for service outside of agency boundaries, other information as needed, map, a copy of the draft agreement or contract, fees and the appropriate environmental document.

2. **Completeness of Application.** The executive director shall determine within 30 days whether the request is complete and acceptable for issuance of a Notice of Filing or whether the request is incomplete. If a request is determined not to be complete, the executive officer shall notify the agency or district of that determination, specifying those parts of the request that are incomplete and an explanation of the manner in which the deficiencies may be made complete.

3. **Executive Officer Approval.** Upon issuance of a Notice of Filing, the executive officer is authorized to administratively approve an application for an out of boundary service connection within a sphere of influence of a city or district. When annexation is feasible, applications may be approved with the condition that an application for annexation will be filed prior to connection. The executive officer shall report to the commission on actions regarding out of boundary service applications at the next LAFCo meeting.

~~3. Scheduling. When the request is deemed complete, the executive officer shall place the request on the agenda of the next commission meeting for which adequate notice can be given but not more than 90 days from the date that the request is deemed complete.~~