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AGENDA REPORT

Consent | Action

October 1, 2018

TO: San Diego Commissioners
FROM: Keene Simonds, Executive Officer
Holly Whatley, Commission Counsel
SUBJECT: Policy Adoption | Conduct of Protest Hearings

SUMMARY

The San Diego Local Agency Formation Commission (LAFCO) will consider establishing a policy on conducting protest proceedings. Adoption would formalize existing practices and ensure greater consistency in implementation. This includes – pertinently – establishing discretionary standards and allowances in delegating responsibilities to the Executive Officer as well as receiving and valuing written protests; the latter of which includes accepting e-mails, facsimiles, and other reasonable forms of written protest transmissions within prescribed timelines. Staff recommends approval.

BACKGROUND

Protest Proceedings

San Diego LAFCO's ("Commission") is tasked under State law to conduct protest proceedings whenever it approves a change of organization or reorganization unless waived under specified conditions. These proceedings provide landowners and registered voters the opportunity to participate in the final decision-making underlying a change of organization or reorganization with the ability to trigger an election (25-50%) or outright terminate (50% + 1). LAFCOs also have some discretion – both intentional and by omission – in conducting protest hearings. An example of the former (intentional) includes the ability to delegate conducting responsibilities to the Executive Officer. An example of the latter (omission) includes the manner in which protest can be transmitted to LAFCO ahead of the conclusion of the scheduled hearing.

DISCUSSION

This item is for San Diego LAFCO to consider establishing a policy on conducting protest hearings to formalize existing practices and address discretionary allowances allowed under State law. The policy has been developed with Commission Counsel and includes addressing the following items.

- Outlines the ability and tasks therein for the Executive Officer to assume responsibility for conducting protest hearings on behalf of the Commission.
- Allows written protests to be filed by landowners and registered voters by e-mail, faxes, courier, and in person ahead of the scheduled hearing. All advanced protests need to be received by LAFCO by 5:00pm on the preceding day of the hearing.
- Establishes the date for determining landowner and registered voter eligibility corresponds with the publication date of the protest hearing.

A copy of the proposed policy is attached.

ANALYSIS

The proposed policy provides a clear and sequential outline of protest proceedings at San Diego LAFCO and key discretionary standards authorized by the Commission in implementation. The prompt for the policy follows discussions with Commission Counsel to formalize existing practices and proactively remedy potential future differences with proponents and opponents with respect to receiving and valuing written protests.

RECOMMENDATION

It is recommended San Diego LAFCO approve the establishment of a new policy on conducting protest hearings as outlined in the proceeding section as Alternative One.

ALTERNATIVES FOR ACTION

The following alternatives are available to San Diego LAFCO under a single motion:

Alternative One (Recommended)

- (a) Approve the attached “Policy on the Conduct of Protest Hearings” with any desired changes as identified by the Commission.
- (b) Direct the Executive Officer to designate the adopted policy as “L-112” and authorize staff to proceed with standardized formatting changes.

San Diego LAFCO

October 1, 2018 Regular Meeting

Agenda Item No. 6 | Policy Adoption: Conducting Protest Hearings

Alternative Two

Continue to the next regular meeting and provide direction as needed.

Alternative Three

No action.

PROCEDURES

This item has been placed on the agenda as part of the consent calendar. Accordingly, a successful motion to approve the consent calendar will include taking affirmative action on the staff recommendation as provided unless otherwise specified by the Commission.

Respectfully,



Keene Simonds
Executive Officer

Attachments:

- 1) Proposed "Policy on the Conduct of Protest Hearings"

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POLICY FOR THE CONDUCT OF PROTEST HEARINGS

1. Authority to Conduct Protest Hearings

Pursuant to Title 5, Division 3, Part 4 of the California Government (commencing with section 57000), the Commission shall conduct all protest hearings and take all other actions required of it to complete proceedings for changes of organization or reorganization, unless the Commission, in its discretion, delegates to the Executive Officer consistent with the provisions of this policy.

2. Delegation at Time of Adoption of Resolution

Each time the Commission adopts a resolution making determination approving, with or without conditions, a change of organization or reorganization, the Commission shall also determine whether to conduct the protest hearing or delegate to the Executive Officer. Such a decision of the Commission may be made upon recommendation of the Executive Officer or by motion of a Commission member.

3. Valuation of Written Protests

Irrespective of the Commission conducting the protest hearing or delegating to the Executive Officer, the same procedures shall apply in receiving and valuing written protests. These procedures are outlined as Appendix One to this policy.

4. Delegation to Executive Officer

If the Commission delegates to the Executive Officer the authority to conduct a protest hearing for an approved change of organization or reorganization, the Executive Officer shall conduct the protest hearing in accordance with Government Code section 57000, et seq., and the following:

- a) The protest hearing shall be held in a location open to the public and suitable for the conduct of a public hearing;
- b) The Executive Officer shall provide each Commission member and alternate written notice of the date, time, and location of all protest hearings and any continuances thereof;
- c) The Executive Officer shall be the hearing officer for the protest hearing;
- d) The Executive Officer shall conduct the protest hearing consistent with the manner in which the Commission conducts public hearings;

- e) At the protest hearing, the Executive Officer shall hear and receive any oral or written protest, objection or evidence which is presented, or filed, and accept the withdrawal of any protest prior to the close of the hearing;
- f) The Executive Officer shall cause a record to be made of the protest hearing, and shall preserve as part of the record all written protests, objections and evidence presented or filed at the protest hearing;
- g) After the protest hearing, the Executive Officer shall cause the protests filed and not withdrawn to be reviewed in accordance with the requirements of Government Code section 57052;
- h) Should the value of the protests filed and not withdrawn not require an election or termination, the Executive Officer shall proceed and prepare an ordering resolution in accordance with the requirements of Government Code section 57000, et seq. The Executive Officer shall provide notice of the ordering resolution to the Commission at the next regularly scheduled meeting.
- i) Should the value of the protests filed and not withdrawn either require an election or termination, the Executive Officer shall prepare a report to the Commission and recommend the Commission the adoption of a resolution conformity with the outcome of the protest hearing per Government Code section 57000, et seq. The Executive Officer shall present the report and a draft resolution to the Commission for its consideration at the next regularly scheduled meeting.

5. Commission Action with Respect to Protest Hearings Conducted by Executive Officer

The Commission may accept or reject the Executive Officer's recommendations, or make modifications based upon review of the protest hearing record. The Commission may take any other actions prescribed by Government Code section 57000, et seq., for completion of proceedings for a change of organization or reorganization.

6. Limitation on Delegation of Authority to Executive Officer

Except as expressly provided for herein, the Commission shall retain its authority pursuant to Government Code section 57000, et seq. This policy however, in no way limits the Commission's ability to expressly delegate other tasks to the Executive Officer to the extent such delegation is authorized by Government Code.

Appendix One:

- 1) Written Valuation Procedures

Appendix One

POLICY FOR THE CONDUCT OF PROTEST HEARINGS

Written Valuation Procedures

1. Receipt of Written Protests

LAFCO shall write the date and time on all written protests immediately upon receipt.

2. Counting of Written Protests

LAFCO will count all written protests received, and not withdrawn prior to the time certain the proceedings are concluded, via any of the following means:

- U.S. mail received at LAFCO's office by 5:00 p.m. on the business day preceding the protest hearing date; or
- Courier delivery received at LAFCO's office by 5:00 p.m. on the business day preceding the protest hearing date; or
- Facsimile (fax) transmission, received at LAFCO's office by 5:00 p.m. on the business day preceding the protest hearing date; or
- Electronic mail (e-mail) transmission, received at LAFCO's office by 5:00 p.m. on the business day preceding the protest hearing date; or
- Hand-delivered to LAFCO's office by the protesting party or his or her duly-authorized representative received at LAFCO's office by 5:00 p.m. on the business day preceding the protest hearing date; or
- Hand-delivered to the Commission and/or staff, at the noticed protest meeting of the Commission, by the protesting party or his or her duly-authorized representative, on the protest hearing date and prior to the closing of the protest hearing by the Commission Chair or Acting Chair.

LAFCO will not count written protests received via any of the following means:

- Bearing a date prior to the date of publication of the protest hearing notice; or
- Delivered to the Commission and/or staff after the closing of the protest hearing by the Commission Chair or Acting Chair.

3. Valuing Written Protests

For purposes of valuing written protests only, any reference in this policy and in the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 to the close of the protest hearing will be construed to mean the close of the final protest hearing, meaning that any continuance of the protest hearing pursuant to Government Code Section 57050(a) will extend during which written protests will be accepted.

a) Registered Voter Protest:

Data obtained from the County of San Diego Registrar of Voters (ROV) shall determine the total number of registered voters within the boundaries of the affected territory at the time of the noticed protest hearing. Further, for purposes of calculating registered voter protests, LAFCO shall calculate the applicable percentage thresholds based upon the data obtained from the ROV.

LAFCO will count written protests from registered voters which include all of the following required information:

- Address of the property, providing street and number or other designation sufficient to enable the place of residence to be ascertained; and
- Signature of the registered voter; and
- Date of signature must be within the period starting with the publication of the protest hearing notice and ending at the time of the closing of the protest hearing by the Commission Chair or Acting Chair.

LAFCO will not count written protests from registered voters under any of the following circumstances:

- The address of the property, or other designation sufficient to enable the place of residence to be ascertained, is not provided; or
- The signature of the registered voter is not provided; or
- The date of signature is not provided; or
- The date of signature is prior to the date of publication of the protest hearing notice; or
- The date of signature is after the date of the closing of the protest hearing by the Commission Chair or Acting Chair; or

- The written protest is from a registered voter who is not registered to vote within the boundaries of the affected territory; or
- The written protest was not received consistent with the provisions in Section 1 (“Receipt of Written Protests”), above; or
- The individual who originally filed the protest withdraws his or her protest, in writing, within the time constraints identified herein; or
- Any protest which has been disqualified by the ROV, in the event that the Executive Officer refers registered voter protests to the ROV.

LAFCO staff will count all valid written protests from registered voters to determine the valuation and outcome. The Executive Officer may, at his or her discretion, refer any registered voter written protests to ROV for verification.

b) Landowner Protest:

Data obtained from the County of San Diego Assessor Office’s current tax rolls shall determine the total number of landowners within the boundaries of the affected territory. Further, for purposes of identifying all landowners and for calculating landowner protests, LAFCO shall calculate the applicable percentage thresholds based upon current tax rolls and the assessed value of land obtained from the Assessor.

LAFCO will count written protests from landowners which include all of the following required information:

- Address of the property, providing street and number or other designation sufficient to enable the location of the property within the affected territory to be ascertained; and
- Signature of the landowner; and
- The date of signature must be within the period starting with the publication of the protest hearing notice and ending at the time of the closing of the protest hearing by the Commission Chair or Acting Chair.

LAFCO will not count written protests from landowners under the following circumstances:

- The address of the property, or other designation sufficient to enable the location of the property within the affected territory to be ascertained, is not provided; or

- The signature of the landowner is not provided; or
- The date of signature is not provided; or
- The date of signature is prior to the date of publication of the protest hearing notice; or
- The date of signature is after the date of the closing of the protest hearing by the Commission Chair or Acting Chair;
- The written protest was not received consistent with the provisions in Section 1 (“Receipt of Written Protests”), above;
- The individual signing the written protest is different than the owner of record provided by the Assessor based upon the most recent assessment roll, subject to the requirements of the exception identified in Government Code Section 56710(c); or
- The individual who originally filed the protest withdraws his or her protest, in writing, within the time constraints identified herein.

For those properties which are exempt from taxation owned by a public agency, the valuation shall be determined consistent with Government Code Section 56710(a).

For those properties held in joint tenancy or tenancy in common, the valuation shall be determined consistent with Government Code Section 56710(b).

4. All Protests in Writing

While oral testimony will be considered by the Commission, said testimony will not have any effect on the valuation of protests. Under state law, and this policy, it is only written protests, not later withdrawn in writing, if applicable, that count.

5. Outcomes

Government Code Sections 57075 through 57077.4 describes whether the Commission considers written protests from registered voters, landowners, or both. Based on the valuation of the applicable protests, these sections dictate which of the following actions the Commission must take:

- Terminate the proceedings; or
- Order the change of organization or reorganization subject to an election; or

- Order the change of organization or reorganization without an election.

6. Results

The Commission may announce results at the conclusion of the protest hearing, or, in the alternative, may postpone the announcement to a future meeting if LAFCO staff needs time to verify and value written protests.

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