



**San Diego County**  
**Local Agency Formation Commission**  
 Regional Service Planning | Subdivision of the State of California

**7a**

**AGENDA REPORT**  
 Business | Action

March 7, 2022

**TO:** Commissioners

**FROM:** Holly O. Whatley, Commission Counsel  
 Tamaron Luckett, Commission Clerk

**SUBJECT: Proposed Policy on Ex Parte Communications**

**SUMMARY**

The San Diego County Local Agency Formation Commission (LAFCO) will consider a proposed policy on ex parte communications between Commissioners and project proponents and/or opponents. The proposed policy is premised on the dual interest to accommodate ex parte communications to enhance project decision-making while also ensuring an open and fair process. The proposed policy applies to projects subject to noticed public hearings and outlines required verbal disclosures to be made in conjunction with initiating deliberations.

**BACKGROUND**

**Ex Parte Communications |  
 Definition and Legal Parameters**

*Ex parte* is a Latin phrase meaning “from one party.” Generally, an ex parte communication is any oral or written communication with a decisionmaker that is relevant to the merits of an adjudicatory or quasi-adjudicatory proceeding and takes place outside a noticed hearing. Restrictions on ex parte communications are based on fundamental fairness concerns and constitutional principles of due process. If one side is allowed to communicate with a decisionmaker, without the other side being given an opportunity to listen or respond, questions arise regarding the decisionmaker’s impartiality.

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There are no State or federal laws that prohibit ex parte communications during LAFCO proceedings. In fact, most LAFCO proceedings are quasi-legislative rather than quasi-adjudicatory, and do not implicate the due process protections under the State and federal constitutions. Nonetheless, while allowed to engage in ex parte contacts, the Commission may still consider adopting a policy to disclose those ex parte communications for transparency and avoidance of any ill-advised perceptions.

## **DISCUSSION**

This item is for San Diego LAFCO to consider a proposed policy to formally address ex parte communications between Commissioners and project proponents and/or their opponents. The proposed policy is timed in response to increasing interest by applicants and others to meet with Commissioners and discuss projects ahead of their scheduled hearings. The proposed policy is provided as Attachment One marked by the following central provisions:

- Recognizes the value of in allowing Commissioners to have fair and open ex parte communications in gathering essential information in making informed decisions
- Disclosures limited to projects subject to formal public hearings.
- Outlines standards and related reporting thresholds for Commissioners to timely disclose ex parte communications before beginning project deliberations.

## **ANALYSIS**

The proposed policy before San Diego LAFCO responds to the evolving nature of the Commission's regulatory and planning work and the associated draw of more contested projects. Recent examples include projects to reorganize fire protection services in the Julian region and authorization of groundwater management in Pauma Valley. The proposed policy draws from these and other recent experiences in providing clear rules of engagement with respect to project proponents and/or opponents having ex parte communications and Commissioners' responsibilities in providing disclosures.

## **RECOMMENDATION**

It is recommended San Diego LAFCO approve the proposed policy on ex parte communications for reasons detailed in the preceding section. This recommendation would be accommodated by taking the actions outlined below as Alternative One.

## **ALTERNATIVES FOR ACTION**

The following alternatives are available to San Diego LAFCO:

Alternative One (recommended):

- a) Approve the proposed policy on ex parte communications as provided as Attachment One with any desired changes as well as authorize the Commission Clerk to assign it as next in order under administrative policies.
- b) Set the effective date of the policy for 30 days unless specified otherwise.

Alternative Two:

Continue consideration of the item to a future meeting and provide direction to staff for more information and/or outreach as needed.

Alternative Three:

Take no action.

**PROCEDURES**

This item has been placed on the agenda for action as part of San Diego LAFCO's business calendar. The following procedures, accordingly, are recommended.

- 1) Receive verbal report from staff unless waived.
- 2) Commission discussion.
- 3) Consider the staff recommendation.

Respectfully,

Holly O. Whatley  
Commission Counsel

Attachments:

- 1) Proposed Policy on Ex Parte Communications

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## ADMINISTRATIVE POLICY A-XYZ

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### **Subject**

EX PARTE COMMUNICATIONS

### **Purpose**

This policy accommodates ex parte communications in a fair and open manner between Commissioners and applicant proponents and/or opponents and establishes associated disclosure requirements at public hearings.

### **Background**

There is no State or federal law that prohibits ex parte communications involving Commission proceedings. The absence of any statutory restrictions on ex parte communications ties to the Commissions' role as a quasi-legislative body rather than quasi-adjudicatory body. This distinction – and among other considerations – does not implicate the due process protections under the State and federal constitutions applied to other local governmental agencies. Notwithstanding its role as a quasi-legislative body, the Commission may consider adopting a discretionary policy to disclose ex parte communications it believes adds transparency without overburdening its decision-making process.

### **Policy**

It is the policy of San Diego LAFCO:

1. LAFCO recognizes the value of Commissioners participating in ex parte communications with applicants and other interested parties involving pending deliberations in gathering essential information in making informed decisions.
2. LAFCO equally recognizes the value in ex parte communications is dependent on fairness to ensure no individuals or groups have – real or perceived – greater access to the Commission than others.
3. Ex parte communications covered under this policy include (a) phone calls or internet telephony, (b) meetings, (c) site visits, and (d) any written communications.
  - a) Communications between Commissioners and Commission employees or consultants are not ex parte under this policy.
4. Ex parte communications can be initiated by Commissioners.
5. To the extent practical, a Commissioner shall inform the LAFCO Executive Officer of any anticipated and/or scheduled ex parte communication.
6. LAFCO shall ensure all meeting agendas include a note for public hearing items that require disclosure of ex parte communications by Commissioners.
7. The Chair and/or their designee shall call for a disclosure of ex parte communications from all Commissioners prior to the start of the public hearing.

8. Ex parte communications received after the close of the public hearing, but before the rendering of a decision, shall also be disclosed before the decision.
9. All ex parte communication disclosures made by Commissioners shall identify the date, type, and person and/or group involved.