


SACRAMENTO LOCAL AGENCY FORMATION COMMISSION
1112 I Street, Suite #100
Sacramento, California 95814
(916) 874-6458

March 7, 2007

TO: Sacramento Local Agency Formation Commission
FROM: Peter Brundage, Executive Officer 
RE: Incorporation Fee Policy

RECOMMENDATION

Direct staff to develop a Proposed FY 2007- 08 Budget based on the current LAFCo fee policy, approved November 3, 2003.

DISCUSSION

This report will provide the Commission with background information and with potential deficit impacts to the LAFCo budget that are related to processing incorporation proposals.

The Arden-Arcade Incorporation Committee has circulated a petition to submit an application proposing incorporation to your Commission. The petition was delivered to LAFCo staff on February 27, 2007. On February 28, 2007, the petition was delivered to the Registrar of Voters who has 30 days in which to verify the signatures, pursuant to Elections Code Section 9113 to 9115, inclusive.

In addition to the Arden-Arcade effort, the community of Rio Linda-Elverta has indicated that it desires to commence a petition drive proposing incorporation.

Background

After a great deal of deliberation, on November 5, 2003, the Commission adopted a fee policy regarding processing incorporations. The Commission approved a partial cost recovery from proponents with a full cost recovery from the new city. If the incorporation proposal is successful, the new city must reimburse LAFCo for all costs funded by LAFCo. The current Incorporation Fee Policy states:¹

¹ Complete fee policy attached.

<u>Event</u>	<u>Fiscal Responsibility</u>
Deposit \$25,000	Proponents
Petition Verification	Proponents
Environmental Impact Report	Proponents
Comprehensive Fiscal Analysis	LAFCo
Staff Time	LAFCo
Legal Fees	LAFCo

This fee schedule is a modified full cost recovery method. **On August 6, 2003, I had recommended the Commission adopt a Full Cost Recovery method prior to holding public hearings on incorporation proposals.**² My recommendation was based on budget considerations. At that time, however, the Commission believed that the partial recovery method was the more appropriate approach because it was consistent with how LAFCo treated Citrus Heights, Rancho Cordova and Elk Grove Incorporations.

The cost to process incorporation proposals is expensive because staff uses consultants to prepare an Environmental Impact Report and a Comprehensive Fiscal Analysis. During past incorporation proposals, the cost of the EIR has exceeded \$100,000. The cost of the CFA has ranged from \$35,000 to \$90,000.³ It is likely that the cost of a CFA will continue to increase because the CFA is a very critical part of the incorporation analysis.⁴ Proponents and opponents of future incorporation proposals are demanding an ever higher level of detailed accurate revenue and expenditure estimates.

During past incorporation proposals, LAFCo could absorb the cost of the CFA relatively easily. In the future, I believe it will be more difficult to absorb this cost, especially if staff is processing two incorporation proposals simultaneously or within a relatively short period of time.

Moreover, during past incorporation proposals, the Commission has agreed to advance funds to cover the cost of preparation of the Environmental Impact Report. Public hearings were not scheduled until LAFCo was reimbursed, however, proponents have been allowed to make modest monthly payments toward this cost during the preparation of the EIR. This waiver of up-front costs to proponents creates a cash flow problem for LAFCo's budget. It also creates the potential that LAFCo will not be reimbursed by proponents because they may be unable to raise the necessary funds for this cost.

² Staff report attached.

³ Rancho Cordova Comprehensive Fiscal Analysis cost \$90,000.

⁴ Pursuant to Government Code Section 56800, LAFCo is responsible for preparing the Comprehensive Fiscal Analysis. However, Government Code Section 56383 allows LAFCo to recover its costs.

Options

The Commission could consider the following options:

- (1) Change the current Partial Cost Recovery Policy to Full Cost Recovery of LAFCo expenses wherein the proponents are obligated to pay all costs related to processing an incorporation proposal **up front**. This procedure is followed by several LAFCOs.
- (2) Require proponents to request a loan from the State to cover the cost to process an incorporation proposal based on hardship circumstances.
- (3) Raise annual assessments of the agencies that contribute to LAFCo's budget. [County of Sacramento, Cities within the County, Independent Special Districts within the County of Sacramento.]

Analysis of Options

Increase Fees to Require Full Cost Recovery

In my opinion, it may be difficult to amend the incorporation fee policy at this time due to the fact that proponents have proceeded on the basis of LAFCo's current Partial Cost Recovery policy and have submitted their petition under that policy.

State Loan Process

The Governor's Office of Planning and Research⁵ has provided the following information on State loans:

For an incorporation that has been initiated by a successful petition, LAFCo may forward a request for a loan from the Controller of the State. The State, not LAFCo, can approve the loan which then becomes an obligation of the new city. Repayment of the loan must be made within two years of the effective date of incorporation.

LAFCo shall forward the loan request, along with the certification of insufficient funds as supplied by the proponents. State funds are not automatically granted to an incorporation effort and are subject to availability and other State budget limitations.

If the incorporation proposal is denied by the Commission, or defeated at an election, the loan shall be forgiven.⁶

⁵ State of California, Office of Planning & Research, Guidelines for Incorporation.

⁶ Government Code Section 56383.

I am unsure whether or not the Sacramento LAFCo approved fee policy would impact the State's decision to grant Sacramento LAFCo a loan. Moreover, it appears to be a very difficult and lengthy process to obtain a loan. It is my understanding that the proponents would need to solicit assistance from either their Assembly or Senate representative. This loan request would then need to be approved and funds appropriated through the legislative budget process.

Agency Assessments

The above options may not be realistic options. Thus, it appears that the only viable option is to increase assessments to cover costs related to incorporation proposals. After reimbursement by the new city, assessments could be reduced accordingly. Under current policy, if the proposed new city fails at the ballot box, LAFCo would receive no reimbursement for processing an incorporation proposal. In this event, the County, cities and special districts within the County would be subsidizing an incorporation effort that is either denied by the Commission or fails at election.⁷

Budget Impacts

I do not believe that there will be any significant budget impacts to FY 2006-07. However, the proposed incorporation will likely impact the FY 2007-08 budget. The proposed incorporation total costs are estimated to be:

⁷ Proponents for the incorporation of Citrus Heights filed the petition with Sacramento LAFCo in **October, 1986**. Progress continued until the Board of Supervisors failed to call the election on the issue. Van Duker vs. Board of Supervisors of Sacramento County. (Filed January 1988.) Board of Supervisors: Sacramento County Deputy Sheriffs' Association, Sacramentans to Save our Services vs. Local Agency Formation of Sacramento and Citrus Heights Incorporation Project. (Filed April, 1988.) After judgments, appeals and cross-appeals, in September, 1994, the Citrus Heights Incorporation Project and the County of Sacramento signed a Settlement Agreement. LAFCo resumed processing the Citrus Heights incorporation proceeding. In **November, 1996, the electorate approved incorporation of City of Citrus Heights**.

Proponents for the incorporation of Elk Grove filed the petition with Sacramento LAFCo in **March, 1991**; in November, 1994, the proposed Elk Grove incorporation failed to pass the election. Proponents for the incorporation of Elk Grove filed petition in April, 1996. In **March, 2000, the electorate approved incorporation of City of Elk Grove**.

Proponents for the incorporation of Rancho Cordova filed the petition with Sacramento LAFCo in **October, 1999**. LAFCo approved the incorporation proposal on May 22, 2002; the **electorate passed the measure on November 5, 2002**.

	<u>Low</u>	<u>High</u>	<u>Responsible Party</u>
Registrar of Voters	\$1,500	\$15,000	Proponents
EIR	\$100,000	\$150,000	Proponents
CFA/ Consultants	\$80,000	\$100,000 +	LAFCo
Staff Time	\$20,000	\$30,000 +	LAFCo
Legal	<u>\$20,000</u>	<u>\$30,000</u> +	LAFCo
Total	\$221,500	\$325,000	

The cost outlay for consultants to prepare the Comprehensive Fiscal Analysis, legal review, and other specialized consultants other than environmental consultants, under LAFCo's current fee policy will have a direct impact on the budget.

LAFCo staff time could be absorbed, however, time would be tracked so that all costs would be reimbursed if the incorporation is successful.

Estimated Impact to Assessments for FY 2007-08

CFA	\$100,000
Legal Costs	\$ 30,000
Misc. Consultants	<u>\$ 20,000</u>
Estimated Assessment Increase	\$150,000

The increase in assessments related to the Arden-Arcade Incorporation Proposal is estimated to be \$150,000, or \$50,000 each allocated to the County, cities and special districts. *This estimate assumes that the proponents fund the environmental documents and the cost of signature verification as these expenses are incurred in accordance with the current LAFCo fee policy.*

PB:Maf
Attachment
(Incorporation Fee Policy)

SACRAMENTO LOCAL AGENCY FORMATION COMMISSION
1112 I Street #100
Sacramento, California 95814
(916) 8974-6458

FEE SCHEDULE
November 5, 2003

- | | | |
|----|--------------------------------------------------------------------------------------------------------------|-----------------------------|
| 1. | Annexation/
Detachment | Actual Cost |
| 2. | Reorganization
Deposit \$1,000 | Actual Cost |
| 3. | Consolidation
Deposit \$1,000 | Actual Cost |
| 4. | Formation
Deposit \$1,000 | Actual Cost |
| 5. | Dissolution
Deposit \$1,000 | Actual Cost |
| 6. | Reconsideration
Deposit \$500 | Actual Cost |
| 7. | Application for Latent Powers
Deposit \$500 | Actual Cost |
| 8. | Special Studies
Deposit \$1,000 | Actual Cost |
| 9. | Petition Check : Registrar of Voter Invoice
Set up fee: \$700 for petitions with 500 signatures + | \$1.50 per signature |

10. **Incorporation**
 Deposit \$25,000
1. Petition Check
 [Direct Invoice from Registrar of Voters]
 2. Environmental Documentation
 [Must be Paid Prior to Public Hearing]
 3. All Charges for Staff Time, Commission Counsel Time, Comprehensive Fiscal Analysis, and any other Charges [special studies, maps, fees] will be billed to the new city upon the effective date of the incorporation.¹

Upon determination by the Registrar of Voters that the petition is sufficient, the proponents' \$25,000 deposit will be used to begin the environmental work. LAFCo will select an environmental consultant and negotiate payment terms. The proponents will be required to reimburse LAFCo in accordance with the negotiated payment schedule. If required payments are not made by the proponent, LAFCo will direct the environmental consultant to cease work until payments are brought current; LAFCo will cease work on the fiscal analysis, and any other required studies or staff time, until payments for the environmental documentation are brought current. The Commission retains the right to waive this requirement.

LAFCo funds the Comprehensive Fiscal Analysis, legal costs, staff time and special studies, and upon a successful election, bills the new city for all costs upon the effective date of the new city.

- | | | |
|-----|----------------------------------------------------------------------------------------------------|-------------|
| 11. | Disincorporation
Deposit \$2,000 | Actual Cost |
| 12. | Sphere of Influence Amendment
[Non-mandatory]
Deposit \$1,000 | Actual Cost |
| 13. | Environmental Review
Invoiced from DERA,
Collected by Commission Clerk
Forwarded to DERA. | Actual Cost |
| 14. | Fish and Game Filing Fees ² | |

¹ Fee schedule for incorporation adopted as policy on November 5, 2003.

- | | | |
|-----|---------------------------------------------------------------------------------------------------------------------|---------------|
| 15. | State Clearing House Filing Fees
Notice of Determination
Collected from Client at Time of Filing | \$875.00 |
| 16. | State Board of Equalization Filing Fees
Collected from Client at Time of Filing
Forwarded by Commission Clerk | Per Schedule |
| 17. | Additional Fees:
Copies | .10 /per page |

**Actual Cost: Time and overhead and materials;
special studies and legal review.**

Applicants shall also indemnify LAFCo.

(Fee Schedule)

² Resolution No. LAFC 1070, adopted January 1, 1991, and a part of the Application package, defines California Fish and Game Code fees as applicable for projects not determined to be exempt or de minimus [\$1,275 for Negative Declaration and \$875 for Environmental Impact Report.]

**SACRAMENTO LOCAL AGENCY FORMATION COMMISSION
EMPLOYEE**

RATE SCHEDULE

Direct Costs

Executive Officer	\$60.00 per hour
Senior Staff	\$53.00 per hour
Associate	\$45.00 per hour
Commission Clerk	\$40.00 per hour

Indirect Costs per Employee
(Excludes legal counsel,
contingencies and special
consultants.)

\$20.00 per hour
per FTE

Other Costs

Consultants
LAFCo legal review

Actual Cost
of Service Provided

Exhibit A

RATE SCHEDULE

Nancy C. Miller	\$250.00
William L. Owen	\$250.00
Kirk E. Trost	\$250.00
Christiane E. Layton	\$225.00
Paul J. Chrisman	\$225.00
Matina R. Kolokotronis	\$225.00
Madeline E. Miller	\$195.00
Law Clerks	\$125.00
Paralegals	\$85.00

In addition, only the following costs will be billed as follows:

In-house photocopying will be billed at \$.05 a copy. Other photocopying, postage, long distance telephone charges, federal express, courier service, court and administrative fees, and all other "out of pocket" costs will be billed at actual costs. Travel to and from client is not billed.

Hourly rates may increase upon written amendment by the parties. The firm usually adjusts rates annually.

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FEES FOR ENVIRONMENTAL DOCUMENTATION

The Sacramento Local Agency Formation Commission will conduct environmental review for each proposal before its consideration.

The work is done by a consultant on a full cost (special studies, time and materials) recovery basis.

The applicant is responsible for full cost recovery.

SACRAMENTO LOCAL AGENCY FORMATION COMMISSION

1112 I Street #100
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November 5, 2003

#3
APPROVED
SACRAMENTO LOCAL AGENCY
FORMATION COMMISSION

NOV 5 2003

TO: Sacramento Local Agency Formation Commission

FROM: Peter Brundage, Executive Officer

RE: Incorporation Fee Policy Options

Way
Commission Clerk

RECOMMENDATION

1. Direct staff to finalize the incorporation fee policy for one of the options identified in this report, or as further directed by the Commission.
2. If surplus funds are available, establish a General Reserve account in the FY 2004-05 Budget for non-budgeted projects.

DISCUSSION

On October 16, the Incorporation Fee Policy Subcommittee [Commissioners Illa Collin, Roberta MacGlashan, Charles Rose] met to discuss various options for fee policies on incorporation proposals. The Subcommittee discussed several fee options and their related impacts to proponents, to the County, to cities and to special districts. Although several options were discussed, the Subcommittee did not agree on any specific cost recovery methodology.

Previously, staff recommended full cost recovery [all costs of processing an incorporation proposal] from incorporation proponents.¹ The basis of this recommendation is founded on LAFCo's budget constraints and the potential effect of incorporation expenses on those agencies which contribute to LAFCo's budget.

I propose four fee recovery funding options for Commission consideration regarding incorporation proposals:

1. ***Existing Fee Policy (Partial Cost Recovery)***
2. ***Full Cost Recovery***
3. ***Partial Cost Recovery from Proponent/ Full Cost Recovery from New City***
4. ***No Cost Recovery***

¹ Proposed June 4, 2003; August 3, 2003.

1. EXISTING FEE POLICY (Partial Cost Recovery)

Currently, incorporation proponents are responsible for (1) the cost of petition verification and (2) the environmental document. LAFCo absorbs all other costs related to the incorporation including fiscal analysis, legal fees, staff time, and special studies (if required). These costs will be recovered in the annual assessment (or could be recovered through a special mid-year assessment) invoiced to those agencies which contribute to LAFCo's budget: the County, cities, and special districts. The current Commission fee policy was used for the incorporation of Elk Grove and the incorporation of Rancho Cordova. During these incorporation proposals, the County of Sacramento was the sole contributor to LAFCO's budget.

2. FULL COST RECOVERY

The incorporation proponents would be obligated to pay all of the costs related to processing an incorporation proposal. In addition to the preparation of their maps and legal descriptions (required for application), proponents would be required to pay the total of the following costs:

- Petition Signature Check
- Environmental Document
- Fiscal Analysis
- LAFCo Staff Time
- Legal Costs
- Other Special Studies and/or LAFCo Consultant Costs
- Filing fees to State Board of Equalization [New city responsibility.]²

The payment plan for Full Cost Recovery should include a minimum deposit of \$25,000; payment to be made as expenses are incurred as invoiced by LAFCo staff. All costs that can be invoiced would be reimbursed prior to the public hearing on the incorporation proposal; after hearing, additional costs to be invoiced and reimbursed.

Analysis of Full Cost Recovery

Most LAFCo's have a full cost recovery policy for proponent-initiated proposals. However, proponents typically have a very difficult time raising funds to pay for incorporation costs. A significant amount of time and effort is required to obtain the required number of signatures for the petition and the funding to pay for signature verification on the petition. On the other hand, incorporations are generally difficult and very costly to process and without some form of assistance are likely to be very difficult for a grass roots group to fully fund.

² Filing fees are paid to the State Board of Equalization after a successful election. The State Board of Equalization will defer the cost until after the effective date of the incorporation. Thus, these fees are not a consideration for LAFCo outlay of funding, however, LAFCo has paid these fees in the past and been reimbursed by the new city.

**# 3. PARTIAL COST RECOVERY FROM PROPONENT/
FULL COST RECOVERY FROM NEW CITY**

This option is a modification of Sacramento LAFCo's current fee policy. It demands partial payment up-front from the proponents and complete payment of costs from the new city upon a successful election. In addition to the preparation of their maps and legal description, proponents would be required to pay the following costs *prior to a public hearing on the proposal*:

Petition Signature Check
Environmental Document

LAFCo funds the remainder of project costs (fiscal analysis; funds for special studies and/or consultant costs, legal fees and staff time) until these costs can be billed to a new city.

New option, Full Cost Deferred

This option can be viewed as a LAFCo loan to the proposed new city. *If successful, the new city would be obligated to pay LAFCo for the fiscal analysis, legal costs, LAFCo staff time, and any other direct costs related to the incorporation incurred by LAFCo staff in the processing of the project, to be invoiced upon the effective date of the new city.* However, in the event the incorporation is not successful, LAFCo would absorb all costs incurred *except* petition signature check and environmental documentation.

The payment plan for Partial Cost Recovery from Proponent/ Full Cost Recovery from New City should require a \$25,000 refundable deposit upon submission of the application. The deposit would be used to begin the environmental work. Petition signature check remains the responsibility of the proponents and is invoiced by the Registrar of Voters directly to the proponents. If the petition is sufficient, LAFCo would select an environmental consultant and negotiate payment terms. The proponents would be required to reimburse LAFCo in accordance with the negotiated payment schedule. If required payments are not made by the proponent, LAFCo will direct the environmental consultant to cease work until payments are brought current; LAFCo will cease work on the fiscal analysis, and any other required studies or staff time, until payments for the environmental documentation are brought current. The Commission retains the right to waive this requirement upon request.

LAFCo funds the fiscal analysis, legal costs, staff time and special studies, and upon a successful election, bills the new city for all costs upon the effective date of the new city. **NOTE: A special assessment to LAFCo's contributors may be required depending upon the time of year an application is filed.**

