



# San Luis Obispo Local Agency Formation Commission

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**TO: MEMBERS OF THE COMMISSION**

**FROM: ROB FITZROY, EXECUTIVE OFFICER**

**DATE: MAY 18, 2023**

**SUBJECT: POLICIES, PROCEDURES & BY-LAWS MANUAL UPDATES**

## RECOMMENDATION

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**Action 1:** Approve, by motion, the proposed updates to the Policies, Procedures & By-Laws Manual.

## BACKGROUND

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The Fiscal Year 2022-2023 Budget and Work Plan prioritized a work effort to update the Policies & Procedures Manual and By-Laws. The primary purpose of the update was to address policies that relate to LAFCO's indemnification policies as a result of the decision of the Court of Appeal in the case of San Luis Obispo Local Agency Formation Commission et. al. v. *City of Pismo Beach, et.al. 61 Cal. App. 5<sup>th</sup> 595.*, a lawsuit which initially began in 2013 and fully concluded in 2023.

In this case, the City of Pismo Beach and Central Coast Development Company ("Central") applied to the San Luis Obispo LAFCO to annex a parcel of real property to the city. LAFCO denied the application and the City and Central brought an action to challenge that decision. LAFCO prevailed and brought an action to recover attorney fees under an indemnity agreement contained in the annexation application. The trial court granted the city and developer judgment on the pleadings because LAFCO has no authority to require such fees. LAFCO and the Special District Risk Management Authority filed an appeal.

The Court of Appeal affirmed the trial court judgment holding that: (1) the agreement was not supported by consideration, as required for a contract; (2) The Cortese-Knox-Hertzberg Act authorizing LAFCO to charge fees does not apply to post-administrative matters and (3) LAFCO had no authority under the Cortese-Knox-Hertzberg Act to require the agreement.

The results of this case necessitated various changes related to LAFCO's proposal application packets and the Policy & Procedures Manual. The LAFCO application packets have been updated accordingly, and the final necessary update to address the results of the case was to update the Policy and Procedures Manual among other updates to streamline and modernize the document. Similarly, in an effort to modernize and enhance usability, we have merged the By-Laws manual with the Policies & Procedures manual to create one document. No substantive changes to the By-Laws were made.

## KEY CHANGES

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The most substantive change to the Policy & Procedures Manual was specifically related to the aforementioned indemnification issue. Any policies related to indemnification in context to the application packet or cost accounting agreement have been permanently removed. Specifically, policies under Section 2.11.6 have been modified, and Policies 2.11.7, 2.11.8 (a-d) have been fully removed. Policy 2.11.6 retains some language related to indemnification because it still remains the policy of the Commission to indemnify when appropriate and allowed by law. Again however, LAFCOs are no longer allowed to require indemnification as a prerequisite for submitting an application.

The policy changes are shown below, underlined shows additions and strike-through shows permanent removals. Changes specific to indemnification can be found beginning on Page 25 of Attachment A. In addition, any substantive changes within Attachment A are shown in red for ease, and similarly, underlined shows additions and strike-through shows permanent removals.

*2.11.6. To the extent allowed by law, it is the policy of this Commission that applicants for LAFCO actions shall defend, indemnify and hold harmless LAFCO ~~to the fullest extent allowed by law,~~ at the sole expense of the applicant, against any and all claims, demands, actions and/or lawsuits that may be filled against LAFCO which challenges any Commission action including, but not limited to, action on an application or proposal. (~~"Claims"~~). ~~The application shall also include an agreement by the applicant to defend, indemnify and hold harmless LAFCO to the fullest extent allowed by law, at the sole expense of the applicant, against any and all Claims ("Indemnification Agreement"). The Agreement must be signed by the applicant(s) for the application to be deemed complete.~~*

*~~2.11.7. Prior to the Executive Officer deeming an application complete, the applicant(s) shall submit a signed Cost Accounting and Indemnification Agreement.~~*

*~~2.11.8. The following policy shall be applied to any applicant and/or jurisdiction that is not in compliance with an existing LAFCO Cost Accounting and Indemnification Agreement as determined by the Executive Officer and Legal Counsel:~~*

- ~~a. The LAFCO Executive Officer (EO), in consultation with Legal Counsel, shall determine, on review of an application, whether an applicant and/or jurisdiction has previously failed to comply with the LAFCO Indemnification Policy and/or the LAFCO Cost Accounting and Indemnification Agreement.~~
- ~~b. Prior to acceptance for processing of an application from an applicant and/or jurisdiction, which the EO determines to have failed to comply with the Policy and Agreement referenced in paragraph a. of this policy above, the LAFCO Executive Officer shall advise the Commission at a regularly scheduled meeting regarding the applicant's prior breach of the obligations of the Policy, Agreement, or both. The Executive Officer, in consultation with Legal Counsel, shall make a recommendation to the Commission regarding the amount of a bond or other commercially reasonable undertaking to be required of the applicant before the application will be accepted.~~
- ~~c. On the basis of the Executive Officer's recommendation, the Commission shall establish a bond or other commercially reasonable undertaking as a condition for acceptance of the application. The purpose of this security requirement is secure the obligation of the applicant to indemnify LAFCO from future liability in connection with the application. In addition, the applicant shall be required to satisfy any past due obligation owed to LAFCO from previous applications, prior to processing any new application.~~
- ~~d. Compliance with this policy does not relieve the applicant of responsibility to submit other information as requested by LAFCO to process the application, to otherwise comply with applicable law and these policies, and cure any outstanding non-compliance with the Policy and Indemnification Agreement referenced in paragraph 8 a. of this policy above.~~

Additional changes were made to the Procedures section titled "Preliminary Steps" Section 3.1.1, to align with the adopted Comprehensive Application and Minor Fee Schedule Updates that were approved by the Commission at the LAFCO April 20, 2023 meeting.

## **OTHER CHANGES**

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Other changes to the Policy & Procedures Manual generally relate to rearranging content to make the document easier to read and other formatting changes to match the new standard of LAFCO.

We have also included LAFCO's By-Laws in the Policy & Procedures Manual. No changes have occurred to any of the By-Laws, they have simply been merged into this document for ease of use and to better connect our policies with our procedures and modes of operation as required by the Cortese, Knox, Hertzberg Act.

## **STAFF RECOMMENDATION**

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### **Recommended Action and Options**

**Action 1:** Approve, by motion, the proposed updates to the Policy & Procedures Manual (Attachment A)

**Other Options:** The Commission may also wish to provide feedback on the Policy & Procedures Manual. Depending on the complexity of the comments, staff can take direction and make the changes accordingly, or if warranted staff can return at a later date with revisions for further Commission review. The Commission may also wish to provide comment or direction on any other policy they wish to add/delete or modify.

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**Attachment A:** Policies, Procedures & By-Laws 2023

# **Attachment A**

Policies, Procedures &  
By-Laws 2023