



LOCAL AGENCY FORMATION COMMISSION OF SANTA CRUZ COUNTY

PROTEST PROCEEDINGS POLICY

Adopted on March 7, 2001 (Resolution No. 2001-6)

Last Revision on September 2, 2020 (Resolution No. 2020-25)

1. OVERVIEW

Prior to January 1, 2000, LAFCO would designate an affected agency as the “conducting authority” to approve a change of organization or reorganization and direct that agency to conduct protest proceedings pursuant to Government Code Section 57000 et seq. With the passage of AB 2838 (Hertzberg – Chapter 761, Statutes of 2000), the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code § 56000 et seq.) established LAFCO as the “conducting authority” for protest proceedings.

The purpose of this policy is to carry out LAFCO’s functions and responsibilities as a conducting authority pursuant to Government Code Section 57000 et seq. Protest proceedings for changes of organization and reorganization shall be conducted by the Commission in accordance with the following guidelines.

2. PROTEST PROCEEDING GUIDELINES

The Commission will adopt a resolution that makes findings and determinations when approving a change of organization or reorganization. The resolution will contain terms and conditions, which include a condition that addresses the protest proceedings.

2.1 Protest Proceeding Timeframe: The Commission shall specify a timeframe between twenty-one (21) and sixty (60) days for the collection and filing of written protests pursuant to Government Code Section 56886(o), and that timeframe shall be included in the terms and conditions of an approval for a change of organization or reorganization for which protest proceedings are not waived pursuant to Government Code Section 56663.

2.2 Public Noticing: Within thirty (35) days of the adoption of the Commission’s resolution making determinations and approving a change of organization or reorganization, the Executive Officer shall notice a protest hearing and, in the notice, set the hearing date as prescribed by the Commission in its terms and conditions.

2.3 Types of Public Noticing: Notice of the hearing shall be provided pursuant to Government Code Section 56150 et seq., and as follows:

- a) Notice must be published, posted, and mailed to affected agencies, proponents, and any persons requesting special notice;
- b) Mailed notice must be provided to all landowners affected by the proposal;

- c) The time, date, and location of the hearing shall be specified in the notice as determined by the Executive Officer; and
- d) The protest hearing must be held in the affected territory if the hearing is a proposal initiated by the Commission pursuant to Government Code Section 56375(a) for a district consolidation, dissolution, or merger, or the establishment of a subsidiary district.

2.4 Protest Hearing: At the protest hearing, the Executive Officer, or designee, shall (1) summarize the Commission's resolution, and (2) hear and receive any oral or written protests, objections, or evidence. Written protests may be filed by any affected landowner or registered voter. The Executive Officer, or designee, may continue the protest, but for no more than sixty (60) days from the date specified in the notice.

2.5 Protest Hearing Results: At the conclusion of the protest hearing:

- a) If no written protests have been filed, the Executive Officer, or designee, shall adopt a form of resolution ordering the change of organization or reorganization without an election; or
- b) If written protests have been filed, the Executive Officer, or designee, shall within thirty (30) days after the conclusion of the hearing, make determinations on the value of written protests filed and not withdrawn; and
- c) To determine the value of written protests filed and not withdrawn, the Executive Officer, or designee, shall cause the names of the signers on the protests to be compared with the voters' register in the County Elections Department pursuant to Government Code Section 56707 and/or the names of the owners of land on the most recent assessment roll pursuant to Government Code Sections 56708 and 56710.

2.6 LAFCO Actions after Protest Proceedings: Upon determination of the value of written protests filed and not withdrawn, the Executive Officer, or designee, shall take one of the following actions, depending on the nature of the change of organization or reorganization:

- a) If less than 25% of the affected registered voters or landowners oppose the proposal, then a form of resolution making determinations and ordering the change of organization or reorganization will be adopted without an election;
- b) If 25% to 50% of the affected registered voters or landowners oppose the proposal, then a form of resolution making determinations and ordering the change of organization or reorganization will be adopted subject to confirmation by the voters; or
- c) If more than 50% of the affected registered voters or landowners oppose the proposal, then a Certificate of Termination will be issued, which ends the LAFCO proceedings.

2.7 Election Process: If an election is required, the Executive Officer or designee, pursuant to Government Code Section 57000(d), shall inform the legislative body of the affected agency of LAFCO's determination and request the legislative body to direct the elections official to conduct the election.

3. LAFCO AS A CONDUCTING AUTHORITY

Pursuant to Government Code Section 57000(c), the Commission has the option of delegating any or all of the functions and responsibilities of the conducting authority to the Executive Officer. Any references made to the "Commission" or "LAFCO" in the following discussion also pertains to the Executive Officer for any functions they will perform on behalf of the Commission. It should also be noted that, pursuant to Government Code Section 57008, the Commission or Executive Officer is required to hold the protest hearing in the affected territory if the proposal was initiated by the Commission pursuant to Government Code Section 56375(a) (district consolidation, dissolution, merger, establishment of a subsidiary district, or a reorganization that includes any of the previous).

Following summarization of the Commission's resolution at the protest hearing, the Commission hears and receives any oral or written protests, objections, or evidence. Anyone who has filed a written protest can withdraw that protest prior to the conclusion of the hearing. Within thirty (30) days after the hearing, LAFCO makes a finding on the value of written protests filed and not withdrawn. The percentage thresholds for LAFCO to terminate or order the change of organization or reorganization with or without an election is consistent with existing law. LAFCO, however, does not have statutory authority to conduct an election if one is required. Therefore, if LAFCO's determination on a proposal is subject to confirmation by the voters and an election must be conducted, LAFCO, pursuant to Government Code Section 57000(d), is required to inform the board of supervisors or city council of the affected city of the Commission's determination and request the board or council to direct the elections official to conduct the election.

4. PROTEST THRESHOLD FOR OTHER BOUNDARY CHANGES

The percentage protest thresholds for a dissolution, consolidation, merger, or the establishment of a subsidiary district differ from the previous changes of organization discussed in the previous sections. While Government Code Section 57077 addresses the requirements for these changes of organization, Government Code Section 56854 supersedes those provisions. The provisions of Government Code Section 56854 (previously Government Code Section 56839.1) was the product of legislation passed in 1997. Pursuant to Government Code Section 56854(a), LAFCO is required to order a dissolution, consolidation, merger, or the establishment of a subsidiary district without an election unless certain protest requirements are met. Those requirements are enumerated in the outline below. However, pursuant to Government Code Section 56854(b), the Commission is prohibited from ordering a merger or the establishment of a subsidiary district without the consent of the affected city.

The Commission is required to order a dissolution, consolidation, merger, or the establishment of a subsidiary district subject to confirmation of the voters, only if the following written protest thresholds are reached.

4.1 Not Initiated by the Commission: Where the proposal was not initiated by the Commission, and where an affected city or district has not objected by resolution to the proposal:

- a) In the case of inhabited territory, a petition signed by:
 - i. At least 25% of the registered voters residing, or owning land, within the affected territory; or
 - ii. At least 25% of the number of landowners who own at least 25% of the assessed value of land within the affected territory.
- b) In the case of a landowner-voter district, and the territory is uninhabited, a petition signed by:
 - i. At least 25% of the number of landowners owning at least 25% of the assessed value of the land within the affected territory.

Note: In the case of a proposal for the dissolution of one or more districts and the annexation of all or substantially all of their territory to another district, the voter requirements outlined above do not apply if each affected district has consented to the proposal by a resolution adopted by a majority of its board of directors (Government Code Section 57114b).

4.2 Initiated by the Commission: Where the proposal was initiated by the Commission, and regardless of whether an affected city or district has objected to the proposal by resolution:

- a) In the case of inhabited territory where there are 300 or more landowners or registered voters within the affected territory, a petition signed by:
 - i. At least 10% of the number of landowners who own at least 10% of the assessed value of land within the affected territory; or
 - ii. At least 10% of the registered voters residing, or owning land, within the affected territory.
- b) In the case of inhabited territory where there are less than 300 landowners or registered voters within the affected territory, a petition signed by:
 - i. At least 25% of the number of landowners who own at least 25% of the assessed value of land within the affected territory; or
 - ii. At least 25% of the registered voters residing, or owning land, within the affected territory.
- c) In the case of a landowner-voter district where the territory is uninhabited and there are 300 or more landowner voters entitled to vote, a petition signed by:
 - i. At least 10% of the number of landowners who own at least 10% of the assessed value of land within the affected territory.
- d) In the case of a landowner-voter district where the territory is uninhabited and there are less than 300 or more landowner voters entitled to vote, a petition signed by:
 - i. At least 25% of the landowner voters entitled to vote.