

A Citizen's Guide to Annexations by Cities

KERN COUNTY ADMINISTRATIVE OFFICE: JUNE 2011

INTRODUCTION

Note: This guide is provided by the Board of Supervisors appointed Citizens' Advisory Committee on Annexations, which assists the Board in providing information to County residents affected by the annexation process. It is revised periodically to reflect changes in local annexation policies and procedures as well as the State law governing annexation. The guide is intended only to provide a broad, general overview of the proceedings related to annexations initiated by a city and may not be interpreted or construed to be complete, conclusive, or as legal advice. Specific and complete requirements as well as additional references to applicable State law may be obtained from:

Local Agency Formation Commission (LAFCo)
5300 Lennox Ave, Ste 303
Bakersfield, CA 93309
(661) 716-1076
Email: kclafco@att.net

Note: Specific legal advice should be sought from an attorney.

There are many types of jurisdictional changes -- annexation, detachment, consolidation, dissolution, etc. This document provides a broad overview of the process for annexing an inhabited area to a city when a city has initiated the annexation. The requirements for all jurisdictional changes are specified by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, commencing with Government Code Section 56000. The Act is administered and enforced by the Local Agency Formation Commission (LAFCo or Commission) through its approval and denial authority. Although many time frames are specified throughout the Act (and noted in this document), pursuant to Section 56106 most of the time frames are not mandatory.

In Kern County, the Commission is composed of three members from city councils, two members from the County Board of Supervisors, two members from the special districts, and two public members (§56328.5). An Executive Officer, appointed by the Commission, and a small staff provide the administrative support needed by the Commission.

Among the purposes of LAFCo are discouraging urban sprawl, preserving agricultural and open space lands, and encouraging the orderly formation and development of local government agencies based upon local conditions and circumstances (§ 56301). The Commission regulates, through approval and denial, the boundary changes proposed by other public agencies or individuals. In reviewing proposals for boundary changes, the Commission is required to consider certain factors such as the conformity between city and county plans, current service levels and the need for future services to the area, and

the social, physical, and economic effects that agency boundary changes present to the community (§ 56841).

Persons affected by an annexation have the opportunity to testify and express their views at two public hearings before the Commission. Written materials may be submitted and oral testimony is received at these public hearings. Only the second public hearing is a "protest hearing" where registered voters' and landowners' written protests are counted. A section addressing the process for protesting an annexation is included in the back of this document, as are sample protest letters.

In addition to an overview of the annexation process, this document also includes a glossary of terms commonly used in procedures for jurisdictional changes and a copy of the Kern County Board of Supervisors' policy resolution regarding annexations. All code sections in this document reference the Government Code unless otherwise stated.

GLOSSARY OF TERMS

Annexation: A process whereby territory is incorporated into a city

CEQA: California Environmental Quality Act (Public Resources Code § 21000 et seq)

Chief Petitioners: Those persons so designated on a petition or resolution for organizational change, to a maximum of three

Commission: Local Agency Formation Commission (see LAFCo)

Detachment: A process whereby territory is removed from a city

EIR: An Environmental Impact Report (EIR) is required under CEQA after an initial study reveals that significant environmental impacts may occur due to a project.

Executive Officer: The Commission appointed Executive Director

Governing Body: The governing board or commission of a local agency, either elected by the voters or appointed by a parent governing body

Inhabited Territory: Territory within which 12 or more registered voters reside

Island: Unincorporated territory, inhabited or uninhabited, that is partially or completely surrounded by incorporated territory

LAFCo: The Kern Local Agency Formation Commission, a governing body that is responsible for ensuring the laws related to organizational changes are followed, and is responsible for making determinations regarding services provision, land use compatibility, boundaries, and other such issues when organizational changes are proposed

Lead Agency: The agency responsible for preparing an environmental document per CEQA

Local Agency: Any local governmental entity--city, county, special district, agency--created by State law.

Negative Declaration: If a project under CEQA is determined to have no significant impact on the environment, a Negative Declaration is filed. A jurisdictional boundary change is considered a "project" under CEQA.

Protest Hearing: The second of two public hearings held by the Executive Officer, where citizens have their only opportunity to officially protest annexation through a written protest letter

Reorganization: Alteration to the boundaries of a city, county, special district, county service area, or sphere of influence

Responsible Agency: An agency responsible for reviewing and commenting on completed environmental document per CEQA

OUTLINE OF TYPICAL ANNEXATION PROCESS

Note: This outline may not apply to annexation of islands of 150 acres or less or the annexation of uninhabited territory with 100% landowner consent. Please contact LAFCo for information concerning these types of annexations.

1. City Council passes a Resolution of Application and files the application with the Local Agency Formation Commission.
2. The City and the County determine a property tax exchange.
3. The Local Agency Formation Commission's Executive Officer reviews the city's application documents and the resolutions effecting the property tax exchange and, if all is in order, issues a Notice of Filing.
4. The Local Agency Formation Commission conducts the first public hearing, the "Notice of Application hearing." Written and oral testimony is received at the hearing. The Commission adopts a Resolution Making Determinations either approving, denying, or modifying the annexation proposal. If the application is approved, LAFCo establishes the date for the second public hearing, the "protest hearing".
5. The Executive Officer conducts a second public hearing, the "protest hearing." Written and oral testimony is received at the hearing. This is the only hearing where written protests are received. Depending on the number of written protests received from registered voters and/or landowners, the Commission orders the annexation, orders the annexation subject to an election, or terminates the annexation.
6. If the Commission orders the annexation, the executive officer issues a Certificate of Completion after receipt and review of the required documents.

APPLICATION FOR ANNEXATION

The annexation process begins after a city council passes a resolution of application to annex certain territory. The application is filed with LAFCo, along with the certified resolution for annexation. By statute, the resolution must include certain language and be accompanied by prescribed documentation, such as a statement as to the nature of the proposal, a description of how services will be provided to the area proposed for annexation, a legal description of the property, various maps, and California Environmental Quality Act (CEQA) compliance documentation (§ 56652). LAFCo proceedings officially begin on the date the LAFCo Executive Officer issues a certificate of filing to the applicant (§56651).

Resolution for Transfer of Property Taxes: When a city annexes territory, the County will transfer a share of its property tax entitlement to that city in consideration of the service responsibility being transferred. In Kern County, most of the cities within the County have entered into Memorandums of Understanding with the County for the transfer of property taxes upon annexation of most types of territory. Without these agreements, the annexing city and the County would be required to negotiate a transfer of property taxes for each proposed annexation within the 60-day time frame prescribed by State law. If a city and county cannot agree on the amount of property taxes to be exchanged, other provisions of the law must be followed (Revenue and Taxation Code § 99).

LAFCo PROCEEDINGS

Application Review: The Executive Officer of LAFCo reviews the application package and, within 30 days, determines if the petition /resolution meets the legal requirements, the project's requirements under CEQA, evidence that a satisfactory exchange of property tax has taken place within the time prescribed by law, and whether the application package is complete (§ 56658). If the application is determined not to be complete, LAFCo sends a letter to the applicant indicating deficiencies and requesting any necessary additional information.

Notice of Filing: If all of the documents are in order, the Executive Officer issues a Notice of Filing and within 90 days sets a date for a public hearing of the Commission where the annexation proposal will be considered (§ 56658). Notwithstanding § 56106, this hearing date is mandatory.

Public Hearing: The first public hearing, the "Notice of Application" hearing before the Commission, is noticed in the newspaper and posted near the door of the hearing room or upon any official bulletin board used for the purpose of posting public notices by or pertaining to the legislative body or Commission at least 21 days before the hearing (§ 56153, 56154, 56158, 56159). Additionally, notices are mailed to each affected agency, the chief petitioners, any person requesting special notice, all registered voters and property owners in or within 300 feet of the area proposed for annexation, and each city within three miles at least 21 days before the hearing (§ 56830, 56155, 56156, 56157). If a LAFCo maintains a Web site, notice must be posted on the Web site at least 21 days before the hearing (§ 56150).

Determination of Commission: At the Commission's first public hearing, which can be continued for up to 70 days (§ 56666), the Commission considers the recommendations of the Executive Officer on a number of factors and policies. These include current and future population and density, current and proposed land uses and potential incompatibilities with adjacent properties, current and future needs for public services and the adequacy and cost of those services currently, timely availability of water supplies, conformity with the Commission's policies and standards, and other provisions of law (§ 56668). At this public hearing, the Commission also receives oral and written comments from citizens and other public agencies. Any protest, written or oral, received at this hearing cannot legally be accepted as a protest of the proposed annexation. Materials may also be filed with the Executive Officer prior to the public hearing (§ 56666).

Adoption of Resolution Making Determinations: Within 35 days after the hearing, the Commission must adopt a resolution making determinations either approving, denying, or modifying the annexation application proposal (§ 56880). The Commission may also include specific terms and conditions in the resolution (§ 56885, 56886). Additionally, the resolution by the Commission initiates protest proceedings (§ 56881). The Commission may authorize proceedings to conclude without any further notice, hearing, or election if there is 100% consent of the landowners.

Notice of Public Protest Hearing: The Commission sets the annexation proposal for this second public hearing within 35 days of the Commission's resolution date and gives notice at least 21 but not more than 60 days in advance of the hearing (§ 57002). The Commission may grant a continuance of the protest hearing for cause. Prior to the protest hearing, contact LAFCo for guidance on submitting a request for a continuance. This public hearing is commonly referred to as a "protest hearing". Notices are mailed to each affected agency, city, or county, chief petitioners, and persons requesting special notice. Additionally, the hearing notice is published in a newspaper of general circulation and is required to be posted. The hearing notice must only be published once per Section 6061. Mailed notices to individual landowners are only required in specific circumstances, which are noted under the section below entitled "Protesting an Annexation." In addition, LAFCo will mail a notice of the public hearing to all registered voters and landowners within the proposed annexation area.

Written Protests: Any written protests must be filed with the Commission prior to the conclusion of the protest hearing (§ 57051), but not before the pasting date of the protest hearing notice. Refer to the section entitled "Protesting an Annexation" for requirements and additional information.

Adoption of Resolution: Pursuant to Government Code § 57075, for inhabited territory the Commission adopts a resolution doing one of the following:

1. Ordering the annexation if less than 25% of the registered voters OR if less than 25% of the landowners owning less than 25% of the assessed value of land file written protests.
2. Ordering the annexation subject to an election if at least 25% but less than 50% of the registered voters file a written protest OR if at least 25% of the number of owners of land who also own at least 25% of the assessed value of the land file a written protest.

3. Terminating the proceeding if written protests are received from 50% or more of the registered voters residing in the inhabited territory.

If a proposed annexation consists of two or more distinct communities as defined in the County General Plan, Census designation, or other commonly recognized community designation as determined by the Commission, and if one of the communities has at least 250 registered voters, protests shall be counted separately for each community (§ 57078.5).

If a proposal is terminated, the same proposal cannot be resubmitted to LAFCo before one year from the date of adoption of the Commission's certificate of termination (§ 57090).

COMPLETION AND EFFECTIVE DATES

Immediately after proceedings ordering an annexation without an election or after a majority of voters approve an annexation in an election, the Commission issues a Certificate of Completion. The Certificate of Completion is forwarded to the governing bodies of the affected agencies, recorded with the County Clerk, and a statement of boundary change or creation is issued by the Executive Officer and filed with the State Board of Equalization, the County Recorder, and the County Assessor. A notice is also given to the Secretary of State. Additionally, property tax transfer resolutions, if any, are forwarded to the County Auditor to effect the property tax transfer (§§ 57200 - 57204).

The governing bodies of the affected agencies recognize the completion of the jurisdictional change (annexation) and the appropriate transfer of responsibilities such as police protection, building inspection, animal control, and planning are assumed by the annexing entity.

PROTESTING AN ANNEXATION

Citizens affected by an annexation have an opportunity to protest the annexation at the second public (protest) hearing, conducted by the Executive Officer. Under the law, this protest hearing is the **ONLY** opportunity where citizens affected by an annexation have the right to file **a written protest** with the Commission and have that protest counted to determine whether the annexation will occur.

Hearing Notices

- The Commission is only required to publish a notice of the second (protest) hearing once in a newspaper of general circulation.
- The notice of hearing must be posted in a public place, for example, the bulletin board near the meeting place.
- ***Citizens affected by an annexation may request that a special protest hearing notice be mailed to them. The request must be sent to the Commission. In most cases, without such a request, a citizen not living in the affected territory will not receive any notice by mail.***
- Kern LAFCo's policy is to mail a notice of the public hearing to all registered voters and landowners within the proposed annexation area.
- The Commission is only required to mail individual hearing notices in the following specific cases:

1. All landowners within any territory proposed to be formed into, or to be annexed to, or detached from, an improvement district within any city or district (§ 57025 (b)).
2. All landowners within any territory proposed for annexation that consists of 75 acres or less (§ 57025 (c)).
3. All landowners within any territory where a proposed annexation would result in the extension of any previously authorized special tax or benefit assessment to the affected territory (§ 57025 (d)).

Note: The City may request LAFCo to waive notice, hearing, and protest hearing in the annexation of uninhabited territory with 100% landowner consent, and the City is not required to conduct notice, hearing, and protest hearing when annexing unincorporated "islands" of territory 150 acres or less in size that are substantially surrounded by City territory.

Effect of Written Protests

- If at least 25% but less than 50% of the registered voters in the territory file a written protest, an election on the matter must be held.
- If at least 25% of the number of owners of land who also own at least 25% of the assessed value of the land file a written protest, an election on the matter must be held.
- If at least 50% of the registered voters in the area proposed for annexation file a written protest to the annexation, the annexation proceeding is terminated.
- If less than 25% of the registered voters OR if less than 25% of the landowners owning less than 25% of the assessed value file a written protest, the annexation moves forward.

Filing a Protest Letter or Petition

- To be officially counted, a protest letter or petition must be filed with the Commission **after** publication of the second (protest) hearing notice, but before the conclusion of the hearing (§ 57051). The Commission may grant a continuance of the protest hearing for cause. Prior to the protest hearing, contact LAFCo for guidance on submitting a request for a continuance.
- Each **registered voter** and **each land owner** in an area proposed for annexation is eligible to protest an annexation. This means that an individual who is both a registered voter and a property owner may file a protest under each designation. If more than one person owns a piece of property, each owner is eligible to file a protest.
- If property is owned in joint tenancy or tenancy in common, and only one of the owners of the property files a protest, then only that individual's proportionate share in the value of the property will be considered in valuing the protest (§ 57052 and § 56710 (b)).
- Since the name on each protest letter is matched against the voter registration roll and/or the assessment (property tax) roll (depending on the source of the protest), the name on the protest letter should match the name on each of these rolls.
- Pursuant to § 57051, in all cases a protest letter or petition must:
 1. Be addressed to the Commission.
 2. State whether a registered voter or a landowner is making the protest.

3. State the name and address of the landowner, or the name and address of the registered voter as they appear on the affidavit of registration and/or the assessment (property tax) roll. If the address of the landowner is different than the affected property location or address, this information must also be included.
 4. Be signed and dated. The date of the signature must be a date after the publication date of the notice of protest hearing.
 5. The protest letter must be filed with the Commission before the conclusion of the protest hearing.
- The Commission's executive officer is responsible for determining the validity of the protests received.