

SDCTA 101 on Municipal Disincorporation

April 2010

Most of the cities in the County of San Diego were incorporated prior to 1960. Due to many factors (e.g. declining revenues, increasing expenditures, limited growth opportunities, etc.), some cities in the County of San Diego (County) have discussed the idea of disincorporating. See Table 1 for an overview of the cities within the County and their respective dates of incorporation. Disincorporation, by definition, is the dissolution of a city and its respective powers.

Table 1: County of San Diego Cities, Dates of Incorporation and Population

City	Date of Incorporation ¹	Population ²	% of Total County Population
Carlsbad	7/16/1952	104,652	3.30%
Chula Vista	11/28/1911	233,108	7.35%
Coronado	12/11/1890	23,028	0.73%
Del Mar	7/15/1959	4,591	0.14%
El Cajon	11/12/1912	98,133	3.09%
Encinitas	10/1/1986	64,145	2.02%
Escondido	10/08/1888	144,831	4.56%
Imperial Beach	7/18/1956	28,243	0.89%
La Mesa	2/16/1912	56,881	1.79%
Lemon Grove	7/1/1977	25,650	0.81%
National City	9/17/1887	56,522	1.78%
Oceanside	7/03/1888	179,681	5.66%
Poway	12/1/1980	51,126	1.61%
San Diego	3/27/1850	1,353,993	42.67%
San Marcos	1/28/1963	83,149	2.62%
Santee	12/1/1980	56,848	1.79%
Solana Beach	7/1/1986	13,547	0.43%
Vista	1/28/1963	96,089	3.03%

This brief analysis will provide an overview of the vocabulary associated with disincorporation, the process involved with filing and reorganizing government boundaries, and the “need-to-knows” of the Local Agency Formation Commission (LAFCO). This review is an overview of disincorporation and is not meant to be an exhaustive look at this process.

¹ League of California Cities.

² California Department of Finance.

Municipal Disincorporation Vocabulary

Table 2 below explains some of the relevant vocabulary of municipal disincorporation.

Table 2	
Vocabulary of Municipal Disincorporation	
Incorporation	“means the incorporation, formation, creation, and establishment of a city with corporate powers. Any area proposed for incorporation as a new city shall have at least 500 registered voters residing within the affected area at the time commission proceedings are initiated.” – Government Code, Section 56043
Disincorporation	“means the disincorporation, dissolution, extinguishment, and termination of the existence of a city and the cessation of its corporate powers, except for the purpose of winding up the affairs of the city.” – Government Code, Section 56034
Consolidation	“means the uniting or joining of two or more cities located in the same county into a single new successor city or two or more districts into a single new successor district.” – Government Code, Section 56030
Detachment	“means the detachment, deannexation, exclusion, deletion, or removal from a city or district of any portion of the territory of that city or district.” – Government Code, Section 56033

Local Agency Formation Commission (LAFCO)

The Local Agency Formation Commission (LAFCO) is the agency that is responsible for “coordinating, directing, and overseeing” changes to governmental boundaries, including disincorporation.³

LAFCO is governed by the Cortese-Knox-Hertzberg Local Government Reorganization Act. LAFCO was established as a way to ensure “orderly growth and development”⁴ in the State of California. The Local Government Reorganization Act recognized that the following must be considered in regard to cities and special districts:

- ... “priorities are required to be established regarding the type and levels of services that the residents of an urban community need and desire;
- that community service priorities be established by weighing the total community service needs against the total financial resources available for securing community services;

³ San Diego LAFCO. “About LAFCO.” Available from <http://www.sdlafco.org/mainpages/aboutlaf.htm>. Accessed on 4/20/2010.

⁴ California Government Code, Section 56001.

- and that those community service priorities are required to reflect local circumstances, conditions, and limited financial resources.”⁵

The Act further stipulated that “whether governmental services are proposed to be provided by a single-purpose agency, several agencies, or a multipurpose agency, responsibility should be given to the agency or agencies that can best provide government services.”⁶

Stage 1: Submitting a Petition or Resolution

All changes in government boundary reorganization are governed by California Government Code, Section 56650. The first step in boundary reorganization is filing a petition or resolution. A certificate of filing (resolution) or certificate of sufficiency (petition) must be issued by the executive director of an agency’s county-based LAFCO before the process can move forward.

With a **resolution** for disincorporation, the local agency requesting the change in organization must submit a plan for service delivery in the affected area. This plan must consist of the following:⁷

- “An enumeration and description of the services to be extended to the affected territory.”
- “The level and range of those services.”
- “An indication of when those services can feasibly be extended to the affected territory.”
- “An indication of any improvement or upgrading of structures, roads, sewer or water facilities, or other conditions the local agency would impose or require within the affected territory if the change of organization or reorganization is completed.”
- “Information with respect to how those services will be financed.”

The local agency is also able to send out notification of its intentions for the affected territory. However, if the local agency chooses not to issue notice, the executive director of LAFCO must do so before issuing a certificate of filing.

With a **petition** for disincorporation, before petitioners are able to circulate the measure, they must file a notice of intention with the executive director of LAFCO. The deadline for signature gathering is six months, and the petition must be submitted with all signatures within 60 days of circulation. In order for a petition to qualify, at least 25% of registered voters residing in the affected city must sign the petition.⁸

⁵ California Government Code, Section 56001.

⁶ Ibid.

⁷ California Government Code, Section 56653.

⁸ California Government Code, Section 56700 and 56765.

Stage 2: LAFCO Consideration⁹

Once LAFCO receives a disincorporation proposal, agency staff conducts an analysis.¹⁰ LAFCO first determines whether the proposal is complete and then considers potential environmental and financial impacts of a proposed disincorporation. The executive director then provides a written report and a recommendation for the commission.

A hearing is set shortly after (not more than 90 days) the LAFCO executive director issues a certificate of filing (resolution) or certificate of sufficiency (petition).¹¹ At this hearing, written and oral testimony is received on the proposal.

Finally, LAFCO releases its final decision within 35 days after the conclusion of the hearing.¹² LAFCO can disapprove the proposal, approve the proposal, or approve the proposal with conditions. If the commission disapproves the proposal, no further proceedings shall be taken and no similar proposal can be initiated for one year after the date of disapproval.¹³

Stage 3: Conducting Authority Proceedings

Once the proposed disincorporation has been approved, with or without conditions, LAFCO schedules another public meeting to be held within 35 days of the approval. The purpose of this meeting is to give the affected voters and landowners a chance to voice their concerns and protest the proposal.

Notice must be published in a newspaper, posted near the meeting room, and mailed to all registered voters in the affected territory at least 21 days before the meeting is scheduled to take place.¹⁴ The language of the law is explicit in that the notice must be published, posted, and mailed.¹⁵

The notice must include all of the following:¹⁶

- A statement of the short form designation assigned to the proposed disincorporation (for example, the short form designation of Riverside County LAFCO proposal #71-33-3 was “Proposed Disincorporation of the City of Cabazon”)¹⁷
- A statement of who initiated the disincorporation and in what manner

⁹ It is important to note that an environmental review under the California Environmental Quality Act (CEQA) may be needed before disincorporation is granted.

¹⁰ LAFCO. “LAFCO Policies and Procedures.” Available from <http://www.mendolafco.org/lafco-policy-and-procedures/chapter7>. Accessed on 4/21/2010.

¹¹ California Government Code, Section 56666

¹² California Government Code, Section 56880

¹³ California Government Code, Section 56884

¹⁴ California Government Code, Section 56154

¹⁵ California Government Code, Section 56150

¹⁶ California Government Code, Section 57026

¹⁷ Riverside County LAFCO Staff Report on the Proposed Disincorporation of the City of Cabazon. On file with author.

- A description of the territory being disincorporated
- The identification of the reorganization as a disincorporation
- A statement of the reasons for the proposed disincorporation
- The time, date, and place of the protest hearing
- Any written protests submitted to the commission

The actual hearing shall be held on the date recorded in the notice. The hearing may be continued “from time to time” but must not exceed 60 days from the specified date.¹⁸ At the hearing, the conducting authority (which may be either the LAFCO’s executive officer or the LAFCO itself) hears and receives written protests from voters and landowners in the affected territories.

After the hearing, the conducting authority adopts a formal resolution ordering the boundary change subject to final voter approval.¹⁹

Stage 4: Election

General LAFCO proceedings require an election for certain types of organizations and reorganizations. The Supreme Court of the United States has determined that individuals do not have a constitutional right to vote on local area boundary changes.²⁰ However, California state law states that a proposed disincorporation (as well as a proposed incorporation) requires majority voter approval.²¹

The election requires a simple majority of registered voters or landowners in the affected territories. If the proposal fails, then the boundary change (or changes) does not occur, and cannot be placed back on the ballot for two years. If the proposal passes, then the boundary change occurs.

The election must be held during the next regular election date occurring at least 88 days after the date upon which the resolution calling the election was adopted. Further, the resolution of the commission which is forwarded to the voters must:²²

- Designate the affected territory within which the special election shall be held
- Provide for the question to be submitted to the voters
- Specify any terms or conditions provided in the change of organization
- State the vote required for confirmation of the change of organization

If the proposal is passed by the voters, the commission executes a certificate of completion confirming the order within 30 days of the election.

¹⁸ California Government Code, Section 57050(a)

¹⁹ *Hunter v. Pittsburgh*, 207 U.S. 161 (1907)

²⁰ *Ibid.*

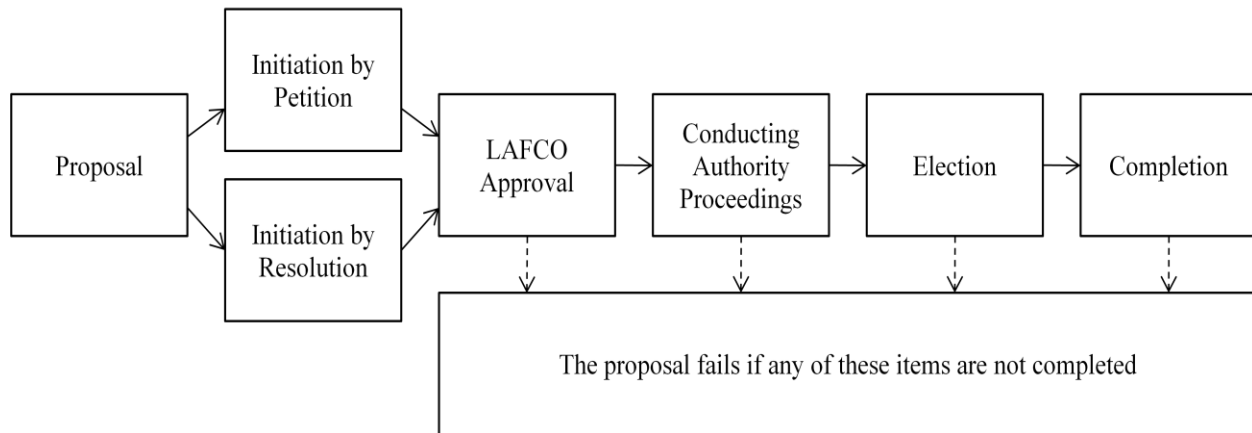
²¹ California Government Code, Section 57077

²² California Government Code, Section 57132

Stage 5: Completion

If LAFCO, the conducting authority, and the voters all approve a proposed disincorporation, then the proposal enters the completion phase. The completion phase generally involves making sure that all the paperwork is valid and that the city leaves no loose ends (such as transfers of fire protection and police responsibilities). This process may take some time, but the disincorporation is not, in effect, complete until the city officials complete the affairs of the city.

LAFCO Disincorporation Procedure



Within 30 days of the election, the city council must transfer all city funds to the county treasurer, and before disincorporation, all public officers must turn over public property in their possession.²³ After disincorporation, the committee must determine and certify the city's debt in a written and certified statement to the county board of supervisors.²⁴

The county tax collector then gathers uncollected taxes and puts them in a special fund established for addressing the affairs of the city.²⁵ If there is not enough money to credit the fund, the board of supervisors must levy a tax to pay the indebtedness of the city as it becomes due.²⁶ These extra taxes will be collected at the same time as other county taxes, will credit the special fund, and will only be levied from those inhabitants of the disincorporated city.²⁷

Disincorporation in Practice

Disincorporation is rare in the state of California. The only LAFCO disincorporation in California history was the disincorporation of Cabazon in 1972.²⁸ The small city in Riverside County had, at

²³ California Government Code, Sections 57403, 57401

²⁴ California Government Code, Section 57402

²⁵ California Government Code, Sections 57405, 57407

²⁶ California Government Code, Section 57409

²⁷ California Government Code, Sections 57410, 57407, 57419

²⁸ League of California Cities

the time, only 613 residents, and had only been incorporated since 1955. Since Cabazon’s disincorporation, other cities (such as Rio Vista and Vallejo) have publicly considered the possibility of disincorporation. However, no petitions or resolutions on disincorporation have been received by any LAFCO’s within the last ten years.

Disincorporation still remains a tool available to distressed cities. Although disincorporation does not relieve a distressed city of its financial obligations, it provides a way for cities to mitigate their losses by transferring services and ensure that no further debt accumulates. Table 3 provides a list of disincorporated cities in California and the dates in which they disincorporated (for the cities which later reincorporated, the dates of reincorporation are listed).

City	Disincorporation	Reincorporation
Dutch Flat*	1866	
Columbia*	1870	
Long Beach	1896	1897
Kelseyville	1902	
Boulder Creek	1915	
Felton*	1917	
Coram	1918	
Orangethorpe	1923	
Stanton	1924	1956
Potter Valley	1926	
McKittrick	1927	
Kennett	1930	
Bayshore	1940	
Pismo Beach	1940	1946
North Sacramento	1963	
Cabazon	1972	
Hornitos*	1973	

Note: Those cities with an asterisk (*) were disincorporated by statute.³⁰

At a rough calculation, disincorporation can take anywhere from 96 days to 854 days, or roughly three (3) months to over (2) years.

²⁹ League of California Cities

³⁰ The state legislature may disincorporate cities by statute rather than by LAFCO, because case law dictates that “[i]n our federal system the states are sovereign, but cities and counties are not; in California as elsewhere they are mere creatures of the state and exist only at the state’s sufferance.” *Bd. Of Supervisors of Sacramento County v. Local Agency Formation Comm’n of Sacramento County*, 838 P.2d 1198 (Cal. 1992)