

# CHAPTER 7

## EVALUATION OF PROPOSALS

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### 7.010 Background

This chapter establishes procedures for the evaluation of application proposals and individual components of the application process. The intent of these procedures is to ensure fair and comprehensive review and consideration of a proposal at each of its stages of review and to provide guidance to the Commission, the Executive Officer, proponent, and the general public as to how the Commission will review and consider the proposal and the options available at each stage.

### 7.020 Application Evaluation/Executive Officer Report

- A. The Executive Officer shall review the application proposal and prepare a report which shall include a recommended action and recommended findings. Preparation of the report should be coordinated with the environmental review process if the Commission is the lead agency for the proposal. In all cases, the report shall be completed and available not less than five (5) calendar days prior to the hearing date. [REFERENCE: Sec. 56675 CGC]
- B. The Executive Officer report shall do all of the following:
  1. Address all factors which must be considered by the Commission.

2. Address the policies of the Reorganization Act, these policies, procedures, and standards, the sphere of influence of all affected districts, and the environmental issues and impacts considered and identified in the Notice of Exemption, Initial Study, or Environmental Impact Report.
3. Include a recommended action with the applicable determinations.
4. Include recommended findings as required and necessary to support the recommended action.
5. Include recommended findings as required by the California Environmental Quality Act.

**[REFERENCE: Sec. 56665 and Sec. 56668 CGC]**

### **7.030 Decision of the Commission**

- A. Upon the conclusion of deliberation and after reviewing and considering the Executive Officer's report and all oral and written testimony received on the proposal, the Commission may take one of the following actions:
  1. Continue the hearing from time to time to a date, time, and place certain, said continued hearing(s) to be held no later than 70 calendar days of the date specified in the notice. **[REFERENCE: Sec. 56666 CGC]**
  2. For proposals which do not require notice and hearing, require a public hearing and set a date, time, and place for the hearing, said hearing to be held no later than 90 calendar days after action. **[REFERENCE: Sec. 56664 CGC]**
  3. Adopt a resolution approving the proposal, with or without conditions, amendments, or modifications, wholly or partially. The resolution shall include the following:
    - (a) A determination of the exchange of property tax for an incorporation or district formation.
    - (b) Revenue and Taxation Code Provisions
    - (c) A determination if the territory is inhabited or uninhabited.
    - (c) The designation of and direction to the conducting authority to initiate proceedings in compliance with the resolution.
    - (d) The assignment of a short-term designation for the proposal.

- (e) Authorization to the conducting authority to conduct proceedings without notice, hearing, and/or an election if authorized by the Reorganization Act and the applicable principal district acts.
- (f) Findings as set forth in Section 7.050.
- (g) The effective date of the change of organization or reorganization.

**[REFERENCE: Sec. 56881 CGC]**

**4. Adopt a resolution taking the following actions:**

- (a) Disapproving or denying the proposal;
- (b) Terminating proceedings on the proposal;
- (c) Prohibiting the initiation of a similar proposal involving the same or substantially the same territory for one year after date of adoption of the resolution unless the Commission waives this requirement if it finds the requirement is detrimental to the public interest.
- (d) Adopting findings as set forth in Section 7.050.

**[REFERENCE: Secs. 56884 CGC]**

- B.** Unless a proposal is withdrawn, the Commission shall take the actions required by Subsections A(3) or A(4) no later than 70 calendar days after the public hearing date specified in the notice. **[REFERENCE: Sec. 56666 CGC]**

### **7.040 Terms and Conditions of Approval**

- A.** If the Commission approves a change of organization or reorganization, the Commission may make that approval conditional upon any of the following:
- 1. Amendment or modification of the proposal including, but not limited to, the modification of the boundaries of the proposal by adding and/or withdrawing territory.
  - 2. The initiation, conduct, or completion of proceedings for another change of organization or reorganization.
  - 3. Confirmation of the approval by the voters and the calling for an election as provided by the Reorganization Act.

4. The terms and conditions set forth in Section 56844 of the Reorganization Act including, but not limited to, the following:
  - (a) The payment of a fixed or determinable amount of money, either as a lump sum or in installments, for the acquisition, transfer, use, or right of use of all or any part of the existing property of the County or any district.
  - (b) The imposition, exemption, transfer, division, or apportionment of liability of payment of principal, interest, and other amounts which shall become due or are outstanding.
  - (c) The levying or fixing and the collection of special, extraordinary, or additional taxes, assessments, service charges, rentals, and/or rates for providing payment of 1 and 2 above.
  - (d) The acquisition, improvement, disposition, sale, transfer, or division of any property, real or personal.
  - (e) The disposition, transfer, or division of any moneys or funds, including cash on hand and moneys due but uncollected, and any other obligations.
  - (f) The employment, transfer, or discharge of employees, the continuation, modification, or termination of existing employment contracts, civil service rights, seniority rights, retirement rights, and other employee benefits and rights.
  - (g) The designation of the method for the selection of members of the legislative body of a district or the number of those members.
  - (h) Any terms and conditions authorized by the principal district act.
  - (i) The continuation or provision of any service provided at that time, or previously authorized by an official act of the local agency.
  - (j) The continuance of any previously authorized charge, fee, assessment, or tax by a successor local agency.
  - (k) Local agency acceptance of liability for repayment of any authorized or outstanding bonds, contracts, or other obligations including such revenue measures as may be appropriate to fund those liabilities.
  - (l) The incurring of new indebtedness by, or on behalf of, all or any part of any local agency, including territory being annexed to any local agency.
  - (m) The establishment, continuation, termination, transfer, consolidation, or separation of any office, department, or board or any function of an office, department, or board only if authorized by the principal district act.
  
5. The payment of conducting authority processing fees, if applicable, prior to the conducting authority initiating proceedings.

**[REFERENCE: Sec. 56885 CGC]**

- B.** The Commission shall not directly regulate land use, property development, or subdivision requirements. **[REFERENCE: Sec. 56375(a)(6) CGC]**

- C. If the Commission conditions its approval, the Commission may order that any further action on the proposal be continued and held in abeyance for a period of time not to exceed six months.
- D. Any term or condition shall be enforceable by, between, among, and against any public agency or agencies designated in the term or condition. **[REFERENCE: Sec. 56886 CGC]**

### **7.050 Findings**

All Commission resolutions shall include findings to support the Commission's action. Findings shall provide an explanation of why the Commission acted in the manner they chose. They shall be based on substantial evidence in the Commission's record of the proposal and may reference and incorporate the Executive Officer's Report and any other report or document accepted by the Commission into the evidentiary record of the proposal.

- A. **Findings for Approval:** A resolution approving a proposal, with or without conditions, amendments, or modifications, wholly or partially, shall contain the following findings:
  - 1. A finding that the Commission has considered the Executive Officer's Report, all written and verbal evidence and testimony, and all factors required to be considered by the Commission by the Reorganization Act and these policies, procedures, and standards.
  - 2. A finding that the proposal is consistent with the purpose and policies of the Reorganization Act and these policies, procedures, and standards.
  - 3. Findings for each condition, amendment, or modification stating why the condition, amendment, or modification is necessary and how it relates to a matter under the purview and authority of the Commission.
  - 4. Findings required by the California Environmental Quality Act.
  - 5. Findings for each exception of a policy standard in accordance with Section 7.070.
  - 6. For incorporations, findings as set forth in Sections 56375 and 56885 of the Reorganization Act.
- B. **Findings for Disapproval:** A resolution disapproving a proposal shall contain the following findings:

1. A finding that the Commission has considered the Executive Officer's Report, all written and verbal evidence and testimony, and all factors required to be considered by the Commission by the Reorganization Act and these policies, procedures, and standards.
2. A finding explaining why the Commission chose to disapprove the proposal based on substantial evidence in the record.

### **7.060 Reconsideration and Correction of Commission Resolution**

- A. The Commission shall accept written requests for amendment or reconsideration of a Commission resolution, provided such person or agency exhausts its administrative remedies by fully participating in the Commission proceedings, including, but not limited to, commenting in writing on the proposal during the public hearing. The request shall be filed with the Executive Officer within 30 calendar days after the date of the adoption of the Commission resolution and prior to adoption of a resolution by the conducting authority on the proposal. A request that is not timely filed shall not be accepted by the Executive Officer, and the Commission shall not take any action pursuant to this section or Section 56857 of the Reorganization Act.
- B. The written request shall precisely and specifically describe the grounds for the request.
- C. The only requests for amendment or reconsideration that the Commission will generally consider are as follows:
  1. Compelling new evidence which was not and could not have been available at the time the decision was made;
  2. There are elements which were previously overlooked, or have changed, such as the repeal of an applicable federal, state or local law that may alter the Commission's decision;
  3. There was an irregularity in the proceedings which may affect the Commission's decision.
- D. As a general rule, other requests for reconsideration will be denied by the Commission without further notice and hearing. This policy is necessary to prevent repetitious or superfluous requests for reconsideration and thereby frustrate the normal processing procedure and sequence for proposals.
- E. Upon receipt of a timely request, the Executive Officer shall immediately notify the conducting authority which shall not take any further action on the proposal until the Commission acts on the request.

- F. The Executive Officer shall place the request on the agenda of the Commission's next meeting for which notice can be given. If a Commission meeting is not scheduled to be held within 30 calendar days of the date of the filing of the request, the Executive Officer shall schedule a meeting for the Commission to consider the request, said meeting to be held no later than 30 calendar days after filing of the request. At the meeting, the Commission shall consider the request and receive any oral or written testimony. At the conclusion of its consideration, the Commission shall:
1. Disapprove the request; or
  2. Schedule a public hearing to consider the request, said hearing to be held within 35 days of the date of the meeting. The public hearing shall be noticed in the same manner as for the original proposal.
- G. At the public hearing, the Commission shall consider the request and Executive Officer Report and receive any oral or written testimony at the hearing. At the conclusion of the hearing, the Commission shall:
1. Approve the request, with or without amendments or terms and conditions; or
  2. Disapprove the request.
- H. If the Commission approves the request, the Commission shall adopt a resolution making determinations which shall supersede the resolution previously adopted. The Executive Officer shall forward a copy of the resolution to those persons or entities who received a copy of the resolution previously adopted.
- I. If the Commission disapproves the request, a new resolution making determinations shall not be adopted and the Commission shall direct the Executive Officer to notify the conducting authority of its action.
- J. The determinations of the Commission shall be final and conclusive. No person or agency shall make any further request for the same change or a substantially similar change.
- K. Clerical errors or mistakes of an adopted resolution may be corrected by the conducting authority, upon written consent of the Executive Officer or Commission, or by the Commission pursuant to Section 56854 of the Reorganization Act.

**[REFERENCE: Sec. 56895 CGC]**

**7.070 Exceptions to Standards**

The Commission or Executive Officer may allow exceptions to the strict application of policy and procedure standards where it is found that practical difficulties, unnecessary hardships, or results inconsistent with the general purpose of the Reorganization Act and these policies, procedures, and standards would occur by its implementation.

- A. Where a policy or procedure is mandatory and is identified by the words "must" or "shall", the Commission or Executive Officer may waive or modify the policy or procedure if it finds:
  - 1. One or more of the following:
    - (a) There are exceptional or extraordinary circumstances or conditions applicable to the territory and/or proposal that do not apply generally to similar territory or the type of proposal;
    - (b) The exception is necessary due to conflicts between general and specific standards;
    - (c) The exception will result in improved quality or lower cost of service available; or
    - (d) There exists no feasible or logical alternative.
  - 2. The waiver or modification will not be materially detrimental to the public welfare or injurious to property, improvement, or services in the area.
  - 3. The waiver or modification is not inconsistent with any mandatory element of the Reorganization Act.
- B. Where a policy or procedure is advisory and is identified by the words "will" or "should", the Commission or Executive Officer may waive or modify the policy if it finds there are compelling or countervailing considerations which make implementation of the policy or procedure unnecessary, undesirable, or inconsistent with other policies, procedures, and standards in light of the entire proposal.
- C. The Executive Officer may only waive or modify those policies, procedures, and standards which he or she is authorized to act upon.

**7.080 Impartial Analysis**

- A. Upon receiving a certified copy of a conducting authority resolution calling for an election, the Executive Officer shall prepare an impartial analysis of the proposal and

forward the impartial analysis to the Commission. The Commission shall consider and approve or modify the analysis and submit the analysis to the officials conducting the election. The analysis shall be submitted to the election officials not later than the last day for submission of rebuttal arguments.

- B.** The impartial analysis shall not exceed 500 words in length, include a general description of the affected territory, and include the statement described in the last paragraph of Section 57144 of the Reorganization Act. The analysis shall describe the proposal and provide unbiased information on the proposal which will allow the electorate to make an informed decision on the proposal.

**[REFERENCE: Sec. 56898 CGC]**