

**LOCAL AGENCY FORMATION COMMISSION OF
SANTA CLARA COUNTY
MINUTES
WEDNESDAY, JUNE 3, 2009**

CALL TO ORDER

Chairperson John Howe calls the meeting to order at 1:15 p.m., and welcomes Alternate Commissioner George Shirakawa.

1. ROLL CALL

The following Commissioners and Alternates are present:

- **Chair John Howe**
- **Vice-Chair Susan Vicklund-Wilson**
- **Commissioner Donald F. Gage**
- **Alternate Commissioner George Shirakawa**, representing Commissioner Liz Kniss
- **Alternate Commissioner Al Pinheiro**

The following Commissioners are absent:

- **Commissioner Pete Constant**
- **Commissioner Liz Kniss**

The following staff members are present:

- **LAFCO Executive Officer Neelima Palacherla**
- **LAFCO Analyst Dunia Noel**
- **LAFCO Counsel Mala Subramanian**

2. PUBLIC PRESENTATION

There were none.

3. APPROVE THE MINUTES OF APRIL 8, 2009 MEETING

MOTION: Approve the minutes of April 8, 2009 meeting, as submitted. (Susan Vicklund-Wilson)

SECOND: Don Gage

MOTION PASSED

AYES: John Howe, Don Gage, Susan Vicklund-Wilson, George Shirakawa

NOES: None

ABSTAIN: None

ABSENT: Pete Constant

PUBLIC HEARING

4. CAMPBELL/LOS GATOS MINOR URBAN SERVICE AREA (USA) AND SPHERE OF INFLUENCE (SOI) AMENDMENT AND DETACHMENT OF A PORTION OF WEST PARR AVENUE FROM THE CITY OF CAMPBELL

Ms. Palacherla provides background information and analysis, and recommends approval of the joint request by the City of Campbell and Town of Los Gatos for USA/SOI amendment and detachment of a portion of West Parr Avenue from Campbell to enable Los Gatos to annex West Parr Avenue up to its centerline. She also reports that the cities have requested a fee waiver.

Bob Kass, Public Works Director, City of Campbell, requests that fees be waived because the application promotes island annexations.

Commissioner Gage inquires if similar requests for fee waivers are anticipated, and Ms. Palacherla informs that Campbell and San Jose have a potential application of similar nature. **Commissioner Wilson** states that since the application is not a pocket annexation and the fee waiver may set a precedent, only a portion of the fees should be waived. She continues by stating that this application is straightforward; however, other cities may seek fee waivers for more complex applications that will require more staff time. Ms. Subramanian advises that the Commission could indicate a dollar-amount cap on the waiver and make a finding that the payment of full fee is detrimental to public interest.

MOTION Approve request for USA/SOI amendment, and detachment from Campbell of a portion of West Parr Avenue; and, waive up to \$5,000.00 in LAFCO fees, with a finding that the payment of full fee is detrimental to public interest. (Susan Vicklund-Wilson)

SECOND: Don Gage

Commissioner Shirakawa expresses support for the motion. **Chairperson Howe** suggests increasing the fee waiver to \$11,000. **Commissioner Wilson** comments that the \$11,000 deposit towards the actual processing cost has already been received and that she is proposing to waive only up to \$5,000 because the application is not actually an island annexation.

MOTION PASSED

AYES: John Howe, Don Gage, Susan Vicklund-Wilson, George Shirakawa

NOES: None

ABSTAIN: None

ABSENT: Pete Constant

5. FINAL LAFCO BUDGET FOR FISCAL YEAR (FY) 2009-10

Ms. Palacherla presents the Final LAFCO Budget and recommends approval.

In response to an inquiry by **Commissioner Shirakawa**, Ms. Palacherla advises that LAFCO does not accrue reserves over the years and savings from a prior year are used to reduce the succeeding year's cost. In response to a follow-up inquiry by **Commissioner Shirakawa**, **Commissioner Gage** informs that the reserve has never been used in the past. **Chairperson Howe** comments that the reserve is also necessary for LAFCO to be fiscally secure and adds that LAFCO's actual expenses have been less than its budget during the last four years.

Commissioner Wilson expresses appreciation to Commissioner Gage and Chairperson Howe for another year of service on budget subcommittee.

MOTION Approve the Final LAFCO Budget for FY 2009-10. (Don Gage)

SECOND: John Howe

MOTION PASSED

AYES: John Howe, Don Gage, Susan Vicklund-Wilson, George Shirakawa

NOES: None

ABSTAIN: None

ABSENT: Pete Constant

6. ADOPTION OF LAFCO INDEMNIFICATION POLICY

Ms. Palacherla presents a brief staff report and recommends adoption of the proposed indemnification policy that requires all applicants to indemnify LAFCO against legal actions relating to their application.

MOTION Adopt the LAFCO Indemnification Policy. (Don Gage)

SECOND Susan Vicklund-Wilson

MOTION PASSED

AYES: John Howe, Don Gage, Susan Vicklund-Wilson, George Shirakawa

NOES: None

ABSTAIN: None

ABSENT: Pete Constant

7. LAFCO RECORDS RETENTION POLICY

Ms. Palacherla requests that the item be continued to the next LAFCO meeting.

MOTION Continue discussion of the LAFCO Records Retention Policy to the next meeting. (Susan Vicklund-Wilson)

SECOND Don Gage

MOTION PASSED

AYES: John Howe, Don Gage, Susan Vicklund-Wilson, George Shirakawa

NOES: None

ABSTAIN: None

ABSENT: Pete Constant

ITEMS FOR ACTION / DISCUSSION

8. SETTLEMENT AGREEMENT BETWEEN SAN MARTIN NEIGHBORHOOD ALLIANCE (SMNA) AND LAFCO OF SANTA CLARA COUNTY

Ms. Subramanian briefly discusses the major provisions in the Settlement Agreement between LAFCO and SMNA. **Commissioner Wilson** states that the settlement agreement is being discussed in the open session in order to make the full cost of the incorporation proposal known to the cities and the County that fund LAFCO.

MOTION Approve the Settlement Agreement. (Don Gage)

SECOND Susan Vicklund-Wilson

Commissioner Shirakawa expresses support for the motion and informs, for the record, that he is unsure if he has received any donation from members of the SMNA and that he has been aware of the incorporation issue prior to being elected to the County Board of Supervisors. In response to **Alternate Commissioner Pinheiro**, Ms. Subramanian informs that future proponents of San Martin incorporation, other than SMNA, will not be required to pay SMNA's unpaid fees.

MOTION PASSED

AYES: John Howe, Don Gage, Susan Vicklund-Wilson, George Shirakawa
NOES: None
ABSTAIN: None
ABSENT: Pete Constant

9. PROPOSED WORK PLAN FOR COMPREHENSIVE REVIEW AND UPDATE OF LAFCO POLICIES

Ms. Noel reports on LAFCO policies that need to be updated.

MOTION Approve the proposed work plan and authorize staff to proceed with updates to the policies, as necessary. (Don Gage)

SECOND Susan Vicklund-Wilson

MOTION PASSED

AYES: John Howe, Don Gage, Susan Vicklund-Wilson, George Shirakawa
NOES: None
ABSTAIN: None
ABSENT: Pete Constant

10. ATTENDANCE OF ALTERNATE COMMISSIONER AT CLOSED SESSION

Ms. Palacherla provides a summary of an informal survey among LAFCOs relating to attendance of alternate commissioners at closed session. Ms. Subramanian then reports on the Attorney General's opinion and proposes that the Commission could allow alternates to participate in closed session if the issue is prolonged. **Commissioner Wilson** comments that there is no way to know if the issue will be prolonged and inquires if there is any legal exposure in allowing alternates to attend. Ms. Subramanian advises that there is no legal exposure and that there are no lawsuits relating to this issue. In response to an inquiry by **Commissioner Gage**, Ms. Subramanian informs that there is no written policy to require those attending closed sessions to keep the proceedings confidential, and such a provision could be added as part of the policy. **Commissioner Shirakawa** proposes that LAFCO counsel may prepare briefs for alternates who will be taking the place of regular members, much like those given to regular members who are unable to attend. **Commissioner Gage** notes that it will be difficult to brief alternates when a regular member excuses himself at the last minute. **Alternate Commissioner Pinheiro** states that alternates attending both open and closed sessions could stay continuously informed and ready when the time comes for them to take the place of a regular member. **Commissioner Shirakawa** proposes that alternates may attend but not vote in closed sessions and those who are absent be briefed by LAFCO counsel. Discussion ensues on **Chairperson Howe's** inquiry regarding a possible Brown Act issue when a third member of the County Board of Supervisors attends a closed session. **Commissioner Gage** proposes that the policy

state that no more than two County representatives shall be present in any closed session. Ms. Palacherla states that the issue would be just as applicable to open session because LAFCO policy encourages all members to attend.

MOTION Continue the item to the next meeting and direct staff to revise the proposed policy in view of the discussion. (Susan Vicklund-Wilson)

SECOND Don Gage

MOTION PASSED

AYES: John Howe, Don Gage, Susan Vicklund-Wilson, George Shirakawa

NOES: None

ABSTAIN: None

ABSENT: Pete Constant

11. REQUEST FOR PROPOSALS FOR DESIGN AND IMPLEMENTATION OF AN ELECTRONIC DOCUMENT MANAGEMENT SYSTEM (EDMS) FOR LAFCO

Ms. Noel briefly reports on the proposed RFP for a LAFCO EDMS.

Brian Schmidt, Committee for Green Foothills, proposes that LAFCO coordinate with the County to make LAFCO records internet-accessible. Ms. Noel informs that web access to LAFCO records is not part of the current RFP but is planned in the future. Ms. Palacherla states that LAFCO website and records are independent of the County, and that the LAFCO website currently contains full agenda packets and all published LAFCO reports such as the completed service reviews.

Alternate Commissioner Pinheiro proposes that staff study the cost of including web access because this improves the public's perception of transparency, stating that the City of Gilroy recently installed this feature. **Chairperson Howe** volunteers to serve on the selection committee, if needed.

MOTION Authorize staff to issue an RFP for qualified firms to design and implement an EDMS, delegate authority to the Executive Officer to enter into an agreement with the most qualified firm in an amount not to exceed \$40,000, and execute any necessary amendments, subject to LAFCO counsel's review and approval. (Don Gage)

SECOND John Howe

MOTION PASSED

AYES: John Howe, Don Gage, Susan Vicklund-Wilson, George Shirakawa

NOES: None

ABSTAIN: None

ABSENT: Pete Constant

12. PRESENTATION REGARDING RECRUITMENT OF COMMISSIONERS TO THE CALAFCO EXECUTIVE BOARD

Chairperson Howe expresses appreciation to **Commissioner Wilson** for her work on the CALAFCO Board.

MOTION Accept staff report. (Don Gage)

SECOND Susan Vicklund-Wilson

MOTION PASSED

AYES: John Howe, Don Gage, Susan Vicklund-Wilson, George Shirakawa
NOES: None
ABSTAIN: None
ABSENT: Pete Constant

13. EXECUTIVE OFFICER'S REPORT

13.1 NOMINATION TO THE CALAFCO BOARD OF DIRECTORS

Ms. Palacherla recommends that Commissioner Wilson be nominated to the CALAFCO Board of Directors.

MOTION Nominate Commissioner Wilson to the CALAFCO Board of Directors.
(Don Gage)

SECOND John Howe

MOTION PASSED

AYES: John Howe, Don Gage, George Shirakawa
NOES: None
ABSTAIN: Susan Vicklund-Wilson
ABSENT: Pete Constant

13.2 CALAFCO ANNUAL CONFERENCE ON OCTOBER 28-30 (TENAYA LODGE, YOSEMITE)

Commissioner Wilson volunteers to serve as the voting delegate, and **Chairperson Howe** volunteers to serve as the alternate voting delegate.

MOTION Designate Commissioner Wilson as the voting delegate and Chairperson Howe as alternate voting delegate, authorize commissioners and staff to attend the 2009 CALAFCO Annual Conference, and authorize travel expenses funded by LAFCO budget. (Don Gage)

SECOND Susan Vicklund-Wilson

MOTION PASSED

AYES: John Howe, Don Gage, Susan Vicklund-Wilson, George Shirakawa
NOES: None
ABSTAIN: None
ABSENT: Pete Constant

13.3 REPORT ON THE CALAFCO WORKSHOP HELD IN APRIL-MAY 2009

Ms. Palacherla provides a brief report.

14. COMMISSIONERS' REPORTS

None

15. NEWSPAPER ARTICLES / NEWSLETTERS

None

16. WRITTEN CORRESPONDENCE

None

17. PENDING APPLICATIONS / UPCOMING PROJECTS

Ms. Palacherla provides a brief report.

18. ADJOURN

The meeting is adjourned at 2:16 p.m.

Approved:

John Howe, Chairperson
Local Agency Formation Commission of Santa Clara County

By: _____
Emmanuel Abello, LAFCO Clerk