




City of Sierra Madre Agenda Report

Rachelle Arizmendi, Mayor
Denise Delmar, Mayor Pro Tem
John Capoccia, Council Member
Gene Goss, Council Member
John Harabedian, Council Member

Sue Spears, City Clerk
Michael Amerio City Treasurer

TO: Honorable Mayor and Members of the City Council

FROM: Teresa Highsmith, City Attorney
Gabriel L. Engeland, City Manager 

DATE: March 13, 2018

SUBJECT: PROCEDURES FOR DISINCORPORATION AND IMPACTS
THEROF

ANALYSIS

At the meeting on February 27th, the City Council received an updated "9212 Election" report detailing the fiscal impact to the City should Measure D "Stop the Utility Users' Tax" be approved by the voters in the April 2018 election. During this presentation Council asked for more information on the process of disincorporation. Attached is a memo from the City Attorney explaining the disincorporation process.

SUMMARY

Please see the attached memo.

FINANCIAL REVIEW

There is no fiscal impact to the City associated with the preparation of this report.

PUBLIC NOTICE PROCESS

This item has been noticed through the regular agenda notification process. Copies of this report are available at the City Hall public counter, at the Sierra Madre Public Library, and can be accessed on the City's website at www.cityofsierramadre.com.

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MEMORANDUM

TO: Mayor Arizmendi and
 Members of the City Council
 City of Sierra Madre

FILE NO: 49011.0013

FROM: Teresa L. Highsmith, City Attorney

DATE: March 8, 2018

CC: Gabe Engeland, City Manager
 Marcie Medina, Assistant City Manager
 Holly O. Whatley, Assistant City Attorney
 Douglas M. Johnson, Assistant City Attorney

RE: Procedures for disincorporation and the impacts thereof

INTRODUCTION AND EXECUTIVE SUMMARY

Measure D, "Stop the Utility Users Tax" initiative will be submitted to the voters on April 12, 2018. The Utility Users Tax (UUT) was approved by over 72% of Sierra Madre voters in 2016 and provides approximately \$2.6 million dollars to the General Fund, comprising 24% of all General Fund revenues. As discussed in the City's recent fiscal impact report authorized by Elections Code Section 9212, losing \$2.6 million dollars would require the City to make budget cuts of this amount to all General Fund departments, including Police Services, Fire and Paramedic Services, Library and Community Services, resulting in a corresponding loss of services.

At the City Council meeting of February 27, 2018, the Council expressed the concern that without sufficient revenues to pay for essential services, the City may be forced to consider disincorporation. This memorandum was prepared in response, to summarize the process to disincorporate the City of Sierra Madre, and financial and legal consequences of a disincorporation. "Disincorporation" means the "dissolution, extinguishment, or 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."¹ The Los Angeles County Local Agency Formation Commission ("LAFCo") and a majority of

¹ Gov. Code, § 56034.

voters in the City must ultimately approve any disincorporation. Although many factors could complicate a disincorporation, the process is 1) formal initiation and creation of a plan for services, 2) a hearing by LAFCo, and 3) an election to approve disincorporation. If the disincorporation is approved, the City will cease to exist, its assets will transfer to the County, and the County will wind up City's debts and other financial liabilities — if necessary, the County may require the voters to approve the imposition of new taxes to cover any outstanding City debts.

DISCUSSION

I. Legal, Financial, and Practical Consequences of Disincorporation

If the City disincorporates, it ceases to exist as a city, and all inhabitants in the territory cease to be subject to the jurisdiction of the former city and have none of the rights or duties of inhabitants or voters of a city.² The City's public property is transferred to the successor (Los Angeles County), and all city money is turned over to the county treasurer.³ The county will create a special fund using the former city's money to settle the affairs of the former city, and any outstanding debts or liabilities will be paid from this fund.⁴ If any surplus money remains in the special fund after the former city's debts are settled, the county board of supervisors can either transfer the money to school districts, community college districts, or districts in the former city.⁵ Surplus funds may also be used for street improvement in the former city.⁶

Disincorporation would affect nearly all City-provided services and City-owned property and infrastructure. Listed below are some of the major changes that City residents would experience if the City disincorporates:

- Transfer of City police department responsibility to the Los Angeles County Sheriff.
- Transfer of City fire department services to CALFIRE.
 - Note: Current City fire department response time is approximately two minutes from call for assistance; CALFIRE would be held to state standard response time of eight minutes;
- City's water rights will be transferred to the County.

² Gov. Code, § 57400.

³ Gov. Code, §§ 57401, 57403

⁴ Gov. Code, § 57406.

⁵ Gov. Code, § 57411.

⁶ *Ibid.*

- Ownership and maintenance of City parks, trails, recreation centers, library, and other City buildings would be transferred to the County.
- Control and maintenance of streets, sidewalks, and street lighting will be transferred to the County.
- County may assume control of all City-owned public utilities.⁷
- County will take over administration of former city's contracts for goods or services, liability for financial obligations will be paid for out of special fund of city's assets.
- City's retirement obligations will be paid for out of special fund of former city's assets.
- City's actuarially determined unfunded pension liability in a public retirement system (CalPERS) will be paid for out of special fund of former city's assets.
- City's liability for other postemployment benefits will be paid for out of special fund of former city's assets.⁸

If the special fund cannot pay city debts, the county can levy taxes in the former city territory to cover the special fund shortfall.⁹ Although the California Constitution prohibits a county from imposing taxes directly in the disincorporation proceedings, LAFCo can require voter approval of such taxes as a condition of approving the disincorporation proposal in the first place.¹⁰

II. Initiation

A disincorporation generally is initiated one of two ways: by petition or by resolution. Individuals and residents initiate disincorporations by petition, while government agencies initiate by resolution. A third path to disincorporation involves the legislative passage of a statute that would effectuate a disincorporation, but that action is rare and we therefore do not discuss it here.

⁷ Gov. Code, § 57415

⁸ Gov. Code, § 56816.

⁹ Gov. Code, § 57409.

¹⁰ Knox, John H. and Chris Hutchinson. "Municipal Disincorporation in California." *Public Law Journal (State Bar of California): Volume 32, No. 3, Summer 2009*; 89 Op. Cal. Atty Gen. 173 (2006).

A. Individuals: Initiation by Petition

Any individual may initiate the disincorporation process by filing with LAFCo a notice of intention to circulate a petition. After filing this notice, the proponent must prepare a petition which presents specified information, including the boundaries of the affected territory and the reasons for the proposed disincorporation.¹¹ When the proponent submits its petition, LAFCo determines whether the petition has enough signatures. A disincorporation petition must contain signatures from at least 25% of registered City voters.¹² If the petition contains enough signatures, LAFCo issues a certificate of sufficiency.¹³

B. Government Agency: Initiation by Resolution and Plan for Services

If the City wishes to initiate the disincorporation process, it must adopt a resolution of application. At least 21 days before adopting this resolution, however, the City must mail written notice of its intent to adopt it to LAFCo, the County, and all agencies that provide services to the City. This written notice must generally describe the disincorporation and the affected area.¹⁴ The resolution of application must contain the same information required for a petition: boundaries of the affected territory, reasons for proposed disincorporation, etc.¹⁵

Further, this resolution must be submitted to LAFCo with a “plan for services,” which describes services to be transferred to the County, how those services are financed,¹⁶ the entity or entities proposed to assume responsibility for the services following completion of disincorporation, a description of each service proposed to be discontinued or transferred, a description of any existing financing of services currently provided (such as bonds, assessments, community facility districts, general taxes, special taxes, other charges, and joint powers authorities or agreements), and any other

¹¹ Gov. Code, § 56700.

¹² Gov. Code, § 56765.

¹³ Gov. Code, § 56706. The petition must designate up to three “chief petitioners” from among its signatories, meaning at least one person who resides or owns land in the affected territory must go on record as the disincorporation’s champion. (Gov. Code, § 56700(a)(7).)

¹⁴ Gov. Code, § 56654.

¹⁵ Gov. Code, § 56654(d).

¹⁶ Gov. Code, §§ 56653; 56653.1.

information that the LAFCo executive officer may deem necessary to evaluate the plan for services submitted.¹⁷

Finally, the City must certify that its debts and contractual liabilities will remain its responsibility after the disincorporation takes effect. This includes:

- (1) the City's indebtedness;
- (2) The amount of money in the City's treasury;
- (3) The amount of any tax levy, assessment, or other obligation due to the City that is unpaid or has not been collected;
- (4) The amount of current and future liabilities, both internal debt owed to other special or restricted funds or enterprise funds within the City and external debt owed to other public agencies or outside lenders or that results from contractual obligations, which may include:
 - a. contracts for goods or services;
 - b. retirement obligations;
 - c. actuarially determined unfunded pension liability in a public retirement system (CalPERS), including any documentation related to the termination of public retirement contract provisions; and
 - d. liability for other postemployment benefits.¹⁸

III. Tax Exchange with County

Because property taxes in the territory to be disincorporated are shared by various local agencies, LAFCo must determine the property tax revenue to be exchanged by the City and County when the disincorporation is completed.¹⁹

IV. Preparation for LAFCo Hearing

With either of the two initiation procedures described above, whoever initiates the disincorporation process (the City or individual proponent) must apply to the LAFCo's executive officer. The executive officer then provides notice to each agency affected by the proposed disincorporation. Following this notice, the executive officer issues a certificate of filing if he or she determines the application is complete.

¹⁷ Gov. Code, § 56653.1

¹⁸ Gov. Code, § 56816.

¹⁹ Gov. Code, § 56813.

If the application is deemed complete, LAFCo's executive officer issues the certificate of filing. The executive officer then sets the disincorporation proposal for hearing before LAFCo no more than 90 days after he or she issued the certificate of filing or the application is deemed complete, whichever is earlier.²⁰

LAFCo must provide notice of this hearing on its website and to:

- Each affected agency;
- The petition proponents, if any;
- Each person who has filed a written request for special notices;
- Each city within three miles of the exterior boundaries of the territory proposed to be disincorporated; and
- All registered voters and all landowners within the affected territory.²¹

LAFCo's executive officer must prepare a report, including a comprehensive fiscal analysis and his or her recommendations on the application for disincorporation.²²

V. LAFCo Hearing and Determination

The hearing on the disincorporation must be held by LAFCo at the date, time and place specified in the notice. The hearing may be continued, but not over 70 days from the date specified in the original notice. At the hearing, LAFCo must receive any oral or written protests, objections and evidence. LAFCo must also consider its executive officer's report on the disincorporation, and the City's plan for replacing services in the affected territory.²³ LAFCo has a broad range of statutory authority to analyze issues related to the proposed disincorporation, including anything it deems "material."²⁴ If at the hearing, LAFCo receives written protests from a majority of City voters, the proceedings are terminated and the proposal is withdrawn.²⁵

Within 35 days after the LAFCo hearing, LAFCo must adopt a resolution that approves, conditionally approves, or denies the proposed disincorporation.²⁶ If LAFCo conditionally approves a disincorporation, it has broad discretion in the conditions it

²⁰ Gov. Code, § 56658.

²¹ Gov. Code, § 56661.

²² Gov. Code, § 56804.

²³ Gov. Code, § 56666.

²⁴ See Gov. Code, §§ 56668, 56668.3, 56668.5.

²⁵ Gov. Code, § 57078.

²⁶ Gov. Code, § 56880.

may impose, including whether to levy taxes on the landowners in the newly-disincorporated territory, subject to voter approval.²⁷ LAFCo similarly has broad discretion to deny a disincorporation. If LAFCo denies a disincorporation, the proceedings terminate.²⁸ LAFCo may not approve or conditionally approve a disincorporation unless it makes these specific findings:

- (a) The proposed disincorporation is consistent with the intent of the LAFCo statute to provide for a sustainable system for the delivery of services.
- (b) LAFCo has considered the service reviews of municipal services and spheres of influence of the affected local agencies, and the disincorporation will address the necessary changes to those spheres of influence, if any.
- (c) LAFCo has reviewed the comprehensive fiscal analysis prepared for the disincorporation.
- (d) LAFCo has reviewed the executive officer's report and recommendation and the oral or written testimony presented at its public hearing.
- (e) The services responsibilities of the city proposed for disincorporation have been assigned through LAFCo's terms and conditions.

A copy of LAFCo's resolution must be mailed to the proponents (if any) and each local agency whose boundaries would be changed by the disincorporation.²⁹ Within 30 days after this resolution is adopted, any person or affected agency may request that LAFCo reconsider its resolution based on new or different facts that could not have been presented earlier.³⁰

VI. Election

Disincorporations are subject to an election in which registered voters in the affected territory vote according to a specific statutory procedure.³¹ The disincorporation is approved if a majority of the votes cast are for the disincorporation.³² The disincorporation fails if a majority of voters fail to cast votes for the disincorporation.

²⁷ Gov. Code, § 56885.5.

²⁸ Gov. Code, § 57090.

²⁹ Gov. Code, § 56882.

³⁰ Gov. Code, § 56895.

³¹ Gov. Code, § 57125 et seq.; Elec. Code, § 15300 et seq.

³² Gov. Code, § 57176.

If the disincorporation efforts fail, the City is barred from filing a disincorporation request for two years following termination of proceedings, unless LAFCo waives the ban on re-applying on a finding that such a ban would harm the public interest.³³

VII. Final Certification

If the LAFCo executive officer is satisfied that the conditions above have been met to approve a disincorporation, then he or she issues a certificate of completion. The disincorporation is not complete until the executive officer issues this certificate. LAFCo may establish an effective date for the disincorporation which must be within nine months from issuance of the certificate of completion. If LAFCo sets no effective date, then the disincorporation is effective when recorded with the county recorder.³⁴

CONCLUSION

It is reasonable to predict that the loss of sufficient revenues to pay for essential City services will cause the degradation or even loss of services, affecting the quality of life of the residents of Sierra Madre. One possible consequence is the initiation of a disincorporation proceeding, which, if approved by the voters, would return the community of Sierra Madre to unincorporated Los Angeles County. As a result, residents would receive their safety services from the County Sheriff and from County Fire; as for the Water Department the County could take it over or sell these assets to an investment-backed utility. Disincorporation does not eliminate existing debts and liabilities; if the assets of Sierra Madre could not cover the liabilities, the County could impose additional property taxes, subject to voter approval. Ultimately, disincorporation is subject to majority voter approval.

³³ Gov. Code, § 57090.

³⁴ Gov. Code, §§ 57200, 57202.