



Local Agency Formation Commission
LAFCO of Napa County

1700 Second Street, Suite 268
Napa, California 94559
Telephone: (707) 259-8645
Facsimile: (707) 251-1053
<http://napa.lafco.ca.gov>

May 5, 2008
Agenda Item No. 7e

April 28, 2008

TO: Local Agency Formation Commission

FROM: Jacqueline M. Gong, Commission Counsel

SUBJECT: Adoption of Policy Regarding Indemnification

The Commission will consider adoption of a policy to provide for indemnification in connection with any application for a change of organization or reorganization or sphere of influence amendment.

In recent years the Local Agency Formation Commission (LAFCO) of Napa County has received a number of proposals for change of organizations or reorganizations that are increasingly greater in scope, complexity and controversy. Most all LAFCOs now, as a prudent measure, require indemnification as a condition of filing any application for a change of organization or reorganization. Commission Counsel recommends LAFCO of Napa County adopt such a policy.

Commission Counsel has prepared the attached policy to require any applicant proposing a change of organization or reorganization to provide indemnification of LAFCO against any legal actions challenging the approval of the applicant's proposal. The proposed policy also affects applicants seeking sphere of influence amendments. The Executive Officer, with approval of Commission Counsel, will prescribe the terms and conditions of any indemnification agreement that will be a standard part of an application. The Commission at its discretion may require additional indemnification agreement as a condition of approving any application.

Recommendation

It is recommended that the Commission adopt the attached policy titled "Legal Indemnification" with any desired changes.

Respectfully submitted,

Jacqueline M. Gong
Commission Counsel

Attachment: as stated

Jack Gingles, Commissioner
Mayor, City of Calistoga

Juliana Inman, Commissioner
Councilmember, City of Napa

Cindy Coffey, Alternate Commissioner
Councilmember, City of American Canyon

Brad Wagenknecht, Chair
County of Napa Supervisor, 1st District

Bill Dodd, Commissioner
County of Napa Supervisor, 4th District

Mark Luce, Alternate Commissioner
County of Napa Supervisor, 2nd District

Brian J. Kelly, Vice Chair
Representative of the General Public

Gregory Rodeno, Alternate Commissioner
Representative of the General Public

Keene Simonds
Executive Officer

LOCAL AGENCY FORMATION COMMISSION OF NAPA COUNTY

Policy Regarding Indemnification

Adopted: _____

As part of any application for a change of organization or reorganization, the applicant and the real party in interest shall agree to indemnify the Local Agency Formation Commission of Napa County (LAFCO). A change of organization or reorganization shall include all actions listed under California Government Code Section 56021. An applicant and/or real party in interest seeking a sphere of influence amendment under California Government Code 56425 shall also agree to indemnify LAFCO. A real party in interest includes the landowner of the property subject to the application and/or registered voter. The Executive Officer, with the approval of LAFCO Counsel, shall prescribe the terms and conditions of the indemnification agreement that shall be part of the application. LAFCO may require an applicant and/or real party in interest to execute an additional indemnity agreement as a condition of approval of any application.

The standard legal indemnification agreement to be used by LAFCO is attached.

Standard Indemnification Agreement

Should the Local Agency Formation Commission of Napa County (“Napa LAFCO”) be named as a party in any litigation (including a “validation” action under California Civil Code of Procedure 860 et seq.) or administrative proceeding in connection with a proposal, the applicant _____ and/or _____ (real party in interest: the landowner/registered voter) agree to indemnify, hold harmless, and promptly reimburse Napa LAFCO for:

1. Any damages, penalties, fines or other costs imposed upon or incurred by Napa LAFCO, its agents, officers, attorneys, and employees from any claim, action, or proceeding brought against any of them, the purpose of which is to attack, set aside, void, or annul the approval of this application or adoption of the environmental document which accompanies it. The Napa LAFCO Executive Officer may require a deposit of funds to cover estimated expenses of the litigation. Applicant and/or real party in interest agree that Napa LAFCO shall have the right to appoint its own counsel to defend it and conduct its own defense in the manner it deems in its best interest, and that such actions shall not relieve or limit Applicant’s and/or real party in interest’s obligations to indemnify and reimburse defense cost; and

2. All reasonable expenses and attorney’s fees in connection with the defense of Napa LAFCO.

This indemnification obligation shall include, but is not limited to, expert witness fees or attorney fees that may be asserted by any person or entity, including the applicant, arising out of, or in connection with, the approval of this application. This indemnification is intended to be as broad as permitted by law.

Applicant and/or real party in interest may be required by Napa LAFCO to execute an additional indemnity agreement as a condition of approval for this application. Such an agreement in no way limits the effect of obligations provided under this legal indemnity.

City or District Application

Land Owner Petition Application

City/District Representative

Land Owner Signature

Print Name

Print Name

Date

Date