

EL DORADO LAFCO

LOCAL AGENCY FORMATION COMMISSION

AGENDA OF FEBRUARY 26, 2020

REGULAR MEETING

TO: Shiva Frentzen, Chair, and
Members of the El Dorado County Local Agency Formation
Commission

FROM: José C. Henríquez, Executive Officer

**AGENDA ITEM #9: PROVIDE DIRECTION TO THE BUDGET AD HOC
COMMITTEE ON THE LEVEL OF STAFFING AT LAFCO AND
DETERMINE WHETHER THE MANNER IN WHICH THE
REMAINING MSRS WILL BE COMPLETED**

RECOMMENDATION

Staff recommends that the Commission provide direction the budget ad hoc committee on LAFCO's current staffing situation, which in turns advises the ad hoc committee on how to best complete the remaining municipal service reviews in the Commission's MSR Project Plan.

REASON FOR RECOMMENDED ACTION

The budget ad hoc committee met to discuss LAFCO's budget for Fiscal Year 2020-21. The discussion was dominated by the topic of staffing. As the Commission is aware, the position of Assistant Policy Analyst is currently vacant. The person in this role was expected to carry out some of the administrative duties that need to be performed in the wake of Denise Tebaldi's retirement on December 31st as well as assist in the completion of the municipal service reviews. Because of the vacancy, LAFCO staff is currently understaffed. The direction to be provided will determine the levels to fund several items in the budget for next fiscal year.

BACKGROUND

The budget ad hoc committee was presented with a draft budget, prepared by staff, to consider for the upcoming fiscal year. The discussion led the committee to the conclusion that there were many interrelated issues to resolve and felt it did not have the mandate from the Commission to resolve them. As a result, the members requested that these issues be brought to the full Commission to provide direction.

The issues

- The appropriate number of employees for LAFCO to balance the workload;
- The appropriate manner to employ those employees in a manner compliant with the new Assembly Bill 5 and pension regulations;
- How much to prioritize the municipal service review vis-à-vis other duties;
- How to best complete the outstanding municipal service reviews left in the Commission's MSR Project Plan; and
- The budgetary impact to each of these positions

Number of employees for LAFCO

For the past 20 years, the size of staff has been between 2.5 to 3 employees, although for a little over three years the Commission employed 3.5 people (from 2006 to 2008 and from late 2018 through 2019). The functions were an executive officer, an analyst/assistant EO and someone to perform the administrative and clerk duties of the Commission. Given the MSR and project workload, your Executive Officer is of the opinion that you are better served by having at least two people in an analytical role and half a person who performs the administrative duties. This is expensive, however, as evidenced by being forced to lay off the then-Commission Clerk in 2008 and having those duties split between the part-time Administrative Assistant and your Policy Analyst (now the Assistant EO). This arrangement was in place for 10 years. While this arrangement worked functionally, it meant that there was no one who was fully dedicated to completing MSRs (more on this later in the memo). These competed with other duties for the PA and EO.

In 2018, after your AA announced her scheduled retirement of December 2019, the EO proposed having a full-time person, an Assistant Policy Analyst, whose duties would be that of the AA, the Clerk and a junior analyst. The latter role was important because it would be this person who would assist with the completion of the MSRs. While the duties could be compatible for the right person in this role, this experiment did not work because there were too many details to keep track of for the average person. LAFCO would have to find a very special person, the equivalent of finding a unicorn, to make this position a success. Consequently, the EO is back to the idea that it is better to keep the administrative duties separate from the analytical role. This type of arrangement can be expensive, however, if there is a junior analyst and an administrative assistant.

The experience from the past month has proved how difficult it is to operate the LAFCO office with only two people; as a result, this operational model is not sustainable. For example, an item was taken off this Agenda due to time constraints and staff has not begun to circulate the advertisement to recruit the alternate public member position (Commissioner Anderly's term expires on May 2020). There are too many administrative duties to perform, which further delays the MSR work. The only other viable alternative is to return to 2.5 staffing, but this would be a return to the experience of the past 10 years where the MSR work is slowly completed between the EO and AEO.

Options

- Staff the LAFCO office at 3.5 employees
- Return LAFCO staffing to 2.5 employees

The position of APA would cost the Commission approximately \$83,000 in salary and benefits for the fiscal year. The Administrative Assistant costs approximately \$30,000 in salary and limited benefits for the fiscal year.

Appropriate Manner of Employment

A complicating factor that ties into this discussion is Assembly Bill 5 (Gonzalez), effective January 1st, and Federal regulations around pensions. AB 5 limits the ability of most agencies in hiring independent contractors or long-term temporary workers. The law now states that a person providing labor or services for some type of payment should be considered an employee rather than an independent contractor, unless the employer demonstrates that the person is free from the control and direction of the hiring entity in connection with the performance of the work.

In addition, pension regulations state that anyone working for a public agency over 1,000 hours (within a calendar year) must contribute to CalPERS on behalf of that temporary employee. Please note that it is not possible to skirt this regulation by “firing” that temporary worker short of 1,000 hours and then “rehiring” that same temp sometime later.

Both of these mean that work that would otherwise be done by an employee of that agency cannot be done long term by a contractor or a consultant unless the working relationship between agency and contractor is structured carefully (AB 5) and cannot be retained longer than 1,000 hours. Both of these, however, preclude the ability to hire a consulting firm “on retainer” for MSR work or hire a temp on a long-term basis.

Of course, AB 5 and pension regulations are no longer a concern if LAFCO just rehires a part-time administrative assistant. In addition, these are also not applicable if LAFCO hires a consultant on a limited term basis, contracted to complete a specific task (such as completing specific set of MSRs).

MSR Prioritization

When the MSR project plan was created in 2013, the direction to staff was that MSRs were of low priority and to get them done as time allowed. Since only the EO and PA/AEO could write MSRs, staff interpreted that direction to mean that other projects took precedence over the MSRs. These two factors are why staff has steadily fallen behind on the work. By 2017 it became apparent staff fell too far behind the project plan, leading the EO to propose hiring an additional person, the APA, who could assist with MSR writing, even if only part time within that person’s assigned duties.

Last fall was the first time since 2013 when the Commission appeared to be revisiting its direction to staff about where MSRs fall in importance relative to other work. At least, the priority seemed to have shifted when it came to the MSR for the fire districts. It is unknown to staff whether the shift applies to the remaining MSRs for the districts that have not been reviewed. It must be clear that, given the limitations on the size of staff and especially now that it is shorthanded, something must give.

Options

If MSR's are to be the new priorities, then either

- It will cost money in the form of additional staff or consultants;
- Other work, outside of projects, must be put on the wayside, including the work with fire districts, special projects and CALAFCO;
- Or both

How Best to Complete the MSR Project Plan

Given all of these, the Commission will have to determine the best approach towards completing the MSR project plan. Attachment A contains the 8-year project plan. The districts shaded in grey have MSR's that are complete. The districts in **bold** are currently in progress, being performed in-house by the EO and AEO or outsourced to consultants (please note that the fire districts are bolded because, while it has not yet been outsourced, the Commission has indicated it wants those fire MSR's completed). The districts written in light grey font were not intended to be completed in the project plan. This leaves the unshaded districts written in black font and bounded by a box. These are the outstanding MSR's to be completed, a total of 15 districts.

The budget ad hoc committee members wanted to know the cost of writing MSR's in-house and by consultants. Attachment B contains this information. First, it shows the amount of time staff spent writing each MSR per fiscal year. That time was multiplied by the appropriate hourly rate for the fee schedule in effect in that fiscal year, yielding the cost. The fee schedule hourly rate was used instead of the salary hourly cost because the fee schedule rate contains overhead costs. It should also be noted that

- It took between 20.5 hours and 171.75 hours to prepare an MSR classified as "easy";
- It took between 73.25 hours and 158.25 hours to prepare an MSR classified as "moderate";
- It took between 81.75 hours and 228.5 hours to prepare an MSR classified as "complex"; and
- Even if the amount of time is the same, the cost of an MSR prepared by EO will be higher than the cost of an MSR prepared by the PA/AEO because former's hourly rate is higher than the PA/AEO

In addition to these factors, the amount of time it takes staff to complete an MSR is likely inflated by a certain amount. It is rare when the EO or AEO have a large amount of time available to write an MSR, much less having enough time to write an entire report in a single sitting. As a result, there is a certain amount of "backtracking" that is involved when writing these MSR's in a stop and go fashion. Since other work takes priority over MSR's, these reports are often set aside until the EO or AEO has time to resume them. Sometimes that stopping period takes months, necessitating the EO or AEO to spend some time to ascertain where the work was left off, what information was needed to continue writing the report, and determine the direction the report was supposed to have gone had work not been stopped.

Also included in Attachment B is the cost of outsourcing the three MSR's that have been contracted during this project plan. It must be emphasized that it is not possible to do an apples-to-apples comparison to the cost of the Cities and EID MSR's. Those MSR's were contracted out because of the respective consultant's expertise; expertise that LAFCO staff did not possess in order to write an effective report.

Options

When it comes to completing the project plan, the tradeoffs before the Commission are either

- To have a dedicated staff person to write them in house, however a certain amount of time will be needed to train that person; or
- To hire a consultant to write them but it runs the risk that those reports may end up being more expensive.

Budgetary Impact

As indicated above, the cost of a full time APA is approximately \$80,000 in salary and benefits and an administrative assistant costs between \$20,000 (temp) and \$30,000 (in-house). The Commission can use these funds to:

- Hire a consultant for a limited term contract to complete the MSR's;
- Hire a new employee whose primary work will be to write MSR's; however this will take time because of training; or
- Do neither and not budget this money with the understanding that MSR work will continue to lag

It should be noted that, whichever path the Commission chooses, this allocation is above the cost of the fire MSR. If approved in Item 8 of this Agenda, then you have committed \$25,000 for this contract in this fiscal year. Implicit is that you have also committed to pay for the *remainder* of the contract to this consultant in FY 2020-21. This remaining amount will need to be budgeted.

Direction will need to be given to staff on which path is preferred.

Attachments

Attachment A: Agency Schedule/Timeline for the Third MSR Cycle

Attachment B: MSR Costs