

# Modoc Local Agency Formation Commission

## REGULAR MEETING AGENDA

Website: [www.modoclafco.org](http://www.modoclafco.org)

### TUESDAY

### August 10, 2021 – 4:00 PM

City Council Chambers  
Alturas City Hall  
200 North Street, Alturas, CA 96101

*(All meeting materials are available on LAFCo's Website: [www.modoclafco.org](http://www.modoclafco.org))*

**1. Call to order / Pledge of Allegiance**

Commissioners

Alternate Members

Cheryl Nelson, City Member  
Ned Coe, Chair, County Member  
Marie Neer, Public Member  
Mark Steffek, Vice-Chair City Member  
Kathie Rhoads, County Member

\_\_\_\_\_, Public Member Alt.  
Geri Byrne, County Member Alt.  
Yolanda Lewis, City Member Alt

LAFCO Staff

John Benoit, Executive Officer  
Scott Browne, LAFCO Counsel  
Macey Binning, Clerk

**2. Approval of the Agenda (Additions and Deletions)**

**3. Election of Chair and Vice-Chair for Fiscal Year 2021-2022**

a) Election of Chair

b) Election of Vice-Chair

**4. Correspondence:**

**5. Consider Minutes for the June 8, 2021 LAFCo meeting**

a. *Approve minutes from the June 8th, 2021 LAFCo Meeting*

**6. Public Comment**

This is the time set aside for citizens to address the Commission on any item of interest to the public that is within the subject matter jurisdiction of the Commission. For items that are on the agenda, public comment will be heard when the item is discussed. If your comments concern an item that is noted as a public hearing, please address the Commission after the public hearing is opened for public testimony. The Chair reserves the right to limit each speaker to three (3) minutes. Please understand that by law, the Commission cannot make decisions on matters not on the agenda.

**7. Authorize payment of claims**

- a. *Authorize payment of claims for June 2021 and July 2021*

**8. Resolution affirming result of the June 30, 2021 protest hearing regarding the dissolution of the Daphedale Community Services District and concurrent Formation of the City of Alturas Municipal Sewer District.**

- a) *Consider LAFCo Resolution 2021-0004, a resolution affirming the conducting authority proceedings results and directing the Executive Officer to file a Certificate of Completion.*

**9. Policy Amendments regarding Voluntary Indemnification Agreements and timelines for processing LAFCo Applications**

- a) *Receive Executive Officer's report and provide direction to staff.*

**10. Authorize Commissioners to attend the Calafco Annual Conference October 6-8, 2021 at the John Wayne Airport in Newport Beach**

**11. Executive Officer's Report:**

**12. Commissioner Reports - Discussion**

*This item is placed on the agenda for Commissioners to discuss items and issues of concern to their constituency, LAFCO, and legislative matters.*

**13. Adjourn to the next regular meeting on October 11, 2021 and consider alternative meeting date.**

*Any member appointed on behalf of local government shall represent the interests of the public as a whole and not solely the interest of the appointing authority Government Code Section 56325.1*

*The Commission may take action upon any item listed on the agenda. Unless otherwise noted, items may be taken up at any time during the meeting.*

Public Comment

Members of the public may address the Commission on items not appearing on the agenda, as well as any item that does appear on the agenda, subject to the following restrictions:

- Items not appearing on the agenda must be of interest to the public and within the Commission's subject matter jurisdiction.
- No action shall be taken on items not appearing on the agenda unless otherwise authorized by Government Code Section 54954.2 (known as the Brown Act, or California Open Meeting Law).

Public Hearings

Members of the public may address the Commission on any item appearing on the agenda as a Public Hearing. The Commission may limit any person's input to a specified time. Written statements may be submitted in lieu of or to supplement oral statements made during a public hearing.

Agenda Materials

*Materials related to an item on this agenda submitted to the Commission after distribution of the agenda area available for review for public inspection in the Modoc County Planning Department office located at on 203 W. 4<sup>th</sup> Street, Alturas CA. [such documents are also available on the Modoc LAFCO website ([www.modoc.lafco.ca.gov](http://www.modoc.lafco.ca.gov)) to the extent practicable and subject to staff's ability to post the documents prior to the meeting]*

Accessibility

An interpreter for the hearing-impaired may be made available upon request to the Executive Officer 72 hours before a meeting.

The location of this meeting is wheelchair-accessible.

Disclosure & Disqualification Requirements

Any person or group of persons acting in concert who directly or indirectly contribute \$1,000 or more in support of or in opposition to a change of organization or reorganization that has been submitted to Modoc LAFCO must comply with the disclosure requirements of the Political Reform Act of 1974 applicable to local initiative measures to be submitted to the electorate. These requirements contain provisions for making disclosures of contributions and expenditures at specified intervals; they may be reviewed at Government Code §§56700.1 and 81000 *et seq.* Additional information about the requirements pertaining to local initiative measures to be presented to the electorate can be obtained by calling the Fair Political Practices Commission at (916) 322-5660. A LAFCO Commissioner must disqualify herself or himself from voting on an application involving an "entitlement for use" (such as an annexation or sphere amendment) if, within the last twelve months, the Commissioner has received \$250 or more in campaign contributions from the applicant, any financially interested person who actively supports or opposes the application, or an agency (such as an attorney, engineer, or planning consultant) representing the applicant or an interested party. The law (Government Code Section 84308) also requires any applicant or other participant in a LAFCO proceeding to disclose the contribution amount and name of the recipient Commissioner on the official record of the proceeding. Contact LAFCO Staff LAFCO staff may be contacted at (530) 233-9625 or by email at [j.benoit4@icloud.com](mailto:j.benoit4@icloud.com) Copies of reports to the extent feasible are located on the LAFCO webpage at: [www.modoclafco.org](http://www.modoclafco.org)

**Local Agency Formation Commission of Modoc County**  
**Meeting Minutes**  
**June 8, 2021**

**1. Call to order / Pledge of Allegiance**

Chair Coe called the meeting to order at 4:00 p.m. in City Council Chambers at 200 W. North Street in Alturas, CA. Commissioner Rhoads, Commissioner Nelson, Commissioner Steffek, and Chair Coe were present. Commissioner Lewis, Commissioner Neer, and Commissioner Byrne were absent. Public attending 4.

Staff Present: John Benoit, Executive Officer, and Macey Binning, Clerk.

**2. Approval of the Agenda (Additions and Deletions)**

Commissioner Steffek made the motion to approve the agenda as presented; seconded by Commissioner Nelson. In favor were Commissioners Rhoads, Nelson, Steffek, and Chair Coe. Motion passed unanimous

**3. Correspondence:**

Executive Officer Benoit reviewed with the Commissioners CALAFCo award categories and nomination process. The award ceremony will take place in October, 2021 at the annual CALAFCo conference. Mr. Benoit encourages the Commissioners if they would like to nominate someone to please do so. Executive Officer Benoit also informs the Commissioners that they can nominate someone to serve as an Officer of the CALAFCo Association for the Northern Region. Currently there is a County Representative seat available. These are two-year terms.

**4. Consider Minutes for the April 13<sup>th</sup>, 2021 LAFCO meeting**

Commissioner Rhoads made the motion to approve the April 13, 2021 LAFCO meeting minutes; seconded by Commissioner Nelson. In favor were Commissioners Rhoads, Nelson, Steffek, and Chair Coe.

Motion passed unanimous

**5. Public Comment – None**

**6. Authorize payment of Claims**

Commissioner Rhoads made the motion to authorize the payment of claims for April, 2021 and May, 2021; seconded by Commissioner Steffek. In favor were Commissioners Rhoads, Nelson, Steffek, and Chair Coe.

Motion passed unanimous

**7. Public Hearing – Dissolution of the Daphnedale Community Services District and Concurrent Formation of the City of Alturas Municipal Sewer District.**

Chair Coe opened the public hearing at 4:10 p.m.

Executive Officer Benoit presented the history of the formation of the Daphnedale Service District which occurred in the 1976. The purpose of this District was to obtain a grant to perform waste water collections that would connect to the City’s system. The people within this District paid a fee

that was collected by the County Assessor then distributed to the District to pay the City of Alturas. Since this formation new regulations have been set in place which make it hard for the District to comply with District requirements. It has also caused the District to be delinquent in payment by \$60,000.00. The best solution will be to create a Subsidiary District called City of Alturas Municipal Sewer District. This will allow for the City to maintain the lines and comply with regulations. This will also allow the City to collect payment directly. If this process occurs the City will then assume Daphnedale's assets.

Chair Coe asks for in favor comments.

Nick Bennett inquires if this process continues will it annex the Daphnedale Service District into the City Limits.

Executive Officer Benoit responds that it will not annex the Daphnedale Service District into the City Limits.

David Shock has two different houses on one lot and was wondering how the City would set up billing. Other than the question regarding billing Mr. Shock is in favor of the Subsidiary District.

Joann White is in favor of the Subsidiary District.

Chair Coe asks for opposed comments.

None were presented to the Commissioners.

Hearing was closed at 4:25 p.m.

Executive Officer Benoit added the Daphnedale Service District and adjacent landowners received written notice of the dissolution and creation of the Subsidiary District. Mr. Benoit didn't receive protest from anyone within the Daphnedale Service District. The next step will be to publish a notice of the formation of the City of Alturas Municipal Sewer District.

Commissioner Rhoads made the motion to adopt **Resolution #2021-0003** approving the Dissolution of the Daphnedale Community Service District subject to terms and conditions; seconded by Commissioner Nelson. In favor were Commissioners Rhoads, Nelson, Steffek, and Chair Coe.

Motion passed unanimous

Commissioner Rhoads made the motion to adopt **Resolution #2021-0004** approving the formation of the City of Alturas Municipal Sewer District; seconded by Commissioner Steffek. In favor were Commissioners Rhoads, Nelson, Steffek, and Chair Coe.

Motion passed unanimous

**8. Public Hearing - Final 21-22 LAFCo Budget**

Chair Coe opened the public hearing at 4:34 p.m.

Executive Officer Benoit informed the Commissioners they reviewed the proposed 2021/2022 LAFCo budget during the April meeting. The requested changes from the April meeting have been made. Mr. Benoit informs the Commissioners that Modoc County has not paid their 2020/2021 share and advises them to do so before year end.

No further comments were presented to the Commissioners

Hearing was closed at 4:37 p.m.

Commissioner Steffek made the motion to adopt **Resolution #2021-0002** approving the final budget; seconded by Commissioner Nelson. In favor were Commissioners Rhoads, Nelson, Steffek, and Chair Coe.

Motion passed unanimous

**9. Executive Officer's Report**

Executive Officer Benoit announces he will be reducing his time with the other LAFCo counties. He will continue to serve Modoc County LAFCo for a few more years but will be introducing Jennifer \_\_\_\_\_. Jennifer will also help conduct with the planned Sphere of Influence and Municipal Service Reviews. Mr. Benoit informed the Commissioners that the Fire Districts may want to consider consolidation. Even if you are an Independent District an audit is still required. He knows that Modoc County OES is working on this issue.

**10. Commissioner Reports**

Commissioner Steffek would like to thank the Commissioners for helping with the Dissolution of the Daphnedale Community Services District and Formation of the City of Alturas Municipal Sewer District.

There being no further business to come before the Commission. Motion made by Commissioner Rhoads to adjourn at 4:47 p.m.; seconded by Commissioner Nelson. In favor were Commissioners Rhoads, Nelson, Steffek, and Chair Coe.

Motion passed unanimous

# Modoc Local Agency Formation Commission

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## CLAIMS

for

June 2021 – July 2021

### Authorize Claims for FY 2020-2021

July 1, 2021	Staff Svcs and Expenses May 2021	\$ 3,625.84
June 8, 2021	Meeting stipend June 8, 2021	\$ 400.00
June 8, 2021	Modoc Record Fin 21-22 Bud and Daphnedale	\$ 117.00
	<b>Total</b>	<b>\$ 4,142.84</b>

### Authorize Claims for FY 2021-2022

July 1, 2021	Calafco Dues FY 2021-2022	\$ 1,131.00
Aug 1, 2021	Staff Svcs and Expenses July 2021	\$ 3,105.64
	<b>TOTAL:</b>	<b>\$ 4,236.64</b>

**DATED:** August 10, 2021

**APPROVED:** August 10, 2021

**Ned Coe, Chair or Mark Steffek, Vice-Chair**  
**Modoc Local Agency Formation Commission**

**Attest:**

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**John Benoit**  
**Executive Officer**

Madoc LAFCO  
Expenditures and Revenue  
FY 2021-2022

Item	File Scanning	Memberships	Copies	Postage	Communications	Office Exp	Columns	Staff Svcs	Clark Costs	Vehicles and	Trains & Travel	MSR/SCU	Upgrades
Account Number	4420	4420	4420	4421	4421	4421	4008	4004	4006	Public-4390	4430	4430	4430
Total Budgeted 2021-2022	\$ 3,000.00	\$ 1,131.00	\$ 600.00	\$ 300.00	\$ 1,000.00	\$ 600.00	\$ 2,000.00	\$ 35,000.00	\$ 720.00	\$ 600.00	\$ 2,200.00	\$ 12,500.00	
Calábco Dues 21-22		\$ (1,131.00)				\$ (24.98)							
Staff Svcs July 2021	\$ (510.00)		\$ (15.00)		\$ (133.16)			\$ (1,955.00)					\$ (467.50)

Total Expenditures	\$ (610.00)	\$ (1,131.00)	\$ (15.00)	\$ 300.00	\$ 866.84	\$ 575.02	\$ 2,000.00	\$ 34,045.00	\$ 720.00	\$ 600.00	\$ 2,200.00	\$ 12,032.50	\$ (467.50)
Total Budget Remaining													

unaudited

July 1, 2021 City Fund Carryover \$ 27,253.12

Actual

21-22 Actual City/Co. Contributions  
FY 2020-21 City Anticipated Funds Transf  
2021-22 County-City Funds anticipated  
Funds received \$ 51,996.10

REVENUE FOR PROJECTS

Interest

Anticipated Funds received \$ (4,236.64)

Less Expenditures \$ 23,016.48

Actual Cash Balance



Comptroller's Statement	TOTAL	Contingency 4822
\$ 4,800.00	\$ 65,451.00	\$ 5,545.10
	\$ (1,131.00)	
	\$ (3,105.64)	

\$		
\$ 4,800.00	\$ 61,214.36	\$ (4,236.64)

Modoc LAFCo  
Expenditures and Revenue  
FY 2020-2021

Item Account Number	File Scanning 4428	Member Share 4428	Supplies 4430	Postage 4431	Communications 4432	Office Exp 4436	Council 4404	Staff Svcs 4405	Class Costs 4406	Notes and Travel 4438	Miscellaneous 4439	Total Budgeted 2020-2021
Catalco Dues 20-21		\$ (1,130.00)										\$ (1,130.00)
JB staff exp July 2020		\$ (10.00)	\$ (0.50)		\$ (79.45)			\$ (2,550.00)				\$ (2,550.00)
JB Staff exp August 2020		\$ (15.00)			\$ (79.97)			\$ (3,410.00)	\$ (120.00)			\$ (3,410.00)
JB Staff exp September 2020		\$ (10.00)			\$ (83.07)			\$ (2,422.50)		\$ (71.80)		\$ (2,422.50)
Modoc Record Pub Mem recruitment 9, 2020												
Comm Payroll Aug 11, 2020												
Comm Payroll October 13, 2020		\$ (20.00)			\$ (88.76)			\$ (3,387.50)	\$ (120.00)	\$ (33.90)		\$ (3,387.50)
JB staff Exp October 2020		\$ (15.00)			\$ (86.72)			\$ (1,870.00)				\$ (1,870.00)
JB Staff exp for November 2020		\$ (15.00)			\$ (82.56)	\$ (64.00)		\$ (3,822.50)	\$ (120.00)			\$ (3,822.50)
Comm payroll December 8, 2020												
Council Chambers rental for 2021												
Staff Svcs January 2021		\$ (15.00)			\$ (108.40)	\$ (150.00)		\$ (2,847.50)				\$ (2,847.50)
Browne ending Dec 15, 2020							\$ (216.00)					\$ (216.00)
Staff Svcs Feb 2021		\$ (5.00)			\$ (107.07)			\$ (3,102.50)	\$ (120.00)			\$ (3,102.50)
Comm payroll Feb 9, 2021												
Staff Svcs March 2021		\$ (10.00)			\$ (54.76)			\$ (2,911.25)				\$ (2,911.25)
Modoc Record 21-22 Prop Budget												
Staff SVCS April 2021		\$ (10.00)			\$ (134.96)			\$ (3,707.50)	\$ (120.00)			\$ (3,707.50)
Staff Svcs May 2021		\$ (50.00)	\$ (50.85)		\$ (54.76)	\$ (19.00)		\$ (4,122.50)				\$ (4,122.50)
Payroll April 13, 2021												
June 8, 2021 Payroll												
Staff Svcs June 2021		\$ (15.00)			\$ (83.34)	\$ (30.00)		\$ (2,000.00)	\$ (120.00)	\$ (117.00)		\$ (2,000.00)
Modoc Record Daphnedale CSD and Fin21-22 Budget												
<b>Total Expenditures Available</b>	\$ (1,130.00)	\$ (1,130.00)	\$ (198.00)	\$ (61.31)	\$ (1,053.82)	\$ (263.86)	\$ (2,184.00)	\$ (35,433.75)	\$ (720.00)	\$ (375.80)	\$ (2,200.00)	\$ (1,997.50)
<b>Total Budget Remaining</b>	\$ -	\$ -	\$ 410.00	\$ 248.65	\$ (53.82)	\$ (863.00)	\$ 1,784.00	\$ 66.25	\$ -	\$ 224.30	\$ 2,200.00	\$ 9,132.50

unaudited	July 1, 2020 City Fund Carryover	\$ 21,378.94	\$ 24,387.59
Actual	20-21 Actual City/Co. Contributions	\$ 46,866.70	
	FY 2020-21 City Anticipated Funds Transf		\$ 46,866.70
	2020-21 County-City Funds anticipated	\$ 46,866.70	
	Funds received		
	REVENUE FOR PROJECTS		
	Interest		
	Anticipated Funds received	\$ (44,001.12)	
	Less Expenditures	\$ 27,253.17	
	Actual Cash Balance		

Commitment	TOTAL	Commodity
Number		Number
\$ 4,000.00	\$ 62,250.00	\$ 6,345.00
	\$ (1,130.00)	
	\$ (2,639.95)	\$ (3,769.95)
	\$ (3,624.97)	
	\$ (2,587.37)	
	\$ (102.00)	
\$ (500.00)	\$ (500.00)	
\$ (400.00)	\$ (400.00)	
	\$ (3,630.16)	
	\$ (1,971.72)	\$ (6,001.88)
	\$ (3,904.06)	
\$ (500.00)	\$ (500.00)	
\$ (150.00)	\$ (150.00)	
	\$ (2,970.90)	
	\$ (216.00)	\$ (3,836.90)
	\$ (3,334.57)	
	\$ (400.00)	
	\$ (2,976.01)	
	\$ (51.00)	\$ (6,761.58)
	\$ (3,972.46)	
	\$ (4,297.11)	
\$ (500.00)	\$ (500.00)	\$ (8,769.57)
\$ (400.00)	\$ (400.00)	
	\$ (3,625.84)	
	\$ (117.00)	\$ (4,142.84)

\$	\$	\$
\$ 1,950.00	\$ 18,246.88	\$ (44,001.12)

**BEFORE THE LOCAL AGENCY FORMATION COMMISSION  
COUNTY OF MODOC, STATE OF CALIFORNIA**

**IN RE:**  
**RESOLUTION REGARDING ) RESOLUTION NO. 2021-0005**  
**INSUFFICIENT PROTESTS RECEIED )**  
**AND AUTHORIZING THE FORMATION )**  
**OF THE CITY OF ALTURAS MUNICIPAL )**  
**SEWER DISTRICT )**  
**(LAFCO APPLICATION NO. 2021-0001) )**

WHEREAS, an application to form a City of Alturas Subsidiary District was filed with the Executive Officer of the Modoc Local Agency Formation Commission (LAFCO) pursuant to the requirements of the Cortese-Knox-Hertzberg Local Government Reorganization Act (Section 56000 *et seq.* of the California Government Code); and

WHEREAS, on June 8, 2021, after a noticed public hearing, LAFCO adopted Resolution No. 2021-0004 making determinations and approving a City of Alturas Municipal Sewer District to include the current incorporated boundary of the City of Alturas and the territory within the Daphnedale CSD, subject to conducting authority proceedings.

WHEREAS, on June 8, 2021 conducting authority proceedings were waived for the dissolution of the Daphnedale Community Services District since there was no written objections to its dissolution prior to the conclusion of the public hearing.

WHEREAS, After publishing a public notice, LAFCo held a protest proceeding on July 30, 2021 and received no written protests or objections from either landowners or registered voters within the City of Alturas and the Daphnedale CSD.

NOW, THEREFORE, IT IS HEREBY RESOLVED, DETERMINED AND ORDERED by the Modoc Local Agency Formation Commission as follows:

1. The foregoing recitals are true and correct.
2. The Commission finds there was insufficient protest to require an election for the formation of the City of Alturas Municipal Sewer District.

3. The Commission orders the formation of the City of Alturas Municipal Sewer District and Dissolution of the Daphnedale CSD upon compliance with the terms and conditions as approved by LAFCo on June 8, 2021

PASSED AND ADOPTED at a regular meeting of the Modoc Local Agency Formation Commission on August 10, 2021 by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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Ned Coe, Chair or Mark Steffek,  
Vice Chair  
MODOC LOCAL AGENCY  
FORMATION COMMISSION

ATTEST:

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John Benoit, Executive Officer

Modoc LAFCo

**MEMORANDUM**

August 10, 2021

**TO:** Modoc LAFCo Commissioners

**FROM:** John Benoit, Executive Officer

**RE:** Proposed policy Amendments regarding Indemnification agreements and application options

- Attachment #1 Counsel's Memo regarding Indemnification agreements March 16, 2021
- Attachment #2 Proposed Policy Amendments
- Attachment #3 Proposed Voluntary Indemnification Agreement

1. Voluntary Indemnification

Historically, applications to Modoc LAFCo have required the applicant, either an agency or a private party, to indemnify LAFCo as a component of the LAFCo "Agreement to Pay" form. The Agreement clearly indicates that should a LAFCo action be legally challenged, the applicant will be required to defend the LAFCo action or reimburse LAFCo for all related costs.

Most LAFCo's throughout the state also use various forms of indemnification agreements and have successfully managed legal challenges to the local LAFCo decision. This was an effective tool until this year when the San Luis Obispo LAFCo's use of an indemnification agreement was successfully challenged by the City of Pismo Beach (*San Luis Obispo LAFCo v. City of Pismo Beach, et.al.* 2021 WL 803740) (the SLO case). LAFCo Legal Counsel has prepared a memorandum (Attachment 1) that fully describes the case and its ramifications to LAFCo's throughout the state. Since Council's memo was written the California Supreme Court has denied review.

LAFCo's will need to adopt an alternative process for addressing the use of indemnification agreements as they are 1) critical to the integrity and implementation of a LAFCo decision and 2) to appropriately place the costs on the applicant and not the LAFCo member agencies who fund the budget.

While Modoc LAFCo has historically not been involved in significant litigation, one single legal challenge could create a budget crisis for future years. Calafco is working on legislation to correct this situation. There is no certainty a legislative fix will be signed into law.

Policies, Standards and Procedures Amendment Needed. Modoc LAFCo's Policies, Standards and Procedures were adopted prior to the SLO case. It is apparent a policy amendment is needed. The procedure for a Policy Amendment is the same as for a Bylaw Amendment as follows:

Section 9 of LAFCo's amendment procedure

- a) The full text of any proposed amendment shall be sent to all members in the same manner as agenda packets, as specified in Section 5.3 c), above.
- b) At the meeting, the proposed amendment shall be read aloud in its entirety by the Chair, unless such reading is waived by the Commission. Discussion may occur and modifications be made to the proposed amendment, but it may not be approved at that first reading.
- c) The proposed amendment to the Bylaws, with any Commission modifications, shall then be circulated to the following entities for their review and comment prior to adoption:
  - City of Alturas
  - County of Modoc
  - Special Districts requesting notification
- d) The proposed amendment, with any modifications, shall be agendized and read a second time at the next regular meeting of the Commission, unless the Commission waives such reading. Any comments received from local agencies shall be presented. Further discussion and modifications may be made to the proposed amendment and it may be adopted at this second reading.

2. Expiration of Applications

All applications that have not been to hearing and completed within two years of initial submittal shall automatically terminate, unless extended by the Commission. Staff shall notify the applicant at least 30 days before termination and give them an opportunity to request an extension. If no extension is requested and granted the application shall terminate.

Recommendation:

- 1. Read the proposed amendments and the voluntary indemnification agreement and expiration of applications unless otherwise waived.
- 2. Discuss and review the proposed policy amendment and voluntary indemnification agreement and expiration of application language.
- 3. Circulate the proposed amendment and voluntary indemnification and expiration of application language for comments.
- 4. Set the proposed amendments at next available LAFCo meeting for a second reading of the amendment and voluntary indemnification and expiration of application language.

**LAW OFFICES OF P. SCOTT BROWNE**

**MARSHA A. BURCH**

*Of Counsel*

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August 3, 2021

**Memorandum re Decision in *San Luis Obispo LAFCo v. City of Pismo Beach***

Dear LAFCo Staff and Commissioners:

This memorandum is to alert you to a very recent case (March 3, 2021) out of the Second District Court of Appeal which may have significant implications for how LAFCo's handle indemnification for fees incurred in legal challenges to LAFCo actions. The case is *San Luis Obispo LAFCo v. City of Pismo Beach, et.al.* 2021 WL 803740.

The decision in that case is not yet final. It could be appealed to the California Supreme Court or it could be determined to decertify it for publication. In the latter case, it would not become part of the reported caselaw. However, out of an abundance of caution, I think it is important you are aware of it as there is a significant possibility it will become law.

In that case, San Luis Obispo LAFCo (SLO LAFCo) sued the City of Pismo Beach and the developer for its \$400,000 in attorney's fees incurred in successfully fighting the Defendants challenge to its denial of an annexation to the City. The claim for fees was based on the indemnification agreement signed by the City and developer as applicants for the annexation.

Defendants challenged LAFCo's right to attorney's fees on a variety of grounds. Their primary focus was on the validity of the requirement they indemnify LAFCo for their own suit challenging LAFCo's action. They argued this was a basic violation of due process and their right to petition for redress.

The Court of Appeal did not, however, limit its decision to this one situation. Rather the Court held that an agreement to pay indemnification requires consideration. LAFCo has a statutory duty to process applications, so absent statutory authority, it cannot require indemnification as a condition for processing an application. The Court found that the existing statutory authority for LAFCos to charge fees, Gov't C § 56383 of the Cortese-Knoz-Hertzberg Local Government Reorganization Act of 2000 (CKH) only applied to costs associated with the administrative process and ended once a certificate of completion was filed. Costs incurred after the completion of the administrative process were not authorized by §56383. Hence there was no authority to require payment of the fees incurred after completion of the administrative process.

LAFCo argued that CKH Section 56107 requires liberal construction of the statutes. The Court rejected this argument as liberal construction cannot prevail against the express language of the 56383. It also rejected an argument that LAFCo had implied powers to impose an indemnification agreement. It rejected this argument because Code of Civil Procedure §1021 limits award of attorney's fees to those situations where they are specifically authorized by statute or by the agreement between the parties. Here there is no statutory authority and no valid agreement to pay the fees.



Memo re San Luis Obispo LAFCo v. City of Pismo Beach  
August 3, 2021  
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If this case becomes reported law, it is likely to upset the present practice of requiring indemnification agreements as part of the LAFCo application. Such agreements would be challenged based on this case, and the outcome highly uncertain.

Without enforceable indemnification agreements, LAFCo would have to plan on funding the defense of any litigation out of its own reserves. If it has inadequate reserves, then it must either borrow from the County if permitted by the Board of Supervisors or curtail its defense.

Other alternatives being explored are 1) to require the applicant to post a deposit for future attorney's fees at time of application, or 2) require the applicant to post a bond in lieu of a deposit. In either case, the burden on the applicant would be significantly increased.

I will keep you posted as this case progresses and we will look to modify LAFCo application procedures if necessary.

Please let me know if you have any questions.

Sincerely

P. Scott Browne  
LAFCo Counsel

**Proposed Policy Amendment Language:**

**Replace 6.4 (c)** (under application Requirements)

*The application shall also include an agreement to pay costs and indemnification. The agreement to pay costs and indemnification must be signed by the applicant for the application to be deemed complete.*

**Replace with:**

**6.4 ( c )**

6.4 c 1:       **Agreement to pay fees.** The application shall also include an agreement to pay costs. The agreement to pay costs must be signed by the applicant for the application to be deemed complete.

6.4 c 2:       **Voluntary Indemnification Agreement.** As part of the application, applicant shall be asked to sign and submit the voluntary indemnification agreement approved by the Commission concurrent with the adoption of this policy for all reasonable expenses and attorney fees incurred from proceedings brought by a third party in connection with the application. While LAFCo retains the discretion in all cases to decide whether to defend an action, the Applicant's voluntary agreement to indemnify LAFCo will provide applicant an opportunity to have significant input on LAFCo's decision whether to defend its decision.

6.4 (e)       All applications that have not been to hearing and completed within two years of initial submittal shall automatically terminate, unless extended by the Commission. Staff shall notify the applicant at least 30 days before termination and give them an opportunity to request an extension. If no extension is requested and granted the application shall terminate.

**Modoc LAFCo  
Voluntary Indemnification Agreement**

LAFCo may not condition acceptance of an application upon requiring the Applicant to indemnify LAFCo. However, LAFCo has complete discretion whether to defend any lawsuit that is filed to challenge its decisions. With its limited budget, LAFCo will usually be reluctant to allocate resources to defend challenged decisions. If the Applicant desires to assure that LAFCo will consult with Applicant before determining how to proceed on a legal challenge and increase the likelihood that LAFCo will defend its decision on Applicant's proposal, Applicant may enter into the following voluntary contractual agreement to indemnify LAFCo in the event of legal challenge:

1. FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged. The Applicant shall defend, indemnify and hold harmless, LAFCo, its agents, officers, attorneys, and employees from any claim, action, or proceeding brought by a third party, the purpose of which is to attack, set aside, void, or annul LAFCo's decision with respect to Applicant's proposal or any required findings or determinations under CEQA made as part of that decision. This indemnification obligation shall include, but not be limited to, damages, costs, expenses, attorney's fees, or expert witness fees that may be asserted by any person or entity other than the applicant, arising out of or in connection with LAFCo's approval of the Applicant's proposal, whether or not there is concurrent, passive, or active negligence on the part of LAFCo, its agents, officers, attorneys, employees and contractors/consultants.
2. Applicant agrees that 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 subject to the provisions of this agreement, and that such actions shall not relieve or limit Applicant's obligations to indemnify and reimburse defense costs.
3. In exchange for such indemnity, LAFCo agrees to the following:
  - a. To immediately notify the Applicant of any litigation or administrative proceeding with respect to the Applicant's application in which LAFCo is named as a party.
  - b. In the event that the Applicant is not joined in the action or proceeding, LAFCo agrees to support a motion by the Applicant to intervene in the action or proceeding.
  - c. To consult with Applicant before making any decision whether to defend the legal challenge. If Applicant desires to defend the case and confirms in writing its commitment to reimburse LAFCo for its defense costs and provides a deposit for such costs as LAFCo shall reasonably determine, LAFCo will proceed to defend unless it has reasonable cause not to do so. If a determination is made to defend the action, LAFCo counsel will consult and reasonably cooperate with Applicant's counsel in the defense of the action. LAFCo shall not enter into any settlement of all or a part of the action without consulting with Applicant.

**APPLICANT:**

- I/We have reviewed the Voluntary Indemnification Agreement and choose not to sign.
- I/We have reviewed and agree to the Voluntary Indemnification Agreement as presented above.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Project Proponent Authorized Signer

**Modoc LAFCo:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
John Benoit, LAFCo Executive Officer

# 2021 ANNUAL CONFERENCE OCTOBER 6 - 8 IN NEWPORT BEACH REGISTRATION FORM

*For Registration by Check*  
To pay with credit cards please visit [www.calafco.org](http://www.calafco.org)  
**REGISTRATION DEADLINE IS SEPTEMBER 17, 2021**

LAFCo
Received
Check #

## CONFERENCE REGISTRATION RATES

	PAYMENT Received by August 31	PAYMENT Received after August 31	Amount Due
Member – Full Conference	\$520	\$560	
Non-member – Full Conference	\$620	\$660	
Guest/Spouse* – All Meals	\$270	\$300	
Guest/Spouse* – Wed Reception/Thu Banquet Only	\$155	\$200	
Member – One Day ( <input type="checkbox"/> Wed or <input type="checkbox"/> Thur or <input type="checkbox"/> Fri)	\$350	\$370	
Non-Member – One Day ( <input type="checkbox"/> Wed or <input type="checkbox"/> Thur or <input type="checkbox"/> Fri)	\$450	\$470	
LAFCo 101 (no charge for those with full conf. registration. \$40 for those just attending this session.)	\$40	\$40	
<b>TOTAL REGISTRATION RATE DUE</b>			<b>\$</b>

\*Guests at meals must purchase their meal. Conference registration meals are non-transferable to guests.

**Payment must accompany registration. Early registration rate payments MUST be received by August 31 in order for that rate to apply. NO EXCEPTIONS.** Please make checks payable to "CALAFCO."

Mail completed forms and payment to:

**CALAFCO**  
1020 12<sup>th</sup> Street, Suite 222  
Sacramento, CA 95814

**Hotel Information: Hyatt Regency Newport Beach conveniently located at the John Wayne Airport**

**ROOMS STARTING AT \$194 PER NIGHT. CUT-OFF DATE IS SEPTEMBER 6, 2021.** Special rate 3 days pre and post conference based on availability. Rate includes parking and excludes taxes.

**TO MAKE HOTEL RESERVATIONS, PLEASE VISIT:**  
<https://www.hyatt.com/en-US/group-booking/SNARJ/G-CAL2> or call directly at 949-975-1234 and reference CALAFCO event.

### CANCELLATION AND REFUND POLICY

1. Registrations are considered complete upon receipt of fees.
2. Cancellation requests made in writing and received by September 21, 2021 receive a 100% refund less \$25 handling fee and any transaction fees.
3. Credits are not issued for any cancellations.
4. Registration fees are transferable to another person not already registered provided the request is received in writing. Deadline to transfer registrations is September 30, 2021.
5. Registration fees for guests and special events are not transferable and are fully refundable (minus any transaction fees) if requests are made in writing and received by September 21, 2021 or if the special event is cancelled.
6. Cancellation requests must be made by e-mail the CALAFCO office.
7. Cancellation requests made after September 21, 2021 are not eligible for a refund.

Please submit one form for each person registering

FIRST NAME \_\_\_\_\_ LAST NAME \_\_\_\_\_

NAME ON NAMED TAG \_\_\_\_\_

LAFCO/ORGANIZATION \_\_\_\_\_ POSITION \_\_\_\_\_

GUEST NAME (For guest/spouse registration) \_\_\_\_\_

MAILING ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ ZIP \_\_\_\_\_

PHONE # \_\_\_\_\_

E-MAIL ADDRESS \_\_\_\_\_

EMERGENCY CONTACT NAME: \_\_\_\_\_

PHONE # \_\_\_\_\_

