

LEGISLATIVE PROPOSAL RESEARCH GUIDE

Please fill out with any information you have available

TITLE	Statutory CEQA exemption for incorporation of a new city
SOURCE	Commission on Local Governance for the 21 st Century report, <u>Growth Within Bounds</u> , January 2000
SUMMARY	Eliminate an unnecessary step in the consideration of new municipal incorporations by LAFCOs

PROPOSAL

Add a new subsection to Public Resources Code Section 21080(b), which states: “this division does not apply to any of the following activities,” as follows:

(16) Any decision by a local agency formation commission to approve the incorporation of a new city whether such incorporation occurs in a previously unincorporated area or as part of a special reorganization

Background:

1. What do you see as the key issue(s) or problem(s) to be addressed by the proposal?
Under the Cortese-Knox-Hertzberg Act¹ LAFCOs are local agencies tasked with evaluating potential California Environmental Quality Act² (CEQA) issues arising from proposed new municipal incorporations. This obligation of LAFCOs³ is problematic because a reorganization of local government entities, in and of itself, is not an environmental action, as defined in CEQA⁴ and other existing CEQA requirements already cover the discretionary approval of land use and development activities of newly formed cities at every stage of their existence. In cases of a proposed municipal incorporation, LAFCOs either make a finding supporting a Negative Declaration⁵ or they require an Environmental Impact Report⁶. In all cases, the burden on LAFCOs for this requirement is not trivial, either in terms of staff time or costs. That burden is typically passed on to applicants seeking incorporation for their community and serves as a significant hurdle and disincentive, especially for “grassroots” citizen groups seeking to exercise their right of local self-governance.
2. Describe in detail the problem or deficiency in current law that the proposal seeks to remedy.
The CEQA requirement for new incorporations is a wasteful exercise that unnecessarily duplicates other required CEQA analyses. In particular, the area proposed for incorporation will have been covered by CEQA requirements relating its county’s General Plan and its elements, subordinate plans (e.g., community plans) adopted by a county in furtherance of its General Plan, and/or site-specific plans associated with a county’s land use authority. With respect to areas that successfully become new cities, these county-level governance documents remain in effect until such time as the new city adopts its own General Plan and implementing documents as required by state planning laws⁷. Such actions by the new city are already subject to CEQA review⁸. Tasking LAFCO with invoking CEQA in a proposed municipal incorporation is therefore duplicative and pointless.

Worse, CEQA adds extra time and costs to the LAFCO incorporation process. A Negative Declaration outcome adds at least 6 months to a decision-making process and a year or more for full Environmental Impact Reports. The additional costs, typically borne by grassroots supporters of democracy and local control, can exceed \$150,000. This represents a significant, often insurmountable, barrier for incorporation proponents. All for no discernable benefit to anyone—other, perhaps, than a boon to defenders of the status quo who view incorporation as a threat to existing political and economic power bases.

3. How does this proposal remedy the problem described above?

The proposal simplifies and expedites the LAFCO process for municipal incorporations.

4. How would this proposal affect Senate District 2?

There are numerous unincorporated communities within Senate District 2, many of whom have considered increasing local control via incorporation. Typically, these citizen groups have limited access to funding and professional advice. The costly, complex and time-consuming requirements of current law act as deterrents and chilling effects against exploring cityhood and local democracy. The looming CEQA requirements alone can prevent nascent incorporation efforts from gathering critical initial momentum. This proposal would remove a key, yet unnecessary, obstacle in front of citizen groups in District 2 and throughout the State.

SOURCE

5. What person, organization, or governmental entity is requesting introduction? Include contact information.

The primary District 2 contact person is Mary Burke (maryburke95519@gmail.com), McKinleyville Community Services District Director and McKinleyville Municipal Advisory Council representative on behalf of a community group of over 15 McKinleyville individuals who attended a presentation by California (un)Incorporated in August 2019. In an unincorporated community, there are inherent challenges to organizing people to advocate for their right to form a city. There are many examples of people who have requested the community incorporate but many people in positions of power keep the narrative to "incorporation is cost-prohibitive and our taxes would double" thereby quieting any formal public request.

The primary contact people for the California (un)Incorporated coalition are Michael Seaman (michaeljseaman@gmail.com) of Arden Arcade, an unincorporated community in Sacramento County and Chris Nicholson (c.nicholson@gmail.com) of El Dorado Hills, an unincorporated community in El Dorado County.

6. Background information:

There are over 6 million Californians who live in urbanized unincorporated areas without a Mayor and city Council to focus on local priorities. Current state policies tend to work against the formation of new cities. No new cities have been formed in the last 10 years, though the population has grown by 3.2 million people. The population could grow to 50-70 million by 2050 and perhaps to 90 million by the end of the century. It is not practical to expect existing cities to absorb all new population growth. Nor is it good

policy to allow urban sprawl to defeat California's needs for agricultural and forest lands and other open space purposes.

7. What bills did they sponsor in past session? Who authored them? What was the outcome?
At the urging of California (un)Incorporated and with assistance from the League of California Cities, AB 2491 of 2018 and AB818 of 2019 were co-authored by Assembly Members Cooley and Quirk. Both would have reformed the current prohibition on distribution of vehicle license fee property taxes (or equivalent) to new cities, limiting such revenues to the 482 existing cities. Both received approval by the Assembly Local Government Committee and were subsequently placed on suspense in the Assembly Appropriations Committee.

LEGISLATIVE HISTORY

8. Has there been a similar bill in past sessions?

No.

9. Session, bill number, author, history of the bill (what committees heard the bill, what votes were taken on the bill):

10. Why did it fail?

11. How is this proposal different?

12. Are there any relevant studies, audits, scholarly work on this issue?

Yes. The need for this change was documented by the Commission on Local Governance for the 21st Century in its January 2000 report entitled Growth Within Bounds. In that report, the Commission said:

“The Act does not include a specific requirement for an environmental analysis of an incorporation proposal. However, under the California Environmental Quality Act (CEQA) a public agency proposing to undertake a project or approve a discretionary action is required to consider the potential environmental impacts of that action. If the lead agency determines that there is no substantial evidence that the project would have a significant impact, a negative declaration may be prepared. Projects that may result in a significant impact on the environment require the more costly and time-consuming preparation of an Environmental Impact Report (EIR).

LAFCOs differ in their treatment of the need to prepare an EIR for incorporations. While some LAFCOs have required an EIR, other LAFCOs have simply filed a negative declaration. The cost implications for incorporation proponents are substantial. Many incorporation proponents see the preparation of an EIR as a delaying tactic which can cost several thousand dollars.

Orange County LAFCO noted that it always files a negative declaration for incorporations. Dana Smith, Executive Officer of Orange County LAFCO testified that, “the cost of preparing an EIR and the relative lack of value of an EIR to the incorporation process should be evaluated. CEQA should be amended to allow for a categorical exemption of incorporations — provided the new city adopts the existing general plan designations of the County.”

Riverside LAFCO Chairman John McFadden went a step further, stating, “. . . we

also have a proposal to reduce the burden on incorporation proponents . . . A change of representation should not be a project [under CEQA]. To assume a range of land use decisions that might be taken by a future city council, as suggested by the court, is so speculative it is ridiculous. The range of potential actions is no different than that which might be taken by a future board of supervisors. We propose a new CEQA exemption for incorporations. This could save incorporation proponents \$50,000 to \$150,000.”

The Commission concurs with the conclusion that a new incorporation is simply a political change and does not commit the area to any specific changes in land-use. The new city must initially adopt the existing county general plan land use designations. While the new city, if formed, could subsequently change plan categories, its actions would at that time be subject to CEQA and the public hearing process. The Commission agrees that an incorporation should not require an EIR in order to comply with the intent of CEQA.”⁹

The Commission recommended as follows:

“RECOMMENDATION 4-13

The Commission recommends that a statutory CEQA exemption be provided for a new incorporation. This recognizes that an act of incorporation constitutes only a political reorganization. Nevertheless, when the newly incorporated city adopts a general plan and zoning ordinances, these acts would not be exempt from CEQA.

Draft Language:

Add a new subsection to Public Resources Code Section 21080(b), which states: “this division does not apply to any of the following activities,” as follows:

*(16) Any decision by a local agency formation commission to approve the incorporation of a new city whether such incorporation occurs in a previously unincorporated area or as part of a special reorganization”.*¹⁰

COST/BUDGETING

13. What is the likely cost of the proposal to the State? To locals?

None. The result of the requested change would save time and money for LAFCOs and for incorporation proponents

14. Has this been tried in the State Budget? Could it be done through the State Budget?

Not relevant. See #13.

SUPPORT/OPPOSITION

15. List likely supporters:

CALAFCO, League of California Cities, California (un)Incorporated and its participating communities

16. List likely opponents:

Environmentalists who do not wish harm to come to CEQA. Consultants who prepare environmental impact analyses for LAFCOs

17. Please describe any concerns that you anticipate may be raised in opposition to the proposal and state your response to those concerns:

Concern - No more exemptions should EVER be allowed for CEQA projects. The exemptions already granted are enough. Response – Reorganization of the governmental structure is not as project under CEQA.

Concern – A new city will run amok with its land use authority, bring destruction to the environment. Response – That is speculative. Besides, the new city must follow the County land use plans in effect prior to incorporation until it adopts its own land use plans. Such adoption requires implementation of CEQA.

Concern – A statutory change is unnecessary because the requested change can be made by the Governor’s Office of Planning and Research (OPR) as a “Categorical Exemption” via its periodic issuance of administrative guidelines to implement CEQA. Response - CEQA has two types of exemptions. Statutory Exemptions¹¹ - exemptions from CEQA granted by the Legislature - and Categorical as may be determined by the Secretary of Resources and articulated in the CEQA Guidelines issued by OPR. Indeed, there are references in the CEQA Guidelines to a categorical exemption for minor changes in the organization of local governments¹³. However, experience has shown that the Governor’s Office has been reluctant to engage in the process of new municipal incorporations. OPR has not updated its document, “A Guide to the LAFCO Process for Incorporations”¹⁴ since it was published in October 2003. In the summer of 2019, a number of unincorporated communities that participate in the California (un)Incorporated coalition, seeking guidance from the Administration, met with OPR’s Deputy for Planning and Policy and OPR’s Legislative Director. Some months afterwards, OPR responded that the concerns of the unincorporated communities should be directed to the Legislators who represent those areas. A Statutory Exemption is therefore needed.

Footnotes:

1. *CA Government Code § 56000 et seq.*
2. *CA Public Resources Code § 21000 et seq.*
3. *CA Public Resources Code § 21062*
4. *CA Public Resources Code § 21060.5 and 21065*
5. *CA Public Resources Code § 21064*
6. *CA Public Resources Code § 21061*
7. *CA Government Code § 65350*
8. *14 CCR § 15378(a)(1)*
9. *Growth within Bounds, Chapter 4, pages 65-66*
10. *Growth within Bounds, page 160*
11. *CA Public Resources Code §15260*
12. *14 CCR § 15300*
13. *14 CCR §15320*
14. *https://calafco.org/sites/default/files/resources/Incorp_Guidelines.pdf*