

# Municipal Disincorporation in California

By John H. Knox & Chris Hutchison\*

## I. INTRODUCTION

The combination of ever-increasing costs and the weakness of the housing market and the general economy has challenged the financial health of many California cities. At least one has already sought bankruptcy protection, and others may follow or are seriously considering the option. The severity of the current economic downturn also has raised the question of whether municipal disincorporation can provide additional or alternative relief to distressed cities. However, the process has rarely been used, and its legal effect is not well understood.

Following a discussion of the background and legal effect of disincorporation in California, this article examines each stage of the disincorporation process, paying attention to timetables, potential hurdles, and other areas of concern for a city or citizens' group seeking to initiate such a proposal.

California law supplies a procedure for disincorporating a city, whether chartered or general law, involving four stages:

- (1) Initiation of Proceedings,
- (2) Consideration by the Local Agency Formation Commission ("LAFCO"),
- (3) Election, and
- (4) Completion of Proceedings.

The process includes several avenues for public participation, whether through voting or public hearings before the LAFCO. Further, the LAFCO has significant authority and discretion over both the process and the substance of the proposal, with power to condition its approval on a "virtually limitless array of factors."<sup>1</sup>

## II. BACKGROUND

### A. THE CORTESE-KNOX-HERTZBERG ACT

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 ("the Act")<sup>2</sup> provides the "sole and exclusive authority and procedure" for the disincorporation of a California city.<sup>3</sup> The Act establishes the exclusive means for "changes of organization and reorganization for cities and districts."<sup>4</sup> A change of organization includes, among other things, "disincorporation of a city."<sup>5</sup> The Act defines disincorporation to mean the "disincorporation, dissolution, extinguishment, and 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."<sup>6</sup> A reorganization is simply the combination of two or more changes of organization.<sup>7</sup>

The Act (along with its predecessors) establishes a local agency formation commission

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(“LAFCO” or “commission”) in each county to oversee proposed changes of organization. Generally, the Act describes the role and authority of LAFCOs with regard to each type of local agency, including cities, and each type of change of organization (e.g., annexations, incorporations, and disincorporations) that could affect an agency. LAFCOs attempt to provide a guiding hand to the development of local agencies of all types, including not only cities, but also school districts, water districts, and many other special-purpose entities, with an eye toward ensuring coherent local and regional development. The primary purpose of a LAFCO is “[t]o review and approve or disapprove with or without amendment, wholly, partially, or conditionally, proposals for changes of organization or reorganization.”<sup>8</sup> LAFCOs have statutory goals of “discouraging urban sprawl, preserving open-space and prime agricultural lands, efficiently providing government services, and encouraging the orderly formation and development of local agencies based upon local conditions and circumstances.”<sup>9</sup>

Each LAFCO has authority to adopt its own written procedures, standards of review, and regulations for hearings, consistent with statute.<sup>10</sup> The Act establishes many different deadlines and procedural requirements, both for those proposing disincorporation and for the commission hearing the proposal. However, with just two exceptions relating to the timing of hearings and requests for reconsideration, these deadlines are “directory” only, and do not bind the commission.<sup>11</sup> Moreover, commission determinations receive a deferential standard of review, and are final unless a court finds “fraud or prejudicial abuse of discretion.”<sup>12</sup> This review requires only that the court ascertain whether the commission decision is supported by “substantial evidence in light of the whole record.”<sup>13</sup>

## B. COURT CHALLENGES

The Act requires that any suit challenging the validity of an approved disincorporation be brought pursuant to California’s validation statutes.<sup>14</sup> A validation action allows any public agency, or “any interested person” if no public agency brings suit, to bring an action in the nature of a proceeding *in rem* in the local superior court.<sup>15</sup> Validation actions, regardless of the plaintiff, are subject to a 60-day statute of limitations, which begins on the date the LAFCO certifies the disincorporation as complete.<sup>16</sup> “Interested persons” must also establish standing, which California courts interpret strictly.<sup>17</sup> Also, the failure of any person or entity to receive notice, such as notice for a hearing, “shall not constitute grounds for any court to invalidate any action taken” pursuant to the notice.<sup>18</sup>

## C. STATUTORY HISTORY

The Act amended the Cortese-Knox Local Government Reorganization Act of 1985 to invest greater authority in LAFCOs, among other changes.<sup>19</sup> The Cortese-Knox Local Government Reorganization Act of 1985 consolidated three predecessor laws for local government boundary and organizational changes. Those laws were: the Knox-Nisbet Act of 1963, which first established LAFCOs; the District Reorganization Act of 1965, which concerned special districts; and the Municipal Organization Act of 1977, which concerned city incorporations and annexations.

## D. STATUTORY DISINCORPORATION

California statute dictates the process for disincorporation. A city or group seeking to propose disincorporation may choose to follow the process set out in the Act or to seek a legislative

revision or exception to the existing process. The state legislature retains significant power over municipal organization. As the California Supreme Court put it, “In our federal system the states are sovereign but cities and counties are not; in California as elsewhere they are mere creatures of the state and exist only at the state’s sufferance.”<sup>20</sup> The legislature could adopt an alternative means of disincorporation for a particular city, just as it has adopted an alternate system for certain annexations to cities in Santa Clara County, which do not undergo LAFCO review.<sup>21</sup> The legislature could also disincorporate a city by statute, as it has several times in the past.<sup>22</sup>

#### E. PRIOR DISINCORPORATIONS

Seventeen cities have disincorporated in California’s history, including the cities of Long Beach, Pismo Beach, and Stanton, each of which later reincorporated.<sup>23</sup> However, since the creation of LAFCOs in 1963, only two cities have disincorporated – Cabazon in 1972 and Hornitos in 1973.<sup>24</sup> Of these, only Cabazon’s disincorporation went through the process prescribed by the Act; Hornitos was disincorporated by statute.<sup>25</sup>

Cabazon was a city of 613 residents in Riverside County incorporated in 1955.<sup>26</sup> Following years of city-government turmoil related to the regulation of local gambling, including multiple recalls, resignations, and arrests of city council members, a group of citizens filed a disincorporation proposal with the local LAFCO.<sup>27</sup> The LAFCO held a hearing, approved the proposal without requiring any additional terms or conditions, and set the question for election.<sup>28</sup> Residents of the city voted 192 to 131 in favor of disincorporation, and after a several-month delay because of a legal challenge to the election procedures, the city ceased existence in early 1972.<sup>29</sup>

Following the disincorporation, Riverside County inherited Cabazon’s assets and liabilities and wound down its remaining affairs, including sale of the city’s personal property and cancellation of its lease for various city buildings.<sup>30</sup> The county paid the city’s outstanding debts with the remaining city funds, along with funds generated from property sales and debts owed to the city. Nearly ten years later, the former city’s account still had a surplus.<sup>31</sup>

### III. LEGAL EFFECT OF DISINCORPORATION

LAFCOs have broad authority to craft the legal effect of a disincorporation through the imposition of specific terms and conditions on a proposal. These terms and conditions supersede the Act’s general provisions regarding the legal effect of disincorporation.<sup>32</sup> However, LAFCOs may not require or allow terms and conditions in violation of the remainder of the Act.

#### A. EFFECT ON DEBTS AND CONTRACTS

A disincorporation may not impair the rights of “any bondholder or other creditor of any county, city, or district,” nor may it impair contract rights or contracts entered into by a public entity pursuant to a joint exercise of powers agreement.<sup>33</sup> Likewise, no disincorporation, or term or condition required, may limit the power of bondholders or other creditors to enforce their rights against the city or the successor county receiving the disincorporated city’s assets.<sup>34</sup> These limits stem not only from statute, but also the California Constitution’s and the U.S. Constitution’s prohibitions on the impairment of contracts by operation of state law.<sup>35</sup>

The Act does not define “creditor,” however California law elsewhere defines the term as “one in whose favor an obligation exists, by reason of which he is, or may become, entitled to the

payment of money.”<sup>36</sup> Also, “[i]n the absence of fraud every contract of a debtor is valid against all his creditors.”<sup>37</sup> The Myers-Milias-Brown Act, which governs collective bargaining between cities and their public employees, does not expressly make collective bargaining agreements, in the form of memoranda of understanding, enforceable; however, the California Supreme Court has held that such agreements become binding once approved by the city.<sup>38</sup> Thus, as binding contracts, a city’s agreements with public employees’ unions might be inviolable in a disincorporation, at least under current California law.

That said, section 56886 of the Act expressly authorizes LAFCOs to impose terms and conditions related to public employment, including the modification and termination of existing employment contracts.<sup>39</sup> This provision would be without meaning if such agreements were inviolable under the Act, lending credence to the argument that public employees’ unions and their members are not “creditors” within the Act’s use of the term.

While the California and U.S. Constitutions bar impairment of contracts by the state, this limit is “not an absolute one and is not to be read with literal exactness like a mathematical formula.”<sup>40</sup> Courts determine whether an unconstitutional impairment of a contract exists by applying a balancing test that compares the severity of the impairment against the public interest in the action allegedly causing the impairment.<sup>41</sup> The California Supreme Court found that a legislative act expressly invalidating certain collective bargaining agreements was unconstitutional in *Sonoma County Organization of Public Employees*.<sup>42</sup> However, a disincorporation would not necessarily invalidate public employment contracts but might instead be viewed as a default by the city. If that were the case, the public employees may be able to assert any contractual rights against the former city’s remaining assets.

Thus, the disincorporation may not unconstitutionally impair the obligation of the contracts, but rather would, in the case of an insolvent former city, leave public employees with valid, if valueless, claims.<sup>43</sup> Further, “it is well settled in California that public employment is not held by contract but by statute . . . .”<sup>44</sup> Likewise, statute, not contract, controls the terms and conditions of public employment, and public employment contracts cannot circumvent contrary statutes.<sup>45</sup> While a public employee may obtain a right protected by the contract clauses of the state and federal constitutions, as was the case in *Sonoma County*, such right does not include the “right to remain in an office or employment, or to the continuation of civil service status.”<sup>46</sup>

## B. EFFECT ON FORMER CITY’S INHABITANTS AND TERRITORY

Upon the effective date of a disincorporation, the county board of supervisors is responsible for winding up the affairs of the former city.<sup>47</sup> Residents of the former city no longer have any rights or duties as inhabitants or voters of a city.<sup>48</sup> Prior to the effective date, public officers must turn over public property to the county board of supervisors, and the city council must turn over all city funds, as certified by the LAFCO or the county, to the county treasurer.<sup>49</sup> The county tax collector may collect any levied but uncollected taxes owed to the disincorporated city, and the county may collect or sue for all debts owed the city.<sup>50</sup> The county places all funds related to the former city in a special fund for winding up the city’s affairs and paying any debts owed by the city.<sup>51</sup> If the special fund is insufficient to pay city indebtedness, the Act states that the county “shall cause to be levied, and there shall be collected from the territory formerly included within the city, taxes sufficient to pay the indebtedness as it becomes due.”<sup>52</sup> If the special fund has a surplus, the Act gives the county discretion to use the funds for various public services within the former city’s

territory.<sup>53</sup> Other territories within the county are not responsible and may not be taxed for the debts or liabilities of the former city.<sup>54</sup>

While the Act requires a county to impose taxes on the former territory of a disincorporated city to make its creditors and bondholders whole, this requirement predates California's adoption of the "Jarvis Family of Initiatives" – Propositions 13 (1978), 4 (1979), 62 (1986), and 218 (1996) – and is likely unconstitutional absent some form of voter approval of the additional taxes.<sup>55</sup> Proposition 218 would require voters in the former city to approve a new special tax by a two-thirds majority or a new general tax by a simple majority,<sup>56</sup> while Proposition 13 would absolutely prohibit any additional property taxes within the former city's territory, even with voter approval.<sup>57</sup> However, while the California Constitution does not allow a county to impose taxes directly under the Act, a LAFCO can require voter approval of such taxes as a condition of approving the disincorporation proposal in the first place.<sup>58</sup>

#### **IV. THE DISINCORPORATION PROCESS<sup>59</sup>**

##### **A. STAGE 1 – INITIATION OF PROCEEDINGS**

There are two ways to propose disincorporation of a California city – either by petitioning the area LAFCO or by filing a resolution of application adopted by any "affected local agency,"<sup>60</sup> which would include the city itself, the county, or any special district including a portion of the city.<sup>61</sup> This article uses a city as a representative local agency for purposes of filing a resolution of application; other affected local agencies also have such powers.

Formal initiation of commission proceedings does not occur until the date the petition or resolution is accepted for filing and the LAFCO's executive officer issues a certificate of filing.<sup>62</sup> These are two separate events under California law. After accepting and certifying the filing of the application, the executive officer must set the proposal for hearing within 90 days and give public notice at least 21 days prior to the hearing on the LAFCO website and in the local newspaper.<sup>63</sup> The LAFCO's executive officer must also issue a report, including recommendations, to the commission, proponents, and affected local agencies no later than five days prior to the hearing.<sup>64</sup>

##### **1. Procedure for Acceptance and Certification**

A petitioner or city submits its application to the area LAFCO's executive officer, who then immediately gives various local agencies notice, describing the proposal and the affected territory.<sup>65</sup> The executive officer has 30 days from receipt to determine whether the application is complete.<sup>66</sup> If the application is incomplete, the executive officer must immediately inform the applicant of any missing elements.<sup>67</sup> Even if complete at filing, however, the executive officer cannot accept an application for filing or issue a certificate of completion for at least 20 days from receipt.<sup>68</sup>

If the executive officer takes no action within 30 days, the application is deemed accepted for filing so long as it includes the required information.<sup>69</sup> After accepting the application for filing, the executive officer must immediately issue to the applicant a certificate of filing, detailing the date of the commission hearing on the proposal.<sup>70</sup>

##### **2. Contents of Petitions and Resolutions**

Petitions and resolutions must meet statutory informational requirements and conform to

the area LAFCO's rules.<sup>71</sup> Resolutions must contain the same information as required of petitions, aside from signature requirements.<sup>72</sup>

### 3. Additional Requirements for Resolutions

Cities may provide public notice prior to adopting a resolution, but must do so at least 21 days in advance.<sup>73</sup> A city filing a resolution of application must also submit a plan for providing services within the city that includes, among other things, specific information on the level of services and how those services will be financed.<sup>74</sup>

### 4. Additional Requirements for Petitions

Petitioners must file a notice of intention, including a brief explanation of the proposal, with the LAFCO's executive officer before circulating a petition for disincorporation.<sup>75</sup> The executive officer then notifies the city and other affected local agencies about the petition.<sup>76</sup>

More than 25% of the city's registered voters must sign the petition for disincorporation.<sup>77</sup> Signers of the petition must provide their dated signature and address.<sup>78</sup> Signatures expire within six months of signing, and proponents must submit the petition within 60 days of gathering the last signature.<sup>79</sup> There is a special procedure applicable to cities in Los Angeles County with over 100,000 residents requiring additional public notice and a shorter window of time (90 days) for gathering signatures.<sup>80</sup>

Within 30 days (excluding weekends and holidays), the LAFCO's executive officer must have the petition's signatures reviewed by the county elections official according to *Election Code* standards, and must prepare a certificate of sufficiency stating whether the petition has enough valid signatures.<sup>81</sup> If the petition is insufficient, proponents can gather signatures for a supplemental petition for an additional 15 days from the executive officer's notice of insufficiency or, at their option, from submitting the petition.<sup>82</sup> The executive officer then has ten days to review the supplemental petition and issue a new certificate of sufficiency.<sup>83</sup>

## B. STAGE 2 – CONSIDERATION BY THE LAFCO

Once the LAFCO has initiated proceedings, it must hold a public hearing within 90 days, which is a mandatory deadline.<sup>84</sup> The commission may continue the hearing for up to 70 days.<sup>85</sup> Within 35 days of concluding the hearing, the LAFCO must either approve or disapprove the proposal by resolution, with or without amendment, including any terms or conditions required by the commission.<sup>86</sup> The commission's resolution can amend the proposal, so long as the amendment does not change the general nature of the proposal.<sup>87</sup>

Apart from approval or disapproval, the commission's resolution must also make any findings required by statute or by commission rule.<sup>88</sup> Disapproval terminates the proceedings<sup>89</sup> and bars reconsideration of a similar proposal for one year, subject to a commission waiver.<sup>90</sup>

If the LAFCO approves the proposal for disincorporation, any person or affected agency has the option of requesting reconsideration of the decision within 30 days, another mandatory deadline.<sup>91</sup> While the request is pending and throughout reconsideration, state law tolls statutes of limitations and procedural deadlines.<sup>92</sup> The written request must specify any changes being sought to the resolution and what additional or different facts are claimed.<sup>93</sup> After giving 21-days notice,

the commission must consider the request at its next meeting.<sup>94</sup>

Reconsideration is quite similar to the commission's initial public hearing, and the commission can continue the reconsideration for up to 35 days.<sup>95</sup> At the end of reconsideration, the commission must approve or disapprove the request, with or without amendment, and the decision is final with regard to the reconsidered issue.<sup>96</sup> However, if the commission approves the request, it must file a new resolution, which then has its own 30-day window for reconsideration requests and restarts this process.<sup>97</sup>

If reconsideration eventually produces an approved proposal for disincorporation, or if no one files a request for reconsideration, the proposal moves forward to the election stage.<sup>98</sup>

### 1. The Hearing and Factors for Review

LAFCOs must comply with California's open meeting and "sunshine" laws, including the Brown Act.<sup>99</sup> The commission must hear and receive any oral or written objections or evidence put before it, and also must consider the executive officer's report and the city's plan for providing services.<sup>100</sup>

The commission also must consider a wide-ranging list of factors, including, in part:

- (1) the cost and adequacy of governmental services,
- (2) the effect on the governmental structure of the county,
- (3) the ability and financial wherewithal of the receiving entity to provide services,
- (4) the comments of residents, landowners, and voters, and
- (5) various other factors, such as environmental justice, water supplies, and housing needs.<sup>101</sup>

### 2. Terms and Conditions

The LAFCO has broad authority to require additional terms and conditions of any proposed disincorporation.<sup>102</sup> The California Supreme Court described this authority as the power to impose a "virtually limitless array of factors" on proposals.<sup>103</sup> Further, the commission can grant conditional approval, such as requiring proceedings for an additional change of organization (e.g., incorporation of a new city or district), with up to a six-month delay in the proceedings for satisfaction of the condition.<sup>104</sup> The California Attorney General confirmed that a commission can even condition its approval of an incorporation on voter approval of additional taxes.<sup>105</sup>

### 3. Limitations on the LAFCO's Authority

A LAFCO may not require or approve a disincorporation, or any terms or conditions required of a disincorporation, in violation of the Act. This includes the Act's limits on the impairment of the rights of bondholders or creditors.<sup>106</sup>

A LAFCO also may not impose terms or conditions that directly regulate land use density or intensity.<sup>107</sup>

## C. STAGE 3 – ELECTION

After the LAFCO endorses a disincorporation proposal, the commission must adopt a resolution ordering the city's disincorporation, subject to voter approval.<sup>108</sup> However, if the commission determines that a majority of voters in the city have filed written protests against the proposal, a vote is unnecessary, and the proposal is abandoned.<sup>109</sup> If either a majority protest exists or a majority of voters disapprove the proposal in an election, the Act bars reconsideration of a similar proposal for two years, subject to a commission waiver.<sup>110</sup>

The election must occur on the next regular election date at least 88 days after adoption of the resolution ordering the election.<sup>111</sup> However, a special election on the matter may be conducted using mailed ballots if authorized by the county elections official.<sup>112</sup> Unless the LAFCO and the proponents of disincorporation otherwise agree, the city (or its remaining assets) bears the costs of the election.<sup>113</sup>

Only the voters within the city to be disincorporated may vote on the proposal.<sup>114</sup> The general election and local election provisions of the *California Elections Code* govern the voting process, however any inconsistencies are resolved in favor of the local election provisions.<sup>115</sup> Likewise, any inconsistencies between the *Elections Code* and the Act are resolved in favor of the Act.<sup>116</sup> The Act provides specific notice requirements, including the contents of the notice, and a particular form for the ballot.<sup>117</sup>

Within five days of calling the election, the LAFCO's executive officer must provide the commission with a brief, impartial analysis of the disincorporation proposal.<sup>118</sup> The commission must then approve the analysis, with or without amendments, and submit it to the county elections official for inclusion in the ballot pamphlet.<sup>119</sup> The city, any affected agency, voters, and citizen associations may also submit brief arguments for and against the proposal for similar inclusion in the pamphlet.<sup>120</sup>

After the election, the county elections official must immediately submit the results to the LAFCO.<sup>121</sup>

#### D. STAGE 4 – COMPLETION OF PROCEEDINGS

If the voters approve the disincorporation, the LAFCO must issue a certificate of completion confirming its order within 30 days of the election canvass.<sup>122</sup> The commission's executive officer then prepares and files a certificate of completion upon satisfaction of any terms and conditions required in the commission's approval of the disincorporation.<sup>123</sup> The executive officer must file the certificate within 90 days of the election with the county recorder and each affected local agency.<sup>124</sup>

If set by the commission, the effective date of an approved disincorporation must be within nine months after the election (but no earlier than the execution date of the certificate of completion).<sup>125</sup> Otherwise, the disincorporation takes effect on the date the certificate of completion is recorded by the county recorder.<sup>126</sup>

### V. CONCLUSION

While no California city has disincorporated in over thirty-six years, disincorporation remains possible and provides an alternative that some California cities or concerned citizens may want to consider. However, there is no modern precedent for an economically motivated

disincorporation. The only use of the LAFCO-led disincorporation process, by Cabazon in 1972, did not involve unwinding complicated financial matters, the possible impairment of public employment contracts, or concerns that creditors would be left empty-handed. Disincorporation of a larger and more complex city would require the LAFCO to undertake a detailed process of determining how to avoid unconstitutional impairment of contracts and to transfer services to the county in a way that would not unduly burden the county while continuing to provide essential services to the residents of the former city. Given California's constitutional limitations on new local taxes, a city that attempted to disincorporate without having sufficient revenues to satisfy its obligations might not be able to do so unless its citizens approved new taxing measures, as the LAFCO might well condition approval of the disincorporation on approval of new revenue measures sufficient to satisfy the obligations of the city.

If a city or group of citizens wants to pursue disincorporation, the support of the local LAFCO is critical, absent a legislative amendment or exception to the Act. The LAFCO has near-total control over the process and can modify or condition proposals as it sees fit. Support of the city's residents will also be necessary. Lastly, given the lack of precedent, any disincorporation, particularly if driven by financial considerations, might involve litigation over both its process and legal effect. Disincorporation is a controversial option, and at least some citizens – let alone creditors and others with a stake in the city's continued existence – should be expected to oppose it.

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<sup>1</sup> *Bd. of Supervisors of Sacramento County v. Local Agency Formation Comm'n of Sacramento County*, 838 P.2d 1198, 1203 (Cal. 1992) (discussing the predecessor to current section 56886 of the *California Government Code*).

<sup>2</sup> CAL. GOV'T CODE §§ 56000-57550 (Deering 2009). Unless otherwise noted, all statutory citations are to the *California Government Code*.

<sup>3</sup> § 56100.

<sup>4</sup> *Id.* The Act makes no distinction between chartered and general law cities, defining "city" to include both categories. § 56023. While the California Constitution provides that chartered cities may disregard state legislative acts pertaining to municipal affairs, disincorporation is not a municipal affair. CAL. CONST. art. XI, § 5(a). California courts have held that annexations, as changes of organization under the Act, are matters of statewide concern and are not subject to a city's charter. *See Ferrini v. City of San Luis Obispo*, 197 Cal. Rptr. 694, 699 (Cal. Ct. App. 1983) (holding that annexations, as "changes of organization" under the Act's predecessor, were not municipal affairs subject to a contrary city charter's provisions), *cited with approval in DeVita v. County of Napa*, 889 P.2d 1019, 1037 (Cal. 1995). Although no court has yet addressed the specific status of disincorporation, the same analysis would apply because the Act includes both annexation and disincorporation in its definition of "change of organization." § 56021.

<sup>5</sup> § 56021.

<sup>6</sup> § 56034.

<sup>7</sup> § 56073.

<sup>8</sup> § 56375(a)(1).

<sup>9</sup> § 56301.

<sup>10</sup> § 56375(g)-(i).

<sup>11</sup> § 56106.

<sup>12</sup> § 56107(b).

<sup>13</sup> § 56107(c).

<sup>14</sup> § 56103.

<sup>15</sup> CAL. CIV. PROC. CODE §§ 860, 863 (Deering 2009).

<sup>16</sup> *Id.* § 860; CAL. GOV'T CODE § 56102.

<sup>17</sup> *See Torres v. City of Yorba Linda*, 17 Cal. Rptr. 2d 400, 406 (Cal. Ct. App. 1993) (holding nonresident plaintiff who hoped to become a resident lacked standing to challenge city redevelopment plan despite paying city sales tax).

<sup>18</sup> § 56160.

<sup>19</sup> *See* 2000 Cal. Stat. 761 (discussing effect on prior law).

<sup>20</sup> *Bd. of Supervisors of Sacramento County v. Local Agency Formation Comm'n of Sacramento County*, 838 P.2d 1198, 1205 (Cal. 1992).

<sup>21</sup> *See* § 56757(a).

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- <sup>22</sup> California League of Cities, California Municipal Disincorporations (unpublished tbl., on file with author). The four cities disincorporated by statute include: Columbia (1870), Dutch Flat (1866), Felton (1917), and Hornitos (1973).
- <sup>23</sup> *Id.* The disincorporated cities include: Bayshore (1940), Boulder Creek (1915), Cabazon (1972), Columbia (1870), Coram (1918), Dutch Flat (1866), Felton (1917), Hornitos (1973), Kelseyville (1902), Kennett (1930), Long Beach (1896), McKittrick (1927), North Sacramento (1963), Orangethorpe (1923), Pismo Beach (1940), Potter Valley (1926), and Stanton (1924).
- <sup>24</sup> *Id.*
- <sup>25</sup> *Id.*; see 1972 Cal. Stat. 1209-10 (“The Town of Hornitos is hereby disincorporated.”).
- <sup>26</sup> Staff Report from Robert J. Fitch, Assistant Executive Officer, Riverside County LAFCO, to the Riverside County LAFCO 2 (July 15, 1971) (on file with author).
- <sup>27</sup> *Id.* at 1-2.
- <sup>28</sup> See Letter from Robert J. Fitch, Assistant Executive Officer, Riverside County LAFCO, to the Cabazon City Council 1 (July 22, 1971) (on file with author) (confirming approval of the LAFCO and next steps for disincorporation).
- <sup>29</sup> Cabazon, Cal., Res. 376 (Jan. 17, 1972). See CAL. SEC’Y OF STATE, Certification of Cabazon Disincorporation (Apr. 13, 1972).
- <sup>30</sup> See, e.g., Letter from W.G. Henderson, Riverside County Purchasing Agent, to Robert Fitch, Riverside County Admin. Office 1 (Aug. 7, 1973) (on file with author) (listing personal property and sale amounts); Letter from Robert J. Fitch, Assistant Executive Officer, Riverside County LAFCO, to Gordon Siddons 1 (Feb. 25, 1972) (on file with author) (cancelling the month-to-month lease of Cabazon’s city hall and police headquarters).
- <sup>31</sup> See Fax from Robert J. Fitch, Riverside County Admin. Officer, to Riverside County Counsel 1 (Oct. 5, 1981) (on file with author) (discussing remaining balance of \$6,023.86 in the Cabazon Disincorporation Trust Fund).
- <sup>32</sup> § 57302.
- <sup>33</sup> § 56121.
- <sup>34</sup> §§ 56122, 56121(d).
- <sup>35</sup> *People v. Banning Co.*, 138 P. 101, 102 (Cal. 1913) (citing the predecessor to article I, section 9 of the California Constitution and Article I, Section 10 of the U.S. Constitution).
- <sup>36</sup> CAL. CIV. CODE § 3430 (Deering 2009).
- <sup>37</sup> *Id.* § 3431.
- <sup>38</sup> *Glendale City Employees’ Ass’n v. Glendale*, 540 P.2d 609, 614 (Cal. 1975). See CAL. GOV’T CODE § 3505.1.
- <sup>39</sup> § 56886(j).
- <sup>40</sup> *Sonoma County Org. of Pub. Employees v. County of Sonoma*, 591 P.2d 1, 5 (Cal. 1979) (citing *Home Bldg. & Loan Ass’n v. Blaisdell*, 290 U.S. 398, 428 (1934)).
- <sup>41</sup> *U.S. Trust Co. of N.Y. v. N.J.*, 431 U.S. 1, 25 (1977) (holding that, with regard to government contracts, “[a]s with laws impairing the obligations of private contracts, an impairment may be constitutional if it is reasonable and necessary to serve an important public purpose”). See *Blaisdell*, 290 U.S. at 438 (“The question is not whether the legislative action affects contracts incidentally, or directly, or indirectly, but whether the legislation is addressed to a legitimate end and the measures taken are reasonable and appropriate to that end.”). The California Supreme Court has interpreted the California Constitution’s contract clause in parallel with that of the U.S. Constitution, applying the same balancing test approach to claims under both clauses. *Sonoma County Org. of Pub. Employees*, 591 P.2d at 10-11.
- <sup>42</sup> *Sonoma County Org. of Pub. Employees*, 591 P.2d at 11.
- <sup>43</sup> Insolvency raises the prospect of a city seeking to use chapter 9 of the *United States Bankruptcy Code*, 11 U.S.C. § 901 *et seq.*, as a means of implementing a disincorporation or avoiding disincorporation altogether. However, municipal bankruptcy is a complex topic and is beyond the scope of this article. A helpful overview of chapter 9 may be found in JOHN KNOX & MARC LEVINSON, MUNICIPAL BANKRUPTCY: AVOIDING AND USING CHAPTER 9 IN TIMES OF FISCAL STRESS (2009), available at <http://www.orrick.com/fileupload/1647.pdf>. A more technical overview of chapter 9 may be found on the website of the Administrative Office of the United States Courts at <http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/chapter9.html>.
- <sup>44</sup> *Miller v. State*, 557 P.2d 970, 973 (Cal. 1977).
- <sup>45</sup> *Id.*
- <sup>46</sup> *Kern v. City of Long Beach*, 179 P.2d 799, 802 (Cal. 1947).
- <sup>47</sup> § 57412.
- <sup>48</sup> § 57400.
- <sup>49</sup> §§ 57401-404.
- <sup>50</sup> §§ 57405, 57413.
- <sup>51</sup> § 57407.
- <sup>52</sup> § 57409.

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<sup>53</sup> § 57411.

<sup>54</sup> § 57419.

<sup>55</sup> Section 57409 derives from former section 34718 of the *Government Code*, which uses nearly identical language and was adopted by the legislature in 1949. 1949 Cal. Stat. 110.

<sup>56</sup> Interestingly, article XIII C, section 2(b) of the California Constitution, which was enacted as a part of Proposition 218, requires that majority-vote general taxes only be considered by the electorate at an election at which the members of the governing body of the city council are up for election. In the case of a disincorporation, it might be that there would be no further city council elections at which to consider such a measure.

<sup>57</sup> See CAL. CONST. art. XIII A, § 1(a).

<sup>58</sup> 89 Op. Cal. Att’y Gen. 173 (2006).

<sup>59</sup> See PETER M. DETWILER, CAL. ENVTL. L. & LAND USE PRACTICE § 73.13 (2009), for general background on the process used by a LAFCO for proposed changes of organization. While not focused on disincorporation per se, this treatise is helpful in understanding the obstacles facing a proponent and the tools available to an opponent of disincorporation.

<sup>60</sup> A LAFCO can self-initiate most changes of organization, however it cannot do so for disincorporation proposals. See § 56375(a)(2).

<sup>61</sup> §§ 56650, 56654(a). See § 56700 (requirements for petitions) and § 56654 (requirements for resolutions).

<sup>62</sup> § 56651.

<sup>63</sup> §§ 56658(i), 56660-61. See § 56157 (regarding notice requirements).

<sup>64</sup> § 56665.

<sup>65</sup> § 56658(b)(1).

<sup>66</sup> § 56658(d).

<sup>67</sup> § 56658(h).

<sup>68</sup> § 56658(e).

<sup>69</sup> § 56658(f).

<sup>70</sup> § 56658(g).

<sup>71</sup> §§ 56652, 56700. Petitions and resolutions must include:

- (1) a statement that the proposal is made pursuant to the Act,
- (2) a statement of the nature of the proposal,
- (3) a map and description of the territory’s boundaries,
- (4) any proposed terms or conditions for the disincorporation,
- (5) the reason(s) for the proposal,
- (6) any data or information required by the area LAFCO’s regulations or by its executive officer,
- (7) contact information for the proponents,
- (8) a request for proceedings,
- (9) a statement whether the proposal is consistent with the city’s sphere of influence, and
- (10) [for petitions only] a statement that the petition is signed by registered voters.

*Id.*

<sup>72</sup> § 56654(d).

<sup>73</sup> § 56654(c).

<sup>74</sup> § 56653.

<sup>75</sup> § 56700.4(a).

<sup>76</sup> § 56700.4(c).

<sup>77</sup> § 56765.

<sup>78</sup> § 56704.

<sup>79</sup> § 56705(a).

<sup>80</sup> §§ 56705(b)(1), 56760.

<sup>81</sup> § 56706(a).

<sup>82</sup> § 56706(b).

<sup>83</sup> § 56706(c).

<sup>84</sup> See § 56658(i).

<sup>85</sup> § 56666(a).

<sup>86</sup> § 56880.

<sup>87</sup> *Fallbrook Sanitary Dist. v. San Diego Local Agency Formation Comm’n*, 256 Cal. Rptr. 590, 594 (Cal. Ct. App. 1989).

<sup>88</sup> § 56881.

<sup>89</sup> § 56880.

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<sup>90</sup> § 56884.

<sup>91</sup> § 56895(a), (c).

<sup>92</sup> § 56895(d).

<sup>93</sup> § 56895(a).

<sup>94</sup> § 56895(e).

<sup>95</sup> § 56895(f).

<sup>96</sup> § 56895(g)-(h).

<sup>97</sup> *Id.*

<sup>98</sup> Note that disincorporations are specifically exempt from the Act's requirement of protest proceedings before the LAFCO. *See* § 57000(a) (protest proceedings only required for changes of organization "not described in Section 57077").

<sup>99</sup> *See* § 54953.

<sup>100</sup> § 56666(b).

<sup>101</sup> § 56668.

<sup>102</sup> § 56886. These terms and conditions may include:

- (1) the payment of funds for use of public property, including the levying and collection of taxes, assessments, or other charges for providing such a payment,
- (2) requirements relating to liability for bonds, contracts, and obligations of the city, including the levying and collection of taxes in an amount necessary to provide payment,
- (3) the incurring of new indebtedness or liability by the city, including issuance of bonds by the city or its successor,
- (4) requirements relating to the city's personal and real property,
- (5) the disposition of city funds,
- (6) "[t]he employment, transfer, or discharge of employees, the continuation, modification, or termination of existing employment contracts, civil service rights, seniority rights, retirement rights, and other employee benefits and rights,"
- (7) the designation of a successor to the city "for the purpose of succeeding to all of the rights, duties and obligations [of the city] . . . with respect to enforcement, performance, or payment of any outstanding bonds . . . , or other contracts and obligations of the [city],"
- (8) the initiation or completion of additional commission proceedings,
- (9) the continuation or provision of services by the city,
- (10) the continuation of prior taxes, assessments, fees, or other charges by the city or its successor,
- (11) the transfer of authority among affected cities, counties, and districts, and
- (12) "[a]ny other matters necessary or incidental to any of the [above] terms and conditions."

*Id.*

<sup>103</sup> *Bd. of Supervisors of Sacramento County v. Local Agency Formation Comm'n of Sacramento County*, 838 P.2d 1198, 1203 (Cal. 1992) (discussing the predecessor to current section 56886).

<sup>104</sup> § 56885.5.

<sup>105</sup> 89 Op. Cal. Att'y Gen. 173 (2006).

<sup>106</sup> *See* discussion *supra* under "Legal Effect of Disincorporation."

<sup>107</sup> § 56375(a)(6).

<sup>108</sup> § 57077(a)(1).

<sup>109</sup> § 57078.

<sup>110</sup> § 57090.

<sup>111</sup> § 57132.

<sup>112</sup> § 57125(b).

<sup>113</sup> § 57150.

<sup>114</sup> § 57118(a).

<sup>115</sup> § 57125.

<sup>116</sup> § 57125(a)(2).

<sup>117</sup> §§ 57130-31, 57133.

<sup>118</sup> § 57144.

<sup>119</sup> *Id.*

<sup>120</sup> § 57145.

<sup>121</sup> § 57149.

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<sup>122</sup> § 57176; If the voters disapprove the disincorporation, the commission must issue a certificate of termination.

§ 57179.

<sup>123</sup> § 57200.

<sup>124</sup> § 57203.

<sup>125</sup> § 57202(a).

<sup>126</sup> § 57202(c).