



BUSINESS & FACILITIES

News and Legal Developments in Business,
Contracts, Construction and Property

A Local Agency Formation Commission (LAFCO) Cannot Condition Its Performance On Applicant Agreeing To Reimburse Litigation Expenses

Central Coast Development Company (Developer) owned a 154-acre parcel of property within the City of Pismo Beach (City). The Developer wanted to construct 252 single-family residences and 60 senior housing units on the parcel. The City approved the Developer’s application for a development permit and the City and Developer applied to the San Luis Obispo Local Agency Formation Commission (LAFCO) to annex the property. The LAFCO application signed by the City and the Developer contained an indemnity agreement for “damages, costs, expenses, attorneys’ fees, and expert witness fees...arising out of or in connection with the application.”

LAFCO denied the application and the City and Developer brought an action to challenge that decision. LAFCO prevailed and presented a bill to the City and Developer for more than \$400,000 in attorney fees and costs. However, the City and Developer refused to pay. In response, LAFCO filed suit asserting breach of contract. LAFCO argued that the indemnification provision was “given in consideration for not requiring anticipated attorney fees to be paid as part of the application fee at the beginning of the process.” The City and Developer disagreed. The court ruled that LAFCO had no authority to impose such fees for post-administrative proceedings. LAFCO appealed the trial court’s ruling.

Ultimately, the Court of Appeal held that the statutory authority for local agency formation commissions only permits the imposition of fee increases associated with application processing, and application processing does not include indemnification for post-application processing. The Court further held that the “agreement” to indemnify was not an actual agreement since there was no consideration, which constitutes either a benefit to the promisor or a detriment to the promise. In this case, LAFCO had a statutory duty to accept all completed applications and did not give any consideration in exchange for the indemnity agreement. Therefore, LAFCO’s indemnity requirement in its application was invalid.

San Luis Obispo Local Agency Formation Commission v. City of Pismo Beach, et al. (2021) 61 Cal.App.5th 595.

NOTE:

This is an interesting and important decision. To the extent that districts, and other public agencies, are required to accept for filing and review, and approve or disprove, various types of applications, they cannot unilaterally include indemnification clauses with attorneys' fees requirements without specific statutory authority to do so.

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