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## WHITE PAPER

# Newly Incorporated Cities: Successfully Transitioning to Cityhood

## *A Guide to Surviving the Post-Incorporation Blues*

Gary Thompson  
**Winzler & Kelly**

Edited by  
Bob Aldrich  
**Orange LAFCo**

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*Prepared as a service to CALAFCO members*

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For information on reprints, please contact:  
California Association of Local Agency Formation  
Commissions  
801 12<sup>th</sup> Street, Suite 611  
Sacramento, CA 95814

916/442-6536

**[www.calafco.org](http://www.calafco.org)**

# **Newly Incorporated Cities: Successfully Transitioning to Cityhood**

**(A Guide to Surviving the Post-Incorporation Blues)**

## **INTRODUCTION**

So the incorporation election was successful and a new city is formed. Congratulations! After the traditional election night celebration winds down, the long-winded “thank you” speeches mercifully end, and the last champagne bottle is emptied, the real work for transitioning to cityhood begins. How to start? To many, this seems like a daunting and complicated process for some very valid reasons: (1) your “city” does not really become a city until the effective date; (2) your city has no money; and, (3) your city cannot legally enter into contracts or collect revenues. What is a “city in waiting” really supposed to do?

This guide is designed to provide a general overview of how newly incorporated cities can effectively use the time between the incorporation election date and the new city’s effective date to help ensure a smooth transition into cityhood. This is not a comprehensive guide, and you should always consult with legal counsel. This guide, however, will provide you with some time-tested advice and information to at least get you started on the transition process.

For reference, this guide is divided into five major sections: (1) Introduction; (2) Key Terms; (3) Pre-Incorporation Transition Period; (4) Effective Date of Incorporation Tasks; and (5) Post-Incorporation Transition Period.

## **KEY TERMS**

Here are a few key terms that will be used throughout this guide:

### *Effective Date of Incorporation*

The “Effective Date of Incorporation” is the date identified in the LAFCo approving resolution as the new city’s first “official” day. This is the day that all municipal, legislative and police power functions officially transfer to the new city. Although there’s much work to do getting the new city ready for its “opening day”, prior to the effective date, the county and any effective agency remain responsible for all governmental functions.

### Pre-Incorporation Transition Period

There are two periods of time that encompass a new city's "transition period": (1) the Pre-Incorporation Transition Period and (2) the Post-Incorporation Transition Period. The Pre-Incorporation Transition Period is that period of time between the incorporation election and the "Effective Date of Incorporation".

### Post-Incorporation Transition Period

The Post-incorporation Transition Period is that period of time between the "Effective Date of Incorporation" and the end of that current fiscal year, at which time all service responsibility transitions to the new city. This transition period can be as long as one full fiscal year, or as little as a few months of the fiscal year, depending on the timing of the effective date.

## **PRE-INCORPORATION TRANSITION PERIOD**

Prior to the city's effective date, the council-elect should develop an overall plan and organizational structure for the city's operation, including a transition plan for all municipal services. Although each county and new city will have their own unique requirements for transitioning services, there are several items of a general nature that will apply to all new cities:

- The new city should coordinate with their LAFCo to ensure that all necessary filings have been completed with the state to accurately identify the city's official jurisdictional boundary, population count, and property and sales tax revenue allocations.
- The new city has no legal standing until the Effective Date of Incorporation.
- The county obligation to transition services does not begin until the Effective Date of Incorporation, and the county cannot legally transfer any service until that time.
- The county must ensure that its revenue/cost tracking processes for determining the net cost of Transition Period services are in place to begin tracking on the Effective Date of Incorporation.
- The county is required to continue processing all development and other types of applications until the Effective Date of Incorporation unless the applicant requests a delay. The city can impose a delay on processing applications only during the Post-Incorporation Transition Period after the Effective Date of Incorporation. Information should be made available at the County's "public counter" explaining this to avoid confusion on the part of applicants.

### **Pre-Incorporation Transition Period Checklist**

The new city and the city council-elect will have a variety of responsibilities that should be completed to prepare for the city's first day of operation. Below is a general "checklist"

which identifies key activities. (Again, these tasks should be tailored to each new city depending on specific circumstances and the affected agencies involved.)

- Interview candidates for position of Interim City Manager.
- Interview candidates for position of Interim City Attorney.
- Interview candidates for administrative support and/or Interim City Clerk.
- Draft procedures for establishing the Office of City Treasurer (if not elected).
- Verify the LAFCo recorded certificate of completion of the incorporation is filed with the State Board of Equalization and the County Assessor.
- Verify appropriate filings are complete with the State Board of Equalization for sales and property tax allocations.
- Begin researching potential banking relationships, draft an initial investment policy and inquire about the establishment of a loan/line of credit.
- Research insurance coverage and surety bonds, and identify risk management alternatives.
- Verify that all ordinances, resolutions and codes are identified and ready for adoption on the Effective Date of Incorporation. (Please refer to the list of resolutions/ordinances in the “Effective Date of Incorporation Tasks” section of this Guide.)
- Draft resolutions for public health, filing of documents, collection of sales and other taxes, boundary maps, etc.
- Draft guidelines for Planning Agency function.
- Draft set of City Council procedural matters.
- Draft interim procedural processes, documents, and forms for city operations.
- Research locations for temporary city hall offices and meeting space for use during the transition period.
- Locate furniture, fixtures and equipment for office operations.
- Verify that temporary space is available and in operation on the city’s first day.
- Identify information management needs and establish temporary system.
- Identify telecommunication and computer needs, purchase equipment and implement system.
- Identify and develop draft City website and email requirements.
- Coordinate with the various County departments regarding contracts, MOUs, costs, transition and support service requirements.
- Develop a preliminary service transition plan for services city desires to transfer immediately.
- Meet and coordinate with other applicable affected agencies regarding services, contracts, MOUs, legislative requirements, etc.
- Develop a preliminary budget for the Transition Period Fiscal Year.
- Initiate contact with respective area Council of Governments, Transportation Authorities/Commissions, Joint Powers Authorities and other local agencies that provide revenues/services to the new city.
- Provide contact information of key staff to all local agencies, including LAFCo.

## Consultant “Best Efforts” Agreements

The new city will have no revenue during the Pre-Incorporation Transition Period, and only limited revenue for several months during the Post-Incorporation Transition Period. Additionally, the new City Council-Elect will not have legal standing to commit city funds or sign contracts until the Effective Date of Incorporation.

In order to execute the various responsibilities and actions identified above, historically new cities have entered into “Best Efforts” agreements with one or more consultants and/or firms to assist in these activities. These consultants/firms generally are required to fund all costs associated with establishing the city and beginning operations, with only a “promise for reimbursement” once the city starts receiving sufficient revenues. Additionally, it is also common practice to seek “lines of credit” with either the county, or a local financial institution in order to create a sufficient cash flow for reimbursing these costs. This line of credit, if established, cannot be accessed until after the Effective Date of Incorporation.

## County & Other Affected Agencies Checklist

During the Pre-Incorporation Transition Period, the county and other affected agencies are responsible for establishing the revenue and cost tracking system each will use when the Post Incorporation Transition Period begins. This system will quantify the net costs of services provided to the city during the Transition Period. The revenue and cost tracking systems can take different forms depending on the service requirements and data base capabilities of each agency. Generally only those costs and revenues that will transfer to the city should be tracked.

- Establish a complete Assessor Parcel Number (APN) list for the new city jurisdiction from the official map and legal description available from LAFCo. **NOTE** – LAFCo is responsible to file a “Statement of Boundary Change” with the State Board of Equalization (SBE), and the County Assessor & Auditor-Controller’s Offices (Government Code Section 57204). The new city is responsible to ensure that the submittal is complete in all respects in accordance with Government Code Sections 54900-54904, and to provide any additional information required by SBE for filings deemed incomplete.
- Coordinate with the SBE for the establishment of new Tax Rate Area (TRA) numbers for the new city jurisdiction. NOTE- the SBE is responsible to administer the TRA system and establish the new TRAs for the new city.
- Develop the new city’s AB 8 allocation factors for all Property Tax allocations (General Fund, Structural Fire Fund, CSAs detached and transferred, Special districts, etc).
- Establish an internal system for identifying and tracking the following revenue and cost elements as applicable:
  - ◆ Sales and Use Tax.
  - ◆ Property In Lieu of Sales Tax.
  - ◆ Transient Occupancy Tax

- ◆ Franchise Fees (generally Electricity, Natural Gas, Cable TV, Water, Solid Waste, etc.).
  - ◆ Documentary Transfer Tax.
  - ◆ Fines and Forfeitures (only those that will transfer to the new city).
  - ◆ Special Assessments (excluding AB 8 Property Tax) for all Special Assessment Districts such as Landscape Maintenance Districts, Lighting Districts, and CSAs, etc.
  - ◆ Revenues (excluding Property Tax and Special Assessments) and costs associated with all Special Assessment Districts such as Landscape Maintenance Districts, Lighting Districts, and CSAs, etc.
  - ◆ Revenues and costs associated with providing Animal Control and Sheltering services.
  - ◆ Revenues and costs associated with providing Recreational services.
  - ◆ Revenues and costs associated with providing Land Use Planning services.
  - ◆ Revenues and costs associated with providing Engineering and Surveying services.
  - ◆ Revenues and costs associated with providing Building and Safety Permit, Plan Check and Inspection services.
  - ◆ Revenues (excluding Streets & Highways Code Sections 2104, 2105, 2106 and 2107 Fuel Taxes) and costs associated with providing Road and Traffic Signal Maintenance services.
  - ◆ Revenues and costs associated with providing Street Sweeping, Local Drainage, Weed Abatement and Landscape Maintenance services.
  - ◆ Costs associated with providing Fire Protection and Emergency Medical Services.
  - ◆ Costs associated with providing Law Enforcement services.
  - ◆ Costs associated with maintaining Parks, Trails, and other Public Facilities.
  - ◆ Costs associated with the Incorporation Election.
- Develop a list of all Fees for Services in place that will initially transfer to the new city for submittal to the new city.
  - Develop a report of all fees, competitive grants, and other revenues (excluding fuel and non-competitive revenues) collected from internal and other agencies applicable to projects in progress or planned the new city jurisdiction. List should include unexpended Development Impact Fees collected from projects within the new city jurisdiction prior to incorporation.
  - Develop a list of all local parks, trails, and other public facilities that will transfer to the new city. (NOTE- Do not include any park, trail, and other facility that is considered “regional” and/or will remain an asset of the county/affected agency.)
  - Develop a list of all economic development, environmental, recreational, and other applicable programs and services that will transfer to the new city. (**NOTE** – Do not include programs that remain a required County provided program or service.)

- Develop a list of projects planned and/or in progress within any Redevelopment Project Area or Sub-Area partially or wholly encompassed within the new city jurisdictional boundary for submittal to the new city. Identify funding status and any outstanding indebtedness/obligations from bond/indenture issuance.
- Develop a status report of all projects that are in the Planning, Permitting and/or Inspection process that will not be completed and closed out prior to the Effective Date of Incorporation for submittal to the new city.
- Develop a status report of all major Capital Improvement transportation and other projects that are in planning or in progress and will not complete prior to the Effective Date of Incorporation for submittal to the new city.
- Develop a list of all county administered Community Facilities Districts (CFD) for submittal to the new city. (**NOTE** – Generally the applicable county/affected agency will continue the management and legislative/administrative oversight responsibilities for any CFD that is in existence on the Effective Date of Incorporation.)

## **EFFECTIVE DATE OF INCORPORATION TASKS**

On the Effective Date of Incorporation, the new city will have several tasks that must be completed at the first city council meeting. Generally, the first order of business for the city council after being sworn in is the selection of the Mayor and Mayor Pro Tempore. Subsequent to those appointments, the city council then must adopt all mandatory urgency ordinances, agreements and resolutions necessary to conduct business as a legal municipality. Additionally, the city council may also adopt any additional agreements, resolutions, etc. not considered mandatory but desired.

The following is a listing of all general mandatory items that the new city must adopt. Also included are common optional items that are jurisdictional specific, and those that the new city may consider for adoption:

### **Urgency Ordinances**

The following Ordinances are either required or recommended to be adopted on the Effective Date of Incorporation and will go into effect immediately.

- Urgency Ordinance providing for all county Ordinances to remain in effect for 120 days.
- Urgency Ordinance adopting the Bradley-Burns Sales and Use Tax to be administered by the State Board of Equalization.
- Urgency Ordinance establishing a Special Gas Tax Street Improvement Fund.
- Urgency Ordinance adopting a Documentary Transfer Tax.
- Urgency Ordinance to continue the existing Transient Occupancy Tax. (As applicable)
- Urgency Ordinance to continue the existing Business License Tax. (As Applicable)
- Urgency Ordinance to continue the existing Utility Users Tax. (As Applicable)

- Urgency Ordinance transferring Tax Assessment and Collection Duties to the county Assessor and Tax Collector
- Urgency Ordinance adopting any local Major Bridge and Thoroughfare Fees. (As applicable)
- Urgency Ordinance adopting any locally specific programs mandatory for receiving transportation and other program revenues. (As applicable)
- Urgency Ordinance establishing the City Council as the City Planning Agency.
- Urgency Ordinance declaring the City Council as the Redevelopment Agency for the City. (As applicable)
- Urgency Ordinance creating and establishing a City Manager form of government and the position of City Manager.
- Urgency Ordinance adopting an interim City Seal.

### **Other Ordinances**

The following Ordinances may be adopted as a “first reading” followed by a “second reading” at a subsequent meeting. If adopted, they become effective 30 days later.

- Ordinance establishing an interim Claims Procedure.
- Ordinance providing for City Council member salaries.
- Ordinance authorizing City Council Reimbursement for Expenses Incurred in Performance of their Duties.
- Ordinance establishing interim Personnel & Administrative Rules.
- Ordinance establishing the city interim Municipal Code.

### **Resolutions**

#### ***Continuation of County and State Services/Laws***

- Resolution adopting all county resolutions applicable to the city.
- Resolution requesting continuation of county services during the transition year.
- Resolution requesting continuation of traffic enforcement services by the California Highway Patrol. (90 Days)
- Resolution authorizing county officials to enforce laws in the city during the transition year.
- Resolution providing for enforcement by the county health officer of all State health laws and regulations within the city.

#### ***City Operations***

- Resolution designating the time, date and location for regular City Council meetings.
- Resolution appointing the City Manager, City Attorney, City Clerk, City Treasurer, Purchasing Agent.
- Resolution appointing a City Engineer.
- Resolution approving agreement to provide interim financial services.

- Resolution approving agreement for interim City Manager services.
- Resolution approving agreement for interim legal services.
- Resolution designating locations for posting of agendas, ordinances, and/or resolutions required by law to be posted.
- Resolution establishing procedure for selection of Mayor and Mayor Pro-Tempore.
- Resolution establishing procedures for conduct of City Council meetings.
- Resolution proposing a Conflict of Interest Code.
- Resolution authorizing the City Manager to hire personnel and purchase necessary supplies.
- Resolution establishing an address for receiving U.S. mail.
- Resolution setting bond amounts for City Clerk, City Treasurer and other designated personnel.
- Resolution ratifying lease agreements for city office space.
- Resolution ratifying all interim service agreements for city operations. (As Applicable)
- Resolution authorizing filing the Statement of Boundary Creation and all relevant documents.
- Resolution authorizing filing of documents with state and county offices and officers.

### ***Financial***

- Resolution approving agreement for state administration of local Sales and Use Taxes.
- Resolution consenting to cancellation of uncollected taxes, penalties and costs based on the consent of the County legal advisor.
- Resolution authorizing examination of Sales and Use Tax records.
- Resolution requesting Federal Tax Identification Number and directing filing of a Statement of Facts and related information with Secretary of State.
- Resolution adopting a Petty Cash Fund.
- Resolution designating City Holidays.
- Resolution adopting the Budget for the current fiscal year. (Inclusive of the General Fund, Gas Tax Street Improvement Fund, and all applicable other restricted funds)
- Resolution continuing the levy and collection of all previously authorized county assessments, fees, charges and taxes.
- Resolution ratifying the Provisional Appropriations Limit for the current fiscal year. (Established by LAFCO Resolution)
- Resolution approving the Revenue Neutrality Agreement between the county and the city. (As Applicable)
- Resolution authorizing investment of city monies in an investment fund. (Generally cities will invest in the Local Agency Investment Fund)
- Resolution establishing procedure for payment of city obligations.
- Resolution designating the applicable county as the city agent for service of process under the Revenue and Taxation Code.

- Resolution designating the city's bank and designating the persons authorized to transact city business, and sign warrants and checks.
- Resolution establishing a revolving Line of Credit. (As Applicable)
- Resolution authorizing reimbursement for Pre-Incorporation and Post-Incorporation expenses.

***Transfer of Responsibilities/Facilities***

- Resolution approving membership in any mandatory local Commission, Joint Powers Authority or other entity required by governing law. (As Applicable)
- Resolution accepting all streets, roads and bridges to be transferred to the city. (As Applicable)
- Resolution accepting all parks to be transferred to the city. (As Applicable)
- Resolution accepting all public facilities within the city to be transferred. (As Applicable)
- Resolution accepting authority for all Landscape Maintenance Districts, County Service Areas, Lighting Districts, and other special assessment districts to be detached from the county and transferred to the city. (Designated by LAFCo Resolution)
- Resolution waiving automatic detachment from any Landscape Maintenance District, County Service Area, Lighting District, or other special assessment districts not designated for transfer to the city. (Designated by LAFCO Resolution)  
Resolution approving and accepting insurance coverage. (Generally cities will join one of several JPAs)
- Resolution accepting assignment of county interests in franchise agreements transferred.
- Resolution transferring all Surveying duties from the county Surveyor to the City Engineer.
- Resolution transferring certain Public Works services (**Note** – add language to include other services Planning, Code Enforcement, Building & Safety)

**Note:** State law treats different types of county decisions differently after an incorporation. Note the following code sections for details:

Zoning	Government Code §57376
General Plans	Government Code §65360
Development Agreements	Government Code §65865.3
Vesting Tentative Maps	Government Code §66498.1 (see also <i>City of Goleta v. Superior Court</i> (2000) 40 Cal.4 <sup>th</sup> 270)
Building Permits	Health & Safety Code §19829

***Land Use/CEQA***

- Resolution adopting the county General Plan and Zoning Code on an interim basis as the city's General Plan.
- Resolution adopting CEQA guidelines.

New cities generally hold a ceremonial session for elected official recognition, public recognition and community celebration for marking the historical significance of establishing the city. This celebration can be incorporated into the first city council meeting or can be held at a separate meeting to suit the desires of the city council and the community.

## **POST- INCORPORATION TRANSITION PERIOD**

During the Post-Incorporation Transition Period, the county and other affected agencies will be primarily responsible for providing continuing services to the new city until transferred. The costs for these services are provided on a “net cost” reimbursable basis for a defined period of time after incorporation. This requirement is state mandated and is designed to allow the new city some time to establish its initial staffing, develop an interim service plan, and accrue some initial start up revenues.

The revenue and cost tracking systems, developed during the Pre-Incorporation Transition Period, should be updated on an ongoing basis to accurately capture expenses and revenues during this period. During this time, the new city should work with the county and other affected agencies to develop and implement a municipal service transition plan that provides for the smoothest and most cost efficient transfer of services for both governmental agencies. The new city may elect to transfer any service wholly or partially during this period, but must accept all service responsibility at the end of the Post-Incorporation Transition Period.

Additionally, during this period the county and the new city should negotiate any services that will remain as “contracted” services with the county after the Post-Incorporation Period. These contracts must be adopted and approved by the governing boards of both the county and the new city prior to the end of the Post-Incorporation Transition Period.

### **New City Requirements**

The following is a list of those responsibilities and activities that the city will continue to undertake during the Post-Incorporation Transition Period:

- Review all county ordinances, resolutions, standards, plan review criteria, etc. and begin tailoring to the city’s unique requirements.
- Begin development, preparation and adoption of permanent codes and ordinances.
- Assure that all statutory requirements of the City are addressed.
- Organize the Planning Commission and other commissions or committees determined by the City Council and prepare related guidelines.
- Develop, in conjunction with the county, the service transition plan, identifying the service transition process and any services to be transferred prior to the end of the Transition Period.
- Develop staffing and contract services plan for all City Services/Departments to be implemented prior to the end of the Transition Period.
- Develop and prepare any necessary RFPs and RFQs for permanent contract services.
- Initiate recruitment for permanent City Manager.
- Initiate recruitment for permanent City Attorney.
- Prepare position description specifications for initial permanent city staff.
- Develop personnel systems including the compensation plan and benefits plan.
- Prepare recruiting plan for City Staff and hire as appropriate.

- Update Transition Period budget as revenues/costs are further defined.
- Prepare the following fiscal year city budget and a 3-10 year projection.
- Prepare a 7-Year Infrastructure and Facilities Capital Improvement Plan.
- Implement compliance with GASB 34, GASB 45, SAS 101-111, SAS 114 and NPDES.
- Prepare implementation plans for all City operations.
- Implement public counter procedures.
- Develop and validate an accurate inventory of city assets, including a field inventory.
- Develop fee structures to be used by the city.
- Negotiate permanent contract for police and fire services and other contracted services.
- Review all existing franchise agreements and prepare notices
- Establish working relationships with community associations or groups
- Finalize long term city hall office and meeting room requirements and layout and complete space negotiations.
- Secure any required additional furnishings, fixtures and equipment for long term city hall.
- Coordinate and prioritize planning, engineering and building projects for transition.
- Develop a final schedule for transition of services including transfer of responsibility for law enforcement, fire services, public works, streets and parkway maintenance and parks and recreation. This includes streets, signals, sweeping, parkway, trees, signs, etc. and all related budgets, revenues and expenditures.
- Finalize interim service agreements with the County and other agencies
- Negotiate transitional agreements and MOUs with the county for approval by the City Council.
- Develop and install management systems including word processing, network, data bases, etc.
- Develop and install financial management, budgeting and purchasing system.
- Develop records management and retention system.
- Create permanent city website/homepage/e-government services.
- Implement e-government systems such as on-line citizen request reporting, response, and tracking system.

### **County and Other Affected Agency Requirements**

The following is a listing of those responsibilities and activities that the county and other affected agencies will be responsible for during the Post-Incorporation Transition Period:

- Develop a service transition plan in coordination with the city for all services.
- Continue service delivery of all municipal services until the end of the Post-Incorporation Transition Period, or until requested for transfer by the city, whichever occurs first.

- Inventory and coordinate transfer of any records to the new city.
- Establish appropriate internal accounting system for collection, accounting and transfer of all revenues to be collected by the county or affected agency on behalf of the city.
- Determine any reserve Fund Balances for any County Service Area, Lighting and/or Landscape Maintenance District, and any other Special Assessment District that will be detached and transferred to the new city.
- Negotiate any necessary Redevelopment Project Area or Sub-Area tax sharing or cooperative planning agreements required.
- Coordinate all previously planned Capital Maintenance Projects in process and not started within the city jurisdiction with the city for prioritization and funding negotiations.
- Coordinate and transition all development and transportation projects based on an agreed upon transition plan with all transition complete no later than the end of the Post-Incorporation Transition Period.
- Develop a final revenue/cost accounting report of all services provided for determination of county net costs of services provided to be reimbursed by the new city.

### **Suggestions for Changes or Additions?**

Please send comments and suggestions for addition or changes to:

CALAFCO  
801 12<sup>th</sup> Street, Suite 611  
Sacramento, CA 95814

[www.calafco.org](http://www.calafco.org)

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