



CALIFORNIA (un)INCORPORATED

A coalition of unincorporated communities throughout California whose residents and businesses are effectively denied a municipal level of government

<https://www.caunincorporated.com> caunincorporated@gmail.com

EMPOWERING UNINCORPORATED COMMUNITIES

Some 5-6 million Californians live in urbanized, unincorporated communities where county governments are responsible for providing municipal services like planning and road maintenance. By nature, the structure of a county Board of Supervisors means decisions about the municipal affairs of an unincorporated community are made by Supervisors from outside the community, which minimizes the local voice. Further, the Supervisor who represents an unincorporated community typically has a very large constituency, which also tends to diminish input from these communities.

The state relies on local governments for implementation of urban policy. Yet, whether due to underinvestment in basic infrastructure like sidewalks or lack of engagement in tackling complex municipal policies like housing or the impact of climate change, counties are often unable to adequately address the municipal needs of unincorporated area residents and businesses. The lack of local control in unincorporated communities impacts the state's ability to address the larger policy goals it seeks to achieve across California.

Residents of incorporated cities have local, democratic self-governance. Unlike city residents, people in unincorporated communities do not have Mayors and City Councils to focus on local priorities. They are thus denied the rights and privileges of self-determination enjoyed by residents of cities. Moreover, current state policy works against the empowerment of unincorporated communities, thereby limiting the delivery of the state's urban priorities to a subset of urbanized areas and restricting the ability of citizens to achieve cityhood for their unincorporated communities. Changes are needed.

Reform unincorporated area governance (stepping stones to local control)

1. Status of Municipal Advisory Councils (MACs)

MACs are authorized in Section 31010 of the Government Code. In some counties, MACs are known as Town Councils or Community Planning Advisory Councils. MACs can take on planning and zoning responsibilities on behalf of a county for a specific community, and they can serve as a community forum for municipal issues. Section 31010 states that a MAC may be appointed or elected, leaving the county to choose how MAC members are selected. Though advisory, an elected MAC speaks for the people that elected them, rather than for the Supervisor who made their appointments. **Revise this section so an elected MAC is the default.**

2. Role of Municipal Advisory Councils

Section 31010 allows MACs to advise Supervisors and allows Supervisors to determine a MAC's scope concerning services provided to an unincorporated area by the county. Unincorporated area residents face multiple venues for an issue that would be handled by city staff or just one convening body in a city. Since counties appoint countywide planning commissions, non-elected residents outside of an

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unincorporated community typically make decisions. Any California community - unincorporated or incorporated - should have the power to make decisions for itself. Therefore, **Section 31010 should be revised to consolidate various land-use, planning and zoning authorities into one council for each unincorporated community**, with appeals directly to the Board of Supervisors.

3. Accountability and Transparency

Counties are not compelled to account for how they invest revenue in a given unincorporated community's municipal services. Basic accountability and transparency measures are needed so unincorporated residents and businesses can understand how their tax dollars are spent in the community and to enable advocacy for their interests. **Legislation is needed to compel counties to account for revenue in each unincorporated community, to ensure that these revenues are not inappropriately subsidizing countywide responsibilities.**

Remove impediments to the formation of new cities

1. Vehicle License Fee Reform

California's cities and counties derive their revenues primarily from property taxes, including real estate property taxes and VLF motor vehicle taxes. Every existing city in California obtains, and benefits from, revenues from VLF motor vehicle taxes. Legislation to enable new cities to also derive revenues based on motor vehicle property taxation has been overwhelmingly approved by the Assembly Local Government Committee and then denied on two occasions without debate by the Assembly Appropriations Committee (AB 2491 in 2019 and AB 818 in 2020). **Legislation is needed to give new cities equity with previously incorporated cities for this revenue stream.**

2. California Environmental Quality Act (CEQA) Exemption

LAFCOs frequently use the California Environmental Quality Act (CEQA) as a tool to defeat new municipal incorporations by requiring expensive and time-consuming implementation of CEQA analysis. Under state law a County's existing General Plan and implementing ordinances (that guide day-to-day land use and development) remain in effect when a new city is formed until the new city creates its own General Plan and implementing ordinances (roughly a three-year process), the creation of which requires application of CEQA. In January 2000 the state Commission on Local Governance for the 21st Century found that CEQA analysis of a new municipal incorporation was inappropriate because a municipal incorporation is merely a reorganization of local government. **Legislation is needed to implement the Commission's recommendation for a CEQA exemption.**

3. Financial Analysis

LAFCOs perform a Certified Financial Analysis (CFA) to determine whether a proposal for a new city would be viable. LAFCOs often use the CFA as a device to thwart a new incorporation by 1) requiring

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citizen proponents to pay for a contractor to do the CFA, 2) denying citizen proponents the ability to manage the contractor's use of funds, and 3) characterizing positive results as negatives. State law allows proponents to appeal CFA analysis to the State Controller. Rather than LAFCOs contracting out this analysis, and to ensure a more consistent approach, this work should be assigned to the State Controller.

Revise the LAFCO process so the State Controller will do the CFA.

4. Reasonable Alimony Payments

Revenue Neutrality is a statutory requirement that resembles divorce alimony. In practice, the costs have been negotiated to persist for 25-30 years. The Legislature has never examined the wisdom of such arrangements that place severe limitations on the ability of a new city to meet its municipal responsibilities. County budgets have benefitted from the negotiations, with new cities bearing the increased costs at the expense of the very same taxpayers who used to be under the county's municipal jurisdiction. A standard methodology is needed to structure payments to a county as a new city untangles municipal services from the county and to ensure fairness for the new city's taxpayers. **Revise the LAFCO process for revenue neutrality.**

5. Sales Tax Distribution Reform

Local Governments receive 1.75% of the taxes on sales and, if voters approve, may obtain additional sales tax revenues for their local jurisdiction. Online sellers can inadvertently overcharge buyers in unincorporated communities by using algorithms that inaccurately assign sales taxes based on zip codes and postal naming conventions. State rules allow for sales taxes collected from purchases completed in a local jurisdiction to be allocated to remote distribution sites instead of the jurisdiction of the buyer. Projected revenues for new cities are disadvantaged compared to systems in place for existing municipalities. It is imperative that proposed new cities be allowed to maximize revenues whenever possible, while still protecting their residents and businesses from unnecessary sales tax charges. **Online sales tax revenues should flow to the jurisdiction of the purchaser and should be collected at the rate in effect at the buyer's location.**

6. Annexations

LAFCO processes for annexation neither require a vote of the public in the impacted area nor stipulate revenue neutrality for the county that would forgo revenue from the annexed area. Incorporations require both revenue neutrality and a vote. That is an unbalanced approach. It should be the right of an unincorporated community to decide the fate of its governance, whether through incorporation or annexation. Under present law there can only be a vote by the people impacted by annexation if they gather a very high, very expensive, number of signatures in an unrealistically short time period at their own expense to defend themselves against an unpopular annexation proposal. At a minimum, a vote by the unincorporated area proposed for annexation, funded by the annexation proponents, should be required. **Revise the LAFCO process concerning annexations.**

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Simplify and expedite the process to form a new city

1. Different Pathway to Achieve a Municipal Incorporation

The LAFCO process has been used to protect the status quo and frustrate new incorporations. Yet some counties (notably Orange County) actively plan for new cities to be formed and other existing local governments are often valid precursors to a municipality - in some cases they are assigned that purpose as legislative intent. There should be a streamlined, cost-effective process whereby local governments can, by resolution: either conduct, or ask the State Controller to conduct, a financial analysis for becoming a city and then, based on that analysis, put the issue before the voters in their jurisdiction. This alternative process would not be limited to a single jurisdiction, but may be accomplished by multiple jurisdictions (whether overlapping or adjacent). LAFCO's important function of resolving boundary considerations would remain, but in a review and comment context. **Legislation is needed for this purpose.**

2. Incentives for Municipal Formation

Typically, citizen groups have to raise funds to pay the substantial costs of forming a municipality. This is a significant hardship for disadvantaged communities. The cost of an incorporation inquiry (\$300K-\$600K) is miniscule relative to the state budget. In times of adequacy for the state budget, why not provide incentives for unincorporated communities that seek improvement of municipal services where it makes sense to do so? Incentives could be delivered through grant programs and managed via the state budget process. **Stipulate the use of state programs and grant funds for this purpose**

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