

SACRAMENTO LOCAL AGENCY FORMATION COMMISSION
1112 I Street, Suite #100
Sacramento, California 95814
(916) 874-6458

August 4, 2010

TO: Sacramento Local Agency Formation Commission

FROM: Nancy C. Miller
Miller, Owen & Trost

RE: Proposed Arden Arcade Incorporation Update (LAFC 03-07) (CEQA - EIR
SCH NO. 2007102114)
A. Adopt Resolution Revising the Impartial Analysis

RECOMMENDATION

Incorporation of the City of Arden Arcade (LAFC 03-07) (CEQA - EIR SCH NO. 2007102114)

1. Approve the proposed changes to the Impartial Analysis, approved June 2, 2010, to clarify the Election Process for the proposed Incorporation of Arden Arcade.
2. If approved, direct staff to forward the Resolution and revised Impartial Analysis to the Sacramento County Registrar.

DISCUSSION

On May 19, 2010, the Commission adopted a Resolution Making Determinations on the Incorporation of Arden Arcade. Section 14 of that Resolution provided that the governing body of the proposed new city shall be a six-member City Council and Mayor, all initially elected at large from throughout the area to be incorporated. Section 14 also provided that in future elections, the City Council would be elected by district, and the Mayor would continue to be elected at large.

On June 2, 2010, the Commission approved an Impartial Analysis of the ballot measure for the proposed Incorporation. Consistent with section 14 of the Resolution Making Determinations, the Impartial Analysis provides that seven members are to be elected at large in the initial election on November 2, 2012. The intent of the Commission was that the Mayor be appointed by the City Council, from within its own ranks.

Corrected Resolution Making Determinations

Contrary to the Commission's intent in adopting the Resolution Making Determinations and the Impartial Analysis, the ballot produced by the Sacramento County Registrar includes two questions on the ballot for electing the proposed City's initial governing body – the first question provides for the election of a six-member City Council, and the second question provides for the election of one individual to a separate office of Mayor.

The Commission did not intend for there to be two questions on the ballot, but intended that the ballot would include one question to elect seven council members at-large, one of whom would fill the office of Mayor, as appointed by the City Council. Commencing in November 2012, all City Councilmember seats would then be elected by district and the office of Mayor would then be an at-large position. The three Councilmember seats receiving the lowest vote totals in November, 2010, would stand for election in November, 2012. The remaining three Councilmembers would serve four (4) year terms, commencing with the November, 2010 general election.

County Counsel has taken the position that the Commission's Resolution Making Determinations does not support the Commission's stated intent, and that the ballot questions cannot be revised unless the Resolution Making Determinations is corrected.

Prior to recommending the Resolution Making Determinations and the Resolution Ordering the Incorporation Subject to an Election to the Commission, staff provided County Counsel and the Registrar with the opportunity to review the proposed resolutions. Staff also communicated with County Counsel and the Registrar via e-mail regarding the approved elections process. Despite these communications, the Registrar prepared the ballot and included two questions.

Based on staff's communications with County Counsel and the Registrar, and the record as a whole, staff requested that County Counsel and the Registrar agree to revise the ballot to reflect the Commission's intent. County Counsel, however, believes that the Resolution Making Determinations is inconsistent with the Commission's stated intent and requires correction.

Based on these facts, good cause existed for the Executive Officer of LAFCo to correct the Resolution Making Determinations administratively, pursuant to Government Code Section 56883. All parties agreed upon the corrected language. Staff also consulted with counsel for the Arden Arcade Incorporation Committee (AAIC) regarding the correction. The AAIC had no objection.

Section 14, subsections (a) and (b) were corrected to read as follows:

14. The new City shall have a Council-City Manager form of government.
 - a. Initially, the governing body of the proposed new city shall be a seven-member City Council (including a Mayor appointed by the City Council from its own ranks), elected at-large from throughout the area to be incorporated. The election of the seven members shall be concurrent with

the election question of whether or not the city shall be created by the electorate.

- b. In future elections, the Mayor shall be elected at-large. Members of the City Council in future elections shall be elected by district, as defined in Government Code section 34871.

Under Government Code section 56883, these corrections did not require Commission approval, and were provided to County Counsel and the Registrar on August 3, 2010. Based on the corrected resolution, the Registrar will notify the candidates who took out nomination papers for Mayor that there will be no mayor specific election and that their submissions will be treated as filings for council seats. Because the Board of Supervisors has already directed the Registrar to conduct the necessary election, no further action of the Board of Supervisors is required.

Revised Impartial Analysis

In addition to making the corrections outlined above to the Resolution Making Determinations, the Registrar requested and staff recommends that the Impartial Analysis also be revised.

Government Code section 56989 provides that the Commission must approve any modification to the Impartial Analysis. Unlike the corrections to the Resolution Making Determinations, the Executive Officer does not have the authority to revise the Impartial Analysis. Pursuant to section 56898, the revised Impartial Analysis must be submitted to the officials conducting the election no later than August 12, 2010 (the last day to submit rebuttal arguments).

The Impartial Analysis, attached hereto as Exhibit A, has been revised to add the following language:

“If approved by the voters, the incorporation would:

- Provide for the election of a city council of six members by district, and a mayor to be elected at-large commencing November 2012. At this election (November 2010) seven members shall be elected at-large and the mayor appointed by the City Council from its own ranks.”

With this change, the revised Impartial Analysis is still within the 500 word limit imposed by Government Code section 56989. If approved by the Commission, the revised Impartial Analysis will be sent to the Sacramento County officials conducting the election. Again, because the Board of Supervisors has already directed the Registrar to conduct the necessary election, no further action of the Board of Supervisors is required to revise the Impartial Analysis.

Staff also consulted with counsel for the AAIC regarding the proposed amendment to the Impartial Analysis. The AAIC did not object.