

# Consolidation & Disincorporation of Cities

June 29, 2012  
CALAFCO University  
Los Angeles, CA





# Cities Merge?

**MICHAEL G. COLANTUONO**

Colantuono & Levin, PC

11364 Pleasant Valley Road

Penn Valley, CA 95946-9000

(530) 432-7359

(530) 432-7356 (fax)

MColantuono@CLLAW.US

**Twitter:** @MColantuono

**Linked-In:** Michael G. Colantuono



# Overview

- Set Stage for Today's Discussion by:
  - Defining terms
  - Providing overview of bankruptcy, disincorporation, consolidation
  - Identifying open issues



# Defining Our Terms

- Bankruptcy
  - Legal Process of Excusing Debts
- Disincorporation – GC 56034
  - Dissolution of a City
- Consolidation – GC 56030
  - Merger of two or more cities or districts into a single successor



# Defining Our Terms

## ■ Charter City

- A City governed under a charter approved by voters pursuant to CA Const. art. XI, §§ 3, 5
- Other cities are called “general law cities” and are governed under laws passed by Legislature

## ■ Borough

- A unit of subgovernment for a City
- I.e., the five boroughs of NYC
- No examples in CA



# Defining Our Terms

- In rem proceeding
  - There are two kinds of law suits
    - In personam actions affect the people who are party to them
    - In rem actions affect everyone who has an interest in the subject matter of the suit, whether they participate or not
  - Actions to challenge reorganizations are in rem, as are bankruptcy cases
  - Such cases forever resolve the issues they address as to the whole world



# Bankruptcy

- Governed by federal law
- Public agencies' access to federal bankruptcy court is governed by state law
- CA was historically generous – any local government could file
- Last year's AB 506 imposed a mediation process; this year's AB 1692 would impose a "neutral evaluator" process



# Bankruptcy

- Federal law requires proof of effort to resolve debt by negotiation before filing
- Can restructure or eliminate debts, but cost is high in terms of loss of credit-worthiness and legal fees
- Relatively uncommon





# Bankruptcy

- Bankruptcies result from:
  - A lawsuit or other catastrophic event
    - Mammoth Lakes
    - Orange County
  - General financial problems
    - Vallejo
    - Stockton
- Prospect that bankruptcy could affect labor agreements & pensions explains recent legislation



# Disincorporation

- Initiated by petition or resolution of an affected local agency – GC 56654, 56700
  - Petitions require signatures of 25% of voters – GC 56765
  - Resolution requires service plan – GC 56653
- Can be accomplished by statute
  - E.g., last year's AB 46 (Vernon bill)



# Disincorporation

- R&T 99 agreement required
  - This allows County veto
    - *Greenwood Addition HOA v. San Marino* (1993) 14 CA4th 1360
- LAFCO review under usual factors –  
GC 56668



# Disincorporation

- Terms & Conditions – GC 56885.5, 56886
  - Labor contracts – GC 56886(l)
  - Bonds & other debt – GC 56886 (c, d, f, g)
  - Additional revenue – GC 56886 (b, s, t, u)
  - But, debt limit continues to apply – GC 56887.5
  - Voter approval required for taxes under Props. 13, 62 & 218
  - Non-City territory cannot be taxed to cover City debts – GC 57419



# Disincorporation

- Voter approval required – GC 57077
- Effect of Disincorporation
  - City ceases to exist – GC 57400
  - Assets revert to County – GC 57401
  - LAFCO or County must do audit – GC 57402, 57404
  - County may levy property tax to cover City debts – GC 57409
    - But voter approval required by Props. 13, 62, 218



# Disincorporation

- **More Effects of Disincorporation**
  - **If funds left after City's debts covered, County must transfer to special districts serving former City or pave streets there – GC 57411**
  - **County may assume City utilities – GC 57415**
    - **Does this mean LAFCO cannot designate a special district as successor to utilities over County objection?**
  - **Newly incorporated city with 2/3 of assessed value of old city may assume its assets & proportionate share of its debts – GC 57418**
- **Over what time frame? 100 years later?**



# Consolidation

- Process is Similar to that for Disincorporation
  - Petition for consolidation requires signatures of 5% of voters of each city to be consolidated



# Consolidation

- **Effect of Consolidation**
  - **Voters can choose name – GC 57475**
  - **If a merged cities is a charter city, successor can be, too – GC 57475**
  - **LAFCO must designate which officials of merged cities hold office until next election – GC 57475**





# Consolidation

- More Effects of Consolidation
  - Ordinances of predecessor city repealed except for assessments, zoning, etc. – GC 57478, 57479
  - Ordinances of city designated as successor remain in effect – GC 57480
  - Debts are not leveled as between merged cities unless terms & conditions so provide – GC 57481



# Open Issues

- What happens to the employees? GC 56886(1)
- Who pays for all this?
- Ought LAFCO adopt local guidelines until CKH can be clarified?
- How ought LAFCO provide for meaningful input by the public, employees, the County, other affected agencies, and other stakeholders?
- What agencies other than the County are appropriate successors to City services?



# Conclusions

- Bankruptcy, Disincorporation & Consolidation are all Unlikely
- However, communities may need to understand them to refocus on more realistic solutions
- The statutes bear review and revision, especially as to voter approval of new taxes
- Today's discussion will likely identify many more questions and areas of the statutes in need of clarification and update.



# LAFCO's Role in Regional Planning

Questions?