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Chapter 25: One More Step Toward Cityhood for East Los Angeles

Brian E. Hamilton

AB 711 (Calderon); 2010 Stat. Ch. 25 (Effective June 7, 2010).

I. INTRODUCTION

The unincorporated community of East Los Angeles is familiar to many Americans as a symbolic center of Mexican-American culture.¹ An epicenter of the Chicano movement of the 1960s and 1970s,² ninety-six percent of today's residents in East Los Angeles identify as Hispanic.³ Many of the figures that represent America's wider Latino culture, including the band Los Lobos, the boxer Oscar De La Hoya, and the actor Edward James Olmos, come from East Los Angeles.⁴ East Los Angeles' low-riders and vibrant murals have also carved a niche in the nation's popular consciousness of Mexican-American culture.⁵

East Los Angeles' only traditional public high school, James D. Garfield High School, earned renown as the home of Jaime Escalante's AP Calculus program, made famous in the film *Stand and Deliver*.⁶ This film helped implant an image of both the problems and the promise of East Los Angeles in the mind of the greater population.⁷ Meanwhile, community leaders such as Escalante have sought to distance the community from the harmful effects of stereotypes and low expectations.⁸

1. IAN F. HANEY LÓPEZ, RACISM ON TRIAL: THE CHICANO FIGHT FOR JUSTICE 86 (2003) ("Los Angeles was home to the largest Mexican community in the world, save Mexico City, and East Los Angeles formed its heart.").

2. Christina Hoag, *East L.A. Wants to be Its Own City*, L.A. TIMES, Sept. 30, 2008, at A4.

3. BURR CONSULTING, REPORT TO THE EAST LOS ANGELES RESIDENTS ASSOCIATION: PUBLIC REVIEW DRAFT INITIAL FISCAL ANALYSIS OF PROPOSED INCORPORATION 6 (2007) [hereinafter BURR REPORT] (on file with the *McGeorge Law Review*).

4. *Id.*

5. *Id.*

6. *Id.*; *STAND AND DELIVER* (Warner Bros. Pictures 1988). This popular and critically-acclaimed movie depicts Escalante, a Bolivian immigrant and high school mathematics teacher, striving to teach Advanced Placement Calculus in an inner-city high school. *Id.* Despite the doubts of parents, other teachers, administrators, and the student themselves, the students passed the AP test. *Id.* The passage rate of the students was so high, and the confidence in the students (and by inference, the community) so low, the students were accused of cheating. *Id.* They retook the exam and upended perceptions of what they and their community were capable of. *Id.*

7. See, e.g., Chon Noriega, *Chicano Cinema and the Horizon of Expectations: A Discursive Analysis of Recent Film Reviews in the Mainstream, Alternative and Hispanic Press* 32-7 (Stanford Ctr. for Chicano Research, Working Paper No. 30, 1990) (describing the film's impact on perceptions of Hispanic barrios within popular media).

8. Diana Tarango, vice president of the East Los Angeles Resident's Association (ELARA) states: "We're a nationally branded area . . . We should be making our own decisions about planting trees on the street or putting up light poles." Hoag, *supra* note 2; see also Jaime Escalante & Jack Dirmann, *The Jaime Escalante Math Problem*, 59 J. NEGRO EDUC. 407, 416 (1990) ("When students of any race, ethnicity, or economic status are expected to work hard, they usually rise to the occasion, devote themselves to the task, and do the work. If

Despite numerous failed efforts to establish cityhood for East Los Angeles,⁹ a new push for incorporation has arisen.¹⁰ A somewhat recent overhaul of the legislative mechanism for incorporation has helped to make the current drive towards cityhood the most promising yet.¹¹ Chapter 25 provides the proponents of incorporation with a \$45,000 loan to help pay for an essential study to determine the feasibility of incorporation.¹²

East Los Angeles is an unincorporated region in Los Angeles County, situated directly east of the City of Los Angeles.¹³ While East Los Angeles is closely associated with the greater Los Angeles area, its nature as an unincorporated community makes it difficult for its nearly 143,000 residents have their needs reflected in the political process.¹⁴

II. LEGAL BACKGROUND

Carving out a new city from existing political boundaries is an extensive process.¹⁵ The expense and effort of navigating this process requires adequate funding and a well-organized support base.¹⁶ In addition, the proponents of cityhood for East Los Angeles have sought legislative support in completing this process.¹⁷

A. *Mastering the Process of Changing Local Boundaries*

The Cortese-Knox-Hertzberg Government Reorganization Act of 2000 revised and updated the previously Byzantine process for creating and changing

we expect kids to be losers they will be losers; if we expect them to be winners they will be winners. They rise, or fall, to the level of the expectations of those around them, especially their parents and their teachers.”)

9. BURR REPORT, *supra* note 3, at 6 (noting that incorporation was sought unsuccessfully in 1961, 1963, and 1974).

10. See CITYHOOD FOR EAST L.A., EAST L.A. RESIDENTS ASS'N, BROCHURE (2009), available at http://www.CityhoodForEastLA.org/files/PDFs/Cityhood_for_East_LA_CFA_3-panel_brochure_10-2009.pdf (on file with the *McGeorge Law Review*) (noting that 33% of East Los Angeles' registered voters have signed petitions in favor of incorporation).

11. See generally Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, CAL. GOV'T CODE §§ 56000-56001 (2010) (streamlining and simplifying the incorporation process; this act, discussed in more detail *infra*, has provided the framework for the current cityhood effort in East Los Angeles).

12. 2010 Stat. ch. 25, § 1.

13. BURR REPORT, *supra* note 3, at 9.

14. See Daniel B. Wood, *East L.A., Latino Heartland, Revives Its Dream of Cityhood*, CHRISTIAN SCI. MONITOR, Dec. 9, 2008 at 2 (reciting the belief by proponents that cityhood would result in “better local representation and services—including parks, public safety, street maintenance—captured revenues, and national recognition.”).

15. See BURR REPORT, *supra* note 3, at 2-5 (detailing the fiscal requirements, consideration factors, and the incorporation process).

16. *Id.*

17. Patrick McGreevy, *Funds OK'd to Explore Cityhood for East L.A.*, L.A. TIMES, Apr. 27, 2010, at A3; see also ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT, COMMITTEE ANALYSIS OF AB 711, at 2 (Apr. 29, 2010) (noting that existing law allows the legislature to allocate funds for this purpose).

local government boundaries.¹⁸ These comprehensive reforms created the current framework for incorporation.¹⁹ Under this act, each county has a Local Agency Formation Commission (LAFCO), which is responsible for facilitating the incorporation process.²⁰ Proponents of incorporation, such as the East Los Angeles Residents Association (ELARA), are responsible for funding the incorporation process and mustering the necessary public and political support.²¹ Upon successful completion of the proponent's application for incorporation, the LAFCO prepares a Comprehensive Fiscal Analysis (CFA).²² This expansive analysis provides a sweeping understanding of the effect and feasibility of incorporation to those potentially affected.²³ There are other vital steps following the CFA,²⁴ but the CFA is an extraordinary hurdle for proponents due to its cost and the impact of its conclusions on the subsequent incorporation vote.²⁵

18. See ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT, GUIDE TO THE CORTESE-KNOX-HERTZBERG LOCAL GOVERNMENT REORGANIZATION ACT OF 2000 5 (2006) [hereinafter LOCAL GOV'T REPORT] (on file with the *McGeorge Law Review*) (providing a historical overview of the act). Prior to the passage of Cortese-Knox-Hertzberg Act in 2000, three separate laws dealt with boundary changes and city organization. *Id.* The different laws were similar in many ways, but the parallel rules often had inconsistencies and required unnecessary duplication of many steps in the process. *Id.*

19. GOVERNOR'S OFFICE OF PLANNING AND RESEARCH, A GUIDE TO THE LAFCO PROCESS FOR INCORPORATIONS 1 (2003) [hereinafter LAFCO GUIDE] (on file with the *McGeorge Law Review*).

20. *Id.* at 1-2.

21. *Id.* at 6-7.

22. See *id.* at 23-50. The CFA process provides a detail study of the fiscal feasibility of incorporation, including a thorough examination of expected costs, revenues, revenue neutrality (meaning that the planned incorporation must address and mitigate the impact on agencies affected by incorporation), budget projections, and transition dates. *Id.*

23. *Id.* at 17.

24. *Id.* at 18. A full explanation of the LAFCO incorporation process would exceed the scope of this article; however, the basic steps of incorporation are: (1) proponents perform an Initial Fiscal Analysis (IFA) (the BURR REPORT, *supra* note 3, is the IFA for East L.A.'s cityhood drive); (2) proponents file an intent to circulate a petition with LAFCO; (3) proponents complete a petition drive for 25% of the registered voters; (4) proponents submit an application with LAFCO; (5) a comprehensive Fiscal Analysis is conducted by a party contracted by LAFCO after a request for proposals; (6) proponent-county negotiations are undertaken to determine the process for incorporation and resolution of boundaries, and transfer of assets, among other issues; (7) the State Controller reviews the CFA, at proponent's expense; (8) LAFCO's executive officer submits a report on the proposal; (9) LAFCO holds a hearing at which it will decide whether to approve the incorporation—if approval is granted, LAFCO may be asked to reconsider and/or hold a protest hearing; (10) after the protest hearing, LAFCO schedules an election to approve or reject the incorporation and choose city council members; (11) upon voter approval, the incorporation begins with the appointment of an interim mayor and attorney who prepare measures for the first Council meeting; and (12) a one-year transition period where services are provided by the County and paid for over five years by the new city. BURR REPORT, *supra* note 3, at 3-5. The CFA is essential to the outcome of the subsequent events, determining the feasibility of incorporation and informing both LAFCO and the voters on the desirability of incorporation; the CFA can also define the character of the new city and its new government. *Id.*

25. *Id.*; see also Sarah Ihn, *The Long Road to Self-Determination: A Critique of Municipal Incorporation Through the East Los Angeles Cityhood Movement*, 13 HARV. LATINO L. REV. 67, 86 (2010) (detailing how the LAFCO process, especially the CFA, places an imposing burden, both in money and time, on the low-income residents of East Los Angeles).

B. *The Drive for East Los Angeles' Incorporation*

East Los Angeles has unsuccessfully attempted to incorporate three times before, all during the 1960s and the 1970s.²⁶ Many blamed the failed attempts on either poor organization by the proponents, hostility to the perceived radicalism of the burgeoning Chicano movement,²⁷ or concern that cityhood would result in new tax burdens.²⁸

During the previous campaigns, neither the Los Angeles Board of Supervisors nor the Los Angeles City Council had any Latino members.²⁹ Now, however, incorporation has broader and more effective support.³⁰ The current mayor of the City of Los Angeles is Latino, as are four members of the City Council, and one County Supervisor.³¹ The increase of Latino elected officials are likely to result in policies that better reflect the particular concerns of the Latino community.³² Many incorporation supporters expect such officials to be responsive to the arguments in favor of incorporation.³³ There are also numerous supporters on the state level.³⁴ ELARA has led the incorporation campaign, with assistance and support from the community, politicians, and businesses.³⁵ Many in this overwhelmingly Latino community feel that control of the local government would "provide much needed representation for Mexican-Americans long marginalized from politics."³⁶

C. *The Costs of Incorporation*

Despite public support for incorporation, securing funding for the CFA has been difficult.³⁷ ELARA secured \$100,000 of the \$145,000 needed to pay for the

26. McGreevy, *supra* note 17.

27. Howard Fine, *Today's Activists Learn Lessons of Failed Cityhood Drives*, L.A. BUS. J., July 30, 2007 at 28; see also Biliana C.S. Ambrecht & Harry P. Pachon, *Ethnic Political Mobilization in a Mexican American Community: An Exploratory Study of East Los Angeles 1965-1972*, 27 W. POL. Q. 500 (1974) (discussing the impact of ethnicity on the political forces in that community during the 1960s and 1970s).

28. See Wood, *supra* note 14 (citing the homeowner fears of higher taxes as a reason for incorporation's defeat). However, the passage of Proposition 13 in 1978 has allayed such fears by limiting the ability of local governments to raise property taxes. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. See, e.g., Rufus P. Browning et al., *Protest Is Not Enough: A Theory of Political Incorporation*, 19 PS: Pol. Sci. and Politics 576, 579 (1986). Discussing that, by increasing the number of minority elected officials, "[c]ity governments became more responsive to minority interests in the delivery of services and in the formation of city policies in such key areas as economic development."

33. McGreevy, *supra* note 17.

34. *Id.*

35. *Id.*

36. Wood, *supra* note 14.

37. Yurina Rico, *La Hora de la Verdad para el Este de LA: El Proyecto de Independencia Requiere de más de 100 Mil Dólares en Diez Días para Seguir* [The Hour of Truth for East LA: The Project for

CFA.³⁸ Unable to raise more, it reached out to state legislators to secure the remaining funds through emergency legislation.³⁹ While many politicians actively support the incorporation effort and others agree in principle, some legislators are reluctant to spend state money on a project that is uncertain to come to fruition.⁴⁰

However, supporters point out that the state provided \$1.8 million to fund a CFA for the proposed incorporation of the San Fernando Valley (though that effort ultimately failed).⁴¹ Pointing to their own preliminary fiscal analysis and desire for local control, many East Los Angelinos feel that the campaign is both fiscally viable and good policy, and thus would justify the much cheaper \$45,000 price tag for their own CFA.⁴²

III. CHAPTER 25

Chapter 25 allocates \$45,000 from the State's General Fund to LAFCO for a loan to ELARA.⁴³ To fund this allocation, Chapter 25 transfers \$45,000 from the Environmental Enhancement and Mitigation Program (EEMP) Fund to the General Fund.⁴⁴ By transferring funds from EEMP, Chapter 25 originates a loan the new city must repay within two years of its incorporation date.⁴⁵ This one-time loan only requires repayment if the proponents of incorporation are successful.⁴⁶ If incorporation does not occur, the state will forgive the loan.⁴⁷

Chapter 25 enacts a law that applies only to a specific locality, thus it is considered a "special law" under California's Constitution.⁴⁸ In order to keep the incorporation process within deadlines, and due to ELARA's contractual

Independence Requires More Than \$100,000 in Ten Days in Order to Survive], LA OPINIÓN, July 12, 2009, at 3 (relating efforts by ELARA leaders to secure funding from state legislators after local fund-raising came up short amid a deep economic contraction).

38. McGreevy, *supra* note 17.

39. *Id.*

40. *See id.* ("Sen. Sam Aanestad . . . said that if cityhood proponents can't come up with \$45,000 . . . 'They can't afford to become a city.'").

41. *Id.*

42. *Id.*; *see also* BURR REPORT, *supra* note 3, at 44 ("East Los Angeles appears to be a viable new city in spite of its relatively modest tax base and the County's reported subsidy of the area.").

43. 2010 Stat. ch. 25, § 1.

44. *Id.*

45. CAL. GOV'T CODE § 56383(g) (West 2010).

46. *Id.*

47. *Id.*

48. 2010 Stat. ch. 25, § 2; *see also* CAL. CONST. art. IV, § 16(b) ("A local or special statute is invalid in any case if a general statute can be made applicable."). A special law is invalid where a general law would be sufficient and where there is not a rational purpose that advances a legitimate state interest. *White v. State*, 88 Cal. App. 4th 298, 305, 105 Cal. Rptr. 2d 714, 721 (4th Dist. 2001). To overcome this constitutional burden, Chapter 25 specifies that the unique circumstances underlying the incorporation of East Los Angeles makes a general law insufficient. 2010 Stat. ch. 25, § 2 (enacted by Chapter 25).

obligations, the Legislature passed Chapter 25 as urgency legislation.⁴⁹ Chapter 25 took effect on June 7, 2010.⁵⁰

IV. ANALYSIS

While backers of incorporation are passionate in their support, worries exist about the ability to both fund the incorporation process and to create a self-sustaining city.⁵¹ These worries have led to questions about the underlying wisdom of incorporation.⁵²

A. *Paying to Make a New City*

Even during a time of intense budget pressures, the Legislature was able to raise the relatively small amount necessary to complete the CFA.⁵³ Some opponents of Chapter 25 see ELARA's inability to raise \$45,000 as an indication that the incorporation effort will likely fail.⁵⁴ However, the financial capacity of this organization is not especially salient to the question of whether East Los Angeles should be incorporated as its own city, and community leaders are more concerned with the ability of the new City of East Los Angeles to provide the benefits promised by proponents of incorporation.⁵⁵ The desire for local control over local issues does not necessarily mean an independent city would be better suited to address such local concerns.⁵⁶

B. *Paying to Keep a New City*

The CFA required by the Cortese-Knox-Hertzberg Act would permit community members to take a serious look at the costs and benefits of incorporation.⁵⁷ Preliminary studies envision Los Angeles County continuing to

49. 2010 Stat. ch. 25, § 3 (enacted by Chapter 25).

50. *Id.*

51. *See, e.g.,* Wood, *supra* note 14 (describing the support for incorporation as well as the worries about the process).

52. *See, e.g.,* McGreevy, *supra* note 17 (depicting the worry of one lawmaker that the new city will not be able to sustain itself).

53. ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT, COMMITTEE ANALYSIS OF AB 711, at 2 (Apr. 29, 2010) (describing how Chapter 25 would deduct the needed funds from a surplus in an unrelated environmental mitigation program).

54. McGreevy, *supra* note 17.

55. Joel Russell, *Checked In*, L.A. BUS. J., Feb. 22, 2010, at 12. Jesse Torres, chief executive of Pan American Bank, the only bank headquartered in East Los Angeles, states that "[i]f it's feasible, great, because self-governance is great for the community. But if it's not feasible, people can shift resources to improving the community within the existing political framework. My support is to get it resolved, once and for all. The sooner the association conducts a fiscal analysis, the sooner we'll know." *Id.*

56. Wood, *supra* note 14 ("We don't have a mayor or city council, so when the community goes to the state capital or Washington to bring back money, nobody is out there fighting for us.").

57. McGreevy, *supra* note 17.

provide many of the municipal services currently provided.⁵⁸ For example, a new City of East Los Angeles would contract with the County to provide police and fire protection, as it does now.⁵⁹ Unlike other similar-sized municipalities that create independent public safety services, cities that contract with larger organizations or join forces with neighboring municipalities realize an economy of scale for a quality of service that, without the collective effort, would otherwise be cost-prohibitive.⁶⁰ This is but one example of the future city finding the best of both worlds through incorporation.⁶¹

With its own city government, East Los Angeles could enhance both the quality of the public services and enable more opportunities for participation by the new city's residents.⁶²

The CFA process would provide a more in-depth understanding of a new city's ability to raise the necessary revenue.⁶³ Such an analysis is critical in ironing out issues that might arise during the transition to cityhood.⁶⁴ While proponents expect that the County of Los Angeles would see a positive fiscal impact if East Los Angeles were to become a city, such a result is not certain.⁶⁵

Also, other constituencies may oppose the formation of a new political entity within greater Los Angeles.⁶⁶ Competition for scarce resources at the local, state, and federal levels may cause other political units to view the incorporation of East Los Angeles as a threat to their diminishing resources and seek to prevent incorporation.⁶⁷ Moreover, some local leaders feel that the lack of larger

58. See BURR REPORT, *supra* note 3, at 16-17 (stating that the new city would contract with Los Angeles County for police, fire protection, animal control, and other services).

59. *Id.* at 16.

60. Jonathan Levin & Steven Tadelis, *Contracting for Government Services: Theory and Evidence from U.S. Cities* 3 (Nat'l Bureau of Econ. Research, Working Paper No. 13350, 2007), available at <http://www.nber.org/papers/w13350> (on file with the *McGeorge Law Review*) ("The smallest cities are the most likely to contract with other public agencies, perhaps to take advantages of economies of scale.").

61. See, e.g., BURR REPORT, *supra* note 3, at 29 (noting that a City of East Los Angeles could generate \$1.2 million in additional revenue through traffic enforcement alone).

62. See Laurie Reynolds, *Intergovernmental Cooperation, Metropolitan Equity, and the New Regionalism*, 78 WASH. L. REV. 93, 102-3 (2003) (discussing the arguments that "localism" both promotes more efficient services and empowers local communities).

63. BURR REPORT, *supra* note 3, at 44 ("East Los Angeles appears to be viable as a new city in spite of its relatively modest tax base and the County's reported subsidy of the area. However, data, legal and political ambiguities create uncertainty as to whether or not a CFA would reach the same conclusion.").

64. See LAFCO GUIDE, *supra* note 19, at 23-50 (detailing how, if incorporation succeeds, the CFA becomes the template for the organization of a new city).

65. BURR REPORT, *supra* note 3, at 43.

66. Mary M. Edwards & Yu Xiao, *Annexation, Local Government Spending, and the Complicating Role of Density*, 45 URB. AFF. REV. 147, 148 (2009) (explaining "[a]nnexation often is an intensely volatile local issue. As an area of public policy, it is full of potential conflict and hostility, and compromise can be difficult to achieve . . . detachment of the removal of land area from an existing tax or service district has serious consequences on district finances").

67. See Raphael J. Sonenshein & Tom Hogen-Esch, *Bring the State (Government) Back In: Home Rule and the Politics of Secession in Los Angeles and New York City*, 41 URB. AFF. REV. 467, 477-78 (2006) (relating the political melodrama between the City of Los Angeles, state government leaders, and surrounding municipalities during the LAFCO CFA process in the unsuccessful campaign for a City of San Fernando).

businesses in East Los Angeles, such as Costco or car dealerships, limits the tax-base of the proposed city.⁶⁸

V. CONCLUSION

Legislators in Sacramento are concerned that ELARA's inability to raise sufficient funds on their own suggests a lack of support for the incorporation initiative and insufficient resources to sustain the new city.⁶⁹

On the other hand, the history of East Los Angeles is largely a history of a community overcoming the burden of low expectations.⁷⁰ The opponents of past incorporation movements were primarily absentee owners of business along East Los Angeles' main commercial strip.⁷¹ Now, though, locally-owned "mom-and-pop" shops comprise many of the businesses in the commercial corridors of the proposed city.⁷²

While residents of East Los Angeles appear enthusiastic about the prospect of cityhood, economic considerations will likely determine the final outcome of this recent incorporation effort.⁷³ State Senator Gloria Romero expressed the optimism and *ganas*⁷⁴ of the community she represents, stating: "We the people of East L.A. have not only stood up, but we have delivered. . . . What a vibrant city East L.A. can be."⁷⁵

68. Hector Becerra, *East L.A. Takes Step to Being a City*, L.A. TIMES, Jan. 10, 2009, at B1.

69. ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT, COMMITTEE ANALYSIS OF AB 711, at 3 (Apr. 29, 2010).

70. See generally LÓPEZ, *supra* note 1 (discussing the struggle of a community which, though existing long before California's annexation by the United States in the nineteenth century, has often been treated as second-class or other).

71. Fine, *supra* note 27 ("A hastily-organized cityhood campaign in 1961 nearly won the day, falling short by just 340 votes. Property owners—many of them absentee landlords—on the community's main commercial strip, Whittier Boulevard, led the opposition, using the argument that cityhood would lead to higher taxes.")

72. Becerra, *supra* note 68.

73. See, e.g., Susannah Rosenblatt, *East L.A. Ready, Financially, for Independence*, L.A. Times, Oct. 17 2007, at A2 ("It's very, very glamorous to think about a city incorporating itself . . . Can it sustain itself? That's the real question.") (quoting Los Angeles County Supervisor Gloria Molina).

74. Escalante & Dirman, *supra* note 8, at 408-09 ("[G]anas . . . translates loosely from Spanish as "desire" or the "wish to succeed . . .").

75. Becerra, *supra* note 68 (referencing, not-so-subtly, STAND AND DELIVER, *supra* note 6).