

**RULES
SAN DIEGO
LOCAL AGENCY FORMATION COMMISSION**

**ARTICLE IV
PROVISION OF NEW OR DIFFERENT
SPECIAL DISTRICT SERVICES/FUNCTIONS
(LATENT POWERS)**

- 4.1 Authorization and Purpose
- 4.2 Definitions
- 4.3 Duties and Powers of the Commission
- 4.4 Designations of Service Classification of Functions and Services/Classes
- ~~4.5 Requirements of Special Districts~~
- ~~4.6 Commission Determination~~
- ~~4.7 Commission Disapproval of Report~~
- ~~4.8 Commission Determination of District Functions and/or Services~~
- 4.9~~5~~ Restriction of District Functions and/or Classes of Services
- 4.10~~6~~ Provision of Additional Functions and Classes Services
- 4.10a~~7~~ Exception to Requirement for LAFCO Approval of the Provision of Additional Functions and/or Classes of Services
- 4.11~~8~~ Application Materials for Latent Powers
- 4.12~~9~~ Public Hearing Requirements
- 4.13~~10~~ Commission Disapproval of Application
- 4.14~~11~~ Commission Approval
- ~~4.15 Commission Procedures~~

4.1 AUTHORIZATION AND PURPOSE -

As provided in Government Code Sections ~~56824~~56425(i) and 56284.14, ~~Chapter 764, Statutes 2000; amended by Chapter 667, Statutes 2001~~ and applicable predecessor statutes, the Commission adopts this Article as its rules and regulations governing the special districts' service functions and classes provision of new or different services/functions (latent powers) of special districts and reaffirms the representation upon the Commission of independent special districts. The Commission will administer this Article consistent with legislative intent to ensure appropriate oversight of special districts

and applicable and ongoing distinctions with respect to setting the nature, location, and extent of any functions and related classes within the jurisdictional boundaries.

4.2 DEFINITIONS -

The following definitions shall apply under this Article:

1. "Activation" means the initiation of the power and authority to provide particular functions or classes of services within all or part of the jurisdictional boundaries of districts.

2. "Class" means a subset activity in the performance of a district function.

3. "Commission" means the San Diego County Local Agency Formation Commission.

4. "District" means an agency of the State as defined by Section 56036 of the Government Code for which the County of San Diego is its principal county as defined by Section 56066 of the Government Code.

5. "Divestiture" means the termination of the power and authority to provide particular functions or classes of services within all or part of the jurisdictional boundaries of districts. (Government Code Section 56307.2.)

6. "Executive Officer" means the ~~executive officer~~ chief administrator appointed by the Commission ~~or the County officer acting as the executive officer.~~

7. "Function" means any power granted by law to a local agency or a county to provide designated governmental or proprietary services or facilities for the use, benefit, or protection of persons or property (Government Code Section 56040).

8. "Latent powers" mean those services, facilities, functions, or powers authorized by the principal act under which the district is formed, but that are not being exercised, as determined by the Commission.

Commented [S1]: Hereafter address divestitures too.

9. "Legislative body" means the legislative body or the governing board of a district as defined in this Article.

~~6.10.~~ "Non-potable water" means water that is unsafe to drink because it contains contaminants and/or is untreated.

11. "Potable water" means water that is safe for drinking and cooking.

~~7.12.~~ "Proceedings" means proceedings taken pursuant to this Article.

~~8.13.~~ "Proposal" means a request ~~or statement of intention~~ made by a resolution of application of a legislative body ~~of a district proposing proceedings~~ for the provision of additional functions or ~~services~~ classes or divestitures.

~~9.14.~~ "Service" means a specific governmental activity established within, and as part of, a function – or any related subset class thereof – of a local agency ~~class established within a single local agency function including the public facilities necessary to perform the function. The San Diego LAFCO's adopted service classification system adopted per Government Code Section 56074 is applicable to all local agencies for purposes of defining functions and services.~~

4.3 DUTIES AND POWERS OF THE COMMISSION

The Commission may:

1. The Commission shall establish the nature, location, and extent of any active functions and subset classes of services provided by districts in applicable municipal service reviews and/or whenever adopting, amending, or updating applicable spheres of influence. (Government Code 56425 (i)).

2. The Commission may revise or otherwise change the nature, location, and extent of any active functions and subset classes of services provided by districts based on subsequently prepared municipal service reviews and/or adopted sphere of influence updates.

~~4.~~ The Commission's most recently completed municipal service review and/or adopted sphere of influence update shall serve as the document of record in determining a district's authorized and active service functions and subset classes. Should conflicts exist, the Commission shall defer to the municipal service review unless special local circumstances merit otherwise.

~~3.~~

Commented [S2]: MSRs or SOI updates are the vehicle to determine what active functions and classes of services are being provided by special districts.

Commented [S3]: The Commission's responsibility to establish the nature, location and extend of service functions and classes is not a one-time event; instead it runs with the MSR/SOI cycle

~~4. The Commission may require Require existing districts to file written reports with the Commission specifying theattesting to the functions ~~or and any subset~~ classes of service provided by such districts. (Government Code Section 56425 (h)(1)).~~

~~5. All other functions and subset classes of services a district is eligible to provide under the applicable principal act that are not active as determined under Section 4.3.3 are designated as latent powers.~~

~~6. Commission approval is required for any district to activate a new service function or subset class allowed under its principal act. Commission approval is similarly required for any district to divest an active service function or subset class.~~

a) ~~Initiation of Commission proceedings for the exercise to activate of or divest new service or different functions or subset classes or services by special districts may be initiated by a special~~the affected district by a resolution of application proposal, including all of the matters specified for a petition in Government Code Section 56700, and submitted to the Executive Officer with a plan for services prepared pursuant to Section 56653 (Government Code Sections 56824.10, added by Chapter 667, Statutes 2001; and 56824.12).

~~2. Identify the nature, location, and extent of any functions or classes of service provided by existing districts (Government Code Section 56425 (h) (2)).~~

b) ~~Determine that, except as otherwise authorized by such rules and regulations, no new or different function or class of service shall be provided by any existing district (Government Code Section 56824.14).~~The Commission shall review and approve or disapprove with or without amendments, wholly, partially, or conditionally, proposals for the establishment activation of new or different functions or subset classes of services or divestitures therein within the jurisdictional boundaries of a special districts after a public hearing is called and held for that purpose unless waived pursuant to statute. ~~The expansion of latent powers shall not require a public hearing.~~

c) ~~The Commission shall review and approve or disapprove with or without amendments, wholly, partially, or conditionally, proposals to m~~Modify (expand, increase, decrease, or eliminate) activated services or functions or subset classes within the jurisdictional boundaries of an existing special districts after a public hearing is called and held for that purpose unless waived pursuant to statute. ~~if requested by resolution of a special district that is subject to the proposed service or function modification.~~

~~7. These rules and regulations shall not apply to the extension or enlargement, within the boundaries of an existing special district, of any function or service that the Commission, pursuant to this Article has determined is currently being provided by such special district. However, if LAFCO If the Commission has restricted the geographic area of any special district function or service subset classes a condition of latent powers activation,~~

Formatted: Indent: Left: 0", Hanging: 0.31"

then LAFCO retains authorization over any extension, expansion, or ~~enlargement~~reduction, of such function or ~~service-subset class~~ within the boundaries of ~~an existing~~the affected ~~special~~-district.

ADMIN DRAFT ONLY

4.4 CLASSIFICATION DESIGNATIONS OF FUNCTIONS AND RELATED CLASS SERVICES -

The following ~~classifications~~ designation of functions and ~~any related classes~~ services are hereby established:

FUNCTION	SERVICESCLASS
<u>Potable Water</u>	1. Wholesale, 2. Retail 3. Groundwater Management, Replenishment, Injection
<u>Non Potable Water</u>	1. Wholesale 2. Retail 3. Groundwater Management
<u>Reused (Recycled) Water</u>	1. Wholesale 2. Retail 3. Groundwater Management
<u>Sewer/Wastewater</u>	1. Collection 2. Transportation, 3. Treatment (Primary, Secondary, and Tertiary), 4. Reclamation, Disposal via Discharge or Reuse
Public Transportation	1. Land, 2. Sea Water 3. Air
Street Lighting	1. Infrastructure/Financier 2. Provider (Retail and Non-Retail)
Power	1. Infrastructure/Financier 2. Provider (Retail and Non-Retail) Generation, Distribution
Gas	1. Infrastructure/Financier 2. Provider (Retail and Non-Retail) Distribution
<u>Internet Broadband Service</u>	1. Infrastructure/Financier 2. Retail
Cable Television	1. Infrastructure/Financier 2. Retail
Telephone/Communications	1. Infrastructure/Financier 2. Retail
Police <u>Protection</u>	
Fire <u>Protection</u>	Watershed, 1. Structural 2. Wildland

Formatted Table

Commented [S4]: Makes recycled water a stand-alone service function and therefore eligible to wastewater and water (retail at least) agencies...

ADMIN DRAFT ONLY

<u>Emergency Medical</u>	<ul style="list-style-type: none"> 1. <u>Dispatch</u> 2. <u>First Response</u> 3. <u>Paramedicine</u>
Ambulance	<ul style="list-style-type: none"> 1. <u>Basic Life Support</u> 2. <u>Advance Life Support</u> 3. <u>Non Medical Transport</u>
Rescue/Disaster	<ul style="list-style-type: none"> 1. <u>First Response (Vehicle, Low Angle, Confined Space)</u> 2. <u>Specialized (Trench, Swiftwater, High Angle)</u>
<u>Fire Prevention</u>	<ul style="list-style-type: none"> 1. <u>Code Enforcement</u> 2. <u>Development Services</u> 3. <u>Public Education</u> 4. <u>Fire Investigations</u>
Parks and Recreation	<ul style="list-style-type: none"> 1. <u>Regional Park Development/Maintenance</u> 2. <u>Local Park Development/Maintenance</u> 3. <u>Recreation</u> 4. <u>Arts and Cultural</u>
Flood Control	<ul style="list-style-type: none"> 1. <u>Flood and Storm Control</u> 2. <u>Land Reclamation</u> 3. <u>Water Provision (Acquire, Distribute, and Store)</u>
Cemeteries	<ul style="list-style-type: none"> 1. <u>Interment - Burials</u> 2. <u>Interment - Cremations</u>
<u>Hospitals/Healthcare</u>	<ul style="list-style-type: none"> 1. <u>Inpatient Medical Care (Acute Care, Non Acute Care)</u> 2. <u>Outpatient Medical Care</u> 3. <u>Ambulance</u> 4. <u>Mental Health</u> 5. <u>Grant Funding</u>
<u>Open Space</u>	<ul style="list-style-type: none"> 1. <u>Conservation (Land, Resources, Habitat)</u> 2. <u>Outdoor Recreation</u>
Solid Waste	<ul style="list-style-type: none"> 1. <u>Collection</u> 2. <u>Transfer Services</u> 3. <u>Disposal</u>
<u>Resource Conservation</u>	<ul style="list-style-type: none"> 1. <u>Soil Erosion</u> 2. <u>Water Conservation</u> 3. <u>Wildlife Enhancement</u> 4. <u>Agricultural Enhancement</u> 5. <u>Water Distribution (Surface and Groundwater)</u> 6. <u>Erosion Stabilization</u>
Pest Control	
Vector Control	
Libraries	
Weed Abatement	
Planning	
Soil Conservation	

Roads, Streets and Highways	Improvement/Maintenance
Section 4.14 added: 9/16/74	

4.5 REQUIREMENTS OF SPECIAL DISTRICTS

Upon the adoption of this Article, each special district shall, at the request of the Executive Officer, provide, to the satisfaction of the Commission, the following materials within 30 days of such request:

1. A report of which functions and services are currently being provided by that district;
2. A statement as to the legal provisions regarding the rendering of such functions and services;
3. A map, showing the boundaries of the district and the location(s) where functions and services are provided.

For purposes of these rules and regulations a district shall be deemed to be providing a function or service if bonds have been heretofore authorized therefore, if substantial sums have been expended, if substantial financial obligations have been incurred therefore, if property, facilities or equipment have been acquired or constructed for such purpose, or if the district is actually exercising its powers to provide such function or service for the benefit of lands or inhabitants within the district.

4.6 COMMISSION DETERMINATION

Following the receipt of such materials from a district as provided for in Section 4.5, the Commission shall determine:

1. To approve with or without amendment, wholly or partially or to disapprove the report on the functions and services currently being provided by the district and the location(s) where such functions or services are being provided;
2. To refer the report back to the district having submitted it and request modification of such report; the Commission shall set a reasonable date for the re-submittal of such modified report.

4.7 COMMISSION DISAPPROVAL OF REPORT

In the event the Commission disapproves a report on the functions and services, the Commission may make its own study and report on the functions and services being provided by a district; the Commission shall, at the request of the affected district, consider its report at a public hearing prior to making a final determination on same.

4.8 COMMISSION DETERMINATION OF DISTRICT FUNCTIONS AND/OR SERVICES

By approving the report of a special district as provided in Section 4.5 or by making its own report on the functions and services of a district as provided in Section 4.7, the Commission

~~shall thereby identify the nature, location and extent of the functions or services provided by such a district.~~

4.9-5 RESTRICTION OF DISTRICT FUNCTIONS AND/OR SERVICES -

At such time as the Commission has identified the nature, location and extent of the functions and services of any district, such district shall not provide any new or different function or class of service except as authorized by this Article, provided that this rule shall not apply to the extension or enlargement, within the boundaries of an existing special district, of any function or service which the Commission, pursuant to this Article, has determined is currently being provided by such special district. In approving a new or different function or class of service, the San Diego LAFCO may restrict the provision of the new or different function or class of service to a geographically specific area within the district. If the Commission imposes this restriction, any subsequent extension or enlargement of the service area will be subject to LAFCO review.

4.10-6 PROVISION OF ADDITIONAL FUNCTIONS AND SERVICES -

Any district making a proposal to provide functions and/or service in addition to those identified by the Commission pursuant to this Article shall file with the Executive Officer a resolution of its governing board making application for the provision of additional functions and/or services.

4.10a7 EXCEPTION TO REQUIREMENT FOR LAFCO APPROVAL OF THE PROVISION OF ADDITIONAL FUNCTIONS AND/OR SERVICES -

A district which is authorized by state law to provide for generation and distribution of electric power is not required to make application to nor obtain authorization from the Commission

before providing that function, although the district has not provided that function previously (9/14/81).

4.11-8 APPLICATION MATERIALS FOR THE PROVISION OF NEW OR DIFFERENT SERVICES/FUNCTIONS (LATENT POWERS) -

A resolution of application shall be in such form as the Commission may prescribe and shall be accompanied by:

1. A statement of the nature of the proposal and the reasons therefore;
2. A legal description of the territory which is the subject of the proposal;
3. A map showing the boundaries of the subject territory;
4. Such additional data and information as may be required by the Executive Officer, pertaining to any of the matters or factors which may be considered by the Commission;
5. The name of the officers or persons, not to exceed three, who are to be given mailed notice of hearing.

4.12-9 PUBLIC HEARING REQUIREMENTS FOR LATENT POWERS ACTIVATION -

Upon the filing of a resolution of application, the Executive Officer shall set the matter for hearing by the Commission.

1. The date of the hearing shall not be more than 90 days after such filing.
2. The Executive Officer shall cause notice of hearing to be published in a newspaper of general circulation within the area for which the provision of additional functions and/or services are proposed, as specified in Government Code Section 6061 and 56824.14.
3. The Executive Officer shall also cause notice of such hearing to be mailed at least twenty-one (21) days prior to the date of hearing to:
 - (a) the district adopting the resolution of application;
 - (b) each city or district within three miles of the subject district;
 - (c) each person who is designated in the application to receive notice or any person who has filed a written request for special notice with the Executive Officer.
4. Such hearing may be continued from time to time for a period not to exceed 70 days from the original date of such hearing. The conduct of such hearing shall be governed by the provisions of Section 56666 of the Government Code and by the Rules of the Commission. At any time not later than 35 days after the conclusion of the hearing, the Commission shall adopt a resolution making determinations approving or disapproving the provision of the additional functions and/or services by the District.

4.13-10 COMMISSION DISAPPROVAL OF APPLICATION -

If the Commission wholly disapproves any proposal involving the provision of such additional functions and/or services by the subject district, no proceeding shall be taken for the

provision of such additional functions and/or services by the subject district for a period of one year after the date of such disapproval unless said period is waived by the Commission.

4.14-11 COMMISSION APPROVAL -

If the Commission approves the provision of additional function(s) and/or service(s), the Executive Officer shall, within 30 days of such approval, forward to the subject district a copy of the Commission's resolution.

~~4.15 COMMISSION PROCEDURES-~~

~~The procedures provided by this Article shall be generally guided by the provisions of Chapter 5 (commencing with Section 56821, Chapter 761, Statutes of 2000; amended by Chapter 667, Statutes 2001) of the Government Code.~~

Adoption History: Article IV, Sections 4.1 to 4.15

Adopted June 30, 1975

Re-affirmed and adopted December 4, 2000

Administratively Revised and Updated May 17, 2005

Administratively Revised and Updated August 7, 2006

Comprehensively Updated and re-adopted March 3, 2008

ADMIN DRAFT ONLY