



San Diego County Local Agency Formation Commission

Regional Service Planning | Subdivision of the State of California

7a

AGENDA REPORT
Business | Discussion

November 7, 2022

TO: Commissioners

FROM: Keene Simonds, Executive Officer
Carolanne Ieromnimon, Analyst I

SUBJECT: Draft Policy Establishment on Out-of-Agency Services

SUMMARY

The San Diego County Local Agency Formation Commission (LAFCO) will review a draft policy to govern outside service approvals for cities and special districts. The draft policy has been prepared as part of the adopted workplan and responds to growing attention towards out-of-agency services that are due in part to increased communications as part of the municipal service review program. The draft reflects and expands on existing practices and marked by establishing definitions and exemptions to focus the statute's local applicability. The item is being presented for discussion and feedback ahead of staff initiating a formal public review.

BACKGROUND

Government Code Section 56133

State law was expanded in January 2001 to require cities and special districts to request and receive approval from LAFCOs before providing new or extended services outside their jurisdictions by contracts or agreements. The addition is codified in Government Code Section 56133 and includes a limited number of exemptions where LAFCOs' approval is not needed and most notably agreements between two or more agencies where the contract service is an equal substitute for services already provided.

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Current Workplan & Direction to Prepare Policy on Out-of-Agency Services

San Diego LAFCO's current workplan was adopted at a noticed public hearing in June 2022 and includes 30 specific projects for the fiscal year. One of the workplan projects involves establishing formal policies governing out-of-agency service approvals at LAFCO and in doing so focus on formalizing and expanding on existing practices. An example of the former includes expanding on an existing provision under the personnel policies delegating authority to the Executive Officer to approve emergency out-of-agency service requests.

DISCUSSION

This item is for San Diego LAFCO to review a draft policy governing the process in receiving, evaluating, and acting on out-of-agency service requests. The draft is being presented for Commission feedback – including direction on possible revisions – prior to staff initiating a formal public review and comment period. The draft largely focuses on formalizing existing practices and provisions under one cover and headlined by the following five features.

- Make explicit the Commission's policy preference to consider out-of-agency service requests on an exception basis when otherwise merited new or extended municipal services cannot be accommodated through jurisdictional changes.
- Establish local definitions for “new” and “extended” services and in doing so frame the overall extent of the Commission's regulation of out-of-agency services as follows.
 - New services would involve the actual delivery of a municipal functions or classes to previously unserved non-jurisdictional lands and/or the re-commencement of functions or classes after a discontinuous period of six or more months.
 - Extended services mean the intensification of municipal functions or classes to served (actual) non-jurisdictional lands that requires a zoning change.
- Make explicit the Commission determines statutory and local exemptions eligibility and provide an expedited process for cities and special districts to receive confirmation from the Executive Officer at no cost.
- Establish local exemptions as follows subject to Executive Officer confirmation.
 - Services provided on an entirely advisory basis.
 - Services provided through automatic aid.
 - Services involving fleet management and equipment sharing.

- Distinguish the review and approval authority between the Commission and Executive Officer as follows.
 - The Commission shall consider all non-emergency requests at a public meeting with recommendations provided by the Executive Officer.
 - The Executive Officer shall consider all emergency requests via public health and safety threats and provide notice to the Commission at the next public meeting. This includes delegation to the Executive Officer in determining when public health and safety threats exist.

A copy of the draft policy is provided as Attachment Two.

ANALYSIS

The draft policy before San Diego LAFCO serves to remedy an ongoing omission with respect to providing clear and formal direction on how the Commission chooses to meet its delegated duty to regulate out-of-agency services. Addressing this omission – markedly – has become a higher priority given increased conversations with cities and special districts through the municipal service review process and the Commission’s overall interest to sync spheres of influence to reflect and accommodate orderly service areas. Towards this end, and as detailed above, the draft largely aims to reflect and expand on existing practices that have generally served the Commission well – including delegating emergency requests to the Executive Officer. Proposed local definitions and exemptions similarly reflect existing and best practices and serves to efficiently scale implementation of Section 56133.

RECOMMENDATION

It is recommended San Diego LAFCO review and discuss the draft policy on out-of-agency services. This includes providing direction to staff on desired revisions and/or additions and ahead of staff initiating a formal public review and comment period.

ALTERNATIVES FOR ACTION

The item is being presented to San Diego LAFCO for discussion and feedback only.

(continued)

PROCEDURES

This item has been placed on San Diego LAFCO's agenda for discussion as part of the business calendar. The following procedures are recommended in the consideration of this item:

- 1) Receive verbal presentation from staff unless waived.
- 2) Invite comments from interested audience members.
- 3) Discuss item and provide feedback as requested.

On behalf of the Executive Officer,



Carolanne Ieromnimon
Analyst I

Attachments:

- 1) Draft Policy on Out-of-Agency Services
- 2) Section 56133

Subject:

OUT-OF-AGENCY SERVICES

Purpose:

Serve as a guide to the Commission in receiving, evaluating, and acting on requests for cities and special districts to provide new or extended services other than fire protection outside their jurisdictional boundaries.

Background:

State law requires cities and special districts to request and receive Commission approval before providing new or extended outside services by contracts or agreements with limited exemptions (Government Code Section 56133).

Policy:

It is the policy of the Commission:

1. Goals and Priorities:

- a) The Commission will consider out-of-agency service requests whenever otherwise merited new or extended services cannot be reasonably accommodated through annexations or other jurisdictional changes.
- b) The Commission shall only approve out-of-agency service requests for cities and special districts involving territory within their spheres of influence in anticipation of future jurisdictional changes.
 - i. The Commission will exercise its independent discretion in potentially prescribing the timing of future jurisdictional changes through its authority to condition out-of-agency service approvals.
- c) The Commission shall only approve out-of-agency service requests for cities and special districts involving territory outside their spheres of influence in response to existing or pending public health and safety threats.
 - i. The Commission will exercise its independent discretion in determining when existing or pending public health and safety threats exist based on available documentation.

2. Definitions:

- a) "Agreement" and/or "contract" shall mean a formal written arrangement contemplated under Section 56133.

- b) "Service" shall mean any authorized municipal service functions and/or classes provided by cities and special districts other than fire protection as well as those exempted by the Commission within Section 3 of this policy.
- c) "New service" shall mean the actual provision of municipal service functions or classes to previously unserved non-jurisdictional lands.
 - i. New service shall also mean the re-commencement of actual services after a discontinuous period of six or more months.
- d) "Extended service" shall mean the intensification of municipal service functions and/or classes to served (actual) non-jurisdictional lands that require a zoning change.

3. Applicability:

- a) Eligibility of all statutory exemptions under 56133(e) as well as local exemptions provided under this policy is the exclusive responsibility of the Commission.
 - i. Cities and special districts may request a no-cost written response from the Commission with respect to whether any proposed out-of-agency services are eligible for exemption under 56133 (e).
 - ii. The Commission delegates all inquiries for exemption eligibility under 56133(e) to the Executive Officer.
 - iii. The Executive Officer shall provide written responses to the inquiring cities or special districts expeditiously.
- b) The following municipal service functions and/or classes are not subject to Commission review and approval under Section 56133.
 - i. Services involving fire protection. These out-of-agency services are addressed under separate Commission policy.
 - ii. Services provided on an entirely advisory basis where no monetary compensation – directly or indirectly – is received by the contracted cities or special districts.
 - iii. Services provided between two or more cities and/or special districts through automatic aid agreements.

- iv. Services provided between two or more cities and/or special districts involving fleet and/or equipment sharing or management.

4. Request Procedures:

- a) All requests for out-of-agency service approvals shall be made in writing by cities and special districts and filed with the Executive Officer. Requests shall be made in letter form, signed by the city/district manager, and include the following items:
 - i. Description of the level and range of services to be provided.
 - ii. Identification of the affected territory.
 - iii. Description on how the services will be provided and funded.
 - iv. A copy of the proposed service agreement or contract.
 - v. Application fee.
- b) As applicable, documentation substantiating existing or impending threats to public health and/or safety shall accompany any requests for out-of-agency service approvals.
 - i. Requests involving wastewater should include correspondence with County Environmental Health and Quality Department addressing the threats to public health and/or safety.

5. Evaluation Procedures:

- a) The Commission shall follow all review procedures under Section 56133.
- b) Requests for out-of-agency service approvals that are not premised on addressing public health and/or safety threats shall be considered by the Commission consistent with the following local procedures.
 - i. The Executive Officer shall confirm in writing within 30 days of receipt whether the out-of-agency service request is complete.
 - ii. Incomplete requests shall be referred back to the cities and special districts with an enumeration of all outstanding items.

- iii. Complete requests shall be presented to the Commission along with Executive Officer recommendations at the next available meeting.
 - iii. Commission shall approve, approve with conditions, or deny by majority vote of members present.
- c) Requests for out-of-agency services premised on addressing public health and/or safety threats are delegated to the Executive Officer for consideration consistent with the following local procedures.
- i. The Executive Officer shall provide notice to any known alternative service providers before taking any actions on requests.
 - ii. The Executive Officer shall take written action on completed requests as soon as reasonably practicable to either approve, approve with conditions, or deny.
 - iii. The Executive Officer shall provide notice to the Commission of his or her action at the next available meeting for information only.

6. Final Disposition

- a) Once the Commission or Executive Officer take actions – whether to approve, approve with conditions, or deny – on out-of-agency service requests the decisions are final and cannot be appealed.

Government Code Section 56133

56133.

(a) A city or district may provide new or extended services by contract or agreement outside its jurisdictional boundary only if it first requests and receives written approval from the commission.

(b) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundary but within its sphere of influence in anticipation of a later change of organization.

(c) If consistent with adopted policy, the commission may authorize a city or district to provide new or extended services outside its jurisdictional boundary and outside its sphere of influence to respond to an existing or impending threat to the health or safety of the public or the residents of the affected territory, if both of the following requirements are met:

(1) The entity applying for approval has provided the commission with documentation of a threat to the health and safety of the public or the affected residents.

(2) The commission has notified any alternate service provider, including any water corporation as defined in Section 241 of the Public Utilities Code, that has filed a map and a statement of its service capabilities with the commission.

(d) The executive officer, within 30 days of receipt of a request for approval by a city or district to extend services outside its jurisdictional boundary, shall determine whether the request is complete and acceptable for filing or whether the request is incomplete. If a request is determined not to be complete, the executive officer shall immediately transmit that determination to the requester, specifying those parts of the request that are incomplete and the manner in which they can be made complete. When the request is deemed complete, the executive officer shall place the request on the agenda of the next commission meeting for which adequate notice can be given but not more than 90 days from the date that the request is deemed complete, unless the commission has delegated approval of requests made pursuant to this section to the executive officer. The commission or executive officer shall approve, disapprove, or approve with conditions the extended services. If the new or extended services are disapproved or approved with conditions, the applicant may request reconsideration, citing the reasons for reconsideration.

(e) This section does not apply to any of the following:

(1) Two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider.

(2) The transfer of nonpotable or nontreated water.

(3) The provision of surplus water to agricultural lands and facilities, including, but not limited to, incidental residential structures, for projects that serve conservation purposes or that directly support agricultural industries. However, prior to extending surplus water service to any project that will support or induce development, the city or district shall first request and receive written approval from the commission in the affected county.

- (4) An extended service that a city or district was providing on or before January 1, 2001.
- (5) A local publicly owned electric utility, as defined by Section 9604 of the Public Utilities Code, providing electric services that do not involve the acquisition, construction, or installation of electric distribution facilities by the local publicly owned electric utility, outside of the utility's jurisdictional boundary.
- (6) A fire protection contract, as defined in subdivision (a) of Section 56134.
- (f) This section applies only to the commission of the county in which the extension of service is proposed.