



**San Diego County**  
**Local Agency Formation Commission**  
 Regional Service Planning | Subdivision of the State of California

**7a**

**AGENDA REPORT**  
 Business | Discussion

October 2, 2023

**TO:** Commissioners

**FROM:** Keene Simonds, Executive Officer  
 Carolanne Ieromnimon, Analyst II

**SUBJECT: Update to Draft Policy on Out-of-Agency Services**

**SUMMARY**

The San Diego County Local Agency Formation Commission (LAFCO) will review an update to a draft policy governing outside service approvals for cities and special districts. The item is part of LAFCO’s adopted workplan and responds to growing attention – and in some instances controversies – involving out-of-agency services due in part to increased communications with local agencies through the municipal service review program. The update incorporates earlier feedback from the Commission following, and subsequent to, reviewing an initial draft at its November 2022 meeting. The aim of the update is to formalize and expand existing practices in administering out-of-agency services activities and in doing so provide clear direction to local agencies to help ensure statutory compliance relative to Commission standards. The item is being presented for discussion and feedback – including whether to add a specific local policy statement to make explicit the Commission determines exemption eligibility – ahead of concluding the public review period and returning for action at a future meeting.

**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

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56133 and includes a limited number of exemptions where LAFCOs' approval is not needed. The includes agreements between two or more public agencies where the contract service is an equal substitute for services already provided.

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

San Diego LAFCO's current annual workplan was adopted at a noticed public hearing in May 2023 and includes 30 specific projects for the fiscal year with several having been carried over from the prior fiscal year. One of these carried over projects involve establishing formal policies to govern 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 an update to a draft policy to govern the process in receiving, evaluating, and acting on out-of-agency service requests. The update is being presented for discussion and related feedback – including direction on further revisions – as part of an ongoing public review and comment period. The update includes refinement based on earlier input from both the Commission and Special Districts Advisory Committee. The refinement is marked by expanding local exemptions and redirecting certain requests involving public health or safety threats from the Executive Officer to the Commission.

An outline of the key policy provisions reflected in the update follows.

- The update continues to premise the policy on the Commission's preference to consider out-of-agency service requests on an exception basis when otherwise merited services cannot be accommodated through jurisdictional changes.
- The update continues to 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 follow.
  - New services would involve the actual delivery of 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 facilitated by a zoning change.
- The update includes an expanded list of local exemptions in which Commission approval is not required and covers all of the following activities:

- Advisory or automatic aid services provided by a city and/or special district where no monetary compensation is provided other than reimbursements.
- Temporary access to a city and/or special district's potable water or wastewater collection, treatment, and discharge facilities.
- Shared services between two or more agencies where monetary compensation is provided beyond reimbursements for any of the following:
  - Abandon Vehicle Abatement
  - Accounting, Billing, and Payroll
  - Animal Care and Control
  - Building and Code Enforcement
  - Dispatch
  - Grant Writing
  - Information Technology
  - Legal
  - Pooled Equipment Purchasing
  - Pooled Materials Purchasing
  - Pooled Services Purchasing
  - Training
- Amend the existing delegation to the Executive Officer to approve out-of-agency service requests tied to public health or safety threats to only water and wastewater functions. All other requests are redirected to the full Commission.

A copy of the update to the draft policy is attached.

## **ANALYSIS**

The update to the draft policy before San Diego LAFCO serves to help remedy an ongoing omission with respect to providing clear and formal direction to all local agencies on how LAFCO 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. The timing of the policy work also syncs with recent out-of-agency service disputes between local agencies coming forward. Towards this end, and as detailed above, the update to the draft aims to reflect and amplify existing practices that have generally served the Commission well. Proposed local definitions and exemptions similarly reflect existing practices and serves to efficiently scale implementation of Section 56133.

Notwithstanding the above analysis, one prominent issue is unaddressed in the update and involves the decision-making authority in determining exemption eligibility (i.e., when local agencies do not need formal approvals). The earlier draft included a provision making it explicit the Commission exclusively determines exemption eligibility. The earlier inclusion syncs to prior Commission action to support legislation to make this otherwise practiced and assumed provision explicit in statute. However, staff removed the provision in the update at the recommendation of the Special Districts Advisory Committee and done so pending additional feedback by the Commission. Removal follows a lengthy discussion at the Committee's September 15, 2023 meeting where most members voiced concerns an explicit provision directing local agencies to confirm with LAFCO on exemption eligibility would create process burdens and stymie cost-sharing arrangements.<sup>1</sup> Staff's decision to remove the provision in the update – pertinently – allows the Commission to consider the balance of the update and its other provisions while carving out possible feedback on the exemption eligibility topic as Commissioners' see fit.

### **RECOMMENDATION**

Review and discuss as requested.

### **ALTERNATIVES FOR ACTION**

None.

### **PROCEDURES**

This item has been placed on San Diego LAFCO's agenda for discussion and feedback – including direction on additional revisions – 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.

Respectfully,



Carolanne Ieromnimon  
Analyst II

Attachment:

- 1) Update to Draft Policy on Out-of-Agency Services

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<sup>1</sup> A video recording of the Special Districts Advisory Committee's September 15<sup>th</sup> meeting is available online, [Special Districts Advisory Committee \(SDAC\) Meeting - September 15, 2023 - YouTube](#). The presentation and subsequent discussion begins at the 26:41 marker.

**Subject:**

OUT-OF-AGENCY SERVICES  
(Exclusive of Fire Protection Services)

**Purpose:**

Serve as a guide to the Commission in receiving, evaluating, and acting on requests by 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).<sup>1</sup>

**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 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 impending public health and safety threats.
  - i. The Commission will exercise its independent discretion in determining when existing or impending public health and safety threats exist based on available documentation and analysis provided by LAFCO staff.

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<sup>1</sup> Contracts involving fire protection services are separately addressed under Government Code Section 56134 and are not covered under this policy.

## 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 4 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 by the land use authority.

## 3. Applicability:

- a) The Commission shall emphasize the "point of delivery" in assessing the applicability of Section 56133.
- b) Cities and special districts may request a no-cost determination from the Commission as to whether any proposed out-of-agency services are eligible for exemption under 56133 (e) and/or Section 4 of this policy.
  - i. The Commission delegates all inquiries for exemption eligibility under 56133(e) and/or Section 3 of this policy to the Executive Officer. The Executive Officer shall provide written notice of their determination to the city or special district to either accept, deny, or deny pending additional information all exemption inquiries within five business days.
  - ii. Should the Executive Officer determine an inquiry does not qualify for exemption, the city or special district may appeal directly to the full Commission. The appeal request must be made in writing and signed by the city manager or special district manager.

#### 4. Exemptions

- a) In addition to those provided by the Legislature under Section 56133(e), the Commission establishes the following local exemptions in which approvals are not required:
  - i. Advisory or automatic aid services provided by a city and/or special district where no monetary compensation other than reimbursements are exchanged.
  - ii. Temporary access to cities and/or special districts' potable water supplies due to an interruption – planned or otherwise.
  - iii. Temporary access to cities and/or special districts' wastewater collection, treatment, or discharge facilities
  - iv. Shared services between cities and/or special districts where monetary compensation is exchanged beyond reimbursements for any of the following activities:
    - Abandon Vehicle Abatement
    - Accounting, Billing, and Payroll
    - Animal Care and Control
    - Building and Code Enforcement
    - Dispatch
    - Grant Writing
    - Information Technology
    - Legal
    - Pooled Equipment Purchasing
    - Pooled Materials Purchasing
    - Pooled Services Purchasing
    - Training

#### 4. Request Procedures:

- a) All approval requests for out-of-agency services shall be made in writing by cities and special districts and filed with the Executive Officer. Requests shall be made in letter form by the city or special district manager and include all of the following information:
  - i. Identification of the affected territory by parcel number or another appropriate geographic marker.

- ii. Description of the ability of the agency to provide the contract service and relationship – including impacts – on existing and/or planned infrastructure and resources.
- iii. Application fee.
- iv. Any other information required by the Executive Officer.

5. Consideration Procedures:

- a) The Commission shall consider all requests for out-of-agency service approvals at a public meeting unless otherwise provided in this policy.
- b) The Executive Officer shall ensure all procedures under Section 56133 are completed and responsible for placing the request on the first available meeting agenda thereafter. The Executive Officer shall include his or her written recommendation on the request to the Commission.
- c) Should requests involve purported public health or safety threats, the Commission delegates approval authority to the Executive Officer under the following circumstances.
  - i. The request involves water and/or wastewater services only. If approved, the Executive Officer shall provide notice to the Commission at the next public meeting for information only.
- d) All other requests involving purported public health or safety threats shall be considered by the Commission at the earliest time possible – including the scheduling of a special meeting with no less than 24-hour notice.

7. Reconsideration:

- a) Should an out-of-agency service request be approved with conditions or denied, the applicant may request reconsideration.

8. CEQA

- a) All out-of-agency service request approvals shall be subject to concurrent review under the California Environmental Quality Act (CEQA).
- b) The Commission assigns all functions and related responsibilities provided under CEQA Guidelines Section 15025 to the Executive Officer – including, but limited to, making exemption findings and related fillings.