



Chairman

Bill Horn
County Board of
Supervisors

June 6, 2016

8

Vice Chairman

Sam Abed
Mayor
City of Escondido

TO: Local Agency Formation Commission

FROM: Executive Officer
Local Governmental Analyst

Members

Dianne Jacob
County Board of
Supervisors

SUBJECT: Draft Fire Protection Contract Policy L-110

Andrew Vanderlaan
Public Member

BACKGROUND

Lorie Zapf
Councilmember
City of San Diego

The enactment of Senate Bill No. 239 (Hertzberg) changed the way certain fire contracts are executed and further placed additional responsibilities on local and state agencies, including LAFCOs, when considering new or extended fire protection services outside a public agency's boundary. Over the past several months, LAFCO staff collaborated with the Special Districts Advisory Committee, the San Diego County's Fire Chief's Association and other local and state agencies to develop guidelines for implementation of the new law. The guidelines were reviewed by the Advisory Committee and approved by the Commission earlier this year. The adopted guidelines: (1) summarized the new statutory requirements, (2) comprehensively identified and resolved the ambiguous provisions in SB 239, and (3) established concurrence between LAFCO and the fire community regarding implementation. A copy of the February 2016 staff report (Attachment A) and adopted guidelines (Attachment B) are attached to this report.

Lorraine Wood
Councilmember
City of Carlsbad

Jo MacKenzie
Vista Irrigation District

Ed Sprague
Olivenhain Municipal
Water District

Vacant
Special District

Alternate Members

Greg Cox
County Board of
Supervisors

FIRE PROTECTION CONTRACT POLICY

Chris Cate
Councilmember
City of San Diego

While the guidelines address the potential conflicts associated with the review and approval of fire protection contracts, there is a need for policy guidance from the Commission to further define LAFCO's role with the new law. Similar to LAFCO staff's collaborative approach with the development of the recently adopted guidelines, the proposed policy was also reviewed by the Advisory Committee on May 20, 2016. Following the discussion with the advisory committee, the draft policy (Attachment 3) was finalized for Commission consideration.

Racquel Vasquez
Councilmember
City of Lemon Grove

Vacant
Special District

Harry Mathis
Public Member

Executive Officer

Michael D. Ott

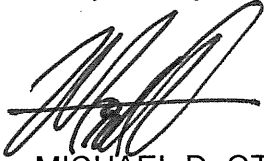
Legal Counsel

Michael G. Colantuono

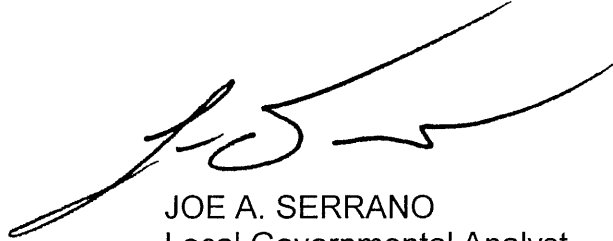
RECOMMENDED: That your Commission,

1. Review and approve the attached Policy for Fire Protection Contracts (Attachment 3); and
2. Direct the Executive Officer to implement the Policy as part of future consideration of fire protection contracts and agreements.

Respectfully submitted,



MICHAEL D. OTT
Executive Officer



JOE A. SERRANO
Local Governmental Analyst

MDO:JS:ra

Attachments:

- 1) February 1, 2016 Staff Report
- 2) Fire Protection Contract Guidelines – Final Version
- 3) Fire Protection Contract Policy – Draft Version

Chairman

Bill Horn
County Board of
Supervisors

February 1, 2016

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Attachment 1

Vice Chairman

Sam Abed
Mayor
City of Escondido

TO: Local Agency Formation Commission

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Members

Dianne Jacob
County Board of
Supervisors

FROM: Executive Officer
Local Governmental Analyst

Andrew Vanderlaan
Public Member

SUBJECT: Draft Guidelines Addressing the Review and Approval of
Fire Protection Contracts

Lorie Zapf
Councilmember
City of San Diego

EXECUTIVE SUMMARY

Lorraine Wood
Councilmember
City of Carlsbad

Enactment of Senate Bill No. 239 (SB 239) amended state law and now requires public agencies, under specified circumstances, to receive written approval from the Local Agency Formation Commission (LAFCO) before exercising new or extended fire protection services outside the agencies' jurisdictional boundaries. The new law went into effect on January 1, 2016 and places added responsibilities on both local and state agencies prior to the submittal of fire protection contract applications to LAFCO.

Jo MacKenzie
Vista Irrigation District

Ed Sprague
Olivenhain Municipal
Water District

A copy of the signed bill by Governor Brown is included in this report as **Attachment 1**. There are many uncertainties with respect to implementation of SB 239. This report identifies outstanding issues requiring further Commission discussion and direction prior to development of a consistent approach for review of fire protection contract applications.

Vacant
Special District

Alternate Members

Greg Cox
County Board of
Supervisors

Chris Cate
Councilmember
City of San Diego

Racquel Vasquez
Councilmember
City of Lemon Grove

Vacant
Special District

Harry Mathis
Public Member

In addition to the notification of today's hearing, LAFCO staff has taken a proactive role to increase awareness of the new law by presenting SB 239 to the Commission's Special Districts Advisory Committee and the San Diego County Fire Chief's Association. Not only did these meetings provide a forum to address the new law's legislative intent but they also assisted in the development of a proposed process for the review of future fire protection contracts. As a result, local agency representatives provided substantial input that was included in staff's final draft documents attached to this report.

Executive Officer

Michael D. Ott

Legal Counsel

Michael G. Colantuono

BACKGROUND

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 directs each LAFCO to review and take action on city or district contract or agreements which extend services outside jurisdictional boundaries. For example, the Commission may authorize a city or district to provide new or extended services outside jurisdictional boundaries to respond to an existing or impending threat to the public health or safety of the residents of the affected territory. Prior to 2016, state law exempted many contracts from LAFCO purview. For example, contracts between two or more public agencies were generally exempt from LAFCO review. This exemption has since been repealed with respect to fire protection contracts.

Following the enactment of SB 239 and establishment of Government Code Section 56134, state law now defines a fire protection contract as: an agreement for the exercise of new or extended fire protection services outside a public agency's boundary that either (1) affects services in more than twenty-five percent of the area within the jurisdictional boundaries of any public agency, or (2) if the employment status of more than twenty-five percent of any public agency is affected by the contract. The San Diego LAFCO opposed this and other provisions in SB 239 because such provisions could potentially have a dampening impact on cost-effective methods of service delivery. SB 239 was nonetheless enacted, and it is now necessary for the San Diego LAFCO to adopt guidelines to ensure that this new law is implemented in a rational manner.

DISCUSSION

The new law requires applicants and LAFCOs to consider various determinations when considering the transfer of fire protection responsibilities including in-depth costs analyses, plans for service, enhanced public notification and additional hearing dates. To illustrate the required steps outlined in SB 239, staff has developed a flowchart similar to other change of organization diagrams available on the San Diego LAFCO's website (see ***Attachment 2***).

While these requirements allow for additional transparency regarding specific fire protection agreements, certain steps outlined in the new law require further clarification before they can be implemented. This led to a meeting between representatives of the California Association of Local Agency Formation Commissions (CALAFCO), the California Professional Firefighters (bill sponsor), and union representatives from CalFIRE Local 2881 to discuss the legislative intent and address any concerns with respect to how SB 239 should be interpreted. The following is a summary of the SB 239's intent according to the bill's sponsor. Also included in this summary are specific recommendations from LAFCO staff regarding clarification and concurrence needed from the Commission.

Threshold Requirement: Public agencies that provide fire protection must now comply

with new requirements when extending services by contract or agreement outside of their jurisdictional boundaries whenever the SB 239 service area or employment status thresholds are reached. SB 239 does not contain verification standards for these thresholds.

- **LAFCO Staff Recommendation:** The bill sponsor indicated that each LAFCO in California may determine what the required proof would be in verifying whether a fire protection contract demands LAFCO review. For example, service maps demonstrating the change of twenty-five percent of the service area or employment statistics that would provide proof of the twenty-five percent of change in employment status could be sufficient documentation for verification. Staff is recommending that several documents be provided as part of the application, including: (1) a copy of the proposed contract, (2) a map and/or Geographic Information System shapefiles recognized by the San Diego LAFCO to determine if the contract affects twenty-five percent of the service area, and (3) budgetary documents which include current employment statistics to determine if the contract affects twenty-five percent of the area's employment status.

Employment Status Undefined: SB 239 applies to an extension of a fire protection contract if either the service area or employment status threshold conditions are triggered. The term "employment status" found in Section 56134(a)(1)(B) is not defined and may lead to different interpretations from affected public agencies, fire unions, and LAFCOs.

- **LAFCO Staff Recommendation:** The bill sponsor indicated that the intent was not to focus on wages, hours, benefits, or working conditions as part of the employment status determination, but rather the change in service providers as it applies to an entire department. Staff has proposed a definition for employment status which is provided on page 5 of this report. This definition focuses on departmental level and service provider changes rather than individual employee level changes.

Single vs. Cumulative Contracts: Currently, Section 56134(a)(2) states in part, if a contract or agreement that, in combination with other contracts or agreements, triggers the twenty-five percent change in service area or employment status, it shall be subject to the definition of a fire protection contract pursuant to this section, and as such will not be exempt from the SB 239 process.

- **LAFCO Staff Recommendation:** The sponsor indicated that it was their intent to review single contracts rather than all of the contracts within that service area, as all of the other contracts are not the cumulative trigger of the twenty-five percent threshold. It was not the intent by the sponsor to trigger each twenty-five threshold by a cumulative approach. Staff is proposing to review and consider proposed fire protection contracts on a case-by-case basis as encouraged by the bill sponsor to clarify this situation.

Contract Exemptions: SB 239 excludes from its requirements mutual aid agreements, including those entered into under the California Emergency Services Act (Gov. Code §

8550 et seq.), or Fire Protection District Law of 1987 (Health & Safety Code § 13800 et seq.). SB 239 is also not intended to change or affect existing LAFCO jurisdiction over proceedings that involve the provision of pre-hospital emergency medical services. No other agreements are exempt from the SB 239 process.

- **LAFCO Staff Recommendation:** The bill sponsor made it clear that several types of fire contracts should not be subject to the new law. These include: renewal of existing contracts (unless renewal includes amendments that trigger the twenty-five percent threshold), ambulance service agreements, and mutual or automatic aid agreements. Additionally, if a current contract expires and an agency no longer wants to contract and assumes providing the service, the bill does not apply, as there is no contract to review and approve. Staff recommends excluding these fire agreements from LAFCO purview as intended by the bill sponsor. In addition, the amendment or renewal of contracts generally does not represent the exercise of “new or extended” service per the meaning of these terms in SB 239. Therefore, contract amendments or renewals will not generally be subject to LAFCO purview.

Collaborative Effort

The meeting with the bill sponsor provided much needed clarification on several areas of the bill. In addition to the newly introduced information, LAFCO staff crafted a preliminary analysis (see **Attachment 3**) of the bill and distributed the document to all fire agencies in order to inform the public agencies at the local and state level of the new law as well as highlight all the outstanding issues within SB 239. To address these issues and develop some type of comprehensive policy, staff also held meetings with LAFCO’s Special Districts Advisory Committee (Committee) and the San Diego County Fire Chief’s Association to discuss SB 239 and provide an opportunity for public agencies to evaluate the new law in an open forum.

The first meeting was held on December 18, 2015 with the Special Districts Advisory Committee. The Committee reviewed the preliminary report and provided direction on several uncertainties within the new statute including term definitions, required documentation, and application procedures. The second meeting was held on January 7, 2016 with the San Diego County Fire Chief’s Association. The Association invited LAFCO to present an overview of the new law. Several members raised concerns on the lack of term definitions used throughout the statute as well as questioning whether agreements between local entities such as Joint Powers Authorities or Indian tribes were subject to LAFCO purview. Such inquiries were subsequently addressed in the draft guidelines. The benefits of both meetings were two-fold: (1) it allowed LAFCO staff to introduce SB 239 to public agencies unfamiliar with the new law and (2) the public agencies were instrumental in identifying several gaps in the law which ultimately assisted in the development of the proposed policy guidelines.

Proposed Fire Protection Contract Policy Guidelines

Based on staff’s review and the input from our outreach with affected agencies, staff

believes the following areas require clarification and are addressed in the proposed guidelines.

Definition of Various Terms

During our meetings with local agencies, a reoccurring concern was the lack of clear definitions. The primary terms in question and in need of clarification were “new and extended services,” “employment status,” and “fire protection.” Staff is proposing these terms be defined as follows:

New and Extended Services

“New service” should be defined independently from extended services and address the governmental functions that were not previously provided by a public agency on or after January 1, 2016. “Extended service” should be defined as a governmental function that goes above and beyond what a public agency currently provides.

Employment Status

The term “employment status” found in Section 56134(a)(1)(B) was not defined; it was the intent of the sponsor that this term means a change in service provider. Furthermore, the bill sponsor indicated that the intent was also not to focus on wages, hours, benefits, or working conditions as part of employment status but rather the change in service providers as it applies to the entire department. While their explanation added supplemental information, the term “employment status” needs a clearer definition before moving forward. The term should, therefore, be defined at the departmental or service provider level and focus on the value of a fire protection contract in relation to the adopted budget of a proposed service provider or changes in the number of employees.

Fire Protection

The term “fire protection” is not defined in the statute. The Merriam-Webster dictionary defines fire protection as the “measures and practices for preventing or reducing injury and loss of life or property by fire.” However, there are several divisions and administrative services that fall under the fire protection umbrella. For example, the Fire Protection District Law of 1987 defines the general powers and duties of a fire district to include fire protection, rescue, emergency medical, hazardous material emergency response, ambulance and any other services relating to the protection of lives and property. To clarify the definition, staff is proposing that fire protection be defined the same as in the Fire Protection District Law of 1987. Subordinate or subsidiary fire protection activities (e.g. administration, management, operations, etc.) will be exempt from LAFCO purview unless otherwise directed by the Commission. Examples of subordinate or subsidiary activities exempt from LAFCO purview include, but are not limited to the following:

- Major/Minor subdivision review, Major Use Permit review, Administrative Permit review (all of which are Discretionary Permits)
- Plan review/Ministerial Permit review (usually building permits)
- New construction fire inspections
- Fire investigations

- Fire sprinkler system plan review and inspections
- Fire alarm system plan review and inspections
- Defensible space inspections and enforcement
- Business/occupancy inspections in existing structures
- Vehicle maintenance and repair
- Sharing of management or other personnel between or among multiple agencies
- Sharing or loaning of equipment or property between or among multiple agencies

Application Procedure

The new law outlines explicit obligations and tasks for both public agencies and LAFCOs when the transfer of fire services is considered. The complete process is outlined in the draft guidelines. In addition, it should be recommended that local and state agencies interested in providing new or extended fire services contact the San Diego LAFCO to determine whether the proposed contract will require LAFCO approval. The draft guidelines identify the benefits of a pre-application discussion between applicants and LAFCO and outline the necessary steps when proposed contracts require LAFCO review or are deemed exempt. Currently, SB 239 does not expedite the LAFCO process when all public agencies agree to the proposed contract. In the event that all affected agencies consent to the proposed change in services, it is recommended that the Commission delegate the approval process to the Executive Officer as a streamlined approach. Also recommended is the filing of a Certificate of Exemption (see ***Attachment 4***) if a proposed contract is determined to be exempt from LAFCO purview by the Executive Officer. Any administratively-approved or exempted fire contract would still be scheduled as an informational item at the next available LAFCO hearing be subject to ratification, as necessary.

Commission Hearing Proceedings

The Commission has the discretion to approve, disapprove, or approve with conditions the contract for new or extended services during the LAFCO hearing. While the new law covers in detail how the Commission cannot approve a proposed fire protection contract unless specific actions are taken, there is a lack of direction in the event if a contract is disapproved or approved with conditions. The draft guidelines provide additional information on the request for reconsideration and termination proceedings if applicable.

Legislative Intent

Following Governor Brown's approval of SB 239 in October 2015, representatives of the CALAFCO met with stakeholders and Sponsors of the bill to discuss the legislative intent. The draft guidelines provide a summary of the meeting between CALAFCO and stakeholders which may be adopted by the Commission as part of the implementation process.

CONCLUSION

Prior to the enactment of SB 239, the Cortese-Knox-Hertzberg Act did not require LAFCO review for most fire protection contracts between two or more public agencies. While the Act recognizes that interagency contracting is often an efficient and cost-saving manner in which to provide local public services, the enactment of SB 239 makes this harder to achieve. SB 239 has accordingly imposed new requirements for Commission approval of fire service contract extensions. To clarify some definitions and procedural aspects of the new law, staff is recommending the adoption of the attached policy guidelines.

RECOMMENDED: That your Commission,

1. Review and approve the attached Policy Guidelines for Fire Protection Contracts (Attachment 5); and
2. Direct the Executive Officer to implement the Guidelines as part of future consideration of fire protection contracts.

Respectfully submitted,

MICHAEL D. OTT
Executive Officer

JOE A. SERRANO
Local Governmental Analyst

Attachments

1. SB 239 Legislative Language
2. SB 239 Flowchart
3. SB 239 Preliminary Analysis Report
4. Certificate of Exemption
5. Fire Protection Contract Policy Guidelines

LOCAL AGENCY FORMATION COMMISSION

Meeting: June 6, 2016

DRAFT GUIDELINES ADDRESSING THE REVIEW AND APPROVAL OF FIRE PROTECTION CONTRACTS REPORT

**Attachments 1-5 of the Report Presented to
the Commission on February 1, 2016, (Item
No. 12) are available on the SD LAFCO
website @ www.sdlafco.org.**

SAN DIEGO LAFCO FIRE PROTECTION CONTRACT GUIDELINES

I. PURPOSE

To provide guidance to the San Diego Local Agency Formation Commission (LAFCO) in conducting fire protection contract reviews.

II. BACKGROUND

Senate Bill No. 239 (SB 239) was signed into law requiring public agencies, under specified circumstances, to receive written approval from the LAFCO in the affected counties before providing new or extended fire protection services outside the agencies' jurisdictional boundaries. The law does not apply to mutual aid agreements, pre-hospital emergency medical services, or existing agreements executed prior to January 1, 2016, unless contractual amendments in 2016 causing either of the 25% thresholds referenced below are reached. SB 239 amended Government Code Sections 56017.2, 56133, and added 56134.

III. OBJECTIVE

Government Code Section 56134 requires LAFCO review and approval for each new fire protection contract. Section 56134 defines a "fire protection contract" as a contract or agreement for the exercise of new or extended fire protection services outside a public agency's jurisdictional boundaries that does either of the following:

- Transfer responsibility for providing services in more than 25% of the area within the jurisdictional boundaries of any public agency affected by the contract or agreement; or
- Changes the employment status of more than 25% of the employees of any public agency affected by the contract or agreement.

An extension of a fire protection contract entered into on or before December 31, 2015 that would produce either of the 25% thresholds above is deemed to be a fire protection contract per SB 239. A proposed contract or agreement for fire protection services in combination with other contracts or agreements, which results in either of the two threshold criteria, is deemed a fire protection contract and is subject to LAFCO purview. However, the sponsor of SB 239 has indicated it is their intent that it be just the one contract rather than all of the contracts within that service area, as all of the other contracts are not the cumulative trigger of the 25% thresholds. As a result, San Diego LAFCO will review and consider proposed fire contracts on a case-by-case basis.

In addition, the amendment or renewal of contracts does not necessarily represent the exercise of “new or extended” services per the meaning of these terms in SB 239. Most contract amendments or renewals represent transfer of existing service responsibilities from one agency to another and not the exercise of “new or extended” services. Therefore, contract amendments and renewals will generally be exempt from LAFCO purview.

IV. DEFINITIONS

The definition of the following terms will assist in the implementation of Government Code Section 56134:

- **Affected public agency** – shall mean any public agency that contains, or would contain, or whose sphere of influence contains or would contain any territory for which an extension of fire service is to be reviewed by the commission. SB 239 contains no sphere consistency requirements with respect to fire protection contracts.
- **Contract or agreement** – shall mean a written contract, agreement or other legal instrument, specifying how service will be extended, provided, or delivered to an affected public agency.
- **Employment status** – shall be defined at the departmental or service provider level and focus on the value of a fire protection contract in relation to the adopted budget of a proposed service provider or changes in the number of employees. Note: the bill sponsors indicated that the intent was not to focus on wages, hours, benefits, or working conditions as part of employment status but rather the change in service providers as it applies to the entire department.
- **Extended services** – services that go above and beyond a class of or special governmental activity established within and as a part of a single public agency general function currently provided.
- **Fire protection** – shall be defined as the governmental activities related to fire protection and may include rescue, emergency medical, hazardous material emergency response, ambulance and any other service(s) consistent with the Fire Protection District Law of 1987 related to the protection of lives and property. Some fire protection activities (e.g. administration, management, operations, etc.) are considered subordinate or subsidiary subcomponents to fire protection and include, but are not limited to the following:
 - Ambulance services
 - Prehospital emergency medical services
 - Mutual or automatic aid agreements
 - Major/Minor subdivision review, Major Use Permit review, Administrative Permit review (all of which are Discretionary Permits)

- Plan review/Ministerial Permit review (usually building permits)
 - New construction fire inspections
 - Fire investigations
 - Fire sprinkler system plan review and inspections
 - Fire alarm system plan review and inspections
 - Defensible space inspections and enforcement
 - Business/occupancy inspections in existing structures
 - Vehicle maintenance and repair
 - Sharing of management or other personnel between or among multiple agencies
 - Sharing or loaning of equipment or property between or among multiple agencies
- **New services** – a class of or special governmental activity established within and as a part of a single public agency general function as provided on or after January 1, 2016. It should be pointed out that a special district would be precluded from providing a “new service” unless it has received LAFCO authorization for activation of latent powers.
 - **Public Agency** – shall be defined in compliance with Government Code Section 56070. The statutory definition of public agency means “the state or any state agency, board, or commission, any city, county, city and county, special district, or any agency, board, or commission of the city, county, city and county, special district, joint powers authority, or other political subdivision.” The definition of public agency does not include Indian tribes, private or mutual water companies.
 - **Written approval of the Commission** – shall mean the adoption of a resolution or other similar document of the Commission and signed by the Executive Officer approving the service agreement/contract at a noticed public hearing.

V. PRE-APPLICATION PROCESS

Public agencies interested in providing new or extended fire services should contact the San Diego LAFCO to determine whether the proposed contract will require LAFCO approval. A pre-application discussion is recommended to address any possible issues associated with the expansion of fire protection services.

If the proposed contract is determined to be exempt from LAFCO purview, a Certificate of Exemption will be filed. The Executive Officer’s determination of exemption is appealable to the Commission within 30 days of the issuance of the determination. Such appeal must be filed in writing with the Executive Officer and must include specific substantiation for the appeal, directly related to fire protection and SB 239 requirements. The appeal shall be heard at the next available Commission meeting that permits adequate public notification.

SB 239 does not expedite the LAFCO process when all public agencies agree to the proposed contract. Therefore, in the event that all affected agencies are in agreement to the proposed change in services, the surcharge for the consideration of a fire protection contract will be waived for the applicant and a streamlined administrative approval process will be followed. For more information on the processing fee regarding fire protection contracts, please review the **“Processing Fee Schedule”** section of this policy.

VI. EXEMPTIONS

The bill sponsor, the California Professional Firefighters, indicated that some fire protection agreements were not intended to be subject to the new law. The San Diego LAFCO accordingly considers the following contracts and agreements exempt from LAFCO purview per these guidelines and/or requirements of SB 239:

- Renewal of existing contracts, unless the renewal included amendments or the inclusion of new territory that triggered the 25% change in service area or employment status
- Ambulance service agreements
- Prehospital emergency medical services
- Mutual or automatic aid agreements
- Subordinate or subsidiary fire protection activities including, but not limited to the following:
 - Ambulance services
 - Prehospital emergency medical services
 - Mutual or automatic aid agreements
 - Major/Minor subdivision review, Major Use Permit review, Administrative Permit review (all of which are Discretionary Permits)
 - Plan review/Ministerial Permit review (usually building permits)
 - New construction fire inspections
 - Fire investigations
 - Fire sprinkler system plan review and inspections
 - Fire alarm system plan review and inspections
 - Defensible space inspections and enforcement
 - Business/occupancy inspections in existing structures
 - Vehicle maintenance and repair
 - Sharing of management or other personnel between or among multiple agencies
 - Sharing or loaning of equipment or property between or among multiple agencies

VII. INITIATION CRITERIA

Public agencies interested in providing new or extended fire services must complete the following steps prior to adopting an initiating resolution:

- Obtain and submit a written agreement validated and executed by each affected public agency and recognized employee organization that represents firefighters of the existing and proposed service providers consenting to the proposed fire protection contract with their adopted resolution; or
- Provide, at least 30 days prior to the hearing in regards to the initiating resolution, a written notice to each affected public agency and recognized employee organization that represents firefighters of the existing proposed service providers of the proposed fire protection contract and submit a copy of each written notice with the resolution of application. The notice shall, at minimum, include a full copy of the proposed contract; and
- In addition to completing one of the above steps, public agencies must also conduct an open and public hearing on the resolution pursuant to the Ralph M. Brown Act or the Bagley-Keene Open Meeting Act, as applicable.

If a resolution is adopted, the clerk of the public agency or the director of the state agency adopting the resolution of application shall file a certified copy with the LAFCO Executive Officer. A request by a public agency for commission approval of new or extended services provided pursuant to a fire protection contract shall be made by the adoption of a resolution of application as follows:

- **Non-State Agency:** In the case of a public agency that is not a state agency; the application shall be initiated by the adoption of a resolution of application by the legislative body of the public agency proposing to provide new or extended services outside the public agency's current service area.
- **State Agency:** In the case of a public agency that is a state agency, the application shall be initiated by the director of the state agency proposing to provide new or extended services outside the agency's current service area and be approved by the Director of Finance.
- **Local Agency Under Contract:** In the case of a public agency that is a local agency currently under contract with a state agency for the provision of fire protection services and proposing to provide new or extended services by the expansion of the existing contract or agreement, the application shall be initiated by the public agency that is a local agency and be approved by the Director of Finance.

VIII. PLAN FOR SERVICE

An application cannot be submitted to LAFCO unless the legislative body of a public agency or the director of a state agency completes a plan for service and independent comprehensive fiscal analysis as part of the application. The plan for service must address the following items:

1. The total estimated cost to provide the new or extended fire protection services in the affected territory;
2. The total estimated cost of the new or extended fire protection services to customers in the affected territory;
3. An identification of existing service providers, if any, of the new or extended services proposed to be provided and the potential fiscal impact to the customers of those existing providers;
4. A plan for financing the exercise of the new or extended fire protection services in the affected territory;
5. Alternatives for the exercise of the new or extended fire protection services in the affected territory;
6. An enumeration and description of the new or extended fire protection services proposed to be extended to the affected territory;
7. The level and range of new or extended fire protection services;
8. An indication of when the new or extended fire protection services can feasibly be extended to the affected territory;
9. An indication of any improvements or upgrades to structures, roads, sewer or water facilities, or other conditions the public agency would impose or require within the affected territory if the fire protection contract is completed; and
10. A determination supported by documentation, that the proposed fire protection contract meets either 25% threshold. The documentation must include a copy of the proposed contract. In addition, if the contract affects 25% of the service area, a map and/or Geographic Information System (GIS) shapefiles recognized by the San Diego LAFCO must be provided in order for data verification by LAFCO. If the contract affects 25% of the employment status, budgetary documents disclosing employment statistics must be provided to LAFCO.

IX. INDEPENDENT COMPREHENSIVE FISCAL ANALYSIS

The applicant is required to prepare by contract an independent comprehensive fiscal analysis, in conjunction with the plan for service, to be submitted with the application. The analysis shall review and document all of the following:

1. A thorough review of the plan for services submitted by the public agency;
2. How the costs of the existing service provider compare to the costs of services provided in service areas with similar populations and of similar geographic size that provide a similar level and range of services and make a reasonable determination of the costs expected to be borne by the public agency providing new or extended fire protection services; and
3. Any other information and analysis needed to support the findings required by the Commission's determinations.

X. LAFCO REVIEW

Once a public agency submits an application with an adopted initiating resolution, completed plan for service and finalized independent comprehensive fiscal analysis, the Executive Officer has within 30 days of receipt to determine whether the request is complete and acceptable for filing. The Executive Officer will notify the applicant if the application is incomplete and the manner in which the application can be rectified to move forward. When the applicant fulfills all requirements, the Executive Officer shall place the request on the agenda of the next commission meeting but not more than 90 days from the date that the application is deemed complete.

XI. COMMISSION HEARING

Once the application is ready for Commission consideration, the Executive Officer shall give mailed notice of the hearing, at least 21 days prior to the hearing date, to each affected local agency or affected county and to any interested party who has filed a written request for notice. The Executive Officer shall also publish the notice of hearing in a newspaper of general circulation that is circulated within the territory affected by the proposal and shall post the notice on LAFCO's website at least 21 days prior to the hearing date.

The Commission may approve, disapprove, or approve with conditions the contract for new or extended services during the LAFCO hearing. If the contract is denied or approved with conditions, the applicant may request reconsideration by citing the reasons for reevaluation. The new law also states that the Commission cannot approve a proposed fire protection contract unless the Commission determines, based on the entire record, all of the following:

- A. The public agency will have sufficient revenues to carry out the exercise of the new or extended fire protection services outside its current area. The Commission may approve an application where the Commission has determined that the public agency will not have sufficient revenue to

provide the proposed new or different functions of services, if the Commission conditions its approval on the concurrent approval of sufficient revenue sources.

- B. The proposed exercise of new or extended fire protection services outside a public agency's current service area is consistent with the intent of SB 239, LAFCO's state mandates and established policies and procedures.
- C. The Commission has reviewed the comprehensive fiscal analysis.
- D. The Commission has reviewed any testimony presented at the public hearing.
- E. The proposed affected territory is expected to receive revenues sufficient to provide public services and facilities and a reasonable reserve during the three fiscal years following the effective date of the contract or agreement between the public agencies to provide the new or extended fire protection services.

Contract Approved

If the Commission determines all the requirements under Government Code Section 56134 have been met, the Commission will adopt a resolution of approval or other associated document. For contracts that receive consensus from all affected agencies, the Commission may delegate the approval process to the Executive Officer. Any administratively-approved fire contract will be scheduled as an informational item at the next available LAFCO hearing and may be subject to ratification, as necessary.

Contract Approved with Conditions

If the Commission approves the contract with conditions, the Commission will adopt a resolution of approval or other document with the conditions listed. For contracts that receive consensus from all affected agencies, the Commission may delegate the approval process to the Executive Officer. Any administratively-approved fire contract will be scheduled as an informational item at the next available LAFCO hearing and may be subject to ratification, as necessary.

Contract Disapproval

If the Commission or Executive Officer disapproves the contract, the applicant may request for reconsideration by citing the reasons for reevaluation. If the reconsideration does not change the initial decision, the Commission will adopt a resolution of disapproval.

XII. REQUEST FOR RECONSIDERATION

SB 239 specifies that an applicant may submit a request for reconsideration if the commission denies the contract or approves with conditions. Under LAFCO statute, any person or affected agency may file a written request with the Executive Officer requesting amendments to or reconsideration of a resolution adopted by the commission within 30 days of the adoption date pursuant to Government Code

Section 56895. The new law discusses the opportunity to request for reconsideration but there is no reference of any deadline to submit a request. For continuity, the Commission will establish a 30-day request for reconsideration period tolled from when fire protection contract(s) are considered by the Commission.

XIII. TERMINATION PROCEEDINGS

Pursuant to Government Code Section 57090(a), if a proposal is terminated, no substantially similar proposal for a change or organization of the same or substantially the same territory may be filed with the commission within one year after the date of the certificate of termination. The new law discusses the requirements to execute a fire protection contract but there is no reference of any termination proceedings. For continuity, the Commission will establish termination proceedings mirroring the procedures outlined in GCS 57090.

XIV. PROCESSING FEE SCHEDULE

The Commission currently has in place a fee schedule for contractual service agreements based on acreage. Fire protection contracts will be included as part of the established fee schedule structure. In addition to the standard processing fee, there will be a 30% non-refundable surcharge for consideration of fire protection contracts. The surcharge will not apply to fire protection contract when all affected public agencies agree to the proposed change in service.

XV. CLARIFYING INFORMATION FROM BILL SPONSORS

Following Governor Brown's approval of SB 239 in October 2015, representatives of the California Association of Local Agency Formation Commissions (CALAFCO) met with stakeholders and Sponsors of the bill to discuss the legislative intent. The following is a summary of the meeting between CALAFCO and stakeholders. The Commission will accordingly consider the following when implementing SB 239.

What the bill is intended to do according to the sponsor:

- Require the applicant to provide LAFCO, as part of the application, whether the 25% service area or employment status trigger is occurring.
- It is up to each LAFCO in California may determine what the required proof would be (for example, service maps demonstrating the change of +25% of the service area, or employment statistics that would provide proof of the +25% of change in employment status). Each LAFCO is encouraged to create local policies on what they would require as the proper documentation.
- While the term "employment status" found in 56134(a)(1)(B) is not defined, it is the intent of the sponsor that this means a change in service providers (department as employer). While a change in wages/benefits/hours worked/working conditions may be viewed by some

as a change in “employment status, but, it was, according to the sponsor, not the original intent of the sponsors.

- The change in employment status of the employees of any public agency affected by the contract or agreement is intended to apply to the entire department.
- Section 56134(a)(2) states in part, that if a contract or agreement that, in combination with other contracts or agreements, triggers the +25% change in service area or employment status, it shall be subject to the definition of a fire protection contract pursuant to this section, and as such will not be exempt from this process. The sponsor indicated it is their intent that it be just the one contract rather than all of the contracts within that service area, as all of the other contracts are not the cumulative trigger of the +25%. Each LAFCO is encouraged to consider a local policy to clarify the situation.

What the bill is not intended to do according to the sponsor:

- The bill is not intended to apply to the renewal of existing contracts, unless the renewal included amendments or the inclusion of new territory that triggered the +25% change in service area or employment status.
- The bill is not intended to apply to mutual or automatic aid agreements.
- The bill is not included to apply to ambulance service agreements.
- If a current contract expires and an agency no longer wants to contract for services and will take over providing the services themselves, the bill does not apply, as there is no contract to review and approve.

Adopted: February 1, 2016

Subject:**Attachment 3**

REVIEW AND APPROVAL OF FIRE PROTECTION CONTRACTS AND AGREEMENTS

Purpose

To provide guidance to the San Diego Local Agency Formation Commission (LAFCO) in reviewing fire protection contracts or agreements for the exercise of new or extended fire protection services outside a public agency's boundaries per Government Code Section 56134.

Background

Senate Bill No. 239 (Hertzberg) was approved in 2015 and became effective on January 1, 2016. SB 239 amended Government Code Sections 56017.2 and 56133, and added Section 56134. Per SB 239, public agencies, under specified circumstances, must receive written approval from the LAFCO in an affected county before providing new or extended fire protection services outside the agencies' jurisdictional boundaries, if the contract results in either of the following conditions: (1) transfers responsibility for providing services in more than 25% of the area within the jurisdictional boundaries of any public agency affected by the contract or agreement; or (2) changes the employment status of more than 25% of the employees of any public agency affected by the contract or agreement.

The new law places added responsibilities on local and state agencies, plus LAFCO. Since there are many uncertainties with respect to implementation of SB 239, the San Diego LAFCO adopted implementation guidelines on February 1, 2016. The adopted guidelines have been incorporated by reference into Legislative Policy L-110 and together, these two documents (guidelines and policy), will assist the Commission in following a consistent approach for the review and approval of fire protection contract applications.

Policy

It is the policy of the San Diego LAFCO to use a multi-step process for the review of fire protection contracts and agreements. The process begins with pre-application consultation; application review; commission consideration; and commission action. This process will be guided by the following provisions:

1. *Pre-Application Review and Discussion*: Prior to submission of a proposal requesting LAFCO consideration, the Commission encourages public agencies and service recipients to participate in a pre-application discussion with LAFCO staff. As part of the pre-application discussion, the Executive Officer shall determine whether the proposed fire protection contract or agreement is subject to or exempt from LAFCO purview. A Certificate of Exemption shall be issued by the Executive Officer, if the contract or agreement is exempt from LAFCO purview. The San Diego LAFCO and/or Executive Officer will consider the following contracts and agreements exempt from LAFCO purview per its adopted guidelines:

- a. Renewal of existing contracts, unless the renewal included amendments

or the inclusion of new territory that triggered the 25% change in service area or employment status.

b. Ambulance service agreements.

c. Pre-hospital emergency medical services.

d. Mutual or automatic aid agreements.

e. Subordinate or subsidiary fire protection activities including, but not limited to the following: ambulance services; pre-hospital emergency medical services; mutual or automatic aid agreements; major/minor subdivision review, major Use Permit review, administrative permit review (all of which are discretionary permits); plan review/ministerial permit review (usually building permits); new construction fire inspections; fire investigations; fire sprinkler system plan review and inspections; fire alarm system plan review and inspections; defensible space inspections and enforcement; business/occupancy inspections in existing structures; vehicle maintenance and repair; sharing of management or other personnel between or among multiple agencies; sharing or loaning of equipment or property between or among multiple agencies.

2. *Application Review:* The Executive Officer shall within 30 days of receipt of a fire contract or agreement determine whether the associated contract application is complete and acceptable for filing. The Executive Officer shall notify the applicant if the application is incomplete and the manner in which the application can be rectified if determined to be incomplete.

a. Once the application is ready for Commission consideration, the Executive Officer shall give mailed notice of the hearing, at least 21 days prior to the hearing date, to each affected local agency or affected county and to any interested party who has filed a written request for notice.

b. The Executive Officer shall also publish the notice of hearing in a newspaper of general circulation that is circulated within the territory affected by the proposal and shall post the notice on LAFCO's website at least 21 days prior to the hearing date.

3. *Commission Consideration:* The Commission shall not approve a proposed fire protection contract unless it determines, based on the entire record, all of the following:

a. The public agency will have sufficient revenues to carry out the exercise of the new or extended fire protection services outside its current area. The Commission may approve an application where the Commission has determined that the public agency will not have sufficient revenue to provide the proposed new or different functions of services, if the Commission conditions its approval on the concurrent approval of sufficient revenue sources.

- b. The proposed exercise of new or extended fire protection services outside a public agency's current service area is consistent with the intent of SB 239, LAFCO's state mandates and established policies and procedures.
- c. The Commission has reviewed the plan for service.
- d. The Commission has reviewed the comprehensive fiscal analysis.
- e. The Commission has reviewed any testimony presented at the public hearing.
- f. The proposed affected territory is expected to receive revenues sufficient to provide public services and facilities and a reasonable reserve during the three fiscal years following the effective date of the contract or agreement between the public agencies to provide the new or extended fire protection services.

4. *Commission Action:* The Commission may approve, approve with condition(s), or disapprove, the contract for new or extended services upon closure of the associated LAFCO hearing and/or administrative proceeding.

a. *Approval* - If the Commission determines all the requirements under Government Code Section 56134 have been met, the Commission shall adopt a resolution of approval or other associated document. For contracts that receive consensus from all affected agencies, the Commission may delegate the approval process to the Executive Officer. Any administratively-approved fire contract shall be scheduled as an informational item at the next available LAFCO hearing and may be subject to ratification, as necessary.

b. *Approval with Conditions* - If the Commission or Executive Officer approves the contract or agreement with conditions, the Commission shall adopt a resolution of approval or other document with the conditions listed. For contracts that receive consensus from all affected agencies, the Commission may delegate the approval process to the Executive Officer. Any administratively-approved fire contract will be scheduled as an informational item at the next available LAFCO hearing and will be subject to ratification, as necessary.

c. *Disapproval* - If the Commission or Executive Officer disapproves the contract or agreement, termination proceedings mirroring the procedures outlined in Government Code Section 57090 shall be followed. Pursuant to Government Code Section 57090(a), if a proposal is terminated, no substantially similar proposal for a change or organization of the same or substantially the same territory may be filed with the commission within one year after the date of the certificate of termination. This waiting period may be waived by the Commission if public health, safety, or welfare issues are present.

d. *Reconsideration:* The Commission establishes a 30-day request for reconsideration period tolled from when a fire protection contract is

considered by the Commission or Executive Officer. The request for reconsideration must be in writing and shall be subject to LAFCO's reconsideration rules and payment of associated processing fees.

Adopted: XXXXX, 2016