



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

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AGENDA REPORT
 Business | Action

May 6, 2024

TO: Commissioners

FROM: Keene Simonds, Executive Officer
 Priscilla Mumpower, Assistant Executive Officer

SUBJECT: Proposed Policy on Out-of-Agency Services

SUMMARY

The San Diego County Local Agency Formation Commission (LAFCO) will consider approving a policy to govern outside service approvals for cities and special districts. The item is part of LAFCO’s adopted workplan and most recently reviewed by the Commission in October 2023 before separate presentations were made to the Cities and Special Districts Advisory Committees in December 2023 and March 2024, respectively. The version before the Commission reflects feedback generated since October and continues to be premised on providing clear rules of engagement in implementing Government Code Section 56133 and its provisions requiring cities and districts to first request and receive approval from LAFCOs before providing out-of-agency services by contracts. Staff recommends approval of the policy with any desired changes along with setting an immediate effective date.

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 – “out-of-agency” services. The addition is codified in Government Code Section 56133 and includes a limited number of exemptions where

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LAFCOs' approval is not needed. This 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 involves 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.

Earlier Draft Policy Versions on Out-of-Agency Services

LAFCO staff prepared an initial draft policy on out-of-agency services for discussion by the Commission in November 2022. The initial version was marked by staff proposing the establishment of local definitions for "new" and "extended" services as well as local exemptions in which certain out-of-agency services would not require formal review and approval. Staff also included an explicit policy in the initial version that the Commission determines exemption (statute and local) eligibility. This initial version was subsequently shared with the Special Districts Advisory Committee in December 2022 with significant concerns and/or objections raised by a majority of the 16 members. LAFCO staff continued to work with the Special Districts Advisory Committee through multiple revisions paired with providing an update to the Commission in October 2023. Commission feedback helped to narrow talking points and a new version – sixth overall since November 2022 – was unanimously supported by the Special Districts Advisory Committee in December 2023. This version was subsequently presented to the Cities Advisory Committee in March 2024 with no concerns or objections raised by the 18 members.

DISCUSSION

This item is for San Diego LAFCO to consider approving a proposed policy governing the process of receiving, evaluating, and acting on out-of-agency service requests. The proposed version builds on several earlier versions, and this includes incorporating feedback generated from the Commission at its October 2023 meeting. Key provisions reflected in the proposed policy before the Commission follow.

- 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.
- 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.

- 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 municipal functions or classes to previously unserved non-jurisdictional lands and/or the re-commencement of functions or classes after a discontinuous period of one or more years.
 - Extended services mean the intensification of municipal functions or classes to serve (actual) non-jurisdictional lands facilitated by a zoning change.
- Establish local exemptions in which Commission review and approval – which is separate from determining eligibility – is not required for 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:
 - Abandoned Vehicle Abatement
 - Accounting, Billing, and Payroll
 - Animal Care and Control
 - Building and Code Enforcement
 - Customer Service
 - Dispatch
 - Grant Writing
 - Heavy Equipment Exchange and/or operation
 - Human Resources
 - Information Technology
 - Laboratory Services
 - Legal
 - Pooled Equipment Purchasing and Use
 - Pooled Materials Purchasing and Use
 - Pooled Services Purchasing and Use
 - Public Affairs/Outreach
 - Training
 - Water, Wastewater, Recycled Water, Stormwater, and Advanced Purification Plant Operations
- Make explicit LAFCO via the Executive Officer determines exemption eligibility with related no-cost request procedures.

- 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 complete copy of the proposed policy is provided in Attachment One.

ANALYSIS

The proposed 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 the Commission chooses to meet its delegated duty to regulate out-of-agency services. LAFCO staff believes the proposed policy appropriately balances the dual interest of the Commission to encourage local agencies to cost-share and pursue creative partnerships while also ensuring out-of-agency activities do not undermine jurisdictional boundaries or dampen local accountability. A related interest – notably and given recent history – addressed in proceeding with the proposed policy is to help sunlight proposed out-of-agency services and in doing so proactively help avoid potential conflicts between local agencies.

RECOMMENDATION

It is recommended San Diego LAFCO approve the proposed policy on out-of-agency services. This recommendation is consistent with Alternative One outlined in the proceeding section.

ALTERNATIVES FOR ACTION

The following alternative actions are available to San Diego LAFCO:

Alternative One (recommended):

Approve the proposed policy on out-of-agency services as provided in Attachment One with any desired changes and set an immediate effective date.

Alternative Two:

Continue consideration of the item to a future meeting and provide direction to staff for additional information as needed.

Alternative Three:

Take no action.

PROCEDURES

This item has been placed on San Diego LAFCO’s agenda for action 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) Commission discussion.
- 3) Consideration of the staff recommendation.

On behalf of the Executive Officer,



Priscilla Mumpower
Assistant Executive Officer

Attachment:

- 1) Proposed Policy on Out-of-Agency Services

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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).¹

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 will review out-of-agency service agreements not previously considered by the Commission in conjunction with future applications for related changes to organization and not unilaterally seek out and review out-of-agency service agreements for compliance with Government Code Section 56133.
- 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

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

response to efficient utilization of regional government resources and existing or impending public health and safety threats.

- i. The Commission will exercise its independent discretion in determining efficient utilization of government resources and when existing or impending public health and safety threats exist with consideration of State Water Resources Control Board Division of Drinking Water, Regional Water Quality Control Board, California Department of Public Health and San Diego County Department of Public Health regulatory guidance and based on available documentation and analysis provided by LAFCO staff.

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 12 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 determines exemption eligibility of all statutory exemptions under 56133(e) as well as local exemptions provided under this policy.
- b) The Commission shall emphasize the "point of delivery" in assessing the applicability of Section 56133.
- c) 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), which includes agreements established prior to 2001, 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. Agreements solely involving two or more public agencies where the public service to be provided (by Agency A) is an alternative to, or substitute for, public services already being provided by an existing public service provider (by Agency B) and where the level of service to be provided by (Agency A) is consistent with the level of service contemplated by the existing service provider (Agency B).
 - a. For the purposes of this section, "already being provided" means the services are within the agency's (Agency B) jurisdictional boundary and an established service area wherein services are being actively provided by the agency (Agency B).
 - b. For the purposes if this section, "contemplated" means:
 - i. The service level is anticipated in a master plan or some long-range planning document of Agency B.
 - ii. Sufficient infrastructure and capacity exists (by Agency A) to provide the service.
 - iii. Service agreements between cities and/or special districts for the use, installations, and maintenance of meter or operational technology (OT)

communications infrastructure similar to wireless ethernet, cellular towers, fiber optic, etc.

- iv. Agreements involving Cathodic protection of pipelines.
- v. Temporary access to cities and/or special districts' potable water supplies due to an interruption – planned or otherwise.
- vi. Temporary access to cities and/or special districts' wastewater collection, treatment, or discharge facilities.
- vii. Temporary access to cities and/or special districts' potable, raw, or recycled water when deemed the best and most efficient use of resources.
- viii. Shared services between cities and/or special districts where monetary compensation is exchanged beyond reimbursements for any of the following activities:
 - Abandoned Vehicle Abatement
 - Accounting, Billing, and Payroll
 - Animal Care and Control
 - Building and Code Enforcement
 - Customer Service
 - Dispatch
 - Grant Writing
 - Heavy Equipment Exchange and/or operation
 - Human Resources
 - Information Technology
 - Laboratory Services
 - Legal
 - Pooled Equipment Purchasing and Use
 - Pooled Materials Purchasing and Use
 - Pooled Services Purchasing and Use
 - Public Affairs/Outreach
 - Training
 - Water, Wastewater, Recycled Water, Stormwater and Advanced Purification Plant Operations

5. 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.

6. 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 findings.