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

5b

AGENDA REPORT
Business | Discussion

March 20, 2025

TO: Cities Advisory Committee

FROM: Keene Simonds, Executive Officer
Michaela Peters, Analyst II

SUBJECT: **Update on Implementing Policy on Out-of-Agency Services**

SUMMARY

The Cities Advisory Committee ("Committee") will receive an update on the implementation of a new LAFCO policy governing out-of-agency services in San Diego County. The policy was established in May 2024 and premised on providing clear rules of engagement in administering Government Code Section 56133 and its provisions requiring cities and special districts to first request and receive approval from LAFCOs before providing out-of-agency services by contracts. As detailed, LAFCO has processed several requests under the new policy as well as implementing related provisions marked by the delegation to the Executive Officer to provide no-cost determinations to cities and districts on exemption eligibility. The update is being presented to the Committee for discussion as part of a scheduled check-in to revisit implementation and identify potential cleanup amendments going forward.

BACKGROUND

Statutory Requirement

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. The includes agreements between two or more public agencies where the contract service is an equal substitute for

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services already provided. The statute also specifies any out-of-agency services local agencies were providing before January 1, 2001 are "grandfathered.

Local Policy Establishment

In May 2024, and consistent with its adopted workplan, LAFCO approved a policy establishing rules and related procedures in receiving, evaluating, and acting on local agencies' requests to provide new or extended services other than fire protection outside their jurisdictions.[1] The motivation to establish a local policy tied to increasing awareness of the scope and scale of local agencies' out-of-agency service practices in step with advancing LAFCO's municipal service review program. Key provisions within the policy follows.

- 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.

- Establish local exemptions in which Commission review and approval – which is separate from determining eligibility – is not required.

- Make explicit LAFCO via the Executive Officer determines exemption eligibility with related no-cost request procedures.

- Delegate to the Executive Officer authority 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 prospectus on the policy paired with a full detailing is attached.

DISCUSSION

This item is for the Committee to receive a scheduled update on LAFCO's ongoing implementation of its new policies governing out-of-agency services under statute with context to local conditions and circumstances in San Diego County. The accompanying staff presentation will detail the scope of requests processed under the new policy as well as related observations – including material themes emerging over the first year of implementation. Committee discussion will help inform clean-up amendments staff anticipates forwarding to the Commission for future consideration.

ANALYSIS

LAFCO staff believes the policy on out-of-agency services has been successful in meeting its underlying goal of creating clear rules of engagement for cities and special districts to proactively comply with Government Code Section 56133. Markedly, and since establishing the policy In May 2024, LAFCO has processed nine out-of-agency service requests will all resulting in approvals – whether directly by the Commission or via delegation through the Executive Officer. This 10-month tally equals the total number of out-of-agency service

[1] Out-of-agency fire protection services are subject to separate statutory direction under Government Code Section 56134.

requests processed over the preceding three-year period and suggests the policy is effectively illuminating the need for cities and districts to request and receive approval by LAFCO before establishing out-of-agency services. Separately, four of the nine requests processed and approved by LAFCO over the last 10 months have qualified for delegation with the Executive Officer determining these requests reasonably address existing or impending public health and safety threats. This includes the Executive Officer citing the need for additional housing as a material consideration – among others - in substantiating a public health and safety finding. LAFCO also considered four formal no-cost requests for exemption eligibility with responsposes provided to the agencies within the one-week period provided in policy. These otherwise positive observations notwithstanding, certain challenges have emerged in implementing the policy and include – but not limited to – the following:

- Determining *impending* public health and/or safety threats and allowance therein to accommodate services beyond spheres of influence (emphasis).

- Applicants may be potentially gaming the system (fee schedule) to induce an otherwise reasonable existing public health and/or safety threat to expedite approval and/or secure a reduced service fee.

- Conditioning out-of-agency approvals – including when to require annexation.

RECOMMENDATION

Review and discuss as requested.

ALTERNATIVES FOR ACTION

None.

PROCEDURES

This item has been placed on the Committee'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.
2) Invite comments from interested audience members.
3) Discuss item and provide feedback as requested.

Respectfully,

Michaela Peters

Michaela Peters
Analyst II

Attachments:

1) Prospectus on Policy L-113 - OSAs
2) Policy L-113 – OSAs

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Out-of-Agency Services

POLICY L-113

(EXCLUSIVE OF FIRE PROTECTION SERVICES)

BACKGROUND

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 LAFCOs' formal approval is not needed. Most notably, this includes agreements between two or more public agencies where the contract service is an equal substitute for services already provided. Contracts involving fire protection services are separately addressed under Government Code Section 56134 and are not covered under this policy.

PURPOSE

This policy was adopted by San Diego LAFCO in May 2024 and serves 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. The 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.

POLICY HIGHLIGHTS

Goals and Priorities

1

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.

2

The Commission will not unilaterally seek out and review out-of-agency service agreements for compliance with Government Code Section 56133.

3

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.

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.

4

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

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.



An out-of-agency service agreement was approved by the Commission in March 2023 for Palomar HCD to provide laborist and OB/GYN medical services to two clinics – Vista Community and TrueCare.

Establishing Local Definitions

New Services:

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:

The intensification of municipal functions or classes to serve (actual) non-jurisdictional lands facilitated by a zoning change.

Additional definitions found within the full policy.

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Defining Applicability

- The Commission determines exemption eligibility of all statutory exemptions under 56133(e) as well as local exemptions.
- Cities and special districts may request a no-cost determination as to whether any proposed out-of-agency services are eligible for exemption.
- The Commission shall emphasize the "point of delivery" in assessing the applicability of Section 56133.

Creating Local Exemptions

In addition to those provided by the Legislature under Section 56133(e), which includes agreements established prior to 2001, the Commission has established local exemptions in which approvals are not required. Exemption eligibility is determined by the commission and is delegated to the Executive Officer. Local exemptions include:

- Advisory or automatic aid services provided by a city and/or special district where no monetary compensation other than reimbursements are exchanged.
- Temporary access to cities and/or special districts' potable water supplies due to an interruption – planned or otherwise; wastewater collection, treatment, or discharge facilities; potable, raw, or recycled water when deemed the best and most efficient use of resources.
- Shared services between cities and/or special districts where monetary compensation is exchanged beyond reimbursements.
  - 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
- 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).
- 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.
- Agreements involving Cathodic protection of pipelines.

No-cost exemption consults are outlined in policy. Please refer to San Diego LAFCO's Policy L-113 for a complete listing of local exemptions.



LAFCO staff assisted with the development and execution of an Memorandum of Understanding between the three RCD's in the region – RCD of Greater San Diego, Mission RCD, and Upper San Luis Rey RCD – to bring their out of agency service practices into statutory compliance.

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Proceeding with Formal Request

Initial Request

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 information as required by policy.

Consideration Procedures

- The Commission shall consider all requests for out-of-agency service approvals at a public meeting unless otherwise provided in this policy.
- Should requests involve purported public health or safety threats, the Commission delegates approval authority to the Executive Officer for water and/or wastewater services only.
- All other requests involving purported public health or safety threats shall be considered by the Commission at the earliest time possible.

Reconsideration

Should an out-of-agency service request be approved with conditions or denied, the applicant or any other city or special district whose sphere of influence or jurisdictional boundary contains the affected territory, may request reconsideration consistent with Rule 3.4(2).

This prospectus serves as an abbreviated guide.
Please refer to Policy L-113 for a complete and specific detailing of all items summarized above.

For the full policy please visit www.sdlafco.org/resources/policies

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.

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

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 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 months or more.

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 Section 4 of 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. The Executive Officer shall include the appeal request at the next available meeting.

iii. Should the Executive Officer determine an inquiry does qualify for exemption, any city or special district that contains – whether the sphere of influence or jurisdictional boundary – the affected territory shall be given immediate written notice and 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. The appeal must be received within three business days of receiving the original notice from the Executive Officer. The Executive Officer shall include the appeal request at the next available meeting and provide notice to all interested parties.

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 exist (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.

   b) All approval requests for out-of-agency services received under this part shall immediately be forwarded by LAFCO to any other city or special district whose sphere of influence or jurisdictional boundary contains the affected territory.

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 consistent with Rule 3.4(2)

b) Should an out-of-agency service request be approved, any other city or special district whose sphere of influence or jurisdictional boundary contains the affected territory may request reconsideration consistent with Rule 3.4(2).

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.