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.