

**LOCAL AGENCY FORMATION COMMISSION  
FOR SAN BERNARDINO COUNTY**

**OUT-OF-AGENCY AGREEMENTS/CONTRACTS FOR  
SERVICE  
GOVERNMENT CODE SECTION 56133  
ADMINISTRATIVE GUIDELINES**

**BACKGROUND**

Beginning January 1, 1994 the Local Agency Formation Commission was charged with the responsibility for reviewing and taking action on a city or district contract to extend service outside its jurisdiction. As a part of the major review of LAFCO law, Government Code Section 56133 has been amended by enactment of AB 2838. This amended code section reads, in its entirety, as follows:

- "(a) A city or district may provide new or extended services by contract or agreement outside its jurisdictional boundaries only if it first requests and receives written approval from the commission in the affected county.*
- (b) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries but within its sphere of influence in anticipation of a later change of organization.*
- (c) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries and outside its sphere of influence to respond to an existing or impending threat to the public health or safety of the residents of the affected territory if both of the following requirements are met:*
  - (1) The entity applying for the contract approval has provided the commission with documentation of a threat to the health and safety of the public or the affected residents.*
  - (2) The commission has notified any alternate service provider, including any water corporation as defined in Section 241 of the Public Utilities Code, or sewer system corporation as defined in Section 230.6 of the Public Utilities Code, that has filed a map and a statement of its service capabilities with the commission.*
- (d) The executive officer, within 30 days of receipt of a request for approval by a city or district of a contract to extend services outside its jurisdictional*

*boundary, shall determine whether the request is complete and acceptable for filing or whether the request is incomplete. If a request is determined not to be complete, the executive officer shall immediately transmit that determination to the requestor, specifying those parts of the request that are incomplete and the manner in which they can be made complete. When the request is deemed complete, the executive officer shall place the request on the agenda of the next commission meeting for which adequate notice can be given but not more than 90 days from the date that the request is deemed complete, unless the commission has delegated approval of those requests to the executive officer. The commission or executive officer shall approve, disapprove, or approve with conditions, the contract for extended services. If the contract is disapproved or approved with conditions, the applicant may request reconsideration, citing the reasons for reconsideration.*

- (e) *This section does not apply to contracts or agreements solely involving two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider. This section does not apply to contracts for the transfer of nonpotable or nontreated water. This section does not apply to contracts or agreements solely involving the provision of surplus water to agricultural lands and facilities, including, but not limited to, incidental residential structures, for projects that serve conservation purposes or that directly support agricultural industries. However, prior to extending surplus water service to any project that will support or induce development, the city or district shall first request and receive written approval from the commission in the affected county. This section does not apply to an extended service that a city or district was providing on or before January 1, 2001. This section does not apply to a local publicly owned electric utility, as defined by Section 9604 of the Public Utilities Code, providing electric services, that do not involve the acquisition, construction or installation of electric distribution facilities by the local publicly owned electric utility, outside of the utility's jurisdictional boundaries."*

*(Amended January 1, 2003, Stats. 2002, Chapter 548)*

## IMPLEMENTING POLICIES

LAFCO has adopted policy declarations, which affect the implementation of its obligations under Government Code Section 56133. They are:

### A. **DEFINITIONS:**

The definition of terms that follows has been developed to assist in the implementation of Government Code Section 56133 since its terminology, in some areas, is not reflective of current statutory definitions or has no statutory definition within Cortese-Knox-Hertzberg:

1. "New or extended services" shall mean for Cities, the provision of those services authorized a city under its enabling legislation; and for Special Districts, service shall remain as defined in Government Code Section 56074. It should be pointed out that a District would be precluded from providing a "new service" unless it has been first authorized that service under existing special district regulations regarding activation of latent powers.
2. "Contract or agreement" shall mean a contract, agreement, or other legal instrument, which requires or agrees to the delivery of service to property.
3. "Written approval of the Commission" shall mean for development related contracts, the adoption of a resolution of the Commission approving the service agreement/contract at a noticed public hearing; for non-development related contracts written approval of the Commission shall mean the document signed by the Executive Officer authorizing the completion of the contract.
4. "Affected County" shall be defined in the same manner as Govt. Code Section 56012 but relating to the area to which contractual service will be delivered.
5. "Anticipation of a later change of organization." The inclusion of an area to be served within the sphere of influence of the serving agency shall be sufficient to comply with this provision.
6. "Public Agency" shall be defined in compliance with Government Code Section 56070. The statutory definition of Public Agency is "the state or any state agency, board or commission, any city, county, city and county, special district or other political subdivision, or any agency, board or commission of the city, county, city and county, special district, or other political subdivision".

The definition of public agency does not include a private or mutual water company. Any contract by a city or district to extend service to these types of service companies would require approval from the Commission prior to contract execution.

7. "Health and safety emergency concern" shall mean the extension of service to alleviate an immediate health and/or safety problem. Such connections would be limited to the provision of water and/or sewer service to an existing structure, the connection to a failing mutual or private water system requiring auxiliary service, the provision of fire protection and/or paramedic services as supplemental or alternative source for service, and other similar threats related to health and safety.

**B. OPERATING POLICIES:**

At the December 20, 2000 hearing, the Commission adopted an operating policy that delegates authority to the Executive Officer to approve or conditionally approve health and safety related service agreements/contracts and/or non-development related service extension. The following is the adopted LAFCO policy:

*The Commission has determined that the Executive Officer shall have the authority to approve or conditionally approve proposals to extend services outside jurisdictional boundaries in cases where the service extension is proposed to remedy a clear health and safety concern. In addition, the Executive Officer shall have the authority to approve or conditionally approve service extensions where the services in question will not facilitate development (for example, an inter-agency contract for fire protection services). In cases where the Executive Officer recommends denial of a proposed service extension that proposal shall be placed on the next agenda for which notice can be provided. After the public hearing, the Commission may approve, conditionally approve or deny the contract." (Adopted December 20, 2000)*

The second operating policy relates to the acquisition of a private water system by a public jurisdiction. This acquisition would require the city or district to continue the service and allow additional connections to the infrastructure without regard to the question of spheres of influence. In order to address this concern and provide a framework for the agency's continuing obligations, LAFCO has adopted the following policy:

*"In the case where a city or district has acquired the system of a private or mutual water company prior to the enactment of this legislation, those agencies shall be authorized to continue such service and provide additional connections within the certificated service area of the private or*

*mutual water company defined by the Public Utilities Commission or other appropriate agency, at the time of acquisition without LAFCO review or approval as outlined in Government Code Section 56133. The continuation of service connections under this policy shall not be constrained by the sphere of influence of that local agency at the time.*

*Proposals to extend service outside this previously defined certificated area would come under the provisions of Government Code Section 56133 for the review and approval by the Commission prior to the signing of a contract/agreement for the provision of the service."*

In order for cities and districts to utilize this special policy it requires that they provide the LAFCO staff with documentation of the certificated service area of the system acquired. This documentation will be maintained on file by LAFCO for future reference.

## APPLICATION PROCEDURES

Unlike the normal initiation process for proposals for jurisdictional change, Government Code Section 56133 provides that only a city or district may request LAFCO review of an out-of-agency service agreement/contract.

Government Code Section 56133 gives LAFCO the authority to review and approve, approve with conditions, or deny these agreements/contracts. For all development-related applications for service, the item will be considered by the Commission at a noticed public hearing. The authority for action for nondevelopment-related agreements/contracts has been delegated to the LAFCO Executive Officer by the Commission, pursuant to policies adopted on December 20, 2000.

### A. Application for Review:

The filing requirements for review of an out-of-agency service contract/agreement shall consist of:

1. Official Request from Applying Agency. A written request signed by the City Manager/District Manager requesting approval for an out-of-agency service agreement/contract or an adopted resolution from the city/district proposing to serve outside its boundaries must be submitted.
2. Payment of Appropriate Filing Fees. The applying agency must submit as part of the application the appropriate filing fees as outlined in the LAFCO Fee Schedule:
  - (a) Development Related:
    - (1) \$4,000 for the review of development-related agreements/contracts involving subdivisions/tracts as defined by the Subdivision Map Act (five or more units); or,
    - (2) \$750 per unit for the review of development related agreements/contracts involving individual units (up to four units requiring a parcel map as defined by the Subdivision Map Act): or,
    - (3) \$750 for the review of agreements/contracts submitted in response to a health and safety issue pursuant to Government Code Section 56133, Subsection (c)

In addition, these types of applications are also subject to the following deposits: \$575 legal counsel, \$450 environmental review, and \$700 individual notice. Applicants shall be required to

reimburse the Commission for all charges and costs in excess of the deposits outlined above.

- (b) \$500 for the administrative review of nondevelopment-related agreements/contracts.
  - (c) \$2,250 for applications requesting exemption from Government Code Section 56133 for review by the Commission.
3. A completed application form including the submission of a copy of the proposed agreement/contract that has been signed by the property owner(s) and, if necessary, the agency extending service(s), and maps showing the location of the property to be served, existing agency boundaries, the location of the existing infrastructure, and the proposed location of the infrastructure to be extended.

(An application form is included as an attachment to these guidelines.)

4. Any other information deemed appropriate by the Executive Officer in order to review the service extension request based upon its special circumstances.

B. Environmental Review Requirements:

The review of a service agreement/contract request will be subject to the review procedures defined in the California Environmental Quality Act (CEQA) and the San Bernardino LAFCO CEQA Guidelines. LAFCO will act as the Lead Agency under CEQA for its environmental review of any service extension request.

If an environmental assessment/analysis was prepared for the project associated with the service extension request (i.e. the County or agency's environmental analysis for a proposed Tentative Tract, Conditional Use Permit, etc.) and LAFCO Staff was afforded the opportunity to evaluate and comment during the Lead Agency's environmental review process, then LAFCO can act as a Responsible Agency under CEQA for its environmental review of a service extension request. A complete set of the adopted environmental documents prepared for the project, a copy of the filed Notice of Determination/Notice of Exemption, and a copy of the Department of Fish and Game fee receipt must be submitted as part of the application.

## REVIEW PROCEDURES

- A. Development-related agreements/contracts associated with the development of tracts, subdivisions, a single-family dwelling unit, a commercial/industrial development on a parcel, or other types of development-related projects will require the following review:
1. The city or district proposing to provide service(s) outside its boundaries shall submit to LAFCO a completed application, with all its component parts as previously defined, for review and consideration. Within 30 days, the LAFCO Executive Officer shall notify the entity whether or not the application filing is complete. If incomplete, the applying agency will be notified of the specific insufficiencies within 30 days, as required by law.
  2. The LAFCO staff shall forward a copy of the application to various County Departments for their review and comment.
  3. The LAFCO staff shall also forward the application for service extension to the Commission's environmental consultant for review. The Commission shall act as the Lead Agency under CEQA and shall prepare the appropriate environmental analysis for the application proposal. If an environmental assessment/analysis has been prepared for a project associated with the service extension request, and LAFCO has been afforded the opportunity to evaluate and comment during the Lead Agency's environmental review process, then the Commission may act as a Responsible Agency under CEQA and shall prepare the appropriate environmental analysis for the application proposal.  
  
Completion of the CEQA review process will be required prior to placement on the Commission's agenda.
  4. If necessary, a meeting with the applying agency and/or the various departments may be held dependent upon the circumstances and/or issues related to the service agreement/contract. The determination of whether or not to hold the meeting shall be made by the LAFCO Executive Officer.
  5. Once these required elements have been completed, the item will be placed on a Commission Agenda. Surrounding property owners/registered voters will be notified of the proposed service extension request through individual notification. At a noticed public hearing, the Commission will consider the staff's presentation and presentations, if any, by interested and affected parties, and make a determination.

6. The Commission has the authority to approve, approve with conditions, or deny the request for out-of-agency service extension. The Commission's determination and any required findings will be set out in a resolution which specifies the area to be served, the services to be provided, and the authority of the agency to provide its services outside its boundaries.
- B. Nondevelopment-related agreements/contracts (Administrative Review by LAFCO Executive Officer) that are related to providing service to an existing dwelling unit, commercial building, etc. or those contracts between public agencies for such items as fire protection mutual aid, etc. will be processed as follows:
1. Prior to the execution of an agreement/contract for service outside their boundaries, the city/district proposing to provide the service shall submit to LAFCO a completed application, with all its component parts as previously defined, for review and consideration.
  2. Completion of the CEQA review process will be required prior to action by the Executive Officer. If there has been no environmental determination made by the applying agency, LAFCO will be the Lead Agency and will prepare the required environmental analysis. Such a determination will be required prior to authorization of the service extension.
  3. The Executive Officer's administrative review will include the following determinations:
    - a. The proposed service extension is either nondevelopment-related and/or involves health and safety concerns as defined by Commission policy.
    - b. The area to be served is within the sphere of influence of the agency requesting to provide service outside its boundaries.
    - c. The environmental analysis/assessment, as required by CEQA, has been completed.
  4. The Executive officer can approve, approve with conditions, or deny the request for service extension. If the Executive Officer's recommendation is denial, that determination will be placed on the next available Commission agenda for which notice can be provided.