Chapter 2 :
Out of Agency Service Contracts
(with track changes)

Attachment 1

TRACK CHANGE LEGEND:
~~Deletions to Existing Policy and Procedures~~
Additions to Existing Policy and Procedures

CHAPTER 2: OUT OF AGENCY SERVICE CONTRACTS

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 under the provisions of Government Code Section 56133. These are unique actions not directly related to the processing of other types of proposals as defined in the Cortese-Knox-Hertzberg Local Government Reorganization Act and these policies and procedures will provide guidance on their processing.

POLICIES:

(Adopted May 18, 1994; Amended December 20, 2000.)

1. DEFINITIONS

The definition of terms that follow 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:

A. "New or extended services" shall mean for ~~C~~cities, the provision of those services authorized a city under its enabling legislation; and for ~~S~~special ~~D~~districts, service shall remain as defined in Government Code Section 56074. It is important to note that a ~~D~~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 functions or services.

B. "Contract or agreement" shall mean a contract, agreement, or other legal instrument, which requires or agrees to the delivery of service to a property or a defined service area.

C. "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~~ or the document signed by the Executive Officer authorizing the completion of the contract in cases where the Executive Officer has been

authorized to approve the service agreement/contract (see Policy 2 below).

D. "Affected County" shall be defined in the same manner as Government~~.~~ Code Section 56012 but relating to the area to which contractual service will be delivered.

E. "Anticipation of a later change of organization." The inclusion of an area to be served within the sphere of influence of the serving agency may be sufficient to comply with this provision.

F. "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.

G. "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.

2. 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.

3. A proposal by a city or district to provide new or extended services outside the agency's boundaries and outside the agency's sphere of influence would come under the provisions of Government Code Section 56133.5, which will require

Commission approval at a noticed public hearing prior to the signing of an agreement/contract for the provision of the service.

~~3~~4. In the case where a city or district authorized to provide water service 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~~provided that the area to be served is within the service area of the private or mutual water company previously defined by the PUC or other appropriate agency.

Proposals to extend service outside this previously defined ~~certificated~~ service area and outside the sphere of influence of the agency providing service would come under the provisions of Government~~.~~ Code Section 56133.5, which will require Commission ~~for the review and~~ approval ~~by the Commission~~at a noticed public hearing prior to the signing of an agreement/contract~~/agreement~~ for the provision of the service.

~~4~~6. For a request for exemption pursuant to Government Code Section 56133(e), the Commission shall make the determination that the service(s) to be provided is/are exempt from LAFCO review. The Commission has, in cases where the service extension proposed does not facilitate development or directly affect employees, delegated the authority to make the determination for exemption pursuant to Government Code Section 56133(e) to the Executive Officer.

APPLICATION PROCEDURES FOR GOVERNMENT CODE SECTIONS 56133 and 56133.5:

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~~ an out-of-agency service agreement~~s~~/contract~~s~~. 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 a non-development-related agreement~~s~~/contract~~s~~ has been delegated to the LAFCO Executive Officer by the Commission, pursuant to policies adopted on December 20, 2000.

In addition, the pilot program for Napa and San Bernardino LAFCOs pursuant to Government Code Section 56133.5, which authorizes a city or district to extend services outside an agency's boundaries and outside its sphere of influence, will also be subject to Commission approval at a noticed public hearing.

1. Application for Review:

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

   A. Official Request from Applying Agency. A written request signed by the City Manager/District General 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.

   B. 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 of Fees, Deposits, and Charges in effect at the time of application. In addition, these types of applications are also subject to the following deposits: legal counsel, environmental review, and individual notice. Applicants shall be required to reimburse the Commission for all charges and costs in excess of the deposits outlined above or will be refunded the balance at the close of the application.

   C. 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~~ providing 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.

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

2. Environmental Review Requirements:

   The review of an out-of-agency service agreement/contract ~~request~~ is subject to environmental review procedures as outlined in Section V of this Manual.

REVIEW PROCEDURES FOR GOVERNMENT CODE SECTIONS 56133 and 56133.5:

1. A d~~D~~evelopment-related agreement~~s~~/contract~~s~~ associated with the development of a tract~~s~~, a subdivision~~s~~, a single-family dwelling unit, a commercial/industrial development ~~on a parcel, or~~and other types of development-related projects, or a

proposal to provide new or extended services outside an agency's boundaries and outside its sphere of influence will require the following review:

A. 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.

B. The LAFCO staff shall forward a copy of the application to various County ~~D~~departments for their review and comment.

C. Completion of the CEQA review process will be required prior to placement on the Commission's agenda.

D. If necessary, a meeting with the applying agency and/or the various County 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.

E. 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.

F. The Commission has the authority to approve, approve with conditions, or deny the request for authorization of an out-of-agency service ~~extension~~agreement/contract. The Commission's determination and any required findings will be set out in a resolution which specifies the property or area to be served, the services to be provided, and the authority of the agency to provide its services outside its boundaries.

2. A n~~N~~on-development related agreement~~s~~/contract~~s~~ (Administrative Review by LAFCO Executive Officer) ~~that are related~~ to provide~~ing~~ service(s) to an existing dwelling unit, a commercial building, ~~etc. or those~~a contract~~s~~ between public agencies for ~~such items as~~ fire protection mutual or automatic aid, ~~etc.~~an agreement/contract where the services will not facilitate development, etc. will be processed as follows:

A. 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.

B. Completion of the CEQA review process will be required prior to action by the Executive Officer.

C. The Executive Officer's administrative review will include the following determinations:

(1) The proposed service extension is either non-development- related and/or involves health and safety concerns as defined by Commission policy.

(2) The area to be served is within the sphere of influence of the agency requesting to provide service outside its boundaries.

(3) The environmental analysis/assessment, as required by CEQA, has been completed.

D. 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 for discussion of the determination.