



January 13, 2021

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CAROLYN EMERY
EXECUTIVE OFFICER

TO: Local Agency Formation Commission

FROM: Executive Officer
Policy Analyst

SUBJECT: San Diego LAFCO Legislative Effort to Amend
Government Code Section 56133

INTRODUCTION

At the December 2, 2020 meeting of the southern region LAFCOs, San Diego LAFCO staff discussed the recent challenges the Commission has experienced with some of its local agencies involving the provision of new or extended services outside of their respective jurisdictional boundaries. Because these challenges have caused conflicts amongst agencies and fiscal and legal impacts to San Diego LAFCO, on December 7, 2020, the Commission approved taking the lead on a legislative effort to clarify the provision (G.C. Section 56133) within the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 that includes the process requiring cities and special districts to receive LAFCO approval to provide new or extended services outside of their jurisdictional boundaries or LAFCO determination of involving exemptions from the statutory process.

The intent of this report is to provide background on the current law, Orange LAFCO's current policy regarding the provision of new or extended services outside an agency's jurisdictional boundary, and San Diego LAFCO's effort to clarify G.C. Section 56133. At this time, staff is seeking preliminary feedback from the Commission. An additional report and recommendations will be provided to the Commission at a future meeting once San Diego LAFCO has obtained an author and the proposed bill language is formalized.

BACKGROUND

Government Code Section 56133

The G.C. Section 56133 was enacted in 1993 and delineates the process and requirements for LAFCO's to review an agency's request to provide new or extended municipal services outside of its jurisdictional boundary. Specifically, the provision states that an extension of service may be provided outside an agency's jurisdictional boundary but within its sphere of influence in anticipation of a later change of organization (i.e., annexation) if approved by LAFCO. The provision also allows for an extension of service to be provided outside an agency's jurisdictional boundary and sphere of influence if proper documentation depicting a threat to the public's health and safety is submitted to and approved by the respective LAFCO. Lastly, G.C. Section 56133 outlines the limited exceptions to the statute, such as contracts between public agencies when the subject services are equal substitutes for services already being provided. In most instances and in compliance with the statute's intent, local agencies defer to LAFCOs in determining the exception eligibility. A copy of the G.C. Section 56133 is provided for the Commission's reference as Attachment A.

Orange LAFCO's Policy on G.C. Section 56133

To facilitate the implementation of G.C. 56133, in 2001, the Commission approved the "Policy & Procedures for the Review and/or Processing of Out-Of-Area Agreements by the Executive Officer (Gov't Code § 56133)." In addition to complying with State law, the local policy establishes the guidelines and process for Orange LAFCO's review of an agency's request to provide new or extended services outside of the agency's respective boundary and to make the determination if a request is exempt from this statutory requirement. Since the enactment of G.C. Section 56133, the Commission's local policy has assisted in the efficient processing and responding to local agencies' requests. A recent example is the request from the City of Placentia to provide fire protection and emergency medical services to a small unincorporated area located within the City's sphere of influence. At the time of the request, annexation of the area was not feasible, but the City anticipated annexing the area in the future. In accordance with Commission policy, the Executive Officer approved the City's request contingent upon the City filing an application to annex the area within one year of approval of the request. Additionally, staff has reviewed and processed requests and determined that those requests met the exemption criteria as outlined in G.C. 56133 and the agency's local policy. The Commission's policy and procedures for reviewing these requests is provided for the Commission's reference as Attachment B.

San Diego's LAFCO Proposal to Amend G.C. Section 56133

Recently in San Diego County, some local agencies have proceeded to self-exempt out-of-agency service arrangements without obtaining their Commission's review. Consequently, these arrangements without LAFCO's review has led to subsequent


conflicts, including with other cities and special districts, and fiscal and legal impacts for San Diego LAFCO. San Diego LAFCO's legislative effort seeks to clarify LAFCOs' exclusive authority to determine exception status for out-of-agency arrangements in accordance with G.C. Section 56133. The effort will include securing a bill author, performing stakeholder outreach and working accordingly with legislative staff in Sacramento. San Diego LAFCO is requesting support and potential interest in co-sponsoring of this legislative effort from several other LAFCOs, including Orange LAFCO.

RECOMMENDATION

Staff recommends that the Commission:

1. Discuss the item and provide feedback as appropriate.

Respectfully Submitted,



CAROLYN EMERY

LUIS TAPIA

Attachments:

- A. G.C. Section 56133
- B. Orange LAFCO Policy & Procedures for the Review and/or Processing of Out-Of-Area Agreements by the Executive Officer (Gov't Code § 56133)

Government Code Section 56133

56133.

(a) A city or district may provide new or extended services by contract or agreement outside its jurisdictional boundary only if it first requests and receives written approval from the commission.

(b) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundary 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 boundary and outside its sphere of influence to respond to an existing or impending threat to the health or safety of the public or the residents of the affected territory, if both of the following requirements are met:

(1) The entity applying for 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, 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 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 requester, 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 requests made pursuant to this section to the executive officer. The commission or executive officer shall approve, disapprove, or approve with conditions the extended services. If the new or extended services are disapproved or approved with conditions, the applicant may request reconsideration, citing the reasons for reconsideration.

(e) This section does not apply to any of the following:

(1) 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.

(2) This section does not apply to the transfer of nonpotable or nontreated water.

(3) 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.

(4) An extended service that a city or district was providing on or before January 1, 2001.

(5) 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 boundary.

(6) A fire protection contract, as defined in subdivision (a) of Section 56134.

**Policy & Procedures for the Review and/or Processing of
Out-Of-Area Agreements by the Executive Officer
(Gov't Code §56133)**

I. PURPOSE

To establish the Commission's policy and procedural guidelines for 1) consulting with public agencies to determine whether their out-of-area service agreements are subject to LAFCO review and 2) reviewing, processing, and approving out-of-area agreements in accordance with the provisions of Government Code §56133.

II. POLICY STATEMENT

It is the policy of this Commission to delegate to the Executive Officer the authority to 1) consult with public agencies to determine whether their out-of-area service agreements are subject to LAFCO review and 2) review, process, and approve out-of-area agreements not exempt under the provisions of Government Code Section 56133 to ensure that such agreements do not create growth opportunities without appropriate oversight. It is also the policy of this Commission to require that any such agreements not previously considered by this Commission be considered in connection with future applications for related changes of organization and not to unilaterally seek out and review out-of-area service agreements for compliance with Section 56133.

III. PURPOSE PROCEDURAL GUIDELINES

A. The Executive Officer, within 30 days of receipt of a request for a LAFCO determination as to whether a city or district agreement to provide new or extended services outside its jurisdictional boundary is exempt from LAFCO review, shall:

1. Determine whether the agreement is exempt from LAFCO approval. The following agreements shall be exempt from LAFCO approval:

a. 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 (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). For purposes of this subsection, "already being provided" means the services are within the agency's (Agency B's) service area. "Contemplated" means 1) the service level is anticipated in a master plan or some other long-range planning document (of

Agency B) and 2) sufficient infrastructure and capacity exists (by Agency A) to provide the service.

- b. Agreements for the transfer of non-potable or non-treated water.
 - c. Agreements solely involving the provision of surplus water to agricultural lands for projects that serve conservation purposes or that directly support agricultural industries provided, however, that agreements for the extension of surplus water service to a project that will support or induce development shall not be exempt from the provisions of this policy.
 - d. Agreements for an extended service that a city or district was providing on January 1, 1994.
 - e. Agreements involving local publicly owned electric utilities as defined by Public Utilities Code Section 9604, which do not involve the acquisition, construction, or installation of electric distribution facilities by a local publicly owned electric utility, outside of its jurisdictional boundaries.
- B. For agreements determined not to be exempt from this policy, the Executive Officer, within 30 days of a request for LAFCO approval, shall determine whether the request is complete and acceptable for filing or whether the request is incomplete. If the request is deemed incomplete, the Executive Officer shall immediately notify the applicant of that determination, specifying those parts of the request that are incomplete and an explanation of the manner in which the deficiencies may be made complete.
- C. Not more than 90 days from determining pursuant to a complete request that an out-of-area service agreement is subject to LAFCO review, the Executive Officer shall approve, disapprove, or approve with conditions the agreement for new or extended services provided, however, that the Executive Officer shall approve or approve with conditions any such agreement only under the following conditions:
- 1. The new or extended services to be provided under the agreement by the applicant city or district, outside of its jurisdictional boundaries and within its sphere of influence, are in anticipation of a later change of organization.
 - 2. The new or extended services to be provided under the agreement by the applicant city or district, outside of its jurisdictional boundaries and outside its sphere of influence, is in response to an existing or impending threat to the public health or safety of the residents of the affected territory and both of the following requirements are met:
 - a. The applicant city or district has provided the Executive Officer with documentation of a threat to the health and safety of the public or the affected residents.
 - b. The Executive Officer has notified any alternate service provider, including any water corporation as defined in Public Utilities Code Section 241 or sewer system corporation as defined in Public

Utilities Code Section 230.6 that has filed a map and a statement of its service capabilities with the Commission.

- D. If the Executive Officer disapproves the agreement or approves the agreement with conditions, the applicant may, within 30 days of the decision, request a reconsideration. Such request must state the reasons for the reconsideration.

Original Adoption Date: 9/12/2001
Date of Last Review: 4/9/2014
Date of Last Revision: N/A