



CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION

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October 8, 2014 (Agenda)

October 8, 2014
Agenda Item 11

Contra Costa Local Agency Formation Commission (LAFCO)
651 Pine Street, Sixth Floor
Martinez, CA 94553

Policies and Procedures Update – Out of Agency Service (OAS)

Dear Members of the Commission:

This item was continued from the August 13, 2014 LAFCO meeting at the request of the Concord City Manager and the County Administrator, along with a request to meet with the LAFCO Policies and Procedures Committee. On September 30, the LAFCO Committee met with City and County representatives to discuss the proposed LAFCO policies and procedures relating to OAS (Gov. Code section 56133 – Attachment 1). A summary of the meeting is provided below.

DISCUSSION

Background: In August, the Policies & Procedures Committee presented the Commission with updated policies and procedures relating to OAS (Attachments 2 and 3). The OAS provisions were enacted in 1994 and have evolved over the years. Current law allows LAFCO to approve OAS in one of two situations: 1) if the subject property is within the local agency's sphere of influence (SOI) and in anticipation of a future annexation, or 2) if the subject property is either inside or outside the local agency's SOI and boundary and in response to an existing or impending threat to the health and safety of the public (e.g., failed septic, contaminated well, etc.).

The OAS provisions are intended to provide a temporary means of service – either in anticipation of a future annexation or to remedy an existing or impending public health and safety situation.

In the last several years, Contra Costa LAFCO has processed a number of requests for OAS. There have been various questions and concerns regarding OAS, which our current policy (Attachment 2) does not address. The updated policies and procedures (Attachments 3 and 4) will better address the persistent issues.

In developing the proposed revisions/ updates, LAFCO staff reviewed OAS policies of 10 other LAFCOs throughout the state.

Regarding the proposed revisions to our **procedures**, the primary changes include the following:

- Clarifies the application requirements, including those pertaining to Deferred Annexation Agreements
- Clarifies the LAFCO proceedings/timeframes
- Adds a requirement that OAS proposals must be accompanied by an annexation application (i.e., dual application) in non-emergency situations, unless this requirement is waived
- Establishes fee structure for dual application
- Authorizes the Executive Officer, in consultation with the Chair or Vice Chair, to approve an OAS application in an emergency situation with appropriate documentation

The proposed new ***policy*** includes provisions to coincide with the revised procedures as summarized above. The proposed new policy also includes the following provisions:

- Introduction
- Purpose
- Objectives
- General Policies
- Types of Requests (i.e., emergency and non-emergency) and specific criteria to be considered
- Consideration of request and specific criteria to be considered

Meeting with City and County Representatives: On September 30, the LAFCO Committee met with staff and elected officials of the City and County to discuss the proposed LAFCO policies and procedures relating to OAS. The City and County expressed general support for the proposed LAFCO policies and procedures; however, the representatives expressed a need for clarification and flexibility, particularly with regard to OAS and future annexation of the Ayers Ranch island.

As a result of the meeting, the proposed procedures (Section 3.15 – Provision of Services by Contract) were modified to clarify provisions relating to 1) submitting a dual application; and 2) emergency applications which can be either within the agency’s SOI or outside the agency’s SOI.

RECOMMENDATION

As recommended by the Policies & Procedures Committee and LAFCO staff, approve the revised policy and procedures with any changes as desired.

Sincerely,

LOU ANN TEXEIRA
EXECUTIVE OFFICER

Attachment 1 - Government Code Section 56133
Attachment 2 - Current Out of Agency Service Policy
Attachment 3 - Proposed Revisions to Out of Agency Service Procedures
Attachment 4 - Proposed New Out of Agency Service Policy

c: County Administrator
Director, County Department of Conservation and Development
All City and District Managers in Contra Costa County

Services by contract outside city and district boundaries

56133. (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.

Threat to public safety

(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.

Notice for alternate service provider

(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.

Proceedings for review

(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 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 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.

Exemptions

(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.

CHAPTER 4. NOTICE

Means of notice

56150. Unless the provision or context otherwise requires, whenever this division requires notice to be published, posted, or mailed, the notice shall be published, posted, or mailed as provided in this chapter. Unless the provision or context otherwise requires, whenever this division requires notice to be given that notice shall also be given in electronic format on a website provided by the commission, to the extent that the commission maintains a website.

Notice given by clerk; contents

56151. Notice authorized or required to be given by publication, posting, or mailing shall be given by the clerk or executive officer and shall contain all matters required by any particular provision of this division. If any ordinance, resolution, or order of any legislative body or the commission gives notice and contains all matters required to be contained in any notice, the clerk or executive officer may cause a copy of that ordinance, resolution, or order to be published, posted, or mailed, in which case no other notice need be given by the clerk or executive officer.

Resolution or ordinance sufficient

Notice given by clerk or executive officer if not specified

56152. Whenever any notice is required to be given and the duty of giving that notice is not specifically enjoined upon some officer, agency, or person, the clerk or executive officer, as the case may be, shall give notice or cause that notice to be given.

Publication in newspaper(s) of general circulation

56153. Notice required to be published shall be published pursuant to Section 6061 in one or more newspapers of general circulation within each affected county, affected city, or affected district. If any newspaper is a newspaper of general circulation in two or more affected cities or affected districts, publication in that newspaper shall be sufficient publication for all those affected

2.1. **POLICIES AND STANDARDS**

J. Standards for Out-Of-Agency Service Agreements

Considerations for Approving Agreements - Annexations to cities and special districts are generally preferred for providing public services. However, there may be situations where health and safety, emergency service, or other concerns warrant out-of-agency service agreements [§56133].

Out-of-agency service agreements are typically considered when annexation is not immediately feasible, and in anticipation of a future change of organization; or in response to an existing or impending public health and safety threat as documented by the County Environmental Health Division of the Health Services Department.

- 1) Agreements Consenting to Annex – LAFCO shall adopt a standard condition for approval of an out-of-agency service agreement requiring recordation of an agreement by the landowner consenting to annexation of the territory, which agreement shall inure to future owners of the property.
- 2) Emergency Approval by Chair - The Chair may authorize cities and special districts to provide services outside of their boundaries as specified herein.
 - a) A request and Resolution of Application is received from the affected local agency, including the requisite processing fee.
 - b) The situation involves a public health, safety or welfare emergency as confirmed by the affected agencies.
 - c) The Executive Officer shall provide a report to the Commission at the next LAFCO meeting of any out-of-agency service agreements that were approved.

CONTRA COSTA LAFCO

3.15 Provision of Services by Contract (Out of Agency Service)

Effective January 1, 1994, 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 LAFCO ([Gov. Code §56133](#)). The definition of city and special district services can be found in [Gov. Code Section §56074](#). In accordance with these definitions, services include the public facilities necessary to perform the service function. [Requirements, procedures and Conditions of approval and exemptions are described below.](#)

REQUIREMENTS

General Statements:

Conditions of Approval: LAFCO may approve, with conditions, a request for out-of-agency services in one of two situations: 1) [in response to an existing or impending threat to the health or safety of the public \(inside or outside the agency's SOI\), or 2\)](#) if the affected territory is within the agency's sphere of influence (SOI) and is in anticipation of a later annexation-

[Out of agency service requests must be filed with the Executive Officer by the affected city or district. The application shall be signed by an authorized representative of the city or district. Requests shall be made in writing with a completed LAFCO application, payment in the amount prescribed under the Commission's adopted fee schedule, appropriate environmental document, proposed service agreement, and an executed and recorded deferred annexation agreement \(DAA\) that includes waiver of property owner protest rights. An indemnification agreement will be required with each application. The recorded DAA shall run with the land and be binding on all future owners of the property. All requests for outside of agency service agreements are subject to the applicable provisions of CEQA.](#)

Requests Due to Health or Safety Emergency:

[Requests due to health or safety emergencies must be accompanied by documentation from the County Environmental Health Division, pursuant to §56133 and Contra Costa LAFCO policies. The Commission shall notify any alternative service provider in accordance with §56133. Emergency situations may occur within or outside the agency's SOI.](#)

Requests in Anticipation of an Annexation:

[Out of agency service applications must be accompanied by a change of organization \(e.g., annexation\) or reorganization application, including an approved tax sharing agreement. This dual application requirement may be waived in certain situations by the Commission in accordance with LAFCO policies \(Section 2.1, subsection J\).](#)

[The proponent will be charged the applicable change of organization fee prior to LAFCO's consideration of the out of agency service agreement, plus a 30% surcharge fee in conjunction](#)

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with the out of agency service proposal. For applications where the dual application requirement is waived, the applicant will be charged the standard out of agency processing fee.

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PROCEDURES

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Review of Request: The Executive Officer shall review and determine within 30 days of receipt whether the request to authorize out of agency service is complete. If a request is deemed incomplete, the Executive Officer shall immediately notify the applicant and identify the information needed to accept the request for filing.

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Once a request is deemed complete, the Executive Officer will prepare a written report with a recommendation. The Executive Officer will present his or her report and recommendation at a public hearing for Commission consideration. The public hearing will be scheduled for the next regular meeting of the Commission for which adequate notice can be given but no later than 90 days from the date the request is deemed complete. The Executive Officer's written report will be made available to the public for review prior to the scheduled hearing and include an evaluation of the factors in accordance with the Government Code and LAFCO policies.

LAFCO may approve the request for out of agency service with or without conditions, or may deny the request. Unless otherwise specified in the LAFCO resolution of approval, out of agency service is allowed for the subject application only, and any future extension or expansion of service is subject to LAFCO's approval.

If the request to provide out of agency service is approved or denied, the applicant may request reconsideration within 30 days citing the reasons for reconsideration.

Consideration of Emergency Request: The Commission authorizes the Executive Officer, in consultation with the Chair or Vice Chair, to approve an emergency request (e.g., failing well or septic system) for out of agency service, as documented by the County Environmental Health Division. The Executive Officer shall report to the Commission on his or her administrative approval of any emergency out of agency service agreements at the next regularly scheduled LAFCO meeting. Such administrative approval can be made in accordance with LAFCO policies (Section 2.1, subsection J).

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EXEMPTIONS

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Exceptions: LAFCO authority over out-of-agency services does not apply to the following:

1. 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.

2. Contracts for the transfer of non-potable or non-treated water; and
3. 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 conservations purposes, or directly support agricultural industries. However, prior to extending surplus water that will support or induce development, the agency must receive written approval from LAFCO.
4. An extended service that a city or district was providing on or before January 1, 2001.
5. A local publicly owned electric utility providing electric services, which 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.

~~Health or Safety Concerns: The Commission may authorize a city or district to provide new or extended service outside its jurisdictional boundary and outside its SOI to respond to an existing or impending threat to the health and safety of the public or the affected residents if both of the following requirements are met:~~

- ~~1. Documentation of a threat to the health and safety of the public or the residents has been provided to the Commission (e.g., letter from the County Environmental Health Division of the Health Services Department); and~~

- ~~2.1. The Commission has notified any alternative service provider that has filed a map and statement of its service capabilities with the Commission.~~

Procedures

~~Applicants will be required to submit a boundary change application, and applicable documentation demonstrating that the agreement is either in response to a public health and safety threat (e.g., letter from the County Environmental Health Division of the Health Services Department, deferred annexation agreement, etc.), or in anticipation of a subsequent jurisdictional change (e.g., deferred annexation agreement, etc.). The proponent will be charged the LAFCO out-of-agency service review fee prior to LAFCO's consideration of the out-of-agency service agreement.~~

~~In the extension of services is in response to a health or safety threat to property outside an agency's SOI, applicants are encouraged, but not required, to submit an annexation application.~~

~~All of the requirements associated with processing an annexation/detachment proposal, such as rezoning, environmental review, etc., will apply when processing an out-of-agency service agreement.~~

~~In accordance with Contra Costa LAFCO policies (Section 2.1 Policies and Standards, Section J), the Chair is authorized to administratively approve out-of-agency service agreements that are in response to health or safety threats, if all conditions of approval have been met in accordance with Government Code Section 56133, and the applicant has satisfactorily demonstrated the existence of public health, safety, or welfare impacts (e.g., letter from the County Environmental Health Division of the Health Services Department). The Executive Officer shall provide a report to the Commission at the next regularly scheduled LAFCO meeting regarding administratively approved service agreements.~~

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2.1 POLICIES AND STANDARDS

J. Policies for Out of Agency Service Agreements

I. Introduction

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH) requires a city or special district to obtain written approval from LAFCO prior to providing new or extended service outside its jurisdictional boundary, with certain exceptions (Gov. Code §56133). This section of the CKH sets forth a two-pronged test or criteria under which requests for out of agency services may be approved: either in response to an existing or impending threat to the health or safety of the public, or in anticipation of a later change in organization (i.e., annexation) for areas within the subject agency's sphere of influence (SOI). Specific procedures for submitting an out of agency service application can be found in Contra Costa LAFCO's Commissioner Handbook, section 3.15 *Provision of Services by Contract*.

II. Purpose

The purpose of these policies is to guide the Commission in reviewing city and district requests to provide new or extended services by agreement outside their jurisdictional boundaries. This includes establishing policies and procedures to ensure that the application meets one of the two criteria under which approval may be granted, and to ensure consistency with respect to form, review and consideration of requests.

III. Objective:

The objective of these policies is to ensure that the extension of services by cities and districts outside their jurisdictional boundaries is logical and consistent with supporting orderly growth and development in Contra Costa County. Out of agency service is generally not intended to support new development.

IV. Out of Agency Service Policies

A. General Statements

- 1) Annexation to cities and special districts involving territory located within the affected agency's sphere of influence (SOI) is generally preferred to out of agency service.
- 2) LAFCO will consider applicable Municipal Service Reviews (MSRs) and discourage out of agency service extensions that conflict with adopted MSR determinations or recommendations.
- 3) Requests for out of agency service agreements are subject to the applicable provisions of the California Environmental Quality Act (CEQA).
- 4) Commission approval is not required for cities or districts to provide new or extended services outside their jurisdictional boundaries if any of the exemptions apply in accordance with §56133(e) – see Section 3.15 for exceptions. The Commission encourages cities and districts to work with the Executive Officer in determining when the statutory exemptions may apply.

B. Form of Request

1. All Requests

Requests to authorize out of agency service shall be filed with the Executive Officer by the affected city or district. The application shall be signed by an authorized representative of the city or district. Requests shall be made in writing with a completed LAFCO application, payment in the amount prescribed under the Commission's adopted fee schedule, appropriate environmental document, proposed service agreement, and an executed and recorded deferred annexation agreement (DAA) and waiver of property owner protest rights. The recorded DAA shall run with the land and be binding on all future owners of the property. An indemnification agreement will be required with each application.

All requests for out of agency service are subject to the applicable provisions of CEQA.

2. Requests Due to Health or Safety Emergency

The Commission may authorize a city or district to provide new or extended services outside their jurisdictional boundary and outside their SOI in response to an existing or impending threat to public health or safety ("emergency" – e.g., failing well or septic system) with documentation from the County Environmental Health Division, and in accordance with §56133(c) and LAFCO procedures. If LAFCO approves an emergency out of agency service request, and the city or district fails to initiate the provision of services within six months of the Commission's approval, the out of agency service approval shall expire, unless otherwise specified by LAFCO.

The Commission authorizes the LAFCO Executive Officer, in consultation with the Chair or Vice Chair, to approve a city's or district's request for out of agency service if there is an existing or impending public health or safety emergency, as documented by the County Environmental Health Division. The Executive Officer shall report to the Commission on his or her administrative approval of any emergency out of agency service agreements at the next regularly scheduled LAFCO meeting. Such administrative approval can be made if the following criteria are met:

- The property is currently developed
- The lack of service being requested constitutes an *immediate* (i.e., approval needed within two months) health and safety concern as documented by County Environmental Health
- There are physical restrictions on the property that prohibit a conventional service delivery method (i.e., septic tank, private well, etc.)

3. Requests in Anticipation of Annexation

An out of agency service application must be accompanied by a change of organization or reorganization application, including an approved tax sharing agreement, in order for LAFCO to determine that the out of agency service is in anticipation of a change of organization (i.e., annexation) within the next 12 months. This dual application requirement may be waived in certain situations by the [Executive Officer-Commission](#) if compelling justification is provided. Circumstances which may warrant such a waiver include, but are not limited to, the following:

- Lack of contiguity (e.g., city boundary) when the project was approved prior to 2011
- Service is only needed to serve a portion of a larger parcel, and annexation of the entire parcel is not desirable

- Other circumstances which are consistent with LAFCO statute and the policies of Contra Costa LAFCO

If immediate annexation (i.e., within 12 months) is not a feasible alternative, then the extension of services may be approved in anticipation of a later annexation if the agency provides LAFCO with a resolution of intent to annex ~~(in lieu of an annexation application)~~, as well as appropriate assurances (e.g., rezoning, plan for annexation, deferred annexation agreement, etc.) which demonstrate that out of agency service is an intermediate step toward eventual annexation.

C. Review of Request

The Executive Officer shall review the request in accordance with CKH and LAFCO's policies and procedures.

D. Consideration of Request

Once a request is deemed complete, the Executive Officer will prepare a written report with a recommendation. The Executive Officer will present his or her report and recommendation at a public hearing for Commission consideration in accordance with CKH and LAFCO's policies and procedures. The Executive Officer's written report will be made available to the public for review prior to the scheduled hearing and include an evaluation of the following factors:

- 1) The ability of the applicant to extend the subject service to the affected land without adversely affecting current service levels within the existing service boundary.
- 2) If the request is to address a health or safety emergency, whether the documentation satisfactorily demonstrates compliance with CKH and LAFCO policies and procedures.
- 3) If the request is in anticipation of future annexation, whether the application provides adequate assurances in furtherance of a future annexation.
- 4) The application's consistency with the policies and general plans of affected local agencies.
- 5) The application's effect on growth and development within and adjacent to the affected land; and whether the out of agency service extension will contribute to premature development of fringe areas or development in areas designated for non-urban uses.
- 6) Whether the proposal contributes to the premature conversion of agricultural land or other open space land.

The Commission and the Executive Officer, as authorized by the Commission, may approve the request for out of agency service with or without conditions, or may deny the request. Unless otherwise specified in the LAFCO resolution of approval, out of agency service is allowed for the subject application only, and any future extension or expansion of service is subject to LAFCO's approval.

If the request to provide out of agency service is approved or denied, the applicant may request reconsideration within 30 days citing the reasons for reconsideration.