

OUT-OF-AGENCY SERVICE AGREEMENTS

(Adopted April 18, 2008)

The Cortese-Knox-Hertzberg Local Governmental Reorganization Act of 2000 requires a city or district to obtain written approval from the local agency formation commission prior to providing new or extended services outside its jurisdictional boundaries (§56133). Certain exceptions apply to services that were previously provided prior to the enactment of the regulations. The underlying purpose of this legislation is to promote annexation over extension of service and to prevent the circumvention of the LAFCo process by providing services by contract instead of through the annexation of territory. These standards govern determination regarding out-of agency service agreements.

A. GENERAL STANDARDS

1. Approval Required. A city or district may provide new or extended service outside its jurisdictional boundaries only if it requests and receives written approval by LAFCo.
2. Service Extensions. LAFCo discourages extension of services by an agency without annexation.
3. Sphere of Influence. LAFCo will consider applications to extend services by contract beyond an agency's jurisdictional boundary only if it is within its sphere of influence in anticipation of a later change of organization.
4. Annexation Not Feasible. Out-of-Agency service agreements are typically considered when annexation is not immediately feasible, and in anticipation of a later change of organization; or, in response to an existing or impending public health and safety threat.
5. Subsequent Annexation Required. If a concurrent application for annexation is not filed, LAFCo shall adopt a standard condition of approval for an Out-of-Agency service agreement requiring recordation of the landowner consenting to annexation of the territory, which agreement shall be binding on all future owners of the property. As a condition of approval, the Commission may require the completion of the annexation within a specified time frame.
6. Approval for designated areas. The Commission may consider applications for approval of Out-of-Agency service for designated areas if the geographic area involved the physical construction of infrastructure intended to serve the area prior to January 1, 2001 and such infrastructure was developed by the County or in accordance with a formal agreement between a city and the County to provide such service. The Commission may require subsequent approval for any new development in such designated areas.

B. PROCEDURES.

1. Filing Requirements. The city or district requesting LAFCo approval shall submit an application for service outside of agency boundaries, other information as needed, map, a copy of the draft agreement or contract, fees and the appropriate environmental document.
2. Completeness of Application. The executive director shall determine within 30 days 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 notify the agency or district 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.
3. Scheduling. 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.

C. THREAT TO PUBLIC HEALTH AND SAFETY

1. Service Outside Sphere of Influence. The commission may authorize a city or district to provide new or extended service outside its jurisdiction boundaries and *outside of 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:
 - a. 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.
 - b. The Commission has notified any alternate service provided pursuant to §65133 of the Government Code.
2. Executive Officer Approval. The executive officer is authorized to administratively approve an application for an emergency connection within a sphere of influence of a city or district when an emergency condition exist which presents an imminent peril to the health and safety of existing development. When annexation is feasible, emergency applications may be approved with the condition that an application for annexation will be filed. The executive officer shall report to the commission on his or her approval of the emergency service application at the next LAFCo meeting.

D. EXEMPTIONS

- 1 Exemptions. The following are exemptions to this policy:

- a. Public Agency Contracts. 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 agency.
- b. Non-Potable and Non-Treated water. Contract for the transfer of non-potable or non-treated water.
- c. Surplus Water to Agricultural Land. Contracts or agreements solely involving the provision of surplus water to agricultural lands, for projects that serve conservation purposes, or 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.
- d. Existing Service. An extended service that a city or district *was* providing on or before January 1, 2001. An extended service that a city or district was providing means an actual connection to service and not the availability to a service.