

SAN MATEO



# LOCAL AGENCY FORMATION COMMISSION

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**May 12, 2021**

**To:** LAFCo Commissioners

**From:** Martha Poyatos, Executive Officer  
Rob Bartoli, Management Analyst

**Subject:** Adoption of Updates to Procedures for Outside Service Agreement Policy Relating to City Water Extensions

## Summary

The Commission has adopted policies concerning general rules for hearings, municipal service reviews, sphere of influence and sphere updates, consideration of boundary change proposals, extension of service outside agency boundaries (recently updated), proposals affecting more than one County, conducting authority proceedings (protest proceedings), public member selection and the functions and services of special districts.

In 2019, the Commission adopted an updated Outside Service Agreement Policy. Recently, staff received an inquiry from a property owner in the Town of Woodside that underscored a need for a revision to the policy. A new house was proposed for a vacant property in Woodside, which is located in the Redwood City water service area established by the San Francisco Public Utilities Commission (SFPUC). Several cities that are retailers of SFPUC water supply provide water service to properties in other cities. The case of cities having established water service areas that include territory in another city is unique in California and was not contemplated by Section 56133 which governs the extension of water service.

The current policy only addresses the extension of service from a city to an unincorporated area in the city's sphere or to another incorporated area when there is a public health issue and where the extension of service by a city to said property would not result in a boundary change. The policy is silent on service extensions for water by a city to another incorporated area but within the agency's established water service area when no public health threat exists. In order to address the unique service delivery patterns related to SFPUC water retailers that serve territory in another city, a revision specific to city water extensions to other cities is recommended.

**COMMISSIONERS:** WARREN SLOCUM, CHAIR, COUNTY ▪ MIKE O'NEILL, VICE CHAIR, CITY ▪ HARVEY RARBACK, CITY ▪ DON HORSLEY, COUNTY  
▪ JOSHUA COSGROVE, SPECIAL DISTRICT ▪ RIC LOHMAN, SPECIAL DISTRICT ▪ ANN DRAPER, PUBLIC

**ALTERNATES:** KATI MARTIN, SPECIAL DISTRICT ▪ DIANA REDDY, CITY ▪ JAMES O'NEILL, PUBLIC ▪ DAVE PINE, COUNTY

**STAFF:** MARTHA POYATOS, EXECUTIVE OFFICER ▪ TIM FOX, LEGAL COUNSEL ▪ ROB BARTOLI, MANAGEMENT ANALYST ▪ ANGELA MONTES, CLERK

### **Draft Changes**

The following is the proposed revision to the existing Outside Service Policy:

*The boundaries of most water service agencies in San Mateo County are set by the San Francisco Public Utilities Commission. In a number of cases, the designated service areas for water providers include both incorporated and unincorporated areas. Several cities in San Mateo County provide water service to other incorporated communities. The intention of Section 56133 is to allow the provision of service to areas within an agency's sphere of influence in anticipation of future annexation to that agency, or outside a sphere of influence where annexation is not anticipated and the extension remedies a public health threat. For incorporated areas that receive water service from another municipality, it is not anticipated that the provision of this water service would require a property to detach from one city and annex to another as these areas are not located in the sphere of influence of another city. As there is no anticipation of a boundary change in conjunction with the extension of a water, Section 56133 is not applicable for a water extension by a city outside of its boundary to another incorporated area. To ensure that a water extension of this manner is exempt, LAFCo will require notification by the service provider prior to the extension of service and the Executive Officer will provide written confirmation that said service is exempt from Section 56133.*

Attached is the draft policy in track-changes with recommended revisions.

### **Committee Review**

On March 4, 2021 the Legislative and Policy Committee recommended approval of the revisions to the policy.

### **Commission Review**

At the March 19, 2021 Commission meeting, the Commission approved the draft version of the policy and requested that it be circulated to interested parties.

### **Comments from Agencies**

After publication of the draft policy at the March meeting, the Bay Area Water Supply & Conservation Agency clarified that SFPUC alone sets the water service boundaries for agencies that are customers of SFPUC. The Bay Area Water Supply & Conservation Agency is not involved in the setting of service boundaries. In response to this comment, the reference to the Bay Area Water Supply & Conservation Agency in the updated OSA policy has been removed.

On May 5, 2021, a comment letter from the City of Redwood City was received by LAFCo. The letter focused on request for written correspondence to LAFCo to confirm that the water extension is exempt from Government Code 56133. Staff from Redwood City stated that this requirement could present an administrative burden to the water provider, applicant, and LAFCo staff. Redwood City requests that one of the two following changes are made to the policy:

- 1) Remove the requirements for notification and the associated written confirmation; or
- 2) Change these requirements to be optional and triggered as a request from the water service provider.

Redwood City staff also asked for clarification about verification for 56133 exemption process if a confirmation review is made by LAFCo.

In recognition of the potential additional process that would be required by this draft policy, LAFCo has proposed to change this requirement to send written notice and confirmation from LAFCo. The policy removes the requirement for LAFCo review these service connections. However, LAFCo staff would still request a service provider that is extending service in compliance with this policy to send courtesy notification to LAFCo upon approval of the service by the City. The reason for this is twofold. First, LAFCo staff is requesting notification for the purposes of confirming that the address of the property to be served is within an existing SFPUC service boundary. Second, the notification will help LAFCo keep a complete record of all service extensions outside city boundaries that occur in the County. This record is useful tool for staff in order to respond to inquiries from member of public or from public agencies.

No other comments from agencies or interested parties were received.

**Recommended Commission Action**

By motion, adopt the proposed Revised Outside Service Agreement Policy

**Attachments**

A. Revised Outside Service Agreement Policy

**SAN MATEO LOCAL AGENCY FORMATION COMMISSION**  
**POLICY AND PROCEDURE FOR REVIEW OF REQUESTS**  
**FOR EXTENSION OF SERVICE OUTSIDE JURISDICTIONAL BOUNDARIES**

In 2001, San Mateo LAFCo adopted a policy for the extension of services outside of jurisdictional boundaries. This policy was intended to allow for local implementation of the Cortese-Knox-Hertzberg Act related to the provision of services outside to areas in San Mateo County. The majority of requests for extension of services have been for sewer or water extensions that typically involved infill development in unincorporated areas under the County's land use jurisdiction, but within a city's sphere of influence (SOI). Affected parcels have not been contiguous to the city and therefore not eligible for immediate annexation.

Since the initial policy, the economic recovery and increased demand for housing on the peninsula has increased the number of new developments requesting outside service extensions on vacant parcels as well as subdivisions within these unincorporated islands that are not contiguous to city boundaries. In response to these increased requests, LAFCo has clarified and updated the policy to reflect changes to the Cortese-Knox-Hertzberg Act, revised language that promotes the future annexation of the property, clarified the specific criteria for when services would be extended, and memorialized emergency extension procedures. These updates are reflected in this policy document.

**1. Legislative Authority**

Government Code Section 56133 provides that any city or district that plans to provide new or extended services by contract or agreement outside its jurisdictional boundaries must apply for and obtain written approval from the local agency formation commission in the affected county.

Paragraph (b) of Section 56133 further states that LAFCo may approve extension of service outside an agency's boundaries and within its sphere of influence in anticipation of future annexation.

As approval of such an extension is discretionary and must be done in anticipation of future annexation, San Mateo LAFCo will require that each application for extension be conditioned upon an executed and recorded deferred annexation agreement, a recorded covenant, or some other instrument that evidences or promotes likelihood of annexation of the property.

The Commission may also approve extension of service outside boundaries and outside its sphere of influence to respond to an existing or impending threat to the public health or safety if both of the following requirements are met:

- a. The agency applying for the contract approval has provided the commission with documentation of a threat to health and safety, and
- b. The commission has notified any alternate service provider, including any water or sewer system corporation, which has filed a map and a statement of its service capabilities with the commission.

## **2. Agreements and Contracts Not Subject to Section 56133**

The following agreements/contracts between public agencies are not subject to LAFCo approval under Section 56133:

- a. 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.
- b. Agreements for the transfer of non-potable or nontreated water.
- c. 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.
- d. An extended service that a city or district was providing on or before January 1, 2001.
- e. 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.
- f. A fire protection contract, as defined in of Government Code Section 56134, subdivision (a).

These agreements and contract exemptions only apply to the commission of the county in which the extension of service is proposed.

LAFCo approval of extension of service outside jurisdictional boundaries is a discretionary action under the California Environmental Quality Act (CEQA).

**3. Procedure for Processing Applications for Extension of Service Outside Jurisdictional Boundaries**

In implementing Government Code Section 56133, the Commission shall process applications for extension of service outside agency boundaries in the following manner:

- a. LAFCo staff shall encourage pre-application consultation and assist the applicant in investigating annexation prior to submitting a formal application for extension of services outside jurisdictional boundaries. It is the intent of the Commission that properties that are contiguous to city or district boundaries be annexed to the city or district in order to receive service. Consideration may be given to parcel configuration, relationship of the parcel to city streets and efficient jurisdictional boundaries. The agency proposing to extend service shall submit a resolution of application, a completed application form, applicable fees and the agency's form of agreement with the property owner for extension of service to the Executive Officer.
- b. Once submitted, the Executive Officer shall deem the application acceptable for filing within 30 days of receipt, or if the application is incomplete, transmit a letter to the applicant stating the reasons the application is incomplete. Upon determination that an application is acceptable for filing, the application shall be placed on the Commission's agenda within 90 days.
- c. LAFCo shall process the application in the manner it processes applications for organizational change to the extent that the application shall be referred for comment to affected county, city(ies), district(s).

- d. The Executive Officer shall transmit the Commission's decision in writing to the affected city or district, the County of San Mateo Planning and Building Department, and the property owner.

#### **4. Factors to Consider in Reviewing Applications**

Upon review and consideration of the application materials specified in b above, the Commission may approve, approve conditionally, deny, or continue to a later date the application for extension of service outside jurisdictional boundaries. If the application is denied or approved with the conditions, the applicant may request reconsideration, citing the grounds for reconsideration. LAFCo will consider the following factors to determine the local and regional impacts of the proposed service outside of jurisdictional boundaries:

- a. Whether annexation is a reasonable and preferable alternative to LAFCo allowing for the extension of services outside the agency's or district's jurisdictional boundaries;
- b. The growth inducing impacts of any proposal;
- c. Whether the proposed extension of service promotes logical and orderly development within the SOI. The creation of islands, strips, and corridors, the annexation of the properties that abut incorporated areas at the rear of the property only, or the annexation of properties where access is only available through unincorporated areas are disfavored;
- d. The agreed upon timetable and stated expectation for annexation, where feasible and within LAFCo policy, to the agency providing the requested service. If logical and orderly development can be achieved via annexation in lieu of an outside extension of service, annexation should be favored;
- e. The proposal's consistency with the policies and plans of all affected agencies;
- f. The ability of the local agency to provide service to the proposed areas without detracting from current service levels;
- g. Whether the proposal contributes to the premature conversion of agricultural land or other open space land;
- h. Extent to which the proposal will assist the entity in achieving its fair share of regional housing needs;

- i. Whether the proposal conflicts with or undermines adopted Municipal Service Review determinations and/or recommendations.
- j. When a proposal is located within a sphere of influence of the following criteria shall apply as well:
  - i. For developed parcels within a sphere of influence
    1. There is a documented existing or potential threat to public health or safety, or proposed new development is consistent with the City and County General Plans and other applicable regulations, and annexation to the city or district is not feasible at the time of application, and
    2. The property owner and city or district have entered into a recordable agreement to future annexation and said agreement runs with the land and shall inure to future owners of the property.
  - ii. For undeveloped parcels within a sphere of influence
    1. The proposed new development is consistent with the city and County General Plans and other applicable regulations, and
    2. Annexation to the city or district is not feasible at the time of application, and
    3. The property owner and city have entered into a recordable agreement to future annexation and said agreement runs with the land and shall inure to future owners of the property.
  - iii. For all properties located outside a sphere of influence
    1. The extension of service mitigates existing or impending health and safety concern. Certification of the impending or existing public health threat is provided by the Director of Environmental Health, and
    2. The property is currently developed, and
    3. The service extension complies with the City and/or County General Plans and other applicable regulations, and
    4. 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, and



5. No future expansion of service will be permitted without approval from LAFCO.

**5. Emergency Connections Procedures**

- a. If at the time of the Commission's meeting agenda is prepared, an application for extension of service to a developed parcel within or outside a city's sphere of influence necessary to mitigate an existing or impending health and safety risk is scheduled for action by the subject City Council or District Board, but is too late to be noticed and placed on the agenda of the next LAFCo meeting for formal action, and delay until the subsequent Commission agenda would cause undue hardship, the Executive Officer, as part of their regular report to the Commission, shall provide a report describing the proposed extension and terms of the proposed agreement which is pending action by the city council or district board.

Pursuant to Section 56133, the Commission may consider delegation to the Executive Officer the authority to consider and approve the application following formal action by the legislative body of the city or district if the action taken does not vary from the report provided to the Commission and if the proposed extension meets all of the following conditions:

- i. Service/infrastructure extension is exempt from the California Environmental Quality Act (CEQA), and
  - ii. Certification is provided by the Director of Environmental Health of an impending or existing public health threat, and
  - iii. The service extension complies with the City and County General Plans and other applicable regulations.
- b. An administrative approval may be allowed for those projects that pose an urgent health or safety concern, without consideration by LAFCo if the project is brought to the Executive Officer's attention without adequate time to place the matter on the Commission's agenda. The administrative approval shall be made jointly by the LAFCo Chairperson (or Vice Chairperson if the Chair is not available) and the Executive Officer.

Both must agree that an administrative approval is appropriate, based upon the criteria outlined below:

- i. Service/infrastructure extension is exempt from the California Environmental Quality Act (CEQA), and
- ii. Certification is provided by the Director of Environmental Health of an impending or existing public health threat, and
- iii. The property is currently developed, and;
- iv. There are physical restrictions on the property that prohibit a conventional service delivery method typically suited to the unincorporated area (i.e., septic tank, private well, etc.), and;
- v. The service extension complies with the City and County General Plans and other applicable regulations, and;
- vi. The property owner and city have begun the process to enter into a recordable agreement to future annexation and said agreement runs with the land and shall inure to future owners of the property. An exception to this requirement is the extension of sewer or water service by a city to territory located in the boundaries of the neighboring city because there is no alternative service provider and city boundaries would not be altered.

#### 6. Water Extensions by a City into an Incorporated Area

The boundaries of most water service agencies in San Mateo County are set by the San Francisco Public Utilities Commission. In a number of cases, the designated service areas for water providers include both incorporated and unincorporated areas. Several cities in San Mateo County provide water service to other incorporated communities. The intention of Section 56133 is to allow the provision of service to areas within an agency's sphere of influence in anticipation of future annexation to that agency, or outside a sphere of influence where annexation is not anticipated and the extension remedies a public health threat. For incorporated areas that receive water service from another municipality, it is not anticipated that the provision of this water service would require a property to detach from one city and annex to another as these areas are not located in the sphere of influence of another city. As there is no anticipation of a boundary change in conjunction with the extension of a water, Section 56133 is not applicable for a water extension by a city outside of its boundary to another incorporated area. If a city is proposing to extend service under this policy, LAFCo requests a notice from the service provide confirming the address to be served for the LAFCo records. If the property is determined to unincorporated or outside of the existing SFPUC boundaries, LAFCo approval will be required. ~~To~~ ensure that a water extension of this manner is exempt, LAFCo will require notification by the service

San Mateo County LAFCo Policy for Extension of Service Outside Jurisdictional Boundaries

~~provider prior to the extension of service and the Executive Officer will provide written confirmation that said service is exempt from Section 56133.~~

Adopted January 17, 2001

Revised November 21, 2001

Revised ~~XXXX~~ March 20, 2019

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