



## **POLICIES AND PROCEDURES FOR CITIES AND DISTRICTS TO PROVIDE SERVICES OUTSIDE AGENCY BOUNDARIES**

**Adopted November 14, 2012  
Amended July 17, 2013**

### **1.0 Authority**

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 authorizes a city or district to provide new or extended services by contract or agreement outside its jurisdictional boundaries if the city or district requests and receives approval from the Commission. 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, or 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, under specified circumstances.

### **2.0 Purpose**

To establish policy and procedural guidelines by which the Commission considers requests for the extension of services by cities and districts outside their jurisdictional boundaries pursuant to Government Code Section 56133.

### **3.0 Objective**

To ensure the extension of services by cities and special districts outside their jurisdictional boundaries are logical and consistent with supporting orderly growth and development in Humboldt County. The Commission recognizes the importance of considering local conditions and circumstances when implementing these policies.

### **4.0 Definitions**

The following definition of terms are provided 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 the Cortese-Knox-Hertzberg Act:

- A. "New or extended services" shall mean the actual delivery of services or the intensification of services to a specific property. New or extended services

established before January 1, 2001 are specifically exempt and are not within the purview of the Commission.

- B. "Contract or agreement" shall mean a contract, agreement, or other legal instrument, which requires or agrees to the delivery of service to property.
- 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 the document signed by the Executive Officer authorizing the completion of the contract.
- D. "Anticipation of a later change of organization." The inclusion of an area to be served within the sphere of influence of the serving agency shall be sufficient to comply with this provision.
- E. "Public Agency" means 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" (Government Code Section 56070).

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.

- F. "Public health and safety threat" 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.
- G. "Sufficient Service Capacity" shall mean the affected agency has the ability to provide the new or extended services to be provided under the agreement without adversely affecting current service levels within its jurisdictional boundaries.

## 5.0 Policies

### 5.1 Commission Approval Required for New or Extended Services

Except for the specific situations exempted by Government Code Section 56133, a city or district shall not provide new or extended services to any party or property outside its jurisdictional boundaries unless it has obtained written approval from LAFCo consistent with all the policies and procedures described herein.

### 5.2 Exemptions

The Executive Officer shall consult with cities and districts to determine whether extended services agreements are subject to Commission review. The following agreements shall be exempt from Commission approval:

- A. Any agreement 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.
- B. Any agreement for the transfer of nonpotable or nontreated water.
- C. Any agreement 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, any agreement for the extension of surplus water service to a project that will support or induce development shall not be exempt from Commission approval.
- D. Any agreement for an extended service that a city or district was providing on or before January 1, 2001.
- E. Any agreement involving 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 its jurisdictional boundaries.

### 5.3 Executive Officer Authority to Approve Certain Requests

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.

#### **5.4 Filing Requirements**

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 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.
- 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 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.

#### **5.5 Environmental Review**

All matters that involve discretionary action pursuant to these regulations are subject to the applicable provisions of the California Environmental Quality Act (CEQA). If there has been no environmental determination made by the applying agency, LAFCo will serve as the Lead Agency and shall prepare the required environmental analysis. Such a determination shall be required prior to authorization of a service extension.

#### **5.6 Annexations**

Annexations to cities and districts involving territory located within the affected agency's sphere of influence is generally preferred to outside service area agreements. The Commission recognizes, however, there may be instances when outside service area agreements are appropriate given local circumstances.

#### **5.7 Criteria for Authorizations for Outside Service Area Requests**

The Commission and the Executive Officer shall limit its outside service area authorizations to public health and safety emergencies and circumstances where:

- A. Sufficient service capacity exists;
- B. Annexation would not be practicable (in determining whether an annexation is practicable, the Commission shall consider the sphere of influence determinations for the affected territory in accordance with Government Code 56425(e); and
- C. The outside service area request is determined by the Commission to be consistent with the policies adopted in and pursuant to the Cortese-Knox-Hertzberg Act.

### **5.8 Public Health and Safety Criteria for Water and Sewer Services**

The Commission recognizes the importance of proactively addressing impending threats to public health and safety in considering requests for outside water and sewer services. Accordingly, the affected agency or landowners shall provide the Commission with documentation of the public health and safety threat, consistent with the criteria below.

- A. An existing on-site sewage disposal system may be deemed a threat to the health and safety of the public or the affected residents if it meets one or more of the following criteria, as determined by a Humboldt County Division of Environmental Health Specialist or other qualified professional:
  - (1) There is ponding or accumulation of wastewater or septic tank effluent at or above the surface of the ground.
  - (2) There is a lack of an unsaturated vertical soil separation between the bottom of a disposal field and seasonal high groundwater.
  - (3) There is a failure of the disposal field or septic tank to accept, treat, and dispose of wastewater in quantities discharged by the structure served.
  - (4) The on-site septic system is within 50 feet of a well or other water source.
  - (5) Any other condition associated with the operation or use of an on-site sewage system that could permit the exposure, either directly or indirectly, of individuals or domestic animals to inadequately treated wastewater.
- B. An existing water source used for domestic purposes may be deemed a threat to the health and safety of the public or the affected residents if it meets one or more of the following criteria, as determined by a Humboldt County Division of Environmental Health Specialist or other qualified professional:

- (1) The water supply is impacted by biological, chemical, or radiological constituents that cannot be adequately or reasonably treated or removed to levels deemed safe for human consumption or contact.
- (2) The quantity of the water supply is constantly or periodically inadequate (less than one gallon per minute) to meet the domestic needs for which its use is intended, and additional quantities cannot adequately or reasonably be developed.
- (3) Any other condition in which the continued use of an existing water supply could result in negative impacts to human health.

## **6.0 Application Procedures**

For all development-related applications for service, the item shall be considered by the Commission at a noticed public meeting. The authority for action for nondevelopment-related agreements/contracts has been delegated to the LAFCo Executive Officer by the Commission.

### **6.1 Development-Related Applications**

Development-related agreements/contracts associated with the development of tracts, subdivisions, a single-family dwelling unit, a commercial/industrial development on a parcel, or other types of development-related projects shall require the following review and approval by the Commission:

- A. The city or district proposing to provide service(s) outside its boundaries shall submit to LAFCo an application for review and consideration. Within 30 days after receipt of an application, the Executive Officer shall determine whether the application is complete and acceptable for filing. If the request is deemed incomplete, the Executive Officer shall immediately notify the applying agency of that determination, specifying those parts of the application that are incomplete and an explanation of the manner in which the deficiencies may be made complete.
- B. The Executive Officer shall provide a referral regarding the request to the Humboldt County Public Works, Planning and Building, and Environmental Health Departments and affected and nearby public agencies and utilities providing the service type that is proposed to be extended.
- C. If necessary, a meeting with the applying agency and/or the various 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.

- D. Once these required elements have been completed, the item shall be placed on a Commission Agenda within 90 days. At a noticed public meeting, the Commission will consider the staff's presentation and presentations, if any, by interested and affected parties, and make a determination.
- E. The Commission has the authority to approve, approve with conditions, or deny the service extension request. The Commission's determination and any required findings will be set out in a resolution which specifies the area to be served, the services to be provided, and the authority of the agency to provide its services outside its boundaries.
- F. Within 30 days after the Commission disapproves or approves with conditions an outside service area agreement, the applicants may request reconsideration of the decision by filing a written request with the Executive Officer. In all other cases, the decision of the Commission on an outside service area agreement shall be final and conclusive. The request for reconsideration shall include the required reconsideration fee and shall state the reasons for the reconsideration. Reconsideration by the Commission shall be noticed and conducted pursuant to Section 56895 of the Government Code. The determinations of the Commission on reconsideration shall be final and conclusive.

## 6.2 Nondevelopment-Related Applications

Nondevelopment-related agreements/contracts that are related to providing service to existing residential, commercial or industrial development shall include the following review and approval by the LAFCo Executive Officer:

- 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. The Executive Officer's administrative review shall include the following determinations:
  - (1) The proposed service extension is either nondevelopment-related and/or involves health and safety concerns as defined by Commission policy.
  - (2) Sufficient service capacity exists.
  - (3) The request is consistent with the Cortese-Knox-Hertzberg Act.
- C. The Executive Officer can approve, approve with conditions, or deny the request for service extension. Should the Executive Officer decide, for any

reason, to not exercise his/her delegated authority, the Executive Officer shall refer the request to the Commission for approval.

In cases where the Executive Officer denies a proposed service extension, the proposal shall be placed on the next Commission meeting agenda for which notice can be provided. After consideration at a public meeting, the Commission may approve, conditionally approve or deny the request for service extension.

In cases where the Executive Officer approves a proposed service extension, said approval is subject to a potential review initiated by the Commission pursuant to Section 6.2 D. of this Policy. The applying agency and/or the affected property owner may, in their discretion, initiate the extension of service prior to the expiration of the time the Commission may initiate a review of the decision. However, any such extension is taken at the risk of the applying agency and/or the property owner that the Commission may ultimately reverse the approval of the Executive Officer, or place additional conditions on such approval. The approval of the Executive Officer creates no legally enforceable, vested right of the applying agency and/or the property owner.

In cases where the Executive Officer approves a proposed service extension with conditions to which the applying agency and/or property owner objects, the applying agency and/or property owner may proceed with the extension under the conditional terms and said conditional terms shall be placed on the next Commission meeting agenda for which notice can be provided. After consideration at the public meeting, the Commission may lift or modify the conditions.

- D. The Executive Officer shall notify the Commission of his/her decision on an outside service area agreement within two business days. Within ten days after the Executive Officer's decision, any member of the Commission may request the Commission to review the decision by filing a written request with the Executive Officer. The Executive Officer shall set the request for review as an agenda item for the next meeting of the Commission for which notice can be given. After consideration of the issue, the Commission may affirm, reverse, or modify the decision of the Executive Officer.

## **7.0 List of Pre-Existing Services**

Upon adoption of these regulations, the Executive Officer shall ask each city and district to provide a list or map of parcels to which it was providing services outside its boundaries before January 1, 2001, as well as a list of outside agency services established after the effective date of Government Code Section 56133.



The Executive Officer subsequently shall place the list of outside agency services on the agenda for the Commission at a regularly scheduled meeting for Commission review.

The Commission shall receive and file the list of outside agency services and the Executive Officer shall maintain a record of outside agency services as public information. Expansion or intensification of outside agency services shall be considered a new request, subject to all the requirements of new outside agency service requests.