



Local Agency Formation Commission of Napa County
Subdivision of the State of California

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June 6, 2011
Agenda Item No. 7a (Action)

May 31, 2011

TO: Local Agency Formation Commission

FROM: Ad Hoc Committee on Policies and Procedures

SUBJECT: Amendments to Policy on Outside Service Agreements

The Commission will consider amendments to the agency's *Policy on Outside Service Agreements* to simplify and expedite the process for cities and special districts to request approval. The proposed amendments follow discussion from the April 4, 2011 meeting.

California Government Code (G.C.) Section 56133 was enacted in 1994 and requires cities and special districts to request and receive written approval from Local Agency Formation Commissions before providing new or extended municipal services by contract or agreement outside their jurisdictional boundaries. Approval must comply with one of two geographic requirements. First, LAFCOs may only approve outside municipal service extensions within the affected agencies' spheres of influence in anticipation of future changes of organization. Second, LAFCOs may only approve outside municipal service extensions beyond the affected agencies' spheres of influence to respond to existing or impending public health or safety threats.

A. Background

At its November 3, 2008, LAFCO of Napa County ("Commission") adopted a policy establishing principles and procedures in administering requests from cities and special districts to provide new or extended municipal services outside their boundaries under G.C. Section 56133. This includes prescribing the (a) form, (b) review, and (c) consideration of agency requests. The policy, titled *Policy on Outside Service Agreements*, was adopted at a noticed hearing and followed a 30-day public review period in which comments were received by the County of Napa and City of Napa; comments that were largely incorporated into the adopted text. The underlying motivation tied to adopting the policy is to help ensure the reviews of these types of requests are processed uniformly and consistent with the preferences of the Commission.

Lewis Chilton, Vice Chair
Councilmember, Town of Yountville

Joan Bennett, Commissioner
Councilmember, City of American Canyon

Juliana Inman, Alternate Commissioner
Councilmember, City of Napa

Bill Dodd, Chair
County of Napa Supervisor, 4th District

Brad Wagenknecht, Commissioner
County of Napa Supervisor, 1st District

Mark Luce, Alternate Commissioner
County of Napa Supervisor, 2nd District

Brian J. Kelly, Commissioner
Representative of the General Public

Gregory Rodeno, Alternate Commissioner
Representative of the General Public

Keene Simonds
Executive Officer

The Commission has adopted one amendment to its *Policy on Outside Service Agreements*. The amendment was adopted at the April 4, 2011 meeting as part of a comprehensive update undertaken by the Commission's appointed Ad Hoc Committee on Policies and Procedures (Luce, Rodeno, and Simonds). The amendment incorporates language prescribing criteria for use by cities and special districts to propose outside municipal services beyond their spheres of influence under the public health and safety threat provision in G.C. Section 56133(c). Markedly, the adopted amendment establishes a path in approving limited (e.g., residential lots adjacent to existing service lines) and otherwise logical municipal service extensions beyond spheres of influence while transferring responsibility for defining threats to public health and safety from the local agencies to the Commission.

B. Discussion/Analysis

In adopting the referenced amendment on April 4th, the Commission received comment from the City of Napa's Deputy Public Works Director Phil Brun outlining the City's interest in further refining the *Policy on Outside Service Agreements*. Mr. Brun noted the City is particularly interested in simplifying the filing process for cities and special districts to request approval from the Commission; a process that currently requires the affected agency submit a resolution along with their completed application form. Mr. Brun added striking the resolution requirement would provide more flexibility to the affected agencies in how they choose to file landowner requests for outside municipal services. Mr. Brun also conveyed the City's interest in the Commission delegating approval authority to the Executive Officer as an additional means of expediting the review/approval process for public health and safety threats.

The Ad Hoc Committee believes the City makes a reasonable suggestion with regard to improving the implementation of the *Policy on Outside Service Agreements* by striking the resolution requirement. This added allowance would be particularly advantageous for cities and special districts seeking approval under the public health and safety provision enumerated under G.C. Section 56133(c). With this in mind, the following amendment to Section IV/B is proposed:

IV/B. Form of Request

Requests to authorize an outside service agreement shall be filed with the Executive Officer by the affected city or special district. Requests shall be made ~~by resolution of the affected agency~~ in writing with a cover letter accompanying a completed application using the form provided in Attachment A. Requests shall also include a check in the amount prescribed under the Commission's adopted fee schedule along with a copy of the proposed service agreement. The application shall be signed by an authorized representative of the city or special district.

Ad Hoc Committee also believes a second amendment is appropriate to Section IV/A/4 to clarify the Chair's delegated authority from the Commission in approving outside municipal service requests involving threats to public health or safety. Specifically, the current text limits the Chair's authority to expedite the approval process involving public health or safety threats to existing and urgent emergencies.¹The Ad Hoc Committee believes clarification is needed to empower the Chair to also address impending threats. This clarification would also address the City's desire for the Commission to fully delegate review/approval authority for public health and safety threats. The proposed amendment follows:

IV/A/4 General Statements

The Commission authorizes the Chair to approve a city or special district's request for an outside service agreement if there is an existing ~~and urgent~~ impending public health or safety emergency. The Commission shall ratify the Chair's determination at the next regular scheduled meeting.

C. Summary

The Ad Hoc Committee believes both proposed amendments to the *Policy on Outside Service Agreements* are reasonable and would improve coordination with local agencies for reasons enumerated above. It is important to note the amendment striking the resolution requirement for cities and special districts in filing outside municipal service requests potentially reduces opportunities for public review and comment on the underlying project at the agency level prior to Commission consideration. This potential loss of public dialogue is concerning, but the Ad Hoc Committee believes it is appropriate to defer to the agencies in determining how best to internally process requests (i.e., with or without public meetings) for filing with the Commission.

D. Alternatives for Action

The following alternative actions are available to the Commission.

Option One: Adopt by motion the attached draft amendments to the *Policy on Outside Service Agreements* with or without any changes.

Option Two: Continue consideration to a future meeting and provide direction to staff regarding additional information requests as needed. This may include seeking additional agency/public comment.

Option Three: Take no action.

¹ The policy also specifies the Commission shall ratify the Chair's determination at the next regular scheduled meeting.

E. Recommendation

It is recommended the Commission take action as outlined as Option One in the preceding section.

E. Procedures for Consideration

The following procedures are recommended with respect to the Commission's consideration of this item:

- 1) Receive verbal report from the Committee;
- 2) Invite public comments (discretionary); and
- 3) Discuss item and consider action on recommendation.

Respectfully submitted on behalf of the Committee,

Keene Simonds
Executive Officer

Attachment:

- 1) Draft Amendments to Policy on Outside Service Agreements (Track Changes)



LOCAL AGENCY FORMATION COMMISSION OF NAPA COUNTY

Policy on Outside Service Agreements

Adopted: November 3, 2008

Amended: April 4, 2011

I. Background

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 includes provisions requiring cities and special districts to request and receive written approval from the Commission before providing new or extended services by agreements outside their jurisdictional boundaries with limited exemptions (Government Code Section 56133). The Commission may authorize a city or special district to provide new or extended service outside their jurisdictional boundary in anticipation of a subsequent change of organization, such as an annexation. The Commission may also authorize a city or special district to provide new or extended service outside their jurisdictional boundary and sphere of influence to address an existing or future threat to the public health or safety.

II. Purpose

The purpose of these policies is to guide the Commission in reviewing city and special district requests to provide new or extended services by agreement outside their jurisdictional boundaries. This includes making policy statements and establishing consistent procedures with respect to the form, review, and consideration of requests.

III. Objective

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

IV. Outside Service Agreement Policies

A. General Statements

- 1) Annexations to cities and special districts involving territory located within the affected agency's sphere of influence is generally preferred to outside service agreements. The Commission recognizes, however, there may be instances when outside service agreements involving territory within the affected agency's sphere of influence is appropriate given local circumstances.
- 2) The Commission shall authorize a city or special district's request to provide new or extended services outside their jurisdictional boundary and sphere of influence only in response to either an (a) existing or (b) impending threat to public health or safety in accordance with Government Code Section 56133(c).

- 3) The Commission recognizes the importance of proactively addressing impending threats to public health and safety in considering requests for outside water and sewer services in support of existing and planned residential uses with reasonable access to existing infrastructure. Accordingly, the Commission will consider outside water and sewer service requests for purposes of addressing an impending public health or safety threat if all of the following criteria is applicable:
 - (a) The subject property is zoned for residential type uses by the affected land use authority.
 - (b) The subject property comprises a legal lot of record as of January 1, 2001.
 - (c) The subject property is adjacent to a public right-of-way in which the affected service line is located.
 - (d) The proposed service extension can be accommodated by an appropriate connection for single-family uses.
- 4) The Commission authorizes the Chair to approve a city or special district's request for an outside service agreement if there is an existing ~~and-urgent or~~ impending public health or safety emergency. The Commission shall ratify the Chair's determination at the next regular scheduled meeting.
- 5) All requests for outside service agreements are subject to the applicable provisions of the California Environmental Quality Act.
- 6) Commission approval is not required for cities or special districts to provide new or extended services outside their jurisdictional boundaries if any of the following conditions apply in accordance with Government Code Section 56133(e):
 - (a) The agreement involves two or more public agencies where the contracted service is an alternative or substitute for public services already provided.
 - (b) The agreement involves the transfer of non-potable or non-treated water.
 - (c) The agreement involves the provision of surplus water to agricultural lands for conservation projects or to directly support agricultural industries.
 - (d) The agreement involves an extended service that a city or special district was providing on or before January 1, 2001.

The Commission encourages cities and special districts to work with the Executive Office in determining when the above exemptions may apply.

B. Form of Request

Requests to authorize an outside service agreement shall be filed with the Executive Officer by the affected city or special district. Requests shall be made ~~by resolution of the affected agency in writing~~ with a cover letter accompanying a completed application using the form provided in Attachment A. Requests shall also include a check in the amount prescribed under the Commission's adopted fee schedule along with a copy of the proposed service agreement. The application shall be signed by an authorized representative of the city or special district.

C. Review of Request

The Executive Officer shall review and determine within 30 days of receipt whether the request to authorize an outside service agreement 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.

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. 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 following three factors:

- 1) The ability of the applicant to extend the subject service to the affected land.
- 2) The application's consistency with the policies and general plans of all affected local agencies.
- 3) The application's effect on growth and development within and adjacent to the affected land.

The Commission may approve the request with or without conditions. If denied, the affected city or special district can ask for reconsideration within 30 days.