



LAFCO - San Luis Obispo - Local Agency Formation Commission
SLO LAFCO - Serving the Area of San Luis Obispo County

TO: MEMBERS, FORMATION COMMISSION
FROM: DAVID CHURCH, EXECUTIVE OFFICER
DATE: JANUARY 16, 2020
**SUBJECT: CALAFCO APPROVED AMENDMENTS TO GC 56133-
OUTSIDE USER AGREEMENTS**

RECOMMENDATION. It is respectfully recommended that the Commission support the clarifying changes to the Outside User Agreement section of Cortese-Knox-Hertzberg Act GC 56133.

DISCUSSION. Attached is a staff memorandum to the CALAFCO Board from Harry Ehrlich of San Diego LAFCO. Mr. Ehrlich is a long time analyst and legislative consultant for CALAFCO.

Attachments A: CALAFCO Proposed Amendment
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The legislative change clarifies that LAFCO has the sole authority to make the determination of applying the exemptions found in GC 56133 (e); not the agencies that are considering an outside user agreement. In other words, the agencies need to consult with LAFCO regarding the need for LAFCO approval of an outside user agreement rather than self-determining if an exemption can be applied.

When agencies have asked SLOLAFCO staff about an outside user agreement, we have reviewed the request and determined if LAFCO approval was needed for an agreement. For example, Templeton CSD provides domestic water service to a CALFIRE Station just outside its boundaries. CALFIRE rebuilt the station. GC 56133(e) allows for an exemption between two government agencies if the agreement does not change the level of service. In this case the agreement did not change the level of service and it was exempted from having to get LAFCO approval. The outside user agreement was between two public agencies.

In another situation the Cities of Arroyo Grande and Grover Beach entering into an agreement to use Arroyo Grande sewer lines to serve a new development in Grover Beach. This did change the level of service by increasing the number of hook ups to the sewer from the new development. This agreement was subject to LAFCO approval.

In other Counties, some jurisdictions are “self-deciding” in regard to the exemptions found in GC 56133. This has led to jurisdictions bypassing the outside user approval process without consulting with LAFCO. The changes to the GC would clarify that LAFCO has the authority to make the determination regarding the application of an exemption under 56133.

This change clarifies what is intended in the CKH Act; that LAFCO should make the decisions regarding the exemptions after reviewing the proposal. The EO will send an email to CALAFCO advising them of SLOLAFCO’s support.

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Attachment A

CALAFCO Proposed Amendment to GC 56133

CALAFCO BULLETIN

Proposed Amendments to Government Code Section 56133



The Proposal

The CALAFCO Board has unanimously approved a proposal from the Legislative Committee to amend Government Code (G.C.) Section 56133 and its provisions governing the LAFCo approval process for cities and districts to provide new or extended services outside their jurisdictional boundaries. Two distinct components underlie the Board-approved amendments:

1. The first and most pertinent component clarifies LAFCos' authority to determine whether a proposed new or extended service meets any of the exemptions listed under subsection (e).
2. The second component adds the term "function" to the statute to ensure consistency with other sections of CKH and the distinction between service, function and class.

Why the Proposal?

The CALAFCO Board and Legislative Committee believe the proposed amendments to G.C. Section 56133 will measurably clarify a LAFCos' intended role to review and regulate new or extended services outside an agency's jurisdictional boundaries. The proposal is the result of an evolving discussion among several Executive Officers in all four regions over the last two years and was thoroughly vetted with the Legislative Committee before going to the Board. The amendments do not expand or limit LAFCos' current authority. Most notably, the amendments clarify that LAFCo possesses the sole authority to determine whether a new or extended service can be considered exempt from LAFCo review and approval. This protects against a city or district "self-exempting" a contract or agreement for a new or extended service that would otherwise merit commission review. Adding the term "function" also makes the statute consistent with other areas in CKH. The following examples demonstrate how the amendments would be applied:

- If two public agencies enter into a contract or agreement for a new or extended service, it would be up to LAFCo, not the two agencies, to determine if the service is "an alternative to, or substitute for" a service already being provided and that the level of service is "consistent with the level of service contemplated by the existing service provider."
- If a service provider is currently providing a service outside its jurisdictional boundaries that predates 2001, it would be up to LAFCo to determine if an increase in the level of service to accommodate a new development is a new or extended service subject to LAFCo approval.
- If a city or district proposes to provide surplus water outside its boundaries, it would be up to LAFCo, not the city or district, to determine if that service will induce development and require LAFCo approval.

Further, the proposed amendment would make it explicit that LAFCo would consider all "functions" when new or extended services are proposed outside an agency's jurisdictional boundaries.

The amendments would clearly state that LAFCo is to determine when a contract or agreement for a new or extended service is exempt from LAFCo approval pursuant to section 56133(e). This is hoped to avoid delays and other transaction costs tied to disagreements with agencies regarding the constitution of "new" and "extended" services when exemptions are stated to apply. A notification to LAFCo and review for concurrence should be an administrative action possible by staff unless a difference of opinion is a result, as determined by the commission.

Specific examples:

The following real-world examples demonstrate the need for the proposed clarifications to section 56133:

- A water district approved new water service to dozens of homes built outside its boundaries after 2001. The district exempted itself from section 56133 because it had entered into a handshake “agreement” with a developer to provide the service long before 2001. As a result, these dozens of new services were in violation of CKH.
- A farmer wanted water service from a nearby city to water his crops during a drought. The farmer approached the city and convinced the city to consider the water service as “surplus” water (even though the city was in a stage 3 water shortage emergency). The city made the determination that the service was exempt from LAFCo review/approval.
- Agency A (possibly a water or wastewater agency) is required to implement environmental mitigation for a project by developing habitat within or outside its SOI. Agency A proposes to contract with Agency B (possibly another water agency or RCD) to install and/or maintain the habitat area for a period of time, outside of its service area and SOI. While Agency B may be in the function of providing that service, to do so in Agency A’s area as a new or expanded service even by contract should be subject to review and authorization by LAFCo.

Frequently asked questions:

Question: *Will these changes create new pressures on LAFCo to accommodate development outside an agency’s jurisdictional boundaries that it would otherwise reject?*

Answer: No. The proposed changes do not affect LAFCo’s existing right and duty to deny outside service requests deemed illogical and inconsistent with their policies. The intent is to clarify existing authority areas.

Question: *Does clarifying LAFCo’s authority to approve services and functions outside an agency’s jurisdictional boundaries undermine LAFCo’s ability to curb sprawl?*

Answer: No. The proposed changes continue the measured safeguards to protect against inappropriate urban development by requiring LAFCo to make specific findings when considering proposals for new or extended services.

Question: *How long has CALAFCO been discussing this proposal?*

Answer: The Legislative Committee thoroughly vetted the current version of the proposal in October 2019 and unanimously approved presenting the proposal to the Board, who unanimously approved the proposal in December 2019. The matter of authority in G.C. Section 56133 has long been a topic of discussion for the Legislative Committee and Board.

Question: *Who can I talk to if I have questions?*

Answer: Each region has a coordinator to answer your questions. You may also contact CALAFCO Executive Director Pamela Miller at pmiller@calafco.org. These regional coordinators are available to discuss the Board-approved amendments with you:

Northern: Steve Lucas, Butte (slucas@buttecounty.net)

Central: José Henríquez, El Dorado (JHenriquez@edlafco.us)

Coastal: Kai Luoma, Ventura (kai.luoma@ventura.org)

Southern: Harry Ehrlich, San Diego (ehrichprs@gmail.com)

**2020 Proposed CKH Legislation Change
GC Section 56133**

56133.

(a) A city or district may provide new or extended services or functions by contract or agreement outside its jurisdictional boundary only if it first requests and receives written approval from the commission.

(b) The commission may authorize a city or district to provide new or extended services or functions outside its jurisdictional boundary but within its sphere of influence in anticipation of a later change of organization.

(c) The commission may authorize a city or district to provide new or extended services or functions outside its jurisdictional boundary and outside its sphere of influence to respond to an existing or impending threat to the health or safety of the public or the residents of the affected territory, if both of the following requirements are met:

(1) The entity applying for approval has provided the commission with documentation of a threat to the health and safety of the public or the affected residents.

(2) 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.

(d) The executive officer, within 30 days of receipt of a request for approval by a city or district to extend services or functions 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 requests made pursuant to this section to the executive officer. The commission or executive officer shall approve, disapprove, or approve with conditions the extended services. If the new or extended services are disapproved or approved with conditions, the applicant may request reconsideration, citing the reasons for reconsideration.

(e) This section does not apply to any of the following, as determined by the commission:

(1) Two or more public agencies where the public service or function to be provided is an alternative to, or substitute for, public services or functions 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 or function contemplated by the existing service provider.

(2) The transfer of nonpotable or nontreated water.

(3) 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.

(4) An extended service or function that a city or district was providing on or before January 1, 2001.

(5) 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.

(6) A fire protection contract, as defined in subdivision (a) of Section 56134.

(f) This section applies only to the commission of the county in which the extension of service or function is proposed.