

Resolution No. 2023-24-08
of the Mendocino Local Agency Formation Commission

Approving the
Amendment to Policy 12.2 for Outside Agency Services

WHEREAS, Local Agency Formation Commissions have been created under the provisions of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Sections 56000 et. seq. of the Government Code, as independent agencies, with the power to adopt policies and procedures to carry out their functions, (§56300); and

WHEREAS, the Commission allocated funding for policy development and amendment efforts to modernize and address opportunities for improvement in the Fiscal Year 2023-24 Budget; and

WHEREAS, the Policies & Procedures Committee held public meetings on the proposed policy amendment on November 6, 2023, March 11, 2024, and May 17, 2024, and at those meetings, the Committee considered the report of the Executive Officer and all oral and written comments with respect to the proposed policy amendment, and recommended the policy amendment to the Commission, and

WHEREAS, the Commission held a public meeting on June 3, 2024, and at that meeting the Commission considered the recommendation of the Policies & Procedures Committee, the report of the Executive Officer, and all oral and written comments with respect to the proposed policy amendment.

NOW, THEREFORE, the Local Agency Formation Commission of the County of Mendocino DOES HEREBY RESOLVE, DETERMINE and ORDER the adoption of an amendment to Policy 12.2 for "Outside Agency Services", as set forth in Exhibit A, attached hereto and incorporated herein by reference.

BE IT FURTHER RESOLVED that the Mendocino LAFCo Policies & Procedures Manual be updated accordingly.

PASSED and ADOPTED by the Mendocino Local Agency Formation Commission this 3rd day of June 2024 by the following vote:

AYES: Ward, Mulheren, Horsley, Rodin, Gonzalez, McGourty

NOES:

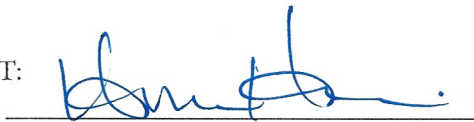
ABSTAIN:

ABSENT: Christen



MAUREEN MULHEREN, Commission Chair

ATTEST:



UMA HINMAN, Executive Officer

Exhibit A

Mendocino LAFCo Policy Amendment

12.2 OUTSIDE AGENCY SERVICES

12.2.1 COMMISSION APPROVAL REQUIRED

A city or district, individually or as a member agency of a joint powers authority (JPA), 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 the CKH Act (G.C. §56133) and the policies described herein.

LAFCo prefers that this type of application be made by the local agency; however, if the city or district has declined to serve as the applicant, the affected landowner(s) may submit the application based on current (e.g. within 3 months) written proof from the local agency confirming both willingness and capacity to serve (e.g. will serve letter) the affected territory.

12.2.2 REQUIREMENT FOR EXEMPTIONS TO COMMISSION APPROVAL

Commission approval may not be required for cities or special districts to provide new or extended services outside their jurisdictional boundaries in accordance with the provisions of G.C. §56133(e).

Agency self-exemption under G.C. §56133(e) is not recommended due to the complexity involved and the potential for a difficult and/or costly process to unwind unauthorized services. Outside agency services may be allowed to address unique circumstances and are not intended to circumvent the LAFCo process by providing services by contract instead of through the annexation of territory. Agency self-determinations of exemption can lead to a communication breakdown and can prevent LAFCo from effectively fulfilling its mandates, such as conducting meaningful studies.

LAFCo strongly encourages advance notice and coordination with agencies in determining whether specific situations are exempted by G.C. §56133(e) to support LAFCo in efficiently performing its functions and to support agencies in providing valid outside agency services.

For outside agency services that a city or district was providing on or before January 1, 2001 under G.C. §56133(e)(4), LAFCo encourages the city or district to request an Annexation Consent Agreement from each landowner, unless it is not logical and orderly for the city or district to ever annex the subject property or area.

12.2.3 DEFINITIONS

Services – any municipal services provided by a city or special district.

Outside Agency Services – municipal services provided outside the jurisdictional boundary of a local government agency (city or special district) by contract or agreement.

New – the provision of municipal services to a previously unserved property or use.

Extended – the expansion or intensification of municipal services currently provided to a property or use.

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In anticipation of a later change of organization – a reliable commitment from the serving agency and/or landowner(s) that outside agency services will become inside agency services within a near-term timeframe or based on a foreseeable event or change in circumstance.

An existing threat to health or safety – the non-functioning or failure of existing private utilities (e.g. on-site septic system or well), which cannot be readily remedied, and have resulted in a health hazard from inadequately treated wastewater or the loss of access to safe and reliable drinking water. The lack of fire protection and/or emergency medical services to existing development may also qualify as an existing safety threat.

An impending threat to health or safety – the stage before an existing threat to health or safety in which there is a known and measurable high risk that will result in a threat to health or safety (e.g. within 6 months).

12.2.4 NEW OR EXTENDED SERVICES

Annexation to cities and special districts involving territory located within the affected agency's sphere of influence (SOI) is preferred to providing outside agency services by contract or agreement, in support of logical and orderly growth and development. The Commission recognizes, however, that there may be special circumstances that justify approval of outside agency services by contract or agreement prior to annexation.

Such special circumstances most frequently involve the need for municipal services to address an existing threat to health or safety. A properly documented threat to health or safety for consideration in those cases is strongly encouraged, regardless of whether located within or outside the agency's SOI.

In reviewing requests for outside agency services, LAFCo will apply the same general substantive policies as for annexation proposals. The following will be addressed in the Executive Officer's written report:

- 1) The ability of the agency to provide the subject service(s) to the affected territory, without detracting from current service levels.
- 2) Documentation with substantial evidence to support a finding by the Commission of an existing or impending threat to the health or safety of the public or the affected residents.
- 3) Consistency with the policies and general plans of all affected local agencies.
- 4) Effect on growth and development within and adjacent to the affected territory.
- 5) Potential impacts on prime agricultural or open space lands.
- 6) Consistency with the Commission's adopted municipal service review determinations and recommendations.
- 7) The applicant's statement, with specificity, of the nature and timing of the anticipated later change of organization for the affected territory.

12.2.4.1 Within SOI

The Commission strongly discourages the use of outside agency services for the purpose of providing municipal services to new development, which can result in unintended consequences, such as inducing

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growth or resulting in the premature conversion of agricultural or open space lands to urban use. The Commission will approve such requests only under extraordinary circumstances and will apply strict limitations on such services.

G.C. §56133(b) authorizes the Commission to approve outside agency services “in anticipation of a later change of organization”. The standard condition for landowners to record a LAFCo Annexation Consent Agreement may not necessarily satisfy the qualification for an anticipated later change of organization. Further, the inclusion of the land to be served within the SOI of the serving agency also may not be sufficient because the SOI boundary can change over time, and placing territory within a sphere does not guarantee that annexation will occur (Policy 10.1.8). The Commission may include a condition to address this component of the CKH Act, such as requiring that an annexation application be submitted prior to, or within a specified timeframe (e.g. 1-2 years) of, the outside agency services approval.

Any outside agency services approved by the Commission prior to the date this policy is approved by the Commission shall not be subject to this policy, but the policy in effect at the time said application is approved by the Commission.

12.2.4.2 Outside SOI

The Commission recognizes the importance of promptly addressing threats to public health and safety, especially in considering outside agency services related to water and sewer services.

The Commission shall authorize a city or special district’s request to provide new or extended services outside their jurisdictional boundary and outside their SOI only in response to an existing or impending threat to the health or safety of the public or affected residents in accordance with G.C. §56133(c).

For water and sewer services, the affected agency and/or landowner(s) shall provide the Commission with documentation consistent with the public health and safety criteria for water and sewer services below.

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 Mendocino County Environmental Health or another qualified professional:

- i. There is ponding or accumulation of wastewater or septic tank effluent at or above the surface of the ground.
- ii. There is a lack of an unsaturated vertical soil separation between the bottom of a disposal field and seasonal high groundwater.
- iii. 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, and additional capacity cannot adequately or reasonably be developed.
- iv. 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.

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 Mendocino County Environmental Health or another qualified professional:

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- i. 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.
- ii. 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.
- iii. Any other condition in which the continued use of an existing water supply could result in negative impacts to human health.

12.2.5 ADMINISTRATIVE APPROVAL UNDER URGENT CIRCUMSTANCES

The Commission authorizes the Executive Officer, in accordance with G.C. §56133(d), to administratively approve a city or special district's request for new or extended outside agency services by contract or agreement if there is an existing and urgent public health or safety emergency as identified in writing from the local public health officer and/or environmental health director, or in the case of fire services, the applicable Fire Chief. The Commission shall ratify the Executive Officer's determination at the next regularly scheduled meeting.

12.2.6 CONDITIONS OF APPROVAL

12.2.6.1 Annexation Consent Agreement

The Commission will condition the approval of all outside agency services upon a requirement that the landowner(s) sign a LAFCo agreement consenting to annexation of the territory to the public service provider, which agreement shall bind current and future owners and registered voters of the property. The standard agreement shall be prepared by LAFCo legal counsel and provided to all landowners for execution and recording. Proof of recordation of the Annexation Consent Agreement will be required before the LAFCo outside agency services approval becomes final and effective.

12.2.6.2 Expiration of LAFCo Approval

Unless specified otherwise in the Commission's resolution approving a particular outside agency services application, the Commission's approval of outside agency services shall expire within one year of approval unless the agency-landowner contract has been executed and the construction of any needed infrastructure improvements has commenced. A one-time extension may be requested by the applicant, prior to the one-year expiration date, for a period of time that is necessary to complete the Commission's conditions. If the provision of outside agency services has not commenced within three years of the Commission's approval, the approval is terminated and a new application is required.

12.2.6.3 Further LAFCo Review - Expansion or Intensification of Services

The Commission's approval of outside agency services shall be limited to the existing structures and uses on the subject property, and not to any other properties. Any significant expansion or intensification of the approved services (e.g. upsize the connection for a subdivision or major conversion of use type) shall be considered a new request, subject to LAFCo review.

12.2.7 Temporary Water Hauling During a Local Emergency

During a city, county, or state issued drought emergency proclamation affecting potable water supply, a city or special district may provide potable water outside its jurisdictional boundaries through water

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hauling on a temporary basis to address impacts to health and safety arising from dry wells or other temporary limitations on regular water supply. In these situations, LAFCo approval will not be required pursuant to G. C. §56133 due to the temporary and emergency nature of the service.

While LAFCo approval will not be required during the temporary emergency, LAFCo does require notice of and data reporting for the temporary outside agency water service to support LAFCo in efficiently performing its functions. The city/district providing the potable water service should notify LAFCo within 30 days of commencing such service, as feasible under emergency conditions. Notification should include the address and/or assessor's parcel number (APN) for each property receiving water service and reference the emergency proclamation. The city or special district shall cease providing temporary water service outside jurisdictional boundaries within 30 days of termination of the emergency proclamation. Within 90 days of the end of the emergency, the city/district providing the potable water service should provide LAFCo a detailed summary of how much water was provided to each property per month during the emergency water hauling.

Absent a city, county, or state issued emergency proclamation, G. C. §56133 specifies that a city or special district must apply for and obtain LAFCo approval before providing new or extended services outside its jurisdictional boundaries, including potable water hauling.