

## CHAPTER 5. OUT-OF-AGENCY SERVICE BY CONTRACT POLICIES

### 5.1 INTRODUCTION

The term “out-of-agency service by contract” (OASC) refers to an agency such as a city or special district providing new or extended services by contract or agreement outside its jurisdictional boundaries.

Prior to 1994, cities and special districts in California could avoid a LAFCO’s review process for annexation and provide services by contract outside their boundaries without obtaining LAFCO approval. This circumvented the Legislature’s intent for LAFCOs to regulate city and special district boundaries which generally determine where a city or special district provides services; furthermore, it undermined a LAFCO’s ability to guide growth, and ensure orderly development and good planning of infrastructure and services.

To prevent such circumvention and strengthen LAFCO’s position to better address issues concerning growth and sprawl, the Legislature added Government Code (GC) §56133 which requires cities and special districts to first request and receive written approval from LAFCO before providing new or extended services by contract outside their jurisdictional boundaries. GC §56133 was enacted in 1993 as part of Assembly Bill No. 1335 and became effective on January 1, 1994. Over subsequent years, GC §56133 has been amended several times to clarify a LAFCO’s role in regulating service provision outside jurisdictional boundaries. In 2003, the law was revised to state that GC §56133 does not apply to service extensions that occurred on or before January 1, 2001.

### 5.2 PROCEDURAL POLICIES FOR OUT-OF-AGENCY SERVICE BY CONTRACT PROPOSALS

The following procedures apply for processing of OASC proposals:

1. **LAFCO approval.** Government Code §56133 requires that a city or special district must apply for and obtain LAFCO approval before providing new or extended services by contract or agreement outside its jurisdictional boundaries, unless exempt pursuant to GC §56133(e).
2. **Initiation.** An OASC application to Santa Clara LAFCO must be initiated by resolution of the city or special district that is proposing to provide the service beyond its jurisdictional boundaries.
3. **Pre-Application Meeting.** A city or special district that seeks to or receives a request to provide service outside its jurisdictional boundaries must first evaluate whether the OASC request is consistent with applicable local and Santa Clara LAFCO policies and determine whether it supports the request. In order to aid such evaluation, Santa Clara LAFCO encourages a city/special district to schedule a pre-application meeting with LAFCO staff as early as possible to discuss their OASC plans and obtain more information on the policies and procedures that may apply to the specific proposal. LAFCO staff shall also assist the city/special district in investigating annexation as an alternative to submitting a formal OASC application.

4. **LAFCO Determination of Exemptions.** It is Santa Clara LAFCO's policy to encourage local agencies to engage in cost sharing and pursue innovative partnerships while also ensuring that OASC activities do not undermine jurisdictional boundaries, reduce local agency accountability and transparency, or lead to unintended growth-inducing impacts. In order to appropriately balance these interests, Santa Clara LAFCO, and not the city or special district that would provide the service, shall determine if a proposed OASC is exempt from the requirement for LAFCO approval pursuant to exemptions in GC §56133(e). The following procedures apply:

a. The city or special district shall contact LAFCO staff for a determination on whether an OASC proposal would be eligible for an exemption under GC §56133(e). Such consultations may occur via phone or email communication. LAFCO encourages the city or district to contact LAFCO staff as early as possible to discuss its OASC plans and obtain information on the LAFCO policies and procedures that may apply to the specific proposal.

b. The Executive Officer in consultation with LAFCO Counsel, shall provide a determination on whether or not the OASC proposal is exempt, ~~(such determination shall be appealable to LAFCO as described below~~ in (d).

c. ~~The Executive Officer shall and~~ inform the Commission of the determination at the next available meeting, unless it is an exploratory and not a formal inquiry.

d. The city or special district, at no cost, may appeal the Executive Officer's determination on the exemption to LAFCO. The appeal must include specific substantiation for the exemption and must be made within 10 business days of receiving the EO determination.

e. The appeal shall be heard by LAFCO at its next available meeting that permits adequate public notification. If LAFCO determines that the exemption does not apply, the city or special district must apply for and obtain LAFCO approval before providing services by contract outside boundaries.

5. **Administrative Approval.** An administrative approval of an OASC, without consideration by LAFCO, may be allowed in situations that pose an urgent public health or safety concern. 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 of the OASC proposal is appropriate, based upon the following criteria:

a. The lack of service being requested constitutes an immediate threat to public health and safety as documented by the County Department of Environmental Health.

b. The property is currently developed.

c. There are physical constraints on the property that prohibit a conventional service delivery method typically suited to the unincorporated area (e.g., septic system, private well, etc.), and there are no other feasible means or solutions available for addressing the situation.

The Executive Officer shall inform the Commission on the administrative approval of a OASC proposal at the next regularly scheduled LAFCO meeting.

6. **CEQA.** An OASC proposal is considered a project under the California Environmental Quality Act (CEQA). The Lead Agency for an OASC proposal shall be either 1.) the city or the county with the land use approval authority for the development that would receive the service; or 2.) the city or the special district that would provide the service. Santa Clara LAFCO would be a Responsible Agency and is required to rely on the lead agency's CEQA documentation. The Lead Agencies must consult with LAFCO on the scoping of CEQA documentation for the potential proposal.
7. **Recordation of Agreement for Services.** OASC applications shall include a service agreement signed by all relevant parties including the agency that would provide the service and the property owner. Upon Santa Clara LAFCO approval of an OASC proposal and within 3 months of the date of approval, the signed service agreement must be recorded with the Santa Clara County Recorder and submitted to LAFCO staff.

### **5.3 POLICIES AND EVALUATION CRITERIA FOR OUT OF AGENCY SERVICE BY CONTRACT PROPOSALS**

Consistent with State law and the Countywide Urban Development policies (CUDPs) jointly adopted by LAFCO, the County and the 15 cities, it is Santa Clara LAFCO's goal that local agencies provide services within their jurisdictional boundaries and not extend services outside jurisdictional boundaries if annexation is a feasible alternative, unless it is in response to an existing public health and safety threat. Furthermore, in order to prevent sprawl, ensure efficient delivery of services, promote more efficient use of existing urbanized areas, and preserve open space and agricultural lands, LAFCO discourages OACS proposals that support new development in the unincorporated areas, outside city Urban Service Areas (USAs).

To further these goals, Santa Clara LAFCO shall carefully consider and evaluate OASC proposals consistent with its policies and the CKH Act. In addition to any other applicable factors enumerated in GC §56668, Santa Clara LAFCO shall consider the following policies and factors in evaluating the impacts of an OASC proposal:

1. **Conformance with Spheres of Influence.**
  - a. Pursuant to GC §56133(b), Santa Clara LAFCO 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 annexation.
  - b. Santa Clara LAFCO may authorize a city or district to provide new or extended services outside its SOI to respond to an existing or impending threat to public health and safety (as documented by the County Environmental Health Department) in accordance with GC §56133(c)(1), and after notification to any alternate service provider in accordance with GC §56133(c)(2).
2. **Annexation as Alternative to OASC.** Where feasible and within Santa Clara LAFCO policy, annexation to the city or the special district that would provide the

service is generally preferred to service extension outside its jurisdictional boundaries. Santa Clara LAFCO will consider whether annexation is a logical alternative to extending services beyond the jurisdictional boundaries of a local agency. An OASC proposal may be appropriate in certain limited cases where immediate annexation is not a feasible alternative due to lack of contiguity or other unique local circumstances.

In accordance with GC § 56133(b), Santa Clara LAFCO may approve a OASC proposal in anticipation of a future annexation if the agency is able to provide LAFCO with a resolution of intent to annex and with appropriate assurances which demonstrate that the OASC is an intermediate step toward eventual annexation. Such assurances will be evaluated on a case-by-case basis and should include all appropriate actions including and not limited to application of a pre-zoning designation, preparation of a plan for annexation, a provision in the service contract for the property owner to consent-to-a future annexation and/or to waive protest rights.

3. **Service Extensions into Unincorporated Area.** Consistent with the CUDPs and the County General Plan that prohibit urban development and the provision of urban services in unincorporated rural areas outside city USAs, Santa Clara LAFCO shall discourage OASC proposals that are intended to support new development in the unincorporated county, with the following two exceptions.

- a. **Extensions to Address Existing Public Health and Safety Threat.** Santa Clara LAFCO recognizes that in some limited circumstances, an OASC proposal into the rural unincorporated area may be appropriate if it is the only way to resolve an existing threat to public health and safety (e.g., existing septic system failures, well contaminations, or well failures). Consistent with §56133(c), Santa Clara LAFCO shall consider the following criteria in evaluating such proposals on a case-by-case basis:

- i. Whether the property is currently developed
- ii. Whether the threat to public health and safety is substantial and immediate, as documented by the County Department of Environmental Health and whether there are any other feasible means of addressing the situation
- iii. Whether the proposal would result in an ~~premature~~ intrusion of urbanization into a predominantly agricultural or rural area [GC §56668(d)]
- iv. Whether a pattern of such requests is developing, and if so, the cumulative impact of such requests. If a pattern of such requests is developing, LAFCO shall encourage affected agencies to develop and successfully implement measures/plans to first avoid and minimize such requests which may be growth inducing

- b. **Service Extensions to Agricultural Worker Housing.** ~~Given that~~  
~~i. a~~gricultural workers are an essential component of Santa Clara County's agricultural industry, ~~Santa Clara LAFCO will give special consideration~~

~~to OASC proposals that are for~~and agricultural worker housing which supports the preservation of open space and agricultural lands, continued sustainability of agriculture, delivery of agricultural produce, and continued viability of Santa Clara County's food system. Santa Clara LAFCO will give special consideration to OASC proposals that consist solely of agricultural worker housing and that meet both the following requirements:

A. The County has methods (e.g., requirements for recordation of deed restrictions and/or affordability covenants on the property) currently in place to ensure affordability and occupancy of the proposed agricultural worker housing for eligible agricultural workers over the long term and for not less than 55 years.

B. The proposed agricultural worker housing will be maintained and operated by a qualified affordable housing organization that has been certified pursuant to Health & Safety Code §17030.10, a public agency, or an employer providing housing.

~~and ii. Santa Clara LAFCO shall consider the following in evaluating such proposals, -shall consider the following,~~ in accordance with OASC Policy #5.3.2:

- Ai. Whether the proposed housing is consistent with the County General Plan, Zoning ordinance and its policies/plans for agricultural land preservation
- Bii. Whether the proposal fulfills the established need for agricultural worker housing and whether it is consistent with the city and /or County's long-term agricultural land conservation plans
- iiic. Whether the proposed agricultural worker housing development is imminent or is likely to occur with the next 5 years
- ~~iv. Whether the County has methods currently in place (e.g., deed restrictions and / or affordability covenants) to ensure that the proposed agricultural worker housing remains affordable and occupied by eligible agricultural workers at affordable rents and sales prices over the long term~~
- ~~v. Whether the proposed agricultural worker housing will be maintained and operated by a qualified and certified affordable housing organization pursuant to Health & Safety Code §17030.10, including a public agency, or an employee housing provider~~
- Dvi. Whether the proposal minimizes the conversion of and/or impacts to agricultural lands, for example, by designating building envelopes, siting on lands of lesser agricultural value, etc.

4. **Public Health and Safety.** Pursuant to GC § 56133(c)(1), Santa Clara LAFCO shall consider whether the OASC proposal is in response to an existing or impending threat to public health and safety as determined and documented by the County Environmental Health Department.

5. **Ability to provide Public Services.** Consistent with GC §56668(k), Santa Clara LAFCO shall require OASC proposals to clearly demonstrate that the city/special district has the ability to provide the proposed service without detracting from current service levels within its existing service area- and shall consider criteria listed in Policies #3.4.5, #3.4.6, and #3.4.7, as applicable.
6. **Conformance with General Plans and Policies.** Consistent with GC §56668(h), Santa Clara LAFCO shall consider whether the OASC proposal is consistent with the policies and general plans of all affected local agencies, including cities, special districts and the county.
7. **Growth Inducing Impacts.** Consistent with GC §56668(d), Santa Clara, LAFCO shall consider the growth-inducing impacts of the OASC proposal and discourage proposals that contribute to ~~premature~~-development of fringe areas or intrusion of urbanization into areas designated for non-urban uses. To limit growth inducing impacts, LAFCO shall consider whether public facilities or infrastructure related to the proposal would be sized to exceed the capacity needed for the proposed development and/or extended through agricultural, open space lands, or non-urban areas.
8. **Impacts to Agricultural and Open Space Lands.** Consistent with GC §56377(a), Santa Clara LAFCO shall discourage proposals that result in ~~premature~~-conversion of or have adverse impacts on agricultural or open space land and shall consider criteria in Policy #3.4.2(a thru d).
9. **Conformance with Service Reviews.** Consistent with GC §56668(i), Santa Clara LAFCO shall consider the applicable service reviews and shall discourage OASC proposals that undermine adopted service review determinations or recommendations.
10. **Fire Protection Contracts.** Effective January 1, 2016, GC §56134 requires LAFCO approval of a fire protection contract or agreement that provides new or extended fire protection services outside a public agency's jurisdictional boundaries and meets either of the following thresholds: (1) transfers responsibility for providing services in more than 25 percent of the area within the jurisdictional boundaries of any public agency affected by the contract; or (2) changes the employment status of more than 25 percent of the employees of any public agency affected by the contract. Santa Clara LAFCO shall consider such OASC proposals for fire protection contracts pursuant to GC §56134.

The Commission will review such proposals for consistency with the required findings of GC §56134(h)(2)(i) and (j), as well as the overall purposes of LAFCO that encourage the efficient provision of government services.