

SAN DIEGO LAFCO FIRE PROTECTION CONTRACT GUIDELINES

I. PURPOSE

To provide guidance to the San Diego Local Agency Formation Commission (LAFCO) in conducting fire protection contract reviews.

II. BACKGROUND

Senate Bill No. 239 (SB 239) was signed into law requiring public agencies, under specified circumstances, to receive written approval from the LAFCO in the affected counties before providing new or extended fire protection services outside the agencies' jurisdictional boundaries. The law does not apply to mutual aid agreements, pre-hospital emergency medical services, or existing agreements executed prior to January 1, 2016, unless contractual amendments in 2016 causing either of the 25% thresholds referenced below are reached. SB 239 amended Government Code Sections 56017.2, 56133, and added 56134.

III. OBJECTIVE

Government Code Section 56134 requires LAFCO review and approval for each new fire protection contract. Section 56134 defines a "fire protection contract" as a contract or agreement for the exercise of new or extended fire protection services outside a public agency's jurisdictional boundaries that does either of the following:

- Transfer responsibility for providing services in more than 25% of the area within the jurisdictional boundaries of any public agency affected by the contract or agreement; or
- Changes the employment status of more than 25% of the employees of any public agency affected by the contract or agreement.

An extension of a fire protection contract entered into on or before December 31, 2015 that would produce either of the 25% thresholds above is deemed to be a fire protection contract per SB 239. A proposed contract or agreement for fire protection services in combination with other contracts or agreements, which results in either of the two threshold criteria, is deemed a fire protection contract and is subject to LAFCO purview. However, the sponsor of SB 239 has indicated it is their intent that it be just the one contract rather than all of the contracts within that service area, as all of the other contracts are not the cumulative trigger of the 25% thresholds. As a result, San Diego LAFCO will review and consider proposed fire contracts on a case-by-case basis.

In addition, the amendment or renewal of contracts does not necessarily represent the exercise of “new or extended” services per the meaning of these terms in SB 239. Most contract amendments or renewals represent transfer of existing service responsibilities from one agency to another and not the exercise of “new or extended” services. Therefore, contract amendments and renewals will generally be exempt from LAFCO purview.

IV. DEFINITIONS

The definition of the following terms will assist in the implementation of Government Code Section 56134:

- **Affected public agency** – shall mean any public agency that contains, or would contain, or whose sphere of influence contains or would contain any territory for which an extension of fire service is to be reviewed by the commission. SB 239 contains no sphere consistency requirements with respect to fire protection contracts.
- **Contract or agreement** – shall mean a written contract, agreement or other legal instrument, specifying how service will be extended, provided, or delivered to an affected public agency.
- **Employment status** – shall be defined at the departmental or service provider level and focus on the value of a fire protection contract in relation to the adopted budget of a proposed service provider or changes in the number of employees. Note: the bill sponsors indicated that the intent was not to focus on wages, hours, benefits, or working conditions as part of employment status but rather the change in service providers as it applies to the entire department.
- **Extended services** – services that go above and beyond a class of or special governmental activity established within and as a part of a single public agency general function currently provided.
- **Fire protection** – shall be defined as the governmental activities related to fire protection and may include rescue, emergency medical, hazardous material emergency response, ambulance and any other service(s) consistent with the Fire Protection District Law of 1987 related to the protection of lives and property. Some fire protection activities (e.g. administration, management, operations, etc.) are considered subordinate or subsidiary subcomponents to fire protection and include, but are not limited to the following:
 - Ambulance services
 - Prehospital emergency medical services
 - Mutual or automatic aid agreements
 - Major/Minor subdivision review, Major Use Permit review, Administrative Permit review (all of which are Discretionary Permits)

- Plan review/Ministerial Permit review (usually building permits)
 - New construction fire inspections
 - Fire investigations
 - Fire sprinkler system plan review and inspections
 - Fire alarm system plan review and inspections
 - Defensible space inspections and enforcement
 - Business/occupancy inspections in existing structures
 - Vehicle maintenance and repair
 - Sharing of management or other personnel between or among multiple agencies
 - Sharing or loaning of equipment or property between or among multiple agencies
- **New services** – a class of or special governmental activity established within and as a part of a single public agency general function as provided on or after January 1, 2016. It should be pointed out that a special district would be precluded from providing a “new service” unless it has received LAFCO authorization for activation of latent powers.
 - **Public Agency** – shall be defined in compliance with Government Code Section 56070. The statutory definition of public agency means “the state or any state agency, board, or commission, any city, county, city and county, special district, or any agency, board, or commission of the city, county, city and county, special district, joint powers authority, or other political subdivision.” The definition of public agency does not include Indian tribes, private or mutual water companies.
 - **Written approval of the Commission** – shall mean the adoption of a resolution or other similar document of the Commission and signed by the Executive Officer approving the service agreement/contract at a noticed public hearing.

V. PRE-APPLICATION PROCESS

Public agencies interested in providing new or extended fire services should contact the San Diego LAFCO to determine whether the proposed contract will require LAFCO approval. A pre-application discussion is recommended to address any possible issues associated with the expansion of fire protection services.

If the proposed contract is determined to be exempt from LAFCO purview, a Certificate of Exemption will be filed. The Executive Officer’s determination of exemption is appealable to the Commission within 30 days of the issuance of the determination. Such appeal must be filed in writing with the Executive Officer and must include specific substantiation for the appeal, directly related to fire protection and SB 239 requirements. The appeal shall be heard at the next available Commission meeting that permits adequate public notification.

SB 239 does not expedite the LAFCO process when all public agencies agree to the proposed contract. Therefore, in the event that all affected agencies are in agreement to the proposed change in services, the surcharge for the consideration of a fire protection contract will be waived for the applicant and a streamlined administrative approval process will be followed. For more information on the processing fee regarding fire protection contracts, please review the ***“Processing Fee Schedule”*** section of this policy.

VI. EXEMPTIONS

The bill sponsor, the California Professional Firefighters, indicated that some fire protection agreements were not intended to be subject to the new law. The San Diego LAFCO accordingly considers the following contracts and agreements exempt from LAFCO purview per these guidelines and/or requirements of SB 239:

- Renewal of existing contracts, unless the renewal included amendments or the inclusion of new territory that triggered the 25% change in service area or employment status
- Ambulance service agreements
- Prehospital emergency medical services
- Mutual or automatic aid agreements
- Subordinate or subsidiary fire protection activities including, but not limited to the following:
 - Ambulance services
 - Prehospital emergency medical services
 - Mutual or automatic aid agreements
 - Major/Minor subdivision review, Major Use Permit review, Administrative Permit review (all of which are Discretionary Permits)
 - Plan review/Ministerial Permit review (usually building permits)
 - New construction fire inspections
 - Fire investigations
 - Fire sprinkler system plan review and inspections
 - Fire alarm system plan review and inspections
 - Defensible space inspections and enforcement
 - Business/occupancy inspections in existing structures
 - Vehicle maintenance and repair
 - Sharing of management or other personnel between or among multiple agencies
 - Sharing or loaning of equipment or property between or among multiple agencies

VII. INITIATION CRITERIA

Public agencies interested in providing new or extended fire services must complete the following steps prior to adopting an initiating resolution:

- Obtain and submit a written agreement validated and executed by each affected public agency and recognized employee organization that represents firefighters of the existing and proposed service providers consenting to the proposed fire protection contract with their adopted resolution; or
- Provide, at least 30 days prior to the hearing in regards to the initiating resolution, a written notice to each affected public agency and recognized employee organization that represents firefighters of the existing proposed service providers of the proposed fire protection contract and submit a copy of each written notice with the resolution of application. The notice shall, at minimum, include a full copy of the proposed contract; and
- In addition to completing one of the above steps, public agencies must also conduct an open and public hearing on the resolution pursuant to the Ralph M. Brown Act or the Bagley-Keene Open Meeting Act, as applicable.

If a resolution is adopted, the clerk of the public agency or the director of the state agency adopting the resolution of application shall file a certified copy with the LAFCO Executive Officer. A request by a public agency for commission approval of new or extended services provided pursuant to a fire protection contract shall be made by the adoption of a resolution of application as follows:

- **Non-State Agency:** In the case of a public agency that is not a state agency; the application shall be initiated by the adoption of a resolution of application by the legislative body of the public agency proposing to provide new or extended services outside the public agency's current service area.
- **State Agency:** In the case of a public agency that is a state agency, the application shall be initiated by the director of the state agency proposing to provide new or extended services outside the agency's current service area and be approved by the Director of Finance.
- **Local Agency Under Contract:** In the case of a public agency that is a local agency currently under contract with a state agency for the provision of fire protection services and proposing to provide new or extended services by the expansion of the existing contract or agreement, the application shall be initiated by the public agency that is a local agency and be approved by the Director of Finance.

VIII. PLAN FOR SERVICE

An application cannot be submitted to LAFCO unless the legislative body of a public agency or the director of a state agency completes a plan for service and independent comprehensive fiscal analysis as part of the application. The plan for service must address the following items:

1. The total estimated cost to provide the new or extended fire protection services in the affected territory;
2. The total estimated cost of the new or extended fire protection services to customers in the affected territory;
3. An identification of existing service providers, if any, of the new or extended services proposed to be provided and the potential fiscal impact to the customers of those existing providers;
4. A plan for financing the exercise of the new or extended fire protection services in the affected territory;
5. Alternatives for the exercise of the new or extended fire protection services in the affected territory;
6. An enumeration and description of the new or extended fire protection services proposed to be extended to the affected territory;
7. The level and range of new or extended fire protection services;
8. An indication of when the new or extended fire protection services can feasibly be extended to the affected territory;
9. An indication of any improvements or upgrades to structures, roads, sewer or water facilities, or other conditions the public agency would impose or require within the affected territory if the fire protection contract is completed; and
10. A determination supported by documentation, that the proposed fire protection contract meets either 25% threshold. The documentation must include a copy of the proposed contract. In addition, if the contract affects 25% of the service area, a map and/or Geographic Information System (GIS) shapefiles recognized by the San Diego LAFCO must be provided in order for data verification by LAFCO. If the contract affects 25% of the employment status, budgetary documents disclosing employment statistics must be provided to LAFCO.

IX. INDEPENDENT COMPREHENSIVE FISCAL ANALYSIS

The applicant is required to prepare by contract an independent comprehensive fiscal analysis, in conjunction with the plan for service, to be submitted with the application. The analysis shall review and document all of the following:

1. A thorough review of the plan for services submitted by the public agency;
2. How the costs of the existing service provider compare to the costs of services provided in service areas with similar populations and of similar geographic size that provide a similar level and range of services and make a reasonable determination of the costs expected to be borne by the public agency providing new or extended fire protection services; and
3. Any other information and analysis needed to support the findings required by the Commission's determinations.

X. LAFCO REVIEW

Once a public agency submits an application with an adopted initiating resolution, completed plan for service and finalized independent comprehensive fiscal analysis, the Executive Officer has within 30 days of receipt to determine whether the request is complete and acceptable for filing. The Executive Officer will notify the applicant if the application is incomplete and the manner in which the application can be rectified to move forward. When the applicant fulfills all requirements, the Executive Officer shall place the request on the agenda of the next commission meeting but not more than 90 days from the date that the application is deemed complete.

XI. COMMISSION HEARING

Once the application is ready for Commission consideration, the Executive Officer shall give mailed notice of the hearing, at least 21 days prior to the hearing date, to each affected local agency or affected county and to any interested party who has filed a written request for notice. The Executive Officer shall also publish the notice of hearing in a newspaper of general circulation that is circulated within the territory affected by the proposal and shall post the notice on LAFCO's website at least 21 days prior to the hearing date.

The Commission may approve, disapprove, or approve with conditions the contract for new or extended services during the LAFCO hearing. If the contract is denied or approved with conditions, the applicant may request reconsideration by citing the reasons for reevaluation. The new law also states that the Commission cannot approve a proposed fire protection contract unless the Commission determines, based on the entire record, all of the following:

- A. The public agency will have sufficient revenues to carry out the exercise of the new or extended fire protection services outside its current area. The Commission may approve an application where the Commission has determined that the public agency will not have sufficient revenue to

provide the proposed new or different functions of services, if the Commission conditions its approval on the concurrent approval of sufficient revenue sources.

- B. The proposed exercise of new or extended fire protection services outside a public agency's current service area is consistent with the intent of SB 239, LAFCO's state mandates and established policies and procedures.
- C. The Commission has reviewed the comprehensive fiscal analysis.
- D. The Commission has reviewed any testimony presented at the public hearing.
- E. The proposed affected territory is expected to receive revenues sufficient to provide public services and facilities and a reasonable reserve during the three fiscal years following the effective date of the contract or agreement between the public agencies to provide the new or extended fire protection services.

Contract Approved

If the Commission determines all the requirements under Government Code Section 56134 have been met, the Commission will adopt a resolution of approval or other associated document. For contracts that receive consensus from all affected agencies, the Commission may delegate the approval process to the Executive Officer. Any administratively-approved fire contract will be scheduled as an informational item at the next available LAFCO hearing and may be subject to ratification, as necessary.

Contract Approved with Conditions

If the Commission approves the contract with conditions, the Commission will adopt a resolution of approval or other document with the conditions listed. For contracts that receive consensus from all affected agencies, the Commission may delegate the approval process to the Executive Officer. Any administratively-approved fire contract will be scheduled as an informational item at the next available LAFCO hearing and may be subject to ratification, as necessary.

Contract Disapproval

If the Commission or Executive Officer disapproves the contract, the applicant may request for reconsideration by citing the reasons for reevaluation. If the reconsideration does not change the initial decision, the Commission will adopt a resolution of disapproval.

XII. REQUEST FOR RECONSIDERATION

SB 239 specifies that an applicant may submit a request for reconsideration if the commission denies the contract or approves with conditions. Under LAFCO statute, any person or affected agency may file a written request with the Executive Officer requesting amendments to or reconsideration of a resolution adopted by the commission within 30 days of the adoption date pursuant to Government Code

Section 56895. The new law discusses the opportunity to request for reconsideration but there is no reference of any deadline to submit a request. For continuity, the Commission will establish a 30-day request for reconsideration period tolled from when fire protection contract(s) are considered by the Commission.

XIII. TERMINATION PROCEEDINGS

Pursuant to Government Code Section 57090(a), if a proposal is terminated, no substantially similar proposal for a change or organization of the same or substantially the same territory may be filed with the commission within one year after the date of the certificate of termination. The new law discusses the requirements to execute a fire protection contract but there is no reference of any termination proceedings. For continuity, the Commission will establish termination proceedings mirroring the procedures outlined in GCS 57090.

XIV. PROCESSING FEE SCHEDULE

The Commission currently has in place a fee schedule for contractual service agreements based on acreage. Fire protection contracts will be included as part of the established fee schedule structure. In addition to the standard processing fee, there will be a 30% non-refundable surcharge for consideration of fire protection contracts. The surcharge will not apply to fire protection contract when all affected public agencies agree to the proposed change in service.

XV. CLARIFYING INFORMATION FROM BILL SPONSORS

Following Governor Brown's approval of SB 239 in October 2015, representatives of the California Association of Local Agency Formation Commissions (CALAFCO) met with stakeholders and Sponsors of the bill to discuss the legislative intent. The following is a summary of the meeting between CALAFCO and stakeholders. The Commission will accordingly consider the following when implementing SB 239.

What the bill is intended to do according to the sponsor:

- Require the applicant to provide LAFCO, as part of the application, whether the 25% service area or employment status trigger is occurring.
- It is up to each LAFCO in California may determine what the required proof would be (for example, service maps demonstrating the change of +25% of the service area, or employment statistics that would provide proof of the +25% of change in employment status). Each LAFCO is encouraged to create local policies on what they would require as the proper documentation.
- While the term "employment status" found in 56134(a)(1)(B) is not defined, it is the intent of the sponsor that this means a change in service providers (department as employer). While a change in wages/benefits/hours worked/working conditions may be viewed by some

as a change in “employment status, but, it was, according to the sponsor, not the original intent of the sponsors.

- The change in employment status of the employees of any public agency affected by the contract or agreement is intended to apply to the entire department.
- Section 56134(a)(2) states in part, that if a contract or agreement that, in combination with other contracts or agreements, triggers the +25% change in service area or employment status, it shall be subject to the definition of a fire protection contract pursuant to this section, and as such will not be exempt from this process. The sponsor indicated it is their intent that it be just the one contract rather than all of the contracts within that service area, as all of the other contracts are not the cumulative trigger of the +25%. Each LAFCO is encouraged to consider a local policy to clarify the situation.

What the bill is not intended to do according to the sponsor:

- The bill is not intended to apply to the renewal of existing contracts, unless the renewal included amendments or the inclusion of new territory that triggered the +25% change in service area or employment status.
- The bill is not intended to apply to mutual or automatic aid agreements.
- The bill is not included to apply to ambulance service agreements.
- If a current contract expires and an agency no longer wants to contract for services and will take over providing the services themselves, the bill does not apply, as there is no contract to review and approve.

Adopted: February 1, 2016