

Memorandum

To: Board of Directors
Cities Association of Santa Clara County Joint Powers Agency
City Managers, Santa Clara County

From: Jannie Quinn and Andrew Shen, Co-General Counsel

Date: February 29, 2024

Re: JPA Bylaws Proposed Feedback/Input To Date

BACKGROUND:

As a newly constituted joint powers agency (JPA) and as required by the joint powers agreement, the Board has begun the process of adopting its own bylaws. As a starting point, we will be using the former unincorporated association's bylaws. At its February 8th meeting, the Board voted to have the Executive Committee act as the Bylaws Review Subcommittee.

During the process of creating the JPA, the Cities Association received requests for specific items to be addressed in the Bylaws for the Joint Powers Agency. This memorandum summarizes those requests as they may be helpful to the member agencies as they consider what, if any, input to provide regarding the proposed bylaws. These requests, along with any additional input received will be reviewed by the Executive Committee and then the Board.

LEGISLATIVE ACTION COMMITTEE

Clarification was requested regarding the Legislative Action Committee by three member agencies. (The provisions related to the Legislative Action Committee can be found in Article VI, Section 1. Standing Committees.) One member agency sought to clarify the role of the Legislative Action Committee to distinguish it from the Board of Directors. For reference, the bylaws define the Legislative Action Committee as a standing committee and describe three purposes for this committee.

A question was also raised whether a supermajority vote should be required to take a position on legislation. The bylaws currently require a majority vote of those present and voting.

Another agency suggested the bylaws should include rules about how the Legislative Action Committee's positions on proposed legislation are portrayed and offered the following language:

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- When the Association takes a position on proposed legislation, it must be clear as to which cities support the proposed legislation, which oppose the legislation, and which are not taking a position on the proposed legislation. If a letter is sent from the Association, the letter must indicate this information. For example, if all 15 cities support a bill, the letter can indicate that support is unanimous. If only 10 of the 15 cities support a bill, the letter must list which cities support the bill and which cities oppose the bill. If only 8 of the 12 cities that voted support a bill, the letter must list the 8 cities that support the bill, the 4 cities that oppose the bill, and the 3 cities that did not vote.
- Alternatively, letters could be sent by groups of cities rather than from the Association. For example, all the cities that support a bill could send a joint letter. Or all the cities that oppose a bill could send a joint letter.
- The agency is open to other ways to address any concerns regarding transparency.

VOTING REQUIREMENTS

A question has been raised about the voting requirement for significant programs or activities in the context of the budget.

Article 15 of the joint powers agreement provides:

“If the Board desires to create significant programs or activities which will utilize substantial resources of the Agency, it shall do so by a vote of the Board. If the Board deems it necessary, it may appoint a working committee to study the significant program or activity and provide input to the Board. Substantial resources and significant program or activity shall be defined as any program or activity requiring \$10,000 or more in annual expenditures; this amount shall be increased by the annual cost of living CPI index. Any new significant program or activity shall require a work plan and a two-thirds vote of the Members in order to be initiated. When a new significant program is intentionally designed to be limited in scope, such that it only provides benefits to particular Members, the Agency may enter into a specific program or project Agreement that includes relevant terms regarding the particular affected Members, and any such Agreement shall be approved by the Board prior to or at the same time as formation of the significant program. These limited scope Agreements shall be subject to approval by the Board by a two-thirds vote of the Members.”

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Specifically, what vote is required if a significant program were proposed as part of the budget? A majority vote is needed to adopt the budget, yet the joint powers agreement requires a two-thirds vote to approve a significant program or activity. If a significant program or activity were to be presented at the same time as the annual budget, the voting requirements would not be in alignment and should be clarified. One option would be to include language to ensure the significant program is approved separately or in advance of a vote on the budget. Once approved, it could be included the budget, and the budget could be approved with a majority vote.

Per the bylaws, a majority vote of the members who are present is required for the Board to take action, such as adopting the annual budget. (Article V, Meetings, Section 4). However, a two-thirds vote is required to adopt or amend the bylaws. (Article VII, Adoption and Amendments). Also as set forth below, the joint powers agreement requires a two-thirds vote to initiate a significant program or activity requiring \$10,000 or more in annual expenditures.

WORKING COMMITTEE

One agency raised the issue whether to establish a permanent working committee from member cities to advise the board.

COMPOSITION OF EXECUTIVE COMMITTEE

An agency asked consideration to be given to establishing a requirement to reserve one seat on the Executive Committee for small cities.

COMPETITION FOR GRANTS

One agency raised the issue whether a provision should be included in the bylaws to address what would occur if the JPA were to compete for the same grant as its member cities.