

SUBJECT: CITIES ASSOCIATION OF SANTA CLARA COUNTY’S REQUEST FOR APPROVAL OF JOINT POWERS AGREEMENT TO ESTABLISH THE CITIES ASSOCIATION OF SANTA CLARA COUNTY JOINT POWERS AGENCY

BACKGROUND:

History of CASCC and JPA Discussions

Over thirty years ago, the cities and towns in Santa Clara County (“Member Agencies”) established the CASCC to improve cooperation on issues of common interest. The CASCC was intended to consolidate and maintain the functions and purposes of the Inter-City Council, the Santa Clara County Mayor’s Conference, and the City Selection Committee for Santa Clara County. In 1990, the cities and towns entered into an agreement to provide some structure and outline the purpose and function of the CASCC. In 2010, the CASCC adopted its bylaws. Currently, the CASCC is an unincorporated association.

As early as 2017, the CASCC began reviewing and considering the appropriate organizational structure for the CASCC. In August 2020, its Board of Directors unanimously voted to take the steps necessary to form a joint powers authority because it would provide a more formal and recognized structure for CASCC and clarity regarding tax status, governmental immunities, and potential liability of the Members. To form a joint powers authority, a JPA must be approved by the CASCC Board of Directors and then executed by each Member Agency that wishes to join the joint powers authority, which would be called the Cities Association of Santa Clara County Joint Powers Agency (“Agency”).

The CASCC conducted outreach and solicited input on the proposed draft JPA over the past two years. The CASCC circulated a draft JPA to all City and Town Attorneys in the County for their review and input and incorporated significant changes into the agreement. The Acting Executive Director and the General Counsel at the time attended two virtual meetings with most of the Town or City Attorneys or Assistant City Attorneys on September 14 and September 28, 2022. The entire JPA was reviewed each time. A separate and additional meeting was held by the Santa Clara City Attorneys Roundtable on September 16, 2022, where the JPA was again reviewed.

CASCC representatives presented a draft JPA at the Santa Clara County City Managers Association (“SCCCMA”) meeting on October 12, 2022. Following that meeting, the City Managers submitted a list of 17 questions regarding the JPA to CASCC representatives. Due to changes in CASCC over the last year, including a new General Counsel and the rotation of new City Council Board representatives, the answers to those questions were not completed until August 2023. These responses were circulated to the SCCCMA members (see Attachment 2). On August 9, 2023, CASCC representatives again met with the SCCCMA to discuss the responses to the October 12, 2022, questions, and answers document, review the proposed JPA, and receive additional input. At the August 9, 2023, meeting, the CASCC representatives responded to the concerns raised by the City Managers and further edits were made to the draft JPA.

On September 14, 2023, the CASCC Board received the updated draft JPA that included edits that responded to comments of the City/Town Attorneys and City Managers. At the meeting, the CASCC Board heard the concerns raised by Board members and City Managers who attended the meeting, and it was confirmed that those concerns would be addressed in the JPA. The CASCC Board directed some additional changes be made to the draft JPA to clarify that the Agency would not hire employees and to provide some language permitting but not requiring the CASCC Board to appoint a working committee to review new initiatives and provide input. With these changes, the CASCC Board unanimously approved transmittal of the draft JPA to the City Councils for each of the proposed Member Agencies for their consideration.

BYLAWS:

The CASCC currently has bylaws that have governed its operations for several years. Upon formation of a JPA, the governing board would update these existing bylaws. In conjunction with the future bylaws for the Agency, the CASCC plans to prepare a personnel policy handbook which would include policies that apply to the organization's independent contractors and Board members such as safety-related policies and a policy prohibiting discrimination, harassment, and retaliation. As part of this policy development, the Agency would identify which entity or resources would administer these rules (for example, General Counsel or a third-party entity).

OTHER ORGANIZATIONAL STRUCTURES CONSIDERED:

The CASCC previously considered both a 501(c)(4) nonprofit organization and a joint powers authority. In 2020, the CASCC Board voted unanimously to create a joint powers authority based on factors such as time and cost of forming the new entity and the compatibility of the joint powers authority government structure with the goals and purpose of the CASCC. Between 2020 and 2022, events have transpired that have underscored the need for the indemnification, access to insurance and structure a joint powers authority can afford its members.

OVERVIEW OF THE PROPOSED AGREEMENT:

The JPA restates the same purposes expressed for the creation of the CASCC. Consistent with the Joint Exercise of Powers Act (Government Code section 6500 et seq.), the agreement defines the power and authority of the Agency. To address concerns raised by Member Agencies, the Agency would be specifically prohibited from acquiring real property, levying taxes, hiring employees or exercising any eminent domain power. The proposed JPA has also been modified to further restrict the authority of the Agency. (See Sections 6 and 7). The CASCC Executive Board would be replaced by an Executive Committee. The Executive Committee may only take on those powers approved by the Agency's Board of Directors. For example, the Executive Committee is not permitted to authorize any investigations into the business of the Agency without the Board's approval.

Like the CASCC, the Agency would also be charged with administering the City Selection Committee ("CSC"), which involves establishment of the application process, scheduling and holding meetings for appointments to be made, keeping track of committee and board appointments, terms, and

resignations, coordinating with the County Clerk and disseminating meeting minutes, and troubleshooting where necessary. The CSC is a state-mandated entity charged with making appointments to various regional and local boards and committees. Each city and town in Santa Clara County will continue to participate in the CSC even if the city or town is not a member of CASCC. Appointments to the local boards and committees will be based on majority votes of the city/town CSC representatives.

Of note, the CASCC provides more benefits to its members beyond administering the CSC. The CASCC allows all 15 cities and towns in Santa Clara County to work together on regional issues, advocate at the county, regional and state levels, and provide a significant voice in policymaking in Sacramento. The solid work of the CASCC has resulted in some notable achievements and benefits to our cities and towns. The single-use plastic bag ban ordinances passed by all 15 cities and towns originated with the CASCC, as did the Healthy Cities Dashboard in conjunction with Santa Clara County Department of Public Health. Other examples include delivery of county-wide symposia on timely and important topics such as housing and sustainability, providing technical assistance to city staff for Housing Element Updates through the Planning Collaborative, and providing feedback and endorsements for legislative bills under consideration. The CASCC is also a great way for representatives from the different cities to share ideas, create professional connections and collaborate on similar issues affecting all the cities and towns.

ADVANTAGES OF FORMING THE AGENCY:

1. As a governmental agency, the Agency would have access to insurance and risk pools that are not available to an unincorporated association.
2. The Agency may be a more attractive recipient of sponsorships and donations, potentially easing pressure on the budget and therefore on the Members (see Fiscal Impact section below).
3. The JPA clarifies liability issues and is drafted so that the entity indemnifies the members of the Agency.
4. The formation of the Agency would clarify the tax status of the organization.

FISCAL IMPACT:

Budget

FY24 covers the period from July 1, 2023, to June 30, 2024.

FY25 covers the period from July 1, 2024, to June 30, 2025.

1. The budget for FY25 has not yet been developed and therefore has not been presented to the CASCC Board for consideration. Under the current CASCC bylaws, the Executive Director will develop the FY25 budget for adoption by the Board at its April 11, 2024, board meeting. This budget will be developed with the same parameters as the FY24 budget, which are:
 - a) The CASCC budget is an operational budget-there are no separate line items for programs other than the Annual Membership Meeting and the Annual Holiday Party. The major expense in the budget is the payment of independent contractors, currently the Executive Director and the General Counsel (on an as-needed basis).

- b) The Executive Director will present a responsible budget in line with the current CASCC finances that would not exceed its resources.
2. There is no indication that the CASCC budget will increase solely because CASCC becomes the Agency.
- a) Approval of any new programs or projects with budget impacts of \$10,000 or greater requires approval of 2/3 of the Board of Directors and the financial resources to fund such a program or project. If there is not enough budget for said programs/projects, the Executive Director will advise the Board of such and will give the Board all relevant information to make an informed decision. Ultimately, the Board decides how to proceed financially. (See item 1.b above.)
 - b) It is anticipated that CASCC legal costs would be reduced after the adoption of a JPA. Formation of the JPA was calculated as part of the FY24 budget and once the JPA formation is complete, the need for legal services would decrease.
 - c) As a JPA, the CASCC will be eligible to receive sponsorships and donations to underwrite costs of programs and events. Every effort will be made to seek sponsorships and donations as this relieves the pressure on the budget.

Membership Dues

As has been the case over the past few years, the FY24 dues are based on the size of each Member Agency and the plan is to continue with this same approach. In addition, the Board has expressed a desire not to increase the membership dues in light of current economic conditions. Therefore, for the FY25 membership dues, the Executive Director intends to propose a budget to the CASCC Board (or Agency Board of Directors) that preserves the same dues structure as FY24 whereby each Member Agency will be asked to pay the same amount in dues as in FY24.

In the event not all 15 cities join the Agency, the budget proposal would preserve the same dues, but the Agency Board would be required to make some budget adjustments. The Executive Director would advise the Board on how the CASCC or Agency budget may be revised, providing all relevant information and data. Also, after FY25, it is anticipated that an annual CPI adjustment would be recommended.