

Answers to City Managers Questions re: Cities Association of Santa Clara County ("CASCC") and Proposed Joint Powers Authority ("JPA")
August 7, 2023

GENERAL

Question #1. a.: What do we want this organization to be?

Answer #1. a.: The goals and purposes of the organization will not change. Here are the stated goals of the CASCC:

- To review, study, develop consensus positions, and recommend on issues of interest to Santa Clara County cities;
- To develop a common agenda for Santa Clara County cities;
- To serve as a unified voice for Santa Clara County cities in relationship to other agencies, organizations, and levels of government, including the Peninsula Division of the League of California Cities;
- To serve as the City Selection Committee pursuant to Government Code section 50270 et seq. and make appointments to regional and local bodies as provided by law;
- To assist in the development of state-wide legislative policy through the structure of the League of California Cities;
- To serve as a source of education, information, and networking for officials from all cities in Santa Clara County;
- To provide a forum for non-city individuals, groups and organizations, and the private sector to address items of interest to Santa Clara County cities.

And here are the stated purposes of the proposed JPA:

1. Review, study, develop consensus positions, and take action on issues of interest to Members;
2. Focus on local and regional matters that are important to our future;
3. Develop a common agenda for Santa Clara County cities;
4. Serve as a unified voice for Santa Clara County cities in relationship to other agencies, organizations, and levels of government;
5. Establish the City Selection Committee pursuant to Government Code Section 50270 *et seq.*, as amended and make appointments to regional and local bodies as provided by law;
6. Serve as a source of education, information, and networking for officials from all cities in Santa Clara County;
7. Provide a forum for non-city individuals, groups and organizations and the private sector to address items of interest to Santa Clara County cities;
8. Reduce duplication of effort by sharing information and provide a unified voice and strong advocacy on legislation and other important issues that affect its Members;
9. Strengthen the Members' and Agency's standing at the regional, State and Federal level;
10. Strive to respect local control, provide regional perspective, and make a difference to elevate the quality of life throughout the County;

11. Provide a forum for discussion and study of problems common to the Members and to assist in the development and implementation of solutions to such problems;
12. Provide a method for the Members to collaborate and jointly develop policies that benefit the region; and
13. Collaborate in such a way that is efficient, saves the jurisdictions the expense of individual effort, and creates positive outcomes.

Question #1. b.: What are the goals in forming this separate JPA as opposed to something less structured?

Answer #1. b.: Currently, the CASC is an unincorporated association under the California Corporations Code. Since its creation, the member agencies have executed some agreements to provide a bit more structure to the association. In 1990, the CASC's member cities also entered into an agreement governing the operation of the organization, later amended on June 30, 1995. A copy of that Agreement is attached. As authorized by this Agreement, the CASC has also adopted bylaws, available on the organization's website. The existing Agreements set forth a structure that is similar to what a Joint Powers Agreement would establish for a JPA.

If the Cities Association becomes a JPA, neither the purpose nor the budget process would change. However, the JPA structure addresses concerns that have been raised about the CASC such as liability and insurance. The JPA would have access to insurance that is not currently available. Governmental immunities would apply to the JPA that do not apply to an unincorporated association. A JPA would also clarify the tax status of the organization. The governance and organizational structure are also familiar to the members.

Question #1. c. How is forming the JPA furthering those goals.

Answer #1. c.: The most effective CASC is one that is permanent, has governmental immunities to liabilities and employs an organizational structure that is both equitable and highly functional. Also, it will insulate the individual city/town members from future individual liability that an unincorporated association would arguably not do. The CASC has accomplished much in the past and can accomplish many of the same programs and should the Board of Directors wish to, additional tasks with the new, permanent structure. In addition, the formation of a JPA eliminates potential tax issues as governmental entities are generally not subject to federal and State tax-related requirements.

Question #2: Are there better organizational forms such as public benefits corporation or nonprofit organization?

CASC previously considered both a 501 (c) (4) non-profit social welfare organization and a JPA. In 2020, the Board of Directors chose to pursue a JPA based on factors, such as the time and cost of forming the new entity and the compatibility of the JPA structure and membership of

the association. Considering the events that have transpired since the Board of Directors made the decision in 2020, we are even more convinced the JPA structure is best suited to the needs of the CASC for the reasons stated above and the fact that the CASC members are elected Council members appointed by their respective agencies and the CASC administers the Cities Selection Committee.

Question #3: What models/example joint powers agreements were used to develop the proposed CASC JPA?

Answer #3: The proposed JPA was developed by the two prior General Counsels, including Gary Baum, and he utilized the following examples: Silicon Valley Regional Interoperability Authority JPA (click on JPA document link) <https://svria.org/resources/documents/> Silicon Valley Animal Control Authority JPA (click on JPA link) <https://www.svaca.com/about-us>

Question #4: What issues, structural or otherwise, is the association facing that can only or uniquely be solved by the formation of a JPA?

The JPA would provide a governmental structure for the CASC. As a JPA, the CASC would have governmental immunities and the liability of its members would be clarified. The JPA would have also access to some risk pools that insure governmental entities. The JPA structure itself would create a backbone of organization by clearly setting forth the scope of the JPA's authority.

See answer to Question 1c above.

Question #5: Are there examples of issues that the JPA can address, particularly that cannot be accomplished through a less formal structure?

See answers to Questions #3 and #4.

Collaboration amongst our cities is one of the key advantages of the CASC, which helps to strengthen our region. It is noteworthy, that in a county as populous and diverse as Santa Clara County, our cities have been able to come together and have some notable successes that could only have happened through CASC. For example, the work of the CASC during the COVID-19 pandemic resulted in a stronger partnership with our County, paving the way for greater trust and collaboration in the future. In recognition of their hard work, the CASC was awarded the President's Medal for Exemplary Service During the COVID-19 Pandemic by the SCC Board of Supervisors. Also, our cities collectively implemented ordinances to ban single-use plastic bags in each of our cities. Perhaps one of the most timely advantages of the CASC and JPA membership would be the ability to apply for regional and statewide grants, such as the

ANSWERS TO CITY MANAGER'S QUESTIONS RE: CASC JPA

August 7, 2023

multi-year Regional Early Action Planning (REAP) Grant from ABAG. CASC contracts with Community Planning Collaborative to lead this effort. Currently, all of our cities benefit from the technical assistance provided by the Planning Collaborative. Formed in October of 2019, the Santa Clara County Planning Collaborative is a shared effort among the county's jurisdictions to help address the region's housing challenges. The jurisdictions, by working together collaboratively, save money, time, and resources by sharing information and capacity; maintain & facilitate relationships with non-profits, affordable housing advocates, and key governmental organizations.

For cities that are part of the JPA, they would be able to participate in sessions with legislators and other councilmembers to benchmark and share ideas. They would also have the opportunity to vote and advocate on issues together with their fellow cities. During COVID, different groups were able to reach out to the Cities Association knowing they would be able to reach all 15 cities. Also, having a group with all 15 cities participating would complement the SCC City Managers and City Attorneys groups.

Question #6: The primary purpose or goal of the formation described today (10/12/22), was for all cities to continue to participate. If that is the case will the final document be able to be ratified without each of the cities consenting?

The CASC functions best when all cities and towns within the County are members. Each of the individual Council members who serve on the CASC board will present the JPA to their respective agencies for approval with the goal of having all the current members cities and towns participate in the JPA. It is important to note that all cities and towns would continue to participate in the City Selection Committee (CSC) even if they are not members of the JPA. Government Code Section 50270 designates the mayors of all cities and towns within the County to serve on the CSC. The purpose of the CSC is to appoint city representatives to boards, commissions, and agencies as required by law. In Santa Clara County, CASC houses the CSC and takes responsibility for all the administrative tasks related to the CSC.

While it is the goal of the CASC and the JPA process that all cities and towns become members, the JPA is drafted so that it becomes effective once eight members join. Should the number of members fall below 7 then Article 4 of the JPA would apply:

After one full year after the initial formation of the Agency, should the membership fall below seven (7) Members due to the withdrawal of Members and the membership level remains at below seven (7) Members for a period of at least one (1) year and a similar JPA, with the same or similar powers and functions is formed containing a majority of cities in the County of Santa Clara, the Agency shall change its name and permit the new organization to take on the name of the Agency. Notwithstanding

ANSWERS TO CITY MANAGER'S QUESTIONS RE: CASC JPA

August 7, 2023

the name change, this Agreement shall continue in effect until terminated as provided herein. The termination of this Agreement with respect to an individual Member upon its withdrawal from membership in the Agency shall not operate to terminate this Agreement with respect to the remaining Members.

Note, this provision was added at the request of the City/Town Attorneys all of which provided input into the final draft of the JPA.

FISCAL MANAGEMENT

Question #1: How will member agencies be able to review proposed annual budget and proposed assessments in advance of adoption by the JPA board?

Answer: #1: Like the process set forth in the bylaws and the process followed by the SVRIA, section 8.3.5 of the JPA requires the Board of Directors to adopt its budget by April 30 of each year. This process is designed to ensure that city/town members can consider and incorporate any increase or decrease in their dues into their budget planning before they are required to adopt their own budgets. Only the Board of Directors may adopt the budget at a publicly noticed meeting, the Executive Committee may not adopt the budget. Notice of proposed budget figures will be sent to the City Managers in advance of any budget adoption meeting. If April 30 is too late for city/town budget planning, an alternative date of March 30 could be considered.

Question #2: Is it assumed that the dues structure/formula will be determined after approval of the JPA, or will this be established in advance of approval?

Answer: #2: While the dues will be established after approval of the JPA, no significant increases are anticipated. The adoption of any dues structure or formula would need to be considered as part of the annual budget process. The dues' structure and related provisions will be incorporated into the bylaws for the JPA. The CASCC will share information regarding its proposed budget and dues as soon as possible in each budget cycle, and will share with its member cities and towns, their elected officials, and city managers in a transparent manner. The goal is to submit next year's fiscal year budget, with the final Joint Powers Agreement, in December 2023.

Question #3: How will the JPA address disagreements on the dues structure, particularly if dues will increase with a JPA?

Answer #3: It is neither assumed nor anticipated that the dues will increase because of the change in organizational structure. It is anticipated that annual dues will increase to reflect cost

of living increases. As set forth in the current bylaws, the Board adopts a budget every year in the same timeline as its member agencies and a majority vote is required to adopt a budget.

Question #4: Has the association considered CalPERS costs in a potential JPA?

Answer#4: Yes, CASSC has considered this matter. CASSC obtains services from independent contractors and does not have employees. CalPERS membership is not mandatory for a JPA. The JPA has been drafted to address this issue and specifically states the JPA will not contract with CalPERS. See JPA provision 14.1.5:

14.1.5 The Agency shall not contract with or become a member of the California Public Employees Retirement System ("PERS"), nor shall any employee of the Agency become a member of PERS or be entitled to a pension or retirement from PERS because of service to the Agency; and

In addition, the following change will be made to the JPA to address the issue:

14.1.6 The Agency shall not contract with or provide any pension to any employee of the Agency, nor shall any employee of the Agency be entitled to a pension or retirement Benefits, aside from Social Security as a result of service to the Agency.

Question #5: What is the extent of the Dissolution Plan and Tax Liability and who will be responsible?

Answer #5: The Dissolution Plan for CASSC has been discussed by the City/Town Attorney's group and researched by a few of its members. A consensus on the approach to dissolution has been reached with the City/Town Attorney's Group. Article 5 of the JPA it states: "Upon formation of the Agency as described in Article 4, the Cities Association of Santa Clara County, an unincorporated association shall follow the process of dissolution and cease to exist." The CASSC will follow the procedure for dissolution set forth in California Corporations Code Section 18410. Upon approval of the JPA by eight Members, the current CASSC Board of Directors will pass a resolution following the Corporations Code procedure and transfer the assets and liabilities of CASSC. The City/Town Attorneys discussed the possibility of only transferring the assets and not the liabilities of CASSC. However, the consensus of this group was that this approach may be rejected by the courts so that path is not recommended and will not be followed.

PERSONNEL MANAGEMENT

Question #1: Who is responsible for evaluating the performance of the Executive Director, and taking any associated personnel action?

Statement #1: Difficult personnel issues can occur in any organization. It is in everyone's interest to establish a structure for handling such issues in advance of actual situations.

Response to Statement #1: Agreed.

Answer#1: The Executive Director provides services to CASC as an independent contractor. Only a majority of the Board of Directors may take action regarding the contract of the Executive Director or any performance evaluation process. The JPA will be modified to clarify this issue.

Just to reiterate from Question 4 above, all services provided to CASC will be through independent contractors, not salaried employees.

DECISIONMAKING

Question #1: How will the JPA determine whether to pursue new initiatives, such as grants, that may not clearly exceed the \$50,000 Significant Programs threshold? How will the JPA determine its ability to perform its associated responsibilities?

Answer #1: The JPA at Article 15 Substantial Programs states:

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. Substantial resources and significant program or activity shall be defined as any program or activity requiring \$50,000 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 specific program or project Agreement that includes relevant terms, by 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 Agreements shall be subject to approval by the Board of Directors by a two-thirds vote of the Members.

First and foremost, the JPA's programs and activities will be limited to its available budget. If a new initiative or grant becomes available, the Board would discuss the level of interest at a public meeting and whether it should pursue it.

Second, the CASC also intends to amend this JPA provision to define a Substantial Program as any program or activity requiring \$10,000 or more (subject to CPI adjustments) - rather than \$50,000 or more - in annual expenditures, in order to exercise greater fiscal oversight.

Statement #1: For example, the SVRIA JPA establishes a Working Committee with specified composition, that is responsible for recommending a budget, accepting grants, and awarding contracts, as well as recommending an Executive Director.

Response to Statement #1: The Executive Committee performs a similar role to that of SVRIA's Working Committee, but its powers have been limited based upon input from the City Managers and City/Town Attorneys. Should the CASC Board of Directors wish to create a new committee, such as the Working Committee with significant powers, the concept, scope, staffing and resources implications would need to be considered by the Board of Directors.

While SVRIA is a JPA model that was considered in the formation of the CASC JPA, it should be noted that SVRIA's annual budget exceeds \$5 million (for FY 23 and beyond). By comparison, the CASC annual budget is currently under \$300K. Currently, it is sufficient for the Executive Committee to perform some, not all, functions of the SVRIA Working Committee. At some point in the future, the CASC Board of Directors may consider formation of a Working Committee, and may choose to do so with input from the City Managers and/or the City Attorneys.

Question #2: How will the JPA determine its position and activities related to legislative advocacy? How will individual Director's responsibility to the JPA be reconciled with positions of their respective agencies?

Answer #2:

Role of the Legislative Action Committee ("LAC")

LAC advocates on behalf of all 15 cities on issues of mutual interest, provides legislative updates to cities, and organizes emergency responses to urgent issues. LAC acts as the convening body for all 15 cities to discuss and take positions on legislative bills, and local and state measures ("Bills/Measures"). The LAC meetings allow for collaboration, advocacy, and education. It allows the cities to delve into an issue and discuss how the issue may affect their cities. LAC is also guided by the Legislative Guiding Principles and the Housing Position Paper, which were both adopted by the Cities Association Board and aim to be representative of all 15 cities.

Benefit to cities from LAC

Cities benefit from the LAC in many ways. An organization consisting of 15 cities with over 1.9 million residents has a louder and more impactful and effective voice compared to each city advocating on its own behalf, especially smaller cities. Legislators have said repeatedly that they pay attention to the positions taken by the Cities Association. Legislators and local groups

seek the Cities Association's endorsement because they understand the importance and influence of an endorsement from the Cities Association.

LAC also provides an opportunity for legislators to present an idea for a potential Bill/Measure and solicit feedback on how such a Bill/Measure may impact cities, or what provisions would cities support/oppose. This is also a great opportunity for Cities to weigh in and give feedback to help shape a bill before it moves forward. Legislators/groups have also shared that it is much easier for them to come to Cities Association and reach all 15 cities at the same time than try to reach each Council individually. For many of the presentations, the legislators will attend the LAC meeting, which gives the cities face to face time with legislators.

Another benefit is LAC provides a forum for cities to learn from each other, hear different perspectives, and better understand the potential impact of a Bill/Measure. Often, this results in the cities being better informed on the pressing issues happening at the state and local levels.

Decision-making process for LAC

The LAC agenda normally consists of (1) an educational item whereby a legislator or group presents on a potential or new Bill/Measure, the intent being to educate and answer any questions representatives may have, or (2) a few Bills/Measures for discussion and action, to recommend a position to the Cities Association Board. It is the Board that makes the final decision on the Cities Association's position on a particular Bill/Measure. Some cities have the same Councilmember serve on LAC and the Board, while others will have different Councilmembers serve on each body. Therefore, although the discussion and presentation at the Board level is not as in depth as the LAC meeting, sometimes the discussion and vote at the Board level are different from what happened at the LAC meeting.

LAC's recommendation to the Board is based on what majority of the cities support. The practice is for the LAC Chair to communicate the recommended position to the full Board and include the minority position(s) or any concerns expressed during the discussion at the LAC meeting.

One of the ways the CASC communicates its position on a particular Bill/Measure is to send a letter to the applicable body. In recent years, the CASC has made an effort to include the concerns of the "minority position" in the letter, and advocate that certain bills carve out an exemption for smaller cities, recognizing that all 15 cities are unique, diverse and range from populations of a few thousand to one million people.

Every city has its own approach to how it votes on a Bill/Measure at a LAC meeting. Some cities will only vote on a Bill/Measure if their full Council has taken a position on the particular item. Other cities will vote on the item if it aligns with a position taken on a similar issue by its Council. If an item is not controversial like housing, then most cities will vote on the item, even if their full Councils have not considered the item.

How to make LAC even better

The CASCC Executive Committee has continued to identify ways to improve LAC because of the value it provides to the cities. Here are some things we are already considering, and we welcome any suggestions you may have:

- Need staff support to be better prepared for LAC meetings. This work can be time consuming as it requires analyzing bills, researching the support and oppose positions and legislative history, and tracking the status of the Bill/Measure. To date, this work has fallen to the LAC Chair, CASCC Executive Director, and/or the Board President's staff. If cities, like San Jose, are willing to share their legislative staff with the CASCC, at no cost, it is worth exploring, provided the work is objective and does not reflect the position of that city.
- Continue to do a better job of including the minority voices in our advocacy and any unique impacts to smaller cities.
- Provide a LAC calendar at the beginning of the year that gives dates when LAC will be considering certain bills to give cities an opportunity to have their Councils take a position on the bill before it goes to LAC.
- Have cities suggest bills they want LAC to consider.
- Continue to have the Board members report back to their Councils and City Managers on the impactful and valuable work the CASCC is doing.

Question #3: How does the organization work if/when not all cities join? If not all or enough members join, how does the association act as the appointing body for various regional commissions.

Answer #3: The Agency will be formed once eight cities/towns approve the JPA (See JPA Article 8). The participating members would meet and operate as a JPA. Given Government Code provisions governing the CSC, all cities are permitted to participate in these Committee meetings and the appointment process even if they are not members of the JPA (See JPA Article 13). The JPA would continue to administer the CSC.

At the request of the City/Town Attorneys provisions were added to Article 8 that after one year of formation should membership fall to less than seven members for a period of one year that the Agency is required to release the CASCC name to a new JPA should one be formed. On a related note, the Executive Committee is not activated until there are nine members, and it will then consist of three members, in order to address any potential ties in voting. If the JPA

has eleven or more members, the Executive Committee would then consist of five members (See JPA Article 11). The CASCC intends to amend JPA Article 11 to capture this approach.

For cities that are part of the JPA, they would be able to participate in sessions with legislators and other councilmembers to benchmark and share ideas. They would also have the opportunity to vote and advocate on issues together with their fellow cities. During COVID, different groups were able to reach out to the Cities Association knowing they would be able to reach all 15 cities. Also, having a group with all 15 cities participating would complement the SCC City Managers and City Attorneys groups.

Question #4: Does the proposed power of the executive committee have the potential to allow the executive board to make decisions at the expense of some or all of the members?

Answer #4: The proposed JPA has been drafted to address concerns regarding the authority of the Executive Committee (formerly known as the “Executive Board”). Additional changes will be made to the JPA to clarify that the Executive Committee cannot make personnel decisions and that new powers can only be vested in the Executive Committee following a vote of the Board of Directors on the issue. The Executive Committee will not have the authority to make personnel decisions or decisions related to the contract for the Executive Director.

The JPA currently reads as follows: at Article 11: “The Executive Committee may have additional powers delegated to it by the Board, except for the adoption of the Agency’s annual budget. Any additional powers and duties delegated shall be specified in a Resolution adopted by the Board. The Executive Committee shall provide notice to the Board before authorizing or conducting any investigations into the business of the Agency and before taking personnel action. These actions must be authorized by a majority vote of the Executive Committee.”

The reference to personnel action will be removed and the Executive Committee will be prohibited from taking any personnel actions.

Question #5 What is a situation where the association would need to issue debt, purchase land, or hire or terminate multiple employees?

Answer#5: The provisions authorizing the JPA to issue debt or purchase land will be removed. It is unknown whether the Agency would ever need to hire or terminate an employee, but those decisions would be made by the Board of Directors and memorialized in a budget adopted by the Board of Directors, not the Executive Committee. (See answer to PERSONNEL MANAGEMENT #1)