

The Future of CASCC – Moving Toward A New Organizational Structure

August 13, 2020

CASCC Board of Directors



Purpose of Presentation

- To provide information regarding a change of the CASCC organizational structure to either a non-profit organization or a Joint Powers Authority.
- Discuss next steps for setting up a new organizational structure.
- Board may vote on next steps including adoption of one of the proposed organizational structures.

History of the CASCC

- Cities Association of Santa Clara County was formed in 1990. However, CASCC was not its own independent agency or authority.
- Since formation, California and federal law have changed.
- CASCC was not originally registered as a governmental entity. Attempts to register as a governmental entity with IRS have been unsuccessful.
- CASCC is now, and has traditionally operated as, a non-governmental, unincorporated organization. However, there are restrictions to what such a body can do (for example, an unincorporated organization's revenue cannot exceed \$5,000.00 per year).

The Future of CASCC

- CASCC is growing with respect to its responsibilities, its involvement in projects of mutual interest among the cities, and in revenue.
 - Planning Collaborative to address region's housing challenges
 - SCSC Roundtable
 - Silicon Valley Clean Energy
 - Efforts and Resolutions involving inclusivity, Black Lives Matter, support of communities of color, age-friendly cities, minimum wage raises, housing and homelessness prevention, and sustainability.
 - City Selection Committee
- To meet its goals, CASCC needs a legally sound and sustainable structure for the future.
- Structural change will ensure compliance with state and federal regulations and allow CASCC to continue to grow.

Proposal to Reorganize

- To achieve its goals and continue to seek new and more expansive opportunities, the CASCC proposes to restructure as a different type of legal entity.
- CASCC may do so by either dissolving first or restructuring. Both dissolution and restructuring can occur simultaneously with setting up a new organizational structure.
- There are two organizational structures that seem to fit the CASCC's goals: a Joint Powers Authority (JPA) or a 501(c)(4) non-profit organization.
- Both counsel and accountant recommend JPA to 501(c)(4), but the decision ultimately lies with CASCC.

Joint Powers Authority

- What is it?
 - Joint Powers Authorities are legally created entities that allow two or more public agencies to jointly exercise common powers.
 - The Joint Exercise of Powers Act, as codified in California Government Code section 6500, governs JPAs.
 - The Act authorizes two kinds of JPA arrangements. The first allows two or more public agencies to contract to jointly exercise common powers. The second allows two or more public agencies to form a separate legal entity. This new entity has independent legal rights, including the ability to enter into contracts, hold property and sue or be sued. Forming a separate entity can be beneficial because the debts, liabilities and obligations of the JPA belong to that entity, not the contracting parties.
 - To enter into a JPA, the public agencies must enter into an agreement. This agreement must state both the powers of the JPA and the manner in which it will be exercised. The governing bodies of all the contracting public agencies must approve the agreement.
- Who approves a JPA?
 - The contracting cities. JPAs are registered with the State of California, but their existence is governed by state law and rules of contract.

Process to Create a JPA

JPA	Time and Cost
<p>1. Determine whether to dissolve or to remain an unincorporated organization that will restructure</p>	<p>Decision to be held at meeting of CA.</p>
<p>2. Draft and approve Constitutional Document</p>	<p>Costs: Cost of attorney: estimated 25-30 hours (depending on input from members; ensure compliance with JPA best practices/accreditation standards).</p> <p>Details and Time Estimate: Usually 1-4 months to complete but timeline may vary depending on negotiations.</p> <p>Draft constitutional document; resources (time and money) may be spent to create document and confer with respective cities (and/or their city attorneys) and to hold a meeting at which documents can be approved.</p>
<p>3. Draft bylaws</p>	<p>Costs: Cost of attorney- estimated 5-10 hours if using current bylaws; 10-15 hours for new bylaws.</p> <p>Details and Time Estimate: Can be done simultaneously with Step 2, and may take 1-2 months to draft and approve. Timeline varies depending on negotiations between members.</p> <p>Draft new or revise current bylaws; resources (time and money) may be spent to create document and confer with respective cities and to hold a meeting at which bylaws can be approved</p>

Process to Create a JPA

JPA	Time and Cost
4. Assign a treasurer and an auditor	<p>Costs: Cost only to meet and assign this role.</p> <p>Details and Time Estimate: Can be done after Steps 2-3 are complete and may be completed during a meeting of the CA. Multiple ongoing filing requirements on an annual basis.</p>
5. Register with Secretary of State	<p>Costs: Cost of attorney: estimated 1-3 hours; \$1.00 filing fee.</p> <p>Details and Time Estimate: File Notice of a Joint Powers Agreement using Form NPSF-404A.</p>
6. JPA sets up an official bond/fidelity coverage for person(s) entrusted with property of JPA and other necessary insurance	<p>Costs: TBD.</p> <p>Details and Time Estimate: Limits JPA exposure to loss and secures required insurance under Cal. Govt Code 6505.1. Time TBD depending on insurer process. Complete alongside Step 5.</p>
7. Send JPA documents to State Controller's Office/other relevant agencies	<p>Costs: Filing is free notwithstanding postal fees.</p> <p>Details and Time Estimate: Completed with Step 5. Includes Public Agency Roster filing, Conflict of Interest Code; Special Districts Financial Transactions Report (if required for first filing, but will be an annual requirement prepared by JPA and/or accountant)</p>

Costs of Setting Up a JPA

- Total predicted budget range:
 - Approximately \$10.00 in filing fees
 - Approximately 35 hours in attorney's fees (\$7,000- estimate based on average of low estimate and high estimate)
 - Approximately 0 hours in predicted accountant's fees, however, accountant will continue to assist with annual bookkeeping (estimate based on average of low estimate and high estimate)
- Utilize CASCC internal staff, including Executive Director, whenever possible to minimize expenditures

501(c)(4)

- What is it?
 - Federally recognized not-for-profit incorporation.
 - Social Welfare Organization
 - Operated exclusively to promote social welfare. Intended primarily to further the common good and general welfare of the people of the community (such as by bringing about civic betterment and social improvements).
 - Permits lobbying
 - Seeking legislation germane to the organization's programs is a permissible means of attaining social welfare purposes.
 - The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. However, a section 501(c)(4) social welfare organization may engage in some political activities, so long as that is not its primary activity.
- Who decides whether organization is a 501(c)(4)?
 - Federal government, specifically the IRS, ultimately determines whether to approve application for 501(c)(4) status or deny.

Process to Create a 501(c)(4)

Steps to Create a Non-profit 501(c)(4)	Time and Cost
1. Determine whether to dissolve or to remain an unincorporated organization that will restructure	Decision to be held at meeting of CASCC.
2. Draft and approve articles of incorporation	<p>Costs: Cost of attorney to draft and revise constitutional document: estimated 7-15 hours (depending on revisions and input from members).</p> <p>Details and Time Estimate: <u>1-4 months to complete.</u> Resources (time and money) may be spent to create document and confer with respective cities (and/or their city attorneys) and to hold a meeting at which documents can be approved.</p>
3. Choose name; Incorporate with State of California	<p>Costs: Filing fee with State (\$30 as of 6/23/20).</p> <p>Details and Time Estimate: Completed simultaneously with Step 2; processing time for State of California is generally 1-2 months.</p>
4. Draft bylaws	<p>Costs: Cost of attorney to draft new or revise current bylaws: estimated 12-20 hours (depending on revisions and input from members).</p> <p>Details and Time Estimate: <u>May take 1-3 months to draft and approve, especially if additional input from members.</u></p> <p>Resources (time and money) may be spent to confer with respective cities (and/or their city attorneys) and to hold a meeting at which bylaws can be approved.</p>

Process to Create a 501(c)(4)

Steps to Create a Non-profit 501(c)(4)	Time and Cost
5. Prepare and file a statement of information with Secretary of State	<p>Costs: Cost of attorney: estimated 1-3 hours. Filing fee is \$20.</p> <p><u>Details and Time Estimate:</u> File within 90 days of filing articles of incorporation. Processing time for State of California is generally 1-2 months. Completed simultaneously with Step 2. Note: Must also file statement of information every two years.</p>
6. Continue to prepare/maintain records and accounting files	<p>Costs: TBD (if outside service from accountant versus if managed by CASCC)</p> <p>Time TBD</p>
7. Obtain EIN/ File form SS-4	<p>Costs: Cost of accountant to file: estimated 2-5 hours.</p> <p><u>Details and Time Estimate:</u> After Step 2-5 are complete, CA can file takes one week to prepare and 1-3 months to process.</p>
8. Create a proposed budget for 2 full accounting periods and a current statement of assets and liabilities	<p>Costs: Cost of accountant (8-16 hours).</p> <p><u>Details and Time Estimate:</u> Simultaneous with Step 2-5.</p>

Process to Create a 501(c)(4)

Steps to Create a Non-profit 501(c)(4)	Time and Cost
9. Apply for federal tax exemption (multiple forms to be completed)	<p>Costs: Cost of accountant (5-13 hours). \$50 filing fee as of 6/23/20; There is also a user fee cost that may be associated on Form 8718 (\$600 in 2019).</p> <p>Details and Time Estimate: Must complete and file Form 8976 within 60 days of establishing org. Application will likely take 1-3 weeks to prepare; process of receiving determination letter from IRS can take up to a year, but average processing time is 3 months. Can also generally file Form 1024-A, and may need to file Form 990. File Form 2848 for power of attorney or representative if necessary.</p>
10. Apply for state and local tax exemption	<p>Costs: Cost of accountant (4-8 hours). No cost to file state form unless cost of preparation by accountant; unknown local cost- local costs determined by city in which organization is incorporated</p> <p>Details and Time Estimate: After Step 10 is completed, must file State Form FTB 3500A and submit federal determination letter (preparation and processing times vary depending on city of incorporation)</p>
11. Register with State's Attorney General	<p>Costs: Cost of attorney: estimated 2-4 hours; \$25 Filing fee.</p> <p>Details and Time Estimate: After Step 10 is completed, this step must be completed within 30 days of first receiving charitable assets. Registration processing time is likely 1-3 months.</p>
12. File any local license or permits	<p>Costs: Fees and preparation time vary depending on where organization will be filed.</p> <p>Details and Time Estimate: TBD</p>

Process to Create a 501(c)(4)

Steps to Create a Non-profit 501(c)(4)	Time and Cost
13. Open a Bank Account	<p>Costs: Costs should be <i>de minimis</i> if any.</p> <p>Details and Time Estimate: Most banks will require completion of Step 12 before they will allow for an account to be opened. Process takes 1-2 weeks generally to complete application and be approved but depends on bank.</p>
14. Obtain insurance	<p>Costs: Cost will vary widely depending on Insurer and coverage levels.</p> <p>Details and Time Estimate: Can complete after Step 12 is complete. 3-5 days to prepare form, approval time usually 1-3 weeks.</p>
15. Optional: apply for nonprofit postal permit	<p>Costs: No fee to file.</p> <p>Details and Time Estimate: Can happen once Step 9-10 are completed; Usually takes 3-5 days to prepare, and up to one month to obtain approval.</p>

Costs of Setting Up A 501(c)(4)

- Total predicted budget range:
 - Approximately \$1000.00 in filing fees
 - Approximately 35 hours in attorney's fees (\$7,000- estimate based on average of low estimate and high estimate)
 - Approximately 30 hours in accountant's fees (\$6,000- estimate based on average of low estimate and high estimate)
- Utilize CASCC internal staff, including Executive Director, whenever possible to minimize expenditures

Cities Association Timeline for Creating JPA versus 501(c)(4)

Chantene Koplow | June 26, 2020

501(c)(4)	<p>If you choose to pursue a 501(c)(4), the first step is to decide whether to dissolve or restructure the CA. CA will need to meet and decide (Board sends matter to full body)</p>	<ol style="list-style-type: none"> 1) Create and approve Articles of Incorporation. 2) Choose name and Incorporate 3) Draft bylaws 4) Prepare and file documents with Secretary of State 	<ol style="list-style-type: none"> 1) Obtain EIN 2) Create proposed budget 3) Submit application for Federal Tax Exemption. <u>May take between three months to a year to obtain IRS determination letter of tax exempt status</u> 	<p>Depending on when and if IRS issues determination letter approving tax exempt status:</p> <ol style="list-style-type: none"> 1) File for state and local tax exempt status 2) Register with State's Attorney General 3) File any local business license or permits. 4) Open Bank Account, 5) Obtain insurance 6) Optional: apply for a nonprofit postal permit. <p><u>Each of these steps may take 1-3 months to be approved but can be done simultaneously.</u></p>
	First Step: Dissolution or Restructuring	1-4 Months	First 6 months	First Year
JPA	<p>If you choose to pursue a JPA, the first step is to decide whether to dissolve or restructure the CA. CA will need to meet and decide (Board sends matter to full body)</p>	<p>Create Constitutional Document.</p>	<ol style="list-style-type: none"> 1) Approve Constitutional Document - Members will work with their cities to obtain approval and changes may need to be made 2) Draft bylaws 3) Assign treasurer and auditor 4) Register with Secretary of State 	<p>JPA is up and running. CA can be dissolved or has already been restructured as a part of Step 1.</p>

* Time estimates are based on average historical time to complete each task, but these estimates may vary. For example, negotiating the JPA's Constitution or creating and approving the Articles of Incorporation for the 501(c)(4) can take more or less time depending on how quickly the members are able to confer with their respective cities and reach consensus amongst one another. In addition, please be advised that with COVID-19 and governmental understaffing, some processes may take longer than anticipated.

Restructuring or Forming New CASCC

- Counsel and accountant recommend dissolving current CASCC if pursuing a 501(c)(4).
 - 501(c)(4) is legally distinct from current organization and should be treated as such.
 - Dissolution permits new organization to proceed without attaching prior liabilities that may no longer be relevant to new entity.
 - Likely able to dissolve at end of the process setting up the 501(c)(4), allowing for continuity of operations.
- Dissolution not necessarily required to restructure current CASCC as a JPA. However, dissolution can be accomplished at the end of the process setting up JPA, allowing for continuity of operations.