



Strategic Planning Committee

Meeting Date: December 11, 2023

[[!Agenda Item No. {{item.number}}!]]

Review of Board Rules

Information

Prepared by: Michael Maurer, General Counsel

Attachments: No

Approved by: James Corless

Referring Committee: Not Applicable

1. Issue:

The Board adopts Rules governing its conduct. The Rules were last updated in 2005 and may require some revisions.

2. Recommendation:

None; this item is for information only.

3. Background/Analysis:

SACOG was formed through a joint powers agreement, which provides that the Board may adopt formal Rules for the conduct of its meetings and the operation of the agency. The Board has adopted Rules, which are attached to this report. The joint powers agreement can only be modified through action of the member agencies. The Rules can be updated more regularly. All member agencies must be given three weeks' advance notice of any changes, and then the final changes must be provided to the members.

Prior to 2005, the Rules were reviewed and updated every few years, but the most recent update occurred in 2005. Since that time, there have been changes in the laws and in SACOG's practices that would justify making updates. Additionally, the Board has also recently approved an updated Strategic Plan, and a Racial Equity Action Plan, both of which are intended to drive key decisions. While these policies may not directly affect the Rules, the Rules should be considered with their principles in mind.

4. Discussion/Analysis:

A helpful framework for reviewing Board Rules is to consider the four "C's":

Current: Are the Rules legally up to date and do they reflect current practices?

Clear: Are the Rules written in plain English that is easy to understand implement?

Copacetic: Are the Rules in good order? Do they make sense? Do they reflect good practices?

Consistent: Are the rules consistent with SACOG's mission, vision, and goals?

The below discussion lays out some particular areas where the Board may want to either modify or supplement the current rules. This list is not intended to be exhaustive of all possibilities, and staff will be looking to the committee for other suggestions. In particular, are there have been questions or issues that have come up during the committee members' service on the Board that have been unclear or that could

have been better addressed through the Rules? Staff will consider recommendations and then return at the next Strategic Planning Committee with a proposed revised document.

Potential considerations:

Calling Special Meetings. The JPA indicates that a special meeting may be called by the Chair or by a majority of Directors. However, the Rules are silent as to how to go about actually calling a special meeting. The Brown Act allows for board members to discuss scheduling a meeting. In most cases, a request would simply go to the Chair, who would decide whether to call the meeting. But if a majority of the Board wants to call a meeting (and the Chair objects), it may be practically impossible to call without violating the Brown Act. The Rules could therefore indicate a mechanism for requesting a special meeting.

Given the size of the Board, special meetings are generally discouraged because it may be difficult to establish a quorum and find a time that fits with everyone's schedules. A short-notice special meeting may also be less fair to Board members that have other commitments or that have to travel further. To the extent that staff is involved in assisting with calling special meetings, repeated requests on staff could become a burden. But, there may also be rare instances where a majority of the Board is not aligned with the Chair and wants to call a meeting. One option would be to establish a "critical mass" of the Board – some minimum number that is less than a majority - that requests the clerk to gauge interest in a special meeting at a particular time. Upon a majority agreeing, a special meeting would be called. (Note that this procedure would only apply to Board, not committee, meetings.)

Closed Session Communications. As a general rule, matters discussed in closed session are confidential. While rare for SACOG, the Board does occasionally discuss matters that may result in litigation and which could result in costs to SACOG or member agencies. The Brown Act specifically authorizes members of a JPA board to discuss matters from the JPA's closed session with their county board/city council in closed session or with the county counsel or city attorney, provided that such communications are authorized in either the JPA itself or in rules adopted by the board. The Rules are currently silent on this Brown Act provision. By authorizing such communications, SACOG may be able to communicate more information to its members and better serve their interests.

Delegation. In accordance with the JPA, the Rules allow for standing committees of the Board. The Rules refer to such committees as "advisory," but in certain instances the Board has elected to delegate action items to a committee. Such delegations have been authorized by the Board and are within the implied authority granted to the Board in the JPA. Updating the Rules to reflect actual practices and expressly allow for delegation in limited instances, would better align the Rules with current practices and help ensure that actions taken by delegation are binding. It also would help to ensure, in some instances, that there would be a body that is available and able to take action when an action is needed. The Board would have to vote to allow the delegation and the delegated authority would have to take place in a public committee meeting. This approach could also allow for more efficiencies in the future, such as enabling committees to approve routine matters.

Nonvoting/Ex Officio Board Seats. The JPA provides a nonvoting ex officio Board seat to the Director of Caltrans District 3. The JPA does not restrict enabling other organizations or partners to participate in Board discussions in a nonvoting manner. Providing a rule for adding other nonvoting positions may be a way to develop further community relationships and establish liaisons between SACOG and other communities/governments in the region. Likewise, the Rules could create a mechanism for the Chair or Board

to appoint SACOG directors to serve as ex officio board members or liaisons for other entities or governmental organizations.

Committee Process. The Rules provide for the formation of standing committees, as well as for “policy, technical and ad hoc committees.” While this does not necessarily restrict the Board, the reference to policy and technical committees may be overly limiting as the Board may want to seek to engage participation with the public in other manners. Additionally, while the term “ad hoc” is used, this portion of the Rules only refers to formal committees. For better clarity, the term “ad hoc committee” should either be removed or this section should explicitly reference ad hoc committees under the Brown Act (i.e., committees that are not formed by formal action and that do not have ongoing jurisdiction).

Additionally, the Rules currently require that committees follow SACOG’s Affirmative Action Policy and Program. This reference should be updated to reflect current requirements and policies.

Removing Disturbances. The Brown Act has long allowed a procedure to “clear the room” when there is an actual disturbance. New legislation specifically allows a board chair to order the removal of any individual causing an actual disturbance following a warning. If the person threatens violence, or commits an act of violence, they may be ordered removed without warning. This procedure is now law and therefore does not necessarily have to be written into the Rules. However, by doing so, the Board may provide a clear process and clear expectations for how disturbances will be handled.

Parliamentary Rules of Procedure. The Rules allow for the Chair to decide questions of order or procedure. The Rules do not, however, contain any specific rules of order or procedure. Parliamentary rules are not laws and cannot foreclose votes that would otherwise successfully pass an action. To maintain flexibility and good process, the Rules should continue to give the Chair discretion to make ultimate determinations on matters of order or procedure. It may be helpful to the Chair if the Rules incorporated some simple parliamentary rules – such as Rosenberg’s Rules of Order (published by CalCities) – as a backstop. This would give the Chair an objective basis to decide questions based on established procedures.

Rules of Decorum. The Rules likewise grant the Chair the Authority to preserve decorum but do not give any particular standards for decorum. As with rules of procedure, there is value in having standards of decorum that are flexible and can apply to various situations, including situations that are unforeseen. While it hopefully never occurs, the Chair may find it useful to have adopted standards to point to in the event of Board actions that call for a censure. The Board has previously adopted a code of conduct, which could serve as a basis for standards of decorum.

Committee of the Whole. A “committee of the whole” is a parliamentary procedure that allows a board that loses a quorum to continue to receive information and operate as a board, albeit without the ability to take action. In the absence of rule to the contrary, the Board may operate as a committee of the whole. And provided the items are on the agenda, the meeting is noticed and open and public, and otherwise complies with the Brown Act, it would not be a Brown Act violation. While the Board members would be strongly discouraged to leave meetings prior to the completion of business, a Rule that allows for a committee of the whole would more clearly show that the Board could continue its proceedings and simply table any votes.

Establishing Quorum and Votes. The JPA requires the presence of three different board constituencies to achieve a quorum and pass an action: a majority of the cities, a majority of county directors, and majority of representative population. Because the JPA refers to county directors – not counties - attendance of 5 of 8

County directors is technically required. The Board may consider whether the three constituencies could meet and transact business separately, as necessary. This would enable a majority of city directors to meet and vote, and then the county directors could separately meet and vote.

This approach is not expressly authorized by the JPA and would require a liberal interpretation of the terms and intent of the JPA. It may provide an opportunity where the Board does not meet all three quorum requirements (or loses of one the three) but still desires or needs to transact business. The primary downside of this approach is that it limits debate among the full Board, and the city representatives benefit from the comments of their county peers (and vice versa) prior to voting.

Compensation. The rules set a fixed payment per meeting of \$100 for board members for each meeting attended. The rules also are the basis for paying non-board members for participating in committees, such as the public members of the Race, Equity and Inclusion Working Group. This amount has not been adjusted in nearly 20 years, and so staff would like to research comparable organizations to determine if the amount should be adjusted slightly to reflect cost inflation over this time period.

5. Fiscal Impact/Grant Information:

There is no fiscal impact other than staff time and legal expenses to review and update the Rules.