

South Bay Cities Council of Governments

September 12, 2022

TO: SBCCOG Steering Committee
FROM: Jacki Bacharach, Executive Director
SUBJECT: Voting Procedures

BACKGROUND

At the July Board meeting, a vote was taken to send a letter to the County opposing a mandatory mask mandate. The vote was 6 Yes, 3 No and 3 abstentions. It was deemed that support for the letter passed and the letter was sent.

There was an objection to the vote and at the August Steering Committee meeting the action was reviewed and rescinded based on Section 7 of the Joint Powers Authority

Section 7. Functioning of Governing Board.

- e. Actions. Actions taken by the Governing Board shall be by not less than fifty percent (50%) plus one (1) of the voting representatives of the Governing Board who are present provided that a quorum has been established, unless by a provision of applicable law, this Fourth Amended and Restated Agreement, the Bylaws or by direction of the Governing Board, a higher number of votes is required to carry a particular motion.

Because there were 12 voting representatives, seven affirmative votes were required.

Additionally at the August meeting, there was a discussion about the number of votes required to take action and staff was requested to ask our legal counsel whether there should be requirements for extraordinary votes for items of regional significance.

RESPONSE FROM LEGAL COUNSEL

The Board consists of 18 members, and assuming no members are inactive or suspended, then a quorum is 10, not nine. See JPA, Section 7(c) (a quorum is 50% + 1 of the total membership). This is standard; a quorum is always a majority of the total membership.

(NOTE: we had been counting the county as one member but clarification on this item from legal counsel is as follows: The JPA gives the County two votes, so the Board membership is 18. The quorum is based on number of representatives who can vote (i.e. delegates), not membership. Section 7 of the JPA says that a quorum is 50% +1 of "its" membership, referring to the membership of the Board (18), not member jurisdictions.)

Under JPA Section 7(c), an action must be approved by 50% plus 1 of members who are present. I presume an "action" is approval of any motion. This rule is stricter than the rule applied in a general law city, where an action may be taken by a majority of the quorum. Here are some examples:

- o If 10 members are present (a quorum), six affirmative votes are required for an action.

- If 18 members are present, ten affirmative votes are required for an action.
- If 14 members are present, eight votes are required for an action.
- You say that usually 12 members attend; in that case, seven votes are required for an action.

In each instance above, some members present may abstain or vote no, but a motion will still pass if the minimum number of votes noted above are in the affirmative. Abstentions are not counted as a no; but that is pretty much irrelevant as the JPA requires 50%+1 of those present voting in the affirmative. In a city with five councilmembers, a motion may pass with 2 affirmative votes (a majority of the quorum), even if 3 members abstain. In your case, if 14 members are present and 7 vote no or abstain, the motion fails, even though the 7 affirmative votes are a majority of the quorum (because 7 is not 50% +1 of the number present). So, depending on the number of members present, the current rule does work to require more votes to pass an action than required in a general law city.

Super-majority votes are undemocratic and create obstacles to getting decisions made. Perhaps the Steering Committee would feel differently if it saw the vote requirements set forth in paragraph 2 above? If not, then adopting a super-majority requirement for specific types of actions would require us to be very clear about what those actions are. As you note below, “regional significance” is a pretty vague description and would end up giving rise to disagreements as to whether a 2/3 vote is or is not required. But, if we define the type of action that requires a super-majority vote clearly, it is do-able. Whether it is good policy or not, is another question.

Under the Brown Act, a “walk-on” item, defined as an item of business that is not on the posted agenda, can only be added to the agenda at the meeting on a 2/3 vote, and only upon a finding that the item came to the agency’s attention after the posting of the agenda and there is an immediate need for action. So, it already takes a 2/3 vote to add a walk-on item to the agenda. Once it is on, it is subject to the usual vote requirement for action discussed above.

RECOMMENDATION

That no changes be made.