



Agenda Report

Date: March 14, 2019
To: West Contra Costa Integrated Waste Management Authority Board
From: Stan Hakes, Executive Director
Subject: Joint Exercise of Powers Agreement (JEPA) Update

ACTIONS REQUESTED

1. Receive and file Joint Exercise of Powers Agreement (JEPA) update report.
2. Provide direction to staff.

BACKGROUND

The RecycleMore Board has been engaged in the process of updating the West Contra Costa Integrated Waste Management Authority (RecycleMore) Joint Exercise of Powers Agreement (JEPA) since early 2016. As part of the JEPA Update, the Board received an initial draft RecycleMore Framework from the City Managers in December 2017, and updated the City Managers RecycleMore Framework ("Framework") in January 2018. The Framework seemed to be useful as a basis to move forward with the JEPA update.

At the July 26, 2018 Board meeting, the Board directed staff to refer eight of the remaining JEPA issues to the City Managers for their recommendation. The City Managers met on July 30 and August 23, 2018 and made significant progress by agreeing on recommendations to resolve seven (7) of the eight (8) issues which were delegated by the Board. It is important to note that one of the seven resolved issues included in the City Managers August 2018 recommended JEPA Update was agreement that each member city would have one voting representative on the Board, and each would have an equal vote.

Since that time, the Richmond City Manager and El Cerrito City Manager retired. The new Richmond City Manager has expressed concerns about the City of Richmond agreeing to a JEPA with a Board structure of each city having one Director, each with an equal vote. The new Richmond City Manager expressed support for a weighted vote, and brought this issue to the Richmond City Council.

On February 26, 2018, the Richmond City Council considered the JEPA Board voting representation issue. (Staff report included as Attachment 1). The City Council voted 5-0 (Councilmembers Myrick and Johnson abstaining) in favor of Option 1. Option 1 says that Richmond would remain in the JPA if three key provisions are included in the JEPA:

- 1) Maintain Richmond's weighted voting (as described in more detail in Attachment 1);
- 2) Update the JEPA withdrawal language to allow member agencies to leave the agency and request ratepayer paid funds proportionally;
- 3) Focus Authority programs on Household Hazardous Waste Programs, compliance with State laws, management of the Post-Collection Agreement, setting Post-Collection rates and outreach and education.

At this point, staff and Legal Counsel are uncertain on how to proceed. The Richmond City Council has made it clear that they will insist on an updated JEPA document that must include a weighted Board vote (or Richmond continuing to have three voting Directors). A letter from the City of San Pablo expresses the opposite position. San Pablo has communicated they “will not entertain or support any changes to the Board’s recommended governance and representation provisions that were previously agreed to in the August 2018 City Manager recommended JEPA amendment framework.” Pinole and Hercules have submitted letters with similar language. The San Pablo JEPA letter is included as Attachment 2 to this report.

Staff would appreciate Board direction on this issue. Staff has identified four (4) potential options to address the JEPA issue.

1. Ask the City Managers to continue to meet to determine if a City Managers JEPA solution can be achieved.
2. Discontinue the City Managers JEPA negotiation process, and have the Board deliberate in April or at another future Board meeting to address remaining JEPA issues.
3. Direct staff to no longer work on the JEPA update, and to continue to use the current JEPA as the Authority governing document.
4. Another option as determined by the Board.

FISCAL IMPACT

There are no fiscal impacts at this time. Depending on future actions by the Board, updates to the JEPA may have minor to significant fiscal impacts to the RecycleMore organization.

RECOMMENDED ACTION

1. Receive and file Joint Exercise of Powers Agreement (JEPA) update report.
2. Provide direction to staff.

Submitted by:



Stan Hakes
Executive Director

Attachment 1 - Richmond City Council February 26, 2018 Agenda Report on JEPA Voting Representation Issue

Attachment 2 - JEPA Letter from the City of San Pablo



AGENDA REPORT

CITY MANAGER'S OFFICE

DATE: February 26, 2019

TO: Mayor Butt and Members of the City Council

FROM: Carlos Martinez, City Manager
Shasa Curl, Economic and Community Development Director

SUBJECT: RECYCLEMORE JOINT EXERCISE of POWERS AGREEMENT VOTING STRUCTURE

STATEMENT OF THE ISSUE:

The West Contra Costa Integrated Waste Management Authority ("RecycleMore") is a joint powers authority (JPA) charged with overseeing the post-collection processing of solid waste, recycling, and green waste materials. At the beginning of 2016, RecycleMore led the process to restate and revise the agency's governing agreement known as the Joint Exercise of Powers Agreement ("Agreement"). City staff is seeking City Council direction on the proposed reduction of Richmond's weighted vote in the draft Agreement.

RECOMMENDED ACTION:

RECEIVE a presentation and provide DIRECTION to the City Manager on the voting structure for the RecycleMore Joint Exercise of Powers Agreement.

FINANCIAL IMPACT:

There is no financial impact to the City's General Fund.

Richmond ratepayers contribute approximately 57 percent of RecycleMore's operating budget and total revenue collected for post-collection services.

DISCUSSION:

Background

The City of Richmond's solid waste and recycling services are provided by two agreements with Republic Services: 1) a collection franchise agreement managed by the City of Richmond; and 2) a post-collection agreement managed by RecycleMore. The post-collection agreement includes recyclables processing, composting, operation of a Household Hazardous Waste facility, and the transfer, transportation, and disposal of solid waste. Both the collection and post-collection agreements end in 2025.

RecycleMore was formed in 1991 to finance the construction of a regional recycling facility known as the Integrated Resource Recovery Facility ("Recycling Facility") and meet State recycling mandates. The original Joint Exercise of Powers Agreement ("Agreement") was developed with respect to the agency's financial obligations, and was intended to serve as the governing agreement until the bonds were fully repaid on December 31, 2013. RecycleMore has provided benefits to member cities by meeting State recycling mandates, providing household hazardous waste recycling programs, and leading an updated post-collection agreement that expanded food scrap recycling services.

In December 2015, the RecycleMore Board of Directors directed RecycleMore staff to draft an updated Agreement that would reflect the Agency's new role after the Recycling Facility construction bond repayment, update the withdrawal process for member cities, and include opportunities for Contra Costa County to join as an official member. The first workshop to receive input on the Agreement update was held April 2016, and since that time, there have been numerous workshops, Board Meetings, and recommendations to aid in the revision of the Agreement. Throughout the update process, Richmond Board Directors have consistently conveyed requests for equitable policies that recognize Richmond's financial contribution to the JPA, and Richmond's environmental and health burdens attributed to hosting the regional solid waste facilities.

On December 23, 2016, Richmond's City Manager, as directed by the Richmond City Council, sent a letter stating grievances with the November 2017 version of the Agreement and giving notice of intent to withdraw if Richmond's requests were not satisfactorily addressed (Attachment 1). In an effort to support the Agreement revision process, City Managers from each of the RecycleMore member cities formed a working group to develop a RecycleMore framework (Attachment 2) for Board consideration. On January 18, 2018, the City Managers presented their recommended framework ("framework") to the RecycleMore Board and the RecycleMore Board voted to incorporate it into the Agreement update.

The intent of the City Manager's framework was to focus RecycleMore on core programs, services, and projects, "Core Services" that would increase diversion to meet State mandates, improve quality of service, and effectively manage rates and the post-collection agreement. The Framework aimed to avoid non-core programs, services, and projects (non-core services) unless there was unanimous agreement between RecycleMore directors. In addition, this Framework included a reduction in Richmond's voting powers to assuage concerns from smaller cities. Richmond's previous City Manager agreed in concept to the Framework; however, agreement was dependent on adequately and satisfactorily incorporating all elements of the City Manager's Framework and addressing Richmond's request for equitable policies. At the end of August 2018, the City Managers and JPA failed to broker a deal on the previous Framework.

Since then, the City of Richmond's leadership has changed and Richmond's current leadership has determined that the proposed reduction in Richmond's voting representation is not in the City's best interest. The City is not obligated to continue negotiating a deal to reduce Richmond's voting representation on the Board.

City Managers JEPA Issues

The principal Agreement issues that remain unresolved include: 1) voting; and 2) withdrawal. The other member agencies request Richmond reduce its representation on the board to one unweighted vote, equivalent to 20 percent (*1 Richmond board member divided by 5 total members*) and consider it a “deal breaker” if Richmond does not agree to one unweighted vote. Richmond requests a clear and reasonable withdrawal policy, and fair disbursement of reserve funds upon withdrawal.

Richmond's current voting percentage is 43% (*3 Richmond board members divided by 7 total members*), and is supported ideally by all three board member's attendance. Richmond's proportional representation on the RecycleMore Board was established to reflect Richmond's significant population and rate base compared to other member cities. The Richmond community hosts the region's solid waste facilities; provides more than 50 percent of RecycleMore's budget; and incurs the most economic, health, and infrastructure impacts from solid waste operations. It is common practice for members of regional agencies to have weighted voting.

Richmond City staff recommends that the City Council direct the City Manager to pursue two options presented below.

Option 1: Remain in the JPA if the Agreement attains the following three key points of equity:

- 1) Maintain Richmond's weighted voting to include:
 - a. “MCE model” (explanation stated below)
 - 1 Director equivalent to 3 votes; or
 - b. Status quo with 3 Directors.
- 2) Update the withdrawal language to allow member agencies to leave the agency and request ratepayer contributed funds proportionally and fairly.
- 3) Focus JPA programs on the following:
 - Household Hazardous Waste Programs
 - Compliance with State laws
 - § Prepare and submit annual reports to Cal Recycle
 - § Remain in compliance with AB 939 and associated diversion mandates.
 - § Implement and remain in compliance with AB 341 (mandatory commercial recycling) and AB 1826 (mandatory organics collection)
 - § Implement and remain in compliance with SB 1383
 - Manage the Post-Collection Agreement
 - Set Post-Collection Rates
 - Outreach and Education
 - Legislative Updates

The "MCE model" would utilize the voting model adopted in the MCE JPA as stated below.

Summary (example) of voting percentage calculation:

1. (1/total Number of Directors)/multiplied by 50 AND (10 percent for each member city)
2. (Jurisdiction Annual Solid Waste Tonnage/JEPA Total Annual Solid Waste Tonnage) multiplied by 50 (Approximately 29.3 percent for Richmond)

The sum of the above is equivalent to: $10\% + 29.3\% = 39.3\%$ for Richmond's weighted voting.

Option 2: If there is no agreement between the member cities, then RecycleMore and the City of Richmond should initiate a transition plan for future consideration.

The Member Agencies' contributions to RecycleMore were reported in the April 6, 2017 Financial Impact and Disposal/Diversion Report by R3 Consultants. The report concluded that Richmond ratepayers contribute a net \$916,318 annually to the RecycleMore budget. If Richmond were to withdraw, it would receive an estimated \$916,318 annually to manage the Post-Collection Agreement and provide related recycling services. The following findings summarize the subsidies and contributions from RecycleMore budget and Richmond's ratebase:

- Richmond ratepayers contribute \$515,000 of RecycleMore's \$991,000 annual budget.
- Richmond ratepayers contribute \$508,531 of RecycleMore's \$978,607 HHW budget.
 - § R3 estimates our participation costs are \$382,981 annually, with a net annual variance of \$125,464 (the variance is due to the Richmond's lower participation at the HHW facility and revenues generated from solid waste tonnage).
- Richmond ratepayers contribute an annual rate subsidy of \$315,854 to other JPA cities (Richmond has a higher industrial and commercial ratepayer base).
- It is important to note that Richmond ratepayers benefit from approximately \$40,000 of recycling revenues generated by other participating cities.

It is important to consider Richmond's responsibility and obligation to contribute to retirement obligations. RecycleMore Board has recently appropriated significant funding from the reserves to address the CalPERS Unfunded Accrued Liability and Other Post-Employment Benefit liabilities. More information still needs to be analyzed on future liabilities if Richmond were to withdraw.

Additionally, household hazardous waste costs in the post-collection agreement are aggregated regionally with all RecycleMore cities. Richmond has reached out to Republic Services to provide feedback on the April 6, 2017 Financial Impact and Disposal/Diversion Report by R3 Consultants to determine how Household Hazardous Waste (HHW) costs and services may be affected by withdrawal. City staff will continue to evaluate all potential financial obligations and clarify cost changes if the City were to withdraw from RecycleMore.

ATTACHMENTS:

1. City Manager Letter to RecycleMore 12-23-16
2. City Managers' Recommendation 12-5-17

CITY OF SAN PABLO

City Manager

January 9, 2019

Mr. Stan Hakes,
Executive Director
WCCIWMA/RecycleMore JPA
1 Alvarado Square
San Pablo, CA 94806



Re: RECYCLEMORE JEPA AMENDMENT PROCESS (STATUS)

Dear Mr. Hakes:

Since July 2017, the RecycleMore JPA Board of Directors has solicited the assistance of the five (5) West County City Managers to recommend a Joint Exercise of Powers Agreement (JEPA) amendment framework to streamline RecycleMore's regional coordination and program management of solid waste, recycling, household hazardous waste, and regulatory reporting programs to the State of California on behalf of all JPA member agencies.

Over the last 18 month period, there has been substantial effort made by all five (5) City Managers to reach consensus on a recommended JEPA amendment framework that attempted to address all JPA related operational issues (i.e. core services, reserve fund disbursement, provisions for member agency withdrawal, and including changes to Board governance and representation, etc.). A consensus was successfully reached **collaboratively by all five (5) City Managers** in August 2018.

Unfortunately, as you know, in December 2018, the City of Richmond proposed new changes to the August 2018 City Manager recommended JEPA amendment framework. Unfortunately, the City of San Pablo does not agree with all of the proposed changes from the City of Richmond as reviewed in a recent meeting held on January 7, 2019.

Therefore, despite not being able to reach consensus at this time, the City of San Pablo wishes to clarify its position for your scheduled update to the RecycleMore JPA Board on January 24, 2019. For the betterment of all member agencies involved, the City of San Pablo supports a JEPA amendment process to move forward, as follows:

- **The City of San Pablo supports a JEPA amendment process which is in alignment with the City Manager recommended JEPA amendment framework reached in August 2018 by all five (5) City Managers; and**
- **The City of San Pablo is willing to entertain possible language clarification to specific financial provisions recently requested in December 2018 by the City of Richmond; and**

- **The City of San Pablo will NOT entertain or support any changes to the Board's recommended governance and representation provisions that were previously agreed to in the August 2018 City Manager recommended JEPA amendment framework.**

Should you have any questions about this matter, please contact me directly at (510) 215-3016, or MattR@sanpabloca.gov.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matt Rodriguez', with a stylized flourish extending to the right.

Matt Rodriguez,
City Manager

cc: Mayor and City Council
City Attorney
Assistant City Manager
Public Works Director
Environmental Program Analyst