

Legislation Text

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PREPARED BY: KARINEH SAMKIAN

DATE OF MEETING: 03/18/19

SUBJECT:

UPDATE TO THE CITY COUNCIL ON RECYCLEMORE'S PROGRESS ON THE JOINT EXERCISE OF POWERS AGREEMENT AMENDMENT

CITY MANAGER RECOMMENDATION

Provide information and direct staff.

COMPLIANCE STATEMENTS

The RecycleMore Joint Exercise of Powers Agreement is an adopted policy item under *Major Policy Goal: Enhance Community Resilience - 203 Assess Environmental Impacts over the Long-term* in the FY 2019-21 Council Priority Workplan, effective March 1, 2019.

CEQA Compliance Statement

This update is not a project and is for informational purpose only; therefore, it does not require CEQA clearance.

BACKGROUND

Purpose of RecycleMore and the JEPA

In 1991, the City of San Pablo along with the cities of El Cerrito, Hercules, Pinole and Richmond created the West Contra Costa Integrated Waste Management Authority, a Joint Powers Authority (JPA) more recently referred to as RecycleMore. The unincorporated West Contra Costa County area is also served by RecycleMore and represented by a Contra Costa County Supervisor, who serves as an ex-officio member (non-voting).

The original purpose of the JPA was to comply with new state diversion mandates as well as site an Integrated Resource Recovery Facility (IRRF). The member agencies developed the Joint Exercise of Powers Agreement (JEPA) that authorized the construction and operation of the IRRF, pledged waste stream control to RecycleMore, and tasked RecycleMore with certain municipal solid waste activities. These activities include: compliance with state diversion mandates; overseeing the post-collection processing of solid waste, recycling, and compost; and providing household hazardous waste disposal programs.

Reasons to Amend JEPA

From 1994 through 2013, RecycleMore was party to an IRRF Agreement that funded and built the IRRF. All member agencies paid the debt service on the bonds that funded the IRRF over a twenty-year period via a portion of the monthly post collection rates charged to solid waste ratepayers in each member agency. The IRRF agreement expired in 2013 and all bond obligations were paid off.

With the bonds being paid off and other changes in the organization (i.e. request from the County to

become a voting member), the RecycleMore Board (Board) began discussions about the future structure and roles of RecycleMore. Adding the County would result in an even number of Board Members, which poses a problem in the case of a tie vote. The County also had some terms prior to joining including: (1) the ability to require an IRRF franchise agreement; (2) giving priority to the in-County landfills; (3) simplifying the withdrawal process (the current JEPA requires the majority of remaining member agencies to approve withdrawal); and (4) keeping the current rate-setting methodology for post collection rates.

The cities of Richmond and El Cerrito also wanted to amend the JEPA to make the withdrawal process easier and establish a process to disburse reserves. Some of the reserves were disbursed in 2015, but the two cities wanted a policy for future disbursements and disbursement upon withdrawal.

JEPA Amendment Process to Date

- In September 2015, the Board began discussions about the future of RecycleMore (which agencies are joining or staying) and amending the JEPA.
- There were several Board workshops to discuss the terms of the JEPA.
- In November 2016, RecycleMore released a draft JEPA.
- The Richmond City Council directed their staff to negotiate better terms or consider withdrawing. Their main issues were: (1) adding the County vote dilutes their three voting seats; 2) equity in services as compared to the City's proportional contribution (Richmond ratepayers make up approximately half of RecycleMore's budget and they have more industrial customers which helps stabilize the rates); (3) withdrawal is still not simple; (4) reserves are not automatically distributed at time of withdrawal; and (5) RecycleMore's powers are overreaching (i.e. issuing bonds and eminent domain).
- In June 2017, RecycleMore released another draft JEPA Amendment after further discussions.
- In July 2017, a special meeting was held where City Managers (CMs) of the member cities were asked to attend to discuss the new draft. The Board requested that the CMs meet and negotiate the main issues. Shortly after, the Board asked that the discussion omit County membership to simplify the process.
- In January 2018, the CMs prepared a framework that was presented to the Board (see Attachment). Here is a summary of the terms:
 - The City of Richmond agreed to reduce their voting seats to one vote similar to other JPAs (including Stop Waste and Central Contra Costa County).
 - In exchange, the other cities agreed to reduce RecycleMore services to just core services, require a unanimous vote to change the rate setting methodology and to add new projects, and simplify the withdrawal process.
- In May 2018, RecycleMore released a draft JEPA incorporating the CMs' agreement. The City of Richmond raised additional policy concerns and negotiations continued.
- In June 2018, RecycleMore released another draft and all but one issue remain unresolved (i.e. language on withdrawing agencies and reserve disbursements).
- In August 2018, a final draft of a CM recommended framework on the JEPA amendment process was reached by all CMs representing member agencies, including language "in concept" on withdrawing agencies and reserve disbursements.

- In late August 2018, the City of Richmond CM Bill Lindsay retired.
- In December 2018, the CMs met (including the new CM of Richmond and the new CM of El Cerrito). Richmond's new CM proposed new language on December 16, 2018 to either keep their three voting seats or consider a weighted vote like Marin Clean Energy governance model.
- On December 31, 2018, the City of El Cerrito CM Scott Hanin retired.
- In January 2019, the CMs from San Pablo, Hercules, and Pinole sent letters to the RecycleMore JPA Executive Director Stan Hakes stating their desire to remain open about minor financial language changes proposed by the new Richmond CM; but, would not support any changes to the governance or voting structure under the CM recommended framework on the JEPA amendment process reached in August 2018, with language originally agreed to over 18 months previously.
- On January 24, 2019, the RecycleMore JPA Board was presented an update report by the RecycleMore JPA Executive Director Stan Hakes on the JEPA amendment process. On a 6-1 vote, the Board voted to direct staff to request the CMs move forward with the JEPA update consistent with the CM's recommended framework, and in subsequent member agency letters, and CM's group agreement of August 2018 (see Attachment).
- On February 26, 2019, the Richmond City Council directed their CM to pursue "option 1" to persuade the other CMs to incorporate Richmond's preferred weighted vote on governance similar to Marin Clean Energy model, or maintain "status quo with three current Board directors" (see Attachment).

City Council Policy Considerations

On March 14, 2019, per the posted agenda, the RecycleMore JPA Board is slated to receive an updated report from RecycleMore JPA Executive Director Stan Hakes on the JEPA amendment process, including the recent action by the Richmond City Council on February 26, 2019 as stated above (see Attachment).

This evening, City staff is providing these updated policy concerns to the entire City Council. The intent of the City Manager and staff is to highlight the lack of regional cooperation and partnership resulting from the City of Richmond's recent action on February 26, 2019 despite formal action(s) taken previously by the RecycleMore JPA Board by majority vote to support the CM recommended framework on the JEPA amendment process adopted on January 24, 2019 (i.e. 6-1 vote).

As a result of these recent circumstances, the City Manager advises that continued negotiations with the City of Richmond on the new JEPA amendment process, especially as it relates to governance and voting, remains futile, inconclusive, and not in the best interest of regional cooperation, partnership, and supporting equity and fairness for all member agencies involved in the RecycleMore JPA. However, the City Manager desires to solicit feedback and input from the City Council on these updated policy matters before proceeding any further on the JEPA amendment process.

Therefore, the City Manager recommends the City Council herein directs the City Council RecycleMore JPA Board Representatives (Pineda; Xavier), and City staff, to proceed along the following said policy guidelines until formal action is necessitated, as follows:

- 1). *Continue with ongoing negotiations with all member agencies on the JEPA amendment*

in accordance with the CM recommended framework agreed to in August 2018 as formally adopted by the RecycleMore JPA Board (6-1 vote) on January 24, 2019; and/or

- 2). Terminate said negotiations with all member agencies on the JEPA amendment process temporarily for now unless the RecycleMore JPA Board formally adopts and moves forward with formal implementation of the CM recommended framework agreed to in August 2018; and/or*
- 3). Terminate said negotiations with all member agencies on the JEPA amendment process, and prepare for the subsequent impacts associated with potential member agency withdrawal (by any member agency or agencies) under the current adopted provisions of the current adopted JEPA agreement.*

Note: Impacts if Richmond Withdraws

Previously, in January 2017, the RecycleMore JPA Board directed the JPA Executive Director Stan Hakes to hire a consulting firm to determine the financial and diversion impacts if the City of Richmond was to officially withdraw from the JPA in the near future. The report, which is summarized in the RecycleMore Agenda Report (See Attachment), indicates that if the City of Richmond were to withdraw, the post-collection rates would increase between \$0.48-2.24 (1.5-7% of total bill which includes collection costs). The higher estimate assumes that the RecycleMore JPA and Household Hazardous Waste budgets would remain the same. The equivalent diversion rate would change from 68% to 67% which is still above the 50% mandated by the state. There are many issues RecycleMore JPA staff would need to negotiate with the City of Richmond prior to withdrawal, including separating out the state compliance and regulatory reports, and the obligations under the adopted post-collection agreements approved by all member agencies.

FISCAL IMPACT

This is an informational item only. If the City of Richmond elects to officially withdraw from RecycleMore JPA, there is a potential for solid waste rates to increase and impact customers within the City's jurisdiction. Once total impact is analyzed by the RecycleMore JPA Board on the implications with formal withdrawal action by any member agency, then City staff will return to the City Council for further formal direction.

Attachments

- 1) City Managers Framework
- 2) City Manager letter dated January 9, 2019
- 3) RecycleMore JPA Board Meeting Minutes from January 24, 2019 (Agenda Item #8.2)
- 4) City of Richmond Agenda Report for February 26, 2019
- 5) RecycleMore JPA Posted Agenda for March 14, 2019 (Agenda Item #8.0)
- 6) RecycleMore JPA Board Agenda for April 13, 2017 (Agenda Item #8.0)