

Legislation Text

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DATE OF MEETING: 09/03/19

SUBJECT:

CITY COUNCIL POLICY DISCUSSION: REQUEST FROM THE WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY/RECYCLEMORE JPA BOARD OF DIRECTORS TO CONSIDER ADOPTION OF THE FIFTH AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT, TO WHICH THE CITY IS A PARTY, AND AUTHORIZING THE MAYOR BY RESOLUTION TO EXECUTE THE AGREEMENT IF THE MAJORITY OF THE OTHER MEMBER AGENCIES' GOVERNING BODIES APPROVE THE AGREEMENT

CITY MANAGER RECOMMENDATION

Consider policy discussion and provide direction by majority vote via Resolution

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

Amending the Joint Exercise of Powers Agreement (JEPA) does not constitute a project under the California Environmental Quality Act (CEQA) and therefore 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 simplify the withdrawal process 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

- 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) from the member agencies were asked to attend to discuss the new draft. After some discussion, 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 1). The main terms included:
 - 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 remained 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, 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). Richmond’s new CM proposed new language on December 16, 2018 to either keep Richmond’s 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 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 Board was presented an update report by the RecycleMore Executive Director on the JEPA amendment process. With 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 reached in August 2018, and in subsequent member agency letters.
- On February 26, 2019, the Richmond City Council directed their CM 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”.
- On March 14, 2019, the Board directed staff to work with the CMs to retain Richmond’s three voting seats. The Board Members from the cities of San Pablo and Pinole did not agree with this direction.
- On March 18, 2019, San Pablo staff provided an update to the City Council and were directed by majority vote (via minute action) to uphold the CM recommended policy framework from August 2018, and to negotiate a JEPA with the changed governance structure.
- On April 23, 2019, the CMs met to discuss Richmond retaining their three voting seats and there was no consensus reached on this matter.
- On May 9, 2019, with a vote of 5-2 (San Pablo and Pinole voting no), the Board directed staff to prepare a draft JEPA that includes Richmond retaining their three voting seats and circulate it to the CMs and City Attorneys for a final review.
- On June 24, 2019, the CMs met and provided comments on the draft JEPA.
- On June 28, 2019, the revised JEPA was forwarded to the Board and the City Attorneys with comments due by July 9, 2019. San Pablo and Richmond attorneys provided clarifying comments which were mostly incorporated in the final JEPA.
- On July 18, 2019, with a vote of 6-1 (San Pablo voting no), the Board approved the Fifth Amended and Restated JEPA (see Attachment 2) and directed the Interim Executive Director Steve Duran to forward the agreement to member agency CMs for consideration of approval by their councils.
- On July 29, 2019, Executive Director Stan Hakes retired, with Interim Executive Director Steve Duran appointed by Board action while a professional executive recruitment is being conducted.

Fifth Amended and Restated JEPA Terms

Since a majority of the RecycleMore Board Members approved the JEPA Amendment on July 18, 2019, the current JEPA Amendment as proposed requires a separate approval by the majority of the

member agencies' governing bodies to become effective. The key terms of the Fifth Amended and Restated JEPA include:

1. Maintaining the current governance structure of one voting Board Member per member agency and three voting Board Members for the City of Richmond.
2. Defining core services which consist of:
 - Ensuring member agencies are in compliance with State laws
 - Managing the Post-Collection Recycling and Disposal Services contract
 - Implementing Household Hazardous Waste programs
 - Providing community outreach and education
 - Providing legislative updates
3. Limiting RecycleMore powers (i.e. do not have the power of eminent domain, or to pass and enforce regional ordinances).
4. Providing clarifying language if some of the member agencies want to site and fund a facility.
5. Requiring unanimous vote for several actions including, but not limited to, the following budget/financial matters:
 - Changing the rate setting methodology
 - Approving any projects outside of the core services
 - Changing the reserve policy
6. Allowing any member agency to withdraw from RecycleMore with 180 days written notice.
7. Defining the terms (i.e. pro-rata share) on disposition of assets/liabilities, and on the distribution of reserves to a withdrawing member agency.
8. Requiring the approval of the majority of the Board AND the approval of all the member agencies' governing bodies to amend the JEPA.
9. Requiring a 2/3 vote of the Board AND approval by 2/3 of the member agencies' governing bodies for termination or dissolution of RecycleMore.

Summary of JEPA Amendment Process

For the last four-year period, City staff, JPA staff, and other member agencies' staff have routinely met to discuss an appropriate amendment process for the governing document (i.e. JEPA) for the RecycleMore regional agency to be more effective.

Since 2017 to date, intense negotiations between CMs reached their peak in Summer 2018 with regard to new core services being conceded along with a new composition of governance/Board representation (i.e. one member agency; one Board vote) being key factors of a newly proposed JEPA Amendment framework under consideration. Hence, the overall goal was to enhance better equity and partnership among all current member agencies involved, and to establish a new JEPA

Amendment that could be agreed to by all member agencies, including Contra Costa County once they officially join RecycleMore as a future member agency following a successful JEPA Amendment process.

After considerable efforts and time by CMs, JPA staff, and City staff, a consensus has not been reached by all member agencies involved to date on all aspects of the JEPA Amendment as proposed, especially as it relates to the current governance/Board representation (#1 above), and unanimous vote required on fiscal matters (#5 above).

Despite the Board's desire to move forward on an updated JEPA amendment as proposed, San Pablo still has concerns for our local ratepayers that significant concessions were agreed to by all member agencies on core services in exchange for Board governance changes as proposed under the CM-recommended JEPA Amendment framework reached in August 2018. Subsequently, the CM-recommended JEPA Amendment framework was supported and approved by majority vote Board action on January 24, 2019.

Unfortunately, since February 2019, the City of Richmond has maintained their desire to maintain status quo on their current Board representation (i.e. 3 voting seats) which has resulted in a majority of member agencies to revert back to status quo on the current Board governance structure. Since Board action in January 2019, these actions have been upheld by subsequent Board actions culminating in the July 18, 2019 Board action (6-1 vote; with San Pablo dissenting) on support for the current version of the JEPA Amendment as proposed.

Although it is very frustrating to City staff that a negotiated CM-recommended JEPA Amendment was not adhered to by the Board, given the fact that all financial and non-core services will now require an unanimous vote of the Board under the proposed JEPA Amendment, City staff are somewhat baffled that the City of Richmond will be retaining their three (3) votes. As stated above, and as proposed, each member agency will now have veto power which basically makes the additional votes (or status quo) for the City of Richmond moot.

Current City Council Policy Direction

On March 18, 2019, the City Council gave unanimous majority vote direction to uphold the CM proposed JEPA framework from August 2018, and to negotiate the governance structure issue based on what is best for San Pablo ratepayers, and to maximize equity and partnership among existing member agencies. That current policy direction by majority vote stands today concerning the proposed JEPA Amendment before the City Council this evening. The City Council must agree by majority vote to uphold this current adopted policy direction, or direct approval by majority vote to proceed with approval of the JEPA Amendment as proposed by the Board via Resolution.

Regardless of the majority vote direction received this evening by the City Council on the proposed JEPA Amendment, the City of San Pablo would continue to participate as a member agency in RecycleMore. If the City Council directs the formal adoption of said Resolution attached hereto, this would authorize the Mayor to execute said agreement on behalf of the City of San Pablo as member agency.

FISCAL IMPACT

There is no direct cost to the City associated with this action. Any increases in RecycleMore programs or state mandates, will be included in the solid waste rates. Any disbursement of reserves

to member agencies as a result of this agreement amendment will be recorded as revenue in the special revenue fund (209 - Solid Waste Management) which was created in 2016 for uses that further the purpose of RecycleMore.

Attachments

- 1) CM Framework
- 2) Fifth Amended and Restated Joint Exercise of Powers Agreement