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Staff Report for Resolution Approving the StopWaste.Org Joint Exercise of Powers Agreement (JPA) Creating the Energy Council and Agreeing to Become a Member of the Energy Council

**SUMMARY AND RECOMMENDATIONS**

On September 26, 2012, the Alameda County Waste Management Authority (ACWMA, operating under the name StopWaste.Org) Board voted to invite all Alameda County local jurisdictions to sign a Joint Exercise of Powers Agreement for the Energy Council (Energy JPA) to form the Energy Council. On February 27, 2013, the ACWMA Board further voted to modify the proposed Energy JPA to include a weighted voting structure, along with some clarifying language. StopWaste.Org proposes this Energy JPA to support its member jurisdictions in obtaining energy program funding.

Such collaborative efforts and the Energy JPA as an umbrella organization are viewed positively by funders and positions Alameda County jurisdictions for regional benefits. The City of San Leandro will particularly benefit as a small jurisdiction with limited staff available for applying for and managing grants. As a member of the Energy Council, the City of San Leandro will potentially secure resources and more efficiently coordinate energy-related initiatives.

Staff recommends that the City Council approve a resolution to authorize and direct the City Manager to execute a Joint Exercise of Powers Agreement for the Energy Council for San Leandro to become a member of the Energy Council.

**BACKGROUND**

The Alameda County Waste Management Authority (StopWaste.Org) is a public agency formed in 1976 by a Joint Exercise of Powers Agreement among the County of Alameda, each of the fourteen cities within the county, and two sanitary districts that provide refuse and recycling collection

services. StopWaste.Org is responsible for preparation of the Alameda County Integrated Waste Management Plan and Alameda County Hazardous Waste Management Plan. It manages a long-range program for development of solid waste facilities and offers a wide variety of other programs in the areas of source reduction and recycling, market development, technical assistance and public education. In the course of implementing the Integrated Waste Management Plan, StopWaste.Org has recognized the link between solid waste management and reducing emissions that cause climate change, improving air quality, cutting energy use, and saving money. In recent years, StopWaste.Org has pursued the development of green building and energy efficiency programs to advance these interconnected goals.

The resolution would establish an Energy JPA among the StopWaste.Org member agencies to pursue and receive energy specific grants and other related third party funding on behalf of its member agencies.

Since 2009, the City of San Leandro has participated actively with StopWaste on development and implementation of the Federal Stimulus Funding (EECGB) Energy Upgrade California program. This program promotes residential energy upgrades in San Leandro as well as throughout the Bay Area, in association with the Association of Bay Area Governments (ABAG). StopWaste.Org has also consulted with Alameda County local jurisdictions to plan new energy-related programs under the Bay Area Regional Energy Network (BayREN) program led by ABAG. In November 2012, the California Public Utilities Commission approved a 2013-2014 budget of more than \$23 million for new BayREN energy programs that will serve Bay Area communities, including new programs to help single-family and multi-family building owners and tenants save energy and money. StopWaste.Org has acted as a point of contact for San Leandro in these efforts, and has secured energy-related grants on our behalf. It is expected that energy-related grant opportunities will continue to be available in California on a competitive basis in the coming years.

#### Proposed Energy Council Joint Exercise of Powers Agreement

The stated purpose of the Energy Council is to serve as a funding conduit to seek and receive energy-specific grants and other third-party funding on behalf of StopWaste.Org member agencies. The Energy Council will develop and implement sustainable energy initiatives that reduce energy demand, increase energy efficiency, and advance the use of clean, efficient, and renewable resources in the county. StopWaste.Org believes that the formation of an energy-focused JPA will increase its members' ability to compete for funds for future energy programs to benefit our communities. StopWaste.Org has received input from potential funders that forming such a JPA would provide a clear signal that our region prioritizes energy management and sustainable energy initiatives and has established a dedicated governance structure for this purpose.

The proposed Energy Council would be established as a separate public entity from the member agencies within the meaning of Government Code Section 6507 with no debt, liability, or obligation of the Energy Council constituting a debt, liability or obligation of any of the member agencies. The proposed Energy Council would not have the power to impose taxes or fees and will not require contributions or other payments from member agencies other than optional staff resources to participate in the proposed Technical Advisory Group and/or assist in implementing grants. The proposed Council would have the power to adopt countywide ordinances. However any adopted ordinances would only apply within a member agency if the agency adopted a resolution to "opt in".

The proposed Energy Council's membership would consist of one member of the governing body of

each of the member agencies, with the governing body member being the same member who is appointed by the member agency as representative to the ACWMA Board (currently Councilmember Pauline Cutter.) Each agency would also appoint an alternate member (currently Councilmember Diana Souza) similarly to the representative member described above.

Per the revised Energy JPA, approved by the ACWMA Board on February 27, a simple majority of the proposed Council's members shall be required for all actions, with a weighted voting structure whereby the City of Oakland receives three (3) votes; the cities of Hayward and Fremont and Alameda County receives two (2) votes; the remaining 11 jurisdictions would receive one vote each. The Council would be subject to the Brown Act with meetings open to the public and minutes prepared and forwarded to each member as well as to each member agency.

A draft resolution to approve the proposed Energy JPA is presented to the City Council, with the proposed JPA as an attachment. In addition, attached to this staff report are the proposed Energy Council Rules of Procedure and the draft ACWMA/Energy Council Memorandum of Understanding.

StopWaste.Org is requesting that cities that are interested in joining the JPA do so by April 12, 2013 in order to take advantage of upcoming grant funding cycles.

## **ANALYSIS**

Many cities within Alameda County, including the City of San Leandro, have adopted Climate Action Plans and other environmental initiatives that will be greatly facilitated by obtaining outside funding. In addition, many energy-related initiatives, such as providing consumer incentives or focusing on specific commercial sectors, may be more effectively and efficiently implemented on a regional basis.

Membership in the Energy JPA will not subject the City to countywide ordinances or other imposed policy adoptions as a condition of receiving funding. Should countywide ordinances be developed as a result of the Energy JPA work, those ordinances would be adopted on an opt-in basis.

The proposed weighting structure appears to have been an area of concern for some cities including San Leandro. Councilmember Cutter, as the City's ACWMA Board representative, voted against the weighted voting structure (see Previous Actions) in the ACWMA vote on the Energy JPA revisions on both January 23 and February 27. With the weighted voting structure, the smaller cities would still hold a majority vote if they vote together on issues of common interest; out of the 20 total votes, the weighted votes for Oakland, Alameda County, Fremont and Hayward add up to 9 votes, while the remaining single vote jurisdictions add up to 11 votes.

Finally, staff believes that, should San Leandro decide not to join the Energy JPA, our city will be left at a disadvantage in the pursuit of energy-related grant funding and other policy initiatives. Participation in the Energy Council can provide funding to support actions that improve efficiency and reduce energy use. These actions can save money through improved efficiency and decreased waste, as well as create other economic benefits through job creation and business attraction.

## **Current Agency Policies**

The City of San Leandro has a long-standing commitment to reducing energy use and contributing to climate action through its Climate Action Plan, adopted December 21, 2009. The Community Development Department has participated in the Energy Upgrade Technical Advisory Group since its

formation in February 2010.

### **Previous Actions**

On January 22, 2013, the City Council supported Councilmember Pauline Cutter, the San Leandro representative to the ACWMA, to maintain a vote for a one jurisdiction-one vote voting structure for upcoming ACWMA decisions on the Energy JPA in January and February.

### **Applicable General Plan Policies**

- **Policy 28.02 Planning and Building Practices** Encourage construction, landscaping, and site planning practices that minimize heating and cooling costs and ensure that energy is efficiently used. Local building codes and other City regulations and procedures should meet or exceed state and federal standards for energy conservation and efficiency.
- **Policy 28.03 Weatherization** Promote the weatherization and energy retrofitting of existing homes and businesses, including the development of solar space heating and water heating systems, and the use of energy-efficient lighting, fixtures and appliances.

### **Environmental Review**

The proposed resolution to join the Energy JPA is exempt from CEQA since the Energy JPA does not approve or allow the construction of any project and, therefore, has no potential for resulting in physical change in the environment, directly or ultimately. Therefore, adoption of this Resolution is exempt from environmental review under the California Environmental Quality Act pursuant to Public Resources Code section 21065 based on the finding that the proposed Energy JPA is not a “project” within the meaning of Section 15378 of the State CEQA Guidelines and section 15061(b).

### **Legal Analysis**

The proposed Energy JPA was analyzed by the City Attorney’s Office and found to be in conformance with the State of California Government Code as well as the local General Plan.

### **ATTACHMENTS**

- Proposed Energy Council Rules of Procedure
- Draft ACWMA/Energy Council Memorandum of Understanding.

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