CITY OF NEWARK
CITY COUNCIL

37101 Newark Boulevard, Newark, CA 94560-3796 • 510-578-4266 • E-mail: city.clerk@Newark.org

AGENDA

Thursday, July 14, 2016

City Administration Building
7:30 p.m.
City Council Chambers

CITY COUNCIL:

Alan L. Nagy, Mayor

Luis L. Freitas, Vice Mayor

Sucy Collazo

Michael K. Hannon

Mike Bucci

CITY STAFF:

John Becker
City Manager

Terrence Grindall
Assistant City Manager

Susie Woodstock
Administrative Services Director

Sandy Abe
Human Resources Director

Soren Fajeau
Public Works Director

Jim Leal
Police Chief

David Zehnder
Recreation and Community Services Director

David J. Benoun
City Attorney

Sheila Harrington
City Clerk

Welcome to the Newark City Council meeting. The following information will help you understand the City Council Agenda and what occurs during a City Council meeting. Your participation in your City government is encouraged, and we hope this information will enable you to become more involved. The Order of Business for Council meetings is as follows:

A. ROLL CALL
B. MINUTES
C. PRESENTATIONS AND PROCLAMATIONS
D. WRITTEN COMMUNICATIONS
E. PUBLIC HEARINGS
F. CITY MANAGER REPORTS
G. CITY ATTORNEY REPORTS
H. ECONOMIC DEVELOPMENT CORPORATION
I. COUNCIL MATTERS
J. SUCCESSOR AGENCY TO REDEVELOPMENT AGENCY
K. ORAL COMMUNICATIONS
L. APPROPRIATIONS
M. CLOSED SESSION
N. ADJOURNMENT

Items listed on the agenda may be approved, disapproved, or continued to a future meeting. Many items require an action by motion or the adoption of a resolution or an ordinance. When this is required, the words ***MOTION***, ***RESOLUTION***, or ***ORDINANCE*** appear in parenthesis at the end of the item. If one of these words does not appear, the item is an informational item.

The attached ***Agenda*** gives the ***Background/Discussion*** of agenda items. Following this section is the word ***Attachment***. Unless "none" follows ***Attachment***, there is more documentation which is available for public review at the Newark Library, the City Clerk's office or at www.newark.org. Those items on the Agenda which are coming from the Planning Commission will also include a section entitled ***Update***, which will state what the Planning Commission's action was on that particular item. ***Action*** indicates what staff's recommendation is and what action(s) the Council may take.

Addressing the City Council: You may speak once and submit written materials on any listed item at the appropriate time. You may speak once and submit written materials on any item **not** on the agenda during ***Oral Communications***. To address the Council, please seek the recognition of the Mayor by raising your hand. Once recognized, come forward to the lectern and you may, but you are not required to, state your name and address for the record. Public comments are limited to five (5) minutes per speaker, subject to adjustment by the Mayor. Matters brought before the Council which require an action may be either referred to staff or placed on a future Council agenda.

No question shall be asked of a council member, city staff, or an audience member except through the presiding officer. No person shall use vulgar, profane, loud or boisterous language that interrupts a meeting. Any person who refuses to carry out instructions given by the presiding officer for the purpose of maintaining order may be guilty of an infraction and may result in removal from the meeting.

City Council meetings are cablecast live on government access channel 26 and streamed at http://newarkca.pegsteam.com. Agendas are posted pursuant to Government Code Section 54954.2. Supporting materials are available at the Newark Library, in the City Clerk's office or at www.newark.org on the Monday preceding the meeting. For those persons requiring hearing assistance, or other special accommodations, please contact the City Clerk two days prior to the meeting.

CITY OF NEWARK
CITY COUNCIL

37101 Newark Boulevard, Newark, CA 94560-3796 • 510-578-4266 • E-mail: city.clerk@newark.org

AGENDA

Thursday, July 14, 2016

City Administration Building
7:30 p.m.
City Council Chambers

A. ROLL CALL

B. MINUTES

B.1 Approval of Minutes of the regular City Council meeting of Thursday, June 23, 2016. (MOTION)

C. PRESENTATIONS AND PROCLAMATIONS

C.1 Introduction of employees.

Background/Discussion – Newly hired Senior Accountant Michael Djurovic, Associate Planner Sofia Mangalam, and Equipment Mechanic I Lorenzo Houle will be introduced at the City Council meeting.

C.2 Proclamation for the Portuguese Fraternal Society of America Council No. 16 Holy Ghost Festival and 94th Anniversary. (PROCLAMATION)

Background/Discussion – The Portuguese Fraternal Society of America Council 16 will celebrate the annual Holy Ghost Festival on July 23-24, 2016. This will also be a celebration of the Society's 94th Anniversary in the City of Newark. Council President Maria Fatima Silva and officers of the Society will be at the City Council to accept the proclamation.

C.3 Presentation of the 2016 Agency Award of Excellence for Innovation from the Northern California Chapter of the International Personnel Management Association (NCCIPMA) for the City to City Wellness Challenge. (PRESENTATION)

Background/Discussion – In 2015, the League of California cities, through a competitive process, selected five cities throughout the state for workforce health program grants. Newark and Fremont were each awarded one of the $5,000 wellness program grants. As neighboring cities and grant recipients, Newark and Fremont partnered to launch a wellness initiative that involved an 8 week team based wellness competition between both cities.

Digital platforms enabled employees to log and record their daily physical health activities online or using a mobile app. Employees were encouraged to exercise a minimum of 30 minutes each day at least five times per week.

The City to City wellness challenge was fun, successful, and beneficial. Nearly 50% of the Newark's workforce participated, and 90% of participating employees were satisfied with the program and would participate again. 51% reported an increase in energy, 62% increased their activity, and 36% lost weight.

In 2016, the Northern California Chapter of the International Personnel Management Association awarded both the Cities of Fremont and Newark with an Agency Award of Excellence for this innovative wellness competition and program.

Christopher Boucher, Vice President NCCIPMA and Port of Oakland Director of Human Resources, will be at the meeting to present the award.

D. WRITTEN COMMUNICATIONS

E. PUBLIC HEARINGS

F. CITY MANAGER REPORTS

(It is recommended that Item F.1 be acted on unless separate discussion and/or action is requested by a Council Member or a member of the audience.)

CONSENT

F.1 Approval of plans and specifications, acceptance of bid and award of contract to Bond Blacktop, Inc. for 2016 Street Slurry Seal Program, Project 1117 – from Associate Civil Engineer Tran. (MOTION)(RESOLUTION)

Background/Discussion – This project scope of work includes an application of sand, aggregate, and asphalt emulsion mixture and pavement re-striping on various City streets.

Bids for the project were opened on June 28, 2016 with the following results:

Bidder	Amount
Bond Blacktop, Inc.	$ 212,596.10
American Asphalt Repair and Resurfacing Company, Inc.	225,701.30
Pavement Coatings Company	245,270.00
VSS International, Inc.	247,767.05
Graham Contractors, Inc.	249,336.50
California Pavement Company, Inc.	251,278.20
Sierra Nevada Construction, Inc.	272,007.00
Engineer's Estimate	$ 216,000.00

The 2014-2016 Biennial Budget includes funding for this project in Fiscal Year 2015-2016. The streets maintenance portion of this project will be funded through Alameda County Measure B/BB Sales Tax funds, Vehicle Registration Fee funds, and the Traffic Congestion Relief Fund.

Staff recommends that this project be awarded to the lowest responsible bidder, Bond Blacktop, Inc.

Attachment

Action – It is recommended that the City Council, by motion, approve the plans and specifications and by resolution, accept the bid and award the contract to Bond Blacktop, Inc. for 2016 Street Slurry Seal Program, Project 1117.

NONCONSENT

F.2 Authorization for the City Manager to sign a Memorandum of Understanding and a Framework Agreement with Pacific Gas & Electric Company regarding implementation of the Community Pipeline Safety Initiative in the City of Newark - from City Manager Becker. (MOTION)

Background/Discussion – Pacific Gas & Electric Company (PG&E) is pursuing a project that it calls the "Community Pipeline Safety Initiative". This project involves the removal of certain trees, vegetation, and structures that are located in close proximity to PG&E's high pressure gas transmission pipelines. PG&E's stated goal for this statewide project is to improve gas pipeline safety and reliability for their customers and the community.

During the March 10, 2016 City Council meeting, PG&E representatives presented the Council with an overview of the Pipeline Safety Initiative. After the presentation, the City Council asked a number of questions and requested additional information regarding various aspects of the project including: private property assessment and remediation processes; the location and size of gas pipelines within the City; the location and status of automatic shut-off valves; maintenance and inspection processes, and community outreach efforts. PG&E agreed to respond to the Council's questions in a timely manner. In addition, the Council directed staff to work with PG&E to develop an agreement that would codify the party's obligations with regard to tree and vegetation removals within the public right-of-way.

On April 15, PG&E sent a letter to the City Manager providing the information that the Council requested. The letter also expressed PG&E's commitment to work with the City to reach an agreement that would guide the implementation of the Pipeline Safety Initiative in Newark and be respectful of the City's policies and goals. The letter is attached to this report.

City staff and PG&E and have reached agreement on a Memorandum of Understanding (MOU) that addresses the issues identified above. This MOU is similar to agreements that PG&E has executed with other communities in their service area. It includes provisions that would require PG&E to follow City ordinances with regard to tree removals, obtain encroachment permits, perform mitigation measures, provide community notification of work to be performed, and reimburse the City for staff time related to this project. It also includes a provision that requires private property owner agreement prior to any removal of trees, structures, or other items within their easement. This would include restoration as well as any compensation to be provided to the property owner.

The PG&E/Agency Framework Agreement that is referenced and attached to the MOU was negotiated in 2014 between PG&E and representatives from cities in Alameda and Contra Costa County. It will serve as a supplement to the proposed MOU and will provide additional guidance for the implementation of the "Pipeline Safety Initiative". Both agreements have been reviewed and approved by the City Attorney.

Staff and PG&E estimate that there are approximately 305 City-owned trees located in close proximity to PG&E's pipeline. Of these 305 trees, PG&E has identified 31 that are proposed for removal. Staff will work with PG&E under the provisions of the Agreement to determine appropriate tree removals, replacements, and financial compensation.

PG&E plans to do extensive outreach to property owners prior to initiating any pipeline safety work. PG&E will provide written notification to all customers within 500 feet of proposed gas pipeline safety work and more specific information to customers within 50 feet of proposed work areas. PG&E has already initiated outreach at community meetings with the Lake and Rosemont Homeowners Association and the Newark Unified School District

Attachments

Action - It is recommended that the City Council, by motion, authorize the City Manager to sign a Memorandum of Understanding and a Framework Agreement with Pacific Gas & Electric Company regarding implementation of the Community Pipeline Safety Initiative in the City of Newark

F.3 Adoption of a resolution placing a local one-half cent sales tax increase on the November 8, 2016 Election Ballot for voter consideration and related election procedures and consideration of the Ballot Measure language and participation in Ballot Arguments – from City Manager Becker. (RESOLUTION)

Background/Discussion – On May 28, 2015, the City Council approved a contract with Group 4 Architecture to study the potential replacement of the library building, police operations facility, Council chambers, and City administrative offices. This study

analyzed and documented: a program of uses; a space needs assessment both existing and future; an alternative site analysis process and the identification of a preferred site; a conceptual Civic Center site plan; building massing diagrams and strategies; a project cost model and schedule, and an assessment of funding sources and financing options. Public and stakeholder input was a key part of the study process. There were two community meetings and numerous stakeholder interviews. The effort also included three City Council work sessions with significant public comment.

On June 23, 2016, Group 4 Architecture presented their final report of the Civic Center Feasibility Study to the City Council. The study recommends the replacement of the police operations facility; City administration building, and library building on the existing site. In order to meet existing and future space needs and to enable modern efficient operations, the study recommends that the buildings should be sized at 24,250 square feet for the Police Department, 23,000 square feet for the City Administration Building, and 26,000 square feet for the Library Building.

The Study also recommends that the co-location of the Newark Unified School District (NUSD) Administrative Offices should be considered in the future detailed design process. Group 4 Architecture, in consultation with NUSD, determined that 13,350 square feet of space would be needed. The District's dedicated space would be paid for and owned by NUSD and allow for shared use of Council/Board chambers, and meeting/training facilities.

The Study estimates that the total cost for the construction of these facilities (excluding the NUSD Administration Offices) will be $64 million dollars. The consultant evaluated a number of potential funding sources for the construction of the facilities including issuing a General Obligation Bond, issuing a Special Tax Bond, a Transient Occupancy Tax increase, and a one-half cent sales tax increase. The consultant concluded that a one-half cent local sales tax or a General Obligation Bond could raise the necessary funding for the construction of the facilities.

The Study recommends that the City proceed with detailed planning for a new Civic Center that can provide seismically safe, energy efficient, accessible, and cost-effective facilities to provide the citizens of Newark with needed public safety, administrative, cultural and educational services. After Council discussion and public comment, the Council voted unanimously to accept the Newark Civic Center Feasibility Study Final Report.

In conjunction with the Civic Center Feasibility Study, on April 28, 2016, the City Council directed staff to facilitate a public opinion poll to evaluate possible public support for a revenue measure to support construction of a new library building, police operations facility, and City administrative offices. The Council directed staff to focus the polling revenue options on a local sales tax increase or a general obligation bond.

On May 3, 2016, the City Manager signed an agreement with Godbe Research for consultant services for public opinion sampling and evaluation. Godbe Research

completed their work and presented the survey results to the City Council during the June 23, 2016 City Council meeting. In summary, the results indicated considerable support for a sales tax increase to support the construction of a new library building, police operations facility, and City administrative offices. This support was tied to improved public safety services and enhanced library services for all age groups. The results also indicated that a significant majority of those polled had a favorable opinion of the job the City of Newark is doing in providing City services and in managing and spending taxpayer dollars. Majority support for a General Obligation Bond was not indicated in the polling results.

At the end of the presentation, the City Council accepted the results of the public opinion polling and directed staff to return at a future City Council meeting with the necessary actions to place a measure on the November 8, 2016 ballot to allow voters to consider a local one-half cent sales tax increase.

Election Actions

In order to place a proposed local sales tax increase ordinance on the ballot for the November 8, 2016 election, there are five matters that require Council direction. First, Council needs to approve the language for the ballot question. Second, Council needs to consider a resolution requesting the services of the Registrar of Voters of Alameda County to place the local sales tax ordinance on the November 8, 2016, ballot. Third, Council needs to direct the City Attorney to submit an impartial analysis to the City Clerk. Fourth, Council needs to determine the process for submission of an argument in favor of the measure. Fifth, Council needs to determine if rebuttals to arguments will be allowed and determine the process for submission of rebuttal arguments.

Ballot Question

The State Elections Code requires the ballot measure to be printed in the ballot pamphlet in the form of a "yes or no" ballot question of no more than 75 words. The ballot question must include a true and impartial statement of the ballot measure. The ballot question for City Council consideration, which is within the 75-word limit, is as follows:

"To upgrade City of Newark facilities and services, including replacing the seismically unsafe police operations/emergency operations center to survive an earthquake; providing updated crime-fighting technology; replacing aging library/city facilities with buildings meeting safety codes; providing disabled access and senior/teen/children's programs; and other facilities and services; shall the City of Newark enact a one-half cent sales tax, providing $3,500,000 annually, for 25 years, with annual audits, independent citizens' oversight, and all funds spent locally?"

Ballot Impartial Analysis, Arguments, and Rebuttals

The State Elections Code provides for the City Council to direct the City Attorney to prepare an impartial analysis of no more than 500 words, showing the effect of the measure on existing law. This must be submitted to the City Clerk, as the Elections Official, by 4:00 p.m. on Thursday, July 28, 2016.

The State Elections Code allows the City Council to determine whether to author an argument in favor of the ballot measure. Arguments of no more than 300 words each for and against the ballot measure can then be included in the Sample Ballot and Voter Information Pamphlet. The arguments must be submitted to the City Clerk, as the Elections Official, by 4:00 p.m. on Thursday, July 28, 2016.

The State Elections Code also allows the City Council to determine whether to allow rebuttals. Any rebuttals, of no more than 250 words, must be submitted to the City Clerk, as the Elections Official, no later than ten days after arguments are due. The tenth day following the due date for arguments falls on Sunday, August 7 so it rolls over to the next business day of Monday, August 8, 2016 by 4:00 p.m. If there is no argument put forward in opposition to the ballot measure, then there will be no rebuttal.

The arguments can be authored by a maximum of five eligible voters. The code also requires that only one argument for and one argument against each ballot measure will be accepted by the Elections Official, and provides for an orderly process in determining who is eligible to submit a statement. If more than one argument for or more than one argument against the measure is received by the deadline, per the Elections Code, the City Clerk must select only one argument for and one argument against, giving preference and priority in the following order to:

1. The legislative body, or member or members of the legislative body authorized by that body.
2. The individual voter, or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors or proponents of the measure.
3. Bona fide associations of citizens.
4. Individual voters who are eligible to vote on the measure.

The City Council has several options regarding the preparation of ballot arguments. In order for the City Council to authorize an argument to be given preference, as identified above, the Council may either: (1) author an argument in favor of the measure as a whole body (subject to Brown Act considerations) or (2) authorize up to two Council members to author and sign the argument on behalf of the entire City Council. If the second option is chosen the argument could also be signed by community members eligible to vote in the election as long as the total number of signatures does not exceed five. If the Council chooses option (2) the Council will have delegated full authority to the identified Council Member(s) to author the measure and it would not be necessary to return to the whole Council at a special meeting to finalize the language of the argument. Alternatively, the City Council may choose to have other members of the Newark community who are bona fide sponsors or proponents author the argument, in which case the second priority position for acceptance.

Staff recommends repeating the process used for the 2014 election ballot and select the second option and authorize the Mayor to sign the argument on behalf of the City Council along with four other community members of his choosing.

Recommendation
It is recommended the City Council approve the ballot language as presented and place an ordinance on the November 8, 2016 ballot to increase the local sales tax by one-half cent. Based on current sales tax revenue levels, if adopted, this measure will provide approximately $3.5 million per year in additional sales tax revenue and the sales tax increase would be in place for 25 years.

It is further recommended that the City Attorney be directed to prepare the impartial analysis of the measure; the Mayor be designated to author and sign a ballot argument on behalf of the City Council for the measure along with four other community members who are proponents; rebuttal arguments be allowed; and if there is an argument submitted in opposition to the measure, that the Mayor be authorized to author and sign a rebuttal argument, along with four other community members who are proponents.

Attachment

Action - It is recommended that the City Council, by resolution, take the following actions:

1. Approve the ballot question language.
2. Submit a one-half cent sales tax increase ordinance to the voters at the November 8, 2016 election, identifying the language of the ballot question, requesting the Board of Supervisors of the County of Alameda to authorize the Alameda County Registrar of Voters to place the ordinance on the ballot.
3. Direct the City Attorney to prepare the impartial analysis of the measure.
4. Authorize the Mayor to author and sign, on behalf of the City Council, the ballot argument and include the signatures of four other community members who are proponents of the measure.
5. Allow rebuttal arguments and authorize the Mayor to author and sign, on behalf of the City Council, a rebuttal if an argument in opposition to the ballot measure is submitted and include the signatures of four other community members who are proponents of the measure.

G. CITY ATTORNEY REPORTS

G.1 Discussion of Draft Joint Powers Agreement for Alameda County Community Choice Aggregation Energy Program – from City Attorney Benoun. (MOTION)

Summary - Next month the Alameda County Board of Supervisors is expected to consider adopting a Joint Powers Agreement ("JPA") to implement a countywide "Community Choice Aggregation Energy Program". County Counsel provided the City Attorneys for the all cities in Alameda County a draft of the JPA ("**Attachment 1**") and has requested feedback from each of the cities prior to the Board of Supervisors taking action on the draft JPA.

This report will provide an overview of the proposed energy program as well as highlight some of the substantive provisions contained in the draft JPA. While City staff is able to provide comment on technical and non-substantive matters, staff believes that there are several policy matters that the Council should review and, if the Council deems necessary, direct staff to provide feedback to the County prior to the County's consideration of the JPA.

Background - On April 14, 2016, Alameda County planning staff and their consultants presented the City Council with an overview of the proposed Alameda County Community Choice energy program. A copy of that presentation is provided as "**Attachment 2**". That presentation, in summary, defined choice energy programs, explained their benefits, projected a timeline for formation of a JPA to govern this program, and provided anticipated implementation dates.

As articulated by the County, a community choice aggregator ("CCA") supplies electricity (not gas) to energy customers through wholesale purchase contracts and/or through ownership and operation of electrical power generating plants. However, the delivery of such power (specifically the transmission, distribution, metering, billing, and customer service) remains with the incumbent utility, which in this case is the Pacific Gas & Electric Company ("PG&E"). The County reports that the benefits of a local aggregation plan include increased renewable energy at equal or competitive rates and an energy provider that is controlled locally by a publicly accountable board of directors.

State law allows cities and counties to create the CCA through a JPA. The JPA then purchases electrical power on a community-wide basis by pooling the buying power of the individual customers within their jurisdictions. Four such programs have been established in California, specifically in the counties of Marin, Sonoma, and San Francisco, as well as the city of Lancaster.

The creation of the CCA is accomplished through a public process. First, participating cities must enact ordinances that form the JPA that governs the CCA. Second, the CCA is required to prepare an implementation plan that must be approved by the California Public Utilities Commission. Third, the CCA is required to contract for energy delivery with the incumbent provider's existing delivery network, which in this case is PG&E.

From the customer's perspective, the transition should be seamless. The only change should be line items on the energy bills showing the charge from the CCA and the transmission fee charged by the utility company for delivering the electricity supplied by the CCA. According to the County, the CCA should be able to provide local, renewable energy at rates less than, or comparable to, previous rates charged by the existing utility company.

Prior to launch of the program and as required under State law, the CCA should give customers 2 notices within 60 days indicating that he/she can "opt-out" of the upcoming program. If the customer does not opt-out, then, pursuant to State law, the customer would be automatically enrolled in the new energy program. After enrollment, the customer should receive two additional notices, both indicating that she/he can opt-out at no cost.

Discussion - In June 2014, the Alameda County Board of Supervisors allocated $1.32 million to explore the creation of an Alameda County Choice Aggregation energy program, which will be reimbursed by the JPA if the program is launched. Alameda County planning staff evaluated the feasibility and assembled a Steering Committee consisting of approximately 40 members, including a representative from each city within Alameda County and stakeholders from various environmental and labor organizations. Councilmember Hannon serves as the City's representative to the Steering Committee.

The timeline for the implementation of this program is as follows:

Adoption of the JPA by the County:	August 2016
Cities to Adopt JPA:	September – November 2016
First JPA Meeting:	January 2017
Launch and Phase-In of Program:	Summer – Fall 2017

The County recently provided the City Attorneys with an updated draft JPA, along with a technical study assessing the feasibility of the program. The JPA for the Marin Energy Authority, which was established in 2008, served as the starting point for drafting the attached JPA. Several revisions were also made at the request of the Steering Committee.

The City Attorneys have also provided County Counsel with technical comments on the form of the draft JPA. However, the draft JPA contains several policy considerations that the Council should review at this juncture to determine if there are any comments or concerns that need to be conveyed to the County so that the County can consider them prior to taking any action on the JPA.

The decision of whether Newark should join the CCA will occur later this fall after staff has had the opportunity to review the lengthy materials associated with this program, including all of the technical reports, and present them to the Council for review and consideration. The purpose of this report is not to discuss and analyze the impacts that a CCA would have on Newark and its community, but rather to discuss the draft JPA so that the Council's comments, if any, can be relayed to the County.

There are 7 policy considerations that are highlighted below. They are not discussed in any particular order.

Consideration #1: Advisory Committee (Section 4.8.1)

The draft JPA calls for the creation of a "Community Advisory Committee" consisting of 9 members "who represent a diverse cross-section of interests and skill sets" and who shall

"advise the Board of Directors on all subjects related to the operation of the CCA Program". The Board determines if any committee members receive payment for their services and reimbursement of their expenses.

This provision does not specify how the committee members are selected, nor does it ensure all public agencies within Alameda County are represented on the Committee.

Consideration #2: Advisory Committee Chair Serving as "Ex Officio Member to the Board"

At a meeting last week with County Counsel and the City Attorneys, County Counsel represented that there was a "consensus" of the Steering Committee to have the chair of the Advisory Committee serve as an "ex officio member" on the Authority's Board of Directors. As explained to the City Attorneys, this person would not have any voting rights but would be able to attend Board meetings and provide comments. Because this issue recently arose, it is not reflected in the attached draft JPA, but it is expected to be included in the next draft.

This concept is important because it could allow an unelected community member who may not be accountable to the electorate to assist the Board with deliberation and influence their voting.

Consideration #3: Voting "Shares" (Sections 11.2; 1.1.21 and .22; and Appendix A)

The draft JPA provides for two types of votes – a "percentage vote" and a "voting shares vote". Except for certain matters requiring a supermajority vote (discussed below), all Board action must be taken by "percentage vote".

A "percentage vote" is defined as an affirmative vote of a majority of the Board of Directors. In other words, each agency that each Director represents receives one vote. However, if a matter is approved by a percentage vote, then two Directors may request that a "voting shares vote" be immediately held. (The attached draft provides that *four* Directors may request the "voting shares vote". However, County Counsel recently indicated that threshold in the next iteration of the draft JPA will be reduced from four to two at the request of the larger Cities.)

A "voting shares vote" is a weighted vote by the Board using a formula based on the energy use within each Director's jurisdiction. Stated differently, jurisdictions with higher energy use will receive a larger weighted vote. To approve an action that was taken by a percentage vote, the voting shares vote must be more than 50%. If the 50% threshold is not met under this voting shares vote, then the action taken by the Board under the percentage vote does not pass.

A voting shares vote may also be used to resolve percentage votes that are tied.

The County has provided the cities with a recent technical study, which includes a forecast of the energy demands of the various jurisdictions ("**Attachment 3**"). If each agency elects to participate in the energy program, then the voting shares will be weighted as follows:

JURISDICTION	PROJECTED ENERGY USE (MWh)	VOTING SHARES VOTE
Oakland	2,005,388	24.88 %
Fremont	1,306,713	16.18 %
Hayward	813,048	10.11 %
Berkeley	684,455	8.48 %
Pleasanton	529,114	6.55 %
San Leandro	516,830	6.40 %
Unincorporated	513,917	6.37 %
Livermore	498,218	6.17 %
Union City	356,019	4.30 %
Dublin	297,219	3.68 %
Newark	258,720	3.20 %
Emeryville	203,591	2.52 %
Albany	57,726	0.71 %
Piedmont	32,768	0.41 %

The draft JPA also recognizes that the Authority's membership may change as agencies decide to join or withdraw. Any change in the membership would affect the voting balances above.

Consideration #4: Supermajority Votes (Section 8.4)

The draft JPA provides that it may only be amended by a two-thirds vote. However, amendments to the above voting provisions require a three-quarters vote. These supermajority thresholds apply to both the percentage vote and, if triggered by two Directors, the voting shares vote.

Also, the draft JPA authorizes the Board to adopt "Operating Rules and Regulations", which governs many of the day-to-day rules and procedures for the JPA, including regulating the Chief Executive Officer (presumably a paid employee). The adoption of the Operating Rules and Regulations itself requires a majority vote, but those Operating Rules & Procedures could spell out action items that require supermajority votes.

These provisions would presumably tend to preclude amendments that are not supported by a significant portion of the agencies.

Consideration #5: *Early* Termination Costs (Section 7.3)

As discussed above, County staff anticipates that the Board of Supervisors will consider adopting the JPA later this month and that the cities will consider adoption this Fall. If adopted, then the new Authority would hold its first meeting in January 2017 and the program is expected to launch and be phased-in later next year.

Prior to the launch, the Authority must provide all member agencies with a report comparing the estimated new electrical rates with the existing rates, in addition to comparing the estimated greenhouse gas emissions rate and the estimated renewable energy to be used.

Within thirty (30) days of receiving this report, any jurisdiction can elect to immediately withdraw, but only if any of the following three conditions occur:

(1) The Authority is unable to provide total electrical rates, as part of its baseline offering to customers, that are equal to or lower than PG&E; or

(2) The Authority is unable to provide electricity in a manner that has a lower greenhouse gas emissions rate than PG&E; or

(3) The Authority will use less renewable energy than PG&E.

The draft JPA provides that any agency that terminates early will not be responsible for any liabilities or obligations of the Authority.

This language is significant because it allows jurisdictions to withdraw prior to the launch of the program but only upon thirty days and only in certain situations.

Consideration #6: Withdrawal Costs Charged to Agency *After* Launch (Section 7.2)

As for withdrawing from the program *after* it launches, the draft JPA provides that any jurisdiction may withdraw effective the beginning of the Authority's fiscal year by giving 180 days' notice. If this occurs, then the withdrawing jurisdiction "shall" be responsible for "any claims, demands, damages, or liabilities arising" from their membership. County counsel has explained that this provision refers to general public entity liability, such as workers compensation matters or general liability claims.
Additionally, any withdrawing jurisdiction "**shall** be responsible for any damages, losses or costs incurred by the Authority resulting from the Party's withdrawal, including but not limited to losses from the resale of power contracted for by the Authority to serve the Party's load." (Emphasis added.)

This language is important because if a jurisdiction elects to withdraw after launch, not only will that jurisdiction be responsible for its general liabilities in connection with its membership, but it will also be responsible for all costs incurred as a result of its withdrawal. Unfortunately, neither County staff nor its consultants can provide any quantification of these costs at this time.

Consideration #7: Start-Up Costs Charged if Agency Joins *After* Launch and Vote (Section 3.1)

As indicated above, the County Board of Supervisors has allocated $1.32 million to pay for "start-up" costs associated with launching this program. The County estimates that total start-up costs equate to $3.25 million. The draft JPA obligates the County to pay for all start-up costs, but authorizes the Authority to establish a "reasonable time period" after launch over which such costs are recovered in customer charges for electric services. (Section 6.3.2)

Agencies that elect to join the CCA *prior* to program launch will not be financially responsible for the start-up costs. However, if an agency *declines* to initially participate in the program, but then later decides to join, the admission of that agency must be voted upon by the Board of the JPA (*and subject to the voting rules outlined above*).

Also, any newly joining agencies could be charged a "membership fee" to be established by the Board. The County's consultant explained that membership fee could be used by the Authority to recover retention of technical consultants to add the new agency to the program, as well as mailing costs of the notices.

Further, the draft JPA authorizes the Authority to impose "any condition" on a newly joining agency.

These provisions are important because they show that initial members do not have to pay any start-up costs (the County is paying all of them), but it could be burdensome for agencies to join the CCA after launch since any newly admitted party may have to pay a membership fee, satisfy certain conditions imposed by the JPA, and the admission will require an affirmative vote from the Directors in compliance with the voting provisions discussed above.

Conclusion - At the Council meeting, staff will provide an overview of these substantive policy provisions contained in the draft JPA as discussed above. Any comments, changes, and direction regarding any of these considerations (or *any* other language in the draft JPA or any concerns regarding the program) will be relayed to the County.

Attachments:

Attachment 1: Draft "East Bay Community Energy Authority Joint Powers Agreement"

Attachment 2: "Community Choice Energy for Alameda County Status Update", April 14, 2016

Attachment 3: "Appendix A" to the "Technical Study for Community Choice Aggregation Program in Alameda County"

Action - It is recommended that the City Council receive this report and, by motion, direct the City Attorney to convey the Council's comments, changes, and concerns, if any, regarding the policy considerations contained in the draft Joint Powers Agreement to the County Counsel's Office of Alameda County.

H. ECONOMIC DEVELOPMENT CORPORATION

I. CITY COUNCIL MATTERS

J. CITY COUNCIL ACTING AS THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY

K. ORAL COMMUNICATIONS

L. APPROPRIATIONS

Approval of Audited Demands for the City Council meeting of July 14, 2016. (MOTION)

M. CLOSED SESSION

N. ADJOURNMENT

Pursuant to Government Code 54957.5: Supplemental materials distributed less than 72 hours before this meeting, to a majority of the City Council, will be made available for public inspection at this meeting and at the City Clerk's Office located at 37101 Newark Boulevard, 5th Floor, during normal business hours. Materials prepared by City staff and distributed during the meeting are available for public inspection at the meeting or after the meeting if prepared by some other person. Documents related to closed session items or are exempt from disclosure will not be made available for public inspection.

For those persons requiring hearing assistance, please make your request to the City Clerk two days prior to the meeting.