



### Staff Report Item 11

**TO:** East Bay Community Energy Board of Directors

**FROM:** Leah Goldberg, General Counsel

**SUBJECT:** Amendments to the Joint Powers Agreement

**DATE:** June 20, 2018

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#### **Recommendation**

Adopt a resolution amending the East Bay Community Energy Authority (“EBCE”) Joint Powers Agreement (“JPA”) to:

- A. Allow a Board Member or alternate who is no longer on the governing body of a member agency to continue to serve on the EBCE Board of Directors until a new Director or alternate is appointed by the member agency;
- B. Provide for up to three alternates to serve on the Community Advisory Committee (“CAC”) in the event that regularly appointed committee members cannot attend;
- C. Appoint the Chair and Vice Chair of the EBCE Board in June to serve consistent with the EBCE fiscal year, which is July 1 to June 30; and
- D. Amend the timeline for preparation of the Local Development Business Plan (“LDBP”).

#### **Background and Discussion**

Section 8.4 of the EBCE JPA allows amendments to the JPA by a two-thirds affirmative vote of the entire Board (i.e., eight Board Members) after a 30-day notice to all members of the proposed amendments. On October 18, 2017, the EBCE Board adopted a process for considering policy and JPA amendments. That policy obligates the Chief Executive Officer (“CEO”) to bring potential JPA amendments to the Board in March and September for discussion. A majority of the Board must indicate support for a policy amendment or JPA amendment for the proposed amendment to be noticed for Board action.

On March 21, 2018, the Board discussed proposed amendments to the JPA and directed staff to draft the proposed amendments and provide notice to member agencies as required by the JPA. These amendments were drafted and on May 17, 2018, the Clerk to the Board provided written notice to each member agency in compliance with the JPA. EBCE has not received any comments or responses from any of the member agencies on the proposed JPA amendments.

## **Analysis**

The proposed amendments modify the JPA in four areas: First, the modifications to sections 4.2.1 and 4.3 would allow a Board Member or alternate who is no longer an elected official of a member agency to continue serving on the EBCE Board for up to 90 days or until the member agency appoints another member of the legislative body to serve on the EBCE Board of Directors as a Director or an alternate. The goal behind this amendment is to allow for continuity while members select new Directors and alternates to serve on the EBCE Board.

Second, the amendment to section 4.9 of the JPA provides for a pool of three alternates to the CAC. It also provides a process for CAC members who cannot attend a meeting to notify and secure a commitment from an alternate to attend in his or her place. During the past few months the CAC has had difficulty holding meetings due to lack of a quorum. The goal of this amendment is to alleviate this problem by allowing for alternates to step in when CAC members are unavailable.

Third, the amendment to section 4.14.1, changes the timing for election of the Board Chair and Vice Chair from January to June. The terms of office for those positions would run concurrently with the EBCE fiscal year. Several good reasons exist for this change, not the least of which is the fact that new councilmembers are typically sworn in in January. In some years, the EBCE January Board meeting will occur before the swearing in of new councilmembers meaning that the EBCE Board may change composition shortly after electing a Chair and Vice Chair. This would deprive new EBCE Board Members from voting on these positions. Alternatively, new Board Members could be asked to vote on a Chair or Vice Chair at their first meeting. Moving the election to June allows for the Board Members to work together for a few months before electing a Chair and Vice Chair.

The final amendment deletes the timing for completion of the LDBP. The JPA set a very aggressive timeline for adoption of the LDBP—one that would have dramatically curtailed public input. The draft plan was only recently made available for final public review. EBCE intends to conduct additional public review coupled with environmental review and then bring the LDBP to the Board for review and approval as soon as practicable.

## **Fiscal Impact**

There is no fiscal impact associated with these amendments.

## **CEQA**

Not a project.

## **Attachments**

- A. Resolution to Amend Joint Powers Agreement
- B. Amendments Joint Powers Agreement

**RESOLUTION NO. \_\_\_\_\_**  
**A RESOLUTION OF THE BOARD OF DIRECTORS**  
**OF THE EAST BAY COMMUNITY ENERGY AUTHORITY**  
**TO AMEND THE JOINT POWERS AGREEMENT**

THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY DOES HEREBY FIND, RESOLVE AND ORDER AS FOLLOWS:

Section 1. The East Bay Community Energy Authority (“EBCE”) was formed on December 1, 2016, under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq.*, among the County of Alameda, and the Cities of Oakland, Emeryville, Berkeley, San Leandro, Union City, Hayward, Fremont, Castro Valley, Dublin, Livermore and Albany to study, promote, develop, conduct, operate, and manage energy and energy-related climate change programs in all of the member jurisdictions.

Section 2. The Joint Powers Agreement provides for amendment of the Joint Powers Agreement following at least 30-days written notice to the member jurisdictions containing the language of the proposed amendment. Notice of the proposed amendments was provided to the member jurisdictions in writing on May 17, 2018.

Section 3. Approval of Joint Powers Agreement Amendments requires an affirmative vote of two-thirds affirmative votes of the entire Board of Directors, which vote was taken on June 20, 2018.

Section 4. The Board of Directors hereby finds and declares that certain provisions in the EBCE Joint Powers Agreement require amendment. Specifically, the Board of Directors finds that the EBCE’s business can be complicated and may require a new Director or Alternate time to learn the intricacies of EBCE’s business and that there is a benefit to allowing Directors or Alternates who no longer serve on the Governing Body of a Party to continue to service as a Director for up to ninety (90) days until the Party appoints a new Director or Alternate to represent that Party.

Section 5. The Board of Directors further finds that electing a Chair and Vice Chair towards the end of the Fiscal Year to begin serving on July 1, instead of at the beginning of January, allows newer Directors the opportunity to fully acquaint themselves with their colleagues on the Board of Directors before electing Chair and Vice Chair.

Section 6. The Board of Directors further finds that an effective Community Advisory Committee requires an active and involved membership that attend meetings; and that the Community Advisory Committee has had a difficult time obtaining a quorum in order to hold

regular meetings; and that in order to ensure that the Community Advisory Committee can hold regular meetings, it is necessary to have a pool of three alternates that can attend in the event one of the regular Community Advisory Committee members cannot attend.

Section 7. The Board of Directors further finds that timeline in the Joint Powers Agreement to complete a business plan was not realistic even though there has been significant effort to complete the business plan.

Section 8. The Board of Directors hereby approves the amendments to the Joint Powers Agreement as written in attachment A, and further directs the EBCE staff to notify the Parties that such amendments were duly adopted by a two-thirds vote of all Directors to be effective on July 1, 2018.

ADOPTED AND APPROVED this 20th day of June, 2018.

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Scott Haggerty, Chair

ATTEST:

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Stephanie Cabrera, Clerk of the Board

## Amendments to EBCE Joint Powers Agreement

1. Section 4.2.1 shall be amended to read in full as follows:

4.2.1 The governing body of each Party shall appoint and designate in writing one regular Director who shall be authorized to act for and on behalf of the Party on matters within the powers of the Authority. The governing body of each Party also shall appoint and designate in writing one alternate Director who may vote on matters when the regular Director is absent from a Board meeting. The person appointed and designated as the regular Director shall be a member of the governing body of the Party at the time of appointment but may continue to serve as a Director following his/her term as a member of the Party's governing body until a new Director is appointed pursuant to the timing in Section 4.3. The person appointed and designated as the alternate Director shall also be a member of the governing body of a Party and the alternate may continue to serve as an alternate following his/her term as a member of a Party's governing body until a new alternate is appointed pursuant to the timing in Section 4.3.

2. Section 4.3 shall be amended to read in full as follows:

4.3 **Term of Office.** Each regular and alternate Director shall serve at the pleasure of the governing body of the Party that the Director represents and may be removed as Director by such governing body at the time. If at any time a vacancy occurs on the Board because a Director is no longer a member of a Party's governing body, the Party shall appoint a replacement to fill the position of the previous Director in accordance with the provisions of Section 4.2.1 within ninety (90) days of the date that such Director is no longer a member of a Party's governing body or for any other reason that such position becomes vacant.

3. Section 4.9 shall be amended in full to read as follows:

4.9 **Community Advisory Committee.** The Board shall establish a Community Advisory Committee consisting of nine members and three alternates, none of whom may be voting members of the Board. One alternate from the pool of three alternates may take the place of a Community Advisory Member when a Community Advisory Committee member cannot attend a meeting. The Community Advisory Committee member that is unable to attend a meeting must notify the alternates of their inability to attend and obtain confirmation that one of the Alternates can attend the Community Advisory Committee meeting in that member's place. The function of the Community Advisory Committee shall be to advise the Board of Directors on all subjects related to the operation of the CCA Program as set forth in a work plan adopted by the Board of Directors from time to time, with the exception of personnel and litigation decisions. The Community Advisory Committee is advisory only, and shall not have decision making authority, or receive any delegation of authority from the Board of Directors.

The Board shall publicize the opportunity to serve on the Community Advisory Committee and shall appoint members of the Community Advisory Committee and Alternates from those individuals expressing interest in serving, and who represent a diverse cross-section of interests, skill sets and geographic regions. Members of the Community Advisory Committee shall serve staggered four-years terms (the first term of three of the members shall be two years, and four years thereafter), which may be renewed. A member or Alternate of the Community Advisory Committee may be removed by the Board of Directors by majority vote. The Board of Directors shall determine whether the Community Advisory Committee members will receive a stipend or be entitled to reimbursement of expenses.

4. Section 4.14.1 shall be amended to read in full as follows:  
4.14.1 **Chair and Vice Chair.** Prior to the end of the fiscal year, the Directors shall elect, from among themselves, a Chair, who shall be the presiding officer of all Board meetings, and a Vice Chair, who shall serve in the absence of the Chair. The newly elected Chair and Vice Chair shall commence serving in those capacities on July 1, except that no separate election shall be required for Fiscal Year 2018-2019 and the Chair and Vice Chair elected in 2018 shall continue to serve until the end of the 2018-2019 Fiscal Year. The Chair and Vice Chair shall hold office for one year and serve no more than two consecutive terms, however, the total number of terms a Director may serve as Chair or Vice Chair is not limited. The office of either the Chair or Vice Chair shall be declared vacant and the Board shall make a new selection if:  
(a) the person serving dies, resigns, or ceases to be a member of the governing body of a Party that person represents, except if the person is continuing to serve on the Board after that person no longer serves on the governing body in conformance with section 4.2.1.; (b) the Party that the person represents removes the person as its representative on the Board, or (c) the Party that the person represents withdraws from the Authority pursuant to the provisions of this Agreement.
5. Section 5.4 shall be amended to delete the second to the last sentence that reads:  
“The Business Plan shall be completed by the Authority no later than eight (8) months after the seating of the Authority Board of Directors.”