



CITY COUNCIL AGENDA STATEMENT



July 9, 2019

File ID: 19-0276

TITLE

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA APPROVING THE AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT BY AND BETWEEN THE CITY OF CHULA VISTA AND THE SAN DIEGO UNIFIED PORT DISTRICT FOR THE CHULA VISTA BAYFRONT FACILITIES FINANCING AUTHORITY; CONSENTING TO THE APPOINTMENT OF THE CITY ATTORNEY TO SERVE AS CO-COUNSEL TO SUCH AUTHORITY; AND APPOINTING A COUNCILMEMBER TO ITS GOVERNING BOARD

RECOMMENDED ACTION

Council adopt the resolution.

SUMMARY

On May 8, 2012, the City of Chula Vista (the "City") and the San Diego Unified Port District (the "District") approved and entered into a Financing Agreement for the Chula Vista Bayfront Master Plan (CVBMP), which identified the rights and obligations of each agency, with respect to the financing, development, and construction of CVBMP public improvements, infrastructure, and a convention center. The Financing Agreement established that the City and the District would form a Joint Exercise of Powers Authority to provide for or facilitate the financing of the convention center and other public improvements.

On May 13, 2014, the City of Chula Vista adopted Resolution 2014-070 approving a Joint Exercise of Powers Agreement (the "JEPA Agreement") forming the Chula Vista Bayfront Facilities Financing Authority (the "Authority") to implement common objectives of the parties related to the development of the CVBMP. On September 25, 2018, the Council adopted Resolution 2018-200 approving an Amended and Restated Joint Exercise of Powers Agreement and appointing the Mayor and Councilmember Aguilar to the Governing Board of the Authority. The District did not take action on the Amended and Restated Agreement approved by the City Council. A revised Amended and Restated Agreement has been drafted and is recommended for Council approval. In addition, Councilmember Aguilar no longer holds Council office, necessitating a new appointment to the Governing Board. Lastly, the Revised and Amended Agreement provides for the City Attorney and the Port Attorney to the District to act as co-counsel to the Authority, with the consent of the respective bodies. An action consenting to the appointment of the City Attorney to act as co-counsel to the Authority is recommended.

ENVIRONMENTAL REVIEW

The Development Services Director has determined that adopting an Amended and Restated Joint Exercise of Powers Agreement, consenting to the appointment of the City Attorney to serve as co-counsel to the Authority, and appointing a new Governing Board Member are not projects as defined under Section

15378(b)(5) of the California Environmental Quality Act (CEQA) Guidelines because these actions involve only an organizational or administrative activity of government that will not result in a direct or indirect physical change in the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the activity is not subject to CEQA.

BOARD/COMMISSION/COMMITTEE RECOMMENDATION

Not applicable.

DISCUSSION

On May 8, 2012, the City and the District entered into a Bayfront Master Plan Financing Agreement (the “Financing Agreement”) for the CVBMP. The Financing Agreement identified the rights and obligations of each agency, with respect to the financing, development, and construction of public improvements, infrastructure, and a planned convention center in the CVBMP. The Financing Agreement was subsequently amended and restated to recognize additional rights and obligations of the respective agencies, effective June 20, 2017 (the “Amended and Restated Financing Agreement”). The Financing Agreement established that the City and the District would form a Joint Exercise of Powers Authority (JEPA) to provide for or facilitate the financing of the convention center and other public improvements.

Pursuant to authority granted by Article 1 (commencing with §6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the “JPA Act”), the City entered into a JEPA Agreement with the District, effective May 1, 2014 (the “Original JEPA Agreement”). The Original JEPA Agreement established the Authority.

The Authority was formed for the sole purpose of assisting in the financing and refinancing of capital improvement projects of the CVBMP, as contemplated by the Financing Agreement. The anticipated sources of funds to secure debt issued by the Authority are addressed in the Amended and Restated Financing Agreement, and include, but are not limited to: District ground lease revenues, lease payments payable from public funds, City sales taxes, City transient occupancy taxes (TOT), and additional occupancy-based revenues. Pursuant to California law and the JEPA Agreement, the Authority will be a public entity separate and apart from the City and District. The debts, liabilities, or obligations of the Authority will not be the debts, liabilities, or obligations of the City, the District, or any representative of the City or District serving on the Governing Board of the Authority.

September 25, 2018, the Council adopted Resolution 2018-200 approving an Amended and Restated Joint Exercise of Powers Agreement (the “2018 Amended and Restated JEPA Agreement”) and appointing the Mayor and Councilmember Aguilar to the Governing Board of the Authority. The District did not take formal action on the 2018 Amended and Restated Agreement, as approved by the City Council.

Subsequent to the Council’s September 2018 action, representatives of the District and City have worked collaboratively to further refine the proposed structure and authority of the JEPA. In that process, the need for Authority bylaws (the “Bylaws”) to provide additional clarity was identified. A revised Amended and Restated Joint Exercise of Powers Agreement (the “2019 Amended and Restated JEPA Agreement”) has been drafted and is presented for Council’s consideration as Attachment 1 to this report. Draft Authority

Bylaws are provided for Council's information as Attachment 2. The adoption of Bylaws will be a future action of the JEPA Governing Board. A redline comparison of the 2018 and 2019 Amended and Restated JEPA Agreements is provided as Attachment 3.

In their totality, the Amended and Restated JEPA Agreement and the draft Bylaws make the following substantive changes, as compared with the Original JEPA Agreement (not an exhaustive list):

- Clarifies that the Authority's jurisdiction is limited to the CVBMP Area; and
- Clarifies that the purpose of the Authority is the financing and refinancing of capital improvement projects of the CVBMP, as contemplated by the Amended and Restated Financing Agreement; and
- Requires the Governing Board of the Authority to hold at least one regular meeting each year; and
- Allows for meetings of the Governing Board to be held by teleconference, in accordance with the Brown Act; and
- Requires four members of the Governing Board for a quorum or to approve a motion, in place of a simple majority; and
- Provides for adoption of bylaws, if desired; and
- Provides for adoption of policies and procedures for the administration and operation of the Authority, if desired; and
- Modifies the term of the Governing Board Chair and Vice Chair from running concurrently with the term of the Mayor of the City to a one-year term, with allowances for successor selection; and
- Adds the office of Auditor, as required by statute; and
- Designates the Finance Director of the City as the Treasurer and the Auditor of the Authority; and
- Clarifies that the Authority shall bear all costs incurred in preparing any required audits; and
- Designates the City Attorney and the Port Attorney for the District as co-counsel to the Authority, subject to consent of the City Council and the Port Board of Commissioners, respectively; and
- Provides that the Authority shall, by resolution, adopt a procurement policy, which may be the procurement policy of the City, the District, or a policy that is separate from that of the City or the District; and
- Provides that the method of disposition of assets between the City and the District following dissolution will be subject to future agreement between the agencies; and
- Clarifies the terms under which the City and/or the District may withdraw from the Agreement; and
- Establishes the order of business for meetings of the Governing Board; and
- Provides parliamentary procedures; and
- Establishes a cost sharing framework for expenses incurred in administering the JEPA.

Governing Board

The Authority is a separate public entity, distinct from the City and the District, led by a Governing Board. The Governing Board will consist of five (5) members, to be appointed as follows:

- Two (2) members appointed by the City Council;
- Two (2) members appointed by the District Board of Commissioners; and
- One (1) member will be the Chula Vista appointed Port Commissioner.

Pursuant to Section 4.B of the Agreement, Board Members shall be designated by action of the City Council and the District Board of Commissioners, respectively. Board members must be members of the governing body or employees of the City or District, as applicable. The term of office as a Board Member shall terminate when such Board Member (i) shall be replaced by action of the City Council or the District Board of Commissioners, as applicable; or (ii) shall cease to be an employee of the City or District, as the case may be.

The Mayor and Councilmember Aguilar were appointed to the City's two seats on the Governing Board via Resolution 2018-200 on September 25, 2018. Councilmember Aguilar's term of office as a Board Member expired concurrent with her exit from City Council office on December 11, 2018. Appointment of a Councilmember to the City's second Governing Board seat is recommended.

DECISION-MAKER CONFLICT

Staff has reviewed the property holdings of the City Council members and has found no property holdings within 1,000 feet of the boundaries of the property which is the subject of this action. Consequently, this item does not present a disqualifying real property-related financial conflict of interest under California Code of Regulations Title 2, section 18702.2(a)(7) or (8), for purposes of the Political Reform Act (Cal. Gov't Code §87100, *et seq.*).

Staff is not independently aware, and has not been informed by any City Council member, of any other fact that may constitute a basis for a decision-maker conflict of interest in this matter.

CURRENT-YEAR FISCAL IMPACT

Adopting a resolution approving an Amended and Restated Joint Exercise of Powers Agreement, consenting to the appointment of the City Attorney to serve as co-counsel to the Authority, and appointing a Governing Board Member to the Authority has no net fiscal impact. All costs associated with preparing this report are included in the operating budget for the Development Services Department.

ONGOING FISCAL IMPACT

There is no ongoing fiscal impact as a result of this action.

ATTACHMENTS

1. Proposed Amended and Restated Joint Exercise of Powers Agreement
2. Draft Bylaws
3. Redline comparison of the 2018 and 2019 Amended and Restated Joint Exercise of Powers Agreements

Staff Contact: Tiffany Allen, Assistant Director of Development Services