



# City of San Leandro

Meeting Date: March 18, 2013

## Staff Report

---

**File Number:** 13-107 **Agenda Section:** CONSENT CALENDAR

**Agenda Number:** 8.L.

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Tom Liao  
Acting Community Development Director

**FINANCE REVIEW:** Not Applicable

**TITLE:** 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 retrofiting 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.

**PREPARED BY:** Sally Barros, Senior Planner, Community Development Department

ENERGY COUNCIL  
RULES OF PROCEDURE  
Adopted \_\_\_\_\_, 2013

Article 1  
General Provisions

- Section 1-1 Authority for Rules These rules apply to the Energy Council Board and Committees of the Board and are adopted pursuant to the Joint Exercise of Powers Agreement for the Energy Council effective March 29, 2013, as it may be amended from time to time (hereinafter, "JPA"). The provisions of said agreement are herein incorporated by reference.
- Section 1-2 Purpose of Rules The purpose of these rules is to provide for the orderly and fair conduct of the meetings of the Board and operations of the Council.

Article 2  
Organization of the Board

- Section 2-1 Composition of the Board The Board is composed of members and alternates appointed pursuant to the JPA. No member or alternate shall receive compensation for attending meetings of the Board or any Board Committee, but reimbursement of travel or other expenses may be made if the Board has adopted a policy governing such reimbursements.
- Section 2-2 Officers The Officers of the Board shall be a President, First Vice-President and Second Vice-President, who shall serve until the elections of their successors. No member may serve more than one full consecutive term of office as an Officer.
- Section 2-3 Election of Officers The Officers shall be elected at the regular meeting of the Energy Council in the month of June of each year. They shall be elected by the vote required for all Board actions as specified in the JPA, and shall serve from July 1 through June 30 of the following year. Notwithstanding the foregoing, the Board may select initial officers to serve from the time of the first Board meeting through June 30 of that year and those officers may be re-elected and serve as officers for the term beginning July 1 of that year.
- Section 2-4 Duties of President The President shall preside at all meetings of the Board and shall conduct the business of the board in the manner prescribed by these Rules. The President shall preserve order and

decorum and shall decide all questions of order subject to the action of a vote of the Board.

- Section 2-5 Duties of First and Second Vice-Presidents In the absence or inability of the President to act, the Vice Presidents shall perform the duties of the President in the order of the succession.
- Section 2-6 Executive Director The Executive Director of the Energy Council shall be the Executive Director of the Alameda County Waste Management Authority pursuant to the memorandum of understanding between the Energy Council and Authority approved April 24, 2013.
- Section 2-7 Duties of Executive Director The Executive Director or designee shall perform the following duties:
- (a) Attend each meeting of the Board;
  - (b) Maintain a record of all proceedings of the Board;
  - (c) Prepare an agenda for each meeting;
  - (d) Notify all Board members of the time and place of each meeting;
  - (e) Maintain all records of the Board;
  - (f) Serve as Secretary to the Board;
  - (g) Maintain records of the proceedings of committee meetings;
  - (h) Establish a Technical Advisory Group (“TAG”) consisting of at least one staff representative from each Agency to advise Energy Council staff on matters such as strategic planning, annual work plans, funding priorities, proposed program design, coordination with existing energy service providers and programs (e.g., East Bay Energy Watch), and other matters related to advancing sustainable energy initiatives. Energy Council staff shall cause summary minutes of all TAG meetings to be kept and shall, as soon as possible after each meeting, cause a copy of the summary minutes to be forwarded to each member of the Board and to each TAG representative. As matters discussed at the TAG are considered by the Board, Energy Council staff shall also include a summary of TAG input in the staff’s report on the matter to the Board. TAG members may also speak on any given matter in front of the Board.
  - (i) Perform other duties directed by law or the Board.

### Article 3 Meetings of the Board

- Section 3-1 Regular Meetings Regular monthly meetings will be held in conjunction with regular meetings of the Alameda County Waste Management Authority.
- Section 3-2 Cancellation and/or Reschedule of Regular Meetings Any regular meeting of the Board may be cancelled or rescheduled by the President, or the Executive Director on the direction of the President, no less than seven (7)

calendar days prior to the scheduled date of such meeting. Notification of cancellation or reschedule shall be mailed to all parties who are notified of regular meetings of the Board.

- Section 3-3 Special Meetings Special meetings of the Board may be called by order of the President or by a majority of the members. The order calling the special meeting shall specify the time of the meeting and the business to be transacted at such meeting.
- Section 3-4 Effect of Holiday If any meeting day or adjourned meeting day falls on a holiday, the meeting of the Board shall be specially scheduled by the Board.
- Section 3-5 Quorum A majority of the members of the Board shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn from time to time pursuant to Section 3-6 of these Rules.
- Section 3-6 Absence of a Quorum In the absence of a quorum, the members present shall adjourn the meeting to a stated time and place, and the absent members shall be notified. If all members are absent, the Executive Director shall adjourn the meeting to a stated time and place and notify all members pursuant to Section 3-7 of these Rules.
- Section 3-7 Notice of Meetings All meetings of the Board shall be subject to the provisions of the Ralph M. Brown Act, being Sections 54950, *et seq.* of the California Government Code, and other applicable laws of the State of California requiring notice of meetings of the Board.
- Section 3-8 Teleconferencing A Board member wishing to use teleconferencing should notify the Executive Director, or designee, of the teleconference location at least eight (8) days prior to the affected Committee/Board meeting. The teleconference location shall be accessible to the public. The Executive Director will identify the teleconference location in the agenda of the meeting and ensure posting of the agenda at the teleconference location. Votes at a Committee/Board meeting where teleconferencing is used will be taken by roll call.

#### Article 4 Conduct of Meetings

- Section 4-1 Order of Business The business of each meeting of the Board shall be transacted as far as is practicable in the following order:
- (a) Call to order;
  - (b) Roll call;
  - (c) Announcements by President;
  - (d) Approval of minutes of prior meetings;
  - (e) Consent calendar;



- (f) Open public discussion from the floor;
- (g) Regular calendar;
  - (1) Unfinished business;
  - (2) New business;
- (h) Member Comments and Communications; and
- (i) Adjournment.

The above order of business may be suspended or changed at any time upon order of the President. The consent calendar may contain those matters the nature of which have been determined by the Executive Director to be routine, and will be approved by a single action. Any item shall be removed from the consent calendar and placed for discussion on the regular calendar at the request of any member. The regular calendar shall contain all other matters and business. Open public discussion from the floor is provided for any member of the public wishing to speak on any matter within the jurisdiction of the Energy Council, but not listed on the agenda. Each speaker is limited to three minutes.

Section 4-2 Parliamentary Rules The rules and procedures set forth in Robert's Rules of Order are hereby adopted for the government of this Board in all cases not otherwise provided for in these Rules.

Section 4-3 Vote Required  
The vote required for Board action shall be as specified in the JPA. An abstention to vote by any member shall be construed as that member not voting on a particular matter.

Section 4-4 Alternate's Vote An agency alternate may vote on any matter under consideration only in the absence of the agency member from the meeting or as provided under Section 4-6 of these Rules.

Section 4-5 Roll Call Each roll call of the Board shall be in alphabetical order of the name of the agency, except that the President shall be called last.

Section 4-6 Roll Call Not Required The roll need not be called in voting upon a motion except when requested by a member. If the roll is not called, in the absence of objection, the President may order the motion unanimously approved.

Section 4-7 Voting Ineligibility Any Board member ineligible to vote on any matter under consideration by the Board shall leave the Board table before the matter is considered and refrain from participation in any action concerning the matter.

## Article 5 Meetings of Committees

Section 5-1 Committees: Specific Committees, Notice of Meetings and General Rules

The Board or President may establish Committees from time to time to advise the Energy Council. Committees shall be subject to these Rules. Any meeting of a Committee that constitutes a quorum of the Board shall be noticed as both a meeting of the Committee and a meeting of the Board. General rules pertaining to Committees are as follows:

- (1) Only Committee members are permitted to vote on matters before the Committee.
- (2) Committees are not empowered to take final agency action on behalf of the Board.
- (3) A majority of the Committee members present and voting is required for adoption of recommendations/actions.
- (4) Board members who are not Committee members may attend Committee meetings, but will not count toward formation of the quorum necessary to conduct the meeting.
- (5) In absence of a Board member appointed to a Committee that Board member's alternate shall serve as a member of the Committee exactly as if a regular appointee to the Committee.

Section 5-2 Committee Vacancy When a vacancy occurs on any Committee, the Board shall be notified and the Energy Council President shall recommend appointment of members to said Committee, subject to confirmation by the Energy Council Board.

Section 5-3 Cancellation and/or Reschedule of Regular Committee Meetings Any regular Committee meeting of the Energy Council may be canceled or rescheduled by the President, or the Executive Director with the consent of the President, no less than seven (7) calendar days prior to the scheduled date of such meeting. Notification of cancellation or reschedule shall be mailed to all parties who are notified of regular meetings of the Committee.

Section 5-4 Special Meetings Special Committee meetings may be called by order of the President or the Executive Director with the consent of the President or by a majority of the members of the Committee. The order calling the special meeting shall specify the time of the meeting and the business to be transacted at such meeting.

Section 5-5 Adjourned Meetings Any regular meeting of the Committee may be adjourned to any date prior to the date established for the next regular meeting. Any adjourned regular meeting is part of the regular meeting. Any special meeting may be adjourned, and any adjourned special meeting is part of the special meeting.

Section 5-6 Effect of Holiday If any meeting day or adjourned meeting day falls on a holiday, the meeting of the Committee shall be specially scheduled by the Committee.

Section 5-7 Absence of a Quorum In the absence of a quorum, the members present shall adjourn the meeting to a stated time and place, and the absent member shall be notified. If all members are absent, the Executive Director shall adjourn the meeting to a stated time and place and notify all members pursuant to Section 3-7 of these Rules.

Section 5-8 Teleconferencing A Committee member wishing to use teleconferencing should notify the Executive Director, or designee, of the teleconference location at least eight (8) days prior to the affected Committee meeting. The teleconference location shall be accessible to the public. The Executive Director will identify the teleconference location in the agenda of the meeting and ensure posting of the agenda at the teleconference location. Votes at a Committee meeting where teleconferencing is used will be taken by roll call.

**MEMORANDUM OF UNDERSTANDING  
FOR ADMINISTRATION OF THE ENERGY COUNCIL**

THIS MEMORANDUM OF UNDERSTANDING (MOU) is entered into by and between the Alameda County Waste Management Authority (hereinafter “Authority”), and the Energy Council and shall be effective as of \_\_\_\_\_, 2013 (“effective date”).

**WHEREAS,**

- A. The Authority is a Joint Powers Agency created in 1976 for the purpose of preparing, adopting, revising, amending, administering, implementing, and enforcing the Alameda County Integrated Waste Management Plan and the Alameda County Hazardous Waste Management Plan.
- B. The Energy Council is a Joint Powers Agency created in 2013 for the purpose of providing a means by which its member agencies can more effectively develop and implement sustainable energy initiatives that reduce energy demand, increase energy efficiency, and advance the use of clean, efficient, and renewable resources available in the region for the benefit of the Energy Council member agencies and their constituents. As of the effective date each of the signatories is a member of the Authority.
- C. There are significant economies and various public benefits which may be realized through organizational consolidation of the Authority and the Energy Council.

**NOW, THEREFORE,** the parties do agree as follows:

**1. Purpose of Agreement**

- 1.1 The purpose of this Agreement is to make arrangements between the Authority and Energy Council for administration of the Energy Council’s business in a manner which most efficiently and effectively utilizes resources and avoids wasteful duplication of efforts by the Authority and the Energy Council. The general responsibilities of the Authority and Energy Council are delineated in this MOU, as are parameters for the shared use of resources, general guidelines for administration and processes for optimal coordination of programs.

**2. Organization**

- 2.1 The Energy Council shall be considered a separate and distinct entity organization with the unique powers and responsibilities conveyed to it by the Joint Powers Agreement creating the Energy Council and central organizational and administrative support provided by the Authority.
- 2.2 Staff support required to form and administer the Energy Council shall be provided by the Authority and funded by grants and other funds received by the Energy Council as hereinafter provided.

**3. Executive Director**

- 3.1 The incumbent Executive Director for the Authority shall be the Executive Director for the Energy Council and the various terms and conditions of the Executive Director's employment shall remain in effect independent of the this MOU.
- 3.2 The Energy Council has, through its Rules of Procedure, designated and conveyed to the Executive Director the administrative powers, responsibilities and authorities required of the position.
- 3.3 The Executive Director will organize and manage staff and resources in a manner so as to optimally carry out Authority and Energy Council programs within the fiscal limitations imposed by the funding received by the Energy Council.
- 3.4 Both the Authority and Energy Council recognize that the schedule of Authority, Energy Council and committee meetings may impose inordinate demands upon the Executive Director's time, and accordingly the Authority and Energy Council authorize the Executive Director to utilize professional level staff in a manner which may best facilitate meetings and the conduct of business by both parties.
- 3.5 As the Chief Administrative Officer for the Authority and the Energy Council, it shall be solely the Executive Director's responsibility to provide direction to staff in carrying out the policies and programs adopted by the Authority and by the Energy Council.
- 3.6 The performance of the Executive Director shall be evaluated by the Authority in accordance with the provisions of an employment agreement.

#### **4. Personnel Administration**

- 4.1 A major purpose of this MOU is to facilitate the most cost effective joint use of personnel and other resources which may be required by the Authority and the Energy Council.
- 4.2 The Executive Director shall employ and assign work to staff based upon organizational plans, budgets and policies previously approved by the Energy Council Board.
- 4.3 Personnel policies, procedures and regulations shall be uniform and consistently applied throughout the organization. Any such policies, procedures and regulations adopted and previously implemented by the Authority at the time of execution of this MOU, shall remain in effect until later modified.
- 4.4 All regular and limited term staff employed, regardless of work assignment, shall be considered employees of the Authority, and shall have available to them the same benefits, group plans and other programs as are available to other employees of the Authority.
- 4.5 Notwithstanding other provisions regarding personnel administration, the Energy Council may at its option retain legal counsel independently of the Authority or may use the services of the Authority's counsel pursuant to this MOU.

**5. Budget**

- 5.1 Annual budgeting for the Energy Council shall be on a fiscal year basis, from July 1 through June 30 of the subsequent year. The Energy Council budget shall be developed and presented publicly and may be integrated with the budget of the Authority as part of a comprehensive and coordinated budget proposal.
- 5.2 An annual budget shall be adopted separately by the Energy Council. Separate accounting records will be maintained for the Energy Council in accordance with generally accepted accounting principles.
- 5.3 A separate trust fund shall be created for funding from grants received by the Energy Council, to be administered by the Energy Council. The Energy Council shall have exclusive control over the disposition and use of said trust fund.
- 5.4 The operational costs of personnel, facilities and other resources shall be allocated among the various trust funds administered by the Authority and the Energy Council, in accordance with the adopted budget, and reflecting a fair and reasonable distribution of such costs among the trust funds as may be agreed upon by the Authority and Energy Council. Where appropriate, administrative and overhead costs shall be allocated among the trust funds administered by the Authority and the Energy Council, on the basis of staffing assignments.
- 5.5 In general, the approved budget document shall be the authorization for the Executive Director to employ and assign staffing, acquire and allocate resources, and to contract for services and programs. Specific approval to enter into agreements, acquire property, make major purchases, and other significant actions will be the subject of more specific approval by the Energy Council.

**6. Fiscal Management**

- 6.1 Fiscal Management of the Energy Council funds shall be conducted under the purview of the designated Treasurer as prescribed by Government Code section 6500 et seq. as those sections exist and as they may be amended from time to time. The Authority may elect to manage funds utilizing either public or private institutions, in accordance with state law, the Joint Powers Agreement creating the Authority and Authority policy where appropriate.
- 6.2 During the fiscal year regular reports shall be made to the Authority and the Energy Council regarding the status of revenues and expenditures with respect to the adopted budget.

**7. Facilities**

- 7.1 Facilities required for administration of the Authority and the Energy Council shall be provided by shared use, the cost of which shall be apportioned between the parties on the basis of staffing allocations. The existing Authority administrative offices at 1537 Webster Street in Oakland, California shall be shared by both parties. Any future decision to relocate offices to another location shall be by agreement between the

Authority and Energy Council. The Authority and the Energy Council may independently own, lease or otherwise acquire interests in properties at any other locations, for any purpose related to carrying out their respective programs.

**8. Roles and Responsibilities**

8.1 Roles and responsibilities of the Authority and the Energy Council are generally set forth by the Joint Powers Agreement establishing the Authority and by the Joint Powers Agreement establishing the Energy Council. It is agreed by the parties that these areas of responsibility are as follows:

8.1.1 The Authority shall generally be responsible for preparing, adopting, revising, amending, administering, implementing, and enforcing the Alameda County Integrated Waste Management Plan and the Alameda County Hazardous Waste Management Plan and such other projects as the Authority may pursue through its enabling Joint Powers Agreement. Further, the Authority shall be responsible for personnel management, budgeting and other administrative functions required for joint operation with the Energy Council.

8.1.2 The Energy Council shall be generally responsible for integrated energy resource planning which promotes use of sustainable, cleaner and affordable energy resources as more specifically set forth in section 2 of the joint powers agreement creating the Energy Council.

**9. Liability and Insurance**

9.1 Neither the Authority nor the Energy Council shall be held liable for actions by the other, and each shall hold the other harmless for liability arising through action by either party. Each party shall maintain appropriate policies of liability insurance and errors and omissions insurance for officials of both organizations and employees of the Authority.

**10. Modification of Agreement**

10.1 This agreement may be modified at any time with the approval of both parties, subject to the following conditions.

10.1.1 Modification of the Agreement shall be effected through resolution of both the Authority and Energy Council.

10.1.2 Modification of this Agreement shall be accomplished in a manner which does not adversely impact upon programs currently in process, and shall not result in a duplication of services or less efficient use of resources.

**11. Termination of Agreement** Termination of this Agreement may be initiated at any time by resolution of either the Authority or Energy Council, subject to the following conditions.

11.1 Termination of this Agreement shall be accomplished in a manner which does not adversely impact upon programs currently in process, and shall not result in a duplication of services or less efficient use of resources.

- 11.2 A resolution of termination by either party shall initiate a transition period of a minimum of six months, during which any existing joint programs of the Authority and Energy Council shall be brought to completion, or modified in a manner as to facilitate their completion after the transition period is over. With the concurrence of both parties, the transition period may be shortened, subject to a finding by each party that there will be no significant adverse impact to programs in process.
- 11.3 In the event of termination of this agreement, the liquid assets of the Authority and the Energy Council will be divided between the two parties, in accordance with their respective trust funds. Any other assets shall be distributed on the basis of trust fund ownership, and any shared assets shall be divided by agreement between the parties, generally in proportion to the respective contributions of the parties to the asset to be divided.

**[Signature Block]**





# City of San Leandro

Meeting Date: March 18, 2013

## Resolution - Council

---

**File Number:** 13-108 **Agenda Section:** CONSENT CALENDAR

**Agenda Number:**

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Tom Liao  
Acting Community Development Director

**FINANCE REVIEW:** Not Applicable

**TITLE:** ADOPT: Resolution Authorizing the City Manager to Execute the Joint Exercise of Powers Agreement with Alameda County Waste Management Authority Creating the Energy Council and Agreeing to Become a Member of the Energy Council (approves the JPA creating the Energy Council and authorizes San Leandros membership in the Energy Council)

---

**WHEREAS**, the City of San Leandro City Council adopted a Climate Action Plan (CAP) on December 21, 2009 to identify a prioritized plan of action for achieving a twenty-five (25) percent reduction in greenhouse gas (GHG) emissions from 2005 levels by the year 2020; and

**WHEREAS**, enhancing the energy efficiency in buildings throughout the City of San Leandro is a critical component of the CAP, with the guiding principle of "Reduce then Produce"; and

**WHEREAS**, the Alameda County Waste Management Authority (herein referred to as StopWaste.Org) in the course of implementing the Countywide Integrated Waste Management Plan has made an ongoing, coordinated effort to reduce the emissions that cause climate change, improve air quality, reduce waste, cut energy use and save money through its Green Building program, the Green Packages project, and the Energy Upgrade California program; and

**WHEREAS**, StopWaste.Org has successfully secured several energy-related grants, including approximately \$8 million in economic stimulus funding on behalf of its member agencies; and

**WHEREAS**, there is an opportunity to continue and expand the types of energy efficiency programs through funding from multiple sources, including regional/state/federal agencies, investor owned utilities and private foundations; and

**WHEREAS**, based on input from potential funders, a Joint Exercise of Powers agency that is expressly authorized to seek and expend energy-related funds -- separate from the existing Alameda County Waste Management Authority -- would provide a clear signal that our region prioritizes energy management and has established a dedicated governance structure for this purpose; and

**WHEREAS**, the attached Joint Exercise of Powers Agreement would create an independent Energy Council to seek funding; develop and implement sustainable energy initiatives that reduce energy demand, increase energy efficiency; and advance the use of clean, efficient, and renewable resources available in the region for the benefit of the member agencies and their constituents; and

**WHEREAS**, becoming a member of the Energy Council will benefit the City of San Leandro in providing greater competitiveness in obtaining funding, access to specialized energy related technical expertise and services, and assistance to strengthen local staff capacity; and

**WHEREAS**, no debt, liability, or obligation or obligation of the Energy Council shall constitute a debt, liability or obligation of the City of San Leandro pursuant to Government Code section 6508.1 and the terms of the agreement.

**NOW, THEREFORE**, the City Council of the City of San Leandro does **RESOLVE** as follows:

That the attached Joint Exercise of Powers Agreement for the Energy Council is hereby approved and execution by the City Manager is hereby authorized; and

That membership in the Energy Council is hereby authorized.

**Joint Exercise of Powers Agreement for the Energy Council**

This Agreement is entered into and becomes effective April 12, 2013 by and between the undersigned public agencies, all of said parties referred to collectively as the “Agencies.”

**WITNESSETH**

A. Joint Exercise of Powers:

The Joint Exercise of Powers Act, Government Code section 6500 et seq. (the “Act”), provides that two or more public agencies by agreement may jointly exercise any power common to the contracting parties. It is the intent of the contracting Agencies to utilize this statutory authorization in this Agreement.

B. Energy Efficiency Leadership:

The Agencies desire to build on and further establish the record of Alameda County, and the cities and communities within the County, as leaders in developing and implementing sustainable energy initiatives that support a healthy environment and economy, an enhanced quality of life, and greater self-reliance for the region, by reducing energy demand, increasing energy efficiency, and advancing the use of clean, efficient, and renewable local resources.

**AGREEMENT**

NOW, THEREFORE, the Agencies agree as follows:

1. CREATION OF THE ENERGY COUNCIL

Pursuant to the Act, the Agencies hereby create a separate joint powers agency, which is named the Energy Council, to exercise in the manner set forth in this Agreement powers common to each of the Agencies. The Energy Council shall be a public entity separate from the Agencies within the meaning of Government Code section 6507. No debt, liability, or obligation of the Energy Council shall constitute a debt, liability or obligation of any Agency.

## 2. OBJECTIVE

The purpose of this Agreement is to provide a means by which the Agencies can more effectively develop and implement sustainable energy initiatives that reduce energy demand, increase energy efficiency, and advance the use of clean, efficient, and renewable resources available in the region for the benefit of the Agencies and their constituents. To further that purpose, the Energy Council will work toward the following goals:

- a. To coordinate regional integrated energy resource planning efforts which promote use of sustainable, cleaner and affordable energy resources;
- b. To encourage consistency among policies and programs that are adopted and implemented by the Agencies;
- c. To increase the competitiveness of the region in obtaining funding and the ability of the Energy Council and the Agencies to establish strong partnerships with other stakeholders;
- d. To assist the Agencies in developing a long-term sustainable energy strategy and implementation plan;
- e. To increase awareness of, and enhance access to, energy conservation, energy efficiency, and renewable energy opportunities available to the region;
- f. To add value to, but not duplicate, energy services offered by utilities and others serving the region;
- g. To provide technical and policy assistance to the Agencies in implementing energy efficiency, integrated demand-side management, renewable generation programs, and meeting their goals in reducing greenhouse gas emissions;
- h. To conduct outreach to and assist the Agencies in strengthening staff capacity by identifying, seeking, and securing grant funds that support local agency staffing to work on energy efficiency programs;
- i. To keep key decision makers and stakeholders informed of energy-related policy, regulations, and market changes that are likely to impact the region;
- j. To support research, development, demonstration, innovation, and commercialization of sustainable energy technologies by public and private entities operating in the jurisdictions of the Agencies; and
- k. To identify, seek, and secure grant funds that support implementation of local agency climate plans throughout the Agencies.

### 3. DEFINITIONS

Certain words as used in this Agreement shall be defined as follows:

- a. "Board" shall mean the board constituted herein pursuant to this Agreement to administer and implement this Agreement.
- b. "Agency" shall mean each city or county which is a signatory to this Agreement.
- c. "Energy Council" shall mean the public and separate agency created by this Agreement.

### 4. POWERS

The Energy Council is authorized, in its own name, to do all acts necessary to fulfill the purposes of this Agreement including, without limitation, each of the following:

- a. To make and enter into contracts;
- b. To apply for and accept grants, advances, contributions, and donations of funds, property, services, and other forms of assistance from any public or private source;
- c. To provide funding, staffing, and other services to the Agencies and other entities for the conduct of programs under the general purview of the Energy Council;
- d. To employ or contract for the services of agents, consultants and such other persons or firms as necessary;
- e. To employ staff as necessary to carry out Energy Council programs, and to adopt and implement appropriate personnel policies and procedures as required;
- f. To make plans and conduct studies;
- g. To acquire, construct, manage, maintain, operate and control any buildings, works, or improvements;
- h. To lease real or personal property as lessee and as lessor;
- i. To sue and be sued in its own name;
- j. To adopt ordinances provided that an ordinance shall apply within the jurisdictional boundaries of any Agency only if approved by adoption of a resolution by that Agency. The foregoing restriction shall not apply to Energy Council ordinances that govern only the administration and operation of the Energy Council;

- k. To incur debts, liabilities or obligations, subject to limitations herein set forth (As provided in paragraph 1 of this Agreement, and pursuant to Government Code section 6508.1, no debt, liability, or obligation of the Energy Council shall constitute a debt, liability or obligation of any Agency);
- l. To adopt annually a budget setting forth all administrative, operational, and capital expenses for the Energy Council;
- m. To coordinate programs of mutual interest and provide administrative assistance with other organizations involved in related programs; and
- n. To exercise all other powers necessary and proper to carry out the provisions of this Agreement, provided, however that the Energy Council shall not have the power to:
  - (1) Impose taxes or fees on residents, businesses, property owners or any other entity, public or private;
  - (2) Require contributions or other payments from any Agency except pursuant to a separate agreement between the Agency and the Energy Council; or
  - (3) Operate as a community choice aggregator as that term is defined in Public Utilities Code section 331.1.

5. ORGANIZATION

The Energy Council shall be governed by the Board, which shall exercise all powers and authority on behalf of the Energy Council. The Board is empowered to establish its own procedures. The Board may do any and all things necessary to carry out the purposes of this Agreement. As a condition of exercising the powers set forth in section 4, above, the Energy Council shall ensure the existence of liability insurance and errors and omissions insurance for actions of staff and Board members and shall enter an agreement for organizational and administrative support with an existing public agency which agreement shall indemnify and hold harmless the Energy Council for liability arising out of said support.

- a. **Members of the Board.** The Board shall consist of one member of the governing body of each of the Agencies. The member from each Agency shall be the member that the Agency has appointed as its member to the board of the Alameda County Waste Management Authority. Each Agency shall have an alternate member and that member shall be the alternate member that the Agency has appointed to the Board of the Alameda County Waste Management Authority. Each member and alternate shall serve at the pleasure of the governing body of the appointing agency. Any change in

appointment of a member or alternate to the board of the Alameda County Waste Management Authority shall also be a change with respect to the Board of the Council. If an Agency is not a member of the Alameda County Waste Management Authority, the governing body of the Agency shall by resolution appoint one of its members to serve as a member and one of its members to serve as an alternate member of the Board after his or her appointment until a successor is selected. Each member and alternate shall serve at the pleasure of the governing body of the appointing agency. Any change in appointment of a member or alternate shall be by resolution of the governing body of the appointing agency.

- b. **Vote.** Each member shall have one vote except that the member selected by the City of Oakland shall have three votes and the members selected by the County of Alameda and the Cities of Fremont and Hayward shall have two votes.
  
- c. **Vote Required.** A simple majority of the Board members present shall be required for all actions.
  
- d. **Meetings of the Board.**
  - (1) Regular Meetings. The Board shall hold at least one regular meeting each year. The date, hour, and place at which each such regular meeting shall be held shall be fixed by resolution of the Board.
  - (2) Special Meetings. Special meetings of the Board may be called in accordance with provisions of law.
  - (3) Notice of Meetings. All meetings of the Board shall be held subject to the provisions of the Ralph M. Brown Act, Government Code section 54950 et seq., and other applicable laws of the State of California requiring notice of meetings of public bodies to be given.
  - (4) Minutes. The Board shall cause minutes of all meetings to be kept and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each member of the Board and to each Agency.
  - (5) Quorum. A majority of the members of the Board shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn from time to time.
  
- e. **Rules of Procedure.** The Board shall adopt by resolution from time to time such rules of procedure for the conduct of its affairs as may be required.

6. PARTIES TO THIS AGREEMENT

For purposes of this Agreement, each Agency intends to, and does, contract with every other Agency that is a signatory to this Agreement and, in addition, with every public agency that becomes a member under Paragraph 7. The withdrawal of any Agency from this Agreement does not affect its validity or enforceability as to the remaining Agencies.

7. PROCEDURE FOR BECOMING MEMBER OF ENERGY COUNCIL

All of the Cities in Alameda County, and the County of Alameda, that have executed the Agreement by the effective date shall be members of the Energy Council. In addition, any city or county that shares and exercises powers in common with the Agencies may become a member of the Energy Council upon (1) presenting an adopted resolution to the Energy Council requesting to become a member of the Energy Council; (2) receiving Board approval of that request accepting the city or county to membership; and (3) signing this Agreement.

8. RESTRICTIONS UPON EXERCISE OF POWER OF ENERGY COUNCIL

This Agreement is entered into under the provisions of Government Code section 6500 et seq. concerning joint powers agreements. The powers to be exercised hereunder shall be subject to the restrictions upon the manner of exercising those powers as limited by law. The manner of exercising powers granted by this Agreement shall be subject to the same restrictions as imposed upon the County of Alameda. If at any time the County of Alameda is not a party to this Agreement, the manner of exercising powers granted by this Agreement shall be subject to the same restrictions as imposed upon the largest city within Alameda County that is an Energy Council member.

9. FUNDS, AUDIT, AND ACCOUNTING SERVICES

The Energy Council shall appoint an officer or employee as Finance Officer and that officer shall serve the combined functions of treasurer and auditor pursuant to Government Code sections 6505.5 and 6505.6 as those sections now exist or may be amended from time to time. The Finance Officer shall serve as the depositary and have custody of all Energy Council funds from whatever source, and shall perform the functions set forth in the above-referenced sections of the Government Code.

10. DISPOSITION OF ENERGY COUNCIL FUNDS UPON TERMINATION



- a. In the event of termination of the Energy Council where there is a successor public entity, which will carry on the activities of the Energy Council and assume its obligations, Energy Council funds, including any interest earned on deposits, remaining upon termination of the Energy Council and after payment of all obligations shall be transferred to the successor public entity.
- b. If there is no successor public entity, which would carry on any of the activities of the Energy Council or assume any of its obligations, Energy Council funds, including any interest earned on deposits, remaining upon termination of the Energy Council and after payment of all obligations, shall be distributed by the Board consistent with the purposes and terms of the original funding source(s).
- c. If there is a successor public entity which would undertake some of the functions of the Energy Council and assume some of its obligations, Energy Council funds, including any interest earned on deposits, remaining upon termination of the Energy Council and after payment of all obligations and payment to the successor public entity of funds for the functions and obligations assumed by the successor public entity, shall be distributed by the Board consistent with the purposes and terms of the original funding source(s).
- d. In the event the Energy Council is terminated all decisions of the Board with regard to determinations of amounts and recipients of distributed funds shall be final.

## 11. WITHDRAWAL, TERMINATION OF MEMBERSHIP, TERMINATION OF ENERGY COUNCIL

Any Agency may withdraw from the Agreement following written notice submitted to the Energy Council at least six months in advance of the effective date of withdrawal. The membership of any agency which ceases to have powers in common with the parties to this Agreement shall terminate thirty (30) days after the agency ceases to have powers in common with the parties to this Agreement. If the Energy Council receives no funding for three consecutive fiscal years, the Board shall consider terminating the Energy Council.

## 12. AMENDMENTS

This Agreement may be amended by the affirmative vote of the governing bodies of not less than two-thirds of all Agencies.

## 13. NOTICES

All notices to Agencies shall be deemed to have been given when mailed to the governing body of each member Agency.

IN WITNESS WHEREOF, each Agency has executed approval of this Agreement and filed said approval with the Secretary of the Alameda County Waste Management Authority and said signatures are listed below or attached hereto.

Agency	Approval Date (If Any)
<p><b>County of Alameda</b></p> <p>By: _____</p> <p>Print Name: _____</p> <p>Its: _____</p>	<p>_____</p>
<p><b>City of Alameda</b></p> <p>By: _____</p> <p>Print Name: _____</p> <p>Its: _____</p>	<p>_____</p>
<p><b>City of Albany</b></p> <p>By: _____</p> <p>Print Name: _____</p> <p>Its: _____</p>	<p>_____</p>
<p><b>City of Berkeley</b></p> <p>By: _____</p> <p>Print Name: _____</p> <p>Its: _____</p>	<p>_____</p>
<p><b>City of Dublin</b></p> <p>By: _____</p> <p>Print Name: _____</p> <p>Its: _____</p>	<p>_____</p>

<p><b>City of Emeryville</b></p> <p>By: _____</p> <p>Print Name: _____</p> <p>Its: _____</p>	<p>_____</p> <p>_____</p>
<p><b>City of Fremont</b></p> <p>By: _____</p> <p>Print Name: _____</p> <p>Its: _____</p>	<p>_____</p> <p>_____</p>
<p><b>City of Hayward</b></p> <p>By: _____</p> <p>Print Name: _____</p> <p>Its: _____</p>	<p>_____</p> <p>_____</p>
<p><b>City of Livermore</b></p> <p>By: _____</p> <p>Print Name: _____</p> <p>Its: _____</p>	<p>_____</p> <p>_____</p>
<p><b>City of Newark</b></p> <p>By: _____</p> <p>Print Name: _____</p> <p>Its: _____</p>	<p>_____</p> <p>_____</p>

<p><b>City of Oakland</b></p> <p>By: _____</p> <p>Print Name: _____</p> <p>Its: _____</p>	<p>_____</p>
<p><b>City of Piedmont</b></p> <p>By: _____</p> <p>Print Name: _____</p> <p>Its: _____</p>	<p>_____</p>
<p><b>City of Pleasanton</b></p> <p>By: _____</p> <p>Print Name: _____</p> <p>Its: _____</p>	<p>_____</p>
<p><b>City of San Leandro</b></p> <p>By: _____</p> <p>Print Name: _____</p> <p>Its: _____</p>	<p>_____</p>
<p><b>City of Union City</b></p> <p>By: _____</p> <p>Print Name: _____</p> <p>Its: _____</p>	<p>_____</p>