



DATE: September 24, 2019

TO: Mayor and City Council

FROM: City Attorney

SUBJECT: Adopt a Resolution Appointing the Representative and Alternate Representative to the ERMA Board of Directors and to the ERMAC Board of Directors; and Approving Amendments to the ERMAC Joint Powers Agreement

RECOMMENDATION

That the City Council adopts the attached Resolutions (1) Appointing Assistant City Attorney Seema Vashi as the City's Representative and City Attorney Michael Lawson as the City's Alternate to the ERMA Board of Directors; and appointing City Attorney Michael Lawson as the City's Representative and Assistant City Attorney Seema Vashi as the City's Alternate to the ERMAC Board of Directors; and (2) approving amendments to the ERMAC Joint Powers Agreement.

SUMMARY

The Employment Risk Management Authority (ERMA) is a self-insured joint powers authority, comprised of various public entities and created for the purposes of employment practices liability (EPL) coverage. The City is a current member of ERMA. The attached Resolution (Attachment II) appoints Assistant City Attorney Seema Vashi as the City's representative and City Attorney Michael Lawson as the City's Alternate to the ERMA Board of Directors.

The Exclusive Risk Management Authority of California (ERMAC) was founded in 2003 specifically for the purpose of providing risk-sharing and risk-transfer municipal liability protection to California Governmental Agencies. The City is a member of ERMAC. The attached Resolution (Attachment II) appoints City Attorney Michael Lawson as the City's representative and Assistant City Attorney Seema Vashi as the City's Alternate to the ERMAC Board of Directors.

The ERMAC Board of Directors recently approved several amendments to the ERMAC Joint Powers Agreement. The attached Resolution (Attachment III) approves these amendments to the ERMAC Joint Powers Agreement.

BACKGROUND

ERMA is a self-insured joint powers authority created exclusively for the purpose of providing broad EPL coverage at reasonable rates for public agencies and now covers more than 160 public agencies in California. ERMA comprises various public agencies in California, including the City of Hayward, in which agencies share risk up to \$1 million against potentially unlawful employment practices and discrimination claims.

ERMAC is a self-insured joint powers authority created for the purpose of providing liability protection to California governmental agencies. ERMAC provides high-value insurance coverages for all City activity – approximately 45 programs or activities are covered such as liability exposure for police practices, auto and property losses, employment practices, environmental contamination, internal theft/ embezzlement, library literacy activity, and so on. Coverages generally are \$50 million for tort and injury losses, and \$1 billion for property losses.

DISCUSSION

The City of Hayward is a member entity of ERMA and ERMAC. Both ERMA and ERMAC have a board of directors, comprised of a representative and alternate from each member entity. Each respective board of directors is responsible for performing all acts necessary to fulfill the purposes of the joint powers agreement including, but not limited to, developing and administering coverage programs, reviewing financial information, and admitting or expelling members.

Appointment of City Representative and Alternate to ERMA and ERMAC:

Article VII of the joint powers agreement creating ERMA requires the governing body of each member entity to appoint one representative and one alternate to the ERMA Board of Directors. Assistant City Attorney Seema Vashi advises the City on labor and employment matters and is therefore recommended to serve as the City's representative to the ERMA board of directors, with City Attorney Michael Lawson serving as the alternate in her absence. The City's alternate and representative will be authorized to bind the City on all matters pertaining to the ERMA Joint Powers Agreement.

Article 6 of the Joint Powers Agreement creating ERMAC requires the governing body of each member entity to appoint one representative and one alternate to the ERMAC Board of Directors. City Attorney Michael Lawson serves as the City's sole representative to the ERMAC Board. The City does not currently have an authorized alternate to the ERMAC Board of Directors. The alternate will be authorized to act in the absence of the representative and shall have the same responsibility, power, and authority as the representative. The City Attorney recommends that Assistant City Attorney Seema Vashi, who has been employed by the City of Hayward since 2012, serve as the City's alternate representative to the ERMAC Board given her familiarity with the ERMAC Joint Powers Agreement. The City's alternate and representative will be authorized to bind the City on all matters pertaining to the ERMAC Joint Powers Agreement.

Approval of Amendments to the ERMAC Joint Powers Agreement:

The board of directors and the member agencies of ERMAC adopted a joint powers agreement originally dated June 27, 2003. Thereafter, the joint powers agreement was amended by Resolution 2004-01 to change the name of the Authority and by Resolution 2004-02 to add Section 15 related to contractual liability of member agencies. Recently, the board of directors determined that further amendments to the Joint Powers Agreement would be in the best interests of ERMAC. After review and discussion, the ERMAC Board of Directors approved the following amendments to the joint powers agreement:

1. Add to Section 3, Purpose of the Agreement: Common Exercise of Powers, the following sentence as a new paragraph at the end: "New members may be admitted to the Authority upon approval by a two-thirds or higher vote of the Board of Directors. Eligibility is limited to California public agencies."
2. Add to Section 4, Powers, "(H) To appoint a Treasurer pursuant to Government Code section 6505.6. Per that section, the Treasurer shall cause an annual audit to be conducted."
3. Replace Section 5, Termination, "giving of thirty (30) days written notice to the primary officer of the authority" with "giving of written notice to the primary officer of the Authority of provisional termination by December 31 and final notice of termination by March 31."
4. Add to Section 6, Board of Directors, the following sentence as a new paragraph at the end: "At least one regular meeting shall be held each program year."
5. Add as a new Section 16: "Member Agency Responsibilities. The member Agencies shall have the following responsibilities:
 - A. to cooperate fully with the Authority in determining the cause of losses and in the settlement of claims, as defined in the Memorandum of Coverage;
 - B. to pay cash contributions, cash assessments, and other charges, promptly to the Authority when due;
 - C. to provide the Authority with such statistical and loss experience data and other information as may be necessary for the Authority to carry out the purposes of this Agreement;
 - D. to establish and maintain risk management programs including but not limited to loss control, risk transfer, and employee safety programs;
 - E. to cooperate with and assist the Authority and any insurer, claims adjuster or legal counsel retained by the Authority, in all matters relating to this Agreement;
 - F. to comply with the Bylaws and all policies and procedures adopted by the Board; and,
 - G. to appoint a representative and alternate to the Board of Directors."

6. Add as a new Section 17: "Assessments and Surplus Distributions. The Board by two-thirds vote shall have the authority to levy an assessment on member Agencies upon a determination that it is necessary to meet the Authority's obligations. The assessment shall be *pro rata* in accordance with the respective initial premiums paid by members for the program year(s) giving rise to the deficit position. The Board by two-thirds vote shall have the authority to declare a distribution of surplus funds to current members upon a determination that surplus funds are available for distribution. Such distribution shall be *pro rata* in accordance with the respective initial premiums paid by current member Agencies for the program year(s) giving rise to the surplus position."
7. Add as a new Section 18: "Expulsion. The Board, by a two-thirds vote, may expel any member Agency from membership, effective at the end of the program year in which notice is given; such Agency shall have all the duties of a member that had voluntarily withdrawn."
8. Add as new Section 19: "Withdrawal. Withdrawal of any member Agency under Section 5 shall not terminate its responsibility:
 - A. to cooperate fully with the Authority in determining the cause of losses and in the defense of covered claims;
 - B. to pay assessments due and payable for program years in which the member Agency participated;
 - C. to provide such statistical and loss experience data and other information as may be necessary for the Authority to carry out the purposes of this Agreement; and
 - D. to cooperate and assist the Authority and any insurer, claims adjustor, or legal counsel retained by the Authority, in all matters relating to this Agreement. Coverage in all program years which the member Agency participated will remain in effect and continue until the conclusion of their respective program years."
9. Add as a new Section 20: "Termination and Distribution. This Agreement may be terminated at any time by the written consent of all member Agencies, or when due to withdrawals or expulsions, less than two member Agencies remain. Provided, however, that this Agreement shall continue in force for the purpose of disposing of all claims and all other functions necessary to wind up the affairs of the Authority. Upon termination of this Agreement, after resolution of claims, all assets of the Authority shall be distributed among past or present members of the Authority *pro rata* in proportion to the contributions made."

The City Attorney's Office has reviewed these amendments and recommends approval of these amendments to the ERMAC Joint Powers Agreement.

STRATEGIC INITIATIVES

This agenda item is a routine operational item and does not relate to a specific Council strategic initiative.

ECONOMIC IMPACT

There will be no direct economic impact of this Resolution on Hayward residents.

FISCAL IMPACT

There is no fiscal impact to the City of Hayward at this time. Annual insurance premiums are approved and appropriated by the City Council as part of the annual budget adoption process.

PUBLIC CONTACT

No public notices were published.

NEXT STEPS

Following Council's action, the City Clerk's office will administer the oath of affirmation to the newly appointed members.

Prepared by and Recommended by: Michael Lawson, City Attorney

Approved by:



Kelly McAdoo, City Manager