



**DATE:** July 13, 2021

**TO:** Mayor and City Council

**FROM:** City Attorney

**SUBJECT:** Adopt a Resolution Approving Amendments to the Exclusive Risk Management Authority of California (ERMAC) Joint Powers Agreement

## **RECOMMENDATION**

That the Council adopts a resolution (Attachment II) approving the amendments to the Exclusive Risk Management Authority of California Joint Powers Agreement.

## **SUMMARY**

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. By designation of the Council, the City Attorney sits on the ERMAC Board of Directors. The ERMAC Board of Directors recommends approval of the amendments to the ERMAC Joint Powers Agreement as specifically set forth in this report.

## **BACKGROUND**

ERMAC is a self-insured joint powers authority created exclusively for the purpose of providing property and liability protection to California Governmental Agencies. The proposed amendments to the JPA Agreement are intended to conform the agreement to current practices and, further, to conform with the Joint Exercise of Powers Act (Gov. Code sec. 6500 et seq.) and the accreditation standards of the California Association of Joint Powers Authorities (CAJPA).

## **DISCUSSION**

Changes to the JPA Agreement are proposed to indicate the effective date of the amendments, state the conditions under which California public agencies could join, provide for appointment of a treasurer and an auditor, specify the member whose restrictions will apply to the Authority pursuant to Gov. Code sec. 6509, increase the amount of notice for withdrawal, require at least one Board meeting per year, clarify that it is a separate agency, add member responsibilities, provide for assessments and distribution of surplus, procedure

for expulsion, specify the effect of withdrawal, and provide for distribution of assets if the Agreement is terminated.

- Sections 1 and 10 have been revised to refer to the agreement as updated and amended, and to clarify that the effective date of the amended and restated agreement is when the last of the members has executed it.
- Section 3 specifies that California public agencies are eligible to join upon approval by at least two-thirds of the Board (CAJPA accreditation standards requires such a provision).
- Section 4(H) provides for appointment of a treasurer and an auditor, and for an annual audit, as required by Gov. Code section 6505.6 (CAJPA requires this provision).
- Section 5 is revised to increase the prior 30-day notice period for withdrawal to a provisional notice six months before the end of the fiscal year and final notice three months before the end of the fiscal year.
- Section 15 is slightly revised to clarify that the Authority is a separate public entity created by the JPA Agreement.
- Section 16 is new. CAJPA's accreditation standards require a provision for obligations of members, so Section 16 lists the responsibilities of members including cooperation regarding claims, prompt payment of amounts owed to the Authority, furnishing necessary information, establishment of risk management programs, compliance with governing documents, and appointments to the Authority's board.
- Section 17 gives the Board authority, by a two-thirds vote, to impose assessments and declare distributions, and requires assessments and distributions to be pro rata to premiums paid (CAJPA requires provisions for assessments and distributions).
- Section 18 allows expulsion of a member by a two-thirds vote (CAJPA requires provision for terminating a member based on issues such as non-payment of premiums, underwriting problems, or the failure to adequately control risks).
- Section 19 covers the effect of withdrawal, including a continuing obligation to cooperate and pay any amounts owed (CAJPA requires provisions for withdrawal).
- Section 20 provides for termination of the Authority and proportionate distribution of assets upon termination (CAJPA requires provisions for distribution upon termination, as does Gov. Code sec. 6512).

The City Attorney's Office has reviewed these amendments and recommends approval of these amendments to the ERMAC Joint Powers Agreement. Additionally, the JPA commissioned separate legal counsel to review and prepare the proposed amendments.

## **ECONOMIC IMPACT**

There is no direct economic impact of the recommendation on Hayward residents.

## **STRATEGIC ROADMAP**

This agenda item is a routine administration of the City's insurance coverages program and does not relate to a specific Council strategic initiative.

## **FISCAL IMPACT**

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

## **SUSTAINABILITY FEATURES**

There are no sustainability features associated with this report.

## **PUBLIC CONTACT**

The agenda for this item was posted in compliance with the Brown Act.

## **NEXT STEPS**

If approved, the amendments to the ERMAC Joint Powers Agreement will take effect when approved by the governing board of the last member agency voting on the matter.

*Prepared and Recommended by:* Michael Lawson, City Attorney

Approved by:



---

Kelly McAdoo, City Manager