



Item No. 16 Town of Atherton

CITY COUNCIL STAFF REPORT – REGULAR AGENDA

TO: THE HONORABLE MAYOR AND CITY COUNCIL

FROM: GEORGE RODERICKS, CITY MANAGER

DATE: MARCH 18, 2020

SUBJECT: APPROVAL OF AND AUTHORIZATION TO EXECUTE A NOTICE OF INTENT TO WITHDRAW FROM THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY (SBWMA)

RECOMMENDATION

Review and approve the issuance of a Notice of Intent to Withdraw from the SBWMA.

BACKGROUND

In May 2019, the Town released a Request for Proposal (RFP) for Solid Waste Procurement Assistance. The Town has a Franchise Agreement with Recology San Mateo County (Recology) that expires in December 2020. In June 2019, the Town awarded a professional services agreement to R3 Consulting Group, Inc. to provide solid waste procurement assistance. In February 2020, the Council reviewed the response to the RFP and directed staff to begin negotiations in earnest with GreenWaste Recovery Services (GWR).

The general rules of governance for the SBWMA provide that the Town must issue a Notice of Intent to Withdraw (NOI) at least six (6) months prior to the end of the current rate year. In order to allow negotiations with GWR to continue in earnest, the Town needs to issue that NOI.

ANALYSIS

The City Attorney, in consultation with the Solid Waste Subcommittee has prepared the attached NOI. Upon issuance of the NOI, the Town and the SBWMA will begin negotiations for liquidation in full of any proportion of any and all existing debts obligations, and liabilities incurred, earned or expected to be earned by the date of withdrawal. The NOI provides the Town's analysis of those obligations to the SBWMA to open discussion for exit.

Staff recommends that the Council review the attached NOI, provide any necessary revisions and authorize its release to the SBWMA.

POLICY FOCUS

To coincide with the end of the Franchise Agreement, a Notice of Intent will be sent to the South Bayside Waste Management Authority (SBWMA). Other issues related to withdrawal will also be necessary, to include a vote of the SBWMA member agencies and liquidation of all existing debts, obligations, and liabilities.

FISCAL IMPACT

Funding for costs related to exit from the SBWMA may come from the Town's Rate Stabilization Fund. There are no costs related to the issuance of the NOI.

PUBLIC NOTICE

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also disseminated via the Town's electronic News Flash and Atherton Online. There are approximately 1,200 subscribers to the Town's electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but be not limited to, media outlets, school districts, Menlo Park Fire District, service providers (water, power, and sewer), and regional elected officials.

COMMISSION/COMMITTEE FEEDBACK/REFERRAL

This item ___ has or X has not been before a Town Committee or Commission.

- Audit/Finance Committee (meets every other month)
- Bicycle/Pedestrian Committee (meets as needed)
- PMC - Civic Center Advisory Committee (meets as needed)
- Environmental Programs Committee (meets every other month)
- Park and Recreation Committee (meets each month)
- Planning Commission (meets each month)
- Rail Committee (meets every other month)

ATTACHMENTS

1. NOI Letter

March 18, 2020

VIA E-MAIL AND U.S. MAIL

Joe La Mariana
Executive Director
South Bayside Waste Management Authority
610 Elm Street, Suite 202
San Carlos, CA 94070
E-Mail: jlamariana@rethinkwaste.org

Re: Town of Atherton's Notice of Withdrawal from SBWMA JPA

Dear Director La Mariana:

This letter is to notify you that the Town of Atherton ("Atherton" or "Town") is considering withdrawal from the South Bayside Waste Management Authority ("SBWMA" or "JPA"). The Town is principally concerned that the JPA's work no longer aligns with the needs and demands of the Town's residents, so it is exploring alternative options for waste management.

The general rules of governance for SBWMA are laid out in the Second Amended and Restated Joint Exercise of Powers Agreement dated June 19, 2013 ("JPA Agreement"). Therein, and as discussed below, Article 15 – *Withdrawal from SBWMA* provides certain procedures to withdraw from the JPA:

15.1 Withdrawal Conditions. A Member may not withdraw from the SBWMA unless and until that Member achieves the following:

- a. The liquidation in full of its proportion of any and all existing debts, obligations, and liabilities incurred, earned, or expected to be earned by the date of withdrawal, including but not limited to the Revenue Bonds, as determined by the Board.
- b. The provision to the SBWMA of a written notice of intent to withdraw from the SBWMA at least six (6) months prior to the end of the current Rate Year, specifying the date on which the member intends to withdraw.
- c. Approval of such withdrawal by a 4/5 affirmative vote of Equity Members.

Notice of intent to withdraw is due to the Board at least six (6) months before the end of a rate year. (JPA Agreement, Section 15.1(b).) A rate year, as defined in the JPA Agreement, ends on December 31 so notice must be provided by the end of June in the member's final rate year. This letter shall serve as Atherton's notice of intent to withdraw pursuant to Section 15.1; however, the Town reserves the right to remain as a Member as long as withdrawal does not actually occur.

As part of the process for withdrawal from the JPA, the Town would like to clarify its obligations for the payment of the Town's proportionate share of SBWMA's liabilities required for withdrawal under Section 15.1(a).

The Town understands that its obligations to the JPA are a function of the assets which it has invested in the JPA and any bond indebtedness that it has signed and remain outstanding at the time of withdrawal.

As a founding member of the JPA, Atherton has been an Equity Member since 1999. During that time, the Town has financially supported each of the JPA's initiatives, predominately including the development, construction, and management of the Shoreway Environmental Center. If the Town was to withdraw from the JPA, the value of the Center—proportionate to the Town's contribution to the Center's development—would properly be valued as an asset owed to the Town, less the value of the Town's use of the Center until the time of withdrawal.

The JPA Agreement provides, in the event the JPA is terminated without naming a successor agency, "all assets and liabilities shall be apportioned to each Member in proportion to the contribution of each current Member's ratepayers' total contribution [until termination]." (JPA Agreement, section 16.1(b).) This means that, at the termination of the JPA, each remaining member will receive a portion of the assets of the JPA, less the amount of outstanding JPA obligations.

It follows that the same principle applies if the Town was to withdraw from the JPA. The JPA's portfolio of assets includes, in part, those only made possible by the Town's contributions. Assuming the Town withdraws from the JPA, assets due to the Town would be reallocated to the remaining members until such time that those members withdraw, via termination of the JPA or otherwise. Thus, the Town is owed the same consideration and entitled to the value of its assets at the time that it withdraws from the JPA, if it so chooses to withdraw.

Outside the express language of the JPA Agreement, principles of equity call for the Town to be paid its share of the JPA assets – the Town will no longer benefit from use of the Center and other JPA initiatives. These assets, part of which were fostered by the Town's contributions, will only be utilized by the remaining members; to ignore the Town's contributions would unjustly benefit and enrich the remaining members.

It is true at the creation of the JPA, the assets, rights, and liabilities of the JPA "shall not constitute assets, rights, debts, liabilities, or obligations of any of the Agencies [of] the SBWMA." (JPA Agreement, Section 3.3.) However, this is contradicted in the plain language of the JPA Agreement that repeatedly and expressly provides each member is allocated responsibility to the JPA proportionate to its contributions and needs. We believe that the intent of this section was more appropriately to highlight the fact that the JPA is a separate legal entity and therefore, members are not individually liable for the contractual obligations of the JPA. And, in any event, if the Town is not entitled to the benefits of the JPA (proportionate share of assets), it should be followed that it is also not burdened by its debts and liabilities.

As a founding principle, indeed prior to the section quoted above, the recitals of the JPA Agreement provide "the costs for planning and implementing Solid Waste and Recycling

Programs will be based on a fair and equitable allocation system that considers the relative benefits to each Agency and the additional costs of services provided to each Agency." (JPA Agreement, Recital (D).) This means that a driving factor in the allocation of financial responsibilities within the JPA was the proportionate use and benefit gleaned by each member. Thus, each member was assessed for costs at a rate with consideration of their proportionate use and benefit from the JPA.

SBWMA's predominant direction, especially in recent years, has been to fund projects that target and benefit commercial growth and diversion. Atherton is a built-out residential community with no commercial development or uses. Therefore, the Town does not benefit from this targeted approach in any way, and it never has. To avoid this divergence from the JPA's founding principle articulated above, Atherton expressly requested that processing costs for commercial and residential uses be apportioned equitably. Unfortunately, the request, and even discussion of the request, was unilaterally declined. Consequently, it comes as no surprise that while Atherton has benefited the JPA, the JPA has predominantly served at the pleasure of, and for the advantage of, the other members.

In addition, Section 12.1 – *Debts and Liabilities* provides that a member agency's obligation is "expressly limited only to the appropriation and contribution of such funds as may be levied pursuant to this agreement or as the Members hereto may agree." Furthermore, Section 13.2 – *Attributing Solid Waste* provides "the SBWMA shall establish a fair and equitable method of attributing Solid Waste, Recyclable Materials, and Plant Materials to the Members that are delivered to the Facilities." These further support that the Town is entitled to its share of the JPA's assets. Indeed, despite these established principles of fair allocation, the Town has never utilized the JPA's full suite of services, nor received a discount for not doing so – as explained, the Town does not produce multi-family unit or commercial waste like other members and was denied its request to equitably apportion costs related to each.

If the SBWMA were to abide by the exact language of the JPA Agreement, "Revenue Bonds" is expressly defined as only "those certain revenue bonds titled 'South Bayside Waste Management Authority (San Mateo County, California) Solid Waste System Revenue Bonds, Series 2000,' and issued in the amount of \$20,090,000 on March 1, 2000." (JPA Agreement, Ex. C, "Definitions.") There is no mention or consideration for future revenue bonds. Thus, a plain reading provides room for an argument to be made that the JPA Agreement does not apply to bonds issued beyond the Series 2000 bonds and the Town, or really any JPA member, has no obligation to revenue bonds except for the Series 2000 bonds pursuant to the JPA Agreement.

The Town is entitled to certain assets of the JPA proportionate to its financial contributions to JPA initiatives until the time of the Town's withdrawal. However, the requisite liquidation prior to withdrawal is a measure of both the Town's assets and liabilities in the JPA. The total assets of the JPA as of the 2017/18 Audited Financial Statements is \$74,506,626. The JPA's stated total liabilities in that same Report is \$54,235,476. Allocating the Town's responsibility at 3.25% for both assets and liabilities result in a net to the Town of \$658,812. The Town does not expect the JPA to refund the Town in that amount nor liquidate its assets; however, the Town asks for the Board's response on the Town's outstanding assets and obligations to liquefy in the event the Town decides to withdraw from the JPA.

Joe La Mariana, SBWMA Executive Director
March 18, 2020
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The Town appreciates the Board's assistance in this matter as the Town considers its options for waste management.

Sincerely,

George J. Rodericks
City Manager
Town of Atherton

cc: City Council