CITY OF
HAYWARD
HEART OF THE BAY

DATE: April 20, 2010

TO: Mayor and City Council

FROM: Development Services Director

SUBJECT: Resolution Opposing Proposition 16

RECOMMENDATION

That Council reads and comments on this report, and adopts the attached resolution (Attachment I) opposing Proposition 16.

BACKGROUND

The Council Sustainability Committee considered the attached draft resolution on April 7, 2010, and unanimously recommended that the City Council adopts the resolution. Proposition 16, titled the *New Two-Thirds Requirement for Local Public Electricity Providers Act,* is targeted at the formation of Community Choice Aggregation (CCA) programs. As reported to the Committee in April 2009[1], the CCA program was established by the California legislature in 2002 (AB117) to give cities and counties the authority to procure electricity in bulk for resale to customers within their jurisdictional boundaries.

Under the CCA program, PG&E would deliver the electricity to end-use customers and PG&E would continue to read the electric meters and issue monthly bills to customers enrolled in the CCA program. Unlike traditional utility service, the source of the electric supply and the price paid by customers for the generation services procured by the CCA program would be determined by the CCA. Customers would have the choice of being automatically enrolled in the program following a notification process or remaining with PG&E by enrolling in an opt-out process.

The San Joaquin Valley Power Authority and the Marin Energy Authority have been trying to establish CCA programs. As reported by the Kings River Conservation District[2], the San Joaquin Valley Power Authority (SJVPA), at its regular board meeting on June 25, 2009, suspended activities to implement a Community Choice Aggregation program. The SJVPA cited market

[1] http://www.hayward-ca.gov/citygov/meetings/csc/ccsc/2009/CSC-CCSC040109.pdf

[2] http://www.krcd.org/newsletters/vol7-no1-connections/

conditions, the volatility in energy prices, and strong opposition from PG&E as reasons for halting efforts to establish a CCA.

The Marin Energy Authority[3] is currently challenging the findings of a report by the Marin County Civil Grand Jury titled *Marin Clean Energy: Pull the Plug*[4], which states that the Marin Energy Authority should be abandoned, that the cities and county of Marin should resume talks with PG&E to "work toward a more favorable mix of renewable energy", and that the "citizens of Marin are being led down a costly and extremely risky path not yet traveled by any other community in California".

Since the California legislature adopted Assembly Bill 117, several other cities and counties have also expressed interest and/or have studied possible adoption of Community Choice Aggregation. With funding from the California Energy Commission's Public Interest Energy Research program, the Local Government Commission has worked with Navigant Consulting, Inc. to assist twelve California communities in their investigation of CCA feasibility. They are: Berkeley, Beverly Hills, Emeryville, Los Angeles County, Oakland, Pleasanton, Richmond, San Diego County, San Marcos, Vallejo, and West Hollywood. Each community was provided preliminary feasibility studies. Several of the cities and counties moved forward with further studies.

DISCUSSION

Proposition 16, the *New Two-Thirds Requirement for Local Public Electricity Providers Act*, will be on California's June 8, 2010 ballot. If passed, the Act would amend the California constitution by requiring a two-thirds vote of the electorate before a public agency could enter the retail power business. This will make it more difficult than it is currently for local entities to form either municipal utilities or CCAs. If this measure is enacted, forming a local municipal utility or a CCA will require the approval, through election, of two-thirds of the voters who live in the area of the would-be local municipal utility or CCA.

Following is a summary of Proposition 16 provided by the Legislative Analyst's Office[5]:

> The measure places new voter approval requirements on local governments before they can use "public funds"—defined broadly in the measure to include tax revenues, various forms of debt, and ratepayer funds—to start up electricity service, expand electricity service into a new territory, or to create a CCA. First, if an authorized local government entity seeks to start up electricity service, it must receive approval by two-thirds of the voters in the area proposed to be served. Second, if an existing publicly owned utility seeks to expand its electric delivery service into a new territory, it must receive an approval by two-thirds of the voters in both the area currently served by the utility and the new area proposed to be served. Third, the measure requires two-thirds voter approval for a local government to create a CCA.

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[3] http://www.marinenergyauthority.org/index.cfm
[4] http://www.co.marin.ca.us/depts/GJ/main/cvgrjr/2009gj/clean_energy.pdf
[5] http://www.lao.ca.gov/ballot/2009/090395.aspx

In general, restricting any local government action by requiring a two-thirds vote results in a loss of flexibility and may limit the City's ability to take innovative steps in a timely manner to address fiscal and sustainability issues. Hayward's Climate Action Plan, adopted in July 2009, recommends implementing Action 5.4, which states "To increase the renewable portion of utility electricity generation by advocating for increased state-wide renewable portfolio standards; and consider participating in community choice aggregation, or other means." AB 117 requires that utility customers have the opportunity to "opt out" of a CCA. Notices would be mailed directly to customers. This process ensures community approval of a CCA before it is implemented.

According to Ballotpedia[6], Pacific Gas & Electric is the primary financial sponsor of the initiative, having contributed $28.5 million through March 26, 2010. Proposition 16's opponents have raised $40,000 through late March.

The City of Berkeley unanimously passed a resolution similar to the attached resolution on September 22, 2009. The California League of Cities, the California Association of Counties, Marin County, and San Francisco have all taken formal positions opposing Proposition 16.

ECONOMIC IMPACT

The impact of Proposition 16 on Hayward's economy would not be significant. If Proposition 16 becomes law, Hayward voters would need to vote by a two-thirds majority to enact a CCA. The economic impacts of implementing a CCA are unknown at this time and would be studied prior to implementation of a CCA.

FISCAL IMPACT

Council adoption of the attached resolution will have no fiscal impact to the City of Hayward. If Proposition 16 is approved by voters, and if the City of Hayward decides to pursue formation of a CCA, then the costs associated with holding an election would be need to be considered. The Legislative Analyst's Office concluded that the passage of Proposition 16 would have an "unknown net impact on state and local government costs and revenues, depending on future voter decisions, due to the measure's potential effects on electricity rates and publicly owned utility operations".

PUBLIC CONTACT

The attached draft resolution was presented to the Sustainability Committee meeting on April 7, 2010. No members of the public spoke about the issue, and the Committee unanimously recommended that the City Council adopts the resolution.

NEXT STEPS

Green Cities California, of which Hayward recently became a member, plans to announce collective opposition to Proposition 16 pending local action by each of the members.

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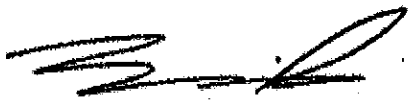
[6] http://www.ballotpedia.org/wiki/index.php/California_Proposition_16_(June_2010)

Prepared by: Erik J. Pearson, AICP, Senior Planner

Recommended by: David Rizk, AICP, Development Services Director

Approved by:



Fran David, Acting City Manager

Attachments:

Attachment I Draft Resolution

HAYWARD CITY COUNCIL

RESOLUTION NO. 10-

Introduced by Council Member

RESOLUTION EXPRESSING THE CITY OF HAYWARD'S OPPOSITION TO PROPOSITION 16 AND PROTECTING THE CITY'S ABILITY TO PURSUE COMMUNITY CHOICE AGGREGATION TO REDUCE GREENHOUSE GAS EMISSIONS

WHEREAS, AB117 was signed into law in 2002 and established Community Choice Aggregation to give cities and counties the authority to procure electricity in bulk for resale to customers within their jurisdictional boundaries; and

WHEREAS, the Marin Energy Authority determined that Community Choice Aggregation is the most cost-effective way that the county and cities of Marin can reduce greenhouse gas emissions; and

WHEREAS, Hayward's Climate Action Plan, adopted in July 2009, established a goal of reducing greenhouse gas emissions by 82.5 percent below 2005 levels by 2050; and

WHEREAS, Hayward's Climate Action Plan recommends the consideration of Community Choice Aggregation as one way to meet the long term emission reduction goal; and

WHEREAS, PG&E delivered about 14 percent eligible renewables in 2009; and

WHEREAS, PG&E is required to meet a state mandated goal of 20 percent eligible renewable energy by 2010; and

WHEREAS, PG&E is financially backing a California ballot initiative called the "New Two Thirds Requirement for Local Electricity Providers"; and

WHEREAS, the initiative would require a local government entity seeking to start up electricity service to receive approval by two-thirds of the voters in the area proposed to be served; and

WHEREAS, restricting local government action by requiring a two-thirds vote results in a loss of flexibility and may limit the City's ability to take innovative steps in a timely manner to address fiscal and sustainability issues; and

WHEREAS, the initiative would be a new hurdle for Hayward to exercise its ability to serve as an aggregate electricity provider; and

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward opposes the "New Two Thirds Requirement for Local Electricity Providers" ballot initiative.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2010

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST:
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward