

## ORDINANCE NO. 16-010

### ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EMERYVILLE AUTHORIZING THE IMPLEMENTATION OF A COMMUNITY CHOICE AGGREGATION PROGRAM PURSUANT TO CALIFORNIA PUBLIC UTILITIES CODE SECTION 366.2

**WHEREAS**, the County of Alameda (“County”) and Alameda County cities, including the City of Emeryville, have been actively investigating options to provide electricity supply services to constituents within the County with the intent of achieving greater local involvement over the provision of electricity supply services, competitive electric rates, the development of local renewable energy projects, reduced greenhouse gas emissions, and the wider implementation of energy conservation and efficiency projects and programs; and

**WHEREAS**, Assembly Bill 117, codified as Public Utilities Code Section 366.2 (the “Act”), authorizes any California city or county whose governing body so elects, to combine the electricity load of its residents and businesses in a community wide electricity aggregation program known as Community Choice Aggregation (“CCA”); and

**WHEREAS**, the Act allows a CCA program to be carried out under a joint powers agreement entered into by entities that each have capacity to implement a CCA program individually; the joint power agreement structure reduces the risks of implementing a CCA program by immunizing the financial assets of participants; and to this end, since 2014, the County has been evaluating a potential CCA program for the County and the cities within Alameda County; and

**WHEREAS**, the County Board of Supervisors voted unanimously in June of 2014 to allocate funding to explore the creation of a CCA Program and directed County staff to undertake the steps necessary to evaluate its feasibility; and to assist in the evaluation of the CCA program within Alameda County, the County established a Steering Committee comprised of city and stakeholder representatives, in 2015, that has met monthly, advising the Board of Supervisors on the possibility of creating a CCA Program; and

**WHEREAS**, the Technical Feasibility Study completed in June of 2016 shows that implementing a Community Choice Aggregation program would likely provide multiple benefits to the citizens of Alameda County, including the following:

1. Providing customers a choice of power providers;
2. Increasing local control over energy rates and other energy-related matters;
3. Providing electric rates that are competitive with those provided by the incumbent utility;
4. Reducing greenhouse gas emissions arising from electricity use;
5. Increasing local and regional renewable generation capacity;
6. Increasing energy conservation and efficiency projects and programs;
7. Increasing regional energy self-sufficiency; and

8. Encouraging local economic and employment benefits through energy conservation and efficiency projects; and

**WHEREAS**, representatives from the County and Alameda County cities have developed the East Bay Community Energy Authority Joint Powers Agreement (“Joint Powers Agreement”) (attached hereto as Exhibit A). The Joint Powers Agreement creates the East Bay Community Energy Authority (“Authority”), which will govern and operate the CCA program; and

**WHEREAS**, the County and the Alameda County cities that elect to participate in the CCA Program shall do so by approving the execution of the Joint Powers Agreement and adopting an ordinance electing to implement a CCA Program, as required by Public Utilities Code Section 366.2(c)(12); and

**WHEREAS**, the Authority will enter into agreements with electric power suppliers and other service providers and, based upon those agreements, the Authority plans to provide electrical power to residents and businesses at rates that are competitive with those of the incumbent utility; upon the California Public Utilities Commission approving the implementation plan prepared by the Authority, the Authority can provide service to customers within its member jurisdictions; and under Public Utilities Code Section 366.2, customers have the right to opt-out of a CCA program and continue to receive service from the incumbent utility; and customers who wish to continue to receive service from the incumbent utility will be able to do so at any time;

**NOW THEREFORE THE CITY COUNCIL OF THE CITY OF EMERYVILLE HEREBY ORDAINS AS FOLLOWS:**

**SECTION ONE. PURPOSE AND INTENT**

The purpose and intent of this ordinance is to implement a Community Choice Aggregation (CCA) program within Alameda County and including the City of Emeryville, pursuant to the authority provided by California Public Utilities Section 366.2.

**SECTION TWO. IMPLEMENTATION OF A COMMUNITY CHOICE AGGREGATION PROGRAM WITHIN THE CITY OF EMERYVILLE PURSUANT TO PUBLIC UTILITIES CODE SECTION 366.2(c)(12)**

The City Council of the City of Emeryville hereby elects to implement a Community Choice Aggregation program within the City of Emeryville by and through the City’s participation in the East Bay Community Energy Authority, pursuant to California Public Utilities Code Section 366(c)(12).

**SECTION THREE. CEQA DETERMINATION**

The City Council finds, pursuant to Title 14 of the California Administrative Code, Section 15378(b)(5), that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project. A Project does not include "Organization or administrative activities of governments that will not result in direct or indirect physical changes in the environment." Forming or joining a CCA presents no

foreseeable significant adverse impact to the environment over the existing condition because state regulations such as the Renewable Portfolio Standard (RPS) and Resource Adequacy (RA) requirements apply equally to CCAs as they do to Private Utilities.

**SECTION FOUR. SEVERABILITY**

Every section, paragraph, clause, and phrase of this Ordinance is hereby declared severable. If, for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining section, paragraphs, clauses, or phrases.

**SECTION FIVE. EFFECTIVE DATE**

This Ordinance shall take effect thirty (30) days following its final passage. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code section 33693.

**SECTION SIX. CODIFICATION**

Sections One, Two, Three, Four, Five and Six of this Ordinance shall Not be codified in the Emeryville Municipal Code.

This Ordinance was introduced and first read by the City Council of the City of Emeryville at a regular meeting on Tuesday, November 1, 2016 and **PASSED AND ADOPTED** by the City Council at a regular meeting on Tuesday, November 15, 2016, by the following vote:

AYES:	<u>5</u>	Mayor Martinez, Vice Mayor Donahue and Council Members Asher, Atkin and Davis
NOES:	<u>0</u>	_____
ABSTAIN:	<u>0</u>	_____
ABSENT:	<u>0</u>	_____

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

APPROVED AS TO FORM:



\_\_\_\_\_  
CITY ATTORNEY