

CITY COUNCIL ORDINANCE NO. 20-09

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRVINE, CALIFORNIA, AUTHORIZING THE IMPLEMENTATION OF A COMMUNITY CHOICE AGGREGATION PROGRAM

WHEREAS, the City of Irvine has been actively investigating options to provide electric services to constituents within its service area with the intent of achieving greater local involvement over the provisions of electric services and promoting competitive retail choice; and

WHEREAS, assembly Bill 117 (Stat. 2002, ch. 838; see California Public Utilities Code § 366.2 et seq.; hereinafter referred to as 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 expressly authorizes participation in a CCA program through a joint powers agency, and to this end, the City of Irvine has been evaluating a countywide CCA program; and

WHEREAS, through Docket No. R.03-10-003, the California Public Utilities Commission ("Commission") has issued various decisions and rulings addressing the implementation of CCA programs, including establishing a procedure by which the Commission will review implementation plans, which are required to be submitted under the Act as the means of describing the CCA program and ensuring compliance with the Act; and

WHEREAS, the City has elected to form a joint powers authority that would specify the terms and conditions by which participants may participate as a group in energy programs, including, but not limited to, the implementation of a CCA program with the following benefits:

- a. providing customers a choice of power providers;
- b. increasing local control over energy rates and other energy-related matters;
- c. providing electric rates that are competitive with those provided by the incumbent utility;
- d. improving the local economy by increasing local and regional renewable generation capacity and energy conservation and efficiency projects and programs;
- e. increasing regional energy self-sufficiency; and
- f. reducing greenhouse gas emissions arising from electricity use in the City; and

WHEREAS, the Joint Powers Agreement creating the Authority will govern and operate the CCA program on behalf of its member jurisdictions. The City may participate in the Authority by approving the execution of the Joint Powers Agreement and adoption of a CCA ordinance required by Public Utilities Code § 366.2(c)(12). The City's participation in the Authority will include membership on the Board of Directors of the Authority as provided in the Joint Powers Agreement; and

WHEREAS, the Authority will enter into agreements with electric power suppliers and other services providers and, based on these agreements, the Authority plans to provide power to residents and businesses at rates that are competitive with those of the incumbent utility. Once the Commission approves the implementation plan prepared by the Authority, the Authority may provide service to customers within the City and those cities that choose to participate in the Authority; and

WHEREAS, under Public Utilities Code § 366.2, customers have the right to opt-out of a CCA program and continue to receive service from the incumbent utility. Customers who desire to continue to receive service from the incumbent utility will be able to do so at any time; and

WHEREAS, on November 10, 2020 and November 24, 2020, the City Council held public meetings at which time interested persons had an opportunity to testify either in support or in opposition to implementation of the CCA program within the City; and

WHEREAS, this ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines, as it is not a "project" and has no potential to result in a direct or reasonably foreseeable indirect physical change to the environment because it is merely the formation of an organization. 14 Cal. Code Regs. § 15378(a). The ordinance is also exempt from CEQA because it is an organizational or administrative activity of governments that will not result in direct or indirect physical change in the environment. 14 Cal. Code Regs. § 15378(b)(5). The ordinance is also exempt from CEQA because it is merely a change in organization of local agencies. 14 Cal. Code Regs. § 15320. Further, the ordinance is exempt from CEQA because there is no possibility that the ordinance or its implementation, which would only result in the formation of a governmental organization, would have a significant negative effect on the environment. 14 Cal. Code Regs. § 15061(b)(3). The City Clerk shall cause a Notice of Exemption to be filed as authorized by CEQA and the State CEQA Guidelines.

NOW, THEREFORE, the City Council of the City of Irvine DOES HEREBY ORDAIN as follows:

**SECTION 1. FINDINGS.** The above recitals are true and correct and are incorporated herein as findings in support of the actions taken and authorized hereby.

**SECTION 2. AUTHORIZATION TO IMPLEMENT A COMMUNITY CHOICE AGGREGATION PROGRAM.** Based upon the foregoing, and in order to provide businesses and residents within the City with a choice of power providers, the City hereby

elects to implement a community choice aggregation program within the jurisdiction of the City by participating in the CCA program of the Authority, as described in the Joint Powers Agreement.

**SECTION 3. SEVERABILITY.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is held for any reason to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

**SECTION 4. EFFECTIVE DATE.** This ordinance shall take effect 30 days after its passage.

PASSED AND ADOPTED by the City Council of the City of Irvine at a special meeting held on the 24<sup>th</sup> day of November, 2020.

  
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MAYOR OF THE CITY OF IRVINE

ATTEST:  
  
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CITY CLERK OF THE CITY OF IRVINE

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) SS  
CITY OF IRVINE )

I, MOLLY M. PERRY, City Clerk of the City of Irvine, HEREBY DO CERTIFY that the foregoing Ordinance was introduced for first reading on the 10<sup>th</sup> day of November, 2020, and duly adopted at a special meeting of the City Council of the City of Irvine, held on the 24<sup>th</sup> day of November, 2020.

AYES: 5 COUNCILMEMBERS: Carroll, Fox, Khan, Kuo and Shea  
NOES: 0 COUNCILMEMBERS: None  
ABSENT: 0 COUNCILMEMBERS: None  
ABSTAIN: 0 COUNCILMEMBERS: None

  
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CITY CLERK OF THE CITY OF IRVINE