



## Staff Report

**TO:** Mayor, and City Council Members  
**FROM:** Kari Mendoza, Administrative Services Director  
**DATE:** March 17, 2020  
**SUBJECT:** **Adopt Resolution (A) Appointing the Representative and Alternate Representative to the ERMAC Board of Directors; and Resolution (B) Approve Amendments to the ERMAC Joint Powers Agreement**

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### **Background and Analysis:**

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. The attached resolution (Attachment A) appoints Administrative Services Director, Kari Mendoza, as the City's representative and City Manager, Todd Parton, as the City's alternate to the ERMAC Board of Directors.

ERMAC is a self-insured joint powers authority created for the purpose of providing liability protection to California governmental agencies. ERMAC provides high-value insurance coverages for all City activity – approximately 45 programs or activities are covered such as liability exposure for police practices, auto and property losses, employment practices, environmental contamination, internal theft/embezzlement, library literacy activity, and so on. Coverages generally are \$50 million for tort and injury losses, and \$1 billion for property losses.

The ERMAC Board of Directors recently approved several amendments to the ERMAC Joint Powers Agreement. The attached resolution (Attachment B) approves these amendments to the ERMAC Joint Powers Agreement.

### Appointment of City Representative and Alternate to ERMAC:

Article 6 of the joint powers agreement creating ERMAC requires the governing body of each member entity to appoint one representative and one alternate to the ERMAC Board of Directors. Administrative Services Director Kari Mendoza serves as the City's sole representative to the ERMAC Board. The City does not currently have an authorized alternate to the ERMAC Board of Directors. The alternate will be authorized

to act in the absence of the representative and shall have the same responsibility, power and authority as the representative. It is recommended that City Manager, Todd Parton, serve as the City's alternate representative to the ERMAC Board. The City's alternate and representative will be authorized to bind the City on all matters pertaining to the ERMAC Joint Powers Agreement.

Approval of Amendments to the ERMAC Joint Powers Agreement:

The Board of Directors and the member agencies of ERMAC adopted a joint powers agreement dated June 27, 2003. Thereafter, the joint powers agreement was amended by Resolution 2004-01 to change the name of the authority and by Resolution 2004-02 to add Section 15 related to contractual liability of member agencies. Recently, the Board of Directors determined that further amendments to the joint powers agreement would be in the best interests of ERMAC. After review and discussion, the ERMAC Board of Directors approved the following amendments to the joint powers agreement:

1. Add to Section 3, Purpose of the Agreement: Common Exercise of Powers, the following sentence as a new paragraph at the end: "New members may be admitted to the Authority upon approval by a two-thirds or higher vote of the Board of Directors. Eligibility is limited to California public agencies."
2. Add to Section 4, Powers, "(H) To appoint a Treasurer pursuant to Government Code section 6505.6. Per that section, the Treasurer shall cause an annual audit to be conducted."
3. Replace Section 5, Termination, "giving of thirty (30) days written notice to the primary officer of the authority" with "giving of written notice to the primary officer of the Authority of provisional termination by December 31 and final notice of termination by March 31."
4. Add to Section 6, Board of Directors, the following sentence as a new paragraph at the end: "At least one regular meeting shall be held each program year."
5. Add as a new Section 16: "Member Agency Responsibilities. The member Agencies shall have the following responsibilities:
  - A. to cooperate fully with the Authority in determining the cause of losses and in the settlement of claims, as defined in the Memorandum of Coverage;
  - B. to pay cash contributions, cash assessments and other charges, promptly to the Authority when due;

- C. to provide the Authority with such statistical and loss experience data and other information as may be necessary for the Authority to carry out the purposes of this Agreement;
  - D. to establish and maintain risk management programs including but not limited to loss control, risk transfer and employee safety programs;
  - E. to cooperate with and assist the Authority and any insurer, claims adjuster or legal counsel retained by the Authority, in all matters relating to this Agreement;
  - F. to comply with the Bylaws and all policies and procedures adopted by the Board; and
  - G. to appoint a representative and alternate to the Board of Directors.”
6. Add as a new Section 17: “Assessments and Surplus Distributions. The Board by two-thirds vote shall have the authority to levy an assessment on member Agencies upon a determination that it is necessary to meet the Authority’s obligations. The assessment shall be *pro rata* in accordance with the respective initial premiums paid by members for the program year(s) giving rise to the deficit position. The Board by two-thirds vote shall have the authority to declare a distribution of surplus funds to current members upon a determination that surplus funds are available for distribution. Such distribution shall be *pro rata* in accordance with the respective initial premiums paid by current member Agencies for the program year(s) giving rise to the surplus position.”
7. Add as a new Section 18: “Expulsion. The Board, by a two-thirds vote, may expel any member Agency from membership, effective at the end of the program year in which notice is given; such Agency shall have all the duties of a member that had voluntarily withdrawn.”
8. Add as new Section 19: “Withdrawal. Withdrawal of any member Agency under Section 5 shall not terminate its responsibility:
- A. to cooperate fully with the Authority in determining the cause of losses and in the defense of covered claims;
  - B. to pay assessments due and payable for program years in which the member Agency participated;
  - C. to provide such statistical and loss experience data and other information as may be necessary for the Authority to carry out the purposes of this Agreement; and
  - D. to cooperate and assist the Authority and any insurer, claims adjuster, or legal counsel retained by the Authority, in all matters relating to this Agreement. Coverage in all program years which the member Agency

participated will remain in effect and continue until the conclusion of their respective program years.”

9. Add as a new Section 20: “Termination and Distribution. This Agreement may be terminated at any time by the written consent of all member Agencies, or when due to withdrawals or expulsions, less than two member Agencies remain. Provided, however, that this Agreement shall continue in force for the purpose of disposing of all claims and all other functions necessary to wind up the affairs of the Authority. Upon termination of this Agreement, after resolution of claims, all assets of the Authority shall be distributed among past or present members of the Authority *pro rata* in proportion to the contributions made.”

As a result of the addition of Section 18, Expulsion City staff and the City attorney recommended ERMAC include a minimum notice period. Therefore, the BYLAWS of the Exclusive Risk Management Authority of California were amended at the February 19, 2020 meeting to add the following:

1. Add to Article II, Section 1: Expulsion of a member Agency pursuant Section 18 of the JPA Agreement, effective at the end of the program year in which notice is given, shall only occur upon a minimum of one hundred and twenty (120) days advance notice to the member agency.

By-law revisions do not require Council approval.

The City Attorney’s office has reviewed these amendments.

**Fiscal Impact:**

There is no fiscal impact to the City of Beaumont at this time.

**Recommended Action:**

Waive the full reading and adopt by title only, a “Resolution Appointing the Representative and Alternate to the ERMAC Board of Directors” Appointing Administrative Services Director Kari Mendoza as the City’s Representative and City Manager Todd Parton as the City’s Alternate to the ERMAC Board of Directors, and

Waive the full reading and adopt by title only, “Resolution Approving Amendments to the Exclusive Risk Management Authority of California Joint Powers Agreement.”

**Attachments:**

- A. Resolution Appointing the Representative and Alternate to ERMAC
- B. Resolution Approving Amendments to the ERMAC JPA
- C. Redlined JPA Agreement
- D. JPA Amendment as Amended
- E. Redlined By Laws
- F. By Laws as Amended