CITY COUNCIL AGENDA REPORT

MEETING DATE: August 1, 2006 **ITEM NUMBER:** IX-1

SUBJECT: FALSE REPORTS AGAINST OFFICERS AND CITY EMPLOYEES

DATE: JULY 6, 2006

FROM: KIMBERLY HALL BARLOW, CITY ATTORNEY

PRESENTATION BY: KIMBERLY HALL BARLOW, CITY ATTORNEY

FOR FURTHER INFORMATION CONTACT: KIMBERLY HALL BARLOW, 714-754-5399

RECOMMENDATION:

Introduce and give first reading to the attached Ordinance Amending Chapter 1 of Title 11 of the Costa Mesa Municipal Code, relating to making false reports against City officers and employees.

BACKGROUND:

This ordinance was enacted in 1975 making it a crime to sign and file a false statement for the purpose of causing an investigation into the conduct of any officer or employee, knowing of the falsity of the statement or without a reasonable basis for believing it to be true. Unlike California Penal Code section 148.6, regarding filing of false allegations against peace officers, the City's ordinance covers false reports made against any City office or employee.

ANALYSIS:

On May 15, 2006, the United States Supreme Court denied a petition for review of a Ninth Circuit Court of Appeals decision holding California Penal Code ("PC") § 148.6 unconstitutional. This decision means that the Ninth Circuit's opinion is final. The Appellate court had determined that, although the statute regulates otherwise unprotected speech, it is in violation of viewpoint neutrality, the core requirement of the First Amendment, by singling out particular speech based on the speaker's viewpoint. The citizen complaint procedures were devised by the state in order to further greater accountability by peace officers. However, that goal is undermined by holding only citizen complainants responsible for falsehoods. Peace officers or witnesses making supportive false statements would not face criminal sanction.

Please note, that while PC § 148.6 has been declared unconstitutional by the Ninth Circuit, the California Supreme Court previously determined in People v. Atkinson (Stanistreet), 29 Cal. 4th 497 (2002), that the statute was constitutional. The result of these two decisions is that the section is constitutional according to the California state courts, but is unconstitutional according to the federal courts. Because of the Supremacy Clause, we believe it likely that federal courts will invalidate any conviction under PC § 148.6. It appears likely to us that the same fate would befall any conviction under existing Costa Mesa Municipal Code section 11-15, as it appears to suffer from

the same flaw as Penal Code section 148.6, criminalizing only false statements adverse to officers and employees, and not false statements which are "favorable" to them.

The police department has already been notified of the Ninth Circuit's controlling ruling on the issue of enforcement of PC § 148.6. We believe that CMMC section 11-15 should be repealed, as efforts to enforce it could lead to civil rights lawsuits seeking substantial damages in federal court.

ALTERNATIVES CONSIDERED:

City Council may choose to either leave the Municipal Code as is or delete the section. An available alternative would be to modify the section to criminalize all false statements submitted in writing about an officer or employee, regardless of whether they are critical or favorable.

FISCAL REVIEW:

None required.

LEGAL REVIEW:

The City Attorney's office has prepared the attached ordinance for your consideration.

CONCLUSION:

The proposed amendment to the Costa Mesa Municipal Code is intended to protect the City from costly litigation in defense of civil rights actions relating to making false reports against City officials. The City Attorney recommends that City Council give first reading to the Ordinance amendment.

ALLAN L. ROEDER
City Manager

KIMBERLY HALL BARLOW
City Attorney

DISTRIBUTION: City Manager

ATTACHMENTS: 1 Draft Ordinance Amendment

File Name Date Time

ORDINANCE NO. 06-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA AMENDING CHAPTER I OF TITLE 11 OF THE COSTA MESA MUNICIPAL CODE RELATING TO FALSE REPORTS

WHEREAS, California Penal Code section 148.6 provides that "[e]very person who files any allegation of misconduct against any peace officer, as defined in Chapter 4.5 (commencing with section 830) of Title 3 of Part 2, knowing the allegation to be false, is guilty of a misdemeanor;" and

WHEREAS, a recent federal appellate court decision has held that Penal Code section 148.6 is unconstitutional based on viewpoint, because only those individuals who are critical and not those who are supportive are subject to prosecution; and

WHEREAS, pursuant to Penal Code section 148.6, the Costa Mesa Municipal Code, in section 11-15, provides that making a false allegation against a city officer or employee is unlawful; and

WHEREAS, enforcement of section 11-15 could lead to civil rights lawsuits, leaving the City vulnerable to expensive defense costs and judgments.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Section 11-15 of Chapter I of Title 11 of the Costa Mesa Municipal Code is hereby deleted in its entirety:

Chapter I

~~**Sec. 11-15. Filing false statements regarding city officers or employees prohibited.**~~

~~Every person who, having been advised of the provisions of this section, signs a written statement declaring the contents thereof to be true, and causes the same to be filed with any department of the City of Costa Mesa, for the purpose of causing an investigation to be made into the activities or conduct of any city officer or employee, knowing such statement to be false or without a reasonable belief in the truth thereof when such statement is in fact false, is guilty of a misdemeanor. It is the intent of the city council of the City of Costa Mesa that this section not be construed as to apply to those situations regulated by Penal Code sections 148.5 and 148.3.~~

Sec. 11-15. Reserved.

Section 2. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

Section 3. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Costa Mesa hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, 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. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and posted pursuant to the provisions of law in that regard and this Ordinance shall take effect 30 days after its final passage.

PASSED AND ADOPTED this ____ day of _____, 2006.

_____
Mayor

APPROVED AS TO FORM:

_____
City Attorney

ATTEST:

_____
City Clerk of the City of Costa Mesa

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF COSTA MESA)

I, JULIE FOLCIK, City Clerk and ex-officio clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. 06-__ was introduced and considered section by section at a regular meeting of said City Council held on the _____th day of _____, 2006, and thereafter passed and adopted as a whole at a regular meeting of said City Council held on the _____ day of _____, 2006, by the following roll call vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this ____ day of _____, 2006.

_____
City Clerk and ex-officio
Clerk of the City Council of the
City of Costa Mesa