



CITY COUNCIL AGENDA REPORT

MEETING DATE: November 14, 2006

ITEM NUMBER: **VI-12**

SUBJECT: LEGAL DEFENSE OF EMPLOYEES

DATE: OCTOBER 17, 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:

Adopt the attached Council Policy relating to legal defense of City employees or former employees.

BACKGROUND:

Presently, when current or former City employees are named along with the City as defendants in lawsuits, the item is placed on the agenda for adjournment to closed session. After discussion, City Council determines whether to authorize defense of the named employees.

ANALYSIS:

Once the City has been served with a lawsuit, a response must be made within a specified time. By law, the City must defend and indemnify employees or former employees who were acting within the scope of their employment with the City when the incident(s) giving rise to the lawsuit occurred, unless there is a conflict between the City and the employee or a possible violation of law.

The City has three choices with respect to defending employees: 1) defense without any reservation of its rights, 2) defense under a reservation of rights not to pay any judgment, compromise or settlement until it is established that the occurrence arose out of an act or omission occurring within the scope of City employment or 3) declining defense after determining that an actual conflict exists between the employee and the City in defending the action or that the employee was acting outside the course and scope of employment with the City.

It is time consuming and inefficient to adjourn and adjourn to closed session for every lawsuit where City employees or former employees are named defendants. Additionally, this procedure tends to delay the City's ability to promptly respond. In almost all cases, it is readily discernible whether the employee was acting within the course and scope of employment.

By delegating this function to the City Manager, with the concurrence of the City Attorney, the proposed change in procedure will shorten the time for authorization. In

CITY OF COSTA MESA, CALIFORNIA

COUNCIL POLICY

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PURPOSE:

The City, by law, must defend employees who were acting within the scope of their employment when the incident which gave rise to the lawsuit occurred. This policy will clarify the City's procedures relating to the defense of City employees in such lawsuits.

POLICY:

Limited authority is hereby delegated to the City Manager, in consultation with the City Attorney, to determine that an employee or former employee specifically named as a defendant in a lawsuit, was acting within the scope of his or her employment as a City employee, when the alleged act(s) or omission(s) occurred, from which the lawsuit arose; and to authorize defense of the employee or former employee at the City's expense.

PROCEDURE:

1. When an employee or former employee of the City of Costa Mesa, including any Council Member, is named in a lawsuit where it is alleged that the plaintiff's injury arose out of the employee's conduct, the City Manager shall, in consultation with the City Attorney, assess whether the act(s) or omission(s) occurred within the course and scope of employment with the City.
2. The City Manager, with the City Attorney's concurrence, shall determine whether any conflict exists between the named employee and the City and/or whether there may have been a possible violation of law.
3. If the City Manager finds that the employee, other than a City Council Member, was acting within the scope of his or her employment with the City and there is no conflict of interest or probable violation of law, the City Manager may authorize defense of the employee by the City.
4. City Council shall be informed of such determinations by memorandum.
5. In the event the City Manager, with the concurrence of the City Attorney, decides that a conflict of interest exists or a possible violation of law may have occurred, the item will be placed on the agenda for closed session at the soonest possible City Council meeting. If a current or former City Council Member is named in the lawsuit, the City Council, without that person's participation, shall determine whether to authorize the defense of that person in the action.
6. A request for defense may be placed on the agenda for City Council discussion in closed session at the discretion of the City Manager for any reason deemed to be of sufficient importance, or upon request of any Council Member.