



CITY COUNCIL AGENDA REPORT

MEETING DATE: February 19, 2008

ITEM NUMBER:

SUBJECT: WATER QUALITY ORDINANCE IMPLEMENTATION AGREEMENT

DATE: FEBRUARY 6, 2008

FROM: FIRE ADMINISTRATION

PRESENTATION BY: MIKE MORGAN, FIRE CHIEF

FOR FURTHER INFORMATION CONTACT: GREGG STEWARD, DEPUTY CHIEF (714) 327-7404

RECOMMENDATION:

1. Approve Water Quality Ordinance Implementation Agreement between City of Costa Mesa and County of Orange.
2. Authorize the Mayor and the City Clerk to execute Agreement No. D07-107.

BACKGROUND:

The Fire Department, in collaboration with The Public Services Department which serves as the City's representative for the National Pollutant Discharge Elimination System (NPDES), request that the City Council approve an agreement authorizing the City to contract with the Orange County Flood Control District (District) to serve as the Authorized Inspector for the pollutant release portion of the NPDES and Spill Prevention Containment and Control (SPCC) permit programs for the City of Costa Mesa. The purpose of the agreement is to allow the City to take advantage of the District's capacity to provide high-end scientific, technical and enforcement services that the City is unable to provide. Thus, the role of the District as the Authorized Inspector in this agreement is to respond to water pollution reports/complaints and support necessary investigations, spill clean up and enforcement activities as required in the adopted permits.

The terms of the agreement include an annual pollution response on-call fee identified in Exhibit "A" of the agreement, as well as, reimbursement of actual costs incurred by the District.

ANALYSIS:

Costa Mesa is currently one of four Orange County cities not involved in this agreement. The other cities not participating are either a Certified Unified Program Agency (CUPA) through Cal EPA or have their own designated hazmat clean up crews. Thus, the City of Costa Mesa is the only city in the county not having access to this level of service.

As first responders to potentially hazardous materials entering city streets, curb and gutters, sewers and other drainage systems, the City is ultimately responsible for proper notification under the Health and Safety Code and Water Code. Utilizing District services under this agreement would ensure that all proper entities are notified including Orange County Health Care Agency, Fish and Game, US Fish and Wildlife, County Harbor Patrol, Environmental Protection Agency (EPA), etc., and that subsequent clean up, transportation and disposal methods of contaminants are completed. Further responsibilities that the District would assume through this agreement include: cost recovery from the responsible party, coordinating with the District Attorney if criminal charges are necessary, and providing information to the Costa Mesa Fire Department for consideration of cost recovery, per the 2007 California Fire Code. If proper protocols are not followed, there is risk of being fined by the Regional Water Quality Control Board and other State and Federal entities. Currently, the City is assuming this risk.

Additional benefits are that Costa Mesa Fire Department apparatus and personnel would become available for additional emergency responses, once the immediate emergency is mitigated, by transferring scene responsibility to the District designated inspector. Currently, fire personnel must remain on standby at the scene while the clean up occurs, which causes other fire companies to respond to 911 calls outside their designated response district for up to several hours. Overall, this program reduces the City's liability by providing a higher level of notification, supervision, and clean up completed by a team with more advanced training and experience than the Fire Department or Public Services Department can offer, and allows our fire crews to become available for additional responses in a more timely manner.

ALTERNATIVES CONSIDERED:

The alternative to this Council action is to not participate in the agreement, which exposes the city to potential liability if procedures for proper notification, clean up, and disposal of materials are not followed correctly.

FISCAL REVIEW:

The cost for participating in this agreement is currently \$1,326 per year. It is anticipated that the annual fee to participate in this program would be far less than the cost of a large fine to the City by not responding properly to the concerns of a pollutant incident, or by improper notifications to the proper agencies in a timely manner. Clean up costs will utilize restitution methods or seek Superfund monies depending on location of incident, severity of incident, and resources required to mitigate and clean the area of concern. (Superfund is the name given to the environmental program established to address abandoned hazardous waste sites. It allows the EPA to clean up such sites and to compel responsible parties to perform cleanups or reimburse the government for EPA-lead cleanups.)

Through this agreement, the Orange County Flood Control District will take over responsibility from the Fire Department once the emergency has been mitigated. They will then verify proper clean up procedures are being followed. By utilizing this agreement, and the expertise of the Orange County Flood Control District, we will greatly reduce the possibility that currently exists of the City of Costa Mesa being fined for improper clean up of an incident.

LEGAL REVIEW:

The County Agreement No. D07-107 has been approved as to form by the City Attorney's office.

CONCLUSION:

It is recommended that the City Council approve the Water Quality Ordinance Implementation Agreement and authorize the Mayor and the City Clerk to execute Agreement No. D07-107.

MIKE MORGAN

Fire Chief

MARC R. PUCKETT

Director of Finance

KIMBERLY HALL BARLOW

City Attorney

| ATTACHMENT: "A" [Water Quality Ordinance](#)
Implementation Agreement (3 copies)

DISTRIBUTION: City Manager
Assistant City Manager
City Attorney
City Clerk
Staff
File