OB-3

CITY OF COSTA MESA
P. O. Box 1200
Costa Mesa, CA 92628-1200

FEE: $ N/A

APPLICATION FOR REVIEW, APPEAL OR REHEARING

Applicant Name Wendy Leece, Council Member

Address 77 Fair Drive, Costa Mesa, CA 92626

Phone 754-5000 Representing*

REQUEST FOR: ☒ **REVIEW**** ☐ **APPEAL** ☐ **REHEARING**

Decision of which review, appeal or rehearing is requested: (give number of rezone, zone exception, ordinance, etc., if applicable, and the date of the decision, if known.) New Business #4 Re: Outsourcing of City Services. March 1, 2011 meeting

Decision by: Council

Reasons for requesting review, appeal or rehearing:

1. Request for review and rehearing based on insufficient notice to the public. The report was not sufficient to include financial data to identify cost savings. I have had many residents complain to me. They did not have time to understand the complexities and outcomes due to information lacking per cost savings and other issues. May be in violation of current employee contracts and put City at risk for lawsuits. Legal opinion was not given to me in time to fully consider. Legal opinion given only to council 1 hour before meeting. Not enough time to review and consult w/ City attorney.

Date: 3/4/11 Signature: Wendy Leece

For office use only – do not write below this line

SCHEDULED FOR THE CITY COUNCIL/PLANNING COMMISSION MEETING OF:
If review, appeal or rehearing is for person or body other than City Council/Planning Commission, date of hearing of review, appeal or rehearing:

CITY OF COSTA MESA
BY

2011 MAR -4 PM 4:46

CITY CLERK
RECEIVED

* If you are serving as the agent for another person, please identify the person you represent and provide proof of agency.
** Review may be requested only by City Council or City Council Member
Costa Mesa/Forms1/Application for Review-Appeal-Rehearing

CITY COUNCIL AGENDA REPORT

MEETING DATE: March 1, 2011 ITEM NUMBER: NB-4

SUBJECT: OUTSOURCING OF CITY SERVICES

DATE: FEBRUARY 24, 2011

FROM: CITY MANAGER'S DEPARTMENT

PRESENTATION BY: THOMAS R. HATCH, ASSISTANT CITY MANAGER

FOR FURTHER INFORMATION CONTACT: THOMAS R. HATCH @ (714) 754-5328

RECOMMENDATION:

The City Council Budget Working Group is recommending that the City Council outsource the City services listed in this staff report and direct the Assistant City Manager to begin the process of noticing employees of this action.

DISCUSSION:

At the City Council Study Session of February 8, 2011, the City Attorney presented a staff report (Attachment A) that outlined the requirements for noticing employees for outsourcing or layoffs. This report was requested by the City Council Budget Working Group in an effort to understand the process for appropriately notifying employees of future outsourcing. The report states, "For layoffs which would result from contracting out a specific service, each affected employee would be entitled to at least six months' notice pursuant to Administrative Regulation 2.26 and the City is also required to meet and consult with the applicable bargaining units (or employees if not part of a bargaining unit) to identify the specific employees/positions which would be subject to layoff as well as the impact of such layoffs/contracting out on the remaining members of the unit."

The City Council Budget Working Group is concerned that a six-month noticing requirement per applicable Memorandum Of Understandings and/or Administrative Regulations will not allow for implementation of changes until several months into the next fiscal year. Any decision to outsource services by the City Council on March 1, 2011, would not become effective until September 1, 2011 or later date. The financial concern is that with the noticing requirements any budgetary savings from a change in the system for delivering services would not be realized at the beginning of the next fiscal year and likely would not be effective until well into the new fiscal year.

Given the constraints identified above for a six-month noticing process and given the successful outsourcing of similar services by other cities, the Budget Working Group is recommending that the City Council act now to decide on outsourcing these identified City services:

- The entire Fire Department operations;
- Street Sweeping services;
- Graffiti Abatement services;
- Park Maintenance services;
- Parkway and Median Maintenance services;
- Fleet Maintenance services;
- Street Maintenance services;
- Facility Maintenance services;
- Animal Control services;
- City Jail services;
- Special Event Safety services;
- Information Technology services;
- Telecommunications services;
- Building Inspection services;
- Reprographic services;
- Graphic Design services;
- Payroll services; and
- Employee Benefit Administration services.

Per the City Council's direction, the City has commenced a complete organizational review of the structure of how municipal services are provided to the community. This process is expected to take up to six months or more to complete. As portions of this comprehensive review are completed, the detailed analysis and alternatives for service delivery will be provided to the public and employees for review and input prior to the City Council deliberating and determining the new structure for service delivery of each identified service. The options for new service delivery could include the following: a private vendor, another public agency or joint powers agreement, a non-profit agency, restructured City staff operations, or another method still to be determined. As this process moves forward, the formation of recommendations about new service delivery systems will be based on the thorough evaluation of the best and most efficient method for delivering a particular service to the community and may likely require formal bidding processes.

ALTERNATIVES CONSIDERED:

The City Council may decide not to outsource all or some of the services identified.

FISCAL REVIEW:

The fiscal impact for outsourcing the identified City services is unknown at this time.

CONCLUSION:

After discussing alternatives and the timing constraints for outsourcing, the Budget Working Group is recommending that the City Council outsource the City services listed in this staff report and direct management staff take the appropriate legal steps to notice employees of this action.

Thomas R. Hatch
Assistant City Manager

Kimberly Hall Barlow
City Attorney

Attachment: Attachment 1 Staff Report on Noticing Requirements

ATTACHMENT 1

CITY COUNCIL STUDY SESSION REPORT

MEETING DATE: February 8, 2011 ITEM NUMBER: 5

SUBJECT: NOTICING REQUIREMENTS FOR OUTSOURCING OR LAYOFFS

DATE: FEBRUARY 4, 2011

FROM: THE CITY ATTORNEY'S OFFICE

PRESENTATION BY: KIMBERLY HALL BARLOW, CITY ATTORNEY

FOR FURTHER INFORMATION CONTACT: KIMBERLY HALL BARLOW AT (714) 754-5152

RECOMMENDATION:

That the City Council receive the information and provide direction to staff on any possible areas of contracting that staff should explore and bring back for Council consideration.

BACKGROUND:

The City Council Budget Working Group requested that staff provide information on the legal requirements if Council should determine to contract for specific services or determine to eliminate or reduce certain City services to address budgetary concerns.

A number of statutes, City policies and agreement/MOU provisions would come into play should the Council determine to contract out for specific services or to reduce or eliminate specific City services, resulting in layoffs or elimination of positions. A general overview is provided; more specific requirements can be identified if Council identifies a specific service to be contracted for or eliminated.

ANALYSIS:

1. **Is the City required to give notice to each bargaining unit before issuing layoff notices to its members?**

   Yes. Rule 14, Section 5 of the Personnel Rules and Regulations, as well as Administrative Regulation 2.26[1] require notice be provided to the bargaining units

[1] A.R. 2.26: In accordance with Rule 14, Section [5] of the Personnel Rules and Regulations, thirty (30) calendar days before the effective date of layoff, the appointing authority shall notify Personnel of the intended action with reasons therefore. In the event a decision is made by the City to contract out for a specific service performed by City employees, the City will give the affected employees a minimum of six (6) months advance notification in which to evaluate their own situation and assist in planning for the future. The City shall meet and consult with the concerned employee organization on such matters as the timing of the layoff and the number and identity of the employees affected by the layoff.

and to each affected employee. For layoffs which are not the result of contracting out a specific service, the City must give to each affected employee, as well as the bargaining unit of which they are a member, at least thirty days' notice. In addition, the City would be required to meet and consult with the applicable bargaining unit to identify and address impacts to any remaining members of the unit. These requirements are incorporated into the MOUs with each bargaining group to varying degrees. See Article 19.2 of the CMCEA MOU, Article 19.1 of CMPA MOU, Article 19 of CMPMA MOU, Article 24 of CMFA MOU.

For layoffs which would result from contracting out a specific service, each affected employee would be entitled to at least six months' notice pursuant to Administrative Regulation 2.26 and the City is also required to meet and consult with the applicable bargaining units (or employees if not part of a bargaining unit) to identify the specific employees/positions which would be subject to layoff as well as the impact of such layoffs/contracting out on the remaining members of the unit.

2. **Is the City required to be specific as to the service/program being considered for contracting out? In other words, can the City Council issue a blanket notice to all employees of its intent to contract out all services to keep all options open?**

No. The Council must first consider and determine which specific services would be contracted for and then give the required six months' notice to affected employees and bargaining units. Article 19.2 with CMCEA states that once "a decision is made by the City to contract out for a specific service" the required notice is given. Staff believes this requires that notice be given out after the decision to contract out, not before.

As to the possibility of contracting with OCFA, the existing rules would require giving six months' notice to CMFA members. However, the transition time for such contracting out would be subject to negotiation with CMFA and OCFA and could potentially be shorter.

It should be noted that in the event of a layoff, part-time positions are eliminated first. In addition, employees who are notified of layoffs are required to exercise their "bumping" rights within five working days of receiving layoff notifications. Thus, whether thirty days' notice or six months' notice is given to specific employees, the notified employees will have to notify management of any position which they elect to displace into, which would in turn trigger layoff notices to those effected who otherwise would not have been laid off.

3. **May the City withdraw its notice at any time over the 6 months' notice period?**

The City could elect to rescind any thirty days' or six months' notices required to be given. However, employees who receive such notices may seek positions elsewhere during the notice period and thus rescission would not necessarily result in any given employee continuing employment with the City.

Staff would need to assess the impacts of any possible staff reduction or contracting out, and per the requirements of the Meyers-Millias Brown Act, the City would need to meet with the bargaining units to discuss possible impacts to their working conditions as a result elimination of positions or contracting out for services.

ALTERNATIVES CONSIDERED:

None at this time.

FISCAL REVIEW:

The potential financial impact of eliminating, reducing or contracting out specific services cannot be determined until the specific positions/services are identified.

LEGAL REVIEW:

The City Attorney prepared this report with input from Human Resources staff.

CONCLUSION:

Staff is seeking direction as to any particular service Council is interested in contracting out or reducing or eliminating so that appropriate studies, impact analysis, etc. can be performed and brought forward for City Council action.

KIMBERLY HALL BARLOW
City Attorney

STEVE MANDOKI
Administrative Services Director

BOBBY YOUNG
Budget and Research Officer