

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: William L. McDonald

SUBJECT: SEE BELOW

DATE: March 14, 2011

Approved

Debra A. Serna

Date

3/22/11

COUNCIL DISTRICT: CITY WIDE

SUBJECT: RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH THE COUNTY OF SANTA CLARA TO TERMINATE THE CITY'S ROLE AS A PARTICIPATING AGENCY (PA) IN THE COUNTY'S HAZARDOUS MATERIALS CERTIFIED UNIFIED PROGRAM (CUPA)

RECOMMENDATION

Adopt a resolution authorizing the City Manager to negotiate and execute an Agreement with the County of Santa Clara (County), terminating the City's responsibility for specified State hazardous materials programs in the City of San José (City).

OUTCOME

The responsibility for administering the following programs under the County's Hazardous Materials Certified Unified Program (CUPA) program for businesses located in the City will become the responsibility of the County: the Underground Storage Tank Program (UST); Aboveground Petroleum Storage Tank Program (APST); Hazardous Materials Business Plan Program (HMBP); and, the Hazardous Materials Plan/Inventory Statement Programs. Additionally, the responsibility for issuing invoices and permits related to the CUPA program will become the responsibility of the County. These changes will take effect July 1, 2011.

The transition to the County should be cost neutral in that the loss of revenue should be offset by the cost savings in staff position eliminations. These changes will be reflected as part of the 2011-2012 Proposed Operating Budget process.

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BACKGROUND

Legislation passed by the State in 1993 (Health and Safety Code, Chapter 6.11) required the implementation of a Unified Program to administer certain State hazardous waste and hazardous materials statutes and regulations (Unified Program or CUPA) by January 1, 1997. In addition, Health and Safety Code 25404(d) and 25404.5 required the implementation of a Single Fee System for billing State, County, and local fees. The Unified Program covers six State hazardous waste and hazardous materials programs. The programs are the Hazardous Materials Release Response Plan, Hazardous Waste/Tiered Permitting, Underground Storage Tanks (UST), Aboveground Petroleum Storage Tank, California Accidental Release Program and the Uniform Fire Code Hazardous Materials Management Plan/Hazardous Materials Inventory Statements.

The CUPA program initially allowed jurisdictions to decide if they wanted to be a full CUPA (conduct all of the activities in the six programs) or a Participating Agency (PA) (conduct some of the programs). The City decided to be a PA, subordinate to the County CUPA, which is administered by the County's Environmental Health Department, Hazardous Materials Compliance Division. The City entered into an Agreement with the County on August 15, 1997, to provide the following four activities under the CUPA program: Hazardous Materials Release Response Plans, Underground Storage Tanks, Aboveground Storage Tanks, and Uniform Fire Code Hazardous Materials Management Plan/Hazardous Materials Inventory Statements.

Upon implementation of the Agreement, the City also became the agency responsible for the collection of the Single Fee System, which included managing the billing for the two unified program elements that the County oversees, as well as all State surcharges associated with any of the six programs that are part of the Unified Program.

With the passage of State legislation in 1999 and subsequent additional underground storage tank regulations, the State dramatically increased the responsibilities associated with completing the UST inspections. This included changing the inspection cycle from every three years to at least annually, which significantly increased the amount of paperwork and tracking of information required. Additionally, all Hazardous Materials Inspectors conducting UST inspections are now required to maintain International Code Council Underground Tank Inspector Certification. More recently, the State has passed a law for AGSTs that will increase the inspection activity and inspector certification requirements for that program as well.

In 2008, the County performed an audit of the City's Hazardous Materials Program, as required by State Law, with the finding that the program required "Major Improvement." Deficiencies were found with regard to not meeting State-mandated minimum inspection frequencies and performance standards for the UST Program and the Hazardous Materials Release Response and Inventory (Business Plan) Program, as well as the implementation of the Single Fee System and Permit Consolidation service. Many of the ongoing deficiencies are directly related to the long-term lack of staffing and resources required to accomplish the continually growing set of tasks associated with the Unified Program. The complexity of issues associated with managing and executing the program has increased significantly.

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On May 12, 2009, the City Manager sent a letter to the County Executive indicating the City's desire to revisit its level of participation in the CUPA program. Discussions were held with County staff regarding the transfer of the UST and AGST programs and billing/permitting functions. Since 2009, Bureau of Fire Prevention (BFP) staff and County staff have been meeting to address the complexities associated with transferring the programs and billing to the County. A subsequent follow-up audit in 2010 found that improvements were not realized and resulted in the County requiring the City to enter into a Program Improvement Agreement (PIA). To date only 7 of the 31 deficiencies in the PIA have been corrected.

On February 10, 2011, the County gave the City notice of their intent to revoke the City's PA status with the assistance of the Secretary of California Environmental Protection Agency (Cal EPA), if necessary, because of the continual deficiencies with the program, the City's inability to correct them, and the lack of progress towards the transfer of the CUPA program. On February 23, 2011 the City received a letter from the County (Attachment A) stating that it was determined that it is in the best interest of the CUPA program to have the County administer all of the unified program elements. They expressed the desire to have a "very short" timetable to transition the program, due to budget cycles and are looking at having completion by July 1, 2011.

ANALYSIS

The main role of the San José Fire Department's Hazardous Materials Program in the BFP is to ensure safe handling and storage of hazardous materials for the safety of the public and businesses, as well as providing advanced knowledge to first responders. This is done through a permitting, inspection and enforcement program of permitted occupancies, ensuring compliance with International Fire Code, State Law, San José Fire Code, and the San José Hazardous Materials Storage (HMSO) and Toxic Gas (TGO) ordinances.

The Hazardous Materials Program has two sections. One is the Development Services section that provides plan review and inspection services in coordination with the Building Division of PBCE, being a vital part of the STI / ITI accelerated plan check program. The other is the Occupancy Compliance section that works through an inspection program focused on the maintenance of the design and permit standards to ensure public safety. Information is shared with the Bureau of Field Operations for planning and on-scene support.

CUPA inspections are primarily focused on environmental impact, not Fire Safety. After the CUPA contract is terminated the San José Fire Department's Haz Mat Program will continue to be a vital partner in the Development Services plan check (STI / ITI), inspection, and permitting process. The program will also continue to conduct Fire Code, HMSO, and TGO occupancy compliance inspections supporting public safety and emergency services. As the CUPA inspections will be the responsibility of the County, the environmental concerns will continue to be addressed.

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The Fire Department bills facilities for their annual Hazardous Materials and Fire Safety Permits. Currently, the City charges fees for the storage, use and handling of hazardous materials (e.g., flammable/combustible liquids, corrosive substances, etc.). The two components of the hazardous materials fee charged by the City are as follows:

- Component 1 – Facilities meeting hazardous material reporting requirements of Chapter 6.95 of the California Health and Safety Code (generally 55 gallons or more of a liquid, or 500 pounds or more of a solid, or 200 cubic feet or greater of a gas) are required to submit a Hazardous Materials Business Plan (HMBP) and Hazardous Materials Inventory Statement (HMIS) to the San José Fire Department. A fee is then charged for the review of these two components of the HMBP. The County does not currently charge a fee for this service, but will be establishing a fee in the future.
- Component 2 –Applies only to those facilities that store hazardous materials in underground storage tanks. The City charges a fee per underground storage tank; \$315.50 for the first tank and \$149 for each additional tank per facility. The County charges \$929 for the first tank and \$465 for each additional tank per facility.

There are currently 287 underground storage tank facilities in the City: 279 that pay fees; plus 5 City facilities and 3 public school facilities that do not pay fees. The 5 City facilities and 3 public school facilities which are currently fee-exempt would pay the County's Underground Storage Tank Operating Permit fees. The annual cost for City facilities would total \$6,900. The cost to schools facilities would total \$4,200. To date, neither the County nor the City has charged a fee for the Aboveground Petroleum Storage Tank Program.

As a part of the Single Fee System, the City absorbs the costs of billing and collecting for State and County CUPA fees. By transferring the Single Fee System and Permit Consolidation services for the Unified Program to the County, the City will free up staff time in the analyst and accounting positions, permitting the staff to address other issues within the Bureau not associated with the CUPA Program.

The proposed termination agreement will provide for a transition to the County of all services on July 1, 2011. The City will transfer a copy of all of its relevant records to the County. All fees due the City for its obligations before July that are collected by the County after July 1 will be remitted to the City. The agreement will provide for mutual indemnification, and it contains a provision that requires both the City and County to engage in public outreach to business that will be affected.

With the County's desire to transition the program at the end of this fiscal year, BFP and County staff will be meeting on a bi-weekly basis to facilitate the ease of transition and develop a specific plan to address technical and billing details.

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EVALUATION AND FOLLOW-UP

One measure of the success of this change will be the increased number of hazardous materials inspections conducted by the hazardous materials inspectors.

With Fire Prevention inspection services being outside the CUPA / PA agreement, businesses in San José will continue to receive a Fire Department invoice for the Fire Department services. The County will invoice separately for CUPA related services and State fees. Some reconciliation services will be required over the next several years as payments are realized for delinquent accounts that were previously billed by the City for the County as part of the Single Fee System. This will end after four years from the last Single Fee billing due to statute of limitations.

POLICY ALTERNATIVES

The County has indicated that it will work with Cal EPA to formally transition the City's Participating Agency status. The responsibilities and requirements of the Certified Unified Program are assigned to the County through state statute, and Santa Clara County has the authority to return the program to their agency; therefore, no policy alternatives are presented.

PUBLIC OUTREACH/INTEREST

This item meets Criterion 2 below. Information to affected CUPA facilities will be mailed to the facility owners and emailed where possible. In addition, information on the transfer of the CUPA program will be placed on the Fire Department's website. A copy of this memo will be posted on the City's website as part of the April 5, 2011 Agenda.

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: Email, Website Posting, Community Meetings, Notice in appropriate newspapers.)**

COORDINATION

This memorandum has been coordinated with the Environmental Services Department, City Manager's Office, City Attorney's Office, the Budget Office, and the Santa Clara County Environmental Health Department, Hazardous Materials Compliance Division.

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COST SUMMARY/FISCAL IMPLICATIONS

The transition to the County should be cost neutral in that the loss of revenue should be offset by the cost savings in the staff position eliminations. These changes will be reflected as part of the 2011-2012 Proposed Operating Budget process.

The City will realize a revenue loss of \$535,000 from annual Hazardous Materials permits after transferring the CUPA program to the County. To address this loss, the Fire Department will propose to eliminate three positions as part of the 2011-2012 Proposed Operating Budget: 1.0 Program Manager II, 1.0 Hazardous Materials Inspector, and 1.0 Fire Prevention Inspector. CUPA annual permits also paid for 0.2 FTE of an Environmental Compliance Officer (ECO) position. The Environmental Services Department is currently evaluating funding options to continue the 0.2 FTE.

CEQA

CEQA: Not a Project File No. PP10-066

/s/
WILLIAM L. MCDONALD
Fire Chief

For questions please contact Deputy Fire Chief Ruben Torres, Fire Marshal, at 408-535-7793.

County of Santa Clara

Department of Agriculture and Environmental Management
Administration Division



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<http://www.sccagriculture.org>

February 18, 2011

RECEIVED

FEB 23 2011

FIRE PREVENTION
BUREAU

Ruben Torres, Fire Marshal
Bureau of Fire Prevention
San Jose Fire Department
200 East Santa Clara Street
San Jose 95113-1905

RE: Transfer of Unified Program Responsibilities from the City of San Jose to the County of Santa Clara

Dear Chief Torres,

Thank you for meeting with us on February 10th regarding transitioning the Certified Unified Program Agency (CUPA) environmental programs. As you are aware, these discussions were initiated in 2009 when the County Executive received the initial letter from San Jose City Manager Debra Figone indicating the City's desire to transfer these programs to the County. The purpose of this letter is to reiterate the County's position and offer assistance to facilitate the transition of the programs.

The County, after consulting with Cal EPA, has determined that it is in the best interest of the program to administer all of the unified program elements. The unified program elements currently implemented by San Jose include: Hazardous Materials Business Plan Program and Hazardous Materials Inventory Statement; Underground Storage Tank Program; Aboveground Petroleum Storage Tank Program and Single Fee System (billing and permitting of CUPA programs). The key issue driving this decision is the City's level of performance found in the audits of 2008 and 2010.

As mutually agreed upon in our meeting, due to budget cycles, the timetable to transition the programs is very short. We recognize that this decision will have an impact on both entities and would like to begin working on the transition immediately. The transfer of the billing and permitting is our immediate concern since it involves the most preparation. I would like to suggest that our Program Manager, Jim Blamey, communicate directly with your HazMat Manager, Mike Murtiff, to identify the best manner in which to proceed with this transition. Mr. Blamey is willing to serve as a central point of contact during the transition process.

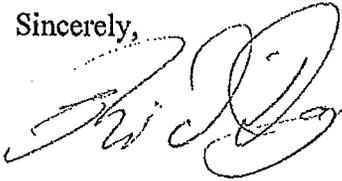
I will also be asking Mark Bernal, Deputy County Counsel, to update the Office of the City Attorney as you suggested in our meeting. Finally, the City / County Compendium of issues will be updated to reflect the current status.

The County is committed to working with the City to make the transition of the unified program elements seamless. We understand the implications of the transition on your program and on its staff. To this end, the County has requested that our Human Resources investigate the feasibility of transfer of some staff between the City and County. I will keep you informed of their findings should you wish to exercise that option.

To facilitate the transition of the programs by the beginning of the new fiscal year, I suggest that bi-weekly meetings be held between County and City staff members. A transition plan to deal with the technical and billing details can be worked out by these individuals. The County has the experience of successfully assuming the responsibility of CUPA programs from other jurisdictions in the recent past. For example, we worked very closely with the City of Palo Alto in the transitioning of their Underground Storage Tank and Single Fee (billing & permitting) programs.

Once again, thank you for meeting with us last week. The County looks forward to working with City staff to achieve a smooth transition of the programs to the County. Please contact me if there are any items for us to discuss before Jim Blamey and Mike Murtiff begin their series of meetings.

Sincerely,



Kevin O'Day, Director
Department of Agriculture and Environmental Management

kevin.o'day@aem.sccgov.org

cc Ivan Lee, Deputy Chief
Philip D. Smith, Director DEH