



CITY COUNCIL AGENDA REPORT

MEETING DATE: December 6, 2004

ITEM NUMBER: _____

SUBJECT: Restrictions on the Use of the City Seal and Penalties for Misuse Thereof

DATE: November 23, 2004

FROM: City Attorney's Office

PRESENTATION BY: Kimberly Hall Barlow, City Attorney

FOR FURTHER INFORMATION CONTACT: Linda Nguyen, Deputy City Attorney, 714.754.5399

RECOMMENDATION:

1. Approve and give first reading to Ordinance 05-____, which adds Section 2-15 to Title 2, Chapter I of the Costa Mesa Municipal Code, pertaining to restrictions on the use of the City Seal and penalties for misuse thereof.
2. Approve the amended City Council Policy 000-10, which pertains to restrictions on the use of the City Seal.

BACKGROUND:

At the City Council Meeting of November 1, 2004, Council Member Cowan requested that the City Attorney's Office submit a report pertaining to the unauthorized or improper use of the City Seal. At the City Council Meeting of November 22, 2004, the City Attorney's Office submitted a report to the City Council in which it recommended that the City Council do the following: 1) pass an ordinance prohibiting the unauthorized use of the City Seal for non-official City business; and 2) amend City Council Policy 000-10, which pertains to restrictions on the use of the City Seal. Upon review of such report, Council Member Cowan requested that the City Attorney's Office prepare an ordinance prohibiting the unauthorized use of the City Seal for non-official City business and an amendment to City Council Policy 000-10.

ANALYSIS:

As a trademark, the City Seal is the personal property of the City. The City can control how the City Seal is used as well as prevent other parties from using it. Currently, the City has implemented only an internal regulation, City Council Policy 000-10, which establishes a policy for the use of the City Seal. City Council Policy 000-10 does not prohibit parties outside of the City from using the City Seal. To prevent such unauthorized use, the City would have to take, or threaten to take, court action to enforce its rights. Furthermore, unless the City engaged in litigation, it could not assess fiscal penalties for unauthorized use of the City Seal. To avoid the inconvenience and costs of litigating over trademark rights, the City Attorney's Office recommended in its report to the City Council that the City pass an ordinance prohibiting the unauthorized use of the City Seal for non-official City business.

The proposed ordinance makes it unlawful to use the City Seal, or an imitation thereof, for non-official City business, except upon approval of the City Council. Furthermore, by making the violation of this ordinance a misdemeanor, the proposed ordinance allows the City to assess fiscal penalties for unauthorized use of the City Seal.

The amended City Council Policy 000-10 clarifies the provisions of the previous version. It also specifically prohibits the authorization of the City Seal to be used in conjunction with any campaign for elective or appointive office by or on behalf of any person.

ALTERNATIVES CONSIDERED:

1. The City could rely solely on its common law trademark rights to prevent parties outside of the City from using the City Seal. Such reliance would force the City to take, or threaten to take, court action to enforce these rights. Furthermore, such reliance would make it harder for the City to assess fiscal penalties for unauthorized use of the City Seal.

2. The City could rely on the existing version of City Council Policy 000-10, which could use clarification and which does not specifically prohibit the use of the City Seal in conjunction with campaigns for elective or appointive office.

FISCAL REVIEW:

There is no fiscal impact.

LEGAL REVIEW:

This report, the proposed ordinance and amended City Council Policy 000-10 have been prepared by the City Attorney's Office and no further legal review is necessary.

CONCLUSION:

The proposed ordinance makes unauthorized use of the City Seal, or imitation thereof, for non-official City business a misdemeanor. The proposed ordinance allows the City to protect its rights in the City Seal without the inconveniences and costs of litigation. The amended City Council Policy 000-10 clarifies the provisions of the previous version as well as specifically prohibits the use of the City Seal in conjunction with campaigns for elective or appointive office.

KIMBERLY HALL BARLOW
City Attorney

MARC R. PUCKETT
Director of Finance

DISTRIBUTION: Allan Roeder, City Manager
Julie Folcik, Deputy City Clerk

- ATTACHMENTS:
- 1 [An Ordinance of the City Council of the City of Costa Mesa, California, Adding Section 2-15 to the Costa Mesa Municipal Code Pertaining to Restrictions on the Use of the City Seal and Penalties for Misuse Thereof](#)
 - 2 [Amended City Council Policy 000-10](#)

File Name 12-06-04 City Seal Ordinance Staff Report

Date 11/23/04

Time