



AGENDA MEMORANDUM

First Reading for the City Council Meeting August 11, 2020
Second Reading for the City Council Meeting August 18, 2020

DATE: July 28, 2020

TO: Peter Zaroni, City Manager

THRU: Steve Viera, Assistant City Manager
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Authorize entering into Wastewater System Consent Decree with the US Environmental Protection Agency (EPA) and the State of Texas, and appropriating funds for civil penalty, state attorney, and legal and consultant service fees

CAPTION:

Ordinance authorizing execution of all documents necessary to enter into a Consent Decree with the United States of America and State of Texas regarding improvements, operation and maintenance of the City wastewater system and appropriating \$1,187,000 for civil penalty for the United States, attorney fees for the State of Texas, and City legal and consultant services related to finalizing and obtaining court approval of said decree.

SUMMARY:

This Ordinance authorizes the City Manager or his designee to enter into the Consent Decree with EPA and TCEQ regarding improvements, operation and maintenance of the City wastewater system, and to appropriate civil penalty and state attorney fees required by the Consent Decree, and to appropriate legal and consultant services fees for finalization of the entry of the Consent Decree, and to begin implementing the work as required by the Consent Decree.

BACKGROUND AND FINDINGS:

The City had a history of numerous sanitary sewer overflows (SSOs), which resulted in EPA initiating an enforcement effort against the City more than 10 years ago to combat the high numbers of reported SSOs. At the beginning of negotiations, the EPA threatened to level millions of dollars in fines against the City and mandate almost one billion dollars of improvements to the City's wastewater collection and treatment plant systems. The initial EPA demands to inspect, clean, repair and replace the entire sanitary sewer collection system, in addition to upgrading lift stations and wastewater treatment plants over a relatively short capital project timeline of only 10 years, would have increased wastewater rates by more than 100%.

Since 2010, the City and the EPA have been negotiating the details of a proposed Consent Decree to resolve the EPA's outstanding claims against the City for SSOs and for exceeding limits required by the Texas Pollutant Discharge Elimination System (TPDES) permits at the City's wastewater treatment plants. This 10-year negotiation effort resulted in the City and EPA reaching the proposed Consent Decree under which the City shall implement a series of programs within 15 years to clean, inspect, repair, rehabilitate and upgrade the existing wastewater infrastructure to prevent SSOs throughout the City and to ensure compliance with wastewater treatment permits. During negotiations, federal officials repeatedly threatened to sue the City. A successful federal lawsuit against the City could have resulted in more than \$400 million in fines against the City. Negotiations led to an agreed fine of \$1,136,000 and \$18,000 for state attorney fees. The Consent Decree also obligates the City to pay stipulated penalties for SSOs and TPDES permit violations after the City enters the Consent Decree. To finalize entry of the Consent Decree, the City must pay approximately \$33,000 for legal and consultant service fees.

To meet Consent Decree requirements, the City implemented the following major programs:

- Consent Decree asset management and reporting program
- City-wide collection system cleaning and inspection program
- City-wide collection system repairing and rehabilitation program (wastewater IDIQ program)
- City-wide collection system capacity assessment and measures
- Repair and Upgrade programs for wastewater treatment plants and lift stations

Additionally, the Utilities Department is proposing staff augmentation to execute these programs and manage all Consent Decree requirements.

ALTERNATIVES:

N/A

FISCAL IMPACT:

The Consent Decree requirements to clean, inspect, repair, rehabilitate and upgrade the wastewater collection and treatment plant systems are estimated to increase wastewater rates approximately 2-3% annually without considering inflation rate.

Funding Detail:

Fund: 4200

Organization/Activity: n/a

Mission Element: n/a

Project # (CIP Only): n/a

Account: 200840

Fund: 4200

Organization/Activity: 33400

Mission Element: 042

Project # (CIP Only): n/a

Account: 540025

RECOMMENDATION:

Staff recommends entering into a 15-year Wastewater System Consent Decree with the US Environmental Protection Agency (EPA), Department of Justice (DOJ) and the State of Texas, and appropriating funds for civil penalty of \$1,136,000, state attorney fee of \$18,000, and \$33,000 for legal and consultant services for the finalization of the entry of the Consent Decree.

LIST OF SUPPORTING DOCUMENTS:

Ordinance

Consent Decree document