

November 26, 1991

REPORT TO THE COMMITTEE  
ON PUBLIC SERVICES AND SAFETY

ENVIRONMENTAL MEDIATION PROGRAM

BACKGROUND

At the Committee's June 19, 1991, meeting, the City Attorney and City Manager presented a joint report regarding the long term direction of the Environmental Mediation Program (EMP). The Committee discussed and approved, in concept, the recommendations as set forth in the City Manager's Report Number 91-277, dated June 14, 1991. (A copy is provided for your information). These recommendations included:

1. The Mediation Program should remain with a neutral, non-profit entity housed outside of the formal City structure;
2. Modifications should be incorporated into the mediation process to include the interests of the complainants where appropriate;
3. The Mediation Program should be expanded into other areas outside of code enforcement.

By way of background, EMP has effectively conducted over 300 mediations between City code enforcement divisions and property owners over the past two years. They have also held several training sessions in communication skills for the Planning Department's volunteer program and are currently coordinating a specialized mediation program with various community and professional organizations in the college area. EMP commenced a Mobile Home Park Mediation Program for the Housing Commission this fiscal year. The Mediation Program is a joint effort with the University of San Diego (USD) School of Law.

DISCUSSION AND ANALYSIS

The primary unresolved issue for the Committee's current discussion is the ongoing funding of the Mediation Program. Issues were raised by the Committee regarding the impact of the previous two budgetary cycles upon EMP. During the past two fiscal years the Mediation Program has not been identified as a separate item in the budget document. Thus, this Committee independently raised the Program's funding as an issue during the later part of each budgetary cycle. This uncertainty has hampered EMP's effectiveness and continuity.

During the past three months the City Attorney's Code Enforcement Unit, as the Mediation Program's contract administrator, has held several meetings with representatives from the City Manager's Office, Planning Department and Financial Management to address the Program's short-term and long-term funding issues.

Participant User Fee

One alternative source of revenue which has been suggested is to charge the property owners that participate in the mediation a user fee. We would recommend against imposition of such a fee. Whatever minimal amount of revenue that could be assessed and collected would not offset the damage such a fee would wreak upon the success rate of the Mediation Program. EMP's effectiveness is premised upon gaining the cooperation of the property owner to participate in the process. Imposition of a user fee would make it virtually impossible to cajole the owner to the mediation table. Thus, the departments would be forced to use more costly enforcement options, i.e., administrative hearings or judicial actions. Moreover, many violators are on fixed incomes and do not have access to funds to bring their properties into compliance let alone pay a user fee.

#### Department Contribution Model

Over the last two fiscal years EMP has been funded from a combination of sources. For example, EMP's total budget of \$130,880 for fiscal year 1992 is derived from the following funds: (1) Building Inspection Enterprise Fund--\$42,000; Code Enforcement Civil Penalties Fund--\$16,000; General Fund, Fourth Quarter Transfers (Fiscal Year 1991) \$40,880; and \$32,000 from the Non departmental Fund (\$20,000 of this Non departmental contribution is from the Housing Commission for the Mobile Home Park Mediation Program).

This model is essentially based on the premise that EMP's two biggest users make the largest contributions. Over the past two years, Building Inspection and the Planning Department have referred 88% of EMP's caseload. These two departments incur the direct benefit of using mediation instead of other costly enforcement remedies. Both Building Inspection and Planning received a direct cost savings in staff time and enforcement related costs. Planning Department has made estimates that it saves approximately \$2,000 per case in preparation time alone when compared with the amount of staff time necessary to prepare a case for litigation. (These savings do not include the time and costs of the City Attorney to pursue litigation.)

These cost savings are not as great, however, for some of the other code enforcement divisions which generate a smaller caseload, e.g., Fire Prevention and Litter Control. Since they do not use mediation as often as the larger enforcement divisions their cost per mediation is significantly higher. Thus, it is not recommended that these smaller departments contribute to EMP's funding at this stage.

#### Short Term Recommendations

During the short-term, the City Attorney would recommend that EMP be funded for the next fiscal year (1993) using this department contribution model until long-term resources can be identified by the City Attorney and City Manager. As a result of the various meetings, with the City Manager and Financial Management, the City Attorney would further recommend that a separate fund be arranged for the Mediation Program.

This would not only assist in tracking expenditures and revenues, but help identify EMP as a line item in the budget document. It would also clarify the confusion regarding EMP's status and location.

As far as contribution amounts that can be identified at this early stage in the budgetary process, a chart is attached to this report which compares the current fiscal year's contribution levels with those proposed for fiscal year 1993. The overall budget for EMP will remain the same for next fiscal year. Building Inspection has offered to increase its share to \$45,000. The Housing Commission has also agreed, in concept, to budget an undetermined amount depending upon the effectiveness of the Mobile Home Park Mediation Program in the current year. This amount would not exceed this year's contribution of \$20,000. Last year the General Fund contributed a total of \$52,880 through Fourth Quarter Transfers and Non departmental expenditures. For fiscal year 1993 the proposed General Fund contribution would match Building Inspection Department's contribution of \$45,000. The remaining amount could be derived from the Code Enforcement Civil Penalties Fund. It should be noted, however, that it is impossible to predict whether the Civil Penalties Fund will have sufficient resources to make up this difference. It will depend upon the amount of civil penalties assessed and collected and other expenditures from the Civil Penalties Fund (i.e., automation project). The City Manager should have a better estimate when EMP comes before the Council during the annual budget review.

The only issue with respect to the proposed funding allocations for next fiscal year is the location of the General Fund's contribution in the actual budget document. It is recommended that this contribution of \$45,000 be located in the Planning Department since they are the Mediation Program's largest user. Although the first few steps of the annual budgetary process have already been completed, it is recommended that Planning increase their budget to take this \$45,000 contribution into account without having to make any further cuts or decreases in service. After all, the purpose of this adjustment is merely to shift the location of the General Fund's contribution and Planning Department should not be penalized for being the logical spot.

#### Long Term Recommendations

The City Attorney and City Manager continue to identify and evaluate alternative sources of funding for EMP. The City Manager is scheduled to report to the Transportation and Land Use Committee in February on finding alternatives for the City's entire code enforcement system. Should the City Manager develop new funding mechanisms for code enforcement, EMP has already been identified to be included in any overall restructuring of the City's financing of code enforcement.

Grants are always an option worthy of exploration. Although such funds are highly competitive and difficult to predict, EMP's efforts over the past two years does create an established track record that may generate sufficient interest by local or national foundations. (The

creation of a separate fund should also make it easier to account for grant revenues.) The Program Director and Contract Administrator will continue to identify and apply for relevant grant resources.

Some progress has been made regarding the resolution of EMP's long-term funding dilemma. In September the Program Director and Code Enforcement Unit met with the Dean of USD Law School to start negotiations to continue the existing contractual partnership. USD expressed an interest to continue with the existing arrangement and would also be amenable to a multi-year contract. A multi-year contract would avoid the program disruption experienced in the past and be consistent with the City Manager's multi-year budget cycle.

Respectfully submitted,  
JOHN W. WITT  
City Attorney

JWW:JMS:lmk/(043.1)  
Attachments  
RC-91-58