Action Item
Agenda Item No. 6

City Manager's Approval

Report to the Auburn City Council

To: Honorable Mayor and City Council Members
From: Michael G. Colantuono, City Attorney
Date: January 14, 2013
Subject: Amendment of City Ordinance Limiting Liability – Second Reading

The Issue

Shall the City Council adopt an Ordinance to update the City's Municipal Code by adding Section 10.23 to the City of Auburn Municipal Code regarding limitation of tort liability for acts or omissions of City officers and employees?

Conclusions and Recommendations

Conduct a second reading of an ordinance to add Section 10.23 to the Auburn Municipal Code regarding limitation of tort liability for acts or omissions of City officers and employees.

Background

Under Government Code section 815.6, a public entity may be liable for injury caused by its failure to discharge a "mandatory duty" imposed by an enactment designed to protect against that type of injury. This section would clarify that the provisions of the Code which establish standards of performance or obligations of City officers and employees are not intended to create a "mandatory duty" for purposes of tort liability.

A Second Reading is required to adopt the Ordinance. Should the Council decide to adopt the Ordinance, it will become effective thirty (30) days following the Second Reading.

Alternatives Available to Council; Implications of Alternatives

1. Adopt an Ordinance adding Section 10.23 to the City of Auburn Municipal Code regarding limitation of liability.

2. Do not adopt an Ordinance adding Section 10.23 to the City of Auburn Municipal Code regarding limitation of liability. This action could expose the City to liabilities which would otherwise be avoided by adopting this limiting language.

Fiscal Impact

The resources to prepare this ordinance and staff report are budgeted. To the extent this amendment limits the potential for tort suits against it, it may prevent significant liabilities and therefore have a beneficial fiscal impact.

Attachment - Ordinance No. X

c: Bob Richardson, City Manager
Andy Heath, Director of Administrative Services

ORDINANCE NO. 13-___

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN ADDING SECTION 10.23 TO THE AUBURN MUNICIPAL CODE LIMITING TORT LIABILITY FOR OMMISSIONS OF OFFICERS OR EMPLOYEES.

THE CITY COUNCIL OF THE CITY OF AUBURN DOES ORDAIN AS FOLLOWS:

Section One: Code Amendment. Section 10.23 is hereby added to the Auburn Municipal Code to read as follows:

10.23 Limitation on Liability

> Any provision of this Code establishing performance standards or establishing an obligation or duty to act or to refrain from acting by any officer or employee shall not be construed as creating a mandatory duty for the purposes of tort liability if the officer or employee fails to perform a directed obligation or duty.

Section Two: Effective Date. This Ordinance shall take effect thirty days following its adoption as provided by Government Code Section 36937.

Section Three: Certification. The City Clerk shall certify to the passage and adoption of this Ordinance and shall give notice of its adoption as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting of the entire text.

Section Four: Severability. Should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any court of competent jurisdiction or by reason of any preemptive legislation, the

remaining provisions, sections, paragraphs, sentences or words of this Ordinance shall remain in full force and effect.

Section Five: Construction. To the extent the provisions of the Auburn Municipal Code as amended by this Ordinance are substantially the same as the provisions of that Code as it read prior to the adoption of this Ordinance, those provisions shall be construed as continuations of the prior provisions and not as new enactments.

DATED: January 14, 2013

Kevin Hanley, Mayor

ATTEST:

Stephanie L. Snyder, City Clerk

I, Stephanie L. Snyder, City Clerk of the City of Auburn, hereby certify that the foregoing ordinance was duly passed at a regular meeting of the City Council of the City of Auburn held on the 14th day of January, 2013 by the following vote on roll call:

Ayes:
Noes:
Absent:

Stephanie L. Snyder, City Clerk