

AGENDA ITEM NO. 24A+D

**CITY OF SAN ANTONIO
INTERDEPARTMENTAL MEMORANDUM
OFFICE OF THE CITY ATTORNEY**

TO: Mayor and City Council

FROM: Andrew Martin, City Attorney

THROUGH: Terry M. Brechtel, City Manager

COPIES: Melissa Byrne Vossmer, Assistant City Manager; Eugene E. Habiger, General, USAF (Ret.), President/Chief Executive Officer, San Antonio Water System (SAWS); John T. Reynolds, Corporate Counsel for SAWS; and File

SUBJECT: Ordinance enabling the San Antonio Water System, on behalf of the City of San Antonio, to pursue environmental enforcement authority given to local governments pursuant to Chapter 26 and §7.351 of the Texas Water Code, further amending Chapter 34 of the City Code of Ordinances to reflect such authority in the San Antonio Water System as well as the Office of the City Attorney. Also, a Resolution, as required by statute, memorializing said Ordinance and directing the City Clerk to transmit an official copy of the Ordinance to the Texas Commission on Environmental Quality.

DATE: January 9, 2003

SUMMARY AND RECOMMENDATIONS

These actions consist of an Ordinance and a Resolution. The Ordinance enables the San Antonio Water System, on behalf of the City of San Antonio, to pursue environmental enforcement authority given to local governments pursuant to Chapter 26 and §7.351 of the Texas Water Code and further amends the City Code of Ordinances, Chapter 34, to reflect such new authority in the San Antonio Water System as well as the Office of the City Attorney. The Resolution, as required by statute, memorializes the Ordinance and directs the City Clerk to transmit an official copy of said Ordinance to the Texas Commission on Environmental Quality.

The City Attorney recommends approval of the Ordinance and Resolution.

BACKGROUND INFORMATION

- Texas Water Code §7.351 authorizes local governments to institute civil suits in a district court for injunctive relief and/or to recover civil penalties against a person who has committed or threatens to commit violations of Chapter 26 of the Texas Water Code, or any rule adopted or permit issued by the Texas Commission on Environmental Quality under Chapter 26.
- Texas Water Code §7.352 requires that a local government desiring to exercise enforcement powers under Chapter 26 of the Texas Water Code must pass a resolution authorizing the exercise of those powers. [This change must also be reflected in the City's Code of Ordinances; therefore, an Ordinance is necessary as well as a Resolution.]

- Chapter 26 of the Texas Water Code concerns water quality control. Title 30 of the Texas Administrative Code Chapter 213 (30 TAC 213) contains the administrative rules of the State of Texas that pertain specifically to protection of the Edwards Aquifer. These rules were adopted pursuant to Chapter 26 of the Texas Water Code. Included within these rules are the requirements that a Water Pollution Abatement Plan perpetually apply to development over the Edwards Aquifer Recharge Zone.
- Most development over the Edwards Aquifer Recharge Zone has occurred pursuant to an Edwards Aquifer Protection Plan that also includes a Water Protection Abatement Plan approved by the State of Texas. Adoption of this ordinance by the City of San Antonio would permit the San Antonio Water System, as well as the City Attorney, to step into the enforcement shoes of the Texas Commission on Environmental Quality (TCEQ) to bring civil suit and other enforcement action against entities who do not comply with the Edwards Aquifer Water Pollution Abatement Plan applicable to their respective sites.
- The enforcement authority granted by §7.351 of the Texas Water Code includes civil penalties of up to \$25,000.00 for each day that a violation continues, as well as injunctive relief to stop the work of violators until they bring their projects into compliance. Recovery of attorneys' fees and court costs is also authorized. The City has an imperative interest in Edwards Aquifer water quality, justifying enforcement.

The Board of Trustees for the San Antonio Water System (SAWS) acted by Resolution No. 02-313 to approve the requested enforcement authority for the Legal Department of SAWS. The Texas Water Code further requires that such authority be memorialized in a Resolution. The City Clerk will be directed by the City's proposed Resolution to provide a copy of the enabling Ordinance to the appropriate TCEQ official.

FISCAL IMPACT

The passage of this Ordinance and the Resolution will not have a financial impact on the City of San Antonio.

COORDINATION

The request for this Ordinance and the Resolution has been coordinated among the Office of the City Attorney, the San Antonio Water System, and the Public Works Department.



Andrew Martin
City Attorney
City of San Antonio

Approved:



Terry M. Brechtel
City Manager

CITY ATTORNEY
Vernon S. ...

TEXAS CODES
ANNOTATED

WATER CODE

Sections 1.001 to 25

RECEIVED
MAR 28 2000
CITY ATTORNEY'S OFFICE
SAN ANTONIO, TEXAS



WEST GROUP

LEGAL RESEARCH

[Sections 7.311 to 7.350 reserved for expansion]

SUBCHAPTER H. SUIT BY OTHERS

§ 7.351. Civil Suits

(a) If it appears that a violation or threat of violation of Chapter 16, 26, 28, or 34 of this code or Chapter 361, 371, 372, or 382, Health and Safety Code, or a provision of Chapter 401, Health and Safety Code, under the commission's jurisdiction or a rule adopted or an order or a permit issued under those chapters or provisions has occurred or is occurring in the jurisdiction of a local government, the local government or, in the case of a violation of Chapter 401, Health and Safety Code, a person affected as defined in that chapter, may institute a civil suit under Subchapter D in the same manner as the commission in a district court by its own attorney for the injunctive relief or civil penalty, or both, as authorized by this chapter against the person who committed, is committing, or is threatening to commit the violation.

(b) If it appears that a violation or threat of violation of Chapter 366, Health and Safety Code, under the commission's jurisdiction or a rule adopted or an order or a permit issued under that chapter has occurred or is occurring in the jurisdiction of a local government, an authorized agent as defined in that chapter may institute a civil suit under Subchapter D in the same manner as the commission in a district court by its own attorney for the injunctive relief or civil penalty, or both, as authorized by this chapter against the person who committed, is committing, or is threatening to commit the violation.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 193, § 1, eff. Sept. 1, 1999.

Historical and Statutory Notes

For application provision of Acts 1997, 75th Leg., ch. 1072, see notes following V.T.C.A., Water Code § 7.142.

Acts 1999, 76th Leg., ch. 193 inserted a subsec. (a) designation and added subsec. (b).

Library References

10 Texas Pl & Pr Forms, Pollution and Conservation §§197:41 et seq.

Texts and Treatises

- 18 Am Jur Trials 495, Subterranean Water Pollution; 50 Am Jur Trials 471, Use and Examination of Experts in Environmental Litigation; 56 Am Jur Trials 369, Recovery of Damages for Property Devaluation Caused by Off-Site Environmental Hazards; 59 Am Jur Trials 231, Contractual Indemnifications and Releases from Environmental Liability.
- 6 Am Jur Proof of Facts 2d 595, Contamination of Subterranean Water Supply by Sewage.

- 24 Am Jur Proof of Facts 3d 609, Admissibility and Reliability of Laboratory Analysis of Soil, Water, and Air Samples in Environmental Litigation.
- 3 Am Jur Proof of Facts 3d 517, Leaking Underground Gasoline Storage Tank.
- 33 Am Jur Proof of Facts 3d 163, Diminished Property Value Due to Environmental Contamination.
- 35 Am Jur Proof of Facts 3d 493, Proof of Standing in Environmental Citizen Suits.
- 37 Am Jur Proof of Facts 3d 439, Recovery of Damages for Injury to Landowner's Property from Environmental Condition of Neighboring Land.

§ 7.352. Resolution Required

In the case of a violation of Chapter 26 of this code or Chapter 382, Health and Safety Code, a local government may not exercise the enforcement power authorized by this subchapter unless its governing body adopts a resolution authorizing the exercise of the power.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.

Historical and Statutory Notes

For application provision of Acts 1997, 75th Leg., ch. 1072, see notes following V.T.C.A., Water Code § 7.142.

§ 7.353. Commission Necessary Party

In a suit brought by a local government under this subchapter, the commission is a necessary and indispensable party.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.

Historical and Statutory Notes

For application provision of Acts 1997, 75th Leg., ch. 1072, see notes following V.T.C.A., Water Code § 7.142.

§ 7.354. Costs and Fees

A penalty collected in a suit under this subchapter for a violation of Chapter 28 of this code or Chapter 401, Health and Safety Code, shall be paid to the state. If the suit is brought by a local government or, in the case of a violation of Chapter 401, Health and Safety Code, a person affected as defined in that chapter, the court shall include in any final judgment in favor of the local government or affected person an award to cover reasonable costs and attorney's fees.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.

Historical and Statutory Notes

For application provision of Acts 1997, 75th Leg., ch. 1072, see notes following V.T.C.A., Water Code § 7.142.

§ 7.355. Complaints

In the case of a violation of Chapter 401, Health and Safety Code, a local government or person affected may file with the commission a written complaint and may request an investigation of an alleged violation by a person who holds a permit subject to the commission's jurisdiction.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.