TO: HONORABLE CITY COUNCIL

FROM: CITY MANAGER

DEPARTMENT: PUBLIC WORKS

DATE: OCTOBER 20, 2008

REPORT TYPE: CONSENT

SUBJECT: Adoption of a Resolution Formally Establishing a Corrective Action Reserve Within the Refuse Fund in Accordance With the California Integrated Waste Management Board Financial Assurance Requirements

RECOMMENDATION

Staff recommends that Council:

1. Adopt the attached resolution (Attachment A) approving the formal establishment of a Corrective Action Reserve within the Refuse Fund in the amount of $636,216 (plus annual inflation updates) in accordance with the California Integrated Waste Management Board (CIWMB) requirements that would provide for initiating and completing corrective action in the event of a potential groundwater release from the Palo Alto Landfill; and

2. Authorize the City’s Director of Administrative Services to verify the establishment of the Corrective Action Reserve (Attachment B) and the Director of Public Works to certify the establishment of a financial mechanism for corrective action for the Palo Alto Landfill (Attachment C) in letters addressed to the CIWMB.

BACKGROUND

In 1990, the City Council passed a resolution formally establishing the landfill’s closure/postclosure maintenance refuse reserve (Resolution No. 6919). In 1992, the City’s landfill consultant, “EMCON”, developed a cost estimate for potential corrective actions as part of the groundwater monitoring program for the Palo Alto Landfill. Subsequently, the City established a refuse reserve titled “Water Resources Board Reserve” in order to accommodate these potential corrective action costs. In 2003, another City consultant, “Conor Pacific”, prepared a cost estimate update for a potential release to groundwater for the landfill. The City’s corrective action reserve was modified to reflect this updated cost forecast. Since 2003, the City has increased this reserve by an amount equal to inflation based on annual inflation factors provided by the CIWMB. The current amount contained in this account is now $636,216 accounting for the last update in May 2008. City staff believed that with the establishment of the corrective action reserve, the City was in full compliance with the CIWMB policies and regulatory requirements. However, CIWMB staff has recently contacted City staff to request a more formal establishment and committal of funds.
The CIWMB has promulgated regulations requiring that landfill operators have adequate financial assurances for closure activities and corrective actions. A financial assurance mechanism is an arrangement whereby a party facing a potential or certain liability pledges or deposits funds so that 1) all anticipated costs will be covered; 2) all funds will be secure over time; and 3) all funds will be available when needed. PRC section 43501 mandates that landfill operators establish "a trust fund or equivalent financial arrangement" as evidence of financial ability to pay for the costs of closure/postclosure maintenance and corrective action for their respective facilities. The purpose of the financial assurance mechanism (for corrective action) is to directly obligate public entities, involved in environmentally hazardous activities, to commit funds in advance for the costs of protecting the environment.

There are several mechanisms allowed for government entities to provide financial assurance. The City has chosen an enterprise reserve for both the landfill’s closure/postclosure maintenance and corrective action. To provide security over time and ensure funds are readily available, CIWMB regulations require that monies from the enterprise fund be dedicated to closure/postclosure maintenance and/or corrective action, and deposited into a mechanism offering protection "equivalent to" a trust fund. The funds must be held by a public agency (or separate department) not directly connected with, nor responsible for operating the subject landfill or the waste management operations of the county or city, such as the auditor or treasurer. Public operators have the flexibility to make arrangements to suit their own needs as long as the CIWMB is satisfied that the funds are adequately protected. On each anniversary of the establishment of the fund, the balance must be increased in accordance with a formula specified by the regulations.

**DISCUSSION**
As mentioned above, the City has already established a corrective action reserve to cover potential costs associated with a reasonable foreseeable release from the landfill and has increased the fund annually based on inflation factor updates provided by the CIWMB. However, the City has not formally established this reserve by resolution, officially verified the establishment of the reserve, or certified this financial assurance mechanism in accordance with CIWMB requirements. The resolution is necessary to demonstrate the commitment of this reserve for the sole purpose of providing corrective action and gives the CIWMB the authority to direct the Director of Administrative Services to use the funds for corrective action if the City fails to perform corrective action as required by law.

Once the attached resolution has been adopted, the City will need to provide a letter signed by the Director of Administrative Services verifying the formal establishment of the reserve (Attachment B) and another letter signed by the Director of Public Works certifying the establishment of a financial mechanism for corrective action for the Palo Alto Landfill (Attachment C).

**RESOURCE IMPACT**
Sufficient funds have already been budgeted for the corrective action in the amount of $636,216 and are available in the Refuse Fund.

**POLICY IMPLICATIONS**
The recommendation does not represent changes to existing City policies.
ENVIRONMENTAL REVIEW
Adoption of this resolution and formally establishing this reserve is not a project under the California Environmental Quality Act (CEQA) because the activity will not cause either a direct physical change or a reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS
Attachment A: Resolution
Attachment B: Letter Verification of Establishment of Reserve
Attachment C: Letter Certification for the Establishment of a Financial Mechanism for Corrective Action of the Palo Alto Landfill

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