



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Claims Presentation and
Processing Ordinance

DATE: November 29, 2007

RECOMMENDATION

Approval of an ordinance amending Title 1 of the San José Municipal Code to add a new Chapter 1.20 to establish uniform requirements and procedures applicable to the presentation and processing of claims for money or damages with the City of San José where the claim is exempt from the filing requirements of the California Government Claims Act and there are no other applicable requirements or procedures for the filing of such claim under State law or the Municipal Code, to require the filing of a claim as a prerequisite to filing suit against the City, and to establish a transition period for the presentation of claims that would be untimely under the new procedures and requirements.

OUTCOME

The adoption of the proposed ordinance will:

1. establish a claims procedure for claims against the City that aren't currently covered by State law or the Municipal Code;
2. in the case of a rejected claim, limit the time period for the claimant to file a lawsuit against the City to six months from the date of the City's written rejection notice;
3. impose certain claim processing requirements upon the City in order to expedite the claim review process; and
4. require claimants to file their claims for money or damages within the time periods specified under State law which provides for a claims period not to exceed one year of the date of accrual of their causes of action as a prerequisite for filing a lawsuit against the City.

BACKGROUND

Under the California Government Claims Act (the "Act"), the general rule is that any party with a claim for money or damages against a public entity must file a claim directly with the public entity in order to file a lawsuit. The Act also provides time limits for the claimant to file his or her claim and for the public entity to reject or deny the claim. Further, once a public entity rejects a claim in accordance with the Act's procedures, the claimant must bring his or her lawsuit against the public entity within six months of the written rejection notice.

The purpose of these procedures is to give a public entity the opportunity to investigate the facts while evidence is fresh and to settle meritorious claims without the need for costly litigation. Additionally, the prompt presentation of claims seeking money and the shortened time frame for claimants to sue, enables the public entity to engage in appropriate fiscal planning.

The Act permits a public entity such as the City to adopt its own claims filing ordinance for certain claims that would otherwise be exempt from the Act and that are not addressed in other laws. In accordance with the Act, the City Council adopted Ordinance No. 27787 in June 2006, which added a new Chapter 4.82 to the Municipal Code and established uniform requirements and procedures applicable to the presentation and processing of certain tax refund claims with the City, including a one year claims period.

ANALYSIS

Claim Presentation and Filing Requirements

Application.

The proposed ordinance would amend Title 1 to add a new Chapter 1.20 to establish a uniform claims filing procedure for claims for money or damages against the City, except claims for money or damages where a claims filing procedure already exists under State law or the Municipal Code. Claims that are currently not addressed by State law or the Municipal Code that would become subject to the claims presentation requirements of the proposed ordinance would include claims by another public entity against the City for money or damages.

The new claims filing ordinance would not apply to tax refund claims (which are governed by the claims filing procedures set forth in Chapter 4.82 of the Municipal Code). Additionally, the proposed ordinance would not apply to employee claims for fees, salaries, wages, mileage, or claims for retirement benefits, since revising existing procedures applicable to these kinds of claims might raise meet and confer issues.

The claim presentation and filing requirements in the proposed ordinance, which are a prerequisite to filing suit against the City, do not eliminate the administrative remedies already in place under our Municipal Code for claimants seeking refunds or fee adjustments.

Claims Presentation Requirements.

Consistent with the claims filing requirements of the Act, the claimant will be required to file his or her claim for money or damages with the City Clerk no later than one year after the accrual of the cause of action, and to provide the City with the following information: claimant's name, address and, if different, the claimant's mailing address, the basis on which the claim is made and information, including supporting documentation for the amount claimed. In most instances, claims covered by the proposed ordinance would be subject to a one year filing period.

The claim must be verified by the claimant or the claimant's guardian, executor, conservator or administrator. A claim that is filed on behalf of multiple persons must be verified by each claimant or by the claimant's guardian, executor, conservator or administrator. No claim may be filed on behalf of a class of persons unless verified by every member of that class.

City's Processing Requirements.

The City is required to process the claim within certain time limits. If a claim is deficient, then the City must notify the claimant within 20 days of presentation of the claim and must refrain from acting upon the claim for 15 days after the deficiency notice is given.

Generally, the City must act upon the claim within 45 days of its presentation. If the City fails to act, the claim is deemed rejected. As with claims filed under the Act, claims filed under Chapter 1.20 will be forwarded by the City Clerk to the City Attorney's Office for processing.

Allowance or Settlement of Claims.

Claims filed under Chapter 1.20 will be subject to the provisions of existing Municipal Code Chapter 4.24 which delegates limited settlement authority to the City Attorney for claims against the City where the amount to be paid does not exceed \$10,000 and emergency settlement authority during times when the City Council is in recess.

Claim Prerequisite to Lawsuit.

As with claims under the Act, the claimant must follow the claim presentation requirements in order to be able to file a lawsuit against the City; and must bring suit against the City within six months of the City's written notice of claim rejection. If the

City fails to provide the written rejection notice to the claimant, then the claimant may bring the lawsuit within two years of the date on which the claim arose.

Retroactive Application of Ordinance.

The time limitation for filing a claim for money or damages against the City specified in the proposed ordinance would apply retroactively except for a limited transition period. The purpose of the ordinance is to establish prompt claims presentation requirements in order to enable the City to take into consideration pending claims and possible litigation when making various fiscal decisions. For claims covered by the proposed ordinance, the City's exposure for the payment of money or damages is the one year claims period. Assuming a notice of rejection is sent to the claimant, then the City, in most cases, will know within six months following the rejection notice whether litigation on the claim will occur and may plan accordingly.

In order to provide potential claimants with the opportunity to file claims which would have been timely prior to the adoption of the proposed ordinance, but would be untimely once the proposed ordinance becomes effective, a transition period from January 18, 2008 (the effective date of the ordinance) through March 3, 2008 is specified. This will permit a claimant to file a claim covered by the proposed ordinance for a period longer than the maximum one year claims period under the proposed ordinance provided that the claim is filed on or before March 3, 2008 and the claim is presented within the applicable claims period in effect prior to the adoption of the ordinance.

For example, a claim covered by the ordinance and seeking money or damages over the three year period from March 1, 2005 through March 1, 2008 would not be barred by the maximum one year filing period if presented to the City on or before March 1, 2008. However, as of March 4, 2008, a claim for the prior three year period will be untimely because the transition period will have ended on March 3, 2008, and the maximum one year claims filing period will be in place. Accordingly, a claim filed on March 4, 2008 may seek money or damages that accrued during the period from March 4, 2007 through March 4, 2008.

ALTERNATIVES

The City Council could choose not to adopt the proposed ordinance.

PUBLIC OUTREACH

Notice of the adoption of the proposed ordinance will be published in the newspaper as required by law. This memo and ordinance are posted on the City's website for the December 11, 2007 Council Agenda.

COORDINATION

The City Manager's Office and City Clerk's Office are aware of the proposed ordinance.

CEQA

Not a Project.

RICHARD DOYLE
City Attorney

By 
Karin Murabito
Senior Deputy City Attorney

Attachment

cc: Debra Figone
Lee Price

For questions please contact Karin Murabito, Senior Deputy City Attorney, at 535-1900.

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 1 OF THE SAN JOSE MUNICIPAL CODE TO ADD A NEW CHAPTER 1.20 TO ESTABLISH UNIFORM REQUIREMENTS AND PROCEDURES APPLICABLE TO THE PRESENTATION AND PROCESSING OF CLAIMS FOR MONEY OR DAMAGES WITH THE CITY OF SAN JOSE, WHERE THE CLAIM IS EXCEPTED FROM THE FILING REQUIREMENTS OF THE CALIFORNIA GOVERNMENT CLAIMS ACT AND THERE ARE NO OTHER APPLICABLE REQUIREMENTS OR PROCEDURES FOR THE FILING OF SUCH CLAIM, TO REQUIRE THE FILING OF A CLAIM AS A PREREQUISITE TO FILING SUIT AGAINST THE CITY, AND TO ESTABLISH A TRANSITION PERIOD FOR THE PRESENTATION OF CLAIMS THAT WOULD BE UNTIMELY UNDER THE NEW PROCEDURES AND REQUIREMENTS

WHEREAS, pursuant to Section 935 of the California Government Code, this Council wishes to enact uniform procedures applicable to the presentation and processing of claims excepted under California Government Code Section 905 from the claims filing requirements of Chapter 1 and Chapter 2 of Division 3.6 of Title 1 of the California Government Code and for which no other procedures are set forth in State law or this Code; and

WHEREAS, uniform procedures for the presentation and processing of claims provide the City with the opportunity to investigate the facts of such claims while the evidence is fresh, allow for the settlement of meritorious claims without the need for costly litigation, and permit the City to make appropriate fiscal planning decisions; and

WHEREAS, except as expressly specified to the contrary in Section 3 of this Ordinance, it is the Council's intent that this Ordinance apply retroactively in order to preserve the City's ability to engage in sound fiscal planning;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Title 1 of the San José Municipal Code is hereby amended by adding a new Chapter to be numbered and entitled and to read as follows:

CHAPTER 1.20
CLAIMS PROCEDURES
Part 1
Authority and Application

1.20.010 Authority

This Chapter is enacted pursuant to Section 935 of the California Government Code.

1.20.020 Application

- A. Except as set forth in Subsection B, the provisions of this Chapter shall apply to all claims for money or damages against the City which are excepted under California Government Code Section 905 from the claims filing requirements of Chapter 1 and Chapter 2 of Division 3.6 of Title 1 of the California Government Code, and which are not governed by any other State statutes or regulations expressly relating thereto. Such claims are referred to in this Chapter as "Covered Claims."
- B. Covered Claims shall exclude the following:
1. Claims governed by other provisions of this Code which expressly provide for the filing of a claim as a prerequisite for filing suit against the City for money or damages.
 2. Claims by public employees for fees, salaries, wages, mileage or other expenses and allowances.

3. Applications or claims for money or benefits under any public retirement or pension system.

1.20.030 Construction

Nothing contained herein is intended to extend any statute of limitations or claims filing period provided under other provisions of this Code, State law, or any other applicable law or regulation related to filing a judicial action or other proceeding for recovery of money or damages against the City. References in this Chapter to specific sections of the California Government Code shall refer to those provisions as they now exist or shall hereafter be amended.

1.20.040 Time Barred Claims

Nothing in this Chapter revives or reinstates any claim or cause of action that, on the effective date of this Chapter, is barred by failure to comply with any previously applicable statute, ordinance or regulation requiring the presentation of a claim prior to suit, or by failure to commence any action within the period prescribed by an applicable statute of limitations.

Part 2

Presentation and Processing of Covered Claims

1.20.200 Claims Required

Except as modified by this Chapter all Covered Claims against the City for money or damages shall be presented to the City within the time and in the manner prescribed by Part 3 of Division 3.6 of Title 1 of the California Government Code (commencing with Section 900 thereof) for the claims to which that Part applies by its own terms.

1.20.210 Form of Claim

All Covered Claims shall be made in writing and verified by the claimant or by his or her guardian, conservator, executor or administrator. Any Covered Claim filed on behalf of more than one person shall be verified by each person on behalf of whom the claim is filed or by his or her guardian, conservator, executor or administrator. In addition, all Covered Claims shall contain the information required by California Government Code Section 910.

1.20.220 City Action on Claims

Covered Claims shall be acted upon by the City within the time and, except as modified by this Chapter, in the manner prescribed by Part 3 of Division 3.6 of Title 1 of the California Government Code (commencing with Section 900 thereof) for the claims to which that Part applies by its own terms.

1.20.230 Claim Prerequisite to Suit

In accordance with California Government Code Sections 935(b) and 945.6, no action against the City may be maintained by a person who has not complied with applicable claims presentation requirements.

1.20.240 Suit

Any action brought against the City upon any Covered Claim shall conform to the requirements of Section 940 through and including Section 949 of the California Government Code. Any action brought against any employee of the City upon any Covered Claim or demand shall conform to the requirements of Section 950 through and including Section 951 of the California Government Code.

SECTION 2. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

SECTION 3. This Ordinance shall take effect at the expiration of thirty days after adoption as provided by San José City Charter Section 605, and except as expressly set forth in the following sentence, shall apply retroactively. Any Covered Claim that would have been timely if presented in accordance with any claims period in effect (the "Prior Claims Period") prior to the effective date of this Ordinance may, notwithstanding this Ordinance, be presented by the sooner of the date on which the Prior Claims Period would have expired or on March 3, 2008.

PASSED FOR PUBLICATION of title this _____ day of _____, 2007, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk