



CITY COUNCIL AGENDA REPORT

MEETING DATE: May 15, 2007

ITEM NUMBER:

SUBJECT: Amendment and Update of Liability Claims Settlement and Rejection Authority

DATE: May 3, 2007

FROM: Stephen N. Mandoki, Administrative Services Director, and Terri L. Cassidy, Human Resources Manager

PRESENTATION BY: James B. Thyden, Human Resources Analyst, and Debra M. Yasui, Human Resources Administrator

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RECOMMENDED ACTION:

It is recommended that City Council direct staff to present an amended Municipal Code and Council Policy to provide the City Manager with authority to settle liability claims against the City for up to \$50,000 and to reject liability claims against the City for any amount (either stated or unstated). Subsequently, the City Manager may delegate this authority to settle or reject claims to the City's Insurance Committee, Human Resources/Risk Manager, and/or other qualified staff via an Administrative Regulation.

BACKGROUND:

The Costa Mesa Municipal Code, Chapter V. Finance, Article 3, Claims Against the City, Section 2-189 (Attachment I), established an Insurance Committee, comprised of the City Manager, Director of Finance, and City Attorney, or their designees. The current Code, which was amended in 1996, authorizes the committee to reject or negotiate all claims and settle any claim up to \$25,000. In addition, the Human Resources/Risk Manager is authorized to reject or settle any tort claim up to \$5,000. (Note: The current Council Policy 000-3 (Attachment II) has not been updated since 1992 and should be conformed to the Municipal Code.)

The liability claims environment has changed significantly since 1996 and claimants will now make claims for millions of dollars, even though the facts may not support such a claim. While the types and values of claims have changed a great deal since 1996, the authority limits remain unchanged. Currently, the custom and practice employed for rejection of all claims with an amount claimed that is either unknown, unstated, or in excess of \$25,000, is to bring them to City Council for action. The proposed changes would synchronize the custom and practice to the Code, and authorize the City Manager to delegate authority to settle or reject certain claims, as deemed appropriate.

ANALYSIS:

Since 1992, liability claims against the City of Costa Mesa have increased in volume and amounts. There are two key elements to this issue:

- 1) Settlements - actual settlements paid by the City.
- 2) Claim Amounts - the amount claimed on the Claim Form filed by the claimant. These amounts may be an accurate reflection of the value of the claim or an exaggerated amount.

Analyzing claims by the amount of the settlement paid by the City is important information to determine settlement authority. However, analyzing claims by the amount claimed by the claimant is important to determine rejection authority. Currently, if a claim is filed for up to \$5,000, the Risk Manager (now Human Resources/Risk Manager) has authority to reject or settle it. Any claim over \$5,000 and up to \$25,000 falls within the authority of the Insurance Committee to reject or settle. All claims in excess of \$25,000 are presented to City Council for rejection or settlement.

Based on claim settlement value inflation over the last ten years (nuisance value in the industry is often anything less than \$25,000), current authority amounts are conservative and the City would be well served to increase these levels. Authorizing the City Manager to reject any claim without merit, regardless of the amount claimed, would relieve burden from the City Council and/or Insurance Committee and allow for quicker responses to claimants. An earlier response to claimants begins the statute of limitations for filing a lawsuit sooner. Staff recommends increasing both settlement and rejection authority levels.

Staff also conducted a survey of seven Orange County cities on settlement and rejection authority in 2005, and updated it in April 2007. The results are summarized on Attachment III and the recommendations being made are well within the norm.

Additionally, on June 20, 2006 City Council approved Ordinance 06-13, changing the City Manager's spending authority limit from \$25,000 to \$50,000. This action will synchronize the City Manager's liability claim settlement authority with the spending authority.

The effect of these changes would be that the City Manager or designee(s) would review and reject all claims and also have the authority to settle claims for up to \$50,000. Claim settlements over \$50,000 would be presented to City Council for authorization. Raising this limit would allow the City to reject claims quickly, which in turn would give claimants shorter periods in which to file lawsuits to pursue their claims. It would also eliminate the staff time required to bring each such claim to the City Council.

ALTERNATIVES CONSIDERED:

- 1) Keep rejection authority levels at the settlement authority levels. Should City Council keep the authority levels the same, staff would conform custom and practice to the Municipal Code and begin taking all claim rejections for claims over \$5,000 to the Insurance Committee, rather than to City Council.
- 2) Provide the City Manager with lesser settlement authority.
- 3) Increase the current settlement authority given to the Insurance Committee and Risk Manager.

FISCAL REVIEW:

There is no fiscal impact to this item. The number of claims and amount the claims are settled for is not impacted by changing the settlement authority of staff.

LEGAL REVIEW:

The City Attorney recommends that an increase in the authority for settlement be made and to allow rejections of claims in any amount at the determination of the City Manager. This will allow for quicker processing of claims, which in turn can speed up the commencement of litigation for claims which are not resolved. This can often result in lesser discovery costs in litigation due to the records being more accessible and the witnesses' recollections being somewhat sharper.

CONCLUSION:

It is recommended that the City Council direct staff to present an amended Municipal Code and Council Policy for City Council approval per the above.

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ATTACHMENTS: [I Municipal Code Section 2-189 Settlement of Certain Claims](#)
[II Council Policy 000-3 Liability Claim Procedure](#)
[III Survey of Rejection and Settlement Authority](#)