



CITY OF LONG BEACH ORD-19

DEPARTMENT OF FINANCIAL MANAGEMENT

333 West Ocean Boulevard 6th Floor • Long Beach, CA 90802

January 24, 2012

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Recommendation to declare an Ordinance amending Long Beach Municipal Code 2.83.020 requiring class action claims against the City to be verified by every member of the class, read the first time and laid over to the next regular meeting of City Council for final reading. (Citywide)

DISCUSSION

The California Supreme Court has recently expanded the ability of tax payers to file broad class action claims against cities for refunds of taxes and fees in those cases where a city does not have regulations concerning such claims. Accordingly, the City Attorney's Office is recommending that the City amend its claims procedure to prohibit such broad claims. Such amendment will not prohibit individual tax payers from filing claims for the refund of taxes or fees, but will discourage the broad class actions which are costly for the City to defend against. By adding a requirement that every request for refund be verified by an individual tax payer, the tax payers' rights to seek a refund will be protected and the City will be spared the costly defense of such class actions.

This matter was reviewed by Assistant City Attorney Heather A. Mahood on December 9, 2011 and Acting Budget and Performance Management Bureau Manager Shari Metcalfe on December 19, 2011.

TIMING CONSIDERATIONS

While there appears to be no urgency with respect to the adoption of this Ordinance, the City Council is requested to protect the City's interests by making this change on January 24, 2012.

FISCAL IMPACT

This is a proactive measure and, therefore, there is no fiscal impact for the proposed action. There is no local job impact associated with this recommendation.

HONORABLE MAYOR AND CITY COUNCIL
January 24, 2012
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SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



JOHN GROSS
DIRECTOR OF FINANCIAL MANAGEMENT

JG:RB

K:\REVENUE MANAGEMENT\PROJECTS\PREVENTING CLASS REFUND CLAIMS ORDINANCE -CCL R1.DOC

APPROVED:



PATRICK H. WEST
CITY MANAGER

1 915.4 of the Government Code of the State of California, and such claims
2 shall further be subject to the provisions of Section 945.4 of the
3 Government Code relating to the prohibition of suit in the absence of
4 presentation of claims and action thereon by the city council.

5 B. Contract and other claims. In addition to the requirements of
6 Subsection 2.83.020.A. of this Section and notwithstanding the exemptions
7 set forth in Section 905 of the Government Code of the State of California,
8 all claims against the city for damages or money, when a procedure for
9 processing such claims is not otherwise provided by state or local law, shall
10 be presented within the time limitations and in the manner prescribed by
11 Sections 910 through 915.4 of the Government Code of the State of
12 California and such claims shall further be subject to the provisions of
13 Section 945.4 of the Government Code relating to the prohibition of suit in
14 the absence of presentation of claims and action thereon by the city council.
15 The foregoing reference to Government Code Section 910 shall not be
16 construed to authorize a class claim, and no claim may be filed on behalf of
17 a class of persons unless verified by every member of that class.

18 C. Late claims. When a claim required by the procedure to be
19 presented within a period of less than one (1) year after the accrual of the
20 cause of action is not presented within the required time, an application
21 may be made to the city for leave to present such claim. Subdivision (b) of
22 Section 911.4, Sections 911.6 to 912.2, inclusive, and Sections 946.4 and
23 946.6 of the California Government Code are applicable to all such claims.

24
25 Section 2. The City Clerk shall certify to the passage of this ordinance by
26 the City Council and cause it to be posted in three (3) conspicuous places in the City of
27 Long Beach, and it shall take effect on the thirty-first (31st) day after it is approved by the
28 Mayor.

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I hereby certify that the foregoing ordinance was adopted by the City Council of the City of Long Beach at its meeting of _____, 20__, by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

City Clerk

Approved: _____
(Date)

Mayor

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LONG BEACH, CALIFORNIA AMENDING SECTION 2.83.020 OF THE LONG BEACH MUNICIPAL CODE REGARDING CLAIMS AGAINST THE CITY

THE CITY COUNCIL OF THE CITY OF LONG BEACH DOES ORDAIN AS FOLLOWS:

~~Section 1. *Code Amendment.* Section 2.83.020 of the Long Beach Municipal Code is hereby amended to read as follows:~~

~~“Section _____ Claims~~

~~_____ (a) Authority~~

~~_____ This ordinance is enacted pursuant to Section 935 of the California Government Code.~~

~~_____ (b) Claims Required~~

~~_____ All claims against the city for money or damages not otherwise governed by the Government Claims Act, California Government Code Sections 900 et seq., or another state law (hereinafter in this ordinance, “claims”) shall be presented 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, as these provisions now exist or shall hereafter be amended, and as further provided by this ordinance.~~

~~_____ (c) Form of Claim~~

~~_____ All claims shall be made in writing and verified by the claimant or by his or her guardian, conservator, executor or administrator. In addition, all claims shall contain the information required by California Government Code Section 910. The foregoing reference to Government Code Section 910 shall not be construed to authorize a class claim, and no claim may be filed on behalf of a class of persons unless verified by every member of that class.~~

~~_____ (d) Claim Prerequisite to Suit~~

~~_____ In accordance with California Government Code Sections 935(b) and 945.6, all claims shall be presented as provided in this section and acted upon by the city prior to the filing of any action on such claims and no such action may be maintained by a person who has not complied with the requirements of subdivisions (b) and (c) of this section.~~

~~_____ (e) Suit~~

~~_____ Any action brought against the city upon any claim or demand shall conform to the requirements of Sections 940-949 of the California Government Code. Any action brought against any employee of the city shall conform with the requirements of Section 950-951 of the California Government Code.”~~

~~Section 2. *Severability.* 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.~~

2.83.020 - Special claims procedure.

Pursuant to the authority of Section 935 of the Government Code of the State of California, the city establishes the following claims procedure for those claims for money or damages against the city which are excepted by Section 905 from Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of the California Government Code, and which are not governed by any other statutes or regulations expressly relating thereto:

A. Employee claims. Notwithstanding the exceptions contained in section 905 of the Government Code of the State of California, all claims by public officers or employees for fees, salaries, wages, overtime pay, holiday pay, compensating time off, vacation pay, sick leave pay, back pay and other expenses or allowances claimed due from the city, when a procedure for processing such claims is not otherwise provided by state or local law or memorandum of understanding, shall be presented within the time limitations and in the manner prescribed by Sections 910 through 915.4 of the Government Code of the State of California, and such claims shall further be subject to the provisions of Section 945.4 of the Government Code relating to the prohibition of suit in the absence of presentation of claims and action thereon by the city council.

B. Contract and other claims. In addition to the requirements of Subsection 2.83.020.A. of this section and notwithstanding the exemptions set forth in Section 905 of the Government Code of the State of California, all claims against the city for damages or money, when a procedure for processing such claims is not otherwise provided by state or local law, shall be presented within the time limitations and in the manner prescribed by Sections 910 through 915.4 of the Government Code of the State of California and such claims shall further be subject to the provisions of Section 945.4 of the Government Code relating to the prohibition of suit in the absence of presentation of claims and action thereon by the city council. The foregoing reference to Government Code section 910 shall not be construed to authorize a class claim, and no claim may be filed on behalf of a class of persons unless verified by every member of that class.

C. Late claims. When a claim required by the procedure to be presented within a period of less than one (1) year after the accrual of the cause of action is not presented within the required time, an application may be made to the city for leave to present such claim. Subdivision (b) of Section 911.4, Sections 911.6 to 912.2, inclusive, and Sections 946.4 and 946.6 of the California Government Code are applicable to all such claims."

Section 2. _____ The City Clerk shall certify to the passage of this ordinance by the City Council and cause it to be posted in three (3) conspicuous places in the City of Long Beach, and it shall take effect on the thirty-first (31st) day after it is approved by the Mayor.

I hereby certify that the foregoing ordinance was adopted by the City Council of the City of Long Beach at its meeting of _____, 2011, by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

_____ City Clerk

Approved: _____

_____ (Date) _____ Mayor

~~Section 3. Effective Date; Transitional Clause. This Ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937. However, any claim that would have been timely if presented on the day before this Ordinance becomes effective which claim would be untimely under the requirements of the this Ordinance may, notwithstanding this Ordinance, be presented not later than the 45th day after the adoption of this Ordinance.~~

~~Section 4. Certification. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published according to law.~~

~~PASSED, APPROVED AND ADOPTED, this ___th day of _____ 2008.~~

_____ Mayor

ATTEST:

City Clerk

_____ APPROVED AS TO FORM:

City Attorney