



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Catherine Krysyna, Assistant Finance Manager
MEETING DATE: October 5, 2016
SUBJECT: Second Reading of an Amendment to the City's Claims Ordinance
CEQA: This does not constitute a "project" under the California Environmental Quality Act (CEQA) Guideline Section 15378.

RECOMMENDATION

Hold a second reading and adopt an ordinance to amend Pacific Grove Municipal Code (PGMC) Chapter 6.06, Section 6.06.055 to increase the City Manager's authority to act on claims against the City from under \$15,000 to under \$35,000 and to allow the City Manager authority to reject claims in any amount that are deemed not to be a proper charge against the City, and to modify Council Policy No. 000-7 accordingly.

DISCUSSION

A first reading of this proposed amendment was held on September 21, 2016. The second reading was published on October 2, 2016 as required by the City Charter. At the first reading, Council presented no objections to the increased authority requested for the City Manager or for the coinciding amendments to Council Policy No. 000-7. However, Council requested that a monthly report be provided to Council Members listing all claim settlements and rejections for the month. This language was added to Council Policy No. 000-7.

For claims against the City under \$15,000, Chapter 6.06.055 of the Pacific Grove Municipal Code (PGMC) currently allows the City Manager exclusive authority to act on those claims in the same manner as the City Council. However, PGMC Chapter 2.16, Article II, Section 2.16.160, allows the City Manager, as Purchasing Agent, authorization to make purchases for the City under \$35,000. Since both actions authorize the City Manager to approve the expenditure of City funds within set limits, the City Attorney has counseled that, for consistency, the City Manager's authority to act on claims (approve or deny) should be set at the same amount as the City Manager's purchasing authority.

Also under the amended ordinance, the City Manager would possess full authority to reject claims in any amount against the City that he deems unreasonable and not a proper charge against the City. Approval of this change streamlines handling and increases the efficiency of claims processing. In the event rejected claims are litigated, the matter would continue to be brought to the City Council for review and evaluation.

Council Policy No. 000-7 states “any settlement in excess of \$25,000.00 shall have prior approval from the City Council”. In order to comport with the proposed amendment to the PGMC proposed herein, Staff proposes that the policy settlement amount also be revised to read: “any settlement of \$35,000.00 or more shall have prior approval from the City Council”. Additionally, the Procedure section of Council Policy 000-7, under the Worker’s Compensation sub-section, states: “A standard report shall be prepared and forwarded to the City Manager without delay for all incidents of job-related illness or injury”. Given the time-sensitive nature of managing work-related illnesses and injuries, Staff recommends changing “a standard report” to the DWC1 Report of Injury and “City Manager” to Finance Director, or designee.

FISCAL IMPACT

None

ATTACHMENTS

1. [PGMC Chapter 2.16](#)
2. [PGMC Chapter 6.06](#)
3. Council Policy No. 000-7
4. Ordinance

RESPECTFULLY SUBMITTED:



Catherine Krysyna
Assistant Finance Manager

REVIEWED BY:



Ben Harvey
City Manager

City of Pacific Grove, California City Council Policy

| Policy Governing | Policy No. | Effective Date | Page |
|---|------------|----------------|--------|
| Processing and Settling Claims Against the City | 000-7 | June 7, 1989 | 1 of 1 |

PURPOSE: It is the purpose of this policy to establish procedures for processing and settling claims made against the City as a result of personal injury, property damage, or job-related illness or injury (workers' compensation).

POLICY: With regard to workers' compensation, it is the policy of the City to provide treatment and care for employees injured on the job. Treating physicians must be approved by the City, or the employee must have designated a personal physician in writing prior to the illness or injury. The City may not be liable for costs incurred through unauthorized treatment.

With regard to general liability claims for personal injury or property damage, it is the policy of the City that all such claims be investigated quickly and carefully, and that prompt and equitable restitution be offered to the injured parties when it is found that a claim is meritorious. Conversely, when a claim or lawsuit is filed which does not appear to have legal merit, or it appears that a claim or lawsuit has been pursued in bad faith, is frivolous, or is untimely, the City shall resist and defend such claims or actions vigorously. No claims shall be paid without an underlying basis of legal merit. Further, the City may consider the institution of litigation under Section 128.5 of the California Code of Civil Procedure in order to discourage claims made frivolously or in bad faith and to obtain reimbursement for City's incurred costs.

The City Manager and City Attorney, and their designated representatives, shall have the authority to retain adjustors, attorneys, investigators and any other assistance deemed necessary to administer, adjust, investigate, and defend against or settle claims against the City. ~~The City Council shall be advised of all settlements, and any settlement in excess of \$25,000 shall have prior approval from the Council.~~ ***Any settlement in the amount of \$35,000.00 or more shall have prior approval from the City Council. On a monthly basis, each Council Member shall be provided a report listing all rejected claims and settlements for the month reported.***

PROCEDURES: Workers' Compensation All on-the-job accidents which result in personal injury must be reported to a supervisor immediately, regardless of the severity of the injury. ~~A standard report~~ ***The DWC1 Report of Injury*** shall be prepared and forwarded to the ~~City Manager~~ ***Finance Director, or designee,*** without delay for all incidents of job-related illness or injury. This policy is necessary for the protection of the employee and to provide information which may be used to prevent similar accidents.

General Liability All claims for personal injury or property damage shall be filed with the City Clerk or a designated representative, as required by law. When it is determined that it will take more than 30 days to investigate or settle a claim, such claim shall be referred to the ~~City Council Manager~~ for denial in order to protect the City's legal rights.

ORDINANCE NO. 16-xxx

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
PACIFIC GROVE AMENDING CHAPTER 6.06 OF THE
PACIFIC GROVE MUNICIPAL CODE REGARDING UNIFORM
CLAIMS PRESENTATION AND COUNCIL POLICY 000-7**

WHEREAS, Chapter 606, Subsection 6.06.055 of the Pacific Grove Municipal Code, as of 2010, states that for claims against the city under \$15,000 the City Manager shall have exclusive authority to act on such a claim in the same manner provided in PGMC 6.06.050; and

WHEREAS, Chapter 2.16, Article II, Subsection 2.16.160(a) of the Pacific Grove Municipal Code states that purchases of supplies, services, materials, equipment and contractual services, including public works, having an estimated market value under \$35,000 may be made by the Purchasing Agent in the open market, as hereinafter described in this article, without observing the formal contract procedures prescribed in Articles III and IV of this chapter; and

WHEREAS, Council Policy 000-7 specifies the City Manager's authority to act on claims as less than \$25,000; and

WHEREAS, Council Policy 000-7 requires a standard report to be given to the City Manager on all incidents of job-related illness or injury, which is unnecessary and conflicts with current practice; and

WHEREAS, the intent of the City Council is to apply consistency to the authority level provided to the City Manager for action on claims and as Purchasing Agent; and

WHEREAS, the intent of the City Council is to allow the City Manager full authority to reject claims against the City in any amount; and

WHEREAS, the intent of the City Council is to continue with its current practice regarding job-related illness or injury reporting; and

WHEREAS, the City Council has requested a monthly report on all claims settled or rejected within the month; and

WHEREAS, in the enactment of this ordinance, the City followed the guidelines adopted by the State of California and published in the California Code of Regulations, Title 14, Section 15000, et seq. Enactment of this ordinance action does not constitute a "project" as defined by California Environmental Quality Act (CEQA) because it is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE:

SECTION 1. The foregoing findings of the City Council are incorporated into this Ordinance as if set forth in full.

SECTION 2. The text set forth in existing Municipal Code Chapter 6.06.055 entitled *Action by City Manager* shall be changed by the deletion of all text shown in ~~strikeout text~~ and the addition of all a text shown in bold italic text (***bold/italic text***), as follows:

(a) For claims against the City under ~~\$15,000~~ ***\$35,000*** the City Manager shall have the exclusive authority to act on such a claim in the same manner provided in PGMC 6.06.050 [Ord. 10-013 } 2, 2010].

(b) ***For all claims against the City, in any amount, the City Manager shall have the exclusive authority to reject such claims.***

1) The City Manager shall act on a claim within 45 days after the claim has been presented. If the City Manager fails or refuses to act on a claim within this time, the claim shall be deemed to have been rejected by the City Manager on the last day of the period within which the City Manager was required to act upon the claim. [Ord. 02-28} 1, 2002]

SECTION 3. The text set forth in Council Policy 000-7 shall be changed by the deletion of all text shown as ~~strikeout text~~ and the addition the addition of all text shown in bold italic text (***bold italic text***) as follows:

~~The City Council shall be advised of all settlements, and any settlement in excess of \$25,000 shall have prior approval of the City Council.~~ ***Any settlement in the amount of \$35,000 or more shall have prior approval from the City Council. On a monthly basis, each Council Member shall be provided a report listing all rejected claims and settlements for the month reported.***

~~A standard report~~ ***The DWC1 Report of Injury*** shall be prepared and forwarded to the ~~City Manager~~ ***Finance Director, or designee*** without delay for all incidents of job-related illness or injury.

When it is determined that it will take more than 30 days to investigate or settle a claim, such claim shall be referred to the City ~~Council~~ ***Manager*** for denial in order to protect the City's legal rights.

SECTION 4. The City Manager is directed to execute all documents and to perform all necessary City acts to implement this ordinance.

SECTION 5. In accord with Article 15 of the City Charter, this ordinance shall become effective 30 days after adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this 5th day of October, 2016, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

BILL KAMPE, Mayor

ATTEST:

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

DAVID C. LAREDO, City Attorney