



## **Staff Report**

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### **ORDINANCE ADDING CHAPTER 2, ARTICLE XI, PROCEDURE AND LIMITATIONS PERIOD FOR FILING CLAIMS**

Honorable Mayor and Council Members:

#### **Summary**

Section 935 of the California Government Code allows cities to establish by ordinance a claims policy and procedure for all claims that are not otherwise covered by the California Tort Claims Act or other provisions of state law. The proposed ordinance would establish such a claims procedure for Belmont.

#### **Background**

The Tort Claims Act, Government Code Section 905 et seq., establishes an administrative claims procedure for presentation of claims to local entities. The Act specifies that the claim must contain a description of the indebtedness, obligation, injury, damage or loss, the date/time and place of the occurrence, the name/s of the public employee/s involved and the amount of the claim. (Government Code Section 910) Unless exempted by the Act, before filing a complaint for damages against a public entity or employee, a claimant must present a claim to the entity in accordance with the Tort Claims Act. (Government Code Section 945.4)

Per Government Code Section 911.2, claims based on causes of action for death, personal injury, injury to personal property and injury to growing crops must be filed within six months of the accrual of the cause of action. For the purpose of the Tort Claims Act, the date of accrual is the same date on which the cause of action would accrue if there were no claims requirements. (Government Code Section 901) Claims for "any other" cause of action (for example, breach of contract and damage to real property) must be filed within one year of the accrual of the cause of action. (Government Code Section 911.2)

Government Code Section 905 contains a list of exemptions to the claims filing requirement. Exempted are:

(a) Claims under the Revenue and Taxation Code or other statute prescribing procedures for the refund, rebate, exemption, cancellation, amendment, modification or adjustment of any tax, assessment, fee or charge or any portion thereof, or of any penalties, costs or charges related thereto.

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- (b) Claims in connection with which the filing of a notice of lien, statement of claim, or stop notice is required under any provision of law relating to mechanics', laborers' or materialmen's liens.
- (c) Claims by public employees for fees, salaries, wages, mileage or other expenses and allowances.
- (d) Claims for which the workers' compensation authorized by Division 4 (commencing with Section 3200) of the Labor Code is the exclusive remedy.
- (e) Applications or claims for any form of public assistance under the Welfare and Institutions Code or other provisions of law relating to public assistance programs, and claims for goods, services, provisions or other assistance rendered for or on behalf of any recipient of any form of public assistance.
- (f) Applications or claims for money or benefits under any public retirement or pension system.
- (g) Claims for principal or interest upon any bonds, notes, warrants, or other evidences of indebtedness.
- (h) Claims that relate to a special assessment constituting a specific lien against the property assessed and that are payable from the proceeds of the assessment, by offset of a claim for damages against it or by delivery of any warrant or bonds representing it.
- (i) Claims by the state or by a state department or agency or by another local public entity or by a judicial branch entity.
- (j) Claims arising under any provision of the Unemployment Insurance Code, including but not limited to claims for money or benefits, or for refunds or credits of employer or worker contributions, penalties, or interest, or for refunds to workers of deductions from wages in excess of the amount prescribed.
- (k) Claims for the recovery of penalties or forfeitures made pursuant to Article 1 (commencing with Section 1720) of Chapter 1 of Part 7 of Division 2 of the Labor Code.
- (l) Claims governed by the Pedestrian Mall Law of 1960, Part 1 (commencing with Section 11000) of Division 13 of the Streets and Highways Code.

**Discussion**

Government Code Section 935 allows cities to establish by ordinance a claims procedure for claims otherwise exempted by Government Code Section 905. The proposed ordinance would establish such a claims procedure for Belmont.

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If adopted, the ordinance would require that claims be filed for:

- (a) Rebate, exemption, cancellation or adjustment of any tax, assessment, fee or charge and any penalties related thereto.
- (b) Claims in connection with stop notices and other mechanic's and materialmen's liens that would relate to public works projects.
- (c) Claims of public employees for fees, salaries, wages or other allowances.

The proposed Ordinance indicates it is being enacted under the authority of Government Code Section 935. It defines "claims" as all claims against the City for money damages or tax refunds not otherwise governed by state law. It requires presentment of any such claims to be within one year after the accrual of the claim or payment of the tax or assessment.

As with all other claims, claims filed per this ordinance must contain a verified statement, on a form prepared by the City Clerk, and presentment of the claim is made to the City Clerk.

Proper presentment of the claim and action upon the claim by the City is a prerequisite for the filing of any lawsuit or action on such a claim. This is consistent with the procedure in the Tort Claims Act for all other claims for money and damages that are governed by state law.

**Recommendation**

It is recommended that the Council review the proposed ordinance, introduce it as Chapter 2, Article XI, Establishing a Procedure and Limitations Period for Filing Claims, and set the ordinance for second reading.

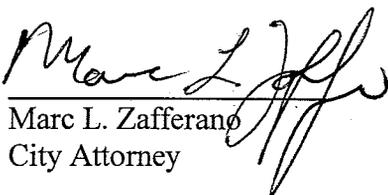
**Alternatives**

1. Decline to introduce the ordinance as proposed.

**Attachments**

- A. Proposed Ordinance

Respectfully submitted,

  
Marc L. Zafferano  
City Attorney

ATTACHMENT A  
PROPOSED ORDINANCE

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF BELMONT ADDING ARTICLE XI, PROCEDURE  
AND LIMITATIONS PERIOD FOR FILING CLAIMS, TO CHAPTER 2,  
ADMINISTRATION, OF THE BELMONT MUNICIPAL CODE

The City Council of the City of Belmont does ordain as follows:

SECTION 1: Belmont Municipal Code Chapter 2, Article XI, is hereby added to read as follows:

- 2-187 Authority.
- 2-188 Claims required.
- 2-189 Presentment of claims.
- 2-190 Form of claim.
- 2-191 Claim prerequisite to suit.
- 2-192 City action on claim.

2-187 Authority.

This chapter is enacted pursuant to California Government Code Section 935.

2-188 Claims required.

All claims against the City for money, damages or tax or assessment refunds, not otherwise governed by the Tort Claims Act, California Government Code Sections 900, et seq., or any other law of the State of California (hereinafter "claims") shall be governed by the provisions of this chapter.

2-189 Presentment of claims.

Claims against the City governed by this chapter shall be presented not later than one year after the accrual of the claim. A tax or assessment refund claim shall be deemed to accrue as of the date of payment of the tax or assessment.

2-190 Form of claim.

All claims shall be made in writing and verified by a claimant or by the claimant's guardian, conservator, executor or administrator. No claim may be filed on behalf of a class of persons unless verified by every member of the class. In addition, all claims shall contain the information required by California Government Code Section 910. Claims shall be made on a form provided by the City Clerk and shall be filed with the City Clerk.

2-191 Claim prerequisite to suit.

All claims shall be presented as provided in this chapter and acted upon by the City Council prior to the filing of any lawsuit or action on such claim, and no lawsuit or action shall be maintained by a person or entity that has not complied with this chapter.

2-192 City action on claim.

The City Council shall act to approve or deny a claim within forty-five days of its presentment as required under this chapter. Failure of the City Council to act within the time required shall be deemed a denial of the claim.

SECTION 3: Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Belmont hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, phrase or portion may be declared invalid or unconstitutional.

SECTION 4: Pursuant to Section 36937 of the Government Code of the State of California, this Ordinance shall take effect and be in full force and effect thirty (30) days after its final passage.

SECTION 5: The City Clerk shall cause this Ordinance to be published and posted in accordance with the requirements of Section 36933 of the Government Code of the State of California.

Introduced this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\* \* \* \* \*

PASSED AND ADOPTED as an Ordinance of the City of Belmont at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 2006.

AYES, COUNCILMEMBERS: \_\_\_\_\_

NOES, COUNCILMEMBERS: \_\_\_\_\_

ABSENT, COUNCILMEMBERS: \_\_\_\_\_

ABSTAIN, COUNCILMEMBERS: \_\_\_\_\_

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Mayor of the City of Belmont

ATTEST:

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Clerk of the City of Belmont