

September 19, 2002

REPORT TO THE COMMITTEE ON RULES,
FINANCE AND INTERGOVERNMENTAL RELATIONS

AMENDING COUNCIL POLICY TO RAISE CITY MANAGER
LITIGATION SETTLEMENT AUTHORITY

INTRODUCTION

Recently, the City Council has experienced an increase in the number and types of lawsuits that must be heard in closed session pursuant to the California open meeting law, the Brown Act. This increase has resulted in an inability to conclude appropriate closed session business in the allotted time for regular closed sessions on Tuesday mornings, and a need for the City Council to either continue the closed session business until later in the day on Tuesdays, or continue the matters to another time, sometimes for extended periods.

To alleviate this problem, the City Attorney and City Manager recommend that City Council Policy No. 000-09 be amended to increase the City Manager's settlement authority to \$50,000 for all cases. In addition, it is recommended that the City Manager be delegated the authority to screen all written settlement offers to ensure that only bona fide offers need to be considered by the City Council.

BACKGROUND

Pursuant to City Council Policy No. 000-09 (copy enclosed) the City Manager, upon consultation with the City Attorney, is delegated certain authority to settle litigation against the City. The Policy sets certain limits on the City Manager's authority, and creates two categories of claims: 1) general litigation; and 2) claims associated with water main breaks and sewer back-ups.

Regarding general litigation, the Risk Management Department has direct settlement authority for claims up to \$5,000, and the City Manager has authority for claims up to \$20,000. In the category of water main breaks and sewer back-ups, the Risk Management Department has authority up to \$20,000, and the City Manager authority up to \$50,000. The authority for general litigation was last raised in 1987 (from \$5,000 to the current \$20,000), and the authority for water main breaks and sewer back-ups was last raised in 1993.

The Brown Act (California Government Code section 54950 et seq.) permits the City Council to meet in closed session to consider the compromise of claims and litigation. The time for regular closed sessions has been traditionally set at 9 a.m. on Tuesdays when there is

otherwise scheduled a regular City Council meeting. The closed session lasts until 10 a.m. when the regular open meeting re-convenes.

In the last several years, the City Attorney has observed that, because of the increase in the number and complexity of cases that must be considered in closed session by the City Council (for example complex land use matters or significant personal injury litigation) the City Council has often been unable to conclude the closed session business by 10 a.m. As a result, the City Council must often re-convene in closed session at the end of the day on Tuesday, often after a lengthy open session, or continue matters until another time. Many of the matters that trail or are continued tend to be cases where the settlement proposal is \$50,000 or less.

In addition, we have observed that time is consumed in closed session regarding reports on written settlement demands or offers that are not bona fide. Rule 3-510 of the Rules of Professional Conduct for attorneys requires that an attorney communicate the terms of any written settlement offer to the client (or representative with authority). This has resulted in closed session reports to the City Council regarding written settlement demands or offers that are routinely rejected based on the facts and circumstances of the case (for example, a case that may be worth \$50,000 but the written settlement demand is \$1 million). These reports can be time consuming and in most cases unnecessary.

RECOMMENDATION

California Government Code section 935.4 permits the legislative body of a local entity to delegate to an employee settlement authority up to \$50,000; authority above that sum requires a charter amendment.¹ While we do not necessarily agree that such authority is a matter of statewide concern subject to state regulation, and that the City Council could under its charter powers establish a higher authority, \$50,000 appears to be an appropriate threshold for the City Manager's exercise of settlement authority. To alleviate the problems described above regarding the number of matters to be considered in closed session, the City Attorney and City Manager recommend that Council Policy 000-09 be amended to increase the City Manager's settlement authority to \$50,000 in all cases, and increase the Risk Management Department's authority to \$20,000 in all cases. In addition, it is recommended that the City Manager, upon consultation with the City Attorney, be delegated the authority to screen all written settlement demands or offers to determine which offers are bona fide and should be considered by the City Council and which should be rejected.

Respectfully submitted,

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Enclosure
RC-2002-17