

**Office of  
The City Attorney  
City of San Diego**

**MEMORANDUM  
MS 59**

**(619) 236-6220**

**DATE:** September 14, 2022

**TO:** Honorable Members of the City Council

**FROM:** City Attorney Mara W. Elliott

**SUBJECT:** Claims Against the City - Council Policy 000-09

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At the City Council (Council) hearing on September 12, 2022, to consider the settlement of *San Diego Housing Commission, et. al. v. Jim Neil, et al.*, several Councilmembers expressed confusion about the process for settling cases.

The City Council of the City of San Diego is responsible for establishing municipal policies and establishing procedures to accomplish those policies. See Council Policy 000-01 (CP 000-01). To that end, the Council has created CP 000-01, titled “Council Policy Manual” that consolidates formally adopted Council policies into a reference document for easy access. These Council Policies have been adopted by Council Resolution R-169938 (March 15, 1962). See Council Policy 000-01.

Council Policy 000-09, titled “Claims Against the City” (CP 000-09), has been in effect since the Council adopted it on June 29, 1965, and has been amended nine times since 1965, most recently on August 11, 2014. Council Policy 000-09 (Aug. 11, 2014). It “establish[es] a procedure for the efficient administration of claims against the City” and is intended to “provide for increased efficiency in the administration of all claims and lawsuits filed against the City.” It describes how the City Attorney’s Office communicates with the Council and the Mayor about claims and lawsuits and delegates authority to City officials and departments based on the value of a claim. The Mayor and his staff are empowered to resolve cases valued at \$50,000 or less, and the Council has reserved for itself discretion over claims valued at more than \$50,000 (i.e., such claims “shall be approved or denied by Council resolution...”). Council Policy 000-09 at ¶VI.

My Office follows CP 000-09 in administering claims and lawsuits. Claims and lawsuits involving an expenditure of more than \$50,000 are presented in closed session and, if resolved, are docketed for consideration at an open session Council meeting along with a resolution memorializing the Council’s action. My Office routinely brings proposed settlements that do *not* involve a City expenditure to closed session for Council consideration and approval even though we are not required to do so under CP 000-09.

With respect to *San Diego Housing Commission, et. al. v. Jim Neil, et al.*, the Council approved the settlement framework on April 19, 2022, and my Office notified the Council in writing on June 23, 2022, that a settlement had been reached. We brought this lawsuit to Council in open

session on September 12, 2022, even though the settlement did not involve an expenditure, because the matter was of public interest, and there would otherwise be no opportunity for public input. My Office followed all applicable Council Policies in handling the above-referenced matter and docketed it for an open session discussion. The settlement is 100% consistent with Council and Housing Authority direction.

We invite the Council to review past revenue-generating litigation matters to confirm that there has been no change in my Office's handling of these types of litigation matters. We have always adhered to Council Policy 000-09 and will continue to do so. Please contact me if you have questions or concerns.

Sincerely,

MARA W. ELLIOTT, CITY ATTORNEY

By: /s/ Mara W. Elliott  
Mara W. Elliott  
City Attorney

MWE:se

MS-2022-8

Doc. #3088084

Attachment: Council Policy 000-01, Council Policy Manual  
Council Policy 000-09, Claims Against the City

CITY OF SAN DIEGO, CALIFORNIA  
**COUNCIL POLICY**

**CURRENT**

SUBJECT: COUNCIL POLICY MANUAL  
POLICY NO.: 000-01  
EFFECTIVE DATE: November 8, 2021

BACKGROUND:

The City Council of the City of San Diego (Council) is responsible for establishing municipal policies and establishing procedures to accomplish those policies. This Council Policy Manual consolidates formally adopted Council policies into a reference document for easy access.

PURPOSE:

It is the purpose of this policy to establish procedures for the preparation, electronic distribution, and maintenance of Council policies and the Council Policy Manual.

POLICY:

1. There is hereby established a Council Policy Manual which shall contain all City policy statements adopted by resolution of the City Council.
2. Generally, policy statements in this Council Policy Manual will include only such municipal matters for which the responsibility of decision is placed in the Council by the City Charter, the Municipal Code, or specific ordinances and resolutions.
3. When preparing a new Council Policy statement for inclusion in the Council Policy Manual, the originator should determine whether the issue is best addressed as an addition to a comprehensive policy document [such as the General Plan] or whether a new Council Policy is warranted.
4. All policy statements of the Council shall be prepared in writing and approved by resolution. Once approved, statements of policy will be reproduced, distributed, and included in the Council Policy Manual accompanied by the resolution number and date of adoption.
5. Each policy statement shall include: (a) a brief background description of the problem, (b) the purpose of the policy, (c) the policy statements, (d) other criteria or procedural sections as required, and (e) cross reference notations to the City Charter, Municipal Code, Administrative Regulations, or other authority.

CITY OF SAN DIEGO, CALIFORNIA  
**COUNCIL POLICY**

**CURRENT**

6. Unless otherwise required by law, all policy statements of the Council shall be drafted using gender-neutral pronouns or reusing nouns to avoid the use of gendered or binary pronouns when referring to a person or group of people.
7. The City Clerk shall be responsible for the preparation, continuing maintenance, and electronic distribution of the Council Policy Manual, and additions or deletions thereto.
8. The City Clerk shall be responsible for notifying the Mayor and all City Department heads of changes, deletion, or addition to the Council Policy Manual.
9. The Rules Committee shall complete a biennial review of the Council Policy Manual “Table of Contents” to determine which policies, if any, need review and direct them to the appropriate committee for further review. A periodic review of the entire Council Policy Manual should occur to determine whether the policies contained therein remain relevant and useful.
10. In determining whether to amend or retire any policy from the Council Policy Manual, a review by the appropriate Council committee should be made. If the committee determines that amendments are required or that a policy should be repealed, the matter can only be amended or repealed by resolution of the Council.

**PROCEDURE:**

1. A Councilmember, the Mayor, non-mayoral department heads, and City Boards and Commissions may originate draft policy proposals for formal consideration by the Council through the Committee process.
2. The City Clerk shall be responsible for the assignment of policy numbers and titles to a proposed policy draft.
3. Drafts of proposed Council policies and amendments to existing policies shall be processed in accordance with the provisions of the Rules of the Council and should be reviewed by the City Attorney for legality prior to being placed on the Committee agenda. Such drafts shall be referred to the appropriate Council Committee for discussion, analysis, and preliminary action.
4. Upon approval by the appropriate Council committee, the City Attorney shall prepare a resolution of adoption through the Request for Council Action process. Such resolution shall be prepared and processed in accordance with the Rules of the Council. A strike-out version of the draft policy shall be prepared and forwarded with the Request for Council Action.

CITY OF SAN DIEGO, CALIFORNIA  
**COUNCIL POLICY**

CURRENT

5. Proposed policies will then be presented for Council consideration. If Council approves a policy with revisions, the City Attorney will make the changes and forward a final draft and strike-out version to the City Clerk.
6. After official adoption by the Council, the City Clerk shall be responsible for duplication of the statement of policy and electronic distribution.
7. As required, the City Clerk shall update the Table of Contents and Cross Reference in the Council Policy Manual.
8. Each July of odd numbers years, the Rules Committee shall review an updated Table of Contents to determine which policies, if any, they wish to review and then forward them for consideration to the appropriate committee.

HISTORY:

Adopted by Resolution R-169938 – 03/15/1962

Amended by Resolution R-191955 – 10/26/1967

Amended by Resolution R-211429 – 08/29/1974

Amended by Resolution R-252047 – 06/16/1980

Amended by Resolution R-274932 – 01/08/1990

Amended by Resolution R-307548 – 07/05/2012

Amended by Resolution R-310843 – 12/06/2016

Amended by Resolution R-313771 – 11/08/2021

CITY OF SAN DIEGO, CALIFORNIA  
**COUNCIL POLICY**

CURRENT

SUBJECT: CLAIMS AGAINST THE CITY

POLICY NO.: 000-09

EFFECTIVE DATE: August 11, 2014

BACKGROUND:

City Council amended this Council Policy on June 25, 1965 to establish a procedure for the efficient administration of claims against the City. This was done in accordance with the California Government Code, Section 935 et seq. As was the case in 1970, the City continues to self-insure the greater portion of its potential liability and the purpose of this amended Council Policy is to provide for increased efficiency in the administration of all claims and lawsuits filed against the City.

PURPOSE:

The purpose of this amended policy is to provide for an increased efficiency in the handling of all claims and lawsuits that are filed against the City up to and including Fifty Thousand Dollars (\$50,000). All other claims will be administered in accordance with the procedure established by this Council Policy 000-09 and pursuant to California Government Code, Section 935 et seq.

POLICY:

- I. All claims shall be filed with the Director of Risk Management.
- II. The Public Liability Division of the Department of Risk Management, herein called "Division", is assigned responsibility for administering claims against the City, pursuant to Government Code 935 et seq. and as hereinafter provided.
- III. All claims shall be investigated and adjusted by Division.
- IV. Division shall have the authority to allow, deny or compromise all claims wherein the amount paid in settlement does not exceed Fifty Thousand Dollars (\$50,000) for Water and Sewer related claims and Twenty-Five Thousand Dollars (\$25,000) for other claims. Claims for damages will be allowed or compromised with the following conditions:
  1. Not to exceed Seven Thousand Dollars (\$7,000) field settlement authority for each Claims Representative II with the approval of the Supervising Claims Representative.
  2. Not to exceed Ten Thousand Dollars (\$10,000) settlement authority for the

CITY OF SAN DIEGO, CALIFORNIA  
**COUNCIL POLICY**

**CURRENT**

Supervising Claims Representative.

3. Not to exceed Fifteen Thousand Dollars (\$15,000) settlement authority for the Claims and Insurance Manager.
  4. Not to exceed Twenty-Five Thousand Dollars (\$25,000) settlement authority for the Director and Deputy Director of Risk Management for non Water and non Sewer related claims.
  5. Not to exceed Fifty Thousand Dollars (\$50,000) settlement authority for the Director and Deputy Director of Risk Management for Water and Sewer related claims.
- V. The Chief Financial Officer shall have the authority to allow, deny or compromise all claims wherein the amount paid in settlement does not exceed Fifty Thousand Dollars (\$50,000).
- VI. All claims which have a total value in an amount in excess of Fifty Thousand Dollars (\$50,000), from one or any combination of funding sources including the value of future payments, shall be approved or denied by Council resolution unless otherwise denied by operation of law. A claim denied by operation of law is recognized as denied by Government Code section 912.4 when after forty-five (45) days of filing the claim, no City action is taken either by way of acceptance or denial.
- VII. Notification of denial of claims, whether by Division, by Council resolution or by operation of law, will be made in writing to the claimant.
- VIII. In all cases that are settled, Division shall obtain a warrant-check from the Office of the Comptroller and forward it to the claimant in return for his properly signed and executed release. In the interests of efficient claims management, and where the liability exposure so indicates, Division may elect to pay portions of claimant's losses as they are incurred, securing partial release receipts to be applied to the full release at the termination of the claim where it is practical.
- IX. In all cases, Division shall seek the advice and consent of the City Attorney on questions of law.
- X. In all cases in which a summons and complaint is served on the City, the case shall be forwarded to the City Attorney for legal action.

CITY OF SAN DIEGO, CALIFORNIA  
**COUNCIL POLICY**

**CURRENT**

- XI. In all cases of claims or suits or potential liability exposure in excess of the applicable self-insurance limits, Division shall in writing place the excess coverage insurance carrier on notice of the claim and coordinate investigation and litigation with that carrier.
- XII. Division will provide the Council with a monthly tort claims statistical report. This report shall reflect the City's claims volume and expense experience in the self-insurance program.
- XIII. The Mayor, or his designee, and the City Attorney shall notify the City Council of any claim, litigation, or discrimination complaint, regardless of value, involving an employee directly appointed by the City Council when it is determined that reasonable cause exists for such charges, and notify the Council again upon disposition of such charges.
- XIV. It is the policy of the City Council that employees, who are determined to have committed unlawful discrimination, shall personally pay for the costs of their defense and any damages awarded through settlement or by a court, to the extent allowed by law.
- XV. The City Attorney shall report to the City Council on the status of significant pending litigation.
- XVI. For any claim or lawsuit in which a written offer of compromise has been received which would otherwise require City Council approval, the Mayor, or his designee, shall consult with the City Attorney and determine whether the offer is bona fide and requires City Council consideration. The Mayor, or his designee, shall have the authority to reject any offer that the Mayor, or his designee, and City Attorney deem not bona fide.

**HISTORY:**

Adopted by Resolution R-184185 - 06/29/1965  
Amended by Resolution R-192807 - 02/01/1968  
Amended by Resolution R-193581 - 05/02/1968  
Amended by Resolution R-200428 - 07/30/1970  
Amended by Resolution R-264164 - 09/30/1985  
Amended by Resolution R-268138 - 04/20/1987  
Amended by Resolution R-278427 - 07/29/1991  
Amended by Resolution R-282607 - 09/13/1993  
Amended by Resolution R-297382 - 11/25/2002  
Amended by Resolution R-309164 - 08/11/2014