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LOCAL CLAIMS FILING REGULATIONS

INTRODUCTION

The Tort Claims Act generally requires the filing of an administrative claim for damages as a prerequisite to filing a civil action. Twelve classes of damage claims are exempted from the claim-presentation requirements under Government Code section 905. However, the Tort Claims Act provides local public agencies an opportunity to remove this exemption. Pursuant to Government Code section 935, local public agencies may adopt by charter amendment or local ordinance a claim filing requirement for those classes of claims which would otherwise be exempted under section 905. The purpose of this paper is to discuss the benefits of adopting such a requirement and to provide a sample ordinance for those who are interested in adopting a similar ordinance.

DISCUSSION

Local Agencies May Require The Filing Of An Administrative Claim For Those Claims That Would Otherwise Be Exempted From The Claims Presentation Requirements.

The Tort Claims Act (Gov. Code, § 810 et seq.) establishes the basic principals of public agency liability for damage claims, whether those claims sound in tort or contract. Aside from establishing the substantive rules for public agency damages liability, it establishes the procedural rules pursuant to which a claimant may seek a damage award from a public agency. Compliance with these procedural rules, including those requiring the filing of an administrative claim within the applicable six-month or one-year statute of limitation, operate as prerequisites to the filing of a civil action against the public agency. (See Gov. Code, §§ 945.6 and 946.)

Accordingly, where there may be substantive liability, the procedural requirements provide public agencies the opportunity to timely investigate claims and to reduce litigation expenses and potential judgments. In addition, procedural rules such as the statutes of limitations serve to bar some claims which would otherwise be substantively valid. (See *City of Ontario v. Superior Court* (1993) 12 Cal.App.4th 894, 902-03 (describing the purposes of the prescribed time limits as giving public agencies opportunities to timely investigate claims, to settle meritorious claims short of litigation, and to make appropriate fiscal planning decisions); see also *Crow v. State* (1990) 222 Cal.App.3d 192, 202.)

The Tort Claims Act, however, does not treat all claims the same. Specifically, the uniform procedures for claims against local public entities are limited by Government Code section 905, which exempts some damage claims from the Tort Claims Act claims-presentation requirements (Gov. Code, § 900 et seq. and § 910 et

seq.). Government Code section 905 excludes twelve categories of claims, many of which have specific claims procedures provided for them in other statutes. Included among the list of excluded categories of claims are:

- claims under the Revenue and Taxation Code or other statute for refunds of illegally collected taxes;
- claims for principal or interest upon any bond or other financial instrument;
- claims for employment benefits or salaries;
- claims by the State and other public agencies;
- welfare claims;
- claims by public employees for fees, salaries, wages, mileage or other expenses and allowances;
- public retirement or pension system claims.

(See Gov. Code, § 905 for complete list.)

What the Legislature takes with one hand, however, it gives with the other. Government Code section 935 provides that claims which are excluded from the claims presentation provisions, and which are not governed by other statutes or regulations expressly related thereto, may be covered by local agency charter, ordinance or regulation. As such, under section 935, municipalities and other local agencies may adopt ordinances which specifically require the filing of an administrative claim for those claims which would otherwise be excluded under section 905. This grant of this authority to local agencies has received judicial approval for both charter and general law cities. (See *Pasadena Hotel Development Venture v. City of Pasadena* (1981) 119 Cal.App.3d 412; *City of Ontario, supra*, 12 Cal.App.4th 894.)¹

Local Claims Filing Ordinances Limit Liability.

The enactment of local claims procedures is of great benefit to cities. For instance, in *City of Ontario*, the State filed an action against the City for equitable

¹ Some charter cities include such requirements both in their charter and in their municipal codes. (See, e.g., *Pasadena Hotel Development Venture, supra*, 119 Cal.App.3d 412.) The courts, however, have found the enactment of such claim filing procedures only by ordinance to be sufficient. (See *City of Ontario*, 12 Cal.App.4th at 899-902.)

indemnity in a flood damage case. The City demurred on the basis that the State had not filed a claim with the City and that the claim would be barred by the City's statute of limitations. The Court of Appeal agreed. It found that the express intent of the City's ordinance was to take advantage of section 935 and that section 935 "does not incorporate any suggestion whatsoever that it does not apply to claims by the State." (*City of Ontario, supra*, 12 Cal.App.4th at 902.) In fact, the Court found sections 905 and 935 and the relationship between the two to be exceedingly unambiguous: "Sections 905 and 935, read together, are perfectly clear. Section 905 creates exemptions from the state-mandated claims procedure; section 935 permits local public entities to enact their own procedures to cover the exempted claims." (*Id.* at 901-902.) Because the State did not comply and could not now comply, the City was saved from a possible indemnity judgment against it.

Even more clear and beneficial is the potential for such local claims-filing regulations to limit municipal liability in the tax refund claim context. As stated above, Government Code section 905 exempts from the claims filing provisions "[c]laims under the Revenue and Taxation Code or other statute providing procedures for the refund, rebate," etc. (Gov. Code, § 905(a).) Local regulations providing such refund procedures are not encompassed within the term "statute" either as commonly used or as particularly employed in section 905. Therefore, a city may adopt regulations requiring a Government Code claim as a prerequisite to a lawsuit for the refund of local taxes. (*Volkswagen Pacific, Inc. v. City of Los Angeles* (1972) 7 Cal.3d 48, 60-61.)

For example, in *Pasadena Hotel, supra*, 119 Cal.App.3d 412, an error in the tax assessed to a taxpayer resulted in a \$25,000 overpayment by the taxpayer to the City in 1976. The taxpayer filed a claim with the City in 1979 pursuant to the four year statute of limitations in the Revenue and Taxation Code. The City Charter and a municipal code provision, however, required that claims for tax refunds be filed within in one year. Because the Revenue and Taxation code section did not expressly relate to the circumstances of the case, it did not apply and the shorter one year statute of limitations did apply resulting in the taxpayer's claim being untimely. Accordingly, local agencies that adopt a claims filing ordinance pursuant to Government Code section 935 may greatly limit their liability.

Consideration of the decision in *Howard Jarvis Taxpayers Assn. v. City of La Habra* (2001) 25 Cal.4th 809, demonstrates how the absence of such an ordinance can effectively increase a municipality's civil liability. At issue in *HJTA v. City of La Habra* was when the statute of limitations began running.

In *HJTA v. City of La Habra*, more than three years after the City's utility users tax ordinance was adopted, taxpayers sued the City claiming that the general tax was required by Proposition 62 to have been approved by the voters. The plaintiffs sought, among other things, a declaration that the tax was invalid, an injunction against its

enforcement and a writ compelling the City to cease collecting the tax and refund illegally collected past taxes to the taxpayers. The City argued that the applicable statute of limitations period was three years pursuant to CCP § 338(a) (an action upon a liability created by statute) and that the limitations period commenced upon enactment of the tax ordinance. Thus, the City asserted, the claim was barred. Both the trial appellate courts upheld the City's position, but the Supreme Court reversed.

In reviewing the case, the Court held that while the plaintiffs could have brought suit as soon as the ordinance was enacted and did not have to wait for a court ruling that Proposition 62 was constitutional, their claim continually accrued every time the City collected the tax. Compounding the negative impact of the decision for the City of La Habra was that, for such tax liability claims exempted from the Tort Claims Act claims filing provisions, the applicable statute of limitations period was three years pursuant to CCP § 338. This meant the claim could proceed, and that should the ordinance ultimately be declared illegal, the City's liability would be three-fold that which it could have been had it enacted a one-year claims-filing procedure.

While this case specifically did not have anything to do with the Tort Claims Act or sections 905 and 935, the lesson that can be learned is clear. Those cities that have enacted an ordinance pursuant to section 935 providing for a claims-filing procedure for those claims exempted by section 905, may avoid altogether or at least greatly diminish their liability for such claims through the application of the one-year statute provided by the Tort Claims Act. In other words, as stated above, once a city establishes a claims-filing procedure, compliance with its provisions is a prerequisite to filing a lawsuit. A failure to file a claim within the Tort Claims Act's statute of limitations bars the lawsuit. Even where the statute continually accrues (e.g., the collection cases), the City's liability is reduced to only those claims accruing within the past year.²

CONCLUSION

As the experiences of many cities can attest, all cities without such an ordinance are well-advised to adopt a claims filing ordinance, at a minimum to cover themselves for future claims. A sample ordinance is attached to this paper for your reference.

² Cities should keep in mind that local regulations providing for claims-filing procedures generally do not apply retroactively unless they explicitly provide so. (*Adler v. Los Angeles Unified Sch. Dist.* (1979) 98 Cal.App.3d 280, 287.)

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