

AGENDA ITEM NO. 2D  
COUNCIL MEETING 01/30/14  
APPROVED BY \_\_\_\_\_

DEPARTMENT DIRECTOR \_\_\_\_\_

CITY MANAGER 

January 30, 2014

**FROM:** BRUCE RUDD, City Manager

**BY:** RENENA SMITH, Assistant City Manger 

**SUBJECT:** An Ordinance of the City of Fresno, California, Amending Subsections (c) and (d) of Section 7-903 and Subsection (b) of Section 7-910 of the Fresno Municipal Code, Relating to Write-off and Settlement Authority

## RECOMMENDATIONS

Approve the attached ordinance amending Subsections (c) and (d) of Section 7-903 and Subsection (b) of Section 7-910 of the Fresno Municipal Code, relating to write-off and settlement authority.

## EXECUTIVE SUMMARY

The attached ordinance amends the Fresno Municipal Code by increasing the authority of the City Manager, City Attorney and City Controller to: 1) approve settlements; 2) compromise claims; and 3) write-off code enforcement fines, penalties, abatement costs, attorney fees, interest and liens.

## BACKGROUND

The City Administrative Officer (CAO), City Attorney, City Controller and Risk/Safety Manager currently have varying levels of discretion to deny claims, including a claim in litigation, approve payment for any claim or pending litigation, or compromise any claim. "Pending litigation," for purposes of this section 7-903, shall mean any action, proceeding, or cause pending in any court of record or before any body, official, or agency, including (without limitation), any administrative proceeding or special proceeding, provided that pending litigation shall not include a criminal proceeding.

The proposed Ordinance amends the Fresno Municipal Code by increasing the authority of the CAO, City Attorney and City Controller to: 1) approve settlements; 2) compromise claims; and 3) write-off code enforcement fines, penalties, abatement costs, attorney fees, interest and liens.

The proposed ordinance will increase those levels as follows:

<i>Authority</i>	<i>Action</i>	<i>Current</i>	<i>Proposed</i>
Risk Manager/City Controller	Claim or pending litigation or compromise	\$15,000	\$25,000
CAO /City Attorney	Deny any claim	\$500,000 or less	\$500,000 or less
CAO /City Attorney	Claim or pending litigation or compromise	\$25,000	\$50,000
CAO /City Attorney	Code enforcement fines		\$100,000

Amounts exceeding the authorized limits will be submitted to the City Council for approval. In any instance in which a write-off or settlement is authorized under this section, the authority shall also include entering into agreements compromising the claim or obligation on terms that are deemed to be in the best interests of the City.

#### **FISCAL IMPACT**

The Fiscal Impact is negligible, as the amendment increases the authority to settle or compromise claims or pending litigation, and write-off uncollectible code enforcement fines, penalties, abatement costs, attorney fees, interest and liens. The executive staff will continue to ensure that all claims against the City are verified and subject to due diligence review.

BILL NO. \_\_\_\_\_

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

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA  
AMENDING SUBSECTIONS (c) AND (d) OF SECTION 7-903  
AND SUBSECTION (b) OF SECTION 7-910 OF THE FRESNO  
MUNICIPAL CODE, RELATING TO WRITE OFF AND  
SETTLEMENT AUTHORITY

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Subsection (c) of Section 7-903 of the Fresno Municipal Code is amended to read:

(c) The Risk/Safety Manager may deny any claim including a claim in litigation amounting to fifty thousand dollars (\$50,000.00) or less, or may, with the concurrence of the Controller or his designee, approve for payment any claim or pending litigation amounting to ~~fifteen~~ twenty-five thousand dollars (~~\$15,000.00~~) [(\$25,000.00)] or less, or compromise for ~~fifteen~~ twenty-five thousand dollars (~~\$15,000.00~~) [(\$25,000.00)] or less any claim. "Pending litigation," for purposes of this section 7-903, shall mean any action, proceeding, or cause pending in any court of record or before anybody, official, or agency, including (without limitation), any administrative proceeding or special proceeding, provided that pending litigation shall not include a criminal proceeding.

SECTION 2. Subsection (d) of Section 7-903 of the Fresno Municipal Code is amended to read:

(d) The Risk/Safety Manager shall forward any claim not disposed of pursuant to subsection (c) of this section to the Chief

Administrative Officer, and shall include therewith an investigative report and recommendation. The Chief Administrative Officer may, with the concurrence of the City Attorney, [deny any claim amounting to five hundred thousand dollars (\$500,000.00) or less,] approve for payment any claim or settlement [payment] of pending litigation amounting to ~~twenty-five~~ [fifty] thousand dollars ~~(\$25,000.00)~~ [( \$50,000.00)] or less, ~~deny any claim amounting to five hundred thousand dollars (\$500,000.00) or less, or compromise~~ [any claim or settlement of pending litigation amounting to] ~~twenty-five~~ [fifty] thousand dollars ~~(\$25,000.00)~~ [( \$50,000.00)] or less, ~~any claim or settlement of pending litigation.~~ Claims for benefits under the Workers' Compensation statutes are "claims" for purposes of settlement under this subsection. The Chief Administrative Officer or his/her designee, with the concurrence of the City Attorney, shall have authority to settle Workers' Compensation claims where the amount in dispute does not exceed a claimed difference of one hundred thousand dollars (\$100,000) between the parties, and where the total amount or value of the settlement does not exceed two hundred fifty thousand dollars (\$250,000). The Chief Administrative Officer shall return any claim which has been approved, or compromised or denied by him, together with his and the City Attorney's decisions relative thereto, to the Risk/Safety Manager who shall be responsible for immediately notifying the claimant of such decision and expediting the payment of any claim which has been approved or compromised.

SECTION 3. Subsection (b) of Section 7-910 of the Fresno Municipal Code is amended to read:

(b) Procedure by City Attorney.

(1) The City Attorney shall pursue collection and may, in furtherance of such collection:

(i) Accept a promissory note to repay the claim over a period of time;

(ii) File an action in the appropriate court to secure a judgment; or

(iii) Assign the claim, promissory note, or judgment to a collection agency.

(2) When the City Attorney determines it is in the best interest of the city to do so, considering the cost of collection and the merits of the claim, he may:

(i) Authorize the Controller to accept a compromise settlement and write off the balance of the claim as uncollectible, where the amount of the write-off does not exceed fifteen thousand dollars (\$15,000.00);

(ii) Authorize the Controller to file an action in Small Claims Court and write off any amount in excess of such court's jurisdiction, where the amount of the write-off does not exceed fifteen thousand dollars (\$15,000.00); or

(iii) Authorize the Controller to write off the claim in full where the amount of the write-off does not exceed fifteen thousand dollars (\$15,000.00).

(3) For claims in excess of fifteen thousand dollars (\$15,000). When the City Attorney determines it is in the best interest of the City to accept a compromise settlement of the claim and write off the balance as uncollectible, or to write off the claim in full as uncollectible, he shall ~~submit the matter~~:

(i.) Submit the matter to the Chief Administrative Officer for approval where the amount of the write-off is up to fifty thousand dollars (\$50,000):

(ii.) In the case of code enforcement fines, penalties, abatement costs, attorney fees, interest, and liens, submit the matter to the Chief Administrative Officer for approval where the amount of the write-off is up to one hundred thousand dollars (\$100,000):

(iii.) Submit the matter to the Council for approval where the amount of the write-off, other than as provided in subsection (ii) above, exceeds fifteen [fifty] thousand dollars ~~(\$15,000.00)~~ [(50,000.00)].

(4) In any instance in which a write-off is authorized under this Section, the authority shall also include entering into Agreements

compromising the claim or obligation on terms that are deemed to be  
in the best interests of the City.]

SECTION 4. This ordinance shall become effective and in full force and effect at 12:01  
a.m. on the thirty-first day after its passage.

\* \* \* \* \*

STATE OF CALIFORNIA )  
COUNTY OF FRESNO ) ss.  
CITY OF FRESNO )

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

AYES :  
NOES :  
ABSENT:  
ABSTAIN:

Mayor Approval: \_\_\_\_\_, 2014

Mayor Approval/No Return: \_\_\_\_\_, 2014

Mayor Veto: \_\_\_\_\_, 2014

Council Override Vote: \_\_\_\_\_, 2014

YVONNE SPENCE, CMC  
City Clerk

BY: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE

BY: \_\_\_\_\_  
Raj Singh Badhesha, Deputy

tbs- [63321fmk-rsb/tbs-ns]- 1/22/14

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