



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Report on procedure for Payment of Claims

MEETING DATE: January 20, 1993

PREPARED BY: City Manager

RECOMMENDED ACTION: None required. Information only.

BACKGROUND INFORMATION: At the regular meeting of December 16, 1992 and January 6, 1993, Councilmember Davenport questioned the manner in which City bills and payroll is made.

The City Attorney has prepared memos addressing this issue and they are attached (Exhibit A and B).

In an effort to determine what is the generally accepted practice in some other area public agencies, I contacted 10 such agencies. The cities of Tracy, Manteca and Escalon follow a practice identical to the City of Lodi. The others: Stockton, Ripon, Lathrop, Galt, Modesto, Merced and the County of San Joaquin do not put the item on the agenda.

In addition to unnecessarily inconveniencing vendors, many of them local, who do business with the City of Lodi by making them wait up to two to three weeks longer for their payment, the City would also lose a considerable portion of its vendor discounts. Some vendors give percentage discounts if they receive payment within a specified period. This loss would be in the area of \$3,500 - \$4,500 annually.

The February 2, 1993 "Shirtsleeve" topic will be a review of various City Council procedural policies. The Council may wish to discuss how this item is to be addressed in the future.

FUNDING: None required

Respectfully submitted,

Thomas A. Peterson
City Manager

TAP:br

Attachments

CCCOM700/TXTA.07A

APPROVED: _____

THOMAS A PETERSON
City Manager



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CITY OF LODI
MEMORANDUM FROM THE OFFICE OF THE CITY ATTORNEY
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EXHIBIT A

To: The Honorable Mayor and Council Members
City Manager
Finance Director

From: Bob McNatt, City Attorney

Date: January 7, 1993

Subject: CONSENT CALENDAR ITEM: "CLAIMS"

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SITUATION

On the "Consent" calendar portion of each City Council meeting agenda is an item denominated "Claims". Under this item, the Council is asked to ratify payments previously made for such expenses as payroll, bulk electric power purchases, etc. Concerns have been expressed by Councilmember Davenport that because the Council does not approve these payments in advance, but only ratifies them afterward, the methodology may be illegal. A staff response on this matter has been requested by the Council.

ANALYSIS

Limits on and grants of authority regarding municipal financial affairs are found in various places throughout California law. The cornerstone of municipal authority is Article 11, Section 7 of the California Constitution which grants general authority to cities for all "municipal affairs"; this has been interpreted to include fiscal policies (Cramer v. San Diego 330 P.2d 235).

Other examples of provisions covering municipal fiscal matters include California Constitution Article 13A(1) [limits on property taxes], California Constitution Article 16, Section 18 [debt limits], and Chapter 4 of Division 3 of the California Government Code (commencing with Section 37200) covering municipal financial powers generally.

The most relevant statute on this topic is Government Code Section 37208 (copy attached) which addresses payments for the type of claims at issue here. This statute clearly provides that payment of claims for payroll and items "conforming to a budget approved by ... the legislative body need not be audited by the legislative body prior to payment" (emphasis added).

Although I don't believe the City Clerk usually "certifies" that the claims conform to an approved budget as referred to in subsection (b) of this statute, our situation may simply be an example of a past Council's exercise of its discretion to modify the statutory plan.

Under subsection (c) of this statute, the Council could choose to "ratify" the payments (i.e., approve after the fact) once a year in the form of an audited comprehensive financial report and dispense entirely with having the "Claims" item on each Council agenda. In fact, the City Council now

Honorable City Council Members,
City Manager and Finance Director
January 7, 1993
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receives such an annual audit report which includes all the same items previously presented under "Claims". It appears this would satisfy the criteria in subsection (c).

CONCLUSIONS AND OPINIONS

It is my opinion that the City's present "claims" procedures are legal. I suspect that this item has appeared on the agenda for as long as anyone can recall because some previous Council wanted frequent updates on City expenditures.

It does not appear the City is required to have a "Claims" item on each agenda. In doing so, the City appears to be acting within its discretion. I am aware of some cities which do not customarily put such items on Council agendas at all, choosing instead to approve the once-annual financial audit. Conversely, I have been told that some cities choose to have the Council approve all warrants beforehand. I offer no opinion as to the desirability of any of these approaches.

Respectfully submitted,


BOB McNATT
City Attorney

BM:vc

attachment
cc: City Clerk
CCCLAIMS/TXTA.01V

FINANCIAL POWERS
Div. 3

§ 37210

§ 37208. Payroll warrants or checks; warrants or checks in payment of budgeted demands; audit; ratification and approval

(a) Payroll warrants or checks need not be audited by the legislative body prior to payment. Payrolls shall be presented to the legislative body for ratification and approval at the first meeting after delivery of the payroll warrants or checks.

(b) Warrants or checks drawn in payment of demands certified or approved by the city clerk as conforming to a budget approved by ordinance or resolution of the legislative body need not be audited by the legislative body prior to payment.

(c) Notwithstanding subdivisions (a) and (b), budgeted payrolls and demands paid by warrants or checks may be presented to the legislative body for ratification and approval in the form of an audited comprehensive annual financial report.

(Added by Stats.1949, c. 79, p. 154, § 1. Amended by Stats.1959, c. 1775, p. 4259, § 1; Stats.1970, c. 261, p. 525, § 2; Stats.1980, c. 770, p. 2286, § 2; Stats.1986, c. 982, § 14.)

Historical Note

The 1959 amendment added the second paragraph in its present form except as modified by the subsequent three amendments.

The 1970 amendment, in the first sentence of the second paragraph, inserted "or resolution".

The 1980 amendment inserted "or checks" throughout the section; and, in the second sentence of the second paragraph, substituted "warrants" for "warrant".

The 1986 amendment inserted subdivision designations; deleted the second sentence of subd. (b) which provided: "Budgeted demands paid by warrant prior to audit by the legislative body shall be presented to the legislative body for ratification and approval at the first meeting after delivery of the warrants."; and added subd. (c).

Derivation: See Derivation under § 37206.

Forms

See West's California Code Forms, Government.

§ 37209. Transfer of city clerk's duties to director of finance; ordinance

The duties imposed upon the city clerk by this article may be transferred to a director of finance when such office has been established and the powers and duties thereof defined by ordinance. Such an ordinance shall require the execution by the director of finance of the bond required of the city clerk by Section 36518 of this Code.

(Added by Stats.1955, c. 1754, p. 3242, § 1.)

Library References

Municipal Corporations ¶170.
C.J.S. Municipal Corporations § 545.

Sovereign immunity study. 5 Cal. L. Rev.
Comm. Reports 299, 421 (1963).

§ 37210. Newly incorporated cities; issuance of temporary nonnegotiable notes; repayment

Newly incorporated cities that have not received revenues from property taxes may issue temporary non-negotiable notes bearing interest at a rate not exceeding 6 percent per annum to pay lawfully incurred current expenses and

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CITY OF LODI
MEMORANDUM FROM THE OFFICE OF THE CITY ATTORNEY
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EXHIBIT B

To: The Honorable Mayor and Council Members
City Manager
Finance Director

From: Bob McNatt, City Attorney

Date: January 13, 1993

Subject: CONSENT CALENDAR "CLAIMS" PROCEDURES

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This is intended as a supplement to my memo of January 7, 1993 on the above topic. A question has been raised as to the effect of Government Code Section 37202 (attached) on the situation. Although reasonable minds could differ as to the effect of this statute, I don't believe it changes my overall conclusion that Lodi's handling of consent calendar claims items is proper.

The specific language contained in Section 37202 which raises the question states "... the legislative body shall approve or reject demands only after such demands have been audited ..." (emphasis added). If that was all the statute said, I would probably agree that State law might require prior approval of all City expenditures or payment of "demands".

However, the Section begins by stating "[e]xcept as provided in Section 37208 ..." In my memo of January 7, 1993, it was concluded that Lodi is in compliance under Section 37208. One of the distinctions between these two statutes is that Section 37202 does not refer to payment of demands under a previously-adopted budget. When these two statutes area read together, I believe the logical conclusion is that cities have an option of how they choose to pay their bills.

As I have previously said, I am unaware of any State law which requires a city to adopt an annual budget. In such circumstances, I assume that Section 37202, which requires prior Council approval of all demands for items which are not contained in a formal budget, would apply.

On the other hand, cities could choose under Section 37208 to ratify (after the fact) payments made on demands which conform to a previously-adopted budget. I believe this is the situation in Lodi.

Claims Procedures
January 13, 1993
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In summary, it is my opinion that if Lodi did not have an adopted budget, the provisions of Section 37202 might apply and Council approval would be required before demands could be paid. However, since to my knowledge all the claims contained in the consent calendar for ratification are done pursuant to an approved budget, Section 37208 would apply.

Respectfully submitted,



BOB McNATT
City Attorney

BM:vc

attachment

cc: City Clerk

CCCLAIMS.2/TXTA.01V

§ 37202. Demands; audit; submission; certification

Except as provided in Section 37208, the legislative body shall approve or reject demands only after such demands have been audited in the manner prescribed by ordinance or resolution. Such audited demands may be submitted separately or a register of audited demands may be submitted to the legislative body for approval or rejection and shall have attached thereto the affidavit of the officer submitting the demands certifying as to the accuracy of the demands and the availability of funds for payment thereof.

(Added by Stats.1949, c. 79, p. 154, § 1. Amended by Stats.1951, c. 1248, p. 3095, § 1; Stats.1970, c. 261, p. 525, § 1.)

Historical Note

As added in 1949, this section read: "The legislative body shall audit demands." The 1951 amendment rewrote the section in its present form, except as modified by the 1970 amendment.

The 1970 amendment substituted the exception at the beginning of the first sentence for "The".

Derivation: See Derivation under § 37201.

Library References

Municipal Corporations ¶1012.
C.J.S. Municipal Corporations § 2177.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

Notes of Decisions

Actions and proceedings, in general 3
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Mandamus 4
Nature and effect of determination 2

1. Demands, in general

Under Municipal Corporation Act, § 864, Stats.1883, pp. 266 et seq., declaring that all "demands" against a city or town of the sixth class shall be presented and audited by the board of trustees, etc., though the term "demands" was sufficiently broad to include claims for torts as well as on contracts, yet the purpose of the act being that the claim should be audited, which could not apply to claims for torts, the act did not require presentation of a claim for damages for the maintenance of a nuisance as a condition precedent to the plaintiff's right to sue thereon. *Adams v. City of Modesto* (1901) 63 P. 1083, 131 C. 501.

2. Nature and effect of determination

Under a city ordinance authorizing the fire superintendent to grant a fireman leave of absence with pay during a sickness contracted while on duty, the determination by the superintendent that a fireman's sickness was so contracted is conclusive, and the auditing board has no discretion to disallow the fireman's salary during such leave, though the pay roll as

made out and verified by fire chief must pass through the hands of the auditing committee in the ordinary course of business. *Jackson v. Wilde* (1921) 198 P. 822, 52 C.A. 259.

A city is not precluded, by its allowance of bills presented for rents accrued under a void contract, from showing that such bills were in excess of the reasonable value of the property. *Higgins v. City of San Diego* (1896) 45 P. 824, 118 C. 524, modified in other respects 50 P. 670, 118 C. 524.

The action of the trustees of a city on the presentation of a claim which they have jurisdiction to hear and determine is a judicial act, and, whether right or wrong, is binding on the clerk. *McConoughey v. Jackson* (1894) 35 P. 863, 101 C. 265, 40 Am.St.R. 53.

3. Actions and proceedings, in general

The rejection of a claim against the city by its board of examiners does not affect the right of action against the city on the claim. *San Francisco Gas Co. v. City of San Francisco* (1856) 6 C. 190.

4. Mandamus

Where petitioner had been erroneously fined by city judge under a statute providing a penalty for a felony and fine and been paid into city treasury, in view of treasurer's restricted right