

January 20, 2004

Honorable Mayor and Members of
the Hermosa Beach City Council

Regular Meeting
January 27, 2004

**REQUEST
TO DENY APPLICATION TO PRESENT A LATE CLAIM**

Recommended Action:

It is recommended that City Council deny the Application for Leave to present a late claim based on the findings that no evidence was presented in the application that would explain or justify that the claim was not presented through mistake, inadvertence, surprise or excusable neglect and the public entity was not prejudiced in its defense of the claim by the failure to present the claim within the time specified in Section 911.2". [Government Code, Section 911.6]

Background:

On October 18, 2002, the police and fire departments were sent to investigate the report of illegal fireworks. The investigation centered on Mr. Gallagher's son. Mr. Gallagher was subsequently arrested when he delayed and obstructed the fire and police personnel. Mr. Gallagher appeared in court for these charges on May 22, 2003 and the charges were dismissed. The City was first made aware of this claim on November 19, 2003 when Mr. Gallagher presented a claim for damages. The City returned his claim as untimely. On January 13, 2004, his attorney sent the attached request for Leave to Present a Late Claim. Government Code 911.2 requires that a claim against a public entity be presented within six months.

Analysis:

Government Code Section 911.6 requires that the City Council grant or deny the Application to present a Late Claim with 45 days after it is presented. The Council shall grant the application if they find "the failure to present the claim was through mistake, inadvertence, surprise or excusable neglect and the public entity was not prejudiced in its defense of the claim by the failure to present the claim within the time specified in Section 911.2". [Government Code, Section 911.6]

Mr. Gallagher's attorney, in his request for leave, states that the City should accept the claim due to the fact that it was filed six months from the date of Mr. Gallagher's court appearance or in the alternative, accept the attorney's letter as an application to present a late claim.

It is staff's opinion, after consultation with the City Attorney, that the event that would cause or give rise to any claims was the date of the incident itself and not the date that Mr. Gallagher's charges were dismissed. As such, the Council should deny the application to file a late claim.

Respectfully submitted,

Concur:

Michael A. Earl, Director
Personnel & Risk Management

Stephen R. Burrell
City Manager