

106 CLAIMS AGAINST THE DISTRICT

106.1 Purpose

The purpose of these policies is to establish uniform procedures for the filing of claims against the District for money or damages in accordance with the requirements of the Government Claims Act (Gov. Code § 810-996.6 hereinafter the “Act”). In general, the Act and these policies require that a legal action for money or damages against the District may not be maintained in a court of law unless a written claim has first been timely presented to the Board of Directors of the District and rejected in whole or in part. Compliance with the procedures specified in the Act and these policies is mandatory in order for the claimant to maintain a judicial action against the District for monetary damages. The purpose of these policies is to give the District an opportunity to settle justifiable claims before legal action is brought. Second, these policies permit the District to make an early investigation of facts, on which the claim is based, thereby enabling the District to defend itself against unjust claims and to correct the conditions or practices which gave rise to the claim.

106.2 Types of Claims Subject to Claims Presentation Requirements

A. Claims Against the District for Money or Damages Required by the Act

The Act requires that all claims against the District for money or damages comply with the claims presentation requirements specified in the Act and summarized in these policies. A claim for money or damages against the District may include a claim of property damage to real property, property damage to personal property, personal injury damages which include any form of injury to a person including physical injury or injury to reputation or character, or a claim of contractual damages. Examples of claims which may be filed against the District requesting money or damages from the District are as follows:

1. Tort Claims
 - a. Claims of negligence by the District or its employees resulting in personal injury or property damage;
 - b. Claims of nuisance resulting in personal injury or property damages;

- c. Breach of statutory duties;
- d. A claim alleging intentional wrongful conduct by District employees in the course of their employment causing personal injury or property damage including but not limited to fraud, false arrest, assault and battery, or discrimination.

2. Contract Claims

These claims allege breach of an oral or written contract by District resulting in monetary damages to the other party to the contract.

B. Claims Exempt from the Act but Required to Comply with Claims Presentation Requirements

There are various types of claims which may be filed against the District which do not involve claims for money or damages against the District which, although exempt from the Act, are still required to comply with the claims presentation procedures and requirements specified in these policies and the District's Claims Ordinance (*See Appendix 100-B*). The purpose of the Claims Ordinance is to require that all claims filed with the District comply with the claims presentation requirements specified in these policies in order to accomplish the purposes of these policies. Examples of the types of claims which may be brought against the District which must comply with the claims presentation requirements specified herein pursuant to the authority of the District's Claims Ordinance are the following types of claims:

1. Any claim seeking relief other than money or damages, such as a request for an injunction to stop continuing District activity or a mandatory injunction seeking a court order compelling the District to perform specified actions;
2. Petition for issuance of a writ of mandate by a court compelling the District and its employees to perform a mandatory duty, such as compliance with CEQA requirements in approving public projects;
3. Actions which seek declaratory relief or a court's declaration of the relative rights and obligations of contracting parties including the District;
4. Actions alleging employment discrimination by the District or its employees including sexual harassment claims, and actions by employees against the District for back pay or benefits;
5. Actions claiming violation of federal law;
6. Claims against the District for refund of special taxes, assessments, or fees and charges submitted by individual claimants. The District's Claims Ordinance does not permit the filing of class action claims against the District for refunds of special taxes, assessments, or fees and charges.

106.3 Preparation of Claim

Reference is made to Appendix 100-C (Instructions for Filing a Claim) of these policies, Instructions for Filing a Claim, which specify the required contents of the Claim Form (Appendix 100-C, Exhibit 1) and provide a suggested form of Claim Form for filing by potential claimants.

106.4 Time Limits for Presentation of Claim

Claims for money or damages related to causes of action for death, injury to persons, or injury to personal property must be filed within six (6) months after the accrual of the cause of action. Claims for money or damages relating to any other cause of action such as allegations of damage to real property and breach of contract must be filed within one (1) year after accrual of the cause of action.

Claims which do not involve claims for money or damages against the District as specified in Section 106.2.B, 1-6 must be filed within six (6) months after the accrual of such cause of action.

106.5 Method of Presentation of Claim

The claimant may present the claim or an amendment to a claim or an application for leave to file a late claim by either delivering the document to the Board Secretary of the District at the District's office or mailing it to the Board Secretary at the address of the District's principal office. A mailed claim will be deemed filed effective on the date that a properly stamped and addressed envelope containing the claim is deposited in the mail.

106.6 Consideration of Claim by District

Upon presentation of a claim to the District in accordance with the procedures set forth above, District staff will take one or more of the following actions with respect to consideration of the claim.

A. Notice of Insufficiency of Claim

Within twenty (20) days after a claim has been presented, the District shall give the claimant written notice of any substantial defects or omissions in the content of the claim that prevent the claim from complying with the requirements of this policy specified above. A form of Notice of Insufficiency is attached hereto as Appendix 100-D (Forms Letters for Claims), Exhibits D-1A and D-1B.

B. Investigation of Claim

The General Manager shall authorize an investigation to be conducted regarding the facts and circumstances surrounding the claim both as to potential District liability for the losses specified in the claim as well as the nature, extent and amount of losses claimed. If the claim requests action by the District other than compensation for money or damages, the investigation shall include an evaluation of the claimant's requested action on District operations. This investigation then may be conducted under the auspices of or with the cooperation of the District's insurance coverage provider and District Legal Counsel.

106.7 Board Action on Claim

The Board of Directors of the District is authorized, within a period of forty-five (45) days after the claim has been presented to the District, to take any of the following actions: (1) reject the claim entirely; (2) allow the claim in full; (3) allow the claim in part and reject the balance of the claim; (4) compromise the claim or settle the claim if the liability or amount due is disputed; (5) take no action, thus permitting the claim to be denied by operation of law pursuant to Government Code Section 912.4(c).

The District's insurance coverage provider recommends that if the Board of Directors of District disputes any aspect of alleged District liability for the claim, or disputes in part the amount of money or damages alleged in the claim or the specific District action requested in the claim, that the Board of Directors of District reject the claim in its entirety and forward it to the insurance coverage provider for additional investigation and adjustment of the claim.

106.8 Notice of Action on Claim

Upon final action by the Board of Directors on any claim, written notice of the Board's action on the claim shall be mailed to the claimant at the address specified in the Claim Form in the form provided in Government Code Section 913 and as specified in Appendix 100-D—Form Letters for Claims to these policies. The giving of such notice is important because it limits the statute of limitations applicable to any judicial action which the claimant may desire to file in the event of a rejected claim to six (6) months after the date of the written notice of rejection of claim from the District.

106.9 Reconsideration of Rejected Claims

The District wishes to provide for the utmost flexibility in negotiation and settlement of claims against the District. Even after a claim has been rejected by Board action, the Board will grant reconsideration of rejected claims if reconsideration is requested before a legal action on the claim has begun. As an alternative to reconsideration of rejected claim, the Board of Directors may act to agree to extend the time to consider a claim beyond the customary 45-day period.

106.10 Notice and Return of Late Claim

When a claim that is required under these policies to be presented six (6) months after accrual of the cause of action is presented late, or when a claim is required under these policies to be presented within either six (6) months after the accrual of the cause of action, or one year after accrual of the cause of action is presented late, the Board Secretary shall give notice to the claimant that the claim was not timely filed and that the claim is being returned without further action. This notice shall be sent within forty-five (45) days after receipt of the claim. The form of notice is specified by Government Code Section 911.3(a) and is set forth in Appendix 100-D (Form Letters for Claims, Exhibits D-3, D-4 and D-5) to these policies. The notice advises the claimant that the claimant's only recourse is to apply without delay for leave to present a late claim to the Board of Directors for consideration.

106.11 Summary of Late Claim Procedure

The late claim procedure is comprised of the following steps:

- A. The claimant must file an Application for Leave to File a Late Claim with the District. The application must be presented within a reasonable time not to exceed one year after the accrual of the cause of action. A form of Application for Leave to File a Late Claim is attached to these policies as Appendix 100-D (Form Letters for Claims, Exhibits D-3).
- B. The Board of Directors of District has forty-five (45) days in which to grant or deny the Application for Leave to File a Late Claim. Failure of the Board to take any action within forty-five (45) days operates as a denial of the application. If the Board approves the Application to File a Late Claim, the Board of Directors will agendaize consideration of rejection or acceptance of the claim either in whole or in part at a subsequent regular meeting of the Board of Directors.
- C. If the Board of Directors denies the Application for Leave to File a Late Claim, the claimant has six (6) months in which to file a petition with the court for an order excusing claimant from complying with these claims presentation requirements.

106.12 Method of Notice Regarding Action on Claim

All communications between the District and the claimant after the date a Claim is filed with the District shall be by first class mail postage prepaid mailed to the address of the claimant as specified in the Claim Form. In certain circumstances the District may use Certified Mail-Return Receipt Requested to obtain evidentiary support for receipt of mailed documents from the District.

106.13 Property Damage Claims Not Exceeding \$2,000

In the course of the District's operations in providing water, wastewater, parks, recreation and fire service, damage to land and improvements occasionally occurs due to the proximity of the District's facilities to private property. When District employees are aware that property has been damaged in the course of their work, restorative measures are to be taken to return the property as close to its original condition as possible.

When a property owner files a Claims Form with the District alleging District liability for property damage in an amount not to exceed Two Thousand Dollars (\$2,000.00), which is the District's deductible on its property damage insurance policy, the District will conduct an investigation of the circumstances surrounding the property damage claim.

Investigations shall be done in a timely fashion and documented with a written report, including photographs and/or interviews, when appropriate. Interviews of employees or other witnesses may be recorded and subsequently transcribed, or witnesses or employees may be asked to give written statements of the circumstances surrounding the Claim. A copy of the investigative report shall be submitted to the General Manager.

If the investigation report finds that the property damage alleged in the Claim Form is due to negligent actions by the District or its employees, the investigation shall also address the issues of whether the alleged property damage can be repaired by the District for the sum of less than Two Thousand Dollars (\$2,000.00).

If the investigation report reveals that the alleged property damage can be repaired by the District for a sum of less than Two Thousand Dollars (\$2,000.00), the General Manager may direct that a Work Order be prepared to repair the damages subject to all of the following conditions:

- A. Property owner agrees that the proposed repairs are appropriate and adequate;
- B. Property owner agrees to allow District personnel access to their property to perform the repair work;
- C. District personnel have the necessary tools, equipment, and expertise to perform the necessary work;
- D. Repair work can be accomplished within a reasonable amount of time; and,
- E. Cost of material for the repairs will not exceed \$2,000.

106.14 Water & Sewer Account Leak Adjustment Requests

The General Manager, or the Office Manager in his/her absence, is authorized to adjust a customer's water or sewer service account when their bill reflects usage that is significantly greater than normal, due to accidental loss of water through broken pipes or other failures in the property's plumbing system, subject to the following conditions:

- A. The customer account shows no record of being delinquent for more than 60 days during the past 24 months.
- B. One (1) leak adjustment will be granted within a 24 month period and may not span more than one billing cycle.
- C. No adjustment for an irrigation leak will be given (any leaks associated with irrigation systems are not eligible).
- D. Immediate steps were taken, after detection of the leak, to prevent further loss of water AND customer must have repaired the leak within 14 days of being notified or when the leak was discovered.
- E. Leak must be deemed undetectable by the homeowner; no adjustment will be granted for internal plumbing leaks which should be considered a household maintenance responsibility; and/or eligible for insurance payment.
- F. Hoses or faucets left on by customer are not eligible for adjustments.
- G. Leak adjustments must be applied for in writing within 30 days of receipt of billing.
- H. Proof of the repair must be provided (receipts for any materials or services related to that repair). Only leaks in excess of three times the owner's last year consumption for the same read period will be considered for adjustment.
- I. All gallons in excess will be rebilled at the District's Baseline Usage Rate and be due and payable upon the next billing cycle.
- J. No leak adjustments will be granted during District declared drought status.