



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 12/21/2021

ITEM NO: 6

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DATE: December 14, 2021  
TO: Mayor and Town Council  
FROM: Robert Schultz, Town Attorney  
SUBJECT: Adopt A Resolution Delegating Authority to the Town Manager to Settle Claims, Pending Actions and Workers' Compensation Claims Against the Town That Do Not Exceed Fifty Thousand Dollars (\$50,000).

**RECOMMENDATION:**

It is recommended that Town Council adopt the attached Resolution (Attachment 1) delegating to the Town Manager authority to settle claims, pending actions and Workers' Compensation claims that do not exceed fifty thousand dollars (\$50,000).

**BACKGROUND:**

The Town is often called upon to consider settlement of claims or lawsuits. These claims and lawsuits may be for dangerous conditions of public property, workers' compensation matters, or other Town acts or omissions leading to potential or actual liability.

California Government Code Sections 935.4 and 949 permit the Town Council, by resolution, to delegate authority to Town staff in order to pay, compromise, or settle pending claims and actions against the Town. The current level of settlement authority delegated to the Town Manager with respect to claims, pending actions and workers' compensation claims is \$50,000.

On October 26, 2021, the Policy Committee considered this matter and directed staff to reaffirm and formalize the established practice that delegates to the Town Manager settlement authority up to \$50,000. In addition, the Policy Committee agreed that settlement authority with respect to workers' compensation claims is in addition to that awarded by the Workers' Compensation Appeals Board (WCAB).

**DISCUSSION:**

The attached Resolution reaffirms and formalizes the current practice that provides the Town Manager with settlement authority with respect to claims against the Town up to \$50,000.

**PREPARED BY:** Robert Schultz  
Town Attorney

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Reviewed by: Assistant Town Manager and Finance Director

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SUBJECT: Adopt A Resolution Delegating Authority to the Town Manager to Settle Claims and Pending Actions Against the Town That Do Not Exceed Fifty Thousand Dollars (\$50,000), Including Workers' Compensation Claims

DATE: December 14, 2021

DISCUSSION (continued):

Regarding workers' compensation claims, it is important to understand that such claims are delicate matters that involve investigation and verification by our Third-Party Administrator (TPA). It is rare, and not recommended, that the Town Council would take any action that differs from the findings of the TPA in relation to workers' compensation claims. While staff will always inform members of the Town Council about the appropriate elements of a workers' compensation claim, many of the details are confidential and protected information. In addition, workers' compensation claims can be resolved in three ways, all of which are legally binding. Two of the three forms of resolution leave the employer with no discretion regarding the payment amounts. A brief description of each of the three methods and the settlement process is included below.

*1. Stipulation with Request for Award*

A "Stipulation with Request for Award" (Stip) means that both parties agree there is no dispute as to the level of permanent disability (PD), which is determined by State law and is not negotiable. The Stipulations must be approved by a Workers' Compensation Appeals Board (WCAB) judge and payment by the employer is mandatory.

*2. Compromise and Release*

A "Compromise and Release" (C&R) is often used to settle disputed claims and to buy out future medical and indemnity exposure when advantageous to the Town. Disputes can exist on issues of compensability, the level of permanent disability, apportionment to prior injury or other employment, periods of temporary disability as well as medical treatment. Although a C&R is the only form of settlement in the workers' compensation venue in which the employer has some discretion regarding payment amounts, the amount of PD due to the worker is always determined by State law and is not a negotiable item.

*3. Findings and Award*

A "Findings and Award" (F&A) is a judgment issued by the Workers' Compensation Appeals Board (WCAB) Judge if the parties can't settle. Payment by the employer is mandatory and occurs until the award has been paid out. Discretion is limited to filing an appeal called a "Petition for Reconsideration" when one party disagrees with the F&A.

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DISCUSSION (continued):

Claims can only be settled after an impacted employee has reached maximum medical improvement (MMI). At that time, the employee's level of permanent disability (PD) is established by a doctor within the workers' compensation system. The level of PD, which is the amount of money due to the impacted employee for the permanent disability, is determined by a process known as rating. Rating is done by the State's Disability Evaluation Unit (DEU). The rates for permanent disability are determined by State law. Unlike a settlement in a personal injury claim or other lawsuit, PD amounts are not negotiable.

Unlike liability claims, the Labor Code and the State Division of Workers' Compensation have established the requirements for acceptance of claims as well as the provision of required benefits so that employers (e.g., the Town) cannot deny claims or fail to provide benefits for claims that meet the established criteria. Should the Town refuse to settle demands that are reasonable, sanctions could be assessed against the Town by the WCAB. In addition, timelines for the issuance of payments are strictly enforced and failure to meet the timelines results in financial penalties.

As a matter of practice, the Town Manager resolves workers' compensation claims by "Stipulation with Request for Award" (Stipulation), up to the Town's current self-insured retention (SIR), when the Stipulation is for mandatory permanent disability amounts that are undisputed, determined by State law and are not negotiable. In contrast, as a matter of practice, the Town Manager resolves workers' compensation claims up to \$50,000 by "Compromise and Release" (C&R) that are not mandated by the WCAB.

CONCLUSION:

The attached Resolution reaffirms and formalizes the current practice that provides the Town Manager with settlement authority with respect to claims against the Town up to \$50,000.

COORDINATION:

This report was coordinated with the Town Manager's Office.

FISCAL IMPACT:

There is not a fiscal impact associated with the policy.

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and Pending Actions Against the Town That Do Not Exceed Fifty Thousand  
Dollars (\$50,000), Including Workers' Compensation Claims

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ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

ATTACHMENT:

1. Resolution