SUBJECT: CONSIDER THE INTRODUCTION OF ORDINANCE NO. 14 ESTABLISHING PROCEDURES FOR CLAIM FOR MONEY OR DAMAGES EXCEPTED BY SECTION 905 OF THE CALIFORNIA GOVERNMENT CODE

RECOMMENDED ACTION: □ Information Only  □ Recommended Motion

Introduce Ordinance No. 14 by reading of the title only and waiving further reading thereof.

Fiscal Impact:
No impact for the introduction/adoptions of the Ordinance other than publication costs upon its adoption.

Background/Discussion:

Action taken at March 20, 2003 Executive Committee
The Executive Committee unanimously recommended the introduction of the Ordinance by the Board of Directors. The Executive Committee was advised that the motion for consideration by the Board would differ from the Committee’s motion because of the need to read the title of the ordinance and waive the reading thereof. Otherwise, the entire Ordinance would have to be read into the record.

BOARD ACTION: Approved as Recommended  [X]  Other  [ ]
Approved with Modification(s)  [ ]

MOTION:  PEEPLES/WALLACE to introduce Ordinance No. 14 by reading of the title only and waiving further reading thereof. (7-0) (Ordinance No. 14 title read by General Counsel Scheidig).
Ayes: Directors Bischofberger, Peeples, Jaquez, Harper, Kaplan, Vice President Wallace, President Piras – 7
Nees: None – 0
Absent: None – 0
Abstain: None - 0

The above order was passed and adopted on April 3, 2003.

Rose Martinez, District Secretary
By ________________________________
The Content of GC Memo No. 03-106 as submitted to the Executive Committee

On August 8, 2002, the Board adopted Resolution No. 2067, which among other things, called for a special tax measure in Special Transit District No. 1. This measure eventually was titled Measure AA for the November 5, 2002 election and successfully passed.

Section 9 of the resolution allows for filing claims for a tax refund and establishes certain administrative procedures for processing of the claims.

Government Code §935 allows the District to enact a claims ordinance covering those aspects of claims for money or damages which are not otherwise subject to the Tort Claims Act. Government Code § 905 (Attachment A) sets forth the various claims or damages to which such a claims ordinance would be applicable, including (a) claims for tax refunds.

The primary benefit of a claims ordinance is that it effectively shortens the statute of limitations to one year, instead of three years for claims based on a statute and four years for breaches of contract. (See CCP §§ 337, 338.)

The importance of shortening the statute of limitations is particularly important to claims for the refund of taxes, assessments, and fees, since the California Supreme Court’s decision in Howard Jarvis Taxpayers Association v. City of La Habra (2001) 25 Cal.4th 809. In this decision the Court held that the statute of limitations for a challenge to a tax begins to run anew every time an unlawful tax is collected. Previously, it was believed that the statute ran when the tax was passed and if not challenged within the statutory time limit, no further challenge was possible.

While the emphasis in this memo is on the salutary benefit of the ordinance on handling any refund claims under Measure AA, note that Government Code §905 is not limited to tax refunds, as noted earlier.

Prior Relevant Board Actions/Policies:
Resolution No. 2067

Attachments:
A - Government Code §905
B - Draft Ordinance No. 14

Approved by: Kenneth C. Scheidig
Prepared by: Kenneth C. Scheidig
Date Prepared: March 10, 2003
GOVERNMENT CODE SECTION 905

905. There shall be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of this part all claims for money or damages against local public entities except:

(a) Claims under the Revenue and Taxation Code or other statute prescribing procedures for the refund, rebate, exemption, cancellation, amendment, modification or adjustment of any tax, assessment, fee or charge or any portion thereof, or of any penalties, costs or charges related thereto.

(b) Claims in connection with which the filing of a notice of lien, statement of claim, or stop notice is required under any provision of law relating to mechanics', laborers' or materialmen's liens.

(c) Claims by public employees for fees, salaries, wages, mileage or other expenses and allowances.

(d) Claims for which the workmen's compensation authorized by Division 4 (commencing with Section 3201) of the Labor Code is the exclusive remedy.

(e) Applications or claims for any form of public assistance under the Welfare and Institutions Code or other provisions of law relating to public assistance programs, and claims for goods, services, provisions or other assistance rendered for or on behalf of any recipient of any form of public assistance.

(f) Applications or claims for money or benefits under any public retirement or pension system.

(g) Claims for principal or interest upon any bonds, notes, warrants, or other evidences of indebtedness.

(h) Claims which relate to a special assessment constituting a specific lien against the property assessed and which are payable from the proceeds of such an assessment, by offset of a claim for damages against it or by delivery of any warrant or bonds representing it.

(i) Claims by the State or by a state department or agency or by another local public entity.

(j) Claims arising under any provision of the Unemployment Insurance Code, including but not limited to claims for money or benefits, or for refunds or credits of employer or worker contributions, penalties, or interest, or for refunds to workers of deductions from wages in excess of the amount prescribed.

(k) Claims for the recovery of penalties or forfeitures made pursuant to Article 1 (commencing with Section 1720) of Chapter 1 of Part 7 of Division 2 of the Labor Code.

(l) Claims governed by the Pedestrian Mall Law of 1960, Part 1 (commencing with Section 11000) of Division 13 of the Streets and Highways.
ORDINANCE NO. 14

AN ORDINANCE OF THE BOARD OF DIRECTORS OF
THE ALAMEDA-CONTRA COSTA TRANSIT DISTRICT
RELATING TO CLAIMS FOR MONEY OR DAMAGES EXCEPTED BY SECTION 905
OF THE CALIFORNIA GOVERNMENT CODE

Be it enacted by the Board of Directors of the Alameda Contra Costa Transit District:

Section 1.

A. Claims against the Alameda Contra Costa Transit District.

Any claim against the Alameda-Contra Costa Transit District for money, damages, or a refund that is excepted by section 905 of the Government Code from the claims presentation requirements of the Tort Claims Act, including any claims filed pursuant to Section 9 of Resolution 2067, and which is not governed by other statutes or ordinances expressly relating thereto, shall be governed by this Ordinance. Any person pursuing such a claim must file a claim with the District Secretary, and the claim must conform to the following requirements:

(a) It shall be in writing.

(b) It shall contain the name and post office address of the claimant.

(c) It shall be verified by the person who claims to be entitled to be paid the money or damages or who has paid the money sought to be refunded, except that it can be verified by the claimant's guardian, conservator, or the executor or administrator of his or her will or estate.

(d) It shall state the date, place, and circumstance of the occurrence or transaction giving rise to the claim and a general description of the indebtedness, obligation, or injury so far as it may be known. If the claim is seeking a refund of a tax, fee, or assessment, the claim shall state whether the payment or payments of the tax, fee, or assessment were made to the Alameda-Contra Costa Transit District directly or to another entity collecting the tax, fee, or assessment on behalf of the Alameda-Contra Costa Transit District.

(e) It shall state the total amount of the claim, together with the basis for computation of the amount claimed.

(f) It shall be filed with the District Secretary not later than one year after the accrual of the cause of action of the underlying claim.

B. Action by Board of Directors.

The Board of Directors shall take action upon a claim submitted pursuant to section A., above within 45 days of its filing with the District Secretary. If the Board of Directors fails to do so, the demand or claim shall be deemed to have been rejected by the Board of Directors on the last day of the period within which the Board of Directors
was required to act. Action by the Board of Directors shall otherwise be subject to the provisions of section 912.4 of the Government Code.

C. Prerequisite to lawsuit.

No lawsuit may be brought against the Alameda-Contra Costa Transit District on any cause of action for which a claim must be filed under section A. above, until the claim has been filed with the District Secretary as required by this Ordinance and has been acted upon by the Board of Directors or has been deemed to have been rejected. Any action brought against the Alameda-Contra Costa Transit District on such a claim shall be subject to the provisions of sections 945.6 and 946 of the Government Code. Only the person who filed the claim may bring such a lawsuit, and if another person should do so judgment shall not be rendered for the plaintiff.

D. Claims for Refund Subject to the Tort Claims Act—Procedure

Where a claim for refund is subject to Chapter 1 and Chapter 2 of Part 3 of Division 3.6 of Title 1 of the Government Code of the State of California (§900, et seq.) the claim shall be verified by the person who has paid the money sought to be refunded, by his guardian or conservator, or by the executor or administrator of his or her will or estate. No suit for refund may be brought against the District until a written claim pursuant to this section has been presented to the District and has been acted upon or has been deemed to be rejected by the District, in accordance with the Tort Claims Act.

Section 2. Severability. If any section, subsection, phrase or clause of this ordinance is for any reasons held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The Board of Directors hereby declares that it would have passed this ordinance and each section, subsection, phrase, or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unconstitutional.

Section 3. Effective Date. This ordinance shall take effect thirty (30) days after passage thereof.

Section 4. Publication. This ordinance shall become effective thirty (30) days after its adoption which shall be at least three days after its introduction. This ordinance shall be published once a week for two consecutive weeks following its passage in a newspaper of general publication within the District.

Patrisha Piras, President

ATTEST:
Rose Martinez, District Secretary

I, Rose Martinez, District Secretary for the Alameda-Contra Costa Transit District, do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the Board of Directors held on ____________ and adopted at a Regular Meeting of the Board of Directors held on the _____ day of April 2003, by the following roll call vote:

AYES: DIRECTORS:
NOES: DIRECTORS:
ABSENT: DIRECTORS:
ABSTAIN: DIRECTORS:

______________________________
Rose Martinez, District Secretary

Approved as to Form:

Kenneth C. Scheidig, General Counsel