



# CITY OF NEWPORT BEACH

## ADMINISTRATIVE SERVICES Revenue Division

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MAR 23 2009

**COMMISSION ON  
STATE MANDATE**

March 16, 2009

Ms. Paula Higashi  
Commission on State Mandates  
980 Ninth Street  
Suite 300  
Sacramento, CA 95814

Re: Request to Amend Proposed Statement of Decision  
or in the alternative  
Request for Continuance  
Identity Theft Test Claim  
Chapter 956, Statutes of 2000  
Penal Code section 530.6  
Claim no. 03-TC-08  
City of Newport Beach, Claimant

Dear Ms. Higashi:

The Test Claimant City of Newport Beach requests that the Proposed Statement of Decision be amended so as to not make any finding regarding the Parameters and Guidelines. The Statement of Decision currently reads as follows, at page 12:

The Commission finds that determining the appropriate law enforcement agency to investigate the matter further and making a referral to that agency is not a state-mandated activity and as such is not reimbursable. Claimant, in comments on the draft staff analysis submitted March 4, 2009, states that it "reserves the right to revisit [this issue] during the Parameters and Guidelines phase. . . as reasonabl[y] necessary to carry out the mandate." If local law enforcement opts to undertake this activity it would do so after the completion of all of the state mandated activities. Because this activity cannot occur until all mandated activities are complete, it cannot be reasonably necessary to carry out the mandated activities. Though such a referral may be in the spirit of the law and may be good public policy, it is not a specifically mandated activity, not necessary to carry out the mandate, and therefore not reimbursable. The Commission finds that determining the appropriate law enforcement agency to investigate the matter further and making a referral to that agency is not a state-mandated activity and that this optional activity may not be addressed in the parameters and guidelines.

The City requests that the balance of the paragraph after the second sentence be stricken, or in the alternative the finding be removed and the City be allowed to address the issue in the Parameters and Guideline phase without prejudice.

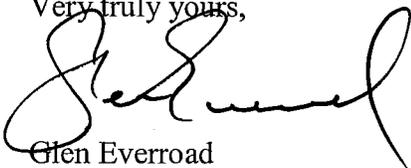
As was evident in the City's March 4, 2009, filing, the City is in agreement with Staff, and as it turned out, with the Department of Finance, as to what is and is not mandated. That is not the issue here. The issue is that a finding has been made as to Parameters and Guidelines when no such document has been filed with or is under consideration by the Commission. Moreover, given the options presented by AB 1222, no Parameters and Guidelines may ultimately be filed with this Commission for full Staff analysis. The City simply asks that it be allowed to make whatever arguments and to present whatever testimony it is able to muster to support any Parameter and Guidelines it may choose to file.

Otherwise if you do not see fit to grant the above request, the City requests that the above-stated matter be continued to May 29, 2009. The City was time-barred from bringing its request under California Code of Regulations, title 2, section 1183.01, subdivision (c)(2)(A) for a mandatory granting of the request, as the City received its proposed Statement of Decision today, March 16, 2009, and the City's representative received it on March 13. Thus the City brings its request under to California Code of Regulations, title 2, section 1183.01, subdivision (c)(2)(C). This request is brought pursuant to California Code of Regulations, title 2, section 1181.1, subdivision (h)(1), in that, the Staff increased the number of issues pending by raising an issue in the Final Staff Analysis and proposed Statement of Decision which was heretofore unraised, unbriefed, and unsupported by any evidence or argument by the test claimant or any state agency or any interested party. The City requests an opportunity to respond solely to the new issue raised regarding the referral activity and its bar from the Parameters and Guidelines phase as not being reasonably necessary.

Should this request be granted the City also requests that a briefing schedule be set to allow for interested parties to comment on the City's response. Should this request be denied, the City requests a postponement of the hearing to allow for pre-hearing to review the issue with Staff and interested parties.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,



Glen Everroad  
Revenue Manager  
City of Newport Beach