

State of California
COMMISSION ON STATE MANDATES
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Claim No. <i>01-TC-16</i>

TEST CLAIM FORM

Local Agency or School District Submitting Claim

City of San Jose

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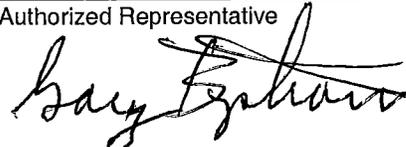
Representative Organization to be Notified
League of California Cities

This test claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code section(s) within the chaptered bill, if applicable.
Chapter 993, Statutes of 1989

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative	Telephone No.
Gary Bystrom, Captain, San Jose Fire Department	408-277

Signature of Authorized Representative	Date
	5-28-02

**BEFORE THE
COMMISSION ON STATE MANDATES**

Test Claim of:
City of San Jose

Fire Safety Inspections of Care Facilities

Chapter 993, Statutes of 1989

STATEMENT OF THE CLAIM

A. MANDATE SUMMARY

With the passage of Chapter 993, Statutes of 1989, local fire departments are required to perform fire safety inspections of all community care facilities¹, residential care facilities for the elderly², and child day care facilities³. Upon receipt of a request from a prospective licensee, the local fire department, or State Fire Marshal, whichever has primary jurisdiction, is required to conduct a preinspection of the facility prior to the fire clearance approval. At the time of the preinspection, the primary fire enforcing agency will provide consultation and interpretation of the fire safety regulations that are to be enforced in order to obtain the clearances necessary to obtain a license.

Health and Safety Code, Section 1566.2 prohibits the charging of any fee for enforcing fire safety regulations with respect to residential care facilities that accommodate six or fewer persons. However, Section 13235 does allow a preinspection fee of \$50 to be charged to these facilities.

The fee authorization contained in the test claim legislation has not been increased in the 12 years since the passage of the subject legislation. At the present time an average of 3 hours is needed to complete the total fire clearance process for each facility. Some facilities, depending on the number of visits necessary to obtain the fire clearance, require up to 4 hours. Other facilities may only require 2 hours. Included in this process are travel time to the facility, time spent at the facility, telephone time, research of related codes, and data entry. Personnel turnover, which necessitates the training of new fire inspectors, is also part of the equation.

The San Jose Fire Department Bureau of Fire Prevention is mandated by the City to be 100% cost recovery. The hourly rate at which our department charges in order to achieve

¹ As defined in Health and Safety Code, Section 1502.

² As defined in Health and Safety Code, Section 1569.2.

³ As defined in Health and Safety Code, Section 1596.750.

full cost recovery is \$110. The present \$50 fee allowance for a preinspection does not quite cover the cost of one-half hour.

B. LEGISLATIVE HISTORY PRIOR TO 1975

There was no requirement prior to 1975, nor in any of the intervening years, until the passage of Chapter 993, Statutes of 1989, filed on September 29, 1998, to mandate the inspection of community care facilities, residential care facilities or child care facilities.

C. SPECIFIC STATUTORY SECTIONS THAT CONTAIN THE MANDATED ACTIVITIES

As related above, the mandated activities are contained in Health and Safety Code, Sections 1531.2, 1569.149, 1596.809, 13144.5, and 13235. These sections relate to the reimbursable provisions of the test claim, particularly Health and Safety Code, Section 13235.

D. COST ESTIMATES

The activities necessary to comply with the inspection mandate include the training of the fire inspector to conduct the inspection. Additionally, the fire inspector must travel to the site, inspect the site, consult regarding the interpretation and application of fire safety regulations, and provide information regarding what is needed to be done in order to obtain the requisite clearances.

It is estimated that the cost for inspecting each facility would average \$330 (3 hours x \$110). Presently, we provide preinspections and fire clearance inspections for approximately 75 of these "six and under facilities" each year. This results in a cost of approximately \$24,750, of which we are only allowed by law to collect \$3,750. Thus, it is estimated that our costs to perform this mandate are approximately \$21,000 each year.

E. REIMBURSABLE COSTS MANDATED BY THE STATE

The costs incurred by the City of San Jose as a result of the statutes included in the test claim are all reimbursable costs as such costs are "costs mandated by the State" under Article XIII B (6) of the California Constitution, and Section 17500 *et seq.* of the Government Code. Section 17514 of the Government Code defines "costs mandated by the state", and specifies the following three requirements:

1. There are "increased costs which a local agency is required to incur after July 1, 1980."
2. The costs are incurred "as a result of any statute enacted on or after January 1, 1975."

3. The costs are the result of “a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

All three of the above requirements for finding costs mandated by the State are met as described previously herein.

F. MANDATE MEETS BOTH SUPREME COURT TESTS

The mandate created by these three statutes clearly meets both tests that the Supreme Court in the *County of Los Angeles v. State of California* (1987) created for determining what constitutes a reimbursable state mandated local program. Those two tests, which the Commission on State Mandates relies upon to determine if a reimbursable mandate exists, are the “unique to government” and the “carry out a state policy” tests. Their application to this test claim is discussed below.

Mandate Is Unique to Local Government

The statutory scheme set forth above imposes a unique requirement on local government. The statutory scheme specifically requires local fire departments to perform the preinspections, written reports and final inspections of prospective state licensed community care facilities, residential care facilities for the elderly and child day care facilities.

Mandate Carries Out a State Policy

Section 1 of the test claim legislation states in substantial detail the necessity for the test claim legislation as follows:

Community care facilities, residential care facilities for the elderly, and child care facilities serve the needs of thousands of persons who are either physically impaired, mentally disabled, frail, elderly, or children, and who warrant care in a specialized, noninstitutional environment.

It is in the best interest of the California public that private citizens be encouraged to develop and operate community care facilities, residential care facilities for the elderly, and child day care facilities throughout the state in order to meet the critical demand for quality, specialized care homes.

Complex and unclear fire safety codes have frustrated the attempts of persons seeking to establish community care facilities, residential care facilities for the elderly, and child day care facilities, and have resulted in significant loss of money and resources to individuals who have received incorrect information regarding fire safety requirements from state or local officials, or no guidance at all.

Interpretation of state and local fire safety regulations varies between the more than 1,200 fire jurisdictions, and in some cases varies within the same jurisdictions, causing confusion and, in numerous instances, project cancellation.

Therefore, it is the intention of the Legislature that a prospective applicant for community care facility, residential care facility for the elderly, and child day care facility licensure shall be clearly informed in advance of making design modifications to a structure to meet specific fire safety requirements.

The Legislature further intends that it is incumbent on state and local agencies to assist persons in the interpretation of fire safety regulations for community care facilities, residential care facilities for the elderly, and child day care facilities, and that greater efforts must be made to clarify and streamline the fire safety clearance process.

The legislative intent clearly expressed in Section 1 of the legislation clearly demonstrates the state policy to streamline and clarify the fire safety requirements for prospective licensees of community care facilities, residential care facilities for the elderly, and child day care facilities, thus making it easier for applicants to complete the licensing process.

In summary, the statute mandates that the City of San Jose believes that the preinspections, written reports and final inspections satisfy the constitutional requirements for the finding of a reimbursable mandate.

STATE FUNDING DISCLAIMERS ARE NOT APPLICABLE

There are seven disclaimers specified in Government Code, Section 17556 which could serve to bar recovery of "costs mandated by the State", as defined in Government Code, Section 17556. None of the seven disclaimers apply to this test claim:

1. The claim is submitted by a local agency or school district which requests legislative authority for that local agency or school district to implement the Program specified in the statutes, and that statute imposes costs upon the local agency or school district requesting the legislative authority.
2. The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts.
3. The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.
4. The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.
5. The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the

costs of the State mandate in an amount sufficient to fund the cost of the State mandate.

6. The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a Statewide election.
7. The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

None of the above disclaimers have any application to the City of San Jose's test claim. The only disclaimer which could, arguably, have any application is the number 4, which speaks in terms of a fee authority sufficient to pay for the mandated program or increased level of service. As noted above, certain size facilities are exempt by law from the payment of any fee, so clearly as to those facilities the disclaimer is inapplicable. Additionally, the fee authority, which has not been increased since the original enactment of the legislation, is not only set by statute, but is clearly inadequate to fully reimburse the cost of the mandated program.

CONCLUSION

Chapter 993, Statutes of 1989 imposed a new state mandated program and cost on the City of San Jose, by requiring the fire department to perform preinspections, written reports and final inspections of community care facilities, residential care facilities for the elderly, and child care facilities. The mandated program meets all of the criteria and tests for the Commission on State Mandates to find a reimbursable state mandated program. None of the so-called disclaimers or other statutory or constitutional provisions that would relieve the State from its constitutional obligation to provide reimbursement have any application to this claim.

G. CLAIM REQUIREMENTS

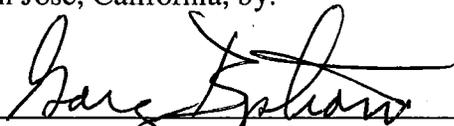
The following elements of this test claim are provided pursuant to Section 1183, Title 2, of the California Code of Regulations:

Exhibit 1: Chapter 993, Statutes of 1989

CLAIM CERTIFICATION

The foregoing facts are known to me personally and if so required, I could and would testify to the statements made herein. I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 29 day of May, 2002, at San Jose, California, by:



Gary Bystrom, Captain
San Jose Fire Department

CHAPTER 993

An act to amend Section 13144.5 of, to add Sections 1531.2, 1569.149, and 1596.809 to, and to add Chapter 5.5 (commencing with Section 13235) to Part 2 of Division 12 of, the Health and Safety Code, relating to fire safety in care facilities.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 29, 1989.]

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares the following: Community care facilities, residential care facilities for the elderly, and child care facilities serve the needs of thousands of persons who are either physically impaired, mentally disabled, frail, elderly, or children, and who warrant care in a specialized, noninstitutional environment.

It is in the best interest of the California public that private citizens be encouraged to develop and operate community care facilities, residential care facilities for the elderly, and child day care facilities throughout the state in order to meet the critical demand for quality, specialized care homes.

Complex and unclear fire safety codes have frustrated the attempts of persons seeking to establish community care facilities, residential care facilities for the elderly, and child day care facilities, and have resulted in significant loss of money and resources to individuals who have received incorrect information regarding fire safety requirements from state or local officials, or no guidance at all.

Interpretation of state and local fire safety regulations varies between the more than 1,200 fire jurisdictions, and in some cases varies within the same jurisdiction, causing confusion and, in numerous instances, project cancellation.

Therefore, it is the intention of the Legislature that a prospective applicant for community care facility, residential care facility for the elderly, or child day care facility licensure shall be clearly informed in advance of making design modifications to a structure to meet specific fire safety requirements.

The Legislature further intends that it is incumbent on state and local agencies to assist persons in the interpretation of fire safety regulations for community care facilities, residential care facilities for the elderly, and child day care facilities, and that greater efforts must be made to clarify and streamline the fire safety clearance process.

SEC. 2. Section 1531.2 is added to the Health and Safety Code, to read:

1531.2. A prospective applicant for licensure shall be notified at the time of the initial request for information regarding application for licensure that, prior to obtaining licensure, the facility shall

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secure and maintain a fire clearance approval from the local fire enforcing agency, as defined in Section 13244, or the State Fire Marshal, whichever has primary fire protection jurisdiction. The prospective applicant shall be notified of the provisions of Section 13235, relating to the fire safety clearance application. The prospective applicant for licensure shall be notified that the fire clearance shall be in accordance with state and local fire safety regulations.

SEC. 3. Section 1569.149 is added to the Health and Safety Code, to read:

1569.149. A prospective applicant for licensure shall be notified at the time of the initial request for information regarding application for licensure that, prior to obtaining licensure, the facility shall secure and maintain a fire clearance approval from the local fire enforcing agency, as defined in Section 13244, or the State Fire Marshal, whichever has primary fire protection jurisdiction. The prospective applicant shall be notified of the provisions of Section 13235, relating to the fire safety clearance application. The prospective applicant for licensure shall be notified that the fire clearance shall be in accordance with state and local fire safety regulations.

SEC. 4. Section 1596.809 is added to the Health and Safety Code, to read:

1596.809. A prospective applicant for licensure shall be notified at the time of the initial request for information regarding application for licensure that, prior to obtaining licensure, the facility shall secure and maintain a fire clearance approval from the local fire enforcing agency, as defined in Section 13244, or the State Fire Marshal, whichever has primary fire protection jurisdiction. The prospective applicant shall be notified of the provisions of Section 13235, relating to the fire safety clearance application. The prospective applicant for licensure shall be notified that the fire clearance shall be in accordance with state and local fire safety regulations.

SEC. 5. Section 13144.5 of the Health and Safety Code is amended to read:

13144.5. The State Fire Marshal shall prepare and conduct voluntary regular training sessions devoted to the interpretation and application of the laws and rules and regulations in Title 19 and Title 24 of the California Code of Regulations relating to fire and panic safety. The training sessions shall include, but need not be limited to, interpretation of the regulations pertaining to community care facilities licensed pursuant to Section 1508, to residential care facilities for the elderly licensed pursuant to Section 1569.10, and to child day care facilities licensed pursuant to Section 1596.80, in order to coordinate a consistent interpretation and application of the regulations among local fire enforcement agencies.

SEC. 4. Chapter 5.5 (commencing with Section 13235) is added to Part 2 of Division 12 of the Health and Safety Code, to read:

CHAPTER 5.5. FIRE SAFETY INSPECTIONS OF CARE FACILITIES

13235. (a) Upon receipt of a request from a prospective licensee of a community care facility, as defined in Section 1502, of a residential care facility for the elderly, as defined in Section 1569.2, or of a child day care facility, as defined in Section 1596.750, the local fire enforcing agency, as defined in Section 13244, or State Fire Marshal, whichever has primary jurisdiction, shall conduct a preinspection of the facility prior to the final fire clearance approval. At the time of the preinspection, the primary fire enforcing agency shall provide consultation and interpretation of fire safety regulations, and shall notify the prospective licensee of the facility in writing of the specific fire safety regulations which shall be enforced in order to obtain fire clearance approval. A fee of not more than fifty dollars (\$50) may be charged for the preinspection of a facility with a capacity to serve 25 or fewer persons. A fee of not more than one hundred dollars (\$100) may be charged for a preinspection of a facility with a capacity to serve 26 or more persons.

(b) The primary fire enforcing agency shall complete the final fire clearance inspection for a community care facility, residential care facility for the elderly, or child day care facility within 30 days of receipt of the request for the final inspection, or as of the date the prospective facility requests the final preclearance inspection by the State Department of Social Services, whichever is later.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 994

An act to amend Section 224n of the Civil Code, relating to adoption.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 29, 1989.]

The people of the State of California do enact as follows:

SECTION 1. Section 224n of the Civil Code is amended to read:

224n. The department or licensed adoption agency to which a child has been freed for adoption by either relinquishment or termination of parental rights shall be responsible for the care of the child, and shall be entitled to the exclusive custody and control of the

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