

Hearing: _____
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PROPOSED PARAMETERS AND GUIDELINES

Government Code sections 3304, 3306.5, 3309 and 3312
Stats. 1976, ch. 465; Stats. 1998, ch. 786; Stats. 2000, ch. 209;
and Stats. 2002, ch. 170

Peace Officers Procedural Bill of Rights II 03-TC-18

City of Newport Beach, Claimant

I. SUMMARY OF THE MANDATE

On December 1, 2011, the Commission on State Mandates (Commission) adopted a Statement of Decision finding that the test claim legislation imposes a partially reimbursable state-mandated program upon local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this test claim for the following reimbursable activities:

1. Provide a chief of police that is dismissed with a written notice and the reason or reasons for the dismissal when the charges supporting the dismissal *do not* damage the chief of police's ability to find other employment and trigger existing notice requirements under the due process clause of the United States and California Constitutions. (Gov. Code, § 3304(c) (Stats. 1998, ch. 786).)
2. Within one year of discovery of any misconduct, provide notice to the peace officer being investigated that he or she may face disciplinary action after the investigation is completed. (Gov. Code, § 3304(d) (Stats. 1998, ch. 786).)
3. After the investigation and any predisciplinary response or procedure utilized by the employer, notify the peace officer in writing that the employer has decided to impose discipline on the officer. (Gov. Code, § 3304(f) (Stats. 1998, ch. 786)):
 - a. Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interest *are not* affected (i.e., the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
 - b. Transfer of permanent, probationary and at-will employees for purposes of punishment;
 - c. Denial of promotion for permanent, probationary, and at-will employees for reasons other than merit; and
 - d. Other actions against permanent, probationary, and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Conducting investigations is not reimbursable.

4. Provide notice in order to take any of the following disciplinary actions for wearing a pin or displaying any other item containing the American flag (Gov. Code, § 3312 (Stats. 2002, ch. 170)):
 - a. Dismissal of a probationary or at-will officer when the charges supporting the dismissal *do not* damage the officer's ability to find other employment;
 - b. Demotion, suspension, salary reduction, or written reprimand of a probationary or at-will officer;
 - c. Transfer for purposes of punishment of a permanent, probationary, or at-will officer;
 - d. Denial of promotion to a permanent, probationary, or at-will officer; and
 - e. Other actions against permanent, probationary, or at-will officer that result in disadvantage, harm, loss, or hardship and impact the career opportunities of the officer.

The notice must include: (1) a statement that the officer's pin or other item violates an existing rule, regulation, policy, or local agency agreement or contract regarding the wearing of a pin, or the displaying of any other item, containing the American flag; (2) a citation to the specific rule, regulation, policy, or local agency agreement or contract that the pin or other item violates; and (3) a statement that the officer may file an appeal against the employer challenging the alleged violation pursuant to the applicable grievance or appeal procedures adopted by the department or public agency that otherwise comply with existing law.

5. Perform the following activities upon receipt of a request by an officer to inspect his or her personnel files (Gov. Code, § 3306.5):

Counties

- a. Permit a peace officer to inspect letters of reference and records relating to the investigation of a possible criminal offense if they are used or have been used to determine that officer's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action. (Gov. Code, § 3306.5(a) (Stats. 2000, ch. 209).)
- b. Make the personnel file or copy thereof available within a reasonable period of time after a request therefor by the officer. (Gov. Code, § 3306.5(b) (Stats. 2000, ch. 209).)
- c. Make an officer's written request to correct or delete a portion of the officer's personnel file, which the officer believes to be mistakenly or unlawfully placed in the file, part of the officer's personnel file. (Gov. Code, § 3306.5(c) (Stats. 2000, ch. 209).)
- d. Within 30 days of receiving an officer's request to correct or delete a portion of his or her personnel file pursuant to Government Code section 3306.5(c), grant the request and make the requested changes or notify the officer of the decision to refuse the request. (Gov. Code, § 3306.5(d) (Stats. 2000, ch. 209).)

- e. If the employer refuses to grant the request, in whole or in part, state in writing the reasons for refusing the request, and make the written statement part of the requesting officer's personnel file. (Gov. Code, § 3306.5(d) (Stats. 2000, ch. 209).)

Cities and Special Police Protection Districts Named in Government Code
Section 53060.7

- a. Permit a peace officer to inspect personnel files at reasonable times and intervals, and during usual business hours, upon request by the officer. The personnel files that an officer may inspect are limited to those that are used or have been used to determine that officer's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action. (Gov. Code, § 3306.5(a) (Stats. 2000, ch. 209).)
 - b. Make the file or copy thereof available within a reasonable period of time after a request therefor by the officer. (Gov. Code, § 3306.5(b) (Stats. 2000, ch. 209).)
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6. Notify an officer, either orally or in writing, that a search of the officer's employer assigned locker or storage space will be conducted, if during the course of an investigation into officer misconduct an employer determines it is necessary to conduct a search of the officer's employer assigned locker or storage space. (Gov. Code, § 3309 (Stats. 1976, ch. 465).)

II. ELIGIBLE CLAIMANTS

Any city, county, city and county and special police protection district named in Government Code Section 53060.7 that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557(e), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The City of Newport Beach filed the test claim on September 26, 2003, establishing eligibility for reimbursement on or after July 1, 2002. Therefore, costs incurred pursuant to Government Code sections 3304, 3306.5, and 3309 are reimbursable on or after July 1, 2002. Costs incurred pursuant to Government Code sections 3312 are reimbursable on or after January 1, 2003.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Government Code section 17560(b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

Claimants may use time studies to support salary and benefit costs when an activity is task-repetitive. Activities that require varying levels of effort are not appropriate for time studies. Claimants wishing to use time studies to support salary and benefit costs are required to comply with the State Controller's Time-Study Guidelines before a time study is conducted. Time study usage is subject to the review and audit conducted by the State Controller's Office.

For each eligible claimant, the following activities are reimbursable:

1. Draft, review, edit, approve, serve and file written notice to a chief of police that is dismissed when the charges supporting the dismissal *do not* damage the chief of police's ability to find other employment and trigger existing notice requirements under the due process clause of the United States and California Constitutions. Written notice must be accompanied by the reason or reasons for the dismissal. (Gov. Code, § 3304(c) (Stats. 1998, ch. 786).)
2. Within one year of discovery of any misconduct, draft, review, edit, approve, serve and file notice to the peace officer being investigated that he or she may face disciplinary action after the investigation is completed. (Gov. Code, § 3304(d) (Stats. 1998, ch. 786).)
3. After the investigation and any predisciplinary response or procedure utilized by the employer, draft, review, edit, approve, serve and file written notice to the peace officer that the employer has decided to impose discipline on the officer. (Gov. Code, § 3304(f) (Stats. 1998, ch. 786)):
 - a. Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interest *are not* affected (i.e., the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
 - b. Transfer of permanent, probationary and at-will employees for purposes of punishment;
 - c. Denial of promotion for permanent, probationary, and at-will employees for reasons other than merit; and
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5. Perform the following activities upon receipt of a request by an officer to inspect his or her personnel files (Gov. Code, § 3306.5):

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- a. Permit a peace officer to inspect letters of reference and records relating to the investigation of a possible criminal offense if they are used or have been used to determine that officer's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action. This includes schedule appointment to inspect personnel file, monitor officer while he or she reviews information and payment of officer for time away from normal duty. (Gov. Code, § 3306.5(a) (Stats. 2000, ch. 209).)
- b. Make the personnel file or copy thereof available within a reasonable period of time after a request therefor by the officer. This includes schedule appointment to inspect personnel file, monitor officer while he or she reviews information and payment of officer for time away from normal duty. (Gov. Code, § 3306.5(b) (Stats. 2000, ch. 209).)
- c. File in an officer's personnel file a copy of the officer's written request to correct or delete a portion of the officer's personnel file, which the officer believes to be mistakenly or unlawfully placed in the file. (Gov. Code, § 3306.5(c) (Stats. 2000, ch. 209).)
- d. Within 30 days of receiving an officer's request to correct or delete a portion of his or her personnel file pursuant to Government Code section 3306.5(c), grant the request and make the requested changes or notify the officer of the decision to refuse the request. This includes review officer's written request for correction(s), make changes as requested if request is granted and respond to officer's request for correction(s) (Gov. Code, § 3306.5(d) (Stats. 2000, ch. 209).)
- e. If the employer refuses to grant the request, in whole or in part, draft, review, edit, approve, serve and file in the requesting officer's personnel file a writing describing the reasons for refusing the request. (Gov. Code, § 3306.5(d) (Stats. 2000, ch. 209).)

Cities and Special Police Protection Districts Named in Government Code Section 53060.7

- a. Permit a peace officer to inspect personnel files at reasonable times and intervals, and during usual business hours, upon request by the officer. The personnel files that an officer may inspect are limited to those that are used or have been used to determine that officer's qualifications for employment, promotion, additional

- compensation, or termination or other disciplinary action. (Gov. Code, § 3306.5(a) (Stats. 2000, ch. 209).)
- b. Make the file or copy thereof available within a reasonable period of time after a request therefor by the officer. This includes schedule appointment to inspect personnel file, monitor officer while he or she reviews information and payment of officer for time away from normal duty. (Gov. Code, § 3306.5(b) (Stats. 2000, ch. 209).)
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6. Provide notice to an officer, either orally or in writing, that a search of the officer's employer assigned locker or storage space will be conducted, if during the course of an investigation into officer misconduct an employer determines it is necessary to conduct a search of the officer's employer assigned locker or storage space. For written notices this also includes draft, review, edit, approve, and file the notice. (Gov. Code, § 3309 (Stats. 1976, ch. 465).)

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1., Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1., Salaries and Benefits, and A.2., Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3., Contracted Services.

B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both: (1) overhead costs of

the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in 2 CFR Part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)).

The distribution base may be: (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.); (2) direct salaries and wages; or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by: (1) classifying a department's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by: (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter¹ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated

¹ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.2.

LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.