

TO: City Council
FROM: James L. App, City Manager
SUBJECT: **Municipal Code Amendment – Claim Filing**
DATE: March 20, 2007

NEEDS: For the City Council to consider amending Municipal Code statute of limitations provisions for filing a claim for refund of taxes, assessments, or fees.

FACTS:

1. The City’s current procedures for refund of taxes, assessments or fees provide a three-year statute of limitations to file a claim.
2. The three-year provision makes it difficult to plan the allocation of tax resources.
3. The California Government Code (Section 935) allows ordinances that require payers to submit a refund claim within one year after payment.
4. Modification of the Municipal Code to provide a one-year claim period provides ample opportunity to potential claimants and a reasonable degree of predictability to local taxpayer’s expectations as to the uses of their tax dollars.

ANALYSIS &

CONCLUSION: Individuals, who may, on occasion, feel they have over or wrongfully paid local taxes, assessments or fees deserve the opportunity to request a refund. Similarly, if their request/claim is rejected, they deserve the right to file suit in pursuit of their claim. By the same token, taxpayers in general have a legitimate expectation that their elected representatives and City staff can make responsible and timely planning decisions regarding the use of their tax dollars. A one-year statute of limitations on filing of a claim for refund respects the interests of all parties.

POLICY

REFERENCE: California Government Code, Title 1, Division 3.6, Part 3 commencing with Section 900; Paso Robles Municipal Code, Division XXV, Section 3.04.

FISCAL

IMPACT: Will not limit amount of any legitimate refund.

OPTIONS:

- A. Introduce for First Reading (by Title Only), and Set March 20, 2007 for Adoption of, Ordinance No. ____ Amending Division XXV of Chapter 3.04 of the City Municipal Code Regarding Claims Against the City for Refunds of Taxes, Assessments, or Fees.**
- B. Amend, Modify or Reject the Option Above.**

Attachment: Ordinance

ORDINANCE NO. XXX N.S.

**AN ORDINANCE OF THE CITY OF EL PASO DE ROBLES
AMENDING DIVISION XXV OF CHAPTER 3.04 OF THE CITY'S MUNICIPAL
CODE REGARDING CLAIMS AGAINST THE CITY FOR REFUNDS OF
TAXES, ASSESSMENTS, OR FEES**

WHEREAS, the City's current procedures for refund of taxes, assessments or fees provides a three-year statute of limitations to file a claim for refund;

WHEREAS, this three-year statute of limitations makes it difficult for the City to plan with financial certainty;

WHEREAS, the City may, pursuant to Government Code section 935, adopt a claim filing ordinance to require that payors submit a refund claim with the City no later than one year after payment as a prerequisite to filing suit;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Code Amendment. Division XXV of Chapter 3.04 of the Paso Robles Municipal Code is hereby amended to read as follows:

Division XXV. Claims for Refund of Taxes, Assessments, or Fees

3.04.550 Authority/Scope.

The provisions of this Division are enacted pursuant to Section 935 of the California Government Code and shall apply to all claims for recovery of taxes, fees or assessments enacted by the City which are not expressly governed by a claims procedure set forth in any other statute or ordinance.

3.04.551 Claim required.

No suit for the recovery of any taxes, fees, or assessments which have been paid by any person to the City may be maintained unless a claim for refund of such taxes, fees, or assessments has been filed and rejected in accordance with Part 3 of Divisions 3.6 of Title 1 of the California Government Code (commencing with Section 900 thereof) as those provisions now exist or shall hereafter be amended, and as further provided in this Division.

3.04.552 Time limit for filing a claim

Any claim for a refund of taxes, fees, or assessments subject to this Chapter shall be made within one year after payment was made under protest.

3.04.553 Claim --Who may make.

A claim for the refund of taxes, fees, or assessments subject to the provisions of this Chapter may be filed by the claimant, or by the claimant's guardian, executor, conservator or administrator. No claim may be filed on behalf of a class of persons unless verified by every member of that class as required by this section.

3.04.554 Claims procedures

A claim for the refund of any taxes, fees, or assessments paid under protest shall be filed in writing no later than one year after the date of the timely payment under protest. The claim shall be deemed filed on the date of receipt by the City Attorney. Any such claim shall contain the information required by Government Code section 910, as that provision now exists or may be amended in the future, as well as the following information:

- (a) The name and address of the claimant, and where applicable, the claimant's guardian, executor, conservator, or administrator.
- (b) The amount paid and the amount assessed, the payment date and the nature of any taxes, fees, or assessments paid, including the address of any property to which the tax, fee or assessment is applicable.
- (c) A description of the specific reason for the refund and whether the whole tax, fee, or assessment is claimed to be void or, if only a part, what portion.
- (d) The signature of the claimant or the claimant's guardian, executor, conservator, or administrator, accompanied by a contemporaneous statement that the information on the claim has been provided under penalty of perjury.

3.04.555 Reasons for refunds.

On order of the city council, any taxes, assessments, fees, penalties, or costs paid to the City shall be refunded if they were due to:

- (a) Mathematical, computational or other error on the part of the City; or
- (b) Overpayment or duplicate payment.

3.04.556 Processing of claims

The City Council shall act on a claim in the manner provided in Government Code section 912.4 and 912.6 within forty-five (45) days after the claim is presented.

3.04.557 Time-barred claims

Nothing in this Division revives or reinstates any cause of action that, on _____
_____ [insert effective date of this Ordinance], is barred by failure to
comply with any previously applicable statute, ordinance or regulation requiring
the presentation of a claim prior to a suit for refund of taxes, fees, or assessments
subject to this Chapter, or by failure to commence any action thereon within the
period prescribed by an applicable statute of limitations.

3.04.558 Deducted proportionately from funds.

If the amount paid has been apportioned to any funds or revenue or
assessment districts, the proper proportion of the refund shall be deducted
from any amounts due each fund or revenue or assessment district.

3.04.559 Moneys not refunded--Deposit.

Any amount subject to refund for which application is not made within the
time allowed shall be placed in the City general fund.

3.04.560 Payment Under Protest--Not Voluntary.

Any assessee may contest a tax, fee or assessment by tendering the required
payment when due and providing written notice that such payment is being
tendered under protest, and the basis for such protest. A payment under
protest is not a voluntary payment.

3.04.561 Time of Commencement of Lawsuit.

Any lawsuit for the refund of any taxes, fees, or assessments shall be commenced
within six months from and after the date on which the City Council rejects a
claim for refund. The action may be brought only:

- (a) As to the portion of the tax, fee, or assessment claimed to be void.
 - (b) On the grounds specified in the claim.
 - (c) By the person making payment, his guardian, executor, administrator, or heir.
- Payment of a judgment against the city shall not be made to an assignee of the
person bringing the action.

Section 2. Severability. Should any provision of this Ordinance, or its
application to any person or circumstance, be determined by a court of competent
jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall
have no effect on any other provision of this Ordinance or the application of this
Ordinance to any other person or circumstance and, to that end, the provisions hereof are
severable.

Section 3. Effective Date. This Ordinance shall take effect thirty (30) days after
adoption as provide by Government Code section 36937. The provisions of this
Ordinance shall apply retroactively to any taxes, fees, or assessments paid prior to the
Effective Date. However, any claim that would have been timely if presented on the day

before this Ordinance becomes effective, but which would be untimely under the requirements of this Ordinance, may (notwithstanding this Ordinance) be presented not later than the 45th day after the adoption of this Ordinance.

Section 4. Publication. This Ordinance shall be published once fifteen (15) days after its passage in a newspaper of general circulation, printed, published and circulated in the City in accordance with Government Code section 36933.

Introduced at a regular meeting of the City Council held on _____, 200____, and passed and adopted by the City Council of the City of El Paso de Robles on the ___ day of ____ 200_ by the following roll call vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Mayor Frank R. Mecham

ATTEST:

Deborah Robinson
Deputy City Clerk