

AGENDA REQUEST

FOR: COUNCIL MEETING OF JUNE 5, 2012


FROM:

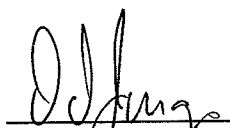
KIT WILLIAMS, CITY ATTORNEY

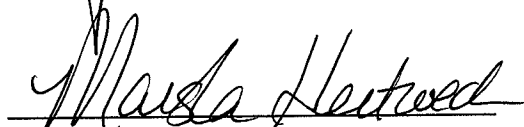
ORDINANCE OR RESOLUTION TITLE AND SUBJECT:


An Ordinance To Enact §39.10 Water And Wastewater Damage Claims Into The Fayetteville Code


APPROVED FOR AGENDA:


City Attorney Date May 17, 2012


Utilities Director Date 17 MAY 12


Finance Director Date 5/17/12


Chief of Staff Date 5/17/12


Mayor Date 5/24/12



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Kim G.

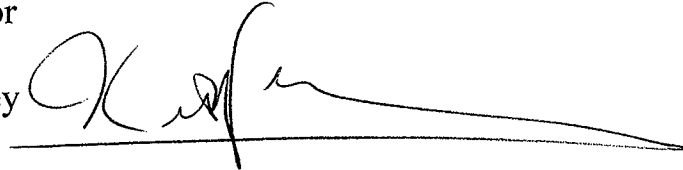
TO: **Mayor Jordan**
City Council

Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

CC: **Don Marr**, Chief of Staff
David Jurgens, Utilities Director
Paul Becker, Finance Director

FROM: **Kit Williams**, City Attorney



DATE: **May 16, 2012**

RE: **Codifying Damage Claim Procedure**

HISTORY

The City of Fayetteville has historically investigated damage claims by its customers for sewer main back-ups and other problems associated and caused by city infrastructure. Some damages to property caused by blocked sewer **mains** (not private sewer service pipes) have normally been compensated. See Resolution No. 48-78 of August 1, 1978 and Resolution No. 76-87 of October 6, 1987. (attached)

UPDATING NEEDED

These 25 year old and older policies need updating and clarification. The current \$2,500.00 limit of Resolution No. 76-87 may have been appropriate in 1987, but is far from adequate now to pay legitimate damage claims experienced by our citizens for sewer main back-ups in recent years. The Utilities Department looked at historical data and determined that an \$8,000.00 level was appropriate now. In an extreme or unusual situation, the Mayor can request the City Council to approve an even higher figure (up to \$20,000.00). I do not believe we should allow a claimant or department director to appeal to the City Council, but instead reserve this power solely for the Mayor.

INPUT FROM CITY DEPARTMENTS

I want to thank the administration and all division and department heads for their work and input on the updating and codification of the City's policies concerning when a damage claim against the City should be paid and for what type of damage should the City consider paying. I especially want to thank Utilities Director David Jurgens who has the longest and largest history considering whether or not to pay personal property claims for sewer main blockage back-ups and some water main break flooding issues.

I believe the City needs to codify these damage claim policies and repeal earlier resolutions passed by the Fayetteville Board of Directors. The proposed policies will be codified into Chapter 39 **City Policies** of the Code of Fayetteville which now has only a single section dealing with filing a municipal improvement district.

Please read these policies which do not make significant changes from what has been our normal procedure for decades. However, I would like this procedure to be clarified and codified to ensure that all citizens with similar claims will be treated equally and fairly.

SOVEREIGN IMMUNITY

Please keep in mind that the City's statutory sovereign immunity protects us from liability and even from being sued in most circumstances in which someone is injured or whose property is damaged as a result of our employee's negligence or mistake. Therefore, our damage claim policy should be very restrictive so as not to waste our taxpayers' money. Thus, we will continue not to pay for pain and suffering or for anything that would be paid an insurance company. We can pay a deductible amount of an insurance policy if the City is assured the payment will not be diverted to an insurance company. Our policy still does not cover our motor vehicles insured through the Municipal League which handles claims for such car or truck accidents.

I believe enacting these new damage claim policies will protect the City and its taxpayers from potential litigation and ensure our damage claim procedure is the most efficient, equal, fair and transparent possible.

ORDINANCE NO. _____

**AN ORDINANCE TO ENACT §39.10 WATER AND WASTEWATER
DAMAGE CLAIMS INTO THE FAYETTEVILLE CODE**

WHEREAS, occasionally a city sewer main gets blocked causing sewage to back up into a residence or a city water main breaks and causes some damage to nearby property; and

WHEREAS, sovereign immunity protects the City from liability from such damages even if our employees might have somehow acted negligently (which is usually not the case); and

WHEREAS, the City has long offered some limited compensation for property damage and clean-up costs to affected persons on a case by case basis; and

WHEREAS, the procedure for how to handle such claims, with limits on the type of compensation and amount of compensation clearly expressed should be enacted into the Fayetteville Code to ensure consistent and fair treatment of such situations.

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby enacts §39.10 **Water and Wastewater Damage Claims** into the Fayetteville Code as shown on Exhibit A.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby repeals any and all previous Resolutions and Ordinances concerning such damage claims.

PASSED and APPROVED this 5th day of June, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

EXHIBIT A

ARTICLE II

Damage Claims

§39.10 Water and Wastewater Damage Claims.

(A) Establishment of Property Damage Claim Compensation Policy.

Without waiving its statutory sovereign immunity, the City establishes the following voluntary policy governing the permissible payment of reasonable compensation for property damage claims proximately caused by a failure of the municipally owned water or wastewater infrastructure system that results in a trespass into and damage to private property.

(B) Requirements for Property Damage Claims To Be Eligible for Compensation.

- (1) The cause of the damage must be directly attributed to a failure of municipal infrastructure owned and operated by the Fayetteville Water and Wastewater utility, and cannot be associated with or caused by a private sewer or water connection or service line.
- (2) The failure must not be caused by factors beyond the City's control such as: loss of electrical service; flooding of its infrastructure; acts of third parties; failure of claimants to properly maintain protective devices (back flow valves, check valves, clean out caps, etc.); acts of God; and other circumstances beyond the City's control.
- (3) A claim form must be completed in writing and submitted to the Mayor's Office within thirty (30) days of property damage occurrence. Claim forms may be supplemented later with additional information, bills, etc. as allowed by the Utilities Director of the City of Fayetteville. Failure to submit the initial claim form within thirty (30) days of the incident terminates the claimant's opportunity to request compensation.

(C) Limitation of any compensation that might be paid.

- (1) Because the City of Fayetteville is protected by sovereign immunity, the city shall pay **no** compensation for any alleged damage associated with or related to any alleged personal injury (except a medical insurance deductible or co-payment) or any other damage except for property damage.
- (2) Compensation which may be paid for damage to property shall be limited to the cost of cleaning or repair of the damage or, in the event that the cost of cleaning or repair exceeds the fair market value of the subject property, less salvage value, compensation shall be limited to the fair market value of the

damaged property less any salvage value. No compensation shall be paid for inconvenience, loss of use, loss of profits or rents, consequential damages, or anything other than cleaning, repair or replacement of property, and, in extreme cases, dislocation expenses not to exceed three days.

- (3) No payment by the City may accrue to the benefit, directly or indirectly, of an insurance carrier, nor for any damage if such is covered by any insurance policy. If the insurance company waives any subrogation right, the City may pay an amount equal to the deductible already paid by the claimant for a property damage claim. Claimants shall be required to provide documents satisfactory to the City establishing their insurance coverage or lack thereof for any claim.
- (4) The Utilities Department Director may not authorize any payment greater than \$8,000.00 for any claim pursuant to this section. The Mayor may request the City Council to authorize an amount greater than \$8,000.00 by Resolution, but in no case shall the City pay more than \$20,000.00 pursuant to this claims procedure for a damage claim related to a water or wastewater utility infrastructure occurrence unless in an extraordinary case the Mayor recommends and the City Council by two-thirds majority approves an exemption from the \$20,000.00 damage cap and approves a payment up to \$40,000.00.
- (5) This subsection does not pertain to nor affect in any manner the motor vehicle liability insurance requirements of A.C.A. §21-9-303 nor the claims procedure and limitations to comply with that state law.

(D) *Discretion of the City.*

The City acting through its Utilities Department Director has complete and sole discretion whether or not to pay any compensation pursuant to this section if the claimant has properly and timely submitted the claim form and all necessary documentation. This section provides no right to compensation for any claimant, nor any right to appeal to the Mayor or City Council.

(E) *Release required if compensation paid.*

If the City offers to pay any compensation pursuant to this section, the claimant must sign a full release to receive the compensation offered by the city.

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RESOLUTION NO. 76-87

MICROFILMED

A RESOLUTION AMENDING RESOLUTION NO. 48-78 TO AMEND THE CITY'S POLICY REGARDING PAYMENT OF COMPENSATION BY THE CITY FOR PROPERTY DAMAGE CAUSED BY A CITY SEWAGE SYSTEM BACK-UP.

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That Section 1 of Resolution No. 48-78 is hereby amended by amending the first subparagraph to read as follows:

The City will pay a maximum of \$2,500 per incident, per dwelling unit (or per business unit), excluding occupant labor, for the documented cost of repairing, replacing, or cleaning a building structure or building contents damaged by a City sewage system back-up; provided,

- (a) The blockage occurred in a City sewage system main and not in a private line connecting a structure to the City sewage main;
- (b) The sewage back-up was caused by an isolated line blockage and not by excessive infiltration of surface water or by general flooding conditions;
- (c) The sewage back-up was not caused by a pump failure due to electric outages;
- (d) The City will pay paid receipts only or will make payments jointly to the owner and vendor;
- (e) The City will not pay for a property owner's labor and will not pay based on estimates; and
- (f) The City reserves the right to use an independent claims adjuster to settle a claim made under this policy which is over \$1,000, or if unusual circumstances, as determined by the City, exist or if a disagreement with the property owner arises.

PASSED AND APPROVED this 6th day of October, 1987.

APPROVED

By: Marilyn Johnson
Mayor

ATTEST
By: Guzanne McWhorter
City Clerk

RESOLUTION NO. 48-78

A RESOLUTION ESTABLISHING A POLICY REGARDING THE PAYMENT OF COMPENSATION BY THE CITY OF FAYETTEVILLE FOR PROPERTY DAMAGE CAUSED BY A CITY SEWAGE SYSTEM BACK-UP.

WHEREAS, the City's sewage system on occasion experiences an isolated back-up; and

WHEREAS, such a back-up sometimes results in damage to a building structure or to building contents; and

WHEREAS, under existing law, the City is not legally liable for such damage, but the Board of Directors has determined that under certain conditions, the City should compensate the property owner for such damage.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the Board of Directors hereby establishes the following policy regarding the payment of compensation to a property owner for damages to a building structure or to building contents caused by a back-up of the City's sewage system:

The City will pay a maximum of \$1,000 per incident, per dwelling unit (or per business unit), excluding occupant labor, for the documented costs of repairing, replacing, or cleaning a building structure or building contents damaged by a City sewage system back-up; provided,

- (a) The blockage occurred in a City sewage system main and not in a private line connecting a structure to the City's sewage main; and
- (b) The sewage back-up was caused by an isolated line blockage and not by excessive infiltration of surface water or by general flooding conditions.

Section 2. Any claim for payment of compensation under Section 1 of this resolution shall be presented in writing to the City Engineer within ninety (90) days of the incident giving rise to the claim. The complaint shall be signed by the claimant and shall state concisely the facts upon which the claim is based and shall set forth the address of the claimant, the time, date and place of the incident giving rise to the claim, and the amount claimed. The claimant shall furnish the City Engineer with (a) a description of the property damaged and a description of the damage done, and (b) itemized statements or bills from those performing repair or cleaning service or furnishing repair or cleaning materials and supplies with notations as to whether or not the same have been paid, and, if paid, the date of payment.

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Section 3. The City Engineer or his duly authorized representative, shall investigate each claim. Within thirty (30) days of receipt of a claim, the City Engineer shall render a decision on the claim and notify the claimant in writing of his decision. A claimant may appeal the decision of the City Engineer to the City Board of Directors by filing written notice of appeal with the City Clerk within ten (10) days from the date of the City Engineer's decision.

PASSED AND APPROVED this 1st day of August 1978.

APPROVED:

Ernest E. Lonsberry
MAYOR

ATTEST:

Silene Ellsworth
CITY CLERK

