

AGENDA REQUEST FORM

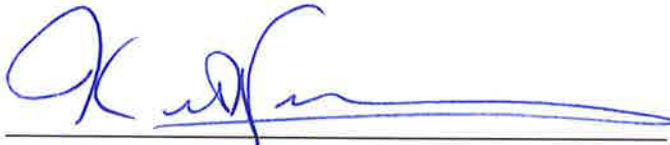
FOR: Council Meeting of June 21, 2022

FROM: City Attorney Kit Williams

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

AN ORDINANCE TO AMEND § 39.10 WATER AND WASTEWATER DAMAGE CLAIMS AND § 39.11 DAMAGE CLAIMS OTHER THAN WATER AND WASTEWATER DAMAGE CLAIMS OF THE *FAYETTEVILLE CODE* TO INCREASE THE ALLOWED COMPENSATION AMOUNT BY 25% BECAUSE OF A DECADE OF INFLATION AND TO APPROVE AN EMERGENCY CLAUSE

APPROVED FOR AGENDA:



City Attorney Kit Williams
Approved

June 9, 2022



OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Jodi Batker
Paralegal

TO: **Mayor Jordan**
City Council

CC: **Susan Norton**, Chief of Staff
Tim Nyander, Utilities Director
Paul Becker, Finance Director

FROM: **Kit Williams**, City Attorney

DATE: **June 9, 2022**

RE: **Amending §39.10 and §39.11 Claims for Compensation**

Because of the unprecedented major rupture of one of the City's largest water mains which caused significantly more damage to nearby homes than any previous main breakage and because the maximum limits of compensation that can be authorized by the City Council has not been changed for over a decade, the City Council requested that I present an amendment which would increase its compensation authority by 25%. I have done so and have attached this proposed ordinance for your review. This ordinance includes an Emergency Clause, so it can become immediately effective upon passage and approval.

This increase in the City Council's authority provided by this ordinance needs to be passed prior to your consideration of the compensation request that you tabled to this meeting which will be heard during Unfinished Business. This will require the City Council to Suspend the Rules to place this ordinance after Consent and **before** Unfinished Business. This ordinance will also need to be read all three times and have the Emergency Clause approved before the compensation Resolution can be considered in order for the Council to have legal authority to approve up to \$50,000.00.

39.02—39.09 Reserved**ARTICLE II DAMAGE CLAIMS****39.10 Water And Wastewater Damage Claims**

- (A) *Establishment of Property Damage Claim Compensation Policy.*
- (1) 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.
 - (4) When a possible water leak claim has been promptly called to the attention of water and sewer staff who initially could not detect or determine the cause of such leak which then caused the property owner to invest in sump pumps and/or other reasonable measures to protect its property, compensation for such property damage prevention efforts may be paid pursuant to this article if a compensable water leak is later discovered or confirmed by city staff.
- (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 (3) 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.

Amended to
increase all
amounts by
25%

- (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 (2/3) 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.*

- (1) 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.*

- (1) 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.
(Ord. No. 5504, 6-5-12; Ord. No. 5938, §1, 12-20-16)

39.11 Damage Claims Other Than Water And Wastewater Damage Claims

(A) *Establishment of Property Damage Claim Compensation Policy.*

- (1) Without waiving its statutory sovereign immunity, the city establishes the following voluntary policy governing the permissible payment of reasonable compensation for property damage claims (other than water and wastewater) proximately caused by uninsured city vehicles, equipment, infrastructure, or personnel activities. Claims relating to city vehicles which are insured shall be handled by the city's insurance adjustor (currently the Municipal League) except that very small property damage claims may be voluntarily paid by the city if a full release is obtained.

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

- (1) The cause of the damage must be directly attributed to a malfunction of such uninsured vehicle or equipment, neglect or misuse of such equipment by city personnel, dangerous disrepair of city infrastructure, or other similar situation.
- (2) Any problem with the city's infrastructure that causes damage must not have been caused by factors beyond the city's control such as floods, tornados, ice storms or other acts of God, nor by acts of third parties, nor by the failure of a claimant to act in a reasonably prudent manner.
- (3) A claim form must be completed in writing and submitted to the Mayor's Office within thirty (30) days of damage occurrence. Claim forms may be supplemented later with additional information, bills, etc. as allowed by the Chief of Staff 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 repair of the damage or, in the event that the cost of 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 repair or replacement of property.
- (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 Chief of Staff 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 unless in an extraordinary case the Mayor recommends and the City Council by two-thirds ($\frac{2}{3}$) majority approves an exemption from this \$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.

*Amended to
increase all
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25%*

(D) *Discretion of the City.*

deleted as
unnecessary →

(1) The city acting through its Chief of Staff 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. Only the Mayor may request City Council consideration for an amount in excess of \$8,000.00. This section provides no right to compensation for any claimant, nor any right to appeal to the Mayor or City Council.

(2) The city does not waive its sovereign immunity by considering whether or not to voluntarily pay any portion of a damage claim submitted for review under this section. The decision of the city is final and unappealable to any court.

(E) *Release Required if Compensation Paid.*

(1) 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.

(Ord. No. 5505, 6-5-12)

39.12—39.99 Reserved