

ORDINANCE NO. 62-22

AN ORDINANCE AMENDING THE 2020 LIMITED CLAIMS POLICY ADOPTED BY ORDINANCE NO. 95-20 TO ALLOW LIMITED CLAIMS RELATED TO DAMAGE CAUSED BY FALLEN TREES IN CITY RIGHTS-OF-WAY

WHEREAS, the City of Fort Smith enjoys immunity from tort liability except in certain instances where it adopts a policy to accept limited responsibility for certain claims of damages; and

WHEREAS, the City of Fort Smith adopted the 2020 Limited Tort Claims Policy with the approval of Ordinance No. 95-20 on October 10, 2020; and

WHEREAS, recent discussion of a specific loss caused by a fallen tree has given cause to amend such Limited Tort Claims Policy; and

WHEREAS, three (3) copies of Amended 2020 Limited Tort Claims Policy have been on file in the Office of the City Clerk of the City of Fort Smith for inspection and review by the public prior to the passage of this Ordinance.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Board of Directors of the City of Fort Smith, Arkansas, that:

Section 1. The Amended 2020 Limited Tort Claims Policy is hereby adopted.

Section 2. The codifier shall codify the adopted amendments by amending existing sections of the 2020 Limited Tort Claims Policy at the discretion of the codifier.

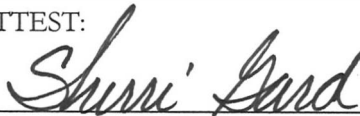
Section 3. All other provisions of Ordinance No. 95-20 shall remain in effect.

ADOPTED this 16th day of August, 2022.

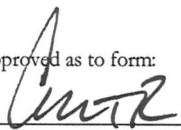
APPROVED:


Mayor

ATTEST:


City Clerk

Approved as to form:


City Attorney
Publish One Time

AMENDED
2020
LIMITED POLICY OF THE CITY OF FORT SMITH, ARKANSAS FOR THE
HEARING AND SETTLING OF SPECIFICALLY IDENTIFIED TORT
CLAIMS

This policy is established to govern the hearing and settling of tort claims arising because of the actions of the employees of the City of Fort Smith. The City acknowledges its immunity from liability, except to the extent that the City may be covered by liability insurance, for damages and further acknowledges that no tort action is permitted to lie against the City because of the acts of its agents and employees. A. C. A. Section 21-9-301 (Repl. 1995). The City determines, by this policy, to hear and settle only those specifically identified tort claims described in the policy and no others, and the City agrees to hear and settle the specifically identified claims only pursuant to the expressed procedures and limitations of liability set forth in this policy. The City reserves the right to amend or repeal in its entirety the policy at any time irrespective of any prior occurrence which could result in a claim(s) or the pendency of a claim(s).

I. TORT CLAIMS AS TO WHICH POLICY APPLIES.

Unless limited by the third sentence of this paragraph I, and according to the limitations and procedures set forth in this policy, the City shall receive for hearing and settling tort claims involving allegations of property damage arising from the negligent action(s) of employee(s) of the City causing a sanitary sewer back-up, a water main line break (leak), a water service line break (leak); vehicle damage caused by displaced manhole lid, or a tree falling from City controlled right-of-way . No other tort claims shall be received for processing pursuant to this policy.

Specifically, this policy shall not authorize the processing of claims of personal injury or claims arising from intentional acts of City agents and employees, claims of strict liability, claims not directly related to the performance of the job duties of the involved City employees (even though they may have been "at work" at the time of the occurrence), claims of damage to uninsured real or personal property including vehicles, or claims covered by any liability insurance policy obtained by the City, obtained by others for the benefit of the City, or obtained by others for their own benefit.

"Sanitary sewer back-up" shall refer solely to property damage claims arising from the negligent actions of City employees proximately causing sanitary sewer flows to discharge from the City's sanitary sewer lines directly (not by over land surface flow) into a structure then utilized for

residential, commercial or industrial purpose.

"Water main line break" shall refer solely to property damage claims arising from the negligent actions of city employees proximately resulting in water flow from a break (leak) in City water distribution lines (but not service lines from distribution lines to individual water meters) to enter into residences or structures, or which otherwise causes damage to property.

"Tree falling from City controlled right-of-way" shall refer solely to property damage claims arising from the negligent actions of City employees in failing to remove preciously diseased or damaged trees from right-of-way controlled by the City (public street, alley, or easement areas).

"Vehicle damage caused by displaced manhole lid" shall refer solely to damage to a vehicle arising from the vehicle striking a sanitary sewer manhole in a public roadway where the manhole lid has been displaced.

"Water service line break" shall refer solely to property damage arising from the negligent actions of city employees proximately resulting in water flow from a break (leak) in City water service lines (but not water main line break) entering into residences or structures, or which otherwise causes damage to property.

II. PROCEDURE FOR PROCESSING CLAIMS.

The following procedures shall govern the processing of claims submitted pursuant to this policy.

- (a) The term "Utility Director" shall refer to the Utility Director or his/her designated agent.
- (b) The term "City Administrator" shall refer to the City Administrator or his/her designated agent.
- (c) All claims filed on a date prior to December 1, 2020, shall be processed under the policy established by Ordinances No. 54-14 and 57-17. All claims filed on or after the date of December 1, 2020, shall be processed under this policy, regardless of whether the claim resulted from an occurrence of back-up, water main line break, building foundation settlement, or occurrence of a water service line leak on a date before or after December 1, 2020.
- (d) Any person making a claim under this policy may provide in writing to the Utility Director within thirty (30) days of the occurrence a notice of intention to file a claim.

Any person who complies with this notice provision may thereafter, within the time limit and according to the procedures set forth in (d) below, file a written claim.

- (e) All claims shall be submitted in writing (containing the name, address and telephone number of the claimant) delivered to the Utility Director within the time periods provided in (c) or, if notice of intention to file a claims has been provided pursuant to (c), within sixty (60) days of delivery of the notice of intention to file a claim. If delivered in writing within the time period provided in (d), the claimant may request an extension of time for filing a claim which may be considered at the discretion of the Utility Director.
- (f) (1) When used in this policy, the term "single property" refers to real property, irrespective of platting or description as more than one lot or parcel, owned by the same person, persons, entity or entities.

(2) All claims from a sanitary sewer back-up into a single structure shall be consolidated and handled as one claim subject to the \$5,000.00 limitation provided by Section III (b). All claims from a water main line break across a single property shall be consolidated and handled as one claim subject to the \$5,000.00 limitation provided by Section III (b). All claims for a water service line break located on a single property shall be consolidated and handled as one claim subject to the \$5,000.00 and \$10,000.00 limitations provided by Section III (b). All claims for vehicle damage arising from a single occurrence of displaced manhole lid shall be subject to the \$2,000.00 limitation provided by Section III (b). All claims for fallen tree damage on a single property shall be consolidated and handled as one claim subject to the \$500.00 limitation provided by Section III(b).

(3) Irrespective of the "single property provisions of this subparagraph (e), in the event of damage to both real property and personal property resulting from a sanitary sewer back-up, water main line break, or water service line break, any separate owners of the real property and the personal property may each separately present a claim under this policy and each, separate claim may be paid; provided the maximum payment on a separate personal property claim is \$2,500.00.
- (g) All claims, shall be considered by the Utility Director, who shall determine all requisite facts under this policy, including the existence of negligence as described in Section I. The Utility Director shall have the authority to recommend for payment, from funds

appropriated for that purpose, such claims. With reference to the existence of negligence on sanitary sewer backup claims, the Utility Director shall assume that any discharge originating in the sewer system of the City (as opposed to the claimant's service line) proximately arose from a negligent action of the City unless the Utility Director determines there is objective evidence of another caused of the back-up. With reference to the existence of negligence on water main line break and water service line break claims, the Utility Director shall assume that any flow of water from a broken City water main line or service line proximately arose from a negligent action of the City unless the Utility Director determines there is objective evidence of another cause of the water main or service line break. With reference to the existence of negligence on vehicle damage from a displaced manhole lid, the Utility Director shall assume that any such damage proximately arose from a negligent action of the City unless the Utility Director determines there is objective evidence of another cause of the displaced manhole lid. With reference to the existence of negligence regarding fallen tree damage claims, the Utility Director shall assume that from the tree fell due to a negligent action of the City unless the Utility Director determines there is objective evidence of another cause for the fallen tree.

- (h) Claims denied, in whole or part, by the Utility Director may be appealed to the City Administrator. A claimant shall have a period often (10) days, from the date of notification by the Utility Director, to appeal the decision to the City Administrator. Said notification shall be issued by first class mail to the address indicated by the written claim of the claimant. The ten day period will run from the date of issuance of notification for any claimant whose address is located within the City of Fort Smith. In the event that the claimant's address is located outside the City of Fort Smith, a period of four (4) days shall be added to the period in which an appeal to the City Administrator may be submitted.
- (i) A claimant's appeal shall be filed in writing and filed with the City Administrator, and the appeal shall be scheduled by the City Administrator and the claimant notified of the date of the hearing.
- (j) In addition to the other limitations set forth in this policy, compensation paid for damage to real or personal property shall be limited so as to not exceed 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 so as to not exceed

the fair market value of the damage property minus any salvage value. No compensation shall be granted for inconvenience, loss of use, loss of profits, dislocation expenses or personal injury including, without limitation, emotional distress.

- (k) Unless the requirement is waived or modified by the Utility Director, the claimant shall submit three qualified estimates of the cost of repair of the property in question or three opinions of qualified persons of the fair market value, minus salvage costs, of damaged property.
- (l) For vehicle damage claims arising from a displaced manhole lid, the claimant must also submit a police report documenting the incident.
- (m) The provision of this policy regarding types of claims subject to the policy, limitation periods, limitations on coverage and the other provisions of the policy shall be applicable to all claims including those appealed to the City Administrator.

III. ADDITIONAL LIMITATIONS ON CLAIMS.

In addition to limitations set forth at other places in this policy, all claims shall be subject to the following limitations.

- (a) No claim shall be processed or paid with respect to real or personal property, including a vehicle, which is not insured under a policy of insurance providing coverage for the claim event. Payment shall be limited to the amount of the deductible, if any, on the applicable policy, and the payment is additionally limited by the maximum payment amounts of (b) below. No compensation shall be paid on the basis of any claim accruing to the benefit, directly or indirectly, of an insurance carrier. Any claim may be rejected by the Utility Director or the City Administrator from further handling in the event that the claimant fails to comply with any reasonable requirements of the Utility Director or the City Administrator regarding determinations of insurance coverage.
- (b) Except for separate personal property claims, the maximum payment amounts for approved claims under this policy are \$5,000.00 for any sewer backup claim; \$2,000.00 for any vehicle damage claim; \$5,000.00 for any water main line break claim; \$5,000.00 for any water service line break claim, provided the maximum shall be \$10,000.00 where the water meter attached to the water service line is located within a privately-owned building or structure; and \$500.00 for any fallen tree claim. The maximum payment for a personal property claim separate from a real property claim is \$2,500.00

(pursuant to II(e)(3) above).

- (c) During any budget year, no claim shall be processed if the total budget appropriation for handling the claims has been expended.
- (d) Acceptance of the sum paid by the City on a claim will constitute a release and discharge of the City from any and all other liability for existing or future claims arising from the occurrence which gave rise to the claim of back-up. Additionally, the acceptance shall acknowledge the limitation set forth in the next sub-paragraph regarding future occurrences.
- (e) After the City has paid a sewer back-up claim at a location in the City (either under this policy, the policy or previous policies), the City shall not thereafter consider or pay a claim under this policy arising from a sewer back-up at the same location presented by the previously paid claimant or said claimant's spouse or immediate family member (parent or child or related person residing in same household).
- (f) This policy shall not apply where there is a written agreement absolving or releasing the City of liability.