
SALT LAKE CITY COUNCIL STAFF REPORT

DATE: April 18, 2006
SUBJECT: Amendments to the No-Fault Utilities Claims Ordinance
STAFF REPORT BY: Lehua Weaver
CC: Rocky Fluhart, Sam Guevara, DJ Baxter, LeRoy Hooton, Jeff Niermeyer, Ed Rutan, Chris Bramhall

Since the implementation of a No-Fault Utilities Claim Ordinance in 1989, an industry policy shift has been occurring with regard to the damage claim limits. Through review of the no-fault utility ordinance, the Department of Public Utilities has identified several significant changes to the claim process, and proposes that certain amendments be made to the ordinance.

The most significant change proposed includes the elimination of the payment limit. Through this review process, the Department has also established criteria for cleaning standards. The Salt Lake Valley Health Department has reviewed the City developed standards to ensure that the criteria are consistent.

This proposed change would affect all three of the Public Utilities enterprise funds – water, sewer and stormwater.

KEY ELEMENTS

The proposed changes include:

1. Elimination of payment limit. The existing ordinance sets payment limits of \$3,000 per home, \$35,000 per incident, and \$50,000 per calendar year. The proposed amendment would eliminate all of these payment maximums.
2. Clean-up Standards. In response to the need for acceptable clean-up standards, especially in events involving sewage back-up, the Department has created criteria through collaboration with the Water Environment Association of Utah, U.S. Center for Disease Control and Prevention, Environmental Infection Control in Health Care Facilities, Illinois Department of Public Health, Minnesota Department of Health, IICRC S500 standards used by the private cleanup companies, and the Colorado Department of Public Health. The Department has also worked with the Health Department to document consistent criteria for cleaning up sites.
3. Clean-up Contractor. Through the City's procurement procedures, the Department will retain one or more clean-up contractors to perform clean-up services on an as-needed basis. (Formerly, the Department's employees were responsible for the initial response to sites and clean-up efforts.) If a resident has otherwise employed a clean-up company to perform this work, the City would still reimburse the resident for the cost of that clean-up in the amount the City would have otherwise paid to one of its contractors.
4. Reimbursement based on actual cash value. Applications for claim payments will be based on the current actual cash value of an item and not its replacement value. This will apply to items that were not able to be restored in the clean-up process, and the actual cash value will be determined by a professional appraiser.

5. Definition of “force majeure.” The proposed ordinance defines “force majeure” as, “acts of God; acts of public enemies, insurrection; riots; war; landslides; lightning; earthquakes; fires; storms; floods; washouts; droughts; civil disturbances; explosions; acts of terrorism, sabotage; or any other similar cause or event not reasonably within the city’s control.” The proposed ordinance amendment specifies that for any such occurrences, a claim would not qualify.

The Department of Public Utilities has paid out the following in water and sewer no-fault claims:

- In 2005 –
 - \$18,538 was paid out in 15 **sewer** claims at an average of \$1,236 per claim.
 - \$12,470 was paid out in 9 **water** claims at an average of \$1,386 per claim.
- 1995 through 2005 –
 - \$154,381 was paid out in 149 **sewer** claims, an average of \$1,036 per claim.
 - \$173,908 was paid out in 246 **water** claims, an average of \$707 per claim.

These amounts include all customers and facilities both inside and outside the City limits, but do not include the cost of initial clean-up, which was performed by Public Utilities staff.

Based on estimates and averages, if the proposed ordinance is adopted, an average payment **on a sewer claim** may be \$15,000. *Please note: this would include cleaning costs performed by a contractor under this proposal. Cleaning costs are not included in the average amounts listed above.*

One major cause in the occurrence of back-ups or breaches of the service lines is an obstruction in the sewer and water pipes. This obstruction may be in the form of a tree root or other item clogging the line. As a preventative measure, the Department of Public Utilities has established maintenance standards, which exceed national averages for cleaning frequency and television monitoring of lines, and they have a developed CIP plan to rehabilitate a number of pipes each year.

Some aspects of the application process and procedure would remain the same between the existing ordinance and proposed amendments. These include:

- Payment by the City through this no-fault process does not constitute an admission by the City of responsibility or liability for the event.
- The loss identified by the claim is not otherwise partially or fully covered by private insurance. (Any amount covered by private insurance would reduce the City’s payment by the corresponding amount. For example, if the loss is completely covered by private insurance, an application to the City for damages would not qualify.)
- An application must be filed with 90 days.
- Applications will be submitted to the Recorder’s Office, who will refer it to the Department of Public Utilities, who will provide a recommendation and related information to the Attorney’s Office.

MATTERS AT ISSUE

In an informal survey conducted by Public Utilities staff, other cities were identified who also have eliminated payment maximums. Of those surveyed, the other utilities are similar to Salt Lake City in that they also perform preventative maintenance measures. Of note, there was an

incident in Provo which resulted in a \$375,000 claim being paid for the total event – this included all payments made to the twenty residents who filed claims.

Other cities also mentioned that their motivation for eliminating payment maximums is to work with their residents and to provide the best service possible.

- 1. The Council may wish to ask about information gathered from other cities or utility districts.**
- 2. The Council may wish to ask whether Salt Lake City’s practice of maintaining water and sewer lines would reduce the potential claims received or should merit some limit, even if higher than the current practice.**

Council Transmittal

To: Rocky Fluhart, Chief Administrative Officer

March 29, 2006

RE: Amendments to Chapter 3.36, No-Fault Utilities Claims Ordinance

Recommendation: The City Council approves the amendments to Chapter 3.36, No-Fault Utilities Claims.

Availability of Funds: FY 2005-06 Budget – Claims & Damages Fund

Discussions: In 1989, Salt Lake City Corporation adopted a No-Fault Utilities Claim Ordinance to provide immediate assistance to property owners for cleanup of water, sewage, and mud and the replacement of carpet and other personal effects without assuming responsibility for the damage. In 2001, the Ordinance was amended to increase the No-Fault payment values.

The No-Fault Claims Ordinance has proven successful in dealing with most claims. However, since the ordinance was first enacted, there has been a paradigm shift in standards used to cleanup flooded areas and compensate owners for damaged property. The current trend is towards government assuming more responsibility for damages resulting from non-negligent flooding of private property arising from the operations of public utility facilities.

There has been a policy trend away from standing behind "Government Immunity" in dealing with utility non-negligent flooding, to a policy of government taking more responsibility for cleanup and personal property damages expenses under No-Fault rules. The cost of a more liberal policy is shared by all customers of the utility through rates charged for utility services, which act much like a public insurance policy.

Summary of the 2006 amendments include:

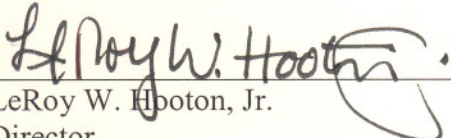
1. The Department of Public Utilities (Public Utilities) will establish cleanup criteria and specifications, with public health and safety guidance standards.
2. The cleanup of flood damaged properties will be conducted by private contractors. In accordance with the city's procurement procedures, the Public Utilities will engage the services of one or more cleanup contractors.

3. If damaged real or personal property cannot be reasonably restored to pre-event condition Public Utilities will pay to the property owner the estimated actual cash value at the time of the event. Such value will be determined by a professional appraiser engaged by the city for this purpose. In no event will Public Utilities pay, or reimburse the property owners for the payment of special or consequential damages.
4. Damaged property owner must make an application for cleanup expenses and reimbursements.
5. Eligibility for assistance excludes damages from force majeure and other criteria.
6. Property owner are responsible for applying for assistance in a timely manner.
7. Payment for cleanup and damaged personal property does not imply liability of the Department of Public Utilities, an admission of negligence or responsibility of the city or the department for any damage or loss.
8. Any assistance or payment is strictly voluntary on the part of the Department of Public Utilities.
9. Any assistance or payment shall constitute a full and complete release of any and all claims against the city or Department of Public Utilities, its officers, employees and agents arising from the incident.
10. The No-Fault payment maximum limits have been eliminated from the current \$3,000 per home and location, \$35,000 per incident and \$50,000 per calendar year to no limit.
11. The Department of Public Utilities is authorized budget funds in its Claims & Damages Fund to pay for costs of providing assistance and payments for No-Fault claims. These costs will be included in the three enterprise funds rate calculation formula.

On March 24, 2006 the Public Utilities Advisory Committee recommended approval of the No-Fault Ordinance.

Contact Person(s): LeRoy W. Hooton, Jr. at 483-6768, Jeff Niermeyer at 483-6785 or Chris Bramhall 535-7683.

Submitted By:



LeRoy W. Hooton, Jr.
Director

Attachment

SALT LAKE CITY ORDINANCE
No. _____ of 2006
(Relating to No-Fault Utilities Claims)

AN ORDINANCE REPEALING IN ITS ENTIRETY CHAPTER 3.36, *SALT LAKE CITY CODE*, RELATING TO NO-FAULT UTILITIES CLAIMS, AND ENACTING A NEW CHAPTER 3.36 RELATING TO NO-FAULT UTILITIES CLAIMS; ESTABLISHING PROCEDURES FOR INITIAL CLEANUP RESPONSE, AND FOR THE PROCESSING OF CLAIMS FOR DAMAGES CAUSED BY A BREAK, LEAK, BACKUP OR OTHER FAILURE OF CITY WATER, SEWER, STORM DRAIN AND CANAL FACILITIES, THROUGH NO FAULT OF THE CITY; ESTABLISHING STANDARDS FOR CLEANUP; ESTABLISHING QUALIFICATIONS FOR ASSISTANCE; AND RELATED MATTERS.

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Be it ordained by the City Council of Salt Lake City, Utah:

SECTION 1. That Chapter 3.36, *Salt Lake City Code*, pertaining to no-fault utilities claims be, and the same hereby is, repealed in its entirety.

3.36.010 Short Title:

The ordinance codified in this chapter shall be known as the *NO-FAULT UTILITIES CLAIMS ORDINANCE*. (Ord. 60-85 § 1, 1985; prior code § 49-11-1)

3.36.020 Purpose:

It is the purpose of this chapter to compensate persons for loss sustained as the result of a break or backup in a city-owned and maintained water main or sewer line, regardless of fault, within

the restrictions, limitations and other provisions of this chapter. (Ord. 60-85 § 1, 1985: prior code § 49-11-2)

3.36.030 Definitions:

Unless the context specifically indicates otherwise, the following terms and phrases, as used in this chapter, shall have the meanings hereinafter designated:

A. "City" means the Salt Lake City Corporation, a political subdivision of the state.

B. "City attorney" means the city attorney or his/her designee.

C. "Person or applicant" means any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate or any other legal entity (except the United States government or any of its agencies, the state and any of its political subdivisions) or their legal representatives, agents or assigns.

D. "Political subdivision" means any political subdivision of the state, including state departments and agencies, cities, towns, counties and school districts. (Ord. 60-85 § 1, 1985: prior code § 49-11-3)

3.36.040 Administration And Establishment Of Regulations:

The director may establish regulations sufficient to provide for the handling of such claims and disbursement of those funds which are set aside for payment of claims under this chapter. (Ord. 60-85 § 1, 1985: prior code § 49-11-8)

3.36.050 Reimbursement Application Time Limitations:

All applications for reimbursement under this chapter must be submitted to the city recorder within ninety (90) days after the incident occurs. (Ord. 60-85 § 1, 1985; prior code § 49-11-4)

~~3.36.060 Application Investigation And Recommendation:~~

~~Applications received by the city recorder shall be referred to the department of public utilities for investigation and recommendation. The department's report shall be forwarded to the city attorney for determination under the criteria of this chapter. All payment authorized by the city attorney shall be made by the director of the department of public utilities solely from funds to be set aside under this chapter. (Ord. 60-85 § 1, 1985; prior code § 49-11-5)~~

~~3.36.065 Criteria For Payment:~~

~~A. The determination as to whether to make payment for loss under this chapter shall be based on the following criteria:~~

- ~~1. Whether an eligible applicant suffered an otherwise uninsured property loss, caused by breach or backup of a city-owned water main, sewer line or storm drain line, under circumstances where the applicant acted responsibly to avoid the loss; and~~
- ~~2. If so, whether the extent of the loss has been adequately substantiated.~~

~~B. The following shall result in the denial of an application:~~

- ~~1. Application not timely submitted;~~
- ~~2. Loss fully covered by private insurance;~~
- ~~3. Applicant ineligible under the terms of this chapter;~~
- ~~4. Loss caused by an irresponsible act of the applicant, applicant's agent, or member of applicant's business or household;~~

5. ~~Loss or eligibility unsubstantiated.~~

C. ~~The following shall result in reduction of payment:~~

1. ~~Loss partially covered by private insurance;~~
2. ~~Loss exceeds funding limits of this chapter;~~
3. ~~Verification of loss inadequate or incomplete;~~
4. ~~Applicant did not cause the problem but failed to act responsibly to minimize the loss.~~

~~(Ord. 63-01 § 1, 2001; Ord. 60-85 § 1, 1985; prior code § 49-11-91)~~

~~3.36.070 Maximum Payments:~~

~~No payment under this chapter shall exceed any of the following:~~

- A. ~~Three thousand dollars (\$3,000.00) per application or location;~~
- B. ~~Thirty five thousand dollars (\$35,000.00) per incident;~~
- C. ~~Fifty thousand dollars (\$50,000.00) per calendar year. (Ord. 63-01 § 2, 2001; Ord. 60-85 § 1, 1985; prior code § 49-11-6)~~

~~3.36.080 Payment Does Not Imply Liability:~~

A. ~~Any payment made under this chapter shall not be construed as an admission of nor does it imply any negligence or responsibility on the part of the city for such damage. Any payment made under this chapter is strictly voluntary on the part of the city.~~

B. ~~This chapter shall not in any way supersede, change or abrogate the state government immunity act, Utah Code Annotated, section 63-30-1 et seq., as amended, or its successor, and its application to the city, or establish in any person a right to sue the city under this chapter.~~

~~C. Any payment made under this chapter and accepted shall constitute a full and complete release of any and all claims against the city, its officers, employees and agents arising from the incident. (Ord. 60-85 § 1, 1985; prior code § 49-11-9[±])~~

~~3.36.090 Budget Expenditures:~~

~~The city department of public utilities is authorized to provide for and include within its budget a fund from which an amount not to exceed thirty thousand dollars (\$30,000.00) annually may be drawn to make the foregoing payments. (Ord. 45-01 § 4, 2001; Ord. 60-85 § 1, 1985; prior code § 49-11-7)~~

~~3.36.100 Claims From Other Governmental Agencies:~~

~~Notwithstanding any other provisions of this chapter, no application shall be accepted from the United States or any of its departments or agencies, the state or any political subdivision. (Ord. 60-85 § 1, 1985; prior code § 49-11-10)~~

SECTION 2. That a new Chapter 3.36, Salt Lake City Code, is enacted to read as follows:

3.36.010 Short Title:

The ordinance codified in this chapter shall be known as the NO-FAULT UTILITIES CLAIMS ORDINANCE.

3.36.020 Purpose:

The purpose of this chapter is to assist in the cleanup of real and personal property, and/or compensate persons for the loss of real or personal property, destroyed or damaged as the result

of a break, leak, backup or other failure of city facilities, regardless of fault, within the restrictions, limitations and other provisions of this chapter.

3.36.030 Definitions:

Unless the context specifically indicates otherwise, the following terms and phrases, as used in this chapter, shall have the meanings hereinafter designated:

(a) “Actual cash value” means the actual, depreciated value of an item, and not the replacement value.

(b) “City” means Salt Lake City Corporation, a political subdivision of the state.

(c) “City attorney” means the city attorney or his/her designee.

(d) “City facilities” means any culinary water, sanitary sewer or storm sewer pipeline, any irrigation water canal, and all related appurtenances, which are owned, operated and maintained by the department.

(e) “Cleanup” means all activities necessary to reasonably restore destroyed or damaged real and personal property to its pre-event condition, in accordance with cleanup criteria.

(f) “Cleanup contractor” means an independent disaster cleanup contractor, licensed to do business in the state.

(g) “Cleanup criteria” means cleanup standards, procedures and protocol established by the director pursuant to this chapter.

(h) “Department” means the city’s department of public utilities.

(i) “Director” means the director of the department, or his/her designee.

(j) "Force majeure" means acts of God; acts of public enemies; insurrection; riots; war; landslides; lightning; earthquakes; fires; storms; floods; washouts; droughts; civil disturbances; explosions; acts of terrorism, sabotage; or any other similar cause or event not reasonably within the city's control.

(k) "Person or applicant" means any individual, partnership, firm, company, corporation, association, joint stock company, trust, estate or any other legal entity (except the United States government or any of its agencies, and the state and any of its agencies and political subdivisions) or their legal representatives, agents or assigns.

(l) "Private facilities" means any pipelines and related facilities which are owned and operated by a property owner, and which connect to city facilities.

(m) "Property owner" means the owner of the premises which has sustained a loss described in this chapter, or any person lawfully in possession of such premises.

3.36.040 Establishment Of Cleanup Criteria And Other Regulations:

The director shall, from time to time, establish cleanup criteria which shall constitute the standard for cleanup and payment under this chapter. In establishing such cleanup criteria, the director shall give due consideration to generally available health guidelines, recommendations from industry, governmental and academic experts, and other sources of guidance reasonably deemed by the director to be balanced, unbiased, and protective of health and safety. The director may establish such additional rules, regulations and procedures which are consistent with this chapter, as may be necessary or convenient in effecting the purposes of this chapter.

3.36.045 Cleanup Of Real And Personal Property:

(a) The director shall, in accordance with the city's standard procurement procedures, engage the services of one or more cleanup contractors to perform cleanup services at the direction of the director on an as-needed basis.

(b) Upon discovering a break, leak, backup or other failure of city facilities, or any damage resulting from the same, a property owner shall immediately notify the director of such event.

(c) Upon notification of the occurrence of the event, the director shall contact a cleanup contractor under contract with the city pursuant to subsection (a) above, and direct the cleanup contractor to perform all cleanup work at the premises, in accordance with established cleanup criteria.

(d) In the event the property owner engages the services of a cleanup contractor prior to notifying the director of the event, the department may reimburse the property owner for actual expenses incurred by the property owner, but only up to the amount the department would have paid its own cleanup contractor under subsection (c) above.

(e) In the event the damaged real or personal property cannot, in the judgment of the director, be reasonably restored to its pre-event condition, in accordance with the cleanup criteria, the department may pay to the property owner the estimated actual cash value, at the time of the event, of such property. Such value shall be determined by a professional appraiser engaged by the city for such purpose.

(f) In no event shall the department pay, or reimburse the property owner for the payment of, special or consequential damages.

3.36.050 Application; Time Limitations:

Any request for cleanup under Section 3.36.045(c), reimbursement of cleanup expenses under Section 3.36.045(d), or payment of actual cash value under Section 3.36.045(e), shall be made by filing a written application in such form as shall be prescribed by the director pursuant to Section 3.36.040; provided that the initial request for cleanup may be made by contacting the director by telephone or other means, followed by a written application. Written applications shall be submitted to the city recorder within ninety (90) days after the occurrence of the event.

3.36.060 Application-Investigation And Recommendation:

Applications received by the city recorder shall be referred to the department for investigation and recommendation. The department's report shall be forwarded to the city attorney for determination under the criteria of this chapter. All payments authorized by the city attorney shall be made by the director solely from the appropriate enterprise fund managed by the director.

3.36.065 Qualification For Assistance:

An application or request for assistance or payment under this chapter shall qualify only if the director, after due inquiry or investigation, makes an affirmative determination that the event was the result of a break, leak, backup or other failure of city facilities, and that none of the following circumstances apply:

(a) The loss was the result of a force majeure which damaged the city facilities;

(b) The loss was caused by either an act or omission of the property owner, the property owner's agent, or a member of the property owner's family or business;

(c) The property owner failed to file a claim hereunder in a timely manner, or failed to comply with any other procedural requirements of this chapter;

- (d) The loss was the result of intentional or negligent acts of third parties;
- (e) The loss was the result of a break, leak, backup or failure of private facilities; or
- (f) The loss is wholly covered by private insurance.

3.36.070 Reduction In Assistance:

The city may limit any assistance, or reduce any payment, under this chapter based upon any of the following:

- (a) The property owner did not act responsibly to prevent, avoid or minimize the loss;
- (b) The property owner is unable to fully substantiate or document the extent of the loss;
- (c) The loss is partially covered by private insurance.

3.36.080 Payment Does Not Imply Liability:

(a) Any assistance or payment made under this chapter shall not be construed as, and does not imply, an admission of negligence or responsibility on the part of the city or the department for any damage or loss.

(b) Any assistance or payment made under this chapter is strictly voluntary on the part of the department. While it shall be the general policy of the city to follow the provisions of this chapter, the city shall not be required to do so. The city may, based on the particular facts and circumstances of an event, elect to reject a request for assistance hereunder. If a request for assistance under this chapter is not approved by the director within 90 days of filing, it is deemed rejected. In the event a request hereunder is rejected, the property owner's recourse would be to proceed under the provisions of the Utah Governmental Immunity Act and file a notice of claim

thereunder. Nothing in this chapter shall be construed as an acknowledgment by the city that the property owner has a meritorious claim under the Utah Governmental Immunity Act, and the city reserves the right to assert any and all available defenses. The ninety-day notice period under this chapter shall not operate to extend the one-year notice period under the Utah Governmental Immunity Act. This chapter shall not in any way supersede, change or abrogate the Utah Governmental Immunity Act, and its application to the city and the department, or establish in any person a right to sue the city under this chapter.

(c) Any assistance or payment made under this chapter and accepted shall constitute a full and complete release of any and all claims against the city (including the department), its officers, employees and agents arising from the incident.

3.36.090 Budget Expenditures:

The department is authorized to provide for and include within each enterprise fund it manages a separate fund from which amounts may be drawn to make the foregoing assistance or payments. Each such separate fund shall be funded, in amounts deemed by the director to be sufficient for the purpose, from revenues accruing to each respective enterprise fund from all available sources, including regular service charges. The establishment and funding of such funds, and the expenditure of the amounts therein, shall be consistent with applicable law, and all applicable bond covenants of the city.

3.36.100 Claims From Other Governmental Agencies:

Notwithstanding any other provisions of this chapter, no application shall be accepted from the United States or any of its departments or agencies, the state or any political subdivision.

SECTION 23. This ordinance shall take effect immediately upon the date of its first publication.

Passed by the City Council of Salt Lake City, Utah this _____ day of _____, 2006.

CHAIRPERSON

ATTEST:

CHIEF DEPUTY CITY RECORDER

Transmitted to Mayor on _____.

Mayor's Action: _____ Approved. _____ Vetoed.

APPROVED AS TO FORM
Salt Lake City Attorney's Office
Date 3/30/06
By Chris Hill

MAYOR

CHIEF DEPUTY CITY RECORDER

(SEAL)

Bill No. _____ of 2006.
Published: _____.