



MEETING OF SEPTEMBER 19, 2023

TO: Mayor Jordan and City Council

THRU:

FROM: Kit Williams, City Attorney

DATE:

SUBJECT: AN ORDINANCE TO AMEND § 39.10 WATER AND WASTEWATER DAMAGE CLAIMS

RECOMMENDATION:

Council Member Berna is sponsoring an ordinance to amend § 39.10 **WATER AND WASTEWATER DAMAGE CLAIMS**

BACKGROUND:

DISCUSSION:

BUDGET/STAFF IMPACT:

ATTACHMENTS: Agenda Request Form - Ordinance to amend water and wastewater claims, ORD AMEND 36.10 WATER AND WASTEWATER DAMAGE CLAIMS, DC - Ordinance to raise possible award for catastrophic damages to \$100,000, 36 INCH AND LARGER MAP



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2023-1024

AN ORDINANCE TO AMEND § 39.10 WATER AND WASTEWATER DAMAGE CLAIMS

AN ORDINANCE TO AMEND §39.10 WATER AND WASTEWATER DAMAGE CLAIMS OF THE FAYETTEVILLE CODE TO ENABLE THE CITY COUNCIL TO EXCEED THE \$50,000.00 LIMITATION ON COMPENSATION WHEN LARGE, PRESSURIZED WATER TRANSMISSION LINES FAIL AND CAUSE CATASTROPHIC DAMAGE AND TO DECLARE AN EMERGENCY

WHEREAS, the limitations for compensation with § 39.10 **Water and Wastewater Damage Claims** are sufficient for almost all claims and ensure that our rate payers' revenue will be conserved; and

WHEREAS, thirty-six inch (36") diameter and larger pressurized water transmission lines carry so much greater amount of water under pressure that failure or rupture of such a large water transmission line can cause catastrophically greater damage to houses and businesses such that those owners might need to be voluntarily compensated by City Council at a higher maximum level than currently allowed by § 39.10 (C)(4); and

WHEREAS, the City may wish to contractually retain an experienced and competent insurance adjuster for most claims that may likely exceed \$25,000.00 and then rely upon such adjuster's professional analysis to establish possible compensation rather than requiring each claimant to obtain bids or quotes for all items damaged or destroyed by water or wastewater system issues.

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 amends § 39.10 **Water and Wastewater Damage Claims** by enacting a new (C)(5) and moving the current (C)(5) to the (C)(6) position. The newly enacted (C)(5) shall be as follows:

“(C)(5) If damage to a residential or commercial property is caused by the failure or rupture of a thirty-six inch (36”) or greater pressurized water transmission line and water from such failure or rupture causes such catastrophic damage to residential or commercial property that exceeds the Fifty Thousand Dollar (\$50,000.00) limit of § 39.10 (C)(4), such claim should be investigated and reviewed by an experienced and competent insurance adjuster hired by the City who shall report and certify to the City Council the estimated total amount of loss actually suffered by such claimant. The City Council may rely on such certified estimate and by two-thirds vote may then decide to authorize payment to the claimant up to One Hundred Thousand Dollars (\$100,000.00) as a further exemption from the normal Twenty-Five Thousand Dollar (\$25,000.00) damage cap.”

Section 2: Emergency Clause. The City Council of the City of Fayetteville hereby determines that, in order to protect the peace, health, and safety of its citizens, this ordinance needs to go into effect immediately upon its passage and approval and be applicable to all pending and future claims pursuant to § 39.10 of the *Fayetteville Code*.



DEPARTMENTAL CORRESPONDENCE



OFFICE OF THE
CITY ATTORNEY

TO: **Mayor Jordan**
City Council

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

FROM: **Kit Williams**, City Attorney

DATE: **August 25, 2023**

RE: **Ordinance to raise possible award for catastrophic damages caused by very large (36" or larger) pressurized water transmission lines to \$100,000.00**

Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Jodi Batker
Paralegal

City Council Member Scott Berna requested that I draft a potential code change to raise the final cap for possible compensation for catastrophic damages caused by a rupture or other problem with the City's largest pressurized water transmission lines (36 inch or larger). These larger lines carry massively more water under pressure than our smaller water lines so that a break in such large lines can cause significantly greater property damage.

Our Utilities Department is already testing whether in more complex and expensive water/sewer claims, the use of an experienced insurance adjuster could speed the possible compensation procedure and ensure an even fairer recommendation of reasonable compensation could be made to the City Council. This code revision expressly recommends the use of a contracted insurance adjuster for any losses from the larger pipes that could exceed \$50,000.00. However, such adjuster could also be used in smaller claims to obtain a certified estimate for City Council consideration. This would relieve the homeowner from having to obtain three quotes or bids from contractors willing to do various parts of (often relatively minor) repair work. The City could rely on the expertise of such adjuster concerning depreciated value and reasonable repair costs. Such adjuster could save substantial staff time needed in complex repair cases. The City Council would still retain its absolute discretion whether to grant any compensation, and is so, how much compensation is proper.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND § 39.10 **WATER AND WASTEWATER DAMAGE CLAIMS** OF THE *FAYETTEVILLE CODE* TO ENABLE THE CITY COUNCIL TO EXCEED THE \$50,000.00 LIMITATION ON COMPENSATION WHEN LARGE, PRESSURIZED WATER TRANSMISSION LINES FAIL AND CAUSE CATASTROPHIC DAMAGE AND TO DECLARE AN EMERGENCY

WHEREAS, the limitations for compensation with § 39.10 **Water and Wastewater Damage Claims** are sufficient for almost all claims and ensure that our rate payers' revenue will be conserved; and

WHEREAS, thirty-six inch (36") diameter and larger pressurized water transmission lines carry so much greater amount of water under pressure that failure or rupture of such a large water transmission line can cause catastrophically greater damage to houses and businesses such that those owners might need to be voluntarily compensated by City Council at a higher maximum level than currently allowed by § 39.10 (C)(4); and

WHEREAS, the City may wish to contractually retain an experienced and competent insurance adjuster for most claims that may likely exceed \$25,000.00 and then rely upon such adjuster's professional analysis to establish possible compensation rather than requiring each claimant to obtain bids or quotes for all items damaged or destroyed by water or wastewater system issues.

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Section 2: Emergency Clause. The City Council of the City of Fayetteville hereby determines that, in order to protect the peace, health, and safety of its citizens, this ordinance needs to go into effect immediately upon its passage and approval and be applicable to all pending and future claims pursuant to § 39.10 of the *Fayetteville Code*.

39.02

FAYETTEVILLE CODE OF ORDINANCES
TITLE III ADMINISTRATION

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.
- (4) The Utilities Department Director may not authorize any payment greater than \$10,000.00 for any claim pursuant to this section. The Mayor may request the City Council to authorize an amount greater than \$10,000.00 by resolution, but in no case shall the city pay more than \$25,000.00 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 ($\frac{2}{3}$) majority approves an exemption from the \$25,000.00 damage cap and approves a payment up to \$50,000.00.
- (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; Ord. No. 6576, § 1, 6-21-22)

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.