Chapter 3
NO FAULT UTILITIES CLAIMS

9-3-1: SHORT TITLE:

The ordinance codified herein shall be known as the NO FAULT UTILITIES CLAIMS ORDINANCE. (2001 Code § 90-6-101)

9-3-2: PURPOSE:

It is the purpose of this chapter to adopt a program to compensate persons for loss sustained as the result of a break or backup in a city owned and maintained water main or sanitary sewer line. City payments will be made regardless of city fault and as a cost of operating these enterprise functions, but subject to strict policy limitations and within budgeted appropriations. (2001 Code § 90-6-102)

9-3-3: NO FAULT PAYMENT OF CLEANUP AND DAMAGES:

A. Damage From City Owned Water Or Sanitary Sewer Lines: The city shall pay, from funds generated from fees and charges made for water and sanitary sewer services, the reasonable and actual expenses for damages and costs to clean up, sanitize and repair property damaged or destroyed, when such loss or expense is directly and proximately caused by breakage or backup of a city owned and maintained culinary water line or sanitary sewer line. Such payments or services will be made without regard to proving city negligence or fault; however, any such payment or city obligation is subject to: 1) the restrictions, limitations and the other provisions of this chapter; 2) unencumbered and appropriated funds existing in the city's applicable fiscal year budget to satisfy the proved claim; and 3) execution of a full release, approved by the city attorney, whereunder the applicants waive, release and covenant not to sue the city or any of its officers, employees or agents regarding the incident which resulted in the application or claim for damage reimbursement by the city.

B. Damage From Unconnected Private Sewer Lines: Under the same terms and conditions of this chapter and as specifically provided in subsection A of this section, the city shall pay for the reasonable and actual cost of connecting private sanitary sewer lines to the city main line, but only if the applicant reasonably establishes that: 1) the original private sanitary sewer line was never lawfully connected to the city sewer main line; and 2) a certification of occupancy was issued by the city for the structure served by that private sanitary sewer line. However, any city no fault obligation or payment for this private line circumstance is strictly limited to payment for the actual and reasonable excavation and other expenses directly and proximately necessary to extend the preexisting private sewer line and connect it to the city sewer system. No payment right or city obligation is established by this chapter and no payments shall be made: 1) if the building or structure was otherwise lawfully connected to an alternative sewer system, such as a septic tank or to another jurisdiction's sewer system; or 2) for those elements of damages or costs, including preexisting pipe replacement expenses, which are not directly and proximately occasioned by the preexisting private sewer line's failure to have been originally connected to the city sewer system.
C. No Fault Optional; Release Of Right To Sue Required: The city's no fault program, provided in this chapter, shall not affect any rights of any person to alternatively seek redress or damages on the basis of negligence, fault or other applicable legal recourse, permitted under state or federal law. However, any city no fault payment under this chapter shall only be made based on a waiver, release and be in lieu of all other claims regarding the incident. (2001 Code § 90-6-103)

This section has been affected by a recently passed ordinance, 19-05 - UTILITIES - CHANGE OF FORM OF GOVERNMENT. Go to new ordinance.

9-3-4: ADMINISTRATION AND ESTABLISHMENT OF REGULATIONS:

The city manager may establish reasonable regulations and procedures sufficient to provide for the efficient handling of such claims and disbursement of appropriated funds for payment of claims, under the provisions and limitations of this chapter. (2001 Code § 90-6-104)

9-3-5: REIMBURSEMENT; APPLICATION; TIME LIMITATIONS:

All applications or claims for reimbursement under this chapter must be submitted to the city clerk/recorder within ninety (90) days after the incident occurs or applicant knew, or reasonably should have known, a covered loss existed, commencing with the city 2005-2006 fiscal year on July 1, 2005. (2001 Code § 90-6-201)

9-3-6: APPLICATION INVESTIGATION AND RECOMMENDATION:

Applications or claims received by the city clerk/recorder shall be referred to the city attorney and department of public works for investigation and recommendation. The department of public works' report shall be forwarded to the city attorney for evaluation, under the criteria of this chapter. All payments shall first be authorized by the city attorney or his/her designee and all payments shall be made solely from funds appropriated and budgeted for purposes of this chapter. (2001 Code § 90-6-202)

9-3-7: CRITERIA FOR PAYMENT OF CLAIMS:

A. Duty To Mitigate And Verifiable Losses: The determination as to whether to make payment for loss under this chapter shall include the following criteria:

1. Did an applicant suffer an otherwise uninsured property loss which was caused by a break in or backup of a city owned water main or sanitary sewer line, under circumstances where the applicant acted reasonably and responsibly to avoid the loss and mitigate damage or loss;

2. Has the claimed property damage been substantiated in a commercially reasonable manner; and

3. Payments under this chapter shall be limited to the depreciated value of the property lost or damaged and not its replacement value or cost.
B. Disqualifying Events: Any one or more of the following conditions shall result in the denial of all or part of an application for reimbursement or a damage payment:

1. The application was not timely submitted, as above provided;

2. The loss was partially or fully covered by private insurance; provided, that insurance deductibles are eligible for city payment under the provisions of this chapter;

3. The applicant is otherwise ineligible, under the terms of this chapter;

4. The loss was caused by an unreasonable or an irresponsible act of the applicant, applicant's agent or a member of applicant's business or household; or

5. The loss or eligibility for reimbursement is unsubstantiated, under commercially reasonable standards.

C. City Offsets: Any one or more of the following conditions shall result in reduction of a payment, request or claim:

1. The loss was partially covered by private insurance, in which event the claim shall be reduced by the amount of said insurance payment or right of payment;

2. The loss exceeds the city funding limits or appropriated funds;

3. Verification of loss is inadequate or incomplete; or

4. The applicant did not cause the problem, but failed to act reasonably or responsibly to minimize or mitigate the loss.

D. Governmental Entities Excluded: Notwithstanding any other provisions of this chapter, no application shall be accepted from and no payments authorized for the United States of America or any other governmental or quasi-governmental entity, including any state or any political subdivision or special district of a state. (2001 Code § 90-6-301)

9-3-8: MAXIMUM PAYMENTS:

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

A. Maximum payment per claimant: Ten thousand dollars ($10,000.00) per incident at any one address or location;

B. Maximum fiscal year expenditure: One hundred thousand dollars ($100,000.00) in any city fiscal year. (2001 Code § 90-6-302; amd. Ord. 09-16, 6-9-2009)

9-3-9: PAYMENT FOR CLEANUP AND SANITIZATION:
A. Property Owner May Choose To Have The City Do Initial Cleanup: Notwithstanding the other provisions of this chapter, when a claimant notifies the city of a breakage or backup of a city owned and maintained culinary water line or sanitary sewer line, the city may offer to have its third party contractor(s), retained for this purpose, initially clean up and, if necessary, sanitize the damaged property, following the city’s guidelines. Alternatively the property owner may arrange separately for initial cleanup and sanitizing by the property owner’s own retained contractor(s). In this latter instance, the city may reimburse to the property owner the actual costs of this cleanup and sanitization, but only to the extent of what the work would have cost if the city contractor had undertaken the cleanup and sanitizing.

B. Initial Cleanup And Sanitizing Defined: Initial cleanup and sanitizing may include stopping the flow of water or effluent, removing standing water or sewer effluent from the property, and other precautions as outlined in the city’s guidelines. Initial cleanup and sanitizing does not include repairs to or replacement of damaged building materials, personal property or any other property damage claims. These latter damages may be eligible for reimbursement through the process described in the other provisions of this chapter.

C. Cost Of Initial Cleanup Is In Addition To Damage Payments: The cost of initial cleanup and sanitizing, whether provided by a city contractor or a private contractor, shall be in addition to the reimbursement amount allowed by subsection 9-3-8A of this chapter, but will be subject to the limitation in subsection 9-3-8B of this chapter and the appropriation of funds each year by the city council for this purpose.

D. Scope Of Initial Cleanup And Sanitizing At City Discretion; No Special Or Consequential Damages: The extent, method and costs of initial cleanup and sanitizing by a city provided contractor will be at the sole and independent discretion of the city. In no event shall the city pay, or reimburse the property owner for the payment of, special or consequential damages. (2001 Code § 90-6-303; amd. Ord. 09-16, 6-9-2009)

9-3-10: PAYMENT DOES NOT IMPLY LIABILITY OR WAIVE GOVERNMENTAL IMMUNITY:

A. No City Admission Of Responsibility: The adoption of this chapter and any payment made pursuant to this chapter is not an admission of liability and it does not imply any negligence or responsibility on the part of the city, including responsibility for any damage or loss.

B. No Waiver Of Immunity: This chapter shall not in any way supersede, change, modify or abrogate the governmental immunity act of Utah, including Utah Code Annotated section 63G-7-101 et seq., or any successor provisions. Further, this chapter does not create a cause of action or establish a right to sue the city.

C. Payment Is Release Of Liability Claim: Acceptance of any payment made pursuant to this chapter shall constitute a full and complete release of any and all claims against the city, its officers, employees and agents arising from the incident subject of that payment. (2001 Code § 90-6-304)
9-3-11: BUDGET EXPENDITURES:

The city manager is authorized to establish a water and sewer utility enterprise no fault loss account within the risk management fund, to be funded from water and sanitary sewer rates. Appropriations will be made through the regular budget process, including the adoption of utility fee and rate increases to fund this program. (2001 Code § 90-6-305; amd. Ord. 09-16, 6-9-2009)