

TITLE 8

CHAPTER 3

NO-FAULT UTILITY CLAIMS

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8-3-1: INTENT

It is the city's intent 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 on the part of the city, within the restrictions, limitations, and other provisions of this chapter.

8-3-2: DEFINITIONS

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

- BODILY INJURY:** Actual physical injury, sickness or disease sustained by a person, including death resulting from any of these.
- CITY:** River Heights City Corporation, a political subdivision of the state of Utah.
- CLAIM:** Any demand for damages from release of sewage or sudden and accidental release of potable water.
- DAMAGES:** Monetary amounts the insured becomes legally obligated to pay to a third party as a result of bodily injury, or property damage caused by an occurrence, or personal injury caused by a personal injury offense. Attorney fees and litigation costs are not damages.
- PERSON OR APPLICANT:** An individual, partnership, co-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, or the state of Utah and any of its political subdivisions) or their legal representatives, agents, or assigns.

PERSONAL INJURY: Injury, other than bodily injury arising out of a personal injury offense.

PERSONAL INJURY OFFENSE: Means any of the following: 1) False arrest, detention or imprisonment or malicious prosecution; 2) Libel, slander or defamation of character; 3) Wrongful entry or eviction, or other invasion of the right of private occupancy.

POLITICAL SUBDIVISION: Any political subdivision of the state of Utah, including state departments and agencies, cities, towns, counties, and school districts.

POTABLE WATER: Water intended to be used for human consumption.

PROPERTY DAMAGE: Physical injury to or destruction of tangible property, including the resulting loss or use of that property. Also, loss of use of tangible property that is not physically injured or destroyed.

RELEASE OF SEWAGE: An occurrence where solid, liquid or gaseous pollutants cause property damage or bodily injury by passing back through the toilets and/or drains located in the premises owned or leased by any third-party person, firm or entity relying upon the insured for sewage treatment services. Solid, liquid or gaseous pollutants which cause property damage or bodily injury by any means other than passing back through the toilets and/or drains located in the premises owned or leased by such third-party persons, firms or entities, does not constitute release of sewage and damages caused thereby are not covered.

8-3-3: ADMINISTRATION AND ESTABLISHMENT OF REGULATIONS

The city hereby establishes regulations sufficient to provide for the handling of such claims and disbursement of funds set aside for payment of claims under this chapter.

8-3-4: REIMBURSEMENT CLAIMS, TIME LIMITATIONS

All claims for reimbursement under this chapter must comply with the Governmental Immunity Act of Utah, Utah Code Annotated §63-30d-101 et seq., as amended, and be submitted to the city recorder within thirty (30) days after the incident giving rise to the loss occurs.

8-3-5: CLAIMS INVESTIGATION AND RECOMMENDATION

Claims received by the city recorder shall be referred to the mayor, the public works director and the councilmember assigned to water and sewer for investigation and recommendation. The recommendation may be forwarded to the city attorney for determination under the criteria of this chapter. The recommendation will be presented to

the city council for consideration. All payments authorized by the city council shall be made by the City of River Heights.

8-3-6: CRITERIA FOR PAYMENT

- A. The determination as to whether to make payment of a claim submitted pursuant to this chapter shall be based on the following criteria:
1. Whether an eligible claimant suffered an otherwise uninsured property loss, caused by breach or backup of a city-owned water main or sewer line, under circumstances where the claimant acted responsibly to avoid the loss; and,
 2. If so, whether the extent of the loss has been adequately substantiated.

The following shall result in the denial of a claim:

3. Claim not timely submitted;
 4. Loss fully covered by private insurance (For exclusions see 8-3-7 A. for insurance deductible consideration);
 5. Claimant ineligible under the terms of this chapter;
 6. Loss caused by an irresponsible act of the claimant, claimant's agent, or member of claimant's business or household; or
 7. Loss or eligibility unsubstantiated.
- B. The following shall result in a 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; or
 4. Claimant did not cause the problem but failed to act responsibly to minimize the loss.

8-3-7: MAXIMUM PAYMENT

- A. Payments under this chapter shall not exceed \$5,000 per claim. Claims to pay insurance deductibles will be considered.
- B. Payments under this chapter shall not exceed \$100,000 (the no-fault sewer and potable water aggregate limit per policy period) per fiscal year.

8-3-8: PAYMENT DOES NOT IMPLY LIABILITY, RELEASE REQUIRED

- A. Any payment of a claim 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. 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 Government Immunity Act of Utah, and its application to the city, or establish in any person a right to sue the city under this chapter.
- C. Any payment of a claim made under this chapter and accepted by the claimant shall constitute a full and complete release of any and all claims against the city, its officers, employees, and agents for any damage or loss arising from the incident.
- D. Any payment of a claim made under this chapter shall be expressly conditioned upon the city first receiving a written release of liability, signed and notarized by the claimant, in a form acceptable to the city attorney.

8-3-9: CLAIMS FROM OTHER GOVERNMENTAL AGENCIES

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

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