

ORDINANCE NO. 1065

AN ORDINANCE ESTABLISHING THE CITY'S POLICY FOR DAMAGES CAUSED BY SANITARY SEWER BACKUPS IN PRIVATE RESIDENCES WITHIN THE CITY OF FORT MORGAN

WHEREAS, pursuant to Article IV, Sec. 4, the Council shall have the power to “[P]rovide for the construction, maintenance, operation, and disposition of public improvements, public works, public utilities, public services, and public buildings...”; and,

WHEREAS, City Council finds that it is in the best interest of the citizens and the operation of the Wastewater Collection and Distribution Department to provide a Good Faith Payment under limited circumstances; and,

WHEREAS, City Council has directed the Office of the City Attorney to draft an ordinance adopting a policy regarding sanitary sewer backups within the City of Fort Morgan,

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF FORT MORGAN, that the City's policy for damages caused by sanitary sewer backups in private residences within the City of Fort Morgan is hereby adopted as follows:

1. GENERAL POLICY

1.1 This ordinance provides guidelines for the review of claims related to sanitary sewer backup damage to private property. This policy is not intended to be construed or interpreted as a waiver, express or implied, of any immunity, rights, benefits, protection, or other provisions of the City's governmental immunity as provided under the Colorado Governmental Immunity Act (“CGIA”). For definition purposes, “sewer(s)” refers to sanitary sewers and not to storm drains. For purposes of this policy, a city sewer line is defined as the full outside diameter of a main sanitary sewer, excluding external connections (e.g. [Y's] and [T's] and sewer laterals).

1.2 The Wastewater Collection and Distribution Department will promptly investigate any reported or suspected sewer backup damage to private property as a result of obstruction in a publicly owned sewer system, and will submit a written report to the City Manager together with all available information on the circumstances and extent of known damages involved in the incident(s). A videotape or photographs will also be made of the damage and be made a part of the report submitted to the City Manager.

1.3 Any claim for damages must be made with the City by filing a **Notice of Claim** (attached) for that purpose within fifteen (15) days after the date of occurrence. The

forms shall include the claimant's name, address, date of occurrence, description, and the amount of damages claimed. Photocopies of invoices and receipts associated with the claim must be attached. All claims will be forwarded to the City's insurance carrier for review. This provision does not alter notice requirements under the Colorado Governmental Immunity Act (CGIA).

1.4 All claimants who provided notice to the City's Risk Management Department that they were damaged as the result of a sewer backup prior to January 1, 2008, shall be eligible for a good Faith Payment under this ordinance for damages which occurred after September 1, 2007.

1.5 All claims will be subject to the limits set forth in Section 2 and exclusions set forth in Section 3 and according to the conditions as set forth in Section 4.

2. LIMITS

2.1 All claims for property damage and / or physical injury that occur as a result of a sanitary sewer backup will be referred to the City's insurance carrier for review. The insurance carrier will not consider payment of a property damage and /or physical injury claim resulting from conditions outside the City's control (such as an Act of God). The City will provide its insurance carrier with the appropriate documentation related to the claimant's claim. After reviewing all available information, the City's insurance carrier, at its sole discretion, will determine whether the City is liable for the property damage and/ or physical injury. If the insurance carrier determines the City is liable for the claimant's property damage and /or physical injury, the insurance carrier will pay the claim accordingly.

2.2 If the City's insurance carrier determines that the City is not liable for the claimant's property damage and/or physical injury, the City Manager will have the discretion to authorize a "Good Faith Payment" to be made to the claimant. Each individual claim will be evaluated on its own merits. The City Manager has the authority to authorize Good Faith Payments up to \$500. Should a claimant request a reimbursement greater than \$500, the City Manager may recommend an additional good faith payment up to \$3,000. The additional good faith payment includes the initial \$500 payment. Any good faith payment greater than \$500 must be approved by City Council.

2.3 Good Faith Payments shall not exceed \$3,000 for any single claim. The first \$500.00 does not require a dollar for dollar match by the claimant. This amount is intended to assist a claimant with any insurance deductible for cleanup of the property. A claimant is not required to have insurance coverage to receive this Good Faith Payment. The remaining \$2,500.00 available under this code provision is subject to a dollar for dollar match by the claimant for cleanup costs.

2.4 Claimants or agents will be required to submit all supporting documentation including receipts and/or invoices indicating costs incurred for cleaning and/or sanitizing

the affected property. The determination of whether the claimant's documentation is sufficient to support a claim will be subject to the discretion of the City Manager. The City will reimburse the claimant with matching funds for the costs, not to exceed \$3,000. These costs specifically do not include repair or reconstruction costs.

2.5 The City will provide each claimant a backflow prevention valve for installation at the cost of the claimant.

2.6 The number of Good Faith Payments allowed to any claimant or his/her family shall be limited to one payment every five (5) years.

2.7 Payment of all claims Five-Hundred (\$500.00) or less are subject to the discretion of the City Manager and his/her decision shall be final.

3. EXCLUSIONS

This policy shall not apply to:

3.1 Losses caused by the failure of sewer lines owned by the claimant or agent, or other private persons.

3.2 Sewage damages caused by negligence or failure to properly maintain the claimant's utility system.

3.3 Sewage damages caused by the failure of the claimant or agent to take steps necessary to prohibit further damage to the property once an incident has occurred or the claimant or agent has been put on notice of another problem unrelated to the initial incident.

4. CONDITIONS

4.1 If any insurance is available to the claimant or agent covering a loss claimed hereunder, that coverage will be considered primary coverage. Any coverage provided under the terms and provisions of this policy shall be secondary and in excess of the claimant's or agent's primary coverage. Such secondary coverage will not contribute to any primary coverage. In the event that the claimant's insurance carrier does not cover such loss, a letter from the carrier denying the loss claimed hereunder is required to be eligible for any Good Faith Payment.

4.2 A **Notice of Claim** must be filed with the City Manager within **fifteen (15)** days from the date of occurrence or in exercise of reasonable diligence should have been discovered. These forms will be reviewed in accordance with Section 2. If the City's insurance carrier denies the claim, the carrier will notify the claimant or agent directly. If the City denies the claim, the claimant or agent will be contacted directly by the Human Resources and Risk Management Department.

4.3 The claimant or agent will be notified of the insurance carrier's or City's position relative to their claim within 90 days after receipt of the Notice of Claim, or as required by the Colorado Governmental Immunity Act.

4.4 The claimant must allow the City's insurance carrier and/or City personnel to inspect and examine the alleged property damage before any claim will be processed or paid.

4.5 All claimants must sign a **Release**, either in the form as required by the City's insurance carrier or provided by the City, before any payment is made to the claimant. The release will absolve the City or its carrier from any and all liability arising from the claim and release the City and its carrier from any future claims related to the incident.

4.6 The City or its insured shall have the right at their sole discretions to seek subrogation against any person or organization liable for the property damage described in a claim. Claimant shall assist and cooperate with the City or its insured in any action or proceeding to obtain subrogation.

4.7 No payment shall be made to any claimant or agent until the City finds that the claimant or agent has cleared all obstructions, natural or constructed, that impede the City's access to its easements whether recorded or by prescription

5. DEFINITIONS

5.1 **Claimant or Agent:** Claimant is the individual(s) filing a claim against the City of Fort Morgan seeking reimbursement for paid or obligated payment due to property damage caused by the operation of the City's Utility System. Agent shall be construed to mean a tenant or landlord of the claimant.

5.2 **Ultimate Net Loss:** This term refers to the sum paid in settlement of a claim for which the City agrees to pay after making deductions for all other recoveries, salvages, deductibles, and insurances. "Ultimate Net Loss" does not include: (a) costs and expenses incurred by an insurer on behalf of the claimant or agent; (b) office costs or salaries and expenses of employees of the claimant or agent; or (c) retainer fees of counsel retained by claimant or agent.

5.3 **Property Damage:** This term means the loss of or direct damage to or clean up costs related to destruction of tangible property.

5.4 **Actual Cash Value (ACV):** Generally defined as replacement cost less depreciation.

5.5 **City Utility System:** The full outside diameter of a main sanitary sewer, excluding external connections (e.g. [Y's] and [T's] and sewer laterals).

5.6 **Claimant or Agent Utility System:** The Water and Sanitary Sewer System located in or on the property of the claimant or agent.

5.7 **Occurrence:** An event which causes property damage to the property of the claimant or agent as the result of the operations of the City's Sanitary System.

5.8 **Obstruction:** Natural or artificial objects which impede or prohibit the City's ability to access its property interests or easements which are either recorded or by prescription.

6. GENERAL CLAIMANT RESPONSIBILITIES

6.1 Claimant must provide reasonable proof of ownership and the value of the damaged personal and real property.

6.2 The claimant must comply with all conditions contained within section 4 of this policy that outlines notification and documentation responsibilities.

7. PAYMENT OF NON-ECONOMIC DAMAGES – NO ADMISSION OF LIABILITY

7.1 The City will not pay non-economic damages as compensation for an occurrence under this policy.

7.2 Any payment made hereunder is a "Good Faith" gesture and is not intended and shall not be construed as an admission of liability or waiver of any defense on immunity.

8. ACQUISITION OF EXPRESS EASEMENTS

8.1 The City Manager shall have the authority to negotiate the purchase of additional easements where the City requires additional access. All easement purchases as provided herein shall be approved by Council.

INTRODUCED, READ AND PASSED UPON FIRST READING this 4th day of March, 2008, for publication once in a newspaper of the City of Fort Morgan, Colorado, at least ten days before its final passage.

[SEAL]

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

BY: */s/ Jack L. Darnell*
Mayor

ATTEST:

/s/ Andrea Strand
City Clerk

FINALLY PASSED, ADOPTED AND APPROVED this 18th day of March, 2008 for publication by title only, once in the newspaper of the City of Fort Morgan, Colorado, within five days of the final passage, to take effect five days after final publication.

[SEAL] THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

ATTEST: BY: */s/ Jack L. Darnell*
Mayor

/s/ Andrea Strand
City Clerk

STATE OF COLORADO)
COUNTY OF MORGAN)
CITY OF FORT MORGAN)

CERTIFICATE

I, Andrea Strand, the duly appointed, qualified and acting Clerk of the City of Fort Morgan, Colorado, do hereby certify and attest that the foregoing **Ordinance No. 1065** was, as a proposed **Ordinance** duly and legally presented to the City Council of the City of Fort Morgan, Colorado, at a Regular Meeting on the 4th day of March, 2008. Said **Ordinance**, as proposed, was duly read at length at said regular meeting, and thereafter the same was, on the 7th day of March, 2008, published in the *Fort Morgan Times*, a daily newspaper of general circulation published and printed in the City of Fort Morgan, Morgan County, Colorado. Said proposed **Ordinance** was again taken up and read a second time, duly and legally passed, approved and adopted at a Regular Meeting of the City Council held on the 18th day of March, 2008. Within five (5) days after its final passage, said **Ordinance** was published in the *Fort Morgan Times*, a daily newspaper of general circulation published and printed in the City of Fort Morgan, Morgan County, Colorado.

/s/ Andrea Strand
City Clerk