

# SULTAN CITY COUNCIL

## AGENDA ITEM COVER SHEET

---

**ITEM NO:** Consent C 7

**DATE:** August 23, 2009

**SUBJECT:** Ordinance 1055-09 Amendments to Chapter 3.30

**CONTACT PERSON:** Laura Koenig, Clerk/Deputy Finance Director

### ISSUE:

The issue before the City Council is the adoption of Ordinance 1055-09 to amend Title 3.30, Claims Against the City. This is a part of the code scrub project for SMC Title 3 and required under ESHB 1553 approved by the State with an implementation date of July 31, 2009. The ordinance was introduced for a first reading on July 23, 2009. The City Attorney has reviewed the ordinance and made minor changes.

### SUMMARY:

RCW 4.92 and 4.96 provide for a process for claims against governmental units. During the last legislative session amendments were made to the RCW under ESHB 1553. ESHB 1553 was passed and signed into law with an effective date for implementation of July 31, 2009.

The method of service for a claim has been changed to allow the Claim Form to be delivered to the designated agent by regular mail, or certified mail, with return receipt requested, or can be hand delivered to the office the designated agent. Prior to this action, a claimant was required to present a claim in writing to the designated agent.

An additional change is the requirement for all local governmental entities to make available (along with instructions and use the standard tort claim form published by the office of financial management unless it adopts its own form that meets the requirements of the act. Staff would recommend using the forms and instructions developed by OFM (Attachment D).

### DISCUSSION:

The following changes were made to SMC 3.30:

1. 3.30.010 Filing: changed to comply with the new requirements
2. 3.30.020 Contents: a claimant does not have to provide their address for the prior 6 months under the revised law.
3. 3.30.070 Manner of processing: claims are now referred to the insurance carrier for processing.
4. 3.30.100 Claim Fund: the city does not have an insurance claim fund. This section has been deleted.

5. Housekeeping item: The city is required to have a designated agent to accept claims. The reference to the clerk/treasurer have been changed to city clerk.

STAFF RECOMMENDATION:

Adoption of Ordinance 1055-09 amending Title 3.30.

Attachments:       A. Ordinance 1055-09 Claims Against the City as amended

CITY OF SULTAN  
WASHINGTON  
ORDINANCE NO. 1055-09

---

AN ORDINANCE OF THE CITY OF SULTAN,  
WASHINGTON, AMENDING SMC 3.30 REGARDING  
CLAIMS AGAINST THE CITY; PROVIDING FOR  
SEVERABILITY; AND ESTABLISHING AN EFFECTIVE  
DATE

---

WHEREAS, the Legislature recently amended RCW 4.96.020 relating to claims for damages against the state and local governmental entities;

WHEREAS, the recent amendments in ESHB 1553 requires to the City to amend its claims procedure and the content of the Claim for Damages form; and

WHEREAS, the City Council desires to amend Chapter 3.30 of the Sultan Municipal Code to reflect the changes to RCW 4.96.020;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SULTAN,  
WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Sultan Municipal Code 3.30 is hereby amended to read as follows:

**Chapter 3.30  
CLAIMS AGAINST THE CITY**

Sections:

- [3.30.010](#) Filing.
- [3.30.020](#) Contents of claim – Filing on behalf of claimant.
- [3.30.030](#) Bar to action.
- [3.30.040](#) Action maintained.
- [3.30.050](#) Duties of city ~~clerk/treasurer~~.
- [3.30.060](#) Duties of city attorney.
- [3.30.070](#) Manner of processing claims.
- [3.30.080](#) Defense of city officers and employees.
- [3.30.090](#) Recovery of losses.
- [3.30.100](#) Establishment of insurance claims fund.
- [3.30.110](#) Authority for payment.
- [3.30.120](#) Invalid claim – Action prohibited.

### **3.30.010 Filing.**

All claims for damages or injuries against the city arising out of tortious conduct shall be deemed presented when the claim form is delivered in person to the City Clerk during normal business hours at City Hall or is received by the City Clerk by regular mail, registered mail, or certified mail, with return receipt requested, to the City Clerk or other person designated to accept delivery at the the City Clerk's office. ~~in writing and filed with the clerk/treasurer of the city.~~

**3.30.020 Contents of claim – Filing on behalf of claimant.** All claims for damages or injuries against the city provided for in SMC [3.30.010](#) shall be submitted on the city's approved claim form and accurately state the conduct and circumstances that brought about the injury or damage; the time, place, source, nature and extent of the alleged damages or injuries; and give the date of birth, and contact information and actual residence of the claimant by street and number at the date of presenting such claim for damages and ~~shall be verified by affidavit of the claimant, or such other person, as may be authorized by law to verify such claims to the effect that the same is true.~~

~~B. If the claimant is incapacitated from verifying and filing his claim for damages within the time prescribed, or if the claimant is a minor, in case the claim is for damages to real or personal property, and if the owner of such property is a nonresident of such city or is absent therefrom during the time within which a claim for damages to said property is required to be filed, then the claim may be verified and presented on behalf of the claimant by any relative or attorney or agency representing the injured person, or in case of damages to property, representing the owner thereof.~~

The tort claim form must be signed either by:

1. the claimant, verifying the claim; or
2. a person with a written power of attorney for the claimant; or
3. an attorney licensed to practice in Washington; or
4. by a court-approved guardian or guardian ad litem.

### **3.30.030 Bar to action.**

The omission to present any claim for damages or injuries against the city in the manner or within the time this chapter provides shall be a bar to any action against the city therefor.

### **3.30.040 Action maintained.**

No action shall be maintained against the city for any claim for damage or injuries until presentation and filing of such claim to the city clerk/treasurer of Sultan.

### **3.30.050 Duties of ~~city clerk/treasurer~~ City Clerk .**

Upon presentation of any claim for damages or injuries against the city, the ~~clerk/treasurer~~ City Clerk shall indelibly mark on such claim the date of receipt and shall forthwith deliver a true and complete copy of said claim to the city attorney.

### **3.30.060 Duties of city attorney.**

The law department shall promptly examine all claims for damages or injuries against the city submitted to it by the ~~clerk/treasurer~~ City Clerk of the city. The law department is authorized to conduct such investigation into the facts, circumstances and law relative to any claim for damages or injuries against the city as he, in the exercise of his discretion, may deem necessary. Such investigations may be conducted by the risk manager or claims investigators under the city attorney's directions.

### **3.30.070 Manner of processing claims.**

~~The law department~~ City Clerk shall process claims for damages or injuries in accordance with the City's insurance policy and refer all claims to the insurance company. the following manner: Claims not covered by the insurance policy, shall be referred to the City Attorney for processing.

~~A. Claims for damages or injuries up to \$1,000 shall be allowed, disallowed or otherwise settled by a finance committee consisting of two members of the city council, the city attorney and the risk manager, and the department head from the city department from which the claim arises.~~

~~B. All claims exceeding \$1,000 which have been reviewed by the city attorney shall be submitted to the city council for their approval, disapproval or settlement.~~

~~C. The risk manager, city attorney or the finance committee may, in their discretion, refer any claim to the city council.~~

### **3.30.080 Defense of city officers and employees.**

A. Purpose. The purpose of this section is to protect city officers, employees and their marital communities from personal liability for acts committed by such officers and employees within the scope of their official city duties.

B. Determinations of Scope and Status. The city attorney shall determine any and all questions relating to the following issues:

1. Whether acts performed by a city officer or employee were within the scope of that person's official city duties; and

2. Whether for purposes of the issues raised by a claims lawsuit, a particular person is in fact, a city officer or employee.

C. Responsibility for Defense. Where a city officer, employee, or the marital community of such officer or employee is sued in a claims lawsuit for an act or alleged act falling within the scope of the officer's or employee's official duties, the city attorney shall be responsible for defense of that person or community in accordance with the procedure specified within this title.

D. Exclusions. This section shall not apply where a claims lawsuit is covered by insurance or where a claims lawsuit arises out of a city officer's or employee's use of his personal vehicle.

E. Possible Conflicts. Where a possible conflict exists between the city and a city official or employee acting within the scope of his or her official duties, and where both are named as parties in the same claims lawsuit, the city attorney may decline to represent that person and his or her marital community. In such cases where the city attorney declines representation, the city shall be responsible for payment of

reasonable attorney's fees and costs incurred in the defense of the city officer or employee.

### **3.30.090 Recovery of losses.**

A. Actions for Recovery. The city attorney may be responsible for bringing all actions, including claims and lawsuits, for recovery of the losses to the city arising out of the acts of others. Such losses may include property damages or losses which impact on the city as a result of personal injuries to city officers or employees. In addition, the city attorney may join the city of Sultan as a party with any third party in a lawsuit involving recovery of loss to the city of Sultan.

B. Allocation of Recoveries. Any moneys recovered by the city attorney on account of losses to the city shall be paid to the departmental fund which has expended funds and/or materials as a result of the loss. Any moneys in excess of those so expended shall be transferred to the insurance claims fund.

### **~~3.30.100 Establishment of insurance claims fund.~~**

~~There is established a fund to be known as the insurance claims fund for which funds will be put in set reserve for the purpose of paying claims for damages or injuries against the city not otherwise covered by city insurance or ordinances of the city.~~

### **3.30.110 Authority for payment.**

Approval or settlement according to SMC [3.30.070](#) shall be approved for payment by the City Clerk.

### **3.30.120 Invalid claim – Action prohibited.**

Neither the city council nor any department or officer or authority shall allow, make valid or in any manner recognize any demand against the city which was not at the time of its creation a valid claim against the city; nor shall they, or any of them, allow or authorize to be paid any demands which without such action would be invalid or which shall have been barred by any statute of limitations or for which the city was never liable; and any such action shall be null and void.

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 3. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

**ADOPTED** BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON  
THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2009.

CITY OF SULTAN

\_\_\_\_\_  
Carolyn Eslick, Mayor

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Laura Koenig, City Clerk

Approved as to form:

\_\_\_\_\_  
Margaret J. King, City Attorney