

ORDINANCE No. 189572

*Establish process to resolve claims related to the water main break on March 16, 2019, and authorize payment of claims (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. On March 16, 2019, a large 30-inch water main burst in Northeast Portland in the area of Northeast 23rd Avenue and Skidmore Street.
2. The cast iron water main pipe was constructed around 1915 and the condition of the surrounding pipe suggests that it should have lasted for many more decades.
3. At its peak, the burst pipe released 40,000 gallons of water per minute into the neighborhood.
4. This type of large water main failure is exceedingly rare, and the failure of the pipe was unforeseeable.
5. Several residents and others suffered property damage as a result of the water main break and have asserted claims against the City.
6. While the City denies legal responsibility for any damages, the City acknowledges that it would incur costs to defend claims and the results of any litigation can be uncertain.
7. Accordingly, given the scope of the impacts, disputed claims related to the water main break should be resolved for the benefit of the City according to the process established herein.
8. The goal of this ordinance is to resolve legitimate claims as soon as possible for the benefit of the City and affected claimants, which will allow the City to use its limited resources to efficiently handle other disputed claims, if necessary.

NOW, THEREFORE, the Council directs:

- a. Claims asserting damages as a result of the water main break in Northeast Portland on March 16, 2019, may be processed and paid as follows:
 1. **Deadline to Submit Claims:** Claims must be submitted to the City Attorney's Office at the address below no later than July 15, 2019:

Portland City Attorney's Office
1221 SW 4th Ave., Rm. 430
Portland, OR 97204

Risk Management shall forward all tort claim notices received to date related to the water main break to the City Attorney's Office, which shall treat the claims as submitted by the deadline herein. The City Attorney's Office shall contact the claimants and may request additional information if necessary to process the claims. Failure to submit this additional information may impact the City's ability to consider the claim.

2. **Types of Costs the City will Pay:** The City Attorney's Office will process claims and may authorize payment for economic losses and property damage caused by the water main break, including the actual cost to repair or replace damaged property, temporary relocation expenses, or lost wages or income. The City Attorney's Office will not process or authorize payment for property upgrades, asbestos abatement, pollution remediation, damage associated with underground storage tanks, or pain and suffering. The City Attorney's Office also will not process or authorize payment for any losses or damages caused by power outages. At its sole discretion, the City Attorney's Office may evaluate and settle claims for other types of damages, subject to the limitations and requirements of this ordinance.
3. **Documentation:** All damages and requested payment amounts must be documented with photographs and receipts, or other proof and documentation satisfactory to the City Attorney's Office. Claimants also must submit proof of insurance claims and denials, if any, related to the water main break and other insurance information requested by the City Attorney's Office, including insurance policy and carrier information.
4. **Payments:** Pursuant to Charter Sec. 1-106, the City Attorney's Office is hereby authorized to negotiate, compromise and settle claims submitted under this process and may authorize the payment of any claim, including claims exceeding \$5,000, related to the water main break on March 16, 2019, subject to the limitations in this ordinance.
5. **Source of Funds:** The City Council hereby authorizes the City Attorney's Office to pay a total maximum sum of \$250,000 to settle all claims submitted under the process established by this ordinance. City Council directs the City Budget Office to allocate \$250,000 in current

year unrestricted General Fund contingency resources to a Policy Set Aside account via the FY 2018-19 Over Expenditure Ordinance. These funds will be carried over to the FY 2019-20 budget for this purpose, and shall be available for appropriation to the City Attorney's Office in the FY 2019-20 Fall Budget Monitoring Process.

6. **Release and Assignment:** Before receiving payment, claimants must release any and all claims for any and all damages against the City related to the water main break, and assign any claims they may have against their insurers or third-parties, by executing a Release and Assignment in substantially the same form as attached in Exhibit A.


7. **Closing of Claims:** All submitted claims will be processed to completion by the City Attorney's Office no later than October 14th, 2019, by which date payments will be authorized for all submitted claims for which the requirements of this ordinance have been met to the satisfaction of the City Attorney's Office. If the City Attorney's Office is not able to successfully resolve a claim by the deadline or the source of funds is exhausted, the City Attorney's Office shall notify the claimant immediately in writing, the claimant shall retain all available rights of recourse against the City, and the City shall retain all applicable defenses.
 - b. Those impacted by the water main break who do not wish to use the process established herein to resolve their claims may submit their claims to Risk Management to be processed in the regular course and shall retain all available rights of recourse against the City, subject to all applicable defenses the City may have.

Section 2. The Council declares that an emergency exists because the swift resolution of claims related to the water main break will benefit the City and claimants and the settlement process should begin as soon as possible; therefore, this ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council: JUN 19 2019

Commissioner Amanda Fritz
Mayor Ted Wheeler

Prepared by: Robert Taylor
Date Prepared: May 28, 2019

Mary Hull Caballero
Auditor of the City of Portland
By  Deputy

Agenda No.
ORDINANCE NO. 189572
 Title

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<p style="text-align: center;">INTRODUCED BY Commissioner/Auditor: Mayor Wheeler/Commissioner Fritz</p>	<p>CLERK USE: DATE FILED <u>JUN 11 2019</u></p>
<p style="text-align: center;">COMMISSIONER APPROVAL</p> <p>Mayor—Finance & Administration - Wheeler <i>WD</i></p> <p>Position 1/Utilities - Fritz <i>And Fritz</i></p> <p>Position 2/Works - Fish</p> <p>Position 3/Affairs - Hardesty</p> <p>Position 4/Safety - Eudaly</p>	<p style="text-align: center;">Mary Hull Caballero Auditor of the City of Portland</p> <p>By: <u><i>Mary Hull</i></u> Deputy</p>
<p style="text-align: center;">BUREAU APPROVAL</p> <p>Bureau: Bureau Head:</p>	<p>ACTION TAKEN:</p>
<p>Prepared by: Robert Taylor Date Prepared: 6/5/19</p>	
<p>Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p>	
<p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>	
<p>City Auditor Office Approval: required for Code Ordinances</p>	
<p>City Attorney Approval: required for contract, code, easement, franchise, comp plan, charter</p>	
<p>Council Meeting Date 6/19/19</p>	

AGENDA
<p>TIME CERTAIN <input type="checkbox"/></p> <p>Start time: _____</p> <p>Total amount of time needed: _____ (for presentation, testimony and discussion)</p>
<p>CONSENT <input type="checkbox"/></p>
<p>REGULAR <input checked="" type="checkbox"/></p> <p>Total amount of time needed: 10 min (for presentation, testimony and discussion)</p>

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz	✓	
2. Fish	2. Fish	✓	
3. Hardesty	3. Hardesty	_____	
4. Eudaly	4. Eudaly	✓	
Wheeler	Wheeler	✓	