

CITY OF MANITOWOC
CLAIMS HANDLING POLICY
(proposed effective date 7/19/2016)

This document does not constitute legal advice and should not be substituted for the advice of private legal counsel. Claimants have the right to retain an attorney of their choice to assist them with filing a claim solely at their own cost and expense. Claimants are encouraged to review Wis. Stat. § 893.80 prior to filing a claim.

Purpose

The purpose of this policy is to establish a transparent claims processing and review policy to provide claimants with clear information and ensure that all claims are handled promptly and consistently.

Applicability and Scope

This policy applies to all claims filed with the City under Wis. Stat. § 893.80 and City officials and staff who handle these claims.

Statutory Requirements and Information

The City of Manitowoc receives claims from citizens pursuant to Wis. Stat. § 893.80. In order to file a claim under this statute, claimants must submit to the clerk a document which:

1. States the circumstances of the claim and is signed by the claimant or their agent or attorney.
2. States the address of the claimant, and a statement of the relief sought. If money damages are sought, a specific sum must be stated. A statement such as "damages in excess of x amount" or "damages up to x amount" does not fulfill this criteria.

Generally speaking, this document must be filed within 120 days of the event in order for action to be taken. A form to file these claims is available on the City's website and from the City Clerk's office. Claimants are encouraged, but not required, to use this form to assist them with filing a claim. Signed claims forms should be submitted to the City Clerk within 120 days of the date of the event.

To act on a claim, the City will also request proof of the amount of the claim, by means of either itemized receipts or two itemized estimates.

Before filing a lawsuit against the City of Manitowoc for reimbursement, state law requires that you follow the claims policy established by the City. Filing a claim does not automatically guarantee reimbursement from the City. In order to obtain reimbursement from the City, you must prove that the City or its employees acted unlawfully or negligently. The City examines each claim on an individual basis to determine if reimbursement is legally required or appropriate.

Claims Processing

The Finance Committee has authorized the City Attorney to review all claims filed against the City. The City Attorney has the authority to settle claims up to \$5,000. Before a claim over \$5,000 is paid, it must be approved by the Finance Committee and then the Common Council and Mayor. Each of these bodies only meets once per month. No other City employees or officials have the authority to settle a claim and any other representation made by a City employee or official is legally binding on the City.

Once a claim has been filed with the City Clerk, the Clerk shall forward the Claim to the Finance Committee of the Common Council and the City Attorney. The City Attorney or designee shall send the claimant a notice of claim receipt and contact the relevant departments for information within 10 business days. The City Attorney or designee shall also forward the claim to the City's liability insurance carrier, Cities and Villages Mutual Insurance Company. Claimants who did not have immediate repairs done must provide two estimates for the work in order to be reimbursed.

If the City or the City's liability insurance carrier determines that a claim should be paid in full or in part, the City Attorney's Office shall facilitate payment of the claim within 120 days of the claim being filed with the City Clerk, so long as the claimant has signed the City's release form.

The City Attorney may, at their discretion, and after consultation with the City's liability insurance carrier, deny claims or not act on a claim or recommend the Common Council and Mayor deny a claim or not act on a claim, consistent with state law. If a claim is not formally disallowed within 120 days, it is considered disallowed under law. The City shall issue a formal notice of disallowance pursuant to Wis. Stat. § 893.80(1g) unless the City Attorney or the City's liability insurance carrier advises against this. If a claim has not been acted upon via settlement or a disallowance of claim within 120 days of the claim being filed with the Clerk, a claimant should assume that a claim has been disallowed.

If a claim is disallowed via formal written notice, a claimant generally has six months to file a lawsuit over the claim. If a claim is disallowed via time rather than formal written notice, a claimant must follow the normal statute of limitations. The City Attorney cannot provide claimants with advice on what that statute of limitations may be.

Routine Denials of Claims

The City of Manitowoc implements appropriate and routine maintenance for its streets, sidewalks, trees, storm water and sewer systems, electrical, water and wastewater utilities, and other City infrastructure and services. These maintenance programs address situations requiring attention on a regular, on-going basis, and are based upon the diligent exercise of judgment by the City. Reasonable municipal fiscal considerations and the City's fiduciary responsibility to all taxpayers make it impossible to maintain all streets, sidewalks, trees, sewer lines, etc. in a perfect condition at all times. These considerations also make it impractical to repeatedly make reimbursement to individual citizens based on claims for which the City is not legally liable.

Wisconsin statutes and case law recognize these public policy principles and, accordingly, municipalities are held to a standard of "reasonableness" rather than one of perfection, and are afforded immunity from claims which result from discretionary acts or decisions.

Therefore, it shall be the policy of the City of Manitowoc to routinely deny claims made against the City or its insurer for slips and falls, wet basements, storm damage from falling trees or limbs, electrical outages and other similar incidents, after consultation with the City's insurer and consideration of its recommendations. Exceptions to this policy will be considered only in cases where it is factually demonstrated to the satisfaction of the City Attorney or Common Council, depending on the claim amount, that City of Manitowoc policies and procedures are negligent, were not adhered to, or in some way were not in keeping with normally accepted municipal maintenance programs.