

Claim Dumpers A Decades-Old Law Says City Hall Should Do the Right Thing. No One Remembers It.

By Dirk VanderHart

JUDY WICKMAN says a city-owned bomb took out her chimney. It was the night of June 7, 2014, and cops were swarming outside the house next door to Wickman's small home on NE 66th, looking for a murder suspect.

Officers tried tear gas to flush out the man. When it did no good (the suspect wasn't home), they detonated six explosive charges on the front door and other access points. Wickman, who waited down the street for the drama to resolve, remembers how enormous booms shook the entire neighborhood.

"I thought they had accidentally blown the house up," she says.

So she was relieved, upon returning home, to find only a couple of her windows had broken in the chaos—damage that the city paid \$445 to repair within weeks.

It wasn't until months later, when the rains settled in, that Wickman realized she had a much larger problem. Her chimney was cracked, and had somehow separated from her home. Water was seeping in with every storm, causing thousands of dollars in damage, Wickman says.

"I'd never had trouble with my chimney," she says. "The damage was a result of blasts that were done on June 7."

Wickman says the city should pay up. And until around 25 years ago, she might have stood a good chance at remuneration.

For the last 70 years, it's been city policy to pay out "fair and moral" claims to citizens who've suffered damages at the hands of Portland employees—even if there's no legal liability involved.

For most of that history, the process was used frequently, and for all manner of delightful reasons.

The city paid \$14 to a woman whose Italian sandals had been savaged by a parks bureau lawnmower, and \$1,000 to a man whose cows were inadvertently poisoned by the fire department. Officials gave a woman \$18,000 after the city sold her house out from under her, and considered the case of a man whose dog went missing while he was in jail.

As a 1983 memo from the Portland City Attorney's Office noted: "The possibilities for variety among 'fair and moral' claims are endless."

Until, that is, they ended.

Ever since a seemingly innocuous policy tweak in 1990, officials haven't paid out a single "fair and moral" claim to members of the public, even as the policy for honoring them remains a part of law. At the same time, city employees routinely use the policy when their personal property is damaged on the job.

What's more, a committee that's supposed to consider these claims—required by code to consist of two city commissioners and the city auditor—hasn't convened in 25 years. Elected officials contacted about the committee had no idea it was even supposed to exist.

But the policy's getting new attention in light of Wickman's chimney predicament. The situation has City Ombudsman Margie Sollinger calling on Portland officials to either resurrect the policy, or formally do away with it.

"The fair and moral claims process is an avenue for recourse that the public is supposed to have," says Sollinger, an internal watchdog tasked with calling out bad decisions by the city. "If council no longer wants to offer a fair and moral claims process, it should formally repeal the process that's described in code."

WICKMAN HAS talked about her broken chimney with everyone she can think of since discovering the damage in October. Now she's pinning her hopes for recompense on the "fair and moral" policy.

After the city paid for her broken windows, Wickman says officials refused to help with what she estimates is \$10,000 in damages related to the chimney—damage she didn't even realize existed until long after she'd cashed the window check.

"They were very sorry, but the policy is, once I sign the check they weren't responsible for anything," Wickman says.

After being "dismissed at every level in the city process," Wickman brought her story to Sollinger, whose job it is to investigate citizen complaints about city bureaus. The ombudsman dug up the "fair and moral" claims policy, all but lost to obscurity, and wondered if it could apply to Wickman's case.

The policy dates back to May 1946, when voters decided by a wide margin the City of Portland should pay citizens for unjust damages, even when the city wasn't legally liable. (Until 1967, citizens weren't allowed to sue the city, under state law.)

Under the policy, a three-member "Committee on Claims" considered loads of cases, large and small, until the late '80s. Then a 1990 ordinance changed everything.

In September of that year, Portland City Council turned responsibility for the "fair and moral" process over to the Risk Management Division, which already wrangled potential lawsuits against the city. City leaders also gave risk management staff the ability to handle all claims below \$1,500 without consulting the claims committee.

The changes would "result in the routine administration and processing of these claims," council found. They would also "lessen demands upon the claims committee's time."

City commissioners were half right: Since the 1990 tweak, the claims committee hasn't met once. That's partly because the Risk Management Division has not used the policy to address a single "fair and moral" claim filed by the public. The only reason any member of city council has heard of the policy at all is that Sollinger took her concerns about its disuse to the mayor's office.

"All the credit goes to her for finding this," says Dana Haynes, spokesman for Mayor Charlie Hales. Haynes says the office hasn't taken a position on whether the policy needs to be reinvigorated—those discussions will wait until after budget season.

"It sounds like a conversation worth having," Haynes says, "but there's certainly not an opinion coming from our office about whether this is something that's lacking."

Risk management says state law is to blame for the abandonment of the policy. It says "fair and moral" claims are a relic of a bygone era, and became largely defunct after the city's immunity to being sued was stripped in 1967.

"Community members can sue the city for just about anything" these days, says Portland Office of Management and Finance spokeswoman Jen Clodius.

But citizens successfully filed "fair and moral" claims with the city for decades after those changes. They only ended when the Risk Management Division took control in 1990.

At the same time, city workers are free to file "fair and moral" claims when their stuff breaks while they're working. They've done so an average of seven times a year since 1990, according to city records obtained via Oregon's open records law.

Most often, these requests come from police officers who break their watches and eyeglasses in the line of duty. In fact the city's most expensive claim since 1990, a \$662 payout, was for broken glasses. But the city has also cut checks to an employee whose purse was snatched (\$100), and to cops whose gloves and boots were ruined in a meth bust (\$134.99). One city employee had his shorts ruined by a keyboard in 2008. He got \$30.

The claims are rarely large. Just 16 have involved more than \$200 since 1990, according to risk management. In that time, the city's paid out just under \$10,000—the same amount Wickman wants for her chimney.

WHICH BRINGS US back to that chimney, and how Wickman hopes her problems reverse the trend of the last 25 years.

The facts are hardly cut and dried.

The police bureau confirmed to the Mercury it used "very low grain weight explosive material" to gain access to the suspect's home, but says it's impossible that the blasts caused any chimney damage.

"Officers were standing near it," says police spokesman Sgt. Pete Simpson. "If an explosion were to cause damage to the chimney, it like would have injured officers which it did not. It's a very technical skill."

But Wickman says she's got evidence to back her up. As part of an insurance claim that's still unfolding, she's had a structural engineer and chimney inspector over to her home. She believes their accounts will help prove to the city that it wronged her last June—and that, liability or no, it would be "fair and moral" to undo the damage.

She's also been studying the Portland City Charter, noting what's required to seek recompense through a time-honored, if forgotten, process.

With Sollinger's encouragement, she put her "fair and moral" claim in the mail on Tuesday, April 7.

"I'm stubborn," Wickman says. "This has escalated to a point where they would like this to go away, but it's not gonna go away."