## Denial of Claims by the City of Tuscaloosa

State law tort claims against municipalities are evaluated under strict rules set out by the State of Alabama. It is illegal for cities to pay claims unless the facts support such payment under state law. There is good reason for such strict laws: claims paid by municipalities must be paid with taxpayer dollars.

Typically the person who filed the claim disagrees with the decision to not pay it. This document provides a general explanation as to why claims are sometimes denied and some of the options available to you if your claim is denied. It is not exhaustive, and is not intended to give you legal advice, but hopefully it will help you understand the process more.

A claim is denied only after careful investigation and deliberation by the City Legal Department. The Legal Department very strictly applies the rule of law to the facts, and the claim will be denied if the facts and law indicate the City is not responsible. **Claims which have been denied will NOT be reconsidered unless new evidence which was previously unavailable is discovered and presented to the Legal Dept.** If your claim has been denied then it becomes your option whether to file a law suit in Small Claims Court or some other court; contact an attorney of your choosing to represent you; or take other appropriate legal measures. It is your responsibility to know and protect your legal rights.

### Common reasons claims are denied

Under Alabama Code §11-47-190, a municipality generally may not be held liable unless a person is injured by the "neglect, carelessness, or unskillfulness" of a municipal employee; or unless the injury was caused by a defect in a public way (such as a city street or city sidewalk) **and** the defect was known by the municipality or existed for such a length of time that it should have been known to the municipality. There are other rules that govern liability, some of which will be discussed below.

1. It was filed too late. ALA. CODE §11-47-23 states that a tort claim against a municipality must be filed within six months of the date of the occurrence giving rise to the claim or else it is barred. Filing a claim even one day after the deadline will result in your claim being denied.
2. Insufficient proof provided by the claimant. Because you are asking the City to use taxpayer money to pay your claim, the law puts the burden on you to provide sufficient evidence to support the claim. The City's investigation is designed to verify the facts you supply and to discover any additional important facts; it is not designed to supply primary evidence to support liability.
3. Inability to document the incident. In order for a claim to be paid, the statement of facts given by the claimant ordinarily must be verified from another source. This can come from police reports, independent witnesses, municipal employees or records, or some other source. If there is no verification of the incident then the claim may be denied on this basis.
4. No evidence that a city employee was negligent, careless, or unskillful. When a claim is based on the conduct of a City employee, it is the responsibility of the person filing the claim to supply evidence that a city employee was legally at fault. Legal fault means something more than a city employee causing an accident; it means that a rule such as the standard of reasonable care was breached. Sometimes the City's own investigation will discover such facts, and if it does the City follows this finding. However, this does not relieve the claimant of the burden of proof. Accidents involving City employees can happen without the City employee being at fault, and in cases such as this the claim will be denied. On the other end of the spectrum, state law provides that cities are not liable for certain conduct of employees which is more culpable than mere negligence – therefore cities are not liable for the reckless or intentional conduct of employees.
5. Incident does not involve the City. The City of Tuscaloosa is not responsible for acts of DCH Hospital; Tuscaloosa City Schools; the Parks and Recreation Association (PARA); the Parking and Transit Authority (local bus service); and many other agencies commonly thought to be "city" agencies.

6. On road and sidewalk claims, no evidence of a "defect", or area not controlled by the City. No attempt will be made to definitively explain everything that is and is not a road or sidewalk defect. However, if a claim arises out of someone hitting an object laying in or spilled on the roadway, or from something such as a rock being thrown up by a vehicle, these items usually are not defects for which the City is liable. Also, many roads or sidewalks in this area are owned or maintained by the State of Alabama, Tuscaloosa County, or private entities. The City of Tuscaloosa is not responsible for such roads or sidewalks.
7. On road and sidewalk defect claims, no evidence City had knowledge of any defect. Under Alabama law, a municipality is liable for defects in public roads and sidewalks only if it had actual or constructive knowledge that the defect existed. Constructive knowledge is a legal principle whereby knowledge of the defect can be imputed to the City if the defect existed for such a length of time that the City should have known about and repaired the defect. It is common for a claim based on a road defect – such as hitting a pothole – to be denied because there is no evidence to support a finding that the pothole had existed for such a length of time that the City should have known about it. Indeed, the filing of a claim is often the first knowledge the City has of such defects in public roads, and if this is the case the claim may be denied on this basis.
8. Lack of causation. Under Alabama law, even if the City is shown to be negligent or otherwise guilty of culpable conduct, the law requires that in order for the City to be liable, the negligence or other culpable conduct be the "proximate cause" (also known as "legal cause") of the damages claimed. Proximate causation is not always an easy concept to explain or understand, but if the City's investigation reveals that the conduct of the City or City employee was not the proximate cause of the claimed injury, then the claim will be denied on this basis.
9. Affirmative defenses. The law provides that even in cases where the facts indicate the City is otherwise responsible, there may exist one or more "affirmative defenses" which prevent the imposition of liability. This is a very broad category. One common example of an affirmative defense is "contributory negligence." The law provides that if a city employee negligently causes personal injury or damage to someone's property, but the facts show that this party was also negligent, then the claim may be barred by the defense of contributory negligence. This defense applies even if the City was 99% at fault and the claimant only 1% at fault – if the claimant's fault in any way contributes to the accident then the entire claim is barred. Another frequently applicable defense is "immunity." The law provides that municipalities are immune from liability for certain kinds of actions in exercising the governmental function. The instances where immunity would apply are too numerous to list. There are many other affirmative defenses that can apply to claims, and contributory negligence and immunity are given as illustrations only.