



STAFF REPORT

CITY of YORBA LINDA

ADMINISTRATION DEPARTMENT

DATE: JUNE 7, 2022

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: MARK A. PULONE, CITY MANAGER
PREPARED BY: MARK K. AALDERS, ASSISTANT TO THE CITY MANAGER

SUBJECT: DENIAL OF CLAIMS FOR DAMAGES

RECOMMENDATION

It is recommended that the City Council of the City of Yorba Linda deny the claim for damages by Mercury Insurance as subrogee of Jeffrey Brem, and Joe and Linda Hernandez.

BACKGROUND

Claims for damages filed against the City are reviewed and investigated by City staff and a third-party claims administrator with the George Hills Company. George Hills Company specializes in claims management and risk management services. These services are provided through the City's contract membership in the California Insurance Pool Authority. Staff makes recommendations to the Council for settlement or denial based on the investigatory findings. A claimant's failure to provide evidence of and/or supporting documents to substantiate the claim for damages will also result in a recommendation for denial of the claim.

DISCUSSION

The following claims for damages have been recommended for denial based on the investigations by City staff and the third-party claims administrator. Further details for each claim are available upon request.

Mercury Insurance as Subrogee of Jeffrey Brem

The claim entails Mercury Insurance filing a claim for reimbursement of repairs made to their insured's (Jeffrey Brem) vehicle. Mr. Brem alleged that his "vehicle bottomed out in (a) depression area on the road" at the intersection of Van Buren Street and Yorba Linda Boulevard. Staff performed an on-site survey of the location and reviewed documents pertinent to the intersection's design and speed survey. This specific intersection has a four-way traffic light which governs the straightaways and turns and staff confirmed it was operating correctly at the time of the incident. The design of the intersection has above ground drainage which runs parallel with Yorba Linda Boulevard and crosses over Van

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Buren Street on both sides of the intersection. This is a standard design for the west side of Yorba Linda.

While no specific direction of travel was listed on the claim for damages form, a driver must reduce their speed to make a safe turn onto Van Buren Street or Yorba Linda Boulevard, and thereby safely traverse the above ground drainage. Based on the damage to the insured's vehicle, it is evident that the insured was not traveling at a safe speed and/or attempting to make it through a yellow "caution" traffic light. No other historical claims have been filed for this intersection.

It was also noted that Mr. Brem resides within .07 miles of the intersection so it is naturally assumed that he would navigate this intersection on a regular basis; thereby being familiar with the above ground drainage system at this intersection.

Therefore, the third-party claims administrator and City staff recommend denying the claim.

Linda and Joe Hernandez

The claim involves a vehicle-pedestrian incident in which the claimant, Linda Hernandez, was struck by a vehicle while in a City crosswalk at the intersection of Village Center Drive and Yorba Linda Boulevard. The claimant alleges that the City was negligent in failing to maintain operational traffic lights at the intersection. Joe Hernandez has a correlating claim "due to the loss of consortium" for Ms. Hernandez' injuries.

Per the Orange County Sheriff's Collision (OCSD) Report, on November 5, 2021, at approximately 5:50 am, Ms. Hernandez was walking northbound in the crosswalk along Village Center Drive to cross Yorba Linda Boulevard. The OCSD report notes the conditions as dark and dense fog, limited visibility and dry road conditions. The streetlights were operational, and the traffic lights were flashing red which is the default when the traffic lights are not in full operational mode. When there are flashing red traffic signals, the California Manual of Traffic Control Devices (CA-MUTCD) also requires the pedestrian signals on the traffic lights to be off. Therefore, it is incumbent upon the pedestrian to heed the flashing red lights when crossing the street. It is unknown if Ms. Hernandez was wearing light or dark clothing or carrying a flashlight or other reflective device during dark and foggy conditions.

The vehicle's driver was heading southbound on Village Center Drive and making a left turn to go eastbound on Yorba Linda Boulevard. The driver's statement taken by OCSD notes "was driving about 15 MPH due to the limited visibility from the fog and fogged up windows..." The driver acknowledged that he "was planning on pulling over to let the windows defog after he completed the turn." He did not see the pedestrian prior to the collision.

City staff checked with the City's traffic signal lights contractors' and were notified that there were no reports or incidents reflected in the system on November 5, 2021. Preventative maintenance records were also reviewed and in order. The reason for the flashing red traffic lights is unknown at this time, but believed to be either a communication failure, voltage disruption or the conflict monitor detected an issue and went into flashing red default mode

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before returning to normal operations. Nevertheless, the flashing red traffic signals were operational and both pedestrians and vehicles must adhere to traffic laws governing such instances.

In this case, the third-party administrator and staff concur with the OCSD Collision Report that the driver of the vehicle was solely at fault “for failing to yield to a pedestrian in a crosswalk,” especially under dark, dense fog and limited visibility conditions, including the driver’s negligence of having a fogged up windshield.

FISCAL IMPACT

None

ALTERNATIVES

As an alternative to staff’s recommendations for the claims, the City Council has the following options:

1. Accept liability for the claims and pay the amount specified in the claim forms.
 2. Grant settlement authority up to a certain amount and direct the claims adjuster to enter into settlement negotiations with the claimants.
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