

DATE SUBMITTED 05/28/2024
 SUBMITTED BY Kristen Smith
 DATE ACTION REQUIRED 06/05/2024

COUNCIL ACTION (X)
 PUBLIC HEARING REQUIRED ()
 RESOLUTION ()
 ORDINANCE 1ST READING ()
 ORDINANCE 2ND READING ()
 CITY CLERK'S INITIALS ()

**IMPERIAL CITY COUNCIL
 AGENDA ITEM**

SUBJECT: DISCUSSION/ACTION: 1. Authorization to reject claim CW File Number CJP-3051590 CBV as recommended by Carl Warren & Company.	
DEPARTMENT INVOLVED: Human Resources	
BACKGROUND/SUMMARY: Recommendation from Carl Warren & Company to reject claim CW File Number CJP-3051590 CBV submitted by Maria E. Gomez on May 17, 2024.	
FISCAL IMPACT: NOT TO EXCEED There is no fiscal impact associated with this action.	FINANCE INITIALS <u>JMG</u>
STAFF RECOMMENDATION: Staff recommends approval to reject claim.	DEPT. INITIALS <u>KWS</u>
MANAGER'S RECOMMENDATION: Approve Staff Recommendation	CITY MANAGER'S INITIALS <u>DM</u>
MOTION:	
SECONDED: AYES: NAYES: ABSENT:	APPROVED () REJECTED () DISAPPROVED () DEFERRED () REFERRED TO:

Rejection of Claim – Maria E. Gomez

Claim for Damages against a Governmental Entity

A complete copy of the Claim for Damages has been included with the agenda packets distributed to members of the Imperial City Council. It has not been included with the online agenda packet. A complete copy of this agenda item is available for review in the City Clerk's Office located at 420 S. Imperial Avenue, Imperial, CA.

RECEIVED

MAY 17

Initial: emery

CLAIM FOR DAMAGE OR INJURY AGAINST THE CITY OF IMPERIAL, CALIFORNIA

Claims for death, injury to person, or to personal property must be filed not later than six months after the occurrence. (Gov. Code, Sec. 911.2)

Claims for damages to real property must be filed not later than 1 year after the occurrence. (Gov. Code, Sec. 911.2)

TO: City of Imperial
420 So. Imperial Ave.
Imperial, CA 92251

Maria E. Gomez	El Centro, CA 92232	760-455-9113	67
Name of Claimant	Address	Phone	Age

Walter Clark Legal Group, 71861 CA-111, Rancho Mirage, CA 92270
Address to which Claimant wishes notices sent

WHEN did damage or injury occur? 11/17/2023

WHERE did damage or injury occur? W. State Street & Imperial Avenue, In the City of Imperial, California.

HOW and under what circumstances did damage or injury occur? See Attachment A

WHAT particular action by the City, or its employees, caused the alleged damage or injury? (Include Names of Employees, if known)

See Attachment A

WHAT sum do you claim? Include the estimated amount of any prospective loss, insofar as it may be known at the time of the presentation of this claim, together with the basis of computation of the amount claimed: (Attach estimates or bills, if possible)

Amount exceeds \$35,000.00. Unlimited Jurisdiction Case

\$ _____

\$ _____

\$ _____ **Total Amount Claimed** \$ Unlimited Jurisdiction Case

NAMES and addresses of witnesses, Doctors and Hospitals:

US San Diego Health, 6363 Greenwich Dr., San Diego, CA 92122; El Centro Regional Medical Center, 1415 Ross Avenue, El Centro, CA 92243. See Attached Medical Specials.

Maria E Gomez
Signature of Claimant

Date

CLAIM FOR DAMAGE OR INJURY AGAINST THE CITY OF IMPERIAL, CALIFORNIA

Claims for death, injury to person, or to personal property must be filed not later than six months after the occurrence. (Gov. Code, Sec. 911.2)

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TO: City of Imperial
420 So. Imperial Ave.
Imperial, CA 92251

<u>María E. Gomez</u>	<u>El Centro, CA 92232</u>	<u>760-455-8113</u>	<u>67</u>
Name of Claimant	Address	Phone	Age

Walter Clark Legal Group, 71881 CA-111, Rancho Mirage, CA 92270
Address to which Claimant wishes notices sent

WHEN did damage or injury occur? 11/17/2023

WHERE did damage or injury occur? W. State Street & Imperial Avenue, in the City of Imperial, California.

HOW and under what circumstances did damage or injury occur? See Attachment A

WHAT particular action by the City, or its employees, caused the alleged damage or injury? (Include Names of Employees, if known)


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Amount exceeds \$35,000.00, Unlimited Jurisdiction Case
 \$ _____
 \$ _____
 \$ _____ **Total Amount Claimed** \$ Unlimited Jurisdiction Case

NAMES and addresses of witnesses, Doctors and Hospitals:

US San Diego Health, 6363 Grandview Dr., San Diego, CA 92122; El Centro Regional Medical Center, 1415 Ross Avenue, El Centro, CA 92243. See Attached Medical Records.


Signature of Claimant

Date

ATTACHMENT A

HOW and under what circumstances did damage or injury occur?

On November 17, 2023, at approximately 9:30 a.m., Maria E. Gomez was walking on the sidewalk of West State Street and Imperial Avenue, when she tripped and fell, due to the uneven pavement on the sidewalk, which caused her to sustain serious injuries.

Claimant Maria E. Gomez sustained serious injuries and other damages as a result of the subject fall due to the dangerous condition of public property located on the sidewalk of West State Street and Imperial Avenue, in the unincorporated area of the City of Imperial, in Imperial County. See attached color photographs of the uneven pavement.

WHAT particular action by the City, or its employees, caused the alleged damage or injury? (Include Names of Employees, if known)

The City of Imperial carelessly, recklessly, and unlawfully owned, leased, maintained, managed, operated, designed, and controlled the uneven pavement on the sidewalk of West State Street and Imperial Avenue in the unincorporated area of the City of Imperial, in Imperial County (where the subject fall occurred), hereinafter referred to as the "Premises".

Claimant alleges that the City of Imperial, and its employees, agents, and/or independent contractors, created a dangerous condition on public property while working, planning, designing and/or approving the design of the Premises.

The Premises were in a dangerous condition that created a substantial risk when the Premises were used in a reasonably foreseeable manner, including, but not limited to:

- The City of Imperial created a dangerous condition of public property by improper design of the subject side in consideration of pedestrians;
- The Premises were in a physically damaged, deteriorated or defective condition such that it is reasonably foreseeable that the damage would endanger pedestrians on the sidewalk;

The City of Imperial was negligent in its use, ownership, maintenance, and control of the Premises in that it permitted such a dangerous condition to exist on the Premises.

The City of Imperial had a non-delegable duty to: (1) exercise due care in the use, ownership, maintenance, control, occupation and management of the Premises in order to avoid exposing the general public to an unreasonable risk of harm; (2) use reasonable care to keep the Premises in a reasonably safe condition; (3) use reasonable care to discover any unsafe conditions; and (4) to repair, replace, and/or give adequate warning of anything that could be reasonably expected to harm others.

The duties outlined above pertaining to City of Imperial are non-delegable duties.

Claimant is informed, believes, and thereon alleges that the City of Imperial's agents and/or employees caused and/or permitted the dangerous condition to remain on the Premises. A danger which would not be reasonably apparent to, or anticipated by, persons on the Premises.

Claimant is informed, believes, and thereon alleges that the City of Imperial is liable in *respondeat superior* (vicarious liability) for the torts of its employees committed during the course and scope of its employees' employment under Government Code §815.2(a). This includes, but is not limited to, liability for negligent acts and omissions committed by employees of the City of Imperial while said employees were acting within the course and scope of their employment.

Claimant is informed, believes, and thereon alleges that the City of Imperial had actual and/or constructive notice of the dangerous condition on the Premises a sufficient time prior to this incident to have taken appropriate measures to discover the dangerous condition, to repair it, to protect against it and/or to adequately warn of the dangerous condition. The knowledge of any agent/employee is imputed to its employer.

The City of Imperial owned, managed, maintained and controlled the Premises. The Premises were in a dangerous condition at the time of this incident. The dangerous condition created a reasonably foreseeable risk of the kind of injury that occurred.

The dangerous condition was caused by the negligence of the City of Imperial's agents and/or employee(s) and/or independent contractors, while acting within the course and scope of their employment with the City of Imperial [Gov. Code Sections 835(a), 840.2].

The City of Imperial knew, or should have known, the dangerous condition of the Premises a sufficient time prior to this incident and could have protected and warned against it.

The dangerous condition had existed for enough time before the incident that the City of Imperial, through a reasonable inspection, should have discovered the condition and known that it was dangerous.

Prior to Claimant's incident, the City of Imperial had actual and/or constructive notice of the dangerous condition.

Pursuant to CACI 1103 and Gov. Code Section 835.2, a public entity knows of a dangerous condition if an employee knows of the condition and reasonably should have informed the entity about it.

Pursuant to CACI 1012, the knowledge of an employee, agent, or independent contractor is imputed to the employer/property owner.

At the time of the subject incident, the City of Imperial controlled the Premises and had the power, ability, and means to prevent, fix, or guard against the dangerous condition, but failed to do so.

The City of Imperial failed to warn of, repair, or remedy this dangerous condition.

Maria E. Gomez v. City of Imperial | DOI: 11/17/2023

Pursuant to Gov. Code Sec. 815.2, a public entity is liable for injury proximately caused by an act of an employee of the public entity within the course and scope of employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative.

Pursuant to Gov. Code Sec. 820, a public employee is liable for injury caused by his act or omission to the same extent as a private person.

At the time of the presentation of this claim, Claimant is unaware of the City of Imperial's employee's names and/or departments. Investigation into this claim is ongoing, and this information will be provided when it has been determined.

As a proximate result of the negligence, carelessness, recklessness, unlawfulness and/or breaches of the City of Imperial, and its agents, employees, and/or independent contractors, Claimant was hurt and injured to her health, strength and activity, sustaining injury to her body and shock to her nervous system and person, as well as mental and emotional distress, all of which have caused, and continue to cause, Claimant great mental and physical pain and suffering. Claimant's injuries include, but are not limited to, the following: left shoulder (fracture); left arm (fracture), bilateral knees and depression.

As a further proximate result of said negligence, carelessness, recklessness, unlawfulness and/or breaches of the City of Imperial, and its agents, employees and/or independent contractors, Claimant was caused to, and continues to, seek treatment with appropriate health care providers for the injuries sustained in the subject incident. Claimant is informed and believes, and thereon alleges, that said injuries will result in some permanent disability. Please see the attached List of Medical Specials.

As a further proximate result of said negligence, carelessness, recklessness, unlawfulness and/or breaches of the City of Imperial, and its agents, employees and/or independent contractors, Claimant has been, and will continue to be, prevented from working in her usual occupation, and she has suffered, and will continue to suffer, a loss of earnings and loss of earning capacity.

A complete investigation of this collision has not been completed. As such, Claimant reserves her right to expand her allegations, claims, causes of action, facts, description of indebtedness, obligation, injury, damages, and losses incurred based upon evidence obtained through discovery.