

ARTICLE 21  
**Claims, Actions and Proceedings**

**§ 21-1. Tort Claims.**

Notice of each claim for damages for wrong or injury to person or property or for the death of a person founded upon tort shall be given within ninety days after the claim arises by service thereof in compliance with the provisions of section fifty-e of the general municipal law.

**§ 21-2. Conditions Precedent to Action.**

No action or proceeding to recover or enforce any unliquidated account or claim against the city shall be brought until such claim shall have been filed with the city clerk or, in the case of a claim founded upon tort, shall not be brought until notice of claim is served as required by the provisions of section 50-e of the general municipal law.

No civil action shall be maintained against the city for damage or injuries to person or property sustained in consequence of any street, part or portion of any street including the curb thereof and any encumbrances thereon or attachments thereto, tree, bridge, viaduct, underpass, culvert, parkway or park approach, sidewalk or crosswalk, pedestrian walk or path, or traffic-control sign or signal, being defective, out of repair, unsafe, dangerous or obstructed, or in consequence of the existence or accumulation of snow or ice upon any street, bridge, viaduct, underpass, culvert, parkway or park approach, sidewalk or crosswalk, pedestrian walk or path, unless previous to the occurrence resulting in such damage or injuries written notice of such alleged condition relating to the particular place and location was actually given to the city clerk and there was a failure or neglect within a reasonable time thereafter to remedy or correct the alleged condition complained of.

**§ 21-3. Damages on Altering Grade.**

When the city shall alter the recorded grade of any street or alley, the owner of any property in front of whose premises the grade is so altered may within one year thereafter present a claim to the city clerk for damages caused by such alteration.

**§ 21-4. Action Relating to Navigation.**

Whenever, any vessel, float or other craft shall be so placed as to obstruct navigation or any sunken vessel or wreck shall obstruct navigation of any navigable waters under the control of the city, the commissioner of public works, parks and streets pursuant to such ordinance, shall order the owner or person in charge thereof to remove the same. In the event of failure to obey said order, said commissioner shall cause the removal thereof and the expense of such removal shall be a lien upon the vessel, float, craft or wreck so removed and may be recovered by the city from the owner thereof by action.

**§ 21-5. Action for Foreign Insurance Tax.**

The tax provided to be paid by section 25-14 of this charter, the damages for any breach

of the undertakings given pursuant to section 25-15 of this charter and the pecuniary penalties imposed by section 25-16 of this charter, may be sued for and recovered with costs of suit in any court of record within this state by the director of the treasury for the use of the department of fire.

**§ 21-6. Action To Recover Tax.**

After the expiration of ten months from the commencement of collections on the general tax rolls, the city may recover by action the amount of every tax on said rolls with the additions and interest unpaid from the persons liable to pay the same. The judgment obtained in such action, when docketed in the office of the clerk of Erie county, shall have priority over any other lien or encumbrance upon or any transfer of the property charged with the tax for which such action was brought, provided that said judgment shall not have priority over the encumbrance, lien or transfer of any purchaser or encumbrancer of said property not a party to said action whose encumbrance, lien or transfer shall have been filed or recorded before the commencement of the action.

**§ 21-7. Proceeding To Review General Assessment.**

No proceeding shall be brought to review any assessment on the general rolls, or any of them, unless the petition for the writ is presented to a justice of the supreme court or at a special term of the supreme court in the judicial district in which the assessment complained of was made within thirty days after the final completion of said assessment rolls and the publication of the notice thereof as required by article 28. In any such proceeding the total assessment only can be reviewed. Assessments of special franchises may be reviewed as provided by the tax law.

**§ 21-8. Mandamus To Remove Wires.**

Compliance with an ordinance in respect to the removal of poles, cables, wires and other appliances for conducting electricity from the streets or public grounds of the city may be enforced by mandamus by any court of competent jurisdiction upon application of the city as relator.

**§ 21-9. Resident Not Disqualified.**

No person shall be incompetent to act as judge, justice, commissioner, referee, juror or witness by reason of his being a resident or freeholder of the city, in any action or proceeding to which the city is a party, or in which it is interested.

**§ 21-10. Security Not Required of City.**

It shall not be necessary for the city, in any action or proceeding in which it is a party to give any bond, undertaking or security on appeal, or in order to obtain a provisional remedy, or to take or to prevent any other proceeding.

**§ 21-11. Notice of Intention To File Claim Against Fire Insurance Proceeds.**

The director of the treasury is authorized, upon the passage of a resolution by the

common council, to file with the state superintendent of insurance a notice of intention to claim against the proceeds of any fire insurance policy upon real property (except one- and two-family residential structures) located within the city, upon which there are liens for special ad valorem levies, special assessments and municipal charges and which have remained undischarged for a period of one year or more.

The proceeds against which a claim has been filed shall be released or returned to the insured, provided that the insured agrees in writing with the city, upon such terms and conditions to guarantee performance of the agreement as the corporation counsel may deem reasonable and necessary, to restore the property damaged by a fire to at least the same condition that it was in prior to the time that the city's lien arose.

The powers granted by this article shall be in addition to, and not in substitution for, all the powers, rights, privileges and authority now existing in the city or hereafter conferred upon it by any other provision of law.