

**A Resolution Establishing a No-Fault Sanitary Sewer Backup Damage Reimbursement Policy.**

*WHEREAS, the City of Whitewater has determined that it is necessary to increase citizen awareness of the operational dynamics of wastewater collection systems and their responsibilities relative to maintenance and protection against potential property damage from sewer backups, and*

*WHEREAS, the City of Whitewater is responsible for maintaining sewer mains, manholes, pump stations and force mains that are in City rights-of-way and on City property, and*

*WHEREAS, the City of Whitewater expends significant resources, through an extensive preventive maintenance program, to keep the sewer system in a good state of repair. Occasionally, however, forces of nature or conditions develop within the system that may cause sewage to back up into a residence or business which are beyond the City's control, and*

*WHEREAS, the City of Whitewater desires to reduce health hazards by encouraging property owners who have experienced a sewer backup to get it appropriately cleaned up as quickly as possible, and*

*WHEREAS, the City of Whitewater desires to provide a method for assisting homeowners with the financial burden of a sewer backup even when the City is not legally liable for the resulting damage.*

*NOW THEREFORE, BE IT RESOLVED by the Common Council of the City of Whitewater that the City will reimburse sanitary sewer customers as set forth in the City's No-Fault Sanitary Sewer Backup Damage Reimbursement Policy.*

*Resolution introduced by Councilmember Kidd, who moved its adoption. Seconded by Councilmember Binnie. AYES: Wellnitz, Grady, Binnie, Goettl, Singer, Kidd. NOES: None. ABSENT: None. ADOPTED: April 7, 2016.*

Cameron L. Clapper, City Manager

Michele R. Smith, City Clerk

**City of Whitewater**  
**No-Fault Sanitary Sewer Backup Damage Reimbursement Policy**

This Policy is a result of, and authorized by, City of Whitewater Common Council Resolution Number 2016-\_\_\_\_\_

**1. GENERAL**

1.1 This Policy is intended to increase citizen awareness of the operational dynamics of wastewater collection systems and their responsibilities relative to maintenance and protection against potential property damage from sewer backups. In addition, this policy provides for limited assistance to individuals who have experienced property damage as a direct result of backup of the City's sanitary sewer system even if it is determined the City is not at fault. It is intended to cover isolated incidents and does not cover multiple claims from widespread damage as a result of forces of nature or other situations out of the City's control.

1.2 The City is responsible for maintaining sewer mains, manholes, pump stations and force mains that are in City rights-of-way and on City property. Maintenance of sewer service lines from the City-owned system to the property owner's structure is the responsibility of the property owner.

1.3 The Wastewater Department expends significant resources, through an extensive preventive maintenance program, to keep the sewer system in a good state of repair. Occasionally, however, forces of nature or conditions develop within the system that may cause sewage to back up into a residence or business which is beyond the City's control and which is not an incident in which the City bears responsibility or legal liability.

1.4 For the purpose of this Policy, the term "no-fault" means without the legal fault of the City and without any cause attributable to the property owner. The intent of this Policy is for the City to reimburse (a) property owner(s), up to the limit(s) established in this Policy, for clean-up costs and repairs to buildings for damages resulting from a City sanitary sewer backup irrespective of whether the City was legally negligent or legally liable for those damages under the controlling provisions of law.

1.5 For the purpose of this Policy the term "sanitary sewer backup" or "sewer backup" means any backup of sewage from the City owned and maintained sanitary sewer or sewer force main system. It does not include stormwater backups or backups caused in areas that are the responsibility of the property owner.

1.6 Overflowing drains and toilets as a result of water running in the house or business is not considered a backup from the City's sewer system, i.e., if there is a pipe blockage, and the resident continues to flush toilets and run water causing an overflow, it is not considered a sewer backup under the definitions of this policy.

1.7 Any kind of damage caused by the potable water system within the structure, including overflows of sinks, toilets, tubs, showers, washing machines or broken water tanks and pipes is not covered by this policy.

## **2. PURPOSE**

2.1 This Policy is intended to:

- A. Reduce health hazards by encouraging property owners who have experienced a sewer backup to get it appropriately cleaned up as quickly as possible.
- B. Provide a method for assisting homeowners with the financial burden of a sewer backup even when the City is not legally liable for the resulting damage.
- C. Educate the public as to the City's limitation of liability and the responsibility and options of residents to protect their own assets.

2.2 The City shall be the sole and exclusive judge of the claims submitted under this Policy and the payments made hereunder are not entitlements, but are intended to be made in the nature of "courtesy" or "good will" payments and are made subject to fund availability.

## **3. COMMUNICATION**

3.1 To enhance public education, City Staff may develop an educational program designed to inform the public as to the inherent vulnerabilities of wastewater collection systems and what the public can do to protect their health and property from damage from potential sewer backups. This information may be disseminated through various methods available to the City including, but not limited to, websites, newsletters, public speaking events, advertisements and utility bill inserts.

## **4. PROGRAM**

4.1 As part of the contract for the provision of sewer services to the customers of the City, and in consideration of payment of sewer bills, the City agrees to reimburse its sanitary sewer customers for ~~up to \$7,500~~ of cleanup costs, property damages, and mechanical equipment, essential to the habitation of the residence, caused by a sanitary sewer backup, irrespective of whether the City is legally liable for those damages. Included in the \$7,500 limit is reimbursement of personal property and/or possessions, up to \$1,000. The program will have an annual aggregate limit of \$30,000 per all occurrences. Reimbursement is subject to the following conditions:

- A. The backup must have resulted from a condition in the City's sanitary sewer system or lines and not from a condition in a private line.

- B. The backup must not have been caused by catastrophic weather or other event for which Federal Emergency Management Assistance is available.
- C. The backup must not have been caused by an interruption in electric power to the City's sewer system or to any other City lift station.
- E. ~~The City will not reimburse any costs which have been or are eligible to be covered under the property owner's homeowners or other property insurance.~~
- F. The maximum amount that the City will reimburse is a ~~one-time amount of up to \$7,500 per sewer lateral~~, provided there has been no change in ownership since the last paid claim. In this regard, a structure or group of structures served by a single connection to the City's sewer system is considered a single lateral.
- G. Coverage under said policy shall only be extended to customers of the City of Whitewater wastewater collection system.
- I. All claims for reimbursement under this Policy must be submitted to the City Clerk ~~within one hundred twenty (120) days after the incident occurs.~~
- J. The Finance Director may refer claims for reimbursement to an independent insurance adjuster for investigation, recommendation, and compensability determination on an as needed basis.
- K. The determination as to whether to make payment for loss under this Policy shall be based on the following criteria:
  - 1. Whether an eligible claimant suffered an otherwise uninsured property loss, caused by breach or backup of a City-owned sanitary sewer line, under circumstances where the claimant acted responsibly to avoid the loss; and
  - 2. If so, whether the extent of the loss has been adequately substantiated.
  - 3. The following shall result in the denial of a claim:
    - (a) Claim not timely submitted;
    - (b) Loss fully covered by private insurance;
    - (c) Claimant ineligible under the terms of this policy;
    - (d) Loss caused by an irresponsible act of the claimant, claimant's employee or agent, or member of claimant's household;
    - (f) Loss eligibility unsubstantiated;
    - (g) Any other conditions or criteria determined as appropriate by the City.
  - 4. The following shall result in reduction of payment:
    - (a) Loss partially covered by private insurance;
    - (b) Loss exceeds funding limits of this Policy/Resolution;
    - (c) Verification of loss inadequate or incomplete;
    - (d) Claimant did not cause the problem but failed to act responsibly to minimize the loss;
    - (e) ~~Property sewer bills are not current;~~

- (f) ~~There exist outstanding amounts owed to the City associated with the property or property owner (any payment by the City will be reduced by outstanding amounts owed);~~
- (g) Loss for an occurrence exceeds financial parameters established by the City Council;
- (h) Any other conditions or criteria determined as appropriate by the City.

- L. A property owner receiving reimbursement under this program may be encouraged to install a sewer backflow prevention device. The cost of the device and its installation is eligible for reimbursement under this program.
- M. Tenant and Property Owner Claims: Claims from a tenant and property owner that were affected by the same backup will be received separately, but will jointly be restricted to the \$7,500 limit including no more than \$1,000 for personal property and possessions. The City will determine a fair and equitable way of allocating the funds per lateral.
- N. Cleanup costs and real property damages are reimbursable up to one-hundred percent (100%) of the cost. Mechanical equipment essential to the habitation of the residence is reimbursable up to fair market value, as determined by the City. Personal property and possessions are reimbursable up to fifty percent (50%) of replacement cost, as determined by the City.

4.2 Cleanup of Real and Personal Property:

- A. Upon discovering a break, leak, backup or other failure of City facilities, or any damage resulting from the same, ~~a property owner shall immediately notify the Public Works Wastewater Utility of such event.~~
- B. Upon notification of the occurrence of the event, Public Works will respond as determined appropriate and as resources allow.
- C. To request reimbursement for damaged property or other loss, related to a sewer backup, the property owner must complete a Notice of Claim form and file it with the City Clerk. Once the claim is filed, City staff and the City's agents will review and investigate it, and determine compensability.
- D. ~~In the event the property owner engages the services of a cleanup/mitigation contractor the City may reimburse the property owner for actual expenses incurred by the property owner, but only up to the amount the City or its agents determine is reasonable and appropriate. All documentation of loss, damage, and mitigation expenses must be provided to the City or its agents in a media and format requested by the City or its agents.~~
- E. This Policy does not cover alleged damages for personal injury.

F. In no event shall the reimbursement total exceed \$7,500 per lateral for cleanup, other mitigation services, repair, and damaged real or personal property.

4.3. This is a one-time sewer backup reimbursement. This reimbursement applies to a building and the property owner(s) at the time of the event. Subsequent sewer backups at building, while owned by the same property owner(s), will not be eligible for reimbursement.

4.4 Payment does not imply liability.

A. Any payment made under this Policy shall not be construed as an admission of nor does it imply any negligence or responsibility on the part of the City for such damage. Any payment made under this Policy is strictly voluntary on the part of the City.

B. Any payment made under this Policy and accepted shall constitute a full and complete release of any and all claims against the City, its officers, employees and agents arising from the incident. No payments shall be made unless the appropriate parties sign a release, approved by the City Attorney, of all claims against the City.

4.5. Notwithstanding any other provisions of this Policy, no claim shall be accepted from the United States or any of its departments or agencies, the state or any political subdivision, the University of Wisconsin-Whitewater, the Whitewater Unified School District, or any other taxing district.