

NOTICE TO ALL SEWER CUSTOMERS

The City of Grand Rapids recently adopted a new claims policy on the advice and recommendation of their legal counsel. This new policy will change how the City of Grand Rapids will evaluate and pay claims relating to sewer back up events for all customer communities of the City of Grand Rapids, including sewer customers in the City of Walker.

The new policy will follow requirements of Public Act 222, which was approved by the Michigan legislature in 2001, and became effective in 2002. This law essentially requires that the claimant must prove the following if they are to succeed in a sewer back up claim: 1. The city's sewer had a defect, 2. The City knew or reasonably should have known about the defect 3. The City had reasonable time to repair the defect but failed to do so and 4. The defect was the substantial proximate cause of the damages alleged.

The proposed policy does provide for a sewage system event hardship assistance program. The "payment up front" program would authorize the City of Grand Rapids risk manager to pay qualifying residents an amount not to exceed \$1,000 per claim toward clean up or other costs incurred as a result of a sewer system event; however, the claim must still meet the 4 point test noted above.

It is strongly recommended that residents whose homes are susceptible to sewer backups contact their insurance company to discuss if purchasing a sewer back up rider is necessary to protect your property.

The above change in the sewer back up claims policy is effective immediately.

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- b. The City Attorney, or his or her designee, shall conduct an investigation into each claim and make a determination with regard to the City's legal liability to pay said claim. The City Attorney, or his or her designee shall make a recommendation with regard to specific amounts to be paid, if any.
- c. For proposed settlements of property damage claims greater than \$1,000.00 and equal to or less than \$15,000.00, the City Attorney, or his or her designee, may authorize payment or denial on behalf of the City.
- d. All proposed settlements of property damage claims in excess of \$15,000.00 shall be submitted with the advice and recommendations of the City Attorney to the Fiscal Committee.
- e. The Department of Law shall periodically prepare and submit to the City Commission a report which summarizes the nature and amount of all claims processed in accordance with this policy, along with the disposition and rationale for each.

B. Sewer Backup Claims

1. Authority for Payment. Prior to the issuance of any proposed offer of settlement to any claimant under this provision, the terms of the proposed settlement shall be submitted by the Risk Manager to the Department of Law for review and approval. The City Attorney, or his or her designee, may then authorize payment or denial of the claim on behalf of the City. All proposed settlements of property damage claims in excess of \$15,000.00 shall be submitted with the advice and recommendations of the City Attorney to the Fiscal Committee.
2. Sewer backup claims shall be processed in accordance with Public Act 222 of 2001, being MCL 691.1416, et. seq. A summary of the act is provided as follows:

a. Definitions

Appropriate Governmental Agency – means a governmental agency that, at the time of a sewage disposal system event, owned or operated, or directly or indirectly discharged into, the portion of the sewage disposal system that allegedly caused damage or physical injury.

Claimant – means a property owner is one who has suffered property damage or physical injury, and believes that a "sewage disposal system event" caused such damage or physical injury.

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Defect – means a construction, design, maintenance, operation or repair defect.

Sewage Disposal System Event – means the overflow or backup of a sewage disposal system onto real property. An overflow or backup is not a sewage disposal system event if any of the following was a substantial proximate cause:

- Obstruction in the service lead not caused by a governmental agency.
- Sump system, building drain, surface drain, gutter or downspout connected to the sewage disposal system.
- Act of war or terrorism.

Sewage Disposal System – all interceptor sewers, storm sewers, sanitary sewers, combined sanitary and storm sewers, sewage treatment plants, and all other plants, works, instrumentalities, and properties used or useful in connection with the collection, treatment, and disposal of sewage and industrial wastes, and includes a storm water drain system under the jurisdiction and control of the governmental agency.

b. Notice Requirements

A claimant that experiences a “sewage disposal system event” must file a claim with the City of Grand Rapids *in writing* within 45 days of the discovery of the event. The claim must include:

- The claimant’s name, address and phone number.
- The address of the affected property.
- The date of discovery of any property damage or physical injury.
- A brief description of the claim.

Claimants that fail to file a written claim within 45 days are not entitled to compensation.

c. Claim Requirements

A claimant may seek compensation for property damage or personal injury by showing that ALL of the following existed at the time of the event:

- (i.) The governmental agency qualifies as an appropriate governmental agency, as defined by the statute.

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- (ii.) The sewage disposal system had a defect.
- (iii.) The governmental agency knew, or in the exercise of reasonable diligence should have known about the defect.
- (iv.) The governmental agency, having the legal authority to do so, failed to take reasonable steps in a reasonable amount of time to repair, correct, or remedy the defect.
- (v.) The defect was a substantial proximate cause of the event and the property damage or physical injury.

d. Damages

Recovery under this policy is limited to actual economic damages caused by an event unless the claim seeks recovery for a death, serious impairment of a bodily function, or permanent serious disfigurement.

For damage to personal property, the claimant must provide reasonable proof of ownership and value of the damaged property.

Sewage System Event Hardship Assistance Program. In order to relieve the hardship that may accompany sewer backups caused by a blockage in the City's sewer main, and notwithstanding any provisions of this policy to the contrary, the City reserves the right to authorize payment in an amount not to exceed one-thousand dollars (\$1,000.00) for damage caused by a sewage disposal system event as defined herein. Such payment may be authorized at the discretion of the Risk Manager, shall be made no more than once per parcel per sewage disposal system event, and shall require the execution of a full release of claim against the City. Damage caused by an obstruction in a sewer lateral shall not be eligible for compensation under this program.

IV. DEPARTMENTAL CLAIMS PROCEDURE

Every department, upon notification from the Department of Law or Risk Management Department that a claim has been filed which concerns that department, shall submit the following within 14 days:

- A. A complete written report which describes the events surrounding the claims situation along with statements from employees with any knowledge of the event.

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- B. A detailed description of departmental procedures or policies which affected this particular claim.
- C. A copy of all records relevant to the claim.
- D. A recommendation for either payment or non-payment of the claim and the underlying reason for the recommendation.