

# TORONTO STAFF REPORT

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October 24, 2005

To: Works Committee

From: Lou Di Gironimo, Acting General Manager, Toronto Water

Subject: No-Fault Grant for Sewer Backups  
All Wards

Purpose:

The purpose of the report is to identify the option and associated costs of providing a "no-fault" grant to those who experienced basement flooding during the August 19, 2005, as a result of sewer backups.

Financial Implications and Impact Statement:

The direct costs of providing a no-fault grant to residents who suffered property damage due to sewer backups associated with the August 19, 2005, rainstorm is estimated to be between \$4.5 million and \$9 million depending on the eligibility criteria and the upset limit of the grant. There would be no offsetting reduction in liability to the City as a result of the grant, because the City is not generally liable for sewer backup damages caused by such an extreme event.

Funding for this purpose has not been approved in the 2005 Toronto Water Capital Budget nor has it been included in the proposed 2006 Toronto Water Capital Budget submission. The inclusion of this program in 2005 would require the capital plan to be amended and items deferred to 2006. If a No Fault Grant Program is included in the 2006 Capital Budget request, the proposed 2006 water rate would have to be increased in the range of 1.0% to 1.8% depending on the program uptake levels, and the maximum grant limit.

The Chief Financial Officer and Treasurer has reviewed this report and concurs with the financial impact statement.

Recommendations:

It is recommended that this report be received for information

## Background:

City Council at its meeting of September 28, 29 and 30, 2005 reinstated the Basement Flooding Protection Subsidy Program, providing financial subsidies to those homeowners who experienced flooding from the August 19, 2005, storm for the installation of works to prevent future flooding. These homeowners may be entitled to subsidies up to \$3,200. The Subsidy Program was also extended again for homeowners that experienced basement flooding during the storms of 2000 and the electrical blackout of August 2003.

The Works Committee, at its meeting held on September 14, 2005, in considering the staff presentation "Status of Rain Damage Resulting from the August 19, 2005 Storm" recommended to the Policy and Finance Committee, among other things, that City Council reinstate the "no fault" grant to those who have experienced sewer back-up in their homes as a result of that storm event. Policy and Finance Committee (Report No 8, Clause 38) referred that recommendation to the Deputy City Manager, Fareed Amin, and the Acting General Manager, Toronto Water, for report to the Works Committee and that such report provide options and costing with respect to reinstating the "no fault" grant to those who have experienced sewer backups.

The former City of North York had established a No-Fault Flood Grant Program to assist homeowners with the cost of repairing damages to private property as a result of watermain breaks or main sewer back-ups in that City's systems. This program was established on April 17, 1991, at a time when North York had experienced extremely heavy rainstorms which resulted in widespread basement flooding. The program provided an upset limit of \$3,000 and included the following eligibility criteria:

- (1) The occurrence of a sewer back-up or watermain break must be after January 1, 1991. There is no grant allowed for back-up due to blocked connections.
- (2) The grant applicant must not have caused or contributed to the damage.
- (3) The applicants' damages, both building and contents, are to be assessed based on depreciated values and not on replacement costs to a maximum of \$3,000.
- (4) If the applicant has Homeowners Insurance, which provides coverage, it is required that they present a claim against their policy where greater benefits may be available.
- (5) Claims by the tenant and owner of the same premises will be considered jointly, and both must be identified. If the combined property damages exceed \$3,000 then the maximum amount of the grant will be pro-rated in proportion to their respective damages.
- (6) Acceptance of the grant does not preclude an action for greater damages. In those cases, liability would have to be established against the City and the amount of the damage proven.

City Council, at its meeting of April 23 to May 2, 2001, in considering options to provide financial relief to those residents which experienced basement flooding for storms in 2000,

adopted recommendations from the Policy and Finance Committee (Report No. 5, Clause 3) that a City-wide Basement Flood Grant Program not be established and that the former North York City Council resolution which created the no-fault program in North York be repealed.

The reasons given for not establishing a no fault grant program for damages caused by sewer backups and watermain breaks were that:

- (1) the City was initiating the Basement Flooding Protection Subsidy Program (also referred to as the Home Isolation Program), which financially assisted homeowners with the installation of home isolation devices to prevent basement flooding;
- (2) funding for future sewer upgrades would continue to assist in reducing the risk of basement flooding;
- (3) property owners and tenants have access to comprehensive insurance products, which provide ample protection;
- (4) the repeal of the North York program would be in keeping with the harmonization of the City's insurance practices and restore fair and consistent claims adjudication;
- (5) a City-wide grant would result in a higher level of service for all other former municipalities except North York;
- (6) under the *Municipal Act*, there is no legal obligation on a municipality to pay residential basement flooding damages, except in the event of negligence on the part of the City; and
- (7) the frequency and severity of basement flooding occurrences are weather dependent, typically associated with extreme conditions which are unpredictable, making the associated expenses unpredictable.

Comments:

Since Council last considered this issue in 2001, there has been no significant change in circumstances that would alter the analysis put forward at that time with respect to implementing a similar program. However, this report considers the implications of providing such a program only to those homes affected by the August 19, 2005, storm event. No consideration has been made for those homeowners that experienced flooding during the storms of 2000 and the electrical blackout of August 2003 as the matter of “no fault” grants were considered at that time and Council did not approve the extension, or continuation of the former North York policy.

At this point, Toronto Water has received 2,200 reports of basement flooding and the Insurance and Risk Management section has received 951 claims for damages. It should be noted that if a grant program is made available, many more reports will likely be received. For example, Toronto Water has received a significant increase in reports of basement flooding since the

Basement Flooding Protection Subsidy Program was extended to these affected residences by Council in September 2005, and subsequently advertised.

At this time, funding has been made available only to support the Basement Flooding Protection Subsidy Program, which aims to prevent future incidences of flooding. Provisions for funding a no-fault type grant program have not been made. If this type of program is implemented, the City will still have to process the damage claims received by Insurance and Risk Management staff and deal with the legal actions against the City. Therefore, a grant program will not reduce the City's costs to settle claims.

Assuming the maximum grant is set at \$3,000, as in the former North York grant program, and that there will be between 1,500 and 3,000 eligible claims, the program costs could range from \$4.5 million to \$9 million.

Conclusions:

The provision of a "no fault" grant to homeowners who suffered flooded basements as a result of the August 19, 2005, rainstorm is not recommended. It is estimated that such a grant could cost the City from \$4.5 million to \$9 million and will not provide any lasting benefit to the homeowner and will not support the City's efforts to provide a permanent solution to basement flooding.

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