

No Fault Grant for Basement Flooding Damages

Date: August 17, 2021

To: General Government and Licensing Committee

From: General Manager, Toronto Water

Wards: All

SUMMARY

This report addresses recommended eligibility criteria and the financial implications of providing a one-time no fault grant for residential property owners and/or tenants in the Rockcliffe neighbourhood of Ward 5, York South-Weston, and other similarly impacted areas, who were uninsurable for basement flooding insurance coverage and reported one or more sewer back-up/basement flooding incidents to the City of Toronto as a result of storm events during the time period January 1, 2018 to December 31, 2020 inclusive.

In 2001, City Council decided to not establish a City-Wide Basement Flood Grant Program that would provide reoccurring financial grants of a certain amount for flooded basements. The decision to not proceed was on the basis that the Program would not provide any beneficial effects for the City, the cost of the program is unpredictable and potentially excessive, and the program is not required under the Municipal Act. This decision was in response to the consideration of a flood grant program following the storm event of May 12, 2000.

In 2005, a Flood Damages Grant Program, for basement flooding damages experienced by property owners as a result of the August 19, 2005 storm, was approved by City Council. The 2005 Flood Damages Grant Program ended in 2007 when City Council decided not to extend the program for homeowners that experienced flooding from storm events in December 2006 or February 2007.

This report provides information on how a no fault grant program will require ratepayer support from all classes of water users, how there is no legal obligation to provide a no fault grant program, and how a grant program would not reduce future risk of flooding. Potential eligibility criteria for a program and the financial requirement for such a program are also outlined.

RECOMMENDATIONS

The General Manager, Toronto Water recommends that:

1. The General Government and Licensing Committee receive this report for information.

FINANCIAL IMPACT

There is no financial impact to the City resulting from receipt of this report.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

On February 2, 2021, City Council directed the General Manager, Toronto Water, in consultation with the Director, Insurance and Risk Management, Finance and Treasury Services, and the City Solicitor to report to the General Government and Licensing Committee in the second quarter of 2021 on recommended eligibility criteria and financial implications of providing a one-time no fault grant for residential property owners and/or tenants in the Rockcliffe neighbourhood of Ward 5, York South-Weston, and other similarly impacted areas, who were uninsurable for basement flooding insurance coverage and reported one or more sewer back-up/basement flooding incidents to the City of Toronto as a result of storm events during the time period January 1, 2018 to December 31, 2020 inclusive.

Link: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.GL20.1>

On September 26 and 27, 2007, City Council directed that there should be no extension of the 2005 Flood Damages Grant Program to provide grants to homeowners that were flooded as a result of sewer backups in Ward 39 in December 2006 or February 2007.

Link: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2007.PW8.9>

On June 14, 2006, City Council adopted Terms and Conditions for the 2005 Flood Damages Grant Program. The 2005 Flood Damages Grant Program was created in response to the basement flooding that was experienced as a result of the August 19, 2005 storm event. Under this program, a maximum per applicant grant of \$3,000 could be obtained subject to City Council adopted eligibility criteria.

Link: <https://www.toronto.ca/legdocs/2006/agendas/council/cc060614/cofa.pdf>

On March 6, 7 and 8, 2001, City Council determined that a City-Wide Basement Flood Grant Program not be established for flooded basements on the basis that it would not provide any beneficial effects for the City, the cost of the program is unpredictable and potentially excessive, and the program is not required under the Municipal Act. This

decision was in response to the consideration of a flood grant program following the storm event of May 12, 2000.

Link: <https://www.toronto.ca/legdocs/2001/agendas/council/cc010306/wks3rpt/cl007.pdf>

COMMENTS

The information provided in this report has been derived from previous staff reports and City Council decisions regarding no fault grant programs for basement flooding damages, Toronto Water's records covering the period from January 1, 2018 to December 31, 2020, and the experience of Insurance & Risk Management following the 2005 Flood Damages Grant Program. The following discussion identifies no fault grant program considerations, the relevant storm events, eligibility criteria, and financial impacts.

The practical and equity impacts to consider when establishing a new one-time no fault grant program include:

1) All water ratepayers will contribute to the funding of a grant program.

- The City of Toronto's Water and Wastewater Program is currently fully funded on a 'pay-as-you-go' basis through a combined water and wastewater consumption rate and service fees as reflected in Toronto Water's Operating and Capital Budgets (the "Program"). Consequently, any grant program would necessarily be funded from the Program and, as such, all ratepayers, including multi-residential, institutional, commercial, and industrial property owners, including those that are not eligible for a no fault grant, would contribute to the funds used to pay grants.
- The average water utility cost for a residential property was \$951 in 2020. The provision of a no fault grant to an eligible property could readily exceed water revenue obtained from a property.
- Ratepayers that obtain appropriate insurance and take measures to guard against basement flooding would contribute to the funds to pay the grants while not being equally eligible to receive such grants.

2) There is no legal obligation on a municipality to pay residential basement flooding damages, except in the event a resident is able to establish the basement flooding damages were caused by negligence on the part of the City.

- The City has established policies and practices as to how it uses its limited resources to maintain its infrastructure.
- The City is not obligated to provide protection from the impact of storm events in circumstances when the infrastructure it maintains is overwhelmed because of the size and intensity of a storm event.
- The City of Toronto Act establishes the City's responsibilities.

3) The provision of a no fault grant to cover the cost of damages does not reduce the risk of future flooding events.

- The grant would provide financial support to offset some of the cost of flooding damages. This would not change the likelihood or extent of future damages.

- Resources directed to reducing risks such as the Basement Flooding Protection Subsidy Program, and sewer rehabilitation and maintenance activities can reduce the likelihood and magnitude of flooding damages.

4) Frequency and severity of basement flooding occurrences is extremely volatile making associated expenses unpredictable.

- Setting a precedent for compensating property owners for the impacts from weather events in the absence of negligence on the part of the City could lead to significant and indeterminate financial impacts.

2018 to 2020 Storm Events and Flooding Incidents

The time period of 2018-2020 includes four significant storm events, namely those of August 7, 2018; July 17, 2019; January 11, 2020; and July 8, 2020. The rainfall magnitudes and distributions across the City for each storm event are shown in Figures 1 to 4 in the Attachment to this report. The City received 825 flooded basement reports as a result of these storm events, with Ward 5, York South-Weston receiving the largest single total of any ward at 161 reports. Basement flooding reported in the rest of the City totalled 664.

Potential Eligibility Criteria for Establishing a No Fault Grant Program for 2018 to 2020 Storm Events

The eligibility criteria from previous no fault grant programs generally required that property flooding damages had to have occurred as a result of a storm event, that the events were reported to the City prior to a specified date, that the damages consisted of uninsured losses, that the damages were not as a result of actions taken by the applicant, and that the property owner claimed damages against their own insurance.

Requiring the flooding incidences to be reported to the City prior to a specified date (e.g. prior to the creation of a no fault grant program) allows the cost of a potential program to be estimated. It also exists as a means to limit fraudulent claims. When the City receives calls reporting basement flooding, staff are sent to investigate and record what happened. These records can be accessed after the incidents and they provide assurance that basement flooding damages did occur. As time passes, repairs are undertaken and it becomes difficult and often not possible for the City to verify whether or not a basement flooding incident had occurred. As a result, criteria to limit new claims after a reasonable amount of time has passed is important.

The criteria requiring eligible losses to be uninsured relates to the objective of compensating property owners only for damages that they are not being compensated for through other means. Eligible losses can include compensation for property owners who did not have insurance coverage, and also for the component of losses for property owners that were not covered by their insurance coverage. A maximum eligible claim amount should also be established. An independent adjuster should adjudicate each application and determine the eligible loss for each complete application received.

Financial Impacts of Establishing a No Fault Grant program for 2018 to 2020 Storm Events

As a basis for estimating the financial impact of a new no fault grant program for storm event damages covering the period from 2018 to 2020, the 2005 Flood Damages Grant Program was reviewed.

The August 19, 2005 storm resulted in 3,842 properties contained on Toronto Water's list of reported flooding, as of April 19, 2006. The City received 1,081 grant applications, a 28 per cent uptake. The average claim amount for uninsured losses was \$720. The total paid out in grants for uninsured losses was just over \$778,000. The difference between depreciated versus replacement values can be significant. The 2005 Flood Damages Grant Program assessed damages based on depreciated values not on replacement costs. Administration costs amounted to approximately 20 per cent of the total paid out.

Recognizing that 2005 was 16 years ago, staff considered an increase in the maximum eligible grant amount if a new no fault grant program were to be established for flooding damages for the 2018-2020 period. For the purposes of this report, a financial impact assessment was undertaken based on a maximum eligible loss amount of \$7,500 for uninsured losses per eligible property.

A maximum eligible loss amount for uninsured losses of \$7,500 would result in one-time no fault grants totalling \$1,267,875 for Ward 5, assuming all 161 properties were eligible and applied for the maximum eligible loss amount. Likewise, if the grant were to be extended to all properties who reported basement flooding to the City, the no fault grant amount would total \$6,496,875, assuming all 825 properties were eligible and applied for the maximum eligible loss amount.

The administration associated with establishing and implementing a no fault grant program was considered as follows. As with past flood damages grant programs, it is assumed that future programs would employ the services of an independent adjuster rather than entirely administering the program internally. The independent adjuster would be used to adjudicate each application and determine eligible losses. Under this model, additional City staff are not expected to be required. Based on existing costs for the services of an independent adjuster, administration costs would add an estimated additional 5 per cent to the cost of a program.

Summary

Based on the practical, equity, and financial impacts that would result from establishing a no fault grant program, it is recommended that City Council not proceed with such a program.

The Director, Insurance and Risk Management, Finance and Treasury Services, and the City Solicitor have been consulted in the preparation of this report.

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SIGNATURE

Lou Di Gironimo
General Manager, Toronto Water

ATTACHMENTS

- Storm magnitudes and distribution of rainfall across the City for storm events from 2018 to 2020

ATTACHMENTS

Figures 1 to 4 in this attachment present storm magnitudes and rainfall distributions across the City for storm events from 2018 to 2020.

Figure 1: August 7, 2018 Storm Event

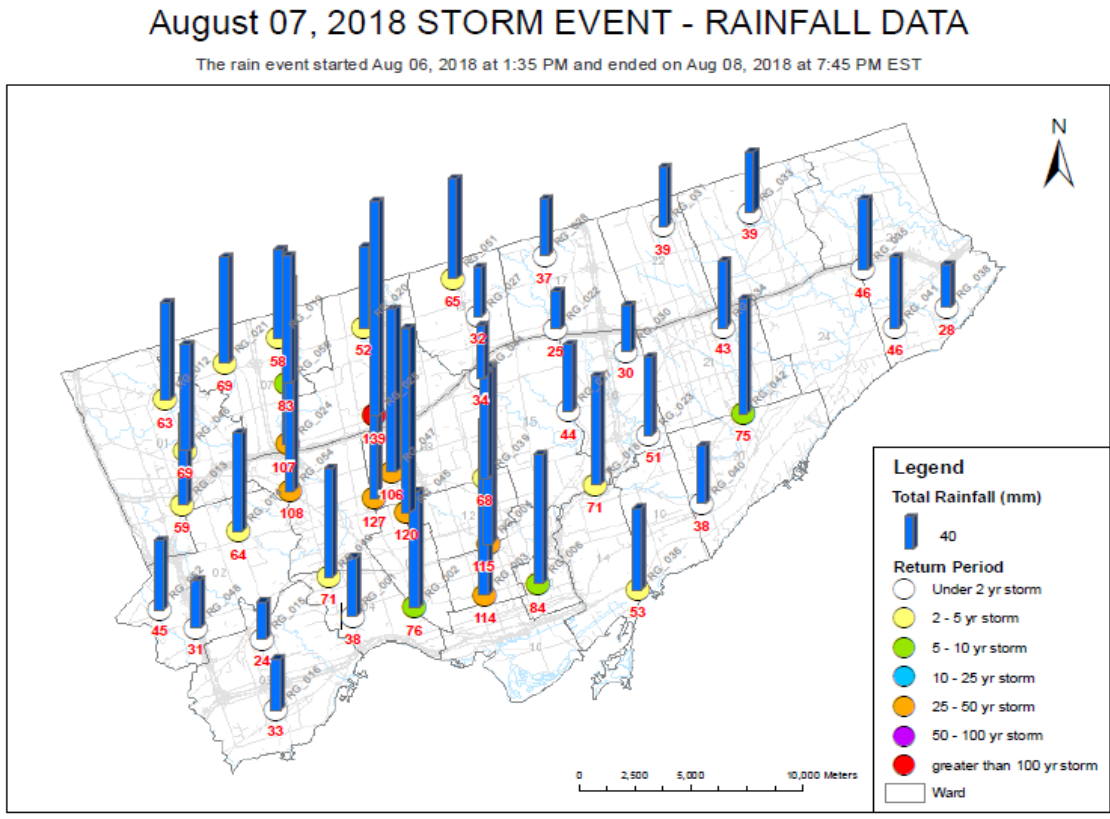


Figure 2: July 17, 2019 Storm Event - Rainfall Data

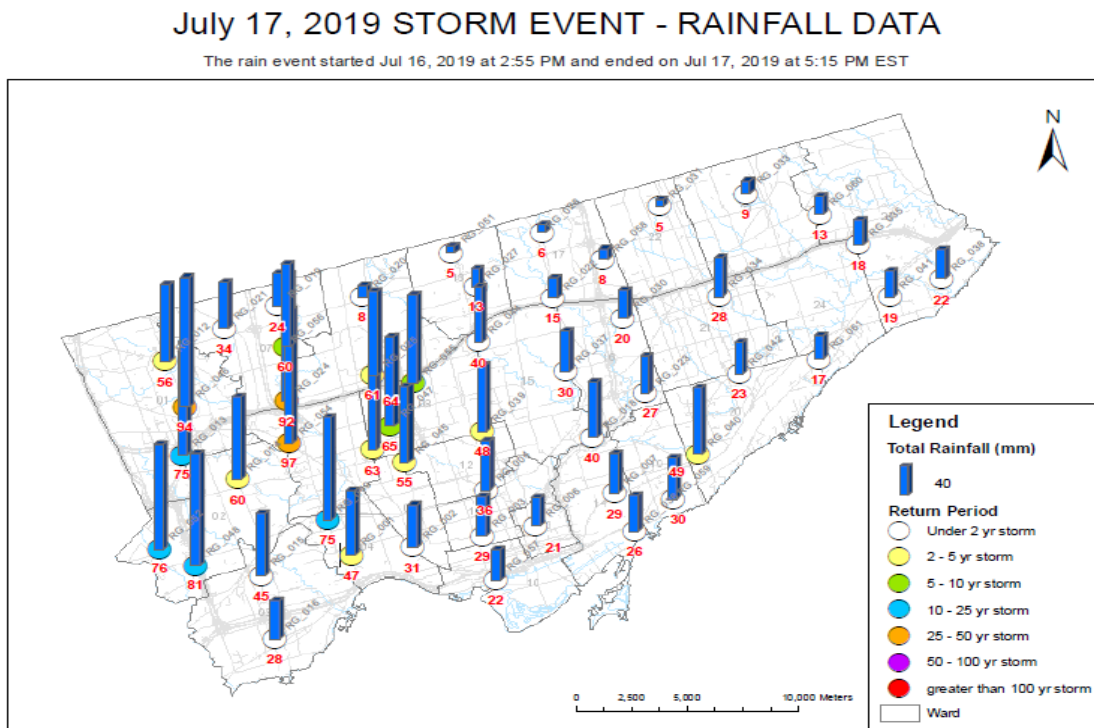


Figure 3: January 11, 2020 Storm Event

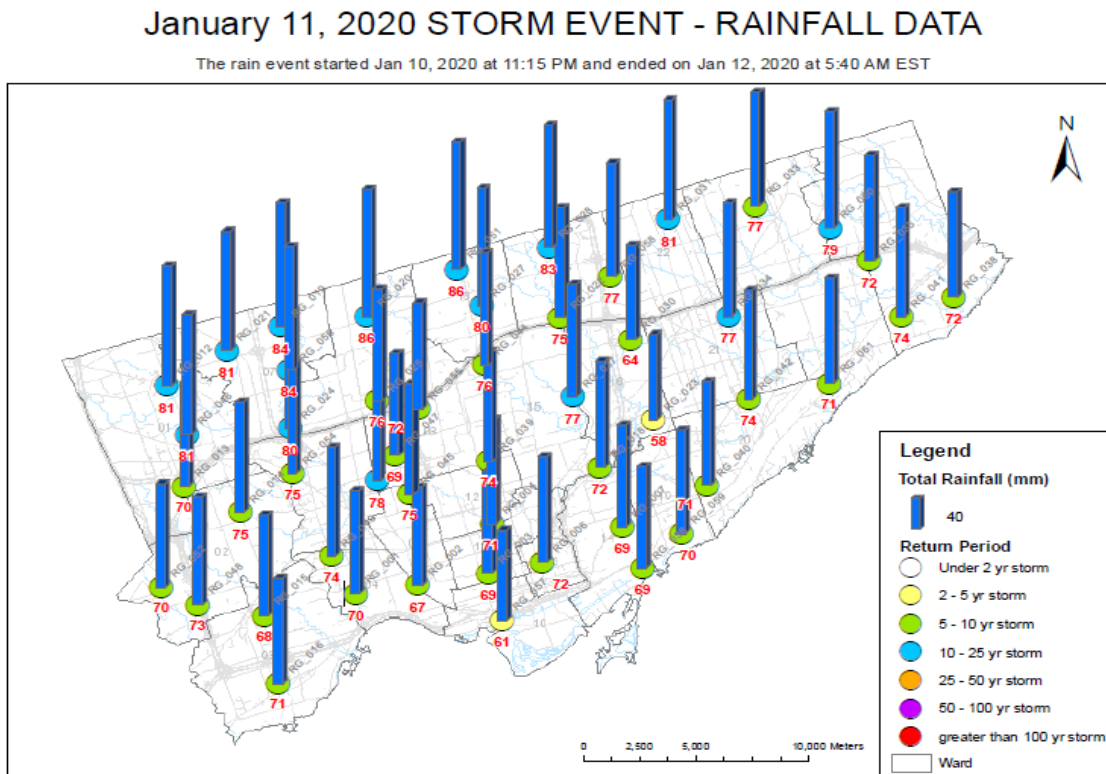


Figure 4: July 8, 2020 Storm Event

July 08, 2020 STORM EVENT - RAINFALL DATA

The rain event started Jul 08, 2020 at 3:00 AM and ended on Jul 08, 2020 at 6:00 PM EST

