



To: MAYOR AND CITY COUNCIL

Agenda Item #: IV. S.

From: Lisa Schaefer, Assistant City Manager

Action

Discussion

Date: June 17, 2015

Information

Subject: Resolution No. 2015-61 ESTABLISHING LIMITED CLEAN UP AND PROPERTY DAMAGE PROTECTION FOR SEWER BACK-UPS AND WATER MAIN BREAKS FOR WATER AND SEWER CUSTOMERS

Action Requested:

A motion to adopt Resolution No. 2015-61 renewing the City's no-fault sewer backup coverage with the League of Minnesota Cities Insurance Trust (LMCIT).

Information / Background:

There have been some changes in the coverage provided by LMCIT for no-fault sewer backup, which requires the City adopt a new resolution to continue this optional coverage. The coverage changes are outlined in the attached memo from LMCIT.

The estimated premium for this coverage is \$16,209 which is a decrease from last year's premium of \$19,963 which was prorated because the City had this coverage from November 2014 – June 2015.

Attachments:

Resolution No. 2015-61

Memo from LMCIT Re: Coverage Changes to LMCIT's Optional No-Fault Sewer Backup Coverage

Resolution #2015-61

RESOLUTION ESTABLISHING LIMITED CLEAN UP AND
PROPERTY DAMAGE PROTECTION FOR SEWER BACK-UPS AND
WATER MAIN BREAKS FOR WATER AND SEWER CUSTOMERS

WHEREAS, The City of Edina provides water and sanitary sewer services to property within its jurisdiction; and

WHEREAS, water main breaks may cause water to enter into property causing damage; and

WHEREAS, blockages or other conditions in the City of Edina's sanitary sewer lines may cause the back-up of sewage into properties that are connected to those City of Edina's sanitary lines; and

WHEREAS, water main breaks and sewer back-ups pose a public health and safety concern; and

WHEREAS, it may be difficult to determine the exact cause and responsibility for a water main break or sanitary sewer back-ups and

WHEREAS, the City of Edina desires to encourage the expeditious clean-up of properties that have encountered damage from water main breaks and sewer back-ups; and

WHEREAS, the City of Edina desires to minimize the potential of expensive lawsuits arising out of water main breaks and sanitary sewer back-up claims; and

WHEREAS, the City of Edina is a member of the League of Minnesota Cities Insurance Trust (LMCIT); and

WHEREAS, LMCIT has offered the City of Edina limited "no fault" sewer coverage and water main break coverage (No-Fault Coverage) that will reimburse users of the water and sewer system for certain clean-up costs and property damage regardless of whether the City of Edina is at fault.

NOW THEREFORE, BE IT RESOLVED, as follows:

The City of Edina, will reimburse water and sanitary sewer customers for up to \$40,000 of clean-up costs and property damages caused by a water main break or sanitary sewer back-up, regardless of whether the City of Edina is negligent or otherwise legally liable for damages, subject to the following conditions:

- I. Sanitary Sewer Back-Ups. For Sanitary sewer back-ups:
 - A. The back-up must have resulted from a condition in the City of Edina's sanitary sewer system or lines, and not from a condition in a private line.
 - B. The back-up must not have been caused by any catastrophic weather or other event which has been declared by the President of the United States to be a major disaster pursuant to 42 U.S.C. §§ 5121-5206, commonly known as the Stafford Act.

- C. The back-up must not have been caused by an interruption in electric power to the City of Edina's sewer system or to any City of Edina lift station, which continues for more than 72 hours.
- D. The back-up must not have been caused by an amount of precipitation equivalent to rainfall amounts which exceed:
 - 2.0 inches in a 1-hour period; or
 - 2.5 inches in a 3-hour period; or
 - 3.0 inches in a 6-hour period; or
 - 3.5 inches in a 12-hour period; or
 - 4.0 inches in a 24-hour period; or
 - 4.5 inches in a 72-hour period; or
 - 5.5 inches in a 168-hour period.
- E. Neither the City of Edina nor LMCIT will reimburse any costs which have been or are eligible to be covered under a property owner's own homeowners' or other property insurance, or which would be eligible to be reimbursed under a National Flood Insurance Protection (NFIP) policy, whether or not the property owner actually has NFIP Coverage.
- F. The maximum amount that the City of Edina or LMCIT will reimburse is \$40,000 per building, per year. A structure or group of structures served by a single connection to the City of Edina's sewer system is considered a single building.

II. Water Main Breaks. For water main breaks:

- A. Neither the City of Edina nor LMCIT will reimburse any costs which have been or are eligible to be covered under a property owner's own homeowners' or other property insurance
- B. The maximum amount that the City of Edina or LMCIT will reimburse is \$40,000 to any claimant, regardless of the number of occurrences or the number of properties affected.
- C. Neither the City of Edina nor LMCIT will pay more than \$250,000 for water main break damages resulting from any single occurrence. All water main break damage which occurs during any period of 72 consecutive hours is deemed to result from a single occurrence. If the total water main break damage for all claimants in a single occurrence exceeds \$250,000, the reimbursement to each claimant will be calculated as follows:
 - 1. A preliminary reimbursement figure is established for each claimant, equal to the lesser of the claimant's actual damages or \$40,000.
 - 2. The sum of the preliminary reimbursement figures for all claimants will be calculated.
 - 3. Each claimant will be paid a percentage of his or her preliminary reimbursement figure, equal to the percentage calculated by dividing \$250,000 by the sum of all claimants' preliminary reimbursement figures.

III. The City of Edina's determination to make these payments is contingent on and expressly limited to the extent that No-Fault Coverage is in force and available to reimburse the City of Edina for the costs set forth herein.

IV. The City of Edina retains the right, in its sole discretion, to revoke, rescind, or modify this resolution at any time.

V. The City of Edina hereby rescinds any prior resolution providing no-fault sewer backup coverage and water main break coverage.

IN WITNESS WHEREOF, the City of Edina, by action of its governing body, caused this Resolution to be approved on June 17, 2015.

City of Edina

By: _____

Its _____

And: _____

Its _____



November 13, 2014

To: LMCIT Members and Agents

From: Pete Tritz, LMCIT Administrator
Dan Greensweig, LMCIT Assistant Administrator
Liam Bieber, LMCIT Underwriting Manager

RE: **Coverage Changes to LMCIT's Optional No-Fault Sewer Backup Coverage**

Your city is one of several that purchases LMCIT's optional no-fault sewer backup (NFSB) coverage, which has been offered to cities as an additional-cost option since 2001. This coverage reimburses a property owner for up to \$10,000 (higher limits of \$25,000 and \$40,000 are available) of clean-up costs and damages caused by a sewer backup or water main break, irrespective of whether the city was negligent or legally liable for those damages.

The NFSB coverage was introduced in 2001 after being requested by several cities. The coverage is meant to be fully funded by member cities that choose to purchase it (i.e. not subsidized by member cities that choose not to purchase it), since the intent of the coverage is to really provide a solution for cities that want to cover sewer backup claims or water main breaks, even if the city is not negligent. Of course another intent of the coverage is to help reduce health hazards by encouraging prompt clean-ups.

For 2015, there are important changes to the NFSB coverage that will effectively narrow the coverage. The coverage has always had an exclusion for natural disasters and situations where there's been exceptionally heavy rainfall. The revision makes the coverage more restrictive. That is, there will now be a broader range of events that will be excluded under the NFSB coverage.

Why is LMCIT making these changes?

There are currently 77 member cities that purchase NFSB coverage, which generates about \$156,000 in annual premiums. After the heavy rains this summer, specifically the July rainstorms, over 50 claims were submitted under the NFSB coverage, with a total cost in the range of \$500,000. Accordingly, the NFSB coverage program operated at a loss this year, with those losses being funded by LMCIT reserves rather than through the premiums generated by this program.

Because of the way the NFSB coverage is currently written, it could expose LMCIT to an extremely expensive total loss cost in some circumstances which the current premium rates are not adequate to support.

What are the changes?

Following are the coverage changes that will be made for renewals on or after November 15, 2014. These changes should reduce the loss costs under this coverage to a level the current rates can support. If your city chooses to continue with the NFSB coverage in 2014-15, you will receive a new endorsement with the changes outlined herein.

- ***Now excludes any situation declared a disaster by FEMA.***

The exclusion for FEMA-declared disasters has been reworded to exclude NFSB coverage in *any weather-related or other event which has been declared by the President of the United States to be a major disaster pursuant to 42 U.S.C. §§ 5121-5206, commonly known as the Stafford Act.*

Coverage language prior to the 2014-15 coverage year referred to situations where FEMA disaster assistance was available, which created an ambiguity as to whether the assistance had to be available to the homeowner in order for the exclusion to apply. Changes this year now exclude any situation declared a disaster by FEMA.

- ***Now excludes any situation where rainfall exceeds certain amounts, which is more restrictive than the “100-year rainfall” standard used in the previous coverage.***

The exclusion for heavy rainfall events has been revised to apply to any situation in which rainfall or precipitation exceeds the following amounts:

2.0 inches in a 1-hour period; or
2.5 inches in a 3-hour period; or
3.0 inches in a 6-hour period; or
3.5 inches in a 12-hour period; or
4.0 inches in a 24-hour period; or
4.5 inches in a 72-hour period; or
5.5 inches in a 168-hour period.

Coverage language prior to the 2014-15 coverage year had excluded situations in which rainfall or precipitation exceeded the 100-year rainfall amount for the location. LMCIT will no longer use the 100-year rainfall as an indicator for claim exclusion. It will now be based on the above amounts.

With the coverage changes taking place, will the premium rates for NFSB coverage change?

No. Rates for NFSB coverage will not change for the 2014-15 coverage year (which is based on a per sewer connection basis).

Do we have to pass a new resolution if our city chooses to continue with the NFSB coverage?

Yes. Part of the process for putting the NFSB coverage in place is for your city council to pass a formal resolution that makes the NFSB protection part of the agreement between the city and the sewer customer. The idea is that by paying their sewer bill, the sewer user is purchasing not just sewer services but also the right to be reimbursed for certain specified sewer backup costs and damages. Because of the coverage changes taking place, NFSB members will need to pass a new resolution so the contractual obligation to provide NFSB costs to water and sewer customers aligns with the coverage you are purchasing with LMCIT to provide those benefits. Attached with this letter is a model resolution that can be used.

More Information

If you have additional questions about the changes taking place for the no-fault sewer backup coverage, contact your underwriter at 651.281.1200 or 800.925.1122.

RESOLUTION ESTABLISHING LIMITED CLEAN UP AND
PROPERTY DAMAGE PROTECTION FOR SEWER BACK-UPS AND
WATER MAIN BREAKS FOR WATER AND SEWER CUSTOMERS

WHEREAS, _____ (the Governmental Unit) provides water and sanitary sewer services to property within its jurisdiction; and

WHEREAS, water main breaks may cause water to enter into property causing damage; and

WHEREAS, blockages or other conditions in the Governmental Unit's sanitary sewer lines may cause the back-up of sewage into properties that are connected to those Governmental Unit's sanitary lines; and

WHEREAS, water main breaks and sewer back-ups pose a public health and safety concern; and

WHEREAS, it may be difficult to determine the exact cause and responsibility for a water main break or sanitary sewer back-ups and

WHEREAS, the Governmental Unit desires to encourage the expeditious clean-up of properties that have encountered damage from water main breaks and sewer back-ups; and

WHEREAS, the Governmental Unit desires to minimize the potential of expensive lawsuits arising out of water main breaks and sanitary sewer back-up claims; and

WHEREAS, the Governmental Unit is a member of the League of Minnesota Cities Insurance Trust (LMCIT); and

WHEREAS, LMCIT has offered the Governmental Unit limited "no fault" sewer coverage and water main break coverage (No-Fault Coverage) that will reimburse users of the water and sewer system for certain clean-up costs and property damage regardless of whether the Governmental Unit is at fault.

NOW THEREFORE, BE IT RESOLVED, as follows:

The Governmental Unit, will reimburse water and sanitary sewer customers for up to \$ _____ of clean-up costs and property damages caused by a water main break or sanitary sewer back-up, regardless of whether the Governmental Unit is negligent or otherwise legally liable for damages, subject to the following conditions:

I. Sanitary Sewer Back-Ups. For Sanitary sewer back-ups:

- A. The back-up must have resulted from a condition in the Governmental Unit's sanitary sewer system or lines, and not from a condition in a private line.
- B. The back-up must not have been caused by any catastrophic weather or other event which has been declared by the President of the United States to be a major disaster pursuant to 42 U.S.C. §§ 5121-5206, commonly known as the Stafford Act.

- C. The back-up must not have been caused by an interruption in electric power to the Governmental Unit's sewer system or to any Governmental Unit lift station, which continues for more than 72 hours.
- D. The back-up must not have been caused by an amount of precipitation equivalent to rainfall amounts which exceed:
 - 2.0 inches in a 1-hour period; or
 - 2.5 inches in a 3-hour period; or
 - 3.0 inches in a 6-hour period; or
 - 3.5 inches in a 12-hour period; or
 - 4.0 inches in a 24-hour period; or
 - 4.5 inches in a 72-hour period; or
 - 5.5 inches in a 168-hour period.
- E. Neither the Governmental Unit nor LMCIT will reimburse any costs which have been or are eligible to be covered under a property owner's own homeowners' or other property insurance, or which would be eligible to be reimbursed under a National Flood Insurance Protection (NFIP) policy, whether or not the property owner actually has NFIP Coverage.
- F. The maximum amount that the Governmental Unit or LMCIT will reimburse is \$ _____ per building, per year. A structure or group of structures served by a single connection to the Governmental Unit's sewer system is considered a single building.

II. Water Main Breaks. For water main breaks:

- A. Neither the Governmental Unit nor LMCIT will reimburse any costs which have been or are eligible to be covered under a property owner's own homeowners' or other property insurance
- B. The maximum amount that the Governmental Unit or LMCIT will reimburse is \$ _____ to any claimant, regardless of the number of occurrences or the number of properties affected.
- C. Neither the Governmental Unit nor LMCIT will pay more than \$250,000 for water main break damages resulting from any single occurrence. All water main break damage which occurs during any period of 72 consecutive hours is deemed to result from a single occurrence. If the total water main break damage for all claimants in a single occurrence exceeds \$250,000, the reimbursement to each claimant will be calculated as follows:
 - 1. A preliminary reimbursement figure is established for each claimant, equal to the lesser of the claimant's actual damages or \$ _____.
 - 2. The sum of the preliminary reimbursement figures for all claimants will be calculated.
 - 3. Each claimant will be paid a percentage of his or her preliminary reimbursement figure, equal to the percentage calculated by dividing \$250,000 by the sum of all claimants' preliminary reimbursement figures.

III. The Governmental Unit's determination to make these payments is contingent on and expressly limited to the extent that No-Fault Coverage is in force and available to reimburse the Governmental Unit for the costs set forth herein.

IV. The Governmental Unit retains the right, in its sole discretion, to revoke, rescind, or modify this resolution at any time.

V. The Governmental Unit hereby rescinds any prior resolution providing no-fault sewer backup coverage and water main break coverage.

IN WITNESS WHEREOF, the Governmental Unit, by action of its governing body, caused this Resolution to be approved on _____, 20__.

Governmental Unit

By: _____

Its _____

And: _____

Its _____