



**To:** Mayor and City Council

**Agenda Item #:** IV. E.

**From:** Lisa Schaefer, Director of Human Resources

**Action**

**Discussion**

**Date:** November 18, 2014

**Information**

**Subject:** Resolution # 2014-140 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 #2014-140 to allow the City to obtain optional No-fault Sewer Back-up Coverage with a per occurrence limit of \$40,000.

### **Information / Background:**

On July 1, 2014 the City changed its Property/Casualty insurance carrier to the League of Minnesota Cities Insurance Trust (LMCIT). LMCIT offers an Optional "No-fault" Sewer Back-up coverage that will reimburse property owners a portion of the clean-up costs and damages resulting from a City sewer backup or City water-main break even if there was no negligence on the City's part.

The City's current insurance policy pays a homeowner claim only in the event the City is legally liable. The City is not legally liable for system failures unless there was negligence on the part of the City.

### **Additional "No-fault" Coverage**

The City of Edina has met the underwriting criteria and is approved by LMCIT to obtain this additional coverage. The additional coverage would reimburse the property owner for damages even if the City wasn't legally liable in certain situations. To be an eligible claim, the backup 1) must result from a condition in the City's sewer system or lines 2) must not be a situation that is specifically excluded from coverage, and 3) must not exceed the coverage limit.

It is important to note that even "No-fault" insurance would exclude certain claims including 100-year storm events and other catastrophic-type situations.

Staff recommends the City elect the \$40,000 limit per sewer connection, which is the maximum coverage allowed. The estimated annual premium for the additional coverage is \$19,963. However, any deductibles incurred are applied to the City's existing deductible arrangement for the entire Property/Casualty line of coverage. That deductible arrangement is:

- A deductible of up to \$50,000 per individual claim.

- An aggregate deductible of \$100,000 for total claims under the Property/Casualty Lines (e.g. General Liability, Law Enforcement, Liquor, etc.)
- A maintenance deductible of \$1,000 for each claim after the aggregate deductible is met.

**Attachments:**

Resolution No. 2014-140

LMCIT Quotation: No-Fault Sewer Back-up and Water Main Break Coverage

LMCIT Risk Management Information: Optional “No-Fault” Sewer Backup Coverage



**LMCIT QUOTATION**  
**No-Fault Sewer Back-up and Water Main Break Coverage**

Re: **City of Edina**

Coverage: Refer to the attached LMCIT Optional No-Fault Sewer Back-up Coverage Bulletin-No-Fault Sewer Back-up and Water Main Break Coverage Endorsement.

Limits Available: \$10,000/\$25,000/\$40,000.  
Refer to the attached LMCIT Optional No-Fault Sewer Back-up Coverage Bulletin- No-Fault Sewer Back-up and Water Main Break Coverage Endorsement.

Premium: \$10,000-\$1.79 per sewer connection manual rate  
\$25,000-\$2.11 per sewer connection manual rate  
\$40,000-\$2.63 per sewer connection manual rate  
(Premium will be prorated to the expiration of the city's covenant.)

<b>Limit Per Sewer Connection Per Occurrence</b>	<b>Estimated Premium (with \$50/\$100/\$1 deductible arrangement)</b>
\$10,000	\$13,587
\$25,000	\$16,016
\$40,000	\$19,963

Retroactive Date: The date that the city council passes the resolution.

Remarks:

1. To bind coverage, the city council must formally pass a resolution and send a signed copy to LMCIT.
2. A Model Resolution is attached.



RISK MANAGEMENT INFORMATION  
**OPTIONAL “NO-FAULT”  
SEWER BACKUP COVERAGE**

*The League of Minnesota Cities Insurance Trust (LMCIT) offers property/casualty member cities “no-fault” sewer backup coverage. This optional coverage will reimburse a property owner for clean-up costs and damages resulting from a city sewer backup or from a city water main break, irrespective of whether the backup was caused by city negligence.*

The “no-fault” sewer backup coverage option is intended to:

- Reduce health hazards by encouraging property owners to clean-up backups as quickly as possible.
- Reduce the frequency and severity of sewer backup lawsuits (i.e. property owners may be less inclined to sue if they receive conciliatory treatment at the time of the backup).
- Give cities a way to address the sticky political problems that can arise when a property owner learns the city and LMCIT won’t reimburse for sewer backup damages because the city wasn’t negligent and therefore not legally liable.

Many cities and their citizens may find this coverage option to be a helpful tool. However, it’s also important to realize it’s not a complete solution to sewer backup problems, and not every possible backup will be covered.

**Which sewer backups are covered?**

The “no-fault” coverage would reimburse the property owner for sewer backup damages or water main breaks, regardless of whether the city was legally liable, if the following conditions are met:

- The backup must have resulted from a condition in the city’s sewer system or lines. A backup caused by a clog or other problem in the property owner’s own line would not be covered.
- It’s not a situation that is specifically excluded in the coverage.
- The coverage limit has not been exceeded.

### **Which situations are excluded?**

The “no-fault” coverage will not apply in several “catastrophic” type situations. Specifically, these are:

- Any event, weather-related or otherwise, for which FEMA assistance is available;
- Any interruption in the electric power supply to the city’s sewer system or to any city sewer lift station which continues for more than 72 hours; or
- Rainfall or precipitation that exceeds the amount determined by the National Weather Service to constitute a 100-year storm event.

### **What costs would be covered?**

The coverage would reimburse the property owner for the cost of cleaning up the backup, and for any damage to the property, up to the coverage limit. For purposes of the city’s deductibles, claims under the no-fault coverage are treated as liability claims, so the same per-occurrence and/or annual deductibles will apply.

However, there are certain costs that would not be reimbursed under the no-fault coverage:

- Any costs which have been or are eligible to be covered under the property owner’s own homeowner’s or other property insurance; and
- Any costs that would be eligible to be reimbursed under an NFIP flood insurance policy, whether or not the property owner actually has NFIP coverage.

### **What is the coverage limit?**

The basic limit is \$10,000 per building per year. The city also has options to purchase additional limits of \$25,000 or \$40,000 per building. For purposes of the limit, a structure or group of structures that is served by a single connection to the city’s sewer system will be considered a single building.

Only true “no-fault” claims are counted toward the limit. Claims for damages caused by city negligence, for which the city would be legally liable in any case, are not charged against that limit.

### **What does it cost?**

The rating mechanism has changed effective November 15, 2012. For renewals prior to November 15, 2012, the premium charge was a percentage of the city’s municipal liability premium. For renewals on or after November 15, 2012, the charge is based on a per sewer connection basis. To avoid premium shocks for existing members, a transition mechanism has been put into place. This mechanism caps the changes in premiums – the max increase is 30 percent and the max decrease is 10 percent.

Limit	Pre-11/15/12	11/15/12-13
10,000 limit	8.5% of municipal liability premium	\$1.79 per connection manual rate
25,000 limit	10% of municipal liability premium	\$2.11 per connection manual rate
40,000 limit	12.5% of municipal liability premium	\$2.63 per connection manual rate

Because the LMCIT Board's intent is that this coverage be self-supporting, charges will be continually monitored and, if necessary, adjusted in the future.

### Is every city automatically eligible?

No. To be eligible, the city must meet these underwriting criteria:

- The city must have a policy and practice of inspecting and cleaning its sewer lines on a reasonable schedule.
- If there are any existing problems in the city's system which have caused backups in the past or are likely to cause backups, the city must have and be implementing a plan to address those problems.
- The city must have a system and the ability to respond promptly to backups or other sewer problems at any time of the day or week.
- The city must have in place an appropriate program to minimize stormwater inflow and infiltration.
- The city must have in place a system to maintain records of routine sewer cleaning and maintenance, and of any reported problems and responses.

When establishing these criteria, the goal of LMCIT was to focus on reasonableness rather than on creating specific standards. The intent isn't to set an arbitrary requirement that sewers be inspected and cleaned every six months, every three years, every five years, etc. What makes sense in one city with some older and sometimes sagging clay lines probably wouldn't make sense in a city with newer plastic lines, and vice versa. From the underwriting standpoint, the real concern is that the city has considered its own situation and developed policies, practices, and schedules that make sense for its own situation.

#### **More Information**

For assistance in developing sewer policies, practices, and schedules, please see the [Sewer Toolkit](#).

### How would the "no-fault" coverage work if a sewer backup was caused by city negligence, and where the city was legally liable for the resulting damages?

If the situation isn't one where the "no-fault" coverage applies, the city's LMCIT liability coverage would respond just as it does now. That is, LMCIT would investigate and if necessary defend the claim on the city's behalf, and would pay the resulting damages if in fact the city is legally liable for those damages.

The same would be true for damages that exceed the \$10,000 no-fault limit, or for a subrogation claim against the city by the homeowner's insurance company. The city's existing LMCIT liability would respond just as it does now.

### **What's the legal basis for this coverage? Wouldn't it be a gift of public funds to pay for damages the city isn't legally liable for?**

First, as noted earlier, one goal is to help reduce health hazards by encouraging prompt clean-ups. That's clearly a public purpose and in the public interest.

Second, the law and facts surrounding most sewer backup claims are rarely so clear that the liability issue is entirely black and white. There's virtually always a way that a claimant's attorney can make some type of argument for city liability. Having this coverage in place should help eliminate the need to spend public funds on litigation costs in many of these cases.

Finally, part of the process for putting the coverage in place is for the city council to pass a formal resolution that makes this no-fault sewer backup 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. In other words, the basis for the no-fault payments to the property owner would be the contract between the city and the sewer user.

### **How do we put coverage in place?**

Contact your LMCIT underwriter for an application. If the city qualifies for coverage, we'll send the city a formal quote, along with a model resolution. To put coverage in place, the city council must formally pass that resolution, and send a copy to LMCIT.

If the city decides to add this coverage, it will also be important to make sure citizens know about it. LMCIT can also provide models for a press release, newsletter article, utility bill insert, etc.

#### **Your League Resource**

Contact your LMCIT underwriter at 651-281-1200 or 800-925-1122 for more information about the "no-fault" sewer backup coverage.

### **What if we decide to discontinue the coverage sometime in the future?**

Make sure your agent notifies your LMCIT underwriter. In addition, it's important to let your citizens know if and when the coverage is discontinued. The council should formally rescind the resolution that made the no-fault sewer backup protection part of the agreement between the city and the sewer customer.

Liam Bieber 01/13



RESOLUTION NO. 2014-140

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 the 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 is often difficult to determine the exact cause and responsibility for water main breaks and sanitary sewer back-ups, and

WHEREAS, the governing body of 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 governing body of 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 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, as part of the contract for providing water and sewer services to the customers of the City of Edina, and in consideration of the payment of water and sewer bills, agrees to reimburse water and sanitary sewer customers for up to \$40,000.00 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 catastrophic weather or other events for which Federal Emergency Management Assistance is available.

CITY OF EDINA

- 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 rainfall or precipitation that would constitute a 100-year storm as determined by the National Weather Service.
- 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 \$40,000.00 per building, per year. In this regard, 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. LMCIT will pay for claims presented by the City of Edina for water main break damage to property of others which was not caused by the City of Edina's negligence.
- B. Neither the City of Edina nor LMCIT will pay for damages or expenses for which the property owner has been or is eligible to be reimbursed by any homeowners' or other property insurance.
- C. The maximum amount that the City of Edina or LMCIT will reimburse is \$40,000.00 to any claimant, regardless of the number of occurrences or the number of properties affected.
- D. 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 \$40,000.00.
  - 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.

Dated: November 18, 2014

Attest: \_\_\_\_\_  
Debra A. Mangen, City Clerk

\_\_\_\_\_  
James B. Hovland, Mayor

STATE OF MINNESOTA)  
COUNTY OF HENNEPIN) SS  
CITY OF EDINA )  
CERTIFICATE OF CITY CLERK

I, the undersigned duly appointed and acting City Clerk for the City of Edina do hereby certify that the attached and foregoing Resolution was duly adopted by the Edina City Council at its Regular Meeting of November 18, 2014, and as recorded in the Minutes of said Regular Meeting.

WITNESS my hand and seal of said City this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

\_\_\_\_\_  
City Clerk