



**CITY OF TYLER
CITY COUNCIL COMMUNICATION**

Agenda Number: O-3

Date: December 13, 2006

Subject: Request that the City Council consider approving an ordinance modifying Chapter 2, "Finance and Taxation", Article VI, "Claims", Section 2-61, "Claims for Sanitary Sewer Stoppages" to increase Tyler Water Utilities participation in Sanitary Sewer Overflow in Premises claims from \$1,500 maximum to \$5,000 maximum.

Page: 1 of 2

Item Reference: City Council Agenda Item O-4, 11/26/03

Tyler Water Utilities operates over 510 miles of sanitary sewer collection system, with over 29,000 customer connections. Occasionally situations occur where blockages in the sanitary sewer collection system result in sewer backing up and overflowing into a building. These occurrences are documented and recorded as Overflow in Premises (OIP). As a result of improved maintenance procedures, the number of OIPs has reduced from a high of 60 per year to 38, last fiscal year.

The City of Tyler, as a governmental entity, has sovereign immunity barring suit against the City for OIPs, and such immunity is waived only if liability arises under the Texas Tort Claims Act. When an OIP happens, Tyler Water Utilities provides immediate assistance in removing sewage, via wetvac process, explains the Tyler Water Utilities policy and instructs the building owner to contact their insurance carrier. While the City has immunity and expressly denies liability in such OIPs, in 1995, a policy was adopted which authorized assisting customers with their documented out of pocket expenses up to their insurance deductible or \$500, whichever was less. In 2003, the City participation was increased to the insurance deductible or \$1,500, whichever was less.

Due to changes in insurance coverage availability, fewer customers have insurance and those that do have limited coverage which does not always cover the restoration costs. As such, while the number of overflows is decreasing, we are seeing more financial burden being shifted to our customers for something they have little or no control over.

Therefore, without relinquishing any exemption from liability or suit, but continuing in the spirit of assisting our customers, staff is recommending that the participation outlined by ordinance and policy be increased from \$1,500 to a maximum of \$5,000, based on out of pocket expenses (less plumbing and lodging expenses) not covered by insurance.

Agenda Number: O-3

FUNDING:

Tyler Water Utilities Account 502 0741 741 0467

RECOMMENDATION:

It is recommended that City Council approve an ordinance modifying Chapter 2, "Finance and Taxation", Article VI, "Claims", Section 2-61, "Claims for Sanitary Sewer Stoppages" to increase Tyler Water Utilities participation in Sanitary Sewer Overflow in Premises claims from \$1,500 maximum to \$5,000 maximum.

Drafted/Recommended By:
Department Leader

A handwritten signature in black ink, appearing to read "G. Morgan", with a long horizontal flourish extending to the right.

Greg Morgan

Edited/Submitted By:
City Manager

ORDINANCE NO. O-2006-102

AN ORDINANCE OF THE CITY OF TYLER, TEXAS AMENDING CHAPTER 2, "FINANCE AND TAXATION" ARTICLE VI, "CLAIMS", SECTION 2-61, "CLAIMS FOR SANITARY SEWER STOPPAGES, OVERFLOWS ON PREMISES", TO RAISE THE AMOUNT OF MONEY THE CIYT WILL PAY FOR SANITARY SEWER OVERFLOW DAMAGE; PROVIDING FOR SEVERABILITY; PROVIDING FOR A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Tyler Water Utilities operates over 510 miles of sanitary sewer collection system, with over 29,000 connections; and

WHEREAS, approximately 35 Overflows in Premises, resulting from blockage in the sanitary sewer mains, occur each year; and

WHEREAS, the City of Tyler has sovereign immunity barring suit against it for Overflows in Premises, except as waived under the Texas Tort Claims Act; and

WHEREAS, the City of Tyler recognizes the burden and hardship these occurrences cause for Tyler Water Utilities customers and wishes, without waiving exemption from liability, to assist customers in their out of pocket expenses; and

WHEREAS, the current City participation in sewer overflow claims is limited to a homeowners insurance deductible or \$1,500 whichever is less; and

WHEREAS, the City has determined that, to better assist customers, the City's participation in compensating for sewer overflow claims should consist of actual out of pocket expenses, up to and including a maximum of \$5,000, excluding plumbing and lodging expenses; and

WHEREAS, adoption of this ordinance does not constitute a waiver of any immunity or exemption of liability for sanitary sewer overflows, the City may enjoy under state law;

NOW, THEREFORE, BE IT ORDAINED BY THE CIYT COUNCIL OF THE CITY OF TYLER, TEXAS:

PART 1. Chapter 2, "Finance and Taxation", Article VI, "Claims", Section 2-61, "Claims for sanitary sewer stoppages; overflows on premises", is hereby amended to read as follows:

Sec. 2-61. Claims for sanitary sewer stoppages; overflows on premises.

The City Manager is authorized, in situations where the City receives a claim for a sanitary sewer main stoppage that results in an overflow on private premises, to pay actual, documented clean-up and restoration expenses (excluding plumbing and lodging expenses) not covered by insurance up to and including an amount of *five thousand dollars (\$5,000)*. In no

case does the City assume responsibility for overflows resulting from service line stoppages, nor is this procedure intended to acknowledge or suggest legal liability on the part of the City. Periodically, the City Council shall be notified of the status of all such overflow claims. (Ord. No. 0-98-21; 3/18/98) (0-2003-63, 11/26/03) (0-2006-102, 12/13/06)

PART 2. That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 3. That any person, firm or corporation violating any provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler City Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall become effective upon its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be December 20, 2006.

PASSED AND APPROVED this 13 day of December, A.D. 2006.

JOSEPH O. SEEBER, MAYOR OF THE
CITY OF TYLER, TEXAS

ATTEST:

APPROVED;

Cassandra Brager, City Clerk

City Attorney