

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** RICHARD DOYLE  
City Attorney

**SUBJECT:** Ordinance to Authorize the City  
Attorney the Ability to Compromise  
and Settle Claims Related to  
Sanitary Sewer Backup Intrusions  
in Which the Amount to be Paid by  
the City Does Not Exceed \$25,000

**DATE:** September 16, 2005

## RECOMMENDATION

Approval of an ordinance to amend Section 4.24.010 of Chapter 4.24 of Title 4 of the San José Municipal Code to authorize the City Attorney to compromise and settle claims related to sanitary sewer backup intrusions in which the amount to be paid by the City does not exceed twenty-five thousand dollars (\$25,000).

## BACKGROUND

The City has over 47,000 sanitary sewer main line segments, or 2,150 miles of pipes, that serve over 250,000 residential and non-residential lateral connections. During a typical year, the City experiences about 1,000 blockages in the sanitary sewer main lines. It is estimated that these blockages result in approximately 50 sanitary sewer backup intrusions (also known as "backups"), into privately owned residential and non-residential structures that are reported to the City each year.

Backups often result in claims being filed by property owners or insurance companies against the City seeking restitution for structural restoration, property replacement, cleaning, and interim lodging expenses. Currently, the Municipal Code authorizes the City Attorney to fully compromise with a claimant and settle claims under \$10,000. Claims over \$10,000 must be brought to the City Council for review, direction, and authorization for the City Attorney to compromise and reach a settlement. The City Attorney is seeking authority to compromise and settle backup claims that do not exceed \$25,000.00 without first obtaining City Council approval.

## ANALYSIS

In the past, the \$10,000 threshold was high enough to allow the City Attorney to efficiently negotiate typical claims involving restoration of minor structural damage to floors and walls; replacement of damaged property such as carpets, rugs, and furniture; and short-term lodging of residents and

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occupants as necessary. This allowed property owners, residents, or occupants to quickly return to their homes or resume their normal use of the structures without great disruption. However, the costs for restoration, construction, replacement of property, and short-term lodging have risen in recent years, resulting in many minor to moderate backup claims exceeding the \$10,000 threshold. Of the estimated 50 claims that occurred each year for the last five years, 15 have been over \$10,000 and the majority were for routine restoration, replacement, and lodging expenses that did not require any extraordinary compromise or settlement negotiations. During this same five-year time period, there were six claims over \$10,000 and under \$25,000, most of which were of similar routine nature.

Due to the routine nature of claims under \$25,000, the ability of maintenance staff and the Attorney's Office to efficiently respond to the incidents and resolve routine claims, and the desire to reduce the negative impact on the people, businesses and operations affected by a backup, it is recommended that the City Attorney be authorized to compromise and settle backup claims under \$25,000 without the requirement to involve the City Council in closed session. The City Attorney may bring a claim under \$25,000 to the Council if there are special circumstances warranting City Council direction.

### OUTCOMES

The outcome of this ordinance is to streamline the claim process for sanitary sewer intrusions under \$25,000 to ensure that the impacted parties are compensated fairly for damages in a timely manner.

### PUBLIC OUTREACH

Not Applicable.

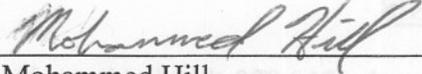
### COORDINATION

This memorandum was coordinated with the Department of Transportation and the Environmental Services Department.

### CEQA

Not a Project.

RICHARD DOYLE  
City Attorney

By:   
Mohammed Hill  
Deputy City Attorney

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San Jose City Clerk