



## Memorandum

**TO:** HONORABLE MAYOR AND CITY COUNCIL

**FROM:** RICHARD DOYLE  
City Attorney

**SUBJECT:** Settlement with California State Automobile Association Re: Sewer Backup

**DATE:** September 24, 2009

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### **RECOMMENDATION**

Approve payment to California State Automobile Association in the amount of \$60,000 pursuant to a Release, as authorized by the City Council in closed session on August 25, 2009, to resolve the lawsuit *California State Automobile Association v. City of San Jose*.

### **OUTCOME**

To settle litigation between the City of San Jose and California State Automobile Association (CSAA) regarding a sewer backup that occurred on April 6, 2008 at CSAA's insured's property located on Moshall Way, San Jose (District 8).

### **BACKGROUND**

This case arises from an April 6, 2008 sewer backup that resulted from a blockage in the City's main sewer line. The backup caused a significant amount of effluent containing raw sewage to emanate from the toilets and shower drain of property owned by CSAA's insured, Martha Herrera. The grey water damaged the home's flooring, floor molding, drywall, cabinets, carpeting, rugs, appliances, furniture, and various personal items.

Ms. Herrera's home had a backflow device, which is designed to prevent a backup into the residence; however, it had not been properly maintained.

Ms. Herrera made a claim for resulting damages to her insurance carrier CSAA. CSAA paid for Ms. Herrera's property damages as well as relocation expenses incurred during clean up and repairs. CSAA brought a lawsuit against the City seeking reimbursement for these losses. CSAA seeks approximately \$95,000 in damages, fees and costs.

**ANALYSIS**

The settlement is reasonable in light of the inherent risks and costs of litigation as well as Staff's conclusion that the initial cause of the backup was due to a blockage in the City's sewer main. CSAA's insurance adjuster discounted the claim where appropriate. A portion of the settlement amount is for reimbursement of plumbing repairs, including the installation of a new backflow device on Ms. Herrera's property to prevent future occurrences. In agreeing to the settlement amount, the City also considered Ms. Herrera's potential contributory negligence for not properly maintaining the backflow valve. This settlement is made as a compromise of a disputed claim, and by settling, the City is not admitting that it is legally liable for the amounts claimed.

**PUBLIC OUTREACH/INTEREST**

This memorandum and the release are posted on the City's website for the October 6, 2009 City Council Agenda.

**COORDINATION**

The settlement has been coordinated with the Department of Transportation.

**COST SUMMARY/IMPLICATIONS**

1. AMOUNT OF RECOMMENDATION: \$60,000.00
2. SOURCE OF FUNDING: 541-ESD: Sanitary Sewer Claims

**BUDGET REFERENCE**

Fund #	Appn #	Appn. Name	Total Appn.	2009-2010 Proposed Budget (Page)	Last Budget Action (Date, Ord. No.)
541	3210	ESD: Sanitary Sewer Claims	\$250,000.	N/A	06/23/09, Ord. No. 28593

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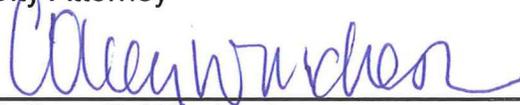
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**CEQA**

Not a project.

RICHARD DOYLE

City Attorney



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Colleen D. Winchester

Senior Deputy City Attorney

For questions please contact Richard Doyle, City Attorney at (408) 535-1900.