

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Richard Doyle
Jennifer A. Maguire

SUBJECT: Settlement of Hildebrand sewer back-up claim

DATE: June 10, 2010

RECOMMENDATION

It is recommended that Council:

1. Approve payment to Ms. Akemi Hildebrand in the amount of \$151,000 pursuant to a Settlement Agreement and Release, as authorized by the City Council in closed session on June 8, 2010, to resolve her claims against the City of San Jose for two grey water intrusions; and
2. Approve the following Appropriation Ordinance amendments in the Sewer Service and Use Charge Fund (Fund 541) for 2009-2010:
 - a. Decrease the Ending Fund Balance by \$45,000.
 - b. Increase the Environmental Services Dept.: Sanitary Sewer Claims appropriation by \$45,000.

OUTCOME

To settle the claim against the City of San Jose by Ms. Hildebrand regarding sewer backups that occurred on June 19, 2007 and September 27, 2008 into the claimant's home at 405 River View Dr. (District 2) and appropriate the necessary funds to cover the settlement.

BACKGROUND

This case arises out of two alleged sewer back-ups into the claimant's home. The first back-up occurred on June 19, 2007; the claimant's home was flooded with sewage while she was away. By the time that she returned home several days later, DOT found no evidence of a blockage or other condition that would explain the flooding. No other properties were affected, so it did not appear that an adverse condition in the City sewer main, assuming one existed, was significant.

The claimant submitted a claim to her homeowner's insurance company, Farmer's Insurance, for the damage to her home and property as a result of the first incident of flooding. Her claim against the City seeks damages for uninsured personal property from this first incident. She is also seeking interest on those damages.

On September 27, 2008, the claimant was moving back into her home upon completion of repairs following the first back-up. All the floors, walls and bathrooms were new. The majority of the claimant's personal property was in boxes. Although a new back-water device was installed, there was a blockage in the sewer main and the home flooded a second time. The grey water damaged the home's flooring, floor molding, drywall, cabinets, carpeting, rugs, appliances, furniture, and various personal items. The claimant was unable to pay for repairs to the damaged areas of her home, and in February, 2009, Council authorized an advance of \$49,000.00 for those repairs. The claimant was displaced from her home for over eight months as a result of the second backup.

The claim against the City sought damages, including fees and costs, in excess of \$375,000.00 for both losses.

ANALYSIS

The settlement is reasonable in light of the inherent risks and costs of litigation, as well as Staff's conclusion that a potential cause of the second backup was a partial root blockage in the City's sewer main. 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 claims.

PUBLIC OUTREACH/INTEREST

This memorandum and the release are posted on the City's website for the June 22, 2010 City Council Agenda.

COORDINATION

The settlement has been coordinated with the Department of Transportation.

COST SUMMARY/IMPLICATIONS

1. AMOUNT OF RECOMMENDATION: \$151,000.00
2. SOURCE OF FUNDING: Fund 541 – Sewer Service and Use Charge Fund

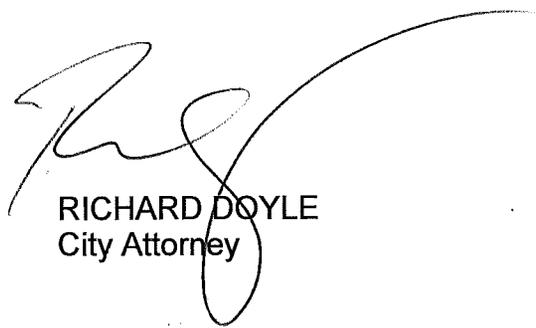
BUDGET REFERENCE

Fund #	Appn #	Appn. Name	Total Appn.	Recommendation	2009-2010 Adopted Operating Budget (Page)	Last Budget Action (Date, Ord. No.)
541	3210	ESD: Sanitary Sewer Claims	\$250,000*	\$151,000	XI - 83	6/23/2009 Ord. No. 28593

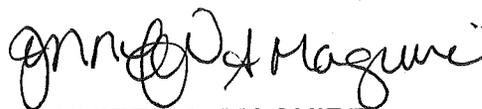
*The recommended appropriation action increases this appropriation to \$295,000.

CEQA

CEQA: Not a Project; File No. PP10-066, Agreements/Contracts (New or Amended).



RICHARD DOYLE
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Budget Director

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