

**MEMORANDUM
ADMINISTRATIVE SERVICES DEPARTMENT**

To: Thomas Thomas, City Manager

Subject: General Liability Claims

Date: 9/26/12

On Saturday August 4th 1, 2012, at approximately 4:00 pm, Public Works received a call about water flowing out of a basement toilet at 2019 37th Street. The on-call employee was paged and responded to the site in a timely manner. The employee initially thought a sewer main backup occurred. It was later determined a water main (water hydrant lateral) had burst. The water from the break found its way into a nearby sanitary sewer and overloaded the sewer causing it to backup into multiple homes in the 2000 block of 37 Street.

Before the General Liability Committee (GLC) made a decision on whether or not the City was liable for the damages, it requested Public Works investigate the mains condition and the number of incidences that had occurred in that area for the past several years. It was determined the main did not have an abnormal amount of breaks that would alarm the City to know a water main break was to occur.

The GLC applied the following facts of the incident to the Local Governmental Tort Immunity Act. Specifically, Section 3.05, "immunity for failure to make an inspection or negligent inspection of property" and Section 1.11 "willful and wanton misconduct" was reviewed. The GLC made the following conclusions:

1. The City had no prior notice of a problem with the water main. The history for the area did not alarm the City of any hazards. The City has no way to predict when or where a leak will occur.
2. The City did not exhibit willful or wanton behavior by not protecting the public. The water main simply burst. Instead of rising to the surface, the water flowed into a nearby sewer main.
3. The sewer backup was the result of damage to the nearby sewer caused by the water main break.
4. The City responded to the leak promptly and made necessary repairs.

For these reasons, the General Liability Committee (GLC) recommended denial of payment of the six (6) claims:

• Ander Rowe (2019-37 Street) -	\$12,610.87
• Linda Gutting (2002-37 Street) -	\$6,956.70
• Leona Sheets (2023-37 Street) -	\$14,602.38
• Helen and Tom Laity (2032-37 Street) -	\$2,173.33
• Daniele Jordan (2008-37 Street) -	\$2,342.25
• Roma Nessler (2004-37 Street) -	<u>\$2,106.10</u>
Total	\$40,791.63

Following the GLC's decision to deny the claims, the decision was reviewed by City Manager Thomas Thomas and he recommends that each resident be paid half their claim costs (\$20,395.81). Claims will be paid out the self-insurance fund. The City admits no liability for the damage and the payments will be on a non-precedent setting basis.

Submitted by: Patrick Doherty, Risk Manager
John Thorson, Administrative Services Director

Approved by: Thomas Thomas, City Manager