

CHAPTER 14.30

SEWER BACKUP PREVENTION

SECTION:

14.30.010: Purpose

14.30.020: Revenue - Expenditures

14.30.030: Claims - Amounts Allowed - Procedure

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14.30.010: Purpose: It is the purpose of this chapter to provide a comprehensive system for the elimination, to the greatest extent practical, of sewer backups and to compensate those injured thereby, whether the same be caused by the negligent or improper operation of the sewer system by the City of Kennewick or some other person or whether the same be caused by some means wholly without the control of the City of Kennewick. The remedies and relief provided in this chapter are exclusive and any person filing a claim under the provisions of this chapter shall be barred from seeking relief which may otherwise be available if he elects to pursue a claim under these provisions. (Ord. 2750 Sec. 1 (part), 1983)

14.30.020: Revenue - Expenditures:

(1) There is hereby imposed a surcharge upon all sewer accounts, not to exceed two percent, taxes excluded, which shall be placed into the Risk Management Fund for the purpose of paying any claim compensable under this chapter. The said Fund shall be maintained at a level determined by the Director as necessary to meet the liabilities provided herein and to defray the costs and expenses of administering these provisions. The amount of surcharge shall be reduced or eliminated once the Fund has reached the maximum set by the Director. Interest accrued upon the said Fund shall be allowed to increase the total to 25% above the maximum provided and all surpluses thereafter shall be placed into the Water and Sewer Revenue Fund. In the event that the maximum is later reduced or the account eliminated, all funds remaining therein shall be placed in the Water and Sewer Revenue Fund.

(2) The Director is authorized to pay, settle and compromise any claim arising as the result of a sewer backup with the funds collected herein. He may from the funds collected pay any insurance deductible, costs of defense, costs of adjusting and any other reasonably necessary expenses arising from a sewer backup claim. In addition to the amounts authorized by Section 14.30.030, the Director is authorized immediately upon notice to take such reasonable steps as he deems necessary to abate any immediate health hazard and to perform any costs of cleaning and sterilization and to take all other necessary and appropriate action reasonably necessary to protect the health of any person who is or may be injured by a sewer backup. (Ord. 2750 Sec. 1 (part), 1983)

14.30.030: Claims - Amounts Allowed - Procedure:

(1) Any person electing to file a claim under the provisions of this chapter shall be limited to the relief provided herein. Any person electing to pursue any remedy other than that specifically provided herein, shall be barred from recovery under these provisions.

(2) In the event of damage caused by a sewer backup into residential, commercial or industrial property, the Director is authorized to pay special damages proximately caused by the backup only for the following items:

- (a) Damage to property, real and personal;
- (b) Expenses of cleaning and necessary repainting;
- (c) Medical expenses; and
- (d) Expenses of temporary dislocation, such as temporary housing and meal costs.

Damages will be paid for the diminution in value of property or if not practical, fair market value. Title to the property in the latter case vests in the City. Damage will be paid for carpets which cannot be cleaned, but not for expensive rugs which serve other than a utilitarian purpose. Only in extraordinary cases will clothing be other than cleaned.

There shall be no recovery for items of an historical or sentimental nature nor any other item which because of its age, scarcity, etc. has increased in value, such as magazines, stamps, books, curiosities, paintings, art objects and similar such items and collections. There shall be no recovery for general damages such as pain and suffering, wrongful death, loss of consortium, etc.

(3) The City shall be allowed to first inspect all damaged property. The claimant must provide an inventory and expense account.

(4) There shall be deducted from the compensable claims, any amounts received from insurance or other collateral sources.

(5) Upon the first occurrence of a sewer backup resulting from a plugged City main line, the City shall pay 100 percent of the compensable amount. No claim shall be paid until such time as a backflow prevention device is installed by the property owner. The device must be installed within 60 days of the date of backup, unless an extension is approved by the Director. Upon a second occurrence of sewer backup, the City will pay 75 percent of the compensable amount should it be determined by the City's Building Inspector that the installed backflow prevention device was not maintained properly. The City shall not pay for damages for any further occurrences of backup where the backflow prevention device was determined by the City Building Inspector to be maintained improperly. No recovery shall be allowed for the failure of any private fixture or device, such as pumps and plumbing, or for a subsequent backup, without a backflow prevention device having been installed.

(6) A claim or claims which cannot be paid with revenues collected within one year from the date of first claim exhausting the funds, shall be reduced in proportion to revenues collected over the year following the first claim. A claim or claims in excess of revenue, as above-described, is not compensable under this chapter and may not be recovered otherwise unless the claimant elects to proceed wholly without the scope of the recovery provided in this chapter. (Ord. 3551 Sec. 1, 1994; Ord. 2989 Sec. 1, 1986; Ord. 2750 Sec. 1 (part), 1983)

14.30.040: Appeals: Any person aggrieved by a determination of the Director under the provisions of this chapter may request a hearing before the Director within 20 days of the Director's determination. The Director's decision following a hearing, shall be final and conclusive. Any person aggrieved thereby may apply to the Superior Court for such relief as may be entitled within 30 days of such final decision. (Ord. 2750 Sec. 1 (part), 1983)