

**CITY OF HAMILTON**

**CORPORATE SERVICES**  
**Budgets & Finance**  
**Risk Management Services**

<b>Report to:</b> Mayor and Members Committee of the Whole	<b>Submitted by:</b> Joseph L. Rinaldo General Manager Finance and Corporate Services
<b>Date:</b> July 25, 2006	<b>Prepared by:</b> Michael Hill (5733) John McLennan (5736)

**SUBJECT: Proposed Residential Municipal Disaster Relief Assistance Program  
for Basement Flooding (FCS06007) (City Wide)**

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**RECOMMENDATION:**

- a) That a Residential Municipal Disaster Relief Assistance Program be established to provide residents with a compassionate grant in an amount not to exceed \$750.00 for Basement Flooding resulting from a severe rain storm;
- b) That payment of such claims be based on compassionate grounds only and not to be construed as an admission of liability on the part of the City of Hamilton;
- c) That the Eligibility Criteria for the Residential Municipal Disaster Relief Assistance Program as set out in Appendix A to report FCS06007 be approved;
- d) That a Residential Municipal Disaster Relief Program Reserve be established at a balance of \$1.5 million to be funded equally from the Waterworks, Sanitary Sewer and Storm Reserves;
- e) That City Council declare the severe rain storm events of July 26, 2005, August 19, 2005 and July 10, 2006, for all affected properties within the boundaries of the City of Hamilton, as Disasters for the purpose of the Residential Municipal Disaster Relief Assistance Program; and

- f) That staff be authorized to retain an independent adjuster for the administration of claims under the Residential Municipal Disaster Relief Assistance Program and that these administrative costs be funded from the reserve.

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Joseph L. Rinaldo  
General Manager  
Finance and Corporate Services

**EXECUTIVE SUMMARY:**

With the continuing reoccurrence of localised, severe and intense rainstorms in the City of Hamilton, the capacity of the City's sanitary and storm sewer infrastructure has been exceeded on several occasions resulting in the flooding of basements in many homes or dwellings in various locations. Residents have sustained expenses relating to damages as a result of their basements being flooded from a severe rainstorm. In order to alleviate the financial burden that is incurred by many residents as a result of basement flooding, caused through no fault of their own or the City, it is recommended that Council consider providing a compassionate grant of an amount not to exceed \$750.00 to assist residents who have suffered losses as a result of basement flooding caused by severe rainstorms. The City is currently working, in many ways, to increase capacity of the sanitary and storm water infrastructure in order to reduce or eliminate the potential of future occurrences.

By providing assistance through a compassionate grant program, residents can be assisted financially much quicker than having to wait for the determination by the City's insurers of any liability on the part of the City which can take a long time due to the nature of the technical investigation that is required. This grant program would remove the immediate need for determining liability before assistance can be given and would not jeopardize the City's ability to defend claims and allegations of negligence should the City be pursued by additional claims in excess of the grant allowance.

While the Province of Ontario has in place the Ontario Disaster Relief Assistance Program (ODRAP), applications for assistance to the Province by the City of Hamilton have been denied as the total cost of damages sustained in the events did not meet the financial formula of the Province to provide access to their relief assistance program. The program being recommended will be implemented when disasters, as declared by Council, occur and do not qualify for ODRAP assistance.

**BACKGROUND:**

As a result of past and recent severe rainstorm events which have involved the City's infrastructure, it has been recommended that a compassionate grant in an amount not to exceed \$750.00 be provided to City residents whose basements have flooded as a result of a severe rainstorm.

The Ontario Provincial Government has in place the Ontario Disaster Relief Assistance Plan (ODRAP) that is available to provide financial assistance to residents of municipalities in extraordinary situations where disasters are of such magnitude that they are beyond the local municipality's ability to manage and thus warrant Provincial assistance. In summary, when a municipality declares a disaster, they can then make an application to ODRAP, through the Minister of Municipal Affairs and Housing, asking for assistance. ODRAP has requirements and a formula to determine if a municipality is eligible for assistance under the program. If the Municipality is eligible, a very detailed program to determine eligibility and level of assistance is put into place for residents to apply for financial assistance. Funding is provided by the Province on a \$2 for \$1 basis relative to local fundraising efforts.

As a result of widespread flooding during recent rainstorm events, the City of Hamilton made such an application to the Minister on two different occasions. However, based on ODRAP's criteria, the level of damage did not meet a magnitude that was beyond the Municipality's ability to manage and, therefore, did not warrant Provincial assistance through ODRAP. As a result, residents from our community who would have qualified for assistance under ODRAP were precluded from applying because the Municipality's request for disaster assistance was denied.

In an effort to provide assistance for those in need, it is proposed that the City adopt a policy and process for its' own disaster relief assistance program where and when ODRAP and other level of Governments does not respond for relief assistance for residential basement flooding only or where Council declares a rainstorm event with resultant residential basement flooding to be a Disaster. As ODRAP's portion of the contribution would not be available, it is recommended that a City disaster relief assistance program for residential basement flooding be considered. The program would provide a compassionate grant not to exceed \$750.00 to residents who would have qualified had ODRAP approved the City's application for relief. It is further proposed that eligibility, policy and process for managing the funds and claims be similar to those used by ODRAP. This would permit the City to assist residents who may have been disadvantaged, through no fault of their own by ODRAP's decision, simply because the City does not meet the requirements for provincial assistance.

**ANALYSIS/RATIONALE:**

Staff have reviewed basement flooding events in the City of Hamilton, in recent years, which would most likely have been considered as severe rainstorms for the purposes of

this proposal. These events were the severe rain flooding of July 26 and August 19, 2005 and the rainstorm of July 10, 2006. It was determined that damages to private property can result directly or indirectly from a failure or overload of the City's infrastructure even if there is no negligence on the part of the City. In each of the events reviewed, damage to property in basements was caused by sewer back-up and was insurable, subject to some limitations and deductibles. Coverage for sewer back-up and escape of water from a public water main is available, in most instances, from insurers but damage caused by surface water flooding is not available at all.

In all of the above events, a relatively low percentage of property owners did not have access to insurance, however, for those who were insured some portions of their claims may have been denied by their insurers due to the surface water flooding exclusion. In some cases, sewer back-up coverage is not available to some residents. Based on our statistical analysis of claims resulting from basement flooding from the above events, we have determined that 77% of the properties are insured. This is consistent with statistical claim information from the flooding of homes which occurred in Stratford and Peterborough in recent years.

Insurance is purchased to protect against losses arising from insured perils. For the most part, those property owners who have insurance have the opportunity for a quick response to their claims by their insurers. Liability or responsibility for damage is not an issue for insured property owners as those issues will be sorted out later by the insurers and the responsible party.

Greatest concern is for those who need assistance if they have no access to insurance to assist them with the repair or replacement of essential items and who may be pressed financially.

This proposed program to assist those with flooded basements is in consideration of those who have no access to insurance, have been denied coverage by their insurance company, who may be pressed financially and are not eligible for ODRAP assistance due to the Municipality not qualifying for assistance at the municipal level.

Staff has conducted a survey of the Cities of London, Ottawa, Toronto and Kitchener and also the Regional Municipalities of Waterloo, Peel, Niagara and other municipalities and none of these municipalities have a program that would respond, on a broad base, to assist residents when disaster relief is denied to the Municipality by ODRAP.

The Cities of Toronto and Ottawa have subsidy programs to assist with remedial action for the prevention of sewer back-ups, such as installation of back-flow preventers and downspout disconnects. A report will be submitted to Council in the Fall in this regard. Residents must apply for these grants and are subject to a variety of terms and conditions.

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The following Table describes the position taken by other municipalities regarding sewer back-up claims:

<b>MUNICIPALITY</b>	<b>POLICY</b>
London	Pay only when negligent
Niagara Region	Pay only when negligent
Kitchener	Pay only when negligent
Toronto	Pay only when negligent
Ottawa	Pay only when negligent
Mississauga	Pay only when negligent
Peel Region	Grants to max \$1500.00 but Region must be responsible and excludes sewer back-ups that are storm related.
Halton Region	Grants to max. \$500.00 for sanitary sewer back-ups only. Not surface flooding.
Durham Region	Grants to max. \$250.00 for clean up costs only

Based on our survey, no other Municipality in Ontario has a disaster program, as broad as this proposal, to assist residents when assistance is denied by ODRAP. This recommended proposal, if approved by Council, could be implemented by Council declaring an event which has resulted in the basement flooding of multiple residential properties caused directly from a severe rainstorm to be a "Disaster".

Implementing a residential disaster relief program for basement flooding in this manner will permit the City to assist those who have been disadvantaged by no fault of their own. Therefore, it is recommended that Terms and Conditions of assistance to individuals under the proposed program be similar to those used by ODRAP for determining eligibility and funding. This would ensure consistency of process and practice with an established and experienced program. Appendix A to this report FCS06007 sets out the proposed criteria for the City's program.

It is also necessary to define a funding limit for the program. Funding is provided by ODRAP on the basis that ODRAP will fund \$2 for every \$1 raised by the community. In this proposal, we are recommending that the funding limits for the program be an amount that would be based on a reasonably expected contribution factor by the community. In the City of Peterborough, the average residential claim payment processed under ODRAP's terms and conditions for the flooding caused by severe rainstorms in July 2004 averaged \$2,500. The Peterborough community fundraising share or contribution was 1/3rd (\$833.00). It is recommended, in this proposal, that the City of Hamilton fund an amount up to a maximum of \$750.00 which is representative of community fundraising as experienced in Peterborough.

All property owners or tenants submitting claims would be required to provide documentation regarding the details and availability of insurance to them, acknowledge that the grant payment they may qualify to receive is based on compassionate grounds and is not an admission of liability on the part of the City of Hamilton. They would further be required to agree that any amounts paid under this grant program would be deducted from any potential future claim settlement arising from the same event to avoid duplication of damage payments.

**ALTERNATIVES FOR CONSIDERATION:**

**Option 1:** Currently, the City has no broad based disaster relief program to provide financial assistance to citizens. This is a status quo alternative. This option would have no additional costs attached to it.

**Option 2:** This option, which is being recommended, proposes that the City design and implement a compassionate grant using a similar criteria (but limiting it to basement flooding) as the ODRAP disaster relief plan. This alternative would be the quickest way to implement a proven disaster relief program as terms, conditions and process have already been established and tested by the Province. This option provides for an ability to determine the potential financial implications as various parameters will have been defined. The ODRAP program specifically excludes insured damages including the deductible amount. Staff recommend that we amend the ODRAP terms and conditions so as to include the insurance deductible as part of the available grant funds given that the recommended funding amount per claim represents only 1/3rd as the 2/3rd contribution from the Province is not available. This would provide assistance to a greater number of residents.

**Option 3:** An alternative would be to exclude the insurance deductible from the eligibility criteria, which is similar to the ODRAP program. For these residents, their basements would have been restored through their insurance policy and their out-of-pocket expense would have consisted of their insurance deductible plus any ineligible costs.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

**Option 1:** Option 1 has no additional financial implications.

**Option 2:** Determining the financial implications for Option 2 is dependant on the size of the disaster and the terms and conditions of the program once they have been determined. Our statistical information indicates that approximately 77% of the flooding claims in the summer of 2005 were insured. Deductibles vary, on average, from \$300.00 to \$1,000.00. There were approximately 645 claims reported, in total, for the two events in 2005. There may be additional claims that have not been made and which may be made if grants are made available. Therefore, it should be anticipated that these numbers will rise but it is impossible to estimate.

For the purposes of this report, staff have provided for an increase of 10% or an additional 65 claims. Assuming that the City will be paying approximately 710 claims at a maximum amount of \$750.00, the estimated cost of the program for the 2005 claims would be approximately \$532,500.00 plus administration expenses.

For the July 10, 2006, rainstorm event the City has received approximately 150 calls regarding the process for submitting claims for flooding. It is traditionally several weeks after the event that claim notices are received from individuals and insurance companies. If you estimate the anticipated volume of claims at 250, at the maximum grant level of \$750.00, the total cost would be approximately \$187,500.00 plus administration expenses.

By proceeding with a grant program, as outlined, the City would not be admitting liability and thus this should not affect our insurers' rights with regard to the claims received for the two events in 2005.

**Option 3:** If the insurance deductible was excluded, it is estimated that the cost under this option would be approximately \$300,000 plus administrative costs (based on the experience of 2005 events).

**Administration:** It is recommended that the claims for compassionate grants be administered by an independent adjusting firm since the frequency and volume of claims is unpredictable. The proposed administration costs will range between \$100 to \$125 per claim.

#### **POLICIES AFFECTING PROPOSAL:**

Implementation of the proposed disaster relief program for basement flooding would not affect the claims policy and process for claims made against the City alleging negligence as the proposed program is considered a grant and the determination of fault would not be a requirement. There would be no impact on the current Council policy of paying claims only when the City is deemed negligent.

#### **RELEVANT CONSULTATION:**

City Legal Services, ODRAP staff and staff of other municipalities.

**CITY STRATEGIC COMMITMENT:**

By evaluating the “**Triple Bottom Line**”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Evaluate the implications of your recommendations by indicating and completing the sections below. Consider both short-term and long-term implications.

**Community Well-Being is enhanced.**       **Yes**    **No**

**Environmental Well-Being is enhanced.**       **Yes**    **No**

**Economic Well-Being is enhanced.**       **Yes**    **No**

**Does the option you are recommending create value across all three bottom lines?**  
 **Yes**    **No**

**Do the options you are recommending make Hamilton a City of choice for high performance public servants?**  
 **Yes**    **No**

**APPENDIX A to FCS06007**

**ELIGIBILITY CRITERIA  
FOR  
RESIDENTIAL MUNICIPAL DISASTER RELIEF  
ASSISTANCE PROGRAM FOR BASEMENT FLOODING**

**Introduction**

The eligibility and payment of any funds under the program is based on compassionate grounds only and is not to be construed as an admission of liability on the part of the City of Hamilton. Any funds paid under this program will be deducted from any potential future claim settlement to avoid duplication of damage payments. This program would not be implemented where disaster relief is provided by another level of government (e.g., ODRAP). In addition, residents who are currently in litigation with the City would not be eligible for assistance under this program.

**Disaster Declaration**

To declare a Disaster resulting from a severe rainstorm event, Council shall, by resolution, clearly define the time frame and identify the boundaries within the City that are eligible for relief for basement flooding under this program.

**Eligibility**

To be eligible, the following criteria must be met:

- Residential property must be within the boundaries of the declared disaster area and suffered basement flooding directly related to the severe rainstorm event
- Losses not covered by insurance
- Private residential owners and/or tenants
- Damages fall into the categories of eligible losses & costs

**Eligible Losses and Costs**

- Clean-up, restoration, repairs or replacement to pre-disaster condition to the basement of a principal residence
- Essential furnishings including refrigerator, freezer, furnace, stove, clothes, washer and dryer
- Tools or other items essential to the claimant's livelihood
- Emergency expenses (e.g., evacuation costs, food and shelter)
- Perishable food
- Insurance deductible

**Ineligible Losses and Costs**

- Losses covered by insurance
- Non-essential furniture (e.g., stereos)
- Landscaping, fencing, driveways and retaining walls
- Recreational vehicles (e.g., boats)
- Antiques and collections
- Loss of revenue or wages (e.g. rents)
- Losses recoverable at law
- Personal injury
- Private roads/bridges and erosion

**Private Property Owners**

Eligible losses include:

1. Costs of clean-up, restoration, repair or replacement to pre-disaster condition of a basement (e.g., floors and walls).
2. Costs for clean-up of property for safety reasons or to provide access (e.g., debris removal); and
3. Costs of clean-up, restoration, repair or replacement of basic furniture damaged as a result of the disaster (e.g., major appliances).

**Tenants**

Eligible losses include:

1. Costs of clean-up, restoration, repair or replacement of contents as identified in the Eligible Losses and Costs damaged as a result of the disaster (e.g., major appliances and beds but excluding structural repairs that are the responsibility of the owner).