



City Attorney's Office

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Common Council
City of West Allis

RE: City Attorney's Report of Claim – **Edward Wistl**

Dear Council Members:

The enclosed claim has been referred to this office in accordance with Section 3.05(8) of the Revised Municipal Code. This office has examined the facts of the claim and the applicable law. This office's recommendation is to deny the claim based on the summary below:

Facts: On January 21, 2018, the City of West Allis Public Works Department responded to a sewer backup at Edward Wistl's property at 7210 West Greenfield Avenue in West Allis. After hydro-jetting the sewer line, the Public Works crew noticed a large amount of grease. The crew tried to televise into the sewer to determine the source of the backup, but the camera was not working. On January 28, 2018, a second back-up occurred at the same location. The Public Works crew observed sand and gravel in the sewer. Upon televising the sewer on February 1, 2018, a water main break was suspected as clear water was observed to be gushing through the main, along with stone. On February 2, 2018, the Water Department located the water main break and repaired it.

Due to the sewer back-up on January 21, the lower level of Wistl's property flooded with water. Wistl used Roto Rooter emergency service and a cleaning crew to extract water, clean, and deodorize the affected areas. Wistl also claims that personal property stored in this area suffered water damage.

Claim: Wistl is claiming that the City should reimburse him for the damages he suffered as a result of the first backup: Roto-Rooter emergency service, professional cleaning, property damage, and his own labor. He is seeking \$7,990.46.

Analysis: The claim should be denied. Case law states that a municipality is not responsible for damages arising from a private nuisance action unless the municipality had prior notice of the private nuisance. Here, per the opinion of a City of West Allis engineer, the water main break was the main cause of both backups, and the City did not have any knowledge of the condition of the water main before the backups occurred. While the sanitary main was not in the best of shape at the time of the backups, a City engineer opined that even if the sanitary main was brand new, the water and material from the water

main break could still come in and through privately-owned lateral joints to cause damage. Therefore, since the City did not have any knowledge that the water main was broken or in poor condition and the sanitary main's condition not being the cause of Wistl's damages, the City is not liable.

Furthermore, even if the City was responsible, Wistl has not proven all of his damages with reasonable certainty. Wistl did not provide any receipts for the damaged items or account for depreciation; similarly, he has not shown that \$50.00 an hour for his unspecified labor costs is a reasonable amount.

Therefore, based on the above analysis, the City Attorney Office's recommendation is to deny this unmeritorious claim.

Respectfully submitted,



Jenna Merten
Assistant City Attorney