



**CITY OF HAMILTON**

**PUBLIC WORKS DEPARTMENT**  
**Hamilton Water Division**

<b>TO:</b> Mayor and Members General Issues Committee	<b>WARD(S) AFFECTED:</b> CITY WIDE
<b>COMMITTEE DATE:</b> February 6, 2013	
<b>SUBJECT/REPORT NO:</b> Residential Protective Plumbing Subsidy Program (PW11056c) - (City Wide) <i>(Outstanding Business List Item)</i>	
<b>SUBMITTED BY:</b> Gerry Davis, CMA General Manager Public Works Department	<b>PREPARED BY:</b> Dan McKinnon (905) 546-2424, Extension 5941 Shane McCauley (905) 546-2424, Extension 1020
<b>SIGNATURE:</b>	

**RECOMMENDATION**

- (a) That the Protective Plumbing Program (3P) be amended to:
  - (i) require property owners to submit to the City of Hamilton three independent quotes for the eligible works prior to approval or provision of grants and/or loans; and
  - (ii) provide that grant and loan values for the Protective Plumbing Program (3P) be equal to the value of the lowest of the three quotes submitted to the City of Hamilton for the eligible works;
- (b) That staff be directed to implement subsections (a) (i) and (ii), including the amendment of the Protective Plumbing Program (3P) Guidelines;
- (c) That the item entitled "Residential Protective Plumbing Program" be identified as completed and removed from the General Issues Committee Outstanding Business List for Public Works.

**EXECUTIVE SUMMARY**

During the October 31, 2012 General Issues Committee (GIC) staff presentation of the 2013 Rate Budget the committee discussed funding for the Protective Plumbing Program (3P). As a result of these discussions staff was directed as follows;

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- (a) That staff be directed to report back to the General Issues Committee providing options such as, but not limited to, the RFI, RFP or tendering process to deliver the continuation of the Residential Protective Plumbing Program;
- (b) That staff be directed to report back to the General Issues Committee identifying costs that the City may avoid through the mitigation of flooding risk by the installation of a backwater valve to residential properties that are connected to the City's sanitary system;
- (c) That Legal staff be directed to seek options to prevent alleged dubious marketing practices of the program, including incentive programs;
- (d) That the Internal Auditor be requested to conduct a value-for money audit of the Residential Protective Plumbing Program since its inception to date.

During Committee there were a number of concerns discussed respecting the sustainability of the program due to significant increases in program expenditures and potentially inappropriate behaviour in the marketplace. As a result staff were directed to report back to Council respecting items a) through d) as above.

The recommendations contained in this report support the Mission Statement of the Public Works Business Plan "Innovate Now" - "Provide safe, strategic and environmentally conscious services that bring our communities to life".

**Alternatives for Consideration - See Page 7**

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS**

**Financial:** The recommendation contained in this report is believed to increase the financial sustainability of the program by ensuring the value of works is established through a competitive process while not increasing any other costs related to the program.

**Staffing:** N/A

**Legal:** N/A

**HISTORICAL BACKGROUND**

On July 7, 2011 Council approved the General Issues Committee Report 11-023 which included both a recommendation from staff and direction from council as follows:

- 1) Expand eligibility for the Residential Protective Plumbing Subsidy Program (3P) to all residential owner-occupied properties within the City of Hamilton regardless of whether or not the property had previously experienced basement flooding and;
- 2) That staff report back to the appropriate standing committee on the options available for extending the Residential Protective Plumbing Subsidy Program to registered owners of residential rental properties.

### Recommendation

The recommendation and rationale for expanding eligibility for the program to all residential owner-occupied properties within the City of Hamilton whether they had experienced basement flooding or not is contained in the July 4, 2011 Public Works Report “*Residential Protective Plumbing Subsidy Program (3P Program) (PW11056)*” and was based on a combination of feedback received by staff from both city residents and members of Council, as well as the trends of the program at that time. Since this change was implemented program activity has increased dramatically.

The 2012 budget of \$2.3 million for the program included for the potential of a 20% increase in program participation over 2011 expenditures. On two separate occasions throughout 2012 additional funding was required for the program to ensure requests for grants were met. Actual expenditures for the program for 2012 were approximately \$5.1 million.

During the October 31, 2012 General Issues Committee (GIC) staff presentation of the 2013 Rate Budget the committee discussed funding for the Protective Plumbing Program (3P). As a result of these discussions staff was directed as follows;

- (a) That staff be directed to report back to the General Issues Committee providing options such as, but not limited to, the RFI, RFP or tendering process to deliver the continuation of the Residential Protective Plumbing Program;
- (b) That staff be directed to report back to the General Issues Committee identifying costs that the City may avoid through the mitigation of flooding risk by the installation of a backwater valve to residential properties that are connected to the City’s sanitary system;
- (c) That Legal staff be directed to seek options to prevent alleged dubious marketing practices of the program, including incentive programs;
- (d) That the Internal Auditor be requested to conduct a value-for money audit of the Residential Protective Plumbing Program since its inception to date.

The recommendations and information in this report are in response to the direction from Council respecting items (a) through (d) as above.

### Direction

A separate report will be brought before the General Issues Committee with details regarding a Community Improvement Plan (CIP) that, if approved by Council, will allow the program to be extended to residential rental properties. This report will provide information for Committee and Council to consider in regards to the program’s structure and delivery options.

## **POLICY IMPLICATIONS**

The recommendations in this report directly affect the Protective Plumbing Program (3P) and propose changes to the program itself.

**RELEVANT CONSULTATION**

Staff from the City Manager's Office (Commercial/Development/Policy Section of Legal Services Division and Internal Audit Division), Corporate Services (Current Budgets and Risk Management) were consulted in the development of this report.

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

During the October 31, 2012 General Issues Committee (GIC) staff presentation of the 2013 Rate Budget the committee discussed funding for the Protective Plumbing Program (3P). As a result of these discussions staff was directed as follows:

- (a) That staff be directed to report back to the General Issues Committee providing options such as, but not limited to, the RFI, RFP or tendering process to deliver the continuation of the Residential Protective Plumbing Program;
- (b) That staff be directed to report back to the General Issues Committee identifying costs that the City may avoid through the mitigation of flooding risk by the installation of a backwater valve to residential properties that are connected to the City's sanitary system;
- (c) That Legal staff be directed to seek options to prevent alleged dubious marketing practices of the program, including incentive programs;
- (d) That the Internal Auditor be requested to conduct a value-for money audit of the Residential Protective Plumbing Program since its inception to date.

**Analysis of item:**

- (a) That staff be directed to report back to the General Issues Committee providing options such as, but not limited to, the RFI, RFP or tendering process to deliver the continuation of the Residential Protective Plumbing Program;

The intent of this direction originates from a desire of Council to derive greater value and control over the issuance of funding through 3P. As a result of what appears to be dubious business practices as well as an absence of competition within the program Council sought to reign in the costs of the program to ensure its sustainability.

Staff reviewed the option of issuing a competitive procurement process (e.g. RFI, RFP or RFT) to secure the services of a contractor to undertake the works eligible under 3P and believe that it is possible to undertake this model. This model would see the City hire a contractor to complete works on private property with the property owner's consent, inspect the works and pay the contractor directly for the completed works. There are however, a number of risks associated with this model as discussed below.

In consultation with Legal Services it was determined that while the City can perform work on private property utilizing City staff or a contractor with the consent of the property owner; the risk and liabilities associated with the City performing the work either itself or through a contractor would likely be significant. This is especially the case where the work involved most often results in the physical alteration of a private

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residence in accordance with the provisions of a permit issued under the Ontario Building Code. Undertaking this model would likely expose the City to a number of potential claims such as recurring basement flooding and associated property damage, collateral structural or cosmetic damage, customer service claims and health and safety claims. As a result of these concerns staff do not recommend pursuing this model.

Staff reviewed similar programs in 10 municipalities throughout Ontario and none of them physically undertake the works directly on private property either with municipal staff or contractors contracted directly by the municipality.

In considering the intent of this direction, staff believe that by initiating some minor protocol changes to the 3P program, the spirit of the above direction will be met. The change contemplated would in essence require property owners who wish to participate in 3P to acquire three independent quotes for the proposed works to be submitted at the time of the application. The value of the grant and/or loan would be equal to the lowest of the three quotes. While this appears to be a minor change, staff believe that the introduction of competition into the program has the potential to ensure the most efficient delivery of the program's intent. As a result staff recommend this change as an alternative to the direction in item (a) above. Should Council approve this recommendation, staff will report back at the appropriate time with an update on the effect of the change.

- (b) That staff be directed to report back to the General Issues Committee identifying costs that the City may avoid through the mitigation of flooding risk by the installation of a backwater valve to residential properties that are connected to the City's sanitary system;

Risk Management Services was consulted for the purpose of determining the potential benefit of the 3P on liability exposure when there is widespread property flooding during heavy rain events.

The City has been in a good position to escape liability for flooding since the inception of the Good Government Act of 1996. Previous to this piece of legislation municipalities were basically forced to pay flood claims due to the fact that claimants did not have to prove negligence on the part of the municipality. The mere fact that water which would normally be channeled away by a municipal storm water management system ends up in a basement was enough to establish a "nuisance" case against the municipality and consequently municipalities had little choice but to compensate flood claimants. The Good Government Act essentially eliminated the theory of "nuisance" as it relates to basement flooding and established that claimants were required to prove negligence to be successful in recovering flood damages from a municipality. As a result, the realistic liability exposure for municipalities for basement flooding has been significantly reduced. Consequently the City of Hamilton has rarely compensated a flood claimant since the Good Government Act has been in place.

In light of the foregoing, the 3P has not significantly improved the City's ability to defend liability for basement flood claims. Risk Management Services however, is of the opinion that the 3P does play an important role in the reduction of overall costs related

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to liability exposure and other Risk Management activities when there is a flooding event. The continuation and proliferation of the 3P will only serve to compound the beneficial effect of cost savings relative to future heavy rain events within the City.

It should also be noted that the presence of protective plumbing in a household should serve to a) allow the property owner to acquire sewer back-up coverage where they previously had not been able to do so, b) provide access for property owners for cheaper premiums, higher limits, and/or lower deductibles for sewer back-up coverage. While this would have no direct financial impact for the City, it certainly serves as a value added benefit of the 3P in light of an abundance of citizen contact to staff and councillors alike requesting assistance with the acquisition of sewer back-up coverage.

3P initiatives unquestionably result in less basement flooding. Although the City is generally in a strong defence position there are still many corollary costs which accompany flood situations. With fewer basements flooding, cost savings are realized in the following areas:

- Claims handling
- Customer Contact Centre
- Legal defence
- WWW dispatch and investigation
- Compassionate Grant payments
- Supplemental Grant payments

The Compassionate Grant Programs would appear to be the area of most significant savings. The following table details grant payments for the program since its inception in 2006:

Compassionate Grant Payments for Heavy Rain Events							
Event Date	Event Type	Location	Status	Total Liability Claims	Grant Apps Requested	Approved Grants	Total Grant Payments \$
26-Jul-05	Heavy Rain	City Wide	Closed	117	756	601	403,854.00
19-Aug-05	Heavy Rain	City Wide	Closed	561	958	794	512,334.46
10-Jul-06	Heavy Rain	City Wide	Closed	144	785	672	434,005.00
27-Jul-06	Heavy Rain	Waterdown	Closed	8	56	28	17,700.00
01-Dec-06	Heavy Rain	Greenhill	Closed	34	163	75	47,857.68
25-May-07	Heavy Rain	City Wide	Closed	90	118	45	30,199.19
Jun 13-30, 2008	Heavy Rain	City Wide	Closed	28	188	89	38,153.00
Jul 1-31, 2008	Heavy Rain	City Wide	Closed	60	442	198	70,858.00
Aug 1-14, 2008	Heavy Rain	City Wide	Closed	84	688	309	110,784.00
26-Jul-09	Heavy Rain	City Wide	Closed	1,600	7,694	4125	3,079,128.00
29-Aug-09	Heavy Rain	City Wide	Closed	43	379	154	101,481.00
28-Sep-10	Heavy Rain	City Wide	Closed	71	280	111	87,191.19
08-Jun-11	Heavy Rain	City Wide	Closed	32	96	51	41,215.31
04-Aug-11	Heavy Rain	City Wide	Closed	2	6	1	500.00
09-Aug-11	Heavy Rain	City Wide	Closed	11	43	21	16,800.00
22-Jul-12	Heavy Rain	City Wide	Open	145	303	218	164,000.00
<b>Total</b>				<b>3030</b>	<b>12,955</b>	<b>7492</b>	<b>\$5,156,060.83</b>

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- (c) That Legal staff be directed to seek options to prevent alleged dubious marketing practices of the program, including incentive programs;

Council directed staff to investigate options to prevent contractors from offering incentive programs and engaging in dubious marketing.

Any contractors who perform work under this grant program must be licensed under the Business Licensing Bylaw. Consideration was given as to whether an offence could be created under the Trades Schedule of the By-law. In consultation with Legal Services, it is not recommended that such an offence be created, given that the accepted valid municipal purposes for licensing businesses are nuisance prevention, customer protection and health and safety promotion, none of which apply to the issuing of incentives or marketing programs. However, it is felt that this issue can be addressed in a couple of ways.

1. Add a provision to the 3P Assessment Form as well as the Application Form that states that “any grants or loans from the City are provided on the condition that the property owners not receive remuneration, in any form, from the contractor”, with both the property owner and the contractor acknowledging this and certifying that it has/will not happen. If then there is evidence that shows that the contractor does provide an incentive program to a property owner, such as a gift card, then enforcement against the contractor can proceed under the “honesty and integrity” requirement with a licensing hearing. A licence holder’s failure to live up to any financial arrangement, whether with the City or anyone else, related to the operation of their business is captured by the requirement in the General Provisions of the Business Licensing Bylaw that all license holders to conduct themselves with honesty and integrity.
2. As part of the revised program a requirement could be introduced where a homeowner must submit at least three quotes for the work to be completed that would be assessed by the City. The City then could provide the grant based on the lowest quote up to the maximum grant amount. This would effectively eliminate the advantage of providing incentives by contractors as well as any dubious marketing. This option could be implemented on its own or in conjunction with option one.

- (d) That the Internal Auditor be requested to conduct a value-for money audit of the Residential Protective Plumbing Program since its inception to date.

Internal Audit Services has indicated that they will endeavour to add this to their 2013 work plan however they are continuing to recruit for internal resources to provide these services.

#### **ALTERNATIVES FOR CONSIDERATION**

An alternative to the recommendations in this report include implementing a delivery model for 3P that uses either City staff or contracted services to complete eligible work

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on private property. This model is not recommended due to the inherent risks and associated liability exposure.

**CORPORATE STRATEGIC PLAN**

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

***Healthy Community***

- ◆ The 3P helps to protect residential property owners from sewer back-ups due to sewer surcharging. This program helps to reduce the emotional, financial and health issues related to basement flooding due to sewer surcharges.

**APPENDICES / SCHEDULES**

None