



City of Racine, Wisconsin
Common Council

AGENDA BRIEFING MEMORADUM

COMMITTEE: Finance and Personnel

LEGISLATION ITEM #: 0516-18

AGENDA DATE: June 11, 2018

DEPARTMENT: City Attorney’s Office

Prepared By: Assistant City Attorney Marisa L. Roubik

Reviewed By: City Attorney Scott Letteney

SUBJECT: Communication from the City Attorney submitting the claim of Bonnie J. Ayers for consideration.

EXECUTIVE SUMMARY:

The City Attorney’s Office recommends that this Committee deny the claim of Bonnie J. Ayers because the City and the Utility had no constructive or actual knowledge of a defect in the water main in question, and, therefore, neither the City nor the Utility is legally liable for the alleged damages.

BACKGROUND & ANALYSIS:

The Claimant, Bonnie J. Ayers of 2507 Taylor Avenue, Racine, Wisconsin 53403, filed this claim for reimbursement in the amount of \$9,280.00 for cleanup of her basement arising from alleged flooding after a water main break on or about January 15, 2018, and subsequent rainfall on January 21-22, 2018 with melting snow saturating the ground and allegedly running into the basement, which allegedly continued on and off throughout February 2018. The City and Water Utility deny liability.

In instances where the City and the Utility has no constructive or actual knowledge of a defect in a water main, the City and the Utility cannot be held legally liable for the damages resulting from such a defect. Furthermore, the City and the Utility cannot be held legally liable for, so-called, “acts of God,” over which the City and the Utility have no control.

This was the first water main break that has been reported in the 2500 block of Taylor Avenue, and neither the City nor the Water Utility had prior actual or constructive notice that this portion of the water

31 main was compromised. The Water Utility sent crews out to repair this break by 7:30 AM on January 15,
32 shortly after receiving a report of this break earlier that same morning.

33 The City Attorney's Office recommends that this Committee deny the claim of Bonnie J. Ayers
34 because neither the City nor the Utility had constructive or actual knowledge of a defect in the water main
35 in question, and the City and the Utility cannot be held liable for other "acts of God"; therefore, the City
36 and the Utility are not legally liable for the alleged damages.

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38 **BUDGETARY IMPACT:**

39 Assuming the recommendation to deny this claim is adopted, this item would have a \$0.00 impact
40 on the City's budget.

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42 **OPTIONS/ALTERNATIVES:**

43 If the recommendation to deny this claim is rejected, and the Committee recommends that this
44 claim be paid by the City (contrary to any indication of the City's liability for the alleged damages), this
45 item would have up to a \$9,280.00 impact on the City's 2018 claims budget.

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47 **RECOMMENDED ACTION:**

48 The City Attorney's Office respectfully recommends that this Committee deny the claim of Bonnie
49 J. Ayers.

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51 **ATTACHMENT(S):**

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