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**City of Racine, Wisconsin
Common Council**

AGENDA BRIEFING MEMORANDUM

COMMITTEE: Finance and Personnel

LEGISLATION ITEM #: 0392-24

AGENDA DATE: May 13, 2024

DEPARTMENT: City Attorney's Office

Prepared By: Deputy City Attorney Marisa L. Roubik

SUBJECT: Communication sponsored by Alder West on behalf of the City Attorney's Office submitting the claim of Cynthia Knapp-Finley for consideration for disallowance.

EXECUTIVE SUMMARY:

Cynthia Knapp-Finley filed a claim with the City requesting an unspecified amount for damages allegedly arising from her vehicle striking a parked car while she was driving on Mecham Road due to alleged water on the road on or about January 16, 2024. The claimant alleges that a water main break caused flooding in the road, and when she then drove through said flooding, water splashed onto her windshield and turned to ice, which compromised her ability to see through the windshield. The City and the Water Utility deny liability due to defects in the claim as filed. Furthermore, the claimant was negligent for failing to maintain a proper lookout for potential hazards in plain sight within the roadway. Moreover, neither the City nor the Water Utility had any constructive or actual knowledge of a defect in the water main in question, and, therefore, the City and the Water Utility are not legally liable for the alleged damages.

For these reasons, it is the recommendation of the City Attorney's Office that this claim be disallowed.

BACKGROUND & ANALYSIS:

Cynthia Knapp-Finley, of 4814 Maryland Avenue, Racine, Wisconsin, claims reimbursement in an unspecified amount for damages allegedly arising from her vehicle striking a parked car while she was driving on Mecham Road due to alleged water on the road on or about January 16, 2024. The claimant alleges that a water main break caused flooding in the road, and when she then drove through said flooding,

31 water splashed onto her windshield and turned to ice, which compromised her ability to see through the
32 windshield.

33 The City and Water Utility deny liability due to defects in the claim as filed. Furthermore, the
34 claimant was negligent for failing to maintain a proper lookout for potential hazards in plain sight within
35 the roadway. Moreover, neither the City nor the Water Utility had any constructive or actual knowledge of
36 a defect in the water main in question, and, therefore, the City and the Water Utility are not legally liable
37 for the alleged damages.

38 The claim that the claimant filed with the City on or about January 29, 2024 did not include an
39 itemized statement of the relief sought, as required by law. Furthermore, this claim was improperly filed
40 with the City Attorney's Office, contrary to Wis. Stat. § 801.11(4)(a)3. As such, the claimant did not satisfy
41 the statutory requirements for filing a claim in accordance with Wis. Stat. § 893.80(1d), and she does not
42 have a right to maintain an action against the City.

43 Furthermore, all drivers have a duty to look out for potential roadway hazards in plain sight, such
44 as flooding in the roadway. If a driver fails or is unable to keep a proper lookout for such potential hazards
45 in their plain sight, the driver is negligent.

46 In instances such as this, where neither the City nor the Water Utility had any constructive or actual
47 knowledge of a defect in a water main, the City and the Water Utility cannot be held legally liable for the
48 damages resulting from such a defect. Here, the Water Utility had no prior actual or constructive notice
49 that this portion of the water main was compromised until it was reported to the Water Utility at 6:00 PM
50 on the date in question. However, the claimant alleges that she encountered this main break at 5:20 PM—
51 prior to the Water Utility's notice thereof.

52 For the above stated reasons, it is the recommendation of the City Attorney's Office that this claim
53 be disallowed.

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55 **BUDGETARY IMPACT:**

56 Assuming the recommendation to disallow this claim is adopted, this item would have a \$0.00
57 impact on the City's budget.

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59 **RECOMMENDED ACTION:**

60 That the disallowance of this claim be recommended for approval.