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**City of Racine, Wisconsin
Common Council**

AGENDA BRIEFING MEMORANDUM

COMMITTEE: Finance and Personnel

LEGISLATION ITEM #: 0001-23

AGENDA DATE: January 9, 2023

DEPARTMENT: City Attorney’s Office

Prepared By: Deputy City Attorney Marisa L. Roubik

SUBJECT: Communication sponsored by Alder Taft on behalf of the City Attorney’s Office submitting the claim of John Klinkhammer for consideration for disallowance.

EXECUTIVE SUMMARY:

John Klinkhammer claims reimbursement in the amount of \$10,000.00 for damages allegedly caused by water in his basement arising from a sewer backup that occurred during the record-setting rainfall on September 11-12, 2022. The City Attorney’s Office recommends that this Committee disallow the claim of John Klinkhammer because the City and the Wastewater Utility cannot be held legally liable for, so-called, “acts of God,” such as unprecedented rainfall events, over which the City and the Utility have no control.

BACKGROUND & ANALYSIS:

The Claimant, John Klinkhammer of 2832 Illinois Street, Racine, Wisconsin 53405, filed this claim for reimbursement in the amount of \$10,000.00 for damages allegedly caused by water in his basement arising from a sewer backup that occurred during the 200-year flood on September 11-12, 2022. The City and Wastewater Utility deny liability.

The record-setting rain event on September 11 and 12, 2022 lasted for over 18 hours and was of historic proportions with recorded rainfall totals ranging from 6.75” to 9.75” in the City of Racine. Statistically, this was considered a 200-year flood with a 0.5% chance of occurrence. The City’s sewer system was taxed during this event but performed as designed; however, the unprecedented rain totals on September 11-12, 2022 exceeded the capacity of the system.

31 The Racine City sanitary sewers are cleaned on a 3-year cycle. The main that services this address
32 was last cleaned on April 21, 2021. The City has no knowledge of any defects existing in the sewers that
33 service this address. During the storm in question, the sewers were simply surcharged and overwhelmed
34 by the unusually large amount of rain that fell for an exceptional duration.

35 It should be noted that some homeowners have reported that they escaped flooding damage by
36 simply installing a drain backflow preventer in their basement floor drains. This may prove to be an
37 inexpensive solution going forward for homeowners such as the claimant.

38 The unusual 200-year storm that occurred on September 11-12, 2022 is considered an “act of God,”
39 which is a natural event or disaster that cannot be reasonably foreseen or prevented. The City and the
40 Utility cannot be held legally liable for such “acts of God,” over which the City and the Utility have no
41 control.

42 For the reasons set forth above, the City cannot be held legally liable for the alleged damages and
43 this claim should be disallowed.

44 _____

45 **BUDGETARY IMPACT:**

46 Assuming the recommendation to disallow this claim is adopted, this item would have a \$0.00
47 impact on the City’s budget.

48 _____

49 **RECOMMENDED ACTION:**

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

51 _____