



1 **City of Racine, Wisconsin**
2 **Common Council**

3 **AGENDA BRIEFING MEMORADUM**

4 **COMMITTEE: Finance and Personnel** **LEGISLATION ITEM #: 0515-18**

5 **AGENDA DATE:** June 11, 2018

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7 **DEPARTMENT:** City Attorney’s Office

8 **Prepared By:** Assistant City Attorney Marisa L. Roubik

9 **Reviewed By:** City Attorney Scott Letteney

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11 **SUBJECT:** Communication from the City Attorney submitting the claim of Mary Myers for consideration.

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13 **EXECUTIVE SUMMARY:**

14 The City Attorney’s Office recommends that this Committee deny the claim of Mary Myers
15 because the notice of circumstances for this claim was untimely filed, the allegations therein cannot be
16 substantiated, and neither the City nor the Utility had constructive or actual knowledge of a defect in the
17 water main in the vicinity of this property; therefore, the City and the Utility are not legally liable for the
18 alleged damages.

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20 **BACKGROUND & ANALYSIS:**

21 The Claimant, Mary Myers of 2838 Illinois Street, Racine, Wisconsin 53405, filed this notice of
22 circumstances and claim for reimbursement in the amount of \$8,593.93 for damages resulting from the
23 alleged flooding of her basement on October 11, 2017. The City and Water Utility deny liability.

24 As a threshold matter, this notice of circumstances was not filed within 120 days after the
25 occurrence of the event giving rise to the claim, as required by Wisconsin Statute section 893.80(1d)(a).
26 This alone is sufficient reason to deny this claim, as it is not legally actionable due to its untimely filing.

27 Beyond that, the claimant’s allegation that flooding was caused by a purported water main break
28 down the street from her home cannot be substantiated. Both the Water and Wastewater Utilities deny that
29 there were any such breaks or repairs of water mains occurring on or around the date or location in question.

30 Because the claimant's allegations are unsubstantiated, the City and the Utility are not legally liable for the
31 alleged damages.

32 Even if there had been a water main break in this area that caused the alleged flooding, the City
33 and the Utility would not be liable for the alleged damages because neither the City nor the Utility had prior
34 actual or constructive notice that a water main in this area was compromised.

35 The City Attorney's Office recommends that this Committee deny the claim of Mary Myers
36 because the notice of circumstances for this claim was untimely filed, the allegations therein cannot be
37 substantiated, and neither the City nor the Utility had constructive or actual knowledge of a defect in the
38 water main in the vicinity of this property; therefore, the City and the Utility are not legally liable for the
39 alleged damages.

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41 **BUDGETARY IMPACT:**

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

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45 **OPTIONS/ALTERNATIVES:**

46 If the recommendation to deny this claim is rejected, and the Committee recommends that this
47 claim be paid by the City (contrary to any indication of the City's liability for the alleged damages), this
48 item would have up to an \$8,593.93 impact on the City's 2018 claims budget.

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50 **RECOMMENDED ACTION:**

51 The City Attorney's Office respectfully recommends that this Committee deny the claim of Mary
52 Myers.

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54 **ATTACHMENT(S):**

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