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**City of Racine, Wisconsin
Common Council**

AGENDA BRIEFING MEMORANDUM

COMMITTEE: Finance and Personnel

LEGISLATION ITEM #: 0980-19

AGENDA DATE: September 23, 2019

DEPARTMENT: City Attorney's Office

Prepared By: Assistant City Attorney Marisa Roubik

SUBJECT: Communication from Alderman Q.A. Shakoor, II submitting the claim of Kevin Simanek and Robbye Lucero for consideration.

EXECUTIVE SUMMARY:

Kevin Simanek and Robbye Lucero filed a claim with the City requesting \$2,856.30 in damages allegedly arising from the replacement of a water meter at their residence on or about April 24, 2019. Because the technique used to replace this water meter was a discretionary act, the City is immune from liability for any damages that allegedly resulted. For this reason, it is the recommendation of the City Attorney's Office that this claim be disallowed.

BACKGROUND & ANALYSIS:

Kevin Simanek and Robbye Lucero filed a claim with the City requesting \$2,856.30 in damages allegedly arising from the replacement of a water meter at their residence at 824 Crab Tree Lane, Racine, Wisconsin, on or about April 24, 2019.

Although the Water Utility is mandated by the Wisconsin Public Service Commission to replace water meters on a 20-year schedule, the technique used to replace a water meter is discretionary insofar as Racine Water Utility workers must determine the best way to accomplish this task. In the claimants' case, the homeowners had walled off the water meter in a small box preventing adequate access. As such, the Utility workers consulted with the claimants about the available options for performing this work and obtained their explicit consent to proceed with this work in a discretionary manner in light of the obstacles that impeded their access to the meter. The claimants allege that water that leaked out during the changing of the meters damaged the laminate flooring in their basement.

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33 The City is immune from liability for the claimants' alleged damages pursuant to Wis. Stat.
34 § 893.80. In short, state law confers broad immunity from suits on municipalities for acts that are
35 considered "discretionary" in nature insofar as they require a municipal employee to use his/her judgment
36 to perform the acts. In the instant case, the Utility workers consulted with the claimants about the available
37 options for performing this work and obtained the claimants' explicit consent to proceed with this work in
38 a discretionary manner in light of the obstacles that impeded their access to the meter. Given the
39 discretionary nature of these acts, the City cannot be held liable for the alleged damages that may have
40 subsequently occurred.

41 For the reasons set forth above, the City is immune from liability and the claim should be
42 disallowed.

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44 **BUDGETARY IMPACT:**

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

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48 **OPTIONS/ALTERNATIVES:**

49 If the Committee recommends that this claim be paid by the City (contrary to any indication of the
50 City's liability for the alleged damages), this item would have up to a \$2,856.30 impact on the City's 2019
51 claims budget.

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53 **RECOMMENDED ACTION:**

54 That the claim of Kevin Simanek and Robbye Lucero be disallowed.