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**City of Racine, Wisconsin
Common Council**

AGENDA BRIEFING MEMORANDUM

COMMITTEE: Finance and Personnel

LEGISLATION ITEM #: 0973-23

AGENDA DATE: October 30, 2023

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 Racine Shopping Center, LLC, as represented by Attorney Michael P. Stupar, for consideration for disallowance.

EXECUTIVE SUMMARY:

Racine Shopping Center, LLC filed a claim with the City by and through its legal counsel, Attorney Michael P. Stupar, requesting \$1,850,006.20 in damages allegedly arising from a water main break that caused flooding at the Racine Shopping Center, LLC located at 5409 Washington Avenue, Mount Pleasant, Wisconsin, on or about May 21, 2023. The City Attorney's Office recommends the disallowance of this claim because 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.

BACKGROUND & ANALYSIS:

The claimant, Racine Shopping Center, LLC filed this claim with the City by and through its legal counsel, Attorney Michael P. Stupar, requesting \$1,850,006.20 in damages allegedly arising from a water main break that caused flooding at the Racine Shopping Center, LLC located at 5409 Washington Avenue, Mount Pleasant, Wisconsin, on or about May 21, 2023.

In instances where neither the City nor the Water Utility had any constructive or actual knowledge of a defect in a water main, the City and the Water Utility cannot be held legally liable for the damages resulting from such a defect.

31 This was the first break in the water main in this area to have been reported, and, the City's Water
32 Utility had no prior actual or constructive notice that this portion of the water main was compromised. Due
33 to the break in the water main, the Racine Shopping Center, LLC located at 5409 Washington Avenue,
34 Mount Pleasant, Wisconsin, allegedly suffered some flooding.

35 The City Attorney's Office recommends disallowance of the claim of Racine Shopping Center,
36 LLC because neither the City nor the Water Utility had any constructive or actual knowledge of a defect in
37 the water main in question, and, therefore, the City and the Water Utility are not legally liable for the alleged
38 damages.

39 Furthermore, even if the City and/or the Water Utility were found to be liable for any of the claimed
40 damages, Wis. Stat. § 893.80(3) caps the amount recoverable for any damages, in any action founded on
41 tort against any municipality at \$50,000.00.

42 In sum, the City Attorney's Office recommends disallowance of the claim of Racine Shopping
43 Center, LLC.

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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.

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49 **RECOMMENDED ACTION:**

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

51 _____