



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

3 **AGENDA BRIEFING MEMORADUM**

4 **COMMITTEE: Finance and Personnel** **LEGISLATION ITEM #: 0068-18**

5 **AGENDA DATE:** February 12, 2018

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

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

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10 **SUBJECT:** Communication from the City Attorney submitting the claim of Erie Insurance for
11 consideration.

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13 **EXECUTIVE SUMMARY:**

14 The City Attorney’s Office recommends that this Committee deny the claim of Erie Insurance
15 because the City had no constructive or actual knowledge of a defect in the water main in question, and,
16 therefore, the City is not legally liable for the alleged damages.

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18 **BACKGROUND & ANALYSIS:**

19 The Claimant, Erie Insurance Company of Erie, Pennsylvania, filed this claim for reimbursement
20 in the amount of \$12,391.28 for damages allegedly arising from a broken water main in the 2200 block of
21 Hamilton Avenue, in Racine, Wisconsin, on or about August 29, 2017.

22 In instances where the City has no constructive or actual knowledge of a defect in a water main,
23 the City cannot be held legally liable for the damages resulting from such a defect.

24 This was the first break in the 20” transmission main that has been reported in this area, and, the
25 City’s Water Utility had no prior actual or constructive notice that this portion of the water main was
26 compromised. Due to the size and severity of the break, the entire roadway was flooded, which resulted in
27 the flooding of a basement located at 2125 Hamilton Avenue. After reimbursing the property owner for
28 his losses, Erie Insurance filed this claim with the City in an attempt to recoup the payments it made in
29 accordance with the insurance policy held by the property owner.

30 The City Attorney's Office recommends that this Committee deny the claim of Erie Insurance
31 because the City had no constructive or actual knowledge of a defect in the water main in question, and,
32 therefore, the City is not legally liable for the alleged damages.

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34 **BUDGETARY IMPACT:**

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

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38 **OPTIONS/ALTERNATIVES:**

39 If the recommendation to deny this claim is rejected, and the Committee recommends that this
40 claim be paid by the City (contrary to any indication of the City's liability for the alleged damages), this
41 item would have up to a \$12,391.28 impact on the City's 2018 claims budget.

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43 **RECOMMENDED ACTION:**

44 The City Attorney's Office respectfully recommends that this Committee deny the claim of Erie
45 Insurance.

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47 **ATTACHMENT(S):**

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