



**City of Racine, Wisconsin
Common Council**

AGENDA BRIEFING MEMORANDUM

COMMITTEE: Finance and Personnel

LEGISLATION ITEM #: 0254-22

AGENDA DATE: April 25, 2022

DEPARTMENT: City Attorney's Office

Prepared By: Deputy City Attorney Marisa Roubik

SUBJECT: Communication sponsored by Alder Taft on behalf of the City Attorney's Office submitting the claim of Charmeka Flowers for consideration for disallowance.

EXECUTIVE SUMMARY:

Charmeka Flowers claims reimbursement of an unspecified amount for vehicle damages allegedly arising from a water main break where her vehicle was parked on the 1600 block of Kearney Avenue on or about January 26, 2021. Due to the claimant's failure to satisfy the statutory requirements for filing a claim in accordance with Wis. Stat. § 893.80(1d), she does not have a right to maintain an action against the City. Furthermore, this claim should be disallowed because the City and the Waterworks Utility had no knowledge of this defect in the water main in question, and, therefore, neither the City nor the Utility is legally liable for the alleged damages.

BACKGROUND & ANALYSIS:

The Claimant, Charmeka Flowers, filed this claim for reimbursement of an unspecified amount for damages allegedly arising from a water main break where her vehicle was parked on the 1600 block of Kearney Avenue on or about January 26, 2021. The City and Waterworks Utility ("Utility") deny liability.

In order to have the right to maintain an action against the City, Wisconsin Statute section 893.80(1d) requires a claimant to file written notice of the circumstances of a claim within 120 days after the happening of the event giving rise to the claim. Furthermore, when a claim is filed, it must contain the address of the claimant and an itemized statement of the relief sought.

30 The written notice of circumstances that Ms. Flowers filed with the City on or about February 3,
31 2022, states that the date of the incident was “Jan 26, 2021,” which is much more than 120 days after the
32 happening of the event giving rise to this claim. Furthermore, Ms. Flowers’ claim fails to state the City,
33 State, and Zip code for her address of “1638 Taylor Ave,” and she did not include an itemized statement of
34 the relief sought. As such, Ms. Flowers did not satisfy the statutory requirements for filing a claim in
35 accordance with Wis. Stat. § 893.80(1d), and she does not have a right to maintain an action against the
36 City.

37 Beyond that, the City and the Waterworks Utility had no constructive or actual knowledge of this
38 defect in the water main in question, and, therefore, neither the City nor the Waterworks Utility is legally
39 liable for the alleged damages.

40 Although there is no record of a water main break at the 1600 block of Kearney Avenue on January
41 26, 2021, the City was able to confirm that some of the events alleged in Ms. Flowers’ claim did occur on
42 January 26, 2022—exactly one year after the alleged date of this event. Specifically, at approximately 3:00
43 AM on January 26, 2022, the Waterworks Utility was notified of and immediately responded to a water
44 main break on the 1600 block of Kearney Avenue. Assuming *arguendo* that this is the same water main
45 break and flooding that Ms. Flowers is referencing in her claim, the City had no prior notice of this defect
46 in the water main in the 1600 block of Kearney Avenue. In instances where the City and the Utility have
47 no constructive or actual knowledge of a defect in a water main, the City and the Utility cannot be held
48 legally liable for the damages resulting from such a defect.

49 The City Attorney’s Office recommends that this Committee disallow the claim of Charmeka
50 Flowers due to the claimant’s failure to satisfy the statutory requirements for filing a claim in accordance
51 with Wis. Stat. § 893.80(1d), and because neither the City nor the Utility had knowledge of a defect in the
52 water main in question; therefore, the City and the Utility are not legally liable for the alleged damages.

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54 **BUDGETARY IMPACT:**

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

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58 **RECOMMENDED ACTION:**

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