



1 City of Racine, Wisconsin
2 Common Council

3 **AGENDA BRIEFING MEMORANDUM**

4 **COMMITTEE:** Finance and Personnel

LEGISLATION ITEM #: 0178-23

5 **AGENDA DATE:** February 27, 2023

6
7 **DEPARTMENT:** City Attorney’s Office

8 **Prepared By:** Deputy City Attorney Marisa L. Roubik
9

10 **SUBJECT:** Communication sponsored by Alder Taft on behalf of the City Attorney’s Office submitting
11 the claim of Mary McIntyre for consideration for disallowance.
12

13 **EXECUTIVE SUMMARY:**

14 Mary McIntyre claims reimbursement in the amount of \$15,462.01 for damages allegedly caused
15 by water in her basement arising from a sewer backup that occurred during the record-setting rainfall on
16 September 11-12, 2022. The City Attorney’s Office recommends that this Committee disallow the claim
17 of Mary McIntyre because the City and the Wastewater Utility cannot be held legally liable for, so-called,
18 “acts of God,” such as unprecedented rainfall events, over which the City and the Utility have no control.
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20 **BACKGROUND & ANALYSIS:**

21 The Claimant, Mary McIntyre of 2424 Dwight Street, Racine, Wisconsin 53403, filed this claim
22 for reimbursement in the amount of \$10,000.00 for damages allegedly caused by water in her basement
23 arising from a sewer backup that occurred during the 200-year flood on September 11-12, 2022. The City
24 and Wastewater Utility deny liability.

25 The record-setting rain event on September 11 and 12, 2022 lasted for over 18 hours and was of
26 historic proportions with recorded rainfall totals ranging from 6.75” to 9.75” in the City of Racine.
27 Statistically, this was considered a 200-year flood with a 0.5% chance of occurrence. The City’s sewer
28 system was taxed during this event but performed as designed; however, the unprecedented rain totals on
29 September 11-12, 2022 exceeded the capacity of the system.

30 The Racine City sanitary sewers are cleaned on a 3-year cycle. The main that services this address
31 was last cleaned on June 29, 2021. The City has no knowledge of any defects existing in the sewers that

32 service this address. The sewer main that services this address was inspected by Wastewater Utility workers
33 on September 13, 2022. Upon inspection, no defects were found in the sewer system itself—the sewers
34 were simply surcharged and overwhelmed by the unusually large amount of rain that fell for an exceptional
35 duration.

36 It should be noted that some homeowners have reported that they escaped flooding damage by
37 simply installing a drain backflow preventer in their basement floor drains. This may prove to be an
38 inexpensive solution going forward for homeowners such as the claimant.

39 The unusual 200-year storm that occurred on September 11-12, 2022 is considered an “act of God,”
40 which is a natural event or disaster that cannot be reasonably foreseen or prevented. The City and the
41 Utility cannot be held legally liable for such “acts of God,” over which the City and the Utility have no
42 control.

43 For the reasons set forth above, the City cannot be held legally liable for the alleged damages and
44 this claim should be disallowed.

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46 **BUDGETARY IMPACT:**

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

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50 **RECOMMENDED ACTION:**

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