



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

**AGENDA BRIEFING MEMORANDUM**

**COMMITTEE:** Finance and Personnel

**LEGISLATION ITEM #: 0084-20**

**AGENDA DATE:** February 24, 2020

**DEPARTMENT:** City Attorney's Office

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

**SUBJECT:** Communication sponsored by Alder Shakoor II, on behalf of the City Attorney's Office, submitting the claim of David K. Popoff for consideration for disallowance.

**EXECUTIVE SUMMARY:**

David K. Popoff filed a claim for reimbursement in the amount of \$2,107.56 for alleged lost revenue due to a supposed loss of tenancy arising from the reconstruction of Hamilton Street on or about November 2, 2019. The contracted party performing this construction project was Donner Construction. Therefore, the contractor, rather than the City, is liable for the alleged damages that resulted from this construction project. As such, the City Attorney's Office recommends that the claim of David K. Popoff be disallowed.

**BACKGROUND & ANALYSIS:**

The Claimant, David K. Popoff, of 122801 Moorpark Street, Unit 107, Studio City, California 91604, claims reimbursement in the amount of \$2,107.56 for alleged lost revenue due to a supposed loss of tenancy at a rental property he owns located at 308 Hamilton Street, Racine, Wisconsin, 53402, due to the reconstruction of Hamilton Street on or about November 2, 2019.

On the date in question, Hamilton Street was undergoing construction, which was performed under contract by Donner Construction. On at least two previous occasions, Mr. Popoff and/or his representative had spoken with employees of Donner Construction to inquire about access to this property on November 2, 2019, which was the date his alleged tenant was supposed to be moving in. Donner Construction assured Mr. Popoff that his alleged tenant would have access to the property at 308 Hamilton Street. However, Mr. Popoff alleges that, on November 2, 2019, his purported tenant's moving van was unable to access the driveway at 308 Hamilton Street and, in turn, the tenant refused to take occupancy of the property, which resulted in Mr. Popoff

36 incurring an alleged \$2,107.56 in lost revenue stemming from a lost security deposit, and utility  
37 and snow removal bills that Mr. Popoff—as opposed to his tenant—had to pay during the months  
38 of November and December 2019.

39 Prior to this November 2, 2019 incident, Mr. Popoff spoke solely with Donner Construction  
40 employees to notify them of his need for access on the date at issue, and Donner Construction  
41 failed to honor its assurances to Mr. Popoff regarding this access; therefore, Mr. Popoff should file  
42 his claim against Donner Construction. After reviewing the circumstances of this claim, the City  
43 Attorney’s Office contends that the City is not liable for this damage.

44 In sum, the City Attorney’s Office recommends that this Committee disallow the claim of  
45 David K. Popoff because the City is not liable for alleged damages caused by contracted  
46 construction crews.

---

47  
48 **BUDGETARY IMPACT:**

49 Assuming the recommendation to deny this claim is adopted, this item would have a \$0.00  
50 impact on the City’s budget.

---

51  
52 **OPTIONS/ALTERNATIVES:**

53 If the recommendation to deny this claim is rejected, and the Common Council directs the  
54 City to pay this claim (contrary to any indication of the City’s liability for the alleged damages),  
55 this item would have up to a \$2,107.56 impact on the City’s 2020 claims budget.

---

56  
57 **RECOMMENDED ACTION:**

58 To approve the disallowance of the claim of David K. Popoff.