



1 City of Racine, Wisconsin
2 Common Council

3 AGENDA BRIEFING MEMORANDUM

4 COMMITTEE: Finance and Personnel

LEGISLATION ITEM #: 0113-21

5 AGENDA DATE: February 22, 2021

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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 sponsored by Alder Taft, on behalf of the City Attorney's Office, submitting
11 the claim of Peter and Barbara Lehman for consideration for disallowance

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13 EXECUTIVE SUMMARY:

14 The City Attorney's Office recommends that this Committee deny the claim of Peter and Barbara
15 Lehman because the City and the Utility had no constructive or actual knowledge of a defect in the water
16 main in question, and, therefore, neither the City nor the Utility is legally liable for the alleged damages.

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18 BACKGROUND & ANALYSIS:

19 The Claimants, Peter and Barbara Lehman of 3604 Spruce Street, Racine, Wisconsin 53403, filed
20 this claim for reimbursement in the amount of \$1,527.03 for damages to their basement allegedly arising
21 from a water main break on or about August 26, 2020. The City and Water Utility deny liability.

22 In instances where the City and the Utility has no constructive or actual knowledge of a defect in a
23 water main, the City and the Utility cannot be held legally liable for the damages resulting from such a
24 defect. Furthermore, the City and the Utility cannot be held legally liable for, so-called, "acts of God," over
25 which the City and the Utility have no control.

26 Neither the City nor the Water Utility had prior actual or constructive notice that this portion of the
27 water main was compromised on or before the date of its break. The Water Utility sent crews out to repair
28 this break shortly after receiving a report of this break at by approximately 9:00 AM on August 26, 2020.

29 The City Attorney's Office recommends that this Committee deny the claim of Peter and Barbara
30 Lehman because neither the City nor the Utility had constructive or actual knowledge of a defect in the

31 water main in question, and the City and the Utility cannot be held liable for other “acts of God”; therefore,
32 the City and the Utility are 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 \$1, 527.03 impact on the City’s 2021 claims budget.

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43 **RECOMMENDED ACTION:**

44 That the claim of Peter and Barbara Lehman be disallowed.

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46 **ATTACHMENT(S):**

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