



**City of Racine, Wisconsin
Common Council**

AGENDA BRIEFING MEMORANDUM

COMMITTEE: Finance and Personnel

LEGISLATION ITEM #: 0330-21

AGENDA DATE: May 10, 2021

DEPARTMENT: City Attorney's Office

Prepared By: Assistant City Attorney Marisa Roubik

SUBJECT: Communication sponsored by Alder Taft on behalf of the City Attorney's Office submitting the claim of Gregory and Tammy Mastos for consideration for disallowance.

EXECUTIVE SUMMARY:

Gregory and Tammy Mastos, of Racine, Wisconsin, filed a claim with the City of Racine demanding between \$2,850 to \$3,325 in damages arising from alleged damage to the headstone of their deceased relative, who is interred at Graceland Cemetery in Racine. Because there is no proof that the alleged damage to the headstone was caused by the City of Racine, nor is there any proof of when the alleged damage occurred so as to prove that this claim was filed timely, it is the recommendation of the City Attorney's Office that this claim be disallowed.

BACKGROUND & ANALYSIS:

On February 15, 2021, the claimants, Gregory and Tammy Mastos, of Racine, Wisconsin, filed a claim with the City demanding between \$2,850 to \$3,325 in damages arising from alleged damage to the headstone of their deceased relative, who is interred at Graceland Cemetery in Racine.

The claimants allege that, on January 7, 2021, they went to Graceland Cemetery to pay their respects to the deceased, and found that his headstone had multiple scratches and chips. Because the City owns and maintains the grounds of Graceland Cemetery, Mr. and Mrs. Mastos filed their claim against the City for the cost of replacing this headstone. However, the claimants did not assert how or when this headstone was damaged in the nearly eighteen years that it has been in Graceland Cemetery, nor did they suggest who or what had caused this alleged damage.

The claimants do not offer any proof that this alleged damage was caused by the City of Racine or an employee or agent thereof. It does not appear that this alleged damage was caused by grounds keeping equipment, as the headstone also features a large flower vase, which was unharmed, despite the fact that it extends several inches above the headstone. As such, it is unlikely, if not impossible, that this headstone was driven over and damaged by a lawnmower or other mechanical equipment operated by the City. Rather, it is more likely that age, defects in the headstone's material, or some other environmental factor is to blame for the alleged damage to the headstone. There is no proof the alleged damage to the headstone was caused by the City of Racine

Furthermore, Wisconsin Statute section 893.80(1d)(a) requires that a claimant file a written notice of the circumstances of a claim against the City "[w]ithin 120 days after the happening of the event giving rise to the claim." Although the claimants discovered this alleged damage on January 7, 2021, and filed their claim on February 15, 2021, their claim failed to allege the date of the event that gave rise to this claim, namely, the date on which the alleged damage occurred. Because this headstone was placed in Graceland Cemetery nearly eighteen years ago, the alleged damage could have easily occurred prior to October 18, 2020, which was 120 days before this claim was filed. Based on the information in the claim itself, there is no proof that this claim was filed timely.

In sum, because there is no proof that the alleged damage to the headstone was caused by the City of Racine, nor is there any proof of when the alleged damage occurred so as to prove that this claim was filed timely, it is the recommendation of the City Attorney's Office that this claim be disallowed.

BUDGETARY IMPACT:

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

OPTIONS/ALTERNATIVES:

If this claim were to be paid by the City—contrary to any indication of the City's liability for the alleged damages—this item would have up to a \$3,325 impact on the City's 2021 claims budget.

RECOMMENDED ACTION:

That the disallowance of this claim be recommended for approval.

ATTACHMENT(S):