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**City of Racine, Wisconsin
Common Council**

AGENDA BRIEFING MEMORADUM

COMMITTEE: Finance and Personnel

LEGISLATION ITEM #: 0838-18

AGENDA DATE: August 27, 2018

DEPARTMENT: City Attorney's Office

Prepared By: Marisa Roubik

SUBJECT: Claim of Jenna Dower, City Attorney File No. 2018-0131

EXECUTIVE SUMMARY:

Jenna Dower filed a claim with the city requesting \$117.57 worth of damages to her vehicle as a result of her running over a pothole on the road on May 14, 2018. The city denies that it was negligent in maintaining the roadway. Alternatively, even if the city was negligent, it is immune from liability here for damages caused by highway defects pursuant to Wis. Stat. § 893.83.

For this reason, it is the recommendation of the City Attorney's Office that the Finance and Personnel Committee recommend that the Common Council deny this claim.

BACKGROUND & ANALYSIS:

Jenna Dower, of 2324 Orchard St. in Racine, Wisconsin, filed a claim for reimbursement in the amount of \$117.57 for vehicle damage allegedly arising after she allegedly drove over a pothole claimed to be located on or about the 5000 block of Washington Ave. on May 14, 2018. After reviewing the circumstances of this claim, the City Attorney's Office contends that the City is not liable for this damage.

Wisconsin Statute section 893.83 eliminated municipal liability for highway defects when it was amended in 2012. By law, the City is not liable for the claimant's alleged damages because Wisconsin Statute section 893.80 confers broad immunity from suits on municipalities for acts that are considered "discretionary" in nature, such as the filling of potholes for which the City has no prior notice of a defect. In this instance, the City did not have notice of this highway defect in the 5000 block of Washington Ave. on May 14, 2018.

31 Putting aside the issue of immunity for a moment, the city further denies that it was negligent in
32 maintaining or repairing such road defects. When potholes were discovered by the Department of Public
33 Works (“DPW”) or a complaint was made, those holes were filled shortly thereafter. In 2018, complaints
34 regarding this stretch of roadway were received on March 27, 2018 and (on the day after this incident) May
35 15, 2018, and repairs were made within 24 hours. Furthermore, the Department of Public Works regularly
36 maintains these portions of the roadway, noting that routine pothole filling was done on this particular
37 stretch of roadway on January 24, 2018, January 31, 2108, February 28, 2018, March 26, 2018, March 28,
38 2018, April 19, 2018, April 20, 2018, May 15, 2018, and May 16, 2018. As a result, the city was not
39 negligent in fulfilling any ministerial duties.

40 Because the City is immune from liability and was not negligent in this instance, Jenna Dower’s
41 claim should be denied.

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43 **BUDGETARY IMPACT:**

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

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47 **OPTIONS/ALTERNATIVES:**

48 If the Committee recommends that this claim be paid by the City (contrary to any indication of
49 the City’s liability for the alleged damages), this item would have up to a \$117.57 impact on the City’s
50 2018 claims budget.

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52 **RECOMMENDED ACTION:**

53 The City Attorney’s Office respectfully advises this Committee to recommend that the Common
54 Council deny the claim of Jenna Dower.

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56 **ATTACHMENT(S):**

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