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**City of Racine, Wisconsin  
Common Council**

**AGENDA BRIEFING MEMORANDUM**

**COMMITTEE:** Finance and Personnel

**LEGISLATION ITEM #:** 0972-19

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**AGENDA DATE:** September 23, 2019

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**DEPARTMENT:** City Attorney's Office

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

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**SUBJECT:** Communication from Alderman Q.A. Shakoor, II submitting the claim of Fred and Dana Bell for consideration.

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**EXECUTIVE SUMMARY:**

Fred and Dana Bell filed a claim with the City requesting \$187.85 in damages for repairs to their vehicle allegedly arising from driving over a pothole in the eastbound lane of Durand Avenue approximately 500 feet before Indiana Street on or about June 24, 2019. The City denies that it was negligent in maintaining the roadway because this portion of Durand Avenue is owned and maintained by Mt. Pleasant. Alternatively, even if the City was negligent, it is immune from liability 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 this claim be disallowed.

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**BACKGROUND & ANALYSIS:**

Fred and Dana Bell claim reimbursement in the amount of \$187.85 in damages for repairs to their vehicle allegedly arising from driving over a pothole in the eastbound lane of Durand Avenue approximately 500 feet before Indiana Street on or about June 24, 2019. After reviewing the circumstances of this claim, the City Attorney's Office contends that the City is not liable for this damage.

The eastbound lane of Durand Avenue spanning between Illinois Street and Indiana Street is not within the City of Racine's city limits. Rather, this portion of roadway is located within Mt. Pleasant. According to police call logs and consistent with the claimants' own account, the Bells were traveling in the eastbound lane of Durand Avenue approximately 500 feet before Indiana Street when they hit the

31 pothole that allegedly damaged their tire. As such, the pothole that caused this alleged damage was located  
32 in Mt. Pleasant, and the City of Racine is not responsible for maintaining or repairing this portion of the  
33 roadway.

34 Furthermore, even if the City were responsible for maintaining or repairing this portion of the  
35 roadway, Wisconsin Statute section 893.83 eliminated municipal liability for highway defects when it was  
36 amended in 2012. By law, the City could not be held liable for the claimants' alleged damages because  
37 Wisconsin Statute section 893.80 confers broad immunity from suits on municipalities for acts that are  
38 considered "discretionary" in nature, such as the filling of potholes for which the City has no prior notice  
39 of a defect. Because the City had no prior knowledge of this defect, the City could not be held liable for  
40 the alleged damages.

41 For the above stated reasons, it is the recommendation of the City Attorney's Office that this claim  
42 be disallowed.

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44 **BUDGETARY IMPACT:**

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

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48 **OPTIONS/ALTERNATIVES:**

49 If the Committee recommends that this claim be paid by the City (contrary to any indication of  
50 the City's liability for the alleged damages), this item would have up to a \$187.85 impact on the City's  
51 2019 claims budget.

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53 **RECOMMENDED ACTION:**

54 That the claim of Fred and Dana Bell be disallowed.