



City of Racine, Wisconsin  
Common Council

**AGENDA BRIEFING MEMORADUM**

**COMMITTEE:** Finance and Personnel

**LEGISLATION ITEM #:** 0121-19

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**AGENDA DATE:** February 11, 2019

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**DEPARTMENT:** City Attorney’s Office

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

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**SUBJECT:** Communication from the City Attorney submitting the claim of Adrian Fernandez for consideration.

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**EXECUTIVE SUMMARY:**

The City Attorney’s Office recommends that the claim of Adrian Fernandez be denied because, pursuant to Wis. Stat. § 893.83, the City is immune from liability for damages caused by sidewalk defects of which the City had no prior notice. As such, it is the recommendation of the City Attorney’s Office that the Finance and Personnel Committee recommend that the Common Council deny this claim.

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**BACKGROUND & ANALYSIS:**

The Claimant, Adrian Fernandez of 3116 Washington Avenue, Racine, Wisconsin 53405, filed this claim for reimbursement in the amount of \$7,500.00 for damages after an alleged trip and fall on the public sidewalk in the 1300 block of Grove Avenue on or about September 4, 2018. The City denies liability for the damages alleged in this claim.

Wisconsin Statute section 893.83 eliminated municipal liability for highway and sidewalk 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 repair of sidewalks for which the City has no prior notice of a defect. In this instance, the City did not have notice of a sidewalk defect on the 1300 block of Grove Avenue prior to the date of this incident in 2018.

30           Moreover, all pedestrians have a duty use ordinary care when walking and to look out for potential  
31 hazards in plain sight, such as defects in the sidewalk. If a pedestrian fails to keep a proper lookout for  
32 such potential hazards in their plain sight, the pedestrian is negligent.

33           In sum, the City is not legally liable for the alleged damages because the City is immune from  
34 liability for damages caused by sidewalk defects pursuant to Wis. Stat. § 893.83, and, if Ms. Fernandez’s  
35 allegations were taken as true, they would indicate negligence on her part. As such, the City Attorney’s  
36 Office recommends that this Committee recommend denial of the claim of Adrian Fernandez to the  
37 Common Council.

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39 **BUDGETARY IMPACT:**

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

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43 **OPTIONS/ALTERNATIVES:**

44           If the recommendation to deny this claim is rejected, and the Committee recommends that this  
45 claim be paid by the City (contrary to any indication of the City’s liability for the alleged damages), this  
46 item would have up to a \$7,500.00 impact on the City’s 2019 claims budget.

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48 **RECOMMENDED ACTION:**

49           The City Attorney’s Office respectfully recommends that this Committee recommend denial of the  
50 claim of Adrian Fernandez to the Common Council.

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52 **ATTACHMENT(S):**

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