



**City of Racine, Wisconsin
Common Council**

AGENDA BRIEFING MEMORANDUM

COMMITTEE: Finance and Personnel

LEGISLATION ITEM #: 0989-21

AGENDA DATE: January 10, 2022

DEPARTMENT: City Attorney's Office

Prepared By: Deputy City Attorney Marisa L. Roubik

SUBJECT: Communication sponsored by Alder Taft on behalf of the City Attorney's Office submitting the claim of Tina M. Anderson for consideration for disallowance.

EXECUTIVE SUMMARY:

Tina M. Anderson filed a claim with the City requesting \$50,000.00 in damages for an injury she sustained after she allegedly stepped into a pothole in the parking lot of the King Community Center on or about August 9, 2019. The City Attorney's Office recommends that the claim of Tina M. Anderson be denied because she failed to use ordinary care while walking, and, pursuant to state law, the City is immune from liability for damages caused by alleged defects in a public parking lot when the City had no prior notice of such a defect. As such, it is the recommendation of the City Attorney's Office that the Finance and Personnel Committee recommend denial of this claim to the Common Council.

BACKGROUND & ANALYSIS:

Tina M. Anderson, of Racine, Wisconsin, filed this claim for reimbursement in the amount of \$50,000.00 for damages she sustained after she allegedly stepped into a pothole in the parking lot of the King Community Center on or about August 9, 2019 at 9:00 PM (four hours after the Center had closed that day). The City denies liability for the damages alleged in this claim.

Wisconsin Statute section 893.83 eliminated municipal liability for publicly-owned parking lot 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 potholes and other highway defects for which

the City has no prior notice. In this instance, the City did not have notice of a parking lot defect at the subject location prior to the date of this incident in 2019.

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

In sum, the City is not legally liable for the alleged damages because the City is immune from liability for damages caused by sidewalk defects pursuant to Wisconsin Statute section 893.83, and, if Ms. Anderson's allegations were taken as true, they would indicate negligence on her part. As such, the City Attorney's Office recommends that this Committee recommend denial of the claim of Tina M. Anderson to the Common Council.

BUDGETARY IMPACT:

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

OPTIONS/ALTERNATIVES:

If the recommendation to deny this claim is rejected, and the Committee recommends that this claim 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 \$50,000.00 impact on the City's 2022 claims budget.

RECOMMENDED ACTION:

The City Attorney's Office respectfully recommends that this Committee recommend denial of the claim of Tina M. Anderson to the Common Council.

ATTACHMENT(S):