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**City of Racine, Wisconsin
Common Council**

AGENDA BRIEFING MEMORADUM

COMMITTEE: Finance and Personnel

LEGISLATION ITEM #: 0119-18

AGENDA DATE: February 26, 2018

DEPARTMENT: City Attorney's Office

Prepared By: Assistant City Attorney Marisa Roubik

Reviewed By: City Attorney Scott Letteney

SUBJECT: Communication from the City Attorney submitting the claim of Ceonia Paytes for consideration.

EXECUTIVE SUMMARY:

The City Attorney's Office advises this Committee to recommend that the Common Council deny the claim of Ceonia Paytes because the City is immune from liability when damages arise from potholes that the City was unaware of.

BACKGROUND & ANALYSIS:

Ceonia Paytes of 1306 Walton Avenue, Racine, Wisconsin filed a claim for reimbursement in the amount of \$640.49 for vehicle damage allegedly arising after she drove over a pothole adjacent to the driveway for Nagra Pump & Pantry at 1826 Douglas Avenue on or about January 21, 2018. After reviewing the circumstances of this claim, the City Attorney's Office contends that the City is not liable for this damage.

By law, the City is not liable for Ms. Paytes' 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. A discretionary act is one that requires an exercise of judgment when applying rules to the facts. In the case of filling potholes, the task of deciding when and where to fill potholes is a discretionary act requiring the exercise of judgment on the part of the supervisor of the DPW's Street Maintenance Division.

31 In some cases, the city could be held liable if it was given notice of a defect and its failure to remedy
32 such defect was unreasonable. Here, there is no evidence that the City had prior notice of this defect. Prior
33 to receiving this claim, the City had not received a complaint about this pothole located at 1826 Douglas
34 Avenue. Upon learning of this defect, the DPW's Street Maintenance Division filled this pothole so as to
35 remedy the defect.

36 For the reasons set forth above, the City Attorney's Office respectfully advises this Committee to
37 recommend that the Common Council deny the claim of Ceonia Paytes.

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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 Committee recommends that this claim be paid by the City (contrary to any indication of the
45 City's liability for the alleged damages), this item would have up to a \$640.49 impact on the City's 2018
46 claims budget.

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48 **RECOMMENDED ACTION:**

49 The City Attorney's Office respectfully advises this Committee to recommend that the Common
50 Council deny the claim of Ceonia Paytes.

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52 **ATTACHMENT(S):**