



1 **City of Racine, Wisconsin**
2 **Common Council**

3 **AGENDA BRIEFING MEMORADUM**

4 **COMMITTEE:** Finance and Personnel

LEGISLATION ITEM #: 0159-19

5 **AGENDA DATE:** February 11, 2019

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7 **DEPARTMENT:** City Attorney’s Office

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

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10 **SUBJECT:** (Direct Referral) Communication from the City Attorney submitting the claim of Sandra
11 Patino-Ibarra for consideration.

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13 **EXECUTIVE SUMMARY:**

14 The City Attorney’s Office recommends that this Committee deny the claim of Sandra Patino-
15 Ibarra because the incident allegedly giving rise to this claim was not caused by the City’s negligence. As
16 such, it is the recommendation of the City Attorney’s Office that the Finance and Personnel Committee
17 recommend that the Common Council deny this claim.

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19 **BACKGROUND & ANALYSIS:**

20 Claimant Sandra Patino-Ibarra (a minor) of Racine, Wisconsin, filed this claim for reimbursement
21 in the amount of \$500,000.00 for damages after an incident wherein a Police Department vehicle struck the
22 minor claimant when she illegally darted out into the street from in between two parked cars in the 1600
23 block of Maple Street, on or about April 22, 2018. The City denies liability for the damages alleged in this
24 claim.

25 The City maintains that the operator of the Police Department vehicle was not negligent because
26 he was exercising ordinary care in maintaining a lookout, but nevertheless failed to see the minor claimant
27 run out into the roadway because several factors of recognition (e.g., her small stature, the speed with which
28 she entered into the roadway, the improper location from which she emerged into the roadway, and her
29 dark-colored clothing which blended in with the two parked cars that were dark in color, from which she
30 emerged) were not present, causing the claimant to blend in with the background of the vicinity. Once the

31 claimant became visible to the driver of the vehicle, he swerved to avoid her; however, the claimant
32 continued to run into the roadway until she made contact with the vehicle.

33 Furthermore, the City maintains that the claimant’s parents have a duty to use ordinary care to
34 protect their children from dangers that are known or should have been known or anticipated by the parents.
35 Both of the claimant’s parents were home at the time of the incident, and one of her parents was standing
36 in between the two parked cars right behind the claimant as she ran out into the street. The City maintains
37 that this accident occurred due to the negligence of the claimant’s parents—not the operator of the Police
38 vehicle.

39 In sum, the City asserts that it is not legally liable for the alleged damages because the operator of
40 this vehicle exercised ordinary care in maintaining a lookout; whereas, the parents of Sandra Patino-Ibarra
41 acted negligently by failing to use ordinary care to protect their children from known dangers. As such, the
42 City Attorney’s Office recommends that the Finance and Personnel Committee recommend denial of the
43 claim of Sandra Patino-Ibarra to the Common Council.

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45 **BUDGETARY IMPACT:**

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

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49 **OPTIONS/ALTERNATIVES:**

50 If the recommendation to deny this claim is rejected, and the Committee recommends that this
51 claim be paid by the City (contrary to any indication of the City’s liability for the alleged damages), this
52 item would have up to a \$250,000.00 impact on the City’s 2019 claims budget. (Per Wis. Stat. § 345.05(3),
53 a \$250,000 cap exists for negligent damages with a municipal motor vehicle.)

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55 **RECOMMENDED ACTION:**

56 The City Attorney’s Office respectfully recommends that this Committee recommend denial of the
57 claim of Sandra Patino-Ibarra to the Common Council.

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59 **ATTACHMENT(S):**

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