



1 City of Racine, Wisconsin
2 Common Council

3 **AGENDA BRIEFING MEMORANDUM**

4 **COMMITTEE:** Finance and Personnel

LEGISLATION ITEM #: 0349-19

5 **AGENDA DATE:** April 8, 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:** Communication from the City Attorney submitting the claim of Katy Lowe for consideration.

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12 **EXECUTIVE SUMMARY:**

13 The City Attorney’s Office recommends that the claim of Katy Lowe be denied because, pursuant
14 to Wisconsin Statute section 893.83, the City is immune from liability for damages caused by sidewalk
15 defects of which the City had no prior notice. As such, it is the recommendation of the City Attorney’s
16 Office that the Finance and Personnel Committee recommend denial of this claim to the Common Council.

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18 **BACKGROUND & ANALYSIS:**

19 The Claimant, Katy Lowe, of 3063 Michigan Boulevard, Racine, Wisconsin 53402, filed this claim
20 for reimbursement in the amount of \$282.37 for damages after an alleged trip and fall on the public sidewalk
21 in the 900 block of Wolff Street on or about September 26, 2018. The City denies liability for the damages
22 alleged in this claim.

23 Wisconsin Statute section 893.83 eliminated municipal liability for highway and sidewalk defects
24 when it was amended in 2012. By law, the City is not liable for the claimant’s alleged damages because
25 Wisconsin Statute section 893.80 confers broad immunity from suits on municipalities for acts that are
26 considered “discretionary” in nature, such as the repair of sidewalks for which the City has no prior notice
27 of a defect. In this instance, the City did not have notice of a sidewalk defect at the subject location, in or
28 around 904 Wolff Street, prior to the date of this incident in 2018.

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

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

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38 **BUDGETARY IMPACT:**

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

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42 **OPTIONS/ALTERNATIVES:**

43 If the recommendation to deny this claim is rejected, and the Committee recommends that this
44 claim be paid by the City (contrary to any indication of the City's liability for the alleged damages), this
45 item would have up to a \$282.37 impact on the City's 2019 claims budget.

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47 **RECOMMENDED ACTION:**

48 The City Attorney's Office respectfully recommends that this Committee recommend denial of the
49 claim of Katy Lowe to the Common Council.

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51 **ATTACHMENT(S):**

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