



**City of Racine, Wisconsin
Common Council**

AGENDA BRIEFING MEMORANDUM

COMMITTEE: Finance and Personnel

LEGISLATION ITEM #: 0098-24

AGENDA DATE: February 26, 2024

DEPARTMENT: City Attorney’s Office

Prepared By: Deputy City Attorney Marisa L. Roubik

SUBJECT: Communication sponsored by Alder West on behalf of the City Attorney’s Office submitting the claim of Stephanie J. Auer for consideration for disallowance..

EXECUTIVE SUMMARY:

Stephanie J. Auer filed a claim with the City requesting \$6,194.70 in damages for an injury she allegedly sustained after she purportedly tripped on a portion of sidewalk located at the intersection of Wisconsin Avenue and 5th Street, which was owned by Root City Capital, LLC, on or about September 1, 2023. Because this portion of the sidewalk is privately owned, the City is not liable for the claimant’s injuries. Even if the City owned this portion of the sidewalk, it could not be held liable, pursuant to Wisconsin Statute section 893.83 and the claimant’s negligence. As such, it is the recommendation of the City Attorney’s Office that this claim be disallowed.

BACKGROUND & ANALYSIS:

Stephanie J. Auer, of 5145 Linden Lane, Racine, Wisconsin 53406, filed a claim with the City requesting \$6,194.70 in damages for an injury she allegedly sustained after she purportedly tripped on a portion of sidewalk located at the intersection of Wisconsin Avenue and 5th Street, which was owned by Root City Capital, LLC, on or about September 1, 2023. The City denies liability for the damages alleged in this claim.

The portion of the sidewalk identified by the claimant as the slab that caused her alleged injury is not owned by the City; therefore, the City is not liable for this injury. Rather, this portion of the sidewalk is privately owned by Root City Capital, LLC. The City has notified the claimant of the property owner’s name and address.

32 Furthermore, even if this portion of the sidewalk was owned by the City, Wisconsin Statute section
33 893.83 eliminated municipal liability for highway and sidewalk defects when it was amended in 2012. By
34 law, the City is not liable for the claimant's alleged damages because Wisconsin Statute section 893.80
35 confers broad immunity from suits on municipalities for acts that are considered "discretionary" in nature,
36 such as the repair of sidewalks for which the City has no prior notice of a defect. In this instance, the City
37 did not have notice of a sidewalk defect at the subject location prior to the date of this incident in 2023.

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

41 For the reasons set forth above, it is the recommendation of the City Attorney's Office that this
42 claim be disallowed.

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44 **BUDGETARY IMPACT:**

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

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48 **RECOMMENDED ACTION:**

49 That the disallowance of this claim be recommended for approval.

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