



**City of Racine, Wisconsin  
Common Council**

**AGENDA BRIEFING MEMORADUM**

**COMMITTEE:** Finance and Personnel

**LEGISLATION ITEM #:** 0517-18

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**AGENDA DATE:** June 11, 2018

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**DEPARTMENT:** City Attorney’s Office

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

**Reviewed By:** City Attorney Scott Letteney

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**SUBJECT:** Communication from the City Attorney submitting the claim of Evette Smith for consideration.

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**EXECUTIVE SUMMARY:**

The City Attorney’s Office recommends that this Committee deny the claim of Evette Smith because, among other reasons, her claim failed to name with reasonable specificity the location of the alleged highway defects that caused damage to her vehicle. As such, the City has not received sufficient notice of this claim per Wisconsin Statute section 893.80 and the City cannot be held liable for the damages alleged therein.

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**BACKGROUND & ANALYSIS:**

The Claimant, Evette Smith of 1441 Oaks Road, #8, Mt. Pleasant, Wisconsin 53406, filed this claim for reimbursement in the amount of \$747.18 for alleged damage to her vehicle supposedly caused by “driving down from one side of town to the other hitting bumps and pot holes” on April 4, 2018. When asked the location of the incident that gave rise to this claim, the claimant stated: Durand / Washington / 16th / Ohio. The City denies liability for the damages alleged in this claim.

The Wisconsin Supreme Court has held that a written claim filed under Wisconsin Statute section 893.80 must be definite enough to provide the municipality with the information necessary to decide whether to settle the claim. Because this claim does not name specific locations of the alleged bump(s) and/or pothole(s) that allegedly damaged her vehicle, the City cannot investigate whether it had prior notice of these alleged defects and failed to make the necessary repairs within a reasonable timeframe. As such,

31 the City has not received sufficient notice of this claim per Wisconsin Statute section 893.80 and the City  
32 cannot be held liable for the damages alleged therein.

33 Furthermore, Wisconsin Statute section 893.83 eliminated municipal liability for highway defects  
34 when it was amended in 2012. By law, the City is not liable for the claimant's alleged damages because  
35 Wisconsin Statute section 893.80 confers broad immunity from suits on municipalities for acts that are  
36 considered "discretionary" in nature, such as the filling of potholes for which the City has no prior notice  
37 of a defect. In this instance, the City did not have notice of a highway defect spanning from "Durand /  
38 Washington / 16th / Ohio."

39 Additionally, the claimant has failed to show that the alleged damage her vehicle sustained was  
40 caused by City of Racine highway defects, rather than similar highway defects located in her municipality  
41 of residence, Mt. Pleasant, or other areas she recently traveled to, such as Lake Bluff, Illinois, where she  
42 received the first of her two service estimates on April 16, 2018.

43 Finally, all drivers have a duty to look out for potential roadway hazards in plain sight, such as  
44 potholes or bumps in the road. If a driver fails to keep a proper lookout for such potential hazards in their  
45 plain sight, the driver is negligent.

46 In sum, the City is not legally liable for the alleged damages because Evette Smith failed to satisfy  
47 the specificity requirements in Wisconsin Statute section 893.80, show a causal connection between the  
48 alleged defects in City of Racine highways and the claimed damages, and, if her allegations were taken as  
49 true, they would indicate negligence on her part. As such, the City Attorney's Office recommends that this  
50 Committee deny the claim of Evette Smith.

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52 **BUDGETARY IMPACT:**

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

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56 **OPTIONS/ALTERNATIVES:**

57 If the recommendation to deny this claim is rejected, and the Committee recommends that this  
58 claim be paid by the City (contrary to any indication of the City's liability for the alleged damages), this  
59 item would have up to a \$747.18 impact on the City's 2018 claims budget.

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61 **RECOMMENDED ACTION:**

62 The City Attorney's Office respectfully recommends that this Committee deny the claim of Evette  
63 Smith.

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65 **ATTACHMENT(S):**

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