



**City of Racine, Wisconsin
Common Council**

AGENDA BRIEFING MEMORANDUM

INTRO TO COUNCIL DATE: February 19, 2025

STANDING COMMITTEE DATE: February 24, 2025

FINAL ACTION COUNCIL DATE: March 4, 2025

DEPARTMENT: City Attorney's Office

Prepared By: Deputy City Attorney Marisa Roubik

SUBJECT: Communication sponsored by Alder Horton on behalf of the City Attorney's Office submitting the claim of Earl Tucker for consideration for disallowance.

EXECUTIVE SUMMARY:

Earl Tucker filed a claim with the City requesting \$1,900.00 in damages for repairs to his vehicle allegedly arising from driving over a pothole located somewhere in the northbound lanes of Highway 31 between Highway 11 and Highway 20 on November 5, 2024. It is unclear whether the portion of the highway at issue is within the city of Racine's municipal boundaries. Nonetheless, the City denies that it was negligent in maintaining the roadway, and the City is not liable for these damages because it had no prior notice of the alleged defect. Furthermore, the claimant was negligent for failing to maintain a proper lookout for potential hazards in plain sight within the roadway.

For these reasons, it is the recommendation of the City Attorney's Office that this claim be disallowed.

BACKGROUND & ANALYSIS:

Earl Tucker filed a claim with the City requesting \$1,900.00 in damages for repairs to his vehicle allegedly arising from driving over a pothole located somewhere in the northbound lanes of Highway 31 between Highway 11 and Highway 20 on November 5, 2024. After reviewing the circumstances of this claim, the City Attorney's Office contends that the City is not liable for this damage.

31 It is unclear whether the portion of the highway at issue is within the city of Racine's municipal
32 boundaries. Nonetheless, the City denies that it was negligent in maintaining the roadway, and the City is
33 not liable for these damages because it had no prior notice of the alleged defect.

34 Wisconsin Statute section 893.83 eliminated municipal liability for highway defects when it was
35 amended in 2012. By law, the City is not liable for the claimant's alleged damages because Wisconsin
36 Statute section 893.80 confers broad immunity from suits on municipalities for acts that are considered
37 "discretionary" in nature, such as the maintenance of highways for which the City has no prior notice of a
38 defect. In this instance, the City did not have prior notice of this highway defect in the vicinity of
39 northbound lanes of Highway 31 between Highway 11 and Highway 20 on or about November 5, 2024.
40 Because the City had no prior knowledge of this defect, the City cannot be held liable for the alleged
41 damages.

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

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45 **BUDGETARY IMPACT:**

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

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49 **RECOMMENDED ACTION:**

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