



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

3 **AGENDA BRIEFING MEMORADUM**

4 **COMMITTEE:** Finance and Personnel

LEGISLATION ITEM #: 0490-18

5 **AGENDA DATE:** May 21, 2018

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

8 **Prepared By:** Nhu Tran

9 **Reviewed By:**

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11 **SUBJECT:** Claim of Yamille Mederos, City Attorney File No. 2018-0072

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13 **EXECUTIVE SUMMARY:**

14 Yamille Mederos filed a claim with the city requesting \$134.50 worth of damages to her vehicle as a
15 result of her running over a pothole on the road on February 20, 2018. The city denies that it was
16 negligent in maintaining the roadway. Alternatively, even if the city was negligent, it is immune from
17 liability here for damages caused by highway defects pursuant to Wis. Stat. § 893.83.

18 For this reason, it is the recommendation of the City Attorney's Office that this claim be denied.

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20 **BACKGROUND & ANALYSIS:**

21 Wis. Stat. § 893.83 eliminated municipal liability for highway defects when it was amended in 2012. As it
22 reads now, the city is immune from liability for damages resulting from highway defects under most
23 conditions, including defects such as potholes. In carving out this exception to governmental liability in
24 2012, the legislature did so with the interest of protecting the public purse, noting that the goal was to
25 reduce the number of lawsuits brought against towns, villages, cities and counties and thereby reducing
26 those entities' legal costs, damage awards and insurance premiums. *See* 2011 S.B. 125 Fiscal Estimate
27 (Wis. 2012).

28 Putting aside the issue of immunity for a moment, the city further denies that it was negligent in failing to
29 maintain or repair such road defects. The Department of Public Works routinely maintains these portions
30 of the roadway, nothing that an inspection was conducted December 4 and December 18, 2017, as well as

31 January 9, January 25, January 31, February 19, February 23, and March 8, 2018. When potholes were
32 discovered or a complaint was made, those holes were subsequently be filled shortly thereafter. In this
33 case, there were no specific complaints received by DPW regarding this particular pothole or area prior to
34 February 20, 2018 and therefore the city had no notice of such defect. As a result, the city did not fail to
35 fulfil any ministerial duties.

36 Since the city was not negligent here and because it is immune from liability, the claim should be denied.

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38 **BUDGETARY IMPACT:**

39 None

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41 **OPTIONS/ALTERNATIVES:**

42 Pay the claim.

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44 **RECOMMENDED ACTION:**

45 Deny the claim.

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47 **ATTACHMENT(S):**