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**City of Racine, Wisconsin
Common Council**

AGENDA BRIEFING MEMORADUM

4 **COMMITTEE:** Finance and Personnel

LEGISLATION ITEM #: 0122-19

5 **AGENDA DATE:** February 11, 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 Antonio Luna for
11 consideration.

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13 **EXECUTIVE SUMMARY:**

14 The City Attorney’s Office recommends that this Committee deny the claim of Antonio Luna
15 because he failed to satisfy the specificity requirements in Wisconsin Statute section 893.80, he did not
16 demonstrate that the alleged hazard was left in the roadway by the City, and, if his allegations were taken
17 as true, they would indicate negligence on his part. As such, it is the recommendation of the City Attorney’s
18 Office that the Finance and Personnel Committee recommend that the Common Council deny this claim.

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20 **BACKGROUND & ANALYSIS:**

21 Claimant Antonio Luna of 1732 Center Street, Racine, Wisconsin, 53403, filed this claim for
22 reimbursement in the amount of \$952.21 for tire replacement allegedly arising after he drove over
23 “construction metal” on Durand Avenue on or about December 5, 2018. The City denies liability for the
24 damages alleged in this claim.

25 The Wisconsin Supreme Court has held that a written claim filed under Wisconsin Statute section
26 893.80 must be definite enough to provide the municipality with the information necessary to decide
27 whether to settle the claim. This claim alleges that the “construction metal” that damaged his tire(s) was
28 located on Durand Avenue somewhere between Diamond Cutz Barber Shop, located at 2909 Durand
29 Avenue, and the claimant’s residence at 1732 Center Street. Because this claim does not name the specific
30 location of the alleged “construction metal” that supposedly damaged the claimant’s vehicle, the City
31 cannot investigate whether it had prior notice of this alleged hazard and failed to remediate it within a

32 reasonable timeframe. As such, the City has not received sufficient notice of this claim per Wisconsin
33 Statute section 893.80 and the City cannot be held liable for the damages alleged therein.

34 Additionally, the claimant has failed to show that the alleged damage his tire(s) sustained was
35 caused by “construction mental” left in the roadway by the City of Racine. Because the claimant did not
36 demonstrate that the alleged hazard was left in the roadway by the City, the City cannot be held liable for
37 the damages alleged therein.

38 Finally, all drivers have a duty to look out for potential roadway hazards in plain sight, such as
39 debris on the road. If a driver fails to keep a proper lookout for such potential hazards in their plain sight,
40 the driver is negligent.

41 In sum, the City is not legally liable for the alleged damages because Antonio Luna failed to satisfy
42 the specificity requirements in Wisconsin Statute section 893.80, he did not demonstrate that the alleged
43 hazard was left in the roadway by the City, and, if his allegations were taken as true, they would indicate
44 negligence on his part. As such, the City Attorney’s Office recommends that the Finance and Personnel
45 Committee recommend denial of the claim of Antonio Luna to the Common Council.

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47 **BUDGETARY IMPACT:**

48 Assuming the recommendation to deny this claim is adopted, this item would have a \$0.00 impact
49 on the City’s budget.

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51 **OPTIONS/ALTERNATIVES:**

52 If the recommendation to deny this claim is rejected, and the Committee recommends that this
53 claim be paid by the City (contrary to any indication of the City’s liability for the alleged damages), this
54 item would have up to a \$952.21 impact on the City’s 2019 claims budget.

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56 **RECOMMENDED ACTION:**

57 The City Attorney’s Office respectfully recommends that this Committee recommend denial of the
58 claim of Antonio Luna to the Common Council.

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60 **ATTACHMENT(S):**

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