



**City of Racine, Wisconsin
Common Council**

AGENDA BRIEFING MEMORANDUM

COMMITTEE: Finance and Personnel

LEGISLATION ITEM #: 0846-24

AGENDA DATE: October 7, 2024

DEPARTMENT: City Attorney's Office

Prepared By: Deputy City Attorney Marisa L. Roubik

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

EXECUTIVE SUMMARY:

Ann Fahl filed a claim with the City requesting \$3,542.48 in damages to a loaner vehicle allegedly resulting from her driving over a heavy metal cap that supposedly belonged to the Racine Water Utility, which was purportedly misplaced in the roadway at Highway 31 near Highway MM on or about June 21, 2024. Neither the City nor the Water Utility had any constructive or actual knowledge that a heavy metal cap allegedly owned by the Water Utility was improperly located in the roadway at the time of the claimed incident, and, therefore, the City and the Water Utility are not legally liable for the alleged damages. 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:

Ann Fahl, of 5033 Deerwood Drive, Mt. Pleasant, Wisconsin, filed a claim with the City requesting \$3,542.48 in damages to a loaner vehicle allegedly resulting from her driving over a heavy metal cap that supposedly belonged to the Racine Water Utility, which was purportedly misplaced in the roadway at Highway 31 near Highway MM on or about June 21, 2024. The loaner vehicle that the claimant was driving at the time of the alleged incident belonged to Uptown Auto Body of Racine and is currently registered to Finishing Touch Auto Body Inc.

31 In instances such as this, where neither the City nor the Water Utility had any constructive or actual
32 knowledge that a heavy metal cap allegedly owned by the Water Utility was improperly located in the
33 roadway at the time of the claimed incident, the City and the Water Utility cannot be held legally liable for
34 the damages resulting from such a defect.

35 Furthermore, all drivers have a duty to look out for potential roadway hazards in plain sight, such
36 as obstructions in the roadway. If a driver fails to keep a proper lookout for such potential hazards in their
37 plain sight, the driver is negligent.

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

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41 **BUDGETARY IMPACT:**

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

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45 **RECOMMENDED ACTION:**

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