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**City of Racine, Wisconsin
Common Council**

AGENDA BRIEFING MEMORANDUM

COMMITTEE: Finance and Personnel

LEGISLATION ITEM #: 0838-20

AGENDA DATE: January 11, 2021

DEPARTMENT: City Attorney's Office

Prepared By: Assistant City Attorney Marisa Roubik

SUBJECT: Communication sponsored by Alder Taft on behalf of the City Attorney's Office submitting the claim of Sylvia Rodriguez for consideration for disallowance.

EXECUTIVE SUMMARY:

Sylvia Rodriguez filed a claim with the City requesting \$277.74 in damages for repairs to her vehicle allegedly arising from driving over a pothole located at the corner of 14th Street and Villa Street on September 29, 2020. The city denies that it was negligent in maintaining the roadway. Alternatively, even if the city was negligent, it is immune from liability for damages caused by highway defects pursuant to Wis. Stat. § 893.83.

For this reason, it is the recommendation of the City Attorney's Office that the Finance and Personnel Committee recommend that the Common Council disallow this claim.

BACKGROUND & ANALYSIS:

Sylvia Rodriguez claims reimbursement in the amount of \$277.74 in damages for repairs to her vehicle allegedly arising from driving over a pothole located at the corner of 14th Street and Villa Street on September 29, 2020. After reviewing the circumstances of this claim, the City Attorney's Office contends that the City is not liable for this damage.

Wisconsin Statute section 893.83 eliminated municipal liability for highway defects when it was amended in 2012. By law, the City is not liable for the claimant's alleged damages because Wisconsin Statute section 893.80 confers broad immunity from suits on municipalities for acts that are considered "discretionary" in nature, such as the maintenance of highways for which the City has no prior notice of a

31 defect. In this instance, the City did not have notice of this highway defect in the vicinity of 14th Street
32 and Villa Street on or about September 29, 2020. Because the City had no prior knowledge of this defect,
33 the City cannot be held liable for the alleged damages.

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

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37 **BUDGETARY IMPACT:**

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

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41 **OPTIONS/ALTERNATIVES:**

42 If the Committee recommends that this claim be paid by the City (contrary to any indication of
43 the City's liability for the alleged damages), this item would have up to a \$277.74 impact on the City's
44 2021 claims budget.

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46 **RECOMMENDED ACTION:**

47 That the claim of Sylvia Rodriguez be disallowed.