



**City of Racine, Wisconsin
Common Council**

AGENDA BRIEFING MEMORANDUM

COMMITTEE: Finance and Personnel

LEGISLATION ITEM #: 0487-22

AGENDA DATE: July 11, 2022

DEPARTMENT: City Attorney's Office

Prepared By: Deputy City Attorney Marisa Roubik

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

EXECUTIVE SUMMARY:

Charlene House filed a claim with the City requesting an unspecified amount in damages for repairs to her vehicle allegedly arising from driving over a storm sewer opening located at in the gutter/curb at the intersection of 12th Street and South Memorial Drive. The City denies that it was negligent in maintaining the roadway. The City had no prior knowledge of this defect; therefore, it is immune from liability for damages caused by highway defects pursuant to Wis. Stat. § 893.83. Furthermore, the claim that was filed with the City is deficient insofar as it does not meet the requirements set forth in Wis. Stat. § 893.80(1d).

For these reasons, 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:

Charlene House claims reimbursement in an unspecified amount for repairs to her vehicle allegedly arising from driving over a storm sewer opening located at in the gutter/curb at the intersection of 12th Street and South Memorial Drive. 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 Wis. Stat. § 893.80 confers broad immunity from suits on municipalities for acts that are considered "discretionary" in

31 nature, such as the maintenance of highways for which the City has no prior notice of a defect. In this
32 instance, the City did not have notice of this highway defect in the vicinity of 12th Street and Memorial
33 Drive prior to claimant reporting this defect to the City after the alleged incident occurred. Because the
34 City had no prior knowledge of this defect, the City cannot be held liable for the alleged damages.

35 In order to have the right to maintain an action against the City, Wis. Stat. § 893.80(1d) requires a
36 claimant to file a claim that contains an itemized statement of the relief sought.

37 The claim that Ms. House filed with the City on or about May 13, 2022 did not include an itemized
38 statement of the relief sought. As such, Ms. House did not satisfy the statutory requirements for filing a
39 claim in accordance with Wis. Stat. § 893.80(1d), and she does not have a right to maintain an action against
40 the City.

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

44 **BUDGETARY IMPACT:**

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

48 **RECOMMENDED ACTION:**

49 That the claim of Charlene House be disallowed.