



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

3 **AGENDA BRIEFING MEMORANDUM**

4 **COMMITTEE:** Finance and Personnel

LEGISLATION ITEM #: 0454-23

5 **AGENDA DATE:** May 8, 2023

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

8 **Prepared By:** Deputy City Attorney Marisa Roubik

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10 **SUBJECT:** Communication sponsored by Alder West on behalf of the City Attorney's Office submitting
11 the claim of Lisa Kielbasa for consideration for disallowance.

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13 **EXECUTIVE SUMMARY:**

14 Lisa Kielbasa filed a claim with the City requesting an unspecified amount of damages allegedly
15 arising from a fall while walking on the sidewalk on or near the north side of the building located at 555
16 Main Street in Racine, Wisconsin on or about August 30, 2022. Pursuant to Wisconsin Statute section
17 893.83, the City is immune from liability for damages caused by sidewalk defects of which the City had no
18 prior notice. Moreover, the claimant was negligent in her duty to use ordinary care to look out for potential
19 hazards in plain sight, such as sidewalk defects. Furthermore, various defects in the filing of the written
20 notice of the circumstances of the claim and the claim itself render it unactionable. As such, it is the
21 recommendation of the City Attorney's Office that this claim be disallowed.

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23 **BACKGROUND & ANALYSIS:**

24 Lisa Kielbasa of 5213 Twin Elms Drive, Racine, Wisconsin, filed this claim requesting an
25 unspecified amount of damages after allegedly tripping and falling on the public sidewalk on or near
26 the north side of the building located at 555 Main Street in Racine, Wisconsin on or about August 30, 2022.

27 Wisconsin Statute section 893.83 eliminated municipal liability for highway and sidewalk defects
28 when it was amended in 2012. By law, the City is not liable for the claimant's alleged damages because
29 Wisconsin Statute section 893.80 confers broad immunity from suits on municipalities for acts that are
30 considered "discretionary" in nature, such as the repair of sidewalks for which the City has no prior notice
31 of a defect. In this instance, the City did not have notice of a sidewalk defect on north side of the building
32 located at 555 Main Street in Racine, Wisconsin prior to the date of this incident in 2022.

33 Moreover, all pedestrians have a duty use ordinary care when walking and to look out for potential
34 hazards in plain sight, such as defects in the sidewalk. If a pedestrian fails to keep a proper lookout for
35 such potential hazards in their plain sight, the pedestrian is negligent.

36 Furthermore, Wisconsin Statute section 893.80(1d)(a) requires that written notice of the
37 circumstances of the claim be served on the City within 120 days after the happening of the event giving
38 rise to the claim in order for a claim to be legally actionable against the City. In this instance, the City did
39 not receive such notice until March 8, 2023, which was 190 days after the alleged event occurred.

40 Additionally, Wisconsin Statute section 893.80(1d)(b) requires that a claim must contain “an
41 itemized statement of the relief sought”; however, in the instant case, no such itemized statement of the
42 relief sought was made. Therefore, this claim is not actionable against the City.

43 For the reasons set forth above, the City is not legally liable for the alleged damages and this claim
44 should be disallowed.

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46 **BUDGETARY IMPACT:**

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

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50 **RECOMMENDED ACTION:**

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

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