



# **City of Racine, Wisconsin**

## **Common Council**

## **AGENDA BRIEFING MEMORANDUM**

**COMMITTEE:** Finance and Personnel      **LEGISLATION ITEM #:** 0836-18

**AGENDA DATE: August 27, 2018**

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

**Prepared By: Marisa Roubik**

**SUBJECT:** Claim of Jonathan Hubbard, City Attorney File No. 2018-0138

## **EXECUTIVE SUMMARY:**

13 Jonathan Hubbard filed a claim with the city requesting \$173.02 worth of damages to his vehicle  
14 as a result of his running over a pothole on the road on May 14, 2018. city denies that it was negligent in  
15 maintaining the roadway. Alternatively, even if the city was negligent, it is immune from liability here for  
16 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 deny this claim.

## 20 BACKGROUND & ANALYSIS:

21 Jonathan Hubbard, of 4001 Olive St. in Racine, Wisconsin, filed a claim for reimbursement in the  
22 amount of \$173.02 for vehicle damage allegedly arising after he allegedly drove over a pothole claimed to  
23 be located on or about the intersection of Washington Ave. and Ohio St. on May 14, 2018. After reviewing  
24 the circumstances of this claim, the City Attorney's Office contends that the City is not liable for this  
25 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 filling of potholes for which the City has no prior notice of a defect.

30 In this instance, the City did not have notice of this highway defect in the vicinity of Washington Ave. and  
31 Ohio St. on May 14, 2018.

32 Putting aside the issue of immunity for a moment, the city further denies that it was negligent in  
33 maintaining or repairing such road defects. When potholes were discovered by the Department of Public  
34 Works (“DPW”) or a complaint was made, those holes were filled shortly thereafter. In 2018, complaints  
35 regarding this stretch of roadway were received on March 27, 2018 and (on the day after this incident) May  
36 15, 2018, and repairs were made within 24 hours. Furthermore, the Department of Public Works regularly  
37 maintains these portions of the roadway, noting that routine pothole filling was done on this particular  
38 stretch of roadway on January 24, 2018, January 31, 2018, February 28, 2018, March 26, 2018, March 28,  
39 2018, April 19, 2018, April 20, 2018, May 15, 2018, and May 16, 2018. As a result, the city was not  
40 negligent in fulfilling any ministerial duties.

41 Because the City is immune from liability and was not negligent in this instance, Jonathan  
42 Hubbard’s claim should be denied.

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44 **BUDGETARY IMPACT:**

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

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48 **OPTIONS/ALTERNATIVES:**

49 If the Committee recommends that this claim be paid by the City (contrary to any indication of  
50 the City’s liability for the alleged damages), this item would have up to a \$173.02 impact on the City’s  
51 2018 claims budget.

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53 **RECOMMENDED ACTION:**

54 The City Attorney’s Office respectfully advises this Committee to recommend that the Common  
55 Council deny the claim of Jonathan Hubbard.

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57 **ATTACHMENT(S):**

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