



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

3 **AGENDA BRIEFING MEMORADUM**

4 **COMMITTEE:** Finance and Personnel

LEGISLATION ITEM #: 0019-19

5 **AGENDA DATE:** January 21, 2019

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

8 **Prepared By:** Assistant City Attorney Marisa L. Roubik

9 **Reviewed By:** N/A

11 **SUBJECT:** Communication from the City Attorney submitting the claim of Sharron Ivy for consideration.

13 **EXECUTIVE SUMMARY:**

14 The City Attorney’s Office recommends that this Committee deny the claim of Sharron Ivy because
15 she failed to satisfy the specificity requirements in Wisconsin Statute section 893.80, show a causal
16 connection between the alleged defects in City of Racine highways and the claimed damages, and, if her
17 allegations were taken as true, they would indicate negligence on her part.

19 **BACKGROUND & ANALYSIS:**

20 The Claimant, Sharron Ivy of 8453 Cooper Rd., Kenosha, Wisconsin 53142, filed this claim for
21 reimbursement in the amount of \$803.90 for alleged damage to her vehicle supposedly caused by hitting a
22 pothole on July 17, 2018 at some unspecified location on “Rt. 11 . . . past the Racine Mall before arriving
23 at \$18 Eye Glasses, which is approximately less than five minutes.” The claimant’s description of the
24 alleged pothole’s location spans more than a mile of roadway. The City denies liability for the damages
25 alleged in this claim.

26 The Wisconsin Supreme Court has held that a written claim filed under Wisconsin Statute section
27 893.80 must be definite enough to provide the municipality with the information necessary to decide
28 whether to settle the claim. Because this claim does not name specific location of the alleged pothole that
29 allegedly damaged her vehicle, the City cannot investigate whether it had prior notice of this alleged defect
30 and failed to make the necessary repairs within a reasonable timeframe. As such, the City has not received

31 sufficient notice of this claim per Wisconsin Statute section 893.80 and the City cannot be held liable for
32 the damages alleged therein.

33 Furthermore, Wisconsin Statute section 893.83 eliminated municipal liability for highway defects
34 when it was amended in 2012. By law, the City is not liable for the claimant's alleged damages because
35 Wisconsin Statute section 893.80 confers broad immunity from suits on municipalities for acts that are
36 considered "discretionary" in nature, such as the filling of potholes for which the City has no prior notice
37 of a defect. In this instance, the City did not have notice of a highway defect spanning from "the Racine
38 Mall" to "\$18 Eye Glasses."

39 Additionally, the claimant has failed to show that the alleged damage her vehicle sustained was
40 caused by City of Racine highway defects, rather than similar highway defects located in her municipality
41 of residence, Kenosha, or other areas she recently traveled to, such as Lincolnshire, Illinois, where she
42 received the first of her two service estimates on July 20, 2018.

43 Finally, all drivers have a duty to look out for potential roadway hazards in plain sight, such as
44 potholes or bumps in the road. If a driver fails to keep a proper lookout for such potential hazards in their
45 plain sight, the driver is negligent.

46 In sum, the City is not legally liable for the alleged damages because Sharron Ivy failed to satisfy
47 the specificity requirements in Wisconsin Statute section 893.80, show a causal connection between the
48 alleged defects in City of Racine highways and the claimed damages, and, if her allegations were taken as
49 true, they would indicate negligence on her part. As such, the City Attorney's Office recommends that this
50 Committee deny the claim of Sharron Ivy.

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52 **BUDGETARY IMPACT:**

53 Assuming the recommendation to deny this claim is adopted, this item would have a \$0.00 impact
54 on the City's budget.

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56 **OPTIONS/ALTERNATIVES:**

57 If the recommendation to deny this claim is rejected, and the Committee recommends that this
58 claim be paid by the City (contrary to any indication of the City's liability for the alleged damages), this
59 item would have up to an \$803.90 impact on the City's 2019 claims budget.

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61 **RECOMMENDED ACTION:**

62 The City Attorney's Office respectfully recommends that this Committee deny the claim of Sharron
63 Ivy.

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65 **ATTACHMENT(S):**

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