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**City of Racine, Wisconsin
Common Council**

AGENDA BRIEFING MEMORANDUM

COMMITTEE: Finance and Personnel

LEGISLATION ITEM #: 0411-19

AGENDA DATE: April 22, 2019

DEPARTMENT: City Attorney's Office

Prepared By: Assistant City Attorney Marisa Roubik

SUBJECT: Communication from the City Attorney submitting the claim of Fard Mohammed.

EXECUTIVE SUMMARY:

Fard Mohammed filed a claim with the City requesting \$1,377.50 in damages for repairs to his vehicle allegedly arising from his driving over potholes in the 1200 block of Ohio Street on or about February 20, 2019. 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 this claim be denied.

BACKGROUND & ANALYSIS:

Fard Mohammed claims reimbursement in the amount of \$1,377.50 in damages for repairs to his vehicle allegedly arising from his driving over potholes while turning from the 4700 block of Washington Avenue onto the 1200 block of Ohio Street on or about February 20, 2019. 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 filling of potholes for which the City has no prior notice of a defect. However, the City could be held liable if it was given notice of a defect and its failure to remedy such defect was unreasonable.

31 In the instant case, the City’s Department of Public Works (“DPW”) did receive complaints about
32 potholes in the area of Washington Avenue and Ohio Street, but the complaints were remedied within a
33 reasonable time. Complaints were received regarding this area on the following dates in February 2019:
34 2/5/19 (late in the day), 2/6/19 (early in the morning), 2/14/19, and 2/20/19. All complaints were addressed
35 within 24 hours—and some the same day—by filling in the potholes with cold patch. Furthermore, routine
36 maintenance has been done in this area by the DPW on a weekly or bi-weekly basis throughout the 2018-
37 2019 winter months. As a result, all complaints were remedied within a reasonable time (24 hours or less);
38 therefore, the city was not negligent in fulfilling any ministerial duties.

39 Because the City was not negligent in this instance, it is immune from liability for these damages
40 and Fard Mohammed’s claim should be denied.

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42 **BUDGETARY IMPACT:**

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

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46 **OPTIONS/ALTERNATIVES:**

47 If the Committee recommends that this claim be paid by the City (contrary to any indication of
48 the City’s liability for the alleged damages), this item would have up to a \$1,377.50 impact on the City’s
49 2019 claims budget.

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51 **RECOMMENDED ACTION:**

52 The City Attorney’s Office respectfully advises this Committee to recommend that the Common
53 Council deny the claim of Fard Mohammed.

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55 **ATTACHMENT(S):**

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