



City of Racine, Wisconsin  
Common Council

**AGENDA BRIEFING MEMORANDUM**

**COMMITTEE:** Finance and Personnel

**LEGISLATION ITEM #:** 1129-19

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**AGENDA DATE:** October 21, 2019

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**DEPARTMENT:** City Attorney’s Office

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

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**SUBJECT:** Communication sponsored by Alder Shakoor II submitting the claim of Dora Moten for consideration for disallowance.

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**EXECUTIVE SUMMARY:**

Dora Moten filed a claim for reimbursement in the amount of \$60,000.00 for injuries allegedly arising from falling into a hole that she claims was at or near 1000 Harbridge Street on July 7, 2017. The City Attorney’s Office recommends that the claim of Dora Moten be disallowed because, pursuant to Wisconsin Statute section 893.83, the City is immune from liability for damages caused by sidewalk defects of which the City had no prior notice. In this instance, neither a hole nor prior notice of a hole was found in the 1000 block of Harbridge Street.

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**BACKGROUND & ANALYSIS:**

The Claimant, Dora Moten, of 1815 Thurston Avenue, Racine, Wisconsin 53403, filed this claim for reimbursement in the amount of \$60,000.00 for injuries arising from falling into a hole that she claims was at or near 1000 Harbridge Street in the City of Racine on July 7, 2017. Upon close inspection, no such hole was found to exist on the 1000 block of Harbridge Street. Furthermore, the City did not have any prior notice of a hole in the 1000 block of Harbridge Street. The City denies liability for the damages alleged in this claim.

Wisconsin Statute section 893.83 eliminated municipal liability for highway and sidewalk 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 repair of sidewalks for which the City has no prior notice of a defect. In this instance, the City did not have notice of a sidewalk defect at the subject location, in or

33 around the 1000 block of Harbridge Street, prior to the date of this incident in 2017, nor was any such defect  
34 located upon closer inspection.

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

38 In sum, the City is not legally liable for the alleged damages because the City is immune from  
39 liability for damages caused by sidewalk defects pursuant to Wisconsin Statute section 893.83, and, if Ms.  
40 Moten's allegations were taken as true, they would indicate negligence on her part. As such, the City  
41 Attorney's Office recommends that this Committee recommend disallowance of the claim of Dora Moten  
42 to the Common Council.

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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 recommendation to deny this claim is rejected, and the Committee recommends that this  
50 claim be paid by the City (contrary to any indication of the City's liability for the alleged damages), this  
51 item would have up to a \$60,000.00 impact on the City's 2019 claims budget.

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53 **RECOMMENDED ACTION:**

54 To recommend that the Common Council disallow the claim of Dora Moten.

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56 **ATTACHMENT(S):**

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