



City of Racine, Wisconsin
Common Council

AGENDA BRIEFING MEMORANDUM

COMMITTEE: Common Council (Direct Referral) **LEGISLATION ITEM #:**

AGENDA DATE: February 19, 2020

DEPARTMENT: City Attorney's Office

Prepared By: Assistant City Attorney Marisa L. Roubik

SUBJECT: (Direct Referral) Communication sponsored by Alder Shakoor II, on behalf of the City Attorney's Office, submitting the claim of Pamela Brouwers for consideration for disallowance.

EXECUTIVE SUMMARY:

Pamela Brouwers filed a claim for reimbursement in the amount of \$9,787.48 for injuries allegedly arising from falling at the intersection of 14th Street and College Avenue on or about April 6, 2018. The City Attorney's Office recommends that the claim of Pamela Brouwers be disallowed because, pursuant to Wisconsin Statute section 893.80, the City is immune from liability for damages caused by highway defects of which the City had no prior notice, as was the case in this instance.

BACKGROUND & ANALYSIS:

The Claimant, Pamela Brouwers, of 1111 Prairie Dr. #6, Racine, Wisconsin 53406, claims reimbursement in the amount of \$9,787.48 for injuries allegedly arising from falling at the northeast corner of the intersection at 14th Street and College Avenue around noon on or about April 6, 2018. The City did not have any prior notice of a defect in the highway at the subject location. Therefore, the City denies liability for the damages 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 maintenance and

34 repair of highways¹ for which the City has no prior notice of a defect. In this instance, the City
35 did not have notice of a defect in the highway at the subject location prior to the date of this
36 incident.

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

40 In sum, the City is not legally liable for the alleged damages because the City is immune
41 from liability for damages caused by highway defects pursuant to Wisconsin Statute section
42 893.80, and, if Ms. Brouwers' allegations were taken as true, they would indicate negligence on
43 her part. As such, the Common Council should disallow the claim of Pamela Brouwers.

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45 **BUDGETARY IMPACT:**

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

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49 **OPTIONS/ALTERNATIVES:**

50 If the recommendation to deny this claim is rejected, and the Common Council directs the
51 City to pay this claim (contrary to any indication of the City's liability for the alleged damages),
52 this item would have up to a \$9,787.46 impact on the City's 2020 claims budget.

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54 **RECOMMENDED ACTION:**

55 To approve the disallowance of the claim of Pamela Brouwers.

¹ The term "highways," as it is used in the governmental immunity context, generally includes sidewalks, roads, streets, bridges, driveway aprons, and shoulders of the highway. *Ellerman v. City of Manitowoc*, 2003 WI App 216, ¶7, 267 Wis. 2d 480, 484-85, 671 N.W.2d 366, 368.