



City Attorney's Office

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February 6, 2018

Common Council
City of West Allis

RE: City Attorney's Report of Claim – Lizzette Martinez

Dear Council Members:

The enclosed claim has been referred to this office in accordance with Section 3.05(8) of the Revised Municipal Code. This office has examined the facts of the claim and the applicable law. This office's recommendation is to deny the claim based on the summary below:

Facts: On August 14, 2017, a West Allis police officer observed Lizzette Martinez driving eastbound on West Lincoln Avenue in the City of West Allis, speeding 10 miles over the speed limit, and swerving numerous times between lanes. When the officer pulled her vehicle over, he observed Ms. Martinez to display indicia of intoxication: erratic and slurred speech, bloodshot and watery eyes, repetitive statements, and unsteadiness. Ms. Martinez subsequently performed poorly on standardized field sobriety tests and was arrested for operating while intoxicated. Due to her arrest and no party being able or willing to take responsibility for her vehicle, Ms. Martinez's vehicle was towed. At the police station, an officer who is certified as a drug recognition expert evaluated Ms. Martinez and, based on his observations, concluded that she was under the influence of a central nervous system depressant. Ms. Martinez submitted to a blood draw, and several weeks later, the results indicated that the State Hygiene Lab did not detect drugs or ethanol in Ms. Martinez's system.

Claim: Ms. Martinez is claiming that her vehicle should not have been towed due to the lab not detecting any drugs or ethanol in her system. She is seeking \$348.48.

Analysis: The claim should be denied. Based on Ms. Martinez's dangerous driving and the officer's observations, the officer had reasonable suspicion to pull Ms. Martinez over and had probable cause to arrest her for operating while intoxicated. West Allis Police Department Standard 3.7.6 requires officers to have vehicles towed if a sober, validly licensed driver is not available or willing to take responsibility for the custody of the vehicle. In Ms. Martinez's case, no such driver was available, so the policy required the vehicle to be towed. Furthermore, Ms. Martinez failed to mitigate her damages. While Ms. Martinez was released from police custody at 3:50 a.m. on August 14, 2017, she failed to pick up her vehicle until August 20, 2017 and incurred an additional \$175.00 in charges.

Therefore, based on the above analysis, the City Attorney Office's recommendation is to deny this unmeritorious claim.

Respectfully submitted,

A handwritten signature in blue ink that reads "Jenna Merten". The signature is written in a cursive, flowing style.

Jenna Merten
Assistant City Attorney