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MEMORANDUM

TO: Common Council
FROM: Assistant City Attorney Nicholas S. Cerwin
DATE: December 13, 2018
SUBJECT: City Attorney's Report of Claim- Richard D. Vis

Dear Common 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: Richard Vis claims that on September 7, 2018 around 8:50 A.M. he was traveling within the City of West Allis on Greenfield Avenue west of 84th Street when he hit a large pothole that he could not avoid because of traffic. He asserts that the pothole caused damage to his rear tire. He states that he then notified the Department of Public Works (hereafter "DPW") regarding the pothole. DPW indicated that the department was made aware of the pothole at approximately 9:00 A.M. that same day and subsequently filled the pothole later same day. Based on the investigation of DPW, they had no prior notice that the pothole existed and indicated that it is common that these potholes occur unexpectedly.

Claim: Mr. Vis is alleging that the City is responsible for the pothole that allegedly damaged his rear wheel and is seeking damages for \$125.93 dollars.

Analysis: This claim should be denied. Mr. Vis is alleging that the City had created or maintained a nuisance for having a pothole located in its streets. A municipality is not responsible for damages arising from a private nuisance action unless the municipality had prior notice of the nuisance. Here, the City received no reports of the pothole in the area until after the incident had occurred. Once the City did receive notice, the nuisance was repaired in the same day. Furthermore, determining when to inspect and repair potholes is a discretionary decision. Generally, the City is immune from suit for its discretionary decisions. Since the City did not have knowledge of the pothole at the time of the damage and has discretion as to when to inspect and repair the roads, the City would not be liable for the damages claimed by Richard Vis.

Therefore, based on the above analysis, the City Attorney's Office is recommending that the Common Council deny this unmeritorious claim.

Respectfully submitted,

Nicholas S. Cerwin
Assistant City Attorney