



1 **City of Racine, Wisconsin**
2 **Common Council**

3 **AGENDA BRIEFING MEMORANDUM**

4 **COMMITTEE:** Finance and Personnel

LEGISLATION ITEM #: 0410-19

5 **AGENDA DATE:** April 22, 2019

7 **DEPARTMENT:** City Attorney's Office

8 **Prepared By:** Assistant City Attorney Marisa Roubik

10 **SUBJECT:** Communication from the City Attorney submitting the claim of Tammy Ruggaber for
11 consideration.

13 **EXECUTIVE SUMMARY:**

14 Tammy Ruggaber filed a claim with the City requesting \$178.67 in damages to her vehicle after a tree
15 branch allegedly fell on her parked car during a storm on or about November 26, 2018. Here, there was
16 no prior notice of a defect in the tree. As such, the City did not have a ministerial duty to service this tree,
17 and the City is immune from liability. For this reason, it is the recommendation of the City Attorney's
18 Office that this claim be denied.

20 **BACKGROUND & ANALYSIS:**

21 Tammy Ruggaber, of 2036 Quincy Avenue, Racine, WI 53403, filed a claim for reimbursement for
22 \$178.67 in damages to her vehicle after a tree branch allegedly fell on her car, which was parked on the
23 street in front of 2036 Quincy Avenue, during a storm on or about November 26, 2018.

24 The City is immune from liability for Ms. Ruggaber's alleged damages pursuant to Wis. Stat. § 893.80.
25 In short, state law confers broad immunity from suits on municipalities for acts that are considered
26 "discretionary" in nature. In the case of maintaining trees, the task of deciding which trees need pruning,
27 maintenance, or removal and when such actions should be taken are all discretionary acts requiring
28 judgment on the part of the arborist. Given the discretionary nature of these acts, the City cannot be held
29 liable for failing to prune or remove the tree branch in question before its fall.

30 In some cases, the City could be held liable if it was given notice of a defect and its failure to remedy
31 such defect was unreasonable. Here, there is no evidence that the City knew of the defect in the tree.
32 Inspection of this particular tree was conducted as part of the annual summer inspection in late-July of
33 2018 and it was not marked for removal at that time. Since the annual inspection revealed no such defects
34 and the City did not have prior notice of any defect, the City did not have a ministerial duty to service this
35 tree.

36 For the reasons set forth above, the City is immune from liability and the claim should be denied.

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38 **BUDGETARY IMPACT:**

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

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42 **OPTIONS/ALTERNATIVES:**

43 If the Committee recommends that this claim be paid by the City (contrary to any indication of the City's
44 liability for the alleged damages), this item would have up to a \$178.67 impact on the City's 2019 claims
45 budget.

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47 **RECOMMENDED ACTION:**

48 The City Attorney's Office respectfully advises this Committee to recommend that the Common Council
49 deny the claim of Tammy Ruggaber.

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51 **ATTACHMENT(S):**