



**City of Racine, Wisconsin
Common Council**

AGENDA BRIEFING MEMORANDUM

INTRO TO COUNCIL DATE: April 2, 2025

STANDING COMMITTEE DATE: April 7, 2025

FINAL ACTION COUNCIL DATE: April 14, 2025

DEPARTMENT: City Attorney's Office

Prepared By: Deputy City Attorney Marisa Roubik

SUBJECT: Communication sponsored by Alder Horton on behalf of the City Attorney's Office submitting the claim of Margaret A. Morgenson for consideration for disallowance.

EXECUTIVE SUMMARY:

Margaret A. Morgenson filed a claim with the City requesting \$20,644.56 for damages allegedly arising from her vehicle being struck by a fallen tree branch while it was parked outside of 1829 Jupiter Avenue, Racine, Wisconsin, on or about October 31, 2024. There was no prior notice of a current defect in the tree in question. As such, the City did not have a ministerial duty to service this tree, and the City is immune from liability. For this reason, it is the recommendation of the City Attorney's Office that this claim be disallowed.

BACKGROUND & ANALYSIS:

Margaret A. Morgenson, of 1829 Jupiter Avenue, Racine, Wisconsin, filed a claim with the City requesting \$20,644.56 for damages allegedly arising from her vehicle being struck by a fallen tree branch while it was parked outside of 1829 Jupiter Avenue, Racine, Wisconsin, on or about October 31, 2024.

The tree in question was most recently inspected in July of 2024, and was the subject of other, recent annual inspections in July of 2017, 2018, 2019, 2020, 2021, 2022, and 2023. The tree in question was also pruned by the City's Forestry Division on June 18, 2019 and December 15, 2020, and no significant issues were identified with this tree. Furthermore, the City had no prior notice of a current defect

31 in this tree. It appears that the large branch in question fell due to high winds overnight on the evening of
32 October 31 into November 1, 2024.

33 The City is immune from liability for the claimant's alleged damages pursuant to Wis. Stat. §
34 893.80. In short, state law confers broad immunity from suits on municipalities for acts that are considered
35 "discretionary" in nature. In the case of maintaining trees, the task of deciding which trees need pruning,
36 maintenance, or removal and when such actions should be taken are all discretionary acts requiring
37 judgment on the part of the arborist. Given the discretionary nature of these acts, the City cannot be held
38 liable for failing to prune or remove a tree or a tree branch before its fall.

39 In some cases, the City could be held liable if it was given notice of a defect and its failure to
40 remedy such defect was unreasonable. Here, there is no evidence that the City knew of a current defect in
41 the tree. Regular inspection of this particular tree was conducted in July of 2024 and annually for several
42 years preceding that date, and there is no evidence of any defect being entered into the City's database at
43 that time. Since this inspection revealed no defects and the City did not have prior notice of any defect, the
44 City did not have a ministerial duty to service this tree, and the City cannot be held liable for this branch
45 falling.

46 For the reasons set forth above, the City is immune from liability and the claim should be
47 disallowed.

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49 **BUDGETARY IMPACT:**

50 Assuming the recommendation to disallow this claim is adopted, this item would have a \$0.00
51 impact on the City's budget.

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53 **RECOMMENDED ACTION:**

54 That the disallowance of this claim be recommended for approval.
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