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**City of Racine, Wisconsin
Common Council**

AGENDA BRIEFING MEMORANDUM

COMMITTEE: Finance and Personnel

LEGISLATION ITEM #: 1128-19

AGENDA DATE: October 7, 2019

DEPARTMENT: City Attorney's Office

Prepared By: Assistant City Attorney Marisa Roubik

SUBJECT: Communication sponsored by Alder Shakoor II submitting the claim of Monique McKnight for consideration for disallowance.

EXECUTIVE SUMMARY:

Monique McKnight filed a claim with the City requesting \$1,400.36 in damages to her vehicle after a tree branch allegedly fell on her car that was parked at 2036 Center Street on or about June 30, 2019. Here, there was no prior notice of a defect in the tree. 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:

Monique McKnight, of 2036 Center Street, Racine, WI 53403, filed a claim for reimbursement for \$1,400.36 in damages to her vehicle after a tree branch allegedly fell on her car, which was parked on the street in front of 2036 Center Street on or about June 30, 2019 between 4:00 PM and 5:00 PM.

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

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38 **BUDGETARY IMPACT:**

39 Assuming the recommendation to disallow this claim is adopted, this item would have a \$0.00 impact on
40 the 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 \$1,400.36 impact on the City's 2019
45 claims 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 disallow the claim of Monique McKnight.

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51 **ATTACHMENT(S):**