



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

3 **AGENDA BRIEFING MEMORANDUM**

4 **COMMITTEE:** Finance and Personnel

LEGISLATION ITEM #: 0848-23

5 **AGENDA DATE:** August 28, 2023

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

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

10 **SUBJECT:** Communication sponsored by Alder West on behalf of the City Attorney's Office
11 submitting the claim of Christian Jones for consideration for disallowance.

13 **EXECUTIVE SUMMARY:**

14 Christian Jones filed a claim with the City requesting \$4,051.11 for damages allegedly arising from
15 the claimant's vehicle being struck by a tree branch while it was parked on the 2100 block of Clarence
16 Avenue, Racine, Wisconsin, or about June 15, 2023. There was no prior notice of a current defect in the
17 tree in question. As such, the City did not have a ministerial duty to service this tree, and the City is immune
18 from liability. For this reason, it is the recommendation of the City Attorney's Office that this claim be
19 disallowed.

21 **BACKGROUND & ANALYSIS:**

22 Christian Jones filed a claim with the City requesting \$4,051.11 for damages allegedly arising from
23 the claimant's vehicle being struck by a tree branch while it was parked on the 2100 block of Clarence
24 Avenue, Racine, Wisconsin, or about June 15, 2023. The tree in question was most recently inspected in
25 June 2022, July 2021, and July 2020, according to the Parks Department's annual inspection schedule; and
26 it was pruned in, in 2018 and 2021. The City had no prior notice of a current defect in this tree.

27 The City is immune from liability for these alleged damages pursuant to Wis. Stat. § 893.80. In
28 short, state law confers broad immunity from suits on municipalities for acts that are considered
29 "discretionary" in nature. In the case of maintaining trees, the task of deciding which trees need pruning,
30 maintenance, or removal and when such actions should be taken are all discretionary acts requiring

31 judgment on the part of the arborist. Given the discretionary nature of these acts, the City cannot be held
32 liable for failing to prune or remove a tree or a tree branch before its fall.

33 In some cases, the City could be held liable if it was given notice of a defect and its failure to
34 remedy such defect was unreasonable. Here, there is no evidence that the City knew of a current defect in
35 the tree. Inspection of this particular tree was conducted per the annual schedule in June 2022, and pruning
36 was conducted in 2018 and 2021, and there is no evidence of any defect being entered into the City's
37 database at that time. Since this inspection revealed no defects and the City did not have prior notice of
38 any defect, the City did not have a ministerial duty to service this tree, and the City cannot be held liable
39 for this branch falling.

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

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43 **BUDGETARY IMPACT:**

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

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47 **RECOMMENDED ACTION:**

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

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50 **ATTACHMENT(S):**