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**City of Racine, Wisconsin
Common Council**

AGENDA BRIEFING MEMORANDUM

COMMITTEE: Finance and Personnel

LEGISLATION ITEM #: 0648-24

AGENDA DATE: August 12, 2024

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 Meshawn Byles for consideration for disallowance.

EXECUTIVE SUMMARY:

Meshawn Byles filed a claim with the City requesting \$2,700.00 for damages allegedly arising from his vehicle being struck by a fallen tree while it was parked outside of 1628 Grove Avenue, Racine, Wisconsin 53404, on or about May 21, 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:

Meshawn Byles, of 1628 Grove Avenue, Racine, Wisconsin 53404, filed a claim with the City requesting \$2,700.00 for damages allegedly arising from his vehicle being struck by a fallen tree while it was parked outside of 1628 Grove Avenue, Racine, Wisconsin 53404, on or about May 21, 2024.

The tree in question was most recently inspected and pruned by the City's Forestry Division on June 8, 2017 and October 18, 2022, and no significant issues were identified with this tree. Furthermore, the City had no prior notice of a current defect in this tree.

The City is immune from liability for the claimant'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,

31 maintenance, or removal and when such actions should be taken are all discretionary acts requiring
32 judgment on the part of the arborist. Given the discretionary nature of these acts, the City cannot be held
33 liable for failing to prune or remove a tree or a tree branch before its fall.

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