



City of Racine, Wisconsin  
Common Council

AGENDA BRIEFING MEMORANDUM

COMMITTEE: Finance and Personnel

LEGISLATION ITEM #: 0844-24

AGENDA DATE: October 7, 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 Robert Lizotte for consideration for disallowance.

EXECUTIVE SUMMARY:

Robert Lizotte filed a claim with the City alleging damages of \$2,422.15 for repairs to the electrical meter box, mast, and wires for a residence he owned at 2501 Charles Street in Racine, after a City-owned tree purportedly fell on a powerline servicing that address during a storm on or about June 25, 2024. In this instance, the City did not have 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 any damages resulting from this tree falling during a storm. Therefore, it is the recommendation of the City Attorney's Office that this claim be disallowed.

BACKGROUND & ANALYSIS:

Robert Lizotte, who currently resides at 6730 Explorer Drive, Mt. Pleasant, Wisconsin, of 1723 Green Street in Racine, filed a claim with the City alleging damages of \$2,422.15 for repairs to the electrical meter box, mast, and wires for a residence at 2501 Charles Street in Racine (which the claimant owned at the time of this incident) after a City-owned tree purportedly fell on a powerline servicing that address during a storm on or about June 25, 2024.

The City is immune from liability for the 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 before its fall, nor can the City be held liable for any damages that may result therefrom.

In some cases, the City could be held liable if it was given notice of a defect and its failure to remedy such defect was unreasonable. Here, there is no evidence that the City knew of any defect in the tree. Inspection of this particular tree was conducted as part of the annual summer inspection in July of 2020, 2021, 2022, and 2023, and it was also pruned on January 27, 2020. During each of these annual inspections, nothing of concern was noted by the arborist. Since the annual inspections revealed no apparent defects and the City did not have prior notice of any defect, the City did not have a ministerial duty to service this tree. Nor is the City liable for any alleged damages that occur when such a tree falls.

For the reasons set forth above, the City cannot be held liable for the alleged damages and this claim should be disallowed.

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**BUDGETARY IMPACT:**

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

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**RECOMMENDED ACTION:**

That the disallowance of this claim be recommended for approval.

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