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**City of Racine, Wisconsin
Common Council**

AGENDA BRIEFING MEMORANDUM

COMMITTEE: Finance and Personnel

LEGISLATION ITEM #: 0731-22

AGENDA DATE: October 10, 2022

DEPARTMENT: City Attorney's Office

Prepared By: Deputy City Attorney Marisa Roubik

SUBJECT: Communication sponsored by Alder Taft on behalf of the City Attorney's Office submitting the claim of Leewauna Epps for consideration for disallowance.

EXECUTIVE SUMMARY:

Leewauna Epps filed a claim with the City requesting \$3,000.00 for property damages allegedly arising from a tree limb that fell on the property at 1332 Franklin Street, Racine, WI, or about August 20, 2022. There was no prior notice of a 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:

Leewauna Epps filed a claim with the City requesting \$3,000.00 for property damages allegedly arising from a tree limb that fell on the property at 1332 Franklin Street, Racine, WI, or about August 20, 2022. Weather history for August 20, 2022 indicates that rain and associated winds blowing at approximately 30 MPH moved through during the night between 2 and 3 AM. The claimant is requesting reimbursement for six children's bicycles, two air conditioners, patio furniture, a basketball hoop, a barbecue grill, and two coolers, all of which she alleges were damaged by the fallen tree limb. The claimant is not requesting reimbursement for damages to the residence, as she is not the owner of this property.

The City is immune from liability for these 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

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 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 defect in the tree.
36 Inspection of this particular tree was conducted as part of the annual summer inspection in July 2022, and
37 there is no evidence of any defect or other pruning or removal order being entered into the City's database
38 at that time. Since the annual inspection revealed no defects and the City did not have prior notice of any
39 defect, the City did not have a ministerial duty to service this tree, and the City cannot be held liable for
40 this branch falling.

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

43 _____

44 **BUDGETARY IMPACT:**

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

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48 **RECOMMENDED ACTION:**

49 That the claim of Leewauna Epps be disallowed.

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51 **ATTACHMENT(S):**