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**City of Racine, Wisconsin  
Common Council**

**AGENDA BRIEFING MEMORANDUM**

**COMMITTEE:** Finance and Personnel

**LEGISLATION ITEM #: 0846-23**

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**AGENDA DATE:** August 28, 2023

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**DEPARTMENT:** City Attorney's Office

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

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**SUBJECT:** Communication sponsored by Alder West on behalf of the City Attorney's Office submitting the claim of Myeshah Hollis for consideration for disallowance.

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**EXECUTIVE SUMMARY:**

Myeshah Hollis filed a claim with the City requesting \$598.50 for damages allegedly arising from her vehicle being struck by a tree branch while it was parked on the 1400 block of Quincy Avenue, Racine, Wisconsin, or about July 13, 2023. 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.

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**BACKGROUND & ANALYSIS:**

Myeshah Hollis filed a claim with the City requesting \$598.50 for damages allegedly arising from her vehicle being struck by a tree branch while it was parked on the 1400 block of Quincy Avenue, Racine, Wisconsin, or about July 13, 2023. The tree in question was most recently inspected in June 2022, July 2021, and July 2020, according to the Parks Department's annual inspection schedule; and it was pruned in May 2016 and in January 2023. The City had no prior notice of a current defect in this tree.

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 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 or a tree branch before its fall.

32           In some cases, the City could be held liable if it was given notice of a defect and its failure to  
33 remedy such defect was unreasonable. Here, there is no evidence that the City knew of a current defect in  
34 the tree. Inspection of this particular tree was conducted per the annual schedule in June 2022, and pruning  
35 was conducted as recently as January 2023, and there is no evidence of any defect being entered into the  
36 City’s database at that time. Since this recent inspection revealed no defects and the City did not have prior  
37 notice of any defect, the City did not have a ministerial duty to service this tree, and the City cannot be held  
38 liable for this branch falling.

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

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42 **BUDGETARY IMPACT:**

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

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46 **RECOMMENDED ACTION:**

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

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49 **ATTACHMENT(S):**