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City of Racine, Wisconsin  
COMMON COUNCIL

**AGENDA BRIEFING MEMORANDUM**

**COMMITTEE:** Finance and Personnel Committee    **LEGISLATION ITEM #:** 0963-18

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**AGENDA DATE:** 9/24/18

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**DEPARTMENT:** City Attorney's Office

**Prepared By:** Nhu Arn

**Reviewed By:**

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**SUBJECT:** Claim filed by Kacy Mathis, dated 5/31/18

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**EXECUTIVE SUMMARY:** It is the recommendation of the City Attorney's Office to deny this claim based on lack of negligence, as well as discretionary immunity.

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**BACKGROUND & ANALYSIS:**

On June 16, 2018, Kacy Mathis filed a claim with the City demanding \$2,733.23 in damages to her vehicle as a result of a tree branch falling on it. According to the police report, Ms. Mathis was operating her vehicle on 5/31/18 at the 2500 block of Washington Avenue when a tree branch fell on her vehicle. The police report confirms that a tree branch did fall onto her vehicle, but did not identify which tree in particular. Ms. Mathis claims that the tree was a very large, dead tree and that she should be reimbursed for her vehicle repairs.

Matthew Koepnick, the City Forrester, was not informed of the incident until approximately two weeks after it occurred. Upon inspecting the area, Ms. Koepnick identified the likely tree in question, which was located within a forest area owned and maintained by the City. He inspected the tree and found the tree to be healthy with no dead branches remaining. Mr. Koepnick states that even healthy trees will sometimes result in fallen branches, and that is a natural shedding process that can oftentimes be unpredictable. Due to the exact tree not having been identified, Mr. Koepnick also inspected all other

29 trees in the surrounding area to assess potential safety concerns. At that time, he did not identify any  
30 trees in the area that were dead, or needed to be pruned or removed.

31 The City conducts an annual tree removal survey every year to identify any trees within the public right  
32 of way that need to be pruned or removed. During this 2-3 week survey, arborists are assigned to  
33 various sections of the City and are then tasked with examining all trees in their assigned areas. The goal  
34 is to mark trees for removal or pruning as needed, in order to make the public right of way safe for both  
35 pedestrian and vehicular travel. For at least the past 5 years, the City has had no record of any trees in  
36 this particular area of the forest having been marked for pruning or removal as part of this survey. As  
37 such, the City had no prior notice of any defects and therefore did not have any ministerial duty to act  
38 prior to this incident.

39 Moreover, tree removal is a discretionary public works function, in that the City has freedom to  
40 determine how and when trees are maintained. Because this is a discretionary act, the City is immune  
41 from liability pursuant to Wis. Stat. § 893.80(4).

42 For the above reasons, the claim should be denied.

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44 **BUDGETARY IMPACT:** \$2,733.23, if the claim is paid

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46 **OPTIONS/ALTERNATIVES:** Pay the claim.

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48 **RECOMMENDED ACTION:** Deny the claim.

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50 **ATTACHMENT(S):**