



**City of Racine, Wisconsin
Common Council**

AGENDA BRIEFING MEMORANDUM

INTRO TO COUNCIL DATE: February 19, 2025

STANDING COMMITTEE DATE: February 24, 2025

FINAL ACTION COUNCIL DATE: March 4, 2025

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 Patricia Peksa for consideration for disallowance.

EXECUTIVE SUMMARY:

Patricia Peksa filed a claim with the City requesting \$14,200.00 for property damages allegedly arising from a tree limb that fell on the property at 1513 Indiana Street, Racine, WI, or about July 15, 2024. The City denies liability due to defects in the claim as filed. Furthermore, 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:

Patricia Peksa filed a claim with the City requesting \$14,200.00 for property damages allegedly arising from a tree limb that fell on the property at 1513 Indiana Street, Racine, WI, or about July 15, 2024. Among the damages alleged were repairs to the property's fence, gutters, soffit, front porch, and sidewalk concrete.

The City denies liability due to defects in the claim as filed. Specifically, the claim that Ms. Peksa filed with the City on or about December 2, 2024 alleging a July 15, 2024 event that gave rise to the claimed damages was untimely filed, contrary to Wis. Stat. § 893.80(1d)(a), which requires a claim to be filed within

120 days after the happening of the event giving rise to the claim. The instant claim was filed 140 days after the event that gave rise to the claim.

Furthermore, 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 before its fall.

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 a defect in the tree. Inspection of this particular tree has been regularly conducted each year as part of the City’s Forestry Division’s annual summer inspections, and there was no evidence of any defect upon the most recent inspection prior to this incident. Additionally, the tree in question was most recently pruned by the City’s Forestry Division on August 4, 2022 and September 6, 2022, and no significant issues were identified with this tree at that time. Since the most recent annual inspection revealed no defects and the City did not have prior notice of any defect, the City did not have a ministerial duty to service this tree, and the City cannot be held liable for this tree falling.

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

BUDGETARY IMPACT:

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

RECOMMENDED ACTION:

That the disallowance of this claim be recommended for approval.