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**City of Racine, Wisconsin
Common Council**

AGENDA BRIEFING MEMORANDUM

COMMITTEE: Finance and Personnel

LEGISLATION ITEM #:

AGENDA DATE: November 11, 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 Dannez Green for consideration for disallowance.

EXECUTIVE SUMMARY:

Dannez Green filed a claim with the City requesting \$4,128.89 for damages allegedly arising from the claimant's vehicle being struck by a tree branch while it was parked in the vicinity of at 2203 Ohio Street in Racine on or about July 14, 2024. 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.

BACKGROUND & ANALYSIS:

Dannez Green, of 2203 Ohio Street, Racine, Wisconsin 53405, filed a claim with the City requesting \$4,128.89 for damages allegedly arising from the claimant's vehicle being struck by a tree branch while it was parked in the vicinity of at 2203 Ohio Street on or about July 14, 2024. The tree in question was most recently inspected and pruned on March 26, 2024, according to the Parks Department's Forestry Division. 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

31 judgment on the part of the arborist. Given the discretionary nature of these acts, the City cannot be held
32 liable for failing to prune or remove a tree or a tree branch before its fall.

33 In some cases, the City could be held liable if it was given notice of a defect and its failure to
34 remedy such defect was unreasonable. Here, there is no evidence that the City knew of a current defect in
35 the tree. Inspection and pruning of this particular tree was conducted in March 2024, and there is no
36 evidence of any defect being entered into the City's database at or after that time. Since this inspection
37 revealed no defects and the City did not have prior notice of any existing defect, the City did not have a
38 ministerial duty to service this tree, and the City cannot be held 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.
48 _____

49 **ATTACHMENT(S):**