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**City of Racine, Wisconsin  
Common Council**

**AGENDA BRIEFING MEMORANDUM**

**COMMITTEE:** Finance and Personnel

**LEGISLATION ITEM #: 0457-23**

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**AGENDA DATE:** May 8, 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 Tangler Malone for consideration for disallowance.

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**EXECUTIVE SUMMARY:**

Tangler Malone filed a claim with the City requesting an unspecified amount of damages allegedly arising from a tree limb that fell on a vehicle parked in front of the property located at 1253 West Blvd, Racine, Wisconsin, or about January 14, 2023. Because the claimant failed to satisfy the requirements of Wisconsin Statute section 893.80(1d), no action may be brought or maintained against the City for these damages. Furthermore, the City had no prior notice of a defect in the tree branch in question; therefore, the City is not liable for these damages. For these reasons, it is the recommendation of the City Attorney's Office that this claim be disallowed.

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**BACKGROUND & ANALYSIS:**

Tangler Malone filed a claim with the City requesting an unspecified amount of damages arising from a tree limb that fell on a vehicle parked in front of the property located at 1253 West Blvd, Racine, Wisconsin, or about January 14, 2023.

In order to bring or maintain an action against the City, Wisconsin Statute section 893.80(1d) sets forth the requirement that, among other criteria, "written notice of the circumstances of the claim" *must be* "signed by the party, agent or attorney," and a claim *must contain* "an itemized statement of the relief sought." Because the written notice of the circumstances of the claim was not signed by anyone, and the claim did not contain an itemized statement of the relief sought, the claimant failed to satisfy the

31 requirements of Wisconsin Statute section 893.80(1d), and no action may be brought or maintained against  
32 the City for these damages.

33 Furthermore, the City is immune from liability for these alleged damages pursuant to Wisconsin  
34 Statute section 893.80. In short, state law confers broad immunity from suits on municipalities for acts that  
35 are considered “discretionary” in nature. In the case of maintaining trees, the task of deciding which trees  
36 need pruning, maintenance, or removal and when such actions should be taken are all discretionary acts  
37 requiring judgment on the part of the arborist. Given the discretionary nature of these acts, the City cannot  
38 be held liable for failing to prune or remove a tree branch before its fall.

39 In some cases, the City could be held liable if it was given notice of a defect and its failure to  
40 remedy such defect was unreasonable. Here, there is no evidence that the City knew of a defect in the tree  
41 branch in question. A regularly scheduled inspection and pruning of this particular tree was conducted in  
42 January 2023 in accordance with the 6-year pruning cycle, and the tree branch in question appeared healthy  
43 at that time. Since this recent inspection revealed no defects in the tree branch in question and the City did  
44 not have prior notice of any defect, the City did not have a ministerial duty to service this tree branch, and  
45 the City cannot be held liable for this branch falling.

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

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49 **BUDGETARY IMPACT:**

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

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53 **RECOMMENDED ACTION:**

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

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