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**City of Racine, Wisconsin
Common Council**

AGENDA BRIEFING MEMORANDUM

COMMITTEE: Finance and Personnel

LEGISLATION ITEM #: 0619-20

AGENDA DATE: September 21, 2020

DEPARTMENT: City Attorney's Office

Prepared By: Assistant City Attorney Marisa Roubik

SUBJECT: Communication sponsored by Alder Taft on behalf of the City Attorney's Office submitting the claim of Gregory Nielsen for consideration for disallowance.

EXECUTIVE SUMMARY:

Gregory Nielsen filed a claim with the City requesting \$697.41 in damages to his vehicle after a tree branch allegedly fell on his car that was parked at 2514 Virginia Street on or about June 2, 2020. Here, there was no prior notice of a defect in the tree. 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:

Gregory Nielsen, of 2515 Virginia Street, Racine, WI 53405, filed a claim for reimbursement for \$697.41 in damages to his vehicle after a tree branch allegedly fell on his car, which was parked on the street in front of 2514 Virginia Street on or about June 2, 2020 around 11:30 PM.

The City is immune from liability for Mr. Nielsen's 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.

30 In some cases, the City could be held liable if it was given notice of a defect and its failure to remedy such
31 defect was unreasonable. Here, there is no evidence that the City knew of a defect in the tree. Inspection
32 of this particular tree was conducted as part of the annual summer inspection in 2019, and there is no
33 evidence of any defect or other removal order being entered into the City's database at that time. Since the
34 annual inspection revealed no defects and the City did not have prior notice of any defect, the City did not
35 have a ministerial duty to service this tree.

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

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38 **BUDGETARY IMPACT:**

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

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42 **OPTIONS/ALTERNATIVES:**

43 If the Committee recommends that this claim be paid by the City (contrary to any indication of the City's
44 liability for the alleged damages), this item would have up to a \$697.41 impact on the City's 2020 claims
45 budget.

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47 **RECOMMENDED ACTION:**

48 The City Attorney's Office respectfully advises this Committee to recommend that the Common Council
49 disallow the claim of Gregory Nielson.

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51 **ATTACHMENT(S):**