



**City of Racine, Wisconsin
Common Council**

AGENDA BRIEFING MEMORANDUM

COMMITTEE: Finance and Personnel

LEGISLATION ITEM #: 0647-22

AGENDA DATE: September 12, 2022

DEPARTMENT: City Attorney's Office

Prepared By: Deputy City Attorney Marisa Roubik

SUBJECT: Communication sponsored by Alder Taft on behalf of the City Attorney's Office submitting the claim of Samantha Bisgrove and Branden Weber for consideration for disallowance.

EXECUTIVE SUMMARY:

Samantha Bisgrove and Branden Weber filed a claim with the City requesting \$12,104.00 in damages to the property at 2620 Arthur Avenue after a tree growing in Pierce Park allegedly fell on the garage, fence, and yard at said address on or about July 8, 2022. 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:

Samantha Bisgrove and Branden Weber, of 2620 Arthur Avenue, Racine, Wisconsin 53405, filed a claim for reimbursement for \$12,104.00 in damages after a tree growing in Pierce Park allegedly fell on the garage, fence, and yard at said address on or about July 8, 2022.

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.

31 In some cases, the City could be held liable if it was given notice of a defect and its failure to
32 remedy such defect was unreasonable. Here, there is no evidence that the City knew of a defect in the tree.
33 Inspection of this particular tree was conducted as part of the annual summer inspection in 2021, and there
34 is no evidence of any defect or other removal order being entered into the City's database at that time. Since
35 the annual inspection revealed no defects and the City did not have prior notice of any defect, the City did
36 not have a ministerial duty to service this tree.

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

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40 **BUDGETARY IMPACT:**

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

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44 **RECOMMENDED ACTION:**

45 That the claim of Samantha Bisgrove and Branden Weber be disallowed.

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47 **ATTACHMENT(S):**