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**City of Racine, Wisconsin
Common Council**

AGENDA BRIEFING MEMORANDUM

COMMITTEE: Finance and Personnel

LEGISLATION ITEM #: 1149-19

AGENDA DATE: October 21, 2019

DEPARTMENT: City Attorney's Office

Prepared By: Assistant City Attorney Marisa Roubik

SUBJECT: Communication sponsored by Alder Shakoor II submitting the claim of Jonathan Eckblad for consideration for disallowance.

EXECUTIVE SUMMARY:

Jonathan Eckblad filed a claim with the City requesting \$2,500.00 in damages for home repairs allegedly arising from tree damage after a storm on or about July 2, 2019 at 3429 North Main Street. Here, there was no prior notice of a defect in the trees. As such, the City did not have a ministerial duty to service these trees, 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:

Jonathan Eckblad, of 3429 North Main Street, Racine, Wisconsin 53402, filed a claim for reimbursement for \$2,500.00 in damages for home repairs allegedly arising from tree damage after a storm on or about July 2, 2019. According to the claimant, this severe storm destroyed five trees on the claimant's property and two trees were downed completely. Tree damage was alleged to occur to the claimant's chimney, roof, gutters, flag pole, and several windows.

The City is immune from liability for Mr. Eckblad'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.

32 In some cases, the City could be held liable if it was given notice of a defect and its failure to remedy
33 such defect was unreasonable. Here, there is no evidence that the City knew of the defect in the trees.
34 Inspection of these particular trees was conducted as part of the annual summer inspection in August of
35 2018 and none of the trees were marked for removal at that time. Since the annual inspection revealed no
36 such defects and the City did not have prior notice of any defect, the City did not have a ministerial duty
37 to service these trees.

38 For the reasons set forth above, the City is immune from liability and the claim should be 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 impact on
42 the City's budget.

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44 **OPTIONS/ALTERNATIVES:**

45 If the Committee recommends that this claim be paid by the City (contrary to any indication of the City's
46 liability for the alleged damages), this item would have up to a \$2,500.00 impact on the City's 2019
47 claims budget.

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49 **RECOMMENDED ACTION:**

50 To recommend that the Common Council disallow the claim of Jonathan Eckblad.

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52 **ATTACHMENT(S):**