



City of Waukesha
201 Delafield St. Waukesha, WI 53188
Tel: 262.542.3700
waukesha-wi.gov

Committee: None	Date: 8/10/2023
Common Council Item Number: 23-7431	Date: 8/15/2023
Submitted By: Brian Running	City Administrator Approval: GLK
Finance Department Review: DVK	City Attorney's Office Review: BER
Subject: Disallowance of claim for damage to auto – Marcus Misfeldt.	

Details:

Mr. Misfeldt's car was parked on Wabash Avenue. A large limb from a tree in the terrace fell and landed on the car, causing damage to the roof and left rear door. Photos are included in the claim, which is also attached to the agenda. Forestry reports that there was no prior indication that the limb was in danger of falling. The City is liable if it has notice that a tree poses a danger of damage or injury and then does not take appropriate steps to prevent the damage or injury. Without that notice, there is no duty for the City to take action, and no liability, which is why disallowance is recommended. Mr. Misfeldt can then pursue a claim in court where the issues of liability can be sorted out. Note that Mr. Misfeldt's claim for damages, \$10,969.09, significantly exceeds the Kelly Blue Book value of the car, between \$4830 and \$7811.

Options & Alternatives:

A compromise settlement could be attempted, purely to avoid having to go to court. If that is the Council's desire, then the Council should authorize the City Attorney to pursue a compromise and use discretion in the City's best interest. We would require that two more repair estimates be obtained, and that any payment be made payable to the repair shop.

Financial Remarks:

If payment is made, it would come from account 1520.57420.

Executive Recommendation:

Disallow the claim.