



## CITY OF WAUKESHA

### Administration

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<b>Committee:</b> None	<b>Committee Meeting Date:</b> <a href="#">Click here to enter a date.</a>
<b>Agenda Item Number:</b> 19-0770	<b>Common Council Meeting Date:</b> 6/4/2019
<b>Submitted By:</b> Brian Running, City Attorney	<b>City Administrator Approval:</b> Kevin Lahner, City Administrator <a href="#">Click here to enter text.</a>
<b>Finance Department Review:</b> Rich Abbott, Finance Director RA	<b>City Attorney's Office Review:</b> Brian Running, City Attorney BER
<b>Subject:</b>  Disallowance of claim for damages by Ashly Stamm.	

#### Details:

On February 7 of this year a large limb split and fell off a tree in the terrace of South Charles Street. Unfortunately, Ms. Stamm's pickup truck was beneath it when it fell, resulting in about \$9000 of damage to the truck, according to estimates she received from body shops. The City would only be liable for damages if it had actual notice and knowledge that the tree presented a hazard and failed to take any action to prevent harm resulting from that hazard. The City Forester reports that there was no notice or knowledge that this particular tree was a hazard, therefore, the City should not allow and pay this claim. By disallowing the claim, Ms. Stamm would then have 6 months within which to file a lawsuit against the City, if she wishes to. To succeed in that suit, she would have to show that the City did have actual notice and knowledge that the tree might break and cause damage to persons or property beneath it and failed to take appropriate action.

Our liability insurance company has already rejected the claim on these same grounds.

The proper course for Ms. Stamm is to report this claim to her auto insurance carrier, which would pay to repair her vehicle and then pursue the City for subrogated damages. If the subro suit were successful, Ms. Stamm would recover her deductible, if she paid one.

#### Options & Alternatives:

There are two alternatives: One, pay the claim. That is not recommended, as there is no evidence that the City was negligent. Two, take no action, and allow the claim to be disallowed by failure to act on it within 120 days of its receipt by the City. That is also not recommended, because it leaves the statute of limitations for a suit against the City at 6 years, as opposed to 6 months. The 6-month limitations period is very advantageous to the City because the City does not have to carry a contingent liability forward into following years, and gives the City more certainty about its potential liabilities.

#### Financial Remarks:

There is no immediate financial impact to the City.

#### Staff Recommendation:

Disallowance of the claim and authorization to the City Clerk to issue a formal disallowance notice to Ms. Stamm.



Ashly Stamm

236 South Charles street  
Waukesha WI  
262-424-9122  
ashleebaby3069@yahoo.com

February 7th 2019

City of Waukesha,

This is a claim against the city of Waukesha for damage done to a truck on February 7th 2019. On this day in February a tree limb from a tree that was on city property fell on top of my truck. The incident took place at 231 south Charles street Waukesha WI. I was parked on the street during the morning of February 7th 2019 when I heard a loud bang sound at 8am while I was getting ready for work when I looked out the window I had seen that a very large limb from a tree that was on city property next to where I was parked had peeled off of the side of the tree and fallen on top of my truck. I immediately ran outside while neighbors had called the police department because the limb of the tree was so big it completely blocked the street. Once the police arrived they had called the city of Waukesha to come get the tree branch off my truck. Once the city arrived they had to cut it up and then had to use huge machinery to lift the massive branch off my truck. This claim is for the damages sought after for the repairs needed to fix my truck now that a tree limb that was on the city Waukesha's property had fallen on my truck. The city of Waukesha acted negligently by not cutting down the limb that was next to the sidewalk in the first place before fall/winter had started because if you take a look at the document provided from a certified master arborist WI-0145B he stated that "the failure was result of winds, a weak trunk union and significant frost cracks. Codominant stems with weak unions and frost cracking is characteristic of linden. If these trees are not braced, then codominant limb should be removed to eliminate potential hazard." This statement proves that the limb had a weak joint so it should of been cut off before fall started so that it wouldn't of been a hazard which would of resulted in the limb not peeling off and falling on my truck. The arborist also had provided a picture of the tree in addition to his letter which I also provided. I have provided two detailed itemized estimates from two auto body shop of what the cost is of fixing the truck. The damage amount I am seeking is \$8,946.98 for the repairs of my truck to return it to the way it was before the tree limb had fallen on it. I have provided many pictures of the incident that took place and to show the damage done. If you have any questions please feel free to contact me the best way would be by cell phone at 262-424-9122 at any time however if I do not answer leave a voicemail and I will get back to u as soon as possible or u can contact me by email at [ashleebaby3069@yahoo.com](mailto:ashleebaby3069@yahoo.com) I will respond within a couple minutes. My current residence is at 236 south Charles street. The location of the incident was at 231 south Charles street. I appreciate you taking the time to review this claim and look forward to hearing from you.

Sincerely,

Ashly Stamm