

**CITY OF WAUKESHA****Administration**

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<b>Source:</b> City Attorney	<b>Date:</b> 3/30/2017
<b>Common Council Item Number:</b> 17-0494	<b>Date:</b> 4/6/2017
<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 <a href="#">Click here to enter text.</a>	<b>City Attorney's Office Review:</b> Brian Running, City Attorney <a href="#">Click here to enter text.</a>
<b>Subject:</b> Disallowance of claim for damages by Anthony San Fellippo.	

**Details:**

A claim for property damages was served on the City by Anthony San Fellippo. Mr. San Fellippo was walking, and allegedly tripped on a City manhole cover that was slightly ajar. Mr. San Fellippo claims \$106.07 of medical expenses that were not covered by his medical insurance, and is also asking that future follow-up doctor visits be paid for.

A disallowance does not mean that Mr. San Fellippo will not recover anything. The effect of the disallowance is only to begin the running of a six-month period within which he must file suit against the City or have his claim barred. If we do not formally disallow, the statute of limitations would be six years. The six-month period allows the City to manage its claims more efficiently, by allowing us to close out cases faster.

The City Attorney's Office will always recommend disallowance of claims in cases of negligence, such as this one. The reason is that negligence cases always involve an allocation of negligence among the parties; it is *extremely* rare when one party is unquestionably 100% at fault. A party's right to recovery is reduced by the party's percentage of fault, or even barred altogether. That allocation of negligence should be done in mediation or at trial, not at the claims-notice stage. Almost certainly, there will be a settlement of this matter, after a suit is filed.

**Options & Alternatives:**

The alternatives are to pay the claim immediately in exchange for a full release of claims, or to disallow the claim and start the six-month period running. We do not recommend the other alternative, which is to do nothing, and allow the six-years statute of limitations to apply.

**Financial Remarks:**

There is no immediate financial impact from a disallowance.

**Staff Recommendation:**

Disallow the claim of Anthony San Fellippo and authorize the City Attorney to deliver a notice of disallowance to Mr. San Fellippo.