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## MEMORANDUM

**TO:** Common Council  
**FROM:** Assistant City Attorney Nicholas Cerwin  
**DATE:** December 13, 2018  
**SUBJECT:** City Attorney's Report of Claim- Cheryl Dolge Claim

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Dear Common Council Members,

The enclosed claim has been referred to this office in accordance with Section 3.05(8) of the Revised Municipal Code. This office has examined the facts of the claim and the applicable law. This office's recommendation is to deny the claim based on the summary below:

**Facts:** Cheryl Dolge alleges that on or about July 1, 2018 a strong storm had caused a limb from a tree on the City's right of way to fall and cause damage to the claimant's 2012 Ford Focus. West Allis Police Officer Christianson reported to the scene for the reported branch falling on a vehicle. Officer Christianson made contact with the claimant who had indicated at the time that she had parked the vehicle in her driveway and that a storm had proceeded through the area causing the branches to fall onto the trunk of her vehicle. Ms. Dolge provided three estimates which ranged in value from \$1,941.58 dollars to \$2,418.52 dollars.

**Claim:** Cheryl Dolge is alleging that the City is responsible for the damage to her car. She is seeking \$3,000.00 dollars in damages regarding this claim.

**Analysis:**

This claim should be denied. Ms. Dolge's claim essentially asserts that the City should be liable for a tree limb that fell onto her car from the City's right of way when a storm damaged the tree and caused the limb to fall. The Wisconsin statutes and case law interpreting those statutes does not support the claimant's position. Instead, the City would need to have either been aware of some defect or should have been aware of a defect with the tree and then failed to act on a duty to correct that defect before any liability claims could be successfully asserted. In this case, the City was not aware of any defects in the tree and there had not been any complaints that the tree was damaged prior to the storm.

Additionally, the City would not be liable for unforeseeable events that cause damage to an otherwise healthy tree. Furthermore, appropriate maintenance of trees in the City right of way is a discretionary decision so long as the trees do not represent a private nuisance. In this case because there was no private nuisance and the City would be immune from liability for discretionary decisions. Finally, Ms. Dolge does not support the claimed amount with sufficient evidence to justify the dollar amount requested and therefore the claimant would be unable to prove the asserted amount.



Therefore, based on the above analysis, the City Attorney's Office is recommending that the Common Council deny this unmeritorious claim.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "N.S. Cerwin".

Nicholas S. Cerwin  
Assistant City Attorney