

**THE CITY OF OKLAHOMA CITY
OFFICE OF
THE MUNICIPAL COUNSELOR**

Council Agenda
Item No. XI. W
5/20/2025

TO:	Mayor and Council	Travis Lane 18500 Salvador Road Edmond, OK 73102 Ward 8 \$300
FROM:	Kenneth Jordan Municipal Counselor	
AGENDA CLAIM # a		Recommended for DENIAL

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges a water main break occurred on September 11, 2024, at 18500 Salvador Road, Edmond, OK, when a private contractor installing fiber optic cable for a private company struck a water line. Claimant alleges that as a result of the water break, sand entered his residential plumbing lines and affected his plumbing system. Claimant alleges he had to cut into his home's sheetrock and replace plumbing valves due to the sand in his lines. Damages are alleged in the amount of \$300. This amount is supported by documentation.

Section 153(A) of the Governmental Tort Claims Act provides:

- A. The state or a political subdivision shall be liable for loss resulting from its torts or the torts of its employees acting within the scope of their employment subject to the limitations and exceptions specified in The Governmental Tort Claims Act and only where the state or political subdivision, if a private person or entity, would be liable for money damages under the laws of this state. The state or a political subdivision shall not be liable under the provisions of The Governmental Tort Claims Act for any act or omission of an employee acting outside the scope of the employee's employment.

51 O.S. 2023 Supp. §153(A).

According to the Oklahoma Supreme Court, a prima facie case of negligence is established by showing the following: "(1) a duty owed by the defendant to protect the plaintiff from injury, (2) a failure to properly exercise or perform that duty and (3) the plaintiff's injuries are proximately caused by the defendant's failure to exercise his duty of care." *McKellips v. Saint Francis Hospital, Inc.*, 741 P.2d 467, 470 (Okla. 1987) (citations omitted).

Proximate cause has two components - legal causation and cause in fact. *Id.* Cause in fact is determined by the "but for" test: "The defendant's conduct is a cause of the event if the event would not have occurred but for that conduct." *Id.* (citations omitted). "Proximate cause" is also a synonym for "legal cause." BLACK'S LAW DICTIONARY, 804 (6th Ed. 1990). To clarify this issue, the Oklahoma Supreme Court has further defined proximate cause: "The proximate cause of an event must be that which in a natural and continuous sequence, unbroken by an independent cause,

produces the event and without which the event would not have occurred." *Gaines v. Providence Apartments*, 750 P.2d 125, 126-27 (Okla. 1987) (citations omitted).

A City is not an insurer of its water mains. *City of Muskogee v. Turner*, 98 P.2d 1095, 1097 (Okla. 1940). Nevertheless, as as stated above, the City is liable for loss resulting from its torts or the torts of its employees acting within the scope of their employment. 51 O.S. 2023 Supp. §153(A).

This office is in receipt of information from the Line Maintenance Division of the Utilities Department regarding this incident. This information corroborates the claimant's allegations that the damage to the City's properly marked water lines was caused by a private contractor working for a private company. The claimant has been provided the name of the private contractor.

Based on the above information and applicable Oklahoma law, it is the opinion of this office that this claim should be denied, and we so recommend.

CJH