

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

Council Agenda  
Item No. XI. AC  
1/30/2024

TO:	Mayor and Council	Donna Edwards 2704 SW 111th Street Oklahoma City, OK 73170 Ward 5 \$3,022.96 Recommended for DENIAL
FROM:	Kenneth Jordan Municipal Counselor	
AGENDA CLAIM # a		

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges her vehicle was splattered with paint between July 31, 2023 and August 9, 2023, when a street striper vehicle was working on the road at or near the intersection of SW 104th Street and South May Avenue in Oklahoma City. Damages are alleged in the amount of \$3,022.96, the cost of painting the vehicle. 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).

Section 155 of the Governmental Tort Claims Act provides, in pertinent part, that the state or a political subdivision shall not be liable if the loss or claim results from:

18. An act or omission of an independent contractor or consultant or his or her employees, agents, subcontractors or suppliers or of a person other than an employee of the state or political subdivision at the time the act or omission occurred.

51 O.S. 2023 Supp. §155(18).

The office is in receipt of information from the Field Services Division of the Public Works Department regarding this incident. This information indicates that an independent contractor was most likely responsible for claimant's damages. Claimant has been provided the contractor's contact information.

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.

SRS

## DENIED

Brannan Wolford  
8105 NW 89th Street  
Oklahoma City, OK 73132  
Ward 1  
\$4,604.52  
Recommended for DENIAL

### AGENDA CLAIM # b

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges claimant's vehicle was damaged on September 8, 2023 when it struck a sinkhole allegedly caused by a defective gas line while traveling at or near 1000 North Hudson Avenue in Oklahoma City. Damages are alleged in the amount of \$4,604.52, the cost of replacing a wheel, repairing the rocker panel, and performing an alignment. 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).

The Supreme Court of Oklahoma has held that "the municipality is not an insurer of safety of the traveling public." *Williams v. City of Bristow*, 350 P.2d 484 (Okla. 1960), *Rider v. City of Norman*, 476 P.2d 312, 313 (Okla. 1970), and *Evans v. City of Eufaula*, 527 P.2d 329, 332 (Okla. 1974). A municipality has a duty to exercise ordinary or reasonable care in maintaining the streets and

sidewalks in a reasonably safe condition for those using them in a proper manner. *Rider v. City of Norman*, 476 P.2d 312, 313 (Okla. 1970) and *Evans v. City of Eufaula*, 527 at 332. A municipality is liable only for negligence in failing to repair, remove or guard against substantial defects or obstructions after actual or constructive notice of their existence. *Williams* at 488.

Regarding constructive notice, the Supreme Court of Oklahoma has held that a city need not have actual notice of the condition of its streets to be liable for injuries resulting from defective condition of its streets, but it is sufficient that the defective condition has existed for such a period of time that the city, by use of ordinary care, could have discovered it. *City of Norman v. Sallee*, 238 P.2d 292, 296 (Okla. 1951), *Picher v. Barrett*, 249 P.739, 740 (Okla. 1926), *Wagoner v. Black*, 97 P.2d 21, 23 (Okla. 1939) citing *Armstrong v. City of Tulsa*, 226 P. 560, 563 (Okla. 1924), and *Sapulpa v. Williams*, 249 P. 152 (Okla. 1926).

This office is in receipt of information from the Streets Maintenance Division of the Public Works Department regarding this incident. The information indicates that there were no reports of road defects at or near the same location in the six months prior to the incident. This office is also in receipt of information from the Line Maintenance Division of the Utilities Department regarding this incident. The information indicates that the gas line at this location was not installed by the City. In this case, it appears the City did not have actual or constructive notice of the defective condition of the streets at or near this location prior to the claimant's incident. Furthermore, after having received notice of a defect, City workers repaired the area within a reasonable amount of time. Claimant has been provided with this information.

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.

SRS