

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

Council Agenda
Item No. XI. T
5/6/2025

TO:	Mayor and Council	Ellen Bates 16805 Rainwater Trail Edmond, OK 73012 Ward 8 \$630.75
FROM:	Kenneth Jordan Municipal Counselor	
AGENDA CLAIM #	a	Recommended for APPROVAL

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges a water main break occurred on August 10, 2024, at 16805 Rainwater Trail, Edmond, OK. Claimant alleges that during the subsequent repairs made by City employees to the line and her driveway, the City allowed asphalt to enter the water line causing damage to her plumbing inside her home. Damages are alleged in the amount of \$630.75, the cost of repairs to her plumbing and sheetrock. 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 indicates that the water main in front of claimant's home failed on the date in question, and Line Maintenance Department employees replaced the pipe under the claimant's driveway. City employees also applied a temporary patch to the surface, which included the application of asphalt.

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

CJH

APPROVED

Matthew Tom
2709 SW 83rd Street
Oklahoma City, OK 73159
Ward 5
\$485
Recommended for APPROVAL

AGENDA CLAIM # b

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges that on January 12, 2025, an Oklahoma City Police Department (OCPD) Officer lost the claimant's property, which consisted of his driver's license, cash, and a bank card, when the property was mistakenly left on top of the officer's police vehicle by the officer and then subsequently fell off the roof once the officer left the area of 7432 South May Avenue, Oklahoma City, OK 73159. Damages are alleged in the amount of \$485. 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 office is in receipt of information from the Oklahoma City Police Department regarding this incident. This information corroborates claimant's narrative and verifies claimant's allegations.

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

JWJ/cjh