

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

Council Agenda
Item No. IX. BA
4/26/2022

TO: Mayor and City Council

FROM: Kenneth Jordan
Municipal Counselor

Resolution authorizing the Municipal Counselor to waive service of process and to confess judgment without admission of liability in the amount of \$3,034.39 and all the costs of the action in the Oklahoma County District Court in the claim filed by Vicki Cornelius. Ward 2.

Claimant's address:
8901 North Walker Avenue
Oklahoma City, OK 73114

This office acknowledges receipt of a claim from the above referenced claimant in which claimant alleges that on December 1, 2021, around 10:30 am, claimant was traveling on 96th Street and North Western Avenue in Oklahoma City when she hit a pothole which caused \$3,034.39 worth of damage to her vehicle. This amount is supported by documentation submitted by the claimant.

The Oklahoma Government Tort Claims Act provides that:

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.Supp.2015, § 153(A). The claimant's allegation is based solely on a theory of negligence. 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." *John v. Saint Francis Hospital, Inc.*, 2017 OK 81, ¶ 32, 405 P.3d 681, 691 (citation omitted).

It is well established that a municipal corporation has a primary duty of keeping and maintaining its streets, sidewalks, and public ways, in a reasonably safe condition for the traveling public, and that its

liability for personal injuries by reason of defects and obstructions therein is founded solely on negligence.

Oklahoma City v. Prieto, 1971 OK 10, ¶ 7, 482 P.2d 919, 921 (citation omitted).

Under a negligence theory, the City did not owe a duty to the claimant unless it had prior notice of the pothole claimant struck. “[E]xcept when the [street] has been rendered unsafe by the direct act, order, or authority of the municipal corporation, it is not liable for an unsafe condition of the same of which it has no notice, actual or constructive.” *City of Ardmore v. Griffin*, 1953 OK 233, ¶ 6, 261 P.2d 218, 220 (citation omitted). “A municipality is liable only for negligence in failing to repair, remove or guard against substantial (as distinguished from ‘slight or trivial’) defects or obstructions after actual or constructive notice of their existence.” *Williams v. City of Bristow*, 1960 OK 61, ¶ 27 350 P.2d 484, 488.

This office is in receipt of information from the Streets, Traffic, and Drainage Maintenance Division of the Public Works Department that there had been multiple prior complaints of potholes in the area.

Based on the above information and applicable Oklahoma law, it is the opinion of this office that this claim should be approved in the amount of \$3,034.39, and that the Municipal Counselor should be authorized to confess judgment without admission of liability in that amount and all costs of the action in the District Court. If Council agrees, a Resolution to that effect has been prepared.