

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

Council Agenda
Item No. XI. S.1&2
12/6/2022

TO: Mayor and Council
FROM: Kenneth Jordan
Municipal Counselor

Catherine Chalos
704 NW 52nd Street
Oklahoma City, OK 73118
Ward 2
\$195
Recommended for APPROVAL

AGENDA CLAIM # a

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges damages to her property on February 18, 2022, when a City sewer main backed up at the property located at 704 NW 52nd Street in Oklahoma City, Oklahoma. Damages are alleged in the amount of \$195, the cost of hiring a private plumber. 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 this 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 this act for any act or omission of an employee acting outside the scope of his employment.

51 O.S. 2011 §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).

Applicable law holds that a municipality is not liable for damages resulting from a sewer backup unless the municipality had prior notice, actual or constructive, of a nuisance or defect in the sewer

line which it failed to abate within a reasonable time and such nuisance or defect resulted in damage to the claimant. *Oklahoma City v. Romano*, 433 P.2d 924, 927 (Okla. 1967).

This office is in receipt of information from the Line Maintenance Division of the Utilities Department regarding this incident. The information indicates that there were no reports of defects in the City's sewer main near the same location in the five years prior to the incident. The information further indicates that there was a structural deficiency with the City's Main that caused a backup on the date of the incident.

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.

ZAW