



# OFFICE OF THE CITY ATTORNEY

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## CLAIMS MEMORANDUM #DC-2024-004

**TO:** Mayor and Council

**FROM:** Garrett Lam  
Assistant City Attorney 

**DATE:** March 21, 2024

**MEETING:** April 9, 2024

**RE:** Damage claim of  
Deaderick and Kemerly White  
5307 NW Elm Avenue  
Lawton, Oklahoma 73505

Submitted in the amount of \$7,900.00 on January 24, 2024

**RECOMMENDATION:** Approval in the amount of \$2,849.25

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**BASIS OF CLAIM:** Deaderick and Kemerly White are the tenants at 5307 NW Elm Avenue, Lawton, Oklahoma. Claimants allege on January 1, 2024, they woke up to water overflowing from the shower drain in the basement and sewer water running throughout the house. Claimants have submitted a list of damaged items in the amount of \$7,915.00 and are requesting reimbursement in the amount of \$7,900.00.

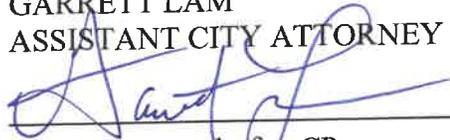
**FACTS:** According to Wastewater Collection records, the Wastewater Collections Division received a call through dispatch for the residence at 5212 NW Liberty Avenue on January 1, 2024, at approximately 2:50 p.m. reporting a sewer back up. The Wastewater Collections crew arrived at 3:45 p.m. and cleared an obstruction of non-biodegradable wipes and grease on the actual pipe segment that services 5212 NW Liberty Avenue, which is three pipe segments below 5307 NW Elm Avenue. According to the homeowner, Trevor Scruggs, the tenant, Mr. White, called him around 2:30 p.m. on January 1, 2024, and he went to the residence. He called a plumber and they camera'd the line to see if they could find a problem. The following day he called Wastewater Collections and met with the Wastewater Collection Supervisor who informed him that they had a sewer backup downstream from 5307 NW Elm Ave. that could have caused them to back up as well. **Records show no prior main history on the first pipe segment above, actual pipe segment, second pipe segment, third pipe segment, or fourth pipe segment below, there is history on the first pipe segment below this location in the last three (3) years.** None of the pipe segments appear on the SSES report.

**LEGAL BASIS FOR APPROVAL OF CLAIM:** Pursuant to Title 51, Oklahoma Statutes, §151 et seq., municipalities are held accountable in the same manner as private entities or individuals for negligent acts or omissions that result in harm to others. However, negligence is never presumed, and the burden of proving negligence and that it was the proximate cause of the harm complained of, is on the complaining party. Oklahoma Ry. Co. v. Ivery, 204 P.2d 978 (Okla. 1949). **In the case of a defective water and sanitary sewer system, the Oklahoma Supreme Court has held that a complaining party does not meet his burden of proving negligence unless prior notice of the defective condition, actual or constructive, has been received by the entity controlling and managing the system.** City of Holdenville v. Griggs, 411 P.2d 521 (Okla. 1966). In that instance, a duty arises to abate the defect within a reasonable time. Id. at 522.

In this instance, there is prior history on the first pipe segment below. Therefore, it is recommended that the claim be approved in a reduced amount. The claims investigator met with the claimant and discussed each line item and came to an agreed reduced amount of \$2,849.25. The City will pick up several of the damaged items.

**In the future, if claimants or the homeowner experiences a problem with the sewer line at this residence, it is advised that they notify Wastewater Collections/Maintenance at 581-3500 or after hours and weekends at 581-3272. The City will send a crew out to the residence to check the main line immediately. Claimant is also advised not to flush wipes or personal hygiene products down the line.**

GARRETT LAM  
ASSISTANT CITY ATTORNEY



Mincie Beamesderfer, CP  
Claims Investigator