



OFFICE OF THE CITY ATTORNEY

CLAIMS MEMORANDUM #DC-2024-067

TO: Mayor and Council

FROM: Garrett Lam
Assistant City Attorney

DATE: December 20, 2024

MEETING: January 14, 2025

RE: Damage claim of
Mariah Cole
912 SW 37th Street
Lawton, OK 73505

A handwritten signature in blue ink, appearing to be "GL", is written over the name "Garrett Lam" in the "FROM:" field.

Submitted in the amount of \$1,511.98 on November 4, 2024

RECOMMENDATION: Denial

BASIS OF CLAIM: Mariah Cole resides at 912 SW 37th Street and alleges on May 30, 2024, the City raised her fence because it was sitting on top of a manhole. Wastewater Collections told her they had to leave it like that, and she couldn't cover the manhole. Her dogs were attacked through the hole on October 7, 2024, and October 29, 2024. Claimant is seeking reimbursement for their veterinarian bills in the amount of \$1,511.98.

DATE OF DAMAGE: October 7, and October 29, 2024

FACTS: On May 19, 2024, the City of Lawton Wastewater Collections Department received a sewer backup call from 909 SW 36th Street. A Wastewater Collection crew responded to the call and cleared the obstruction of wipes from the City's main. The crew returned the following day and did preventative maintenance on the lines downstream and needed to access to the manhole in the utility easement behind 912 SW 37th Street and 909 SW 36th Street and a fence was installed directly over the manhole 912 SW 37th Street. The Wastewater Collections Supervisor, Juan Ayala, contacted Ms. Cole and told her the fence was obstructing access to the manhole, and they were going to have to remove a few pickets from the fence and raise them a couple of inches so that they could gain access to the manhole. Mr. Ayala told her the fence could not be lowered, because the City will have to be able to access the sewer main when they need it. At that point it was Ms. Coles responsibility to place another fence or barricade around the outer 24-inch manhole that was inside her yard. It should be noted that due to the fence being placed in the utility easement, the City could give notice to the property owner to remove the fence from the easement if they need further access, and the resident or homeowner would be required to replace or reinstall the fence at their cost. Claimant had five months from the time the City raised the pickets in the fence until the time her dogs were allegedly attacked through a hole.

LEGAL BASIS FOR DENIAL OF CLAIM: Section 20-1-101 of the Lawton City Code, states that "construction of encroachments on the public utility easements will not diminish the city's rights or its authorized entities' rights for repairing, maintaining, and replacing public utilities."

Lawton City Council Policy 5-3, Regulations Governing the Use and Access to Utility Easements, provides as follows:

“1. To reduce the maintenance, repair and installation costs of utilities to all consumers, the City shall not restore nor pay any restoration or replacement costs for any encroachment placed upon a public utility easement or right-of-way that is removed after notice has been given to the property owner to remove the encroachment and grant access for utility service, except under the limited circumstances provided in Section 20-1-101, Lawton City Code, 2005.” (Emphasis added)(Adopted on February 15, 2007)

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).

This office recommends denial of this claim in full because in this instance:

1. The City did *not* act negligently by removing and reinstalling the fence, when performing preventative **maintenance** to the City’s sewer main, located **within the City’s easement**. There has been no evidence presented that shows that the City acted in a negligent manner.
2. Claimant herself knew of the issue and should have installed a preventative measure for her dogs safety.

GARRETT LAM
ASSISTANT CITY ATTORNEY



Mincie Beamesderfer, CP
Claims Investigator