



OFFICE OF THE CITY ATTORNEY

CLAIMS MEMORANDUM #DC-2023-013

TO: Mayor and Council

FROM: Timothy Wilson *TW*
Deputy City Attorney

DATE: April 21, 2023

MEETING: May 9, 2023

RE: Damage claim of
James P. Jackson
7109 SW Cherokee Circle
Lawton, OK 73505

Submitted in the amount of \$1,600.00 on March 3, 2023

RECOMMENDATION: Denial

BASIS OF CLAIM: James Jackson is the owner of the property located at 7109 SW Cherokee Circle. Claimant alleges a City of Lawton Wastewater Maintenance Division removed his privacy dog kennel fence when they were making a repair to the City's Wastewater main. Mr. Jackson filed a claim in the amount of \$1,600.00 for the repair and reinstallation of the kennel fence. No estimates or invoices were submitted with the claim.

DATE OF DAMAGE: February 27, 2023

FACTS: According to John Santos, Superintendent of Wastewater Maintenance, a contractor for the City of Lawton was working on the City's sewer main on or about February 27, 2023, and they removed the fence in order to gain access to repair the City's main. The homeowner was contacted the week prior to the start of the repair and was informed they were going to remove the fence and that the contractor would repair the fence. The contractor repaired the fence on March 7, 2023, a few days after claimant filed his claim with the City of Lawton, City Clerk. The claims investigator has tried to make contact with Mr. Jackson by phone and letter to see if he would like to withdraw his claim since the repairs were made, and no response was received.


LEGAL BASIS FOR DENIAL 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).

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

1. The Contractor for the City of Lawton repaired the fence on March 7, 2023

TIMOTHY WILSON
DEPUTY CITY ATTORNEY


Mincie Beamesderfer, CP
Claims Investigator