




OFFICE OF THE CITY ATTORNEY

CLAIMS MEMORANDUM #DC-2021-021

TO: Mayor and Council

FROM: Kelea L. Fisher 
Deputy City Attorney

DATE: September 15, 2021

MEETING: September 28, 2021

RE: Damage claim of
Delores McFarland
5023 NE Haddington Place
Lawton, Oklahoma 73507

Submitted in the amount of \$443.41 on June 30, 2021

RECOMMENDATION: Denial

BASIS OF CLAIM: Claimant alleges on June 28, 2021, she was running on the sidewalk north of Gore Boulevard on Flower Mound Road and tripped on a crack in the sidewalk. Claimant further alleges the trip caused her to injure her knee and break her watch. Claimant was treated and released at Comanche County Memorial Hospital the same day. Claimant is seeking a total of \$443.41, which includes an in the amount of \$63.00 for her hospital copay and an Apple work order in the amount of \$380.41 for her watch repair.

DATE OF DAMAGE: June 28, 2021

FACTS: Ms. McFarland alleges on June 28, 2021, at 7:01 a.m., she was jogging on north Flower Mound Road and tripped on a crack and fell down, causing her to cut her knee open to the bone. Claimant went to Comanche County Memorial Hospital and was treated and released. On June 30, 2021, Claimant filed a claim and provided pictures of the crack and informed the City Attorney's Claims Investigator of the location of the crack and stated that she jogs this area on regular basis. The Claims Investigator then met Cliff Haggemiller, Streets Superintendent, at the location to observe and take additional pictures of the crack. The area identified by Claimant was a cracked portion of concrete with a cracked piece protruding from the sidewalk. The protruding area measured approximately one (1) inch in height. According to Mr. Haggemiller, the Streets Department has not received any prior notice or complaints from the Claimant or any other citizens regarding the sidewalk.

LEGAL BASIS FOR DENIAL OF CLAIM: Lawton City Code Section 20-1-103 (Duty to keep sidewalks accessible—Liability for injuries) provides as follows:

- A. All owners, occupants and users of real property abutting upon streets in the city, at their own cost and expense, shall maintain and keep the sidewalks (and paving laid thereon), bordering their property:
1. In a safe, adequate and good condition, without defects;
 2. At curb grade and level and free of depression, excavations, elevations, inequalities, obstacles, obstructions or encroachments, natural or artificial, above or below ground level, or which overlap, impinge upon or appropriate any part of the sidewalk area or the space eight feet above it; and
 3. Easily accessible to and freely and safely used by the public for travel by foot.

- B. The owner, occupant and user of the property abutting upon any defective sidewalk shall be primarily liable for any injury or damage inflicted upon any person as a result of a violation of subsection A. hereof.

Negligence is defined as the failure to exercise ordinary care to avoid injury to another's person or property. 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).

When a defect in a sidewalk is so slight that no careful or prudent person would reasonably anticipate any danger from its existence, but still an accident happens which could have been guarded against by the exercise of extraordinary care and foresight, the question of the (city's) responsibility is one of law. Id. Classifying a defect trivial or slight is merely a convenient way to describe a defect from which, considering all of the circumstances, all reasonable men would agree the city would not (in the exercise of reasonable care and prudence) anticipate danger to the public using the way. Rider v. City of Norman, 1970 OK 200, 476 P.2d 312, 312. In the Rider case, the Court found that the plaintiff's view of a sidewalk defect was clear and unobstructed and it was daylight and in such circumstances, a slight lip on the sidewalk was held to be a trivial defect. Id.

This office recommends denial of this claim for the following reasons:

According to Lawton City Code, property owners are responsible for maintaining sidewalks abutting their property in a safe, adequate and good condition free of defects. The sidewalk in question, abuts private property and therefore, any defects in the sidewalk that may have led to Claimant's injury, would be the responsibility of the private property owner should a court find that the sidewalk defect caused Claimant's injury.

However, even if the City was responsible for maintaining this particular sidewalk (which is not the case), the City would not be liable for Claimant's injury. Claimant alleges she tripped and fell over a defect that, according to Oklahoma case law, would be classified as trivial. Furthermore, the incident occurred at 7:00 a.m., in the daylight, and there is no evidence to suggest that her view of the defect

was anything other than clear and unobstructed. Therefore, the City would not be liable for Claimant's injuries in accordance with well-established case law.

KELEA L. FISHER
DEPUTY CITY ATTORNEY



Mincie Beamesderfer, CLA
Claims Investigator