




## OFFICE OF THE CITY ATTORNEY

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### CLAIMS MEMORANDUM #DC-2021-019

**TO:** Mayor and Council

**FROM:** Kelea L. Fisher   
Deputy City Attorney

**DATE:** September 15, 2021

**MEETING:** September 28, 2021

**RE:** Damage claim of  
YMCA  
#5, SW 5th Street  
Lawton, Oklahoma 73501

Submitted in the amount of \$24,567.39 on June 21, 2021

**RECOMMENDATION:** Denial

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**BASIS OF CLAIM:** Frank Walker, CEO of Lawton Family YMCA located at #5 SW 5<sup>th</sup> Street, alleges on January 8, 2021, an obstruction in the City of Lawton's sewer main caused wastewater to back up in the basement of the YMCA, causing damage to the flooring, carpet, walls, and equipment. Mr. Walker has filed a claim in the amount of \$24,567.39 which includes the following: an estimate from Johnson Mason Carpet Cleaning in the amount of \$8,304.38 for removal of damaged floor covering, baseboards, cabinet, toilets, cleaning surfaces and HEPA vacuuming; an estimate from Comanche Lumber in the amount of \$4,839.02 for floor covering and installation; an invoice from All-N-One LLC. in the amount of \$6,657.85 for installation of drywall, baseboards, storage bins and turf, to include the removal of turf and the cost of storage bins; an estimate from Turf Factory in the amount of \$2,186.25 for padded turf; and an invoice from Johnson Mason Carpet Cleaning in the amount of \$2,572.89 for water extraction, dehumidification and air movers.

**FACTS:** According to Glenn Hinton, Wastewater Collections Superintendent, Wastewater Collections' records show on January 8, 2021, at approximately 2:52 p.m., the division was notified that the basement was flooding at the building located at #5 SW 5<sup>th</sup> Street. A Wastewater Collections crew was dispatched and arrived on scene at approximately 3:07 p.m. The crew entered the lower manhole and found a blockage and attempted to clear the obstruction but were unsuccessful. The crew then entered the upper manhole and was able to break the blockage of debris and grease. **Records show no prior main history on the pipe segment above, the actual pipe segment, first pipe**

**segment below, second pipe segment below, third pipe segment below or the fourth pipe segment below this location in the last three (3) years.** None of the pipe segments appear on the SSES report.

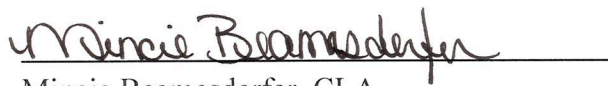
**LEGAL BASIS FOR DENIAL OF CLAIM:** Pursuant to Title 51, Oklahoma Statutes, §151 et seq., municipalities are held accountable in the same manner as private entities or individuals for negligent acts or omissions that result in harm to others. However, negligence is never presumed, and the burden of 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). **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 no prior history on the actual pipe segment in question or the first, second, third or fourth pipe segments below this pipe segment in the past three years. Therefore, the City had no prior notice, actual or constructive, of a defective condition with the main and would not be liable for the damages that occurred.**

In the future, if Claimants experience a problem with the sewer line, 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 check the main line immediately.

It is recommended that the Claimants contact a private plumber to install a backflow preventer/backwater valve and not flush wipes and personal hygiene products down the line.

KELEA L. FISHER  
DEPUTY CITY ATTORNEY

  
Mincie Beamesderfer, CLA  
Claims Investigator