




OFFICE OF THE CITY ATTORNEY

CLAIMS MEMORANDUM #DC-2021-024

TO: Mayor and Council

FROM: Kelea Fisher 
Deputy City Attorney

DATE: September 15, 2021

MEETING: September 28, 2021

RE: Damage claim of Martin Morales
3407 SW Crestview Dr.
Lawton, Oklahoma 73505

Submitted in the amount of \$1,750.00 on July 12, 2021

RECOMMENDATION: Denial

BASIS OF CLAIM: Claimant, Martin Morales, states that on July 9, 2021 he was eastbound on Cache Road in the inside lane in front of the Fusion Buffet at 4102 NW Cache Road when he hit a bump in the road that caused his radiator to crack on his 2013 Cadillac ATS. Claimant states he was on his way to Elgin when he noticed his car running very hot. Claimant submitted an invoice dated July 12, 2021, from Legend Driven in Lawton in the amount of \$1,741.32 for replacement of the radiator and coolant.

DATE OF DAMAGE: July 9, 2021

FACTS: According to Cliff Haggenmiller, Streets Department Superintendent, the area of the roadway in question has been classified as an irregularity in the roadway. Mr. Haggenmiller describes the irregularity as a condition similar to what a driver might experience going over normal railroad crossings. A properly maintained vehicle, traveling at a regular rate of speed is able to drive over the irregularity with no damage to the vehicle. The City Attorney's Claims Investigator went to the area to observe traffic and the roadway irregularity. There is a raised portion of asphalt, however, the irregularity was so insignificant, all of the vehicles traveling during her time of observation continued driving at a regular rate of speed without issue. Although the Streets Department has received calls regarding this location, there were no calls reporting damage to a vehicle. Furthermore, the irregularity is of such a minimal nature that it cannot be classified as a hazard. It should be noted that according to online research, the radiator in the 2013 Cadillac ATS, has been reported to have numerous issues. One owner reported in July of 2017, he had already replaced four radiators in his vehicle.

LEGAL BASIS FOR DENIAL OF CLAIM: Under Oklahoma law, a municipality has a duty to use ordinary care to maintain its streets in a reasonably safe condition for usual and ordinary use, or to use ordinary care to adequately warn of any dangerous condition of which the municipality knows, or reasonably should know, in sufficient time to have removed or corrected the condition, or have given adequate warning of its existence. OUJI 2d 11.1 (Duty of Municipality to Maintain Public Ways). The test to determine whether the City was negligent is “whether or not such municipality, in the exercise of reasonable care and prudence, could have or should have, anticipated danger and damages to the traveling public using the way.” Rider v. City of Norman, 476 P.2d 312, 313 (Okla. 1970). A municipality, however, is not an insurer of the safety of travelers. Zachary v. City of Sapulpa, 442 P.2d 328 (1966). **A municipality will, therefore, not be liable for every defect or obstruction, however slight or trivial, or little likely to cause injury, or for every mere inequality or irregularity in the surface of the way. Id. It is only against danger which can or ought to be anticipated, in the exercise of reasonable care and prudence, that the municipality is bound to guard. Id.**

Additionally, Lawton City Code, 2015, Section 23-16-1602 (Accidents involving damage to property) provides as follows:

A. The driver of any vehicle involved in an accident resulting only in apparent damage to property shall immediately stop such vehicle at the scene of such accident or as close thereto as possible.....

B. If the damage resulting from such accident is to the property of the driver only, with no damage to the person or property of another, the driver need not stop at the scene of the accident but shall make report of the damage to the Lawton police department within twenty-four (24) hours of such accident. (Emphasis added)

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

1. The City did *not* act negligently in this instance. The bump in the roadway is a mere irregularity in the roadway for which the City would not be liable according to well established caselaw. Additionally, the Streets Department had not received any prior reports of damage prior to this incident.
2. Mr. Morales had a duty pursuant to Lawton City Code 2015, Section 23-16-1602 to make a report of the alleged damage to his vehicle to the police department within twenty-four (24) hours of the incident and failed to do so.

KELEA FISHER
DEPUTY CITY ATTORNEY


Mincie Beamesderfer, CLA
Claims Investigator