



OFFICE OF THE CITY ATTORNEY

CLAIMS MEMORANDUM #DC-2021-020

TO: Mayor and Council

FROM: Gregory Gibson *GWG*
Assistant City Attorney

DATE: September 15, 2021

MEETING: October 26, 2021

RE: Damage claim of
Galilee Missionary Baptist Church
7 NE Dr. Louis K. Jones Ave.
Lawton, Oklahoma 73507

Submitted in the amount of \$12,940.00 on June 28, 2021

RECOMMENDATION: Denial

BASIS OF CLAIM: Wayne Willis, Representative for Galilee Missionary Baptist Church, alleges on or about August 1, 2020, the church's asphalt parking lot was damaged due to a City trash truck turning to exit the parking lot. The church's parking lot sustained damage in previous years, and after making repairs, the dumpster was moved to a different location in the lot. Now both areas of the parking lot where the dumpster has been placed are damaged. Mr. Willis has submitted an estimate J&S Concrete Construction, Inc. in the amount of \$12,940.00 to repair both areas in the parking lot. The estimates are to remove and haul off the old asphalt, set and pour 6" of concrete with a 2' gravel base, with #3 rebar ties, in the area in front of the refuse facility, and 4" of concrete with a 2" gravel base and #3 rebar ties in the parking lot area that is damaged.

DATE OF DAMAGE: August 2020

FACTS: According to Jason Mansel, Solid Waste Superintendent, he has spoken with his office staff and the Solid Waste Collections Supervisors regarding the claim, and they were not aware of the issue with parking lot, nor have they spoken with Mr. Willis or anyone else from the church. Mr. Mansel inspected the parking lot on July 8, 2021 and reported that the parking lot has a very thin layer of asphalt that is not in accordance with City Code. Once the thin asphalt is infiltrated with moisture, heavy trucks will cause the asphalt to fail. The only way to avoid asphalt damage would be to place the dumpster closer to the roadway and service it there, however, it would need to comply with City Code 6-1-5-188 – Refuse Facilities. The Claims Investigator also inspected the parking lot and took photos and measured the thickness of the asphalt. The asphalt is approximately 2" inches thick in both areas. Both areas of the parking lot have failed due to the thin layer of the asphalt, moisture infiltration beneath the asphalt, and

the weight of the trucks. The parking lot is not in compliance with City of Lawton Code 6-1-5-188, A-5, which requires "A minimum six-inch thick concrete pad *shall* be provided for the refuse container(s) enclosure, and a minimum fifty (50) feet by twelve (12) feet unobstructed approach path constructed with a minimum six (6) inches thick concrete (recommended) or asphalt paving shall be provided for the collection truck access to the front of the enclosure. In addition, sufficient area to maneuver the truck through the site, including a through driveway or a turn-around area must be provided. The collection truck must be able to perform its required functions without backing across any driveway entrance or onto any public street."

It should be noted that the estimate provided is for concrete, not asphalt, and would represent a significant *upgrade* to the parking lot. Concrete is significantly higher priced than asphalt.

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 this instance, there is no negligent act by the City. The parking lot was not in compliance with City Code, and the City employee did not know the depth of the asphalt was not in compliance with the City Code before driving on the parking lot to service the customer's dumpster.

This office recommends denial of this claim in full.

GREGORY GIBSON
ASSISTANT CITY ATTORNEY


Mincie Beamesderfer, CLA
Claims Investigator