
**MEMORANDUM
HUMAN RESOURCES DEPARTMENT**

TO: Thomas E. Thomas, City Manager

SUBJECT: Payne General Liability Claim

Date: March 28, 2014

The Human Resources Department conducted further review of a general liability claim filed by Lolita Payne. Her claim is in regards to auto damage caused by a sink hole within a public street.

On March 10, 2014, Ms. Payne's daughter (Mystique Thompson) was driving westbound on 23 Avenue. At approximately 1707-23 Avenue, the pavement gave away and the vehicle became stuck in a sinkhole. The car sustained \$3,366 in damages according to the estimate. Ms. Payne only carried liability insurance on the vehicle.

According to Public Works, a water main break occurred west of this address in February (2/21/14). The water main break was repaired by a contractor and the hole backfilled the same day. A city engineering technician was also at the location and found no problems with the repair work performed by the contractor. Ms. Thompson's accident occurred two concrete panels east of the main break site. It is possible there may have been a void area created that was not visible to the repair crew.

The water main break history for the location is attached. There were two earlier main breaks that occurred in fiscal year 83/84 and more recently in fiscal year 98/99. The water main break history for this location is normal and does not indicate problems.

The history for the area did not alarm the city of any hazards. The cold winter was particularly hard on water utilities with above average main breaks recorded city wide. The city has no way to predict when or where a sink hole may occur. Furthermore, the 2/21/14 main break was repaired and backfilled promptly so the city did not exhibit any willful or wanton behavior by failing to make necessary repairs to the roadway.

The General Liability Committee (GLC) met on 3-19-14 and recommended the claims be denied under the Illinois Tort Immunity Act. The purpose of the Illinois Tort Immunity Act (745 ILCS 10/3) is to protect the City from liability arising from its operations. The decision to deny was twofold under the Act:

- Section 3-102 states a local public entity has the duty to exercise ordinary care to maintain its property in a reasonably safe condition and shall not be liable unless it is proven that it has actual or constructive notice of the existence of such a condition. The City had no prior or previous notice of a problem with the concrete panel; and
- Section 1-210 "willful and wanton conduct". In the Act it means a course of action which shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others or their

property. The City did not exhibit willful or wanton misconduct by not protecting the public in this case.

Recommendation: The Tort Immunity Act provides an appropriate legal defense for denying the claim. Ms. Payne has not provided any new claim information since her initial claim. The GLC continues to recommend the denial of the Payne claim under the Tort Immunity Act.

Submitted By: John Thorson, Human Resources Director

Approved By: Thomas Thomas, City Manager