



STAFF REPORT

CITY of YORBA LINDA

ADMINISTRATION DEPARTMENT

DATE: MARCH 15, 2022

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: MARK A. PULONE, CITY MANAGER
PREPARED BY: MARK K. AALDERS, ASSISTANT TO THE CITY MANAGER

SUBJECT: DENIAL OF CLAIMS FOR DAMAGES

RECOMMENDATION

It is recommended that the City Council of the City of Yorba Linda deny the claims for damages by James Bardeen, James Gaffney and Jim & Audrey Von Zabern.

BACKGROUND

Claims for damages filed against the City are reviewed and investigated by City staff and a third-party claims administrator with the George Hills Company. George Hills Company specializes in claims management and risk management services. These services are provided through the City's contract membership in the California Insurance Pool Authority. Staff makes recommendations to the Council for settlement or denial based on the investigatory findings. A claimant's failure to provide evidence of and/or supporting documents to substantiate the claim for damages will also result in a recommendation for denial of the claim.

DISCUSSION

The following claims for damages have been recommended for denial based on the investigations by City staff and the third-party claims administrator. Further details for each claim are available upon request.

James Bardeen

The claimant states that due to the tree trimming and lack of signage warning of the presence of bees that he and his dogs were stung by bees as he crossed the street towards Trailside Park. Per the City's tree maintenance contractor, West Coast Arborists, the crew was trimming when unbeknownst to them they came across a tree which was infested with bees. In a post recorded statement by the City's third-party administrator, the claimant acknowledged that he walks the area everyday with his dogs and had never seen bees in these trees before prior to this incident.

DENIAL OF CLAIMS FOR DAMAGES

Page | 2

The City, nor the contractor, can predict an encounter with a beehive or control bees in their natural environment. Therefore, a natural condition immunity applies in this case. The third-party claims administrator and City staff recommend denying the claim.

James Gaffney

The claimant alleges that his fence, cement slab and foundation were being damaged by City eucalyptus tree roots adjacent to his property. Staff investigated the claim and noted the following.

- Public Works staff surveyed the fence line and determined that the eucalyptus tree roots are not causing damage to the fence or raising concrete slabs on the claimant's property.
- The claimant's northern fence is made up of wood slats and railroad ties bracing the slats together. It is evident, that the slats and railroad ties have rotted out over time causing them to break and bulb out. This damage is not caused by eucalyptus tree roots. Material(s) made out of wood are not intended to retain soil and have plant materials which are watered regularly. The watering of the plant material on the claimant's property is causing the wood to rot out.
- The fence is on private property and was originally in place prior to the purchase of the claimant's home. The fence naturally aged and decayed which requires needed repairs/replacement to be made by the property owner.

In the timeframe in which the claim was investigated, the claimant used a private contractor to repair the fence. Therefore, the third-party claims administrator and City staff recommend denying the claim.

Jim and Audrey Von Zabern

The claim entails two eucalyptus tree branches falling onto the claimant's personal vehicle (pickup truck) during a windstorm. City staff responded to the claim to remove the tree branches and investigated the incident. The claimant states that the branches fell between the hours of midnight and 8am. During this timeframe, the weather report reflects high winds upwards of 15-22 miles-per-hour which qualifies as a wind event.

Per the request of the third-party claim's administrator, staff provided detailed tree trimming records for the eucalyptus trees located on El Cajon Trail behind the claimant's property. The records reflected that the trees were maintained in accordance with arborist standards and the City's three-year trimming cycle.

In such a case that a wind event caused the damage and the City maintained its trees in accordance with National Arborist standards, the occurrence of such damage is deemed an "act of God" and thereby the City is not liable for said damage.

Therefore, the third-party claims administrator and City staff recommend denying the claim.

DENIAL OF CLAIMS FOR DAMAGES

Page | 3

FISCAL IMPACT

None

ALTERNATIVES

As an alternative to staff's recommendations for the claims, the City Council has the following options:

1. Accept liability for the claims and pay the amount specified in the claim forms.
 2. Grant settlement authority up to a certain amount and direct the claims adjuster to enter into settlement negotiations with the claimants.
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