

ORDINANCE NO. 190971

Enacting a new Article XVIII, Risk Management Program, in Chapter 2, Code of Ordinances, which revises, clarifies and expands existing provisions on risk management; repealing sections 2-1685-1688.

WHEREAS, the City of Kansas City, Missouri, is committed to efficiently and appropriately managing risk; and

WHEREAS, the establishment of a revised Risk Management Program based on industry best practices is required in order to manage risk; and

WHEREAS, the success of the Risk Management Program depends on the City Manager, Risk Management Committee, and departments and offices of the City of Kansas City, Missouri to carry out and support the program; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That a new Article XVIII, Risk Management Program, in Chapter 2, Code of Ordinances is hereby enacted to read as follows:

ARTICLE XVIII. RISK MANAGEMENT PROGRAM.

Sec. 2-2200. Declaration and purpose.

(a) This City government shall administer a Risk Management Program.

(b) The Risk Management Program establishes policies and organizes, leads and adjusts the City's activities to minimize the effects of risk on the City. The program covers financial, strategic, and operational risks as well as risks associated with accidental losses.

(c) The purpose of the program is to effectively identify and evaluate risk to the City and develop efficient means to manage and mitigate the effects of those risks.

Sec. 2-2201. Risk Management Committee

(a) *Establishment.*

(1) The Risk Management Committee is hereby established. The Risk Management Committee shall be responsible for development of policies and deployment of appropriate risk treatments related to the City's risks arising from use of public funds, operations, human resources, property, claims, cyber security, and intangibles.

(2) The Risk Management Committee shall be composed of a representative of the City Manager, and the City Attorney, the Director of the General Services Department, the Director of Human Resources, and the Director

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of Finance, who shall serve as chairperson, all of whom shall serve as voting members. The City's Risk Manager (who shall serve as Secretary) and such other members as are designated by the City Manager, shall serve as non-voting members.

(b) *Duties and Authority.* The Risk Management Committee shall:

- (1) Serve as the City Manager's oversight body for all aspects of the program including any follow-up actions with City departments and offices.
- (2) Manage all funds established for claims and lawsuit settlements.
- (3) Set objectives to be achieved through the Risk Management Program.
- (4) Have the authority to require cooperation and action in its reviews and proceedings from all departments and offices of the City.
- (5) Have the authority to reallocate resources in order to effectively meet the purposes and needs of the program.
- (6) Annually direct the Risk Manager to prepare and submit to the City Manager a report, no later than July 1, of its approvals and rejections of settlements and other committee activities. The report shall include, but not be limited to: frequency of claims, costs incurred, reserves, trends in frequency and severity, and new developments in the law. The report also shall identify any departments, divisions, offices, or conditions which appear to be contributing unduly to losses.
- (7) Review and approve the annual report submitted by the Risk Manager. The budget estimate portion of the report shall be submitted pursuant to the budget process as outlined in Sections 803-805 of the City Charter.
- (8) Establish a Claims Subcommittee under the supervision of the Risk Management Committee that shall review claims submitted to it by the City Attorney pursuant to Section 2-302. Members shall be the Director of Finance, a representative of the Office of the City Manager, and the City Attorney.

Sec. 2-2202. Administration.

(a) The City Manager shall have overall responsibility for administering the Risk Management Program and holding accountable each department and office for its adherence to the program.

(b) City departments and offices shall:

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- (1) Be responsible for educating staff on the importance and requirements of the Risk Management Program and adhering to the program.
- (2) Implement established risk management processes and systems within their respective areas of responsibility and monitor their effectiveness.
- (3) Integrate risk management into organizational strategies and include risk information during decision making.
- (4) Communicate to the Risk Manager changes in business operations which may generate changes in risk for the City.
- (5) Immediately report to the City Attorney and the Risk Manager any claims or incidents which could potentially create liability or loss to the City.

Sec. 2-2203. City legal expense fund.

(a) *Uninsured status of the city.* Except as required by statute, ordinance or contract, the city council hereby adopts the policy that the risk management of claims against the city shall be that the city is uninsured, not self-insured; provided, however, that liability coverage may be purchased from insurance companies for payment of claims which are not barred by sovereign, governmental, official immunity or the public duty doctrine.

(b) *Legal expense fund established.* There is hereby established a fund to be known as the city legal expense fund, the purpose of which is to enable the city to pay, in whole or in part, claims for various losses and liabilities incurred by the city, except that no payments from the fund are to be made for claims or lawsuits in which the city has immunity under RSMo § 537.600, or other applicable law, either statutory or case law. Such immunities include, but are not limited to sovereign, governmental, official immunity and the public duty doctrine. However, claims and lawsuits against the city may be paid from the fund to the extent that a court of competent jurisdiction, in a final judgment, finds that no immunity is applicable, or that the public duty doctrine affords no defense.

(c) *Limitation on payments.* No payments of claims, made solely against the city, shall be paid from the fund in excess of any statutory cap on liability.

(d) *No expansion of liability.* Nothing in this Article shall be construed to broaden the liability of the city beyond the provisions of RSMo §§ 537.600 to 537.610, or other applicable law, either statutory or case law, nor to abolish or waive any defense at law which might otherwise be available to the city, its agents, representatives, officials, officers, or employees.

(e) *Sources of funding.* Such fund shall be composed of appropriated contributions from activity accounts within the general and other operating funds, which shall be appropriated annually on the basis of claim frequency, loss payments and claim

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reserves. The risk management committee shall have the sole authority to recommend the allocation of department contributions to the city manager for budgeting purposes.

(f) *Budget; nature of fund.* The city legal expense fund shall be operated under a budget adopted by the city council in the same manner as other city funds. This fund shall be used for the purposes set forth in this Article, and no other, and shall continue from year to year, its surplus not reverting to the general fund surplus at the end of the fiscal year. The council may, upon the recommendation of the risk management committee, appropriate additional sums to this fund.

(g) *Use of the city legal expense fund.* The legal expense fund may be used to pay the following:

- (1) Claims made by third parties based on liability of the city, its agents, representatives, officials, officers, or employees, if such claims are not barred by sovereign, governmental, official immunity, or the public duty doctrine, in accordance with RSMo § 537.600, or other applicable law, either statutory or case law based on a final judgment of a court of competent jurisdiction.
- (2) Such payments shall be made only upon authorization by the risk management committee, the city attorney or the city council.

(h) *Investments.* All unexpended cash in the city legal expense fund for the payment of losses may be invested in securities of the type authorized by the city charter. Earnings from investments shall accrue to the credit of the fund.

Sec. 2-2204. Provision for payment of claims.

In the annual appropriation ordinance, the city council shall include provision for payments out of the city legal expense and workers' compensation funds for losses which occur during the next fiscal year.

The creation of the city legal expense and workers' compensation funds and the payment therefrom of such amounts as may be necessary for the benefit of any person covered thereby are deemed necessary and proper public purposes for which the funds of this city may be expended.

Sec. 2-2205. Claims against fund.

(a) *Submission.* All claims which are payable from the city legal expense and workers' compensation funds shall be submitted in the manner and form as directed by the risk management committee. The city attorney shall have authority to solicit bids or proposals and employ experts to aid in determining the amount of any loss.

(b) Any dispute between a department and the committee concerning a loss shall be referred to the city manager for final determination.

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(c) Each city department shall cooperate with the city attorney, or designee, in the investigation, negotiation or other proceedings relating to the handling of claims or litigation against the department. Refusal of a department to cooperate in the handling of claim matters may bar the payment of that department's claims from the fund.

(d) Third party losses covered by the legal expense fund and claims payable from the workers' compensation fund shall be handled for denial, or compromise and payment, by the city attorney, pursuant to authority granted that office under section 2-302, where payment does not exceed \$25,000.00; and, with the approval of the committee, the city attorney may do likewise in matters not requiring payment in excess of \$50,000.00. Claim payments in excess of \$50,000.00 shall be subject to approval by the city council upon the recommendation of the risk management committee and the city attorney.

(e) *Review by committee.* All proposed payments for claims or litigated matters from the city legal expense and workers' compensation funds shall be reported to the risk management committee in such manner and detail as the committee shall direct. The committee may authorize the requested payment, request more information, or decline the request for payment.

Section 2. That Sections 2-1685-1688, existing provisions regarding risk management and the legal expense fund, are hereby repealed.

Approved as to form and legality:

M. Margaret Sheahan Moran
Deputy City Attorney