

ORDINANCE

2019-10-17-0850

AMENDING THE CITY'S DEFINED SELF-INSURANCE AND RISK MANAGEMENT PROGRAM TO CLARIFY AND STREAMLINE STAFF ROLES AND RESPONSIBILITIES FOR MANAGING AND RESOLVING CLAIMS.

* * * * *

WHEREAS, Section 53 of the City Charter empowers the City Attorney to represent the City in all legal proceedings and matters; and

WHEREAS, the City established the Defined Self-Insurance and Risk Management Program in 1996 to establish policies and duties related to the administration of lawsuits, claims and the liability insurance funds; and

WHEREAS, this Program was last updated in February 2013; and

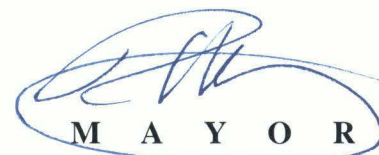
WHEREAS, amendments to this Program are necessary to clarify and streamline staff roles and responsibilities for managing and resolving claims; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

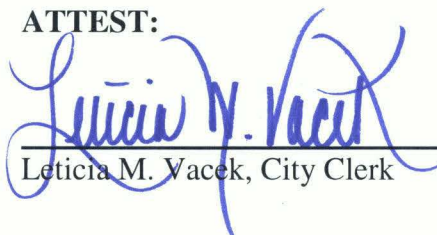
SECTION 1. The City's Defined Self-Insurance and Risk Management Program is hereby amended and adopted as set out in Attachment 1.

SECTION 2. This Ordinance is effective immediately upon passage by eight affirmative votes; otherwise it is effective on the tenth day after passage hereof.

PASSED and APPROVED this 17th day of October, 2019.



M A Y O R
Ron Nirenberg

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney

Agenda Item:	14 (in consent vote: 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22A, 22B, 23A, 23B, 23C)						
Date:	10/17/2019						
Time:	10:17:53 AM						
Vote Type:	Motion to Approve						
Description:	Ordinance amending the City's Defined Self-Insurance and Risk Management Program to clarify and streamline staff roles and responsibilities for managing and resolving claims. [Andrew Segovia, City Attorney]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x				x
Jada Andrews-Sullivan	District 2		x			x	
Rebecca Viagran	District 3		x				
Adriana Rocha Garcia	District 4		x				
Shirley Gonzales	District 5		x				
Melissa Cabello Havrda	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				
Clayton H. Perry	District 10		x				

The City of San Antonio Defined Self-Insurance & Risk Management Program

ARTICLE I GENERAL PROVISIONS

Section 1.01 Policy

Section 53 of the City Charter empowers the City Attorney to serve as chief legal advisor to the Council, the City Manager and all City departments, offices and agencies as well as represent the City in all legal proceedings.

Thus, it is the policy of the City that all legal matters be managed by the City Attorney's Office and to entrust to the City Attorney, or designee, the authority to take any and all steps necessary to allow for legal representation including the selection of outside counsel and the retention of expert witnesses and/or vendors.

It is further the policy of the City, subject to budgetary and general economic conditions, to self-insure against all potential liabilities through the Fund and to provide such self-insurance by depositing money into the Fund in amounts sufficient, under actuarial determinations, to provide for the defined self-insurance coverages herein. It is further the policy of the City, under the appropriate conditions, to obtain Program Insurance as provided by Section 2.04 below.

Section 1.02 Definitions

As used herein:

- A. "Act" includes an omission or failure to act.
- B. "Actuarial Liability" means the amount of City liability for Claims of the Fund as determined by a professional actuary and required to be recorded in the City's financial statements based upon Generally Accepted Accounting Principles (GAAP).
- C. "Administrative Expenses" means the expenses of administering the Program, to the extent designated as such by the Claims Board, including, but not limited to, the following:
 - 1. the compensation paid to any loss control or risk management consultant;
 - 2. the compensation paid to any Claims Adjuster, Third Party Administrator, or professional actuary-
 - 3. the expense of defending or administering any Claim, including, but not limited to, the following:

- a. the compensation paid to expert witnesses;
 - b. attorney's fees and expenses;
 - c. investigation expenses; and
 - d. court costs;
 - e. any expenses incurred by City in the course of any financing undertaken to provide funding for the fund or to repay any obligation incurred by City in the course of such a financing; or
4. the cost of Program Insurance (including any compensation paid to brokers).

D. "**Claim**" means any claim or suit, or an investigation by a regulatory or enforcement agency, against the City (whether in its capacity as a municipal corporation or as an insurer under the Workers' Compensation Law), or any claim or suit against any Plan member that the City is responsible for defending under the Risk Assumption Ordinance, regardless of whether any Damages resulting from such claim or suit are permitted under the Program Ordinance to be paid from the Fund. "Claim" means any claim or suit against the City whether seeking monetary, injunctive, or equitable relief.

E. "**Corporate General Liability Conduct**" means any of the following:

1. any Error or Omission that causes an Injury; or
2. any conduct of the City or a Plan Member, acting within the course, scope and authority of his employment, office or position with the City, that:
 - a. causes Personal Injury, Property Damage, or Regulatory Injury that is not intended or expected, or
 - b. causes Advertising Injury that:
 - i. is not intended or expected, and,
 - ii. does not arise out of any statement that is known to be false; or
 - c. causes Personal Injury or Property Damage (regardless of whether intended or expected) that results from:
 - i. the use of reasonable force for the purpose of protecting persons or property, or

ii. the discharge of official duties for the City. .

- F. "**Damages**" means compensatory damages or special damages, or damages that lawfully may be awarded against the City or a Plan Member, but excluding exemplary damages found against the member.
- G. "**Department Director**" means that individual having responsibility for the management of the department from which a claim arises.
- H. "**Error or Omission**" means any act performed by a Plan Member, acting in good faith within the course and scope of employment with the City, that results in or constitutes an erroneous discharge of such Plan Member's official duties for the City (including the making of an incorrect statement), but that does not constitute legally actionable fraud or an intentional or knowing breach of duty.
- I. "**Fund**" means the liability and/or workers' compensation funds in Budget account 75.
- J. "**Fund Surplus**" means the amount of money in the Fund that is in excess of the Actuarial Liability and Operating Reserve.
- K. "**Injury**" means any of the following injuries:
1. Advertising Injury - any injury to a person that results from the promotion activities of City if such injury arises out of libel, slander, defamation, violation of right to privacy, commercial piracy, unfair competition, or infringement of copyright, title, or slogan;
 2. Commercial Injury – any injury to a person that results in economic damages that results from a contractual relationship.
 3. Personal Injury - any
 - a. bodily injury,
 - b. mental harm, anguish, or illness (regardless of whether accompanied by Bodily injury),
 - c. discrimination with injury,
 - d. humiliation,
 - e. assault,
 - f. false or improper service of process,

- g. false imprisonment with injury,
 - h. damage to character, reputation, or integrity,
 - i. invasion of privacy
 - j. violation of property rights, or
 - k. violation of civil rights with injury;
4. Property Damage - any damage to or destruction of tangible property or the loss of use of tangible property; or
 5. Regulatory Injury - any economic loss sustained by a person as a result of the performance by the City of its regulatory or property acquisition functions.
- L. "**Occurrence**" means an episode, an incident or series of related incidents, or an event or series of related events that result in compensable injury.
- M. "**Operating Reserve**" means the amounts of funds approved in the City's annual Adopted Budget in the Fund as an operating reserve to provide financial flexibility for unanticipated changes in claims liability, catastrophic losses, actuarial valuation changes, or other significant events.
- N. "**Person**" includes an individual, partnership, trust, or other association; corporation; or governmental entity or agency.
- O. "**Plan Loss Expenses**" means any of the following: (a) the City's expense in investigating or defending a claim that may result in a Claim; and (b) the costs taxed against a Plan Member in a suit that results in a Claim and any pre-judgment or post-judgment interest for which the Plan Member is liable; and (c) the reasonable expenses of a Plan Member incurred at the City's request in connection with a Claim; and (d) any attorneys' fees ordered by a court to be paid by a Plan Member in a suit arising out of a Claim.
- P. "**Plan Member**" means an individual who at the time of a covered Act is: (a) an employee of the City; (b) the Mayor, and any other member of the City Council; or (c) a member of (i) a City board, commission, or committee created by charter, ordinance, or resolution of the City, or (ii) the board of directors of any nonprofit corporation created under the authority of City Council as an instrumentality of the City, unless by specific contract provision the City does not provide coverage..
- Q. "**Program**" means the San Antonio Self-Insurance and Risk Management Program, as originally authorized in Ordinance 83926.

- R. **"Program Claim"** means any Claim arising from:
1. Corporate General Liability Conduct; or
 2. actions under the Workers' Compensation laws.
- S. **"Program Ordinance"** means Ordinance 83926 and any amendments thereto.
- T. **"Risk Assumption Ordinance"** means City Ordinance 83927, which establishes the City of San Antonio Officer and Employee Liability Plan, as from time to time amended.
- U. **"Workers' Compensation Law"** means Texas Labor Code, Title 5, Subtitle C.
- V. **"Workers' Compensation Payment"** means any payment of compensation, benefits, expenses, or other charges for which the City is liable, under the Workers' Compensation Law.

ARTICLE II SELF-INSURANCE AND RISK MANAGEMENT PROGRAM

Section 2.01 Program Defined

The City, by enactment of Ordinance 83926, established the "San Antonio Self-Insurance and Risk Management Program" consisting of the policies, rights, and duties embodied in the Ordinance. The City herein further defines and clarifies the policies, rights and administration of the Program.

Section 2.02. Self-Insurance and Risk Management Program.

- A. The Risk Manager, subject to the superior authority of the City Manager, shall:
1. identify and qualify (to the extent practicable) the risks that have the potential to result in liability of the City or Plan Members for a claim payment;
 2. budget and plan the Self-Insurance and Risk Management Program, including, but not limited to risk assumption, risk reduction, risk retention and risk transfer (including the purchase of Program Insurance);
 3. develop and maintain a management information system in coordination with any existing systems of the City, for the efficient

recording of Program information; and

4. devise and implement programs designed to reduce the City's and the Plan Member's potential liability exposure.
- B. The Risk Manager shall implement and supervise the safety policies and procedures that are to be followed by the City, subject to applicable budgetary restrictions.

Section 2.03. Self-Insurance and Risk Management Program Services

- A. To assure the viability of the Self-Insurance and Risk Management Program the Risk Manager may hire a professional risk management service to be retained as a contractor to the Self-Insurance Liability and Workers' Compensation Funds.
- B. The Risk Manager may also retain a professional actuary service to calculate the actuarial liability of the Self-Insurance Liability and Workers' Compensation Funds.
- C. If a professional service is retained, the Risk Manager shall select the service provider, with the approval of the City Council if required.

Section 2.04 Program Insurance

- A. Program Insurance may be obtained under the following circumstances:
1. as excess coverage over that provided by the fund;
 2. as reinsurance for the Fund;
 3. as first-dollar coverage in lieu of that provided by the Fund;
 4. when services that are necessary to effectively administer the Program can be obtained only through the obtaining of the insurance;
 5. when the City is required by contract or law, to obtain the insurance; or
 6. when the limitations on coverage under the Fund do not result in long-term economic advantage to the City, and the insurance obtained either does not contain such limitations, or offsets such limitations or reduces such limitations.
- B. The procurement of Program Insurance shall be coordinated by the Risk Manager subject to superior authority of the City Manager and approval by the City Council.

- C. Program Insurance shall be written by companies licensed to do business in the State of Texas at the time the policy issued and shall be written by companies with an A.M. Best rating of A-(VII) or better or otherwise acceptable to the Risk Manager.
- D. The remuneration of agents or brokers providing insurance services to the City pursuant to the Program shall be on a fee basis.

Section 2.05 Claims Board

- A. The Self-Insurance Claims Board ("Claims Board") as originally created by Ordinance 83926, is hereby modified as follows:
 - 1. The Claims Board shall be composed of the following five voting members:
 - a. City Manager Designee as Chairperson,
 - b. City Attorney as Co-Chairperson,
 - c. Deputy Chief Financial Officer ,
 - d. Risk Manager, and
 - e. Director of Human Resources.
 - 2. Any Claims Board member may appoint a designee to represent their proxy vote.
 - 3. The Department Director or designee shall attend as a non-voting member.
- B. Meetings of the Claims Board shall be in accordance with the provisions of the Texas Open Meetings Act, Tex. Gov't Code Chapter 551, et seq.
- C. The Claims Board shall meet as necessary to consider settlement of claims and lawsuits within the range of its authority as set by Section 3.04 Settlement of Claims. The setting of such meetings, posting of necessary agendas and maintenance of meeting minutes will be under the direction of the Risk Manager.

**ARTICLE III
ADMINISTRATION OF CLAIMS**

Section 3.01 Administration of Claims Generally

The Office of Risk Management is responsible for the administration of Claims and operates in conjunction with the City Attorney's Office in matters of litigation.

Section 3.02 Claims Adjusters

- A. The Risk Manager may allow one or more claims adjusters to adjust or otherwise administer Claims for the City.
- B. A claims adjuster may be City staff, or a professional claims handling or management service.
- C. Each claims adjuster shall be directly responsible to the Risk Manager or designee and shall follow any claims administration policies and procedures established by the Office of Risk Management.

Section 3.03 Defense of Claims

- A. The City Attorney or designee shall direct the defense of the City in Claims.
- B. The City Attorney or designee shall select, retain, and supervise, if applicable, outside attorneys, experts, vendors and investigators they deem necessary in connection with the defense of any Claim, regardless of whether the Claim is covered by the self-insurance fund and regardless of the form of relief requested
- C. The City Attorney shall promulgate guidelines for the defense of the City in litigation matters and, shall evaluate the performance of all outside counsel, experts and investigators.

Section 3.04 Settlement of Claims

- A. Settlement proposals shall be submitted to the proper approving authority by submission of a memorandum outlining the claims made and the justification for settlement recommendation. The memorandum shall be prepared by the attorney handling the lawsuit or the claims adjuster assigned to the claim and submitted to the Office of Risk Management for processing.
- B. Settlement of claims and lawsuits shall be upon the following approval authorities:
 - 1. The assigned claims adjuster or Assistant City Attorney may approve payment for settlement of any one claimant that arise from the same occurrence in the amount of \$7,500.00 or less without the necessity of further approval.
 - 2. Settlement in an amount between \$7,500.01 and \$15,000.00 per claimant shall require approval of the Risk Manager or designee and the City Attorney or designee, with notification to the Department

Director, as indicated by their signatures on the settlement memorandum.

3. Settlement in any amount between \$15,000.01 and \$50,000.00 per claimant shall require approval of a majority of the Claims Board as indicated by the Chair's signature on the settlement memorandum.
 4. Settlement in any amount above \$50,000.00 per claimant shall require approval of the City Council through passage of a City Ordinance.
- C. Settlement of property damage and personal injury damages arising from the same occurrence shall be considered as separate claims for purposes of determining the appropriate authority level.
- D. On an exception basis, after review and recommendation by the City Attorney and the Chief Financial Officer, the City Manager may authorize a settlement of up to \$50,000.

**ARTICLE IV
REGULATION OF SELF-INSURANCE LIABILITY & WORKERS'
COMPENSATION FUNDS**

Section 4.01 Authorized Withdrawals from the Fund or Funds

- A. Money may be withdrawn from the Fund or Funds ONLY for the following purposes:
1. to pay for Administrative Expenses;
 2. to pay any Program Claim;
 3. to compromise or settle a Claim in accordance with Section 3.04 Settlement of Claims;
 4. to pay any Fund or Fund Surplus to the City;
 5. to retire (by scheduled payment, prepayment, defeasance, or otherwise) any obligation of the City incurred in connection with providing funding for the Funds;
 6. to satisfy any judgment issued by a court of competent jurisdiction;
or
 7. to reimburse the City for any payment made under any agreement to provide funding for the Funds that is permitted to be paid to the City pursuant to such agreement, or to the extent and under the

terms and conditions provided in such agreement, to cure a default in payment by the City under such agreement.

- B. No withdrawal from the Funds may be made except in accordance with the Program Ordinance.

Section 4.02 Withdrawals From Funds

- A. Subject to the restrictions and limitations provided by the Program, withdrawal from the Fund for payment of Administrative Expenses may be made at the direction of the Risk Manager or designee and/or the City Attorney or designee. The Risk Manager may authorize a claims adjuster to pay Administrative Expenses in amounts less than \$7,500.00 for any one claimant that arises from the same occurrence.
- B. Withdrawal from the Fund for payment of any settlement shall be in accordance with Section 3.04 Settlement of Claims.
- C. An aggregate amount exceeding \$50,000 for Property Damage or Personal Injury may not be withdrawn from the Fund to pay the Program Claims of any one claimant that arise from the same Occurrence unless the City Council approves a greater amount for that purpose.

Section 4.03 Excluded Payment

Money may not be withdrawn from the Fund to make any of the following excluded payments:

- A. the payment of any Program claim involving Damages that arise from the exercise by the City of its power of eminent domain with the exception of damages or expenses arising by counterclaim;
- B. the payment of all or that portion of any Program claim, or of any other item for which a withdrawal from the Fund or Funds is permitted by Section 3.04 Settlement of Claims, that, in lieu of payment from the Fund, can be paid from:
 - 1. the proceeds of Program Insurance carried by the City, including, but not limited to those property and casualty insurance policies maintained by the City;
 - 2. the proceeds of any insurance carried under any health, accident, or similar plan of benefits provided by the City;
 - 3. any fund, reserves, or other source of payment available to the City that has been designated or otherwise set aside for such use; or

4. the proceeds of any insurance, bond (including payment, performance and maintenance bonds), fund, collateral, letter of credit, indemnity or other security provided, posted or maintained by a third party at the request or for the benefit of the City.
- C. the payment of any Program Claim arising from an injury that results from declared or undeclared war (including civil war, insurrection, rebellion, or similar hostility) or any act or condition incident to war;
- D. the payment of any Program Claim:
1. in which the City's liability exists by virtue of the Texas Tort Claims act, Chapter 101 of the Texas Civil Practice and Remedies Code, regardless of whether the City is a defendant, that exceeds the limits on liability applicable to the City under the statute;
 2. in which the City's liability exists by virtue of the Workers' Compensation Law that exceeds the limits on liability applicable to the City under that statute;
 3. that the City is otherwise granted immunity from paying or precluded from paying by law; or
 4. in an amount that exceeds any limits prescribed in Section 4.04 Limits on Amount of Withdrawals for Program Claims or the Risk Assumption Ordinance; or
- E. the payment of any exemplary damages on the behalf of a Plan Member.

Section 4.04 Limits on Amount of Withdrawals for Program Claims

- A. The aggregate amount of withdrawals from the fund to pay Corporate General Liability Claims under the Texas Tort Claims Act, Texas Civil Practice and Remedy Code Chapter 101 et. seq. may not exceed the following in accordance with the Texas Tort Claims Act, as of the date of the adoption of this Plan or as those limits are modified or amended time-to-time by the Texas Legislature:
1. for Personal Injury Claims: \$250,000 per person/\$500,000 per occurrence;
 2. for Property Damage Claims: \$100,000 per occurrence;

- B. The aggregate amount of withdrawals from the Fund to pay any Plan Claim for which the City in the judgment of the Claims Board is liable that arise from any one Occurrence may not exceed a self-insured retention amount in a purchased policy, if any.
- C. The aggregate amount of withdrawals from the Workers' Compensation Fund to pay Workers' Compensation Payments that arise from anyone Occurrence may not exceed a self-insured retention amount in a purchased policy, if any.
- D. Any amounts necessitate by law, above the amounts stated here, shall be determined by the Chief Financial Officer taking into consideration nature of claim, potential for future liability, impact on the budget and City policy objectives.

Section 4.05 Withdrawal of Fund Surplus

A Fund Surplus may be withdrawn from the Fund no more than once a year in accordance with the terms of this Plan.

Section 4.06 Investment of Fund

The Chief Financial Officer shall direct the investment of money in the Fund in investments that are eligible as lawful investments for other public funds of the City.

**ARTICLE V
OTHER PROGRAM PROVISIONS**

Section 5.01 Report to City Manager on Program Status

The Chief Financial Officer, in consultation with the Risk Manager, shall report to the City Manager on the status and experience of the Program, including the financial status of the Fund, on an annual basis.

Section 5.02 Alteration and Termination of Program

- A. Subject to Subsection 2 of this Section, the City, by ordinance, may alter the Program from time to time or terminate the Program at any time without notice to any Plan Member or other person.
- B. The City, by agreement approved by the City Council, may limit its right to alter or terminate the Program.

Section 5.03 Effective Date of Program: Duration

The program became effective on April 25, 1996, 12:01 a.m. and continues in effect until

terminated by the City Council. The process for administration of all pending claims and suits, as of the effective date, shall be governed by the procedures established in this Program.

ARTICLE VI MISCELLANEOUS PROVISIONS

Section 6.01 Conflicts with Ordinances

This Program shall not operate to repeal or affect any ordinance of the City except to the extent that the provisions thereof are inconsistent or in conflict with *this* Program, in which event, the provisions of this Program shall control, all save and except, continuing obligations under prior Indemnity Ordinances.

Section 6.02 Severability

The terms and provisions of this Program shall be deemed to be severable and if the validity of any section, subsection, sentence, clause or phrase of this Program should be declared to be invalid, the same shall not affect the validity of any other section, subsection, sentence, clause or phrase of the Program.

Section 6.03 Governmental Regulations

The regulations provided in this Program are hereby found to be governmental.

Section 6.04 Interpretation

- A. Whenever the context requires:
 - 1. reference to the City Manager, Assistant City Manager, City Attorney, Risk Manager or any Department Director shall be construed to include any person designated to act in their place.
 - 2. reference in the Program of the singular number shall include the plural and vice versa; and
 - 3. words used in the Program denoting gender shall be construed to include the masculine, feminine, and neuter.
- B. Titles given to any article or section of the Program are for convenience only and are not intended to modify or affect the meaning of the Program.
- C. By its language or treatment, the City intends no waiver of its rights under law, nor does it intend a ratification that would cause liability under the law.

Section 6.05 Prior Contract & Tort Liability

This Program does not alter any City tort or contract liability existing as of the date of the enactment of Ordinance 83926. More specifically, this Program does not alter contractual obligations in either San Antonio Firefighters Collective Bargaining Agreement or San Antonio Police Collective Bargaining Agreement as of that date.

Section 6.06 No Admission of Liability for Claims

The City, by virtue of establishing and maintaining the Program, is not admitting liability for any Claims. The City reserves the right to assert any defense to the payment or collection of any Claim that is lawfully available to it or any Plan Member. No language herein shall be a waiver, nor is any action taken intended as ratification.

Section 6.07 Cooperation of City Administration

To promote the efficient and effective administration of the Program, the various department heads and other employees having administrative responsibilities for the City are directed to cooperate with the Office of Risk Management and the City Attorney's Office.