



## **Agenda Item Details**

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Meeting Sep 19, 2012 - City Commission Meeting

Category 9. CONSENT

Subject 9.08 Approval of Amendments to City Commission Policy 214---JAMES O. COOKE IV., CITY TREASURER-CLERK

Access Public

Type Action (Consent)

Preferred Date Sep 19, 2012

Fiscal Impact No

Budgeted No

Recommended Action Approve Option 1

## **Public Content**

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**FOR INFORMATION CONTACT:** Gail Shuffler, Risk Management Administrator at 891-2117

### **STATEMENT OF ISSUE**

The City Commission has several policies in place concerning risk management and insurance. Commission Policy 214 addresses the funding level and method of the City's Special Insurance Reserve (SIR) Fund. Additionally, it incorporates by reference to statute the City's liability limits under the Self-Insurance program. This item is to clarify the funding level and method of the SIR, explicitly list the liability limits and add a definition of volunteer to the policy.

### **SUPPLEMENTAL MATERIAL / ISSUE ANALYSIS**

#### **History/Facts & Issues**

The City Commission has several policies in place concerning risk management and insurance.

The City provides for payment of claims through an internal service fund which is allocated in the annual budget process. The city self-insures for many types of liability claims and operates under the requirements of the Florida Sovereign Immunity Statute, §FS 768.28.

Effective October, 1, 2011, the Legislature increased the Sovereign Immunity liability limits to \$200,000 per person/\$300,000 per accident. This amendment to the Commission Policy incorporates that change to the program.

In addition to the liability limit amendment, the policy also addresses the funding level and methodology for the City's Special Insurance Reserve Fund. The Policy defines the purpose" is established and funded to meet unanticipated losses from catastrophic events, higher than expected claims experienced in a given fiscal year, or to meet other claims/resource needs in excess of the Risk Management Fund". The Policy called for a funding level at the higher of 150% of the past three years claim costs or \$3,000,000. This amendment explicitly states it is the average claims cost of the analysis period and not the total claim cost of the analysis period. This amendment also extends the analysis period from three (3) years to five (5) years.

By specifying the use of average claims cost rather than the total claims cost, current reserves balances above the required funding level can be released for other uses in the long run. The financial impact will be to reduce the impact of a single large claim on the average used to calculate the SIR funding in a single budget cycle but will increase the duration of it being included in the calculation.

**Charitable Contributions**

n/a

**Options**

1. Approve the recommended revisions to Commission 214
2. Provide staff with additional guidance.

[09-19-12 Agenda Item - Commission Policies214 Attachment.pdf \(108 KB\)](#)

**Administrative Content**

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## City Commission Policy 214 – Risk Management/Self-Insurance Policy

DEPARTMENT: Treasurer-Clerk  
DATE ADOPTED: July 12, 1991  
DATE OF LAST REVISION: February 24, 2010

### **214.01 Authority:**

This policy is authorized and adopted by the Tallahassee City Commission on July 12, 1991 and becomes effective immediately upon such adoption.

### **214.02 Purpose:**

The purpose of this policy is to authorize and create a self-insurance program for the City of Tallahassee. This policy establishes a uniform and centralized self-insurance system that will provide coverage and funding for claims which have been traditionally insured through the commercial insurance market. In addition, this policy also authorizes the City to defend, save harmless and indemnify any of its Commissioners, officials, employees, volunteers, board or committee members from claims, lawsuits and judgments which might be brought against them for their alleged acts or omissions occurring in the performance of their duties.

### **214.03 Scope and Applicability:**

This policy and the self-insurance program authorized and created shall apply to all claims as defined herein against the City of Tallahassee, its Commissioners, officials, employees, volunteers, and appointed board or committee members which may arise while acting lawfully within the scope of their duties and employment. The City of Tallahassee shall provide legal defense and will pay all legitimate costs for its Commissioners, officials, employees, volunteers and board or committee members named as parties or defendants in claims or lawsuits as a result of acts or omissions made in good faith performance of the City's business. This policy shall only protect such Commissioners, officials, employees, volunteers and board or committee members who acted in good faith and in a manner in which he or she reasonably believed to be in, or not opposed to, the best interests of the City of Tallahassee. The City Attorney may also be consulted on various risk management issues as the need arises.

### **214.04 Policy Statement:**

It is the policy of the City of Tallahassee to provide coverage for all claims against the City which emanate from automobile and general liability incidents (both personal injury and property damage), public official liability, professional liability, law enforcement liability, workers' compensation, employment-related claims, and Americans with Disabilities Act claims through a self-insurance internal service fund. As recommended by the Risk Manager, these exposures may also be either commercially insured or supplemented with commercial insurance to provide the most effective treatment of the exposures involved.

Liability for automobile and all general liability exposure areas defined above shall be limited to \$100,000 per person/\$200,000 per accident for losses occurring on or before September 30, 2011 and for losses occurring on or after October 1, 2011, \$200,000 per person/\$300,000 per accident as governed by Florida Statute 768.28(5), often cited as the "Sovereign Immunity Statute".

Liability for workers' compensation claims shall be limited to benefits prescribed by Florida Statute 440, cited as the "Workers' Compensation Law".

It is also the policy of the City of Tallahassee to provide a defense for and indemnify any Commissioner, official, employees or volunteers of the City, or any citizen member of a board or committee of the City of Tallahassee appointed by the City Commission, who is made a party to any suit or proceeding, other than by an action of the City of Tallahassee, or against whom a claim is asserted by reason of his or her actions taken within the scope of duty or

service as a Commissioner, official, employee, or volunteer or as an appointed member of a board or committee of the City of Tallahassee.

In the case of claims or causes of action arising out of Title 42, 1983, USCA or other federal statutes, coverage under the self-insurance fund is extended to all claims or judgments against the City, its Commissioners, officials, employees, volunteers and appointed board and committee members while acting lawfully within the scope of their employment, so long as such actions are not willful, wanton or intentional in character.

#### **214.05 Exceptions:**

Excluded from coverage under the self-insurance program are crime coverages, faithful performance bonds, police and firefighters statutory death benefits, airport liability insurance, certain excess coverages, and direct and indirect property damage to City buildings, facilities and other real and personal property. However, upon recommendation of the Risk Manager, any or all of these exposures, including any new exposures that may be identified, may be brought under the self-insurance program and/or covered by or supplemented with commercial insurance.

An employee shall not be covered under this plan:

1. For any alleged act or omission not occurring in the performance of duty by an employee; or;
2. For an alleged act or omission ~~not~~ constituting malfeasance in office or willful or wanton neglect of duty; or
3. For an alleged act constituting fraud by the city official, employee, volunteer, or board member.

This plan shall not apply to any claim, demand or lawsuit for liability arising out of an act or omission for which the City has procured a commercial policy of insurance. Provided, however, that in the event:

1. The City would otherwise be liable for the alleged act or omission if such insurance had not been purchased, and;
2. The liability limits of such policy are less than the liability limits provided by this plan and/or contain a deductible amount to be assumed by the insured, then the liability limits of this plan shall apply to any damages and acceptance of the liability limits of such policy and up to the limits provided by Florida Statute 768 or to the deductible amount otherwise assumed by the insured.

#### **214.06 Definitions:**

**City:** Refers to the City of Tallahassee, Florida, a duly incorporated and chartered municipality by the State of Florida. The City was established in 1824 and chartered by the Legislature in 1919.

**Claim:** Is defined as a request for indemnification of a loss by a third-party for damages alleged to have been caused by the City or one of its agents. The term "claim" may also be used to refer to the estimated value or amount of a loss.

**Employee:** Means any person who performs services for remuneration and who is actually employed, whether full-time, part-time or temporarily, or as a volunteer by the City, while acting within the course and scope of his or her duties as such. The term "employee" shall not include independent contractors or other persons who are not considered employees of the City under Chapter 440, Florida Statutes.

**Incurred ~~But~~ Not Reported or IBNR:** Refers to claims, which based upon insurance industry methodology, have occurred but have not been reported to the alleged party. Such claims should be reasonably estimated and considered when reserving for future claims development. This term may also include the adverse development of existing claims.

**Official:** Refers to the Mayor and elected City Commissioners serving as the legislative government body of the City of Tallahassee as provided by the City Charter and/or to those appointed officials as defined by the City Charter, consisting of the City Manager, the City Treasurer-Clerk, the City Auditor and the City Attorney. Each official is an appointee serving at the pleasure of the City Commission.

**Third-Party Administrator or TPA:** Is an independent professional firm that investigates and handles claims filed against an insured or self-insured (City). The TPA contracts with the insured or self-insured to provide these services, usually on a flat fee or time and expense basis in order to provide the claimant an independent review and analysis of liability and subsequent value of damages in cases brought against the insured.

Volunteer: A person who provides service to the public on behalf of the city while not compensated by the city subject to definitions and provisions of FS 768.1355. "Florida Volunteer Protection Act"

**214.07 Procedures:**

**Statutory Authority:** Pursuant to Section 111.072 of the Florida Statutes, the City of Tallahassee is authorized to create a self-insurance program to provide financial protection and funding for anticipation of claims and judgments against it.

By establishing this self-insurance program, the City specifically does not waive or intend to waive or impair any of its rights under any law, specifically including, but not limited to those rights recognized and afforded to the City under Section 768.28, Florida Statutes. The rights reserved include without limitation, the right of the City, its officials, officers, employees and volunteers to assert "sovereign immunity" to the extent allowed by law, to assert restrictions and limitations on the amount of tort liability to which the City may be exposed to under applicable law, and to assert restrictions and limitations on the ~~collectibility~~ collectability of any tort judgment permitted by Section 768.28, Florida Statutes and other applicable provisions of Florida or federal laws.

**Funding Source:** By authority of this policy, there is hereby created an Internal Service Fund for the sole purpose of providing resources needed to pay all anticipated claims and judgments against the City arising out of the coverage areas defined within this policy. That fund shall be known as the Risk Management Fund and shall be funded on an annual basis sufficient to meet anticipated and projected claims payment and claims reserves for all known and incurred but not reported (IBNR) cases for such year together with any deficits for prior periods. Departments within the City shall be allocated their proportional share of these costs by Risk Management based upon their share of the exposure base and actual loss exposure within each area of coverage. This allocation is submitted to ~~OMB-DMA~~ in each budgetary preparation cycle.

In addition, a Special Insurance Reserve Fund is established and funded to meet unanticipated losses from catastrophic events, higher than expected claims experienced in a given fiscal year, or to meet other claims/resource needs in excess of the Risk Management Fund. The level of funding for this fund shall be set at the higher of 150% of the past ~~three (3) years~~ five (5) year's average claims cost, or \$3,000,000. Any drawdown of that fund below this level shall be replenished in the next budget cycle(s).

Any situation of such catastrophic nature to exceed the limits of protection provided by those two (2) funds shall qualify for an appropriation from the deficiencies and emergency fund and shall serve as the City's excess layer of financial protection for losses covered within this program.

**Claims Administration:** Claims filed against the City within the coverages defined within the self-insurance program may be investigated by a firm selected through the competitive process and approved in accordance with the City's procurement policies. The investigative firm shall not have any settlement authority except that given by the Risk ~~Management~~ Management Division on a case-by-case basis.

Such services are governed by the terms and conditions set forth in a mutually-negotiated claims service contract.

**Indemnification:** Upon notification of any claim, action or proceeding, the Commissioner, official, employee, volunteer or board or committee member shall notify the City Risk Management Office, which shall, through its claims administration process, resolve each claim and pay judgments, fines and amounts paid in settlement of any such claim suit or proceeding, including any appeal thereof, in accordance with the City's Claims Settlement

Policy. Limits on payments of judgments, fines and amounts paid in settlement of any claim, or proceeding, including any appeal ~~thereof, are thereof, are~~ established by the Claims Settlement Policy, defining the levels of authority for settlement given to the Claims Administrator, City Staff and the City Commission. In addition, the Commissioner, official, employee, volunteer or board or committee member shall cooperate fully with the City Risk Management Office and the City Attorney in the resolution of the claim, action or proceeding, providing such information

as deemed necessary by the aforementioned parties. No employee shall discuss any accident or incident involving the City or their duties with the City with anyone other than their supervisors, the Risk Management Office, the Safety Officer, the City Attorney or their exclusive representative, nor shall the employee furnish to any other person, agent, investigator, attorney or governmental agency any document or statement or waiver unless required by law. Requests for such shall be immediately forwarded to the Risk Management Office or the City Attorney's office.

The City shall have the right and duty to provide legal representation through the City Attorney or at its discretion, through the selection of outside legal counsel, to any Commissioner, official, employee, volunteer, or board or committee member sued in connection with any claim for damages, other civil action or alleged violation of civil rights with criminal sanctions against such person arising out of the course and scope of employment provided that such Commissioner, official, employee, volunteer, or board or committee member may be entitled to indemnification as set forth in this section. Such legal representation shall be provided at no cost to the Commissioners, officials, employee, volunteer, or board or committee member. The indemnification provided to the above referenced groups is consistent with that provided for in the City's current indemnification Resolution 86-R-1454 approved by the City Commission on November 25, 1986. The commissioner, official, employee, volunteer, or board or committee member shall cooperate fully with the City in preparation and presentation of the case and the failure to cooperate shall waive such Commissioner's, official's, employee's, volunteer's or board or committee member's right to representation and indemnity under this policy.

**Legal Services:** Legal services, when required to defend claims that evolve into litigation, shall be coordinated by and through the City Attorney's Office. The City Attorney is authorized to provide those services or, at his discretion, retain outside or special legal counsel to assist in the defense of the City and its Commissioners, officials, employees, volunteers and appointed board and committee members.

When outside legal counsel is utilized, Risk Management shall participate in the selection process of that counsel. In addition, the Risk Management Office and the City Attorney's Office shall meet as necessary and may include outside defense counsel to discuss and prepare for mediations and trials.

**Annual Reports:** The City Commission shall be provided with an annual report detailing the performance of the self-insurance program. The report shall be prepared by the Risk Management Office and agendaed for City Commission review and discussion at one of the regular business meetings during the first quarter following the end of the year.

#### **214.08 Administration:**

-The City Treasurer-Clerk, through the Risk Management Office, shall be responsible for the administration of this policy and program including: the establishment of required funding levels, distribution of such costs among departments, and the determination of reserves for known and IBNR claims. Any substantial changes, additions or deletions to this policy shall be approved by the City Commission.

#### **Revisions:**

June 21, 1995

February 24, 2010

September 19, 2012

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