

City Commission Policy 214

Risk Management/Self-Insurance Policy

DEPARTMENT: Office of the City Treasurer-Clerk

DATE ADOPTED: July 12, 1991

DATE OF LAST REVISION: September 21, 2022

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 (City). 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.

214.03 Scope and Applicability:

This policy and the self-insurance program authorized and created in this policy shall apply to all claims and damages, as defined herein, against the City and its Officials, Employees, Volunteers, and Board or Committee Members. The City shall provide a legal defense and will pay all legitimate costs for its Officials, Employees, Volunteers, and Board or Committee Members named as parties or defendants in claims or lawsuits as a result of alleged acts or omissions taken within the scope and course of their duties or employment and while acting for on or behalf of the City so long as they acted in good faith and in a manner in which they reasonably believed to be in, or not opposed to, the best interests of the City.

214.04 Policy Statement:

It is the policy of the City 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, police civil liability, workers' compensation, employment-practice liability, and Americans with Disabilities Act claims through an internal self-insurance 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.

The extent of liability for automobile and all general liability exposure areas defined above shall be the limits prescribed by Florida Statute 768.28(5), often cited as the "Sovereign Immunity Statute".¹ Liability for workers' compensation claims shall be limited to benefits prescribed by Chapter 440, Florida Statutes, cited as the "Workers' Compensation Law."

It is also the policy of the City to provide a defense for and indemnify any Official, Employee, Volunteer, or Board or Committee Member who is made a party to any suit or proceeding, other than by an action

¹ This amount is currently \$200,000 per person/\$300,000 per accident for losses occurring on or after October 1, 2011.

of the City, or against whom a claim is asserted for acts or omissions taken within the scope and course of their duties or employment and while acting for or on behalf of the City.

In the case of claims or causes of action arising out of Section 1983, Title 42, U.S. Code or other federal statutes, coverage under the self-insurance fund is extended to all claims or judgments against the City, its Officials, Employees, Volunteers, and Board and Committee Members for acts or omissions taken within the scope and course of their duties or employment and while acting for or on behalf of the City, subject to the Exceptions listed below.

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, cyber coverage, unmanned aerial vehicle/DRONE liability, Appointed Officials' auto liability, 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.

Any Official, Employee, Volunteer, or Board or Committee Member shall not be covered under this plan:

1. For any alleged act or omission not occurring within the scope and course of their duties or employment or while not acting for or on behalf of the City; or
2. For an alleged act or omission constituting malfeasance in office or willful or wanton neglect of duty during the scope and course of their duties or employment; or
3. For an alleged act constituting fraud performed during the scope and course of their duties or employment.

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 Chapter 768, Florida Statutes, or to the deductible amount otherwise assumed by the insured.

214.06 Definitions:

Board or Committee Member: Is defined as those citizen members duly appointed to a board or committee by an Official, as defined herein, and to those citizen members that serve on boards of certain Florida non-profit corporations that act solely as direct support organizations benefitting the City. The term Board or Committee Member does not include those citizen members that serve on boards independent of the City or boards of non-profit entities not under control of the City, even if the entity

receives funding from the City, nor to citizen members appointed to a board by a person or entity other than the City or an Official, as defined herein.

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.

Damages: Means compensatory damages which the City, its Board or Committee member, Employee or Official becomes legally obligated to pay on account of a covered negligent act by way of judgment, award or negotiated settlement. Damages does not include payment of taxes, fines, penalties, or sanctions. Damages do not include punitive or exemplary damages or the multiple portion of any multiplied damages award.

Employee: Means any person who performs services for remuneration and who is actually employed, whether full-time, part-time or temporarily, while acting within the scope and course of his or her duties for or on behalf of the City. 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, individually or collectively, serving as the legislative government body of the City of Tallahassee as provided by the City Charter and to those appointed officials as defined by the City Charter, consisting of the City Manager, the City Treasurer-Clerk, the City Auditor (Inspector General), and the City Attorney.

Volunteer: A person who provides service to the public on behalf of the City while not compensated by the City and subject to the "Florida Volunteer Protection Act," Section 768.1355, Florida Statutes.

214.07 Procedures:

Statutory Authority: Pursuant to Section 111.072, Florida Statutes, the City 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, as amended. The rights reserved include without limitation, the right of the City, its Officials, Employees, Volunteers, and Board or Committee Members 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 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, judgments and damages 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 Resource Management 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 five (5) year's average claims cost, or \$5,000,000. 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 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 Risk Management employees or 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 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 Official, Employee, Volunteer, or Board or Committee member acting for or on behalf of the City shall notify the City Risk Management Office, which shall, through its claims administration process, resolve each claim and pay judgments, settlements or awards 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, settlements, and awards paid in settlement of any claim, or proceeding, including any appeal thereof, are established by the Claims Settlement Policy (CP200), defining the levels of authority for settlement given to the Risk Management Administrator, City Staff, and the City Commission. In addition, the 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 Office, the City Attorney's Office or their exclusive representative, nor shall the Official, Employee, Volunteer, or Board or Committee Member 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 the City Attorney's discretion, through the selection of outside legal counsel, to any 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 as a result of alleged acts or omissions taken within the scope and course of their duties or employment and while acting for or on behalf of the City, provided that such 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 Official, 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. Officials, Employees, Volunteers, and Board or Committee Members shall cooperate fully with the City in preparation and presentation of a case and the failure to cooperate shall waive such 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. 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.

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.

214.09 Sunset Provision:

This policy is also subject to sunset review by the City Commission no later than five (5) years from the date of adoptions. Subsequent reviews by the City Commission are to occur no later than five (5) years from the date of the prior review. Revisions will become effective immediately upon City Commission approval.

Revisions:

June 21, 1995
February 24, 2010
September 19, 2012
October 25, 2017