



Legislation Text

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AN ORDINANCE relating to risk management policies including the processing and disposition of claims and lawsuits against the county; and amending Ordinance 3581, Section 1, as amended, and K.C.C. 2.21.010, Ordinance 3581, Section 2, as amended, and K.C.C. 2.21.020, Ordinance 11984, Section 3, as amended, and K.C.C. 2.21.030, Ordinance 12076, Section 38, as amended, and K.C.C. 2.21.040, Ordinance 3581, Section 6, as amended, and K.C.C. 2.21.050, Ordinance 3581, Section 7, as amended, and K.C.C. 2.21.060, Ordinance 3581, Section 8, as amended, and K.C.C. 2.21.070, Ordinance 3581, Section 9, as amended, and K.C.C. 2.21.080, Ordinance 3581, Section 10, as amended, and K.C.C. 2.21.090, and Ordinance 3581, Section 11, as amended, and K.C.C. 2.21.100.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Ordinance 3581, Section 1, as amended, and K.C.C. 2.21.010 are hereby amended to read as follows:

The purpose of this chapter is to establish risk management policies for the county and to define procedures for the executive and the prosecuting attorney regarding the processing and disposition of claims and (~~claims~~) lawsuits against the county.

SECTION 2. Ordinance 3581, Section 2, as amended, and K.C.C. 2.21.020 are hereby amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires

otherwise:

A. "Chief civil deputy" means the chief deputy of the civil division (~~(, office of the prosecuting attorney~~) or ~~((the chief civil deputy's))~~ designee;

B. "Civil division" means the civil division of the office of the ~~((King County))~~ prosecuting attorney;

C. "Claim~~((s))~~" means any claim that names the county, or any of its officers, employees, or agents, whether employed or engaged in the past or in the present, while acting in ~~((good faith with no reasonable cause to believe the conduct was unlawful and within the scope of the county officer, employee or agent's))~~ service to or employment with the county, as a cause or causes of injury or damage, and that alleges a tort cause of action and asks for money damages;

D. "Committee" means the risk management committee established by K.C.C. 2.21.040;

E. "Enterprise risk management" means a countywide approach to risk management that proactively identifies and addresses potential risks across all operations. It is designed to ensure that organizational leadership integrates consideration of risk into the county's culture and processes, including, but not limited to, business and strategic planning and performance measurement;

F. "Lawsuit" means any lawsuit that names as a defendant the county, its officers, employees, or agents, whether employed or engaged in the past or in the present, while acting ~~((in good faith))~~ within the scope of ~~((their official duties))~~ service to or employment with the county, that alleges a tort cause of action and that asks for money damages;

G. "Risk management" means a coordinated and continuous management process to identify potential loss exposures, to apply reasonable and effective risk controls, and to ~~((insure))~~ ensure that the financial integrity of the county is not impaired after a loss; and

H. "Safety manager" means the manager of the ~~((safety and claims management))~~ central employee services division of the department of ~~((executive services))~~ human resources.

SECTION 3. Ordinance 11984, Section 3, as amended, and K.C.C. 2.21.030 are hereby amended to

read as follows:

A. The office of risk management services is established in K.C.C. chapter 2.16. The manager of the office of risk management services shall be the risk manager, who shall report directly to the director of the department of executive services and have the following duties: ((-

B.))1. ~~((The risk manager shall b))~~Be responsible for the administration of the county's insurance and risk management program((-));

2. ~~((The risk manager shall e))~~Coordinate with the civil division on the following:

a. contractual matters giving rise to potential liability on the part of the county ~~((The risk manager shall));~~

b. sharing information pertinent to claims and lawsuits against the county; and

c. ~~((seek the))~~ seeking advice ~~((of the civil division))~~ as to appropriate language regarding ~~((insurance,))~~ indemnification, releases, and hold harmless clauses ~~((and~~ ~~((Thereafter, t risk manager shall advise))~~ advising department directors ~~((and division managers))~~ or designees concerning these matters, and on appropriate language regarding insurance, as part of a coordinated process before finalization of county contracts ~~((-));~~

3. ~~((The risk manager shall be the chairperson of the committee and shall advise))~~ Informing the committee concerning insurance, risk management policies, broker selection, and other appropriate matters~~((-));~~

4. ~~((With the approval of the committee, the risk manager shall select))~~ Selecting appropriate insurance brokers by use of a competitive procurement process for the marketing and selection of insurance and related services~~((-));~~

5. ~~((The risk manager shall be))~~ Being responsible for the purchasing and administration of all insurance policies, funded self-insurance programs, and related services, as are consistent with good risk management policy and the needs of the county~~((In purchasing insurance policies, the risk manager shall obtain the approval of the committee.))~~

6. ~~((The risk manager shall advise))~~ Advising all county departments and ~~((other county))~~ agencies regarding risk management and reduction of risk and exposure to loss, ~~((including))~~ which shall include, but not be limited to, the following:

- a. programs and precautions for safety ~~((to reduce))~~;
- b. reducing hazards to the public that may exist in county facilities and operations~~((, and))~~;
- c. utilizing enterprise risk management in order to integrate risk management processes countywide;

and

d. proactively identifying, ((analyze, respond)) analyzing, responding to, and ((monitor)) monitoring risks and opportunities for risk-reduction~~((The risk manager shall)),~~ including making recommendations to all county departments and agencies regarding the safety of the public using county facilities or services;

7. ~~((e))~~ Cooperate with the safety manager in areas in which, in the opinion of the risk manager, the safety of employees and of the public requires coordinated programs~~((The risk manager shall also be responsible for answering))~~;

8. Answer all insurance or funded self-insurance coverage questions~~((The risk manager shall be responsible for the evaluation of))~~;

9. Evaluate current and future county or departmental insurance coverage programs, and have the authority to take actions that are in the best interests of the county~~((;))~~;

~~((7. The risk manager shall have the power,))~~ 10. ~~((s))~~ Subject to budget ~~((authorization))~~ appropriation, ((to)) contract for ((such)) outside assistance and perform ((such)) other acts as ((are)) necessary to carry out the risk manager's responsibilities in an expeditious manner((;));

~~((8. The risk manager is responsible for establishing))~~ 11. Establish reserve requirements for all claims and lawsuits and ~~((recommending))~~ recommend financing plans and budget actions to assure that adequate resources are available to meet risk management financing requirements~~((;))~~;

~~((9. The risk manager is responsible for))~~ 12. ~~((f))~~ Risk identification, control and reduction~~((;))~~;

including authority to make recommendations to all county departments and agencies regarding the safety of the public using county facilities or services.

~~C.1. The risk manager shall have the power to e))~~ 13. Employ the services of claims specialists or other persons who are necessary to process claims in an equitable and expeditious manner((:

~~2. The risk manager shall cooperate with the civil division in coordinating information pertinent to claims and lawsuits against the county.);~~

~~((3. The risk manager shall))~~ 14. ((d))Dispose of claims as authorized in K.C.C. 2.21.070.((E-))D.;

~~((4. The risk manager shall))~~ 15. ((m))Maintain complete histories of all claims and claims litigation, insured or funded self-insurance, loss histories, and investigations of claims. The risk manager shall be responsible to ensure that complete files are maintained of all claims asserted against the county and all incidents reported to the office of risk management services sufficient to document at least a ((five)) ten-year claims history((-);

~~((D.1. The risk manager shall report quarterly))~~ 16. Provide a quarterly letter to the council on claims that have been closed with an indemnity payment in the amount of one hundred thousand dollars or more. The report shall: identify the claimant; describe the claim; identify the amount of the indemnity payment; identify if the payment was a result of a settlement, a judgment, or a payment to an insurance company or other party; and include any other information the risk manager believes would be helpful to the council in understanding the nature of the claim. The ((report shall take the form of a)) letter ((with an attached)) shall include a table that provides the information required in this ((section)) subsection. The quarterly ((report is)) letter should be due ((thirty)) forty-five days after the end of each calendar quarter of the year;((-

~~2. The risk manager,;))~~ 17. ((e))On or before March 31 of each year ((shall)), provide an annual report to the council on the performance of the risk management program. The annual report shall include, ((including)) but not be limited to, the number of claim filings, amount of claim payments, insurance coverage ((and)), self-insured retention. ~~The annual report shall also include),~~ and enterprise risk management results for

the previous year and plans for the current year, including, but not limited to, enterprise risk management goals, priorities, agency actions, and measurable results.

~~((E.))~~ B. The executive shall electronically file the report((s)) and letter required by this section with the clerk of the council, who shall ~~((be filed in the form of a paper original and))~~ retain ~~((an))~~ electronic ~~((copy with the clerk of the council, who shall retain the original and))~~ copies and provide ~~((an))~~ electronic ~~((copy of the report))~~ copies to all councilmembers, the council chief of staff, and the lead staff for the government accountability and oversight committee, or its successor.

SECTION 4. Ordinance 12076, Section 38, as amended, and K.C.C. 2.21.040 are hereby amended to read as follows:

A. There is created a risk management committee to be composed of the risk manager, ~~((the safety manager;))~~ the chief civil deputy, and the director of the office of performance, strategy and budget. The risk manager shall chair the committee. ~~((The safety manager shall be a nonvoting member of the committee and shall inform and advise the committee on safety matters and coordinate employee safety programs with the risk identification and control functions of the committee.))~~

B. The risk management committee shall:

1. Make recommendations to the council and executive regarding risk management policy ~~((and shall cause the policy to be established and kept current));~~

2. ~~((Approve the selection of insurance brokers chosen as a result of a competitive procurement process;~~

3.))Advise the risk manager on matters concerning the purchase of insurance policies, and advise on the design of insurance and funded self-insurance programs; and

~~((4.))~~3. Advise the risk manager concerning matters of risk management policy~~((; and~~

~~5. Approve the purchase of all insurance policies)).~~

SECTION 5. Ordinance 3581, Section 6, as amended, and K.C.C. 2.21.050 are hereby amended to read as follows:

A. This section is consistent with and implements RCW 36.27.020, which makes the prosecuting attorney the legal advisor of the county.

B.1. Subject to the other provisions of this chapter, the county shall provide legal representation and indemnification to protect county officers, employees, and agents, whether employed or engaged in the past or the present, and their marital communities, from personal liability for alleged violations of civil or criminal law resulting from or based upon alleged acts or omissions of the officers, employees, or agents. To have the benefit of the legal representation and indemnification, the county officer, employee, or agent must have performed or acted in good faith, ~~((with no reasonable cause to believe the conduct was unlawful and))~~ within the scope of the county officer's, employee's, or agent's service to or employment with the county, and with no reasonable cause to believe the conduct was unlawful.

2. The civil division shall provide legal advice to the risk manager regarding the disposition of all claims against the county.

3. The civil division shall keep the risk manager advised of the current status and progress of all claim ~~((s))~~ litigation.

4. The civil division shall direct any recommendations for settlement of claims or lawsuits to the authority designated by K.C.C. ~~((4.21.030 and 4.21.080))~~ 2.21.070.D. and 2.21.080.D., as having final settlement authority. In recommending settlement of claims or lawsuits for more than fifty thousand dollars, the civil division shall consult, in conjunction with the office of risk management services, with the department or ~~((other county))~~ agency most involved with the litigation or named as a party to the lawsuit.

5. In reviewing contract language involving indemnification, releases, or hold harmless clauses ~~((or insurance matters))~~, the civil division shall provide advice to the risk manager, department directors, or designees.

6. The prosecuting attorney may contract with outside counsel for legal services where appropriate.

7. The chief civil deputy (~~(of the civil division)~~) shall resolve any questions relating to:

a. whether a county (~~(official)~~) officer, employee, or agent acted in good faith with no reasonable cause to believe the conduct was unlawful, and within the scope of the county officer's, employee's, or agent's service to or employment with the county;

b. whether, for purposes of the issues raised by a particular claim or lawsuit, a person is in fact a county (~~(official)~~) officer, employee, or agent; or

c. whether or not a county officer, employee, or agent performed or acted as required to have the benefit of county legal representation and indemnification.

C. Any reasonable costs and expenses incurred in the provision of legal representation and indemnification for criminal law allegations, driving infractions, and professional licensing matters shall be paid from the funds appropriated to the particular county department or agency employing or retaining the affected county officer, employee, or agent, unless the risk manager approves payment for such costs and expenses out of the risk management fund. Any reasonable costs and expenses incurred in the provision of legal representation and indemnification for tort claims and lawsuits shall be paid from available insurance or funded self-insurance program.

SECTION 6. Ordinance 3581, Section 7, as amended, and K.C.C. 2.21.060 are hereby amended to read as follows:

A. All county departments (~~(or)~~) and agencies and the officers, employees, and agents of those departments and agencies shall cooperate fully and in good faith with the risk manager and the civil division in the investigation and defense of claims and lawsuits. When deemed necessary by the chief civil deputy or deputy prosecutor assigned to the case, the assistance may include, but not be limited to, the providing of testimony and exhibits for use in litigation. Any request for information by the office of risk management services shall be considered a request by the civil division.

B. Except as specifically directed by the risk manager or the civil division, a county department or agency, ~~((or))~~ a county ~~((official))~~ officer or ~~((speaking agent))~~ designee, or an employee or agent represented by the civil division or by outside counsel at the county's expense should not:

1. Negotiate or otherwise affect the settlement of a claim or lawsuit against the county; or
2. Make an admission of liability involving a claim or lawsuit against the county.

C. Except as specifically directed by the risk manager or the civil division, a county department or agency, ~~((or))~~ a county ~~((official))~~ officer or ~~((speaking agent))~~ designee, or an employee or agent represented by the civil division or by outside legal counsel at the county's expense should not:

1. Discuss₂ with persons who are not county employees₂ incidents that could reasonably lead to claims or lawsuits against the county; or
2. Discuss₂ with persons who are not county employees₂ incidents that are the subject of pending claims or lawsuits.

D. In the event of an accident, incident₂ or occurrence causing bodily injury or property damage involving county vehicles, property₂ or personnel acting within the scope of their employment, the knowledgeable county officers, employees₂ and agents shall provide notice to the office of risk management services as soon as practicable. The notice shall include all reasonably obtainable information with respect to the time, place₂ and circumstances of the accident, incident₂ or occurrence and the names and addresses of all knowledgeable county personnel, injured or affected parties₂ and available witnesses.

SECTION 7. Ordinance 3581, Section 8, as amended, and K.C.C. 2.21.070 are hereby amended to read as follows:

A.1. All claims against the county for damages arising out of tortious conduct shall be presented to and filed with the risk manager by use of the electronic claim filing system managed by the office of risk management services₂ or a claim form provided by the county or the state.

2. All such claims shall be verified by oath or affidavit and shall:

- a. state the claimant's name, date of birth, and contact information;
- b. describe the conduct and circumstances that brought about the injury or damage;
- c. describe the injury or damage;
- d. state the time and place the injury or damage occurred;
- e. state the names of all persons involved, if known; and
- f. state the amount of damages claimed, together with a statement of the actual residence of the claimant at the time of presenting and filing the claim and for a period of six months immediately before the time the claim arose.

3. If the claimant is incapacitated from verifying, presenting, and filing the claim, if the claimant is a minor or if the claimant is a nonresident of the state, the claim may be verified, presented, and filed on behalf of the claimant by any relative, attorney, or agent representing the claimant. With respect to the content of such claims, this section shall be liberally construed so that substantial compliance will be deemed satisfactory.

B. An action shall not be commenced against the county for damages arising out of tortious conduct until a claim has first been presented to and filed with the risk manager and sixty calendar days have passed after the date of filing.

C. This section shall not affect the applicable period of limitations within which an action must be commenced, but the period shall begin and shall continue to run as if no claim were required.

D.1. For all claims of one hundred thousand dollars or less, the risk manager shall have the final payment authority and shall make final disposition by either granting or denying the claim((;)).

2. For all claims ((over)) more than ten thousand dollars, the risk manager shall seek the advice of the civil division before final disposition.

3. For all claims ((above)) more than one hundred thousand dollars, the county executive shall make final disposition after receiving advice from the civil division and the risk manager.

SECTION 8. Ordinance 3581, Section 9, as amended, and K.C.C. 2.21.080 are hereby amended to read

as follows:

A. Service of a summons and complaint shall be as provided in K.C.C. 2.04.010. Any county (~~official~~) officer or employee who is served with a summons and complaint in a lawsuit against the county or against any of its (~~officials~~) officers, employees, or agents alleged to be acting in their official capacities shall immediately forward the summons and complaint to the office of the manager of the records and licensing services division at kcserviceofsummons@kingcounty.gov.

B. The manager of the records and licensing services division, upon receiving service of the summons and complaint shall immediately forward the summons and complaint to the civil division. The civil division shall docket the lawsuit and forward a copy of the summons and complaint to involved department and to the office of risk management services for lawsuits covered by the risk management fund.

C. The prosecuting attorney shall defend, or provide for the defense of, all lawsuits against the county or any of its (~~officials~~) officers, employees, or agents, (~~acting~~) having performed or acted in good faith within the scope of the county officer's, employee's, or agent's service to or employment with the county, and with no reasonable cause to believe the conduct was unlawful (~~and within the scope of the county officer, employee or agent's service to or employment with the county~~), as long as the individuals discharge their obligations in K.C.C. 2.21.060.

D. Final authority for settlement of self-insured lawsuits shall be as follows:

1. The risk manager, acting with the advice of the civil division, may authorize settlements of one hundred thousand dollars or less; and

2. The executive, acting with the advice of the civil division and the risk manager, may authorize settlements of more than one hundred thousand dollars.

SECTION 9. Ordinance 3581, Section 10, as amended, and K.C.C. 2.21.090 are hereby amended to read as follows:

A. The purpose of this section is to protect county officers, employees, agents, and their marital

communities from personal liability for acts committed by those individuals in good faith and within the scope of their official county duties.

B. The chief civil deputy shall determine all questions relating to scope and status in accordance with K.C.C. 2.21.050.B.7.

C. When a county officer, employee, agent, or the marital community of the county officer, employee, or agent is sued in a lawsuit for an act or alleged act falling within the scope of the officer's, employee's, or agent's official duties, the prosecuting attorney shall be responsible for defense of that person or community in accordance with K.C.C. 2.21.050, 2.21.060 and 2.21.080 and this section.

D. This section may not apply if a claim or lawsuit is covered fully by insurance.

E. If a possible conflict exists between the county and a county ~~((official))~~ officer, employee, or agent acting in good faith within ~~((the))~~ their scope of the person's official duties~~((of the county official, employee or agent))~~, and with no reasonable cause to believe the conduct was unlawful, the prosecuting attorney may, at the prosecuting attorney's sole discretion, appoint outside counsel as a special deputy prosecuting attorney to represent the person. In those cases, the county shall be responsible for payment of costs incurred in the defense.

F.1. Subject to the other provisions of this chapter, the county shall provide legal representation and indemnification to protect county officers, employees, agents, and their marital communities from personal liability for alleged violations of civil or criminal law resulting from or based upon alleged acts or omissions of the officers, employees, or agents. To have the benefit of the legal representation and indemnification, the county officers, employees, or agents must have performed or acted in good faith, with no reasonable cause to believe the conduct was unlawful and within the scope of the county officer's, employee's, or agent's service to or employment with the county.

2. For the purposes of subsection F.1. of this section, "alleged violations of civil or criminal law":

a. includes, but is not limited to, professional licensing matters if a complaint has been filed

regarding an officer, employee, or agent's professional license; and

b. does not include motor-vehicle-related infractions unless the chief civil deputy determines that, in a particular instance, a motor vehicle infraction should be included because it is in the best interests of the county.

SECTION 10. Ordinance 3581, Section 11, as amended, and K.C.C. 2.21.100 are hereby amended to read as follows:

A. The risk manager and the civil division shall be responsible for bringing all actions, including claims and lawsuits, for recovery of losses to the county arising out of the acts of others. The losses may include property damages or losses that impact ~~((the))~~ the county as a result of personal injuries to county officers ~~((or))~~, employees, or agents. In addition, the civil division may join the county as a party with any third party in a lawsuit involving recovery of loss to the county. The prosecuting attorney may contract with outside counsel on recovery matters where appropriate.

B. Any moneys recovered, excluding costs of recovery, by the risk manager or civil division, on account of losses to the county shall be paid to the budget unit or department that has expended funds or materials as a result of the loss. Any moneys recovered in excess of those so expended shall be transferred to the ~~((insurance))~~ risk management fund.