



THE CITY OF SAN DIEGO

M E M O R A N D U M

DATE: August 31, 2010

TO: Eduardo Luna, City Auditor

FROM: Greg Bych, Risk Management Director 

SUBJECT: Management Response to the Performance Audit of the Risk Management's Public Liability and Loss Recovery Division

This memorandum is in response to the City Auditor's Performance Audit of the Risk Management's Public Liability and Loss Recovery Division.

The objective of the audit outlined by the City Auditor in the initial audit interview was to evaluate the management, reporting, and internal controls related to the Public Liability and Loss Recovery processes for proper handling, accounting, and accuracy in the City's financial statements. As the audit progressed, however, the scope was expanded by the Auditor to look at broader risk and loss control measures that apply to citywide operations that are outside of the span of control of the Public Liability division.

It is important to note that the audit of the Public Liability division of the Risk Management Department revealed no *significant* deficiencies in the Public Liability division's claims management operations related to the initial audit objective. While this is not stated in the audit findings, it is a significant and positive finding of this audit that there are no material weaknesses in the management, reporting and internal controls related to the Public Liability and Loss Recovery processes for proper handling, accounting, and accuracy in the City's financial statements.

The expanded scope included a review of broadly based city wide loss prevention opportunities, but did not include an audit of the processes and procedures in effect in two other divisions of Risk Management (Safety and the Workers' Compensation divisions) which are very relevant to a city wide or enterprise risk audit. These other two divisions address loss prevention in addition to the losses specifically related to Public Liability claims against the City.

It is important to make clear that conclusions drawn about city wide risk exposure imply findings of these two divisions of Risk Management when an audit of these operations did not occur. Several recommendations in this audit do not apply to the operations of the Risk Management Department and suggest a different audit focus; that is, a review of risk management practices city wide. Therefore, this audit draws certain conclusions without a comprehensive analysis of loss control practices and procedures in place city wide.

Findings related to the audit of the Risk Management Public Liability and Loss Recovery Division include suggested improvements to the documentation of processes and work flow, some of which were in the process of being completed at the time of the audit. The department has accepted several of these recommendations.

Additionally, management believes enterprise risk management is an important area for future analysis and city wide planning to improve its risk management activities to avoid and mitigate potential loss.

Response to Recommendations:

The Public Liability division of the Risk Management Department is responsible for three primary functions:

1. **Claims.** The primary function is the handling of claims for damages against the City pursuant to Section 915 of the California Government Code, as tasked by the San Diego Municipal Code, wherein the Director of Risk Management is designated as Secretary of Council for Claims.
2. **Recovery (subrogation).** This function is related to the Revenue and Recovery sub division of the Public Liability division. Revenue and Recovery, under A.R. 45.80, seeks to recover the costs associated with property losses caused by crimes or negligence.
3. **Insurance.** The Public Liability's Claims and Insurance Manager oversees and maintains the City's insurance portfolio and serves as an advisor to City staff regarding insurance requirements for City contracts.

The Risk Management Department has reviewed the Performance Audit of the Risk Management's Public Liability and Loss Recovery Division and provides the following responses to the recommendations:

Recommendation 1: Risk Management should adopt public sector enhancing practices for collection, analysis, and reporting of risk information, and prepare and distribute an annual Risk Management Report.

Response: Partially agree. The Audit makes references to "enhancing practices" but does not fully expand on why these practices were chosen or the methodology used to rate the Risk Management Department against them. An "enhancing practice" is not a professional standard. Audit staff has indicated that an "enhancing practice" is a practice found elsewhere by the

Auditor in their research which they deemed to be superior to the City's practice. However, absent from the comparison is a thorough analysis of how the City's needs, and its corresponding practices, compared to the practice of the other organization using the enhanced practice. A concern with this approach is that the sources cited with enhanced practices differ significantly from the structure and risk profile of the City, resulting in findings that are not applicable.

While Risk Management does employ industry best practices with regard to data collection, it concedes that opportunities exist to further develop loss information reporting. The Department, for some time, has considered providing an annual report but has been hindered by inferior systems until the recent implementation of the iVOS claim system in 2009 and additionally by a lack of resources to conduct data mining, analysis and reporting. Additional staffing would be required for the analysis, reporting of risk information and the preparation of an annual Risk Management Report as suggested by the Auditor. New staffing to accomplish additional analytical and reporting recommendations needs to be evaluated in light of the significant budgetary reductions in FY 2011 and FY 2012. This cost/benefit analysis will be conducted in the preparation of the FY 2012 budget and results reported in the fourth quarter of FY 2011.

Recommendation 2: Risk Management should annually survey City departments about their informational needs and analyze historical claims data and provide departments with reports on a monthly or quarterly basis.

Response: Partially agree. Risk Management disagrees that an annual department survey would be a value added benefit. An annual survey would not be the best utilization of limited resources and that would require staff support in the departments. Risk Management agrees that analyzing historical claims data and providing department reports on a quarterly basis would be beneficial and currently applies this practice with enterprise fund departments. Although Risk Management agrees that providing loss reports to departments would be beneficial, absent department resources dedicated to analyze the data provided, the impact of producing the reports may be minimal. Risk Management will contact the departments that reflect high claims and assess their report needs. Risk Management will then conduct an analysis to determine the number of staff hours extracting data and producing the report will require. The funding for additional staff hours needs to be evaluated in light of the significant budgetary reductions in FY 2011 and FY 2012. This cost/benefit analysis will be conducted in the preparation of the FY 2012 budget and results reported in the fourth quarter of FY 2011.

Recommendation 3: Risk Management, with the assistance of an actuarial consultant, should develop and implement cost allocation methodology for City departments to assess the costs of general liability claims.

Response: Agree. There are additional services that can be obtained from an actuarial consultant. Currently, Risk Management limits the usage of such services due to financial constraints. A cost analysis needs to be evaluated in light of anticipated budgetary constraints

for FY 2011 and FY 2012. This analysis will be conducted in conjunction with the preparation of the FY 2012 budget and reported in the fourth quarter of FY 2011

Recommendation 4: The City Administration should consider actions taken by other cities to limit sidewalk repair responsibility and to take appropriate action to limit the City's liability related to sidewalks.

Response: Agree. However, action to this recommendation falls outside of the span of control for the Public Liability division and can best be directed to the Office of the City Attorney. Staff from the City Attorney's Office has advised that they are currently exploring legal options available to limit the City's liability related to sidewalks and expect to present a recommendation to City Council within the next quarter.

Recommendation 5: The City Administration should establish a risk management working group charged with coordinating Risk Management efforts with membership representation from all the major city departments and the City Attorney's Office. This committee should meet at least quarterly and be chaired by the Director of Risk Management or another senior city official.

Response: Disagree. A "working group" structure is not the best way to conduct risk mitigation, particularly in an organization with limited resources. Each department's operational exposures and risk mitigation strategies are significantly different. Risk Management believes that its response to recommendation #2 above best addresses the City's need to maximize risk mitigation across all city departments, by aligning department loss information with the management directly responsible for its mitigation. However, as noted under response to recommendation #2, Risk Management notes that, absent department resources dedicated to analyze the data provided, the impact of producing the reports may be minimal.

Recommendation 6: Risk Management should develop a detailed safety training curriculum for City employees and deliver this training on a regular basis. The Public Liability and Loss Recovery Division should develop detailed informational material regarding its services and post it on the City website. Training and informational material should be targeted to areas and activities with high public liability losses and addressing frequently asked questions.

Response: Partially agree. Risk Management already has a detailed safety training curriculum for employees, known as the Injury & Illness Prevention Program (IIPP). However, this program is directed towards employee workplace safety. Consistent with Risk Management's response to recommendations #2 and #5, Risk Management believes that the most effective way to maximize risk mitigation across all city departments is by aligning department loss information, including hazard assessment training, with the management directly responsible for its mitigation.

With respect to having the Public Liability division develop detailed informational material regarding its services and post it on the City website, Risk Management currently provides detailed information pertaining to the Public Liability division but will add informational material pertaining to Loss Recovery on the City's website by the end of the calendar year.

Recommendation 7: Risk Management and the City Attorney should solicit feedback from the City Council on the adequacy and completeness of current public liability claims-related reporting and, as appropriate, facilitate the updating of Council Policy 000-009 to be consistent with agreed-upon reporting.

Response: Agree. Risk Management, in the first quarter of calendar year 2011, will coordinate with the office of the City Attorney to solicit City Council feedback and update Council Policy 000-009 if necessary.

Recommendation 8: Develop additional Risk Management policy and departmental guidance to detail the steps for the proper reporting of claims compliant with Council Policy 000-09. This guidance should specify report contents to satisfy current reporting requirements and subsequently developed ones.

Response: Disagree. Upon the completion of Recommendation #7 policy and reporting criteria will be clearly established. No additional policies to further detail Council Policy 000-009 are required.

Recommendation 9: Risk Management should formalize and document the claim reserving approach and periodically review it with the City's actuary.

Response: Partially Agree. Risk Management already has a formalized claims reserving approach. Risk Management agrees to document that methodology and agrees to include a discussion of claim reserving as a part of its annual actuarial review by the end of the calendar year.

Recommendation 10: Risk Management should properly document and maintain each annual marketing effort in relation to insurance premiums to retain historical self-insured retention limits, excess liability coverages and available premiums.

Response: Agree. In depth marketing efforts are conducted annually by the City's insurance pool, CSAC (California State Association of Counties). Because of its large size, CSAC relies on extensive buying power for each of their insurance programs. Risk Management will retain documentation of the annual marketing efforts. Risk Management does retain historical information on its self-insured retention limits, excess liability coverage and premium costs.

Recommendation 11: Risk Management should prepare formalized annual reviews of historical premiums, actual losses and reimbursements. These reviews would include the self-insured retention limit, excess liability limits, and related premiums to assess the best limit to maintain and validate the reasonableness of insurance costs.

Response: Partially agree. Risk Management currently performs reviews of the self-insured retention limit, excess liability limits, and related premiums on an annual basis to assess the best limits to maintain and validate the reasonableness of insurance costs. This is typically done in conjunction with the preparation of the City's annual budget and the city's annual renewal of its insurance. Risk Management will continue its practice of annual insurance reviews and in conjunction with the FY 2012 budget development will document this process by the fourth quarter of FY 2012.

Recommendation 12: Risk Management should develop additional policy, procedure and departmental guidance to detail the process and expectations related to the periodic internal and external reviews of insurance coverages and premiums, and the documentation thereof.

Response: Agree. Risk Management will document the process associated with the annual renewal, mid-year changes and other periodic reviews of insurance coverage by the end of FY 2011.

Recommendation 13: Risk Management should review documented and undocumented processes for current reporting, practices, roles and responsibilities to ensure that Risk Management has a strong documented loss recovery function in compliance with Administrative Regulation 45.80 and best practices. These processes should incorporate formalized communication about and advertisement of the loss recovery function, including on the internal and external Risk Management websites.

Response: Agree. As discussed under response to recommendation #6, Risk Management will also review processes and will document the loss recovery function to ensure compliance with Administrative Regulation 45.80 in the second quarter of FY 2012.

Recommendation 14: Risk Management should seek additional actuarial analysis or reviews for risk control, cost allocations, and claims reviews to assist with loss management processes and the implementation of loss prevention programs. Any newly created and existing actuarial analysis should be incorporated into the proposed annual reporting that we separately recommended Risk Management prepare.

Response: Partially agree. As discussed under response to recommendation #3, Risk Management will conduct a cost analysis to evaluate budgetary constraints for FY 2011 and FY 2012. This analysis can be conducted in the fourth quarter of FY 2011.

Recommendation 15: Risk Management should develop, document and implement policy, procedure and departmental guidance to detail the actuarial analysis process and expectations to include the following:

- a. Receipt and analysis of the results of the annual actuarial review, including any impact on the recommended annual Risk Management reporting;
- b. Any internally or externally developed reports or analysis including, but not limited to, risk control, cost allocations and claims reviews; and,
- c. Claim reserving practices developed, formalized and implemented.

Response: Disagree. With respect to the annual actuarial process, Risk Management has procedures in place that have been reviewed and documented by the City's external auditor, Macias Gini & O'Connell. The actuarial results are provided to the City Comptroller for use in the City's CAFR.

As discussed in the response to recommendation #3, there are additional services that can be obtained from an actuarial consultant and included as part of the City's annual actuarial review. As discussed in the response to recommendation #9, Risk Management already has a formalized claims reserving approach.

Recommendation 16: Risk Management should review and update claim-related City Council Policies, Administrative Regulations and forms to ensure consistency with current processes, organizational structure and overall expectations, and periodically perform ongoing reviews of those documents for accuracy.

Response: Agree. As discussed in the response to recommendations #7 and #13, Risk Management is part of the city wide effort to update administrative regulations and is consistent with the assigned time lines designated per department. Completion of updates is expected by the first quarter of FY 2012.

Recommendation 17: Risk Management should resolve the discrepancy between the California Government Code and Section 110 of the City Charter regarding the time limit for submitting claims against the City.

Response: Agree. However, compliance with this recommendation will require actions by the Office of The City Attorney as they will need to issue a legal opinion and present possible changes to the City Charter. Changes to the City Charter require a public vote. Risk Management staff will immediately request an opinion from the Office of the City Attorney.

Recommendation 18: Risk Management staff should also document, formalize and implement detailed policies and related procedures and departmental instructions to specify the current process and documentation requirements regarding the receipt, handling and resolution of public liability claims.

Response: Disagree. Risk Management's process for receipt, handling and resolution of public liability claims is governed by the California Government Code. Risk Management staff currently abides by and adheres to specifications as dictated by the Government Code.

Recommendation 19: Risk Management should obtain or develop formalized staffing and workload benchmarking to monitor workload levels, measure staff performance and substantiate future budgetary requests.

Response: Agree and have already completed. Documentation is now on file from the City's insurance pool. Industry standards reflect an average caseload of 125-150 claims per adjuster. Public Liability staff currently carries a caseload averaging 250 claims per adjuster. These workloads are documented as the Risk Management department requests permission to fill departing vacancies; however no new additional resources have been requested given ongoing year over year budget reductions.

Recommendation 20: Risk Management should develop and implement legally defensible documentation standards for claimants that would permit the rapid denial of claims lacking sufficient evidence. Documentation requirements should be included on the City's claim form and / or Risk Management's external website.

Response: Disagree. As previously mentioned under response to recommendation #18, claims handling is strictly governed by the California Government Code. With the exception of a "notice of insufficiency," the Government Code does not provide the legal basis for a "rapid" denial due to lack of evidence. Additionally, the Risk Management website currently does provide thorough information regarding the City's claim process and the documentation needed to support a claim.

Recommendation 21: Risk Management should review and where appropriate request an update of the authorization limits indicated in section IV of Council Policy 000-09 as appropriate to allow greater efficiency in claims handling as well as consistency with the jurisdiction of the small claims court (claims up to \$7,500) and the organizational structure of the Public Liability & Loss Recovery Division.

Response: Agree. Risk Management will include an assessment of current authorization limits in conjunction with the review of Council Policy 000-009 in the first quarter of calendar year 2011.

Recommendation 22: Risk Management should deny or reject all tow and impound related claims that have not been reviewed and substantiated by the San Diego Police Department's Internal Affairs.

Response: Disagree. Adjusters must be able to rely on their ability to objectively evaluate the merits of each claim and draw on their experience before reaching a conclusion in the outcome of a claim. Predetermining a claim outcome based on one factor is not a legitimately defensible position.

Recommendation 23: The City Administration should transfer the responsibility for vehicle post-storage hearings being performed by Risk Management to the San Diego Police Department.

Response: Management agrees to review the current process and division of labor in handling post storage hearings. Since both Risk Management and the Police Department are responsible for this function, a review of the rationale for splitting the duties and the potential to streamline and maximize staff resources is worthwhile. Risk Management will immediately begin discussions with the Police Department, and a determination of the appropriate work flow and departmental responsibilities for post storage hearings will be completed by January 2011.

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GJB/CC

cc: Honorable Mayor Jerry Sanders
Honorable Councilmembers
Jay M. Goldstone, Chief Operating Officer
Wally Hill, Assistant Chief Operating Officer
Mary Lewis, Chief Financial Officer