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## MEMORANDUM

**To:** Kurt Triplett, City Manager

**From:** James Lopez, Director of Human Resources & Performance Management  
Tracey Dunlap, Deputy City Manager  
Kathy Joyner, Safety/Risk Analyst  
WCIA Staff

**Date:** September 9, 2016

**Subject:** INSURANCE COVERAGE OVERVIEW

### I. Introduction

The purpose of this memorandum is to provide an overview of how the City of Kirkland manages risk through its membership in the Washington Cities Insurance Authority (WCIA) and other programs including a description of the types of insurance coverage, coverage limits, exclusions and exceptions. This overview will also include a brief summary of how the City manages risk outside the coverage provided by WCIA in two key areas: workers compensation and non-insured infrastructure. Programs such as employee health benefits and compensation-related issues are beyond the scope of this document.

### II. Definitions

All-Risk Coverage: Any peril that the coverage document does not specifically omit is automatically covered.

Claims-Made Basis: A term describing an insurance policy that covers claims first filed during the year the policy is in force for any incidents that occur that year or during any previous period during which the insured was covered. Claims-made policies do not cover claims after the policy has expired.

Errors or Omissions: An insurance form that protects the insured against liability for committing an error or omission in performance of professional duties. Generally, such policies are designed to cover financial losses rather than liability for bodily injury or property damage.

Exclusions: A provision of an insurance policy referring to hazards, circumstances, or property not covered by the policy.

Occurrence Basis: Policy covers events that occur during the policy period regardless of when the claim is made. Washington State has a three-year statute of limitations on liability claims.

Peril: Cause of loss

Stop-Gap Coverage: Coverage that provides employers liability coverage for work-related injuries arising out of incident operations or exposures in monopolistic-fund states.

Sublimit: A limitation in an insurance policy on the amount of coverage available to cover a specific type of loss.

### **III. Washington Cities Insurance Authority (WCIA)**

#### Background

The Washington Cities Insurance Authority (WCIA) (Authority) is a municipal organization of Washington public entities that join together for the purpose of providing liability and property financial protection to its members. WCIA is the oldest municipal insurance pool in the State of Washington formed in 1981 by the City of Kirkland and 8 other Puget Sound area cities. Today WCIA has grown to 167 members and provides a broad range of coverage and services to the membership. A brief synopsis of each coverage type follows:

#### **A. Liability Coverage**

The current WCIA liability coverage document is the equivalent of at least six insurance policies: general liability, automobile liability, stop-gap, errors or omissions, employee benefits liability and employment practices liability. Police liability, sometimes a separate insurance policy, is included in the general liability.

Liability coverage is “first dollar” which means there are no deductibles for Kirkland. Defense costs are included and coverage is afforded to Kirkland’s City Council, employees and volunteers. The coverage provides \$20 million in liability limits, subject to a \$4 million sublimit for the membership’s liability for terrorism and a \$5 million sublimit for planning and land use liability. Each year the WCIA Board (Board), composed of one person from each member of the Authority, approves the coverage document. Revisions are made periodically to improve coverage. For instance, in 2016, the Board expanded liability coverage to include coverage for the use of drones and the administering of opioid antagonists (e.g. Naloxone) by first responders. The WCIA coverage document is broader in coverage than most liability insurance policies. Below is a more-detailed discussion of each of the coverage areas.

##### **1. General and Automobile Liability**

The City of Kirkland maintains \$20 million in coverage for liability arising from its premises, operations, vehicle use, products (e.g. water), and from liability assumed under contract that results in bodily injury, property damage, personal injury or advertising liability. An example of an advertising liability claim might allege the City had slandered or defamed the claimant in an advertisement, publicity article, broadcast or telecast.

As coverage is broad it is easier to explain what is excluded from coverage as opposed to what is covered. Major exclusions include liability from:

- Medical Malpractice (not including paramedics or EMT's)
- Pollution
- Use of aircraft
- Use of watercraft (over 30 feet in length)
- Breach of contracts
- Airports
- Transit systems
- Fines, penalties and punitive damages
- Nuclear events
- Fraud, dishonesty, criminal actions, and wrongful acts
- Land subsidence (e.g. landslide) unless caused by the member's negligence
- Asbestos exposure
- Open Public Meeting Acts and Public Record Acts fines and costs

The above are very standard exclusions in pooling and in the insurance industry. Many are covered by specialized policies or cannot be covered by insurance or reinsurance. These exclusions also apply to stop-gap, error or omissions, employee benefits, and employment practice coverage.

WCIA has no liability exclusions or a sublimit for physical or sexual molestation. These types of limitations are very prevalent in commercial insurance policies where the insured has a large exposure to minors. Many WCIA members have this type of exposure with various park and recreation programs and activities with children.

## **2. Stop-Gap Coverage**

As noted in Section III below, in Washington, L&I or "industrial insurance" is the sole recourse for most injured employees meaning, except in rare circumstances, the employee cannot sue the employer. **Stop-gap** is coverage for liability resulting from employee's work-related bodily injury or disease other than claims covered by L&I. Generally, there are three areas where the law does allow an employee to bring suit against the employer. They are gross negligence, forcing an employee to do a job that is more hazardous than should be anticipated or an intentional act.

## **3. Errors or Omissions Liability Coverage**

This is a combination of public officials' liability and professional liability insurance. This coverage is for public officials and employees for their alleged errors, omissions, negligence or breach of duty in the scope of their employment or duties for the City. Any liability arising from any dishonest, fraudulent, criminal or malicious act would be excluded from coverage.

Like all WCIA coverage, the errors or omissions liability coverage is written on an occurrence coverage basis as opposed to insurance policies that are often written with

claims made coverage. Occurrence coverage is more protective for the City, as the policy covers events that occur during the policy period regardless of when the claim is made. Claims-made policies do not cover claims after the policy has expired.

#### **4. Employee Benefits Liability Coverage**

Employee benefits liability provides coverage for liability in the administration of employee benefits. Administration means:

- Giving employee benefit consultations to employees
- Interpreting employee benefits
- Handling of employee benefits
- Affecting enrollment or terminations of employees under employee benefit programs

This coverage would exclude any claim for failure or performance by any benefits insurer or the member's failure to comply with any law concerning workers' compensation, unemployment insurance, social security or disability benefits.

#### **5. Employment Practices Liability Coverage**

Employment practices liability covers wrongful acts and employment practice violations including any of the actual or alleged:

- Wrongful termination
- Harassment including sexual harassment and hostile work environment
- Discrimination of all kinds
- Retaliation
- Wrongful failure to promote
- Wrongful discipline
- Employment related libel, slander, defamation or invasion of privacy

For Instance:

**Deception:** If an employee submits to a medical examination, and a urine sample is drug tested without prior disclosure, it would be deceptive to use that as grounds for termination.

**Violation of confidentiality:** If an employee is told their information will be used for one purpose only. It cannot later be used for other purposes. New information must be obtained.

**Secret, intrusive monitoring:** Illegal and undisclosed audio or video recordings are the most common examples.

**Intrusion on employee's private life:** An extreme example of this would be the hiring of a private detective to follow an employee after work hours.

## **B. Property Insurance Program**

The City insures the value of its property (property schedule) at around \$162 million. The City maintains a \$5,000 deductible for most of its property insurance coverage, and the deductible applies to all covered perils except flood and earthquake. There is a different deductible structure for flood and earthquake known as an "all other perils" deductible. Staff is available to discuss the specifics of the more complex criteria surrounding the flood and earthquake deductibles upon request of the Council.

In 2013, Kirkland had 25 buildings appraised. The appraisals assure that buildings are correctly valued for their replacement cost and are looked at favorably by insurance underwriters. In case of loss, buildings, contents, machinery and equipment are valued at the cost to replace new.

The property program is written on an all risk basis where coverage is afforded unless excluded. Major excluded perils of loss include:

- Losses covered under the boiler and machinery policy.
- Theft by employees (covered by crime insurance).
- Ordinary, wear and tear, latent defect, inherent vice or gradual deterioration, however the ensuing loss is covered unless otherwise excluded. Ensuing loss is the damage that results from the wear and tear, latent defect, inherent vice or gradual deterioration. An example of this would be a fire that resulted because of an aging electrical panel. The panel would not be covered, but if a building burnt down as a result, the building would be covered if it was on the property schedule.
- Normal settling or shrinkage of foundations, roofs, walls, floors, ceilings or walkways, however the ensuing loss is covered unless otherwise excluded.
- Nuclear radiation or contamination.
- War, rebellion and civil war.
- Against insects, animal or vermin damage, however the ensuing loss is covered unless otherwise excluded. If termites ate through a beam in a building, the beam would not be covered. If the falling beam landed on one of our autos on our schedule, the repair of the auto would be covered
- Loss from biological or chemical substances.
- Cost of pollution or contamination, however covered if resulting from a covered peril.
- Asbestos, unless damaged by fire, windstorm, vandalism and other specified perils.
- Loss arising out of mold, mildew, fungus or other microorganisms.
- Loss of electronic data unless caused by fire or explosion.

The property program excludes coverage for land except for restoration or repairing of land improvements. Also, WCIA requires that property be scheduled for coverage to apply.

Like other WCIA members, Kirkland covers more than buildings, contents and equipment in the property program. Artwork totaling \$2.5 million is covered as well as docks, lift stations, shelters, playground equipment, field lights, swimming pools, water towers, nature benches, and emergency communication signs.

The property program does not cover water mains, storm and sewer mains, sidewalks, and roads because of the high premiums to insure them at their full replacement cost value. (See discussion below about “Key Non-Insured Infrastructure Exposure”). In the event of a declared disaster, FEMA would likely provide public assistance for the cost to repair or replace these types of infrastructure.

The City also carries many coverage extensions to the property program. These include coverage for:

- Increased cost of construction (e.g. building code upgrades)
- Demolition costs
- Debris removal
- Expediting expenses
- Business Interruption (loss of income)
- Loss of tenants’ rents
- Loss caused by utility service interruption
- Loss caused by interruption of civil or military authority
- Loss caused by impairment of ingress/egress
- Property in transit
- Accounts receivables – This coverage protects us if we are unable to collect outstanding balances because our account records are damaged by an insured peril.
- Consequential loss – Loss of property caused by interruption of power, heat or air conditioning caused by physical loss of someone else’s power. An example would be if the City lost food in the freezer at the Peter Kirk Community Center after Puget Sound Energy lost service because of an outage at their plant.

### **C. Monetary Recovery**

For property that is damaged by a third party not covered on the property schedule, the City engages in a process to recover those damages directly from the liable party. This “monetary recovery” program is administered by the risk management staff in the Human Resources Department in partnership with the department that is responsible for the infrastructure (usually Public Works). A service package request is included in the proposed budget to fund a pilot program with the King County Office of Risk Management to streamline this collection process and bring additional resources to expedite collections.

### **D. Cyber Insurance**

In response to the rise in cyber-attacks, their sophistication and the increased risks to loss, the City carries a cyber insurance policy provided by WCIA through AIG. Cyber liability covers claims from third parties alleging negligence from the disclosure of their confidential information or from a failure of a member’s network security.

The City’s cyber insurance includes:

- Security and privacy liability in the amount of \$1,000,000 that is primary (covers first) before WCIA’s liability coverage document.
- Regulatory action coverage in the amount of \$1,000,000 to pay for fines and penalties such as HIPAA violations that WCIA cannot cover.

- Privacy event services including notifications to affected individuals, identity theft call center assistance, identity restoration services, and identity monitoring and victim cost reimbursement insurance.
- Event management services in the amount of \$500,000 for event response and \$500,000 for electronic data that covers costs for:
  - Forensic investigations
  - Public relations, crisis management or legal costs
  - Restoration, re-collection or re-creation of electronic data
  - Cyber extortion up to \$1,000,000 (must be approved by AIG)
  - Cyberterrorism

The cyber insurance is subject to a \$25,000 deductible with certain exceptions.

### **E. Crime Insurance**

Kirkland elects coverage as part of WCIA's optional crime insurance policy insured through AIG. The crime policy provides \$2.5 million in limits for loss caused by employee theft, robbery or crime, computer fraud, forgery (including credit or debit card), and funds transfer fraud with a \$10,000 deductible. The insurance is written on a blanket basis meaning Kirkland is covered from losses by all employees and officials. The policy is endorsed to provide faithful performance of duty coverage for government employees. Faithful performance of duty covers losses of public officials or employees for failing to faithfully perform duties as prescribed by law. This endorsement allows WCIA members to provide the equivalent of small individual bonds for certain officials as required by city ordinance in conjunction with state statutes.

### **F. Auto Physical Damage Program**

There are three layers in Kirkland's auto physical damage coverage program. The first layer is the City's deductible. The second layer is the WCIA coverage layer up to \$250,000 per occurrence. The third layer is an additional insurance layer which provides \$100,000,000 per occurrence limits. Kirkland has a \$1,000 deductible for comprehensive and collision coverage and the 360 scheduled vehicle values total \$19 million. The \$1,000 deductible is waived for windshield repair and for damages caused by fire or lightning.

Like the property program, the auto physical damage program requires vehicles to be scheduled for coverage. The program coverage territory is limited to the United States and Canada. Loss valuation is either actual cash value (ACV) or replacement cost for certain vehicles at the election of the City.

The City insures its vehicles at a replacement cost if the vehicle replacement value, including equipment, is \$25,000 or greater. About 56% of the City's vehicles, in the auto program, are covered for replacement cost. Generally, Fire Department and other expensive vehicles have replacement cost coverage. For instance, Kirkland has a Spartan fire truck valued at \$1,200,000 with replacement cost coverage. In addition the City elects replacement cost coverage for police vehicles.

## **F. Equipment Breakdown Insurance**

What is now called equipment breakdown insurance used to be called boiler and machinery insurance. Besides covering boiler explosions, equipment breakdown insurance also covers mechanical breakdowns and electrical damage losses that are excluded by the property insurance program.

Kirkland elects to participate in WCIA's optional joint purchase equipment breakdown insurance policy. The policy provides \$100 million in equipment breakdown coverage subject to a minimum deductible of \$10,000.

## **IV. Workers Compensation**

The City maintains Workers Compensation coverage through the Department of Labor and Industries (L & I). All injured workers in Washington State are entitled to Workers Compensation (RCW 51.32.010) which is no-fault accident and disability coverage. Workers Compensation provides medical and limited wage-replacement coverage to workers who suffer job-related injuries and illness.

The City's annual premium paid to L & I is based on our experience factor. The experience factor is based on worker hours and amount of claims. Below is a snapshot showing the City's experience factor for the last five years. An experience factor greater than 1.0 indicates higher than average claim costs.

<u>Year</u>	<u>Experience Factor</u>	<u>Claim Years</u>
2011	1.2608	7/1/2006-6/30/2009
2012	1.1193	7/1/2007-6/30/2010
2013	1.2993	7/1/2008-6/30/2011
2014	1.1378	7/1/2009-6/30/2012
2015	1.0526	7/1/2010-6/30/2013

The higher than average experience factor is the result of three types of claims: back, shoulder, and legs. These claims are generally caused by improper lifting techniques or repetitive motion.

Each claim is examined closely, by Risk Management, to determine the cause and preventability. The greatest potential for managing any increases in the City's experience factor (and therefore containing costs) is maintaining proper education and training and adhering to safety protocols put forth in each department. Risk Management works closely with the departments to assure this is done. Risk Management is currently evaluating additional training programs to address the specific "lifting techniques" and other similar issues facing the City. These programs will be implemented in 2017.



Safety training is included in every employee's new hire orientation and regular ongoing training topics include a review of our safety policies, defensive driving standards, bloodborne pathogen protocols, ergonomics standards, respiratory procedures, hazard communication, and ladder safety and fall protection best practices. Recently, the City implemented a Learning Management System (LMS) which allows employees to complete some of the annual mandatory safety training online at the convenience of their own work station.

Finally, the City is actively engaged in a return-to-work program for injured employees and these efforts continue to have a positive impact. Only 31% of the L & I claims during this five-year period involved one or more days of lost time due to the injury. Expediting the return of injured employees to productive work minimizes the disruption of operations and reduces overall workers compensation costs.

## **V. Key Non-Insured Infrastructure Exposure**

As noted above, the WCIA property insurance program does not provide coverage for some significant city infrastructure such as water mains, storm and sewer mains, sidewalks and roads because of the high premiums to insure them at their full replacement cost value. The city does, however, set aside reserves to provide a hedge against an unplanned system failure. It is not practical to reserve against major catastrophic events, such as earthquakes or widespread structural failures, but plans can be made for more moderate events such as main breaks, a fire at a pump station, or flooding. In the event of a declared disaster, FEMA would provide public assistance for a portion of the cost to repair or replace these non-insured infrastructures.

The water/sewer and surface water utilities maintain a specific capital contingency reserve to provide for unanticipated failures of plant and equipment. The intent is to provide the funds needed on a short-term basis, to be replenished from rates over time. If the requirements are significantly larger than the target reserve balance, the funds provide a mechanism for short-term emergency response, while the City pursues financing for the full cost. Financing can take the form of:

- Issuance of debt to be paid from future utility revenues (or general revenues for roads or sidewalks),
- Grants,
- Insurance for selected components as described earlier,
- Reprioritizing other funded capital projects to free up those revenues for the emergent need, or
- Use of other City-wide reserves such as the Contingency Reserve Fund established in accordance with RCW 35A.33.145 to meet any unforeseen municipal expense or the General Capital Contingency.

In addition, the utilities set aside funds toward system replacement based on asset depreciation adjusted by a multiplier to simulate replacement cost. This capital funding source is based on overall system value, so in the event that there is an unplanned failure necessitating replacement of an asset, the balances for this purpose can also be made available.

The minimum reserve balance for the utility capital contingency reserve is 10% of the 6-year CIP, which equates to a reserve of:

- \$1.46 million for surface water and
- \$3.79 million for water/sewer.

In reality, the capital reserve balances for the utilities, including the system replacement funds, exceeds that amount, with surface water reserves at \$5.9 million and water/sewer reserves at \$8.3 million. As described above, a portion of these balances could be used for smaller events or can provide short-term relief for larger failures while longer term funding options are pursued as described above. These reserve levels have proven to be adequate to address unexpected system failures that have occurred in the past.

The target balances for the Contingency Reserve Fund is \$5.5 million for 2015-2016 and the General Capital Contingency target is \$5.7 million. The estimated 2016 year-end balances in these reserves are \$4.0 million in the Contingency and \$4.9 million in the General Capital Contingency and both reserves are being replenished over time from the 1% set-aside from General Fund revenues and are expected to be at target levels before 2021.