

RECEIVED

SNOHOMISH COUNTY
EXECUTIVE OFFICE

County Council



CO00028814

JUN 1 1984 520

SNOHOMISH COUNTY, WASHINGTON

AMENDED

ORDINANCE NO. 84-062

W.T. _____ K.B. _____

T.C. _____ S.W. _____

G.L. _____ D.J. _____

RELATING TO CLAIMS FOR AND AGAINST THE
COUNTY AND RISK MANAGEMENT

BE IT ORDAINED:

Section 1. The following resolutions and ordinances are hereby repealed as of the effective date of this ordinance.

- (1) Resolution dated April 14, 1975, codified as Chapter 2.92 SCC, Insurance Advisory Committee.
- (2) Resolution No. 79-61 dated April 9, 1979, codified as Chapter 2.96 SCC, Insurance and Risk Management.
- (3) Uncodified resolution dated July 6, 1977, creating the Claims Review Committee.
- (4) Uncodified resolution pursuant to Chapter 4.22 SCC, dated November 18, 1981, Relating to Insurance and Risk Manager authorization to pay claims up to \$10,000 deductible limits for already paid claims.
- (5) Resolution adopted January 9, 1978 codified as Chapter 3.60 SCC Legal Counsel for Civil Action Defense of County Personnel and resolution dated December 3, 1979 amending sections therein.
- (6) Resolution 79-245 adopted August 27, 1979, codified as Chapter 3.66 SCC Small Claims Collection Procedure.
- (7) Ordinance 82-075 adopted August 3, 1982. Relating to Risk Management.
- (8) Resolution dated January 18, 1972, codified as Chapter 4.38 SCC, Industrial Insurance Cumulative Reserve Fund.

Section 2. New Chapter 2.90 is added to the Snohomish County Code as follows:

Chapter 2.90

RISK MANAGEMENT AND INSURANCE

Sections:

- 2.90.010 Purpose
- 2.90.020 Definitions
- 2.90.030 Insurance Administration
- 2.90.040 Risk Management Administration
- 2.90.050 Claims Handling Procedures
- 2.90.060 Claims Disposal Procedure
- 2.90.070 Small Claims Collections
- 2.90.080 Duties of County Officers and Employees
- 2.90.090 Procedure for Representing Defendant Employees
- 2.90.100 Worker's Compensation Claims
- 2.90.110 Recovery of Losses
- 2.90.120 Risk Management Committee
- 2.90.130 Severability

2.90.010 Purpose. The purpose of this ordinance is to establish risk management procedures for the county, the executive, the prosecuting attorney, the director of finance, and personnel department regarding the purchase of insurance, employee and citizenry safety and the processing and disposition of claims for alleged tortious conduct against the county.

2.90.020 Definitions. As used in this ordinance, the following words and terms shall have the meanings set forth herein:

- (1) "Claim" means any claim for, at least in part, monetary damages based on alleged tortious conduct of the county, or agents or employees of the county, within the agents or employees scope of employment;
- (2) "Council" means the Snohomish County Council;
- (3) "Executive" means the Snohomish County Executive;
- (4) "Insurance fund" means that fund provided in Title 4, Snohomish County Code;
- (5) "Lawsuit" means any lawsuit naming the county or an agent or employee of the county acting within his or her scope of employment, as defendant or third party defendant, which lawsuit alleges a tortious cause of action and seeks, at least in part, money damages;
- (6) "Prosecuting attorney" means the prosecuting attorney of Snohomish County and such deputies as he or she shall delegate to perform functions referred to herein;
- (7) "Risk Management" shall mean a coordinated and continuous management process to identify and analyze potential loss exposures, to apply where possible reasonable and effective processes to transfer or reduce the risk of loss so as to preserve the assets of Snohomish County;
- (8) "Director of Finance" means the Director of the Department of Finance, or his/her designees;
- (9) "Safety Officer and Worker's Compensation Administrator" means the county officer responsible for implementing and carrying out all

federal, state and county loss control and safety programs, or his/her designees.

Section 2.90.030 Insurance Administration.

(1) Duties of the Director of Finance.

- (a) The Director of Finance may negotiate with insurance brokers for any type of liability and casualty insurance and/or official bonds as he or she deems necessary for the preservation of county assets. Upon request of other county officials the Director of Finance may investigate, recommend and/or negotiate for the purchase of other types of insurance.
- (b) The Director of Finance shall be responsible for the purchase and administration of such insurance policies and bonds, funded self-insurance programs, and related services as are consistent with good risk management policy and the needs of the county.
- (c) The Director of Finance shall be responsible for the design of insurance programs, the amount of reserves to be established, and the appropriate retention levels.

(2) Duties of the Prosecuting Attorney.

- (a) The prosecuting attorney shall advise and recommend to Snohomish County departments appropriate contractual clauses providing for indemnity, hold harmless, and insurance. He or she shall review contractual provisions relating to indemnity and hold harmless requirements as part of a coordinated process prior to finalization of all said contracts.
- (b) The prosecuting attorney shall analyze and make recommendations to the Director of Finance as to the types and amounts of insurance coverage most beneficial to the county and shall approve specific insurance policies prior to purchase.

2.90.040 Risk Management Administration

(1) Duties of the Safety and Worker's Compensation Administrator (SWCA).

- (a) The SWCA shall advise all county departments, divisions, and other agencies regarding programs and precautions for safety to reduce hazard to the employees and public that may exist in county facilities and operations.
- (b) The SWCA shall maintain histories of all worker's compensation claims, insured or funded self-insurance, loss histories, and investigations of worker's compensation claims and incident reports.
- (c) Reports. The SWCA on or before February 15 of the subsequent year shall report to the Director of Finance the total number and amount of all claims filed against the county and the number and amounts of all claims paid by the county during the preceding calendar year.

(2) Duties of the Prosecuting Attorney.

- (a) The prosecuting attorney shall develop claims administration procedures to be followed by county officials and employees. The prosecuting attorney shall develop procedures to insure the full investigation, processing, adjusting and disposal of claims and lawsuits.
- (b) The prosecuting attorney shall make tenders of potentially insured claims to insurance carriers.
- (c) The prosecuting attorney shall maintain histories of all liability and property claims, insured or funded self-insurance, loss histories, and investigations of such claims and incident reports.
- (d) The prosecuting attorney on or before February 15 of the subsequent year shall report to the Director of Finance the total number and amount of all claims filed against the county and the number and amounts of all claims paid by the county during the preceding calendar year.
- (e) The prosecuting attorney, as provided by state law, is responsible for the prosecution and defense of all lawsuits against the county, except where other counsel is provided by insurance coverage or appointed pursuant to RCW 36.32.200. The prosecuting attorney may appear as co-counsel with insurance provided counsel, where appropriate.
- (f) The prosecuting attorney shall provide legal advice to other county officials regarding the disposition of all claims against the county.
- (g) The prosecuting attorney shall prepare such guidelines as are necessary to inform county employees of their responsibilities in relation to accident reporting and risk management policy. The prosecuting attorney shall be responsible for the dissemination of such guidelines.
- (h) The prosecuting attorney may investigate any incidents, or conditions, prior to a claim being filed, for the purpose of possible litigation and/or preventing future incidents.

2.90.050 Claims Handling Procedures.

- (1) Service and Filing. In accordance with state law, claims shall be filed with the clerk of the council and summons and complaint served upon the auditor.
- (2) Transmittal. The clerk of the council shall transmit copies of the claim to the prosecuting attorney within three days of filing. The auditor shall immediately forward copies of all summons's and complaints to the prosecuting attorney, and clerk of the council.
- (3) Service on Office or Employee. Any county official or employee other than the auditor or deputy auditor who is served with a summons and/or complaint in a lawsuit against the county shall immediately deliver such process to the prosecuting attorney.

2.90.060 Claims Disposal Procedure.

- (1) The prosecuting attorney shall have the authority to settle or dispose of claims or lawsuits of five thousand dollars or less, after notification to the Director of Finance.
- (2) It shall be the duty of the prosecuting attorney to recommend to the Director of Finance the settlement and disposal of claims of over five thousand dollars but less than ten thousand dollars. The Director of Finance shall have authority to settle or dispose of claims of this amount with the concurrence of the Prosecuting Attorney.
- (3) The prosecuting attorney and Director of Finance shall make recommendations to the Executive as to proposed settlements or disposal of claims in excess of ten thousand dollars. The County Council shall have authority to settle or dispose of claims in excess of ten thousand dollars upon the recommendation of the Executive.
- (4) Prior to settling or disposing of any claim or lawsuit, the prosecuting attorney shall notify the official, or other county department head, involved in the litigation.
- (5) Subsequent to settling or disposing of any claim or lawsuit, the prosecuting attorney shall notify in writing the official, or other county department head and the Executive as to the basis of liability, steps to prevent or remedy similar potential liability producing situations. This notification shall be a confidential communication and shall not be divulged by any county official or employee.

2.90.070 Small Claims Collections.

- (1) County officials, department heads, or their designees, shall have the authority to pursue, collect and/or defend monetary claims within the jurisdiction of Small Claims Court or brought in Small Claims Court pursuant to Chapter 12.40 RCW.
- (2) County officials, department heads, or their designees, shall be responsible for defending the county in small claims actions alleging tortious conduct on behalf of the county, agent of the county or employee of the county acting within the scope of employment.
- (3) The prosecuting attorney may, at his/her sole discretion, pursue, collect, or defend the monetary claims in Small Claims Court.
- (4) County officials, department heads, or their designees, are authorized, upon being awarded a judgment in favor of the county in Small Claims Court, to employ a collection agency for services to collect and/or execute on said judgment.
- (5) Each county official, department head, or their designee, shall be responsible for maintaining records of each and every claim pursued, collected or defended by them. These records shall include detailed information as to the nature and amount of the claim, the official or department head responsible for its collection or defense, the individual who appeared in court on behalf of the county, and the disposition of the action.

2.90.080 Duties of County Officers and Employees.

- (1) Cooperation. All county officials and other county departments shall report to and cooperate fully with the prosecuting attorney in all accident matters including investigation involving disposition of claims and the settlement and defense of claims lawsuits or settlement or disposal of claims or investigation of any incident or condition. All county officials and employees shall follow all claims and/or risk management procedures as established by the Prosecuting Attorney or Director of Finance. All officials and department heads shall provide such information as requested and otherwise assist the prosecuting attorney in the defense of claims lawsuits. When deemed necessary by the prosecuting attorney such assistance may include but is not limited to the providing of testimony and exhibits for use in litigation.
- (2) Forbidden Acts. Except when authorized, no county official or employee, acting individually or collectively, may:
 - (a) Negotiate or otherwise effect the settlement of a claim or claims lawsuit against the county;
 - (b) Make an admission of liability involving a claim or claims lawsuit against the county;
 - (c) Discuss with persons who are not county employees incidents which could reasonably lead to claims or claims lawsuits against the county;
 - (d) Make statements, written or oral, with regard to another employee, county premises or operations that would impute liability or negligence to the county in any instant case or the future.
- (3) Employee Responsibility concerning accident occurrence. Any officer or employee shall, in the event of an accident or occurrence, which is likely to result in suit being brought against such officer or employee, or the county, as soon thereafter as possible, give the prosecuting attorney written notice thereof, identifying the officer or employee involved and containing information with respect to the time, place and circumstances thereof, and the names and addresses of the injured, and of any available witnesses, and shall immediately forward to the prosecuting attorney every demand, notice, summons or other process relating to said incident, and received by him or her or their representative, and shall cooperate with the prosecuting attorney or any attorney retained by the county or any claims representative retained by the county upon request, and shall further assist in making settlements, in the conduct of suits and enforcing any claim or any right of contribution of indemnity against any person or organization who may be liable to the county because of bodily injury, property damage or other loss arising from the accident, incident or occurrence; and any such officer or employee shall attend interviews, depositions, hearings and trials and assist in securing the attendance of witnesses upon request; and any such officer and employee shall not, except at his/her own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of an accident.

2.90.090 Procedure for Representing Defendant Employees.

(1) Agents or employees of Snohomish County who are named individually in a claim or lawsuit, and wish the county to indemnify or defend them shall make application for same to the Prosecuting Attorney. Such application shall include a complete statement of the act(s) and/or omission(s) complained of, together with copies of any pleadings served and such additional information as may be requested. This application shall be submitted to the prosecuting attorney's office no later than ten days after service of process upon the applicant. If submission is not made within the ten-day period the prosecuting attorney may refuse to protect, provide defense or hold the applicant harmless in the legal action in question unless the applicant demonstrates that he/she had a reasonable excuse for the failure to comply with the time requirement.

(2) Action of prosecuting attorney pending decision to provide counsel. Upon receipt of copies of all pleadings, the prosecuting attorney is hereby authorized to appear in such action to the extent permitted by state law in order to maintain the status quo in the proceedings pending decision as to whether legal counsel will be provided.

(3) Synopsis and recommendation--Preparation. Upon refusal to accept defense, the prosecuting attorney shall prepare a synopsis of the nature of the legal action and whether or not, in his/her opinion, the applicant acted in good faith or purported to act within the scope of his or her official duties and forward such synopsis to the council, together with his own recommendation thereon.

(4) Council to decide. The council shall decide whether to uphold the denial or acceptance of defense by the prosecuting attorney as to whether the acts or omission of the officer, or employee were in good faith and within the scope of his or her official duties. If the council reverses the denial, the county shall provide legal counsel for representation in and defense of civil suits and shall hold these individuals harmless for any expenses connected with the defense, settlement, or monetary judgment arising from same. All decisions of the council shall be final and not appealable on any grounds.

(5) Defendant liability insurance. In the event defendant officer or employee is protected by a policy of liability insurance, the policy shall be relied upon by the officer or employee to the extent that such policy provides defense or insures the official or employee. If the officer or employee will suffer losses and/or expenses not covered by the policy, the county shall provide protection for such excess loss and/or expenses.

(6) Limitations. If any such officer or employees fail or refuse to cooperate as specified in Snohomish County Code 2.90.080(3), or elects to provide his or her legal representation with respect to claims and/or litigation arising out of acts or duties in the scope of his or her employment by the county, the provisions of this chapter will be inapplicable and of no force and effect with respect to any such claim and/or litigation; provided, that the obligations assumed under this section by the county shall not apply to any negligent act, error or omission not within the scope and course of their duties or employment, dishonest, fraudulent, criminal or malicious act nor extend to any lawsuit brought by the county or in its behalf. The provisions of this section shall not modify existing procedures or requirements of law for processing and payment of claims against the county,

or of judgments in those cases in which the county is a party defendant; provided, that such claims, lawsuits and judgments shall be handled in all respects in the same manner as those in which a claim is filed or a lawsuit brought against the county, notwithstanding any other provision contained in this section. Such provisions shall have no force and effect with respect to any accident, occurrence or circumstance to the extent to which the county, the officer or employee is insured against loss or damages under the terms of any valid insurance policy.

2.90.100 Worker's Compensation Claims.

- (1) Worker's compensation claims shall be reported and filed with the SWCA in the manner and on the forms prescribed by state law and regulations.
- (2) Worker's compensation claims shall be processed and disposed of as required by state law.

2.90.110 Recovery of Losses. The prosecuting attorney shall be responsible for collecting such claims as defined in this chapter as he is requested to collect by the affected county officer, department, or division. Any lawsuit or other proceeding to collect a claim, other than in Small Claims Court, shall be subject to the responsibility and control of the prosecuting attorney.

2.90.120 Risk Management Committee created.

- (1) Committee Membership. There is hereby created a Snohomish County risk management committee composed of the following:
 - (a) There shall be six county members (or their designee)
 - (1) Director of Finance
 - (2) Prosecuting Attorney
 - (3) Director of Public Works
 - (4) Sheriff
 - (5) Safety & Worker's Compensation Administrator
 - (6) Member designated by County Council.
 - (b) There shall be two insurance industry members who shall be appointed by the Snohomish County Executive from the membership of the Snohomish and South Snohomish County Insurance Agents' Association. These members shall be selected by the Executive to serve terms of two years and until their successors are appointed.

No insurance industry member may vote on any matter which would financially benefit the member of the business which employs the member or on whose board the member sits, or the business which employs the member or on whose board the member sits.

- (2) Committee meetings. The committee shall meet to conduct its business at least once a quarter and shall meet with the County Executive and County Council at least twice a year for a review of its activities.
- (3) Powers and duties of committee. The risk management committee is charged with the function of advising the Director of Finance regarding the most advantageous manner of treating those risks to the county to the end that catastrophic losses are avoided where reasonably possible through policies of insurance, and lesser losses are minimized either through use of insurance or self-insurance of risks, the occurrence of which would not seriously disrupt the administration of

county government.

- (4) Additional duties. In addition to the functions set out in subsection (3) of this section, upon request of the Director of Finance, the committee shall examine insurance requirements that may be generated by agreements of all kinds entered into by the County and report thereon to the Director of Finance.

2.90.900 Severability. Should any section, subsection, paragraph, sentence, clause or phrase of this chapter be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of such chapter or section.

Dated May 30, 1984

Donald J. Butler
Chairman

ATTEST:

Kathleen J. Morston
asst. Clerk of the Council

ATTEST:

Linda McCrea

[Signature]
Deputy County Executive

APPROVED VETOED

EMERGENCY Date 6-4-84

PUBLISHED _____ and _____