



Legislation Text

File #: 2012-0236, **Version:** 1

AN ORDINANCE relating to risk management; amending Ordinance 3581, Section 2, as amended, and K.C.C. 4.12.020, Ordinance 11984, Section 3, as amended, and K.C.C. 4.12.030, Ordinance 12076, Section 38, as amended, and K.C.C. 4.12.040, Ordinance 3581, Section 6, as amended, and K.C.C. 4.12.050, Ordinance 3581, Section 7, as amended, and K.C.C. 4.12.060, Ordinance 3581, Section 8, as amended, and K.C.C. 4.12.070, Ordinance 3581, Section 9, as amended, and K.C.C. 4.12.080, Ordinance 3581, Section 10, as amended, and K.C.C. 4.12.090 and Ordinance 3581, Section 11, and K.C.C. 4.12.100, repealing Ordinance 11032, Section 27, and K.C.C. 4.13.010, and Ordinance 11032, Section 27, and K.C.C. 4.13.020 and recodifying K.C.C. 4.12.010.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. There is hereby established a new chapter in K.C.C. Title 2. The new chapter shall contain K.C.C. 4.12.010, as recodified by this ordinance, K.C.C. 4.12.020, as recodified by this ordinance, K.C.C. 4.12.030, as recodified by this ordinance, K.C.C. 4.12.040, as recodified by this ordinance, K.C.C. 4.12.050, as recodified by this ordinance, K.C.C. 4.12.060, as recodified by this ordinance, K.C.C. 4.12.070, as recodified by this ordinance, , K.C.C. 4.12.080, as recodified by this ordinance, , K.C.C. 4.12.090, as recodified by this ordinance, and K.C.C. 4.12.100, as recodified by this ordinance.

SECTION 2. K.C.C. 4.12.010 is hereby recodified as a new section in the new chapter established in section 1 of this ordinance.

SECTION 3. K.C.C. 4.12.020 is hereby recodified as a new section in the new chapter established in section 1 of this ordinance.

SECTION 4. Ordinance 3581, Section 2, as amended, and K.C.C. 4.12.020 are each hereby amended to read as follows:

~~((As used in this chapter, the following words and terms shall have the meanings set forth herein:))~~ 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 ~~((King County prosecutor))~~ prosecuting attorney or ~~((his))~~ the chief civil deputy's designee;

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

C. "Claims" ~~((shall))~~ means any claim ~~((naming))~~ that names the county, ~~((and/or))~~ its officer~~((s))~~, employee~~((s))~~ or ~~((authorized))~~ agent~~((s))~~, while acting in good faith with no reasonable cause to believe the conduct was unlawful and within the scope of ~~((their official duties,))~~ the county officer, employee or agent's service to or employment with the county as a cause or causes of injury or damage and ~~((which))~~ that alleges a tort cause of action and asks for money damages.

D. "Lawsuit" means any lawsuit ~~((naming))~~ that names as a defendant the county, ~~((and/or))~~ its officers, employees or ~~((authorized))~~ agents, while acting in good faith within the scope of their official duties, ~~((as defendant(s), which lawsuit))~~ that alleges a tort cause of action and that asks for money damages;

E. "Committee" means the risk management committee established by ~~((Section))~~ K.C.C. 4.12.040, as recodified by this ordinance;

F. ~~((("Council" means the King County council, as defined by Article 2 of the King County Charter;~~

G. ~~("Executive" means the King County executive, as defined by Article 3 of the King County Charter or his designee;~~

H.)) "Risk management" means a coordinated and continuous management process to identify potential loss exposures, to apply reasonable and effective risk controls and to insure that the financial integrity of ~~((King~~

) ~~the~~ county is not impaired after a loss;

~~(I. "RM" means the risk manager or his designee;~~

~~J.) G. "Safety manager" means the manager of the~~ safety and ~~((workers compensation program))~~ claims management division of the department of executive services.

SECTION 5. K.C.C. 4.12.030 is hereby recodified as a new section in the new chapter established in section 1 of this ordinance.

SECTION 6. Ordinance 11984, Section 3, as amended, and K.C.C. 4.12.030 are each hereby amended to read as follows:

A. The risk management division is established in K.C.C. chapter 2.16. The manager of the risk management division shall be the risk manager, who shall report directly to the director of the department of executive services.

B.1. The risk manager shall be responsible for administration of the risk management program.

2. The risk manager shall coordinate with the civil division on contractual matters giving rise to potential liability on the part of the county. The risk manager shall seek the advice of the civil division as to appropriate language regarding insurance, indemnification, releases and hold harmless clauses. Thereafter, the risk manager shall advise department directors and division managers concerning these matters as part of a coordinated process ~~((prior to))~~ before finalization of county contracts.

3. The risk manager shall be the chairperson of the committee and shall advise 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 appropriate insurance brokers by use of a competitive procurement process for the marketing of insurance and related services.

5. The risk manager shall be responsible for the purchasing and administration of all ~~((such))~~ 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 all county departments(~~(, divisions)~~) and other county agencies regarding risk management and reduction of risk and exposure to loss, including programs and precautions for safety to reduce hazards to the public that may exist in county facilities and operations. The risk manager shall cooperate with the safety manager in areas (~~(where)~~) in which, in the opinion of the risk manager, the safety of employees and (~~(safety)~~) of the public requires coordinated programs. The risk manager shall also be responsible for answering all insurance or funded self-insurance coverage questions. The (~~(RM)~~) risk manager shall be responsible for the evaluation of current and future county or departmental insurance coverage programs and have the authority to make recommendations where such an action is in the best interests of the county.

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

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

9. The risk manager (~~(shall have responsibility)~~) is responsible for risk identification, control and reduction, including authority to make recommendations to all county departments(~~(, divisions)~~) and agencies regarding the safety of the public using county facilities or services.

C.1. The risk manager shall have the power to employ the services of (~~(such)~~) claims specialists or other (~~(parties as)~~) 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. (~~(For all claims of fifty thousand dollars or less, t)~~)The risk manager shall (~~(make final disposition~~

~~except that, for all claims over two thousand five hundred dollars, the risk manager shall seek the advice of the civil division prior to final disposition))~~ dispose of claims as authorized in K.C.C. 4.12.070.E, as recodified by this ordinance.

4. The risk manager shall 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 ~~((i))~~ensure that complete files are maintained of all claims asserted against the county and all incidents reported to the risk management division sufficient to document at least a five-year claims history.

D.1. The risk manager shall provide quarterly reports 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, include a description of the claim, identify the amount of the indemnity payment, identify if the payment was a result of a settlement, a judgment, or payment to an insurance company or other party and shall include any other information the risk manager feels would be helpful to the council in understanding the nature of the claim. ~~((The reports shall take the form of one original letter with an attached table that provides the information required in this section, and an electronic version of the letter and table, submitted to the clerk of the council for distribution to all councilmembers.))~~ The reports are due thirty days after the end of each calendar quarter of the year.

2. The risk manager on or before March 31 of ~~((the subsequent))~~ each year shall report to the council 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. The risk manager shall also make an annual report to the committee and the council regarding insurance coverage and the level of retained risk.

E. The reports required by this section shall take the form of one original letter with an attached table that provides the information required in this section, and an electronic version of the letter and table, submitted to the clerk of the council for distribution to all councilmembers.

SECTION 7. K.C.C. 4.12.040 is hereby recodified as a new section in the new chapter established in

section 1 of this ordinance.

SECTION 8. Ordinance 12076, Section 38, as amended, and K.C.C. 4.12.040 are each hereby amended to read as follows:

A. There is created a risk management committee to be composed of the ~~((following individuals: RM;~~ risk manager, the safety manager~~((;)), the chief civil deputy~~~~((;))~~) and the director of the office of performance, strategy and budget. The ~~((RM))~~ risk manager shall chair the committee. The safety manager shall be a nonvoting member of the committee and shall ~~((serve to))~~ 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 ~~((such))~~ the policy to be established and kept current;

2. Approve the selection of ~~((all))~~ insurance brokers ~~((submitted to it,))~~ chosen as a result of a competitive procurement process;

3. ~~((Render advice to))~~ Advise the ~~((RM))~~ risk manager on matters concerning the purchase of insurance policies and advise on the design of insurance and funded self-insurance programs;

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

5. Approve the purchase of all insurance policies.

SECTION 9. K.C.C. 4.12.050 is hereby recodified as a new section in the new chapter established in section 1 of this ordinance.

SECTION 10. Ordinance 3581, Section 6, as amended, and K.C.C. 4.12.050 are each hereby amended to read as follows:

A. ~~((LEGAL ADVISOR OF COUNTY,))~~ This section is consistent with and implements ~~((in part state law,))~~ RCW 36.27.020, which makes the prosecuting attorney the legal advisor of the county.

B. ~~((DUTIES. 1. The prosecuting attorney, in accordance with state law, RCW 36.27.020, shall be~~

~~primarily responsible for the defense of all lawsuits against the county, or against county officials, employees or authorized agents, acting in good faith within the scope of their official county duties, except where insurance or service contracts provide for defense. The prosecuting attorney may contract with outside counsel for legal services where appropriate.)~~ 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 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.

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

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

4. The civil division shall direct any recommendations for settlement of claims or lawsuits to the authority designated by ((Sections)) K.C.C. 4.12.030, as recodified by this ordinance, and 4.12.080, as recodified by this ordinance, as having final settlement authority. In recommending settlement of claims or lawsuits, the civil division shall consult, in conjunction with the risk management office, with the department((; division)) or other county agency most involved with the litigation ((and/)) or named as a party to the lawsuit.

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

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 ((and all)) questions relating to ((the following issues)):

a. whether a county official, employee or ~~((authorized))~~ agent acted in good faith ~~((within the scope of his or her official county duties))~~ 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; ~~((and))~~

b. whether, for purposes of the issues raised by a particular claim or lawsuit, a person is in fact a county official, employee or ~~((authorized))~~ 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. 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 11. K.C.C. 4.12.060 is hereby recodified as a new section in the new chapter established in section 1 of this ordinance.

SECTION 12. Ordinance 3581, Section 7, as amended, and K.C.C. 4.12.060 are each hereby amended to read as follows:

A. ~~((COOPERATION.))~~ All county departments~~((, divisions))~~ or agencies and the officers, employees and ~~((authorized))~~ agents ~~((thereof are hereby directed to))~~ of those departments and agencies shall cooperate fully and in good faith with the ~~((RM))~~ 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, ~~((such))~~ 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 shall be considered a request by the civil division.

B. ~~((FORBIDDEN ACTS.))~~ Except as specifically directed by the ~~((RM))~~ risk manager or the civil division, ~~((no))~~ a county department~~((, division or other county))~~ or agency, ~~((and no))~~ or a county official~~((, employee,))~~ or ~~((authorized))~~ speaking agent, ~~((acting individually or collectively, may engage in the following acts))~~ 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 or speaking agent, or an employee or agent represented by the civil division or by outside legal counsel at the county's expense should not:

~~((3))~~1. Discuss with persons who are not county employees incidents ~~((which))~~ that could reasonably lead to claims or lawsuits against the county; or

~~((4))~~2. Discuss with persons who are not county employees incidents ~~((which))~~ that are the subject of pending claims or lawsuits.

C. ~~((REPORTING ACCIDENTS AND INCIDENTS.))~~ In the event of an accident, incident or occurrence causing bodily injury or property damage involving county vehicles, property or personnel acting within the scope of their employment, the knowledgeable county officers, ~~((agents,))~~ employees and ~~((authorized))~~ agents shall provide notice to the office of risk management as soon as practicable. ~~((Such))~~ The notice shall include all reasonably obtainable information with respect to the time, place and circumstances of ~~((said))~~ the accident, incident or occurrence and the names and addresses of all knowledgeable county personnel, injured or affected parties~~((;))~~ and available witnesses.

SECTION 13. K.C.C. 4.12.070 is hereby recodified as a new section in the new chapter established in section 1 of this ordinance.

SECTION 14. Ordinance 3581, Section 8, as amended, and K.C.C. 4.12.070 are each hereby amended

to read as follows:

A. ~~((PLACE FOR FILING; CONTENT:))~~ 1. All claims against the county for damages arising out of tortious conduct shall be presented to and filed with the clerk of the council on a claim form provided by the county or the state.

2. All such claims shall be verified by oath or affidavit and shall ~~((accurately))~~:

a. describe the conduct and circumstances ~~((which))~~ that brought about the injury or damage~~((;))~~;

b. describe the injury or damage~~((;))~~;

c. state the time and place the injury or damage occurred~~((;))~~;

d. state the names of all persons involved, if known~~((,))~~; and ~~((shall))~~

e. contain 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 ~~((prior to))~~ before the time the claim arose.

3. If the claimant is incapacitated from verifying, presenting~~((;))~~ and filing ~~((his))~~ the claim, ~~((or))~~ 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 ~~((him))~~ 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 ~~((PERIOD AND REQUISITES. No))~~ 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 clerk of the council.

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

~~((C. TRANSMITTAL.))~~ D. The clerk of the council shall ~~((initiate the processing of a claim by))~~

immediately ~~((transmitting))~~ transmit the original of the claim to the ~~((RM. The clerk of the council shall at the same time send a copy of the letter of transmittal to))~~ risk manager and notify the civil division of the transmittal.

~~((D. DISPOSITION.))~~ E.1. For all claims of ~~((fifty))~~ one hundred thousand dollars or less, the ~~((RM))~~ risk manager shall ~~((be))~~ have the final payment authority and shall make final disposition by either granting or denying ~~((such))~~ the claim~~((; Provided that,))~~.

2. ~~((f))~~ For all claims over ~~((two thousand five hundred))~~ ten thousand dollars, the ~~((RM))~~ risk manager shall seek the advice of the civil division ~~((prior to))~~ before final disposition.

~~((2.))~~ 3. For all claims above ~~((fifty))~~ one hundred thousand dollars, the county executive shall make final disposition after receiving advice from the civil division and the ~~((RM))~~ risk manager.

SECTION 15. K.C.C. 4.12.080 is hereby recodified as a new section in the new chapter established in section 1 of this ordinance.

SECTION 16. Ordinance 3581, Section 9, as amended, and K.C.C. 4.12.080 are each hereby amended to read as follows:

A. ~~((SERVICE OF PROCESS.))~~ Service of a summons and complaint ~~((on the clerk of the council shall constitute service on the county for purpose of state law, RCW 4.28.080. B. SERVICE ON OFFICER OR EMPLOYEE))~~ shall be as provided in K.C.C. 2.04.010. Any county official or employee who is served with a summons and~~((/or))~~ complaint in a lawsuit against the county or against any of its officials, employees or ~~((authorized))~~ agents alleged to be acting in their official capacities shall immediately deliver the summons and ~~((/or))~~ complaint to the clerk of the council.

~~((C. DISTRIBUTION.))~~ B. The clerk of the council, upon accepting service of the summons and~~((/or))~~ complaint shall immediately deliver ~~((copies thereof))~~ the summons and complaint to the civil division. The civil division shall docket the lawsuit and send a copy of the summons and~~((/or))~~ complaint to the office of risk management.

~~((D. DEFENSE.))~~ C. The prosecuting attorney shall defend, or provide for the defense~~((;))~~ of, all ~~((self-insured))~~ lawsuits against the county or any of its officials, employees or ~~((authorized))~~ agents, acting in good faith ~~((within the scope of their official duties; Provided that, such))~~ 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 ~~((as set forth))~~ in ~~((Section))~~ K.C.C. 4.12.060, as recodified by this ordinance.

~~((E. SETTLEMENT.))~~ D. Final authority for settlement of self-insured lawsuits shall be as follows:

1. The ~~((RM))~~ risk manager, acting with the advice of the civil division, may authorize settlements of ~~((fifty))~~ one hundred thousand dollars or less~~((;))~~; and
2. The executive, acting with the advice of the civil division and the ~~((RM))~~ risk manager, may authorize settlements of more than ~~((fifty))~~ one hundred thousand dollars.

SECTION 17. K.C.C. 4.12.090 is hereby recodified as a new section in the new chapter established in section 1 of this ordinance.

SECTION 18. Ordinance 3581, Section 10, as amended, and K.C.C. 4.12.090 are each hereby amended to read as follows:

A. ~~((PURPOSE.))~~ The purpose of this section is to protect county officers, employees, ~~((authorized))~~ agents and their marital communities from personal liability for acts committed by ~~((such))~~ those individuals in good faith and within the scope of their official county duties.

B. ~~((DETERMINATIONS OF SCOPE AND STATUS.))~~ The chief civil deputy shall determine ~~((any and))~~ all questions relating to scope and status in accordance with ~~((Section))~~ K.C.C. ~~((4.12.050.B.6))~~ 4.12.050.B.7, as recodified by this ordinance.

C. ~~((RESPONSIBILITY FOR DEFENSE. Where))~~ When a county officer, employee, ~~((authorized))~~ agent or the marital community of ~~((such person))~~ 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 ~~((authorized))~~ agent's official duties, the prosecuting attorney shall be responsible for defense of that person or community in accordance with ~~((the procedures and requirements specified in Sections))~~ K.C.C. 4.12.050, as recodified by this ordinance, 4.12.060, as recodified by this ordinance, and 4.12.080, as recodified by this ordinance, and ~~((4.12.090))~~ this section.

D. ~~((EXCLUSIONS.))~~ This section ~~((shall))~~ may not apply ~~((where))~~ if a claim or lawsuit is covered fully by insurance.

E. ~~((POSSIBLE CONFLICTS. Where))~~ If a possible conflict exists between the county and a county official, employee or ~~((authorized))~~ agent, acting in good faith within the scope of his or her official duties, the prosecuting attorney may at ~~((his or her))~~ the prosecuting attorney's sole discretion, appoint outside counsel as a special deputy prosecuting attorney to represent ~~((such))~~ the person(s). In ~~((such))~~ those cases, the county shall be responsible for payment of costs incurred in ~~((such))~~ 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, employee 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 19. K.C.C. 4.12.100 is hereby recodified as a new section in the new chapter established in section 1 of this ordinance.

SECTION 20. Ordinance 3581, Section 11, and K.C.C. 4.12.100 are each hereby amended to read as follows:

A. ~~((ACTIONS FOR RECOVERY.))~~ The ~~((RM))~~ 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. ~~((Such))~~ The losses may include property damages or losses ~~((which))~~ that impact on the county as a result of personal injuries to county officers or employees. 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.

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

SECTION 21. Ordinance 11032, Section 27, and K.C.C. 4.13.010 are each hereby repealed.

SECTION 22. Ordinance 11032, Section 27, and K.C.C. 4.13.020 are each hereby repealed.