

CITY OF SEATTLE

RESOLUTION _____

..title

A RESOLUTION relating to financial policies for the Judgment/Claims Fund; revising certain policies, establishing a new policy, and requesting a ten-year policy review cycle.

..body

WHEREAS, the City Council and the Mayor are committed to high standards of financial management; and

WHEREAS, adopting and periodically updating financial policies are important steps towards assuring consistent and rational financial management; and

WHEREAS, the financial policies for the Judgment/Claims Fund are essential components of financial policies; and

WHEREAS, the City Council and Mayor have reviewed the financial policies for the Judgment/Claims Fund and wish to update and modify the policies; NOW,
THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEATTLE, THE MAYOR CONCURRING, THAT:

Section 1. To improve risk management controls and accountability within Seattle City government and to manage claims in a consistent and comprehensive manner, the City Council (“Council”) adopts the attached policies (Exhibit A to this resolution) regarding the Judgment/Claims Fund. In so doing, the Council reaffirms certain existing financial policies for this fund and updates the policies in the following ways:

A. Policy 4 describes the revised basis upon which the judgment and claims budget will be developed.

B. Policy 6 sets a revised policy regarding fund balances.

1 C. Policy 10 clarifies existing policy regarding appropriate use of Judgment/Claims
2 Fund monies.

3 D. Policies 12 and 13 are modified to provide revised timelines and requirements for
4 annual reports to the Council.

5 E. Policy 14 is a new policy that calls for the creation of a committee to assist in
6 Citywide risk management efforts.

7 Section 2. The Council requests that the City Budget Office, in conjunction with the City
8 Attorney’s Office, Department of Finance and Administrative Services, and other City
9 departments as needed, review the attached policies and propose updates on a ten-year cycle,
10 with the next review scheduled for 2028.

CITY OF SEATTLE
POLICIES FOR THE JUDGMENT/CLAIMS FUND
Submitted for Legislative Approval September 2018 ~~November 19, 2018~~

The Judgment/Claims Fund (JCF) was established to provide for the payment of judgments and claims, advance payment of some claims, and certain litigation expenses of the City. Expenses incurred on behalf of the utility funds are reimbursed by the utility funds (Seattle City Light and Seattle Public Utilities), and Judgment/Claims Fund expenses incurred on behalf of the General Fund-supported departments have been covered by an “operating transfer in” from Finance General.

Several changes to the following Judgment/Claims Fund policies are being recommended by City Budget Office, Department of Finance and Administrative Services and City Attorney Office staff in response to a 2017 City Council Budget Statement of Legislative Intent (SLI). The recommended changes to the funding mechanism for the JCF and retention of fund balance should significantly decrease the need for supplemental JCF funding and provide for increased fund stability. This resolution supersedes prior Council Resolution 30386 (2001). Many of the policies are unchanged. New and revised policies are noted as such.

Fund Structure

Policy 1. Creation of fund. The Judgment/Claims Fund has been established for the assets and liabilities relating to judgments, claims, and related expenses of the City of Seattle per Ordinances 108657 and 117977.

Expenditures

Policy 2. Expenditures from fund. All judgments, claims, advance payments, and litigation expenses as authorized by SMC 5.24 may be paid from the Judgment/Claims Fund.

Revenues/Fund Balances

Policy 3. Revenues to fund. “[I]nto which fund shall be placed such amounts of money as appropriated by the City Council and such funds as are reimbursements from proper source funds for judgments, claims payments, advance claims payments, and litigation expenses” [Ordinance 117977, SMC 5.24.010]

Policy 4. Budget. As part of the budget process, the City will provide funds to cover expected eligible “judgments and claims” costs less reimbursements from the utilities for each biennial budget year. Effective with the 2019 budget, each annual budget will be developed based on a combination of actuarial estimates for insurable costs and a five-year inflated average of non-insurable costs. In 2019, a 50% confidence level shall be used, with a subsequent 10% per year increase in confidence level until a 90% confidence level is applied. [Revised Policy]

Policy 5. Cost recovery. Actual Judgment/Claims Fund expenses or losses incurred on behalf of the utilities will be reimbursed by the utilities as incurred. Effective January 1, 2003, cost

recovery for the Judgment/Claims Fund expenses incurred on behalf of General Fund-supported departments will be based on premiums charged to individual departments. Premiums will be calculated based on the average percentage of judgments, claims, and other eligible expenses incurred by each department over the previous five years. Only the self-insured retention amounts on catastrophic losses will be included in the calculation of departmental premiums. For those situations for which insurance coverage was not available, an amount equivalent to a comparable self-insured retention will be used.

Unanticipated catastrophic losses incurred by General Fund-supported departments that cannot be covered with insurance will be charged to the Emergency Fund if sufficient balances are not available in the Judgment/Claims Fund. If the Emergency Fund does not have sufficient funds to cover these expenses, the City may consider issuing limited general obligation debt.

Policy 6. Fund balances. Effective in 2018, if actual expenditures in a year are less than the amounts paid into the Judgment/Claims Fund from premiums, the surplus will be used to create a fund balance for future costs above budgeted levels. The fund balance will be allowed to accumulate until it reaches twice the City's current self-insured retention for excess liability insurance, and may be allowed to exceed this amount on the recommendation of the Judgment Claims Finance Committee. [Revised Policy]

Payments

Policy 7. Payment of judgments. The City Attorney shall have full supervisory control of all the litigation of the City, or in which the City or any of its departments are interested, and shall perform such duties as are or shall be prescribed by ordinance. [Article XIII, Section 3 of the Seattle City Charter.]

Effective January 1, 2002, the City Attorney may authorize payment of any settlement arising out of litigation against the City or any judgment against the City. Prior to authorizing settlement of any litigation for an amount over Five Hundred Thousand Dollars (\$500,000.00), the City Attorney shall brief the City Council regarding the proposed settlement during executive session called pursuant to RCW 42.30.110. Prior to authorizing a settlement involving significant financial or policy issues, the City Attorney shall consult with the Director of Finance and the head of the relevant department. Upon the presentation by the City Attorney to the Director of Finance of either a copy of a Release and Order of Dismissal or a copy of a judgment against the City, entered in an appropriate court, and having attached thereto a statement in writing, signed by the City Attorney, to the effect that the right of appeal from such judgment has been expressly waived, or that the time for an appeal has expired, the Director of Finance shall issue a check upon the Judgment/Claims Subfund for the amount of such judgment, and costs if awarded to the claimant by the court. [Ordinance 120521]

Policy 8. Adjustment and payment of claims. In order to manage claims filed against the City in a consistent and comprehensive manner, all claims filed against the City, as provided in SMC 5.24, shall be investigated and evaluated by the Director of Finance with the assistance of the City Attorney.

Effective January 1, 2002, the Director of Finance may authorize payment of any claim against the City including claims brought in the small claims department of the district court pursuant to RCW Chapter 12.40. Prior to authorizing settlement of any claim for an amount over One Hundred Thousand Dollars (\$100,000.00), the Director of Finance shall brief the City Attorney and the City Council regarding the proposed settlement during executive session called pursuant to RCW 42.30.110. Prior to authorizing a settlement involving significant legal or policy issues, the Director of Finance shall consult with the City Attorney and the head of the relevant department. [Ordinance 120521]

Policy 9. Advance payments-Grounds for payment. The City Attorney and the Director of Finance are authorized to make periodic payments to a claimant pending settlement of other disposition of his claim equivalent to not more than the claimant's pre-injury net take-home pay if the City Attorney or the Director of Finance finds the conditions listed in SMC 5.24.040 to exist. [Revised Policy] [Ordinance 120521]

Policy 10. Litigation expenses.

The City Attorney and the Director of Finance are authorized to make payment to private and/or public agencies, firms, and/or individuals who provide services to the City in support of any litigation and/or claim and/or threatened litigation or claim filed or contemplated against the City or where the City is a plaintiff or potential plaintiff in legal action. The Judgment and Claims Finance Committee will adopt written guidelines for the implementation of this policy. [Revised Policy] [Ordinance 120521]

Reporting/Evaluation Requirements

Policy 11. Claims evaluation and departmental involvement. Effective January 1, 2002, all claims for damages shall be investigated and evaluated by the Department of Finance with the assistance of the City Attorney. In anticipation of litigation regarding such claims, the Director of Finance may request reports from all interested departments concerning any claim and such reports shall be prepared to assist the City Attorney in defense of the City and shall constitute and be treated as privileged communications. [Ordinance 120521]

Policy 12. Annual Briefings of Council. Effective January 1, 2019, the Director of Finance, Director of Risk Management, and the City Attorney will provide annual briefings to Council in executive sessions called pursuant to RCW 42.30.110 on individual settlements over Two Hundred Thousand Dollars (\$200,000.00) in April. The Director of each of the City departments involved with each specific settlement will also participate in these briefings. [Revised Policy]

Policy 13. Reports to Council and City Departments. The Director of Risk Management will provide semi-annual reports in April and October to Council and City Departments on all claims and lawsuits against the City. [Revised Policy].

Policy 14. Judgment and Claims Finance Committee. A new Judgment and Claims Finance Committee shall be created. The Committee will meet at least quarterly and more often if needed. The Committee is charged with oversight measures including: monitoring and reporting on expenditures, review current cases and reserves; ensuring sufficient funding; and identifying

patterns and trends in cases which suggest specific risk mitigation strategies. Membership will include representatives from the City Attorney’s Office, Department of Finance and Administrative Services, ~~and~~ the City Budget Office and the Central Staff Director or designee. Other participants may be consulted to provide technical, actuarial, or finance advice. [New Policy].

Ordinance Index

Ordinance 108657. 1979

- Establish JC fund.

Ordinance 111195. 1983

- Establish requirements for filing a claim.
- Adding SMC 5.24.005
- Claims under Law Dept

Ordinance 113872. 1988

- Payment of claims under \$1.

Ordinance 115538. 1991

- Increase claims settlement authorization in LAW from \$2,500 to \$10,000

Ordinance 116368. 1992

- Establishing a Finance Department. No more elected Comptroller/Treasurer

Ordinance 117977. 1995

- JC created as subfund in GF. SMC 5.24 010, 020, 030

Ordinance 118923. 1998

- Eliminate requirement claimant signature be notarized.

Ordinance 120114. 2000

- **ESD** Finance Div of Exec Svs Dept. Authorizing payment of claims by check or warrant. Fund must be solvent. Payments under \$1. SMC 5.24.020 and 030

Ordinance 120521 (CB 113825). 2001

- Transfers Claims from Law to (FAS) ESD
- Over \$500,000 settlement City Attorney brief Council.
- Over \$100,000 claims payment Finance Director brief Council.
- Revises
 - o SMC 5.24.005 Claims for Damages
 - o SMC 5.24.020 Payment of Judgments
 - o SMC 5.24.030 Payment of Claims
 - o SMC 5.24.040 Advance Payments – Grounds for Payment
 - o SMC 5.24.060 Litigation Expenses

Resolution 30386. 2001

- Adoption and revision of JC Policies

Ordinance 120794. 2002

- **DEA** Establish Dept of Executive Administration – Claims responsibility

Ordinance 123361.

- Creates **CBO** and **FAS**.

Ordinance 124088. 2012 State Contract Indemnification.

- Creates General Liability in JC of \$6.5 million

Ordinance 125492. 2017

- FinMAP. JC becomes a fund instead of ‘subfund’.