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RISK MANAGEMENT

AUTHORITY

This Practice was originally adopted in October 1978. This Practice was last amended by the Acting Executive Director on March 25, 2019.

PURPOSE and BACKGROUND

This Practice was initially developed in 1978, to establish and define the Commission’s Risk Management Program operations, provide policy for the control of risks, and assign responsibilities for carrying out program requirements. Subsequent to its initial adoption, the Practice was amended as follows:

- April 16, 2003: Amended to update regulatory and internal policy references, introduce more current standards of risk control, clarify risk management program activities and goals, and better identify responsibilities for the reduction and handling of liability matters.
- September 30, 2016: Reviewed and amended to update Maryland’s Tort Cap Limits and to clarify the responsibilities of the Department of Human Resources and Management, and update citation references.
- March 25, 2019: Reviewed and amended to reflect updated references.

REFERENCES

- State of Maryland Occupational Safety and Health Act, (MOSHA), COMAR 09.12.20 Code of Maryland
- Title 29 Code of Federal Regulations Part 1910 (General Industry), Part 1926 (Construction)
- Annotated Code of Maryland, Courts Judicial Proceedings, §5-301-§5-304 (inclusive), Local Government Tort Claims Act
- Annotated Code of Maryland, Courts Judicial Proceedings, §5-512, Immunities and Prohibited Actions-Governmental
- M-NCPPC Administrative Practice 4-10, “Purchasing Policy”
- M-NCPPC Administrative Practice 6-10, “M-NCPPC Vehicle Use Program”
- M-NCPPC Administrative Procedures 04-04, Risk Management and Safety Manual
- Schedule of Insurance in Force, The Maryland National Capital Park and Planning Commission’s Comprehensive Annual Financial Report.
- Montgomery County Code of 1972, §20-37, Comprehensive Insurance and Self-Insurance Program; and the Agreement of July 1, 1978, as amended, between the Commission and Montgomery County for the Commission’s participation and coverage in the Montgomery County Self-Insurance Program.

DEFINITIONS

Actuarial Evaluation A recognized financial technique for establishing funding for current and future liabilities.

The Commission: The governing body of the Maryland-National Capital Park and Planning Commission, which is comprised of five members from each of the agency's two Planning Boards for Montgomery County and Prince George's County.

The Maryland-National Capital Park and Planning Commission: The organizational entity. For purposes of this Practice, the terms "M-NCPPC" or "agency" shall be used to reference the organizational entity.

Risk Assessment The rating of activities to determine the probability of their causing frequent damage or claims against the Commission, catastrophic losses, or a combination of these two probabilities.

Risk Avoidance Eliminating a high-risk activity, or disposal of a high-risk facility, in order to prevent any claim arising against the Commission from the activity, or facility.

Risk Management The process of making and carrying out decisions that will minimize the adverse effects of accidental losses. Risk management involves evaluating the history of losses and risk probability, then designing countermeasures for preventing or limiting the degree of loss. Countermeasures include identification of potential loss exposure; risk avoidance; design and implementation of safety and loss control programs, to include maintenance standards, changes in public services, security measures, pre-employment evaluations of Commission employees, medical monitoring, drug and alcohol-free workplace initiatives, transfer of risk through self-insurance and commercial insurance programs.

Risk Management Fund An internal service fund, funded by budgeted revenue transfers from operating departments to pay for costs or losses associated with the administration of self-insurance, commercial insurance, and reserves.

Risk Retention When an organization knowingly or unknowingly retains losses using funded or unfunded reserves, operating expenses, or simply borrows to pay for losses that occur.

Risk Transfer Shifting of the financial burden of losses from one party to another through commercial insurance or written contracts and agreements.

Self-Insurance Program Provides protection against risks and losses by setting budgeted departmental contributions to the Risk Management Fund; funding of third-party administrator determined case reserves; funding actuarially determined reserves which are incurred but not reported (IBNR) reserves; and funding Commission determined retained earnings reserves.

Subrogation The recovery of damages from a third party whose negligent acts may have caused injury to Commission employees or property, and for which the Commission was obligated to pay, in the form of paid leave and insurance benefits, or through reconstruction and repair.

POLICY

The control of risks and safety shall be primary considerations in the planning and operation of all Commission activities. The Commission shall have a comprehensive Risk Management Program which helps ensure a safe work environment for its employees, and safe recreational facilities and programs for patrons and persons doing business with the agency. The objective of risk management within the Commission is to prevent the loss of life, avoid injury, protect and secure Commission assets, and to keep the cost of managing such risk to a prudent minimum through sound risk controls and insurance coverage.

The Commission's Risk Management Program includes, but is not limited to:

- Management of risks/liabilities through identification of risk exposures and implementation of effective loss control and risk avoidance.
- Transfer of risks through adequate insurance, vendor insurance requirements, and subrogation of third-party claims.
- Compliance with state and federal safety regulations and the implementation of safe practices through training and education.
- Protection of patrons and persons doing business with the Commission.
- Maintenance of employee safety and health through industrial hygiene, inspections, loss investigations, benefits management, and medical testing and monitoring.
- Facility inspections and design review.
- Analysis of accidents and implementation of loss control programs.
- Monitoring and management of claims services under contract with the Commission.

Funding of Risk Management Program Activities: Adequate funds, to the extent available, will be provided for personnel, facilities and equipment necessary to achieve the Commission's loss prevention objectives. These objectives and resources will be developed during the annual budget process.

Risk Management Insurance: The Commission shall comply with all provisions of the Local Government Tort Claims Act. In accordance with the Act, the Commission authorizes the retention (self-insurance) of real and personal property losses not to exceed \$400,000 arising out of a single event or occurrence, and not to exceed \$800,000 for all such retained losses in the aggregate during a single fiscal year.

The Commission also participates in the Montgomery County Self-insurance Program (MCSIP) which includes the Intra-governmental Risk Management Fund. The purpose of the program is to pool participant resources, facilitate self-insurance coverage, underwrite the administration of risk management programs, and to provide excess insurance for losses that are otherwise not covered by participating members' internal insurance coverages. The Program includes other local government members such as Montgomery County Government, Montgomery College, Montgomery County Schools, and other local municipalities. Montgomery County Government is the executor of the MCSIP.

The annual agreement between the Commission and Montgomery County specifies funds on deposit, limits of coverage, program reimbursement, claims procedures and services, and funds

management. MCSIP is guided by the Interagency Insurance Panel, one voting member of which is a Commission representative. Participation in MCSIP helps ensure efficient and economical coverage of risk management activities including, but not limited to:

- Real and personal property leases.
- Property damage (other than vehicles).
- Police professional coverage.
- Public official liability.
- Automobile liability.
- Automobile property damage.
- Workers' compensation coverage.

In addition to participation in the MCSIP, the Commission obtains commercial insurance policies as needed, which include, but are not limited to: catastrophic and blanket coverages, public employee fidelity bonds, protection of fine arts and antique collections, airport operations coverage, museum coverage, and for other specialized protection.

The Commission may also utilize an appropriate alternative to the MCSIP, if it is determined to be in the Commission's best interest.

RESPONSIBILITIES

Department Heads:

The Department Heads shall help ensure safe facilities and programs through the implementation of, and compliance with, the Commission's safety regulations and procedures. Specific activities include, but are not limited to, the following:

1. Providing oversight of the Commission's Risk Management and Safety Programs.
Maintaining safe environments for employees and patrons; requesting assistance from Risk Management and Safety for specialized needs (e.g., industrial hygiene evaluations), when necessary; and ensuring that service, supplies, and equipment meet the standards of federal and state safety compliance agencies such as Occupational Safety and Health Administration (OSHA) Maryland Occupational and Safety and Health (MOSH), Department of Transportation (DOT), Environmental Protection Agency (EPA), and other appropriate agencies.
2. Notifying the Risk Management and Safety Office, Department of Human Resources and Management of any additions/changes to programs or facilities within the department. Departments are responsible for ensuring that risk assessments with recommendations are made for each program or facility that is modified, acquired, or constructed. Departments should utilize the Risk Management and Safety Office, as necessary.
3. Ensuring, to the degree possible, that users of Commission facilities and services follow safe procedures in their activities.
4. Inspecting and protecting areas and activities for which the Commission is responsible. These efforts include:

- a) Frequent inspection by vehicle operators and facility supervisors of the equipment and areas in their custody.
 - b) Support for federal, state, and county mandated inspections.
5. Providing prompt investigation, review, and appropriate remedial action where possible for all losses reported to the Commission and its component departments. The primary purpose of investigation is to identify reasons for loss, necessary corrective actions, and steps that should be implemented to prevent/limit future loss.
 6. Ensuring as appropriate, that administrative proceedings are initiated against employees whose negligent or intentional acts have resulted in monetary loss to the Commission.
 7. Ensuring that Commission employees receive necessary safety awareness training in areas including but not limited to, position-specific safety-sensitive duties, operation of vehicles and specialized equipment/machinery, direct patron services, and emergency response plans.

Department of Human Resources and Management:

The Executive Director shall provide overall supervision for risk management, assign staff to carry out departmental duties for the program, and provide technical support and assistance for departments.

If funds are available, the Executive Director will provide awards and recognition to departments and units that have made notable contributions to the Commission and to patrons by reducing and controlling losses.

With the Secretary-Treasurer, the Executive Director shall evaluate insurance needs and recommended coverages to the Commission. In accordance with the Agreement between the Commission and Montgomery County for participation in the MCSIP, the Executive Director or his/her designee(s) shall be a member of the Montgomery County Interagency Insurance Panel.

Under the general direction of the Executive Director, the responsibilities of the Risk Management and Safety office, Department of Human Resources and Management shall include the following:

1. Establishing guidelines for the management of general liability, fidelity, property, worker's compensation, and other risk exposures arising from Commission operations, including provision of safety engineering and/or loss prevention services by an insurer.
2. Initiating recovery actions against persons and organizations whose negligent, intentional, or otherwise unlawful actions result in monetary loss to the Commission. This responsibility shall be coordinated with the General Counsel. Actions will be joined with insurers and adjusters, when appropriate.

3. Developing and maintaining an effective management information system that will provide accurate analysis of both the fiscal and operational parts of the program. This shall include, but not be limited to the assessment of general liability claims and workers' compensation implications.
4. Planning and coordinating a safety program for all Commission activities, to include education and training in injury prevention, mandated safety and health regulations, emergency preparedness, driver improvement and license monitoring programs, accident investigations, and facility inspections.
5. Assisting in the review of plans and specifications for facilities, grounds, supplies, and equipment, and programs to ensure that they meet safety standards and are free from recognized hazards.
6. Acting as a technical resource and adviser to the Commission, Department Heads, and the Safety Committees in those areas that fall within the Risk Manager's responsibility.
7. Administering and supervising the risk management and group insurance programs.
8. Providing support, training, and prompt feedback to Safety Committees and individuals who offer recommendations for program improvements.
9. Developing and maintaining the Commission's Risk Management/Safety Manual, which contains loss reporting instructions, safety rules and regulations, safety guidelines, current insurance coverage information, and related topics of interest to line management and staff.
10. Reviewing all contracts to ensure that:
 - a) Contractors and others doing business with the Commission have adequate insurance and meet MOSHA requirements.
 - b) The Commission is held harmless for other's actions.
11. Providing recommendations to the Secretary-Treasurer on waivers of insurance for vendor contracts.
12. Providing oversight of claims and administration of the MCSIP and commercial insurance programs.
13. Reconciling Risk Management Fund activities with the Department of Finance. Reconciliation shall include activities such as review of actuarial projection claims and other Risk Management controls.

The Department of Finance:

The Department of Finance shall provide financial reporting services; have custody of management of the Intra-governmental Risk Management Fund; and with the Executive Director, have overview fiscal responsibility for the program.

With the Executive Director, the Secretary-Treasurer evaluates insurance needs and recommends coverages to the Commission. The Secretary-Treasurer may approve waivers of insurance after consultation with the Risk Management and Safety Office, Department of Human Resources and Management.

Under the general direction of the Secretary-Treasurer, the responsibilities of the Department of Finance shall include:

1. Providing to the Commission, annual actuarial evaluations of the Risk Management Fund.
2. Providing annual financial projections and financial analysis of Risk Management Fund activities.
3. Developing an annual budget for the Risk Management Fund with advice from the Department of Human Resources and Management.
4. Assisting the Department of Human Resources and Management in their reconciliation of the Risk Management Fund activities.

Office of the General Counsel:

The General Counsel shall provide advice and support on legal matters affecting the Commission's risk management program. Under the direction of the General Counsel, the department's responsibilities shall include:

1. Providing advice, counsel, and support for the loss recovery program of the Department of Human Resources and Management.
2. Ensuring that the Commission is advised of all legal claims that are under the purview of the Risk Management Fund.
3. Ensuring that the Risk Management Fund of the MCSIP receives the support of Commission employees and assets to properly defend actions against the Commission.
4. Ensuring, where proper, that court actions are initiated against persons or organizations whose negligent, intentional, or otherwise unlawful acts have resulted in monetary loss to the Commission.
5. Providing oversight and coordination for the Commission of litigation cases, the settlement of those cases and where appropriate, settlement of non-litigation cases that are handled by the Risk Management Fund of the MCSIP.

Safety Committees:

The Commission hereby establishes a safety committee in each county, of which Risk Management and Safety Office staff shall be members. The chair of each committee shall be designated by Department Heads. The chair shall ensure that the committee consists of volunteer members representing a cross-section of each County's activities. The safety committee is responsible for assisting with departmental safety and training, and providing ideas to Department Heads on ways for improving and sustaining the Commission's loss control efforts. The safety committee may provide incentives and recognition for notable contributions to the area of safety awareness.

Individual Employees:

Employees are expected to exercise workplace safety and take precautions to minimize the potential for injury or damage.