

**RESOLUTION NO. 1222**

**A RESOLUTION ADOPTING AND IMPLIMENTING A RISK  
MANAGEMENT AND TORT LIABILITY POLICY AND  
REPEALING REOLUTION NO. 348 DATED JULY 3, 1979.**

WHEREAS, the governing body of the City of Colby, Kansas (the "City") may adopt a resolution implementing a Risk Management and Tort Liability Policy.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY  
OF THE CITY OF COLBY, KANSAS:**

**SECTION 1. DEFINITIONS**

“Risk Manager” means the employee or outside contractor assigned responsibility for assisting the City in obtaining insurance policies, reviewing tort claims, reviewing contracts for risk, evaluating internal situations, such as human resource issues, employee conflicts, funding of employee benefits, due to rising health insurance costs etc. and working with the City on policies and procedures to mitigate risk.

**SECTION 2. PURPOSE OF RESOLUTION**

The purpose of this Resolution is to set forth the general public policy objectives of the city as it relates to risk management;

- (a) To establish an orderly process and program for managing the risks of the city;
- (b) To establish guidelines for the operation of the city’s risk management program;
- (c) To implement a risk management program based on risk identification and measurement, risk reduction and prevention, risk retention, risk transfer and such other systems or techniques as may be appropriate.

**SECTION 3. GENERAL OBJECTIVES**

The general objectives of the City’s risk management program are to secure the following:

- (a) The establishment, to the extent practical, of a hazard-free work and public-service environment which employees of the city and members of the general public, exercising reasonable care, may use in safety and security;

(b) The protection of the city, and thus its citizens and taxpayers, against the consequences of accidental or other losses which are financially catastrophic in nature, and the preservation of the city's fiscal and other assets and its public-service capabilities from serious loss, destruction or depletion;

(c) The minimization of the total, long-term cost to the city of accidental losses and their consequences by providing for the identification, measurement, prevention and control of risks; and

(d) The creation of a system of internal procedures providing a continuing reassessment of exposures to loss, loss-bearing capacity and available financial resources to protect against such losses, including insurance, self-insuring, self-funding, pooling, and internal situations.

#### **SECTION 4. RISK REDUCTION AND PREVENTION**

(a) All existing operations, programs, equipment and facilities of the city should be identified and evaluated to determine the potential severity and frequency of accidental loss. All potential hazards to the public or to city employees should be reduced to their practical minimum. Those services or facilities which constitute a potential liability risk to the city disproportionate to the public need or benefits derived therefrom, should be discontinued where the city has discretion as to the continued performance or existence of such service or facility.

(b) It shall be the general policy of the city to utilize loss prevention techniques wherever possible, consistent with the cost involved. Efforts to prevent losses shall be given first priority. Loss prevention recommendations of federal and state agencies, insurance companies, and other experts shall be implemented whenever practical.

#### **SECTION 5. RISK RETENTION**

It shall be the City's general policy to retain certain risks by self-insuring under the following circumstances:

(a) When the loss will occur with predictable frequency and in an amount, which will not have a catastrophic impact on the City's financial position, recognizing:

- (1) the ability of the city to finance losses from its operating budget;
- (2) the ability of the city to finance losses from its risk management fund;
- (3) capacity of the city to borrow money to pay judgments and certain other losses;
- (4) ability of the city to administer a self-insurance program, including the provision of legal defense;

(b) When the probability of occurrence is so remote that the cost of ensuring the risk would be unwarranted use of public moneys;

- (c) When insurance is not available, or available only at a prohibitive cost.
  - (1) exceptions to these general guidelines shall be as listed in Section 7.

## **SECTION 6. RISK TRANSFER – HOLD HARMLESS AGREEMENTS**

In all contractual relationships, the City will transfer to others all risk of loss from chance events resulting from the relationship of the contracting parties. The opportunity to transfer such risks involved under contractual agreements shall be given primary consideration. However, before contractually transferring a risk to another party, that party's ability to assume the risk and control the loss, and the traditions, of the parties and industry involved as well as their financial worth, shall be considered. In any event, all contractual agreements providing for any service, construction, leasing of equipment or other such agreements shall be reviewed by the City Manager and the City Attorney to determine whether the City is adequately protected against financial losses.

## **SECTION 7. RISK TRANSFER – INSURANCE**

It shall be the policy of the City to purchase insurance only under the following circumstances:

- (a) When required by law or contract.
- (b) When other methods of risk management or risk transfer do not reduce the loss exposure to an acceptable risk retention level.
- (c) When certain necessary services, including legal defense and claims handling, can best be provided through the purchase of insurance.
- (d) When self-insurance, including deductibles, does not result in long-term economy for the city.
- (e) When the potential severity and degree of risk may result in a loss which would substantially affect the financial capability of the city to continue to provide essential public services and facilities.

## **SECTION 8. JOINT INSURANCE TRANSFER AND RETENTION**

The City will combine risk retention and risk transfer when purchasing insurance through the use of deductibles or a self-insured retention where practical. In the case of liability insurance, such retention may be applied either to the final settlement, court costs and attorney's fees or only to the cost of final judgment as determined by agreement.

## **SECTION 9. INSURANCE PURCHASING**

(a) The City shall endeavor to purchase its property and casualty insurance coverage from a single source when the packaged arrangement proves financially advantageous to the City, and thus to its taxpayers and utility service users. Emphasis shall be given to total insurance costs, rather than the separate costs of individual policies. As a general rule, a multiplicity of separate insurance coverages shall be avoided.

(b) Notwithstanding any other City ordinance, insurance shall be purchased and placed in a businesslike manner, without preference or prejudice, at the lowest practical effective cost with special emphasis given to all benefits and levels of direct service to the City. The formal competitive bidding process shall be limited to a frequency no less than every three (3) years, unless the current insurance company, broker or agent provides unsatisfactory service, cancels coverage or the Risk Manager determines that competitive bidding is warranted.

(c) Insurance will be placed only with those insurance companies or risk retention groups which may conduct business in Kansas, except as to such insurance as may be available only from non-admitted companies. Financial statements, or a rating of A- or higher in Best's Key Rating Guide, should be required from non-admitted companies.

(d) Insurance may be obtained by participating in a State of Kansas, Insurance Commissioner-approved "pool" which the Risk Manager has determined is properly funded and administered to adequately protect the City.

## **SECTION 10. INSURANCE COVERAGES**

Subject to the provisions of this Resolution, the following should be observed in determining amounts of retention or transfer by insurance:

(a) *Property Insurance – Public Buildings and Contents.* It shall be the City's policy to insure only property losses in excess of deductibles as determined by the Risk Manager and approved by the City Council, as the most advantageous to the City. Buildings and contents losses which will total less than the approved deductible will be met from budget appropriations. Buildings will be valued and insured at replacement cost, or at actual cash value when necessary. Property should be insured on an all-risk basis whenever possible.

(b) *Automobile Liability Insurance on Motor Vehicles.* Liability insurance shall be maintained on all City-owned, rented and non-owned motor vehicles used by City employees. The policy may be subject to a large self-insured retention consistent with the reserve fund.

(c) *Physical Damage and Collision Insurance on Motor Vehicles.* Collision and comprehensive insurance may be carried on City vehicles licensed for highway use as

deemed appropriate by the Risk Manager and including the lowest competitive deductible.

(d) *Commercial General Liability Insurance.* Except as otherwise provided in this Resolution, the City should carry general liability insurance to protect the city and its employees from tort liability for bodily injuries and property damage on all its properties and for all its operations. The limits of liability for the above coverage shall be in such amounts as recommended by the Risk Manager and approved by the City Council. Medical payments coverage may be provided when it is deemed advisable to provide financial aid, without regard to negligence or liability, to any person who may be bodily injured. The purchase of public officials' liability insurance shall be subject to the provisions of Section 13.

(e) *Workers' Compensation.* The City shall provide workers' compensation benefits for its employees as required by law.

(f) *Catastrophic Insurance.* The City should maintain umbrella or excess liability insurance as needed to protect itself against any major, uninsured catastrophe as recommended by the Risk Manager and as approved by the City Council.

(g) *Other Insurance.* Other insurance shall be placed into effect upon the determination of necessity and recommendation for such coverages by the Risk Manager; or when required by law.

(h) *Employee Fidelity Bonds.* Employee fidelity bonds shall be secured for officers and employees as required by state law and City ordinances.

## **SECTION 11. SPECIAL LIABILITY EXPENSE**

(a) There is hereby created within the City's accounts a special liability expense fund as authorized by K.S.A. 75-6110. Such fund shall be utilized as an operating fund, and also as a reserve fund as set forth in Section 12.

(b) To the maximum extent possible, all expenses involved in the payment of claims, purchase of insurance, resolution of internal human resource issues, provision of legal defense and other direct and indirect costs resulting from the implementation of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.) not covered by existing liability insurance shall be paid from the risk management expense fund. Any expenditures from this fund shall be disbursed in the same manner as other expenditures of the City, subject to the provisions of Section 14.

## **SECTION 12. RISK MANAGEMENT RESERVE FUND.**

(a) The City shall utilize the special liability expense fund as a risk management reserve fund in accordance with K.S.A. 12-2615 for the purpose of providing moneys to reimburse the City, in whole or in part, from any uninsured loss.

Moneys in such fund, not immediately needed, should be invested and the interest thereon credited to the fund.

(b) The reserve funds will be annually examined as to their adequacy and a report of such adequacy furnished to the City Council as part of the City's annual audit.

### **SECTION 13. PROTECTION OF OFFICERS**

(a) The City shall, through insurance or other means, fully comply with the provisions of the Kansas Tort Claims Act, requiring the City to provide legal defense and indemnify City officials and employees from damages resulting from injury or damages proximately caused by an act or omission while acting legally and within the scope of their employment.

(b) Pursuant to K.S.A. 75-6108, the City Manager is hereby designated as the person to receive, and to determine eligibility of, any written requests from the City's officers and employees to provide a defense to civil tort actions or proceedings that may be filed against them.

### **SECTION 14. GENERAL POLICY ON TORT LIABILITY CLAIMS**

The City recognizes that court decisions continue to develop a clearer understanding of the status of governmental immunity and liability under the Kansas Tort Claims Act. Further, the cost of commercial liability insurance in future years will be related to the loss experience of insurance companies writing such liability insurance. In addition, circumstances may arise in support of payments to persons who may be injured as a result of the use of the City's services or facilities, notwithstanding the absence of negligence or tort liability. The following, as to the filing, settlement and payment of tort claims, are therefore established:

(a) All tort claims against the City, its officials, employees, agents and volunteers must be filed with the City Clerk in accordance with K.S.A. 12-105b(d).

(b) The City shall not compromise or settle any uninsured claim unless the City Attorney reasonably determines that there is evidence that the City may be legally liable, since such actions tend to precipitate similar claims and there are questions as to the propriety of using public funds for such purposes when there is no public benefit derived or any legal obligation. The City Attorney shall examine each uninsured tort claim filed against the City. If, in the judgment of the City Attorney, the City will probably not be found liable in the event of litigation, it shall be the policy of the City that the claim not be compromised or settled, regardless of the emotional merits of the case. The Risk Manager, with the assistance of the City Attorney, shall initiate claims settlement negotiations upon a determination of

probable liability for a claim (regardless of whether such claim is covered by insurance).

(c) The City Council, meeting in executive session, will review proposed settlements of uninsured claims in excess of twenty-five thousand dollars (\$25,000.00). It is recognized that the cost of legal defense constitutes a substantial share of the cost of insurance premiums. However, the discouragement of no meritorious claims and the development of a body of case law interpreting the Tort Claims Act is of long-term importance, to this City and to other Kansas local governments.

(d) If the City Manager determines upon receiving the advice of the City Attorney that it is in the best interests of the City to settle an uninsured claim, the City Manager is then empowered to negotiate a final uninsured claim settlement up to a maximum of twenty-five thousand dollars (\$25,000.00). The City Council will approve or disapprove uninsured claim settlements in excess of twenty-five thousand dollars (\$25,000.00).

**ADOPTED BY THE COUNCIL AND APPROVED BY THE MAYOR** this 1<sup>st</sup> day of April, 2025. Resolution No.348 is hereby repealed.

---

Lee Leiker, Mayor

ATTEST:

---

Joni L. Ketchum, City Clerk  
(Seal)