

TITLE V CLAIMS, SUMMONS, INSURANCE & RISK MANAGEMENT

CHAPTERS:

5.04 General Provisions

Chapter 5.04 GENERAL PROVISIONS

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5.04.010 CLAIMS. All claims for damages against any local government entity must be presented to and filed with the governing body in accordance with the provisions of RCW 4.96. Charter cities may have additional provisions, which will continue to apply so long as those provisions do not conflict with the state statutory provisions in RCW 4.96.

Every person has the right to file a claim against a local government entity for damages incurred by the claimant whom he feels should be compensated. Per RCW 4.96.020.

1. For claims for damages presented after July 26, 2009, all claims for damages must be presented on the standard tort claim form that is maintained by the risk management subsection of the Office of Financial Management, except as allowed under subsection (c) of this subsection. The standard tort claim must be posted on the Office of Financial Management's website.
 - a. The standard tort claim must at a minimum include the following information.
 - i. The claimant's name, date of birth and contact information;
 - ii. A description of the conduct and the circumstances that brought about the injury or damage;
 - iii. A description of the injury or damage;
 - iv. A statement of the time and place that the injury or damage occurred;
 - v. A listing of the names of all persons involved and contact information, if known;
 - vi. A statement of the amount of damages claimed; and
 - vii. A statement of the actual residence of the claimant at the time of presenting the claim and at the time the claim arose.

- b. The standard tort claim must be signed by either:
 - i. By the claimant, verifying the claim;
 - ii. Pursuant to a written power of attorney, by the attorney in fact for the claimant;
 - iii. By an attorney admitted to practice in Washington State on the claimant's behalf;
or
 - iv. By a court-approved guardian or guardian ad litem on behalf of the claimant.
 - c. Local government entities shall make available the standard tort claim form described in this section with instruction on how the form is to be presented and the name, address, and business hours of the agent of the local governmental entity. If a local governmental entity chooses to also make available its own tort claim form in lieu of the standard tort claim form, the form:
 - i. May require additional information beyond what is specified under this section, but the local governmental entity may not deny a claim because of the claimant's failure to provide that additional information;
 - ii. Must not require the claimant's social security number; and
 - iii. Must include instruction on how the form is to be presented and the name, address, and business hours of the agent of the local government entity appointed to receive the claim.
 - d. If any claim form provided by the local government entity fails to require the information specified in this section, or incorrectly lists the agent with whom the claim is to be filed, the local government entity is deemed to have waived any defense related to the failure to provide that specific information or to present the claim to the proper designated agent.
 - e. Presenting either the standard tort claim form or the local government tort claim form satisfies the requirements of this chapter.
 - f. The amount of damages stated on the claim form is not admissible at trial.
2. No action subject to the claim filing requirements of this section shall be commenced against any local governmental entity, or against any local governmental entity's officers, employees, or volunteers, acting in such capacity, for damages arising out of tortious conduct until sixty calendar days have elapsed after the claim has first been presented to the agent of the governing body thereof. The applicable period of limitations within which an action must be commenced shall be tolled during the sixty calendar day period. For the purposes of the applicable period of limitations, an action commenced within five court days after the sixty calendar day period has elapsed is deemed to have been presented on the first day after the sixty calendar day period elapsed.
 3. With respect to the content of claims under this section and all procedural requirements in this section, this section must be liberally construed so that substantial compliance will be deemed satisfactory.

How your claims are handled, will depend on your insurance coverage, and at what level the deductible, or self-insurance retention, if any, apply. In any event, you should request information about the incident from the department(s) affected and forward those reports along with the claim to your insurance carrier or broker, attorney and/or risk manager, depending upon your specific claim reporting procedures.

If your municipality is a member of an insurance pool, follow the procedures they set forth.

5.04.020 SUMMONS. Summons are similar to claims in that they often seek monetary relief for damages alleged to be caused by a municipality, but they differ in that they bring the court system into the process. A summons may also call for other forms of relief beyond seeking monetary damages. Per RCW 4.28.080(2), a summons against any town or incorporated city in the state must be served on the Mayor, City Manager, or, during normal office hours, to the Mayor's or City Manager's designated agent of the City Clerk. Typically, the summons will require a response within a limited time period (20 days). This is important because if the municipality fails to respond in a timely manner, it could lose its right to contest the charges. Once a summons has been received, you should immediately forward a date-stamped copy to the City Attorney, City Manager/Administrator, and affected department director(s). Your attorney should advise you on responding to legal actions such as these.

5.04.030 INSURANCE - TYPES AVAILABLE. Washington municipalities have a wide range of options for insuring against losses. Insurance can be purchased commercially, purchased as a group through a commercially insured pool, or a city can join a self-insurance pool or independently self-insure all or part of its own exposures. Clerks may be responsible for recommending an insurance alternative to the administrator, manager, or the mayor.

5.04.040 INSURANCE - RECOMMENDED AREAS TO BE COVERED. Cities need to consider coverage for losses in the following areas:

1. General Liability Insurance covers injuries to, or death of, 3rd parties or damage to their property caused by some act or omission of the municipality. With such a high investment in streets, parks and other public areas, it is extremely important to be protected against losses from accidents, which may occur.
2. Property Insurance protects the against losses of property from fire or water damage, lightning, etc. Extended coverage may be included in the policy to cover other losses such as flood and earthquake damage.
3. Business Auto Insurance includes coverage for liability, collision, and comprehensive damage to owned or leased vehicles.
4. Law Enforcement Liability Insurance covers exposures such as alleged false arrest and imprisonment, excessive force, etc.
5. Errors & Omissions Insurance protects the municipality and its officials against losses from lawsuits claiming negligence or error. This type of insurance is particularly important for the elected and appointed officials and members of boards and commissions.
6. Workers' Compensation Insurance enables the municipality to provide certain benefits to workers injured in industrial accidents. The municipality usually buys Workers'

Compensation Policies, which pay the benefits required by law. The State sets the schedule of benefits that are paid. An increasing number of cities are self-insuring for Workers' Compensation.

7. Disability Insurance may also be provided by the municipality to replace income lost from inability to work because of accident or sickness not otherwise covered by Workers' Compensation. This type of insurance provides stated benefits for a specified number of weeks, months, or indefinitely after a stipulated waiting period, depending on the coverage paid for by the municipality.
8. Employee Benefits Insurance is generally provided as a benefit to the employee. The municipality usually has group insurance, which allows the employees and family members to be insured. This type of insurance usually covers major medical expenses such as surgery and prolonged illness. It may or may not have a deductible amount or premium co-payment to be paid by the employee.

In addition, there may be special areas of loss the municipality should recognize and insure, such as airports, harbors, waterfronts, fairgrounds, etc.

5.04.050 RISK MANAGEMENT - RECORDS. Accurate records of claims and summons should be kept by the clerk, risk staff, or claims personnel so if loss patterns emerge, staff can attempt to prevent those kinds of situations in the future. This is the first step that can be taken toward managing risk. Tracking and analyzing your history of loss-causing incidents can be a part of a pro-active risk management and loss prevention program, which also includes projecting potential future losses.

5.04.060 RISK MANAGEMENT - SUSCEPTIBLE AREAS. Below is a non-exhaustive list of issues or situations, by department, which could bring lawsuits or claims:

Executive/Administrative Hearings:

- Administration of federal grants
- Denial of freedom of speech in forums

Public Finance and Budgeting:

- Tax assessments: discrimination
- Public assistance payments: discrimination, grant, suspension, revocation, hearings
- Franchises: discrimination, property rights

Regulatory Functions:

- Licenses and permits: suspension, revocation, hearings

Personnel:

- Selection procedures
- Disciplinary actions, hearings
- Discrimination (racial, sex, age, handicap, etc.)
- Union membership

Planning and Zoning:

- Zoning changes, notices, hearings
- Invalid zoning ordinances
- Enforcement
- Variances, permits to developers
- Perpetuating segregation

Public Safety:

- Limiting press coverage of fires
- False arrest and imprisonment
- Excessive force, harassment
- Illegal entry, search & seizure
- Interrogation
- Parole proceedings
- Jail sanitation
- Prisoner medical and healthcare, rehabilitation
- Solitary confinement

Public Works:

- Demolition of private property: notice, hearings
- Street closings to improve neighborhoods: discrimination
- Inadequate or improper service delivery (i.e., inadequate maintenance)
- Denial of services
- Housing discrimination
- Location of garbage dumps: loss in property values
- Use and storage of toxic chemicals

Utilities:

- Service termination for nonpayment: hearings, appeals
- Security deposits: discrimination
- Private water system tie-ins/hook-ups: discrimination
- Environmental Impairment

Facilities:

- Streets, sidewalks, parks, equipment in disrepair
- Improper signage
- Improper roadway design

Health:

- Failure to provide transportation: loss of service
- Right to treatment
- Communicable diseases

Recreation:

- Admission to facilities: discrimination
- Location: discrimination

Judicial:

- Child custody proceedings
- Commitment to mental hospitals
- Malicious prosecution
- Obscenity: threats to prosecute

Becoming aware of existing and potential risks and identifying management practices which can be implemented to prevent losses are important in reducing liability. You can also improve your awareness of trends in municipal liability by contacting the Association of Washington Cities (AWC), the International City Management Association (ICMA), and the Public Risk and Insurance Management Association (PRIMA) and asking about publications or periodicals, which they might offer. In addition, your attorney, insurance agent/broker or risk management staff or consultant may be able to provide information in this area.

5.04.070 CONTROL OF RISKS. Once risks are identified, they can be controlled by avoiding the risk-causing situation altogether (as in the case of a city electing not to sponsor or permit a public fireworks display); reducing the risk (by following appropriate policies and training personnel); or transferring the risk (to a commercial insurance company or local government insurance pool). Risks that cannot be transferred, such as those which are excluded by an insurance policy or which fall below the policy deductible, might be financed along with the cost of the insurance itself. This completes the cycle of risk management and risk financing as cities begin to realize financial benefits from conscientious efforts to control losses.