

NOTICE OF SPECIAL MEETING

Of The

CITY COUNCIL

to be held JULY 27, 1982, at 10:00 A.M.  
in the City Council Chambers

- to discuss the RISK MANAGEMENT PROGRAM

CERTIFICATION

I hereby certify that the above notice of meeting was posted on the bulletin board at the City Hall of the City of Abilene, Texas, on the 23rd day of July, 1982, at 10:00 a.m.

  
Assistant City Secretary

The City Council met in special session July 27, 1982, in the Administrative Conference Room to discuss Risk Management. Mayor Elbert E. Hall, Carlos Rodriguez, A. E. Fogle, Jr., and L. D. Hilton were present. Julian Bridges, Billye C. Proctor and Kathy Webster were absent. City Manager Ed Seegmiller, City Attorney Harvey Cargill, Assistant City Attorney Gary Landers, Finance Director Roy McDaniel, and Assistant City Secretary Kelly Beard were also present.

Mr. McDaniel said that the Risk Management Study was made to let the City look at the self-insurance program for general and fleet liability. He said prior to 1978, the City paid very little attention to risk and just bought insurance as the need came along, whether it involved liability or fire and extended coverage. In 1978, the premiums on the general and fleet liability were increasing rapidly for very little coverage. He said that the City had coverage of \$100,000 per person, \$300,000 per incident, and \$50,000 for property damage. In 1978, premiums were \$138,000 for one year. The City's claims had been running under \$50,000 for the previous four years. In 1978, the Council approved a self-insurance concept for general and fleet liability. The first year the self-insurance concept was implemented, the City paid out \$18,000. Through the second year, the City paid out about \$20,000 and through the current year, the City has already paid out \$20,000. He said that, however, the City does have claims pending for over \$1,000,000. He said that these were not potentially serious claims, but nevertheless, they are pending. He said that a tremendous amount of court decisions and legal ramifications are exposing the City to more liability prior to 1978.

Mayor Hall said that there was nothing wrong with being self-insured and there is nothing wrong with accepting some portion of liability that is properly measured. There is a great deal to be said about not spending money on high insurance premiums. But, he said he was concerned about the City's capability for liability.

Mr. Jack Gibson, RIMCO Risk Management, Inc., presented the report to the Council of RIMCO's observations and recommendations for the City's insurance needs. He said that RIMCO was hired by the City several months ago. In talking with different City departments and organizations, he was able to receive information for the report. RIMCO went through financial reports, claims, traffic reports, summaries, etc., for information.

Mr. Gibson presented the observations that RIMCO made concerning the City's insurance needs:

Observation 1: There has not been a full centralization of the Risk Management function within the City. He said that the Legal Department had been negotiating contracts with hold harmless provisions and insurance requirements, the Civil Defense Coordinator had been adjusting claims with the help of the claims committee, the Director of Finance had been purchasing insurance, so there has been no one individual or even committee of individuals responsible for that function. RIMCO believes the City is at a point where a full-time Risk Manager should be hired and given those responsibilities on a full-time basis. He said that if the City stays self-insured, it would be a full-time job with the claims adjusting and other responsibilities that this individual would have. He said that if the City should decide not to be self-insured and an insurance adjuster would be hired, then the position of Risk Manager may not be a full-time job. But, his residual time could be applied to other functions.

Observation 2: The present Risk Management procedures are better than average. RIMCO feels that the procedures the City has implemented are superior to many of the cities in the State of Texas. The City requires certificates of insurance with the companies and individuals under contractual agreement with the City and the City has a good follow-up system to assure that current insurance certificates are filed. He said the claims adjustment function has been administered well considering the person doing this function has not had a lot of previous experience. This function is done by the City Secretary with the help of the Legal Department and the records are kept on file in the City Secretary's office. RIMCO feels that the claim files could be documented better and the self-insured loss cost of the reports the City is keeping as far as past claims are concerned might be more detailed. Overall, he said that RIMCO felt the City was doing a good job of administering the Risk Management function.

Observation 3: Substantial ability to assume loss. RIMCO did financial calculations using the 1981 audited report to determine using guidelines that had been developed by the Risk Management committee over a number of years to determine from a financial point of view how much risk the City should be able to retain. What degree or dollar amount the losses the City could pay from its own funds without the use of insurance without it having a material impact on the City's operations? The City's retention capability was computed by RIMCO as being \$1,200,000. He said that the City should do its own calculations to see if it comes up with the same figure. He said that RIMCO suggests that the Council formalize an amount whether it be \$1,200,000 or another amount developed by the staff to give to the Risk Management committee.

Observation 4: The self-insurance program is viable. RIMCO feels the City needs to limit the catastrophe potential. The City does not have a large enough body of risk where the low of large numbers or statistics will apply. He said in that case, the City cannot say that with 99 percent accuracy that losses will be \$30,000. He said they may be \$30,000 per year for ten years and then millions of dollars when there is some sort of catastrophe. Therefore, if the self-insurance program is continued, excess liability coverage should be purchased. He said that this is a relatively new kind of coverage. The City could count the per occurrence liability loss at a certain level: for example, \$100,000 per occurrence. That way the City would be on the hook for the first \$100,000 and an insurance company would pay any amounts over that. He said the City was also self-insuring physical damage coverage on mobile equipment, such as the public works vehicles, etc. This kind of equipment would be subject to tornado loss, explosions, etc. The insurance needed for that type of coverage is readily available and not extremely expensive. Other City vehicles, such as police cars, fire trucks, etc., should also be covered. He said that does not mean common collisions between two cars but tornadoes and other disasters.

Observation 5: Self-insurance is a long term decision. RIMCO feels that the long-term self-insurance program with excess liability coverage would be the most economical approach for the City. However, the current insurance market is extremely low in cost. He said it would not hurt in the short-term to consider coverage by an insurance company. Mr. Seegmiller asked Mr. Gibson if the City could buy insurance or release it whenever it was advantageous even though the City was self-insured. Mr. Gibson said that for instance, the City decides to buy general liability insurance through the TML pool, which is a combination of self-insurance and insurance, the City cannot renew that insurance policy at any point and go back to a self-insurance program and at that time buy your excess coverage. When the City is self-insured, the losses are going to go up and down, but if the City were to budget at a maximum level, then that would smooth it out and whatever was left over would be a sort of dividend. He said that the City could make a short-term decision to insure and later on decide to go back to self-insurance. There is no problem in doing that.

Mayor Hall said the City could move toward self-insurance as a long-range program. There would be a period where the City would be able to build up its reserves to take care of the program. During other periods the City might want a little more protection and pay for it because then the City would not be ready to spend in case of a catastrophic loss. Also, he said even if the City had those reserves and the market was such that insurance was an attractive buy, then the City might for a few years use the market. It is not an inflexible thing; it does require constant awareness of what the market does.

Councilman Fogle said that insurance premiums kind of fluctuate; sometimes they are high and sometimes they are low. If they are low, it might be that the cost would be such that the City might want to be insured instead of self-insured.

Mr. Gibson continued by saying that unfortunately, cities are often one of those risks that cannot be placed at any rate when the market tightens up. That is why more and more cities have been self-insuring than they have been several years ago when insurance was high. Self-insurance today might be a good thing to consider because for one, the market being soft means you are going to be able to buy the excess coverage less expensively than in a tight market. Also, the City could be prepared and would not have to go through being cancelled and having to set up a self-insurance program or trying to find alternative sources if the market does tighten again. The market looks like it is going to be soft for a while because it seems to be tied into interest rates.

Observation 6: Implementation of noninsurance risk transfer can be improved. The City can pass it's liability to others in a contract. He said that if the City has a contractor to build a street, there would be a hold harmless clause in the contract and also require that contract to devise certain levels of insurance coverage to back up that hold harmless and indemnity agreement. Therefore, that contractor should be able to defend the City and pay any judgements when both he and the City are a joint entity.

Harvey Cargill asked Mr. Gibson if a hold harmless or indemnity clause requirement also applied to an organization that had no real assets or was a non-profit organization.

Mr. Gibson said that the City should consider a requirement that an organization be covered.

Observation 7: The present insurance policies can be improved. RIMCO felt the policies protected the City well against the more probable losses. (Fire, wind storm, etc.) RIMCO did make some suggestions to fine tune the coverages. For Example: the building and contents coverage is what RIMCO calls named peril basis, which means the names of various perils which the policy insures. RIMCO feels that an all risk policy would be better and there would not be that much difference in the cost.

Mayor Hall said that all risk insurance does not cover all risks. It is a form that says it covers all risks, except in contrast to what is called a specified list. He thinks the City would be better off with the all risk with a list of hazards, but he reiterated that it does not cover all risks.

Mr. Gibson said that replacement cost coverage should be considered on the buildings and contents, which means instead of insurance recovery on depreciated values, it will pay the current replacement costs. The values in which the City is insuring should be updated. RIMCO thinks the City should purchase extra expense insurance, which would, for example, if the City had a fire in a building, the insurance company would reimburse the City for extra expenses in arranging for substitute office spacing in another location, having telephone lines hooked up, over-time employees, renting office equipment and office furniture, etc. It is a nominal cost for that coverage and it is well worth having. RIMCO feels the City should consider purchasing electronic data processing policies which would better cover the exposures involving computer equipment and damage to that equipment. Consider purchasing valuable paper insurance for documents, maps such as what is in the Public Works Department. RIMCO said the City might ought to decrease the liability with an honesty blanket bond.

Mr. McDaniel mentioned that the City has already asked TML for quotes on several options to get some idea of what it is going to cost to buy the liability through them. He said that the honesty bond is coming up for renewal and the City has asked TML for quotes on it also. He explained that an honesty bond comes in two types: Blanket Honesty Bond, which is presently \$100,000 for all employees, and for theft of City property. The Blanket policy specifically excludes certain positions, such as the Mayor and Council and the City Treasurer. Those positions would have to be on a Name Honesty Bond for the same \$100,000.

Mayor Hall asked Mr. Gibson about the TML liability policy. Mr. Gibson said the TML pool policy went into effect January 1, 1982. He said he talked with Bill Martin of the TML Relief Bureau and he said that with the 30 or 40 cities in the program, the premium volume was in the excess of \$2,000,000. TML does have reinsurance on a treaty basis versus fire. He said that TML was one of the first states in the United States to set up any kind of pool at all. Their Workman's Compensation Pool has received great notoriety throughout the nation and other states have patterned their Workman's Compensation pool after the TML program. TML has experience in the concept in that regard. He said as far as setting up the liability pool, TML hired Powers, Perrin, Foster & Crosby to do the analysis and the court writing. He said that this was top management as far as casualty was concerned. The PPF&C firm is doing all of the claims adjusting, the loss control, etc. However, he said he was not sure whether they had the reinsurance or not. He suggested asking TML all of these questions and see how they respond to the City.

Mayor Hall asked Mr. Gibson that if the City elected to use stop loss insurance, would RIMCO help the City investigate the market or is the City on its own. Mr. Gibson said that would be up to the City. He said they would assist in preparing the specifications and things of that nature. He said the marketing of excess liability coverages is not hard to find, that there was a wholesaler in San Antonio that would probably be of help. He said if the City would like RIMCO to assist the City in other ways, then they could arrange for that agreement.

Mayor Hall said that if the City could buy the coverage locally, then he would like to see the money spent in Abilene.

Mayor Hall asked that since the City is self-insured, the City is really doing business with its bosses. When the staff handles claims, the City is really working with the people who pay the City's way. He asked Mr. Gibson what do other cities do when they have self-insurance; do they use an independent adjuster. Mr. Gibson said that a lot of times, cities will contract with one of many independent adjusters or they may have an in-house adjuster. He said that most claims could be investigated and handled by an in-house adjuster, however, if there is some sort of catastrophe, it would probably be a good idea to have an independent adjuster on retainer to assist the in-house person. He said it is unfortunate that the City does not have an independent adjuster or an insurance company to act as a go-between for the City and the claimants.

Mr. Seegmiller said that many times citizens react to a claim the same way they do to a complaint they may have. If it is not taken care of by one department or one person, then they ask "Where do I go next?" But, when they have to settle for a committee's decision, then they do not like to accept it.

Councilman Hilton felt that the City should have some sort of stop loss insurance. The City could handle its claims to a certain point, then an insurance company could come in and take care of whatever is over that point. Mayor Hall asked that if the City had a claim for \$300--would the City handle it or would an independent adjuster handle it if the City had a stop loss. Councilman Hilton explained that if the City had a claim for \$300, the City would handle it. But, if the claimant added other bills to the claim which made it reach a very high amount, then the independent adjuster would take over. Mr. Gibson added that if the City had to hire an attorney to defend the claim, the insurance would pay his fees once the retention limit had been reached (\$100,000). Mayor Hall asked if the City would need to report every claim or only those to be handled by an independent adjuster. Mr. Gibson said that it could be worked out between the City and the adjuster. Most of the time, the insurance company will have some sort of guidelines for reporting for the City to follow. Councilman Hilton said that ACU reports every claim because they never know how the claim will turn out. Most of the time, he said ACU would rather pay a \$250 claim than to have to send an adjuster out. Mr. Gibson said that RIMCO recommends the City report all claims. Mr. McDaniel mentioned that in another city, he dealt with an insurance company that told the City to be sure and report even the small claims; otherwise, the insurance company could deny liability if it didn't know about a claim. Councilman Hilton felt that the City should have a stop loss regardless of how much the City could absorb in losses.

Mr. Seegmiller asked if the City had a stop loss contract with someone and it was determined that it wanted to use an outside adjuster, could the City contract with the adjuster to adjust smaller claims. Mr. Gibson said that was possible.

Councilman Rodriguez asked what the Risk Manager's duties would be and who would he be responsible to, and if a person with these qualifications could be found in Abilene. Mr. Gibson said that it was possible that a person could be found locally. His responsibilities would be identifying the risk that the City faces, determining how to handle that risk, working with different departments, finding out the insurance requirements with individuals the City contracts with, following up on insurance certificates, purchasing insurance coverages on behalf of the City, adjusting the claims, etc. The departments would help the Risk Manager with information and other services and would act as sort of a committee.

Mr. Gargill said that he also agreed that the City needed a Risk Manager. He said that when the staff was discussing the duties of a Risk Manager, they came up with almost the same criteria that Mr. Gibson had just stated. He

said that while he was in Austin last November, several brokerage firms stated that because of the exclusion provisions in the policies themselves, at that time, there was no coverage obtainable that would have any real coverage. He said that he had been told on the TML pool coverage, it seemed that as long as a city had a population of 70,000 to 100,000 it would work well. However, he said if the city had a larger population, it would probably be more economical to have a self-insurance program than to go with TML.

He pointed out that under 1983 litigation, (Civil Rights--the City's largest area of loss other than casualty and the normal type of disaster type of insurance), it would be hard to find good coverage for this type of situation other than TML. Mr. Gibson felt that in his opinion, a long-term, self-insurance program would be the best thing for the City.

Mr. Cargill also said there was a new type of liability appearing and that is Antitrust liability. That is, for example, when a competitor will bid on a project and that competitor will not get the bid. That competitor will try to find some connection between a member of the staff or the Council and the individual who won the bid and try to make up some sort of conspiracy. Then, the competitor could sue the other bidder, the staff and the Council. He said the answer to the problem is legislation. He also brought up the matter of waiver of subrogation.

Mr. Gibson explained that, for example, the City owned some buildings that were leased. The lessee is required to purchase insurance, but due to the City's negligence, that building burned down. It would be possible for the lessee's insurance company to subrogate back to the City. A waiver of subrogation in that instance would keep the lessee from doing that.

Mayor Hall asked what kind of repercussion the members of the Council had against such law suits as Antitrust, etc. Mr. Cargill said that there was not much of any kind of repercussion. The Mayor also asked if there was any way the City could take its personal liability policies or any umbrella policy to cover their acts as public servants. Mr. Gibson explained that if the Mayor were driving his personal vehicle on City business and had an accident, then the personal policy would respond. The individual's policy has an exclusion for business pursuits. He felt that something could be arranged with an insurance agent for some sort of a personal program. Mr. Cargill said no matter who owned the car the person was driving, as long as it was on City business, the City Council would be asked to decide whether the Council would pay for the employee's liability. Mr. Gibson suggested the Council pass a resolution saying to the extent admissible by law, the City would reimburse and defend employees and Council Members against suits brought against them resulting from their acts on behalf of the City. Of course, if the staff member did something illegal, then it would not be legal for the City to reimburse him.

Mr. McDaniel said that the staff would come back to the Council with a policy statement and the quotes from the different insurance companies and independent adjusters. He thought that if the Council accepts the report, then they are more or less agreeing with what had been said in concept. Then, each area of the report will be a separate decision. He said the TML quotes should be back around the first of September. He said the TML is planning on pursuing some quotes on excess coverage. In the meantime, he will start working on the claims record keeping system. He said the staff might come back to the Council once a month for the next few months to get direction.

Councilman Hilton said that he was uncomfortable with the idea of liability without some sort of stop loss. Mr. McDaniel mentioned that four years ago, when the City first decided to go self-insured, the basic policy went for \$138,000. He said he could have obtained a \$1,000,000 stop loss on top of the basic policy for another \$65,000. He said he could not get the stop loss without the basic policy. Now, the market conditions are such that the City could go out and get a \$500,000 stop loss for \$50,000. But, a year from now, that might not be the case, and the City would have to make another decision.

Mr. Gibson said the position of Risk Manager would fall under Mr. McDaniel's department. The Risk Manager probably would be working full-time on Risk Management for the first year or so. As time goes on, he could be given additional duties.

Councilman Hilton asked Mr. McDaniel if the policies came due on the Budget date. Mr. McDaniel said they were not, that they were staggered, and it would probably be difficult to have them come due at the same time because of the difference of dealing with fire casualty situations and dealing with a liability situation. There is really no connection.

Mayor Hall asked Mr. McDaniel if his department could take on the responsibility of tracking down all the information the Council needed, and if it could act as a Risk Management team until a Risk Manager could be found. Mr. McDaniel said yes, that his department could make a start. He said that if the Council agrees with the concept, and the Budget hearings start, he will ask for the approval of the position. He said then he could start advertising immediately and he could get as much of the information needed as he could.

Mr. Hilton made the motion to accept the report and proceed in putting the Risk Manager's position in the Budget and get bids on insurance with stop loss and/or deductibles. Councilman Rodriguez seconded the motion.

AYES: Mr. Rodriguez, Mr. Hilton, Mr. Fogle, and Mayor Hall.

NAYS: None.

Mayor Hall expressed his gratitude for Mr. Gibson and RIMCO's assistance and felt that the City might be able to use its help getting its Risk Management program started. Mr. Gibson said that his company would gladly help the City with whatever assistance it needs.

Mayor Hall asked Mr. Gibson if the way the City operates its bid letting for depositories with banks was the right way to do it. Mr. McDaniel said that the City has the proper legal forms for the depository contracts. He said that the City's contracts specifies that the banks will secure its funds with legal securities and their market value will be at least equal to what the City has in that bank. He said that he has arbitrarily set a 30 percent spread between par value and market value on what has been pledged. The City receives an appraisal at the end of every month and those appraisals have been running around 24 to 25 percent differential between market value and par value depending on how a portfolio is made up.

Mayor Hall adjourned the meeting at 11:30 a.m.

*Henry Beard*  
Assistant City Secretary

*Judith Hall*  
Mayor Elbert E. Hall