

CITY OF OAKLAND
COUNCIL AGENDA REPORT

TO: Office of the City Manager
ATTN: Deborah Edgerly
FROM: Office of the City Manager, Risk Management Division
DATE: January 6, 2004

RE: SUPPLEMENTAL INFORMATION REGARDING THE RISK MANAGEMENT
INCENTIVE PROGRAM (FY 2001/02) WITH ALTERNATIVES INCLUDING
THE PHOENIX MODEL

SUMMARY

At the regular City Council Meeting of November 4th, staff presented the Risk Management Incentive Program Report forwarded from the Finance Committee of October 14th. At this meeting, public speakers from People United For a Better Oakland (“Pueblo”) advocated that the Council should adopt the cost allocation plan developed and implemented by the City of Phoenix. Council directed that staff research the Phoenix model and come back to the Council with further recommendations. This report outlines the Phoenix model for consideration as an alternative.

FISCAL IMPACTS

The July 22, 2003 report outlined the fiscal impact of the original program alternatives. As discussed in previous reports, the original proposal (Option A) would result in a budget loss of \$426,668 for the Oakland Police Department in (FY 03-04), a loss of \$10,186 for the Oakland Fire Department (FY 03-04), and a loss of \$207,782 for the Public Works Agency (FY 03-04).

The simple cost allocation system (Option B) would have no immediate fiscal impact as the project could be accomplished with current staffing and would not begin until the next mid-cycle budget adjustment. Future impacts would be minimal because the departments would be budgeted for the estimated annual cost of the program.

The complex cost allocation system (Option C), would entail a start-up cost of approximately \$20,000, which would come from the General Liability Fund to fund an appropriate actuarial consultant. The resulting budget adjustments and targets for the departments would not occur until the next opportunity to impact the budget, presumably, the mid-cycle review. A great deal of additional staff time from Risk Management and the Budget office would be required for this alternative

Alternative D involves no cost allocations and therefore has no fiscal impact.

Alternative E, (The Phoenix Model), would have no fiscal impact as it does not require taking operational money out of a department that expended more than was anticipated.

BACKGROUND

On July 22, 2003, staff presented a report allocating general liability fund monies pursuant to the implementation of the 1997 Risk Management Incentive Program (RMIP) to the Finance Committee. This report outlined a number of concerns related to the implementation of the program due to the current budget situation and due to the desire to implement best practices in the public sector regarding Risk Management. Staff was directed to come back with alternative proposals which would also include the original proposal as an option. Staff came back to the Finance Committee on October 14th with alternatives.

Of the alternatives presented, an Alternative D was included, which was a proposal authored by Mayor Jerry Brown. This plan was a four-point police management reform which mandated a greatly increased accountability system within the Oakland Police Department. The Committee recommended this Alternative D by a majority and forwarded the recommendation to the full Council. On November 4th, the full Council requested that a model developed by the City of Phoenix be researched and brought back as a potential alternative for implementation.

Original RMIP Alternatives :

- A. The original RMIP plan – Disincentive/Incentive payments pursuant to ten year rolling averages as described in the original July 22nd report.
- B. Simple “First Dollar Deductible” Cost Allocation Program as described in the October 14th report.
- C. Complex Cost Allocation Program with an actuarial analysis as described in the October 14th report.
- D. Police Department Accountability System.

This proposal developed by Mayor Jerry Brown targeted specific management issues within the Oakland Police Department. These management controls included a requirement that commanding officers meet with officers who have claims against them, that commanding officers be held accountable for the actions of their subordinates, and that the City Council be informed in closed session regarding the outcomes of disciplinary actions regarding officers involved in a legal claim. These management controls extend the reforms mandated by recent legal settlements and are currently being implemented. In addition, the alternative allows for the re-opening of Internal Affairs Investigations upon the discovery of new evidence – this change, if implemented, is not mandated by any legal settlement and would be a dramatic change in departmental policy.

KEY ISSUES AND IMPACTS

The Phoenix Model

The City of Phoenix is a city with a larger population than Oakland (1.4 Million) and has significantly different risk management issues related to its responsibility of running its own airport, transit system and public utilities, all with the assistance of Federal funding for which it is subject to Federal controls.

The Phoenix cost allocation system is one in which an actuarial analysis is performed each year before the annual budget process to determine how much should be budgeted in the General Liability Fund. The Risk Management Division then looks at a five year average of liability payouts to determine how much of this fund should be placed in each department budget. Therefore, if the Police Department used 25% of the general liability fund on a five year average, it would receive 25% of the actuarial allocation during the budget process.

As a department incurs liability payouts, these amounts are charged to departments. When a department goes over its allocated amount, the overage comes from the General Liability Fund, not the department budget. If a department spends less than its budget allocation, it must return the excess money to the General Liability Fund. In no instance does a department experience any budget cuts to its regular programs as a result of the risk management program.

The Phoenix model is similar to Oakland's current practice, in that the amounts are calculated, analyzed and reported to Council, but no money is taken out of the operational budget, although a five year rolling average is used rather than a ten year average.

SUSTAINABLE OPPORTUNITIES

The issues addressed in this report provide no environmental opportunities.

DISABILITY AND SENIOR CITIZEN ACCESS

The issues addressed in this report provide no benefits and impacts for the disability and senior citizen communities.

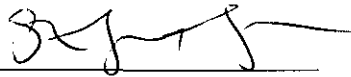
RECOMMENDATION(S) AND RATIONALE

Staff supports Alternative D as it includes real management reforms for the Oakland Police Department and will not result in budget reductions to departments which are already feeling extreme budget constraints. Staff also supports the Phoenix model, insofar as it mandates regular reporting by the major departments and does not result in any budget impacts by any department.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council support the implementation of Alternative D, as well as continue annual reporting, such as that practiced by the City of Phoenix.

Respectfully submitted,



Stephanie Garrabrant-Sierra
Risk Manager

APPROVED AND FORWARDED TO THE
CITY COUNCIL:


OFFICE OF THE CITY MANAGER

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**CITY OF OAKLAND
COUNCIL AGENDA REPORT**

TO: Office of the City Manager
ATTN: Deborah Edgerly
FROM: Office of the City Manager, Risk Management Division
DATE: October 14, 2003

RE: RESOLUTIONS DIRECTING THE ALLOCATION OF GENERAL LIABILITY
FUND MONIES IN ACCORDANCE WITH THE RISK MANAGEMENT
INCENTIVE PROGRAM (FY 2001/02) WITH ALTERNATIVES

SUMMARY

On July 22, 2003, staff presented a report allocating general liability fund monies pursuant to the implementation of the 1997 Risk Management Incentive Program (RMIP). This report outlined a number of concerns related to the implementation of this report due to the current budget situation and due to the desire to implement best practices in the public sector regarding Risk Management. Staff was directed to come back with alternative proposals which would also include the original proposal as an option.

FISCAL IMPACTS

The July 22, 2003 report outlined the fiscal impact of the original program. The most important fiscal impact related to the disincentive/incentive program. The FY 2000/01 incentive/disincentive amounts for the participating agencies and departments are as follows:

Agency/Department	Positive/(Negative) Allocation (+/- 25% Deviation from Baseline)
Oakland Police Department	(\$ 426,668)
Oakland Fire Department	(\$ 10,186)
Public Works Agency	(\$ 207,782)
Office of Parks and Recreation	\$ 69,111

Funding for this program and its positive incentive is available through the General Liability Fund (1100). Funding for the dis-incentive charged to the Oakland Police Department, Public Works Agency and Oakland Fire Department would be transferred from the budget of that agency or department in accordance with the program guidelines.

The simple cost allocation system (Option B) would have no immediate fiscal impact as the project could be accomplished with current staffing and would not begin until the next mid-cycle budget adjustment. If the City were to undertake the more complex cost allocation system (Option C), approximately \$20,000 could be used from the General Liability Fund to fund an appropriate actuarial consultant; the resulting budget adjustments and targets for the departments would not occur until the next opportunity to impact the budget, presumably, the mid-cycle review.

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Financial Management Committee
October 14, 2003
Agenda Item #

BACKGROUND

As requested by the Finance and Management Committee on July 22nd, there are alternatives to the RMIP as originally conceived. Staff strongly recommends that key provisions of the original plan be retained. These include:

- A yearly comprehensive report outlining claims, claim types and payout information with comparisons to previous years;
- This report should include a section for each of the "Big Four" departments (Fire, Police, Public Works and Parks and Recreation) to comment on their claims activity with recommendations outlining each department's strategy for reducing claims.
- The department directors from each of the Big Four departments should personally report on their claims activity and strategies before the Finance Committee during this annual report.

Incentive/Disincentive Alternatives:

Options

- A. The original RMIP plan – Disincentive/Incentive payments pursuant to ten year rolling averages as described in the previous report with no cap.
- B. Simple "First Dollar Deductible" Cost Allocation Program.

Cost allocation programs have been used in other jurisdictions to varying degrees. The main tenet of a cost allocation is to fairly allocate the cost of claims to the responsible agency in a way which is predictable and for which the cost can be reasonably budgeted.

The City of Sacramento has recently implemented this form of a cost allocation program, much like the deductible of a typical insurance plan. In this type of program, a responsible department must pay a "deductible" or first set amount of dollars for each paid claim. For example, the police department had 100 claims which resulted in some form of payout during fiscal year '01-'02. If the City's deductible was \$1500 and it is assumed that each claim paid on behalf of the police department was above \$1500, the Police Department would be responsible for \$150,000 of the total claims number. In the case of a cumulative claim, such as litigation based on a number of claims, a deductible could be paid for each individual claim, despite the settlement of a number of claims as one unit.

During each budget period, a base amount to cover a reasonably expected number of claims based on past performance and other accepted Risk Management principles as determined by the Risk Management Division would be added to each department's budget. To the extent that there are fewer paid claims, the department will enjoy a surplus to use as they wish. If there is a larger number of budgeted claims, the departments must find the money to pay the additional claims or must appeal the additional payment before the Finance Committee during the annual report.

The key advantages of this simple cost allocation program over the original RMIP program are:

- Costs are capped; yet incentives and disincentives are retained;
- Numbers of claims are given appropriate perspective in a deductible program, while the severity of claims do not overshadow claims with high occurrence numbers.
- Council is still given the opportunity to examine claims data and hear from responsible departments on claims reduction strategies.
- The public is given an opportunity to review claims data and has the opportunity to present their views during committee meetings;
- Departments would not only be affected by monetary incentive and disincentives, but the process would necessarily direct department attention to each claim;
- This type of program could be performed with current staffing with no additional costs.

Because of the advantages outlined above, staff recommends the above program, Option B, which could be implemented as soon as mid-cycle budget adjustments are made and which can be accomplished without the aid of any outside consultants with existing staff.

C. Complex Cost Allocation Program.

A more complex form of cost allocation could also be implemented which would perform even more like a traditional insurance policy. This would first require the performance of an independent actuarial analysis of each department to determine appropriate target numbers for typical claims expectations based on traditional risk management factors such as history, environment, available budget to control risk, litigation environment, condition of infrastructure and other factors which can affect claims activity. A typical estimate for such an analysis for each of the Big Four departments would probably be in the range of \$15,000 to \$20,000.

After an analysis, each department would then be allocated money through the budget process to cover reasonably anticipated costs of claims. To the extent that claims are above or below the determined values, the department would have to pay or would have a budget surplus. The caveat for any such program would be a cap on any amount which would need to be paid, much like an excess insurance policy which would cover amounts dramatically exceeding expected claims numbers. This method would also require an appeal process with detailed criteria which would allow departments to demonstrate why a particular claim was either impossible to avoid, or where the department was not at fault. Lastly, this program would need more involvement from the budget office and the City Attorney's office, as funds would need to be tracked and moved with some frequency.

Additional Recommendation:

- Institute non-monetary incentives - Employees must be taught how to recognize and mitigate hazards and exposures. They must be trained at all levels of employment that they have a shared responsibility to reduce hazards and the losses associated with them. They must develop a commitment to the improved performance in order to continue

long-term success. Without this skill set and commitment, monetary incentive programs can result in ignoring or under-reporting losses. Non-monetary incentives can reward departments by way of public pronouncements of successful efforts, spotlighting exceptional performance of individuals and divisions.

Staff recommends that the Risk Management Division work with Agencies to help develop practical non-monetary incentives to encourage safe working conditions and claims reduction.

KEY ISSUES AND IMPACTS

Attached to the original RMIP report were attachments containing comprehensive claims data, the loss reduction plans for each of the Big Four Departments and a list of appeal considerations recommended if the original RMIP is retained. If it is determined that the original plan should be retained, the committee must still determine the relative merits of each department's appeal. Attached to this report are the original resolutions which would allow the budget alterations to take place pursuant to the original plan. The alternative recommendations do not require a resolution for implementation.

SUSTAINABLE OPPORTUNITIES

The issues addressed in this report provide no environmental opportunities.

DISABILITY AND SENIOR CITIZEN ACCESS

The issues addressed in this report provide no benefits and impacts for the disability and senior citizen communities.

RECOMMENDATION(S) AND RATIONALE

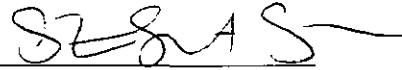
Staff recommends that Council:

- Approve one of the recommended cost allocation programs.
 1. If Option A is selected, hear and make a determination on each department's appeal and adopt the attached resolutions, with changes based on appeal determinations.
 2. If either Options B or C is selected, no action by Council is necessary. Staff will begin implementation immediately.
- Continue to receive comprehensive annual reports with reporting from each of the Big Four agencies.
- Agencies and departments will continue to develop a yearly action plan designed for the reduction and/or prevention of loss exposures covered by this report and will present these plans during the annual report.

ACTION REQUESTED OF THE CITY COUNCIL


Staff recommends that Council accept the findings and recommendations contained within this report.

Respectfully submitted,



Stephanie Garrabrant-Sierra
Risk Manager

APPROVED AND FORWARDED TO THE
FINANCE AND MANAGEMENT COMMITTEE:


OFFICE OF THE CITY MANAGER

→ ALTERNATIVE Δ →

October 14, 2003

ALTERNATIVE to RMIP for OPD Claims

- 1) Establish mandatory face-to-face meetings between every officer—who is the subject of a citizen complaint—and his or her lieutenant or commander for purposes of thoroughly reviewing court cases and proposed settlements that involve said officer.
- 2) Aggressively enforce Part 4, Section D(3) of the Negotiated Settlement Agreement holding all command officers personally responsible for monitoring and correcting inappropriate behavior in their chain of command.
- 3) Thoroughly document all improvements made pursuant to (2) above and provide such documentation in closed session in a timely manner.
- 4) The Internal Affairs investigation may be re-opened and or tolled, pursuant to the California Government Code, Section 3304 et seq., in order to consider evidence that was not discovered at the time of the Internal Affairs investigation.

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CITY OF OAKLAND
COUNCIL AGENDA REPORT

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OFFICE OF THE CITY CLERK
OAKLAND
2003 JUL 10 PM 3: 22

TO: Office of the City Manager
ATTN: Deborah Edgerly
FROM: Office of the City Manager, Risk Management Division
DATE: July 22, 2003

RE: RESOLUTIONS DIRECTING THE ALLOCATION OF GENERAL LIABILITY
FUND MONIES IN ACCORDANCE WITH THE RISK MANAGEMENT
INCENTIVE PROGRAM (FY 2001/02)

SUMMARY

On December 2, 1997, City Council directed staff to implement a Risk Management Incentive Program to monitor the general liability claim payout activity of the Oakland Police Department, Oakland Fire Department, Public Works Agency and Office of Parks and Recreation. This program was adopted in response to a prototype program brought before Council by a citizens group named People United for a Better Oakland (PUEBLO) that intended to monitor police activities.

This report transmits the General Liability Risk Management Incentive Program (RMIP) results for fiscal year 2001/02. Based on the findings of this report, recommendations are made: 1) to adjust the budgeted amounts for department self insurance funds to reflect actual payout averages; 2) to proceed with the incentive/dis-incentive allocation process of this program; and 3) to review and modify current training programs and policies to address the loss activity experienced by each agency and department.

FISCAL IMPACTS

Two types of fiscal impact exist in this program. The first, Pre-allocated General Liability Fund, relates to the allocated budgeted funds designated for participating agencies and departments. General Liability losses are paid via these funds. The second fiscal impact, RMIP Incentive/Disincentive Amounts, relates to the amounts each agency and department will pay or receive.

1. Pre-Allocated General Liability Fund

The fiscal impacts of this program are based on the Council's adopted Risk Management Incentive Program (RMIP) that uses a "rolling average payouts" baseline. It requires the transfer of funds from the City's General Liability Fund to Agency and Department budgets.

The 2001-2003 Budget has pre-allocated funds from the General Liability Fund (1100) to the participating agencies and departments. These allocations were made in advance of the calculation of the FY 2002-03 rolling average payout baseline during the budget process in the spring of 2001.

Adjustments must be made to the allocated fund amounts in order to align the budgeted amount with the current average baseline. The pre-allocated budget amounts and budgetary adjustments are as follows:

~~FINANCE & MANAGEMENT COMMITTEE~~

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Finance and Mgmt. Committee
September 23, 2003

Agency/Department	Pre-Allocated Budget Amount (FY 2001-03)	Budgetary Adjustment Required (FY 2002-03)
Oakland Police Department	\$1,432,017	+ \$ 394,316
Oakland Fire Department	\$ 114,444	- \$ 9,331
Public Works Agency	\$ 664,852	+ \$ 268,447
Office of Parks & Recreation	\$ 358,464	+ \$ 96,454

2. RMIP Incentive/Disincentive Amounts

The Risk Management Incentive Program was designed to impose pecuniary incentives or disincentives on departments based on the General Liability loss (payout) performance. The process of performance assessment requires the evaluation of current fiscal year payout activity as compared to the average payout activity over a series of years. Departments and agencies are then made accountable for a percentage of the amount over their average loss activity (baseline) or allocated a percentage of the amount under their baseline. The FY 2000/01 incentive/disincentive amounts for the participating agencies and departments are as follows:

Agency/Department	Positive/(Negative) Allocation (+/- 25% Deviation from Baseline)
Oakland Police Department	(\$ 426,668)
Oakland Fire Department	(\$ 10,186)
Public Works Agency	(\$ 207,782)
Office of Parks and Recreation	\$ 69,111

Funding for this program and its positive incentive is available through the General Liability Fund (1100). Funding for the disincentive charged to the Oakland Police Department, Public Works Agency and Oakland Fire Department would be transferred from the budget of that agency or department in accordance with the program guidelines.

BACKGROUND

On December 2, 1997, Council adopted the Risk Management Incentive Program that had been proposed by a group of Oakland citizens known as People United for a Better Oakland (PUEBLO). Their goal was to monitor the actions of Oakland Police Department during arrests and other areas of direct contact with the public that could be related to improper police procedures. The chair and members of the Finance and Management Committee subsequently expanded the scope of incident tracking of liability claims of the Police Department to include the departments of Fire, Public Works and Parks & Recreation.

The Risk Management Incentive Program (RMIP) was developed by a staff-working group representing each participating Agency and the City Attorney's Office, the City Manager's Office and the Budget and Finance Agency. The RMIP was developed based on three essential core elements:

1. The budgets of the participating agencies and departments should include a specific line item amount for claims and litigation payouts:

2. A positive incentive program should be devised that would provide pecuniary rewards to the agencies/departments in years where the actual payouts were less than the line item amount; and
3. A negative incentive program should be devised that would provide pecuniary losses to the agencies/departments in years where the actual payouts were greater than the line item amount.

Based on these core elements, a formula was developed by the working group that would be used to calculate cost incentives/disincentives against specific departments. The intent of the RMIP is to create a budgeted line item amount for claims/litigation payouts incurred by the Oakland Police Department, Oakland Fire Department, Public Works Agency and Office of Parks and Recreation. The RMIP was implemented initially for the Oakland Police Department (FY 1997/98) and for the remaining agencies/departments the following fiscal year (FY 1998/99).

Under adopted guidelines of the RMIP, each Agency/Department has the opportunity to receive or lose a portion of its annual budget according to its performance in reducing liability payouts. The guidelines are based on the average payouts for the last seven to nine years, gradually building up to a ten-year running average in Fiscal Year 2002/03. If the Agency's actual payouts exceed the calculated baseline, the Agency will be responsible for re-directing funds within its budget to cover 25% of the overage. If the Agency's actual payouts are less than the baseline, the Agency will be allowed to spend 25% of the savings on capital items and/or one-time expenditures proposed by the Agency.

This report provides RMIP results for Fiscal Year 2001/02.

KEY ISSUES AND IMPACTS

1. Agency/Department Pre-Allocated General Liability Fund

As discussed in the Fiscal Impact section of this report, with the adoption of a two-year budget cycle, funds were pre-allocated to the self-insurance fund line item for each participating agency and department. The City Attorney's Office directs payment of general liability losses through these agency/departmental funds in accordance with the RMIP protocol established in 1997.

The current (FY 2002/03) Self Insurance Fund allocations are based on the 1999/2000 general liability pay-out history for each agency/department. Staff has since compiled actual payout data for Fiscal Year 2000/01. Adjustments to the Self Insurance Fund allocations are necessary to accurately reflect the current baseline fund amounts. The necessary adjustments are listed below.

Agency/Department	Pre-Allocated Budgeted Amount	2002-03 Rolling Average Baseline	Budgetary Adjustment Required (FY 2002/03)
Oakland Police Department	\$1,432,017	\$1,826,333	+ \$ 394,316
Oakland Fire Department	\$ 114,444	\$ 105,113	- \$ 9,331
Public Works Agency	\$ 664,852	\$ 933,299	+ \$ 268,447
Office of Parks & Recreation	\$ 358,464	\$ 454,918	+ \$ 96,454

2. RMIP Incentive/Disincentive Amounts

The RMIP Implementation Working Group, consisting of staff from the City Attorney's Office and the Office of the City Manager, Risk Management Division, analyzed the loss experience of the participating agencies and departments and the approved cost allocation formula was applied. *Attachments A through D (Table 1)* provide the detailed findings of the RMIP Implementation Working Group as regards each respective Agency or Department.

In summary, the FY 2001/02 allocations for the participating agencies and departments are as follows:

Agency/Department	Total Adjusted Losses	Amount Over/(Under) Baseline	Incentive/(Disincentive) Allocation (+/- 25%)
Oakland Police Department	\$3,362,339	\$ 1,706,673	(\$ 426,668)
Oakland Fire Department	\$ 140,765	\$ 40,745	(\$ 10,186)
Public Works Agency	\$1,660,537	\$ 831,129	(\$ 207,782)
Office of Parks and Recreation	\$ 213,030	(\$ 276,443)	\$ 69,111

Under the guidelines of this program, those agencies and departments with a positive resulting incentive receive monies to use toward "wish list" items. The agencies and departments with a negative incentive are required to transfer funds back from within their operating budget to the general fund reserve.

Note that beginning with fiscal year 2000/01, the Total Adjusted Losses for Public Works Agency "backs out" the payouts related to Sewer Claims. These losses are funded via an account separate from the Self Insured Fund, and therefore should not be considered in the overall incentive/disincentive totals. As such, the "running average baseline" for Public Works has been recalculated for the entire program period. However, the effect of this change will not be made retroactive to prior years. The 2000/01 Incentive/(Disincentive) Allocation is the first year this change will be applied.

3. Payout Activity Analysis

Analysis of the Payout Activity shows that among the four agencies and departments, the most common loss type by frequency of payouts was vehicle related incidents or tree damage (for OPR). However, the most severe loss types were typically personnel civil rights matters, wrongful death cases and cases related to the maintenance and upkeep of the City's

infrastructure as denoted in loss types described as "Dangerous Conditions." (See Attachments A through D (Table 2).)

These loss characteristics are unchanged from last year's pay-out experience. In an effort to address the high number of vehicle accidents and their related pay-outs, the City implemented a defensive driving program (Administrative Instruction 587) and a vehicle accident review process (Administrative Instruction 588). As a result, it appears that the frequency of vehicle accident claims filed against the City is experiencing a downward trend. (See Attachments A through D (Table 4).) Risk Management Division will continue working with departments on ensuring authorized vehicle operators are properly trained and unsafe operation of vehicles that result in vehicle accidents are followed up with proper remedial training and/or recommendations for other preventive actions.

The high severity personnel matters (i.e. sexual harassment and civil rights issues) continue to be addressed by specific training provided by the Office of the City Attorney and the Office of Personnel. The mandatory Workplace Harassment training is in the implementation phase at this time.

Staff also reviewed the size of the individual case pay-outs (Attachments A through D (Table 3).) Our analysis indicates that based on the size of the pay-out, Personnel/Labor matters pose the largest exposures for OFD. These matters can best be addressed through effective officer training and supervision. The training curriculum in the recruit academies and ongoing professional development of department staff should be reviewed to ensure the most current and effective practices are being taught to our employees. Further, department policy documents should be reviewed to ensure proper accountability is applied when excesses or violations have been identified.

The largest exposures posed to OPD involve public contact matters (Civil Rights, non-force issues and wrongful death issues) and vehicle accidents. The same strategies employed for OFD can be utilized to assist OPD in reducing their risk of loss.

In regards to PWA and OPR, our analysis indicates that vehicular accidents and aging infrastructure (street repairs, sewers and trees) pose the largest exposure. Through continued implementation of the Fleet Safety Program, the frequency and severity of vehicle accidents should be reduced by training and employee accountability.

It should be noted that many of the claims in which payouts were made originated several years ago. Table 4 in Attachments A through D identifies the types of cases that have been filed with incident dates within the last two years. It also provides information on the amount of monies that have been "reserved" and/or paid out on these cases in each category. While "incurred but not reported" (IBNR) cases are not reflected here, these tables do provide a picture of the type of loss activity each department experiences on a yearly basis.

Each agency and department has committed to an action plan designed for the reduction and/or prevention of the loss exposures covered by this report. These commitments are summarized in Attachments A through D of this report.

SUSTAINABLE OPPORTUNITIES

The issues addressed in this report provide no environmental opportunities.

DISABILITY AND SENIOR CITIZEN ACCESS

The issues addressed in this report provide no benefits and impacts for the disability and senior citizen communities.

RECOMMENDATION(S) AND RATIONALE

The liability loss performance of the agencies and departments participating in this program has been measured in accordance with adopted guidelines. Staff recommends that Council:

- Adopt the attached resolutions implementing the budget adjustments necessary to reflect the actual Baseline Amounts specified for each participating department and agency, and allocating the Agency/Departmental incentives and disincentives as recommended, subject to the attached appeal considerations as contemplated in the original Risk Management Incentive Program and other factors that influence the program effectiveness. (See Attachment E.)
- Direct Agencies and Departments to implement the proposed action plans designed for the reduction and/or prevention of loss exposures covered by this report. (See Attachments A through D – Tables 5 and 6.)
- Direct Risk Management staff to look for alternative ways to calculate Agency's loss baselines without being subject to annual loss payout fluctuations.

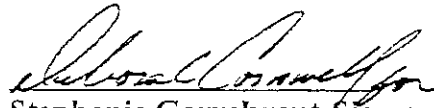
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ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that Council accept the findings and recommendations contained within this report and adopt the attached resolution.

Respectfully submitted,


Stephanie Garrabrant-Sierra
Risk Manager

Prepared by:
Stephanie Garrabrant-Sierra, Risk Manager
Deborah Cornwell, Safety & Loss Control Mgr.

APPROVED AND FORWARDED TO THE
FINANCE AND MANAGEMENT COMMITTEE:


OFFICE OF THE CITY MANAGER

Attachment A
Table 1
Oakland Police Department - Average General Liability Losses

Fiscal Year	Total	Less: Aberrational	Adjusted Total	Running Previous Average Baseline Figure	Amount Over/ (Under) Baseline	Incentive/ (Dis-Incentive) Allocation
1992/93	\$3,262,330	\$500,000	\$2,762,330			
1993/94	\$1,751,498	\$437,604	\$1,313,894	\$2,762,330	(\$1,448,436)	
1994/95	\$990,782	\$129,278	\$861,504	\$2,038,112	(\$1,176,608)	
1995/96	\$2,807,988	\$830,000	\$1,977,988	\$1,645,909	\$332,079	
1996/97	\$2,860,128	\$2,006,194	\$853,934	\$1,728,929	(\$874,995)	
1997/98	\$1,145,008	\$126,000	\$1,019,008	\$1,553,930	(\$534,922)	\$133,731
1998/99	\$1,508,188	\$428,918	\$1,079,270	\$1,464,776	(\$385,506)	\$96,377
1999/00	\$1,842,455	\$0	\$1,842,455	\$1,409,704	\$432,751	(\$108,188)
2000/01	\$3,190,607	\$0	\$3,190,607	\$1,463,798	\$1,726,809	(\$431,702)
2001/02	\$3,362,339	\$0	\$3,362,339	\$1,655,665	\$1,706,673	(\$426,668)
2002/03				\$1,826,333		
Total	\$22,721,322					

Table 2
OPD Payout Activity Analysis – 2001/02

Total Number	100 Payouts
Top 3 Most Frequent Loss Categories	<ol style="list-style-type: none"> 1. City Vehicle v. Another Vehicle/Stationary Object/Pedestrian (53 payouts = \$2,194,961.63) 2. Non-vehicle Related Property Loss (10 payouts = \$8,927.87) 3. Police: Force Non-Civil Rights (7 payouts = \$62,675) and Police: Towing – Red Zone, Tickets, Etc. (7 payouts = \$10,366.86)
Top 3 Most Severe Loss Categories	<ol style="list-style-type: none"> 1. Police: Non-Force Civil Rights (2 payouts averaging \$102,500 each) 2. Police: Force – Wrongful Death (3 payouts averaging \$97,289 each) 3. Police: Conduct – Non-force (5 payouts of \$91,500 each)

Table 3
2001/02 LARGE PAY-OUT CASES – OPD

Case #	Loss Type	Date of Loss	Total Pay-out	Brief Description
21037	City Vehicle against Another Vehicle	9/9/2000	\$2,000,000	Vehicle Accident at intersection resulting in serious injuries
20156	Police: Conduct – Non-force	3/1/1997	\$350,000	Alleges intimidation & rudeness to claimant & daughter
980620	Police: Force – Wrongful Death	2/4/1998	\$236,363	Alleges father wrongfully shot by OPD officer
21412	Police: Non-Force Civil Rights	11/26/1998	\$195,000	Alleges wrongful arrest & Civil Rights violations

**Table 4
OPD - REPORTED CLAIMS AND LAWSUITS**

Liability Type	Cause Code	2000-01		2001-02	
		Number of Cases	Total Incurred	Number of Cases	Total Incurred
Auto Liability	City Vehicle	2	\$ 3,392.95	1	\$ 1.00
Auto Liability	City Vehicle Against Another Vehicle	84	\$2,272,491.11	65	\$ 111,489.82
Auto Liability	City Vehicle vs. Pedestrian	4	\$ 25,000.00	0	\$ -
Auto Liability	City Vehicle vs. Stationary Object	3	\$ 2,347.00	5	\$ 3,980.19
General Liability	City Govt.: Administrative Hearings	0	\$ -	1	\$ 5,001.00
General Liability	City Govt.: Policy	1	\$ -	0	\$ -
General Liability	Code Enforcement: Drug Nuisance	1	\$ 1.00	17	\$ 13.00
General Liability	Code Enforcement: Other Nuisance	1	\$ 1.00	4	\$ 3.00
General Liability	Code Enforcement: Vehicle Seizure	65	\$ 2.00	4	\$ 1.00
General Liability	Code Enforcement: Weapon Confiscation	3	\$ -	14	\$ 3.00
General Liability	Code Enforcement: Receivership	0	\$ -	1	\$ 1.00
General Liability	Collections/Bankruptcy	4	\$ 4.00	0	\$ -
General Liability	Dangerous Condition: City Buildings	0	\$ -	1	\$ 500.00
General Liability	Dangerous Condition: Sidewalks: Trip & Fall	0	\$ -	1	\$ -
General Liability	Miscellaneous	4	\$ 4.00	5	\$ 5,003.00
General Liability	Personnel/Labor	0	\$ -	2	\$ -
General Liability	Personnel/Labor: Employment Discrimination	0	\$ -	3	\$ 100,002.00
General Liability	Personnel/Labor: Grievance - Other	4	\$ 2.00	1	\$ 1.00
General Liability	Personnel/Labor: Grievance - Suspension	1	\$ -	1	\$ 1.00
General Liability	Personnel/Labor: Grievance - Termination	3	\$ 1.00	2	\$ 1.00
General Liability	Personnel/Labor: Wrongful Termination	4	\$ 120,001.00	4	\$ 50,001.00
General Liability	Police: Conduct - Non-force	38	\$ 142,022.00	18	\$ 70,004.00
General Liability	Police: Force - Civil Rights	61	\$ 590,033.00	28	\$ 25,006.00
General Liability	Police: Force - Non-Civil Rights	39	\$ 307,519.00	16	\$ 3.00
General Liability	Police: Force - Wrongful Death	5	\$ 875,001.00	1	\$ 5,000.00
General Liability	Police: Jail/Property Room	9	\$ 2,144.57	9	\$ 762.00
General Liability	Police: Miscellaneous	4	\$ 500.00	12	\$ 1.00
General Liability	Police: Non-force Civil Rights	21	\$ 200,007.00	13	\$ 65,003.00
General Liability	Police: Non-vehicle Related Property Loss	45	\$ 11,052.72	45	\$ 5,677.10
General Liability	Police: Suspect Chase	17	\$ 5,296.00	13	\$ 4,086.10
General Liability	Police: Towing - Red Zone, Tickets, Etc.	36	\$ 21,871.64	30	\$ 1,813.02
General Liability	Records/Evidence	0	\$ -	1	\$ 1.00
General Liability	Records: Subpoena	1	\$ -	2	\$ 1.00
AUTO LIABILITY TOTAL		93	\$ 2,303,231.06	71	\$ 115,471.01
GENERAL LIABILITY TOTAL		367	\$ 2,273,462.93	249	\$ 337,888.22
GRAND TOTAL		460	\$ 4,578,693.99	320	\$ 453,359.23

Item ~~3~~
Finance and Mgmt. Committee
September 23, 2003

**OAKLAND POLICE DEPARTMENT
LOSS REDUCTION ACTION PLAN**

The Oakland Police Department (OPD) is committed to implement a Loss Reduction Action Plan in order to reduce or prevent the likelihood of continued losses identified through the Risk Management Incentive Program. The text below provides information of the actions already taken or soon to be taken by the Department.

Table 5 – FY 2001-02 Accomplishments

LOSS EXPOSURE TYPES	ACTION PLAN PROPOSED (FY 2001-02)	ACTIONS COMPLETED (FY 2001-02)
<p>City Vehicle Accidents</p>	<p>OPD will review and update General Order G-4 <i>Departmental Safety</i>. The Department Safety Coordinator will review all vehicle collision reports to identify patterns and develop training to mitigate any unsafe practices and procedures. Supervisors will pay close attention to officers' driving patterns to eliminate behaviors that may lead to accidents. Identified officers will receive additional defensive driver training. OPD's Safety Coordinator will work closely with the City's Fleet Safety Coordinator to implement approved programs and policies.</p> <p>Additionally, OPD command officers and supervisors will be held accountable for the unsafe driving habits of their subordinates. Where patterns of unsafe driving are discovered, not only will officers face disciplinary action, including loss of pay or fines, command level officers will be required to demonstrate what corrective (preventive) measures they have undertaken to prevent such unsafe driving.</p>	<p>The Department's Safety Coordinator continues to review all vehicle collision reports. Certain collisions were referred to the Department's Safety Committee or the Department's Safety Coordinator. Between the two, unsafe practices were identified and training and policy modifications were developed.</p> <p>During Calendar Year 2002, numerous officers were referred to defensive/remedial driver training.</p> <p>Additionally, at least 40 officers received discipline (ranging from oral reprimands to suspensions and fines) because of their unsafe driving which resulted in a preventable collision.</p>
<p>Force-Civil Rights</p>	<p>Added attention will be given to officer training and supervision. Sworn officers are currently</p>	<p>All new recruits (police officer trainees) attended diversity training at the Museum of Tolerance.</p>

	<p>attending the "Museum of Tolerance" diversity training, "LeadSimm" Leadership training and peer group counseling.</p> <p>OPD will review, and where appropriate, modify existing training curricula and publications relating to use of force, arrest and defensive tactics. In 2000, the Department revised two main "force" policy documents.</p> <p>OPD Training is reviewing alternative technologies and/or equipment resources that have the potential of mitigating the possibility of injury to persons during arrests and/or detentions.</p> <p>The Department is also working with experts to identify needed changes in Use of Force policy, reporting and investigations.</p> <p>All uses of force will continue to be captured in the Department's "Select Indicators System." Officers that exceed established thresholds are subject to referral to the Department's Early Intervention System. The Early Intervention System is a board of command-level staff, peers and others who discuss with the involved officer the circumstances surrounding the use(s) of force. Following such meetings, corrective measures are generally recommended and follow-up meetings are scheduled as necessary.</p>	<p>Additionally, "LeadSimm" Leadership Training was provided to over one hundred police officers, other city staff and community leaders.</p> <p>The Department has continued to provide training to all sworn staff on proper arrest techniques and defensive tactics. Staff have also received training on the use and proper deployment of myriad less-lethal force options.</p> <p>All uses of force and complaints of misconduct continue to be captured in the Department's current early warning system (Select Indicators System). Officers who reach designated thresholds are directed to the Early Intervention System Board where corrective measures are developed with, and for, the involved officer.</p>
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<p>Conduct – Non Force</p>	<p>OPD will review all cases of conduct complaints. Officers currently receive training in legal updates regarding search and seizure, diversity training through the Museum of Tolerance program.</p>	<p>All misconduct complaints are reviewed by the Internal Affairs commander, the Chief of Police and the affected officer's chain of command. Additionally, all complaints are logged into the</p>
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	<p>LeadSimm leadership training and problem solving techniques.</p> <p>Additionally, as noted above, all complaints are captured in the Department's "Select Indicators System." Officers that demonstrate marginal performance patterns are subject to a series of interventions, including referral to the Early Intervention System board, re-assignment and/or re-training.</p>	<p>Department's Selector Indicators System (an early warning system). The Internal Affairs Division disseminates to relevant command officers Selector Indicators data on a monthly basis. The data are then reviewed by department managers and interventions are undertaken for those personnel exhibiting marginal performance patterns.</p> <p>Additionally, all commanders are now compelled to review every misconduct complaint regardless of its ultimate finding. If the complaint represents a trend, the commanders are directed to take the appropriate corrective action, which can include re-training, reassignment, etc.</p>
<p>Non-Vehicular Property Damage</p>	<p>OPD will provide close supervision and review all non-vehicular property damage cases</p>	<p>All non-vehicular property damage cases are reported and reviewed by the appropriate chain of command and/or the Department's Safety Committee. When appropriate, those seeking reimbursement for non-vehicular property damage caused by a police action are referred to the City Attorney's Office.</p>
<p>Personnel – Sexual Harassment</p>	<p>Department policy on the issue of sexual harassment is completely in accord with City policy. Any form of sexual harassment in the workplace is strictly prohibited. Corrective action will be taken promptly against any member or employee who engages in sexual harassment. Sworn and civilian personnel receive sexual harassment training and the Department will participate in the mandatory Office of Personnel Sexual Harassment training for non-sworn managers and supervisors.</p>	<p>All personnel continue to receive training on sexual harassment. Complaints of this type are promptly and thoroughly investigated by the Department's Internal Affairs Division and/or the City's Equal Opportunity Programs Division within the City Manager's Office.</p>
<p>Labor – Employment Discrimination</p>	<p>OPD is currently participating in a Limited Duty Position study with the assistance of the Office of</p>	<p>As indicated, the department has completed its review of essential job functions for the Police Officer</p>

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<p>and ADA</p>	<p>Personnel. OPD has completed its review of essential functions for Police Officer classifications.</p>	<p>classification. Currently, one sergeant of police and one police officer have sought and received ADA accommodations.</p>
<p>Wrongful Death</p>	<p>OPD will continue to review and analyze all wrongful death cases. Officers are being trained in options to lethal force and less than lethal force. Officers are also being trained in conflict resolution, problem solving and "tactical communications." Tactical communication is used to defuse aggression by employing non-threatening verbal communication techniques.</p>	<p>The Department's Discharge of Firearms Board of Review reviews all firearms discharges. Summaries of their findings are prepared and discussed as line-up training.</p> <p>The appropriate corrective action is taken against those personnel who have been found to have violated Department rules or regulations.</p> <p>Tactical communications ("verbal judo") training has been provided to those personnel who have demonstrated a consistent inability to treat others with dignity and respect.</p>
<p>Other Activities</p>	<p>1. In its continuing efforts to reduce the risk of liability, OPD is currently reviewing its Early Intervention System (EIS). This system is a pro-active, non-disciplinary program designed to identify and positively influence conduct or performance-related problems exhibited by individual officers. By applying professionally accepted intervention strategies at an early stage, it is intended that the value and work of each officer be recognized and that his/her professional career be preserved and services as a City of Oakland employee is retained. Equally, the program is intended to promote greater trust and confidence between officers and citizens and could, potentially, reduce civil liability exposure and costs. OPD is planning to now examine groups of officers at the squad or unit level to</p>	<p>The Department has formed a "PIMS" team who will soon recommend to the Chief of Police the purchase of a new Early Warning or Personnel Information Management System (PIMS). Staff like the Early Warning System used by the Phoenix, Arizona Police Department, and it is expected that we will design a similar system for use at OPD.</p> <p>Monthly Risk Management Team meetings are convened by the City Attorney's Office. OPD representatives, including staff from the Office of Inspector General and the Internal Affairs Division, attend these meetings.</p> <p>The Office of Inspector General (OIG) has spent most of the past year developing the Riders' court-approved settlement agreement.</p> <p>The agreement has since been <u>3</u></p>

	<p>determine whether they should be participating, en masse, in the EIS process. This will track behavior by units as well as individuals within the unit.</p> <ol style="list-style-type: none">2. OPD is in the process of developing a Risk Management Team comprised of staff from the City Attorney's Office, Risk Management and the Police Department. The Risk Management Team will review liability claims and suits and develop plans for mitigating/eliminating recurrences.3. The City Attorney's Office will review key policies and procedures from a risk management perspective to mitigate claims.4. OPD's newly created Office of the Inspector General (OIG) will partner with management in order to provide support and guidance in creating the very best environment which is conducive to managing risks and achieving established goals and objectives. Special responsibilities of the OIG include, but are certainly not limited to: a) conducting audits and investigations relating to all aspects of Departmental programs and operations; b) coordinating and recommending policies and procedures; and c) providing assistance and assessment in the areas of accountability, performance measure initiatives and compliance with laws, regulations and internal policies.	<p>signed by all pertinent parties and we have begun to implement its various components.</p> <p>Our first monthly meeting to ensure compliance with the reforms (with the plaintiffs' attorneys, the City Attorney's Office, staff from the OIG and the OPOA) will be held in March 2003.</p>
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Table 6 – Fiscal Year 2002-03 Goals – OPD

LOSS EXPOSURE TYPES	ACTION PLAN PROPOSED (FY 2002-03)
City Vehicle Accidents	The Department will endeavor to reduce preventable vehicle collisions by 10 percent (from 2002 levels). We will achieve the reduction by reviewing every officer-involved vehicle collision and requiring training and meting out discipline as necessary.
Force-Civil Rights	All force/civil rights complaints will be referred to the Department's Internal Affairs Division for investigation. The Department will endeavor to reduce such complaints by 10 percent. We will do so by thoroughly investigating all such complaints, providing training to all personnel based on the lessons learned from these investigations and imposing discipline when it is found that officers have violated departmental rules or regulations
Conduct – Non Force	As with force/civil rights complaints, the Department will endeavor to reduce conduct-non force complaints by 10 percent.
Non-Vehicular Property Damage	The Department will endeavor to reduce non-vehicular property damage cases by closely reviewing all such cases/reports, and discussing these matters with involved personnel. When appropriate, we will use training, discipline and the development of new policies as tools to reduce the amount of property damage that can be attributed to police officer misconduct.
Personnel – Sexual Harassment	Through continuous training, prompt and thorough investigations, discipline, and proactive supervision, the Department will endeavor to dramatically reduce misconduct and complaints involving sexual harassment.
Labor – Employment Discrimination and ADA	Same as above
Wrongful Death	<p>All wrongful death claims/complaints are investigated by the Department's Homicide Section. Additionally, pursuant to the Riders' settlement agreement, the Internal Affairs Division will also respond to the scene of certain officer-involved shootings. In these cases, the two organizational units will conduct separate investigations, which will be reviewed by the Chief of Police.</p> <p>Additionally, the Department's Discharge of Firearms Board of Review will continue to review every officer-involved</p>

	shooting, whether or not a person was struck. These boards will meet as necessary and will continue to prepare and disseminate their findings and recommendations. Often, the board recommends changes in tactics, training and/or the equipment available to officers in the field.
Other Activities	Pursuant to the Riders' settlement agreement, the Department will continue development of a new early warning system or PIMS (Personnel Information Management System).

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 Finance & Management Committee
 July 22, 2003
 Agenda Item # _____

Attachment B

Table 1

Oakland Fire Department - Average General Liability Losses

Fiscal Years	Total	Less: Aberrational	Adjusted Total	Running Previous Average Baseline Figure	Amount Over/ (Under) Baseline	Incentive/ (Dis-Incentive) Allocation
1994/95	\$13,753	\$0	\$13,753			
1995/96	\$2,629,360	\$2,500,000	\$129,360	\$13,753	\$115,607	
1996/97	\$350,786	\$0	\$350,786	\$71,557	\$279,230	
1997/98	\$60,951	\$0	\$60,951	\$164,633	(\$103,682)	
1998/99	\$29,534	\$0	\$29,534	\$138,713	(\$109,179)	\$27,295
1999/00	\$97,512	\$0	\$97,512	\$116,877	(\$19,365)	\$4,841
2000/01	\$18,239	\$0	\$18,239	\$113,649	(\$95,410)	\$23,852
2001/02	\$140,765	\$0	\$140,765	\$100,019	\$40,745	(\$10,186)
2002/03				\$105,113		
Total	\$ 3,340,900					

Table 2

OFD Payout Activity Analysis - 2001/02

Total Number of Payouts	13
Top 3 Loss Categories (Frequency)	<ol style="list-style-type: none"> 1. City Vehicle v. Another Vehicle (11 payouts = \$57,590.14) 2. Fire Response Related Damages (1 payout = \$1,374.65) Personnel/Labor: Grievance - Other (1 payout = \$81,800)
Top 3 Severity Categories	<ol style="list-style-type: none"> 1. Personnel/Labor: Grievance - Other (1 payout = \$81,800 each) 2. City Vehicle vs. Another Vehicle (11 payouts averaging \$5,235.47 each) 3. Fire Response Related Damages (1 payout = \$1,374.65 each)

Table 3

2001/02 LARGE PAY-OUT CASES - OFD

Case #	Loss Type	Date of Loss	Total Pay-out	Brief Description
98274	Personnel/Labor: Grievance	4/24/1997	\$81,800	Failure to promote according to merit in violating City charter
99050	City Vehicle against Another Vehicle	2/7/1998	\$25,000	OFD truck hit claimant vehicle
C21788	City Vehicle against Another Vehicle	4/5/2001	\$12,264	Alleges City vehicle struck claimant's vehicle

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Table 4
OFD - REPORTED CLAIMS AND LAWSUITS

<u>Liability Type</u>	<u>Cause Code</u>	2000-01		2001-02	
		<u>Number of Cases</u>	<u>Total Incurred</u>	<u>Number of Cases</u>	<u>Total Incurred</u>
Auto Liability	City Vehicle	2	\$ 12,000.00	0	\$ -
Auto Liability	City Vehicle Against Another Vehicle	19	\$ 55,967.28	15	\$ 38,945.70
General Liability	Code Enforcement: Building Code Violations	0	\$ -	1	\$ -
General Liability	Dangerous Condition: City Buildings	1	\$ 1,800.00	0	\$ -
General Liability	Dangerous Condition: Operations-Maintenance	0	\$ -	1	\$ -
General Liability	Fire Department: Fire Response Related Damages	0	\$ -	4	\$ 1,374.65
General Liability	Lien Claims	1	\$ 500.00	0	\$ -
General Liability	Miscellaneous	6	\$ 5,925.00	4	\$ 272.00
General Liability	Personnel/Labor: ADA	1	\$ 20,000.00	0	\$ -
General Liability	Personnel/Labor: Grievance - Suspension	1	\$ -	0	\$ -
General Liability	Personnel/Labor: Grievance - Other	0	\$ -	1	\$ 1.00
General Liability	Personnel/Labor: Retirement	0	\$ -	1	\$ 1.00
General Liability	Personnel/Labor: Wrongful Termination	0	\$ -	1	\$ -
TOTAL AUTO LIABILITY		21	\$ 67,967.28	15	\$ 38,945.70
TOTAL GENERAL LIABILITY		10	\$ 28,225.00	13	\$ 1,648.65
GRAND TOTAL		31	\$ 96,192.28	28	\$ 40,594.35

OAKLAND FIRE DEPARTMENT LOSS REDUCTION ACTION PLAN

The Oakland Fire Department (OFD) is committed to implement a Loss Reduction Action Plan in order to reduce or prevent the likelihood of continued losses identified through the Risk Management Incentive Program. The text below provides information of the actions already taken or soon to be taken by the Department.

Table 5 – FY 2001-02 Accomplishments

LOSS EXPOSURE TYPE	ACTION PLAN PROPOSED (FY 2001-02)	ACTIONS COMPLETED (FY 2001-02)
<p>City Vehicle v. Another Vehicle</p>	<p>OFD has begun a process to address vehicle accidents as they arise. The OFD Safety Officer is responsible for the initial review and determination based on the nature of the accident no matter how trivial. Major accidents and repeat offense cases are forwarded to the Accident Review Board. The Board meets on an as needed basis. To date there has been eight meetings of the Board. In addition, a driving course and training program has been developed for those cases deemed appropriate. A driver improvement course for all drivers is required and completed through the Training Division.</p> <p>OFD has been working with the CMO, Risk Management Division as well as the IAFF Local 55 in order to implement a comprehensive driver training and certification program to evaluate the skill level of department drivers prior to their operation of City vehicles. Once the final details are ironed out, it is anticipated that the program classes will begin. The classes will be provided through citywide training.</p>	<p>In November 2002 the Oakland Fire Department, the City Manager's office, the Risk Management Division and IAFF, Local 55 completed its work and successfully implemented the Vehicle Accident and Review Policies and Procedures.</p> <p>OFD has made the choice to use the Smith System to train each apparatus operator and all vehicle operators in the department on the system. This is a defensive driving and safety skills training method. We have completed the train-the-trainers for the system and will deliver more trainings throughout the year.</p> <p>The Department's Training Department will work with Citywide Training to deliver the training on the vehicle accident and review policies and procedures.</p>
<p>Personnel/ Labor Sexual</p>	<p>The Office of the City Attorney (CAO) provided a train-the-trainer session on</p>	<p>The Training Division is working with Citywide Training to identify and</p>

<p>Harassment</p>	<p>Sexual Harassment Awareness and Prevention for company officers. In the months of September and October 2000, OFD personnel were trained on awareness, prevention of sexual harassment and how to address problematic situations. Additionally, the CAO Sexual Harassment Handbook was widely distributed to all 26 firehouses. The Department is committed to rigid enforcement of the policy.</p> <p>OFD is focusing on organizational development through providing a more positive approach to Human Resources. These efforts consist of staff development, team building, and diversity training.</p>	<p>provide on-line trainings for workplace harassment for the department's employees.</p> <p>Eight times a year the Training Division provides a review of various aspects of Citywide Sexual Harassment Policy. All personnel are required to be trained and sign off that they have had policy review.</p> <p>OFD continued its focus on organizational development during this period with the delivery of a leadership, effective supervision and management practices and conflict resolution training to all Officers.</p>
<p>Labor Compensation/ Benefit</p>	<p>The two settlements' payouts from 1999/2000 as outlined in the Risk Management Incentive Program Council report were outstanding from three years ago. In an effort to minimize future exposure and loss, OFD is responding to grievances in a timely manner and to the extent possible attempting to settle cases prior to arbitration.</p> <p>OFD meets with a City attorney on a weekly basis to address recent incidents with potential loss exposures and problematic personnel issues, and to develop strategies to limit the potential exposure.</p>	<p>OFD responds to all grievances within the time frames prescribed by MOU. The OFD, with assistance from the City Attorney's Office, attempts to settle all claims <u>before</u> they become payouts of any amount. All employees are trained regularly on how to be sensitive to identify workplace harassment. The department has zero-tolerance for these behaviors.</p>

Table 6 – Fiscal Year 2002-03 Goals – OFD

LOSS EXPOSURE TYPE	ACTION PLAN PROPOSED (FY 2002-03)
City Vehicle v. Another Vehicle	The OFD would like to continue implementation of our 2002 goal to reduce accidents by 10% each year for the next 3 years.
Personnel/ Labor Sexual Harassment	There were major issues with sexual harassment and personnel issues in the past. It is our goal to continue training 100% of our employees on harassment sensitivity, and to continue to respond to all grievances in a timely manner.
Labor Compensation/ Benefit	Since the Fire Department began aggressively working on reducing worker's compensation in 1999, many of our original offenders have been retired. We will continue to attempt to decrease our worker's compensation long-term claims by 10% for the next three years.

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<u>Attachment C</u>							
<u>Table 1</u>							
<u>Public Works Agency - Average General Liability Losses</u>							
Fiscal Year	Total	Less: Aberrational	Less Sewer Payouts	Adjusted Total	Running Previous Average Baseline Figure	Amount Over/ (Under) Baseline	Incentive/ (Dis-Incentive) Allocation
1994/95	\$ 1,750,004	\$ 500,000	\$ 87,229	\$ 1,162,775			
1995/96	\$ 989,683	\$ 500,000	\$ 194,401	\$ 295,282	\$ 1,162,775	(\$ 867,493)	
1996/97	\$ 3,619,155	\$ 2,984,316	\$ 224,857	\$ 409,982	\$ 729,029	(\$ 319,047)	
1997/98	\$ 1,825,974	\$ 1,200,000	\$ 85,353	\$ 540,621	\$ 622,680	(\$ 82,059)	
1998/99	\$ 3,586,688	\$ 3,100,000	\$ 153,131	\$ 333,557	\$ 602,165	(\$ 268,608)	\$ 67,152
1999/00	\$ 1,479,416	\$ -	\$ 398,055	\$ 1,081,361	\$ 548,443	\$ 532,918	(\$133,229)
2000/01	\$ 2,330,519	\$ -	\$ 348,242	\$ 1,982,277	\$ 637,263	\$1,345,014	(\$336,254)
2001/02	\$ 2,095,856	\$ -	\$ 435,319	\$ 1,660,537	\$ 829,408	\$ 831,129	(\$207,782)
2002/03					\$ 933,299		
Total	\$ 17,677,295						

<u>Table 2</u>	
<u>PWA Payout Activity Analysis - 2001/02</u>	
Total Number of Payouts	100
Top 3 Loss Categories (Frequency)	1. City Vehicle Against Another Vehicle/Bicycle (27 payouts = \$123,074.92) 2. Dangerous Condition: Sewers-Floods/Storm Drains (25 payouts = \$435,318.86) 3. Dangerous Condition: Sidewalks: Trips and Falls (19 payouts = \$203,031.08)
Top 3 Severity Categories	1. Breach of Contract (1 payout = \$375,000 each) 2. Dangerous Conditions: Inverse Condemnation (7 payouts averaging \$70,290.22 each) 3. Dangerous Condition: Street - Trips and Falls (6 payouts averaging \$61,527 each)

Table 3
2001/02 LARGE PAY-OUT CASES - PWA

Case #	Loss Type	Date of Loss	Total Pay-out	Brief Description
X01597	Breach of Contract	8/1/1996	\$375,000	Council authorized construction contract settlement
99004	Dangerous Condition: Streets/Signs/Lights	2/21/1998	\$290,000	Trip & fall in a square patch next to sidewalk
C22099	Dangerous Conditions: Sewer Floods	12/2/2001	\$182,949.42	Alleges backed up sewer flooded property
99065	Dangerous Conditions: Inverse Condemnation	2/3/1998	\$152,000	Water damage to property due to road design
97472	Dangerous Condition: Sewer Floods	1/2/1997	\$148,206.48	Water damage and landslide due to sewer system
98221	Dangerous Condition: Inverse Condemnation	1/2/1997	\$101,941.56	Drainage system caused erosion and landslide into property

Table 4
PWA - REPORTED CLAIMS AND LAWSUITS

	Cause Code	2000-01		2001-02	
		Number of Cases	Total Incurred	Number of Cases	Total Incurred
Auto Liability	City Vehicle vs. Stationary Object	5	\$ 192.55	2	\$ -
Auto Liability	Collision/Two or more Cars	45	\$ 157,739.15	20	\$ 36,740.07
Auto Liability	Other auto Liability	1	\$ 1.00	0	\$ -
General Liability	Breach of Contract	3	\$ -	0	\$ -
General Liability	City Govt.: Other	1	\$ -	0	\$ -
General Liability	Claims Due to City-hired Contractors	10	\$ 5,533.00	1	\$ -
General Liability	Dangerous Condition	4	\$ 5,752.00	3	\$ 1.00
General Liability	Dangerous Condition: City Buildings	3	\$ 2,502.00	3	\$ 4,650.20
General Liability	Dangerous Condition: Inverse Condemnation	2	\$ 1.00	3	\$ 10,355.00
General Liability	Dangerous Condition: Operations-Maintenance	16	\$ 7,253.71	6	\$ 299.00
General Liability	Dangerous Condition: OPR Trees	4	\$ 3.00	0	\$ -
General Liability	Dangerous Condition: Sidewalks	7	\$ 326,502.00	3	\$ 1.00
General Liability	Dangerous Condition: Sidewalks Trip & Fall	101	\$ 382,881.88	55	\$ 107,732.00
General Liability	Dangerous Condition: Streets	107	\$ 23,818.60	88	\$ 17,075.00
General Liability	Dangerous Condition: Streets Curb Irons	11	\$ 3,558.78	12	\$ 737.00
General Liability	Dangerous Condition: Streets Signs & Lights	3	\$ 2,943.14	19	\$ 40,002.00
General Liability	Dangerous Condition: Streets Trip & Fall	29	\$ 115,177.00	23	\$ 91,505.00
General Liability	Miscellaneous	5	\$ 3.00	3	\$ 2,500.00
General Liability	Personnel/Labor: Grievance-Termination	1	\$ -	0	\$ -
Sewer Liability	Sewer	65	\$ 938,412.04	64	\$ 336,391.45
TOTAL AUTO LIABILITY		51	\$ 157,932.70	22	\$ 36,740.07
TOTAL SEWER LIABILITY		65	\$ 938,412.04	64	\$ 336,391.45
TOTAL GENERAL LIABILITY		307	\$ 875,929.11	219	\$ 274,857.20
GRAND TOTAL		423	\$1,972,273.85	305	\$ 647,988.72

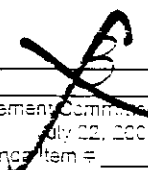
**PUBLIC WORKS AGENCY
LOSS REDUCTION ACTION PLAN**

The Public Works Agency (PWA) implemented a Loss Reduction Action Plan to reduce or prevent the likelihood of continued losses identified through the Risk Management Incentive Program. PWA has taken the following actions in an effort to reduce general liability losses.

Table 5 – FY 2001-02 Accomplishments

LOSS EXPOSURE TYPES	ACTION PLAN PROPOSED (FY 2001-02)	ACTIONS COMPLETED (FY 2001-02)
<p>City Vehicle v. Another Vehicle</p>	<ol style="list-style-type: none"> 1. Supervisors and employees have been trained in various driver training skills including Forklift Operation. 2. The procedures for the PWA Accident Review Committee are being developed in accordance with City's Administrative Instruction regarding Vehicle Accident review process. 3. PWA requires and administers annual driver skills testing for all truck drivers and heavy equipment operators. PWA participates in the Department of Transportation Controlled Substances Testing Program for all drivers with Class A & B licenses. 4. PWA will fully participate in the comprehensive Fleet Safety Program being developed by the Office of Personnel. 	<p>Training was completed in May 2001. Additional Defensive Driver training for all vehicle operators was concluded in September 2001.</p> <p>The PWA Accident Review Committee has been created and formally convened; additional meetings are scheduled as new situations arise.</p> <p>PWA has and will continue to require and administer controlled substances testing for truck drivers and heavy equipment operators with Class A & B licenses.</p> <p>In April, May and July 2001, 60 percent of authorized drivers participated in the Comprehensive Fleet Safety Program. In September and October 2001, an additional 30 percent received training. The remaining personnel, who missed these in-house sessions, will be required to participate in the Citywide training program. Annual refresher courses</p>

		<p>are planned, as well as programs for new employees.</p>
<p>Sewers</p>	<p>Contractors will be required to inspect all main sewer lines before and after rehabilitation, noting all active sewer laterals, to ensure all laterals have been properly connected.</p> <p>PWA will work with the Office of Parks and Recreation to explore ways of minimizing the invasion of tree roots in sewer lines. Following Council's acceptance of staff's recommendations, a contract was approved in October 2002 to commence a two-year "root foaming" of all sewer collector lines.</p>	<p>Currently, PWA is actively enforcing these inspection requirements. Prior to start of construction, the contractor or the City will televise the main sewer line to identify the locations and numbers of sewer lateral connections. The contractor is then responsible to interpret from the information provided, field explorations, and dye testing the plumbing fixtures to determine if the connections are active or not and reconnect all active laterals. All inactive laterals are sealed.</p> <p>PWA continues to work collaboratively with OPR staff in resolving tree root invasion in sewer lines. Per Council approval in late 2002, root foaming was applied to 60,000 linear feet of sewer line easement. To date these locations have not experienced any problems. The application is guaranteed to keep roots out of the lines for two years. Public Works will continue to monitor progress.</p>
<p>City-hired Contracts</p>	<p>All contractors/consultants are required to provide comprehensive general liability and automobile liability insurance. They must also provide workers' compensation and employers' liability as mandated by the State of California. In addition, contractors must provide a payment bond and a performance bond for construction contracts. Consultants must provide professional liability insurance.</p>	<p>Contract Administration continues to require that all contractors/consultants provide comprehensive general liability and automobile liability insurance. They must also provide workers' compensation and employers' liability as mandated by the State of California. In addition, contractors must provide a payment bond and a performance bond for construction contracts. Consultants on professional services contracts must provide professional liability insurance. Contract Administration staff increased performance bonds from 50% to 100% as of July 2001, unless a lesser amount is specifically approved by Council.</p>



<p>Dangerous Condition Drainage</p>	<p>PWA has recently completed a preliminary analysis of the storm drainage system and will develop a master plan to make improvements to the system.</p>	<p>The Storm Drainage Master Plan is 40% complete and the final plan should be completed by February 2004. If funding is available, implementation of the recommended capital improvements should mitigate the inverse condemnation claims related to storm drainage over time.</p>
<p>Dangerous Condition: Sidewalk and Street Repair</p>	<p>PWA has purchased additional street paving and pothole repair equipment to increase its street maintenance program.</p>	<p>With the two new minor paving packer trucks, we were able to double the amount of potholes filled in 2001-2002. We were also able to launch a new Preliminary Repair Crew for damaged sidewalks.</p>
<p>Other Activities</p>	<ol style="list-style-type: none"> 1. PWA will reinstate quarterly meetings with the City Attorney's Office to review outstanding litigation and identify areas where additional staff training is needed. 2. Sexual harassment prevention training has commenced and all PWA managers and supervisors will have completed the course by end of October. Training for PWA rank and file employees will commence in November 2001 and continue through mid-2002. 3. PWA Maintenance Services and Municipal Buildings Divisions have established Betterment Committees comprised of management and labor representatives. Safety and training issues and programs are discussed and developed by these committee. 	<p>PWA continues to meet with City Attorney staff to collaborate on the agency's litigation issues. This meeting occurs as needed.</p> <p>All managers and supervisors have been trained in sexual harassment this past year.</p> <p>PWA Maintenance continues to conduct Betterment Committee meetings. However, during the Local 790 negotiations process all meetings were suspended, but will resume April 2003.</p>

Table 6 – Fiscal Year 2002-03 Goals - PWA

LOSS EXPOSURE TYPES	ACTION PLAN PROPOSED (FY 2002-03)
City Vehicle v. Another Vehicle	Revise Agency Accident Review Policy to reflect changes in Administrative Instruction. Educate Managers and Supervisors on new procedures.
Sewers	PWA will continue to enforce the contract requirements and the inspection program. Expand root foaming program to treat 150,000 linear feet of sewer line easement annually. Implement on-call clean up contract for private properties that experience damage due to sewer backups and flooding.
City-hired Contracts	Continue to insure that 100% of Public Works contracts have met all insurance requirements prescribed by the Risk Manager prior to execution of contract.
Dangerous Condition: Drainage	Completion of two storm drainage projects (one at East 11th Street and the other on Greenwood Drive) funded through Fund 5500. No further funding for drainage improvements is currently available. Storm Drainage Master Plan is scheduled for completion in February 2004.
Dangerous Condition: Sidewalk and Street Repair	Expand our preventative maintenance program to include an additional Crack/Joint Crew. Implement a pilot program for the installation of rubberize sidewalk.
Other Activities	Schedule Work Place Harassment for all PWA employees Spring 2003. Continue Betterment Committee meetings in Maintenance Services.

<i>Attachment D</i>						
<i>Table 1</i>						
<i>Office of the Parks and Recreation - Average General Liability Losses</i>						
Fiscal Year	Total	Less: Aberrational	Adjusted Total	Running Previous Average Baseline Figure	Amount Over/ (Under) Baseline	Incentive/ (Dis-incentive) Allocation
1994/95	\$ 349,389	\$ -	\$ 349,389			
1995/96	\$ 549,122	\$ 140,000	\$ 409,122	\$ 349,389	\$ 59,733	
1996/97	\$ 328,781	\$ -	\$ 328,781	\$ 379,256	\$ (50,475)	
1997/98	\$ 268,055	\$ -	\$ 268,055	\$ 362,431	\$ (94,376)	
1998/99	\$ 1,812,198	\$ 1,255,000	\$ 557,198	\$ 338,837	\$ 218,361	(\$ 54,590)
1999/00	\$ 401,219	\$ -	\$ 401,219	\$ 382,509	\$ 18,710	(\$ 4,677)
2000/01	\$ 1,112,550	\$ -	\$ 1,112,550	\$ 385,627	\$ 726,923	(\$ 181,731)
2001/02	\$ 213,030	\$ -	\$ 213,030	\$ 489,473	\$ (276,443)	\$ 69,111
2002/03				\$ 454,918		
Total	\$ 5,034,343					

Table 2	
OPR Payout Activity Analysis – 2001/02	
Total Number of Payouts	54
Top 3 Loss Categories (Frequency)	1. Dangerous Condition: OPR - Trees (33 payouts = \$92,294.83) 2. Dangerous Condition: OPR – Rec. Centers (5 payouts = \$21,150) 3. Dangerous Condition: Operations-Maintenance (5 payouts = \$9,845.19)
Top 3 Severity Categories	1. Dangerous Condition: Streets (1 payout = \$12,500 each) 2. Dangerous Condition: OPR (5 payouts averaging \$10,281.25 each) 3. Personnel/Labor: Grievance-Termination (1 payout = \$7,000 each)

Table 3				
2001/02 LARGE PAY-OUT CASES - OPR				
Case #	Loss Type	Date of Loss	Total Pay-out	Brief Description
990938	Dangerous Condition: OPR	7/5/1999	\$50,000	Alleges fall through bridge at Children's Fairyland
C22530	Dangerous Condition: OPR Trees	5/18/2001	\$13,790.73	Alleges damage caused by roots of City-owned tree
990735	Dangerous Condition: Streets	7/17/1999	\$12,500	Alleges falling off bike due to loose gravel
C22421	City Vehicle Against Another Vehicle	12.15/2001	\$11,937.43	Alleges City vehicle struck claimant's vehicle

Table 4 OPR - REPORTED CLAIMS AND LAWSUITS					
		2000-01		2001-02	
Liability Type	Cause Code	Number of Cases	Total Incurred	Number of Cases	Total Incurred
Auto Liability	City Vehicle against Another Vehicle	5	\$ 13,659.85	12	\$ 32,713.59
Auto Liability	City Vehicle vs. Pedestrian	1	\$ 1.00	0	\$ -
Auto Liability	City Vehicle vs. Stationary Object	1	\$ -	0	\$ -
General Liability	Breach of Contract	0	\$ -	1	\$ 1.00
General Liability	Dangerous Condition: City Buildings	1	\$ 2,500.00	1	\$ -
General Liability	Dangerous Condition: Operations-Maintenance	4	\$ 9,274.68	9	\$ 1,545.19
General Liability	Dangerous Condition: OPR	5	\$ 349.37	4	\$ 1,194.43
General Liability	Dangerous Condition: OPR - Golf Courses	2	\$ 20,001.00	0	\$ -
General Liability	Dangerous Condition: OPR - Grounds	2	\$ 1,430.00	2	\$ -
General Liability	Dangerous Condition: OPR - Recreation Centers	8	\$ 50,003.00	6	\$ 10,381.00
General Liability	Dangerous Condition: OPR - Trees	104	\$143,150.89	80	\$ 56,354.97
General Liability	Dangerous Condition: Sidewalks	3	\$ 58,300.00	0	\$ -
General Liability	Eviction/Unlawful Detainer	1	\$ -	0	\$ -
General Liability	Eviction/Unlawful Detainer: Rent	1	\$ -	0	\$ -
General Liability	Miscellaneous	5	\$ 51,503.00	1	\$ -
General Liability	Personnel/Labor	5	\$ 92,003.00	2	\$ 2.00
General Liability	Personnel/Labor: Employment Discrimination	0	\$ -	1	\$ 1.00
General Liability	Personnel/Labor: Grievance-Termination	2	\$ 7,001.00	1	\$ 1.00
General Liability	Personnel/Labor: Wrongful Termination	3	\$ 50,002.00	0	\$ -
TOTAL AUTO LIABILITY		7	\$ 13,660.85	12	\$ 32,713.59
TOTAL GENERAL LIABILITY		146	\$485,517.94	108	\$ 69,480.59
GRAND TOTAL		153	\$499,178.79	120	\$ 102,194.18

**OFFICE OF PARKS & RECREATION
LOSS REDUCTION ACTION PLAN**

The Office of Parks and Recreation (OPR) is committed to implement a Loss Reduction Action Plan in order to reduce or prevent the likelihood of continued losses identified through the Risk Management Incentive Program. The text below provides information of the actions already taken or soon to be taken by the Department.

Table 5 -- FY 2001-02 Accomplishments

LOSS EXPOSURE TYPES	ACTION PLAN PROPOSED (FY 2001-02)	ACTIONS COMPLETED (FY 2001-02)
City Vehicle v. Another Vehicle	OPR will continue to fully participate in the Fleet Safety Program as implemented by the Office of Personnel. All drivers will be trained for the specific vehicle or equipment they operate. An Accident Review Committee is comprised of the three Area Managers for evaluating the causal factors and prevention of vehicle accidents. Drivers found to be at fault for an accident, regardless of its severity, will be held accountable through disciplinary action and will participate in the training prescribe by the Fleet Safety Program.	Park and Tree Supervisors conduct monthly "tailgate safety" discussions regarding the operation and maintenance of City vehicles. Tree staff operate crane trucks and specialized safety reviews and training are conducted to prevent accident or injury. Vehicle accidents are reviewed by management staff and disciplinary action could be imposed if the City employee is found to be at fault.
Dangerous Condition: Sidewalks Trip/Fall Trees Grounds	OPR will continue to monitor and maintain facilities and grounds through inspections and following up on system complaints. OPR will continue to work closely with PWA to ensure prompt correction of potential hazards as related to buildings, streets and playgrounds.	Park Grounds – Park Supervisors and gardeners inspect, report and monitor park facilities and grounds for potential hazards. Repairs are initiated or work requests are forwarded to Public Works for further maintenance and repairs. Dangerous Condition: Recreation Centers – Recreation Supervisors and Recreation Center Directors inspect and report potential hazards in the recreation center. Patron safety issues are discussed at monthly staff meetings. Incidents involving patrons are reported to the OPR Director, Park Rangers or Police promptly. Incidents involving injuries are forwarded to the City Attorney's Office.

Table 6 – Fiscal Year 2002-03 Goals - OPR

LOSS EXPOSURE TYPES	ACTION PLAN PROPOSED (FY 2002-03)
<p>Dangerous Condition: OPR</p>	<p>OPR employees will promptly report potential hazards in parks and facilities. Inspections by citizens (Oakland Parks Coalition) will be reviewed promptly for potential hazards. A “spring cleaning” will be scheduled to discard unnecessary items that might pose a danger to staff or patrons. Employees who work on computers will undergo ergonomic evaluations and/or work place modifications to reduce repetitive motion injury.</p> <p>Recreation Supervisors and Recreation Center Director staff will continue to discuss safety issues at their monthly staff meetings. Incidents involving patrons will be reported to Park Rangers or Police and the City Attorney’s Office, if necessary.</p>
<p>Dangerous Condition: OPR Trees</p>	<p>Inspectors will continue to inspect all complaints regarding potentially hazardous tree conditions promptly. Hazards trees will be removed or made safe as quickly as possible.</p>
<p>City Vehicle Against Another Vehicle</p>	<p>Monthly “tailgate safety” discussions will continue with an emphasis on vehicle safety and accident prevention. Employees who are involved in a City vehicular accident will be subject to an accident review and possible disciplinary action. Specialized crane trucks trainings will continue for Tree maintenance staff.</p>

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ATTACHMENT E
APPEAL CONSIDERATIONS RELATED TO DISINCENTIVE ALLOCATIONS AND
FACTORS COMPROMISING THE OVERALL PROGRAM EFFECTIVENESS

According to the original reports regarding the Risk Management Incentive Program (RMIP), Council directed that the disincentive budget reductions were to be drawn from an Agency's general fund budget, were not to impact services to the community, and were not to affect department positions. If it was not possible to meet these criteria, an Agency could then make an appeal to the Council for removal of the disincentive penalty. The specific format through which that appeal was to take place has not been designed. As such, staff has listed below a number of factors that should be taken into consideration as Council deliberates the final directive to impose the disincentive allocations.

A. Agency Fiscal Impact of Disincentives/Incentives:

Staff believes that the imposition of positive or negative incentives as devised under the RMIP seldom has the desired effect on the department. In its current form, the RMIP is unlikely to produce a sustained reduction in loss activity. But it does impose severe detrimental budgetary impacts on departments. Below are discussions of the fiscal impact the proposed disincentive would have of the respective agencies:

1. *Oakland Police Department:*

In discussing this program with representatives from the Oakland Police Department, the only area from which \$426,668 could be taken would be from the department overtime budget. To the extent that this allocation impacts positions or services to the public, OPD may appeal the reduction to the Council by stating the effect on the public and reporting on risk management activities undertaken to prevent future losses.

Next year, because of recent large settlements (i.e. the "Riders" settlement), a budget reduction of approximately \$2.5 million should be expected because of next year's RMIP if this program continues in its present form. Therefore, if this program is expected to continue, future budget calculations should factor these future reductions into current budget projections.

2. *Public Works Agency:*

As discussed above, \$207,782 would need to be taken from General Fund sources. The Public Works Agency (PWA) has very little General Fund monies, however, and virtually all of it goes directly to wages or public services. As it was the intention of the program that no positions and no services would be affected from the implementation of the disincentives, PWA must develop a plan to implement the budget adjustment or appeal the disincentive amount. According to PWA's finance manager, PWA already contributes to the general liability fund through a portion of its grant funding. Therefore, it is likely that the PWA has paid at least this amount already through this cost allocation. At the time of the writing of this report, PWA was unable to report on the exact amount of funds contributed during the subject year.

3. *Oakland Fire Department:*
Oakland Fire Department must reduce their budget by the disincentive amount of \$10,186. OFD has reported that it can make this contribution with no loss of services.
4. *Office of Parks and Recreation:*
The Office of Parks and Recreation will enjoy a \$69,111 benefit from this program. This amount will come from the General Liability Fund (1100) as a reward for incurring payouts in an amount less than their "rolling baseline average".

B. Nature of Liability Losses

Staff's analysis of the RMIP has identified several factors that compromise the ability of the program to reach its objectives, contributing to unintended results and impacts of the program that could be harmful to the City's overall risk reduction goals and objectives. Some of these factors were identified at the inception of the program. Others, when taken into consideration resulted in certain program characteristics not being implemented. These factors should be considered in balancing whether the positive aspects of this program can be realized or can overcome the harm that the program may create (such as a reverse incentive.)

1. *Unique Loss Characteristics by Agency:*
The Case Analysis discussion below illustrates a number of factors that uniquely impact agencies. In Table 3 of Attachments A through D, an analysis of large loss payouts for the preceding year list the most severe cases for each Agency. While the goal of this program is to punish Agencies for liability losses and thereby shape behavior, a look at some of the most critical cases give pause as to whether they belong in this analysis or in a disincentive program.

- a. *Public Works Agency:*
The largest payout for PWA was a breach of contract action that occurred in 1996. This was not a tort or injury, but a business deal gone awry, under a Public Works Administration which is no longer with the City. It would be difficult to justify a budget reduction for a case like this.

Two of the remaining three big payout cases for PWA were for landslides, both of which occurred several years before the payout. While landslides can occur because of poor planning decisions made decades ago, landslides are events rarely preventable for our Public Works Agency, particularly when the rough El Nino rainstorms combine with firestorm-ravaged hillsides. Again, taking money from the budget of Public Works can hardly be seen as a rational deterrent for losses of this nature.

b. Office of Parks and Recreation:

The largest payout occurred because of fall in Children's Fairyland, a facility over which the City has given authority for all management and maintenance to a separate non-profit. In support of the facility, the City pays only a small stipend and agrees to insure the park under its own self-insurance. The aging park must operate solely on revenue, donations and volunteer hours. The Risk Management Division recently assisted the non-profit in conducting a safety inspection of all rides and facilities in order to comply with new state laws for amusement parks. Parks and Recreation has minimal budget to assist Children's Fairyland in their maintenance and operations. It hardly seems justified that Parks and Recreation would be held accountable for a loss here.

Another area of liability for Parks and Recreation are City-owned trees. There is no inventory of the thousands of City-owned trees and it is not reasonable to even consider the possibility. Loss of tree staff and resources make it difficult to hold OPR accountable for tree root issues in this City.

c. Oakland Fire Department:

Last year, the Oakland Fire Department settled a grievance from several years ago generated under a different Fire Department administration. This one payout represented more than half of all the Department's payouts last year, and contributed to OFD becoming responsible for an approximate \$10,000 disincentive payment. Ironically, OFD had improved their performance consistently for the last few years and had lowered their baseline, which necessitated the disincentive payment required for this year's loss.

d. Oakland Police Department:

A major objective for the working group and the public was to increase accountability for losses suffered through civil rights cases in the Police Department. As shown by Table 3 in Attachment A, three of the four major cases were civil rights related. The other, the largest award, involved a police chase.

There is no disagreement that the City must bring accountability for police liability cases. The issue to address is whether budget reductions will accomplish this and/or whether budget reductions are the best way to address these issues.

OPD has stated that it is impossible to reduce their budget by this amount without impacting services. Therefore, to implement this program, given this time of extreme budget reductions, OPD would need to be spared the disincentive, or else have police cars be taken off the street, which is no one's goal.

2. *Settlement:*
The vast majority of liability payments occur because of settlement where the City of Oakland had denied liability for the loss alleged. The decision to offer settlement payment as a compromise in a liability claim or lawsuit is based largely on the advice and recommendation from the City Attorney's Office. While the Agency against which the loss is alleged may have had responsibility for the risk on which liability is based, it has little control over the extent of the monetary loss suffered (injuries, wage loss, pain and suffering, etc.) on which settlement is partially based. Therefore, to the extent a settlement amount reflects this monetary loss, its use as part of an incentive/disincentive program is incongruous.

3. *Agencies are punished for losses in areas where mitigation measures were identified but left under-funded:*

The Public Works Agency has experienced a number of claims in areas related to the aging infrastructure of the City of Oakland. Budgetary constraints limit PWA's ability to fully mitigate identified risk exposures and frequently, decisions must be made to prioritize and forestall certain infrastructure improvements. The potential for loss must be factored into the cost-benefit analysis of the budgeting process. The best example of the aging infrastructure where funding is insufficient to mitigate all identified loss exposures is in the areas of sewer and storm drain maintenance and tree maintenance. While we have separated sewer claims for paying off expected losses, other issues that really cannot be sufficiently addressed within our financial constraints, are left unfunded.

4. *Tracking severity at the expense of frequency can skew results:*

As designed, the RMIP's fiscal impact often rests on the severity of a single loss, and may ignore the small, reoccurring problems that are more readily preventable. The severity of a case is not only a measure of the magnitude of loss, but also the age of a case and the venue by which it is being resolved. Departments can do little to affect a case's severity directly, since so many of the variables involved in these larger cases are often outside their control. In fact, many in the Insurance and Risk Management industry view the severity of a loss as a matter of luck.

For instance, even if a department reduced the number of incurred losses (frequency), a single large payout could negate all the good work accomplished by the department and, as mentioned above, departments have little control over the amount of money offered in settlement or ultimately assessed against the City. However, departments can place emphasis on the loss prevention as measured by the frequency of loss as demonstrated in a reduction of accepted general liability claims.

5. *There is little deterrent when a payment is made several years after an occurrence:*

As noted above, the larger payouts tend to happen over a period of years from the date of the incident. Cases in which some time has passed indicate cases for which some litigation activities have occurred and there has been either some settlement decision, or an award decision made by a jury or a court. As indicated,

in the previous section, as claims evolve to lawsuits and mature, their settlement costs tend to increase over time.

The following table demonstrates that the actual financial impact of losses may not be determined until years after the initial loss, and several years after the department involved can effect a change in the behavior that caused the loss.

FISCAL YEAR 2001-02 CITY-WIDE LOSS PAYOUTS BASED ON DATE OF LOSS			
	<u>CLAIMS/LAWSUITS WITH DATES OF LOSS AFTER 7/1/1999</u>	<u>CLAIMS /LAWSUITS WITH DATES OF LOSS PRIOR TO 7/1/1999</u>	<u>TOTAL CLAIMS/ LAWSUITS</u>
<u>NUMBER OF CLAIMS</u>	248	36	284
<u>PERCENT OF CLAIMS</u>	87.3%	12.7%	100.0%
<u>AMOUNT PAID</u>	\$3,397,615	\$4,581,825	\$8,479,440
<u>PERCENT OF TOTAL AMOUNT PAID</u>	46.0%	54.0%	100.0%
<u>AVERAGE PAYOUT</u>	\$15,716	\$127,273	\$29,857

Since the RMIP is based on the total amount paid during a fiscal year, it is actually measuring losses over a broad span of years, making focused loss control difficult. As such, measuring a department's performance based on total pay-outs is not an effective incentive method.

- 6. *Program results can allow Agencies to be punished by improving performance and to be rewarded in later years by mediocre or poor performance:*

Under the current RMIP, a single "good" or "bad" year can unfairly skew a baseline average so that departments can be unfairly punished or rewarded. A clear example is found in the performance of OFD this year. As demonstrated in the Attachment B, Table 1, OFD has consistently lowered their claims payout over the past few years. This lowered baseline has exacerbated the amount they must pay as their disincentive amount when a large claim does inevitably occur.

Conversely, OPD has been paying larger and larger claims each year, thereby raising their baseline. If the \$10 million "Riders" settlement is factored into this number, the OPD may have to pay \$2.5 million from their budget next year. In succeeding years, however, given that it is unlikely that OPD will sustain another such loss, they may be entitled to receive a hefty payment of general funds resulting from only average performance for several succeeding years. These were certainly not the results intended by the working group.

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In conclusion, the City should review the current working rules and objectives of the Risk Management Incentive Program and modify the program as appropriate to best elicit the desired results...an overall and sustained reduction of general liability losses incurred by the City.

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