

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: December 4, 2015

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Council File No. 15-1432

Council District: All

To: The Mayor
The Council

From: Miguel A. Santana, City Administrative Officer

MS

Reference: Citywide Liability Claims Account

Subject: **Citywide Liability Claims Payouts Status and Cost of Risk Analysis Report**

SUMMARY

Our Office is transmitting this status report on the City's Liability Claims Account for Fiscal Year 2015-16 as part of our financial status reporting duties under City Charter Section 291. On October 23, 2015, a \$20 million liability claims deficit was first reported in the First Financial Status Report (FSR). As of the end of October, the potential projected shortfall has increased to \$80 million based on an analysis of specific pending cases by the City Attorney. The \$80 million estimate is subject to change based on more current estimates from the City Attorney. Much of this shortfall is attributable to a small number of extremely significant cases arising from incidents or conduct which occurred many years ago and are reaching resolution concurrently this year, such as wrongful incarceration cases and significant dangerous condition matters. The City Attorney's Office has been providing specific information as to those and other significant matters, and will continue to do so through separate reports.

Payouts from the Liability Claims Account include cases resolved by the City Attorney's Office and those managed by the Attorney Conflicts Panel (ACP), whom is responsible for retaining outside counsel to handle conflict-of-interest matters which the City Attorney's Office is precluded from handling. Defending litigation and settling liability claims have a significant impact on the City's budgetary resources. The intent of this report is to provide a five-year historical overview of the Liability Claims Account and to highlight and bring awareness to the areas where the claims are being made; identify emerging patterns and trends; and to provide an opportunity for the City to evaluate areas within our Departments for preemption and early intervention in the defense of potential claims. A more focused approach by all City Departments to prevent or quickly address potential liabilities can be worthwhile in reducing the amount of claims being filed.

In addressing this issue, the City has taken measures to address risk reduction and management. The Office of the City Administrative Officer (CAO) Risk Management Division annually prepares a Cost of Risk Analysis from data furnished by the City Attorney's Office and the Personnel Department and is intended to assist departments in their efforts to reduce City vehicle, general liability, and Workers' Compensation claims. Additionally, the Los Angeles Police Department recently approved a strategy to develop and coordinate processes and solutions to reduce identifiable harms caused by use of force, employee involved traffic collisions, work-related

injuries, and workplace conflict. A brief overview of that strategy is provided in this report.

It should be noted that this report only reflects payouts made from the General Fund. The CAO will work with departments to prepare a report back on liability payouts paid directly from the Special Funds.

Status of Liability Claims Account

The 2015-16 Adopted Budget provides \$53.91 million in funding for the Liability Claims Account. Additionally, an allocation in the amount of \$2 million for retaining outside counsel is also funded in the Unappropriated Balance for ACP managed by this Office. It is projected that the Liability Claims Account will be fully exhausted by December 2015/January 2016 which covers settlements reached by the City Attorney's Office and cases resolved through ACP. An interim recommendation pending Council consideration totaling \$33.2 million and comprised of an appropriation of \$4.2 million in unallocated revenue from canceled checks and \$29 million in supplemental funding from the Reserve Fund will be requested in the Second FSR to cover resolutions prior to the release of the Mid-Year FSR. However, the City still faces a potential funding shortfall of approximately \$51 million for those matters still pending. Interim adjustments to the Adopted Budget may be necessary during the fiscal year as cases reach resolution through judgement or settlement.

Liability Claims Administrative Process

The Los Angeles Administrative Code authorizes the Mayor to delegate authority to the City Attorney to settle claims and pay judgments against the City in an amount not to exceed \$50,000, and an additional \$50,000 (up to \$100,000) subject to the concurrence of the Claims Board. The Mayor and Council must approve claims or judgments over \$100,000. In previous years, the funding was appropriated in separate accounts, wherein liability claims were handled based on whether the claims were under \$100,000 and claims which were over \$100,000. Beginning this fiscal year, both types of claims are paid out from the same account. The City Attorney's Office periodically reports to the Budget and Finance Committee on the status of the General Fund Liability Claims Account. This report is supplementing the quarterly reports provided directly by the City Attorney's Office to the Committee.

Historical Information

Prior to the 2015-16 Fiscal Year, funding for Liability Claims was budgeted in two separate accounts delineated by the funding threshold of each type of settlement. Table 1 provides information for the last five fiscal years in the following areas:

- Adopted Budget for Liability Claims Account including amounts budgeted in the Unappropriated Balance;
- Expenditures for claims \$100,000 or less resolved by the City Attorney and/or approved by the Claims Board;
- Expenditures for claims over \$100,000 approved by the Mayor and Council; and,
- Total expenditures for each fiscal year.

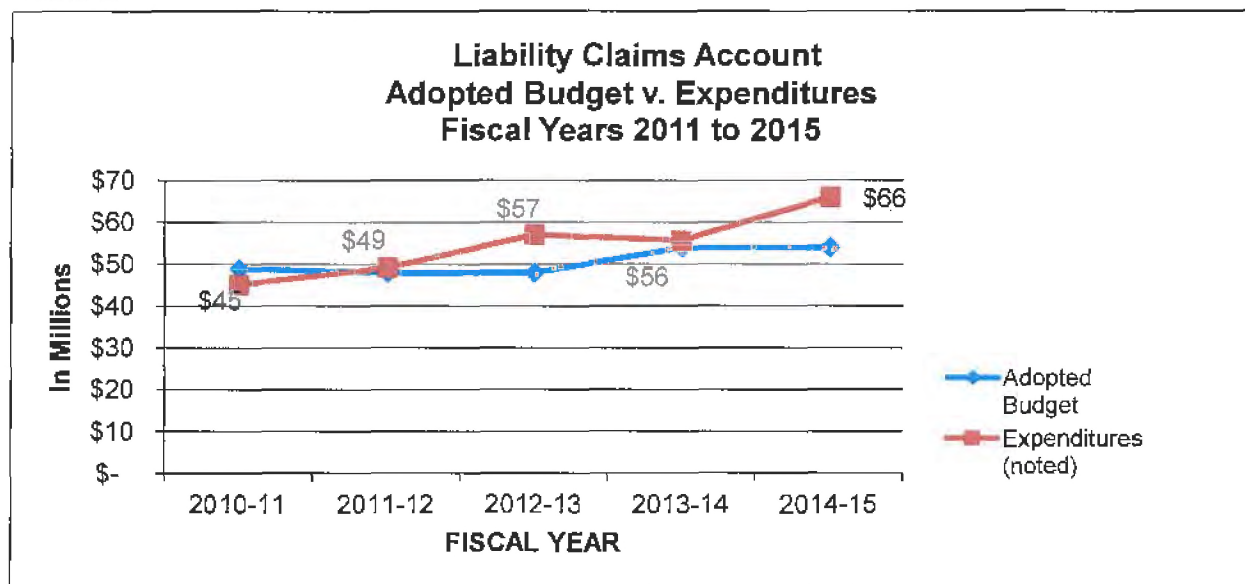
Table 1

Fiscal Year	Adopted Budget	Expenditures Account 9760 Claims \$100,000 and less	Expenditures Account 9770 Claims Over \$100,000	Total Expenditures
2010-11	\$48,850,000	\$8,134,634	\$36,881,691	\$45,016,325
2011-12	\$47,850,000	\$8,026,498	\$41,057,457	\$49,083,955
2012-13	\$47,910,000	\$10,089,986	\$46,851,662	\$56,941,648
2013-14*	\$53,910,000	\$8,943,843	\$46,617,789	\$55,561,632
2014-15*	\$53,910,000	\$8,599,072	\$57,247,321	\$65,846,393

*Includes \$6 million budgeted in the Unappropriated Balance for Liability Claims

The following graph (Table 2) also illustrates the payout level has steadily increased over the last five years. It should be noted that the payout often does not correlate with the year when the claim or lawsuit was filed. Often times, litigation may take several years beyond when the initial claim was made which we are experiencing in the current fiscal year.

Table 2

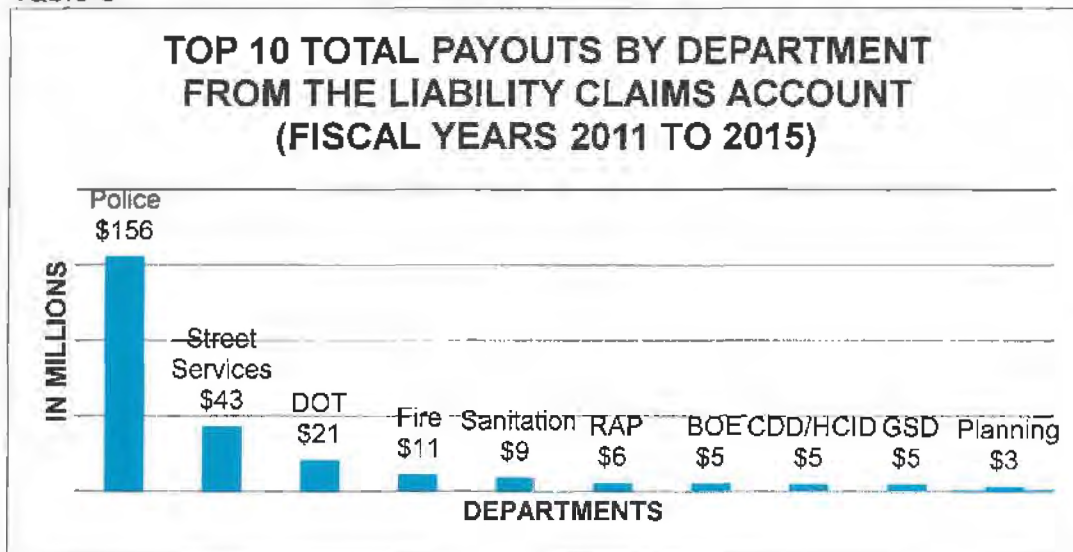


In the last five years, the City has paid out a total of \$272.4 million for liability claims. Several attachments to this report are provided to offer greater detail regarding the type of settlements. The following attachments are included:

- Attachment 1 - List of payouts by departments in alphabetical order;
- Attachment 2 - List of payouts by departments sorted by the highest to lowest total settlement amounts;
- Attachment 3 - List of payouts by liability claim categories

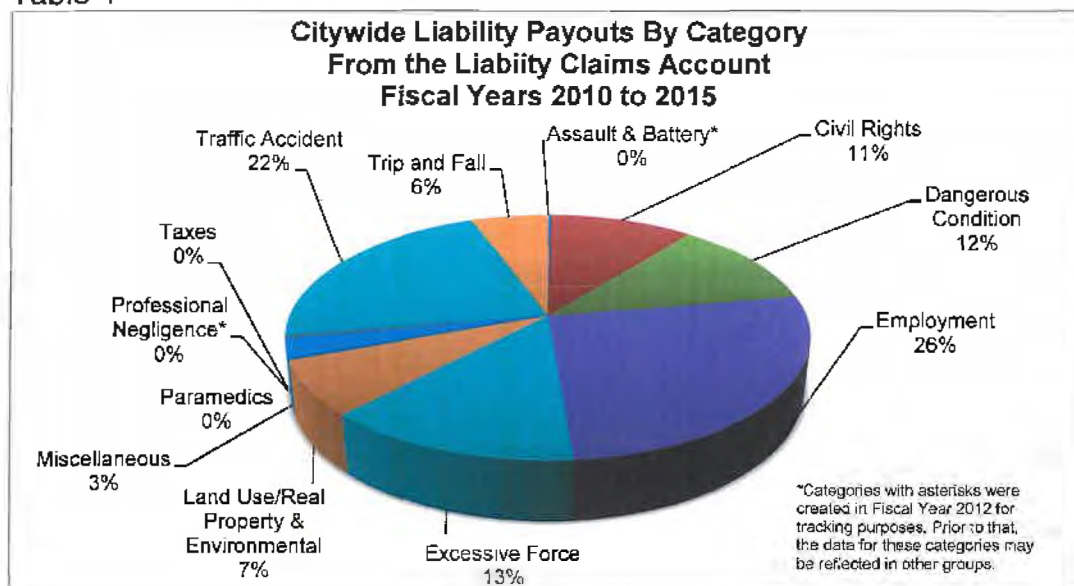
As referenced in total within Attachment 2, the top 10 highest payouts by departments from the Liability Claims Account over the last five years are illustrated in Table 3 below. Approximately \$156 million has been paid out for claims made within and against the Police Department, followed by Public Works - Street Services with \$43 million, and the Department of Transportation with \$21 million.

Table 3



Attachment 3, also illustrated in Table 4 below, provides historical data on the largest payouts being made in Employment and Traffic Accident related claims. Employment cases may include discrimination, harassment, and/or retaliation.

Table 4



Risk Management

The CAO Risk Management Division prepares a cost of risk analysis with data furnished by the City Attorney's Office on City vehicle and general liability claims and the Personnel Department on Workers' Compensation claims. It is intended to assist departments in their efforts to reduce associated liability costs. The data provided is categorized by frequency (number of claims) and severity (cost of claims). It also contains both pre-litigation and litigation claims data; data that is based upon when the incident actually occurred as opposed to when the claim was paid. This is a better tool for loss control as it provides a clear snapshot of losses each year. Additionally, it includes both tort (a wrongful act other than a breach of contract for which compensation can be obtained) and non-tort activity (breach of contract, tax liability, etc.) and is generated from data by the City Attorney's Office and the Personnel Department.

The analysis was completed seven months after the end of each fiscal year to get a better picture of the liability claims for that year. The 2014-15 Fiscal Year data analysis is not available at this time. Fiscal Year 2013-14 data with historical information is provided in this report. As more information becomes available, liability claims data will change. Data does not include proprietary departments (Airport, Harbor and Water and Power). The CAO's cost of risk analysis is provided in this report as Attachment 4.

The City is currently working on a Risk Management Information System, a robust software system that provides the tools to create reports; ability to manage and analyze liability and workers' compensation loss data/exposure information with the core objective of reducing or eliminating risks to drive down the overall cost of risk citywide.

In a quarterly report dated September 15, 2015, LAPD's Risk Management and Legal Affairs Group reported to the Board of Police Commissioners regarding the newly implemented Risk Management and Harm Reduction Strategy (Strategy). The Strategy was adopted by the Board of Police Commissioners on February 17, 2015 as a measure to reduce physical, organization, and financial harms caused by workplace conflict, work-related injury, use of force, and employee-involved traffic collisions (EITC). The overall approach of the strategy is to shift the focus from managing risk to reducing identifiable harms.

LAPD made structural changes within its Office of Constitutional Policing and Policy where the Risk Management and Legal Affairs Group and the Risk Management Division were created to centralize resources for comprehensive data gathering. Problem solving teams and expert panels are utilized to develop interventions and solutions to reduce harms. The Strategy's success is rooted upon the stakeholder's recognition and behavior, and the fundamental responsibility of each and every employee. The Risk Management Legal Affairs Group is also working with the City Attorney's Office to develop and coordinate processes and solutions, especially in the areas related to injuries and workplace conflict.

The City will continue its pre-emptive approach to risk intervention and management.

FISCAL IMPACT STATEMENT

This report is submitted for informational purposes only, therefore there is no impact on the General Fund.

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Attachments