

MUNICIPAL AUDITING REPORT CITY OF ROANOKE



Risk Management General Liability Claims

April 21, 2016

Report Number: 16-013
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AUDIT OBJECTIVES & SCOPE

Audit Objectives:

1. Are adequate controls in place and operating effectively to ensure prompt and fair settlement of General, Automobile and Law Enforcement liability claims for which the City is liable?

Yes – Virginia Association of Counties Group Self Insurance Risk Pool (VACORP) adjusters follow established procedures to assure proper support exists to substantiate the amount of a loss and the City's liability. Approval is obtained from the Risk Manager prior to payment.

2. Are adequate controls in place and operating effectively to ensure claims for which the City is not liable are properly denied?

Yes – Because of the nature of governmental functions performed, the City of Roanoke may be immune to liability for a loss incurred by a citizen. All claims filed against the City are reviewed by a VACORP adjuster to determine liability prior to any payment made. Agreement for denial is obtained from the Risk Manager prior to a denial.

Audit Scope:

The audit considered the various types of claims for which the City could be liable.

We reviewed processes for administering General, Automobile and Law Enforcement liability claims against the City as of February 29, 2016.

We reviewed payments and denials of General, Automobile and Law Enforcement liability claims made between July 1, 2015 and February 29, 2016.

The scope did not include:

- Workers Compensation and Health insurance,
- Claims handled by the City Attorney's Office, or
- The Risk Management Fund Reserve

End of Audit Objectives and Scope

BACKGROUND

The Office of Risk Management is responsible for mitigating and managing the City's exposure to risk by managing the city's self-insurance program, actively managing liability and workers' compensation claims filed against the City, implementing safety and loss control programs, reviewing all certificates of insurance for contracts, permits and bonds, purchasing insurance to protect its assets, ensuring compliance with the Americans with Disabilities Act (ADA) and managing the employee driver qualification program.

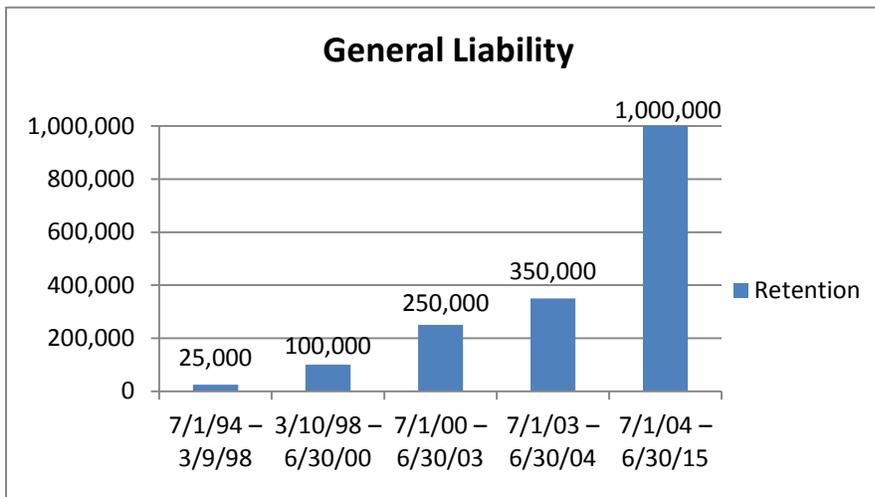
There are three [3] full time staff employed to support the function.

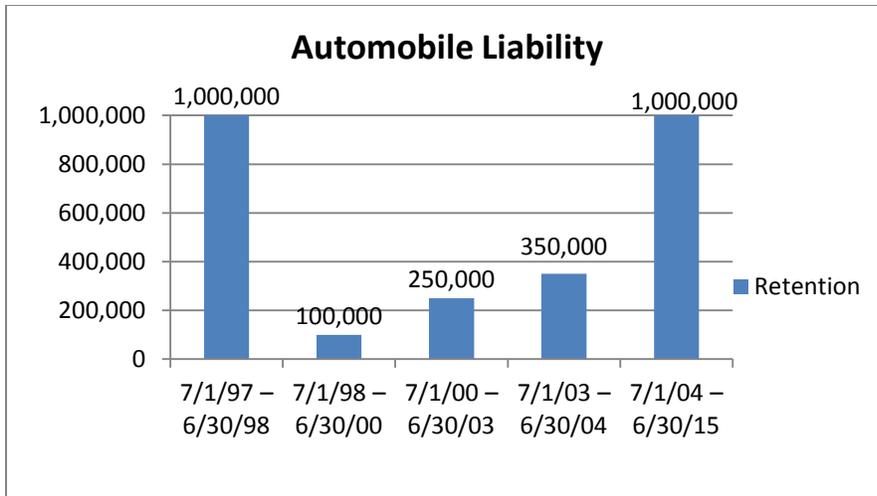
Self-Insurance Program

The City is currently self-insured for Workers Compensation, General liability, Auto liability and Employee Health insurance.

General liability, Auto liability and Worker's Compensation claims are overseen by the Office of Risk Management. General liability covers incidents including employment practice claims, property damage, injuries on City property and law enforcement claims.

A history of the self-insured retention limits, or amount of monies the City is responsible for prior to purchased excess insurance coverage are included below:

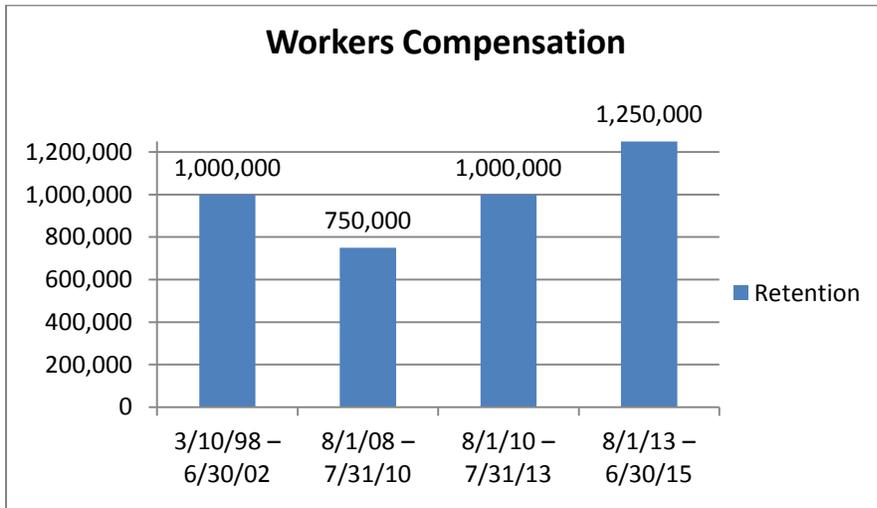




Note:

There were no retention limits for Automobile liability claims between

- July 1, 1994 and June 30, 1997



Note:

There were no retention limits for Workers Compensation claims between

- July 1, 1994 and March 9, 1998
- and
- July 1, 2002 and July 31, 2008

Employee Health Insurance is self-insured with a \$300,000 retention level. Claims are administered by a third party administrator and overseen by the Human Resources Department.

Excess liability coverage is purchased to cover settlements which exceed the self-insured retention amount. The current policy term of August 1, 2015 through August 1, 2016 is written through States Self-Insurers Risk Retention Group which offers coverage to municipalities with little to no exclusions and affordable premiums. The annual premium for the current term is \$234,982.

Effective July 1, 2015, the City contracted with VACORP to provide third party claims handling for all General liability and Automobile liability claims. The claim handling process is overseen by the City's Office of Risk Management and serves as the liaison between VACORP and the City Attorney as necessary. Prior to July 1, 2015 claims were self-administered by the City's Office of Risk Management.

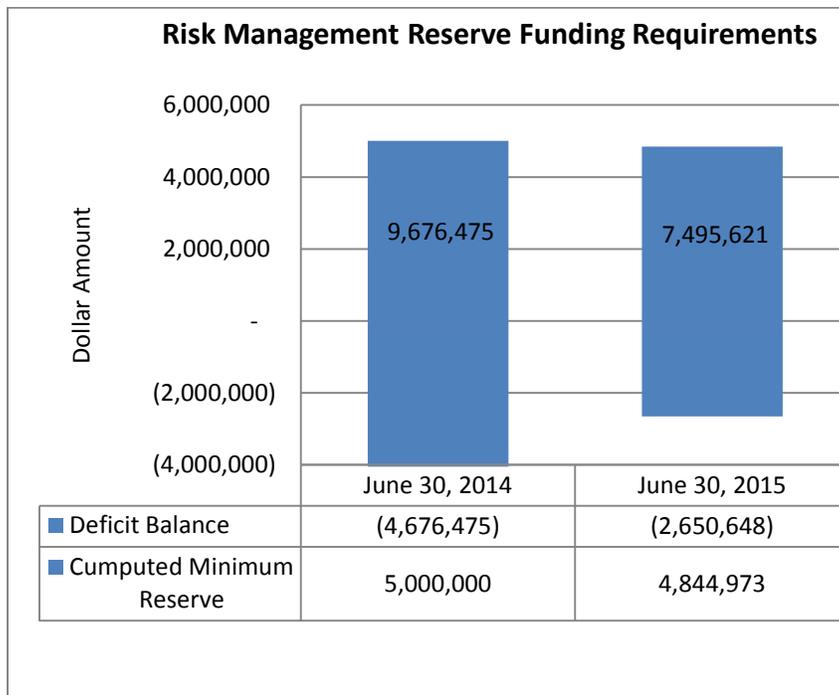
Workers Compensation claims were self-administered by the City's Office of Risk Management before November 15, 2001, at which time administration was outsourced to a third party administrator (TPA). The Office of Risk Management maintains control over the handling of claims. The TPA is required to notify the City of any changes in incurred costs over \$20,000 and all settlements and denials must be approved by the Risk Manager.

The City has adopted comprehensive financial policies that include a Risk Management reserve. The purpose of the reserve is to mitigate risk exposure due to its self-insurance program. A minimum funding level has been established which includes:

- o 25% of the three year average of self-insured claims costs,
- o Plus 10% of the three year average of fully insured premiums,
- o Plus a \$1million in catastrophic reserve

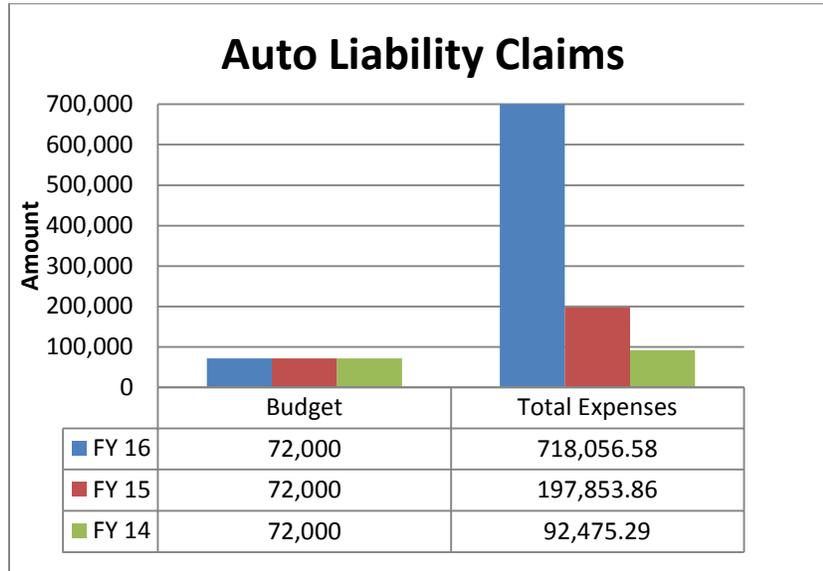
Fund reserve drawdowns are used to fund unanticipated risk management expenses.

Annually, the City engages a third party to perform an actuarial review of the self-insurance program to determine estimated funding for current and future expected claims. Although the reserve has been underfund for the past several years based on future actuarial liabilities, the City continues to add to the reserve on an annual basis and the total cash position of the fund remains strong. Fund details for the past two fiscal years are shown below.

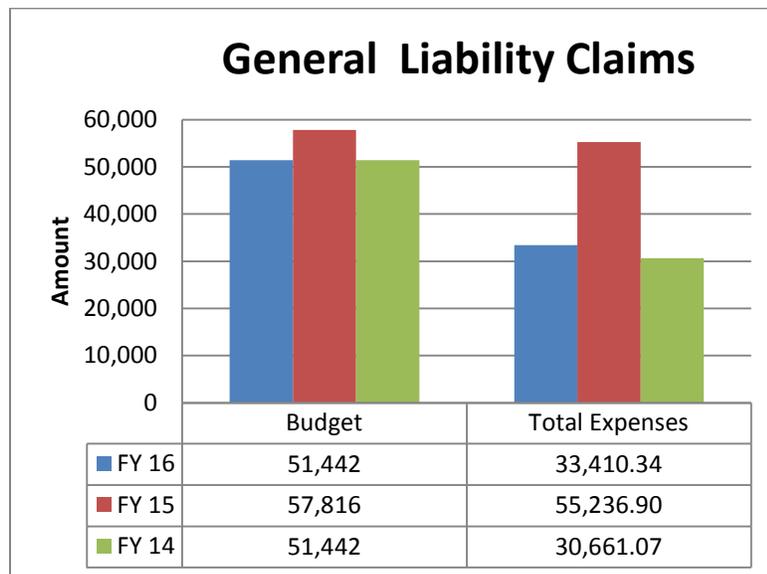


Automobile Liability and General Liability Claims Budget

The Office of Risk Management budgets annually to cover expenditures related to Automobile and General liability claims for which the City is liable. Actual expenditures depend on losses incurred during the year. The graphs below depict the budget versus actual expenditures for the prior three years:



- Note: 1. FY16 figures are through December 31, 2015
 2. FY16 total commitments includes claims paid by the City, including a \$585,000 settlement, not handled by VACORP



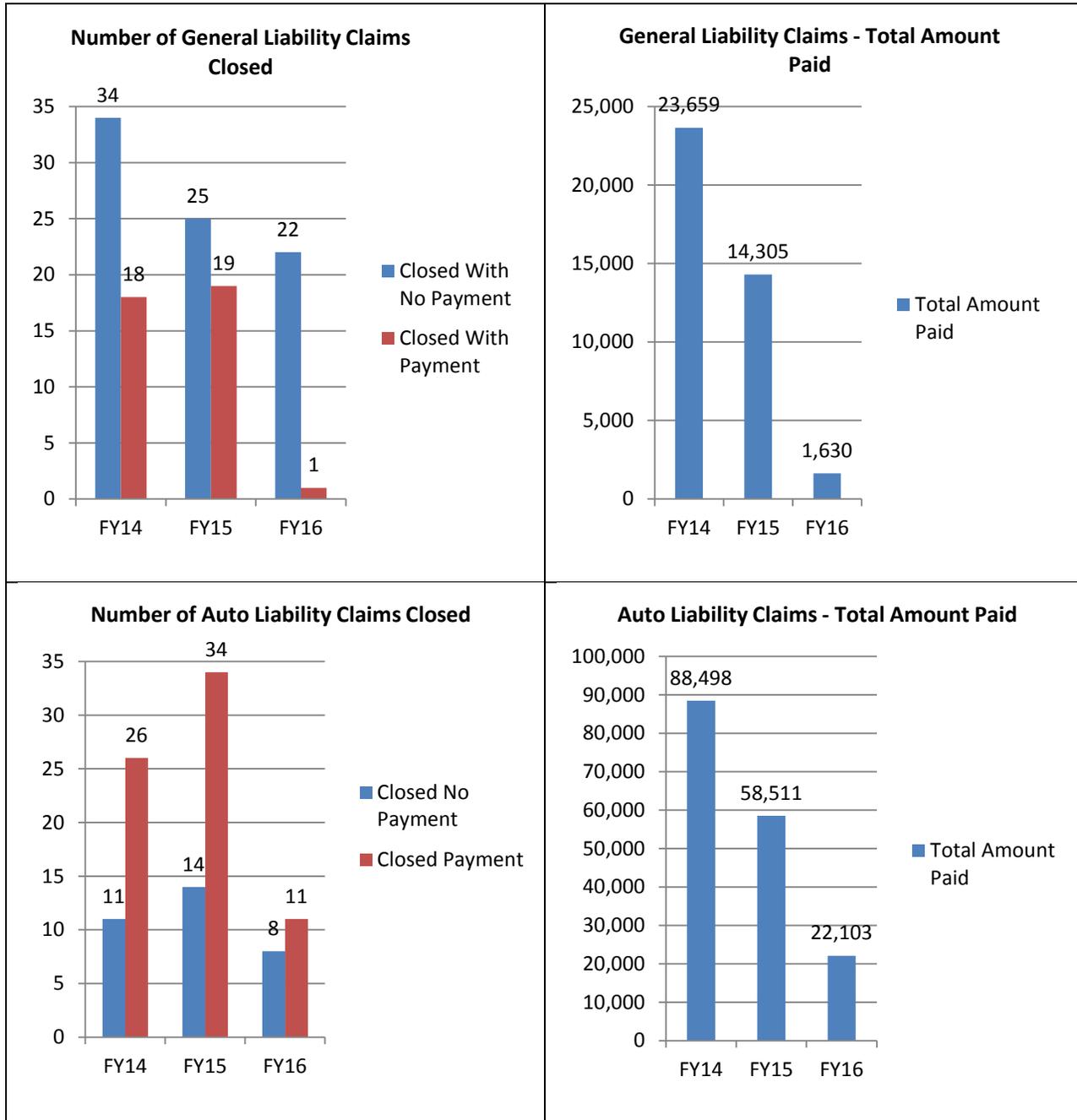
Note: FY 16 figures are through December 31, 2015

The following graphs breakdown the claim count, dollar reserves and amount paid for the last three fiscal years. FY16 is through February 29, 2016:



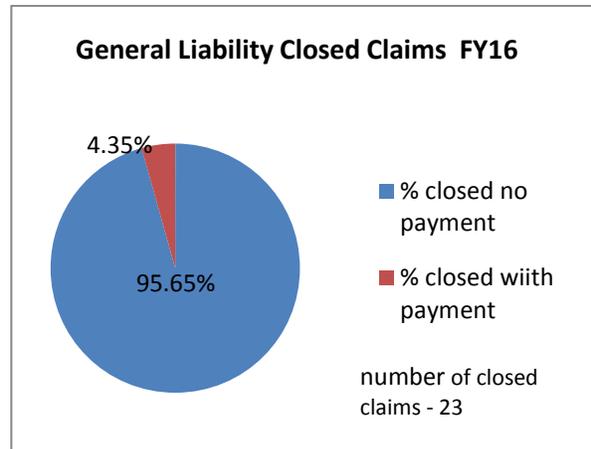
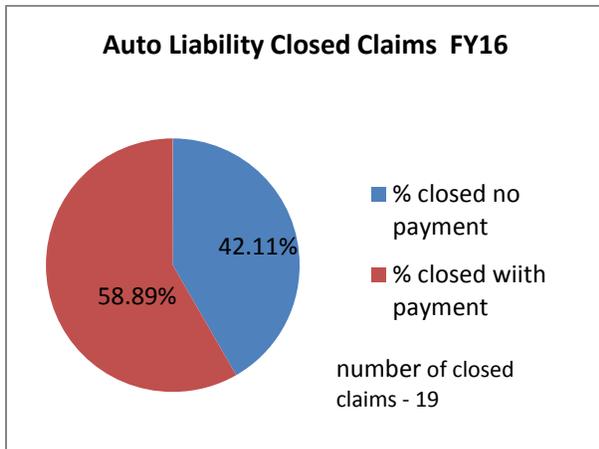
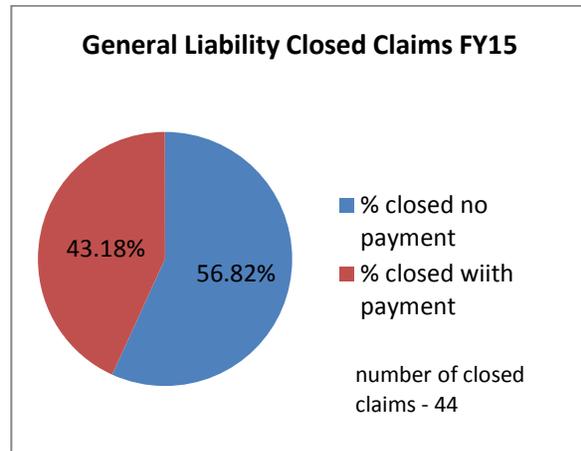
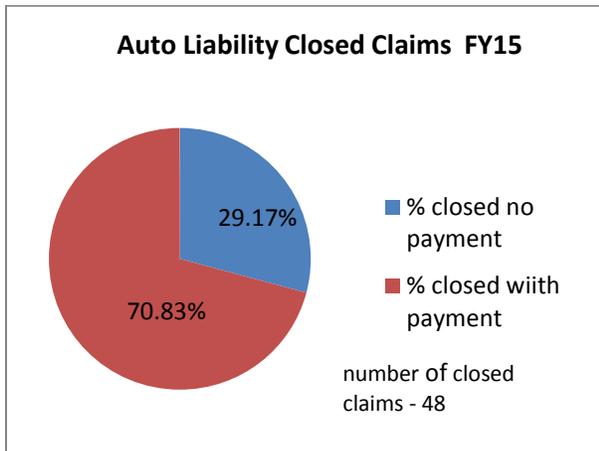
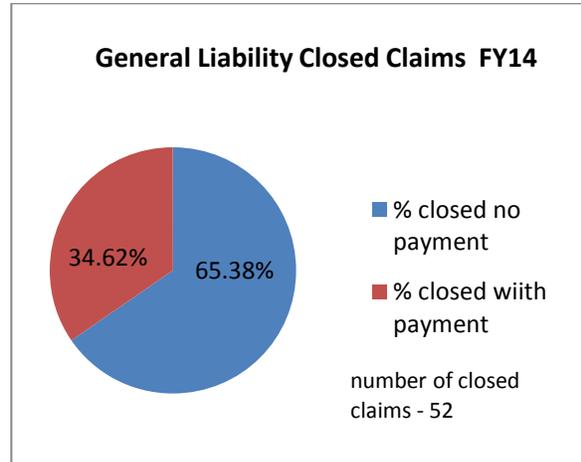
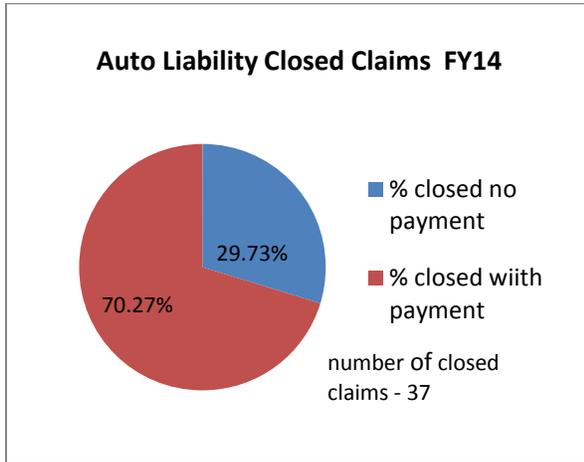
Note: FY16 closed count and paid does not include claims not handled by VACORP, including a \$585,000 payment settled by mediation through the City Attorney's office

The following charts depict the total number of claims **closed** without and with payment and total amount paid. FY16 is through February 29, 2016



Note: FY16 closed with payment count does not include a \$585,000 payment settled by mediation through the City Attorney's office

The following charts depict the percentage of claims **closed** without and with payment. FY16 is through February 29, 2016



Virginia State Code 44-146.23 provides the City immunity from liability when engaged in governmental functions, as opposed to proprietary functions. A governmental function is a function which is carried out solely for the public good. A proprietary function, while carried out partially for public good, is also undertaken in order to be of special benefit to the municipal entity involved.

In general, functions which benefit:

1. members of the general public who are not necessarily residents of the municipality are considered a governmental function and are immune
2. the residents of the city are considered a propriety function and are not immune

Several municipal activities have been deemed governmental functions including:

- Providing emergency medical technician, emergency services, and providing ambulance services
- Operation and maintenance of a police force
- Operation of firefighting force, including driving to the scene of a fire
- Garbage removal
- Maintenance and operation of landfill
- Operation of a jail
- By statute, cities are only liable for gross negligence in the operation of pools, parks, playgrounds and other recreational facilities
- Snow removal during an emergency is a governmental function. The routine removal of snow in a nonemergency (not during or immediately after a severe snow storm) situation is a proprietary function

The routine maintenance of streets, sidewalks and other property are proprietary function. Once the City becomes aware of an issue (such as a pothole), action must be taken in an appropriate amount of time before they become liable for any associated losses.

Other functions performed by the Office of Risk Management include:

Safety and Loss Control Program

The Safety program has been designed to help reduce and potentially eliminate on the job injuries and provide a safe, accident-free and healthy work environment for employees and citizens that visit City facilities. Through regular training, audits and inspections, accident and incident investigations, and statistical analysis to understand loss trends, the department's professional Safety Specialist ensures compliance with the various OSHA (Occupational Safety and Health Administration) regulations.

Review of all certificates of insurance for contracts, permits and bonds

The Risk Manager reviews all certificates of insurance for all contracts, permits and bonds to ensure insurance requirements are met.

Purchase of Insurance

The City uses an insurance consultant, the Rutherford Company, to aid in the process of purchasing insurance coverage for the various City properties. Using information received by the Risk Manager regarding types and specifications of coverage needed, the consultant markets and sends quotes received from insurers back to the Risk Manager to make the decision on which policy to purchase. This decision is based on factors including self-insured retention levels, deductibles, covered limits and premium.

Americans with Disability Act of 1990 (ADA) Regulation

The ADA was passed by Congress in 1990, the nation's first comprehensive civil rights law addressing the needs of people with disabilities, prohibiting discrimination in employment, public services, public accommodations and telecommunications. The Risk Manager acts as the City ADA Compliance Officer as it relates to access to City Properties and Services who works closely with the appropriate City department to make any modifications necessary or seek other ways to resolve if a modification is not feasible.

DMV Review

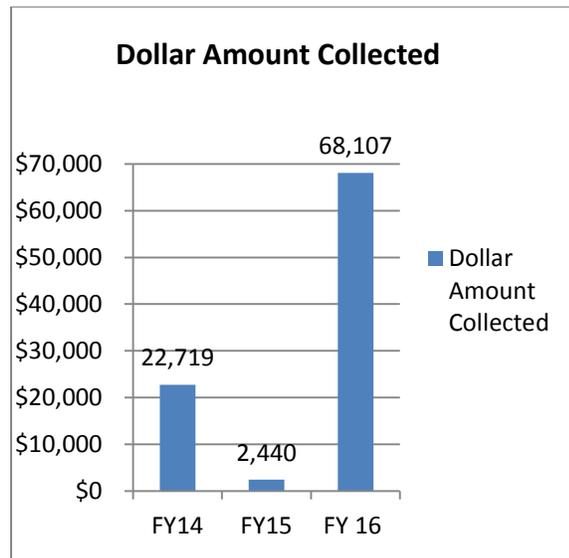
A driver qualification policy which outlines the requirements for new hires and existing employees whose job responsibilities require driving a City vehicle has been established by the Office of Risk Management. This policy includes pre-hire and subsequent annual DMV record reviews by the Office of Risk Management as well as for cause reviews.

Subrogation

Subrogation refers to an insurance company seeking reimbursement from the person or entity legally responsible for an accident after the insurer has paid out money on behalf of its insured. Because the City is self-insured, the Office of Risk Management performs the subrogation as there is no insurance company involved. Subrogation is pursued by the City when damage to City property was either fully or partially caused by another party.

The Office of Risk Management began handling all subrogation at the beginning of Fiscal year 2015. Prior to this date, some subrogation was handled by other departments which incurred the loss (i.e. Fleet, Transportation etc.).

The Office of Risk Management collected the following monies through subrogation over the last three fiscal years:



Note: FY16 is through February 12, 2016

Objective 1: Paid Claims

We reviewed the Claims Management Services contract with Virginia Association of Counties Group Self Insurance Risk Pool (VACORP) for Liability Claims Management Services effective July 1, 2015 through June 30, 2016. The contract details the terms of VACORP servicing of Automobile, General, Public Officials and Law Enforcement Claims for the annual compensation of \$30,000. The contract does not include the required retention of claim documentation or a right to audit clause.

An employee involved in a motor vehicle accident while operating a City vehicle is required to immediately stop, even when the accident appears to be minor or if no other vehicles are involved. Personnel Operating Procedure 18, Vehicular Safety, addresses proper actions to be followed, key point's including:

- Notify supervisor
- Notify Police
- Call 911 if there is an injury or danger of fire
- If possible make written notes of the details while fresh
- Immediately submit to alcohol/drug test if City employee received a moving violation, bodily injury occurred which required immediate medical treatment away from the scene, human fatality or damage which required either vehicle to be towed
- Do not give out information concerning accident except to Police, supervisor, Risk Management etc.
- Do not discuss accident with insurance agents, adjusters or attorneys on behalf of any third party without express permission of the City Attorney or Risk Management

Each City vehicle is required to have a supply of cards with directions on how to file a claim with the City for damages. A copy of this card is provided to the driver of any involved vehicle or property owner. Per State code 15.2.209 all claims must be submitted in writing within six (6) months of the incident and must include claimant name, address, phone number, details of what happened including the date and time, repair estimates and a statement asking that the City pay for damages. [See **Exhibit 1** for sample document]

Any time a City vehicle is involved in an accident, the employees Supervisor is required to complete a Vehicle Accident/Incident Claim report on the VACORP on-line system within two days of the incident. This form is used by the Office of Risk Management to track all incidents as

well as notify VACORP of potential claims and includes information such as:

- Incident type (ie. Vehicle or other property)
- date of incident
- reported date
- incident details including location/address, cause, description, vehicles involved, description of damages and information of other individuals involved including name, address and date of birth
- City personnel contact information

A claimant who wishes to file a claim against the City can either file electronically on-line by completing the claim form located on the Risk Management web page or, by submitting a written letter directly to the Office of Risk Management. All claims are reviewed by the Office of Risk Management for inclusion of all required information and forwarded to VACORP for processing.

While each claim type VACORP handles for the City follow established procedures, due to the varying nature of claims, each will have unique approaches to question resolution, information collection, investigation, liability determination, authorization and ultimate resolution. Claim investigation includes:

- Vehicle Accident/Incident-Claim report prepared by employee supervisor
- Police Incident reports review
- Discussions with the City of Roanoke, claimant and any witnesses as deemed necessary to obtain full details of the incident
- Review of written estimates and invoices for repair of damages

Authority levels have been established for each claim type handled by the VACORP adjuster as follows:

- Auto and general liability property damage - \$20,000
- Auto and general liability bodily injury - \$5,000
- Public officials and law enforcement liability - \$5,000 expense only.

Any claims over the above amount are discussed with the City Attorney's Office prior to settlement. The City Attorney will often receive claims notices that he will make the determination as to whether it will be handled by his office or by Risk Management. These claims are reported to Risk Management who in turn reports it to VACORP.

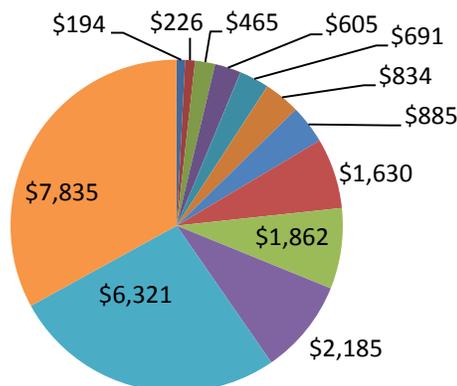
When a claim is sent to VACORP to handle, the VACORP claims adjuster develops a position of the City's liability after completing an investigation. Claims recommended for denial are submitted to a VACORP supervisor for approval by the adjuster. A written recommendation outlining the facts of the claim with payment or denial recommendation is submitted to the Risk Manager for review and approval. After obtaining approval, the VACORP adjuster pays or denies the claim:

- A denial letter detailing the facts and reason for denial is sent to the claimant.
- A release letter is sent to the claimant detailing amount of payment to be made. Upon receipt of signed release from the claimant, payment is made.

If a claim is denied, the claimant can appeal.

Between July 1, 2015 and February 29, 2016, twelve [12] claims totaling \$23,733 were paid. All claims were auto physical damage claims. The chart below depicts the payment amount of each claim.

**Paid Claims Between July 1, 2015
and February 29, 2016**



We randomly selected four [4] claims paid between July 1, 2015 and February 29, 2016.

Documentation for each claim was reviewed to determine if the facts of the claim supported the VACORP adjuster's determination of the City's liability for the loss. Although support varied for each claim it included:

- Incident reports completed by City personnel
- Written claim
- Police report
- Repair estimates
- Independent appraisal
- Photos of damage
- Documented discussions between involved parties
- Written recommendation for payment included facts of the claim to support liability
- Approval of payment by the City Risk Manager
- Signed release by claimant

(VACORP) adjusters follow established procedures to assure proper support to substantiate the amount of a loss and the City's liability. Approval is obtained from the Risk Manager prior to payment.

Objective 2: Denied Claims

The Commonwealth of Virginia along with its Counties and Cities receive sovereign immunity because of the nature of the governmental functions it performs. A municipality however, is not entitled to absolute immunity when it engages in a proprietary function and may be held liable for negligence in the exercise of the function.

Between July 1, 2015 and February 29, 2016, thirty [30] claims were denied due to lack of liability by the City. Twenty-one [21] were general liability and nine [9] were auto physical damage claims.

We randomly selected four [4] claims denied between July 1, 2015 and February 29, 2016. Documentation for each claim was reviewed to determine the facts of the claims supported the VACORP adjuster's determination of the City lack of liability for the loss. The claims were denied for various reasons including:

- City of Roanoke Police Officer was performing a governmental function
- City was not aware of hazard at the time the loss occurred
- No evidence of an incident taking place
- Location incident took place is in Roanoke County

Sufficient documentation was in file to support each denial.

When a claim is denied, the VACORP claims adjuster sends a denial letter to the claimant which includes the reason for denial. If the citizen does not agree with the denial, they may appeal. Approximately three [3] appeals are received by the City annually.

Management has discussed the pros and cons of a formal appeals process with an ultimate decision that VACORP provided an independent review of claims and that the Risk Manager provided a second opinion when needed.

Appeals are typically received by one of the following:

- VACORP (who refers to the City Risk Manager)
- City Risk Manager
- City Manager
- City Attorney or Assistant Attorney
- Director General Services
- Mayor or Council Member

All appeals are sent to the Risk Manager for reevaluation; she reviews the facts of the claim and discusses them with the citizen. A decision is then made to either confirm the denial or pay the claim.

All claims filed against the City are reviewed by a VACORP adjuster to determine liability prior to any payment. Agreement for denial is obtained from the Risk Manager prior to a denial.

SUMMARY OF MANAGEMENT ACTION PLANS

Management Action Plan - Contract	
<p>During the renewal period for the Claims Management Services contract with VACORP, we will include statements to address the time period claim documentation is to be maintained and the right of the City to audit our records.</p>	
Assigned To	Target Date
Jackie Clewis, Risk Manager	07/01/2016

ACKNOWLEDGEMENTS

We would like to thank Jackie Clewis – Risk Manager for her assistance and cooperation throughout this audit.



Ann Clark, CPA
Senior Auditor



Drew Harmon, CPA, CIA
Municipal Auditor

EXHIBIT 1

PROCEDURE FOR FILING A CLAIM WITH THE CITY OF ROANOKE

Because the City of Roanoke is a Municipality, the State of Virginia code 15.2-209 states that all claims against any municipality within the commonwealth *must* be in the form of writing.

OPTION #1 FILE CLAIM ON-LINE:

- Go to www.roanokeva.gov/riskmanagement
- Choose "File a Claim" from menu
- Complete Claim form, attach documents and Submit
- Your claim will be sent to the Office of Risk Management

OPTION #2 WRITTEN CLAIM LETTER:

In writing your claim letter, you should include the following:

- **Your Name, Address, and a Contact Number where we may reach you.**
- **What happened?** *Give as many details as possible.*
- **Where did the incident take place?** *State the exact location of the incident: physical address, street names, mile markers, landmarks. To aid in sustaining your claim you may provide photos of the exact location and surrounding areas so that the area can be easily identified.*
- **When did the incident take place?** *The exact date of the incident and an approximate time.*
- **A statement in your letter asking that the City of Roanoke pay for damages.**
- **Provide repair estimates and/or receipts on a company's letterhead.**

Make sure that you sign your claim letter and include your return address. Send the letter with supporting documents to:

**The Office of Risk Management
215 Church Ave, Room 209
Roanoke, VA 24011**

If you need assistance or have questions, call:
540-853-2450, Option #1

(The claimant has *six (6) months* from the date of the incident to file the claim against the City of Roanoke.)