



CITY MANAGER MEMORANDUM

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Date: October 31, 2023
To: Councilmember Lauren Tolmachoff
From: Kevin R. Phelps, City Manager
Subject: Presumptive Cancer Emails dated 10/27

Councilmember Tolmachoff,

While this information has been shared numerous times with you and the Council, below are answers to your questions from two emails sent on October 27th. I will answer the second email first as it will provide context for answers to your first email.

"Please send me a copy of the Presumptive Cancer Policy."

All claims regarding the Arizona Workers Compensation program (WCp) fall under the authority of the Industrial Commission of Arizona (ICA). Within the WCp, the ICA administers specific policies for presumptive cancer claims made by eligible public safety applicants. Local jurisdictions cannot adopt their own processing procedures but must adhere to the processes and policies established by the ICA.

The City of Glendale is not authorized by the ICA to self-administer worker compensation claims – we must use a qualified third party administrator (TPA). The City's current TPA is CORVEL. The Council approved CORVEL as part of a five-year agreement. Our agreement states that CORVEL, in processing all worker compensation claims, must adhere to all ICA regulations and statutes. ICA regulations encompass presumptive cancer policies that our TPA / City must follow.

As I clearly stated in my email to you and the Council earlier this year, Sec. 2-218 parts (a), (b), (c) and (d) the City's responsibility rest solely with the City's Risk Manager. It also allows the City to contract with a TPA to assist in administering all claims filed in the WCp. This is a necessity in as stated above, the City is precluded from processing their own claims.

In addition to monitoring the processing of claims through its TPA, the City's Worker Compensation Trust FUND (WCTF) oversees the payment of all claims. For claims made by public safety personnel, the WCTF self-insures for individual claims up to \$2.5 million. The Fund, as part of best practices, purchases an excess liability policy through "Safety National" that will reimburse the City for all amounts paid on an individual claim in excess of \$2.5 million.

The excess liability policy with Safety National is linked to the agreement the City has with its TPA (CORVEL). The City would likely be denied coverage if the City had an Administrative policy requiring all presumptive cancer claims to be accepted and paid.

The WCp, has specific rules in place to address appeals either by the applicant or the jurisdiction. If a claim has been denied by the ICA, the City, at its own discretion, may choose to pay all or a portion of a claim. However, if the City chooses to reverse a claim denied by the ICA, the City's excess liability carrier Safety National is not legally obligated to reimburse the City for payments that exceed the \$2.5 million over the life of the claim.

Again, as detailed in my email you received, to date the city has processed four presumptive cancer cases. The first involved a firefighter battling cancer whose application was initiated prior to the State adopting the original presumptive cancer legislation. The TPA denied the case based on statutes in place at time of application. I discussed the circumstances of this with the Council in an executive session. In the e-session there was general agreement that the City should accept the applicant's claim. The City's Risk Manager, under my guidance, instructed our TPA to accept the claim.

The second case involved an applicant whose claim was impacted by the State's second presumptive cancer legislation. In this case, the omission of a retroactive provision, the application had to be processed under the original legislation. After discussing this case with the Council, I felt the application should be accepted. I shared this decision with the applicant stating the City would process their claim as if it had been filed after the second legislation had been enacted. They acknowledged that our TPA still had to go through the ICA process, but regardless of the outcome, the City would accept the claim.

The City has had two applications for presumptive cancer that involved diagnosis and treatment for cancer that were first reported many years prior to any presumptive cancer legislation. The State's presumptive Cancer legislation is silent as to how to process the reoccurrence of cancers that are now covered under state legislation. The City met with each applicant and negotiated a fair settlement unique to each claim that fell outside of the WCTF.

In that there are no longer any presumptive cancer cases that fall under the original legislation, the processing of future presumptive cancer cases is much more defined and predictable. The remaining issue, how to process a reoccurrence of a cancer previously diagnosed and treated, will take state legislation to clarify. In the meantime, we will look at each new reoccurrence case individually and process accordingly.

In the City's News Release earlier this year it recognized a letter of agreement that the City Manager and the Glendale Chapter of the United Phoenix Firefighters Association Local 493 entered into regarding future processing of presumptive cancer claims. It states:

"This letter also calls for Glendale staff to work with their labor partners to pass a state law that clarifies that any reoccurrence of cancer diagnosed during the old rules must be covered under the new law..."

The Mayor's CIOI was brought forward to see if the city should be advocating to the State Legislature to specifically address the reoccurrence of cancer for public safety personnel. Recently at the Council Workshop of Oct. 24th, you questioned the motive behind the Mayor's CIOI.

"Why didn't this sound like a good idea when I brought it up? I have the minutes from the meeting right here where I brought up specifically reoccurrence."

The minutes you reference are not a verbatim transcript but rather a summary. If you review the actual video from the meeting, following up the Mayor's comment that your comments on reoccurrence were indeed an important issue for the staff to research, your immediate comment was:

"And that is not my item of special interest about reoccurrence of cancer Mayor and I am not going to issue another Council item of special interest"

Based on this comment it may be understandable why the Mayor chose to introduce this CIOI.

Your second email centered on when consensus was provided in establishing policies to cover all presumptive cancer claims. For me, the term consensus has several different applications depending on the circumstances.

For example, as your City Manager I am required to receive formal consensus prior to implementing any CIOI. A second example would be a requirement for the Manager to receive formal consensus prior to initiating any specific process for disposing of real property owned by the City. In each example consensus is formal and is required before the City Manager can proceed.

A second type of consensus is informal. Gaining informal consensus can assist the City Manager in making decisions within his / her authority that would likely be supported by the Council. This informal consensus can develop over one or many conversations, either through direct interaction with individual Councilmembers or in more formal settings with the entire Council. Obtaining informal consensus on key topics can be very beneficial to a City Manager by validating likely alignment with the Council on a specific program, initiative, etc. But to be clear, informal consensus is never used to replace those situations where formal consensus is required.

To close this topic, the City's administration of the Worker Compensation Trust Fund, including presumptive cancer claims, has been granted to the City's Risk Manager. However, due to the uniqueness and complexity of presumptive cancer claims, I chose to seek input from the Council using informal consensus before deciding how to administratively process these cases.

To recap, the City's policy for handling presumptive cancer claims is to follow state statutes as instructed by the ICA and administered by our TPA. Cases that have been denied and have exhausted the ICA appeals process can make their case directly to the City's Risk Manager. It has been my instruction to the City's Risk Manager to carefully review each case individually based on the facts of the claim, and further, in accordance with the spirit of the presumptive cancer legislation, approve any claim that has been denied if warranted.

cc: Glendale Mayor and Councilmembers