ORDINANCE NO. 2012.47

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING CHAPTER 2, ADMINISTRATION BY ADDING NEW ARTICLE VII, RELATING TO RISK MANAGEMENT; AND BY REPEALING CHAPTER 2, ARTICLE IV, DIVISION 2, CLAIMS AND DEMANDS AGAINST CITY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. That Chapter 2, of the Tempe City Code is hereby amended by adding a new Article VII as follows:

ARTICLE VII. RISK MANAGEMENT

DIVISION 1. RISK MANAGEMENT TRUST BOARD

Sec.2-501. Definitions.

For the purposes of this division, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Board means the risk management trust board.

Claim means any insured claim or SIR claim.

Claim cost means any internal or external cost or expense incurred by the city in response to any claim against the city, including, but not limited to, claim adjustment costs, contractual services costs, legal defense costs and attorneys' fees awarded against the city.

Insured claim means any claim falling within the coverage provisions of any insurance policy insuring the city.

Risk management cost means any internal or external cost associated with the purchase and maintenance of any commercial property insurance policy, workers' compensation policy or liability insurance policy or bond for, or on behalf of, the city, including consulting, brokerage

and actuarial fees; and all other internal and external costs, fees and expenses incurred in connection with loss prevention and the management of the risk management trust fund.

Risk management program means the city's system of a combination of insurance and direct payments to pay for benefits, losses or claims.

SIR means self-insured retention.

SIR claim means any demand for direct payment of costs, including health, accident, life and disability benefits, a legal action and counter demand or counterclaim for payment of any property loss sustained or lawful claim of liability or fortuitous loss made against the city, covered corporations, covered city entities or covered individuals. The following types of claims are specifically excluded from the definition of SIR claim: (i) any claim alleging damages relating to employee benefits or salary or (ii) or any insured claim.

SIR costs shall mean any claim cost arising from an SIR claim.

Trust fund means the risk management trust fund established by the city for the purpose of paying benefits, claims, claim costs, SIR costs and risk management costs.

Sec. 2 -502. Trust fund—established.

There is hereby established the risk management trust fund. The city manager is directed to segregate all funds previously and hereinafter budgeted for trust fund purposes as described in this article and to maintain the trust fund separate and apart from the city general fund.

Sec. 2-503. Trust fund—purpose.

(a) The purpose of the trust fund is to provide for the payment of benefits, losses and claims as set forth in A.R.S. § 11-981(A) which shall include legal defense costs, administrative costs, claims adjusting costs, losses (including those related to workers' compensation, personal injury or property damage), reserves for anticipated losses and lawsuits, insurance costs (including premiums), external audit and other expenses related to the operation of the city's self-insurance program. Each year, the city council, upon recommendation from the city manager in consultation with the board, will determine the amount deemed appropriate for these purposes.

(b) Such trust fund shall be funded as part of the annual budgetary and appropriation process of the city in such amounts as to provide sufficient monies to pay all reasonable anticipated claim costs and risk management costs for which the city will be responsible in the ensuing fiscal year.

Sec. 2-504. Designation of risk management consultant.

(a) Pursuant to A.R.S. § 11-981(B)(1), the city shall designate a risk management consultant ("risk manager").

(b) Under A.R.S. § 20-283(B)(7), the risk manager is exempt from licensing requirements in Title 20.

(c) The authority granted to the city under A.R.S. § 11-981 is not subject to Title 20 , except that any health, life, accident or disability benefit plan shall conform to the benefits required by Title 20.

Sec. 2-505. Administration of trust—creation of risk management trust board.

(a) *Members*. The trust shall be administered by five (5) joint members who shall serve in an advisory capacity at the sole pleasure of the city council. The city council shall appoint five (5) members, of whom no more than one may be a member of the city council and no more than one may be an employee of the city. A majority of the members shall constitute a quorum for the purpose of conducting business of the board. At the time of initial appointment, the city council shall designate the length of terms to provide for staggered terms. The resignation, incompetency, death or termination of any or all of the members shall not terminate the trust fund or affect its continuity. During a vacancy, the remaining members may exercise the power of the members hereunder. Vacancies among the members shall be filled by appointment by the city council for the remainder of the vacant term.

(b) *Duties*. The board shall meet at least once a year and shall make recommendations thereafter to the city council, through the city manager, regarding the investment and administration of the trust. The board shall submit an annual report to the city council through the city manager relating to the status of the trust fund and making other recommendations that the board deems necessary and appropriate. The risk manager shall coordinate the activities of the board and assist in the facilitation and administration of the trust fund in whatever manner is appropriate and necessary.

(c) *Bonding requirements*. The members shall be bonded in the same manner and procedure as for city employees.

(d) *Stop loss provision*. Pursuant to the self insurance provisions of the city risk management program, only a certain portion of risk exposure will be self-imposed. Levels of self-insured retention for each particular type of a risk shall be recommended by city staff and established and approved by the city council.

(e) *Annual audit*. An annual audit shall be performed by an external auditor and a copy of the report shall be kept on file in the office of the city clerk for a period of not less than five (5) years. The risk manager shall coordinate this audit.

(f) *Expenditures from trust fund*. There shall be no expenditures from the trust fund for any purpose not specified in A.R.S. § 11-981 or this article.

Sec. 2-506. Trust fund not subject to budget law.

Expenditures during the fiscal year from the trust fund and money in the trust fund at the

close of the fiscal year shall not be subject to the provisions of Title 42, Chapter 17, Article 3, of the Arizona Revised Statutes.

Sec. 2-507. Lapse of trust fund.

In the event the trust fund is no longer used by the city for the purposes stated in this article and in A.R.S. § 11-981, the fund shall revert during that fiscal year to the general fund.

Sec. 2-508. Insurance.

(a) The city manager, or his designee, is authorized to enter into, on behalf of the city, any appropriate insurance and surety bonding contracts to provide such risk insurance as he determines to be in the city's best interests.

(b) Per A.R.S. 11-981(F), the city is not authorized to purchase insurance from any insurer not authorized by the director of the department of insurance.

Secs. 2-509 – 2-524. Reserved.

DIVISION 2. CLAIMS AND DEMANDS AGAINST CITY

Sec. 2-525. Presentation of claims.

All claims against the city shall be presented as required by Arizona law.

Sec. 2-526. Manner of approval or disapproval of claims.

(a) All claims other than for damages shall be approved, negotiated or rejected by the city manager or his designee.

(b) All claims for damages shall be approved, negotiated or rejected by the risk manager where the amount thereof or the negotiated amount of payment does not exceed the sum of twenty-five thousand dollars ($25,000). Any claims payment for damages twenty-five thousand one dollars ($25,001) or greater but less than fifty thousand dollars ($50,000) shall be approved, negotiated or rejected by the risk manager with the approval of the city attorney's office. Any claims payment for damages fifty thousand dollars ($50,000) or greater but less than seventy-five thousand dollars ($75,000) shall be approved, negotiated or rejected by the risk manager upon approval of the claims committee which shall consist of the risk manager, a member of the city attorney's office and the finance and technology director or their designees and the department director representing the department to which the claim is being allocated. Any claims payment of seventy-five thousand one dollars ($75,001) or greater shall require the approval of the city council.

Sec. 2-527. Claims management procedures.

(a) The risk manager shall cause all claims to be processed in a timely manner by initiating the prompt investigation, evaluation, settlement or rejection of all claims in accordance with city claims management standards.

(b) The risk manager shall identify and pursue recoveries for the city from all available sources. If litigation is needed to effect recovery, the risk manager shall evaluate potential recovery against the legal costs and make the appropriate determination as to whether or not to initiate the recovery process.

Sec. 2-528. Report to city council.

The city manager shall advise the city council of all claims and demands paid, together with the name of the vendors or payees, dates paid and amounts.

Secs. 2-529 – 2-534. Reserved.

Section 2. That Chapter 2, Article IV, Division 2 of the Tempe City Code, Claims and Demands Against City, is hereby repealed as follows:

~~DIVISION 2. CLAIMS AND DEMANDS AGAINST CITY~~

~~**Sec. 2-162. Presentation of claims.**~~

~~All claims against the city shall be presented as required by Arizona law.~~

~~**Sec. 2-163. Manner of approval or disapproval of claims.**~~

~~(a) All claims other than for damages shall be approved, negotiated or rejected by the city manager or his designee.~~

~~(b) All claims for damages shall be approved, negotiated or rejected by the risk manager where the amount thereof or the negotiated amount of payment does not exceed the sum of twenty-five thousand dollars ($25,000). Any claims payment for damages twenty-five thousand one dollars ($25,001) or greater but less than fifty thousand dollars ($50,000) shall be approved, negotiated or rejected by the risk manager with the approval of the city attorney's office. Any claims payment for damages fifty thousand dollars ($50,000) or greater but less than seventy-five thousand dollars ($75,000) shall be approved, negotiated or rejected by the risk manager upon approval of the claims committee which shall consist of the risk manager, a member of the city attorney's office and the finance and technology director or their designees and the department director representing the department to which the claim is being allocated. Any claims payment of seventy-five thousand one dollars ($75,001) or greater shall require the approval of the city council.~~

~~**Sec. 2-164. Claims management procedures.**~~

~~(a) The risk manager shall cause all claims to be processed in a timely manner by initiating the prompt investigation, evaluation, settlement or rejection of all claims in accordance with city claims management standards.~~

~~(b) The risk manager shall identify and pursue recoveries for the city from all available sources. If litigation is needed to effect recovery, the risk manager shall evaluate potential recovery against the legal costs and make the appropriate determination as to whether or not to initiate the recovery process.~~

~~**Sec. 2-166. Report to city council.**~~

~~The city manager shall advise the city council of all claims and demands paid, together with the name of the vendors or payees, dates paid and amounts.~~

Section 3. Pursuant to the Tempe City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this 18th day of October, 2012.

Mark W. Mitchell

Mark W. Mitchell, Mayor

ATTEST:

Kay E Sacco

Deputy City Clerk

APPROVED AS TO FORM:

Andrew B. Cling

City Attorney