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**Chandler · Arizona**  
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**MEMORANDUM**  
**Law Department**

**DATE:** FEBRUARY 13, 2012  
**TO:** MAYOR AND COUNCIL  
**THRU:** MARY WADE, CITY ATTORNEY *MW*  
**SUBJECT:** ORDINANCE NO. 4351; RISK MANAGEMENT CODE AMENDMENTS

RECOMMENDATION: The City Attorney's Office recommends introduction and tentative approval of Ordinance No. 4351 adopting certain amendments to Chapter 5 of the Chandler City Code relating to Risk Management.

BACKGROUND/DISCUSSION: Section 5.03 of the City Charter authorizes the City Council to "prescribe the manner in which claims or demands against the city shall be presented, audited, and paid." Chapter 5 of the City Code was originally adopted through Ordinance No. 1928 in 1988. Significant amendments to Chapter 5 were made through Ordinance No. 2965 in 1999. As it currently reads, Chapter 5 authorizes the provision of risk management services through the Management Services Office and the designation of a Risk Manager.

During recent budget cycles, the City has eliminated the position of "Risk Manager." Thus, the function of risk management has been carried out recently by various designees of the Management Services Department. The City has also recently decided to increase the amount of litigation defense to be handled in-house through the City Attorney's Office. In light of these changes, the City Manager and the City Attorney have conferred and believe that the provision of risk management services for the City can be most effectively and efficiently carried out through the City Attorney's Office. In light of these changes, the City Attorney's Office is proposing that the Council adopt the proposed changes to Chapter 5 of the City Code relating to risk management.

Some of the highlights of the proposed changes are as follows. First, the general designation of the position of "Risk Manager" is replaced by "City Attorney" to reflect the new responsibilities taken on by the City Attorney's Office. Next, "loss trust fund" is replaced with the simpler term "loss fund" which is more in line with historic City practice of maintaining a designated account within the City finances for risk management but not necessarily a separately maintained "trust" fund.

In Section 5-3.4, an update of the settlement authority amounts is proposed. The settlement authority (formerly given to the Risk Manager) is now handled by the City Attorney and is increased from \$15,000 to \$25,000. Settlements above that amount will still require formal Council approval. This will allow full and adequate consideration of claims against the City without burdening the Council's agenda with claims which are relatively smaller by modern standards. This practice will also be similar to that of other jurisdictions. Attached is a list of settlement authority of other local cities and towns.

In light of the City now handling litigation with in-house attorneys, a new Section 5-3.5.1 is added to allow the City to retain outside expertise as well. In the past, such outside expertise has been retained directly by the independent attorneys retained to defend the City. With most cases intended to be handled internally, the new section will clarify the authority of the City staff to hire necessary independent experts and consultants to protect and defend the City's interests.

FINANCIAL IMPLICATIONS: There is no direct cost associated with the Ordinance. The Ordinance along with the consolidation of the risk management function is anticipated to result in a cost savings to the City and allow the City to permanently eliminate the Risk Manager position.

PROPOSED MOTION: Move to introduce and tentatively approve Ordinance No. 4351 authorizing amendments to Chapter 5 of the Code of the City of Chandler.

MW/rl

Table of Settlement Authority of Various Jurisdictions in Maricopa County

Jurisdiction	Risk Management	Intermediate	City Council
Scottsdale	<\$20,000	None	>\$20,000
Glendale	As designated by City Manager	None	CM has full authority
Surprise	<\$25,000 (City Atty)	<\$50,000 w/consent of CM	>\$50,000
Phoenix	<\$15,000	<\$25,000 w/consent of claims committee	>\$25,000
Tempe	<\$25,000	<\$50,000 w/consent of CA; <\$75,000 w/consent of Claims Committee	>\$75,000
Gilbert	No information found		
Peoria	<\$25,000 (City Atty)	<\$50,000 w/consent of CM	>\$50,000
Mesa	Unreported		
Avondale	\$5,000	\$25,000 w/consent of CA & CM	>\$25,000

ORDINANCE NO. 4351

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER,  
ARIZONA, AMENDING CHAPTER 5, CODE OF THE CITY OF CHANDLER,  
RELATING TO RISK MANAGEMENT

BE IT ORDAINED by the City Council of the City of Chandler, Arizona, that Chapter 5, Code of  
the City of Chandler, is amended as follows:

SECTION 1: That Chapter 5, Code of the City of Chandler is hereby amended to read as follows:

**5-1. - Risk management program.**

In order to establish a centralized and uniform administration of ~~Risk Management Services~~risk management including ~~loss trust fund~~Loss Fund management, claims administration, administration of insurance contracts and provision of loss prevention activities there is hereby established the risk management program, under the supervision of the ~~Management Services Director~~City Attorney.

**5-2. - Risk Management Duties**~~Manager~~.

Under the supervision of the ~~Management Services Director~~City Attorney, duties of the ~~Risk Manager~~risk management shall be carried out in accordance with the provisions of this chapter and shall be as follows:

- A. Claims and litigation administration.
- ~~B. Administration of loss prevention and control programs.~~
- ~~B.C.~~ Evaluation of insurance needs and self-insurance abilities.
- ~~C.D.~~ Environmental regulatory compliance ~~loss trust fund~~Loss Fund management.
- ~~D.E.~~ Other services as determined by the ~~Department Director~~City Attorney.

**5-3. - Claims administration.**

*5-3.1. Filing claims.* Claims must be made in compliance with Charter Section 5.03 and A.R.S. 12-821 et seq. and other applicable Arizona Statutes. All claims for damages shall be presented within one hundred eighty (180) days after the event, occurrence or transaction from which the damages allegedly arose, or within such shorter time as is otherwise required by law. The claim requirements contained in this section are intended to incorporate the requirements of A.R.S. § 12-821.01, and do not constitute a "binding or nonbinding dispute resolution process," "administrative claims process," or "review process" referred to

~~in A.R.S. § 12-821.01(C). There is only one (1) claim to be submitted to comply with this section and A.R.S. § 12-821.01, and it must be submitted within one hundred eighty (180) days after the event, occurrence or transaction from which the damages allegedly arose.~~

~~5-3.2. Agent for service.~~ The City Clerk of the City of Chandler is hereby designated as the agent upon whom claims filed against the City or service of process in litigation may be served pursuant to A.R.S. Rules of Civil Procedure, Rule 4.1.

~~5-3.3. Claims processing.~~ The Risk Manager/City Attorney shall establish procedures to process, evaluate, investigate and report claims filed against the City. The Risk Manager/City Attorney shall have the responsibility for the fiscal and administrative management of all claims against the City. The liability of the City for claims and claim costs shall be that established by law. ~~The responsibility for legal issues, including determining questions of law and City liability and litigation defense and strategy remains with the City Attorney.~~

~~5-3.4. Settlement.~~ It is the policy of the City of Chandler to quickly and fairly pay those claims for which the City is legally liable and to defend against those claims for which the City is not responsible. The City Attorney's office shall review and evaluate all claims received by the City.

~~A. Subject to approval of the City Attorney, the Risk Manager shall determine whether claims against the City should be settled, paid or rejected.~~

~~A. B. Subject to the approval of the City Manager/designee, the Risk Manager/The City Attorney is authorized to pay up to fifteen-twenty-five thousand dollars (\$215,000.00) in settlement of a claim against the City. Any payment in excess of such amount requires prior approval of the City Council.~~

~~B. All settlements in excess of \$25,000.00 shall require the prior approval of the City Council.~~

~~5-3.5. Litigation.~~ If, at any time in the claims evaluation process, it appears to the Risk Manager that the claim may result in litigation, s/he shall inform and consult with the City Attorney and City Manager/designee.

~~A. In the event that a legal action is filed against the City, The City Attorney shall determine whether to defend the litigation with the City Attorney Department or with outside counsel. Litigation strategy for claims referred to outside law firms for defense shall be the responsibility of the City Attorney. Referral to Retention of particular outside counsel shall be based upon their expertise, resources in the particular type of litigation involved and past performance.~~

~~B. Expenses, attorney fees and costs for such defense, whether by the City Attorney or outside counsel shall be charged to and paid from the loss-trust fund/Loss Fund by the Risk Manager/City Attorney unless payment is prohibited in accordance with § 5-7.4.~~

5-3.5.1 Retention of Expert Witnesses, Consultants, Outside Attorneys. In furtherance of the purposes of this Chapter, the City Attorney may enter contracts for professional witnesses, consultants, attorneys or other experts to assist with an existing or probable judicial or administrative proceeding in which the city or a city employee is or may become a party. Such contracts shall be made in the best interests of the City but shall not be subject to the procurement rules of Chapter 3 of this Code.

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~~5-3.6. City damages.~~ The Risk Manager/City Attorney is authorized to file such claims, counter-claims, third party claims or take other legal actions as may be necessary to seek subrogation and

reimbursement and to take other collections actions to or collect for damages sustained by City or where third parties are obligated to indemnify or reimburse the City for funds expended.

**5-4. - Loss prevention and control programs.**

The Risk Manager ~~City Attorney~~ shall ~~may insure that institute~~ loss prevention and control programs are instituted based on loss experience and industry recognized standards.

5-4.1. All City Staff shall cooperate with the City's loss prevention, claims management and risk analysis efforts to minimize risk exposure. ~~In addition, all City Staff shall cooperate as needed in the prosecution or defense of any legal action involving the City.~~

**5-5. - Evaluation of insurance needs and self insurance abilities.**

5-5.1. *Self-insurance.* The City shall act as a self-insurer for all claims and claim costs against the City other than those falling within the provisions of an insurance policy, surety bond or indemnity bond, ~~or claims for which a person or entity other than the City is legally responsible.~~ Provided, however that nothing in this section shall prohibit the City Attorney or designee from paying for the costs and fees necessary to legally establish that such insurance policy, surety bond, indemnity bond or other person or entity is legally responsible for any claim.-

5-5.2. The Risk Manager ~~City Attorney~~ shall evaluate the self-~~insurance abilities-ability~~ of the City and recommend to the City Council amounts for self-~~insurance (risk) retention~~ and for excess insurance coverage.

~~5-6. - Environmental regulatory compliance.~~

~~The Risk Manager shall coordinate the City's compliance efforts with regard to environmental regulations and with actions or orders from regulating agencies.-~~

**5-6.5-7. - Risk management loss trust fund.**

There is hereby established a risk management trust fund ~~to be known as the "Loss Fund."~~ The Loss Fund which shall be administered by the Risk Manager ~~City Attorney in conjunction with the Management Services Director~~ and shall be considered the self-~~insured (risk) retention fund.~~

~~5-6.1.5-7.1. Funds budgeted. This fund~~ The Loss Fund shall be funded as part of the annual budgetary and appropriation process of the City in ~~asuch amounts as to provide sufficient moniesamount~~ to pay all reasonably anticipated lawful claims together with defense costs and expenses, uninsured property damage and losses, excess coverage and other insurance premiums and costs, and other related costs. ~~†The Risk ManagerCity Attorney~~ shall recommend the amounts to be appropriated based on past experience, projected exposure to risk and costs and actuarial studies and projected risk analysis.

~~5-6.2.5-7.2. Fund not subject to budget law.~~ Expenditures during the fiscal year from the trust fund ~~Loss Fund~~ and monies in the trust fund ~~Loss Fund~~ at the close of the fiscal year shall not be subject to the provisions of A.R.S. §§ 42-303 ~~or 42-10442-17101~~ et seq. An audit shall be performed annually by an external auditor, and said report shall be kept on file for a minimum of five (5) years.

~~5-6.3.5-7.3. Payments from fund.~~ The Risk Manager shall pay from the trust fund ~~Loss Fund~~ the following costs, claims and expenses:

- A. Risk Management's operating expenses.

- B. Claims administration and adjusting costs.
- C. Defense costs including attorney fees and other litigation expenses and costs.
- D. Uninsured property loss and damages.
- E. Insurance premiums.
- F. Claims for which the City is liable and are not listed as exceptions herein below.

~~5-6.4.5-7.4. Unfunded liability. Because some risks are so unforeseeable, unpredictable and infrequent they cannot be budgeted for,~~ The following types of claims shall be managed by the Risk Manager City Attorney but shall not be paid from the ~~risk management trust fund~~ Loss Fund. Funds to pay such claims when the City is legally liable shall be paid from the budget of the department from which the claim arose or appropriated from contingency funds by the City Council. Such unfunded claims are:

- A. Claims arising from eminent domain, condemnation or inverse condemnation.
- B. Claims arising from dedication, rights-of-way or easements.
- C. Claims arising from zoning or contract disputes except when the dispute involves insurance coverage or when the claim arises out of an employment related matter and in the judgment of the City Attorney would normally be within the coverage of a typical employment practices liability insurance provision.
- D. Claims arising from environmental impairment or regulatory actions related thereto, pollution, or any loss connected with hazardous wastes, no matter what the cause.
- E. Asbestos related losses not involving workers' compensation statutes.

~~5-6.5.5-7.5. Exceptions.~~ The Risk Manager City Attorney shall not pay the following types of claims.

- A. Claims which are covered by a valid insurance policy.
- B. Loss from City inventory and damages to City property that have customarily been repaired by City Employees.

~~5-6.6.5-7.6. Loss Trust fund restricted.~~ The monies in the ~~risk management trust fund~~ Loss Fund shall not be expended for any other purpose but those listed herein.

~~5-6.7.5-7.7. Risk Manager City Attorney decision final.~~ The determination by the Risk Manager City Attorney of whether the claim, cost or expense or any part thereof should be paid from the ~~risk management trust fund~~ Loss Fund is final. Other departments may be charged by the Risk Manager City Attorney to reimburse the ~~loss trust fund~~ for all or portions of losses incurred by that Department.

~~5-6.8.5-7.8. Annual report.~~ The Risk Manager City Attorney shall establish loss reporting procedures and shall periodically but no less than annually prepare and submit to the City Manager a report regarding the risk management program, including loss data of self-insured risks, premium and loss record of purchased insurance and the status of the risk ~~loss fund management trust fund~~. The City Attorney may obtain An independent audit of the loss trust fund shall be included as a component of the annual report. Such report shall also contain the Risk Manager City Attorney's recommendations regarding funding, operations and administration.

**5-7.5-8. - Defense and indemnification of City Officers and Employees.**

~~5-7.1.5-8.1. City defense.~~ The City shall upon request defend and indemnify without charge, any present or former City Officer or Employee except as provided in section 5-8.5, against any civil claim, suit for damages, or other action against such employee asserted by any person or entity, which has or is alleged to have arisen from any act or omission of the employee if at the time of the act or omission the employee was acting within the scope of their employment and in good faith. However, such employee may retain his or her own counsel to assist in the defense at the sole expense of the employee. ~~Such counsel must be approved by the City, and employees may incur no defense or settlement costs without such approval. The City agrees not to unreasonably withhold such approval.~~ The City also retains the right to associate with any insured in such defense as well as the right to choose the option of advancing expenses incurred in said defense or not. ~~Any amounts that may be advanced must be reimbursed should the claim giving rise to the action subsequently be determined not to be covered under this section.~~ An employee or former employee must reasonably cooperate in good faith in defense of the claim or action to benefit from this section.

~~5-7.2.5-8.2. Employee defined.~~ Employee means any past or present elected or appointed official, officer, employee or supervised volunteer, whether or not compensated or voluntary, who is authorized to perform any act or service on behalf of the City; except this shall not include an independent contractor, or independent professional advisor to the City Council, City Staff, any board, commission or other authority when serving in a professional capacity. Employees shall include members of boards, commissions or authorities which operate under the direct supervision and control of the City serving with or without pay, when acting in their capacity as elected or appointed officials as provided by this Code or the Charter of the City of Chandler.

~~5-7.3.5-8.3.~~ Any City Employee who is held liable for the payment of any claims or damages, by way of judgment or settlement, shall be entitled to indemnification by the City for the amount of the judgment or settlement, where the act or omission resulting in such liability was done in good faith, without malice and within the employee's scope of employment and provided further that the employee participated in defense of the action with reasonable good faith and cooperation.

The City shall pay the judgment thereon or any compromise, settlement of claim or action to which the City has agreed; however, the City may reserve the right not to pay any such judgment, compromise, settlement of claim or action until it is established that the injury, loss or damages from such judgment, compromise, settlement of claim or action arose out of an act or omission occurring within the scope of employment as an employee of the City. The City is required to pay the judgment, compromise, settlement of claim or action only if the injury, loss or damage arose out of an act or omission occurring within the scope of City employment.

~~5-7.4.5-8.4. Payment from risk management loss trust fund.~~ Expenses for defense and indemnification under this section shall be paid from the risk management trust fund ~~Loss Fund~~, and shall include, without limitation, attorney's fees, expert witnesses, consultants, court costs and fees, judgments and amounts paid in settlement of a claim.

~~5-7.5.5-8.5. Exclusions.~~ The City shall not defend, indemnify nor make any payment in connection with any claim or suit made against elected or appointed officials or employees under the following circumstances:

- A. Claims or punitive damages arising out of the willful or wanton misconduct.
- B. Claims arising out of acts of bad faith and/or fraud committed by or at the direction of an individual

with affirmative dishonesty or actual intent to deceive or defraud.

C. When the employee is charged in a criminal complaint or indictment unless the act or omission giving rise to the complaint or indictment was required by or authorized under the official's or employee's duties and responsibilities.

D. Any claim filed by or on behalf of the City except such claims as may be filed by the City to recover money or other expenses for the Loss Fund.

E. Any claim arising from the operation of a City vehicle without authority.

F. Any claim for sexual abuse or harassment or immoral or sexual behavior ~~in direct disregard for City policy~~ whether caused by, instigated or directed by an employee.

G. ~~Any other claim for which the City is not legally liable.~~

Provided, however, nothing in this section shall be interpreted to prevent the City from defending against any claim or lawsuit which makes allegations of conduct falling within this section when the City believes that the allegations are not substantiated.

~~5-7.6.5-8.6. Defenses not waived.~~ Nothing in this subsection shall be construed to waive any defense or immunity available to the City or its employees in any action brought against the City or its employees. ~~This subsection shall not be construed to waive the City's immunity from liability for punitive or any other damages under relevant Federal or State law.~~

~~5-7.7.5-8.7. Notice to City required.~~ Any City Employee against whom a claim or action for damages is brought shall notify his/her immediate supervisor and the Risk Management services within the Risk Manager/City Attorney's Office within five (5) working days after he/she becomes aware of such claim or action.

~~5-7.8.5-8.8. Determination by City Attorney.~~ The City Attorney shall determine whether the provisions of this section apply to claims involving employees.

~~5-7.9.5-8.9. Joint defense.~~ In the event that the City is or may be joined with one (1) or more City Employees as defendants in a lawsuit, the City and the employee shall be jointly represented by the same legal counsel, except that a separate legal counsel ~~shall~~ may be provided to the employee at the City's expense when it is determined by the City Attorney that joint representation would be ~~either ethically inappropriate or result in a violation of the rules of professional conduct or otherwise undesirable~~ not be in the best interests of the City.

~~5-7.10.5-8.10. Conflict of interest.~~

A. Nothing in this subsection or any provision of this Code shall be construed to require the City Attorney to provide legal services in any manner which would ~~create a conflict of interest for~~ result in a violation of the Rules of Professional Conduct by the City Attorney.

B. If the City Attorney determines that representation of a City Employee would create a conflict of interest, violate the Rules of Professional Conduct or not be in the best interests of the City, the City Attorney shall notify the ~~e~~Employee and the City Council ~~Manager~~ that a conflict of interest exists of the same.

C. ~~In the event of a conflict of interest, the City will provide independent private counsel to represent~~

~~the employee; however, the employee may retain his or her own counsel at the employee's expense subject to the rights reserved elsewhere.~~

~~5-7.11.5-8.11. Reimbursement by employee.~~ In the event, that the City incurs costs and expenses on behalf of an employee, pursuant to this section, and it is later determined that the employee was not entitled to the benefits of this section, then the City ~~shall be reimbursed by~~ may seek reimbursement from the employee for all such costs and expenses, including attorneys' fees.

~~5-7.12.5-8.12. City suit.~~ The City shall bring no legal action against an employee or former employee, who is or was employed to provide professional services to the City, for any loss, damage or injury to the City resulting from any act or omission by the employee in the scope of employment, unless the act or omission resulted from willful or wanton misconduct. "Professional services" are those services which are customarily provided by persons with specialized education and training, whose actions in the private sector are commonly protected by errors and omissions insurance (e.g. architects, accountants, attorneys and engineers).

5-8. City Attorney as Risk Manager. From and after the effective date of this Ordinance, the City Attorney shall assume the duties as the risk manager of the City. Any references to "Risk Manager" in this Chapter or any other Chapter in this Code shall be deemed to refer to the City Attorney.

INTRODUCED AND TENTATIVELY APPROVED by the City Council of the City of Chandler, Arizona, this \_\_\_\_ day of \_\_\_\_\_, 2012.

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona this \_\_\_\_ day of \_\_\_\_\_, 2012.

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

Approved as to form:

\_\_\_\_\_  
CITY ATTORNEY 

Ordinance No. 4351

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4351 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2012, and that a quorum was present thereat.

\_\_\_\_\_  
CITY CLERK

Published: