

# 4

DEC 10 2012



**MEMORANDUM**

**DATE:** December 10, 2012  
**TO:** Mayor and Council  
**THRU:** Rich Dlugas, City Manager RD  
**FROM:** Debra Stapleton, Director of Human Resources DAS  
**SUBJECT:** Recommendation for Approval of Ordinance No. 4415

**RECOMMENDATION:** Approve Ordinance No. 4415 of the City Council of the City of Chandler amending Chapter 2, Code of the City of Chandler, by adding Section 16; creating the City of Chandler Worker's Compensation and Employer Liability Trust Fund, and creating the City of Chandler Worker's Compensation and Employer Liability Trust Board to administer the fund.

**BACKGROUND:** Arizona Revised Statute § 11-981 requires the establishment of a trust for the purposes of management and administration of the City of Chandler's self-funded management and administration of a worker's compensation program's assets and liabilities. The City of Chandler must establish a trust fund and trust board to administer the worker's compensation and employer liability trust by January 31, 2013 in order to remain in compliance with the requirements set forth by the Industrial Commission of the State of Arizona which is vested with the authority to approve self-insurance programs involving worker's compensation.

Chapter 2, Chandler City Code will be amended by adding Section 2-16 in order to establish the required Trust Fund for Worker's Compensation benefits. The provisions are also drafted to enable the Health Care Benefits Trust Board as established by Chapter 2, Section 15 of the City Code to also serve as the trustees of the Worker's Compensation and Employer Liability Trust fund. This is scheduled for final adoption on December 13, 2012.

**MOTION:** Approve Ordinance No. 4415 of the City Council of the City of Chandler amending Chapter 2, Code of the City of Chandler, by adding Section 16; creating the City of Chandler Worker's Compensation and Employer Liability Trust Fund, and

creating the City of Chandler Worker's Compensation and Employer Liability Trust Board to administer the fund.

Attachment: Ordinance No. 4415

ORDINANCE NO. 4415

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA AMENDING CHAPTER 2, CODE OF THE CITY OF CHANDLER, BY ADDING SECTION 16; CREATING THE CITY OF CHANDLER WORKER'S COMPENSATION AND EMPLOYER LIABILITY TRUST FUND; AND CREATING THE CITY OF CHANDLER WORKER'S COMPENSATION AND EMPLOYER LIABILITY TRUST BOARD TO ADMINISTER THE FUND.

WHEREAS, A.R.S. § 11-981 and § 23-962 authorize the City of Chandler to establish a self-funded insurance program for worker's compensation and employer liability for its employees;

WHEREAS, the City Council of the City of Chandler has determined that it is in the best interests of the City to adopt such a self-insurance program; and

WHEREAS, A.R.S. § 11-981 requires the establishment of a trust for the purposes of management and administration of this program; and

WHEREAS, A.R.S. § 11-981 also requires the establishment of a trust board to administer the trust.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CHANDLER as follows:

Chapter 2, Chandler City Code, is amended by adding Section 2-16 to read:

Sec. 2-16. City of Chandler Worker's Compensation and Employer Liability Trust; City of Chandler Worker's Compensation and Employer Liability Trust Fund; purpose.

Sec. 2-16.1 The Worker's Compensation and Employer Liability Trust is established and shall provide for a Worker's Compensation and Employer Liability Trust Board to administer the Trust Fund for the purpose of providing for payment of the City's Worker's Compensation and Employer Liability obligations as follows:

(a) All monies received by the City for the purpose of funding the Worker's Compensation and Employer Liability obligations shall be deposited into the Trust Fund, including all contributions, premiums, credits, rebates, refunds, and third-party lien recoveries.

(b) The Trust Fund shall be used for the purpose of administering, staffing, managing, and funding the City's obligations arising pursuant to the provisions of Title 23, Chapters 5 and 6 of the Arizona Revised Statutes and/or pursuant to Rule 4, Section 5 or Rule 15, Section 11 of the Chandler Personnel Rules or any other

compensation due to a former or current City of Chandler employee which is in the nature of worker's compensation.

(c) The City shall adopt a Trust Agreement that sets forth the specific terms of the Worker's Compensation and Employer Liability Trust. A stop-loss provision shall be incorporated into the Trust Agreement.

(d) An annual audit of the Trust Fund shall be conducted by an external auditor designated by the City Manager. A copy of the audit report shall be kept on file in the Office of the City Clerk for a period of not less than five years.

#### Sec. 2-16.2 Definitions.

For the purposes of this article, unless the context otherwise requires:

"Beneficiary" means an employee, former employee, or any other person entitled to receive compensation from the City of Chandler pursuant to the provisions of Title 23, Chapters 5 and 6 of the Arizona Revised Statutes and/or pursuant to Rule 4, Section 5 or Rule 15, Section 11 of the Chandler Personnel Rules or any other compensation due to a former or current City of Chandler employee which is in the nature of worker's compensation.

*Board* means the City of Chandler Worker's Compensation and Employer Liability Trust Board.

*City* means the City of Chandler.

"Plan" means the trust arrangement pursuant to which Chandler provides self-insurance for obligations arising under Chapters 5 and 6 of Title 23 of the Arizona Revised Statutes or similar obligations arising under the City Charter, Code, or Personnel Rules.

*Member* means a person appointed and serving on the City of Chandler Worker's Compensation and Employer Liability Trust Board.

*Trust Agreement* means a separate document adopted by the City setting forth the specific terms for the administration of the City of Chandler Worker's Compensation and Employer Liability Trust, including any amendments or supplements to the agreement.

*Trust Fund* means the City of Chandler Worker's Compensation and Employer Liability Trust Fund.

Sec. 2-16.3 Board; appointment; terms. The Board shall be subject to the following:

- (a) **Establishment.** The Board is established to administer the Trust Agreement and Trust Fund.

- (b) **Appointment.** The Trustees of the Chandler Health Care Benefits Trust as established by Chapter 2, Section 15 of the City Code shall also serve as the Trustees of the Trust Fund to oversee management and administration of the Trust. Provided, however, in the event that a Trustee of the Health Care Benefits Trust is unable or unwilling to serve as a Trustee of this Trust, the Mayor of Chandler shall nominate one or more individuals to serve as a Trustee in his or her stead. The Council shall consider and may appoint any individual so nominated to serve in the stead of the Health Care Benefits Trustee unable or unwilling to serve as Trustee of this Trust. Provided, however that the number and identity of the appointed Trustees shall conform to the requirements herein.
- (c) **Number and Identity.** There shall be five Trustees. No Trustee may be a member of the Council, and no more than one Trustee may be an employee of Chandler. No former member of the Council or former employee shall be a Trustee. With the exception of the employee Trustee, if any, a Trustee shall have expertise in the field of finance, employee benefits, worker's compensation, or health care.
- (d) **Bonding.** All Trustees shall be bonded in an amount to be approved by the City Manager. This requirement may be satisfied by a blanket performance bond or other coverage provided by the City of Chandler. Trustees serving as a Trustee of this Trust and the Health Care Benefits Trust may hold a single bond.
- (e) **Officers.** At the commencement of each Plan Year, the Trustees shall elect a Chairperson, Vice-Chair, and a Secretary from among themselves. The Chairperson shall preside over the work of the Trustees pursuant to this Ordinance and the Trust Document. The Vice-Chair shall preside in the Chairperson's absence. The Secretary shall cause to be maintained accurate records of all actions of the Trustees, including minutes from all Trustees' meetings. A copy of the minutes shall be retained as a record of the Trust's activities.
- (f) **Term.** The term of the office of the Trustees shall run concurrently with the terms of office for the Trustees of the Health Care Benefits Trust. Additionally, the term of a Trustee who is appointed by the Council shall run concurrent with the term of the Health Care Benefits Trustee whom the Trustee is appointed to replace. Each Trustee of this Trust shall accept the appointment in writing and shall confirm in writing that the Trustee agrees to hold and administer the Funds, in trust, pursuant to the terms of this Trust Document.
- (g) **Termination.** The term of any Trustee shall automatically terminate upon the earliest of the following: death; resignation; removal; failure to attend

three consecutive meetings; or, for a Trustee who is an employee of Chandler, the termination of such employment.

- (h) **Resignation of a Trustee.** A Trustee may resign by giving 60 days' prior written notice to the Chairman. The Chairman may exercise discretion to waive or reduce the 60-day requirement, but shall not waive the written-notice requirement. The notice shall state the effective date of resignation. The resignation shall take effect on its stated effective date unless a new Trustee is appointed and accepts appointment prior to the stated effective date, in which case the date of acceptance shall constitute the effective date of the resignation. Upon the effective date of the resignation, the resigning Trustee shall be discharged from any further duty or responsibility under the Trust, and the resigning Trustee shall deliver to the Chairman (or to the Secretary, if the Chairman is resigning) any and all property in his or her possession or control which belongs to the Plan or Trust.
  
- (i) **Removal of a Trustee.** A Trustee may be removed pursuant to Chandler City Code Section 2-6. Upon the effective date of the removal, the removed Trustee shall be discharged from any further duty or responsibility under the Trust, and the removed Trustee shall deliver to the Chairman (or to the Secretary, if the Chairman is being removed) any and all property in his or her possession or control which belongs to the Plan or Trust.
  
- (j) **Meetings.** The Trustees shall meet whenever required to provide for the orderly and timely administration of the business of the Plan and the Trust at such location as may be acceptable to the Trustees, but no less than four times per Plan Year. In calling, providing notice of, and holding meetings, the Trustees shall conform to applicable law.
  
- (k) **Quorum.** A quorum shall consist of three Trustees.
  
- (l) **Voting.** Each Trustee shall have one vote. All actions by and decisions of the Trustees shall be the affirmative vote of a majority of the number of the Trustees attending a duly called meeting of the Trustees at which there is a quorum present.

Sec. 2-16.4. Powers and duties.

- (a) The Board shall:
  - 1. Administer the Trust Fund pursuant to this article and the Trust Agreement.
  - 2. Provide financial oversight of the Trust Fund by evaluating claim expenses and reserve amounts.

3. Review quarterly the Trust Fund to insure sufficient funds exist to pay outstanding and future benefits, to pay losses or claims or any combination of insurance and direct payment, and to pay for risk management consultation.

4. Make recommendations to the City Manager on financial issues relating to Worker's Compensation and Employer Liability.

5. Comply with all requirements of State and Federal laws relating to self-insurance programs for the management and administration of Worker's Compensation and Employer Liability or other self-insured system for direct payment of benefits, losses or claims or any combination of insurance and direct payment, and including risk management consultation.

6. Meet at least four times a year, or more frequently as the Chairperson of the Board deems necessary or upon the request of the City Manager.

(b) The Board may:

1. Adopt rules or policies for the operation of the Board, which are not inconsistent with the City Code, the laws of the State of Arizona, the City Charter or any City ordinances or resolutions.

2. Appoint committees.

3. Request the City Manager to designate staff to perform assignments necessary for the administration of the Trust Fund.

4. Consult with or advise any committee, task force or working group established by the City to address worker's compensation issues or to make recommendations to the City Manager regarding such issues.

5. Delegate its duties and responsibilities in a manner consistent with its fiduciary responsibilities.

#### Sec. 2-16.5. Risk Management Consultant or Insurance Administrator; verification.

(a) The City Manager shall designate a Risk Management Consultant or an Insurance Administrator licensed pursuant to Arizona State law.

(b) City Council shall verify that any Risk Management Consultant or Insurance Administrator designated by the City Manager is licensed as required by Arizona State law.

#### Sec. 2-16.6. Termination; amendment.

(a) The City may determine that it will no longer provide the Worker's Compensation and Employer Liability plan or any other self-insured program for the management and administration of a system for direct payment of benefits, losses or claims or any combination of insurance and direct payment, and including risk management consultation, at which time the Trust Fund will be dissolved after the payment of its outstanding liabilities. Any funds remaining will revert to the City's General Fund.

(b) The City may amend the provisions of this ordinance at any time.

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

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4415 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 thereof.

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

PUBLISHED:

APPROVED AS TO FORM:

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

