City of North Port

ORDINANCE NO. 2015-43
(Adding Article VII; Section 2-383, Risk Management Program)

AN ORDINANCE OF THE CITY OF NORTH PORT, FLORIDA GRANTING DELEGATED AUTHORITY TO THE CITY MANAGER TO CONSIDER AND SETTLE CLAIMS AGAINST THE CITY OF NORTH PORT IN AN AMOUNT NOT TO EXCEED ONE HUNDRED THOUSAND DOLLARS ($100,000); AND TO AUTHORIZE THE PAYMENT OF INVESTIGATION AND LOSS ADJUSTMENT EXPENSES RELATED TO THE CITY'S RISK MANAGEMENT PROGRAM; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, The City of North Port through the Risk Management Division, operates a risk management program for the purpose of financing, preventing and controlling various types of losses and the claims resulting from same; and

WHEREAS, the losses and resultant claims may involve the coordination of Workers' Compensation, Property, Liability, Automobile, and other lines of insurance or self-insurance programs;

WHEREAS, the City Commission approves annually in public session the retention of various portions of these losses in the form of self-insured retentions for large deductibles or maintenance deductibles, by whatever name called, all of which involve the expenditure of public funds; and

WHEREAS, the City Commission has approved the creation of a Self-Insurance Fund as part of the budgeting process; and

WHEREAS, Risk Management Division is responsible for the day-to-day management of the Self-Insurance Fund; and

WHEREAS, it is the Commission's intention to delegate to the City Manager the authority to consider and settle claims in order to promote the efficient use of resources; to promote the efficient administration of the risk management program; and to allow for a timely response to claimants and/or their representatives; and

WHEREAS, the City Commission finds that the limited delegation of settlement authority to the City Manager serves a valid public purpose;

NOW THEREFORE, BE IT RESOLVED by the City Commission of the City of North Port, Florida:

The City Manager shall have the authority to investigate, adjust and settle claims made by or against the City, pursuant to the thresholds set above; and administered through the program as:

SECTION 1: DEFINITIONS

A. **Risk Management Program**: The Risk Management Program shall be administered by the Risk Management Division.

B. **Claim:** A demand for monetary benefits or payment of damages made by a person or their representative, against the City including, but not limited to, claims for bodily injury, workers' compensation, civil rights violations, property damage and claims against law enforcement. Claims include lawsuits filed in state or federal court as well as written notices of demand and intent to sue.

C. **Excess Carrier**: An insurance carrier, either on an admitted or non-admitted basis, which underwrites coverage in excess of a self-insured retention.

D. **Self-Insured Retention**: That portion of damages and loss adjustment expenses related to an occurrence that is paid by the insured under an excess insurance policy.

E. **Third Party Administrator**: A company hired to investigate and adjust claims, manage provider networks, perform utilization review and satisfy reporting requirements on behalf of a self-insured entity.

F. **Safety Program**: The City safety program shall be under the direction of the Risk Management Division, or a designee, to identify and implement ways and means to reduce and eliminate unsafe conditions or practices for which liability may occur.

G. **General Liability**: Shall be defined as all actual or alleged responsibilities to others arising out of the ownership, maintenance and use of all City property, all operations of the City, and all acts or omissions of the City's elected officials, appointees, agents and employees while acting within the scope of official duties.

SECTION 2: CREATION OF THE RISK FUND

A. The Risk Management Program shall rely upon funds placed in an internal service fund, and shall include all monies deposited by appropriation or other sources, related to such fund. The account shall consist of:

1. Any unexpended balance of any appropriation made for the expenditure of public funds for or accruing from the payment of claims and judgements against the City relation to general liability;

2. Appropriations for the payment of claims and judgments against the City relating to general liability;

3. Those costs recovered for services relating to the recovery of claims against other parties involving general liability;

4. Fines and forfeitures levied against employees as a result of being found responsible for preventable accidents;

5. Income accruing from the investment of the fund.

B. The funds are to be expended in accordance with the provisions and for the purposes stated herein. The funds shall be segregated from other funds of the City, shall be appropriated in the annual City budget, and shall be administered under the direction of the Risk Management Division and City Manager for that purpose.

SECTION 3: SETTLEMENT OF CLAIMS

The City Manager, with the advice of the City Attorney and staff, will have the authority to consider and settle all claims that are made against the City or by the City in an amount not to exceed one hundred thousand dollars ($100,000). All claims that are made against the City or by the City in an amount exceeding one hundred thousand dollars ($100,000) will be presented to City Commission for discussion and authorization to settle.

SECTION 4: LEGAL COUNSEL

The City Attorney shall perform all legal services required to accomplish the purpose of the Risk Management Program regarding the defense or prosecution or the negotiation of settlements of those claims or suits determined to be well founded for which the amounts claimed may be payable from the Self-Insurance Fund. The City Attorney may obtain outside legal services which shall be paid from the fund when such services are deemed necessary in the best interest of the City.

SECTION 5: LOSS ADJUSTMENT EXPENSES

A. The Risk Management Division shall have the authority to authorize the payment of loss adjustment expenses necessary to investigate, adjust and settle claims brought against the City. Such expenses shall include but not be limited to the cost to pay records expenses, pay filing fees and costs, procure private investigation services, perform records reviews and searches, procure bill review services, procure appraisals, and procure other expenses necessary to investigate, authenticate or evaluate a claim made against the City. Such expenses shall be subject to the Loss Verification and Expense Provisions contained in Section 5B.

B. Loss adjustment expenses shall not include the hiring or retaining of a Third Party Administrator to adjust claims under a Self-Insurance Fund. Loss adjustment expenses shall not include the hiring or retaining of expert witnesses or of outside counsel to represent the City or individual employees and commissioners named in a cause of action.

SECTION 6: LOSS VERIFICATION AND EXPENSE PROVISIONS

A. The Risk Management Division shall document each claim file with the following documents and records to support the finding of negligence or responsibility on the part of the City and/or to

support the settlement of claims as permitted pursuant to this Ordinance.

1. A Claim Form completed by the Claimant or their representative as required.

2. Documentation of an investigation including any witness statements, medical reports, collection of evidence, pictures, diagrams or other applicable information.

3. The collection of necessary documentation to approximate the value of the loss.

4. A written recommendation by the Risk Management Division or the contracted adjuster performing the investigation as to the issue of liability, claim valuation, economy and efficiency, or other reasons for the recommendation to settle within the recommended amounts.

5. A written recommendation to approve settlement by legal counsel.

B. The approval of loss adjustment expenses shall be subject to the following:

1. The City Manager may approve the purchase of specialty services procured from vendors utilized by a contracted adjuster or Third Party Administrator when performed on the City's behalf to investigate or evaluated a claim. The adjuster or Third Party Administrator shall disclose the estimated cost to provide the service prior to approval.

2. If a service, document or item is available from a single source, the payment of fees shall be permitted if such service, document or item is necessary to authenticate a claim.

3. The City Manager may approve loss adjustment expenses when the availability of expertise or service in a given area of expertise or service is determined by the adjuster and City Manager to be narrow or limited or the availability of such expertise or service is limited due to geography and such expense is determined to be necessary to authenticate or evaluate the claim.

4. If the City has exceeded its Self-Insured Retention or has executed the notification requirements for an excess carrier as to the Self-Insured Retention for a given claim, the Risk Management Division through the Third Party Administrator, shall coordinate the approval of expenditures with the excess carrier so as not to jeopardize the repayment of excess reinsurance funds.

SECTION 7: SETTLEMENT DOCUMENTS

The Risk Management Division through the City's Third Party Administrator and the City Attorney's Office shall prepare settlement and release documents for use in the settlement of claims. Such documents shall be executed by the City Manager upon settlement of the claim in question, pursuant to the provisions of this Ordinance.

SECTIONS 8: DELEGATION OF AUTHORITY

The City Manager may delegate the authority set forth in this Ordinance, in full or in part, to a member of staff, the City's contracted Third Party Administrator or legal counsel. Such delegation

may include attendance at mediation, arbitration or trial. The City Attorney and the City Manager, or their designees, are authorized to represent the City in any settlement or mediation and to agree to recommend any settlement to the Commission, or the City Manager, as appropriate.

SECTION 9: SEVERABILITY

If any section, subsection, sentence, clause, or provision of this ordinance is finally held invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, sentence, clause, or provision shall be deemed a separate, distinct, and independent section, subsection, sentence, clause, or provision and such holding shall not affect the validity of the remaining sections, subsections, sentences, clauses, or provisions.

SECTION 10: CONFLICTS

In the event of any conflict between the provisions of this Ordinance and any other City of North Port City ordinance or portions thereof, the provisions of this Ordinance shall prevail to the extent of such conflict.

SECTION 11: EFFECTIVE DATE

This Ordinance shall take effect immediately upon its adoption by the Commission of the City of North Port, Florida.

READ BY TITLE ONLY at first reading by the City Commission of the City of North Port, Florida in public session this 26 day of October, 2015.

PASSED AND DULY ADOPTED on the second and final reading in public session by the City Commission of the City of North Port, Florida this 9th day of November, 2015.

CITY OF NORTH PORT, FLORIDA

Jacqueline Moore
JACQUELINE MOORE
MAYOR

ATTEST:

Helen M. Raimbeau
HELEN M. RAIMBEAU, MMC
CITY CLERK

APPROVED AS TO FORMAT AND CORRECTNESS:

MARK MORIARTY
CITY ATTORNEY