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HELEN PURCELL  
2004-0970754 08/20/04 11:04  
4 OF 5

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When recorded mail to:

Attn: City Clerk  
City of Avondale  
11465 W. Civic Center Drive, Ste 200  
Avondale, AZ 85323

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**ORDINANCE NO. 1010-04**

**AMENDING THE AVONDALE CITY CODE  
CHAPTER 2, ADMINISTRATION  
RISK MANAGEMENT  
AND  
DECLARING AN EMERGENCY**

Passed and Adopted by the Mayor and Council of the City of Avondale  
The 21st Day of June, 2004

**ORDINANCE NO. 1010-04**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE AVONDALE CITY CODE, CHAPTER 2, ADMINISTRATION, RELATING TO RISK MANAGEMENT, AND DECLARING AN EMERGENCY.

**BE IT ORDAINED** BY THE COUNCIL OF THE CITY OF AVONDALE, as follows:

SECTION 1. That the Avondale City Code, Chapter 2, Administration, is hereby amended to add the following article:

**Article V**

**RISK MANAGEMENT**

**2-70 Definitions.**

As used in this article, the following definitions shall apply.

“Claim” shall mean any insured claim or SIR claim.

“Claim cost” shall mean any internal or external cost or expense incurred by the City in response to any claim against the City, any covered corporation, covered City entity or covered individual as defined herein, including, but not limited to, claim adjustment costs, contractual services costs, legal defense costs and attorneys’ fees awarded against the City.

“Covered corporation” shall mean any corporation created for the purpose of assisting the City in capital acquisitions and other exclusively municipal purposes.

“Covered City entity” shall mean any board, commission, committee or subcommittee created by any City Charter provision, City ordinance or resolution or other formal action of the City Council, created for or in the course of carrying out the exercising powers and duties for and on behalf of and for the exclusive benefit of the City as a public municipality.

“Covered individual” shall mean any individual acting within the scope of employment or authority and falling within the following classes as of any applicable date of loss:

- (a) Any elected official of the City.
- (b) Any individual appointed to any covered City entity or as a Board Member of a covered corporation.
- (c) Any employee of the City, including any officer of the City, carried on the City payroll and subject to City personnel rules, whether full-time, part-time, permanent or temporary.

(d) Any agent or representative appointed by the City and acting at the direction of the City.

(e) Any individual acting as a duly appointed volunteer for or on behalf of the City and who was acting under the actual direction or control of an individual described in subsections a, b or c of this definition at the time and place of the occurrence, event, act or omission alleged to have formed the basis of any claim.

“Insured claim” shall mean any claim falling within the coverage provisions of any insurance policy insuring the City, a covered City entity, a covered corporation or a covered individual.

“Risk Management Cost” shall mean any internal or external cost associated with the purchase and maintenance of any commercial property insurance policy or liability insurance policy or bond for, or on behalf of, the City or any covered corporation, covered entity or covered individual, 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 Trust Fund” shall mean the trust fund established by the City Manager for the purpose of paying claims, claim costs, SIR costs and risk management costs.

“SIR” shall mean self-insured retention.

“SIR claim” shall mean any demand, including 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) any insured claim.

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

## **2-71 Risk Management Trust Fund Established.**

(a) There is hereby established a Risk Management Trust Fund. 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.

(b) Expenditures during the fiscal year from the Risk Management Trust Fund and monies in said fund at the close of the fiscal year shall not be subject to the provisions of Title 42, Chapter 17, Article 3, Arizona Revised Statutes, as amended.

(c) The Risk Management Trust Fund shall be audited annually by an external auditor and a copy of the audit report shall be kept on file in the office of the City Clerk for a period not less than five years.

## **2-72 Risk Management Trust Fund Trustees.**

(a) The Risk Management Trust Fund shall be administered by no less than five joint trustees appointed by the City Council. All trustees shall be residents of the City. No more than one member of the City Council and no more than one City employee shall serve as a trustee. At the time of initial appointment, the City Council shall designate the length of terms to provide for staggered terms.

(b) The trustees shall be responsible for recommendations to the City Council regarding the administration of the Risk Management Trust Fund.

(c) The trustees shall meet at least once a year and submit a report to the City Council delineating the status of the Risk Management Trust Fund and including recommendations as the trustees deem necessary.

(d) The trustees shall be bonded in a minimum amount of \$10,000. Said bonding costs shall be paid by the City.

(e) The resignation, incompetency, death or termination of any or all of the trustees shall not terminate the Risk Management Trust Fund or affect its continuity. During a vacancy, the remaining trustees may exercise the power of the trustees hereunder. Vacancies among the trustees shall be filled by appointment by the City Council for the remainder of the vacant term.

## **2-73 Non-liability and Indemnification of Trustees.**

(a) Except as otherwise provided by law, the trustees shall not be liable individually for any act or omission of the trustees or representatives of the trustees for negligence, error in judgment or any act or omission, except his or her own willful misfeasance, gross negligence or bad faith in the conduct of his or her duties as a Risk Management Trust Fund trustee. Every act or thing done or omitted, and power exercised or obligation incurred by the trustees in the administration of the Risk Management Trust Fund, or in connection with any business or property of the trust, in his or her capacity as trustee, shall be deemed done, omitted, exercised or incurred by the trustee acting under the powers and duties imposed on the trustee under the provisions of this Article; and, upon any debt, claim, demand, judgment, decree or obligation of any nature whatsoever against or incurred by the trustee in his or her capacity as such, whether founded upon contract or tort, recourse shall be had solely to the property of the trust. Nothing contained in this trust shall protect the trustees or agents or representatives of the trust against liability to the trust, or to the beneficiaries thereof, for willful misfeasance, gross negligence or bad faith in the conduct of his or her duty.

(b) The trust shall indemnify, defend and hold harmless the trustees from and against all claims and liabilities, whether they proceed to judgment or are settled, to which the trustee may become subject by reason of his or her being or having been the trustee, or by reason of any action alleged to have been taken or omitted by him or her, as trustee, and shall reimburse him or her for all legal and other expenses reasonably incurred by him or her in connection with any such claim or liability; provided, however, that the trustee shall be indemnified or reimbursed under the foregoing provisions in relation to any matter, unless it shall have been adjudicated that

his or her action or omission constituted willful misfeasance, gross negligence or bad faith in the conduct of his or her duties, or unless, in the absence of such an adjudication, the trust shall have received a written opinion from the City Attorney to the effect that if the matter of willful misfeasance, gross negligence or bad faith, in the conduct of duties had been adjudicated, it would have been adjudicated in favor of the trustee. The rights accruing to the trustees under these provisions shall not exclude any other right to which her or she may be lawfully entitled, nor shall anything contained herein restrict the right of the trust to indemnify or reimburse the trustees in any proper cause, even though not specifically provided for herein; provided that the trustee may satisfy any right of indemnity or reimbursement granted herein, or to which her or she may otherwise be entitled, except as provided by law.

#### **2-74 Presentation of Claims.**

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

#### **2-75 Duties and Responsibilities of the Risk Manager and the City Attorney.**

(a) The City Manager shall designate a risk manager, licensed pursuant to Title 20, Chapter 2, Articles 3 or 9, Arizona Revised Statutes, as amended. The risk manager shall have the responsibility for (i) the fiscal and administrative management of all claims against the City defined herein, including SIR claims and insured claims, (ii) the use and implementation of alternative dispute resolution methods involving any claim, (iii) the selection, acquisition of and payment for commercial insurance policies, alternative risk financing measures and surety bonds purchased for the benefit of the City and covered corporations, entities and individuals, (iv) the payment of claim costs and risk management costs and (v) causing the City to comply with all requirements for self-insurers as such may be contained in the applicable law.

(b) The City Attorney shall have the responsibility for management of all legal actions against the City, including the direct selection of legal counsel for defense of any claim, and shall further have the responsibility for determining the legal liability of the City with respect to any claim, including any decision to file suit, defend a suit or prosecute an appeal.

#### **2-76 Manner of Approval or Disapproval of Claims.**

(a) The risk manager, acting within the parameters set by the City Attorney for determining that the City has exposure to legal liability, and upon further determining that the proposed expenditure of Risk Management Trust Funds is reasonable, may authorize and pay any SIR claim in an amount not to exceed the sum of \$5,000 in the aggregate for any single demand for any single claim. The risk manager shall consult with the City Attorney prior to any determination to pay any claim for which the exposure to legal liability is unclear. No SIR claim in litigation can be settled or paid by the risk manager without prior determination by the City Attorney that the City has exposure to legal liability.

(b) The risk manager may, with the concurrence of the City Manager and the City Attorney, authorize payment of any claim in any amount between \$5,000 and \$25,000 for any single demand for any single claim.

(c) No claim in excess of \$25,000 for any single demand for any single claim may be paid without City Council approval.

**2-77 Insurance.**

The City Manager is authorized to enter into, on behalf of the City, any appropriate insurance and surety bonding contracts to provide such risk insurance as he or she determines to be in the City's best interests. Such contracts in excess of \$25,000 are subject to City Council approval.

**2-78 Self-Insurance.**

(a) The City shall act as a self-insurer for all claims and claim costs against the City other than those falling within the coverage provisions of an insurance policy or surety bond. The City's liability for such claims and claim costs shall be governed by state and federal law.

(b) If other valid and collectible insurance is available to apply to any claim against the City, a covered corporation, a covered City entity or a covered individual, the application of the SIR shall be limited as set forth in this subsection. The SIR is primary and applies to all SIR claims except when the following apply:

(1) Any other insurance, whether primary, excess, contingent or on any other basis that covers any covered corporation, or covered City entity, whether purchased by the City or by the corporation or entity.

(2) Any automobile liability coverage on a private motor vehicle driven by a covered individual on City business.

(3) Any insurance, whether primary, excess, contingent or on any other basis, that is purchased by any other person or entity and is available to cover a claim against the City by reason of the City's having been listed as a person insured, additional insured or additional named insured on the other person's or entity's insurance.

**2-79 Procurement Code Exemption.**

Except as prohibited by Arizona law, agreements with legal counsel for the defense of a claim under this article and agreements negotiated in the settlement of a claim or litigation or threatened litigation are exempt from the requirements of the City's Procurement Code.

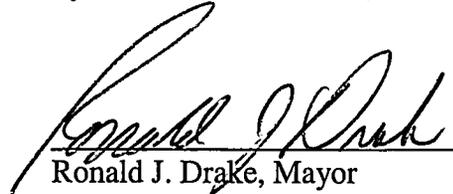
**2-80-2-90 Reserved.**

SECTION 2. The immediate operation of this Ordinance is necessary for the financing of the City of Avondale's risk management operations and for the preservation of the public health and welfare relating to risk management; therefore, an emergency is hereby declared to exist. This Ordinance shall be in full force and effect from and after its passage and approval by

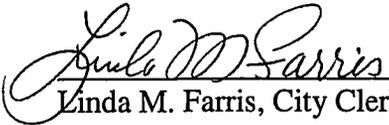
the Mayor and Council of the City of Avondale as required by law, and this Ordinance is hereby exempt from the referendum provisions of the constitution and laws of the State of Arizona.

SECTION 3. That the Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to execute all documents and take all steps necessary to carry out the purpose of this Ordinance.

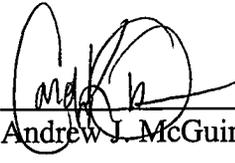
**PASSED AND ADOPTED** by the Council of the City of Avondale, June 21, 2004.

  
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Ronald J. Drake, Mayor

ATTEST:

  
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Linda M. Farris, City Clerk

APPROVED AS TO FORM:

  
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Andrew J. McGuire, City Attorney