

CITY OF ALBUQUERQUE - ORDINANCES

CHAPTER 2 - GOVERNMENT

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PART 1: SETTLEMENT OR COMPROMISE OF LITIGATION

§ 2-8-1-1 STATEMENT OF PURPOSE.

The City Council recognizes that, while the City Attorney must have maximum freedom in dealing with ordinary cases involving the city, the City Council must keep informed about the settlement of cases of a serious nature, whether for financial or policy reasons.

('74 Code, § 1-16-1) (Ord. 66-1977)

§ 2-8-1-2 SETTLEMENT AUTHORITY.

The city shall not settle or dismiss any suit on behalf of or against the city which involves an amount of \$25,000 or more, or any suit alleging the invalidity or unconstitutionality of any city ordinance where the effect of such settlement would be to compromise the terms of such ordinance, except in accordance with the procedures set out in § 2-8-1-3 herein. For the purpose of this section, SETTLEMENT amount shall mean in condemnation cases the amount which exceeds the city's highest appraisal.

('74 Code, § 1-16-2) (Ord. 66-1977; Am. Ord. 45-1987)

§ 2-8-1-3 PROCEDURE FOR SETTLEMENT.

(A) Where settlement of a case involves a decision made by the Council in an appeal, whether the matter is specified in § 2-8-1-2 or not, settlement of the case shall require a majority vote of the Council.

(B) Where settlement of a case specified in § 2-8-1-2 involves a plan adopted by the Council for urban development and conservation as specified in §§ 14-13-2-1 et seq., Planning, and the Council has adopted that plan, settlement of the case shall require a majority vote of the Council.

(C) Where settlement of a case specified in § 2-8-1-2 involves making a special agreement to delay or not enforce Council-adopted zoning or subdivision regulations, settlement of the case shall require a majority vote of the Council.

(D) In cases of proposed settlement of a case specified in § 2-8-1-2, but not specified above in this section, if the matter will not come before the Risk Management Claims Review Board or if the policy of an ordinance will be substantially affected by the proposed settlement, the City Attorney shall confer with the Director of the Council Services Department or his or her authorized representative prior to the finalization of any such settlement. Additionally, the City Attorney shall have prepared a report on every case where settlement for \$25,000 or more has occurred. Such report, including the designation of each case by name and number, settlement and the reason why the settlement was entered into, shall be made public and shall be transmitted by executive communication to the City Council within 30 days after the time for appeal of a judgement or finalization of a settlement has run.

('74 Code, § 1-16-3) (Ord. 66-1977; Am. Ord. 45-1987; Am. Ord. 8-1993)

§ 2-8-1-4 REPORTS.

The City Attorney shall, in addition to the obligations imposed in § 2-8-1-3 above, submit in writing to the Council, a quarterly report listing the amount of all settlements and judgments where the amount of the settlement or judgment exceeds \$10,000, designating each case by name and number, if applicable, and describing the nature of the case.

('74 Code, § 1-16-4) (Ord. 66-1977; Am. Ord. 45-1987)

PART 2: RISK MANAGEMENT

§ 2-8-2-1 AUTHORITY.

The Council, pursuant to Article X, Section 6 of the Constitution of New Mexico, in accordance with the New Mexico Tort Claims Act, Sections 41-4-1 et seq. NMSA 1978, hereby enacts §§ 2-8-2-1 et seq. to create a municipal public liability fund and for the purpose of providing maximum local self-government.

('74 Code, § 1-15-1) (Ord. 95-1983; Am. Ord. 66-1986)

§ 2-8-2-2 SHORT TITLE.

Sections 2-8-2-1 et seq. shall be referred to as the "City Risk Management Ordinance."

('74 Code, § 1-15-2) (Ord. 95-1983; Am. Ord. 66-1986)

§ 2-8-2-3 COUNCIL DECLARATION.

(A) The Council intends by §§ 2-8-2-1 et seq. to provide for the establishment of a Risk Management Function, a municipal public liability fund which shall be known as the Risk Management Fund, and to provide for insurance or self-insurance in accordance with the Tort Claims Act, Sections 41-4-1 et seq. NMSA 1978.

(B) Sections 2-8-2-1 et seq. shall be interpreted in a manner consistent with the express requirements of the New Mexico Tort Claims Act applicable to home rule municipalities electing to insure or self-insure through a municipal liability fund.

(C) Nothing in §§ 2-8-2-1 et seq. shall be construed as limiting the powers of the city as a home rule municipality which has adopted a charter pursuant to Article X, Section 6 of the Constitution of New Mexico.

(D) Nothing in §§ 2-8-2-1 et seq. shall be construed as a waiver of any sovereign governmental immunity.

('74 Code, § 1-15-3) (Ord. 95-1983; Am. Ord. 66-1986)

§ 2-8-2-4 INCORPORATING PROVISIONS OF THE NEW MEXICO TORT CLAIMS ACT.

The city hereby adopts and incorporates herein the New Mexico Tort Claims Act as that Act may be amended or revised from time to time.

('74 Code, § 1-15-4) (Ord. 95-1983; Am. Ord. 66-1986)

§ 2-8-2-5 RISK MANAGEMENT MANUAL.

The Chief Administrative Officer shall cause a Risk Management Manual to be prepared and distributed to all departments and division heads.

(A) The Risk Management Manual shall set forth city policies and procedures pertaining to loss prevention, accident reporting and the handling and settling of claims against the city, its officers and employees.

(B) The Risk Management Manual shall set forth procedures governing the Risk Management Claims Review Board.

('74 Code, § 1-15-5) (Ord. 95-1983; Am. Ord. 66-1986)

§ 2-8-2-6 RISK MANAGEMENT CLAIMS REVIEW BOARD.

(A) There is created a Risk Management Claims Review Board which shall not be considered as a public board. The Board shall consist of:

(1) The Chief Administrative Officer of the city or designee of the Chief Administrative Officer;

(2) The City Attorney or a designee of the City Attorney;

(3) The Director of Finance and Management or designee of the Director of Finance and Management;

(4) The Director of the Personnel Services Department or a designee of the Director of the Personnel Services Department;

(5) A department head or designee, appointed by the Chief Administrative Officer;

(6) The Risk Management Director, Deputy Director or the Claims Manager who shall be a non-voting member; and

(7) A member of the staff of the City Council designated by the Director of Council Services who shall be a non-voting member.

(B) Three voting members of the Risk Management Claims Review Board shall constitute a quorum.

(C) The Risk Management Claims Review Board shall review and approve or disapprove the handling, payment and disposition of claims in accordance with the Risk Management Manual approved by the Chief Administrative Officer of the city. A decision of the Board shall not be the subject of a grievance as defined in Chapter 3, Article 1, Merit System; Personnel Policy

('74 Code, § 1-15-6) (Ord. 95-1983; Am. Ord. 66-1986)

§ 2-8-2-7 RISKS TO BE SELF-INSURED OR INSURED.

The city shall provide for self-insurance or insurance for the following risks:

(A) All risks for which immunity has been waived under the provisions of the Tort Claims Act;

(B) All risks arising under the laws of jurisdictions other than New Mexico, including but not limited to other states, territories and possessions, and the United States of America; and

(C) For all other risks for which the Chief Administrative Officer deems it reasonable to provide for insurance or reserves. These risks shall be set forth in the Risk Management Manual and approved by the Chief Administrative Officer.

('74 Code, § 1-15-7) (Ord. 95-1983; Am. Ord. 66-1986)

§ 2-8-2-8 RISK MANAGEMENT FUND.

(A) The city hereby elects to create and maintain a municipal public liability fund as required by Section 41-4-25B NMSA 1978 of the New Mexico Tort Claims Act which shall be called the Risk Management Fund.

(B) The Risk Management Fund shall be held in trust, deposited in a segregated account and invested in accordance with law.

(C) Any money deposited in the Risk Management Fund may be expended to

purchase liability insurance; to pay costs and expenses incurred in carrying out the provisions of this section; to defend, save harmless and indemnify any officer or employee of the municipality for any liability covered by the Tort Claims Act; and to create a retention fund adequate to cover all uninsured tort liability or other liability covered by the provisions of the Tort Liability Act. Except for insurance purchased through the State Risk Manager, insurance shall be purchased through an Agent of Record selected pursuant to Chapter 5, Article 5, Public Purchases.

(D) Each year the Council shall appropriate to the Risk Management Fund such amounts as are necessary to purchase insurance or to provide adequate reserves for self-insured risks for which immunity has been waived by the New Mexico Tort Claims Act and liabilities of the city pursuant to the laws of New Mexico, this code and any applicable ordinances of the city, and the laws of the United States and other jurisdictions.

('74 Code, § 1-15-8) (Ord. 95-1983; Am. Ord. 66-1986)

§ 2-8-2-9 TORT LIABILITY PROGRAM – CLAIMS.

(A) There is hereby created a Tort Liability Claims Program within the Risk Management Fund.

(B) Claims against the Tort Liability Claims Program shall be made in accordance with the Tort Claims Act.

(C) All claims made pursuant to the New Mexico Tort Claims Act shall comply with the requirements of the Act regarding notice or written notice of the occurrence giving rise to claim, and that Act's statute of limitations;

(D) If the Director for the Risk Management Function has reason to believe that the Risk Management Fund would be exhausted by payment of all claims allowed during a particular fiscal year, the amounts paid to each claimant and parties obtaining judgments shall be prorated, with each party receiving an amount equal to the percentage their own payment bears to the total of claims or judgments outstanding and payable from the fund. Any amounts due and unpaid as a result of such proration shall be paid in the following fiscal year.

('74 Code, § 1-15-9) (Ord. 95-1983; Am. Ord. 66-1986)

§ 2-8-2-10 OTHER RISK MANAGEMENT PROGRAMS – EXPENDITURES.

Each year the Council shall appropriate such funds as may be necessary to other Risk Management Programs. Money appropriated to other Risk Management Programs may be expended:

(A) To settle, defend, and pay claims and judgments for on-the-job injuries to city employees as provided in the New Mexico Workmen's Compensation Act. All claims made pursuant to the New Mexico Workmen's Compensation Act shall comply with the requirements of that act with respect to notice or written notice of the occurrence giving rise to the claim and that Act's statute of limitations;

(B) To insure or self-insure all risks of loss of the city not insured or self-insured by the Tort Liability Claims Program. Insurance shall be purchased through one or more Agents of Record selected pursuant to Chapter 5, Article 5, Public Purchases;

(C) To pay any claims, judgments, costs and expenses incurred in carrying out the provisions of §§ 2-8-2-1 et seq. and the provisions of the Risk Management Manual;

(D) To create a retention or reserve fund and/or provide excess insurance coverage for unmatured risks and claims.

('74 Code, § 1-15-10) (Ord. 95-1983; Am. Ord. 66-1986)

§ 2-8-2-11 CONFIDENTIALITY OF RECORDS.

(A) Until the disposition of a claim or lawsuit becomes final, all claim and litigation records shall be confidential and shall not be subject to any right of inspection by any person not a city officer or employee acting within the scope of their official duties.

(B) When the disposition of a claim or lawsuit becomes final, claim and litigation records shall then be subject to public inspection, except for those records, or portions thereof, that are exempt from disclosure under the state Inspection of Public Records Act. For the purpose of this section, FINAL shall mean when the settlement agreement has been signed by all the parties when the final decree has been entered by the court, or, if the former events are not applicable, when the city closes the case.

(C) Settlement agreements, final judgments and releases executed pursuant to the final disposition of a claim or lawsuit shall not be confidential. No settlement agreement

entered into in order to settle claims or litigation against the city may contain provisions providing for the confidentiality of the settlement documents or provisions prohibiting disclosure of the reasons for entering into the settlement.

(D) Records protected pursuant to division (A) or (B) of this section shall be made available as necessary for purposes of audit or defense. Any person performing such audit or providing such defense shall keep such records confidential, except as required otherwise by law.

('74 Code, § 1-15-11A,B) (Ord. 95-1983; Am. Ord. 66-1986; Am. Ord. 53-1995)
Penalty, see § 2-8-2-99

§ 2-8-2-99 PENALTY.

Any person who reveals records protected pursuant to § 2-8-2-11(A) to another person in violation of this section is guilty of misdemeanor and shall, upon conviction, be fined not more than \$500. The city shall not employ any person so convicted for a period of five years after the date of conviction.

('74 Code, § 1-15-11C) (Ord. 95-1983; Am. Ord. 66-1986)