

1 Amended 12/19/95
2 by Ordinance No. 2645

3 Introduced April 11, 1995, by Councilman
4 Van Sandt, seconded by Councilman
5 Schedler (both by request of Administration
6

7 Item No. 95-04-1776
8

9
10 **ORDINANCE NO. 2608**
11

12 An ordinance relating to Risk Management, Insurance and Indemnification;
13 establishing the duties of a Risk Manager and the City Attorney with respect to claims for
14 certain damages against the City; establishing the Self-Insurance Retention (SIR)
15 Program for the City; establishing the funding for the SIR system; providing for
16 procedures for the approval and payment of claims; providing for the legal representation
17 of City employees and other persons and entities; providing for the payment of certain
18 judgments against the City; providing for additional contracts of insurance; prohibiting the
19 inclusion of certain indemnification provisions in City contracts; permitting the City to
20 provide legal defense and liability funding under certain circumstances; and amending the
21 Slidell City Code by adding new sections under "Risk Management, Insurance and
22 Indemnification;" and repealing City Code Sections 2-71 through 2-76, inclusive.

23 BE IT ORDAINED by the Council of the City of Slidell as follows:

24 **SECTION 1.** The Slidell City Code is hereby amended by the addition of new
25 sections under Article V, entitled "Risk Management, Insurance and Indemnification"
26 consisting of Sections 2-71 through 2-82, to read as follows:

27 Sec. 2-71. Definitions.

28 As used in this Chapter, the following definitions shall apply.

29
30 Board or Commission - Any Board or Commission, created by Charter, ordinance,
31 City Council action or Mayor action.

32
33 Budget Unit - Any department, division or function of the City's administrative
34 service including the office of Mayor and City Council.

35
36 City - The City of Slidell and all its Council members, officers, employees (when
37 acting within the scope of their authority), boards, commissions or other city-created
38 entities.

39
40 Claim - Any demand made for the payment of money damages from the City by
41 any person or entity, in the nature of a tort claim, excluding: (1) any demand based
42 solely on the assertion of a claim within the jurisdiction of a Civil Service Board; (2) a
43 demand relating solely to salary or employment benefits; (3) a demand based solely on
44 contract rights or issues; (4) a demand arising solely out of any right or claim of right to
45 property, its use or transfer; (5) a demand based on taxes; or (6) any solely non-monetary
46 demand.

47
48 Claim Cost - Any internal or external cost or expense incurred by the City in
49 response to any claim against the City, including insurance or bond policy costs;
50 contractual services costs; and legal defense costs.

51
52 Risk Fund - Any fund or account established by the Risk Manager for the purpose
53 of paying claims and claim costs.

54
55 SIR - Self-insurance retention.

4
5
6 SIR Claim - Any claim not covered by the loss payable provisions of an insurance
7 or indemnity policy.

8
9 SIR Costs - Any claim cost arising from a SIR claim.

10
11 **Sec. 2-72. Duties and responsibilities of the Risk Manager and City Attorney.**

- 12
13 (a) The Risk Manager shall have the responsibility for the fiscal and
14 administrative management of all claims as defined herein, including SIR
15 claims, against the City; responsibility for the management and budgeting
16 of the risk fund, the control of Risk Management, and the Risk Management
17 Section; the use and implementation of binding or non-binding alternative
18 dispute resolution methods involving any claim; the selection, acquisition of
19 and payment for insurance and indemnity bonding policies purchased for
20 the benefit of the City, and the payment of claim costs.
- 21
22 (b) The City Attorney shall have the responsibility for management of all legal
23 actions against the City and shall further have the responsibility for the
24 determination of the legal liability of the City with respect to any claim.
- 25
26 (c) Notwithstanding the foregoing, the Risk Manager shall have the authority
27 for management and determination of the City's responsibility for any SIR
28 claim for damages in which the claim is less than \$2,000.00; under the
29 directions provided by the City Attorney with respect to legal liability.

30
31 **Sec. 2-73. Insurance.**

32
33 The Risk Manager, acting for the Mayor, is authorized to enter into, on
34 behalf of the City, any appropriate insurance and surety bonding contracts
35 to provide such risk insurance as he/she determines to be in the best
36 interests of the City; and upon the approval of the City Attorney, to execute
37 all such contracts.

38
39 **Sec. 2-74. Self-Insurance - Scope - Fund.**

- 40
41 (a) The City shall act as a self-insurer for all claims and claim costs against the
42 City other than those falling within the provisions of an insurance policy,
43 surety bond or indemnity bond. The liability of the City for claims and claim
44 costs shall be that established by law. The Risk Manager shall cause the
45 City to comply with all requirements for self-insurers as such may be
46 contained in appropriate law to obtain for the City all benefits of any such
47 self-insurance status, and to maintain such status for as long as it is in the
48 interests of the City to do so.
- 49
50 (b) There shall be established a Risk Fund which shall be administered by the
51 Risk Manager and shall be considered an insurance reserve fund. This
52 fund shall be funded as part of the annual budgetary and appropriation
53 process of the City of Slidell in such amounts deemed necessary by the
54 City Council to provide sufficient monies to pay all reasonably anticipated
55 lawful SIR claims and claim costs against the City for the ensuing fiscal
56 year.

57
58 **Sec. 2-75. Claims payment.**

59
60 Upon receipt of the approval for payment as set forth in this chapter, the
61 Risk Manager shall be authorized and shall have the authority to pay all SIR
62 claims and claim costs for which the City is legally liable; subject to the
63 Charter, ordinances, and other provisions of law.

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6 **Sec. 2-76. Authorization for approval of claims.**

- 7
8 (a) The Risk Manager, acting within the guidelines set by the City Attorney for
9 determining that the City has exposure to legal liability, and the Risk
10 Manager's further determination that the proposed expenditure of City funds
11 is reasonable, may authorize and pay any SIR claim, whether or not in
12 litigation, in an amount not to exceed the sum of \$2,000.00 in the aggregate
13 for any single demand for any single claim. The Risk Manager shall consult
14 with the City Attorney prior to any determination to pay a SIR claim for
15 which the legal exposure is unclear. No SIR claim in litigation can be
16 settled or paid by the Risk Manager without a prior determination by the
17 City Attorney that the City has exposure to legal liability.
- 18
19 (b) The Mayor or the Mayor's designee may, with the concurrence of the City
20 Attorney, authorize the payment of any SIR claim, whether or not in
21 litigation, in an amount not to exceed \$10,000.00 in the aggregate for any
22 single demand for any single claim.
- 23
24 (c) Except as set forth herein, no SIR claim or demand against the City shall
25 be paid except upon express authorization of the City Council, unless such
26 claim or demand has been reduced to a legal judgment against the City.

27
28 **Sec. 2-77. Payment of judgments.**

29
30 Upon a determination made by the City Attorney and the Mayor, or his
31 designee, that no further judicial review is recommended or possible, and
32 upon presentation to the City of a judgment of a court directing payment of
33 any SIR damage claim or cost, upon which interest is accruing, the Risk
34 Manager may direct the payment of the judgment forthwith from City funds,
35 consistent with decisions of the courts of the State of Louisiana relative to
36 the payment of judgments notwithstanding budgetary and other provisions
37 of law, and reflect such judgment payment upon a subsequent payment
38 ordinance to be adopted by the Council.

39
40 **Sec. 2-78. Contract provisions. indemnification prohibition.**

- 41
42 (a) No City contract or agreement shall contain any provision, and the City shall
43 not be bound by any provision of any such agreement, whereby the City of
44 Slidell, its agents, officers or employees agree to provide any indemnity or
45 assume any liability for any omission, act or activity of the City, its agents,
46 servants or employees, beyond such liability as may be imposed as a
47 matter of law upon the City by reason of such omission, act or activity
48 existing in the absence of any contractual provision relating thereto.
- 49
50 (b) The City shall not enter into any contract or agreement, nor be bound by
51 any provision of any such contract or agreement whereby the City limits its
52 rights to obtain legal redress, damages or compensation whatsoever, other
53 than such limitations as may be imposed by law in the absence of any such
54 provision; for any act constituting negligence, product liability, design defect
55 or similar conduct exposing the City to a potential loss of property, personal
56 injury liability or damages recoverable by law as direct and special damages
57 for such conduct, omission or activity. The provisions of this subsection
58 shall not be construed to affect the ability of the City by contract or
59 agreement to enter into terms or conditions relative to product warranty,
60 guaranty or merchantability. The provisions of this subsection shall further
61 not be construed to limit the ability of the City to obtain property or the use
62 of any property through the acceptance of any conveyance other than a full
63 bill of sale or warranty deed.
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- 6 (c) The City shall include in all contracts in which any person, firm, corporation
- 7 or entity is acting or may act to provide goods or services or perform
- 8 contracts, including but not limited to public works contracts, on behalf of
- 9 the City; such terms and conditions requiring indemnification of the City or
- 10 insurance providing coverage for the City with or without a policy or bond,
- 11 as in the judgment of the Risk Manager and upon the recommendation of
- 12 the contracting department of the City, shall be sufficient to provide
- 13 adequate protection consistent with reasonable business requirements of
- 14 the City in the performance of a contract or work on behalf of the City. The
- 15 City Attorney may publish and distribute to the various departments,
- 16 divisions and functions of the City appropriate contractual language and
- 17 policy requirements to form part of City contracts and agreements.
- 18

19 **Sec. 2-79. Risk management loss control.**

- 20
- 21 (a) The direction of the risk management loss control function of the City and
- 22 all of its departments, divisions and functions, shall be vested in the Risk
- 23 Management Division.
- 24
- 25 (b) The Risk Manager shall have responsibility for coordination and control of
- 26 all efforts of the City of Slidell to protect against personal injury liability and
- 27 property damage loss control. The division may establish by appropriate
- 28 regulation promulgated by the Risk Manager, regulations and requirements
- 29 designed to protect the City from personal injury liability claims and property
- 30 damage claims.
- 31

32 **Sec. 2-80. Worker's Compensation**

- 33
- 34 (a) The Risk Manager shall have the responsibility for the fiscal and
- 35 administrative management of all Worker's Compensation claims against
- 36 the City; responsibility for the management and budgeting of the Worker's
- 37 Compensation risk fund, the control of risk management, and the risk
- 38 management section; and the payment of claim costs.
- 39
- 40 (b) The City Attorney shall have the responsibility for management of all legal
- 41 actions against the City and shall further have the responsibility for the
- 42 determination of legal liability of the City with respect to any Worker's
- 43 Compensation claim.
- 44
- 45 (c) The Risk Manager shall also be subject to rules and regulations from the
- 46 City Attorney, the Finance Director, and the Worker's Compensation insurer
- 47 or a third party administrator in respect to the fiscal and administrative
- 48 management of the Worker's Compensation claims.
- 49

50 **Sec. 2-81. Indemnification of officials, officers, and employees of the City of Slidell.**

- 51
- 52 (a) (1) As used in this Section, an "official, officer, or employee" of the City
- 53 of Slidell means such a person holding office or employment in the
- 54 executive branch of City government or in any department, office,
- 55 division, or agency thereof, or in any legislative branch of City
- 56 government, including, without limitation, the Mayor, a City
- 57 Councilperson; the Chief of Police; the City Attorney, the City
- 58 Prosecutor, the Chief of Staff, the Council Administrator, the Clerk of
- 59 the City Council, the Director of Finance, any City department head,
- 60 and any City employee acting under the direct supervision of a City
- 61 official.

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7 (2) As used in this Section, an "official, officer, or employee" of the City
8 of Slidell means the following boards and its members:

- 9
10 (a) The Ethics Board;
- 11 (b) The Board of Zoning Adjustment;
- 12 (c) The Planning Commission;
- 13 (d) The Zoning Commission; and
- 14 (e) Any other board or commission appointed by the Mayor or
15 City Council pursuant to the Home Rule Charter of the City of
16 Slidell.

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22 (3) As used in this Section, an "official, officer, or employee" of the City
23 of Slidell does **not** include an independent contractor, which includes
24 persons who have been hired for a specific job with the City of
25 Slidell.

26
27 (b) It is hereby declared to be the public policy of this City that the City shall
28 hold harmless and indemnify each official, officer, and employee of the City
29 from any financial loss which, for purposes of this Section, shall mean and
30 include court costs, judicial interest, and monetary damages, arising out of
31 any claim, demand, suit, or judgment in any court by reason of alleged
32 negligence or other act by the official, officer, or employee, including Civil
33 Rights violations, if the official, officer, or employee, at the time damages
34 were sustained, was acting in the discharge of his duties and within the
35 scope of his office, employment, contract, or assignment and such damages
36 did not result from the intentional wrongful act or gross negligence of the
37 official, officer, or employee.

38
39 (c) Within five days after an official, officer, or employee is served with any
40 petition, summons, complaint, process, notice, demand, or pleading, he
41 shall deliver the original or a copy thereof to the City Attorney. Failure to
42 make the required delivery under this Section to the City Attorney shall
43 preclude indemnification hereunder. Upon delivery to the City Attorney, the
44 City Attorney shall assume control of the defense of the official, officer, or
45 employee, unless:

46
47 (1) In such instances when the official, officer or employee states in
48 writing that he does **not** wish to be represented by the City Attorney,
49 the City shall **not** be responsible for the fee of any counsel retained
50 by the officer or employee.

51
52 (2) The official, officer or employee is covered by a policy of insurance
53 under the terms of which the insurance carrier is required to provide
54 counsel and the insurance carrier does in fact provide a defense for
55 the full extent of the claims made against the official, officer or
56 employee.

57
58 (3) After thorough investigation by the City Attorney, it appears that the
59 official, officer or employee was not acting in the discharge of his
60 duties and within the scope of his office, employment, contract, or
61 assignment at the time of the alleged act or omission; or that he

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6 was acting in an intentionally wrongful manner; or was grossly
7 negligent; provided that the City shall not be obligated to indemnify
8 the official, officer or employee for attorney fees incurred, unless the
9 City Attorney had determined not to assume the defense of the
10 officer or employee based on his investigation, and the court
11 subsequently finds that the official, officer or employee was acting in
12 the discharge of his duties and within the scope of his employment,
13 contract, or assignment and the damages did not result from the
14 intentional wrongful act or gross negligence of the officer or
15 employee.

16
17 (4) After thorough investigation, if it appears that representation of the
18 official, officer or employee would conflict with the representation of
19 another official, officer or employee of the City or the City itself, the
20 City Attorney with the approval of the Mayor shall secure special
21 counsel to represent the official, officer or employee at City expense.

22
23 (d) In any case where the City Attorney does not undertake the representation
24 of the official, officer or employee, the City Attorney may take such action
25 as he deems necessary including enrolling as co-counsel, to protect the
26 interests of the City.

27
28 (e) The decision of the City Attorney not to defend an official, officer or
29 employee and any and all information obtained by him as a result of the
30 investigations conducted pursuant to Paragraph (3) or (4) of Subsection C
31 shall be considered confidential and shall not be admissible as evidence in
32 any legal proceeding and no reference thereto shall be made in any trial or
33 hearing.

34
35 (f) If an official, officer, or employee of the City is held liable for monetary
36 damages for actions arising under the circumstances provided by this
37 Section, the City shall appropriate a sum sufficient to reimburse the official,
38 officer, or employee. The court, upon request of any party, shall give
39 written findings of fact as to whether the official, officer, or employee was
40 acting in the discharge of his duties and within the scope of his
41 employment, and whether the damages were the result of the intentional
42 wrongful act or gross negligence of the official, officer, or employee. An out
43 of court settlement shall have the effect of a judgment of a court of
44 competent jurisdiction for purposes of this Section, but the settlement shall
45 be approved by the City Attorney.

46
47 (g) Nothing in this Section shall in any way impair, limit, or modify the rights
48 and obligations of any insurer under any policy of insurance or impair the
49 right of the individual to obtain private counsel in his own behalf. However,
50 the City shall not be obligated to indemnify the individual for the attorney
51 fees so incurred, except as provided in Paragraph C(3) of this Section.

52
53 (h) Nothing in this Section shall prohibit the City of Slidell from entering into a
54 compromise settlement or agreement with the claimant prior to any
55 judgment.

56
57 (i) The benefits of this Section shall inure only to officials, officers, employees
58 of the City or, upon the death of the affected official, officer or employee,
59 to his legal, instituted, or irregular heirs, subject to the community rights of
60 surviving spouse, which, however, shall not enlarge or diminish the rights
61 of any other party.

6 **Sec. 2-82. Limitation of provisions.**
7

8 Nothing in this chapter shall be construed to have any effect or impact
9 on, or derogate from any other power given elsewhere in the Charter or this
10 code to other departments or entities of the City with respect to any health,
11 disability, life, or unemployment insurance or coverage. Nothing in this
12 chapter shall be deemed to have any effect upon any bonds provided in
13 connection with a public works contract; any fidelity bonding contracts,
14 provisions or requirements, or any performance or delivery agreements
15 which include performance or delivery bond or insurance provisions.
16

17 **SECTION 2.** Sections 2-71 through 2-76 be and the same are hereby repealed.
18

19 **Adopted this 9th day of May, 1995.**
20

21
22 **DELIVERED**
23 05/12/95 3:15 p.m.
24 to the Mayor

25
26 **RECEIVED**
27 05/15/95 8:40 a.m.
28 from the Mayor

21 *Richard B. Van Sandt*
22 Richard B. Van Sandt
23 Councilman, District C
24 President of the Council

25 *Salvatore A. Caruso*
26 Salvatore A. Caruso
27 Mayor
28

29 *Davis Dautreuil*
30
31 Davis Dautreuil
32 Council Administrator/Clerk of the Council
33
34