THE CITY OF ASHEVILLE

Staff Report

Council Meeting Date: March 10, 2020

Subject: Revoke Resolution 93-145 and adopt new claim settlement authority resolution

Staff Resource(s): Barbara Whitehorn, CFO, Brad Stein, Risk Manager, and Brad Branham, City Attorney

Action Requested: Revoke Resolution 93-145 and adopt new claim settlement authority resolution

Background:

- In 1993, Asheville City Council adopted Resolution 93-145; granting the City of Asheville Risk Management Division (Risk Management) authority to settle liability claims and lawsuits up to $25,000 on matters including but not limited to property damage, bodily injury, and employment claims while settlements exceeding $25,000 still required Asheville City Council approval.
- Resolution 93-145 only provided administrative settlement authority for those matters under the purview of the City's Risk Manager. However, other liability claims are handled primarily by the City Attorney, including but not limited to land use, zoning, and code enforcement matters.
- Risk Management and the City Attorney's Office seek updated settlement authority not to exceed $50,000 per claimant to increase efficiency by expediting claim resolutions.
- The proposed administrative settlement authority limit accounts for inflation since Resolution 93-145 was adopted in 1993, and expands the authority to include those claims managed by the City Attorney.
- Settlements exceeding $50,000 shall continue to require City Council approval.

Council Goal(s):

- A Financially Resilient City

Committee(s):

- Finance and Human Resources Committee - February 25, 2020 - unanimously adopted to move forward to full Council.

Pro(s):

- Increased settlement authority expedites liability claims and lawsuit resolution to support claimants' return to pre-loss condition and values the amount to keep up with inflation.
- Increased efficiency for Council Meetings as fewer small claims will require the body's consideration.
- Creates consistency for claimants.

Con(s):

- None.

Fiscal Impact:

- There is no fiscal impact to this action. Annually, the Property & Liability Fund is allocated by City Council to utilize for liability claims and lawsuit-related settlements. Other settlements would be funded by specific project budgets or department funds.

Suggested Motion:

- Motion to adopt a resolution to revoke Asheville Resolution 93-145 authorizing the City Risk Manager to settle liability claims up to $25,000 and establish policy granting the City Risk Management Division and City Attorney's Office authority to settle liability claims and lawsuits up to $50,000 per claimant.

Attachment(s)

- Resolution

RESOLUTION NO. _____

RESOLUTION TO REVOKE ASHEVILLE RESOLUTION NO. 93-145 AND ESTABLISHING POLICY REGARDING SETTLEMENT OF LIABILITY CLAIMS ON BEHALF OF THE CITY OF ASHEVILLE_____

WHEREAS, on or around September 1, 1993, the City of Asheville ("City") established a self-insured liability claim program, by which the City is a self-insured municipality as provided by the General Statutes of North Carolina and has a self-insured retention of $500,000.00 per occurrence for tort liability, meaning that the City pays from its own funds for liability claims up to this amount;

WHEREAS, in or around 1993, the Asheville Claims Corporation ("ACC") was established to assist the City with the implementation of the City's self-funded loss reserve program and to administer and resolve liability claims made against the City and its employees;

WHEREAS, on September 28, 1993, the Asheville City Council adopted Resolution 93-145, which established a policy regarding the settlement of claims filed against the City; and

WHEREAS, pursuant to Resolution 93-145, the ACC is responsible for the administration of all claims for damages against the City under the City's self-insured liability claim program; and

WHEREAS, pursuant to Resolution 93-145, the Director of Risk Management has the authority to settle all liability claims against the City not exceeding $25,000, and City Council approval is required for the settlement of all liability claims and lawsuits in excess of $25,000; and

WHEREAS, in or around 2013, the City undertook a review of the ACC and determined that the ACC was no longer necessary to assist the City with the implementation of the City's self-insured liability claim program, based, in part, on the City utilizing a Third-Party Administrator to assist the City with the review and payment of liability claims made against the City; and

WHEREAS, in or around 2014, the City Attorney's Office and City Risk Management Division reviewed and developed Claims Handling Procedures, to ensure that City liability claims handling protocols are consistent; and

WHEREAS, in 2016 the ACC was dissolved and, currently, the City Risk Management Division manages liability claims and lawsuit settlements, in accordance with the Division's Claims Handling Procedure and in collaboration with the City Attorney's Office and the Third Party Administrator, when necessary; and

WHEREAS, the Asheville City Council finds it necessary to revoke Resolution No. 93-145 and adopt a new policy regarding the settlement of claims on behalf of the City, which reflects the City's current method of handling liability claims under the City's self-insured liability claim program and to establish those limits of authority; and

WHEREAS, the Asheville City Council finds it beneficial to increase the efficiency of the claims resolution process by extending the authority to resolve legal claims not covered by the City's self-insured liability claim program. In such cases, the City Attorney shall have authority to resolve claims pursuant to the authority limits provided herein; and

WHEREAS, the Asheville City Council also seeks to timely resolve liability claims and lawsuits asserted against or by the City of Asheville and, to that end, the Asheville City Council has determined

that there is a need to increase the amount of settlement authority currently provided to the City Risk Management Division from $25,000 to $50,000, and to provide the same authority to the City Attorney for the settlement of claims not delegated to the City Risk Management Division;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

Section 1. City of Asheville Resolution No. 93-145 is hereby revoked and the City's policy regarding the settlement of liability claims and lawsuits filed against or on behalf of the City of Asheville shall be as set forth herein.

Section 2. The authority to settle liability claims and lawsuits against or on behalf of the City shall be as follows:

a. The City Risk Management Division shall be responsible for the management and administration of all liability claims asserted against the City, which are not covered by commercial insurance, subject to a $500,000 occurrence limit. The City Risk Management Division may also refer such claims to the City-retained Third-Party Administrator (TPA), as appropriate. The Risk Management Division or City-retained TPA shall manage liability claims payment of damages within the scope of administration if damages are established by judgment or a court of competent jurisdiction or by settlement, consistent with City protocol on settlement of claims. Nothing herein shall be construed to prejudice or prevent the City from asserting governmental immunity as a defense to any claim, lawsuit or to payment of any judgment, when applicable.

b. The Risk Management Division is hereby authorized to settle liability claims and lawsuits asserted against the City that do not exceed $50,000 per claimant, after consultation with the City Attorney's Office, as appropriate. When appropriate, settlements shall be consistent with recommendations made by the City-retained TPA and defense counsel.

c. The City Attorney shall be responsible for all legal claims not otherwise delegated to the City Risk Management Division. The City Attorney is hereby authorized to settle such claims and lawsuits filed against or on behalf of the City that do not exceed $50,000 per claimant.

d. Liability claims and lawsuits valued in excess of $50,000 shall be settled only with the prior approval of the Asheville City Council.

Read, approved, and adopted this 10th day of March, 2020.

_____ _____

City Clerk Mayor

Approved as to form:

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City Attorney