

ORDINANCE NO. 043, 2021  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING DIVISION 3 IN ARTICLE III OF CHAPTER 8 OF THE  
CODE OF THE CITY OF FORT COLLINS  
CONCERNING THE CITY'S SELF-INSURANCE PROGRAM AND FUND

WHEREAS, in January 1988, the City Council adopted Resolution 88-1 establishing the City's self-insurance program (the "Program") and fund (the "Fund") to provide for the legal defense, settlement and payment of civil claims brought against the City and its "public employees," as this term is defined in the Colorado Governmental Immunity Act (the "CGIA"), and for the replacement or repair of damaged or stolen City property; and

WHEREAS, in November 1988, the City Council adopted Resolution 88-183 to expand the Program and Fund to include the legal defense, settlement and payment of workers' compensation claims filed against the City by its employees; and

WHEREAS, in December of 2000, the City Council adopted Ordinance No. 177, 2000, to codify the Program and Fund by adding Division 3 to Article III of City Code Chapter 8 ("Division 3"); and

WHEREAS, the Program and Fund were established, in part, to satisfy the City's legal obligations under the CGIA to defend and indemnify its employees, which includes the City's councilmembers, appointed board and commission members and authorized volunteers, from and against certain civil claims, which obligations are currently codified in Division 6 of Article VII of City Code Chapter 2; and

WHEREAS, a recent review of Division 3 by City staff reveals the need to amend it to clarify that the Program's "covered expenses" eligible to be paid from the Fund can also be paid from other established City funds if the monies for such expenditures have either been previously appropriated for such use or transferred to the Program's Fund in compliance with the applicable provisions of Article V, Part 1 of the Charter; and

WHEREAS, the review also revealed the need to update the Program's "covered expenses" that can be paid from the Fund to be consistent with all the potential litigation that can be brought against the City and its employees, and to generally update and provide for consistency in the wording of Division 3; and

WHEREAS, the City Council determines and finds it is in the best interest of the City and its employees, and necessary for the public health, safety and welfare, for Division 3 to be amended as hereafter provided.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Section 8-105 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 8-105. - Establishment and purpose of self-insurance program and fund.**

A self-insurance program and fund are hereby authorized and established for the City. However, the establishment of the program and fund shall not be construed to expand in any way the City's legal liability to third-party claimants, whether under the provisions of the Colorado Governmental Immunity Act or otherwise. Other governmental entities may participate in the self-insurance program provided that each such entity has entered into an intergovernmental agreement with the City as authorized by C.R.S. Section 29-1-203 and Section 16, Article II of the Charter and, in such event, the terms and conditions of the intergovernmental agreement shall govern the City's obligations under the program to that other governmental entity and its public employees.

Section 3. That Section 8-106 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 8-106. - Covered expenses.**

Except to the extent the City has agreed otherwise in an intergovernmental agreement with any other participating entity concerning the participating entity's and its public employees' legal liability to third-party claimants, as authorized in § 8-105, the self-insurance fund shall only be used to pay the City's uninsured portion of the following "covered expenses":

- (1) The City's indemnity and defense obligations to its public employees under Division 6, Article VII of Chapter 2 of this Code.
- (2) The City's costs and attorney fees in anticipation of, to investigate or to defend the City and/or any of its public employees related to any of the following potential or filed claims or causes of action:
  - a. Any tort claim;
  - b. Any claim arising under contract;
  - c. Any action under Rule 106 of the Colorado Rules of Civil Procedure;
  - d. A declaratory judgment action;
  - e. Any action or claim arising under or pursuant to a state or federal statute;
  - f. An inverse condemnation or regulatory taking action; and
  - g. Any claim for equitable relief, including, without limitation, a claim for injunctive relief.
- (3) Judgments entered against and settlements agreed to by the City in civil claims or actions arising under tort, state or federal statute, Rule 106 of the Colorado Rules of Civil Procedure or that seek declaratory or equitable relief;
- (4) The City's costs and expenses incurred for the repair or replacement of City property, real or personal, which costs are sustained by reason of the theft of or the damage to said

property, excluding normal wear and tear, provided that such theft or damage is customarily covered by a commercial property insurance policy;

- (5) The City's defense costs, attorney fees, medical expenses, disability benefits, indemnity benefits and other costs associated with workers' compensation claims filed against the City;
- (6) Insurance premiums, broker fees and other costs related to the City purchase of liability, property, workers' compensation and any other insurance policies purchased by the City, but excluding title insurance policies;
- (7) The City's costs to administer the self-insurance program and fund as are deemed reasonable and necessary by the City's Financial Officer or such officer's designee; and
- (8) The City's loss prevention costs for safety training, incentive programs, personal protective equipment for employees, industrial hygiene studies and other expenses that are deemed appropriate by the City's Financial Officer or such officer's designee.

Section 4. That Section 8-107 of the Code of the City of Fort Collins is hereby amended to read as follows:

**8-107. - Funding of the self-insurance program.**

The self-insurance program shall be funded by monies appropriated by the City Council for expenditure from the self-insurance fund, and the self-insurance fund is hereby established to be used for payment of the covered expenses described in § 8-106. Notwithstanding the foregoing, no payment from the self-insurance fund shall exceed the uninsured portion of any covered expense. In addition, nothing in this Division 3 is intended to prohibit expenditures from other City funds to pay the self-insurance program's covered expenses described in § 8-106 provided the monies for such expenditures have either been previously appropriated for such use or transferred to the self-insurance fund in compliance with the applicable provisions of Article V, Part 1 of the Charter.

Section 5. That Section 8-108 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 8-108. - Implementation and administration.**

- (a) The City's Financial Officer shall be responsible for implementation and administration of the self-insurance program and fund, including the settlement of claims. The Financial Officer is authorized to promulgate rules for the proper daily management, operation and maintenance of the program and fund, and is further authorized to enter into professional services agreements pursuant to relevant provisions of this Code for the administration of claims.
- (b) The Financial Officer or such officer's designee shall authorize expenditures from the self-insurance fund and may use other legally available funds for covered expenses described in § 8-106 and shall maintain such accounting records pertaining to each such transaction as may be deemed necessary by the City's Financial Officer. Covered expenses shall be paid on an occurrence basis.

(c) The total amount of the covered expenses paid out of the self-insurance fund shall be allocated among the various service areas or departments of the City, and the service areas and departments charged therefor, according to an assessment of each service area's and department's exposure by the Financial Officer or such officer's designee. Factors to be considered by the Financial Officer or such officer's designee shall include, without limitation, each service area's or department's payroll, revenue, value of property utilized, previous loss history, expected losses, and reserves for workers' compensation claims that may be required by the Colorado Department of Labor and Employment.

Introduced, considered favorably on first reading, and ordered published this 16th day of March, A.D. 2021, and to be presented for final passage on the 20th day of April, A.D. 2021.



Mayor

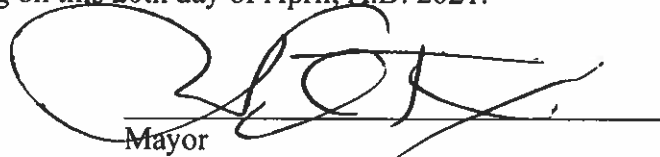
ATTEST:



City Clerk



Passed and adopted on final reading on this 20th day of April, A.D. 2021.



Mayor

ATTEST:



City Clerk

