

PROPOSED

ORDINANCE NO. 2018-

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO CLAIMS AGAINST OR ON BEHALF OF BROWARD COUNTY; REPEALING AND REPLACING SECTION 1-51.3 OF THE BROWARD COUNTY CODE OF ORDINANCES ("CODE") TO CLARIFY AND MODIFY THE AUTHORITIES OF THE COUNTY ADMINISTRATOR AND THE COUNTY ATTORNEY; REPEALING SECTIONS 1-195 THROUGH 1-202 OF THE CODE; AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

(Sponsored by the Board of County Commissioners)

WHEREAS, Section 1-51.3 of the Broward County Code of Ordinances ("Code") provides certain authority to the County Administrator and County Attorney to settle claims, and provides certain authority to the County Attorney to file and prosecute claims; and

WHEREAS, Section 1-51.3, when originally enacted in 1976, authorized the County Administrator and the County Attorney to settle claims that did not exceed \$2,500; and when amended in 1990, the County Administrator's settlement authority remained limited to \$2,500, while the County Attorney's settlement authority was increased to \$15,000; and

WHEREAS, the settlement authorities of the County Administrator and the County Attorney have not been increased for more than 27 years; and

WHEREAS, aside from the occurrence of substantial inflation since 1990, a review of settlement authorities in neighboring jurisdictions supports an increase in the settlement authorities for the County Administrator and the County Attorney; and

1 WHEREAS, on October 1, 2011, the Florida statutory limitation for tort liability
2 claims against governmental entities as stated in Section 768.28(5), Florida Statutes,
3 increased from \$100,000 per claim to \$200,000 per claim, and from \$200,000 per
4 occurrence to \$300,000 per occurrence; and

5 WHEREAS, Sections 1-195 through 1-202 of the Code addressing tort and
6 workers' compensation claims were originally enacted in 1977; these provisions of the
7 Code were amended only once in 1981 to provide that a concurring opinion from the
8 County Attorney is not necessary for the County Administrator to settle claims for less
9 than \$1,000; and these provisions of the Code are generally duplicative of, or in conflict
10 with, the authorities stated in Section 1-51.3; and

11 WHEREAS, the Board of County Commissioners ("Board") believes that the
12 authority of the County Administrator and the County Attorney to assert and settle
13 claims should be modified and clarified, and that clearly articulated authority for the
14 County Attorney to file, prosecute, and defend claims is essential to the vigorous
15 protection of the County's legal rights; and

16 WHEREAS, the Board has determined that the Code amendments contained in
17 this Ordinance will enable the Offices of the County Administrator and the County
18 Attorney to more effectively and efficiently prosecute, defend, and, when appropriate,
19 settle claims on behalf of the County,

20

21 BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
22 BROWARD COUNTY, FLORIDA:

23

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Coding: Words in ~~struck-through~~ type are deletions from existing text. Words in
underscored type are additions.

1 Section 1. Section 1-51.3 of the Broward County Code of Ordinances is
2 hereby repealed in its entirety, and a new Section 1-51.3 is hereby created to read as
3 follows:

4 [Underlining omitted]

5
6 **Sec. 1-51.3. Claims Against or on Behalf of the County; Authority of the**
7 **County Administrator and the County Attorney.**

8 (a) *Definitions*

9 (1) *Claim* means any and all claims, demands, or causes of action asserted
10 by one person or entity against a different person or entity arising out of
11 the same incident or occurrence.

12 (2) *Claim Amount* for a Liability Claim means the total monetary amount to be
13 paid by the County; and *Claim Amount* for a County Claim means the fair
14 value of the Claim as determined by the person or entity authorized to
15 settle the Claim. The following elements shall not be included in
16 calculating the Claim Amount: any declaratory, injunctive, or other
17 nonmonetary relief; attorneys' fees and taxable costs of any party to the
18 extent waived as part of the settlement; any applicable deductible(s) under
19 a County insurance policy; and any actual costs to be incurred by a
20 person or entity to come into compliance with any applicable law, rule, or
21 regulation.

22 (3) *County Claim* means a Claim originally asserted on behalf of, or in the
23 name of, the County, including its respective divisions, councils, boards,
24 offices, or departments.

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- 1 (4) *Liability Claim* means a Claim originally asserted against the County,
2 including its respective divisions, councils, boards, offices, or departments.
- 3 (b) *County Administrator Authority*
- 4 (1) The County Administrator may settle, adjust, and otherwise compromise
5 any Claim for which the Claim Amount does not exceed Fifteen Thousand
6 Dollars (\$15,000).
- 7 (2) The County Administrator may assert, on a presuit basis only, a County
8 Claim in any amount for subrogation or relating to personal injury or
9 property damage, and may settle, adjust, or otherwise compromise any
10 such County Claim, on a presuit basis only, for the full Claim Amount,
11 provided the Claim Amount does not exceed One Hundred Thousand
12 Dollars (\$100,000).
- 13 (3) For all such Claims, the County Administrator shall:
- 14 a. Investigate the facts and circumstances surrounding or relating to
15 the Claim;
- 16 b. Maintain a written account of any investigation and the County
17 Administrator's conclusions and recommendations as to the proper
18 disposition of the Claim; and
- 19 c. Provide a quarterly report to the Board of all Claims settled by the
20 County Administrator.
- 21 (4) The County Administrator is authorized to execute on behalf of the County
22 all necessary and pertinent documents and pay vouchers for all
23 settlements authorized under this Section 1-51.3.
- 24

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1 (5) The Risk Management Director may exercise the authorities granted to
2 the County Administrator under this section for Liability Claims for which
3 the Claim Amount does not exceed Ten Thousand Dollars (\$10,000), and
4 for County Claims in any amount.

5 (c) *County Attorney Authority to File Original Actions to Assert Claims*

6 (1) The County Attorney is authorized to file the following actions without prior
7 approval of the Board:

- 8 a. Any County Claim for which there is an imminent filing deadline or
9 which seeks emergency relief; provided that the County
10 Administrator (or designee) provides a written concurrence that the
11 filing is appropriate under the circumstances, and provided that the
12 County Attorney seeks ratification of the filing by the Board at the
13 next regularly scheduled Board meeting;
- 14 b. Any Claim arising out of the same incident or occurrence at issue in
15 a pending lawsuit;
- 16 c. A lien, levy, garnishment, proof of claim, administrative action,
17 adversary action, or any other action to collect or enforce payment
18 of taxes, fines, or penalties (including attorneys' fees, costs, and
19 interest) due to the County;
- 20 d. Any action to allocate tax deed surplus funds;
- 21 e. Any action to pursue a subrogation claim;
- 22 f. Any code enforcement action to enforce the County's regulatory
23 code provisions; and
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1 g. Any action in connection with a County Claim that is not addressed
2 elsewhere in this subpart (c) for which the Claim Amount that does
3 not exceed Twenty-Five Thousand Dollars (\$25,000).

4 (2) Except as otherwise stated in this section or authorized by any other
5 provision of the Broward County Code of Ordinances or the Broward
6 County Administrative Code, approval of the Board is required for the
7 County Attorney to file an original action to assert a Claim.

8 (d) *County Attorney Prosecution and Defense of Claims.* The County
9 Attorney shall prosecute and defend, as applicable, all Claims, and in connection
10 therewith is authorized and empowered to:

11 (1) File any and all pleadings, motions, claims, and defenses determined by
12 the County Attorney to be appropriate, including, without limitation, causes
13 of action, affirmative defenses, counterclaims, crossclaims, third-party
14 claims, appeals, and other legal devices or procedural actions arising in
15 connection with a Claim;

16 (2) Designate and assign attorneys within the Office of the County Attorney to
17 prosecute or defend the Claim as the County Attorney deems appropriate;

18 (3) Retain expert witnesses as deemed prudent by the County Attorney; and

19 (4) Take all legal actions deemed appropriate by the County Attorney to
20 vigorously prosecute and defend Claims, as applicable, including, without
21 limitation, asserting, amending, or withdrawing causes of actions or
22 defenses, entering into stipulations of fact or law, and actions or
23 proceedings to obtain nonparty or third-party discovery.
24

1 (e) *County Attorney Settlement Authority.* The County Attorney is authorized
2 and empowered to settle or otherwise compromise the following Claims:

3 (1) Any Claim for which the Claim Amount does not exceed Twenty-Five
4 Thousand Dollars (\$25,000);

5 (2) With the written concurrence of the County Administrator, any Claim for
6 which the Claim Amount does not exceed Fifty Thousand Dollars
7 (\$50,000);

8 (3) The attorneys' fees portion of any workers' compensation Claim as set
9 forth in Section 440.34, Florida Statutes, or as approved by the Judge of
10 Compensation Claims; and

11 (4) Any Claim for which the County Attorney was authorized to file the original
12 action without prior Board approval and without subsequent Board
13 ratification.

14 (f) *County Attorney Quarterly Reports.* The County Attorney shall file a
15 quarterly report with the Board reflecting, for the applicable period, all County Claims
16 originally filed and all Liability Claims settled, including for such settled Claims the total
17 monetary amounts demanded (if stated), the total Claim Amount, and any other
18 pertinent nonmonetary settlement terms.

19 (g) *Cooperation Between the County Administrator and the County Attorney*

20 (1) If the County Administrator is unable to settle a Claim after exhausting
21 reasonable efforts to do so, the County Administrator may forward said
22 Claim to the County Attorney for further action. All such forwarded Claims
23 shall be accompanied by a summary of the claim and actions taken to
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1 date by the County Administrator, all pertinent documents, and the County
2 Administrator's recommendations for further action.

3 (2) Upon request of the County Attorney, the County Administrator shall
4 provide staff assistance to investigate regarding any Claims being handled
5 by the Office of the County Attorney. If deemed appropriate by the County
6 Attorney, the County Attorney may refer Claims to the County
7 Administrator for investigation, fact finding, or reporting, or for the purpose
8 of attempting an adjustment, settlement, or compromise.

9 (h) *Consistency with County Code.* Nothing in this Section 1-51.3 modifies
10 the authority delegated by the Board to the County Administrator, the County Attorney,
11 or any other person or entity under any other section of the Broward County Code of
12 Ordinances or the Broward County Administrative Code.

13
14 Section 2. Sections 1-195 through 1-202 of the Broward County Code of
15 Ordinances are hereby repealed in their entirety.

16
17 Section 3. SEVERABILITY.

18 If any portion of this Ordinance is determined by any Court to be invalid, the
19 invalid portion shall be stricken, and such striking shall not affect the validity of the
20 remainder of this Ordinance. If any Court determines that this Ordinance, or any portion
21 hereof, cannot be legally applied to any individual(s), group(s), entity(ies), property(ies),
22 or circumstance(s), such determination shall not affect the applicability hereof to any
23 other individual, group, entity, property, or circumstance.

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1 Section 4. INCLUSION IN CODE.

2 It is the intention of the Board of County Commissioners that the provisions of
3 this Ordinance shall become and be made a part of the Broward County Code; and that
4 the sections of this Ordinance may be renumbered or relettered and the word
5 "ordinance" may be changed to "section," "article," or such other appropriate word or
6 phrase in order to accomplish such intentions.

7
8 Section 5. EFFECTIVE DATE.

9 This Ordinance shall become effective as provided by law.

10
11 ENACTED

12 FILED WITH THE DEPARTMENT OF STATE

13 EFFECTIVE

14
15 Approved as to form and legal sufficiency:
Andrew J. Meyers, County Attorney

16
17 By /s/ René D. Harrod 12/19/17
18 René D. Harrod (date)
19 Deputy County Attorney

PROPOSED

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23 RDH/ab
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24 Section 1-51.3. Ordinance.doc
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