

ORDINANCE 497-11

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, ADOPTING AND MAKING PART OF THE TOWN CODE THAT DOCUMENT TITLED "CHAPTER 18 FIRE PREVENTION AND PROTECTION" AND MADE A PUBLIC RECORD BY RESOLUTION 881-11.

WHEREAS, the Mayor and Council deem it necessary to adopt certain regulations to protect, enhance and promote the health, safety and welfare of the Town of Queen Creek ("Town") and its residents, and

WHEREAS, the Mayor and Council desire to prevent fire hazards which threaten the safety of individuals and private and public improvements, including residential, commercial and industrial dwellings, and

WHEREAS, the Town of Queen Creek is authorized to provide services relating to the protection of lives and property including, but not limited to, fire protection services, arson investigation, rescue services, emergency medical services, hazardous material emergency response services; and

WHEREAS, the Mayor and Council find that the costs of providing some of the services of the Queen Creek Fire Department are an increasing burden on the Town of Queen Creek; and

WHEREAS, it is the purpose and intent of the Town of Queen Creek to establish rates to cover the cost of services which the Queen Creek Fire Department provides related to motor vehicle accidents, collisions, motor vehicle fires, motor vehicle extractions, hazardous materials spills or discharge, including but not limited to utility line incidents, and other emergency incidents; and

WHEREAS, the Town possesses the authority to adopt regulations for the prevention and extinguishment of fires, arson investigation, appropriation, control of the finances and property of the town, cost recovery, and the protection of the health, safety and welfare of town residents, A.R.S. §§ 9-240; 9-951; 9-500.01, 9-500.02, 9-500.20, 12-961, 12-962, 12-964, 12-971, 12-972 and the Town of Queen Creek Fire Code; and

WHEREAS, Arizona Revised Statutes Section 9-802 et seq. provides a procedure for adopting ordinances by reference.

NOW THEREFORE, BE IT ORDAINED by the Council of the Town of Queen Creek, Arizona, as follows:

Section 1. The document titled "*Chapter 18 Fire Prevention and Protection*," attached hereto as Exhibit "A" and made a public record by Resolution 881-11 is hereby adopted by reference and made a part of the Town Code as if fully set out in this Ordinance.

Section 2. Any person who shall violate any of the provisions of the provisions of Exhibit "A" or the Fire Code adopted by the Town or fail to comply therewith, or who shall violate or fail to comply with any order made under this article or such Fire Code, or who shall build in violation of any detailed statement of specifications or plans submitted and approved

under this article or such Fire Code or any certificate or permit issued under this article or such Fire Code, shall severally, for each violation and noncompliance respectively, be guilty of a Class 1 misdemeanor and shall be punished by a fine not to exceed \$2500.00, by imprisonment for a period not to exceed six months, by a term of probation not to exceed three (3) years, or by a combination of such fine, imprisonment, and probation. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violations or defects forthwith. Each day that prohibited conditions are maintained shall constitute a separate offense punishable as hereinabove described.

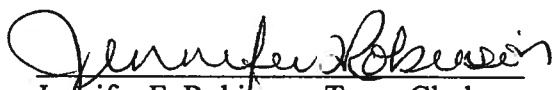
Section 3: If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of this addition adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section 4. The Town Clerk is hereby directed to publish this adopting ordinance in full.

PASSED AND ADOPTED by the Town Council of the Town of Queen Creek this 18th day of May 2011.

ATTEST:

TOWN OF QUEEN CREEK, an Arizona
municipal corporation


Jennifer F. Robinson, Town Clerk


Gail Barney, Mayor

REVEIWED BY:


John Kross, Town Manager

APPROVED AS TO FORM:

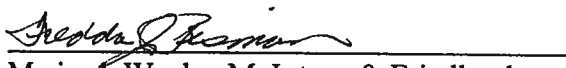

Mariscal, Weeks, McIntyre & Friedlander,
P.A.
Town Attorneys

EXHIBIT A
TO ORDINANCE NO. 497-11

CHAPTER 18 FIRE PREVENTION AND PROTECTION

ARTICLE 18-1 FIRE PREVENTION AND PROTECTION

Section 18-1-1 Fire Department established; authority and duties

A. There is hereby established for the Town of Queen Creek a Fire Department. The Fire Department shall be headed by the Chief of the Fire Department. The Chief of the Fire Department is hereby granted authority to enforce the provisions of this chapter and the Town's adopted fire prevention code (the "Town of Queen Creek Fire Code" or the "Fire Code"). The Chief shall be responsible for the direction of all firefighting, fire prevention, and fire service activities of the Town and be responsible for planning and developing programs to protect the life and property in the Town from fire. The Chief shall be responsible for establishing departmental policies and rules necessary for the operation of the Fire Department. The Chief shall assign, appoint, and designate personnel and maintain training programs.

B. The Chief of the Fire Department may designate members of the Fire Department as arson investigators who shall, while engaged in arson investigations in this State, possess and may exercise law enforcement powers of peace officers of this State provided that:

1. The primary duty of arson investigators is the investigation, detection and apprehension of persons who have violated or are suspected of violating any provisions of A.R.S. title 13, chapter 17 (A.R.S. § 13-1701 et seq.) relating to crimes of arson; and
2. Any individual designated as an arson investigator shall have law enforcement training under the provisions of A.R.S. § 41-1822.
3. This subsection shall not be construed as granting any powers of peace officers of this State to arson investigators other than those necessary for the investigation, detection and apprehension authority as specifically provided herein.

C. The Chief of the Fire Department shall appoint a Fire Marshal who shall perform the functions of fire prevention throughout the Town. The Fire Marshal is hereby granted authority to enforce the provisions of this chapter and the Town's adopted Fire Code.

D. The Fire Department shall be responsible for extinguishing fires and performing necessary public services of an emergency nature. The Fire Department shall also maintain effective operation of Fire Department communications.

E. The Fire Department is hereby granted the authority to:

1. Organize and maintain fire alarm and telephone systems, provide for the management and control of the same, for the appointment of superintendents

thereof, also to erect and maintain suitable buildings, equipment and implements.

2. Regulate or prohibit the manufacture, keeping, storing and using of powder, dynamite, gun cotton, nitroglycerine, fireworks and other explosive materials and substances.
3. Regulate the storage of hay, straw, oil and other inflammable and combustible materials.
4. Regulate the use of steam engines, gas engines, steam boilers and electric motors, and to prohibit their use in such localities as in the judgment of the Fire Marshal would endanger public safety or health; also to regulate the installation of gas and electric fixtures and appliances and to provide for proper inspection of same.
5. Prescribe fire limits and determine the character and height of buildings that may be erected therein and the nature of the materials to be used in the construction, alteration or repair of such buildings or in the repair or alteration of existing buildings within such fire limits.
6. Regulate the construction of and the materials used in all buildings, chimneys, stacks and other structures; and the construction and use of party walls; to prevent the erection and maintenance of unsafe or insecure buildings, walls, chimneys, stacks or other structures, and to provide for their summary abatement or destruction; to regulate the materials used in and the method of construction and location of drains and sewers, the materials used in wiring buildings or other structures for the use of electricity for lighting, power, heat or other purposes, and materials used in piping buildings or other structures for the purpose of supplying the same with water or gas and the manner of so doing; to prohibit the construction of buildings and structures which do not conform to such regulations.
7. Require the owners and lessees of buildings or other structures to place upon or in them adequate fire escapes and appliances for protection against fire and for the extinguishment of fires.
8. Prevent the construction and to cause the removal of dangerous chimneys, fireplaces, hearths, stoves, stovepipes, ovens, boilers, apparatus and machinery used in any building in the Town; to regulate the carrying on of manufacturing liable to cause fire; to prevent the depositing of ashes, the accumulation of shavings, rubbish or any other combustible material in unsafe places, and to make all necessary provisions to guard against fires.
9. Recover costs for services rendered within and without the Town's corporate limits.
10. Perform such additional duties and services as may be required by the Town Council.

F. The Chief of the Fire Department and officers of the Fire Department, when at the scene of a fire or other emergency, may direct or assist peace officers in directing traffic there at or in the immediate vicinity.

Section 18-1-2 Fire Department response outside Town boundaries

The Fire Department is hereby authorized to answer fire alarms, fight fires and provide emergency services beyond the corporate boundaries of the Town of Queen Creek whenever the Fire Chief, in his discretion, shall deem it necessary for the protection of lives and property. The Fire Department is authorized to charge Emergency Medical Equipment and Standby Personnel fees, and other charges for recovery of costs applicable when Town of Queen Creek firefighters, paramedics, and equipment are used to provide service outside the incorporated boundaries of the Town of Queen Creek.

Section 18-1-3 Enforcement; annual report

A. The Fire Code, also referred to herein and within Chapter 7 of the Queen Creek Town Code as "This Code", including all related technical codes and standards, amendments, rules and regulations for the technical codes, appendices and other building regulations adopted by the Town shall be enforced by the Fire Department of the Town, under the supervision of the Chief of the Fire Department.

B. The Chief of the Fire Department may detail and assign such members of the Fire Department as fire prevention inspectors as shall from time to time be necessary. The Chief of the Fire Department shall recommend to the Town Manager the employment of technical inspectors when necessary.

C. A report on fire prevention activities shall be made annually and transmitted to the Town Manager, or more frequently as determined by the Chief of the Fire Department and Town Manager. It shall contain all proceedings under this chapter with such statistics as the Chief of the Fire Department may wish to include therein and recommendations of amendments to this chapter and the Fire Code.

Section 18-1-4 Permits; reviews and inspections

The Chief of the Fire Department, Fire Marshal, or designee, including designated fire code officials, are authorized to receive applications, review construction documents, conduct inspections and re-inspections, and issue certificates and permits, and stipulate conditions therefore. Permits shall not be issued when public safety would be at risk, as determined by the issuing fire code official(s).

Section 18-1-5 Modifications

The Chief of the Fire Department shall be authorized to determine the specific applicability of the Fire Code adopted by the Town when there are practical difficulties in carrying out the strict letter of the code, upon written application that a practical difficulty exists; provided, that the spirit of the Fire Code shall be observed, public safety secured and substantial justice done. The particulars of such modification, when granted or allowed, and the decision of the Chief of the Fire Department thereon, shall be entered upon the records of the Fire Department, and a signed copy shall be furnished to the applicant.

Section 18-1-6 Conflicting provisions

Nothing in the Fire Code adopted by the Town shall be construed to prevent the enforcement of other laws which prescribe more restrictive limitations, nor shall the permissive provisions of the Fire Code be presumed to waive limitations imposed by other statutes or ordinances of the Town or the State.

Section 18-1-7 Tampering, injuring fire alarm system or pumps and hydrants

It shall be unlawful for any person to tamper or injure any part of a fire alarm system or any reservoir, pumps, pipes, valves, gates and fire hydrants or to use or remove, without permission of the Chief of the Fire Department, except for the protection of property from fire damage, any part of the equipment of the Fire Department.

Section 18-1-8 Interference with firefighters in performance of duties; disobedience to orders of firefighters engaged in duties

It shall be unlawful for any person to interfere with the lawful efforts of any firefighter, or company of firefighters, including the Fire Marshal, paramedics and fire code officials, in the performance of their duties, or to engage in any disorderly conduct which might reduce the efficiency of such firefighters, or to forbid, prevent or dissuade others from assisting such firefighters in the performance of their duties, or to disobey the lawful orders of the public officer or firefighters while engaged in extinguishing any fire or responding to an alarm or fire.

Section 18-1-9 On-site plans

Plans and specifications shall be submitted to the Fire Department for review and approval prior to construction. One set of fire department approved plans shall be on the job site for each inspection.

Section 18-1-10 Explosives and blasting

Explosives shall not be possessed, kept, stored, sold, offered for sale, given away, used, discharged, transported or disposed of within hazardous fire areas, except by permit issued by the Fire Marshal.

Section 18-1-11 Fireworks

Fireworks shall not be used or possessed in hazardous fire areas. The Fire Marshal is authorized to seize, take, remove or cause to be removed fireworks in violation of this subsection.

Section 18-1-12 Violation; penalty

Any person who shall violate any of the provisions of this article or the Fire Code adopted by the Town or fail to comply therewith, or who shall violate or fail to comply with any order made under this article or such Fire Code, or who shall build in violation of any detailed statement of specifications or plans submitted and approved under this article or such Fire Code or any certificate or permit issued under this article or such Fire Code, shall severally, for each violation and noncompliance respectively, be guilty of a Class 1 misdemeanor and shall be punished by a fine not to exceed \$2500.00, by imprisonment for a period not to exceed six months, by a term of

probation not to exceed three (3) years, or by a combination of such fine, imprisonment, and probation. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violations or defects forthwith. Each day that prohibited conditions are maintained shall constitute a separate offense punishable as hereinabove described.

ARTICLE 18-2 EMERGENCY SERVICE COST RECOVERY

Section 18-2-1 Short Title

This Article shall be known as the "Emergency Service Cost Recovery Ordinance".

Section 18-2-2 Findings

1. The Town of Queen Creek is authorized to provide services relating to the protection of lives and property including, but not limited to, fire protection services, rescue services, emergency medical services, and hazardous material emergency response services.
2. The Fire Department can be called upon to provide fire-rescue services within and without the Town's corporate limits.
3. These services include actions to mitigate injury to the public health, safety and welfare from fire, trauma, acute illness, hazardous conditions and other emergencies.
4. The expenses associated with providing these services can be substantial.
5. The Town Council of the Town of Queen Creek finds that the costs of providing some of the services of the Queen Creek Fire Department are an increasing burden on the Town of Queen Creek.

Section 18-2-3 Purpose and intent

It is the purpose and intent of the Town of Queen Creek to establish rates to cover costs of services which the Queen Creek Fire Department provides related to motor vehicle accidents, collisions, motor vehicle fires, motor vehicle extractions, technical rescue incidents, hazardous materials spills or discharge, wildland fires, non-permitted burns, incidents caused by negligence and/or willful disregard for established fire and life-safety codes including but not limited to utility line, and other emergency incidents within and without the Town's corporate limits.

The Town of Queen Creek provides services to the community funded through the General Fund by tax revenues. Reimbursement may be sought for the increased costs of providing such services, whenever practicable, from parties who, by reason of neglect or malfeasance, cause incidents requiring police, fire and rescue services, or cause increased costs to the Town for gaining compliance with municipal ordinances. Cost recovery is a mechanism whereby these costs may be levied upon responsible parties, rather than the taxpayers of Queen Creek. To accomplish this, the Town of Queen Creek hereby establishes a cost recovery procedure in this article.

Section 18-2-4 Administration and responsibility

The administration of this article is under the direction of the Town Manager and Fire Chief, and by delegation, the finance director. Each department manager is responsible for tracking costs associated with cost recovery under their respective supervision and forwarding cost recovery invoices, calculations and documentation to the finance director, Fire Chief and Town Manager.

The Town of Queen Creek shall, at its sole discretion, determine whether or not town resources and/or personnel are available for reimbursable services. Furthermore, all persons responsible for the enforcement or application of this article, shall not be liable for any damage or injury to persons or property arising out of or relating in any way to the application or enforcement of this article.

Section 18-2-5 Definitions

“Cost(s) or Charge(s)” shall mean to include, but not be limited to, Town charges and expenses for emergency personnel salaries and costs and expense of incidents connected to: emergency incidents, hazardous material incidents, malicious incidents, motor vehicle collision, non-permitted burns, nuisance incidents, which are determined by the Fire Chief or as contained in the applicable Queen Creek fee schedule.

“Emergency Incident” shall mean to include, but not be limited to, those incidents that require fire, rescue and/or medical response in an immediate fashion, following established emergency response protocols, and includes, but is not limited to: hazardous material incidents, malicious incidents, motor vehicle collisions, non-permitted burns, nuisance incidents, technical rescue events, wildland fires and any other type of incident listed or designated in this article or designated by the Fire Chief.

“Expense of Incident” or “Incident Expense” means the costs and charges incurred by the Town of Queen Creek in making an appropriate emergency response to an incident. It consists of all costs directly arising because of the particular incident, including, but not limited to the actual costs and charges of providing police, firefighting, hazardous material incident management, rescue and emergency medical services at the scene of the incident, as well as the actual salaries and fringe benefits of the emergency personnel responding to the incident. Recoverable costs also include the actual costs for damage or destruction to Town of Queen Creek property, any utility or service charges to the Town from other public agencies resulting from the incident, and the actual cost of medical treatment for any Town personnel injured during the response.

“Emergency Personnel” means personnel who are employees of the Town of Queen Creek Fire Department during their involvement in an emergency or non-emergency incident/event.

“Hazardous Material Incident” means those incidents, including but not limited to emergency incidents, involving the release, or threatened release or exposure, of hazardous substances as defined in this article and/or any product that could prove a danger to health or the environment.

“Intentionally Wrongful Conduct” means conduct intended to injure another person or property.

“Malicious Incident” means those incidents, including emergency incidents, which stem from an individual’s intentional purpose to cause property damage, endanger lives, and/or cause the response of emergency personnel for other than an actual emergency.

“Motor Vehicle Collision” means incidents, including emergency incidents, involving one or more motorized vehicles including cars, trucks, buses, planes, helicopters, trains, motorcycles, and the vehicles and trailers being pulled by motorized vehicles.

“Non-Emergency Incident” means those incidents which allow for fire, rescue and/or emergency medical response in a less urgent fashion, following established non-emergency response protocols.

“Non-Permitted Burns” means the intentional disposal of debris without the oral and/or written permission from the Fire Department.

“Nuisance Incident” means those incidents that are of the same nature, on a repetitive basis, at the same location, due to lack of servicing to mechanical and/or electrical equipment of an emergency system, or the failure to correct a previously documented fire hazard, or false reporting of an emergency incident or any other fire department response that is deemed unnecessary by the Fire Chief, including but not limited to false alarms caused by carelessness.

“Responsible person” or “responsible party” within this article means any person or party:

1. Who, by law is liable or made responsible for the payment to a governmental agency of its costs and expenses in providing police, fire, rescue and related emergency services;
2. Whose negligence or intentionally wrongful conduct proximately causes an emergency incident affecting public health or safety which necessitates an emergency response or rescue effort by a governmental agency to deal with or prevent injury to persons or damage to property;
3. Any person who is indebted to the Town by virtue of a duty, charge, cost, statutory duty, statutory obligation, statutory liability, tax or revenue imposed by law or ordinance; and
4. If a responsible party is a minor, the parent or guardian of that minor shall be jointly and severally liable with the minor for the expense of an emergency incident, as allowed by law.

“Person” or “Party” means any individual or group of individuals; or association, company, corporation, firm, organization, or partnership, singular or plural, of any kind; or any corporation, general or limited partnership, joint venture, unincorporated association, or governmental or quasi-governmental entity.

“Technical Rescue Event” means incidents that require rope rescue, confined space rescue or technical rescue services and/or extraction.

“Special Event” means those non-emergency events that occur within and/or outside the Town limits that require the presence of Emergency Personnel employed by the Fire Department, or as requested by the owner of the involved property or event coordinator.

“Wildland Fire” means any outside fire involving general natural combustible materials, other than permitted burn, with no restriction concerning area involved, or size of any damaged area.

Section 18-2-6 Emergency Service Cost Recovery

A. The Town of Queen Creek and the Queen Creek Fire Department may recover costs, charges and expenses of incidents connected to emergency incidents. A responsible person or party shall be liable to the Town for all incident expenses, as described in this article or as designated by the Fire Chief, connected to emergency incidents and the following listed incidents or services:

1. Each person who is under the influence of an alcoholic beverage or any drug, or their combined influence, and whose negligent operation of a motor vehicle, boat, vessel, or aircraft caused by that influence proximately causes any incident resulting in an emergency incident, or whose intentionally wrongful conduct proximately causes any incident resulting in an emergency incident shall be liable to the Town for the expense of that emergency incident, not to exceed twenty five hundred dollars, or any higher amount as may from time to time be established by law.
2. The expense of hazardous material incidents, including expenses for the containment, confinement, clean-up and/or mitigation of hazardous substances, releases and threats of release or exposure as defined in this article.
3. The expense of emergency incidents for fire suppression activity from a responsible party for the intentional setting of fire or the spread of fire to adjoining properties, or for fire suppression costs on occupied or mortgaged property against which a current, uncorrected notice of violation of a fire hazard has been issued.
4. The expense of emergency incidents for the rescue or medical treatment, or both, of persons placed in jeopardy or injured by the negligence or intentionally wrongful conduct of a responsible party.
5. The expense for injury to public safety personnel, or for damage to public property.
6. Emergency incidents outside the Town of Queen Creek limits may be invoiced to the property owner(s) and person(s) receiving assistance from the Fire Department.
7. Malicious Incidents may be invoiced to the responsible party(s)
8. Motor Vehicle Collisions where extrication is performed may be invoiced per occurrence. In the event multiple vehicles are involved the costs, responsibility shall be joint and several among all responsible parties and persons.
9. Motor Vehicle Collisions may be invoiced to the responsible party(s).

10. Non-Emergency incidents may be invoiced to the responsible party(s).
11. Non-Permitted Burns may be invoiced to the responsible party(s).
12. Nuisance Incidents may be invoiced per occurrence to the responsible party(s).
13. Permitted Burns that become out-of-control, as determined by the Fire Chief, due to negligence may be invoiced to the responsible party who was issued the permit.
14. Special Events services.
15. Technical Rescue Events may be invoiced to the responsible party(s).
16. Wildland Fires caused by negligence may be invoiced to the responsible party starting the fire.

B. Cost rates shall be invoiced at the determined rates for each resource, supplies, equipment, apparatus and personnel. The Town Council by separate resolution shall adopt a schedule of rates as described in this article and the Fire Chief shall have concurrent authority to designate incidents and services to be charged responsible parties and determine the rates therefore.

C. After review by the Fire Chief and Town Manager, the director of finance may charge the expense defined in this article to each responsible party or person. Each responsible party or person is jointly and severally responsible for all expense defined under this article. The charge constitutes a debt to the Town of Queen Creek, and may be collected by the Town in the same manner as in the case of an obligation to a municipality under a contract, expressed or implied.

Section 18-2-7 Recovery of costs for Hazardous Waste Incidents

A. The Fire Chief is authorized to clean up or abate the effects of any hazardous substance or waste unlawfully released, discharged or deposited upon or into any property or facilities within the Town, including but not limited to hazardous material incidents described in this article. The following described persons shall be jointly and severally liable to the Town for the payment of all incident expenses incurred by the Town as a result of such cleanup or abatement activity:

1. The person or persons whose negligent conduct or willful conduct or omission proximately caused such release, discharge or deposit;
2. The person or persons who owned or had custody or control of the hazardous substance or waste at the time of such release, discharge or deposit, without regard to fault or proximate cause; and
3. The person or persons who owned or had custody or control of the container which held such hazardous waste or substance at the time or immediately prior to such release, discharge or deposit, without regard to fault or proximate cause.

B. In the event that any person undertakes, either voluntarily or upon order of the Fire Chief or other city official, to clean up or abate the effects of any hazardous substance or waste unlawfully released, discharged or deposited upon or into any property or facilities within the Town, the Fire Chief may take such action as is necessary to supervise or verify the adequacy of the cleanup or abatement. The persons described in subsection A of this section shall be liable to the Town for all costs incurred as a result of such supervision or verification.

C. The expense of an emergency response to any spill or release of a hazardous substance, as hereinafter defined, which poses a significant present threat or potential hazard to human life, property or environment, shall be a charge against the person or entity whose conduct, or that of its employees, agents or contractors, caused or permitted the incident resulting in the emergency response. Said charge shall constitute a debt that is collectible by the public agency incurring those costs in the same manner as in the case of an obligation under contract.

D. For the purposes of this subsection, costs incurred by the Town shall include, but shall not necessarily be limited to, the following: actual labor costs of Town personnel, including benefits and administrative overhead; cost of equipment operation; cost of any contract labor and materials. The charge for an emergency response shall be imposed in accordance with a schedule of fees, pursuant to the recommendation of the Chief of the Fire Department and Town Manager, adopted by resolution of the Town Council for the Town of Queen Creek, as it may from time to time be amended. Implementation of such an assessment procedure shall not be the exclusive remedy of the Town for recovery of such costs. The authority to recover costs under this subsection shall not include actual fire suppression services which are normally or usually provided by the Fire Department.

E. The cost imposed pursuant to this section shall be reasonably commensurate to the verifiable costs involved in emergency response to and/or prevention, abatement, mitigation or confinement of spills or releases of hazardous substances within or beyond town limits.

F. The Chief of the Fire Department or his designee shall determine the verifiable costs of the town for emergency response to hazardous substance spills or releases and shall use such costs to develop a cost recovery schedule of applicable charges necessary to recover town costs for such emergency responses. Said schedule shall be the basis for the Fire Chief's recommendation to the Town Manager and Town Council of the Town of Queen Creek.

G. Payment of any charge hereunder shall not relieve a person or entity, its employees, agents or contractors from compliance with any other applicable law, rule or regulation.

H. For purposes of this section 18-2-7 a hazardous substance shall be defined as any material that is identified in:

1. The Code of Federal Regulations, Title 49, Section 171.8;
2. Hazardous wastes such as any chemical, compound, mixture, substance or article which is identified or listed by the United States Environmental

Protection Agency or appropriate agency of the State to be —hazardous waste as defined in 40 Code of Federal Regulations Section 261.1 through 261.33, as and if amended, except that, for purposes of this ordinance hazardous waste shall include household waste as defined in 40 Code of Federal Regulations Section 261.4B.1.

3. Code of Federal Regulations, Title 40, Section 261.31—261.33; or
4. Any substance which is known by the business handling it to be likely to pose a significant present or potential hazard to public health, safety or the environment.

I. A material may be added to the list of hazardous substances as defined in section (H) hereof, upon a finding by the Fire Chief that the material, because of its quantity, concentration or physical or chemical characteristic, poses a significant present threat or potential hazard to human life, property or the environment if released into the community.

J. An emergency response shall be defined as a response by a city department or agency to prevent, abate, mitigate or confine a spill or release of a hazardous substance within or without the Town's corporate limits in order to protect human life, property or the environment from a significant present threat or potential hazard.

K. A release or spill shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, burning, dumping or disposing into the environment and/or community.

L. Any person or entity, its employees, agents or contractors who causes, permits or is responsible for a spill or release of a hazardous substance within the town limits, upon notification of the same, shall immediately cease all activities causing or likely to cause reoccurrence or continuation of such spills or releases and shall not resume such activities unless and until so directed by the Fire Chief or his designee.

M. No person or entity, its employees, agents or contractors shall dispose of or store any hazardous substance on public property, except under direction of the Fire Chief or his designee.

N. The remedies provided by this section shall be in addition to any other remedies provided by law.

Section 18-2-8 Notice of Responsibility and Service

Any notice given for any purpose under this article ("Notice(s) of Responsibility") shall be provided, in writing, to the responsible person or responsible party. Invoicing for costs under this article in connection with Notices of Responsibility shall contain, at a minimum, the date on which services were rendered by the Fire Department, the due date for payment of the invoice, the mailing address for payment, an explanation of the services provided, and the cost of rendered services.

Notice given for any purpose under this article shall be deemed received on the date when written notice is personally served in the same manner as provided by the Arizona Rules of Civil Procedure or mailed certified mail return receipt requested. If notice is served by certified mail, the notice shall be mailed to the last known address of the responsible person or party or the responsible person's or party's statutory agent. In the event that the post office address of the responsible person or party is unknown or if the responsible person or party cannot reasonably be reached by mail, the town may publish such notice in the newspaper used by the town for one publication, and such service shall be complete and shall have the same effect and force as if personally served upon such responsible person or party.

Section 18-2-9 Appeal

Any responsible party, responsible person or person otherwise responsible for costs who disagrees with the Notice of Responsibility and/or costs invoiced under this article may appeal to the Town Manager by filing a written request with the Town Manager and Town Clerk no later than 15 days after receiving the Notice of Responsibility. The written appeal shall provide the reason for the appeal and describe the specific relief that the petitioner is seeking. The Fire Chief shall review the request and prepare a recommendation within 15 days. Upon receipt of the Fire Chief's recommendations, the Town Manager shall notify the petitioner, in writing, of the date, time and location of the hearing on the appeal. The Town Manager may affirm, vacate, or modify the Notice of Responsibility, including the charges connected thereto. The Town Manager may extend the time for payment for a reasonable period of time. If no timely statement of appeal is properly made, then the Notice of Responsibility, including charges, becomes final when the time for appeal lapses. The town is authorized to record the Notice of Responsibility and connected calculation of charges with the appropriate County Recorder's Office.

Section 18-2-10 Method of Collection

The Town Manager shall be authorized to collect the amount of charges imposed pursuant to this article in the same manner and method as delinquent utility bills and taxes. The Town shall be empowered to maintain proceedings in a court of competent jurisdiction to collect the amount of charges authorized by this article, including costs, expenses and attorney's fees in the same manner as municipal taxes. If delinquent, the amount of the charges, costs, expenses and fees shall be subject to the same penalties and the same procedure for foreclosure on property as are provided for municipal taxes.

A. Whenever charges for cost recovery are not paid within a reasonable time following demand, the Town Manager and the Town Attorney, as applicable, are authorized to prosecute the claim to judgment in an appropriate court with jurisdiction and to take any other action appropriate for collection.

B. The Town Attorney is authorized to collect any amounts due by civil or administrative action or both, together with all costs incurred in the collection of that indebtedness after demand for payment has been refused.

C. Recovery of costs for emergency incidents is in addition to any separate right of the Town to recover costs and damages from a responsible party whose negligence or wrongful conduct causes damage or injury to public property or personnel, or both.

D. The Town Manager, Fire Chief and Town Attorney are authorized to intervene or join in any action or proceeding, or initiate proceedings, connected to the costs and charges set forth in this article or pursuant to any other applicable law allowing for the recovery of costs of services.

Section 18-2-11 Accounting for Costs of Cleanup

A public safety official shall keep a record of costs incurred in connection with response, cleanup, disposal and directly related administration of cleanup of emergency incidents. This documentation shall be regularly distributed to the Town Manager, Fire Chief and finance director.

Section 18-2-12 Use of Costs Paid or Collected

Any and all costs paid or collected pursuant to this article shall be deposited by the finance director in a public services revolving account. The public services revolving account within the town's general fund is established, consisting of monies collected from payments levied under this article and such other funds as the Town Council may deem appropriate. The finance director shall administer the account. All costs paid or collected pursuant to the article that are deposited in the public services revolving account shall be designated for the Fire Department expenditures approved by the Town Council.

Section 18-2-13 Indemnity

Any person who requests emergency action, and any responsible person shall defend, indemnify, save and hold harmless the Town, its elected officials, officers, employees and agents, (collectively the Indemnitees) for, from and against any and all claims, demands, losses, damages, suits, actions, liabilities, fines, charges, penalties, obligations, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and professional, expert or consultant fees (including, but not limited to, such expenses incurred in any attempt to enforce this indemnification provision and the cost of appellate proceedings("Claims")), which may arise out of, in connection with, resulting from or related to in any manner, directly or indirectly, in whole or in part, out of any emergency incident.

Section 18-2-14 Effect of criminal or civil proceedings on cost recovery or permit issuance

The initiation of administrative or civil proceedings for cost recovery does not bar the criminal prosecution of a responsible party for the associated violation. Similarly, criminal prosecution does not bar administrative or civil collection for cost recovery for the violation giving rise to the criminal prosecution. The existence of an issued permit shall not bar civil or criminal enforcement proceedings.

Section 18-2-15 Professional Emergency Service Contracts

The Fire Chief and Town Manager without compliance with formal contract bidding requirements may enter into professional emergency services agreements with qualified, licensed "HazMat" service providers for emergency abatement of hazardous materials incidents. Such providers shall be selected on the basis of quoted services rates, qualifications and availability.

Section 18-2-16 Remedies and Non-Exclusive Charges

The remedies provided in this article are not exclusive or in lieu of any other rights and remedies that the town may have at law or equity. The foregoing charges of this article shall not be the exclusive charges that may be made by the Town for the cost and expense of emergency services, but shall only be supplemental thereto. Additional charges may be collected by the Town pursuant to any other law, including but not limited to, general taxation, fees, other cost recovery rights and special assessment.

Section 2. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.