

ORDINANCE 584-15

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, AMENDING THE QUEEN CREEK TOWN CODE BY ADDING A NEW SECTION 3-5: INDEMNIFICATION OF EMPLOYEES; AND PROVIDING FOR SEVERABILITY.

WHEREAS, Arizona Revised Statutes § 9-802 provides a procedure whereby a municipality may enact the provisions of a code or public record by reference, without setting forth such provisions, provided that the adopting ordinance is published in full; and

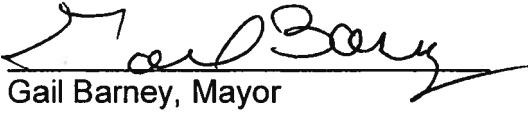
WHEREAS, the Town Council finds that it is in the best interest of the Town that its officers, employees, elected officials and members of Town board and commissions should be indemnified from certain claims arising out of the performance of their duties as officers, employees, elected officials, or members of a Town board or commission.

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

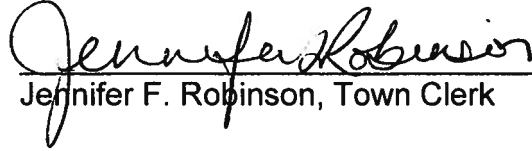
- Section 1. That the Queen Creek Town Code Chapter 3, "Administration" is amended by adding new Section 3-5, "Indemnification of Officers and Employees" as set forth in Exhibit "A," which is attached hereto and incorporated herein by reference;
- Section 2. If any section, subsection, clause, phrase or portion of this ordinance is for any reason held invalid, unenforceable or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof.
- Section 3. At least three (3) copies of this Ordinance and Exhibit "A" shall be kept on file in the office of the Town Clerk and kept available for public use and inspection.
- Section 4. That this adopting ordinance shall be published in full.

PASSED AND ADOPTED BY the Mayor and Common Council of the Town of Queen Creek, Arizona, this 18th day of November 2015.

FOR THE TOWN OF QUEEN CREEK:


Gail Barney, Mayor

ATTESTED TO:


Jennifer F. Robinson, Town Clerk

REVIEWED BY:


John Kross, Town Manager

APPROVED AS TO FORM:


Dickinson Wright PLLC
Attorneys for the Town

EXHIBIT "A"

INDEMNIFICATION OF TOWN OFFICERS AND EMPLOYEES

Sec. 3-5-1 Persons to be indemnified

Any person made a party or threatened to be made a party to any proceeding based on claims arising out of the performance of their duties as an officer, employee, councilmember, or member of a board or commission of the town (an "appointee") shall be indemnified as set forth in this Section 3-5.

Sec. 3-5-2 Notification of manager

As a prerequisite to indemnification under this Section 3-5, a person shall notify the town manager as soon as he is made a party or threatened to be made a party to any proceeding. The town manager, in consultation with the town attorney, shall determine whether provisions of this Section 3-5 apply to such claims. If the town manager is the person seeking indemnification, the term "town manager" in this Section 3-5-2 shall refer to the assistant town manager.

Sec. 3-5-3 Expenses for indemnification

Indemnification shall include, without limitation, attorneys' fees, expert witness fees, court costs and fees, judgments and amounts paid in settlement of a claim, if approved by the town.

Sec. 3-5-6 Criminal proceedings.

If the proceeding is a criminal proceeding, the person shall be indemnified if he had no reasonable cause to believe his conduct was unlawful.

Sec. 3-5-7 Representation

If the town is or may be joined with one or more employees, councilmembers, or appointees as defendants in a lawsuit, the town and the individual(s) shall be jointly represented by the same legal counsel, except that separate legal counsel shall be provided to the employee at the town's expense when it is determined by the town attorney that joint representation would be either ethically inappropriate or otherwise contrary to the interests of the town. Legal counsel shall be selected by town or, as applicable, the town's insurer.

An officer, employee, councilmember or appointee who is being defended and indemnified pursuant to this Section 3-5 shall cooperate with the town and, upon the town's request, assist in conducting any contested proceeding and making settlements. The officer, employee, councilmember or appointee shall, when requested by the town attend depositions, hearings and trials and assist in securing and giving evidence. The officer, employee, councilmember or appointee shall not, except at his or her own cost, voluntarily make any payment, assume any obligation or incur any expense in connection with the claim or contested proceeding. If the officer, employee, councilmember or appointee fails to cooperate as required by this subsection, then the town shall have the right not to defend or indemnify the individual.

Sec. 3-5-8 No presumption created.

With respect to indemnification, a termination of the proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not by itself create a presumption that the person acted, or failed to act, other than in good faith and in a manner which he reasonably believed to be in or not opposed to the best interest of the town, and with respect to any criminal proceeding, had reasonable cause to believe that his conduct was unlawful.

Sec. 3-5-9 Gross negligence and misconduct.

No indemnification shall be made in respect of any claim, issue or matter as to which such person shall be determined to be liable for gross negligence or intentional tortious misconduct in the performance of his duty to the town.

In the event that the town incurs costs and expenses on behalf of a person pursuant to this Section 3-5, and it is later determined that the person was not entitled to the benefits of this Section because the individual was grossly negligent or committed intentional tortious misconduct, then the town shall be reimbursed by the person for all such costs and expenses, including attorneys' fees.

Sec. 3-5-10 No impairment of insurance

Nothing in the indemnity provisions of this Section 3-5 is intended to limit or impair the existence of any insurance, municipal risk pool coverage, or other similar protection provided to the town or to any person seeking indemnification. Any protection provided to an indemnified person pursuant to this Section 3-5 shall be secondary and the coverage afforded by any such third party insurance or other coverage or protection shall in all cases be primary.