

ORDINANCE NO. 2828

AN ORDINANCE OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, AMENDING THE CODE OF GILBERT, ARIZONA, CHAPTER 2 – ADMINISTRATION, ARTICLE II – OFFICERS AND EMPLOYEES, DIVISION 4 – TOWN ATTORNEY AND DIVISION 5 – DEFENSE AND INDEMNIFICATION OF TOWN OFFICERS AND EMPLOYEES; ADDING NEW DIVISION 6 – RISK MANAGEMENT; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING FOR SEVERABILITY.

BE IT ORDAINED by the Common Council of the Town of Gilbert, Arizona, as follows:

SECTION 1. The Code of Gilbert, Arizona, Chapter 2 – Administration, Article II – Officers and Employees, Division 4 – Town Attorney is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

Sec. 2-90. - Creation of office; appointment; duty and responsibility generally.

The office of the town attorney is created and established. The town attorney shall be appointed by and shall serve at the pleasure of the council. It shall be the duty of the town attorney to attend all meetings of the council; prepare or review all ordinances, contracts and similar documents for consideration by the council; provide legal advice to the council and all officers, departments, and employees in matters relating to their official powers and duties; retain special counsel with the concurrence of the town manager; and collaborate with other attorneys, INVESTIGATORS, AND CONSULTANTS engaged by the Town council to manage litigation or assist the town attorney therein. IN ADDITION TO THE DUTIES PROVIDED IN THIS SECTION, THE TOWN ATTORNEY SHALL PERFORM SUCH OTHER DUTIES AND FUNCTIONS AS MAY BE REQUIRED BY STATUTE OR ORDINANCE.

SEC. 2-91 - TOWN ATTORNEY AS RISK MANAGER.

THE TOWN ATTORNEY SHALL ASSUME THE DUTIES AS THE RISK MANAGER OF THE TOWN. ANY REFERENCES TO “RISK MANAGER” IN THIS CODE SHALL BE DEEMED TO REFER TO THE TOWN ATTORNEY.

Secs. 2-92+2—2-100. – Reserved.

SECTION 2. The Code of Gilbert, Arizona, Chapter 2 – Administration, Article II – Officers and Employees, Division 5 – Defense and Indemnification of Town Officers and Employees is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

Sections 2-114—2-115~~30~~. – Reserved.

SECTION 3. The Code of Gilbert, Arizona, Chapter 2 – Administration, Article II – Officers and Employees, Division 6 – Risk Management is hereby added as follows (additions in ALL CAPS):

DIVISION 6. – RISK MANAGEMENT

SEC. 2-116 - RISK MANAGEMENT PROGRAM.

IN ORDER TO ESTABLISH A CENTRALIZED AND UNIFORM ADMINISTRATION OF RISK MANAGEMENT FUNCTIONS INCLUDING SELF-INSURANCE RETENTION TRUST FUND MANAGEMENT, CLAIMS ADMINISTRATION, ADMINISTRATION OF INSURANCE CONTRACTS, AND PROVISION OF LOSS PREVENTION ACTIVITIES, THE TOWN OF GILBERT RISK MANAGEMENT PROGRAM IS HEREBY ESTABLISHED.

SEC. 2-117 - RISK MANAGEMENT DUTIES.

UNDER THE SUPERVISION OF THE TOWN ATTORNEY, DUTIES OF RISK MANAGEMENT SHALL BE CARRIED OUT IN ACCORDANCE WITH THE PROVISIONS OF THIS CHAPTER AND SHALL INCLUDE:

- (A) CLAIMS AND LITIGATION ADMINISTRATION;
- (B) EVALUATION OF INSURANCE NEEDS AND SELF-INSURANCE ABILITIES;
- (C) SELF INSURANCE RETENTION FUND MANAGEMENT; AND
- (D) OTHER RELATED DUTIES AS DETERMINED BY THE TOWN ATTORNEY.

SEC. 2-118 - CLAIMS ADMINISTRATION.

(A) *FILING CLAIMS*. CLAIMS MUST BE MADE IN COMPLIANCE WITH A.R.S. § 12-820, ET. SEQ. AND OTHER APPLICABLE ARIZONA LAW AND TOWN ORDINANCES. ALL CLAIMS FOR DAMAGES SHALL BE PRESENTED WITHIN ONE HUNDRED EIGHTY (180) DAYS AFTER A CAUSE OF ACTION ACCRUES, OR WITHIN SUCH SHORTER TIME AS IS

OTHERWISE REQUIRED BY LAW. THE CLAIM REQUIREMENTS CONTAINED IN THIS SECTION ARE INTENDED TO INCORPORATE THE NOTICE OF CLAIM REQUIREMENTS OF A.R.S. § 12-821.01, AND DO NOT (1) CONSTITUTE A BINDING OR NONBINDING DISPUTE RESOLUTION PROCESS, AN ADMINISTRATIVE CLAIMS PROCESS, OR A REVIEW PROCESS SET FORTH IN A.R.S. § 12-821.01(C); OR (2) GRANT ANY ADDITIONAL RIGHTS TO A CLAIMANT OTHER THAN THOSE PRESCRIBED IN A.R.S. § 12-820, ET. SEQ. AND THE TOWN CODE.

(B) *AGENT FOR SERVICE*. THE TOWN CLERK IS HEREBY DESIGNATED AS THE SOLE AGENT UPON WHOM ALL CLAIMS FILED AGAINST THE TOWN (OR ITS DEPARTMENTS) OR SERVICE OF PROCESS MAY BE SERVED PURSUANT TO THE ARIZONA RULES OF PROCEDURE, A.R.S. § 12-821.01, AND FOR ALL OTHER CIRCUMSTANCES REQUIRING SERVICE OF PROCESS UPON THE TOWN.

(C) *CLAIMS PROCESSING*. THE TOWN ATTORNEY SHALL ESTABLISH PROCEDURES TO PROCESS, EVALUATE, INVESTIGATE, AND REPORT CLAIMS FILED AGAINST THE TOWN. THE TOWN ATTORNEY SHALL HAVE THE RESPONSIBILITY FOR THE FISCAL AND ADMINISTRATIVE MANAGEMENT OF ALL CLAIMS BY OR AGAINST THE TOWN. THE LIABILITY OF THE TOWN FOR CLAIMS AND CLAIM COSTS SHALL BE THAT ESTABLISHED BY LAW.

(D) *SETTLEMENT*. THE TOWN ATTORNEY SHALL REVIEW AND EVALUATE ALL CLAIMS RECEIVED BY THE TOWN. SETTLEMENT OF ALL CLAIMS SHALL BE SUBJECT TO THE SETTLEMENT AUTHORITY SET FORTH IN SECTION 2-61.

(E) *LITIGATION*.

(1) IN THE EVENT THAT A DEMAND, CLAIM, LAWSUIT OR ANY OTHER TYPE OF LEGAL ACTION IS FILED BY OR AGAINST THE TOWN, THE TOWN ATTORNEY SHALL DETERMINE WHETHER TO INVESTIGATE AND DEFEND THE LITIGATION WITH STAFF FROM THE TOWN ATTORNEY'S OFFICE OR WITH OUTSIDE COUNSEL. LITIGATION STRATEGY FOR CLAIMS REFERRED TO OUTSIDE COUNSEL FOR DEFENSE SHALL BE THE RESPONSIBILITY OF THE TOWN ATTORNEY. RETENTION OF OUTSIDE COUNSEL IS AT THE DISCRETION OF THE TOWN ATTORNEY AND MAY BE BASED UPON FACTORS SUCH AS EXPERTISE, RESOURCES IN THE PARTICULAR TYPE OF LITIGATION INVOLVED, AND PAST PERFORMANCE.

(2) EXPENSES, ATTORNEY FEES, AND COSTS, WHETHER INCURRED BY THE TOWN ATTORNEY OR OUTSIDE COUNSEL MAY BE CHARGED TO AND PAID FROM THE SELF INSURANCE RETENTION FUND, UNLESS PAYMENT IS PROHIBITED UNDER SECTION 2-121.

(F) *RETENTION OF OUTSIDE PROFESSIONALS.* THE TOWN ATTORNEY MAY ENTER INTO CONTRACTS FOR PROFESSIONAL WITNESSES, CONSULTANTS, INVESTIGATORS, ATTORNEYS, INVESTIGATORS, OR OTHER EXPERTS TO ASSIST WITH EXISTING OR POTENTIAL LEGAL MATTERS.

(G) *TOWN DAMAGES.* SUBJECT TO APPROVAL BY THE TOWN COUNCIL, THE TOWN ATTORNEY IS AUTHORIZED TO FILE SUCH CLAIMS, COUNTER-CLAIMS, THIRD PARTY CLAIMS, OR TAKE OTHER LEGAL ACTION AS MAY BE NECESSARY TO SEEK SUBROGATION AND REIMBURSEMENT OR COLLECT FOR DAMAGES SUSTAINED BY TOWN OR WHERE THIRD-PARTIES ARE OBLIGATED TO INDEMNIFY OR REIMBURSE THE TOWN FOR FUNDS EXPENDED OR DAMAGES INCURRED.

SEC. 2-119 - LOSS PREVENTION AND CONTROL PROGRAMS.

THE TOWN ATTORNEY MAY INSTITUTE LOSS PREVENTION AND CONTROL PROGRAMS BASED ON LOSS EXPERIENCE AND INDUSTRY RECOGNIZED STANDARDS. ALL TOWN STAFF SHALL COOPERATE WITH THE TOWN'S LOSS PREVENTION, CLAIMS MANAGEMENT, AND RISK ANALYSIS EFFORTS TO MINIMIZE RISK EXPOSURE TO THE TOWN. IN ADDITION, ALL TOWN STAFF SHALL COOPERATE AS NEEDED IN THE PROSECUTION OR DEFENSE OF ANY LEGAL ACTION INVOLVING THE TOWN.

SEC. 2-120 - EVALUATION OF INSURANCE NEEDS AND SELF-INSURANCE ABILITIES.

(A) *SELF-INSURER.* THE TOWN SHALL ACT AS A SELF-INSURER FOR ALL CLAIMS AND CLAIM COSTS AGAINST THE TOWN OTHER THAN THOSE FALLING WITHIN THE PROVISIONS OF AN INSURANCE POLICY, SURETY BOND, OR INDEMNITY BOND, OR OTHER TYPE OF SURETY. NOTHING IN THIS SECTION SHALL PROHIBIT THE TOWN ATTORNEY FROM PAYING FOR THE COSTS AND FEES NECESSARY TO LEGALLY ESTABLISH SUCH INSURANCE POLICY, SURETY BOND, INDEMNITY BOND, OR OTHER TYPE OF SURETY.

(B) *SELF-INSURANCE RETENTION*. THE TOWN ATTORNEY SHALL EVALUATE THE SELF-INSURANCE ABILITY OF THE TOWN AND RECOMMEND TO THE TOWN COUNCIL ANY CHANGES NECESSARY TO THE SELF-INSURANCE RETENTION AMOUNT.

SEC. 2-121 - RISK MANAGEMENT LOSS FUND.

THERE IS HEREBY ESTABLISHED A TRUST FUND TO BE KNOWN AS "THE TOWN OF GILBERT RISK MANAGEMENT TRUST FUND" (THE "TRUST FUND"). THE TRUST FUND SHALL BE ADMINISTERED BY THE TOWN ATTORNEY IN CONSULTATION WITH THE DIRECTOR OF MANAGEMENT AND BUDGET. THE TRUST FUND SHALL BE ESTABLISHED FOR THE PURPOSE OF PROVIDING THE TOWN ATTORNEY WITH THE FUNDS TO PAY THE TOWN'S ABILITY TO PAY FOR LIABILITY CLAIMS AGAINST THE TOWN AND CLAIM COSTS.

(A) *FUNDS BUDGETED*. THE TRUST FUND SHALL BE FUNDED AS PART OF THE TOWN'S ANNUAL BUDGETARY AND APPROPRIATION PROCESS IN A SUFFICIENT AMOUNT TO PAY ALL REASONABLY ANTICIPATED LAWFUL CLAIMS, TOGETHER WITH COSTS AND EXPENSES, AS WELL AS UNINSURED PROPERTY DAMAGE AND LOSSES, AND MAY INCLUDE EXCESS COVERAGE AND OTHER INSURANCE PREMIUMS AND COSTS, AND OTHER RELATED COSTS. THE TOWN ATTORNEY SHALL RECOMMEND THE AMOUNTS TO BE APPROPRIATED BASED ON PAST EXPERIENCE, PROJECTED EXPOSURE TO RISK AND COSTS, ACTUARIAL STUDIES, AND PROJECTED RISK ANALYSIS.

(B) *FUND NOT SUBJECT TO BUDGET LAW*. EXPENDITURES DURING THE FISCAL YEAR FROM THE TRUST FUND AND MONIES IN THE TRUST FUND AT THE CLOSE OF THE FISCAL YEAR SHALL NOT BE SUBJECT TO THE PROVISIONS OF A.R.S. 42, CHAPTER 17, ARTICLE 3. AN AUDIT OF THE TRUST FUND SHALL BE PERFORMED ANNUALLY BY AN EXTERNAL AUDITOR AND THE REPORT SHALL BE KEPT ON FILE IN THE OFFICE OF THE TOWN CLERK FOR A MINIMUM OF FIVE (5) YEARS.

(C) *PAYMENTS FROM FUND*. THE TOWN ATTORNEY MAY PAY THE FOLLOWING COSTS, CLAIMS AND EXPENSES FROM THE TRUST FUND:

- A. OPERATING EXPENSES FOR RISK MANAGEMENT WITHIN THE TOWN, INCLUDING WITHOUT LIMITATION THE SALARY FOR TOWN EMPLOYEES WHO HANDLE RISK MANAGEMENT DUTIES.
- B. CLAIMS ADMINISTRATION AND ADJUSTING COSTS.
- C. CLAIM INVESTIGATION AND LITIGATION EXPENSES AND COSTS.

- D. UNINSURED PROPERTY LOSS AND DAMAGES.
- E. INSURANCE PREMIUMS AND RELATED BROKERAGE FEES AND COMMISSIONS.
- F. LOSS CONTROL PROJECTS.
- G. ACTUARY STUDIES
- H. APPRAISAL FEES FOR INSURANCE VALUATION.
- I. CLAIMS FOR WHICH THE TOWN IS LIABLE AND ARE NOT LISTED AS EXCEPTIONS BELOW.

(D) *EXCEPTIONS*. THE FOLLOWING TYPES OF CLAIMS SHALL BE MANAGED BY THE TOWN ATTORNEY BUT SHALL NOT BE PAID FROM THE TRUST FUND UNLESS THE CLAIMS FALL WITHIN THE COVERAGE OF THE TOWN'S LIABILITY INSURANCE COVERAGES. FUNDS TO PAY SUCH CLAIMS SHALL BE PAID FROM THE BUDGET OF THE DEPARTMENT FROM WHICH THE CLAIM AROSE OR APPROPRIATED FROM CONTINGENCY FUNDS BY THE TOWN COUNCIL. SUCH UNFUNDED CLAIMS ARE:

- A. CLAIMS ARISING FROM EMINENT DOMAIN, CONDEMNATION, OR INVERSE CONDEMNATION.
- B. CLAIMS ARISING FROM RIGHTS-OF-WAY OR EASEMENTS.
- C. CLAIMS ARISING FROM ZONING OR CONTRACT DISPUTES EXCEPT WHEN THE DISPUTE INVOLVES INSURANCE COVERAGE.
- D. CLAIMS ARISING FROM ENVIRONMENTAL IMPAIRMENT OR REGULATORY ACTIONS RELATED THERETO, POLLUTION, OR ANY LOSS CONNECTED WITH HAZARDOUS WASTES, NO MATTER WHAT THE CAUSE, NOT COVERED BY INSURANCE.
- E. ASBESTOS RELATED LOSSES NOT INVOLVING WORKERS' COMPENSATION STATUTES.
- F. WORKER'S COMPENSATION CLAIMS.
- G. ANY DEMAND BASED ON TAXES.
- H. ANY DEMAND RELATING SOLELY TO SALARY OR EMPLOYMENT BENEFITS UNLESS COVERED BY INSURANCE.

(F) *LOSS FUND RESTRICTED*. THE MONIES IN THE TRUST FUND SHALL NOT BE EXPENDED FOR ANY PURPOSE OTHER THAN THOSE LISTED HEREIN OR OTHERWISE AUTHORIZED BY LAW.

(G) *TOWN ATTORNEY DECISION FINAL*. THE DETERMINATION BY THE TOWN ATTORNEY OF WHETHER A CLAIM, COST, OR EXPENSE OR ANY PART THEREOF SHOULD BE PAID FROM THE TRUST FUND IS FINAL. OTHER DEPARTMENTS MAY BE CHARGED BY THE TOWN ATTORNEY

TO REIMBURSE THE TRUST FUND FOR ALL OR PORTIONS OF LOSSES INCURRED BY THAT DEPARTMENT.

SECTIONS 2-122—2-130. – RESERVED.

SECTION 4. Authorization.

The Town Manager, the Town Clerk, and the Town Attorney are hereby authorized and directed to take all steps necessary to carry out the purpose of this Ordinance.

SECTION 5. Providing for Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of this Ordinance or any part of the Code adopted herein by reference are hereby repealed.

SECTION 6. Providing for Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Code 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.

PASSED AND ADOPTED by the Common Council of the Town of Gilbert, Arizona, this 28th day of June, 2022, by the following vote:

AYES: Anderson, Hendrix, Koprowski, Peterson, September, Tilque, Yentes

NAYES: _____ ABSENT: _____

EXCUSED: _____ ABSTAINED: _____


Brigitte Peterson, Mayor

ATTEST:

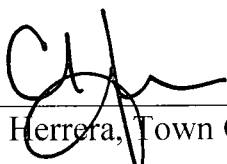

Chaveli Herrera, Town Clerk

APPROVED AS TO FORM:



Christopher W. Payne, Town Attorney

I, CHAVELI HERRERA, TOWN CLERK, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE ORDINANCE NO. 2828 ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT ON THIS 28TH DAY OF JUNE, 2022, WAS POSTED IN THREE PLACES ON THE 29TH DAY OF JUNE, 2022.



Chaveli Herrera, Town Clerk