

TOWN OF CAREFREE, ARIZONA

ORDINANCE NO. 2010-10

AN ORDINANCE OF THE TOWN OF CAREFREE, MARICOPA COUNTY, ARIZONA, ADOPTING AMENDMENTS TO CHAPTER 2, ARTICLE 2, SECTIONS 2-7-2 and 2-7-4, THE TOWN OF CAREFREE CODE; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS OF THE TOWN CODE; PROVIDING FOR SEPARABILITY; AND DIRECTING THE TOWN CLERK OF THE TOWN OF CAREFREE TO INCORPORATE THIS AMENDMENT INTO THE TOWN OF CAREFREE TOWN CODE.

BE IT ORDAINED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CAREFREE, MARICOPA COUNTY, ARIZONA AS FOLLOWS:

Section 1. The Mayor and Common Council deem it necessary, in order to conserve, promote, and protect the public health, safety and welfare, to amend that certain document known as the Code of the Town of Carefree, Arizona.

Section 2. All ordinances or portions of ordinances in conflict with the provisions of this Ordinance, or inconsistent with the regulations of this Ordinance, are hereby repealed to the extent necessary to give this Ordinance full force and effect.

Section 3. The amendments are made to Chapter 2, Articles 2-7-2 and 2-7-4 of The Town of Carefree Code Amended as follows (added language is shown in bold, deleted language is shown ~~crossed out~~):

Section 2-7-2 Indemnification and Protection of Town Officials

A. Any town officer and all town officials shall be exonerated, indemnified and held harmless by the town from and against any liability or loss ~~in any manner arising out of, or occasioned by, his service as a town officer or official and based upon any claim by any third party that the town or such town officer or official, by any action or failure to act, damaged the property or infringed the rights of said third party, or of any other person on whose behalf said third party brings a claim or legal action,~~ **arising from a civil complaint filed in federal or state court naming the town officer or official or arising from a criminal investigation or criminal proceeding of the town officer or official in which the civil or criminal liability of such individual is alleged to arise from acts or omissions of such individual acting in the course and scope of employment or duties performed on behalf of the town, provided such officer or official acted, or failed to act, lawfully, in good faith and in a manner he or she reasonably believed to be lawful and in, or not opposed to, the best interests of the town. The town shall not provide legal defense or indemnification or exoneration in any civil litigation or criminal investigation or criminal proceedings for or on behalf of any town officer or official against whom a claim is filed or made where the actual activities of such individual giving rise to the claim were outside the course and scope of employment of such individual as an officer**

or official of the town, or beyond the duties of such individual as an officer or official of the town.

B. The right to indemnification provided for in subsection A of this section shall extend as well to any ~~claim brought~~ **civil complaint filed in federal or state court naming the town officer or official and to any criminal investigation or criminal proceeding of the town officer or official filed or instituted** by, or on behalf of, the town to recover damages alleged to have been occasioned to it, or any of its property, by any act or failure to act of any town officer or official, except that no indemnification or exoneration shall be made in respect of any claim, issue or matter as to which such town officer or official shall have been adjudged to be liable to the town unless and only to the extent that the court in rendering such judgment shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such officer or official is fairly and reasonably entitled to indemnity for such expenses as such court may deem proper. The court in which any such action or suit was brought may determine upon application that, in view of all of the circumstances of the case, indemnity for amounts paid in settlement is proper and may order indemnity for the amount so paid in settlement.

C. In any case where indemnification is required under the provisions of subsections A or B of this section, the town treasurer shall pay, on behalf of such town officer or official, any money judgment and shall perform the onerous provisions of any court order which may be entered against him when such judgment or order has become final and no longer appealable, or has not been stayed pending appeal.

D. In any case where any town officer or official is or may be entitled to be exonerated, indemnified and held harmless pursuant to the provisions of subsection A of this section, the town shall protect and defend him **or her** from and against any **such civil litigation or criminal investigation or criminal proceeding** commenced against him **or her**, by engaging and compensating competent legal counsel to conduct his **or her** defense, and by paying all court costs, and any fees of opposing legal counsel, taxed or imposed by the court having jurisdiction.

E. In any case where any town officer or official is or may be entitled to be exonerated, indemnified and held harmless pursuant to the provisions of subsection B of this section, the town shall pay the expenses, including attorneys fees and cost of a bond or other security pending appeal, incurred in defending the **civil complaint filed in federal or state court naming the town officer or official or the criminal investigation or criminal proceeding of the town officer or official** ~~action, suit or proceeding by such officer or official~~ in advance of the final disposition of such action, suit, **investigation** or proceeding upon receipt of an undertaking by or on behalf of such town officer or official to repay such amount if it is ultimately determined that he is not entitled to be indemnified by the town as authorized in subsection B of this section.

Section 2-7-4 Notice of Claims

It shall be a precondition to the assertion of any claim for protection and indemnity under this article that any town officer or officials, after having been served with process

commencing civil litigation against him or her or them, ~~or after having received written notice of a possible claim or~~ **after having notice of a criminal investigation or criminal proceeding** alleged to be covered under the provisions of subsections A or B of Section 2-7-2, shall promptly give notice ~~thereof of the pendency of such action, or the presentation of any such claim,~~ to the town clerk, who shall in turn present such ~~actual or potential claim~~ to the council, together with such town officer's or officials' request for indemnity and protection hereunder, **for a decision by the council whether indemnification is required under Section 2-7-2.** It shall further be a precondition to coverage hereunder that a town officer or officials claiming the protection and benefits conferred by this article shall at all times, and in every way, cooperate fully with legal counsel appointed by the town to defend against any ~~threatened or pending civil litigation or criminal investigation or criminal proceeding~~ under the provisions of subsection D of Section 2-7-2. **In all matters involving notice of a criminal investigation or criminal proceeding alleged to be covered under the provisions of Subsections A or B of Section 2-7-2, the town officer or official in addition to giving notice thereof to the town clerk shall promptly give notice thereof and consult with the town attorney until such time as a decision is made by the council on whether to grant the town officer or official's request for indemnification.**

Section 4. The Town Clerk of the Town of Carefree shall incorporate the Amendment set forth herein into the Town Code of the Town of Carefree, Arizona.

PASSED AND ADOPTED by the Mayor and Common Council of the Town of Carefree, Arizona, this 7 day of December, 2010.

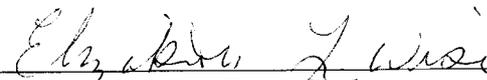
Ayes 6 Noes 1 Abstentions 0 Absent 0

TOWN OF CAREFREE



Mayor, David Schwan

ATTEST:



Elizabeth L. Wise, Town Clerk

APPROVED AS TO FORM:



Thomas K. Chenal, Town Attorney