

ORDINANCE NO. 09-15

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PEORIA, ARIZONA AMENDING CHAPTER 2 OF THE PEORIA CITY CODE (1992) BY AMENDING SECTION 2-50 PERTAINING TO CLAIMS MANAGEMENT; DEFINITIONS AND BY AMENDING SECTION 2-57 PERTAINING TO CLAIMS; INSURANCE; LIABILITY; WORKER'S COMPENSATION; EMPLOYEE BENEFITS AND BY AMENDING SECTION 2-58 PERTAINING TO CLAIMS; SELF-INSURANCE; LIABILITY; WORKER'S COMPENSATION TRUST FUND; EMPLOYEE BENEFITS TRUST FUND AND BY AMENDING SECTION 2-77 PERTAINING TO CITY ATTORNEY; CLAIMS MANAGEMENT; LITIGATION; SPECIAL COUNSEL AND BY ENACTING AMENDING SECTION 2-85 PERTAINING TO FINANCE; WORKER'S COMPENSATION AND EMPLOYEE BENEFITS TRUST and BY AMENDING SECTION 2-152 PERTAINING TO BOARDS AND COMMISSIONS; UNSCHEDULED BOARDS AND COMMISSIONS AND PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

THEREFORE, it is ordained by the Mayor and Council of the City of Peoria as follows:

SECTION 1. Chapter 2 of the Peoria City Code (1992) is amended by amending Section 2-50 pertaining to Claims Management; definitions and which shall read as follows:

Sec. 2 50. Claims Management; definitions.

- (a) City - The City of Peoria and all its Council Members, Mayor, appointed officers and department heads, employees, agents (when acting within the scope of their authority), boards, commissions or other City created entities.
- (b) City Manager means the City Manager of the City, or his or her designee.
- (c) Claim - Any demand made for the payment of money damages from the City by any person or entity, in the nature of a tort or contract claim; excluding any demand based solely on the assertion of a claim within the jurisdiction of the personnel board, a demand relating solely to payment of wages earned and employment benefits granted to all employees; a demand arising solely out of any right or claim of superior title to property, its use or transfer, a demand based on taxes, or any solely non-monetary demand.

(d) **Claim Costs-** Any internal or external costs or expense incurred by the City, in response to any claim against the City, including insurance or bond policy costs, contractual services costs, legal defense costs and related consultant costs.

(e) **Claims Management Program -** the program administered by the Office of the City Attorney to procure insurance against claims and to pay claim costs arising out of claims based on the amounts appropriated by the City Council through the budget process.

(f) **Diminution in Value Claim** means a claim for just compensation, as defined in A.R.S. § 12-1136, as amended, for diminution in the fair market value of real property resulting from the enactment of a land use law that is not exempt under A.R.S. § 12-1134 (B), as amended, by the City that reduces existing rights to use, divide, sell, or possess private real property as of the date of the enactment. Such claims are permitted by A.R.S. § 12-1134, as amended.

(g) **Employee Benefit Claim** means a claim by an employee of the City, enrolled in an insurance benefit program provided by the City making a claim under such program for coverage of a service under the program provided by the City and for which the service is covered.

(gh) **Exempt land use law** means a land use law that:

- (1) Limit or prohibit a use or division of real property for the protection of the public's health and safety, including rules and regulations relating to fire and building codes, health and sanitation, transportation or traffic control, solid or hazardous waste, and pollution control;
- (2) Limit or prohibit the use or division of real property commonly and historically recognized as a *public nuisance under common law*, including and land use law that prohibits unreasonable interference with the exercise of a right common to the general public;
- (3) Are required by Maricopa County, Yavapai County, the State of Arizona, other political subdivisions thereof other than the City and over which the City has no legal control, or federal law;
- (4) Limit or prohibit the use or division of a property for the purpose of housing sex offenders, selling illegal drugs, liquor control, or pornography, obscenity, nude or topless dancing, and other adult oriented businesses if the land use laws are consistent with the constitution of Arizona and the United States;
- (5) Establish locations for utility facilities;

- (6) Do not directly regulate an owner's land;
- (7) Were enacted before December 5, 2006; or
- (8) Any regulation affecting real property that is not a land use law.

(hi) Insurance Reserve Fund- Any fund or account established by the City for the purposes of paying claims and claim costs.

(ij) Land use law means any statute, rule, ordinance, resolution or law enacted by the City that regulates the use or division of land or any interest in land or that regulates accepted farming or forestry practices. Land use law specifically excludes (without limitation): administrative rules of the City not adopted by the City Council; development fees levied under the authority granted by A.R.S. § 9-463.05; approval of a preliminary and/or final plat; conditions and issuance of building, utility, fire, grading, drainage and engineering permits and site plans and minor amendments of planned zoning districts under the zoning ordinance of the city.

(jk) Owner means the holder of fee title to the real property that is the subject of the claim on the date at the time that the diminution in value is alleged to have occurred. Owner does not mean persons having less than fee title ownership.

(kl) SIR - Self-Insurance Retention.

(m) Worker's Compensation: means a program of self insurance to cover injuries incurred by an employee of volunteer of the City while performing in the scope of their duties and as covered under the Arizona Worker's Compensation laws.

SECTION 2. Chapter 2 of the Peoria City Code (1992) is amended by amending Section 2-57 pertaining to Claims; insurance; liability; worker's compensation; employee benefits and which shall read as follows:

Sec. 2-57. Claims; insurance; liability; worker's compensation; employee benefits .

The City Manager is authorized to enter into on behalf of the City any,

(a) appropriate insurance and surety bonding contracts to provide insurance against claims and risks as he/she determines to be in the best interest of the City and upon the approval of the City Attorney.

(b) appropriate insurance and surety bonding contracts to provide insurance for worker's compensation and employee benefit claims.

The approval of the City Council shall be required if such contract is in excess of fifty thousand dollars (\$50,000) to execute all such contracts.

SECTION 3. Chapter 2 of the Peoria City Code (1992) is amended by amending Section 2-58 pertaining to Claims; self-insurance; liability; worker's compensation trust fund; employee benefits trust fund and which shall read as follows:

Sec. 2-58. Claims; Self-Insurance; Liability; Worker's Compensation Trust Fund; Employee Benefits Trust Fund.

(a) There shall be established an Insurance Reserve Fund. This fund shall be funded as part of the annual budgetary and appropriation process of the City in such amounts as to provide sufficient monies to pay all reasonably anticipated lawful SIR claims and claim costs against the City for the ensuing fiscal year.

(b) The Finance and Budget Departments shall with the approval of the Chief Financial Officer allocate insurance and Insurance Reserve Fund costs consistent with appropriate risk underwriting methodology.

(c) There shall be established a Worker's Compensation Trust Fund. This fund shall be funded as part of the annual budgetary and appropriation process of the City in such amounts to pay all reasonably anticipated lawful Worker's Compensation claims and claims cost against the City for the ensuing fiscal year.

(d) The Finance, Budget and Human Resources Departments with the approval of the Chief Financial Officer allocate Worker's Compensation and Worker's Compensation Trust costs consistent with appropriate risk underwriting methodology.

(e) There shall be established an Employee Benefits Trust Fund. In the event, the City elects to self insure for Employee Benefits, the fund shall be funded as part of the annual budgetary and appropriation process of the City in such amounts to pay all reasonably anticipated lawful Employee Benefit claims and costs against the City for the ensuing fiscal year.

(f) The Finance, Budget and Human Resources Departments with the approval of the Chief Financial Officer allocate Employee Benefits Costs and Employee Benefits Trust costs consistent with appropriate risk underwriting methodology.

SECTION 4. Chapter 2 of the Peoria City Code (1992) is amended by amending Section 2-77 pertaining to City Attorney; claims management; litigation; special counsel and which shall read as follows:

Sec. 2-77. City Attorney; claims management; litigation; special counsel.

The City Attorney shall:

(a) Be responsible for the administration and operation of the City's Claims Management and Self Insured Retention Programs and to recommend to the City Manager and City Council the purchase of insurance to cover claims against the City.

(b) Have the power to adjust, settle, compromise or submit to arbitration or alternative dispute resolution any action, causes or action, accounts, debts, claims, demands, disputes and matters in favor of or against the City or in which the City is concerned as a debtor or creditor, now existing or which may hereafter arise, not involving or requiring payment to exceed Twenty Five Thousand Dollars (\$25,000.00) and with the approval of the City Manager may do likewise in matters not involving or requiring payment to exceed Fifty Thousand (\$50,000.00) Dollars, provided that the Council has appropriated money to settle such claims and the Chief Financial Officer of the City determines such funds are available.

(c) Have the power to use and implement binding or non-binding alternative dispute resolution methods involving any claims; the payment for insurance and the payment of claim costs and related costs, including but not limited to all claims arising out of the operation of the City's Worker's Compensation and Employee Benefit programs.

(d) Have the responsibility for management of all legal actions against the City and shall further have the responsibility for the determination of the legal liability of the City with respect to any claim, including but not limited to all claims arising out of the operation of the City's Worker's Compensation and Employee Benefit programs.

(e) Prosecute, defend and provide legal representation in all civil suits, causes, actions and proceedings where the City or any officer or employee acting in his official capacity and within the scope of their employment is a party or may become interested. The City Attorney may with the consent of the City Manager and providing that the Council has appropriated sufficient funds employ outside counsel when in the City Attorney's discretion, the best interest of the City so require. Such outside counsel shall operate under the supervision of the City Attorney.

(f) Periodically report to the Council any decision or outcome of any litigation or proceeding in which the City has an interest. Such reports are deemed a public record exempt from public disclosure to preserve attorney-client privileges unless the Council has formally waived such privilege.

(g) Conduct and prosecute appeals from orders, decisions or judgments of the municipal and justice courts affecting any interest of the City as the City Attorney may, in the exercise of discretion determine to be necessary or desirable and/or upon direction by the Council, conduct, participate in and prosecute appeals from orders, decisions or judgments of any Court of Record in this State or any Court of the United States.

SECTION 5. Chapter 2 of the Peoria City Code (1992) is amended by enacting amending Section 2-85 pertaining to Finance; worker's compensation and employee benefits trust and which shall read as follows:

Sec. 2-85. Finance; worker's compensation and employee benefits trust.

(a) The City shall designate a risk management consultant or insurance administrator licensed pursuant to title 20, chapter 2, Arizona Revised Statutes.

(b) There shall be an Employee Benefits Trust Board, which shall serve as trustees for the City's Employee Benefit Trust, if any and the Worker's Compensation Trust Fund. The Employee Benefits Trust Board shall consist of five (5) trustees, not withstanding any other provision of this code, no more than one may be an employee of the City. The City's Human Resources Director or their designee shall be an ex-officio member of the Employee Benefits Trust Board.

(c) The trustees of the Employee's Benefit Trust Board trust must be bonded. The Board shall provide for an annual audit to be performed by an external auditor and a copy of the report kept on file in the Department of the City Clerk.

(d) The trustees of the Employee's Benefit Trust Board shall not make any expenditure from the trust fund for any purpose not specified in this code.

(e) 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 title 42, chapter 17, article 3, Arizona Revised Statutes.

SECTION 6. Chapter 2 of the Peoria City Code (1992) is amended by amending Section 2-152 pertaining to Boards and Commissions; unscheduled boards and commissions and which shall read as follows:

Sec. 2-152. Boards and Commissions; unscheduled boards and commissions.

(a) The following are unscheduled boards and commissions and shall include:

- (1) Building Code Board of Appeals - 7 members
- (2) Citizens commission on Elected Officials Salaries – 5 members
- (3) Design Standards Advisory Board B 5 members
- (4) Historic Preservation Commission - 7 members
- (5) Industrial Development Authority - 7 members

- (6) Municipal Development Authority - 5 members
- (7) Personnel Board - 3 members, 1 alternate
- (8) Peoria Municipal Sports Complex Authority - 7 members
- (9) Public Defender Review Board - 5 members
- (10) Public Safety Review Board-Police - 5 members
- (11) Public Safety Review Board-Fire - 5 members
- (12) Volunteer Firefighter Pension Board - 5 members
- (13) Sister Cities Board – 7 members
- (14) Veteran's Memorial board – 7 members
- (15) Judicial Selection Advisory Board – 5 members
- (16) Employee Benefits Trust Board – 5 members

SECTION 7. If any section, subsection, sentence, clause or phrase 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 of this Ordinance.

SECTION 8. This Ordinance shall become effective in the manner provided by law.

PASSED AND ADOPTED by the Mayor and Council of the City of Peoria, Arizona, this 2nd day of June, 2009.

Dated: 6/5/09

Bob Barrett

Bob Barrett, Mayor

ATTEST:



Mary Jo Kief, City Clerk



APPROVED AS TO FORM:



Stephen M. Kemp, City Attorney

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