

ORDINANCE NO. 809-23

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA AMENDING CHAPTER 16 OF THE QUEEN CREEK TOWN CODE BY AMENDING SECTIONS 16-2-9 AND 16-5-3, AND ADDING ARTICLE 16-11 SUSTAINABLE WATER ALLOCATION REGULATIONS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING SEVERABILITY

WHEREAS, the Town of Queen Creek has finite water resources; and

WHEREAS, the Town Council has determined that to ensure there is a sustainable water supply for current and future water users, the Town must maintain a dependable water supply; and

WHEREAS, in order to do so, it is necessary to take steps for safeguarding current water users while also providing adequate resources for future customers; and

WHEREAS, potential future large non-residential water users which are disproportionately high volume water demands could disrupt the delicate balance of water supply and demand for all of Queen Creek and its water customers; and

WHEREAS, the Town Council finds that adopting this ordinance assists the Town in managing its current and future water supplies and is in the best interest of the Town and its citizens.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, AS FOLLOWS:

Section 1: The Code of Queen Creek, Arizona, Chapter 16 is hereby amended by amending Sections 16-2-9 and 16-5-5, and adding a new Article 11 as follows (deletions in **bold strikethrough** and additions in **bold ALLCAPS**):

Section 16-2-9 Grounds for Refusal of Service

Add: **F. FAILURE TO COMPLY WITH OR VIOLATION OF ARTICLE 16-11.**

Section 16-5-3 Applicability; Conditions for Service

- Amend: A. Domestic water may be supplied by the Town to customers:
(1) UPON the terms and conditions prescribed in this Article, (2) PURSUANT TO ARTICLE 16-11 AND A SUSTAINABLE WATER ALLOCATION AGREEMENT THEREUNDER, and not otherwise.

ARTICLE 16-11 SUSTAINABLE WATER ALLOCATION REGULATIONS

16-11-1 POLICY ESTABLISHED

- (A) THE TOWN OF QUEEN CREEK HAS FINITE WATER RESOURCES.**
- (B) THE WATER ALLOCATION POLICY IMPLEMENTED IN THIS ARTICLE 16-11 WILL ASSIST THE TOWN IN MAINTAINING A SUSTAINABLE WATER SUPPLY FOR EXISTING AND FUTURE WATER USERS.**

16-11-2 DEFINITIONS

- (A) "ALLOCATION" SHALL MEAN THE TOWN'S ACT(S) OF RECORD ALLOCATING WATER IT OWNS OR MAY OWN IN THE FUTURE FOR DELIVERY IN ITS WATER SYSTEM FOR CURRENT AND FUTURE WATER CUSTOMERS. ALLOCATION OF WATER UNDER THIS ARTICLE 16-11 DOES NOT CONVEY ANY RIGHTS TO OTHERS FOR THE USE, OWNERSHIP, OR RESERVATION OF SUCH WATER TO ANY PARTICULAR CUSTOMER BEING SERVED OR POTENTIALLY TO BE SERVED BY THE TOWN'S WATER SYSTEM, OR FOR A DIFFERENT USE.**
- (B) "ANNUAL" OR "ANNUALLY" REFERS TO A CALENDAR YEAR.**
- (C) "APPLICANT" SHALL MEAN THE OWNER, OR OWNER'S AGENT, WHO SUBMITS A WATER SERVICE REQUEST PURSUANT TO THE QUEEN CREEK TOWN CODE CHAPTER 16, FOR A NEW OR CHANGE IN USE.**
- (D) "CHANGE IN USE" SHALL MEAN A USE BY AN EXISTING TOWN WATER CUSTOMER OR ON REAL PROPERTY**

WITHIN THE TOWN'S WATER SERVICE AREA WHICH CAUSES THE WATER USE TO EXCEED TIER I WATER USE ALLOCATION AND BECOME A TIER I EXPANDED WATER USER OR TIER II WATER USER.

- (E) "MULTIPLE AND LARGE METER USERS" OR "MLM USERS" SHALL MEAN WATER USERS ENGAGING IN WATER USES AND NON-IRRIGATION RECLAIMED WATER USES - EXCLUDING WATER METERS CURRENTLY IN SERVICE FOR THE APPLICANT FOR THE SAME USE AND LEVEL OF WATER SERVICE PRIOR TO ENACTMENT OF THIS ORDINANCE, WATER METERS USED SOLELY FOR RESIDENTIAL LAND USE (AS DEFINED IN QUEEN CREEK TOWN CODE SECTION 7-7-3), AND LANDSCAPE WATER METERS, WHICH:**
- (1) USE OR WILL USE WATER SUFFICIENT TO REQUIRE INSTALLATION OF A 3-INCH OR GREATER METER OR ITS EQUIVALENT IN MULTIPLE METERS;**
 - (2) USE OR WILL USE MORE THAN 60 ACRE FEET OF WATER ANNUALLY (53,565 GALLONS PER DAY); OR**
 - (3) REQUIRE OR WILL REQUIRE ONE OR MORE NEW METERS FOR A BUILDING THAT ALREADY HAS WATER SERVICE AND THE COMBINED WATER USE IS OR WILL BE MORE THAN 60 ACRE FEET ANNUALLY (53,565 GALLONS PER DAY).**
- (F) "SUSTAINABLE WATER ALLOCATION APPLICATION" SHALL MEAN THE APPLICATION THAT MUST BE SUBMITTED BY ALL APPLICANTS DESIRING TO BECOME OR ARE A MLM USER.**
- (G) "SUSTAINABLE WATER ALLOCATION AGREEMENT" SHALL MEAN A WRITTEN AGREEMENT THAT HAS BEEN ENTERED INTO BETWEEN THE APPLICANT AND THE TOWN, AS DESCRIBED IN THIS ARTICLE.**

- (H) "TIER I WATER USE ALLOCATION" SHALL MEAN UP TO AN INCLUDING 60 ACRE FEET OF WATER ANNUALLY (53,565 GALLONS PER DAY) PER WATER USE OR USER.**
- (I) "TIER I EXPANDED WATER USE ALLOCATION" SHALL MEAN THE TIER I USE ALLOCATION PLUS UP TO AN ADDITIONAL 40 ACRE FEET OF WATER ANNUALLY, REPRESENTING A TOTAL AMOUNT OF UP TO 100 ACRE FEET ANNUALLY (89,275 GALLONS PER DAY) PER WATER USE OR USER PURSUANT TO A SUSTAINABLE WATER ALLOCATION AGREEMENT ENTERED INTO UNDER SECTION 16-11-5(B).**
- (J) "TIER II WATER" SHALL MEAN WATER THAT THE APPLICANT IS REQUIRED TO ACQUIRED AND HAS TRANSFERRED TO THE TOWN, IN EXCESS OF THE TIER I WATER USE ALLOCATION AND TIER I EXPANDED USE ALLOCATION (IF APPLICABLE), WHETHER THAT WATER IS ACQUIRED DIRECTLY BY APPLICANT OR IS ACQUIRED BY THE TOWN PURSUANT TO THE SUSTAINABLE WATER ALLOCATION AGREEMENT.**
- (K) "TIER II WATER USE ALLOCATION" SHALL MEAN THE TOWN COUNCIL ACCEPTED ALLOCATION OF TIER II WATER TO A MLM USER IN ACCORDANCE WITH THIS ARTICLE AND A SUSTAINABLE WATER ALLOCATION AGREEMENT.**
- (L) "WATER" SHALL MEAN POTABLE AND RECLAIMED WATER SERVED BY THE TOWN FOR ANY USE OTHER THAN FOR LANDSCAPE OR IRRIGATION.**
- (M) "WATER RESOURCE MANAGEMENT STRATEGY REPORT" SHALL MEAN THE PERIODIC REPORT APPROVED BY THE TOWN COUNCIL WHICH DEFINES THE TIER I WATER USE ALLOCATION, OUTLINES THE TOWN'S DEVELOPMENT GOALS, TYPES OF LAND USES TO BE ENCOURAGED BY THE TOWN'S POSSIBLE PARTICIPATION IN THE ACQUISITION OF TIER II WATER, AND THE CRITERIA TO BE CONSIDERED BY**

TOWN STAFF AND THE TOWN COUNCIL IN THE POTENTIAL PARTICIPATION IN THE ACQUISITION OF TIER II WATER TO MLM USERS WHO MAY MEET THE CRITERIA. THOSE CRITERIA SHALL INCLUDE, BUT NOT BE LIMITED TO, THE WATER ACQUISITION AND ALLOCATION, AND ECONOMIC DEVELOPMENT POLICY, GOALS AND STRATEGIES IMPLEMENTED BY THE TOWN.

- (N) "WATER SERVICE REQUEST" SHALL MEAN AN APPLICATION FOR SERVICE UNDER SECTIONS 16-2-7 AND ARTICLE 16-5 OF THE TOWN CODE.**

16-11-3 - APPLICABILITY

- (A) THE WATER USAGE OF ALL MLM USERS IN THE TOWN, OTHER THAN MLM USERS WHO ARE APPROVED IN ACCORDANCE WITH SUBSECTION 16-11-3, ARE LIMITED TO THE THEN-EXISTING TIER I WATER ALLOCATION ACCEPTED BY THE TOWN IN ACCORDANCE WITH THIS ARTICLE 16-11.**
- (B) ALL MLM USERS DESIRING TO EXCEED, OR WHICH ARE DETERMINED BY THE TOWN (EITHER BEFORE OR AFTER INSTALLATION OF A WATER METER OR COMMENCEMENT OF DELIVERY OF WATER) TO BE OPERATING A USE THAT EXCEEDS THE TIER I WATER USE ALLOCATION SHALL ENTER INTO A SUSTAINABLE WATER ALLOCATION AGREEMENT THAT HAS BEEN EXECUTED BY THE APPLICANT AND APPROVED BY THE TOWN.**
- (C) MLM USERS MAY ONLY EXCEED THE TIER I WATER USE ALLOCATION THEN EXISTING, IF AND WHEN THE TOWN, IN ITS SOLE DISCRETION, SPECIFICALLY GRANTS A WATER USE ALLOCATION IN ACCORDANCE WITH THIS CHAPTER AND PURSUANT TO A SUSTAINABLE WATER ALLOCATION AGREEMENT.**

16-11-4 - SUSTAINABLE WATER ALLOCATION AGREEMENT APPLICATION

- (A) ALL MLM USERS SHALL SUBMIT A SUSTAINABLE WATER ALLOCATION AGREEMENT APPLICATION TO THE TOWN PRIOR TO RECEIVING WATER.**
- (B) THE SUSTAINABLE WATER ALLOCATION AGREEMENT APPLICATION SHALL IDENTIFY THE TYPE OF WATER USE, THE SIZE OF THE STRUCTURES IN THE DEVELOPMENT AND/OR INVOLVED IN THE USE, ANNUAL AND MONTHLY WATER USE, AND THE PHASING OF DEVELOPMENT IF APPLICABLE.**
- (C) THE INFORMATION PROVIDED BY THE APPLICANT IN THE SUSTAINABLE WATER ALLOCATION AGREEMENT APPLICATION SHALL BE USED TO CALCULATE THE APPLICANT'S TIER I WATER USE ALLOCATION AND THE APPLICATION OF THE PROVISIONS OF SECTION 16-11-5.**

16-11-5 - TOWN REVIEW OF SUSTAINABLE WATER ALLOCATION APPLICATIONS

- (A) SUBJECT TO SUBSECTIONS CHAPTER 16-11-5(B) AND (C), THE TOWN WATER RESOURCES MANAGER SHALL REVIEW AND THE TOWN MANAGER MAY RECOMMEND A SUSTAINABLE WATER ALLOCATION AGREEMENT APPLICATION AS PROVIDED IN THIS ARTICLE.**
- (B) THE TOWN MANAGER, IN CONSIDERATION OF A RECOMMENDATION BY THE TOWN WATER RESOURCE MANAGER, WILL DETERMINE IN THEIR SOLE AND ABSOLUTE DISCRETION WHETHER, BASED ON THE MOST RECENT WATER RESOURCE MANAGEMENT STRATEGY REPORT, A PARTICULAR MLM USER'S DEVELOPMENT OR CHANGE IN USE MAY BE ELIGIBLE FOR THE APPLICATION OF A TIER I EXPANDED USE ALLOCATION, AND IF SO, HOW MUCH TIER I EXPANDED WATER USE ALLOCATION THE**

TOWN MAY PROVIDE TO THE DEVELOPMENT, AND ON WHAT TERMS TO BE INCLUDED IN THE SUSTAINABLE WATER ALLOCATION AGREEMENT. UNLESS TIER II WATER IS ALLOCATED TO THE DEVELOPMENT, THE TOWN MANAGER SHALL HAVE THE AUTHORITY TO ENTER INTO A SUSTAINABLE WATER ALLOCATION AGREEMENT AS PROVIDED IN THIS ARTICLE.

(C) TIER II WATER ALLOCATION DETERMINATION.

(1) THE TOWN COUNCIL, IN CONSIDERATION OF A RECOMMENDATION BY THE TOWN MANAGER, WILL DETERMINE IN ITS SOLE AND ABSOLUTE DISCRETION WHETHER, BASED ON THE MOST RECENT WATER RESOURCE MANAGEMENT STRATEGY REPORT, IF A PARTICULAR MLM USER'S DEVELOPMENT OR CHANGE IN USE MAY BE ELIGIBLE FOR THE TOWN'S PARTICIPATION IN THE ACQUISITION OF TIER II WATER, AND IF SO, HOW MUCH TIER II WATER THE TOWN MAY PARTICIPATE IN FOR THE DEVELOPMENT, AND ON WHAT TERMS TO BE INCLUDED IN THE SUSTAINABLE WATER ALLOCATION AGREEMENT.

(2) TO THE EXTENT THE TOWN COUNCIL DETERMINES THAT IT WILL NOT PARTICIPATE IN THE ACQUISITION OF TIER II WATER, THE MLM USER MUST PURCHASE AT ITS SOLE EXPENSE TIER II WATER, IF AVAILABLE, IN ORDER TO CONTINUE WITH THE WATER SERVICE REQUEST FOR ITS PLANNED DEVELOPMENT OR CHANGE IN USE, WHICH ACQUISITION SHALL BE DOCUMENTED IN THE SUSTAINABLE WATER ALLOCATION AGREEMENT.

(D) PRIOR TO AUTHORIZING THE INSTALLATION OF ANY WATER METERS OR CHANGE IN USE FOR A MLM USER DESIRING TO EXCEED THE TIER I WATER USE ALLOCATION, THE TOWN AND THE MLM USER SHALL

ENTER INTO A SUSTAINABLE WATER ALLOCATION AGREEMENT IN A FORM APPROVED BY THE TOWN. THE SUSTAINABLE WATER ALLOCATION AGREEMENT SHALL INCLUDE THE FOLLOWING PROVISIONS:

- (1) TERM OF THE AGREEMENT AND TERMS FOR RENEWAL.**
 - (2) TOWN'S DETERMINATION REGARDING THE WATER USE ALLOCATION THAT WILL BE PERMITTED PURSUANT TO THE SUSTAINABLE WATER ALLOCATION AGREEMENT.**
 - (3) TERMS AND CONDITIONS FOR THE PURCHASE OF WATER RESOURCES NECESSARY FOR DELIVERY OF WATER UNDER THE SUSTAINABLE WATER ALLOCATION AGREEMENT.**
 - (4) TERMS AND CONDITIONS THAT THE PURCHASED WATER SUPPLY WILL MEET ALL THE REQUIREMENTS FOR THE TOWN TO QUALIFY FOR OR MAINTAIN A DESIGNATION OF ASSURED WATER SUPPLY AS OUTLINE IN THE ARIZONA GROUNDWATER MANAGEMENT ACT.**
 - (5) OTHER TERMS AND CONDITIONS DEEMED NECESSARY BY THE TOWN IN ORDER TO ALLOW FOR THE ALLOCATION OF TIER II WATER UNDER THE SUSTAINABLE WATER ALLOCATION AGREEMENT.**
- (E) ALL TIERS OF WATER ARE LINKED TO THE WATER METER AND SPECIFIC USE AT THE SITE AS SPECIFIED IN THE SUSTAINABLE WATER ALLOCATION AGREEMENT, AND ANY RIGHTS UNDER A SUSTAINABLE WATER ALLOCATION AGREEMENT CANNOT BE ASSIGNED, LEASED, TRANSFERRED OR JOINED WITH ANOTHER USE WITHOUT PRIOR SUBMITTAL OF A SUSTAINABLE WATER ALLOCATION**

APPLICATION AND WRITTEN AUTHORIZATION BY THE TOWN AND CORRESPONDING AMENDMENT OF THE SUSTAINABLE WATER ALLOCATION AGREEMENT OR EXECUTION OF A NEW SUSTAINABLE WATER ALLOCATION AGREEMENT.

16-11-6 – RATES FOR WATER

EXCEPT AS SET FORTH IN A SUSTAINABLE WATER ALLOCATION AGREEMENT, ALL USERS SHALL PAY THE RATES FOR DELIVERY OF WATER ESTABLISHED BY THE TOWN COUNCIL, WHICH MAY BE AMENDED FROM TIME TO TIME, PURSUANT TO SECTION 16-5-13 OF THE TOWN CODE, OR AS OTHERWISE ALLOWED BY LAW AND APPROVED BY THE TOWN COUNCIL.

16-11-7 ENFORCEMENT FOR EXCEEDING THE ANNUAL SUSTAINABLE WATER USE ALLOTMENT

(A) THE TOWN WATER RESOURCES MANAGER SHALL PERIODICALLY REVIEW EACH MLM USER'S WATER USAGE, OR ANTICIPATED USE, BASED ON A CALENDAR YEAR (OR APPLICABLE PORTION THEREOF). A MLM USER WHOSE WATER USAGE IS DETERMINED TO BE IN EXCESS OF THE AMOUNT SET FORTH IN THE SUSTAINABLE WATER ALLOCATION AGREEMENT SHALL BE SUBJECT TO THE FOLLOWING ENFORCEMENT:

(1) FIRST EXCEEDANCE - THE MLM USER MUST IMMEDIATELY REDUCE THE AMOUNT OF WATER IT USES TO THE AMOUNT SET FORTH IN THE SUSTAINABLE WATER ALLOCATION AGREEMENT AND MUST SUBMIT A WRITTEN WATER USE REDUCTION PLAN IN A FORM AND SUBSTANCE ACCEPTABLE TO THE TOWN WITHIN 30 DAYS FOLLOWING WRITTEN REQUEST BY THE TOWN. FAILURE TO COMPLY WITH THE FOREGOING SHALL BE DEEMED A SECOND EXCEEDANCE.

- (2) **SECOND EXCEEDANCE - THE MLM USER MUST IMMEDIATELY REDUCE THE AMOUNT OF WATER IT USES TO THE AMOUNT SET FORTH IN THE SUSTAINABLE WATER ALLOCATION AGREEMENT, THE TOWN MAY ACQUIRE OR UTILIZE WATER CREDITS OR OTHER AVAILABLE WATER RESOURCES TO OFFSET THE EXCEEDANCE BY THE MLM USER. THE MLM USER SHALL REIMBURSE THE TOWN FOR ALL REASONABLE COSTS FOR THE WATER EXCEEDANCE BY THE MLM USER. FAILURE TO COMPLY WITH THE FOREGOING SHALL BE DEEMED A THIRD EXCEEDANCE.**
- (3) **THIRD EXCEEDANCE - THE MLM USER MUST IMMEDIATELY REDUCE THE AMOUNT OF WATER IT USES TO THE AMOUNT SET FORTH IN THE SUSTAINABLE WATER ALLOCATION AGREEMENT, THE TOWN MAY ACQUIRE OR UTILIZE WATER CREDITS OR OTHER AVAILABLE WATER RESOURCES TO OFFSET THE EXCEEDANCE BY THE MLM USER. THE MLM USER SHALL REIMBURSE THE TOWN FOR ALL REASONABLE COSTS FOR THE WATER EXCEEDANCE BY THE MLM USER. THE TOWN MAY IN ADDITION THERETO, IN ITS DISCRETION, TERMINATE THE MLM USER'S SUSTAINABLE WATER ALLOCATION AGREEMENT AND LOCK OR REMOVE THE MLM USER'S WATER METERS AND/OR SEEK TO ENFORCE ANY OR ALL REMEDIES AVAILABLE AT LAW OR IN EQUITY (INCLUDING EXPEDITED EQUITABLE RELIEF).**

Section 2: All ordinances and resolutions, and parts of ordinances or resolutions in conflict with the provisions of this Ordinance or any part of the Town Code adopted herein are hereby repealed as of the effective date of this Ordinance.

Section 3: If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of this additional or modification 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 and at least one paper copy and one electronic copy of this Ordinance is to be filed with the Town Clerk.

PASSED AND ADOPTED by the Mayor and Common Council of the Town of Queen Creek, Arizona, this 5th day of April 2023.

FOR THE TOWN OF QUEEN CREEK:

ATTESTED TO:

Julia Wheatley, Mayor

Maria Gonzalez, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:

Bruce Gardner, Town Manager

Dickinson Wright, LLC
Attorneys for the Town