

**ORDINANCE NO. 14-08**

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, AMENDING THE TOWN OF FOUNTAIN HILLS SUBDIVISION ORDINANCE, ARTICLE 5 (GRADING STANDARDS), SECTION 5.02 (SUBDIVISION GRADING STANDARDS) AND SECTION 5.04 (HILLSIDE DISTURBANCE) BY MODIFYING THE GRADING AND HILLSIDE DISTURBANCE REQUIREMENTS.

**WHEREAS**, the Mayor and the Council of the Town of Fountain Hills (the “Town Council”) adopted Ordinance No. 96-29, which established the Subdivision Ordinance for the Town of Fountain Hills (the “Subdivision Ordinance”); and

**WHEREAS**, Sections 5.02 and 5.04 of the Subdivision Ordinance contain provisions relating to grading and hillside disturbance that limit the amount of disturbance allowed on lots with slopes in excess of 10% (the “Hillside Requirements”); and

**WHEREAS**, the Town Council desires to amend the Subdivision Ordinance to modify the Hillside Requirements to allow for greater areas of disturbance on certain lots; and

**WHEREAS**, public hearings regarding this Ordinance were advertised in the September 10, 2014, and September 17, 2014, editions of the *Fountain Hills Times*; and

**WHEREAS**, public hearings were held by the Fountain Hills Planning & Zoning Commission on September 25, 2014, and by the Town Council on October 16, 2014.

**NOW, THEREFORE, BE IT ORDAINED** BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS as follows:

**SECTION 1.** The foregoing recitals are incorporated as if fully set forth herein.

**SECTION 2.** The Subdivision Ordinance, Article 5 (Grading Standards), Subsection 5.02.B (Grading Standards), is hereby deleted in its entirety and replaced with the following:

**B. Grading Standards.** Unless exempt pursuant to Subsection 5.02.C of this Article, the following grading standards shall apply to all property within the corporate limits of the Town.

1. **Residential Property:** The area permitted to be disturbed on any platted residential land is unlimited on terrain sloping less than 20%. Terrain containing slopes equal to or exceeding 20% is limited to 40% disturbance, as set forth in Subsection 5.04.A of this Article.

a. When the subdivider has granted a Hillside Protection Easement(s) and/or has donated undisturbed hillside land to the Town or to a Town-approved land preservation organization in an amount necessary to satisfy the hillside protection requirements of this

Ordinance, all areas outside of the Hillside Protection Easement(s) and/or preservation lands may be disturbed.

- b. When no preservation measures have taken place in the platting process, the disturbance allowance shall be in accordance with the grading limitations of Subsection 5.04.A of this Article.
- c. If a residual area remains after computing the allowed area of disturbance of a lot or parcel, and any of the following conditions apply, the Town Manager or authorized designee may allow the property owner to disturb all or a portion of residual area under any of the following circumstances:
  - 1. The residual area of the lot or parcel was previously disturbed during subdivision construction.
  - 2. There are no rock outcrops, significant topographic features or significant native vegetation to be preserved.
  - 3. All adjacent property owners were permitted to disturb property adjacent to the residual area.
- d. There shall be no waiver by the Town Manager or authorized designee, for disturbance of residual area that:
  - 1. Contains rock outcrops, significant topographical features, significant native vegetation; or
  - 2. Abuts land dedicated in any form as non-disturbance or open space, such as wash parcels, native open space tracts, Hillside Protection Easement(s), or other non-disturbance areas on privately owned land.
- 2. **Grading of All Un-platted Land, Regardless of the Base Zoning District:** The area permitted to be disturbed for all un-platted land is unlimited on terrain sloping less than 20%. The area permitted to be disturbed on slopes equal to or exceeding 20% is set forth in Subsection 5.04.A of this Article.
- 3. **Grading for Non-Residential Structures in Residential Zoning Districts:** The limitations on grading area for non-residential structures in residential zoning districts as specified in Subsections 5.02.B.1 through 5.02.B.2 of this Article, may be waived by the Town Council.
- 4. **Grading for Parks and Golf Courses:** The limitations on disturbance as specified in this Article (including area of disturbance as well as height and retention of cut and fill) may be waived by the Town Council for the

development of a park, a golf course, trails or other recreational development that does not entail a building or buildings as the primary purpose of the development.

5. **Grading for Utility Lines:** With the exception of power lines capable of carrying 69kv or more of voltage, utility lines shall be located underground. Utilities must be located within allowed disturbance areas as outlined in Subsection 5.04.B.1.b of this Article.
6. **Road Grading:** Grading for roads is subject to the cut and fill limitations of this Article. These limitations may be waived by the Town Council.
7. **Total Disturbance:** All grading, including subdivision improvement grading, and/or disturbance performed subsequent to September 20, 1991 is considered to be cumulative under this Article.
8. **Disturbance Limit Fencing:** Prior to the issuance of a building or grading permit, and prior to any disturbance activities, a six foot high imbedded chain-link fence shall be installed on the disturbance limit line as identified on the approved site plan for the site. The disturbance limit boundary shall be established and staked by an Arizona-registered land surveyor. No disturbance limit fencing shall be located outside of the surveyor's staked area. Appropriate warning signs in English and Spanish shall also be posted at least every 100 linear feet on the required fencing. The Town Manager or authorized designee shall inspect the fence, signage, and surveyor's staking to insure its proper location and construction prior to the issuance of the building/grading permit for the site. Such fencing and signage shall be maintained in place throughout the grading/construction process and shall only be removed after a final inspection or Certificate of Occupancy has been issued by the Town. These regulations may be waived by the Town Manager or authorized designee if 100% of the lot on which the construction activity is permitted has been graded or disturbed as part of an approved subdivision grading permit.
9. **Disturbance Buffers:**
  - a. It is recommended that all proposed non-disturbance areas or Hillside Protection Easements be located not closer than:
    1. Eight feet from any building.
    2. Five feet from the outside face of any retaining wall where the retaining wall is supporting a fill slope.
    3. One foot from the "day lighted" top of a maximum one to one cut slope, the toe of such slope beginning at the bottom

of the outside edge of the footing for any retaining wall where the retaining wall is supporting a cut slope.

4. Three feet from the outside face of any other wall or fence or the edge of any fill grading.
  5. One foot from the edge of any cut grading.
  6. Ten feet from any sewer lateral, or five feet from the edge of any utility line trench, whichever is greater.
- b. If disturbance does take place within a non-disturbance area or within a Hillside Protection Easement, all construction and grading activity on the site shall stop, pursuant to a Town-issued stop work order. The stop work order shall remain effective until the property owner and the property owner's authorized representatives, either jointly or severally, do all of the following:
1. Provides the Town with a revised site plan prepared by an Arizona-registered land surveyor that accurately depicts the area and size, in square feet, of the disturbance into the non-disturbance area(s) or Hillside Protection Easement area(s).
  2. Provides the Town with re-vegetation and irrigation plans prepared by an Arizona-registered landscape architect for the non-disturbance or Hillside Protection Easement area(s) disturbed.
  3. Causes the non-disturbance area(s) or Hillside Protection Easement Area(s) to be re-vegetated and irrigated according to the submitted and approved re-vegetation and irrigation plans.
  4. Pays to the Town a fee, in an amount determined by the Town Manager or designee, per square foot of disturbance that occurred within the non-disturbance areas or Hillside Protection Easements on the property.

10. **Columbaria Disturbance Exemptions by Special Use Permit:** The development of columbaria, including any accompanying features such as walkways, may be exempted from the regulations of this Subsection 5.02.B by Special Use Permit pursuant to Section 2.02 of the Town Zoning Ordinance, if all of the following conditions exist:

- a. The columbaria is an accessory use to a church.

- b. The columbaria and any accompanying features shall be designed to minimally alter the existing topography and vegetation.
  - c. The columbaria and any accompanying features shall be designed so that any Natural Features are not disturbed.
  - d. The building area of the columbaria shall not exceed 10% of the total building area of the church buildings.
  - e. A landscape plan prepared and stamped by an Arizona-registered landscaping architect, which plan meets the applicable landscaping regulations of Article VI, Section 6.05 of this Ordinance, is submitted and approved by the Town Manager or authorized designee.
11. **Pad Elevation and Building Location Certifications:** Prior to the approval of any building stem wall inspection or a pre-slab inspection, whichever occurs first, the property owner or his/her designee shall provide the Town with a certification statement that is prepared, stamped and signed by an Arizona-registered land surveyor, that certifies the finished floor elevation(s) and the horizontal location of the building. Pad elevations and building locations must be accurate to 1/10th of a foot as compared to the approved site plan or an amended site plan. The requirements in this subsection may be waived at the discretion of the Town Engineer.
12. **Stabilization of Slopes:** Slope stabilization is required as set forth in the Town's most recently adopted version of the International Building Code, as amended.
13. **Pre-Grading:** A grading or building permit shall not be conditioned on altering, modifying or not utilizing existing grading, if the existing grading work was completed in conformance with valid permits, and does not present a threat or danger to the proposed development or neighboring properties. This provision does not prevent the Town Engineer from requiring necessary documentation of site suitability to assure soil stability, compaction, and other geotechnical purposes.
14. **Restoration of Graded Surfaces:**
- a. Vegetation shall be reestablished on all exposed fill slopes, cut slopes, utility lines, driveway(s), and graded surfaces, except for cosmetic landscaping abutting buildings in accordance with the standards established in Article VI of this Ordinance. Newly exposed rock faces shall be stained to match adjacent areas of the lot.

b. A re-vegetation plan shall be submitted with and approved as part of the landscape plans for the lot or parcel disturbed. The re-vegetation process shall be completed prior to the final approval by the Town Manager or authorized designee, unless a specific exemption is granted by the Town Manager or authorized designee. Grading and other improvements for drainage and erosion control purposes shall also be completed and re-vegetated/landscaped prior to final inspection.

15. **Dust Control:** During all grading, and until re-vegetation or site restoration is completed, dust should be minimized by application of approved dust control methods.

C. **Exemptions:**

1. Lots used for governmental purposes and owned by utility companies that are regulated by the Arizona Corporation Commission, and lots owned by other political subdivisions of the State or Federal government, are exempt from the hillside disturbance limitations of Sections 5.02 and 5.04.
2. A 20' wide band of primary driveway access (measured from the back of curb to the nearest point of intersection with any portion of the house, the garage door or a carport or covered driveway, if any) is excluded from the hillside disturbance limitations.
3. A 10' wide utility trench exemption may be allowed, subject to written confirmation of the requirement from the utility company stating that the trench must be outside the driveway access exemption. Such exempted area must be re-vegetated in accordance with subsection 5.02(B)(14).
4. Single-Family Residential lots zoned R1-6, R1-6A, R1-8, R1-8A, R1-10 and R1-10A shall be 100% disturbable and exempt from the hillside disturbance limitations.
5. Non-residential property in Commercial or Industrial zoning districts shall be 100% disturbable and exempt from the hillside disturbance limitations.

SECTION 3. The Subdivision Ordinance, Article 5 (Grading Standards), Subsection 5.04.A (Purpose; Methodology), is hereby amended as follows:

A. **Purpose; Methodology.** The purpose of these hillside regulations is to limit the amount of hillside disturbance within each subdivision. The amount of hillside area that may be disturbed shall be based on the severity of the slope. Hillside areas shall mean any area having slopes equal to or greater than ~~10~~ 20%, as measured from a topographical contour map prepared and stamped by an Arizona-registered land surveyor. The Town requires the submission of topographic contour maps having contour intervals not greater than two feet and

at a scale not smaller than 1" = 20' for sites less than 10 acres. Sites 10 to 100 acres may utilize contour intervals not greater than five feet at a scale not smaller than 1" = 50'. Sites over 100 acres may utilize contour intervals not greater than five feet at a scale not smaller than 1" = 100'. Individual non-contiguous areas of hillside or non-hillside that are less than 500 square feet that are located within larger areas non-hillside or hillside, respectively, may be included with the larger area of non-hillside or hillside that surrounds it. ~~Whether a subdivider chooses the Lot by Lot Hillside Protection Option or the Hillside Transfer and Protection Option as set forth in SubSections 5.04.G.1 and 5.04.G.2, respectively, the actual square footage of disturbance permitted within one slope interval may be transferred into areas having lesser degree of slope.~~ The percent of slope shall be determined by the spacing between the contours lines as shown on the preliminary plat. Following are the land disturbance allowance of slope interval areas of 500 square feet or more:

Percent of Slope	Preservation Requirement (%)	Disturbance Allowance (%)
<10	0	100
10 < 20	70	30
20 < 30	80	20
30 and more	90	10

PERCENT OF SLOPE	PRESERVATION REQUIREMENT (%)	DISTURBANCE ALLOWANCE (%)
0 – 20%	0	100 %
20% +	60%	40%

**SECTION 4.** The Subdivision Ordinance, Article 5 (Grading Standards), Subsection 5.04.B (Exemption; Calculations), is hereby amended by adding a new Subsection, 504.B.1.c, to read as follows:

- c. All lots and uses deemed exempt under Subsection 5.02.C of this Article.

**SECTION 5.** The Subdivision Ordinance, Article 5 (Grading Standards), Section 5.04 (Hillside Disturbance), is hereby amended by deleting the Illustration of Preservation Requirement, in its entirety.

**SECTION 6.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason to be held 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.

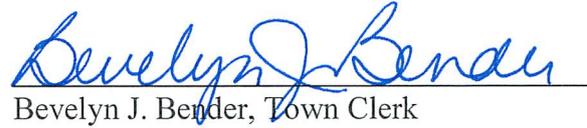
**SECTION 7.** The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to execute all documents and take all steps necessary to carry out the purpose and intent of this Ordinance.

**PASSED AND ADOPTED BY** the Mayor and Council of the Town of Fountain Hills, Arizona, October 16, 2014.

**FOR THE TOWN OF FOUNTAIN HILLS:**

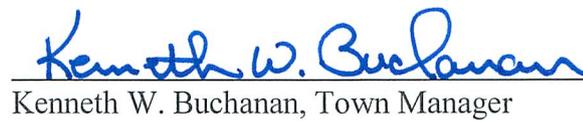
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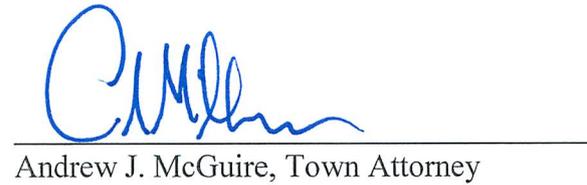
  
Linda M. Kavanagh, Mayor

  
Bevelyn J. Bender, Town Clerk

**REVIEWED BY:**

**APPROVED AS TO FORM:**

  
Kenneth W. Buchanan, Town Manager

  
Andrew J. McGuire, Town Attorney