

**ORDINANCE 16-04**

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, AMENDING THE TOWN OF FOUNTAIN HILLS ZONING ORDINANCE, CHAPTER 12, COMMERCIAL ZONING DISTRICTS, RELATED TO OUTDOOR ENTERTAINMENT, ADDING A NEW CHAPTER 25, ENTERTAINMENT OVERLAY DISTRICT, AND AMENDING THE OFFICIAL ZONING DISTRICT MAP.

**WHEREAS**, the Mayor and Council of the Town of Fountain Hills (the “Town Council”) approved Ordinance No. 93-22 which adopted the Zoning Ordinance for the Town of Fountain Hills (the “Zoning Ordinance”); and

**WHEREAS**, the Town Council desires to amend the Zoning Ordinance to revise Chapter 12 (Commercial Zoning Districts), Subsection 12.02(C) (Additional Uses Permitted in C-2 and C-3 Zoning Districts), to allow outdoor entertainment, and to add a new Chapter 25 (Entertainment Overlay District) to create an overlay zoning district for downtown to allow for outdoor entertainment; and

**WHEREAS**, the Town Council desires to amend the Town of Fountain Hills Official Zoning District Map (the “Zoning Map”) pursuant to ARIZ. REV. STAT. § 9-462.04, to modify the zoning designation for an approximately 63 acre area of real property to include the Entertainment Overlay District (the “Zoning Map Amendment”); and

**WHEREAS**, in accordance with the Zoning Ordinance and pursuant to ARIZ. REV. STAT. § 9-462.04, public hearings regarding this Ordinance were advertised in the August 24, 2016 and August 31, 2016, editions of the *Fountain Hills Times*; and

**WHEREAS**, public hearings were held by the Fountain Hills Planning and Zoning Commission on September 8, 2016, and by the Town Council on October 6, 2016.

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

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. The Zoning Ordinance, Chapter 12 (Commercial Zoning Districts), Subsection 12.02(C) (Additional Uses Permitted in C-2 and C-3 Zoning Districts) is hereby amended as follows:

....

3. Bars, including retail sales of package goods for off-site consumptions, provided that there is no entertainment or music audible off-site UNLESS OTHERWISE PERMITTED PURSUANT TO CHAPTER 25 OF THIS ORDINANCE. ~~No adult entertainment.~~

....

18. Restaurants and cafes, including outdoor patios with or without cocktail lounges, provided that there is no entertainment or music audible off-site UNLESS OTHERWISE PERMITTED PURSUANT TO CHAPTER 25 OF THIS ORDINANCE. ~~and provided that~~ Any outdoor patio with alcoholic beverage service must be enclosed as required by Arizona Revised Statutes § 4-207.01, as amended, except for the time during which a current and applicable barrier exemption, as granted by the Arizona Department of Liquor Licenses and Control, is in place for the outdoor patio.

....

SECTION 3. The Zoning Ordinance is hereby amended by adding a new Chapter 25 (Entertainment Overlay District) as follows:

**Sections:**

**25.01 Purpose and Intent**

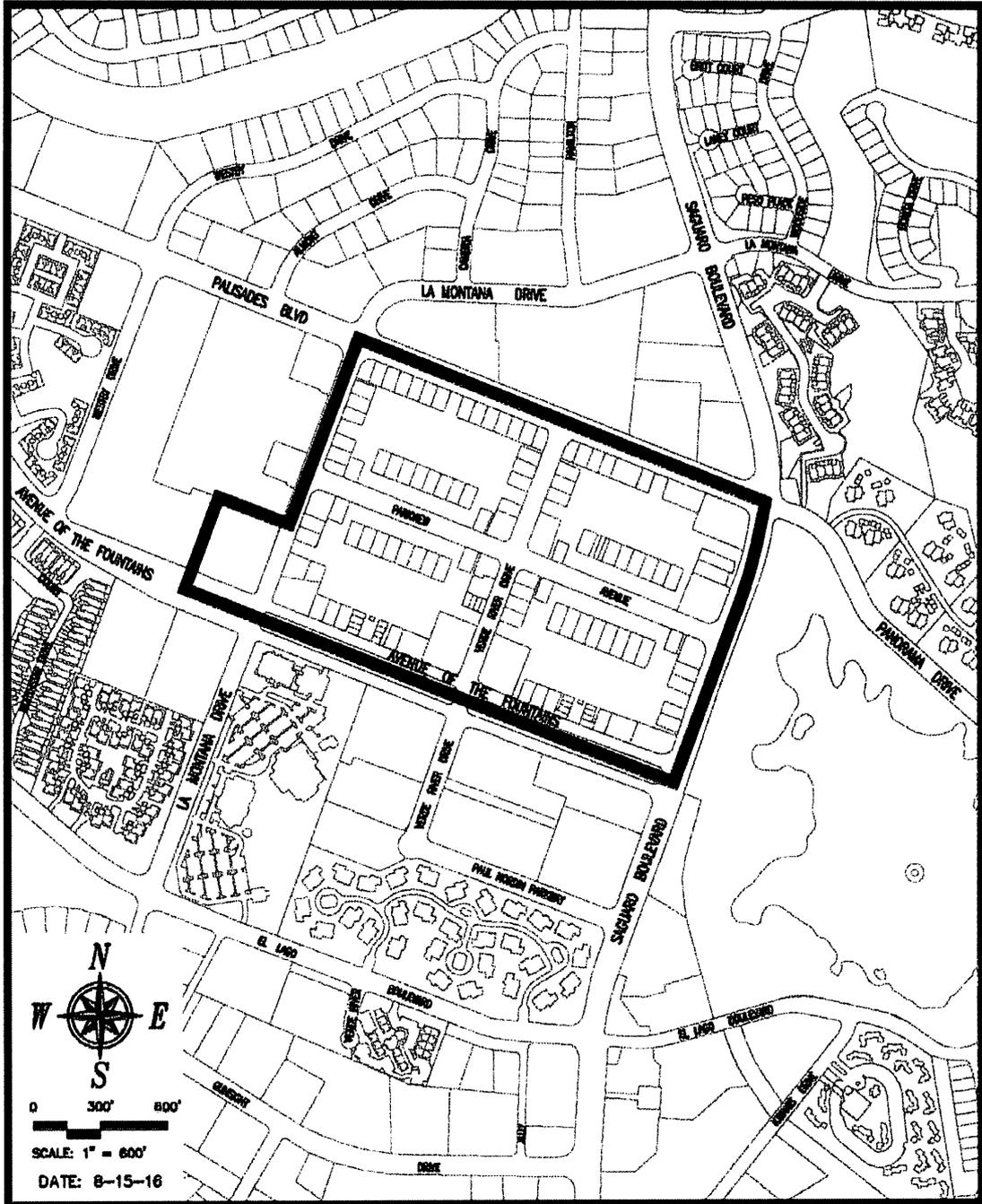
**25.02 Provisions Applicable to all Uses**

**Section 25.01 Purpose and Intent**

The Entertainment Overlay District is an overlay zoning district covering portions of downtown within the Downtown Area Specific Plan area, as shown in Figure 25-1 below; any property located either partially or wholly within the district is allowed the uses in this Chapter. The overlay district is intended to allow for outdoor entertainment and uses to establish a more vibrant and active downtown area. The Entertainment Overlay District modifies the underlying zoning district regulations only to the extent specifically set forth in this Chapter. If not specifically modified in this Chapter, all of the regulations in effect in the underlying zoning districts will remain in full force and effect.

[Figure 25-1 on following page]

TOWN OF FOUNTAIN HILLS  
ENTERTAINMENT OVERLAY DISTRICT  
Figure 25-1



**Section 25.02 Provisions Applicable to all Uses**

- A. Outdoor Entertainment is permitted at any establishment with dedicated outdoor seating areas for food and beverage service.
- B. Any recorded or live music or sound that is electronically amplified and played outside an establishment shall only be permitted at establishments with dedicated outdoor seating areas for food and beverage service.
- C. Establishments with dedicated outdoor seating areas for food and beverage service shall comply with the sound level requirements set forth in the Fountain Hills Town Code Section 11-1-7, as amended.
- D. Outdoor seating areas for food and beverage service shall comply with any applicable barrier requirements from the Arizona Department of Liquor Licenses and Control.
- E. Outdoor seating areas for food and beverage service are allowed within the sidewalk areas, provided an encroachment permit is approved by the Town Council, in its sole discretion.

SECTION 4. The Zoning Map Amendment applicable to the approximately 63 acre area of real property generally bounded by Palisades Boulevard to the north, Saguaro Boulevard to the east, La Montana Boulevard to the west and Avenue of the Fountains to the South, as more particularly depicted on Exhibit A, attached hereto and incorporated herein by reference, is hereby approved.

SECTION 5. If any section, subsection, sentence, clause, phrase or portion 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 6. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to take all steps and execute all documents 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 6, 2016.

**FOR THE TOWN OF FOUNTAIN HILLS:**

  
\_\_\_\_\_  
Linda M. Kavanagh, Mayor

**REVIEWED BY:**

  
\_\_\_\_\_  
Grady E. Miller, Town Manager

**ATTESTED TO:**

  
\_\_\_\_\_  
Bevelyn J. Bender, Town Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Andrew J. McGuire, Town Attorney

EXHIBIT A  
TO  
ORDINANCE 16-04

(Map of Property)

See following page.

TOWN OF FOUNTAIN HILLS  
ENTERTAINMENT OVERLAY DISTRICT  
Figure 25-1

