

ORDINANCE NO. 12-02

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, AMENDING THE FOUNTAIN HILLS TOWN CODE, CHAPTER 1, ARTICLE 1-8, AND CHAPTER 12, BY CREATING PROVISIONS RELATED TO ENFORCEMENT OF CIVIL VIOLATIONS.

WHEREAS, the Town of Fountain Hills Town Code (the "Town Code") contains provisions pertaining to penalties for various violations; and

WHEREAS, most violations of the Town Code are, by default, designated as class one misdemeanor offenses; and

WHEREAS, the Mayor and Council of the Town of Fountain Hills (the "Town Council") desire to adopt Town code enforcement procedures that mirror existing practice to first seek compliance prior to issuance of a civil citation or criminal complaint; and

WHEREAS, it is in the best interests of the citizens of the Town of Fountain Hills to have a uniform set of standards for civil enforcement of Town Code provisions.

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 Fountain Hills Town Code, Chapter 1 (General), Article 1-8 (Penalty), Section 1-8-1 (Penalty Provisions), is hereby renamed Section 1-8-2 (Criminal and Civil Traffic Penalty Provisions) and amended as follows:

Section 1-8-2 CRIMINAL AND CIVIL TRAFFIC Penalty Provisions

A. Any person found guilty of violating any provisions of this code WHERE NO SPECIFIC PENALTY IS PROVIDED THEREFOR AND NO OTHER PENALTY PROVISION IS REFERENCED, ~~except as otherwise provided in this code,~~ shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not to exceed two thousand five hundred dollars or by imprisonment for a period not to exceed six months, or by both such fine and imprisonment. ~~Each day that a violation continues shall be a separate offense punishable as hereinabove described.~~

B. Any violation of or failure or refusal to do or perform any act required by Chapter 12 of this code constitutes a civil traffic violation. Civil traffic violations are subject to the provisions of A.R.S. Title 28, Chapter 6, Articles 20 and 21 and amendments thereto.

C. Any person who is found or pleads guilty to a misdemeanor criminal offense in the municipal court and who, as a consequence, is incarcerated in any jail facility, may as a part of any sentence imposed by the municipal court, be required to reimburse the Town for any costs of such incarceration charged to the Town by the jail facility in which the person was incarcerated.

SECTION 3. The Fountain Hills Town Code, Chapter 1 (General), Article 1-8 (Penalty) is hereby amended by adding a new Section 1-8-1 (General Provisions) thereto, to read as follows:

Section 1-8-1 General Provisions

A. Each day any violation of any provision of this code or of any ordinance continues shall constitute a separate offense. In all cases where the same offense is made punishable or is created by different clauses or sections of this code the prosecuting officer may elect under which to proceed; but not more than one recovery shall be had against the same person for the same offense; provided, the revocation of a license or permit shall not be considered a recovery or penalty so as to bar any other penalty being enforced.

B. When two or more persons have liability to the Town or are responsible for a violation of this code, their responsibility shall be joint and several.

C. Nothing in this Section shall in any way impair or act as a bar to any charges or costs assessed pursuant to Chapter 5 of this code.

SECTION 4. The Fountain Hills Town Code, Chapter 1 (General), Article 1-8 (Penalty) is hereby amended by adding a new Section 1-8-3 (Civil Penalty Provisions) thereto, to read as follows:

Section 1-8-3 Civil Penalty Provisions

A. This Section applies whenever in this code or in any ordinance of the Town any act is prohibited or is made or declared to be unlawful or an offense, or whenever in such code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, and where a civil penalty is declared to be applicable.

B. Unless otherwise specified, written notice and/or civil citation may be issued for the failure to do or perform any act required by this code.

C. Notice of Violation.

1. The Town may seek voluntary compliance with the provisions of this code before issuing a civil citation or criminal complaint, as applicable. This shall include a written notice of violation given to the responsible party.

2. A notice of violation may be issued by the Town Manager or authorized designee.

3. The notice of violation shall set forth the nature of the violation, a reference to the section(s) violated, the action required to come into compliance with the provision of the code, the time period provided to come into compliance, and the person at the Town to contact for further information.

4. The Town shall use reasonable efforts to ensure that notices of violation are received by the responsible party; provided, however, failure of the responsible party to receive a notice of violation shall not preclude the subsequent issuance of a civil citation or criminal complaint, as applicable.

5. Nothing in this Section shall prevent the Town from taking immediate action to protect the public from an imminent hazard to health or safety as otherwise provided by law.

D. Civil Citations.

1. Unless otherwise designated as a criminal offense, if a violation continues past the compliance time set forth in the notice of violation, a civil citation may be issued to the person or entity responsible for the violation.

2. A civil citation may be issued by the Town Manager or authorized designee.

3. The civil citation shall include the date of the violation, a reference to the section(s) violated and, if applicable, the location of the property or site at issue.

4. The civil citation shall direct the defendant to pay the fine imposed pursuant to Subsection 1-8-3(E) below or appear in the Fountain Hills Municipal Court within ten days of the issuance of the citation.

5. The civil citation shall provide notice that if the defendant fails to pay the fine or appear in the Fountain Hills Municipal Court as directed, a default judgment will be entered in the amount of the fine designated on the citation for the violation. In addition, a default fee may be imposed for failure to appear.

6. Service of the citation may be accomplished and will be deemed proper and complete by any of the following methods:

a. Hand delivering the citation to the defendant.

b. Mailing a copy of the citation by certified or registered mail, return receipt requested, to the defendant's last known address.

c. Any means allowed by the Arizona Rules of Civil Procedure for the Superior Courts of Arizona.

E. Civil Penalties.

1. A person or entity convicted of a violation of the code pursuant to this Section, unless otherwise specified, shall be punishable by a base fine of not more than \$500.

2. Any defendant who fails to pay the fine or appear in the Fountain Hills Municipal Court as directed by a citation issued pursuant to this Section, or who fails to appear at the time and place set for trial of a matter arising under this Section, shall be subject to an additional default fee in an amount established by the Fountain Hills Municipal Court.

3. Any judgments issued by the Fountain Hills Municipal Court shall be subject to all surcharges and fees imposed by state law in addition to the base civil fines required by this Section.

4. Judgments shall be collected in the same manner as any other civil judgment as provided by law.

F. Recidivist Properties/Persons.

1. The recidivist process is designed to provide relief via an expedited enforcement process for problems with persons or entities who repeatedly violate any provision of this code or Town ordinance and who have demonstrated an unwillingness to comply with this Section 1-8-3. Any violation of this chapter, whether initially deemed civil or criminal in nature, which is committed by a person deemed a recidivist as set forth in Subsection 1-8-3(F)(2) below, shall be deemed a misdemeanor and shall be addressed as set forth in Subsection 1-8-2(A) above.

2. A person or entity shall be deemed a “recidivist” if such person or entity has been issued a notice of violation and/or civil citation, and/or criminal charges filed for two or more times within the last two-year period relating to violations of the same provisions of this code.

3. To address frequently occurring violations on recidivist parties or entities, the Town Manager or authorized designee may initiate non-complaint based inspections/code enforcement on recidivist parties or entities after case resolution to check for a recurrence of the same violation(s).

4. Cases for which the persons or entities involved have been designated as recidivist shall be submitted to the Town Prosecutor for further action consistent with this chapter.

G. The penalties set forth in this Section shall be in addition to any penalty, fine, fee, assessment or surcharge that may be assessed pursuant to state law.

SECTION 5. The Fountain Hills Town Code, Chapter 12 (Traffic), Article 12-2 (Traffic Control), Section 12-2-13 (Penalties), is hereby amended as follows:

Section 12-2-13 Penalties

Violations of this article shall be punishable as set forth in Chapter 1, Article 1-8, SECTION 1-8-2, Subsection B, of this code.

SECTION 6. The Fountain Hills Town Code, Chapter 12 (Traffic), Article 12-3 (Parking), Section 12-3-12 (Penalties), is hereby amended as follows:

Section 12-3-12 Penalties

Violations of this Article shall be punishable as set forth in Chapter 1, Article 1-8, SECTION 1-8-2, Subsection B, of this code. Each day that a violation continues shall be a separate offense punishable by imposition of a civil sanction not to exceed three hundred dollars.

SECTION 7. The Fountain Hills Town Code, Chapter 12 (Traffic), Article 12-4 (Private Parking), Section 12-4-6 (Penalties), is hereby amended as follows:

Section 12-4-6 Penalties

Violations of this article shall be punishable as set forth in CHAPTER 1, ARTICLE 1-8, SECTION 1-8-2, Subsection B, of Article 1-8 of this code.

SECTION 8. 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 9. 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, March 1, 2012.

FOR THE TOWN OF FOUNTAIN HILLS:



Jay T. Schlum, Mayor

REVIEWED BY:



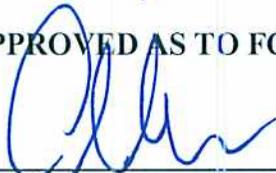
Julie Ghetti, Interim Town Manager *for*

ATTESTED TO:



Bevelyn J. Bender, Town Clerk

APPROVED AS TO FORM:



Andrew J. McGuire, Town Attorney