

**ORDINANCE NO. 12-05**

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, CHAPTER 16 LODGING ZONING DISTRICTS, AND CHAPTER 18 TOWN CENTER COMMERCIAL ZONING DISTRICT, RELATED TO OUTDOOR SEATING AREAS.

**WHEREAS**, the Mayor and Council of the Town of Fountain Hills (the "Town Council") adopted 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), Chapter 16 (Lodging Zoning Districts) and Chapter 18 (Town Center Commercial Zoning District), (i) to allow restaurants within those districts to have outdoor seating areas and (ii) to clarify that outdoor seating areas need not be enclosed if no alcoholic beverages are served; 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 22, 2012, August 29, 2012, and October 17, 2012 editions of the Fountain Hills Times; and

**WHEREAS**, public hearings were held by the Fountain Hills Planning and Zoning Commission on September 13, 2012 and October 11, 2012, and by the Town Council on November 1, 2012.

**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(B)(1) (Uses Permitted in C-1, C-C, C-2, and C-3, Zoning Districts; Commercial Uses), is hereby amended by modifying subsection t thereof, as follows:

- t. Restaurants, INCLUDING OUTDOOR PATIOS WITH OR WITHOUT COCKTAIL LOUNGES, PROVIDED THAT THERE IS NO ENTERTAINMENT OR MUSIC AUDIBLE OFF-SITE 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, Chapter 12 (Commercial Zoning Districts), Subsection 12.02(C) (Additional Uses Permitted in C-2 and C-3 Zoning Districts), is hereby amended by deleting subsection 18 thereof in its entirety and reserving it for future use.

SECTION 4. The Zoning Ordinance, Chapter 12 (Commercial Zoning Districts), Subsection 12.04(C) (Uses Subject to Special Use Permits in C-C and C-1 Zoning Districts Only; Outdoor Seating Area), is hereby deleted in its entirety and reserved for future use.

SECTION 5. The Zoning Ordinance, Chapter 16 (Lodging Zoning Districts), Section 16.03 (Uses Subject to Special Use Permits in L-1, L-2 and L-3 Zoning Districts), is hereby amended by modifying subsection A thereof, as follows:

- A. Restaurants ~~and cafes~~, including the utilization of an OUTDOOR ~~enclosed~~-patio with or without alcoholic beverage sales, provided that there is no entertainment or music audible off-site 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, providing the following criteria are met:

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SECTION 6. The Zoning Ordinance, Chapter 18 (Town Center Commercial Zoning District), Subsection 18.03(B) (Permitted Uses; Any of the Following Commercial Uses), is hereby amended by modifying subsection 23 thereof, as follows:

- 23. Outdoor seating areas for restaurants, delicatessens, cafes or bars with or without alcoholic beverage service, subject to the regulations of this Chapter 18 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 7. 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.

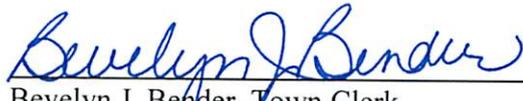
SECTION 8. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to execute all documents and take all steps necessary to carry out the purpose and intent of this Ordinance.

**PASSED AND ADOPTED** by the Mayor and Council of the Town of Fountain Hills, Arizona, November 1, 2012.

**FOR THE TOWN OF FOUNTAIN HILLS:**

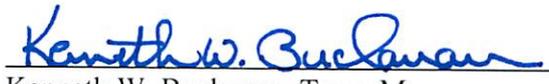
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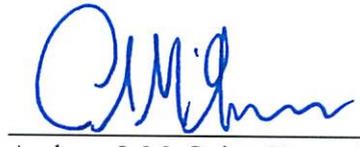
  
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Linda M. Kavanagh, Mayor

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

**REVIEWED BY:**

**APPROVED AS TO FORM:**

  
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Kenneth W. Buchanan, Town Manager

  
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Andrew J. McGuire, Town Attorney