

**RESOLUTION NO. 2018-46**

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF FOUNTAIN HILLS, MARICOPA COUNTY, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE TOWN CLERK AND ENTITLED "SECTION 11-1-7(J) NUISANCE PARTY."

**BE IT RESOLVED** BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF FOUNTAIN HILLS as follows:

SECTION 1. That certain document entitled "Section 11-1-7(J) Nuisance Party," attached hereto as Exhibit A, of which one paper copy and one electronic copy maintained in compliance with ARIZ. REV. STAT. § 44-7041 are on file in the office of the Town Clerk and open for public inspection during normal business hours, is hereby declared to be a public record, and said copies are ordered to remain on file with the Town Clerk.

**PASSED AND ADOPTED** by the Mayor and Council of the Town of Fountain Hills, Maricopa County, Arizona, this 19th day of June, 2018.

**FOR THE TOWN OF FOUNTAIN HILLS:**

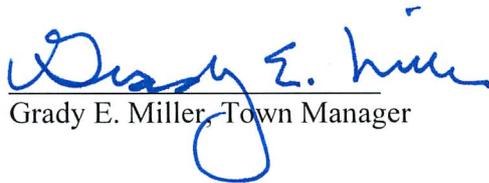
**ATTESTED TO:**

  
Linda M. Kavanagh, Mayor

  
Bevelyn J. Bender, Town Clerk

**REVIEWED BY:**

**APPROVED AS TO FORM:**

  
Grady E. Miller, Town Manager

  
Mitesh V. Patel, Interim Town Attorney  
Dickinson Wright PLLC

EXHIBIT A  
TO  
RESOLUTION NO. 2018-46

[TOWN CODE SECTION 11-1-7(J) NUISANCE PARTY]

See following pages.

PHOENIX 77018-1 469392v1

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Fountain Hills Town Code

Amendment to Chapter 11 of the Fountain Hills Town Code

**Section 11-1-7 Noise**

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J. Nuisance Party. A Nuisance party is unlawful and constitutes a civil infraction.

1. Definitions. For the provisions of Section 11-1-7(J) the following definitions apply:

- a. "Minor" means any person under the age of twenty-one (21) years.
  - b. "Enforcement Officer" means either a (i) Town designated law enforcement officer or (ii) Town code enforcement officer.
  - c. "Notice of Violation" has the same meaning as the term is defined in Section 1-8-3.
  - d. "Nuisance Party" means a gathering of one (1) or more persons on any private property, including property used to conduct business, in a manner which causes a disturbance of the quiet enjoyment of private or public property by any person or persons. Such disturbances include, but are not limited to, excessive noise or traffic, obstruction of public streets by crowds or vehicles, drinking in public, the service of alcohol to minors or consumption of alcohol by minors, fighting, disturbing the peace, and littering.
  - e. "Owner" means the Owner of any property, as well as any agent of an Owner who acts on behalf of the Owner to control or otherwise regulate the occupancy or use of the property.
  - f. "Premises" means the property that is the site of a nuisance party. For residential properties, "premises" means the dwelling unit or units where the nuisance party occurs.
  - g. "Responsible person" means any person in attendance who engaged in a nuisance party, including any Owner who is in attendance, occupant, tenant, guest or any sponsor, host or organizer of the nuisance party. "Responsible person" does not include Owners or persons in charge of premises where a nuisance party takes place if the persons in attendance obtained use of the premises through illegal entry or trespassing.
2. Abatement of a nuisance party. An Enforcement Officer may abate a nuisance party by reasonable means including, but not limited to, warning, citation, or, in case of a law enforcement officer, arrest of violators under applicable ordinances or state statutes, and dispersal of the persons attending the gathering.

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3. When an Enforcement Officer responds to the first nuisance party and while at the scene determines that there is a threat to the public peace, health, safety, or general welfare, the officer may issue a citation to any Responsible Person(s).
  - a. If on a first response to a nuisance party, any of the following crimes are being committed:
    - i. Minor in possession of alcohol;
    - ii. Minor in consumption of alcohol;
    - iii. Possession or use of illegal drugs;
    - iv. Weapons misconduct, in violation of A.R.S. Section 13-3102; or
    - v. Any felony offense;
  - b. Then the Responsible Person(s) and Owner shall be assessed a fine commensurate with a second nuisance party, as set forth in subsections (5) and (6) of this section.
4. Notice of violation. If an Enforcement Officer issues a citation to an Owner or any Responsible Person(s) under this section, the officer shall notify the Town in writing. Upon such notification the Town shall issue a Notice of Violation to the Owner in the same manner as set forth in Subsection 1-8-3(c) of this Code.
5. Non-Owner liability for nuisance parties.
  - a. Any of the following Responsible Person(s) may be liable for a civil infraction:
    - i. The person(s) who organized or sponsored the event constituting a nuisance party;
    - ii. Any person engaged in any conduct causing the gathering to be a nuisance party.
  - b. Civil penalties for Responsible Person(s)
    - i. For a first nuisance party violation the fine is two hundred fifty dollars (\$250.00), inclusive of any applicable fines, fees, assessments or surcharges.
    - ii. Subsequent Nuisance Parties. If the Responsible Person(s) found liable for a nuisance party have previously been found responsible for a nuisance party, regardless of the location of the prior violation, the penalties are as follows:
      1. For a second nuisance party violation within one hundred twenty (120) days of the first nuisance party the fine is five hundred dollars (\$500.00), inclusive of any applicable fines, fees, assessments or surcharges.

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2. For a third or subsequent nuisance party within one hundred twenty (120) days of the second nuisance party the fine is one thousand dollars (\$1,000.00), inclusive of any applicable fines, fees, assessments or surcharges.
3. If on response to a third or subsequent nuisance party, any of the following crimes are being committed at the party:
  - a. Minor in possession of alcohol;
  - b. Minor in consumption of alcohol;
  - c. Possession or use of illegal drugs;
  - d. Weapons misconduct, in violation of A.R.S. Section 13-3102; or
  - e. Any felony offense.

Then the Responsible Person(s) shall be assessed a fine commensurate with two (2) times the fine for a third or subsequent nuisance party, as set forth in this subsection.

### 6. Owner liability for nuisance parties.

- a. The Owner of the property where the nuisance party occurred may be liable for a civil infraction.
- b. Civil penalties for Owners
  - i. An Owner who is not in attendance at the nuisance party, and who did not organize or sponsor the nuisance party, may be issued a written notice of violation.
  - ii. Subsequent Nuisance Parties.
    1. If, after a written notice of a violation is issued by the Town, an Enforcement Officer responds for a second time to the same premises for a nuisance party within one hundred twenty (120) days of the first response, such response shall be deemed a second nuisance party and the fine is five hundred dollars (\$500.00), inclusive of any applicable fines, fees, assessments or surcharges.
    2. If, after a written notice of a second violation is issued, an Enforcement Officer responds to the same premises for a third or subsequent nuisance party within one hundred twenty (120) days of the second nuisance party response, such response shall be deemed a third or subsequent nuisance party and the fine is one thousand dollars (\$1,000.00), inclusive of any applicable fines, fees, assessments or surcharges.

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3. If on response to a third or subsequent nuisance party, any of the following crimes are being committed at the party:
  - a. Minor in possession of alcohol;
  - b. Minor in consumption of alcohol;
  - c. Possession or use of illegal drugs;
  - d. Weapons misconduct, in violation of A.R.S. Section 13-3102; or
  - e. Any felony offense.

Then the Owner shall be assessed a fine commensurate with two (2) times the fine for a third or subsequent nuisance party, as set forth in this subsection.

- c. Within ten (10) business days of receipt of a citation or notice of violation, the Owner may petition the Presiding Magistrate for a waiver of the civil fine, under any of the following circumstances:
    - i. The Owner has taken steps reasonably necessary to prevent a subsequent nuisance party or to exclude the uninvited person from the premises, or the Owner is actively attempting to evict the Responsible Person(s) from the premises.
    - ii. The Owner of a property with over fifty (50) individually rented units obtains and maintains private security services for the entire property.
    - iii. If an Owner evicts tenants from a premises where a nuisance party occurred and new tenants at the same premises are given notice of a nuisance party violation, the Owner must be re-notified in the same manner as set forth in Subsection 1-8-3(c) of this Code.
7. Enforcement. Enforcement Officers are authorized to enforce the provisions of this section provided that enforcement is initiated by a complaint from a member of the public or as otherwise provided by law. The complaining member of the public shall not necessarily be required to appear in court before a violator may be found responsible. Enforcement Officers shall enforce the provisions of this section using their sound discretion and the consideration of the totality of the circumstances, including but not limited to the uses of the premises (e.g. residential, commercial, etc.).
  8. Other remedies. Nothing in this section shall be construed as affecting the ability of the State to initiate or continue concurrent or subsequent criminal prosecution of any Responsible Person(s) or Owner for any violations of the provisions of the Town code or State law arising out of the circumstances necessitating the application of this section.