

SUMMARY OF AGENDA ITEM

DATE: March 27, 2008
TO: Mayor and Council
FROM: Legal Department
SUBJECT: Technical Amendments to Magistrate Code Provisions
Ordinance 732 and Resolution 2358

PURPOSE:

Ordinance 732 (Resolution 2358) makes technical amendments to the section of the Town Code dealing with the Town's Magistrate Court.

SUMMARY OF CHANGES:

- 1) The Ordinance provides that the Town Magistrate Court has one Town Magistrate and Associate Magistrate(s) as needed. Currently, the Court has a Presiding Magistrate, a Magistrate, and Judge ProTems (Temporary Judges).
- 2) The Ordinance appoints the individuals currently serving as the Magistrate Court's Judge ProTems as Associate Magistrates.
- 3) The organization of Sections 34.02 through 34.04 is changed in accordance with the above changes.

EXPLANATION OF CHANGES:

- 1) The Town's Magistrate Court (along with all municipal courts within Arizona) is governed by the Arizona Constitution, the Arizona Revised Statutes, the Rules of the Supreme Court, and the Town Code. Additionally, the Arizona Administrative Office of the Courts ("AOC") provides guidance and oversight to all municipal courts. During the early 2000's, the Arizona Courts determined that Judge ProTems were required to be attorneys. In response to this, Payson created the positions of Presiding Magistrate and Magistrate. (Ordinance 613 passed 7/11/02)

Subsequent to 2002, the Arizona Constitution was amended and it was the opinion of most in the legal field that Judge ProTems in the lower courts no longer needed to be attorneys. Additionally, Judge R.O. McDaniel retired and Dorothy Little was appointed Presiding Magistrate in his place. Instead of having other Magistrates, the Town began using various Judge ProTem's. In 2007, AOC issued an opinion that "there is no statutory authority for appointment of a pro tem judge in a municipal court." Additionally, AOC recommended the creation of the position of 'Associate Magistrate' in place of Judge ProTems. In accordance with this opinion, Ordinance 732 creates the new position of 'Associate Magistrate.'

1st Reading & Public Hearing MAR 27 2008 G.B.

- 2) Section 4 of the Ordinance appoints those persons currently serving as Judge ProTems to the new position of Associate Magistrate. Section 5 sets their compensation at the amount paid to Judge ProTems in the Justice Court (currently \$25.00/hour).
- 3) In addition to the creation of the position of Associate Magistrate, various portions of sections 34.02 through 34.04 have been reordered. The table below summarizes the changes. A copy of sections 34.02 through 34.04 as they exist currently is attached to this Summary.

| Section | Current | Amended |
|---------|--|--|
| 34.01 | No changes | |
| 34.02 | Appointment of the Presiding Magistrate and Magistrate | Appointment of the Magistrate, Associate Magistrate, Court Clerk, and other Court Staff |
| 34.03 | Powers and Duties of the Magistrate | Same except subparagraph (A) is new (presiding officer) and old subparagraph (H) is deleted (appointment of Judge ProTems) |
| 34.04 | Court Clerk | Duties of Associate Magistrates |

CHAPTER 34: MAGISTRATE'S COURT

Section

- 34.01 Establishment; jurisdiction
- 34.02 Town Magistrate; assistant
- 34.03 Powers and duties of Town Magistrate
- 34.04 Court Clerk
- 34.05 Hearing officers
- 34.06 Proceedings of court
- 34.07 Procedures to summon jurors
- 34.08 Recovery of incarceration and booking costs

§ 34.01 ESTABLISHMENT; JURISDICTION.

There is hereby established in the town a magistrate's court which shall have jurisdiction of all violations of this code, and jurisdiction concurrently with justices of the peace of precincts in which the town is located of violation of laws of the state committed within the limits of the town.
(` 82 Code, Art. 5-1)

§ 34.02 TOWN MAGISTRATE; ASSISTANT.

(A) The presiding officer of the Magistrate's Court of the town shall be the Presiding Magistrate, who shall be appointed by the Mayor and Common Council of the town. The Presiding Magistrate shall be appointed to serve for a term of two years, with the beginning and end of the term to be specified at the time of appointment. During such term, the Presiding Magistrate may be removed only for cause.
(` 82 Code, § 5-2-1) (Am. Ord. 241, passed 5-13-85; Am. Ord. 613, passed 7-11-02)

(B) The office of Town Magistrate is hereby created. The Presiding Magistrate may recommend to the Mayor and Common Council the names of individuals qualified to serve as Town Magistrate for the Magistrate Court, subject to the assignment and direction of the Presiding Magistrate, once appointed by the Mayor and Common Council. All Town Magistrates shall serve for a term to be specified by the Mayor and Common Council, subject to removal by the Mayor and Common Council after recommendation of the Presiding Magistrate. Each Magistrate appointed to the Town Magistrate's Court, including the Presiding Magistrate, shall have those powers and perform those duties set forth in § 34.03 hereunder and any additional powers and duties established by contract between the parties, including, but not by way of limitation, the authority to perform services authorized by law for the Justice of the Peace Courts.

(` 82 Code, § 5-2-2; Am. Ord. 613, passed 7-11-02)

§ 34.03 POWERS AND DUTIES OF TOWN MAGISTRATE.

The powers and duties of the Magistrate shall include the following:

(A) The powers and duties set forth and conferred upon the Magistrate under the provisions of the state constitution and statutes, this code and the ordinances and resolutions of the town.

(B) The keeping of a docket in which shall be entered each action and the proceedings of the court therein.

(C) The responsibility for fixing and receiving civil traffic deposits, all bonds and bails, and receiving all fines, penalties, fees, civil traffic sanctions and other monies as provided by law.

(D) Payment of all fees, fines, civil traffic sanctions, penalties and other monies collected by the court to the Treasurer.

(E) Submitting a monthly report to the Council summarizing court activities for that month.

(F) Preparation of a schedule of traffic violations not involving the death of a person, listing specific bail and civil traffic deposits, for each violation.

(G) Designation of a deputy, other than a law enforcement officer, and a specific location at which the deputy shall, during hours when the court is not open, set the amount of bail and civil traffic deposits, in accordance with the foregoing schedule, and collect bail and civil traffic deposits, or accept proper bail bonds in lieu thereof, for and on behalf of the court.

(H) The Town Magistrate may recommend to Council the names of individuals qualified to serve as judges pro-tem for the magistrate court, subject to the assignment and direction of the Town Magistrate, once appointed. All judges pro-tem shall serve for an unspecified term, subject to the removal by the Council or the Town Magistrate. All duly appointed judges pro-tem shall be compensated on an hourly basis per a fee established by the Council, and subject to the reimbursement of those travel expenses and other out-of-pocket allowances permitted for town employees. All judges pro-tem shall be independent contractors, and not subject to the benefits or wage provisions for town employees.

(` 82 Code, § 5-2-3) (Am. Ord. 205, passed 12-29-83; Am. Ord. 285, passed 12-11-86)

§ 34.04 COURT CLERK.

The office of Town Magistrate Court Clerk is hereby created. The Town Magistrate Court Clerk will be responsible for those duties lawfully assigned to him or her by the Town Magistrate.

(` 82 Code, § 5-2-4)

ORDINANCE NO. 732

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, AMENDING TOWN CODE SECTIONS 34.01 THROUGH 34.04 RELATING TO THE TOWN MAGISTRATE COURT.

WHEREAS, pursuant to A.R.S. §22-402, the Town of Payson has established a Magistrate Court; and

WHEREAS, the Town of Payson wishes to amend its Town Code provisions relating to its Magistrate Court,

NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY ORDAIN AS FOLLOWS:

- Section 1. That sections 34.01 through 34.04 (Town Magistrate Court) of Chapter 34 of the Code of the Town of Payson set forth in Resolution 2358 were heretofore declared to be a public record by such Resolution, and all the provisions thereof are hereby referred to, amended, and adopted by this reference as though all the provisions thereof were set forth in full in this Ordinance Number 732.
- Section 2. That at least three copies of the amendments to sections 34.01 through 34.04 (Town Magistrate Court) of Chapter 34, as adopted by this Ordinance Number 732 shall be filed in the Office of the Town Clerk of the Town of Payson and the same shall be maintained and kept available for public use and inspection.
- Section 3. All ordinances and parts of ordinances in conflict with the provisions of this Ordinance Number 732 are hereby repealed to the extent of such conflict.
- Section 4. Pursuant to section 34.02(C) of the Code of the Town of Payson, as amended, the Town Council hereby appoints R.O. McDaniel, James Weeks, John Huffman, John Pearlman, and Judge Patti Nolan as Associate Magistrates of the Payson Magistrate Court.
- Section 5. Pursuant to section 34.02(E) of the Code of the Town of Payson, as amended, the Town Council determines that the Associate Magistrates shall be compensated at an hourly rate equal to the hourly rate for Judge Pro Tems in the Payson Justice Court.
- Section 6. If any section, subsection, sentence, clause, phrase or portion of this Ordinance Number 732 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 Number 732. The Mayor and Common Council of the Town of Payson declares that it would have adopted this Ordinance

1st Reading ¹/₂ Pub. Hrg. MAR 27 2008 C. 6

Number 732 and each section, subsection, sentence, clause, phrase or portion thereof despite the fact that any one or more sections, subsections, sentences, clauses, phrases or portions would be declared invalid or unconstitutional.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON this ____ day of _____, 2008, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

F. Robert Edwards, Mayor

ATTEST:

APPROVED AS TO FORM:

Silvia Smith, Town Clerk

Samuel I. Streichman, Town Attorney

**RESOLUTION NO. 2358 IS
PROVIDED FOR INFORMATION
ONLY
AT THE 3/27/08 COUNCIL MEETING.**

**RESOLUTION NO. 2358 WILL
BE AGENDIZED AS AN ACTION ITEM
AT THE 4/3/08 COUNCIL MEETING.**

RESOLUTION NO. 2358

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, AMENDING SECTIONS 34.02 THROUGH 34.04 OF CHAPTER 34 OF THE CODE OF THE TOWN OF PAYSON, AND DECLARING SUCH AMENDMENTS TO BE A PUBLIC RECORD.

WHEREAS, pursuant to A.R.S. §22-402, the Town of Payson has established a Magistrate Court; and

WHEREAS, the Town of Payson wishes to amend its Town Code provisions relating to its Magistrate Court,

WHEREAS, such amendment may be enacted by reference, pursuant to A.R.S. § 9-802,

NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:

Section 1. That Sections 34.01 through 34.04 (Magistrate Court) of Chapter 34 of the Code of the Town of Payson are hereby amended, are declared to be a public record as amended, and as amended shall read as set forth in Exhibit A, attached hereto and made a part hereof by this reference as though set forth in full at this point.

Section 2. If any section, subsection, sentence, clause, phrase or portion of Resolution Number 2358 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 Resolution Number 2358. The Town Council of Payson declares that it would have adopted Resolution Number 2358 and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one (1) or more sections, subsections, sentences, clauses, phrases, or portions may be declared invalid or unconstitutional.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON this ____ day of _____, 2008, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

F. Robert Edwards, Mayor

ATTEST:

APPROVED AS TO FORM:

Silvia Smith, Town Clerk

Samuel I. Streichman, Town Attorney

34.01 ESTABLISHMENT; JURISDICTION.

There is hereby established in the Town a Magistrate Court which shall have jurisdiction of all violations of this Code and jurisdiction concurrently with the justice of the peace precincts in which the Town is located of violations of the laws of the State committed within the territorial limits of the Town.

34.02 MAGISTRATE COURT PERSONNEL AND MANNER OF APPOINTMENT.

- (A) The Town Magistrate Court shall have a Town Magistrate, such Associate Magistrates as may be needed from time to time, a Court Clerk, and other Court staff as may be necessary.
- (B) The Town Magistrate, and any Associate Magistrates shall be qualified by training and experience to perform the powers and duties described in this Chapter.
- (B) The Mayor and Common Council shall appoint a Town Magistrate for a term of two years. During such term, the Town Magistrate may only be removed for cause.
- (C) The Mayor and Common Council may appoint one or more Associate Magistrates for a term of two years. During such terms, Associate Magistrates may only be removed for cause.
- (D) The Court Clerk and any other Court staff shall be appointed by the Town Magistrate and shall serve at the pleasure of the Town Magistrate.
- (E) The Mayor and Common Council shall from time to time fix the amount and manner of payment for the compensation of the Town Magistrate and Associate Magistrates.

34.03 POWERS AND DUTIES OF THE TOWN MAGISTRATE.

The Town Magistrate shall have the following powers and duties:

- (A) Be the presiding officer of the Magistrate Court.
- (B) All powers and duties set forth and conferred upon the Magistrate under the provisions of the Arizona State Constitution, the Arizona Revised Statutes, this Code and the ordinances and resolutions of the Town.

Exhibit A to Resolution 2358

- (C) The keeping of a docket (in written or electronic form) in which shall be entered each action and the proceedings of the court therein.
- (D) The responsibility for fixing and receiving civil traffic deposits, all bonds and bails, and receiving all fines, penalties, fees, civil traffic sanctions and other monies as provided by law.
- (E) Payment of the Town's portion of all fees, fines, civil traffic sanctions, penalties and other monies collected by the court to the Town's Chief Fiscal Officer.
- (F) Submitting a bi-annual report to the Council summarizing court activities.
- (G) Preparation of a schedule of traffic violations not involving the death of a person, listing specific bail and civil traffic deposits, for each violation.
- (H) Designation of a deputy, other than a law enforcement officer, and a specific location at which the deputy shall, during hours when the court is not open, set the amount of bail and civil traffic deposits, in accordance with the foregoing schedule, and collect bail and civil traffic deposits, or accept proper bail bonds in lieu thereof, for and on behalf of the court.

34.04 POWERS AND DUTIES OF ASSOCIATE MAGISTRATES.

The Associate Magistrates shall, under the direction of the Town Magistrate exercise the powers and duties listed in section 34.03(B).

Exhibit A to Resolution 2358