

RESOLUTION NO. 2408

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, AMENDING SECTION 15-10 OF CHAPTER 154 (THE UNIFIED DEVELOPMENT CODE) OF THE CODE OF THE TOWN OF PAYSON, AND DECLARING SUCH AMENDMENT TO BE A PUBLIC RECORD. (ENFORCEMENT)

WHEREAS, the Code of the Town of Payson was declared to be a public record by Resolution Number 1536 of the Town of Payson; and

WHEREAS, the Code of the Town of Payson was adopted as a public record by Ordinance Number 588 of the Town of Payson; and

WHEREAS, it is the intention of the Town of Payson to amend Section 15-10 of Chapter 154 (the Unified Development Code) of the Code of the Town of Payson related to Enforcement of the Unified Development Code; and

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. Section 15-10 of Chapter 154 of the Code of the Town of Payson is hereby amended, is declared to be a public record, and as amended shall read as set forth in Exhibit A attached hereto.

Section 2. If any section, subsection, sentence, clause, phrase or portion of Resolution Number 2408 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 2408. The Town Council of Payson declares that it would have adopted Resolution Number 2408 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 _____

Kenny J. Evans, Mayor

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ATTEST:

Silvia Smith, Town Clerk

APPROVED AS TO FORM:

Samuel I. Streichman, Town Attorney

EXHIBIT A OF RESOLUTION 2408

15-10 ENFORCEMENT

15-10-001 Purpose and Scope

A. Purpose

The purpose of this article is to provide a comprehensive and efficient manner of encouraging and enforcing compliance with the Town of Payson Unified Development Code (the "UDC"), while at the same time providing an administrative process which is accessible to the citizens of the Town of Payson.

B. Scope

If any building is erected, constructed, reconstructed, altered, repaired, converted or maintained, or if any building, structure, or real or personal property is used in a manner contrary to, or in violation of the UDC, the Town of Payson (the "Town") may take any one or more appropriate enforcement actions to restrain, correct or abate the violation, as contained herein or as allowed by law, at the sole discretion of the Town. Any such enforcement action(s) are cumulative and nonexclusive.

15-10-002 Inspections

The Community Development Director or the Director's designee, or any other enforcement officer may, in the discharge of his/her duties in accordance with the UDC, and for good cause, enter any premises, building, structure or land at any reasonable hour to inspect the same in connection with any application made under the terms of the UDC, or for any investigation or inspection as to whether or not any portion of such premises, building, structure or land is in violation of, or being used in violation of, the UDC.

In all cases in which consent to inspect has been refused, the owner or occupant of any premises, building, structure, or land shall be provided with written notice of inspection which notice shall be delivered in person or by certified mail at least twenty-four (24) hours before such inspection takes place.

Such notice shall be deemed delivered at the time of delivery if delivered personally, and, if mailed by certified mail shall be deemed delivered on the day following the date of mailing.

15-10-003 Authority to Enforce

The Community Development Director or the Director's designee(s) shall be responsible for the enforcement of the UDC ~~and, in addition, shall have authority to issue civil citations arising from violations of the UDC.~~

15-10-004 Civil Penalties

A. Civil

Each person, firm, sole proprietorship, corporation, partnership, LLC, or other entity violating any provision of the UDC shall be subject to a minimum civil penalty of FIFTY DOLLARS (\$50.00) and maximum civil penalty of ONE THOUSAND DOLLARS (\$1,000.00), for each and every violation of the UDC.

B. Criminal

1. Each person, firm, sole proprietorship, corporation, partnership, LLC, or other entity violating a provision of the Unified Development Code for which it has been charged and found responsible/guilty for within the prior 24 months may be subject to a criminal penalty as provided for in Section 10.99 of the Code of the Town of Payson.
2. No de minimis violations shall be subject to a criminal penalty.
3. For the purposes of this subsection, a de minimis violation means a violation which, although undesirable, has no direct or immediate relationship to safety, health, or damage to property, and does not violate the overall intent of this Code.

C. Each person, firm, sole proprietorship, corporation, partnership, LLC, or other entity violating the UDC shall be deemed to have committed a separate violation for each and every day during which the violation(s) is committed or continues to exist.

15-10-005 Responsible Party

The owner, occupant, and/or the person, firm, sole proprietorship, corporation, partnership, LLC, or other entity in possession of any property in violation of the UDC shall be each severally responsible for such violation(s).

15-10-006 Civil Enforcement Procedure

A. Notice of Violation

Except in cases of alleged imminent hazards, repeated violations, or similar situations where the Town has previously notified or cited the same or a substantially similar violation, the Community Development Director or the Director's designee shall provide reasonable written notice to the owner, occupant, and/or the person, firm, sole proprietorship, corporation, partnership, LLC, or other entity in possession of the property in violation of the UDC in an attempt to obtain voluntary compliance with the provisions of the UDC, as provided below.

1. Reasonable notice shall consist of written notification and shall include the following:
 - 1a. Identification of the property in violation by street address if known and if not known, by tax parcel number.
 - 2b. A clear description of the violation(s) of the UDC and request for voluntary compliance by correction of the described violation(s) within fifteen (15) days from the date of the Notice of Violation. Such fifteen day period shall include weekends and holidays.
 - 3c. A warning that if the violation(s) is not corrected within fifteen (15) days from the date of the Notice of Violation, the Town may pursue enforcement of the UDC by issuance of a civil citation or complaint, issuance of a stop work order, issuance of a cease use order, or other legal remedies available at law.
 - ~~4. A warning that each person, firm, sole proprietorship, corporation, partnership, LLC, or other entity violating any provision of the UDC shall be subject to a~~

~~minimum civil penalty of FIFTY DOLLARS (\$50.00) and maximum civil penalty of ONE THOUSAND DOLLARS (\$1,000.00), for each and every violation of the UDC. The potential penalties:~~

- ~~5. A warning that each person, firm, sole proprietorship, corporation, partnership, LLC, or other entity violating the UDC shall be deemed to have committed a separate violation for each and every day during which the violation(s) is committed or continues to exist.~~
- ~~6. The right to meet with and discuss the Notice of Violation with the issuer of the Notice, within ten (10) days of the date of the Notice. Such ten day period shall include weekends and holidays.~~
- ~~7. After meeting with the issuer of the Notice, the right to appeal the Notice of Violation to the Community Development Director, specifying that the appeal must be in writing directed to the Community Development Director, and must be filed within five (5) business days after the meeting with the issuer of the Notice.~~

B2. Service of Notice of Violation

The Notice of Violation shall be hand delivered or mailed by certified regular mail (1) to the property address; (2) to the last known mailing address of the property owner; and (3) to the occupant, or such other person, firm, sole proprietorship, corporation, partnership, LLC, or other entity in possession or control of the property, if such mailing address is different from the property address.

~~C. Right to be heard on Notice of Violation~~

~~The property owner, occupant, or such other person, firm, sole proprietorship, corporation, partnership, LLC, or other entity in possession or control of the property shall have the right to meet with and discuss the Notice of Violation with the issuer of the Notice, within ten (10) days of the date of the Notice.~~

~~D. Administrative Appeal on Notice of Violation~~

~~Following meeting with the issuer of the Notice, and only thereafter, the property owner and the occupant, or such other person, firm, sole proprietorship, corporation, partnership, LLC, or other entity in possession or control of the property shall have the right to appeal the Notice of Violation to the Community Development Director.~~

~~The appeal must be in writing and must be filed with the Community Development Director within five (5) business days after the meeting with the issuer of the Notice of Violation.~~

~~Administrative conferences on appeal shall be informal. If the person or entity pursuing an appeal through administrative conference elects to be represented by an attorney, that person or entity shall so notify the Community Development Director at least two (2) business days prior to the time set for the administrative conference.~~

~~Following the administrative conference, the Community Development Director may:~~

- ~~1. Reconsider the alleged violation(s);~~
- ~~2. Grant an extension of time within which to comply with the UDC;~~
- ~~3. Grant a minor written variance from the provisions of the UDC;~~
- ~~4. Issue a stop work order;~~
- ~~5. Issue a cease use order; or~~
- ~~6. Direct the issuance of a civil citation or summons and complaint for enforcement.~~

EB. Civil citation or complaint for appearance in Magistrate Court

1. Commencement of Action.

- a. An action in the Payson Magistrate Court (the “Magistrate Court”) may be commenced by the issuance of a civil citation or complaint. The Community Development Director and/or the Director’s designee(s), may issue a citation under this article. The citation shall direct the defendant to appear personally in the Payson Magistrate Court. ~~(the “Magistrate Court”) to answer the citation at a specified time and date not more than twenty (20) days after issuance of the citation, on the first available Wednesday morning, as designated on the citation.~~
- b. An action under this article may also be commenced by the Town Legal Department filing a civil complaint with the Magistrate Court. ~~Upon receipt of the complaint, the Magistrate Court shall issue a summons requiring the defendant to appear at a specified time and date not more than twenty (20) days after issuance of the summons, on the first available Wednesday morning, as designated on the summons.~~ The commencement of this procedure shall not limit the right or authority of the Town, through its Legal Department or otherwise, to take any other action available by law to enforce compliance with the UDC.

2. Contents of civil citation or complaint.

The civil citation or complaint, whichever is applicable, shall contain at least the following information:

- a. The time, date, place and UDC section(s) of the alleged violation(s);
- b. The time, date and place for the defendant to appear;
- c. ~~An affirmation signed~~ A signature of by the citing official that the violation(s) took place;
- d. The possibility of a minimum penalty in the amount of FIFTY (\$50.00) and maximum penalty of ONE THOUSAND DOLLARS (\$1,000.00) for each violation; and,
- e. Warning of default and imposition of penalty in the event of failure to appear.

~~3. Form of civil citation.~~

~~The civil citation shall be substantially in a form established by the Town Community Development and Legal Departments.~~

43. Service of civil citation or summons and complaint.

~~Service of the citation or summons and complaint may be accomplished and will be deemed effective and complete by any of the following methods:~~ shall be made by personal service, certified mail or publication.

- ~~a. By hand delivery of a copy of the citation or summons and complaint to the defendant. This method of service is effective and complete regardless of whether or not the defendant signs the citation promising to appear at the time and date designated thereon. In the event that the defendant fails to sign the citation or acknowledge receipt of the summons and complaint, for whatever reason, the Town shall file an affidavit with the Magistrate Court stating:—~~

- ~~(1) That the Citation or Summons and Complaint was dispatched to the Defendant;~~
- ~~(2) That the Citation or Summons and Complaint was in fact received by the Defendant through hand delivery; and,~~
- ~~(3) The date of receipt by the Defendant.~~

~~This affidavit shall be prima facie evidence of personal service and service shall be deemed complete as of the date of hand delivery to the Defendant.~~

- ~~b. By mailing a copy of the citation or summons and complaint, by certified mail, deliver to addressee only, return receipt requested, to the defendant. Upon return through the post office of the signed return receipt, the Town shall file an affidavit with the court stating:~~

- ~~(1) That the citation or summons and complaint was dispatched to the Defendant;~~
- ~~(2) That the citation or summons and complaint was in fact received by the defendant as evidenced by the return receipt, a copy of which shall be attached to the affidavit; and,~~
- ~~(3) The date of receipt by the defendant and the date of the return of the return receipt to the sender.~~

~~This affidavit shall be prima facie evidence of personal service of the citation or summons and complaint and service shall be deemed complete as of the date of receipt of the citation or summons and complaint by the defendant.~~

FC. Procedure in Magistrate Court

1. Civil Hearing Officer

The Town Magistrate or Associate Town Magistrate shall serve as Civil Hearing Officer.

2. Rules of Procedure

The Arizona Rules of Procedure in Civil Traffic Violation cases shall govern the proceedings under this section, except as modified by, or where inconsistent with the provisions of this section.

2. Appearance

~~The defendant shall appear in person or by counsel before the hearing officer in the Magistrate Court at the time, date and place designated on the citation or summons and shall either admit or deny the allegations of the citation or complaint.~~

~~At the initial appearance, if the defendant admits the allegations, the hearing officer shall immediately enter judgment against the defendant.~~

~~At the initial appearance, if the defendant denies the allegations, the hearing officer shall set a hearing not less than thirty (30) nor more than sixty (60) days from the date of the initial appearance for a prehearing conference or for a final hearing, as the hearing officer may deem appropriate or as may be requested by the parties.~~

3. Prehearing conference

~~The hearing officer may in the officer's discretion, or shall at the request of either party, set a prehearing conference not less than thirty (30) nor more than sixty (60) days from the date of the initial appearance.~~

~~If a prehearing conference is scheduled, the parties shall appear before the hearing officer to discuss any matters which may aid in the disposition of the case. At the conclusion of the prehearing conference, the hearing officer~~

may (a) continue the matter for not less than thirty (30) nor more than sixty (60) days upon good cause shown; (b) accept an admission of the violation(s) or a dismissal of the citation or complaint; (c) set the matter for final hearing; or (d) make any other order necessary in the interests of justice.

~~4. Default judgment~~

~~(a) Failure to appear per citation or summons~~

~~If the defendant fails to appear as directed on the citation or summons, the hearing officer shall enter a default judgment against the defendant.~~

~~(b) Failure to appear at prehearing conference~~

~~If the hearing officer schedules a prehearing conference and if the defendant fails to appear at the prehearing conference, the hearing officer shall set the matter for final hearing.~~

~~(c) Failure to appear at final hearing~~

~~If the defendant fails to appear at the final hearing, the hearing officer shall enter a default judgment against the defendant.~~

~~5. Failure to obey order of hearing officer prior to judgment~~

~~When a party, prior to judgment, fails to obey an order of the hearing officer, the officer may (a) prevent that party from presenting certain evidence; (b) strike part or all of a pleading; (c) enter judgment in whole or in part against that party; or (d) make any other order necessary in the interests of justice.~~

~~6. Record of proceedings~~

~~A record of the final hearing shall be made by stenographic transcription or by electronic tape recording.~~

~~7. Burden of proof at final hearing; witnesses~~

~~Each party shall be responsible for compelling the attendance of its respective witnesses. The burden of proof at the final hearing shall be by a preponderance of the evidence. The hearing officer shall, upon request by either party, make written findings of fact and conclusions of law and may request proposed findings of fact and conclusions of law from either party.~~

~~8. Rules of Evidence~~

~~The Arizona Rules of Evidence shall not apply. Any evidence offered may be admitted subject to a determination by the hearing officer that the offered evidence is relevant and material and has some probative value to a fact at issue. Nothing in this rule is to be construed as abrogating any statutory provision relating to privileged communications.~~

~~9. Judgment~~

~~If, after final hearing, the hearing officer determines the existence of a violation(s), or in the event the defendant admits the allegations in the citation or complaint, the hearing officer shall enter judgment in favor of the plaintiff. Written judgment shall be rendered not later than twenty (20) working days after conclusion of the final hearing.~~

~~10. Penalties and Restitution~~

~~Unless otherwise provided in the UDC, when a violation(s) is determined to have occurred, the following penalties shall be imposed for each such violation:~~

- ~~_____ a. Monetary penalty~~
 - ~~_____ A penalty of not less than FIFTY DOLLARS (\$50.00) nor more than ONE THOUSAND DOLLARS (\$1,000.00), for each and every violation(s) as determined by the hearing officer or as admitted by a defendant.~~
- ~~_____ b. Other penalties~~
 - ~~_____ Any other order deemed necessary or appropriate in the discretion of the hearing officer, including but not limited to correction or abatement of the violation(s).~~
- ~~_____ c. Additional penalty for failure to comply with judgment~~
 - ~~_____ Failure of a defendant to comply with any order contained in a judgment entered by the hearing officer shall result in an additional penalty of not less than FIFTY DOLLARS (\$50.00) nor more than ONE THOUSAND DOLLARS (\$1,000.00) for each day such defendant fails to comply after the date ordered to do so.~~
- ~~_____ d. Collection of penalties, abatement of violation(s)~~
 - ~~_____ Any penalty not paid within thirty (30) days after entry of judgment shall be collectible as a civil judgment. In addition and without election, the Town may commence legal action in any court of competent jurisdiction for the collection of such penalty.~~
 - ~~_____ Any failure of a defendant to comply with a judgment entered by the hearing officer in the Payson Magistrate Court ordering such defendant to correct or abate a violation(s), which failure to comply continues for a period of thirty (30) days following such order, shall be deemed a public nuisance and the Town may seek injunctive or other relief in any court of competent jurisdiction.~~
- ~~_____ e. Restitution~~
 - ~~_____ In addition to any penalty imposed, each person, firm, sole proprietorship, corporation, partnership, LLC, or other entity found responsible for a violation (s) of the UDC shall be jointly and severally liable for all costs associated with the Town's enforcement of such Code, which costs shall be awarded as part of the judgment entered by the hearing officer in the Payson Magistrate Court.~~
 - ~~_____ These remedies shall be in addition to any and all other remedies available at law or provided in the UDC.~~
- ~~_____ 11. Appeal from Magistrate Court judgment~~
 - ~~_____ Any party may appeal to the Superior Court from a final order or judgment rendered by the hearing officer in the Payson Magistrate Court. Appeals to the Superior Court shall be on the record and shall be without oral argument, unless requested by the Superior Court or allowed by the Superior Court upon motion of either party.~~
 - ~~_____ a. Notice of Appeal and appeal bond~~
 - ~~_____ An appeal shall be taken by filing a written notice of appeal with the Payson Magistrate Court within thirty (30) days after the entry of the order or judgment appealed from.~~
 - ~~_____ Bond on appeal shall be in the amount of the monetary penalty ordered by the hearing officer and must be posted by the appellant before the appeal~~

shall be perfected and allowed to proceed:

~~b. Transmission of Record~~

~~Within five (5) days after notice of appeal is filed, the appellant shall make arrangements with the Magistrate Court to pay for a written transcript of the record. The Superior Court may dismiss the appeal if the appellant fails to make arrangements to pay for the written transcript. Upon the appellant paying for a written transcript, the Magistrate Court shall within sixty (60) days from such payment, prepare and transmit the record to the Superior Court.~~

~~If either party claims the record to be incomplete or lost, and the hearing officer who conducted the final hearing in the Magistrate Court so certifies, a new hearing shall be conducted before that officer.~~

~~c. Appellate Memoranda~~

~~The appellant shall file its memorandum within twenty (20) days after the filing of the record in the Superior Court. The appellee's memorandum shall be filed within twenty (20) days after service of appellant's memorandum. No further memoranda shall be filed unless ordered by the Superior Court.~~

~~d. Disposition on the Record~~

~~After determination of an appeal, the Superior Court may:~~

~~1. Affirm the action of the hearing officer and remand for further proceedings; or,~~

~~2. Affirm in part, reverse in part, and remand for further proceedings; or,~~

~~3. Reverse the action of the hearing officer and remand, if necessary, for further proceedings.~~

~~e. Stay of enforcement of judgment during appeal;~~

~~Enforcement of the Magistrate Court judgment or order shall be stayed during the pendency of the appeal proceedings.~~

15-10-007 Criminal Enforcement Procedure

A. Criminal enforcement proceedings shall be initiated by the Town Prosecutor's office.

B. All criminal enforcement proceedings shall be conducted pursuant to the Arizona Rules of Criminal Procedure.

~~15-10-007~~ 15-10-008 Emergency Abatement

If a situation presents an imminent hazard to life or public safety, the Town may issue an order directing the owner and the occupant, and/or the person, firm, sole proprietorship, corporation, partnership, LLC, or other entity in possession of the property to immediately take such action as is appropriate to correct or abate the situation upon notice by the enforcement official. In addition, the Town may act to correct or abate the situation.

The owner, occupant, and/or the person, firm, sole proprietorship, corporation, partnership, LLC, or other entity shall be granted a hearing by administrative conference before the Town Manager on the matter upon request, as soon as practicable, but such hearing shall in no case stay the abatement or correction of such situation. At the conclusion of the hearing, the Town Manager may uphold, reconsider, or modify any order issued under this Section.

The Town Legal Department may file a civil action in any court of competent jurisdiction seeking reimbursement to the Town for the cost of abatement and enforcement of this Section.