

ORDINANCE NO. 828

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, AMENDING CHAPTER 34 OF THE CODE OF THE TOWN OF PAYSON AND ADOPTING SUCH AMENDMENTS BY REFERENCE. (MAGISTRATE COURT)

WHEREAS, Chapter 34 of the Town Code contains provisions establishing and regulating the Payson Magistrate Court; and

WHEREAS, following of a review of the Magistrate Court by the Arizona Office of Courts, it was determined that several technical and conforming amendments to Chapter 34 were warranted; and

WHEREAS, it is the desire of the Mayor and Common Council, to amend the Code of the Town of Payson by amending Chapter 34 by reference pursuant to A.R.S. § 9-802,

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

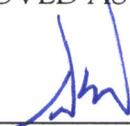
- Section 1. That the amendments to Chapter 34 (Magistrate Court) of the Code of the Town of Payson set forth in Resolution 2705 were heretofore declared to be a public record by such Resolution, and that the amendments to Chapter 34 are hereby referred to and adopted by this reference as though all the provisions thereof were set forth in full in this Ordinance.
- Section 2. That at least three copies of the amendments to Chapter 34, as adopted by this Ordinance shall be filed in the Office of the Clerk of the Town of Payson and the same shall be maintained and kept available for public use and inspection.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON this ____ day of _____, 2013, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

Kenny J. Evans, Mayor

ATTEST:

APPROVED AS TO FORM:


Timothy M. Wright, Town Attorney

Silvia Smith, Town Clerk

MAR 07 2013
G. 3

First Reading + Public Hearing

**RESOLUTION NO. 2705 IS
PROVIDED FOR INFORMATION
ONLY AT THE MARCH 7, 2013
COUNCIL MEETING.**

**RESOLUTION NO. 2705 WILL
BE AGENDIZED AS AN ACTION ITEM
AT THE MARCH 21, 2013 COUNCIL
MEETING.**

RESOLUTION NO. 2705

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, AMENDING CHAPTER 34 (MAGISTRATE COURT) OF THE CODE OF THE TOWN OF PAYSON AND DECLARING SUCH AMENDMENTS TO BE A PUBLIC RECORD.

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 Chapter 34 of the Code of the Town of Payson relating to the Payson Magistrate Court; 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. Chapter 34 (Magistrate Court) 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, or portion of this Resolution 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 Resolution.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON this ____ day of _____, 2013, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

Kenny J. Evans, Mayor

ATTEST:

APPROVED AS TO FORM:

Silvia Smith, Town Clerk



Timothy M. Wright, Town Attorney

EXHIBIT A

TO

RESOLUTION 2705

§ 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 justices of the peace of precincts in which the town is located of violation of 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 and/or Judges Pro Tempore, and other Court staff as may be necessary.

(B) The Town Magistrate, and any Associate Magistrates or Judges Pro Tempore shall be qualified by training and experience to perform the powers and duties described in this Chapter.

(C) 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.

(D) The Town Magistrate may appoint one or more Associate Magistrates for a term of two years. During such terms, Associate Magistrates may only be removed for cause.

(E) Court staff shall be appointed by the Town Magistrate and shall serve at the pleasure of the Town Magistrate.

(F) The Town Magistrate may utilize Judges Pro Tempore who are judges, magistrates, or judges pro tempore of any other court in this state.

(G) 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. Judges Pro Tempore shall be compensated at the same rate and in the same manner as judges pro tempore of the Payson Regional Justice Court.

§ 34.03 POWERS AND DUTIES OF 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.

(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, accept proper bail bonds in lieu thereof, for and on behalf of the court.

§ 34.04 POWERS AND DUTIES OF ASSOCIATE MAGISTRATES AND JUDGES PRO TEMPORE.

The Associate Magistrates and any Judges Pro Tempore shall, under the direction of the Town Magistrate, exercise the powers and duties listed in § 34.03(B).

§ 34.05 HEARING OFFICERS.

The Town Magistrate may appoint one or more hearing officers to preside over civil traffic violation cases when, in his/her opinion, the appointment of hearing officers is necessary to assure prompt disposition of civil traffic violation cases. Hearing officers may hear and dispose of civil traffic violation cases under supervision of the Town Magistrate.

§ 34.06 PROCEEDINGS OF COURT.

(A) General. The proceedings shall be conducted in accordance with the state constitution, applicable state statutes and applicable state rules.

(B) Bail. Rule 7 of the Rules of Criminal Procedure shall govern release of all defendants, where applicable.

(C) Civil traffic deposits. Civil traffic deposits for violation of local and state civil traffic laws shall be required in accordance with A.R.S. Title 28, and a deposit schedule prepared and approved by the Town Magistrate.

§ 34.07 PROCEDURES TO SUMMON JURORS.

The municipal court staff, at the direction of the Town Magistrate, shall select and summon jurors for service in the municipal court system pursuant to the standards and procedures as set forth in state law.

§ 34.08 RECOVERY OF INCARCERATION AND BOOKING COSTS.

(A) Payment of costs. Any person who is convicted of an offense in the magistrate court and who, as a consequence, is booked by, or incarcerated in, the Gila County Jail, shall, as part of any sentence imposed by the magistrate court, be required to reimburse the town for its actual expenses incurred to the county by reason of booking and/or incarceration.

(B) Waiver of costs for indigents. The Town Magistrate may waive the costs imposed by this section upon a finding of indigency. The Magistrate may base such finding upon information received from the Defendant, including, but not limited to monthly income, monthly expenses, assets, debts, eligibility in government assistance programs. If a defendant's financial situation changes substantially, such defendant shall immediately notify the Court and the Magistrate shall make a new determination if the defendant is indigent.

(C) Collection of fees. In addition to any other civil or criminal remedies which may be allowed by law, the town is authorized to institute any appropriate civil suit in a court of competent jurisdiction for recovery of the fees referred to herein.

EXHIBIT A

TO

RESOLUTION 2705

(Showing insertions/deletions)

§ 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 justices of the peace of precincts in which the town is located of violation of 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 and/or Judges Pro Tempore, and other Court staff as may be necessary.

Deleted: as may be needed from time to time, a Court Clerk,

(B) The Town Magistrate, and any Associate Magistrates or Judges Pro Tempore shall be qualified by training and experience to perform the powers and duties described in this Chapter.

(C) 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.

(D) The Town Magistrate may appoint one or more Associate Magistrates for a term of two years. During such terms, Associate Magistrates may only be removed for cause.

Deleted: Mayor and Common Council

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(F) The Town Magistrate may utilize Judges Pro Tempore who are judges, magistrates, or judges pro tempore of any other court in this state.

(G) 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. Judges Pro Tempore shall be compensated at the same rate and in the same manner as judges pro tempore of the Payson Regional Justice Court.

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(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.

(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, accept proper bail bonds in lieu thereof, for and on behalf of the court.

Deleted: set the amount of bail and civil traffic deposits, in accordance with the foregoing schedule, and collect bail and civil traffic deposits, or

§ 34.04 POWERS AND DUTIES OF ASSOCIATE MAGISTRATES AND JUDGES PRO TEMPORE.

The Associate Magistrates and any Judges Pro Tempore shall, under the direction of the Town Magistrate, exercise the powers and duties listed in § 34.03(B)

§ 34.05 HEARING OFFICERS.

The Town Magistrate may appoint one or more hearing officers to preside over civil traffic violation cases when, in his/her opinion, the appointment of hearing officers is necessary to assure prompt disposition of civil traffic violation cases. Hearing officers may hear and dispose of civil traffic violation cases under supervision of the Town Magistrate,

Deleted: Council or Town Manager

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Deleted: presiding officer of the

Deleted: Court, which is appealable to the Superior Court, pursuant to A.R.S. Title 22, Chapter 2, Article 4.

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Deleted: of the state supreme court pertaining to police courts. The proceedings shall also be conducted in accordance with the rules of criminal procedure for the superior court, unless otherwise prescribed, and providing this code and resolutions of the town are not in conflict therewith.¶

¶ (2) The magistrate court proceedings shall be commenced by complaint and in the name of the state, setting forth the offense charged and particulars of time, place, person and property as to enable the defendant to understand the nature of the offense and to answer the complaint. All complaints shall issue under oath except where commenced by use of the Arizona Traffic Ticket and Complaint.¶

¶ (3) If the magistrate is satisfied that the offense complained of has been committed by the person charged, he shall issue a summons or a warrant of arrest. Before issuing a summons or warrant of arrest on a complaint, the magistrate may subpoena and examine witnesses as to the truth of the complaint.¶

¶ (4) The magistrate court shall follow the Rules of Procedure in civil traffic violation cases as adopted and amended from time to time by the Arizona Supreme Court.

§ 34.06 PROCEEDINGS OF COURT.

(A) General.

The proceedings shall be conducted in accordance with the state constitution, applicable state statutes and applicable state rules.

(B) Bail. Rule 7 of the Rules of Criminal Procedure shall govern release of all defendants, where applicable.

(C) Civil traffic deposits. Civil traffic deposits for violation of local and state civil traffic laws shall be required in accordance with A.R.S. Title 28, and a deposit schedule prepared and approved by the Town Magistrate.

§ 34.07 PROCEDURES TO SUMMON JURORS.

The municipal court staff, at the direction of the Town Magistrate, shall select and summons jurors for service in the municipal court system pursuant to the standards and procedures as set forth in state law.

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Deleted: out in A.R.S. § 22-426(A) and (B) and as amended

Deleted: ¶
(B) The Town Magistrate shall designate a clerk of the court to handle the day-to-day operation of the jury panel selection and summons process in the same manner prescribed as in courts of record. ¶

§ 34.08 RECOVERY OF INCARCERATION AND BOOKING COSTS.

(A) Payment of costs. Any person who is convicted of an offense in the magistrate court and who, as a consequence, is booked by, or incarcerated in, the Gila County Jail, shall, as part of any sentence imposed by the magistrate court, be required to reimburse the town for its actual expenses incurred to the county by reason of booking and/or incarceration.

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¶
(1)

Deleted: misdemeanor criminal

(B) Waiver of costs for indigents. The Town Magistrate may waive the costs imposed by this section upon a finding of indigency. The Magistrate may base such finding upon information received from the Defendant, including, but not limited to monthly income, monthly expenses, assets, debts, eligibility in government assistance programs. If a defendant's financial situation changes substantially, such defendant shall immediately notify the Court and the Magistrate shall make a new determination if the defendant is indigent.

Deleted: (2) In the event the booking cost or the daily incarceration cost charges billed to the town by the Gila County Jail shall increase or decrease following the effective date of this section, then the respective fees herein shall similarly be increased or decreased.

(C) Collection of fees. In addition to any other civil or criminal remedies which may be allowed by law, the town is authorized to institute any appropriate civil suit in a court of competent jurisdiction for recovery of the fees referred to herein.

Deleted: (1) No person shall be required to pay the fees established by this section who is found by the magistrate court to be indigent. Prior to determining that a person is indigent for purposes of this section, the magistrate court shall require a sworn statement from the defendant seeking a waiver of the incarceration costs fee or booking costs fee, which statement shall include, at minimum, the following information:¶
(a) All income received by the defendant from any source on a monthly basis.¶
(b) The defendant's monthly expenses.¶
(c) A list of assets owned by the defendant, including the estimated fair market value.¶
(d) A list of debts owed by the defendant.¶
(2) The fees required by this section shall be waived by the magistrate court if the defendant establishes by sworn statement or otherwise that the defendant receives assistance from one or more of the following governmental programs:¶
(a) The Aid to Families With Dependent Children Program (42 USC 601 to 615).¶
(b) The Food Stamp Program (7 USC 2011 to 2029).¶
(c) The General Assistance Program (A.R.S. §§ 46-231 et seq.).¶
(3) The magistrate court may also waive the fees required by this section if the court expressly finds that the defendant has an income which is insufficient or barely sufficient to meet the daily essentials of life and includes no surplus disposable income that could be budgeted for payment of the incarceration costs fee or the booking costs fee.¶
(4) The magistrate court shall order the defendant to pay the required fee(s) if, at any time prior to the entry of the final judgment, the court determines, after notice to the defendant and a hearing, that the defendant no longer meets the eligibility requirements of division (B)(2) above of this section.¶
(5) A defendant who has been granted a waiver of the incarceration costs fee or the booking costs fee pursuant to division (B)(2) of this section shall promptly notify the magistrate court of any change in the defendant's financial circumstances during the pendency of the action that affects the defendant's ability to pay the fee(s).¶