

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 4th day of September, 2008, by the following vote:

AYES 7 NOES 0 ABSTENTIONS 0 ABSENT 0

cc: american legal community Dev


Kenny J. Evans, Mayor

SEP 04 2008: G.2

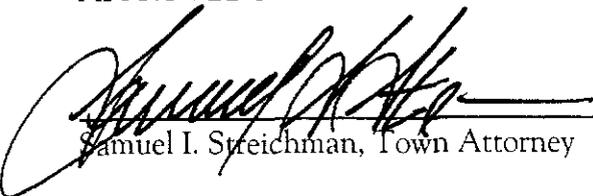
11,04

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.

15-10-004 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:
 - a. Identification of the property in violation by street address if known and if not known, by tax parcel number.
 - b. 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.
 - c. 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.

2. 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.

B. 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 Magistrate Court.
- b. An action under this article may also be commenced by the Town Legal Department filing a civil complaint with the Magistrate Court. 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. A signature of 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. Service of civil citation or summons and complaint.

Service shall be made by personal service, certified mail or publication.

C. 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.

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.

15-10-008 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.