



POST ACTION MEETING AGENDA

REGULAR MEETING NOTICE

OF THE

PLANNING AND ZONING COMMISSION

Commission Members:

Chairman Mike Archambault, Vice-Chairman Eugene Mikolajczyk

Commissioners: Stan Connick, Howie Jones, Jeremy Strohan, Susan Dempster and Roger Owers

Pursuant to A.R.S. 38-431.02, notice is hereby given to the members of the Fountain Hills Planning and Zoning Commission and to the general public that the Fountain Hills Planning and Zoning Commission will hold a regular meeting, which is open to the general public, on **September 8, 2016**, at **6:30 p.m.** in the Town Hall Council Chambers at 16705 E. Avenue of the Fountains, Fountain Hills, Arizona.

Commissioners of the Town of Fountain Hills will attend either in person or by telephone conference call; a quorum of the Town's Councilmembers or various Commissions or Boards may be in attendance at the Commission meeting.

TIME: 6:30 P.M. – REGULAR SESSION
WHEN: THURSDAY, September 8, 2016
WHERE: TOWN HALL COUNCIL CHAMBERS
16705 EAST AVENUE OF THE FOUNTAINS

PROCEDURE FOR ADDRESSING THE PLANNING & ZONING COMMISSION

Anyone wishing to speak before the Commission must fill out a speaker's card and submit it to the Commission Recorder prior to the Commission's discussion of that Agenda item. Speaker Cards are located in the Council Chamber Lobby and near the Recorder's position on the dais.

Speakers will be called in the order in which the speaker cards were received either by the Recorder or the Chairman. At that time, speakers should stand and approach the podium. Speakers are asked to state their name prior to commenting and to direct their comments to the Presiding Officer and not to individual Commission Members. Speakers' statements should not be repetitive. *In order to conduct an orderly business meeting, the Presiding Officer shall keep control of the meeting and shall require the speakers and audience to refrain from abusive or profane remarks, disruptive outbursts, applause, protests or other conduct that disrupts or interferes with the orderly conduct of the business of the meeting. Personal attacks on Commissioners, Town Council members, Town staff or members of the public are not allowed. Please be respectful when making your comments. If a speaker chooses not to speak when called, the speaker will be deemed to have waived his or her opportunity to speak on the matter. Speakers may not (i) reserve a portion of their time for a later time or (ii) transfer any portion of their time to another speaker.*

If there is a Public Hearing, please submit the speaker card to speak to that issue prior to the beginning of the Public Hearing and the Consideration of said issue.

Individual speakers will be allowed **three** contiguous minutes to address the Commission. Time limits may be waived by (i) *discretion of the Chairman upon request by the speaker not less than 24 hours prior to a Meeting,* (ii) *consensus of the Commission at Meeting* or (iii) *the Chairman either prior to or during a Meeting.* **If you do not comply with these rules, you will be asked to leave.**

* **CALL TO ORDER AND PLEDGE OF ALLEGIANCE** – Chairman Mike Archambault **6:30 PM**

* **MOMENT OF REFLECTION** – Chairman Mike Archambault

* **ROLL CALL** – Chairman Mike Archambault

CALL TO THE PUBLIC

Pursuant to A.R.S. §38-431-01(G), public comment is permitted (not required) on matters not listed on the agenda. Any such comment (i) must be within the jurisdiction of the Commission and (ii) is subject to reasonable time, place, and manner restrictions. The Commission will not discuss or take legal action on matters raised during “Call to the Public” unless the matters are properly noticed for discussion and legal action. **At the conclusion of the call to the public, individual Commission members may (i) respond to criticism, (ii) ask staff to review a matter or (iii) ask that the matter be placed on a future Commission agenda.**

AGENDA ITEM(S)

1. **CONSIDERATION of APPROVING** the Planning and Zoning Commission Regular Meeting Minutes from August 11, 2016. **APPROVED**
2. **PUBLIC HEARING** to receive comments on **ORDINANCE 16-08**, amending the Town of Fountain Hills Zoning Ordinance, Chapter 5, Section 5.19, and Chapter 18, Section 18.06, by revising provisions related to noise violations. Case #Z2016-05 **OPENED 6:32 PM CLOSED 7:01 PM**
3. **CONSIDERATION** of **ORDINANCE 16-08**, amending the Town of Fountain Hills Zoning Ordinance, Chapter 5, Section 5.19, and Chapter 18, Section 18.06, by revising provisions related to noise violations. Case #Z2016-05 **APPROVED 3-2**
4. **PUBLIC HEARING** to receive comments on **ORDINANCE 16-04**, proposed amendments to the Fountain Hills Zoning Map of approximately 63 acres in size, and proposed text amendments to the Town of Fountain Hills Zoning Ordinance, Chapter 12 – Commercial Zoning Districts and, adding a new Chapter 25, Entertainment Overlay District. If adopted, the amendments would create an Entertainment Overlay District which overlays portions of the downtown area. Case #Z2016-02 **OPENED 6:32 PM CLOSED 7:01 PM**
5. **CONSIDERATION of ORDINANCE 16-04**, proposed amendments to the Fountain Hills Zoning Map of approximately 63 acres in size, and proposed text amendments to the Town of Fountain Hills Zoning Ordinance, Chapter 12 – Commercial Zoning Districts and, adding a new Chapter 25, Entertainment Overlay District. If adopted, the amendments would create an Entertainment Overlay District which overlays portions of the downtown area. Case #Z2016-02 **APPROVED 5-0**
6. **COMMISSION DISCUSSION/REQUEST FOR RESEARCH** to staff. **NO ACTION TAKEN**
Item listed below are related only to the propriety of (i) placing such items on a future agenda for action or (ii) directing staff to conduct further research and report back to the Commission.
7. **SUMMARY OF COMMISSION REQUESTS** from Senior Planner. **NONE**

8. **REPORT** from Senior Planner and Zoning Administrator, Planning and Zoning Division of Development Services. **NONE**

9. **ADJOURNMENT 7:32 PM**

Supporting documentation and staff reports furnished to the Commission with this agenda are available for review in the Planning & Zoning Division of the Development Services Department.

DATED this 25th day of August 2016

By: _____


Robert Rodgers, Interim Development Services Manager
Town of Fountain Hills

The Town of Fountain Hills endeavors to make all public meetings accessible to persons with disabilities. Please call 837-2003 (voice) or 1-800-367-8939 (TDD) 48 hours prior to the meeting to request reasonable accommodations to participate in this meeting. **A majority of the Council Members may be in attendance. No official action will be taken.**

Notice is hereby given that pursuant to A.R.S. §1-602.A.9, subject to certain specified statutory exceptions, parents have a right to consent before the State or any of its political subdivisions make a video or audio recording of a minor child. Meetings of the Planning and Zoning Commission are audio and/or video recorded, and, as a result, proceedings in which children are present may be subject to such recording. Parents in order to exercise their rights may either file written consent with the Town Clerk to such recording, or take personal action to ensure that their child or children are not present when a recording may be made. If a child is present at the time a recording is made, the Town will assume that the rights afforded parents pursuant to A.R.S. §1-602.A.9 have been waived.”



REGULAR MEETING NOTICE
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7. **SUMMARY OF COMMISSION REQUESTS** from Senior Planner.

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DATED this 25th day of August 2016

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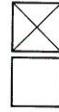

Robert Rodgers, Interim Development Services Manager
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TOWN OF FOUNTAIN HILLS



**Planning and Zoning
Board of Adjustment**

AGENDA ACTION FORM

Meeting Date: September 8, 2016

Meeting Type: Regular

Agenda Type: Regular

Submitting Division: Development Services

Staff Contact Information: N/A

REQUEST TO PLANNING & ZONING COMMISSION: CONSIDERATION for approving the PLANNING & ZONING COMMISSION REGULAR MEETING MINUTES from August 11, 2016.

Applicant: N/A

Applicant Contact Information: N/A

Property Location: N/A

Related Ordinance, Policy or Guiding Principle: Policy or Guiding Principle: A.R.S. §38-431.01

Staff Summary (background): The intent of approving previous meeting minutes is to ensure an accurate account of the discussion and action that took place at that meeting for archival purposes. Approved minutes are placed on the Town's website in compliance with state law.

Risk Analysis (options or alternatives with implications): N/A

Fiscal Impact (initial and ongoing costs; budget status): N/A

Recommendation(s): Approval

Staff Recommendation(s): Approval

SUGGESTED MOTION: Move to Approve the Planning & Zoning Regular Meeting Minutes dated August 11, 2016, as presented.

Attachment(s): N/A

Submitted by:

Paula Woodward 08/25/2016
Paula Woodward, Executive Assistant Date

Approved by:

[Signature] 08/25/2016
Robert Rodgers, Interim Development Services Director Date

**TOWN OF FOUNTAIN HILLS
MINUTES OF THE REGULAR SESSION OF THE
PLANNING & ZONING COMMISSION
August 11, 2016**

Chairman Archambault opened the meeting at 6:30 p.m.

ROLL CALL:

The following Commissioners were present: Chairman Michael Archambault, Vice-Chairman Eugene Mikolajczyk. Commissioners: Howie Jones, Stan Connick, and Roger Owers. Also in attendance were Robert Rodgers, Interim Development Services Director, and Paula Woodward, Executive Assistant and Recorder of the minutes. Commissioners Susan Dempster and Jeremy Strohan were absent.

Chairman Archambault requested participation in the Pledge of Allegiance and a moment of silent reflection.

CALL TO THE PUBLIC

No one wished to speak.

AGENDA ITEM #1 - CONSIDERATION OF APPROVING THE PLANNING AND ZONING COMMISSION MEETING MINUTES DATED July 28, 2016.

Vice-Chairman Mikolajczyk **MOVED** to **APPROVE** the meeting minutes dated Thursday, July 28, 2016 as written. Commissioner Howie Jones **SECONDED** and the **MOTION CARRIED UNANIMOUSLY** (5/0).

AGENDA ITEM #2 - PUBLIC HEARING TO RECEIVE COMMENTS ON A PROPOSED SPECIAL USE PERMIT BY FEARLESS KITTY CAT RESCUE TO ALLOW INDOOR KENNELS AT 16832 E. AVENUE OF THE FOUNTAINS, LOCATED IN THE "C-2" ZONING DISTRICT. Case #SU 2016-03

Chairman Archambault turned the meeting over to Commissioner Connick.

Commissioner Connick opened the public hearing at 6:32 p.m.

Bob Rodgers addressed the Commission regarding a Special Use Permit Application submitted by Fearless Kitty Rescue, a non-profit, no-kill, cat rescue and kennel facility currently located at 16913 E. Enterprise Drive. That is in the C-3 (Heavy Commercial /Light Industrial) Zoning District. Mr. Rodgers said they have the option to purchase a vacant building located at 16832 East Avenue of the Fountains where they wish to re-locate the rescue facility. The building fronts on the Avenue of the Fountains, directly abuts Gridley's store and is across a small courtyard area from Sofrita's restaurant. This is in the C-2 (Mid-Density Commercial) Zoning District. The C-2 district regulations are contained in Chapter 12 of the Zoning Ordinance. Pursuant to Section 12.03.D in order for a kennel to operate in the C-2 zoning district, a Special Use Permit must be approved by the Town Council. Tonight's hearing is to request that the Planning & Zoning Commission consider forwarding a favorable recommendation to the Town Council to approve this request.

Section 2.02D of the Zoning Ordinance outlines the key criteria that should be considered by the Commission during your deliberations.

They are:

1. Any Special Conditions that influence the location
2. Whether any new buildings or other improvements are proposed
3. Traffic

4. Any negative influences on adjoining properties
5. No detriments to the public health, safety, peace, or comfort to the properties in the immediate area or to the general welfare of the town at large

Mr. Rodgers stated, that if the Commission determines that those factors are satisfactorily addressed, the Commission should forward a recommendation to approve the Special Use Permit. If it's determined that the factors are not all satisfactorily met, the Commission may recommend that the Council attach additional stipulations to their approval. OR, you may recommend denial. If recommending denial, the Commission should note the specific reasons for the recommendation in order that Council can fully evaluate the recommendation.

Staff recommends that the Commission forward a recommendation to Town Council to approve the Special Use Permit to allow Fearless Kitty Rescue to locate at 16832 E. Avenue of the Fountains, subject to the stipulations outlined in the staff report.

Kristen Skivington, a volunteer with Fearless Kitty Rescue, addressed the commission. She said Fearless Kitty Rescue is a free roaming, no kill facility. The cats are not in cages. There are large rooms, couches, kitty furniture, food and water. Cages are only used temporarily to introduce new additions to the facility or for kitty timeout. Kittens are separated from adult cats and all have the ability to play and be just cats. The Fearless Kitty Rescue has been in the current location for four years and expanded three times. The new space will allow for Fearless Kitty Rescue to be internally designed for a rescue. This would include, a non-emergency medical area, public spaces to view adoptable cats, and an educational /resource center. There are over 100 volunteers and this space would provide an area for training staff. There are 2 shifts, (morning and afternoon/early evening) running 7 days a week. Services with Republic Services are for pick up two days a week. All litter would be triple bagged and placed in industrial contractor bags before going into the disposal. Ms. Skivington concluded with thanking the Commission and that she is available for any further questions.

Kate Koch, a two and half year volunteer with Fearless Kitty Rescue, addressed the Commission relative to a grant received from Republic Services last summer. She explained the grant was for the Trap-Neuter-Return (TNR) for Feral Cats Program. Feral Cats are wild cats that are not domestic and every town has them. Ms. Koch reviewed some of the rescue's accomplishments. In the last eighteen months ninety-nine cats were taken into the Fearless Kitty Rescue; sixty-six strays, thirteen trap and release, twenty-two owner surrender, and eleven from owners deceased (3 from MCSO calls), forty-seven calls for lost and found cats and nine dead cats picked up off the streets. Ms. Koch concluded with offering informational flyers about the TNR program.

Amberleigh Dabrowski, a Fountain Hills resident, asked the following questions regarding the Fearless Kitty Rescue; how frequently would volunteers work at the facility and the amount of foot traffic expected. She also asked about noise control measures.

Commissioner Connick asked if there were any more public speakers and there being none, he closed the public hearing at 6:34 p.m.

AGENDA ITEMS #3 - CONSIDERATION OF A PROPOSED SPECIAL USE PERMIT BY FEARLESS KITTY CAT RESCUE TO ALLOW INDOOR KENNELS AT 16832 E. AVENUE OF THE FOUNTAINS, LOCATED IN THE "C-2" ZONING DISTRICT. Case #SU 2016-03

Chairman Archambault asked for hours of operation and answers to the questions from the last speaker.

Ms. Skivington said the hours of operation are 7:30 a.m. to 6:30 p.m. These are not the public hours but people come and go throughout the day. Public hours are not every day. The new location's proposed hours are: Thursday, Friday, Saturday and Sunday, 10:00 a.m. till 12:00 p.m.

and then 3:00 p.m. till 5:00 p.m. The facility is not open full time to the public. Adoption arrangements are made by appointment with the adoption coordinator.

Chairman Archambault asked how are the cats contained.

Ms. Skivington replied there are many rooms which are designated cat rooms with doors. They are not allowed to free roam the building. There is a public area of the building near the entrance that is contained and allows people to see the cats available for adoption. There are a lot of windows on the interior and exterior for viewing of the cats in each of the rooms.

In response to other questions Ms. Skivington said noise is not an issue with the current location and they do not anticipate one in the new location. The cats are left unattended overnight and there is no way for anyone to come into the building. Cats are very independent and do not mind being left alone. The web camera posted on the website shows what the kittens are doing when no one is around. They are often playing, running and sometimes sleeping.

Commissioner Jones thanked the rescue for the community support Fearless Kitty Rescue provides to Fountain Hills. He asked what is the percentage of local and national funding.

Ms. Skivington said local is 70 % and national is 30 %. National funds are growing because of participation in more grant writing and having national recognition. Two large donations of cat food were received this last year which provided \$60,000 value of cat food. Since it was not all needed, Fearless Kitty networked with other rescues to share the food. The promotion of Fearless Kitty Rescue on Jackson Galaxy's Foundation and other sites are providing more grants. Fearless Kitty Rescue was recently recognized at a national conference.

In response to Commissioner Jones, Ms. Skivington said the feral cats are brought in and get spayed or neutered and receive rabies vaccination. They are returned to the location they were taken from.

Ms. Koch said the majority of feral cats are near El Pueblo and the Indian reservation area. The farthest one out is near Safeway.

In response to questions, Ms. Koch said all the volunteers will park in the back and the windows do not open so noise should not be an issue. Security cameras will be in place.

Commissioner Connick asked about other community rescues.

Ms. Skivington said there are rescues in other communities. The difference is Fearless Kitty has a dedicated staff and location. Sometimes people use their house and take in cats. There are official ones like the county and the humane society. Fearless Kitty is unique because it is in a small community and can serve the town well.

Commissioner Owers asked if the TNR programs spay, neuter and rabies shots are performed on site.

Ms. Koch said the Arizona Animal Rescue League provides a low cost spay and neuter program which Fearless Kitty Rescue resources. After surgery the cats are returned to the facility for monitoring and then released where they were trapped. They are given rabies shots only. The procedures are not done at the rescue facility.

Ms. Skivington said the cats available for adoption are spayed and neutered, vaccinated and micro chipped at El Dorado Veterinarian Hospital in Fountain Hills.

Commissioner Owers **MOVED** to **FORWARD A RECOMMENDATION** to Town Council to approve the proposed SPECIAL USE PERMIT to allow Fearless Kitty Cat Rescue to operate an indoor kennel at 16832 E. Avenue of the Fountains, located in the "C-2" zoning district, subject to the stipulations recommended by staff as outlined in the staff report. Vice-Chairman Mikolajczyk **SECONDED** and the **MOTION CARRIED UNANIMOUSLY**. (5/0)

AGENDA ITEMS #4 - COMMISSION DISCUSSION/REQUEST FOR RESEARCH to staff.

Items listed below are related only to the propriety of (i) placing such items on a future agenda for action or (ii) directing staff to conduct further research and report back to the Commission.

None

AGENDA ITEM #5 - SUMMARY OF COMMISSION REQUESTS FROM SENIOR PLANNER.

None

AGENDA ITEM #6 - REPORT FROM SENIOR PLANNER AND ZONING ADMINISTRATOR, PLANNING AND ZONING DIVISION OF DEVELOPMENT SERVICES.

There are four open commissioner positions with five applicants. Interviews will take place next week.

AGENDA ITEM #7 - ADJOURNMENT.

Commissioner Jones **MOVED** to adjourn the meeting at 7:05 p.m. and Vice-Chairman Mikolajczyk **SECONDED** and the **MOTION CARRIED UNANIMOUSLY**. (5/0)

FOUNTAIN HILLS PLANNING & ZONING COMMISSION

BY:

Chairman Mike Archambault

ATTEST:

Paula Woodward, Executive Assistant

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the meeting of the Fountain Hills Planning and Zoning Commission held on the 11th day of August 2016, in the Town Council Chambers, 16705 E. Avenue of the Fountains, Fountain Hills, AZ 85268. I further certify that the meeting was duly called and that a quorum was present.

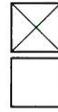
Dated this 17th day of August 2016



Paula Woodward, Executive Assistant



TOWN OF FOUNTAIN HILLS



**Planning and Zoning
Board of Adjustment**

AGENDA ACTION FORM

Meeting Date: September 8, 2016

Agenda Type: Regular

Meeting Type: Regular

Submitting Department: Development Services

Staff Contact Information: Bob Rodgers, Senior Planner, 480-816-5138, rrodgers@fh.az.gov

REQUEST TO COMMISSION (Agenda Language):

PUBLIC HEARING to receive comments on ORDINANCE 16-08, amending the Town of Fountain Hills Zoning Ordinance, Chapter 5, Section 5.19, and Chapter 18, Section 18.06, by revising provisions related to noise violations. Case #Z2016-05

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Case #Z2016-02

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Case #Z2016-02

Applicant: The Town of Fountain Hills

Applicant Contact Information: Planning & Zoning Division

Property Location: Town-Wide

Related Ordinance, Policy or Guiding Principle:

Fountain Hills General Plan - Downtown Area Specific Plan
Zoning Ordinance Section 2.01 – Amendments or Zone Changes
Zoning Ordinance Chapter 5 Section 5.19.A – Noise
Zoning Ordinance Chapter 12 – Commercial Zoning Districts
Zoning Ordinance Chapter 18 – Town Center Commercial Zoning District
Fountain Hills Town Code Chapter 11, Section 11-1-7 - Noise
Fountain Hills Zoning Map

Staff Summary (background):

The characteristics of sound and the regulation of noise is a complex subject. In an effort to improve understanding of this matter, a Noise Subcommittee was formed by the Planning & Zoning Commission on June 10, 2010 in response to the highly publicized noise complaints generated from residents around Fountain Lake who were disturbed by the nighttime music being played by businesses in Plaza Fountainside.

The subcommittee was charged with conducting an in-depth review of the noise regulations in town (specifically downtown), reviewing noise regulations from other jurisdictions, conducting independent research as necessary, and providing specific recommendations in the form of potential ordinance amendments back to the Planning & Zoning Commission.

Staff provided the subcommittee with copies of the town's regulations as well as selected other municipal, and model ordinances. Staff also advertised for knowledgeable volunteers and two well-qualified community residents stepped forward to offer their assistance and insight.

This committee forwarded a report containing recommendations for noise ordinance revisions in essentially the form that is attached to this report. The Planning & Zoning Commission accepted the report and initiated the ordinance amendments. However, due to other circumstances, the ordinance amendments were never adopted.

On February 11, 2016 the Planning & Zoning Commission established a sub-committee in order to study the possibilities of providing consistent noise regulations in all the zoning districts in the downtown area. It was noted that the downtown area contained at least three commercial zoning districts and there were at least two different criteria for outdoor entertainment (noise). The subcommittee returned their report on April 14, 2016.

The subcommittee's report recommended some ordinance revisions as well as the creation of a Downtown Entertainment Overlay District that would allow for outdoor entertainment activities in the downtown area under a set of uniform noise regulations regardless of the zoning district. The Planning & Zoning Commission accepted the committee report and directed staff to initiate the ordinance and map revisions.

Both the Noise ordinance revision, and the Downtown Entertainment Overlay District revision were forwarded to the Town Attorney's office for review and to be put into proper form for adoption.

During the review, it became apparent that there could be some confusion and/or inconsistencies between the noise regulations in Chapters 5 and 18 of the Zoning Ordinance and those in Chapter 11 of the Town Code. In order to eliminate these issues, the proposal has been modified so as to

remove the noise ordinance provisions from the Zoning Ordinance completely and place them entirely within the Town Code.

HIGHLIGHTS OF THE PROPOSED NOISE ORDINANCE AMENDMENTS (ORD #16-08)

1. Section 5.19 of the Zoning Ordinance is deleted and replaced with a referral to Section 11-1-7 of the Town Code.
2. Section 18.06 of the Zoning Ordinance is deleted and replaced with a referral to Section 11-1-7 of the Town Code.
3. Section 11-1-7 of the Town Code is deleted and replaced with the new Section 11-1-7 Town of Fountain Hills Noise Regulations.
4. Town Code Section 11-1-7 accomplishes the following:
 - Consolidates all noise regulations into a single location for easier reference and understanding.
 - Establishes a fair, 2-part test for determining if/when a violation occurs.
 - Establishes specific maximum decibel levels allowed during specific times, during specific months.
 - Clearly outlines enforcement procedures
 - Lists specific exemptions.

HIGHLIGHTS OF THE PROPOSED DOWNTOWN ENTERTAINMENT OVERLAY (ORD #16-04)

1. Chapter 12, Section 12.02.C. 3 and Section 12.02.C.18 of the Zoning Ordinance are amended to reference the new Chapter 25 of the Zoning Ordinance.
2. Chapter 25 – Entertainment Overlay District, is added to the Zoning Ordinance.
3. The parameters for businesses within the overlay district to provide outdoor seating, dining, entertainment, and similar activities is provided by uniform regulations to be applied throughout the overlay district regardless of underlying commercial zoning district.
4. The Downtown Entertainment Overlay boundaries are clearly defined and amended to the official Zoning Map as an overlay district.

While different in nature, Ordinance #16-08 (Noise) and Ordinance #16-04 (Downtown Overlay) are included together within this staff report because they are very closely related and should be considered as mutually affecting one another when/if they are enacted.

It is important to note that the Planning & Zoning Commission is only reviewing and making recommendations on the proposed zoning ordinance amendments (ORD 16-04 and ORD 16-08).

Ordinance #16-10 and Resolution #2016-17 are provided for informational purposes only. The Town Code amendment will not be included in your recommendations. However, the Town Code regulations are included in this packet for the Commission's reference since they will be replacing the deleted zoning provisions and provide the Commission with the information necessary for an informed recommendation.

Fiscal Impact (initial and ongoing costs; budget status): NA

Staff Recommendation(s):

Staff recommends that the Planning & Zoning Commission forward a recommendation to the Town Council to approve Ordinance #16-08, the Noise related Zoning Ordinance amendments to Chapters 5 and 18 as presented.

Staff recommends that the Planning & Zoning Commission forward a recommendation to the Town Council to approve Ordinance #16-04, amending the Zoning Ordinance Chapter 12, adding a new Zoning Ordinance Chapter 25, and amending the Zoning Map by adding the Downtown Entertainment Overlay Zoning District, as presented.

SUGGESTED MOTIONS:

Move to forward a recommendation to the Town Council to approve Ordinance #16-08, related to the noise regulations in the Zoning Ordinance, Chapter 5 and Chapter 18, as presented.

Move to forward a recommendation to the Town Council to approve Ordinance #16-04, related to the Downtown Entertainment Overlay Zoning District regulations and Zoning Map amendments, as presented.

Attachment(s):

- Ordinance #16-04 (6 pgs)
- Ordinance #16-08 (2 pgs)
- Ordinance #16-10 (2 pgs)
- Resolution #2016-17 (1 pg)
- Town of Fountain Hills Noise Regulations (5 pgs)
- Correspondence Received

Submitted by:

Robert Rodgers  August 25, 2016
Interim Development Services Director Date

ORDINANCE 16-04

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, AMENDING THE TOWN OF FOUNTAIN HILLS ZONING ORDINANCE, CHAPTER 12, COMMERCIAL ZONING DISTRICTS, RELATED TO OUTDOOR ENTERTAINMENT, ADDING A NEW CHAPTER 25, ENTERTAINMENT OVERLAY DISTRICT, AND AMENDING THE OFFICIAL ZONING DISTRICT MAP.

WHEREAS, the Mayor and Council of the Town of Fountain Hills (the “Town Council”) approved Ordinance No. 93-22 which adopted the Zoning Ordinance for the Town of Fountain Hills (the “Zoning Ordinance”); and

WHEREAS, the Town Council desires to amend the Zoning Ordinance to revise Chapter 12 (Commercial Zoning Districts), Subsection 12.02(C) (Additional Uses Permitted in C-2 and C-3 Zoning Districts), to allow outdoor entertainment, and to add a new Chapter 25 (Entertainment Overlay District) to create an overlay zoning district for downtown to allow for outdoor entertainment; and

WHEREAS, the Town Council desires to amend the Town of Fountain Hills Official Zoning District Map (the “Zoning Map”) pursuant to ARIZ. REV. STAT. § 9-462.04, to modify the zoning designation for an approximately 63 acre area of real property to include the Entertainment Overlay District (the “Zoning Map Amendment”); and

WHEREAS, in accordance with the Zoning Ordinance and pursuant to ARIZ. REV. STAT. § 9-462.04, public hearings regarding this Ordinance were advertised in the August 24, 2016 and August 31, 2016 editions of the *Fountain Hills Times*; and

WHEREAS, public hearings were held by the Fountain Hills Planning and Zoning Commission on September 8, 2016, and by the Town Council on October 6, 2016.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. The Zoning Ordinance, Chapter 12 (Commercial Zoning Districts), Subsection 12.02(C) (Additional Uses Permitted in C-2 and C-3 Zoning Districts) is hereby amended as follows:

....

3. Bars, including retail sales of package goods for off-site consumptions, provided that there is no entertainment or music audible off-site UNLESS OTHERWISE PERMITTED PURSUANT TO CHAPTER 25 OF THIS ORDINANCE. ~~No adult entertainment.~~

....

18. Restaurants and cafes, including outdoor patios with or without cocktail lounges, provided that there is no entertainment or music audible off-site UNLESS OTHERWISE PERMITTED PURSUANT TO CHAPTER 25 OF THIS ORDINANCE. ~~and provided that~~ Any outdoor patio with alcoholic beverage service must be enclosed as required by Arizona Revised Statutes § 4-207.01, as amended, except for the time during which a current and applicable barrier exemption, as granted by the Arizona Department of Liquor Licenses and Control, is in place for the outdoor patio.

....

SECTION 3. The Zoning Ordinance is hereby amended by adding a new Chapter 25 (Entertainment Overlay District) as follows:

Sections:

25.01 Purpose and Intent

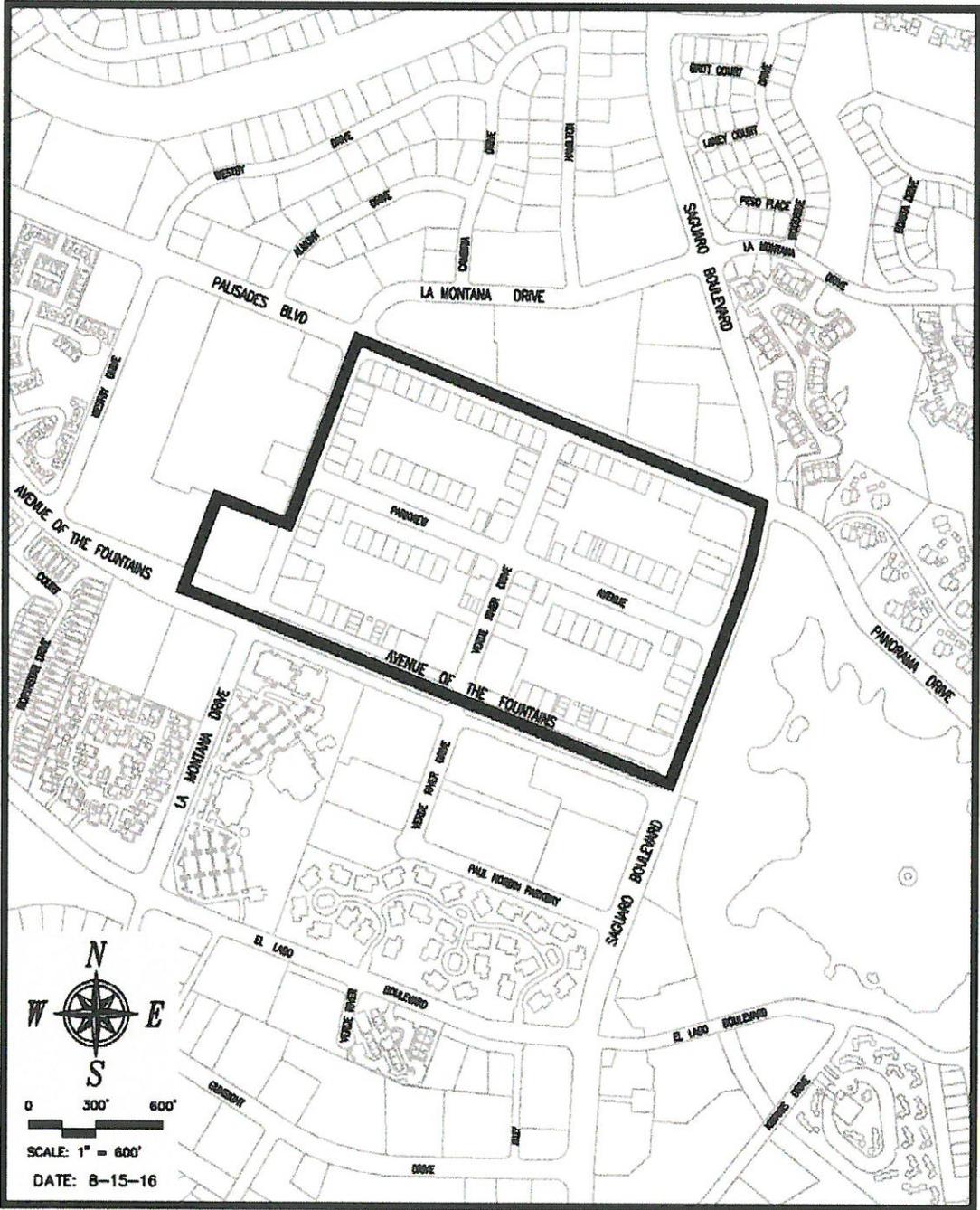
25.02 Provisions Applicable to all Uses

Section 25.01 Purpose and Intent

The Entertainment Overlay District is an overlay zoning district covering portions of downtown within the Downtown Area Specific Plan area, as shown in Figure 25-1 below; any property located either partially or wholly within the district is allowed the uses in this Chapter. The overlay district is intended to allow for outdoor entertainment and uses to establish a more vibrant and active downtown area. The Entertainment Overlay District modifies the underlying zoning district regulations only to the extent specifically set forth in this Chapter. If not specifically modified in this Chapter, all of the regulations in effect in the underlying zoning districts will remain in full force and effect.

[Figure 25-1 on following page]

TOWN OF FOUNTAIN HILLS
ENTERTAINMENT OVERLAY DISTRICT
Figure 25-1



Section 25.02 Provisions Applicable to all Uses

- A. Outdoor Entertainment is permitted at any establishment with dedicated outdoor seating areas for food and beverage service.
- B. Any recorded or live music or sound that is electronically amplified and played outside an establishment shall only be permitted at establishments with dedicated outdoor seating areas for food and beverage service.
- C. Establishments with dedicated outdoor seating areas for food and beverage service shall comply with the sound level requirements set forth in the Fountain Hills Town Code Section 11-1-7, as amended.
- D. Outdoor seating areas for food and beverage service shall comply with any applicable barrier requirements from the Arizona Department of Liquor Licenses and Control.
- E. Outdoor seating areas for food and beverage service are allowed within the sidewalk areas, provided an encroachment permit is approved by the Town Council, in its sole discretion.

SECTION 4. The Zoning Map Amendment applicable to the approximately 63 acre area of real property generally bounded by Palisades Boulevard to the north, Saguaro Boulevard to the east, La Montana Boulevard to the west and Avenue of the Fountains to the South, as more particularly depicted on Exhibit A, attached hereto and incorporated herein by reference, is hereby approved.

SECTION 5. If any section, subsection, sentence, clause, phrase or portion of this Ordinance 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.

SECTION 6. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to take all steps and execute all documents necessary to carry out the purpose and intent of this Ordinance.

PASSED AND ADOPTED by the Mayor and Council of the Town of Fountain Hills, Arizona, October 6, 2016.

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

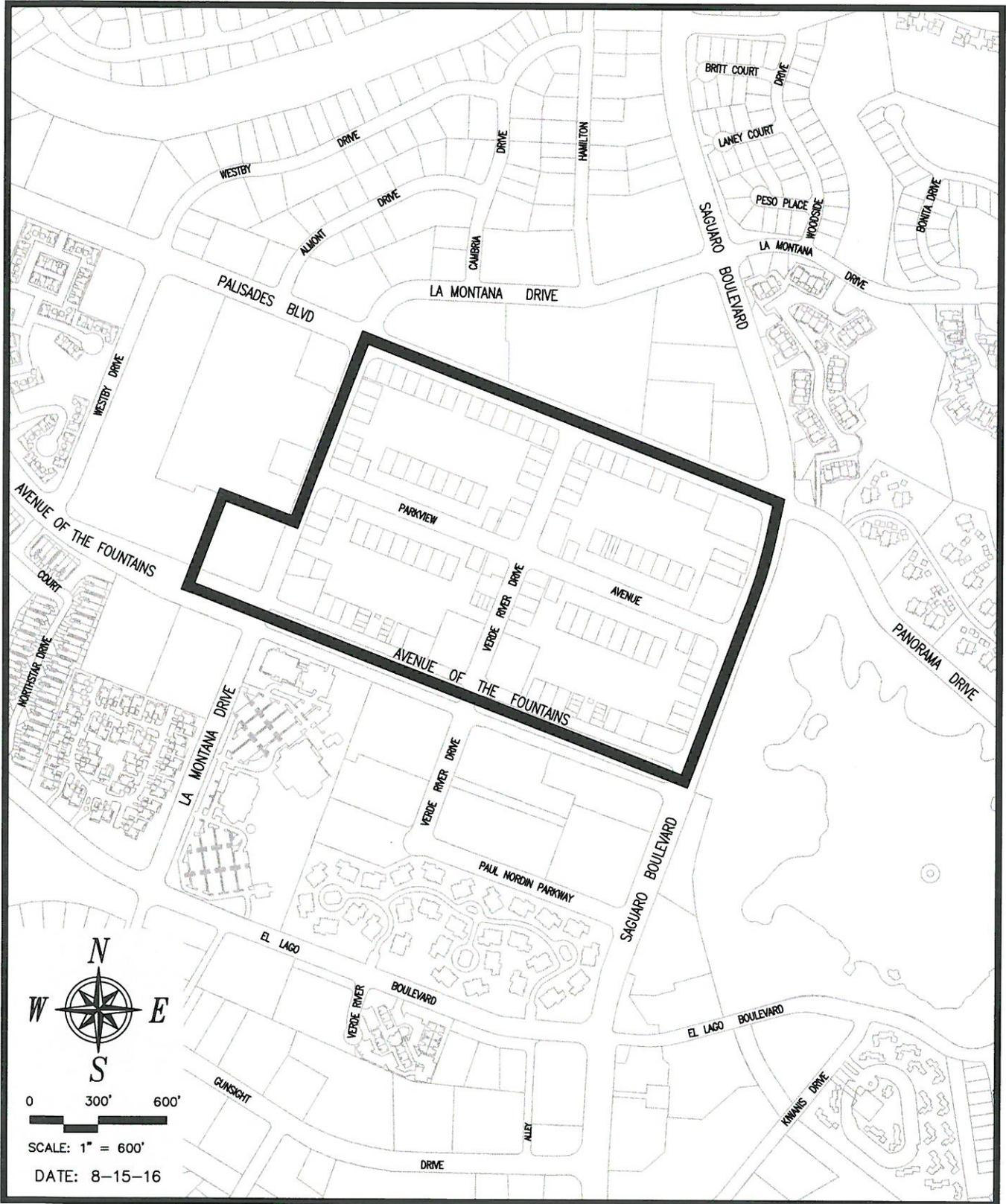
Andrew J. McGuire, Town Attorney

EXHIBIT A
TO
ORDINANCE 16-04

(Map of Property)

See following page.

TOWN OF FOUNTAIN HILLS ENTERTAINMENT OVERLAY DISTRICT



ORDINANCE 16-08

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, AMENDING THE TOWN OF FOUNTAIN HILLS ZONING ORDINANCE, CHAPTER 5, SECTION 5.19, AND CHAPTER 18, SECTION 18.06, BY REVISING PROVISIONS RELATED TO NOISE VIOLATIONS.

WHEREAS, the Town of Fountain Hills Town Code and the Town of Fountain Hills Zoning Ordinance (the “Zoning Ordinance”) each contain provisions pertaining to noise violations; and

WHEREAS, it is in the best interests of the citizens of the Town of Fountain Hills (the “Town”) to have a uniform set of standards by which authorized individuals may objectively determine whether a noise violation has occurred; and

WHEREAS, the Town desires to clarify the provisions of the Zoning Ordinance relating to noise violations to provide its citizens with a clear statement of the noise violation provisions applicable to activities in the corporate limits of the Town.

WHEREAS, in accordance with the Zoning Ordinance and pursuant to ARIZ. REV. STAT. § 9-462.04, public hearings regarding this Ordinance were advertised in the August 24, 2016 and August 31, 2016 editions of the *Fountain Hills Times*; and

WHEREAS, public hearings were held by the Fountain Hills Planning and Zoning Commission on September 8, 2016, and by the Town Council on October 6, 2016.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. The Town of Fountain Hills Zoning Ordinance, Chapter 5 (General Provisions), Section 5.19 (Performance Standards) is hereby amended by deleting Subsection A thereof (Noise) and replacing it with the following:

- A. Noise. The sound pressure level of any individual operation shall not exceed the maximum decibel levels set forth in the Fountain Hills Town Code Section 11-1-7, Table 2, with each individual operation being considered a sound source, as such term is defined in the Fountain Hills Town Code Subsection 11-1-7(B)(8), as amended. For purposes of this Subsection 5.19(A), decibel levels shall be measured according to the measurement standards set forth in the Fountain Hills Town Code Section 11-1-7, as amended; provided, however, that for purposes of this Subsection 5.19(A), the registering of a noise complaint shall not be necessary.

SECTION 3. The Town of Fountain Hills Zoning Ordinance, Chapter 18 (Town Center Commercial Zoning District), Section 18.06 (Additional regulations) is hereby amended by deleting Subsection B thereof and replacing it with the following new Subsection B, to read as follows:

- B. Any recorded or live music or sound that is electronically amplified and played outside an establishment shall only be permitted at establishments with dedicated outdoor seating areas for food and beverage service. Such establishments shall comply with the sound level requirements set forth in the Fountain Hills Town Code Section 11-1-7, as amended.

SECTION 4. If any section, subsection, sentence, clause, phrase or portion of this Ordinance 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.

SECTION 5. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to take all steps and execute all documents necessary to carry out the purpose and intent of this Ordinance.

PASSED AND ADOPTED by the Mayor and Council of the Town of Fountain Hills, Arizona, October 6, 2016.

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

Andrew J. McGuire, Town Attorney

ORDINANCE 16-10

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, ADOPTING THE “TOWN OF FOUNTAIN HILLS NOISE REGULATIONS” BY REFERENCE AND AMENDING THE TOWN OF FOUNTAIN HILLS TOWN CODE, CHAPTER 11, SECTION 11-1-7, BY REVISING PROVISIONS RELATED TO NOISE VIOLATIONS.

WHEREAS, the Town of Fountain Hills Town Code (the “Town Code”) contains provisions pertaining to noise violations; and

WHEREAS, it is in the best interests of the citizens of the Town of Fountain Hills (the “Town”) to have standards by which authorized individuals may objectively determine whether a noise violation has occurred; and

WHEREAS, the Town desires to clarify the provisions relating to noise violations to provide its citizens with a clear statement of the noise violation provisions applicable to activities in the corporate limits of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. The document known as the “Town of Fountain Hills Noise Regulations” (the “Noise Regulations”), 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, which document was made a public record by Resolution 2016-17 of the Town of Fountain Hills, Arizona, is hereby referred to, adopted and made a part hereof as if fully set out in this Ordinance.

SECTION 3. The Fountain Hills Town Code, Chapter 11 (Offenses), Article 11-1 (Offenses), is hereby amended by deleting Section 11-1-7 (Noise), in its entirety and replacing it with the Noise Regulations.

SECTION 4. Any person who fails to comply with any provision of the Noise Regulations shall be subject to civil and criminal penalties as set forth in Section 1-8-1 of the Fountain Hills Town Code, including civil penalties of not more than \$250 base fine. Criminal penalties shall constitute a class one misdemeanor, punishable by a fine not to exceed \$2,500.00 or by imprisonment for a period not to exceed six months, or by both such fine and imprisonment. Each day that a violation continues shall be a separate offense.

SECTION 5. If any section, subsection, sentence, clause, phrase or portion of this Ordinance 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.

SECTION 6. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to take all steps and execute all documents necessary to carry out the purpose and intent of this Ordinance.

PASSED AND ADOPTED by the Mayor and Council of the Town of Fountain Hills, Arizona, September 15, 2016.

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

Andrew J. McGuire, Town Attorney

RESOLUTION 2016-17

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE TOWN CLERK AND ENTITLED THE "TOWN OF FOUNTAIN HILLS NOISE REGULATIONS."

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

SECTION 1. That certain document entitled the "Town of Fountain Hills Noise Regulations," 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, Arizona, September 15, 2016.

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

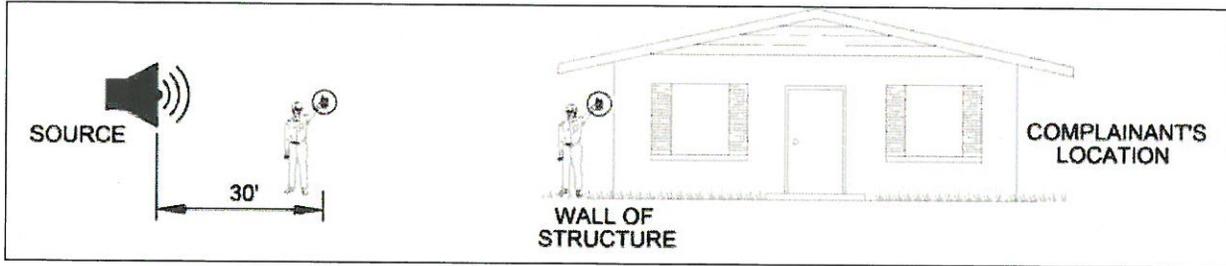
Andrew J. McGuire, Town Attorney

TOWN OF FOUNTAIN HILLS NOISE REGULATIONS

Section 11-1-7 Noise.

- A. Purpose. The purpose of this Section is to promote the health and general welfare of the citizens and businesses of the Town by balancing the need to protect the community against unreasonable noise with the legitimate goal of promoting and encouraging commercial and business growth in the community.
- B. Definitions. The following words, terms and phrases, when used in this Section, have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:
1. “A’ band level” means the total sound level of all noise as measured with a sound level meter using an A-weighting network. The unit is the dB(A).
 2. “Complainant” means a person who files a noise complaint.
 3. “Decibel” means a sound pressure that is 20 times the logarithm to the base 10 of the ratio of the pressure of sound to the reference pressure, 2×10^{-5} newton/meter².
 4. “Emergency work” means any (a) work performed to prevent or alleviate physical trauma or property damage threatened or caused by an emergency that has or may result in a disruption of service and that is necessary to restore property to a safe condition following a public calamity, (b) work required to protect the health, safety or welfare of persons or property or (c) work by private or public utilities when restoring utility service.
 5. “Noise violation” means any noise created that exceeds the maximum limits as specified in this Section.
 6. “Sound level (noise level)” means the sound measured with the A-weighting and slow response by a sound level meter.
 7. “Sound level meter” means an instrument including a microphone, an amplifier, an output meter and frequency weighting networks for the measurement of sound levels that satisfies the pertinent requirements for Type 1 sound level meters as set forth in the most recent version of American Standard Specifications for Sound Level Meters ANSI S1.4-1983.
 8. “Sound Source” means the cause and location of the noise.
- C. Measurement Standard. Sound level shall be measured with a sound level meter operated in accordance with the manufacturer’s guidelines and instructions.

Table 1 Measurement Standards:



D. Noise Violations Prohibited. Subject to the complaint processing provisions in Subsection 11-1-7(E) below, it shall be a violation of this Section to emit or allow to be emitted noise in excess of the permissible noise levels set forth in Table 2 below.

Table 2 Permissible Noise Levels:

Monday – Thursday, May 15th to September 15th		
Measurement Location	Time	Decibel dB(A)
Wall of structure proximate to complainant's location	5:30 am to 11:00 pm	55
Approximately 30 feet from the sound source		85
Wall of structure proximate to complainant's location	11:00 pm to 5:30 am	45
Approximately 30 feet from the sound source		75
Monday – Thursday, September 16th to May 14th		
Measurement Location	Time	Decibel dB (A)
Wall of structure proximate to complainant's location	6:00 am to 11:00 pm	55
Approximately 30 feet from the sound source		85
Wall of structure proximate to complainant's location	11:00 pm to 6:00 am	45
Approximately 30 feet from the sound source		75

Friday – Sunday, year long		
Measurement Location	Time	Decibel dB(A)
Wall of structure proximate to complainant's location	7:00 am to 11:00 pm	55
Approximately 30 feet from the sound source		85
Wall of structure proximate to complainant's location	11:00 pm to 7:00 am	45
Approximately 30 feet from the sound source		75

- E. **Complaint Processing.** After receiving a noise complaint from a complainant, an individual authorized under Subsection G of this Section shall measure the noise level with such measurements being made both at the wall of the complainant's location and approximately 30 feet from the sound source, as illustrated in Table 1 above. The authorized individual shall determine a noise violation has occurred when the decibel levels at both the complainant's location and at approximately 30 feet from the sound source exceed the maximum decibel levels set forth in Table 2 above.
- F. **Sound Truck.** It is unlawful to play, operate, or use any device known as a sound truck, loud speaker or sound amplifier, radio or phonograph with loud speaker or sound amplifier or any instrument of any kind or character that emits loud and raucous noises and is attached to and upon any vehicle unless such person in charge of such vehicle.
- G. **Violations.** The Town Manager or designee, code official or Town law enforcement officer may issue civil citations pursuant to Subsection 1-8-3(D) of this Code to enforce violations of this Section. After civil enforcement as set forth in Subsection 1-8-3(D) of this Code, any POST-certified law enforcement officer or the Town Prosecutor may issue criminal complaints pursuant to Subsection 1-8-2(A) to enforce this Section.
- H. **Exemptions.** The following uses and activities shall be exempt from Town noise level regulations:
1. Noises resulting from air-conditioning equipment when such equipment is in proper operating condition.
 2. Noises resulting from lawn maintenance equipment operated during daylight hours when such equipment is functioning with all mufflers and standard noise-reducing equipment in use and in proper operating condition.

3. Noises of safety signals, warning devices and emergency pressure relief valves.
4. Noises resulting from an authorized emergency vehicle when responding to an emergency call or acting in time of emergency.
5. Noises resulting from emergency work.
6. Church chimes or bells.
7. Any noise created by any Town or Town contractor vehicles, equipment or facilities while being operated or utilized for official business.
8. Noises resulting from a special event being held pursuant to a Town-issued special event permit.
9. An un-amplified human voice.

From the Front Page

year from their rentals. Almost half Airbnb hosts nationwide use that money to pay for necessities like groceries and rent, the company's report said.

The new law helps Arizonans earn extra income by renting out their property, said Daniel Scarpinato, a spokesman for Gov. Doug Ducey.

But cities here and elsewhere have struggled with how to regulate such rentals.

New York City has been especially hostile to Airbnb — allocating \$10 million to track down and punish hosts operating illegally. The New York state legislature passed a bill in June threatening hosts with fines up to \$7,500 if Gov. Andrew Cuomo signs it.

San Diego fined one Airbnb host 5,000 last year. In February, the city cracked down on more than 200 hosts, notifying them that they owed taxes on their rentals. San Diego is working on clarifying their guidelines.

Scarpinato said Arizona instead wants to stay "out of the way" so residents can fully participate in the latest technologies.

"Many states are tripping over themselves trying to figure out how to handle new technology," Scarpinato said. "We want to be recognized nationally as being leader of the sharing economy."

Airbnb is lobbying for more states to follow Arizona's lead, but how the law works here may help determine what they choose to do.

Many Airbnb hosts may use money they make from renting their homes to pay for necessities, but popular tourist destinations are seeing something different. Investors are buying properties and renting them out like hotels, said Steven Mauk, director of development services for Yavapai County.

"We saw whole neighborhoods turn into 90 percent short-term rentals," Mauk said.

That was the reason Sedona banned them more than 20 years ago, he said.

A high concentration of short-term rentals can cause neighbors to lose a sense of ownership of their area.

"They can also become 'party houses' at prompt ongoing neighborhood complaints.

And they allow homeowners to compete with hotels.

Kozachik, the Tucson councilman, said the new state law creates an uneven

playing field for the hotel and bed-and-breakfast industry. Most people who rent their houses on Airbnb do not pay for improvements to abide by health codes, he said, so they have an unfair advantage over businesses that are required to meet such safety standards.

Mauk added that popular vacation spots, such as Prescott and Sedona, already draw heavy tourist traffic so these cities have little to gain from opening more places to stay. Instead, forcing them to allow potentially disruptive Airbnb guests only detracts from the peaceful neighborhoods residents want, Mauk said.

Kevin Burke, town manager of Paradise Valley, said most short-term rentals don't cause problems. And other city officials agreed the majority of Airbnb hosts and guests are not problematic, but those that are can stir a lot of controversy.

Arizona cities have handled vacation rentals very differently — from not regulating them at all to banning them.

Airbnb began operating in Arizona in 2009. The state law arrived as some cities were beginning to regulate them.

Most cities' zoning ordinances don't touch on vacation rentals, noted Gregory Lines, a recent law school graduate who researched potential regulations for Airbnb in Arizona.

"Some cities had no idea what I was talking about when I called them about their regulations for Airbnb," Lines said. "It would kill all Airbnbs if they followed all the rules on the books right now."

Paradise Valley had assembled a committee to discuss the problems short-term rentals bring up. It halted those efforts when the Legislature began working on the new law. The same happened in Tucson.

"It was a few bad apples driving the need for new policies," Burke said.

The new law's supporters said the state needed to pre-empt complications caused by the "patchwork" local regulations that were being adopted.

In the Valley, it's difficult to know where one city ends and another begins, Scarpinato said. So allowing every city to make its own regulations is confusing for hosts and visitors.

People who say the state is being hypocritical with this law are wrong, said Christina Sandefur, Goldwater Institute executive vice president who helped

write the bill.

Local control is often good, she said, because city government usually understands a community better than the state. But local regulations are not best in all situations, she said. It's the state's job to step in when local governments overstep their bounds and violate people's property rights, Sandefur said.

In this case, people should be able to use their property as they choose as long as their guests aren't disturbing others.

Rather than ban short-term rentals outright, she said, it's better for local government only to step in if they become a nuisance.

She compared the issue to a backyard barbecue. Some gatherings get loud and out of hand, but cities don't ban them altogether. Instead, they enforce ordinances that address issues like noise and parking.

Lines, the law student who studied the impact of Airbnb regulations, pointed out even cities that banned vacation rentals still had listings on Airbnb, so the state action addresses the inevitable.

"The fact is: Short-term rentals were already here even if you try to weed them out," Lines said. "They can still happen regardless of bans, so the underlying factor is that they're here. Let's take advantage of them."

Many city officials acknowledged the law does provide a few tools to regulate them.

Hosts must provide an emergency contact so they can address problems. Cities can also limit rentals for reasons such as traffic, health and sanitation, and sex offenders.

"The final bill doesn't prohibit our ability to crack down on complaints," said Scott Butler, Mesa's deputy city manager.

Prescott Deputy City Manager Alison Zelms is pleased cities have some latitude to regulate the rentals, but said it turns local governments into "hotel managers" instead of allowing them to ban rentals entirely if they choose.

"Now problems are being dealt with on a complaint basis vs. preventing them," she said.

Most city officials are discussing how they will move forward. Their plans include figuring out how to track complaints about rental properties and making residents aware of who to contact if they have problems.



CARPENTER HAZLEWOOD

Carpenter, Hazlewood, Delgado & Bolen, PLC

ATTORNEYS AT LAW

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Jonathan D. Ebertshauser, Esq.

Licensed in Arizona

e-mail: jonathane@carpenterhazlewood.com
direct: 480-427-2863

August 23, 2016

SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED, FIRST CLASS MAIL, AND EMAIL (lkavanagh@fh.az.gov; dbrown@fh.az.gov; ndeporter@fh.az.gov; chansen@fh.az.gov; hleger@fh.az.gov; amagazine@fh.az.gov; cyates@fh.az.gov)

Town Council Members
Town of Fountain Hills
16705 E. Avenue of the Fountains
Fountain Hills, Arizona 85268

Re: Proposed Noise Ordinance- Opposition

Dear Members of the Town Council:

Our firm represents the Villas at Copperwynd Association (“Association”). The Association recently became aware of a proposed ordinance that would amend the current noise restrictions in place within the Town of Fountain Hills. As a result, the Association has asked our office to articulate the community’s opposition to the proposed ordinance.

Throughout this year, the Villas at Copperwynd Association has come to the Town Council with concerns related to the noise issues that plague its homeowners. The Association has actively defended the homeowners from the possibility of increased disturbance and annoyance from the surrounding uses. The proposed amendment goes entirely against the Association’s efforts that have been presented to the Town Council on multiple occasions.

As each of you are likely aware, this Association is neighbored by the Copperwynd Resort & Club (“Club Property”). As we have previously explained, events held at the Club Property are historically loud and last late into the evenings, negatively impacting the neighboring homeowners and the Association. The Association has thus

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relied on the noise ordinance in the Town of Fountain Hills to mitigate the negative impact the noise emanating from the Club Property has on this community.

However, as evidenced by our repeated attempts to curtail the noise issues that persist within the Association, even the current noise ordinances are insufficient to protect the harmony and welfare of the homeowners within the Association. Rather than addressing the multiple concerns raised this year, this proposed ordinance would instead raise the permissible sound level exponentially and increase the negative impact on the Association's residents and the neighboring communities.

The proposed Noise Ordinance requires that noise levels be measured in two separate locations in order to determine whether a noise violation exists. Section 11-1-7(E) of the proposed ordinance provides in relevant part as follows:

[A] noise violation has occurred when the decibel levels at both the complainant's location and at approximately thirty (30) feet from the sound source exceed the maximum decibel levels set forth in Table 2 above.

During a weekday evening (Monday through Thursday from 11:00 pm to 5:30 am), the proposed ordinance permits sounds up to 75 dB(A) within 30 feet of the "sound source." It seems that the ordinance attempts to curtail the impact of the noise on neighboring properties by setting lower decibel requirements when measuring from the wall of the structure proximate to the complainant's location, which during this same time period would be 45dB(A). However, the proposed ordinance completely fails in its objective and would instead exacerbate the noise issues that persist within the Association.

The intent to measure the noise levels at the wall of the structure proximate to the complainant's location is inherently flawed. Owners have a right to the quiet enjoyment of their entire property, not merely the quiet enjoyment within the structure on their property. The majority of cities have recognized this and instead measure noise levels at the property line closest to the source of the noise, which is the more appropriate location for measurement in this case. Additionally, multiple Units within the Association are approximately 30 feet away from Club Property. Accordingly, the subsequent sound measurements from the complainant's wall would be superfluous. This ordinance would effectively permit the Club Property to emit noises up to at least 75 dB(A) during the weekday evening hours alone, which is drastically higher than the limit currently in place that is already insufficient in protecting the comfort of the residents. The extent of this impact only increases during the weekends and as the seasons change. On a weekday until 11:00 pm, multiple residents of the Association who live approximately 30 ft. from the Club Property would likely be subjected to noises up to 85 dB(A).

Additionally, many homes throughout Fountain Hills are located within 30 ft. of their neighboring property. This is particularly true in the Association as the Units compose a Condominium Association and neighbors share walls and live directly on top of one another. The proposed ordinance would expressly allow noisy neighbors and loud, late night parties. The neighboring owner would have no recourse against the noisy neighbor unless the noise exceeded the 75-85 dB(A) limitations set forth in the proposed ordinance, which is drastically higher than the current noise standards. Such a policy favors those generating noise (e.g. the partying neighbor or business) over the health and general welfare of the law abiding citizens of this town.

To put this issue into perspective, the U.S. Department of Labor, through the Occupational Safety and Health Administration (“OSHA”) requires employers to provide hearing protection devices to any employee exposed to at least 8-hours of 85 dB(A) of noise. The proposed noise ordinance creates the potential for homeowners to be subjected to the same risks that have raised the concerns of the U.S. Department of Labor. However, to require homeowners to wear hearing protection devices within their homes is clearly absurd, and to subject homeowners to the possibility of such necessity is grossly inappropriate.

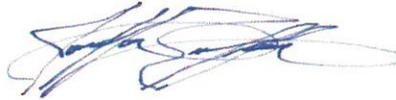
The stated goal of the proposed ordinance is to “balance the need to protect the community against unreasonable noise with the legitimate goal of promoting and encouraging commercial and business growth in the community.” However, it seems that that the proposed ordinance provides slight benefit to businesses within the town at the incredible expense of the residents. To say otherwise would be a blatant disregard to the desires and concerns of your residents.

Fountain Hills was once cited as “a welcome oasis on the outskirts of a metropolis” by Phoenix Magazine. Upon passing this ordinance, Fountain Hills would instead become one of the noisiest towns in the valley. In fact, the surrounding communities of Paradise Valley and Scottsdale have each set a maximum allowable noise level, neither of which exceed 68 dB(A). Accordingly, Fountain Hills would hardly be appropriately described as an “oasis” from the noise and disruption of the Phoenix metropolis. The Town Council promised to protect the surroundings and environment that make the Town of Fountain Hills the tranquil oasis that earned its outstanding reputation. The 2010 Strategic Plan adopted by the Town Council specifically pledges that the Town Council will “[p]reserve the natural beauty that surrounds us and protect it so future generations can enjoy it.” The fact that the Town Council is even entertaining the proposed Noise Ordinance in spite of this promise should cause immense alarm to the residents of Fountain Hills.

The Association requests that the Town Council take a stronger position in support of the residents of Fountain Hills. It is clear that this proposed ordinance is not in the best interests of the community, but rather the interests of a few businesses. Such decisions should not be made in a manner that would so negatively impact the Fountain Hills quality of life that each resident strives to preserve.

We welcome any questions the Town Council may have regarding the Association's position in this matter and look forward to addressing this issue at the upcoming Town Council meeting. Please feel free to contact me directly at (480) 427-2863.

Sincerely,



Jonathan D. Ebertshauser, Esq.

for

CARPENTER, HAZLEWOOD, DELGADO & BOLEN, PLC