

## CHAPTER 18

### **ENFORCEMENT PROCEDURES FOR VIOLATIONS OF THE TOWN CODE AND ZONING ORDINANCE**

#### **ARTICLE 18-1 General Provisions.**

Section 18-1-1. Violations of this Town Code and Zoning Ordinances of the Town may be filed under the criminal or civil enforcement procedures of this Chapter and under Article 1.8 of this Town Code. A person shall not be charged with both a civil and criminal offense for the same violation on the same date, but a subsequent violation against the same property or person may be charged as civil or criminal pursuant to this Article 18.

Section 18-1-2. For the purpose of enforcement of this Town Code and the Zoning Ordinance, unless otherwise stated, there is hereby created the position of Code Enforcement Officer, which officer shall be the Zoning Administrator for enforcement of this Town Code (other than the Building Code and Fire Code) and the Zoning Ordinance. The Code Enforcement Officer for the Fire Code shall be the Town Fire Chief, and the Code Enforcement Officer for the Building Code shall be the Building Official.

#### **ARTICLE 18-2 Criminal Citation.**

Section 18-2-1. A criminal citation is used when: the offense is serious and requires immediate action, the alleged violator has ignored previous warnings or notice, has refused to work with the Town toward compliance, or the violation is a repeat of a previous offense.

#### **ARTICLE 18-3 Civil Citation.**

Section 18-3-1. Violations of the Town Code or Zoning Ordinance may be filed under civil enforcement procedures and declared to be civil offenses. A person shall not be charged with both a civil and criminal offense for the same violation on the same date, but a subsequent violation against the same property or person may be charged as criminal rather than civil.

Section 18-3-2. The Council shall periodically appoint a hearing officer to hear and determine Town Code and Zoning Ordinance violations under the civil violation procedure. The hearing officer shall not be an employee or member of any Town board or commission.

Section 18-3-3. Civil complaints shall be filed using either the uniform Arizona Traffic Ticket and Complaint form, or one substantially similar, which shall cite to this Article 18-3 as well as the particular subsection of the Town Code or Zoning Ordinance applicable to the alleged violation. Complaints may be sworn to by any building inspector or Zoning Code officer for the Town. The citation shall contain the date and time of the alleged violation, and direct the defendant to appear before the Hearing Officer at the specified time to enter a plea either admitting or denying the complaint. Citations will be served by personal delivery upon the defendant by the responsible inspector or code enforcement officer, or by registered mail together with a summons, in the manner set forth in Rule 3.4 of the Arizona Rules of

Criminal Procedure. The citation will state that if the defendant fails to appear, the Hearing Officer will enter a default judgment against him in favor of the State, and impose sanctions not to exceed \$250 for each alleged violation. Subpoenas for witnesses shall be prepared and signed at the request of either the defendant or the Town., and served by personal service, certified mail, or first class mail, pursuant to A.R.S. § 13-4072, as may be amended.

Section 18-3-4. Hearing Procedures. Unless otherwise modified therein, civil enforcement procedures herein shall follow the Arizona Rules of Court for Civil Traffic Violations. The Town Attorney or designee will present evidence of the charges in the complaint. The defendant may present evidence pro per or through counsel. The defendant will not have a right to a jury trial. If the Hearing Officer finds that the charges are proven by a preponderance of the evidence, judgment shall be entered against the defendant for the Town, and sanctions imposed up to \$250 per offense. If the Hearing Officer finds the charges not proven, the case shall be dismissed. Any sanction shall be imposed immediately, without setting a sentencing date or probationary period, except that the Hearing Officer may allow the defendant a time to pay the sanction not more than 30 days from the hearing date.

Section 18-3-5. The defendant may appeal the decision of the Hearing Officer to the Town Magistrate, pursuant to ARS 22-402.B, as may be amended, who shall conduct a review of the matter limited to whether the Town Code or Zoning Ordinance has been correctly interpreted or applied by the hearing officer. It shall not be a trial de novo unless the Court determines that the records are insufficient, or there is no record preserved. A record for purposes of this Section 18-3-5 consists of audio tape recordings, any written rulings of the Hearing Officer, and exhibits admitted at the hearing. Further appeal to the Superior Court, either pursuant to A.R.S. § 12-124.A, as may be amended, is hereby granted.

**ARTICLE 18-4 Notice and Citation Procedure.**

Unless otherwise stated in this Town Code the following notice procedure shall be used:

Section 18-4-1. A verbal or written warning may be provided by the Code Enforcement Officer to the alleged party in violation, as a courtesy, when the violation is not considered immediately serious to the health, safety, or property of others, permitting a minimum of 10 days to correct, or make timely arrangements to correct, the violation.

Section 18-4-2. A written notice of violation is provided when (i) personal contact cannot be made, (ii) because access to the property is prevented, (iii) the occupant is not on the premises or (iv) the occupant has ignored an earlier courtesy warning. The time frame for compliance (not to exceed sixty days from the first courtesy warning) is at the discretion of the Code Enforcement Official.

Section 18-4-3. A criminal citation is used when: the offense is serious and requires immediate action, the alleged violator has ignored previous warnings, has refused to work with the Town toward compliance, or the violation is a repeat of a previous offense. For the purpose of enforcement of the Town Code, violations of any adopted Building Code in conjunction with a Town Code violation will be

considered violations of the Town Code as well, and appropriate, simultaneous enforcement action shall be taken by the Building Official as permitted by the Building Code.

**ARTICLE 18-5 Inspection Warrant.**

Section 18-5-1. An "inspection warrant" is an order, in writing, in the name of the people, signed by a judge or magistrate of a court of competent jurisdiction, directed to a state, county or local official, commanding him to conduct any inspection required or authorized by state, county or local law or regulation relating to building, fire, safety, plumbing, electrical, health or zoning.

Section 18-5-2. An inspection warrant shall be issued only upon cause, supported by affidavit, particularly describing the place, dwelling, structure, premises or vehicle to be searched and the purpose for which the search is made. In addition, the affidavit shall contain either a statement that consent to inspect has been sought and refused or facts or circumstances reasonably justifying the failure to seek such consent.

Section 18-5-3. Cause shall be deemed to exist if either reasonable legislative or administrative standards for conducting a routine or area inspection are satisfied with respect to the particular place, dwelling, structure, premises or vehicle, or there is reason to believe that a condition of nonconformity exists with respect to the particular place, dwelling, structure, premises or vehicle.

Section 18-5-4. Before issuing an inspection warrant, the judge may examine on oath the applicant and any other witnesses, and shall satisfy herself or himself of the existence of grounds for granting such application.

Section 18-5-6. If the judge is satisfied that cause for the inspection exists, she or he shall issue the warrant particularly describing each place, dwelling, structure, premises or vehicle to be inspected and designating on the warrant the purpose and limitations of the inspection.

Section 18-5-7. An inspection warrant shall be effective for the time specified therein, but not for a period of more than fourteen (14) days, unless extended or renewed by the judge who signed and issued the original warrant upon satisfying herself or himself that such extension or renewal is in the public interest. Such inspection warrant must be executed and returned to the issuing judge within the time specified in the warrant or within the extended or renewed time. After the expiration of such time the warrant, unless extended, is void.

Section 18-5-8. An inspection pursuant to this warrant may not be made between 6:00 p.m. of any day and 8:00 a.m. of the succeeding day, nor in the absence of an owner or occupant of the particular place, dwelling, structure, premises or vehicle unless specifically authorized by the judge upon a showing that such authority is reasonably necessary to effectuate the purpose of the regulation being enforced. An inspection pursuant to a warrant shall not be made by means of forcible entry; except that the judge may expressly authorize a forcible entry where facts are shown sufficient to create a reasonable suspicion of violation of a state, county or local law or regulation relating to buildings, fire, safety, plumbing, electrical, health or zoning, which, if such violation existed, would be an immediate

threat to health or safety, or where facts are shown establishing that reasonable attempts to serve a previous warrant have been unsuccessful. Where prior consent has been sought and refused, notice to the owner or occupant that a warrant has been issued must be given at least twenty-four (24) hours before the warrant is executed, unless the judge finds that immediate execution is reasonably necessary in the circumstances shown.

Section 18-5-9. Any person who willfully refuses to permit an inspection lawfully authorized by warrant issued pursuant to this Article is guilty of a misdemeanor punishable as set forth in Article 1-8 of this Town Code.

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