

ORDINANCE 422-08

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF QUEEN CREEK, MARICOPA COUNTY, ARIZONA, AMENDING THE TOWN OF QUEEN CREEK TOWN CODE CHAPTER 5, MUNICIPAL COURT BY ADDING ARTICLE 5-6, CIVIL HEARING OFFICER PROVIDING FOR A DEFINITION OF CIVIL HEARING OFFICER, AND ARTICLE 5-7, CIVIL CODE INFRACTIONS PROVIDING FOR COMMENCEMENT OF ENFORCEMENT ACTION ON CIVIL CODE INFRACTION, VIOLATIONS DEEMED PUBLIC NUISANCE, NON-EXCLUSIVE REMEDIES AND COMPATIBILITY.

BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, AS FOLLOWS:

Chapter 5 is hereby amended by adding the following:

CHAPTER 5 MUNICIPAL COURT

ARTICLE 5-6 CIVIL HEARING OFFICER

A Civil Hearing Officer shall be appointed by the Town Manager and may hear all civil code infractions and make such orders as may be proper and necessary to dispose of such cases. Such cases shall be heard without a jury. The Civil Hearing Officer shall adopt such local rules of procedure as may be necessary to implement the hearing of civil code infraction cases. The Civil Hearing Officer shall be the person with authority to issue penalties pursuant to Article 10-7 et.seq. Chapter 10, HEALTH AND SANITATION, and process such violations.

ARTICLE 5-7 CIVIL CODE INFRACTIONS

5-7-1 Commencement of Enforcement Action on Civil Code Infraction

5-7-2 Violations Deemed a Public Nuisance

5-7-3 Remedies Not Exclusive

5-7-4 Compatibility With Other Regulations

Section 5-7-1 Commencement of Enforcement Action on Civil Code Infraction

A. A civil code infraction means all violations of the Town Code designated as civil

violations or such violations that are not designated as a petty offense, misdemeanor or civil traffic violation.

- B. An enforcement action on a civil code infraction shall be commenced by the filing of a complaint with the Town Civil Hearing Officer, on a form approved by the Town Attorney, or on a Uniform Arizona Traffic Ticket and Complaint, as specified in the Arizona Rules of Procedure in civil traffic violation cases. The complaint form shall be in at least triplicate, in dimensions of approximately 8-1/2 inches by 11 inches, consisting of the original complaint, violator or defendant copy, and enforcement copy. The complaint form shall contain a notice of hearing specifying a location, date, and time at least ten (10) days following issuance of the complaint, at which the defendant shall appear to admit or deny the allegations contained therein. The complaint shall specifically identify the defendant, the date and time of the alleged civil code infraction(s), the location of the alleged civil code infraction(s), and the civil code infraction(s) alleged by the town code or ordinance section number and description. The complaint shall be signed by the complainant or Enforcement Officer, who shall certify, under penalty of perjury, that he or she has reasonable grounds to believe that the named defendant committed the civil code infractions described in the complaint and that a copy of the complaint has been served on the defendant pursuant to this section.
- C. The complaint and notice of hearing may be served upon the defendant and will be deemed proper and complete by any of the following means:
1. By having the defendant(s) sign the complaint with an acknowledgement of receipt of a copy thereof;
 2. By hand delivery to the person or persons listed on the complaint;
 3. By certified mail with return receipt, addressed to the person or persons listed on the complaint; or
 4. By any means authorized in the Arizona Rules of Civil Procedure.
- D. Where the defendant is a corporation, partnership, or association the words Defendant or Person in subdivisions C(1), (2), (3) and (4) above shall mean a partner, an officer, a managing organization agent, or any other agent of such entity.
- E. Any town official or employee with responsibility to enforce or administer the particular area of the town code or a town ordinance for which the enforcement action is brought, including the Town Attorney, Town Prosecutor or any peace officer, may file an enforcement action on a civil code infraction and may serve the complaint and notice of hearing in the manner set forth in subdivisions C(1), (2), (3), or (4) above. The Civil Hearing Officer may enter an award in favor of the town for the actual costs of service if a civil code infraction is found, whether or not a civil penalty is assessed.
- F. A person served with a notice of hearing for a civil code infraction shall appear at the

time and place set forth in the notice of hearing or may appear prior to the time and upon the directions contained in the notice of hearing to admit or deny the allegations of the complaint. Allegations not denied at the time of appearance are deemed admitted.

- G. If the allegations are admitted, the Civil Hearing Officer shall enter judgment for the Town and may impose a civil sanction and costs of service against the defendant. The Civil Hearing Officer shall also order the abatement of the civil code infraction, unless it has been abated by the date of a finding of responsibility therefore.
- H. If the defendant(s) denies any allegations contained in the complaint, the Civil Hearing Officer shall set the matter for a civil code infraction hearing. Civil code infraction hearings shall be informal and held without a jury, and the Town is required to prove the violation charged by a preponderance of the evidence. Technical rules of evidence shall not apply in such hearings, except for rules concerning relevancy and privileged communications. If the defendant elects to be represented by counsel, the defendant shall so notify the Civil Hearing Officer. The Town may also be represented by the Town Attorney or Town Prosecutor. Hearings shall be electronically recorded by the Civil Hearing Officer. If the Civil Hearing Officer finds in favor of the defendant, the Civil Hearing Officer shall enter an order denying the complaint. If the Civil Hearing Officer finds in favor of the Town, the Civil Hearing Officer shall enter judgment for the Town and may impose a civil sanction and costs of service against the defendant. Each day that a violation continues shall be a separate offense punishable as herein provided. In addition to any monetary civil sanction, the Civil Hearing Officer shall also order the abatement of the civil code infraction, unless it has been abated by the date of entry of such judgment. The Civil Hearing Officer shall have the authority, within his or her discretion, to suspend the payment of any civil sanction imposed.
- I. If a person served with a complaint and notice of hearing fails to appear on or before the date and time directed in the notice of hearing, or at such other time as may be directed by the Civil Hearing Officer, the allegations contained in the complaint shall be deemed admitted, and the Civil Hearing Officer shall enter judgment for the Town and may impose a civil sanction and costs of service against the defendant.
- J. In any case involving a civil code infraction relating to the occupancy or use of land, any interest in such land shall be recordable as a lien upon such land and shall run with the land. The Town, at its sole option, may record a notice of civil sanction and abatement order with the Maricopa County Recorder or Pinal County Recorder, as appropriate, and thereby cause compliance by any person(s) or entity thereafter acquiring such property. When the property is brought into compliance by the owner or responsible party, satisfaction of notice of civil sanction and abatement order shall be filed at the request and expense of the owner or responsible party. It shall be the property owner's responsibility to secure the satisfaction of notice of civil sanction and abatement order from the Town.

- K. Notwithstanding and other provision of this code, any person found to have violated any provision of this code or amendments thereto, which pursuant to this section is classified as a civil code infraction, and who has been twice previously found to have violated such provision within the preceding twenty four (24) months, shall, in addition to any penalty prescribed for such civil code infraction, be guilty of a Class 1 misdemeanor and shall be punished by a fine not to exceed \$2,500, by imprisonment for a period not to exceed six months, by a term of probation not to exceed three (3) years, or by an combination of such fine, imprisonment, and probation.
- L. Any person against whom judgment is entered for a civil code infraction, or against whom a civil sanction is imposed for such infraction, may seek judicial review of such judgment or sanction by way of special action to the Maricopa County Superior Court or Pinal County Superior Court, whichever is the proper venue.

Section 5-7-2 Violations Deemed a Public Nuisance

In addition to the enforcement process and penalties provided herein, any condition caused or permitted to exist in violation of any of the provisions of this ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

Section 5-7-3 Remedies Not Exclusive

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the Town to seek cumulative remedies.

The Town may recover all attorneys' fees, court costs and other expenses associated with enforcement of this ordinance, including monitoring expenses.

Section 5-7-4 Compatibility with Other Regulations

This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards of human health or the environment shall control.

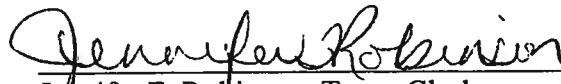
PASSED AND ADOPTED by the Mayor and Council of the Town of Queen Creek, Arizona, this 2nd day of April 2008.

FOR THE TOWN OF QUEEN CREEK:

ATTEST TO:



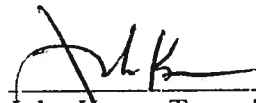
Arthur M. Sanders, Mayor



Jennifer F. Robinson, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:



John Kross, Town Manager



Fredda J. Bisman, Town Attorney