

ORDINANCE NO. 784-22

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, AMENDING AND CREATING CERTAIN SECTIONS OF CHAPTER 7 BUILDINGS AND BUILDING REGULATIONS AND AMENDING CHAPTER 9 OFFENSES; AND PROVIDE FOR CONSISTENCY AND PROPER COORDINATION BETWEEN AMENDED CHAPTERS OF THE TOWN CODE, AND BETWEEN THE IMPACTED TOWN DEPARTMENTS AND THE POLICE DEPARTMENT; PROVIDING FOR PENALTIES AND PERMIT PROCESSES; AND PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES.

WHEREAS, the Mayor and Council deem it necessary to adopt certain regulations to protect, enhance and promote the health, safety and welfare of the Town of Queen Creek ("Town") and its residents, and

WHEREAS, the Town has established the Queen Creek Police Department ("QCPD") to protect, enhance and promote the health, safety and welfare of the Town and its residents, and

WHEREAS, A.R.S. § 9-240, *et seq.*, authorizes the Town Council to regulate the functions of the Town, and

WHEREAS, the revisions to the Code adopted September 15, 2021 inadvertently omitted a preexisting construction permit process,

WHEREAS, the Code revisions set forth in this Ordinance provide for appropriate penalties for violations and enforcement of the Code provisions set forth in this Ordinance, and

WHEREAS, the Mayor and Council have determined that the revisions to the Town Code set forth in this Ordinance should take effect on April 20, 2022.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Common Council of the Town of Queen Creek as follows:

Section 1. The Queen Creek Town Code, Arizona Chapter 7 Buildings and Building Regulations is amended and Section 7.1.4.10 is created as set forth below in this Ordinance.

7.1.4.10 Nighttime and Holiday Construction Permit ("NHCP"). Construction work may be conducted at different times than otherwise allowed in Section 9-3-3 of the Town Code only if, upon written application, a permit to perform nighttime/holiday construction ("NHCP") is obtained from the Development Services Department, Building Safety Division. The form and contents of the application, permit and any supporting documentation required for issuance of a permit shall be established by, and as determined necessary by, the Building Official.

7.1.4.10.1 Application for a NHCP. An application for a NHCP will be submitted to the Development Services Department, Building Safety Division at the same time as the application for the required permits under 7.1.4.1, or if no building permit is required prior to commencing any construction activity. The application shall be in the form and supported by such documentation as the required by the Building Official, and shall include, at a minimum:

1. A complete schedule showing the specific dates with start and end times nighttime/holiday work is proposed to be performed;
2. A detailed description of the work to be performed on each date (delineating times when specific activities will be performed);
3. The type, size and amount of equipment, including vehicles (*i.e.*, concrete and delivery vehicles), to be used on each specific date;
4. A detailed sound and light mitigation plan;
5. A detailed traffic mitigation plan, if required; and
6. A detailed plan for providing notice to the surrounding neighborhood including who will receive notice, and the methods, substance and times when notice will be provided, and a 24-hour contact for complaints.

7.1.4.10.2 Issuance of a NHCP. No NHCP will be issued until a completed application has been formally submitted to and approved by the Building Official. In granting a NHCP, the Building Official shall, as the Building Official determines is appropriate for the specific location and type of work involved, consider whether:

1. Construction noise in the vicinity of the proposed work site would be less objectionable at night than during the daytime because of the different population levels or different neighborhood activities;
2. Obstruction and interference with traffic, particularly on streets of major importance, would be less objectionable at night than during the daytime;
3. The kind of work to be performed emits noises and/or light at such a low level as to not cause significant disturbance of the reasonable peaceful enjoyment of the surrounding neighbors in the vicinity of the work site;
4. The neighborhood of the proposed work site is primarily residential in character wherein sleep would be disturbed;
5. Undue economic hardship to the applicant or other undue hardship to the neighborhood the work site is located in would occur if the work were spread over a longer time period;

6. The work will abate or prevent hazard to life or property;
7. The proposed early morning or night work is in the general public interest;
8. The effectiveness of the sound and light mitigation plan;
9. The effectiveness of the traffic mitigation plan, if required;
10. The effectiveness of the plan for providing notice to the neighborhood;
11. The applicant's prior record of compliance with Town Codes and requirements; and
12. Any other factors the Building Official determines are relevant support or preclude the issuance of the requested permit.

7.1.4.10.3 Single and Multiple Projects. A NHCP may be obtained for a single project, or for multiple projects under construction, by the same applicant, within 600 feet, approximately two blocks, of each other.

7.1.4.10.4 NHCP Requirements. In the NHCP, the Building Official shall prescribe such conditions, working times, types of construction equipment to be used, sound and light mitigation, traffic mitigation, notice requirements, and other conditions as the Building Official deems appropriate in the public interest for the construction work and project at the location nighttime/holiday construction activities are to occur. The current approved NHCP shall be available for inspection at the work site at all times.

7.1.4.10.5 Emergencies. A NHCP shall not be required to perform emergency work necessary to restore property to a safe condition following a public calamity, work required to protect the health, safety or welfare of persons or property, or work by private or public utilities when restoring utility service.

7.1.4.10.6 Amendment of NHCP. The Applicant shall strictly comply with the requirements of the NHCP. If at any time the applicant determines that a NHCP requires amendment for any reason, the applicant shall submit to the Building Official an application to amend the NHCP, and shall continue to comply with the terms of the NHCP in place until an amendment is granted by the Building Official in writing.

7.1.4.10.7 Revocation of Permits; Appeals. The Building Official may revoke any NHCP granted hereunder upon complaints based upon evidence acceptable to the Building Official that the applicant has not strictly complied with the terms of the then current NHCP and/or the construction work causes significant undue disturbance of the reasonable peaceful enjoyment of the surrounding neighbors in the vicinity of the work site. Any person aggrieved by the granting or the refusal to grant a NHCP by the Building Official may appeal the decision to the Director of Development Services. Appeals of the Director's decisions may be made to the Town Manager, whose determination shall be final.

Section 2. The Queen Creek Town Code, Arizona Chapter 9 Offenses, is amended as set forth below (additions in Underline, removals in ~~Strikethrough~~) in this Ordinance and incorporated in full herein as part of this Ordinance.

9-3-3 Noise Regulations During Nighttime and Holiday Construction

It is unlawful during the times hereinafter set forth, to conduct construction activities of any kind, including but not limited to ~~the making of an excavating or~~ clearing of surface land and delivery of equipment or supplies, or the operation of any tools, generators, vehicles and or equipment of any kind mechanically powered tools anywhere in the Town limits, when such activities result in the generation of loud, unreasonable, or excessive noise in violation of this Section or Section 9-6-4 below, or without complying with Section 7-1-4-10 of the Town Code.

- A. Start/stop time periods of construction. Above mentioned construction activities are prohibited during the following time periods, unless a Nighttime and Holiday Construction ~~p~~Permit ("NHCP") is obtained as ~~described~~ required under in subsection Section 7-1-4-10 of the Town Code ~~is section:~~
 - 1. Prior to 5:00 am and after 7:00 pm Monday through Friday from May 15 through September 15.
 - 2. Prior to 6:00 am and after 7:00 pm Monday through Friday during the remainder of the year.
 - 3. Prior to 7:00 am and after 5:00 pm on Saturdays throughout the year.
 - 4. At all times on Sundays and Legal Holidays as defined by the Town.
- B. Stop orders. Whenever any work on a construction project is in violation of the provisions of this section, an Authorized Enforcement Agent may order the construction project stopped by notice in writing served on any persons responsible for the project, and any such persons shall forthwith stop work on the project until a permit is obtained. Failure to obey a stop order is a separate violation.
- C. Exclusions. The following activities shall be excluded from such prohibition:
 - 1. Noise generated by work being performed by a resident of a residential building or structure may continue until 10:00 pm but may not begin earlier than the times set forth in subsection ~~B~~ A of this section.
 - 2. Noise resulting from emergencies, including but not limited to, repair of roofs, windows, doors, electrical, plumbing and mechanical (HVAC) shall be permitted whenever necessary. An emergency shall be defined as any situation where work must be performed in order to prevent serious injury to persons or property.
 - 3. ~~Noise generated by sod delivery equipment, and vehicles.~~
 - 4. ~~Loading/unloading construction material, such as lumber, tile, and similar materials.~~
 - 5. ~~Pre-construction termite pre-treatment.~~
- D. Violation of this Section or an issued NHCP is a Civil Offense and Section 9-6-10 shall apply to Repeat Violators as set forth therein.

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9-6-4 Nighttime Noise

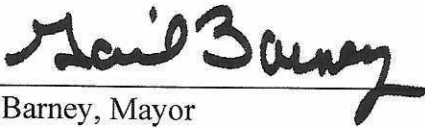
It is unlawful for any person or entity to cause or allow loud, unreasonable, or excessive noise to emit from real or personal property that the person or entity owns or controls, regardless of the instrument, device, or source of the noise, between the hours of 10:00 p.m. and 6:00 a.m., unless issued and operating in compliance with a Nighttime and Holiday Construction Permit ("NHCP") by the Town in accordance with Section 7-1-4-10, or having met an exclusion or timeframe in accordance with Section 9-3-3 of the Town Code. Violation of this Section is a Civil Offense and Section 9-6-10 shall apply to Repeat Violators as set forth therein.

Section 3. All ordinances or parts of ordinances in conflict with the provisions of this ordinances or any part of the Queen Creek Town Code adopted herein are hereby repealed, effective as of the effective date of this Ordinance.

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 thereof.

PASSED AND ADOPTED BY the Mayor and Common Council of the Town of Queen Creek this 20th day of April 2022.

FOR TOWN OF QUEEN CREEK:


Gail Barney, Mayor

ATTESTED TO:


Maria Gonzalez, Town Clerk

REVIEWED BY:


John Kross, ICMA-CM
Town Manager
4891-9803-1643 v3 [53749-44]

APPROVED AS TO FORM:


Dickinson Wright PLLC *Keis Beecher*
Town Attorneys